CULTURAL ENCOUNTERS
IN LATE ANTIQUITY AND
THE MIDDLE AGES, 46



The Oath in Late Antiquity and the Early Middle Ages

Religious Act, Social Bond, Holy Sacrament

Edited by
Stefan Esders and Gerda Heydemann,
with Lukas Bothe

BREPOLS

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LATE ANTIQUITY AND THE MIDDLE AGES

VOLUME 46

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British Library Cataloguing in Publication Data
A catalogue record for this book is available from the British Library.

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ISBN: 978-2-503-62100-5
e-ISBN: 978-2-503-62101-2
DOI: 10.1484/M.CELAMA-EB.5.151747

ISSN: 1378-8779
e-ISSN: 2294-8511

Printed in the EU on acid-free paper.

D/2026/0095/38

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Acknowledgements

As religious acts combining ritualistic elements and speech-acts, oaths are ubiquitous and provide an ideal focus for interdisciplinary research. In December 2016, a group composed of scholars coming from different fields and working in different periods got together in Berlin to discuss the function of oaths, but also the discourses on the oath in late antique and early medieval societies. When preparing the conference, and also through our discussions, it became obvious that we wanted to focus specifically on oaths in the Christian tradition from Late Antiquity to the early Middle Ages. While oaths as an anthropological phenomenon were common in almost all societies whatever their dominant religion, the Christian take on oaths was specific since it was guided by the Bible, which framed Christian oath-taking in a very authoritative way, but also showed a flexible approach to the religious legitimacy of oaths in practice. To combine theory and practice of oaths, to understand their uses, but also contemporary reflections on oaths was thus at the heart of the conference.

Unfortunately, and unpredictably, it took us much longer than we had anticipated to publish some of the most substantial contributions to the Berlin conference within this volume. Without narrating the various obstacles that prolonged the process of finishing this volume in detail, we would like to express our deep gratitude towards our contributors for their generous patience and their trust that this project would come to a happy end. Not all participants of the conference were able to publish their papers as chapters, but we are extremely grateful for their contributions to the conference and their engagement in the lively discussions we had. We were lucky in that Stefan Jurasinski and Michael Wuk agreed to write new contributions that make important additions to the spectrum of topics and regions dealt with in this volume. It should be noted that some of the contributions have been written closer to the original conference in 2016 than others, and that we have not striven to systematically update the bibliography in all cases.

For his work on the concept and programme of the original conference, we would like to thank in particular Lukas Bothe. As research associate in the DFG's Special Research Unit 'Governance in Areas of Limited Statehood', which funded the conference to a considerable extent, he also engaged in many practical matters during the conference. With regard to the final stages of producing this book, we are very grateful to Albert Fenton and Christina Pössel, who corrected the English of those chapters not written by native speakers. We should also like to thank Pia Lucas, Pau-Pernat Poensgen, Friederike Michel, and Maren Nie, whose careful help in copyediting and

proofreading the chapters was indispensable to finish this volume, as well as Yitzhak Hen and the team at Brepols for seeing it through the publishing process. We hope that the final result reflects the fruitful and entangled discussions of our conference and will inspire further research on oaths and their multi-faceted social functions and religious framings in the future.

The editors
Berlin, May 2025

Introduction

Oaths appear as an almost universal feature and an indispensable tool in societies both past and present. In many of them, we find oath-taking as a kind of routine procedure employed to validate legal transactions. This should, however, not distract from the fact that sociologically, the power of oaths is rooted in their focus on essential shared values that tie individual and community together, and on the social standing that an individual has within such a community. For this reason, in most cases a person, by swearing an oath, is taking a somewhat radical course of action and mobilizing all his or her authority and reputation in order to either make a true statement at court or to give a solemn promise about his or her future conduct. The oath is thereby effectuating a profound personal transformation in a public setting; it thus appears to have been a powerful instrument that can give historians a glimpse into the inner fabric of past societies, allowing us to see how norms of behaviour were constructed and how social bonds were created and validated, as well as how conflicts could be settled.

That we find oaths in almost all societies past and present should, however, not obscure the fact that in each society, religion exercised a very specific influence on the use and the consequences of oaths. In contrast to vows, which are usually offered towards a deity, oaths call upon a God as witness who is expected to punish the swearing person, if he or she is not telling the truth or not fulfilling what was promised. But the power of Gods can be imagined in very different ways. This is why it can be so rewarding to compare the function of oaths within different religious cultures.[1]

Moreover, in a more 'functional' perspective, the power of oaths has also to be seen in relation to the legal culture of a society. If we consider the use of oaths in the ancient world,[2] it becomes obvious that the Roman attitude towards oaths in some respects needs to be characterized as fairly 'pragmatic'. For instance, the Roman politician and philosopher Cicero,

1 See Auzépy and Saint-Guillain, eds, *Oralité et lien social au Moyen Âge*; Buc and Conlan, eds, *Oaths in Premodern Japan and Premodern Europe*.

2 Esders, 'Schwur'.

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The Oath in Late Antiquity and the Early Middle Ages: Religious Act, Social Bond, Holy Sacrament, ed. by Stefan Esders and Gerda Heydemann, CELAMA 46 (Turnhout: Brepols, 2026), pp. 9–18 BREPOLS PUBLISHERS 10.1484/M.CELAMA-EB.5.152869

in his late work *De officiis*, discussed at some length the famous legendary episode of the Roman politician and commander Regulus (consul 267 BC), who in the First Punic War was taken captive by the Carthaginians. After having given his honour under oath, Regulus was sent back to negotiate peace, but back in Rome, he persuaded the senate, contrary to his mandate, to continue the war, while he went back to Carthage to keep his word that he would return.[3] Regulus's behaviour served Cicero as a splendid example of the Roman virtue of *fides* which the Romans preserved even towards their enemies. This caused him to add some general words on his understanding of how oaths functioned:

> Sed in iure iurando non qui metus, sed quae vis sit, debet intellegi. Est enim ius iurandum affirmatio religiosa; quod autem affirmate at quasi deo teste promiseris, id tenendum est. Iam enim non ad iram deorum, quae nulla est, sed ad iustitiam et ad fidem pertinet. […] Qui ius igitur iurandum violat, is fidem violat, quam in Capitolio vicinam Iovis optimi maximi … maiores nostri esse voluerunt.[4]
>
> > (In taking an oath it is our duty to consider not what one may have to fear in case of violation but wherein its obligation lies: an oath is an assurance backed by religious sanctity; and a solemn promise given, as before God as one's witness, is to be sacredly kept. For the question no longer concerns the wrath of the gods (for there is no such thing) but the obligations of justice and good faith. […] Whoever, therefore, violates his oath violates Good Faith, which our forefathers chose that she should dwell upon the Capitol, neighbour to Jupiter Supreme and Best.)

Fides and *bona fides* were key concepts in Roman social life and ethics, as is illustrated not only by the famous temple on the Capitol dedicated to *Fides* as a goddess in the mid-third century BC[5] to which Cicero referred, but also by the well-known coins illustrating the *fides exercituum* with a handshake.[6] They illustrate well how the oath was regarded by many as an instrument to maintain *fides* and legal obligations, rather than an act of intrinsic religious value. Accordingly, while Cicero emphasized that oaths needed to be kept, his thought was centred more on the idea of trust than on the oath per se. Delineating a historical development that had replaced the fear of Gods by law and trust, he even denied that there could exist anything like 'the wrath of Gods'. Accordingly, religion comes only into play for Cicero as something

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3 Cicero, *De officiis* III, 26, 99–32, 115.

4 Cicero, *De officiis* III, 29, 104 (quoted here following the Loeb translation by Miller, p. 383, slightly altered).

5 Reusser, *Der Fidestempel auf dem Kapitol in Rom*.

6 See Sear, *Roman Coins and Their Values*, vol. IV, p. 49; see also Morgan, *Roman Faith and Christian Faith*.

that had the potential to make Roman laws work better. In a way this may appear as anticipating the laconic remark by the German philosopher Arthur Schopenhauer (d. 1860) that oaths should in principle be avoided but can indeed be useful as a 'metaphysical detour for jurists'.[7]

It seems to be in accordance with this pragmatic attitude of legal practitioners and philosophers, and indeed their attempt to keep law and religion separate, that we find in a law issued by the Roman emperor Alexander Severus in 223 the explicit statement that no earthly institution should be responsible for punishing perjury:

> Iurisiurandi contempta religio satis deum ultorem habet. Periculum autem corporis vel maiestatis crimen secundum constituta divorum parentum meorum, etsi per principis venerationem quodam calore fuerit periuratum, inferri non placet.
>
> (In case of contempt of the religious power of the oath it is sufficient to have God as punisher. Even if a false oath was sworn with a certain fervour through venerably invoking the prince, it does not please us to take legal action according to the statutes of our divine forefathers which would entail a danger of corporal punishment or the crime of lèse-majesté.)[8]

To be sure, the Romans regarded oaths as powerful instruments to make their legal norms and procedures work. But in the case of failure, they deemed punishable the crime that was committed, not the fact that an oath had been taken beforehand and broken. Notwithstanding, a notorious perjurer could become an *infamatus* in ancient Rome, which could have a significant impact on his legal capacity in the future.[9] And in the imperial period, when oaths were often sworn by invoking the Roman emperor as deity,[10] breaking such an oath could theoretically be sanctioned as a violation of the emperor's majesty. Still, it is typical that in Roman legal discourse nobody cared about the religious implications that the violation of an oath might create. The Gods were considered mighty enough to care for themselves in punishing any abuse of their name, and Alexander Severus could remind his subjects of the emperor's majesty without using it as a legal instrument.

---

7 'Der Eid ist die metaphysische Eselsbrücke der Juristen: sie sollten sie so selten, als irgend möglich, betreten. Wenn es aber unvermeidlich ist, da sollte es mit größter Feierlichkeit, nie ohne Gegenwart des Geistlichen, ja, sogar in der Kirche, oder in einer dem Gerichtshofe beigegebenen Kapelle, geschehn.' (Schopenhauer, *Parerga und Paralipomena*, vol. II, ch. 15: 'Ueber Religion', p. 298).

8 *Codex Iustinianus* IV, 1 (*De rebus creditis et de iureiurando*), 2, ed. by Krüger, p. 149 (author's translation).

9 Cicero, *De legibus* II, 9, 22.

10 Seidl, *Der Eid im ägyptisch-römischen Provinzialrecht*; Worp, 'Byzantine Imperial Titulature'; for a symbolic and functionalistic interpretation, see Hopkins, 'Divine Emperors or The Symbolic Unity of the Roman Empire', pp. 197–242.

Against the backdrop of this pragmatic Roman attitude to religion and oath-taking, it seems worthwhile to ask what impact Christianity may have had on the issue of oath-taking and perjury as debated within Roman and indeed post-Roman societies. Naturally, the numerous examples of the punishment of perjury that we encounter, for example in Christian miracle stories,[11] would suggest that the Christian God was considered sufficiently mighty to care for himself in punishing any abuse of his name. The main difference between 'pagan' and Christian attitudes towards oath-taking and perjury was not, it seems, one of the power of God(s), but rather one of what we may call 'belief' or scriptural base. The use of oaths in Christianity can be characterized by a tension rooted in the fact that its founder had explicitly rejected the use of oaths. In the Sermon on the Mount (Matt. 5. 33–37), one of the few and therefore crucial passages of the New Testament that may be characterized as explicitly prescriptive in a legal sense, and similarly in the so-called Epistle of James (5. 12), we find that Christ himself, in an explicit rejection of contemporary practices, forbade the swearing of any oath:

> Again you have heard that it was said to those of old, 'You shall not swear falsely, but shall perform to the Lord what you have sworn'. / But I say to you, 'Do not take an oath at all, either by heaven, for it is the throne of God, / or by the earth, for it is his footstool, or by Jerusalem, for it is the city of the great King. / And do not take an oath by your head, for you cannot make one hair white or black. / Let what you say be simply "Yes" or "No"; anything more than this comes from evil'.[12]

Christ's message was unambiguous in the view that perjurers were problematic since they abused the name of God for earthly purposes; and similarly, the idea was disseminated within the nascent community of Christians that trust should be created without recourse to oath-taking, since the new faith rendered oaths themselves unnecessary. In this sense the statement seems to converge with the Roman attitude that it was *fides* that should matter, not the oath per se. But the interpretative framework of the Christian prohibition was more complex. There has been a lot of discussion among theologians as to what may have motivated Christ to condemn so categorically the practice of oath-swearing: was it directed against Jewish practices of swearing, or should it be seen as part of a wider critical attitude against swearing which we also encounter in Greek texts?[13] Paradoxically, despite or even contrary to the prohibition of swearing, the Christian period between the fourth and the eleventh centuries can thus be described as one of an enormous diversification and spread in the use of oaths. This process generated a great deal of reflection and debates on the practice of oath-swearing, its legitimacy, significance, and meaning,

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11 Devos, 'Saints garants de la foi jurée'; Esders, '"Avenger of All Perjury"', pp. 17–40 and 111–29.

12 Matt. 5. 33–37.

13 Vahrenhorst, *'Ihr sollt überhaupt nicht schwören'*; Kollmann, 'Das Schwurverbot Mt 5,33–37/ Jak 5,12'; Kollman, 'Erwägungen zur Reichweite des Schwurverbots Jesu (Mt 5,34)'.

and also its limits. The prohibition to swear laid the foundation for further reflection about oaths, traces of which we find in sermons, pastoral letters, biblical commentaries, canon law, and even ecclesiastical historiography. It is in these texts where we can detect most prominently the specific character of Christian attitudes towards oath-taking. Moreover, through comparison, significant differences in such attitudes in other monotheistic religions such as Judaism[14] and Islam can be discovered.[15] Not that these religions took the practice of invoking the name of Yahwe or Allah lightly. But they did not have to cope with the problem that a prophet or God had explicitly forbidden to swear at all. It was this fundamental contradiction between Christ's prohibition and the practical requirements of social, economic, and legal life which Christian thinkers had to come to terms with. Needless to say, many maintained a radical position in declining to swear altogether, as we find it expressed by Basil of Caesarea and John Chrysostom.[16] In later periods, such a radical stance was often held by members of medieval religious groups which the mainstream church regarded as 'heretical',[17] as is the case in our present time for Jehovah's Witnesses, amongst others. Most theologians, however, and accordingly, would not condemn swearing altogether, as they would not overlook their societies' need to use oaths as instruments of trust and justice. Rather, they were looking for ways to qualify promises and oaths, possibly even to reduce the constellations in which swearing was necessary or to remedy situations when the abuse of an oath and the violation of God's name became obvious.[18]

If we try to structure these reflections, four aspects merit further investigation here:

1. The first relates to the Christian oath as a religious act and the prohibition to swear in theology and exegesis. How was the biblical prohibition dealt with, and which arguments were used to mitigate it without claiming it to be irrelevant?

2. The second aspect concerns the dangers of perjury. Naturally, Christian thinkers could anticipate that legitimating the use of oaths under certain conditions would encourage perjury on a larger scale. What could be done to make this less likely to happen? Where was caution exercised? What role did stipulation and reservation clauses play in avoiding perjury? And when perjury occurred, what remedies could be applied to mitigate God's wrath? What role, for instance, did penance play to compensate for such a grave offence?

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14 Magnetti, 'The Oath in the Old Testament'; Ziegler, *Promises to Keep*; Strine, *Sworn Enemies*; Klein, *Beschworene Selbstverpflichtung*.

15 Marsham, *Rituals of Islamic Monarchy*, pp. 21–79.

16 See Esders, 'Schwur', pp. 49–50 (with references).

17 Vauchez, 'Les refus du serment chez les hérétiques médiévaux', pp. 257–63.

18 Hofmeister, *Die christlichen Eidesformen*.

3. A third point is about personal obligations and the creation of social bonds and legal trust. Did Christianity develop a special concept of promise? What was the opinion of Christian thinkers on the will of a Christian individual and his ability to contract? And how did the oath fit into this picture?

4. The fourth aspect focuses on the obligations created by oaths and on discourses of political theory centred around the oath. Which arguments had to be put forward, which authorities needed to get involved, and which rituals had to be performed in order to dissolve oaths? Did the breaking of an oath-based promise by a religiously legitimized ruler give his subjects a right to resist?

Among the chapters contained in this volume, the Romano-Christian point of departure is addressed in the first section, which deals with 'The Christian Oath in Roman Society'. Bernd Kollmann commences with a careful contextualization of 'Jesus's Teachings on Oaths in their Ancient Context', including Roman practice and the Torah. In doing so, Kollmann recovers from oblivion those contemporary practices of oath-taking against which Jesus presumably took a stance when he preached against the swearing of oaths in the Sermon on the Mount (Matt. 5. 33–37). Kevin Uhalde takes up that line of thought and elaborates on 'The Shape of Early Christian Fidelity: Swearing and Repenting in the Face of Uncertainty'. Uhalde shows how the social necessity of oath-swearing was pragmatically reconcilable with the highly dubious aspect of 'deliberate, risk-taking trust' for two influential Christian authors writing before and after the Constantine revolution respectively.[19]

The second section, 'Redefining Social Relations in an Age of Transition', takes up the theme of re-evaluation and re-definition. Susanna Elm looks at 'The Human Condition: *Condicio* and *origo* in Augustine (Letters 10*, 20*, and 24*)', stressing the relevance of the term *condicio*, which means both contract but also personal status in relation to a person's condition at birth. Elm argues that the various technical, legal meanings of *origo* as binding conditions from birth were crucial in Augustine's conceptualization of the sin *per originem*. *Condicio* and *origo* relate to oaths in two different ways, as personal freedom was a prerequisite for oath-taking while the procedures to determine someone's disputed *origo* often comprised the swearing of oaths. Michael Wuk, in '"Alien and inappropriate"? Vigilius of Rome, the Council of Constantinople (553), and the Necessity of Swearing Oaths', examines the oaths received and promised by the sixth-century bishop of Rome, Vigilius, in the course of his difficult negotiations with the emperor Justinian concerning the condemnation of the Three Chapters. Although Vigilius received and took these oaths under considerable political pressure,

19 The phrase is taken from Morgan, *Roman Faith and Christian Faith*, p. 181.

he was eager to extract the best possible benefit from them. While different actors could certainly invoke the scriptural prohibition to swear when it suited their argument, the oath was handled pragmatically by all sides as a tool to navigate a complex political situation. Jamie Wood then illuminates the practices of 'Making and Breaking Agreements in Early Medieval Iberia: Oaths, Pacts and the Failure of Social Consensus'. Wood focuses on three different kinds of agreements: baptismal pacts, monastic pacts, and oaths of loyalty to the monarch, which have hitherto not been analysed together. Wood stresses the theoretical desire of Visigothic-era lawmakers to use pacts and oaths as mechanisms for achieving social consensus in a changing world, as well as their practical failures. The two chapters convened in this section thus underline the functionality and increasing social importance of oaths in Late Antiquity, thereby forestalling the centrality of oaths in social, legal, and political affairs of the Carolingian era.

