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AN APPROACH TO PERJURY IN PENITENTIAL BOOKS IN THE LIGHT OF THE ANCIENT LAW

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Abstract. The task of every trial since the dawn of time has been to reach the truth and establish the factual state with a broad explanation of various facts and evidence. One of the important pieces of evidence has always been the testimony of witnesses, but since ancient times they have been approached with a certain amount of caution. This is exemplified by the Code of Hammurabi, which already in its first paragraphs addresses the issue of responsibility for the spoken word, and the Latin maxim *Unus testis, nullus testis*, describing the rule of evidence law. According to this legal principle, unconfirmed testimony from one witness should be rejected, because it is considered too unreliable to establish a fact. This principle had its roots in biblical sources and Roman law. The books of penance, which were created in the era of late Christian antiquity and the early Middle Ages and which are evidence of the development of penitential practice in the Church, stood, like ancient legal cultures, also on guard so that witnesses testifying in court trials were guided only by the truth, so that false testimony would not contribute to an unjust verdict. The aim of the article is to show, in the light of the books of penance against the background of ancient laws, what consequences threatened a person who answered affirmatively to the question that, according to Bishop Burchard of Worms, should be asked of the penitent: "Have you been a false witness, that is, have you testified falsely and claimed that what was false was true? If yes, did you do it for the sake of love for someone, for a financial benefit, or out of fear?"

Keywords: ancient law; penitential books; Middle Ages; Church.

INTRODUCTION

The primary objective of criminal proceedings is to uncover the truth [Boczek 2020, 29-30; Kołodziejczyk 2019, 149-52; Michalski 2016, 88-89; Mincewicz 2020, 211-14] and to determine whether an offence has occurred. Furthermore, it aims to identify the perpetrator and hold him or her criminally liable for the commission of the prohibited act, establish their guilt, or, in contrast, to affirm the innocence of the suspected individual. Back in antiquity, Roman Emperor Hadrian framed an underlying principle for the

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administration of justice as follows, "it is better that a guilty person be freed than that an innocent should be punished"[1] [Mozgawa-Saj 2018, 107].

Therefore, in the quest for truth, and in line with the principle of material truth, all participants in the proceedings are bound to provide true testimony. In other words, they must provide responses regarding the circumstances of the case that accurately reflect the actual state of affairs and without concealing any relevant information that they possess [Malinowski 2014, 9].[2] It should be self-evident to everyone that, when appearing before a court of law or any other authoritative body, you are bound to speak nothing but the truth. This is not consistently observed in practice. In both courts and other institutions that are rested on truthfulness individuals may still make false depositions. They either carefully describe circumstances that did not occur or provide a distorted picture of actual circumstances. They are also prone to conceal facts or deny what really happened. As a result, this holds significant importance for the effective operation of the entire justice system and authorized bodies. It also influences court's judgements, which, certainly, has a profound impact on the life of individuals facing such verdicts. Unfortunately, information pertaining to criminal proceedings related to the offense of false deposition is hardly seen in the public domain. The public may even have the impression of impunity for committing the offence of perjury [Urbaniak-Mastalerz 2020, 32-33].

Making a false deposition, commonly referred to as perjury, is addressed by Polish criminal law comprehensively. As provided in Article 233(1) of the Polish Criminal Code, any person who, making a deposition aimed to be evidence in court proceedings or in any other proceedings conducted under the law, says an untruth or hides away the truth is liable to a penalty of deprivation of liberty from six months to eight years.[3] Perjury before

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[1] *Satius est impunitum relinqui facinus nocens, quam innocens damnari* (Dig., 48, 19, 5).

