'Alienated from the womb':

abortion in the early medieval West, c.500-900

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I, Zubin Mistry, confirm that the work presented in this thesis is my own. Where information has been derived from other sources, I confirm that this has been indicated in the thesis.

Signed:

ABSTRACT

This thesis is primarily a cultural history of abortion in the early medieval West. It is a historical study of perceptions, rather than the practice, of abortion. The span covered ranges from the sixth century, when certain localised ecclesiastical initiatives in the form of councils and sermons addressed abortion, through to the ninth century, when some of these initiatives were integrated into pastoral texts produced in altogether different locales. The thesis uses a range of predominantly ecclesiastical texts – canonical collections, penitentials, sermons, hagiography, scriptural commentaries, but also law-codes – to bring to light the multiple ways in which abortion was construed, experienced and responded to as a moral and social problem.

Although there is a concerted focus upon the ecclesiastical tradition on abortion, a focus which ultimately questions how such a tradition ought to be understood, the thesis also explores the broader cultural significance of abortion. Early medieval churchmen, rulers, and jurists saw multiple things in abortion and there were multiple perspectives upon abortion. The thesis illuminates the manifold and, occasionally, surprising ways in which abortion was perceived in relation to gender, sexuality, politics, theology and the church.

The history of early medieval abortion has been largely underwritten. Moreover, it has been inadequately historicised. Early medieval abortion has been rendered strangely familiar because it has been approached through alien concepts and assumptions, whether pre-medieval, later medieval or modern. Through vigilance against conceptual dangers, a thoroughgoing and sometimes microscopic approach to reading and contextualising early medieval sources, and an interest in bringing the history of abortion into conversation with other areas of early medieval historiography, the thesis seeks to historicise perceptions of and responses to abortion in the early medieval West.

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ACKNOWLEDGMENTS

INTRODUCTION

Introductions often explain how germinal ideas came to full fruition and perhaps some research projects truly unfold in the manner of divine creation. Under the seamless guidance of a loving creator, the entire progression from conception of the seed to the emergence of perfected form follows a divine plan: "Before I formed you in the womb I knew you" (Jeremiah 1:5). This research project was not one of them. In retrospect, the embryonic idea for research (and a phrase which we will encounter, *male conceptus*, springs to mind) looks very different. The manner in which this embryonic idea metamorphosed introduces the deeper aims of this thesis more clearly than a disingenuous *imitatio Dei*.

Originally, abortion and contraception in the early medieval West were the means to an end within a twofold division of labour: to look at attitudes towards abortion and contraception in this murky period and to situate within specific modern contexts the ways in which these attitudes have been written up in histories of birth-control. In a sense, the aim was to examine the historical memory, rather than the history, of early medieval abortion. For example, this memory has been contested in modern Catholic discourse, especially intra-Catholic debate on the morality of abortion and contraception in the USA from the 1960s to the present day.[1] Several historical studies and works with historical sections were written very much within this context.[2]

But the research encountered two problems. In addition to works written in a Catholic milieu and aside from a clutch of focussed studies[3], the relevant historiography largely constituted a mix of diachronic histories of birth-control[4] and historical studies

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[1] See Daniel Maguire and James T. Burtchaell, 'The Catholic Legacy and Abortion: A debate', in S.E. Lammers & Allen Verhey (eds.) *On Moral Medicine: Theological perspectives in medical ethics* (Grand Rapids, 1998) pp.586-599.

[2] The best known example is John T. Noonan's still magisterial but slightly dated *Contraception: A history of its treatment by the Catholic theologians and canonists* (Cambridge, Mass. 1965) along with his historical essay on Christian attitudes to abortion, 'An Almost Absolute Value in History', in id. (ed.) *The Morality of Abortion: Legal and historical perspectives* (Cambridge, Mass. 1970) pp.1-59. Other examples include Germain Grisez, *Abortion: The myths, the realities, and the arguments* (New York, 1970), John Connery, *Abortion: The development of the Roman Catholic perspective* (Chicago, 1977), and Daniel A. Dombrowski and Robert Deltete, *A Brief, Liberal, Catholic Defense of Abortion* (Chicago, 2000).

[3] E.g. Evelyne Patlagean, 'Sur la limitation de la fecondité dans la haute époque byzantine', *Annales ESC* 24 (1969) pp.1353-1369, Jean-Louis Flandrin, 'Contraception, Marriage, and Sexual Relations in the Christian West', in id. *Sex in the Western World: The development of attitudes and behaviour* (Reading, 1991) pp.99-116.

[4] E.g. Angus McLaren, *A History of Contraception: From antiquity to the present day* (Oxford, 1990), Robert Jütte, *Contraception: A history*, trans. Vicky Russell (Cambridge, 2008). See chapter one on the works of

on other subjects.[5] Two noticeable tendencies were an interest in practice rather than perceptions and the limited coverage of early medieval abortion. The focus was inevitably upon the ecclesiastical tradition of condemnation. But in these histories the early medieval world was very much a dark age, obscured by an overwhelming patristic shadow and little more than a conduit along which a sealed moral doctrine was conveyed to scholastic thought:

> In the period from 450 to 1100, when monks and bishops were the chief transmitters of Christian moral ideas, the teaching on abortion was reiterated…The early Christian and patristic attitudes were faithfully preserved in the various channels communicating the teaching of past authority and instilling its observance.[6]

Or, more starkly:

> One might have imagined that in the thousand years after Augustine there would have been some important development in the Christian doctrine concerning abortion. As a matter of fact, there does not seem to have been much development…The received moral teaching was accepted, preached, and backed up with discipline. Not much seems to have been done to articulate and consolidate the variety of precepts.[7]

At the same time, it became clear that the early medieval texts and contexts appeared to warrant far closer scrutiny than these histories provided. Some sources (e.g. penitentials) were either underused or marginalised from broader narratives of traditional continuity, while others (e.g. 'abortion miracles' in hagiography) did not enter into these histories at all. The sources hinted at dynamics scarcely developed in the historiography. The early medieval West was precisely when condemnation of abortion was integrated into ecclesiastical and political programmes for clerical education, pastoral ministry and the forming of Christian communities. Churchmen actively negotiated the problem of abortion and developed practicable traditions of condemnation. Moreover, the cultural significance of abortion in early medieval societies was broad, intricate and marked by notes of consonance and dissonance. Early

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John Riddle. Studies focussed on later centuries, like Jean Claude Bologne, *La naissance interdite: sterilité, avortement, contraception au Moyen Age* (Paris, 1988), contain some relevant treatment too.

[5] E.g. Jean-Louis Flandrin, *Un temps pour embrasser: aux origines de la morale sexuelle occidentale (VIe-XIe siecle)* (Paris, 1983), John Boswell, *The Kindness of Strangers : The abandonment of children in Western Europe from Late Antiquity to the Renaissance* (London, 1988).

[6] Noonan, 'Almost absolute value', pp.18-19.

[7] Grisez, *Abortion,* p.150.

medieval abortion had been underwritten, decontextualised and apprehended through alien concepts, and it cried out to be written up as an early medieval history. The original idea of examining historical memory had given way to a cultural history of early medieval abortion.

There is one significant exception to the historiographical gap. In a series of articles published over the past decade, Marianne Elsakkers has examined early medieval birth-control.[8] Her published work concentrates particularly on early medieval law-codes, though she also discusses ecclesiastical sources, and her interest is in practice as much as perceptions. Elsakkers' work has been a vital guide through the sometimes complex relations between medieval sources and modern editions as well as a consistent source of inspiration. Several chapters of the thesis are indebted to her excavation of sources. At the same time, the thesis departs from her readings of specific sources and an implied picture of attitudes. For example, early medieval sensitivity to women's health or *de facto* tolerance of early-term abortion will be far less prominent in this history than they are in Elsakkers' for reasons which will become clear. If parts of the thesis are written *pace* Elsakkers, awareness of disagreement ought not to be taken as unawareness of debt. Ultimately, however, my divergences from Elsakkers' undoubtedly important work are not simply about different readings of sources but also about a conviction that early medieval abortion is too often insufficiently historicised. Historicising must combine a thoroughgoing contextualisation of early medieval perceptions with a sustained suspicion that these perceptions are easily distorted by apprehension through alien concepts (whether later medieval or modern). Peter Biller has drawn attention to the cognitive hazard of "dangerous modern vocabulary" in the historical study of birth-control. Seemingly innocuous words like contraception, birth-control etc. are embedded in a specific and recent "thought-world" and "insidiously imply past possession of these categories, past capacity to think similarly".[9] Premodern ideas about conception, embryogenesis and pregnancy do not simply correspond to modern ideas or, for that

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[8] Earlier this year, Elsakkers' dissertation at the university of Amsterdam, *Reading between the Lines: Old Germanic and early Christian views on abortion*, was published online (to avoid a long web address, search for "Elsakkers" at http://www.dare.uva.nl). Several of her published articles form part of the dissertation but previously unpublished material, including on penitentials and early medieval herbals, is embargoed until 2012. Unfortunately, her 'The Early Medieval Latin and Vernacular Vocabulary of Abortion and Embryology', in Michele Goyens et al. (eds.) *Science Translated: Latin and vernacular translations of scientific treatises in medieval Europe* (Turnhout, 2008) pp.377-413 (not included in the dissertation) only came to my attention in the very final stages of writing.
[9] *The Measure of Multitude: Population in medieval thought* (Oxford, 2000) p.137.

matter, to one another. The same, as we shall see, holds true of moral and social attitudes to abortion.

The thesis has two broad aims. First, to provide a contextualised history of the ecclesiastical tradition on abortion in the early medieval West. 'Tradition' remains useful if we eschew a static picture of impervious doctrine and embrace a more dynamic picture in which traditions are "historically extended, socially embodied argument[s]" sustained by "continuities of conflict".[10] This tradition was enacted, worked out and even created in localised attempts to educate the clergy for pastoral ministry. If there was development over time, it lay in pastoral and pedagogical practices rather than moral theories, and ultimately in the growing integration of condemnation of abortion within the textual tools for creating Christian communities. The second broad aim is to illuminate the cultural significance of abortion. Attitudes and perceptions were not coloured in a monochrome scheme. There were multiple perspectives upon abortion in the sense of different ways of seeing (with inevitable blindspots) rather than distinct moral positions. This exploration of cultural significance requires contextualising the customary sources of such histories and also integrating sources which often lie outside such histories. It also entails using abortion as a peculiar window upon early medieval culture and bringing the history of abortion into more sustained conversation with other areas of early medieval historiography. Indeed, in the final chapter, abortion will be central to a proposed revision in received narratives of an important ninth-century political episode. Given the historicising spirit, the thesis will have succeeded in some measure if the reader finds early medieval abortion to be less familiar than anticipated.

These dual elements, contexts and concepts, merit a few more words. During the course of research, a variety of secondary works intersecting several disciplines have been influential. Modern abortion debate has a strange familiarity about it. Dispute has solidified into distinct idioms of bodily autonomy or foetal humanity, idioms as immediately recognisable as they are seemingly irreconcilable.[11] Anthropological and historical work on social debate over abortion, particularly on contemporary 'pro-life' and 'pro-choice' activism in the USA and anti-abortion rhetoric in historical perspective,

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[10] Alasdair MacIntyre, *After Virtue: A study in moral theory* (London, 1985) pp.204-225 (at p.222). The scale at which MacIntyre conceives of traditions is broader than my use but there are ambiguities of scale in his own thought on traditions: c.f. Jean Porter, 'Tradition in the Recent Work of Alasdair MacIntyre', in Mark C. Murphy (ed.) *Alasdair MacIntyre* (Cambridge, 2003) pp.38-70.

[11] C.f. Elizabeth Mensch and Alan Freeman, *The Politics of Virtue: Is abortion debatable?* (Durham, NC: 1993).

shows, however, the complex and mutable concerns which underlay this discourse, from diagnoses of gender relations to diagnoses of national malaises, from political identities to religious identities. Abortion is never just about women and/or foetuses, or the narrow set of questions studied by philosophy undergraduates in applied ethics courses.[12]

Second, ethnographic and anthropological studies of birth-control at the micro-level have shown how macro-studies of birth-control in both contemporary and historical perspective can neglect social and cultural particularity.[13] Even in contemporary societies in which birth-control has been promoted in consort with international agencies, the social significance of abortion and related practices varies considerably. In modern Israel, for example, official Israeli reproductive initiatives operate against a backdrop of differential birth-rates among Jews and Arabs, while the experience of Palestinian women has been further influenced by two distinct discourses: a discourse of modernisation which idealises small families and problematises the birth of 'deformed' children as 'primitivism', and a contrasting discourse of "romanticised traditionalism" which valorises larger families.[14] The basic commonality of these micro-studies is that, even when introduced in a 'top-down' manner, the meaning of birth-control is rooted in particular social and cultural forms. As Mary Douglas once put it, if abortion, contraception and infanticide are sometimes about "bread and butter", they can also be about "caviar and champagne": that is, such practice may sometimes be about material resources and apprehended in something approaching Malthusian terms, but can also be about social resources, prestige and power.[15] The upshot of these micro-studies is that the practice of abortion and, crucially, perspectives upon such practice are as easily obscured as they are apprehended by uncritical assumptions about what historical populations saw and did not see in abortion. Simply assuming that individual empowerment or bodily autonomy underlies such practice (and, in a negative sense, opposition to it) is complicated by societies in which social norms are governed by

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[12] On abortion activism, see Faye D. Ginsburg, *Contested Lives: The abortion debate in an American community*, updated edition (Berkeley, 1998) and Michael W. Cuneo, *The Smoke of Satan: Conservative and traditionalist dissent in contemporary American Catholicism* (Oxford, 1999). For broader historical perspectives, see Nathan Stormer, *Articulating Life's Memory: A study of nineteenth-century U.S. medical antiabortion rhetoric* (Lanham, 2002).

[13] Matthew Connelly, 'Population Control is History: New perspectives on the international campaign to limit population growth', *Comparative Studies in Society and History* 45.1 (2003) pp.122-147.

[14] Rhoda Ann Kanaaneh, *Birthing the Nation: Strategies of Palestinian women in Israel* (Berkeley, 2002) at p.255.

[15] 'Population Control in Primitive Groups', *British Journal of Sociology* 17.3 (1966) pp.263-273.

notions of public shame and visibility.[16] Similarly, the social afterlife of specifically religious ideas is complex. Many contemporary Ecuadorian women might see the foetus as a 'person' shaped by divine providence from conception, worry about or, alternatively, dispute the nature of *auca*, the wandering spirits of the unbaptised, and yet also see abortion primarily as a sin of 'self-mutilation' rather than 'other-mutilation'.[17]

Finally, a number of highly stimulating historical studies of medical and religious embryologies have been published since my research began.[18] The historical focuses vary considerably – medieval Buddhism, early twentieth-century embryo-collectors, Rabbinic Judaism – but these work are characterised by historicist awareness, sensitivity to different kinds of embryological epistemologies, and an awareness that the connection between embryologies and the question of abortion is not straightforward in the manner suggested by modern positions on abortion argued 'with embryology on our side'.[19] To speak about the foetus or unborn child is not necessarily to speak about abortion. The influence of these works upon my own has been twofold. In the following chapters, I have been wary of using embryological texts to 'fill in the gaps' and have ultimately steered clear of attempting to answer what effect, if any, the central foetal narrative in medieval religion, beginning with Gabriel's annunciation of Christ's conception to Mary, had on ways of understanding abortion. Indeed, as we shall see, the embryological text, a decidedly Christological one at that, which can be placed in closest proximity to a relevant early medieval prescriptive text problematises this 'fill the gaps' approach. At the same time, recent interest in foetal symbolism, or 'imagining the foetus', has prompted an engagement with *aborsus* symbolism, or 'imagining the *aborsus*'.[20]

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[16] C.f. Wolf Bleek, 'Avoiding Shame: The ethical context of abortion in Ghana', *Anthropological Quarterly* 54.4 (1981) pp.203-209, Heather Paxson, *Making Modern Mothers: Ethics and family planning in urban Greece* (Berkeley, 2004) pp.60-62.

[17] Lynn M. Morgan, 'Imagining the Unborn in the Ecuadorian Andes', *Feminist Studies* 23.2 (1997) pp.322-350.

[18] Frances Garrett, *Religion, Medicine and the Human Embryo in Tibet* (London, 2008), Lynn M. Morgan, *Icons of Life: A cultural history of the human embryo* (Berkeley, 2009), and Gwynn Kessler, *Conceiving Israel: The fetus in Rabbinic narratives* (Philadelphia, 2009).

[19] The work of the historian Barbara Duden has influenced Kessler and Morgan. Duden has historicised embryology, especially in the study of early modern medicine, partly in order to illuminate the historical peculiarity of modern discourse on abortion: see her *Disembodying Women: Perspectives on pregnancy and the unborn*, trans. L. Hoinacki (Cambridge, Mass., 1993) and 'The Fetus on the "farther shore": Towards a history of the unborn', in Lynn M. Morgan and Meredith W. Michaels (eds.) *Fetal Subjects, Feminist Positions* (Philadelphia, 1999) pp.13-25.

[20] See the interdisciplinary essays in Vanessa R. Sasson and Jane Marie Law (eds.) *Imagining the Fetus: The unborn in myth, religion, and culture* (Cambridge, 2009).

This condensed overview of selected academic work on abortion presages a sensibility rather than a single theoretical key, an openness to apprehending the unfamiliar and a wariness of miscomprehending through the familiar. The principal modus operandi will be to mount intense readings of sources to understand early medieval perspectives on abortion. Many of these sources are derivative, generic and shorn of individual personalities. But, close textual and contextual analysis especially of prescriptive texts together with an appreciation of a consistent limitation which ought to be taken as implicitly acknowledged throughout – namely that these were 'official' forms of discourse authored by men – illuminates fluctuating ways in which abortion was understood in relation to gender, sexuality, chastity, magic, murder, the body politic and the body of the church. We will also encounter multiple perspectives on abortion borne of different practices. Abortion did not always signify the same set of problems and was not always spoken about in a univocal way: the aborted foetus was literally "alienated from the womb" of its mother, while the sinner, including the aborting woman, was "alienated from the womb" of the mother church.[21] The resulting kind of history is not so much an exposition of an early medieval *mentalité* as a cultural history punctuated by microhistorical moments. Indeed, though this thesis is not straightforwardly a work of microhistory, the research slowly became animated with an affinity to a simple but crucial idea in microhistory: "microscopic observation will reveal factors previously unobserved".[22] The significant connection between abortion and fornication by the chaste, religious or clerical, and the peculiar manner in which abortion was, in certain contexts, politicised will count, I hope, among the fruits of this sensibility.

The thesis falls into three parts. Chapters one and two form a set of anticipatory prolegomena. Neither chapter is a straightforward history of premedieval abortion. Both are highly selective surveys which anticipate key themes and questions. Chapter one uses critiques of John Riddle's revisionist history of premodern birth-control and a selective sampling of classical and late antique medical texts to demonstrate the importance (and difficulty) of historicising ancient and medieval reproductive technologies, and contemporaries' perceptions of these technologies. Chapter two turns to moral

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[21] Symbolic abortion is discussed in chapter eight.
[22] Giovanni Levi, 'On Microhistory', in Peter Burke (ed.) *New Perspectives on Historical Writing*, second edition (Cambridge, 2001) p.101. I am grateful to Antonio Sennis for helping me to see my research in this light.

discourse, specifically the multiple ways in which abortion was construed as a problem in Roman society and, especially, early and late antique Christianity.

Chapters three to six form the central core and chart how concerns over abortion were increasingly integrated into clerical education and pastoral practice between the sixth and ninth centuries. They are focussed upon the praxis of the ecclesiastical tradition on abortion. Emphasis will be placed upon the range of moral and social concerns with which abortion was tangled, the ambiguities with which it was hedged and the active deliberation which early medieval churchmen brought to bear upon these questions. The chapters are in chronological order but operate at different scales according to the relevant sources.

The sixth-century sermons of Caesarius of Arles are the focus of chapter three. Caesarius is no stranger to histories of abortion principally because of one resonant sentence with which he recurrently condemned abortion. But the complex and idiosyncratic way in which he construed and addressed the problem of abortion has been little studied. We will imagine the sermons as both performative texts for lay audiences and pedagogical texts for clerical readers.

In chapter four, we turn to sixth- and seventh-century Spain. Both before and after formal conversion from Arian to Catholic Christianity in 589 Visigothic Spain formed the setting for different forms of 'official' discourse on abortion. There were local and national councils addressing abortion in strikingly different ways, the layered development of legal approaches to abortion and two unusual interventions by early medieval rulers on the subject. We will see how religio-political and pastoral discourses both converged and diverged in addressing abortion.

Chapter five examines the origins and evolution of abortion canons in the penitentials. The chapter is premised upon the conviction that study of abortion in the penitentials has not made use of the opportunities presented by scholarly developments since the 1980s. Used with requisite methodological care, the penitentials can be profitably read in more than one way. In chapter five, we will scrutinise and situate the points of origin for a number of recurrent abortion canons in the sixth and seventh centuries, and then how these canons were subsequently used by compilers and encountered by readers in the eighth and early ninth century.

Turning to the context of Carolingian reform, chapter six is the culmination of the focus on unfolding tradition. Reform provided a fundamental framing principle in

certain narratives produced by Catholic theologians by which a highly specific historical memory was formed. Chapter six will use a critique of this narrative as a springboard to examine the complex deliberation upon abortion in Carolingian canonical collections and penitentials, the process by which a tradition of condemnation was forged and the ways in which ecclesiastical authors sought to make authority work, to make the tradition on abortion practicable.

Pastoral and canonical sources were written in cultures capable of seeing abortion from multiple perspectives borne of different practices and in the final part of the thesis we turn to these alternative perspectives on abortion. The aim is not a simplistic plotting of 'positions' on abortion in relation to the ecclesiastical tradition. Rather, these perspectives reveal much about the very culture in which this tradition unfolded.

Chapter seven examines early medieval law-codes. It seeks to identify the perspectives from which these codes approached abortion and problematise the ease with which they are read for attitudes to abortion.

The material for the final two chapters is rather different and has scarcely entered historiographical discussion of abortion. Chapter eight shows that scripture was not silent on abortion in the early medieval West. It examines an eclectic series of theological and scriptural texts for their discussions and rhetorical uses of the *aborsus,* the product of miscarriage or abortion. These texts were not primarily addressing the morality of abortion, but they spoke about the *aborsus* far more eloquently than prescriptive texts because the *aborsus* was rich with symbolic possibility and conceptual difficulty.

And in chapter nine, we turn to the handful of early medieval representations of abortions. These representations are odd and distinctive. They take the form of two very different kinds of miracles related to abortions in early medieval hagiography and an accusation of abortion in the forementioned ninth-century episode, the divorce case of Lothar II and Theutberga. Precisely because they are odd and distinctive, these representations are keys to historicising early medieval abortion.

1.

ENVISAGING PRACTICE:
THEMES IN THE HISTORY OF ABORTION

These opening two chapters use the history and historiography of abortion to signal important precursors, contrasts, and conceptual and methodological questions. The surveys are selective and thematically anticipatory, and draw upon medical, social and cultural history. Grasping the distinctiveness of early medieval abortion requires some awareness of what abortion signified and why it was problematic in earlier centuries. The surveys also testify to an important historiographical difference: ancient and late antique society has a relatively developed secondary literature on abortion.

This chapter examines certain aspects of abortion and the history of medicine. Historically, early medieval reproductive technologies were rooted in the classical past, and we will survey some relevant questions in understanding these technologies. Historiographically, debates about the practice of abortion in premodern societies, especially critiques of positivism in the history of medicine, have brought to light some important issues in understanding these technologies. The ramifications of these debates for cultural histories of abortion, however, have been underdeveloped. This chapter does not aspire to be a history of the practice of abortion in classical and late antique society. Rather, it uses secondary works to indicate problems in envisaging this practice historically and the ways in which it was perceived by contemporaries.

THE DISTORTION OF EFFICACY

Recipes and regimens for provoking abortion or otherwise affecting fertility appeared across classical and late antique medical texts. The principal literary genres were pharmacology and gynaecology, epitomised by Dioscorides' influential first-century pharmacopeia *De materia medica* and Soranus of Ephesus' early second-century *Gynecology*. Numerous other classical and late antique authors like Celsus, Pliny, Galen, Oribasius, Marcellus Empiricus and Aetius gave methods for abortion. These methods most commonly took the form of drinks and suppositories, but also comprised lotions,

physical manipulations, chirurgy and 'superstitious' practices.[1] Certainly since Norman Himes wrote about premodern birth-control in the 1930s historians have tended to be wary about the efficacy and diffusion of these methods, though wariness has addressed the means and ends of birth-control in different ways.[2]

From the early 1990s, however, John Riddle challenged assumptions about premodern birth-control.[3] His work contains three important theses. First, ancient reproductive technologies contained more effective methods of birth-control than historians have recognised. Drawing upon modern research on the biochemical effects of various substances on the fertility of laboratory mice and rats, Riddle has identified identical or similar substances in ancient or medieval medical prescriptions, from which he concludes that modern science verifies the efficacy of these prescriptions as orally ingested contraceptives or early-term abortifacients.[4] Second, this efficacious knowledge was widely diffused and drawn upon in practice. Medical prescriptions represent the tip of a largely undocumented iceberg. This knowledge circulated between women and across generations as "orally transmitted lore, just as one would learn recipes for cooking".[5] Third, this practical knowledge was not only largely retained in the post-Roman world but was also amended and augmented. Riddle's monographs have become standard reference points whenever historians allude to the prevalence of abortion and contraception in ancient or medieval societies. Recently, for instance, in an important overview of early medieval cultural history, Julia Smith combines Riddle's

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[1] Keith Hopkins, 'Contraception in the Roman empire', *Comparative Studies in Society and History* 8.1 (1965) pp.128-34; Plinio Prioreschi, 'Contraception and Abortion in the Greco-Roman world', *Vesalius* 1.2 (1995) pp.77-87; Susan Dowsing, 'Contraception and Abortion in the Early Roman Empire: A critical examination of ancient sources and modern interpretations' (thèse de maîtrise, University of Ottawa, 1999, web address in bibliography); Konstantinos Kapparis, *Abortion in the Ancient World* (London, 2002) pp.7-31. See Enzo Nardi, *Procurato aborto nel mondo Greco Romano* (Milan, 1971) for excerpts and see below on John Riddle.

[2] Norman E. Himes, *A Medical History of Contraception* (Baltimore, 1936). Historians have generally been more sceptical about contraception than abortion. For a summary of Philippe Ariès' position on premodern contraception, see his 'Sur les origines de la contraception en France', *Population* (French edition) 8.1 (1953) 465-72. Ariès argued that contraception was literally 'unthinkable' and did not form part of the medieval 'mental universe'. The thesis is mistaken, on which see Peter Biller, 'Birth-control in the West in the Thirteenth and Fourteenth Centuries', *Past and Present* 94 (1982) pp.3-5, but it is a more thought-provoking mistake than is sometimes acknowledged insofar as it focuses upon the social and 'mental' contexts of birth-control.

[3] *Contraception and Abortion from the Ancient World to the Renaissance* (Cambridge, Mass. 1992), *Eve's Herbs: A history of contraception and abortion in the West* (Cambridge, Mass., 1997). Other relevant articles by Riddle are noted in the bibliography.

[4] This positivist revisionism was not entirely unprecedented: c.f. Wolfgang Jöchle, 'Menses-inducing Drugs: Their role in antique, medieval and renaissance gynecology and birth-control', *Contraception* 10.4 (1974) pp.425-439.

[5] *Eve's herbs*, p.89.

picture with a prohibition-implies-practice assumption when she notes that "[f]rom the earliest Christian times, churchmen had inveighed in vain against both contraception and abortion, and there is no doubt that common herbs with effective contraceptive and abortifacient properties were well known throughout early medieval Europe."[6]

Riddle's work is an important antidote to extreme scepticism about premodern reproductive technologies. But it has also been subject to important criticism by historians of medicine and demography, criticism which is relevant to cultural histories of abortion. Numerous demographic historians remain unconvinced. Even if modern science verifies the efficacy of premodern reproductive technologies (and, as we shall see, this is equivocal), Riddle's picture of demographically significant abortifacient and contraceptive practice, a picture evoked by allusions to ancient and medieval population shifts as much as argued, is unsubstantiated. For such practices to have a significant demographic effect upon society as a whole, knowledge of effective birth-control has to be employed correctly and regularly on a large scale by willing fertile couples across the social spectrum. This concatenation of assumptions is problematic. It is more plausible that birth-control was practised at certain social locations and scales which insulated its demographic effect: extramarital sexual relations (including prostitution); among the upper class; and, possibly, as a means of spacing births within marriage more generally.[7]

Historians of medicine have critiqued Riddle's work too. In what is effectively a primer in the pitfalls of birth-control history, Helen King has criticised Riddle's insufficient attention to conceptual and methodological problems, an anachronistic alignment of male interests with fertility and female interests with infertility, and neglect of the "shared cultural matrix of doctor and patient which enables…drug[s] to make sense".[8] Riddle's positivist methodology compromises the historical value of his works. Medical prescriptions contained multiple ingredients in differing preparations put to alternative, even conflicting uses, by different authorities. Recipes imply a practical

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[6] Julia M.H. Smith, *Europe after Rome: A new cultural history, 500-1000* (Oxford, 2005) p.70 with reference to Riddle's *Contraception and abortion*, a "fundamentally important discussion", at pp.321-322.
[7] Walter Scheidel, 'Progress and Problems in Roman demography', in Walter Scheidel (ed.) *Debating Roman Demography* (Leiden, 2000) pp.32-46, Bruce W. Frier, 'Natural Fertility and Family Limitation in Roman Marriage', *Classical Philology* 89.4 (1994) pp.318-33, Etienne van de Walle, 'Towards a Demographic History of Abortion', *Population: An English Selection* 11 (1999) pp.115-32, John C. Caldwell, 'Fertility Control in the Ancient World: Was there an ancient fertility transition?', *Journal of Population Research* 17.1 (2004) pp.1-17. I set aside questions of later medieval demography.
[8] *Hippocrates' Woman: Reading the female body in classical Greece* (London, 1998) pp.132-156 (at p.154); see too Monica Green, review of *Eve's herbs*, *Bulletin of the history of medicine* 73.2 (1999) pp.308-311 and id. 'Gendering the History of Women's Healthcare', *Gender and History* 20.3 (2008) pp.487-518.

knowledge and this implicit knowledge lies largely beyond the historian's direct reach. Verifying the biochemical efficacy of substances on the fertility of rats and mice in modern laboratories is not the same thing as verifying the efficacy of the uses prescribed in medical texts or their authors' understandings of efficacy.[9] The reproductive technologies which emerge from reading Riddle's works are decidedly odd, defined by biochemical agency but devoid of human intentionality. Thus, the first-century physician Scribonius Largus' recipe for therapeutic care *after* birth or miscarriage becomes evidence for the efficacy of ancient birth-control because of the biochemistry of some of its ingredients.[10]

The imprimatur of modern pharmacological rationality obscures the practical and conceptual contexts of classical and medieval reproductive technologies. Moreover, attitudes to abortion did not form against a backdrop of reproductive technologies that were efficacious in modern senses nor did these technologies necessarily receive pharmacological approval from contemporaries. In the second century, Galen was scornful about the prescription of many drugs, including some for inducing abortion or sterility. Most were "too weak" and others were simply dangerous, and merely knowing such "risible" drugs tarnished physicians' reputations.[11] Indeed, we will encounter allusions to the dangers of abortion in classical and early medieval moralising.

Scepticism over positivist histories of medicine is not to argue that abortion or means of preventing conception were unknown or unpractised. It is to stress that medical texts propound historical and historiographical ambiguities which are effaced by interpretation through modern categories of efficacy, and that these notes of ambiguity are fundamentally important in framing attitudes to abortion.

THE USE AND ABUSE OF ABORTIFACIENTS

In the first century, Pliny the Elder complained of stark contradictions between two female physicians: "When [Elephantis] says that fertility is brought about by the same

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[9] Vincent Barras, 'La naissance et ses recettes en médecine antique', in Véronique Dasen (ed.) *Naissance et petite enfance dans l'Antiquité* (Paris, 2004) pp.94-101. Riddle's work contains flickering acknowledgment of such problems (e.g. *Eve's herbs*, p.43) but is insufficiently conditioned by them; see King, *Hippocrates' woman,* pp.147-151 for a mini 'case-study' of methodological flaws.

[10] Riddle, *Contraception and abortion*, pp.84-85; see ibid. pp.90-1 for a similarly problematic account of the late fourth-/early fifth-century medical writer Marcellus Empiricus.

[11] *De simplicium medicamentorum temperamentis ac facultatibus* X.1: translated in Kapparis, *Abortion in the ancient world*, pp.15, 29.

methods by which [Lais] pronounces barrenness [is], it is better not to believe them".[12] Beyond his suspicion of female medical authority even in reproductive matters, Pliny was hinting at something significant. Across and even within texts, substances were used in recipes which sought to effect different ends. For instance, while Dioscorides, Galen and Oribasius included the root herb birthwort in abortifacient prescriptions of varying complexity, Pliny listed it as a purgative to draw out menses, afterbirth (i.e. placenta and foetal membranes) or dead foetuses.[13] Clearly not all uses pertained to abortion. Placentae or dead foetuses dangerously retained in the womb were and are an attested health hazard to women.[14] Prescriptions for emmenagogues (i.e. substances for stimulating menstrual flow), which proliferated in medical texts, are more intriguing. The biochemistry of emmenagogic substances correlates with anti-fertility effects.[15] Moreover, amenorrhoea can, of course, be a sign of pregnancy. The consequent temptation is to see emmenagogues as de facto abortifacients.[16] But were emmenagogic prescriptions effectively abortifacient prescriptions? Did they function as a hushed code for abortion?

The importance of menstruation in conceptions of women's health and constructions of female nature suggests otherwise. In Hippocratic medicine, for example, menstruation was essential to female health because menstrual blood drained women's wet and spongy flesh. The absence of menstruation was symptomatic of a variety of female ailments and stimulating menstrual flow was not solely or even primarily about pregnancy.[17] Admittedly, Hippocratic medicine made a great deal about

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[12] *Natural history* 28.81: translated in Amy Richlin, 'Pliny's Brassiere: Roman medicine and the female body', in Laura K. McClure (ed.) *Sexuality and Gender in the Classical World* (Oxford, 2002) p.237.

[13] See Riddle, *Contraception*, pp.39, 85, 89-90 for examples of birthwort's inclusion in both abortifacient and emmenagogic prescriptions. For its use in aiding childbirth, see Michael J. O'Dowd, *The History of Medications for Women: Materia medica woman* (New York, 2001) pp.52, 58, 82, 101, 133.

[14] A seventh-century *vita* of Paul, the sixth-century Byzantine émigré and bishop of Mérida, tells the story of his surgical removal of a dead foetus stuck in the womb of a rich noblewoman: *Lives of the fathers of Merida* (*Life of Paul* 2.11), trans. A.T. Fear, *Lives of the Visigothic fathers* (Liverpool, 1997) p.60 and see Renate Blumenfeld-Kosinki, *Not of Woman Born: Representations of caesarean birth in medieval and renaissance culture* (Ithaca, 1990) pp.123-124. See Stefania Siedlecky, 'Pharmacological Properties of Emmenagogues: A biomedical view', in Etienne van de Walle and Gigi Santow (eds.) *Regulating Menstruation: Beliefs, practices, interpretations* (Chicago, 2001) pp.94-95 for a personal account of an obstetric emergency in the Australian outback because of a deceased, undelivered foetus.

[15] Siedlecky, 'Pharmacological properties', pp.99-109.

[16] As Riddle consistently does: e.g. *Contraception and abortion*, p.32: "*agaricon*…was given as an emmenagogue – that is to say, an abortifacient for practical results".

[17] Lesley Ann Dean-Jones, 'The Cultural Construct of the Female Body in Classical Greek Science', in Sarah B. Pomeroy (ed.) *Women's History and Ancient History* (Chapel Hill, 1991) pp.141-121, Etienne van de Walle, 'Menstrual Catharsis and the Greek Physician', in van de Walle and Santow (eds.), *Regulating menstruation,* pp.3-21.

menstruation. Yet even the classical medical author most critical of conceptually rooting female health in menstruation recognised its multiple significance. For Soranus retention and absence of menses (which he distinguished) could result from age, overexertion, uterine disease or even "mannishness". Moreover, in explaining his position within medical debates on the health benefits of menstruation, Soranus sided with the sceptics. But both sides in the debate took it for granted that menstruation was essential for conception and that menstruation problems denoted fertility problems.[18] In sum, emmenagogues constituted female health aids and, insofar as menstruation was taken to be the "essential prerequisite for conception even more clearly than it was understood to mark the premature end of a pregnancy", conception aids too.[19]

We cannot simply read emmenagogic prescriptions as so much abortion advice. The huge number of prescribed emmenagogues suggests that helping fertility was of equal, if not greater, importance than curbing fertility within these reproductive technologies. Furthermore, emmenagogues problematise the straightforward alignment of fertility with male interests and birth-control with female interests (distinct from the reasonable supposition that women had greater social proximity than men to reproductive matters). Alongside any envisaged picture of women seeking abortions we must place women (and couples) whose hopes of becoming parents were dashed by miscarriage or infertility. In classical times, the fragility and desirability of reproduction was literally inscribed upon curse-tablets threatening sterility and miscarriage, and in amulets which besought myriad divinities, each with specific functions, to assist in the uncertainties of conception and the perils of pregnancy and childbirth.[20]

Two important caveats must be made. Coded prescriptions to abortion can exist, but identifying such codes depends on understanding socio-cultural context rather than modern biochemical knowledge. One precondition for identifying such codes is texts

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[18] *Gynecology* III.6-8, trans. Owsei Temkin, *Soranus' Gynecology* (Baltimore, 1956) pp.132-134; c.f. Joan Cadden, *Meanings of Sex Difference in the Middle Ages: Medicine, science and culture* (Cambridge, 1995) pp.28-29.

[19] Rebecca Flemming, *Medicine and the Making of Roman Women: Gender, nature and authority from Celsus to Galen* (Oxford, 2001) p.163. Gigi Santow, 'Emmenagogues and Abortifacients in the twentieth century: An issue of ambiguity', in van de Walle and Santow (eds.) *Regulating menstruation*, pp.64-92 suggests that understanding amenorrhea primarily as a sign of pregnancy is far more recent than is commonly supposed.

[20] Jean-Jacques Aubert, 'La procréation (divinement) assistée dans l'Antiquité gréco-romaine', in Dasen (ed.) *Naissance et petite enfance*, pp.187-98. An example of the longing for children comes out in a letter Jerome wrote to Pammachius on the virtues of his late wife Paulina (daughter of St. Paula). Multiple miscarriages had told Paulina that she was not incapable of conceiving and she did not lose hope of becoming a parent (*dumque crebris abortiis, ex experta fecunditate conceptuum, non disperat liberos*): *Ep*.66.3, PL 22, col.640.

which give emmenagogic, but not abortifacient, uses for substance. Another is a cultural context in which the production of such codes was necessary and intelligible.[21] Plausible examples, however, do not abound in classical or later medical works.[22] Second, there were possibilities for overlap. In the course of listing remedies for retained menses, Soranus noted that several herbs with a pedigree as menstrual purgatives were "drugs which women have often used also for abortion".[23] Even one of Riddle's critics, Etienne van de Walle, concedes that multiple uses for substances "created a zone of opportunity" for women seeking abortion, though he emphasises that emmenagogues ought generally to be understood as attempts to promote female health or fertility.[24]

In sum, the intentions with which potions were used could be ambiguous and the ambiguity of intentionality will be important in subsequent chapters.

MEDICAL ETHICS AND HARD CASES

When medical authors addressed abortion in relation to professional ethics, abortion was both problematised and justified by medical norms. In the first century Scribonius Largus declared that the destruction of the foetus, the "uncertain hope (*spem dubiam*) of a human", was incompatible with the "science of healing, not harming".[25] Yet, women's health was also an overriding concern, a concern which is implicit in pre- and postpartum therapies, and warnings of pharmaceutical danger.[26]

Whatever the Hippocratic *Oath*'s provision on abortion originally meant, subsequent construals of the *Oath* epitomised this tension between woman and foetus.[27] Soranus famously reported that this was an area of controversy. Some cited Hippocrates and refused to prescribe abortifacients because of the obligation to "guard and preserve

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[21] For a nineteenth-century English example, see Siedlecky, 'Pharmacological properties', pp.98-99 on the sale and marketing of Thomas Beecham's so-called 'Female's Friends'.

[22] The closest thing to an example which I have come across is more a laconic euphemism than a code. If a child was born "prematurely or misshapen", an Anglo-Saxon pharmacopeia from *c*.1000 advised "tak[ing] the roots of [squirting cucumber] simmered down by two thirds and wash[ing] the child with it" before cautioning that this herb was lethal if eaten on an empty stomach: *Old English Herbarium* 115.2, trans. Anne Van Arsdall, *Medieval Herbal Remedies: The Old English Herbarium and Anglo-Saxon medicine* (London, 2002) p.199.

[23] *Gynecology* III.12, pp.139-40.

[24] 'Flowers and Fruits: Two thousand years of menstrual regulation', *Journal of Interdisciplinary History* 28.2 (1997) p.202.

[25] *Compositiones*, preface: text in Nardi, *Procurato*, pp.63-4; c.f. Flemming, *Medicine and the making of Roman women*, pp.142-3 and Vivian Nutton, *Ancient Medicine* (London, 2004) pp.173-174.

[26] Kapparis, *Abortion in the ancient world*, pp.16-19.

[27] Ibid. pp.66-76 summarises histioriographical debate on the *Oath*; c.f. Vivian Nutton, 'Beyond the Hippocratic Oath', *Clio Medica* 24 (1993) pp.10-37.

what has been engendered by nature", while others prescribed them "with discrimination" when narrow wombs and other complications rendered childbearing problematic. Soranus sympathised with the latter position, which introduced his own prescriptions.[28]

The fourth-century medical writer Theodorus Priscianus elaborated upon this tension in the gynaecological section of his book on medicine. Drawing on Hippocrates, Priscianus wrote that dispensing an abortifacient polluted the purity of medicine. But he conceded exceptions. Sometimes difficult choices had to be made because uterine disease or inappropriate age caused premature births and endangered women's lives. Priscianus conceived of this choice as a form of exchange: to "buy" the certain safety of a mother at the "price" of losing a foetus. He likened it to pruning the branches of a tree of its branches or emptying overloaded ships of their cargo in storms. Priscianus then listed nine abortifacient prescriptions.[29]

These prognostic abortions anticipated potential complications in female health. The most extreme recourse for safeguarding a woman's life took the form of embryotomy, the surgical removal of dead or living foetuses from the womb, in response to obstetric emergencies. Danielle Gourevitch has drawn attention to the remains of a newborn infant dating from *c.*350 found at a gravesite in Poundbury, Dorset. The infant had been decapitated, was missing a right arm and leg, and had suffered multiple mutilations and fractures, strongly suggesting that she (the infant was probably female) had died in an embryotomy (or her remains had been extracted through embryotomy). The mother probably survived given that she was not buried too. Gourevitch also notes another set of fourth-century remains found in a tomb at Beth Shemesh, Israel, of a girl of appropximately fourteen years, whose pelvic cavity contained a full-term foetus of around forty weeks. Pelvic measurements suggest that normal birth would have been impossible. The heavily pregnant girl probably died of an internal haemorrhage in or before labour. [30] These grave dangers make sense of the fact that authors like Priscianus

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[28] I.60, pp.62-63.

[29] *Euporiston* III.VI.23, ed. V. Rose (Leipzig, 1894) p.240.

[30] 'Chirurgie obstétricale dans le monde romain: césarienne et embryotomie', in *Naissance et petite enfance*, pp.245-60, (at 262); id. and Yves Malinas, 'Présentation de l'épaule negligee. Expertise d'un squelette de fœtus à terme découvert dans une nécropole du IVᵉ siècle à Poundbury (Dorset UK)', *Revue française de gynécologie et d'obstétrique* 91.6 (1996) pp.291-333. For other examples of comparable remains see Donald J. Ortner, *Identification of pathological conditions in human skeletal remains* (San Diego, 2003) pp.174-176. For material evidence of abortion, see Gourevitch, 'La gynécologie et l'obstétrique', *Aufstieg und Niedergang der römischen Welt* 37.3 (1994) pp.2119, 2123 and Anne L. McClannan, '"Weapons to Probe the Womb': The

articulated distaste for abortion but also gave abortifacient prescriptions. We should also note that embryotomy occurred *in extremis*. The implication is that the vast majority of references to abortion in both medical and moral texts envisaged something considerably earlier in gestation.

The problem of weighing the life of the mother against that of her child was rarely a subject of ethical scrutiny among Christian writers. Two references, however, reflect the dilemma of the predicaments in which it arose. Around the turn of the third century, Tertullian mentioned embryotomy and even conveyed certain practical details in his treatise on the soul, *De anima*. An instrument opened up the genitals, he said, while another was used to dissect the foetus. In context, Tertullian was arguing from authority to support his contention that the product of conception was a living or souled being. In a tangent, he used the practice of embryotomy – taught, so he said, by Hippocrates, Asclepiades, Herophilus, Erasistratus, and even the "milder" Soranus – to prove his point: to speak of killing the foetus presumed that it had been alive. Tertullian's own view on the morality of embryotomy is more difficult to interpret.[31] He certainly described embryotomy with graphic imagery: embryotomy was a "crime", a "throat-slitting" using an 'embryo-slayer' (*embruosphaktēn*), and a "theft under the cover of darkness". But this charged language was juxtaposed with flickering acknowledgment of the difficult predicament. The infant was killed in the womb through a "necessary cruelty" because it had become a "matricide unless it dies (*matricida, ni moriturus* [sic])" and "Hicesius [whom Tertullian earlier lambasts for not regarding the foetus as a living being] did not doubt, I believe, the necessity of the crime". This conflicted ambivalence – a necessary crime – makes it difficult to conclude with confidence on Tertullian's attitude to embryotomy and the sentiment which he attributed to medical authorities might well have echoed his own thoughts: "they pitied the hapless infancy of this kind of being who has first to be killed so that a living woman is not torn apart (*ut prius occidatur, ne viva lanietur*)".[32] Augustine, too, mentioned the practice more briefly in the

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material culture of abortion and contraception in the early Byzantine period', in Anne L. McClannan and Karen Rosoff Encarnación (eds.) *The Material Culture of Sex, Procreation, and Marriage in Premodern Europe* (New York, 2002) pp.33-58.

[31] See differing interpretations in Noonan, 'Almost absolute value', p.13, Fridolf Kudlien, 'Medical Ethics and Popular Ethics in Greece and Rome', *Clio Medica* 5 (1970) p.104 (both of whom argue Tertullian was opposed to the praftice) and, in contrast, Owsei Temkin, 'The Idea of Respect for Life in the History of Medicine' in id. *"On Second Thought" and other essays in the history of medicine and science* (Baltimore, 2003) pp.35-36.

[32] *De anima*, 25.4-6, ed. J.H,. Waszink (Leiden, 2010) pp.35-36.

Enchiridion, almost certainly aware of Tertullian's passage and to make much the same point in the context of eschatology. His reference to "infants who are dissected limb by limb and brought out of the womb of pregnant women in case, by remaining there dead, they kill their own mothers too" clearly discerned the rationale of the procedure, whatever his view on its legitimacy.[33]

Tellingly, both of these references were tangents. Neither came close to the casuistic discussions found in Jewish *halakkah* or later medieval philosophy. In the early medieval West, despite familiarity with the predicament, there was no casuistry of abortion.[34]

MISCONCEIVING ABORTION AND CONTRACEPTION

Our final theme is a crucial ambiguity: the porous boundary between abortion and contraception. Soranus famously distinguished between 'contraceptive' (*atokion*), which "does not let conception take place", and 'abortifacient' (*phthorion*), which "destroys what has been conceived". (A third permutation was "expulsive" (*ekbolion*). Some saw this as synonymous with abortion while others argued they differ because *ekbolion* entails "shaking and leaping", not drugs).[35] There was an important therapeutic rationale behind Soranus' distinction: "it is safer to prevent conception from taking place than to destroy the fetus". Whether this theory translated into practice, however, is another matter. In outlining the debate on the *Oath*, the second party who cautiously prescribed abortifacients "say the same about contraceptives too"; and when Soranus went on to outline four oral recipes, he noted, "[h]owever, these things not only prevent conception but also destroy any already existing".[36]

The two principal areas of conceptual ambiguity were locating conception and the forming of the embryo/foetus. In the Hippocratic text *On the nature of the child* the

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[33] *Enchiridion*, 23.86: text in Nardi, *Procurato aborto*, p.559. We will return to this passage when we turn to eschatology in chapter eight.

[34] The most illustrative example of such familiarity is the oldest manuscript containing the full text of Muscio's *Gynecia*, the roughly sixth-century Latin translation of Soranus. The manuscript, dating from the ninth century and written in Carolingian minuscule, contains thirteen images of various uterine *homunculi* taking up different positions to illustrate complications in pregnancy and childbirth: c.f. Christine Cadilhac-Bonnet, 'Si l'enfant se trouve dans une présentation contre nature, que doit faire la sage-femme?', in Dasen (ed.) *Naissance et petite enfance*, pp.199-208. The images can be viewed at the Wellcome Library's online image collection (www.images.wellcome.ac.uk).

[35] Ann Ellis Hanson, 'Continuity and Change: Three case studies in Hippocratic gynecological therapy and theory', in Pomeroy (ed.) *Women's history*, pp.74. Hanson, ibid. pp.98-9n.10 notes that Soranus was attempting to reconcile his reading of the *Oath*'s provision on abortion with the Hippocratic *On the nature of the child*, in which a slavegirl was advised to jump vigorously to induce abortion. But in other Hippocratic texts abortifacient drugs were called *ekbolia*.

[36] I.60-1, 63, pp.62, 65.

process was said to begin when the male and female seeds mixed. The ensuing seed inflated and formed a membrane through which it received breath. The maternal menstrual blood was drawn into the membrane where it coagulates and "causes the increase of what it is to become a living thing". Other membranes developed and, under the influence of more blood and breath, flesh began to form, eventually fashioned into distinct organs and limbs by the power of breath. By the forty-second day for girls and by the thirtieth day for boys the foetus was formed and continued to develop thereafter.[37]

There were theoretical differences, of course, on the contributions of the sexes and the ordering of embryogenesis, most distinctly in the contrast between Aristotle's hylomorphic 'one-seed' theory and Hippocratic and Galenic 'two-seed' theories.[38] Aristotle's embryology is most commonly associated with a remark in *History of animals*, in which formation of males, marked by the first movement, was said to be completed by around forty days, and that of females by around ninety days, though across his works Aristotle's embryology was in fact more complex and vacillating.[39] But these differences should not obscure a commonality: these theories yielded complex processes onto which it is exceedingly difficult to graft modern notions of conception and embryogenesis. Conception (*kyēsis*) was so-called, Soranus explained, because it was a kind of concealment (*keuthēsis*) of the seed by the uterus. When the seed is "laid hold of temporarily and is immediately ejected again…this is not conception". "Conception" occurred only after the seed was conveyed to and retained by the uterus. At this point "the offspring is still unshapen" and here Soranus' account is ambiguous insofar as he wrote of "retention and attachment after conveyance" in relation to both seed and embryo. Later, when the foetus has "already been moulded", then "seed has been changed and is already a nature, [and,] in process of time[, a] soul too, and no longer seed".[40] To be untroubled by the unavoidable translation is not to have understood that

[37] *On the nature of the child* 12-18, trans. I. M. Lonie, *The Hippocratic Treatises* (Berlin, 1981) pp.6-9.
[38] See Michael Boylan, 'The Galenic and Hippocratic Challenges to Aristotle's Conception Theory', *Journal of the History of Biology* 17.1 (1984) pp.83-112, id. 'Galen's Conception Theory', *Journal of the History of Biology* 19.1 (1986) pp.47-77, Cadden, *Meanings of sex difference,* pp.17-37 and Lesley Ann Dean-Jones, *Women's Bodies in Classical Greek Science* (Oxford, 1994) pp.148-224. Kapparis, *Abortion in the ancient world*, pp.33-52 gives a broad overview.
[39] Jane Oppenheimer, 'When Sense and Life Begin: Background for a remark in Aristotle's "Politics" (1335b24)', *Arethusa* 8.2 (1975) pp.331-44.
[40] I.43, pp.42-3.

'conception' appears to denote retention of the seed, not instantiation of the embryo, and that the precise relation between seed and embryo is not entirely clear.

The distinction between preventing conception and destroying what has been conceived is – and was – ambiguous. As Keith Hopkins noted, Dioscorides gave an abortifacient use for pepper, which "dries out" the embryo, but described it as an ostensibly incongruous *atokion* if applied *after* coitus.[41] The interpretative difficulty lies partly, as Hopkins noted, in translating Dioscorides' rationale into imperfect modern terms. But it also lies in identifying the rationale in the first place. We could read back Soranus' understanding of conception and *atokion*, thereby making more sense of a contraceptive postcoital suppository than Hopkins perhaps allowed. But the practical and theoretical considerations underlying the distinction between one use as postcoital *atokion* from another as abortifacient are not similarly retrievable by an intertextual sleight of hand. Riddle's solution, namely that Dioscorides was making a distinction in the manner of "modern medical usage [which] knows of postcoital contraceptives", begs the question.[42] Following Hopkins and despite Riddle, historians have acknowledged "confusion" between abortion and contraception in classical and other sources. But, in a sense, the fundamental problem is not just ancient "confusion" but also a lack of confusion among modern interpreters who fail to take stock of a conceptual "situation in which there [wa]s no culturally dominant perception of the most important factors in conception" and to divergent medical theories of conception can be added other bodies of knowledge.[43]

Further, abortion and preventing conception were practically ambiguous. How to know whether this or that potion or suppository prevented conception or destroyed any already existing? Indeed, how to know whether or not a woman had conceived? Soranus reported that some denied that conception can be recognised but insisted, "one must work out the evidence for conception from the many signs lumped together": a "shivering sensation" at the end of intercourse, dryness of the vagina (because the seed draws moisture upward), swelling breasts, stomach upsets, cessation or reduction of

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[41] *De materia* 2.159.3, in Hopkins, 'Contraception', p.137; translation in Riddle, *Contraception and abortion*, p.35.
[42] *Contraception and abortion*, p.35.
[43] Hopkins, 'Contraception', p.139; c.f. R. Etienne, 'La conscience médicale antique et la vie des enfants', *Annales de Demographie historique* [Special issue: 'Enfants et sociétés'] (1973) pp.19-29; Thomas Laqueur, *Making Sex: Body and gender from the Greeks to Freud* (Harvard, 1990) pp.49-61; Marie-Hélène Congourdeau, 'Genèse d'un regard Chrétien sur l'embryon', in Dasen ed. *Naissance et petite enfance*, pp.349-62.

menstruation, swelling of the abdomen, and, finally, the "gravida perceives the movement of the fetus". Until late in pregnancy, these signs were not patent and, as we have seen, cessation of menstruation was not solely interpreted as an indicator of pregnancy.[44] Signs became more definite the further removed they were from the conception they signified; but procuring an abortion earlier rather than later was presumably more desirable for medical and social reasons.

Latin could not succinctly express Soranus' distinction. While Greek had several nouns for abortion (*amblōsis* and *ektrōsis* in addition to *phthora*), Latin had variations on *abortus*.[45] Like the older English use of abortion, this could denote induced abortion, miscarriage or premature birth. In most cases, abortion or miscarriage is a workable translation, though *abortus* or variants sometimes referred to 'that which has been aborted/miscarried'. There was no precise Latin equivalent, however, for *atokion*, for which constructions like *ne concipiat* or *ut non concipiat* were used.

Part of the interpretative problem is the temptation of finding referents for ready-made translations. In the history of medicine there is growing awareness of these semantic dangers, but the implications for histories of attitudes to abortion are more rarely developed. The primary focus of the following chapters is upon abortion. Yet contraception is inevitable. Insofar as we are inclined to see objections to abortion in terms of an "ontological position" (i.e. pertaining to taking the morally significant life of the foetus) and objections to contraception in terms of a "perversity position" (i.e. pertaining to transgressing procreative sexual norms), denunciations of abortion and even infanticide in which the evils of murder *and* immoral sex were inextricably connected will disturb these neat presumptions, and medical texts provide another source of disturbance.[46] If, given that the early medieval historian does not have the relative luxury of later medieval expressions like *vitatio prolis*, it is unavoidable as a word too, sparing the reader from inverted commas requires emphasising that contraception is used, to appropriate other later medieval terms, analogically, not univocally.

None of this is to deny that Latin could articulate relevant distinctions. Churchmen could distinguish between killing what has been conceived (*quod conceptum est necare*) and

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[44] I.44, pp.43-4. At I.23, 27 Soranus notes that menstruation continues after conception in some women.

[45] Kapparis, *Abortion in the ancient world*, pp.7-8. Of course, there were other descriptions like 'killing a child' etc.

[46] Terms from Daniel A. Dombrowski, 'St. Augustine, Abortion and Libido crudelis', *Journal of the History of Ideas* 49.1 (1988) pp.151-156.

taking pains not to conceive (*ut non concipiat elaborat*), at least in theory. If the moral interpretation of such distinctions does not align with modern expectations, regarding potions for preventing conception as homicidal was nonetheless in tandem with ambiguities found in medical texts.

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In the historical study of attitudes to abortion, medical texts are often used as reference points for theories of embryogenesis or conception which were then 'applied' in moral works. This approach is not workable when studying early medieval abortion. This reflects, first, a stock of medical texts which were far more inclined towards practice than theory[47] as well as a lingering uncertainty over the social diffusion of medical knowledge.[48] It also reflects, second, a secondary literature which is still developing.[49] But, third, as we shall see, where we can identify the embryological knowledge 'applied' to abortion, the sources of this knowledge owed more to theological embryology than medical embryology. This brief thematic survey has not identified ideas about conception, embryogenesis, pregnancy and abortion which would be straightforwardly 'applied' centuries later. Rather, it has signalled questions (has conception occurred? has the seed been formed? etc) and ambiguities (of intention and of effect) which will be important throughout this study. In the wake of Riddle's revisionism, historians of medicine have stressed the need for historicist rather than positivist accounts of the practice of abortion. This need is pressing in cultural histories of abortion too.

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[47] Gerhard Baader, 'Early Medieval Latin Adaptations of Byzantine Medicine in Western Europe', *Dumbarton Oaks Papers* 38 (1984) pp.251-259. One of Riddle's important contributions has been to emphasise that early medieval pharmacopeia were not merely copies of classical texts: see *Contraception and abortion*, pp.87-126 and 'Pseudo-Dioscorides' *Ex herbis femininis* and Early Medieval Medical Botany', *Journal of the History of Biology* 14.1 (1981) pp.43-81.

[48] For example, Frederick S. Paxton 'Curing Bodies – Curing Souls: Hrabanus Maurus, medical education, and the clergy in ninth-century Francia', *Journal of the History of Medicine and Allied Sciences* 50.2 (1995) pp.230-252 has strongly argued that Rabanus Maurus' references to medical education in the ninth century, often taken literally as references to formalised medical education, were metaphorical ways of talking about priestly duties and pastoral care.

[49] I write this with reproductive medicine specifically in mind, though the point still holds in general to some extent. That said, early medieval medicine is being looked at with fresh eyes and a sense of historicism, for which see Peregrine Horden, 'What's Wrong with Early Medieval Medicine?', *Social History of Medicine* (advance access published on November 3, 2009, web address in bibliography), and there has been interesting work on early medieval Anglo-Saxon medical texts, such as van Arsdall's translation of the *Old English Herbarium* and Lászlo S. Chardonnens, *Anglo-Saxon Prognostics, 900-1100* (Leiden, 2007).

ATTITUDES TO ABORTION IN CLASSICAL AND LATE ANTIQUITY

We turn now to an eclectic survey of attitudes to abortion in Classical and Late Antiquity. Once again, the purpose is thematic and anticipatory. We will encounter certain ideas and associations which also were significant in the early medieval West, but also a variety of ways of understanding abortion in relation to both Roman society and Christian communities. Because the historiography of Christian moral values on abortion has often stressed unanimity, we will pay special attention to the wide-ranging and evolving significance which abortion held for Christian communities from the early church through to Augustine.[1]

ROMAN PERSPECTIVES ON ABORTION

There is no exact consensus on Roman attitudes to abortion. Some historians have traced an increasing "'respect for all forms of life' from the early empire"[2], while others have stressed an ultimate "indifference to fetal and early life".[3] It is beyond the scope of this chapter to settle the question. But gauging attitudes simply by plotting attitudes to foetal life has sometimes thwarted sensitivity to the complex significance of abortion. Abortion was not simply about biological reproduction, but about social reproduction too, which "entails much more than literal procreation [insofar] as children are born into complex social arrangements through which legacies of property, positions, rights, and values are negotiated over time".[4] When Roman jurists, philosophers, moralists and satirists saw abortion, they also saw the social and the political.

Seeing like a state: abortion in Roman law

Roman law viewed abortion through two very specific lenses. The first of these was the rights of men as fathers and husbands. A rescript issued under the emperors Septimius Severus and Caracalla around the turn of the third century subjected a wife

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[1] For example, see Michael J. Gorman, *Abortion and the Early Church: Christian, Jewish and pagan attitudes in the Greco-Roman world* (Downers Grove, 1982).

[2] Emiel Eyben, 'Family Planning in Graeco-Roman Antiquity', *Ancient society* 11/12 (1980-81) pp.5-82

[3] Noonan, 'Almost absolute value' p.7. For views in nineteenth and early twentieth-century scholarship, see Nardi, *Procurato aborto*, pp.200-203.

[4] Faye D. Ginsburg and Rayna Rapp, 'Introduction: Conceiving the new world order', in Faye D. Ginsburg and Rayna Rapp (eds.) *Conceiving the New World Order: The global politics of reproduction* (Berkeley, 1995) pp.1-2.

who aborted to temporary exile for having cheated (*fraudasse*) her husband of children.[5] The underlying premise was probably older. The contemporary jurist Tryphoninus connected the rescript to a tangential passage in Cicero's *Pro Cluentio*, in which Cicero had written of a recently widowed Milesian woman, pregnant when her husband had died, who had been convicted of a capital crime for having an abortion after being bribed by rival heirs. Cicero had agreed with the decision on the grounds of paternal rights and civic interests: the woman had injured the "father's hope, the memory of his name, the provisions of a race, the heir of a family and a future citizen of the republic". Tryphoninus alluded to this passage before adding that a woman who had an abortion after a divorce "so that she does not bear a child to a husband she hates" also fell under the scope of the Severan rescript.[6] Incidentally, the same interest in paternal rights characterised abortion laws under Christian emperors. Under Justinian, abortion constituted grounds for husbands to divorce their wives.[7] In these laws, abortion potentially harmed paternal interests and, if the foetus was offered a certain degree of legal protection, it was because of the state's custodial interest in childbearing and paternal/marital rights.[8]

The other lens was social anxiety over the use of poisons. In the late second or third century, the jurist Paulus' *sententia* on a law dating back to Republican Rome, the *Lex Cornelia de sicariis et veneficis*, treated abortion in the context of poisons. Dispensing an abortifacient or aphrodisiac drink was punished with dismissal to the mines or exile to an island in the case of the upper class. The rationale was spelled out: even if those who dispensed such potions wrought no harm (*etsi id dolo non faciant*), they gave a "bad example".[9] Here the law was perturbed not only by the physical dangers but also the social scandal of *venenae* and their suspicious sexual undertones (elsewhere drugs for conception, *ad conceptionem*, were also punished for their bad example).[10] The connection between abortifacient and aphrodisiac poisons was not unusual. In his *Natural history*, Pliny rhetorically refused in principle to speak of abortifacients, aphrodisiacs and other

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[5] *Digest* 47.11.4: text in Nardi, *Procurato aborto*, p.422.

[6] *Pro Cluentio* 11.33; *Digest* 48.19.39: text in Nardi, *Procurato aborto*, pp.217, 416-9.

[7] *Novellae* 22.15.2: text in Nardi, *Procurato aborto*, pp.613-614, with noted precursors from Constantinue and Theodosius II.

[8] Marguerite Hirt, 'La legislation romaine et les droits des enfants', in Dasen (ed.) *Naissance et petite enfance*, pp.282-283.

[9] Paulus, *Sententiae*, V.23.14 = *Digest* 48.19.38.5: text in Nardi, *Procurato aborto*, pp.433-437.

[10] D.48.3.2: text in Nardi, *Procurato aborto*, pp.455-456. See J.B. Rives, 'Magic, Religion, and Law : The case of the *Lex Cornelia de sicariis et veneficiis*', in Clifford Ando and Jorg Rüpke (eds.) *Religion and Law in Classical and Christian Rome* (Stuttgart, 2006) pp.53-54.

magical ruses except by way of issuing caveats and rebuttals (*nisi ubi cavenda sunt aut coarguenda*), though his work did not quite live up to this proclaimed reticence.[11]

Abortion was almost certainly not legally punishable *per se* in Roman law. While laws on infant exposure and abandonment noticeably shifted from the later fourth century onward, denying the parental right to reclaim children and the right of others to rear such children as slaves, there is no strong evidence of similar legal developments on abortion.[12] Looking forward, we will encounter the anxiety over poisons and the association between abortifacient and aphrodisiac 'magic' time and again, but not the marital prism.

The abortion-adultery nexus: abortion in Roman moralising

In Roman moral scrutiny women were conspicuously isolated as the culprits of abortion. In Pliny's words, men might have plotted out the backalleys of sex (*deverticula veneris excogitata*) but women hatched up abortion.[13] The motives imputed ranged from the trivial to the transgressive. Seneca contrasted his own mother's decency (*pudicitia*) with the indecency (*impudicitia*) of contemporary women, who garishly paraded themselves in immodest apparel and "meretricious make-up". His mother, by contrast, did not "hide [her] burgeoning womb as if it were an unsightly burden, or cut out from [her] womb the hopes conceived of children (*nec intra viscera tua conceptas spes liberorum elisisti*)".[14] In the second century, Aulus Gellius' *Attic nights* told a story about a rhetor called Favorinus who visited a pupil to congratulate him on becoming a father. But the visit soon turned sour. Favorinus argued with the pupil's mother-in-law after she had revealed that they would employ wet-nurses (the exhausted new mother slept through the debate). It was incongruously unmaternal, Favorinus complained, for a woman to nourish something which she could not see in pregnancy only to shrink from feeding a child which was visibly alive, human, and calling for maternal care. Nipples were not beauty-spots, he pointed out, for prettifying the breasts. Unnatural women refused to breast-feed thinking that nursing marred their beauty just like other women aborted foetuses in case their stomachs wrinkled and drooped. This tied in with Favorinus' abhorrence of wet-nursing: "since it is worthy of public detestation and communal

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[11] *Natural history* 25.3.25: text in Nardi, *Procurato*, pp.265-266.
[12] C.f. Boswell, *Kindness of strangers*, pp.162-163, 170-172, 189-194.
[13] *Natural history*, 10.83.172; text in Nardi, *Procurato aborto*, p.265. For representations of abortion in Latin and Greek writers from the first to fourth centuries, see especially Kapparis, *Abortion in the ancient world*, pp.91-165, and Eyben, 'Family planning', pp.48-56.
[14] *Ad Helviam* 16.2-4: text and translation (adapted) in Rebecca Langlands, *Sexual Morality in Ancient Rome* (Cambridge, 2006) pp.75-6.

abhorrence to kill a human in its very beginnings (*in ipsis hominem primordiis*), while it is being moulded (*fingitur*) and given life (*animatur*), in the hands of nature the maker", how different was it to deny a child of nourishment?[15]

Other authors associated abortion with a more transgressive motive than vanity: to hide adultery. Around the turn of the second century, Juvenal toyed with images of adulterous upper class women in one of his *Satires*. After noting that poor women undergo the toils of childbirth and nursing, he trained his sights upon the well-to-do. The drugs and skills "for murdering people (*homines*) / within the womb" at women's disposal made it "rare for a gilded bed to contain a woman in labour". Emiel Eyben sees something especially significant in Juvenal's description of abortion as murdering "people".[16] But he does not quote Juvenal's mischievous counsel: "Be glad, you wretch, and give her the potion [or] you might discover / that you were the father of an Ethiopian, that you'd made your will / for a coloured heir whom you'd shudder to see first thing in the morning."[17] Ovid famously broached his mistress Corinna's abortion in his *Amores*, though comic detachment and satirical mimicry of public values complicate interpretation, while Tacitus contrasted Roman upper class immorality with putative Germanic pronatalism.[18]

Suzanne Dixon has argued that these texts, "taken for centuries as evidence of [the] moral decline of Roman society, are useless as historical information". They are "scuttlebut", tendentious caricatures which conveyed masculine anxieties, civic ideologies and fears of female autonomy. Favorinus was using abortion to signify the self-regarding frivolity of upper class women and Juvenal's satires gave ludic expression to male anxieties over sex and paternity, anxieties more solemnly enshrined in Roman law. Far from being impelled by a "disinterested horror of child-murder", these moralists used abortion "as an illustration of vanity…and sexual flightiness". Dixon's analysis is important for highlighting the "adultery-abortion nexus": "[o]n the literary scale of moral misbehavior, abortion is moderately shocking but gains its impetus from

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[15] *Attic Nights*, 12.1.1-9: my translation from J.C. Rolfe, *Aulus Gellius: Attic Nights, Volume II, Books 6-13* (s.l., 1927) pp.352-354.
[16] Eyben, 'Family planning', p.54.
[17] *Satire* 6.594-601, trans. N. Rudd (Oxford, 1991) p.58.
[18] See varying perspectives in W.J. Watts, 'Ovid, the Law and Roman Society on Abortion', *Acta Classica* 16 (1973) pp.89-101, Leslie Cahoon, 'The Bed as Battlefield: Erotic conquest and military conquest in Ovid's *Amores*', *Transactions of the American Philological Association* 118 (1988) pp.292-307, M.K. Gamel, '*Non sine caede*: Abortion, politics and poetics in Ovid's *Amores*', *Helios* 16 (1989) pp.183-206. On Tacitus' *Germania*, see Langland, *Sexual morality in ancient Rome*, pp.323-332.

its association with adultery, which has richer descriptive and narrative possibilities".[19] Represented as the secretive means by which well-to-do women concealed adultery, abortion became the sign through which the male observer disclosed female crimes. For Dixon, this nexus was a "literary device". For our purposes, abortion's signalling function and evolving configurations of the nexus between abortion and sexual morality will be crucial.

