

# *Bishops, Canon Law and Governance in Tenth-Century England: the Constitutiones of Oda of Canterbury*

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*This article challenges the view that canon law was insignificant in the development of tenth-century English administrative and judicial institutions through a new study of Oda of Canterbury's Constitutiones, an important but neglected episcopal capitulary. Particular attention is paid to Oda's sources, the text's place in the legislative programme of King Edmund and the influence of wider European approaches to episcopal justice. The article shows that Oda's statutes endorsed an emerging system of collaborative justice between secular and ecclesiastical elites, thus demonstrating that tenth-century English governance was informed by a wider range of normative legal traditions than usually thought.*

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**D**id canon law matter in early medieval England? Several core elements of early medieval religious legislation – canonical collections, synodal decrees and episcopal capitularies – have traditionally been considered negligible in the exercise of ecclesiastical

ASE = *Anglo-Saxon England*; BL = British Library, London; Bod. Lib. = Bodleian Library, Oxford; C&S = *Councils & synods, with other documents relating to the English Church, I: AD 871–1204*, 1: 871–1066, ed. Dorothy Whitelock, Oxford 1981; EME = *Early Medieval Europe, Hibernensis = The Hibernensis, book 1: a study and edition*, ed. Roy Flechner, Washington, DC 2019; MGH = *Monumenta Germaniae Historica: Capit. = Capitularia regum Francorum*; Capit. n.s. = *Capitularia regum Francorum, nova series*; Capit. episc. = *Capitula episcoporum*; Epp. = *Epistolae*; LL = *Leges*; SS = *Scriptores*

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discipline, particularly in the two centuries prior to the Norman Conquest. Only the extensive canonical writings of Archbishop Wulfstan II of York (d. 1023) have seemed to represent a momentary exception to this axiom.<sup>1</sup> The apparent insignificance of canon law in the tenth and eleventh centuries – a period of English history distinguished by its venerable tradition of secular legislation – has generally been ascribed to two factors. First, penitential handbooks, rather than canon law collections, have often been deemed the favoured instruments of ecclesiastical discipline and pastoral care. Penitentials, well attested in tenth- and eleventh-century England, have classically been viewed as a distinct albeit complementary genre.<sup>2</sup> Recent work, however, has demonstrated how entrenched typological assumptions concerning what constitutes a ‘canon law collection’, ‘penitential’ or ‘episcopal capitulary’, and the corresponding modern evaluations of their implications, have inhibited a full appreciation of the available English evidence. Historians increasingly recognise that such nomenclature and classifications tend to obscure rather than clarify our understanding of the practical application of early medieval religious law.<sup>3</sup>

A second factor held to have diminished the significance of canon law in later Anglo-Saxon England is the comprehensive reach of royal legislation, which regularly treated ecclesiastical matters. In the tenth-century kingdom of the English, the institutions of the Church, not least the episcopate, were arguably integrated with royal government to a greater degree than elsewhere in Europe. Bishops were important members of

<sup>1</sup> On Wulfstan see Patrick Wormald, *The making of English law: King Alfred to the twelfth century*, I: *Legislation and its limits*, Oxford 1999, 330–66, 389–97, 449–65, and ‘Archbishop Wulfstan and the holiness of society’, in his *Legal culture in the early medieval West: law as text, image, and experience*, London 1999, 225–52. Wulfstan’s canon law collection, ed. J. E. Cross and Andrew Hamer, Cambridge 1999, should now be read alongside Michael Elliot, ‘The Worcester collection of canons’, in Joseph Goering, Stephan Dusil and Andreas Thier (eds), *Proceedings of the fourteenth International Congress of Medieval Canon Law: Toronto, 5–11 August 2012*, Vatican City 2016, 1–30.

<sup>2</sup> For a traditional accounting see R. H. Helmholz, *The Oxford history of the laws of England*, I: *The history of the canon law and ecclesiastical jurisdiction, 597–1649*, Oxford 2004, 27–30.

<sup>3</sup> Michael Elliot, ‘Canon law collections in England, ca 600–1066: the manuscript evidence’, unpubl. PhD diss. Toronto 2013, 10–22, 33–40, 69–85, and ‘New evidence for the influence of Gallic canon law in Anglo-Saxon England’, this *JOURNAL* lxiv (2013), 700–30 at pp. 702–8. See also Ludger Körntgen, ‘Kanonisches Recht und Busspraxis: zu Kontext und Funktion des *Paenitentiale Excarpsus Cummeanus*’, in Wolfgang P. Müller and Mary E. Sommar (eds), *Medieval church law and the origins of the Western legal tradition: a tribute to Kenneth Pennington*, Washington, DC 2006, 17–32; Carine van Rhijn, *Shepherds of the Lord: priests and episcopal statutes in the Carolingian period*, Turnhout 2007, 13–31; Sarah Hamilton, ‘Inquiring into adultery and other wicked deeds: episcopal justice in tenth- and early eleventh-century Italy’, *Viator* xli (2010), 21–44 at p. 37; and Rob Meens, *Penance in medieval Europe, 600–1200*, Cambridge 2014, 108–10.

the king's *witan* (counsellors) and were often envisaged as royal agents in law codes, which they were themselves frequently involved in drafting. Kings tended to exercise tight control over episcopal appointments.<sup>4</sup> Furthermore, a robust tradition of Anglo-Saxon church councils disappeared after the mid-ninth century, perhaps as a consequence of viking onslaught. When our evidence resurfaces in the tenth century, church councils seem to have been subsumed within royal assemblies, to the extent that it is often impossible to distinguish between such meetings. This has contributed to a general view that, in comparison with the continent, there was little separation between spheres of secular and ecclesiastical jurisdiction in tenth- and eleventh-century England.<sup>5</sup> Yet such 'mixed' conciliar and legislative activity was common in the early Middle Ages, as Merovingian and Carolingian Frankish evidence amply attests.<sup>6</sup> English bishops approached councils and legislation from distinctive historical and political standpoints, but they certainly 'knew the canons' and could differentiate between secular and religious legislation.<sup>7</sup> Moreover, one

<sup>4</sup> Frank Barlow, *The English Church, 1000–1066: a history of the later Anglo-Saxon Church*, 2nd edn, London 1979, 96–153; Mary Frances Giandrea, *Episcopal culture in late Anglo-Saxon England*, Woodbridge 2007, 35–69. On episcopal involvement in the drafting of royal laws before Wulfstan see also Wormald, *Making*, 299–300, 310, 319; and on episcopal appointments see Catherine Cubitt, 'Bishops and succession crises in tenth- and eleventh-century England', in Ludger Körntgen and Dominik Waßenhoven (eds), *Patterns of episcopal power: bishops in tenth- and eleventh-century Western Europe*, Berlin 2011, 111–26 at pp. 121–6.

<sup>5</sup> Hanna Vollrath, *Die Synoden Englands bis 1066*, Paderborn 1985, 212–390; Wormald, *Making*, 418–65; Catherine Cubitt, 'Bishops and councils in late Saxon England: the intersection of secular and ecclesiastical law', in Wilfried Hartmann and Annette Grabowsky (eds), *Recht und Gericht in Kirche und Welt um 900*, Munich 2007, 151–67; Simon Keynes, 'Church councils, royal assemblies and Anglo-Saxon royal diplomas', in Gale R. Owen-Crocker and Brian W. Schneider (eds), *Kingship, legislation and power in Anglo-Saxon England*, Woodbridge 2013, 17–182 at pp. 18–29; Levi Roach, *Kingship and consent in Anglo-Saxon England, 871–978*, Cambridge 2013, 22–4, 107–20; Elliot, 'Canon law collections', 41–55; but cf. Nicole Marafioti, 'Secular and ecclesiastical justice in late Anglo-Saxon England', *Speculum* xciv (2019), 774–805.

<sup>6</sup> Mayke de Jong, 'Ecclesia and the early medieval polity', in Stuart Airlie, Walter Pohl and Helmuth Reimitz (eds), *Staat im frühen Mittelalter*, Vienna 2006, 113–32 at pp. 124–9; Gregory I. Halfond, *Archaeology of Frankish church councils, AD 511–768*, Leiden 2010; Elliot, 'Canon law collections', 45–9. On earlier English councils see Catherine Cubitt, *Anglo-Saxon church councils, c. 650–c.850*, London 1995, 17–59; and for their influence on royal laws in the seventh century see Ingrid Ivarsen, 'Innovation and experimentation in late seventh-century law: the case of Theodore, Hlothhere, Wihtræd and Ine', *ASE* (forthcoming).

<sup>7</sup> Among other recent work see Shannon Ambrose, 'The *Collectio canonum Hibernensis* and the literature of the Anglo-Saxon Benedictine reform', *Viator* xxxvi (2005), 107–18; Catherine Cubitt, 'Bishops, priests and penance in late Saxon England', *EME* xiv (2006), 41–63; Stefan Jurasinski, *The Old English penitentials and Anglo-Saxon law*, Cambridge 2015; Joyce Hill, 'Two Anglo-Saxon bishops at work; Wulfstan, Leofric

might well ask not whether kings successfully imposed royal jurisdiction over the Church, but instead whether bishops successfully expanded their own sphere of jurisdiction by placing ecclesiastical matters on the royal agenda. Nevertheless, canonical tradition – penitential material excepted<sup>8</sup> – has long seemed marginal, even irrelevant to a legal culture in which church governance was ostensibly articulated almost entirely through royal law codes.

Texts and manuscripts of canon law thus tend to languish in the shade of secular legislation, which anchors histories of administrative structures, judicial institutions, crime and punishment, social order and state power in early medieval England.<sup>9</sup> This article seeks to demonstrate that canonical resources did in fact play a role in the development of governing structures in the nascent kingdom of the English. It takes as its focus a little-studied legal collection issued by Archbishop Oda of Canterbury (r. 941–58), known today as his *Constitutiones*.<sup>10</sup> These rulings represent the only episcopal capitulary – that is, a series of chapters issued by a bishop for the guidance of clergy and laity – known to have been produced in England between the *Dialogus* of Ecgberht of York (d. 766) and Wulfstan's 'Canons of Edgar' (written and revised between c. 1004 and c. 1018).<sup>11</sup> The *Constitutiones* have often been acknowledged as a sidelight on the institutional Church as it re-emerged following the devastation of the ninth-century viking raids.<sup>12</sup> On account of Oda's travels abroad and

and Cambridge, Corpus Christi College MS 190', in Körntgen and Waßenhoven, *Patterns*, 145–61; Jay Paul Gates, 'Preaching, politics and episcopal reform in Wulfstan's early writings', *EME* xxiii (2015), 93–116; Sarah Hamilton, 'Law and liturgy: excommunication records, 900–1050', in Sarah Greer, Alice Hicklin and Stefan Esders (eds), *Using and not using the past after the Carolingian Empire, c.900–c.1050*, London 2020, 282–302. See also the collection of resources maintained by Michael Elliot at <<http://individual.utoronto.ca/michaelelliott/index.html>>, accessed 17 April 2024.

<sup>8</sup> For the influence of penitential handbooks on royal legislation see Carole Hough, 'Penitential literature and secular law in Anglo-Saxon England', *Anglo-Saxon Studies in Archaeology and History* xi (2000), 133–41.

<sup>9</sup> As, for example, in George Molyneaux, *The formation of the English kingdom in the tenth century*, Oxford 2015, and Tom Lambert, *Law and order in Anglo-Saxon England*, Oxford 2017.

<sup>10</sup> Oda of Canterbury, *Constitutiones*, *C&S*, 67–74, no. 20. This supersedes the edition by G. Schoebe, 'The chapters of Archbishop Oda (942/6) and the canons of the legate councils of 786', *Historical Research* xxxv (1962), 75–83. There is an English translation in John Johnson, *A collection of the laws and canons of the Church of England*, 2nd edn, Oxford 1850, i. 358–63.

