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Bartholomew of Exeter’s Penitential:
Some Observations on his Personal Dicta*

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Scholars have paid little attention to the *Penitential* of Bartholomew, Bishop of Exeter (d. 1184). Despite the popularity the work enjoyed in the late twelfth century, scholars have dismissed it as largely unoriginal and lacking in canonistic skill. Dom Adrian Morey, who produced an edition of the *Penitential*, stated that it had little 'originality', except for the first twenty-two and the last two chapters, and that it was largely a ‘mosaic of quotations’.1 Stephan Kuttner and Eleanor Rathbone concurred, that Bartholomew’s minimal personal input and listing of old *auctoritates* demonstrated a lack of any searching analysis of canonical concepts or any ‘technical canonistic training’.2 All three labeled the work ‘old-fashioned’ in its ‘tariff list’ method of composition that is its listing of sins followed by the relevant penances.3 This paper suggests that these observations of Bartholomew’s work do not provide the full story. In particular, there are ‘original’ aspects to the work which have been under-appreciated, or even overlooked, by these commentators. Further, I suggest that typecasting the *Penitential* as unoriginal and old-fashioned prevents an understanding of the work in the context of legal-theological literature of the second half of the twelfth century, in which practicality played an important role.

Bartholomew’s life and works combined theology and law.4 He received education in the arts, theology, and law, probably at Paris in the 1140s.5 The chronicle of Gerald of Wales suggests that Bartholomew was more learned in Justinianic Roman

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5 Although it is not certain what he studied or taught, Bartholomew is listed among Paris masters in the poem *Metamorphosis Golie*, in Serta mediaevalia: Textus varii saecularum X-XIII in unum collecti I-II (CCCM 171A; ed. R. B. C. Huygens; Turnhout 2000) 53.1-2, 814: “Hinc et Bartholomaues, faciem acutus, retor, dyalecticus, sermone astutus”. This places him in Paris between 1140 and 1142.
than canon law. After a stint in the familia at Canterbury, under Theobald (between 1138 and 1161), he became archdeacon, then in 1161 bishop, of Exeter. This promotion was in no small part due to the influence of his allies and friends John of Salisbury and Theobald, both of whom he knew from his time at Canterbury. He was very much engaged in the ecclesiastical politics of his day, including the Becket controversy, and in his work as papal judge delegate. It was in the latter role that he became a confidante and friend of Baldwin, himself a papal judge delegate between 1175 and after 1180; in addition, Baldwin served as Archdeacon of Totnes in the diocese of Exeter from 1161-1169. Like many men of his generation, once his studies on the Continent were completed, Bartholomew moved back to England to apply the schoolman’s learning to the practical realities of ecclesiastical and royal administration.

Bartholomew’s Penitential is by far the best-known of his works, if not one of the most popular penitential works of the twelfth century. Twenty-two manuscripts survive, most of which previously belonged to religious houses in England and France. This is much greater than the number of surviving copies of a contemporary work, the Sentences of Robert of Melun. This testifies to the popularity and wide diffusion of the work. Morey’s edition is based on British Library Cotton Ms Vitellius A.xii, from which there are few significant variations in the other manuscripts. Apart from the Penitential, the known works of Bartholomew include a treatise on free will and predestination (previously known as either De libero arbitrio or De fatalitate et fato, but now called Contra fatalitatis errorem) – one of the few sustained and systematic treatments of this topic in the period; a dialogue against the Jews (Dialogus contra Judaeos); and a collection of about a hundred sermons for Sundays and Feast-days (with a focus on penance and sin).

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6 Morey, Bartholomew of Exeter (note 1) 103, citing Gerald of Wales, Giraldi Cambrensis Opera RS 21.7.57.
7 Morey, Bartholomew of Exeter (note 1) 105-6.
9 Morey listed eighteen extant manuscripts (Morey, Bartholomew of Exeter 164-6), to which Kuttner added one (Kuttner, ‘Retractiones’ 29), and Bell a further three (Bartholomaei Exoniensis contra fatalitatis errorem (CCCM 157; ed. and intro. D. N. Bell; Brepols 1996) xviii-ix, making a total of twenty-two.
10 Morey, Bartholomew of Exeter (note 1) 167.
11 Bell provides the title Contra fatalitatis errorem. Contra fatalitatis errorem, ed. Bartholomaei Exoniensis (note 9) xx.
12 The work survives in a single manuscript, namely Oxford, Bodleian Library, Bodley MS 482 (2046). Bell states that it was dedicated to Baldwin Bishop of Worcester (as he then was; later Bishop of Canterbury in 1184), and written when Bartholomew was an old man, i.e. between 1180 and 1184: Contra fatalitatis errorem, ed. Bartholomaei Exoniensis (note 9) xvi.
13 The sermons survive in two manuscripts, namely Oxford, Bodleian Library, Bodley Ms 449 (2396) and Rouen, Bibl. Municipale, A. 307 [626], fol. 31-190v [ending imperfectly]: Contra fatalitatis errorem, ed. Bartholomaei Exoniensis (note 9) xvii. For a discussion of these sermons, see Morey, Bartholomew of Exeter (note 1) 109-112; B. Smalley, The Becket Conflict and the Schools: A Study of Intellectual in Politics (Oxford 1973) 220-221. The sermons are listed in J. B. Schneyer, Repertorium der lateinischen Sermones des Mittelalters (Beiträge zur Geschichte der Philosophie und Theologie des Mittelalters 43/1; Münster 1969) 1. 242-243.
The *Contra fatalitatis errorem* is worthy of particular mention as it demonstrates Bartholomew’s qualities both as an independent thinker and as a savant in the fields of philosophy, logic, and theology. Written between 1180, when Bartholomew was an old man, and his translation to Canterbury and subsequent death in 1184, this work refutes the ideas of astrology, divination, and other methods of prognostication that had prevailed in England and parts of Europe from the 1160s. Not merely attacking astrology, he is at pains to reconcile human free-will with divine predestination. The work indicates his familiarity with the church fathers’ attempts to deal with this issue, chief among them St. Augustine of Hippo. Not only does Bartholomew quote directly from some twenty-three ‘genuine’ works of Augustine, but goes further by applying these *auctoritates* in syllogisms designed to satisfy the tendencies of modernists (*moderni*) and know-alls (*scioli*) to approach such issues utilizing medieval logic. Whereas the first part of the treatise (chapters 1-102) attempts to reconcile divine foreknowledge and predestination with the contingency of human actions, the second (chapters 104-174) deals with the relation between humankind’s freedom of choice (i.e. to sin) in the various states of history and to divine grace. In this carefully argued treatise, Bell claims, ‘we find what is actually the longest and most comprehensive attempt at resolving the paradox of predestination and free-will to come from the twelfth century’.15

