

Inquiring into Adultery and Other Wicked Deeds:
Episcopal Justice in Tenth- and Early Eleventh-century Italy

Abstract: This article suggests that Italian bishops often had recourse to spiritual penalties to exercise their coercive authority over serious offences during the tenth and early eleventh centuries. Tracing the history of episcopal jurisdiction over serious offences from the ninth century, where it was supported by the Carolingian rulers, into the post-Carolingian world of the tenth and early eleventh centuries, it argues for continuity between the earlier and later periods. It thus revises the widely accepted view that episcopal interest in the use of such penalties only re-emerged in the period after the Gregorian reform as a consequence of the political marginalisation of bishops created by the emergence of the communes.

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I

Arnulf of Milan describes how in 1008 Bishop Odelric of Asti and his brother, the Marquis Manfred, walked barefoot to the patronal church of San Ambrogio in Milan from three miles outside the city, the bishop carrying a book, the marquis a dog. Before the doors of San Ambrogio they ‘confessed their guilt most devotedly’ to Archbishop Arnulf of Milan. Bishop Odelric then placed the symbols of his office – his staff and ring – on the altar, but later took them up again with the permission of the Archbishop. The marquis donated gold to the church which was made into a cross. The two brothers then processed, still barefoot, through the city to the cathedral and there ‘were received in peace by the archbishop, clergy and the entire people’. Their actions constituted the settlement of a dispute which had begun

perhaps three years earlier, upon Odelric's appointment to the see of Asti by the German King, and later Emperor, Henry II on his first expedition into Italy; Odelric seems to have been chosen because of his brother's support for Henry's claim to the Italian crown. But Archbishop Arnulf, who was upset at not having been consulted over the appointment, objected to Odelric's promotion to the episcopate on the grounds that his predecessor, Bishop Peter, was still alive, having been expelled from his see by Henry II for supporting his rival for the Italian crown, Arduin of Ivrea. Odelric appealed to Rome and his consecration went ahead with the pope's sanction, despite having been forbidden by the archbishop. In the face of such contumacy, and in order to get Odelric to recognise his authority as metropolitan, Archbishop Arnulf excommunicated Odelric and his brother at a synod held in Milan in 1008. He then led an army with his suffragan bishops which successfully besieged Odelric in his see at Asti. As a consequence both men came before the archbishop later that year to make peace 'to his satisfaction'.¹

Carrying a dog to denote a nobleman's humility and submission is well-attested in east Frankish accounts of dispute settlement where it is often referred to as 'harmiscara'.² On this occasion this punishment was explicitly combined with the liturgical rite for the reconciliation of excommunicants. Barefoot, as repentant excommunicants, the bishop and his brother came before the archbishop at the doors of the church; this was the place specified in liturgical rites where the bishop should meet repentant sinners who sought reconciliation from their sentence of excommunication.³ The bishop and his brother then made their confession; liturgical rites for the reconciliation of excommunicants emphasised that those seeking reconciliation should acknowledge and confess their sin.⁴ The liturgical rite came together with the secular one to allow both men to demonstrate their public atonement, submission to, and reconciliation with the archbishop. This case thus highlights the way in which one member of the Italian episcopate, Archbishop Arnulf, managed easily to combine

the demands of secular with ecclesiastical lordship when it came to asserting his authority in a way which was normative for the period.

Studies of dispute settlement in tenth- and eleventh-century west and east Frankia have shown the influence which ecclesiastical penance had on secular rituals of supplication.⁵ Modern political and legal historians of Italy in the same period have, however, largely focussed on the secular aspects of the lordship of the bishops of the *regnum Italiae*, leaving its spiritual aspects to the historians of canon law.⁶ Yet, as we shall see, episcopal justice played just as important a part in the political culture of this period as it did in later centuries. The relative neglect of episcopal spiritual jurisdiction has its roots in both tenth-century political developments within the kingdom of Italy and in the more general approaches taken by scholars to the history of jurisdiction in this period. The tenth-century *regnum Italiae* witnessed the bishops' consolidation of their political authority over both their *civites* and surrounding *territoria* as part of a wider localisation of power.⁷ The wealth of documentation means that scholars' attention has been focussed on their temporal responsibilities as secular lords and public judges. The history of bishops' spiritual jurisdiction in the pre-Gregorian period in Italy has been largely, although not wholly, ignored.⁸ Wilfried Hartmann's work on Carolingian church law and the forms and structures of episcopal justice has demonstrated the important role Italian bishops played as guarantors of justice and morals in the chaotic years around 900 AD but does not investigate far beyond the initial decades of the tenth century, whilst the picture of episcopal spiritual jurisdiction found in François Bougard's excellent survey of the evidence for justice from the *regnum Italiae* in the ninth to eleventh century remains shadowy at best.⁹

Bishops only reappear as spiritual judges in the current historiography upon their retreat from public jurisdiction in the late eleventh century. The emphasis of eleventh-century clerical reformers on the separation and purity of the clergy coincided with the emergence of

the communes and the bishops' loss of public authority.¹⁰ Increasing self-consciousness about clerical status and bishops' retreat from their role as civic leaders coincided with the importance Pope Gregory VII himself attached to the spiritual weapons of excommunication and interdict, and a more general revival of spiritual justice in the course of the twelfth century with the growth of canon law.¹¹ Thus the bishops of Florence increasingly resorted to excommunication in the first half of the thirteenth century in the face of growing opposition from the emerging rural communes to their attempts to increase the income which they derived from their property and lordships in the *contado*; rents and dues had been commuted into inflation-resistant annual grain payments and an episcopal representative, the *podestà*, appointed to ensure the bishop's tenants fulfilled their dues under the new terms. These met with resistance. In 1207, for example, the community of San Lorenzo di Borgo acted collectively and appointed notaries to challenge Bishop John of Velletri's attempts to impose his authority; the bishop responded by having the notaries excommunicated. The dispute rumbled on for another thirty-two years; in 1232, for instance, the leaders of the commune refused to accept the authority of the episcopal *podestà*, whereupon they were excommunicated by the bishop. In 1237 Bishop Ardingo excommunicated the men of the community of San Casciano Val di Pesa as part of an ongoing dispute over their refusal to pay the *census*.¹² Further south the bishops of Arezzo repeatedly used excommunication as a weapon in their campaign to regain temporal jurisdiction over of the city of Cortona in the course of the thirteenth century.¹³ This narrative, which regards the use of these often ineffectual spiritual weapons in defence of territorial lordship as a symptom of the bishops' retreat from the public authority they enjoyed in their heyday in the tenth and eleventh centuries still prevails, despite Chris Wickham's research which suggests that rural communes did not acquire their rights from bishops, but rather that episcopal and communal rights developed alongside each other. But whilst there is evidence, in the communal oaths

recorded from the early twelfth century onwards, that rural communes took responsibility for most offences from at least this time, major crimes – homicide, bloodshed, perjury, adultery, treason – remained reserved to the episcopal *iura*.¹⁴

Episcopal jurisdiction over such criminal offences had deep roots. Peace and justice were a constant of medieval politics, as was the ideal of co-operation between secular and ecclesiastical authorities, and importance was attached throughout the early medieval kingdoms to bishops' spiritual jurisdiction over certain offences.¹⁵ The Carolingian rulers actively promoted co-operation between the count and bishop as secular and ecclesiastical judge respectively. They also supported episcopal responsibility for major criminal acts such as homicide, adultery, incest and rape, that is those cases which offended the wider community.¹⁶ However, the importance the Carolingian rulers attached to the elimination of moral impurity from the Frankish kingdoms, and to co-operation between bishop and *missus*, disappears in current portraits of the post-Carolingian kingdoms; the tenth century is generally portrayed as one where bishops and kings failed to act together to enforce the public peace and punish flagrant crimes. Instead public authority became fragmented and localised.¹⁷ Episcopal sees thus became one of several sites of judicial authority within a locality. Records of landownership dominate the documentary record, and thus studies of disputes, and consideration of questions about the extent of the episcopal takeover of public authority. In other words, the spiritual aspects of episcopal jurisdiction between the late ninth and early twelfth centuries currently are not part of the more general picture of political culture at this time.

The neglect of episcopal spiritual jurisdiction in the historiography of post-Carolingian Italy is also due to the prevailing scholarly narrative for the emergence of public criminal law in the Middle Ages which incorporates criminal law into the 'story' of 'state formation', and thus views the revival of public criminal law as a consequence of the emergence of the

bureaucratic state in the twelfth century.¹⁸ The conclusion that public criminal law did not exist earlier has its roots in two features of early medieval law. First, the laws of this period allowed guilty parties to make composition in cases of serious crimes such as homicide or attacks resulting in permanent injury, that is to pay a fine to the victims or their families in lieu of other punishment. Second, early medieval law codes often blended ecclesiastical with secular law, and sometimes even included penitential sentences for offences, highlighting the lack of separation between civil and criminal, as well as royal and ecclesiastical, law. It is generally thought that this separation was only reintroduced with the revival of the study of Roman law in the late eleventh and twelfth centuries,¹⁹ although recent work by Lotte Kéry has emphasised the role played by church law in the emergence of public criminal law; whilst she surveys the evidence for the period before the twelfth century, her research focuses on the great early canonists from Gratian onwards.²⁰

Yet to see the emergence of episcopal spiritual powers in the twelfth and thirteenth centuries as a reaction to secular powerlessness and to the post-Gregorian world of the formal separation of the clergy from laity is to miss the point. As the case of Bishop Odelric's submission to Archbishop Arnulf shows, bishops had not neglected to deploy the spiritual aspects of their jurisdiction in the pre-Gregorian world when, theoretically, they had greater secular authority. This essay will therefore investigate further this aspect of the political culture of the bishops of Italy in the tenth and eleventh centuries. Building on the work of Bougard and Hartmann it will consider the nature of the evidence for the exercise of episcopal spiritual jurisdiction in the years between the collapse of the Carolingian empire in the late ninth century and the beginnings of the papal reform movement in the mid-eleventh century, that is the long tenth century. The next part establishes the legacy of written law and legal practice which the tenth-century bishops inherited from their Carolingian predecessors, and the influence which it had on their own aspirational and reformist writings. The final

section investigates how far attempts were made to translate these aspirations into practice through a review of some of the canon law collections and penitentials which were composed for, and circulated within, the episcopal courts of Italy in the tenth and early eleventh centuries.

