

THE INTERNAL FORUM AND THE LITERATURE OF PENANCE AND CONFESSION

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When Dante ascended to the Sphere of the Sun, he was directed by St. Thomas Aquinas to consider a circle of shining lights. One of the lights, St. Thomas tells him, is Gratian, “who served the one and the other court so well that it gives pleasure in Paradise” (*che l'uno e l'altro foro / aiutò sì che piace in paradiso* [*Paradiso* 10:104–5]). The allusion to two “courts” (*fora*) would have puzzled Gratian, but to both Thomas and Dante it would have had a clear reference to the two broad arenas in which the Church’s canon law was operative: the external forum of ecclesiastical courts (sometimes known as the “contentious forum”) and the *internal forum of conscience and of penance*.¹ This new way of describing the Church’s legal competence had been invented in the decades immediately following the publication of Gratian’s magisterial textbook (ca. 1140), and it would have important consequences for the history of medieval canon law in the years to come.²

¹ See A. Mostaza, “Forum internum — forum externum: (En torno a la naturaleza jurídica del fuero interno),” *Revista Española de derecho canonico* 23 (1967): 253–331, at 258 n. 15; 24 (1968): 339–64. Note that the term “internal forum” is not a medieval usage; *forum internum* was used in the post-Tridentine church to refer to what was called the *forum poenitentiae* or *poenitentiale*, or the *forum conscientiae* in the Middle Ages.

This essay was originally written in 1992 for the multi-volume *History of Medieval Canon Law*, ed. W. Hartmann and K. Pennington (Washington, DC, in progress). The publication of the volume of the *History* in which it was to appear has been unavoidably delayed, and it was thought best to publish a revised and updated version of the essay here. I have attempted to integrate recent publications in the body of the essay, but four general surveys deserve special mention as appearing too late for adequate incorporation. They are: Maria Giuseppina Muzzarelli, *Penitenze nel Medioevo: Uomini e modelli a confronto* (Bologna, 1994); Peter Biller and A. J. Minnis, eds., *Handling Sin: Confession in the Middle Ages* (York, 1998); Roberto Rusconi, *L'ordine dei peccati: La confessione tra Medioevo et età moderna* (Bologna, 2002); Odd Langholm, *The Merchant in the Confessional: Trade and Price in the Pre-Reformation Penitential Handbooks* (Leiden, 2003).

² For a general orientation to the internal forum see: P. Capobianco, “De ambitu fori interni in iure ante Codicem,” *Apollinaris* 8 (1935): 591–605; 9 (1936): 364–74; K. Mörsdorf, “Der Rechtscharakter der iurisdictio fori interni,” *Münchener theologische Zeitschrift* 8 (1957): 161–73; B. Fries, *Forum in der Rechtssprache*, *Münchener theologische Studien* 3, *Kanonistische Abteilung* 17 (Munich, 1963); Mostaza, “Forum internum — Forum externum”; W. Trusen, “Forum internum und gelehrtes Recht im Spätmittelalter: Summae confessorum und Traktate als Wegbereiter der Rezeption,” *Zeitschrift der Savigny-Stiftung für Rechtsgeschichte, Kanonistische Abteilung* 57 (1971): 83–126.

The language that would divide the Church's legal competence between two *fora* is metaphorical; it refers to no precise jurisdictional boundaries but rather to two interrelated spheres of the Church's authority. The primary locus of the external forum is the ecclesiastical court; the primary locus of the internal forum is the court of penance (*forum poenitentiae* or *forum poenitentiale*). In general, the external forum is concerned with public and manifest transgressions of the Church's law or of divine law, while the internal forum is the court of conscience (*forum conscientiae*) where even secret crimes and sins are considered, along with manifest sins against God, neighbor, and self. The external forum is both mandatory and contentious: defendants are compelled to appear, and the truth of their case is sought through argument and counterargument. The court of penance is voluntary in the sense that it is entered on the initiative of the penitent alone. In it the penitent is simultaneously the accuser and the accused. The external forum follows specific and carefully devised procedures under the supervision of experienced judges, lawyers, and trained personnel, while the penitential forum is more informal and less concerned with procedural details.³ Nevertheless, both *fora* administer the same canon law, and they seek to attain the same goal in doing so: to restrain vice and foster virtue in the Christian community.⁴

This essay will describe the workings of the penitential forum during the two centuries after Gratian and will sketch a history of the vast canonical literature that was written during those centuries to educate confessors and penitents. It may serve as a reminder that canon law was not just a system for lawyers, judges, and administrators, but a body of learned jurisprudence that affected everyone, in the most intimate ways, in the confessional. If a widespread and deeply rooted juridical culture can be seen as one of the important legacies of the Middle Ages to our own times, the creation of that culture owes a great deal to the close and regular contact of all Christians

³ Thomas Aquinas distinguishes the two *fora* in terms of their relative formality in his *Scriptum super Sententiis*, 4.18.2.2.1 ad 2: "Ad secundum dicendum quod sacerdotes parochiales habent quidem jurisdictionem in subditos suos quantum ad forum conscientiae, sed non quantum ad forum iudiciale; quia non possunt coram eis conveniri in causis contentiosis. Et ideo excommunicare non possunt, sed absolvere possunt in foro poenitentiali. Et quamvis forum poenitentiale sit dignius, tamen in foro iudicali major solemnitas requiritur; quia in eo oportet quod non solum Deo, sed etiam homini satisfiat" (*S. Thomae Aquinatis Scriptum super Sententiis magistri Petri Lombardi*, ed. P. Maria Fabianus Moos [Paris, 1947], 956, no. 158).

⁴ See G. Le Bras, *Institutions ecclésiastiques de la chrétienté médiévale*, 2 vols., Histoire de l'église depuis les origines jusqu'à nos jours 12 (Paris, 1959–64), 1:109–12; Giulio Silano, "Of Sleep and Sleeplessness: The Papacy and the Law, 1150–1300," in *The Religious Roles of the Papacy: Ideals and Realities, 1150–1300*, ed. C. Ryan (Toronto, 1989), 343–61.

with the legal system and the science of jurisprudence in the Church's internal forum of conscience and confession.

THE PENITENTIAL FORUM: "COURTS" AND PERSONNEL

The Parish

The Fourth Lateran Council of 1215 required that all adult Christians, both male and female, confess their sins to their "proper priest" (*proprius sacerdos*) at least once a year and strive to fulfill the penance enjoined.⁵ This canon may be seen as the fundamental charter of the Church's internal forum.⁶ It emphasized, first, the universality of the requirement of confession: "All the faithful of both sexes" (*omnis utriusque sexus fidelis*). No one who has reached the age of reason (*annus discretionis*) may be excluded, either because of sex or because of social status. Women as well as men, servants and slaves as well as bishops and popes, were all expected to appear in the court of penance at least once a year and to confess faithfully (*confiteatur fideliter*) to their proper priest.⁷

Although expressed by the Council as a legal requirement and made enforceable by the Church's most severe legal sanctions (excommunication and denial of Christian burial), the actual confession of one's sins in the court of penance remained a voluntary activity. The practitioners in this internal forum were the penitents themselves, who were taught to act as both accusers and accused in the court of penance. The Lateran Council

⁵ "Omnis utriusque sexus fidelis, postquam ad annos discretionis pervenerit, omnia sua solus peccata confiteatur fideliter, saltem semel in anno proprio sacerdoti, et iniunctam sibi poenitentiam studeat pro viribus adimplere" (canon 21, *Conciliorum oecumenicorum decreta*, ed. J. Alberigo et al. [Bologna, 1972], 245). For an English translation of the Bologna edition, with the same pagination, see *Decrees of the Ecumenical Councils*, ed. Norman P. Tanner, 2 vols. (London, 1990).

⁶ See M. Maccarrone, "'Cura animarum' e 'parochialis sacerdos' nelle costituzioni del IV concilio lateranense (1215): Applicazioni in Italia nel sec. XIII," in *Pievi e parrocchie in Italia nel basso Medioevo (Sec. XIII–XV)*: Atti del VI Convegno di Storia della Chiesa in Italia, Firenze (21–25 Sett. 1981), 2 vols., Italia Sacra: Studi e Documenti di Storia Ecclesiastica 35 (Rome, 1984), 1:81–195, esp. 160–66; N. Beriou, "Autour de Latran IV (1215): La naissance de la confession moderne et sa diffusion," in *Pratiques de la confession: Des Pères du désert à Vatican II* (Paris, 1983), 73–93; J. Avril, "A propos du 'proprius sacerdos': Quelques réflexions sur les pouvoirs du prêtre de paroisse," in *Proceedings of the Fifth International Congress of Medieval Canon Law, Salamanca* (Vatican City, 1980), 471–86.

⁷ Hostiensis discusses at length the various statuses of penitents, beginning with the pope ("Papa cui teneatur confiteri"), and delineates the characteristic sins of each group; *Summa aurea*, "De poenitentibus et remissionibus" 15–44 (Venice, 1574; repr. Turin, 1963), cols. 1769–94.

thus required that all Christian people, laity as well as clergy, at every level of society, be at least nominal participants in the penitential forum and, by extension, in the moral and juridical life of the Church. During the centuries that followed, this internal forum would become the training ground for the Christian conscience and a school where both clergy and laity would learn the Church's canon law.

When the Council required confession to one's "proper" priest, it recognized that the simple priest of a parish exercised the same power of the keys, to bind and loose sinners, that was exercised by the apostles and by the bishops who were their successors.⁸ Throughout the twelfth century, scholars had argued about the exercise of this power in the hands of simple priests, lower clergy, and the laity.⁹ Many attempts were made to circumscribe the power that could be exercised by simple priests, but the emerging consensus, expressed by the Fourth Lateran Council, was that the primary locus of the Church's penitential discipline was the priest charged with the care of souls in a local community.¹⁰ The Council went on to restrict the free choice of confessors by requiring penitents to seek permission from their proper priest if they wished to confess to someone else.¹¹

⁸ "Unusquisque sacerdos catholicus tenet locum Dei viventis, et loco Dei potest absolvere poenitentem" (Hostiensis, *Summa aurea*, "De poenit. et remiss." 15, col. 1770).

⁹ The classic studies are: A. Teetaert, *La confession aux laïques dans l'Eglise latine depuis le VIII^e jusqu'au XIV^e siècle* (Bruges and Paris, 1926); P. Anciaux, *La théologie du sacrement de pénitence au XII^e siècle* (Louvain, 1949); L. Hödl, *Die Geschichte der scholastischen Literatur und der Theologie der Schlüsselgewalt: Die scholastische Literatur und die Theologie der Schlüsselgewalt von ihren Anfängen bis zur Summa aurea des Wilhelm von Auxerre*, Beiträge zur Geschichte der Philosophie und Theologie des Mittelalters 38.4 (Münster, 1960). An excellent summary is found in J. W. Baldwin, *Masters, Princes and Merchants: The Social Views of Peter the Chanter and His Circle*, 2 vols. (Princeton, 1970), 1:50–59.

¹⁰ "Dic quod sacerdos parochialis ex quo sibi cura animarum commissa est ab aliquo episcopo sine alia licentia speciali potestatem habet audiendi confessiones parochianorum suorum, excommunicandi et absolvendi, exceptis prohibitis, quia in his consistit curam" (Hostiensis, *Summa aurea*, "De poenit. et remiss." 14, col. 1766).

¹¹ "Si quis autem alieno sacerdoti voluerit iusta de causa sua confiteri peccata, licentiam prius postulet et obtineat a proprio sacerdote, cum aliter ille ipsum non possit solvere vel ligare" (canon 21, *Conciliarum oecumenicorum decreta*, 245).

The older practice urged penitents to seek out several confessors or to choose the most qualified priest available. The classic authority was (Ps.) Augustine: "Qui vult confiteri peccata ut inveniat gratiam querat sacerdotem qui sciat ligare et solvere" (*Decretum Gratiani*, De pen. D. 6, canon 1). The practice of choosing one's own confessor continued, alongside the required annual confession to one's "proper priest," throughout the Middle Ages and was enshrined in one of the most popular medieval didactic poems, the *Peniteas cito*, peccator of William de Montibus; see J. Goering, *William de Montibus (ca. 1140–1213): The Schools and the Literature of Pastoral Care*, Studies and Texts 108 (Toronto, 1992), 121 (lines 27–29). For a discussion of the canonical literature on the

These provisions ensured that the primary tribunal of the internal forum would be in the local community and that the local priest charged with the care of souls would be the principal minister and judge. According to canonical norms, the priest of a parish should be at least thirty years old, free of all impediments to the exercise of his office, and capable of performing correctly the divine services and sacramental rites of the Church.¹² At his ordination to the priesthood he received the sacerdotal powers, including the “power of the keys,” the authority to loose and bind sinners in the sacrament of penance.¹³

The curate of a parish often had diverse loyalties. He received his spiritual authority from the hands of the bishop, but he had been nominated to his office by the patron of an ecclesiastical benefice who might be a layman, a cleric, or a lay or ecclesiastical corporation. If the patron's nominee to a benefice lacked the canonical or educational requisites for fulfilling the office of priest, he might nevertheless be installed as “rector” or “parson” (*persona*) of the benefice, but he would be required to maintain a suitable priest in the parish to serve as his vicar. Such a vicar would provide pastoral care and ecclesiastical services in the parish perpetually, or until the rector was able to be ordained. Perpetual vicarages were established in many parishes, and in these the income of the benefice was divided on a permanent basis between the rector and the perpetual vicar, with the latter expected to exercise daily the care of souls (*cura animarum*) in the parish.¹⁴

The curate, whether rector or vicar, was charged with residing in his parish and providing all the ecclesiastical services for his parishioners. He might have received some training for his vocation in the household (*familia*) of a bishop, or in a song or grammar school in the local community, and he would have learned the practical duties of his office during years of apprenticeship, as a cleric in minor orders or as a subdeacon or deacon serving under a practicing priest. He may have had some advanced education in a monastic or cathedral school or even a university, but this was neither required nor expected of most ordinands.¹⁵

choice of confessors, see L. Hödl, “Die sacramentale Busse und ihre kirchliche Ordnung im beginnenden mittelalterlichen Streit um die Bussvollmacht der Ordenspriester,” *Franziskanische Studien* 55 (1973): 330–74, at 332–40.

¹² Cf. 4 Lateran, canon 27, *Conciliorum oecumenicorum decreta*, 248.

¹³ See Hödl, *Schlüsselgewalt*, passim.

¹⁴ See R. A. R. Hartridge, *A History of Vicarages in the Middle Ages* (Cambridge, 1930).

¹⁵ See L. E. Boyle, “The Constitution ‘Cum ex eo’ of Boniface VIII: Education of Parochial Clergy,” *Mediaeval Studies* 24 (1962): 263–302; idem, “Aspects of Clerical Education in Fourteenth-Century England,” in *The Fourteenth Century*, Proceedings of the State University of New York Conferences in Medieval Studies, ed. P. E. Szarmach and B. S. Levy (Binghamton, NY, 1977), 19–32; both are reprinted in idem, *Pastoral Care, Clerical Education and Canon Law, 1200–1400*, Variorum Reprints (London, 1981); J. Goering,

The parish priest was responsible to the patron who appointed him and to the local community that he served, but he also owed obedience to his bishop and to various officials charged with the supervision of pastoral care and ecclesiastical discipline in the diocese. As proper priest and confessor, he was expected to hear the confessions of his parishioners at least once a year, but he was also expected to confess his own sins regularly to a confessor appointed by the bishop and to have recourse to more skilled confessors if questions or problems should arise in hearing confessions and enjoining penances.

Although the parish priest or curate was the *proprius sacerdos* and proper confessor of most Christians in their parishes, other local communities had their own proper priests and confessors. In monasteries and houses of friars or canons, the abbot or prior, or a priest designated by them, heard the confessions of the inhabitants. Communities of women religious often availed themselves of the services of stipendiary priests or of priests from neighboring monastic houses who would make the sacraments available and hear the women's confessions. In all such instances the *proprius sacerdos* was someone other than a parish priest.

In special cases permission might be granted to confess to someone other than one's "proper priest." Pilgrims, travelers, students in the schools, and others who were absent from their home parishes for extended periods could seek out another priest to hear their confession, and arrangements for such confessions became common during the thirteenth century.¹⁶ Exceptions were also granted within parish communities. Noble families might be permitted to retain a personal chaplain and confessor for their households. By the fourteenth century licenses were regularly being granted by bishops to allow lords and ladies to confess to their own priests, and in their own chapels, rather than to their parish priest.¹⁷ Hospitals, merchant and trade guilds, and confraternities also received permission to appoint chaplains and

"The Changing Face of the Village Parish: The Thirteenth Century," in *Pathways to Medieval Peasants*, ed. J. A. Raftis (Toronto, 1981), 323–33.

¹⁶ For example, the canons of St. Victor and of Ste. Geneviève became confessors to the student population in Paris, and both major and minor penitentiaries in the papal curia heard confessions of pilgrims to Rome (see below).

¹⁷ R. M. Haines prints a typical episcopal license granting a noble couple permission to choose their own confessor for two years in *Ecclesia anglicana: Studies in the English Church of the Later Middle Ages* (Toronto, 1989), 51–52. For numerous examples from the papal curia in the fifteenth century, see the volumes of the *Repertorium poenitentiarum Germanicum* (Tübingen, 1996–); Ludwig Schmugge, "Cleansing on Consciences: Some Observations regarding the Fifteenth-Century Registers of the Papal Penitentiary," *Viator* 29 (1998): 345–61, at 359–60.

to confess to these rather than to their parish priest.¹⁸ In such cases care was taken to protect the jurisdictional and financial rights of the parish priest while allowing some choice of confessors in the internal forum.

As members of the local community, the confessors were well acquainted with their people, with the sins that they might be expected to confess, and with the penances that they could sustain. The embarrassment and shame that accompanied confession to one's local priest were acknowledged, but the shame itself was seen as a therapeutic part of confession. Although local priests might lack formal education and legal training for the task of judging souls in the internal forum, they gradually came to see themselves, and to be seen by their people, as the proper priests and primary confessors in Christendom.

During the thirteenth century new groups of highly trained and popular confessors, the mendicant friars, arose to supplement, and often to challenge, the local priest's primacy in the internal forum.¹⁹ The activities of the friar-confessors were closely regulated by bishops (and by the orders themselves) so as to preserve the basic principle that parishioners should confess to their own parish priest. Nevertheless, tensions ran high. No doubt some parish priests were glad of the help they received from friars in hearing large numbers of confessions during the busiest days of the Lenten season. But many others resented the incursion of these outsiders and their tendency to override the jurisdictional prerogatives of the parish. This competition among confessors may have fostered better education and training among both the secular and the regular clergy as each sought to meet the challenges presented by the other and the demands of an increasingly sophisticated populace.

¹⁸ For confession in hospitals see the *Libellus pastoralis de cura et officio archidiaconi*, printed under the name of Raymund of Peñafort in the *Catalogue général des manuscrits des bibliothèques publiques des départements de France*, ed. F. Ravaisson, 1 (Paris, 1849), 592–649, at 634–41. On guilds and confraternities see G.-G. Meersseman, *Ordo Fraternalitatis: Confraternitate e pietà dei laici nel medioevo*, 3 vols., Italia sacra 24–26 (Rome, 1977).