In light of his successful ecclesiastical career and literary output, it is small wonder then that Gerald of Wales considered Bartholomew worthy of mention as one of the six most praiseworthy bishops of the age, and related Pope Alexander III’s remark that the bishop of Exeter was one of the two great *luminaria* of the English Church.16

According to Morey, the *Penitential* was composed at Exeter, either when Bartholomew was archdeacon or in the early years of his being bishop of Exeter, that is between 1150 and 1170; Bell suggests the early 1160s.17 The *Penitential* is a treatise on sin and penance, containing 135 chapters. Although for the most part, as noted above, it comprises a list of sins followed by the corresponding penance due, this is not the case for the entire treatise. The work is clearly designed to instruct priests in their role of confession, and its straightforward structure makes this apparent. It is divided into two parts: the first forty chapters explain sin and the manner of penance, while the 95 chapters of the second part list the sins and their concomitant penances. Within the first part, Bartholomew deals with four topics: sin and the theological virtues (chapters 1-5); the concept of flexibility and the commutation of penance (chapters 6 and 7); penance and its varieties (chapters 8-22 and 135); and the knowledge required of a priest to administer penance (chapters 23-24). This necessary knowledge includes the different kinds of sin (chapters 26-29, 31-32, and 37) and sinner (chapters 25 and 39), penance (chapters 30, 33-36, and 40), and the method of hearing confession (chapter 38). In each of the

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14 For what follows, see *Contra fatalitatis errorem*, ed. Bartholomaei Exoniensis (note 9) xxviii-xxxv.
95 chapters of the second part, the crime or sin is listed, defined, and its penance detailed, usually by citing canonical authorities. Of these sins, Bartholomew places significant emphasis on murder (chapters 41-57); manslaughter (chapters 58-60); sexual sins, such as adultery and incest (chapters 61-71); oath- and vow-breaking and lying (chapters 73-85); the sacraments (chapters 98-100, and 103); excommunication (chapters 118-19 and 122-123); and sins against the Holy Ghost (chapters 131-34). Let us now look more closely at some of these chapters, in order to inquire into the supposed unoriginal and non-canonistic nature of Bartholomew’s *Penitential*.

Bartholomew’s aim was not necessarily to be original, but rather pedagogic and pastoral. This is evident from the Prologue, in which Bartholomew begins:18

> “Never can that be taught or known too much which, when it is untaught or unknown causes a loss of salvation. And so, let priests make known to everyone both those evil things with which, and the good things without which no one can be saved.”

The Prologue then lists the 17 ‘evil things’, or sins, noted at the Council of Chalons-sur-Saône in 813 CE, and reproduced in Burchard’s *Decretum*, based on Galatians 5: 19-21, namely: fornication, uncleanness, luxury, immodesty, idolatry, witchcraft, enmities, contentions, emulation, wraths, quarrels, dissensions, sects, envies, murders, drunkenness, and lust.19 These are distinct from the seven deadly sins and the three theological virtues which Bartholomew goes on to outline in chapter 2.20

This Burchardian text is the first of many borrowings noted by the editor in the treatise, and it is worth explaining the nature of these sources. Morey’s edition is not a ‘critical’ one in the sense that he has made no attempt to systematically identify ‘formal’ (i.e. immediate) or ‘material’ (i.e. original) sources used by Bartholomew; rather he has pointed to suggestive parallels where the canons used by Bartholomew can be found in four contemporaneous or near-contemporary works: Ivo of Chartres’s *Decretum*, Burchard of Worms’s *Decretum*, Peter Lombard’s *Four Books of Sentences*, and Gratian’s *Decretum*.21

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20 *Penitential* c. 1 175.19-22: “Mala quorum quodlibet salutem impedit sunt septem principia uicia: superbia, inuidia, ira, tristitia, auaricia, et ventris ingluuies, luxuria et que ex his nascuntur multimoda uicia et peruersa opera”. Note Bartholomew’s use of *tristitia* to designate ‘sloth’, rather than the term *acedia* employed commonly in the thirteenth century.