[2] This is how A. Malinowski explains the issue of untrue statements, "With a view to determining whether a statement is false, three key factors must be considered. First, the statement must be consistent with facts – in other words, it must be true or false. Second, the statement must be consistent with the speaker's belief in its logical value – in other words, the statement must be sincere or insincere. Third, it must be ascertained whether the speaker's statement is intended to mislead. The act of lying by a person giving deposition consists in making a statement that, in the view of the speaker themselves, is intentionally and consciously false. In other words, the speaker knowingly tells lies and delivers insincere responses. The convergence of these two factors, coupled with the intent to deceive the questioning party, is relevant. The testifying person provides information that is inconsistent with their own conviction about the facts with the intention that it will be taken as true. Therefore, statements that reflect the actual state of affairs may also be untrue if the speaker is not aware of this fact" [Malinowski 2020, 11].

[3] A witness who testifies out of fear of impending criminal liability does not commit the offence under Article 233(1a) of the Criminal Code if – insofar as they are exercising their right to defence – he or she gives a false deposition or withholds the truth, while, at the same time, their conduct does not meet the criteria of any prohibited act defined in another provision of the said code [Potulski 2022, 151-59].

a court of law is therefore a serious offence governed by the law.[4] A false deposition made at court is detrimental both to the process itself and to the perjurer. The problem has been discussed at length in the literature on the subject [Bojańczyk 2014, 137-43; Czabański and Warchoł 2007, 35-50; Dziesiński 2007, 147-59; Gruszecka 2010, 139-62; Kukuła 2012, 145-58; Młynarczyk 1971; Pawełek 2009, 152-60; Pohl 2006, 38-44; Rusinek 2008, 83-92; Sitkowska 2011; Sławiński 2015, 101-26; Tarapata and Zakrzewski 2017, 374-417; Wiliński 2007, 70-75; Zagiczek 2017, 418-44].

It is important to note, however, that false accusation, false deposition, or perjury are not contemporary phenomena. They have been around for millennia. Hence, the provisions addressing liability for false deposition, false accusation, or perjury hold a prominent position in the world's most ancient legal codes. This fact seems to suggest the enduring human propensity to misrepresent, deceive, and bear false witness. The testimony of a witness has always held a pivotal role in upholding security and law and order, which is why much attention has always been attached to the elimination of conduct and attitudes that cloud the facts in pursuit of the truth or could lead to an injustice.

The author aims to reflect on the oldest monuments of law, especially from the Early Middle Ages, and highlight, based on ancient penitential books, what consequences making a false deposition entailed. Penitential books (also penitentials) contained exhaustive lists of offences and wrongdoings, including perjury and bearing false witness, along with a "penitential tariff," which depended on who and when committed one of the listed sins. Above all, they were intended to provide guidance to confessors as to what rules they should follow when giving penance to a sinner and, additionally, to ensure that the approach to penitential matters was uniform.[5]

1. PERJURY IN ANCIENT LEGAL CULTURES

Rules and regulations concerning accountability for false accusation, false deposition, and perjury occupy a central place in ancient laws. The Code of Hammurabi, the king of Babylon ruling from 1792 to 1750 BC, addresses

[4] For liability for perjury to be established, it is essential that the individual providing the testimony be formally warned about the potential consequences of false testimony under criminal law. If no such warning has been issued, no offence can be said to occur [Nawrocki 2015, 144-57].

[5] As provided in the penitentials, penance required a sinner to perform certain actions related to each sin and to undertake self-mortification defined in terms of type (fasting, saying prayers, lying prostrate, physical self-punishment, almsgiving), quantity and quality (the length of fasting in days, weeks, months, and even years; eating only bread and water; abstaining from meat, wine, beer, fat or in another way) [Erdö 2008, 61; Story 2021, 242-43].

the question of responsibility[6] for statements made in a court case already in the four opening sections.[7]

The key evidence primarily relied on witnesses' depositions [Kuryłowicz 2006, 80]. The Code of Hammurabi emphasized their importance and scope. It prescribed execution[8] for unfounded allegations in capital cases, i.e. ones where the perpetrator faced the death penalty (para. 3). In other cases, a financial penalty sufficed (para. 4).[9] The principle of talion was put in place, that is, false testimony exposed the perjurer to the same punishment as the falsely accused person would have suffered if found guilty [Idem 2013, 164-65]. The code in question was the first to introduce the said principle, thus departing from the earlier principle of pecuniary redress, as it was, for example, in the Code of Ur-Nammu.[10] The principle was also envisaged to ensure, but not only, "that the strong do no harm to the weak, and justice be done to orphans and widows". In this approach, the punishment was design to directly affect the perpetrator who could not avoid it by paying a sufficiently large amount of money [Pędracki 1997, 26; Szamocki 2004, 43].