¹⁹ See L. E. Boyle, "Notes on the Education of the *Fratres communes* in the Dominican Order in the Thirteenth Century," in *Xenia Medii Aevi historiam illustrantia oblata Thomae Kaeppli O.P.* (Rome, 1978), 249–67, repr. in idem, *Pastoral Care*; S. M. da Romallo, *Il ministero della confessione nei primordi dell'Ordine francescano in relazione ai diritti parrocchiali* (Milan, 1949); R. Rusconi, "I Francescani e la confessione nel secolo XIII," in *Francescanesimo e vita religiosa dei laici nel '200: Società internazionale di studi francescani*, Atti dell'VIII Convegno Internazionale (Assisi, 1981), 251–309; *Dalla penitenza all'ascolto delle confessioni: il ruolo dei frati mendicanti. Atti del XXIII convegno internazionale: Assisi, 12–14 ottobre 1995* (Spoleto, 1996); B. Roest, *Franciscan Literature of Religious Instruction* (Leiden: forthcoming).

A priest's competence in his penitential forum extended, theoretically, to the hearing of all confessions, the absolution of all sins, and the imposition of suitable penances. This sweeping authority, accorded to him by virtue of his ordination, was one of the most striking implications of twelfth- and thirteenth-century penitential doctrine. In practice, however, the competence of the parish priest was somewhat circumscribed. The first limitation was one of common sense. Priests were urged to refer serious or difficult cases to their superiors for adjudication.²⁰ Such cases included, no doubt, those that threatened social stability and harmony in the parish. Often the priest might benefit from the intervention of a higher authority, and he was encouraged to avail himself of the opportunity. Other difficult cases arose from the growing sophistication of the canon law concerning marriage, holy orders, simony, usury, and other matters. Parish priests received some instruction in the intricacies of the new canon law, but the aim of this teaching may have been as much to warn them of difficulties beyond their ken as to prepare them to deal with the problems themselves.

In addition to these voluntary constraints, several very specific limitations were placed on the parish priest's competence in the penitential forum. Public or solemn penance, imposed for notorious and serious sins, remained the preserve of the bishop.²¹ The confession, absolution, and punishment of certain named sins, such as arson, murder, sacrilege, forgery, and other grave crimes, were reserved variously to the bishop or the pope.²² The power of parish priests to absolve penitents from excommunication was limited in certain cases, and sins that resulted in irregularity (a canonical hindrance to marriage, holy orders, and certain legal actions) could be absolved only by higher authorities. In general, however, the parish priest enjoyed substantial competence in the penitential forum of his parish. His ability to advise and absolve parishioners was circumscribed only by his own political, social, and intellectual limitations, and by specific and named reservations of the bishop or the pope.

The competence of the priest extended to hearing confessions and imposing penances for acts such as heresy, theft, and murder that might also be brought before various civil or criminal tribunals. The question arises,

²⁰ "Expediens est ut inungat archidiaconus sacerdoti ut sciat poenitentias a sanctis determinatas. . . . Injungat etiam ei quod, si circa haec vel alia difficilia aliquando dubitaverit, ad majorum consilium recurrat quam citius poterit" (*Libellus pastoralis de cura et officio archidiaconi*, 610). See below for a more detailed discussion.

²¹ On solemn and public penance see Raymund of Peñafort, *De poenitentia* 3.34.6 (*S. Raimundus de Pennaforte Summa de poenitentia*, ed. X. Ochoa and A. Diez, Universa bibliotheca iuris 1.B [Rome, 1976], 801); M. C. Mansfield, *The Humiliation of Sinners: Public Penance in Thirteenth Century France* (Ithaca, NY, 1995).

²² See the discussion of reserved cases below.

whether a crime divulged in the confessional could be prosecuted subsequently in the external forum of the Church or in the secular courts. The most effective hindrance to the movement of a case from the internal to the external forum was the “seal of confession” that prohibited a priest, with the strictest sanctions, from revealing what he had heard in confession. The Fourth Lateran Council, in the same canon that prescribed annual confession, decreed that a priest who violated the secrecy of the confessional should not only be deposed from his office, but also be relegated to perpetual penance in a strict monastery.²³

Furthermore, the goal of the Church’s courts (and, to a large extent, of the secular courts as well) was the same as that of the confessional. They sought to lead sinners to confess their misdeeds, to be reconciled with God and with the Church, and to make suitable amends to those who were injured. If these ends could be met freely, in the confessional, then no further adjudication was necessary. If a crime was manifest and public, however, or if it was to someone’s advantage to prosecute the crime in a public forum, one gained no immunity through the confessional. Contrition, confession, and penance reconciled the sinner with God and with the Church but provided no safeguard against punishment by temporal authorities. Moreover, the new juridical procedure of *inquisitio* and the new emphasis on law as a means of active intervention in moral governance gradually encouraged ecclesiastical authorities, from the pope down to the local archdeacons and rural deans, to seek out sinners and to do for them in the external forum what they were unwilling to do for themselves in confession.²⁴

Although the prosecution of criminal acts could not move easily from the internal to the external forum, movement in the opposite direction was possible and even salutary. The difficulties of proof and limitations of human

²³ “Caveat autem omnino, ne verbo vel signo vel alio quovis modo prodat aliquatenus peccatorem, sed si prudentiori consilio indiguerit, illud absque ulla expressione personae caute requirat, quoniam qui peccatum in poenitentiali iudicio sibi detectum praesumpserit revelare, non solum a sacerdotali officio deponendum decernimus, verum etiam ad agenda perpetuam poenitentiam in arctum monasterium detrudendum” (canon 21, *Conciliarum oecumenicorum decreta* [n. 5 above], 245).

John of Kent (ca. 1216) has the priest give a penitent the following assurances: “De me autem confidere potes quia novit Deus quod prius me permetterem decollari quam signo vel dicto te de confessione tua detegere, etsi patrem meum occideres, maxime cum sciam te mihi non mihi set ut Deo principaliter confiteri, Dei autem secretum nullus sane mentis presumat revelare” (London, BL Royal 9.A.XIV, fol. 225v).

²⁴ See Silano, “Sleep and Sleeplessness” (n. 4 above), 343–61; R. Fraher, “IV Lateran’s Revolution in Criminal Procedure: the Birth of *Inquisitio*, the End of Ordeals, and Innocent III’s Vision of Ecclesiastical Politics,” in *Studia in honorem eminentissimi cardinalis Alphonsi M. Stickler*, *Studia et textus historiae iuris canonici* 7 (Rome, 1992), 97–111.

discernment in the external courts could lead to judgments that were legally correct yet unsatisfying. In such cases judges might leave the principals to their “conscience.” This implied more than a pious hope; it imposed on the recipient the very real obligation of examining his or her conscience in the internal court of penance and of acting accordingly.

The Diocese

The bishop, at the head of the diocesan hierarchy, was the “proper priest” of everyone in his diocese and had general oversight of the penitential forum.²⁵ He was the confessor of the diocesan clergy, the arbiter of difficult questions arising in the internal forum, and the person responsible for educating his subordinates concerning penitential discipline. He might exercise these duties personally, but he was frequently assisted by diocesan officials and *coadiutores*.²⁶

A confessor-general, or *penitentiarius*, of the diocese was the bishop’s vicar in all matters concerning penitential discipline. This official, much ignored in modern studies, played a crucial role in the internal forum. As the local expert in penitential law and theology, he heard confessions of the diocesan clergy, adjudicated cases reserved to the bishop from the local confessors, and supervised the imposition of public penances in the bishop’s stead. Many of the manuals of penance and confession that proliferated during the thirteenth and subsequent centuries were composed by and for the diocesan penitentiary.²⁷

Beneath the bishop and his penitentiary was a hierarchy of penitential authorities in the diocese. The Fourth Lateran Council encouraged bishops to appoint “coadiutores et cooperatores” to assist them in preaching and “in hearing confessions and enjoining penances.”²⁸ The Council of the Province

²⁵ “Ut tamen scias tres esse personas, quibus immediate subiecta est quaelibet anima, scilicet Papam, dioecesanum, et proprium sacerdotem” (Hostiensis, *Summa aurea* [n. 7 above], “De poenit. et remiss.” 18, col. 1772).

²⁶ The administration of penance at the diocesan level still needs much study. For England see two essays by Haines, “The Penitential System at Diocesan Level” and “The Jurisdiction of the Subdean of Salisbury,” in his *Ecclesia anglicana*, 39–52, 53–66.

²⁷ The most extensive discussion of the office of diocesan penitentiary is that of L. Thomassin in the eighteenth century. I have consulted the French edition of 1864: *Ancienne & nouvelle discipline de l’Eglise*, vol. 1, part 10, chap. 10 (“Du théologal et du pénitencier”), 379–91. See also Le Bras, *Institutions ecclésiastiques* (n. 4 above), 401; F. Broomfield, *Thomae de Chobham Summa Confessorum*, *Analecta Mediaevalia Namurcensis* 25 (Louvain, 1968), lvi–lviii, 213; J. J. F. Firth, ed., *Robert of Flamborough Canon-Penitentiary of Saint-Victor at Paris Liber poenitentialis: A Critical Edition with Introduction and Notes* (Toronto, 1971), 3–5; Haines, “Penitential System,” in *Ecclesia anglicana*, 39–51.

²⁸ Canon 10, *Conciliorum oecumenicorum decreta*, 239–40.

of Canterbury, held at Oxford in 1222, illustrates one of the ways in which the Lateran injunction was implemented:

Since souls are frequently endangered because of a shortage of confessors or because rural deans and parsons are perhaps embarrassed to confess to their own prelate, wishing to remedy this malady, we decree that certain prudent and discrete confessors should be established by the bishops in each archdeaconry, who can hear the confessions of the rural deans, the priests, and the parsons. In cathedral churches where there are secular canons, let these canons confess to the bishop or the dean or to other certain persons appointed for this purpose by the bishop and the dean and chapter.²⁹

Another of the bishop's officials (and sometimes a powerful rival) was the archdeacon. As their names imply, archdeacons were not necessarily priests and thus could not hear confessions *ex officio*; their primary competence was in the local courts of the external ecclesiastical forum. Archdeacons enjoyed substantial benefices and employed assistants to help in their pastoral work as the bishop's representative in the archdeaconry. Among these assistants one would expect to find experts in canon law and the discipline of the external forum as well as priests and clerics who were skilled in hearing confessions and exercising penitential discipline.³⁰

The lowest level of penitential discipline in the diocese, just above the simple parish priest, was exercised by the archpriest or rural dean.³¹ The archpriest, a common figure in Italy and much of the Mediterranean, was

²⁹ "Quoniam nonnumquam ob defectum confessorum vel quia decani rurales et persone forte erubescunt suo prelato confiteri, certum iminet periculum animarum, volentes huic morbo mederi statuimus ut certi confessores prudentes et discreti ab episcopo loci per archidiaconatus singulos statuatur, qui confessiones audiant decanorum ruralium, presbiterorum, et personarum. In cathedralibus autem ecclesiis ubi sunt canonici seculares, confiteantur ipsi canonici episcopo vel decano vel certis personis ad hoc per episcopum et decanum et capitulum constitutis" (canon 24, *Councils and Synods, with Other Documents Relating to the English Church*, II: A.D. 1205–1213, ed. F. M. Powicke and C. R. Cheney, 2 vols. [Oxford, 1964], 1:113).

³⁰ For a general discussion of the archdeacon, see Le Bras, *Institutions ecclésiastiques*, 391–94. One of the most popular manuals of confession, Robert Grosseteste's *Templum Dei*, was probably written while Robert was serving in the household of Hugh Foliot, archdeacon of Shropshire, during the 1190s. See *Robert Grosseteste: Templum Dei*, ed. J. Goering and F. A. C. Mantello (Toronto, 1984), 4–6; R. W. Southern, *Robert Grosseteste: The Growth of An English Mind in Medieval Europe* (Oxford, 1986), 63–69.

For an excellent example of the archdeacon's pastoral activities, including his oversight over confessions and penitential discipline in his archdeaconry, see the *Libellus pastoralis de cura et officio archidiaconi* (n. 18 above), especially the chapter "Quomodo se habeat sacerdos circa confessiones et poenitentias," 609–11.

³¹ For a general discussion of the archpriest or rural dean see Le Bras, *Institutions ecclésiastiques*, 428–34; P. R. Hyams, "Deans and Their Doings: The Norwich Inquiry of 1286," in *Proceedings of the Sixth International Congress of Medieval Canon Law, Berkeley* (Vatican City, 1985), 619–46.

usually the head of a *pieve* or collegiate church and of the priests who lived together there and traveled out to serve the surrounding communities.³² In other areas, especially in France and England where isolated parishes were the norm, priests would usually be placed under the supervision of a rural dean or archpriest chosen from among themselves or appointed by the bishop or his delegate. Groups of ten or so parish priests formed a rural deanery and were expected to meet together regularly (often monthly) in a kind of chapter (*capitulum*).³³ They were expected to confess their sins to the archpriest, dean, or some appointed confessor, to learn new techniques of the confessional, and to receive guidance in difficult cases during their regular chapter meetings.³⁴

The Papal Curia

The diocesan bishop's authority and activity in the penitential forum was echoed in the curia of the Roman pontiff. By the thirteenth century an office of papal penitentiary was established to hear confessions of curial members and of the numerous pilgrims and visitors to the court.³⁵ The papal

³² See *Pievi e parrocchie in Italia* (n. 6 above); H. A. Kelly, *Canon Law and the Archpriest of Hita*, Medieval and Renaissance Texts and Studies 27 (Binghamton, NY, 1984).

³³ Even before the Fourth Lateran Council, Archbishop Stephen Langton provided that two confessors be established in each rural deanery of the Canterbury diocese to hear the confessions of parish priests. The Statutes of Canterbury (1213–14) provide: “Quilibet autem sacerdos de consensu domini archiepiscopi suum habeat confessorem, et in quolibet capitulo [i.e., chapter of rural deans or archpriests] duo sint confessores quibus, a domino archiepiscopo constitutis, eiusdem capituli sacerdotes sua possint peccata confiteri. Si qua vero fuerint dubia que per eos expediri nequeant, vel si quis de sacerdotibus eis ob aliquam causam noluerit peccata sua confiteri, ad principales penitentiarios domini archiepiscopi recurrant. Si vero neutri eorum suum voluerit revelare peccatum, ad archiepiscopum veniat ut vel ei confiteatur vel sibi ab ipso alius assignetur cui velit et valet confiteri” (canon 13, Powicke and Cheney, *Councils and Synods*, 1:27).

³⁴ See J. Goering and D. S. Taylor, “The *Summulae* of Bishops Walter de Cantilupe (1240) and Peter Quinel (1287),” *Speculum* 67 (1992): 576–94; Mansfield, *Humiliation of Sinners* (n. 21 above), 74.

³⁵ The basic study is E. Göller, *Die päpstliche Pönitentiarie von ihrem Ursprung bis zu ihrer Umgestaltung unter Pius V*, 2 vols. (Rome, 1907–11). See also C. H. Haskins, “The Sources for the History of the Papal Penitentiary,” *American Journal of Theology* 9 (1905): 421–50; M. Meyer, *Die Pönitentiarieformularsammlung des Waller Murner von Strassburg: Beitrag zur Geschichte und Diplomatie der päpstlichen Pönitentiarie im 14. Jahrhundert* (Freiburg, 1979); F. Tamburini, “La penitenzieria apostolica durante il papato Avignone,” in *Aux origines de l'état moderne: Le fonctionnement administratif de la papauté d'Avignon*, Collection de l'École française de Rome 138 (Rome, 1990) 251–68; L. Schmutge, P. Hersperger, and B. Wiggenhauser, *Die Supplikenregister der päpstlichen Pönitentiarie aus der Zeit Pius' II. (1458–1464)* (Tübingen, 1996); Schmutge, “Cleansing on Consciences” (n. 17 above).

penitentiary, like his diocesan counterparts, also answered questions about difficult cases posed to him by penitents and penitentiaries, confirmed or adjusted the decisions of lower confessors, and dealt with the cases reserved to the pope for absolution and disposition.³⁶ Outside the curia, popes regularly appointed penitentiaries to accompany the legations that they sent to various parts of Christendom. Raymund of Peñafort, perhaps the greatest penitential authority of the thirteenth century, served in such a capacity (as *penitentiarius domini legati*) in the service of a papal legate to Spain in 1228–29.³⁷

PROCEDURE IN THE INTERNAL FORUM

The practices and procedures of the internal forum, as developed in the thirteenth century, informed and influenced judicial activity at every level of the Church, from the papal curia to the most distant parochial outposts. These procedures, in turn, were influenced by the practices of the external courts and the teachings of the schools. Bishops, penitentiaries, and other skilled confessors kept abreast of procedural changes in the external courts and adapted these to the confessional. Raymund of Peñafort's influential *Summa de penitentia*, for example, incorporates large parts of his earlier "ordo iudiciarius" (*Summa de iure canonico*), and the surviving formularies of papal penitentiaries reveal their debt to the new procedural literature.³⁸ Nevertheless, procedures in the internal forum were less formal than in the external courts, and they are not easily reconstructed by studying the procedure of papal and other "external" courts. As is to be expected, the surviving documents from the diocesan and papal penitentiaries give a limited and somewhat distorted view of procedures in the penitential forum. These documents inform us about difficult cases and about special matters reserved for episcopal or papal attention, but the fundamental procedures in the penitential forum are those developed for the regular confession of sins and enjoining of penances in the humble parishes, as well as in the most exalted churches.

³⁶ See examples from the fifteenth century in the volumes of the *Repertorium poenitentiariae Germanicum* (n. 17 above). The range of penitentiary business can also be seen in the surviving formularies: H. C. Lea, *A Formulary of the Papal Penitentiary in the Thirteenth Century* (Philadelphia, 1892); Meyer, *Die Pönitentiariiformularsammlung*. For the surviving registers of the papal penitentiary see F. Tamburini, "Il primo registro di suppliche dell'Archivio della Sacra Penitenzieria Apostolica (1410–1411)," *Rivista di Storia della Chiesa in Italia* 23 (1969): 384–427; M. Harvey, *England, Rome and the Papacy 1417–1464: The Study of a Relationship* (Manchester, 1993), 101–27.

³⁷ See Ochoa and Diez, *Summa de paenitentia* (n. 21 above), lxxv–lxxix.

³⁸ *Ibid.*, lxxxviii.

The procedures of the internal forum can best be studied at the most elementary level: a priest hearing a penitent's confession and assigning a penance. The evidence for such a study has become much more accessible in recent decades with the identification and study of numerous manuals and handbooks of penance, and it is on the basis of these texts that we can begin to outline the procedures and practices of the internal forum.

Admission into the Internal Forum

One mark of the growing importance of penance in the thirteenth century is the expansion of opportunities available for entering the penitential forum. Regular confession preceding reception of the eucharist one or more times a year was perhaps a norm in parts of Christendom before the thirteenth century.³⁹ The Fourth Lateran Council of 1215 insisted on a minimum requirement of annual confession and communion, and this "Easter duty" remained an integral part of Catholic practice into the twentieth century. Preparation for the annual confession to the parish priest would begin on Ash Wednesday, at the beginning of the Lenten period of fasting, with traditional liturgical ceremonies and often with sermons on a theme such as: "Penitentiam agite, appropinquabit enim regnum celorum" (Matt. 3:2).⁴⁰ The universality of the requirement, that "Everyone of both sexes . . . shall confess," seems to have been taken seriously. Preachers sometimes note the obstacles experienced by some, especially the young, farm laborers, and the unfree, in attending the sacraments, thus implying an effort to accommodate them.⁴¹

³⁹ The requirement of annual confession was not an innovation of the council: See P. Browe, "Die Pflichtbeichte im Mittelalter," *Zeitschrift für katholische Theologie* 57 (1933): 335–83; P. Landau, "Epikletisches und transzendentes Kirchenrecht bei Hans Dombois: Kritische Anmerkungen zu seiner Sicht der Kirchenrechtsgeschichte," *Zeitschrift der Savigny-Stiftung für Rechtsgeschichte, Kanonistische Abteilung* 72 (1987): 131–54, at 146–50. But see the cautious comments of A. Murray, "Confession as a Historical Source in the Thirteenth Century," in *The Writing of History in the Middle Ages: Essays Presented to Richard William Southern*, ed. R. H. C. Davis and J. M. Wallace-Hadrill (Oxford, 1981), 275–322.