<sup>11</sup> On Ecgberht see Martin J. Ryan, 'Archbishop Ecgberht and his *Dialogus*', in Alexander R. Rumble (ed.), *Leaders of the Anglo-Saxon Church: from Bede to Stigand*, Woodbridge 2012, 41–60. For the 'Canons of Edgar', see *C&S*, 313–38, no. 48.

<sup>12</sup> Vollrath, *Synoden*, 212–29, offers the most extensive treatment of the work. See also David N. Dumville, *Wessex and England from Alfred to Edgar*, Woodbridge 1992,

experience of continental monasticism, the *Constitutiones* have also been considered a kind of proto-‘reform’ text, anticipating concerns for the regulation of religious life associated with the English ‘Benedictine reform’.<sup>13</sup> However, despite being a rare piece of tenth-century ecclesiastical legislation, Oda’s text has largely escaped close analysis, a neglect perhaps stemming from views of the work as unoriginal and therefore inconsequential.<sup>14</sup>

This article suggests that Oda’s *Constitutiones* offer an overlooked route into important questions about the nature and conceptualisation of governance in tenth-century England. Contrary to what has often been thought, Oda’s statutes form a considered, canonically informed statement on ecclesiastical organisation and jurisdiction, providing crucial evidence for the reintroduction of canon law in tenth-century England from abroad. This ‘international’ dimension of Oda’s collection is key to the analysis, which consequently situates the *Constitutiones* in a European context of changing episcopal attitudes to law and jurisdiction in the tenth century. This wider context, moreover, is one with which English ecclesiastical developments have often been characterised as out of step. Where royal power and government are concerned, recent scholars have tended to reject older notions of ‘English exceptionalism’.<sup>15</sup> But several features of the tenth-century English Church, including its purported lack of conciliar and canonical traditions, still give it a distinctive or ‘exceptional’ appearance when set against continental practice.<sup>16</sup> Across the

162, 202–3; Ambrose, ‘*Collectio*’, 110; Keynes, ‘Church councils’, 28; Alaric A. Trousdale, ‘Being everywhere at once: delegation and royal authority in late Anglo-Saxon England’, in Owen-Crocker and Schneider, *Kingship*, 275–96 at pp. 277–83.

<sup>13</sup> On the reform see Julia Barrow, ‘The ideology of the tenth-century English Benedictine “reform”’, in Patricia Skinner (ed.), *Challenging the boundaries of medieval history: the legacy of Timothy Reuter*, Turnhout 2009, 141–54; Christopher A. Jones, ‘Ælfric and the limits of Benedictine reform’, in Hugh Magennis and Mary Swan (eds), *A companion to Ælfric*, Leiden 2009, 67–108; Francesca Tinti, ‘Benedictine reform and pastoral care in late Anglo-Saxon England’, *EME* xxiii (2015), 229–51; and for an overview of current thought, Christopher A. Jones, ‘Minsters and monasticism in Anglo-Saxon England’, in Alison I. Beach and Isabelle Cochelin (eds), *The Cambridge history of medieval monasticism in the Latin West*, Cambridge 2020, 502–18.

<sup>14</sup> For instance, Schoebe, ‘Chapters’, who supplied just two pages of introduction, stating that the text ‘cannot be used as evidence of ideas that originated in the tenth century’ (75). Similarly, John Blair, *The Church in Anglo-Saxon society*, Oxford 2005, 349–50.

<sup>15</sup> For instance, Roach, *Kingship*, 11–14; Molyneaux, *Formation*, 233–49.

<sup>16</sup> Thus, for example, the English toleration of episcopal translation: Nicholas Brooks, *The early history of the Church of Canterbury: Christ Church from 597 to 1066*, Leicester 1984, 216–17; Francesca Tinti, ‘The archiepiscopal *pallium* in late Anglo-Saxon England’, in Francesca Tinti (ed.), *England and Rome in the early Middle Ages: pilgrimage, art, and politics*, Turnhout 2014, 307–42 at pp. 311–19. On episcopal pluralism

Channel, the tenth century is now viewed as a pivotal era in the conceptualisation and application of church law. Continental bishops availed themselves of canonical materials in efforts to delineate new frameworks for the exercise of justice.<sup>17</sup> Interrogating this narrative of English difference, this study argues that Oda's production of an episcopal capitulary was influenced by these broader trajectories, and that his adaptation of continental canonical norms contributed to the embedding of new administrative institutions and a conception of collaborative justice during the reign of Edmund (r. 939–46).

### *The Constitutiones: contents and sources*

Historians are relatively well informed about Oda's life, thanks to Byrhtferth of Ramsey's *Vita Oswaldi*, written c. 997–1002. This work's subject, Oswald, bishop of Worcester (961–92) and archbishop of York (971–92), was the nephew of Oda, about whom the text provides much information.<sup>18</sup> Oda was appointed bishop of Ramsbury in 925 × 7 and promoted to the archbishopric of Canterbury by King Edmund in 941. The promotion of bishops from smaller sees to Canterbury or York was common practice in the tenth century.<sup>19</sup> Oda's known legislative activities

see Hill, 'Two Anglo-Saxon bishops', 145–6. On the phenomenon of monastic cathedrals see Patrick Wormald, 'Æthelwold and his continental counterparts: contact, comparison, contrast', in Barbara Yorke (ed.), *Bishop Æthelwold: his career and influence*, Woodbridge 1988, 13–42 at pp. 37–41, and Jones, 'Minsters', 507–10. On the question of 'exceptionality', see now Benjamin Savill, *England and the papacy in the early Middle Ages: papal privileges in European perspective, c. 680–1073*, Oxford 2023.

<sup>17</sup> On these developments, see, from a wide literature, Sarah Hamilton, *The practice of penance, 900–1050*, Woodbridge 2001; Greta Austin, 'Bishops and religious law, 900–1050', in John S. Ott and Anna Trumbore Jones (eds), *The bishop reformed: studies of episcopal power and culture in the central Middle Ages*, London 2007, 40–57; Wilfried Hartmann, *Kirche und Kirchenrecht um 900: die Bedeutung der spätkarolingischen Zeit für Tradition und Innovation im kirchlichen Recht*, Hanover 2008; Conrad Leyser, 'Episcopal office in the Italy of Liudprand of Cremona, c. 890–c. 970', *EHR* cxxv (2010), 795–817; Charles West, 'Legal culture in tenth-century Lotharingia', in David Rollason, Conrad Leyser and Hannah Williams (eds), *England and the continent in the tenth century: studies in honour of Wilhelm Levison (1876–1947)*, Turnhout 2010, 351–75; Laurent Jégou, *L'Évêque, juge de paix: l'autorité épiscopale et le règlement des conflits (VIII–XI<sup>e</sup> siècle)*, Turnhout 2011; and Jelle Wassenaar, 'Bishops, canon law, and the politics of belonging in post-Carolingian Italy, c. 930–c. 960', in Greer, Hicklin and Esders, *Using*, 221–40. The broader historiography of bishops in this period is surveyed by Julia Barrow, 'Authority and reform: historiographical frameworks for understanding tenth- and eleventh-century bishops', *Medieval Low Countries* vi (2019), 9–25.

<sup>18</sup> Byrhtferth of Ramsey, *Vita sancti Oswaldi*, i.1–8, in *Byrhtferth of Ramsey: the Lives of St Oswald and St Ecgwine*, ed. Michael Lapidge, Oxford 2008, 9–33. For biographical treatments and further references see Brooks, *Early history*, 222–37, and Catherine Cubitt and Marios Costambeys, 'Oda', *Oxford dictionary of national biography*, Oxford 2004, s.n.

<sup>19</sup> Cubitt, 'Bishops and succession crises', 121–6.



all occurred during Edmund's reign. His *Constitutiones* have been called thus since they were first edited by Henry Spelman in 1639.<sup>20</sup> The work has survived in a single manuscript: British Library, MS Cotton Vespasian A.xiv, a composite codex of three parts, all written in the eleventh and twelfth centuries. The third part, fos 114–79, was produced for Wulfstan at Worcester or York in the early eleventh century. It is often known as Wulfstan's 'Alcuin letter-book', as the first seven quires consist primarily of the Northumbrian scholar's letters. Oda's *Constitutiones* appear in the eighth quire of part II (fos 172–9) at fos 175v–177v, which Wulfstan essentially compiled as a small collection of canon law texts.<sup>21</sup> Wulfstan's hand can be found in various parts of this quire, though he did not copy the *Constitutiones* himself. While Wulfstan is known to have tampered with his legal sources on several occasions, there are no serious grounds for suspecting interpolation here, apart from one minor instance of probable correction.<sup>22</sup> Wulfstan almost certainly obtained the *Constitutiones* and many other texts found in MS Vespasian A.xiv from Christ Church, Canterbury.<sup>23</sup>

The *Constitutiones*, written in Latin, consist of a preface and ten statutes on the responsibilities of clerics, monks and laypeople. Oda begins by professing his unworthiness, despite 'having been enriched by the honour of the pallium' ('pallei honore ditatus'), which provides a likely *terminus post quem* of 942, the year he seems to have travelled to Rome to obtain his *pallium*. He states that he compiled this document (*cartula*) from earlier precepts for the encouragement ('ad consolationem') of Edmund and all those subjected to his rule (*imperium*). The king's murder in May 946 provides a *terminus ante quem*, though as discussed

<sup>20</sup> *Concilia, decreta, leges, constitutiones in re ecclesiarum orbis Britannici*, ed. Henry Spelman, London 1639, i. 415–18.

<sup>21</sup> Gareth Mann, 'The development of Wulfstan's Alcuin manuscript', in Matthew Townend (ed.), *Wulfstan, archbishop of York: the proceedings of the second Alcuin conference*, Turnhout 2004, 235–78 at pp. 257–65. The texts of this quire are, in order: the canons of the 672 council of Hertford; Wulfstan's *De rapinis aeclesiasticarum rerum* (a short text on the alienation of church property that draws heavily on Atto of Vercelli's *De pressuris ecclesiasticis*); a letter of Pope Leo III to Coenwulf, king of Mercia; Oda's *Constitutiones*; Wulfstan's *De activa vita et contemplativa* (a short text that draws on a homily of Bede); Wulfstan's 'letter of protest' to the papacy; and a letter addressed to Wulfstan while he was bishop of London. The manuscript is digitised on the British Library's website, but it was unavailable as this article went to press owing to the 2023 cyber attack.

<sup>22</sup> Wormald, *Making*, 314–15; Ingrid Ivarsen, 'Æthelstan, Wulfstan and a revised history of tithes in England', *EME* xxix (2021), 225–52.