A common means employed in legal proceedings, according to the Code of Hammurabi, was an affirmative (assertive) oath sworn by the parties to confirm the truthfulness of their depositions. The oath was sworn before

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[6] The idea of accountability for words said appears as early as in the Code of Hammurabi, at least with regard to defamation (slander). Its para. 127 says that if a man pointed a finger at a priestess or another man's wife (probably implying her sexual misconduct) and she has avoided conviction, that man, unless he can prove his point, should be beaten in the presence of the judges and his hair shaved [Dziembowski and Szwejkowska 2013, 6].

[7] Rules on bearing false witness during court proceedings are also found in the oldest known Sumerian collection of laws, the Code of Ur-Nammu of the Sumerian "king of Ur, lord of Uruk, king of Sumer and Akkad" (ca. 2111-2094 BC). It addresses perjury in two points: "§ 28. If a man appears as a witness, and was shown to be a perjurer, he must pay fifteen shekels of silver. § 29 If a man appears as a witness, but withdraws his oath, he must make payment, to the extent of the value in litigation of the case [Riccio 2022, 86-87]. The Code of Lipit-Ishtar, who was the king of the city-state of Isin and controlled the neighbouring cities of Nippur, Ur, Uruk and Eridu, goes back to 1934-1924 BC. Its para. 17 reads, "If a man without authorization bound another man to a matter of which he (the latter) had no knowledge, that man is not affirmed (i.e., legally obligated), he (the first man) shall bear the penalty in regard to the matter to which he had bound him" [Dziembowski and Szwejkowska 2013, 5-6; Kuryłowicz 2006, 80; Pędracki 1997, 7-10].

[8] The death penalty was exacted by drowning, burning, burying, or bricking up in the case of burglars and thieves; also, impaling or drawing by cattle were also in use [Karnacewicz 2017, 68].

[9] According to the Code of Hammurabi, "§ 3. If any one bring an accusation of any crime before the elders, and does not prove what he has charged, he shall, if it be a capital offense charged, be put to death. § 4. If he satisfy the elders to impose a fine of grain or money, he shall receive the fine that the action produces."

[10] Presumably, King Hammurabi aimed to promote the equality of citizens (awils) before the law regardless of their financial status, although in those times full equality by today's standards should rather be ruled out [Pędracki 1997, 27].

the monarch, Marduk, the patron deity of Babylon, and before other local deities. The consequence of swearing the oath was, at least in some cases, exclusion from the obligation to pay damages (para. 249, 266) [Klima 2019, 285].

In the courts of ancient Egypt, the offence of perjury was punished by death because, according to Diodorus Siculus, it embraced the two greatest punishable acts that undermine respect for the gods and trust between people. Consequently, if an individual falsely accused another during court proceedings, they were required to endure the punishment that would have been imposed on the innocent party had the former been acquitted [Kuryłowicz 2013, 40-41].

The issue of bearing false witness at court and abuses related thereto also surface in the biblical law of the Old Testament[11] where it is vehemently condemned. As in the Code of Hammurabi, the principle of talion is applied. A perjurer suffered the same punishment as the accused if they had been found guilty.[12] Basically, the Old Testament does not mention the punishment of mutilation. Therefore, the principle of a life for a life, an eye for an eye should be understood figuratively as intended to ensure fair compensation rather than revenge [Szamocki 2004, 54].