⁴⁰ "Specialiter autem in initio quadragesimae, quod dicitur caput jejunii, parochianos convocet sacerdos, eisque specialiter de poenitentia proponat sermonem, eosque ad poenitentiam invitet" (Alan of Lille, *Liber poenitentialis* 3.50, ed. J. Longère, *Analecta Mediaevalia Namurcensia* 18, 2 vols. [Louvain, 1965], 2:158).

⁴¹ In the early morning of Easter Sunday, William de Montibus addressed a crowd of children, servants, and shepherds who had completed their Lenten penance: "Consuetudo est sancte ecclesie ut in hac die ueniant ad primam pueri, puelle, pastores, seruites qui pro seruitio dominorum suorum ad ecclesiam in aliis diebus uenire non possunt" (Goering, *William de Montibus* [n. 11 above], 559; cf. 19–20).

The annual encounter of many Christians with their parish priest in the penitential forum may have been a fairly cursory event. Although attendance was mandatory, the mode of attendance and the actual confession of sins was voluntary and must have varied greatly depending on the skill, learning, and inclinations of both priest and penitent. Priests were sometimes warned about what to expect from their parishioners: "The sinners of your parish will come to confession, I tell you, [only] during Lent, and not in the first or the second or the third week, but in the sixth week, or on Good Friday or Saturday or on Easter Sunday, drawn by the necessity of keeping a custom rather than by the compunction of true penance."⁴² The ignorance and incompetence of priests in hearing confessions was likewise legendary. We do well here to avoid exaggerated claims, either negative or positive, as to the quality of the procedures and the expertise of the participants in the local penitential *fora*. Nevertheless, the ubiquity of the "court of penance" and its propinquity to the lives and experiences of medieval people is worthy of note. Most medieval people must never have been called before the Church's external courts and thus had no firsthand experience of the canon law as applied in the external forum. But the expectation that all Christians, clergy and laity alike, would appear in the internal forum of penance and confession at least once a year ensured at least a modicum of familiarity with the doctrines and practices of the Church's canon law among all the faithful.

The minimum requirement of an annual Easter confession by all Christians marked the most obvious time for availing oneself of the internal forum, but many other opportunities existed alongside. Confession to a priest *in extremis*, at the hour of one's death, was at least as widespread as Lenten confession, and probably has a longer history.⁴³ The importance of a final confession was so great that, at the point of death, one was permitted to

⁴² "Nunc itaque fratres ueniunt ad uos peccatores parochianorum uestrorum immundi, fornicatores, adulteri, usurarii, auari, fures, rapaces, ebriosi, mendaces, periuri, proximum odio habentes. . . . Veniunt inquam in quadragesima, et non in prima uel in secunda uel in tertia quadragesima septimana set in sexta uel die passionis Domini uel etiam in sabbato uel die paschali, necessitate conseruante consuetudinis magis quam compunctione uere penitentie ducti. Alii autem mandant uos in domos suas periculo mortis territi. Et quidem et isti et illi toto anno in peccatis suis dormiunt nec salutis consilium querunt nisi ut dictum est uel consuetudine accipiente in pascha communionis uel necessitate mortis imminentes requirunt." From an anonymous sermon (before 1250) in Oxford, New College MS 94, fol. 12v–13r.

⁴³ The Fourth Lateran Council (canon 22: "Quod infirmi prius provideant animae quam corpori") required that a priest be called before a medical doctor to minister to the sick. See also the Lenten sermon quoted above (n. 42), which envisions many people calling on a confessor when in danger of death.

confess even to a layperson or a heretic if no priest were available.⁴⁴ Prophylactic confessions also became very popular for those about to engage in some particularly dangerous activity (e.g., war, travel, or childbirth). By seeking out a priest and confessing their sins, they forestalled the possibility of dying unshriven.

Many other opportunities for confession were cultivated in the thirteenth and subsequent centuries. Confession and examination of conscience became a kind of spiritual exercise among both clergy and pious laity. "Holy women" (*mulieres religiosas*), in the Low Countries and elsewhere, began to besiege priests with demands for frequent confession,⁴⁵ and confraternities of penitents and *disciplinati* sprang up throughout Europe.⁴⁶ Many people were moved to penance and confession by popular preachers,⁴⁷ and the new mendicant orders (Dominicans and Franciscans) became training grounds for confessors and preachers almost as soon as they were founded.

Bishops, too, began to take an active role in fostering confessions among the laity in their dioceses. Bishop Robert Grosseteste (d. 1253) describes how, in introducing the new canonical procedure of *inquisitio* into the visitation of the churches in the large English diocese of Lincoln, he also made provision for preaching and hearing confessions:

After I was made bishop, I thought to myself how a bishop ought to be a pastor of souls. . . . I began, therefore, to travel around my diocese, rural deanery by rural deanery, requiring the clergy of each deanery to come together at a certain time and place, and charging them to prepare their parishioners to assemble at the same time and place, along with their children for confirmation, to hear the Word of God, and to confess. Usually, when all had come together, I preached to the clergy and a Friar Preacher or Minor preached to the people. Thereafter, four friars heard confessions and enjoined penances. That day and the next I confirmed children and, along with my clergy, carried out the inquisitions, corrections, and reforms as these pertain to the office of the inquisition.⁴⁸

⁴⁴ The classic study is A. Teetaert, *La confession au laïques* (n. 9 above).

⁴⁵ This aspect of feminine piety, especially among the *mulieres religiosas* of the early thirteenth century, remains little studied. See note 89 below.

⁴⁶ See G.-G. Meersseman, *Le Dossier de l'Ordre de la Pénitence au XIII^e siècle* (Freiburg, 1971); idem, "Disciplinati e penitenti nel duecento," in *Il movimento dei Disciplinati nel settimo centenario dal suo inizio (Perugia-1260)* (Perugia, 1962), 43-72.

⁴⁷ For the connection of preaching and confession see R. Rusconi, "De la prédication à la confession: transmission et contrôle de modèles de comportement au XIII^e siècle," in *Faire croire: Modalités de la diffusion et de la réception des messages religieux du XII^e au XV^e siècle* (Rome, 1981), 67-85; Beriou, "La naissance de la confession moderne" (n. 6 above).

⁴⁸ "Ego post meam in episcopum creationem consideravi me episcopum esse et pastorem animarum. . . . Unde episcopatum meum cepi circuire per singulos decanatus rurales, faciens clerum cuiuscunque decanatus per ordinem certis die et loco convocari, et populum

In this example we see how closely linked were the internal forum of confession and the external forum of inquisition, correction, and reform.

Finally, we should note how the internal forum gradually became a place where one could seek advice from experienced confessors on matters of conscience and difficult moral questions. In one of the folktales collected by Italo Calvino, two friends have made a vow to each other that the first to get married would call on the other to be his groomsman, "even if he should be at the ends of the earth." When one of the friends dies and the other plans to get married, he has no idea what to do so he seeks the advice of his confessor. The priest admits that it is a ticklish situation but advises the survivor: "You must keep your promise. Call on him even if he is dead. Go to his grave and say what you're supposed to say. It will then be up to him whether to come to your wedding or not."⁴⁹ Beneath the folksy surface of this story lies evidence of the common and widespread expectation that even local parish priests would be able to give expert advice about questions of conscience and behavior. The priest in the story would have had little opportunity to study the detailed canonical discussions concerning oaths, but he would have known the outlines of a correct response from having his own conscience formed by learned confessors in the confessional, or perhaps from reading any of the myriad penitential manuals that circulated widely in the thirteenth and subsequent centuries.

Confession: Collecting the Evidence

Just as entry into the penitential forum depended on the initiative of the penitent, so too did the giving of testimony. No outside evidence was admissible in the internal forum; only the free, full, and truthful confession of the penitent was acceptable. The art of producing such a confession was one of the most important skills to be learned by priest and penitent in the later Middle Ages.

The procedure for hearing private confessions in the thirteenth century was an elaboration of the ancient liturgical practices of public penance (as

premuni ut eisdem die et loco adessent cum parvulis confirmandis, ad audiendum verbum dei et confitendum. Congregatis autem clero et populo, egomet ut pluries proponebam verbum dei clero, et aliquis frater predicator aut minor populo. Et quatuor fratres consequenter audiebant confessiones et iniungebant penitentias. Et confirmatis pueris eodem die et sequente, continue ego cum clericis meis intendebamus inquisitionibus, correctionibus, et reformationibus secundum quod pertinet ad officium inquisitionis" (Powicke and Cheney, *Councils and Synods* [n. 29 above], 1:265). Grosseteste's visitation articles, stressing their canonical status (*canonice statuta sunt . . . canonice punituros*), are printed *ibid.*, 276–78.

⁴⁹ "One Night in Paradise" in *Italian Folktales Selected and Retold by Italo Calvino*, trans. G. Martin (New York, 1980), 119.

seen especially in the liturgies for Ash Wednesday and in the *Ordines ad paenitentiam dandam*), and of the traditions of the Celtic, Frankish, and Italian penitentials of the sixth and subsequent centuries.⁵⁰ By the thirteenth century these traditional materials had been molded into a generally accepted set of procedures that would continue to govern penitential practice for centuries.⁵¹

Private confessions generally took place in the church but not in an enclosure such as the modern "confessional." The priest would sit in some open place, and the penitent would stand with bowed head at a lower level or kneel. Neither was to look at the other, and the priest was to wear a cowl or hood that would discourage direct eye contact.⁵² The penitent would

⁵⁰ See C. Vogel, "Les Rituels de la pénitence tarifée," in *Liturgia opera divina e umana: Studi sulla riforma liturgica offerti à S. E. Mons. Annibale Bugnini in occasione del suo 70° compleanno*, ed. P. Jounel, R. Kaczynski, and G. Pasqualetti (Rome, 1982), 419–27; R. Kottje, "Busspraxis und Bussritus" in *Segni e riti nella chiesa altomedievale occidentale*, 2 vols., Settimane di studio del Centro Italiano di Studi sull'alto Medioevo 33 (Spoleto, 1987), 1:369–95; S. Hamilton, *The Practice of Penance, 900–1050* (Woodbridge, Engl., 2001).

For the influence of the early medieval *ordines* on thirteenth century practice see J. Goering and P. J. Payer, "The 'Summa penitentiae Fratrum Predicatorum': A Thirteenth-Century Confessional Formulary," *Mediaeval Studies* 55 (1993): 1–50.

⁵¹ The description that follows is based on the early-thirteenth-century formulary known as the *Summa penitentiae Fratrum Praedicatorum* (see note above). Illustrative materials are drawn from other manuals and formularies of the late twelfth and early thirteenth centuries, including, in approximate chronological order, *Homo quidam* (ca. 1155–65) (ed. P. Michaud-Quantin, "Un manuel de confession archaïque dans le manuscrit Avranches 136," *Sacris erudiri* 17 [1966]: 5–54); Alan of Lille, *Liber poenitentialis* (n. 40 above); "Ricardus," *Summa de penitentia iniungenda* (= Ps. Praepositinus, *De penitentis iniungendis*), Stuttgart, Württembergische Landesbibliothek HB I 70, fols. 2r–19r; Robert of Flamborough, *Liber poenitentialis* (n. 27 above); John of Kent, *Summa de penitentia*, London, British Library MS Royal 9.A.XIV, fols. 203v–232v; Thomas of Chobham, *Summa confessorum* (n. 27 above); Robert Grosseteste, *Templum Dei* (n. 30 above); Raymond of Peñafort, *Summa de penitentia* (n. 21 above); "Deux formulaires pour la confession du milieu du XIII^e siècle," ed. P. Michaud-Quantin, *Recherches de théologie ancienne et médiévale* 31 (1964): 43–62; Master Serlo, *Summa de penitentia*, ed. J. Goering, *Mediaeval Studies* 38 (1976): 1–53; Hostiensis (Henricus de Segusio), *Summa aurea*, "De poenitentis et remissionibus" (n. 7 above); Peter Sampson, "De sacramento poenitentiae," in *Liber synodalis compositus per Magistrum Petrum de Sampsono ad instantiam Domini Raymundi Dei Gratia Nemausensis Episcopi*, in E. Martène and U. Durand, *Thesaurus novus anecdotorum* 4 (Paris, 1717), 1021–70.

See also L. K. Little, "Les techniques de la confession et la confession comme technique," in *Faire Croire*, 88–99; R. Rusconi, "Ordinate confiteri: La confessione dei peccati nelle 'summae de casibus' et nei manuali per i confessori (metà XII–inizi XIV secolo)," in *L'Aveu: Antiquité et Moyen-Âge*, Collection de l'École française de Rome 88 (Rome, 1986), 297–313; Mansfield, *Humiliation of Sinners* (n. 21 above), 78–91.

⁵² "Tunc etiam dicat ei sacerdos quod stet inclinatus ad terram. . . . Sacerdos etiam audiens peccatorem caueat ne ipsum respiciat in facie et maxime ne respici possit et

begin by greeting the priest, and the priest would receive the penitent with a prayer or with words of encouragement.⁵³ If the penitent was unknown to him, the priest would inquire about the person's status (religious, clerical, lay), condition (beneficed, married, widowed, single), and office (merchant, mercenary, judge, prostitute, etc.).⁵⁴

Next, the priest was urged to inquire into the faith of the penitent. Does he or she know the creed or the articles of faith, the "Pater noster," and the baptismal formula "in nomine Patris et Filii et Spiritus sancti," in Latin or in the vernacular?⁵⁵ He should also ascertain that the person is truly repentant and willing to confess and to undertake whatever penance might be enjoined by the priest.

The penitent would then recite a ritual act of confession or confess spontaneously the sins that came to mind while the priest offered encouragement and direction. After this self-generated confession the priest was to conduct his own interrogation, exploring areas that may have been touched on earlier or that seemed appropriate given the status and condition of the penitent.⁵⁶ The most common framework for this directed confession was the seven deadly sins (pride, envy, wrath, sloth, avarice, gluttony, and lust) or transgressions of the Ten Commandments, but many other paradigms were also recommended.⁵⁷ The emphasis in all the penitential treatises was on

precipue si est mulier. . . . Et prouideat si fieri potest ne sit in loco nimis secreto et ut altius quam confitens sedeat, et caputium in capite teneat profunde" (Goering and Payer, "Summa penitentiae Fratrum Praedicatorum," 27).

"Districte vero praecipimus, quod illi qui confessiones audient, in loco patenti audiant confitentes, non in occulto, & praecipue, si fuerint mulieres. Habeat autem sacerdos sollicitudinem diligentem, ne dum audit confessionem, in facie respiciat confitentem, praecipue mulierem; sed cappam indutam habeat, capucium in capite vestitum teneat, et inclinatum" (P. Sampson, *Liber Synodalis*, 1028).

⁵³ "Penitentium omnium fere consuetudo est suum confessorem primitus salutare, quibus sacerdos applaudens uultu, blandis uerbis, gaudenti animo respondeat: 'Bene ueneris frater,' uel ita dicens potius, 'Deus det tibi gratiam reconciliandi te ei, et in amore eius de cetero uiuendi et uoluntatem suam per omnia faciendi'" (John of Kent, *Summa de penitentia*, London, BL Royal 9.A.XIV, fol. 225r^b).

⁵⁴ See Thomas of Chobham, "De penitente suscipiendo: De officii penitentium," *Summa confessorum*, 290–309.

⁵⁵ "Debet eum primo interrogare presbyter utrum sciat Pater noster, Credo in Deum, Ave Maria, et si non sciat, moneat eum ut addiscat" (P. Sampson, *Liber synodalis*, 1029); cf. Chobham, "De penitente suscipiendo," 289–90.

⁵⁶ For arguments about the propriety of the priest questioning the penitent, see Goering and Payer, "Summa penitentiae Fratrum Praedicatorum," 15–16. See Hostiensis, *Summa aurea*, "De poenit. et remiss." 15–44, cols. 1769–94, for an extended consideration of confession "ad status" and the particular questions that should be asked of each.

⁵⁷ See, for example, the two formularies edited by Michaud-Quantin: "Et si peccator nesciat confiteri, tunc sacerdos ipsum adiuuet, currens per septem mortalia vel criminalia peccata, postea per quinque sensus, et tunc per cogitationes et voluntates" (in *Confessio*

helping the penitent to provide a full and detailed account of his or her sins. Such a confession might have been expected of a monk or a seeker after perfection in an earlier period; by the thirteenth century it was being held up as a model for all Christians.

Two general categories of sins were recognized: venial and mortal. Venial sins were the peccadilloes of which everyone was guilty to some degree and which were forgiven in general confession, in recitations of the "Pater noster" (*dimitte nobis debita nostra*) or in reception of the Eucharist.⁵⁸ Mortal or "deadly" sins could be forgiven only after explicit acts of contrition and confession, accompanied by promises of amendment, reparation, and penitential satisfaction.

The identification of "mortal" or deadly sins was not a matter to be taken lightly. Raymund of Peñafort warns confessors against too quickly pronouncing a sin to be mortal, without clear canonical warrant.⁵⁹ He directs the inquiring reader first to the Decalogue (Exodus 20, Deuteronomy 5), all transgressions of which are mortal sins, and also to the lists of sins in Romans 1 and Galatians 5, to "Augustine's" discussion of mortal and venial sins in Dist. 25 c. 3 d.p. of the *Decretum*, and to the individual titles of Raymund's own work (*supra in singulis tractatibus*).⁶⁰ The reference to the preceding titles of his *Summa* reminds us that the entire canon law of the Church, and not just the titles "*De penitentia*," contained the information a skilled confessor needed to diagnose sins and to make sound judgments in the internal forum.⁶¹

debet); "Ad habendum salutiferae confessionis ordinem, haec breviter conscripsi. Primo fiat de puerilibus, utpote de inobedientia patris et matris. . . . Postea de septem mortalibus. . . . Postea de septem sacramentis. . . . Post de decem praeceptis decalogi. . . . Postremo autem de quinque sensibus. . . . Ad ultimum vero de omnibus membris et primo de capite" (in *Ad habendam*) ("Deux formulaires," 53, 60–62).

⁵⁸ Alan of Lille, *Liber poenitentialis* 4.24, p. 178; cf. Gratian, *De pen.* D. 3 canon 20.

⁵⁹ "Unum tamen consulo, quod non sis nimis promptus iudicare mortalia peccata, ubi tibi non constat per certam scripturam esse mortalia" (canon 817, *Summa de penitentia* [n. 21 above], 3.34.21).

⁶⁰ *Ibid.* The canonist ("Ricardus") who wrote the *Summa de penitentia iniungenda* (ca. 1200: formerly attributed to Praepositinus of Cremona) begins his chapter "De generibus mortalium peccatorum" with the striking assertion: "Revolutis sacre scripture libris, diutius excogitando inveniri possunt octoginta unum genera mortalium peccatorum," which he then duly lists: "Commessatio, Ebrietas, Negligentia, Turpitude, . . ." (*Summa de penitentia iniungenda* [n. 51 above], fol. 4v; a critical edition of the *Summa de penitentia iniungenda* is in preparation). Cf. Chobham, *Summa confessorum*, 14–31.