II

The Carolingian rulers of the ninth century envisaged a world in which local secular and ecclesiastical lords shared jurisdiction over criminal offences. This division of responsibility failed to mirror completely later medieval divisions between offences such as adultery and incest, which lay in the spiritual sphere, and those criminal acts such as homicide which came under secular jurisdiction. The need for co-operation between royal and ecclesiastical justice was embodied in the Frankish concept of *ministerium* and promulgated in Carolingian legislation throughout the ninth century.²¹ In 802, for example, Charlemagne issued a capitulary in which he enjoined bishops, abbots, abbesses and counts to ‘agree the law together’, working together for charity and peace;²² counts were given criminal jurisdiction over the regions they administered to detect and punish thieves, brigands, killers, adulterers, magicians, enchanter, diviners, and all sacrilegious persons,²³ whilst certain offences, that is fratricide and the shameful offence (*scelus*) of incest, were reserved to the bishop to devise a suitable penance.²⁴ The last two represented particularly scandalous and transgressive offences, perhaps explaining why responsibility for their emendment was given to the bishop, rather than as with normal serious crimes, being the responsibility of the count. In a capitulary issued in Italy in 846, the Emperor Lothar widened the bishops’ remit to include many other offences; he set out his wish

‘that the bishops should each in his own diocese diligently examine and assiduously investigate whoever has been caught in public shameful acts (*publicis flagitiis*), that is

those guilty of incest, adultery, ravishing nuns, or who have accepted them in marriage, those guilty of homicide, sacrilege, of taking or plundering the property of another; and this should be examined solicitously throughout our whole kingdom, so that, anyone found to have done such things, should be placed under public penance or, if they do not wish this, they should be separated from the church, until they are corrected (*corrigantur*) from their shameful deeds (*flagitiis*). The same thing should be done about those who are known to have been in the clergy and afterwards to have allowed their hair to grow out.²⁵

It seems, however, as if there was no consistency in the division of responsibilities for four years later, in 850, the synod of Pavia seemingly restricted the offences under episcopal jurisdiction, decreeing that acts of rape and abduction, obdurate clerical womanisers, and non-payment of tithes should all be punished through the imposition of the spiritual weapon of excommunication.²⁶ A year later, however, in 851, the *capitula* issued after a joint meeting at Meerssen of the three rulers of the Carolingian *regna*, Lothar, Louis and Charles the Bald, made clear that someone guilty of a capital or public crime (*crimen*) should not evade his punishment by moving to another realm, but ‘be keenly and diligently sought out, lest he find a place to stay and hide in the kingdom of another of us and infect the faithful people of our God and of us with his sickness.’ The three rulers should thus co-operate to ensure that ‘through the ministers of the *res publica*’ the offender should be compelled to return to his bishop and receive due penance for whatever public *crimen* he may have committed, or if he has already received it, then let him carry it out according to the law.²⁷ In this decree the three rulers followed their grandfather who, in 802, had enjoined the bishops, abbots, abbesses and counts to ‘agree the law together’, working for charity and peace. The need for co-operation between royal officers and the episcopate was essential for the spiritual health of the Frankish faithful. Despite the consistency of such ideals, it is worth noting that neither

the language used to describe those offences which fell under the bishop's jurisdiction – *scelera, flagitia, crimina* – nor the types of offence assigned to the episcopal remit are wholly consistent across these texts.²⁸ Such variation suggests that precisely what constituted a spiritual offence was not yet consistently understood; to talk of episcopal criminal jurisdiction for this period is therefore anachronistic. Despite such inconsistencies, however, the overall aspirations of declared law remained constant.

The extent to which the high ambitions of royal declarations were realised is clear from the evidence of the *placita* (public court hearings and the texts which record them).²⁹ One ongoing case from the early ninth century demonstrates the overlap of responsibilities resulting from the close collaboration of royal officials and bishops in what appears to be a wholly ecclesiastical affair, the trial of a priest for misconduct. In July 803 a *placitum* was held in the episcopal palace at Lucca.³⁰ Presided over by James, bishop of Lucca, with the clergy from 'his holy church', including Agripandus, the archdeacon, and eleven priests, as well as Frotpaldus, the *gastaldius*, and Arochis, *vuassus domini regis*, the court met to hear the case of Alpulus, *presbiter* of the church of St Justus, which had been referred to them by King Pippin.³¹ The issue before the court was whether Alpulus could continue to hold the church from which he had been dismissed by a previous bishop of Lucca, John, for abducting a nun, Gumperga, from her monastery in the neighbouring diocese of Pisa: Bishop John had sentenced him to become a monk in the community at Gurgona.³² Various clerics who remembered Bishop John well were questioned, and were all unanimous in remembering the sentence imposed on Alpulus on that occasion. Therefore, following the orders of 'our lord king and in accordance with the canonical authority concerning those who are presumed to have been degraded from holy orders, "if any priest or deacon is excommunicated by episcopal judgement if he should be presumed to have performed any actions belonging to the ministry he will be damned"', Alpulus was therefore excommunicated, and judgement

given that he should again be removed from his church.³³ But ten years later, in 813, Alpulus appeared before yet another *placitum*, held by the bishop of Lucca, and attended by Adalard, the imperial *missus*, accused of singing mass in his church, despite having been excommunicated. On this occasion the judgement of the earlier court was consulted, quoted, testified to by witnesses, and Alpulus was once again excommunicated and told that he should not sing mass, nor presume to do any works pertaining to his ministry.³⁴ Paradoxically Alpulus's case exemplifies both the inefficiency and the sophistication of justice in the Carolingian *regnum Italiae*. Although Alpulus was condemned on three occasions, and deposed from his sacerdotal office, successive bishops of Lucca were unable to remove him from his church where he seemingly remained in office for over a decade. The involvement of the bishops of both Pisa and Lucca, the presence of a royal *vuassus*, the *gastaldius*, and the imperial *missus*, all point to an affair of considerable local importance, and the 803 *placitum* was held in response to royal intervention, suggesting some sort of appeal. The presence of royal officers on both that occasion and again in 813 testifies to the reality which lay behind the ideal of kingship as a *ministerium*.

It was an ideal which continued to resonate into the late ninth and tenth centuries. In 891 Guy of Spoleto was crowned emperor and issued a capitulary; in a blatant bid for acceptance of his legitimacy, the first chapter envisaged the continuation of the Carolingian ideal, with 'bishops and counts united together in their sees and counties for the peace and salvation of the inhabitants in all their works' to prevent plunder, abduction and incest.³⁵ The author of the episcopal *Capitularia Casinensia*, composed in southern Italy c. 900, was also anxious to maintain the bishop's jurisdiction over his clergy which suggests it was being challenged: any cleric or priest who was in dispute with another cleric should go to the archpriest or bishop with his case, and not to a layman. If he did otherwise, he should be excommunicated.³⁶ Two years earlier, at a council held in Rome by Pope John IX (898-900),

the assembled clergy had sought to preserve their authority over those cases which fell under the bishop's spiritual jurisdiction. The final canon of the council lamented the fact that 'a pernicious custom had grown up' whereby the people guilty of those sins which normally pertain to the bishop, namely adultery, were going instead to the public judge (*judex publicus*), and making a monetary redemption for their crime, before persisting in their sin, saying that the matter does not belong to the bishop as it had already been dealt with through public examination and redeemed. The council therefore decreed that:

'the bishops of each town in their own diocese should have the free power to inquire into adultery and wicked deeds (*scelera*), to punish and to judge, following what the canons decree, without being impeded by anyone.'³⁷

Whilst the clergy assembled in Rome intended to make their judgements in accordance with canon law, they seem to be repeating the injunction of Lothar's 846 capitulary to the bishops to examine and investigate 'public shameful acts (*flagitia*)' including not only sexual sins but homicide and plunder.³⁸ There are, however, no direct linguistic parallels between the two: the Roman council in 898 instead referred to such acts as *scelera*. Both words, however, carry with them a sense of offending the public weal: *scelera* are possibly more associated with pollution, whilst *flagitium* perhaps carries with it more of a sense of shame.³⁹ The Roman clergy, like the Carolingian ruling elite of half a century before, envisaged a world in which bishops had responsibility for severe and public crimes, and put an emphasis on sexual misdeeds.⁴⁰

It is important, however, to put the 898 canon in its political context. The council was called in the wake of the backlash which followed Pope Stephen VI's gruesome 897 synod at which the corpse of Pope Formosus (891-6) was exhumed, tried, and condemned. The immediate background to this trial was Formosus's support for the east Frankish king

Arnulf's expeditions into Italy in 894 and 895-6; in this he was opposed by Stephen VI, who had the support of Lambert of Spoleto, Arnulf's rival as emperor. At the trial it was agreed that Formosus had not been a legitimate pope, because he was already bishop of another see, that his measures and acts should be annulled, and his ordinations declared invalid.⁴¹ Pope John IX (898-900) was anxious to reunite and restore the church in the wake of the schism which ripped through the clerical community of Rome and the Lazio, and the 898 council was crucial to his efforts: there many of those who had taken part in previous year's synod against Formosus were absolved, and the orders of those ordained by Formosus declared valid: this latter point was particularly important because John IX had himself been ordained by Formosus. It was agreed that future papal elections should be held under the supervision of imperial representatives, and that Lambert of Spoleto was the legitimate emperor, rather than the other challenger, Berengar of Friuli. This reminder of the bishop's responsibility for *scelera* is therefore part of a deliberate return to the rule of proper and uncorrupted church law in the wake of a contentious synod. This provision was enacted in a very specific context for a particular community: the clergy of Rome and the Lazio. Its portrait of the collapse of co-operation between public and ecclesiastical justice is part of its authors' bid for legitimate authority, just as Guy of Spoleto's vision of continuing co-operation was seven years earlier in 891.

The promotion in the final decades of the ninth century of Carolingian ideals of episcopal responsibility for both sexual sins and other serious offences reflects the uncertainties of that period; nevertheless it also suggests the continued currency of these ideas. The evidence for their survival in the next century is more problematic because neither tenth-century rulers nor bishops recorded their councils nor issued laws or capitularies to nearly the same extent as their Carolingian predecessors. On the episcopal side, however, the writings of two bishops of north Italian sees, Rather of Verona and Atto of Vercelli, point

to the survival of Carolingian ideas about episcopal regulation over both sexual and other serious crimes.

The relations of Rather, some-time bishop of Verona, with his local clergy and lay nobility were somewhat acrimonious, and his writings suggest the continuing breakdown in lay respect for episcopal spiritual jurisdiction reported by the Roman clergy in 898. As with that example, however, Rather's complaints should not be taken at face value, but rather must be placed within their specific political contexts. Rather complained in the *Praeloquia* (c. 935-7) that

'Nowhere are there councils of the Church, nowhere synods and conventions; ecclesiastical law neither approves nor reproves, accuses or excuses, defends or opposes anything, but everything is commanded, executed and allowed by secular might, power and decision, justly or unjustly; I too am evidence of this condition in that I was not condemned by my fellow-bishops but sent into exile by lay authorities.'⁴²

The sting lies in that last sentence, for the passage comes from the start of a letter addressed to archbishops Wido of Lyons and Sobbo of Vienne in which Rather complains of his unjust ejection from the see of Verona and seeks support for his case. Rather had been imprisoned by King Hugh of Italy (926-47) for the support he showed to Arnold duke of Bavaria's invasion of Italy in 934.⁴³ He included the letter in his *Praeloquia*, a work he composed on the duties of Christ's athletes, from king to servant, in a section on the moral duties of bishops, in which he attacked his colleagues for their immorality. Restored to his see in 946, Rather lost it again in 948, in circumstances he recounted later in a letter to Pope Agapetus II. The local count of Verona, Milo, stirred up all the clergy, nobles, farmers and serfs against him, so that when he held a synod, the archdeacon and all the clergy walked out and left him

alone in the church.⁴⁴ He later accused his rival for the see, Count Milo's nephew, of causing perjury to be overlooked, and anathemas, that is the most extreme sentence for excommunication, despised.⁴⁵ Milo's actions had led to Rather's failure to perform his episcopal duties and exercise his jurisdiction over offences. Rather's troubles continued. Writing to his diocesan clergy in 965, after he was restored to the see a third time by Otto I in 961, he complained that the local opposition, led by his rival for the see again prevented him from exercising his episcopal jurisdiction. He had dared not summon any of the laity to a synod about adultery or perjury or any sin at all (*flagitium*) because he had dared not discipline the clergy for their sinful behaviour, principally clerical marriage, as the laity would rightly accuse the clergy of hypocrisy. Nevertheless, he had, echoing the inquisitorial procedure set out at Pavia in 850 and by, as we shall see, Bishop Atto in 940, instructed his archpriest, archdeacon and cathedral canons to visit the parishes and report back to him all the matters which needed to be corrected amongst both the laity and the local clergy.⁴⁶ The whole process ground to a halt, however, and never progressed to an examination of the morals of the local communities. In 967 Rather turned his attention again to the behaviour of his clergy. Returning from the imperial-papal synod held at Ravenna he summoned a council of his diocesan clergy to report on it, but the cathedral clergy prevented some others from coming, whilst others refused to give up their wives. He then ordered that these sinful clergy be arrested and make satisfaction by paying for work on the church of the Blessed Virgin Mary but they did not attend, and the count, one Nanno, issued a ban forbidding them to come to the council. Certain of the laity, charged with various unspecified crimes (*scelera*), refused to attend as well, and Rather sent out officers to arrest them and compel them to make satisfaction by paying for work on the church. As a campaign it was singularly unsuccessful. Indeed it ended with Rather's exile. One of the charges made against him was that he sent proctors to arrest the clergy who did not answer his summons.⁴⁷ In his self-portrait Rather

presented himself as a conscientious bishop who was only too aware of his own failure to live up to the ideals of his office. His voluminous testimony demonstrates the breakdown which could, and did, occur between bishop and secular authority in a locality and which inevitably affected a bishop's spiritual as well as temporal authority. But he also testifies to the fact that the ideals of episcopal jurisdiction over clerical and lay *flagitia* and *scelera* were maintained, even if they were not successfully implemented.

