

Genres of Casuistry:

Penitential Teaching for Franciscans in *Labia Sacerdotis*¹

By comparison with the Dominicans, the Friars Minor came relatively late to administering confession to lay people. The Franciscans' early history as an order of lay brothers meant that it was not initially equipped to hear confessions in a systematic manner.² Over the years, accounts of Franciscan priests and preachers hearing confession accumulated, until in 1237, a bull of Gregory IX, *Quoniam abundavit iniquitas*, permitted Franciscans to hear confessions; Innocent IV extended these rights when he reissued the bull in 1244.³ To accompany these penitential duties, a tradition of Franciscan writing for confessors emerged in the thirteenth century. The development of the genre mirrored Franciscan participation in lay confession: the first penitential writings were not manuals for administering the sacrament, but penitential sermons calling the laity to confess.⁴ It was only in the 1270s that Franciscan confessors' manuals began to circulate, the first surviving manual being Monaldus of Capo d'Istria's guide to canon law relevant to the penitential forum, written around 1274.⁵

¹ Throughout this paper, the following abbreviations for canonical texts will be used: *Decretum Gratiani*, ed. Friedberg, *Corpus Iuris Canonici*, 2 vols. (Leipzig 1879) vol. i. C refers to Causa, from the second part of the *Decretum*, q. refers to the question number, and c. to the chapter within this. Gregory IX's decretals, known as *Liber Extra*, are also edited by Friedberg in *Corpus Iuris Canonici*, vol. ii. References to individual decretals are quoted in the form X.1.2.3, with the first number referring to book of the *Liber Extra*, the second to the title and the third to the chapter. I would like to extend my thanks to the anonymous reviewers of this article, David d'Avray and John Sabapathy.

² Roberto Rusconi, 'I francescani e la confessione nel secolo XIII' in *Francescanesimo e vita religiosa del laici nel '200: Atti dell'VIII Convegno Internazionale Assisi, 16-18 ottobre 1980* (Assisi, 1981), 253-309, at 255-9.

³ Rusconi, 'I francescani e la confessione', 275-6.

⁴ Bert Roest, *A History of Franciscan Education (c.1210-1517)* (Leiden, Boston, Cologne, 2000), 315-16; idem., *Franciscan Literature of Religious Instruction Before the Council of Trent*, (Leiden, 2004), 16, 18-19, 24, 38.

⁵ Monaldus of Capo d'Istria, *Summa de Iure Canonico*, (Lyon 1516); cf. Pierre Michaud Quantin, *Sommes de casuistique et manuels de confession au moyen âge (XII-XVI siècles)* (Louvain, 1962), 42. An exception to this generalisation is the now lost *Liber de poenitentia* of Adam Marsh. (Richard Sharpe, *A Handlist of the Latin Writer of Great Britain and Ireland Before 1540*, Turnhout, 1997, 18.)

When Franciscan authors turned to writing penitential guides, they contributed to a genre that had already been established over the course of the earlier thirteenth century.⁶ Early confessors' manuals were written by secular clerics as guides for priests charged with hearing confession. They were a mixture of sacramental instruction and a list of sins, with summaries of canon law and theology relevant to penitence. The majority of these early manuals were written in England, including Thomas Chobham's *Cum Miserationes* (c.1210-1215), Robert Flamborough's *Liber Poenitentialis* (1208-1213) and John of Kent's *Summa* (1212-20).⁷ In 1221, Honorius III instructed the Dominican order to aid bishops in hearing confessions. In response, the order produced a series of new confessors' manuals in quick succession, including Paul of Hungary's manual and the *Summa Conradi*, but both were superseded by Raymond of Peñafort's *Summa de Poenitentia*, which was originally written in 1224-6 in Barcelona, and updated with references to the *Liber Extra* in 1234-6.⁸ As a result,

⁶ cf. Roest, *Franciscan Literature of Religious Instruction*, 315. On the development of pastoral teaching in and outside of mendicant houses in the thirteenth century: Leonard Boyle, O.P., 'Notes on the Education of the *Frates communes* in the Dominican Order in the Thirteenth Century' in his *Pastoral Care, Clerical Education and Canon Law, 1200-1300* (London, 1981): VI; Joseph Goering, *William de Montibus (c.1140-1213): the schools and the literature of pastoral care* (Toronto, 1992); idem. 'The Scholastic Turn (1100-1500) Penitential Theology and Law in the Schools' in Abigail Firey, (ed.) *A New History of Penance* (Leiden and Boston, 2008), 219-37; William Dohar, 'Sufficienter literatus: clerical examination and instruction for the care of souls' in J Jacqueline Brown and William P. Stoneman (es.), *A Distinct Voice. Medieval Studies in Honour of Leonard E. Boyle, O.P.* (Notre Dame Ind. 1997), 205-21; M. Michèle Mulchahey, "First the Bow is Bent in Study..." *Dominican Education before 1350* (Toronto, 1998); Catherine Rider, 'Sciendum est autem sacerdotibus (Penitens accedens ad confessionem): a Short Thirteenth-Century Treatise on Hearing Confessions' *Mediaeval Studies* 73 (2011): 147-182; Andrew Reeves, *Religious Education in Thirteenth-century England: The Creed and Articles of Faith* (Leiden and Boston, 2015); William H. Campbell, *The Landscape of Pastoral Care in 13th-Century England* (Cambridge 2018).

⁷ *Thomae de Chobham Summa Confessorum* ed. F. Broomfield (Louvain, 1968); Robert of Flamborough, *Liber poenitentialis a critical edition with introduction and notes*, ed. J. J. Francis Firth (Toronto, 1971); John of Kent, *Liber Poenitentialis* in British Library, Royal MS 9 A XIV ff. 203v- 232v.

⁸ Paul of Hungary, *Summa Poenitentiae*, in *Bibliotheca casinensis IV* (Montecassino, 1880), 191-215; *Summa Conradi* is published in Jean Pierre Renard (ed.), *Trois sommes de penitence de la première moitié du XIIIe siècle: la "Summula magistri Conradi," les sommes "Quia non pigris" et "Decime dande sunt"* (Louvain-la-Neuve, 1989); Raymond of Peñafort, *Summa de Poenitentia et Matrimonio cum Glossis Ioannis de Friburgo* (Rome 1603, repr. Farnborough, 1967), glosses actually by William of Rennes; cf. Michaud Quantin, *Sommes de casuistique*, 24-6,

when the first Franciscans came to write confessors' manuals for their order, they adopted and updated Raymond of Peñafort's manual. As Roberto Rusconi demonstrates in an important paper, the controversies between the two orders had no effect on their intellectual engagement with each other in penitential matters.⁹

Nevertheless, there remains an open question about the ways in which Franciscans adapted a largely Dominican tradition to the culture and traditions of their own order. This article addresses one aspect of the Franciscan development of penitential teaching in particular: the relationship between written penitential manuals and oral teaching in Franciscan houses for brothers who would hear confessions. Although there has been much scholarship on theology and canon law teaching in Franciscan *studia*, we still know relatively little about manner in which practical training on hearing confessions was conducted within the order. There is a certain amount of information in the regulations of Franciscan houses, which sometimes called for including a *Summa de casibus* among the texts to be taught by regional lectors.¹⁰ An important additional source for penitential teaching are the confessors' manuals themselves. In this paper, I look at a late thirteenth-century Franciscan set of questions on penitential canon law. It is known for the words of its incipit *Labia Sacerdotis* and was written in the Franciscan *studium* in Magdeburg in the late thirteenth century.¹¹ *Labia Sacerdotis* can be described broadly as a manual for confessors, but it belongs to a more specialised genre of questions based on a lecture course on penitential matters. Such texts resulted from a teaching programme in which a lecturer gave instruction on an authoritative manual, updating and elaborating as he read, and then wrote down his additions as a new treatise. As we will see, there are several other surviving manuals of this kind from the thirteenth century. Because of their closeness to a *viva voce* lecture course, this kind of

34-43; Stephan Kuttner, 'Zur Entstehungsgeschichte der Summa de casibus poenitentiae des hl. Raymond von Penyafort' in his *Studies in the History of Medieval Canon Law* (Ashgate, 1990), 97-105.

⁹ Rusconi, 'I francescani e la confessione', 295.

¹⁰ Roest, *A History of Franciscan Education*, 85, 147.

¹¹ Bertrand Kurtscheid, 'De studio iuris canonici in ordine fratrum minorum saeculo XIII' *Antonianum* 2 (1927): 157-202, at 172; cf. Karl Weinzierl, 'Heinrich von Merseburg, Franziskaner, Kanonist, † 1276', *Neue deutsche Biographie* VIII (1969), 415-416; see also, the online register of Franciscan authors: <https://applejack.science.ru.nl/franciscanauthors/franauth.htm#_Toc427570980> last consulted 19 July 2021;

treatise allows us to see what and how simple brothers were taught as part of their basic training.

The study of *Labia Sacerdotis* as a teaching text reveals more general observations about penitential teaching in the thirteenth century, in particular, the degree to which penitential questions focussed on cases of moral uncertainty. The manual is entirely made up of casuistical questions, that is, questions about cases where the degree of guilt is unclear. The word casuistry, despite all of its pejorative connotations, is used here to mean no more than the application of moral principles to individual cases.¹² Casuistry focuses on cases of conscience; questions about what to do in a difficult situation or a difficult judgement about how bad an action already committed was in the circumstances. A casuistical manual collects difficult moral questions together and resolves them individually without dwelling too much on justifying the overarching principles. The use of a casuistical method had important implications for the manner of teachings penitential topics to Franciscan brothers, but, as I will show, also had an effect on the content of the teaching.