If the assumptions embedded in moralising sources can only be naively perceived as clear reflections of moral decline, they do nonetheless articulate the very pressures to which women were subject. Women had much to lose from disclosure of adulterous or otherwise extramarital sex. In a rare allusion to familial pressures underlying abortion, Plutarch remarked upon a young girl who lost her virginity before marriage and "endured the ordeal in such a manner that she did not make a sound, so that neither her father nor anyone else around her noticed that she had been pregnant and had an abortion". Her "decency" overcame the "pains" wrought by her "previous indignity".[20] If moralising discourse on abortion often enacted a blindness to the "huge pain that any underdeveloped society places on the bodies of its fertile women" through childbirth, regurgitating commonplace motives did not altogether preclude recognition of this toll.[21] Soranus, who recognised it to some extent, also stressed that medical "discrimination" entailed not yielding to those who sought abortion to conceal adultery "or out of consideration for youthful beauty".[22]

Some historians, including Dixon, have suggested that abortion was a means by which women asserted bodily autonomy and even resistance in the face of onerous civic ideologies, and there is something to this.[23] But we must also be wary of uncritically reading back contemporary associations between abortion and female autonomy, in other words, of presuming that the relation between abortion and social emancipation is transhistorically unchanging. What is readily construed as individual emancipation can also be viewed as the culmination of specific social forces: did the abortion procured by

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[19] *Reading Roman Women: Sources, genres, and real life* (London, 2001) pp.59-65. For a classic account of the reproductive demands made of women (and, to some extent, men) by classical and late antique civic ideologies, see Peter Brown, *The Body and Society: Men, women and sexual renunciation in early Christianity* (London, 1988) pp.5-25.

[20] *Moralia* 242c: translation in Kapparis, *Abortion in the ancient world*, p.101. Kapparis' discussion of motives for abortion from female (pp.91-132) and male (pp.133-165) perspectives is valuable but the categorisation of perspectives is problematic given male authorship of the relevant texts.

[21] Brown, *Body and society*, p.25

[22] *Gynecology* I.60, p.63.

[23] *Reading Roman women*, pp.60-61; c.f. Aline Rousselle, *Porneia: On desire and the body in antiquity*. trans. Felicia Pheasant (Oxford, 1988) pp44-46.

Plutarch's young girl contest or confirm sexual norms? Moreover, limiting family size was a plausible upper class strategy to safeguard wealth and inheritance patterns.[24] A possible mode of resistance to civic ideologies, male interests and moralists' expectations, abortion could also serve and confirm them.[25]

Abortion problematised: other perspectives in Roman society

Before turning to Christian discourse on abortion, it must be emphasised that there were other perspectives on abortion in Roman society. A widely-cited example is the first-century Stoic, Musonius Rufus. His rejection of abortion and preventing conception was unusually vehement, and he held this position without especially strong concern for the foetus. Alluding to a historically spurious early Roman law, he stressed that earlier lawgivers unanimously viewed civic growth as a blessing and decline as a source of shame, and thus forbade abortion and contraception, and rewarded couples for having large families. Unusually inclined to large families, Musonius rejected poverty as an excuse for not rearing children, pointing to the example of birds, poorer than men in natural capacities yet solicitous to all their young. The refusal among the rich to "rear later-born offspring in order that those earlier born may inherit greater wealth" was even more "monstrous" and "inhuman". Musonius went beyond the importance attached to reproduction in Roman society and, on civic and eudaimonistic grounds, edged closer to "procreationism". For Musonius, intercourse was justified "only when it occurs in marriage and is indulged for the purpose of begetting children" and was "unjust and unlawful when…mere pleasure-seeking, even in marriage" and turned men into "wantons".[26] This emphasis on procreation opened up different ways of relating

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[24] Pierre Salmon, *La limitation des naissances dans la société romaine* (Brussels, 1999) pp.8-13.

[25] A point briefly noted by Keith Hopkins, *Death and Renewal* (Cambridge, 1983) p.97. Here I also have in mind the work of Catharine MacKinnon, who has criticised framing abortion rights in terms of individual privacy insofar as this obscures the importance of socio-political context in determining what abortion signifies and effects: see, for example, her *Feminism Unmodified: Discourses on law and life* (Cambridge, Mass., 1987) pp.93-101. MacKinnon's diagnosis of modern sexual politics cannot just be historically transplanted; its value lies in questioning the assumption that abortion entails emancipation regardless of context, and in raising the possibility that what appears as emancipation at the individual level is the culmination of powerful sexual configurations at the social level.

[26] Fragmenta 12, 15: trans. Cora E. Lutz, 'Musonius Rufus, the Roman Socrates', *Yale Classical Studies* 10 (1947) pp.86-88, 96-101; see Eyben, 'Family planning', pp.40-43 and Martha Nussbaum, 'The Incomplete Feminism of Musonius Rufus, Platonist, Stoic, and Roman', in Martha Nussbaum and Juha Sihvola (eds.) *The Sleep of Reason: Erotic experience and sexual ethics in ancient Greece and Rome* (Chicago, 2002) pp.308-313.

abortion to sex, including the possibility of implicating men, and there were affinities between Stoic and emergent Christian sexual ethics.[27]

If Musonius had little to say about the foetus, it is clear that the question of the beginning of an individual's life was being debated by classical philosophers.[28] It is misleading to assume that these debates were *really* about abortion: the unusual life-at-conception view was not being asserted principally to argue against abortion any more than the Stoic view of life beginning at a neonate's first breath was an argument for abortion. Nonetheless, occasionally abortion was explicitly connected to such debate. The second-century pseudo-Galenic tract, *Whether what is carried in the womb is a living being*, outlined various positions before elaborating a richly metaphysical embryology to argue that the embryo is a living being. The tract culminated in a rallying-cry for embryonic vengeance:

> Come out of the recesses without the fear that you [embryos] might be deprived of your generation, or lose your family and your fortune. The slander of many, and the wickedness of those who commit crimes against nature will not erase you. You yourselves will become the avengers like Pericles, Peisistratus, Paris, like Alexander the Macedonian and Heracles.

The uterine Pericles was "formidable" and the uterine Peisistratus "tyrannical", and they "confirmed not only that [embryos] are living beings, but also that they are braver than human nature, even while they still remain rooted in the womb".[29] Admittedly, the final address presupposed that this was not exactly a mainstream view and the tract was probably a rhetorical exercise rather than a position paper *avant le mot*. But this sharp speech was, at least, an intelligible rhetorical pose.

Finally, two first-century Jewish authors writing in Graeco-Roman milieux demonstrate that there was an animus against abortion which intersected Jewish and Graeco-Roman cultures. Earlier in the first century Philo broached abortion when commenting on Exodus 21:22-25 in his work on the Torah, *De specialibus legibus*. This passage was the scriptural source for the *lex talionis* and covered a scenario in which two men fight and one of them hits a pregnant woman. Here the Hebrew and Septuagint texts diverged. The Hebrew text graded penalties according to harm suffered by the

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[27] C.f. Noonan, *Contraception*, pp.46-49, 76-81. Kathy L. Gaca, 'The Reproductive Technology of the Pythagoreans', *Classical Philology* 95.2 (2000) pp.113-132 argues that the roots of Jewish and Christian "procreationism" lay ultimately in Pythagoreanism rather than Stoicism.

[28] Kapparis, *Abortion in the ancient world*, pp.33-52.

[29] Translation in Kapparis, *Abortion in the ancient world*, pp.204-210.

woman: if she miscarried, but there was no "harm", the man who struck her would be liable to a fine; if she died, he would pay with a life for a life. The Septuagint version, however, graded penalties according to foetal development: if the foetus was "unformed", the penalty was a fine; if "formed", the penalty was life for a life. Both texts have long been subject to contested interpretations.[30] As we shall see, early medieval Christians had access to Latin translations of both versions: the *vetus Latina* followed the Septuagint's mention of "formed" and "unformed", while the Vulgate did not.[31]

An Alexandrian Jew, Philo unsurprisingly expanded upon the Septuagint text. In the former permutation (unformed), the man was fined for preventing "nature, who was fashioning and preparing that most excellent of creatures, a human being, from bringing him into existence". In the latter permutation (formed), the penalty was capital because he had slain a "man…still in the workshop of nature, who has not thought it as yet a proper time to produce him to the light, but had kept him like a statue lying in a sculptor's workshop".[32] For Philo, though this distinction was a substantive one, it was not one which aligns straightforwardly with modern distinctions between abortion and contraception or early and late abortion or murder and not murder. Whether 'formed' or 'unformed', deliberate or culpable abortion was a "criminal interference with the process of nature".[33] Another passage, however, echoed with Stoic ideas of foetal dependence on the mother. Philo noted that "those who have investigated the secrets of natural philosophy say that those children which are still in the belly…are a part of their mothers", an opinion shared by "the most highly esteemed of the physicians who have examined into the formation of man, scrutinising both what is easily seen and what is kept concealed". But, crucially, Philo drew upon these ideas to underline the Jewish law. For, "when the children are brought forth and are separated from that which is produced with them…they then become real living creatures". Thus, "beyond all question, he who slays an infant is a homicide, and the law shows its indignation at such

[30] Daniel Schiff, *Abortion in Judaism* (Cambridge, 2002) pp.1-17 is a helpful starting point. The translation of the Septuagint's *exeikonismenon* as "formed" is misleading insofar as the word really evokes the divine image (*eikos*).

[31] See Roxane Humbert-Droz, 'L'exégèse d'Exode 21,22-25: les pères de l'eglise et l'avortement' (Neuchâtel, 2004), web address in bibliography.

[32] *De specialibus legibus* 3.108-109, trans. C.D. Yonge, *The Works of Philo*, new edition (Peabody, 1993) p.605.

[33] Maren Niehoff, *Philo on Jewish Identity and Culture* (Tübingen, 2001) p.164.

an action; not being guided by the age but by the species of the creature in whom its ordinances are violated".[34]

Later in the first century, Josephus also connected abortion to infanticide. In his *Antiquitates*, he reiterated the Septuagint text, adding that the penalty in the first permutation was for "having diminished the multitude by the destruction of what was in [the woman's] womb". But in the altogether more aggressively apologetic *Contra Apionem*, he emphasised that the law "enjoins us to bring up all our offspring, and forbids women to cause abortion of what is begotten or to destroy it afterward". A guilty woman became the "murderer of her child, by destroying a living creature, and diminishing human kind" and anyone who "proceeds to such fornication or murder…cannot be clean".[35] It is significant that Philo and Josephus couched Jewish precepts in terms intended to resonate with Gentile audiences, both Greek and Roman.[36] Together with the likes of Musonius, they suggest that classical Roman society contained perspectives on abortion which are not reducible to literary motifs.

CHRISTIAN DISCOURSE ON ABORTION

Christian moral excellence: abortion and apologetics

That Christian discourse on abortion was not entirely innovative is clear from the earliest mention of abortion in a Christian text. The *Didache* was a brief and enigmatic early Christian treatise written as a manual for a fledgling Christian community in *c*.100.[37] The title, *didachē,* literally means "training" and the second rule of "training" began with a list of ten offences, starting with murder and sexual transgressions. After a pair of prohibitions (of magic and making potions) came abortion and infanticide: "you will not murder offspring by means of abortion / (and) you will not kill [him/her] having been born".[38] This pairing of abortion and infanticide featured in several contemporary or older Jewish texts, including Josephus' *Contra Apionem*.[39]

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[34] *De specialibus* 3.117-118, p.606; see Schiff, *Abortion in Judaism*, pp.13-21.

[35] *Antiquities*, 4.278; *Against Apion* 2.202: trans. W. Whiston, *The New Complete Works of Josephus*, revised edition (Grand Rapids, 1999) pp.160, 973.

[36] See David Winston 'Philo and the Rabbis on Sex and the Body', *Poetics Today* 19.1 (1998) pp.41-62 on the complexity of Jewish-Greek cultural interfaces, and see Schiff, *Abortion in Judaism*, pp.27-57 on the rather different casuistic approach in later Rabbinic texts.

[37] Valuable for its insights into the early church, the treatise has given rise to a welter of interpretations since its discovery in 1873: see Jonathan A. Draper, 'The Didache in Modern Research: An overview', in id. (ed.) *The Didache in Modern Research* (Leiden, 1996) pp.1-42.

[38] "ou phoneuseis teknon en phthorą / oude gennēthenta apokteneis", 2.2, ed. and trans. Aaron Milavec, *The Didache: Faith, hope, and life of the earliest Christian communities, 50-70 C.E.* (Mahwah, 2003) pp.14-15.

[39] See Milavec, *Didache*, p.139 and Cornelia B. Horn and John B. Marten, '*Let the Little Children Come to Me': Childhood and children in early Christianity* (Washington D.C., 2009) pp.214-217.

Perhaps the principal reason why early Christian discourse seems distinctive is the fact that second and third-century apologists cultivated a sense of Christian distinction.[40] In the late second century, the philosopher-convert Athenagoras parried charges lodged against Christians by underlining the counter-cultural moral pedigree of Christian communities in an *apologia* addressed to the emperors Marcus Aurelius and Commodus. Athenagoras used abortion and infanticide to make rumours of Christian murder and cannibalism look ludicrous. Since Christians declared that women who have abortions commit homicide (*androphonein*) and would be accountable to God, on what grounds would they murder? Athenagoras stressed Christian consistency. The "same man cannot regard that which a woman carries in her womb as a living creature, and therefore as an object of God's care, and then...slay the creature that has come forth to the light of day".[41]

In the late second or third century, the Roman apologist Minucius Felix made a similar move in his dialogue between two educated Romans. Christians, the convert Octavius emphasised, were not the ones who strangled their own children or exposed them to wild beasts, nor were they like those women who "extinguished the beginning of a future human within their own wombs and commit *parricidium* before they give birth". The social mores which Christians countered were not an arbitrary aberration but stemmed from non-Christian theology: Saturn devoured his own children.[42] Elsewhere, Tertullian made recourse to a similar theological point. In his *Apologeticum* he deflected charges of cannibalistic infanticide onto accusers by outlining a potted history of child sacrifice with theological roots in the polytheistic pantheon before using abortion as an emblem of Christian moral sensibility:

> Since murder is altogether forbidden [for us], we cannot even kill what has been conceived in the womb, while blood is still being gathered into a human *(hominem)*. To prevent birth is a swifter murder (*homicidii festinatio*), and it does not matter whether someone takes away a life that is born (*natam...animam*) or destroy one that is budding

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[40] C.f. Helen Rhee, *Early Christian Literature: Christ and culture in the second and third centuries* (London, 2005) pp.117-24 on the use of marital norms as an exemplary apologetic strategy.

[41] *Embassy for the Christians* 35, trans. J.H. Crehan, ACW 23 (1956) p.76; text in Nardi, *Procurato aborto*, p.364.

[42] *Octavius* 30.2-3: text in Nardi, *Procurato aborto*, p.394. *Parricidium* was an evolving term. Specific connotations of murdering a close relation – father, sibling, even patrons – coexisted with broader connotations of murder. In the early fourth century, the legal meaning of *parricidium* was extended to denote the murder of one's children: c.f. Eva Maria Lassen, 'The Ultimate Crime: Parricidium and the concept of family in the late Roman Republic and early empire', *Classica et Mediaevalia* 43 (1993) pp.147-62. Noonan, 'Almost absolute value', 11-12 suggests that this was a deliberately provocative semantic extension.

(*nascentem*). What will be a human is a human (*homo est et qui est futurus*); the whole fruit is already in the seed.[43]

Elsewhere, just before the passage on embryotomy in *De anima* quoted in chapter one, Tertullian attempted to refute the view that animation occurred at birth in a rhetorical apostrophe directed at pregnant women: through movements and throbbing "you recognise in the foetus some power of life (*vivacitem*) distinct from your own". And immediately after the embryotomy passage, Tertullian turned to scripture, to the "wombs of the most holy women and the infants not only breathing therein, but prophesying too". Rebecca's womb was disturbed by the uterine conflict between Jacob and Esau; Elizabeth rejoiced because John the Baptist leapt within her; Mary glorified the Lord within her. He ended by quoting Jeremiah 1.5: "Before I formed you in the womb, I knew you, and before you were born, I consecrated you".[44] Tertullian was not unique in drawing attention to the depiction of uterine existence in such passages. While he fell short of directly approaching abortion through scripture, the proximity to the embryotomy passage suggests that such passages held implications for abortion. Scriptural silence on abortion, often taken for granted today, is profoundly related to the cultural context in which scripture is read.

Divine love and divine punishment: the apocalypse of abortion

To some early Christians, scripture was not silent on abortion in an altogether different sense. The theologians Clement of Alexandria (*c.*150-215) and Methodius of Olympus (d.*c.*311) both imagined the contrasting fates of aborting mothers (and infanticidal parents) and their children through their reading of an apocryphal apocalypse, the mid second-century *Apocalypse of Peter*.[45] Clement quoted the *Apocalypse* to stress that God's providence "do[es] not light upon them only that are in the flesh". Those children "born due out of time [i.e. abortively]" would be saved – or, more precisely, those who would have attained salvation had they survived, would be saved.

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[43] *Apologeticum* 9.2-6, 9.8, ed. E. Dekkers, CCSL 1 (1954) pp.102-3; c.f. a similar argument in *Ad Nationes* 15.1.1-8, ed. J.G.Ph. Borleffs, CCSL 1, p.34.

[44] *De anima* 25.3; 26.1-5. Methodius, *Symposium* 2.2, trans. H. Musurillo, ACW 27 (1958) p.50 quoted Jeremiah 1.5 to argue that if "God is still fashioning human beings, would it not be insolent of us to loathe procreation".

[45] The relevant passage in the two extant versions – the fuller *Apocalypse* 8 (Ethiopian) and the truncated *Apocalypse* 26 (Akhtim fragment) – is translated in J.K. Elliott, *The Apocryphal New Testament* (Oxford, 1993) p.605. Attila Jakab, 'The Reception of the Apocalypse of Peter in Ancient Christianity', in Jan N. Bremmer and István Czachesz (eds.) *The Apocalypse of Peter* (Leuven, 2003) pp.174-186 cautions against exaggerating the *Apocalypse's* popularity. Nonetheless, it would be referred to as an authority until at least the sixth century.

The mothers' punishment was particularly gruesome. Their breast-milk would leak and congeal forming tormenting beasts.[46] Methodius, after stressing God's care for his creatures, added that "divinely inspired Scriptures" (he did not mention the *Apocalypse* by name) taught that "all babies, even those from unlawful unions, are entrusted at birth to the keeping of guardian angels":

> Whereas if they came into existence contrary to the will and ordinance of that blessed nature of God, how could they be committed to angels to be brought up with great gentleness and indulgence? And if they are to accuse their own parents, how could they summon them before the judgment seat of Christ with bold confidence[?][47]

These references to the *Apocalypse* encapsulate what abortion evoked for early generations of Christian. Abortion was murder. But this was not simply predicated on arguments about the human status of the foetus. Foetal being was inextricably relational. First, in relation to God. To call abortion murder was to see what is in the womb as, in Athenagoras' words, the "object of God's care". Embryology was an implicit theology: the process by which the foetus was "mould[ed] like wax within the womb from the moist and infinitesimal seed" was stamped with the providential care of God, whose "creative power transforms His archetypes and remodels them according to the image of Christ".[48] Damnation or non-salvation of unbaptised infants was clearly not the basis for abhorrence of abortion or infanticide. Indeed, this connection was a decidedly post-Augustinian one which did not subsequently unravel straightforwardly.[49] Second, the foetus was a being in relation with, not reducible to, its mother. When tied to rejection of infanticide, this discourse was also about parenthood.[50]

Abortion was not a sign to uncover sexual immorality. Aborting women in the *Apocalypse* suffered punishment because "for fornication's sake [they] have caused their [children's] destruction". This made assumptions about the connection between abortion and fornication. But, as Patrick Gray has emphasised, fornication was being flagged as the context which led to abortion in order to make a "behavioural" point.

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[46] *Prophetical extracts* 48.1, in Elliott, *Apocryphal New Testament,* p.598. Incidentally, Clement swapped around the punishments as found in *Apocalypse* 8, in which women were buried up to their faces in a pit of faeces, their eyes struck by bolts from their aborted children, while the infanticidal parents were the ones tormented by mammary beasts.

[47] *Symposium* 2.6, pp.55-56.

[48] Methodius, *Symposium* 2.6, p.55. Damnation or non-salvation of unbaptised infants was clearly not the basis for abhorrence of abortion or infanticide.

[49] See chapter eight.

[50] Carolyn Osiek and David L. Balch, *Families in the New Testament World: Households and house churches* (Louisville, 1997) pp.165-166, Horn and Marten, *Let the little children come to me*, pp.223-225.

The "exhortative result" was like saying: do not have an abortion even if it is to hide illicit sex.[51] As Methodius' reading of the *Apocalypse* made clear, God's care – and the moral imperatives which emanated from it – extended to "all babies, even those from unlawful unions".

A problem within the fold: abortion within Christian communities

In exoteric texts, apologists situated abortion outside the bounds of Christian communities. But Christian communities were not insulated from abortion, a reality which found occasional expression in intra-Christian disputes. In the third century, in the midst of the fateful controversies over the readmission of lapsed Christians in North Africa, Cyprian cast doubt on the rectitude of an ecclesiastical rival in Carthage: Novatus (not to be mistaken with the more famous rigorist Novatian) had allegedly "struck his wife's womb with his heel and, in a hasty abortion, squeezed out his child in parricide".[52]

Also in the third century, Hippolytus criticised pope Callistus for his complicity in abortion. The bishop of Rome had allowed noblewomen, "in the heat of youthful passion [but] unwilling to give up their class", to take up partners, slave or free, as *de facto* husbands without legal marriage. These women began to "corset themselves in order to cause abortions, because, on account of their lineage and their enormous wealth, they did not wish to have a child from a slave or from a commoner".[53] Hippolytus' main point was to criticise Callistus, though he also hinted at the complex relation between social structures and abortion. Both charges, moreover, reflect ways in which abortion made a powerful point in invectives against men.

Tertullian used abortion in an acerbic commentary on an emergent custom in the Carthaginian church: young girls who had renounced marriage were proudly encouraged to stand unveiled in church. His gloomy realism played on abortion becoming the inevitable culmination of misplaced confidence for, as Tertullian explained, this impetuous custom inevitably led to sanctimonious duplicity. Once they started uncovering their heads, these virgins were sometimes forced to cover their bellies because of sexual weakness. Afraid that the lapse would become common knowledge,

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[51] Patrick Gray, 'Abortion, Infanticide, and the Social Rhetoric of the *Apocalypse of Peter*', *Journal of Early Christian Studies* 9.3 (2001) pp.319-323.

[52] "Uterus uxoris calce percussus, et abortione properante in parricidium partus expressus", *Ep.*52: text in Nardi, *Procurato aborto*, p.465; see Henry Chadwick, *The Church in Ancient Society: From Galilee to Gregory the Great* (Oxford, 2001) pp.153-154.

[53] *Refutation* 9.12.24: translation in Peter Lampe, *From Paul to Valentinus: Christians at Rome in the first two centuries*, trans. Michael Steinhauser (London, 2003) p.119.

the fallen virgin would audaciously act against her own womb: "God knows how many infants he has formed and led to perfect births after a long fight with their mothers. Such virgins," Tertullian sneered, "readily conceive and happily give birth to [children] rather like their fathers".[54] For Tertullian, abortion did not just mark female sin but also a community which foolishly underestimated the "social conventions that human frailty demanded".[55] All of these rhetorical uses of abortion presupposed that its rejection was a recognised moral standard.

Communal prohibition: the councils of Elvira and Ancyra

This standard had to be enforced and enacted. The means by which this happened are only implicit in sources until the beginning of the fourth century, when a gathering of bishops convened in Elvira in southern Spain to legislate on a range of issues: the complicity of local officials in upholding the imperial cult, problems in landowning, and matters of clerical propriety. A conspicuous number of canons covered sexual matters. Dating the council of Elvira has been subject to intricate debate, and proposals range from the late third-century to after 314, partly gravitating around the relationship between the council and the Diocletianic persecution, though *c*.300 is conventional.[56] To complicate matters further, it is also unclear whether the relevant canon (c.63) covered abortion in its original context:

> If any woman has conceived through adultery, in the absence of her husband (*absente marito suo*), and has killed what resulted from her deed (*idque post facinus occiderit*), it is decreed that she must not be given communion at her death, because she has doubled her crime (*eo quod geminaverit scelus*).[57]

The crucial phrase, "killed what resulted from her deed", is ambiguous. In another canon (c.68), a female catechumen who strangled or suffocated an adulterously conceived child was also to be readmitted at death.[58] It is possible that, like c.68, c.63 envisaged infanticide (which demonstrates, incidentally, how infanticide could be entangled with female sexual sin).[59] On the other hand, abortion hid adultery in a way

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[54] *De virginibus velandis*, 14.2-9, ed. E. Dekkers, CCSL (1954) pp.1224-1225.
[55] Brown, *Body and society*, pp.80-82 (at p.81).
[56] Joseph Streeter, 'Appendix to Chapter 2: The date of the council of Elvira', in G.E.M de Ste. Croix, *Christian Persecution, Martyrdom, and Orthodoxy*, ed. M. Whitby & J. Streeter, (Oxford, 2006) pp.99-104.
[57] Ed. Gonzalo Martínez Díez and Félix Rodríguez, *La colección canónica Hispana. 4: concilios galos, concilias hispanos: primera parte* (Madrid, 1984) p.262.
[58] Ibid. p.264.
[59] Nardi, *Procurato aborto*, pp.489-491 suggests this reading.

that infanticide obviously did not. The very ambiguity reflects how easily what could be said about infanticide could easily be said about abortion, and vice versa.

Held in 314 in the wake of the Edict of Milan, the council of Ancyra yielded a subtly different canon on abortion (c.21):

> Concerning women who fornicate (*ekporneuousōn*) and either kill their offspring or endeavour to have an abortion (*kai spoudazousōn phthoria poiein*), an earlier rule excluded them until death, and some have agreed to this. But, finding it more humane (*philanthrōpoteron*), we have determined a period of ten years according to the appointed degrees.[60]

There was no ambiguity here. The former clause referred to infanticide and the latter to abortion, though again they were treated together. The stricter "earlier rule" defies identification. The dating issue, geographical location and wording make Elvira an unlikely candidate. The council had convened in the year following Licinius' proclamation of toleration for Christians in the East and several canons detailed the various permutations of Christians who had lapsed under persecution with sensitivity to circumstances and recommending discretionary pragmatism.[61] This discretion was also reflected in the "more humane" penalty "according to the appointed degrees", both of which hint at formalised reintegration of sinners.

Together the canons demonstrate subtly different ways of tying abortion to sexual morality. Noting the greater severity of the Elviran canon compared with that on a mistress' murder of her servant, Aline Rousselle has concluded that "[s]o exalted was the Christian idea of marriage that adultery, along with the abortion that was its sign, was considered a more serious crime than murder [because the] foundation on which society stood [viz. marriage] was more important than the protection of life". Reading Elvira as a microcosm of Christian social priorities, Rousselle traces a thread back to Augustan Rome.[62] This rightly identifies the entanglement of sex and murder while overstating the affinity with Roman priorities. It was not solely adultery that was punished. In that macabre pun, the crimes were twinned (*geminaverit*). The canon did, though, place an accent upon marital absence, a presumption not entirely alien to

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[60] Ed. R.B. Rackham, 'The Texts of the Canons of Ancyra', in Samuel R. Driver (ed.) *Studia biblica et ecclesiastica,* volume 3 (Oxford, 1891) p153; translation adapted from Huser, *The Crime of Abortion in Canon Law: An historical synopsis and commentary* (Washington D.C., 1942) p.19.

[61] See G.E.M. de Ste. Croix, 'Aspects of the 'Great' Persecution', in id. *Christian persecution* (Oxford, 2006) pp.46-47 on the background.

[62] Aline Rousselle, 'Body Politics in Ancient Rome', in Pauline S. Pantel (ed.) *A History of Women, vol. 1: From ancient goddesses to Christian saints* (Cambridge, Mass., 1992) pp.333-335.

Roman moralising. At Ancrya, however, the framing was different: fornication, rather than adultery. Unlike adultery, fornication was a broader category, and this framing was more in keeping with earlier Christian discourse on abortion than the Elviran framing. Taken together, the two canons represent a range of possible associations between abortion and sexual transgression. In the long term, the latter predominated in ecclesiastical approaches to abortion. In both cases, abortion was a sign, but unlike some Roman moralising, it was not simply a signifier of transgression, for the sign was problematic in itself.

Church fathers on abortion: western examples

In the fourth and fifth centuries, a range of ecclesiastical writers addressed abortion. Their statements on abortion and the diverse contexts in which they made them show a range of perspectives.[63]

In the late fourth century, Ambrose of Milan included a comment on reproductive strategies in his *Hexaemeron*, a theologically rich exploration nominally about the six days of creation. After a lengthy meditation on the moral qualities of birds, an account which emphasised their solicitous parental affection, he emphasised parents' duty to love their children in a tangent. Rueing female disinclination from nursing, Ambrose noted matter-of-factly that the poor abandon their young and deny (*abnegant*) that they are theirs if found. But he reserved his stinging rebuke for the rich. For, "to prevent their patrimony from becoming split, the rich deny (*negant*) their own foetuses in the womb" and "snuff out their children with parricidal liquids (*parricidalibus sucis*), taking away a life before it is given (*priusque aufertur vita, quam traditur*)".[64] The rebuke echoed with Roman sentiments and with the Christian moral idiom of *parricidium*.

A very different moral location of abortion appeared in Jerome's famous letter to Eustochium, the daughter of saint Paula, a letter which will echo in subsequent chapters. Jerome was writing in *c.*384 on the occasion of Eustochium taking a vow of virginity. The letter took to task various forms of moral corruption in the church including sexual lapses of supposed virgins. Many such virgins were weak, their sin betrayed by swelling bellies and wailing infants. To avoid these visible sights and sounds, others resorted to more drastic remedies:

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[63] I only mention a few examples here, which, unfortunately, replicates the historiographical tendency to concentrate on the big names and neglect statements from other church fathers like Lucifer, Optatus, Zeno (of Verona), Epiphanius, and Theodoret: see Nardi, *Procurato aborto*, pp.481-582.

[64] *Hexaemeron* 5.18.58: text in Nardi, *Procurato aborto*, pp.531-532.

> Others drink up sterility (*sterilitatem praebibunt*) and perpetrate the murder of an unborn human (*necdum nati hominis homicidium*). Some, after realising that they have conceived in sin, turn to poisons of abortion and, often dying together themselves (*commortuae*), are led down into hell guilty of three crimes: [they are] suicides (*homicidae sui*), adulterers against Christ (*Christi adulterae*) and parricides of their unborn children (*necdum nati filii parricidae*).[65]

The rationale for abortion was implicit in the denunciation of abortion. Jerome conveyed the communal shame of lapses from virginity together with the very pressure through which abortion became a desperate recourse. Indicia, a virgin associated with Ambrose's sister, Marcellina, was accused of doing precisely what Jerome outlined: losing her purity and covering it up through abortion. Defending Indicia, Ambrose vociferously disputed how to deal with this case in correspondence with Syagrius, the bishop of Verona, and criticised him for insisting upon a physical examination by midwives.[66]

Yet another sexual location can be found in Augustine, who wrote most extensively of all patristic writers about abortion.[67] Augustine was deeply troubled by the question of life's beginnings in the womb for a variety of reasons. His language and concepts were not consistent (he continually hedged his words with circumspection – *quidam, quodam modo* etc.) and expressed wavering opinions in his commentary on Exodus and in his eschatological writings.[68]

Ironically, when he addressed the morality of abortion (and preventing conception) most directly, in treatises on marriage written partly as contributions in doctrinal disputes against Manichaean and Jovinianist ideas, these uncomfortable questions were more peripheral. Augustine, who had two different concubines over a fourteen year period, might well have had personal experience of sexually using women "against nature".[69] In *De bono coniugali*, a work with anti-Jovinian themes, he posed the question whether a man and woman who have sex together out of sexual incontinence but are nevertheless sexually faithful could be considered married. He answered in the affirmative provided that two conditions were met: first, they agreed to remain faithful until death; and, second, even if they did not have sex in order to have children, they did

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[65] *Ep.*22.13, PL 22, cols.401-402.
[66] See Katherine C. Kelly, *Performing Virginity and Testing Chastity in the Middle Ages* (London, 2005) pp.33-35.
[67] See Nardi, *Procurato aborto*, pp.547-561 and John C. Bauerschmidt, 'Abortion', in Allan D. Fitzgerald (ed.) *Augustine through the Ages: An encyclopedia* (Grand Rapids, 1999) p.1.
[68] We will return to these works in chapter eight.
[69] Brent D. Shaw, 'The Family in Late Antiquity: The experience of Augustine', *Past and Present* 115 (1987) p.45.

not avoid offspring either through not wanting them or ensuring that none were born (*agant ne nascantur*) by some evil means (*opere aliquo malo*).[70]

In *De nuptiis et concupiscentia*, Augustine expanded upon this evil which "turns the decent name of marriage into a cover for vice". This evil extended into exposing children born against their parents' will. Here, Augustine clearly articulated the signifying power of abortion and infanticide: when they acted against their children, parents' cruelty exposed their hidden wickedness. Sometimes, he continued in a famous passage:

> this lustful cruelty or cruel lust (*libidinosa crudelitas vel libido crudelis*) reaches the point that it procures poisons of sterility (*sterilitatis venena*); and, if nothing else works, [it] snuffs and pours out the foetuses conceived in the womb by some means, wanting its own offspring to die before it lives (*prius interire quam vivere*); or, if it was already alive in the womb, [wanting] that it is killed before birth (*occidi antequam nasci*). Again, if both are like this, they are not spouses…But if only one of them is like this, I daresay that either she is in a sense her husband's whore, or he his wife's adulterer.[71]

In both passages Augustine was domesticating abortion. Abortion was not something perpetrated by the isolated, fornicating woman but by spouses. The grounds for objecting to abortion and preventing conception – or to the destruction of formed and unformed foetuses – were not neatly separated. The cruelty of lust pointed to the destructive culmination of wrongful sex and the lustfulness of cruelty denoted the sexual aetiology of child-murder. But, while we will revisit Augustine's more oblique writings on abortion, we will not come back to his intricate theology of marriage for a simple reason: early medieval churchmen did not draw upon this theology in dealing with abortion.

Church fathers on abortion: eastern examples

We end with two treatments of abortion from the Greek East which, despite not having a direct influence in the West, raise important questions about the relation between abortion, murder and sex.

Perhaps the most important eastern canon on abortion was written by Basil of Caesarea in the later fourth century. This canon was fatefully insulated from a western

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[70] *De bono coniugali* 5, ed. M. Walsh (Oxford, 2001) p.10: ibid. p.11n.24 suggests that Augustine was distinguishing between contraception and abortion.
[71] *De nuptiis et concupiscentia* 1.15.17, PL 44, col.423.

readership.[72] Basil's *Letter to Amphilochius* tackled the thorny ontology of abortion in a distinctive way:

> The woman who has aborted (*phtheirasa*) on purpose is held guilty of murder. Among us, there is no punctilious distinction (*akribologia*) between formed and unformed. For in this case, not only is the one to be born vindicated, but also the one who contrived against herself, since the women who do this so often die themselves. To this the destruction (*phthora*) of the embryo is added, another murder (*phonos*) according to the intention (*kata…tēn epinoian*) of those who undertake such things.[73]

Like the Ancyran canon, Basil went on to outline a ten year penance and stressed that the penalty depended above all upon the manner of repentance. The canon is another piece of evidence that questions of foetal development were becoming increasingly associated with the question of abortion in the mid to late fourth century. In broad perspective, the Greek East developed distinctive perspectives on the embryo through theology. The co-instantiation of soul and body – in other words, marking the beginning of human life at 'conception' – was developed in the Christology of Maximus the Confessor in the seventh century and, a little more ambiguously, by Basil's brother, Gregory of Nyssa.[74] Basil appears to have been responding to a specific question and his response neither disputed nor assented to ambiguous gradualism. He did not reject the terms of the distinction but its application. The meticulous mapping out (*akribologia*) of abortion against developments in foetal life was misplaced scrutiny. Abortion was a form of destruction (*phthora*) which constituted murder (*phonos*) not according to the ontological status of the foetus but according to the intentional nature of the act (*epinoia*). Basil's repudiation of *akribologia* lays down an interpretative challenge. In its clarity of expression, Basil's canon was singular. But we will listen out for odd early medieval echoes of this idea.

Finally, Basil's contemporary John Chrysostom spoke about abortion in a sermon on Paul's letter to the Romans. In the middle of the sermon, Chrysostom urged his listeners to "flee fornication and the mother of it, drunkenness". Drunkenness inverts moral perceptions: in a drunken stupor, "wives come to be in disrepute, and [prostitutes] in

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[72] For its importance in the East and discussion in later Byzantine commentaries, see Huser, *Crime of abortion*, pp.22-24, 30-31 and E. Poulakou-Rebelakou et al. 'Abortions in Byzantine Times (325-1453 AD)' *Vesalius* 2.1 (1996) pp.19-25.

[73] *First letter to Amphilochius* 2: text in Nardi, *Procurato aborto*, p.513, translation adapted from Huser, *Crime of abortion*, p.22.

[74] See Marie-Hélène Congourdeau, 'L'animation de l'embryon humain chez Maxime le Confesseur', *Nouvelle révue théologique* 111 (1984) pp.693-709 and John Saward, *Redeemer in the Womb: Jesus living in Mary* (San Francisco, 1993) pp.8-13.

honor among you". If children were born out of these visits to prostitutes, all manner of injustices and scandals flow. Chrysostom made the social observation that such children would scarcely be supported by their fathers. Unsurprisingly, prostitutes often resorted to abortion, and here Chrysostom asked:

> Why sow where the ground makes its care to destroy the fruit? where there are many efforts at abortion? where there is murder before the birth? for even the harlot thou dost not let continue a mere harlot, but makest her a murderess also. You see how drunkenness leads to whoredom, whoredom to adultery, adultery to murder.

Men turn prostitutes into murderesses, and "make a chamber of procreation a chamber for murder, and arm the woman that was given for childbearing unto slaughter". This was not the worst of it. Many of these men were married, "[w]hence the mischief is the greater [because] sorceries are applied not to the womb that is prostituted, but to the injured wife".[75] To put it bluntly: husbands ended up treating their wives like whores.

Unsurprisingly, Chrysostom's homily has attracted attention for his description of abortion as 'something worse than murder…I have no name to give it, since it does not take off the thing born, but prevents its being born".[76] Abortion was ineffable murder. But another aspect of his homily is not so commonly noted: in context, his direct addressees were men. Remarkably, when discussing the abortions procured by prostitutes, Chrysostom precluded a specifically male get-out, for "even if the daring deed be hers, yet the causing of it is thine." And wives who had abortions, far from doing so underhandedly and nefariously, were "injured". The focus was squarely – and extraordinarily so – on male culpability for abortion. This was an unequivocal, uncompromising denunciation that went beyond haranguing distant complicity in abortion. Chrysostom presented an aetiology of abortion in which male lust was the prime mover. At the same time, it is a reminder of a potentiality within Christian discourse on abortion: male complicity with abortion. If this is easily overlooked, it must not be overstated either. This potentiality was not pervasively actualised. Women continued to bear the physical brunt of pregnancy and, for the large part, the moral burden of abortion. But, in subtle ways, there were multiple facets to male responsibility for abortion: not only licentious husbands, but also those chaste men dutybound to inveigh against such practices.

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[75] *Homily 24 on the Epistle to the Romans*, trans. J.B. Morris & W.H. Simcox, *NPNF* 11 (1889) p.520.
[76] E.g. Gorman, *Abortion and the early church*, pp.72-3.

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Abortion signified a range of problems and concerns to Christians, Jews and 'pagans'. The relationship between Christian ideas and Graeco-Roman milieu was complex. Different perspectives reflect not only different moral ideas but also different contexts of writing and different ways of seeing. Where Roman law and moralism took a decidedly civic perspective and almost deliberately fostered sexual double standards, Christian authors took an ecclesial perspective and inconsistently grappled with subtly different sexual norms. Historians have often characterised Christian abhorrence at abortion as something, if not wholly unprecedented, then certainly unique and unanimous: the "form[ation of] a new standard higher than any which then existed in the world"[77], a "novel moral-viewpoint"[78], a "notion that human life, even in its embryonic and wailing forms, demands a sacred respect"[79], the adoption of an "absolute position"[80] and "an almost absolute value".[81] A sense of unanimous abhorrence is a distorting truth. It is not wrong. Overemphasised, however, it misses the complexity of Christian attitudes to abortion. Rejection of abortion marked the moral excellence of Christian life but also the frailty of Christian communities; abortion was related to the sex life of the married and the sex life of the chaste; and abortion was illuminated by divine love and divine punishment.

A history of emergent Christian attitudes to abortion fully attuned to these intricacies is, perhaps, yet to be written. For our purposes, an acknowledgment of the multiple significance of abortion problematises the idea that the early medieval West was simply a conveyor for earlier moral doctrine. Abortion was never simply apprehended through a sealed moral doctrine, but was also a theological, political, moral and social sign. The swirling mixture of sources on abortion in classical and late antique society, animated by a cornucopia of distinctive personalities, addressed and used abortion in a variety of contexts. They were written to address a range of needs in the present. The remainder of this study will attempt to root the ecclesiastical tradition on abortion and the cultural significance of abortion in specifically early medieval contexts.

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[77] W.E.H. Lecky, *History of European Morals from Augustus to Charlemagne,* volume 2 (New York, 1975 [1869]) p.20.
[78] Huser, *Crime of abortion*, p.12.
[79] Michel Riquet, 'Christianisme et population', *Population* (French edition) 4 (1949) p.621.
[80] Kapparis, *Abortion in the ancient world*, p.51.
[81] Noonan, 'Almost absolute value'.

PREPARING FOR JUDGMENT DAY:
ABORTION IN THE SERMONS OF CAESARIUS OF ARLES

"It cannot be successfully argued," wrote John Noonan, "that the monastic code on marital morality was worked out by persons with no pastoral responsibilities or sympathies".[1] Even this sensitive historian of birth-control failed to grasp the importance of "pastoral responsibilities". Early medieval churchmen did not reflect upon abortion in apologetic or intellectual contexts. There was scarcely any specialised discourse on abortion as a stand-alone issue. Rather, condemnation of abortion was integrated into broader attempts to forge Christian communities. Over time, traditions of condemnation were created, developed and adapted to needs in the present. This tradition was not immutably set in Late Antiquity or earlier but was itself rooted in contemporary perceptions and practices.

The majority of early medieval sources are prescriptive texts – penitentials, councils, canonical collections etc. They are less individual and more generic than their earlier counterparts. In spite of this – or, perhaps, because of it – they testify to the ways in which churchmen actively negotiated the problem of abortion in the context of pastoral practice and social reform. The next four chapters will focus upon how abortion was integrated into pastoral texts and the practice of forming of Christian communities from *c.*500 to 900. The chapters are in broad chronological order and view a range of early medieval 'moments' at different scales. Insofar as there is a broader narrative, it is one of increasing integration within pastoral and reforming programmes. But the primary aim is to examine the evolving and different, even contradictory, ways in which early medieval churchmen construed and negotiated the problems thrown up by abortion.

The sixth-century sermons of Caesarius of Arles offer a rich starting point. Caesarius is no stranger to histories of abortion. Scholars have often quoted him for an unforgettable and seemingly nonsensical statement on potions to thwart fertility: women would be guilty of as many murders as children they might have conceived. But, by excerpting his jarring denunciation, scholars have insufficiently examined how a rejection of abortion was integrated into this energetic bishop's attempt to form a

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[1] Noonan, *Contraception*, p.143.

Christian community, an aim through which he prefigured broader early medieval dynamics.[2] At the same time, his sermons were idiosyncratic, unusually marked with a bishop's personality. Caesarius adapted condemnations of abortion to the perceived needs of a Christian community in a particular time and place, not to contribute to a timeless moral tradition, and the result coupled sharp focal points with conspicuous blindspots.

PREACHING AND PASTORAL LEADERSHIP

During an episcopate spanning four decades from 502 until his death in 542, Caesarius became a pre-eminent figure in the sixth-century Gallic church. A product of the vibrant spiritual cross-currents which had converged in a unique way across southern Gaul from the fifth century, after an admittedly turbulent period as a monk at the monastery of Lérins, Caesarius eventually became a pre-eminent ecclesiastical leader who undertook monastic projects in Arles, meetings with the Ostrogothic king, Theoderic, and Pope Symmachus in 513, and a leading role at Gallic councils in the 520s.[3]

The most enduring testimony to Caesarius' pastoral energy was his sermons, of which over two hundred have survived. Through them, he enacted an "active social theology" in which preaching was integral to forming Christian communities.[4] Influenced by the rhetorician and priest Julianus Pomerius' conception of an ascetically informed "pastoral rhetoric" in which God's word was conveyed in accessible language, Caesarius sought to "catch [people's] attention with words, so as to fix their mind on the divine word".[5] As the biographers of his sixth-century *vita* explained, Caesarius was "completely dedicated…to the word of God [and] constant preaching" gently encouraging with

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[2] For previous treatments, see A.M. Dubarle, 'La contraception chez Césaire d'Arles', *La vie spirituelle, supplément* 67 (1963) pp.515-519; Noonan, *Contraception*, pp.145-147; Suzanne F. Wemple, *Women in Frankish Society: Marriage and the cloister 500 to 900* (Philadelphia, 1983) pp.24-25; Clarissa W. Atkinson, *The Oldest Vocation: Christian motherhood in the Middle Ages* (Ithaca, 1991) pp.86-87 and Gillian Clark, *Women in Late Antiquity: Pagan and Christian lifestyles* (Oxford, 1994) pp.83-84.

[3] The fundamental study is William E. Klingshirn, *Caesarius of Arles: The making of a Christian community in late antique Gaul* (Cambridge, 1994) and see too id. 'Church Politics and Chronology: Dating the episcopacy of Caesarius of Arles', *Revue des études Augustiniennes* 38 (1992) pp.80-88. On Lérinian monasticism, see Conrad Leyser, "'This Sainted Isle': Panegyrics, nostalgia and the invention of Lérinian monasticism', in William E. Klingshirn and Mark Vessey (eds.) *The Limits of Ancient Christianity* (Ann Arbor, 1999) pp.188-206.

[4] Thomas N. Hall, 'The Early Medieval Sermon', in Beverley M. Kienzle (ed.) *The Sermon*, Typologie des sources du moyen âge occidental 81-83 (Turnhout, 2000) p.231.

[5] Conrad Leyser, *Authority and Asceticism from Augustine to Gregory the Great* (2000) pp.77-83 (at pp.80, 83). On Caesarius' encounter with Julianus Pomerius see Klingshirn, *Caesarius*, pp.75-82.

"sweet speech" or otherwise adopting altogether "stronger language" when the sins of his flock warranted it.[6] Abortion was one of many such sins.

While Caesarius probably had stenographers to transcribe sermons and certainly had copyists, he continually revised them so that they could be used and understood elsewhere. Some sermons alluded to specific incidents and local social experiences, the kind of allusions which were part of the skilled preacher's repertoire. In one sermon, Caesarius reflected upon the "dire calamity" that befell people during the Burgundian siege of Arles in 508 (*sermo* 70.2). Many were altogether more generic and shorn of dates, occasions of delivery, and other specific details.[7] Preaching was strongly associated with the episcopate in late antique and Merovingian Gaul, but Caesarius was no episcopal protectionist. He enjoined priests and deacons to preach the word of God too. He "diffused the fragrance of Christ far and wide" by "prepar[ing his] sermons in such a way that if any visitor requested them, he did not refuse to share them" and even sent them out to "clerics located far away in the Frankish lands, Gaul, Italy, Spain, and other provinces [so that] they could preach in their own churches".[8] The sermons' double function and dual audience is an important interpretative key: they were both performative texts for a lay audience and pedagogical texts for a clerical audience.

ABORTION IN THE SERMONS

Five of his surviving sermons (*sermones* 19, 44, 51, 52 and 200) and one letter (classified as *sermo* 1) addressed abortion.[9] Five of these were, in Germanus Morin's classification, *admonitiones*, instructional and exhortatory works for lay audiences. In the years since Morin's seminal edition, new sermons have been added to the corpus while the attribution of other works has been questioned, leading some scholars to feel that a reappraisal of the corpus is very much needed.[10] The problem lies in the huge number of manuscripts across which Caesarius' sermons are pseudonymously and anonymously strewn.[11] For our purposes, however, Caesarius' *admonitiones* have hitherto survived

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[6] *Life of Caesarius* I.17, trans. W.E. Klingshirn *Caesarius of Arles: Life, Testament, Letters* (Liverpool, 1994) p.17.

[7] Klingshirn, *Caesarius*, pp.9-14.

[8] *Life of Caesarius* I.55, p.37.

[9] I have used Germanus Morin, *Sancti Caesarii Arelatensis sermones*, CCSL 103-104 (Turnhout, 1953) except for *sermo* 1, which has a superior edition in Marie-José Delage *Césaire d'Arles: sermons au peuple,* Sources Chrétiennes 175 (Paris, 1971).

[10] C.f. Leyser, *Authority and asceticism*, pp.81-82n.3.

[11] G. Morin, 'Mes principes et ma méthode pour la future édition de saint Césaire', *Revue Bénédictine* 10 (1893) pp.62-78. Details of manuscripts and homiliaries containing his sermons are laid out exhaustively in Morin's introduction, and are simplified for summary in a table in SC 175, pp.81-93.

piecemeal revisions to Morin's painstaking work and none of the subsequently recovered sermons adds to the number which broaches abortion.[12]

Obliged to preach (sermo 1)

His letter to Gallic bishops is a suitable starting point. Marie-José Delage has suggested that it was written at some point between 506 and 529. Caesarius' political position was far stronger after 513 and a later date, probably in the 520s, is most likely.[13]

In this statement of ideal episcopal praxis, the binding obligation to preach was the recurrent and quintessentially Caesarian theme. Caesarius urged incessant preaching, "as often as we can", not just in church, but also in banquets, at gatherings and on the road. The cacophony of "frivolous gossip and sneering jokes" was to be drowned out by the word of God (1.10). Ineloquence was an insufficient excuse because preaching did not require the kind of "consummate eloquence which few can understand". A plain-talking priest could reprimand drunkards, scold adulterers, and admonish the proud. Caesarius provided a meandering list of sins against which priests were urged to speak out. What kind of a priest, he kept asking, cannot denounce this or that sin. Soon, he came to abortion:

> Who is there who cannot say [that] no woman should take those potions for abortion, because she should not doubt that she will have to bring herself before Christ's tribunal for as many cases as those she has killed, either already born or just conceived? Who cannot warn that no woman should take a potion so that she cannot conceive, nor should she harm within her the nature which God has wished to be fertile: because, she will be held guilty of as many homicides as [children] she had been able to conceive or give birth to, and, unless she undergoes a fitting penance, she will be condemned to eternal death in hell? A woman who does not want to have children should enter into a religious pact with her husband: for, chastity is the only sterility for a Christian woman.[14]

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[12] *Sermones* 51 and 52 are the most susceptible to revision but are still generally considered Caesarian. Along with *sermo* 53, they only survive in a manuscript of an eighth-century homiliary attributed to Burchard of Würzburg, on which see G. Morin, 'L'homéliaire de Burchard de Würzburg: contribution à la critique des sermones de St Césaire d'Arles', *Revue Bénédictine* 13 (1896) pp.97-111. Yitzhak Hen, *Culture and Religion in Merovingian Gaul, A.D. 481-751* (Leiden, 1995) p.165 notes the possibility that these sermons were written in eighth-century Würzburg, though he does not quite argue against ascribing them to Caesarius.

[13] The dates 506 and 529 refer to the councils of Agde and Vaison: see SC 175, pp.176, 276-277n.1. See Klingshirn, *Caesarius*, pp. 82-97, 113-117 on controversies surrounding his election and his ransoming of Burgundian prisoners after the siege of Arles in 508. It is not possible to date the five sermons on abortion.

[14] "Quis est qui non possit dicere…nulla mulier aliquas potiones ad aborsum accipiat, quia, quantoscumque aut iam natos aut adhuc conceptos occiderit, cum tantis causis ante tribunal Christi se ducendam esse non dubitet? Quis est qui admonere non possit, ut nulla mulier potiones accipiat, ut iam concipere non queat, nec damnet in se naturam, quam Deus voluit esse fecundam; quia, quantoscumque concipere vel parere potuerat, tantorum homicidiorum rea tenebitur, et, nisi digna paenitentia subvenerit,

Caesarius was not only drawing attention to the immoral practice of abortion but also to the grave obligation to preach. Its gravity was bound up with the gravity of the sins against which pastors were obliged to preach. Caesarius was reminding bishops and priests of their duty to remind women of God's judgment, for they too would be answerable at a tribunal for the souls of all those who died "famished of God's word" through their negligence. When Caesarius proposed that those who found it difficult to preach could follow the ancient tradition of reading out sermons in church for the salvation of souls (1.15), he did not have just the souls of those listening in mind. Like many other passages in the letter, this one highlighted an envisaged pastoral problem while supplying the very words in which it was to be addressed. Indeed, these were the phrases and images, the same idiom of condemnation, which he used in his own preaching.

Catechumens and abortion (Sermo 200)

In two cases (*sermones* 19 and 200), abortion was included within thematically broad-ranging sermons. *Sermo* 200 was directed to *competentes* (catechumens) and was derived from an Augustinian sermon on this theme.[15] Caesarius' active interest in conversion is suggested by his biographers' hazy account of the ransoming of Burgundian and Frankish captives following the Ostrogothic relief of a besieged Arles in 508. Conversion was probably part of the rationale for the ransoming, and elsewhere Caesarius invited his listeners to convert Arian Christians, Jews and pagans.[16] In the case of *sermo* 200, however, the precise circumstances and date are unclear, though his audience included the faithful baptised, whom Caesarius hoped would find his suggestions of some use (200.1).

Caesarius outlined ritual aspects of the catechumenate, spiritual attitudes incompatible with the profession of Christian faith and the consequent need for penitence and divine mercy (200.2-5). The catechumen who committed particularly serious sins at the devil's instigation (*persuadente diabolo*) – namely, adultery, theft and murder – had to seek God's mercy (200.4). The same was true of "any female catechumen [who] at some point takes devilish potions for abortion, and kills her children either still poised in the womb or

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in gehenna aeterna morte damnabitur; mulier, quae iam non vult habere filios, religiosum cum viro suo ineat pactum: christianae enim feminae sterilitas sola sit castitas?" 1.12, pp.246-248.

[15] We will revisit this sermon and its Augustinian precursor in chapter eight.

[16] *Life of Caesarius* I.32-33, pp.25-26. See William E. Klingshirn, 'Charity and Power: Caesarius of Arles and the ransoming of captives in sub-Roman Gaul', *Journal of Roman Studies* 75 (1985) pp.183-203.

otherwise born".[17] This was Caesarius' least developed description of abortion. Nonetheless, abortion numbered among the most serious sins, all of which required penitential cleansing before baptism and precluded integration into the Christian community.

Paternal correction (sermo 19)

In *sermo* 19, the segment dealing with abortion was ostensibly tied on rather loosely at the end. Caesarius gave thanks to God for the opportunity to visit after various duties had kept him away, a small detail which suggests that the sermon was delivered (or was a revision of a sermon delivered) to a rural congregation outside Arles. The broad range of subjects covered reflects this: Christians who received only intermittent preaching needed a primer in community ethics.

Caesarius began with a typical contrast between the paucity of our earthly years and the eternal glory of reigning in heaven with Christ. He outlined *crimina capitalia,* which cast men down into hell, and everyday (*cotidiana*) sins, atoned for through almsgiving and other good works (19.1-2). He detailed requisite behaviour before and during visits to church (19.3) and listed superstitious and pagan practices which contravened baptism and the profession of faith (19.4). One of these practices, consulting magicians, seers and enchanters over ailments, provided a thread leading into a detailed sequence on physical and spiritual health in the final section (19.5).

The healthy could be spiritually sick and the sick spiritually healthy. The vicissitudes of life called for a twofold gratitude to God: gratitude for convalescence from illness or, alternatively, for the spiritual advantages that sickness imparted insofar as the healthy, unencumbered by illness, more readily turned to sin. Whether health returned quickly or slowly, spiritual gratitude was essential "because [God] knows what we need, when it is better for us to grow ill or to be healthy". He immediately moved onto abortion in what appears to be a non-sequitur, though we shall return to why it may not be below:

> And relying on your charity, out of paternal concern I advise all your daughters that no woman should take potions for abortion and kill her children, whether conceived or born; but she must rear however many [children] she has conceived herself or pass them onto others to be reared; because however many [children] she has killed, she will appear a guilty murderess of that many on judgment day.[18]

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[17] "aliqua mulier conpetens potiones diabolicas aliquando ad avorsum accepit, et filios suos aut adhuc in utero positos aut etiam natos occidit", 200.4, p.810.

[18] "Nam et hoc praesumens de caritate vestra omnes filias vestras pro solicitudine paterna admoneo, ut nulla mulier potiones ad avorsum accipiat, nec filios suos aut conceptos aut natos occidat; sed,

The noblewoman and the servant-girl (sermo 44)

The remaining three sermons were more thematically focussed. In s*ermo* 44 Caesarius spoke about chastity and ritual purity on a martyr's feast. The connection between martyrdom and purity was not accidental. The blessed martyrs were, of course, models of imitation and agents of intercession in the struggle against sin (44.1). Preparing for their feasts and for receiving the sacrament of Christ necessitated the exercise of chastity beforehand (44.3). A great deal of the sermon outlined sexual norms, including the interconnected importance of continence and procreation in marriage.

As a preacher, Caesarius drew upon the imagined texture of his audience's lives and elaborated rhetorical responses to anticipated objections in order to expose spiritual complacency.[19] Some said, he declared in one such anticipation, that sexual sin was paltry (*parvum*). It was not, he conceded, the worst kind of sin. But if habitual and unrepentantly practised, sexual sin polluted the soul just as tiny raindrops accumulated drop by drop to fill up rivers. Would someone who habitually allowed this paltry sin tolerate so many paltry blows (*parvulas plagas*) to the body (44.6)?

Caesarius used a similar rhetorical confrontation in a tangent on abortion, which followed a brief caution against premarital sex. Young men and women who corrupted themselves through premarital "adultery" came to marriage with living bodies and deadened souls (44.1). He then moved onto abortion in a series of familiar phrases.[20] Then, in the most withering of his attacks on abortion, he staged a rhetorical confrontation with the noblewoman (*mulier ingenua*) who took death-dealing (*mortiferas*) potions to avoid conceiving more children:

> I would like to know whether she wants her servants or tenants to do this. Because just as every woman wants slaves to be born for her, to serve her, so too she should either rear or give to others for rearing however many [children] she conceives; otherwise she either refuses to conceive or, which is worse, wants to kill those who might have been good Christians. And with what conscience does she want slaves to be born from her servants while she refuses to bear those who could have become Christians?[21]

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quantoscumque conceperit, aut ipsa nutriat, aut nutriendos aliis tradat; quia quantoscumque occiderit, pro tantis homicida in die iudicii rea apparebit." 19.5, p.91.

[19] Klingshirn, *Caesarius*, pp.14, 209 and SC 175, pp. 197-201.

[20] In summary: prohibition on killing before or after birth; Christ's tribunal; prohibition on potions to prevent conception; so many conceptions thwarted, so many homicides.

[21] "…velim scire si hoc ancillas vel colonas suas facere vellet. Et ideo quomodo unaquaeque vult ut sibi nascantur mancipia, quae illi serviant, ita et illa, quantoscumque conceperit, aut ipsa nutriat, aut nutriendos aliis tradat; ne forte illos aut concipere nolit, aut, quod est gravius, occidere velit, qui boni christiani esse potuerant. Et qua conscientia sibi ab ancillis suis vult mancipia nasci, cum ipsa nolit eos qui christiani possint fieri generare?" 44.2, p.196.

Fecundity and sterility (sermo 51)

The two remaining sermons were the most coherent. *Sermo* 51 examined the correct spiritual attitude to children and childlessness. Caesarius emphasised that good deeds were like children to the childless. But while these spiritual children raised their parents to heaven, earthly children were the source of troubles. While clarifying that there was nothing wrong with having children and that the married were not to be dissuaded from having them, he noted how parents were wont to accumulate wealth for their children through fraud and robbery, thereby bringing want to others and eternal death to themselves (51.2-3).

Caesarius moved onto those whom God did not want to have children, the childless, and who resorted to "certain herbs or devilish characters or sacrilegious amulets" in order to have them. The refusal to accept childlessness was a rejection of divine providence. So too was the refusal to accept fecundity. Again, Caesarius drew upon a familiar stock of phrases and images. But Caesarius also incorporated the passage on abortion from Jerome's letter to Eustochium, the only instance in which he clearly drew upon a patristic source in condemning abortion. Since women who took "sacrilegious potions" to kill their children could also die, they beame *homicidae suae, Christi adulterae* and *necdum nati filii parricidae*. The subtext of the original declamation was lost in translation insofar as *Christi adulterae* were consecrated virgins rather than married women. Nonetheless, tying the threads back together, women who wanted to have children "by any kind of sacrilegious medicine" acted badly while those who killed children conceived or born "sin even more grievously". By taking "sacrilegious potions" to avoid conception, they harmed their nature, which God wanted to be fruitful (a point briefly made in *sermo* 1.12).

Diabolical suasion (sermo 52)

Finally, *sermo* 52 was a blistering tour of the devil's wares. The opening outlined a practical theology of martyrdom. To be a martyr was to be a "witness" who, spurred by charity, scolded wrongdoers and spoke out against such devilish temptations as consulting augurs, sorcerers and soothsayers (52.1). Misled by the devil, stupid men worshipped the days and the months, foolish Arlesian women set down their looms on Thursdays in honour of Jove and lunatics believed that their incantations and other pointless pagan customs actually drove the moon along (52.2-3).

An even clearer form of diabolical deception (*aperte diabolus exercet deceptiones suas*) was plied upon women who thought that they could not be rich if they gave birth to more than two or three children. The devil coaxed (*persuadet*) them to commit infanticide or to take potions for abortion. The consequence was a sacrilegious perversion of maternity:

> What do they think when they do this except that God cannot feed and guide those whose birth he has ordered? And they quite possibly kill those who might have served God better or obeyed their very parents in perfect love. For by a sacrilegious and parricidal rite, they take poisonous potions in order to give to their children a life cut short by premature death within the maternal womb and, through this sort of remedy, they drink the cup of bereavement with this cruel potion.[22]

Caesarius then developed a theme latent in other sermons: by taking potions for abortion, women harmed themselves:

> What pitiable conviction. They think that the poison, which passes through them via their drink, does not affect *them* [literally: is alien from them]; and they do not realise that they conceive in this sort of way, that, when they receive with death what has been conceived in their wombs, they are conceiving in sterility. For even if at this point a little child, which could be killed, is not to be found within the fold of the maternal body, it is nonetheless true that the very nature within them is harmed.[23]

This bodily harm was eternally harmful (*in perpetuum nocitura*). The tragic irony was that women had healthier remedies (*salubriora remedia*) within them: marital chastity.

This was Caesarius' most developed and spectacular denunciation of abortion. The devil's *persuasio* was lamentable because it obscured the harm that women wrought upon themselves and upon their children in the womb. Countering the *remedium* of the cruel drink was the *remedium* of chastity. In outlining this more salubrious remedy – a remedy which safeguarded both body and soul – Caesarius was practising what he preached, for when the marty "speaks against those temptations of the devil, he is recognised as bearing witness to Christ" (52.1).

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[22] "Et haec facientes quid aliud credunt, nisi quod illos, quos deus iusserit nasci, pascere aut gubernare non possit? Et forsitan illos occident, qui aut deum melius servire aut ipsis parentibus perfecto amore potuerant oboedire. Pro qua re sacrilegio aut parricidali ritu venenatas potiones accipiunt, ut inperfectam filiorum vitam inmatura morte per viscera materna transmittant, et per quoddam remedium cum quodam potu crudele bibant poculum orbitatis." 52.4, p.231.

[23] "Lugenda persuasio! alienum a se putant illud quod per earum haustum transit venenum; et nesciunt quia hoc genere, dum conceptum in visceribus excipiunt morte, in sterelitate [sic] concipiunt. Quod si adhuc infantolus qui possit occidi intra sinum materni corporis non invenitur, non minus est quod ipsa intra hominem natura damnatur."

Creating an idiom of condemnation

A set of phrases and images recurred across these sermons:

- abortion prohibited as killing of children whether born or conceived (1.12, 19.5, 44.2, 51.4, 52.4; *in utero positos*, 200.4)

- image of Christ's tribunal on judgment day; charge of as many murders as children killed (1.12, 19.5, 44.2, 51.4)

- taking potions to avoid conception as acts against "nature" and God-willed fecundity (1.12, 51.4, 52.4)

- all occasions on which a woman thwarted a possible conception are murders (1.12, 44.2, 51.4)

- injunction of the "sterility" of chastity (1.12, 52.4)

- injunction to rear all children oneself or give them to others for rearing (19.5, 44.2, 51.4)

This recurrence reflects the importance of memory. Caesarius "taught from memory" and might well have preached extempore.[24] But, more importantly, he idealised his sermons as seeds from which the word of God could take root and grow fruitful. He urged his audience "always [to] recall and retain what we have proposed for the salvation of your soul". Caesarius yearned for the spiritual cross-pollination of speech within the community: "Let one say to another: I heard my bishop speaking about chastity. Let another say: I also remember that he preached about almsgiving". If each person remembered just three or four *sententiae*, between them they could remember the whole and, with Christ's help, bring them to fruition in their deeds (*sermo* 6.8).

This was not just about literal memory but about a growing, communal memory. It was a rather optimistic ideal. But the way in which scholars have been drawn to one specific phrase is an odd reflection of the manner in which Caesarius crafted his words as carefully constructed mnemonics for preachers and preached alike. Importantly, while the moral problematisation of abortion was hardly novel, these were Caesarius' own words. He was not a conveyor of sealed traditions – he quoted Jerome once and a little out of context – but deployed an idiom of condemnation suited to the intersecting tendencies he perceived in his community. To isolate a few phrases from the intersecting themes across the sermons is to attenuate the purpose and power of his speech, and to neglect the intricacy of what abortion signified.

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[24] *Life of Caesarius*, I.54, p.36; see Klingshirn, *Caesarius*, pp.12-14.

Idealised femininity and the sexual division of labour

Caesarius isolated women as the agents of abortion. The fathers of those conceived and those who provided the means were not clearly mentioned by Caesarius. Aside from the implied intentionality of having an abortion – not to have a child – there was little real engagement with motivation. One motive, to conceal illicit sex, was absent and material concerns were broached just once: some women resorted to abortion "fearing lest they cannot be rich if they were to have more children", that is, fearing for *their* own riches (52.4). This might have been a mistake, the kind of sloppy error by inexperienced (*incipientes*) scribes, for which he asked his clerical readers' pardon ('Praefatio libri Sermonum', 2); or, otherwise, it was a somewhat tendentious imputation insofar as elsewhere Caesarius spoke of parents' desire to "leave *their children* rich in this world" (51.2, my italics).

At any rate, whenever Caesarius spoke about abortion, he was speaking almost exclusively about women. This focus stemmed from a broader tendency to tie sin to gender. Lisa Bailey has recently demonstrated how Caesarius "used the rhetoric of masculinity to control the "problems" of sex and drink". While abortion and practices associated with childbearing and healing were characterised as feminine sins, drunkenness and sexual licence were characterised as masculine sins. Men who drank to excess or indulged their sexual whims were enacting a commonly shared conception of manliness. Wallowing in the "sewer of lust", men who slept with servant-girls competed over who had slept with the most (42.3). At drunken banquets, drunkards ridiculed those who drank less than them (46.1) and declared that these moderates were not real men (47.1). Caesarius' response was to uncover these habitual and shared social practices as a form of "aberrant masculinity" and set against them a competing conception of virility premised upon self-discipine rather than excess. Binge drinking and promiscuity were deficiencies in manhood, not its distinctions.[25]

Caesarius did not quite encounter a female counterpart to male braggadocio and abortion was presumably as hushed a practice as male promiscuity was brash. But abortion was similarly tied to gender and Caesarius critiqued abortion through the idealised feminine: maternity. The author of a *regula* for nuns, Caesarius was not simplistically pronatalist. He expressly denied the legitimacy of those who tried to have

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[25] Lisa Bailey, "'These are not Men": Sex and drink in the sermons of Caesarius of Arles', *Journal of Early Christian Studies* 15.1 (2007) especially pp.31-35 (quotations at pp.23, 31).

children by whatever means (*sermo* 51). Nor were connotations of spiritualised maternity closed to men.[26] Caesarius' biographers drew upon these and comparable connotations in conveying Caesarius' own virtue. By chopping off silver from columns and handing over chalices and censers for the ransoming of Burgundian captives, Caesarius acted as a kind of midwife who "made the womb of the mother [church] open up for children (*aperire fecit filiis matris viscera*); he did not cause it to be harmed (*dampnari*)".[27] More simply, he loved even his enemies "not only with a paternal but also a maternal affection".[28]

Childbearing was fundamental to idealised maternity and abortion entailed the opposite of idealised maternity: women killed their *own* children in the womb. *Sermo* 52 in particular accentuated the desecration of maternity wrought by the "parricidal rite". To drink an abortion potion was to sip from the "cup of bereavement (*poculum orbitatis*)" and to snuff out the "imperfect life of children" from within the "maternal womb". Indeed, in this sermon, Caesarius deliberately used the ineffability of this perversion. Abortion transformed the woman on the threshold of motherhood into an "unhappy mother, no, now the stepmother of a child not yet engendered (*infelix mater, immo non geniti filii iam noverca*)" (52.4).[29]

But, moreoever, women harmed their own nature (1.12, 51.4, 52.4). They visited physical harm upon themselves (52.4) or, even worse, took their own lives in trying to end another (51.4). Often, unbeknown to themselves, they conceived in sterility. This sterility was not a passive state but a more actively disruptive force. Whether or not it killed an infant in the womb – indeed, whether or not there was an infant in the womb to be killed – the poisons damaged a woman's natural capacity to bear children (52.4) and, in this sense, the harm was unnatural. At the supernatural level, it rejected God's will and entailed a refusal to trust in providential guidance (51.4, 52.4). It was a kind of harm (*damnare*) which flirted with damnation.

Finally, reproduction was ineluctably social. This was clearest in the rhetorical confrontation with the noblewoman who insisted that her female servants bore children. She did this precisely in order to perpetuate a certain social order: they were to bear

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[26] On this point, see especially Giselle de Nie, 'Fatherly and Motherly Curing in sixth-century Gaul: Saint Radegund's *mysterium*', in id. *Word, Image and Experience: Dynamics of miracle and self-perception in sixth-century Gaul* (Aldershot, 2003) XIII, pp.53-86.