Writing in the north-western see of Vercelli, one of Rather's contemporaries, Bishop Atto (924-61) also attests to the continuation of these ideals. In the capitulary he composed for his diocesan clergy c. 940 he set out those areas over which he expected to be able to exercise his spiritual jurisdiction; these included not only specifically clerical offences but also ones pertaining especially to the laity.⁴⁸ He thus spelled out the behaviour he expected of his clergy: those married clergy who refused to reform and those who were persistently drunk were to be excommunicated; those who persisted in celebrating the New Year with pagan rites and in their belief in magic and sorcery were declared anathema.⁴⁹ Those members of the laity who persisted in usury were to be excommunicated.⁵⁰ He envisaged an elaborate system for the investigation of unspecified criminal faults and the administration of penance in terms which echo, but do not duplicate, the earlier provisions of Pavia (850) and Rome (898):

'A priest should not impose rules of penance without respect of person or case; the times of penance or of reconciliation he should leave to the bishop's decision. Just as a priest should not reconcile a penitent without consulting the bishop (unless by the bishop's permission) so rather priests who are ordained among the people should take care lest their parishioners fall into criminal faults (*in criminalia ... delicta*). If this should happen they should make careful inquiry, both from the parishioners

themselves and from all their neighbours, about how the events occurred, and should not delay writing this down. They should be zealous in encouraging them often to have recourse to the satisfaction of peace and penance. The senior priest of that congregation – or whoever is more learned after him – should come together with them bringing what he has written. If the penitents defer appearing, the priest should be at the chief seat of the bishop on Ash Wednesday, together with what he has written and should produce this for his bishop to consider what he should do. If the penitents appear he should once more give an account of the rules which are imposed on them as penance, and should show the greatest concern for them, to know their behaviour as well as possible. If he perceives that anyone is bowed down by his penance, so that there is some expectation of danger from increased weakness, or if infirmity weighs heavily on anyone, the priest should return to his bishop so that remedies may be granted to the bishop through his agency. If the bishop is not present, he should refer the matter in the meantime to the cardinal priests of the chief see. On Maundy Thursday, the day of reconciliation, he himself should return to give a most complete account of what each has done; and again similarly on the Wednesday after the octave of Pentecost he should make haste to appear together with them so that he should learn and write down what has been imposed on them.’⁵¹

It is, of course, impossible to know whether this elaborate system was put into practice. Atto, makes no reference in his *capitula* to collaborating with secular authority to coerce and punish criminals. This omission is not, in itself, particularly surprising, for episcopal *capitula* from ninth-century Frankia, unlike their royal counterparts, are similarly reticent about referring to secular powers.⁵² But as a reform-minded bishop interested in pastoral issues Atto clearly viewed the investigation of criminal faults as part of the duties of both a bishop and his clergy.

The aspirational literature therefore suggests the continuing projection of Carolingian ideals of episcopal regulation over *scelera*, *flagitia* and *crimina* against a backdrop of disintegrating episcopal authority. The negative portrayal is, however, part of the rhetoric of power composed by individual authorities to meet particular circumstances. It is almost impossible to look beyond these prescriptions and investigate the episcopate's jurisdiction over these offences in practice. Glimpses of their activity in this regard are rare and mostly confined to the clergy. Atto of Vercelli, for example, wrote to the priest Ambrose that priests should be excommunicated unless they gave up their wives.⁵³ More interestingly secular rulers were still portrayed as working with bishops to enforce church law: Otto I in a grant to the bishop of Volterra ordered that if the priests did not 'follow canonical obedience', and failed to render tithes to the baptismal church, and treated the orders of the synod with contempt, they should be excommunicated by the bishop from the Church and received by no one.⁵⁴ In doing so he was following earlier precedents: both the synod of Pavia (850) and Lambert in an imperial capitulary of 898 had enjoined excommunication as punishment for non-payment of tithe.⁵⁵

The evidence from papal documents is richer but also more problematic. The possibility of one of their members being called to the bishop's synod or excommunicated was something from which the monastic communities sought papal immunity.⁵⁶ Letters show the popes were willing to use penance and excommunication as penalties, not only in cases of sexual sin, but also of disobedience of their authority and homicide. The register of John VIII (873-82) is filled with references to penance and excommunication. He excommunicated Lambert, count of Spoleto and his brother-in-law, Adalbert of Tuscany, for their attacks on papal territory.⁵⁷ He threatened with excommunication the clergy and people of the church of Valva if they did not support the man he regarded as legitimate bishop.⁵⁸ He initially praised Athanasius, who took control of the episcopate and dukedom of Naples in 878 through a coup

in which he blinded his brother, for his zeal against the *scandala* which had beset the city, but later excommunicated him for his involvement with the Saracens.⁵⁹ John VIII's fondness for excommunication was also articulated at the papal synod held at Ravenna in March 877 where it was enjoined as a punishment for sacrilege, abduction, rape, for those who having committed homicide or arson refuse to make public satisfaction, and robbers who having been admonished twice to amend their ways refuse to do so.⁶⁰ The same synod enacted legislation to deter communication with excommunicants on pain of their own excommunication, repeating Pope Leo I's dictum that 'those with whom we cannot communicate while they are living we must continue to avoid after death'. It also made provision for how excommunication sentences should be publicised both within and outside the diocese.⁶¹ Those who sought to take away the patrimony of the Roman Church were also anathematized.⁶² The next year John VIII visited Provence and held a council at Troyes attended by the west Frankish bishops, led by Hincmar of Rheims, which used the pope's request for assent to his excommunication of the Italian magnates Lambert and Adalbert and his enemies amongst the Roman clergy, including Formosus and Gregory to get him to excommunicate those who 'wrongfully seize ecclesiastical property'.⁶³ Whilst the pope's problematic relationship with Lambert and Adalbert obviously provides an important context for both these councils, their wider remit suggests excommunication was viewed by the pope and bishops as an important coercive weapon in defence of their own authority, but also as a punishment for serious offences of homicide and arson, rape and abduction.

It is impossible to know whether the papal correspondence of the tenth century, had it survived, would have related a similar picture of an active papal spiritual jurisdiction, although there are some hints that the popes continued to use their spiritual powers in this way. In April 999 Pope Gregory V, in council with the Emperor Otto III, imposed a penance on Arduin of Ivrea for his murder of Bishop Peter of Vercelli in 997.⁶⁴ The council awarded

Arduin the penance which would have been given to him if had confessed secretly: he should put down his arms, eat no meat, kiss no man nor woman, wear no linen clothes, never remain more than two nights in one place unless he was sick, and not take communion until his deathbed. Alternatively he could become a monk. His property, and that of his accomplices, was granted to the church of Vercelli. Arduin's later career, as rival king of Italy to Otto III's successor, Henry II, make it clear that he did not perform his prescribed penance for life, if at all. This case was a *cause célèbre*; it is not, unfortunately, evidence for the sort of routine spiritual justice envisaged by Pope Sergius IV in a grant he made to the abbot Nonantola in 1011 concerning the rights of the canonical community in the church of St Michael's, in which he granted jurisdiction over all 'criminal' faults to the *archipresbiter* of the church.⁶⁵

The evidence reviewed thus far shows an understandable preoccupation on the part of the senior clergy with clerical discipline. Yet it is striking the extent to which ninth-century ideals of episcopal responsibility for the detection and punishment of serious crimes amongst the laity persisted into this period. Atto of Vercelli envisaged an elaborate system by which priests investigated and reported the criminal faults of their parishioners. These faults remain unspecified. For Rather of Verona lay *flagitia* and *scelera* seem to comprise adultery, perjury and disobedience to episcopal authority as well as unspecified crimes. Specific examples of the exercise of episcopal jurisdiction over criminal acts are, however, rare. The late ninth-century pope John VIII used it in defence of papal territory and authority, as, over a century later, did Pope Gregory V, when he excommunicated Arduin of Ivrea for the murder of Bishop Peter of Vercelli, and as Archbishop Arnulf of Milan did when he excommunicated Bishop Odelric and Marquis Manfred for the usurpation of the see of Asti without his consent. In part this *lacuna* may be because many of the references to bishops' spiritual jurisdiction, and especially to their recourse to excommunication, in the post-Carolingian west and east Frankish kingdom are found in letter collections and narrative sources; the

relative absence of such sources for the Italian kingdom and principalities may explain the apparent bias in favour of the papacy. In order to investigate further the extent to which attempts were made by Italian bishops in the post-Carolingian period to realise their aspirations to maintain jurisdiction over criminal acts it is worth considering the evidence of canon law and penitential collections; these are both genres which have, somewhat surprisingly, not yet been integrated very well into the history of episcopal jurisdiction in this period.

III

The following brief review of this evidence will suggest that churchmen in post-Carolingian Italy maintained an active and pragmatic interest in ecclesiastical jurisdiction over serious crimes. The collections of canon law which proliferated in tenth- and eleventh-century Italy set out the bishops' authority, together with detailed guidance as to how it should be exercised.⁶⁶ More detailed advice was found in the penitentials, more pastoral texts which often combined liturgical rites for the administering of penance with lists of sins and their appropriate penitential tariff – a specified period of fasting, pilgrimage, or excommunication from the eucharist for a specific period.