***Labia Sacerdotis* in Context**

Labia Sacerdotis is one of a series of teaching texts on canon law produced in German Franciscan *studia* during the thirteenth and early fourteenth century. The original work in the series was Henry of Merseburg's *Summa Titulorum*, an introductory summary of Gregory IX's decretals completed in the 1240s. This was not a penitential manual, and so is not included in the history of Franciscan confessors' manuals.¹³ Rather, the *Summa* goes through the five books of Decretals in order and explains the principles of the law under each title.¹⁴ Later

¹² For an important study of casuistry in a broader sense, see Jean-Claude Passeron and Jacques Revel (eds.), *Penser par cas*, Enquête 4 (Paris, 2005); Emily Corran, *Lying and Perjury in Medieval Practical Thought: A Study in the History of Casuistry* (Oxford, 2018), 1-2.

¹³ On Henry of Merseburg's manual of canon law, see Kurtscheid, 'De studio iuris canonici', 160-4; Roest, *Franciscan Literature of Religious Instruction*, 317.

¹⁴ The text of Henry of Merseburg's *Summa Titulorum* survives in over thirty manuscripts (cf. Kurtscheid, 'De studio iuris canonici': 193-7): I have used Leipzig, Universitätsbibliothek MS 1004, a clear fourteenth-century copy with the full text of the *Summa* with the *Apparatus* incorporated into the text. This manuscript starts with the prologue to the *Apparatus* with the incipit: 'Fecit deus duo luminaria' (fo 1v), followed by the incipit to the main text 'Sicut deus' (fo. 4r) (cf. Kurtscheid: 168)

members of the Magdeburg house wrote an *Apparatus* to Henry of Merseburg's *Summa* (with updates to the legislation taken from the First Council of Lyon).¹⁵ The *Labia Sacerdotis* was a further addition to this corpus, the result of a series of lectures on Henry of Merseburg's glossed text, which focused on questions relating to confession and the penitential forum. The close relationship of this text with Henry of Merseburg's *Summa* and *Apparatus* is apparent from the title it is often given in manuscripts, *Casus in Summa Henrici*. This was not the final stage in the reworking of the text: a later recension of the *Summa Henrici* was produced in the early fourteenth century: this was known as *Summa Brevis super Decretales*, and combined extracts from *Summa Henrici*, the *Apparatus* and *Labia Sacerdotis*.¹⁶ *Labia Sacerdotis* therefore was a specialist penitential manual within a series of canonical teaching texts. As we shall see, it also had a more specific function than the other penitential guides, such as Thomas Chobham's *Cum Miserationes* or Raymond of Peñafort's *Summa de Casibus*, which were by and large intended as general overviews of canon law or penitential teaching.

Labia Sacerdotis was written after 1285 and before 1298, possibly by a Henry of Barben.¹⁷ The date is determined by references in the text to the Second Council of Lyon in 1274, and to John of Erfurt's *Sentences' Commentary* and *Tabula utriusque iuris*, which circulated in 1285, but the absence of any reference to the *Liber Sextus* of Boniface VIII, published in 1298. The text has been attributed in various manuscripts to Hermann Merseburgensi, Hermann de Weyssenburg, Hugo de Merseburg, Hinricus de Wirczeburg, Iohannes fratri magistri Henrici de Presburg, and Henricus de Barboy or Barben. Kurtscheid argues that all of these attributions except Henry of Barben can be explained away as confusions due to the reference to H. de Merseberg in the prologue of *Labia Sacerdotis*, and

¹⁵ Kurtscheid, 'De studio iuris canonici': 164-8.

¹⁶ The incipit is 'Fecit Deus duo luminaria' cf. Kurtscheid, 'De studio iuris canonici': 172-3, 201-2. A useful guide to all of these texts is available on the following online register of Franciscan authors: https://applejack.science.ru.nl/franciscanauthors/franauth.htm#_Toc427570984 (last accessed 16 July 2021). The date of the *Summa Brevis* is determined by references to privileges given to the Friars Minor by Benedict IX and Clement V. cf. Ethan Leong Yee, 'The Burden of Forgiveness: Franciscans' Impact on Penitential Practices in the Thirteenth Century' PhD Dissertation Columbia University 2019: 29-33; My thanks to Dr Yee for sharing his thesis with me and for his help with disentangling the complex textual tradition behind these recensions.

¹⁷ A detailed discussion of the text can be found in Kurtscheid, 'De studio iuris canonici': 168-72.

so adopts Henry of Barben as the author.¹⁸ No further details are known about a Henry of Barben at Magdeburg. For convenience, I shall refer to the author of this text as Henry, but it should be understood that this identification is tentative.

The Magdeburg Franciscan house, where *Labia Sacerdotis* was written, was founded in 1225 and it became a school in 1228.¹⁹ It was quite prestigious, with two Paris-trained English scholars as its first lecturers: Simon Anglicus had lectured in Paris, and brought a number of preachers and theologians with him to the school in 1228.²⁰ He was later succeeded by the natural philosopher Bartholomeus Anglicus in 1230, who had previously lectured on the Bible to Franciscans on the lectorate programme in Paris.²¹ Magdeburg became the foremost *studium* in the region in the early thirteenth century; friars were sent there from across Saxon province in order to receive teaching in theology, before becoming lecturers in their local houses.²² Later in the thirteenth century, however, its prestige was overtaken by the *studia* at Regensburg and Worms.²³

The text of the *Labia Sacerdotis* survives in about forty-five manuscripts, more often copied separately from Henry of Merseburg's *Summa* than not.²⁴ Almost all surviving manuscripts have a provenance in Germany. The majority date from the fifteenth century and

¹⁸ Kurtscheid, 'De studio iuris canonici': 171-2.

¹⁹ On the early history of Franciscan schools and the emergence of the role of lector see the important account by Neslihan Şenocak, *The Poor and the Perfect: The Rise of Learning in the Franciscan Order, 1209-1310* (Ithaca NY, 2012), 54-9.

²⁰ Bert Roest, *Franciscan Learning, Preaching and Mission c.1220-1650. Cum Scientia Sit Donum Dei, Armatura Ad Defendendam Sanctam Fidem Catholicam* (Leden, 2015), 36.

²¹ *ibid.* 37.

²² Franciscan *studia* differed in several important respects from their Dominican counterparts, most significantly in that a school did not have to be designated *studium generale* in order to accept brothers from other provinces as students. See Neslihan Şenocak, 'The Franciscan *Studium Generale*: A New Interpretation' in Kent Emery Jr, William J Courtenay and Stephen M Metzger (eds), *Philosophy and Theology in the Studia of the Religious Orders and at Papal and Royal Courts* (Turnhout, 2012), 221-36.

²³ Roest, *Franciscan Learning*, 38.

²⁴ Kurtscheid's list of manuscripts is the only systematic catalogue of the work that I know of ('De Studio Ordinis' pp. 197-201). Kurtscheid missed Leipzig, Universitätsbibliothek MS 1695, and potentially some other manuscripts in addition. It has not been possible to reconstitute a full list of manuscripts of this text for this article. (My thanks to Katherine Sturm for her help with Leipzig manuscripts).

are not known to have a Franciscan origin. I will say more about the manuscripts of the *Labia Sacerdotis* below.

The Prologue

We have a detailed understanding of *Labia Sacerdotis's* setting in life because the treatise has an unusually communicative prologue. It is a composite introduction with several sections (a form that is not unusual for penitential manuals for this period).²⁵ Still, this prologue is unusually complete in the range of introductory information offered. The four sections are:

- 1) a sermon-like introduction urging priests to attain a minimum standard of learning. The opening words are taken from the book of Malachi, 'For the priest's lips should keep knowledge and they should seek the law at his mouth, for he is the angel of the Lord of hosts'. The author interprets this as an instruction to the priest to use his learning to be both knowledgeable and virtuous (a highly conventional reckoning of the benefits of learning).²⁶ The three kinds of knowledge necessary for a simple priest, he says, are knowledge of secular letters (in order to be able to tell falsehood from truth, to have a path to knowledge of theology (*viam ad scientiam pietatis...habere*), and in order to exercise licitly his office as priest), Scripture (for the perfection of this knowledge, to avoid heresy and in order to be able to teach his subordinates) and canon law (so as not to break the law through ignorance, to regulate himself well and so that he can advise penitents).²⁷

²⁵ The prologue is edited by Thomas Ertl in his *Religion und Disziplin: Selbstdeutung und Weltordnung im frühen Deutschen Franziskanertum* (Berlin and New York, 2006): 406-11. John of Freiburg's *Summa Confessorum* is another manual with a composite introduction: when John updated the text of his *Summa*, he chose to keep the prologues of his earlier drafts, such that the final introduction consisted of three parts. See Leonard Boyle, 'The *Summa Confessorum* of John of Freiburg and the Popularization of the Moral Teaching of St. Thomas and of some of his Contemporaries' in his *Pastoral Care, Clerical Education and Canon Law, 1200-1300* (London, 1981), III, 245-68, at 250-1.

²⁶ John Baldwin, *Masters, Preachers and Merchants: The Social Views of Peter the Chanter and his Circle*, 2 vols. (Princeton 1970), 1:107-16; Ian Wei, 'From Twelfth-Century Schools to Thirteenth Century Universities: The Disappearance of Biographical and Autobiographical Representations of Scholars' *Speculum* 86/1 (2011): 42-78 at 60-6.

²⁷ Ertl, *Religion und Disziplin*, 406-8.