21 Morey, *Bartholomew of Exeter* (note 1) 167: “It has not been possible to make a full investigation of the sources, but it is hoped that the printed text and the indication of the immediate sources will provide a guide for further study.” Id., 173: “no attempt has been made to indicate more than the immediate sources of the Penitential, and there is little doubt that further work would reveal far more than has been obtained [my emphasis].”
Bartholomew draws on Burchard of Worms's *Decretum* throughout the treatise, and it is arguably his most important source. Kuttner and Rathbone lament that he used Burchard and Ivo even though the more modern sources of Gratian and Peter Lombard were available. For much of the material in the opening chapters, on the theological virtues and penance, and the penultimate chapters, on sins against the Holy Ghost, Bartholomew draws on the Four Books of Sentences of Peter Lombard. Bartholomew also borrows regularly from Ivo of Chartres's *Decretum*: chapter 39 of the *Penitential* dealing with infirm penitents contains nine chapters from book fifteen of Ivo’s *Decretum*, while chapter 61 on adultery adapts eighteen chapters from the eighth book of Ivo’s work. Gratian’s *Decretum* is also used heavily in chapters 84 and 85 on perjury and chapters 96 and 97 on schism and simony respectively. Whether Bartholomew accessed these authorities directly, or indirectly, is difficult to establish. Irrespective of the directness of the source, the main point to acknowledge is that Bartholomew is concerned with correct instruction; to do this, it is not merely optional, but mandatory, to cite the relevant canons. Like many authors of his age, he is concerned to ensure that his treatise is in accordance with *auctoritates*. Un-originality, therefore, was a necessary by-product of his work.

I have identified a number of passages in the *Penitential* which appear to be personal contributions by Bartholomew himself. My discussion of these chapters follows


A systematic study of the formal sources in Bartholomew’s *Penitential* is needed as Morey’s references to the four works (Ivo of Chartres’s *Decretum*, Burchard of Worms’s *Decretum*, Peter Lombard’s *Four Books of Sentences*, and Gratian’s *Decretum*), on his own admission, are somewhat superficial and can give a misleading impression of diversity in the authorities employed by him. For example, we know that much of the Lombard’s text on penance comes directly from Gratian (J. De Ghellinck, *Le movement théologique du XIIe siècle* [Bruges 1948] 213, 285) and that, in turn, Gratian “exploited” Ivo’s *Panormia* and *Collectio tripartita* (rather than his *Decretum*: Landau, ‘Gratian’ 31). Further, in informal communications, Dr. Brett indicates that the relative contributions of Ivo and Burchard need fundamental re-assessment: for example, he notes (a) that Morey cites BD but not ID on a number of occasions, but there are only three where the BD text is not in ID (Penitential c. 61 222.29-32; c. 69 236.29-35; c. 95 260.5-10) and (b) that Morey cites BD, ID, and Gratian in one case, despite the inscription suggesting BD alone (Penitential c. 47 214.21-32, cf. BD 1.201). In addition, Dr. Brett observes that the Gratian references are very often ‘loose’ (e.g., Penitential c. 100 268.14-17), suggesting that the real source may have been the *Collectio Lanfranci*.

25 I have listed these “personal dicta” to Bartholomew’s *Penitential* in the Appendix. In compiling it, I have relied on Morey’s apparatus accompanying the text, the indications in Morey’s short commentary on the nature of the text (Morey, *Bartholomew of Exeter* 172-74), Kuttner – Rathbone’s listing of additional *dicta*
the tripartite taxonomy of penitential literature, utilized by Joe Goering, namely: 1) issues surrounding admission to the internal forum, including the mandatory nature of attendance, frequency, and the voluntary nature of actual confession; 2) the priest's role in collecting evidence from the sinner, including his knowledge of the different types of sins and their circumstances, as well as his interrogation of the sinner; and 3) the judgment concerning absolution of the sinner and satisfaction for the sins, characterized by discretion (*arbitrium*) on the part of the priest and the aim of restitution.  

Bartholomew's treatise does not consider directly whether attending confession is compulsory or how often it should occur. In chapter 9 he simply presumes the compulsory nature of confession, when he begins: 'Oral confession is necessary if the penitent has time'. This chapter also deals with 'true' confession, namely the condition precedent of having committed sin before confession, and 'integrity' of confession, the need to confess all (and not merely part) of one's sins to a priest. In addition, it outlines the requirement of a priest to hear confession, except in certain cases of necessity where a priest is not available, where a layperson may do so. Bartholomew relies on the *De penitentia* of Gratian as authority for these comments. This chapter contains little that is original with Bartholomew.

Bartholomew provides a much greater degree of personal input on the issue of the priest's role in collecting evidence from the confessing sinner. In the first few lines of the Prologue quoted above, which appear to be Bartholomew's own words, he stresses the importance of a priest knowing the difference between good and evil. Of such things one can never have too much knowledge, he notes. Once a priest is able to distinguish virtue from vice, he is then in a suitable position to collect evidence of sin from the sinner. Apart from his consideration of the seven vices and three virtues outlined by Burchard, Bartholomew answers much later in the *Penitential*, in a short dicta to the chapter entitled 'What is sin itself?', that it is the 'impenitence of an obstinate heart'. Thus, for Bartholomew, sin is obstinacy.

The confessor must consider the circumstances of the sin. The priest must be

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27 In the twelfth century, it was understood that confession was necessary once a year: Goering, 'Internal Forum' (note 26) 188. But Gratian did not express a concluded view on the issue: J. Gaudemet 'Le débat sur la confession dans la Distinction 1 du de penitentia (Decret du Gratien, C.33 q.3)', *ZRG Kan. Abt. 71* (1985) 52-75; and P. Anciaux, *La théologie du sacrement de pénitence au Xl/e siècle* (Louvain 1949) 442-47.

28 *Penitential* c. 9 180.2: "Confessio oris necessaria est, si penitens tempus habuerit."; cf. C.33 q.3 cc.37-39.


30 *Penitential* c. 133 294-6-7: "Ipsum vero peccatum, obstinati cordis inpenitentiam."

aware of the various types of sinner, Bartholomew observes in dicta to chapter 25. These dicta take the form of a *summula*, or mini-*summa*, on the differences of transgressors, Bartholomew states that a priest must consider whether the penitent is free, a slave, a cleric, a layperson, or a monk. In the case of a cleric, what order or rank? In the case of a layperson, are they married or single? If the penitent is wealthy or a pauper, a boy or an adolescent, a man or an old man, dull or cunning, healthy or infirm, man or woman, virgin or non-virgin, continent or not, or carrying out an office which can be administered without sin or not.

