



DATE DOWNLOADED: Mon Mar 27 05:52:32 2023

SOURCE: Content Downloaded from [HeinOnline](#)

Citations:

Please note: citations are provided as a general guideline. Users should consult their preferred citation format's style manual for proper citation formatting.

Bluebook 21st ed.

Rob Meens, Lenneke van Raaij & Carine van Rhijn, Continuing Carolingian Reform in the Late Ninth Century: The Paenitentiale Trecense, 36 BULL. MEDIEVAL CANON L. (n.s.) 17

ALWD 7th ed.

Rob Meens, Lenneke van Raaij & Carine van Rhijn, Continuing Carolingian Reform in the Late Ninth Century: The Paenitentiale Trecense, 36 Bull. Medieval Canon L. (n.s.) 17

APA 7th ed.

Meens, R., van Raaij, L., & van Rhijn, C. Continuing Carolingian Reform in the Late Ninth Century: The Paenitentiale Trecense. Bulletin of Medieval Canon Law, 36, 17-54.

Chicago 17th ed.

Rob Meens; Lenneke van Raaij; Carine van Rhijn, "Continuing Carolingian Reform in the Late Ninth Century: The Paenitentiale Trecense," Bulletin of Medieval Canon Law 36 : 17-54

McGill Guide 9th ed.

Rob Meens, Lenneke van Raaij & Carine van Rhijn, "Continuing Carolingian Reform in the Late Ninth Century: The Paenitentiale Trecense" 36 Bull Medieval Canon L (ns) 17.

AGLC 4th ed.

Rob Meens, Lenneke van Raaij and Carine van Rhijn, 'Continuing Carolingian Reform in the Late Ninth Century: The Paenitentiale Trecense' 36 Bulletin of Medieval Canon Law 17

MLA 9th ed.

Meens, Rob, et al. "Continuing Carolingian Reform in the Late Ninth Century: The Paenitentiale Trecense." Bulletin of Medieval Canon Law, 36, , pp. 17-54. HeinOnline.

OSCOLA 4th ed.

Rob Meens, Lenneke van Raaij & Carine van Rhijn, 'Continuing Carolingian Reform in the Late Ninth Century: The Paenitentiale Trecense' 36 Bull Medieval Canon L (ns) 17
Please note: citations are provided as a general guideline. Users should consult their preferred citation format's style manual for proper citation formatting.

-- Your use of this HeinOnline PDF indicates your acceptance of HeinOnline's Terms and Conditions of the license agreement available at

<https://heinonline.org/HOL/License>

-- The search text of this PDF is generated from uncorrected OCR text.

-- To obtain permission to use this article beyond the scope of your license, please use:

[Copyright Information](#)

Continuing Carolingian Reform in the late Ninth Century: The *Paenitentiale Trecense*

Rob Meens, Lenneke van Raaij, Carine van Rhijn

In the Carolingian kingdoms penance was an important aspect of life.¹ Penitential principals and procedures were heavily debated in ecclesiastical councils and penitential rituals functioned as a focus for political discussions and actions on the highest level, as the two cases in which Louis the Pious did public penance clearly demonstrate. The importance of the theme of penance was such that historians refer to Louis's reign as 'the penitential state'.² The Carolingian era also saw a bustling activity in the composition of penitential handbooks that were meant to instruct confessors on how to deal with sinners in a new way. These new Carolingian creations were far from homogeneous, but they all display a clear interest in the authorities providing legitimization for the rulings they offer to the confessor on how to deal with his confessing subjects. In the year 813 the council of Chalon-sur-Saône ruled that: 'we should repudiate and eliminate totally those booklets they call penitentials, of which the errors are as certain as the authors are uncertain'.³ This canon can be seen as a token that the authority of penitential rulings was a matter of great concern, although the council of Chalon-sur-Saône represented only one voice in a choir of polyphone singers, and other councils adopted different positions on this matter.⁴ As a result of these concerns

¹ On penance in the Carolingian kingdoms, see: Rob Meens, *Penance in Medieval Europe* (Cambridge 2014) 101-139; Abigail Firey, *A Contrite Heart: Prosecution and Redemption in the Carolingian Empire* (Studies in Medieval and Reformation Traditions 145; Leiden-Boston 2009); Daniel Bachrach, 'Confession in the Regnum Francorum (742-900)', *JEH* 54 (2003) 3-22; for a minimalist view of the importance of penance, see Alexander Murray, *Conscience and Authority in the Medieval Church* (Oxford 2015) esp. 5-16 and 17-48.

² Mayke de Jong, *The Penitential State: Authority and Atonement in the Age of Louis the Pious, 814-840* (Cambridge 2009).

³ Council of Chalon 813 c.38 MGH Conc. 1.281: 'Repudiatis ac penitus eliminatis libellis, quos paenitentiales vocant, quorum sunt certi errores, incerti auctores'.

⁴ Meens, *Penance in Medieval Europe* 111-123.

influential scholars such as Halitgar of Cambrai and Hrabanus Maurus composed new penitential handbooks for the clergy, that should live up to the expectations as they were expressed in reforming circles. Canonical collections such as the *Collectio Dacheriana* (ca. 800) also provided a range of rulings that proved a valuable tool for judging penitents.⁵

At the council of Tours in 813 the bishops decided that to remedy the situation in which the great variety of penitential decisions hampered proper penitential judgments, an episcopal assembly should meet at the sacred palace to decide what would be the right penitential book to be used in the empire. This proposition did not come to fruition. No decision was ever pronounced on the proper penitential book to be prescribed throughout the empire. A number of penitentials were composed, however, that responded to the criticism of the Carolingian bishops. Yet, they all came up with different conclusions. Although grounded in a number of authoritative basic texts, variety was still the rule. One manuscript, now kept in Troyes, Médiathèque de Troyes Champagne Métropole 1979, contains no less than three penitential books that in their own way tried to respond to the episcopal criticism of penitential books. This codex contains book one of the penitential of Halitgar of Cambrai, which was composed at the behest of Archbishop Ebo of Reims. Ebo had invited the bishop of Cambrai to compose a text in order to remedy a situation ‘in which the judgments of the penitents were confused, diverse and contradictory in the little works that our priests use and which are not founded on anyone’s authority’.⁶ Ebo clearly subscribed to the criticisms formulated in Chalon-sur-Saône regarding penitential books and regarded the sayings of the fathers and the judgments of the canons as the proper foundation for penitential judgments. Furthermore, the Troyes manuscript contains the so-called penitential of Pseudo-Theodore. This text, composed in the north-eastern regions of the Frankish empire, possibly

⁵ Ibid. 119-120.

⁶ Letter of Ebo to Hrabanus, MGH Epp. 5.617: ‘et hoc est quod in hac re me valde sollicitat quod ita confusa sunt iudicia paenitentium in presbyterorum nostrorum opusculis atque ita diversa et inter se discrepantia ut nullius auctoritate suffulta ut vix propter dissonantiam possint discerni’.

somewhere in the area between Reims and Mainz in the second quarter of the ninth century, clearly dates from a region and a period in which the criticism of penitential books was well-known. It has therefore sometimes been included among the group penitential books inspired by new Carolingian thinking about penance, although this is not so evident from its text or the choices of source material.⁷ A third penitential book included in the Troyes manuscript was already observed by Raymund Kottje when he studied the manuscript tradition of Halitgar's penitential, but it has hitherto never been edited or analysed.⁸ In this contribution we will offer an analysis as well as an edition of this text, that in its own way tried to respond to the criticism of penitential books as it was expressed in the early ninth century.

The Manuscript

Manuscript Troyes, Médiathèque de Troyes Champagne Métropole 1979 is an intriguing one. It is hard to date palaeographically, but most scholars agree on dating it in the late tenth or the early eleventh century and localizing it in the region of the Western parts of Germany or the Eastern parts of France.⁹ Susan Keefe suspects that we are dealing with 'a copy of a Carolingian codex in (its) entirety'.¹⁰ The

⁷ See the introduction to the edition by Carine van Rhijn, *Paenitentiale Pseudo-Theodori* (CCL 156B; Turnhout 2009) xvii-xx.

⁸ Raymund 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) 64.

⁹ For dating and localisation of the manuscript see Pokorný, MGH Capit. Ep. III 167: s. XI/1; Hubert Mordek, *Bibliotheca capitularium regum Francorum manuscripta. Überlieferung und Traditionszusammenhang der fränkischen Herrschererlasse* (MGH Hilfsmittel 15; München 1995) 739: s. XI/1; edd. Hubert Mordek, Klaus Zechiel-Eckes and Michael Glatthaar, *Die Admonitio Generalis Karls des Grossen* (MGH Fontes antiqui 16; Hannover 2012) 71: s. XI/1; Kottje, *Bussbücher* 63: s. X/XI, 2 vols. (2 vols. Notre Dame 2002) 2.640: s. X/XI. Susan A. Keefe, *Water and the Word: Baptism and the Education of the Clergy in the Carolingian Empire* (2 vols. Notre Dame 2002) 2.640: s. X/XI.

¹⁰ Susan A. Keefe, *A Catalogue of Works Pertaining to the Explanation of the Creed in Carolingian Manuscripts* (Instrumenta patristica et mediaevalia 63; Turnhout 2012) 15.

manuscript is rather small, measuring 14 by 10 centimetres, resembling a modern-day pocket book. Its contents are neatly summarized by a note on the second folio: ‘In hoc volumine contigentur libri catholicae fidei et ecclesiasticorum docmatum (sic) ac officiorum canonum quoque atque poenitentialium’. It does indeed contain mainly texts concerning the creed, canon law material and penitential books.

Because of its miscellaneous nature, the contents of the manuscript have never been fully described or analysed. It contains among other texts, a commentary on the creed (fol. 2r-13r), the *Liber de ecclesiasticis disciplinis* by Gennadius of Marseille (fol. 13v-30r), the *De fide* of Bacharius (fol. 30r-35r) and the *Liber de divinis officiis* of Pseudo-Alcuin (fol. 44-157v). It further contains a canon law collection that is known as the *Collection in 234 chapters* (fol. 158r-243v), a collection that still awaits an edition. This collection is dated to the tenth century and originated probably in Lotharingia.¹¹ It includes material taken from the *Collectio Dacheriana*, as well as from Carolingian episcopal statutes: chapter 226 of this collection includes the text of the *Admonitio Generalis*, the programmatic capitulary of 789 in which Charlemagne offered a blueprint for a Christian Frankish society. The *Admonitio* is here presented in a version that is, according to the editors of this text (Glatthaar, Zechiel-Eckes and Mordek), ‘einer der besten Textzeugen der Admonitio’, and must have been based on an exemplar, that was very close to the original.¹² After this collection the manuscript contains the three penitential books that we already introduced. In this penitential part some related material is included as well, such as a letter of Hrabanus Maurus discussing several topics related to penance, the Responsiones 7 and 8 of the *Libellus Responsionum* of Gregory the Great, a text often found in relation to penitential books, as well as liturgical and educational material related to penance.¹³

¹¹ Kéry 186; Wilfried Hartmann, *Kirche und Kirchenrecht um 900: Die Bedeutung der spätkarolingischen Zeit für Tradition und Innovation im kirchlichen Recht* (MGH Schriften 58; Hannover 2008) 288.

¹² *Die Admonitio Generalis Karls des Grossen* 101-102.