- 2) an introduction to Henry of Merseburg's *Summa*. This follows the form identified by Minnis and Scott as the Aristotelian elaboration of the twelfth-century *accessus* to teaching texts.²⁸ This was an explanation of the text ordered around the Aristotelian four causes: the efficient cause (the author of the text and his reason for writing, in this case Henry of Merseburg writing for the common good), the material cause (the materials used by the author, i.e. canons, decrees, decretals of letters of the Roman pontiff) the 'formal cause' (the literary style and method, i.e. the division into five books into titles and the titles into smaller parts etc.) and the final cause, (the ultimate end in writing, in this case, knowledge of canon law so that the prudent reader may find in it what should be used for the equity of the law, for useful counsel and for analysis by cases and by themes).²⁹
- 3) a guide to the books of canon and Roman law. The author of the *Labia Sacerdotis* explains the different purposes of the main collections of Roman law, the Institutes, the Codex, the Digest and the Authentica. He explains how references to the various parts of Gratian's *Decretum* are made and the distinction (borrowed from Gratian's *Decretum*) between a canon and a decretal.³⁰ This last part is similar to the useful section near the end of James Brundage's textbook *Medieval Canon Law*, which sets out the various forms in which references to canon law sources can take.³¹
- 4) an account of how the author came to write the present treatise.

Such an introduction signals that this is a practical manual intended to help priests make decisions, rather than a primer on basic theology. It is a familiar trope to present even long and complex confessors' manual as a guide for the simple, but in several ways, the *Labia Sacerdotis* nuances this claim to emphasise that it is for those who require guidance in canon law. The schematised account of necessary learning for priests sidesteps the more usual catechetical list of the articles of faith, the vices and Ten Commandments. It makes only

²⁸ A.J. Minnis and A.B. Scott (eds), *Medieval Literary Theory and Criticism c.1100-c.1375. The Commentary Tradition*, Revised Edition (Oxford, 1988), 2-3.

²⁹ Ertl, *Religion und Disziplin*, 408-9.

³⁰ Ertl, *Religion und Disziplin*, 409-10.

³¹ James Brundage, *Medieval Canon Law* (New York, 1995), 190-205.

fleeting mention of the importance of theological knowledge as a guard against falling into error, and instead emphasises the importance of knowledge of the law to prevent sinful behaviour. When the author includes an *accessus* to Henry of Merseburg's summary of canon law, he identifies his own work as a supplement to an authoritative canon law school text. He also repairs an omission in the existing tradition: Henry wrote no *accessus* to his own work, but the *apparatus* has an *accessus* to itself in its prologue, explaining the purpose of the commentary.³² The section explaining how to look up references in the *Decretum* is also complementary to the prologue of Henry of Merseburg's *Summa* and its *Apparatus*. Henry of Merseburg (following an example set by Gratian) sets out first principles in the prologue to his *Summa*, including definitions of natural and positive law, and the *Apparatus* explains the rationale between the division between imperial and sacerdotal authority. The final paragraph of the *Apparatus* prologue gives a brief list of the books of Roman and canon law:³³ the section in the *Labia* quotes this, and expands it with additional information, including an explanation of how to look up canon law sources. These aspects of the prologue indicate that the text is intended to be read alongside and in addition to Henry of Merseburg's manual.

These impressions are confirmed in the final part of the prologue in which the author explains how he came to write the text. It is worth quoting the entirety of what he says in the final section:

'When I was lecturing to the brothers on brother Henry's *Summa* and was interpolating certain cases to the lecture, that the text of that little *Summa* did not include, brothers, with many entreaties and insistent requests, asked me to write down the same cases briefly and simply, so that simple brothers, who cannot get themselves or those confessing to them out of the dark woods of canon law into lucidity, could refer to the clarity of these cases in order to resolve the complex problems raised in confession.'

There directly follows an obligatory modesty topos,

³² The introduction to the *Apparatus* of Henry of Merseburg's *Summa* is published in Ertl, *Religion und Disziplin*, 389-95, relevant section at 395.

³³ cf. Leipzig, Universitätsbibliothek MS 1004, f. 4v; Ertl, *Religion un Disziplin*, 395.

‘And although I feared to undertake this labour because of my awareness of my lack of knowledge and weakness of my physical strength, because the brothers’ urging was too much and for the sake of Christ’s charity whose eyes saw my imperfection, being compelled by brotherly devotion, I decided to agree, more serving the common good than private, since public utility is preferable to private, as it is held in *Decretum* C.7 q.1 c.35.’

The author then sets out his method and intentions:

‘Therefore I collected certain cases with great labour through many night hours, as far as I could, from the text of the decretals and decretalists from *summae* and *apparatus* of many famous and very renowned masters in canon law, and I annotated certain titles whenever I thought that the material seemed more appropriate. But I have not put down those cases which are contained in the text of the same little *summa*, to show that the cases which I have added are to be in addition to the same little *summa*, and I have chosen to omit a good many cases from various *tituli*, since it was my intention to explain only the more common cases, especially those which could be useful to ordinary confessors either in hearing other people’s confessions or in guarding their own consciences. Indeed, where different authors have different opinions on the same case, I did not wish to defend the opinions of other masters, instead it is enough for me in those cases to put the opinion of one authoritative master with his name according to my own conscience, so that anyone who wishes to defend the views of other masters, should not criticise or dispute with me, but with the author of this opinion, since I include some things here not judging, but simply quoting the opinions of others. I ask you, whoever reads this, that you look with a pious eye, examine it with diligent study, and correct and emend what should be corrected with a kind spirit and recommend the soul of the compiler to God with devoted prayers.’³⁴

³⁴ ‘Cum summam Heinrici fratribus legerem et quosdam casus lectioni intersererem, quos textus eiusdem summule non habebat, fratres multimodis precibus ac importunis instantiis me rogaverunt, ut eosdem casus brevibus verbis et simplicibus annotarem, quatenus fratres simplices ad planiciem eorundem casuum pro expediendis penitentium perplexitatibus recurrerent, qui non possent se ac confitentes sibi in latebrosa silva

This paragraph is a window into the methods for teaching of simple brothers. The author describes a course on penitential questions that would equip priests to give good counsel and comply with the rules in all aspects of their ministry. The teacher would read from the text of a more authoritative manual, then pose a series of questions not resolved by the text, answering each one in turn. In accordance with scholarly practice of the period, the questions and their answers were collected and edited by the teacher in order to be circulated as a written offering. The collection thus offers a kind of specialised penitential teaching that is linked to, but separate from, the educational programme of the university. Like the canon law schools of the period, this teaching was based around lectures, but unlike the schools, the text being glossed, Henry of Merseburg's *Summa*, was a simplified summary of the discipline, rather than the decretals themselves. Just as the literary result of a canon law lecture was a series of glosses or an apparatus designed to be read alongside a decretal collection (or alongside Gratian's *Decretum*), the text of the *Labia Sacerdotis* fulfils a comparable function.

iuris canonici ad liquidum expedire. Et quamvis hunc laborem tum propter defectum scientie tum propter defectum virium corporalium teste conscientia subire formidarem, nimia fratrum devictus instantia et charitate Christi, cuius oculi imperfectum meum viderunt, me compellente fratrum devotioni, censui annuendum magis deserviens communi utilitati quam private, quippe cum publica utilitas preferenda sit private, ut habetur vii. q.i. Scias (*Decretum* C.7 q.1 c.35). Igitur de textu decretalium et decretorum et de summis ac apparatus plurium magistrorum famosorum ac valde nominatorum in iure canonico cum magno labore et crebris vigiliis casus quosdam, prout potui, collegi et certis titulis, prout eorundem materie mihi magis videbatur congrue, annotavi. Porro casus illos que in textu eiusdem summule habebantur non posui, ut ostenderem quod casus quos adieci sunt eiusdem summule supplementum plurimosque casus de diversis titulis voluntarie obmisi, quia intentionis mee fuit solum communiore casus explicare, precipue illos, que simplicibus confessoribus utiles esse possunt sive in confessionibus audiendis aliorum sive pro conscientii propriis servandis. Sane, ubi circa eundem casum diversi diversa opinantur, ibi opiniones aliorum magistrorum defendere nolui, sed sufficit mihi pro conscientia mea ibi opinionem unius magistri autentici cum ipsius nomine ponere, ut qui opiniones aliorum magistrorum defendere voluerint, mihi non detrahant nec contra me disputent, sed contra auctorem illius opinionis, cum quedam hic ponam non sententiando, sed aliorum opiniones simpliciter recitando. Rogo te, quicumque istud legeris, ut oculo pio perspicias diligentique studio discutias ac benigno animo corrigenda corrigas et emendas et compilatoris animam deo devotis precibus recommends.' Ertl, *Religion und Disziplin*, 410-411. I have corrected the text in a few places where Ertl's grammar does not add up, using Bibliotheca Apostolica Vaticana MS Pal. Lat. 152, f. 194r. This manuscript was chosen for convenience: it is a reasonably good text which is clearly written and available on a digital viewer.

Labia Sacerdotis does not employ the dialectic method favoured in the schools, with preliminary answers listed on all sides of a problem followed by a resolution: Henry of Barben states explicitly that he will simply report an opinion that he judges to be correct. In this sense, the collection is not scholarly, but interacts with school texts at the level usually adopted in confessors' manuals of this period. Still, the work is also distinct from the popular genre of penitential manual. Within the topics that are deemed relevant, the author says that he will not restate the basics that were set out in Henry's *Summa*, but instead update and develop the ideas. This is therefore an extension book on penitential canon law that selectively questions Henry of Merseburg's *Summa*, rather than a systematic handbook or apparatus.