And the priest must also be aware of the different types of sins, Bartholomew notes in further personal dicta. Chapter 26 deals with the difference between delicts. Bartholomew inserts here *summulae* explaining the need for a priest to distinguish between different types of sin. He first distinguishes mortal (*mortalis*) from lesser (*levis*) or venial sins. The latter are not intentional. Thus, a priest must know whether the sin was committed knowingly or innocently, with volition or without, with aforethought or not. In dicta to chapter 27, Bartholomew further defines these lesser or venial sins. They are not ‘mild’ in themselves, he explains, but only by comparison to greater (*maius*) sins. These lesser sins are innumerable, and one cannot live without committing several of them. He provides examples of these: excessive laughter now and then; the slothful or useless love of hearing things; arriving before the meal hour without need; being late in visiting those imprisoned or sick; singing or ordering something other than as specified in the ecclesiastical offices; or to exasperate a pauper inconveniently seeking your attention. Bartholomew uses *levis* to describe such sins, although the adjective *venialis* was also used by twelfth century authors.

A second consideration which Bartholomew notes in his dicta to chapter 26 is whether the sin was committed publicly or privately. A third consideration is whether the sin was by ‘thought alone’, or whether it involved, in addition, speech or even deeds. He further explores this in his own dicta to chapter 22 (dealing with pilgrimage). Bartholomew states that the priest must be mindful of whether the sin is simultaneously of the mind and body, or of the mind alone. In the case of the former, the mind cannot sin without the agency of the body, as in the case of manslaughter,

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32 *Penitential* c. 25 194.6-16: “Attendendum de penitente utrum liber sit an seruus, si clericus, si laicus, si monachus; et si est clericus, cuius ordinis sit aut dignitatis, si laicus an coniugatus an sine coniugio.[...] Item si penitens dunes est uel pauper, si puer uel adolescentes, si uir uel etate senex, si hebes uel gnarus, si sanus uel infirmus, si uir uel mulier, si urge uel corrupta, si continens uel incontinentes, si officium gerat quod sine pec­­cato administrari possit, uel quod non possit; et ex his relique penitentium differentie perpendantur secundum quas augenda est uel minuenda penitentia, ita scilicet, ut cui plus commissum est plus exigatur ab eo”.

33 *Penitential*, c. 26, p. 195.2-3: “Primo considerandum est an sit peccatum de illis que leuia dicuntur, an de illis que mortalia vocantur.”

34 *Penitential* c. 27 196.5: “Quedam peccata dicuntur leuia, non in se sed maiorum comparatione.” The examples of lesser sins follow: *ibid.*, 196.5-17.


36 *Penitential* c. 26 195.2-3: “Item si puplicum uel occultum, si scienter uel ignoranter, si sponte uel non sponte commissum, si cum deliberatione uel non, si sola cogitatione uel locutione uel etiam opere.”
highway robbery, theft, and similar offences (where both a mental element and a physical element are required to make out the wrong). In the case of the latter, the mental element alone suffices, as in the seven deadly sins outlined in chapter 1. There is a small overlap between these and the 17 sins cited in the Prologue (from the ninth-century Church Council of Chalons-sur-Saône).

Continuing his *summulae* to chapter 26, Bartholomew notes a fourth consideration, the different grades (gradus) of sins. These arise from the circumstances in which they occurred, for a man, he suggests, is 'tempted by suggestion, apprised by consent, retained by works, bound by usage, blinded by excuse of sin, and absorbed by obstinacy and impenitence.' Fifth, the place, time, and particular mode of the act distinguish the sin.

But, summarizing these different circumstances of sins, Bartholomew concludes in his dicta to chapter 26 that, above all, it is the reason and intent behind them which define the sin and determines whether it is mortal or venial. This is consistent with his dicta in chapter 27, which state that the essential characteristic of these lesser sins is that they are committed without deliberation or out of ignorance, negligence, vanity, surprise, necessity, forgetfulness, or some infirmity. Accordingly, Bartholomew’s personal dicta to chapters 22, 25, 26, and 27 of the *Penitential* make it clear that priests ought to be aware of the different types, and particular circumstances, of sins and their respective sinners.

Having considered the act (sin) and the actor (sinner) respectively, Bartholomew turns his focus to the consequences. What role did the priest play in administering penance once a sinner had made appropriate confession? His personal dicta begin on the opposite tack. In chapter 6 of the *Penitential*, which deals with ‘Things pertaining to penitents which may never be dismissed or relaxed’, Bartholomew comments that there are certain things which a priest has no power to omit or relax, such as true penance (vera penitentia), pure confession (pura confessio), making satisfaction for those things which a penitent admitted he or she should be penitent for, or remitting sins for those who transgressed in their hearts (ex corde).

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37 *Penitential* c. 22 192.12-18: “Est etiam attendendum quod peccatum sit corporis simul et anime, an solius anime. Corporis simul et anime peccatum est quod ab anima non nisi corpore cooperante perpetratur, ut est homicidium, latrocinium, fursum et his similia. Solius anime sunt que sine corporali executione administrum animam ream constituant. Sicut septem superius enumerata principalia mala, et que ex eis nascentur anime spiritualia iuicia.” Cf. Dig. 48.8 (on murder); Dig. 47.2 (on theft and, by implication, highway robbery).

38 *Penitential* c. 26 195.7-13: “Homo namque suggestione temptatur, delectatione apprehenditur, consensu vincitur, opere retinetur, consuetudine ligatur, excusatione peccati excuccatur, obstinatione uero et inpenitentia absorbetur. Item locus et tempus et multiplex modus executionis ipsius iuici”.