⁶¹ On the canonical sources of Raymund's *Summa de penitentia*, see J. P. Renard, *Trois sommes de pénitence de la première moitié du XIII^e siècle: La "Summula Magistri Conradi."* *Les sommes "Quia non pigris" et "Decime dande sunt,"* 2 vols. (Louvain-la-Neuve, 1989), 1:53–62.

Nor was it enough for the confessor to identify a sin named in one of the authoritative sources. He must also lead the penitent to consider the “circumstances” of the sin.⁶² If an adulterer should confess simply to “fornication” or to “a carnal fault,” this is no true confession; the equivocation serves to disguise the graver sin of adultery. Likewise if a murderer fails to confess that the murder took place in a church, or that it was done by slow torture rather than quickly with a sharp knife, or that clergy were involved in the bloodshed, the sin takes on a different and more serious aspect.⁶³ Only after such a full and detailed confession would the priest be able to assess the extenuating and the exacerbating circumstances of the sin and of the sinner and come to a just, equitable, and salubrious judgment in the internal forum.

Judgment

Having heard all the evidence, the priest must arrive at a judgment concerning absolution of the sinner and satisfaction for the sins.⁶⁴ If the penitent is truly sorry for the sins committed, has confessed them fully, and is intent on avoiding them in the future, the priest should assure the penitent of God’s forgiveness. A formal, ritual absolution would be pronounced only at the end of the confession,⁶⁵ but some indication that the sins were for-

⁶² See S. Kuttner, *Kanonistische Schuldlehre von Gratian bis auf die Dekretalen Gregors IX.*, *Studi e Testi* 64 (Vatican City, 1935), 22–30; J. Gründel, *Die Lehre von den Umständen der menschlichen Handlung im Mittelalter*, *Beiträge zur Geschichte der Philosophie und Theologie des Mittelalters* 39.5 (Münster, 1963); Bella Millett, “Ancrene Wisse and the Conditions of Confession,” *English Studies* 80 (1999): 193–215.

⁶³ “Debet igitur penitens quid fecerit non in genere sed quantum potest specificando confiteri. Quod si commisit adulterium non sufficit dicere quod fornicatus est vel quia lapsu carnis peccavit, quia sic per generalitatem celaret peccatum suum. . . . Quod si homicidium fecerit quis vel luxuriam in loco sancto, vel aliquod peccatum commiserit, gravius peccat quam si in loco non sancto. . . . Deinde videndum est quibus auxiliis quid fiat. Ut si forte interfecerit quis hominem auxilio clericorum vel religiosorum, plus peccat quam si solus hoc fecerit vel etiam cum laicis. . . . Considerandum est etiam quomodo perpetratum est peccatum, ut si forte quis hominem interfecerit minus peccat si cito et acuto gladio decapitet eum quam si diu torquendo et hebeti membra dilaniet, id est membratim dividat, dum adhuc vivat” (Walter of Cantilupe [1240], printed in Powicke and Cheney, *Councils and Synods* [n. 29 above], 2:1069–70); cf. Goering and Taylor, “*Summulae*” (n. 34 above), 588.

⁶⁴ “Caveat spiritualis iudex, sicut non commisit crimen nequitiae, ita non careat munere scientiae; oportet ut sciat cognoscere, quidquid debet iudicare: iudicaria enim potestas hoc postulat, ut quod debet iudicare, discernat. Diligens enim investigator, sapienter interroget a peccatore, quod forsitan ignoret, vel verecundia velit occultare” (Alan of Lille, *Liber poenitentialis* [n. 40 above], 3.47, p. 156).

⁶⁵ The form of this absolution changes, during the course of the thirteenth century, from the deprecatory: “May God forgive you” (*Deus absolvat te*), to the declarative: “I absolve you” (*Ego te absolvo a peccatis tuis*). P.-M. Gy has argued that the new formula arose “in

given would be made immediately after the confession and before the negotiation of a suitable penance.⁶⁶

But the priest also needed to decide if the sins that had been confessed were within his power and jurisdiction.⁶⁷ Not only was he encouraged to send difficult cases on to his superior for adjudication, but bishops and popes could also reserve for themselves the absolution of certain grave sins and require that someone guilty of these be sent to the diocesan or papal penitentiary.⁶⁸ Lists and discussions of such “reserved cases” proliferated in the thirteenth and subsequent centuries, as did memorial verses composed to help the simple priest to remember them.⁶⁹

the office of the papal penitentiary, or among the masters of Bologna, and that it connotes a development of the canonical aspect of the sacrament.” The declarative form is already presupposed in Innocent IV’s commentary on the Decretals; see Gy, “Les définitions de la confession après le quatrième concile du Latran,” in *L’aveu* (n. 51 above), 283–96, at 290 and n. 33.

⁶⁶ The *Summa penitentiae Fratrum Praedicatorum* (n. 50 above) instructs priests to follow the confession with: “Parcat tibi Deus. Dominus transtulit a te peccatum tuum, uerumtamen penam temporalem oportet te sustinere” (lines 244–45), to assign a penance, and then to conclude with a general confession and absolution: “In fine quoque generalis fiat confessio, et a sacerdote absolutio detur” (line 276), pp. 39, 41; cf. 21–22.

⁶⁷ “Scire autem debent sacerdotes quod non habent potestatem absoluendi penitentes ab enormibus que sibi reseruant maiores prelati in synodis nisi in articulo necessitatis” (John of Kent, MS Royal 9.A.XIV, fol. 231v). Cf. Raymund of Peñafort, *Summa de penitentia* 3.34.18, pp. 814–15; Serlo, *Summa de penitentia* (n. 51 above), 9–11.

⁶⁸ See, for example, the comments of Herman of Saxony (1337): “Et nota hic quatuor. Primo quod inferior debet absoluere absolute et sine conditione de pertinentibus ad se. Vnde non debet dicere ‘Absoluo te si ibis ad episcopum, alias non,’ sed debet absolute dicere ‘Absoluo te.’ Secundo quod de aliis debet penitentem remittere ad episcopum, dummodo ipse proponat eum adire. Tertio quod episcopus debet absolute de pertinentibus ad se penitentem absoluere. Quarto quod ex hiis sequitur quod sic remissus ad episcopum solum tenetur ei confiteri de casu propter quem remissus est, non de aliis” (edited in E. Reiter, “A Treatise on Confession from the Secular/Mendicant Dispute: The *Casus abstracti a iure* of Herman of Saxony, O.F.M.,” *Mediaeval Studies* 57 [1995]: 1–39, at 32).

⁶⁹ “Et nota quod quidam casus sunt seruandi episcopis, quidam domino pape. Vnde uersus:

Si facit incestum, defloret, aut homicida,
 Sacrilegus, patrum percussor, uel sodomita,
 Pontificem querat; papam si miserit ignem,
 Clerici percussor fuerit quoque uel symonia.

(*Summa penitentiae Fratrum Praedicatorum*, lines 270–75, pp. 40–41.)

Another influential discussion was that of John of Kent: “Scire autem debent sacerdotes quod non habent potestatem absoluendi penitentes ab enormibus que sibi reseruant /231v^b/ maiores prelati in synodis nisi in articulo necessitatis, cuiusmodi sunt publici feneratores, incendiarii, falsi testes, periurantes super sacrosancta propter lucrum uel dampnum aliorum, et specialiter in assisis ubi sequitur exheredacio et in causa matrimonii et cetera huiusmodi sortilegii, falsarii sigillorum et cartarum et huiusmodi, tonsores monete,

While the enumeration of reserved sins might vary according to time and place, certain sins became the special object of ecclesiastical censure through the process of excommunication.⁷⁰ It was incumbent on the priest to discover whether the penitent had incurred excommunication, either by means of a formal sentence (*data sententia*) or by committing a sin, such as striking a cleric, that carried with it an automatic sentence of excommunication (*lata sententia*).⁷¹ A parish priest could not lift the excommunication sanctioned or imposed by an equal or by a higher power, nor could he grant absolution to a person who remained excommunicate.

It was also the priest's duty to discover during the course of the confession any irregularities of life that would impede the proper performance of the penitent's duties and actions in society. For the laity this meant primarily irregularities in their marital status and for clerics irregularities in their holy orders. This aspect of the confessor's task called for a quite sophisticated appreciation of the Church's developing canon law. Robert of Flamborough was one of the first writers to make available to confessors the general outlines of the new canon law concerning marriage and holy orders. He devotes the bulk of his work (books two and three) to an exposition of these

impedientes testamentum rationabile, et qui incidunt in canonem late sentencie, specialissime si clericum percusserint, destinati sunt ad curiam romanam, proditores, heretici, symoniaci, et qui partum supponunt ad alicuius exheredacionem. Similiter qui partum opprimunt negligenter siue maliciose, per pociones et huiusmodi postquam conceptum animatum fuerit, raptores rerum ecclesiasticarum siue retentores omni casu nisi in mortis articulo et tunc sub condicione. Romam sunt destinandi qui in canonem late sentencie inciderunt et symoniam commiserunt, premissa per hos uersus possunt retineri:

Deditus usure, faciens incendia, falsi
 Testes, sortilegi, falsarius atque monete
 Tonsor, legatum impediens, a canone uincti
 Proditor, ac heresim sectans, uendensque columbas,
 Supponens partumue necans, rerumque sacrarum
 Raptor, presbitero nequeunt a simplice solui.

(*Summa de penitentia* [n. 51 above], fol. 231v.) See also Chobham, *Summa confessorum* (n. 27 above), 212–18.

⁷⁰ For a general orientation see E. Vodola, *Excommunication in the Middle Ages* (Berkeley, 1986); J. Zeliauskas, *De excommunicatione vitata apud glossatores (1140–1350)* (Zurich, 1967); F. Russo, "Pénitence et excommunication: Étude historique sur les rapports entre la théologie et le droit canon dans le domaine pénitentiel du XI^e au XIII^e siècle," *Recherches de science religieuse* 33 (1946): 257–79, 431–61.

⁷¹ Robert Grosseteste includes in his *Templum Dei* (n. 30 above) schematic outlines under the rubrics: "Casus quibus excommunicatur quis ipso iure" (16 cases), "Solus papa absoluit uel aliquis eius auctoritate" (6 cases), "Percussores clericorum ab alio quam a papa absoluendi sunt" (3 cases), "Ab episcopo loci absoluendi" (5 cases), etc. (chap. 7–12, pp. 39–43).

difficult issues.⁷² If irregularities were discovered in the confessional, it was up to the priest to give proper counsel to the penitent and to direct him or her to the pertinent ecclesiastical authorities for dispensation, reconciliation, or further judgment.⁷³

The last and perhaps the most difficult judgment to be made by the priest concerned the penance or satisfaction for sins. Because the penitential court is, in a sense, a voluntary forum, it is necessary that the penitent agree to undertake whatever penance the priest sees fit to enjoin. The priest might begin by saying: "The ancient canons require seven years of penance for each mortal sin, but because you and I are in court (*in foro sumus*) I will enjoin on you a penance that you are willing and able to sustain."⁷⁴ The priest was taught to determine an appropriate penance using his own judgment (*ad arbitrium suum*), by considering the traditional penitential canons, the gravity of the sins, the circumstances of the sins and of the sinner, and the willingness and ability of the penitent to sustain the penance enjoined. The actual penances were a mixture of prayers, alms, fasts, and corporal disciplines: prayers were reparation for sins against God, restitution and giving of alms for sins against neighbors, and fasts and disciplines for sins against self.⁷⁵

⁷² "Ego in primis de difficilioribus me expedire consuevi, de matrimonio scilicet cum laicis, de simonia et aliis quae circa clericos attenduntur cum clericis" (*Liber poenitentialis* 1.4 [n. 27 above], 62). Robert Grosseteste reduces Flamborough's teachings to schematic form in his *Templum Dei*, chap. 12, 16, and 17, pp. 53–54, 57–62.

⁷³ John of Kent depicts the following conversation between a confessor and a penitent who has had intercourse with his wife's relatives, within the prohibited degrees: "Sacerdos: Non es in uero matrimonio. Non enim est uxor tua quam tu habes pro uxore. Penitens: Quid faciam? Sacerdos: Hanc oportet dimittere. Si possis predictum cubitum probare coram episcopo, celebrabitur diuorcium et concedetur utrique alii coniugi. Penitens: Non possum, quia nemo scit nisi ego. Sacerdos: Habeas ergo hanc tanquam sororem uel cognatam, non tanquam uxorem, idest non cognoscas eam quia ita precepit Dominus Papa in Decretali. Penitens: Nec ego nec ipsa possumus continere. . . . Quid ergo faciam? Sacerdos: Finge uel fac peregrinationem et uiuere alibi sine illa. Penitens: Si uendam que habeo potero in longinquis aliam ducere et in uero matrimonio uiuere et mori? Sacerdos: De hoc pete a tuo episcopo" (MS Royal 9.A.XIV, fol. 226r).

⁷⁴ "Cuilibet peccato mortali debetur septennis penitentia secundum canones, tamen quia ego et tu in foro sumus iniungam tibi quod uoueris et potueris portare. Et tunc ad arbitrium suum iniungat ei penitentiam, id est ieiunia et orationes et disciplinas et helemosinas et uotum pacis indifferenter, set, si potest fieri, pena respondeat culpe" (*Summa penitentie Fratrum Praedicatorum*, lines 245–49, p. 39). Cf. Alan of Lille, *Liber poenitentialis* 4.19, p. 173.

⁷⁵ "Et tunc ad arbitrium suum iniungat ei penitentiam, id est ieiunia et orationes et disciplinas et helemosinas et uotum pacis indifferenter, set, si potest fieri, pena respondeat culpe.

"Vnde sciendum est quod qui peccat mortaliter offendit uel Deum uel proximum uel seipsum. In Deum peccat quis per blasphemiam et per periurium et huiusmodi, et tunc debet

Much has been made in past scholarship of the supposed rigor and rigidity of the traditional penitential tariffs and of the radical change that came into penitential practice with the introduction of “arbitrary” or discretionary penances in the twelfth and thirteenth centuries.⁷⁶ If taken too strictly, such an interpretation would lead to the erroneous view that the earlier confessors had no scope for judgment (*arbitrium*) in the application of the penitential law. A strict reading would also lead us to expect that the traditional canons lost their power and importance during the thirteenth century and were replaced entirely by the unfettered judgment of the individual confessors. Neither view is accurate.⁷⁷

In so far as there was a gradual shift from tariff to “arbitrary” or discretionary penances, this can be most usefully understood as a shift of emphasis in clerical education. The thirteenth-century priest was still expected to know the tariff-penances handed down by the ancient fathers, but he was gradually taught to supplement, and even to replace, these authoritative canons with a knowledge of the new skills of the ecclesiastical judge and of the canonical consultant.⁷⁸ Common to both earlier and later confessors was

satisfieri per orationes. In proximum peccat per uiolentiam et per iniuriam aliquam, et debet reddere rapinam uel usuram et huiusmodi, et debet satisfieri per helemosinas. In semetipsum peccat per gulam et luxuriam, et debet satisfacere per ieiunia et per disciplinas et alias macerationes carnis” (*Summa penitentiae Fratrum Praedicatorum*, lines 250–56, p. 39).

The mention of a “peace bond” (*votum pacis*) as a type of penitential satisfaction may reflect the importance of peace-making in the pastoral activity of the mendicant friars; see A. Thompson, “The Revivalist as Peace-Maker,” in *Revival Preachers and Politics in Thirteenth-Century Italy: The Great Devotion of 1233* (Oxford, 1992), 136–56.

⁷⁶ The entire discussion of “arbitrary” penances needs to be recast in terms of the larger developments in the juridical culture of the twelfth century; see L. Mayali, “The Concept of Discretionary Punishment in Medieval Jurisprudence,” in *Studia in honorem . . . Stickler* (n. 24 above), 299–315. A good discussion of the older views on the replacement of tariffs with arbitrary penances is P. Michaud-Quantin, “A propos des premières Summae confessorum: Théologie et droit canonique,” *Recherches de théologie ancienne et médiévale* 26 (1959): 264–306.

⁷⁷ See J. Goering, “The *Summa* of Master Serlo and Thirteenth-Century Penitential Literature,” *Mediaeval Studies* 40 (1978): 290–311, at 296–97; P. J. Payer, “The Humanism of the Penitentials and the Continuity of the Penitential Tradition,” *Mediaeval Studies* 46 (1984): 340–54, at 346–50; idem, “The Origins and Development of the Later *Canones penitentiales*,” *Mediaeval Studies* 61 (1999): 81–105.

⁷⁸ The author of the treatise *Homo quidam* (1155–65) assumes that a “penitential” is kept in the apse of the church, and he encourages the priest to study it frequently: “Legat ergo sacerdos frequenter in abside ecclesiae poenitentiale romanum vel Theodori Cantuariensis vel Bedae vel Brocardi [= Burchard of Worms?] vel ex eis excerpta, quia, ut dicit Augustinus, poenitentiae non sunt legitimae, quae secundum canones non assignantur” (*Homo quidam* [n. 51 above], 36).

Robert Grosseteste provides a list of traditional penitential canons along with

the expectation that they would apply the law, whether ancient or modern, with a view toward more than strict justice; like a wise judge, the confessor should love mercy and strive for equity; like a medical doctor, he should look after the health of the penitent's soul.⁷⁹

Another aspect of penitential satisfaction that called for a knowledge of the latest teachings of the canonists was the restitution of ill-gotten gains.⁸⁰ Restitution, in the ancient law codes, was a rather simple procedure requiring little sophisticated analysis on the part of the confessor; the penitent was advised to return stolen property and to perform a penance for the sin. With the growing complexity of the later medieval economy, the opportunities for new and more subtle types of illicit gain multiplied apace. If priests were to judge wisely in the internal forum they needed to understand some of the intricacies of the new profit economy. It is generally acknowledged that the groundwork for the modern discipline of economics was laid by medieval canonists and theologians in their discussions of usury, simony, tithes, and just price. This scholastic analysis was undertaken not for its own sake, however, nor for its relevance to the church courts, but because it was necessary for preparing confessors and judges in the internal forum.⁸¹

As this discussion has suggested, the number and kinds of sins identified as "mortal" or death-dealing increased dramatically during the thirteenth century, as did the ability of confessors to analyze sins and their circumstances. But the growing sophistication of moral and legal analysis, and the urgency with which sinners were taught to search their consciences for signs of subtle and previously unrecognized sins, resulted in a kind of penitential inflation. If penitents were to make a full examination of conscience and a complete confession of sins, they must also have confidence that the acts of satisfaction required of them could be sustained. The specter of seven years of penance in recompense for each mortal sin would be an insuperable bar-

instructions on how they should be "tempered" for modern use in his "De paenitentia iniungendis"; ed. J. Goering and F. A. C. Mantello, "The Early Penitential Writings of Robert Grosseteste," *Recherches de théologie ancienne et médiévale* 54 (1987): 52–112, at 93–110.

For the continued use of penitential canons see J. Longère, "La pénitence selon le *Repertorium*, les Instructions et Constitutions, et le Pontifical de Guillaume Durand," in *Guillaume Durand Évêque de Mende (v. 1230–1296): Canoniste, liturgiste et homme politique*, ed. P.-M. Gy (Paris, 1992), 105–33.