The Composition of *Labia Sacerdotis*

The main text bears out the promise of the introduction. First, it limits the range of topics under discussion. Like Henry of Merseburg's *Summa*, the text follows the chapter headings and order of the *Liber Extra*, but the author draws selectively from the five books of the Decretals, only including titles that are relevant to penitence. As a result, the five books of the *Labia Sacerdotis*, which follow the five books of the *Liber Extra* are of uneven length. The first two books, which in the *Liber Extra* consist of 73 titles given over to elections, offices and procedure, have only fourteen chapters in *Labia Sacerdotis*. This is because so few of these chapters in the early parts of the *Liber Extra* have material that is relevant to penitential teaching that could be of use to a humble priest. We get no explanations in this section of the definition of constitutions, rescripts or elections. Instead, the first chapter of *Labia Sacerdotis* there are several questions concerning elections. The author starts with a few general questions: what if everyone involved in an election wishes to ratify a candidate voted in by a minority, would this be a valid election?³⁵ What if all consent to an unsuitable person, can he

³⁵ Prague Národní knihovna České republiky, MS XI E 2, f. 28r (C), compared with Bibliotheca Apostolica Vaticana, MS Pal. lat. 152 f. 193r-v (V). Notes in round brackets always signify a variant reading of the word directly before. 'Quid si omnes velint habere ratam electionem factam a paucioribus, numquid valebit? Respondeo quod non, sed oportet (V: non oportet, sed) eos denuo eligere, argumentum 'Electione' Quanto (V: Cum) hoc Innocentius. Nota secundum Burchardum et Hostiensem si unus gerit vicem decem absentium, ille intelligitur decem voces habere. Extra 'Electione' Scriptum (X.1.6.40).' NB: For extracts not edited by Ertl, I have used these two manuscripts for convenience: both present a relatively accurate text.

be rejected?³⁶ However, he says that he will pass over all other questions on election, since they are not relevant to the forum of confession.³⁷ The remainder of the chapter is a list of reserved cases – he saves for another chapter those cases that are reserved to the pope, but lists grave sins that are reserved to a bishop for absolution.³⁸ The next chapter after this is ‘De Renunciacione’, corresponding to the ninth title of the *Liber Extra*, contains only two questions relating to renunciation of offices – these are cases where renunciation is complicated by simony and disobedience. Book 5 of the *Decretals*, on the other hand, is devoted to criminal law and penitence, and includes chapters on subjects such as simony, heresy, homicide and usury. There is a wealth of material relevant to the internal forum in this section of the decretals, and so the *Labia Sacerdotis* has questions on nearly all of the titles in the *Liber Extra*, and the fifth book is by far the longest. Superficially then, the treatise follows the format of mainstream canon law treatises, but any material not relevant to confessors has been almost entirely excised.

Within each title, Henry of Barben partially follows the methodology of the influential Dominican confessors’ manual, Raymond of Penafort’s *Summa de Casibus*, and the *Apparatus* to this text composed by William of Rennes. These both included a combination of general introductions to penitential topics and problematic cases. Thus, in the chapter on vows, Raymond sets out first the definition of a vow and distinguishes necessary from voluntary and solemn from simple vows, before he raises a series of problem cases: a man vows to enter a monastery but then gets married, what should he do? A man vows to go on crusade but enters a monastery instead, is he still permitted to go on crusade and is he guilty of breaking a solemn religious vow? What if a woman’s husband has been missing for years on crusade and she has remarried, presuming him dead, but he returns and claims her as his wife? In response to each question, Raymond demonstrates how the decretals can be used to resolve dilemmas such as these. The chapters on vows in the *Labia Sacerdotis*, on the other hand, do not include any of the exposition or basic description, but quote all of the problems from *Summa de*

³⁶ Ibid. (V: f. 197r) ‘Quid si omnes consentiant in personam non ydoneam numquid potest reprobari?’

³⁷ Ibid. ‘Plures casus de electione transeo quia parum spectant ad forum confessionis. Que sint (V:sunt) illa que spectant ad solum papam habes infra in eodem libro in textu et in apparatu sub titulo de officio legati.’

³⁸ Ibid. C: ff. 28r-29r; V: f. 197

Casibus, and quotes Raymond's and William's solutions.³⁹ However, he expands the range of questions considered, also including problems raised in Goffredus of Trani's *Summa*, and a problem specific to the Friars Minor raised in the *Sentences* commentary of John of Erfurt.⁴⁰

In fact, throughout the *Labia Sacerdotis*, Henry of Barben draws on recent theology school debates to flesh out his penitential arguments. He favours the arguments made by Franciscan theologians. For example, the first chapter of the final book, on accusations, is one of the minority of chapters not primarily based on Raymond of Penafort and William of Rennes. The questions raised in this chapter are as follows:

- 1) Can a subordinate accuse a prelate? The answer depends whether he does so in good conscience or not.
- 2) What if someone is the only person who knows about a crime, does he have to make a public accusation?
- 3) It is asked whether everyone is obliged to take to task (*arguere*) a brother who has committed a sin?
- 4) Is a subject required to correct a prelate who has sinned?
- 5) Does a bad prelate sin if he corrects his subordinate?⁴¹

Questions on fraternal correction and public accusations had become a regular topic discussed in theology schools by this period, and Henry draws on Bonaventure's *Sentences*

³⁹ cf. C: f. 46 r-v; V: ff. 200v-201r.

⁴⁰ Ibid. C f. 45r, V. f.201r: 'Queritur (V: Et) si aliquis vovit intrare ordinem minorum fratrum et ibi non potest recipi, quid faciet? Respondeo talis aut cogitavit primo et principaliter de religione sed ex consequenti de tali et (V add.: non de alia et) tunc si in illa (V: in illa]ibi) non recipitur tenetur intrare aliam, aut cogitavit de illa et tunc si non recipitur igitur non tenetur ire ad aliam (V: ire ad aliam]aliam intrare), quia istud (V: om.) subintelligebatur si vellent eum recipere et si dubitat (V:dubitatur) quomodo vovit teneat viam tutiorem. Hoc Frater Iohannis iiii. libro Sententiarum d. 19'.

⁴¹ C ff. 71r-v, V: ff. 208v-209r, 'De accusationibus', 'Queritur si subditi possunt accusare prelatum (V: prelatos)? ... Quid si aliquis scit solus de aliquo crimine aliquod, numquid debet eum accusare?... Queritur si quilibet teneatur corripere (V: arguere) fratrem peccantem cum dicatur Matthei xviii 'Si peccaverit in te frater tuus corripere (V: vade et corrige) eum inter te et ipsum solum? ... Numquid subditus (V:om) tenetur corripere (V: corrigere) prelatum peccantem? ... Numquid malus prelatum peccat corripendo subditum?'

Commentary and the *Summa Halensis* in order to answer questions on this topic.⁴² Elsewhere he also quotes Servasanto de Faenza and the *Sentences* commentary of John of Erfurt. For example, Henry's response to the question whether someone who knows of another's crime should make a public accusation, is as follows: 'I respond that he must not accuse him in public as long as he alone knows about it, but he should admonish him in secret according to Augustine: 'If adulterous men sin secretly in houses, we do not betray them, but we charge them in secret where evil occurs'.⁴³ True to his word, the author briefly quotes one opinion, taken from the *Summa Halensis*. In contrast to the canon law references in this book, the manner of quotation is vague: the reference to the work of theology is indicated simply in the form 'Here Alexander', without any mention of book or chapter. The author presumably regarded these theologians as authoritative but assumed that his students would not need to follow up a quote in the same way that they would a legal canon. Still, the inclusion of theologians and penitential authors signals the collection's genre as a pastoral work rather than as a work of canon law proper.⁴⁴

Taking the introduction and the main text together, we can identify the *Labia Sacerdotis* as a specific genre of teaching text. The volume does not have enough basic information to function as a manual for beginners. It passes over all basic descriptions of concepts and procedures and offers no systematic instructions on how to interrogate a penitent or give absolution. Instead we have a series of questions that push at the more difficult and ambiguous aspects of penitential teaching. Such a specialist text implies a rather specific setting-in-life, and I would suggest two closely linked functions and audiences. The first is one that exactly corresponds to the scene described in the final part of the *Labia's* Prologue. The questions were a syllabus, or list of questions, useful for a Franciscan lector.

⁴² For example, in this chapter Henry quotes Bonaventure *In IV. Sent. D. 19, dubium iv*, in *Opera Omnia*, ed. PP. Collegii S. Bonaventurae, 10 vols. (Quarrachi, 1882-1902): 4:513a. My thanks to the anonymous reviewer of this paper who supplied this reference.

⁴³ C f. 71v; V f. 208v 'Respondeo quod non debet eum accusare in manifesto quamdiu solus scit, sed monere in occulto secundum illud Augustinus: 'Si homines adulteri secrete in domibus peccant, nos non prodimus sed (prodimus sed) peccamus V) in secreto arguimus ubi malum contingit. Hoc (C: Ibi monetur hoc) Alexander.'

⁴⁴ On the relationship between theology and canon law in penitential teaching see Joseph Goering, 'The Scholastic Turn (110-1500): Penitential Theology and Law in the Schools', in *A New History of Penance*, ed. Abigail Firey (Leiden, 2007), 219-38.

Such a teacher, entrusted with teaching aspiring Franciscan confessors, could use the *Labia Sacerdotis* alongside Henry of Merseburg's *Summa*. After an initial reading of the sections of Henry of Merseburg's treatise that were relevant to the penitential forum, such a lector could develop his teaching using the more challenging problems in the *Labia Sacerdotis*. Henry of Barben said that he would only include in his treatise problems that would expand on or develop what was written in Henry of Merseburg's treatise and its apparatus. The second function of the text was as a reference work, a trouble-shooting guide to penitential matters. Henry said that he intended the work to be useful in this way in his prologue. The wide diffusion of the work outside of Franciscan houses suggests that this was an important reception. Since however, the treatise makes no claim to be comprehensive and, as we saw with the chapter on elections (that turned out to be a list of reserved episcopal cases), the organisation was not always transparent, the work was sub-optimal in this function. I suspect that the questions would be most useful as an aide-memoire to someone who had listened to lectures based on the treatise.