Complex problems of date, provenance and possible audience face any scholar who wishes to use this material. Canon law collections were seemingly intended for use in law cases which came before the bishop either in his court or the diocesan synod, as reference works for advice and as teaching aids for the education of the clergy, whilst penitentials were more pastoral in purpose, intended for use by local priests in the delivery of pastoral care. In practice there was a good deal of overlap and ambiguity between the two genres: collections like the early eleventh-century south Italian *Collection in V Books* made extensive use of penitential material.⁶⁷ As a consequence the purpose and audience of penitentials has been a

matter for debate in recent years: were they compiled for use by local priests, or rather, as Franz Kerff argued, to support the bishop in the conduct of his synodal inquisitions?⁶⁸ The problem is that whilst the text often suggests a pastoral purpose, the codicological evidence, especially that from the tenth and eleventh centuries, suggests that penitentials were being copied with other legal texts, suggesting a more firmly juridical context.⁶⁹ Recent work on both the texts and codicology of east Frankish and central Italian penitentials material from the tenth and eleventh centuries has emphasised the importance of a third context, that such texts were primarily intended for the education and training of the clergy.⁷⁰ It is therefore worth investigating the Italian material in more detail.

That the Italian episcopate and clergy of the tenth and eleventh centuries were extremely interested in both canon law and penitentials is well known. Bishops Atto of Vercelli and Rather of Verona both envisaged penitentials being used by their clergy. Atto enjoined his diocesan clergy that they should know both Scripture and the canons, as together these formed a sound foundation for their work as both teachers and preachers, together with the rules of discipline.⁷¹ At the Lenten diocesan synod in 966 Rather advised his clergy to encourage the practice of annual Lenten confession amongst the laity, to make sure they administered penance according to what was written in the penitential, and to include a penitential amongst the books they should own.⁷² Penance, penitentials and a knowledge of canon law were all part of the normal work which these two bishops expected from their local clergy. For them the audience for penitentials within Italy was obvious: the bishop, his clergy, and, indirectly, the laity whose lives were to be regulated according to them. But in his address Rather was quoting verbatim from an earlier text, the *Admonitio synodalis*, which was itself compiled mainly from Carolingian conciliar collections, proceedings and episcopal capitula, whilst Atto took his text ultimately from the IV Council of Toledo (633) via an

intermediary.⁷³ Both men were projecting an ideal of pastoral care, supported by canon law and penitentials, derived from their ninth-century reforming predecessors.

The manuscript evidence, however, suggests that Italian bishops in both the north and the south invested time and effort in the compilation and copying of such texts. Unlike their Frankish contemporaries, for whom the hey-day of copying and composing penitentials lay in the eighth and ninth centuries, the Italian clergy of the late tenth, eleventh and early twelfth centuries showed a marked interest in penitentials, copying older ones and composing new ones.⁷⁴ The slowdown in both the composition and copying of penitentials within the Frankish heartlands may in part be a reflection of their substantial Carolingian legacy; tenth-century churchmen in these areas had little need to copy penitentials as they already had them in their libraries. Central and southern Italy, where the majority of the new penitentials (and canon law collections) come from, by contrast had suffered severe depredations in Saracen raids and internal wars in the late ninth and early tenth centuries, and thus churches and monasteries in these areas sought to replenish their libraries.⁷⁵ The revival of interest in penitentials in post-Carolingian Italy mirrors that in late Anglo-Saxon England.⁷⁶ Whilst English interest has been linked to the tenth-century reformers, the reasons for Italian activity in this area are only beginning to be understood, thanks to the work of both Roger Reynolds and Adriaan Gaastra, whose research on the central and south Italian penitentials has illuminated this material in all sorts of ways.⁷⁷

One canon law collection, the *Collectio Anselmo Dedicata*, suggests a concern with the mechanics of episcopal jurisdiction amongst a north Italian audience at the beginning of the tenth century.⁷⁸ It was composed in northern Italy, perhaps at Vercelli, in the late ninth century and the manuscript evidence demonstrates that it circulated in northern Italy in the first half of the tenth century before crossing the Alps into southern Germany at the turn of

the tenth century.⁷⁹ Research on the collection has mostly focussed on the use the compiler made not only of Gregory the Great and Roman law, but especially of Pseudo-Isidore, large parts of which he introduced into canon law.⁸⁰ But the *Collectio*'s popularity probably owes more to its systematic organisation, for it is divided into twelve books. It focuses on clerical life and clerical authority. Placed between one on the responsibilities of bishops and one on those of priests and deacons, book III deals with how a synod, an important adjunct to episcopal authority, should be celebrated, how people should be called to the synod, on accusers and accusations, witnesses and testimonies, the smoothing away of injustice, of judges and ecclesiastical or secular judgements.⁸¹ The compiler of the *Collectio* envisaged episcopal authority ranging across the spiritual and the secular, the lay and the clerical; this seems also to be how it was interpreted by Atto of Vercelli who drew on Book III as a source for one chapter of his episcopal capitula in which he enjoined priests to hold annual synods to correct the ecclesiastical *mores* of their flocks.⁸² The *Collectio* also included material on a range of other diverse matters – the primacy of the Roman see and other metropolitans, the life of the secular and regular clergy, the duties of the laity, the faith, baptism, church buildings, preaching, gifts, tithes, feast days, heretics, schismatics, Jews and pagans – but it did not include penance as an explicit category. North Italian bishops had to turn elsewhere, to the penitentials recorded in both reference collections and pastoral handbooks, for more detailed regulations. The *Collectio* was more concerned to endorse their spiritual authority.

The compilers of the south Italian canon law collections were more pragmatic. The early tenth-century *Collection in Nine Books*, seems to have also been targeted at an episcopal audience: its first two books are dedicated to the celebration of councils, its eighth and ninth book to the use of penance and judgement of penitents.⁸³ This collection of some 1300 capitula survives in a single Beneventan manuscript from the mid-eleventh century (Vatican City, Biblioteca Apostolica Vaticana, MS Vat. Lat. 1349) although as its most

recent sources date from the early tenth century it has been dated to *c.* 920-*c.* 930.⁸⁴ Adriaan Gaastra's detailed study of the sources for Book IX suggests the compilers composed new canons, albeit ones grounded in earlier traditions, as well as copying one from earlier penitentials.⁸⁵ They altered texts to fit new cases in a way which suggests 'a lively interest' in penitential law. Gaastra also argues that book IX was probably intended not so much as a reference work but rather as a pedagogic text to teach priests how to use the canons when giving penitential sentence; the text explicitly allows considerable discretion to the priest, and provides guidance on how to reconcile the conflicts in the canons.⁸⁶ Whilst there is a distinct monastic bias in terms of scriptoria and provenance for this collection, as is also the case for the other south Italian penitential and canonistic material, this bias need not preclude a pastoral and episcopal audience for these texts.⁸⁷ The north Italian material, by contrast, shows a stronger bias towards the episcopate.⁸⁸ Collections from both regions share a pragmatic concern with the administration of ecclesiastical law but the large size of these collections – it is sometimes less true of their derivatives – suggests they were almost certainly intended as reference texts or, perhaps, teaching aids.⁸⁹

Turning very briefly to the evidence of the penitentials, many seem to have been copied into codices which were compiled as reference works rather than for use in the field. Thus the ninth-century pontifical of Halitgar was copied, together with a collection of extracts on penance from the church fathers, including Gregory the Great, Isidore, Augustine and John Chrysostom, into a codex compiled in northern Italy, almost certainly at Bobbio, in the second half of the tenth century, now Berlin, Staatsbibliothek, Cod. Hamilton 290.⁹⁰ The early eleventh-century south Italian codex, now London, British Library, Additional 16413, is usually described as an episcopal handbook: it contains a diverse range of penitential, canonical and liturgical materials, including texts on the ordination to the ministry, and the seven grades of the ecclesiastical ministry (both of particular concern to the episcopate), an

ordo missae, and a sermon on penance, as well as its own collection of canon law, drawn from penitential and other sources.⁹¹ The London codex has not been attributed to a specific see; it was written in Beneventan script, which is usually associated with Montecassino and the monasteries of the surrounding area. It is, however, not beyond the bounds of probability that these monasteries provided collections for use by bishops in southern Italy.⁹² Other manuscripts can be linked more directly to an episcopal or at least a cathedral context. Thus a late eleventh-century pontifical from Arezzo includes a rite for the giving of penance followed by a penitential (largely derived from Burchard of Worms), together with a list of items in the cathedral treasury.⁹³

Other penitentials survive in a more pastoral context and are evidence of attempts being made to provide local priests with the materials needed for the detection and regulation of serious sins along the lines envisaged by Bishops Atto and Rather. One Roman book, now Biblioteca Apostolica Vaticana, Archivio S. Pietro H.58, is a complex codex of some 150 folios, written s. x^{ex}/s. xiⁱⁿ; it includes the rites for the *cura animarum*, an *ordo missae*, a martyrology, two passions, a *computus*, a homily, canon law, and two penitentials, one of which is peculiar to this manuscript.⁹⁴ The contents of this handbook taken as a whole echo the list of those books a priest should own prescribed in the ninth-century sermon, the *Admonitio synodalis*, which Rather cited in its entirety in his address to his clergy in 966.⁹⁵ These parallels taken together with the importance awarded to the liturgy for pastoral care, and the absence of pontifical rites suggest this codex was composed as a handbook for clergy to deliver pastoral care, including, as we shall see, the detection of serious crime, at lower level than that of the bishop. Two examples from northern Italy point to a similar attempt to provide local priests with guidance for the detection of offences including more serious crimes. The north Italian codex, Verona, Biblioteca Capitolare, LXIII (s.x^{med} - 2), is essentially a collection of canonical materials, including the ninth-century episcopal

capitulary of Gherbald of Liège as well as excerpts from the church fathers and both canonical and penitential materials, including extracts from both Halitgar and the 'Bede-Egbert double penitential'; it contains nothing of specific interest to a bishop, and has therefore been classified as a handbook for parish priests.⁹⁶ Rome, Biblioteca Vallicelliana, Cod. B. 58 is now a medium-sized codex of several penitentials written in different Italian hands but it is by no means clear that it is a medieval compilation. The text of an *ordo* for giving penance which is peculiar to northern Italy was written on a quire at the end of the codex in an eleventh-century hand and followed by a collection of penitential canons concerning the specific offence of homicide.⁹⁷ The practical administration of penance was perhaps of interest to the copier of this quire as a portable *libellus* for the priest to take out to aid him in his pastoral ministry, but equally it could be intended as a guide for a particular occasion or as guidance on a particular issue. These last three examples were, as we have seen, part of a wider concern with educating and training local priests; they thus represent evidence of attempts by contemporaries of Bishop Rather and Atto to enact the aspirations voiced in those men's writings for the regulation of serious offences.