⁷⁹ On the antiquity of these images of physician and judge, and on their origins in Roman Law, see Silano, "Sleep and Sleeplessness" (n. 4 above), 360–61.

⁸⁰ See K. Weinzierl, *Die Restitutionslehre der Frühscholastik* (Munich, 1936); cf. Hostiensis, *Summa aurea* (n. 7 above), "De poenit. et remiss." 61–62, cols. 1844–65.

⁸¹ See Baldwin, *Masters, Princes and Merchants* (n. 9 above), 1:261–311; L. K. Little, "Pride Goes before Avarice: Social Change and the Vices in Latin Christendom," *American Historical Review* 76 (1961): 16–49.

rier to one who was attempting a conscientious, detailed, and frequent confession of all sins of thought, word, and deed. If such confessions were to be required in the internal forum, provision must also be made to make the requirement supportable.⁸² “Arbitrary” penances, tempered according to the informed judgment of the priest, were one way to approach the problem. The confessor was often advised to counsel the penitent about what would be required by a strict interpretation of the ancient canons and then to negotiate about what was a sustainable penance.⁸³ But the thirteenth century also saw the expansion of other remedies and aids for the penitent.

First among these was the development of penitential commutations, remissions, and indulgences.⁸⁴ Commutations allowed the sinner to substitute one type of penance for another; building a bridge or repairing a church might replace years of penitential fasting, for example. The new penance was, in theory, equivalent to the one with which it was commuted.

A greater boon was granted by remissions and indulgences (known variously as *relaxationes*, *remissiones*, *absolutiones*, and *indulgentiae*). These developed gradually during the twelfth and thirteenth centuries. They allowed a bishop to forgive as much of a penance as he saw fit without requiring an equal exchange of punishments. Indulgences came to play a crucial role in the spiritual and physical economy of the later Middle Ages. They provided opportunities for new kinds of social investment by the Church⁸⁵ and stimulated new forms of piety and devotion among the faithful. By the end of the Middle Ages, indulgences were an integral part of penitential satisfaction in the internal forum.

⁸² The problem was stated clearly by Alan of Lille: “Sciendum quod pro singulis peccatis non debet singillatim diversas injungere poenitentias; sic enim cuilibet poenitenti, infinitas injungeret poenitentias. Sed pro omnibus debet injungere unam, quam pro sui arbitrio inspecta quantitate et numero delictorum, debet diminuire vel augere” (*Liber poenitentialis* [n. 40 above], 3.51, p. 158).

⁸³ “Cuilibet peccato mortali debetur septennis penitentia secundum canones, tamen quia ego et tu in foro sumus iniungam tibi quod uolueris et potueris portare” (*Summa penitentiae Fratrum Praedicatorum* [n. 50 above], lines 245–47, p. 39).

⁸⁴ The classic studies are H. C. Lea, *A History of Auricular Confession and Indulgences in the Latin Church*, 3 vols. (Philadelphia, 1896); N. Paulus, *Geschichte des Ablasses im Mittelalter vom Ursprunge bis zur Mitte des 14. Jahrhunderts*, 2 vols. (Paderborn, 1922–23). The importance of confessors’ manuals for the study of this topic has long been recognized; see J. Dietterle, “Die Summae confessorum (sive de casibus conscientiae) von ihren Anfängen an bis zu Silvester Prierias, unter besonderer Berücksichtigung ihrer Bestimmungen über den Ablass,” *Zeitschrift für Kirchengeschichte* 24 (1903): 353–74, 520–48; 25 (1904): 248–72; 26 (1905): 59–81, 350–62; 27 (1906): 70–83, 166–88, 296–310, 431–42; 28 (1907): 401–31.

⁸⁵ See Haines, “The Indulgence as a Form of Social Insurance,” in his *Ecclesia anglicana* (n. 17 above), 183–91.

A second powerful, if fearful, recourse for repentant sinners was found in purgatory. Although long present in the Christian world-view, purgatory became the subject of special attention in the twelfth and subsequent centuries.⁸⁶ As a place of purgation after death, it provided an opportunity for repentant and confessed sinners to complete the unfulfilled penances that were required of them in the internal forum. By the early thirteenth century confessors were being taught to warn penitents: "Brother, it is necessary that you undergo punishment either in this life or in purgatory. But the pains of purgatory are incomparably worse than any suffered in this life. Your life is in your hands; choose therefore either to undergo sufficient canonical and authoritative penances here, or await purgation."⁸⁷ The canonists devoted a good deal of effort to delineating the correlations of penance and purgation and to the workings of the spiritual economy that centered around penance, purgation, and indulgences,⁸⁸ while new forms of prayers for the dead and "purgatorial piety" sprang up as adjuncts to the business of the internal forum.⁸⁹

Such, in general outline, was the procedure followed in the penitential courts of medieval Europe. It has been suggested here that penance was one of the chief ways that everyone came into contact, on a regular basis, with the workings of the canonical system and with the science of canonical jurisprudence. It remains to describe how penitential law was shaped by the schools, the doctrines, and the writings of professional canonists, and how it was taught to the priests and people on whom the workings of the internal forum ultimately depended.

⁸⁶ Whatever the weaknesses of J. Le Goff's specific arguments about the "birth" of purgatory, he deserves the credit for redirecting modern discussions of purgatory in a most helpful way; see his *La naissance du Purgatoire* (Paris, 1981); English idem, *The Birth of Purgatory*, trans. A. H. Goldhammer (Chicago, 1984).

⁸⁷ "Frater, oportet te vel in hac vita puniri vel in purgatorio. Incomparabiliter autem gravior est poena purgatorii quam aliqua in hac vita. Ecce anima tua in manibus tuis; elige ergo tibi vel in hac vita sufficienter secundum poenitentias canonicas vel authenticas puniri vel purgatorium expectare" (Flamborough, *Liber poenitentialis* [n. 27 above], 5.16, p. 277).

⁸⁸ See P. V. Aimone, "Il Purgatorio nella decretistica," in *Proceedings of the Ninth International Congress of Medieval Canon Law, Munich* (Vatican City, 1997), 997–1009.

⁸⁹ See J. le Goff, "Social Victory: Purgatory and the Cure of Souls," in *The Birth of Purgatory*, 289–333; R. Sweetman, "Christine of St. Trond and Her Preaching Apostolate: Thomas of Cantimpré's Hagiographical Method Re-visited," *Vox Benedictina* 9 (1992): 67–97; idem, "Visions of Purgatory and their Role in Thomas of Cantimpré's *Bonum universale de apibus*," *Ons geestelijk erf* 67 (1993): 20–33.

EDUCATION FOR THE INTERNAL FORUM

The most common way for laypersons and simple priests to learn the new penitential procedures and teachings of the internal forum must have been through social practice rather than by reading books or hearing them read in the schools. In the twelfth and thirteenth centuries few priests, and even fewer laypersons, were alumni of the schools of law and theology where penitential doctrine was being developed. Although parish priests were expected to be literate, it is unlikely that many had the resources or the inclination to procure and study the technical literature of penance and confession.⁹⁰ But every priest and every layperson, no matter what their educational attainment, was expected to confess regularly in the internal forum. We may presume that a simple parish priest would learn about the new doctrines and practices of confession when he confessed his own sins to a more learned priest, perhaps one who had been to the schools or had read or heard the teachings of the modern masters. The simple priest would, in turn, convey something of the new doctrines and practices to his own parishioners when he heard their confessions.

By its very nature such “social learning” leaves no clear trace in the historical record. If we wish to recover what was being taught and learned in the parishes of Christendom, the best we can do is to study the schools where confessors received their training and the literature that was written to train them. Having done so, we will be able to speak more confidently about the ideas and materials that an individual priest or layperson would have been likely to encounter, even if we are unable to ascertain with certainty any single person’s actual experience of the internal forum.

The Schools

Primary Schools

The first taste of school life and book learning for most people in western Europe in the thirteenth and subsequent centuries was in the “Song” or grammar school. Here boys (and sometimes girls) would learn the rudiments of reading and writing and be introduced to the liturgical life of the Church by learning its songs and chants by heart. Such schools, found in most parishes, were taught by the local priest, by other clerics, or by monks or canons from the vicinity.⁹¹ Although the curricula of these schools encompassed

⁹⁰ See note 15 above, on clerical education; see also Goering, *William de Montibus* (n. 11 above), 59–67.

⁹¹ F. W. Oediger, *Über die Bildung der Geistlichen im späten Mittelalter* (Leiden, 1953) remains a valuable survey. See also M. C. Woods and Rita Copeland, “Classroom and

no technical training in the Church's law, students doubtlessly encountered some elements of penitential doctrine and practice. For example, by the end of the thirteenth century a short didactic poem on confession, entitled *Peniteas cito peccator* ("Do penance quickly, O sinner"), became a common set-text in the primary schools. This poem, originally composed for use in the cathedral school of Lincoln, was accompanied by a gloss that elucidated the legal and theological doctrine of penance. It became one of the most popular and widely quoted poems of the later Middle Ages.⁹²

Diocesan and Cathedral Schools

Both the Third and the Fourth Lateran Councils (1179 and 1215) required that schools be established in every diocese to provide education free of charge to prospective clerics.⁹³ A few of these schools, and others that grew up alongside and in conjunction with them (e.g., the schools of Chartres, Orleans, Padua, Tours) are well known to modern scholars. But the vast range of scholastic activities in diocesan and cathedral schools is only beginning to be investigated.⁹⁴

At the most basic level, diocesan schools were the outgrowth of bishops' households or of communities of priests (i.e., minster churches or *pievi*, headed by a superior). Young clerics who were nourished at the bishop's "table" would then take up the pastoral care in the parishes of his diocese.⁹⁵ The author of the treatise *Summa de penitentia iniungenda* (ca. 1200) expresses the general expectation clearly in addressing his treatise to priests who had missed the opportunity of being raised in such a household:

Confession," in *Cambridge History of Medieval Literature*, ed. D. Wallace (Cambridge, 1999), 376–406.

⁹² Both the poem and its original gloss are printed by Goering, *William de Montibus*, 107–38.

⁹³ 3 Lateran, canon 18; 4 Lateran, canon 11; see *Conciliorum oecumenicorum decreta* (n. 5 above), 220, 240.

⁹⁴ See the suggestive comments by A. Gouron, "Une école ou des écoles? Sur les canonistes français (vers 1150–vers 1210)," in *Proceedings of the Sixth International Congress of Medieval Canon Law* (n. 31 above), 223–40; see also the essays in *Luoghi e metodi di insegnamento nell'Italia medioevale (secoli XII–XIV)*, ed. L. Gargan and O. Limone (Galatina, 1989).

⁹⁵ The bishop's responsibility for educating parochial clergy is clearly expressed in canon 27 of the Fourth Lateran Council, *De instructione ordinandorum*: "Cum sit ars artium regimen animarum, districtè praecipimus, ut episcopi promovendos in sacerdotes diligenter instruant et informant vel per se ipsos vel per alios viros idoneos super divinis officiis et ecclesiasticis sacramentis, qualiter ea rite valeant celebrare" (*Conciliorum oecumenicorum decreta*, 248). The so-called "seminary legislation" of the Council of Trent continues this tradition of episcopal schools as the primary locus of clerical formation (Session 23, 15 July 1563, canon 18; *Conciliorum oecumenicorum decreta*, 750–53).

To the venerable priests N. and N., Richard, their devoted friend. . . . You have asked me to write briefly about how you should exercise your priestly office and especially how you should enjoin penances on your subjects. Desiring to fulfill your needs in so far as I am able, I have composed this treatise for you and for others *who have not been fed at the table of a paterfamilias and have not drunk deeply of the wine of his household*.⁹⁶

The course of study in these diocesan schools must have varied greatly from place to place, and most of the detailed historical evidence for local curricula and lectures is lost to us. Nevertheless, a significant number of the treatises, *summae*, and manuals on penance and confession that have survived were written by masters in these diocesan schools and were presumably directed to students there. A careful study of this literature will help to illuminate the instruction that was offered to the students in these schools.

Schools of the Regular Canons and Mendicant Friars

For the history of penance and confession, the schools of the regular canons and of the mendicant orders are especially important. Perhaps the most influential school for confessors in the thirteenth century was in the Abbey of St. Victor in Paris. Robert of Flamborough, a canon and “penitentiary” of St. Victor, composed his influential *Liber poenitentialis* there between 1208 and 1213. Both before and after Robert’s day, the Abbey was a center of penitential and confessional expertise serving especially the large population of students in and around Paris.⁹⁷

A similar relationship between a community of regular priests specializing in confession and a nascent university may have existed in Oxford in the late twelfth and early thirteenth centuries. The prior of the Augustinian abbey of Osney in Oxford certainly acted as diocesan penitentiary and referred cases to the papal penitentiary sometime between 1200 and 1203.⁹⁸ The same prior of Osney, Clement, also corresponded with Senatus, the

⁹⁶ “Venerabilibus sacerdotibus N. et N. Ricardus eorum devotissimus. . . . Recolo vos a me postulasse quod brevem doctrinam vobis darem, qualiter in suscepto officio sacerdotali maxime erga subditos in penitentiis iniungendis administrare debeatis. Unde vestre caritati in quantum valeo satisfacere cupiens, quedam breviter ad vestram utilitatem et aliorum *qui in convivio patris familias non sunt refecti nec ab ubertate domus sue inebriati*, componere curavi” (Stuttgart, Württembergische Landesbibliothek HB I 70, fol. 2r [emphasis added]).

⁹⁷ See C. Egger, “De praxi paenitentiali Victorinorum,” *Angelicum* 17 (1940): 156–79; J. Longère, “Documents sur la confession à l’abbaye de Saint-Victor au 12^e et au 13^e siècles,” in Petrus Pictaviensis, *Summa de confessione: Compilatio praesens*, CCM 51 (Turnhout, 1980), lxxv–lxxxvii; idem, “La fonction pastorale de Saint-Victor à la fin du XII^e et au début du XIII^e siècle,” in *L’Abbaye Parisienne de Saint-Victor au Moyen Age*, Bibliotheca Victorina 1 (Turnhout, 1991), 291–313.

⁹⁸ See C. R. Cheney, *Pope Innocent III and England*, Pápste und Papsttum 9 (Stuttgart, 1976), 66–67, 70–71.

learned “archpriest” and penitentiary of Worcester diocese, concerning penitential practices, dispensations, and marriage questions.⁹⁹

From the thirteenth century onward, however, it was the schools of the mendicant friars that took the lead in training expert confessors. The point has been made recently that, “although the original mission of the Dominican order was that of preaching, within four years of its foundation the order became an Order of Confessors as well as an Order of Preachers.”¹⁰⁰ The schools of the friars are best known today for their great scholastic theologians — Albert, Thomas, Bonaventure, and Scotus, for example. But the practical training in the *cura animarum* that was provided in these schools to thousands of lesser friars (the *fratres communes*) and to other clerics who were permitted to attend, would seem to have had an even greater impact on the intellectual and social life of Europe. It is in the mendicant schools that we can see most clearly the development of a curriculum designed to train priests as ministers and judges in the internal forum.¹⁰¹

Universities

Of all the medieval schools, universities have been the most thoroughly and carefully studied. We can reconstruct with some certainty the contents of lectures (ordinary and extraordinary), the textbooks and glosses, the disputed questions and other academic exercises, and the courses of study leading to degrees in civil law, canon law, and theology.¹⁰² Much detailed work remains to be done, but the general outlines and content of a university education in the Middle Ages are becoming increasingly clear.

⁹⁹ See P. Delhay, “Deux textes de Senatus de Worcester sur la pénitence,” *Recherches de théologie ancienne et médiévale* 19 (1952): 203–24, at 205. Senatus describes himself as “archipresbiterum ecclesie” [of Worcester] and as having “penitentium curam et censuram confessionum” (204). See also M. G. Cheney, *Roger, Bishop of Worcester 1164–1179* (Oxford, 1980), 58–61, and Richard Sharpe, “Senatus of Worcester,” in *A Handlist of the Latin Writers of Great Britain and Ireland before 1540* (Turnhout, 1997), 602–3.

¹⁰⁰ Boyle, “*Fratres Communes*” (n. 19 above), 249.

¹⁰¹ See Boyle, “*Fratres communes*”; idem, “The *Summa confessorum* of John of Freiburg and the Popularization of the Moral Teaching of St. Thomas and Some of His Contemporaries,” in *St. Thomas Aquinas, 1274–1974: Commemorative Studies*, ed. A. A. Maurer, 2 vols. (Toronto, 1974), 2:245–68 (repr. in Boyle, *Pastoral Care* [n. 15 above]); idem, “Pastoral Training in the Time of Fishacre,” *New Blackfriars* 80 (1999): 345–53; Rusconi, “I Francescani e la confessione” (n. 19 above). The best general introduction to Dominican education is M. M. Mulchahey, “*First the Bow is Bent in Study:*” *Dominican Education before 1350* (Toronto, 1998); for the Franciscan schools, see B. Roest, *A History of Franciscan Education (ca. 1210–1517)* (Leiden, 2000).

¹⁰² The literature is too vast to summarize. The classic study is H. Rashdall, *Universities of Europe in the Middle Ages*, ed. F. M. Powicke and A. B. Emden, 3 vols. (Oxford, 1936). For a recent survey see *A History of the University in Europe, 1: Universities in the Middle Ages*, ed. H. de Ridder-Symoens (Cambridge, 1992).

Students and masters congregated in university centers to discuss the latest and the most sophisticated analyses of intellectual questions. One is tempted, therefore, to think of university masters and students as pure scholars who would have little interest in practical questions concerning the care of souls and the internal forum, but the evidence suggests otherwise. Many of the most influential practical *summae* and handbooks were written by university masters and their students. Raymund of Peñafort wrote his *Summa de penitentia* and *Summa de matrimonio* on the basis of his training at Bologna. Both Henry of Susa (Hostiensis) and Geoffrey of Trani were regent masters at Bologna, and both composed extremely popular works (Hostiensis's *Summa aurea* and Godfrey's *Apparatus* on the *Extravagantes*) for the use of pastors engaged in the care of souls.¹⁰³ We have every reason to believe that university masters and their students were deeply interested and involved in education for the *cura animarum*.

Schools at the Papal Curia

The last schools to be considered here are the schools of theology, canon law, and civil law that flourished at the papal curia during the thirteenth century.¹⁰⁴ These schools helped to train young clerics who were called from far and wide to service in the households of the pope, the cardinals, and other curial officials. They also constituted a kind of curial academy where important questions could be discussed, theological and legal expertise could be solicited, and where an *opinio Curiae* could be formulated and expressed.¹⁰⁵

The schools of canon and civil law were "private" schools that had grown up and been fostered in the shadow of the Curia; only the lecturer in theology was supported by a pontifical stipend.¹⁰⁶ But education for pastoral care, penance, and the internal forum seems to have been a paramount interest even of the "theologian" at the papal curia. The earliest theological master whose name is known to us is Bartholomew [of Breganza], O.P., who is referred to by Innocent IV as his chaplain and penitentiary and as regent

¹⁰³ For the pastoral intent of these works see their respective prologues: Hostiensis, *Summa aurea* (n. 7 above); Gottfredo da Trani, *Summa super titulis Decretalium* (Lyons, 1959; repr. Aalen, 1992). Both were widely known outside the law schools and quoted in the practical treatises and *summae confessorum* of the thirteenth and subsequent centuries.