[27] *Vitae Caesarii* 1.33, MGH SRM 3, p.469.

[28] *Life of Caesarius* 1.53, p.36.

[29] This presumably played on negative connotations of stepmothers. I have only found one comparable reference in the fifth-century North African poet Dracontius' *Carmen de Deo*, which described any woman who drank up potions for abortion or committed infanticide as "not even a stepmother (*minus ecce noverca*)": *Carmen de Deo* II.314-320, PL 60, cols.796-797.

more slaves for her, while she limited her own childbearing for (here, we might appropriate Mary Douglas' phrase again) "caviar and champagne". Caesarius nonetheless shared something in common with these hypothetical hypocrites in assuming that women bore the responsibility for perpetuating the social order. The key difference, however, was that, for Caesarius, a different kind of social reproduction took precedence: children could become Christians (44.2) and serve God (52.4). In other words, social reproduction – and women's responsibility for it – had to be understood theologically.

Sexual double standards and blind spots

If the isolation of women as the culprits of abortion was borne of a pastoral strategy, it was a pastoral strategy susceptible to a crucial oversight. In attacking male sexual licence and hypocrisy, Caesarius "spoke up in defense of women".[30] His rhetoric against male sexual sins played on notions of emasculation and implied that women were often morally superior in practice. Social conventions expected higher sexual standards of women and the men who enacted this double standard were blind to the fact that Christ's blood redeemed men and women alike (42.3). These were the sexually corrupted men who insisted that their wives came to marriage as virgins without making similar demands of themselves (43.2). They were less than men and became what women were in name: following that commonplace etymology, man (*vir*) came from strength (*a virtute*), while woman (*mulier*) came from softness (*a mollitie*), that is, from weakness (*a fragilitate,* 43.1).[31]

Caesarius conveyed a monastically informed version of the Augustinian theology of marriage to his listeners.[32] Sexual renunciation was a higher calling than marriage. But, properly practised, marriage remained spiritually respectable and was integrated into the community of holiness. There were three models of chastity to emulate: virgins looked upon Mary, widows upon Anna and wives upon Susanna. Married women who preserved mutual fidelity (*sibi invicem fidem servaverint*) and intercourse with a desire for children (*nonnisi pro desiderio filiorum*) would number with Job, Sara and Susanna, and other prophets and patriarchs, in heaven (6.7). More sternly, men were reminded that they took wives for the sake of children (*propter filiorum procreationem*), not for the sake of

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[30] Suzanne F. Wemple, *Women in Frankish society*, p.24.
[31] See Smith, *Europe after Rome*, pp.122-123 on this etymological commonplace.
[32] See Klingshirn, *Caesarius*, pp.190-193 and A. Zurek, 'L'etica coniugale in Cesario di Arles. Rapporti con Agostino e nuovi orientamenti', *Augustinianum* 25(1985) pp.565-578.

lust (*propter libidinem*), as the marriage rubric clearly stated. For Caesarius, a crucial aspect of the procreative norm was the relation between procreative intention and chastity. This was not solely, or even primarily, a 'natural law' argument premised upon the natural teleology of sex. Rather, the absence of a desire for children revealed that one had been conquered by lust (*luxuria victus*). Here, Caesarius focussed his moral gaze upon men, since it was they who were prone to captivity to lust, to that tendency, in a slightly strange agricultural image, to keep sowing land which had already been sown (44.3).[33]

If Caesarius was right to be concerned with male sexual mores and hypocrisy, with the man who expected his wife to be the "conqueror" against the "cruellest bestial lust" but was himself "conquered by lust's first blow" (43.1), then it was emollient husbands, not virile wives, who needed to be told about the religious pact of chastity. But, as Suzanne Wemple has noted, "[e]ven this sympathetic observer of women's plight failed to perceive that men might have been more responsible for abortions and infanticides than women in a society where double sexual standards prevailed".[34] His isolation of women as culprits for abortion threatened to complement, rather than counter, the sexual double standards which he sought to erode. Here, Caesarius departed from the Augustinian approach to marriage and procreation, which conceived of sins committed by spouses, not just wives. Although Caesarius elaborated a conjugal morality in which the procreative norm was central, his approach to abortion was insulated from this sort of analysis because of his use of gender as a pastoral strategy. The procreative rationale for licit marriage was almost entirely absent from his statements on abortion and thwarting conception, perhaps implicit only in the religious pact of chastity. In drinking up potions, women did not act against the natural teleology of intercourse but against their own maternal natures.

Envisaged community responses

Caesarius hinted at community responses to abortion. Women who could not rear their children were to hand them over to others for rearing (19.1, 51.4). Though the onus was upon the mother-to-be, the possibility that others would actually take up the task of rearing children had to be conceivable. It is tempting to think of monasteries, not least the ones which Caesarius founded, as possible sources of support. In eastern

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[33] In context, the image worked in two ways. First, sowing a field repeatedly was like using one's wife repeatedly out of lust: there was less chance of bearing proper fruit. But, second, Caesarius then asked why a man would do with his own body (*in corpore suo*) what he would not do with his own field: the meaning of the field had shifted from his wife to his own body.

[34] *Women in Frankish society*, p.24.

and western monasticism, the practice of taking in orphans and parental vows of oblation before birth hint at a mentality open to this. But Caesarius' *regula* for the nuns of St. Jean in Arles disappoints. It tentatively set the age of entry at six or seven years and explicitly rejected the practice of sending daughters to the monastery in order to be reared and taught, a reaction against parents who used the monastery as a kind of finishing school.[35] In sum, we can only guess at the social structures, if any, which would have made his injunction to offer up children for adoption a seriously proferred alternative to abortion.

Aside from the noblewoman (or the devil, to whom we turn below) there were two further examples of external influence upon abortion. The first of these pertained to women as wives and was limited to the equivocal pact of chastity. A more promising though intricate possibility lies in *sermo* 19, where Caesarius spoke of daughters. In societies where shame is attached to unwed mothers or where parent-child relations are understood in hierarchical terms, parental pressure can be a significant dynamic underlying the recourse to abortion.[36] Ancient and early medieval sources rarely addressed abortion in connection with a woman's parents or family: that is, in terms of parental pressure to have an abortion or fear of parental reaction to a socially shameful pregnancy. This is doubtless related to the absence of morally serious discussion of those who might have wanted a pregnant woman to have an abortion, aside from pregnant women themselves.[37]

It is possible that s*ermo* 19 was a rare exception. The apparent non-sequitur has been noted above. After a theologically focussed account of attitudes to sickness and health, Caesarius moved onto abortion with the following phrase, "And relying on your charity, I advise all your daughters, out of paternal concern, that no woman should take potions for abortion [etc.]" (19.2). Caesarius hoped that admonitions would ripple through the community as they reminded one another of their sins and admonitions borne of charity were, of course, the mark of a martyr (52.1). But charity was also required to receive

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[35] See Mayke de Jong, *In Samuel's Image: Child oblation in the early medieval West* (Leiden, 1996) pp.18-23, 32-36 on Caesarius' *regula* and, more generally, Boswell, *Kindness of strangers*, pp.228-236.

[36] See, for example, Marc L. Moskowitz, *The Haunting Fetus: Abortion, sexuality, and the spirit world in Taiwan* (Honolulu, 2001) on familial influences upon women's abortion decisions in contemporary Taiwanese society.

[37] One anecdote of pressure exerted on a woman so that she has an abortion comes in Ammianus Marcellinus' *Res gestae* XVI.10.18, text in Nardi, *Procurato aborto* pp.503-504. After recounting Constantius II's *adventus* into Rome in 357, Ammianus added a curious aside: "Meanwhile, Helen, sister of Constantius, wife of Julian Caesar, had been led to Rome under the guise of affection, but the queen Eusebia, who had always been barren, enticed her through a ruse to drink a special poison, so that however many times she conceived, she gave birth prematurely (*ut quotienscumque concepisset, immaturam abiceret partum*)".

these admonitions and Caesarius often cushioned his moral criticisms with appeals for this receptive charity. For his speech to act like a mirror to sins, he needed his audience's charity too (42.6).[38] In s*ermo* 19, the appeal to charity functioned in both ways. It was the source of the admonition – a "paternal" concern over female sin – but also the cushion for an exhortation to fathers. The preceding theology of health and sickness had culminated in God's providential knowledge: God always knows what is best for us. Might this also have included having a pregnant daughter? Adopting paternal concern, Caesarius was fashioning a model for paternal imitation, with the implication that not all fathers would offer such admonitions to their daughters. If this reading is correct, then this was one instance in which men were held to bear some responsibility, if not quite culpability, for the practice of abortion: fathers were challenged to emulate the kind of paternal concern that Caesarius demonstrated.

Abortion and the dark arts

Unlike the isolation of women, insinuations of 'superstition' were only explicit in two sermons (51 and 52). Understanding how 'superstition' functioned as a strategy of condemnation is crucial to understanding the denunciation of "sacrilegious" potions (51.4) and diabolical persuasion (52.4). Across his sermons, Caesarius condemned a range of practices: from honouring Jove on Thursdays (19.4) to praying at springs (53.1), from celebrating the Kalends (192.3, 193.3) to consulting a motley array of augurs and healers whose exact specialities were left strikingly vague.[39]

Scholars have increasingly questioned the idea that these condemnations testify straightforwardly to 'pagan survivals'.[40] Beneath his "indiscriminate polemic" lurked a "complicated diversity of religious intentions": bathing in rivers to mark the feast of John the Baptist (33.4) was one such syncretistic practice so "monotonously and formulaically condemned".[41] A pre-eminent concern for Caesarius was the incompatibility between professing the Christian faith and these myriad practices. Exposing this incompatibility depended on imbuing these practices with a "heavy charge of religious significance" which their practitioners did not necessarily share. His

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[38] See Giselle de Nie, 'Caesarius of Arles and Gregory of Tours: Two sixth-century Gallic bishops and 'Christian magic''', in id. *Word, image and experience*, V, pp.176-179 on Caesarius' conception of *caritas.*
[39] On this last point, see Klingshirn, *Caesarius*, p.219.
[40] Robert A. Markus, 'From Caesarius to Boniface: Christianity and paganism in Gaul', in Jacques Fontaine and J.N. Hillgarth (eds.) *The Seventh Century: Change and continuity* (London, 1992) pp.154-72; Klingshirn, *Caesarius*, pp. 209-226; Hen, *Culture and religion*, pp.154-167; and id. 'Paganism and Superstition in the time of Gregory of Tours: *Une question mal posée!*', in Kathleen Mitchell and Ian Wood (eds.) *The World of Gregory of Tours* (Leiden, 2002) pp.229-232.
[41] Klingshirn, *Caesarius*, p.210.

blanket denunciations of myriad modes of religious and ritual life are best grasped as attempts to define the identity of a Christian community. By locating these practices well "outside the boundaries of the ascetic code of Christian conduct", Caesarius' denunciations gave definition to the "Christian community united with its bishop under a shared loyalty and a shared value-system".[42]

To this end, Caesarius smeared abortion with 'superstitious' associations. First, the association between the "sacrilegious" potions and other unchristian practices accentuated a crucial dimension of his denunciation of abortion. The concepts and use of these terms are difficult to pin down but, by Caesarius' day, they commonly stood for recourse to non-divine power.[43] Thus, in *sermo* 52, "devilish spells and sacrilegious amulets" became the means by which people contravened God's desire not to bless them with children. Caesarius connected this to the contrary practice – of avoiding having children when God wants one to be fruitful – by describing both practices as "fighting with cruel and impious audacity against the will of Christ". In this segment of the sermon, Caesarius spoke of "sacrilegious" potions and medicaments four times, twice to describe the attempt to have children and twice to describe the attempt to avoid having children, and elsewhere he spoke of abortion as a "sacrilegious rite" (52.4). What united these practices as forms of sacrilege – even if the latter was "even worse" – was the refusal to accept God's will.

Second, Caesarius' denunciations drew on the spectre of the devil. Potions for abortion were "devilish" (44.2) and the devil's persuasion was the root of serious sins (200.4). The broader aim of *sermo* 52 was to uncover the "deadly cunning of the hidden persecutor" (52.5). This *diabolus* was no mere rhetorical figure but a "real Christian Devil, firmly conceived within the Christian framework of good and evil".[44] Women who aborted were examples of how patently (*aperte*) the devil plied his wares and coaxed them to damnation. The devil's persuasion was a form of obfuscation. It was mournful (*lugenda*) because it obscured from women what the "rite" of abortion entailed: they did not realise the self-harm and murder they wrought (52.4). By uncovering the devil's persuasion, Caesarius was rhetorically uncovering the true nature of abortion.

There was one especially interesting way in which Caesarius connected abortion to certain 'superstitious' practices. Caesarius reserved a ferocious invective for mothers who sought out particular remedies for their sickly children. Instead of the church's

[42] Robert A. Markus, *The End of Ancient Christianity* (Cambridge, 1990) pp.206-207.
[43] Hen, *Culture and religion*, p.161. -
[44] J.M. Wallace-Hadrill, *The Frankish Church* (Oxford, 1983) p.14.

medicine (anointing with chrism) or even the simple craft of doctors, they sought out soothsayers and sorcerers, wrote spells and wore charms on their necks.[45] A link between these practices and abortion was the devil: it was through his cunning that women cruelly (*crudeliter*) killed their children through abortion and even more cruelly (*crudelius*) healed them through spells (52.5). In this instance, Caesarius was not using the connotations of other practices to denounce abortion. Instead, he was drawing upon the moral resonance of abortion, the cruel murder of children at the devil's instigation, to critique other practices which he wanted to place beyond the pale of the Christian community. The result was something more jarring than anything he had to say about abortion: consulting healers for one's children was likened to or, to be precise, was even worse than killing them through abortion.

Tertullian and other early Christians had constructed a religious aetiology of abortion rooted in the bloody tales of the Roman pantheon. By Caesarius' time, the conceptual associations between abortion and 'paganism' had shifted. He drew upon diabolical and sacrilegious connotations as a way of revealing what was wrong about abortion. Unlike early Christians writing in exoteric contexts, early medieval clerics did not have the luxury of encountering (or pretending to) abortion outside the bounds of the Christian community. They were dealing with the problem of abortion within the fold. Caesarius' smears were a pastoral response, a strategy of distinction which proclaimed abortion to be absolutely incompatible with Christian identity at communal and individual levels.

'Homicidal contraception'

Caesarius persistently described abortion as the taking of life. He described abortion as killing (*occidere*, in all six texts) and murder (*homicidium* – 1.12, 19.5). As noted above, abortion was not simply an abstract case of taking life. The relational dimension, the rude fact of who was murdering whom, was crucial. Abortion was maternal murder and the killing field was within the womb (200.4), within the folds of the mother's body (52.4). Abortion was mapped out between conception and birth, between, in modern terms, contraception and infanticide. Abortion was child-murder. In each sermon, a moral description was added to the initial prohibition on taking potions for abortion, which eroded distinctions between killing before and after birth: he consistently spoke of killing both those already born (*iam natos*) and those just conceived (*adhuc conceptos*) (1.12, 19.5, 44.2. 51.4, 52.4) or still poised in the womb (200.4). As a pastoral strategy,

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[45] See Don C. Skemer, *Binding Words: Textual amulets in the Middle Ages* (University Park, PA., 2006) pp.40-41 on his treatment of textual amulets.

this rested on the presumption that killing of infants already born would be recognisably wrong for his audience. It is notable that Caesarius did not approach infanticide separately from his denunciations of abortion, though he did recollect the sad fate of some young children during the siege of Arles: snatched from their mothers' arms, they were thrown "half-dead (*semivivis*)" into the road and nurses were not allowed to tend to those who were still alive or bury those who had died (70.2).

At the other end of the spectrum, Caesarius also spoke of taking potions to avoid conception as a form of murder. A woman would be held guilty for as many times as she might have conceived (1.12, 19.5, 51.4). Was Caesarius seriously talking about 'homicidal contraception'? Was this a case of ontology gone horribly wrong? In trying to make sense of his most memorable *sententia*, scholars have tended to emphasise the rhetorical effect.[46] This is doubtless true. But it merits further consideration.

To hold someone who took such potions guilty of murder did not necessarily mean that a life had in fact been taken. This was the point Basil of Caesarea had made in his canon on abortion in emphasising the intention of the act. The passage which best reveals Caesarius' sense is the extensive denunciation of abortion in *sermo* 52. The aim of the passage, we recall, was to uncover how women harmed themselves in abortion without realising it. But, despite the remarks that preceded it, remarks which constituted Caesarius' most thickly descriptive passage on abortion, the passage also reveals the profound ambiguity of what drinking these potions entailed. To reiterate: thinking that these potions had no effect on them, women did not realise that they conceived in a sterile sort of way; and even if there was no child (*infantolus*) to be killed in the womb, they nonetheless harmed themselves. Strikingly, Caesarius rhetorically filled the womb in the most affecting terms, with the diminutive *infantolus*, at the very point when he envisaged its emptiness. But the preceding sentence carried a different and important implication: women who took these potions were unaware that they had conceived. To speak to them of murder was to remind them that they might well have conceived.

Upon encountering opposition to abortion, it is tempting to look for the opponent's position on foetal status as the source, the rational basis, of moral opposition. Caesarius' best-known line on abortion suggests that this can be, counter-intuitively, misleading. His insistent denunciation of taking any potions to thwart fertility as murder was not predicated upon an elaborated position on how foetuses came to be in the womb. It was premised, if anything, on self-conscious ignorance of precisely what effect drinking up

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[46] See, for example, Noonan, *Contraception*, p.146.

such potions had. In other words, it was a response to the unsettling ambiguity of abortion.

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While Caesarius' ideals on how best to forge a Christian community might well have been put into practice within his own diocese during his lifetime, in order to spread, they had to be taken up with similar gusto by other bishops. In this, his project failed and for over a century after his death his reforming ideals did not bear fruit within the early Frankish church. His *admonitiones* did not reverberate in the countryside even if his scriptural homilies did within Merovingian monasteries. It was only from the eighth century onward that his words increasingly reverberated outside monastic confines once again.[47] We will encounter his words again. But rather like modern readers, early medieval readers tended to focus on one or two striking statements.

Caesarius' importance does not lie in a straightforward influence on subsequent generations. Indeed, the intricate significance of abortion in sixth-century Gaul was unique and not replicated. Rather, Caesarius anticipates key themes such as the mutable significance of abortion and the ways in which early medieval approaches to abortion, far from being contributions to a timeless and specialised moral debate, were shaped by broader pastoral concerns. The double audience of his sermons is important. They were both performative texts for exhorting the laity and pedagogical texts for equipping priests. Women would be held to account for their abortions before Christ upon judgment day, and clerics would be held to account if these women and other sinners were *not* "tearfully threatened with eternal punishment".[48] In the following three chapters, we will see how abortion was integrated into the education of the clergy and their anticipated pastoral ministry over the next four centuries.

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[47] Klingshirn, *Caesarius*, pp.271-286.
[48] *Life of Caesarius* I.17, p.17.

RELIGION AND POLITICS:
ABORTION IN VISIGOTHIC SPAIN

At some point in the very late sixth century, a monk called Tarra wrote to the Visigothic king Reccared to plead for his aid in an unpleasant matter. All that we know of Tarra comes from his petition. He was a monk from the monastery at Cauliana, near Mérida. A defamatory rumour spread that he had consorted with a prostitute, a rumour which he steadfastly denied. But, after his fellow monks had spread the rumour, he had found himself unjustly exiled from the monastery without a fair hearing. Tarra was desperate to clear his name – and his Germanic name hints at a possible subtext. It is plausible that Tarra was a formerly Arian Goth who had, rather like Reccared, entered the Catholic fold and, indeed, in writing to Reccared he self-consciously emphasised his orthodox credentials. If he was a convert, his letter hints not only at the power of sexual slander but also the tensions that underlay the "ideological screen" of "social unanimity" in the Iberian church after the conversion of Reccared in 587.[1]

The letter is also noteworthy for the strange way in which Tarra chose to describe his unjust expulsion to Reccared. Disgraced and falsely smeared, he complained, "they have flung me out of the womb like an innocent abortion; and all the earth above me mourned: there was no one who would know me [and do me] good."[2] The last two clauses are found in Mozarabic liturgy[3] The *aborsus* image, however, was Tarra's own. It erred towards a sense of deliberate abortion and, strikingly, Tarra placed an accent on the innocence of the *aborsus*. His fellow monks were like abortionists who had expelled him out of the womb. It is tempting to dismiss this as little more than an idiosyncrasy. But, in fact, Tarra's image encapsulates the complex cultural significance of abortion in the early medieval West. In chapter eight, we will come to see that if Tarra's image was unusual, it was not because he used an *aborsus* image. In this chapter, we will attempt to understand a cultural background against which it made sense for Tarra to use this image in a letter to the king.

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[1] Santiago Castellanos, 'The Significance of Social Unanimity in a Visigothic Hagiography: Keys to an ideological screen', *Journal of Early Christian Studies* 11.3 (2003) pp.413-414.

[2] "ut vulbae aborsum proiecerunt indemnatum; et luxit super me omnis terra: non est inventus qui me cognosceret bene", MGH Epp. 3, Epistolae Merowingici et Karolini aevi I, p.676. On the letter, see Isabel Velázquez, 'El *suggerendum* de Tarra a Reccaredo', *Antiquité Tardive* 4 (1996) pp.291-298.

[3] See the Palm Sunday liturgy in the *Breviarum Gothicum*, PL 86, col.574.

For, Tarra was writing to Reccared against a cultural background in which Spanish churchmen, jurists and even rulers negotiated a range of concerns related to abortion, from sexual transgression to the state of the foetus, from the health of the body politic to the health of the body of the church. In Visigothic Spain abortion was being spoken about at various official levels. No surviving Western church council dealing with abortion has survived from the early fourth century up until the mid sixth century, when two Spanish councils (and a canonical collection associated with a third council) issued rather different pronouncements on abortion. Significantly for our broader picture, two of these councils would become important authoritative precedents on abortion outside the Iberian peninsula centuries later. Moreover, legal articles rooted in Visigothic customary law were re-codified in the seventh century, the layers of which can be excavated. Finally, if in general early medieval rulers cannnot associated directly with pronouncements on abortion, the two exceptions were both Visigothic rulers. One of these rulers was Chindaswinth (642-653), who issued a fierce pronouncement in a late addition to Visigothic law. The other, coincidentally, was Reccared (586-601), who was associated with an enactment on abortion at the formalisation of his conversion at the third council of Toledo in 589.

The peculiarity of the Visigothic situation is illuminating. We can observe deliberation about abortion through the distinct rationalities and priorities of localised conciliar action, early medieval law and political rule. At one level, the unusual royal pronouncements on abortion demonstrate the possibilities for convergence between early medieval politics, law and religion. Abortion became 'politicised' in the highly specific sense of Visigothic politics. In contemporary contexts, politicisation signifies seemingly interminable debate and social conflict. In a Visigothic context, politicisation entailed speaking about abortion in the ideological idiom of unity and royal power, an idiom which took the idea of a Christian society very seriously. But, as we shall see, at another level, this politicisation diverged from pastoral perspectives on abortion.

'KILLING THOSE CONCEIVED IN SIN': COUNCIL OF LÉRIDA (546)

The Iberian conciliar record for most of the sixth century is erratic. Those councils for which records have survived tended to be localised gatherings covering clerical behaviour, episcopal rights and responsibilities, and other administrative or liturgical questions. They rarely give indications of specific reasons for which bishops had

convened and cannot be held to stand for the entire Iberian church.[4] The council of Lérida (546) is typical in all but one regard: its "unusual concern with lay behavior".[5] Of the sixteen canons, a relatively large proportion (seven) was not concerned exclusively with the clergy: but, curiously, it contained a canon on abortion which also conveyed anxieties about clerical misdemeanours:

> Those of either sex who have strived to kill what has been wrongly conceived or born in adultery, or have attacked them in the womb of mothers by any potions, to these adulterers communion is to be given after a period of seven years, provided that they persist in lamentation and humility for all their life[; if they were clerics], they are not allowed to recover their office of ministry; but from the moment of receiving communion they must number among the chorus of penitents. For the poisoners themselves, communion may only be granted at death, if they lament their misdeeds for their entire life.[6]

This canon was non-derivative. The bishops at Lérida did make passing references to canonical precedent. The final canon (c.16), for example, on correct procedure when a bishop dies, referred to the "ancient authority of the canons". But the practical reality of available canonical sources was far more limited than these passing references might initially suggest.[7] This is important in situating the canon in relation to earlier and later canons. The form and substance of the abortion canon gives no obvious indications of knowledge of earlier conciliar pronouncements. The bishops at Lérida were not consciously commenting on Elvira and Ancyra. It is questionable whether they knew these conciliar precedents. In other words, it is misleading to read Lérida in a chain with Elvira and Ancyra insofar as it assimilates to the shape of later canonical collections and ignores the contexts in which such canons arose. Admittedly, in the case of Lérida we must necessarily speculate. The Léridan canon was most likely a response to a particular incident or the result of a bishop's insistence that abortion was a problem that needed addressing.

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[4] Roger Collins, *Early Medieval Spain: Unity in diversity 400-1000* (New York, 1995) pp.116-118.

[5] Rachel Stocking, *Bishops, Councils, and Consensus in the Visigothic kingdom, 589-633* (Ann Arbor, 2000) pp.35-44 (at p.42). This chapter is particularly indebted to Stocking's rich monograph.

[6] "Ti vero qui male conceptos ex adulterio factos vel editos necare studuerint, vel in uteris matrum potionibus aliquibus colliserint, in utroque sexu adulteris post septem annorum curricula conmunio tribuatur, ita tamen ut omni tempore vitae suae fletibus et humilitati insistant; officium eis ministrandi recuperare non liceat, attamen in choro psallentium a tempore receptae conmunionis intersint. Ipsis veneficis in exitu tantum, si facinora sua omni tempore vitae suae defleverint, conmunio tribuatur." c.2; ed. Gonzalo Martínez Díez and Félix Rodríguez, *La colección canónica Hispana 4: concilios galos, concilios hispanos, primera parte* (Madrid, 1984) p.300.

[7] Stocking, *Bishops, councils, and consensus*, pp.38-40.

The canon outlined three kinds of transgressor with escalating reprisals: adulterers, clerics, and *venefici*. There was a connection between abortion and adultery but it was not identical to the Elviran canon. Elvira, we recall, had spoken of women who committed adultery in the absence of their husbands and then killed what they have conceived after the crime. Lérida referred to children conceived in sin (*male conceptos*) but these adulterers were both men and women (*in utroque sexu adulteris*). Infanticide, abortion and adultery were not specifically female sins. Abortion was not the sign that disclosed female threats to male interests but the sign of transgressions against a sexual order which – theoretically – made strong demands of men as well as women. If ecclesiastical opposition to abortion constituted an attempt to control minds and bodies, male minds and male bodies were not exempt. The canon further underlined male culpability by dealing with clerics implicated in abortion, whose infraction was to be publicly marked by removal from office.

The bishop drew abortion together with infanticide (though *necare* was reserved for the latter and the vaguer *collidere* for the former). But it was those who administered the means for abortion, *venefici*, which surely refers to complicity in procuring abortion and not to facilitating infanticide, who were most severely punished. The bishops at Lérida envisaged an interesting division of labour. Men and women endeavoured to kill or launch an attack in the womb. The wording is open-ended about whether or not these attempts are successful and acting with intent might have been deemed punishable.[8] Nonetheless, whether they actually administered and supplied the various potions (*potionibus aliquibus*) or simply offered their knowledge of suitable ingredients, *venefici* had done something more scandalous.

There is a risk of skewing the canon by reading it overly fastidiously. The adultery-abortion frame did not, presumably, imply that abortion was licit in other contexts nor, by punishing *venefici* most severely, were the bishops mounting a moral argument that abortion was worse than infanticide. Likewise, the implications of the canon's most striking feature – the incorporation of male culpability for abortion – were not spelt out precisely: a man could force or persuade a woman to take an abortifacient potion but he could not, of course, take it himself. The canon thought through abortion from several angles and could conceivably have functioned as a workable directive to guide clerics in discerning and condemning abortion.

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[8] Huser, *Crime of abortion*, p.25.

The next Spanish canon on abortion is associated with the itinerant Pannonian monk who founded the monastery at Dumio and became an important figure in the reorganisation of the Galician church, to which his writings and involvement at two councils at Braga testify.[9] The canon is found in a canonical collection inserted after the records for Braga II in Spanish collections. It was not, then, the product of a council but a canonical collection, though one for which we know important details about the author and context in which it was produced. Martin compiled the *Capitula ex Orientalium Patrum Synodis* for Nitigisius, bishop of Lugo, at some point between 569 (when the separate bishopric of Lugo was created) and the aftermath of Braga II (held in 572), though a date around the time of the council, which brought Martin and Nitigisius together as senior bishops, is most likely. The canon reworked the Ancyran canon:

> If any woman has fornicated and killed the infant who was subsequently born, or has strived to have an abortion and kill what has been conceived, or indeed has taken pains so that she does not conceive, whether in adultery or legitimate marriage, earlier canons decreed that such women are to receive communion at death. Out of clemency, however, we judge that such women, or those [women] complicit in these same crimes, are to undertake ten years' penance. (c.77)[10]

The canon extended the treatment of infanticide and abortion to include attempts at preventing conception. It also broke the connection between abortion and illicit sex, and punished accomplices, characterised as other women.

John Noonan emphasised that the "first apparent church legislation against contraception is…an interpolation" and noted that while some subsequent canonical collections adopted the "accurate" version of the Ancyran canon, others adopted "Martin's concoction".[11] In fact, Martin was not the first compiler to amend the canon. The *Collectio Quesnelliana*, a late fifth- or early sixth-century collection of Gallic or Roman

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[9] Braga I, Braga II and Martin's *capitula* are edited with his other works by C.W. Barlow, *Martini Episcopi Bracarensi Opera Omnia* (New Haven, 1950). For overviews of Martin's undertakings in Galicia, see Alberto Ferreiro, 'The Missionary Labours of St. Martin of Braga in 6th century Galicia', *Studia Monastica* 23 (1981) pp.11-26 and Maria Joao Violante Branco, "St. Martin of Braga, the Sueves and Gallaecia', in Alberto Ferreiro (ed.) *The Visigoths: Studies in culture and society* (Leiden, 1999) pp.63-98.

[10] "Si qua mulier fornicaverit et infantem qui exinde fuerit natus occiderit, et quae studuerit abortum facere *et quod conceptum est necare aut certe ut non concipiat elaborat, sive ex adulterio sive ex legitimo coniugio*, has tales mulieres in mortem recipere communionem priores canones decreverunt. Nos tamen pro misericordia *sive tales mulieres sive conscias scelerum ipsarum* decem annis agere poenitentiam iudicamus" c.77, p.142. Augmentations italicised.

[11] Noonan, *Contraception*, p.149.

origin, added to the opening clause concerning those women who fornicate and kill their children, "and also those [women] who act with them to shake out what has been conceived from the womb". Dionysius Exiguus' famous collection, which used the *Collectio Quesnelliana* as a source, contained the same addition and so too did other collections.[12] Canons were rearranged and changed according to the aims and needs of compilers. In Martin's case, we might ask why the canon might have been included and amended. Noonan interpreted the canon as an "attempt to protect conception from attack" produced against a "background of Manichaean danger".[13] This "danger" took the form of Priscillianism, the complex movement associated with the Spanish bishop Priscillian of Avila, beheaded on charges of magic in 385.[14]

This reading overemphasises the importance of concerns over heresy while underplaying the less spectacular aims of ecclesiastical reform. The corrective offered below is a microcosmic example of how the connection between abortion and heresy, a connection of considerable significance in late antiquity, was far more limited in the early medieval West, and how clerical education and pastoral practice are central to understanding the ecclesiastical treatment of abortion in the early medieval West.

A Priscillianist detour: abortion and heresy

Noonan's reading is based on Priscillianism's association with Manichaeism, which had long been tainted with deviant sexual practices, including birth-control.[15] Incidentally, Noonan did not mention a more specific connection. Priscillian himself had been subject to rumours of sexual immorality. Sometimes (as we shall see shortly) it was simply known that there were rumours, not what these rumours actually were. But Sulpicius Severus' *Chronica* was unique in detailing allegations against Priscillian, among which was a story implicating Priscillian with an abortion. In 380, en route to Rome in order to plead his case with two supporters, he encountered Euchrotia, the widow of an Aquitanian rhetorician, and her daughter Procula. Mother and daughter joined

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[12] "sed et eas quae agunt secum ut utero conceptos excutiant", *Collectio Quesnelliana*, PL 56, col.441; c.f., in Dionysius Exiguus' collection, PL 67, col.155. C.f. c.103 in Cresconius' *Concordia Canonum*, PL 88, col.881. Noonan, *Contraception*, p.149 wrongly refers to the "unchanged text" in Dionysius Exiguus' collection. On the influence of the *Collectio Quesnelliana*, see Lotte Kéry, *Canonical Collections of the Early Middle Ages (ca. 400-1140)* (Washington D.C., 1999) p.27. Martin's mention of accomplices appears to be independent given the different wording and attachment to the final clause.

[13] Noonan, *Contraception*, pp.148-9.

[14] Key studies are Henry Chadwick, *Priscillian of Avila: The occult and the charismatic in the early church* (Oxford, 1976) and Virginia Burrus, *The Making of a Heretic: Gender, authority, and the Priscillianist controversy* (Berkeley, 1995).

[15] See Noonan, *Contraception*, pp.107-146.

Priscillian's scandalising retinue of women. A rumour arose that Procula, violated by Priscillian, had become pregnant and had used herbs to procure an abortion.[16]

The key question is whether there was a "background of Manichaean danger", with specific connotations of sexual immorality and 'anti-conception' practices, in sixth-century Galicia. Noonan deduced this background principally from the activity of Braga I, a decade or so before Martin drew up his canon. Presided over by Lucretius, the metropolitan bishop of Braga, the council met in 561. Martin, at this point the bishop of Dumio, was an attendee. The council marked the reinvigoration of the church in Galicia following the recent, albeit historically murky, conversion of the Suevic kings to Catholicism from Arianism and had been convened on the order of the Suevic king, Ariamir.[17] In the opening address, Lucretius outlined a threefold agenda of reform: to re-endorse "statutes of faith" (*statuta fidei*); to regain familiarity with earlier canons; and to issue new canons on improper clerical practice. In all three cases, the rationale was bound up with countering the clerical ignorance and ecclesiastical fragmentation fostered by a long hiatus in Galician conciliar activity and, implicitly, from the limitations that Catholic bishops had once faced under Arian kings.

The *statuta fidei* were directed against Priscillianism. Lucretius drew attention to two fifth-century anti-Priscillianist measures which had touched north-West Spain "at the time when the abominable poison of the Priscillianist sect was spreading": a rule of faith (*regula fidei*) proscribing Priscillianist heresies from the first council of Toledo (400) which had been sent to Balconius, the bishop of Braga in the first decades of the fifth century; and a letter of 447 written by pope Leo I in response to letters from Turibius of Astorga requesting Leo's intervention and describing Priscillianism (one of Turibius' letters has not survived and must be surmised from Leo's response). The *regula* was read out at the bishops' request and they appear to have had copies in their hands, though it was not transcribed for the conciliar record. Lucretius then drew on Leo I's condemnation as a reminder that the "fabrications of the Priscillianist heresy had once been abominated and condemned from the seat of the blessed apostle Peter".[18]

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[16] "Inde iter coeptum ingressi, turpi sane pudibundoque comitatu, cum uxoribus atque alienis etiam feminis, in quis erat Euchrotia ac filia eius Procula, de qua fuit in sermone hominum Priscilliani stupro grauidam partum sibi graminibus abegisse", 2.48; ed. G. de Senneville-Grave, Sources Chrétiennes 441 (Paris, 1999) p.97; see too Chadwick, *Priscillian*, pp.36-37 and Burrus, *Making of a heretic*, pp.83-84.

[17] See E.A. Thompson, "The Conversion of the Spanish Suevi to Catholicism', in Edward James (ed.) *Visigothic Spain: New approaches* (Oxford, 1980) pp.77-92 on the murky history of Suevic conversion.

[18] Braga I, 2-3, p.196.

Seventeen "restatements" or "reiterations" (*relicta*) against Priscillianism were endorsed, which were almost entirely derived from the sources mentioned by Lucretius. Two of these *relicta* are of particular interest. First, anyone who "condemns human marriage and shudders at the procreation of children, as Manichaeus and Priscillian said" was anathematised.[19] This is the anathema which led Noonan to read Martin's later canon in terms of a rearguard action against Priscillianism. He did not note a second anathema against anyone who suggested that "forming of the human body is the work of the devil, and that conceptions in mothers' wombs are fashioned by the work of demons", once again, in the manner of Mani and Priscillian.[20] In theory, both anathemas might be read in relation to abortion and 'anti-conception' attitudes. Moreover, they could conceivably have inclined churchmen to view such practices through a heresiological lens. But the primary concern was doctrinal and the ideas imputed in the anathemas signalled questionable theology, rather than questionable sexual practices. The rejection of corporeality, especially in the aspersion on foetal formation, was antimaterialist and entailed a form of theological violence: those who saw the coming-into-being of man as demoniacal handiwork "do not believe in the resurrection of the flesh for this reason".[21]

When we turn to the source for these two *relicta*, we see that the precise connection between Priscillianism and 'anti-conception' attitudes is not unequivocal. They were derived from Leo's letter. As Raymond Van Dam has shown, Leo's letter became the "canonical definition of Priscillianism". But its reliability as a source on Priscillianism is highly questionable. In responding to Turibius, Leo transposed the connotations of heretical doctrine and immoral practices that he associated with Manichaeism onto Priscillian and his followers. Moreover, it is highly probably that Leo gained much of his information on Priscillian from the details in Turibius' (non-extant) description of Priscillianism.[22] At one point, Leo remarked that "widely published" reports of Priscillianist immorality, though he did not elaborate, made them resemble Manichaeans all the more.[23] Alberto Ferreiro has speculatively pointed to the rumour recounted by

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[19] "Si quis coniugia humana damnat et procreationem nascentium perhorrescit, sicut Manichaeus et Priscillianus dixerunt", 3.11, p.108.
[20] "Si quis plasmationem humani corporis diaboli dicit esse figmentum, et conceptiones in uteris matrum operibus dicit daemonum figurari", 3.12, p.108.
[21] "propter quod et resurrectionem carnis non credit". On this point, see Alberto Ferreiro, 'Priscillianism and Nicolaitism', in id. *Simon Magus in Patristic, Medieval and Early Modern Traditions* (Leiden, 2005) pp.116-117.
[22] *Leadership and Community in Late Antique Gaul* (Berkeley, 1985) pp.112-114 (at p.114).
[23] *Ep*.15.16, PL 54, col.689.

Sulpicius as a possible reference point; but rather tellingly, without any concrete detail, the allusion in all probability just reflects the "ubiquitous word-of-mouth misinformation" circulating at the time.[24] In sum, the source for the *relicta* might have made a great deal of the specific connections between Priscillianism and 'anti-conception' mores. But Leo, misinformed and misinforming in equal measure, did not.

Further, by the time the anathemas were drawn up at Braga, this subtext (if it had ever truly existed) had been further effaced. Like previous Iberian councils on Priscillianism, Braga I did not expressly impugn Priscillianist immorality but focussed instead upon doctrinal error, drawing upon a prestigious (but also dubious) authority for whom Priscillianism had been something of a heresiological kaleidoscope.[25] That is not to say that Priscillianism was not a live topic in mid sixth-century Galicia even if it is doubtful that the "sect" was as extensive and vibrant as it had once been in the province. Galician Priscillianism had been experienced as a threat to ecclesiastical authority and order. Of course, in a sense all heresies are experienced and remembered as threats to authority and order. But in Galicia, these threats were not markedly sexualised. The sect was synonymous with a threateningly obdurate form of asceticism, uncanonical ordinations, deviant ritual practices and, significantly, antagonistic political rapports with Suevic overlords and segments of the rural populace.[26] In the wake of the Suevic monarchy's conversion, endorsing the *relicta* on Priscillianism constituted a resonant *point de depart* for a programme of ecclesiastical cohesion. What Noonan saw as a background of "danger" might be viewed as a background of opportunity for a reenergised Galician episcopate.

Back to Braga II: educating the clergy

When we turn back to Martin's canon, produced a decade after the *relicta* of 561, the connection with any constructed memory of Priscillianism becomes more tenuous. By the time the second council of Braga met in 572, Martin had become the metropolitan bishop of Braga. The council came after the reorganisation of bishoprics in Galicia. There are only the smallest traces of a concern with Priscillianism at Braga II. The records of Braga I, including the anathemas, were read out at Martin's prompting to

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[24] Ferreiro, 'Priscillianism', pp.119-120.
[25] See Alberto Ferreiro, 'Jerome's Polemic against Priscillian in his *Letter to Ctesiphon* (133,4)', in id. *Simon Magus*, p.89, and id. 'Priscillianism and Nicolaitism' p.118n.24.
[26] Violante Branco, 'Martin of Braga', pp.70-72. Van Dam, *Leadership and community*, shows that in the fifth century Priscillianism "bec[ame] part of the religious vocabulary that men used to enunciate and resolve personal rivalries and feuds over ecclesiastical priorities in Spain and in Southern Gaul" (p.110).

remind the bishops of the conciliar decrees. Otherwise, only one canon (on liturgy) contained a possible reference to Priscillianism.[27] The council was effectively a "*repertoire of practical determinations*" on various episcopal and clerical duties.[28]

Finally, the canons in Martin's collection contained only slightly stronger traces of Priscillianism. Though described by Martin in his preamble to Nitigisius as "holy canons decreed by the ancient fathers in eastern regions", nine of the 84 canons were taken from an anti-Priscillianist council, Toledo I. Henry Chadwick has suggested that various eastern canons were "selected for their evident bearing on the Priscillianist problem". But these pertained to ecclesiastical organisation and liturgy (Priscillianists were associated with liturgically improper Easter and missal practices). Aware of the sexual connotations of heretical groups, Chadwick nonetheless did not count the abortion canon among this number.[29]

The significance of Priscillianism to the bishops at Braga – and the historical relation between heresy and deviant sexual practices – was more fluid than Noonan recognised. The emphasis on heretical 'anti-procreationist' ideas prompting the development of orthodox positions is a marked feature of Noonan's broader narrative on contraception and, to a lesser extent, abortion. The fruits of this approach are particularly clear in his analysis of Augustine's thought on birth-control which was, after all, formulated in contexts of doctrinal dispute. But transferring this approach to other contexts and ignoring the use of sexual slander in countering heresies can have a distorting effect.[30] In this case, Noonan read the dynamics of heretical provocation characteristic of late antique heresiology into later sources.

A better understanding of the abortion canon lies in recognising the aims of the Galician episcopacy. Both Bragan councils acted upon a strong desire to forge a cohesive ecclesiastical structure through conciliar activity and a canonically educated clergy. In his collection, Martin explained to Nitigisius that he had deliberately arranged the canons – those on bishops and clerics were separated from those on the laity (including the abortion canon) – so that "anyone could find whichever canon he might

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[27] Chadwick, *Priscillian*, p.230.
[28] Violante Branco, 'Martin of Braga', p.88.
[29] Chadwick, *Priscillian*, pp.228-229; c.f. his comment on rumours of Procula's abortion: "Manichees were known to hold that procreation should be avoided, and horrified orthodox Catholics by openly advising married couples to confine sexual intercourse to the 'safe period' of the menstrual cycle. They were naturally accused of justifying abortion." (p.37). But he did not identify such specific overtures in the case of Priscillianism at Braga II or elsewhere.
[30] See Peter Biller, 'Birth-control in the West in the Thirteenth and Fourteenth Centuries', *Past and Present* 94 (1982) pp.8-12 on Noonan's overemphasis upon Catharism in his account of twelfth and thirteenth-century developments.

wish to know about more quickly". He chose canons which would be helpful for clerics under his and Nitigisius' charge. This was itself a novel undertaking, only the second systematic collection of canons surviving from the early medieval West.[31] Martin also expressed his disappointment with existing translations of canons from Greek, acknowledged the difficulty of translation and hoped to improve clarity. Indeed, the opening of the abortion canon is a faithful translation of the Greek. But another unexpressed aim, which was embodied in the canons themselves, was to adapt them according to the needs of the church in Galicia.[32]

As at Lérida, the augmentations (and very inclusion) of the canon were the fruit of thinking through abortion: different intentions and effects of drinking potions (preventing conception or killing what has been conceived), different contexts (adultery or marriage) and different forms of complicity (female accomplices). Noonan had seen the augmentations on marriage and preventing conception as borne of a historical memory of heresy. But the overriding end to which Martin's collection, and its adapted canons, was directed pertained to anticipated pastoral practice.

In the previous chapter, we have already seen a Gallic bishop discuss abortion in relation to marriage and preventing conception for reasons which had nothing to do with heresy.[33] And the final Spanish council with an abortion canon also treated abortion (and infanticide) within and outside marriage in a way which is not best understood in terms of heretical provocation.

'BITTER DISCIPLINE OF BISHOPS AND JUDGES': TOLEDO III (589)

The final Iberian council under scrutiny was markedly different from the localised affairs at Lérida and Braga. The third council of Toledo met in 589 to mark the formal alignment of Visigothic rule with the Catholic church through the conversion of king Reccared. This was a deliberately momentous occasion. But while the council was eagerly represented as a crucial moment in intersecting sacred and political narratives, both the king and the gathered bishops also approached the council as an opportunity to clarify and consolidate their authority and respective powers. The records of the council are complex. After three days of fasting, Reccared's public profession of the

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[31] The earliest systematic collection was Fulgentius Ferrandus' *Breviatio canonum*, dating from the 530s or 540s; Martin's collection was composed independently, Kéry, *Canonical collections*, pp.8, 23.

[32] See Violante Branco, 'Martin of Braga', pp.91-96 on how Martin's oeuvre demonstrates his sensitivity to the respective pastoral needs of the Galician elite and poorly educated rural dwellers.

[33] For a broader comparison of Caesarius and Martin, see Alberto Ferreiro, 'Early Medieval Missionary Tactics: The example of Martin and Caesarius', *Studia Historica Antigua* 6 (1988) pp.225-238.

Catholic faith was read aloud, which asserted Reccared's divinely appointed role in driving out Arian heresy. Next, an assembly of bishops, clergy and nobles were invited to issue a public renunciation of Arianism. Thereafter, anathemas of Arianism were issued. Finally, the assembled bishops issued canons on various subjects with a confirmatory subscription from Reccared.[34]

The canon on abortion appeared in these episcopal canons. The treatment of abortion was partly marked by the complex delineation of power. It is discernible in the canon's title: "That the bishop *together with judges* clamps down on those who murder their own children with bitter discipline".[35] The bishops explained:

> While many complaints are brought before the ears of the sacred council, among them is a reported practice of such great cruelty that the ears of the presiding priests can scarcely bear [to listen], namely that in certain parts of Spain, parents devoted to fornication and ignorant of piety are killing their own children. If they find it a burden to have children more numerously, they should first restrain themselves from fornication. For since marriage is contracted for the sake of producing children, they are held guilty of both parricide and fornication those who, by killing their own foetuses, show that they were joined not for children but for lust.[36]

This abomination, the bishops continued, had been "brought to the attention of our most glorious lord and king, Reccared", who had ordered judges to "undertake a diligent investigation" together with ecclesiastical leaders and to respond with "severe measures". The bishops at Toledo regretfully (*dolentius*) agreed that church leaders in affected regions were to team up with judges and adopt the most "bitter discipline short of capital punishment (*sine capitali vindicta acriori disciplina*)". The canon was written in a fiery moral idiom. The parental *necatores filiorum* were hell-bent on fornicating (*fornicationi avidi*) and ignorant of holiness (*nescii pietati*). Their crime was abominable (*nefas*) and caused one to shudder (*horrendum*).

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[34] Stocking, *Bishops, councils, and consensus,* pp.59-88. This section is especially indebted to Stocking's account of Toledo III.

[35] "Ut episcopus cum iudicibus necatores filiorum acriori disciplina corripiat", c.17, ed. Vives, p.130 (my italics). The translation of "acriori disciplina" as "bitter discipline" follows David Nirenberg's abbreviated translation of the council in O.R. Constable (ed.) *Medieval Iberia: Readings from Christian, Muslim, and Jewish sources,* (Philadelphia, 1997) p.18.

[36] "Dum multae querellae ad aures sancti concilii deferentur, inter cetera tantae crudelitatis est opus nuntiatum quantum ferre consedentium aures sacerdotum non possent, ut in quasdam Spaniae partes filios suos parentes interimant fornicationi avidi, nescii pietati. Quibus si taedium est filios numerosius augere, prius se ipsos debent castigare a fornicatio, nam dum causa propagandae prolis sortiantur coniugia, ii et parricidae et fornicatione tenentur obnoxii, qui fetus necando proprios docent se non pro filiis sed pro libidine sociari." c.27; ed. Gonzalo Martínez Díez and Félix Rodríguez, *La coleccion canonica Hispana 5: concilios hispanos, segunda parte* (Madrid, 1992) pp.123-124.

We will turn below to some interesting perspectives in this canon and concentrate here on making sense of the idiom of condemnation, an idiom upon which Chindaswinth drew almost half a century later. Toledo III, like Lérida, was included in the great seventh-century project of Spanish canon law, the *Collectio Hispana*.[37] Centuries later, however, while Carolingian churchmen would draw upon Lérida, Braga II and even Elvira, the Toledan canon on abortion did not enter the early medieval canonical stream on abortion. This partly reflects certain particularities which set it apart from these other councils. The canon was not articulated in an adaptable pastoral idiom. Reccared cast his shadow over the canon, for the impetus behind its measures spoke of the king's active involvement. This was in keeping with Reccared's modus operandi at Toledo III, the momentum behind which originated in the emergence of an ideology of royal power aimed at consolidating a centralised monarchy, a "prestige policy" which had been initially dynamised by Reccared's father, Leovigild. Religious compromise and, ultimately, unification became important for the stability of the kingdom and the manner in which Reccared's conversion was heralded at the council was one element in the shoring up of power.[38]

At Toledo III, Reccared presented himself as the central agent in the council's programme of canonical renewal and channelled this conciliar energy towards defining his own authority. His God-given role entailed a duty to renovate a "canonical way of life" in his kingdom. This *mos canonicus* was to be observed by his subjects and functioned both as a symbol and instrument of sovereignty. Ensuring the faithfulness of his people was inextricably tied to the delineation of his power, and Reccared's conceptualisation of the *mos canonicus* integrated the bishops' activity into this delineation. Reccared was elaborating a "series of claims for his own central authority over [all subjects] in his kingdom…[and for] legal jurisdiction over a unified kingdom…that could, in theory, redress the current weakness of central power".[39]

But the canon was also encoded with the bishops' response to these far-reaching claims. Rachel Stocking has brought to light how the episcopal canons capture moments of subtly critical dialogue between bishops and king. Their variances were never quite

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[37] Huser, *Crime*, p.33. The councils are quoted from Martínez Díez's edition of the *Collectio Hispana*.
[38] See Pablo C. Diaz and Mª.R. Valverde, 'The Theoretical Strength and Practical Weakness of the Visigothic Monarchy of Toledo', in Frans Theuws and Janet Nelson (eds.) *Rituals of power from Late Antiquity to the Early Middle Ages* (Leiden, 2000) pp.60-77 (at p.75) and J.N. Hillgarth, 'Coins and Chronicles: Propaganda in sixth-century Spain and the Byzantine background', in id. *Visigothic Spain, Byzantium and the Irish* (London, 1985) II, pp.491-492, 498.
[39] Stocking, *Bishops, councils and consensus*, pp.68-71 (at pp.69, 71).

explicit but one can nonetheless discern whispers of friction at the same time as each side was attempting to capitalise upon the new opportunities opened up by the other.[40] The abortion canon is one of several which hint at this complex interplay. The preceding canon, on idolatry, also spoke of a widely cast jurisdiction: the sacrilege of idolatry was rooted "through all of Spain and Gaul", and local bishops were to join forces with local judges in response. The canon on *necatores filiorum* was even more strongly marked by Reccared's impetus, but the bishops' response was not absolutely supportive. Both canons are examples of an idealised "quid pro quo arrangement" whereby separated hierarchies of centralised power – the bishops directing their counterparts in localities, the king directing his judges – were brought together. But the *necatores filiorum* canon tellingly omitted certain details. The manner of the cooperation between bishops and judges was left unspecified, a lacuna underlined by the fact that the preceding canon threatened uncooperative bishops with excommunication. The specifics of investigations, judicial practice and the formal nature of the interaction between bishop and judge were all left out. Moreover, the bishops carefully added their own detail: capital punishment was to be avoided. From the bishops' perspective, as Stocking has suggested, the canon embodied a compromise between drawing upon Reccared's boost to their authority as agents of canonicity and not disrupting the multifarious ecclesiastical set-ups and arrangements of power in differing localities.[41]

Recognising this royal-ecclesiastical interplay in the canon is not to suggest that the bishops and king were using abhorrence at child-murder in a wholly cynical way. The subject was a source of very real moral disquiet. But the canon was inseparable from this political interplay. The *horrendum facinus*, to be met with the severest of measures, was more a crime against the body politic than the sin within an ecclesial community addressed in the Bragan and Léridan canons. If the Toledan canon was a statement of negotiation between royal and episcopal power, and its practicality was as questionable as its rhetoric was rousing, the Bragan and Léridan canons were precisely the kinds of localised action that the bishops wanted to protect.

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[40] Ibid. pp.71-77. For instance, their acclamations following Reccared's confession of faith "can be heard as a measured response to his resounding assertions rather than as a culminating chorus of agreement": in particular, the bishops diminished Reccared's role as the force for the conversion of the Gothic *gens* in order to give due thanks to Christ (p.72). At the same time, they had much to gain, both within church power structures and in the kingdom more generally, from their boosted authority as agents of the *mos canonicus* (p.77).
[41] *Bishops, councils and consensus*, pp.80-2.

The treatment of abortion in the Visigothic antiquae

The other significant royal engagement with abortion was attached to the *Lex Visigothorum* in the seventh century. Before turning to Chindaswinth's law, it is necessary to look at pre-existing legal measures. Visigothic law is noteworthy for certain developments in the legal treatment of abortion insofar as this treatment was largely original and not adapted from Roman law. Additionally, this has been the focus of some recent articles by Marianne Elsakkers, though some of her interpretations and broader conclusions will be contested below.[42] Examining Visigothic law also introduces historical questions (e.g. the relation between ecclesiastical and legal approaches to abortion) and methodological questions (e.g. the extent to which we can read early medieval law-codes as sources for attitudes to abortion) which will be addressed in chapter seven.

The *Lex Visigothorum*, promulgated in 653/4 by Chindaswinth's son, Recceswinth (649-672), contained seven laws on abortion.[43] The code combined new laws, largely under Chindaswinth's or Recceswinth's name, with older laws marked as *antiquae*. Individual *antiquae* came from the now-lost *Codex Revisus* promulgated under Leovigild (569-586) or, through this revision, from the original *Codex* issued under Euric (466-484).[44] The first six laws on abortion were *antiquae*. In his edition, Zeumer suggested that the first two originated in Euric's code and had been subsequently amended by Leovigild; he included the hypothetical antecedent for these two laws in his reconstruction of the *Codex Euricianus*, basing it on two Bavarian laws which borrowed from the *Codex*.[45] In practice, it is not possible to ascertain the precise origins of these *antiquae* and the contexts in which they arose, though we can safely conclude that these laws were current in some form by Leovigild's reign. In the *Lex Visigothorum*'s systematic

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[42] 'Inflicting Serious Bodily Harm: The Visigothic *antiquae* on violence and abortion'. *Tijdschrift voor Rechtsgeschiedenis* 71.1-2 (2003) pp.55-63 and 'Gothic Bible, Vetus Latina and Visigothic Law: Evidence for a Septuagint-based Gothic version of Exodus', *Sacris Erudiri* 44 (2005) pp.37-76. Despite my disagreements, this section is indebted to her reading of Visigothic law, especially of a sequence of *antiquae* (VI.3.3-6). See too Darrel W. Amundsen, 'Visigothic Medical Legislation', *Bulletin of the History of Medicine* 45.6 (1971) pp.566-569 and P.D. King, *Law and Society in the Visigothic Kingdom* (Cambridge, 1972) pp.149, 238-239.

[43] The laws on abortion are *Lex Visigothorum* VI.3.1-7, in MGH Leges Nationum Germanicarum 1, pp.260-2. P.D. King, 'King Chindasvind and the First Territorial Law-Code of the Visigothic Kingdom', in *Visigothic Spain*, pp.131-157 argues that the *Lex Visigothorum* was a revision of an earlier code issued by Chindaswinth around a decade earlier.

[44] King, *Law and society*, pp.1-21, Isabel Velázquez, 'Jural Relations as an Indicator of Syncretism: From the law of inheritance to the *dum inlicita* of Chindaswinth', in Peter Heather (ed.) *The Visigoths from the Migration Period to the Seventh Century: An ethnographic perspective* (Woodbridge, 1999) pp.225-231, 236, 256-7.

[45] MGH, Leges Nationum Germanicarum I, pp.260n.1, 261n.1.

arrangement, they fell together under a single *titulus* (*De Excutientibus Hominum Partum*). The first law covered "Those who give potions for abortion":

> If anyone gives to a pregnant woman a drink for abortion or to kill a child (*potionem ad avorsum aut pro necando infante*), he will be killed; and a woman, who seeks a potion to have an abortion (*potionem ad avorsum*), if she is a slave-girl, will receive 200 lashes; if she is freeborn, she will lose her personal status and be handed over in slavery to whomever we decide.[46]

The remaining *antiquae* elaborated permutations of abortion induced by acts of physical violence according to the legal status of assailant and victim. The first of these laid out the scenario, graduating penalties for abortion according to whether or not the woman died, and whether or not the foetus was formed or unformed:

> If anyone hits a pregnant woman, making a freewoman have an abortion by any blow or other means *(quocumque hictu aut per aliquam occasionem mulierem abortare fecerit)*, and she should die from this, he will be punished for homicide. But if only an abortion occurs, and the woman is brought to no harm, should a freeman be known (*cognoscitur*) to have done this to a freewoman, he will pay 150 *solidi* if the infant was formed (*formatum*), and 100 *solidi* if unformed (*informem*).[47]

The next four articles covered the differing permutations of abortion in shortened forms: VI.3.3 referred back to these penalties in the case of an *ingenua* who similarly induced abortion in another *ingenua*, and introduced the sequence of shortened articles:

- a freewoman (*ingenua*) who induced an abortion by violence or some other means (*per aliquam violentiam aut occasionem*) upon another freewoman was to receive the same penalties outlined for the freeman in the previous article (*et ingenui superioris damni pena*) (VI.3.3)
- a freewoman who induced an abortion in a slavegirl (*ancilla*) was to pay 20 *solidi* to her master (VI.3.4)
- a slave (*servus*) who induced an abortion in a freewoman was to receive 200 lashes in public and be transferred to the service of the woman (VI.3.5)
- a slave who induced an abortion in a slavegirl was to receive 200 lashes and his master had to pay 10 *solidi* to the slavegirl's master (VI.3.6).

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[46] *Lex Visigothorum* VI.3.1, p.260. Elsakkers, 'Gothic bible', p.62, plausibly reads *aut pro necando infante* as a clarification of *ad avorsum* as in to kill a child by abortion.
[47] *Lex Visigothorum* VI.3.2, p.261.

This sequence is more opaque than first appearances suggest. It is not clear to which offence the penalties in VI.3.4-6 refer and whether these were to be graduated as in VI.3.2. The opening *antiqua* had strongly distinguished two scenarios: homicide of a woman from violent abortion, and abortion without any harm suffered by the woman. VI.3.3, however, did not make the same distinction and mentioned the possibility that the *ingenua* assailant was deemed to have harmed the *ingenua* victim through a violently induced abortion (*aut eam ex hoc debilitasse cognoscitur*). Elsakkers uses this phrase (*ex hoc debilitasse*) as the key to understanding VI.3.4-6, arguing that the penalties in the subsequent *antiquae* were for harm wrought upon a woman by violently induced abortion. She bases this partly on connections between the penalties in these *antiquae* and penalties for acts of violence, also differentiated by status of victim and assailant, in the *Lex Visigothorum*'s articles on wounds and injuries.[48] It should be noted, however, that it is unclear whether these articles had deliberate or accidental abortion in mind (though probably the latter).[49] Moreover, there are hints that the jurists acknowledged the ambiguity of the causal relation between violent assault and abortion: in VI.3.2 the offender should be known (*cognoscitur*) to have committed the crime. Nonetheless, Elsakkers' reading of VI.3.4-6 holds: they penalised the injury sustained by a woman in abortion by assault.

However, Elsakkers has also interpreted the two fullest *antiquae* (VI.3.1-2) in terms of bodily injury. She argues that the penalties in VI.3.2 graduated according to foetal formation were also for injuries suffered. Her argument relates the 100 *solidi* fine for causing abortion of the unformed fetus to the 100 *solidi* fine for a range of other serious injuries caused by violence – e.g. broken bones, damaged vision, a mutilated nose, loss of a hand (VI.4.1, VI.4.3). From this, Elsakkers concludes that the 100 *solidi* fine in VI.3.2 represented compensation for a comparably serious injury brought about by violent abortion, and the increased fine of 150 *solidi* for a formed foetus reflected the relatively greater hazard of "late-term abortion".[50]

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[48] 'Inflicting serious bodily harm', pp.58-61; c.f. 'Gothic bible', p.63. The titles on wounds and injuries are found in VI.4.1-11. Elsakkers sees a more direct correspondence between the penalties for violent abortion in VI.3.4-6 and penalties for deliberate acts of violence in VI.4.8-11 than I can, though she does acknowledge that the fit is not perfect (p.63). Her point on reading VI.3.4-6 as penalising violence against women nonetheless holds.

[49] As noted by Amundsen, 'Visigothic medical legislation', pp.566-567.

[50] Elsakkers, 'Inflicting serious bodily harm', pp.60-2.

There are several problems. First, reading the formed/unformed distinction as an analogue of modern distinctions between early and late-term abortion is problematic.[51] Second, 100 *solidi* is the fine for other offences which also seem to 'fit', for example, unintentional homicide: if two men came to blows in a quarrel and one of them unwittingly struck dead a third party, the man responsible for starting the quarrel was to be identified; if he was the one who avoided the lethal blow, he nonetheless had to pay 100 *solidi* as the principal cause of the manslaughter (VI.5.4). Most starkly, however, this reading is at variance with the text itself. The penalties for abortion of the *infans* in VI.3.2 were specified precisely if an abortion had occurred but the woman had come to no harm (*mulier in nullo debilitata fuerit*). Indeed, Elsakkers' own work has also highlighted affinities between this article and *vetus Latina* versions of Exodus 21:22-23. She persuasively argues that the passage was the ultimate source for the scenario. In the *vetus Latina* rendering, assailants were to pay a fine at the husband's discretion for causing the abortion of an *infans nondum formatus*; and the penalty was a life for a life (*animam pro anima*) if the *infans* was *formatus*.[52] The penalties in Exodus pertained to the destruction of foetal life and, although the penalties were different in VI.3.2, they likewise functioned as compensation for the loss of foetal life.[53] Incidentally, given the ambiguity over whether the scenario referred to deliberate or accidental abortion, the fine cannot be read as some sort of index of the abstract value attached to foetal life.

Elsakkers' reading of the first *antiqua* is also problematic. She suggests that the proscription of *potiones ad avorsum* in VI.3.1 was "in fact…a condemnation of the use of poison rather than a prohibition of abortion".[54] Elsakkers likens the *antiqua* to a portion of the Roman *Lex Cornelia de sicariis et veneficis*, which entered Alaric's *Breviarium* in the form of the Roman jurist Paulus' *sententia* on it. As we saw in chapter two, this law punished those who gave abortifacient or love potions to someone, even if no harm was inflicted, on the grounds of scandal. Elsakkers sees VI.3.1 as a parallel to the *Lex Cornelia*

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[51] C.f. 'Inflicting serious bodily harm', p.56n.8: "A fetus is "formed" at approximately three months; this is when it has developed distinctive features, and the mother feels movement. When used in conjunction with abortion the distinction 'formed' – 'unformed' is roughly equivalent to early – versus late-term abortion." I will elaborate upon problems in interpreting foetal distinctions in the discussion of law in chapter seven.

[52] Elsakkers, 'Gothic bible' argues that the *antiquae* are "textual and conceptual evidence" (p.76) for a Gothic text of the Septuagint-derived Exodus insofar as they show affinities to this version of Exodus 21:22-25. On the Vetus Latina text: in ibid. 53. For different versions of the *vetus Latina* text, see Humbert-Droz, 'L'exégèse d'exode', pp.28-67.

[53] Incidentally, the fine for inducing the abortion of a *formatus* foetus varied in different copies of the *Lex Visigothorum* from 100 to 250 *solidi*; see the critical apparatus, p.261.

[54] Elsakkers, 'Inflicting serious bodily harm', p.56n.8.

and interprets both laws as "prohibitions of the use of drugs considered detrimental to a woman's health".[55]

But this mistakenly assimilates these two laws and neglects a significant difference between them. The *Lex Cornelia*, we recall, specifically condemned the use of abortifacient and aphrodisiac potions even if no harm came from them. The law was premised on scandal and punished bad example. *Lex Visigothorum* VI.3.1, by contrast, was not solely a condemnation of dangerous poisons. Admittedly, a deep anxiety over magical practices, including *veneficium*, appeared in various *tituli* in the *Lex Visigothorum*. The preceding *titulus* (*De maleficis et consulentibus eos adque veneficis*) contained an article on *veneficium* (though this cannot have influenced the *antiqua* since this law was attributed to Chindaswinth). If freeman and slaves alike gave a poisonous drink to someone who died from taking it, they would suffer a disgraceful (*turpissima*) death. If the person who drank it survived, the *veneficus* would be handed over to him in slavery (VI.2.2). The law clearly conveyed "horror [at] magical practices".[56] But surely means and ends were *both* being punished? To use a *reductio ad absurdum* applying Elsakkers' reading of VI.3.1 to VI.2.2: this was a condemnation of the use of poisons, not a prohibition of killing or harming someone. *Pace* Elsakkers, the simplest reading of the first *antiqua* is not that it "equate[d]…abortifacients and poisons" but that it issued a blunt condemnation of a very specific use of a *potio*: namely, to kill an *infans* through abortion.[57]

A life – or an eye – for a life: Chindaswinth's rescript

These articles covered specific scenarios, mostly pertaining to third-party abortion. The tone of the treatment of abortion in the *Lex Visigothorum* was profoundly altered by the final article, Chindaswinth's pronouncement on abortion, which Elsakkers has described as a "Caesarian sermon in legal guise".[58] Indeed, the *titulus* to Chindaswinth's law on abortion (*De his, qui filios suos aut natos aut in utero necant*) contained an echo of Caesarius' sermons.[59] It began:

> There is nothing worse than the depravity of those who, disregarding piety, become murderers of their own children. In as much as it is said that the crime of these has grown to such a degree throughout the provinces of our land that men as well as women are found to be the performers of this heinous action, we therefore,

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[55] Elsakkers, 'Gothic bible, pp.59-62 (quotation at 62).
[56] King, *Law*, pp.148-149.
[57] Elsakkers, 'Gothic bible', p.62.
[58] 'Gothic bible', p.68.
[59] C.f. "filios suos aut adhuc in utero positos aut etiam natos occidit", *sermo* 200.4.

forbidding this dissoluteness, decree that, if a free woman or a female slave murders a son or a daughter which has been born, or, while still having it in utero, either takes a potion to induce abortion, or by any other means whatsoever presumes to destroy her own fetus [etc.].[60]

Once the provincial judge discovered the crime, the woman in question was to be publicly executed; or, if the judge decided to spare her life, the woman would be blinded in punishment. The description of the punishment deliberately mimicked the description of the crime: the judge was advised to (literally) "extinguish all the vision of her eyes (*omnem visionem oculorum eius...extinguere*)" just as she had "extinguished her child (*extinguere partum*)". If the woman's husband was found to have been complicit, he too was liable to this grisly punishment.

This law was probably the most stringent and unforgiving denunciation of abortion produced in the early medieval West. Yet, beneath the blistering rhetoric of depravity lay some significant perceptions. The pronouncement drew abortion and infanticide together, and emphasised the parental dimension. It carefully explicated what murder entailed and how it was wrought. Infanticide was to kill one's son or daughter, abortion was to destroy one's offspring by taking an abortifacient drink or by whichever other means (*quocumque modo*). Most importantly, although the motives behind such practices were not made explicit – perhaps "dissoluteness" hints at sexual sin – the possibility of male-female cooperation was. More specifically, the nature of a man's role in abortion was specified: he could order or allow (*iussisse vel permisisse*) his wife to have an abortion. His culpability did not require him to have had anything to do with a *potio ad avorsum*. There is a sense of surprise that even men are found to be complicit with these crimes. But this was the mock surprise of moralising rhetoric: Chindaswinth was following in the steps of Toledo III and Lérida in implicating men with abortion too, even if his mock surprise relied on a primary association with women.

That Chindaswinth's law drew on c.17 from Toledo III is clear from the resonance of certain phrases like *filiorum suorum necatores* and *inmemores pietatis*. Moreover, like Toledo III, abortion was described as a problem which afflicted the kingdom and necessitated a determined response from the political centre. Like Reccared before them,

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[60] "Nihil est eorum pravitate deterius, qui, pietatis inmemores, filiorum suorum necatores existent. Quorum quia vitium per provincias regni nostri sic inolevisse narratur, ut tam viri quam femine sceleris huius auctores esse repperiantur, ideo hanc licentiam proibentes decernimus, ut, seu libera seu ancilla natum filium filiamve necaverit, sive adhuc in utero habens, aut potionem ad avorsum acceperit, aut alio quocumque modo extinguere partum suum presumserit[.]", VI.3.7, p.262. Translation from Amundsen, 'Medical legislation', pp.568-9.

Chindaswinth and Recceswinth sought to consolidate royal power, albeit in different ways.[61] Legislation was an important tool for both father and son. The laws issued and the fact of promulgation delineated the kind of royal, God-given role articulated at Toledo III. This role cast the king as the "head of the public body…possessed of the eyes with which to search out what was noxious and of the mind to reach decisions by which the dependent and subject part might be ruled".[62] Abortion was one such noxious element. If abortion – or rumours of it – within the king's realm constituted a menace to the *salus* of the social body, it also presented an opportunity to articulate a response which elaborated upon familiar moral associations in order to reassert royal authority.