This last notion is pursued in the third section of the volume, 'Fidelity and Political Theology'. Jennifer Davis explores 'Rethinking the Oath of Fidelity during the Reign of Charlemagne'. Davis finds that Charlemagne's new conception of the oath of fidelity, apparent in a capitulary of 802, illuminates some of the defining characteristics of Charlemagne's rulership, in particular its ambitious yet diffuse nature, its focus on community-building, and some of the tensions attendant on its implementation. She argues that the articulation of the oath of fidelity in 802 reveals in microcosm some of the guiding ideas and tensions that animated the court of Charlemagne and helped shape the new empire. During the succession crisis between the sons of Louis the Pious in the mid-ninth century, accusations of disloyalty or manipulation of oaths were very effective means of attacking one's opponents. This shows how central the complex notion of *fides* had become to the political and religious ideals and practice of the upper echelons of Carolingian society. Heiko Behrmann looks at 'Oath-Taking and Perjury in the Annals of St Bertin: Tracing the Political Thought of Hincmar of Reims'. Behrmann shows that Hincmar of Reims treated oaths with the utmost sensitivity, especially those with royal participation. He suggests that Hincmar's conceptual framing of the oath as a sacrament and his emphasis on the sacrality of kingship should be seen as foreshadowing later medieval rulers' general exemption from the obligation of taking oaths. While Behrmann's chapter focuses on theological reasons for royal exemptions from oath-taking, Ian Ward tracks 'The End of the Carolingian Oath of Loyalty in the Tenth Century'. Ward examines tenth-century manuscripts for traces of the Carolingian oath of loyalty and finds that access to oath *formulae* was severely limited, while key phrases of Carolingian oath terminology almost disappear from the sources. Positive evidence for oaths in the tenth century demonstrates that oaths did not draw on Carolingian examples in any significant way because the legal and institutional framework had changed so profoundly in the meantime. The three chapters in this section chronologically trace the evolution, refinement, critique, and decline of the decidedly Carolingian concept of

fidelity that resulted from the oath of loyalty to both God and the king, a concept at the core of political theology and royal ideology in particular.

The general functionality of oaths was continuously debated from the formative period of Christianity right up to the Carolingian Renaissance. Theological debates about the fundamental legitimacy of swearing and about oaths taken by clerics, however, only gained momentum in the early Middle Ages. As rulers increasingly relied on the oath of loyalty as an instrument of royal governance, the Church came under renewed pressure to clarify its position towards oath-taking. Contemporary attempts to define the limits of legitimate oath-taking are discussed in the volume's final section, 'Framing the Oath in Early Medieval Theology, Exegesis, and Canon Law'. Stefan Jurasinski looks at 'Augustine, Wilfrid, and The Priest's "Oath" in the Laws of Wihtræd'. In the laws of the Kentish king, Wihtræd, a special formulation for a priest's court testimony is required which is commonly described as an oath but lacks the crucial invocation of divine vengeance on perjury. Jurasinski suggests that the priestly 'oath' found in Wihtræd's laws was understood as a 'safe' oath that would not put clergy at risk of violating obligations to refrain from swearing. Gerda Heydemann and Heiko Behrmann discuss Carolingian exegetes' views on swearing in a jointly written chapter entitled '"Ego autem dico vobis non iurare omnino": The Prohibition to Swear (Matthew 5. 33–37) in Carolingian Exegesis'. Heydemann and Behrmann seek to elucidate how Carolingian thinkers and lawmakers addressed the tension between biblical and legal practice, and how they used this tension to define and delimit the practice of oath-taking, its social functions, and religious consequences. Owen Phelan stresses the sacramental character of oaths in his chapter, 'Between the Fathers and the Masters: The Centrality of Oaths to the Development of an Episcopal Understanding of Marriage in Carolingian Europe'. In order to understand the nature and importance of marriage to early medieval society, Carolingian bishops turned their attention to the oath, which formed a constituent element of early medieval matrimony. Their analyses of marriage in the early Middle Ages illuminate their broader understanding of how oaths integrate basic social, political, and theological bonds integral to their efforts at cultural renewal. After all, early medieval debates about the legitimacy of oaths seemingly culminate in two closely related problems, namely, how to avoid perjury and how to revoke a sworn promise if circumstances necessitated it. Medieval answers to the latter question are discussed by Stefan Esders in his contribution, 'Dissolving the Oath (Seventh to Eleventh Centuries)'. As Esders demonstrates, it was prominent historical cases of the dissolution of oaths (coming from Visigothic Spain, Frankish Gaul, and Carolingian Italy) that were used as precedents in debates held during the Investiture Controversy.

Taken collectively, the chapters in this volume reveal both continuity and transformations in the role of oaths as religious acts, as facilitators of social bonds, and as holy sacraments in the period under consideration. The signature mark of continuity is certainly the function of the oath to render

the invisible visible and in its power to engender new relationships. The centrality of Augustine in all debates about the sacramental character of the oath is apparent throughout the volume. Reading Late Antiquity itself as the creation of new social relationships rather than the collapse of old ones, allows us to better comprehend important changes during the period. The role of Islam as a new player, for example, provided an alternative vocabulary of fidelity, so enthusiastically embraced by the Carolingians. Even though oaths were a powerful and often-used means to create enduring bonds, the chapters convened in this volume also remind us of a proverbial dictum circulating among social anthropologists: namely, that any obligation that is not reversible has no social value at all.

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I.

The Christian Oath in Roman Society

BERND KOLLMANN

Jesus's Teachings on Oaths in their Ancient Context

Introduction

Swearing oaths is a common practice shared by almost all societies. We can make a distinction between assertory oaths and promissory oaths. In using an assertory oath one asserts a statement of a fact. The oath-taker affirms the truth about a present or past event. Oaths taken by courtroom witnesses are illustrative examples. A promissory oath, by contrast, refers to a future action. Examples are the Oath of Office of the President of the United States of America and the Oath of Allegiance sworn by certain public servants in the United Kingdom. The promissory oath easily overlaps the religious and legal territory covered by vows which take the function of deliberate promises and acts of devotion made for the sake of a greater good. Often the promissory oath and the vow become practically identical. In general, an oath can be defined as an assertion or promise relating to something considered sacred as a sign of verity. The words of promise or assertion are strengthened by something or someone of considerable significance. In many cases, oaths refer directly to a deity, supporting an approved statement by appealing to God. The oath-taker calls upon the deity to act as guarantor of his own honesty and integrity in the matter under question. The practice of swearing sacred oaths produces the contrary effect when the oath-taker intentionally commits perjury. A person who swears falsely or breaks an oath not only tells the untruth but also misuses the deity as witness with intent to defraud, and by doing so takes the name of the deity in vain. Furthermore, the oath contradicts basic ethical principles. The words of an autonomous and upright human being should be reliable without appealing to a heteronomous authority. For both religious and ethical reasons, a critical attitude toward oaths was widespread in antiquity. Articulating an unrestricted prohibition of swearing and demanding unrestricted truthfulness of the human word makes Jesus of Nazareth one of the most important voices in the chorus of the ancient critics of oath.

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The Oath in Late Antiquity and the Early Middle Ages: Religious Act, Social Bond, Holy Sacrament, ed. by Stefan Esders and Gerda Heydemann, CELAMA 46 (Turnhout: Brepols, 2026), pp. 21–34 BREPOLS PUBLISHERS 10.1484/M.CELAMA-EB.5.152870

The Antithesis Concerning Oaths (Matthew 5. 33–37)

The largest distinct section of the Sermon on the Mount is the collection of the so-called antitheses (Matt. 5. 21–47). Using six powerful examples, Jesus outlines the principles of his ethical teachings by referring to the requirements of Mosaic law. In each instance, he cites an earlier proposition of the law, using it as a thesis, starting with a version of the formula 'it has been said'. He then postulates an authoritative counterproposition, or antithesis, introduced by the formula 'but I say to you'. The fourth antithesis (Matt. 5. 33–37) contains an ethical argument on the use and misuse of swearing. In some cases, Jesus strengthens and tightens Torah prescriptions in his antitheses, demonstrating that keeping the spirit of the law frequently requires more than keeping the letter of the law. In other instances, including the antithesis on swearing, Mosaic dispensations or permissions allowing certain behaviours in specific situations are effectively suspended.[1] While oaths are permitted and commanded in the Torah, Jesus says to avoid them entirely. With regard to the widespread use of oaths in ancient Judaism, the total prohibition of swearing strikes as a surprise.

> (33) Again, you have heard that was said to those in ancient times: 'You shall not swear falsely, but carry out the oaths you have made to the Lord.' (34) But I say to you: Do not swear at all, not [even] by heaven, because it is the throne of God, (35) nor by the earth, because it is his footstool, nor by Jerusalem, because it is the city of the Great King, (36) nor shall you swear by your head, because you cannot make one hair white or black. (37) Let your words be 'Yes, yes', 'No, no'; anything more than this is of evil. (Matt. 5. 33–37)

The antithesis concerning oaths is not homogeneous. The earliest available version of the tradition has to be reconstructed with the aid of James 5. 12 'Above all, my beloved, do not swear, either by heaven or by earth or by any other oath, but let your yes be yes and your no be no, so that you may not fall under condemnation'.[2] Although the Epistle of James does not ascribe these words to Jesus, it is clear that they go back to the same tradition as Matthew 5. 33–37.[3] Since the unknown author of the Epistle of James gives

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1 Meier, *A Marginal Jew*, p. 185: 'To prohibit all oath-taking was not only to abrogate an institution permitted by the Law, as in the case of divorce. Prohibiting oaths unavoidably involved abrogating individual commandments in the Torah that enjoined oaths in special situations'.

2 Justin might also have preserved an earlier form of Jesus's teaching on oaths than Matthew 5. 33–37: Justin, 'Apology I', ed. by Minns and Parvis, 16.5, pp. 118–19: 'And about not swearing at all and always speaking the truth he (Jesus) commanded thus: "Do not swear at all, but let your 'yes' be 'yes' and your 'no', 'no'. More than this is from the evil one"' (περὶ δὲ τοῦ μὴ ὀμνύναι ὅλως τἀληθῆ δὲ λέγειν ἀεί, οὕτως παρεκελεύσατο· 'Μὴ ὀμόσητε ὅλως, ἔστω δέ ὑμῶν τὸ ναὶ ναὶ καὶ τὸ οὒ οὔ· τὸ δὲ περισσὸν τούτων ἐκ τοῦ πονηροῦ'). See Bellinzoni, *Sayings of Jesus*, pp. 64–67; Minear, 'Yes or No', p. 7.

3 Moo, *Letter of James*, pp. 173–74: 'Jesus's teaching in Matthew 5. 34–37 is particularly

no evidence of dependence upon Matthew's work, James 5. 12 is testimony to the pre-Matthean origin of the core of Matthew 5. 33–37.[4] The parts of the tradition where Matthew and James agree almost certainly belong to the earlier oral form of the prohibition of oaths.

Introduced by 'again, you have heard that was said to those in ancient times', Matthew 5. 33 starts with references to passages from the Old Testament. The opening clause 'you shall not swear falsely' clearly recalls the prohibition of perjury in Leviticus 19. 12 ('you shall not swear by my name falsely'). The second clause 'but carry out the oaths you have made to the Lord' seems to pertain to Deuteronomy 23. 21 ('when you make a vow to Yahweh your god, do not postpone fulfilling it') and Psalm 50. 14 ('and pay your vows to the Most High'). By substituting vows by oaths in the quotation of these Old Testament passages, Matthew 5. 33 assimilates them to the closely related topic of oaths.[5] What appear to be in view 'are vows which have been strengthened by means of an oath'.[6] The references to the Old Testament and the antithetic formulation 'you have heard that was said to those in ancient times […] but I say to you' lack any sort of corresponding phrase in James 5. 12. Almost all critics identify them as a secondary accretion going back to Matthew.

In Matthew 5. 34, Jesus articulates a fundamental und unrestricted prohibition of all oaths. The totality of the exhortation is expressed by adding *at all* (ὅλως/*holōs*) to the prohibition of swearing. Since this adverb does not occur in James 5. 12, it is unclear whether it goes back to Matthew or formed part of the original tradition.[7] However, both Matthew's 'at all' and James's 'or by any other oath' are 'independent witnesses to the presence of some reinforcing phrase stressing that the prohibition is absolute and total'.[8] In Matthew 5. 34–36, Jesus additionally prohibits swearing by heaven, by earth, by Jerusalem, and by one's own head. The exhortation not to swear by one's own head is a secondary accretion.[9] Not only is the exhortation completely absent in James 5. 12 but in Matthew 5. 34–36 it also breaks the pattern of argumentation visible in the chain of the three formulas 'by heaven', 'by earth', and 'by Jerusalem'. The concern is no longer the power of God but the powerlessness of human beings who cannot even change the colour of their hair. Heaven, earth, and Jerusalem in Jewish tradition are all places of God's power and presence. These precise examples intensify the prohibition of swearing which is valid under all circumstances, even with formulas replacing

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important in understanding James' teaching, because it looks as if James is consciously reproducing that tradition'.

4 Davies and Allison, eds, *Gospel According to Saint Matthew*, p. 533.

5 Gundry, *Matthew*, p. 92.

6 Nolland, *Gospel of Matthew*, p. 248.

7 Gundry, *Matthew*, p. 92, argues that Matthew added 'at all' to the prohibition of swearing.

8 Meier, *A Marginal Jew*, p. 193.

9 Luz, *Matthew*, pp. 312–13.

the name of God and referring only indirectly to God. The words of Jesus in Matthew 5. 34–36 reflect the ancient practice of avoiding the divine name in oaths by using substitutes for the deity. Similarly, the related passage of Matthew 23. 16–22 criticizes the highly developed scribal casuistry of swearing oaths by employing substitutes of God. Philo of Alexandria confirms the great popularity of such oaths in ancient Judaism in which the oath-taker calls on 'earth, sun, stars, heaven, the whole universe' instead of God himself.[10] In consequence, God is included in the oath as guarantor of truth. However, strictly speaking, his name is not taken in vain in the case of a person taking a false oath. According to rabbinic judgement, false oaths by heaven and earth do not fall into the category of perjury because heaven and earth are not seen as valid substitutes for God's name (Mishnah Shevuot 4. 13).

In Matthew 5. 37, Jesus finally takes us to the conclusion of the section on swearing. The negative imperatives in Matthew 5. 34–36 give way to the positive half of the command on oaths. Jesus does not go the way of Philo who, in order to protect God's name, recommends substitutionary formulas as a lesser evil. Instead, Jesus demands unrestricted truthfulness of the human word without the support of affirmations or oaths.[11] What must suffice is the ordinary 'yes, yes, no, no', or that a yes must be a yes and a no must be a no as the parallel in James 5. 12 more clearly stipulates. The words 'yes, yes' and 'no, no' appear in Hellenistic Jewish literature and in the works of Rabbinic Judaism as a formula that may be used in place of an oath.[12] Although some scholars claim that Matthew has mitigated the original total prohibition of oaths by turning the logion about yes and no into a substitute oath formula 'yes, yes' or 'no, no', both forms seem to be alternate versions of the same positive command.[13] The final warnings in Matthew 5. 37b ('anything more than this is of evil') and James 5. 12 ('lest you fall under judgement') are probably editorial additions to supply the words on swearing with a rhetorically as well as logically satisfying conclusion.[14] While Gerhard Dautzenberg considers it seriously possible that the prohibition of oaths has its origin in a Jewish-Christian community,[15]

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10 Philo of Alexandria, 'On the Special Laws', ed. and trans. by Colson, II.5 (1), pp. 308–09: 'ἀλλὰ γῆν, ἥλιον, ἀστέρας, οὐρανόν, τὸν σύμπαντα κόσμον'.

11 Luz, *Matthew*, p. 315.

12 See the parallels to Matt. 5. 37 adduced by Davies and Allison, eds, *Gospel According to Saint Matthew*, p. 538.

13 According to Davies and Allison, eds, *Gospel According to Saint Matthew*, p. 538, although 'yes, yes', 'no, no' can be proper oath formulas in Jewish tradition, 'in Matthew one type of oath is not being substituted for another'; see also Moo, *Letter of James*, p. 174: 'It is often argued that Matthew and James diverge on one crucial point: Matthew suggests a "substitute oath" — "yes, yes" and "no, no" […], while James simply prohibits all oaths. But it is more likely that Jesus in Matthew is saying the same thing as James: our truthfulness should be so consistent and dependable that we need no oath to support it: a simple "yes" or "no" should suffice.'