¹³ For the letter of Hrabanus (letter 41), see Bart van Hees and Rob Meens, ‘Ein Brief ‘über diejenigen, die sich an Tieren vergehen’. Zwei

The manuscript contains a kind of compendium of basic Christian knowledge concerning the major tenets of Christian belief, ecclesiastical discipline and the correction of sinners that would suit a well-educated cleric or a bishop. Its small size suggests a practical use.¹⁴ The fact that the first and last folios of many quires show traces of wear, indicates that the manuscript may have remained unbound for quite a while. It is harder to establish for which practical use (or uses) the manuscript has been put together. Susan Keefe proposed that it was meant ‘to prepare a cleric for ordination’.¹⁵ According to Wilfrid Hartmann it might have served a bishop travelling through his diocese.¹⁶

The Paenitentiale Trecense

We propose to name the unnamed penitential in the Troyes manuscript the *Paenitentiale Trecense*, after the place where its only known manuscript survives. It is hard to establish the precise contents of the text, because it is unclear where it starts and where it ends.¹⁷ Some of the material preceding the *Paenitentiale Trecense* may have originally belonged to the penitential. Van Rhijn has edited the corpus of texts that is found between the Pseudo-Theodore penitential and the *Paenitentiale Trecense*, suggesting that these texts were part of the penitential of Pseudo-Theodore.¹⁸ Often, a penitential was transmitted with additional canonical material. In this

unbeachtete Textzeugen von Hrabanus Maurus, Epistola 41’, DA 74 (2018) 687-696; the responsiones of Gregory the Great have been edited in Van Rhijn, *Paenitentiale Pseudo-Theodori*, 158-164. See also *Rescriptum Beati Gregorii Papae ad Augustinum episcopum quem Saxoniam in praedicatione direxerat seu Libellus responsionum*, ed. Valeria Mattaloni (Edizione nazionale dei testi mediolatini d'Italia 43; Florence 2017) 42-43 and 53; for a more detailed discussion of their connection to penitential books, see Rob Meens, ‘Ritual Purity and the Influence of Gregory the Great in the early Middle Ages’, *Unity and Diversity in the Church*, ed. R. Swanson (Studies in Church History 32; Oxford 1996) 31-43.

¹⁴ Kottje, *Bussbücher* 64.

¹⁵ Keefe, *Catalogue* 353.

¹⁶ See the cautious arguments in Hartmann, *Kirche und Kirchenrecht* 309.

¹⁷ See for this problem Van Rhijn, *Paenitentiale Pseudo-Theodori* XXVI-XXX.

¹⁸ *Ibid.* Appendix II 155-171.

case, it concerns a text of unknown origin detailing the way in which a killer should fast for seven years, the letter of Hrabanus Maurus concerning killing and sexual intercourse with animals, and the *responsiones* of Gregory the Great dealing with ritual purity. Particularly Gregory's *responsiones* are often transmitted at the end of penitential books.¹⁹ Yet on fol. 309v a heading entitled 'Qualiter episcopi vel presbiteri suscipere debeant penitentem', seems to announce a new text. With this heading a liturgical ordo starts instructing a confessor how to deal with a penitent sinner. It seems more plausible to regard this ordo as belonging to the subsequent text, as many penitential books start with such a liturgical instruction and it is much less normal to find them at the end of a text. Therefore, we will edit the ordo as belonging to the *Trecense* penitential.

After this liturgical instruction we find a *capitulatio* numbering the penitential canons that follow. This 'table of contents' seems to have ended at canon 49; the last part of which is written in a cramped way in the lower margin and part of the text has been lost because the manuscript at some point has been trimmed. The next folio (fol. 314) is inserted, as its smaller size indicates, and starts with chapter 50 reading 'Incipiunt questiones alcuini de sancta trinitate', thus apparently introducing a new text, although continuing the numbering of the penitential. It concerns a text written by Alcuin, but the Troyes version is substantially longer than the text as it is known.²⁰ Although Alcuin's text is numbered as if

¹⁹ See *Rescriptum Beati Gregorii* 42-43; apparently the manuscripts Vienna, ÖNB lat 2195 and Prague, Archiv Pražského hradu O.83 (the so-called Prague Sacramentary) with a combination of the *Libellus* and two versions of the penitential of Theodore, escaped the attention of the editor. See for a brief discussion, Rob Meens, 'The authority of Gregory the Great: Marriage and Politics in Bavaria in the Eighth Century as Exemplified in the "Gregorian Part" of the Prague Sacramentary', *The Prague Sacramentary: Culture, Religion and Politics in Late Eighth-Century Bavaria*, edd. Maximilian Diesenberger, Rob Meens, H.G. Els Rose (Cultural Encounters in Late Antiquity and the Middle Ages 21; Turnhout 2016) 163-180, at 170-175.

²⁰ This is Alcuin, *Quaestiones de Sancta Trinitate*, edd. Eric Knibbs and E. Ann Mater, *Alcuini Eboracensis, De fide sanctae trinitatis et de incarnatione Christi; Quaestiones de sancta trinitate* (CCCM 249; Turnhout 2012), pp. 149-162. The Troyes manuscript lacks the preface and starts directly with interrogatio 1 and continues until fol. 327v with

it were part of the penitential, the fact that the numbering was added on an inserted leaf, indicates that it originally was not. For this reason we do not consider this text a part of the penitential. That it is not so surprising to encounter this work in this context, is indicated by the fact that in a Paris manuscript Alcuin's text is transmitted in close association with Halitgar's penitential and synodal legislation.²¹

After the liturgical *ordo* and the *capitulatio*, the penitential canons start on f. 315r with the penance assigned for several forms of manslaughter, which clearly formed one of the central points of interest of this work. It discusses killing a priest, the case of shared responsibility when a person was killed by a number of assailants, killing through magical means, the killing of unfree dependents, the case of someone who killed in a state of madness (*insaniens*), and several forms of abortion and infanticide (cc.1-9). Other important topics were clearly marriage and adultery, which are amply discussed (cc.10-17). From adultery a canon discussing the usage of magical means to obtain a man's love, leads into a discussion of magical arts (cc.18-20, and 28-29). Marriage was also of central concern in the judgments regarding the sexual purity of virgins, incestuous relations, breaking marital vows and marriage without parental consent (*raptus*) (cc.21-27 and 34). A number of rather isolated cases concerning eating with Jews, the treatment of people fleeing from their country or king, harassment of the clergy, obstinate feuding parties, perjury and theft, follow (cc.30-36), before the penitential ends with a long section discussing the intricacies of the imposition of penance (cc.37-49). The penitential therefore does not deal in any detail with sexual sins, except when these are related to adultery or marrying within forbidden degrees of kinship. In contrast to many other works of this kind there is no detailed discussion of the

the text as edited (until *interrogatio* 28), but contains more questions and answers than the edition. It has not been used for the edition.

²¹ Paris, BNF, lat. 8508 (s.IX ex., South East France); see Rudolf Pokorny ed. MGH Cap. Ep. 3 (Hannover 1995)50 and Wilfried Hartmann, 'Neue Texte zur bischöflichen Reformgesetzgebung aus den Jahren 829-31: Vier Diözesansynoden Halitgars von Cambrai', DA 35 (1979) 368-394, at 375.

proper forms or periods of sexual conduct within marriage.²² Food regulations are also conspicuously absent, except for the regulation concerning eating together with Jews. The main topics of the text concern violence, marriage, forms of divination and the proper way of dealing with sinners. Since the penitential does not deal with a number of sins that are rather common in other texts of this sort, such as sexual sins or forms of improper religious behaviour, we should perhaps best regard it as being meant to serve as a complement to an existing penitential handbook.²³ It might be no coincidence, that it is found in the Troyes manuscript together with two other works of this kind.

Sources

Since the penitential is anonymous, the sources that were being employed in its composition provide the only clue to establish the circumstances in which it originated. Identifying the texts that the compiler used enables us to determine when, where and why this particular work might have been composed. Since all clauses of this penitential can be identified, except for a small part of c.36, it becomes clear that the author did not compose new sentences, but chose to stick to established authorities. This attitude is related to the Carolingian worries about divergent sentences and the lack of proper authority, as the citation of canon 38 of the council of Chalon-sur Saône of 813 in chapter 29 confirms. By citing this canon condemning unauthoritative penitential books, our author subscribed to the criticisms of penitential rulings that the bishops assembled in Chalon-sur Saône expressed. It is interesting that the compiler did not deem it necessary to make his identity known, at least it is not transmitted in the only manuscript preserving this text. It was the authority of the sources being used that counted, not the authority of a

²² For which see James A. Brundage, *Law, Sex, and Christian Society in Medieval Europe* (Chicago 1987) 152-169 and Pierre J. Payer, *Sex and the Penitentials: The Development of a Sexual Code, 550-1150* (Toronto 1984).

²³ For a similar text, see Rob Meens, ““Aliud Benitenciale”: The ninth-century *Paenitentiale Vindobonense C*”, *Mediaeval Studies* 66 (2004) 1-26.

compiler of a penitential handbook. Although the compiler took great care to employ texts of an impeccable authority, as we will see, he or she apparently felt no need to explicitly identify these sources, although at some point he refers to councils of Mainz, Toledo or the penitential rulings of Theodore of Canterbury.²⁴ This contrasts, for example, with the ninth-century *Paenitentiale Vallicellianum I*, that took great care to provide traditional clauses with a respectable canonical pedigree.²⁵

The liturgical *ordo* with which the text starts, demonstrates many similarities to the *ordo* of a penitential belonging to the group of texts that were attributed to Bede the Venerable and Egbert of York. The attribution of these works to these famous Anglo-Saxon ecclesiastical authorities, is still a matter of some debate: at this point only the authorship of Egbert has some support.²⁶ In one member of this family of texts we encounter an *ordo* that closely resembles the liturgical instruction found in the *Trecense*. It concerns the *Paenitentiale mixtum* which embodies the last stage in which the penitentials attributed to Egbert and Bede were combined into a single handbook.²⁷ Within the manuscripts of the *Paenitentiale mixtum* there is some variation in the specific texts included in the *ordo*, that was carefully charted by Reinhold Haggenmüller. Haggenmüller distinguishes two groups, a northern and a southern one. In the northern group only two out of four manuscripts contain the liturgical *ordo*.²⁸

²⁴ See, for example, cc.18, 23, 30 and 34. It is certainly possible that the compiler of the *Trecense* was a woman. Yet we will henceforward refer to the compiler as 'he'.

²⁵ For which see Günter Hägele, *Das Paenitentiale Vallicellianum I: Ein oberitalienischer Zweig der frühmittelalterlichen kontinentalen Bußbücher: Überlieferung, Verbreitung und Quellen* (Quellen und Forschungen zum Recht im Mittelalter, 3 (Sigmaringen 1984) 76-81; see Meens, *Penance in Medieval Europe* 136-137.

²⁶ Meens, *Penance in Medieval Europe* 96-97.

²⁷ These texts have been investigated by Reinhold Haggenmüller, *Die Überlieferung der Beda und Egbert zugeschriebenen Bussbücher* (Europäische Hochschulschriften Reihe 3, Geschichte und ihre Hilfswissenschaften 461; Frankfurt 1991). For the *Paenitentiale mixtum* 246-273.

²⁸ The northern group consist of the following manuscripts: Düsseldorf, UB 113; Münster, Staatsarchiv, VII 5201; Cologne, Dombibliothek, 118; and Châlon en Champagne, BM 32; only the Düsseldorf and the Münster

The most striking feature of the southern group is the long list of questions to be put to the sinner.²⁹ The ordo of the *Trecense* contains the same preparatory prayers for the priest confessor and the same general interrogation of the penitent sinner focussing on his understanding of the main principles of Christian belief that we find in representatives of both groups. It also incorporates a long set of questions to be presented to the confessing person, that is unique to the southern group. In the last section of the ordo, containing a number of prayers, the manuscripts of the *Paenitentiale mixtum* demonstrate more variety. The *Trecense* includes four prayers that are found in the context of the *mixtum* manuscripts, and adds four others, three of which are found in Gregorian and Gelasian sacramentaries.³⁰ It is remarkable that the *Trecense* here includes four prayers that are only found in the northern group, and exactly in the same order. Its source, therefore, seems to have been a manuscript containing the ordo of the *Paenitentiale mixtum* which included not only the long interrogatory section that is exclusively found in the southern group, but also four prayers that are now only transmitted through two members of the northern group.

That the compiler of the *Trecense* did adhere to the ideal according to which penitential canons of dubious authority should be discarded in favour of approved authoritative texts, is demonstrated by his choice of sources. The main sources that were used are all authoritative Carolingian works related to the reforms. One of these sources is the *Collectio Dacheriana*, perhaps the most important Carolingian canonical collection, possibly composed by Agobard of Lyon. From this authoritative collection our compiler drew most of his conciliar canons.³¹ Moreover, our compiler employed the

manuscript contain the penitential ordo, see Haggenmüller, *Überlieferung* 247 and 258.