<sup>23</sup> BL, MS Cotton Tiberius A.xv, produced in Canterbury in the early eleventh century, contains the same Alcuin letters as MS Vespasian A.xiv: Mann, 'Development', 266; Simon Keynes, 'The "Canterbury letter-book": Alcuin and after', in Claire Breay and Joanna Story (eds), *Manuscripts in the Anglo-Saxon kingdoms: cultures and connections*, Dublin 2021, 119–40 at pp. 133–6.

below, the probable date of production can be further narrowed. The chapters that follow may be summarised thus:

1. An assertion of the inviolability of church property and its immunity from taxation, with quotations from several patristic authorities. Anyone who despoils the Church is to be excommunicated, for those who do not obey the rules of the Church are bolder than the soldiers who crucified Christ.
2. An admonition of the king, princes and all who hold power to obey archbishops and bishops, who have been given the keys to heaven. The king should surround himself with wise counsellors, for he and the princes provide an example to the people. The king should judge fairly, protect the needy, prohibit theft, punish adultery and give alms to the poor.
3. An admonition of bishops, whose vocation demands they set a good example for all. They should visit each part of their diocese annually and preach the word of truth to all without fear or flattery. They should condemn no one unjustly and point the way of salvation to all.
4. An admonition of priests, who should instruct the people of God by good example, according to holy doctrine. They should behave above others, excellently and modestly, so that when one sees a priest in his habit they will think highly of him.
5. An admonition of clerics, who should live honestly in accordance with the decrees of the Fathers. They should also set a good example, and, by their way of life, be a credit to their bishop, honour the Church and lead the people in praise of God.
6. An admonition of monks, who should live according to their vow in all humility and obedience. They should not be vagabonds or *grovagi*. They should follow the example of the Apostles through their manual labour, reading and continual prayer.
7. A decree forbidding incestuous and unjust marriages with nuns, relatives or other unlawful persons. Excommunication will be imposed on anyone who marries a nun.
8. Quoting Psalms lii.3 and xxxii.10–12, a decree that in any meeting (*conventum*) there should be agreement and unanimity between bishops, princes and all the Christian people, so that there is unity and peace everywhere in the Churches of God. The Church should be united by faith, hope and charity, having one head, which is Christ, whose members must help one another with mutual love.
9. An admonition that fasting, with alms, should be carefully observed, especially the fast of Lent, the Ember Days, and other regular fasts, namely the fourth and sixth day of the week. The Lord's day and



saints' feast days are to be observed with cession of all secular work, as the canons and examples of the Fathers affirm. No one should consent to vain superstitions, nor worship the creature rather than creator (Romans i.25).

10. An admonition concerning the payment of tithes, as is stipulated by Scripture (Exodus xxiii.19; Deuteronomy xiv.22; Malachi iii.10–11). Everyone should strive to give tithes from all they possess, and live and give alms from the nine parts.

No single chapter is drawn entirely from one of Oda's sources, and it appears that much of the capitulary is his own composition: he wrote the bulk of cc. 2, 4, 5, 8 and 9. Oda refers to canonical or patristic authorities, often generally, but sometimes through quotations. As has long been recognised, his two principal sources were the *Legatine Capitulary* of 786 and the *Collectio canonum Hibernensis*. Oda also drew on the acts of the 721 synod of Rome and at least one further unidentified source. Let us examine these in turn.

The *Legatine Capitulary* is known today from a report prepared for Pope Hadrian I by Bishop George of Ostia, who in 786 led a mission to assess ecclesiastical standards in England. Twenty *capitula* were produced at a Northumbrian assembly, then presented and agreed at a council in Mercia. Alcuin was most likely involved in their drafting, which George subsequently included in his report to Hadrian.<sup>24</sup> The *Legatine Capitulary* is a crucial source for the Anglo-Saxon Church in the late eighth century, but it has survived in a single manuscript with no English connection: Herzog August Bibliothek, Wolfenbüttel, ms Helmstadt 454 at fos 113v–127v, thought to have been written at Hildesheim in the late tenth century. Here it forms part of a canon law collection known as the *Collectio 233 capitulorum* (fos 22v–165v).<sup>25</sup> Oda's *Constitutiones* provide the first clear evidence for the *Legatine Capitulary*'s reception in England, but it is not known whether it had survived there since the late eighth century or more recently been transmitted to England, nor whether the copy available to Oda was in the same epistolary form as George's report.<sup>26</sup> Chapters 2, 3, 5–8 and 10 all quote from the *Legatine*

<sup>24</sup> George of Ostia to Hadrian I, MGH, Epp. iv, no. 3, 19–29 (hereinafter *Legatine Capitulary*). See Patrick Wormald, 'In search of King Offa's "law-code"', in his *Legal culture*, 201–24; Cubitt, *Anglo-Saxon church councils*, 153–90; Joanna Story, *Carolingian connections: Anglo-Saxon England and Carolingian Francia, c.750–870*, London 2003, 55–92; and, on Alcuin's role, Bryan Carella, 'Alcuin and the Legatine Capitulary of 786: the evidence of scriptural citations', *Journal of Medieval Latin* xxii (2012), 221–56.

<sup>25</sup> For a detailed description see <<https://diglib.hab.de/?db=mss&list=ms&id=454-helmst&catalog=Lesser>>, accessed 17 April 2024, with Wormald, 'Offa's "law-code"', 217; Story, *Carolingian connections*, 61–2; and West, 'Legal culture', 356.

<sup>26</sup> Wormald, 'Offa's "law-code"', 218, thought it 'surely more likely that [Oda] used a version of the capitulary extant in its own right and descended from that which the

*Capitulary*: these concern the prescriptions of responsibility for the different orders, as well as Oda's calls for peace in the Church, the prohibition of unlawful marriage and tithes.<sup>27</sup> He did not simply lift entire canons; rather he extracted and modified sentences within them.

In her edition of the *Constitutiones*, Dorothy Whitelock noted Oda's selective use of the *Legatine Capitulary*.<sup>28</sup> Oda presumably had little need to demand obedience to the Roman tradition of ecumenical councils (*Legatine Capitulary* 1), while the absence of the *Capitulary*'s denunciation of paganism (19) may indicate a more circumscribed West Saxon focus of Oda's text. Other omissions appear to reflect the development of West Saxon political practice. For example, in *Constitutiones* 3, concerning episcopal duties, Oda left out the first sentence of *Legatine Capitulary* 3, which stipulated that two provincial synods (*concilia*) should be held each year in accordance with canonical tradition (referring to c. 5 of the Council of Nicaea). This may have seemed redundant to Oda, since bishops attended royal assemblies that fulfilled this function perhaps five or six times per year.<sup>29</sup> Also notable is Oda's omission of an admonition in *Legatine Capitulary* 10 prohibiting bishops from judging secular matters in their councils ('in conciliis suis secularia iudicare'), which quotes 2 Timothy ii.4 in support.<sup>30</sup> In *Constitutiones* 8, Oda asserted that all *conventa* should rather be marked by agreement between lay and religious authorities.

Oda's second principal source was the *Collectio canonum Hibernensis*, a canon law collection compiled by Irish scholars between 669 and 748.<sup>31</sup> The *Hibernensis* circulated in Carolingian Europe, and was apparently not transmitted to England until the early tenth century *via* Brittany or West Francia.<sup>32</sup> From this collection, Oda drew a number of passages for his

legates must have left behind'. Wormald argued that Alfred's citation of an otherwise unknown law-code of Offa in the preface to his *Domboc* is in fact a reference to the *Legatine Capitulary*.

<sup>27</sup> Cf. *Constitutiones* 2 (kings and princes) and *Legatine Capitulary* 11; *Constitutiones* 3 (bishops) and *Legatine Capitulary* 3, 4 and 11; *Constitutiones* 5 (clerics) and *Legatine Capitulary* 4; *Constitutiones* 6 (monks) and *Legatine Capitulary* 5; *Constitutiones* 7 (unlawful marriage) and *Legatine Capitulary* 15; *Constitutiones* 8 (peace and unity among all people) and *Legatine Capitulary* 14; *Constitutiones* 10 (tithes) and *Legatine Capitulary* 17. See Schoebe, 'Chapters' (who missed the borrowing in *Constitutiones* 5, however).

<sup>28</sup> C&S, 68. See also Trousdale, 'Being everywhere', 278–80.

<sup>29</sup> Keynes, 'Church councils', 30–9.

<sup>30</sup> Story interprets this decree as a response to a particular Northumbrian problem observed by the legates: *Carolingian connections*, 84.

<sup>31</sup> *Hibernensis*. See also Roy Flechner, *Making laws for a Christian society: the Hibernensis and the beginnings of church law in Ireland and Britain*, Abingdon 2021; Caroline Brett with Fiona Edmonds and Paul Russell, *Brittany and the Atlantic Archipelago, 450–1200: contact, myth and history*, Cambridge 2021, 149–56.

<sup>32</sup> Ambrose, 'Collectio'; Brett, Edmonds and Russell, *Brittany*, 173–9.

first chapter on the inalienability of church property, a paraphrase of a canon on the duties of the king in *Constitutiones* 2, and a further quotation in his admonition of wandering monks in c. 6.<sup>33</sup> From these borrowings, it is possible to determine that Oda used recension ‘A’ rather than ‘B’ of the *Hibernensis*.<sup>34</sup> This is confirmed by comparing several of his readings (see Table 1).

In the other instances where Oda used the *Hibernensis*, variations between the A and B recensions are non-existent or insignificant. The examples from *Constitutiones* 1 demonstrate a clear affinity with the A-recension, however. Both *Hibernensis* recensions are found in manuscripts with mid tenth-century Canterbury connections. The only A-recension witness believed to have been in England around this time is BL, ms Cotton Otho E.xiii.<sup>35</sup> This codex is a legal compilation produced in Brittany in the late ninth or early tenth century, perhaps at the abbey of Landévennec based on its script, and is one of numerous books probably transmitted to England in the early tenth century.<sup>36</sup> The manuscript was certainly at St Augustine’s, Canterbury, by the twelfth century, on the basis of an ownership inscription on fo. 2r. King Æthelstan gave a Breton gospel-book (now BL, ms Royal 1.A.xviii) to St Augustine’s; it is possible that ms Otho E.xiii was similarly gifted to the abbey.<sup>37</sup> One should also note the extensive links between Breton monasteries and Fleury (Saint-Benoît-sur-Loire), where Oda spent time, which offer another plausible vector of transmission.<sup>38</sup> *Hibernensis* B is contained in Bodleian Library, Oxford, ms Hatton 42, a ninth-century manuscript from Corbie, perhaps

<sup>33</sup> Cf. *Constitutiones* 1, with *Hibernensis*, 24.10, 152–3; 41.8, 318; 41.3, 314; 41.25, 328; *Constitutiones* 2, with *Hibernensis*, 24.4, 148; *Constitutiones* 6, with *Hibernensis*, 38.3, 291.

<sup>34</sup> On these recensions see *Hibernensis*, 88\*–111\*.

<sup>35</sup> Digitised with full description on the British Library’s website, but currently unavailable (cf. n. 21). In this manuscript *Hibernensis* A was occasionally augmented with material drawn from B, and extracts from B are also found collected alongside other legal texts in a second part of the manuscript. See Flechner, *Making*, 145–7, and *Hibernensis*, 135\*–137\*. Extracts from the A-recension are also contained in Corpus Christi College, Cambridge, ms 279 at fos 81r–94r (France, probably Tours, late ninth century), but the only canon this selection shares with Oda’s *Constitutiones* is 24.10 (*Hibernensis*, 151–2). This manuscript has no Canterbury connection and is thought only to have come to Worcester around the year 1000. See the online Parker Library entry, <<https://parker.stanford.edu/parker/catalog/bk55odb6454>>, accessed 17 April 2024.

<sup>36</sup> Ambrose, ‘*Collectio*’, 110–11; Brett, Edmonds and Russell, *Brittany*, 173–5. I thank Colleen Curran for discussion concerning the possible origins of ms Otho E.xiii.

<sup>37</sup> Simon Keynes, ‘King Athelstan’s books’, in Michael Lapidge and Helmut Gneuss (eds), *Learning and literature in Anglo-Saxon England: studies presented to Peter Clemoes on the occasion of his sixty-fifth birthday*, Cambridge 1985, 143–201 at pp. 165–70. Æthelstan also gave two manuscripts to Christ Church: *ibid.* 147–59.

<sup>38</sup> Marco Mostert, ‘Relations between Fleury and England’, in Rollason, Leyser and Williams, *England*, 185–208 at pp. 198–9.