14 Meier, *A Marginal Jew*, p. 193.

15 Dautzenberg, 'Schwurverbot', p. 65.

there can be no doubt that the oral tradition on which Matthew 5. 34–37 and James 5. 12 are based traces back to the historical Jesus.[16]

Critique on Oaths in the World of Jesus

In both the ancient Graeco-Roman and Jewish worlds, critical questions were raised about the use and misuse of oaths.[17] In Hellenistic Judaism, we find a harsh critique of excessive swearing (πολυορκία/*polyorkia*) that may reflect the influence of Greek philosophy. The Wisdom of Ben Sira, which is accepted as part of the Old Testament by the Roman Catholic Church, speaks against the evil of swearing too frequently (23. 9–11). Philo of Alexandria applied the Greek proverbial saying, 'a second-best voyage', to the use of oaths.[18] He does not prohibit oaths in general but demands that oaths should be avoided as far as possible.[19] In his eyes, frequent swearing is not a proof of faith but of untrustworthiness.[20] Philo criticizes the devaluation of oaths as a result of their constant use. He is convinced that, 'from much swearing springs false swearing and impiety'.[21] Beyond demanding the unrestricted truthfulness of the human word, Philo thinks about the oath question theologically, based on the idea of the holiness of God. On the one hand, 'an oath is an appeal to God as a witness on some disputed matter',[22] whereas on the other hand, no one can swear by God since no one has a direct knowledge of his nature.[23] Taking oaths includes the danger of defiling and desecrating the divine name.[24] In order to protect the name of God, Philo recommends using substitutionary formulas as a lesser evil.[25]

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16 Luz, *Matthew*, p. 313; Meier, *A Marginal Jew*, pp. 198–206.

17 For a more detailed analysis see Kollmann, 'Schwurverbot', pp. 180–88; Betz, *Sermon on the Mount*, pp. 259–62. A good overview on oaths in Ancient Israel and Judaism is provided by Vahrenhorst, *'Ihr sollt überhaupt nicht schwören'*, pp. 41–214, and Meier, *A Marginal Jew*, pp. 184–88. For the use of oaths in the Greek world see Hirzel, *Eid*, pp. 1–220; Plescia, *Oath and Perjury in Ancient Greece*, pp. 1–102.

18 Philo of Alexandria, 'On the Decalogue', ed. and trans. by Colson, 84 (17), pp. 48–49.

19 See Heinemann, 'Philos Lehre vom Eid', pp. 109–18; Betz, *Sermon on the Mount*, p. 264.

20 Philo of Alexandria, 'On the Special Laws', ed. and trans. by Colson, II.8, pp. 310–11.

21 Philo of Alexandria, 'On the Decalogue', ed. and trans. by Colson, 92 (19), pp. 52–53: 'φύεται γὰρ ἐκ πολυορκίας ψευδορκία καὶ ἀσέβεια'.

22 Philo of Alexandria, 'On the Birth of Abel and the Sacrifices', ed. and trans. by Colson and Whitaker, 91–94 (28), pp. 162–65 (citation in 91 (28), pp. 162–63: 'ὅρκου γὰρ ἔννοιά ἐστι μαρτυρία θεοῦ περὶ πράγματος ἀμφισβητουμένου'.

23 Philo of Alexandria, 'Allegorical Interpretation', ed. and trans. by Colson and Whitaker, III.207, pp. 442–43.

24 Philo of Alexandria, 'On the Special Laws', ed. and trans. by Colson, IV.40, pp. 32–33; Philo of Alexandria, 'On the Decalogue', ed. and trans. by Colson, 84–86 (17), pp. 48–49.

25 Philo of Alexandria, 'On the Special Laws', ed. and trans. by Colson, II.5, pp. 308–09.

According to the reports of Philo and Josephus, the Essenes completely rejected taking oaths as an everyday practice. They avoided swearing and esteemed it worse than perjury, for they were convinced that a person who could not be believed without swearing by God was already condemned.[26] When the Jewish people should swear allegiance to Herod the Great and Augustus, the Essenes were excused by the king from the loyalty oath.[27] The only oath the Essenes permitted was the entrance oath that candidates had to swear in the process of entry into the community.[28] If it is correct to identify the community at Qumran as a sub-group of the larger Essene movement and to ascribe the Dead Sea Scrolls to the Essenes, we have evidence that the Essenes not only knew the oath at entering the sect,[29] but also permitted the oath before the judicial court.[30]

In Hellenism, the critical approach to oaths is widespread. Greek and Latin authors such as Epictetus and Quintilian criticize the frequent and thoughtless use of oaths.[31] The *Praecepta Delphica* include a prohibition of oaths.[32] The closest parallels to Jesus's words on swearing can be found in Greek sources dealing with Pythagoras. While Diodorus Siculus reports that Pythagoras recommended to swear only rarely,[33] Iamblich attributes to Pythagoras a complete avoidance of oaths: 'This is also a sign of his esteem for the gods: that he commanded never to swear an oath, thus misusing the gods' names'.[34] According to Diogenes Laertius, Pythagoras was said to have advised his disciples as follows: 'Not to swear oaths by the gods, since one should endeavour to make oneself trustworthy'.[35] However, the

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26 Josephus, 'Jewish War', ed. and trans. by Thackeray, II.141, pp. 376–77; Philo of Alexandria, 'Every Good Man is Free', ed. and trans. by Colson, 84 (12), pp. 60–61.

27 Josephus, 'Jewish Antiquities', ed. and trans. by Marcus and Wikgren, XV.371, vol. VIII, pp. 178–79.

28 Josephus, 'Jewish War', ed. and trans. by Thackeray, II.139–41, pp. 376–77.

29 'Community Rule', [1QS] 5.8–11, ed. and trans. by Charlesworth, pp. 20–23.

30 'Damascus Document', 9.8–12, ed. by Charlesworth, pp. 42–43; Schiffman, 'The Law of Vows and Oaths', pp. 199–214; Luz, *Matthew*, p. 314; VanderKam, 'The Oath and the Community', pp. 416–32; especially on the entrance oath in the Dead Sea Scrolls see Beall, *Josephus' Description of the Essenes*, pp. 75–78.

31 Epictetus, *Encheiridion*, ed. and trans. by Oldfather, c. 33.5, pp. 516–17: 'ὅρκον παραίτησαι, εἰ μὲν οἷόν τε, εἰς ἅπαν, εἰ δὲ μή, ἐκ τῶν ἐνόντων' (Refuse, if you can, to take an oath at all, but if that is impossible, refuse as far as as circumstances allow); Quintilian, *Institutio oratoria*, ed. and trans. by Russel, IX.2.98, vol. IV, pp. 90–91: 'Frequens illud est nec magno opere captandum, quod petitur a iure iurandi […] Nam et in totum iurare, nisi ubi necesse est, gravi viro parum convenit […]'](Another common device (though not one to be thought) is based on an oath […] An oath, in general, is not very appropriate for a person of standing, unless it is absolutely necessary).

32 *Praecepta Delphica*, ed. by Diels, vol. III, pp. 395–97 (no. 1268).

33 Diodorus Siculus, *Bibliotheca historica*, vol. II, ed. by Vogel, X.9.1, p. 200.

34 Iamblichus, *On the Pythagorean Way of Life*, ed. and trans. by Dillon and Hershbell, 28.150, pp. 166–67.

35 Diogenes Laertius, *Vitae Philosophorum*, ed. by Marcovich, VIII.22, p. 586: 'μηδὲ ὀμνύναι θεούς ἀσκεῖν γὰρ αὐτὸν δεῖν ἀξιόπιστον παρέχειν' (Engl. trans. by White, p. 335).

Pythagorean community did not refuse the oath entirely. The 'Golden Verses', a collection of moral teachings deriving from the Pythagorean School, refer to an oath that may have pertained to the secret discipline. Initiates who wanted to join the Pythagorean community were required to swear a secret oath by the Tetractys.[36]

Scholars often claim that Greek philosophers refused the use of oaths purely on anthropological and ethical grounds, arguing that oaths are inappropriate for a free man whose honest word should be as valid as an oath. Concurrently, they maintain that the critique of oath-taking on theological grounds is absent from Greek tradition.[37] The example of Pythagoras, arguing that oaths infringe upon the dignity of the gods and take their names in vain, provides evidence that this point of view is incorrect.[38]

The Scope of Jesus's Prohibition of Swearing

Jesus was the first person in the ancient Jewish world to draw from the widespread critical attitude towards oaths the consequence of a fundamental prohibition. Although both Matthew ('not to swear at all', 5. 34) and James ('or any other oath', 5. 12) emphasize the totality of the prohibition, there is a controversial discussion on the impact of Matthew 5. 33–37 on such oaths commanded in the Torah or required in the legal practice during the days of Jesus. Biblical scholars disagree substantively concerning whether Jesus was arguing against all oaths or just against the oaths of everyday life. According to Dale C. Allison one may well doubt whether Jesus intended his words to be an absolute rejection of all oaths instead of polemics against the habit of swearing incessantly and thoughtlessly about ordinary matters. 'As a matter of fact, the historical Jesus, if he prohibited oaths, may not have had the courtroom in his purview at all but instead the daily life of his hearers'.[39] Ulrich Luz argues that oaths to be sworn before court and official loyalty oaths are probably affected only indirectly by Jesus's comprehensive formulation.[40] In contrast, John Nolland demands that the antithesis should not be understood to restrict the scope of the prohibition of oaths to the private sphere.[41] In my own considerations on the scope of Jesus's prohibition of oaths, I tried to point out the range of

36 Porphyrus, *Vie de Pythagore*, ed. and trans. by Des Places, c. 20, p. 45; Iamblichus, *On the Pythagorean Way of Life*, ed. and trans. by Dillon and Hershbell, c. 28 [150], pp. 166–67. See van der Waerden, *Die Pythagoreer*, pp. 103–10.

37 Hirzel, *Eid*, p. 112; Dautzenberg, 'Schwurverbot', p. 54.

38 For more detailed information, see Kollmann, 'Schwurverbot', pp. 179–83.

39 Allison, *Epistle of James*, p. 724.

40 Luz, *Matthew*, p. 315.

41 Nolland, *Matthew*, p. 253.

contexts in which oaths were used during the time of Jesus, in addition to the oaths of everyday life:[42]

1. *Oaths as required or attested by the Torah*: There are a few cases in which the Old Testament law commands an oath to be taken.[43] A man who was falsely suspected to have put harm on entrusted animals or goods that had been lost or stolen could swear an oath affirming his innocence. In consequence, he was free from legal liability and did not have to pay compensation for damages (Exodus 22. 9–10; Leviticus 5. 20–26). Frequently persons took false oaths in order to get possession of stolen or misappropriated goods (Leviticus 5. 20–26). A wife suspected of adultery by her husband had to undergo the ordeal of bitter water as described in the Book of Numbers (5. 11–32). The wife was given bitter water and then the priest imposed an oath on her. This oath was a self-curse that would cause severe harm to the wife's inner organs if she was lying to assert her innocence. In the Qumran community an oath of cursing was put on thieves or witnesses of theft in order to get back stolen goods.[44]

2. *Loyalty oaths to the ruler*: In the year 20 BCE Herod the Great imposed an oath of loyalty on the Palestinian population.[45] The Pharisees and Essenes were specifically exempted. More than ten years later Herod ordered his people to swear a joint oath of loyalty to Caesar Augustus and himself.[46] This time, the Pharisees who refused to swear such an oath had to pay a fine or were even executed. When the Roman governor Vitellius who visited Jerusalem in 37 CE got the news of Tiberius's death, he required from the Jewish population an oath of loyalty to the new Caesar Caligula.[47]

3. *Oaths in connection with the census*: The provincial census introduced by Quirinius in the year 6 CE and repeated at certain intervals was probably connected with an oath given to officials for the purposes of taxation. In Egypt, the Roman governor ordered the district officials to carry out the household census of the whole population every fourteen years to obtain a basis for taxation. The head of each household had to declare to the censors or their representatives the number of members of the household, their ages, and also their property. Numerous tax

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42 Kollmann, 'Erwägungen', pp. 20–32.

43 Horst, 'Eid im Alten Testament', pp. 292–314.

44 'Damascus Document', 9.10–12, ed. and trans. by Charlesworth, pp. 42–43.

45 Josephus, 'Jewish Antiquities', ed. and trans by Marcus and Wikgren, XV.368–69, vol. VIII, pp. 178–79.

46 Josephus, 'Jewish Antiquities', ed. and trans. by Marcus and Wikgren, XVII.41–45, vol. VIII, pp. 390–93; Schürer, *History of the Jewish People*, p. 314; Schalit, *König Herodes*, pp. 316–22. On the Roman oath of loyalty to Caesar Augustus, see Hermann, *Kaisereid*, pp. 96–98; 123–24.

47 Josephus, 'Jewish Antiquities', ed. and trans. by Feldman, XVIII.124, vol. IX, pp. 86–87.

declarations that survive from Roman Egypt include oaths.[48] The oath in connection with the census is also attested in a Jewish tax declaration. Among the Babatha Papyri that were discovered in 1961 in a cave near En-Gedi on the western shore of the Dead Sea there is the copy of a tax declaration for a provincial census ordered by the Roman governor. In the document dating back to the year 127 CE, a Jewish woman named Babatha declares her ownership of four groves of palms and lists the taxes paid on them. In the subscription she affirms: 'I, Babatha, daughter of Simon, swear by the *genius* of our Lord Caesar that I have in good faith registered as has been written before'.[49]

4. *Entrance oaths*: Aspiring members of the Essene community had to undergo a detailed initiation process which included a year of probation. In the final stage of initiation, the candidates bound themselves by oath to be pious toward God, just to men, and honest with their fellow Essenes, to properly transmit the teachings of the community, and to maintain the secrecy by which the doctrines of the community were guarded from outsiders'.[50] A similar oath is mentioned in one of the Dead Sea Scrolls, namely the Community Rule of the Qumran sect.[51]

Although most Christian interpreters have not taken the prohibition of Matthew 5. 33–37 to be a total rejection of swearing, Jesus may easily have had all these oaths in mind when he demanded that swearing be avoided entirely.[52]

The Influence of Matthew 5. 33–37 on Early Christianity

Surprisingly, the influence of Jesus's prohibition of oaths on the first Christian generations was comparatively weak. Matthew put the dominical injunction against the use of oaths into an antithesis against perjury but not against the oaths permitted or required by Mosaic law. With the exception of James 5. 12, the authors of the New Testament do not show any aversion to oath-taking. Paul either had no knowledge of the dominical injunction against the use of oaths[53] or obeyed it only in a limited sense. He made no use of formal

48 Hombert and Préaux (ed.), *Recherches sur le recensement*, pp. 47–53, 124–27. In the Greek world, oaths most probably sanctioned all legal transactions. Both private contracts and public contracts were ratified by oaths, see Plescia, *Oath and Perjury in Ancient Greece*, pp. 80–82.

49 Greek Papyri, no. 16, in *Documents from the Bar Kokhba Period*, ed. by Naphtali, pp. 65–70 (citation 67–68).

50 Josephus, 'Jewish War', ed. and trans by Thackeray, II.139–42, pp. 376–77.

51 'Community Rule', [1QS] 5.8–9, ed. and trans. by Charlesworth, pp. 20–23; Beall, *Josephus' Description of the Essenes*, pp. 75–78.

52 See also Matthew 26. 63: When Jesus is charged by Pontius Pilate to speak under oath, he refuses.

53 II Corinthians 1. 17–20 is often believed to echo the 'yes, yes, no, no' of Matthew 5. 37 but this

oaths but his epistles are strewn with passages calling on God as witness which might be considered to violate the words of Matthew 5. 33–37.[54] The Epistle to the Hebrews presupposes the habit of human swearing without criticizing it (Hebrews 6. 16). In the Revelation of John an angel takes an oath (Revelation 10. 6), using formulas that are very similar to those forbidden by Jesus in Matthew 5. 35–36. The Didache that presupposes knowledge of Matthew's gospel prohibits false oaths but not swearing at all.[55]

The early fathers of the Greek Church took the prohibition of swearing almost always literally but usually restricted its scope to the private sphere, and to everyday life.[56] In the Latin Church, attempts began early on to remove the sting of the dominical injunction of oaths and to render its demands easier. Often the interpreters claimed that Jesus primarily wanted to prohibit perjury and the thoughtless use of oaths. Moreover, they argued that Jesus had not forbidden swearing by God but only rejected the oaths by heaven, earth, and Jerusalem enumerated in Matthew 5. 35–36.[57] According to the Protestant tradition, the oaths demanded by the state are not in the scope of Jesus's prohibition. The radical tradition of a total prohibition of oaths survived only in nonconformist Christian groups like the Waldensians, the Quakers, or the Amish People. Ulrich Luz summarizes: 'The entire tradition of the Great Church since the early Middle Ages almost unanimously set Mt 5. 33–37 aside and accepted oaths, even though often with a bad conscience.'[58]

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remains uncertain. 'What seems more likely is that early Christian tradition as a whole (Mt 5. 37; James 5. 12; 2Cor 1. 17) reflects acquaintance with a formula widely used in asseveration', Welborn, 'The Dangerous Double Affirmation', p. 41.

54 II Corinthians 1. 23; Galatians 1. 20; see Nolland, *Matthew*, p. 253.

55 *Didache*, ed. by Wengst, 2.2, p. 68. See Vahrenhorst, 'The Presence and Absence', pp. 370–74.

56 Justin, 'Apology I', ed. by Minns and Parvis, I.16.5, pp. 118–19; Irenaeus, *Against Heresies*, ed. and trans. by Rousseau and Doutreleau, II.32.1, pp. 332–33; Clement of Alexandria, *Stromata*, ed. by Früchtel and Stählin, VII.50.1–2, p. 37.