²⁹ Haggenmüller, *Überlieferung* 253-258. The manuscripts of this southern group are: Munich, BSB 3851; Munich, BSB 3853; Heiligenkreuz, SB 217; and Paris, BNF lat. 3878, see *ibidem* 47.

³⁰ The first four prayers are found in the *mixtum* manuscripts: 'Exaudi Domine preces nostras; Presta Domine ut huic famulo tuo; Maiestatem tuam, quaesumus, Domine; Omnipotens sempiternae Deus'; see Haggenmüller, *Überlieferung* 256-257.

³¹ Unfortunately we still have to rely on the edition published in the eighteenth century by Luc d'Achery and L.-F.-J. de la Barre, *Spicilegium*

influential reform penitential composed by Halitgar of Cambrai.³² Since Halitgar also drew on the *Collectio Dacheriana* for many of his canons, it is sometimes difficult to distinguish whether the compiler of the *Trecense* used Halitgar or the *Collectio Dacheriana*.³³ Given the fact that neither of these works is available in a modern edition, this is at the moment impossible to establish with any certainty, but since we can show that the compiler had access to both works, it is perhaps less pressing to try to solve this problem. Since the *Trecense* cites conciliar canons that are not found in Halitgar's work, he must have had access to both texts.

The *Trecense* not only used the penitential that Halitgar of Cambrai had composed in response to the criticism aired at existing penitential works during Carolingian councils, he also drew on another penitential book composed to remedy this situation. Hrabanus Maurus, abbot of Fulda and archbishop of Mainz, composed two major reform penitentials, one for archbishop Otgar of Mainz written in or shortly after 841 and the second one for Heribald, bishop of Auxerre, written more than a decade later, between 853 and 856.³⁴ Only in one case there is a parallel between the *Trecense* text and the penitential for Otgar, but the same clause appears also in the work for Heribald. Since in at least five other instances the *Paenitentiale ad Heribaldum* is clearly used, it seems safe to conclude that the compiler of our

sive collectio veterum aliquot scriptorum qui in Galliae bibliothecis delituerant (Paris 1723) 509-564. A scholarly edition of this immensely important text, is still a desideratum.

³² Halitgar's penitential is edited as *Paenitentiale Halitgarii Cameracensis*, PL 105.651-710. It has been analysed in great detail by Kottje, *Bussbücher*; for book VI we use the edition in Hermann J. Schmitz, *Die Bussbücher und das kanonische Bussverfahren nach handschriftlichen Quellen* (Düsseldorf 1898, reprinted Graz 1958) 290-300, because the numbering of the individual clauses makes it easier to consult.

³³ For Halitgar's use of the *Collectio Dacheriana* *ibidem* 181-183.

³⁴ Hrabanus Maurus, *Paenitentiale ad Otgarium* PL 112.1397-1424 and his *Paenitentiale ad Heribaldum* PL 110.467-494. Again these works are analysed by Kottje, *Bussbücher*.

Troyes penitential used only this penitential, which was also the most influential of Hrabanus's penitential texts.³⁵

Our compiler only once cited a canon from a penitential book that might be suspicious for a Carolingian reformer. In c.9 where the text deals with women who had killed their child to hide their fornication, it cites a clause from the *mixtum* penitential associated with Bede and Egbert, that was, as we have seen, also the source for the penitential ordo at the beginning of our text.³⁶ Now these rulings are not based on authoritative conciliar decisions that our compiler favoured so much, but go back to traditional collections of penitential judgements. In the early tenth century, however, Regino of Prüm included Bede among the respected authorities he could rely on.³⁷ It seems, therefore, that our compiler would subscribe to Regino's judgment, although perhaps not completely, since this is the only instance where he fell back on this text.

Apart from these important collections of penitential rulings, our compiler also used a piece of secular legislation. In chapter 24 he included the two first clauses of a capitulary issued by the Carolingian king Pippin I shortly after he had become the first king of a new dynasty (751-755). These clauses deal with incestuous relations, a topic of major concern for the new Carolingian ruler.³⁸ The inclusion of this secular legislation in a penitential is remarkable, but not inexplicable. In two early manuscripts these clauses on incest are transmitted in a collection of canonical material.³⁹ Moreover, they are found in a number of manuscripts that contain a collection of texts that reflect similar concerns as those of the compiler of the *Trecense*, as will be discussed

³⁵ The *P. ad Heribaldum* is used clearly as the source of cc.18, 19, 20, 23, 30. For the greater popularity of the work written for Heribald, see Kottje, *Bussbücher* 139 and 252.

³⁶ *P. mixtum Bedae-Egberti* c.39.1, ed. Wassersleben, *Bussordnungen* 274.

³⁷ Meens, *Penance in Medieval Europe* 142.

³⁸ Karl Ubl, *Inzestverbot und Gesetzgebung: Die Konstruktion eines Verbrechens (300-1100)* (Millennium-Studien 20; Berlin-New York 2008) 261-264.

³⁹ Gotha, Forschungsbibliothek, Memb. I 85 (Upper Alsace s. X) and Vatican, BAV, Pal. lat. 574 (upper Rhine region, s. VIII/IX), see Mordek, *Bibliotheca Capitularium* 150 and 772.

below. We encounter them in Munich, Bayerische Staatsbibliothek lat. 3853 (s. X 2/2, Augsburg?) and Heiligenkreuz, Stiftsbibliothek 217 (s. X ex., Southeast Germany), two manuscripts that demonstrate an interest in the same set of sources as those employed in the *Trecense*.⁴⁰ Pippin's regulations on incest, therefore, circulated in collections containing canonical material or a combination of such material with secular legislation, which would explain how they ended up in our penitential.

The *Trecense* also cited two councils convening early in the second half of the ninth century. In two instances it cited the council of Mainz of the year 852, a council convening under the authority of Hrabanus Maurus.⁴¹ To a much greater extent our compiler made use of the council of Worms of the year 868. At this council the majority of the bishops of the East Frankish kingdom assembled under the authority of king Louis the German and under the presidency of three archbishops, Adalwin of Salzburg, Liutbert of Mainz and Rimbert of Bremen, they produced an influential corpus of legislation.⁴² It is the source of no less than nine clauses of our penitential, and thus one of its main sources.⁴³

The decisions of the council of Worms were widely distributed, as not only the many manuscripts containing this text demonstrate, but as is also clear from the wide reception that canons of this council received in later works, for example in the work of Regino of Prüm, Burchard of Worms, Ivo of Chartres and other canon law compilations.⁴⁴ It is striking that our penitential starts with a canon that was issued

⁴⁰ For the connection between these manuscripts and the *Trecense*, see below 31. For the inclusion of these canons in the Heiligenkreuz (fol. 279r-279v) and Munich manuscript (fol. 259r-259v), see Mordek, *Bibliotheca Capitularium* 166 and 297.

⁴¹ *P. Trecense* 2 and 7. Interestingly c.9 of the Mainz council (= *Trecense* 7) was added to the mixtum penitential in Munich, BSB lat. 3853, on fol. 28v and 29r, as well as to another text of the group of penitentials attributed to Bede and Egbert, the so-called *Paenitentiale additivum* in Prague, Statni Knihovna, Tepla 1, pp. 33-36; see Haggemüller, *Überlieferung* 272-273.

⁴² Ed. MGH Conc. IV, pp. 246-311. For this council see W. Hartmann, *Das Konzil von Worms 868. Überlieferung und Bedeutung* (Göttingen 1977).

⁴³ *P. Trecense*, c.1, 6, 8, 21, 27, 31-33 and 37.

⁴⁴ See Hartmann, *Das Konzil von Worms*.

at the Worms council, although in this particular case our compiler does not seem to have used canon 16 of the council, that he must have known, but instead resorted to the papal letter of Nicolas I, on which the decision in Worms was based, as the following comparison demonstrates:

<i>Trecense</i>	<i>Letter 155 of Pope Nicolas</i>	<i>Council of Worms</i>
Qui sacerdotem voluntarie occiderit vel morte tradiderit vel parricidium fecerit perpetravit omnibus diebus vitae suae carnem non comedat.	Qui sacerdotem morti voluntate tradiderit vel parricidium perpetraverit, omnibus diebus vitae suae carnem non comedat. ⁴⁵	Qui sacerdotem morti voluntate tradiderit, carnem non comedat, nec vinum bibere praesumat. ⁴⁶

The council of Worms is the most recent text quoted in the *Trecense* penitential thus providing a firm terminus post quem for our text. It has to be written after the year 868.

Context

The date of composition of the manuscript provides the *terminus ante quem* for our text. As mentioned above, it was possibly written in the tenth century, but an early eleventh century date of origin is also possible. Therefore, we can conclude that the *Paenitentiale Trecense* was certainly written sometime between 868 and the early eleventh century. Can we narrow this down further? If Keefe is right and we are dealing with a copy of a (late) Carolingian manuscript, the penitential could be late ninth century. Manuscripts with a similar character and containing some of the same content as our Troyes codex were copied in the eleventh century on the basis of a late Carolingian exemplar, so Keefe's intimation might be correct, although there is no way to prove her assumption.⁴⁷

⁴⁵ Nicolas I, Letter 155, ed. MGH Ep. 6.670.

⁴⁶ Council of Worms, c.16, ed. MGH Conc. 4.270.

⁴⁷ See, e.g. Heiligenkreuz, 217 (s. X ex, Southern Germany); Munich, BSB lat. 3853 (s. X/2, Augsburg?); Paris, BNF lat. 3878 (s. X/XI, Southern Germany); for dates and description of the contents, see Mordek, *Bibliotheca Capitularium* 158-172, 287-305 and 444-451.

One could argue that the fact that the compiler made no use of the work of Regino of Prüm, might be significant. Hartmann observed that the same holds true for the canon law collection in our manuscript, the *Collection in 234 capituli*. This collection is usually dated to the tenth century, although there is no hard evidence to do so. Hartmann suggested two reasons why the compiler of the canon law collection did not use Regino's work: possibly he did not know it, or he compiled his collection to complement Regino's work.⁴⁸

The *Paenitentiale Trecense* has affinities with a group of manuscripts that all demonstrate a clear interest in the same material stemming from councils of Mainz, combined with Hrabanus Maurus's penitential addressed to Heribald and the letters of Nicolas I. Wilfrid Hartmann, elaborating on the work of Rudolf Pokorny, calls this the 'Mainzer Konzilienexzerpte'. This collection has been preserved in two manuscripts: Münster, Staatsarchiv, Msc. VII 5201 (s. X med., Corvey) and Munich, Bayerische Staatsbibliothek, lat. 5541 (s. XI in., Diessen). We find a similar interest in canonical material related to Mainz in four other manuscripts, which are somehow related to the manuscripts containing the 'Mainzer Konzilien-exzerpte'. These manuscripts are Cologne, Dombibliothek, 118 (s. IX ex., near Reims) and 120 (s. X in., Eastern France), Munich, Bayerische Staatsbibliothek lat. 3851 (s. IX², Eastern France) and Salzburg, Siftsbibliothek a.IX.32 (s. XI¹, Cologne?). Another closely related group of manuscripts contained a similar collection of material from Mainz combined with the *Paenitentiale mixtum Ps.-Bedae-Egberti* and the council of Worms. Hartmann calls this the 'Lothringischer Material-sammlung'.⁴⁹ It is transmitted in the manuscripts Munich, Bayerische Staatsbibliothek lat. 3851 and Cologne, Dombibliothek, 118, both of which also contain the 'Mainzer Paenitentialiensammlung'. This collection is also found in manuscript Munich, Bayerische Staatsbibliothek, clm 3853 (s. X², Augsburg?), Paris, Bibliothèque nationale de France, lat. 3878 (s. X ex., Northeastern France?) and Heiligenkreuz, Stiftsbibliothek 217 (s. X ex., Western parts of Germany).

⁴⁸ Hartmann, *Kirche und Kirchenrecht* 288.

⁴⁹ *Ibid.* 168-170.