ASPECTS OF 'OFFICIAL' VISIGOTHIC DISCOURSE ON ABORTION

Convergence: entangling sex and murder

A striking thread that ran through the canons and rescript was the entanglement of abortion with sex and murder. In Martin's canon, this was relatively muted. The Ancyran original had framed abortion in terms of fornication. While Martin's version retained the Ancyran opening, he effectively broke this frame by acknowledging that abortion and preventing conception occurred within marriage too (*sive ex adulterio sive ex legitimo coniugio*). Nonetheless, these practices were implicitly associated with aberrant sex. In the Léridan and Toledan canons, the rooting of abortion in sex was more explicit. Abortion was a form of murder that uncovered two forms of immoral sex: children had been conceived in the sin of illicit unions, from adultery to clerical philandering (Lérida); or children had been conceived sinfully by couples in legitimate unions (Toledo III).

The association between abortion and illicit sexual unions can be read as a moralising taint, a form of stereotyping, though one distinct from the Roman abortion-adultery nexus insofar as both what was signalled (illicit sex) and the sign itself (abortion) was deeply problematic. The taint contained a circularity which played on abortion as a sign: to resort to abortion or even infanticide implied the recognition that one had conceived sinfully. To put it differently, no one would have any reason to get rid of the *bene conceptos*. But it ought not to be dismissed as nothing more than a moralistic phantasm. The 'sign' hints at ways in which children could become 'unwanted'. A powerful example of the disturbance wrought by the birth of children from illicit unions is found

[61] A. Barbero and M.I. Loring, 'The Catholic Visigothic Kingdom', in Paul Fouracre (ed.) *The New Cambridge Medieval History I: c.500-c.700* (Cambridge, 2005) pp.365-370; and see too Stocking, *Bishops, councils and consensus*, pp.185-189.
[62] King, *Law and society*, p.23-38 (at p.32).

in the ninth council of Toledo (655), a provincial, rather than general, Toledan council. One canon intensified earlier attempts to quash clerical immorality. Clerics proven to have fathered children in illicit unions would still be punished. But, in a self-conscious departure from previous decrees, the punishment (*ultio*) would be visited both upon those who committed the crime (*in auctoribus criminum*) and upon their offspring (*in progenie damnatorum*). The children born of these unions would lose their inheritance and remain enslaved to whichever church their errant fathers had belonged to.[63]

These illicitly fathered children posed a profound problem. The products of loathsome unions (*detestando coniubio*), the taint of their parentage could no longer be absorbed without some reprisal. The bishops rationalised their decree by emphasising that the extension of existing norms was necessary because too many had not changed their ways. It is difficult to avoid seeing the children in question as surrogate victims onto whom the perceived threat of clerical immorality was partially displaced and whose punishment merged unnervingly with a form of vengeance (*ultio*).[64] The envisaged children were 'unwanted' by the bishops because of the circumstance in which they were conceived. Insofar as children were entangled with these circumstances, those born of other socially transgressive unions could also become 'unwanted' by parents and by wider communities.

There was plenty at stake for those women and men, lay and clerics, whose illicit unions could be disclosed through the birth of a child. The number of royal and ecclesiastical initiatives against clerical sexual indiscretions suggests that they were a troubling source of scandal for royal and ecclesiastical leaders alike.[65] The canon from Toledo IX was one example of how this scandal was profoundly intensified by the birth of children from such indiscretions. Further, in Visigothic society, as in other early medieval kingdoms, adultery was socially inflammatory. Laws elaborated numerous permutations and redresses. Unsurprisingly, wives were treated far more stringently than husbands, though male adulterers faced severe reprisals and men who abducted women were to be punished in ways that were exacting by early medieval standards.[66] Both women and men had much to lose. A husband was entitled to have adulterers handed

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[63] c.10, *La colección canónica Hispana 5*, pp.503-504.

[64] See René Girard, *Violence and the Sacred* (London, 2005) esp. pp.82-92 on surrogate victims and sacrificial substitution. For an attempt to read the practice and discourse of abortion in Girardian terms, see Bernadette Waterman Ward, 'Abortion as a Sacrament: Mimetic desire and sacrifice in sexual politics' *Contagion* 7 (2000) pp.18-35.

[65] See King, *Law and society*, pp.152-153, Stocking, *Bishops, councils, and consensus*, pp.161-165, 179-180.

[66] King, *Law and society*, pp.232-235, Giorgio Ausenda, 'Kinship and Marriage among the Visigoths', in Heather (ed.) *Visigoths from the migration period*, pp.163-165.

over to him to do with as he pleased. He could even kill them with legal impunity if his wife's adultery were made manifestly clear to a judge.[67] Pregnancy and the birth of a child presumably tilted the balance.

Illicit unions were a social junction at which familial, legal and ecclesiastical pressures converged in problematising the births of certain children, and the raw fact of pregnancy rendered women particularly vulnerable to these pressures.[68] While the association between abortion and illicit unions cannot be naively read as a historical record of actual practice, there was a 'fit' between the social map of sexual relations and the moral location of abortion. This 'fit' also entailed an inevitable problem that lurked within the association. Social and ecclesiastical sanctions against illicit sexual unions gave formal expression to the kinds of pressures which – the same set of sanctions lamented – led to abortion. If abortion and illicit sex really were enacted in a symbiosis of sin, the bishops did not appear to recognise the uncomfortable possibility that they were unwittingly nourishing this symbiosis.

But 'unwanted' children were also conceived in legitimate unions. The more extensive allusions to this context, only alluded to in Martin's canon, came in the Toledan canon and Chindaswinth's rescript. The clearest expression came in the uncompromising Toledan canon. The backhanded acknowledgement of the burden (*taedium*) of having too many children (*filios numerosius augere*) as a motivation for abortion or infanticide was, in fact, fairly novel. But, intriguingly, the motivation was clearly construed in terms of sexual sin. *Taedium* was not exactly morally suspect in itself. But those parents tired of this *taedium* were enjoined to refrain from sex; more precisely, they were to refrain from fornication. This was the same kind of remedy as Caesarius' *sola sterilitas* except the bishops at Toledo had husbands in mind as well as wives. The signalling function of abortion was transferred from condemning illicit unions to marriage legitimised by procreation. By killing (*necando*) men and women revealed (*docent*) that a marriage had been contracted for lust, not for procreation. Child-murder could be understood in terms of vitiating the raison d'être of marriage as much as contraception was.

Furthermore, the double crime was *parricidium* and fornication. The murdered child was understood in relational terms. Envisaging such practices within marriage sharpened

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[67] *Lex Visigothorum* III.4.3-4, pp.148-149.

[68] This complements, but is distinct from, demographic historians' emphasis on extramarital relations as the "privileged locus" for birth-control practice in premodern societies: John Knodel and Etienne van de Walle, 'Lessons from the Past: Policy implications of historical fertility studies', *Population and Development Review* 5.2 (1979) p.219; c.f. Frier, 'Natural fertility', p.331.

this relational dimension: men and women were ridding themselves of their *own* children. This relational dimension is detectable at Lérida – people launched attacks in the wombs of mothers (*in uteri matrum*) – though not as sharply, and it also animated Chindaswinth's rescript. Across these canons and the rescript, abortion was a form of child-murder that enacted a grotesque inversion of normative roles as husbands/wives and as parents, and which disclosed different forms of sexual sin, within and outside marriage. Curiously, the royal pronouncements contained more developed treatments of some of these ideas.

Divergence: the 'salus' of the state and the 'salus' of the sinner

In terms of moral perceptions, the pronouncements associated with Reccared and Chindaswinth articulated ideas consonant with the ecclesiastical tradition on abortion. If anything, their pronouncements amplified particular elements. But this convergence ought not to obscure a subtle divergence, a divergence rooted in the different practices within which abortion was addressed. Lérida and Braga were independent, localised initiatives aimed at fostering clerical and episcopal education in anticipation of pastoral ministry. They can be read as condensed guidelines for negotiating the problem of abortion: they specified different kinds of acts, actors, accomplices and circumstances. They were, in part, punitive and moralistic but they also implied a responsibility for reintegrating sinners. Toledo III and Chindaswinth's rescript were different. Their detailed scrutiny of abortion notwithstanding, they resorted to an urgent moral rhetoric and issued what were punishments *tout court*. A practical subtext, we have seen, was the delineation of centralised royal power.

This difference stemmed from different underlying ideologies both of which dealt with the problem of individuals and communities through "organological" concepts.[69] The church community and Visigothic society were like bodies. But the heads of these bodies responded to the disease of transgression in different ways. In Visigothic political theology, abortion was remedied with amputation, and in the pastoral perspective, abortion was subject to a lengthy, if not necessarily pleasant, treatment in seclusion. This is not a contrast between the secular and the religious – after all, the bishops at Toledo were associated with the canon on abortion – but between the political and the pastoral. Visigothic political theology was concerned with the *salus* of society as a whole.[70] Pastoral practice – whether or not bishops and priests were individually empathetic –

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[69] The term is from King, *Law and society*, p.32.
[70] King, *Law and society*, pp.28-33.

was necessarily concerned with the *salus* of the whole (the church community) but also with the part (the sinner) and the relation between the part and the whole. Thus, while Toledo III and Chindaswinth's were borne of initiatives which took the responsibility for forming a Christian society very seriously, they interrupted pastoral dynamics.

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The Visigothic evidence suggests that, in the sixth and seventh century, the integration of abortion into preparation for pastoral practice was still underdeveloped. In effect, our evidence takes the form of two localised actions, Lérida and Martin's canon. By the time of the Carolingians, abortion had been more thoroughly integrated into a far more developed and ambitious programme of clerical reform. One fundamental element in this programme were distinctly early medieval texts which first emerged contemporaneously with these localised forms of action in Visigothic Spain and which were associated with the development of a mode of penitence rejected as an abomination by the bishops at Toledo III: the penitentials.[71]

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[71] C.f. Cyrille Vogel, *La pécheur et la pénitence au Moyen Âge* (Paris, 1969) pp.15-16.

5.

SEX, MAGIC AND MURDER:
READING ABORTION IN THE PENITENTIALS

The penitentials form the most significant corpus of material on early medieval abortion. Emerging out of the monastic practice of confession in the sixth century, penitentials were subsequently produced, developed and diffused across the British Isles and the continent in both the cloistered and pastoral field.[1] New penitentials were composed and older ones copied throughout the period under study. The majority contained canons on abortion and, of those which did not, several were briefer, thematically-focussed addenda to pre-existing texts within a manuscript.[2] Individually, they give snapshots of how abortion was integrated within an anticipated pastoral ministry that combined the care of souls with a kind of social discipline. As an evolving and intricately intertextual corpus, they potentially signal subtle developments in pastoral thinking about abortion. Their initial emergence in Ireland possibly coincided with the end of Caesarius' episcopate and certainly with the strictures against abortion (and, of course, private penance) issued by Iberian churchmen and monarchs. By the ninth century, their influence had become decisive and the penitentials were widely circulated and even formed an important resource in canonical texts. More than any other body of source material, the penitentials offer a thread of continuity through which one can discern the development of the ecclesiastical treatment of abortion in the early medieval West.

METHODOLOGICAL ISSUES

A 'growth industry' in historiography

The penitentials once had a bad name. They were a "deplorable feature of the medieval church [and i]t is hard to see how anyone could busy himself with such

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[1] While older histories of penance remain useful, Allen J. Frantzen, *The Literature of Penance in Anglo-Saxon England* (New Brunswick, 1983) and Cyrille Vogel, *Les "libri paenitentiales"*, Typologie des sources du moyen âge occidental 27 (Turnhout, 1978), revised by Allen J. Frantzen, Mise à jour du fascicule no.27 (Turnhout, 1985) are important introductions.

[2] The most significant exceptions were the *P.Cummeani* and the oldest versions of the *P.Egberti*. For an example of a recently edited addendum to a manuscript containing the *Excarpsus Cummeani* and *P.Merseburgense A,* see Rob Meens, "'Aliud benitenciale": The ninth-century *Paenitentiale Vindobense C*', *Mediaeval studies* 66 (2004) pp.1-26.

literature and not be the worse for it", and they comprised "an abstract compendium of suppositious crimes and unnatural sins, thought up in the cloister by the tortuous intellect of the clerical scribe".[3] It is testament to the rapid development of scholarship on the penitentials that references to this erstwhile reputation have become, perhaps, something of a mandatory cliché.[4] Scholarship on the penitentials was especially dynamised from the 1980s. The last few decades have seen new critical editions, painstaking textual and codicological research, revisionist histories of early medieval penance and sophisticated use of the penitentials in the study of such topics as sexuality and magic.[5]

These developments both necessitate and provide the means for a careful modus operandi in using the penitentials in a cultural history of abortion. Penitentials were practical texts in a literary tradition. With the possible exception of a few early texts, penitential compilation was a highly derivative exercise but one which cannot be reduced to mere copying. The penitentials' "peculiarity [lay in their] capacity to fuse plagiarism with originality, so that most books are the result of compilation more than of original composition [with the consequence] that the compilers' contribution consisted chiefly in their having chosen what to put in and leave out".[6] Where compilers were arranging more original works, possibly as in the case of earlier insular penitentials, the phrasing and placement of canons can be revealing about thought on particular subjects. Where compilers were drawing principally on pre-existing penitentials, they shaped their material through selection, rephrasing, excision, rearrangement and, more rarely, the addition of novel canons. What such selection, rephrasing and so on signifies must be deduced, in part, from the compositional rationale characteristic of this or that penitential.[7] Added to this are questions over the uses to which the penitentials were put as well as their proximity to pastoral ministry and, ultimately, to the large mass of

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[3] Charles Plummer (writing in 1896) and Nora Chadwick (in 1961), quoted in Marc E. Meyer, 'Early Anglo-Saxon Penitentials and the Position of Women', *Haskins Society Journal* 2 (1990) p.49.

[4] Dominic Janes, 'Sex and Text: The afterlife of medieval penance in Britain and Ireland', in April Harper & Caroline Proctor (eds.) *Medieval Sexuality: A casebook* (London, 2007) pp.32-47 goes beyond the cliché and attempts to historicise the 'embarassment' of the penitentials, in this case, in the nineteenth century.

[5] Rob Meens, 'Introduction: Penitential questions: sin, satisfaction and reconciliation in the tenth and eleventh centuries', *Early Medieval Europe* 14.1 (2006) pp.1-6.

[6] Alexander Murray, *Suicide in the Middle Ages, volume II: The curse on self-murder* (Oxford, 2000) p.251.

[7] See Rob Meens, *Het tripartite boetoboek: overlevering en betekenis van vroegmiddeleeuwse biechtvoorschriften* (Verloren, 1994) pp.569-570 (from the summary in English) and especially id. 'Religious Instruction in the Frankish Kingdoms', in Esther Cohen and Mayke de Jong (eds.) *Medieval Transformations: Texts, power, and gifts in context* (Leiden, 2001) pp.55-64.

ordinary believers – that is, in terms of their capacity to reflect and to shape thought and behaviour.

Active deliberation and the anticipated pastoral ministry

The most intriguing historiographical uses of the penitentials have, unsurprisingly, combined a sense of the particularities of specific subjects with awareness of methodological problems. Allen J. Frantzen, for example, has examined tenth-century Anglo-Saxon penitentials in relation to their earlier Latin prototypes in order to illuminate how same-sex relations were conceived of and condemned. Frantzen is careful to root the treatment of same-sex relations within the treatment of sexual behaviour more broadly and cultivates sensitivity to the variable semantics of class nouns for those involved in homosexual behaviour (e.g. *molles*, *masculi*) and the active process of translation into Old English. In Frantzen's account, the penitentials emerge as the "most specific and...important evidence of same-sex relations and attempts to regulate them in the Anglo-Saxon period".[8] But if they can offer fragmented perspectives on both real-life practice and responses to it, grasping the penitentials' limitations is also crucial. Yitzhak Hen's use of six early Frankish penitentials – "the most intriguing and irritating obstacle in delineating the character of Merovingian society" – in understanding 'pagan' and superstitious practices in seventh and eighth-century Gaul is a case in point. Hen's principal interest is the penitentials' documentary value, the extent to which they were inscribed with real-life details. Hen does not altogether dismiss their documentary value. But, based on a scrutiny of the derivative nature of the relevant canons, Hen argues that condemnations were the product of "literary conventions" and ecclesiastical anxieties "which did not necessarily have a real basis in everyday life".[9] A final example is Alexander Murray's fascinating exposition of suicide canons in the penitentials, fascinating, among other reasons, for the awkward nature of suicides in documents on penance (a suicide could not, of course, become a penitent). In contrast to those on sex or 'magical' practices, the stock of canons on suicide is smaller and Murray's focus is correspondingly sharper. He analyses the Theodorean canon from which subsequent suicide canons appear to have originated in exhaustive detail and speculatively reconstructs the rationales underlying elaborations and accretions in later texts. In so doing, Murray brings to light divergences, if not quite

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[8] *Before the Closet: Same-sex love from Beowulf to Angels in America* (Chicago, 1998) pp.138-183 (at p.175).
[9] *Culture and religion*, pp.180-189 (at pp.180, 187).

over the morality of suicide, then over understandings of the motives underlying suicide and the appropriate *post facto* attitude to suicides themselves.[10]

In these works, the penitentials become curious, even difficult, but nonetheless valuable sources and it is little coincidence that Frantzen and Murray had earlier made significant, though markedly different, contributions to the history of penance.[11] Though the documentary value of the penitentials remains an interesting question, they are most promisingly read as partial – and sometimes oblique – records of a kind of deliberation. This deliberation was more often than not prompted by the compiler's encounter with his source material and was directed to the practical end of orientation in an anticipated pastoral ministry rather than to the intellectual end of moral elucidation. It was not articulated or explicated in a specialised discourse which honed in on specific topics but as part of a broader cataloguing of sins and their remedial punishments. The remnants of this deliberation are the easily negligible means at the penitential compiler's disposal rather than the expressly articulated attention to pastoral and moral detail characteristic of later medieval confessors' manuals.[12] But it was a kind of deliberation all the same and, by a close attention to the texts, the observant reader can, in Murray's words, uncover "nuances of thought easily ignored".[13]

Rewriting penitentials into the history of abortion

The foregoing remarks may appear to trade in platitudes – basically, good historiography depends on good use of sources – but they are necessary for a simple reason. There has been little methodologically aware reading of abortion in the penitentials which can compare to the exemplary scholarship of Frantzen, Hen and Murray.[14] One contention underlying this chapter is that the penitentials have been

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[10] *Suicide II,* pp.252-269.

[11] See n.1 and also Alexander Murray, 'Confession before 1215' *Transactions of the Royal Historical Society* 3, sixth series (1993) pp.51-81 for an important statement of scepticism on the regularity and spread of confession in the early Middle Ages. Other insightful uses of the penitentials include, on food taboos, Rob Meens, 'Pollution in the Early Middle Ages: The case of food regulations in the penitentials', *Early Medieval Europe* 4.1 (1995) pp.3-19 and, on theft, Marilyn Gerriets, 'Theft, Penitentials, and the Compilation of Early Irish Laws', *Celtica* 22 (1991) pp.18-32.

[12] C.f. T.N. Tentler, *Sin and Confession on the Eve of the Reformation* (Princeton, 1977) pp.162-232 and Biller, *Measure of multitude,* pp.185-212 on discussion by canonists and confessional authors about sexual matters, including birth-control, in the twelfth to fourteenth centuries.

[13] *Suicide II,* p.266.

[14] E.g. Noonan, *Contraception*, pp.152-170; Connery, *Abortion*, pp.65-87; Grisez, *Abortion*, pp.150-155; Honings, 'L'aborto nei libri penitenziali irlandesi: convergenza morale e divergenzo pastorale', in Maria G. Muzzarelli (ed.) *Una componente della mentalità occidentale: i penitenziali nell'alto medio evo* (Bologna, 1980) pp.155-184. Abortion canons are also discussed in many other areas of early medieval historiography with comparable methodological limitations: see, for example, Flandrin, *Temps pour embrasser,* pp.89-91. Other examples will be mentioned below where relevant.

inadequately written into the history of abortion. One reason for this has nothing to do with methodology *per se*. Their position in certain narratives of the ecclesiastical tradition on abortion has been curiously marginal, shaped by assumptions about canonical authority together with interpretation and categorisation through alien concepts, to which we shall turn in the following chapter. But, a more fundamental and pervasive shortcoming in these histories, and in other works which have touched upon abortion in the penitentials, has been methodological.[15] One common tendency has been to lift canons from individual penitentials, treated as if they were wholly discrete texts. Typically, these canons are presented in a loosely chronological or thematic scheme with sensitivity to certain variances (principally to the severity of penances or the grading of penances according to foetal development) but without taking into account other kinds of variance (e.g. terminology, casuistic specifics, arrangement of canons etc.) and, furthermore, without asking what such variances might have signified to compilers and readers. Despite the enduring value of certain insights and the workable inventory of abortion canons which they provide, the overriding problem is the decontextualising abstraction of penitential canons. For example, aside from being complicated by the intersection between historical interpretation and modern concerns, attaching great importance to the difference between those canons which did and those which did not grade penances for abortion according to stages in pregnancy or foetal development is insufficient if it fails to recognise that both kinds of canon were brought together in the 'mixed' penitentials produced on the continent from the eighth century. Likewise, an overly neat and selective chronology can misleadingly evoke a replacement narrative, whereby some canons came to be superseded by others. In reality, copies of almost all the penitentials considered in this chapter were produced in ninth-century Frankish scriptoria albeit in widely varying numbers: in stronger terms, some of the earliest insular penitentials have survived precisely because of Carolingian copyists.[16]

This chapter (and the next) will attempt to fill the gap and emulate the forementioned examples of scholarship in their use of the penitentials. There are three successively broader steps to reading abortion in the penitentials: in individual penitential texts; across affiliated penitential texts; and in relation to other kinds of text. This final step

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[15] A point noted by Pierre J. Payer, 'Confession and the Study of Sex in the Middle Ages', in Vern L. Bullough and James A. Brundage (eds.) *Handbook of Medieval Sexuality* (New York, 1996) pp.4-5 with broader histories of sexuality in mind too.

[16] Rob Meens, 'The Frequency and Nature of Early Medieval Penance', in Peter Biller and A.J. Minnis (eds.) *Handling Sin: Confession in the Middle Ages* (York, 1998) p.39 including n.27.

will be most fully developed in the next chapter, with which there is an unavoidable degree of overlap. The form of abortion canons over the eighth century was relatively stable compared to the new canons and emendations which emerged in ninth-century penitentials. In the next chapter, we will turn to some intriguing novel canons, questions of canonical authority and the evolving miscegenation of penitential and canonical material. These texts can be safely retained within the next chapter but the difficulty of dating penitentials with precision combined with the need for illustrative examples means that some early ninth-century material intrudes into this chapter. The fallibility of dating notwithstanding, the endpoint here will be the early ninth century, when Carolingian churchmen issued their famous and easily misunderstood condemnations of penitentials.

The bulk of the chapter is occupied with abortion canons produced in sixth- and seventh-century penitentials, from which the majority of later abortion canons were derived. We will intensively read the earliest penitentials containing abortion canons in order to see the range of moral connotations and problems which abortion evoked in the anticipated pastoral ministry. The approach will be akin to the "dense exercise in deduction" to which Alexander Murray has subjected suicide canons and the aim will be to illuminate the fluctuating mass of concerns, questions and ambiguities with which abortion was entangled. Like Murray, my hope is that the reader is not "rendered breathless".[17] Thereafter, we will turn to the labours of subsequent compilers and the evolving shape of abortion canons in 'mixed' penitentials. The aim is to see how processes of compilation affected the meanings of canons, and to read these processes as forms of active deliberation upon abortion. At the end, we will briefly consider the significance of the penitentials in broader perspective.

ABORTION AND SEXUAL SCANDAL: P.VINNIANI

Composed in mid to late sixth-century Ireland, the oldest surviving penitential, the *P.Vinniani*, was the ultimate source for what became a widely circulated penitential canon on abortion. Owing to the *P.Columbani*'s use of the *P.Vinniani*, the conventional *terminus ad quem* is Columbanus' departure for Gaul in *c*.591.[18] Although *Vinniani* was not

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[17] *Suicide II*, p.257.
[18] Ed. and trans. Ludwig Bieler, *The Irish Penitentials, with an appendix by D.A. Binchy* (Dublin, 1963). A more precise dating depends on whether we identify the author with Finnian of Clonard (d.549) or Finnian of Moville (d.589), a long-disputed question which overlaps with settling the identity of the bishop variously called Findbarr, Uinniau and Finnio and described as Columbanus' teacher in Adomnán's *Vita Columbani*: see Thomas M. Charles-Edwards, *Early Christian Ireland* (Cambridge, 2000) pp.291-293.

as influential as two other penitentials with Irish roots, the *P.Columbani* and *P.Cummeani*, its abortion canon was adapted in the former.

Reading the P.Vinniani

The short epilogue implies that the author, a certain Uinniaus, was in charge of a monastery. He had written "these few things about the remedies of penance" for his "beloved brothers", the "sons of his bowels", in the hope that his humble *opusculum* would help to destroy "all evil deeds".[19] The overwhelming majority of canons, however, applied to clerics and laymen. *Vinniani* was tailored to the perceived needs of a mixed community, quite possibly the kind of community characteristic of many monastic settlements in early Ireland in which *manaig*, or lay monastic tenants, lived in close proximity. Uinniaus was writing for a community already attuned to penitential rhythms and exposed to a sexual ethic within which continence mirrored liturgical cycles.[20] Uinniaus carefully distinguished between the responsibilities of clergy and laity. Since he was "a man of this world", a layman incurred "lighter guilt in this world" but "lesser reward in the world to come" (c.6). This clerical-lay distinction was carefully established in early canons on violence and murder. Thereafter, the bulk of the work listed clerical sins (cc.10-29) and lay sins, particularly sexual sins (cc.35-47).

Deciphering sense from context

Although it envisaged a female perpetrator, the abortion canon nonetheless appeared in the middle of the section on clerical sins:

> If a woman has destroyed someone's child by her *maleficium* (*Si mulier maleficio suo partum alicuius perdiderit*), she shall do penance for half a year with an allowance of bread and water, and abstain from meat and wine for two years and [fast] for six lents on bread and water.[21]

Alicuius might refer either to a man or a woman (as in a woman's own child by a man or another woman's child) and the canon could literally refer to either abortion or

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[19] From the epilogue, p.95. Very few canons, however, specifically bore on the religious: c.50, for instance, reiterated that monks, unlike clerics, could neither perform baptisms nor receive alms.

[20] On *manaig*, see Kathleen Hughes, *The Church in Early Irish Society* (London, 1966) pp.136-41, Frantzen, *Literature of penance*, pp.34-6, 44-5 and, especially on the sexual demands made of *manaig*, Michael W. Herren and Shirley Ann Brown, *Christ in Celtic Christianity: Britain and Ireland from the fifth to the tenth Century* (Woodbridge, 2002) pp.32-3.

[21] c.20, pp.78-80.

infanticide, though the context, as we shall see, suggests the former in both cases.[22] There is a textual complication. Wasserschleben's edition reads, *partum alicuius femin[a]e deciperit.* [23] Translating *decipere* in this context is tricky, but it seems to have the sense of 'cheating a woman of her child'.[24] The difference stems from divergences between the two principal manuscript sources for *Vinniani*, both of which date from the ninth century, though Bieler's text is most probably the more authentic.[25]

While most penitential canons, particularly in later compilations, were discrete, this one must be read with the two preceding and one following canon. It appeared in a digression on *maleficium* after canons on clerical fornication (cc.10-17). Uinniaus moved onto any cleric or woman who was a *malificus* or *malifica* (sic) who harmed or 'cheated' (*deciperat* again) anyone through their *maleficium*. An "immense" sin, it was nonetheless "redeemable through penance", warranting three years on bread and water and another three abstaining from meat and wine (c.18). If the offender (still, by implication, a *malifica* or *malificus* cleric) had not 'cheated' (*deciperat*) anyone but gave something to someone "out of dissolute love (*pro inlecebroso amore*)", the penance was a whole year on bread and water (c.19). No direct source can be identified for these canons but the threefold association between lethal, aphrodisiac and abortifacient 'magic' was hardly new. As observed in chapter two, it was found in Roman law and literature. The canon must also be read with the one that immediately follows:

> But if, as we have said, [she] bears a child and her sin becomes manifest (*manifestum peccatum eius fuerit*), [she will do penance on bread and water for] six years, as in the judgment for a cleric, and in the seventh year, she will be joined to the altar, and then we say that she can restore her crown and put on the white robe and be declared a virgin.

This alternative permutation suggests that c.20 referred to a fornicating nun aborting her own child. The relation between c.20 and c.21 yields a textual reason for preferring Bieler's text insofar as the permutation of c.21 requires that abortion is covered in c.20.

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[22] Taking *alicuius* to denote the father, Bieler's translation reads, "If a woman by her magic destroys the child she has conceived of somebody" (pp.79-81).

[23] *Die Bußordnungen der abendländischen Kirche*, ed. F.W.H. Wasserschleben (Halle, 1851) p.112.

[24] C.f. "misleads any woman with respect to the birth of the child" (making *mulieri* the object of *deciperit* for the sake of sense) in John T. McNeil and Helena M. Gamer, *Medieval Handbooks of Penance: A translation of the principal libri poenitentiales and selections from related documents* (Madison, 1938) p.90.

[25] Bieler's text follows Vienna, National Library, Lat. 2233 (Theol. Lat. 725), though noting variants at p.79, and Wasserschleben's text follows St. Gall Stiftsbibliothek 150. The former is the only complete manuscript of the *P.Vinniani* and, in Bieler's judgment, is the older and more authentic text. For his edition, Bieler relied upon it for wording but, because its canons were diffused across the manuscript, 'corrected' the order using the St. Gall manuscript, pp.15-17.

This flow is obstructed in Wasserschleben's text. Uinniaus likened the penance to that of a cleric who lapsed into fornication, a point to which we will return. Such a cleric would regain his office in the seventh year after the *labor* of penance, for just as in scripture, "Seven times the just man falls and rises" (Proverbs 24.16), so too "he who fell can be called just and in the eighth year evil will not seize him" (c.21).

Some commentators have been struck by the penance in c.20: half a year on bread and water and two years' abstention from meat and wine. Compared to intentional homicide, for which a cleric received ten years in total (c.23), it appears "remarkably lenient" and the "only reasonable conclusion [appears to be] that Finnian did not accord to the foetus the same status as a human being after the moment of birth."[26] Uinniaus did not mark out abortion as especially grave and the question of just how serious abortion was relative to other offences will recur. Generally, abortion tended not to be treated as severely as many other offences such as homicide, infanticide, magical arts and manifold sexual sins, to mention nothing of offences unrelated to sex, magic or murder. But to discern in this 'leniency' solely an implicit position on foetal status is to overlook the multifaceted significance of abortion. If we read the canon in context, instead of excerpting it, we see that abortion was associated with *maleficium* and, above all, the turbulence of sexual scandal.

Mutable 'maleficium'

Maleficium is an awkward term because of its range of connotations.[27] Later penitentials would elaborate different species of *maleficium* ranging from 'love magic' to bringing on storms, in far more detail.[28] Here, *maleficium* could have signified anything from potions to something vaguer like magically jinxing a woman's pregnancy or fertility. The important point is not simply the bewildering range of practices denoted by *maleficium* but the fact that it was not an entirely stable term specifically in relation to abortion.[29] Some later versions of this canon would variously replace *maleficium* with *veneficium* suggesting that some compilers discerned a difference between the two terms. Indeed, the Léridan abortion canon, which connected *potiones* to *venefici*, is a good example of a

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[26] Hugh Connolly, *The Irish Penitentials and their Significance for the Sacrament of Penance Today* (Portland, 1995) pp.67; c.f. Nardi, *Procurato aborto,* p.621 and Honings, 'L'aborto', p.155.
[27] Valerie J. Flint, *The Rise of Magic in Early Medieval Europe* (Oxford, 1991) pp.13-21, 51-54, Hans Peter Broedel, *The Malleus maleficarum and the Construction of Witchcraft: Theology and popular belief* (Manchester, 2003) pp.131-134.
[28] Hen, *Culture and religion*, pp.180-9.
[29] Noonan, *Contraception*, pp155-159 still contains valuable points on *maleficium*, including connotations of sterility, but too readily assumes that *maleficium* was synonymous with herbal potions.

more focussed meaning for *veneficium*. Other texts, however, used *maleficium* synonymously with *veneficium*. When interrogative models were incorporated into penitentials in the ninth century, the penitent could be asked whether he or she had drunk any *maleficium* to avoid conception.[30] While it is reasonable to suppose that the association with *maleficium* tended to intensify the gravity of acts which were already sinful, the association could also bring to the fore ambiguities of intent and effect. This kind of ambiguity might have underlain *Vinniani*, though it is more discernible in Wasserschleben's later text and the swirling connotations and ambiguities of *maleficium* will be important in reading the *P.Columbani*'s reworking.

The turbulence of sexual scandal

Sexual scandal is a more promising avenue. Reading cc.20-21 together, it was the sexual scandal of a vowed virgin who gave birth to a child, and not abortion, which provoked a lengthy penance, the satisfaction of which was to be ritually enacted at the altar. This kind of sexual scandal troubled Uinniaus and, before the abortion canon, he scrutinised the *ruina* of clerical fornication with questions of habituation and social visibility in mind. A fornicating cleric whose sin was a one-off that remained "hidden from men" (though not, of course, from God) received three years' penance in total. He retained his office because "sins can be absolved in secret" (c.10). If habitual but still not public knowledge, the total penance was raised to six years and the cleric would lose his office (c.11). But *ruina* could become even worse. *Maxima ruina* was Uinniaus' dysphemism for fathering a child and he turned to a cleric who consequently committed child-murder. Redemption was still possible, he emphasised, even though the "crime of fornication with homicide is great". The identical penance applied, including loss of office, but Uinniaus also stressed the quality of penance, undertaken "in weeping" and "with prayers through day and night". Moreover, the offender would be exiled for seven years and only restored on the judgment of a priest or bishop (c.12). This is the canon referred to in c.21. Finally, if the cleric did not kill a child born of fornication, the offence was "lesser but the penance the same" (c.13), a reminder that reading penances as a straightforward index of moral gravity can be in tension with the texts. A similar concern with children born of transgressive unions appeared in the treatment of a

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[30] See the following chapter on the *P.Pseudo-Bede*. That is not to suggest that *veneficium* was without its own history of ambiguity: c.f. Matthew Dickie, *Magic and Magicians in the Greco-Roman World* (London, 2001) pp.145-146.

layman who defiled a *puella Dei*. He received a longer penance if a child was born (three years in total) than if no child was born (a year and a half, cc.37-38).

Noting the reduction in penances when fornication did not come to public attention – though perhaps it is better to describe this as intensification when fornication *did* come to public attention – Katharina Wilson and Elizabeth Makowski conclude that "control of lust and the upholding of discipline" were more prominent principles than "protection of life". This was a form of "pragmatism...more concerned with the social repercussions of obvious clerical misbehavior than with the misbehavior itself".[31] The social turbulence of sin certainly recurs in the *P.Vinniani* and atonement sometimes incorporated forms of restorative justice.[32] But "pragmatism" slightly distorts Uinniaus' priorities. Even if a cleric's habitual fornication was not common knowledge, it was presumably brought to public attention by loss of office; as Uinniaus himself emphasised, "it is not a lesser thing, to sin in front of God than in front of men" (c.11). Maintaining the appearance of a morally upright clergy was an important but not an absolute concern. Nonetheless, public knowledge undeniably compounded the sin and complicated penitential evaluation.

It is natural to assume that abortion and infanticide would have been conceived of as lay sins. But, when he covered a layman's fornication with a neighbour's wife or daughter (c.36) Uinniaus did not even broach the question of an ensuing child, let alone getting rid of one. The only context in which he touched upon children born of illicit unions not involving clerics or the religious concerned slavegirls: a layman who slept with his slavegirl had to sell her and, if he fathered a child, she was to be emancipated (cc.39-40).[33] It hardly needs stating that Uinniaus' relative muteness on lay sexual scandal and total silence on lay involvement with abortion and infanticide ought not to be taken as tolerance of such sins. Nonetheless, Uinniaus imagined abortion and infanticide as clerical or religious responses to the threatening possibility that fornication would be revealed. Abortion was sinful but the sense that "[s]ex 'with issue' was far more serious

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[31] *Wykked Wyves and the Woes of Marriage: Misogamous literature from Juvenal to Chaucer* (New York, 1990) p.62. The reference is to penitential authors in general but the *P.Vinniani* is their principal example.

[32] This was not only true of sexual sins. In addition to years of penitential fasting, a cleric who committed murder had to undergo a decade of exile. Upon returning, he was to make peace with the friends of the slain and recompense the slain's parents "with piety and obedience", marked by a ritual declaration of submission: "See, I am in the place of your son; whatever you tell me, I will do" (c.23). Other penances that absorbed restorative justice include canons on non-lethal violence (cc.8-9).

[33] I set aside the more detailed versions of these canons in Wasserschleben's text.

than sex without" loomed larger.[34] As Lisa Bitel has observed, the sexual status of the clergy and the religious played an important symbolic role in early Irish Christian communities. At the core of such communities lay a symbiosis between a theoretically "ethical elite" and the mass of those ordinary Christians who "str[ove] for semi-chaste monogamy". Their sexual status was a vital sign of their ethical elitism and this elite was the "most important sub-group of the Christian community by virtue of the very existence of the larger, sinful community itself". Elite sexual status "had no meaning if the majority of Christians did not appreciate its superiority over their own lustful lives". In this context, an "obsession" with fornication by the supposedly chaste (and responses to abortion or infanticide as recourses to hide such fornication) was hardly surprising: fornication by the chaste disrupted the hierarchical patterning of the Christian community.[35]

For, if children were a disturbing manifestation of sin and signified the *maxima ruina*, abortion (and infanticide) was a means of concealing the disturbing manifestation of fornication from the broader community. "Leniency" reflected, in part, the need to safeguard sexual status charged with such an important symbolic role. In sum, the earliest penitential canon on abortion is easily misconstrued. To read the "leniency" of the penance solely as a condensed position on foetal status is to ignore anxieties over the social repercussion of sin and the sexual witness of the avowedly celibate, and the profound tension between punishing the creation of sexual scandal and punishing the means of averting sexual scandal.

AMBIGUOUS *MALEFICIUM*: THE *P.COLUMBANI*

The more influential penitential attributed to Columbanus (540-615) contained an adaptation of the *P.Vinniani*'s abortion canon. Columbanus has long been assigned a seminal role in the history of penance but the image of Columbanus as a wholesale "innovator" whose *paenitentiae medicamentae* inaugurated a "penitential revolution" in

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[34] Mary Condren, *The Serpent and the Goddess: Women, religion, and power in Celtic Ireland* (San Francisco, 1989) p.91. Condren argues that the problem of illegitimacy was created in early Ireland because, through church laws, a patrilineal system replaced a matrilineal system, in which the status of a child born extramaritally was "extremely suspect" and, consequently, "mothers would often abandon or abort such infants rather than subject them to such a fate or risk becoming social outcasts themselves" (85-6). Like other commentators on the *P.Vinniani*, however, Condren does not comment on how the sexual status of clerics and the religious created a peculiar sort of 'illegitimacy' problem.
[35] 'Sex, Sin, and Celibacy in Early Medieval Ireland', *Proceedings of the Harvard Celtic Colloquium* 7 (1987) pp.81-86 (at pp.81, 85-86).

what had previously been a "penitential wasteland" has been challenged.[36] Scholars have been increasingly sensitive to the distorting refraction of early seventh-century Merovingian history and the history of penance through Jonas of Bobbio's *Vita Columbani*, as well as the distinctly monastic, rather than pastoral, context in which Jonas depicted confession.[37] At the same time, the pre-existence and diversity of private penance before Columbanus' *peregrinatio* has been re-emphasised. What Columbanus brought to Gaul was not an entirely novel theory and practice of penance but a new way of "codify[ing] existing practice, and…reinforc[ing] traditional penitential exercises, such as fasting and abstinence from holy communion, by the authority of written texts".[38]

Decoding the P.Columbani and the context of clerical sins

The gradual nature of this process is inscribed upon the textually complex form in which *Columbani* survives. Thomas Charles-Edwards has identified five distinct sections:

A(i)   penitential for monks - serious sins (cc. A1-8)

A(ii)   penitential for monks - minor sins (cc. A9-12)

B(i)   penitential for clerics (cc. B1-12)

B(ii)   penitential for the laity (cc. B13-25)

B(iii)   penitential for monks - minor sins (cc. B26-29)

The abortion canon appeared in B(i), the clerical penitential. By comparing different (and inconsistent) adaptations of canons on homicide, theft and perjury from *Vinniani* in A(i), B(i) and B(ii), Charles-Edwards has argued that each section represents a distinct composition (or addition to a composition). In his reconstruction of the process by which the *P.Columbani* came into being, the order in which these five sections were written effectively coincided with their final form, starting with A(i). B(i) was written in more refined Latin as a clerical penitential after A(i), which formed a source alongside the *P.Vinniani*. B(ii) was written as a lay penitential, though it mainly drew upon the *P.Vinniani*'s clerical canons, and was possibly written by the same author as B(i). B(iii)

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[36] Mayke de Jong, 'Transformations of Penance', in Frans Theuws and Janet Nelson, *Rituals of Power from Late Antiquity to the Early Middle Ages* (Leiden, 2000), p,186, 216

[37] On Jonas and Merovingian history, see Ian Wood, 'The *Vita Columbani* and Merovingian Hagiography', *Peritia* 1 (1982) pp.63-80. On Jonas' depiction of penance, see Mayke de Jong, 'Transformations of penance' pp.215-219 and Alexander O'Hara, 'Death and the Afterlife in Jonas of Bobbio's *Vita Columbani*', *Studies in Church History* 45 (2009) pp.64-73.

[38] Richard Price, 'Informal Penance in Early Medieval Christendom', *Studies in Church History* 40 (2004) pp.29-32 (at p.31); c.f. Cyrille Vogel, *La discipline pénitentielle en Gaule des origines à la fin de VIIe siècle* (Paris, 1952) pp.47-54.

came to be added to B(ii) and, thereafter, B(i)-(iii) were collected into a single quire with a subsequently influential preface and conclusion. This was quite possibly available to the author of a Frankish penitential around the mid-seventh century, from which a group of related penitentials emerged (to which we turn). Eventually, A(i)-(ii) and B(i)-(iii) were brought together in a single manuscript.[39] It is significant that B(ii), the lay penitential, drew largely upon the *P.Vinniani*'s clerical canons as its principal source. Penitential canons did not necessarily signify the same thing to authors, readers and subsequent compilers. What a later compiler encountered in a source text could be turned to something different. By the same logic, a reader of *P.Vinniani* would not necessarily – or even customarily – have read it as 'silent' on lay abortion. Second, the abortion canon appeared in B(i), the clerical penitential.   Once again, abortion was broached in the midst of clerical sins:

> If anyone has destroyed somebody by his *maleficium* (*Si quis maleficio suo aliquem perdiderit*), let him do penance for three years on an allowance of bread and water, and abstain from wine and meat for three further years, and then finally be received in communion in the seventh year. But if anyone has been a *maleficus* out of love, and has destroyed no-one, (*Si autem pro amore quis maleficus sit, et neminem perdiderit*), let him do penance for a whole year on bread and water if a cleric, for half a year if a layman, for two if a deacon, for three if a priest; especially if through this anyone has harmed the child of a woman (*maxime si per hoc mulieris partum quisque deceperit*), let each one add six lents on top, lest he be guilty of murder (*ideo VI quadragesimas unusquisque insuper augeat, ne homicidii reus sit*). (B(i)6)[40]

This clearly drew on the *P.Vinniani* cc.18-20 but the author adapted his source without using c.21 (on the nun who gives birth). The three segments were brought together in an interconnected sequence. The segment on *maleficium* effectively reproduced *P.Vinniani* c.18 in an intensified form, referring not to harmful (*decipere*) but to lethal (*perdere*) *maleficium*. The *pro amore* segment introduced penitential gradations according to status and clerical rank, a feature of other canons in B(i). And the final segment was changed most conspicuously. In a reverse shift from the first segment, harm (*decipere*) replaced destruction (*perdere*); abortion was explicitly connected to the previous stipulation on 'love magic' (it was wrought "through this" and the penance was an augmentation of the preceding one); and a curious clause, *ne homicidii reus sit*, was added

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[39] 'The Penitential of Columbanus', in Michael Lapidge (ed.) *Columbanus: Studies on the Latin writings* (Woodbridge, 1997) esp. pp.217-25, 235-6.

[40] B(i)6, *Irish penitentials*, p.100. The translation, "lest he be guilty of murder", is self-consciously non-committal and the meaning of this clause will be discussed shortly.

at the end. Most strikingly, the specified perpetrators were men. The 'standard' offender was a cleric in minor orders, with further elaborations depending on clerical rank and a diminished penance for laymen – and it should be recalled that the perpetrator had been a woman in B(i)'s source.

Ambiguous means and equivocal ends

Valerie Flint has read the canon as evidence of a broader insecurity over the lethal dangers of magical potions. For Flint, the stipulation in the *pro amore* segment ("[if] he has harmed no-one") was written "as though the dangers of destroying somebody were really rather high" and the condemnation of both 'birth magic' and 'love magic' provoked strong disapproval "for reasons of physical peril as well as moral and material disapproval".[41] That *maleficium* evoked a sense of peril is plausible and complements what the likes of Jerome, Basil and Caesarius had to say on abortion. But more than peril, the segment on 'birth magic' evoked ambiguity.

First, there was an ambiguity of intention. Harm inflicted upon the *partus* was effected "through this (*per hoc*)", referring to the actions of the *maleficus pro amore*. It is possible that harm to the *partus* was envisaged as an unintentional side-effect. (Alternatively, *per hoc* could be less material: insofar as 'love magic' evoked sexual sin, 'birth magic' could conceal such sin). 'Love magic' was ambiguous too. Magic *pro amore* could entail aphrodisiacs in the sense of arousing sexual passion, a way of manipulating another's will or a way of rousing love in the deeper sense.[42] Second – and more importantly – there was an ambiguity of effect. The wording, *mulieris partum...deceperit*, could be an almost euphemistic way of describing abortion, along the lines of 'harming a woman's child', or a charged way of describing induced sterility, along the lines of 'confounding or frustrating (the birth of) a woman's child'.[43] The final clause, *ne homicidii reus sit*, has baffled some commentators. John Connery notes that the "meaning of this clause is not entirely clear, but it does connect the sin of abortion with homicide" without quite explicating what this connection might have been.[44] But, if the ambiguities of intent and, importantly, effect are borne in mind, it amounted to something like, 'and he should add six lents to his penance *in case* he is guilty of murder'. Insofar as lethal harm to another was precluded in the *pro amore* segment and given that *partum* is the object of *deceperit,*

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[41] Flint, *Rise of magic*, pp.231-8 (at p.237).
[42] C.f. Eleanor Long, 'Aphrodisiacs, Charms, and Philtres', *Western Folklore* 32.3 (1973) pp.153-63.
[43] Flint, *Rise of magic*, p.237 describes this segment as "puzzling" but refers to it as "contraceptive magic".
[44] Connery, *Abortion,* p.71.

homicidium must refer to this *partus*: abortion bordered on murder in an unsettlingly ambiguous way.

These intensive readings of the *maleficium* canons in the *P.Vinniani* and *P.Columbani* demonstrate how ostensibly similar canons could evoke a variety of concerns. In the *P.Vinniani* sexual scandal cast its shadow while in the *P.Columbani* abortion was clouded with ambiguities. But the relation between abortion and sexual scandal was not wholly absent from the *P.Columbani*. It was present in the very connection between the second and third segments of B6. Moreover, other canons covered instances of illicitly conceived children, though there was no unequivocal infanticide canon related to these. As in the *P.Vinniani*, a cleric who fathered a child fell to the *maxima ruina* and had to undergo seven years' penance and exile as a *peregrinus* (B(i)2). Another canon addressed clerics and deacons who had been married with children before coming to office. After taking clerical vows, to father another child was akin "to have committed adultery and to have sinned no less than if he had been a cleric from youth and had sinned with some girl", for which seven years was also the penance (B(i)8). Unlike the *P.Vinniani*, laymen were covered too. A layman who "violated his neighbour's bed" and fathered a child adulterously received a penance of three years, which also incorporated abstention from "more enticing foods" and marital abstinence, which symbolised a form of restorative justice: the guilty man "yield[ed] the price of chastity to the husband of the violated wife" (B(ii)14). These other canons, which focussed conspicuously on male sexual sins, provided a plausible subtext to B(i)6: men, clerical or lay, could use *maleficium* to catalyse and conceal their sexual sins.

Once again, as in the reading of *P.Vinniani*, the canon cannot simply be excerpted as a stand-alone comment on the morality of abortion or the status of the foetus. As in the *P.Vinniani*, sexual sin was important. But, unlike the *P.Vinniani*, the context was male fornication, including by clerics, while the means of causing abortion, *maleficium*, were hedged in ambiguity. Neither of these early penitentials unambiguously addressed a laywoman who had an abortion herself. This changed with a family of penitentials which drew upon the *P.Columbani* as an important source.

CLERICAL REFORM: THE PAENITENTIALES SIMPLICES

The *paenitentiales simplices*, a group of Frankish penitentials which originated as early as the mid to late seventh century but were still being composed in the ninth, were short works each of which is known from one or two manuscript copies. The hypothetical original used B(i)-(iii) as a source. The *simplices* encountered Columbanan canons

through this original (or later works) and shared the same basic 'core' of forty or so canons. This 'core' was not rigorously structured and combined Columbanan, conciliar and novel (or unsourced) material, to which subsequent canons were added in various texts.[45] We can read these texts for a novel abortion canon, their varying adaptations of the Columbanan canons on *maleficium*, and for the contexts in which early *simplices* were produced.

Voluntary abortion

The *P.Bobbiense*, which reproduced almost the entire 'core', suffices as a useful exemplar because it was an early text and survives in an intriguing manuscript (to which we shall return). The novel canon appeared in the second half (Columbanan material was concentrated in the first half):

> If any woman deliberately has an abortion (*Si quis mulier auorsum fecerit uoluntarie*), let her do penance for three years, one on bread and water (c.31).[46]

Three years was the penance for a diverse array of sins, including any "cleric or his wife or anyone else who has smothered (*opresserit*) their child" (c.17).[47] Two of the additional canons in the *P.Parisiense simplex* specified three years as a standard lay penance for "capital sins" (i.e. homicide, adultery, perjury, fornication, impurity) and one year as a standard lay penance for "minor sins" (i.e. theft, false witness) with escalations depending on ecclesiastical rank, rising to twelve or seven years for bishops (cc.61-62). Though the *P.Parisiense simplex* did not reproduce either abortion canon, this was one compiler's retrospective assumptions on categorising penances: three years was for capital sins.

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[45] Ed. R. Kottje, *Paenitentialia minora Franciae et Italiae saeculi VIII-IX*, CCSL 156 (Turnhout, 1994) and see pp.xxii-xxv, xxxiii-xlii. As well as individual editions, Kottje provides a synoptic edition and concordance of canons which shows how the 'core' was distributed across the eight texts (pp.1-60, xxiii-xxiv). The ninth-century *P.Hubertense* will be discussed in the next chapter, and the *P.Floriacense* will be revisited. The remaining six texts edited by Kottje are the *P.Burgundense, P.Bobbiense, P.Parisiense simplex, P.Sletstatense, P.Oxoniense I,* and *P.Sangallense simplex*. Together with the *P.Parisiense simplex*, this last text did not contain abortion canons and is slightly unusual insofar as it reproduced just over half of the 'core' rearranged thematically.

[46] CCSL 156, p.70.

[47] Other examples: *raptus* of virgins or widows (c.33), observing the Kalends (c.30) and homicidal intentions (c.7).

This was possibly the earliest penitential canon to cover women in general.[48] The allusion to volition is interesting, especially if we translate *avorsum* as miscarriage. Miscarriage was presumably far more frequent than in modern societies.[49] Distinguishing spontaneous miscarriage from deliberate abortion was, one imagines, subject to uncertainty. Such a distinction relied in some sense upon a woman's testimony, a reliance which could have moved in various directions: the overlap between abortion and miscarriage could have provided a reasonable 'cover' for a woman seeking abortion; or it could have fed suspicions over spontaneous miscarriage. With one exception, this canon appeared in identical form in five *simplices*.[50]

Reception of the 'maleficium' canon

The Columbanan canons on *maleficium*, however, were more mutable. In the *P.Bobbiense*, after opening canons covering homicide, fornication, perjury and theft (cc.1-8), all of which adapted material from B(i), the *maleficium* canons appeared:

> <9.> If anyone has destroyed (*perdederit*) someone by his *maleficium*, let him do penance for ten years, three on bread and water. <10.> If anyone has wrought *veneficium* for love (*pro amore uenificium fecerit*) and has destroyed (*perdederit*) no-one, let him do penance for three years, one on bread and water. If anyone has harmed a woman's child (*mulieri partum deceperit*), let him do six lents on bread and water.[51]

All of the *simplices* abbreviated their source canons and abbreviations were particularly condensed in the *P.Bobbiense*. Beyond this, the *P.Bobbiense* made three noticeable changes: an increase of the penance for lethal *maleficium* to ten years (which corresponded to the penance for homicide in c.1), a standard three year penance without any gradations in the *pro amore* segment; and excision of the final clause, *ne homicidii reus sit*. Indeed, the Columbanan *maleficium* canons were subject to changes across the *simplices*, though one commonality was the presentation of the *pro amore* and *partum* segments together even if the segment on lethal *maleficium* was omitted. These changes were not spectacular but they do reveal that even in these relatively uncomplicated works, compilation did not

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[48] This reads the *mulier* of the *P.Vinniani* as a nun and also depends on when one assumes the 'core' emerged in comparison with the penitential texts associated with Theodore of Tarsus, discussed in the next section.

[49] See Vern Bullough and Cameron Campbell, 'Female Longevity and Diet in the Middle Ages', *Speculum* 55.2 (1980) pp.317-325 (at 323) and Kathy L. Pearson, 'Nutrition and the Early-medieval Diet', *Speculum* 72.1 (1997) pp.29-30 for arguments that, in historical perspective, the early medieval diet was especially inadequate for pregnant women and that miscarriage would have been even more common because of nutritional deficiencies.

[50] The penance in the *P.Floriacense* was one year.

[51] CCSL 156, p.69.

simply entail passive copying. The following table notes differences from the original form of these canons:

	Bobbiense (cc.9-10)	*Burgundense* (cc.9-10)	*Sletstatense* (c.9)	*Oxoniense I* (cc.7-8)	*Floriacense* (c.10)
lethal *maleficium*	10 years	*veneficium* instead of *maleficium*	(omitted)	(reproduced)	(omitted)
maleficus **pro amore**	*venificium* instead of *maleficus;* 3 years without any graded penances	*veneficus* instead of *maleficus*; no graded penance for laymen	no graded penance for laymen	no graded penance for laymen	layman and cleric both receive 1 year
mulieri **partum** *decipere*	*ne homicidii reus sit* not included	5 lents instead of 6	*ne homicidii reus sit* not included	4 years*; ne homicidii reus sit* not included	3 years; (see below on *homicidium*)

The rationales underlying these changes are not always clear and some alterations were inconsequential: three texts including the *P.Bobbiense* might have excised the final clause, *ne homicidii reus sit*, simply to regularise the form of canons. Nonetheless, the different uses of *veneficium* and *maleficium* in the *P.Bobbiense* and *P.Burgundense*, for example, further demonstrate semantic flux, while the exclusion of the segment on lethal *maleficium* in the *P.Sletstatense* and *P.Floriacense* effectively dampened the connotation of peril that Valerie Flint discerned in the original Columbanan canon. Two texts increased the penance for abortion: from six lents to four years (*P.Oxoniense I*) and to three years additional to the *pro amore* penance, making six (or more depending on clerical rank) in total (*P.Floriacense*). This latter change is intriguing. The conspicuous increase ostensibly complements a feature of the final clause, which is reproduced without the negative: *reus sit homicidii*, "...he would be guilty of murder". But, oddly, the *voluntarie* canon in the *P.Floriacense* (c.32) saw a reduction in penance from three years to one year.[52] The compiler appears to have deemed entanglement with *maleficium*, especially by clerics, as graver than female

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[52] CCSL 156, pp.17-19, 53-56.

abortion. In sum, even across these relatively simple penitential compositions, one can see an active deliberation upon questions like abortion, and a variety of responses.

The context of clerical reform

Another kind of change brings us back to the *P.Bobbiense*'s manuscript context. Three penitentials graded penances by ecclesiastical rank with no mention of laymen at all (*P.Burgundense*, *P.Sletstatense* and *P.Oxoniense I*). The *P.Bobbiense* alone did not grade penances, but its compiler probably had clerical perpetrators in mind too. The *P.Bobbiense* was the penitential incorporated within the famous Merovingian liturgical manuscript, the Bobbio Missal, a modestly produced volume which contained a lectionary, sacramentary, penitential, catechetical material and other liturgical texts - from benedictions for newly married couples *in toro* to formulae for exorcisms, ordinations of abbesses and sacramentals. The Missal brought together a gamut of texts for a range of sacerdotal functions and was "primarily intended as a vade mecum for a Merovingian priest".[53] Rosamond McKitterick's proposal, based on palaeographical analysis, that the Bobbio Missal was produced in south-east Provence as early as the close of the seventh century is significant. As Rob Meens has pointed out, if so, the Missal is the oldest surviving manuscript containing masses offered for the remission of sins together with a penitential and, indeed, it would be the earliest surviving manuscript to contain a penitential.[54] The hypothetical original from which the *P.Bobbiense* ultimately obtained the 'core' was, of course, even older.

Meens has suggested that the Missal "served a clerical community, which provided a number of liturgical functions for a widespread community". The penitential, he argues, was primarily tailored for a priest to hear confessions from other clerics but with some scope for administering lay penance too. The *P.Bobbiense*'s context and content bear this out. For example, the Bobbio Missal incorporated the earliest surviving rubric for a mass in which the priest asked for pardon of his own sins. Moreover, the penitential canons added to the 'core' and derived from the *P.Ambrosianum* had a distinct clerical

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[53] Rob Meens and Yitzhak Hen, 'Conclusion', in Rob Meens and Yitzhak Hen (eds.) *The Bobbio Missal: Liturgy and religious culture in Merovingian Gaul* (Cambridge, 2004) p.219; c.f. Yitzhak Hen, 'The liturgy of the Bobbio Missal', pp.152-153 in the same volume.

[54] Rosamond McKitterick, 'The Scripts of the Bobbio Missal', in Hen and Meens (eds.) *Bobbio Missal*, pp.19-52 and Rob Meens, 'Reforming the Clergy: A context for the use of the Bobbio penitential', pp.155-156 in the same volume. As Meens points out, this would predate the version of the *Excarpsus Cummeani* in Copenhagen, Kongelige Bibliotek, MS Ny. Kgl. S. 58 8°, conventionally assigned to the first half of the eighth century, on which see his 'The Oldest Manuscript Witness of the *Collectio canonum Hibernensis*', *Peritia* 14 (2000) pp.1-19.

flavour, focussing upon clerical purity and ritual propriety.[55] When we turn to the main body of the 'core', a large number of canons did not, admittedly, specify perpetrators. But, where specified, these tended to be clerics and the 'default' of clerical offenders was implied from the opening canon on clerics guilty of homicide[56], while the substance of other canons – such as the now-familiar reference to the *ruina maxima* of fathering a child (c.2) or neglectful handling of the eucharist (c.16) – were undeniably clerical too. In the remaining canons, including cc.9-10 on *maleficium*, the offenders could in theory have been clerics or laymen. But given the intention which underlay the production of the *P.Bobbiense*, clerical behaviour formed the principal focus and, curiously, the canon on voluntary miscarriage was the only one which clearly did not pertain to clerics.[57] If the *P.Bobbiense* was typical, as Meens suggests, this probably characterised other early *simplices*. The *P.Burgundense* would be a plausible candidate given its date (*c.* early eighth century) and the fact that its *maleficium* canons cut out graduated penances for laymen.

What is significant about the *P.Bobbiense's* context is that abortion was incorporated into penitentials with a marked focus on clerical behaviour. Of course, a 'clerical' penitential could easily be applied to the laity. But this is still significant. At one level, it is a reminder that abortion was a specifically female sin.[58] Yet, especially through a concern over the moral status of the clergy and the symbolic importance of their sexual discipline – a thread which connects the *P.Vinniani* through *P.Columbani* to the *simplices* – abortion could also be linked to men.

FOETAL POSITIONS: THE THEODOREAN PENITENTIALS

The remaining canon to enter the penitential stream originated in the penitentials connected with Theodore of Tarsus (602-690).[59] This canon was markedly different from those in *Vinniani*, *Columbani* and the *paenitentiales simplices* in that it broached questions of foetal status and, in one of its forms, canonical authority.

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[55] The *P.Ambrosianum* was identified only relatively recently as an early penitential: ed. L. Körntgen, *Studien zu den Quellen der frühmittelalterlichen Büssbucher* (Sigmaringen, 1993)..

[56] Likewise in canons on post-ordination marital intercourse (c.11) and bestiality (c.29).

[57] 'Reforming the clergy', esp. pp.157-159, 165-167 (at p.166).

[58] To reiterate a point already made, my interest in identifying perceptions of male entanglement with abortion should not be taken to suggest otherwise.

[59] For his biography, see Bernard Bischoff and Michael Lapidge, *Biblical Commentaries from the Canterbury School of Theodore* (Cambridge, 1994) pp.5-81, 133-89. For his impact on the Anglo-Saxon church, see Henry Mayr-Harting, *The Coming of Christianity to Anglo-Saxon England*, third edition (University Park, PA., 1991) pp.130-139. For his intellectual background and pursuits, see Michael Lapidge, 'The School of Theodore and Hadrian', *Anglo-Saxon England* 15 (1986) pp.45-72 and Guglielmo Cavallo, 'Theodore of Tarsus and the Greek Culture of his Time', in Michael Lapidge (ed.) *Archbishop Theodore: Commemorative studies on his life and influence* (Cambridge, 1995) pp.54-67.

Background to the Theodorean penitentials

The Theodorean penitentials form a complex group that have survived in seven known recensions, of which five have been edited: *Iudicia Theodori* (or *Capitula Dacheriana*) (**D**), *Canones Gregorii* (**G**), *Canones Cottiani* (**C**)*, Canones Basilienses* (**B**) and *Discipulus Umbrensium* (**U**), which combined a penitential with a book of non-penitential judgements.[60] Although the ways in which they relate to one another is yet to be fully unravelled, and despite differences and even contradictions between them, each of these recensions was stamped with "Theodore's diverse cultural and intellectual background, of Latin and Greek learning".[61]

The recensions were effectively different versions of Theodore's penitential teaching. The material (if not the form) of **D** and **C** represent an early stage in the dissemination of this teaching, specifically, prior to 673.[62] The case of **U**, the fullest of the penitential texts, is more complicated. **U** was the work of a subsequent editor, the so-called Discipulus Umbrensium, and constituted a re-ordering of Theodorean penitential teaching. Though the Discipulus' sources and circumstances are uncertain, his prologue conveyed Theodore's authority in matters penitential both in his lifetime and in the decades after his death. Men and even women, the Discipulus noted, were fascinated by his learning and the Discipulus claimed that the principal body of his penitential book was derived from the answers that Theodore gave to questions posed to him by a certain priest, the otherwise unknown Eoda, "out of a booklet of the Irish which has been widely distributed".[63] Moreover, various versions of Theodore's penitential teaching were in circulation and the Discipulus' intention was to disentangle the "diverse and confused summary (*diversa confusaque digestio*)" of the teaching and produce a work that was authoritative.

In the process, and compared to the other Theodorean recensions, **U** has a strong thematic structure which almost certainly reflects the Discipulus' own editorial

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[60] Ed. P.W. Finsterwalder, *Die Canones Theodori Cantuariensis und ihre Überlieferungsreformen* (Weimar, 1929) pp.239-52 (**D**), 253-70 (**G**), 271-84 (**C**) and 285-334 (**U**); and ed. F.S. Asbach, *Das Poenitentiale remense und der sogen. Excarpsus Cummeani* (Regensburg, 1975) appendix, pp.80-89 (**B**).

[61] Roy Flechner, 'The Making of the Canons of Theodore', *Peritia* 17-18 (2003-2004) p.123.

[62] As argued by Flechner, 'Making of the canons', through a comparison between canons in **G** and **C**, derived from Basil of Caesarea, permitting a man to remarry after divorcing an adulterous wife and the condemnation of this right to remarry at the council of Hertford (673) at which Theodore presided. See too Thomas M. Charles-Edwards, 'The Penitential of Theodore and the *Iudicia Theodori*', in Lapidge (ed.) *Archbishop Theodore*, pp.144-147 on **D**'s rapid circulation in Ireland and Brittany.

[63] Translation from Charles-Edwards, 'Penitential of Theodore', p.148. Charles-Edwards accepts conventional identification of the *libellus* with *Cummeani* but notes its minimal influence on **U** relative to other recensions.

impulses.[64] Thus, the abortion canons in the other Theodorean penitentials are reasonably interpreted as reflections, direct or otherwise, of 'Theodore' teaching – for our purposes, perhaps questions arising over abortion were discussed between teacher and pupils - while the versions in **U** represent an editor's interpretation and integration of material already in circulation.

Versions of the abortion canon across the Theodorean penitentials

When we turn to the abortion canons, the different versions were variations on a theme. The phrasing in **D** was singular:

A woman who destroys her child (*perdens partum*), [will do penance] for one year, if [she did so] before forty days from conception (*si ante XL dies conceptionis*). But if after forty [days], she will do penance for three years.[65]

The version in **B** yielded:

Women who have abortions (*abhortivum faciunt*) before the [foetuses] have 'soul' (*eodem modo...antequam animam habent*) [will do penance for] two years, and [if] after, that is forty days after conception of the seed (*id est XL dies diebus post conceptionem seminis*), [will add on] three lents as murderers (*ut homicidae*).[66]

And the version in **G** yielded an alternatively phrased canon with an enigmatic clause at the end:

A woman who conceives and kills her child in the womb before forty days (*concepit et occidit filium suum in utero ante XL dies*), will do penance for one year; if she kills after forty days, she ought to do penance as a murderer (*quasi homicida debet penitere*); if [the child] dies without baptism because of someone's bloodshed (*moriatur si nece hominis sine baptimo*), let her do penance for three years.[67]

This explicit connection, albeit enigmatically phrased, between abortion and baptism was unusual, not least because here it apparently signalled a rationale for punishment: the offence lay in bringing about a death without baptism.

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[64] Charles-Edwards, 'Penitential of Theodore' pp147-158, Flechner, 'Making of the canons', pp.126-130.
[65] c.114, p.248.
[66] c.62, p.85.
[67] c.105, p.263.

In **U**, two versions of the abortion canon were included. The first was clearly related to **B** and the second to **G**, and these affiliations are most clearly conveyed by the phrases for describing abortion in the opening clauses:

> Women who have abortions before [the foetus] has 'soul' (*abortiuum faciunt antequam animam habeat*), should do penance for one year or three lents or forty days according to the nature of her guilt (*iuxta qualitatem culpae*). And [if] after, that is after forty days from the reception of the seed (*post id est post XL dies accepti seminis*), they should do penance as murderers (*ut homicidae*) for three years on Wednesdays and Fridays and in the three lents. This is judged ten years according to the canons (*Hoc secundum canones decennium iudicatur*).

> A woman who conceives and kills her infant in the womb before forty days (*concepit et occidit infantem suum in utero ante XL dies*) should do penance for one year. But if after forty days, she should do penance as a murderer (*ut homicida peneteat*).[68]

All of the Theodorean recensions presumed the significance of this forty day demarcation. Literally, this integrated a notion of "delayed animation" into scrutiny of abortion.[69] But we must also be careful not to abstract this logic and treat it as synonymous with other explicitly articulated, gradualist theories of embryogenesis or otherwise impose false clarity: reception of the seed, conception and animation were not altogether stable concepts.

Situating the 'XL dies' distinction

Marianne Elsakkers has recently argued that a number of early medieval texts, both legal and ecclesiastical, effectively appropriated Aristotelian criteria in evaluating abortion. In his *Politics*, Aristotle considered abortion as a means for the ideal *polis* to maintain the optimum population: "if any people have a child as a result of intercourse in contravention of [our] regulations, abortion must be practised on it before it has developed sensation and life". This criterion for distinguishing between "lawful" and "unlawful" abortion – before sensation and life have developed – is conventionally fleshed out by reference to the famous passage in *Historia Animalium*, in which Aristotle opined that movement of embryonic males tended to occur at around forty days and that of females at around ninety days. In the case of the Theodorean texts, Elsakkers argues, the distinction that was not just loosely but definitively Aristotelian: "[e]xplaining the Aristotelian criterion 'life' (*anima*) with the definition Aristotle gave in his *Historia*

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[68] I.14.24, I.14.27, pp.309-310; c.f. **C** cc.143-4, 147, p.280.
[69] Connery, *Abortion*, p.73.

Animalium, i.e. 'forty days after conception', indicates that the *Historia Animalium*, or parts of it, were known in early medieval Western Europe". For Elsakkers, this criterion constituted an approach to abortion which contrasted with the "hardline" attitude most forcefully articulated by Caesarius.[70]

There is, however, an intriguing connection with a more proximate source and, furthermore, reading this source together with the Theodorean canons suggests that *XL dies* was an alternative response to the very questions of ambiguity which had prompted Caesarius' rhetoric of 'homicidal contraception'. This source was the *Laterculus Malalianus*, a short exegetical treatise in two halves which combined a derivative universal history from Eden to the present day with a typologically rich exegesis of the life of Christ. Until recently, the *Laterculus* was assumed to have been a late seventh or early eighth-century work of Roman origin but Jane Stevenson has convincingly argued that it ought to be attributed to Theodore.[71]

Christ's conception was mentioned in the earlier history: "the Lord was conceived in the womb of the virgin on the eighth of the calends of April", 25th March, and this was the same day as his crucifixion and "other wonderful things...done by the Lord", including the Israelites' crossing of the Red Sea, Satan's expulsion from heaven and, even, the very beginning of creation.[72] In the exegetical section, Christ's conception was taken up again, introducing an accent upon divine *kenosis* and the connection between Christ's restoration of humanity and the incarnation: the possibility of our redemption through Christ lay in his sharing in our humanity from its humblest inception.[73] One allegorical hinge was to connect Solomon's building of the temple at Jerusalem (i.e. the first temple), which took forty-six days in the Johannine account (John 2.19), to the life of Christ. Through a "strange mixture of embryology, number-theory, allegory...and historical data", which evinces (indirect) knowledge of Greek medical thought together with a close acquaintance with an Augustinian essay, *De annis quadraginta sex aedificandi*

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[70] 'Genre Hopping: Aristotelian criteria for abortion in Germania', in K.E. Olsen et al. (eds.) *Germanic Texts and Latin Models: Medieval reconstructions* (Leuven, 2001) pp.73-92 (at pp.85-6); *Politics* 7.14.10.1335b and *Historia Animalium*, IX.7.3.583b quoted in ibid. pp.74, 75n.7. But Oppenheimer, 'When sense and life begin', persuasively demonstrates that across his oeuvre Aristotle's embryology was more vacillating than the common habit of reference to *Historia Animalium* suggests.