39 *Penitential* c. 26 195.12-14: “(...) maxime autem causa et intentio, peccata distinguunt. Attendendum etiam an leui uel graui impugnatione peccator uictus succubuerit.”

40 *Penitential* c. 27 196.23-25: “Nullus est enim qui aut cogitatione, aut ignorantia, aut negligentia, aut uanitate, aut obreptione, aut necessitate, aut obliuione, aut aliqua infirmitate non peccat”.

41 *Penitential* c. 6 ([Rubric :] *Quo proprè pertineat ad penitentes ita ut a sacerdotibus nec dimittat ualeant nec relaxant*) 177.26-31: “Sunt autem quaedam proprie ad penitentes pertinientia ita ut in ipsis omittendis uel relaxandis nulla sit sacerdotibus uel episcopis concessa potestas, ut sunt uera penitentia, pura confessio, satisfacere his in quos ipsi qui penitere se dicunt deliquerunt, et ex corde remittere illis qui in ipsos deliquerunt.”
But Bartholomew’s dicta emphasize the discretionary role played by the priest in moderating the excesses of the penitential canons where circumstances demand. In chapter 7 (appropriately entitled ‘Those things which, for diverse reasons, ought to be relaxed or dismissed altogether’), Bartholomew states that, ‘by manifold consideration of reason’, certain ‘disciplines or impositions or punishments (fustigationes)’ or other ‘works of charity or punishment’ ought to be relaxed or omitted. He then lists the penances capable of being moderated in this way, a list which appears to cover all the possible penances that are available. Bartholomew repeats the idea that considerations of reason ought to mollify penance in some cases, in his dicta to chapter 22 on pilgrimage.

But the priest’s discretion is not limited to lessening penance; his role is more nuanced and contingent than that. It is the notion of ‘pastoral prudence’ (pastoris prudentia) which is particularly important to Bartholomew. ‘In dispensing [penance]’, he states in the dicta to chapter 22, ‘first, pastoral prudence and an honest life are necessary’. With pastoral prudence, Bartholomew continues, the priest must pay attention to those things relevant to the increasing or decreasing of penance itself or the length of the penance: the circumstances of the transgressors, transgressions, and other things just discussed. Bartholomew explains that this priestly prudence, moreover, involves seeing beyond appearances, for a priest ought to be able to distinguish a true from a false penitent. In the case of the former, for instance, some allowance ought to be made, for it is more important that the leniency of mercy be followed than the rigor of justice.

Two ‘classical’ norms underlie Bartholomew’s dicta on the pastoral prudence of the priest in determining penance. Morey identifies the first of these as diuersitas culparum diuersitatem facit penitentiarum (‘diversity of guilt makes for diversity in penance’). This notion, drawn from the penitential of Columbanus, is that each sin demands its own particular penance. The second is contraria contrariis sanantur (‘opposing things are cured by their opposites’), the notion from Cummean that the appropriate penance for a sin is to carry out its opposite virtue. Bartholomew makes reference to both these rules in his dicta at the end of chapter 35, following a listing of

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42 Goering refers to this as the confessor’s own judgment or “arbitrium”: Goering, ‘Internal Forum’ (note 26) 198.
43 Penitential c. 7 ([Rubric :

Quedam vero sunt ita ut multiplici consideratione rationis relaxari debeant uel omittiti, ut sunt elemosine, orationes, ieiunia, genitus et silentium, et utilis labor manuum, vigilie, genuflectiones, uerbera corporis, que quidam disciplinas uel superpositiones uel justigationes appellant, vestimentorum vilitas et asperitas, peregrinationes et similia caritatis uel castigationis opera.”

44 Penitential c. 22 192.1-2: “sed ex multiplici rationis consideratione multipliciter sunt dispensanda”.
45 Penitential c. 22 192.2-3: “In quorum dispensatione primo omnium necessaria est pastoris prudentia et uita honesta.”
46 Penitential c. 22 192.4-6: “Deinde ut delinquentium inter se, et item delictorum inter se, et reliquorum, que ad augendam et minuendam penitentiam uel penitentie tempora pertinent prudenter attendat.”
47 Penitential c. 22 192.7-10: “Sciat etiam quo sit uera et quo sit falsa penitentia, et quod in penitentiiis dandis magis sit lenitus misericordie sequenda quam rigor iusticie, circa illos maxime qui uere penitentes esse creduntur”. Cf. Penitential c. 12 184.2-3: “Primum eorum in quibus dispensatio pastoralis admittitur est elemosina”. (“The first of [the forms of penance] which pastoral dispensation allows is almsgiving.”)
48 Morey, Bartholomew of Exeter (note 1) 173.
the penances that match each sin. Examples of the *contraria contrariis sanantur* include the following: sins of arrogance should be redeemed by means of a true heart and humble works; enmity through abundance of charity and generosity; wrath by means of hope and works of charity and leniency; and sadness through sober and spiritual joy. Chapter 36, taken from Burchard’s *Decretum*, provides an example of the rule concerning diversity.

The author’s personal dicta to chapter 37 expand on what constitutes *diuersitas*. In short, diversity refers to the place, time, and reason of the sin as well as the diversity in the sinners and their various manner of sinning. There is similarity here to Bartholomew’s comments on what constitutes diversity in sins and sinners, which I have just discussed. The corresponding penances therefore follow accordingly. For example, lesser or venial sins are purged by mild, daily penance, such as almsgiving, internal contrition, ‘general’ confession, and prayer. Goering notes that deadly sins could be forgiven only after explicit acts of confession and contrition, accompanied by promises of amendment, reparation, and penitential satisfaction. The idea is that the greater the sin, the more is demanded by way of penance.