57 See on the history of influence Luz, *Matthew*, pp. 318–22.

58 Luz, *Matthew*, p. 320.

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KEVIN UHALDE

The Shape of Early Christian Fidelity

Swearing and Repenting in the Face of Uncertainty

Introduction: Pledging Fidelity

An unusual development in the United States 2016 presidential election offers a contemporary vantage point for understanding the relationship between the oath and Christian fidelity in antiquity. On 19 December, a small number of Democratic and Republican electors voted for someone other than the presidential candidate who had won their respective party's popular vote in national elections one month earlier. Such an action by so many so-called 'faithless electors' had not happened in over a century.[1] In addition to these seven were other electors who did not vote at all. Among them was Art Sisneros, elected to serve as an elector for Texas Republicans and pledged to vote for their candidate, Donald Trump. Sisneros decided instead to resign and explained why on his blog, The Blessed Path. Even though the pledge the electors had signed was 'an immoral, unlawful pledge', Sisneros felt bound by it not to vote for someone other than Trump.

> I did, in fact, sign the pledge. It was a voluntary pledge and I willingly signed it. I was wrong in signing this pledge and not communicating to the body that my conscience would not be bound by it. I honestly did not have the convictions about the original purpose of the Electoral College or the biblical qualifications [of Trump to serve as president] until after I was an Elector. The Bible calls this a rash oath and warns against making them.[2]

1 The Supreme Court in 1952 allowed states to legally bind electors to vote for the party's nominee or exclude those who do not so pledge. Enforcing such statutes or punishing a faithless elector, however, would violate his or her constitutional freedom. Sheppard, 'A Case for the Electoral College and for its Faithless Elector'; Bennett, 'The Problem of the Faithless Elector'; Bennett, *Taming the Electoral College*, pp. 95–121; U.S. Electoral College, *About the Electors*.

2 As reported in 'Texas Elector Resigns: Trump Is Not Qualified and I Cannot Vote for Him'. Sisneros's blog post is at <https://theblessedpath.com/2016/11/26/conflicted-elector-in-a-corrupt-college/> [accessed 2 February 2018]. Texas is among the twenty-one states in which electors are not legally bound to vote as they have pledged.

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The Oath in Late Antiquity and the Early Middle Ages: Religious Act, Social Bond, Holy Sacrament, ed. by Stefan Esders and Gerda Heydemann, CELAMA 46 (Turnhout: Brepols, 2026), pp. 35–46 BREPOLS PUBLISHERS 10.1484/M.CELAMA-EB.5.152871

Sisneros had thought hard and consulted 'the three wisest men' he knew about these issues, receiving conflicting answers. But he did not doubt the seriousness of his pledge. Like some early Christians, Sisneros interpreted Jesus's instruction, 'Let your word be "Yes, Yes" or "No, No"' (Matthew 5. 37, James 5. 12), to mean that whatever he pledged or promised had the solemnity of an oath, so long as he did so willingly. 'To be ignorant of all the details involved in an oath (pledge) does not excuse the sin of making that oath', Sisneros added. 'One thing is clear, I have sinned in signing that pledge', yet voting for a person not 'biblically qualified to serve in the office of the Presidency' would also be a sin. 'Since I can't in good conscience vote for Donald Trump, and yet have sinfully made a pledge that I would', Sisneros decided that his 'best option' was to resign his position as elector. Caught in a double-bind, because he did not believe the political fidelity he pledged was separable from his Christian fidelity, Sisneros willingly and knowingly confronted the danger inherent in the oath.

Roman Faith, Christian Faith

Teresa Morgan's 2015 book, *Roman Faith and Christian Faith: 'Pistis' and 'Fides' in the Early Roman Empire and Early Churches*, is bigger than the oath, its scope broader than just a 'word-study' of *pistis* and *fides*.[3] Breadth makes Morgan's analysis of 'the shape and operation of *pistis* and *fides*' in the early principate (through the mid-second century), Hellenistic Judaism, and New Testament helpful for making sense of the oath among early Christians, including in the early third and early fifth centuries that are the focus of this chapter.[4] Morgan shows how in her period '*pistis*/*fides* between human beings' is understood at the time to be 'socially foundational'. Moreover, *pistis*/*fides* between human beings and the divine is also understood to be 'socially foundational'.[5] The fact that the oath in its many, various forms is understood the same way then and by the later Christian authors that concern this chapter is not coincidental. The oath was instrumental to structures and relationships that had fidelity as their foundation.

'Deliberate, risk-taking trust', Morgan writes, 'fortified by evidence of the past and reified in oaths and rituals, enables the evolution of a relationship which is social and political as well as personal'.[6] We can add 'religious' to the dimensions of that relationship — as was certainly the case for Art Sisneros and his struggle over acting as a faithless elector. For an important argument Morgan develops well in several different chapters is that fidelity shared between humans and the divine has many of the same,

3 Morgan, *Roman Faith*, pp. 30–34.
4 Morgan, *Roman Faith*, p. 26.
5 Morgan, *Roman Faith*, p. 157.
6 Morgan, *Roman Faith*, p. 181.

'interpersonal' aspects of fidelity shared between humans, despite the fact that one hallmark of divinity is superhuman constancy and reliability. The ultimate foundation of most ancient faith is divine. 'Whether oaths cemented trust between people where it already existed', I have written in an earlier study of Christian oaths, 'or fabricated trust where it was absent, oaths invariably relied on a sturdier trust in divine justice. When people swore', that is to say, 'they invoked supernatural precision and accountability into their own lives, merging their low expectations of worldly justice with their higher expectations of divine justice'.[7] Morgan refers to the oath most often in her chapters on Greco-Roman communities, as well as in her discussion of the Septuagint. The oath is missing, however, from the chapters on the 'primitive church' that comprise more than half her book.[8] The question of whether Christian fidelity joins, displaces, or conflicts with the social, political, and personal nature of faith-based relationships bound by oaths is therefore left open.[9] This is precisely the sort of question where a broad focus on the shape and operation of Christian fidelity may be productive.

Augustine: Swearing on Danger's Edge

Ancient Christians pondered how best to navigate the dangerous territory of swearing. This chapter compares examples from two well-known authors, Tertullian and Augustine of Hippo. For them, the shape of Christian fidelity was defined at least partly by the uncertainty inherent in both human nature and human society.[10] Like Sisneros, they were simultaneously attuned to scriptural precepts, moral dangers, theological implications, and the social-political-personal pattern Morgan describes in relation to *pistis/fides*. Drawing vocabulary from sociology and linguistics, she explains how the oath 'reifies' and 'defers' faith from the formula, gesture, or ritual of swearing to the foundation of faith (Morgan employs the postmodern term *différance* to help elucidate this process), which in antiquity was most reliably the divine — including faith, *fides*, itself. These are concepts Augustine and Tertullian easily would have grasped. In the early fifth century, Augustine of Hippo preached to his congregation in Sermon 180 on oaths, neatly encapsulating what we might identify as the notion of *différance*: 'Let God swear, since he can swear safely, and nothing deceives him […]. Just as

7 Uhalde, *Expectations of Justice*, p. 79.

8 Morgan, *Roman Faith*, Chapters 6–10 and 12 ('primitive church' at p. 30).

9 Studies of Tertullian's use of *sacramentum*, for example, mostly argue for multivalence and adaptation, rather than a sharp or deliberate break: Harrill, 'The Influence of Roman Contract Law', and Harrill, 'Divine Judgment against Ananias and Sapphira', include references to the voluminous earlier scholarship. By contrast, DesRosiers, 'Oath and Anti-Oath', appears to argue for a sharp and deliberate break, at least among the 'producers', whom he does not see as part of common practice — an argument I find unconvincing.

10 That is the thematic focus of Uhalde, *Expectations of Justice*, pp. 77–104.

you, when you swear, call God as a witness, so he, when he swears, calls himself as a witness'.[11]

However, Morgan sees a profound difference from the earlier understanding of fidelity to have emerged by Augustine's time.[12] First, Augustine distinguished between faith as what is believed (*fides quae*) and faith that is believing (*fides qua*). Second, in doing so, the 'interiority' of faith as believing became distinct and significant as it never had been before.[13] Morgan finds this 'model' to be 'oddly limited' compared to that of the early principate, where 'interiority, relationality, and action are inseparable wherever *pistis/fides* operates'.[14] This, however, exaggerates the distance between Augustine's theology and his understanding of human society, on the one hand, and that between Augustine and earlier Christian authors, on the other. Augustine did not shy away from 'relationality', especially when he was talking directly about the oath. And 'interiority' was integrated into Christian discussions of 'relationality' as early as Tertullian, particularly in relation to oath-swearing and repenting. Both the oath and penance were understood as important means for preserving fidelity in the face of uncertainty, which Augustine and Tertullian found various ways to depict as a danger zone.

Like other ancient authors, Augustine once entertained idealistic notions of a society where true fidelity would mean no need for swearing oaths.[15] Such notions went out the window as he gained experience as a bishop. Augustine came fully to accept that oaths were 'socially indispensable'.[16] A person hardly opens her mouth without one oath or another coming out, he confessed. Augustine himself swore in writing and in person, when he had no choice and when he wanted to increase his credibility or others' confidence in him. That did not make swearing any less dangerous, as he warned his congregation. 'You are a human being set in the midst of trials and temptations, wrapped round in flesh […] and the earthly habitation depresses the mind thinking many things; among these many uncertain, flickering thoughts of yours, human conjectures, human mistakes, when

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11 Augustine, *Sermones*, ed. by Boodts, *sermo* 180. 3, p. 663: 'Iuret ergo Deus, qui iurat securus, quem nihil fallit, quem nihil latet, qui omnino fallere ignorat, quia nec falli potest. Cum enim iurat, se adhibet testem. Quomodo tu, cum iuras, Deum adhibes testem, sic ipse cum iurat, se testem adhibet'; Engl. trans. by Hill, p. 316 (modified).

12 Morgan, *Roman Faith*, pp. 29–30.

13 Morgan, *Roman Faith*, pp. 11–12, 28–30, 444. The key text is Augustine, *De trinitate*, ed. by Mountain, 13.2.5, p. 386: '[A]liud sunt ea quae creduntur, aliud fides qua creduntur. Illa quippe in rebus sunt quae uel esse uel fuisse uel futura esse dicuntur; haec autem in animo credentis est […]'. Morgan (*Roman Faith*, p. 28) acknowledges that Augustine 'only juxtaposes these phrases once, in passing' and '[w]hether or not it is original to him' an open question. But she also writes that it 'is clear […] that this binarism is ingrained in his thinking'.

14 Morgan, *Roman Faith*, pp. 29 and 472.

15 Morgan, *Roman Faith*, pp. 58–59, 105–07.

16 Morgan, *Roman Faith*, p. 3.

does something untrue not creep into your mind, placed as you are in the region of falsehood?'[17]

Augustine's advice may seem contradictory. Give up swearing? How? Indeed, it may not be possible. Even as he encourages not swearing at all, therefore, Augustine repeatedly presented a narrow but real range of options:

> Ipsa est angustia; periurium praecipitium est: qui iurat, iuxta est, qui non iurat, longe est. Peccat et grauiter qui falsum iurat; non peccat qui uerum iurat; sed nec ille peccat qui omnino non iurat. Sed qui non iurat et non peccat, longe est a peccato; qui autem uerum iurat, non peccat, sed prope est ad peccatum.
>
> (Swearing is a narrow ledge, perjury a precipice. If you swear, you're near the edge; if you don't swear, you're far away from it. You sin, and gravely, if you swear to what is false; you don't sin, if you swear the truth; but then you don't sin either, if you don't swear at all. But if you don't swear and don't sin, you are a long way away from sin; while if you do swear the truth, you don't sin, but you are near to sin.)[18]

The image Augustine goes on to develop makes the calculation even seem commonsensical:

> Fac te ambulare in aliquo loco ubi a parte dextera spatiosa sit terra nec usquam angustias patiaris, a sinistra praeceps locus sit. Vbi eligis ambulare? Super finem terrae in labio praecipiti an inde longe? Puto quia inde longe. Sic et qui iurat, in fine ambulat –– et ambulat pedibus infirmis, quia humanis. Si offenderis, deorsum es; si lapsus fueris, deorsum es.
>
> (Suppose you are walking in some place, where there is plenty of space on your right, and you don't face any narrow paths; on your left the ground falls away in a cliff. Where do you prefer to walk? Along the borderline, on the edge of the cliff, or far away from it? Far away from it, I rather think. So too, if you swear, you're walking on the borderline; and you're walking on shaky, because human, feet. If you stumble, down you go. If you slip, down you go.)[19]

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17 Augustine, *Sermones*, ed. by Boodts, *sermo* 180. 3, p. 662: 'Sed homo inter temptationes positus, carne involutus, calcans terram sub terra, *dum corpus quod corrumpitur, aggrauat animam et deprimit terrena inhabitatio sensum multa cogitantem* (Wisdom 9. 15) — inter ista multa tua cogitata incerta, uolatica, coniecturas humanas, fallacias humanas, quando non subrepit tibi quod falsum est, posito in regione falsitatis?'; Engl. trans. by Hill, p. 315 (modified).

18 Augustine, *Sermones*, ed. by Boodts, *sermo* 180. 3, p. 663; Engl. trans. by Hill, p. 316. Note that Hill's translation follows previous editions printing 'ipsa est angustia' for Boodts' 'ripa est angusta' from the r^{1-3} version, for which see Boodts, p. 651.

19 Augustine, *Sermones*, ed. by Boodts, *sermo* 180. 3, pp. 663–64; Engl. trans. by Hill, p. 316.

The true danger of perjury and infidelity is due to uncertainty — both the uncertainty of one's own thoughts (interiority) and the uncertainty others introduce (relationality). Augustine's solution is a form of risk management: 'A false oath is deadly, a true oath is dangerous, swearing no oath at all is safe'.[20]

Tertullian: Swearing and Repenting in the Danger Zone

Despite the fearsome plunge if one falls, Augustine's path between the social necessity of the oath and the moral/spiritual danger of perjury is a walk in the park compared to the danger zones Tertullian conjured in relation to oath-swearing. In the final chapters of *De idololatria* (19–24), Tertullian establishes that swearing by Caesar's genius or any divinity other than God is idolatry — no matter whether a Christian swears wittingly or not, even if someone else is the one who says the words or the Christian only writes or signs the pledge.[21] The oath is still essential, but the wrong sort of oath — not just perjury, but any oath that reifies anything other than Christian fidelity or defers to anything other than the true, Christian God — is death. Instead of walking along the edge, Tertullian has Christians navigating danger's treacherous waters, where 'every wave is choking, every whirlpool sucks' straight down to hell. *Fides*, however, navigates a path through such perils, 'safe if cautious, secure if sharply watchful'.[22] Christians live suspended between necessity and danger, and Tertullian ridicules the notion of avoiding the risk of danger entirely by abandoning the world. Instead, he rather surprisingly claims that avoiding danger is easily done, so long as one remembers how real the danger is. 'Nothing can be easier than to guard against idolatry, if the fear of it is put above everything else.' It is fear that keeps faith 'cautious and secure' as it navigates between the perils of life. 'Every necessity, whatever it may be, is of less importance if compared to such a danger.'[23]

Understanding the instrumental role of fear is where repentance helps further define the shape of Christian fidelity, which is substantiated in penance as well as in oaths. In Tertullian's treatise, *De paenitentia*, humans are 'plunged in sins' waves' from the beginning. By repenting the first time — that is, converting and accepting baptism — they take hold of faith the way a shipwreck victim takes hold of a plank. Repentance is life, or rather a

20 Augustine, *Sermones*, ed. by Boodts, *sermo* 180. 4, p. 665: 'Falsa iuratio exitiosa est, uera iuratio periculosa est, nulla iuratio secura est'; Engl. trans. by Hill, p. 316.

21 Waszink and van Winden, 'A Particular Kind of Idolatry'.

22 Tertullian, *De idolatria*, ed. and trans. by Waszink, 24.1, pp. 68–69: 'Inter hos scopulos et sinus, inter haec uada et freta idololatriae uelificata spiritu dei fides nauigat, tuta si cauta, secura si attonita'.

23 Tertullian, *De idolatria*, ed. and trans. by Waszink, 24.2, pp. 68–69: 'Nihil esse facilius potest, quam cautio idololatriae, si timor eius in capite sit. Quaecumque necessitas minor est periculo tanto comparata'.

life preserver. It is important to be aware that for early Christians, including both Augustine and Tertullian, conversion is only the starting point of repentance, which is an ongoing process synonymous with perseverance — and perseverance is essential to faith.[24] What if perseverance fails, however, and a person lets go of repentance? Tertullian admits that there is a second, final opportunity to take hold of faith, but he is reluctant to talk about it, worried that knowing the 'overabundance of celestial clemency' might stimulate 'the reckless passion of human temerity'.[25] Temerity is opposed to fear as necessity is to danger; temerity is a part of human nature, necessity is a part of human society. Now afloat, faith must navigate the dangers that still remain. How? Through the salutary effect of fear. 'We have escaped once. Let us not place ourselves in danger again, even though it seems that we shall again escape'. The traumatic memory of actual shipwreck, Tertullian observes, compels most survivors to 'divorce both ship and sea from that time on'. He praises their fear, for 'in checking their temerity they give proof of their fear, and human fear is God's glory'.[26]

In his later treatise, *De pudicitia*, Tertullian puts human temerity to a different sort of test from staying afloat above the bottomless vortex of sin. He uses the popular figure of the tightrope walker to demonstrate the importance of fear. Other classical and Christian authors, including Origen and Cassian, used this figure to talk about calculating risk.[27] For Tertullian, the lesson concerns uncertainty, which is as incalculable as the reward — salvation — is immeasurable. We have seen Augustine leaving some distance between safety and danger, allowing a range of more and less risky paths for Christians to follow with their 'shaky, because human, feet'. Tertullian instead set those feet on a 'slender cord' and wondered how well confidence in divine mercy would serve to prevent a misstep or imbalance.