Table 1. *Borrowings in the Constitutiones from the Hibernensis: comparison between A and B recensions*

	<i>Hibernensis</i> A, 41.8 (ed. Flechner, 318)	<i>Hibernensis</i> B, 35.7 (ed. Flechner, 252)
<i>Constitutiones</i> 1 (C&S, 69)		
In <b>istoria aecclesie</b> : ‘Si que domus, agri vel quelibet predia a Christianis direpta sunt, sive sub fiscum <b>regalem</b> , sive in dona collata sunt, hec omnia in antiquum ius <b>Christianorum</b> precipimus revocari.’	In <b>historia æclesiastica</b> : Sanximus, si que domus uel agri uel quelibet predia a Christianis direpta sunt, siue sub fiscum <b>regalem</b> siue in dona conlata sunt, hec omnia in antiquum ius <b>Christianorum</b> precipimus reuocari, dominisque uniuersa restitui.	In libris historiarum: Sancimus, ait, si qua domus, uel agri, uel quelibet predia a Christianis direpta sunt, siue per fiscum, siue in dona conlata, hæc omnia in antiquum ius reuocari precipimus.
<i>Constitutiones</i> 1 (C&S, 70)	<i>Hibernensis</i> A, 41.3 (ed. Flechner, 314)	<i>Hibernensis</i> B, 17.6 (ed. Flechner, 98)
Gregorius enim ait: ‘Si quis ecclesiam Christi* <b>denu- daverit, anathema sit</b> , si non satisfactione emendaverit.’	Gregorius: Si quis aecclesiam Dei <b>denudauerit, anathema sit</b> .	Gregorius: Si quis ecclesiam Dei nudauerit, anathema est.
<i>Constitutiones</i> 1 (C&S, 70)	<i>Hibernensis</i> A, 41.25 (ed. Flechner, 328)	<i>Hibernensis</i> B
Ecclesia enim habet potestatem ligandi atque solvendi.	Aecclesia enim habet potestatem ligandi et soluendi.	[Omitted in B-recension: Flechner, 328]

\*As first noted by Schoebe, ‘Chapters’, 79 n. 8, the text in ms Vespasian A.xiv contains an erasure between ‘ecclesiam’ and ‘Christi’ (fo. 175v). The word erased was ‘Dei’ (as found in both recensions of the *Hibernensis*), indicating that someone in Wulfstan’s circle amended the text. On Wulfstan’s approach to his sources see Wormald, *Making*, 314–15. The formula of this canon resembles those of the acts of the 721 Council of Rome, but this canon is not found there, and the *Hibernensis*’ source is unknown: Elliot, ‘Canon law collections’, 147 n. 66.

also transmitted to Canterbury *via* Brittany. This manuscript has been associated with Archbishop Dunstan (959–88), but there is no evidence that Oda knew or used this manuscript in the composition of his *Constitutiones*.<sup>39</sup>

There are very good reasons to believe that ms Otho E.xiii had indeed reached Canterbury by the 940s, and that Oda consulted it.<sup>40</sup> This book

<sup>39</sup> Pace Wormald, *Making*, 306. See Michael Elliot’s description of this manuscript at <<http://individual.utoronto.ca/michaelelliot/manuscripts.html>>, accessed 17 April 2024; *Hibernensis*, 133\*–135\*; Ambrose, ‘Collectio’, 111–12.

<sup>40</sup> As proposed, but not explored in detail, by Ambrose, ‘Collectio’, 110–11; and Brett, Edmonds and Russell, *Brittany*, 175.

was damaged in the Cotton library fire of 1731. Its copy of *Hibernensis* A (fos 11v–127v) is largely intact, however, and one can observe that all of Oda's borrowings from the *Hibernensis* are present in Otho E.xiii.<sup>41</sup> The case for Oda's use of this codex is strengthened if a third canonical source used by Oda is considered, the decrees of the 721 synod of Rome, sometimes known as Pope Gregory II's *Anathemata*.<sup>42</sup> These canons are also found in MS Otho E.xiii (fos 130v–131v). The third canon of the acts is cited in *Constitutiones* 7, which deals with incestuous and unlawful marriage: 'Sancte enim recordationis Gregorius papa cum pluribus episcopis seu sacerdotibus ceteris in basilica beati Petri apostoli constituit: "Siquis monacham, quam Dei ancillam apellant, in coniugio duxerit, anathema sit"; et responderunt omnes: "Amen."<sup>43</sup> The notion that Oda took this canon directly from MS Otho E.xiii is reinforced by a closer comparison of this manuscript with the wording of the *Constitutiones* as written in MS Vespasian A.xiv. The authentic 721 decrees are consistently formulated, 'Si quis ... anathema sit; et responderunt omnes tertio: anathema sit'; this indeed is how most of the canons appear in MS Otho E.xiii.<sup>44</sup> However, where the prohibition of marriage to nuns appears in MS Otho E.xiii, on fo. 131r, 'amen' is given in place of the second 'anathema sit', an unusual (unique?) variant that Oda's *Constitutiones* preserves.<sup>45</sup> In addition, Oda's text does not include the adverb 'tertio'. At first glance, the MS Otho E.xiii version of this canon also omits 'tertio', which is spelled out in the other canons. But just above a tear in the damaged leaf, after 'omnes', there is in fact a 't' with an abbreviation sign above it and a punctus on either side, clearly representing 'tertio'. It therefore seems that Oda missed this abbreviation, and the omission was carried forward by the copyist of MS Vespasian A.xiv. In sum, while it has previously been suggested that Oda could have consulted MS Otho E.xiii, his demonstrable

<sup>41</sup> *Hibernensis* 24.10 at fo. 44v; 41.8 at fo. 87v; 41.3 at fo. 86v; 41.25 at fo. 90r; 24.4 at fo. 43v; 38.3 at fo. 80v.

<sup>42</sup> There is no modern edition, but the text is printed in several places: *Sacrorum conciliorum nova et amplissima collectio*, ed. Giovanni Domenico Mansi, Florence 1759–98, xii. 262–6; *PL* lxvii. 341–6; *PL* lxxvii. 1339–40. The acts of Rome 721 were widely transmitted in continental canonical collections: Hubert Mordek, *Kirchenrecht und Reform im Frankenreich: die Collectio Vetus Gallica, die älteste systematische Kanonensammlung des fränkischen Gallien*, Berlin 1975, 86, 228–9; Wilfried Hartmann, *Die Synoden der Karolingerzeit im Frankenreich und in Italien*, Paderborn 1989, 38–40.

<sup>43</sup> *C&S*, 72–3; MS Vespasian A.xiv, fo. 176v: 'For Pope Gregory of holy memory, together with many other bishops and priests, decreed in the basilica of the blessed apostle Peter: "If anyone marries a nun, whom they call a handmaid of God, let him be anathema"; and they all answered: "Amen."<sup>44</sup> *Conciliorum*, 263–4.

<sup>45</sup> The aforementioned Bodl. Lib., MS Hatton 42 also contains part of the *Dionysio-Hadriana*, of which the 721 Roman canons were the latest text. In this manuscript (fo. 186r), the response is given simply as 'et responderunt', with neither the repeated 'anathema sit' nor 'amen'.

use of the A-recension of the *Hibernensis* and what was most likely this redaction of the 721 Council of Rome makes it almost certain that he in fact did.

Armed with this insight, it is worth considering the other materials MS Otho E.xiii contains that would have been available to Oda. The manuscript sustained significant damage in the Cotton fire: many leaves were burned, particularly at the beginning and the end, and some are illegible. Others are apparently missing, and several have been rebound wrongly (by whom is unknown). Something of its original arrangement can be established from the fact that many of the same items are found in two other manuscripts, Bibliothèque municipale, Orléans, MS 221 (193) and Bibliothèque nationale, Paris, MS lat. 3182, all three deriving from the same lost exemplar.<sup>46</sup> For instance, the opening leaves of these books all include the *Liber ex lege Moysi*, an early Irish tract of biblical law, followed by a series of biblical and patristic excerpts concerning divorce.<sup>47</sup> The latter section of the manuscript, fos 128r–179v (i.e., after *Hibernensis* A) is more fragmentary and confused. The first part of this section (fos 128r–149v) is interspersed with extracts from the B-recension of the *Hibernensis* (fos 128r–130v, 133r–135v, 137r–139r, 143r–146r). Indeed, MS Otho E.xiii's redaction of *Hibernensis* A was occasionally augmented with material from the B-recension. Other texts found in this part of MS Otho E.xiii include the aforementioned 721 synod of Rome, several extracts attributed to *Lex Salica* concerning thieves (fo. 136v), the *Excerpta de libris Romanorum et Francorum* (an early code dealing with crime and compensation: fos 132r–v, 139r–141r), and an extract of the 'Canons of Adomnán' (concerning food, fos 141v–143r). These can all be found in Paris 3182, while the *Excerpta* and Adomnán sequence is reproduced in both Paris MS 3182 and Orléans MS 221 (193). The second part of this section (fos 150r–179v) is a selection of material from the B-recension written in a different hand to the rest of the manuscript (apart from fo. 151, a wrongly bound leaf from the 'Canons of Theodore').<sup>48</sup> The *Constitutiones* do not draw on any of this material.<sup>49</sup> Nevertheless, Oda's use of MS Otho E.xiii affords crucial evidence for the range of laws that informed his views on ecclesiastical discipline, and some of these texts will be revisited below.

Finally, Oda employed at least one unidentified source. In *Constitutiones* 1, immediately following the anathema of 'Gregory' against those who despoil the Church, Oda provides another quotation on this point: 'Et

<sup>46</sup> *Hibernensis*, 125\*–132\*, 135\*–137\*.

<sup>47</sup> Sven Meeder, 'The *Liber ex lege Moysi*: notes and text', *Journal of Medieval Latin* xix (2009), 173–218.

<sup>48</sup> Flechner, *Making*, 145–7.  
<sup>49</sup> Fo. 128v contains the anathema of 'Gregorius' concerning the spoliation of the church: 'Gregorius: Si quis nudauerit aeclesiam Dei, anathema est' (cf. *Hibernensis*, 17.6, 98). As mentioned above, however, Oda's use of this text is closer to the reading in *Hibernensis* A.



iterum: “Quisquis ecclesie Dei parrochias [sic] violare vel usurpare per rapinam temptaverit, ab ecclesiae ministris excommunicandus est et omni modo a corpore Christi alienus.”<sup>50</sup> Despite the use of ‘iterum’, this canon does not appear in the *Hibernensis*, nor in any text associated with Gregory I or II. The warning’s language is reminiscent of the sanction clauses that were ubiquitous in early medieval charters. From the late seventh century onwards, charters were frequently issued at synods and royal councils, and there are clear parallels between synodal and charter diplomatic.<sup>51</sup> Earlier extant Christ Church charters occasionally provide comparably worded statements.<sup>52</sup> Alternatively, the formula could well have been taken from a now-lost set of conciliar acts.

To summarise, Oda’s capitulary is a substantially original composition outlining regulations and admonitions for lay and religious orders. The archbishop drew on two principal sources, the *Legatine Capitulary* and the *Hibernensis*, as well as the canons of the Roman council of 721 and a further unknown text. Oda almost certainly found the *Hibernensis* and 721 acts in the Breton lawbook MS Otho E.xiii. It is not known where or in what precise form he accessed the *Legatine Capitulary*, but this was clearly available in Canterbury in the 940s. One may note that these three canonical sources all circulated on the continent, and this was clearly a time when legal collections were being brought to England from abroad.

### *Dating and context: Edmund’s London assembly*

The close relationship between the *Constitutiones* and the first law-code of King Edmund (*I Edmund*) has long been recognised.<sup>53</sup> This short Old English code of six decrees was issued after Edmund convened a ‘great

<sup>50</sup> ‘And again: “Anyone who attempts to violate or usurp the districts of the church of God by robbery is to be excommunicated by the ministers of the church and in every way alienated from the body of Christ”’: *C&S*, 70.

<sup>51</sup> Cubitt, *Anglo-Saxon church councils*, 77–87. On anathemas in royal diplomas see her ‘Bishops and councils’, 159–67.