***Labia Sacerdotis* in comparison with Dominican penitential teaching**

The explanatory prologue of the *Labia Sacerdotis* gives an insight into the form of education offered to Franciscan brothers. This account is not only useful for understanding Franciscan education, but also helps us to understand a number of Dominican collections of pastoral questions from the thirteenth century. There is no contemporary description of Dominican teaching of pastoral care like that in the *Labia Sacerdotis*. Despite this relative silence, there are a number of collections of questions on the internal forum, which in the light of *Labia Sacerdotis*, can be attributed to a similar setting in life.

The collection of questions composed by William of Rennes between 1236 and 1245 is an almost exact equivalent to the *Labia Sacerdotis*.⁴⁵ William's later composition, the *Apparatus* to Raymond of Penafort's *Summa de Casibus*, came to have equal authority to Raymond of Penafort's *Summa*, was routinely copied and later published alongside the main text of the *Summa de Casibus*, and is thus familiar to scholars of pastoral care. However,

⁴⁵ These dates are determined by the fact that the questions refer to the fourth book of Raymond's *Summa*, which was added to the others in 1234-5, but do not mention the penitential constitutions that were promulgated at the first Council of Lyon in 1245.

William's earlier composition remains unstudied.⁴⁶ Much of the text of the *Apparatus* was extracted from the earlier collection of questions and rearranged into a form that was more usefully set out for a course of lectures on Raymond's *Summa*. Like the *Labia Sacerdotis*, William's earlier collection of questions was not a complete overview of penitential canon law, but rather a series of supplementary teachings that grew out of a lecture course. Also like the *Labia Sacerdotis*, this was a supplement to a larger text rather than a manual in its own right.

In fact, the organisation of the questions implies that William of Rennes's teaching took place during a short-lived transitional period in Dominican pastoral lecturing. William's *Questiones* follow the order of the *Liber Extra* in much the same way as *Labia Sacerdotis*. The questions are organised under headings borrowed from the names of the titles of the *Liber Extra*. Also like the *Labia*, William only includes those titles that include decretals on problems relevant to the penitential forum: he includes only a few headings from the first two books of the decretals, which are primarily concerned with administrative and procedural law, but has questions organised under almost all of the titles of books four and five, which handle marriage and criminal law respectively.

This choice to arrange the questions according to the order of the *Liber Extra* suggests that William was using the book of the decretals as the basis for his lectures on pastoral care, rather than Raymond of Penafort's *Summa*, as we might assume. The questions were written very shortly after the publication of the revised version of the *Summa de Casibus*, at a time before it had established a canonical place on the curriculum of Dominican houses. At that time, William gave his pastoral lectures (as Henry of Barben later did) by lecturing on those chapters of the decretals that he considered to be relevant to the internal forum. These lectures refer frequently to *Summa de Casibus*, but also draw heavily on pastoral teachings from Gratian's *Decretum* and Huguccio's commentary. Later, the *Summa de Casibus* would become the principle textbook on penitential judgements in the Dominican Order, and

⁴⁶ See Corran, *Lying and Perjury*, 104; Thomas Kaepeli, *Scriptores Ordinis Praedicatorum Medii Aevi*, 4 vols (Rome, 1970-83) 2:156-9 and 4:107-8 (this includes the few biographical details known about William of Rennes). An accessible manuscript is Strasbourg, Bibliothèque nationale et universitaire MS 151, ff. 4-61 available on the BVMM website. https://bvmm.irht.cnrs.fr/resultRecherche/resultRecherche.php?COMPOSITION_ID=11169 last accessed 16 July 2021. I check my transcriptions from this manuscript against Padova, Biblioteca Universitaria, MS 1746, which is a relatively independent witness, in cases where the text is corrupt.

instead of the decretals, William reworked his questions into an *Apparatus* to the *Summa de Casibus*.

None of William of Rennes's questions simply restate basic penitential teachings. Instead he develops and broadens the subject, raising cases not previously considered in texts aimed at beginners, and filling gaps in the decretals and the *Summa de Casibus*. For example, we saw the list of questions under the chapter 'De Accusationibus' in the *Labia Sacerdotis* above; the list of cases in William of Rennes's section of the same name are grouped together as analogous problems all with a similar answer:

1. It is asked: a certain religious while he was in the secular condition struck someone such that the person struck was not able to survive, but he does not know whether he struck him this seriously. Another religious does know this. It is asked whether he is required to reveal this to the one who struck?
2. Someone is believed to be a bishop, who was not a bishop. He ordained many with the mandate of their own bishops, later it was proven in the curia of the lord pope that he was not a bishop. Those ordained by him, let us say brothers of the order of preachers, were ignorant and ministered in their orders in good faith. I, who was there when the man was condemned, know the truth. It is asked whether I am required to tell them?
3. Again, someone knows of another that he was not baptised in the manner of the church and nonetheless he is later ordained into the priesthood de facto. Since he is not baptized, he cannot receive the order of sacraments, it is asked whether I who know the truth am required to tell him?
4. Again, when you infringe a canon *late sententie* (i.e. when you incur an automatic excommunication), or are otherwise by law or deed without your knowledge, you are received in holy orders. Again, you hold alienated property which you believe to be your own, when in fact it is owned by some pauper who greatly needs it. It is asked whether I, knowing the truth, am obliged to reveal it? [...]

5. Whether a household is required to reveal to their lord damages to his property that were committed against him in secret?⁴⁷

As with the equivalent chapter in *Labia Sacerdotis*, there is no introductory overview, nor does William take time to recap the underlying principles in his answer to these questions. The nature of the questions are similar to those in the *Labia Sacerdotis*, since they concern the obligation to reveal privately known crimes in a public forum. However, the questions are not exactly the same. William really just asks about one dilemma in a number of iterations, where Henry of Barben asked a range of questions. William formulates his questions in a more concrete and relatable manner than Henry does in the *Labia*. The manner of responding to questions also is in contrast with the *Labia Sacerdotis*. We saw above that Henry of Barben responds briefly to each problem, often with a quotation from a canon law or theology source. William of Rennes on the other hand subdivides his response to all of these questions into a range of possible scenarios. He gives one set of responses to the problem of whether to alert an unconscious sinner if the sinner is guilty of culpable ignorance (*crassa ignorantia*), and another for those who labour under probable ignorance (*probabilis ignorantia*). In the latter case William further distinguishes between those who can prove their knowledge in a public process and those who cannot. In cases where the truth cannot be proved, William advises choosing a course of action based on the trustworthiness of one's informant and the

⁴⁷ Strasbourg, Bibliothèque nationale et universitaire MS 151, ff. 26rb-va (S) and Padova, Biblioteca Universitaria, MS 1746, ff. 74r-v (P): 'Queritur aliquis religiosus dum adhuc esset in seculo graviter percussit aliquem ita quod persona percussa non potest evadere, ignorat tamen eum se (eum se]si cum S) tam graviter percussisse. Alter religiosus hoc scit. Queritur utrum revelare teneatur ei qui percussit? [...] Aliquis credebatur esse episcopus qui non erat episcopus. Ordinavit multos de facto de mandato propriorum episcoporum postea probatur in curia domini pape ipsum non fuisse episcopum. Ordinati a eo, ponamus fratres ordinis predicatorum, ignorant bona fide in suis ordinibus ministrantes. Ego qui interfui quando fuit ille dampnatus scio veritatem. Queritur an eis teneatur revelare? Item aliquis scit de alio ipsum non fuisse baptizatum in forma ecclesie et nichilominus postea ordinatur in sacerdotem de facto, quia non baptizatus recipere non potest ordinis sacramentum, queritur an ego qui scio veritatem teneor ei revelare? Item cum incidisses in canonem late sententie vel aliter excommunicatus esses ignorans ius vel factum recepisti sacros ordines. Item tu tenes rem alienam credis esse tuam cum sit pauperis alicuius qui multum indiget. Queritur an ego sciens veritatem teneor tibi revelare [...] Numquid familia tenetur domino revelare dampnum quod fit illi in rebus suis occulte?'

character of the person sinning, who may or may not heed the warning.⁴⁸ William's manual is therefore more detailed, and more directed towards helping confessors to consider all relevant details in a case, where the *Labia Sacerdotis* offers briefer responses that follow similar principles. Here is a common methodology of identifying cases relating to a principle set out in a teaching text and recording the lector's answer to the question.

Only in a few exceptional chapters does William of Rennes offer an introductory explanation of the concepts involved: most often he simply lists a number of dilemma-type questions, very often quoted from Huguccio's commentary on Gratian's *Decretum*. It is likely, therefore, that William of Rennes was offering similar pastoral lectures in his house in Orléans in the 1240s to those that Henry of Barben was giving in Magdeburg in the 1280s. Without the evidence and explanation from the *Labia*, it would be difficult to identify the circumstances that led to the composition of such a collection of questions.