> Age tu funambule pudicitiae et castitatis et omnis circa sexum sanctitatis, qui tenuissimum filum disciplinae eiusmodi ueri a uere uia pendente uestigio ingrederis, carnem spiritu librans, animam fide moderans, oculum metu

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24 Tertullian, *De paenitentia*, ed. by Munier, 4.2–3, p. 156: 'Ergo paenitentia vita est, quae praeponitur morti. Eam tu peccator […] ita invade, ita amplexare ut naufragus alicuius tabulae fidem. Haec te peccatorum fluctibus mersum prolevabit et in portum divinae clementiae protelabit'; (Engl. trans. by Le Saint, p. 20: 'Repentance, then, means life, since it is preferred to death. Do thou, a sinner […] lay hold and grip it fast, as one who is shipwrecked holds to a plank of salvation'). On repentance as an ongoing process, see Uhalde, 'Tertullian, the First Penitents, and the Process of Repentance'.

25 Tertullian, *De paenitentia*, ed. by Munier, 7.3, p. 172: 'redundantiam clementiae caelestis libidinem faciat humanae temeritatis'.

26 Tertullian, *De paenitentia*, ed. by Munier, 7.4–6, p. 172: 'Evasimus semel: hactenus periculosis nosmetipsos inferamus etsi iterum evasuri videmur. Plerique naufragio liberati exinde repudium et navi et mari dicunt et dei beneficium, salutem suam scilicet, memoria periculi honorant. Laudo timorem […]. Ita modus temeritatis testatio est timoris; timor autem hominis dei honor est'; Engl. trans. by Le Saint, p. 28 (modified).

27 Rebillard, '*Quasi funambuli*'.

> temperans. Quid itaque in gradu totus es? Perges ne, si potueris, si uolueris, dum tamen securus et quasi in solido es. Nam si qua te carnis uacillatio, animi auocatio, oculi euagatio de tenore decusserit, Deus bonus est.
>
> > (Come now, you funambulist, walking on a tightrope of purity […], you who, on the slender cord of a discipline like this, far from the path of truth, advance with reluctant feet, balancing the flesh by the spirit, *moderating your desires by the faith, guarding your eyes through fear*, why do you watch your step so anxiously? Go right ahead, if you can and if you so desire, since you are just as safe as if you were on solid ground.) [my italics][28]

In *De pudicitia*, Tertullian is attacking the claim that Christian adulterers can repent and then be reconciled in the Church. They cannot be reconciled, Tertullian insists, any more than can Christian murders or Christian idolaters. Once again, it is fear that keeps the mind focused, faith that steers the soul through danger. The suggestion of a safety net would be enough to cause the Christian to waver, and wavering would be enough to fall.

The faithful whose even momentary lapse of fear allows their temerity to plunge them back into danger are the *naufragos iuxta fidem*, the castaways of the faith in 1 Timothy 1. 19 — lost in sin unless God saves them at the Final Judgement. It is not the sins themselves that are irredeemable: 'pagans and heretics', Tertullian observes elsewhere, 'emerge' from them every day.[29] It is the Christians who committed these sins after having 'known God and learned the sacrament of faith' (*sacramentum fidei*).[30] Repentance means not only perseverance; it means also awareness. 'Sacrament of faith' refers to the formula recited at baptism. It is an oath, of course, one which in Morgan's terms reifies the individual Christian's fidelity. At the same time, here and elsewhere, it serves to signify the Christian faith to which Christians are faithful.[31] This is

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28 Tertullian, *De pudicitia*, ed. by Munier, 10.9–10, p. 198; Engl. trans. by Le Saint, p. 81.

29 Tertullian, *De pudicitia*, ed. by Munier, 13.20, p. 212: 'Ceterum ethnici et haeretici cotidie ex blasphemia emergunt'.

30 Tertullian, *De pudicitia*, ed. by Munier, 18.17–18, pp. 250–52: 'Ita clementia illa Dei malentis paenitentiam peccatoris quam mortem ad ignorantes adhuc et adhuc incredulos spectat, […] non qui iam Deum norint et sacramentum didicerint fidei. Quod si clementia Dei ignorantibus adhuc et infidelibus competit, utique et paenitentia ad se clementiam inuitat, salua illa paenitentiae specie post fidem, quae aut leuioribus delictis ueniam ab episcopo consequi poterit aut maioribus et inremissibilibus a Deo solo' (Engl. trans. by Le Saint, p. 109: 'Accordingly that mercy of God by which He *prefers the penance of a sinner to his death*, is meant for those who are still in ignorance and still unbelievers. […] It is not meant for those who have already come to a knowledge of God and learned the mystery of faith. But if those who are still in ignorance and unbelief meet with the mercy of God, it is penance, assuredly, which attracts this mercy to itself. This is without prejudice to that other kind of penance, performed after Baptism, which for lesser sins can obtain pardon from the bishop or for greater and irremissible ones from God alone'.)

31 See for example Colot, *Lactance: penser la conversion*, pp. 48–53 and throughout.

a prime example of the multivalence that Morgan says complicates so-called 'propositional faith'. We see it as well in the famous passage from Tertullian's *De idololatria*, 'non convenit sacramento divino et humano': 'Incompatible are the human oath of allegiance and the divine sacrament, the standard of Christ and the standard of the devil, the legions of light and the legions of darkness. One cannot serve two lords: God and Caesar'.[32]

Christian Faith, Christian Oath

There is one more crucial aspect to the relationship between fidelity, repentance, and the oath, one which accords with Morgan's sensitive treatment of human-divine fidelity. God is not just the remote foundation of the fidelity signified and enacted by the *sacramentum fidei*. God is also an invested party, concerned from the beginning with humanity's well-being. God's investment in humanity is why God swears, a digression Augustine did not take in his Sermon 180 but one which Tertullian took repeatedly, including in *De paenitentia*, where he writes that the same God 'who has appointed that chastisement follow upon judgement, has also promised that pardon will follow upon repentance, saying to the people: "Repent and I shall save you"' (cf. Ezekiel 18. 32).[33] God's promise ('spopondit') is not informal; it is an oath, deliberately sworn in human terms, as Tertullian goes on to explain in arguing for 'the good of repenting'. God wants us to repent and says so 'even by oath', so that we will believe him, swearing for our sake: 'oh most wretched, if we believe not the Lord, even on his oath'. The oath God swears 'in human fashion' is binding. God offers a 'solemn pledge' ('adseveratio'). Humans are bound to respond with 'perseverance', restraining their temerity by adhering to repentance.[34]

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32 Tertullian, *De idolatria*, ed. and trans. by Waszink, 19.2, pp. 62–63: 'Non convenit sacramento divino et humano, signo Christi et signo diaboli, castris lucis et castris tenebrarum; non potest una anima duobus deberi, deo et Caesari'. See especially Brennecke, '"An fidelis ad militiam converti possit"?'. For the long life of this problem, see the work of Stefan Esders, for example, 'Les origines militaires du serment dans les royaumes barbares'.

33 Tertullian, *De paenitentia*, ed. by Munier, 4.1, p. 156: 'Omnibus ergo delictis […] qui poenam per iudicium destinavit, idem et veniam per paenitentiam spopondit, dicens ad populum: *Paenitere et saluum faciam te*'; Engl. trans. by Le Saint, p. 20.

34 Tertullian, *De paenitentia*, ed. by Munier, 4.5–8, pp. 156–58: 'De bono paenitentiae […] bonum atque optimum esse quod deus praecipit. […] neque enim quia bonum est, idcirco auscultare debemus, sed quia deus praecepit […]. "Bonum est paenitere an non"? Quid revolvis? deus praecepit! Atenim ille non praecipit tantum, sed etiam hortatur; invitat praemio: salute; iurans etiam, *vivo dicens* (Ezekiel 33. 11) cupit credi sibi. O beatos nos quorum causa deus iurat; o miserrimos si nec iuranti domino credimus! Quod iterum deus etiam humano more sub deieratione testatur, summa utique gravitate et adgredi et custodire debemus, ut in adseveratione divinae gratiae permanentes in fructu quoque eius et emolumento proinde perseverare possimus'; Engl. trans. by Le Saint, p. 21 (modified).

Whether walking a tightrope or adrift in the tempest, there is a difference between Tertullian's and Augustine's conceptions of danger. Augustine speaks in terms of calculable risk: cautious Christians can compute their safest course for balancing social necessity and danger to their salvation. Tertullian speaks of managing uncertainty. He looks straight down into danger's immeasurable profundity. Calculating risk will not restrain human temerity for long. But let us conclude on a more positive note by turning to a younger contemporary and student of Augustine, Paulus Orosius. In his magnum opus, *Historiae adversum paganos*, Orosius reflects on the intrigue, betrayal, and parricide marking the reigns of Lysimachus and Seleucus I, successors to Alexander the Great.

> Haec sunt inter parentes filios fratres ac socios consanguinitatis societatisque commercia! tanti apud illos diuina atque humana religio pendebatur! Erubescant sane de recordatione praeteritorum, qui nunc interuentu solius fidei Christianae ac medio tantum iurationis sacramento uiuere se cum hostibus nec pati hostilia sciunt; quibus indubitatissime probatur, quia non, sicut illi antea, 'caesa iungebant foedera porca', sed quia nunc inter barbaros ac Romanos creatorem et dominum suum contestantes tantam fidem adhibita in sacramentum seruant euangelia, quantam tunc nec inter parentes ac filios potuit seruare natura.
>
> > (These are the relationships of blood and society between parents, children, and friends. Of such value were human and divine obligations weighed among them. Let those, indeed, blush on recalling past events who now know that *by the intervention of the Christian faith alone, and only by means of the sworn oath* do they live with enemies and do not suffer hostile acts. By these events it is proven beyond all doubt that, not as before 'they made treaties with the sacrifice of a sow' [Vergil, *Aeneid* 8.641], but that now among barbarians and Romans, *they preserve as much faith by calling to witness their Creator and Lord by oaths taken on the Gospels* as in the past nature was unable to preserve between fathers and sons.) [my italics][35]

Beyond risk and danger, uncertainty and fear, Orosius seems to encourage optimism when it comes to Christian faith and Christian oaths. Only now in a Christian society, he claims, can there be true fidelity and peace, such as was impossible in the old days of Roman faith.

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35 Orosius, *Historiarum adversus paganos libri VII*, ed. by Arnaud-Lindet, 3.65–67, p. 188; Engl. trans. by Deferrari, p. 119.

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II.

Redefining Social Relations in an Age of Transition

SUSANNA ELM

The Human Condition

Condicio *and* Origo *in Augustine (Letters 10*, 20*, and 24*)*

> Il punto nodale dei 'rapporti argari', intesi in senso weberiano, rimane la relatione fra lavoro, proprietà e rendita. […] In termini di prevalenza, i caposaldi del sistema agricolo sembrano essere da un lato la piccola proprietà contandina […] [e] dall' altro il colonato.[1]

quoniam ergo praecepit apostolus, ut saecularia iudicia si inter se habuerint christiani, ea non foro sed in ecclesia fiant, unde nos necesse est perpeti tales iurgantium quaestiones, in quibus nobis etiam terrena iura quaerenda sint, praecipue de condicione hominum temporali — quod possumus secundum apostolicam disciplinam, ut dominis suis sint subditi, servis praecipere, non autem liberis iugum servitutis imponere.

> (The Apostle has prescribed [that] the worldly judicial cases the Christians have among themselves should be litigated not in the forum but in the church, so that we have to suffer patiently the questions of such suits, for which we must inform ourselves also of the law of this world, especially that which regards the temporal *condiciones* of man, so that we can, according to apostolic discipline, recommend to the slaves to be submitted to their masters, but not impose on those who are free the yoke of servitude.)[2]

Among the letters composed by Augustine that Johannes Divjak discovered in 1981 three, *Letters 10**, *20**, and *24**, address questions of personal status. In all three letters Augustine engaged with legal cases *de condicione hominum temporali*, that is, the temporal condition of men. At stake were the irrevocable *condiciones*, conditions that might not have been formulated as oaths, but that nonetheless bound the existence of a person from birth to death, from beginning to end.[3] Scholars soon noted that several of these

1 Vera, 'Questioni di storia agraria tardoromana', p. 116.

2 Augustine of Hippo, *Epistulae*, ed. by Divjak, *Ep. 24**.1, p. 126; all English translations in what follows are my own unless otherwise noted. See also Uhalde, *Expectations*, pp. 8–43.

3 Whittaker, 'Agostino e il colonato'; Vera, '*Conductores domus nostrae, conductores privatorum*';

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The Oath in Late Antiquity and the Early Middle Ages: Religious Act, *Social Bond*, *Holy Sacrament*, ed. by Stefan Esders and Gerda Heydemann, CELAMA 46 (Turnhout: Brepols, 2026), pp. 49–66 BREPOLS PUBLISHERS 10.1484/M.CELAMA-EB.5.152872

cases *de condicione hominum temporali* involved tenant farmers, or *coloni*, and that the ways in which Augustine talked about them differed markedly from the scholarly *communis opinio* regarding the fate of such *coloni* at the beginning of the fifth century as a consequence of Diocletian's tax reforms, namely as the equivalent of 'slaves of the land', persons bound to the land as if they were slaves and hence severely curtailed in their personal status and freedom of movement.[4]

Thus, Augustine's letters have become a significant source for the evolution of agrarian labour and questions of personal status. Furthermore, recent research including new findings in papyrology and other aspects of material culture, innovative techniques in economic modelling, the recognition that slavery, including agricultural slavery, was prevalent at the time, alongside novel ways of conceptualizing the transmission and hence interpretative scope of Roman law, have led to a reframing of our understanding of 'the late Roman colonate'.[5] Consequently, current scholarly opinion on the role and status of *coloni* in the western part of the Roman Empire in the early fifth century is in flux and divided, though a core consensus can be established, which I shall briefly outline in what follows.[6]

My brief summary of the *status questionis* below will focus on the *colonus* at the time of Augustine as bishop of Hippo Regius. It is, moreover, intended as background for my central quest, namely to explore what Augustine might have meant when he spoke about *coloni* in the context of the *condicio hominum temporalis*, the human condition.[7] *Condicio* means contract, including marriage contract, pact, covenant, or stipulation, but also place, rank, position, or circumstance.[8] Nearly all aspects of *condicio* involve the swearing of oaths, often in the presence of *iuratores*, to seal pacts, covenants, contracts, obligations to remain where one ought to be, so that the oath is an intrinsic part of what follows.[9] *Condicio*, further, is centrally related to the notion of *origo*, more specifically in our case to the significance that *origo* assumed in the later Roman Empire and hence in the work of Augustine.[10] *Origo* means origin in the sense of beginning, but it also denotes a longstanding concept of Roman public law, famously encapsulated in Cicero's *De legibus* II.5, namely that all inhabitants of Rome have two *patriae*, one according to nature, that is, acquired through the natural fact of

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Kreusch, *Der Eid*, pp. 77–89.

4 For a recent overview of the scholarly debates see Lenski, 'Peasant and Slave'.

5 Carrié, 'Un roman des origines'; Rosafio, 'Dalla locazione al colonato'; Rosafio, *Studi sul colonato*.

6 Vera, 'Questioni di storia agraria tardoromana', pp. 115–16; Scheidel, 'Slaves of the Soil', p. 732; Lenski, 'Peasant and Slave', p. 132.

7 To do so fully is beyond the scope of this chapter and will be addressed separately elsewhere.

8 Lewis and Short, *A Latin Dictionary*, s.v.; and *TLL*, s.v.; *condicio* thus also has a close conceptual relationship to *fides*; Morgan, *Roman Faith and Christian Faith*, pp. 1–122.

9 For further details see Esders, 'Landvermessung', pp. 183–89; Esders, 'Schwur', pp. 52–67.

10 Elm, 'Sold to Sin'.

birth, and the other according to law, that is, as a citizen. As a consequence, all have as *patria* the place (*locus*) of their birth and a second, legal *patria* as citizens of the common *patria* Rome (*Roma communis patria*): 'alteram loci patriam, alteram iuris'.[11]

Since the time of emperor Hadrian at the latest, Roman jurists described the second form of citizenship, the one Cicero had defined as citizenship by law, through the notion of *origo*.[12] Though the precise details of the concept of *origo* as the mechanism that makes one a citizen underwent a number of changes during the empire, especially after the *Constitutio Antoniniana* granted Roman citizenship to all freeborn inhabitants of the realm, and then again in the wake of the tax reforms of Diocletian, *origo* remained the principal means of determining a person's status within the *ordo* of the empire.[13] That is, *origo* determined the *condicio hominis temporalis*.[14]

In the following, I am taking it as a given that Augustine and his audience, the recipients of the Divjak letters as well as those who read and listened to his other writings, were aware of the legal, administrative, and economic aspects that affected the lives of *coloni* and all others subjected to *condiciones* as a consequence of their *origo*.[15] Hence, I presuppose that Augustine used the technical language relating to administration and taxation on purpose, both in contexts such as those of *Letters 10**, *20**, and *24**, where he wrote as bishop as well as landowner, that is, as *patronus*, *possessor*, *dominus fundi*, and thus engaged legal issues directly, but also in other works where he used the same technical vocabulary, such as his *Opus Imperfectum* against Julian of Eclanum, his most mature elaboration of his thoughts regarding the *condicio hominum temporalis* and the sin we all 'per originem trahere'.[16]

What, then, were the semiotics of the *condicio* of the *colonus*, what did Augustine seek to convey and what might his audience have understood

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11 Cicero, *De legibus*, ed. by de Plinval, II.5, p. 39: 'ego mehercule et illi et omnibus municipibus duas esse censeo patrias, unam naturam, alteram civitatis: ut ille Cato, quom esset Tusculi natus, in populi Romani civitatem susceptus est, ita, quom ortu Tusculanus esset, civitate Romanus, habuit alteram loci patriam, alteram iuris'.