<sup>52</sup> For example, ‘**Quisquis** contra hanc donationem uenire **temptauerit** sit ab omni Christianitata separatus, et **a corpore** et sanguini domini nostri Ihesu **Christi** suspensus’ (*The Electronic Sawyer*, 8 <<https://esawyer.lib.cam.ac.uk>>, accessed 17 April 2024, original single sheet diploma of King Hlothhere of Kent, 679); ‘Si quis autem rex umquam post nos eleuatus in regnum, aut episcopus, aut abbas, uel comes, seu ulla potestas hominum contradicat huic kartule, aut infringere **temptauerit**, sciat se sequestratum **a corpore** et sanguine Domini nostri Iesu **Christi**, seu etiam sic **excommunicatum**’ (*Sawyer* 22, early ninth-century forgery of Archbishop Wulfred of Canterbury).

<sup>53</sup> *I Em*. Anglo-Saxon law-codes are cited from *Die Gesetze der Angelsachsen*, ed. F. Liebermann, Halle 1903–16, using the widely employed abbreviations described at vol. I, p. xi. See Vollrath, *Synoden*, 220–5; Wormald, *Making*, 310; Cubitt, ‘Bishops and councils’, 156–7; Trousdale, ‘Being everywhere’, 277–83.

synod' (*mycelne sinoð*) one Easter in London, where Oda and Archbishop Wulfstan 1 of York presided. The date of this council has long proved elusive: any year between 941 and 946 is possible. Wulfhelm, Oda's predecessor at Canterbury, died on 12 February 941, but it is unknown exactly when Oda was appointed. Oda's subscription is missing from the witness-lists of several diplomas Edmund issued in 942 (thus indicating his absence from assemblies), strongly suggesting that he had gone to Rome that summer to obtain his *pallium*, which he certainly possessed by the time he issued the *Constitutiones*.<sup>54</sup> The assembly may have been convened following Edmund's Northumbrian campaign of 944 or 945. As Edmund is unlikely to have completed his expedition before Easter, this would place the council in 945 or 946. The former is more probable, but 946 is not impossible: Easter fell on 22 March that year, and Edmund was assassinated in late May.<sup>55</sup> Wulfstan, furthermore, witnessed extant royal diplomas in 942 and 944–6, but never in 943, which also points to a date of 945 or 946.<sup>56</sup> On balance, Easter 945 seems the most likely date for this 'great synod', when Edmund was at the height of his powers following his gaining of the Midlands and York.

There is another piece of evidence that may stem from the London council. William of Malmesbury (d. in or after 1142), in his *Gesta pontificum Anglorum*, partially preserves an undated pastoral letter from Oda to his suffragans, which was apparently written after a *sinodale concilium* held under Edmund. Oda exhorted his bishops to obey the king and reminded them of their pastoral duties, but William unfortunately omitted what he described as 'a long passage enlarging on the burden of a bishop's office', which one suspects would have been the most useful section for understanding what Oda had specifically prescribed for the bishops and whether it was indeed linked to the London assembly or the *Constitutiones*.<sup>57</sup>

*I Edmund* deals largely with crimes against a Christian lifestyle. Those in holy orders are commanded to lead by example and remain celibate, under pain of disinheritance of earthly possessions and denial of consecrated burial, 'as it says in canon law (*canone*)'.<sup>58</sup> All Christians are reminded of their duty to give tithes.<sup>59</sup> Anyone who sheds the blood of a Christian may not come before the king until they have undertaken

<sup>54</sup> Francesca Tinti, 'England and the papacy in the tenth century', in Rollason, Leyser and Williams, *England*, 163–84 at p. 170–1. <sup>55</sup> Wormald, *Making*, 440–1.

<sup>56</sup> Simon Keynes, *An atlas of attestations in Anglo-Saxon charters, c.670–1066*, Cambridge 2002, table xli.

<sup>57</sup> William of Malmesbury, *Gesta pontificum Anglorum*, ed. M. Winterbottom, Oxford 2007, i.15–16, pp. 28–31. See also *C&S*, 65–7, no. 19.

<sup>58</sup> Wormald proposes that the punishment of disinheritance is a reference to *Legatine Capitulary* 16, p. 25: *Making*, 310. On the denial of Christian burial in royal legislation see Lambert, *Law*, 220–3. On the interpretation of *canone* see Elliot, 'Canon law collections', 51–5. <sup>59</sup> On this provision see Ivarsen, 'Æthelstan', 230, 249.

penance. Adultery, especially involving nuns, is also punishable by denial of holy burial. Bishops are urged to restore church buildings, and it is the king's duty to assist them. Finally, perjury and sorcery are condemned, punishable by excommunication. It has been suggested that the Council of London should be regarded as a 'synod', given that it generally prescribes spiritual sanctions rather than tariffed compensation. Some have posited that Edmund's second law-code (*II Edmund*), which dealt with violent crimes, theft and royal protection, might be a 'secular' counterpart to *I Edmund* arising from the same council.<sup>60</sup>

Did the *Constitutiones* also arise from the London assembly? Noting the clear synergies between Oda's text and *I Edmund*, Patrick Wormald proposed that the latter could have been 'an attempt to put the impetus of vernacular law behind the principles expounded by Oda'.<sup>61</sup> *I Edmund* clearly resonates with the *Constitutiones*, in which Oda called for exemplary leadership, harmony between secular and religious leaders, prohibition of marriage to nuns and tithes. Both texts are unequivocal about the importance of bishops as mediators and guides. The emphasis *I Edmund* places on the roles of Oda and Wulfstan at the London council chimes with the admonition in *Constitutiones* 3 for bishops to 'preach the word of truth to the king' ('verbum veritatis predicare regi'). *I Edmund* 3 states that anyone who physically injures another Christian may not come into the king's presence until he has been redeemed through penance as administered by a bishop; it is unclear whether penance due for other crimes in the code was also to be overseen by bishops. *I Edmund* 5 places the onus of building and repairing churches on bishops, a task in which kings should play an auxiliary role: as *Constitutiones* 1–2 makes clear, this assistance should come through the prevention of spoliation and the guarantee of immunities. *II Edmund* advances a similar agenda, emphasising the royal protection of churches (c. 2) and stipulating that compensation for an act of violence must be followed by penance, as directed by a bishop (4).<sup>62</sup> In fact, it is impossible to dichotomise the two law-codes as 'ecclesiastical' and 'secular': *I Edmund* 1 and 4, on celibacy and adultery with nuns respectively, prescribe *bot* to rectify these transgressions, which could refer to composition, penance or both. Indeed, from the reign of Alfred onwards, secular and spiritual punishments were regularly pronounced together in royal laws.<sup>63</sup> The clear-cut reference in *I Edmund* 1 to *canone*

<sup>60</sup> *II Em*, with literature at n. 53 above; but note Wormald, *Making*, 310–11.

<sup>61</sup> Wormald, *Making*, 310; cf. Vollrath, *Synoden*, 222, and Trousdale, 'Being everywhere', 277–83.

<sup>62</sup> See, respectively, Lambert, *Law*, 185–7, and Sarah Hamilton, 'Rites for public penance in late Anglo-Saxon England', in Helen Gittos and M. Bradford Bedingfield (eds), *The liturgy of the late Anglo-Saxon Church*, Woodbridge 2005, 65–103 at pp. 85–7.

<sup>63</sup> Hough, 'Penitential literature', 134–6; Lambert, *Law*, 179–80. See also the comments of Flechner, *Making*, 68–88.

(‘canon law’) further highlights the broad influences of Edmund’s legislation.<sup>64</sup>

Given that there is a clear political and legislative context for the promulgation of the *Constitutiones*, it is reasonable to suppose that Oda composed the capitulary around the time of the Council of London, that is, probably in 945. While it is impossible to know whether the *Constitutiones* were written at the assembly itself, the production of royal diplomas at such meetings offers an instructive parallel.<sup>65</sup> Oda envisaged a ‘national’ scope for his statutes, which he addressed to ‘all the peoples subject to [Edmund’s] excellent rule’.<sup>66</sup> One might also recall here that Oda ignored the decree in *Legatine Capitulary* 10 warning against bishops concerning themselves with *secularia* in councils. He had no compunction about episcopal participation in the investigation of violent crimes, nor did he see it necessary to distinguish between ‘secular’ and ‘ecclesiastical’ assemblies. Collectively, the *Constitutiones* and *I–II Edmund* advocate an integrated polity in which kings and bishops fulfilled co-operative roles in order to establish peace and concord, and to bring their subjects closer to salvation.<sup>67</sup> This conception of a Christian polity (or *ecclesia*) reflected recent thought in Carolingian Francia, where the proper interaction of episcopal and royal responsibility in matters of justice and pastoral care had been the subject of nuanced debate since the early ninth century.<sup>68</sup> The common agenda of Oda’s *Constitutiones* and Edmund’s laws, moreover, suggests that canon law could influence royal legislation to a far greater degree than is usually imagined.

### *Episcopal jurisdiction in the early tenth century*

Oda’s *Constitutiones*, as discussed, were informed principally by canonical sources with demonstrable continental traditions. Moreover, the foregoing discussion has suggested that Oda’s approach to jurisdiction and responsibility

<sup>64</sup> Cf. the reference in *Af* 21 to *halig ryht* (‘the laws of the church’). Elliot, ‘Canon law collections’, 51–5.

<sup>65</sup> On the debates over the production of diplomas see Keynes, ‘Church councils’.

<sup>66</sup> ‘omnisque populi excellenti imperio eius subiecti’: *Constitutiones*, prolog., 69.

<sup>67</sup> On Edmund’s concern for peace see Lambert, *Law*, 225–7.

<sup>68</sup> From an extensive literature see Steffen Patzold, *Episcopus: Wissen über Bischöfe im Frankenreich des späten 8. bis frühen 10. Jahrhunderts*, Ostfildern 2008; Mayke de Jong, ‘The state of the Church: *ecclesia* and early medieval state formation’, in Walter Pohl and Veronika Wieser (eds), *Der frühmittelalterliche Staat – Europäische Perspektiven*, Vienna 2009, 241–54, and *The penitential state: authority and atonement in the age of Louis the Pious, 814–840*, Cambridge 2009; and Gerda Heydemann, ‘*Nemo militans Deo implicat se saecularia negotia*: Carolingian interpretations of II Timothy II.4’, *EME* xxix (2021), 55–85.

within a Christian polity owed something to Carolingian precedent. It is therefore worth further considering the possible influence of the archbishop's journeys abroad, which were undertaken before his legislative work in the mid-940s. Oda's travels must be seen against a backdrop of intensified international exchange and communication in the late ninth and early tenth centuries which shaped political and cultural developments on both sides of the channel.<sup>69</sup> According to Byrhtferth of Ramsey, Oda accompanied the thegn Æthelhelm on pilgrimage to Rome sometime before his appointment as bishop of Ramsbury.<sup>70</sup> The historian Richer of Rheims relates that Oda led the legation sent by Æthelstan to meet the Frankish magnate Hugh the Great and secure the accession of Louis IV to the West Frankish throne in 936. Louis had been living in exile with his West Saxon mother, Eadgifu, at the court of Æthelstan, his uncle, since the deposition of his father Charles the Simple in 923.<sup>71</sup> Richer's evidence can be read alongside another statement from Byrhtferth asserting that Oda received the monastic habit at Fleury. Hugh the Great was involved in the reform of Fleury, which probably occurred in 936. It was therefore most likely around this time that Oda visited Fleury.<sup>72</sup>

Following his elevation to Canterbury, Oda went to Rome to obtain his archiepiscopal *pallium* from the pope in 942. The evidence for this journey is circumstantial but compelling. As noted above, Oda was absent from numerous royal assemblies in 942, and he possessed the *pallium* by the time he issued the *Constitutiones*. Travelling to Rome to collect the *pallium* became common practice for tenth-century Canterbury archbishops: both Oda's predecessor, Wulfhelm (926–41), and successor, Ælfsige (958–9), undertook the trip.<sup>73</sup> There is another strong indication of Oda's probable journey in the form of a confraternity book from the Rhaetian monastery of Pfäfers, a stop along the central Alpine route to Italy. In the *Liber vitae* of Pfäfers, Oda's name has been entered ('Odo archiepiscopus'), appearing alongside those of Æthelstan ('Athalsten rex'), Edmund ('Otmundus rex') and a certain

<sup>69</sup> Rollason, Leysner and Williams, *England*; Sarah Foot, *Æthelstan: the first king of England*, New Haven 2011, 99–109; Simon MacLean, 'Cross-channel marriage and royal succession in the age of Charles the Simple and Athelstan (c. 916–936)', *Medieval Worlds* ii (2015), 26–44; David Pratt, 'The making of the Second English Coronation *Ordo*', *ASE* xlvii (2017), 147–258.