¹⁰⁴ See H. Denifle, *Die Entstehung der Universitäten des Mittelalters bis 1400* (Berlin, 1885), 301–10; R. Creytens, "Le 'Studium Romanae Curiae' et la maître du Sacré Palais," *Archivum Fratrum Praedicatorum* 12 (1942): 1–83; A. P. Bagliani, "La fondazione dello 'studium curiae': Una rilettura critica," in *Luoghi e metodi di insegnamento nell'Italia medioevale (secoli XII–XIV)* (n. 94 above), 59–81.

¹⁰⁵ Bagliani, "Studium curiae," 80–81.

¹⁰⁶ *Ibid.*, 67–74.

master “in our curia, in the theological faculty.”¹⁰⁷ A thorough study of the curial schools and their masters, both legal and theological, would surely add to our appreciation of the education for pastoral care and for the internal forum that was available to those at the center of the ecclesiastical establishment.

This survey of the medieval schools suggests something of the institutional opportunities available to medieval clerics for learning about the *cura animarum* and the internal forum. An even more abundant source for such education was the burgeoning literature of pastoral care and especially the *Summae de penitentia* and the manuals of confession that were produced in great profusion during the later Middle Ages.

THE LITERATURE OF PENANCE AND CONFESSION

More than one hundred years ago J. F. von Schulte divided the second volume of his magisterial *Geschichte der Quellen und Literatur des canonischen Rechts* into two parts. In the first he treated “the pure jurists” (*die reinen Juristen*), and in the second part he discussed some fifty-seven authors “who wrote for the internal forum” (*die Schriftsteller für das forum internum*).¹⁰⁸ This second part of Schulte’s history represents a pioneering effort to analyze the vast body of practical literature on penance and confession and to bring it within the purview of a scientific and scholarly study of the history of canon law.

As useful as Schulte’s division was, it also helped to establish the view that there were two different types of medieval canonical writers, pure jurists on the one hand and practical authors on the other, and that the two groups had very little to do with each other. The reality was, of course, quite different. The boundaries between “pure” law and practical application were constantly being blurred in the medieval schools. Just as the practice of penance in the internal forum was shaped and directed by the learned doctrines of the schools, so were the interests and teachings of the learned masters shaped by the practical demands and the requirements of pastors and confessors engaged in the care of souls. It would be hard to find, in the Middle Ages, a “pure” jurist, one whose writings were concerned with the Church’s law only in so far as it was a pure and scientific discipline. Nearly all canonistic writers were deeply (and often explicitly) concerned with practical goals as well, and with the distinguishing characteristic of the

¹⁰⁷ “Bartholomaeum de ordine Praedicatorum, tunc capellanum et poenitentiarum suum, et regentem in curia nostra in theologica facultate,” quoted in *ibid.*, 64, n. 29.

¹⁰⁸ J. F. von Schulte, *Geschichte der Quellen und Literatur*, 2 (Stuttgart, 1875; repr. 1956), 408–56, 511–26.

canon law, which is its concern for the health of souls (*salus animarum*).¹⁰⁹ Although the following survey discusses primarily those whom Schulte called “writers for the internal forum,” it is worth remembering that the practical literature of penance and confession formed an integral part of the larger juridical and canonical culture that is the object of attention in this history of medieval canon law.

Much work has been done since 1877 on the literature of pastoral care and especially on the manuals and *summae* written for the “internal court” of penance, but the study of this literature remains in its infancy. We still have no adequate “repertorium” of authors and of texts,¹¹⁰ no comprehensive survey of manuscripts,¹¹¹ and not even a generally accepted taxonomy and terminology with which to carry out further research.¹¹² Here we can

¹⁰⁹ Hostiensis, for example, argues in his *Summa aurea* that canon law, rather than theology or civil law, is the “art of arts” and science of sciences that the Fourth Lateran Council had in mind when it proclaimed that the care of souls (*regimen animarum*) was the highest discipline of study: “Est igitur hec nostra scientia non pure theologica; siue ciuilis; sed vtrique participans nomen proprium sortita canonica vocatur; sicut ius emphyteoticum non est venditio nec locatio sed contractus per se vtrique participans. C. de iure emphy. l. i, et de hac legitur xxxi, di. Nicena, et hec nostra lex siue scientia vere potest scientiarum scientia nuncupari. infra. de eta. et quali. cum sit ars artium” (*Summa aurea*, “Proem”).

¹¹⁰ The most important surveys are: Schulte, *Geschichte der Quellen und Literatur*; Dietterle, “Die ‘Summae confessorum’” (n. 84 above); Teetaert, *La confession aux laïques* (n. 9 above); idem, “Quelques ‘Summae de paenitentia’ anonymes dans la Bibliothèque Nationale de Paris,” in *Miscellanea Giovanni Mercati* (Vatican City, 1946), 2:311–43; P. Michaud-Quantin, *Sommes de casuistique et manuels de confession au moyen âge (XII–XVI^e siècles)* (Louvain, 1962). A useful list of some of the more important works can be found in the interesting study by Langholm, *The Merchant in the Confessional* (n. 1 above), 3.

¹¹¹ See M. W. Bloomfield, B.-G. Guyot, D. R. Howard, and T. B. Kabealo, *Incipits of Latin Works on the Virtues and Vices, 1100–1500 A. D.* (Cambridge, MA, 1979). For Dominican writers see Th. Kaeppli, *Scriptores Ordinis Praedicatorum Medii Aevi*, 4 vols. (Rome, 1970–93).

¹¹² The most sophisticated attempt to classify the popular literature of pastoral care is in L. E. Boyle’s “Summae confessorum,” in *Les Genres littéraires dans les sources théologiques et philosophiques médiévales: Définition, critique, et exploitation: Actes du Colloque international de Louvain-la-Neuve, 25–27 mai 1981* (Louvain, 1982), 227–37. Boyle’s division of the literature on penance and confession can be summarized thus:

I. For Priests

A. Academic

1. *Summae confessorum*
2. *Summae de casibus*

B. Practical

1. *Summae confitendi*
2. *Confessionalia* (e.g., interrogations, excommunications, penitential canons)

II. For Laity

A. Preparation for confession

B. Examination of conscience

only sketch the broad outlines of developments and discuss briefly a few texts that are representative of the vast literature produced in the two centuries following the publication of Gratian's *Decretum*.

From Gratian to Lateran III (1140–79)

An anonymous author, writing probably in Normandy between the years 1155 and 1165, presumes that every church will possess a "penitential," and that all priests should know its contents: "The priest should read frequently, in the apse of the church, the Roman Penitential, or that of Theodore of Canterbury, or of Bede, or of Burchard, or excerpts from these."¹¹³ That the old penitentials, composed in the early Middle Ages, should still be recommended reading in the twelfth and subsequent centuries need occasion neither surprise nor skepticism. It is entirely plausible that some version of a "penitential," excerpted and adapted by contemporary scribes and readers, should have been available in most parish churches, along with the liturgical and sacramental books that pertain to the priestly office.¹¹⁴ Such books may have borne the names of such saintly and authoritative authors as Bede, Theodore, or Burchard, and even have retained some family resemblance to the traditional texts. But a cursory examination of the surviving manuscripts reveals that the copies being produced in the later Middle Ages are often quite different from those of the ninth, tenth, and eleventh centuries, and from the printed editions that represent these traditional penitentials to scholars today.¹¹⁵ Only a detailed study of the many "corrupt" (i.e., updated, augmented, excerpted, and rearranged) copies of the old peniten-

See also his "The Fourth Lateran Council and Manuals of Popular Theology," in *The Popular Literature of Medieval England*, ed. T. J. Heffernan (Knoxville, 1985), 30–43.

A simpler but less nuanced classification is proposed by C. Bergfeld in his discussion of "Beichtjurisprudenz," in *Handbuch der Quellen und Literatur der neueren europäischen Privatrechtsgeschichte*, 1 (Munich, 1973), 999–1015:

1. Comprehensive *summae*
 - A. Organized systematically
 - B. Organized alphabetically
2. Abbreviations and smaller systematic *summae*
3. Glosses and supplements
4. Treatises

¹¹³ See n. 78 above.

¹¹⁴ See Gratian, *Decretum*, D. 38 canons 4 and 5.

¹¹⁵ See, for example, the copies of the "Corrector et Medicus," book 19 of Burchard's *Decretum*, found in the fifteenth-century codices in Bamberg, Staatsbibliothek Misc. Theol. MS 106 (Q.III.31) and 108 (Q.III.25), where the text of "Burchard" provides only a bare framework into which are inserted excerpts from other authorities and from the teachings of the modern masters.

tials will allow us to appreciate the way they continued to function as a basic resource in the internal forum of the later Middle Ages.

The period between 1140 and 1179 also witnessed the composition of some new penitentials. One of the most popular and best known of these is the *Penitentiale* of Bishop Bartholomew of Exeter, written between 1155 and 1170.¹¹⁶ The bulk of the work consists in copies of authoritative penitential canons, drawn mostly from Burchard, Ivo of Chartres, and Gratian,¹¹⁷ but Bartholomew also makes his own contributions to the growing literature and jurisprudence surrounding the penitential forum.¹¹⁸

Other types of treatises on confession were newly composed in this same period. One of the most interesting is the treatise *Homo quidam*, quoted above, probably written between 1155 and 1165, and published from an Avranches manuscript by Michaud-Quantin.¹¹⁹ This treatise presumes in its readers a familiarity with the traditional penitentials and discusses in interesting detail many of the practical problems and questions that confront a priest in hearing confessions and assigning penances.

Michaud-Quantin describes the *Homo quidam* as “archaic” because it ignores Gratian’s *Decretum*. Gratian’s work, indeed, marked a turning point in the history of penance as well as of canonical jurisprudence. His selections of penitential canons from Burchard, Ivo of Chartres, and from the older sources became normative for the rest of the Middle Ages. Gratian’s quotations from the pseudo-Augustinian treatise *De vera et falsa poenitentia* helped give this revolutionary little work its authority and prestige.¹²⁰ But most of all Gratian provided scholars with a textbook that could help them to think systematically and to argue juridically about the important issues of Christian law and morality. For confessors and judges in the internal forum, the interest of Gratian’s *Decretum* extended well beyond its treatises *De poenitentia* and *De consecratione*; all the *distinctiones* and all the *causae* were relevant to the judge of souls. Dante’s insight, quoted at the beginning

¹¹⁶ A. Morey, *Bartholomew of Exeter, Bishop and Canonist: A Study in the Twelfth Century, with the Text of Bartholomew’s Penitential from the Cotton MS Vitellius A. XII* (Cambridge, 1937).

¹¹⁷ Such are the sources identified by Morey, but he cautions that he has sought to do no more than indicate “the immediate sources of the Penitential, and that there is little doubt that further work would reveal far more than has been obtained” (*ibid.*, 173–74).

¹¹⁸ See S. Kuttner and E. Rathbone, “Anglo-Norman Canonists of the Twelfth Century: An Introductory Study,” *Traditio* 7 (1949–51): 279–385 at 283, 295, 321, reprinted with additional material in S. Kuttner, *Gratian and the Schools of Law* (London, 1983); J. Longère, “Quelques *Summae de poenitentia* à la fin du XII^e siècle et au début du XIII^e siècle,” in *La piété populaire au moyen âge* (Paris, 1977), 45–58.

¹¹⁹ *Homo quidam* (n. 51 above), 5–54.

¹²⁰ *De vera et falsa poenitentia* is printed in PL 40:1113–30; its date (eleventh or twelfth century) and place of composition remain undetermined.

of this essay, was correct: practitioners in both the internal and the external *fora* of the Church learned their craft at Gratian's feet.

A final type of literature for the internal forum that began to flourish in the decades after 1140 is something that might be called the "jurisconsult" for confessors. The most notable examples of these, of course, are papal responses to questions posed by confessors and penitentiaries concerning difficult cases. A few responses have survived in the canonical collections and in the papal registers; there must have been many more.¹²¹ Other *jurisperiti* also offered professional opinions on matters of penance and confession. We have, for example, a series of six letters from the 1160s and 70s, sent by the learned monk Senatus, archpriest and penitentiary of Worcester diocese in England, to various correspondents who had asked questions pertaining to the internal forum.¹²²

From Lateran III to Lateran IV (1179–1215): The Interconciliar Period

Leonard E. Boyle has drawn attention to the period between the Third and Fourth Lateran Councils as the time of gestation for the practical literature of pastoral care that would flourish so widely in the thirteenth and subsequent centuries.¹²³ He draws particular attention to the "new, independent literary genres such as *Quaestiones*, *Distinctiones*, *Summae*, *Notabilia*, and *Brocarda*" of the schools of canon law. These new literary forms, he argues, arose out of classroom situations, and, "being didactic in origin and free of form," they were "well suited to the popularization at a pastoral level" of scholastic teachings that touched on the practical care of souls.¹²⁴

Research into the more practical examples of this new didactic literature emanating from the schools of law is not far advanced. Giulio Silano has suggested that the *Distinctiones Decretorum* of the Bolognese-trained Ricardus Anglicus, produced at Paris ca. 1200, reflect something of the practical and popularizing interests of Parisian masters like Peter the Chanter. Ricardus's *Distinctiones* represent a transformation of the more cumbersome and technical style of the Bolognese *distinctiones* into a type of popular canonical literature, suitable for those studying for the *cura animarum*.¹²⁵

¹²¹ See for example the letter of Clement III to the "confessor of Salisbury" (*confessori Salesberiensis*), JL 16624. By the thirteenth century such questions were routinely handled by the office of the papal penitentiary.

¹²² See above, note 99. Most of these responses remain unpublished.

¹²³ L. E. Boyle, "The Inter-conciliar Period 1179–1215 and the Beginnings of Pastoral Manuals," in *Miscellanea Rolando Bandinelli Papa Alessandro III*, ed. F. Liotta (Siena, 1986), 45–56.

¹²⁴ *Ibid.*, 55–56.

¹²⁵ G. Silano, "The 'Distinctiones Decretorum' of Ricardus Anglicus: An Edition," 2 vols. (PhD diss., Toronto, 1981).

Another example of a text from the law schools that discusses practical questions concerning the care of souls is the *Notabilia super Decretum* found in Leiden, Rijksuniversiteit, MS Vulc. 48.¹²⁶ The work is divided into three parts, the first concerning clerics, the second concerning “church business, both clerical and lay,” and the third concerning the sacraments.¹²⁷ A number of contemporary masters are quoted, and the teachings of the canonists are applied to the unraveling of many practical questions. This text, and others like it, represent a rich and largely unexplored source for the history of canon law and its practical application.

Alongside these texts emanating from the law schools is a flourishing, if inchoate, practical literature from the schools of theology.¹²⁸ Peter Comestor and Peter the Chanter are the most famous of the teachers to apply their energies to solving practical questions. Martin Grabmann referred to them as representatives of a “moral” and “practical” school among the theologians¹²⁹ and characterized their work as an application of both law and theology to practical problems of the day.¹³⁰ Among their students, cardinal Robert Courson was perhaps the most influential in continuing and developing the unique blend of canon law and theology that characterized the practical “theology” of many Parisian masters in the late twelfth and early thirteenth century.¹³¹

Although the Parisian schools of law and theology were in the forefront of the effort to bring scholastic expertise to bear on practical and pastoral

¹²⁶ Fols. 9r–25v. A fragmentary version of this text, containing the prologue and a few lines of Part One, is found in a Munich manuscript; see “Das Summenfragment ‘Inter cetera que ecclesiastice dignitati,’” in S. Kuttner, *Repertorium der Kanonistik (1140–1234)*, *Prodromus corporis glossarum* (Vatican City, 1937), 182. Another copy not listed there is found in Munich, Staatsbibliothek MS Clm 16084. A similar type of text is the *Notabilia de excommunicatione et penitentia*; see Kuttner, *Repertorium*, 240–41.

¹²⁷ “In tres partes hoc opus distribuit. Prima enim gradibus et officiis clericorum deputatur. In secunda de ecclesiasticis negotiis, tam clericorum quam laicorum, puta de coniugiis disseretur. In ultima multiplex sacramentorum institutio et celebranda forma plenius edocetur” (Leiden MS, fol. 9r).

¹²⁸ On the growth of this literature see Goering, *William de Montibus* (n. 11 above), 29–42, 58–83.

¹²⁹ Grabmann, *Die Geschichte der scholastischen Methode*, 2 vols. (1909–11; repr. Darmstadt, 1957), 2:476–501.

¹³⁰ An excellent evocation of the interests and approaches of these writers is to be found in Baldwin, *Masters, Princes and Merchants* (n. 9 above).

¹³¹ See V. L. Kennedy, “Robert Courson on Penance,” *Mediaeval Studies* 7 (1945): 291–366; idem, “The Content of Courson’s *Summa*,” *Mediaeval Studies* 9 (1947): 81–107; N. Brieskorn, “Die Kirche in der Gesellschaft des frühen 13. Jahrhunderts — Zwischen Kollaboration und Protest,” in *Ius et historia: Festgabe für Rudolf Weigand zu seinem 60. Geburtstag von seinen Schülern, Mitarbeitern und Freunden*, ed. N. Höhl (Würzburg, 1989), 158–69.

questions during the interconciliar period, these schools never overshadowed the continuing production of penitential and confessional literature at the local, diocesan level. New penitentials, manuals for confessors, *summae*, and treatises were composed for and by many individual bishops, diocesan penitentiaries, and masters and students in the cathedral schools. Alan of Lille dedicated his extensive and innovative *Liber poenitentialis* to Henry, archbishop of Bourges (1191–99). In it he provided Henry with an up-to-date penitential, combining the traditional canons with the latest teachings of the schools of law and theology.¹³² Peter of Roissy performed a similar service for the cathedral school at Chartres, where he was chancellor, in composing his *Manuale de mysteriis ecclesiae* (ca. 1205), a vast *summa* of pastoral law and theology.¹³³ William de Montibus, chancellor of Lincoln cathedral (ca. 1185–1213), wrote a number of works on penance and confession. One of these, a brief verse-compilation entitled *Peniteas cito peccator*, circulated widely throughout Europe during the rest of the Middle Ages, and played an important role in shaping the way medieval people understood penance.¹³⁴

Other diocesan officials contributed a similar variety of pastoral and penitential writings for diverse audiences during this period. Robert of St. Pair (de sancto Paterno), archdeacon and penitentiary of Rouen (ca. 1200), wrote a brief *Liber penitentialis* for use in the archdiocese.¹³⁵ Gerald of Wales, who studied law at Paris in the 1170s, composed his *Gemma ecclesiastica* (ca. 1197) to instruct the Welsh clergy concerning the sacraments and clerical morality.¹³⁶ Guy of Southwick composed a *Tractatus de virtute confessionis* for Bishop William of Hereford (1190–98).¹³⁷

The authors and recipients of many penitential texts written in this period remain unidentified, but the range and diversity of the literature is noteworthy. For example, an unidentified “R.” addressed a penitential, in

¹³² See J. Longère, “Théologie et pastorale de la pénitence chez Alain de Lille,” *Cîteaux* 30 (1979): 125–88.

¹³³ See V. L. Kennedy, “The Handbook of Master Peter Chancellor of Chartres,” *Mediaeval Studies* 5 (1943): 1–50.

¹³⁴ The *Peniteas cito* is printed, along with William’s gloss, in Goering, *William de Montibus*, 107–38. William’s other penitential writings include a *Speculum penitentis*, 179–210, and *De penitentia religiosorum*, 211–21.