The significant role of sworn testimonies in ancient Israelite court processes is further highlighted by the explicit prohibition of perjury in one of the Ten Commandments, "You shall not bear dishonest witness against your neighbour" (Deuteronomy 5:20). The objective was to foster a sense of justice during court proceedings because in ancient Israel the witness was also the accuser. A witness or a wronged person enjoyed both the right and the obligation to appear in court and present their case. Consequently, the witness would frequently play a pivotal role in determining the court's final decision[13] [Szamocki 2004, 53-54].

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[11] See 1 Kings 21:1-16 or Amos 5:10 and 12.

[12] "16 If an unjust witness takes the stand against a man to accuse him of a defection from the law, 17 the two parties in the dispute shall appear before the Lord in the presence of the priests or judges in office at that time. 18 and if after a thorough investigation the judges find that the witness is a false witness and has accused his kinsman falsely, 19 you shall do to him as he planned to do to his kinsman. Thus, shall you purge the evil from your midst. 20 The rest, on hearing of it, shall fear, and never again do a thing so evil among you. 21 Do not look on such a man with pity. Life for life, eye for eye, tooth for tooth, hand for hand, and foot for foot" (Deuteronomy 19:16-19).

[13] Since perjury and untrue statements were not uncommon in capital cases, the Deuteronomistic tradition introduced the rule of two witnesses into Israelite law. Later, it grew more universal and applied to all cases of offences (Deuteronomy 19:15), "One witness alone shall not take the stand against a man in regard to any crime or any offense of which he may be guilty; a judicial fact shall be established only on the testimony of two or three witnesses" [Szamocki 2004, 54]. On the procedural rule of *testis unus testis nullus* in the laws of the Bible and roman law, see Adamczewski 2022.

Compared to earlier solutions, the situation in the laws of ancient Athens was somewhat different. According to the legal principles in force, if the accusing party failed to obtain at least 1/5 of the votes of the judges sitting on the Heliaia tribunal examining the validity of the claim, he had to pay a fine of 1,000 drachmas and lost the right to file claims in similar cases for ever. Unlike the Code of Hammurabi, the laws of ancient Athens did not nurture the principle of talion [Skorupka 2022, 132; Zalewski 2013, 198]. Interestingly, Athens was known for the so-called sycophants. These were semi-professional accusers who specialized in bringing actions to court or threatening to do so. They blackmail other in this way to obtain a pecuniary reward in exchange for withdrawing the action [Dominiuk 2020, 187-88].[14]

2. PERJURY IN ROMAN LAW

Lying under oath was never an independent and standard offence in ancient Rome. In practice, it was prosecuted in connection with sworn, yet false testimonies made by witnesses [Litewski 2001, 174]. It should be stressed that testimony by witnesses, as in the case of the Code of Hammurabi, was undoubtedly the most important piece of evidence in Roman criminal proceedings. Ancient jurists attached great attention to it, next to discussing the hearing of slaves [Nowicka 2018, 59].[15] For example, a special type of witness

[14] Given the absence of a public prosecutor and the fact that in the vast majority of cases half of the fine that was imposed on a false accuser was paid by the state, this form of dishonest and corrupt behaviour was comparatively popular among the people of Athens [Zalewski 2013, 198].

[15] Before the court, the burden of proof rested with the party making the claim and not with the party trying to deny it, *Ei incumbit probatio qui dicit, non qui negat* (D.22,3,2). In criminal cases, evidence had to be particularly compelling; brighter than light, *In criminalibus probationes debent esse luce clariores* (C.4,19,25). The principle of free examination of evidence was adhered to, although certain rules of evidence were also followed. In particular, one witness was not enough to prove a purported fact (the two-witness rule), *Testis unus testis nullus* C. 4.20.9). There was no approved list of evidence in place. They were rational. Irrational evidence (especially *ordalia*) had been in use earlier, but it was quickly abandoned. Some of the key standards concerning witnesses were invented for the sake of the criminal process. Women and even children were allowed to testify. Bearing witness was even mandatory, although some relatives of the accused were able to refuse to testify. Swearing an oath was also required. There were also many regulations in place regarding the capacity to testify, however, they generally became obsolete at a later stage of the development of law. Hearsay evidence (witness) (*ex audit test*) was inadmissible [Litewski 2001, 183]. In statements at court, "I know" would often be replaced by "I presume/suppose." Apparently, the ancient Romans were very cautious in legal affairs. Besides, witnesses did not speak freely on their own but only responded to questions. The questioning was done by the parties, while the jurors remained passive. First the witnesses of the prosecution were heard, next those of the accused. The sequence of depositions in both groups was decided by the petitioner [Dytkowski 2016, 62].