On my reading of his dicta on the discretion that a priest can apply when imposing penance, Bartholomew goes beyond the principles of *diuersitas* and *contraria*. Additionally, he articulates the notion that the penitent empathize as fully as possible with victims of the suffering and loss that the sinner occasioned. The sinner must make good the loss he or she caused, in person and without intermediary. The aim is restitution to the person who has suffered, but restitution by action rather than by remuneration. So, in dicta to chapter 10 on satisfaction, Bartholomew states that a penitent achieves satisfaction if he or she ‘applies him or herself, without (dolo) or negligence, in so far as he or she is able, according to the judicially-ordered or amicably-agreed guilt, so that he or she can be reconciled to the one he or she has harmed’. Conversely, Bartholomew’s dicta to chapter 11 on remission note that a penitent ought to forgive or remit in his own heart ‘those who have sinned against him’. This was necessary before a sinner could remit his or her

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49 *Penitential* c. 35 202.14-17: “(...) si fieri potest semper aut contrariis contraria curentur, aut saltem secundum culpam diuersitatem ad procidendum peccati fomitem diuersitas penitentiarum imponatur.”

50 *Penitential* c. 35 202.4-8: “Peccata superbie per ueram cordis et operum humiditatem redimamus; inuidie per caritatis et liberalitatis abundantiam; ire per spem et opera mansuetudinis et lenitatis; tristicie per sobrium et spirituale gaudium”.

51 *Penitential* c. 36 202.20-21: “Diversitas culpam diuersitatem facit penitentiarum.” Cf. BD 19. 29 (PL CXL 985; *Burchard von Worms* 205va); ID 15. 47 (PL CLXI 868).

52 *Penitential* c. 37 203.29-31: “(...) sed omnis pro locorum et temporum uel causarum diuersitate pro delinquentiium uel delictorum multiformitate (...)”.

53 *Penitential* c. 27 196.25-28: “(...) sed cotidiana et leuitia facili satisfactione purgantur. Sufficit enim ea elemosinis cum cordis contricione et generali confessione et dominica oratione purgare.” D3 c.20 de pen.

54 Goering, ‘*Internal Forum*’ (note 26) 194.

55 *Penitential* c. 25 194.15-16: “(...) ut cui plus commissum est plus exigatur ab eo (...)”.

56 *Penitential* c. 10 181.27-31: “Sequitur ut satisficiat penitens illis in quos ipse deliquit; quod erit si sine dolo et negligentia operosam adhibucrit diligentiam ut pro suo posse iuxta qualitatem culpe ordine iudiciario uel amicabili compositione ei quem lesit reconcilietur.”
The first half of this chapter on remission (chapter 11) is a long exegesis by Bartholomew of two passages from Matthew 6: 12 (Dimitte nobis debita nostra sicut nos dimittimus debitoribus nostris [Forgive us our debts as we forgive our debtors]) and 18: 23-35 (the parable of the unforgiving servant). The keystone of the principle of remission for Bartholomew is forgiveness.

But what are the limits to this pastoral prudence? How is it reconciled with the idea of strict obedience to the written canons? His dicta to chapter 37 attempt an answer to this question:

“For when there is no certain penance to be found in the authentic scriptures for some transgression, then the kind of penance that ought to be imposed ought to be reckoned through the judgment of the prudent pastor from those penances previously established, having regard always to the aforesaid differences [i.e. corporeal and spiritual sins].”

Clearly, the notion of priestly discretion and pastoral prudence undergirds Bartholomew’s framework for the judgment of appropriate penance. In light of the perception of Bartholomew’s treatise by scholars, the significance of this emphasis on discretion should not be underestimated. The very emphasis on discretion, in and of itself, dispels the notion that Bartholomew’s was simply a ‘tariff list’ penitential. Indeed, Goering has cautioned against interpreting too strictly the divide between the rigidity and rigor of the traditional penitential tariffs and the introduction of the ‘arbitrary’ or discretionary penances in the twelfth and thirteenth century. Instead, he argues, the shift between genres can be understood more usefully as a ‘shift in emphasis in clerical education’ towards a juridical and scientific knowledge of the law.

Bartholomew’s Penitential belongs in the midst of this divide; its author’s education in the higher studies of both canonistic and Justinianic Roman law no doubt contributed to this work being more than a mere tariff list, and perhaps something of a pedagogic tool.

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57 Penitential c. 11 182.9-11: “Sequitur ut penitens ex corde remittat his, qui in ipsum deliquerunt, quod ad peccatorum remissionem precipe est necessarium.”

58 Penitential c. 11 182.9-38.

59 Penitential c. 27 203.20-25: “Nam cum nulla certa penitentia pro aliquo delicto in scripturis reperitur autenticis, tunc per prudentis pastoris arbitrium ex iam constitutis penitentiis estimandum est quals debeat imponi penitentia, habita semper predictarum differentiarum ratione.”

60 Goering, ‘Internal Forum’ (note 26) 199. He does, however, distinguish the “new” penitentials of the period 1140-1179 from the “old” ones of the ninth, tenth, and eleventh centuries. Among the “new” penitentials, he includes Bartholomew’s Penitential, the anonymous treatise Homo quidam (1155-1165), Gratian’s Decretum (c. 1140), and the “jurisconsult” for confessors’ literature (1140+): Goering, ‘Internal Forum’ (note 26) 210-212.

The penitential literature of the period 1179-1215 (among them Robert of Courson’s Summa or Penitential (1209-1211), Alan of Lille’s Liber peenitentialis (1191-1199), and William de Montibus’s works on penance) Goering characterizes as varying between “adaptation of the old penitentials” to “more or less sophisticated applications of the teachings of the twelfth-century schools of law and theology”, until the “watershed” of Robert of Flamborough’s Liber penitentialis (1208-1213).