12 Thomas, *'Origine' et 'commune patrie'*, pp. 9–13, 55.

13 Schlinkert, *'Ordo senatorius' und 'nobilitas'*, pp. 50–54, 80–83; pp. 84–94 on *origo*, i.e. inheritance of status; pp. 106–16 achieved through merit and imperial grace; pp. 125–32 on senatorial *munera*; Bryen, 'Reading the Citizenship Papyrus (P.Giss.40)'.

14 See also Bransbourg, *Fiscalité*, pp. 8–31.

15 McLynn, 'Augustine's Black Sheep'; McLynn, 'Administrator'; Vera, '*Conductores domus nostrae, conductores privatorum*'; Hoffman, 'Augustine's Letter 20*'.

16 For examples of Augustine's administrative activities *qua* member of the African clergy, see for example *Concilium Carthaginense*, a. 348, canons 6–14, in *Concilia Africae a. 345-a. 525*, ed. by Munier, pp. 6–10; Buenacasa Pérez, 'La creación del patrimonio eclesiástico de las iglesias norteafricanas en época romana'; Jaïdi, 'Remarques sur la constitution des biens des églises africaines à l'époque romaine tardive'; Leone, 'Clero, proprietà, cristianizzazaione delle campagne nel Nord Africa tardoantico'; Lenski, *Constantine and the Cities*, pp. 246–59; Romanacce, 'Transfert de biens et procédures de restitution dans le conflit donatiste'; MacQueen, 'St Augustine's Concept of Property Ownership'.

when he employed terms such as *obnoxius*, *professio*, *indictio*, *per originem trahere*, in theological contexts? In what follows, I am guided by one red thread: when speaking about *his* conceptualization of what we now call original sin ('Ur/Erbsünde'), Augustine almost never used the Latin *ab origine*, from the beginning. Rather, when talking about original sin, he almost always used the construct *per originem* — for example in this passage from the *De peccatorum meritis*: 'Unde redimit, si non sunt *per originem* primi hominis venumdati sub peccato?' (From where did he repurchase [or redeem] us, if we are not put up for sale under sin through the *origo* of the first man?).[17] What might that imply? Arguably, this is an exceedingly small difference, but as I have argued elsewhere, when dealing with writers such as Augustine, we ignore such differences at our peril.[18]

Coloni and Taxation

> porro idem coloni […] scripserunt ad dominam possessionis, si hoc fieri permisisset, se continuo migraturos et ad me similiter, ut pro eis intervenirem ne fieret […].
>
> > (Then, these same *coloni* […] wrote to the landlord, *domina*, of the possession that they would depart immediately if she allowed this to happen and likewise to me so I would intervene lest it happen […].)[19]

For our present purpose, the rich and vexed history of the scholarship of the late Roman *colonus* begins during the time of Constantine, when the first implications of the empire-wide fiscal reforms introduced during the Tetrarchy began to leave their imprint in the legal sources.[20] In 332, the emperor Constantine issued a law to the provincials (*CTh* 5.17.1), in which he stipulated that a person who was discovered with a 'colonus iuris alienus' ('under someone else's law') in his purview had to restore that *colonus* to 'origine sua', to his *origo*, and had to acknowledge, or accept responsibility for, the tax liability of that person ('super eodem capitatio') at the point of *origo* for the period the *colonus* had been away.[21] This is the first indication in our sources that a *colonus* could be bound to his *origo* with consequences that related in some form to his *capitatio*, his personal tax liability, and that someone other than that *colonus* might have assumed and hence be held

17 Augustine of Hippo, *De peccatorum meritis*, ed. by Urba and Zycha, 1.23.33, p. 33. For recent scholarship on Augustine and original sin see Vanspauwen and Dupont, 'The Doctrine of Original Sin', pp. 459–63.

18 Elm, *Sons of Hellenism*.

19 Augustine of Hippo, *Epistulae*, ed. by Divjak, *Ep. 20**.10, p. 100.

20 Carrié, 'Diocletien et la fiscalité'.

21 *Codex Theodosianus*, ed. by Mommsen and Meyer, v.17.1: 'imp. Constantinus a. ad provinciales: apud quemcumque colonus iuris alienis fuerint inventus, is non solum eundem origini suae restituat, verum super eodem capitatione temporis agnoscat'; Lenski, 'Peasant and Slave', pp. 132–36.

responsible for this liability at the *origo*. Subsequent legislation indicates that this liability and its transfer occurred in the context of the tax assessments (*indictio*) in various forms, as *annona* or *tributum*, levied on municipalities and their territory, and throughout the fourth century and beyond also on particular estates through registration in the tax rolls, that is, in the census lists.[22] Increasingly, the jurists defined a *colonus* thus registered in the census of a landowner's estate as *originalis*, *originarius*, or *adscriptus*, and subsequent legislation specified that such a registration had binding character. Thus, in the next section of the law quoted above, Constantine stipulated that 'it will also be assured that *coloni* who attempt flight should be bound into a servile condition through irons [chains], so that by virtue of a condemnation to slavery they be forced to fulfill the duties appropriate for a free man'.[23]

Scholarship from the nineteenth century onward interpreted this registration and its accompanying liabilities as an ever increasing dependence of formerly free tenant farmers on their landlord, resulting in a *de facto* enslavement of the tenant to the land, that is, a change in personal status: the 'late Roman colonate'.[24] Now, scholars are unanimous that the personal status of such *coloni originarii* remained that of a free person, but it was a freedom circumscribed by liabilities that rendered the individual into a *condicio* analogous to slavery, as if a slave — thus free yet bound in ways not easily determined in detail, but *de facto* representing a new, third form of personal status.[25]

Historiographically, the precise contours of the *colonus originarius* are important to outline for two reasons. First, as Vera and others have pointed out, the *colonus* is the focal point of the relationship between landowner, tenant, and income, so that, second, the *colonus originarius* or *originalis* is central to the complex web of late Roman fiscal practices with its liabilities, privileges, and conditions affecting each inhabitant of the empire that has as yet not received comprehensive study.[26]

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22 Carrié, 'Un roman des origines'; Scheidel, 'Slaves of the Soil'; Finley, *Ancient Slavery and Modern Ideology*, pp. 123–49.

23 *Codex Theodosianus*, ed. by Mommsen and Meyer, v.17.1.1: 'ipsos etiam colonos, qui fugam meditantur, in servilem conditionem ferro ligari conveniet, ut officia quae liberis congruunt, merito servilis condemnationis compellantur implere'; See also Goffart, *Caput and Colonate*, pp. 69–72; Giliberti, *Servi della terra*, pp. 83–86; Krause, *Spätantike Patronatsformen im Westen des römischen Reiches*, pp. 93–98; Lenski, 'Peasant and Slave', pp. 133–34; Mirković, *The Later Roman Colonate and Freedom*, pp. 21–25, 47–59; Sirks, 'Reconsidering the Roman Colonate', pp. 335–36; Grey, 'Contextualizing *colonatus*', pp. 166–67.

24 Ulpian, in *Digesta Iustiniani Augusti*, ed. by Mommsen and Krüger (re-ed. and transl. by Watson), XXXIII.7.12.3, p. 125: 'servus quasi colonus in agro erat' (a slave who was as a *colonus* on the land); Giliberti, *Servi della terra*, pp. 67–69; Eibach, *Untersuchungen zum spätantiken Kolonat in der kaiserlichen Gesetzgebung unter besonderer Berücksichtigung der Terminologie*; Grey, 'Contextualizing *colonatus*', p. 155.

25 Van Minnen, 'Patronage in Fourth-Century Egypt'; Mirković, *The Later Roman Colonate and Freedom*, pp. 25–26; Sirks, 'The Colonate in Justinian's Reign', pp. 129–31.

26 Vera, 'Questioni di storia agraria tardoromana', p. 116; but see now Bransbourg, *Fiscalité*;

Diocletian's Fiscal Reforms

Taxation in the Roman Empire — indeed the entire administrative organization of the Roman Empire pre- and post- Diocletian — revolved around its urban centres. Here the tax declarations, the *confessio* or *professio*, of individual landholders were registered, on the premise that the social fabric was stitched together by the general assumption that those who had the means considered it an honour to contribute to the public good of the *patria*, both the patria of their *origo* and the *patria* that was the entire empire, the *communis patria*, through the provision of a variety of services or *munera*.[27] These services included the payment of annual burdens imposed by the emperors through the praetorian prefect as a direct tax on cities, the *indictio*. How that assessed tax was collected remained the responsibility of local authorities, who assigned shares of the total to the fiscally qualified citizens in proportion to their means.[28]

Diocletian intervened in this process in two ways. First, although tax collection remained at the municipal level, the magistrate at the provincial level assumed a more direct and expanding role. Concurrently, taxes could also be assessed directly on an estate rather than only through the municipality.[29] Second, he introduced a single, empire-wide set of fiscal principles through which, theoretically, the total taxable wealth of the empire could be measured and hence extracted more effectively. This was expressed through two abstract measures, the *iugum* and the *caput*.[30] Phrased differently, at the heart of the reform was the consideration that land and workforce had to be taxed together, because land without labour could not be cultivated and hence not taxed. The abstract notion of *iugera* thus depended on the number of *capita* declared by the individual landowner in his or her *possessio*, or *iugatio*, her tax declaration, and the individual's proportional tax liability of the total assessed for a given community in a given year.[31]

Marcone, 'Il lavoro nelle campagne'; Kolendo, 'La continuità delle strutture agrarie in Africa romana?'.

27 Löhken, *Ordines Dignitatum*, pp. 135–47; Drecoll, *Die Liturgien im römischen Kaiserreich des 3. und 4. Jh. n. Chr.*

28 Goffart, *Caput and Colonate*, p. 31; Jacques, '*Obnoxius curiae*'.

29 Grey, 'Contextualizing *colonatus*', p. 182; Bransbourg, *Fiscalité*, pp. 549–93.

30 'The *iugum* was a concrete unit measuring total taxable non-animate assets of an individual or a community, while the *caput* denoted a proportion of the total tax burden assessed on a community; both together were then registered in the census which was periodically updated', Grey, 'Contextualizing *colonatus*', p. 160 n. 33; *Codex Theodosianus*, ed. by Mommsen and Meyer, XI.3.1; *Syrisch-Römisches Rechtsbuch*, ed. by Selb and Kaufhold, § 106c, p. 157 (Leges Saeculares 121 = FIFRA 2.795–96); Grey, *Constructing Communities*, pp. 178–216; Jones, 'Census Records of the Later Roman Empire'; Harper, 'The Greek Census Inscriptions of Late Antiquity'; Thonemann, 'Estates and the Land in Late Roman Asia Minor'; Mirković, *The Later Roman Colonate and Freedom*, pp. 21–34; Carrié, 'Diocletien et la fiscalité'.

31 Jones, 'Taxation in Antiquity', p. 164.

As a consequence of this registration in the census rolls, the owner became responsible for the tax liability of the *colonus* thus registered. This was a condition of the registration irrespective of whether or not the *colonus* actually owned his property.[32] Seen from the other side, the *colonus* thus registered acquired a fiscal identity defined by his entry into the tax rolls of a specific estate and therefore became a part of the chain of liabilities burdening that estate. Hence, as stipulated in a law of Valentinian, 'though they appear to be free in status they must be treated as slaves of the land on which they were born'.[33] In specifying the landowner's responsibility for the tax payments of his registered *coloni*, the same law differentiates between the *potestas* of a *dominus* and the *sollicitudo* of a *patronus*, but states that both apply, thus ascribing the registered *colonus* a *condicio* that vacillates between slave and free:[34] being registered burdened the *colonus* as if he was a slave ('et debito condicionis obnoxii sunt, paene est ut quandam servitute dediti videantur'), but it did not change their status into the actual *condicio* of a slave.[35]

In other words, a *colonus*'s *origo*, the act of his being registered in the tax rolls of the land to which he was born, determined his *condiciones*, that is, the nature of the liabilities to which he was irrevocably bound, *obnoxius per originem*.[36] Such binding liabilities also affected the owner. She too could no longer dispose of these registered *coloni*, these *coloni originarii* or *originales*, as she saw fit. If land was sold, *coloni* registered on it by right of *origo*, *originis iure*, could not be removed; they were bound by the land and the taxes assessed upon it irrespective of the owner's intentions.[37]

Thus, *origo* implied a principle of registration as a function of tax accountability. It denoted a web of obligations, *condiciones*, that involved everyone who was part of the chain of taxation and its liabilities. The *origo* therefore determined the *condicio* not just of a *colonus originarius*, but of

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32 Sirks, 'The Colonate in Justinian's Reign', pp. 131–32.

33 *Codex Iustinianus*, ed. by Krüger, XI.52.1 (AD 393): 'et licet condicione videantur ingenui, servi tamen terrae ipsius cui nati sunt aestimentur'; Cf. Sirks, 'The Colonate in Justinian's Reign', pp. 124–28.

34 Krause, *Spätantike Patronatsformen*, pp. 89–93.

35 'originis iure', see *Codex Iustinianus*, ed. by Krüger, XI.50.2 (AD 396): 'and [to whom] they are obligated through the debt of their condition, so that they almost seem to be given into servitude'. Hence the divide in scholarship between those who consider 'the colonate' a fiscal category and those who see it as a juridical status, while some argue for something in between. On the fiscal side are, for example, Carrié, 'Un roman des origines'; Grey, 'Contextualizing *colonatus*', pp. 166–67; on the status side, for example, Vera, 'Questioni'; Giliberti, *Servi della terra*; see also Roth, 'Food, Status, and the *peculium* of Agricultural Slaves'; Kehoe, *Law and Rural Economy*, pp. 163–91 for the middle view.

36 For the parallel evolution of the *patrocinium* or 'protection', see Giliberti, *Servi della terra*, pp. 124–29; Krause, *Spätantike Patronatsformen*, pp. 15–20, 98–118. For obligation in general, see Zimmermann, *The Law of Obligations*.

37 *Codex Theodosianus*, ed. by Mommsen and Meyer, V.18.1.2; *Novels of Emperor Valentinian (Leges Novellae)*, ed. by Mommsen and Meyer, 35.1.18; Goffart, *Caput and Colonate*, pp. 80–81.

everyone expected to fulfil a specific *munus* or any other economic role. 'The terms *originalis* or *originarius* […] designated that an individual was registered on the census lists as attached to a particular *origo*, and thus subjected to the responsibilities and privileges of that *origo*.'[38]

Origo thus implies not so much a tie to the land — hence the threat of the *coloni* of *Letter 20** that they might move — but rather a fixed and registered position of responsibility and privileges with regard to the tax liabilities of a collective, publicly documented and acknowledged and handed down by descent, irrespective of the actual place where a person registered and obligated accordingly actually lived.[39] Such *condiciones* acquired through *origo* could be as diverse as the liability (*obnoxius*) to supply ships, produce bread, collect taxes, perform service on the municipal *curia*, or till the land in a position that was both free and bound as if a slave.[40] In addition, the *origo* and its *condiciones* were inherited, in general through the position of the father.[41]

Origo and *Communis Patria*

As has become apparent, *origo* denotes a concrete place, a city, or a piece of land, but it has at the same time a more abstract meaning that combines place with specific inherited, binding communal and individual conditions, obligations, liabilities, and privileges. What then is the connection between this more abstract, administrative meaning of *origo* and the *origo* as (universal) citizenship first enunciated in Cicero's writings?

As mentioned above, Cicero distinguished in his *De Legibus* II.5 between two forms of fatherland, or *patria*, one local and the other Roman; one according to nature, and the other according to the law, that is, according to one's parental descent and as part of the 'universal city'.[42] Thus, already at the time of Cicero, the notion of a dual citizenship was firmly in place. A person born in a municipality under Roman law had the same legal position as if born in the *urbs Roma*; hence Modestinus's expression, coined subsequent to the *Antonine Constitution*, that 'Roma communis

38 Grey, 'Contextualizing *colonatus*', p. 172.

39 For the complexities of descent, see Sirks, 'The Colonate in Justinian's Reign', pp. 126–28; Jacques, '*Obnoxius curiae*', pp. 309–18.

40 Grey, 'Contextualizing *colonatus*', pp. 174–75; Vera, 'Padroni, contandini, contratti', pp. 206–07; Jones, 'The Caste System in the Later Roman Empire'; Mirković, *The Later Roman Colonate and Freedom*, p. 61; Carrié, 'Un roman des origines', pp. 222–23; Giliberti, *Servi della terra*, pp. 66–72, 89–98, 105–11.

41 Sirks, 'Did the Late Roman Government Try to Tie People to their Profession or Status?'; Jacques, '*Obnoxius curiae*', pp. 318–23; Krause, *Spätantike Patronatsformen*, pp. 183–232; Bianchini, 'Condicio dei genitori e status dei figli'; Bond, *Trade and Taboo*, pp. 126–66.

42 Humfress, 'Laws' Empire'.

patria est'.[43] In other words, because one became, through the city of one's origin, Roman, one was, from a legal point of view, even in one's own city actually in *urbs Roma*, so that one never left one's *patria* regardless of one's actual location.[44] Consequently, and with the help of *fictio* — the 'as if' in law — if a person moved from his *patria* to Rome, he operated there as if he was in the city of his birth, or, at the opposite end of the spectrum, *urbs Roma* was wherever the *pater patriae*, the emperor, was.