was *laudator* (one who praises). During a trial, he or she would testify (orally or in written form) about the qualities of the accused: their good personality, conduct, and way of life. A *laudator* was required to possess an impeccable reputation. In processes involving *repetundae* (bribes), at least ten *laudatores* were required to appear [Dytkowski 2016, 60; Mossakowski 2001, 169-73].[16]

Perjury in court proceedings was already criminalized in the Law of the Twelve Tables (451-449 BC).[17] Among the offences listed in the body of the law, there is "speaking false witness."[18] It should be highlighted that in many ancient laws attempts to jointly regulate the offence of false testimony and false accusation were apparently very common, hence, presumably, the Law of the Twelve Tables also penalized what was later to evolve into *crimen calumniae*,[19] i.e. false accusation. This offence was prosecuted in the Late Republic pursuant to *lex Remmia de calmoniatoribus* – a plebiscite of Tribune Remmius from before 80 BC [Zalewski 2013, 199-200]. However, the punishment to be meted out for the said offence according to *lex Remmia* seemed somewhat controversial. According to the jurist named Martianus, a person who falsely accused had the letter K branded on their forehead, or, according to some other views, the letter K was to be placed next to the name of the convict. During the Republic, however, those convicted of *crimen calumniae* were sentenced to infamy. These individuals did not only earn a bad name, but above all, they would lose the capacity to bring an action, the right to hold offices, the right to represent anyone before court, including as a defence lawyer, as well as the right to vote and joint the military. During the Principate, arbitrary punishments were common: *calumnitor* faced the same sanction as the one that would have been imposed on the wrongly accused if found guilty; during the Dominate, the principle of talion was back on the scene [Zalewski 2013, 205-206].

Furthermore, the work of informers was also reported in ancient Rome, just as were the practices of rewarding them and attempts to eradicate such

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[16] Another case was *index*. It was an informer and an accomplice at the same time who admitted to being guilty of the offence. He or she usually managed to go unpunished and was even rewarded. Such an individual would usually be questioned during the proceedings preliminary to trial and then as a witness at court. Already during the Republic, depositions were collected from slaves (*conscii servi*), which was perfectly lawful. *Index* resembled the contemporary institution of a crown witness, who plays a pivotal role primarily in prosecuting organized crime [Dytkowski 2016, 60; Mossakowski 2013, 212-13].

[17] The Roman state evolved over four main historical periods, each with its own organizational framework: the Kingdom, the Republic, the Principate, and the Dominate. The Roman state existed from 753 BC to 476 AD [Kuryłowicz 2006, 167-68].

[18] *Lex duodecim tabulorum* 8, 23: *Si nunc quoque – qui falsum Testimonium dixisse convictus esset, e saxo Tarpeio deiceretur.*

[19] *Calumnia* – the term is translated as slander, calumny, libel, insult, or false accusation [Kumaniecki 1976, 73].

behaviours. An informer was referred to as *delator* [Mossakowski 2013, 201].[20] Making an unfounded accusation entailed not only moral but also legal accountability. Such an action demanded proper punishment. This is seen in the constitutions of the emperors Gratian, Valentinian II, and Theodosius the Great. Unfounded accusation or denunciation would often be punished by infamy, but also arbitrary penalties were handed down [Zalewski 2013, 202-203].