<sup>70</sup> Byrhtferth, *Vita sancti Oswaldi*, i.4, 20–2.

<sup>71</sup> Richer of Rheims, *Historiae*, ed. Hartmut Hoffmann, MGH, SS xxxviii, Hanover 2000, ii.4, 100.

<sup>72</sup> Byrhtferth, *Vita sancti Oswaldi*, ii.4, 38–40. On the reform of Fleury see John Nightingale, 'Oswald, Fleury and continental reform', in Nicholas Brooks and Catherine Cubitt (eds), *St Oswald of Worcester: life and influence*, London 1996, 23–45 at pp. 35–7; Isabelle Rosé, *Construire une société seigneuriale: itinéraire et ecclésiologie de l'abbé Odon de Cluny (fin du IXe – milieu du Xe siècle)*, Turnhout 2008, 304–24.

<sup>73</sup> Tinti, 'Archiepiscopal *pallium*', 311–19, and 'England', 170–1.

‘Odgiva’.<sup>74</sup> In this period, central Alpine roads such as the Kunkels and Lukmanier (Lucomagno) passes were preferable to the western Great St Bernard Pass, where Muslim bandits regularly harried travellers. The contemporary *Annals* of Flodoard of Rheims relate that one band seized the area around Saint-Maurice d’Agaune in 940, thus preventing crossings. Flodoard occasionally received information about such attacks from English pilgrims passing through Rheims.<sup>75</sup> This evidence allows us to see why Oda would have taken the central passes to Rome in 942 and justifies the attribution of the Pfäfers memorial entries to his presence.

Oda therefore spent time in the company of powerful churchmen across West Francia, East Francia and Italy, and he attracted Frankish clerics to Canterbury.<sup>76</sup> These journeys afforded him opportunities to observe continental approaches to ecclesiastical governance during a time of significant innovation in juridical and penitential procedures.<sup>77</sup> Although the steady Carolingian production line of episcopal capitularies petered out in the tenth century (with a few notable exceptions), there is ample evidence for their continued use and adaptation. Carolingian statutes were initially compiled by individual bishops for the instruction of priests: what they should know, how they should behave and how they should fulfil their duties to the laity.<sup>78</sup> In the second half of the ninth century, as episcopal autonomy grew – especially in West Francia, where most of the later statutes were produced – these collections became far more diverse and were informed by a wider range of materials. Some were composed to assist higher clerics investigating local priests’ behaviour.<sup>79</sup> Others contained prescriptions not just for priests, but also for monks and lay-people.<sup>80</sup> Later capitularies sometimes took more penitential, even

<sup>74</sup> Stiftsarchiv, St Gall, Codex Fabariensis 1, p. 33. On the possible identities of ‘Odgiva’ see Keynes, ‘King Athelstan’s books’, 201, plate xvi, and Karl Leyser, ‘The Ottonians and Wessex’, in his *Communications and power in medieval Europe*, I: *The Carolingian and Ottonian centuries*, ed. Timothy Reuter, London 1994, 73–104 at pp. 83–4.

<sup>75</sup> Flodoard of Rheims, *Annales*, ed. Philippe Lauer, Paris 1905, s.a. 940, 79; for English pilgrims see s.a. 921, 5; s.a. 923, 19. See David A. E. Pelletier, ‘Not all roads lead to Rome’, in Tinti, *England*, 17–42.

<sup>76</sup> Michael Lapidge, ‘A Frankish scholar in tenth-century England: Frithegod of Canterbury/Fredegaud of Brioude’, *ASE* xvii (1988), 45–65.

<sup>77</sup> Hartmann, *Kirche*, outlines these developments.

<sup>78</sup> On the *corpus* see MGH, Capit. episc. iv, ed. Rudolf Pokorny, Hanover 2005, 3–67; van Rhijn, *Shepherds*, 13–31; and on later Carolingian pastoral care, Charles West, *Reframing the feudal revolution: political and social transformation between Marne and Moselle, c. 800–c. 1100*, Cambridge 2013, 34–40.

<sup>79</sup> For instance, Hincmar of Rheims’ second statute: MGH, Capit. episc. ii, ed. Rudolf Pokorny and Martina Stratmann, Hanover 1995, 45–70 (issued 852).

<sup>80</sup> For example, Herard of Tours, MGH, Capit. episc. ii. 115–57 (issued 858).



sermon-like forms.<sup>81</sup> And tenth-century statutes drew more heavily on canon law: Atto of Vercelli's *capitula* (c. 924–c. 960), for instance, seem to constitute as much a canonical collection as guidance for priests.<sup>82</sup> Tenth-century bishops clearly still possessed ninth-century statutes in abundance and regularly reworked them: thus, Ruotger of Trier's chapters (915–29) drew on those of Radulf of Bourges (853–66), who in turn had leant heavily on the first statute of Theodulf of Orléans (798–817 × 18).<sup>83</sup>

Another factor which may have curbed demand for new statutes was the appearance of Regino of Prüm's *Libri duo de synodalibus causis*, a handbook of canon law intended for use in episcopal visitations, written at Trier shortly after 906.<sup>84</sup> Drawing on legislative and patristic sources, Regino systematised behavioural norms for clerics and laypeople in the form of enquiries a bishop should make when touring his diocese. Regino's text was soon used as the basis for a homily on priestly behaviour for delivery at a local synod. This collection, known as the *Admonitio synodalis*, was disseminated more widely and often adapted for local contexts.<sup>85</sup> Such collections highlight the emergence of two related institutions which have been thought significant in late Carolingian ecclesiastical administration, albeit tricky to locate in our evidence: episcopal visitations and diocesan synods. While late antique canon law required bishops to tour their dioceses regularly, it is seldom clear how often this actually happened. Provision for diocesan meetings was occasionally mentioned in ninth-century episcopal statutes and conciliar proceedings.<sup>86</sup> In late ninth-century Lotharingia, more concrete evidence for episcopal visitation begins to appear. This has been considered to mark the origin of the itinerant episcopal or

<sup>81</sup> See Isaac of Langres, MGH, Capit. episc. ii. 161–241 (issued 860–80).

<sup>82</sup> Atto of Vercelli, MGH, Capit. episc. iii, ed. Rudolf Pokorny, Hanover 1995, 243–304. On tenth-century *capitula*, see in general Hamilton, *Practice*, 67–76; MGH, Capit. episc. iii. 59–63.

<sup>83</sup> MGH, Capit. episc. i, ed. Peter Brommer, Hanover 1984, 57–70 (Ruotger), 73–142 (Theodulf's first statute), 227–68 (Radulf). Theodulf's first statute survives in forty-nine manuscripts, a third of which are from the ninth century: MGH, Capit. episc. i. 76–99.

<sup>84</sup> Regino of Prüm, *Libri duo de synodalibus causis*, ed. and trans. Wilfried Hartmann, MGH, Collectiones canonum i, Wiesbaden 2023; Hamilton, *Practice*, 27–44; Hartmann, *Kirche*, 149–62; Meens, *Penance*, 141–8.

<sup>85</sup> See Hamilton, *Practice*, 63–7; MGH, Capit. episc. iv. 63; and Charles West, 'The earliest form and function of the "Admonitio synodalis"', *Frühmittelalterliche Studien* lvii (2023), 347–80.

<sup>86</sup> Wilfried Hartmann, 'Synoden schaffen Räume: Metropolen, Diözesen und Pfarreien in den Synodalkanon des 9. Jahrhunderts', *Rechtsgeschichte—Legal History* xxiii (2015), 174–84 at pp. 177–9. These synods tended to focus on priestly competence: Steffen Patzold, *Presbyter. Moral, Mobilität und die Kirchenorganisation im Karolingerreich*, Stuttgart 2020, 321–6.

synodal court (*Sendgericht*), much better attested in the later Middle Ages, whereby the visiting bishop heard cases reported to him involving both lay-people and clerics, sometimes judging in tandem with secular authorities. These courts were responsible for prosecuting criminal offences of all kinds, including homicide and theft, and evidence could be adduced using oaths and ordeals. Excommunication was the main sanction of the synodal court, leveraged to compel the guilty party to perform penance.<sup>87</sup>

The advent of the synodal court alongside new formulations of canon law suggests an expanding sense of episcopal jurisdiction around 900, perhaps in response to perceived deficiencies in the ability of secular institutions to govern certain criminal matters. How far itinerant courts existed beyond the provinces of Trier, Mainz and Cologne at this time is unclear.<sup>88</sup> In West Francia, more evidence for diocesan synods and other episcopal tribunals starts to appear, and synodal *ordines* were occasionally compiled in Lotharingian episcopal manuals.<sup>89</sup> In sum, tenth-century bishops across the former Carolingian Empire were developing their capacity to judge criminal cases, to ensure clerical competence, and to detect and eradicate sin. New frameworks for the exercise of justice increasingly grounded the sanctity and authority of episcopal office in the bishop's role as judge and peacemaker.<sup>90</sup> Procedures for the reporting of serious sins and the dispensation of 'public' penance were supported by the production of new canonical resources.<sup>91</sup> Oda's probable encounters with these administrative innovations are an important context to bear in mind when considering developments back in England.

<sup>87</sup> Lotte Kéry, *Gottesfurcht und irdische Strafe: der Beitrag des mittelalterlichen Kirchenrechts zur Entstehung des öffentlichen Strafrechts*, Cologne 2006, 65–118; Hartmann, *Kirche*, 245–60; Karl Ubl, *Inzestverbot und Gesetzgebung: die Konstruktion eines Verbrechens (300–1100)*, Berlin 2008, 368–73; Stephan Dusil, 'Zur Entstehung und Funktion von Sendgerichten: Beobachtungen bei Regino von Prüm und in seinem Umfeld', in Mathias Schmoekel, Orazio Condorelli and Franck Roumy (eds), *Der Einfluss der Kanonistik auf die europäische Rechtskultur*, III: *Straf- und Straffprozessrecht*, Cologne 2012, 369–409; Bastiaan Waagmeester, 'Bishops, priests and ecclesiastical discipline in tenth- and eleventh-century Lotharingia', *Frühmittelalterliche Studien* lviii (2023), 315–46.

<sup>88</sup> Ubl, *Inzestverbot*, 372.

<sup>89</sup> Isolde Schröder registers twenty-seven diocesan synods in West Francia between 888 and 987: *Die westfränkischen Synoden von 888–987 und ihre Überlieferung*, Munich 1980. See also Hartmann, *Kirche*, 136–8; Jégou, *L'Évêque*, 372–8. For tenth-century synodal *ordines* see Dusil, 'Zur Entstehung', 404–7; Waagmeester, 'Bishops', 321–5.

<sup>90</sup> Jégou, *L'Évêque*, 343–476.

<sup>91</sup> Hamilton, *Practice*, 58–60, 72–5; and 'Inquiring'. On public penance see also Mayke de Jong, 'What was public about public penance? *Paenitentia publica* and justice in the Carolingian world', *La Giustizia nell'alto medioevo, secoli IX–XI, Settimane di studio del Centro italiano di studi sull'alto medioevo* xlv (1997), 863–902; Meens, *Penance*.