A second Dominican casuistical teaching text is contained in British Library Add. MS 30508. The manuscript was the subject of an important paper by Leonard Boyle on the education of *Fratres Communes*.⁴⁹ The inclusion of a donor's name 'Agnes de Winterset' in the volume indicates that the codex probably was produced in the Dominican house at Pontefract.⁵⁰

⁴⁸ Ibid. S ff.26v-27r, P 74v-75r. 'Respondeo ad hec omnia: si huiusmodi ignorantes laborant crassa ignorantia et supina ille qui scit veritatem tenetur eis revelare, quia cum usurpant talia que non licent eos crassa ignorantia non excusat a peccato. [...] Si autem probabili ignorantia laborant errantes in casibus supradictis, licet quibusdam forsitan videatur quod sciens veritatem non tenetur eam sic ignorantibus revelare, cum probabilis ignorantia taliter ignorantes excuset a peccato. Credo tamen sine preiudicio distinguendum utrum ille qui dicit se scire veritatem possit illam probare nec ne. Si possit probare tenetur dicere non propter hoc quod peccent illi qui taliter ignorant, sed propter periculum alienum et iniuriam sacramentorum aut sacrarum rerum quia non ordinatus qui celebrat decipit de facto illos qui audiunt missam eius [...] Si autem non potest probare et tamen omnino certus est de facto et talis est persona et tante auctoritatis quod nullo modo timetur de eius mendacio, sed ei creditur sine suspitione aliqua, distinguendum est, quia si ille qui ignorat et errat persona est tractabilis et persuasibilis, spiritualis et timens deum, tunc sciens veritatem tenetur revelare per se vel per alium. Si autem non est spiritualis aut timens deum et timetur de scandalo eius vel peccato tunc sufficit quod ille qui scit veritatem dica prelato eius forte tamen nec tenetur.'

⁴⁹ Leonard Boyle, 'Notes on the Education of the *Fratres communes* in the Dominican Order in the Thirteenth Century' in his *Pastoral Care*, VI.

⁵⁰ On f. 275r, cf. Boyle 'Notes on the Education of the *Fratres Communes*', 261n.

Internal evidence suggests a date of composition around the 1260s.⁵¹ The codex as a whole consists of a miscellany of texts relevant to pastoral care, including Latin and French forms for confession, and extract of Richard of Wetheringset's *Summa iuniorum* and a compendium of basic theological teaching on the articles of faith and the sacraments.⁵² In the final part there is a summary of Raymond of Penafort's *Summa de Casibus* in question and answer form.⁵³ There follows a series of dilemmas posed as questions usually without an answer included.⁵⁴

The format of these questions is different from the two examples considered above. The questions on the *Summa de Casibus* are no more than a summary of the problems listed in Raymond of Penafort's manual. They do not interpolate any new material, nor do they update any of Raymond's judgements in the light of new legislation. The passage that follows the abbreviated *Summa* is simply a list of questions, with almost no solutions listed. The questions do not appear to follow any order, although the category of canon law to which the question is relevant is usually indicated in the margin. These cases of conscience range from the highly realistic (a travelling merchant who has no fixed domicile asks where he should pay his tithes) to the artificial (whether a priest's illegitimate daughter could marry the same priest's godson, or whether the godson could marry the priest's former mistress).⁵⁵ Most such questions are designed to highlight an ambiguous or challenging part of the canon law of the internal forum, although some also touch on issues of sacramental theology. These dilemmas have been described as teaching prompts for a Dominican lector, or perhaps a master of students: after explaining the principles of pastoral care via a summary of the *Summa de Casibus*, the teacher could test his students with a series of problem cases.⁵⁶

⁵¹ Ibid., 261.

⁵² The same scribe has copied throughout the codex: this is therefore a homogenous collection, the constituent parts of which were always intended to travel together.

⁵³ London, British Library Add. MS 30508, ff. 196r-242r

⁵⁴ Ibid., ff. 242v -275r.

⁵⁵ Ibid., f. 245v: 'Mercator aliquis est vagabundus. Multum lucratur in diversis nundinis. Non habet certum domicilium. Cui ecclesie dande sunt decime?'; f. 243v: 'Quidam sacerdos ex concubina sua filiam habet carnalem. Levat parvum. Si parvus possit habere filiam sacerdotis et si non, si matrem eius possit habere?'

⁵⁶ Leonard Boyle, 'Notes on the Education of the *Fratres communes*', 264. Michèle Mulchahey argues that the abbreviated and practical nature of this manuscript suggests that it was more likely to belong to a Dominican master of students. "*First the Bow is Bent in Study...*", 200-2.

The Dominican lector, therefore, was engaged in a course of teaching that resembles that outlined in *Labia Sacerdotis*. There is evidence of a lecture based on an authoritative text – in this case Raymond of Penafort’s *Summa de Casibus*. The lecture was supplemented with additional cases, which were then collected together and written down. Although the written record is slightly different here, the underlying teaching style suggested is similar to that of the other collections considered here. There are other Dominican collections of cases of conscience which may have links to similar lecture courses: the polished and scholastic *Summa Confessorum* of John of Freiburg would be the most obvious example.⁵⁷

Together, these various manuals (from a variety of houses across Northern Europe) suggest a strong set of conventions for teaching penitential matters that governed both Dominican and Franciscan houses. Both orders followed the same procedure of supplementing lectures with additional cases. Both treated Raymond of Penafort’s *Summa de Casibus* as the most important source on penitential judgements. Both used a question-led methodology. We can also notice differences between the teaching in the two mendicant orders: *Labia Sacerdotis* takes a Franciscan summary of the Decretals as its lecture text, whereas Dominicans were more likely to use Raymond’s *Summa de Casibus*. William of Rennes’ questions come from an early stage, shortly before the *Summa de Casibus* was adopted as the authoritative text on the penitential forum. Whereas the *Summa de Casibus* combined teaching from papal decretals, theological teaching from the penitential tradition and pastoral canon law from Gratian’s *Decretum*, *Labia Sacerdotis*, on the other hand, incorporates theological teaching from prominent Franciscan theologians into chapters that are loosely based on topics from the canonical tradition. Both orders combined theological and canonical teaching in their penitential lectures, but they did so by different routes, and, based on this evidence, the theological aspect of the teaching entered both orders’ pastoral tradition in the second half of the thirteenth century.

Implications for our understanding of Franciscan teaching.

In the final part of this paper, I focus in on what kind of teaching was being offered in the Franciscan collection. Who were the recipients of this teaching? What kind of cases does *Labia Sacerdotis* address?

⁵⁷ On the genesis of John of Freiburg’s *Summa* see Boyle, ‘The *Summa Confessorum* of John of Freiburg’.

With respect to intended audience, we should note the willingness in the *Labia Sacerdotis* to address the most difficult problems that a confessor could encounter. Leonard Boyle associated Dominican casuistical questions with teaching for '*Fratres Communes*', that is, the brothers in mendicant houses who would be engaged with hearing confessions.⁵⁸ He envisaged brothers who were of a humbler status than those who would attend a lectorate program at a *studium*, and who were unlikely to rise to leadership roles in their houses. As we have seen, *Labia Sacerdotis* is similar to collections of pastoral questions originating from Dominican regional mendicant houses, yet its audience was probably more diverse, since Magdeburg was the home of a *studium* that accepted students from external provinces.⁵⁹ In common with the Dominican texts, the teaching would naturally have been of interest to any humble Franciscan friars outside of the lectorate programme, who were tasked with hearing lay confessions. Yet, in addition to this, the lectures would also be of use to those Franciscans who were sent from across the German province to Magdeburg in order to attend theology lectures and who were destined to become lectors in their own house.⁶⁰ Although brothers who later became lectors were less likely to be sent out to hear the confessions of lay people, they would still benefit from teaching on canon law and penitence, not least because they might be called upon to hear confessions within the order. The only group of Franciscans at whom the lectures would probably not have been aimed were the adolescent Franciscan brothers who were in Magdeburg in order to prepare for further studies, either in a Franciscan lectorate programme or in preparation for a baccalaureate in a university theology faculty. This group would not have been ordained, nor would it be sufficiently versed with basic

⁵⁸ Boyle, 'Notes on the Education of *Fratres Communes*', 253-4.

⁵⁹ Franciscan *studia* were not organised in exactly the same manner as their Dominican equivalents, especially since simple *studia* and not only *studia generales*, could accept brothers from a neighbouring province. See Neslihan Şenocak, 'The Franciscan *Studium generale*: A New Interpretation' in Kent Emery Jr, William J. Courtenay and Stephen M. Metzger (eds), *Philosophy and Theology in the Studia of the Religious Orders and at Papal and Royal Courts: Acts of the XVth Annual Colloquium of the Société Internationale pour l'Étude de la Philosophie Médiévale, University of Notre Dame, 8-10 October 2008*. (Turnhout, 2012), 221-36.

⁶⁰ On the Franciscan lectorate programme see Bert Roest, *A History of Franciscan Education (c.1210-1517), Education and Society in the Middle Ages and Renaissance* 11 (Leiden and Boston 2000), 87-96; Roest, *Franciscan Learning, Preaching and Mission*, 44-45; William J. Courtenay, 'From Studia to University: Cologne in the Fourteenth Century' in ed. Speer and Berger, *Wissenschaft mit Zukunft: Die 'Alte' Kölner Universität im Kontext der Europäischen Universitätsgeschichte*; 33-50 at 41-42.

penitential procedure to be able to deal with the specialist problems in *Labia Sacerdotis*. This was therefore a training document primarily for ordained Franciscans of the humbler sort, who were tasked with hearing lay confessions, but there is no reason not to think that more highly educated friars did not attend and read Henry of Barben's cases as well.