3. PERJURY IN PENITENTIAL BOOKS

Next to sacramentaries, penitential books (*libri poenitentiales*), also called penitentials, are among the collections of the so-called special law. They serve as indirect sources of knowledge of canon law, especially criminal law. They were, above all, meticulous collections of rules and regulations concerning the administration of the sacrament of penance [Subera 1977, 62-65]. Their origin can be traced back to the monastic communities in Ireland, Britain, and Scotland. When setting out on a mission to continental Europe, monks would carry the books of penance along with them. They would later inspire local authors to pen new collections gathering the penitential practices of Spain or Gaul [Boguniowski 2001, 268-69]. Moreover, the penitentials contributed to interpreting the sacrament of penance anew: it became a recurrent practice and was ministered also by a regular priest (presbyter) and not only a bishop, as had been the case before. Moreover, the rite of penance itself became a more private ritual, free from the public eye [Szymański 2017, 36].

Although the penitentials specified the duration of penance, each of the penitents was able to enjoy the privilege of receiving the grace of God's mercy. This can explain why *The Book of Penance of Gregory III*, collated in the 9th century, referred an Old Testament quote, "Son, be merciful in judging" (Sirach 4:10), and the Letter of James, "For the judgment is merciless to one who has not shown mercy; mercy triumphs over judgment" (James 2:13), to justify this approach. Hence, the decision to invoke the grace of mercy in specific cases was left to the discretion of bishops and priests. The rationale was that, in the eyes of God, the duration of penance is of secondary importance, rather, what holds primary significance is the suffering (*doloris*) experienced. Moreover, the mere abstention from food is not the aim in itself, instead it should be the genuine mortification following committed sins. Hence, the clear message, "that the time of penance be reduced by the faith and conversion of penitents."[21]

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[20] W. Mossakowski explores the subject of *delatores* in Roman criminal trials extensively [Mossakowski 2013, 201-19].

[21] *Poenitentiale Ps. Gregorii III (saec. IX)*, in: *Księgi pokutne. Tekst łaciński, grecki i polski*. Vol. V: *Synody i kolekcje praw*, Wydawnictwo WAM. Księża Jezuici, Kraków 2005 [hereinafter: *Księgi pokutne*], p. 347.

The penitentials do not ignore the issue of responsibility for false testimony or false accusation, either. It is worth emphasizing, however, that the oldest books of penance written between the 5th and the 7th century in Ireland, England, or Scotland do not mention that at all. Nor did the First Synod of Saint Patrick, convened in the 5th century, address the subject.[22] It appears no earlier than in *The Penitential of Cummean* of the 7th century[23] and in the 8th-century *Pseudo-Cummean Penitential*, also known as *Excarpsus Cummeani*, still, false testimony or false accusation surface in the penitentials penned in Gaul, Italy, and Spain.

In the case of *The Penitential of Cummean* and *The Pseudo-Cummean* Penitential, or a later book of penance, *The Penitential of Cordoba* from the 11th century, there are referenced to the ancient principle of talion. A person who provided false testimony to placate someone was, in the first place, required to seek reconciliation with the individual against whom they had testified falsely (to seek forgiveness). Second, they were expected to accept the same sentence (penance) as the individual whom they had harmed with untrue deposition. This situation was to be assessed by the confessor.[24]

In *The Book of Penance of Gregory III* referred to earlier, the author describes the case of *delator*. In the reviewed translation, the Latin word *delator*[25] was translated as: slandered, although the word is also rendered as informer, accuser, or denunciator, while in ancient Rome, as already said, it was tantamount to an informer. According to the penitential in question, when a slander (false accusation or denunciation) was attributed to a member of the faithful (*fidelis*), and that person was convicted or put to death because of it, the slanderer could not partake in Holy Communion for the rest of his or her life. When the case was of "low importance," such a person could be admitted to Holy Communion after five years or even after three if extraordinary circumstances occurred.[26]

Next to *delator*, *The Book of Penance of Gregory III* also alludes to a witness who offers false testimony (*falsus testis*). In such a case, when it was proven, he or she was forced to do penance for five years. If false testimony could not be proven and the committed offence was not a capital case, the penance lasted for two years.[27]

In contrast, *the Penitential of Vienna*, going back to the late 9th century, generally says that a person who bears false witness deserves a seven-year

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[22] *Synodus S. Patrici, etc. In Hibernia celebrata (456)*, in: *Księgi pokutne,* p. 2-6.