*Bishops, courts and law in tenth-century England*

In comparison with continental sources, the evidence for episcopal justice from tenth-century England can seem trivial, and as such is rarely considered alongside contemporary Frankish and Italian material. Beyond Oda's requirement that bishops visit each parish of their dioceses annually, there is rather little evidence for visitations or diocesan synods in later Anglo-Saxon England, and historians have been sceptical about how often these occurred.<sup>92</sup> Narrative sources such as Byrhtferth's *Vita Oswaldi* occasionally refer in passing to pastoral visitation; a century later, William of Malmesbury depicted Wulfstan of Worcester (1062–95) assiduously traversing his diocese to administer sacraments, dedicate churches and even occasionally settle disputes.<sup>93</sup> But this dearth of evidence makes it all the more appealing to suspect that Oda was influenced by the activities of his continental counterparts, and potentially casts the legislative efforts of Oda and Edmund in a different light. In the *Constitutiones*, Oda threatened those who committed incest with excommunication, adding to the anathema of Gregory II, 'Indeed, following the same apostolic authority, we will similarly cast the javelin of a curse upon such persons, unless, upon rebuke for such a wicked presumption, he will come to make satisfaction'.<sup>94</sup> Edmund's laws made clear that anyone who committed homicide or physical violence was to be excluded from court until he came before a bishop to do penance (*I Edmund* 3; *II Edmund* 4). Such injunctions suppose the existence of structures for the detection and reporting of serious sins, just as continental bishops were prescribing around this time, and as Oda's requirement of visitations supports.

How might these have operated in practice? The evidence for episcopal or synodal courts in tenth-century England, as with diocesan synods, is virtually non-existent. This is not terribly surprising since, as discussed, this

<sup>92</sup> 'Ut suas parrochias [sic] omni anno cum omni vigilantia predicando verbum Dei circumeant, ne aliquis per incuriam pastoris, per devia cuiuslibet ignorantie errans, lupinis pateat morsibus lacerandus': *Constitutiones* 3, p. 71. See Barlow, *English Church*, 245–7; Blair, *Church*, 490–1, 495–7. For a more optimistic assessment see Giandrea, *Episcopal culture*, 116–21.

<sup>93</sup> Byrhtferth, *Vita sancti Oswaldi*, iii.5, 58–61; William of Malmesbury, *Vita Wulfstani*, i.15, ii.15, iii.10, in *William of Malmesbury, saints' Lives*, ed. M. Winterbottom and R. M. Thomson, Oxford 2002, 52–7, 88–93, 120–3. This is a Latin translation (written after 1113) of Coleman's lost Old English text, originally composed shortly after 1095. On this evidence see Francesca Tinti, *Sustaining belief: the Church of Worcester from c. 870 to c. 1100*, Farnham 2010, 243–5, 281–6.

<sup>94</sup> 'Nos quippe, eandem apostolicam auctoritatem sequentes, simili modo iaculum maledictionis talibus imponamus, nisi correptus a tam nefanda presumptione ad satisfactionem pervenerit': *Constitutiones* 7, p. 73.

period is generally marked by an absence of discrete religious administrative institutions.<sup>95</sup> By the time of the first codification of the shire court in the reign of King Edgar, it had been established that lay and ecclesiastical authorities should collaborate in judicial and criminal matters. Edgar's Andover code (*II–III Edgar*, c. 960s) decreed that ealdormen and bishops should sit together in a shire meeting (*scirgemot*) twice per year and judge according to secular and ecclesiastical law respectively.<sup>96</sup> It is not clear what, if any, judicial function shires possessed prior to Edgar's time, and certainly the first evidence for cases heard by shire courts dates from his reign.<sup>97</sup> But as legislation going back to Alfred routinely demonstrates, West Saxon rulers expected bishops to work alongside ealdormen and reeves to enforce the law.<sup>98</sup> It was probably for both political and practical purposes that Edward the Elder first attempted to align shires and dioceses south of the Thames: sometime between 908 and 918, the bishoprics of Sherborne and Winchester were reorganised, resulting in the creation of new sees at Wells, Ramsbury and Crediton. Around 930, Crediton was divided to establish a separate Cornish diocese at St Germans. The southern bishoprics consequently appear to have corresponded to one or two shires.<sup>99</sup>

While shire meetings may not have been regularised before Edgar (and even then, one may wonder how regular they were), regional assemblies headed by bishops and counsellors are clearly attested by non-royal legislation from Æthelstan's reign. *III Æthelstan*, a text issued by bishops and officials following an assembly at Faversham probably in the early 930s, shows the local bishops responding to and implementing legislation previously promulgated at the Grately assembly, in some cases even modifying

<sup>95</sup> Barlow, *English Church*, 137–53; Giandrea, *Episcopal culture*, 169–72; John Hudson, *Oxford history of the laws of England*, II: 871–1216, Oxford 2012, 63–4.

<sup>96</sup> *III Eg* 5.1–2. The code also refers to a 'burh meeting' (*burhgemot*) to be held thrice per year, but its function is unclear: Hudson, *Oxford history*, 56.

<sup>97</sup> Hudson, *Oxford history*, 48–50; Patrick Wormald, 'Courts', in Michael Lapidge, John Blair, Simon Keynes and Donald Scragg (eds), *The Wiley Blackwell encyclopedia of Anglo-Saxon England*, 2nd edn, Oxford 2014, 129, and *Papers preparatory to the making of English law: King Alfred to the twelfth century*, II: *From God's law to common law*, ed. Stephen Baxter and John Hudson, London 2014, 192–8; Molyneaux, *Formation*, 165–72.

<sup>98</sup> *Af* 1.2; *I As* 1; *II As* 25.1, 26–26.1; *III As* prol.; *VI As* prol. See Molyneaux, *Formation*, 109–12.

<sup>99</sup> Brooks, *Early history*, 210–13; Alexander R. Rumble, 'Edward the Elder and the Churches of Winchester and Wessex', in N. J. Higham and D. H. Hill (eds), *Edward the Elder, 899–924*, London 2001, 230–47 at pp. 238–44; Molyneaux, *Formation*, 163–4. On contemporary evidence for Midland shires see David Pratt, 'Written law and the communication of authority in tenth-century England', in Rollason, Leyser and Williams, *England*, 331–50 at pp. 344–5.

the king's decrees.<sup>100</sup> Another text, known as the London peace-guild ordinances (*VI Æthelstan*), recapitulated a pronouncement made at an earlier royal assembly in Thunderfield which decreed 'that every reeve should exact a pledge from his own shire' to uphold laws previously enacted by Æthelstan. Significantly, the following clause added that bishops and ealdormen were also to play a part in taking these pledges, while the next and final clause of the ordinances conveyed a report from Bishop Theodred of London to Archbishop Wulfhelm about adjustments made at an assembly at Whittlebury to earlier royal decrees.<sup>101</sup> The Faversham decree and London ordinances thus offer precious evidence not only for the local application of written law, but also for the lead bishops took in this process. It was at such meetings that ealdormen and reeves surely gained knowledge of written law from bishops.<sup>102</sup>

At a more local level, Edmund's reign marks the first appearance of the administrative unit known as the hundred and its associated court.<sup>103</sup> The term 'hundred' first appeared in the king's undated Colyton code (*III Edmund*) in a clause stating that anyone who refused a request to help track down a thief must pay fines to the king and to the hundred.<sup>104</sup> Shortly thereafter – perhaps still during Edmund's reign, though possibly as late as Edgar's – a more detailed elaboration of the hundred's operation was given in the *Hundred Ordinance*. This text asserted that the hundred should meet every four weeks; that the leading men were to assist in the pursuit of thieves, to whom justice be done 'as it was [in] Edmund's decree previously'; that those who opposed the hundred's decisions were to be fined (or risk outlaw); and that cases were to be judged by 'common justice' (*folcriht*) and heard on appointed days, with fines for those who failed to appear.<sup>105</sup> Edgar's Andover code stated that the hundred meeting (*hundredgemot*) should be attended 'as it was previously established', evidently referring to the *Hundred Ordinance*.<sup>106</sup> Again, the hundred court was probably not an innovation in Edmund's time, as similar provisions for four-weekly

<sup>100</sup> *III As* (surviving only in *Quadripartitus*, a twelfth-century Latin translation); see Levi Roach, 'Law codes and legal norms in later Anglo-Saxon England', *Historical Research* lxxxvi (2013), 465–86 at pp. 469–72, and Ivarsen, 'Æthelstan', 248.

<sup>101</sup> *VI As* 10–12. See Roach, 'Law codes', 474–7, and Pratt, 'Written law', 340–8.

<sup>102</sup> Catherine Cubitt, "'As the lawbook teaches": reeves, lawbooks and urban life in the anonymous Old English Legend of the Seven Sleepers', *EHR* cxxiv (2009), 1021–49 at pp. 1046–7.

<sup>103</sup> H. R. Loyn, 'The hundreds in England in the tenth and eleventh centuries', in H. Hearder and H. R. Loyn (eds), *British government and administration: studies presented to S. B. Chrimes*, Cardiff 1974, 1–15; Hudson, *Oxford history*, 50–5; Molyneux, *Formation*, 141–55.

<sup>104</sup> *III Em* 2 (surviving only in *Quadripartitus*).

<sup>105</sup> *Hu*. The citation of 'Edmund's decree' may refer to *III Em* 2, or perhaps to a lost text that explicitly discussed penalties for thieves.

<sup>106</sup> *III Eg* 5.

courts appear in the laws of Edward and Æthelstan, and local law-courts plainly have a much longer history.<sup>107</sup>

Shire and hundred courts served as venues for a wide range of hearings and disputes. One major concern they were tasked with investigating and punishing was theft, which was repeatedly singled out for remedy in tenth-century West Saxon royal legislation.<sup>108</sup> The London peace-guild ordinances demonstrate that bishops and reeves actively collaborated in the pursuit of thieves in response to Æthelstan's wider efforts to curb theft.<sup>109</sup> Another indicator of possible episcopal involvement in this sphere comes from the lawbook ms Otho E.xiii, on which, as argued above, Oda drew for his *Constitutiones*. Unusually for a canonical collection, the *Hibernensis* covered topics that were ostensibly the domain of 'secular law', including theft. The chapter 'On theft' (*De furto*) invokes a variety of biblical, patristic and canonical authorities in consideration of the significance and types of theft, as well as the various forms of compensation, punishment and penance that might apply in particular cases.<sup>110</sup> Additionally, ms Otho E.xiii includes a folio (136v) containing several further extracts on theft. The first states that a Frank who gives hospitality to a thief must swear with twelve other Franks that they did not know the person was a thief, lest they be considered an accomplice. The item is attributed in ms Otho E.xiii to 'Lex Salica', but its source is rather the collection of royal Carolingian capitularies compiled in 827 by Ansegisus, abbot of Saint-Wandrille.<sup>111</sup> This is followed by an extract on corporal punishments for theft, probably drawn from the 'false capitularies' of Benedictus Levita, a complex set of authentic and forged royal legislation presented as a continuation of Ansegisus' collection, completed between 847 and 857.<sup>112</sup> A third extract, also attributed to 'Lex

<sup>107</sup> *II Ew* 8; *VI As* 8.1.

<sup>108</sup> Wormald, *Making*, 304–6, 311–12; Roach, *Kingship*, 118–20; Molyneux, *Formation*, 104–15; Lambert, *Law*, 172–81. Note that royal prevention of theft was also highlighted in *Constitutiones* 2, p. 70.

<sup>109</sup> *VI As* prol., 1.  
<sup>110</sup> *Hibernensis*, 28, 191–8; fos 55r–57r in ms Otho E.xiii. See also *Hibernensis*, 47\*–48\*.