¹³⁵ Unpublished; see P. Michaud-Quantin, “A propos des premières *Summae confessorum*,” *Recherches de théologie ancienne et médiévale* 26 (1959): 264–306 at 268–69.

¹³⁶ Giraldus Cambrensis, *Gemma ecclesiastica*, ed. J. S. Brewer, Rolls Series 21.2 (London, 1862); trans. J. J. Hagen, *The Jewel of the Church* (Leiden, 1979). The work includes some of the fruits of Gerald’s canonical studies; he presented a copy to Innocent III in 1199.

¹³⁷ Printed by A. Wilmart, “Un opuscule sur la confession composé par Guy de Southwick vers la fin du XII^e siècle,” *Recherches de théologie ancienne et médiévale* 7 (1935): 337–52.

the style of Bartholomew of Exeter's compilation, to an equally unidentified "Stephanus." The penitential is divided into two parts: the first contains 26 numbered chapters and discusses penance in general, the second, with 87 chapters, is a collection of authoritative penitential canons.¹³⁸

Another intriguing example of this not-quite-anonymous literature is the *Summa de penitentia iniungenda*, once attributed to Praepositinus of Cremona but now ascribed to an otherwise unknown "Ricardus" who was trained in canon law and composed his treatise (ca. 1200) for two parish priests who felt the need for some formal instruction concerning pastoral care and especially the enjoining of penances.¹³⁹

Monks also contributed. An anonymous Benedictine, writing during the reign of Frederick Barbarossa, composed a *Liber de penitentia* for his brothers, which discussed many of the important questions of the day and included a biting attack on monks who took part in Frederick's crusade journey of 1188.¹⁴⁰ Stephen, a Cistercian abbot of Stanlaw in England, is credited with the composition of a *Speculum confessionis*, written sometime before 1215.¹⁴¹

These examples are intended only to indicate the range of literature produced in the years before 1215 to educate clerics in the art of hearing confessions and assigning penances. This was a period of experimentation and exploration. The texts range from simple adaptations of the old penitentials to more or less sophisticated applications of the teachings of the twelfth-century schools of law and theology to the Church's penitential discipline.

A watershed in the history of the literature written for the internal forum of penance and confession, however, is Robert of Flamborough's *Liber penitentialis* (1208–13). Nothing is known of Robert's education and training before he became a canon (1205), and then penitentiary, of the abbey of St. Victor in Paris. He probably studied in the Parisian schools and is designated as "magister" in some documents.¹⁴² He may have studied canon law, and he certainly consulted the Parisian canonists carefully.¹⁴³ His penitential is important as marking the first full-scale application of the new

¹³⁸ Unpublished; see Bloomfield, *Incipits* (n. 111 above), nos. 1674 and 3457.

¹³⁹ Unpublished; a critical edition is being prepared by J. Goering; see M. Boháček, "Un manuscript intéressant du 'Compendium' de Werner von Schussenried," *Traditio* 18 (1962): 472–82; S. Kuttner, "Summa ad iniungendam penitentiam," *Traditio* 19 (1963): 537–38.

¹⁴⁰ Printed in PL 213:863–904.

¹⁴¹ Unpublished; see Bloomfield, *Incipits*, no. 0184.

¹⁴² Firth, *Liber poenitentialis* (n. 51 above), 1–8; Baldwin, *Masters, Princes and Merchants* (n. 9 above), 32.

¹⁴³ "Sacerdos. Utique aliquis illorum qui hoc dicunt [i.e. quod votum simplex nullum dirimit matrimonium], legens Parisius in decretis, concessit mihi quod etiam cum sacerdote posset papa dispensare ut contraheret" (*Liber poenitentialis* [n. 27 above], 74).

canon law of the decretists and decretalists to questions of the internal forum.¹⁴⁴ The story that Flamborough's penitential was approved or adopted by the Fourth Lateran Council in 1215 is certainly apocryphal,¹⁴⁵ but his new-style penitential may have been discussed and circulated at the Council, and it certainly helped give shape to the new literature for the internal forum that would flourish in the subsequent decades.

From 1215 to 1250

In the wake of the Fourth Lateran Council, new manuals and *summae* for confessors were produced in the same molds that had been cast in the inter-conciliar period. Peter of Poitiers and Jacques of St. Victor, both canons of St. Victor in Paris, continued the Victorine tradition of writing practical guides for confessors of their order.¹⁴⁶ John of Kent, a canonist of the "Anglo-Norman school," composed a *Summa de penitentia* (ca. 1216) based on Robert of Flamborough's *Liber penitentialis*. John clarifies Flamborough's arguments, bringing them into line with the latest teachings of the canonists, and devotes an entire book of his *Summa* to the kind of model-dialogues between priest and penitent that Flamborough had introduced here and there into his *Liber*.¹⁴⁷

New types of *summae* and manuals were also developed in this period. One of the most popular, and most ambitious, was Thomas of Chobham's *Summa "Cum miserationes"* (*Summa confessorum*). Thomas had studied at Paris at the turn of the twelfth and thirteenth centuries, and was subdean and penitentiary of Salisbury cathedral when he composed his *Summa* (ca. 1216).¹⁴⁸ Its unique blend of canon law, popular theology, and sensible advice to confessors made Thomas's one of the most widely copied and utilized penitential *summae* of the later Middle Ages.¹⁴⁹

¹⁴⁴ Firth's observation seems still to hold true: "Insofar as can be determined at the present state of research, Flamborough was the first to make available to confessors in a short, readable, comprehensive work the new law of the decretists and of the decretals, organized in a practical way for solving cases of conscience" (*Liber poenitentialis*, 17–18).

¹⁴⁵ S. Kuttner, "Pierre de Roissy and Robert of Flamborough," *Traditio* 2 (1944): 492–99, at 496.

¹⁴⁶ Petrus Pictaviensis, *Summa de confessione: Compilatio praesens* (n. 97 above).

¹⁴⁷ An edition is in preparation; see J. Goering, "The *Summa de penitentia* of John of Kent," *Bulletin of Medieval Canon Law*, n.s., 18 (1988): 13–31.

¹⁴⁸ Edited from three manuscripts by F. Broomfield, *Thomae de Chobham* (n. 27 above). A recent biography is in F. Morenzoni, ed., *Thomas de Chobham, Summa de arte praedicandi*, CCM 82 (Turnhout, 1988), xxxi–xxxvi.

¹⁴⁹ This substantial text survives in nearly 200 manuscript copies along with innumerable excerpted and abridged versions; it was printed twice before 1500.

St. Dominic and his friars became engaged in producing guides for confessors almost as soon as the Order of Preachers began to take shape. Among their earliest recruits were students and masters in the law schools. Three of these recruits, Paul of Hungary, Raymund of Peñafort, and Hugh of St. Cher, serve to illustrate the lively interest amongst the early Dominicans in providing useful treatises to aid confessors. Paul of Hungary, a professor of law at Bologna, composed his *De confessione* ca. 1221.¹⁵⁰ Paul divided his treatise into twenty-six titles treating the “questions that arise concerning confession.”¹⁵¹

Raymund of Peñafort composed a much more substantial *Summa de penitentia* for the friars ca. 1225. A Catalan by birth, Raymund studied and taught law at Bologna before returning to Barcelona, where he joined the Dominicans.¹⁵² Raymund seems to have been influenced by the *Summa titulorum decretalium* of the canonist Ambrose (ca. 1215)¹⁵³ and is the first writer to organize a penitential *summa* into books and titles corresponding, in large part, to the divisions of the systematic decretal collections and *Extravagantes*.

Raymund’s *Summa* was destined to enjoy unparalleled success in the succeeding decades, but in the 1220s his was only one among many such texts. Three briefer, but similarly conceived *summae de penitentia*, perhaps also to be associated with the Dominican order, have been published with an excellent introduction by Jean Pierre Renard.¹⁵⁴

Quite a different type of text also flourished among the early Dominicans: the confessional “formulary,” or guide to hearing confessions. One of these, published by Michaud-Quantin, is associated with the writings of Hugh of St. Cher, a professor of law and a bachelor of theology at Paris when he entered the Dominican order in 1225 or 1226. Hugh became one of the most

¹⁵⁰ Printed three times, but none is an adequate edition; see Michaud-Quantin, *Sommes de casuistique* (n. 110 above), 24–26, and the older literature cited there. A full study and edition of Paul’s treatise is being undertaken by Mark F. Johnson.

¹⁵¹ “Quoniam circa confexiones pericula sunt animarum et difficultates quandoque emergunt, ideo ad honorem dei, beati nicolay et fratrum utilitatem ac confitentium salutem, tractatum brevem de confexione compilavi, sub certis titulis singula que circa confexionem requiruntur et incidunt concludentes ut facilius lector que velit valeat invenire” (Prologue, printed in *Bibliotheca Casinensis seu Codicum manuscriptorum qui in tabulario Casinensi asservantur*, 4 [Monte Cassino, 1880], 191).

¹⁵² See Ochoa and Diez, ed., *Summa de paenitentia* (n. 21 above), lxiii–lxxxii; S. Kuttner, “Zur Entstehungsgeschichte der Summa de casibus des hl. Raymund von Penyafort,” *Zeitschrift der Savigny-Stiftung für Rechtsgeschichte, Kanonistische Abteilung* 39 (1953): 419–34, repr. Kuttner, *Studies in the History of Medieval Canon Law* (London, 1990) with “retractationes.”

¹⁵³ Renard, *Trois sommes* (n. 61 above), 1:53–62, 453–55.

¹⁵⁴ *Ibid.* See further below, n. 165.

influential Paris theologians, and was then made cardinal-priest of Santa Sabina in 1244.¹⁵⁵ Another such formulary, written to instruct the friars (and others) in the practical art of hearing confessions, is the *Summa penitentie Fratrum Predicatorum* (1220–30) that circulated widely and was even glossed as a school text in the mid-thirteenth century.¹⁵⁶

From the 1220s onward, a steady stream of manuals and *summae* for confessors, in all shapes and sizes, flowed throughout Europe. The literature written in England is best known to us, thanks to the pioneering investigations of Leonard E. Boyle.¹⁵⁷ A few examples will suffice to indicate the general types of literature being produced. In the 1220s Robert Grosseteste wrote his *Templum Dei*, a schematic confessional guide for priests, based largely on the work of Robert Flamborough and John of Kent.¹⁵⁸ During the same decade he probably composed the works that have come down to us as the *De modo confitendi* and the *De paenitentiiis iniungendis*.¹⁵⁹ In the 1230s an otherwise unknown “Master Serlo” composed a short *Summa de penitentia* that integrated the old penitential teachings with the latest work of thirteenth-century canonists, including Tancred and Raymund of Peñafort.¹⁶⁰ The Cistercian bishop of Bangor, Cadwgan, composed a *Tractatus de modo confitendi*, probably during his episcopate (1230–36).¹⁶¹ Also during this period a group of reforming bishops in England published treatises on penance and confession designed to be circulated with their diocesan statutes

¹⁵⁵ See Michaud-Quantin, “Deux formulaires pour la confession” (n. 51 above), 48–57.

¹⁵⁶ Goering and Payer, “Summa penitentie Fratrum Predicatorum” (n. 50 above); for the glossed copy see 48–49. Another fine example is the *Confessionale* printed by A. C. Peltier among the works of Bonaventure, *Opera omnia*, 8 (Paris, 1866), 359–92; see Roberto Rusconi, “‘Confessio generalis’: Opuscoli per la pratica penitenziale nei primi cinquant’anni dalla introduzione della stampa,” in *I frati minori tra ‘400 e ‘500: Atti del XII Convegno Internazionale Assisi 18-19-20 Ottobre 1984* (Assisi, 1986), 189–227, at 204.

¹⁵⁷ “A Study of the Works Attributed to William of Pagula with Special Reference to the *Oculus sacerdotis* and *Summa summarum*” (DPhil diss., Oxford, 1956); a revised version of this dissertation is being prepared for publication.

¹⁵⁸ Robert Grosseteste, *Templum Dei* (n. 30 above).

¹⁵⁹ Published by Goering and Mantello, “Early Penitential Writings of Robert Grosseteste” (n. 78 above), 52–112. Editions of Grosseteste’s other penitential and confessional writings include: Siegfried Wenzel, “Robert Grosseteste’s Treatise on Confession, ‘Deus est,’” *Franciscan Studies* 30 (1970): 218–93; Joseph Goering and F. A. C. Mantello, “The ‘Perambulavit Iudas, (Speculum confessionis)’ attributed to Robert Grosseteste,” *Revue bénédictine* 96 (1986): 125–86; *idem*, “*Notus in Iudea Deus*: Robert Grosseteste’s Confessional Formula in Lambeth Palace MS 499,” *Viator* 18 (1987): 253–73.

¹⁶⁰ Goering, “The *Summa de penitentia* of Magister Serlo” (n. 51 above); *idem*, “The *Summa* of Master Serlo” (n. 77 above).

¹⁶¹ J. Goering and H. Pryce, “The *De modo confitendi* of Cadwgan, Bishop of Bangor,” *Mediaeval Studies* 62 (2000): 1–27.

and to be studied in the local convocations and chapters of clergy.¹⁶² A fitting summation of this English tradition of pastoral and confessional writings is found in the anonymous *Speculum iuniorum* (ca. 1250).¹⁶³ This substantial *summa* is divided into two books, “De malo” (including the “evils” of crime, sin, and punishment) and “De bono” (including the sacrament of penance). The author treats each topic, first, according to the teachings of the latest theological masters in the schools of Oxford and Paris. He then adduces evidence from English and continental authors of pastoral manuals (e.g., Robert Grosseteste, Richard of Wetheringset, Thomas of Chobham, William Peraldus), and he concludes his discussions with long, verbatim excerpts from Raymund of Peñafort’s *Summa de penitentia* and *Summa de matrimonio* and from other canonists, especially Geoffrey of Trani.

Elsewhere in Europe a similar literary activity is evident. In Paris, William of Auvergne, Odo of Cheriton, and Robert of Sorbon wrote practical manuals and *summae* for the internal forum.¹⁶⁴ Jean Pierre Renard has edited three anonymous *summae de penitentia* that were produced in the German-speaking regions of Europe before 1250. They are comparable in style and organization, if not in scope, to Raymund of Peñafort’s *Summa de penitentia*, and they include excerpts and borrowings from such works as Grosseteste’s *Templum Dei* and Thomas of Chobham’s *Summa confessorum*.¹⁶⁵ Peter of Albalat, archbishop of Tarragona (1238–51), compiled a

¹⁶² See Goering and Taylor, “*Summulae*” (n. 34 above), 576–94. The treatises of Alexander of Stavensby (1224–1237) and Walter de Cantilupe (1240) are edited in Powicke and Cheney, *Councils and Synods* (n. 29 above), 1:220–26, 2:1050–77 (under the name “Peter Quinel”).

¹⁶³ See L. E. Boyle, “Three English Pastoral Summae and a ‘Magister Galienus,’” *Studia Gratiana* 11 (1967): 135–44; J. Goering, “The Popularization of Scholastic Ideas in Thirteenth Century England and an Anonymous *Speculum iuniorum*” (PhD diss., Toronto, 1977). The attribution of this work to an otherwise unknown “Master Galienus” is no longer maintained.

¹⁶⁴ William’s and Robert’s confessional tracts are printed among the works of William of Auvergne, *Opera omnia* (Paris, 1674; repr. Frankfurt a. M., 1963), 2: Supplement, 238b–247a; see P. Glorieux, “Le Tractatus novus de poenitentia de Guillaume d’Auvergne,” in *Miscellanea moralia in honorem eximii domini Arthur Janssen*, 2 vols. (Louvain, 1948), 2:551–65; F. N. M. Diekstra, “The *Supplementum tractatus novi de poenitentia* of Guillaume d’Auvergne and Jacques de Vitry’s Lost Treatise on Confession,” *Recherches de théologie ancienne et médiévale* 61 (1994): 22–41; idem, “Robert de Sorbon’s *Cum repetes (De modo audiendi confessiones et interrogandi)*,” *Recherches de théologie et philosophie médiévales* 66 (1999): 79–153. Odo of Cheriton’s *Summa de penitentia* (ca. 1230), extant in some 32 manuscript copies, is unpublished; see Bloomfield, *Incipits* (n. 111 above), no. 3871.

¹⁶⁵ Renard, *Trois sommes* (n. 61 above), edits the *Summa magistri Conradi* (ca. 1226), which had previously been attributed to Conrad of Hörter, O.P., an attribution challenged

brief *Summa septem sacramentorum* for the use of his clergy.¹⁶⁶ The Bolognese canonist Peter Sampson composed a *Liber synodalis* (ca. 1250) for the use of pastors and confessors in the diocese of Nîmes.¹⁶⁷ The Lyon Dominicans Cabertus Sabaudus and P. de Rosset, former students of law at Bologna, composed a similar treatise, the *Manuale curae pastoralis*, at the request of Henry of Susa (Hostiensis) while he was bishop of Sisteron (1243–50).¹⁶⁸ The most ambitious penitential treatises from the pen of a secular cleric in this period were those composed by the famous Bolognese-trained canonist John of God (Iohannes de Deo); he wrote both a *Liber pastoralis* and a very popular *Liber penitentiarius* (ca. 1147).¹⁶⁹

But it was Raymund of Peñafort who dominated developments in the education of confessors and penitentiaries during the decades immediately following the Fourth Lateran Council.¹⁷⁰ In 1234 Pope Gregory IX published the fruits of Raymund's editorial labors in his *Decretals* or *Liber Extra*. Raymund immediately integrated this new canonical material into a second "edition" of his own *Summa de penitentia*.¹⁷¹ William of Rennes composed an *apparatus* or gloss to Raymund's *Summa* (ca. 1245), and both became standard texts in the Dominican schools during the rest of the thirteenth century.¹⁷² Raymund was famous in the order not just as an author but also as a "teacher of penitentiaries," according to John of Freiburg, a lector in the Dominican Schools at the end of the century.¹⁷³ After 1234, Raymund's *Summa* came to be known as the *Summa de casibus*, an indication of its

by Renard, the *Summa "Quia non piger"* (ca. 1240), and the *Summa "Decime dande sunt"* (1230–40).

¹⁶⁶ Edited in P. H. Linehan, "Pedro de Albalat, Arzobispo de Tarragona y su 'Summa septem sacramentorum,'" *Hispana sacra* 22 (1969): 9–30.

¹⁶⁷ Cited above, n. 51.

¹⁶⁸ Printed in Martène-Durand, *Thesaurus novus anecdotorum*, 4 (Paris, 1717), 1079–98.

¹⁶⁹ See A. Dominques de Sousa Costa, "Animadversiones criticae in vitam et opera canonistae Ioannis de Deo," *Antonianum* 33 (1958): 76–124; idem, *Doutrina penitencial do canonista João de Deus* (Braga, 1956). Cf. Payer, "Origins and Development" (n. 77 above), 92–105.

¹⁷⁰ See the still-useful study by A. Walz, "S. Raymundi de Penyafort auctoritas in re paenitentiali," *Angelicum* 12 (1935): 346–96.

¹⁷¹ Kuttner, "Zur Entstehungsgeschichte" (n. 152 above), 419–34; Ochoa and Diez, *Summa de paenitentia* (n. 21 above), lxxvii–lxxxii.

¹⁷² William's *apparatus* is published, under the name of John of Freiburg, in the margins of the 1603 edition of Raymund's *Summa de poenitentia et matrimonio* (repr. Farnborough, 1967).