Our penitential fits this group of material extremely well. They contain the same kind of material that we find in our Troyes compilation: the councils from Mainz, the penitential by Hrabanus, the letter of Nicolas I, the council of Worms and the *Paenitentiale mixtum* of the works attributed to Bede and Egbert. These peculiarities strongly suggest that the *Paenitentiale Trecense* was composed in the same circles in the same period. Mainly on the basis of the sources employed in these small collections, Hartmann dates them to the second half of the ninth century. They contain mostly material related to Mainz and Worms from the ninth century. The earliest of these manuscripts, Cologne, Dombibliothek 118, dates from the end of the ninth century, whereas the other ones all date from the tenth and eleventh centuries. It seems logical to conclude that our *Paenitentiale Trecense* fits the same chronological and geographical context. Consequently, it should be dated closer to the time when its latest source was produced than to the period in which the manuscript containing our text was written: thus most probably we are dealing with a late ninth century text written in the middle Rhine area at a place that was closely related to Mainz or Worms. The late tenth and eleventh century manuscripts containing these closely related canonical text ensembles, demonstrate that interest in these texts subsisted well into the first half of the eleventh century. The late date of our Troyes manuscript is therefore not surprising.

As far as we know the *Paenitentiale Trecense* only survives in the manuscript from Troyes. It was therefore not a very influential text, although it is of course possible that now it is known, traces of its use can be found in later texts. With only one manuscript, this is the least successful of the penitential books trying to implement Carolingian reform ideals. Perhaps this lack of success can be partly explained by the late date of its composition. Quickly after its completion, Regino of Prüm wrote his well-known and widely disseminated handbook for synodal inquisitions, which drew partly on the same sources that we find in the *Trecense*.⁵⁰

⁵⁰ Regino of Prüm, *Libri duo de synodalibus causis et disciplinis ecclesiasticis*, ed. H. Wasserschleben, *Reginonis libri duo de synodalibus causis et disciplinis ecclesiasticis* (Leipzig 1840). See on this text, Meens, *Penance in Medieval Europe* 141-148; now see the partial edition and

Perhaps Regino's work made the *Paenitentiale Trecense* superfluous, although, fortunately, one scribe thought it useful to copy this work at the end of the tenth century or the early eleventh century, at a moment when bishop Burchard employed Regino's work while compiling his impressive *Decretum* in the town of Worms.⁵¹

Conclusion

As such, the *Paenitentiale Trecense* is a witness to the enduring strength of the Carolingian penitential ideals. This text falls in the group of texts that try to respond to the worries expressed at early ninth-century Carolingian councils about the use of texts of uncertain authority, although it is a really late representative of this group. Halitgar was the first author to undertake such a task, Hrabanus Maurus followed suit. Other penitential handbooks of this kind are, however, anonymous. We refer to their authors as Pseudo-Gregory and Pseudo-Theodore. Like most of the reforming handbooks the compiler of the *Paenitentiale Trecense* did his best to ground his penitential on well-established authorities, in accordance with the canon of the council of Chalon-sur Saône that he cited in his work. He probably worked in the Rhineland in the years between ca. 870 and the early tenth century. The precise identity of the author still eludes us, we do not even have a possibility to give him a pseudo-name. However, our analysis of his sources demonstrates that he must have been closely related to a group of compilers of canonical collections combining conciliar legislation, papal letters and penitential material that was active in the late ninth and early tenth century in the Rhineland, thus laying a foundation for the later work in that region culminating in the impressive

translation by Wilfried Hartmann, Regino von Prüm, *Das Sendhandbuch des Regino von Prüm (Regionis Prumiensis Libri duo De synodalibus causis et disciplinis ecclesiasticis)* (Ausgewählte Quellen zur deutschen Geschichte des Mittelalters 42; Darmstadt 2004).

⁵¹ Burchard of Worms, *Decretum*, edd. Gérard Fransen, Theo Kölzer, *Burchard von Worms: Decretorum libri XX* (Aalen 1992); for this text, see Greta Austin, *Shaping Church Law Around the Year 1000: The Decretum of Burchard of Worms* (Farnham 2009) and the dissertation by Birgit Kynast to be published soon.

canonical compilations prepared by Regino of Prüm and Burchard of Worms.

Edition *Paenitentiale Trecense*

Editorial principles

This edition is based on the sole manuscript containing this text: manuscript Troyes, Médiathèque du Grand Troyes, 1979, folia 309v-324r. To assure the legibility of the text, punctuation and capitalisation have been adjusted to aid modern readers. Spelling follows the manuscript unless indicated otherwise in the notes, but ‘u’ has been replaced with a ‘v’ following modern rules. Abbreviations have been silently resolved, biblical quotations have been italicised. The *capitula* are given Arabic numerals, replacing the Roman numerals in the original texts to facilitate referencing. Roman numerals within the text are preserved. The first part of the text, the *ordo*, is based on the edition by Van Rhijn and emended where appropriate.

Editions used

Collectio Dacheriana: Luc d’Achery and Louis-François-Joseph de la Barre, *Spicilegium sive collectio veterum aliquot scriptorum qui in Galliae bibliothecis delituerant* (Paris 1723) 509-564.

Gelasianum: *Sacramentarium Gelasianum*, ed. L. Mohlberg OSB, *Liber Sacramentorum Romanae Ecclesiae Ordinis Anni Circuli (Sacramentarium Gelasianum)* (Rome 1960).

Gregorianum: *Sacramentarium Gregorianum*, ed. Jean Deshusses, *Le Sacramentaire Grégorien: Ses principales formes d’après les plus anciens manuscrits* (3 vols. Fribourg 1971-1982).

Halitgar: Halitgar of Cambrai, *Paenitentiale*, PL105.651-710; for book 6 we use the edition in Hermann J. Schmitz, *Die Bussbücher und das kanonische Bussverfahren* (Düsseldorf 1898, repr. Graz 1958) 290-300

Hrabanus ad Heribaldum: Hrabanus Maurus, *Paenitentiale ad Heribaldum* PL 110.467-494

Wasserschleben: *Die Bussordnungen der abendländischen Kirche nebst einer rechtsgeschichtlichen Einleitung* herausgegeben von F.W.H. Wasserschleben (Halle, 1851)

Troyes, Médiathèque du Grand Troyes, 1979, fol. 309v-324r

Qualiter episcopi vel presbyteri suscipere debeant penitentem⁵²

Cum ergo venerit⁵³ aliquis ad sacerdotem confiteri peccata sua, mandet ei sacerdos, ut expectet modicum donec intret in cubiculum suum ad orationem. Si autem non habuerit cubiculum, tamen tunc sacerdos in corde dicat hanc orationem.

Cum ergo—hanc orationem, *Paenitentiale mixtum*, Wassersleben 251.

Oremus

Domine Deus omnipotens, propitius esto michi peccatori, ut condigne tibi possim gratias agere, qui me indignum propter tuam magnam misericordiam ministrum fecisti officii sacerdotalis et me exiguum humilemque mediatorem constituisti, ad adorandum et intercedendum ad dominum nostrum Ihesum Christum pro peccantibus et ad poenitentiam revertentibus. Ideoque dominator domine qui omnes homines vis salvos fieri, et ad agnitionem veritatis venire, qui non vis mortem peccatorem⁵⁴, sed ut convertantur et vivant. Suscipe orationem meam quam fundo ante conspectum clementiae tuae pro famulis ac famulabus tuis qui ad poenitentiam venerunt. Per Dominum.

Domine Deus—Per Dominum, *Paenitentiale mixtum*, Wassersleben 251-252.

Videns autem ille qui ad poenitentiam venit sacerdotem tristem et lacrimantem pro suis facinoribus magis ipse timore Dei percussus, amplius tristatur et exhorrescet peccata sua, et unumquemque accedentem ad poenitentiam funderis acriter et assidue.

Videns autem—et assidue, *Paenitentiale mixtum*, Wassersleben 252.

Ordo ad dandam poenitentiam. Interrogat sacerdos dicens:

Credis in Deum Patrem et Filium et Spiritum Sanctum?⁵⁵ R. Credo. Credis quod iste tres personae quas modo diximus Pater et Filius et Spiritus Sanctus tres personae sunt et unus Deus? R. Credo. Credis quod ista carne in qua nunc es in ipsa habes resurgere in die iudicii et recipere sive bonum sive malum quod gessisti? R. Credo. Vis dimittere peccata illis quicumque in te peccaverunt Domino dicente. *Si non remiseritis hominibus peccata eorum, nec pater vester caelestis dimittet vobis peccata vestra.*⁵⁶

⁵² The beginning of this text is marked with a chapter number in the left margin: *XLVIII*.

⁵³ venit *ante corr.*

⁵⁴ peccatorum *ante corr.*

⁵⁵ This text is marked with a chapter number in the left margin: *L*, f. 310r

⁵⁶ Mt. 6:14.

36 ROB MEENS, LENNEKE VAN RAAIJ, CARINE VAN RHIJN

Et require eum diligenter si est incestuosus. Et si non vult incesta ipsa dimittere, non potes ei dare paenitentiam. Nam si vult incesta⁵⁷ ipsa dimittere, tunc dic psalmum xxxvii *Domine ne in furore tuo*⁵⁸ ii et dic orationem hanc

Ordo ad—orationem hanc, *Paenitentiale mixtum*, Wassersleben 252.

Oremus

Deus cuius indulgentia cuncti indigent memento famuli tui N, et qui lubrica terreni corporis fragilitate nudatus est, quaesumus ut des veniam confitenti, parce supplici, ut qui nostris meritis accusamur, tua miseratione salvemur. Per.

Deinde psalmum: *Benedic anima mea domino usque renovabitur ut aquilae iuventus tua.*⁵⁹ Et dic orationem hanc:

Deus sub cuius oculis omne cor trepidat omnesque conscientiae constremescunt, propitiare omnium gemitibus, et cunctorum medere vulneribus, et sicut nemo nostrum liber est a culpa, ita nemo sit alienus a venia. Per Dominum.

Et dic psalmum L *Miserere mei Deus usque et omnes iniquitates meas dele.*⁶⁰ et dic orationem hanc:

Oremus. Deus—meas dele, *Paenitentiale mixtum*, Wassersleben 252-253.

Alia

Precor domine clementiae et misericordiae tuae maiestatem, ut famule tuo N peccata et facinora sua confitenti veniam relaxare digneris, et preteritorum criminum culpas indulgeas, qui humeris tuis ovem perditam reduxisti, qui publicani preces confessione placatus exaudisti, tu etiam huic famulo tuo N placare. Domine tu huius precibus benignus aspira, ut in confessione placabilis⁶¹ permaneat, fletus eius et petitio, perpetuam clementiam tuam celeriter exoret, sanctisque altaribus et sacrariis restitutus, aeternae ac celestis gloriae mancipetur. Per.

Precor Domine—mancipetur. Per, *Paenitentiale mixtum*, Wassersleben 253.

Tunc fac eum confiteri omnia peccata sua ita dicendo.

Fecisti homicidium aut casu, aut nolens, aut per vindicta parentum, aut per iussionem domini tui, aut in publico bello vel facere voluisti et non potuisti ? vii⁶² vel v annos, aut iii vel xl dies. Similiter si servum occiderit, ii annos.

Fecisti periurium per cupiditatem saeculi aut coactus, vel pro necessitate, vel pro vita parentum, aut nesciens, aut si alios in periurium induxisti scienter ? vii annos vel iii annos vel xl dies.

⁵⁷ incesta *add.sup.lin.*

⁵⁸ Ps. 37:1.

⁵⁹ Ps. 102:1-5.

⁶⁰ Ps. 50:3-11.

⁶¹ flebili *ante corr.*; placabilis *add.sup.lin.*

⁶² vel vii *add.sup.lin.*

Fecisti furtum, id est effracturam quadrupedia vel fortio rem causam valentem? solidos c, annos vii vel v vel dies xl.⁶³ Et de minoribus furtis, annum i vel iii quadragesimas seu et xl dies.

Fecisti adulterium cum uxore aliena, aut cum sponsata, vel virgine corrupisti, aut cum sanctaemoniale vel Deo dicata? v vel iii annos vel xl dies⁶⁴.

Nupsisti cum ancilla tua vel uxore tua retro? xl dies.