<sup>111</sup> Otho E.xiii, fo. 136v: 'De latronibus . lex salica . quicumque latroni mansionem dederit ...'; cf. Ansegisus, *Collectio capitularium*, MGH, Capit. N. S. i, ed. Gerhard Schmitz, Hanover 1996, iii.23, 582, taken from *Capitula per missos cognita facienda* (803–13), MGH, Capit. i, ed. Alfred Boretius, Hanover 1883, c. 2, 156. Ansegisus' collection became an important legislative source for Wulfstan: Elliot, 'Canon law collections', 133–8.

<sup>112</sup> 'De latronibus ita praecipimus obseruandum': ms Otho E.xiii, fo. 136v; cf. Benedictus Levita, i.206, 62; Additio 4.142, 38 <<http://www.benedictus.mgh.de>>, accessed 17 April 2024. This is an authentic chapter taken from Charlemagne's capitulary of Herstal (779): MGH, LL, i, ed. Georg Heinrich Pertz, Hanover 1835, cc. 23, 39.



Salica' but found in Ansegisus' collection, concerns a lord's responsibility for crimes committed by slaves.<sup>113</sup>

MS Otho E.xiii also preserves the *Excerpta de libris Romanorum et Francorum* (previously known as the *Canones Wallici*), an early law-code dealing with homicide, injuries, adultery and theft. Penalties are usually given in the form of fines or forfeiture, but the text also prescribes confession to priests and the possibility of exclusion from the 'ecclesia Dei et omni Christianorum mensa'.<sup>114</sup> While the origins of the *Excerpta* have proven elusive, it has a primarily Breton textual tradition, and it circulated alongside the *Hibernensis* in five of its six extant witnesses. Within the confused latter half of MS Otho E.xiii, it actually appears twice, in complete form (fos 139r–141v) and an abbreviated form written by a different scribe (fos 131v–132r). Uniquely among the manuscripts of the *Excerpta*, in both of its Otho E.xiii redactions the text is presented as the rulings of a 'sinodus', in the same manner as the canons of the 721 Roman synod, which appear just before the abbreviated version of the *Excerpta* on fos 130v–131v.<sup>115</sup> These decrees are thus all presented as canons, reinforcing the unity of MS Otho E.xiii as a lawbook describing the scope of ecclesiastical discipline. Legal compilations of the ninth and tenth centuries frequently combined secular legislation, canonical regulations and penitential material, demonstrating that ecclesiastical jurisdiction extended to criminal cases such as theft.<sup>116</sup> The contents of MS Otho E.xiii accord perfectly with the provisions for episcopal adjudication found in such texts as *III and VI Æthelstan* and *II–III Edgar*. As the present analysis of Oda's *Constitutiones* and *I–II Edmund* further suggests, privileging royal law-codes over the wider *corpus* of legal material that

<sup>113</sup> Ansegisus, *Collectio capitularium*, iii.44, 593 (n. 184 for its source). The folio begins with a fragmentary canon on adultery taken from Pope Innocent I's letter to Bishop Exuperius of Toulouse (*Regesta pontificum Romanorum ab condita ecclesia ad annum post Christum natum MCXCVIII*, ed. Philipp Jaffé, Leipzig 1885–8, i. 45 [=JK 293]), which could be found in the early ninth-century *Collectio Dacheriana* (ed. Luc d'Achery and Louis-François-Joseph de la Barre, *Spicilegium sive collectio veterum aliquot scriptorum qui in Galliae bibliothecis delituerant*, Paris 1723, i.84, 528).

<sup>114</sup> *The Irish penitentials*, ed. Ludwig Bieler, Dublin 1963, 136–49, cc. 37, 57, 59, pp. 142, 146, 148. See Brett, Edmonds and Russell, *Brittany*, 152–3.

<sup>115</sup> Magali Coumert, 'Existe-t-il une « Ancienne Loi des Bretons d'Armorique » ? Identités ethniques et tradition manuscrite au haut Moyen Âge', *La Bretagne Linguistique* xviii (2014), 227–64 at pp. 254–6. See also *Hibernensis*, 135\*–137\*, noting the insertion here of a canon concerning the observance of Sunday on fo. 131v, also attributed to a 'sinodus Romana'.

<sup>116</sup> Jégou, *L'Évêque*, 44–6; Rob Meens, 'Penance and satisfaction: conflict settlement and penitential practices in the Frankish world in the early Middle Ages', in Lukas Bothe, Stefan Esders and Han Nijdam (eds), *Wergild, compensation and penance: the monetary logic of early medieval conflict resolution*, Leiden 2021, 212–39 at pp. 212–13, 232.

influenced contemporary thought arguably provides too narrow a picture of late Anglo-Saxon legal culture.

Bishops, therefore, played key roles in the administration of the king's justice and the eradication of sin. Such expectations support the notion that the shire and hundred meetings emerging in early tenth-century Wessex were occasions where secular and ecclesiastical authorities collaboratively sought to impose discipline and disseminate royal orders. It is therefore likely that such gatherings served as venues for the investigation of sin, thereby at least partly fulfilling the functions of diocesan synods in the tenth century. Such a scenario helps to explain the absence of evidence for diocesan synods, episcopal courts or visitations in a period which has otherwise bequeathed us much on the administration of penance by bishops and priests.<sup>117</sup> In the early eleventh century, Wulfstan composed guidance in Old English for priests attending diocesan synods in his statutes known as the 'Canons of Edgar', drawing heavily on Carolingian episcopal capitularies and Ansegisus' *Collectio capitularium*. Among other things, priests were to report whether they knew anybody in their parishes whom they could not compel to atone for their sins.<sup>118</sup> It might be best to see Wulfstan's prescriptions as a bid to modify the practice of investigating serious sins through shire and hundred meetings, rather than an attempt to create an entirely new system of diocesan synods. It is to Wulfstan, as discussed, that we owe the survival of the *Constitutiones*. And even though he was more attuned to wider canonical traditions than any of his English predecessors, Wulfstan was not in any case advocating a clear separation of secular and ecclesiastical justice; in fact, he firmly endorsed Edgar's provisions for lay and religious collaboration at shire courts.<sup>119</sup>

Similarly, one might imagine that Oda's admonition in his *Constitutiones* for bishops to tour their sees annually was an adaptation of continental canonical principle, urging prelates to meet royal officials in local assemblies across their dioceses. Meetings of the hundred could well have provided venues for priests and occasionally bishops to scrutinise accusations

<sup>117</sup> Brad Bedingfield, 'Public penance in Anglo-Saxon England', *ASE* xxxi (2002), 223–55; Hamilton 'Rites'; Cubitt, 'Bishops, priests and penance'.

<sup>118</sup> *C&S*, 317 (c. 6). Further prescriptive evidence suggesting the possibility of synods in the eleventh century is provided by a protocol produced by Wulfstan for the examination and ordination of priests (*C&S*, 422–7 [no. 57]), and by the 'Northumbrian priests' law', which probably postdates Wulfstan's episcopate (*Northumbrian Priests' Law*, cc. 4, 6, 42, 44, ed. Liebermann, *Gesetze*, i, 380–2). The earliest English *ordo* for the convening of a diocesan synod comes from late eleventh-century Worcester: *Ordo* 18, in *Die Konzilsordines des Früh- und Hochmittelalters*, MGH Ordines de celebrando concilio, ed. Herbert Schneider, Hanover 1996, 489–504. See Tinti, *Sustaining belief*, 283–6.

<sup>119</sup> Wulfstan, *Episcopus* (Liebermann edn), *Gesetze*, i, cc. 4, 9, pp. 477–8; *II Cn* 18.1. See also *Cn* 1020 11. For a recent reassessment of Wulfstan's views see Marafioti, 'Secular'.

of serious sin. It is difficult to know whether William the Conqueror's (r. 1066–87) command that bishops and archdeacons cease hearing ecclesiastical cases in hundred courts was issued in response to long-established practice.<sup>120</sup> But hundred meetings would certainly have been logical occasions for the detection of sinful behaviour that might warrant upward reporting to the bishop. The priests, reeves and tithingmen who led hundred courts would have been ideally placed to implement the general orders for inquiry into sin occasionally found in law-codes such as *VIII Æthelred*, issued in 1014 and probably drafted by Wulfstan.<sup>121</sup> Taking all this into account, the existence of discrete diocesan synods as a precondition for the exercise of episcopal justice need not be supposed. For Oda and his contemporaries, there existed a juridical framework well suited to the provision of ecclesiastical discipline and pastoral care. In the first half of the tenth century, several decades before the eras of 'Benedictine reform' and Wulfstanian 'holy society', kings and bishops were already working in concert towards common goals of good Christian government and salvation; indeed, such a programme can be inferred even from Alfred's *domboc* and the *Old English Pastoral Care*.<sup>122</sup> The involvement of churchmen in *secularia*, as Oda suggested in his *Constitutiones*, was entirely apposite, for this was what lawbooks taught.

Oda of Canterbury's *Constitutiones* have long been viewed as a creditable but largely idealistic statement of episcopal leadership, outshone by a more concrete delineation of ecclesiastical responsibilities in the abundant secular legislation of tenth-century English kings. This article has argued that canonical resources were more significant in the shaping of administrative and judicial institutions than has been allowed. Reading the *Constitutiones* in tandem with royal legislation, and in the light of juridical developments across the Channel, one sees the contours of an emerging system of collaborative justice inspired by Carolingian precedent but adapted to West Saxon conditions. This situation need not be viewed as a crude failure to comprehend subtle distinctions between 'secular' and 'ecclesiastical' legislation, an opposition which still sometimes hinders modern approaches to early medieval law. Oda was clear in the *Constitutiones* about the necessity of co-operation and harmony between

<sup>120</sup> *Regesta regum Anglo-Normannorum: the acts of William I (1066–1087)*, ed. David Bates, Oxford 1998, no. 128, pp. 140–2. See Colin Morris, 'William I and the church courts', *EHR* lxxxii (1967), 449–63.

<sup>121</sup> *VIII Atr* 40. On the local application of written law by lay elites, see Cubitt, "'As the lawbook teaches'".

<sup>122</sup> See, respectively, Stefan Jurasinski and Lisi Oliver, *The laws of Alfred: the Domboc and the making of Anglo-Saxon law*, Cambridge 2021, and *The Old English Pastoral Care*, ed. and trans. R. D. Fulk, Cambridge, MA 2021.

kings and bishops in order to bring their people to salvation. This approach proved influential: subsequent legislation from the reign of Edgar and the age of Wulfstan embraced this spirit of co-operation and explicitly endorsed the provision of collaborative expertise in the administration of justice.

From this perspective, Oda inaugurated a legal tradition that buttressed the English kingdom's administrative strength. The *Constitutiones* provide valuable evidence for the reintroduction, use and adaptation of canonical resources in the aftermath of the ninth-century viking depredations. Oda's understanding of episcopal jurisdiction was informed by the legal sources that were available to him, especially the *Hibernensis* and other texts contained in ms Otho E.xiii, but also the *Legatine Capitulary* of 786. Many of these sources were of insular pedigree, but they were filtered through continental collections. Having had opportunities to observe European attitudes to episcopal responsibility, Oda sought to promote similar administrative competences in England: like his peers abroad, he issued admonitory statutes that were informed by canonical tradition, and he considered how sin could be identified, reported and corrected. He was pragmatic about the role of priests and bishops in this regard, however; while local courts and assemblies were becoming more embedded in early tenth-century government, these institutions were recent and probably not yet systematic. They were, however, ideal venues for the investigation of sin, inviting a greater degree of collaboration between secular and ecclesiastical authorities. It should be stressed again that such interactions were hardly unusual in early medieval Europe. Canon law went hand-in-hand with royal legislation in the creation of administrative institutions and the development of notions of criminality and justice, thus attesting to a greater diversity of normative influences in pre-Conquest legal culture than is usually presumed.