Robert’s work signified a change in that it was the ‘first full-scale application of the new canon law of the decretists and decretalists to questions of the internal forum’, a trend continued in the period 1215-1250 by such works as Thomas of Chobham’s Summa confessorum (c. 1216): Goering, ‘Internal Forum’ (note 26) 212-16.
Moving beyond Goering’s taxonomy of penitential literature, there are other significant dicta in Bartholomew’s work which deserve mention. These various comments likewise cross the boundary between law and theology. One set of dicta to chapter 28 take a practical approach to resolving dilemmas involving the sanctity of the seal of confession. A secret sin, he comments, no matter how serious, must be expiated by public satisfaction in some way or other if it publicly affects the reputation of others (for example, a false accusation or the giving of false evidence). But in such a case the penitents themselves, and not the priest-confessor, ought to reveal the truth of the matter. Although the priest may go so far as to give advice to the penitent [or “confessant”] to publicly confess, should the latter not take this advice, then the priest-confessor may not use compulsion nor change his public attitude towards the offender.\(^6\) Calm and persistent persuasion is the order of the day.

In *summulae* to his chapter on perjury (chapter 73), Bartholomew demonstrates a heightened awareness of the importance of oaths in the penitential, and, I would argue, in the broader legal, context. It is not simply the oath before God that is broken, although this is tantamount to sacrilege. ‘For who’, Bartholomew states, ‘seems to condemn God more than someone who, in the very sin that he or she perpetrates against God, invokes God in his own soul as judge and avenger by saying these holy words “So help me God”.’\(^6\) In addition, Bartholomew adds, the consequences of perjurers reneging on their oaths impacts on the right ordering of church and lay society. For, every ecclesiastical, and many secular, disputes, conclude with oaths. Judgments, commonly known as ‘laws’ (*leges*), are never finalized without oaths.\(^6\) Perjury is a serious sin. The most serious penances therefore, Bartholomew concludes, are constituted by diverse perjuries of diverse perjurers.\(^6\) Although this is far from a precise juridical definition of perjury, Bartholomew’s point is that the oath was a tool of conflict resolution in medieval society in the absence of any state machinery to enforce judgment. Perjury put at risk the very idea of a society abiding by its laws.

A further feature of Bartholomew’s authorial presence is his use of Scriptural tags and exegesis. I have already referred to an example of this in his chapter 11 dealing with remission. Further examples abound. In chapter 1 he cites Titus 1:16 in support of the need for ‘sincere’ and ‘firm’ faith, the idea that one’s belief should be without heretical

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\(^6\) *Penitential* c. 28 197.23-198.3: “Si uero occultum fuerit peccatum, quantumcumque sit grattre et enorme, quantumcumque turpe et abominabile, sufficit illud secreta confessione et secreta satisfactione purgare, nisi forte sit tale quod emendari sine aliqua publicatione non possit; ut si per aliquorum falsam accusationem vel falsam testificationem innocens aliquid sit puniendus (...). Si uero peccator consilio non obediert, sacerdos secretum tenet, et peccatum in secreto frequenter ammoneat, nec tamen puplicet nec ab eius communione aliquo modo in puplico se subtrahat.”

\(^6\) *Penitential* c. 73 241.26-29: “Quis enim magis uidetur contemmere Deum, quam qui in ipso peccato, quod contra Deum perpetrat, in animam suam Deum iudicem et ultorem inuocat diciens: sic me Deus adiuuet et hec sancta.”


\(^6\) *Penitential* c. 73 241.35-37: “Sunt ergo in perituros grauissime penitentie a sanctis patribus diversa pro peritorum diuersitatibus constitute.”
depravity (sincere) and such as to make one willing to lay down one's life in defense of any of the articles of faith (firm).\textsuperscript{65} In addition, chapters 15 to 21 are 'original' contributions by the author in that they rely on Scriptural tags for the most part to set out general and well-known propositions on the different types of penance, such as groans and tears, silence, manual labor, vigils, genuflection, scourging, and clothing.\textsuperscript{66} Bartholomew also employs an original Scriptural tag (I Corinthians 16: 22 'If anyone does not love the Lord Jesus Christ, let him be anathema, maranatha.') to clarify the distinction between excommunication and anathema in chapter 118. Bartholomew comments that while every anathematized person is excommunicate, not very excommunicate is anathema. He states that an excommunicate is separated from 'fraternal society', while an anathematized person is in a more severe situation, being condemned or separated 'from God'.\textsuperscript{67} This hints at but does not precisely articulate that excommunication was exclusion from the Church's sacraments and from the Church community, while anathema was complete separation from the body of the faithful and Christian society generally.

Kuttner and Rathbone cite these dicta from chapters 73 and 118 above as evidence of Bartholomew's vagueness in drawing juridical distinctions and tendency to avoid any 'searching analysis' of canonistic concepts, comparing them unfavorably to the more sophisticated contemporary commentaries on Gratian, C.11, q.3 and C.24 (excommunication) and C.22, q.2 (perjury).\textsuperscript{68} Although largely accurate, this is an unfair and unhelpful analysis. In the penitential genre of literature, Bartholomew is not seeking to discuss fine points of canonistic theory, but rather to provide a simple, accessible, and practical guide for curates in their dealings with their parishioners. The reference to local English law in the context of oaths indicates a concern not only for local context and conditions, but above all an inchoate regard for a nascent concept of 'rule of law' as fundamental to the right ordering of society. Further, in distinguishing excommunication from anathema by mere reference to the Pauline letter, Bartholomew draws on familiar biblical imagery rather than the precise semantic and juridical analysis characteristic of canonistic discourse.