[71] Jane Stevenson, 'Theodore and the *Laterculus Malalianus*', in *Archbishop Theodore*, pp.204-221 and id. *The 'Laterculus Malalianus' and the School of Archbishop Theodore* (Cambridge, 1995) esp pp.8-20, with Stevenson's edition and translation in pp.117-161. I am particularly indebted to her analysis and commentary at pp.54-55, 194-200.

[72] *Laterculus Malalianus* 2, p.123.

[73] James R. Siemens, 'Christ's Restoration of Humankind in *Laterculus Malalianus*, 14', *Heythrop Journal* 48.1 (2007) pp.20-24.

templi, the allegorical connection lay in the embryonic beginnings of the incarnation, the formation of Christ in Mary's womb over forty-six days:

> For in this order, according to the authority of our seniors and predecessors, is said, and read, to be the conception of the human race; that for six days the semen remains in the womb, having the appearance of milk (*lactis similitudinem*). Then it is turned into blood for nine days, then it grows for twelve days, and after that it adds eighteen days: it is soon coagulated, and grows towards the outline of limbs (*coaculatur et tendit ad liniamenta membrorum*).[74]

On Stevenson's reading, the real medical font was not Aristotle, but Galen refracted through Augustine's allegorical essay: Galen's familiar figure of 280 days gestation became the embryologically unusual figure of 276 days in the case of Christ, the exact number of days between the annunciation (25 March) and the nativity (25 December).[75] Intriguingly, Christ's conception in Mary's womb was decidedly incarnational. It was human, almost identical to normal embryogenesis, but also retained a unique mark of the divine. The figures above (six, nine, twelve and eighteen) added up to forty-five, to which one day was added:

> There is one day over the forty-five in the [case of] the Lord alone, on account of his unique incarnation from a virgin, without sin or the drawing-together of semen. So according to the type [revealed by] the forty-six years of building of the historical temple, thus the body of Christ in his humanity, restoring the wall in Himself through these steps...restored his healthy building.[76]

The figure of forty-five days demonstrates the fluidity of imagining embryonic development. This was not a 'pure' embryology. Embryological imaginaries can serve multiple ends and embody different epistemologies – that is, forms of "narrative knowing" as well as "logico-scientific knowing".[77] Forty-five days does not, of course, align perfectly with *XL dies*. But that is precisely the point. Rather than seeing *XL dies* as a transferral from *Historia Animalium*, the difference evokes the fluidity of embryological ideas. The difference may, in Stevenson's words, also be "accounted for by erring on the

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[74] *Laterculus Malalianus* 12-13, pp.136-7; earlier quotation at p.194.
[75] Stevenson, '*Laterculus*', pp.196-197.
[76] *Laterculus Malalianus* 13, pp.138-139.
[77] Frances Garrett, 'Ordering Human Growth in Tibetan Medical and Religious Embryologies', in E.L. Furdell (ed.) *Textual Healing: Essays on medieval and early modern medicine* (Leiden, 2005) p.52. See id. *Religion, Medicine and the Human Embryo in Tibet*, pp.8-19 on narrative epistemology – i.e. the idea that narrative can "produc[e] meaningful truths". For two philosophical proponents of narrative epistemology, see Martha Nussbaum, 'Love's Knowledge', in id. *Love's Knowledge: Essays on philosophy and literature* (Oxford, 1990) pp.261-285, and Alasdair MacIntyre, 'Epistemological Crises, Dramatic Narrative, and the Philosophy of Science', in id. *The Tasks of Philosophy: Selected essays, volume 1* (Cambridge, 2006) pp.1-23.

side of severity, given the difficulty of actually calculating dates and the tendency, in the circumstances, of the mother to underestimate".[78] We also should note that numerology in the penitentials has been little-studied and, like the insistence of forty days of post-partum purification, *XL dies* might have served a partly symbolic function.[79]

XL dies signalled precaution rather than precision which applied a stable embryology then applied to abortion. It was a practical, even hesitant, attempt to address the murky ambiguity of the earliest days of pregnancy.[80] This reading is complemented by another curious feature of the canons. Some versions mentioned *anima* (**U**.xiv.24, **B**) while others did not (**U**.xiv.27, **D, G**). Speculatively, it is most plausible that this allusion to *anima* was not in the earliest forms of the canon and was subsequently added. But, we must resist the temptation to read the subsequent insertion of *anima* back into those versions which did not contain it, as if a coherent and conveniently neat theory of animation was consistently brought to bear upon abortion. In the next chapter, we will see an elaboration upon the *XL dies* canon which further problematises this. Nor should we hasten to translate these allusions to *anima* (or, indeed, the representation of embryogenesis in the *Laterculus Malalianus*) as straightforward demarcations of what was and was not 'human': the distinction was in the service of clarifying culpability for the sin of abortion and hinged around the epistemology, as much as the ontology, of this sin.

At this juncture, it is worth comparing *XL dies* to an alternative grading of abortion in a far less influential penitential, the *P.Bigotianum*, composed on the continent in *c*.800 and drawing on Irish and Theodorean material.[81] The penance for "destruction of the liquid matter of the infant (*perditionis liquoris materiae infantis*) in a mother's womb" was three years; and the penance for the "destruction of flesh and soul (*perditionis carnis et animae*) in the womb" was fourteen years.[82] These terms were derived from the canons of an Irish synod which circulated under the title, 'De Disputatione Hibernensis Sinodi et Grigori Nasasensi Sermo de Innumerabilibus Peccatis Incipit', though the latter penance was increased from seven and a half to fourteen years and further penances

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[78] Stevenson, *'Laterculus'*, p.13.
[79] For a sounding in this direction primarily interested in penances, see Arnold Angenendt *et al.* 'Counting Piety in the Early and High Middle Ages', in Bernard Jussen (ed.) *Ordering Medieval Society* (Philadelphia, 2001) pp.23-31.
[80] Flandrin, *Temps pour embrasser*, p.90 notes in passing that the semi-articulate ideas about embryonic animation in the penitentials are best apprehended in terms of hesitancy.
[81] Frantzen, Mise à jour, p.24.
[82] IV.2.2-3, *Irish penitentials*, p.228.

covered the death of the mother with her child.[83] A comparable canon was included in the *Old Irish Penitential* though with an additional gradation: three years for causing "miscarriage of that which [one] has conceived after it has become established in the womb"; seven years "[i]f the flesh has formed"; and fourteen years "[i]f the soul has entered it".[84] As in the Theodorean canons, the gravity of abortion depended on when it was enacted. But there was no consistent embryology underlying these three texts. While "flesh and soul" coincided in the *P.Bigotianum*, they did not in the *Old Irish Penitential* – and the picture in the Theodorean canons alluding to *anima* was different yet again. The influence and spread of the Theodorean penitentials ought not to obscure the fact that early medieval churchmen envisaged abortion through a multiplicity of embryological assumptions and consequent moral conclusions. The penance of fourteen years in *P.Bigotianum* for the "destruction of flesh and soul" was matched only by that for parricide, the most severely punished form of murder.[85]

The Discipulus' editing: reading the abortion canons in context

We can now return to **U** to see how the Discipulus tweaked his material – and this context will help us to see the intricacy of the abortion canon. First, the arrangement. The Discipulus categorised and collected sins loosely by genre – loosely because some sins recurred in different sections. The abortion canons came in a section on the married (*De poenitentia nubentium specialiter*, i.xiv.1-30). Offences included bigamy, divorce, adultery and illicit marital sex, and some canons merged questions of ritual and sexual purity, chastising a wife who "mixes her husband's semen in her food, so she can receive more love" or "tastes her husband's blood as a remedy" and insisting upon menstrual seclusion and post-partum purification lasting forty days. The first abortion canon (i.xiv.24) followed condemnations of aberrant marital intercourse. Intercourse *retro*, which seems to mean (to use a nice euphemism) an unorthodox sexual position, warranted forty days of penance, and intercourse *in terga* (sic), which seems to mean anal intercourse, was treated far more severely and likened to bestiality (i.xiv.21-22).[86] Intercourse during menstruation also warranted forty days (i.xiv.23). Then, in between the two abortion canons, came an important double canon on child-murder:

[83] *Canones Hibernenses* I, cc.6-8, *Irish penitentials*, pp. 160-162.
[84] *Old Irish Penitential* V.6, trans. Binchy, in *Irish penitentials*, p.272.
[85] IV.1.1, p.228.
[86] These terms were not, in fact, clear to later readers: Pierre J. Payer, 'Early Medieval Regulations Concerning Marital Sexual Relations', *Journal of Medieval History* 6.4 (1980) pp.357-358.

If a mother kills her child (*Mater si occiderit filium suum*), if she commits murder (*si homicidium facit*), she should do penance for fifteen years and never change except on Sunday. (i.xiv.25)

If a poor woman (*Mulier paupercula*) kills her child, let her do penance for seven years. In the canons, it is said that if she is a murderer (*si homicida sit*), she should do penance for ten years. (i.xiv.26)

After the second abortion canon (i.xiv.27) were three on infant baptism, epitomising a tantalising characteristic of early medieval sources on abortion: the issue of baptism lurked in the shadows but rarely, as in **G**105, out in the open. If a sickly child in a priest's care died unbaptised, the priest would be deposed (i.xiv.28); if a child died unbaptised through parental negligence, they were to do a year's penance, rising to three if the infant was three years old (i.xiv.29); and anyone who deliberately killed his or her unbaptised child was subject to ten years according to the canons but seven at discretion (*per consilium)* (i.xiv.30). In sum, this was the first explicit, albeit undeveloped, association between abortion and marriage in the penitentials, though the canons on abortion and infanticide noticeably addressed women.

A more puzzling feature of the Discipulus' editing was the inclusion of two abortion canons offering effectively identical penances and punishments of women as *homicidae* (after *XL dies*). Tentatively, the decision might have been to retain the two different intentional descriptions – to have an abortion/miscarriage (*abortivum facere*) and to kill one's infant in the womb (*infantem suum in utero occidere*) – with the former placed after a canon on menstruation and the latter after the canons on child-murder. But the double canon on child-murder adds a further question over the penance *ut homicida(e)*. In the child-murder canons, *homicida(e)* was distinct from the description of killing a child. In both cases, *homicidae(e)* did not point to a quality of the victim but to something about the culprit. This something is not perfectly clear, but probably refers to intentionality or culpability (in the sense of acting knowingly). I suspect that in the abortion canons *ut homicida(e)* has a similar meaning. This was not a point about the foetus (i.e. *this* is homicide because it is after forty days of development) so much as about the woman who resorted to abortion (i.e. after forty days, it is clear that she is culpable for murder). To put it differently, the canon countenanced *not* regarding women who acted very early in pregnancy – forty days was not and is not, after all, a very long time in which to be sure of the signs of pregnancy – as *homicidae*, and, as suggested above, this is best understood epistemologically rather than ontologically. Moreover, it may be misleading

to speak of the *XL dies* distinction as one which "was 'tolerant' of early abortion".[87] It was an attempt to negotiate profound ambiguity and, moreover, one effect of the distinction was to strengthen the sense that a woman who had an abortion after *XL dies* was a *homicida.*

Finally, the Discipulus made two noticeable additions to the *abortivum facere* canon (i.xiv.24) compared to its older version in **B**. First, he added the phrase, "according to the nature of her guilt". It is a mistake to think of the penitentials as texts written and read 'mechanistically'. Pastoral discretion was explicitly inscribed upon prefaces to penitentials, including in **U**, and was implicit in the practice of administering penance.[88] Nonetheless, this addition expressly acknowledged that varying culpability could underlay abortion albeit without specifying how. The subsequent canons on child-murder, of course, identified one such mitigating circumstance, namely poverty, and a later compiler would transfer this mitigating circumstance to abortion. Secondly, the Discipulus referred to canonical judgment, by which abortion warranted ten years. This is significant insofar as canonical pronouncement on abortion (and other subjects) could be absorbed into penitential judgments. In theory, the *canones* could have been referring to Ancyra (in one version or another) or Basil's canonical letter to Amphilochius.

There are, in fact, two questions here, one regarding the Discipulus and the other regarding Theodore himself. In the Discipulus' case, the matter is not overly complicated. Unlike other Theodorean works, the only identifiable canonical source for **U** is the *Sanblasiana*, an early sixth-century collection of Italian origin which also happens to be the only collection which has survived in an early English manuscript. The *Sanblasiana* used *Dionysiana* as a source and would have contained the Ancyran canon.[89] In other words, this was almost certainly a reference to Ancyra.

As for Theodore, he was certainly interested in canonical legislation, though we can only surmise the collections with which he was familiar. In addition to acquaintance with Eastern canonical works gained in his earlier days, he could have become acquainted with an extensive range of sixth- and seventh-century Latin canonical collection of diverse origins during his time in Rome and his journeying to England, and

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[87] Elsakkers, 'Genre hopping', p.90. In context, the reference is to fines or penances graded according to foetal development in legal and penitential texts (including the Theodorean penitentials).

[88] Pierre J. Payer, 'The humanism of the penitentials and the continuity of the penitential tradition', *Medieval studies* 46 (1984) pp.342-346.

[89] Martin Brett, 'Theodore and the Latin Canon Law', in Lapidge (ed.) *Archbishop Theodore*, pp.125, 136-137 on **U**'s use of the *Sanblasiana*. There is no complete edition of the *Sanblasiana* but its principal source was the *Dionysiana*: c.f. Kéry, *Canonical collections*, pp.29-30.

the range of possibility is only further expanded by his associate and fellow traveller Hadrian's African origins.[90] Ancyra was, of course, included in many of these collections. But Theodore was clearly also familiar with Basil's canonical letters, a familiarity imprinted upon his penitential teaching, which contained five canons explicitly drawing upon Basil and a significant number of other possible derivations.[91] Though Latin translations of Basil's canonical letters did not emerge until the late Middle Ages, the introduction of material derived from Basil in the penitential texts – to mention nothing of the use of Basil's others works in late seventh- and early eighth-century England – cannot but be ultimately attributed to Theodore, who probably brought copies of Basil's works with him to England.[92]

The upshot is that Theodore would almost certainly have encountered Basil's canon on abortion at some point and herein lies an irony. Of all the churchmen connected in some way with ecclesiastical sources on abortion in the early Middle Ages, Theodore is the only one of whom we can reasonably assume knowledge of Basil's rejection of the applicability of embryological distinctions in grading abortion; yet Theodore did not incorporate Basil's approach to abortion and it was precisely through his teaching that the very sort of distinction which Basil rejected entered subsequent penitential and canonical works.

ABORTION CANONS IN COMPILATIONS

From the eighth century, these abortion canons – *Maleficium* (i.e. lethal, aphrodisiac and abortifacient, unless otherwise noted) *Voluntarie* and *XL dies* – were incorporated into more complex compilations. The extensive 'tripartite' penitentials drew on three distinct traditions (Cummean, Theodore and the *simplices*) though the sources through which compilers accessed these traditions varied.[93] Here, our focus is upon the presentation and arrangement of canons and the significance of genre: specifically, upon observing how these canons were absorbed in the process of compilation, looking for any traces of deliberation upon abortion, and imagining how readers would have encountered these canons.

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[90] Brett, 'Theodore and canon law', pp.120-124.
[91] Roger E. Reynolds, 'Basil and the Early Medieval Latin Canonical Collections', in P.J. Fedwick (ed.) *Basil of Caesarea: Christian, humanist, ascetic,* two volumes (Toronto, 1981) II, pp.521-522.
[92] C.f. Gabriella Corona, *Ælfric's Life of Saint Basil the Great: Background and context* (Cambridge, 2006) pp.29-30. On translation: see P.J. Fedwick, 'The Translation of the Works of Basil before 1400', in *Basil of Caesarea*, II, pp.455-73.
[93] Frantzen, Mise à jour, pp.30-33, Meens, *Tripartite boetoboek*, p.565

The earliest examples of penitentials which incorporated all three canons, together with versions of the Ancyran canon, are the *Excarpsus Cummeani* and *P.Remense*. Both penitentials were produced in the second quarter of the eighth century and have connections with the abbey of Corbie and the compilation of the *Vetus Gallica* produced there in *c*.740. *Excarpsus Cummeani* was an especially popular work. It was widely copied and diffused, and survives in twenty-eight manuscripts, six of which date from the eighth century.[94] The primary organisational structure of this large penitential was thematic. Canons were grouped in sections under lengthy titles and, within each section, some canons were given ascriptions identifying sources and a number of canons from that source would follow. Three abortion canons were included in a section under the title, "On murder and non-homicidal bloodshed and overlain infants, those who die without baptism and abortions and those who cut their own limbs and those who offer leadership to barbarians". *XL dies* (in a form akin to **U** and **G**) came in a sequence of Theodorean canons ("De Theodoro") directly after the double canon on infanticide while *Voluntarie* appeared with other canons ("De alio penitentiale") after two on infants dying without baptism and the overlaying of infants. This same section began with canons from Ancyra, two on homicide followed by a version of the abortion canon.[95] *Maleficium* canons came in a different section on *malefici, venefici, sacrilegi, arioli,* etc. As in the *P.Bobbiense*, the first canon referred to *maleficium* while the segments on 'love magic' and 'birth magic' referred to *veneficium*. In addition, the Ancyran abortion canon was also reproduced in a section on adultery, *raptus,* divorce, etc.[96] A comparable arrangement was made in *Remense* without two reproductions of the Ancyran canon but with two versions of *XL dies* as in **U**.[97] In both cases, abortion was conceptually associated with murder and violence, while *Maleficium* unsurprisingly came under 'magical' and 'superstitious' practices.

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[94] Listed in Meens, T*ripartitum boeteboek*, pp.231-236; c.f. Arnold Angenendt, '*Donationes pro anima*: Gift and countergift in early medieval liturgy', in J.R. Davis & M. McCormick (eds.) *The Long Morning of Medieval Europe: New directions in early medieval Sstudies* (Aldershot, 2008) pp.137-138 for a useful summary and references.

[95] This was the version which specified, in addition to the original women who fornicated and killed their children, "those [women] who acted with them to shake out what has been conceived from the womb". This version of the canon circulated as early as the late fifth century and appeared in the *Vetus Gallica*, ed. H. Mordek, *Kirchenrecht und Reform im Frankenreich* (Berlin, 1975) p.567.

[96] VI.11, VI.21, VI.3, VII.1-2, III.23: *Bußordnungen,* pp.473-474, 478-481.

[97] *Remense* VIII.20 (*Voluntarie*), VIII.26, 46 (*XL dies*), VIII.49 (Ancyra) all in the section on murder etc; VIIII.1-2 (*Maleficium*) in the section on *malefici* etc: ed. Asbach, *Das remense*, pp.51-54, 56.

Similar arrangements and associations occurred in other tripartite penitentials with varying degrees of care and precision. The *P.Vindobense B* was probably composed in later eighth or early ninth-century Salzburg under the influence of its bishop Arno and drew upon the *Excarpsus Cummeani*, the **U** Theodorean tradition and, unusually, the *P.Vinniani*.[98] The arrangement more or less followed that of *Excarpsus Cummeani*.[99] Something curiously different occurred in *Sangallense tripartitum*, which survives in a single manuscript from the first quarter of the ninth century but was almost certainly composed earlier. The basic organisational principle was very simple, with the three penitential traditions – in the order *simplices*, Theodore, Cummean – presented in three distinct parts, each of which was organised thematically under clear titles, with canons trimmed into short forms.[100] In the first part, *Maleficium* was reproduced together with a canon on the overlaying of children under the heading, "De Avorsis", and its phrasing was slightly different from the original: punishing anyone who harmed a woman's *conceptus* (c.18). *Voluntarie* did not appear here but in the next section, "De Maleficis", with canons on a range of superstitious and 'magical' practices from the *simplices* tradition (c.28, first part). In other words, the associations which these two canons bore had been reversed.[101]

In most of these works, the canons on abortion were not necessarily in close proximity to one another. The later eighth-century *P.Capitula Iudiciorum*, however, was a more carefully arranged work and one which was quite popular, surviving in eight manuscripts and used in later canonical and penitential compilations.[102] Focussed titles prefaced ascribed canons and one of these covered the overlaying of infants and abortion ("De oppressis infantis vel aborsis"). Within this, four canons were listed as "Judicium canonicum", a standard ascription in the *P.Capitula Iudiciorum* for truly canonical material and material from the *simplices* tradition. These included *Voluntarie* (III.1c) and Ancyra (III.1d). But the compiler had been resourceful. Though he reproduced the full version of the *Maleficium* canons elsewhere, he trimmed off the final segment and inserted it as a self-contained canon too, with a change: "If anyone has harmed a woman's *conceptus*, he should do one year's penance on bread and water"

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[98] Meens, *Tripartite boeteboek*, pp.566-567.

[99] *P.Vindobense B* XXXIII.9 (*XL dies*, as in **U**.i.xiv.27), XXXIII.21 (*Voluntarie*) under the title on murder etc; XXXIV.1-2 (*Maleficium*) under the title on *malefici* etc: ed. Meens, *Tripartite boeteboek*, pp. 400, 408-412.

[100] Meens, *Tripartite boeteboek*, pp.565-566.

[101] cc.18, 28 (first part), ed. Meens, *Tripartite boeteboek*, pp,332-334; *XL dies* came under the title on murder in the second part (c.5), p.336.

[102] Meens, *Tripartite boeteboek*, p.567.

(III.1b).[103] To this was added Theodorean material ("Judicium Theodori"): *XL dies* (as in **U**.i.xiv.27 and **G**105) and a canon on infants dying without baptism.[104] The compiler had arranged his material carefully so that the four abortion canons (one of which he had 'created' himself) were produced in one place under a relevant title.

Another example of abortion canons brought together is in the *P.Martenianum*, a relatively chaotic work which is often taken to exemplify the kind of penitential denounced by Carolingian churchmen in the early ninth century.[105] Interestingly, the compiler brought together Theodorean material and with some more unusual material: *XL dies* (as in **U**.i.xiv.24) was reproduced but mistakenly under an ascription to Ancyra, followed by the actual Ancyran canon itself. Next came three canons attributed to patristic authorities, derived from the early eighth-century canonical collection, the *Collectio canonum Hibernensis*. We will turn to this collection and its canons in the next chapter, but we should note the last of these quotations. It was taken from Jerome's letter to Eustochium and contained a scribal error. The final portion read, "they drink up sterility and commit the murder of an undamned(!) person (*nec damnati hominis homicidium faciunt*)", a corruption of the original *nec dum nati*.[106] This misquoted patristic citation encapsulated how peripheral patristic precursors were to the treatment of abortion within these pastoral texts.

One final example is the *P.Merseburgense A*, a penitential originally composed in Northern Italy in the second half of the eighth century.[107] Unlike the other mixed works, the compilation added layers of material from the *P.Cummeani*, **G** (but only cc.91-103, that is, not including the abortion canon) and the *Excarpsus Cummeani* onto the 'core' derived from the *simplices*. Thus, it retained much of the 'core' order: *Maleficium* was reproduced early on and *Voluntarie* after the Columbanan-derived material. After this 'core' material, but before the integration of Cummeanic material, the Ancyran canon was reproduced in an unaugmented version.[108]

All of these penitential compilations surveyed here were guided by differing compositional rationales. Some made editorial choices and excised canons where there appeared to be contradictions; others included as much material as possible. But,

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[103] The *P.Sangallense tripartitum* used *Capitula Iudiciorum* as a source, and this is where its unusual use of *conceptus* originated.
[104] III.1-2: ed. Meens, *Tripartite boeteboek*, pp,438-440.
[105] Frantzen, Mise à jour, p.32. On these denunciations, see the following chapter.
[106] cc.42-47, *Bußordnungen,* p.291.
[107] See CCSL 156, pp.xxv-xxvii, xlii.
[108] cc.10, 33, 46: CCSL 156, pp.128, 135, 140-1.

noticeably, abortion canons were spread across these different kinds of compilations suggesting that early medieval authors did not necessarily see contradictions across the canons.

While compilers sometimes tweaked their material, most did not insert wholly original material on abortion. The most interesting novel canons or emendations, which can be dated reasonably safely to the second quarter of the ninth century and beyond, will be discussed in the following chapter. A significant exception was the *P.Bedae*. Dating this work is difficult. The earliest manuscripts hail from the early ninth century, though it is certainly older, and its place of composition is uncertain.[109] It had an insular flavour, drawing on Theodorean and Irish material, and contained an intriguing addition to *XL dies* (as in **U**.i.xiv.24). After noting a single year of penance for abortion before *XL dies*, and three years after *XL dies*, the compiler made an addition:

> But it makes a great difference (*Sed distat multum*) whether a poor woman does this because of the difficulty of rearing (*paupercula pro difficultate nutriendi*) or a fornicating woman for the sake of hiding her crime (*fornicaria causa sui sceleris celandi*) (IV.12)[110]

This transferred the mitigating circumstance of the Theodorean double canon on infanticide to abortion. But the dearth of novel canons on abortion in most eighth-century penitentials ought not to obscure the fact that compilation entailed active deliberation and that the processes of compilation shaped readers' encounters with these canons, to which we now turn.

A reader's perspective on abortion canons

First, these canons were encountered together. This is worth putting into perspective. More manuscript copies of a work like the *Excarpsus Cummeani*, which contained the full range of penitential abortion canons, have survived than those for the *P.Vinniani*, *P.Columbani* and *simplices* combined.[111] Moreover, even if some penitentials did not contain this or that canon, in codicological context readers had access to penitentials that did. A telling example involves one of the *simplices* which did not contain abortion canons: the manuscript for the *P.Sangallense simplex* also contained the *P.Sangellense tripartitum* and *P.Vinniani*.[112]

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[109] Allen J. Frantzen, 'The Penitentials attributed to Bede', *Speculum* 58.3 (1983) pp.573-597.
[110] IV.12, *Bußordnungen,* p.225.
[111] For a list of manuscripts of the *Excarpsus Cummeani*, see Meens, *Tripartite boetoboek*, pp.231-236.
[112] St. Gall, Stiftsbibliothek 150: CCSL 156, p.xli.

Second, these canons were not devoid of a sense of authority. What had been a reference to Ancyra in **U**.i.xiv.24 turned into the wholesale incorporation of the canon from the *Excarpsus Cummeani* onward. Beyond this, other canons were also inscribed with canonical authority whether mistakenly, as in the *P.Martenianum*, or through a general gathering of penitential material under a canonical ascription, as in the *P.Capitula Iudiciorum*. Moreover, in some penitentials, Theodorean canons were ascribed with his name: such ascriptions were, presumably, not simply early medieval anticipations of the footnote but reflected the weight of his name. In all of this, there was a merging - certainly no palpable dichotomy - between canonical and penitential judgment. Moreover, meanings could shift. After encountering the mention of mitigating and compounding circumstances in the Theodorean double-canon on infanticide and the *P.Bedae*, a reader might have read the penance in the Ancyran canon (ten years) as a reflection of the double-sin of abortion with fornication. (Indeed, in the next chapter we will see an explicit example of this).

Compilation transfigured canons. In a sense, historians' limited appreciation of the significance of penitential canons in their original contexts – the anxieties and ambiguities which underlay the *P.Vinniani, P.Columbani, simplices* and Theodorean penitentials – partly reflects the rather different appearance of the same canons in these later compilations. The encounter with abortion canons in these compilations was marked by two broad tendencies which were not in keeping with the canons' points of origin. First, they encountered a far stronger association between abortion and murder: sections on murder are where canons on abortion regularly ended up. Second, the three canons specifying female culprits (*Voluntarie*, *XL dies* and Ancyra) were often included within these sections, while the canon including male culprits (*Maleficium*) usually appeared elsewhere: abortion appeared as a female sin in a way which was not altogether in keeping with the Columbanan-*simplices* tradition.

One final consideration concerns a notable absence: canons on preventing conception. Such canons did not emerge until slightly later penitentials, and we will examine them in the following chapter. The absence of such canons (before, roughly, the first half of the ninth century) has been highlighted in criticisms of Noonan's reading of the penitentials. Noonan problematically argued that from an early stage the penitentials contained "prohibitions of various forms of marital intercourse in which procreation was intentionally avoided". For Noonan, since a large number of condemned sexual offences were nonprocreative (for instance, aberrant intercourse *in*

terga in the Discipulus' work), canons covering such intercourse were proscriptions of contraceptive practices.[113] Pierre Payer, among others, has criticised the failure to differentiate between condemnation of nonprocreative practices for being contraceptive from condemnation of practices which happen to be contraceptive: canons on nonprocreative sex were not "condemnations of contraception as such".[114] As Jean-Louis Flandrin noted, Noonan's interpretation read back the later medieval "unitary concept of the "crime against nature"" into the penitentials.[115] In other words, Noonan interpreted these works through alien concepts.

But, if we imagine readers' encounter with the penitentials, there is a further complication which mitigates Noonan's anachronistic error to a certain extent. The key issue is codicological context. *Pace* Noonan, penitential compilers did not draw upon a coherent procreative norm in delineating sexual sin prior to the ninth century. But some readers might well have brought such norms to the texts which they read – not least when such norms were articulated by texts in the same manuscript. For instance, as Rob Meens has shown, Theodorean penitentials often circulated with versions of Gregory the Great's influential *Libellus responsionum*, his responses to Augustine of Canterbury's questions about ritual and sexual purity taboos encountered on his mission to England. Since these works contained very different evaluations of sexual and ritual taboos, their circulation together demonstrates that early medieval "discussion about sexuality, human nature and impurity" was multi-dimensional.[116] The *Libellus* conveyed something of Gregory's monastic theology of marriage: lawful intercourse was for procreation (*causa prolis*) and not desire (*non voluptatis*): the "commingling of flesh for creating children ought to be pleasing, not the satisfaction of vices."[117] Importantly, readers of numerous manuscripts would have had immediate access to both penitential canons on sexual offences and Gregory the Great's marital norms, and such readers might well

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[113] *Contraception*, p.161. Noonan acknowledged that clear condemnation of contraception emerged slightly later, though conventional dating of penitentials at the time of writing led him to place this in the eighth century.

[114] *Sex and the Penitentials: The development of a sexual code 550-1150* (Toronto, 1984) pp.33-34.

[115] 'Contraception, Marriage, and Sexual Relations in the Christian West', in id. *Sex in the Western World* (Reading, 1991) p.104.

[116] 'Questioning Ritual Purity: The influence of Gregory the Great's answers to Augustine's queries about childbirth, menstruation and sexuality', in R. Gameson (ed.) *St. Augustine and the Conversion of England* (Sutton, 1999) pp.174-86 (at p.182); id. 'Ritual Purity and the Influence of Gregory the Great in the Early Middle Ages', *Studies in Church History* 32 (1996) pp.31-43.

[117] In Bede, *Ecclesiastical History* I.27 (my translation), ed. and trans. B. Colgrave & R.A.B. Mynors (Oxford, 1969).

have made intertextual connections.[118] Another admittedly more limited example comes in the forementioned *Sangallense* manuscript, which also contained the *P.Vinniani*. One curious feature of the *P.Vinniani* not mentioned above was a potted theology of marriage in a canon on continence from the section on lay sins: "We prescribe and exhort," the canon began, "that there is continence in matrimony, because matrimony without continence is not licit but a sin, and [marriage] is granted by God not for lust but for the sake of children (*non ad libidinem sed causa filiorum*)". Various forms of liturgical and physiological abstinence were prescribed.[119] It should be stressed that, rather like Caesarius, the importance of procreation and continence in Gregory's intricate marital theology – and even Uinniaus' potted counterpart – were not premised upon the 'nature' of sexual intercourse in the manner of a natural law argument, but upon a complex understanding of lust and carnality.[120] Nonetheless, procreation was emphasised as a *ratio* for marital sex, and that such ideas could be found within the same manuscripts as numerous penitentials makes it plausible that such ideas were being brought to the penitentials.

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The treatment of abortion in sixth to late eighth or early ninth-century penitentials was multi-dimensional. These texts did not – and perhaps could not – elaborate upon foetal status. Drawing upon a variable moral idiom, they nonetheless conceived of abortion as the taking of life (*occidere, perdere, homicidium* etc). The *P.Bigotianum* notwithstanding, abortion was not generally punished as severely as other murderous offences (including infanticide). This tendency was inseparable from the ontological and epistemological ambiguities evoked by abortion, ambiguities which are especially palpable in the Theodorean penitentials. Abortion reinforced certain gender associations. Women were unsurprisingly specified in association with sex and

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[118] Examples: one manuscript for the *P.Burgundense* (Munich, Bayerische Staatsbibliothek, Clm 14780 (St. Emmeram e. 2)) contained **G** and as well as the *Libellus*. The manuscript for *P.Oxoniense I* (Oxford, Bodleian Library, Bodl. 311 (2122)) also contained these two texts along with other penitential material: CCSL 156, pp.xxxiv, xxxviii.

[119] c.46, pp.90-92.

[120] For Gregory's understanding of spirit and flesh, see Carole Straw, *Gregory the Great: Perfection in imperfection* (Berkeley, 1988) pp.107-138, and see David L. d'Avray, *Medieval Marriage: Symbolism and society* (Oxford, 2005) pp.66-67 on the nuanced theology of marital sex in another widely circulated Gregorian work, his *Regula pastoralis*.

childbirth. Yet there were some anxieties over male, specifically clerical, entanglement with abortion too. Abortion also bore associations with illicit sex.

Reading excerpted canons as isolated condensations of moral arguments against abortion distorts what they really were: the products of a specific kind of active deliberation in the context of anticipated pastoral ministry. The fluctuations we have seen reflect, in part, this underlying praxis. They represent attempts to craft workable guidelines for priests in negotiating the messy realities of sin, diagnosing the requisite penitential cure for healing sinners and dispensing the appropriate punishment to mark the moral boundaries of the Christian community.

To the extent that penance was remedial and administered in a confessional encounter, it depended upon acknowledgment of sin.[121] More specifically for our purposes, it depended upon acknowledging some form of complicity in abortion. The penitentials offer peculiar, partial whispers of that encounter shorn of the "context of oral performance, memory, and custom" which underlay these texts and informed their use.[122] They are largely shorn too of priestly practical reason, the understanding of circumstantial and personal factors which were vital to the penitential ministry and only obliquely inscribed upon canons themselves.[123] Nonetheless, the penitentials were unprecedented. They served a pedagogic function for priests and, through priests, the laity.[124] Moreover, this pedagogic function was enacted in a context which provided the means by which the ordinary believer was invited to internalise ecclesiastical concerns over abortion. This was true of all sins. The fluctuations borne of the active deliberation which we have scrutinised, however, suggest that the priests entrusted with this internalisation were not possessed of a comprehensive casuistry of abortion. Instead, they possessed a set of guidelines which raised, as much as resolved, practical and moral ambiguities at the same time as they rendered abortion problematic. We turn now to the late eighth and ninth centuries, to see what happened to abortion when the penitentials became part of an ambitious programme of social reform.

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[121] The question of the regularity of this encounter – Meens, 'Frequency and nature', and Murray, 'Confession before 1215', give strong arguments respectively for and against regularity - ought not to obscure the fact that the increasingy possibility of such encounters across some scale was a specifically early medieval development.

[122] Frantzen, *Before the closet*, p.139.

[123] Payer, 'Humanism of the penitentials', pp.242-246.

[124] Meens, 'Religious instruction', passim.

6.

TRADITION IN PRACTICE:
ABORTION IN THE CONTEXT OF CAROLINGIAN REFORM

In *c*.781, Alcuin sent Charlemagne a gift. This *munera parva* took the form of two sets of letters, one a correspondence between Seneca and Paul, the other an exchange between two ancient kings, Alexander the Great and Dindimus the Brahman. Alcuin's is the earliest surviving reference to what came to be known as the *Collatio Alexandri et Dindimi* and the earliest extant copies date from the ninth century. The *Collatio* was an imagined correspondence between the two kings, in which they disputed whether the ascetic *mores* of Brahmin society embodied "perfect wisdom" or a form of "dementia" that "disparages [God's] most splendid creature".[1] While scholars have roughly agreed upon a late fourth- or early fifth-century dating for the original composition, their interpretations of the *Collatio* have varied remarkably. It has been read as an attack by late antique Cynics upon Alexander and, alternatively, as an attack upon the austerity of the Cynics parodied in the figure of Dindimus; as a product of the later fourth-century anti-asceticism associated with the likes of Jovinian and as a Christian attack upon Alexander.[2] The history of the Brahmans' reputation and reception of the *Collatio* is somewhat clearer. Already in late antiquity the Brahmans enjoyed a laudable reputation among Christian writers and in subsequent centuries Dindimus stood for the "virtuous heathen *par excellence*" for generations of later medieval intellectuals.[3] The dedicatory epigram accompanying his gift reveals that Alcuin was very much aligned with this historical trajectory. Making no mention of Alexander, Alcuin drew Charlemagne's attention to the *gens Bragmana*, distinguished by their "extraordinary ways" in which a "reader discerns faith with his mind".[4]

In reading about the Brahmans' "pure and simple life", Charlemagne would have been struck by an asceticism which mingled exotic and familiar elements. Dividing their wealth, the Brahmans lived out an absolute "equality of poverty". They took this

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[1] The *Collatio* is edited without Alcuin's dedication in Telfryn Pritchard, 'The Collatio Alexandri et Dindimi: A revised text', *Classica et Mediaevalia* 46 (1995) pp.262-73. The five sections alternate between Alexander and Dindimus, starting and ending with the former.
[2] See George Cary, *The Medieval Alexander* (Cambridge, 1956) pp.13-14 and Pritchard, 'Collatio Alexandri et Dindimi', pp.255-256.
[3] Thomas Hahn, 'The Indian Tradition in Western Medieval Intellectual History', *Viator* 9 (1978) pp.225-233 (at p.225); Cary, *Medieval Alexander*, pp.91-94.
[4] From Alcuin's dedicatory epigram: PL 101, col.1375.

austerity so seriously that they relied on "parsimony", not herbs, as their bodily medicine.[5] Moreover, the Brahmans were pacifists, refusing to take up arms or wage war, preferring to maintain peace "through morals, not through force". The Brahmans' sexual ethics, however, were perhaps slightly less alien. No one, declared Dindimus, could accuse the *gens Bragmana* of incest, adultery or similar corruptions. He immediately turned to abortion in words which would scarcely raise eyebrows if they had been written by a churchman:

> It is not lust (*libido*) but love of offspring (*subolis amor*) which reminds us of sex (*ad concubitum...admonet nos*). We do not know love unless it is holy (*pium*). We do not stop burgeoning foetuses from growing by drinking up abortions (*abortivis haustibus procedere feta nascentia non vetamus*) nor do we search after the death of another within a living body (*intra vivum corpus mortem investigamus alterius*). Still less do we deprive God of his due by conceiving men in a sterile way (*in hominibus concipiendis sterilitatis obitu minime Deum suo iure privamus*)[.][6]

Dindimus' words entangled abortion with sex, murder and even theological violence. But, for our purposes, it is significant that the closest we can place two of the most renowned Carolingians to the subject of abortion is by looking at what they read. Questions about readers and modes of reading will be crucial.

In this chapter, we bring the attempt to discern modes of active deliberation from the previous chapter to the context of Carolingian reform: within a corpus of interrelated prescriptive texts and within a programme in which broader dynamics, such as a concern with canonical authority, left their mark upon the treatment of abortion. This is the context in which a canonical tradition on abortion was truly forged, and also in which some significant new elements emerged. Moreover, Carolingian reform has been a vital 'moment' in histories of abortion: the static picture of ecclesiastical tradition is rooted in a very particular reading of the interaction between canonical and penitential authority in the ninth century. By revising this picture, we will encounter a tradition which was characterised by dynamism, deliberation and a certain degree of dissonance.

ASPECTS OF CAROLINGIAN REFORM

The integration of abortion within systems of clerical education in preparation for pastoral ministry reached its culmination in the context of Carolingian reform. The

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[5] For evidence of interest in medicinal herb-collecting at Charlemagne's court in Alcuin's poetry and letters, see Loren MacKinney, *Early medieval medicine, with special reference to France and Chartres* (Baltimore, 1937) pp.86-87.
[6] II.8: Pritchard, 'Collatio Alexandri et Dindimi', p.265.

ensuing focus on the ninth century ought not to be taken to imply an eighth-century vacuum (or, indeed, a thesis on the origins of Carolingian reform). Penitentials surveyed in the previous chapter were produced, copied and exchanged across Frankish lands in the eighth century. More specifically, abortion was integrated into primers for fostering Christian ways of life produced by missionary émigrés in the Frankish frontierland. Installed as the first bishop of Wurzburg in Bavaria in 743 and an erstwhile colleague of Boniface, Burchard included some of Caesarius' relevant sermons on 'pagan' practices in his homiliary.[7] Perhaps a little earlier and further south, Pirmin, who founded the monastery at Reichenau in 724, integrated Caesarius' pungent pronouncement on the homicidal guilt of women who resorted to diabolical potions to avoid conception into his own manual for priests, a collection of creedal, doctrinal and moral pointers. The Caesarian *sententia* was suitably nestled between pronouncements on drunkenness and idolatry.[8]

To concentrate on the span from Charlemagne's reign until the end of the ninth century is not to ignore this past – and we will occasionally revisit it. But this span ultimately offers more fertile ground. First, for some interesting material. Second, for the context against which we can set our sources. At its broadest, this was the context of *correctio* or reform, of a "program, educational in nature and religious in content, aimed at the thorough Christianization of all of society".[9] The impulses underlying reform were not novel, but perhaps the scale, resources and even energy with which it was pursued were.[10] Within this programme, abortion was – once again – addressed in the midst of a broader process. Carolingian reform fostered a particular focus on the priest in his locality, on the priest as "sole contact between the people and the world of learning".[11] Carolingian conceptions of the priesthood went beyond the Merovingian obsession with exemplary clerical behaviour (which is visible in the Columbanan penitentials) in insisting that priests governed souls and acted as shepherds to their flocks. Priestly responsibility for the education, guidance and, ultimately, salvation of

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[7] See n.12 in chapter three.

[8] *Scarapsus* 21: ed. E. Hauswald, *Pirmins Scarapsus: Einleitung und Edition* (Constance, 2006) p.77-78 (web address in bibliography).

[9] Susan A. Keefe, *Water and the Word: Baptism and the education of the clergy in the Carolingian empire, volume 1* (Notre Dame, 2002) p.1. Rosamond McKitterick, *The Frankish Church and the Carolingian Reforms, 789-895* (London, 1977) is, of course, an indispensable overview.

[10] Giles Brown, 'Introduction: The Carolingian Renaissance', in Rosamond McKitterick (ed.) *Carolingian Culture: Emulation and innovation* (Cambridge, 1994) pp.1-17 places reform in relation to Visigothic, Anglo-Saxon and Merovingian precedents; see too Martin A. Claussen, *The Reform of the Frankish Church: Chrodegang of Metz and the Regula canonicorum in the eighth century* (Cambridge, 2004) especially pp.19-57.

[11] Keefe, *Water and the word*, p.5.

flocks was intensively emphasised. This required that priests themselves were educated and equipped with suitable means. The relics of these means, the diverse manuscripts combining liturgical, pedagogical, penitential, canonical and so on material, testify to the various attempts made to translate ideals into practice. The sources in this chapter were all produced as part of the 'top-down' *correctio* by which this was to be achieved: they constituted the ideals which priests and – through them – the laity were to emulate and the means by which this was to be brought about.[12]

Episcopal statutes: abortion in the programme for reform

The majority of the sources examined below are compilatory works. We will have to approach them intricately, treating their authors as readers in order to see what they saw in and how they used their source materials. In a sense, these texts mentioned abortion because they encountered abortion in their sources. Before turning to them, however, we must note some peculiarly Carolingian texts which made a more active choice in mentioning abortion, however briefly: episcopal statutes.

The best example is Gerbald of Liège's second episcopal statute (802/9). Episcopal statutes were unprecedented – not in substance, but in praxis. They were "devised as specific tools of communication between city-based bishops and village-based priests, between high clergy...in court circles and the local clergy of the peripheries, and also, hence, between the world of ideals of reform and that in which those ideals ought to be carried out". Gerbald's statute was one of a wave of early generation statutes which "came forth from the imperial epicentre of reform" around the turn of the ninth century.[13] In it, he listed wrongdoers collectively labelled *malefici*. These included soothsayers, divines, "those who wear amulets around their necks, with we-don't-know-what written on" as well as *veneficae*, that is, women who handed out "certain potions for shaking out offspring" (i.e. abortifacients) and aphrodisiac spells. The whole throng of *malefici* were to be rooted out and brought before the bishop so that their cases could be discussed.[14]

Several other statutes contained similar lists incorporating these *veneficae*. In some instances, the emphasis was upon the need for public atonement by *mulieres veneficae* and

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[12] Carine van Rhijn, *Shepherds of the Lord: Priests and episcopal statutes in the Carolingian period* (Turnhout, 2007) passim, but esp. pp.55-68, Keefe, *Water and the word*, pp.1-17.
[13] van Rhijn, *Shepherds of the Lord*, pp.50, 103-4.
[14] 'Second Episcopal Statute', 10: MGH Cap. episc. I, p.29.

other wrongdoers.[15]   The incorporation of abortion into catalogues of nefarious practices happened outside statutes too. The most resonant example comes from a pseudo-Bonifatian sermon written by a north Frankish bishop in *c*.795-825. The sermon's theme was the renunciation of *opera diaboli* at baptism. The meandering list included fornication, adultery, murder, perjury, drunkenness, gluttony, belief in flying witches and wolves, and causing abortion (*abortum facere*).[16]

The commonality across these fleeting allusions was the integration of abortion within localised programmes of reform. Their significance lies in the fact that bishops were choosing to bring abortion to the attention of their priests in the hope that priests would bring abortion to the attention of their flocks. For a more active engagement with abortion, however, we must turn elsewhere.

CREATING AUTHORITY: ABORTION AND CANONICAL AWARENESS

Canonical collections and penitentials, old and new, were the principal texts through which the ecclesiastical tradition on abortion was imparted to the higher and lower clergy. Relating the canons across these texts, however, is historically and historiographically complicated. The early ninth century staged an intriguing moment of tension in the production of pastoral texts and the practice of priestly ministry, a tension which has shaped histories of abortion.

Canonical authority and the history of abortion

The tension stems from misgivings expressed by Carolingian bishops in the opening decades of the ninth century. Bishops were concerned about the integrity and *savoir faire* of priests in their ministry to confessants, and also about the books upon which priests relied for guidance. At the council of Châlons (813) bishops worried that priests meted out penances which ran against the "sacred canons", "authority of holy scriptures" and "properly observed tradition of the church" because of personal feelings of animosity or fondness. Moreover, those "little books called the penitentials, whose errors are certain and authors uncertain" seemed partly to blame.[17] In the same year, the council of Tours evinced similar concerns about the penances handed out "varyingly and indiscriminately" by priests but the assembly was more hesitant over penitentials.

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[15] Herard of Tours, 'Episcopal statute' (858) 3, MGH Cap. episc. III, p.128. C.f. "mulieres, quę potiones tribuunt, ut partus excutiant", *Capitula Treverensia* 5, MGH Cap. episc. I, p.55; "mulieres, quae potiones aliquas donant, ut partus excutiant", *Capitula Silvanectensia prima* 9, MGH Cap. episc. III, pp.82-3. Unfortunately, these latter two statutes cannot be securely dated.

[16] Pseudo-Boniface, *Sermo* 15.1: PL 89, cols.870a-b.

[17] cc.34, 38: MGH Concilia 2.1, Concilia aevi Karolini 1, pp.280-1.

Bishops were advised to identify the "best of the more ancient [ones] as the penitential book which ought to be followed".[18] Far more hostile judgment was passed some years later at one of the great reform councils of 829, the council of Paris. Out of a mixture of neglect and ignorance, priests were meting out penances using "those little volumes...called the penitentials", which contravened canonical authority. Each bishop was urged to root out "those erroneous volumes" and burn them "so that ignorant priests no longer mislead people".[19] In some older narratives of penance, these reforms were seen as a pivotal moment. Penitentials were an "ephemeral and ultimately despised intrusion into the frankish church", for the animus epitomised at Châlons and Paris was understood to have caused the cessation of older-style penitentials, which were replaced by the reform-minded works produced by Halitgar of Cambrai and Rabanus Maurus.[20] Indeed, this dynamic is inscribed in a work by a prominent (and unusually vehement) critic of the penitentials. In his second episcopal statute, Theodulph of Orléans quoted the Ancyran canon on abortion and outlined the ten-year process of reintegration in scrupulous detail and the entire process was subject to episcopal supervision.[21]

For the Catholic theologians interested in the history of abortion these condemnations were highly relevant. As in the history of penance, condemnations provided more than just a moment in a broader narrative. They provided a way of framing the ecclesiastical tradition on abortion throughout the early Middle Ages. It was as though the condemnations of 813 and 829 specifically had penitential canons on abortion in mind. Using a very particular construal of the councils as a yardstick – most importantly, reading the absence of any distinction in foetal development in conciliar canons as a deliberate absence – those penitentials which made such distinctions or mitigated the 'official' discipline were safely quarantined: Carolingian bishops regarded these penitential *libelli* as "unauthorized improvising" and these modern theologians applied this judgment to unpalatable penitential canons on abortion.[22] The "individualism" of the penitentials, the "arbitrariness of their penances" and their initially "local use"

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[18] c.22, council of Tours: ibid. p.289.

[19] c.32, council of Paris: MGH Concilia 2.1, Concilia aevi Karolini 2, p.633.

[20] Rosamond Pierce [McKitterick], 'The 'Frankish' Penitentials', *SCH* 11 (1975) pp.31-9 (at p.34). It is a mark of the profound development in scholarship on the penitentials that a historian of McKitterick's distinction found this narrative credible in 1975. See Frantzen, *Literature of penance*, pp.102-3 on Theodulph of Orléans' misgivings about penitentials (though not about private confession of sins to priests).

[21] 'Second Episcopal Statute', V.1, MGH Cap. episc. I, pp.160-1. Incidentally, this text is comprised mainly of outlines of sins and penances. It is usually considered an episcopal statute in histories of penance (c.f. Frantzen, *Literature of penance*, p.102) while van Rhijn, *Shepherds of the lord*, p.103 regards it as more of a penitential than an episcopal statute.

[22] Grisez, *Abortion*, pp.150-155 (at p.152).

contrasted with the "general acceptance...given to the ten-year penance of Ancyra".[23] This constructed picture of canonical authority was historically respectable, insofar as its contours appeared to map onto the history of penance, and useful in intra-Catholic debates, insofar as it rendered troubling foetal distinctions marginal to the church's teaching on abortion at least for another century or two. The condemnations shaped a much broader story: the endurance of unwavering tradition against transient bands of unauthorised improvisers scribbling away at the ecclesiastical margins.

The history of penance upon which this picture relied is no longer sustainable. The significance of the hostile animus towards the penitentials is easily overstated. That is not to say that concerns over the use of penitentials and the priestly administration of penance were not real. Such concerns left their mark upon some penitentials and even upon their canons on abortion, while the tension between penitential and canonical authority played out in different guises and with different responses over coming centuries.[24] But, revisions in the history of early medieval penance no longer support the marginalisation of the penitentials. These revisions have covered several dimensions: the false dichotomy between 'public' and 'private' penance; the inescapably communal dimensions of sin and confession; and, most recently, the important political ramifications of penitential discourse.[25] The most significant development concerns the composition and copying of penitentials. A clue lies in the fact that denunciations emerged at the same time as other bishops were urging the priests under their authority to own and know penitentials.[26] The interest in producing new editions of penitentials and scrutinising manuscripts which burgeoned from the 1980s has demonstrated unequivocally that penitential composition (in the more traditional sense) did not draw to a halt until roughly the second half of the ninth century and that copying of penitentials continued throughout. The result of this activity was a "Frankish tradition of penitential texts…strong enough to equip the tenth-century Anglo-Saxons for the

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[23] Connery, *Abortion*, pp.65-87 (at p.68); c.f. Huser, *Crime of abortion*, p.40.

[24] See Sarah Hamilton, *The Practice of Penance, 900-1050* (Woodbridge, 2001) pp.31-50, Ludger Körntgen, 'Canon Law and the Practice of Penance: Burchard of Worms' penitential', *Early Medieval Europe* 14.1 (2006) pp.103-117.

[25] In addition to works by Frantzen, Meens and de Jong mentioned in chapter four, a very useful recent overview is Rob Meens, 'The Historiography of Early Medieval Penance', in Abigail Firey (ed.) *A New History of Penance* (Leiden, 2008) pp.73-96. Two recent monographs which examine the political significance of penitential discourse in his period are Mayke de Jong, *The Penitential State: Authority and atonement in the age of Louis the Pious* (Cambridge, 2009) and Abigail Firey, *A Contrite Heart: Prosecution and redemption in the Carolingian empire* (Leiden, 2009).

[26] See Frantzen, 'Significance of the Frankish penitentials', pp.412-413 and Carl I. Hammer, Jr., 'Country Churches, Clerical Inventories and the Carolingian Renaissance in Bavaria', *Church History* 49.1 (1980) pp.7, 11 on Gerbald of Liège and Haito of Basle.

revitalization of their own penitential system".[27] To reiterate, virtually all of the penitentials mentioned in the previous chapter were transcribed in Carolingian manuscripts, and the texts discussed below in no way 'replaced' the penitentials discussed in chapter four.

A tour of the treatment of abortion in Carolingian canonical collections and penitentials, shows that what was taking place in the ninth century demands a composite picture, rather than the theologians' static picture. The nature of these texts requires a keen focus: modulations in these highly derivative and repetitive works are all but indistinguishable to a lazy eye. En route, we will see fluctuating connotations of abortion, the question of 'contraception' and the modalities of canonical awareness.

Canonical collections: the problem of knowing where to look

We begin with canonical collections. In the Carolingian church the Ancyran canon continued its long history of circulation. It was to be found, of course, in the *Dionysio-Hadriana* which Charlemagne received from Pope Hadrian I in 774.[28] Perspectives on Carolingian canon law have moved away from an erstwhile emphasis upon the *Dionysiano-Hadriana*. Older collections like the *Vetus Gallica, Quesnelliana, Sanblasiana, Dacheriana* and original *Dionysiana* retained their popularity.[29] But this accent upon canonical diversity is relatively insignificant in terms of abortion because all of these collections contained the Ancyran canon.[30] The other relevant conciliar canons – from Elvira, Lérida and Braga II – were also available to readers outside Iberia too through various versions of the *Hispana* and gained further circulation when the records of Iberian councils entered the famous Pseudo-Isidorian *Decretales* in the mid ninth-century.[31]

In the ninth century, then, the relevant conciliar statements of abortion were available to clerical readers and, indeed, had been for a significant period of time. They were available, that is, if anyone cared to look them up. But, the mere existence of a compendious work of reference does not guarantee that specific entries will be looked

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[27] Frantzen, *Literature of penance*, at pp.409-10. See especially Meens, 'Frequency and nature', pp.39-47.

[28] Huser, *Crime of abortion*, p.34. Huser's summary of Frankish collections (pp.34-6) is helpful but dated.

[29] Rosamond McKitterick, 'Knowledge of Canon Law in the Frankish Kingdoms before 789: The Manuscript Evidence', *Journal of Theological Studies* 36.1 (1977) pp.97-117; Yitzhak Hen, 'Knowledge of Canon Law among Rural Priests: The evidence of two manuscripts from around 800', *Journal of Theological Studies* 50.1 (1999) pp.117-34.

[30] *Dacheriana* LVI, ed. Luc D'Achery (web address in bibliography). The other collections have been discussed in chapters three, four and five.

[31] Ed. P. Hinschius, *Decretales Pseudo-Isidorianae et Capitula Angilramni* (Leipzig, 1863), pp.263 (Ancyra), 342 (Elvira), 346-7 (Lérida), 432 (Martin of Braga).

up; and where these reference works were lengthy chronological lists of church councils, a reader had to know where to look. 'Knowing where to look' is awareness of canonical precedent by another name, for it presupposes that a conciliar canon had become synonymous with a specific topic. Widely disseminated canonical collections can be misleading insofar as what the historian is really after (or should be at any rate) are traces of this 'knowing where to look'. The usefulness of systematically-arranged canonical collections lies in both demonstrating and fostering this 'knowing'. Another important trace of such 'knowing' is reference to relevant conciliar enactments outside canonical collections and, here, there is an ironic problem with the constructed picture of canonical authority. We encountered the Ancyran canon on abortion at several junctures in the previous chapter. The canon was incorporated into highly influential continental penitentials like the *Excarpsus Cummeani* and *P. Remense*. Even before this, the Theodorean penitentials combined acknowledgment of this canon with the introduction of a way of grading the penance for abortion. In the case of Ancyra, penitentials yield traces of this 'knowing where to look' from the later seventh century, and had been actively fostering it from the mid eighth century. (By a quirk of history, the very wording of the Ancyran canon complemented the modus operandi of tariffed penance insofar as it spoke of the need to mitigate excommunication out of clemency.) Far from existing in tension with this particular canonical precedent, penitentials had been seminal in cultivating awareness of it and continued to do so in the ninth century.

By contrast, we have yet to encounter comparable traces of 'knowing where to look' for Iberian councils. There were, admittedly, systematic versions of the *Collectio Hispana*. The *Excerpta Hispana* was produced in the seventh century, probably in the latter half. Within it, six canons on abortion and infanticide were collected together: Ancyra, Elvira (c.68, on the slavegirl), Toledo III, Martin of Braga's canon, Elvira (c.63), and Lérida.[32] A later systematisation of the *Hispana* took the form of the *Collectio Hispana systematica*, though this was quite possibly compiled in mid ninth-century Gaul.[33] But neither of these amounts to the same spread of canonical awareness embodied by the penitentials' use of Ancyra. As we shall see, the watershed moment from which we can safely conclude that awareness of these councils' pronouncements on abortion (not including Toledo III) had been cultivated outside canonical collections came as late as the 840s.

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[32] *Excerpta Hispana*, V.10.1-6, ed. Gonzalo Martínez Díez, *La colección canónica Hispana 2: colecciones derivadas* (Madrid, 1976) p.175; c.f. Kéry, *Canonical collections*, p.60.

[33] *Hispana Systematica*, V.10.1-6, ibid. pp.385-386 (the same canons as the *Excerpta Hispana* were reproduced, but in a different order); c.f. Kéry, *Canonical collections*, pp.71-72.

To complicate the texture of canonical authority yet further, we can discern other kinds of canonical awareness. A pertinent example is the *Collectio canonum Hibernensis*. Compiled by Irish canonists in the early part of the eighth century, the *Hibernensis* rapidly proliferated on the continent. It was popular because of its practicality, which was borne of an innovative approach to compilation. As the compiler(s) explained in the preface, the *Hibernensis* aspired to be a "brief, complete and consistent exposition from the sprawling forest of writings in the span of a single volume" (an aspiration which underlines the problem of the compendious collections in which records of the Iberian councils were submerged).[34] Its 67 books were thematically arranged and within each book canons covered specific topics with relevant citations from acknowledged conciliar, papal, patristic and scriptural sources.

The treatment of abortion came in a book entitled, "De quaestionibus mulieribus". An ascetic sensibility was established from the opening canon, Jerome's fulsome praise of virginity as the *ecclesiae pulchritudo*, and underlay this book and the next, "De ratione matrimonii".[35] Three canons covered abortion. One quoted the entire portion from Jerome's letter to Eustochium on the feigned morals of professed virgins. The next canon brought together four patristic quotations: a reiteration of the final portion from Jerome, which trimmed off the mention of adultery against Christ so that it applied naturally to women outside the cloister too and added a thirteen year penance; a quotation apparently from Augustine's homilies ("Any woman who destroys her foetus, or kills her child, has perpetrated homicide; the woman, or a man complicit with her in this sin, should undergo rigorous penance for seven years"[36]); and two renditions of Caesarius' familiar censure of preventing conception as a form of homicide, albeit ascribed to Augustine. The third abortion canon referred to Ancyra with a penance of thirteen years instead of the customary ten.[37] To a modern reader, the *Hibernensis* 'got wrong' the Caesarian quotations and the Ancyran penance. But it was a serviceable text, even brilliantly so, for early medieval readers. Together with its offshoots, the *Hibernensis* circulated through the ninth century, a reminder of the diversity of Carolingian canon

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[34] From the preface: ed. F.W.H. Wasserschleben, *Die irische Kanonensammlung* (Leipzig, 1885) p.1. C.f. Westley Follett, *Céli Dé in Ireland: Monastic writing and identity in the early Middle Ages* (Woodbridge, 2006) pp.73-74.

[35] See Thomas O'Loughlin, 'Marriage and Sexuality in the *Hibernensis*', *Peritia* 11 (1997) esp. pp.191-7.

[36] "Quae mulier aut partum suum disperdit, aut filium suum necavit, homicidium perpetravit; mulier sive vir consentiens ei in hoc peccato VII annis districte peniteat". The provenance of this quotation is uncertain.

[37] *Hibernensis* XLV.3-5, pp.207-8.

law.[38] Indeed, the kind of canonical awareness embodied in the *Hibernensis* was not extraordinary. Caesarius' most famous line on abortion entered a number of works, like Pirmin's *Scarapsus*, while Jerome's quotation, which Caesarius had once recycled himself, was well known from its context. Indeed, it spoke most resonantly when fornication was considered in the cloister: Amalarius of Metz reproduced the letter to Eustochium in his own *florilegium* for clergy and nuns.[39]

Finally, scripture was not silent. The pertinent passage, Exodus 21.22-25, was formally integrated into the canonical stream through the important *Collectio capitularium* produced in *c.*847-852 by the mysterious Benedictus Levita as a continuation of Ansegis' *Collectio capitularium* (*c.*827).[40] In this case, there was no distinction in foetal development, for Benedictus reproduced (with slight elaborations) the Vulgate version of Exodus 21.22-25: that is, without the *formatus/nondum formatus* distinction found in *vetus Latina* versions and ultimately derived from the Septuagint.[41] Despite the Carolingian penchant for an emended Vulgate, however, *vetus Latina* versions of Exodus 21.22-25 were still available to and used by Carolingian scholars.[42]

The treatment of abortion in Carolingian canonical collections did not see any spectacular developments. None of the other distinctively Carolingian collections incorporated old or new material on abortion. But the range of relevant canons was broader and more varying than the constructed picture of canonical authority allows. More importantly, awareness of authoritative precedent fluctuated and was subject to development. For significant traces of how this awareness was cemented – and also of how the meaning of these precedents was not irrevocably ossified – we must turn back to the penitentials.

Abortion in 'reform' penitentials

The three penitential works which appear to embody the reformers' concerns were written by Halitgar of Cambrai and Rabanus Maurus. Halitgar's work, composed at the request of Ebbo of Rheims in *c.*830, comprised of six books: the first two formed a

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[38] Roger E. Reynolds, 'Unity and Diversity in Carolingian Canon Law Collections: The case of the *Collectio Hibernensis* and its derivatives', in U.-R. Blumenthal (ed.) *Carolingian Essays* (Washington D.C., 1983) pp.99-135.
[39] *Forma institutionis canonicorum et sanctaemonalium* II.1: PL 105, cols.938b-944b.
[40] See Kéry, *Canonical collections*, pp.92-100, 119-23. Ansegis' collection contained nothing explicitly on abortion. The most relevant canons are two lists of illicit 'magical' practitioners including *malefici* (I.21, I.62) and a moral lament over the multitude of *incetuosi, parricidae* and *homicidae* (taken, in fact, from c.41 at the council of Tours, p.292): MGH Capitularia regum francorum 1 nova series, pp.451, 463-4, 561-2.
[41] *Capitularia*, II.12-13, MGH Leges II, pars altera, p.75.
[42] We will see examples in the final two chapters.

florilegium on the virtues and vices, while the next three outlined canonical guidelines for administering penance. The final book was a penitential which Halitgar claimed to have found in a Roman library and called the "Roman penitential". This claim was "a convenient veil of Roman respectability [drawn] over [his] efforts to synthesize canons with the penitentials of Columbanus, Cummean, and Theodore".[43] In reality, this penitential was Halitgar's own work. On abortion, he reproduced canons from Ancyra and the Columbanan-*simplices* tradition with the customary penances: the Ancyran canon, the canon on *maleficium*, and the *voluntarie* canon.[44] In a miscellany at the end, he also included a new canon stipulating that the "apothecary, male or female, [that is] killers of children" (an unusual combination of professional and moral categories) should be received back into communion if, after a life of sorrowful repentance, death was approaching.[45]

Rabanus Maurus' foray into penitential composition was rather different. Acting upon a request from Otgar of Mainz, in 842 he sent his first penitential to his episcopal predecessor. Otgar had asked Rabanus to "extract succinctly from the canons and opinions of the church fathers, and collect together what has been promulgated by the teachers of the church for emending people's vices". Rabanus duly obliged by collecting together pieces from diverse works into a single volume. The second penitential work stemmed from an even more specific request. In *c.*852 Heribald, the bishop of Auxerre, had asked Rabanus (now the archbishop of Mainz) questions about homicide and sexual sin. Rabanus' responded by sending him a penitential composition very similar to the *P.ad Otgarum* prefaced with advice on seeking answers to moral questions in scripture.[46] Neither work was a conventional penitential. Despite being familiar with penitentials, Rabanus almost completely shunned them as sources. In both works, after treatments of *parricidium* referring to Cain and Abel, the conciliar enactments on abortion were brought together in the order: Ancyra, Elvira and Lérida.[47] Rabanus' role in cementing

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[43] Frantzen, *Literature of penance*, pp.103-7 (at p.104); c.f. McKitterick, *Frankish church*, pp.170-172.

[44] *Paenitentiale Pseudo-Romanum* 2.16 (Ancyra, in a section on fornication); 5.1-2 (*maleficium*, in a section on *maleficium*); 7.2 (*voluntarie*, in a section, *De diversis capitulis*): *Bußordnungen*, pp.366-7, 369.

[45] "Herbarius, vir aut mulier interfectores infantum": (XI.)22, p.375. Biller, *Measure of multitude*, pp.147-148 draws attention to *herbarius* as a professional rather than moral category. This was unusual and the preponderance of early medieval sources do not offer a stable picture of those who supplied the means for abortion, further supporting Biller's conclusion that the "long history [i.e. from the ninth to fifteenth centuries] of the supply of abortifacient drugs in itself, the professional category of the druggist, and the gender of those engaged in this business are all problematic" (at p.147).

[46] *P.ad Otgarum*, preface: PL 112, cols.1397d-1399a; *Paenitentiale ad Heribaldum*: PL 110, cols.467c-470d. C.f. Payer, *Sex and the penitentials,* pp.67-70.

[47] *P. ad Otgarum*, c.9 (all three canons following the portion on *parricidium*): cols.1410c-1411a; *P.ad Heribaldum*, c.8 (Ancyra and Elvira), c.9 (Lérida): cols.474b-c.

awareness of these conciliar precedents on abortion did not end here. At Louis the German's request, he presided over a council at Mainz in October 847.[48] He made full use of the *P.ad Otgarum*, and the same three canons were included in an enactment on "women who kill their infants" (following the same biblical treatment of *parricidium*). The council's proceedings were circulated and a copy was sent to Louis himself.[49]

The penitentials and council of Mainz give hitherto absent traces of 'knowing where to look' for the Iberian councils.[50] Elsewhere, Rabanus gives some indication of how conciliar canons were applied. In a letter of *c*.842, Rabanus responded to a series of questions which a certain *chorepiscopus*, Reginbald, had posed to him, one of which concerned infants found dead next to their parents. Reginbald wanted to know how to proceed when it was "unclear whether the infant had been smothered or suffocated by [the parents], or had died of its own accord". Rabanus advised against complacency. When the death was accidental rather than deliberate, he recommended some sort of scrutiny of their faith.[51] But if it emerged that they were *interfectores*, "they ought to know that they have sinned gravely, as the council of Ancyra attests as follows". He quoted the Ancyran canon in its entirety before noting that others gave three years to anyone who "recklessly (*incaute*) smothered an infant" (in other words, a culpable accident).[52] Precisely which source Rabanus had in mind is unclear. But the source was almost certainly a penitential. Countless penitentials contained *opprimere* canons ultimately derived from the Theodorean penitentials, and a canon at a later council of Mainz (852), which covered "recklessly" smothering infants resembles such penitential canons.[53] The letter to Reginbald hints at how an ancient conciliar canon shifted in practice. Obviously Rabanus quoted the Ancyran canon for its portion on infanticide, not abortion. But the specific context envisaged in the canon – of women who had fornicated and killed their offspring – did not preclude its relevance. In other words, the significance and meaning of canons was intricately bound up with their application. Meaning depended on use.[54] Likewise, the collocation of the three conciliar enactments potentially affected what they were taken to signify. For example, it is easy to imagine how, instead of cementing the

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[48] *The Annals of Fulda* a°847, trans. T. Reuter (Manchester , 1992) p.26.

[49] Council of Mainz (847), c.21: MGH Concilia 3, Die Konzilien der karolingischen Teilreiche 843-859, pp.171-172. The prefatory letter to Louis the German is at pp.159-62.

[50] A comparable trace appears in Radulf of Bourges' episcopal statute (853-866) which quoted Martin of Braga's version of the Ancyran canon: c.41, MGH Cap. episc. I, p.264.

[51] What Rabanus had in mind by "in eis consideratio debet esse pietatis" is not entirely clear.

[52] *Ep*.30.2: MGH Epistolae Karolini aevi III, pp.449-450.

[53] c.9, MGH Concilia 3, p.247: see for example, *P. pseudo-Bedae* XV.1, *Bußordnungen*, p.266.

[54] Rob Meens, 'Religious instruction' pp.61-64 gives examples of such shifts in meaning from even minute changes in penitential canons.

idea of a set penance for abortion, the three different penances lent authority to adapting penances to circumstances and sinners.

Distinctions in foetal development entered none of these works. But it is not possible to read this absence as a deliberate rejection of such distinctions in assessing abortion. In Halitgar's case, this was no more a rejection of such distinctions than his exclusion of Theodorean canons on other subjects was a rejection of their substance.[55] He simply kept the use of Theodorean material down to a minimum. In Rabanus Maurus' case, the modus operandi all but precluded any penitential material, Theodorean or otherwise, and when we turn to his exegetical works in the following chapter, we will see that he found such distinctions intelligible and pertinent at more than one level. What these 'reform-minded' penitentials do show is that reforming principles did not preclude the mingling of canonical and penitential canons (Halitgar), and that canonical awareness was itself subject to developments (Rabanus Maurus). Ironically, Halitgar's penitential included abortion canons in a way which is almost indistinguishable from eighth-century penitentials (the *P.Merseburgense A* contained exactly the same canons on abortion except for the new one on the *herbarius*) while Rabanus Maurus' collocation of conciliar precedents was far more novel.