Turning from the codicology to the evidence of the penitential texts themselves, the bias of the evidence suggests a preoccupation with serious sins such as murder amongst their copyists and composers.⁹⁸ The compilers of earlier medieval penitentials had been preoccupied with policing conversion to Christianity, and therefore included, alongside material on homicide, incest and sexual sins, questions about diet, pagan superstition and sorcery.⁹⁹ This material, dealing with less important offences, has in many, but not all cases, been stripped out of the Italian collections, leaving the focus on the more serious sins. This concern is most obvious in Vallicelliana B. 58 where the canons which follow the penitential rite deal only with homicide. Those in Vatican, Archivio S. Pietro, H. 58, are similarly preoccupied with serious sins; they are divided into sections dealing with homicide,

fornication, perjury, theft, and crimes committed through drunkenness, followed by some miscellaneous canons.¹⁰⁰ The Vatican collection was intended for administration to both the clergy and male and female members of the laity. There are separate sections on the different penances for various sins of fornication committed by members of the clergy, by laymen and by women.¹⁰¹ A similar distinction is made in the penances suggested for different forms of homicide committed by clergy, by laymen and by women.¹⁰² Both penitential collections were thus written for an audience interested in the continued regulation of serious offences.¹⁰³

There is therefore clear evidence for ongoing episcopal interest in church law for the regulation of serious offences in northern and central Italy. Whilst it must be acknowledged that the evidence from southern Italy has a strong monastic tinge, nevertheless this material, drawn from all over Italy, provides a convincing backdrop to the aspirations set out by local reforming bishops such as Atto of Vercelli and Rather of Verona, and to Archbishop Arnulf of Milan's actions in 1008, as well as the penance imposed on Arduin of Ivrea by the Pope and Emperor in 999. In other words, far from viewing the years 900 to 1050 as ones in which Italian bishops turned away from using spiritual weapons to assert their authority, the evidence reviewed in this article suggests the need to reintegrate this aspect of their office into our understanding of both episcopal lordship and political culture at this time. The bishops' continued interest in the penitential regulation of serious offences, together with their use of spiritual weapons of excommunication as a coercive power to enforce their own authority thus forms an important backdrop to the apparent revival of interest in such weapons by participants in the Gregorian Reform movement of the second half of the eleventh century.¹⁰⁴

¹ Arnulf von Mailand, *Liber gestorum recentium*, ed. Claudia Zey, MGH SSrG 67 (Hannover, 1994) 1.18-19, 141-3. On this case, and other examples of reinvestiture in cases where the bishop's office was in doubt, see Timothy Reuter, 'Pastorale pedum ante pedes apostolici posuit: Dis- and Reinvestiture in the Era of the Investiture Contest,' *Belief and Culture in the Middle Ages: Studies Presented to Henry Mayr-Harting*, ed. Richard Gameson and Henrietta Leyser (Oxford 2001) 197-210, espec.207.

² Bernd Schwenk, 'Das Hundtragen. Ein Rechtsbrauch im Mittelalter,' *Historisches Jahrbuch* 110 (1990) 289-308; Jean-Marie Moeglin, 'Harmiscara-harmschar-hachée: le dossier des rituels humiliation et de soumission au Moyen Age,' *Archivium latinitatis medii Aevi* 54 (1996) 11-65; Jessica Hemming, 'Sellam Gestare: Saddle-Bearing Punishments and the Case of Rhiannon,' *Viator* 28 (1997) 45-64.

³ For example, see 'Ordo XCI: Qualiter episcopus reconciliet vel recipiat excommunicatum: Cum aliquis excommunicatus vel anathematizatus, penitentia ductus, veniam postulat, et emendationem promittit, episcopus, qui eum excommunicavit, ante ianuas aecclesiae venire debet et XII presbiteri cum eo, qui eum hinc inde circumdare debent,' *Le Pontifical romano-germanique du dixième siècle*, ed. Cyrille Vogel and Reinhard Elze, 3 vols, Studi e testi 226, 227, 269 (Vatican City 1963, 1972) 1.317. On this rite see Sarah Hamilton, '*Absoluimus uos uice beati petri apostolorum principis*: Episcopal Authority and the Reconciliation of Excommunicants in England and Francia c. 900- c.1150,' *Frankland. The Franks and the World of the Early Middle Ages. Essays in Honour of Dame Jinty Nelson*, ed. Paul Fouracre and David Ganz (Manchester 2008) 209-41.

⁴ 'Et, se ille in terram prostratus veniam postulat, culpam confitetur, paenitentiam implorat, de futuris cautelam spondet, tunc episcopus, apprehensa manu eius dextra, eum in aecclesiam

introducatur et ei communionem et societatem christianam reddat.’: XCI.3, *Le Pontifical romano-germanique* (see n. 3 above), 1.318.

⁵ Geoffrey Koziol, *Begging, Pardon and Favor. Ritual and Political Order in Early Medieval France* (Ithaca, NY 1992); Gerd Althoff, ‘Königsherrschaft und Konfliktbewältigung im 10. und 11. Jahrhundert,’ idem, *Spielregeln der Politik im Mittelalter. Kommunikation in Frieden und Fehde* (Darmstadt 1997) 21-56; idem, ‘Das Privileg der *deditio*,’ ibid. 99-125; idem, *Die Macht der Rituale. Symbolik und Herrschaft im Mittelalter* (Darmstadt 2003); Timothy Reuter, ‘Contextualising Canossa: Excommunication, Penance, Surrender, Reconciliation,’ idem, *Medieval Politics and Modern Mentalities*, ed. Janet L. Nelson (Cambridge 2006) 147-166.

⁶ The exception is, of course, King Henry IV’s submission in the snow before Pope Gregory VII at Canossa in January 1077; for a complex reading of these events see Reuter, ‘Contextualising Canossa’ (see n. 5 above). For a narrower interpretation which places these events squarely in the context of secular rituals of submission see Werner Goez, ‘Canossa als *Deditio*?,’ *Studien zur Geschichte des Mittelalters. Jürgen Petersohn zum 65. Geburtstag*, ed. Martin Thumser (Stuttgart 2000) 92-99.

⁷ Eugenio Dupré Theseider, ‘Vescovi e città nell’Italia precomunale,’ *Vescovi e diocesi in Italia nel medioevo (sec. IX-XIII). Atti del II convegno di storia della chiesa in Italia* (Padua 1964) 55-109; Roland Pauler, *Das Regnum Italiae in ottonischer Zeit: Markgrafen, Grafen und Bischöfe als politische Kräfte*, Bibliothek des Deutschen Historischen Instituts in Rom 54 (Tübingen 1982). For a useful summary in English, which nevertheless emphasises the importance of locating each case in its specific context, see Guiseppe Sergi, ‘The Kingdom of Italy,’ *New Cambridge Medieval History III c. 900-1024*, ed. Timothy Reuter (Cambridge 1999) 346-71, espec. 370-71.

⁸ Especially when compared to recent research on eighth- and ninth-century Frankia: see particularly the work of Mayke de Jong on the political resonances of penance: *The Penitential State: Authority and Atonement in the Age of Louis the Pious, 814-840* (Cambridge 2009).

⁹ Wilfried Hartmann, 'Der Bischof als Richter: zum geistlichen Gericht über kriminelle Vergehen von Laien in früheren Mittelalter (6-11 Jahrhundert),' *Römische Historische Mitteilungen* 28 (1986) 103-24; idem, 'Problem des geistlichen Gerichts im 10. und 11. Jahrhundert: Bischöfe und Synoden als Richter im ostfränkisch-deutschen Reich,' *La Giustizia nell'alto medioevo (secoli IX-XI)*, Settimane di studio del centro italiano di studi sull'alto medioevo, Spoleto 44 (Spoleto 1997) 631-72; idem, *Kirche und Kirchenrecht um 900. Die Bedeutung der spätkarolingischen Zeit für Tradition und Innovation im kirchlichen Recht*, MGH Schriften 58 (Hannover 2008); François Bougard, *La justice dans le royaume d'Italie de la fin du VIIIe siècle au début du XIe siècle*, Bibliothèque des écoles françaises d'Athènes et de Rome 291 (Rome 1995) 235-52; idem, 'La justice dans le royaume d'Italie aux IXe-XIe siècles,' *La Giustizia nell'alto medioevo (secoli IX-XI)* 133-76.

¹⁰ These developments are summarised by Maureen C. Miller, *The Bishop's Palace: Architecture and Authority in Medieval Italy* (Ithaca, NY 2000) 253-56.

¹¹ Elizabeth Vodola, 'Sovereignty and Tabu: Evolution of the Sanction against Communication with Excommunicates. Part I: Gregory VII,' *The Church and Sovereignty c. 590-1918. Essays in Honour of Michael Wilks*, ed. Diana Wood (Oxford 1991) 35-55; eadem, 'Sovereignty and Tabu: Evolution of the Sanction against Communication with Excommunicates. Part II: Canonical Collections,' *Studia in honorem eminentissimi cardinalis Alphonsi M. Stickler*, ed. Rosalio Iosepho Card. Castillo Lara, *Studia et textus historiae iuris canonici* 7 (Rome 1992) 581-98. On the twelfth century see Richard H. Helmholz, 'Excommunication as a Legal Sanction: The Attitudes of Medieval Canonists,' *Zeitschrift der*

Savigny-Stiftung für Rechtsgeschichte, kanonistische Abteilung 99 (1982) 204-12; Anders Winroth, *The Making of Gratian's Decretum* (Cambridge 2000) 34-76. On the increasing importance of the interdict see Peter D. Clarke, *The Interdict in the Thirteenth Century. A Question of Collective Guilt* (Oxford 2007).

¹² George Dameron, *Episcopal Power and Florentine Society 1000-1320* (Cambridge, Mass. 1991), 96-7, 98-101, 139-40; idem, 'Episcopal Lordship in the Diocese of Florence and the Origins of the Commune of San Casciano Val di Pesa 1230-47,' *Journal of Medieval History* 12 (1986) 135-54, at 147-48.

¹³ Miller, *Bishop's Palace* (n. 10 above) 254-55.

¹⁴ Chris Wickham, *Community and Clientele in Twelfth-century Tuscany: The Origins of the Rural Commune in the Plains of Lucca* (Oxford 1998) 95.

¹⁵ Paul Hinschius, *Das Kirchenrecht der Katholiken und Protestanten in Deutschland*, 6 vols (1893; reprinted Graz 1959), vol. 5; Julius Goebel Jr, *Felony and Misdemeanour: A Study in the History of Criminal Law* (1937; reprinted Philadelphia 1976); Jean Chélini, *L'aube du moyen age: naissance de la chrétienté occidentale: la vie religieuse des laïcs dans l'Europe carolingienne (750-900)*, 2nd edn (Paris 1997), 362-444.

¹⁶ See section II below.

¹⁷ Janet L. Nelson, 'Rulers and Government,' *New Cambridge Medieval History III* (n. 7 above) 95-129; Sergi, 'The Kingdom of Italy' (n. 7 above).

¹⁸ E.g. 'The transition [from private pleas to public jurisdiction] is a common European phenomenon and, without belittling the attempts of the Carolingian monarchy, it may safely be considered a product of the emergence, from the twelfth century onwards, of the centralised state.': Raoul C. Van Caenegem, 'Public Prosecution of Crime in Twelfth-century England,' *Church and Government in the Middle Ages: Essays Presented to C. R. Cheney on his Seventieth Birthday*, ed. C. N. L. Brooke, D. E. Luscombe, G. H. Martin and Dorothy

Owen (Cambridge 1976), 41-76 at 41. See also this statement in a recent overview of twelfth-century law: ‘Criminal law, as an independent domain, is often described as a twelfth-century innovation’: Peter Landau, ‘The Development of Law,’ *The New Cambridge Medieval History IV c. 1024-c.1198, Part I*, ed. David Luscombe and Jonathan Riley-Smith (Cambridge 2004), 113-47 at 145; see also Richard M. Fraher, ‘The Theoretical Justification for the New Criminal Law of the High Middle Ages. ‘Res Publicae Interest, Ne Crimina Remaneant Impunita’,’ *University of Illinois Law Review* 3 (1984) 577-95. Now dated but still helpful is Goebel, *Felony and Misdemeanour* (n. 15 above). For a more detailed examination of this issue see the essays in *Die Entstehung des öffentlichen Strafrechts. Bestandsaufnahme eines europäischen Forschungsproblems*, ed. Dietmar Willoweit, (Cologne 1999).

¹⁹ For a helpful overview see Landau, ‘The Development of Law’ (n. 18 above).