Already at the time of Cicero, though Roman citizenship was ostensibly the result of birth in a particular city governed by Roman law, the decisive factor was not the actual territorial one, the place itself, but the status of the parent: the important point was birth 'to' a place, not residence 'at' that place, *unde*, not *ubi*. The concept of the functional equivalent of being a citizen of Rome as soon as one was born 'to' a Roman city, emerged at the time of Cicero in the context of the Italian municipalities, and it worked again in the same way once Caracalla had granted Roman citizenship to nearly all freeborn inhabitants of the empire, except that now, as a consequence of the *Constitutio Antoniniana*, what had begun as a restrictive condition had become a universal one.[45]

In the intervening period, however, the simultaneous presence in the cities of the empire of persons under different legal regimes, essentially divided into *cives* and *incolae*, residents who could be Latin or *peregrini*, required the management of these legal hierarchies of personal status.[46] The guiding principle of this management was again, territorial, but in the case of the residents in the opposite direction. Merely because one resided within a city under Roman law did not grant one Roman citizenship. *Peregrini* remained *peregrini* if born *peregrini*, irrespective of the place where they actually lived.[47] At least since Hadrian, Roman jurists had thus made *origo* the central mechanism to manage this hierarchy of personal status, differentiating between citizens and residents of varying status — and the relevance of this aspect of *origo* remained important even after Caracalla's citizenship edict as attested, not least, by Augustine's preoccupation with *origo*, dual citizenship, and the nature of the *peregrinus* in the context of the *condicio hominum temporalis*.[48]

Because, conceptually, citizenship was determined by the notion of a place of origin that was subordinate to parental descent, actual birth and

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43 *Digesta Iustiniani Augusti*, ed. by Mommsen and Krüger (re-ed. and transl. by Watson), XXVII.1.6.11, p. 783; *Codex Theodosianus*, ed. by Mommsen and Meyer, VI.2.25 (AD 426); Bryen, 'Reading the Citizenship Papyrus (P.Giss.40)'.

44 Thomas, *'Origine' et 'commune patrie'*, pp. 10–11.

45 Thomas, *'Origine' et 'commune patrie'*, pp. 15–19; Kantor, 'Local Law in Asia Minor after the *Constitutio Antoniniana*'; Moatti, 'The Notion of *res publica* in the Age of Caracalla'.

46 Thomas, *'Origine' et 'commune patrie'*, pp. 25–34.

47 Thomas, *'Origine' et 'commune patrie'*, pp. 22–23.

48 Inglebert, 'Christian Reflections on Roman Citizenship (200–400)'.

actual residence were not synonymous with legal origin, or *origo*.[49] Hence, jurists differentiated between the place of residence, *domicilium*, and the locus of provenance: the first was voluntary and transitory, the latter, *origo*, a consequence of descent and hence binding, irrespective of individual volition, and permanent across generations.[50] *Origo*, not *domicilium*, determined citizenship, so that, as a consequence, the nature of a person's participation in their community, that is, the conditions, obligations, and privileges characterizing their participation, resulted from *origo*, and were thus — at least theoretically — immutable and permanent across generations also. This means in practice that the *condiciones* each person acquired *per originem* travelled with that person, *originem trahere*, regardless of the actual place of residence; you could be *natus* in one city, reside in another city, and have your *origo*, through descent, in yet another city entirely, but unlike the first two affiliations, the last was permanent. Not surprisingly, the most intense theoretical and conceptual engagement of the jurists with the role and function of *origo* and the legal and practical implications of the *condiciones* attached to it arose mostly in cases such as those I just mentioned: when the persons in question were in fact not born and did not reside in the place from which they derived their *origo*. Only when a person was born and dwelled outside his place of *origo* did it become imperative to clarify the nature of the conditions, obligations, and privileges into which the *originales* or *originarii* had been born *per originem*.[51]

It is in this context that the contours of *origo* as the determining mechanism of the *condiciones* of citizenship and personal status, with all its obligations and privileges, including fiscal obligations and privileges, emerge. These contours were carried forward into the fourth and fifth centuries through the nexus to *condiciones*, even after Caracalla had made citizenship universal. The principal conditions are the following. As certified by Ulpian, *origo* cannot be altered, not through lies or any other action; it is a 'veritas naturae'.[52] The concept of *veritas naturae* denotes offspring from a legal marriage and hence devolves through the father; only in circumstances where there is no legal marriage, e.g. if the mother is a slave, does her *origo* prevail. Everyone is citizen of the place where his father was a citizen, on the same conditions, and transmits both to his legitimate sons: place of birth, *natus*, residence, and *origo* are hence three distinct entities, even if these categories were, in fact, mostly overlapping or indeed identical.[53]

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49 Harders, '*Agnatio, Cognatio, Consanguinitas*', pp. 18–39; Jacques, '*Obnoxius curiae*', pp. 305–07.

50 Moatti, 'Mobility and Identity between the Second and Fourth Centuries'.

51 Thomas, *'Origine' et 'commune patrie'*, pp. 56–57.

52 *Digesta Iustiniani Augusti*, ed. by Mommsen and Krüger (re-ed. and transl. by Watson), L. 1.6 (Ulpian); *Digesta Iustiniani Augusti*, ed. by Mommsen and Krüger (re-ed. and transl. by Watson), L. 1.22.4 (Sententiae Pauli); *Codex Theodosianus*, ed. by Mommsen and Meyer, XII.1.96, XII.1.159; Thomas, *'Origine' et 'commune patrie'*, pp. 58–59; Jacques, '*Genitalis curia*'.

53 *Digesta Iustiniani Augusti*, ed. by Mommsen and Krüger (re-ed. and transl. by Watson), L. 1.6.1

If the hereditary and permanent nature of *origo* and its conditions thus implies stasis, at least in theory, in practice social mobility was possible.[54] For example, slaves could override the *condicio* of their *origo* through emancipation. Further, the emperor could change the nature of the conditions through exemptions and other privileges,[55] and after Diocletian one could become a citizen through an act of imperial beneficence, the *adlectio*: imperial *fiat*, the beneficence of the divine ruler, thus gave one a new *origo*, a re-birth with a new father, the *pater patriae*, leading to different conditions, 'adlectus per beneficium divis principis'.[56]

In sum, the term *origo* denotes six different meanings: first, it is the beginning; second, it denotes *condiciones*, personal status. In the context of the *colonus originalis*, this is a status that is that of a freeborn person who is also bound as if a slave, free and enslaved; third, as an administrative mechanism it denotes through registration a collective responsibility for liabilities based on individual *condiciones*; fourth, these individual and collective obligations are binding and hereditary; fifth, it denotes dual citizenship and its management, for example in the case of *peregrini*; and last, this implies a distinction between natural birth, *natus*; social birth, *origo*, and residence, *domicilium*.[57]

I would like to conclude with a remark Augustine made in the controversy with Julian of Eclanum concerning the conditions obligating and binding mankind as a consequence of Adam's sin. Was the penalty for Adam's sin only the mortality with which we are born, as Julian argued, or was mortality only one of the *condiciones* handed down to the rest of Adam's sons and daughters as a consequence of their *origo*, *per originem*, the other being sale into slavery to sin?

Augustine's answer is well known and made evident in his response to Julian in the *Opus Imperfectum*. For Julian, the very idea that the conditions Adam had accrued as a result of his disobedience were sale into slavery to sin, transmitted via inheritance, was utterly barbaric. How could a newborn baby be punished for the sins of his parents?[58] Augustine's position, according to Julian, was plainly Manichean, since to argue that sin was inherent in human

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(Ulpian); *Codex Iustinianus*, ed. by Krüger, X.39.3 (Caracalla), X.32.36; Thomas, *'Origine' et 'commune patrie'*, pp. 60–70.

54 Nörr, '*Origo*'; Thomas, *'Origine' et 'commune patrie'*, p. 81.

55 Lizzi Testa, 'The Bishop, *vir venerabilis*', pp. 125–44; Lizzi Testa, 'Privilegi economici e definizione di *Status*'; Mathisen, '*Adnotatio* and *petitio*'.

56 *Codex Iustinianus*, ed. by Krüger, X.40.2; *Digesta Iustiniani Augusti*, ed. by Mommsen and Krüger (re-ed. and transl. by Watson), L. 1.37; Thomas, *'Origine' et 'commune patrie'*, pp. 84–102; quote 92: 'adlectus in coloniam […] ex beneficio divi Hadriani'.

57 Giliberti, *Servi della terra*, pp. 114–23; Sirks, 'The Colonate in Justinian's Reign', pp. 126–28, 138–39; Krause, *Spätantike Patronatsformen*, pp. 263–68.

58 Julian of Eclanum, *Ad Florem* = Augustine of Hippo, *Contra Iulianum*, ed. by Zelzer, I.48, p. 38: 'nascentium persecutor'; Lopes Pereira, *Augustine of Hippo and Martin Luther on Original Sin and Justification of the Sinner*, pp. 129–40.

nature denied the very grace of nature as divine creation.[59] No wonder that Augustine had invented the term *peccatum originale* and used it instead of *peccatum naturale*: it was a cheap attempt to hide the deeply Manichean character of his argument.[60] To the contrary, Augustine responded. Everyone could see that newborn babies suffer death, illness, pain, and actual sale into slavery, even if freeborn. How could a just God permit this *unless* already a newborn carried the sin of Adam *per originem*? Moreover, Christ had died for all men, babies included, and 'unde redimit, si non sunt per originem primi hominis venumdati sub peccato?' (From what would he have repurchased us, had we not been born sold to sin through the *origo* of the first man?)[61]

Indeed, Augustine continued, he had chosen *originalis* rather than *naturalis* to designate this sin, 'because we do not intend a sin of divine making, but a sin of human *origo*, above all to signify that sin which entered the world through one man', Adam.[62] Of course, human nature, like creation as a whole, was good. Human nature was not created to carry that sin, hence neither the human body nor the soul are to blame. Adam's sin was an act of wilful disobedience, punished by death and the enslavement of the will to sin, so that the will was henceforth divided.[63] This will was still free, but it was a freedom now bound by *condiciones* such that it could only veer toward the bad, toward enslavement to sin: though free it was bound as if enslaved.[64] Therefore, Adam's disobedience, not his nature, had sold man, though created free, into slavery to sin, a *condicio* transmitted not qua *natus*, but through man's *origo*, *originem trahere*, from father to son.[65]

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59 Julian of Eclanum, *Ad Florem* = Augustine of Hippo, *Contra Iulianum*, ed. by Zelzer, I.53–54, pp. 48–51.

60 Augustine of Hippo, *Contra Iulianum*, ed. by Zelzer, II.84, pp. 221–22; Augustine of Hippo, *Contra Iulianum*, ed. by Zelzer, V.6–9, pp. 177–79.

61 Augustine of Hippo, *De peccatorum meritis*, ed. by Urba and Zycha, I.23.33, p. 33.

62 Augustine of Hippo, *Contra Iulianum*, ed. by Zelzer, V.9, p. 177: 'non divini operis, sed humanae originis […] quod per unum hominem intravit in mundum […]'.

63 Augustine of Hippo, *Contra Iulianum*, ed. by Zelzer, V.40, p. 241 (referring to Romans 7. 15); Vanspauwen and Dupont, 'The Doctrine', pp. 466–67; Karfíková, *Grace and Will*, p. 80.

64 Djuth, 'Augustine on Necessity'; Dodaro, '"*Ego miser homo*"'; Aflatt, 'The Responsibility for Involuntary Sin in Saint Augustine'; Elm, 'Sold to Sin', pp. 15–21.

65 Augustine of Hippo, *Contra Iulianum*, ed. by Zelzer, III.12; *Codex Theodosianus*, ed. by Mommsen and Meyer, XII.1.38; 42; 58; 62; Rist, 'Augustine', p. 424; Lamberigts, 'Some Critiques on Augustine's View of Sexuality Revised', esp. pp. 154–55.

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MICHAEL WUK

‘Alien and Inappropriate’?

Vigilius of Rome, the Council of Constantinople (553), and the Necessity of Swearing Oaths

Introduction

One of the issues central to the present volume is the spectrum of Christian responses to Jesus’s prohibition of oaths in the Sermon on the Mount.[1] As can be seen in many of the volume’s other contributions, some theologians argued that the Lord had forbidden all sworn promises, some church leaders suggested that only non-Christian pledges were sinful, and some churchmen maintained that as the main concern was perjury, oaths were permissible if the swearers kept their word.[2] Despite — or perhaps owing to — these differences in interpretation, many late antique Christians liberally swore and accepted such pacts, with the result that the practice of oath-taking became subsumed into the Christian milieu. One explanation for this state of affairs is provided by John Chrysostom who, shortly after the riots in Antioch in 387, delivered a series of sermons arguing for restraint from a range of what the preacher framed as sinful habits. In one of these homilies, Chrysostom complains that members of his congregation believed that abstinence from oaths or other established social customs was irrelevant in the arena of everyday life. Instead, the preacher tells us, these individuals repeatedly asserted that scriptural and theological proscriptions of oaths were not an issue for the ‘average Joe’, but were rather a concern for clergymen.[3]

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* This chapter forms a companion piece to Wuk, ‘Pragmatic Necessity’, on the use of oaths at the ecclesiastical councils of the fifth century.

1 Prohibition: Matthew 5. 34-37, abbreviated at James 5. 12; Kollmann, ‘Das Schwurverbot’; Kollmann, ‘Erwägungen zur Reichweite’; J. Meier, ‘Historical Jesus’. See also the introduction to this volume and the contributions of Bernd Kollmann, Gerda Heydemann and Heiko Behrmann, and Heiko Behrmann.

2 See further: Uhalde, *Expectations of Justice*, pp. 77-104; Delouis, ‘Église et serment’; Rebillard, ‘Speech Act’, pp. 194-97.

3 John Chrysostom, *Homiliae XXI de statuis*, XV.15, col. 161. Chrysostom makes similar comments in other sermons: *Adversus Iudaeos*, VIII.4, col. 932; *Homiliae in Genesim*, XXI.6,

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The Oath in Late Antiquity and the Early Middle Ages: Religious Act, Social Bond, Holy Sacrament, ed. by Stefan Esders and Gerda Heydemann, CELAMA 46 (Turnhout: Brepols, 2026), pp. 67–97 BREPOLS PUBLISHERS 10.1484/M.CELAMA-EB.5.152873

Church leaders certainly had to bear the burden of being role models for other Christians. Priests and bishops were highly visible members of society and could hardly preach that the laity should observe the commands outlined in the scriptures if they themselves did not follow these guidelines. Indeed, some late antique authors praised Christian authorities for abstaining from the use of oaths, the avoidance of which was taken as a mark of ascetic strength.[4] And yet, owing to their positions of authority and increasing involvement in civic affairs, late antique clergymen routinely became involved in society's quotidian issues.[5] In the context of these necessary and regular interactions with other members of society, bishops had to decide whether to engage with forbidden yet socially embedded customs, such as the swearing of oaths, or adhere strictly to the scriptural rules on these practices.

And yet, despite the purported assertion of Chrysostom's congregation that only bishops could hope to obey God's commands about oaths, many clergymen thought that the immediate benefits of using these pledges took precedence over more abstract concerns about sin and following the commands of God. In fact, the routine ecclesiastical interactions with the use of oaths led to late antique and medieval clergymen gradually taking ownership of the practice.[6] This chapter considers episcopal pragmatism when faced with the need to swear by investigating the oaths offered and received by Vigilius, bishop of Rome 537–555 CE.[7] In the events leading to the second Council of Constantinople in 553, the bishop was forced to rely on several sworn promises to navigate his fraught relationship with the emperor Justinian and to seek some consensus on contemporary theological issues. After contextualizing the clergyman's uses of oath-taking within these circumstances, the present discussion investigates the two types of promise utilized by Vigilius. The first of these sections examines the oaths of safety received by the churchman, who had been given these assurances by Justinian's representatives to lure the bishop out of asylum. The second section investigates the secret oath through which the bishop was made to affirm his support of the emperor's controversial condemnation of the theologians often termed the Three Chapters.

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col. 183; *Adversus oppugnatores*, col. 372; Maxwell, *Christianization and Communication*, pp. 144-68, esp. pp. 148-51 on the swearing of oaths.

4 For instance: Basil of Caesarea, *Letters*, ed. by Courtonne, CCVII.4, II, p. 187; Sozomen, *Church History*, ed. by. Hansen, VI.28.3, p. 277; Delouis, 'Église et serment', pp. 230-35.

5 On perceptions and duties of clergymen, especially bishops, in Late Antiquity: Elm, *Die Macht des Weisheit: Das Bild des Bischofs*; Rapp, *Holy Bishops*; Lizzi Testa, 'The Late Antique Bishop'.

6 See, for instance: Esders and Mierau, *Der althochdeutsche Klerikereid*, on one ninth-century clerical oath of office and its genesis from earlier promises; Fiori, *Il giuramento di innocenza nel processo canonica medievale*, on medieval ecclesiastical deployments of innocence oaths in judiciary contexts; Blidstein, 'Loosing Vows', pp. 292-93, on the Byzantine church's power to annul oaths.

7 Hereafter, all dates are CE.

Pertinently, in response to the extraction of the latter promise, the emperor Justinian reportedly stated that he believed that it was 'alien and inappropriate' for clergymen to swear such promises.[8] However, at no point in the written records related to these promises do we find any indication that any other party related to these interactions objected to the use of oaths on scriptural grounds. On the contrary, some of the churchmen involved in these events freely took oaths themselves. In the context of the Council of Constantinople in 553, Vigilius had no choice but to accept the necessity of the practice's usage. In some cases, even higher ecclesiastical authorities had to act in a manner which was not entirely in agreement with the teachings of Jesus and thereby prioritize the social benefit of swearing oaths over strict adherence to the scriptures.

Episcopal Vacillation and Imperial Pressure: Justinian, Vigilius, and the Three Chapters

Much of this chapter concerns Vigilius, Justinian, and their extraordinary interactions in the prelude to and during the Council of Constantinople. The terse relationship between emperor and bishop was marked by doctrinal disagreements which sent theological shockwaves across the empire and by Justinian's repeated attempts to enforce universal compliance with his personal standpoint. As it is in this context that Vigilius was required to engage with the practice of swearing oaths, we should begin with a brief examination of the theological conflicts and intense imperial pressure with which the bishop had to deal.[9]

The official purpose of the Council of Constantinople was to resolve the debate around the so-called Three Chapters: the person and works of Theodore, bishop of Mopsuestia 392–428; a letter attributed to Ibas, bishop of Edessa 436–457, and addressed to Mari the Persian; and several theological excurses of Theodoret, bishop of Cyrrhus 423–*c.* 460. Each of the Chapters to some degree opposed the theological views of Cyril, bishop of Alexandria 412–444, whose later reputation as a linchpin of Nicene 'orthodoxy' meant that those accused of disagreement with the clergyman's doctrinal beliefs could be labelled as 'heterodox'.[10] As a result, the acceptability of these works and their authors had been hotly contested in the fifth century. Owing to the arguments of various churchmen, Theodoret

8 *Council of Constantinople II (553)*, ed. by Straub, VII.4.4, p. 186, discussed in the final section of this chapter.