[23] The penitential was developed on the basis of the scheme of eight vices by John Cassian.

[24] *Paenitentiale Cordubense (initio XI saec*), in: *Księgi pokutne*, p. 442; *Poenitentiale Cummaeani (saec. VII)*, in: *Księgi pokutne*, p. 75; *Poenitentiale Pseudo-Cummaeani*, in: *Księgi pokutne*, p. 99.

[25] Lat. *delatio* – to provide, supply, report.

[26] *Poenitentiale Ps. Gregorii III (saec. IX)*, p. 353.

[27] Ibid.

penance, three of which on bread and water.[28] On the other hand, the already mentioned *Penitential of Cordoba* from the 11th century provided that if false testimony or accusation was brought against a bishop, the false witness should do penance for seven years; if against a priest, for five years; if against a deacon, for four years; if against a subdeacon, for three years; and if against a lay person, for one year.[29] Compared to *The Book of Penance of Gregory III*, written two centuries earlier, the Cordoba book adopted an apparently milder approach to the burden of penance. The previous penitential prohibited a person who groundlessly accused a bishop, priest, or deacon of committing an offence from receiving Holy Communion until the end of his or her life.[30]

The Pseudo-Cummean Penitential also looks at situations when a penitent gave false testimony but he or she was not driven by the desire to placate another person (*ut placeat proximo suo*). In such cases, penance depended on the status of the witness. If a lay person did so, he or she was compelled to do penance for one year; a seminary student for two years; a subdeacon for three years; a deacon for four years; a priest for five years; and a bishop for as many as six years.[31]

Bishop Burchard of Worms took a firm stand on the matter of false testimony in the early 11th century. In his view, during confession, the confessor was obliged to ask the sinner, "Have you been a false witness, that is, have you testified falsely and claimed that what was false was true? If yes, did you do it for the sake of love for someone, for a financial benefit, or out of fear?" If someone made a false deposition, he or she was equated with sinners guilty of murder, adultery, or theft. To justify his decision, Bishop Burchard relied on a passage from The Gospel of Matthew, "For from the heart come evil thoughts, murder, adultery, unchastity, theft, false witness, blasphemy" (Matthew 15:19). Therefore, in bishop's view, a false witness should be excommunicated and should do penance like an adulterer, murderer,[32]

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[28] According to *The Penitential of Vienna,* a person who is obliged to fast on bread and water but is unable to do so "should sing 50 psalms while demonstrating grace and 70 without it. If he or she does not know any psalms, let them pay a denarius per day; and if he or she has nothing of value, let them offer some of the food that they partake; for one year on bread and water, let them offer 21 solidi; and if they have nothing of value and cannot fast, let them sing 300 psalms on their knees for each week of fasting on bread and water; on Wednesdays and Fridays, let them fast until 9:00 and let them support the poor." *Poenitentiale Vindobonense (fine saex. IX)*, in: *Księgi pokutne*, p. 363.

[29] *Paenitentiale Cordubense (initio XI saec*), p. 443.

[30] *Poenitentiale Ps. Gregorii III (saec. IX)*, p. 353.

[31] *Poenitentiale Pseudo-Cummaeani*, p. 99.

[32] According to the Bishop of Worms, the following penance should be done for a murder committed out of greed with a view to seizing the victim's property or out of revenge against one's parents, "In the first year after these forty days, you should abstain totally from wine, honey, cheese, and oily fish; yet, it does not apply to the feast days of a specific bishopric, which are celebrated by all the people. If you travelled on a long journey, in an enemy's country, or while at the king's court, or affected by illness, then you may pay one denarius,

or thief.[33] A reduced penance was imposed on a penitent who bore false witness for fear of losing his or her life and of "losing their own limbs." In such cases, the penance was reduced by half, and the penitent was to be instructed not to do it again.[34]

CONCLUSION

A witness testifying before court and his or her testimony, which is hoped to contribute to the ascertainment of the truth, have invariably played a pivotal role across centuries. The institution of witness is instrumental in and widely employed across both criminal and civil proceedings. It was also addressed in historical penitential books, which proves that the members of the ecclesiastical community back in the Middle Ages also happened to distort or suppress the truth. Many disturbing behaviours were reported among the faithful, contrary to the Ten Commandments. Among them, giving false testimony during court proceedings. Hence, efforts were made to ensure that the baptized refrained from behaviours that could harm the repute of the Christian community.