²⁰ Lotte Kéry, *Gottesfurcht und irdische Strafe. Der Beitrag des Mittelalterlichen Kirchenrechts zur Entstehung des öffentlichen Strafrechts* (Cologne 2006).

²¹ ‘The notion that the leadership of this polity was accountable to God because of its divinely bestowed ‘ministry’ (*ministerium*) – as a ruler, a bishop, an abbot or abbess, or a count – was not just a figment of the clerical imagination but a fascinating Carolingian adaptation of the ideas on ministry developed in Gregory the Great’s *Regula Pastoralis*’: de Jong, *The Penitential State* (n. 8 above) 4.

²² ‘Ut episcopi, abbates adque abbatissae comitesque unanimi invicem sint, consentientes legem ad iudicium iustum terminandum cum omni caritate et concordia pacis, et ut fideliter vivant secundum voluntatem Dei, ut semper ubique et propter illos et inter illos iustum iudicium ibique perficiantur.’ *Capitularia regum Francorum, I*, ed. Alfred Boretius, MGH Legum sectio II (Hannover, 1881) no. 33, c. 14, 94.

²³ Ibid. c. 25, 96.

²⁴ Ibid. c. 32 (homicidia), c. 33: ‘Incestuosum scelus omnino prohibemus,’ 96-7. This capitulary, which was issued at Aachen, circulated within Italy; the full text survives in only one copy, Paris, Bibliothèque nationale de France, MS lat. 4613, a tenth-century Italian manuscript which collects the Lombard laws together with various Carolingian capitula: Hubert Mordek, *Bibliotheca capitularium regum Francorum manuscripta: Überlieferung und Traditionszusammenhang der fränkischen Herrschererlasse*, MGH Hilfsmittel 15 (Munich 1995) 469-76. It is clear this capitulary circulated within Italy in this period as c. 27 of this capitulary was also included in the early eleventh-century South Italian canon law collection, the *Collection in V Books*.

²⁵ ‘ut episcopi singuli in suis parroeciis diligenter examinent et sollicite investigent, quicumque publicis sint inretiti flagitiis, hoc est incestos, adulteros, sanctimonialium stupratores vel qui eas eciam in coniugium acceperunt, homicidas, sacrilegos, alienarum rerum pervasores atque praedones; et hoc per omne regnum nostrum sollicite examinetur, ut, quicumque tales fuerint inventi, paenitentiae publice subdantur, aut, si hoc noluerint, ab ecclesia separentur, donec a suis flagitiis corrigantur. Similiter de illis fiat, qui in clericatu fuisse, et postea comam sibi crescere dimississe noscuntur.,’ *Capitularia regum Francorum II*, ed. by Alfred Boretius and Victor Krause, MGH Legum sectio II (Hannover 1890) no. 203, c. 6, 66.

²⁶ *Die Konzilien der karolingischen Teilreiche 843-85*, ed. by Wilfried Hartmann, MGH Concilia III (Hannover 1984) cc. 10, 14, 17, 224, 226-7.

²⁷ ‘Similiter et de eo agendum est, qui pro aliquo capitali et publico crimine a quolibet episcopo corripitur vel excommunicatur aut ante excommunicationem crimen faciens regnum et regis regimen mutat, ne debitam poenitentiam suscipiat aut susceptam legitime peragat, interdum etiam incestam propinquam suam aut sanctimonialem vel raptam sive adulteram,

quam illic ei non licebat habere, fugiens secum ducit: hic talis, cum episcopus, ad cuius curam pertinebit, nobis notum fecerit, diligenter perquiratur, ne morandi vel latendi locum in regno alicuius nostrum inveniatur et Dei ac nostros fideles suo morbo inficiat; sed a nobis vel per ministros rei publicae constringatur et, ut simul cum diabolica praeda, quam secum duxit, ad episcopum suum redeat et de quocumque crimine publico debitam poenitentiam suscipiat aut susceptam legitime peragat, compellatur': no. 205, c. 5, *Capitularia regum Francorum II*, ed. Boretius (n. 25 above) 73. On this text see now de Jong, *The Penitential State* (n. 8 above) 264.

²⁸ Mayke de Jong has demonstrated how the vocabulary for offences varied amongst commentators on Louis the Pious's public penance, and amongst early ninth-century writers more generally, but she has not focussed her attention on vocabulary for serious sin but rather on that for offences in the public domain: for the suggestion that *crimen* carries more legalistic overtones see eadem, *The Penitential State* (n. 8 above) 240; on its association with scandal, *ibid.* 255. The vocabulary for offences in the public domain included *scandalum* (scandal or temptation to sin), *negligentia* (neglect of divine ministry by those appointed to office) which was sometimes used interchangeably with *flagitia*, and *perturbatio* (creation of disorder i.e. actions which are scandalous), *ibid.* 237-9. *Crimen* (crime), *scelus* (a particularly wicked or accursed act), *flagitium* (shameful act) all seem to have been commonplace in the medieval period.

²⁹ For a fuller definition of *placitum* see *The Settlement of Disputes in Early Medieval Europe*, ed. Wendy Davies and Paul Fouracre (Cambridge 1986) 273.

³⁰ On the political significance of the location of the *placitum* in the episcopal hall in Lucca, see Hagen Keller, 'Der Gerichtsort in oberitalienischen und toskanischen Städten: Untersuchungen zur Stellung der Stadt im Herrschaftssystem des Regnum italicum vom 9. bis

11. Jahrhundert' *Quellen und Forschungen aus italienischen Archiven und Bibliotheken* 49 (1969) 1-72, espec. 5-40.

³¹ *I placiti del 'regnum italiae,'* ed. Cesare Manaresi, *Fonti per la storia d'Italia* 92 (Rome 1955), no. 16, l. 42-48. This case is briefly mentioned by Bougard, *La justice dans le royaume d'Italie* (n. 9 above) 237, n. 10.

³² The case was brought by the advocate of Gumperga's monastery of St Peter in the diocese of Pisa.

³³ 'Et dum hec omnia diligenti cura secundum iussionem domni nostri regis inquisissemus, secundum canonicam auctoritatem de his qui degradati presumunt sacrosanctum agere: 'Si quis presbiter aut diaconus a proprio [episcopo] excommunicatus, presumpserit aliquid ministerii agere, ipse in se damnatione firmavit.,' *I placiti*, ed. Manaresi, l. 47. Compare *ibid.* no. 26, l. 82, where the words 'secundum morem consuetudinis numquam eis liceret in alio sinodo spem ad restituendum aberet' were added to this quote. I have not been able to find a direct source for this text, although the sentiment echoes that of the Council of Antioch (341), c. 4: 'Si quis episcopus dampnatus a sinodo, uel presbiter aut diaconus a suo episcopo, ausi fuerint aliquid de ministerio sacro contingere, siue episcopus, iuxta precedentem consuetudinem, siue presbiter aut diaconus, nullo modo liceat ei, nec in alia sinodo, restitutionis spem aut locum habere satisfactionis; sed et communicantes ei omnes abiici de ecclesia et maxime si posteaquam didicerint aduersum memoratos prolatam fuisse sententiam, eisdem communicare tentauerint.,' *PL* 67, col. 160. This text was also cited in the mid-ninth century west Frankish Benedictus Levita *Collectio Capitularium* (847-52), *PL* 97, col. 711, on which see Lotte Kéry, *Canonical Collections of the Early Middle Ages (ca. 400-1140). A Bibliographical Guide to the Manuscripts and Literature* (Washington D.C. 1999).

³⁴ *I placiti*, ed. Manaresi, no. 26, l. 80-84.

³⁵ ‘Placuit nobi eciam summopere statuere, ut episcopi et comites uniti sint in suis paroechiis et comitatibus pro pace et salvatione in omnibus operibus suis habitantibus, ita ut nullum praedonem, raptorem vel incestum permittant morari in suis sedibus vel concessis honoribus,’ *Capitularia regum Francorum II*, ed Boretius (n. 25 above) no. 224, c. 1, 107.

³⁶ ‘Ut nullus clericorum vel sacerdotum, si aliquam causationem cum altero clerico vel sacerdote habuerit, praesumat ad iudicium ire laicorum....Si quis vero aliter facere praesumpserit, procul dubio iuxta canonum iussionem excommunicatus districtius erit.,’ *MGH Capitula episcoporum III*, ed. Rudolf Pokorny (Hannover 1995), c. 21, 329. Compare that of Bishop Atto of Vercelli (924-c.960): ‘Si qui ex fratribus negotium habent inter se, apud cognitores saeculi non iudicentur, sed apud presbiteros ecclesiae, quicquid illud est, dirimatur.,’ c. 52, *ibid.* 283. Atto’s text is derived from Pseudo-Isidore, via the *Collectio Anselmo dedicata* V. 109, *ibid.* 283, n. 144.

³⁷ ‘Habeant igitur episcopi singularum urbium in sua dioecesi liberam potestatem adulteria et scelera inquirere, ulcisci, et iudicare, secundum quod canones censuerunt, absque impedimento alicuius,’ Joannes Dominicus Mansi, *Sacrorum conciliorum nova et amplissima collectio*, 53 vols (Venice, 1759-98; reprinted Graz 1960-61), 17A, 226.

³⁸ *Capitularia regum Francorum II*, ed. Boretius (n. 25 above), no. 203, c. 6, 66.

³⁹ See also n. 28 above.

⁴⁰ The language used to describe such offences is inconsistent: in addition to these terms note Atto of Vercelli’s use of ‘delicta’: *MGH Capitula Episcoporum III* (n. 36 above) 296.

⁴¹ Peter Llewellyn, *Rome in the Dark Ages* (London 1971) 292-3; Conrad Leyser, ‘Charisma in the Archive: Roman Monasteries and the Memory of Gregory the Great, c. 870-c.940,’ *Le scritture dai monastery. Atti del II° seminario internazionale di studio ‘I monastery nell’alto*

medioevo 'Roma, 9-10 maggio 2002, ed. Flavia de Rubeis and Walter Pohl, Acta Instituti Romani Finlandiae 29 (Rome 2003) 207-26.

⁴² 'Concilia dehinc Ecclesiae nusquam, conuentus synodici non alicubi, nil ecclesiastica lege aut approbatur aut inprobatur, accusatur uel exusatur, defenditur aut opponitur, sed omnia ui, potestate et iudicio seculari imperantur, perficiuntur et tolerantur, iuste aut iniuste. Cuius rei quoque astipulator extat et iste, a coepiscopis quidem non iudicatus a laicis uero nulla preeunte audientia exsilio deportatus': *Ratherii Veronensis Praeloquiorum libri VI; Phrenesis; Dialogus confessionalis; Exhortatio et preces; Pauca de vita sancti Donatiani; Fragmenta nuper reperta; Glossae*, ed. Peter L. D. Reid and others, *Corpus Christianorum continuatio mediaevalis* 46A (Turnhout 1984), V. 13, 152; for translation see *The Complete Works of Rather of Verona*, trans. by Peter L. D. Reid (Binghamton, NY 1991) 166.

⁴³ King Hugh (926-47), count of Provence, succeeded to the throne of Italy in 926: see H. Zielinski, 'H. v. Arles und Vienne,' *Lexikon des Mittelalters*, 10 vols (Munich, 1977-99), 5. 158. For brief accounts of his reign see Sergi, 'The Kingdom of Italy' (n. 7 above) 351-55; Chris Wickham, *Early Medieval Italy: Central Power and Local Society 400-1000* (London, 1981) 177-179.