Concubuisti legitimam uxorem et cum ea simul concubinam, vel cum uxore tua retro, adulterasti? annos vii vel v aut iii peniteas.⁶⁵

Fecisti fornicationem sicut sodomitae fecerunt, vel cum matre aut fratre⁶⁶ vel cum peccoribus vel ullo ingenio? xv aut xii vel vii⁶⁷ aut annum i.

Dixisti falsum testimonium pro cupiditate sciens aut nesciens? iii vel ii aut annum i.

Percussisti hominem ut sanguis exiret ab homine vel ossa fregisti? annum i vel xl dies.

Truncasti ei ullum membrum propter iram? annos iii.

Odisti fratrem tuum? Quamdiu in ipso odio fuisti, tamdiu poeniteas in pane et aqua.

Detraxisti ullum hominem ad seniore m vel pares propter invidiam? annum i vel xl dies.

Nupsisti cum uxore tua quadragesimo ante partum? xl dies paeniteas.

Nupsisti die dominico? i diem vel iii dies.

Contigit tibi aliqua⁶⁸ negligentia de sacrificio, c dies vel xl.

Violasti sepulchra propter furtum? annos tres aut ii.

Fecisti usuras? v aut iii annos.

Tulisti res alienas malo ordine per malum ingenium? iii annos.

Fecisti sacrilegium, id est quos aurspices vocant et augurias faciunt et sortilogos, vel vota quae arbores, vel ad fontes seu et cancellos, aut per ullum ingenium vovisti, aut sortitus fuisti, aut auorsum fecisti? v annos vel tres.

Fecisti raptum de virgine vel vidua? tres annos paeniteas.

Tulisti aliquid pecuniae in ecclesia contra directum? iii annos paeniteas aut in quadruplum restituas.

Prodidisti aliquam rem per iniustam dilaturam? iii annos paeniteas.

Duxisti aut transmisisti per ullum ingenium servum tuum aut alium hominem christianum in captivitatem? v annos aut tres peniteas.

Cremasti domum aut aream alterius? iii annos.

Fecisti vomitum propter aebrietatem? xx dies. Si per contentionem, xl dies. Si nesciens, vii dies.

Coegisti ullum hominem bibere ut inebriaretur aut per odium hoc fecisti? c dies.

Bibisti sanguinem aut manducasti de ullo pecude vel homine? iii annos.

⁶³ vel dies xl *add.sup.lin.*

⁶⁴ vel xl dies *add.sup.lin.*

⁶⁵ concubuisti legitimam—iii peniteas *add.sup.lin.*

⁶⁶ fratre *ante corr.*

⁶⁷ vi *ante corr.*

⁶⁸ alia *ante corr.*

Manducasti morticina aut dilacerata a bestiis? xl dies.
 Bibisti de liquore in quo mus vel mustela mortuae invente fuerunt? xl dies
 et si in quadragesima, i annum.
 Contempsisti indictum ieiunium contra decretum seniorum in ecclesia?
 dies xl.⁶⁹
 Oppressisti infantem tuum vel alium ut moretur? vii annos aut v vel iii.
 Bibisti ullum maleficium, id est herbas vel alias causas ut non potuisses
 infantem habere, aut alio donasti, aut hominem per potionem occidere
 voluisti, aut de sanguine vel de semine mariti tui ut maiorem de te haberet
 amorem, aut gustasti aut crisma bibisti? vii annos vel v aut tres.
 Necasti partus tuos? x annos peniteas. Et si filium aut filiam occidisti, xii
 annos. Et si in utero ante conceptum, annum i. Si post conceptum, annos
 iii. Si infans per negligentiam mortuus fuerit sine baptismo, annum i.
 Fecisti aliquid paganas quae in Kalendas Ianuarii faciunt in cervulo aut in
 vegula? iii annos paeniteas.
 Misisti filium tuum supra tectum aut in foramen pro aliqua sanitate? v
 annos.
 Arsisti grana ubi mortuus homo erat? v annos.
 Et ad ultimum dicendum est confitenti:
 Multa sunt peccata mea, Domine, in factis in verbis in cogitationibus.
 Habes fidem confessam et peccata confessa Deo et sacerdoti ut
 remiscantur tibi peccata tua? Credis hoc? Credo. Habes voluntatem quod
 egisti contra mandata Dei ut hoc emendes? Sic habeo. Unde confessus
 fuisti vis iudicium recipere et illud bene custodire et omnibus
 adinventionibus diaboli renuntiare et trinitatem custodire? Volo.
 Dices ei: Dominus sit tibi adiutor et protector et prestet indulgentiam de
 peccatis tuis preteritis, presentibus atque futuris.
 Tunc da illi paenitentiam et iudica secundum modulum criminum eius.
 Data vero paenitentia, dic psalmum *Deus in nomine tuo*⁷⁰ et dices has
 orationes super eum.
 Tunc fac – super eum, *Paenitentiale mixtum*, Wasserschleben 253-255.

Oratio

Exaudi domine preces nostras et confitentium tibi parce peccatis, ut quos
 conscientiae reatus accusat, indulgentia tuae miserationis absolvat. Per
 Dominum
 Exaudi domine—miserationis absolvat - cf. *Gregorianum* no. 3951, vol. III 113; *Gelasianum*
 no. 7817.

Alia

Presta domine, ut huic⁷¹ famulo tuo dignum paenitentiae fructum, ut
 aecclesiae tuae sanctae a cuius integritate deviaverat peccando,
 admissorum veniam consequendo reddatur innocuus. Per Dominum.
 Presta—reddatur innocuus - cf. *Gregorianum* no. 357, 57.

⁶⁹ Contempsisti indictum—dies xl *add.sup.lin.*

⁷⁰ Ps. 53:3.

⁷¹ huic

Alia

Maiestatem tuam, quaesumus, domine sanctae pater omnipotens aeternae deus, qui non mortem peccatorum sed vitam semper inquiris, respice flentem famulum tuum N ad te prostratum, eiusque planctum in gaudium tua miseratione converte. Scinde delictorum saccum et indue eum letitia salutari, ut post longam peregrinationis famem de sanctis altaribus sicietur, ingressus in cubiculum regis, in ipsa aula benedicat nomen gloriae tuae semper. Per Dominum.

Maiestatem tuam—tuae semper - cf. Gelasianum no. 366, 59; Gregorianum no. 3979, vol. 3.119.

Alia

Omnipotens sempiternae deus qui es verus sanctus et sanctorum omnium protector, te pium dominum devotis mentibus pro famulo tuo N deprecor, ut ei indulgentiam tribuas omnium delictorum suorum et ne iterum ad voluntatem peccandi redeat, propitius eum custodire digneris. Per.

Sempiternae deus—custodire digneris - cf. Gregorianum no. 2378, vol. 2.136.

Alia

Precamur domine, intercedentibus omnibus sanctis tuis pro famulo tuo, ut indulgentiam ei tribuas omnium peccatorum, opus eius in bono perficias et gratiam tuam ei concedas, fide, spe et caritate eum repleas, mentem eius ad caelestia desideria erigas, et ab omni adversitate eum defendas, et ad bonam perseverantiam perducas. Per Dominum.

Precamur, domine—perseverantiam perducas - cf. Gregorianum no. 2380, vol. 2.137.

Alia

Adesto supplicationibus nostris, nec sit ab hoc famulo tuo N, clementiae tuae longinqua miseratio, sana vulnera, eiusque remitte peccata, ut nullis a te iniquitatibus separatus, tibi domine semper valeat adherere. Per Dominum.

Adesto supplicationibus—valeat adherere - cf. Gelasianum no. 80, 17; Gregorianum no. 3954, vol. 3.113.

Alia

Da nobis domine, quaesumus, ut sicut publicani praecibus ad confessionem placatus es. Ita et huic famulo tuo N placare, domine et precibus eius benignus aspira, ut in confessione flebili permanenti, et petitione perpetua clementiam tuam celeriter exoret, sanctisque altaribus et sacramentis restitutus, rursus celestis gloriae mancipetur. Per Dominum.

Da nobis domine—celestis gloriae mancipetur - cf. Gregorianum no. 3956, vol. 3.114.

Alia

Domine deus noster qui offensione nostram non vinceris sed satisfactione placaris, respice quaesumus ad hunc famulum tuum N, qui se peccasse⁷² tibi graviter confitetur. Tuum est ablutionem criminum dare et veniam prestare peccantibus, qui dixisti paenitentiam te malle peccatorum quam mortem. Concede ergo domine hoc, ut tibi paenitentiae excubias celebret et

⁷² *passee ante corr.; peccasse add.sup.lin.*

correptis actibus suis conferre sibi a te sempiterna gaudia gratuletur. Per Dominum.⁷³

Domine deus—gaudia gratuletur - cf. *Gelasianum* no. 81, 17; *Gregorianum* no. 3954, vol. 3.113-114.

- 1 Qui sacerdotem voluntarie occiderit, vel paricidium fecerit.
- 2 Si quattuor vel quinque homines per rixum unum occidunt.
- 3 De his qui sibi quicumque⁷⁴ negligentia mortem inferunt.
- 4 Quicumque per maleficium interfecerit⁷⁵ hominem.
- 5 De his qui servos suos extra iudicem necant.
- 6 De eo qui insaniens hominem occiderit.
- 7 De oppressione infantum a matre.
- 8 De mulieribus quae ante temporis plenitudinem partus excutiunt.
- 9 De mulieribus quae fornicantur et infantes occidunt.
- 10 De viris ac feminis adulterium perpetrantibus.
- 11 De his qui fornicantur irrationabiliter id est qui miscentur pecoribus⁷⁶ vel cum masculis polluuntur.
- 12 Ut si mulieres ad priores maritos redire noluerint, velud impie ecclesiastica communione privandae sint.
- 13 De his qui uxores aut quae viros dimittunt ut sic maneant.
- 14 De feminis quae relictis viris suis aliis nubunt.
- 15 De feminis quae consciis maritis adulterantur.
- 16 De viris coniugatis postea in adulterium lapsis.
- 17 Item de eadem⁷⁷ re.
- 18 De his qui menstruum sanguinem immiscent cibo vel potu, et aliis dant ad comedandum et bibendum, et de magica arte.
- 19 De auguriis vel sortilogis.
- 20 De magica arte et divinatione.
- 21 De feminis sacro velamine consecratis.
- 22 De virginibus⁷⁸ secularibus si mecaverint.
- 23 De incestis ex Moguntiacensi concilio.
- 24 Item de incestis.
- 25 De parentibus qui fidem sponsaliorum frangunt.
- 26 De puellis raptis.
- 27 In quota generatione sibi fideles iungantur.
- 28 Quod non liceat christianis observationes diversas adtendere.
- 29 De collectionibus herbarum.
- 30 De his qui cum Iudeis vescuntur.
- 31 De refugis ac perfidis laicis.
- 32 Ut nullus saecularium ecclesiam aut clericum fatigare praesumat.
- 33 De his qui per odium ad pacem reverti noluerint.
- 34 Item de incestis coniugiis ex concilio Agatense.
- 35 De periurio.

⁷³ Capita poenitentialis sequentis *add. manu rec.*

⁷⁴ quicumque

⁷⁵ interfecerit *ante corr.*

⁷⁶ peccoribus *ante corr.*

⁷⁷ eadem

⁷⁸ virginibus

- 36 De furtu.
 37 Sub qua cauta consideratione erga penitentes sacerdos existere debet.
 38 Item unde supra.
 39 De modis paenitentiae peccata confitentibus.
 40 Ut a presbiteris canones sint legende et intelligende.
 41 Quod nulli sit ultima penitentia deneganda.
 42 De his qui necessitate mortis urgente paenitentiam simul et viaticum petunt, et qui obmutescunt antequam sacerdos veniat.
 43 De remedio paenitentiae et quod absolutio paenitentium per manus episcoporum subplicationibus fiat.
 44 De communione privatis et ita defunctis.
 45 De tempore remissionis paenitentiae.
 46 De his qui communionem tempore mortis exposcunt, et si desperatus et consecutus communionem iterum convaluerit.
 47 Ut penitentes . . . ⁷⁹

1. <Qui sacerdotem voluntarie occiderit vel parici> dium fecerit⁸⁰

Qui sacerdotem voluntarie occiderit, vel morte tradiderit vel parricidium perpetraverit,⁸¹ omnibus diebus vitae suae carnem non comedat, nec vinum bibere presumat. Ieiunet autem usque ad vesperum, exceptis festis diebus atque dominicis, arma non sumat et ubicumque ire voluerit, nullo vehiculo deducatur, sed propriis pedibus proficiscatur. Ecclesiam per quinquennii tempus non ingrediatur, sed cum sacrarum orationum officia vel missarum sollempnia celebrantur,⁸² ante fores basilicae perseveret, orans ac deprecans dominum ut tanto cimine abluatur. Post expleto numero quinquennii temporis ingrediatur in ecclesiam, necdum vero communicet, sed inter audientes tantummodo stet, vel dum facultas conceditur sedeat. Cum autem duodecimi anni fuerit cursus finitus, communicandi ei licentia concedatur et equitandi ei tribuatur medella. Maneat in reliquis observationibus tres dies per ebdomadam,⁸³ ut perfectius purgationis⁸⁴ pervenire mereatur ad culmen.