¹⁷³ "Primo, tam de Textu quam de Apparatu seu glossa summe venerabilis patris fratris Raymundi quondam magistri ordinis nostri qui penitentiarios dirigit, registrum sive tabulam . . . ordinavi" (John of Freiburg, *Summa confessorum* [Lyons, 1518], 5 [emphasis added]).

usefulness in the schools as guide to the *forum conscientiae*.¹⁷⁴ Dominican friars, and others who frequented the order's schools to obtain training in practical theology and pastoral care, thus learned to apply the latest teachings of the canonists to knotty questions of the internal forum. They studied Raymund's text and its apparatus alongside the standard canonical glosses, and they supplemented these with such modern authorities as were to be found in Geoffrey of Trani's *Summa super titulis decretalium* (ca. 1240), Hostiensis's *Summa aurea* (1253), and elsewhere in the canonical tradition. These schools set the standard by which education for the internal forum would be measured for centuries to come.

From 1250 to 1300

The tradition of Dominican writings on penance and confession continued to flourish in the second half of the thirteenth century. Humbert of Romans, master general of the order from 1254 to 1263, composed an important set of *Instructiones* for the various offices in the Dominican order. The chapter in his Instructions entitled *De officio confessoris* also circulated independently as a self-contained treatise on confession.¹⁷⁵ Leonard E. Boyle has drawn attention to an anonymous master's collection, in Additional MS 30508 of London's British Library, made sometime between 1260 and 1280, for use in classroom teaching. The collection includes excerpts from the English Dominican provincial master Simon of Hinton's *Summa iuniorum* (ca. 1250) and from Raymund's *Summa*, as well as a series of some 216 problems or *casus* concerning the internal forum. Boyle describes the compiler's work thus:

His method generally is to begin with Raymund's definition of a topic or with the heading, and then to retell one of Raymund's examples in the form of a *casus*, thus: "De periurio. Aliquis captus ab hostibus propter metum qui potest cadere in virum constantem, iurat se daturum x. Queritur utrum obligatur ex tali iuramento? Et videtur multis auctoritatibus quod non. Tamen fere omnes doctores dicunt quod obligatur. . . . Tamen Iohannes [Teutonicus] excipit iiii casus in quibus sic iurans non tenetur."¹⁷⁶

¹⁷⁴ See the discussion of the "multiplex operis inscriptio" in Ochoa and Diez, *Summa de paenitentia*, lix–lxiii.

¹⁷⁵ The "De officio confessoris," chapter 46 of the *Instructiones*, is printed in Humbert de Romanis, *Opera: De vita regulari*, ed. J. J. Berthier, 2 vols. (Turin, 1956), 2:360–69. For the independent circulation of this text see P. Michaud-Quantin, "Textes pénitentiels languedociens au XIII^e siècle," in *Le credo, la morale et l'inquisition*, Cahiers de Fanjeaux 6 (Paris, 1971), 151–72, at 152; Bloomfield, *Incipits* (n. 111 above), nos. 2173, 2182.

¹⁷⁶ Boyle, "Fratres communes" (n. 19 above), 262; cf. idem, "Pastoral Training in the Time of Fishacre" (n. 101 above).

This Dominican tradition of literature for the internal forum reaches its peak in the thirteenth century in the writings of John of Freiburg.¹⁷⁷ John was lector in the Dominican priory at Freiburg-im-Breisgau, and continued to teach there even after he was elected prior of the house in 1290. His first contribution to the literature was a *Registrum*, or alphabetical index, which guided the reader through the materials contained in Raymund's *Summa* and in William of Rennes's *Apparatus*. Next he composed a *Libellus quaestionum casualium*, which followed the order of Raymund's *Summa* but contained new material from the more recent canonical authorities. Finally, he wrote his own *Summa confessorum* (ca. 1297–98), a text that first supplemented, and then supplanted, Raymund's *Summa* in the schools of the order. John also composed a brief treatise for confessors, *De instructione confessorum*.¹⁷⁸

The contributions of the Order of Preachers to the literature of penance and confession in this period have received more attention from modern scholars than those of the Minor Friars.¹⁷⁹ Perhaps the earliest Franciscan author to write an extensive work for the internal forum was Henry of Merseburg, whose *Summa* (ca. 1242) on the Decretals of Gregory IX was written "so that priests could find their way to a knowledge of canon law."¹⁸⁰ Henry's *Summa* played something of the same role in the Franciscan schools (at least in Germany) as Raymund's *Summa de penitentia* did in the Dominican. Like Raymund's *Summa*, Henry's was soon supplemented with an *Apparatus* (ca. 1260), and a new recension appeared by the end of the thirteenth century.¹⁸¹ An anonymous confrere supplemented Henry's *Summa* with a treatise entitled *Labia sacerdotis*, which collected "cases" and practical questions designed to teach the priest what he needs to know "in order to fulfill his office and to counsel penitents."¹⁸² The author describes how this treatise, along with Henry's *Summa* and its *Apparatus*, will be "useful

¹⁷⁷ See Boyle, "Summa confessorum of John of Freiburg" (n. 101 above), 245–68.

¹⁷⁸ See Kaeppli, *Scriptores* (n. 111 above), 2:433–43.

¹⁷⁹ The best studies remain those of B. Kurtscheid, "De studio iuris canonici in Ordine Fratrum Minorum saeculo XIII," *Antonianum* 2 (1927): 157–202, which concentrates on the Franciscan Province of Saxony, comprising most of modern-day Germany, and of R. Rusconi, "I Francescani e la confessione" (n. 19 above), 253–309. See now the chapter on "Confession Handbooks" in Roest, *Franciscan Literature of Religious Instruction* (n. 19 above).

¹⁸⁰ "Ut autem sacerdotibus pateat via ad scienciam iuris canonici, ideo frater Henricus Merseburg [sic] de ordine fratrum Minorum, quondam lector in Magdeburg, summulam iuris canonici quam habemus prae manibus communi utilitati deserviens compilavit" (quoted in Kurtscheid, "De studio iuris canonici," 162).

¹⁸¹ *Ibid.*, 162–68, 172–73.

¹⁸² "'Labia sacerdotis custodiant scientiam.' Huius scientiae necessitatem auctor describit quatenus triplicem scientiam in sacerdotibus requirit . . . ut officia proprii status adimplere et poenitentibus consulere sciant" (*ibid.*, 168).

to simple confessors, whether in hearing the confessions of others or in attending to their own consciences.”¹⁸³

Another Franciscan who produced aids for the internal forum in this period was Claire of Florence (Chiaro da Firenze), a canonist and papal penitentiary who was active between 1243 and 1261. His collections of practical questions and cases (*casus*) seem to reflect the activity in the convent schools of the order.¹⁸⁴ A Franciscan tradition of canonical and penitential writings continued to flourish from the middle of the thirteenth century, and the details of its growth and development await further study. Several examples of works from the end of the thirteenth and the first decades of the fourteenth century illustrate the vivacity of this tradition within the Franciscan order. One is the *Summa de penitentia* of John of Erfurt (1295, rev. ed. after 1304), organized in two books, the first following the order of the seven deadly sins and the second that of the Ten Commandments. John’s work is remarkable, among other things, for the way he manages to integrate all of the technical expertise and concerns of the canonists within the traditional theological and confessional framework of the deadly sins and the commandments.¹⁸⁵ Another example, also illustrating a successful amalgamation of theology and canon law, is found in the works of the Franciscan friar John Rigaldus (Jean Rigaud), whose *Formula confessionum* (ca. 1309–12) was very popular.¹⁸⁶ And a third example is the massive *Summa confessionum pro confessionibus audiendis* (ca. 1311–14) by Durandus of Champagne, a confessor of Jeanne de Navarre, queen of France.¹⁸⁷

Even more ambitious and more influential was the *Summa de casibus conscientiae*, or *Summa Astesana* (ca. 1317), of Astesanus de Asti. Designed to “give counsel in the forum of conscience” (*ad consilium in foro conscientiae tribuendum*), it offered priests and confessors a complete education for the internal forum. Among the authorities that Astesanus brings to bear on solv-

¹⁸³ “Qui simplicibus confessoribus utiles esse possent, sive in confessionibus audiendis aliorum, sive pro conscienciis propriis servandis” (ibid., 169).

¹⁸⁴ See Rusconi, “I Francescani e la confessione,” 296.

¹⁸⁵ *Die Summa confessorum des Johannes von Erfurt*, ed. N. Brieskorn, 3 vols. (Frankfurt, 1980–81).

¹⁸⁶ See A. Teetaert, “La ‘Formula confessionum’ du Frère Mineur Jean Rigaud (d. 1323),” in *Miscellanea Historica in honorem Alberti Meyer* (Louvain, 1946), 2:651–76. John also wrote a very popular theological summa, the *Compendium pauperis*, modeled on the *Compendium theologiae veritatis* of the Dominican friar Hugh Ripelin; see B. G. Guyot, “La ‘Dieta salutis’ et Jean Rigaud,” *Archivum Franciscanum Historicum* 82 (1989): 360–93.

¹⁸⁷ See Dietterle, “Die ‘Summae confessorum’” (n. 84 above) 27 (1906), 70–78; U. Neumann, “‘Sacerdos sine scientia est sicut ductor cecus . . .’ Postulate zur characterlichen und wissenschaftlichen Bildung des Beichtigers in der *Summa collectionum pro confessionibus audiendis* des Durand von Champagne OFM,” in *Universität und Bildung: Festschrift Laetitia Boehm zum 60. Geburtstag*, ed. W. Müller et al. (Munich, 1991), 33–44.

ing cases of conscience are all of the important canonists of the thirteenth century, as well as Johannes Andreae, the romanist Azo, and the famous Franciscan theologians Alexander of Hales and John Duns Scotus. He also incorporates the teachings of the medical authorities and of the philosophers.¹⁸⁸

The English Franciscan Peter Quesnel produced an equally comprehensive *summa* in 1322, his *Directorium iuris in foro conscientiae et iudicali*. In order to make canonical teachings “more easily accessible to judges in the internal and external forum,” Peter divided his *Directorium* into four books, rather than following the more conventional order of the Decretal titles or distributing the materials under alphabetically ordered rubrics.¹⁸⁹ Like Astesanus, Peter names in his prologue all the important canonists and jurists of the thirteenth and early fourteenth centuries and claims them as his authorities.

Education for the internal forum was never, of course, a monopoly of the mendicant orders, but their international system of schools certainly fostered the production, copying, and circulation of their didactic texts. The secular clergy also produced and commissioned the writing of *summae* and manuals of confession, especially for local consumption. By the beginning of the fourteenth century, several of their number had achieved national and international recognition as authorities on the internal forum. William Duranti, papal official and bishop of Mende (1286–96), and Berengar Fredoli, cardinal bishop of Tusculum (1309–23) and papal penitentiary, wrote extremely influential works.¹⁹⁰ William of Pagula, an Oxford graduate *utriusque iuris* who served as vicar of a parish and as penitentiary for a rural deanery and then for an archdeaconry, dominated the English scene for more than a century with his immensely popular *Oculus sacerdotis* as well

¹⁸⁸ Astesanus de Asti, *Summa de casibus conscientiae* (Rome, 1728). See Dietterle, “Die ‘Summae confessorum,’” 26 (1905): 35–62; Michaud-Quantin, *Sommes de casuistique* (n. 110 above), 57–60.

¹⁸⁹ “Istud autem opus in quatuor libri volui dividere ut qui pauper est et non possit se excusare quod non possit ad minus librum illum habere qui ad eius officium noscitur pertinere. Et ideo omitto scribere secundum ordinem Decretalium et secundum ordinem alphabeti ut totam unam materiam continuam valeam pertractare.” Quoted in Rusconi, “I Francescani e la confessione,” 298.

¹⁹⁰ On William Duranti see *Guillaume Durand, Évêque de Mende* (n. 78 above), especially the contribution by J. Longère, “La pénitence selon le *Repertorium*, les instructions et constitutions, et le Pontifical de Guillaume Durand,” 105–33. On Berengar Fredoli see A. Teetaert, “La ‘Summa de paenitentia: Quoniam circa confessiones’ du Cardinal Bérenger Frédol Senior,” in *Miscellanea moralia in honorem eximii domini Arthur Janssen*, 2 vols. (Louvain, 1948), 2:567–600; P. Michaud-Quantin, “La ‘Summula in foro poenitentiali’ attribuée à Bérenger Frédol,” *Studia Gratiana* 11 (1967): 147–67.

as his *Speculum praelatorum* and his pastoral guide to canon law, the *Summa summarum*.¹⁹¹

Fourteenth and Fifteenth Centuries

During the fourteenth and fifteenth centuries the literature of the internal forum flourished as never before. New *summae* and manuals for confessors continued to be written while old ones were copied and brought up to date. The literature produced during these centuries is too vast to summarize here,¹⁹² but brief notice might be made of three developments that proved especially popular.

First was the refinement of the alphabetically organized *summae*. Two Franciscan texts, Monaldus of Capodistria's *Summa iuris* or *Summa Monaldina* (1254–74) and the *Tabula utriusque iuris* (before 1281) of John of Erfurt, are early examples of the type of alphabetical organization that would become standard in the later Middle Ages. John of Freiburg's concordance or *Tabula* (ca. 1280) of Raymund of Peñafort's *Summa* and its *Apparatus* also helped to establish the principles and practices of alphabetical organization, and the German adaptation of John's *Summa confessorum* is cast entirely into an alphabetical mold.¹⁹³ During the fourteenth and fifteenth centuries, some of the most popular and influential of the penitential *summae* were organized alphabetically. These included the *Summa confessorum* (1338) of Bartholomaeus de Sancto Concordio of Pisa (better known as the *Summa Pisana casuum conscientiae* or *Pisanella*), the *Summa Angelica de casibus conscientiae* or *Angelica* (1486) of Angelus Carletus de Clavasio, and the *Summa summarum casuum conscientiae* or *Sylvestrina* (ca. 1500) of Sylvester de Prierio.¹⁹⁴

¹⁹¹ See the articles reprinted in L. E. Boyle, *Pastoral Care* (n. 15 above), especially: "The *Oculus sacerdotis* and Some Other Works of William of Pagula," and "The 'Summa summarum' and Some other English Works of Canon Law."

¹⁹² In addition to the general surveys noted above, n. 110, see T. N. Tentler, *Sin and Confession on the Eve of the Reformation* (Princeton, 1977), 28–53. The vast, and largely unexplored, extent of the anonymous penitential literature from this period can be gauged by examining Bloomfield et al., *Incipits* (n. 111 above). For a more specific geographical area, see indices 5 and 7 of Renard's *Trois sommes* (n. 61 above), 1:521–29, 530–32. Renard lists some 450 penitential and confessional texts that were copied into the seventy-one codices, mostly from the Rhineland and Central Europe, that contain copies of the three short *summae de penitentia* which he edits.

¹⁹³ On these alphabetical *summae*, see Chr. Bergfeld, "Katholische Moraltheologie und Naturrechtslehre: I. Beichtjurisprudenz," in H. Coing, ed., *Handbuch der Quellen und Literatur der neueren europäischen Privatrechtsgeschichte*, 2.1 (Munich, 1977), 999–1015 at 1004–8.

¹⁹⁴ *Ibid.*

A second development that gathered momentum after 1300 was the production of confessional treatises and *summae* in the various vernacular languages. Since the work of E. J. Arnould on the *Manuel des péchés* and of D. W. Robertson on *Handlyng Synne*, it has become widely recognized how large was the debt of much of English and Anglo-Norman religious literature to the Latin literature of penance and confession.¹⁹⁵ Recent research has begun to trace the same phenomenon in many of the vernacular languages of Europe from the thirteenth century onwards.¹⁹⁶

A third type of literature that grew in importance during the final centuries of the Middle Ages was the treatise or “monograph” on topics of special concern for the internal forum. Many of these treatises discussed questions related to the new mercantile and business activities of the time. Works such as Bernardino of Siena’s *De contractibus et usuris*, John Gerson’s *Libellus de contractibus*, William (Nicolaus) of Oresmes’s *Tractatus de moneta seu de commutatione monetarum*, and John Nider’s *Compendiosus tractatus de contractibus mercatorum*, illustrate the depth of thought and study that went into the analysis of contemporary economic practices as they related to the internal forum of penance and confession.¹⁹⁷

CONCLUSION

During the two centuries following the publication of Gratian’s *Decretum*, a new field of jurisprudence developed to meet the needs of those engaged in the hearing of confessions and the care of souls. This jurisprudence of the internal forum (*forum penitentiale*, *forum conscientiae*) was shaped by, and helped to inform, the doctrines of the canonists and the practices in the Church’s courts. As a result, penance and confession became one of the chief ways that everyone, lay and cleric alike, came into regular and close contact

¹⁹⁵ E. J. Arnould, *Le Manuel des péchés: Étude de littérature religieuse Anglo-Normande (XIII^e siècle)* (Paris, 1940); D. W. Robertson, Jr., “The Cultural Tradition of *Handlyng Synne*,” *Speculum* 22 (1947): 162–85.

¹⁹⁶ See, for example, M. D. Innocenti, “Una ‘Confessione’ del XIII secolo: Dal ‘De confessione’ di Roberto di Sorbona (1201–1274) al volgarizzamento in antico milanese,” *Cristianesimo nella storia* 5 (1984): 245–302; J. M. S. Rábanos, “Derecho canónico y praxis pastoral en la España bajomedieval,” in *Proceedings of the Sixth International Congress of Medieval Canon Law* (n. 31 above), 595–617; *Die “Rechtssumme” Bruder Bertholds: Eine deutsche abecedarische Bearbeitung der “Summa confessorum” des Johannes von Freiburg*, 7 vols. to date (Tübingen, 1980–).

¹⁹⁷ See Bergfeld, “Beichtjurisprudenz,” 1011–12; W. Trusen, “Zur Bedeutung des geistlichen Forum internum und externum für die spätmittelalterliche Gesellschaft,” *Zeitschrift der Savigny-Stiftung für Rechtsgeschichte, Kanonistische Abteilung* 107 (1990): 254–85.

with the workings of the Church's legal systems and with the science of canonical jurisprudence.

The importance of confession in the social and religious life of the later Middle Ages can scarcely be exaggerated. The Roman Catechism, produced in the wake of the Council of Trent, observed that: "Almost all devout Christians are convinced that everything holy and pious conserved in the Church at this time is to be attributed, in large part, to confession."¹⁹⁸ The same comment might be made, *mutatis mutandis*, about the creation and spread of a common juridical culture and a *ius commune* in Europe.¹⁹⁹ Although such a culture obviously owes its existence to a great many influences, the one ubiquitous experience of the Church's law that was common everywhere and to almost everyone, regardless of class, status, or gender, was that of the internal forum of penance and confession.

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¹⁹⁸ "Ex eo facile intelligent, quod omnibus fere piis persuasum est, quidquid hoc tempore sanctitatis, pietatis et religionis in ecclesia, summo Dei beneficio, conservatum est, id magna ex parte confessionis tribuendum esse" (*Catechismus ex decreto Concilii Tridentini ad parochos* 2.5.36, 4th ed. [Rome, 1907], 253; quoted in P.-M. Gy, "Les bases de la pénitence moderne," *La Maison-Dieu* 117 [1974]: 63–85, at 81).

¹⁹⁹ See, for example, P. G. Grossi, "Somme penitenziali, diritto canonico, diritto comune," in *Annali della facoltà giuridica di Macerata*, n.s., 1 (1966): 95–134; Chr. Bergfeld, "Zur Jurisprudenz des *forum internum*," *Ius commune* 16 (1989): 133–47.