Modalities of canonical awareness

The effect of reforming impulses upon other penitential compositions was not uniform. Nor was the integration of canonical awareness on abortion. In other ninth-century compositions, one can see a range of ways in which abortion canons interacted with canonical authority and conveyed different moral connotations.

The *P. Floriacense* gives a salutary glimpse of the possibilities for utter confusion. We briefly considered this penitential as one of the *simplices* in the previous chapter. It survives in a single manuscript written in the final quarter of the ninth century in Western Francia probably at Fleury.[56] As we saw, it contained the *Maleficium* and *Voluntarie* canons. Like other *simplices*, extra material was added onto the basic core of canons under various headings such as "Basil judged" and "Theodore". At the very end, two abortion canons were rather hastily added under the heading, "Ancyran Synod". But the Ancyran canon is nowhere to be seen! The first was a version of *XL dies*, the

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[55] He did not, for example, quote any Theodorean material on suicide: Murray, *Suicide II*, pp.263-264.
[56] Florence, Biblioteca Medicea-Laurenziana, Ms. Ashburnham 82: CCSL 156, pp.xxxix-xl.

second the Augustinian quotation found in the *Hibernensis*.[57] The error is even odder given the *P. Floriacense*'s codicological context. It was the final item in a manuscript also containing the *P. Martenianum*, which did include the Ancyran canon (albeit without an ascription). In other words, Ancyra was sufficiently associated with abortion for the compiler to use it as a heading but, in the rush of writing, he was not actually familiar with the relevant canon itself.

Nonetheless, such confusion was not the norm. The *P. Pseudo-Gregorii III* was composed at some point in the mid-ninth century, certainly after Halitgar's work. On the subject of "women who fornicate and have abortions" it mixed conciliar and Theodorean material. Unusually for a penitential, the Braga II version of the Ancyran canon was quoted – the version, we recall, which spoke of killing what has been conceived or taking pains not to conceive – along with the Theodorean concession for a *paupercula* guilty of infanticide, *XL dies* and an *opprimere* canon.[58]

As in other penitentials, the *P.pseudo-Gregorii III* simply juxtaposed these different sources. An example of more meticulous integration is found in the *P. pseudo-Theodori*, an extensive penitential composed in *c.*830-847 possibly in northern France.[59] It gives a snapshot of how authoritative precedent, practical exigency and particular moral connotations shaped the production of abortion canons. The compiler was consummately careful and wanted to provide a text which was as comprehensive as possible. This aligned with reform concerns insofar as it supplied priests with guidelines for countless permutations of sin. The source material upon which he drew was wide-ranging. In addition to some patristic, canonical and scriptural sources, he used the U recension of Theodore, *Excarpsus Cummeani, P. pseudo-Egberti*, Halitgar's penitential and (significantly for our interests) the *P. pseudo-Bedae*. Each section of the work extracted material from these diverse sources and subjected them to diligent arrangement and, where necessary, revision.[60]

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[57] cc.64-5, p.103. "Hastily" in the sense that not all of the words are spelt out properly: for instance, in the second canon "mulier a[ut] partu[m suum] disperdit aut filius negavit, hom[icidium perpetravit]".

[58] c.17: ed. F. Kerff, 'Das Paenitentiale Ps.-Gregorii III: eine kritische Edition', in H. Mordek (ed.) *Aus Archiven und Bibliotheken* (Freibourg, 1992) pp.177-178 (pp.161-162 on dating).

[59] A new edition was published last year: ed. C. van Rhijn, *Paenitentiale pseudo-Theodori* CCSL 156b (Turnhout, 2009).

[60] Carine van Rhijn & Marjolijn Saan, 'Correcting Sinners, Correcting Texts: A context for the *Paenitentiale pseudo-Theodori*', *Early Medieval Europe* 14.1 (2006) pp.23-40.

The author's integration of abortion canons typifies his care. Three canons appeared in the section on murders: the Ancyran canon; *XL dies*; and the *voluntarie* canon.[61] The version of *XL dies* was strikingly different from its original form:

> A woman who willingly loses her child before forty days should do penance for one year. But if after forty days, three years. And if after it has become animated (*postquam animatus*), she should do penance like a murderess, that is ten years. But it makes a great difference whether a poor woman does this because of the difficulty of rearing or a fornicating woman for the sake of hiding her crime.[62]

As we saw in chapter four, the *paupercula* concession was originally in a Theodorean canon on infanticide and became combined with the abortion canon in the *P. Bedae*. A yet more complex Bedan penitential, the *P. pseudo-Bedae,* elaborated further. Where 'animation' had been aligned with forty days in the original Theodorean canon, it was separated in the *P. pseudo-Bedae*, thereby giving three distinctions in development: before forty days (one year of penance); after forty days (three years); and after 'animation' (penance *quasi homicida*).[63] This sequence of accretions is another illustration of the mutability of embryological categories applied to abortion. The *P. pseudo-Theodori* used the pseudo-Bedan version and made an addition: *quasi homicida* was specified as ten years. The rationale becomes clear from the penance in the *voluntarie* canon: there too the penance was ten years (instead of the customary three). Conciliar authority took precedence and the author duly streamlined the penances for abortion. But, once again, meaning and use were related. Streamlining the penitential canons on abortion opened up new possibilities in reading the Ancyran canon: it could now be read as a canon on abortion of the *partus animatus* or a canon on abortion specifically in the context of fornication.[64]

The *P. pseudo-Theodori* also made a telling repetition in the section on the fornication of priests or nuns. Manifold permutations of perpetrators and circumstances were covered through the aid of a recurrent structural pattern: the basic scenario (e.g. clerical fornication with laywomen); an intensified penance if children were born; another penance if these illicitly conceived children were killed; where relevant, the reiteration that the same penance applied if the perpetrator was a (religious) woman because "the

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[61] XV.3-5, p.37.
[62] XV.4, p.37.
[63] *P.pseudo-Bedae* XIV.1: *Bußordnungen*, pp.265-266.
[64] In fact, below we will see evidence of the Ancyran canon being read in precisely this second way in the form of elaborations upon the *P. Merseburgense A*.

Christian religion condemns fornication by the same measure in either sex". This pattern was used throughout the section on clerical/religious fornication.[65] Following a canon on clerical fornication with laywomen, the compiler inserted a tailored version of the Ancyran canon which began: "But if they have killed the children begotten like this (*taliter generatos*) for the sake of hiding fornication, an ancient decree states [etc]".[66] The mention of fornicating *mulieres* had been excised so that it could apply to clerical and religious fornication.

Concerns over clerical and religious fornication were hardly new. Ecclesiastical and royal Carolingian texts spoke with great urgency on the turbulence engendered by such fornication. The contagion of clerical or religious impurity grotesquely distorted the sacred topography of Frankish society. At the local level, it profoundly damaged the reputation of the church. Indeed, the demands of religious purity and visibly proper clerical behaviour issued from the centres of royal and episcopal power were mirrored by the "'bottom-up' *correctio*" of local communities scandalised by the sexual shenanigans of dissolute priests.[67] The *P. pseudo-Theodori* epitomised these concerns. As in the earliest surviving penitential, illicitly conceived children manifested and thereby escalated the contagion of clerical and religious fornication. Unlike the *P. Vinniani*, however, the *P. pseudo-Theodori* did not treat the birth of these children as the pinnacle of escalation: the penance for killing children engendered through one of the panoply of sinful unions was consistently greater than the penance for the birth of such children. For the author of the *P. pseudo-Theodori*, an abortion-fornication nexus existed with a markedly clerical and religious hue.

THE 'ENTRY' OF CONTRACEPTION

Allusion to the *P. pseudo-Bedae* brings our tour to its final and lengthiest stop. After an absence of several centuries, measures against contraceptive acts began to circulate in ninth-century penitentials.

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[65] The elements of this pattern are set out in XII.1-3 and the quotation on equal sexual demands comes in XI.7 (on clerical fornication with laywomen). Other examples include XI.4 (clerical adultery), XI.10 (with *propinquae*) and XI.12 (with many women); the only comparable lay counterpart is X.18 (on *vidua stuprum faciens*): pp.13, 19-23.
[66] XII.8, p.21.
[67] van Rhijn, *Shepherds of the Lord,* pp.200-10 (at p.201); see too Mayke de Jong, '*Imitatio morum:* The cloister and clerical purity in the Carolingian world', in Michael Frassetto (ed.) *Medieval Purity and Piety: Essays on medieval clerical celibacy and religious reform* (New York, 1998) pp.49-80.

The interrogatory in the P.pseudo-Bedae

The earliest example almost certainly comes from the *P.pseudo-Bedae*. The list of penitential tariffs contained three relevant canons, including the revised *XL dies* and Ancyran canons.[68] The interesting development preceded this main body of text. Like other penitentials, including Halitgar's, the tariffs were prefaced with an *ordo ad dandam penitentiam* and the *ordo* included an interrogatory, a list of questions which the priest was to pose to confessants. Whether or not the *P. pseudo-Bedae* pre-dates the reform councils, such an interrogatory was manifestly devised to regularise and aid penitential ministry: "Then make [the penitent] confess all of his sins," the clerical reader was advised, "by saying as follows". In the questions that followed abortion appeared in one which inquired into a motley array of superstitious practices. "Have you committed sacrilege", it began, mentioning such things as soothsaying and offerings at trees or springs before ending, "or have you drawn lots, or caused abortion (*fecisti avorsum*)? You will do penance for five years or three".[69] Later questions covered 'contraception', abortion and infanticide alongside poisoning and the use of aphrodisiacs:

> Have you drunk any *maleficium*, that is herbs or other things, so that you cannot have infants (*ut non potuisses infantes habere*), or given [them] to someone else, or wanted to kill someone by a potion, or [have you drunk] from your husband's blood or semen, so that he has greater love from you, or have you tasted or drunk holy oil? Seven years or five or three.

> Have you killed your children (*Necasti partus tuos*)? Ten years, and if you have killed [your] son or daughter (*filium aut filiam*), twelve years p[enance], and if in the womb before conception, one year, if after conception, three years.[70]

Formally, an interrogatory was not necessarily conducive to clear classification of sins and this one has the character of notes or prompts (for the priest, in turn, to prompt the confessant) rather than a script: thus, in the first of the quoted questions, there is a sudden shift in addressee in the portion on drinking "your husband's semen". Given this form, it is not altogether surprising that the triple distinction in the revised *XL dies* canon was not replicated here. Meticulous embryological consistency was not a priority.

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[68] See n.63 (Theodorean canon), XXXIX.1 (Ancyra), p.274. A third canon assigned one year, "Si quis conceptum mulieris deceperit": XV.2, p.265. The dating is very problematic. The oldest manuscript in which it is found (Vienna, Österreichische Nationalbibliothek, Ms.2223) seems to be from the early decades of the ninth century: Meens, *Tripartite boeteboek*, p.244.

[69] (Interrogatory) 18, p.254.

[70] (Interrogatory) 30-31, p.255.

Rereading Onan: the P.Hubertense

A second example appears in the *P. Hubertense*, another penitential in the *simplices* tradition composed in the first half of the ninth century.[71] Like the other *simplices*, it included *maleficium* and *voluntarie* canons (in the latter case, with a penance of ten years instead of three).[72] Among additions to the basic core came a novel canon on abortion and thwarting conception by means of potions or coital withdrawal under the misleading title, "On the potions of women":

> If anyone has taken potions, so that a woman does not conceive (*ut mulier non concipiat*), or has killed what has been conceived (*conceptos occiderit*), or [if] a man has spilled his semen from intercourse with a woman so that [she] does not conceive (*vir semen effuderit a coitu mulieris, ut non concipiat*), as the sons of Judah [i.e. Onan and Er] did in Thamar, let each fast for ten years.[73]

This was a highly resourceful use of scripture which lay at the margins of exegetical tradition. The enigmatic story of Genesis 38 tells of Tamar's single-minded pursuit of offspring from Er's line. For years after the death of Er and then Onan, she was forced to play the widow by Judah's refusal to marry off his youngest son, Shelah. Tamar took the law into her own hands. Disguised as a veiled temple prostitute, she was impregnated by her unknowing father-in-law. Some months later, news of her (apparent) prostitution and pregnancy reached Judah, who ordered that she be burned. The narrative turns upon the revelation of her secret conception and Judah's recognition of Tamar's righteousness in contrast to his refusal to give his youngest son in marriage. Tamar gave birth to twins, Pharez and Zerah.[74] An ancestor of David, Pharez was in both Gospel genealogies of Christ (Tamar is also mentioned in Mt.1.1). Unsurprisingly, late antique and early medieval exegesis of Genesis 38 focussed upon Judah and Tamar, and their allegorical significance, rather than Onan. Thus, all three of Alcuin's *interrogationes* on Genesis 38 centred around Judah and Tamar. Where sexual sin was invoked, it was used to explain Judah's proclamation of Tamar's righteousness: his lust contrasted with her desire to produce children. None of Alcuin's *interrogationes* mentioned Judah's sons by name.[75]

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[71] Meens, *Tripartite boeteboek*, p.39; c.f. Frantzen, Mise à jour, p.30.
[72] cc.10, 37, CCSL 156, pp.109, 112.
[73] c.56, p.114. The reference is to the story of Onan in Genesis 38.
[74] See Esther M. Menn, *Judah and Tamar (Genesis 38) in Ancient Jewish Exegesis: Studies in literary form and hermeneutics* (Leiden, 1997).
[75] *Interrogationes et responsiones in Genesim* 257-9, PL 100, cols.534d-535a. C.f. Hans Urs von Balthasar, *Explorations in Theology II: Spouse of the word* (San Francisco, 1991) pp.264-270.

If Onan was not the focal point of exegesis, he was nonetheless associated with sexual sin. But this association was historically mutable. John Cassian, for example, anticipated the emergence of Onanism as a synonym for masturbation when he used Onan to illustrate different kinds of fornication. One kind "takes place in the union of the sexes"; another, typified by Onan, "occurs without touching a woman".[76] By contrast, in Theodulph of Orléans' second episcopal statute Onan exemplified the "pollution" or "detestable sin" of lying unnaturally with a woman: this was why "it is read that Onan, son of Judah, who spilled his semen on the ground after entering his wife, was struck down by God".[77] Theodulph was concerned with forms of impurity and unnatural intercourse rather than a deliberately contraceptive act.[78] The only real precursor for the allusion, though one which does not appear to have been a direct influence, was Augustine, who construed Onan's action as contraceptive in an anti-Manichaean treatise.[79] The *P. Hubertense* was exegetically daring insofar as it insinuated that Er too had committed Onan's sin. In context, the contraceptive construal constituted the most precise understanding of the intentionality of Onan's action (which is distinct from saying that it constituted the most precise understanding of Onan's punishment): this was avoidance of offspring through and through, for Onan spilled his seed because he did not want to produce offspring for his late brother. But the principal function of this scriptural allusion was neither exegetical nor justificatory.[80] The function was illustrative and the illustration was meant to resonate with the primary audience for the text: the would-be confessor. A version of this canon also entered another *simplices* text, the *P. Merseburgense B*.[81]

The 'dog not barking in the night': explaining the entry of contraception

These are the earliest penitential canons which unequivocally proscribed deliberately contraceptive acts, and they naturally raise a pair of questions: why now in these ninth-century works? and, what is the significance for understanding enactments on abortion?

Peter Biller has asked the first question and offered an intriguing perspective on it. Biller incorporates these two canons in his discussion of a slightly later text, Regino of

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[76] *Conferences* V.11.4, trans. Boniface Ramsey (New York, 1997) p.191.
[77] *Second Statute* 11, MGH Capit. episc. I, p.168.
[78] As Biller, *Measure of multitude*, p.182n.81 notes.
[79] "in terram fundebat, ne semen daret ad fecundandam Thamar", *Contra Faustum* 22.84, PL 42, col.456.
[80] Six canons additional to the *simplices* core refer to or quote scripture. These are exclusively from the New Testament and their primary function is justificatory.
[81] *Merseburgense B* c.12, CCSL 156, p.174.

Prüm's highly influential episcopal manual written in *c*.906.[82] The manual was an eminently practical text for bishops and it included an *ordo ad dandam penitentiam* (with interrogatory) derived from the *P. pseudo-Bedae*, an interrogatory for use in episcopal visitations, and a list of canons from diverse sources. Regino's compositional modus operandi combined a willingness to include any relevant material from the distant and recent past which he found in his sources with a willingness to make his own additions where he sought fit and, for this reason, we will return to Regino's manual as a de facto *summa* of early medieval abortion in the final pages.[83] Our immediate concern is with two of Regino's additions, both of which speak of potions (or other means) for thwarting conception. The first came in an interrogatory for use in episcopal visitations (distinct from the penitential interrogatory). In the course of such visitations, an assembly of chosen men was to answer under oath the bishop's questions about morals in the locale, among them: "Is there a man or woman (*aliquis vel aliqua*) who has done this or taught another person how to do it: [to bring it about] that a [*or* the] man cannot generate nor a [*or* the] woman conceive (*ut vir non possit generare aut femina concipere*)?" The second addition, which has come to be known as *Si aliquis*, came later, at the end of a sequence of canons on abortion and infanticide: "If someone to sate his [*or* her] lust or out of deliberate hatred has done something to a [*or* the] man or a [*or* the] woman, so that children are not born of him [*or* her] (*ut non ex eo soboles nascatur*), or has given [one of them] to drink, so that he [*or* she] cannot conceive or generate (*ut non possit generare aut concipere*), he [*or* she] is to be regarded as a murderer (*ut homicida teneatur*)".[84]

Biller draws attention to two important things. First, that the form and aim of the text creates a deceptive optical illusion. Regino appears to be operating at a rarefied clerical plane at some distance from the rather more mundane plane of 'real life'. But Biller notes textual hints that this "distance" is illusory: for instance, Regino mentioned a vernacular word which people used to describe forms of infanticide (*morth*) and outlined measures for priests to publicise a kind of amnesty whereby any women who conceived in sin and gave birth in secret could leave her child at the doors of the church rather than compound her sin with murder.[85] Second, that a notable coincidence suggests that Regino might have been responding to palpable realities. A polyptych

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[82] *Measure of multitude*, pp.178-185.
[83] See Greta Austin, *Shaping Church Law around the year 1000: The Decretum of Burchard of Worms* (Farnham, 2009) pp.39-41, 51 on Regino's approach to compilation.
[84] *De synodalibus causis* II.1.9, II.88, ed. W. Hartmann, *Das Sendhandbuch des Regino von Prüm* (Darmstadt, 2004) pp.238, 292; translation from Biller, *Measure of multitude*, pp.179-80.
[85] II.1.6, II.68, pp.238, 284.

surveying the abbey of Prüm's estates has survived for 892-3, overlapping with the beginning of Regino's abbacy, which ran from 892 until his deposition in 899. Biller notes Georges Duby's use of polyptychs in his history of the early medieval peasant economy – more specifically, to Duby's conclusion that polyptychs like the Prüm polyptych point to overpopulated manses.[86] A recent study of the Prüm polyptych supports this. A manse comprised a dwelling and land "deemed sufficient to maintain a family composed of a couple and their unmarried children and often some servants or slaves", ranging from five to fifteen hectares in the Prüm polyptych. The information for the abbey's estates in the Ardennes was recorded on a manse-by-manse basis and shows that manses were regularly being halved or quartered – overpopulation in the sense that more than one family was occupying a manse. In fact, the way in which information for several other estates was recorded – taking a single manse as a model upon which to base what was owed by other manses on the estate – concealed patterns of overpopulated manses in these other estates.[87]

The fascinating coincidence – given his role as abbot Regino would almost certainly have been aware that the abbey's estates, including those in the Ardennes to the West of Prüm, were densely populated – has one more intriguing layer: the manuscript from which the *P. Hubertense* gets its name was written at the abbey of St. Hubert located in the very heart of the Ardennes. Biller's principal interest lay in identifying germinal ninth-century anticipations of 'thinking about' population for which later medieval pastoral texts provide richer pickings. But his identification of these pre-echoes also contains an important ninth-century thesis: "pastoral concern with avoiding conception, which emerged and then intensified between the early ninth century and around 900, was an alert response to patterns of sin among the flock: one sin was being committed more than it had been, in an area suffering from what we call over-population".[88]

Biller's picture is compelling, certainly in Regino's case. And yet, two questioning thoughts arise. The first concerns the compelling nature of the picture. Ostensibly, it stems from convergence between a prescriptive and documentary text. A hasty rejoinder would be to protest that this serendipitous coincidence is exceptional because of the absence of suitable documentary companions to other prescriptive texts. Such a

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[86] Georges Duby, *Rural Economy and Country Life in the Medieval West*, trans. Cynthia Paston (London, 1968) pp.12-14; Biller, *Measure of multitude*, pp.184-185 (including n.31).
[87] Yoshiki Morimoto, 'Aspects of the Early Medieval Peasant Economy as revealed in the Polyptych of Prüm', in Peter Linehan and Janet L. Nelson (eds.) *The Medieval World* (London, 2001) pp.609-612 (at p.609).
[88] *Measure of multitude*, at p.185 (italics in original).

rejoinder, however, would be to mistake Biller's rhetorical use of coincidence for the application of documentary evidence as a kind of verification test for prescriptive texts. A more subtle rejoinder, which does greater justice to Biller's approach to pastoral texts, is that one cannot even attempt to paint such a picture without texts capable of being inscribed with an "alert response to patterns of sin". As Biller has shown, thirteenth- and fourteenth-century pastoral works were open to such inscription.[89] Even if the aperture shrinks the further back one goes, Regino's *modus operandi* meant that his manual was open to the possibility of such inscription too, albeit of a fainter kind. But how much further back can one go? While not wanting to dismiss them as utterly unrelated to 'real life', it is more doubtful that the penitential and canonical texts which we have been scrutinising were on a par with Regino's manual. The formal qualities of these texts resisted, if not quite absolutely precluded, such inscription.[90]

Second, the very need for explanation along these lines may well be rooted in a historiographical perspective rather than a historical moment: or, in plainer terms, our first question is misleading. The need for explanation is the product of persuasive criticism of John Noonan's reading of the penitentials. Noonan, we recall, anachronistically and erroneously read canons on sexual sins which happened to be non-procreative (e.g. oral or anal intercourse) as condemnations of contraceptive sexual acts. A sense that condemnation of contraceptive acts was ubiquitous and almost coterminous with the penitentials' fixation upon sexual sin yielded to the sense of an astonishing lacuna, to the striking silence of the "dog not barking in the night".[91] Given the wholesale switch wrought by this justified revision, it is unsurprising that the entry of canons which unequivocally covered contraceptive acts takes on the appearance of something momentous. But it is this notion of an 'entry', of there being a space for something external to fill, which we might scrutinise.

External entry and internal development

Let us turn back to where we started. In the *P.pseudo-Bedae*, the incorporation of the telling *ut* clause (*ut non potuisses infantes habere*) was less of an 'entry' than initial appearances suggest. First, insofar as intentionality is the crucial thing in making an act contraceptive, looking for measures on contraception is effectively a search for *ut*

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[89] *Measure of multitude*, pp.185-212.
[90] Whether this is a historical or historiographical problem remains a fundamental tension in the study of early medieval pastoral texts: c.f. Payer, *Sex and the penitentials*, pp.119-120.
[91] Biller, *Measure of multitude*, pp.181-182.

clauses and, in fact, we have already encountered such *ut* clauses in references to potions, herbs and other means across a range of early medieval texts: for instance, in Caesarius' sermons (*potiones accipiat, ut iam concipere non queat*) or at Braga II (*ut non concipiat elaborat*). Curiously, the *ut* clause to which the *P. Pseudo-Bedae* bears a most remarkable resemblance comes from a different kind of text, to which we turn in the following chapter. The *ut* clause in the original form of a late sixth-century article from Salic law on jinxing fertility comes close (*unde infantes non potuerit habere*), but the one in the *Lex Salica Karolina* is almost identical (*ut infantes habere non possit*), the difference in persons (the second-person of the penitential interrogatory and the third-person of the legal article) encapsulating the differing gazes of ecclesiastical and secular law.   Second, the *catena* of sins in the relevant question from the interrogatory suggests that what was explicit outside penitentials was latent within them. As in the earliest penitentials, *maleficium* bore a threefold association (lethal, birth and aphrodisiac), while the Theodorean-derived material on semen and blood expanded upon this last aspect. These early *maleficium* canons, which spoke of 'losing' (*perdere*) or 'cheating of' (*decipere*) offspring, covered the same conceptual territory as the Salic article but in a more ambiguous manner. Through a kind of cross-pollination, the *P.pseudo-Bedae*'s allusion to contraceptive *maleficium* brought to fruition what was latent in penitential canons. By comparison, the canon found in the *P. Hubertense* (*ut non concipiat*) truly was novel. There are no early medieval precursors of this simple *ut* clause attached to a specific sexual act. That it was alien to recorded pastoral texts is reflected in its makeshift inclusion in a canon which also treated abortion and contraceptive potions with the canonical penance for abortion. The reason for its emergence is an open question, though Biller's suggestion remains a possibility.[92]

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[92] I entertain mild doubts for two reasons. First, Morimoto's analysis of the Prüm polyptych emphasises a dynamic picture of rural economies, land settlement and demographic change. Whether or not the same situation obtained in the Ardennes when the *P.Hubertense* was written – and, for sake of argument, the scribe at St. Hubert was not privy to documentary representation of such a picture in the way Regino was – is not completely certain. Second – here it is relevant that Biller's picture depends on the canon being written, not just copied, in the Ardennes – I have a lingering suspicion that the *P.Hubertense* might not represent the original form of the canon. The canon also appears in the *P.Merseburgense B* c.12, CCSL 156, p.174. This latter penitential was almost certainly younger than the *P.Hubertense*. The two works share numerous parallels but the precise relationship between them is still not clear (c.f. CCSL 156, pp.xxvii-xxix). The *P. Merseburgense B* canon is, for want of a better word, 'messier' than the *P.Hubertense*'s: *si quis...mulier* instead of *si quis*, a highly unusual two year penance instead of ten. It seems faintly implausible to me that it represents (directly or indirectly) a subsequent version of a canon whose initial form is represented by the *P. Hubertense*. It is the *P. Hubertense*'s form which has the 'feel' of a tidied canon originating perhaps in a now-lost original, which the 'messier' canon in the *P. Merseburgense B* more closely resembles.

As for our second question, the answer is in fact rather simple. A contraceptive sexual act is to thwart conception without any ontological entanglements. With a potion, herbs or *maleficium*, things were rather different. The spectre of murder intermittently haunted pronouncements on such potions ever since Caesarius had denounced 'homicidal contraception'. The strong possibility that he wrote with an acute sense of pastoral realities notwithstanding, Regino's *Si aliquis* was nonetheless a case of *plus ça change*.

There are, finally, two more penitential works which incorporated relevant *ut* clauses. Both penitentials were variations on the late eighth-century *P.Merseburgense A* found in late ninth-century manuscripts. The *P Merseburgense A* had included conventional *Voluntarie* and Ancyran canons. In these later variations, the Ancyran canon had been excised and the *Voluntarie* canon was elongated using the remnants of the Ancyran canon:

> If any woman voluntarily has an abortion, that is has done something for herself or another, so that she does not conceive or kills what has been conceived (*qualecunque causa sibi et alii, ut non concipiat aut conceptos occidat*), she should do three years of penance on bread or water. And if she has fornicated and killed what is born, she should do penance for ten years.

> If any woman voluntarily has an abortion, so that she does not conceive (*ut non concipiat*) or kills what has been conceived, she should do three years of penance on bread and water. But if she has fornicated and killed, she should do penance for ten years.[93]

In both cases, the advent of *ut non concipiat* has served to deepen the ambiguity of abortion rather than clarify the distinction with preventing conception. In the former example, Ancyra became dissociated from abortion and became the murder of a child born in sin. In the second example, Ancyra became a canon specifically tied to abortion to hide fornication. These two canons serve as microcosms of currents which ran through the ninth century. The ecclesiastical tradition on abortion fluctuated through the interplay between canonical awareness, varying moral connotations, pastoral anticipation and practical ambiguities.

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[93] V$_{23}$ c.38, W$_{10}$ c.38: these texts are printed synoptically with the *P.Merseburgense A* in CCSL 156, p.135. The former refers to a text found in Vatican City, Biblioteca Apostolica Vaticana, Vat. Lat. 5751, which dates roughly from the last quarter of the ninth-century; the latter is from Vienna, Österreichische Nationalbibliothek, Cod. lat. 2225, which dates from the turn of the tenth century: CCSL 156, pp.xliii-xlv.

The corpus of Carolingian material on abortion, principally penitential and canonical, testifies to the unprecedented integration of abortion within clerical education, pastoral ministry and delineations of the ideal Christian community. But it also testifies to the fact that this integration did not entail the conveyance of sealed, unyielding moral truths, but the negotiation of numerous factors: canonical authority, practicality, moral connotations. Even those texts which articulated guidelines for ideal ministry were marked with the fluctuations of this negotiation. Articulated ideals did not mean enacted practice – something which Carolingian bishops were all too familiar with – and a cautionary tale which warns against any presumptions comes from modern church history. In the later nineteenth and twentieth century, over decades which saw the spread of mass communication, the increasing politicisation of birth-control and the recurrent reiteration of church teachings on abortion and contraception at an official level, the norm across numerous Catholic parishes in the USA was a rarely punctuated silence on such topics in the pulpit and confessional alike.[94]

We cannot know how widely and deeply these pastoral texts penetrated the murky world of the local priest and his flock. It is safer to suppose, however, that the Carolingian priest was more likely to have been familiar – or urged to be familiar – with an ecclesiastical tradition on abortion than his predecessors; to put it more starkly, in certain dioceses after the mid ninth century, he was more likely to have been familiar with the originally localised action of late antique and early medieval Spanish councils than his sixth-century Spanish counterpart. This was, in part, because this tradition was itself a Carolingian product, the development of which owed much to Rabanus Maurus. It is also reasonable to imagine that those priests who did draw upon these texts in preparation for pastoral ministry did not end up applying unwavering moral truths about abortion, but actively negotiated a flux of connotations and ambiguities – and in this, they would have been in keeping with the pastoral texts and ecclesiastical tradition on abortion in the early medieval West.

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[94] See Leslie W. Tentler, *Catholics and Contraception: An American history* (Ithaca, 2004).

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PARADOX AND PERSPECTIVE:
ABORTION IN EARLY MEDIEVAL LAW-CODES

In these last three chapters, we will move away from the perspective of prescriptive ecclesiastical texts, without losing sight of them entirely, and examine other early medieval perspectives on abortion. Perspective is the operative word. The texts examined are eclectic – law-codes, scriptural commentaries, theological treatises, hagiographical *vitae* – and their ways of speaking about abortion ranged considerably. This range was rooted, in part, in different practices which provided different vantage-points upon abortion.

It is tempting to measure them against the yardstick of prescriptive ecclesiastical texts in a rather simplistic way in order to determine the extent to which they confirm or contradict particular moral ideas and connotations. But this is a rather constricting way of reading these eclectic texts and compromises the historicising aim of this study. To plot these perspectives along a spectrum from opposition to agreement with prescriptive ecclesiastical texts is to hypostatise a very particular sort of disagreement over abortion and, more importantly, to misconstrue the cultural backgrounds against which these prescriptive texts were produced. We will certainly encounter tensions, even profound tensions. But penitentials, canonical collections and so on were produced in cultures capable of seeing abortion in multiple perspectives, and we will attempt to understand these cultures more deeply through these other perspectives. We begin with law-codes.

EARLY MEDIEVAL LAW-CODES: PRELIMINARIES

In theory, law-codes provide the closest thing to a sustained non-ecclesiastical voice on abortion in the early medieval West. As we saw in chapter four, abortion could constitute a legally punishable offence in several ways. A woman who had an abortion could be punished; third-party abortion by means of poisons or magic (and thereby associated with anxieties over jinxing fertility), or by violence (accidental or otherwise) could be punished; accessories to abortion whether through material assistance or

interpersonal pressure, could also be punished. Other questions – for example, questions of foetal development – could complicate matters further while the rationales underlying descriptions of offences and indemnities often remained implicit. Visigothic law had come to cover abortion in all three ways through an accretion of articles including Chindaswinth's unusual pronouncement. In a sense, Visigothic law was accidentally comprehensive. In other early medieval codes, however, abortion was covered differently and no code clearly covered abortion from every angle. Together with the easily neglected difficulty of interpreting specific articles, ascertaining the significance of these differences and what they reflect about attitudes to abortion is not straightforward. Though these codes varied in origin from the sixth to ninth centuries, approaching them against a Carolingian background helps to illuminate important problems in deciphering attitudes to abortion and the relation between legal and ecclesiastical treatment of abortion.

Law-codes in a Carolingian setting

Northern Germanic law-codes have often been read as codifications which primarily served ideological rather than practical ends. A great deal of Frankish legislative output "gives the impression that its purpose was simply to get something into writing that *looked* like a written law-code, more or less regardless of its actual value to judges sitting in court".[1] Carolingian rulers certainly cultivated a "lively tradition of admiration for the Christian emperors as lawgivers".[2] But this symbolic resonance does not necessarily preclude the practical ramifications of legal administration. Rosamond McKitterick and Janet Nelson have argued strongly that written law was put to practical use in the later eighth and ninth centuries, when emended versions of codes were produced, judges, counts and *missi dominici* were required to be familiar with law-books and to use them in administering justice, and possession of such books among lay and ecclesiastical figures can be demonstrated.[3]

At an assembly of dukes, counts and *legislatores*, "men skilled in the law", held at Aachen in 802, Charlemagne "had all the laws in his realm read out and each man's law

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[1] Patrick Wormald, '*Lex scripta* and *Verbum regis*: Legislation and Germanic kingship, from Euric to Cnut', in id. *Legal Culture in the Early Medieval West: Text, image, and experience* (London, 1999) pp.1-44 (at p.13, italics in original); see too id. 'The *Leges barbarorum*: Law and ethnicity in the post-Roman West', in Hans-Werner Goetz et al. (eds.) *Regna and Gentes: The relationship between late antique and early medieval peoples and kingdoms in the transformation of the Roman world* (Leiden, 2003) pp.21-54.
[2] Janet Nelson, 'The Christian Roman emperors in the Carolingian world', in id. *The Frankish World, 750-900* (London, 1996) pp.90-92 (at p.91).
[3] See Rosamond McKitterick, *The Carolingians and the Written Word* (Cambridge, 1989) pp.23-75 and Janet L. Nelson, 'Literacy in Carolingian Government', reprinted in id. *The Frankish world 750-900*, pp.1-36.

read out to him and emended wherever necessary and the emended law written down". Judges had to "judge in accordance with what was written (*per scriptum*)".[4] This endorsement of personality of law catalysed legal practice and a situation of legal pluralism. The most significant source for practical interest in written law, the manuscripts themselves, reveals that different kinds of reader were familiar with multiple codes in various contexts. In her inventory of manuscripts containing the *Lex Salica*, McKitterick identifies three broad categories: law-books, in which various combinations of codes were copied with the *Lex Salica*; school books; and ecclesiastical collections, which also contained canonical material. In the law-books the *Lex Salica*'s most common manuscript companions were the *Lex Ribuaria* and *Lex Alamannorum*, but it was also found with Bavarian, Burgundian, and Lombard codes.[5] We often know more about the ninth-century readership of these codes than for their original contexts of promulgation. There are, nonetheless, inevitable uncertainties. The enhanced practicality of written law must be qualified by our poor knowledge of how the actual processes of customary law, judicial norms and procedures of dispute might have dealt with a subject like abortion as well as by regional differences. Surviving accounts of disputes over property suggest what should at any rate be obvious: written law represented principles of adjudication, culpability and compensation in a highly condensed form.[6]

This inevitably complicates any comparison between legal and ecclesiastical treatment of abortion. It is fruitful to set this question against a Carolingian background: first, because comparison of multiple texts reflects a situation of legal pluralism; second, because we can consider certain developments over time; and, third, because of a practical context about which we have some knowledge. An overarching question can be put in terms of what Patrick Wormald called the "central paradox of Carolingian law-giving". Alongside "all possible deference to the *leges*" came a "massive output" of edicts which were "by and large ecclesiastical in tone". "[I]t seems to have struck no legislator as unacceptably anomalous," he noted, "that capitularies were declaring homicide to be an unacceptable blot on a God-fearing and Bible-reading society, while the repeatedly

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[4] *Annales Laureshamenses* a°802, MGH SS 1, p.39: translation in P.D. King, *Charlemagne: Translated sources* (Kendall, 1987) p.145.
[5] *Carolingians and the written word*, pp.46-55.
[6] Janet L. Nelson, 'Dispute Settlement in Carolingian West Francia', reprinted in id. *The Frankish world, 750-900*, pp.51-74 analyses accounts of disputes.

endorsed *leges* continued to provide blithely for the rhythms of personal vengeance".[7] Admittedly, no royal capitularies covered abortion, though all manner of ecclesiastical texts did including, as we have seen some which emanated from the Carolingian political centre. Were treatments of abortion circulating in the law-books another manifestation of the "central paradox of Carolingian law-giving"? If so, this was a paradox in which the church acquiesced. It was unthinkingly perpetuated across ecclesiastical scriptoria like the one in Cologne, which produced copies of several canonical collections (the *Dionysio-Hadriana*, *Dacheriana* and *Canones Hibernenses*) alongside the *Lex Salica* and *Lex Ribuaria* under the direction of the bishop and sometime courtier Hildebald in the decades around the turn of the ninth century.[8]

ARTICLES ON ABORTION: FIVE EXAMPLES

To answer this, we turn first to articles in codes of diverse origins which were circulating in some form or other in the late eighth and ninth century, with occasional illustrative detours.

Example one: Lex Salica

In *c*.802, the *Lex Salica Karolina*, an emended Carolingian version of Salic law, was produced under Charlemagne's auspices. This is the redaction of Salic law which has survived in well over 60 copies (54 from the ninth or tenth centuries) and greatly outnumbers earlier Carolingian redactions: three have survived of the redaction originally compiled under Pippin in 751-768 (D), and six of the redaction originally compiled under Charlemagne in *c*.798 (E). The manuscript evidence suggests that the *Lex Salica Karolina* effectively came to be the "redaction sanctioned by the Carolingian king and his advisors".[9]

The *Lex Salica Karolina* contained two articles relevant to abortion.[10] The first appeared under a *capitulum* on *maleficia* and *herbae* following articles on lethal and non-lethal herbs, and casting spells through amulets or other means (XXI.1-3):

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[7] 'The *leges barbarorum*', at p.45.
[8] McKitterick, *Frankish church*, p.33, and pp. c.f. Donald A. Bullough, 'Charlemagne's 'Men of God'. Alcuin, Hildebald and Arn', in Joanna Storey (ed.) *Charlemagne: Empire and society* (Manchester, 2005) pp.142-146.
[9] McKitterick, *Carolingians and the written word*, at 41.
[10] The principal modern edition of Salic law, Augustus Eckhardt's *Pactus legis Salicae*, is misleading. Despite differences of interpretation, I am indebted to Marianne Elsakkers, 'Abortion, Poisoning, Magic, and Contraception in Eckhardt's *Pactus legis Salicae*', *Amsterdamer Beiträge zur älteren Germanistik* 57 (2002) pp.233-268 as a guide through the multiple recensions of Salic law. Eckhardt's *Pactus* is a reconstructed text, which absorbed all textual variants he encountered. The resulting text, which contains four articles on abortion, does not accurately represent any of the two surviving Merovingian redactions (A and C) or

> If anyone (*quis*) gives herbs to a woman so that she cannot have children (*ut infantes habere non possit*), [s/]he will be judged accountable to the sum of 2,500 *denarii*, or 62½ *solidi*.[11]

This sounds like something along the lines of jinxing fertility, an ambiguity which evokes the ambiguity of canons on *maleficium* in the penitentials. Marianne Elsakkers has argued that the article did "not condemn contraceptives or abortifacients but...forb[ade] preparing and administering poisons [and] endangering another person's life".[12] Like her reading of Visigothic law, this is underdetermined by the text. Distinguishing between condemning contraception or abortion *per se* and condemning the use of poisons, abortifacient or otherwise, for being dangerous is a somewhat fine distinction if such poisons were the very means of abortion. The *capitula* covered some kinds of harm, including lethal, wrought by the use of *maleficia* and *herbae*, and the final article turned to a very specific sort of harm: endangering a woman's capacity to have children. As we shall see shortly, that this was a highly valued (and vulnerable) dimension of a woman's social life is reflected in the *wergild* for women of differing reproductive status.

The second article came under a *capitulum* on special cases of murder. Compensations were listed for the murder of a boy under twelve years, "long-haired" or otherwise (600 *solidi*), cutting the hair of a *puer crinitus* without parental consent (45 *solidi*) and doing likewise to a girl (62½ *solidi*, XXVI.1-3). The next article turned to violent maltreatment of pregnant women. Beating ("battit") or killing ("occiderit") – the manuscripts oscillated between these terms – a pregnant woman warranted 700 *solidi* (XXVI.4). It was followed by an article covering abortion and infanticide:

> If anyone kills (*occiderit*) an infant in its mother's womb (*infantem in ventre matris suae*) or after its birth (*natum*), before it has a name [and] within nine nights, he will be judged accountable to the sum of 4,000 *denarii*, or 100 *solidi*.[13]

any of the three surviving Carolingian redactions (D, E and the *Lex Salica Karolina*). The *Pactus* forms the main body of the text in MGH LNG 4.1, pp.1-236. In addition, four A-recension texts (A1-4), two C-recension texts (C5-6) and an edition of the *Lex Salica Karolina* are printed synoptically beneath the main text.

[11] *Lex Salica Karolina* XXI.4, p.83. The compensations for the preceding articles were, respectively, 200, 62½ and 62½ *solidi*.

[12] 'Abortion, poisoning, magic', at p.259. It should be noted that Elsakkers' article is primarily interested in Merovingian, rather than Carolingian, recensions of Salic law, but there is no significant difference between Merovingian and Carolingian versions of the article on this point.

[13] *LSK* XXVI.5, p.91.

Subsequent articles varied the *wergild* for women according to their reproductive capacity: the *wergild* of a girl before she was able to have children was 200 *solidi*; of a woman after she had begun to have children, 600 *solidi*; and of a woman after she could no longer have children, 200 *solidi* again (XXVI.6-8). Compensation tariffs are dangerously pliable in interpretation, but the arithmetic is compelling: 100 *solidi* for the infant *in utero* added to 600 *solidi* for a childbearing woman makes up 700 *solidi* for the pregnant woman.

My reading of this article also diverges from Elsakkers', who argues that it punished abortion and early infanticide as "serious injuries or attempted murder, but not as homicide". Her reading hinges upon the 100 *solidi* compensation. First, the *wergild* for homicide of children and adults was higher, ranging from 200 to 600 *solidi*. 100 *solidi* suggests that killing a very young infant was "not considered to be homicide until the child had a name, that is, after the child has been acknowledged as a separate individual". Second, because the 100 *solidi* compensation corresponds to the compensatory tariffs for articles on wounds and debilitating injuries, the "fine for causing miscarriage [wa]s for injuries to the mother, not for killing an unborn child".[14] This correspondence is questionable.[15] So too is the notion that 100 *solidi* signalled that the offence was a form of injury or, indeed, the notion that a *wergild* was so neatly encoded with underlying moral perceptions. One need not read two distinct rationales (abortion as injury and killing an unnamed newborn as a form of non-homicidal attempted murder) within a single article if one simply follows the phrasing: killing (*occidere*) an infant *in utero* or born. The most natural reading is that 100 *solidi* simply was the *wergild* for such infants.

Example two: Lex Ribuaria

The most common companion to Salic law in Carolingian law-books, the *Lex Ribuaria* originated in seventh-century Austrasia and drew upon Merovingian versions of Salic law.[16] Its relevant article was evidently derived from the Salic article on abortion and infanticide:

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[14] 'Abortion, poisoning, magic', pp.239(including n.15)-43 (at p.243).

[15] Following the numeration in Eckhardt's *Pactus*, none of the articles on wounds (XVII.1-12) and only three of the articles on injuries (XXIX.1-18) set compensation at 100 *solidi*: injuring hands, poking out eyes or cutting off someone's nose (XXIX.1), rendering someone dumb by clipping their tongue (XXIX.15) and castration (XXIX.17).

[16] There is no counterpart to the Salic article on jinxing fertility. The Ribuarian *capitula* on *maleficium* (86.1-2) correspond to the first two articles from the Salic *capitula*: MGH LNG 3.2, p.131. The other articles (on

> If anyone kills the child in a woman (*Si quis partum in feminam interfecerit*) or born, before it has a name, he will be judged liable [to pay] 100 *solidi*. And if he kills the mother with child, he will be fined 700 *solidi*.[17]

This came at the end of articles measuring the *wergild* for murder according to ethnicity and clerical grade. The entry of clerical distinctions into the treatment of homicide exemplifies one feature in the evolving practice of written law: the increasing presence of ecclesiastical matters.[18] The Salic source article had grown out of an envisaged context of violence against a pregnant woman and was found together with articles on the murder of women of differing reproductive capacities. This concern was muted in the *Lex Ribuaria* though the relatively exalted *wergild* for a pregnant woman was replicated. But the *wergild* for the *partus in feminam* was not altogether attenuated in relation to other forms of murder: it equalled that for the murder of a Roman or an ordinary cleric.[19]

Example three: Lex Alamannorum

The *Lex Alamannorum* represents yet a later stage in the production of written law. Alamannic law possibly originated at the same time as the *Lex Ribuaria* around the beginning of the seventh century. The fragmentary *Pactus Legis Alamannorum* might approximate to these origins. A later code associated with the Alamannic duke Lantfrid was issued in the early eighth century. Compared to Salic and Ribuarian law, and also to the *Pactus Legis Alamannorum*, it bears a stronger ecclesiastical impression. An opening sequence deals with church property, asylum, and the murder of clerics, while other articles cover observing the sabbath, incest and parricide/fratricide (described as having "gone against God...and to have sinned gravely in God" and dealt with by "penance following the canons"). At the same time, much of this ecclesiastical influence has the feel of being attached onto rather than melded with pre-existing traditions of written law.[20]

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amulets and jinxing fertility) are not found in the oldest recension of Salic law and entered in a later Merovingian recension around the end of the sixth century.

[17] *Lex Rib.* 40.10, p.94.

[18] C.f. Ian Wood, 'Jural Relations among the Franks and Alamanni', in id. (ed.) *Franks and Alamanni in the Merovingian period: An ethnographic perspective* (Woodbridge, 1998) pp.219-221.

[19] *Lex Rib.* 40.3, 5, pp.92-3.

[20] Wood, 'Jural relations', pp.223-224. The article on parricide/fratricide is found in *Lex Alamannorum* (A) XL: MGH LNG 5.1, pp.99-100. This edition prints two redactions of the *Lex Alamannorum* (A and B) synoptically. There are no significant differences between these redactions insofar as the relevant articles are concerned, and for sake of ease I will quote the former. It is the opening inscription in the A-text

The two relevant portions on abortion do not show palpably ecclesiastical influence. One article represents yet another variant on the article found in Salic and Ripuarian law, with a slight shift in framing the situation: if a woman was pregnant and "through the deed of another [her] infant is born dead (*infans natus mortuus fuerit*), or if it is born alive (*vivus natus*) and does not live nine nights". There was a hint of potential controversy. Whoever was alleged (*reputatum*) to have done this either had to pay 40 *solidi* or clear himself with twelve oathswearers.[21] This article might have been fairly old, for it is found in a surviving fragment of the *Pactus legis Alamannorum* too.[22] The other relevant article is not. It covered "anyone who caused an abortion in a pregnant woman", introducing a very specific way of grading compensation:

> [If anyone does this] in such a way that you can already recognise whether it would have been male or female (*iam cognoscere possis, utrum vir an femina fuisset*): if it would have been male, he must compensate with 12 *solidi*; but if female, 24 *solidi*.

And the alternative permutation (and another hint of potential controversy):

> If it cannot be known whether [it would have been male or female], and it was not yet formed in the outlines of its body (*iam non fuit formatus in liniamenta corporis*), he should pay 12 *solidi*. If more is sought, let him clear himself with oathswearers.[23]

Unusual additions within the Salic legal tradition drew similar distinctions. A capitulary issued by Chilperic I in the late sixth century and appended to the main body of Salic law declared that anyone who struck a pregnant woman "in the stomach or kidneys with fist or foot and does not throttle out the child (*pecus*) from her but, because of this, she is weighed down almost to the point of death" was liable to pay 200 *solidi*. If the woman survived but her child did not, compensation was 100 *solidi*; if the woman herself died, 900 *solidi*; and, finally, if the infant thrown out (*infans...qui excutetur*) was a girl, a staggering and perhaps deliberately unaffordable 2,400 *solidi*.[24] This never entered the main body of Salic law, but one Merovingian redaction did include, alongside the 600 *solidi wergild* for a pregnant woman, the stipulation that, "if it can be proven that it

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which mentions the renovation of the *lex* at the time of Lantfrid; the younger B-text claims an older heritage and refers back to the time of Clothar II (584-629), p.62.

[21] *Lex Alam.* (A) LXX, p.137.

[22] *Pactus legis Alamannorum* (XII): ibid. p.24.

[23] *Lex Alamannorum* (A) LXXXVIII.1-2, pp.150-1.

[24] *Capitulare III*, CIV.4-6, 8: MGH LNG 4.1, p.260.

would have been a boy", a further 600 *solidi* were to be paid "for the boy himself".[25] The principal function of these articles was not to demarcate developmental stages *per se* or to distinguish between early and late-term abortion: indeed, the earlier article seems to envisage something later in pregnancy.[26] In the *Lex Alamannorum*, the 12 *solidi* fine applied to the visibly male *abortus* and to the *iam non formatus* alike: the female *abortus* warranted greater compensation.

Example four: Lex Baiwariorum

The *Lex Baiwariorum* was more noticeably different. Like Alamannic law, Bavarian law originated in seventh-century initiatives by Merovingian kings to provide laws for peoples under their rule. But its extant form reflects a much later code issued either by the Bavarian duke Odilo in the 740s or by his son Tassilo in the following decades.[27] The *Lex Baiwariorum* drew particularly upon Visigothic law and like Visigothic law it collected articles on abortion together, in this case under a *capitulum,* "On wives and cases which often pertain to them".

The first two articles correspond to the first two abortion articles in the *Lex Visigothorum*. The first abbreviated the Visigothic article on giving (and asking for) a *potio ad avorsum.* Originally, the penalty had been death for the giver and loss of freedom for any woman who sought such a *potio* (or the lash if she was a slavegirl). In the *Lex Baiwariorum*, capital punishment, mention of women who asked for such potions and some of the faint moral colouring were excised, and what remained was brought together. The other difference was that the Visigothic *quis* became *qua mulier*. In effect, a woman who dispensed a potion received what had been, in the *Lex Visigothorum*, the punishment for seeking it. This was, the article concluded, what the duke had ordered.[28]

The second article dealt with an abortion brought about "by any sort of blow". As in the *Lex Visigothorum*, killing the woman in question was treated as homicide. In the *Lex Baiwariorum*, however, penalties were not graded according to the *formatus/informis* distinction. Instead, one fine (20 *solidi*) applied "if up to now the child was not living (*si*

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[25] *Pactus Legis Salicae* LXVe.1, p.235. This appears to come from a now-lost Merovingian redaction (B) known only from a sixteenth-century edition which Eckhardt incorporated into his *Pactus.*

[26] *Contra* Elsakkers, 'Abortion, poisoning, magic', pp.245-8 who interprets them as articulating a moral concern with 'late-term' abortion.

[27] On the politics of ducal power in Bavaria at the time of Odilo and the interests served by promulgation and promotion of the *Lex Baiwariorum*, see Stuart Airlie, 'Narratives of Triumph and Rituals of Submission: Charlemagne's mastering of Bavaria', *Transactions of the Royal Historical Society* (sixth series) 9 (1998), esp. pp.96-98. See too Abigail Firey, *A contrite heart,* pp.182-184 on the mingling of ecclesiastical and secular law wrought by Tassilo and Bavarian bishops in *c.*750-775.

[28] "cui dux iusserit": *Lex Baiw.* VIII.XVIII, MGH LNG 5.2, p.361.

adhuc partus vivus non fuit)" and another (53 *solidi*) if it was "already living (*iam vivens fuit*)".[29] The complex permutations of free and servile perpetrators and victims were not entirely replicated, though another pair of articles used the same *vivus/non vivus* distinction to graduate abortion brought about in an *ancilla*.[30]

Before this pair, however, came an unprecedented comment on how those responsible for causing an abortion had to pay compensation. The culprit had to pay 12 *solidi* initially. Thereafter, he and his ancestors had to pay one *solidus* each year "until the seventh generation from father to sons". If payment was defaulted for any year, another 12 *solidi* had to be paid and the outlined scheme was resumed "until a reasonable series [of payments] are filled".[31] The rationale was then spelled out (in a few manuscripts, under the title, "On the longstanding (*diuturnam*) grief of the parents"):

> On this account, after the Christian religion grew in the world, our ancestors and judges have set a longstanding (*diuturnam*) compensation because the soul, once it took up flesh (*incarnationem suscepit*), although it had scarcely reached light at birth (*ad nativitatem lucem minime pervenisset*), suffers a longstanding punishment (*diuturnam poenam*), since through abortion it was handed over to hell without the sacrament of rebirth (*sine sacramento regenerationis avortivo modo tradita est ad inferos*).[32]

This was the most clearly articulated early medieval association between culpability for abortion and the question of baptism. Remarkably, it came in the explanation for a compensatory tariff for third-party abortion in a law-code. Doctrinal logic really was taken to its conclusion, for the fate of the unbaptised appears to have rendered abortion especially problematic. The procedure enacted a grim annual commemoration of the *diuturna poena* wrought upon the damned soul of the aborted and mirrored the *diuturna dolor* of the parents.

Another rare allusion to this connection, albeit between infanticide and the infernal fate of the unbaptised, was made by a churchman active in eastern Francia during the eighth century. Boniface had arrived in Bavaria in 739 and, at Odilo's invitation, had set about reorganising the Bavarian church before moving north to Thuringia in 741.[33] In 745 or 746, Boniface wrote to the Mercian king, Ethelbert. His praise for Ethelbert's

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[29] *Lex Baiw.* VIII.XIX, pp.362-3.
[30] *Lex Baiw.* VIII.XXII-XXIII, p.365.
[31] *Lex Baiw.* VIII.XX, p.363-4.
[32] *Lex Baiw.* VIII.XXI, p.364.
[33] Boniface's time in Bavaria is described by Willibold, 'Life of Saint Boniface' 7, trans. C.H. Talbot, in Thomas F.X. Noble and Thomas Head (eds.) *Soldiers of Christ: Saints and saints' lives from Late Antiquity and the early Middle Ages* (London, 1995) pp.130-131.

almsgiving and succour for widows and the poor soon gave way to a stinging rebuke of wayward morals. Boniface took Ethelbert to task for having never taken a lawful wife before turning to morals in his realm, expressing his shock at rumours of sexual crimes involving consecrated virgins. He used roughshod pagan customs encountered in the missionary field as *exempla* to embarrass the supposedly Christian Ethelbert. Bands of Saxon women, he explained, chased adulteresses with rods and knives, while the "filthiest" race of men, the Wends, revered marriage so deeply that their wives voluntarily practised a form of *sati*. Boniface even translated the commonplace admonition that illicit sex produced deformed offspring into political terms: if they acted like the Sodomites, the English would end up producing a degenerate people, neither brave in war nor steady in faith. The Saracen routs in Spain, Provence and Burgundy, he gravely warned, were punishments for these crimes. He turned back to another consequence of fornication:

> And it should be noted that beneath that crime [of fornication] lurks another immense outrage, namely murder (*homicidium*). Because, when those whores (*meretrices*), nuns or otherwise, give birth to their offspring conceived in sins (*male conceptas soboles in peccatis genuerint*), they more often than not kill them; rather than filling the churches of Christ with adoptive children, they instead fill up tombs with bodies and hell with wretched souls (*sed tumulos corporibus et inferos miseris animabus satiantes*).[34]

Boniface's letter displays, once again, that child-murder could be deeply entangled with sexual sin in the ecclesiastical moral imaginary. It is possible that churchmen in mid eighth-century eastern Francia were making this connection between abortion, infanticide and baptism, and that this left its mark upon the *Lex Baiwariorum*.[35]

Example five: Lex Frisionum

Prima facie, the outline of compensatory norms in the enigmatic *Lex Frisionum*, at least as it is conventionally read, appears to demonstrate an opposite tendency. It contained a provision which appears to enshrine a 'pagan' custom decidedly at odds

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[34] Ep.72, MGH Epistolae Merowingici et Karolini Aevi I, p.343.

[35] The other clear reference to this connection is putatively from late eighth-century Milan, but suffers from a problematic dating. The foundational charter for a foundling home in Milan established by a certain Datheus in 787 refers to the problem of children conceived in sin. Since those who conceive adulterously fear public disclosure of their sin, "they kill tender foetuses (*fetos teneros necant*) and send these little ones (*parvulos*) to hell without the bath of baptism because they find no place where they can keep them alive": quoted in Lecky, *History of European morals* II at p.25 from L. Muratori, *Antiquitates italicae medii aevi* (Milan 1730) III.587. Boswell, *Kindness of strangers*, p.225n.158 argues that it was written much later on grounds of the Latinity and the lack of evidence for a foundling hospital in Milan until centuries later.

with ecclesiastical norms on child-murder. The *Lex Frisionum* was written up at Charlemagne's request either in the very early ninth century as part of the same legal initiative to which the Aachen synod testifies, or otherwise in the latter part of the eighth century. Unlike the other codes surveyed, evidence of its practical use is almost non-existent, for no manuscript has survived. In fact, the *Lex Frisionum* was not a promulgated code but documentation compiled in preparation for a code, which was either not forthcoming or has not survived, though we do know that both Charlemagne and Louis the Pious were troubled by Frisian recourse to the feud as the preferred means of settling disputes, a cultural habit which both tried to curb.[36] The text was an odd mixture. Some measures represent royal imperatives, like those specifying payment of *wergild* to the king in the case of a fornicating woman, perjury, or fratricide in the case of no heirs or immediate relatives (i.e. parents or other siblings). The text also contains a few ecclesiastical rules such as fines for not observing Sunday rest.[37] A large number of provisions evidently stemmed from Frisian judicial traditions and the final measure even described the consequences of despoiling a temple. The offender was led to the seashore and, after his ears were clipped and he had been castrated, he was sacrificed to the gods whose temple he had desecrated. Thereafter, the text simply ended on a note of incompletion or even exasperation: "Hęc hactenus".[38]

The relevant provision came under a section on those who could be killed without compensation. A list which included duellists, adulterers, thieves and arsonists caught *in flagrante delicto* culminated in the "infant taken out of the womb and killed by its mother (*infans ab utero sublatus et enecatus a matre*)".[39] *Enecatus* could denote something like smothering or strangling, yet *ab utero sublatus* sounds like deliberately extracting the infant from the womb. This hint at a convention which afforded the social space for abortion and infanticide complements a comment in the mid ninth-century *vita* of the Frisian bishop Liudger (d.809) which deliberately contrasted such 'pagan' custom with Christian religion.[40] Liudger's mother, Liafburg, had a pagan grandmother who had "completely renounced the Catholic faith". Angered that her daughter-in-law gave birth only to girls, she sent men to seize the newborn from her mother's lap before she took

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[36] Nikolaas E. Algra, 'The *Lex Frisionum*: The Genesis of a Legalized Life', in F.J.M. Feldbrugge ed. *The Law's Beginning* (Leiden, 2003) pp.77-92 provides an overview.

[37] *Lex Frisionim* IX.1, X.1, XI.2, XVIII.1-2, MGH Fontes iuris Germanici antiqui 12, pp.48, 52, 64.

[38] *Additio* XI.1, p.102. Algra, '*Lex Frisionum*', p.78 translates: "I am heartily sick of it, I am cheesed off with it".

[39] *Lex Fris.* V.1, p.46.

[40] C.f. Boswell, *Kindness of strangers*, p.211.

milk "because this was the custom of the pagans (*mos...paganorum*)", to kill their offspring before they took any food.[41]

But the exasperated men charged with preparing the *Lex Frisionum* did not quite leave the matter there. They added another stipulation to the compensatory exemptions: "And if any woman (*quaelibet foemina*) has done this, she should pay her [own?] *wergild* (*suam leudam*) to the king; and if she denies it, let her swear with five [oathswearers]".[42] The mention of payment to the king strongly suggests that this was a Carolingian initiative, an addendum to the Frisian custom which had been documented. But there is a crucial ambiguity regarding the culprit because *quaelibet foemina* could in theory refer to the afore-mentioned mother or to another woman (i.e. third party abortion). If it denoted another woman, the preceding convention would remain intact, almost as a kind of maternal right to abortion or infanticide. We will return to this ostensible ambiguity below.

ABORTION AND THE LIMITS OF EARLY MEDIEVAL LAW

The problem of reading attitudes

Was abortion, then, another manifestation of the "paradox of Carolingian law-giving"? The first thing to note is that the rationales, moral suppositions and social realities underlying legal treatments of abortion are more elusive than we are perhaps inclined to admit. In seeking to identify these rationales, historians must navigate the danger of imposing an alien clarity.

A good example concerns the *wergild* for the *infans* or *partus*. Broadly, the compensation for abortion and infanticide tended to be lower than that for other forms of murder, a tendency mirrored by penances in the penitentials. The temptation is to use the calibration of compensations as a key to unlock underlying rationales. There is some scope for this, of course, but it is limited. The calibration of *wergild* did not transcribe the moral status of foetuses and infants into monetary terms. (It is worth recalling that the *Lex Baiwariorum*'s compensation made a resonant moral point primarily because of its form and not its amount). A simple *reductio ad absurdum* clarifies this. If the broader tendency of relatively lower *wergild* gives sufficient grounds to conclude that the *infans* was not considered 'human' (or abortion and infanticide not 'homicidal'), then the

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[41] *Vita Liudgeri* 6, MGH SS 2, p.406. The exposed infant was, of course, subsequently rescued.
[42] *Lex Fris* V.2, p.46. Boswell does not mention this.

calibration in the *Lex Ribuaria* gives sufficient grounds to conclude that the *infans* was considered as 'human' as an ordinary cleric or Roman.

That is not to say that we cannot make any sense of the broader tendency whatsoever. Perhaps the mistake lies in reading the *wergild* in language shaped by modern abortion debates rather than as a reflection of social relations. Anthropology suggests that social relations are seminal in the unfolding of 'personhood' at life's infancy.[43] Infants and even foetuses are ambiguous, liminal beings not simply because they have scarcely passed over the threshold of life, but because they have scarcely passed over the thresholds of families and communities. The reference to naming and nine nights in several articles evokes rituals of early infancy. Such rituals establish an infant in relation to a family and broader community.[44] Across different societies the performance of such rituals and the importance of other symbolic markers that plot the unfolding of an infant's social persona occur over varying spans of time, which is another way of saying that becoming a social being varies (unsurprisingly) across societies. These symbolic markers can even precede birth. Indeed, in the Old Testament story of Hannah's conception of Samuel, which provided the template for numerous saintly conceptions in hagiography and the scriptural warrant for child oblation, the unfolding began before conception.[45] The crucial point is: as this persona unfolds, parents, families and communities do not come to recognise fledgling life as a separate individual; they come to embrace the infant as one of their own precisely by embracing their relation, their tie, to the infant. Without establishing the ties that bind, the infant is liminal precisely because it is not established in relation to others – because it is, as it were, separate. Although the meanings of the Old German glosses found in certain Merovingian

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[43] See Wendy R. James, 'Placing the unborn: on the social recognition of new life', *Anthropology & Medicine* 7.2 (2000) pp.169-89, an anthropological critique of conceptions of 'personhood' which ignore the formative importance of social relations.

[44] Anthropological literature on this subject is vast: c.f. Jyotsna M. Kalavar, 'Hindu Samskāras: milestones of child development', in K.M. Jackson (ed.) *Rituals and patterns in children's lives* (Madison, 2005) pp.47-49; Pranee Liamputtong, 'Baby, souls, name and health: traditional and changed Rituals for a newborn infant among Hmong immigrant mothers in Australia', in id. (ed.) *Childrearing and infant care issues: a cross-cultural perspective* (New York, 2007) pp.219-220. C.f. the ancient Athenian *amphidromia*, whereby a midwife processed with a newborn around the family hearth: Cynthia Patterson, '"Not worth the rearing': the causes of infant exposure in Ancient Greece', *Transactions of the American Philological Association* 115 (1985) p.106.

[45] On scriptural bases for oblation, see de Jong, *In Samuel's image,* pp.8-12, 84-5. See chapter nine on hagiography.

recensions of Salic law are contentious, it is a curious possibility that the double-meaning of the gloss to this article is 'unnamed' and 'unborn'.[46]

Likewise, the distinctions in foetal development require similar caution. Taken together, they differed in form and function from the *XL dies* distinction in the penitentials. *XL dies* signalled problems of intention and effect at the murky beginnings of pregnancy. Roughly speaking, *formatus/non formatus* or *vivus/non vivus* distinctions signalled something later in pregnancy. Moreover, these distinctions in law-codes were identical in neither form nor function. In the *Lex Alamannorum*, the criterion gravitated around a kind of visibility and the reason for this was clear: an increased compensation applied in the case of a female *abortus*. By contrast, the *vivus/non vivus* distinction found in the *Lex Baiwariorum*, like the *formatus/informis* distinction in the *Lex Visigothorum* from which it borrowed, formed the crux of the matter in itself. But how would one know whether the *partus* was *iam vivens* or not, *formatus* or not? Acknowledging uncertainty here is more informative than rendering these distinctions perfectly intelligible by translating them into treacherously familiar terms. To treat all such distinctions as synonymous is to ignore the particularity of the cultural matrices within which they were intelligible and pertinent to specific questions.[47] It is this specificity which is crucial to understanding legal articles on abortion and how we ought to compare them to ecclesiastical canons.

Dissolving the paradox: the compensatory perspective

The most significant divergence between legal and ecclesiastical treatments of abortion lay in a legislative absence which contrasts starkly with a sustained ecclesiastical concern: with two exceptions, codes were seemingly not interested in the abortions which women sought and procured for themselves and majority of articles covered third-party abortion. If absence whispers a tacit tolerance then this divergence gives the surest hint that abortion was indeed another subject which manifests the "paradox of

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[46] "anne ando", A2 XXIIII.4, "annouuado", C6 XXIIIa.7, pp.90-1; see Elsakkers, 'Abortion, magic, poisoning', pp.250-251.

[47] This is a problem with several of Marianne Elsakkers' articles, especially 'Genre hopping', in which she surveys articles and canons in law-codes and penitentials that incorporated distinctions in foetal development and/or duration of pregnancy. Elsakkers concludes that the "Aristotelian concepts 'formed' and 'unformed' reached medieval Germanic Europe via genre hopping or genre switching [defined as] the interaction between secular and non-secular, learned and less learned genres" (at p.91). We have already seen problems with characterising any distinction in foetal development as Aristotelian in the previous chapter. On her reading, this distinction 'hopped' across from one genre to the other. While Elsakkers acknowledges differences in genres of texts, she sees across these distinctions a deeper (Aristotelian) identity: c.f. "Synonyms for 'formed' which we come across in classical and medieval texts are: quickening, animation, ensoulment, movement, sensation and life" (at p.76). But this overriding identity is highly questionable. *XL dies* is quite simply not the same kind of distinction as *iam cognoscere possis, utrum vir an femina fuisset* in either form or function.

Carolingian law-giving". Prima facie, this is plausible. But, as Alexander Murray has demonstrated in the case of sixth-century law and canons on suicide, ostensible divergence in value judgments between ecclesiastical and secular law can turn out to be a question of vantage points, of different languages, of "legislative authorities...talking about different things".[48]

While the production of written law and the scope of what written law addressed evolved, the settlement of torts and systems of compensation remained the fundamental framework. A transgressor paid compensation to a victim for injuries, or to a victim's heirs or relatives in the case of murder. This is almost tediously obvious. It is also easily forgotten. Torts created scope for disagreement between parties, effectively kin-groups, and flickers of anticipated disagreement found in some articles serve as reminders of the tediously obvious. We have seen two such flickers in the *Lex Alamannorum*. Unsurprisingly, the subjects of disagreement were the causal and intentional ambiguities of miscarriage, and the question of compensation. Whoever was alleged (*reputatum*) to have caused a child to be born dead or to die within nine nights of birth had to clear himself by oath in front of designated mediators if he wanted to avoid culpability and payment.[49] And the article which made the recognisability of foetal gender paramount insinuated that the applicability of the distinction or consequent compensation was open to disagreement insofar as it anticipated a situation in which the aggrieved party sought more compensation. Yet another flicker is discernible in a code not examined above but which also featured in some Carolingian law-books. The seventh-century Lombard king Rothari's *Edictus Langobardorum* covered the scenario in which an "infant is unintentionally (*nolendo*) killed by someone when it is in its mother's womb". The compensation procedure was carefully scaled. If she survived, the compensation for the infant would be half of the woman's value according to her rank (assuming she was freeborn). If she died, the culprit had to pay the compensation for her and for the child.

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[48] Murray, *Suicide II*, p.156. This is from Murray's preamble to an exhilarating discussion of the "surface" paradox between sixth-century Roman and canonical law on suicide (pp.154-188). It should be stressed that these two bodies of law contained two seemingly contradictory conclusions on suicide – respectively, suicide "as intrinsically innocent" and suicide "as, equally intrinsically, heinously culpable" – which are more jarringly contradictory than the differences we are discussing.

[49] We encountered a comparable allusion to this ambiguity in chapter three: in one of the Visigothic *antiquae*, a man who caused an abortion by any kind of blow paid compensation if he was recognised or known (*cognoscitur*) to have done this.

Let the feud end there, the article urged, because the culprit had acted unintentionally, the implication being, of course, that the feud might not end there.[50]

Unlike in classical and late Roman law, there was no tradition of viewing the scenario of a woman who had an abortion herself through the prism of marital rights, and this scenario did not easily fit with the customary compensatory framework. Two exceptions prove the rule. The *Lex Visigothorum* had threatened a woman who sought a *potio ad avorsum* with loss of freedom. But this was a punishment, a question of public morals, not an indemnity. The second exception, it emerges, is the addendum in the *Lex Frisionum*. The addendum, we recall, followed the exemption from paying compensation for an *infans ab utero sublatus et enecatus a matre* and stipulated that *quaelibet foemina* who did this had to pay compensation to the king. In light of the logic of compensation, it is implausible that this *foemina* envisaged another woman, a third party: why would she not have to compensate kin in the conventional way? Reading *quaelibet foemina* as the mother makes better sense of payment to the king: it did not fit into the compensatory framework and also made a moral-political assertion that the crime harmed not just the immediate victims but the social body too. Taken together, the documentation of the custom and the addendum encapsulate a moment of tension in preparing written law in the late eighth or early ninth century: those entrusted with the task of preparing a code for Frisia found a social convention sufficiently unsettling to leave a comment upon it.