Qui sacerdotem voluntarie—mereatur ad culmen—Pope Nicolas I, *Epistola* 155, MGH Epp. 6.670; cf. council of Worms c.16, MGH Conc. 4.270-271

2. Si quatuor vel quinque homines per rixam unum occidunt

Si quatuor vel quinque homines unum occidunt, seu etiam plures contra unum rixati fuerint, et ab his vulneratus⁸⁵ mortuus fuerit, quicumque

⁷⁹ Here, the page is cut off. Chapter headings 47 to 49 have been cut away. fol. 314r contains the chapter titles for c.50-58 which are, however, not part of the edited text. fol. 314v is empty.

⁸⁰ This title is reconstructed on the basis of the table of contents; Poenitentiale aliud *add, manu rec.*

⁸¹ fecerit perpetravit *ante corr.*

⁸² celebratur *ante corr.*

⁸³ edomadam *ante corr.*

⁸⁴ pgationis, *Ms.*

⁸⁵ vulneratis *ante corr.*

eorum plagam inposuit, secundum statuta canonum ut homicida iudicetur. Septem annos paenitentiam subeat, hoc est: proximos dies xl. peniteat in pane et aqua leguminibus et holeribus abstineat se ab uxore et ab ingressu ecclesiae. Deinde tres annos abstineat se a carne et vino et medone et cervisa mellita, exceptis festis diebus et gravi infirmitate. Reliquos autem quatuor tres legitimas ferias in singulis ebdomadibus et tres quadragesimas annis singulis a carne tantum abstineant.

Si quattuor vel quinque—carne tantum abstineant –*Council of Mainz (852) c.11, MGH Conc. 3.248.*

3. De his qui sibi quacumque neglegentia mortem inferunt

Qui sibi quacumque neglegentia mortem inferunt, eorum commemoratio in oblatione non fiat. Similiter et de his qui pro suis sceleribus puniuntur. Placuit ut qui sibi ipsis aut per ferrum, aut per venenum, aut praecipitium, aut suspendium vel quolibet modo violentia inferunt mortem : nulla illis in oblatione commemoratio⁸⁶ fiat, neque cum psalmis ad sepulturam eorum cadavera deducantur. Multi enim sibi hoc per ignorantiam usurparunt. Similiter et de his qui pro suis sceleribus puniuntur.

Qui sibi quacumque—suis sceleribus puniuntur –Halitgar, *Paenitentiale IV c.6, col. 681*; Placuit ut qui—suis sceleribus puniuntur - *Collectio Dacheriana c.1, 105, 530.*

4. Quicumque per maleficium interfecerit hominem

Si quis vero per maleficium interfecerit alterum eo quod sine idolatria perficere scelus non potuit, nec in finem pertinendam illi communionem.

Si quis vero—pertinendam illi communionem - *Collectio Dacheriana c.1, 104, 530.*

5. Qui servos suos extra iudicem necant

De his qui servos suos extra iudicem necant. Si quis servum suum proprium sine conscientia iudicis occiderit, excommunicationem, vel poenitentiam biennii reatum sanguinis emundabit.

De his qui—reatum sanguinis emundabit –Halitgar, *Paenitentiale IV c.4, col.681*; *Collectio Dacheriana c.1, 107, 530*; *Hrabanus ad Heribaldum 3, col.471.*

6. De eo qui insaniens hominem occiderit

Si quis insaniens aliquem occiderit, si ad sanam mentem pervenerit, levior ei poenitentia inponenda est quam ei qui sana mente tale quid commiserit. Cui quamvis sit poenitentia inponenda, quia ipsa infirmitas causa peccati licet fortassis occulta contigisse creditur. Tantum tamen levior quam ei qui sanus aliquem occiderit, quantum inter insanum et sanum inrationabile a rationabile constat esse discriminis.

Si quis insaniens—constat esse discriminis - *Council of Worms (868) c.4, MGH Conc. 4.265*; Pope Nicolas I, *Epistola 169, MGH Epp. 6.689*

7. De oppressione⁸⁷ infantum a matre

Si quis infantem suum incaute oppresserit, aut vestimentorum pondere suffocaverit post baptismum, proximos quadraginta dies peniteat in pane et aqua et holeribus atque legumine, et a coniuge se abstineat. Postea tres annos paeniteat per legitimas ferias et tres quadragesimas. Et si ante

⁸⁶ commemoratio *add.sup.lin.*

⁸⁷ oppressione *ante corr.*

baptismum oppresserit, proximos dies quadraginta ut supra, postea quinquennium expleat.

Si quis infantem—postea quinquennium expleat - *Council of Mainz* (852) c.9, MGH Conc. 3.247

8. De mulieribus quae ante temporis plenitudinem partus excutiunt

Mulieres autem quae ante temporis plenitudinem conceptos in utero infantes voluntate excuciant, ut homicidae procul dubio iudicande sunt. Illae vero quae dormiendo filios suos suffocare videntur, leviter de his iudicare oportet, quia nolentes et non sentiendo ad hunc devolutae sunt causum.

Mulieres autem quae—devolutae sunt causum – Pope Nicolas I, *Epistola* 155, MGH Epp. 6.671; cf. *Council of Worms* (868) c.18, MGH Conc. 4.271.

9. De mulieribus quae fornicantur et infantes occidunt

Si qua mulier per fornicationem interfecerit quae nascuntur primum constitutum usque ad exitum vitae paenitendi, ut humanius aliquid consequantur, constituimus eos decennii tempora, secundum gradus quae sunt constituta paeniteat.⁸⁸

Si qua mulier—sunt constituta paeniteat - *Paenitentiale mixtum*, c.39, Wasserschleben 274

10. De viris ac feminis adulterium perpetrantibus

Si cuius uxor adulterata fuerit, vel si ipse adulterium commiserit, septem annorum paenitendi oportet eum perfectionem secundum pristinos gradus.

Si cuius uxor—secundum pristinos gradus - Halitgar, *Paenitentiale* IV c.9, col.682; *Collectio Dacheriana* c.1, 55, 525.

11. De his qui fornicantur inrationabiliter id est qui miscentur pecoribus vel cum masculis polluuntur

De his qui inrationabiliter versati sunt, sive versantur, quotquot ante vicesimum annum tale crimen commiserint, quindecim annis exactis in poenitentia communionem mereantur orationum.⁸⁹ De hinc quinquennio in hac communionem durantes, tunc demum orationis sacramenta contingant. Discuciantur autem et vita eorum quales tempore paenitudinis extiterunt, et ita misericordiam consequantur. Quod si inexplabiliter his hesere crimibus ad agendam paenitentiam prolixius tempus insumant. Quotquot autem peracta viginti⁹⁰ annorum aetate et uxores habentes hoc peccato prolapsi sunt, viginti quinque annis paenitudinem gerentes, in communionem suscipiantur orationum. In qua quinquennio perdurantes, tunc demum oblationis sacramenta percipiant. Quod si qui et uxores habentes et transcendentis quinquagesimum annum aetatis ita delinquerint, ad exitum vitae communionis gratiam consequantur.

De his qui—communionis gratiam consequantur - Halitgar, *Paenitentiale* IV c.7, col.682 ; *Collectio Dacheriana* c.1, 53, 525.

⁸⁸ After c.9, c.8 is repeated; this apparent scribal mistake has been corrected by underlining

⁸⁹ orationem *ante corr.*

⁹⁰ Ms. viginti

12. Ut si mulieres ad priores maritos redire noluerint, velud impiae ecclesiastica communione privande sint

Si autem aliquae mulieres ita posteriorum virorum amore sunt captae, ut malint his coherere quam ad legitimum⁹¹ redire consortium, merito sunt notandae, ita ut ecclesiastica communione privantur, quae de excusabili contaminatione⁹² criminis elegerunt, ostendentes sibi pro sua incontinentia placuisse quod iusta remissio poterat expiare. Redeant ergo in suum statuum voluntaria redintegratione coniugia, neque ullo modo ad obprobrium male voluntatis trahatur, quod conditio necessitatis extorsit. Quia sicut he mulieres quae reverti ad viros suos noluerint impiae sunt habendae, ita illae quae in affectum ex deo initium redeunt⁹³ merito sunt laudendae.

Si autem aliquae—merito sunt laudendae - *Collectio Dacheriana* c.1, 67, 526.

13. De his qui uxores aut quae viros dimitunt ut sic maneant

Placuit ut secundum evangelicam et apostolicam disciplinam neque dimissus ab uxore, neque dimissa a marito alteri coniungantur sed ita maneant, aut sibi reconcilientur. Quod si contempserint, ad penitentiam redigantur, in qua causa legem imperialem petendam promulgare.

Placuit ut secundum—imperialem petendam promulgare - Halitgar, *Paenitentiale* IV c.10, col.682; *Collectio Dacheriana* c.1, 74, 527.

14. De feminis quae relictis viris suis aliis nubunt

Item feminae quae nulla precedente causa relinquerint viros suos et alteri se copulaverint, nec in finem accipiant communionem.

Item feminae quae—finem accipiant communionem - *Collectio Dacheriana* c.1, 75, 527.

15. De feminis quae consciis maritis adulterantur

Si conscio marito uxor fuerit moecatha, placuit nec in finem dandam ei communionem. Si vero eam reliquerit, post decem annos accipiat communionem.⁹⁴

Si conscio marito—annos accipit communionem - *Collectio Dacheriana* c.1, 86, 528.

16. De viris coniugatis postea in adulterium lapsis

Si quis forte habens uxorem semel fuerit lapsus,⁹⁵ placuit eum quinquennium agere de hac re paenitentiam et sic reconciliare nisi necessitas infirmitatis⁹⁶ coegerit, ante tempus dare communionem, hoc et circa feminas observandum.

Si quis forte—circa feminas observandum - *Collectio Dacheriana* c.1, 83, 528.

⁹¹ *legimum ante corr.*. legitimum *add.sup.lin.*

⁹² *contamitione ante corr.*; *contaminatione add.sup.lin.*

⁹³ *redeant ante corr.*?

⁹⁴ Chapters 15 and 16 were copied in reversed order, which has been corrected via insertion signs.

⁹⁵ *lapsus in adulterium ante corr.*

⁹⁶ *infirmitatis add.sup.lin.*

17. Item de eadem re

Si cuius uxor adulterium fecerit, aut vir in alienam uxorem inruerit, septem annos penitentiam agat.

Si cuius uxor—anno penitentiam agat - Halitgar, *Paenitentiale* IV c.13, col.683; *Collectio Dacheriana* c.1, 88, 528

18. De his qui menstruum sanguinem immiscunt cibo vel potu et aliis dant ad comedandum et bibendum et de magica arte

De his etiam feminis quae menstruum sanguinem suum immiscuit cibo uel potu et dedit viro suo ut comederet et biberet, et de illa quae semen in viri sui in potu bibit et de ea quae testam hominis combusit igni et viro suo dedit pro infirmitate vitanda ut nobis videtur sententia feriendi sunt sicut magi et arioli, quia magicam artem exercuisse noscuntur. Nam de his qui magicam artem exercent et qui auguria adtendunt, et divinationes observant, Theodori archiepiscopi gentis Anglorum constitutiones habemus in quibus scriptum est: Qui immolant demoniis in minimis, unum annum paeniteant. Qui vero in magnis, decem annos paeniteant. Mulier si qua ponit filium suum supra tectum vel in fornacem pro sanitate febris, septem annos paeniteat. Qui ardere facit grana ubi homo mortuus est pro sanitate domus et viventium, quinque annos paeniteat. Si mulier incantationes vel divinationes fecerit, unum annum vel tres quadragesimas, vel quadraginta dies iuxta qualitatem culpae paeniteat.