An overview of ancient sources of law, including the Code of Hammurabi, roman law, and a number of mediaeval penitentials, reveals numerous

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or pay the price equivalent to one denarius, or feed three poor people, to suspend fasting on Tuesday, Thursday, or Saturday; however, you may not eat anything but only one of the foods mentioned above, that is, you may drink wine, or mead, or sweet beer. Once you return home or recover from illness, you must not indulge yourself in any way. After one year, you will return to the Church where you will receive the holy kiss. Over the second and third year, you will fast in a comparable way, unless you pay the said price for suspending the fast on Tuesday, Thursday and Saturday, regardless of where you are. Over the remaining days, you must fast carefully, as in the first year. In the remaining four years, you should fast three times forty days and on prescribed days. First before Easter with other Christians and another time before the feast of St John the Baptist. If any of the fast is left, you will complete it later. For the third time, before Christmas, you will abstain from wine, honey, sweet beer, meat, fat, cheese, and oily fish. During the same four years, you can eat whatever you want on Tuesdays, Thursdays, and Saturdays. However, if you want to eat on Mondays and Wednesdays, you must pay the price as indicated earlier. On Fridays, you must always be on bread and water. After all these years, you will receive Holy Communion, however, you will continue to live in penance all your life. And as long as you live, every Friday you will fast on bread and water; and if you wanted to pay not to do so, you could pay one denarius, or pay the price equivalent to one denarius, or feed three poor people. We allow you to do so out of mercy, and not in accordance with the canons which say, If someone deliberately slaughters a person, he must abandon the world, begin a monastic life, and serve God continuously." *Burchardi Wormaciensis ecclesiae episcopi decretorum liber decimus nonus de poenitentia (ca. 1008-1012)*, in: *Księgi pokutne*, p. 370.

[33] Ibid., p. 379.

[34] Ibid., p. 380.

irregularities and inappropriate behaviours among court witnesses. The penitentials responded to such transgressions straightforwardly and in a resolute manner. An example of such a stance is the attitude of Bishop Burchard of Worms. He ranked perjury among the gravest offences, next to murder and adultery, which were punished with excommunication. Other mediaeval penitentials also prescribed either the application of the principle of talion or denial of Holy Communion until the end of life of the individual resorting to false testimony.

The eradication of this kind of behaviour was intended to protect the interest of wrongly accused persons, their right to a good name, and, above all, to ensure that the interest of the justice system be safeguarded. Severe penalties (penances) were aimed to prevent prospective transgressions and deter potential perpetrators from hiding the truth during court proceedings. They also conveyed an educational value. Punishment and penance were also a manifestation of disapproval towards the false witness and his or her evidently debilitating influence on morals or the setting in which such reprehensible behaviour occurred.

A sombre conclusion is that, despite the severe punishments and penances imposed in ancient times, there were always individuals who, guided by various stimuli, did not recoil from providing false testimony. Even in the face of impending consequences, such individuals, either through embracing falsehoods or half-truths, or by remaining silent, contributed to unjust verdicts based on distorted reality. Has the situation improved in contemporary times? It is not easy to tell, and the confines of this paper do not permit to do so. However, as provided in Article 233(1) of the Polish Criminal Code, it needs to be kept in mind that any person who, making a deposition aimed to be evidence in court proceedings or in any other proceedings conducted under the law, says an untruth or hides away the truth is liable to a penalty of deprivation of liberty from six months to eight years.

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