Several exegetical dicta illustrate how Bartholomew uses this moralized-normative reading of Scripture in a pastoral, rather than a strictly juridical, context. In dicta summarizing chapter 5, he states that 'It is not possible to love God without loving one's neighbor', implicitly referring to Matthew 5: 43 and other Scriptural texts. He then quotes Augustine and Bede to this effect. This love for one's neighbor, he concludes, is 'necessary for salvation'.\textsuperscript{69} Bartholomew emphasizes this simple biblical

\textsuperscript{65} \textit{Penitential} c. 1 176.5-9: "Oportet etiam ut eadem fides sincera sit et firma. Sincera ut nihil habeat heretica prauitatis admixtum, firma ut in necessitatis articulo pro ipsius confessione et defensione paratus sit quisque fidelis animam ponere."

\textsuperscript{66} \textit{Penitential} c. 15 188; c. 16 188-89; c. 17, 189; c. 18 189; c. 19 189-90; c. 20 190; and 21, 190-91.

\textsuperscript{67} \textit{Penitential}, c. 118, 280.23-25: "(...) omne anathema est excommunicatio, sed non convertitur. Omnis enim fraterna societate separatio excommunicatio est (...). \textit{Id.}, 32-33: "Anathema uero est condemnatio, siue a Deo separatio".

\textsuperscript{68} Kuttner – Rathbone, 'Anglo-Norman Canonists' (note 2) 295, note 24. On excommunication, see Elizabeth Vodola, \textit{Excommunication in the Middle Ages} (Berkeley 1986).

\textsuperscript{69} \textit{Penitential} c. 5 177.16-23: "Nec potest quis Deum diligere nisi diligat et proximum. (...) Premissa omnibus sunt ad salutem necessaria."
injunction in the pastoral context of penance and confession. Conversely, on the topic of sin, his dicta to chapter 134 interpret a passage from Gregory the Great on the journey from the least to the greatest sins. This journey begins with pride, with its contempt of God and delight at sinning. The journey ends, however, at its extreme when the sinner lives to sin always, not just now and then. It is tempting to label this use of Scripture as an early exemplar of the thirteenth-century ‘moral’ theology of a Robert of Courson or the ‘practical’ theology of a Thomas of Chobham. The preceding study is too provisional to support such a claim. It is, rather, suggestive of a trend in the mid- to later-twelfth-century among men trained in law and theology to apply their skills ex professo in a pastoral-practical context. Indeed, Leonard Boyle and Augustine Thompson labelled penitentials and confession instruction manuals of the mid-twelfth and early thirteenth-century ‘pastoral’ writings and ‘practical’ theology. This tendency is exemplified in Bartholomew’s use of the phrase pastoral prudence (pastoris prudentia), by which the confessor exercises his judgment (arbitrium) in the dispensing of penance. This is surely a conscious parallel to the term jurisprudence (iurisprudentia), used of the decretists and glossators, to indicate their knowledge of both divine (i.e. canon) and human (i.e. Justinianic Roman) law, namely the ius commune. This phrase captures something of the uniqueness in Bartholomew’s work, as I will explain.

It has been commonplace to refer to the interaction of medieval law and theology as premised on the shared treatment of subject matter relating to sacramental (such as marriage) or ecclesiological matters (liturgy, orders). At a far more concrete and practical

70 Penitential c. 134 296.26-28: “Tunc uero ex contemptu Dei et delectatione peccati incipit superbus et miser desiderare non solum diu, sed et si fieri posset, semper, uiuere ut posset semper peccare.”


72 Dig. 1. 1. 10. 2; Inst. 1. 1. 1: “Iuris prudentia est divinarum atque humanarum rerum notitia, justi atque injusti scientia.” I am indebted to Professor Goering for bringing this point to my attention.

level of this interaction, however, John Van Engen has argued that canonists were ‘practical theologians’; he demonstrates that canonists had as their focus the casus, which they had to resolve.74 The casus was the beginning of a lecture on a given lex, canon, or decretal which contained a summary of the contents of that particular text, that is, an outline of the facts underlying the decision and the ruling itself. The casus began as a gloss, but later became detached so as to provide practitioners and students with a handy survey of leges or capitula.75 A related approach was taken by John Baldwin, in the context of twelfth- and early thirteenth-century scholastic theologians and lawyers in the Parisian scholastic milieu.76 His study challenged the type-casting of scholasticism as a learned and academic, yet wholly abstract, method. Instead, Baldwin’s study reveals that these schoolmen applied legal and theological principles to resolving everyday problems and conflicts in Parisian political and social life, notably to conflicts in the schools, the courts, and in business (e.g., usury).77 Elsewhere, I have made similar findings in my own recent analyses of the ex professo applications of law or theology or both in the works of Anglo-Norman figures such as Master Vacarius (c.1115/20-c.1200), Gilbert Foliot (c.1105/10-1187), and Peter of Blois ‘the Younger’ (1125/30-121).78 These writers, I argue, like Bartholomew, applied their learning in the law to matters that were, strictly speaking, outside law. But despite this supra-legal application to theology, sacramental, or ecclesiological matters, the link to law was clear in that the overriding aim was to resolve conflict through pragmatic, practical, pastoral means by means of a discourse that crossed between these higher disciplines of law and theology.

76 Baldwin’s approach most likely built on similar comments by M. Grabmann, Die Geschichte der scholastischen Methode I-II (1909-1911; repr. Darmstadt 1957) II 476-501.
77 Compare Biller’s work in the context of medieval population and birth control: P. Biller, Measure of Multitude (Oxford 2000); also see J. T. Noonan, Jr., The Scholastic Analysis of Usury (Cambridge, MA 1957).
## APPENDIX

**Bartholomew of Exeter’s Personal Dicta to his Penitential**

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