De his etiam—qualitatem culpae paeniteat - *Hrabanus ad Heribaldum* c.30, col.491.

19. De auguriis vel sortilogis

Ne de eo fortasse videatur omissum quod maxime fidem catholicae religionis quas sanctorum sortes divinationis scientiam profitetur, aut quarumcumque scripturarum inspectione futura promittunt. Hoc quicumque clericus vel laicus detectus fuerit, vel consulere, vel docere, ab ecclesia habeatur extraneus.

Ne de eo—ecclesia habeatur extraneus - *Hrabanus ad Heribaldum* c.31, col.491-492.

20. De magica arte et divinatione

Qui auguria aruspicia sive somnia vel divinationes quaslibet sicut mores gentium observant⁹⁷, aut in domos suas huiusmodi homines introducunt inquirendis aliquam maleficiorum morti sequentes, isti si in clero sunt abiciantur, si vero saeculares sunt quinquennio paeniteant.

Qui auguria aruspicia—sunt quinquennio paeniteant - *Hrabanus ad Heribaldum* c.30, col.491.

21. De feminis sacro velamine consecratis

Feminae scilicet quae sacro sunt consecratae velamine, si fuerint, quod nolumus, fornicate velamen deponere non presumant, sed paenitentiae⁹⁸ iugo summis se sumopere decertare festinent, ut ad indulgentiae et remissionis gratiam valeant pervenire.

Feminae scilicet quae—gratiam valeant pervenire - *Council of Worms* (868) c.11, MGH Conc. 4.267; Pope Nicolas I, *Epistola* 156, MGH Epp. 6.673

⁹⁷ faciunt observant *ante corr.*

⁹⁸ sed paenitentiae sed penitentiae *ante corr.*

22. De virginibus saecularibus si mecaverint

Virgines quae virginitatem suam non custodierint, si eosdem qui eas violaverint maritos acceperint, eo quod solas nuptias violaverint. Post annum sine paenitentia reconciliari debent. Vel si alios cognoverint viros, eo quod maechate sunt, placuit per quinquennii tempora acta laegitima poenitentia admitti eas ad communionem oportere.

Virgines quae virginitatem—ad communionem oportere - *Collectio Dacheriana* c.1, 79, 528.

23. De incestis ex Moguntiacensi concilio

Si quis fornicatus fuerit cum duabus sororibus⁹⁹ seu cum noverca sua vel cum sorore¹⁰⁰ sua seu cum amita sua, seu cum matertera sua, vel cum filia patris sui, seu avunculi sui, vel cum nepte sua, vel si qua mulier simili modo fornicata fuerit, abstineat se ab ingressione domus dei anno uno et eodem anno nisi festis diebus praecipuis solummodo pane sale et aqua utatur; Vir arma pugnatoria non ferat osculum nulli prebeat, sacrificium nisi pro viatico minime sumat. Sex inde annis ingrediatur quidem domum dei sed carnibus ac vino et sicera minime utatur nisi festis diebus praecipuis¹⁰¹. De armis vero vel osculo sive sacrificio sicut supradictum est faciat. Postea duobus annis quando carne vescitur a potu omni qui potest inebriari se contineat. Quam potum si biberit non carne vescatur absque praecipuis festis diebus. De armis vel osculo sive sacrificio modum iam dictum teneat. Inde usque ad obitum suum nisi predictis festis diebus a carne se abstineat. Tres legitimas ferias in omni ebdomada et tres quadragesimas in anno legitimas custodiat.¹⁰² De armis vel osculo. sive sacrificio sicut iam dictum est faciat et numquam aliquando coniugio copuletur. Haec eadem paenitentia inponenda est patricidis, vel matricidis, vel fratricidis, vel consanguineis, necnon et his qui spontem per fraudem et avariciam hominem innoxium occidunt quem theudisca lingua morditum vocant.

Si quis fornicatus—lingua morditum vocant - *Hrabanus ad Heribaldum* c.20, col.487; According to the title of this chapter, it derives from a council held in Mainz. This title was adopted from Hrabanus. There is no extant text of a council of Mainz that corresponds to this text. For Hrabanus reference to this council of Mainz, see Kottje, *Bussbücher* 202-203.

24. Item de incestis

Si homo incestum commiserit in istis causis, in deo sacrata, aut cum matre sua aut cum matre et filia, seu cum duabus sororibus¹⁰³, vel cum fratris filia aut sororis filia, vel cum amita, aut matertera, aut cum sobrina, seu cum matrina sua de fonte sive filiola, aut de confirmatione de istis capitalibus pecuniam si habuerit perdat. Et si emendare noluerit, nullus eum recipiat nec cibum ei porrigat usque dum se correxerit, et si pecuniam non habet et liber est mutatur in carcerem usque ad satisfactionem. Si servus aut liber¹⁰⁴ est, plagis vapuletur multis. Si vero

⁹⁹ *Ms.* cum duabus sororibus aut cum duabus sororibus

¹⁰⁰ *Ms.* sore

¹⁰¹ praecipuisque, *Hrabanus*.

¹⁰² a carne abstineat— legitimas custodiat *add.in marg.*

¹⁰³ soribus

¹⁰⁴ libertus: *fons*

dominus suus permiserit ei amplius in talem cadere lapsum, ipse sexaginta solidos domno regi persolvat; De ecclesiasticis vero si bona persona fuerit, perdat suum honorem. Minores vero vapulentur et in carcerem mittantur.

Si homo incestum—et in carcerem mittantur - *Pippini rege capitulare* (754-755) c.1-2 (MGH, Capit. 1 31).

25. De parentibus qui fidem sponsaliorum frangunt

Si qui parentes fidem fregerint sponsaliorum triennii tempora abstineantur, si tamen idem sponsus vel sponsa in gravi crimine fuerint deprehensi, excusati erunt parentes.

Si qui parentes—excusati erunt parentes - *Collectio Dacheriana* c.1, 60, 525.

26. De puellis raptis

Eos qui rapiunt puellas sub nomine simul habitandi, cooperantes et conibentes raptoribus decrevit sancta synodus, ut si quidem clerici sunt decidant gradu proprio, si autem laici anathematitentur.

Eos qui rapiunt—autem laici anathematitentur - Halitgar, *Paenitentiale* IV c.17, col.684; *Collectio Dacheriana* c.1, 70, 527.

27. In quota generatione sibi fideles iugantur

In copulatione fidelium generationum numerum non diffinimus sed id statuimus ut nulli liceat christiano de propria consanguinitatem sive cognatione uxorem accipere usque dum generatio recordatur, cognoscitur ac memoria retinetur.

In copulatione fidelium—ac memoria retinetur - *Council of Worms* (868) c.8, MGH Conc. IV 266-267; statuimus ut nulli—ac memoria retinetur - pope Nicolaus I, *Epistola* 156 MGH Epp. 6.672.

28. Quod non liceat Christianis observationes diversas adtendere

Non liceat christianis traditiones gentilium observare, vel colere elementa, aut lunae, aut stellarum cursum, aut inanem signorum fallaciam pro domo facienda, vel segetes, vel arbores plantandas, vel coniugia socianda.

Scriptum est enim: *Omnia quae facitis in verbo aut in opere, omnia in nomine domini nostri Ihesu Christi facite, gratias agentes deo.*¹⁰⁵

Non liceat christianis—gratias agentes deo - Halitgar, *Paenitentiale* IV c.26, col. 685; *Collectio Dacheriana* c.1, 96, 530.

29. De collectionibus herbarum

Non liceat in collectionibus herbarum quae medicinales sunt, aliquas observationes, aut incantationes adtendere, nisi tantum cum symbolo divino et oratione dominica, ut deus et dominus honoretur. Et mulieres christianas vanitates in suis lanificiis observare, sed deum in vocem adiutorem, qui eis sapientiam texendi donavit.

Non liceat in—sapientiam texendi donavit - Halitgar, *Paenitentiale* IV c.26, col.686; *Collectio Dacheriana* c.1, 97-98, 530.

¹⁰⁵ Col. 3 :17

30. De his qui cum Iudeis vescuntur

Si vero quis clericus vel fidelis laicus cum Iudeis cibum sumpserit, placuit eum a communione abstineri, ut debeat emundari. In concilio Teletano¹⁰⁶ scriptum est: ‘Suggestente id dominus noster canonibus inserendum praecepit ut Iudeis non liceat Christianis habere uxores vel concubinas, neque mancipium christianum in usus proprios comparare. Sed filii qui ex tali coniugio nati sunt, assumendos esse ad baptismum. Nulla officia publica eos opus est agere per quae eis occasio tribuatur poenam christianis inferre’. Si qui vero Christiani ab illis Iudeis inuenti sunt maculati vel etiam circumcisi, non reddito precio ad libertatem vel religionem redeant Christianam. Similiter comedere vel bibere omni modis intersit interdictum.

Si vero quis—redeant christianam – *Hrabanus ad Heribaldum* c.27, 490; Hrabanus cites here the Third Council of Toledo (589) c.14.

31. De refugis ac perfidis laicis

Nobis igitur ratio persuadit sinodalis decernere, ut quicumque laicorum in adversitate propriae gentis, aut propriae, vel regiae potestatis ad externas partes se conferendo noxius fuerit ultra repertus. Non solum omni rerum suarum proprietate privetur, sed et perpetua excommunicatione damnatus numquam illi, praeter in ultimo mortis suae communio tribuatur.

Nobis igitur ratio—suae, communion tribuatur - *Council of Worms* (868) c.3, MGH Conc. 4.278.

32. Ut nullus saecularium ecclesiam aut clericum fatigare presumat

Si quis vero saecularium per calumniam aecclesiam aut clericum fatigare temptaverit, et victus fuerit, ab ecclesiae liminibus et a catholicorum communione, nisi dignae paenituerit, arceatur.

Si quis vero—dignae paenituerit arceatur - *Council of Worms* (868) c.24, MGH Conc. 4. 274.

33. De his qui per odium ad pacem non revertuntur

Placuit etiam uti quicumque odio aut lingua inter se lite¹⁰⁷ discesserint, et ad pacem revocari diutina intentione nequiverint a civitatis primitus sacerdotibus arguantur. Quod si inimicicias deponere perniciose intentione noluerint, de ecclesiae caetui iustissima excommunicatione pellantur.

Placuit etiam uti—iustissima excommunication pellantur - Halitgar, *Paenitentiale* IV c.32, col 686; *Collectio Dacheriana* c.1, 110, 531; *Council of Worms* (868) c.25, MGH Conc. IV 274.

34. Item de incestis coniugiis ex concilio Agatense

De his qui se in pollutione commaculant, placuit, ut quousque in ipso detestando et inlicito carnis contubernio perseverant¹⁰⁸, usque ad missam tantum catecumenorum in ecclesia admittantur; cum quibus etiam nec cibum sumere ulli christianorum sic apostolus iussit oportere.

De his qui—apostolus iussit oportere - *Collectio Dacheriana* c.1, 90, 528-529.