Understanding these articles as borne of a specific practice also illuminates distinctions in foetal development. It is telling that where distinctions in foetal development are relatively, if not entirely, clear, they appear to have gravitated around visible criteria. Such distinctions were made in a specific practice: gauging indemnities and settling a highly particular sort of dispute. If, as we have seen, the possibility of reading attitudes into the articles is complicated, reading these distinctions as applications of unconstested criteria is similarly problematic. This loses sight of their specific function and the likelihood that a dispute over miscarriage was precisely where the question of pregnancy's inception, the causality of miscarriage, culpability of assailants and the status of foetal life would have been subject to conflict and contestation. The very fact of a distinction might have been as important as the

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[50] The article ends, "ut supra, cessante faida, eo quod nolendo fecit": *Edictus Langobardorum* 76, MGH Leges 4, p.24. A subsequent article on causing an abortion by striking a slave-girl (*Edictus Langobardorum* 334) is less detailed.

substance of a distinction in mediating such a dispute. These distinctions were principles of arbitration which could quite easily have been, in a sense, arbitrary.[51]

In sum, the majority of legal articles were borne of a very specific practice and the scenario of a woman who had an abortion herself did not 'fit' into the customary compensatory framework which underlay this practice. Seen like this, it becomes an open question whether the specific function of the distinctions deemed pertinent to gauging indemnities would have *necessarily* retained their pertinence when third-party abortion was not the issue. To whom would the possibility of recognising whether the aborted infant was male or female have been a pressing concern in the case of a woman who had an abortion herself? The pervasive absence of any measures covering maternal abortion (or, indeed, infanticide) is best seen as a blindspot stemming from the rationality of legal articles. Indeed, this blindspot even survived the one instance in which relevant moral perceptions intruded: the doctrinal logic underlying the *Lex Baiwariorum*'s compensation rendered any abortion gravely problematic but the provisions nonetheless pertained to third-party abortion alone. Given the specificity of this legal rationality, there is a danger of stretching articles in search of attitudes to (first-party) abortion.

The mutability of law-codes

In sum, law-codes provided guidelines for dispute settlement and, in the main, articles on abortion were part of this practice. They reveal less about attitudes to abortion *tout court* than they do about the possibility for social conflict arising from miscarriage. There is one further piece of the broader picture which complicates the way in which we understand legal traditions in relation to ecclesiastical traditions.

Marianne Elsakkers has used the relation between law-codes and ecclesiastical texts to present a bipartite picture of early medieval attitudes to abortion: a 'hardline' view, which was utterly opposed to abortion or any interference with conception (e.g. Caesarius, Spanish councils) constrasted with a softer view which was 'tolerant' of early abortion. This latter view was exemplified by early medieval law-codes and also in penitentials which incorporated *XL dies*. (In effect, making a distinction in foetal development bespeaks 'tolerance' or a softer stance).[52] In addition, legal articles on

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[51] Comparative material supports this picture of abortion by assault as a context of intricate dispute: see Sara M. Butler, 'Abortion by Assault: Violence against pregnant women in thirteenth- and fourteenth-century England', *Journal of Women's History* 17.4 (2005) pp.9-31.

[52] This is the picture one gains from reading her articles; the best example is 'Genre hopping', pp.90-91.

abortion were generally more concerned with women's health than with abortion per se.[53] We have seen that there are problems to components of this picture: for instance, foetal distinctions were doing rather different work in penitential canons and legal articles. But, we might also question the stability of this broader picture: the relationship between church and law was susceptible to change.

In chapter four, we saw this happen with the *Lex Visigothorum*. Chindaswinth's rescript was added to layers of older articles and, in the process, the significance of these older articles was transfigured. Other law-codes were not marked with such conspicuous denunciations of abortion. Certainly in a Carolingian context, older law-codes were relatively insulated from change because of a cultivated traditionalism, a sense of the importance of "maintain[ing] the integrity of the traditions that [a] *Lex* symbolized".[54] The emendators behind the *Lex Salica Karolina* clearly read their sources carefully, but they did not make glaring alterations. Their source for the first article (on jinxing fertility) described the perpetrator and victim in an unusual way: "any woman (*quis mulier altera*) who wrought magic upon another woman (*mulieri*) so that [etc]".[55] This was the only article in the whole of Salic law identifying women as perpetrator and victim and might offer a glimpse of "Frankish women amongst themselves, of the world of *secreta mulierum*, where women, who were knowledgeable about *maleficia*, prepare abortifacients and contraceptives for other women".[56] The emendators behind the *Lex Salica Karolina* changed *quis mulier altera* to *quis*.[57] The second article was scarcely changed either. Indeed, in *longue durée,* one really sees accretions of clarifications. It is possible that in its earliest incarnation this article only covered abortion. One version of the earliest redaction had an article on killing a pregnant woman followed by one on killing the infant in the womb, with no mention of birth. The other three versions of the earliest redaction added "or before it has a name".[58] A later Merovingian redaction added "within nine nights".[59] Finally, in the *Lex Salica*, the infanticidal permutation was further clarified with *natum*.

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[53] As we have seen in discussions of Visigothic *antiquae* in chapter four and the *Lex Salica Karolina*, above.
[54] Wormald, '*Leges barbarorum*', at p.40.
[55] C5 XVIII.4, p.83. An English translation naturally transfers the adjective *altera* from *mulier* to *mulieri*.
[56] Elsakkers, 'Abortion, poisoning, magic', pp.258-259.
[57] This alteration was also made in the earlier Carolingian recensions but with different orthography and grammatical sloppiness: D XXV.3, E XXIV.3, MGH LNG 4.2, pp.66-7. Whether or not these were made independently is unclear.
[58] C.f. A4 XXIIII.5-6 and the other three A texts: ibid.
[59] C5 XXIII.4-5, C6 XXIIIa.6-7: ibid. 91.

At the same time, however, younger codes *were* more open to inscription with ecclesiastical priorities. The key examples are the editorial comment in the *Lex Frisionum* and the reference to eternal perdition in the *Lex Baiwariorum*. The *Lex Baiwariorum* is particularly instructive. In reality, the article injected a wholly novel rationale into a sequence of more conventional articles. But it was presented as a venerable ancestral judgment and the result was a kind of invented tradition. This strongly suggests that conceptions of the scope of the law were subject to change – the meaning of articles were not immutably sealed.

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The varied Carolingian readership of these codes is significant. This readership cut across the lay-clerical divide and clerical readers brought other forces and perspectives to these texts. Arno, the late eighth-century bishop of Salzburg, evidently cultivated expertise in ecclesiastical and secular law, in the latter case, the *Lex Baiwariorum*.[60] He was, we recall, probably responsible for the arrival of significant penitential texts in southern Germany and influenced the composition of the *P. Vindobense B*. Likewise, at the turn of the ninth century, Gerbald of Liège was certainly familiar with the *Lex Salica* and *Lex Ribuaria*.[61] Whatever the original framers of these *leges* thought about abortion – and their thoughts are hidden – when clerical readers like Arno and Gerbald turned to and used these same *leges* for their articles on abortion, they neither perceived nor participated in a paradox.

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[60] Firey, *A contrite heart*, pp.194-195 (including n.103).
[61] Rosamond McKitterick, *Charlemagne: The formation of a European identity* (Cambridge, 2008) pp.264-265.

8.

UNNATURAL SYMBOL
IMAGINING THE ABORSUS *IN SCRIPTURE AND THEOLOGY*

Abortion has a long history as a symbol. In the Old Testament, abortion imagery conveyed utter wretchedness, dislocation and ruin, and, in keeping with this tradition, the apostle Paul likened himself to an abortion when he encountered the risen Christ: "Last of all, as to someone untimely born, he appeared also to me. For I am the least of the apostles, unfit to be called an apostle, because I persecuted the church of God" (1 Cor. 15:8-10).[1] The NRSV's "untimely born" translates what early medieval exegetes encountered as *abortivus* or *aborsus*. This *aborsus* was literally the stillborn child, the miscarried flux, the foetus dead in the womb or the unformed and embryonic. From these literal meanings sprang a broad symbolic range: the *aborsus* stood for sin, sinners, wayward catechumens, heretics, Jews, and the earliest period in salvation history. But if the *aborsus* was an expressive symbol, it was also an elusive reality. This elusive quality, to which prescriptive texts attest in their semi-articulate way, was set in sharp relief in eschatology. Would the *aborsus* be resurrected too? Had it even been alive to count among the dead at the end of time? Such awkward questions had been addressed evasively in late antiquity and would be more coherently addressed in high medieval theology.[2] A few early medieval glimpses of these questions form another way of speaking about the *aborsus*.

In this chapter, we turn to these alternative ways of speaking about and seeing the *aborsus*. The path is not well-worn. The eschatological *aborsus* has entered histories of abortion in one highly specific way (mentioned below) while *aborsus* imagery has not. These texts were not primarily concerned with the morality of abortion; they used the

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[1] Harm W. Hollander and Gijsbert E. Van Der Hout, 'The Apostle Paul calling himself an Abortion: 1 Cor. 15:8 within the context of 1 Cor. 15:8-10', *Novum Testamentum* 38.3 (1996) pp.224-236.
[2] See Caroline Walker Bynum, 'Material Continuity, Personal Survival, and the Resurrection of the Body: A scholastic discussion in its medieval and modern contexts', *History of Religions* 30.1 (1990) pp.51-85 and Philip L. Reynolds, *Food and the Body: Some peculiar questions in high medieval theology* (Leiden, 1999) pp.44-46, 50-66.

aborsus to speak about other subjects.[3] Yet, if the prescriptive texts which we have mined are frustratingly laconic in terms of what they understood abortion to entail, the texts surveyed here spoke rather more vividly because the *aborsus* was symbolically rich and eschatologically perplexing. Rather than providing a complete archaeology of *aborsus* imagery in exegesis or a wide-ranging examination of the afterlife, the aim is to work through a miscellany of passages from eschatological works, exegesis, scriptural homilies, and letters on theological questions or disputes in order to bring to light connections, echoes and contrasts.

FRAGILE IDENTITY: ABORTIVI AT THE END OF TIME

We start at the end, or beyond the end, at the resurrection. In thinking about the perfected bodies of the resurrection, Christian eschatology encountered awkward questions. Will infants be resurrected? What will their bodies be like? What about the deformed? What about *abortivi*, the products of miscarriage or infants who died in the womb? Such questions addressed central dimensions of thought on the resurrection of the body. In Caroline Walker Bynum's words, the "resurrection of the body is always connected to divine power…[to] the extraordinary power necessary to create and recreate, to reward and punish, to bring life from death". The possibility that resurrection embraced even those who died scarcely after their lives had begun in the womb was a resonant sign of this power. But thinking about the resurrection also enacted a conceptual tension between identity and change: at the resurrection, we will be both the same as and different from our former bodily selves.[4]

The resurrection of abortive births was a potential 'hard case' in eschatology because it intensified this tension, though the tension was not problematic in all strands of Christian thought. For the fourth-century Syriac theologian Ephraim, it was creative. At

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[3] I have come across one example of concern with abortion conspicuously intruding upon scriptural interpretation in the only substantial Pauline commentary to have survived from between *c*.500-750. Formerly attributed to the North African bishop Primasius of Hadrumetum, it was in fact a sixth-century revision of a fifth-century Pelagian commentary made by Cassiodorus and the monks at Vivarium to excise any traces of offending heresies: Kevin L. Hughes, *Constructing Antichrist: Paul, biblical commentary, and the development of doctrine in the early Middle Ages* (Washington D.C., 2005) pp.117-118. Condemnation of abortion was snuck into the commentary to Paul's first letter to Timothy. At one point Paul outlined the honour due to 'true' widows (1 Tim. 5:3-10). Among other things, such a widow had to have reared children and this criterion (*Si filios educavit*) was simply glossed with the words, "and not by taking abortion, nor has she killed what has been born (*et aborsum non accipiendo, aut jam natum non occidit*)". Abortion also appeared in an earlier gloss to Paul's insistence that woman would be saved by childbearing (1 Tim. 2.15): "[that is] by nourishing, and not by killing or by aborting (*nutriendo, et non necando, nec abortiendo*)": PL 68, cols. 668a, 664b.

[4] Caroline Walker Bynum, *The Resurrection of the Body in Western Christianity, 200-1336* (New York, 1995) at p.2.

the resurrection, divine power would stretch back almost beyond the inception of life. Every *aborsus* would be resurrected as an adult, for whoever "dies in the womb of his mother and never comes to life, will be quickened at the moment [of resurrection] by [Christ] who quickens the dead". The calamity of death before childbirth would be transfigured into a celestial reunion, for where mother died with her child in the womb, "that child will at the resurrection grow up and know its mother, and she will know her child".[5] But those early medieval thinkers who turned to the resurrection inherited a very different tradition of thought, one with an important progenitor in Augustine.

Neither affirming nor denying: Augustine on the fate of abortivi

Questions about the resurrection of *abortivi*, Augustine complained, were the questions that pagans posed when they wanted to ridicule belief in the resurrection.[6] He addressed these questions in two works. A shorter treatment appeared in *De Civitate Dei*, in which he only considered *abortivi fetus* "which have already been alive in the mother's womb but have died there". He dared "neither to affirm nor to deny" that they would be resurrected. Here Augustine wavered on the scope of the resurrection rather than the nature of the *abortivi*. If the resurrection did not include all who numbered among the dead, perhaps "there will be some human souls without bodies for eternity", *abortivi* among them; but if the resurrection embraced all the dead, Augustine felt that *abortivi* (which had been alive in their mother's wombs) had to number among the resurrected.[7]

His speculation in the *Enchiridion* was different and more intricate. Augustine did not question the scope of the resurrection and found the resurrection of formed foetuses acceptable (*tolerari potest*). This is the context in which he referred to embryotomy. Certainly those infants excised from the womb lest their uterine death took their mothers' lives too had once been alive and, hence, would number among the resurrected. The question of unformed foetuses, however, was more perplexing. It was tempting to think that these *informes abortus* perished "just like seeds which have not been conceived". But "who would dare to deny, although who would dare to affirm either, that at the resurrection whatever [the unformed foetus] lacks in form will be fulfilled", thereby bringing to perfection what it would have attained in the natural course of time? But he left it to learned men to scrutinise and dispute ontological and

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[5] From Ephraim's *Sermones* III.1, ll.517-24: quoted in Bynum, *Resurrection of the body*, p.77, with pp.76-8 on Ephraim's understanding of the body and the resurrection.
[6] *City of God* XXII.12, trans. H. Bettenson (Harmondsworth, 1972) p.1052.
[7] *De Civitate Dei* XXII.13: text in Nardi, *Procurato aborto*, p.560. The fact that his doubt primarily gravitated around the scope of the resurrection is easily missed.

epistemological quandaries most meticulously (*scrupulosissime*): namely, when a human begins to live in the womb; and whether something which does not yet present itself with the movements of something living (*motibus viventis*) nonetheless has some sort of concealed life (*quaedam vita et occulta*). Initially doubtful, Augustine left the resurrection of *informes abortus* open.[8]

In neither work, incidentally, did he address the fate of *abortivi* after their resurrection. By the logic of original sin, however, the *abortivi* were beyond redemption. As he emphasised in debate with the Pelagian theologian Julian of Eclanum, when a pregnant woman was baptised, her infant was not itself baptised because it was not part of the maternal body. Since "all children of this concupiscence of the flesh, no matter whence they are born, deservedly come under the heavy yoke of the children of Adam", the unbaptised – and unbaptisable – *abortivi* could not be saved.[9]

Eschatological speculation has entered histories of abortion in interpreting Augustine's position on abortion. The reason is plain. Augustine discussed abortion (as a moral problem) in scriptural commentary, sermons and moral-theological treatises, but his eschatology, particularly in the *Enchiridion*, provides his most personal thoughts upon the question of when life begins in the womb. Curiously, those attempting to grasp Augustine's 'position' on abortion have used these speculations, and their unstable vocabulary, very differently. They are said to show that Augustine did not regard the undeveloped foetus as a 'human person' and that ultimately, without his sexual ethics, early abortion would be morally permissible; or, alternatively, that "[f]aced with human inability to ascertain when the fetus begins to live, Augustine chose to emphasize the value of all life, whether actual or potential".[10]

Such interpretations have been shaped by present concerns, for they attempt to claim Augustine for one or other position in intra-Christian debate on abortion. But the

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[8] *Enchiridion* 23.85-6: text in Nardi, *Procurato aborto*, pp.557-559. Again, the subtlety of Augustine's doubt is easily missed. Nardi, p.556 recognises it in his summary of Augustine's thought in the *Enchiridion* ("the formed foetus has a soul, is alive, is human; but the unformed foetus is an enigma: perhaps it is alive, perhaps it is not"), but even a sensitive reader like Danuta Shanzer, 'Voices and Bodies: The afterlife of the unborn', *Numen* 56.2-3 (2009) pp.348-349, does not.

[9] *Contra Julianum* 6.14.43, translation in E.A. Clark (ed.) *St. Augustine on Sex and Marriage* (Washington D.C., 1996) pp.98-99, and see Donato Ogliari, *Gratia et Certamen: The relationship between grace and free will in the discussion of Augustine with the so-called semipelagians* (Leuven, 2003) pp.68-70. This was controversial among Augustine's contemporaries: see Jeffrey A. Trumbower, *Rescue for the Dead: The posthumous salvation of non-Christians in early Christianity* (Oxford, 2003) pp.133-40. For Leibniz's interesting early modern critique of Augustine on this point, see Elmar J. Kremer, 'Leibniz and the 'Disciples of Saint Augustine' on the Fate of Infants who Die Unbaptized', in Elmar J. Kremer and Michael J. Latzer (eds.) *The Problem of Evil in Early Modern Philosophy* (Toronto, 2001) pp.119-137.

[10] Dombrowski, 'Augustine, abortion and libido crudelis', pp.151-156; Gorman, *Abortion and the early church*, pp.71-72.

Augustine who trickled down to early medieval readers was not one of these modern Augustines who can almost speak in the tongues of 'personhood' or 'sanctity of life'. At the very end of the fifth century, Gennadius of Marseilles' potted biography of Augustine referred, remarkably enough, to the resurrection of *abortivi*. After alluding to various works (and no one could boast of having read them all) Gennadius mentioned that Augustine "wrote with the same sincerity on the resurrection of the dead; he left his uncertainty (*dubitationem*) about *abortivi* to less capable men".[11] When a pair of Visigothic bishops addressed such questions in the seventh century, it was this wavering Augustine with whom they were familiar, and because this Augustine wavered, they used him rather differently.

Resurrection of the damned: Julian of Toledo

One example comes from the *Prognosticon*, the highly influential anthology of patristic statements on death, resurrection, judgment, heaven and hell written by Julian of Toledo in 688/9.[12] A portion of the third book addressed the resurrection, ranging from general principles (e.g. the resurrection pertains to all the dead) to specific problems (e.g. the resurrection of deformed bodies). One section covered *abortivi fetus* introduced with Julian's own *précis* of the central issue: "If it can be ascertained when man begins to live in his mother's womb, then it can be truly determined that what was able to die, that is has life and can die, is restored at the time of the resurrection".

Noting Augustine's hesitancy (*non tam disserens quam proponens*), Julian quoted a statement from the *Enchiridion* enunciating this same principle. He ended with a quotation from Julian Pomerius, which spelt out something unmentioned in Augustine's speculation: "Indeed, those who are thrown forth from the womb, provided that they were once alive, will be resurrected not for judgment but for punishment; because they were condemned by the sin of Adam, they are not absolved from the bonds of their damnation". The quotation concluded jarringly with a reiteration that infants who had

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[11] *De scriptoribus ecclesiasticis* 38, PL 58, cols. 1079-1080. The resurrection of *abortivi* also featured with Gennadius' approval in the potted biography of the little known Tyconius, a Donatist writer contemporary with Augustine and whose eschatology influenced Augustine's. Tyconius argued that all will be raised up in a single resurrection, which embraced the just and unjust, and even the *abortivi deformati* (judging from Augustine's use elsewhere, this means "unformed"): ibid. 18, col. 1071. Gennadius' own summary of resurrection and final judgment: *De ecclesiasticis dogmatis* 6, PL 58, cols. 982-983. Aula Fredriksen, 'Tyconius and Augustine on the Apocalypse', in R.K. Emmerson and B. McGinn (eds.) *The Apocalypse in the Middle Ages* (Ithaca, 1992) pp.20-37 clarifies Tyconius' influence upon Augustine's eschatology.
[12] J.N. Hillgarth, 'St. Julian of Toledo in the Middle Ages', *Journal of the Warburg and Courtauld Institutes* 21.1/2 (1958) pp.15-20. In the twelfth century, Peter Lombard used the *Prognosticon* as a source for the relevant portion of his *Sentences*: Bynum, *Resurrection of the body*, pp.121-122.

been deprived of life in the womb or after birth would be resurrected at the age at which they would have attained perfection.[13] This unravelled the logic of original sin: if resurrected, the unbaptised *abortivi* would rise up in the perfected bodies of the damned.

Julian's summary carefully underlined the relevant principles. Resurrection pertained to all the dead, entailed bodily perfection and was open to anyone who had ever been alive, however fleetingly. Doctrinal concision quietly absorbed the practical ambiguity of when life begins in the womb.

Abortion and superfluity: Braulio of Saragossa

Another perspective comes from the pen of a Visigothic bishop writing a few decades earlier. In 649/50, Braulio of Saragossa responded to a (now lost) letter from the abbot Taius, who had expressed concerns about the authenticity of a very specific kind of relic, the blood of Christ. Jerome had once written about a column at Jerusalem spattered with Christ's blood and this perplexed Taius. What was this blood doing there? Was Christ's blood not restored to him at the resurrection, and would our blood not be restored either? The question was not eccentric. As Caroline Walker Bynum has shown, relic cult was an important catalyst for thought on the resurrection from the later fourth and early fifth century. In a world of relics, it seemed repugnant that a "mere fragment" or "tiny bit" of a saint which held such power on earth would not be restored at the resurrection.[14]

In reply, Braulio demonstrated his familiarity with the relevant portions of *De Civitate Dei* and *Enchiridion*, claiming not to "believe or expect otherwise than what has been expressed with prudent thought and elegant language by St. Augustine in several of his works". He had not gone to the trouble of seeking out these works because it was clear from his original letter that Taius had them at hand. Drawing on Augustine, Braulio sought to reassure Taius. He drew attention, of course, to Christ's blood in the Eucharist. But he also stressed the divine aesthetics of the resurrection, by which "nothing restored to the saints will be without beauty (*nulla indecora*)". There was no problem in assuming that superfluous parts (he referred to Augustine's discussion of nail clippings) would not be taken up in our resurrected bodies, for instance the

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[13] *Prognosticon futuri saeculi* III.27, ed. J.N. Hillgarth, CCSL 115 (Turnhout, 1976) pp.100-101. This is sometimes forgotten in reading Augustine's thought on the resurrection: see, for example, Jones, *Soul of the embryo*, p.228 who assumes that such speculations were attempts to imagine the celestial body.

[14] *Resurrection of the body*, pp.104-8 (at 106). Bynum notes Braulio's letter for the relic cult context at pp.107-8n.179 and also in her more recent discussion of debate over blood relics in the thirteenth to fifteenth centuries: *Wonderful Blood: Theology and practice in late medieval Northern Germany and beyond* (Philadelphia, 2007) pp.96-111 (pp.96-97).

"superfluous humours by which corruptions are born and vices generated". Ironically, the superfluous questions which superstitious people posed gave examples of other superfluous parts and, remarkably (for this was far from faithful to Augustine), the *aborsus* was one such superfluity:

> But we should be cautious in this inquiry...lest we go so far as to be found superstitious; like those who put questions about aborted foetuses which have their corporeal substance from the two sexes (*de abortivis quaerunt feticibus, quae utique consistunt ex corpore utriusque sexus*); [or who ask] what can be held about menstrual blood and also the impure male fluid which in nearly every life must be discharged naturally, matters in which their superstition will be superfluous.

If Augustine had regarded some questions about the resurrection as trivialities borne of ridicule (one recalls those nail clippings), he had nonetheless been deeply troubled by the resurrection of *abortivi*. Braulio's temper was different. The *inanimatus* foetus was flux, a vile humour hardly distinct from menstrual blood or semen, a something which scarcely merited being called a something. He used the unpleasant superfluities of semen and miscarriage to ram home his point about the relics of Christ's blood:

> Why should it not be believed that human blood is drawn off and perishes when the humour of generation and blood, as well as the miscarriage (*aborsus*), are not restored in the resurrection to either parent, if indeed one can speak of a parent, whose disgusting fluid or inanimate foetus is poured forth (*si tamen parens jam dicendus est, cujus aut liquor foedus aut inanimatus profunditur fetus*)? But there are some who assure us that this is the true blood of Christ which a number of people hold as relics, as you say, and that his blood was not reassumed in the resurrection of the body of the Lord, just as this blood was not reassumed.[15]

Reading Braulio and Julian together with their common source, it is clear that there was no single, unanimous account of the beginnings of life in the womb. Where Augustine was hesitant, one of his readers was evasive and the other rather more certain. If within this highly specific conceptual context informed by shared intellectual resources there was no consistent perspective on the inception of life, it is little wonder that prescriptive texts contained a diversity of semi-articulate embryological perspectives.

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[15] *Ep*.42, PL 80, cols. 687d-688d; translations adapted from *Iberian Fathers Volume 2: Braulio of Saragossa, Fructosus of Braga*, trans. C.W. Barlow, FC 63 (Washington, 1969) pp.90-92.

If eschatology shied away from the *aborsus* as much as possible, it was unavoidable in scripture. Three broad tendencies appear to have characterised *aborsus* imagery within and outside exegetical texts from late antiquity. First, the *aborsus* was imperfection and prematurity, exposed or expired before being brought to perfection in the womb. Second, the *aborsus* was a state of wretchedness, of fateful dislocation (literally, *alienatus*). It was an inherently negative symbol. Third, even if flesh-and-blood miscarriage was a horrible contingency – and in his preaching Augustine had once used miscarriage as an example of how the certainty of death worked steadily through life's unknowable contingencies[16] – the *aborsus* was always ripe with significance.[17] The history of this imagery is yet to be written and it would be rash to draw conclusions on the web of affiliations and shape of developments across late antique and early medieval exegesis. Instead, we will look for relevant connections, echoes and contrasts using three focal points: a crucial moment in Gregory the Great's interpretation of the book of Job, in which Gregory highlighted a significant connotation of abortive birth; the multifarious uses of an *aborsus* image which echoed strangely with connotations of deliberate abortion; and a unique coincidence from the ninth century in the form of Rabanus Maurus' exegetical and theological writings, which allow us to hear an early medieval churchman active in propagating canonical precedent on abortion speak about the *aborsus*.

Gregory the Great on Job's curse

Gregory the Great's *Moralia in Iob* contains an unusually creative interaction with scriptural *aborsus* imagery. In the fourth book, he turned to the third chapter of the book of Job, in which Job thrice cursed his birth and survival in the womb. With exegetical creativity Gregory moved far away from the literal meanings of these curses. But, more significantly, he used the literal meaning of these curses as the paradigmatic example of scriptural words which needed to be read beyond the letter. Given his intricate approach

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[16] "Sola mors et certa...Conceptus est puer, forte nascitur, forte aborsum facit": *Sermo* [*de scripturis*] 97.3, PL 38.

[17] For examples, see Augustine on Psalm 58:3, *Enarrationes in Psalmos*, PL 36, cols.677-679, Jerome on Job 3:1-4, 16, *Commentaria in librum Job*, PL 26, cols.642b-c, 625c-626a, and Alcuin on Ecclesiastes 6:1-6, *Commentaria super Ecclesiasten,* PL 100, 691c-692d .

to understanding scripture, understanding the significance of Gregory's words requires a certain intricacy too.[18]

Gregory gave interpretations of Job's curses throughout the fourth book and, in each case, drew deep allegorical or tropological (moral) significance. For example, one curse ("Why did I not die in the womb? Why did I not perish upon leaving the womb? Why was I taken up on knees? Why suckled with breasts?" Job 3:11-12)[19] held a double tropological meaning. These four moments at the beginning of life, from beginnings in the womb to suckling in infancy, denoted four stages by which sin was perpetrated in the heart (suggestion, pleasure, consent and audacity to justify one's action); and four stages by which sin was consummated in action (secretly, openly, increasingly, and habitually). The "womb of conception" was the "tongue of evil suggestion" and the site of secret sin which "hides guilt in darkness".[20] A little later, another curse ("Or why did I not cease to be like a concealed *abortivus*; or like those conceived who never see the light", Job 3.16)[21] became an allegorical periodisation of salvation history. The *abortivus*, "born before the full period [and] immediately hidden away at death", represented salvation history in its most embryonic form, the age of Abraham and Noah, who "died, as it were, from the womb" insofar as they lived before the advent of the Mosaic law. They were "concealed" like an *abortivus* because the "great part of humankind is hidden" in this unknowable past. Similarly, the *concepti* who never saw the light had been conceived by God through the law but had not lived to see the light of Christ's incarnation.[22]

These interpretations were far removed from any literal sense of the *aborsus* and this was typical of the *Moralia*. But, the fourth book was especially important in establishing Gregory's approach to reading scripture and, at the very beginning of the book, he spelt out this methodology. If someone looked at scripture and neglected the "sensibility of the sacred word", he would end up "confounding himself with uncertainty". Why? Because the "words sometimes contradict themselves in their literal meaning". One had to go beyond the letter. Contradictory words "point the reader to the understanding of a

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[18] On Gregory's idiosyncratic approach to scriptural meaning, see Beryl Smalley, *The Study of the Bible in the Middle Ages* (Notre Dame, 1978) pp.32-36, Henri de Lubac, *Medieval Exegesis, volume 1: The four senses of scripture* (Edinburgh, 1998) pp.132-134 and G.R. Evans, *The Thought of Gregory the Great* (Cambridge, 1986) pp.87-96.

[19] "Quare non in vulva mortuus sum; egressus ex utero non statim perii? cur exceptus genibus? cur lactatus uberibus?"

[20] *Moralia* IV.27.49-51, PL 75, cols.661a-662d.

[21] "Aut sicut abortivum absconditum non subsisterem: vel qui concepi non viderunt lucem." Here and below I translate from Job 3 as it is quoted in the *Moralia*.

[22] *Moralia* IV.32.63-4, cols. 671b-672b.

truth"; the dissonance of words in their outer sense was a sign that the reader had to delve deeper for their inner sense.[23]

This was a crucial demonstrative moment in the *Moralia*.[24] *Ecce*, Gregory immediately urged, how holy Job cursed the day of his birth: "Let the day perish when I was born, and the night in which it was said: a man has been conceived" (Job 3:3).[25] Gregory showed that, at the surface, "one cannot find more reprehensible words than these" in two ways. The first was rather pedantic. The curse made no sense because one cannot undo the past (thereby "reprehensible" because senseless and irrational).[26] For the second demonstration, Gregory quoted Job 3:11-12 for support and then elaborated what was rather more viscerally "reprehensible":

> But if [Job] had died immediately upon leaving the womb, was it conceivable to him that he deserved reward for this same death? Do the *abortivi* enjoy eternal rest? Whoever is not set free by the water of rebirth is held guilty, bound by the original bond. Now what the water of baptism effects for us, in days gone by faith alone did for infants, or the virtue of sacrifice for adults, or the witness of circumcision for those descended from Abraham's line.

Here Gregory quoted Psalm 51:5 and John 3:5 as scriptural warrants for original sin and punishment of the unbaptised before continuing:

> How, then, does he desire his own death in the womb, and expect to have been able to find rest in the boon of his own death, when it is certain that [eternal] rest would not have received him from life if the sacraments of divine knowledge had in no way freed him from original sin?[27]

Job's curse demonstrated the confusion wrought by reading scripture without the "sensibility of the sacred word", while the spiritually inspired distance from the literal in Gregory's allegorical and tropological interpretations showed how the most "reprehensible" words in scripture ought to be read. For our purposes, it is Gregory's construal of the literal dissonance of the curse which is intriguing. As he reiterated before his tropological reading of Job 3:11-12, "far be it from us to believe that holy Job, so gifted with spiritual knowledge...should have wished that he had died as an

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[23] *Moralia* IV.1.1, cols.633a-634b.
[24] C.f. S.E. Schreiner, 'Perception in Gregory's *Moralia in Job*', *Studia Patristica* 28 (1993) pp.90-91 and Martien Parmentier, 'Job the Rebel: From the Rabbis to the church fathers', in J. Schwartz & M. Poorthuis (eds.) *Saints and Role Models in Judaism and Christianity* (Leiden, 2004) pp.240-242.
[25] "Pereat dies in qua natus sum, et nox in qua dictum est: Conceptus est homo."
[26] *Moralia* IV.1.2, cols.634b-633a.
[27] *Moralia* IV.1.3, col.635a-c.

abortivus".[28] Gregory used Job's curse as a paradigmatic example of surface contradiction because this contradiction was immediately palpable: the damnable fate of the unbaptised *abortivi* was so obvious that he could pose the rhetorical question: "Do the *abortivi* enjoy eternal rest?" For Gregory in exegesis, as for Julian of Toledo in the different context of eschatology, death in abortion connoted a stark and simple truth which was almost entirely absent from pastoral texts: to die as an *aborsus* was to die bound to original sin and destined for damnation.

Alienated from the womb: the aborsus as heretic and sinner

Gregory's use of Job's curses underlines a striking absence in prescriptive texts. But *aborsus* imagery could also reverberate with echoes of abortion as something deliberate and sinful. The most significant scriptural source for such imagery was Psalm 58:3: "Sinners are born astray from the womb, they have wandered away from the womb, they have spoken lies."[29] The late Carolingian scholar Remigius of Auxerre's reading of Psalm 58 provides a neat summary of meanings tended from this root. Through his foreknowledge God rejected some sinners, like Esau, "in their very conception". In another sense, the womb was the mother church's sacred rites, in which the *alienati* "ought to be conceived for life just like in a woman" and the Jews were alienated "from the womb of the church in which they should have been informed (*informari*) and instructed". Finally, these *alienati* were also heretics:

> By leaving the [mother church] and daring to preach [things that] they have not learned, heretics cause an abortion (*abortivum fecerunt*) before they have been formed (*formati*) and instructed in their mother. If you bear the pregnancy (*parturitionem*) of the church patiently, you will be formed (*formaris*), if impatiently, you will be thrown out, with your mother's grief, of course, but because of your wrongdoing (*excuteris dolore quidem matris, sed malo tuo*).[30]

The *aborsus* as the Jews played on notions of imperfection while the *aborsus* as the heretic also emphasised ejection from the womb. The image was not cultivated from Psalm 58 alone. A pseudo-Bedan commentary on the Pentateuch from *c*.700 used the same image, albeit with fainter connotations, to gloss Leviticus 24:10, in which a man

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[28] *Moralia* IV.27.48, col.661a.
[29] "Alienati sunt peccatores a vulva, erraverunt ab utero, locuti sunt falsa": taken from Augustine, *Enarrationes in Psalmos*, PL 36: col.677.
[30] Remigius, *Enarrationes in psalmos*, PL 131, cols.431d-432a. Remigius' use of Esau and his image of the heretic bear a resemblance to Augustine's lengthier exposition in his *Enarratio in Psalmis*, PL 36, cols.677-679. The Jewish reading, however, seems more original.

born of an Israelite woman but fathered by an Egyptian cursed God's name during a fight in the Israelites' camp: "This signifies heretics, fathered by the devil and thrown out of the womb of the mother church like an abortion (*ex utero matris ecclesiae tamquam abortivi ejecti*), who blaspheme God through false doctrine."[31] Nor was the image confined to exegesis. A fitting example comes from the complex heresy dispute in the later decades of the eighth century when the Spanish bishops Felix of Urgel and Elipandus of Toledo were accused of espousing the idea that Christ was born as a man and only subsequently 'adopted' the divine nature.[32] In a treatise attacking Felix, Paulinus of Aquileia accused his adversary of Christological inconsistency. Sometimes Felix spoke of Christ's divinity as "adoptive and nominal" and appeared to find the incarnation unintelligible: "By what authority, [Felix] says, do you preach that the human Lord was conceived and born of a woman's womb as God, when by nature he is a true man". At other times, he spoke of Christ as true God and man. Felix's constant backtracking was not borne of truthfulness, Paulinus charged, but of fear, "lest by chance he is thrown out of the womb of the holy mother church like an abortion before the light of day (*tanquam abortivus ante lucis projiciatur crepusculum*)".[33]

Paulinus' use of the image reads as a conventional metaphor for the heretic's separation from the church which erred closer to miscarriage than to deliberate abortion. Centuries earlier, comparable images reverberated more distinctly with deliberate abortion. Towards the end of his sermon to catechumens discussed in chapter three, Caesarius explained that the "womb of the mother church conceives each and every catechumen through Christ's inspiration". Catechumens had to avoid sin "lest by chance they convulse (*concutiant*) the maternal womb by their wrongdoing (*male agendo*), and their holy mother throws them forth like an abortion before the proper time of birth (*ante legitimum partum velud avorsum eos mater sancta proiciat*)".[34] Caesarius' sermon drew upon an Augustinian sermon on catechumens, which contained the same image. The mother church would give birth to these catechumens, bringing them forth into the light of faith and tending them in her lap. "Do not," warned Augustine, "let your impatience convulse (*concutere*) the maternal womb, and narrow the doors of your

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[31] Pseudo-Bede, *Commentarii in Pentateuchum*, PL 91, col.356c.
[32] John C. Cavadiani, *The Last Christology of the West: Adoptionism in Spain and Gaul, 785-820* (Philadelphia, 1993), Celia M. Chazelle, *The Crucified God in the Carolingian era: Theology and art of Christ's passion* (Cambridge, 2001) pp.52-70.
[33] *Contra Felicem* I.9, PL 99, cols.361b, 362a.
[34] *Sermo* 200.5, CCSL 104, pp.810-811. Earlier in the sermon, abortion was mentioned with other capital sins.

birth".[35] The remaining example, which we have already encountered, turned this image to yet another purpose: the monk Tarra described himself as an innocent abortion (*aborsus indemnatus*) and his slandering monastic colleagues at Cauliana were, in effect, the abortionists.

What can these multifarious images possibly tell us? First, the language and reference points varied. These were not simply rehashed quotations. And, in some cases, connotations of deliberate abortion were consciously crafted. The words in Remigius' and Caesarius' images evoked the language of prescriptive texts: *excutere/concutere, male agendo* (Ancyra), *abortivum facere* (*Voluntarie* and, in some forms, *XL dies* canons in the penitentials). Such evocation required care, of course, for a hint of self-induced abortion when the mother in question was the church would have been jarring. Thus, the heretic or sinful catechumen became, paradoxically, both the product and the cause of abortion. That this was carefully wrought becomes even clearer in comparison with one surviving example of a rather more careless (or, at least, carefree) image. It comes from the correspondence between Turibius of Astorga and pope Leo I on Priscillianism, to which we briefly turned in chapter four. Turibius wrote to Leo in 447 complaining that Galicia was swarming with heretics. The bishop's choice was plain, for "[one] either compels them to change [like] scolded [children] in the lap of a faithful parent or, [if] utterly incorrigible, [one] expels them from the association of sacred heredity like abortive births and illegitimate offspring".[36] The bizarre sound of Turibius' words stems from symbolic alignment with the perceived psychology of abortion (yet another association, incidentally, between abortion and illicit sex). Where Caesarius or Remigius took care with the connotations, Turibius was saying (to put it crudely but not altogether inaccurately) 'or else abort the bastards'.

Second, these connotations had to make sense to the varying audiences of these works (even commentaries were not secluded exercises in textual criticism, of course, but practical texts for edifying monastic and even lay audiences). They could not have resonated if miscarriage or deliberate abortion elicited squeamishness or prudery. This may appear to be a moot point. But in certain strands of modern theological thought intersecting with political debate over abortion, the *aborsus* has become the paragon of

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[35] *Sermo* 216.7, PL 39, col.1081.

[36] *Turribii epistola*, PL 54, col.693b. The sentence is a little odd and, even in broader context, it is not entirely clear what the subject of *compellit* and *expellit* is: "Eos vero, quos pravorum dogmatum virus interfecerit, aut correctos piae parentis gremio reformari compellit, aut pertinaciter contumaces, veluti abortivos partus ac non legitimam sobolem ex consortio sanctae haereditatis expellit."

innocence.[37] It is difficult to imagine this modern *aborsus* taking on the meaning of the heretic or sinner, or otherwise symbolising painful separation from the church. The uniqueness of Tarra's self-description lay in identification with the *aborsus* and characterisation of the *aborsus* as *indemnatus*. In general, however, the early medieval *aborsus* was not a holy innocent but a powerful symbol of alienation and wretchedness.

Rabanus Maurus and scripturally informed abortion

One of the most significant of all early medieval biblical scholars, Rabanus Maurus, occasionally drew upon these connotations too. It is only recently that historians have mined his exegetical and theological works as rich sources for cultural history.[38] For our purposes, if the episcopal Rabanus of the 840s and beyond took an active role in propagating conciliar precedents on abortion, the exegetical Rabanus availed himself of the scriptural *aborsus* with frequency and gusto.

In *De rerum naturis,* his theologically and scripturally laced encyclopedia, Rabanus' gloss on Psalm 58:3 complements the imagery encountered above. Rabanus began his explanation of the vulva with a verbatim borrowing from Isidore's *Etymologiae*: "*Vulva* is named as if *valva*, the door of the belly: either because it receives semen, or because the foetus proceeds from it."[39] Rabanus did not end here. Vulva "signifies inner secrets" and was also an ecclesiological metaphor: "Interior faith is the vulva of the church from which corrupted heretics bring on the mother's abortion (*aborsum matris intulerunt*)".[40]

But the most striking thread running through his exegesis was the rooting of allegory and tropology in foetal formation and abortive imperfection. When the risen Christ appeared, Paul was "like an *abortivus* because he was dead to the synagogue, born to the church", and also because the "synagogue bore him wrongly conceived and imperfect

[37] See, for example, Philippe Jobert, 'Holy Innocents in our times', in Aidan Nichols (ed.) *Abortion and Martyrdom* (Leominster, 2002) pp.120-125.

[38] Lynda Coon, "'What is the Word if not Semen?" Priestly bodies in Carolingian exegesis', in Leslie Brubaker and Julia M.H. Smith (eds.) *Gender in the Early Medieval World, East and West, 300-900* (Cambridge, 2004) pp.278-300 is especially stimulating, examining images of mystical impregnation and fecund semen in Rabanus' exegesis of Leviticus. See too Marie Ann Mayeski, "'Let Woman not Despair": Rabanus Maurus on women as prophets', *Journal of Theological Studies* 58.2 (1997) pp.237-250, Mayke de Jong, 'Exegesis for an Empress', in Cohen and de Jong (eds.) *Medieval transformations* (Leiden, 2001) pp.69-100 and Abigail Firey, 'The Letter of the Law: Carolingian exegetes and the Old Testament', in J.D. McAuliffe et al. (eds.) *With Reverence for the Word: Medieval scriptural exegesis in Judaism, Christianity, and Islam* (Oxford, 2003) pp.204-224.

[39] Isidore, *Etymologiae* X.137, ed. W.M. Lindsay (Oxford, 1911) unpaginated.

[40] *De rerum naturis*, VI.1, PL 111, col.173, with a quotation of Psalm 58:3 following immediately. On the background to the work, see William Schipper, 'The Earliest Manuscripts of Rabanus Maurus' *De Rerum Naturis*', in P. Binkley (ed.) *Pre-modern Encyclopedic Texts* (Leiden, 1997) pp.363-365.

(*male conceptum imperfectumque*)".[41] The same symbolic focus is discernible in his exegesis of the book of Numbers. During the Israelites' wandering in the desert, Aaron begged Moses to intervene on behalf of his sister Miriam, whom God had punished with leprosy for slandering Moses: "Do not let her be like something dead, like the *aborsus* thrown out of the mother's womb with half of its flesh consumed" (Numbers 12:12).[42] Aaron's entreaty, Rabanus explained, showed that "while the [Jewish] people were indeed formed (*formati*) in the womb of the mother synagogue, they would not be able to reach a proper and complete birth (*effectum et integrum partum*)". Because of sin, the people were like an "imperfect and disarranged abortion (*aborsus imperfectus et incompositus*)" which cannot be "formed into a complete birth or come alive (*vivificare*)".[43]

Most remarkably of all, foetal formation and abortive imperfection was fundamental to Rabanus' reading of Exodus 21:22-23 for tropological reasons. His commentary combined portions from Augustine and Origen with his own contributions. He began by explicating the literal meaning of the Vulgate passage (without the formed/unformed distinction in the Septuagintal versions which Augustine and Origen had commented on) in his own words ("So it seems to me"). Anyone who causes an abortion "after the seed has been conceived" had to pay a fine if she lived and was guilty of homicide if she died. But Rabanus immediately shifted to his primary interest: reading mystically. At this deeper level, the passage was about harming another's soul through neglect or deceit "after the seed of the word has been conceived". If the spiritual assailant prevented the flowering of good works but the victim still lived on in faith, penance was the fine; if the victim's soul was "killed through error" and he thereafter "persevered in faithlessness after an induced abortion (*post prolatum abortivum*), that is, deadly sin", his spiritual assailant "doubtless deserved eternal death, like any true murderer".[44]

"But it should be noted that another edition has it like this," he wrote before quoting the *vetus Latina* from Augustine. Here Rabanus reproduced a portion of Augustine's commentary:

> Here a question about the soul typically arises, namely whether something which is
> not formed should not be understood as being alive (*animatus*): and, indeed, it is not

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[41] *Homilia* 140 *in evangelia et epistolas*, PL 110, col.416a. Unlike Rabanus' other homiliary, this was sent to Lothar I in 854/5 for the emperor's own instruction: Hall, 'The early medieval sermon', p.225.
[42] "ne fiat simile morte, et ut aborsus ejectus de vulva matris. Et comedit dimidium carnis ejus."
[43] *Enarratio in librum Numerorum* II.9, PL 108, cols.665c-666a.
[44] *Commentariorum in Exodum* III.1, PL 108, cols.112c-113a.

homicide because it cannot be said to become lifeless (*nec exanimatum dici potest*) if it did not have a soul up to this point.

The *Lex talionis* punished causing the abortion of a formed foetus with an eye for an eye. For Augustine and, following him, Rabanus, this was illuminated by Christ's injunction to forgive our debtors (Matthew 7:12). "We cannot forgive debts owed to us unless we learn clearly from the law what is owed us"; therefore, "the law did not want an unformed birth (*informe puerperium*) to pertain to murder because a living soul cannot be spoken of (*nondum dici potest anima viva*) in a body which lacks sense". The point was a very subtle one which is easily misunderstood.[45] It was epistemological rather than ontological: we have to know what it is we are forgiving; and the law made this distinction precisely because we do not know ("it cannot be said") that the unformed birth is a *viva anima*.[46]

But, for Rabanus, this was merely a prelude. Augustine provided a literal introduction to a tropological reading of the *vetus Latina* text just as Rabanus' own literal explanation had to his 'mystical' reading of the Vulgate. The remainder of his interpretation – and this took up over half of his commentary on Exodus 21:22-23 – took the form of a highly complex tropological interpretation indebted to Origen. Exodus 21:22-23 became a parable for those in positions of responsibility in the church. To summarise: the unformed foetus was the catechumen who stumbles because of his teachers' quarrelling, while the formed foetus was the baptised Christian "struck by disputes among teachers" and fallen prey to Satanic apostasy. The various bodily parts mentioned in the *lex talionis* were read as different forms of harm visited upon those entrusted to teachers of the faith. The tooth, Rabanus concluded, was that by which someone was "accustomed to grind with his molars to transmit the subtle sense [of scripture] to the stomach of his soul". If a teacher damaged the tooth of one entrusted to him, his own tooth was to be removed "because he had not properly ground down the food of scripture".[47]

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[45] For example, Dombrowski, 'Augustine, abortion and libido crudelis', p.155.

[46] Cols.113b-c. This is all quoted from Rabanus, who excised certain clauses from Augustine. In original context, these clauses (italicised) make even clearer that this was an epistemological point: "If it was an unformed birth, *but hitherto animated in an unformed sort of way (adhuc quodammodo informiter animatum), because we should not hasten to the huge question of the soul in the temerity of rash thought,* the law did not want it to pertain to murder *etc.*" *Quaestiones in Exodi* 80, PL 34, col.626. Here, Augustine seems to be implying that the formed-homicidal/unformed-nonhomicidal configuration was a practical measure in the face of uncertainty. Coincidentally, this is not dissimilar to my suggestion that distinctions in foetal development in early medieval law-codes are best read as principles of arbitration in disputes rather than as laconic exercises in applied ethics.

[47] Ibid. cols.113b-114c drawing on passages from Origen, *Homilia in Exodi* X.3-4, PG 12, cols.371c-374c. The text in PG is Rufinus' translation; no Greek fragments of the *Homilia in Exodi* X have survived.

Rabanus' exegesis has implications which push in opposite directions. It further confirms that absence of distinctions in foetal development in conciliar canons on abortion cannot be anachronistically read as a rejection of such distinctions. More than any other early medieval figure, Rabanus was instrumental in solidifying awareness of these canons. But, insofar as his exegetical way of speaking about abortion was rooted in physicality, Rabanus' understanding of uterine life and death, upon which he elaborated his broad-ranging allegory and tropology, was thoroughly suffused with concepts of formation and imperfection.[48] In other words, the absence of these concepts in conciliar canons did not preclude abortion being understood through these concepts. Yet, at the same time, there is no clear early medieval evidence of a concerted effort to render understandings of what abortion entailed coherent and consistent. Tellingly, the most deeply reflective thought on this question specifically in relation to the morality of abortion took the form of an abbreviated quotation from Augustine used as a literal introduction to a mystical interpretation of scripture.

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Early medieval churchmen spoke about a diverse array of subjects through abortion and the *aborsus*. In so doing, they offer peculiar illuminations of ecclesiastical approaches to abortion. Most obviously, the inconsistent diversity of ways of negotiating the murky ambiguities of coming-into-being in the womb found in penitentials and law-codes found more eloquent counterparts in eschatology and exegesis.

Taken together, these modes of speech give rise to different senses of absence in pastoral and canonical texts. In one sense, they help to fill a gap, to supplement the laconic absence characteristic of formally constrained prescriptive texts. The connotations conveyed in eschatological conundra, creative exegesis and crafted images showcase the rich significance of abortion. Early medieval culture was not squeamish about abortion or sentimental about the perished foetus, or at least not in recognisably modern ways. The *aborsus* was not a paragon of innocence but a symbol of alienation. Speculatively, the connotations encountered in these eclectic texts might well have struck readers and users of prescriptive texts on abortion.

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[48] See Coon, 'What is the word if not semen', on the flesh-and-blood physicality of Rabanus' metaphors of priestly *semen*.

In another sense, however, these texts do not fill but expose absences in prescriptive texts. Two significant absences spring to mind: the fate of the unbaptised and the problem of when life begins in the womb. This first absence, the fate of the unbaptised, is perplexing. The damnation of abortive births was simply obvious to Gregory the Great and Julian of Toledo. Aside from the coincidence of two eighth-century Bavarian texts (the *Lex Baiwariorum* and Boniface's letter to Ethelbert), the implications of eschatology for the morality of abortion were not unravelled: if procuring or causing an abortion led to the damnation of a soul, was abortion not one of the most heinous of sins? Pointing to the proximity of canons on abortion, infanticide and parental or priestly responsibility for baptism in penitentials or acknowledgment that the very form of penitential or canonical texts resisted detailed moral-theological explication is insufficient. Scholars have grown increasingly aware of early medieval 'purgatories', but early medieval 'limbos' in the vein of Greek, later medieval or even Pelagian theology have not been unearthed.[49] In theory, the early medieval West was resolutely Augustinian on the fate of the unbaptisable unborn. But, theory did not necessarily unfold in practice.

The second absence also has the whiff of paradox. Explicit discussion about the beginning of life arose, and not entirely willingly, in two highly specific contexts: the theology of the resurrection and exegesis of Exodus 21:22-23. In moral or pastoral contexts, by contrast, we find only the tiniest relics from which we imagine that such discussions took place. This should feel paradoxical: the kind of discussion so commonly associated with contemporary debate on abortion – scrutiny of foetal capacities, 'personhood', 'individuality', beginning of life etc. – finds some resemblance in eschatology and exegesis, but not when abortion was treated as a moral problem. But it begins to make some sense when one considers how differing perspectives, or embryological gazes, were borne of different practices. To see this at its clearest, compare Braulio with Caesarius.[50] For Braulio, it was almost unintelligible to speak of parents of the abortive flux: the *inanimatus fetus* was like the impure but inevitable

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[49] C.f. Sarah Foot, 'Anglo-Saxon 'Purgatory'', *SCH* 45 (2009) pp.87-96. On eastern theological responses to the problem of unbaptised infants, see Graham Gould, 'Childhood in Eastern Patristic Thought: Some problems of theology and theological anthropology', and Jane Baum, 'The Fate of Babies Dying before Baptism in Byzantium', both in *SCH* 31 (1994) pp.39-52, 115-125.

[50] We should note that Braulio, Isidore of Seville's most renowned pupil, was almost certainly familiar with pronouncements on the abhorrence of abortion issued by Visigothic kings and bishops, and, given his editorial involvement with *Lex Visigothorum* issued by Recceswinth in 654, he might even have arranged Visigothic *antiquae* and Chindaswinth's declaration on abortion: Charles H. Lynch, *Saint Braulio: Bishop of Saragossa (631-51): His life and writings* (Washington D.C., 1938) pp.136-140.

discharge of menstruation or semen. For Caesarius, it was morally unintelligible *not* to speak of the parental, or specifically, the maternal dimension of abortion, a dimension which problematised any interference with reproduction: relationality was so important that an ontological ghost haunted even attempts to prevent conception. The differing gazes of eschatology and pastoral practice saw different things in the *aborsus*. In the thought experiments of resurrection theology, speaking of an *inanimatus fetus* literally sputtered forth in miscarriage like a nocturnal emission made sense to Braulio. In the pastoral field, such language and concepts would have entailed a form of cognitive dissonance, and the language of killing and murder, children and offspring made sense. Moreover, the ambiguous intentionality and efficacy of the means of abortion, and the entanglement with sex, further precluded a single focus on the question of life's beginnings. There was no consistent view of what abortion actually entailed in more than one sense: there were multiple views, in part, because different practices entailed distinct vantage points upon the ebb and flow of life in the womb.

MIRACLES AND RUMOURS:
EARLY MEDIEVAL REPRESENTATIONS OF ABORTION

Pastoral, legal and theological texts had distinctive ways of speaking about abortion, directly or obliquely. In this final chapter, we turn to representations of abortion in other early medieval sources and to some rather different ways of speaking about and using abortion.

If we were to move some centuries forward, we would encounter a rich range of anecdotes, details and, occasionally, full-blown stories embedded in narrative and documentary texts: for example, a wealth of court cases dealing with abortion by assault and domestic violence[1]; stories of fornication and abortion by female religious recorded in secular and ecclesiastical, serious and satirical sources[2]; tales of desperate pregnant women, doctors and midwives spared the need to resort to embryotomy by miraculous deliveries[3]; accounts of women turned suicidal after cycles of incestuous sexual abuse and desperate recourse to abortion or infanticide[4]; and, remarkably, the disturbing tale of a Jewish sorcerer who drugged his Christian servant-girl and surgically removed her uterus, possibly describing a botched abortion and certainly a testament to anti-Semitic fears, a tale which was memorialised in stained glass in thirteenth-century St.-Dié.[5]

Compared to later medieval historians, the early medieval historian is unsurprisingly impoverished. But there were some early medieval representations of abortion and these representations have not entered into histories of abortion. They are not abundant in numbers, but they are abundant in fascinating details and contexts. Most importantly, they are strange. None of them represent abortion in a 'straight' way. Our three focal points concern a saint who miraculously thwarted an abortion while still in the womb,

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[1] Sara M. Butler, 'Abortion by Assault: Violence against pregnant women in thirteenth and fourteenth-centuy England', *Journal of Women's History* 17.4 (2005) pp.9-31.

[2] Graciela S. Daichman, *Wayward Nuns in Medieval Literature* (New York, 1986) pp.56, 170n.32; Jo Ann McNamara, *Sisters in Arms: Catholic nuns through two millennia* (Cambridge, Mass. 1996) p.358; Trevor Dean, 'Fornicating with Nuns in fifteenth-century Bologna', *Journal of Medieval History* 34 (2008) pp.374-382 (esp. pp.374-375).

[3] Ronald Finucane, *The Rescue of Children: Endangered children in medieval miracles* (New York, 2000) pp.23-27.

[4] Alexander Murray, *Suicide in the Middle Ages, volume I: The violent against themselves* (Oxford, 1998) pp.264-271.

[5] Meredith P. Lillich, *Rainbow like an Emerald: Stained glass in Lorraine in the thirteenth and early fourteenth centuries* (University Park, PA., 1991) pp.80-81; Miri Rubin, 'The Person in the Form: Medieval challenges to bodily 'order'', in Sarah Kay and Miri Rubin (eds.) *Framing Medieval Bodies* (Manchester, 1994) pp.108-110.

another group of saints who miraculously performed miracles which bear unnerving resemblances to abortions, and a ridiculous, mysterious accusation of abortion in the midst of a famous ninth-century divorce case. Mentioned in passing, these stories become little more than (depending on one's taste) charming or repulsive items for an early medieval cabinet of curiosities. They may appear to be peripheral to the main business of writing about ecclesiastical traditions on abortion. But if we saturate them in context rather than pick at their tidbits, these representations are keys to historicising early medieval abortion.

FIGHTING FROM THE WOMB: VENANTIUS FORTUNATUS' VITA S. GERMANI

Our first example takes us back to a generation or so after Caesarius had illuminated abortion in the dazzling light of judgment day, when another Gallic bishop was associated with saving an aborting woman from damnation in an altogether more unusual way. The poetry and prose hagiography of Venantius Fortunatus (*c*.540-604) was filled with images of the womb, pregnancy and childbirth.[6] Fortunatus' prose *vita* which commemorated his friend, the prominent Merovingian bishop Germanus of Paris (*c*.496-576), opened with a dramatic representation of a miraculously thwarted abortion:

> Blessed Germanus, bishop of Paris, a native of the territory of Autun, was born of well-bred and respected parents, his father Eleutherius, and his mother Eusebia. Since she had conceived him in the womb within a short period after another [child], his mother, moved by womanly shame, wanted to get rid of the infant before birth; and since she could not harm him by taking a potion to throw him out in abortion, she would lie on her stomach to suffocate by her weight he whom poisons could not harm. Mother was in battle with her child, but the infant was fighting back from the womb: it was a fight between woman and womb. The mother was being struck, but the infancy was unharmed; the bundle was struggling back so that his mother would not become a parricide. So it happened that, kept safe, he emerged unscathed and rendered his mother innocent. Here was a prophecy of the future, to have performed a miracle before he even reached birth.[7]

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[6] For Fortunatus' biography, see Brian Brennan, 'The Career of Venantius Fortunatus', *Traditio* 41 (1985) pp.49-78.

[7] "Beatus igitur Germanus Parisiorum pontifex territorii Augustidunensis indigena patre Eleutherio matre quoque Eusebia honestisque honoratisque parentibus procreatus. Cuius genetrix, pro eo quod hunc post alterum intra breve spatium concepisset in utero, pudore mota muliebra, cupiebat ante partum infantem extinguere, et accepta potione, ut abortivum proiceret, dum nocere non posset, incubabat in ventre, ut pondere praefocaret, quem veneno laedere non valerent. Certabatur mater cum parvulo, renitebat infans ab utero: erat ergo pugna inter mulierem et viscera. Laedebatur matrona nec nocebatur infantia, obluctabatur sarcina ne genetrix fieret parricida. Id actum est, ut servatus incolomis ipse inlaesus procederet et matrem redderet innocentem. Erat hinc futura praenoscere ante fecisse virtutem, quam nasci contigerit." *Vita Sancti Germani* 1, MGH Auct. ant. 4.2, pp.11-12.

The passage is striking in several ways. Fortunatus vividly dramatised the attempted abortion as a "full-blown conflict between mother and son, the two fighting a contest that occurs within the arena of the womb".[8] The miraculous culmination lay not solely in survival but also in salvation: by surviving Germanus safeguarded his mother's innocence. Finally, even if she came perilously close to becoming a *parricida*, the depiction of Eusebia is enigmatic.[9]

The enigma of 'pudor'

This last point requires some elaboration. Scholars have been quick to read the opening to the *vita S.Germani* as a whisper of the burden of childrearing and desire for family planning experienced by Merovingian women.[10] Indeed, it might well be a whisper of spacing births within marriage. But it is easy to overlook Fortunatus' construal: Eusebia did not quite attempt abortion just because she had conceived another child so quickly, but because she felt moved by *muliebra pudor* after conceiving another child so quickly. Clearly Eusebia's *pudor* was not a term of approbation like the "sacred *pudor*" which, Fortunatus wrote in a paean to virginity, raises consecrated virgins to heaven.[11] Elsewhere, *pudor* denoted public shame. Fortunatus' prose *vita* of Hilary of Poitiers tells the story of two merchants who went to a church dedicated to the saint. The merchants co-owned a slab of wax which they decided to offer to St. Hilary, but one of them secretly begrudged the donation. Miraculously, the wax placed before the altar rail divided into equal halves, one of which rolled away signifying Hilary's rejection of half-hearted offerings. The miracle publicised the grudging merchant's secret resentment and he was suitably "overcome by guilt of his immense *pudor*".[12]

Eusebia's *pudor* was not entirely unrelated to the grudging merchant's: it hints at an anticipation of public shame at having conceived again so quickly. Alongside other periods of abstinence pertaining to female physiology (menstruation, pregnancy etc.), postpartum abstinence was commonly enjoined by penitentials and other early medieval texts, and perhaps Eusebia's *pudor* anticipated disclosure of impure postpartum

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[8] John Kitchen, *Saints' Lives and the Rhetoric of Gender: Male and female in Merovingian hagiography* (Oxford, 1998) p.28.
[9] Shanzer, 'Voices and bodies', p.351 mentions the *vita* as a text which "refer[s] neutrally to abortions". This downplays the implication that abortion is a murderous and grave sin, but presumably reflects this depiction.
[10] Jane Tibbetts Schulenburg, *Forgetful of their Sex: Female sanctity and society, ca. 500-1100* (Chicago, 1998) p.244, Kitchen, *Saints' lives*, p.27.
[11] *Carmina* VIII.3, ll.35-36, MGH Auct. ant. 4.1, p.182.
[12] *Liber de virtutibus sancti Hilarii* XI.30-33, MGH Auct. ant. 4.1, p.10.

intercourse.[13] Postpartum abstinence is a socio-cultural norm across many traditional societies with varying configurations (e.g. length of abstinence) and senses of 'taboo'. Such norms are based, in part, upon concerns for infant wellbeing, maternal health and paternal responsibility. They also give rise to ingrained social perceptions: in contemporary Gambia, for example, to call someone a "goat seed" child is a terrible insult to describe someone born of a mother who conceived in quick succession.[14] Historians have understandably read the penitentials' postpartum norms in terms of a specifically Christian connection between sex and impurity, but they have scarcely attempted to imagine the social experience of these norms in light of comparable norms examined in countless ethnographic studies.[15] At any rate, what has struck historians as a whisper of the need for family planning in response to the burdens of childrearing was construed by Fortunatus as an anticipated social pressure, and this construal fell short of a condemnation of motive.

Additionally, the brevity of the allusion to Eusebia's motivation heightens the ambiguity. As John Kitchen has noted, the clause, *pudore mota muliebra*, is syntactically (and, thus, conceptually) subordinate to a "circumstance (unwanted pregnancy) and a proposed course of action (abortion) intended to remove the circumstance". Fortunatus skimmed over Eusebia's motivation because giving "greater prominence to the emotional factor by elaborating on it would risk casting the mother in a sympathetic light".[16] And yet, she was not caricatured in the vein of Caesarius' villainous noblewoman. In the fleeting allusion to her motivation, Eusebia was not cast in an altogether unsympathetic light.

Fortunatus' opening juxtaposes the reiterated description of abortion as protracted uterine conflict between mother and child, a description which drew upon recognisable

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[13] Flandrin, *Temps pour embrasser*, pp.12-18. The most famous, though complicated, early medieval example is Gregory the Great's *Libellus responsionum* which also alludes to post-partum 'churching' and the impurity of marital intercourse until a child had been weaned: see Rob Meens, 'Questioning Ritual Purity: The influence of Gregory the Great's answers to Augustine's queries about childbirth, menstruation and sexuality', in Richard Gameson (ed.) *St. Augustine and the Conversion of England* (Stroud, 1999) pp.174-186. The *libellus* is complicated because Gregory offered spiritual interpretations of purity rules without quite rejecting them altogether.

[14] For theoretical and empirical discussion on the anthropology of child-spacing and postpartum abstinence, see Caroline H. Bledsoe, *Contingent Lives: Fertility, time, and aging in West Africa* (Chicago, 2002) pp.91-161 ("goat seed" insult at p.103).

[15] See, for example, Brundage, *Law, Sex, and Christian Society in Medieval Europe* (Chicago, 1987) pp.155-157. In traditional Indian society, abstinence norms for physiological and 'liturgical' reasons cut across religious groups and bear more than a passing resemblance to the sexual regimen envisaged in penitentials: Purnima Chattopadhayay-Dutt, *Loops and Roots: The conflict between official and traditional family planning in India* (New Delhi, 1995) pp.209-214. For a cross-cultural summary of postpartum abstinence, see Elizabeth Abbott, *A History of Celibacy* (Cambridge, Mass., 2001) pp.295-299.

[16] Kitchen, *Saints' lives*, pp.28-9.

connotations of abortion as a grave and murderous sin (most obviously in the reference to *parricida*), and the enigmatic depiction of a woman who resorted to abortion which was not quite written in the cadences of condemnation. To understand why an attempted abortion was represented in this way we must begin by considering dynamics in early medieval hagiography.

Prophecies and obstructions of sanctity in hagiography

Hagiographers frequently marked the inception of sanctity before birth and signalled the "special destiny" of the saint "predestined to holiness" in the manner of God's annunciation to the prophet Jeremiah: 'Before I formed you in the womb, I knew you, and before you were born I consecrated you' (Jeremiah 1:5).[17] Unusual circumstances surrounding the conception of saints were one way of signalling divine election. Parents of saints miraculously conceived after prolonged barrenness in echoes of biblical couples, though special conceptions were not entirely precluded from less respectable couplings.[18] In one *vita* of an early Irish saint, Brigit of Kildare (to whom we turn below) was conceived after a nobleman slept with his maid, much to his wife's chagrin. A druid prophesied Brigid's extraordinary future after noticing that the maid was with child and enjoined the nobleman to care for her.[19] Prophecy before birth was another way of signalling the conception of sanctity and its most striking manifestation was the pregnant woman's vision or dream. In such visions, epistemic priority lay with the women in question, but interpretation was often mediated through scripture and authorised by clerical consultation.[20] Mothers-to-be nonetheless possessed a special knowledge and played an important role in disclosing prophetic conceptions. In Gregory of Tours' *vita* of Nicetius of Lyon (d.573), which began with a quotation of Jeremiah 1:5, the saint's mother Artemia possessed this special knowledge about her son's future. In a short preface, Gregory did not quite spell out the form of the revelation but simply the fact that God "wanted to reveal it first to [his] mother". Accordingly, when her husband told Artemia that he was being sought after for the

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[17] Isabel Moreira, *Dreams, Visions, and Spiritual Authority in Merovingian Gaul* (Ithaca, 2000) pp.174-175. Moreira notes Germanus' uterine miracle as an unusual example of this "special destiny".

[18] Schulenburg, *Forgetful of their sex*, pp.222-226. C.f. *P.Vinniani* c.41, p.88, which added consolatory examples of biblical figures blessed with children after prolonged barrenness (e.g. Sarah and Abraham) to a canon prohibiting men from repudiating barren wives.

[19] *Vita prima Sanctae Brigitae* 1-2.4, trans. Seán Connelly, 'Vita prima Sanctae Brigitae: Background and historical value', *Journal of the Royal Society of Antiquaries of Ireland* 119 (1989) p.14.

[20] Isabel Moreira, 'Dreams and Divination in Early Medieval Canonical and Narrative Sources: The question of clerical control', *Catholic Historical Review* 89.4 (2003) pp.635-641 examines three unusual examples from Merovingian hagiography which capture the process by which the meaning of dreams and visions were settled by clerical consultation.

bishopric of Geneva, she begged him not to pursue it "because I carry in my womb a bishop conceived by you".[21]

Germanus' uterine miracle entailed a prophecy of sanctity which was far from unparalleled. The prophecy was not articulated through his mother, however, but was enacted against her. Here, the prophetic dynamic met with an altogether different dynamic in hagiography: familial friction. Insofar as they represented familial obligations, social conventions and secular priorities, members of a saint's family regularly appeared as obstacles to be overcome or distractions from the true path. Indeed, family members frequently warranted mention in *vitae* precisely to serve this function. Aside from a rather conventional reference to their upstanding status, the only other detail about Caesarius' parents given by his biographers was their unsympathetic incomprehension at the young Caesarius' habit of giving away his clothes to the poor.[22] As John Kitchen has noted, even if the nature of the obstacle posed by Eusebia's attempt at abortion was unique, the "fact that Fortunatus presents a parent as the hero's first opponent is entirely keeping with the...hagiographic tendency to accord the saint's kin a significant function in the narrative only when a member of the family initiates the conflict".[23] In the *vita Germani*, the extended picture of uterine conflict served a dual hagiographical function: it prophesied Germanus' sanctity and dramatised the overcoming of familial opposition. To understand the nature of Germanus' miracle and the enigmatic depiction of Eusebia, however, we must turn to a sensibility more particular to Fortunatus himself.

Saved by childbearing: the exigencies of childbirth

Like other ascetically inclined writers, Fortunatus used the ugly toils of childbearing to illuminate the beauty of consecrated virginity. The virgin was spared the dejection of being burdened with a foetus interned in her womb.[24] Similarly, Fortunatus' Hispanic contemporary, Leander of Seville counted the "weight of the pregnant womb" and mortality in childbirth in which the very "function and fruit of marriage perish" among the "primary dangers" of marriage in his *regula* dedicated to his sister, the nun

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[21] *Liber Vitae Patrum* VIII.1, MGH SRM 4.1, p.691.
[22] *Life of Caesarius* I.3, p.10.
[23] *Saints' lives*, p.29.
[24] "non premit incluso torpentia viscera fetu | aut gravefacta iacet pignore maesta suo", *Carmina* VIII.3 (the paean to virginity quoted above) ll.325-326, p.189.

