

BOOK REVIEWS

Shaping Church Law Around the Year 1000: The *Decretum* of Burchard of Worms

GRETA AUSTIN

Ashgate Publishing, Farnham, Surrey, 2009, xii + 344 pp (hardback £70.00)
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Burchard was the bishop of Worms from 1000 until his death in 1025. During his episcopate he compiled (c 1012–1022) a collection of church law called the *Decretum*. This work has been seen by some scholars as unsystematic and containing no overall view of church law; and some argue that it was useful only until more systematic jurisprudence supplanted it during the papal reform period. Greta Austin challenges this thesis in her new book, *Shaping Church Law Around the Year 1000*. She argues not only that Burchard of Worms constructed the *Decretum* as a practical manual of canon law designed for episcopal consultation, but also that practical needs led him to develop a systematic theory of ecclesiastical law.

There are three major divisions in the book, followed by an extensive and detailed appendix. Part I provides a good overall background to the text and includes a description of the author's methodology (chapter 1). Austin's work draws upon the significant palaeographic efforts of Hoffmann and Pokorny, who undertook ground-breaking research on Burchard's manuscripts, which they published in 1991. Chapter 3 contains some extremely helpful definitions for novice readers of canon law and also offers an explanation of the sources on which Burchard drew for his collection. Part II, entitled, 'Burchard's editing priorities' (chapters 6–10) is the heart of the book and focuses on a close reading and assessment of Burchard's texts in order to determine reasons for his editorial choices. Chapter 7 examines the authority of canons used in the *Decretum* and finds that Burchard's preference was overwhelmingly for biblical principles as elucidated by patristic writers. He often altered inscriptions to make them appear more authoritative and he did this in a very specific way, limiting the types and numbers of sources. Chapter 8 addresses the method of harmonising differing canons in an attempt to eliminate conflicts and chapter 9 examines general principles that helped in the process of smoothing out inconsistencies in the text. Part III assesses the implications of Burchard's textual alterations and asks whether his editorial changes should be considered forgeries; Austin concludes that they should not. The final chapter explores how canon law interacted with theological thought, concluding with the observation that theology was 'translated into practical action' (p 234) in the *Decretum*. The

appendix contains detailed tables that show formal sources side by side with Burchard's changes.

Burchard brought together conflicting canons and resolved them, making his collection useful for bishops, students and priests, even those who may have had little education or legal background. His work was designed for consultation on specific matters and this Austin calls the 'user-friendly' aspect of the *Decretum*. It was an important structural feature of the text, allowing readers quickly to locate relevant canons and thus making the work very useful to those who consulted it. The 'user-friendly' nature of the collection was not its only significant feature. In compiling the *Decretum*, Burchard selected some canons and eliminated others in order to present a consistent point of view, and in doing so he changed the authorial attribution of many canons. Shaping the collection in this way reflected intentionality; the goal was to bring about a text that was internally coherent. Burchard's alteration of texts, argues Austin, should not be considered an attempt at forgery, especially since he did not try to hide his emendations, but rather as bringing together discordant canons in order to establish consistency. This systematic approach only made the text more useful and practical, providing accessibility to a wider audience (p 33).

In order to harmonise canons Burchard selected them based on a hierarchy of sources that he considered the most weighty and important. This list was limited in scope and included the Bible, patristic sources (limited to seven), councils and penitentials (limited to three). Although he did not provide a running commentary, as Gratian had, Burchard's decisions were not arbitrary but founded on principles. By far the most significant principles for canon law were those based on the biblical text but, rather than using the Bible as a direct source, he preferred to use scriptural interpretations of Church Fathers. When incorporating sources, Burchard eliminated canons based on secular law and even demonstrated an aversion to church councils in which the emperor played a prominent role, including both Nicea and Chalcedon (p 132). This avoidance of secular law was not typical, since many other compilers incorporated it into their work, a practice that was true both before and after Burchard, as evidenced in the work of Ivo of Chartres in the eleventh century.¹

The subject of this book and the various detailed tables in the extensive appendix make it suitable for a scholarly audience; both advanced students and those working on early collections of canon law will benefit from it. That said, Austin has done an excellent job in making the book accessible to the non-specialist. For example, the tables in chapter 7 are extremely helpful and easy to understand, and the background material in chapter 3 gives some basic definitions of key concepts. Overall, the book is well written and well argued.

1 See the review by Becket Soule OP of C Rolker, *Canon Law and the Letters of Ivo of Chartres*, (2011) 13 Ecc LJ 365–366.

Austin has identified patterns and provided extensive documentation to establish that Burchard was guided by certain principles while compiling the *Decretum*. It is, however, extremely difficult to prove the intentions of an author or compiler. Whether Austin's argument convinces scholars that Burchard was indeed a great systematiser of canon law prior to the papal reform period is arguable. Another avenue that might prove fruitful is a consideration of the concepts; an assessment of the content of the *Decretum* in conjunction with the editorial choices of Burchard might round out future interpretations. However, there is no doubt that Austin's detailed knowledge of Burchard's texts, manuscripts and sources makes this work a significant contribution to the field and her thesis challenges scholars to reconsider assumptions about early collections of canon law.

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Religion and Public Reasons (Collected Essays: Volume V)

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John Finnis has been the leading exponent of natural law theory in the field of legal philosophy at least since the publication of *Natural Law and Natural Rights (NLNR)* in 1980. He has taught at Oxford since 1965 and held the Chair of Law and Legal Philosophy from 1989 until his recent retirement.

Oxford University Press has now published a five-volume collection of Finnis' essays, some previously unpublished. The earliest dates from 1967, the latest from 2010. They have also published a second edition of *NLNR*; this leaves the text virtually unchanged but adds a substantial Postscript 'to indicate where the original needs . . . amendment or supplementation'. Finnis' principal themes, the twin forces of practical reasoning and divine revelation as a source of good morals (and good law), are painstakingly elaborated in *NLNR*. They are developed or embroidered in many of the essays, whose strength or value thus depends considerably on the power of Finnis' original arguments.

I am only concerned here with the fifth and last volume of essays, *Religion and Public Reasons*. It contains 24 essays arranged under four headings: 'Religion in public reason and law', 'Bases for accepting revelation', 'Conscience and faith' and 'Controversies'. A number are specifically addressed to a Roman Catholic readership, notably Essay V.6, 'Catholic positions in liberal debates'. Essay V.1