¹⁰⁶ Toletano

¹⁰⁷ *lita ante corr.*

¹⁰⁸ *perseverant post corr.*

35. De periurio

Quicumque vero sciens periurium perpetraverit, annos septem se paenitentiae subdat et ita deinceps ad communionem revertatur. Item Egbertus episcopus gentis Anglorum ita definivit, dicens: Qui iuramentum in ecclesia fecerit, aut in sancto evangelio, seu in sanctorum reliquiis, septem annos peniteat, alii undecim iudicant. Si vero in manu episcopi aut presbyteri, vel diaconi seu in cruce consecrata, annum unum paeniteat, vel septem menses. Similiter in cruce non consecrata. Qui autem seductus ignorans et postea cognoscit, annum unum vel tres quadragesimas paeniteat. Si quis coactus per quamlibet causam necessitatis, tres quadragesimas, alii tres annis, unum ex eis in pane et aqua. Item periuri, tres annos paeniteat. Qui suspicatur quod a periuris in iuramentum ducitur, et tamen iurat per consensum, tres annos paeniteat. Sed quia in multis locis ab his qui per avariciam terrenae possessionis et ecclesiastici ordinis dignitatem precia dabuntur terrenarum rerum habundantiam sibi inde adquirunt, saepe periurium fit illis qui hoc scandalo decipiuntur.¹⁰⁹ Iustum est ut illis qui hoc faciunt, condigna vindicta retribuatur. Si quis laicus periuraverit annos iii^a, clericus v, subdiaconus vi, diaconus vii, presbyter x, episcopus xii. Si quis periuraverit per cupiditatem, totas res suas vendat et pauperibus donet, tondatur et in monasterium intret et ibidem serviat usque ad exitum vitae.

Quicumque vero sciens—ad communionem revertatur – Halitgar, *Paenitentiale* IV, c.28, col.686 and *Hrabanus ad Heribaldum*, c.18, col.484; Item Egbertus episcopus—digna vindicta retribuatur - *Hrabanus ad Heribaldum* c.18, col. 484-485; Si quis laicus—ad exitum vitae – Halitgar, *Paenitentiale*, VI c.23 and 25, ed. Schmitz 295.

36. De furtu

Qui vero cupiditate ductus et captus furtum fecerit, quod abstulit reddat, et annos quinque paenitentiam agat. Si quis laicus capitale furtum fecerit id est quadrupedem, vel casam fregerit, aut quamlibet meliorem rem furaverit, laicus quinque annos, clericus v, subdiaconus vi, diaconus vii, presbyter x, episcopus xii. Si quis sepulchrum violaverit, vii annos paeniteat. Si quis laicus furtum fecerit, reddat proximo suo quod furavit et tres quadragesimas in pane et aqua paeniteat. Si vero reddere non potuerit annum unum et tres quadragesimas et det elemosinas de suo labore pauperibus et sacerdotis iudicio iungatur altari.

Qui vero cupiditate—paenitentiam agat, *fons non invenitur*; Si quis laicus—iungatur altari, Halitgar, *Paenitentiale* VI c.26-30 (ed. Schmitz 295-296)

37. Sub qua cauta consideratione erga paenitentes sacerdos existere debet¹¹⁰.

Paenitentibus secundum differentiam peccatorum sacerdotis arbitrio paenitentiae decernuntur. Debet itaque sacerdos in paenitentia¹¹¹ danda singulorum causas singillatim considerare, originem quoque modumque culparum, et affectus gemitusque delinquentium examinare manifesteque cognoscere, temporum etiam et personarum locorumque et aetatum

¹⁰⁹ decipiantur *ante corr.*

¹¹⁰ debent *ante corr.*

¹¹¹ peniten

qualitates inspicere, ut etiam pro consideratione locorum aetatum vel temporum, seu pro qualitate delictorum atque gemituum uniuscuiusque delinquentis a sacris regulis oculos non reflectat.

Sub qua cauta – oculos non reflectat - *Council of Worms* (868) c.2, MGH Conc. 4.264.

38. Item unde supra

Sacerdos considerare debet in qua aetate vel quomodo edoctus aut qualiter contigerit et ita auctoritas sacerdotalis circa infirmum moderetur, et hoc in omni paenitentia et confessione omnino in quantum deus adiuvare dignetur cum¹¹² omni diligentia conservetur.

Sacerdos considerare debet—omni diligentia conservetur - *Hrabanus ad Heribaldum*, c.30 (in fine), col.491.

39. De modis paenitentiae peccata confitentibus

Modus autem paenitentiae peccata confitentibus, aut per antiquorum canonum institutionem, aut per sanctarum scripturarum auctoritatem, aut per ecclesiasticam consuetudinem sicut superius dictum est inponi debet, repudiatis ac penitus eliminatis libellis quos paenitentiales vocant, quorum sunt certi errores, incerti auctores. De quibus recte dici potest: *Mortificabant animas, quae non moriuntur et vivificabant animas, quae non vivibant.*¹¹³ Qui dum pro peccatis gravioribus leves quosdam et inusitados inponunt paenitentiae modus, *consuunt pulvillos sub omni cubito manus et faciunt cervicalia sub ea capitae universae aetatis ad capiendas animas.*¹¹⁴

Modus autem paenitentiae—ad capiendas animas - *Council of Chalon* (813) c.38, MGH Conc. 2.281.

40. Ut a presbitero canones sint assidue legendae

Cum igitur omnia concilia canonum qui recipiuntur sint a sacerdotibus legenda et intellegenda, et per ea sit vivendum et predicandum, necessarium duximus, ut ea, quae ad fidem pertinent, et ubi de extirpandis viciis et plantandis virtutibus scribitur. Hoc ab eis crebro legatur et bene intellegatur et in populo praedicetur.

Cum igitur omnia—in populo praedicetur - *Council of Chalon-sur-Saône* (813) c.37, MGH Conc. II 1, 281; or *Council of Mainz* (847) c.2, MGH Conc. III 164.

41. Quod nullis¹¹⁵ sit ultima paenitentia deneganda

Vera ergo conversio ad deum in ultimis positorum mente potius est aestimandum quam tempore. propheta hoc taliter asserente: Cum conversus ingemueris salvus eris.¹¹⁶ Cum ergo dominus sit cordis

¹¹² com ante corr.

¹¹³ Ezech. 13:19.

¹¹⁴ Ezech. 13:18.

¹¹⁵ nullus ante corr.

¹¹⁶ This citation is associated with Ezechiel and Iesaiiah, but it is not directly taken from the Bible. It appears in the works of Cyprian, Alcuin, Haimo of Auxerre and others. See Marbury B. Ogle, 'Bible Text or Liturgy?' *The Harvard Theological Review* 33 (1940) 191-224, at 218-220.

inspector, quovis tempore non est deneganda paenitentia postulanti, cum ille se obligat iudici cui occulta omnia noverit revelari.¹¹⁷

Vera ergo conversatio—omnia noverit revelari – Halitgar, III c.2 col.677; *Collectio Dacheriana* c.1, 1, 518.

42. De his qui necessitatae mortis urgente paenitentiam simul et viaticum petunt et qui obmutescunt antequam sacerdos ad eos veniat.

Ita ergo talium necessitati auxiliandum est, ut nec actio illis paenitentiae, nec communionis gratia denegetur, si eam etiam amisso vocis per indicia integri sensus querere conprobetur. Quod si ita aliqua aegritudine fuerint adgravati, ut quod paulo ante poscebant, sub presentia significare non valeant, testimonia eius fidelium circumstantium prodesse debebunt. Simul tamen et paenitentiae et reconciliationis beneficium consequantur.

Ita ergo talium—reconciliationis beneficium consequantur – Halitgar, III c.3, col.677; Ita ergo talium—circumstantium prodesse debebunt - *Collectio Dacheriana* c.1, 2, 518.

43. De remedio penitentiae et quod absolutio paeni¹¹⁸ per manus episcoporum supplicationibus fiat

His autem qui tempore necessitatibus et periculis urgentibus¹¹⁹ instantia presidium paenitentiae et mox reconciliationis implorant, nec satisfactio interdicenda est, nec reconciliatio deneganda. Quia misericordiae dei nec mensuras possumus ponere, nec tempora diffinire, apud quem nulla patitur venire moras conversio dicente spiritu dei per prophetam. *Cum conversus ingemueris, tunc salvus eris;*¹²⁰ et alibi: *Dic iniquitates tuas prior ut iustificeris;*¹²¹ Item. *Quia apud dominum misericordia et copiosa apud eum redemptio.*¹²² In dispensandis itaque dei donis non debemus esse difficiles,¹²³ nec se accusantium gemitus lacrimasque negligere, cum ipsam paenitendi affectionem, ex dei credimus inspiratione contemptam dicente apostolo: *Ne forte det illis deus paenitentiam ut resipiscant a diaboli laqueis, a quo captivi tenentur ad ipsius voluntatem.*¹²⁴

His autem qui—ad ipsius voluntatem - Halitgar, *Paenitentiale* III c.9, col. 679; *Collectio Dacheriana* c.1, 14, 520.

44. De communione privatis et ita defunctis

Horum causa dei iudicio reservanda est, in cuius manu fuit, ut talium obitus ad communionis remedium differatur. Nos autem quibus viventibus non communicavimus, mortuis communicare non possumus.

Horum causa dei—communicare non possumus - Halitgar, *Paenitentiale* III c.14, 680; *Collectio Dacheriana* c.2, 64, 539.

¹¹⁷ revelare ante corr.

¹¹⁸ lege: poenae?

¹¹⁹ lege: urgentibus

¹²⁰ See above note 116.

¹²¹ Isaiah 43:25-26.

¹²² Ps. 129:7

¹²³ difficilis ante corr.

¹²⁴ Cf. II Tim. 2:24-25

45. De tempore remissionis paenitentiae

De paenitentibus autem qui sive ex gravioribus commissis sive ex levioribus paenitentiam gerunt, si nulla interveniat aegritudo, quinta feria ante pascha eis remittendum Romanae aecclesiae consuetudo demonstrat. Ceterum de pondere delictorum aestimanda sacerdotis est iudicare, ut attendat ad confessionem paenitentis et ad fletus et lacrimas corrigentis, actum vero dimitti cum viderit congruam satisfactionem. Sane si quis aegritudinem inciderit, atque usque ad desperationem devenerit ei est ante tempus pasche relaxandum

De paenitentibus autem—tempus pasche relaxandum - Halitgar, *Paenitentiale* III c.13, col. 680; *Collectio Dacheriana* c.1, 21, 521.

46. De his qui communionem tempore mortis exposcunt et si desperatus et consecutus communionem iterum convaluerit

De his qui ad exitum veniunt etiam nunc lex antiqua regularisque servabitur ita ut si quis egreditur e corpore, ultimo et necessario viatico minime privetur. Quod si desperatus et consecutus communionem, oblationisque particeps factus iterum convaluerit, sit inter eos qui communionem orationis tantummodo consequantur. Generaliter autem omni cuilibet in exitu posito et poscenti sibi communionis gratiam tribui, episcopus probabiliter ex oblatione dare debebit.

De his qui—oblatione dare debebit - Halitgar, *Paenitentiale* III c.10, col. 679; *Collectio Dacheriana* c.1, 18, 520.

47. Ut paenitentes non reconcilientur a presbytero nisi iuente episcopo

Ut paenitentibus secundum differentiam peccatorum episcopi arbitrio paenitentiae tempora decernantur, et ut presbiter inconsulto episcopo non reconciliet paenitentem, nisi absentia episcopi necessitate cogente. Cuiuscumque autem paenitentis publicum et vulgatissimum crimen est quod universam aecclesiam commoverit, ante absidem manus ei inponatur.

Ut paenitentibus secundum—manus ei inponatur - Halitgar, *Paenitentiale* III c.11, col. 679; *Collectio Dacheriana* c.1, 19, 520.

48. Item de eadem re

Aurelius episcopus dixit: Si quisquam in periculo fuerit constitutus et se reconciliari divinis altaribus petierit. Si episcopus absens fuerit, debet presbiter consulere episcopum, et sic periclitantem eius precepto reconciliare, quam rem debemus salubri consilio roborare.

Aurelius episcopus dixit—salubri consilio roborare - Halitgar, *Paenitentiale* III c.12, col. 679-680; *Collectio Dacheriana* c.1, 20, 521-522.

49. De his qui pro diversis peccatis penitentiam ferventius exegerunt

De his qui diversis facinoribus peccaverunt et perseverantes in oratione confessionis et paenitentiae conversionem a malis¹²⁵ omnibus habuere perfectam pro qualitate delicti talibus paenitentiae tempus impensum, propter clementiam et bonitatem dei communio concedatur.

De his qui— dei communio concedatur - Halitgar, *Paenitentiale* III c.15, col.680; *Collectio Dacheriana* c.1, 15, 520.

¹²⁵ a malis a malis *ante corr.*

