

**Birgit Kynast, Tradition und Innovation im kirchlichen Recht. Das Bußbuch im Dekret des Bischofs Burchard von Worms, Ostfildern (Jan Thorbecke Verlag) 2020, 541 S. (Quellen und Forschungen zum Recht im Mittelalter, 10), ISBN 978-3-7995-6090-0, EUR 68,00.**

rezensiert von | compte rendu rédigé par  
**David L. d'Avray, London**

Burchard of Worms' canon law compilation, his »Decretum«, was an enormously popular book in the generation before the »papal turn« in the third quarter of the 11<sup>th</sup> century. Early medieval historians have recognized its importance and recently a major project to study it received the kind of funding that only in Germany flows to collective investigations in the field of the humanities. In the meantime, Kynast had the detailed study of Burchard's sources by Rudolf Pokorny and Hartmut Hoffmann at her disposal.

Kynast's book is the product of another characteristic feature of universities in the German-speaking world: a dissertation published without much revision. That can happen elsewhere too, but it is more common to spend a few years revising the work. Conversely, German, Austrian and Swiss students are under less formal pressure to finish by a certain deadline, and can take the time to write their dissertations with publication in mind. Historically, publication often used to take the form of bound xeroxed copies sent to every university library, but the dissertations judged to be best were, and still are, accepted into academic series run by professors who have publication subsidies within their gift. Whereas the typical »book of the thesis« in the Anglophone world emerges from a dissertation with a strict word limit, and any tendencies to expand in the process of revision are controlled by the cost considerations of publishers who do not get subsidies, in the German *Sprachgebiet* very large volumes like Kynast's can be sold at rather reasonable prices. Given the expectation of a subsidy and the respect for length (the cult of brevity may be specific to British historians – it certainly does not exist in Germany, and especially not in France where the »j'ai fait mille pages, c'est le plus sûr« spirit has survived the demise of the old state doctorate), published dissertations can grow large. This one grew to 541 pages. Another contrast with the Anglophone world is that these hefty volumes can emerge from almost any German university – whereas in Britain only a handful of universities train substantial numbers of the kind of doctoral students whose theses are likely to turn into books. Most German universities have research level libraries (not the case in the UK), and there is no hierarchy of universities comparable to those of Britain and the USA. In recent years the Technische Universität Dresden, Erlangen-Nürnberg, and Wuppertal – there are other examples – have been leading centres



Herausgegeben vom Deutschen  
Historischen Institut Paris |  
publiée par l'Institut historique  
allemand



Publiziert unter | publiée sous  
[CC BY 4.0](https://creativecommons.org/licenses/by-nc-sa/4.0/)

of medieval research. It can happen wherever there are inspiring professors. Kynast was trained in Bayreuth, and this book does her alma mater credit.

The first part of the book is a study of the »life and times« of Burchard, drawing on a good knowledge of the sources and the secondary scholarship (so apart from anything else this is a useful general introduction to Burchard's world and works, including one on secular law, the *Hofrecht*). This background is important for understanding the *Sitz im Leben* of the »Decretum«. It was intended to meet a need he knew from the experience of training young clerics in his diocese. There is a contrast here with a key source, the collection by Regino of Prüm, which was for bishops rather than priests.

Much of the body of Kynast's book is a detailed account of the »questions« part of the »Decretum«, with references to manuscripts together with the corresponding column of the »Patrologia Latina«. There is no need to summarise the description here. Though a good deal of the book is descriptive, (so that an adequate summary of it would almost be a repetition of it), Kynast does have a thesis, spelled out towards the end. Within the *topos* that the »Decretum« is a combination of tradition and innovation, there is a more specific and interesting argument: Kynast argues that the »Decretum« did something new by not just inserting, but thoughtfully integrating a penitential questionnaire – for the use of priests – into a canon law collection. She emphasizes the canon law tradition as a source, somewhat relativizing the »Decretum«'s debt to the bible.

For her, the focal point of the »Decretum« is chapter 5 of Book 19, the questions to put to penitents. Analysis of this chapter can reveal the aim and *modus operandi* of the work as a whole. She examines the questionnaire and its sources in great detail. Kynast's aim is to see how the canonical sources behind the questionnaire meshed with the social and religious situation of Burchard's own time – how the tradition was reworked to make it fruitful for new contexts. Her key methodology is to trace back each question to the authorities in the rest of the »Decretum« on which it was based, to show how Burchard worked in constructing the questionnaire and what he was trying to do.