⁴⁴ *Die Briefe des Bischofs Rather von Verona*, ed. Fritz Weigle, MGH Die Briefe der deutschen Kaiserzeit I (Weimar 1949), Ep. 7, 33-43, at 38; *The Complete Works of Rather*, trans. Reid (n. 42 above) no. 10, 226.

⁴⁵ Ibid. ep. 24, 119-24 at 122; *The Complete Works of Rather*, trans. Reid (n. 42 above) no. 40, 425.

⁴⁶ 'Quem enim laicorum de adulterio convenire ausus fuisssem in synodo quem de periurio, quem de quovis flagitio, clericorum frustratus iuditio?', ibid. ep. 26, 144; *The Complete Works of Rather*, trans. Reid (n. 42 above) no. 47, 472-73.

⁴⁷ ‘Quosdam vero de civitate pro diversis sceleribus acusatos, cum ad satisfactionem venire dedignati fuissent, missis e latere meo cum hostiariis ecclesiae comprehendi, ut moris est, feci et satisfactionem factam in idem opus expendi.’: *ibid.*, ep. 33, 184; *The Complete Works of Rather*, trans. Reid (n. 42 above), no. 65, 527-30. On the background to this particular battle, and in particular the importance played by Otto I’s withdrawal of support for Rather after the bishop used lands previously held by military men to support the lesser clergy, see F. Weigle, ‘Ratherius von Verona im Kampf um das Kirchengut 961-68,’ *Quellen und Forschungen aus italienischen Archiven und Bibliotheken* 28 (1937-8) 18-34; also Maureen Miller, *The Formation of a Medieval Church: Ecclesiastical Change in Verona, 950-1150* (Ithaca, NY 1993) 160.

⁴⁸ On Atto’s work and career see Suzanne Fonay Wemple, *Atto of Vercelli. Church, State and Christian Society in Tenth-Century Italy*, *Tem e testi* 27 (Rome 1979).

⁴⁹ Cc. 36, 48, 69, 78, *MGH Capitula Episcoporum III* (n. 36 above), 278, 281, 289, 293.

⁵⁰ C. 49, *ibid.* 282.

⁵¹ ‘Non debet presbiter iniungere penitentiae leges sine aliquo respectu personae aut causae, sed tempora penitentiae aut reconciliationis episcopi arbitrario concedat. Et ut presbiter inconsulto episcopo non reconciliet penitentem nisi episcopo permittente. Sed potius presbiteri, qui in plebibus ordinantur, providentiam magnam habeant, ne eorum parroechiani in criminalia incidant delicta. Quod si evenerit, tam ab ipsis quam ab omnibus vicinis diligenter, qualiter acta sunt, inquirant et scriptis notare, non differant eosque admonere frequenter studeant, ut ad pacis et penitentiae satisfactionem citissime currant, et cum ipsis primus eiusdem plebis presbiter, aut qui doctior post ipsum fuerit, veniat idemque, quod scripserat, secum adferat. Quodsi hiidem penitentes venire distulerint, ipse in capite ieiunii ad primam eiusdem episcopii sedem esse nullo modo cum eodem dissimulet scripto suoque hoc suggerat episcopo, ut, quod ei exinde agendum sit, consideret. Si autem etiam penitentes

adfuerint, leges, quae illis penitentiae imponuntur, rursus describat curamque et sollicitudinem erga eos maximam gerat, ut eorum conversationem plenissime cognoscere possit. Quodsi obnixe aliquem penitentiae viderit incumbere aut debilitate incurrente periculum speretur, aut si infirmitas quempiam oppresserit, ad suum presbiter recurat episcopum, ut illi per ipsum remedia concedantur. Qui si defuerit, cardinalibus prime sedi presbiteris interim suggeratur. Ad diem namque reconciliationis, id est caena domini, ipse quoque recurat singulorum acta plenissime indicandum. Similiter etiam quarto die post octavam pentecosten cum ipsis pariter adesse festinent, ut rursus, quae illis iussa fuerint, cognoscere et describere possit.,’ c. 90, *ibid.* 296-7. On this text see Sarah Hamilton, *The Practice of Penance, 900-1050* (Woodbridge 2001) 73-6.

⁵² For example those edited in *MGH Capitula episcoporum I*, ed. Peter Brommer (Hannover 1984), especially Theodulf of Orléans’ *Capitula I*, *ibid.* 73-142, which circulated widely in the tenth and eleventh centuries, including in Italy, *ibid.* 90-1, 93-4, 97-8.

⁵³ *PL* 134, 115.

⁵⁴ *Die Urkunden der deutschen Könige und Kaiser I: Die Urkunden Konrad I, Heinrich I, und Otto I*, *MGH Diplomatum regum et imperatorum Germaniae I* (Berlin 1956) no. 334, 448-49 at 449.

⁵⁵ C. 17, *MGH Concilia III* (n. 26 above) 227. The council of Pavia also enjoined excommunication on those who were disobedient to the bishop, *ibid.* c. 18, 227-8; *Capitularia regum Francorum II*, ed. Boretius (n. 25 above) c. 9, 110.

⁵⁶ *PL* 132, 1051-53 (San Vincenzo al Volturno (930)); *PL* 133, 869-71 (San Vincenzo al Volturno (944)); *PL* 133, 867-69 (Monte Cassino) (944).

⁵⁷ Epp. 74, 83, 87, and 107, *MGH Epistolae Karolini aevi V: Registrum Iohannis VIII papae*, ed. Erich Caspar, *MGH Epistolarum VII* (Berlin, 1928), 69-71, 78-79, 82-83, 99-100.

⁵⁸ Ep. 5, *ibid.* 4-5.

⁵⁹ Ep. 76, *ibid.* 73. See also epp. 77, 279, *ibid.* 73-4, 246-7. On this case see Patricia Skinner, *Family Power in Southern Italy: The Duchy of Gaeta and Its Neighbours, 850-1139* (Cambridge 1995) 47-9; Barbara Kreutz, *Before the Normans: Southern Italy in the Ninth and Tenth Centuries* (Philadelphia 1991) 57-60. He later excommunicated the Amalfitans for the same offence: Ep. 249, *ibid.* 217-18. Other letters suggest he was at the apex of an appeals system: he wrote to the emperors asking them to grant mercy towards one Madelgerius who had murdered Odelric, but who had subsequently made a personal pilgrimage to the pope to appeal against his sentence, and to Madelgerius's bishop that he should be absolved: Epp. 12, 15, *ibid.* 11, 13-14. Mayke de Jong has shown how earlier ninth-century writers used '*scandalum*' to denote 'public sin,' in the sense of an offence that had undermined a divinely sanctioned order of society': *The Penitential State* (n. 8 above) 232.

⁶⁰ Cc. 5-8: Mansi, *Sacrorum conciliorum* (n. 37 above) 17. 338.

⁶¹ Cc. 9, 10, *ibid.*, 17. 338-9.

⁶² C. 15, *ibid.*, 17. 339-40.

⁶³ *The Annals of St-Bertin*, trans. Janet L. Nelson (Manchester 1991) 207-10, espec. 209; on Hincmar's authorship see *ibid.* 208, n. 8.

⁶⁴ *Die Konzilien Deutschlands und Rechtsitaliens 916-1001, II: 962-1001*, ed. by Ernst-Dieter Hehl, MGH Concilia VI (Hannover 2007) 565-67; Hamilton, *The Practice of Penance* (n. 51 above) 1-2.

⁶⁵ 'cui etiam archipresbitero hanc potestatem concessimus, ut de criminalibus culpis ipse iudicium indicat paenitentibus. Attamen, si necessitas incubuerit, ab aliquo episcopo expectat iudicium, ne desideranti animae paenitentiam interim negare videatur': *Papsturkunden 896-1046*, ed. Harald Zimmermann, 2 vols (Vienna 1985) 2. 857-58 at 2. 858.

⁶⁶ Paul Fournier and Gabriel Le Bras, *Histoire des collections canoniques en occident depuis les fausses décrétales jusqu'au décret de Gratien*, 2 vols (Paris 1931-2), and now Kéry, *Canonical Collections* (n. 33 above).

⁶⁷ For the later period see Kathleen G. Cushing, 'Cruel to be Kind: Penance and Excommunication in Gregorian Canonical Collections,' *Proceedings of the Eleventh International Congress of Medieval Canon Law, Catania, Italy, 30 July – 6 August 2000*, ed. Manlio Bellomo and Orazio Condorelli, Monumenta Iuris Canonici, Serie C, Subsidia 12 (Vatican City 2007); her forthcoming study *Power, Discipline and Pastoral Care: Penance and Reform in Eleventh-Century Italy* will no doubt cast much needed further light on this area.

⁶⁸ Franz Kerff, 'Libri paenitentiales und kirchliche Strafgerichtsbarkeit zum Decretum Gratian: ein Diskussions verslag,' *Zeitschrift der Savigny-Stiftung für Rechtsgeschichte kanonistische Abteilung* 75 (1989) 23-57. For the argument in favour of them as pastoral text, based on both the text and the codicology of the manuscripts see Raymund Kottje, 'Buße oder Strafe?' Zur 'Iustia' in den 'Libri Paenitentiales', *La giustizia nell'alto medioevo (secoli V-VIII) I*, Settimane de studio del centro italiano di studi sull'alto medioevo, Spoleto 42 (Spoleto 1996) 443-68.

⁶⁹ Rob Meens, 'Frequency and Nature of Early Medieval Penance,' *Handling Sin: Confession in the Middle Ages*, ed. Peter Biller and A.J. Minnis (Woodbridge 1998) 35-61; idem, 'Penitentials and the Practice of Penance in the Tenth and Eleventh Centuries,' *Early Medieval Europe* 14 (2006) 7-21; Hamilton, *The Practice of Penance* (n. 51 above) 48-50.

⁷⁰ Hamilton, *The Practice of Penance* (n. 51 above) 25-50; Adriaan Gaastra, 'Penance and the Law: The Penitential Canons of the *Collection in Nine Books*,' *Early Medieval Europe* 14 (2006), 85-102, and idem, 'Between Liturgy and Canon Law. A Study of Books of Confession and Penance in Eleventh- and Twelfth-Century Italy' (unpublished doctoral

dissertation, University of Utrecht 2007); Ludger Körntgen, 'Canon Law and the Practice of Penance: Burchard of Worms's Penitential,' *Early Medieval Europe* 14 (2006), 103-17; Meens, 'Penitentials and the Practice of Penance' (n. 69 above).

⁷¹ 'Sciant igitur sacerdotes scripturas et canones, ut omne opus eorum in praedicatione et doctrina consistat, atque aedificent cunctos tam fidei scientia quam operum disciplina': c. 3, *MGH Capitula Episcoporum III*, ed. Pokorny (n. 36 above) 266.

⁷² 'Feria quarta ante quadragesimam plebem ad confessionem invitate et ei iuxta qualitatem delicti poenitentiam iniungite non ex corde vestro sed sicut in poenitentiali scriptum est.....martyrologium et penitentialem habeat,' Ep. 25, *Die Briefe*, ed. Weigle (n. 44 above) 133, 135.

⁷³ cc. 63, 97, Robert Amiet, 'Une "Admonitio synodalis" de l'époque carolingienne: étude critique et édition,' *Mediaeval Studies* 26 (1964), 12-82 at 58, 68. On the sources for Atto see also Wemple, *Atto of Vercelli* (n. 48 above) 213.