In this sense, *Labia Sacerdotis* represents standard vocational training rather than specialised academic disputation. Nevertheless, as we have seen, the questions are complex and challenging. There is nothing in this treatise in the way of mnemonics, summaries or basic explanation – features that we might expect from a teaching text for beginners. Instead, the teacher has isolated difficult and quite specialised problems relating to pastoral jurisdiction and conscience. A student who paid attention to the responses to such questions would acquire a detailed training in the legislation surrounding excommunication and irregularity, for example, and the hierarchy of penitential jurisdictions. Moreover, the aim of such a list of questions was not only to set out rules – other treatises, such as a widely diffused anonymous work with the incipit 'Nota sex tantum casus', listed regulations, especially those relating to reserved cases and excommunication, more systematically – instead the *Labia Sacerdotis* demonstrates how to solve problems using the rules.⁶¹ The level of training offered to Franciscan confessors was therefore more advanced than one might expect, and (in the modern parlance) focused on skills rather than rote-learning.

The cases included in *Labia Sacerdotis* are scholarly but have direct relevance for practical application. The author often quotes established questions that had already enjoyed a long history in canon law schools; however, the detail in which he quotes the problems implies that he is imagining the problems as they would play out in life. A chapter attached to the section on homicide in book five considers cases involving parents who accidentally kill their children. This was a familiar theme in jurisprudence and a number of penitential canons addressed cases where a baby suffocates when sleeping. The debate goes back to early penitentials: the *Penitential* of Theodore, for example, includes penances for negligent

⁶¹ On 'Nota sex tantum casus' See Amédée Teetaert, 'Quelques "Summae de paenitentia" anonymes dans la Bibliothèque Nationale de Paris' in *Miscellanea Giovanni Mercati*, 6 vols. (Vatican, 1946), 2:333-4; M. Bloomfield et al., *Incipits of Latin Works on the Virtues and Vices, 1100-1500 A.D.* (Cambridge Mass., 1979), no. 3387, p. 290.

parents whose babies died before baptism.⁶² More recently, this issue was referred to in Gratian's *Decretum*, and in two places in *Liber Extra*.⁶³ The issue of accidental suffocation of infants was, in consequence, discussed regularly in the glossating literature associated with both texts, with a particular emphasis on the question of culpability for crimes committed in a state of ignorance.⁶⁴ *Labia Sacerdotis* goes through the standard questions: What if someone suffocates an infant but this is not known in the public forum, should a confessor impose a public penance?⁶⁵ If a mother responsibly put the baby to sleep in a cradle, but the baby dies overnight, does she have to do a penance?⁶⁶ These questions directly reproduce questions posed in the decretals. The final three questions in this section make more creative analogies from existing legal authorities. If a nurse suffocates a child, should the parents be punished? The answer rests on whether the parents suspected the nurse of drunkenness and whether they forbade her from sleeping with the child next to her. If they took these reasonable precautions against accident, they should not be punished.⁶⁷ What about those who are so poor that they lie their baby right next to them at night, because they are worried

⁶² Edited by Willem Finsterwalder in *Die Canones Theodori Cantuariensis und ihre Überlieferungsformen* (Weimar, 1929) p. 268, n. 162.

⁶³ *Decretum*, C 2, q. 5, c. 20; X.5.10.3; X.5.38.7.

⁶⁴ Stephan Kuttner, *Kanonistische Schuldlehre von Gratian bis auf die Dekretalen Gregors IX*, *Studie und Testi* 64 (Vatican, 1935), 116-19.

⁶⁵ C f. 77v, V f.210v: 'Quid si aliqui opprimant (V: oppresserunt) puerum et hoc (V: si hoc) est oclutum numquid debet eis penitentia publica imponi? Respondeo quod non. Extra de penitentiis et remissionibus. 'Quesitum' (X.5.38.7). Et in (V: ex) hoc casu potest sacerdos imponere penitentiam ut dicitur in eodem capitulo.'

⁶⁶ Ibid. 'Queritur si aliqua (V: om.) mulier cum omni diligentia qua potest locat (V: locet) puerum in cunis et in (C: de) mane invenit (V: inveniatur) eum (C: om) mortuum, numquid penitentia debet imponi parentibus? Respondeo in hoc casu penitentia cum pietate potest imponi propter securitatem non tamen magna. Extra e. c. infantibus (X.5.10.3).'

⁶⁷ Ibid. C f. 77v-78r, V ff.210v-211r, 'Quid si nutrix oppressit, numquid parentes puniendi sunt? Respondeo, si nutrix non fuit (V: sit) suspecta de ebrietate et parentes prohibuerunt ne locaret puerum penes (V: apud) se, non sunt parentes (V: om.) puniendi. Si autem nutrix suspecta est vel de consensu parentum locavit puerum penes (V: apud) se, non sunt parentes excusabiles. Argumentum Extra, de penitentiis et remissionibus, 'Quesitum' (X.5.38.7).'

that the baby might die of cold, and then suffocate the child?⁶⁸ What if a mother, lying in a crib, is breastfeeding a child, and falls asleep on top of the baby: should she fulfil a penance, if she was as careful as she could be?⁶⁹ In these last two cases, the response is that the parents must do a penance. The penance should be a moderate one, if they did lawful act with all due care, and they should not be obliged to seek reconciliation with a bishop or prevented from entering church. Henry quotes a decretal on manslaughter from the *Liber Extra* in which a cleric accidentally crushed an infant after being thrown from a horse.⁷⁰ That case was one relevant to the papal penitentiary, and the administrative category of *irregularitas*, the formal rule that debarred priests guilty of bloodshed from exercising their office. Here, the author of the *Labia Sacerdotis* shows how these rules governing the clergy could be adapted in order to infer penitential advice for lay people.

The collection therefore demonstrates the ways in which school debates were a resource for real penitential problems. Sometimes the situations invoked appear to be original to the author, as above, but sometimes they are quoted from other collections. Those that are quoted, however, are no less grounded in reality than the invented ones. In the following chapter on homicide, for example, the *Labia Sacerdotis* quotes a list of scenarios taken from William of Rennes's *Apparatus* to the *Summa de Casibus*. A carer deliberately confines a patient in order to induce sweat, or gives the patient wine when he should not: is the carer responsible for a subsequent death? The case develops into a series of possible alternatives: did the carer allow the invalid to get out of bed whilst delirious? Did he fall into a drunken sleep, during which the patient caused his own death? What if the carer fell asleep

⁶⁸ Ibid. C f. 78r, V f. 211r, 'Quid de illis qui adeo pauperes sunt quod propter necessitatem locant pueros (C: pueru,) penes (V: ad) se, quia (C: qui) timent eos frigore interiri (V: mori), et sic (V: om) opprimunt? Respondeo puto quod (V: om) cum talibus valde misericorditer est agendum et modica penitentia est eis (C: est eis] om) imponenda (V: iniungenda) si adhibuerunt omnem diligentiam cum dederit operam licite rei. Argumentum Extra, de homicidio, 'Ex Litteris' (X.5.12.13).

⁶⁹ Ibid., 'Et idem puto si mater lactando puerum iacentem in cunis obdormiendo super puerum opprimat (V: opprimit) eum cum dederit operam licite rei si adhibuit diligentiam quam potuit (quam potuit] om. C) ne opprimeret, non puto in hiis duobus casibus necessariam esse reconciliationem episcopi nec debet arceri ab ingressu ecclesie. Extra, de homicidiis, 'Ex Litteris' (X.5.12.13).'

⁷⁰ X.5.12.13.

from exhaustion, instead of drunkenness?⁷¹ Henry of Barben copied these cases from William of Rennes, and it is possible that William borrowed the ideas from a decretist (although I have not found the source).⁷² The questions link back to scholastic debates as to the relative importance of intention and action in crime, and the triangulation of these concepts in cases of negligence or where illicit actions have unforeseen consequences.⁷³ But this scholarly pedigree does not mean that the cases were of no use to a confessor engaged in practical ministry. Such cases illustrate the questions a priest should ask when confronted with cases that might or might not fall within the reserved cases (such as homicide) that he must refer to a bishop. Even a humble brother who could not engage with theoretical underpinning of these debates, could intuitively grasp the practical conclusions.

The adaptation of school teaching for practical purposes was not unique to the Franciscans. As we have seen, Henry of Barben drew extensively on similar Dominican penitential manuals, as well as quoting canonical and theological works directly. However, what is specific to the order is Henry's liberal quotation of Franciscan canonists and theologians. His lectures were based on the Franciscan guide to the *Liber Extra* by Henry of Merseburg. When Henry refers to theologians, it is almost exclusively to Franciscan masters. This should not be ascribed simply to the availability of books in the library of a Franciscan house: Thomas Aquinas is quoted on occasion, but comparatively rarely: Bonaventure, Alexander of Hales and John of Erfurt are quoted more frequently.

⁷¹ C f. 78r-v, V f.211r: 'Quid de illo qui custodit infirmum et nimis arcat eum (C: om) ad provocandum sudorem vel dat (V: daret) ei vinum vel alium (V: alia), que sunt ei contraria et ille moritur. Respondeo in talibus que facit homo (C: facit homo] fiunt) bona intentione egrotus non debet homo de facili scrupulosam conscienciam (C: intentionem) gerere licet in aliquo sit erratum, nisi (V: sic non) esset valde lata vel causa vel (C: vel causa vel] om) culpa ut si infirmus esset freneticus et iste permetteret eum currere per (V: ad) plateam et surgere de lecto vel cadere de lecto (C: vel...lecto] om) et ille sic precipitaret se vel si iste cum solus esset (V: om) deputatus ad custodiam eius (V: ei), inebriaret (V: in hoc ebriaret) se et obdormiret et ille medio tempore se ipsum occideret et (V: in) huiusmodi casibus custos ille (V: om) esset irregularis secundum Willelmus. Quid si talis cum laboraret cum eo quod propter lassitudinem et non propter (V: om) ebrietatem obdormiret et ille (C: illo) medio tempore ageret aliquid unde mors sequeretur, numquid esset irregularis. Respondeo credo (credo]om. V) quod non secundum Willelmus.'