After the long overall description of the contents of the interrogatory section, there is a much more detailed discussion of the subset that deals with killing. It would be otiose to rehearse her blow-by-blow account of this section, but anyone interested in the detail of penances for the different kinds of homicide will find plenty of it here. For instance, she criticizes historians who have found or overstated anti-Semitism, and she shows how gravely the killing of a cleric was regarded, well before the Gregorian Reform. The weight of the penance corresponds interestingly to the hierarchy of minor and major clerical orders.



Herausgegeben vom Deutschen  
Historischen Institut Paris |  
publiée par l'Institut historique  
allemand



Publiziert unter | publiée sous  
[CC BY 4.0](https://creativecommons.org/licenses/by/4.0/)

To apply the methodology, she has to use manuscripts whose erasures, interlinear and marginal glosses give us insight into the genesis of the »Decretum« (she also works from manuscripts when comparing Burchard's text with his sources). There are key manuscripts whose provenance is Worms. In any case the printed editions are pre-critical (as noted above, there is now a well-funded project which will put that right). Key manuscripts are BAV Vat. Pal. Lat. 585 and 586, which constitute a working manuscript (*Arbeitsexemplar*), if not the »original« (which is a dubious concept with this kind of transmission anyway).

Methodology and the general argument aside, the reader learns or is reminded of many interesting specifics. Anyone who wanted to know what Burchard had to say on a given issue – e. g. female sexuality, non-Christian beliefs and practices, on both of which there is vivid detail – would find this a useful reference work. Interesting for the history of celibacy is an interrogation (no. 90) implying that it was a sin to »refuse« to hear mass said by a married priest, or to refuse to receive communion from him or to confess to him. It should be said that the status of married priests was actually unclear at this point: the old Church law, according to which a cleric could marry but was supposed to give up sex after he reached the rank of deacon, had not been abolished, but a feeling against marriage among priests was growing, probably because in a rural society, where the priest lived on his own with his wife, it was assumed that they were having sex. The law had been formulated in an urban Roman context where clerics and their wives lived in towns and in sufficient numbers for the mechanisms of social pressure to have an effect. This question suggests that the kind of lay feeling against married clergy that manifested itself among the Pataria in Milan in the early days of the »papal turn« had quite deep roots.

Kynast shows how much emphasis intention received in assessment of the gravity of sin – long before Abelard. Public penance, though represented in the »Decretum«, is not prominent in the questionnaire. We learn what »fasting« meant in »tariff« type penances. It did not always mean total abstinence. What kinds of food and drink one had to give up depended on the gravity of the sin. For the most part, fasting was mostly restricted to Monday, Wednesday, and Friday. It is possible that this applied even to the *carena*, a penance of forty days with a very strict kind of fast: bread and water only. This would often be the prelude to a longer milder fast.

Teachers of medieval English history have long been puzzled by the penance administered to the winners of the battle of Hastings, for causing death. Kynast's analysis shows that behind this lay a tradition of penance for killing in war, even a just war, and for carrying out a legal death penalty. The feud is rejected. The very severe penance for killing a cleric, mentioned above, is relevant background to the ferocious canon of the Second Lateran Council on the same.



Herausgegeben vom Deutschen  
Historischen Institut Paris |  
publiée par l'Institut historique  
allemand



Publiziert unter | publiée sous  
[CC BY 4.0](https://creativecommons.org/licenses/by/4.0/)

The date of Burchard's »Decretum« means that this study cannot settle the polite dispute between Sarah Hamilton and Alexander Murray about penance in the early Middle Ages. Hamilton is a maximalist, but Murray too thinks that the origins of the system, for whose novelty he argues, goes back to around Burchard's time. But Burchard's »Decretum«, as we meet it through this book, appears to reveal a functioning penitential system around 1000 CE. The »Decretum« reflects the system, and surely helped to enable it by providing guidelines for priests. How far some of the severer penances could really be implemented, and how penances for killing interacted with secular law, are (*nisi fallor*) questions not extensively addressed (though there is some discussion of the intersection of the two kinds of norms on p. 316–317, p. 353–354, and p. 365, and of whether penances for killing clerics could actually be applied on p. 362 and p. 366). While nobody will blame Kynast for not drawing comparisons with later periods, given that this is a doctoral thesis, at some point historians should systematically confront the rich if normative detail she provides with the even richer detail that can be obtained from the formularies and registers of the Apostolic Penitentiary. Her book will facilitate such comparisons and has much value in its own right.



Herausgegeben vom Deutschen  
Historischen Institut Paris |  
publiée par l'Institut historique  
allemand



Publiziert unter | publiée sous  
[CC BY 4.0](https://creativecommons.org/licenses/by/4.0/)