⁷⁴ For northern Italy see Gunther Hägele, *Das Paenitentiale Vallicellianum I. Ein oberitalienscher Zweig der frühmittelalterlichen kontinentalen Bußbücher* (Sigmaringen 1984); Hamilton, *The Practice of Penance* (n. 51 above) 48-50; for central and southern Italy see Gaastra, 'Between Liturgy and Canon Law' (n. 70 above); Roger E. Reynolds, 'Penitentials in South and Central Italian Canon Law Manuscripts of the Tenth and Eleventh Centuries,' *Early Medieval Europe* 14 (2006), 65-84.

⁷⁵ Francis Newton, *The Scriptorium and Library at Monte Cassino 1058-1105* (Cambridge 1999), especially 10.

⁷⁶ Allen J. Frantzen, *The Literature of Penance in Anglo-Saxon England* (New Brunswick, NJ 1983).

⁷⁷ Gaastra, 'Penance and the law' (n. 70 above); idem, 'Between liturgy and canon law' (n. 70 above). Amongst Roger E. Reynolds' extensive researches in this field see especially his

‘The South-Italian Canon Law Collection in Five Books and its Derivatives: New Evidence on Its Origins, Diffusion and Use,’ *Mediaeval Studies* 52 (1990), 278-95, espec. 280-81; idem, ‘The Transmission of the *Hibernensis* in Italy: Tenth to Twelfth Century,’ *Peritia* 14 (2000) 20-50; idem, ‘Penitentials in South and Central Italian Canon Law Manuscripts’ (n. 74 above).

⁷⁸ There is no edition of the text; the preface and headings of the parts are available in *PL* 56, 315-6; Jean-Claude Besse's partial edition of the incipit-explicit index of chapters has been criticised but makes the collection accessible: *Histoire des textes du droit de l'église au moyen age de Denys à Gratien: Collectio Anselmo Dedicata. Étude et texte. Extraits* (Paris 1957).

⁷⁹ There are five full copies in tenth-century Italian manuscripts, in addition to the evidence from two fragments: for a comprehensive listing of the manuscripts see Kéry, *Canonical Collections* (n. 33 above) 124-6.

⁸⁰ Besse, *Collectio Anselmo Dedicata* (n. 78 above) xxii. R. Reynolds, 'Law, Canon: to Gratian,' *Dictionary of the Middle Ages*, ed. J. Strayer, 13 vols (New York 1982-89), 7. 395-413, espec. 406. For the argument that the diffusion of Pseudo-Isidore owed a good deal to the *Collectio Anselmo dedicata*, see H. Fuhrmann, *Einfluß und Verbreitung der pseudoisidorischen Fälschungen, von ihrem Auftauchen bis in die neuere Zeit*, MGH Schriften 24, 3 vols (Stuttgart 1972-4), 2. 425-35.

⁸¹ 'De synodo caelebranda et vocatione ad synodum, de accusatoribus et accusationibus, de testibus et testimoniis, de expoliatis injuste, de iudiciis et iudiciis ecclesiasticis vel saecularibus,' Besse, *Collectio Anselmo Dedicata* (n. 78 above) 4.

⁸² c. 27, *MGH Capitula Episcoporum III*, ed. Pokorny (n. 36 above) 275. Atto's ultimate source is the Council of Toledo IV, 3, but for the argument that his immediate source was the *Collectio Anselmo dedicata*, III, 20 see Wemple, *Atto* (n. 48 above) 126 n. 79, 213.

⁸³ *Spicilegium Romanum*, ed. Angelo Mai, 10 vols (Rome 1839-44), 6. 396-472.

⁸⁴ Paul Fournier, 'Un group de recueils canoniques italiens des X et XI siècles,' *Mémoires de l'Institut national de France. Académie des inscriptions et belles-lettres* 40 (1916), 95-213; repr. in idem, *Mélanges de droit canonique*, ed. Theo Kölzer, 2 vols (Aalen 1983), 2. 213-331 at 269-73; idem and Le Bras, *Histoire des collections canoniques* (n. 66 above) 1. 341-7.

⁸⁵ Gaastra, 'Penance and the Law' (n. 70 above).

⁸⁶ Ibid. 100-102.

⁸⁷ Reynolds, 'Penitentials' (n. 74 above). On the role of South Italian monasteries in the education of the clergy see Valerie Remseyer, *The Transformation of A Religious Landscape: Medieval Southern Italy 850-1150* (Ithaca, NY 2006) 191-2. See also Gaastra, 'Between Liturgy and Canon Law' (n. 70 above) chapter 8.

⁸⁸ Hägele, *Das Paenitentiale Vallicellianum I* (n. 74 above) 93-95.

⁸⁹ Gaastra, 'Penance and the Law' (n. 70 above).

⁹⁰ *Die lateinischen Handschriften der Sammlung Hamilton zu Berlin*, ed. Helmut Boese (Wiesbaden 1966), 142-3; Raymund Kottje, *Die Bussbücher Halitgars von Cambrai und des Hrabanus Maurus : ihre Überlieferung und ihre Quellen* (Berlin 1980) 16-18.

⁹¹ Some idea of the contents can be taken from the catalogue entry: *Catalogue of Additions to the Manuscripts in the British Museum in the Years 1846-1847* (London 1864; repr. Norwich 1964) 202-4. On the collection, see Kéry, *Canonical Collections* (n. 33 above) 198; Roger E. Reynolds, 'The *De officiis VII graduum*; Its Origins and Early Medieval Development,' *Mediaeval Studies* 34 (1972) 113-51 at 146. It is small enough to be portable, measuring 15 x 20.5 cm, but is a luxury manuscript, with decorated capitals throughout: Elias A. Loew, *The Beneventan Script: A History of South Italian Minuscule*, 2nd edn, rev. Virginia Brown (Rome 1980).

⁹² Gaastra, 'Between Liturgy and Canon Law' (n. 70 above).

⁹³ Vatican City, Biblioteca Apostolica Vaticana, MS Vat. Lat. 4772. The text is edited in *Bussbücher und das kanonische Bussverfahren nach handschriftlichen Quellen*, ed. Hermann J. Schmitz (Düsseldorf 1898) 403-7. For the significance of the penitential rite see now Hamilton, *The Practice of Penance* (n. 51 above) 166-70.

⁹⁴ Pierre Salmon, 'Un "libellus officialis" du XIe siècle,' *Revue bénédictine* 87 (1977) 257-88; idem, 'Un témoin de la vie chrétienne dans une église de Rome au XIe siècle: le *liber officialis* de la basilique des Saint-Apôtres,' *Rivista di storia della chiesa in Italia* 33 (1979) 65-73; Kottje, *Bussbücher* (n. 90 above) 65-9; Ludger Körntgen, 'Ein italienisches Bussbuch und seine fränkischen Quellen: das anonyme Paenitentiale der Handschrift Vatikan Archiv. S. Pietro H. 58,' *Aus Archiven und Bibliotheken: Festschrift für Raymund Kottje zum 65. Geburtstag*, ed. Hubert Mordek (Frankfurt am Main 1992) 189-205; Sarah Hamilton, 'The *rituale*: The Evolution of a New Liturgical Book,' *The Church and the Book*, ed. Robert N. Swanson, *Studies in Church History* 38 (Woodbridge 2003) 74-86; Gaastra, 'Between Liturgy and Canon Law' (n. 70 above) chapter 3.

⁹⁵ Hamilton, 'The *rituale*' (n. 94 above).

⁹⁶ Fournier and Le Bras, *Histoire* (n. 66 above) 1. 340-41; Kottje, *Bussbücher* (n. 90 above) 76-77; Reinhold Haggenmüller, *Die Überlieferung der Beda und Egbert zugeschriebenen Bussbücher* (Frankfurt am Main 1991) 110-11; Kéry, *Canonical Collections* (n. 33 above) 191.

⁹⁷ Fols 184v-7r; for a partial edition see *Die Bussbücher und die Bussdisciplin der Kirche nach handschriftlichen Quellen dargestellt*, ed. Hermann J. Schmitz (Mainz 1883) 774-79 (*ordo*), 779-86 (*Incipiunt capitula homicidiorum sicut a sanctis patribus per varias eorum codices sunt digesta singula a singulis discreta et in unum congregata*). On this *ordo* see Josef A. Jungmann, *Die lateinischen Bussriten in ihrer geschichtlichen Entwicklung* (Innsbruck 1932) 190-6; Hamilton, *The Practice of penance* (n. 51 above) 166-170.

⁹⁸ I owe this insight to Gaastra, 'Between Liturgy and Canon Law,' ch. 7. E.g. Montecassino, Archivio dell'Abbazia, Cod. 372 which Gaastra dates to the late tenth or early eleventh century, discussing content and providing a new edition; for an earlier flawed edition see *Die Bussbücher*, ed. Schmitz (n. 97 above) 397-432.

⁹⁹ For an analysis of some of this material see Rob Meens, 'Pollution in the Early Middle Ages: The Case of Food Regulations in Penitentials,' *Early Medieval Europe* 4 (1995) 3-19.

¹⁰⁰ Biblioteca Apostolica Vaticana, Archivio S. Pietro H. 58, fols 109r-121v; for a partial edition see Körntgen, 'Ein Italienisches Bußbuch' (n. 94 above). Adriaan Gaastra is in the process of editing this text alongside others from southern Italy for *Corpus Christianorum*.

¹⁰¹ Biblioteca Apostolica Vaticana, Archivio S. Pietro H. 58, ff. 113v-115v.

¹⁰² *Ibid.*, ff. 112v-113v, 115r-115v.

¹⁰³ These canons were largely compilations of older material but it is worth noting that the texts produced for use by the higher clergy in penitential fora also responded to new challenges. The small (and portable) missal from S. Eutizio, now Rome, Biblioteca Vallicelliana B. 63, which has been dated to both the mid- and late eleventh century, also includes material on church law, theology, the liturgy, a calendar and a sacramentary with an *ordo* for giving penance containing a vernacular confession in which the penitent admits in Old Italian to having broken the Truce of God (fol. 231v) [for a dating to 1037 x 89 see Pietro Pirri, *L'Abbazia di Sant'Eutizio in Val Castoriana presso Norcia e le chiese dipendenti* (Rome 1960) 42-53; Edward B. Garrison dated it to 1100-1125: 'Saints Equizio, Onorato, and Libertino in Eleventh- and Early Twelfth-Century Italian Litanies as Clues to the Attributions of Manuscripts,' *Revue bénédictine* 88 (1978), 297-315 at 306]. The survival of a text from southern Italy, absolving the sins of those who seek to maintain the peace, assigning penance to those who break the peace, and threatening with excommunication and malediction those

who break the peace, dating to the second quarter of the eleventh century, the same time as the Truce was introduced into northern Italy, testifies to attempts by Italian clerics to fit new developments into the existing framework for ecclesiastical jurisdiction: Roger E. Reynolds, 'Odilo and the Treuga Dei in Southern Italy: A Beneventan Manuscript Fragment,' *Mediaeval Studies* 46 (1984) 450-62.

¹⁰⁴ On this revival see, in addition to the works by E. Vodola mentioned in n. 11 above, S. Hamilton, 'Penance in the Age of Gregorian Reform,' *Retribution, Repentance and Reconciliation*, ed. Kate Cooper and Jeremy Gregory, *Studies in Church History* 40 (Woodbridge 2004) 47-73.