Florentina.[25] Debilitating pregnancy and dangerous childbirth had long been commonplace contrasts to the fruits of virginity. Such allusions did not express sensitivity to the predicaments faced by pregnant women but highlighted the condition which the female ascetic safely left behind. But, in other contexts, something approaching sensitivity was not entirely precluded. A muted example comes in the form of a curious etymology for *effetus* proposed by Leander's more famous brother, Isidore. Literally, *effetus* meant 'foetussed-out': a woman was said to be "worn-out (*effeta*) because she is exhausted from frequent pregnancy (*frequenti fetu*), for relentless childbirth has debilitated her".[26]

Despite his glorification of virginity, Fortunatus' sensibility towards pregnancy, childbirth and motherhood was nuanced. At a symbolic and spiritual level, far from excluding maternal care, his vision of sanctity integrated it: the abbess Radegund of Poitiers, his most famous hagiographic subject, was a spiritual mother rather than a virile female ascetic.[27] Fortunatus was also sensitive to motherhood in the fleshly sense and to the sometimes grim realities of pregnancy and childbirth. His *consolatio* for the passing of Vilithuta, a young noblewoman who died in childbirth, shows a pained awareness of the dangers of pregnancy. Fortunatus' described how the grief of his addressee, her husband Dagaulf, had redoubled, for hoping to become three, Dagaulf had ended up alone. Mother and child were entwined with a "deadly fate, together each brought death to the other". But, though thwarted at the threshold of physical motherhood, through her almsgiving Vilithuta had become a "unique mother to all" and now numbered among the *felices* in heaven who had begun to "live without sin" on earth.[28] Moreover, childbearing was sanctifying. Another epitaph, which marked the death (not in childbirth) of a mother to two boys who had died young, emphasised sanctification through childbirth. A pair of twins lay in a single tomb just as they had once been "born of the same one womb". One had died in his fifth year, the other "bathed in the holy font, departed first dressed in white". But their infancy was not to be mourned, for a "blessed life" had made "sinless men" of them. The twins were now

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[25] *Regula* 1, PL 72, col.879c. Perhaps the *locus classicus* for this kind of contrast was Jerome's letter to Eustochium.

[26] Isidore, *Etymologiae* X.95.

[27] See Giselle de Nie, '"Consciousness Fecund through God": From male fighter to spiritual bride-mother in late antique female sanctity', in Anneke Mulder-Bakker (ed.) *Sanctity and Motherhood: Essays on holy mothers in the Middle Ages* (New York, 1995) pp.140-151 and Simon Coates, 'Regendering Radegund? Fortunatus, Baudonivia and the problem of female sanctity in Merovingian Gaul', *Studies in Church History* 34 (1998) pp.37-50.

[28] 'Epitaphium Vilithutae', *Carmina* IV.26, MGH Auct. ant. 4.1, pp.95-99. Perhaps tellingly, the fate of the infant in the afterlife went unmentioned.

"blessed spirits who offer up holy prayers" while their *felix* mother who now rested in peace "deserved to enjoy the light through their birth".[29]

If my emphasis on Eusebia's *pudor* is correct, Fortunatus' sensitivity to the fleshly exigencies of pregnancy and childbirth deepens the sense that his use of *pudor* reflects a comparable awareness of sensitivity to the predicaments of childbearing women and cannot be reduced to a churchman's tendentious construal of motive. Moreover, Fortunatus could not ultimately speak of Eusebia in the cadences of outright condemnation because Germanus saved her, "rendered her innocent", by struggling through to birth. In an admittedly peculiar sense, Eusebia had been saved by childbearing and herein lay the nature of Germanus' miracle.

The foetal Germanus as an episcopal saint

In Fortunatus' episcopal *vitae*, miracles were demonstrations of the bishop's charism. As Simon Coates has shown, the bishop-saints' miracles possessed a "liturgical value [by] incorporat[ing] the values represented by the episcopal saint into a system of values promulgated by preaching and the performance of the sacraments". Among Fortunatus' hagiographical subjects, Germanus wrought more miracles than most, freeing prisoners and curing paralytics. An extraordinary number pertained in some way or other to sacramental life. For example, Germanus cured a woman of blindness, and the next day she immediately "went to mass in procession with the people".[30] Coates counts at least nineteen miraculous cures performed through the Eucharistic bread or wine.

These healing miracles dramatised the creation of "unified, Christian, communities by reintegrating those who had been cut off from the services of the Church"; Germanus' role as bishop was, in part, about fostering reintegration into sacramental life and facilitating the "reception of the sinner into the Christian community".[31] The prophecy embodied in Germanus' first miracle must be read as a uterine foretelling of his future role as bishop. By fighting back from the womb, Germanus achieved what Caesarius, had sought to achieve through his preaching: he prevented a woman from becoming a *parricida* through abortion.

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[29] Epitaphium Innocentum, *Carmina* IV.22, MGH Auct. ant. 4.1, p.93. This is not entirely dissimilar to Ephraim's vision of celestial reunion between mother and *aborsus*; but, tellingly again, the twins' baptism was noted.

[30] *Vita S.Germani* 33, p.18.

[31] Simon Coates, 'Venantius Fortunatus and the Image of Episcopal Authority in Late Antique and Early Merovingian Gaul', *English Historical Review* 115 (2000) pp.1128-1131 including p.1130n.2 (quotations at p.1130).

Altogether, the opening to the *vita s. Germani* uniquely condensed a way of imagining the foetus, a vivid description of abortion as mother-child conflict, an enigmatic depiction of the aborting woman and a uterine miracle preventing abortion. If we imagine the 'performance' of the text, Germanus' miracle was at once pedagogic (abortion was a sin) and demonstrative (the bishop's charism was, in part, to turn sinners away from sin, to render them innocent).

Germanus' was not the only uterine miracle within Fortunatus' corpus. In Radegund's monastery at Poitiers, a nun Animia had lain at death's door, horribly swollen (*tumefacta*) with dropsy. Animia had a dream in which Radegund bathed her in chrism, and "[b]y this new kind of miracle the illness left no trace in her womb…and there was nothing harmful in her belly". Giselle de Nie has suggested that this was possibly a "hysterical pseudo-pregnancy" conceived by the "very lively – even physical – imaginations…of being the beloved bride of Christ". But this was not an encoded abortion. It was one of several miracles which elaborated complex images of the doctor-mother and spiritualised 'birth-helper'.[32] Our next point of focus, however, connected saints to uterine miracles in a spectacularly different way. Where Radegund healed the womb and Germanus embodied episcopal sanctity within the womb, certain early Irish saints embodied sanctity by emptying the womb.

THE DISAPPEARING FOETUS: SAINTS AND ABORTION IN EARLY IRISH VITAE

The earliest references to this different kind of abortion miracle are found in the *vitae* of Brigit of Kildare (*c*.452-528).[33] The oldest Brigidine *vita* was written in *c*.650 by Cogitosus, a monk of Kildare, and it largely consisted of a miracle catalogue. Amid the numerous healing, alimentary and agricultural miracles one astonishing miracle stands out:

> With a strength of faith most powerful and ineffable, she blessed a woman who, after a vow of virginity, had lapsed through weakness into youthful concupiscence, as a result of which her womb had begun to swell with pregnancy. In consequence, what had been conceived in the womb disappeared and she restored her to health and to penitence without childbirth or pain.[34]

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[32] *Vita S. Radegundis* 80-81, MGH Auct. ant. 4.2, p.47; Giselle de Nie 'Fatherly and Motherly Curing in sixth-century Gaul: Saint Radegund's *mysterium*', pp.71-80 (translation at pp.55-56).

[33] Lisa M. Bitel, 'Body of a Saint, Story of a Goddess: Origins of the Brigidine tradition', *Textual practice* 16.2 (2002) pp.209-228 gives biographical and textual details.

[34] *Vita Brigitae* 9.1, trans. Seán Connelly and J.-M. Picard, 'Cogitosus' "Life of Brigit": Content and value', *Journal of the Royal Society of Antiquaries of Ireland* 117 (1987) p.16. The Latin reads: "Potentissima enim et

Another Brigidine *vita* written around a century later in *c*.750 contained a near-identical version of the story:

> Another day saint Brigit by the very powerful strength of her faith blessed a woman who had fallen after a vow of integrity and whose womb was pregnant and swelling and the conception in the woman's womb decreased and she restored her to health and repentance without childbirth or its pangs. The woman was healed and gave thanks to God.[35]

Brigit was not alone in making pregnancy disappear. A similar miracle can be found in other *vitae*. First, in the *vita* of the sixth-century saint Cainnech (or Kenneth) of Aghaboe:

> A certain virgin living in his area fornicated secretly and her womb swelled up with child. She asked holy Cainnech to bless her womb as if it were swelling with some affliction. Immediately when he blessed her, the infant in her womb disappeared without showing.[36]

And also in the *vita* of the sixth-century saint Aed (or Aidus): when Aed gazed upon a consecrated virgin serving him food during a visit to a monastery, he noticed that her womb was swelling (*intumescebat*) and that she was with child; Aed left, but after the nun confessed her sin, he returned and "blessed her womb and immediately the infant in her womb disappeared as if it had never been".[37]

Finally, the pre-Patrician saint Ciaran (or Kieran) of Saigir was said to have wrought a comparable miracle in the course of a longer story. A beautiful virgin called Bruinech, belonging to a female monastery which Ciaran had helped to found, was abducted by a local king called Dimma. Ciaran went to Dimma's abode and managed to free the girl by a miracle. But soon it emerged that Bruinech was pregnant with Dimma's child:

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ineffabili fidei fortitudine, quaedam feminam, post votum integritatis, fragilitate humana in iuvenili voluptatis desiderio lapsam, et habentem iam praegnantem ac tumescentem uterum, fideliter benedixit: et evanescente in vulva conceptu, sine partu et sine dolore eam sanam ad penitentiam restituit". See below on the Latin text.

[35] *Vita Prima Sanctae Brigidae* 103, p.45. This is the *vita* mentioned above.

[36] "Quedam virgo in vicino sibi loco habitans occulte fornicavit, et uterus eius partu intumuit. Que a sancto Kannecho postulavit ut uterum suum, quasi aliquo dolore tumescentem, benediceret. Cumque ille benedixisset eam, statim infans in utero eius non apparens evanuit." *Vita s. Cainnechi*, ed. W.W. Heist, *Vitae sanctorum Hiberniae ex codice olim Salmanticensi nunc Bruxellensi* (Brussels, 1965) p.197.

[37] "Sanctus autem Aidus benedixit uterum eius, et statim infans in utero eius evanuit quasi non esset", *Vita s. Aidi*, ed. Heist, p.172.

> After the man of God returned to the monastery with the girl, the girl confessed that she had conceived in her womb. So the man of God, stirred by a zeal for justice and not wanting the serpent's seed to come alive, by making the sign of the cross on her womb made it empty.[38]

The miracles did not end there. Dimma later returned to the monastery to abduct Bruinech once again but she dropped dead at the very sight of him. Dimma's angered threats against Ciaran (in which he claimed Bruinech as his wife) soon gave way to penitential redemption after Ciaran miraculously saved one of Dimma's sons from a fire. Dimma dedicated two of his sons to Ciaran and the vignette ended with Bruinech miraculously restored to life through the saint's prayer.

The episodes in the *vitae* of Brigit, Cainnech and Aed are short, self-contained miracle stories, variations on a basic pattern. Ciaran's miracle is more idiosyncratic in detail, description and context. Lisa Bitel suggests that it shows that "[a]bortion took place, if not commonly, then at least often enough to appear without comment in both secular and ecclesiastical sources".[39] More strongly, for David Herlihy, Ciaran's miracle was an example of how "[e]arly hagiography...carries us to a strange, occasionally savage world, still largely influenced by traditional heathen customs, still only slightly touched by a crude Christianity".[40] But the tension was more intricate and subtle than one between the christianised and non-christianised. We will see how Ciaran's miracle was unique, and how the other miracles embodied a tension between abortion as a useful or intelligible recourse, and abortion as a morally problematic recourse.

Making the text disappear: textual complications

Before this, it is important to note certain textual complications.[41] The Brigidine *vitae* can be safely assumed to be, respectively, mid seventh- and mid eighth-century works. It is plausible that the remaining three *vitae* were originally composed in the eighth or ninth

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[38] "Revertente vero vir Dei cum puella ad monasterium, confessa est puella se conceptum habere in utero. Tunc vir Dei, zelo iustitie ductus, viperium semen animari nolens, impresso ventri eius signo crucis, fecit illud exinaniri." *Vita s. Ciarani*, ed. Heist, p.348.

[39] *Land of Women: Tales of sex and gender from early Ireland* (Ithaca, 1996) p.77. Ciaran's miracle is the ecclesiastical source. The secular source is the birth story of the mythical Irish hero Cu Chulainn. His mother, Deichtine, conceived a child by dreaming of the god Lug. Rumours spread that she had conceived incestuously through brother Conchobar and she agreed to marry one of his men. Not wanting to enter into marriage pregnant, she had an abortion of sorts, either by rolling on her stomach or spewing out the foetus in vomit.

[40] 'Households in the Early Middle Ages: Symmetry and sainthood', in R. McC. Netting et al. (eds.) *Households: Comparative and historical studies of the domestic group* (Berkeley, 1984) p.390; c.f. id. *Medieval Households* (Cambridge, Mass. 1985) p.31.

[41] The fundamental study of the morass of textual and codicological problems in reading early Irish *vitae* is Richard Sharpe, *Medieval Irish Saints' Lives: An introduction to the Vitae sanctorum Hiberniae* (Oxford, 1991).

centuries, but it is probably impossible to unravel fully the extent to which the forms in which they are read today represent the sensitivities of subsequent editors. Later medieval editors found these miracles unsettling and made intriguing alterations to the *vitae* of Ciaran, Cainnech and Aed. These alterations are, in fact, discernible to the naked eye. To simplify for our purposes: the two principal modern editions of these three *vitae* used two different fourteenth-century manuscripts. The excerpts quoted above all come from Heist's edition based on the so-called 'Salamanca codex', while the other modern edition, Plummer's *Vitae Sanctorum Hiberniae*, used a Dublin manuscript. The 'Salamanca codex' represents an older version of these texts.[42] In other words, we can cautiously read Heist's editions as older versions and Plummer's as their cleansed later medieval versions, and, rather curiously, we do not find any of the miracles as quoted above in their later medieval incarnations.

In the cases of Aed and Cainnech, they were completely excised leaving behind stories about the admonition, penance and forgiveness of pregnant nuns. For example, Aed visited the monastery and noticed that one of the nuns was pregnant. When the nun realised that the holy bishop knew of her sin, she confessed and underwent penance. No mention was made of her child.[43] With Ciaran things were slightly different. Dimma's abduction of Bruinech, Ciaran's rescue and the realisation of Bruinech's pregnancy remained. But Ciaran's zeal for justice, his determination that the serpent's seed should not come alive, and his emptying of the womb all disappeared, replaced by a description clearly related to the other *vitae*: "he blessed her womb by making the sign of the cross, and her belly immediately shrank and the child in her womb disappeared".[44] Herlihy described this alteration in stark terms: in the original form of the *vita* the "text is unambiguous: the saint miraculously aborts the fetus" whereas in the "expurgated Latin versions of the same life, the saint causes the fetus conveniently to vanish".[45] In all three cases, miracles which had once been taken to be manifestations of sanctity were unsettling to later medieval editors. The question is what the unexpurgated stories reveal about early medieval sensibilities.

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[42] See Sharpe, *Medieval Irish saints' lives*, especially pp.93-119, 228-246 on the *codex Salmanticensis* and Dublin manuscript collections.

[43] *Vita s. Aidi*, ed. C. Plummer, *Vita Sanctorum Hiberniae*, volume one (Oxford, 1910) p.38. Dorothy Africa, review of Dorothy Ann Bray, *A list of motifs in early Irish saints*, *Speculum* 71.1 (1996) p.131 notes the "quiet adjustment" here and in the *vita s.Cainnici* too.

[44] "signo sancte crucis benedixit vulvam illius, et venter eius exinde decrevit, et partus in utero evanuit", ed. Plummer, p.221.

[45] *Medieval households*, p.31; Bitel, *Land of women*, p.77 echoes this view.

'Empyting' the womb: the glaring anomaly of Ciaran's miracle

Ciaran's miracle was unique. The actual description of the miracle is plain: by an external sign, the marking of the cross, Ciaran made Bruinech's womb empty (*fecit exinaniri*). Insofar as *exanire* has connotations of purging or draining out, this spiritual abortion came close to the sense of a real abortion.

But, the miracle was not unique solely because of this. The motivation was a sense of justice which was as punitive as it was restorative: driven on by a zeal for justice (*zelo iustitie ductus*), Ciaran did not want Dimma's evil seed to come alive (*viperium semen animari nolens*). It is tempting to read great significance into this allusion to 'animation' as if Ciaran's miracle were a saintly exercise in applied ethics: get rid of the *inanimatus semen* before it becomes *animatus*. And it is also tempting to see in *viperium semen* a perspective on the psychology of rape. But Ciaran's motivation echoed a tendency in Irish hagiography: the saintly malediction. His miracle was, in Herlihy's words, "closely analogous to the curses, which the saints frequently utter against an enemy and his *semen*, which typically cause the ruin or even the extirpation of his lineage".[46] The intentionality of the miracle moved against Dimma as much as it moved for Bruinech. Marking the sign of the cross resembled an exorcism as well as a benediction.

It is this context and intentionality, along with the 'emptying' of Bruinech's womb, which make Ciaran's miracle unique and lend it an archaic quality rooted in specifically Irish hagiographic dynamics. And yet, it is to stretch the miracle to see in it an attitude to abortion in general or a glimpse of *secreta mulierum*: the emptying of the womb was an exceptional, sanctified anomaly performed by one man almost against another. Nonetheless, the *vita Ciarani* is the one ecclesiastical source which lies in profound tension with broader ecclesiastical norms on abortion: here was a saint who used the sign of the cross to purge the seed.

Erasing fornication: creating the 'holy abortion'

The miracles in the other *vitae*, however, were different. In each case a nun had fallen pregnant after fornicating; her pregnancy had been revealed as she began to swell up; the saint blessed (*benedicere*) the woman and the infant vanished (*evanere*) from the womb. They were variations on a motif which jumped across from one *vita* to another in early Irish hagiography. Clearly this motif was recycled by hagiographers for different saints.[47]

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[46] *Medieval households*, p.32; see Plummer, *Vitae sanctorum Hiberniae*, pp.clxxiii-clxxiv for a brief discussion and references.
[47] Africa, review, p.130-131.

That is not to say that the accounts were identical. For instance, the Brigidine *vitae* express some sympathy for the fornicating nun: hers was a juvenile lapse. Cainnech's miracle bordered on the inadvertent: he gave his blessing after the nun presented her swollen womb to him as if it were distended through an ailment (*quasi aliquo dolore tumescentem*). Nonetheless, these miracles may appear, like Ciaran's, to be at odds with ecclesiastical action against abortion. The motif certainly scandalised nineteenth-century Catholic editors. In Migne's edition of Cogitosus' *vita Brigitae* one can read of the preceding miracle of transforming water into ale for lepers and the subsequent one of transforming stone into salt, but the episode of the pregnant nun is nowhere to be seen: Brigit's miracle was sufficiently unsettling for it to have disappeared leaving only an elliptical trace.[48]

At the surface, like Migne, we might see a profound tension because of the resemblance to abortion. But, this is more revealing of nineteenth-century sensibilities than early medieval sensibilities. To understand the motif more deeply, we can turn to two medieval stories (one Carolingian and the other slightly later) which convey in far richer detail the highly specific scenario of unwanted pregnancy within a female religious community.

Such pregnancy unleashed profound conflict and turbulence. A powerful example comes in Rudolf of Fulda's ninth-century *vita* of Leoba, the late eighth-century Anglo-Saxon émigrée and abbess at Bischofsheim in northern Bavaria. The nuns at Bischofsheim regularly clothed and fed a crippled girl who sat begging by the monastery gates. Led astray by the devil, the girl committed fornication and when she could "no longer hide the foetus conceived in her swelling (*intumescente*) womb", she feigned sickness. She secretly gave birth and, under cover of night, she threw the child into a pool. As Rudolf stressed, the story was not about a fornicating nun – but, in a sense, that is the point. After the infant's body was found, the townspeople were enraged at the horrible contamination of the pool. Moreover, they assumed that a nun was responsible and sneered at the supposed chastity of the community. Leoba's role was to resolve the conflict between the religious community and the town. After praying to God to deliver the nuns from the "awful rumour", the girl immediately confessed. There was no resolution for her, for she remained enthralled to the devil for the rest of her days. But Leoba had managed to safeguard the community's reputation, its "virginal

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[48] PL 72, col.780c; the Latin text quoted above is from Shanzer, 'Voices and bodies', p.352n.103, who in turn acquired it from a personal correspondence with the early Irish historian Charles D. Wright.

name (*nomen virginale*)".[49] The entire episode was mired in the "problem of a baby's presence among the chaste".[50] The *vita Leobae* shows how problematic such a presence was within and outside monastic confines, and also how readily child-murder (in this case, infanticide) was imputed as the makeshift solution.

Reading the early Irish motif in light of a later story of monastic pregnancy demonstrates more clearly that virginity was a community experience, and that miraculous 'disappearance' contained an implicit recognition of what made abortion (or child-murder) problematic as the recourse in attempting to safeguard this virginity. The story in question is a twelfth-century tale, Aelred of Rievaulx's story of the nun of Watton.[51] A young nun who had entered a newly founded Gilbertine abbey as a small child became pregnant after sleeping with a lay brother attached to the adjacent male community. (Later in the story, furious nuns in the abbey forced the girl to castrate him, without Aelred's approval). The nuns became frenzied as the girl's "swelling belly gave evidence of pregnancy". Some of them assaulted her and older nuns "protected the foetus". They were caught in a dilemm. They could not expel her because it would be upon their souls if she died destitute with her child; but they could not bear to keep her because of the scandal of birth within the monastery. Pregnancy was a violation of *their* chastity.[52] Heavily pregnant, the girl had a dream in which the late archbishop, Henry of York, who had originally committed her to the abbey, appeared. Henry convinced her to confess and expiate her sins by reciting the psalms. The following night, Henry appeared again with two beautiful women, who carried away the chid in swaddling bands. The next morning the girl awoke with "her belly shrunk to normal". She was immediately accused by the other nuns of murdering the child. Her protests of innocence were referred to Gilbert of Sempringham (the founder of the order) and Aelred himself, and the girl was eventually vindicated by a miracle which freed her from the fetters into which the nuns had forced her. The disturbing cataclysm of pregnancy was assuaged by the miraculous removal of the child (and by the subsequent miracle through which the girl's account of her dream was vindicated). But equally significantly, the nuns originally assumed that the girl had got rid of her child by foul means.

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[49] *Vita Leobae* 12, MGH SS 15.2, pp.126-127.

[50] Firey, *A contrite heart*, pp.77-81 (at pp.78-79).

[51] The tale is well-known through Giles Constable's study, 'Aelred of Rievaulx and the Nun of Watton: An episode in the early history of the Gilbertine order', *Studies in Church History,* subsidia 1 (1978) esp. pp.206-210. The story is translated in Boswell, *Kindness of strangers*, pp.452-458.

[52] As Constable, 'Aelred of Rievaulx', p.217 emphasises.

In light of these stories, the miracle motif was a parable of forgiveness, resolution and reintegration. The miracles healed individual women together with their communities – and it is striking that in the context of a female monastery, pregnancy was like an affliction. In this sense, the motif reflects how abortion was an intelligible recourse: it avoided the disturbing presence of a baby among the chaste. And yet, these were not quite normal abortions: they were 'holy abortions'. In each incarnation there was an emphasis upon complete disappearance or 'evanescence': Brigit's blessing made the *conceptus* disappear "without childbirth or its pangs (*sine partu et sine dolore*)"; Cainnech's blessing made the infant disappear from the womb without even showing (*non apparens*); and, most emphatically, Aed's blessing "immediately (*statim*)" made the infant disappear "as if it never was (*quasi non esset*)". At a deeper level, the motif reflects what made abortion problematic. The miracles brought about the end of abortion without the means of abortion. The saints resorted to blessings, not potions, and the bloody, dangerous flux of abortion was nowhere to be seen.

Of course, the resonance of such miracles necessitated a lack of prudery (a sensibility which we encountered in *aborsus* imagery) and an imaginative capacity which was not tied down by the sort of qualms over propriety which Migne and other editors brought to the texts. If Ciaran's miracle is a glimpse of an ecclesiastical perspective which seemingly 'forgot' the problematic nature of abortion, the 'holy abortion' motif is a glimpse of something rather different and offers a strange complement to the tendency in some prescriptive texts to envisage abortion in a religious (or clerical) context. The tension at its core lay not between the christianised and non-christianised, but was rooted in the specifically Christian demands on the chaste and the context of the female monastery. These were 'holy abortions' because they miraculously and paradoxically erased fornication without the ontological ghost of 'normal' abortion: to represent the infant's disappearance "as if it had never been" was to wish away the entanglement of abortion with murder. If the motif exists in tension with prescriptive texts, it is not because it represented abortion as a morally unproblematic recourse – the nature of the miracle drew its resonance partly because 'normal' abortion was problematic – but because it frankly represented abortion as an intelligible recourse to hide the sexual shame of the chaste.

THE RUMOUR OF ABORTION IN THE DIVORCE OF LOTHAR II AND THEUTBERGA

Our last point of discussion is far removed from the stories of saints who miraculously thwarted abortion from the womb or performed quasi-abortions on pregnant nuns. It is fitting that the final stop in this study concerns that rare thing, an instance of a named woman – a queen no less – rumoured to have had an abortion. The rumour was embedded within a Carolingian *cause célèbre*, the divorce of Lothar II and Theutberga, which engendered a protracted and complex dispute lasting from 857 until Lothar's death in 869. Abortion, as we shall see, appears to have been part of a rumour circulating about Theutberga, a rumour used as grounds for divorce in the earliest phase of the case.[53] We know about the accusation from a source unique among the annals, letters, charters and councils which give piecemeal details. In 860 Hincmar of Rheims, the "marriage guru of ninth-century Francia", found himself involved and duly wrote his famous treatise on the divorce.[54] Hincmar quoted from documents which would not have otherwise survived and even offered his own thoughts on various questions, including the rumour of abortion.

Superficially, the rumour was no more than an incidental detail in a picaresque episode. Such accusations against queens were not entirely unprecedented. In the sixth century, Procopius repeatedly used abortion as a strategy of denunciation in his *Secret History*. Procopius relished recounting the empress Theodora's numerous abortions back when she had been a scandalously promiscuous actress. Moreover, Procopius used this trope to slander Justinian, who "did not disdain...to lie with a woman who had not only [practised] every rank defilement, but had also practised infanticide time and again by voluntary abortions. And I think I need name mention of nothing else [about] the character of this man".[55] In Theutberga's case, far from a recurrent trope, abortion was an incidental and ephemeral accusation brought against her by her husband. But, the allusion to abortion in a specific phase of the dispute is intriguing partly because of its

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[53] I am particularly indebted to Karl Heidecker's monograph (only very recently translated into English) *The Divorce of Lothar II: Christian marriage and political power in the Carolingian world* (Ithaca, 2010); and to other discussions of the divorce, especially Jane Bishop, 'Bishops as Marital Advisors in the ninth century', in Julius Kirshner and Suzanne Wemple (eds.) *Women of the Medieval World* (Oxford, 1985) pp.53-84; Janet L. Nelson, *Charles the Bald* (London, 1992) pp.196-200; and Stuart Airlie, 'Private Bodies and the Body Politic in the Divorce Case of Lothar II', *Past and Present* 161 (1998) pp.3-38.

[54] *De divortio Lotharii regis et Theutbergae reginae*, ed. L. Böhringer, MGH Concilia 4, supplementum 1. Heidecker, *Divorce of Lothar II*, pp.36-48 describes the sources. Quotation from d'Avray, *Medieval marriage*, p.85.

[55] *Secret History* X.3 (and c.f. IX.19, XVII.16), ed. and trans. H.B. Dewing (Cambridge, Mass. 1935) pp.121, 109, 203.

incidental and ephemeral nature. The allusion offers us two distinct points of focus: we will embark upon a brief historical detective story which identifies a neglected mystery, finds culprits on both sides and suggests a subtle revision to the conventional narrative of the early stages of the dispute; and we will also turn to Hincmar's thoughts on abortion in this highly particular – and peculiar – context.

Given that Hincmar's entry into the case was very much *in medias res*, it is first necessary to understand the intricate sequence of events through which this incidental allusion came to be recorded.

The events of 857-860: background to Hincmar's De Divortio

In 855 Lothar I, the ruler of the middle Frankish kingdom, died. His kingdom was split between his sons: the eldest, Louis II inherited Italy; the youngest, Charles, inherited Provence; and Lothar II inherited the northernmost part called Lotharingia after him. By the time of his father's death, Lothar had already been in some form of union with an Alsatian noblewoman, Waldrada. It is possible that they had already had children together and by the time of Lothar's death in 869, Waldrada had borne him three sons and a daughter. But, in the year of his accession, Lothar married another noblewoman, Theutberga, the sister of Hucbert, a powerful nobleman and cleric who had served as a counsellor to Lothar's father and controlled important lands in the south of Lotharingia. The marriage was probably contracted for political reasons, perhaps to prepare for the anticipated threat of Lothar's brother Louis II.[56]

By 857 things had changed dramatically. Lothar made the first of his attempts to divorce Theutberga. It was alleged that Theutberga had come to marriage sullied, for she had been forced to have 'unnatural' intercourse with her brother, Hucbert, and had had an abortion after conceiving. (We will return to this charge). Without any witnesses and with Theutberga denying the rumour, proof was sought in an ordeal. A substitute for Theutberga had to pick an object out of a vat of boiling water. When the substitute's hand was judged to be 'uncooked', Theutberga's name was cleared and she was restored as Lothar's wife.[57]

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[56] Heidecker, *Divorce of Lothar II*, pp.59-62, Airlie, 'Private bodies', pp.8-9. The rest of my account of 857-860 is necessarily partial – for instance, the question of Lothar's adultery in having a 'concubine', Waldrada, while still married to Theutberga is set aside. For a full account of 857-860, see Heidecker, *Divorce of Lothar II*, pp.51-99, and for an illuminating discussion of Hincmar's treatment of 'love magic' and 'impotence magic' in relation to Waldrada, see Catherine Rider, *Magic and Impotence in the Middle Ages* (Oxford, 2006) pp.32-36.

[57] *De divortio,* p.114; Heidecker, *Divorce of Lothar II*, pp.66-68.

But a few years later, Lothar tried once again to repudiate Theutberga and recourse to ecclesiastical procedure met with more success. Councils at Aachen in January and February 860 authorised the divorce. The first council, held on 9 January, brought together king and queen before some Lotharingian bishops. The two surviving reports of the council, quoted by Hincmar, are different, but neither explicitly recorded the substance of the rumour. Theutberga evidently made some sort of confession (which she later retracted and which historians regard as coerced). According to the first report, Theutberga spoke to the bishops directly. She swore that she was not fit to remain in marriage and invited her confessor, the archbishop Gunther of Cologne, to speak on her behalf. When he suggested that it would be better coming from her own mouth, she replied, "Why is it necessary to say anything other than what you know?" After the other bishops were satisfied that Theutberga was happy to divulge her confession through her confessor, the report simply mentioned that Gunther told them the grievous secret. The second report states (without direct speech) that Theutberga "confessed everything in front of God and his angels" and "completely uncovered every secret within the rumour which had arisen". Gunther corroborated her confession.[58] The first Aachen council concluded with the bishops and king granting Theutberga permission to take the veil.

Attended by bishops from other realms including some from Western Francia (though invited by Adventius of Metz, Hincmar did not attend), the second Aachen council was held in February 860 with the aim of formalising the divorce. A document written at Theutberga's request and outlining her confession was read out. The shocked bishops interrogated Lothar, who revealed that he had always known about this hidden disgrace but had long preferred that it remained secret. After hearing about it on more recent trips to Burgundy and Italy, however, he could no longer "bear the weight of such great shame". The bishops reinterrogated Theutberga to ensure that she was not confessing under duress. Satisfied, they concluded that the "doleful pollution of incest brought out into the public should be purged by public penance".[59] Theutberga was sent to a convent and Lothar had finally obtained his divorce.

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[58] *De divortio*, p.120; see below on Gunther's summary. See Firey, *Contrite heart*, pp.13-36 for a thorough analysis of the different uses of legal and penitential procedure in both accounts, especially on Theutberga's clever 'disruption' of normal penitential and legal procedure by insisting upon divulgence through her confessor, and the differences between the two reports.
[59] *De divortio*, pp.121-122. A|5

But, fatefully, the matter did not end there. Some Lotharingian bishops remained unconvinced by the councils and, in February or March 860, they sought advice from bishops from other realms on various aspects of the case. Thus, Hincmar soon received records of the first Aachen council together with a list of eight questions and worked on a reply between March and May 860. This forms the first part of the *De divortio*. Roughly six months after the first request, the dissenting Lotharingian bishops sent a second list of questions, which Hincmar also worked through. This forms the second part to his treatise, written in the early autumn of 860.[60]

Over the next decade, the divorce case sucked in numerous rulers, bishops, two popes – and, of course, the two women caught up in the storm, Theutberga and Waldrada. By the turn of 861, Theutberga had sought refuge in Charles the Bald's kingdom, retracted her confession and petitioned Pope Nicholas I, as too did bishops loyal to Lothar as the controversy became plain. The political subtexts intensified as Lothar's vulnerability became an increasing source of interest to his uncles, Charles the Bald in the west and Louis the German in the east. Moreover, the argumentative frameworks shifted. Theutberga's reputed barrenness and the priority of Lothar's 'marriage' to Waldrada before 857 became focal points of debate. Compared to 860, the later phases of the dispute look very different: 865, for example, saw the ceremonial reinstatement of Theutberga as Lothar's queen, Waldrada's excommunication and, intriguingly, Theutberga's written appeal to Nicholas I to dissolve the marriage.[61] There was no mention of abortion in any of this later wrangling.

Back in early 860, however, the divorce was not debated or politicised in the same manner as in later years.[62] Even over the course of 860 the dispute evolved. By the time Hincmar wrote the second part of his treatise, his attitude to Lothar had toughened and political circumstances had changed.[63] But in the first part, Hincmar's suspicions about procedural propriety, the validity of the divorce according to ecclesiastical norms and the accusations upon which the divorce was based were all expressed with greater caution. Indeed, though he doubted the integrity of the procedure through which the

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[60] Heidecker, *Divorce of Lothar II*, pp.46-8, 74.

[61] Heidecker, *Divorce of Lothar II*, pp.100-181. It is possible that the Susannah Crystal held at the British Museum was commissioned for the forced reconciliation of 865: see Valerie Flint, 'Magic and Marriage in Ninth-Century Francia: Lothar, Hincmar – and Susanna', *The Culture of Christendom*, ed. M.A. Meyer (London, 1993) pp.61-74.

[62] Airlie, 'Private bodies', pp.10-14 provides an excellent critique of reading the events up to 860 and, in particular, Hincmar's *De divortio* through the lens of the later politics of the case. Nelson, *Charles the Bald*, pp.198-199 argues against reading Lothar's desire to divorce Theutberga in political terms.

[63] See Heidecker *Divorce of Lothar II*, pp.47-48, 94-99. Between Hincmar's drafting of the first and second parts, relations between Charles the Bald and Lothar had deteriorated.

details of the rumour were ascertained and, indeed, doubted the truth of the rumour, Hincmar accepted the principle that Lothar was free to repudiate Theutberga and remarry if the story of incest before marriage were true.[64] The portions of Hincmar's treatise examined below all come from a specific moment in the dispute, the first half of 860, when Lothar appeared to have secured his divorce; and from the first part of the treatise when, grudgingly, Hincmar first became involved.

Making sense of rumour (i): a neglected 'whodunnit'

We know of the details of the rumour because they were quoted by Hincmar. It was said that Theutberga's brother Hucbert had forcibly had femoral intercourse with her; that she had conceived from this; and that she had drunk an abortifacient drink to hide the disgrace.[65] In effect, three forms of sexual sin or pollution were brought together: incest; unnatural intercourse; and abortion. At the level of argument incest was sufficient grounds for a divorce. But the rumour went beyond this. As Stuart Airlie has shown, the concatenation of sins takes on a "particular and dreadful resonance" when set against ideologies and theologies of queenship. The wombs of Carolingian queens were blessed in marital and regnal *ordines*. In political theology, queens were seen in the shimmering light of biblical exemplars, not only virtuous wives and fruitful mothers like Esther and Judith but also the supreme queen and *domina*, the Virgin Mary. An accusation of incest, 'sodomitical' intercourse and abortion was nothing less than a "ghastly parody of Carolingian queenship" which presented Theutberga "almost as an antithesis of the Virgin Mary".[66]

Historians regularly make passing mention of abortion as part of the rumour and Airlie has brought out its 'function' with unparalleled force. The conventional reading is, roughly, that the rumour was hatched up by Lothar and his supporters as a way of defaming Theutberga and thereby safeguarding the prospects of sealing the divorce. The abortion dimension has not received sustained attention. This is understandable because it was a peripheral detail. If anything, historians have made it less peripheral than it actually was and thereby missed something odd. When we attend closely to the recorded events of 857-860, a mysterious pattern emerges which raises questions about the substance of Theutberga's confession and the interests served by the allusion to

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[64] Heidecker, *Divorce*, pp.82-86, Airlie, 'Private bodies', pp.13-14.

[65] *De divortio*, p.114: we will return to the text and source shortly.

[66] Airlie, 'Private bodies', pp.20-22 (quotations at pp.20, 22), which includes a discussion of relevant liturgical and theological sources.

abortion. Historians (with one limited exception) have overlooked a 'whodunnit': the allusion to abortion is our missing person, and we must revisit where our missing person was last seen alive.

The only full description of the rumour to include abortion appeared in the very opening of the brief sent to Hincmar by the dissenting Lotharingian bishops in February or March 860:

> They [i.e. the dissenting Lotharingian bishops] say in their first chapter: the wife of the lord and king Lothar was initially ascribed with *stuprum*, in that her brother had committed a crime with her in masculine intercourse between the thighs, the disgrace men are accustomed to commit with men [Romans 1:27], and from this she conceived; and that because of this, she took a drink and aborted the child so that the disgrace would be hidden.[67]

This was not a general description of the rumour circulating about Theutberga but a very specific reference which led immediately to the Lotharingian bishops' account of the 857 ordeal recounted above. *This* was the charge, according to the dissenting bishops, which Theutberga denied and which the king, nobles and bishops decided to try by ordeal. The only other explicit mention of abortion appears in a passing reference to the fact that Theutberga had been accused of "*stuprum* and abortion" in one of the bishops' questions on the credibility of the ordeal as judicial process.[68]

By contrast, abortion was not mentioned at the Aachen councils or in relation to them. The first report did not specify the substance of Theutberga's confession at all, while the second report elaborated only slightly in the form of Gunther's corroboration: "She had an interior wound within her, not of her own will, but violently inflicted upon her, on account of which she deemed herself unworthy to come again to the royal marriage bed".[69] Theutberga's statement read out at the February council gave blunter detail – and we can cautiously assume that *this* is what she had 'confessed' to in January: "[M]y brother, the cleric Hucbert, corrupted me in adolescence, and performed and perpetrated upon my body fornication against natural use".[70] Again, no abortion. All of these statements were quoted by Hincmar from documents which were not authored by

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[67] "Aiunt enim primo capitulo: Uxor domni regis Hlotharii primo quidem reputata est de stupro, quasi frater suus cum ea masculino concubitu inter femora, sicut solent masculi in masculis turpitudinem operari, scelus fuerit operatus et inde conceperit; quapropter, ut celaretur flagitium, potum hausit et partum abortivit." *De divortio*, p.114.
[68] *De divortio*, p.146 (*interrogatio* 6).
[69] *De divortio*, pp.115, 120.
[70] *De divortio*, p.121.

the dissenting Lotharingian bishops (although they had provided Hincmar with the first report as a separate *libellus* accompanying their brief).

There is a pattern: the only explicit references were written by the dissenting bishops (setting aside Hincmar, who at any rate gained his information about the rumour from them); and they only referred to abortion in the context of the ordeal. Indeed, in a detail which historians have missed, when these bishops moved on from describing the ordeal they were not even certain of the precise charge brought against Theutberga at the beginning of 860: "Then, after a length of time – and we do not know whether it was about the same thing or about something committed after the start of the marriage – a *libellus* [i.e. the first report of the first Aachen council], which we have sent to you, was written by certain bishops".[71] Historians have assumed that the rumour of incest, 'unnatural' intercourse and abortion mentioned in the bishops' brief was precisely the same rumour confirmed by Theutberga's 'confession' at the 860 councils.[72] But this assumption rests on shaky ground.

If the rumour of incest, unnatural fornication *and* abortion was a concoction, whose concoction was it? In a brief discussion of the charge, Karl Heidecker has questioned whether Lothar and his supporters really brought *all* of these charges against Theutberga. The accusation of incest was central to the grounds for divorce and the accusation of unnatural fornication added a suitable Levitican colouring. Indeed, both were mentioned in Theutberga's written confession at the second Aachen council. But pregnancy and abortion seem a step too far. What strikes modern readers as implausible also struck contemporaries as implausible: conception after femoral intercourse? If the rumour was suitably defamatory, it nonetheless lacked in physiological coherence (a point to which the Lotharingian bishops alluded in a question and upon which Hincmar elaborated in his response discussed below). Heidecker suggests that this was an embellishment wrought by the dissenting bishops because it was "in the[ir] interests... to make the accusation seem ridiculous and suggest that Lothar had simply made the whole thing up in order to obtain a divorce from Theutberga".[73] On Heidecker's reading, the full version of the rumour was not a trumped-up charge against Theutberga but a way of undermining Lothar.

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[71] *De divortio*, p.114. It is possible that they were deliberately pointing out the shifting grounds.
[72] See, for example, Airlie, 'Private bodies', p.19, Nelson, *Charles the bald*, p.199.
[73] *Divorce of Lothar II*, p.68. Heidecker cautiously suggests that there might have been truth to the incest rumour: Hucbert was reputed to be a "violent, aggressive, and sexually debauched individual" and it is not impossible that he had sexually abused Theutberga: see p.68n.34.

Heidecker's suggestion gives a plausible reason for the striking implausibility but overlooks one complication. The dissenting bishops only mentioned the full accusation in the context of the ordeal. If they had wanted to undermine Lothar by ascribing a ridiculous accusation to him, why did they not mention it in relation to the more recent events of early 860? After all, the reticence of the *libellus* on the substance of Theutberga's confession, the very *libellus* which they sent to Hincmar with their brief, provided an ideal opportunity.

Speculatively, another possibility which takes this complication into account runs as follows. The triple charge (incest, unnatural fornication, abortion) *was* initially brought against Theutberga at the ordeal. Between the ordeal and the councils of 860, as Lothar and his supporters thought up another way of securing the divorce, they dropped the abortion charge. Perhaps they picked up on the incredulity which the charge evoked (to which the Lotharingian bishops' question to Hincmar testifies) and realised that it was counter-productive. The drop also reflects the change in procedural means and a calculated, if subtle, shift from guilt to pollution. The 'confession' which led to the sanctioning of the divorce in 860 was not a confession of guilt or culpability. In Gunther's words, Theutberga had suffered an "interior wound...violently inflicted upon her (*violenter sibi inlatum*)". The confession was of defilement or pollution, for which she was scarcely culpable but which nonetheless rendered her unfit for marriage. In the antagonistic context of the ordeal, Theutberga was defamed with (to use Airlie's phrase once again) a "ghastly parody of Carolingian queenship", a parody which left the question of culpability was left rather open. At the Aachen councils, Theutberga was the unfortunately polluted victim, and Lothar and his supporters presented themselves as the grieving agents of a sad but necessary recourse. One might even combine this speculative reading with Heidecker's suggestion. On Lothar's side, abortion was opportunistically included and then opportunistically dropped; and on the dissenting side, the bishops decided not to forget the initial charge because its implausibility discredited Lothar.

The very ephemerality of the allusion to abortion suggests that abortion was useful to more than one side in the dispute, but also that this use was contingent upon circumstances. Useful to Lothar in 857, abortion became obsolete and even counter-productive by 860. These uses reflect three important assumptions about abortion. First, and most obviously, women were vulnerable to the charge of abortion precisely because

it was such an easy charge to make in character assassinations.[74] Second, and relatedly, the disappearance of abortion from the Aachen councils suggests that abortion was strongly understood in terms of guilt and that accusing a woman of abortion smacked of antagonism, impressions which Lothar and his supporters took pains to avoid giving in 860. Third, abortion was naturally associated with sexual sin. Because abortion was so readily conceived of as an act of concealment, it became the very sign which pointed to what was concealed. This association is plain in the original form of the rumour. But it was also relevant if the dissenting bishops were indeed trying to discredit Lothar. To put it slightly oddly, it had to be plausible that Lothar had come up with such an implausible charge if the likes of Hincmar were to be convinced, and the association between abortion and sexual sin provided the requisite patina of plausibility. When we turn to Hincmar's own thoughts, we see that the allusion to abortion ultimately did Lothar no favours.

Making sense of rumour (ii): Hincmar's response

Among the numerous questions posed, the dissenting bishops had requested that Hincmar write back "on the authority of the scriptures and tradition of the fathers, what these writings contain about abortion and *stuprum*", asking for the authors and titles of the relevant works too. They wanted to know two things: whether a woman found guilty of such crimes before marriage could or should remain in marriage; and whether a "woman can conceive in such a way, as is said [of her], and remain a virgin after abortion".[75] Hincmar's response was long and complex, covering a strikingly broad understanding of 'sodomy' and unnatural fornication to configurations of church and state.[76] He did not answer this first question specifically in relation to abortion. We will concentrate simply on what he wrote on abortion, bearing in mind, of course, that he was not writing about the morality of abortion, but the epistemology of abortion in relation to conception and virginity. Moreover, Hincmar's gynaecological knowledge was primarily informed by scripture and theology rather than by natural medicine.

Hincmar began by listing some authorities on these matters. He quoted Exodus 21:22-25 in the *vetus Latina* version, probably from Augustine's commentary, and the angel's

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[74] M. A. Kelleher, '"Like Man and Wife": Clerics' concubines in the diocese of Barcelona', *Journal of Medieval History* 28 (2002) p.356 gives an example from late medieval Catalonia. In defence against accusations of deflowering and impregnating a girl, a cleric insisted that the girl's reputation for promiscuity and abortion was well-known.

[75] *De divortio*, p.177.

[76] *De divortio*, pp.177-196.

words to Joseph after the disquieting revelation of Mary's pregnancy: "For what is born (*natum*) in her" (Mt 1:20).[77] Hincmar noted that here *natum* meant "what has been conceived (*conceptum*), for Joseph first began to hesitate because he saw his wife's womb swelling (*tumescentem*)", a curiously scriptural perspective on female epistemological priority in reproductive matters. Parturition, he explained, encompassed "everything which throws open the womb (*omne quod adaperit vulvam*)", whether a woman gives birth or miscarries, whether formed or unformed, whether male or female.[78] This makes clear his reason for quoting Exodus: even the miscarriage or abortion of an unformed foetus was a form of parturition (in other words, 'this is relevant to the accusation of abortion').

He then emphasised two points. First, any form of parturition required the appropriate emission and reception of semen. Scripture demonstrated that "woman receives semen, that is, by male coitus emitted through the genital vessel into secret of the womb through the portal of the vagina (*in vulvae secretum baiulante matrice*)[79], just as we learn in physical reading (*fisica lectione*), and not by drawing and taking up semen emitted elsewhere or differently, as this fabrication (*adinventio*) says".[80] And, second, scripture also showed that "what is conceived from this emitted semen throws open the womb, as it were, for the first birth". Hincmar seems to be saying, basically, that natural intercourse and birth caused the loss of uterine integrity (a very physical conception of virginity). "We ought to believe what we read," Hincmar wrote ominously, and regard what we do not encounter in our reading as a crime (*nefas*).[81]

The argument-clincher was the Virgin Mary:

> From the beginning, it has never been heard nor read in the scripture of truth...that a woman's womb has received semen without intercourse and has conceived with a closed uterus (*inclauso utero*) and unopened womb (*inaperta vulva*), or with her flesh undamaged gave birth to a living or stillborn [child] (*vivum vel abortivum peperit*), with the singular exception of the holy and blessed virgin Mary, whose conception was not of nature, but of grace.

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[77] In context, "Joseph...do not be afraid to take Mary as your wife, for what is *born* in her is from the holy spirit".

[78] *De divortio*, p.181, ll.26-35 (for this exposition of Hincmar's arguments, I will refer to the line numbers in Bohringer's edition).

[79] It is difficult to translate this following the commonplace definitions of *vulva* and *matrix*.

[80] *De divortio*, p.182, ll.1-4. At p.182n.30 Bohringer notes Isidore's *Etymologiae* XI.136-7 on *matrix* and *vulva*. But, as we saw in the last chapter, the connection between *vulva* and *secretum* was not found in Isidore, and was a connection Rabanus Maurus made in his *De rerum naturis*.

[81] *De divortio*, p.182, ll.4-7, 18-20.

The virgin Mary was the exception who proved the rule. In the case of other virgins, their flesh was broken/corrupted (*corrumpitur*) "in the emission of any sort of birth (*in emissione cuiuslibet partus*)".[82]

Hincmar put the nail in the coffin with one final scriptural allusion. If scripture demonstrated that any form of parturition required natural intercourse, scripture also demonstrated that unnatural intercourse precluded parturition in the story of Onan. The story spoke directly to the matter at hand, for "in that same diabolical fabrication, which is being imputed to that woman and her brother, Onan would lie with his wife seeking to satisfy lust and not wishing children to be born, for which deed God struck him dead". From his reading of scripture, Hincmar concluded, "From this we do not believe that this woman could have conceived from this sort of intercourse"[83]. To make matters worse, he posed a stinging question which caught Lothar out: if, in marriage, Lothar had found Theutberga a virgin, how could he countenance talk of her being defiled (*quasi stupratam*)? And if he did not find her a virgin, why did he keep quiet for so long?

In sum, this small, incidental detail – an accusation of abortion – was an important element at three vital moments in the genesis of the divorce case in a way that scholars have not fully appreciated: in the early attempts to secure the divorce; in the emergent dissidence of some Lotharingian bishops; and in Hincmar's first real involvement. The accusation of abortion had been excised by the time of Lothar's initially successful second attempt at securing a divorce. But his earlier gambit came back to haunt him and the dissident bishops' memory of it paid off. Even before later developments, Hincmar was becoming an implacable opponent who doubted the credibility and integrity of Lothar's attempt to divorce Theutberga, and the abortion accusation provided one significant ground for doubt. The irony, of course, is that abortion does not appear to have been part of Lothar's initially successful pursuit of divorce in 860. Lothar had earlier found it useful to throw a charge of abortion at Theutberga and had later found it useful not to throw the charge. The only surviving instance of an early medieval woman accused of abortion did not quite turn out as we might have expected. In accusations, mud always sticks – but not always to the accused.

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[82] Ibid. p.182, ll.8-11.
[83] Ibid. p.182, ll.21-24.

These miracles and rumours of abortion offer a range of perspectives and sensibilities which emphasise that early medieval abortion was not coloured in a monochrome scheme. One can see different sensitivities to the predicaments of women faced with different kinds of unwanted pregnancy: one woman who attempted abortion was no villain, while another woman was opportunistically accused of abortion precisely in order to vilify her. Moreover, abortion was deeply entangled with sex. Across all of these representations, abortion was understood as a means of 'undoing' problematic sex. The sex in question ranged across a spectrum of possibilities from religious fornication, to incest, to marriage. Abortion was not consistently associated with the taking of life. The author of Ciaran's miracle and the various discussants involved in the case of Lothar and Theutberga apparently forgot this. At the same time, Germanus in the womb was as 'animated' as any other medieval foetus, while the miracle motif only makes sense against the backdrop of 'normal' abortion as a morally fraught recourse.

Together, they show different ways of viewing and using abortion, and reflect cultures in which abortion was a multi-faceted problem: preventing abortion was an episcopal charism; abortion was a morally impossible but socially tempting recourse to preserve not just individuals but communities; and, because of the ambiguities of conception, abortion was an easy charge to lodge, but also one with room for manoeuvre. It is tempting to measure these representations against the yardstick of penitentials or canonical collections. But these representations were not addressing the moral dimensions of abortion directly, and their representations were not in competition with the depiction of abortion in prescriptive texts. If penitentials and canonical collections represent a set of ideas about abortion transcribed in a very particular form, these representations show how variably such ideas were drawn upon in different practices: some elements were seized upon and expanded to an almost grotesquely swollen degree; other elements were more easily forgotten. Ciaran's miracle notwithstanding, divergences represent different vantage points borne of different practices as much as different moral theories of abortion.

As a final illustration of this accent upon perspectives, we can turn back to an unmentioned detail in Hincmar's response to the bishops. In his rebuttal of the accusation of abortion, Hincmar made an intriguing point about social epistemology. After he had outlined his main arguments from scripture, he stressed that "we do not want to reveal to those acquainted with or suggest to those unacquainted with the virginal secrets of girls and women, which we do not know by experience (*quae*

experimento nescimus)". Although he had outlined strong arguments for regarding Lothar's accusation as so much scuttlebutt, he felt that others were better equipped to investigate into such matters. Who could be better placed than a bishop to judge such matters? Married laymen and judges "will be more adept than me at knowing through themselves and through marital licence with their wives whether any woman can conceive in such a way as we have heard about this woman".[84]

Compare this to two correspondences involving Hincmar's contemporaries, both of which happen to take the form of letters from popes to bishops of Mainz. Coincidentally, the first of these was none other than Nicholas I writing at some point between 858 and 863. In a brief letter to Charles of Mainz, he responded to queries about penances. Those guilty of manslaughter, for example, were to be given a compassionate form of penance. "But," he continued:

> ...women who voluntarily shake out the infants conceived in their womb before the fullness of time (*ante temporis plenitudinem conceptos utero infantes voluntate excutiunt*), should without a doubt (*procul dubio*) be judged murderers. While [in the case of] those [women] who appear to have suffocated their own children by sleeping [next to them], it is right to form judgments about them gently (*leviter*), because they have tumbled down into this catastrophe unwilling and unaware.[85]

In context, Nicholas appears to have been responding to a specific query about abortion. At any rate, his tone of humane caution in treating those who perpetrated manslaughter or women who accidently overlaid their children was suspended in passing judgment *procul dubio* on abortion.

Later in 887 or 888, Pope Stephen V wrote to Charles' archiepiscopal successor, the long-serving Liutbert of Mainz, in a letter which has only survived in fragmentary form. The subject was the overlaying of children and the issue, unsurprisingly, revolved around how to proceed with the parents. Liutbert had asked Stephen whether the parents ought to undergo an ordeal. Stephen utterly rejected any form of ordeal as superstition, recommending instead confessions or even some form of tribunal. Stephen conceded that some sins could remain hidden or unknown (though not, of course, from God) and finished with a rhetorical question. Anyone who confessed to or was proven to have perpetrated this was to be severely reprimanded "because, if someone who has

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[84] *De divortio*, p.182 (ll.25-26, 33-35), 183 (l.1).
[85] *Ep.*155, MGH Epistolae Karolini aevi 4, p.671. The letter was used as a source for a canon on abortion and the overlaying of children at the Council of Worms in 868: c.18, MGH Die Konzilien der karolingischen Teilrache 860-874, p.271.

destroyed what is conceived in the womb through abortion is a murderer (*si conceptum in utero qui per aborsum deleverit, homicida est*), then someone who has killed the little day-old infant will be even less justified in absolving himself of murder".[86]

The difference in tone is striking, and the difference stems from vantage points and varying proximities. Formulating principles to deal with the envisaged, anonymous malefactor called for a clear moral tone: Stephen could ask his rhetorical question and Nicholas could speak *procul dubio*. Dealing with the intricacies and contestations of specific individuals in the midst of contestation was a different matter. Hincmar had his own ideas, of course, but also voiced a concern which contains a strange, distorted echo of modern debate on abortion at the same time as it summarises a fundamental question in studying early medieval abortion: what did unmarried men without sexual experience know about such things?

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[86] *Fragmenta registri Stephani V. Papae* 25: MGH Epistolae Karolini aevi 5, pp.348-9.

CONCLUSION

Regino of Prüm's early tenth-century episcopal handbook has often been conceived of as a conduit of Christian moral tradition to the real business of high medieval canonical and scholastic thought on abortion.[1] Looking backwards, instead of forwards, his innovative work encapsulates a condensed history of the ecclesiastical tradition on abortion. First, we can see the Theodorean penitentials mediated through a later compilation. Regino's model *ordo* and interrogatory for administering penance adapted the interrogatory found in the *P.Pseudo-Bedae*, including questions about drinking up *maleficium* "so that you cannot have children" and killing offspring in the womb before and after "conception", together with its peculiar rendition of *XL dies* as part of a threefold gradation of penances before forty days, after forty days and *postquam animatus*.[2] Second, we can see councils from late antiquity and Visigothic Spain mediated through Rabanus Maurus' ninth-century propagation of a triple conciliar precedent on abortion: Ancyra, Lérida and Elvira.[3] Third, we can hear an echo of Caesarius' resonant denunciation of 'homicidal contraception' combined with widely attested fears over jinxed fertility in Regino's own canon, *Si aliquis*, in which anyone who dispensed potions so that someone "cannot generate or conceive" was deemed a homicide.[4] The ultimate origins of this material on abortion lay almost exclusively in early medieval texts and they reached Regino through yet more early medieval texts.

At the points of origin and mediation alike, these canons construed and responded to the problem of abortion within broader attempts to educate clerics in preparation for pastoral ministry. Regino was no different. It is this praxis which renders Regino's handbook a kind of *summa* of the ecclesiastical tradition on abortion in the early medieval West. This tradition was a continuously unfolding praxis on abortion rather than a definitively settled theory. Indeed, Regino made no obvious effort to reconcile differences in his sources. For instance, someone who harmed another's fertility was a homicide, but a woman who had an abortion after forty days was not. But this was a measured diversity. Regino's work was designed "to be used 'on the ground' by

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[1] E.g. Connery, *Abortion*, pp.80-85.
[2] *De synodalibus causis*, I.304, II.55, pp.164, 282.
[3] II.52-54, pp.280-282.
[4] II.88, p.292.

churchmen confronted with real situations".[5] If prescriptive discourse on early medieval abortion was not marked by the cultivated propriety and consistency of speech characteristic of modern debate on, and especially opposition to, abortion, this was because such propriety and consistency were impractical. Conversely, if the underlying praxis has been neglected by historians, it is partly because they have approached this discourse with expectations conditioned by these modern forms of speech about abortion.

We have seen how this tradition was developed in a piecemeal manner. In sixth-century Gaul, Caesarius of Arles attempted to forge a memorable idiom of condemnation for priests and, through them, the laity within a larger project of forming Christian communities. Localised councils in Visigothic Spain were, counter-intuitively, compromised by religio-political discourse on abortion sanctioned by Visigothic rulers. The emergence of penitential canons in the sixth and seventh centuries was borne of different concerns and focussed upon different problems, and in subsequent copying these canons were amenable to new meanings. Finally, in the context of Carolingian reform, this material was further shaped by a range of concerns over authority and practicality. The common underlying thread was praxis rather than theory. Indeed, the rarity by which the doctrinal logic of baptism was truly applied to abortion – a logic by which abortion did not just destroy an ambiguous body but eternally condemned a soul, thereby making abortion (and infanticide) especially grave – is also a reflection of the primacy of praxis and the formal qualities of texts which attempted to individuate sins.

We have also seen that the tradition inscribed upon Regino's work unfolded within cultures in which there were multiple perspectives on abortion. The majority of legal articles addressed violently or magically induced miscarriage. The ostensible blindspot of women who had abortion themselves reflects the specific rationality underlying most early medieval legal articles. Using law-codes as a source, the contrast between 'Germanic' and ecclesiastical attitudes to abortion is less clear than is commonly assumed. What is clearer is that, Chindaswinth's unusual pronouncement notwithstanding, from the eighth century onward law-codes were open to different legal perspectives on abortion, most notably in the form of the *Lex Baiwariorum*'s invented tradition. At root, however, the fluctuating modes of categorising and grading abortion in law-codes, so easily taken as straightforward signs of attitudes, point to the potential for conflict and contestation. There was no wholly stable way of seeing and speaking

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[5] Austin, *Shaping church law*, p.39.

about abortion. This instability was especially marked upon the most unusual modes of speech we have examined: it was precisely because of this instability that abortion was exegetically fruitful and eschatologically perplexing. The early medieval *aborsus* was a fluid, ambiguous being. Finally, representations of abortion, scarce in number but rich in detail, offer glimpses into several profound tensions. Most significantly, abortion was both illicit and intelligible. The aborting woman could be envisaged with a certain empathy, albeit of a highly particular and even tendentious sort, while elsewhere women could be seen as both villains and victims of rumour.

Any generalised conclusions must grapple with a repercussion of the microscopic gaze brought to bear upon the sources. Microhistory inherently implies a sense of relation or intersection: 'micro' implies 'macro', the local implies the global.[6] At a simplistic level, one might read the relation between 'micro' and 'macro' as a relation between practice and ideal. Thus, for example, Emmanuel Le Roy Ladurie's depiction of different sexual mores in fourteenth-century town (Pamiers) and village (Montaillou) discloses the complex realities of sexuality 'from the ground up' which complicates 'top-down' approaches to Catholic or Catharist ideas about sex.[7] Or, to take a relevant modern example, the anthropologist Rhoda Ann Kamaaneh was struck by the answer given by two female Islamic teachers in Palestine when asked about Islamic religious teaching on abortion. Both replied that Islam permitted abortion before the foetus has a soul. "However," writes Kamaaneh, "the fact that neither of these two teachers knew off the top of her head when 'ensoulment' took place (each had to look it up) suggests that these ideas are not central in everyday discourse". Indeed, one teacher later phoned Kamaaneh to clarify a mistake: ensoulment occurred at 120 days and not, as she had earlier stated, at 90 days. To complicate matters yet further, many Palestinian Muslims (and Christians alike) see abortion of 'deformed' foetuses to be permissible and even mandatory.[8] In this case one can readily identify 'macro' (e.g. 'official' Islamic religious teaching) and 'micro' (e.g. the reality of this teaching 'on the ground'). But the picture of a general ideal at the 'macro' level and messy realities at the 'micro' level is not quite the picture which has been developed in this study. In a sense, the idea of a 'macro' level is precisely the image of the ecclesiastical tradition which I have reacted against. This

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[6] John Walton, James F. Brooks and Christopher R.N. DeCorse, 'Introduction', in John Walton et al. (eds.) *Small Worlds: Method, meaning, and narrative in microhistory* (Santa Fe, 2008) p.6.
[7] *Montaillou: Cathars and Catholics in a French village, 1294-1324*, trans. Barbara Bray (London, 1980) pp.144-203.
[8] *Birthing the nation*, p.206.

unwavering, unyielding entity is a modern abstraction. But the kind of 'micro' level which Kamaaneh encountered in contemporary Palestine is no less elusive. What remains are, largely, localised productions of the ideal and only fleeting refractions of how these ideals were enacted 'on the ground'.

The most judicious generalisation of what abortion signified in the early medieval West is that abortion entangled sex and murder. Abortion was most unequivocally murderous when the relational dimension was emphasised: men and women, fathers and, above all, mothers killed their *own* children. Of course, the penumbra of foetal development complicated matters, and the forms and functions of embryological distinctions defy unifying generalisation. I have tried to show that such distinctions ought to be more ambiguous and unfamiliar to historians than they are customarily taken to be. Abortion threatened to be the murder of incipient beings, but also threatened not to be. Attempted resolutions to this troubling ambiguity were not uniform and were rooted in specific practices: pastoral practice (e.g. 'homicidal contraception', *XL dies*), dispute settlement (e.g. distinctions in law-codes but also in Exodus 21:22-23) and even theology (e.g. Braulio's discussion of the abortive flux). Historiography has often traded in a misleadingly interchangeable idiom of 'formation', 'animation', 'quickening' and so on. In the early medieval period, the applicability and stability of such concepts is problematic. 'Quickening' as a moral criterion may well be an anachronism, 'animation' fluctuated across texts, and – an unacknowledged point in historiography – 'formation' was only ever used in principles for arbitration for abortion induced by violence, the scenario in which women were seen as victims of the misfortune of miscarriage, and not in relation to women who procured abortions for themselves.

Abortion was also rooted in sex. Indeed, allusions to material concerns underlying abortion were fleeting, while the problem of 'bad sex' issuing in the *male concepti* was the recurrent backdrop for thinking about abortion. There was a prevalent but mutable nexus between abortion and fornication. Crucially, this nexus was different from the Roman abortion-adultery nexus, for the sign was problematic together with the offence it signified. In the early medieval nexus, fornication sometimes entailed nonmarital or adulterous sex. But it also embraced, in an echo of Augustine, carnal marital sex as well as sexual transgression by the theoretically chaste. The possibilities moved in different directions. It was because of this sexual connection with sex that abortion could be

understood in relation to men as husbands or priests. And, yet, the connection between abortion and sex also – or, even, especially – articulated anxieties about female sexuality.

Perhaps the key to historicising early medieval abortion is to stress the inextricability of the entanglement with sex and murder. Even infanticide was construed as a sign of illicit sex and even attempting to prevent conception was construed as homicidal. Abortion was an intelligible recourse to the authors of early Irish *vitae* and, in a negative sense, to Uinniaus and the author of the *P.Pseudo-Theodori*, precisely because of this entanglement. If the need for historicising reproductive technologies has become increasingly acknowledged, the study of moral perceptions and attitudes has still been insufficiently disciplined by a historicist consciousness. Recognition that modern distinctions between abortion and contraception are not what they once were has not precluded – indeed, has facilitated – transposing modern (or later medieval) moral distinctions between abortion and contraception onto early medieval texts. Herein lies a danger of assimilating early medieval perceptions too closely to recognisable modern perceptions: early term abortion was about sex, not murder, or it was regarded with something approaching 'tolerance', etc. Such interpretation is consolidated by a pervasive but misplaced confidence in the uniform meaning of distinctions between the 'formed'/'unformed', 'living'/'not-yet-living', 'ensouled'/'not-ensouled' foetus, as if early medieval churchmen or jurists invoked such distinctions to do precisely the same work that they do in modern abortion debates. The result is a distortion which aligns, consciously or otherwise, with one set of modern moral perceptions as comfortably as the narrative of an unwavering Christian tradition in 'pro-life heritage tales' aligns with another.[9]

For, finally, this cultural history of abortion suggests that powerful idioms and reflexes rooted in modern discourse often hinder, rather than help, historical understanding. They generate a failure of cultural imagination. Specifically, a failure to engage with alien cultures in which women were often seen as the culprits and sometimes as the victims of abortion; in which abortion was varyingly but inextricably entangled with sex and murder; in which it made sense to denounce preventing conception as a form of homicide *and* to denounce abortion in terms of sexual sin; in which different distinctions in foetal development were made in different social

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[9] The term is from Celeste Michelle Condit, *Decoding Abortion Rhetoric: Communicating social change* (Urbana, 1990) pp.43-58. Condit describes histories like Noonan's and Connery's as 'pro-life heritage tales' and submits them to a political critique, though she has Noonan's 'Almost absolute value' rather than his *Contraception* in mind.

practices and in the service of different ends; and in which the ambiguity of abortion is not just a fog which historians can penetrate through miscomprehending anachronism, but was an early medieval reality which churchmen and jurists consciously struggled to negotiate. Within the short pronouncements on abortion strewn across numerous texts lay condensed ideas about gender relations, sexual sin, homicidal ambiguity and the sacred topography of society.

At root, a profound tension was central to the cultural significance of abortion in early medieval society, a paradox which one of Regino's own canons addressed. Regino was aware of the problem of sexual sin committed "at the devil's persuasion" and through "concupiscent weakness of the flesh", and also the attempt to conceal this "through a single deadly potion":

> [S]o that the crime is not twinned, that is of adultery and homicide, we advise that each priest publicly announces to his people that, if any woman, corrupted in secret, should conceive and give birth, she should by no means kill her son or daughter at the devil's prompting, but, by whichever means prevails, she should have the child carried before the doors of the church and left there, so that on the next day the child can be brought before the priest to be raised and nourished by one of the faithful; and thereby she will avoid being guilty of homicide and, which is worse, parricide.[10]

The profound tension lay in abortion's capacity both to erase and compound the turbulence of sexual sin. In facing the entangled mess of sex and murder, Regino made a conscious choice to address the murder, while 'holy abortions' miraculously bypassed this choice. But many contemporaries did not address this tension and herein lay the fundamental blindspot of most early medieval perspectives on abortion. Through sex, men could be implicated with abortion. But, more commonly, women were the scapegoats of sexual transgression and were left to bear the moral and physical consequences in isolation.

In thinking about the problem of "form and formlessness" in societies, Mary Douglas once turned to "persons in a marginal state...who are somehow left out in the patterning of society":

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[10] "ne geminetur scelus, scilicet adulterii et homicidii, damus consilium, ut unusquisque sacerdos in sua plebe publice adnunciet, ut, si aliqua femina clanculo corrupta conceperit et pepererit, nequaquam diabolo cohortante filium aut filiam suam interficiat, sed, quocunque praevalet ingenio, ante ianuas ecclesiae partum deportari faciat ibique proici, ut coram sacerdote in crastinum delatus ab aliquo fideli suscipiatur et nutriatur, et tali ex causa homicidii reatum et, quod maius est, parricidii evadat.", II.68, p.284. This canon, which follows quotations of infanticide and abortion canons from councils and the *P.Pseudo-Bedae,* potentially covered both abortion and infanticide.

Take, for example, the unborn child. Its present position is ambiguous, its future equally. For no one can say what sex it will have or whether it will survive the hazards of infancy. It is often treated as both vulnerable and dangerous.[11]

The early medieval unborn child was not quite the modern paragon of innocence but certainly was vulnerable and dangerous. So too was the woman who bore her. For, the aborted *infans* and the woman who aborted were vulnerable and dangerous insofar as each risked, in different ways, becoming "alienated from the womb".

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[11] *Purity and Danger: An analysis of concepts of pollution and taboo.* New edition (London, 2002) p.118.

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