⁷² cf. William of Rennes, *Apparatus to the Summa de Casibus*, Book 2, T.1 c.8, v. 'Poterunt promoveri', 154-5.

⁷³ Kuttner, *Kanonistische Schullehre*, 3-7, 102-123, 189-250; Odon Lottin, *Psychologie et morale aux XIIIe et XIVe siècles*, 6 vols. in 8 (Louvain and Gembloux, 1942-1960), i, 4116-20, iv, 321-6, 340, 374, 427-8 ff.

It is a sign of institutional identification rather than a distinctively Franciscan penitential theology. Henry of Barben makes a point of quoting Franciscans, but the views that he quotes are generally ones that theologians of all affiliations agreed on. He quotes the *Summa Halensis* stating that fraternal correction of a superior is acceptable if motivated by good intentions, for example: Thomas Aquinas said something very similar in his *Summa*.⁷⁴ Moreover, when it comes to penitential manuals, where there were fewer Franciscan models available, Henry liberally quotes a wider range of sources. The text he refers to most often is Raymond of Penafort's *Summa de Casibus*, and William of Rennes's gloss to the text.⁷⁵ As Rusconi has commented, the controversy between the mendicant houses had no effect on their willingness to use each other's penitential and pastoral thought. Nevertheless, there is evidence of an attempt on Henry of Barben's part to make a set of questions that felt and sounded distinctively Franciscan. In this he anticipated later Franciscan efforts, such as Astesanus de Asti's long *Summa*, which also combines generalised penitential teaching with quotation from recent Franciscan doctors.⁷⁶

The subject matter addressed in *Labia Sacerdotis* is not specific to the Franciscans. The collection summarises penitential law that would be of interest to confessors of all kinds; there are questions relevant to lay people, priests and members of religious orders, but there are almost none specific to Friars Minor.⁷⁷ One might, for example, expect the chapter on vows to include some thought on the Franciscan evangelical vow in distinction to the vows of other orders, but this is not touched on. Equivalent Dominican casuistical collections of this period sometimes included questions on donations to Dominican houses: there is no equivalent to this in the *Labia* either. The omission contrasts with the work of another

⁷⁴ Aquinas, *Summa Theologica*, II-IIae q.33, art. 3

⁷⁵ Mews and Zahora also comment on the common ground between the Franciscan and Dominican moral traditions; Constant J. Mews and Tomas Zahora, 'Remembering Last Things and Regulating Behaviour in the Early Fourteenth Century: From the *De consideration novissimorum* to the *Speculum morale*' *Speculum* 90/4 (2015): 960-94, at 985.

⁷⁶ cf. Michaud Quantin, *Sommes de casuistique*, 57-60.

⁷⁷ Ethan Yee draws attention to the discussion of Mendicant Friars' right to hear confessions without the permission of the local parish priest. He argues that Franciscans tend to be more permissive in this domain than Dominicans, although both Dominicans and Franciscans admit that the rule applies equally to both orders. Yee, 'The Burden of Forgiveness', 61-4.

Magdeburg Franciscan canonist of the period, Baldwin of Brandenburg, who included a number of Franciscan questions in his *Summa Titulorum*.⁷⁸ The relative absence of casuistry specifically aimed at Franciscan brothers suggests that the author did not see the Franciscan predicament as part of his brief: he simply interpreted existing penitential law in a more general sense.

This observation is borne out by the manuscript tradition of the work: as I indicated above, most of the surviving manuscripts of *Labia Sacerdotis* originate from the fifteenth century, and were not produced or owned by Franciscan brothers or houses. The *Questiones* was acquired by arts masters, Benedictine monks and Augustine friars as well as Franciscans: the text had a universal applicability.⁷⁹ Very few of the surviving manuscripts date from the fourteenth century, and only a small number can be traced back to Franciscan houses. This is not evidence of a lack of reception of the *Labia Sacerdotis* in Franciscan houses, however. The overall loss rate of practical, non-ornamental religious manuscripts from the late middle ages is known to be enormous.⁸⁰ Moreover, manuscripts that were in constant use were the least likely to survive the Middle Ages, whereas manuscripts held in institutional libraries had a slightly better chance. This unevenness of survival rates means that we can know that this text was popular outside of the Franciscan order in Germany in the fifteenth century, but we cannot know much about the text's fourteenth century diffusion.

⁷⁸ Kurtscheid, 'De studio iuris canonici': 175-6; Lee, 'The Burden of Forgiveness', 60-1.

⁷⁹ See the list of manuscripts in Kurtscheid, 'De studio iuris canonici': 197-201. The following manuscripts date from the fourteenth century: Cambridge, Corpus Christi College, MS 520 (owned by the Brigittine convent of Elbing near Gdansk); Frankfurt am Main, MS Barth 165 (fourteenth/ fifteenth century manuscript, owned by a Heynrich von Warborch and associated with Wusterhausen), Frankfurt am Main, Leonh. 9, (dated to 1356, origin unknown); Munich, clm. 12011 (origin unknown, owned by the Benedictine monastery in Prüfening); clm. 16099 (owned by Augustine canons in Passau); clm. 28216 (which may originate from Prague, origin and provenance otherwise unknown); Prague, Library of the Metropolitan Chapter, K XXIX, (owned by Iohannes de Cubito, an arts master in the fifteenth century); St. Gallen, Cod. Sang. 689 (13th-14th century, origin unknown). Based on the evidence available to me (digital images and manuscript catalogues) it is impossible to determine whether any of these manuscripts were produced in a Franciscan house. Among the many fifteenth century copies of the work, the following were owned by the Franciscan house in Munich: clm. 8805 and clm. 8862.

⁸⁰ See comments on the loss rate of manuscripts in practical use in David D'Avray, *Medieval Marriage Sermons: Mass Communication in a Culture without Print* (Oxford, 2001), 19-20.

Labia Sacerdotis is thus an informative source for the development of Franciscan identity in the late thirteenth century, especially useful because the text is non-polemical and aimed at humble brothers as well as scholars. The author emphasises the Franciscan literary canon, which included canonists and theologians. The scholastic achievements of the Franciscan order were made apparent. Nevertheless, the deeper intention behind the collection of questions in *Labia Sacerdotis* is clearly not so much to provide an education on Franciscan penitential thought, but to provide Franciscan brothers, and perhaps the wider clerical community, with a general introduction to hearing confessions. The *Labia* participates in an intellectual tradition that was common to the whole church.

Conclusion

The rise of the mendicant orders is a defining factor in the intellectual history of the thirteenth century, and the syllabus, personnel and thought at elite mendicant *studia* at Paris and Oxford have been studied in detail.⁸¹ Although the superior training of mendicant confessors has become axiomatic in our understanding of the order's popularity and competition with the secular clergy, the exact tenor of general practical teaching offered to mendicant brothers remains largely unknown. This is despite evidence of regular lectures on penitential canon law in mendicant houses.

The *Labia Sacerdotis* provides a remarkably detailed picture of what went on in the classrooms where confessors were trained. The prologue of the *Labia Sacerdotis* describes a practice of lecturing on penitential canon law based on selective readings from Henry of Merseburg's explanations of the *Decretals*. The main text of the *Labia* shows that the lectures were oriented towards problems, in which the application of penitential canon law was uncertain. This case-of-conscience lecture style used by the Magdeburg Franciscan lector

⁸¹ It is impossible to cite all relevant scholarship in this area, but useful ways in can be found in Michèle Mulchahey, "First the Bow is Bent in Study..."; Roest, *Franciscan Literature of Religious Instruction*; William Courtenay, 'The Instructional Programme of the Mendicant Convents at Paris in the Early Fourteenth Century' in Peter Biller and B. Dobson (eds), *The Medieval Church: Universities, Heresy, and the Religious Life. Essays in Honour of Gordon Leff* (Westbridge, 1999), 77-92; Kent Emery Jr, William J. Courtenay and Stephen M. Metzger (eds), *Philosophy and theology in the studia of the religious orders and at papal and royal courts: acts of the XVth annual colloquium of the Société Internationale pour l'Étude de la Philosophie Médiévale, University of Notre Dame, 8-10 October 2008* (Turnhout 2012).

closely resembled the lectures that were taking place in Dominican houses in other parts of Northern Europe.

The use of case-of-conscience teaching reveals a different aspect of Franciscan intellectual achievement than the theology that is usually cited in connection with mendicant learning. It shows us what was considered appropriate training for all friars who would hear confessions. On the evidence of the *Labia Sacerdotis*, the standard was high. There was an emphasis on the graver penitential procedures, such as excommunication, invalid marriages, sins that lead to a public penance if they come to public notice: but along the way, we see that Henry of Barben also aimed to show how a confessor should respond to complicated and ambivalent situations that arose in life, and which required discretion.

The focus on cases in the *Labia Sacerdotis* is significant, therefore, for understanding the method of instruction on hearing confession in mendicant houses, but it is also important for understanding the content of the penitential thought. As we have seen, the questions raised are of a practical nature, and present school debates in a manner which makes it easy to see how they translate into real-world application. Case of conscience teaching was probably more influential in viva voce teaching than in publication (although it was important there too). This kind of teaching is evidence of a side to penitential reform that is sometimes overlooked – one that is less interested in swingeing changes imposed in episcopal and papal councils, but which demonstrated how to diagnose complex situations and proceed with appropriate penitential measures. This was therefore a pragmatic and empirical aspect of medieval learning, and all the more remarkable because it was aimed at teaching all Franciscan confessors (not just those enrolled in a lectorate programme) the skills to solve everyday problems.