9 More extensive treatments of the following events than is possible here are provided by Gray, 'Legacy of Chalcedon', esp. pp. 232-35, and Price, *Council of Constantinople*, I, pp. 1-98.

10 'Orthodoxy' and its antonyms 'heterodoxy/heresy' were labels used by Christians to identify beliefs which they held to be acceptable or unacceptable respectively. As such, these terms were discursive constructs which shifted in meaning, rather than static doctrinal positions: Kahlos, *Religious Dissent*, pp. 105-20, with bibliography.

and Ibas were anathematized at the second Council of Ephesus in 449, but this condemnation was overturned not long afterwards at the Council of Chalcedon in 451.[11] Chalcedon was not the final word on these individuals and their writings. Clergymen on both sides of the debate continued to argue vociferously for and against the condemnation of these individuals and their works into the sixth century.

Much of Vigilius's tenure as bishop of Rome was taken up with this issue.[12] Shortly after his episcopal election in 537, the bishop sent a letter to Justinian asking the emperor not to introduce innovations into the contemporary religious landscape and, in the interests of unity, to agree with Rome's doctrinal position.[13] Ignoring this request, in 543/544 Justinian, who often took an active interest in theological and ecclesiastical affairs, issued an edict which in no uncertain terms condemned the Three Chapters as 'heterodox'.[14] This decree acted as a flashpoint in the ecclesiastical politics of the sixth century. While the emperor managed to compel some church leaders to give their public support for the condemnation, many western churchmen, who maintained that the Chapters were 'orthodox' in nature, proved more resistant than Justinian expected. In the face of his clergy's hostility, Vigilius neglected to offer his public support for the imperial enactment.

It was only after Vigilius came to Constantinople that the relationship between emperor and bishop began to deteriorate publicly. During a church service in November 545, the ecclesiastical leader was taken by imperial soldiers from Rome to Sicily, presumably to protect him from Gothic military activity in Italy.[15] After a year in Sicily, in December 546 the clergyman was summoned to Constantinople by Justinian and took up residence in the Placidia Palace, the accommodation reserved for either the bishop of Rome or his *apocrisiarius* (the bishop's official representative). In January 547, the month after his arrival in Constantinople, the church leader excommunicated Menas, archbishop of Constantinople 536–552, and the other clergymen who had supported Justinian's denouncement of the Three Chapters. After a few months under imperial pressure, in June 547 Vigilius resumed communion with Menas and condemned the Three Chapters in two signed statements, which were secretly delivered to Justinian and his empress, Theodora.[16] The next year, the bishop sent Menas

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11 Theodoret: *Acts of the Council of Chalcedon* (451), ed. by Schwartz, VIII.1-32, pp. 3-11. Ibas: *Acts of the Council of Chalcedon* (451), ed. by Schwartz, IX.1-10.181, pp. 11-55.

12 Sotinel, 'Emperors and Popes', pp. 279-84; Price, *Council of Constantinople*, I, pp. 42-44.

13 *Collectio Avellana*, ed. by Guenther, XCII, pp. 349-54.

14 Although this edict has not survived in its entirety, fragments drawn from other sources have been collated by Schwartz, *Vigiliusbriefe*, pp. 73-81. Justinian's interest in ecclesiastical and theological affairs: Meier, *Das andere Zeitalter*, pp. 104-37; Meier, 'Nachdenken über "Herrschaft"', pp. 206-11.

15 Chrysos, *Η εκκλησιαστική πολιτική*, pp. 44-57; Sotinel, 'Emperors and Popes', p. 281.

16 These documents were read out in the seventh session of the Council of Constantinople: *Council of Constantinople II (553)*, ed. by Straub, VII.6-7, pp. 187-88.

Table 1. Timeline of events

543/544	Justinian condemns the Three Chapters
November 545	Imperial soldiers disrupt Vigilius during a church service to take him from Rome to Sicily.
December 546	Vigilius takes up residence in Placidia Palace, Constantinople.
January 547	Vigilius excommunicates Menas and the other clergymen who supported Justinian's condemnation of the Three Chapters.
June 547	Vigilius resumes communion with Menas and the other excommunicated clergymen. In secret, Vigilius also gives Justinian and Theodora signed condemnations of the Three Chapters.
April 548	Vigilius publishes his *Judgement.*
July 549	Vigilius receives a letter from Aurelian of Arles, who was concerned with the former's stance on the Three Chapters.
March 550	Vigilius deposes the Roman deacons Sebastian and Rusticus for secretly working to undermine his authority.
April 550	Vigilius responds to the letter sent by Aurelian of Arles.
August 550	Vigilius is permitted to withdraw his *Judgement*, but swears a secret oath to Justinian to work for the condemnation of the Three Chapters.
Late 550	A meeting of bishops and imperial officials agrees to discuss the Three Chapters at a major ecumenical council, to be convoked in the future.
July 551	Justinian issues *On the Orthodox Faith*.
July–August 551	Vigilius flees to the church of St Peter and excommunicates Menas and Theodore Ascidas. Imperial soldiers try to take Vigilius out of the church by force, but the bishop is eventually persuaded to leave by various officials.
Late 551	Vigilius is effectively imprisoned in Placidia Palace.
December 551	Vigilius escapes from Placidia Palace and seeks asylum in the church of St Euphemia, Chalcedon.
February 552	Vigilius's *While in St Euphemia's* is disseminated.
June 552	Vigilius revokes his excommunications of Menas and Theodore, and leaves St Euphemia's, Chalcedon.
May–June 553	The second Council of Constantinople takes place without Vigilius's direct involvement. Vigilius disseminates his first *Resolution.* Justinian responds by revealing to the council Vigilius's secret oath to support the condemnation of the Three Chapters. Vigilius is removed from the ecclesiastical diptychs and not allowed to return to Rome.
February 554	Vigilius condemns the Three Chapters in his second *Resolution*.
June 555	Finally permitted to return to Rome, Vigilius dies *en route.*

his *Judgement* (*Iudicatum*), which in no uncertain terms anathematized the Three Chapters.[17] Unsurprisingly, this document was not received positively by the western clergy. On 14 July 549, Vigilius received a letter from Aurelian, bishop of Arles 545/546–551, who expressed his concerns about the latter's public stance on the Chapters and 'orthodoxy'.[18] Perhaps more tellingly, several Roman deacons, led by the clergymen Sebastian and Rusticus, the latter of whom was the bishop's own nephew, clandestinely worked to undermine Vigilius's authority. In response to this discontent, Vigilius deposed the offending deacons and, in an attempt to demonstrate his 'orthodox' credentials, assured Aurelian that he supported the outcomes of the Council of Chalcedon.[19] Recognizing the ineffectual nature of the *Judgement*, Justinian permitted the embarrassed bishop to withdraw his statement, but in August 550, the emperor compelled Vigilius to swear a secret oath that he would vigorously work for western acceptance of the Chapters' condemnation. At some point later in the same year, Justinian, Vigilius, and other church and state actors met in Constantinople and publicly agreed not to publish any new declarations on the Chapters controversy until a consensus was reached at a forthcoming ecumenical council. At the time, it seemed that bishop and emperor had decided not to add fuel to the raging fires of this ecclesiastical conflict.

With few indications that this promised synod would be convened soon, Justinian once again disturbed the uneasy peace by issuing another official statement. *On the Orthodox Faith (De fide recta)*, disseminated in 551, reaffirmed the imperial court's opposition to the Three Chapters and thereby restoked the anger of western clergymen.[20] To protest against this enactment, Vigilius and his ecclesiastical entourage claimed asylum in the church of St Peter in the Hormisdas Palace, close by the emperor's residence. While in the church, the bishop sent an inflammatory letter to Menas and Theodore Ascidas, archbishop of Caesarea 536–558 and Justinian's primary religious advisor. In this letter, Vigilius once again excommunicated Menas and the other eastern clergymen who had supported Justinian's policies concerning the Chapters, but the church leader also asserted that as Theodore was the primary force behind *On the Orthodox Faith*, the archbishop of Caesarea had to be expelled from his position.[21] Eager to end

17 Only excerpts of the *Iudicatum* have survived: *Council of Constantinople II (553)*, ed. by Straub, I.7.11, pp. 11-12; *Collectio Avellana*, ed. by Guenther, LXXXIII.299-302, pp. 316-17.

18 Aurelian's letter has not survived, but the content can be surmised from Vigilius's response, which is dated to 29 April 550 and was read out during the seventh session of the Council of Constantinople: *Council of Constantinople II (553)*, ed. by Straub, VII.10, pp. 197-99.

19 The deacons were deposed by a letter, which was later read out at the Council of Constantinople: *Council of Constantinople II (553)*, ed. by Straub, VII.8, pp. 188-94.

20 Unlike the previous document, this theological statement has survived: Justinian, *De fide recta*, ed. by Schwartz, pp. 72-110.

21 Vigilius, *Letter to Theodore Ascidas and Menas*, ed. by Schwartz, pp. 10-17 only became public knowledge in February 552, when mentioned by Vigilius, *Dum in Sanctae Euphemiae*,

this demonstration of dissent, Justinian managed to compel the churchmen to leave St Peters in August 551. Following a violent interaction in which imperial soldiers failed to drag the bishop of Rome out of the church, the ensconced clergymen were persuaded to depart from their sanctuary by the emperor's representatives, who guaranteed Vigilius's safety by means of oaths if he stopped claiming asylum.

Even though Justinian's officials had sworn that the church leader would not be harmed, Vigilius was effectively imprisoned within the Placidia Palace and mistreated by his servants.[22] And so, not long after leaving St Peter's, Vigilius escaped from his residence through a hole in a wall and again took shelter in a church, but this time in St Euphemia's, a prominent religious building most famous for housing the Council of Chalcedon in 451. The bishop refused to leave the church until his demands, outlined in the letter he had sent from St Peter's, had been met: namely, the deposition of Theodore Ascidas and imperial recognition of Menas's excommunication. As Justinian refused to agree and replied with threats, the church leader sent another letter from the safety of St Euphemia's to explain the incredible series of events which had led to his claiming of asylum and to assert to his western followers that he still supported the Council of Chalcedon. *While in St Euphemia's* (*Dum in Sanctae Euphemiae*) was widely disseminated in February 552 and reported that the bishop initially rebuffed the attempts of imperial officials to lure him out of the church through oaths which confirmed his safety. This state of conflict between church leader and emperor continued until June of the same year, when a compromise was reached: Vigilius would depart from the church and withdraw his statement of excommunication against Theodore and the other anti-Chapters clergymen, while the latter would sign an agreement to remain faithful to the outcomes of Chalcedon and to submit new documents concerning the ongoing debate to the bishop of Rome for approval.[23] Furthermore, to suggest that Justinian and Vigilius were no longer in conflict but were now on the same page, the churchman not only received a half-hearted imperial apology for his mistreatment, but was also granted an audience with the emperor.

To Justinian's mind, an ecumenical council which would settle the debate around the Three Chapters was finally imminent, but Vigilius did not want to commit himself to either side of the debate at this stage. Under pressure once again, the church leader agreed to preside over the

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ed. by Schwartz, pp. 2-3, and posted publicly by the bishop's supporters throughout Constantinople: Mansi, *Sacrorum Conciliorum*, pp. 56-58.

22 Letters written by Vigilius and some western clergymen suggest that this mistreatment included some unspecified public abuse and the forgery of documents in the bishop's name: *Letter from the Church of Milan to the Frankish Envoys*, ed. by Schwartz, pp. 22-23; Vigilius, *Dum in Sanctae Euphemiae*, ed. by Schwartz, p. 5.

23 This agreement is recorded in Vigilius's first *Constitutum*: *Collectio Avellana*, ed. by Guenther, LXXXIII.39, pp. 230-32.

Council of Constantinople, the eight sessions of which took place between 5 May and 2 June 553. However, the bishop played no active role in the synod, which was predominately attended by eastern clergymen who already supported Justinian's condemnation of the Chapters. Rather than taking an active role in the mostly one-sided debate, Vigilius worked on his *Resolution* (*Constitutum*), which was intended to be both a definitive statement on the Three Chapters with no overt sense of denouncement evident and also an affirmation of the bishop's continued adherence to Chalcedonian 'orthodoxy'. The *Resolution*, which was delivered to the emperor on 25 May 553, angered Justinian, who had grown tired of the bishop's vacillation. Imperial officials interrupted the council at the start of the seventh session, which took place on the next day, to read out various documents which revealed that Vigilius had secretly agreed to work for the anathematization of the Three Chapters. Through the *quaestor sacri palatii* Constantine, the emperor also demanded that Vigilius's name be removed from the honorific ecclesiastical diptychs, which contained lists of prominent individuals commemorated by prayer during church liturgies.[24] Perhaps unsurprisingly, the other church leaders present for the council complied with this directive.

Vigilius's fortunes did not improve from this point. The bishop was prevented from leaving Constantinople and may even have suffered further mistreatment.[25] At the least, Vigilius was persuaded to issue further statements concerning the Three Chapters, including another version of his *Resolution*, which was disseminated in February 554 to expunge the original document. At this time, the bishop had been away from his see for seven years and his compliance with the imperial court was surely motivated by a desire to return to Rome. Unfortunately for Vigilius, when he was finally permitted to set out the next year, he met his demise at Syracuse in June 555. Vigilius's death was viewed with suspicion by his clergy and laity, with Pelagius, the bishop's immediate successor, being compelled to prove that he had not contributed to his predecessor's death.[26] Despite Pelagius's earlier opposition to the Three Chapters condemnation, the new bishop of Rome was more tractable to Justinian's interventions in theological affairs and had supported the imperial denouncement of the Chapters. Given Vigilius's oscillation between hostility towards and acceptance of the emperor's religious enactments in this period, Justinian was no doubt concerned that the soon-to-be deceased bishop of Rome would work against the anathematization of the Three Chapters once safely back in his see.

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24 *Council of Constantinople II (553)*, ed. by Straub, VII.14, 16.3, pp. 200-01, 202. As noted by Price, *Council of Constantinople*, II, p. 99 n. 92, this penalty fell just short of deposition from office.

25 *Liber pontificalis*, ed. by Duchesne, LXI.4-9, II, pp. 297-99, which unreliably purports that Vigilius was also exiled: Price, *Council of Constantinople*, I, p. 54.

26 *Liber Pontificalis*, ed. by Duchesne, LXII.1–2, II, p. 296.

After all, many western clergymen still held that Theodore of Mopsuestia and his writings, the letter attributed to Ibas, and the works of Theodoret were 'orthodox' in nature. Whether or not Vigilius's death was planned, the bishop's demise and replacement with a more compliant church leader was only beneficial to the imperial court.

A common denominator can be seen throughout this brief sketch of the complex events surrounding the Council of Constantinople. In each interaction between the sixth-century ecclesiastical authority and the emperor, Justinian sought to force Vigilius to support his religious enactments. While the bishop attempted to resist imperial control, at times his only option was to comply with his ruler, either in the hope that some consensus on the Three Chapters would be reached or in fear of physical harm and mistreatment. The bishop, whose theological standpoint and acquiescence with imperial commands wavered repeatedly throughout his career, primarily sought to navigate the difficult circumstances in which he found himself. Many of Vigilius's actions prior to and during the Council of Constantinople were thus motivated by the clergyman's immediate needs. In the context of this episcopal vacillation and imperial pressure, the reason behind the bishop's utilization of oath-swearing, even though the practice was technically forbidden, becomes clear: Vigilius had no choice.

Vigilius's Time in Asylum and Justinian's Oaths of Safety

Vigilius's desperation and the need to accept oaths is particularly clear when we examine the promises sworn to lure him out of asylum. As noted above, imperial officials sought to extract the churchman from St Peter's and St Euphemia's by affirming on oath that the bishop would not be mistreated if he left the protection of these churches. Although the relationship between Vigilius and Justinian was often fraught, the ecclesiastical authority had good reason to fear for his safety. By investigating the oaths sworn while Vigilius sought shelter under the laws of sanctuary and the contexts of these promises, we can see that the clergyman had no issue with the use of these pacts, most probably as it was in his best interests to do so. Rather than strictly obeying Jesus's prohibition of the practice, the bishop justified his use of the oaths offered as a means of negotiating his way through his conflict with Justinian.

Our best sources for Vigilius's periods in asylum and the related oaths are three letters, two of which were written by the bishop himself. While the first of these missives, sent by the church leader while he was in St Peter's, only implicitly justifies the bishop's claiming of sanctuary, the other communications offer more detail. In a message seemingly sent by the clergy of Milan to Frankish envoys due to visit Constantinople,[27] we

27 We cannot precisely date the letter, which seems to have been published in late 551, nor be

are told that Justinian was furious with Vigilius's opposition to his religious policies, to the extent that 'if [Vigilius and his supporters] had not fled to the churches of the saints, they would have lost their lives'.[28] While this danger was presumably exaggerated, to Vigilius's eyes this concern would have been justified. According to the letter attributed to the Milanese clergy and Vigilius's own *While in St Euphemia's*, soldiers were mobilized to remove the clergymen from St Peter's by force. By all accounts, the ensuing confrontation was dramatic but ultimately unsuccessful: the troops tried to drag the bishop out by his feet and although the altar, to which Vigilius was clinging, collapsed in the fracas, the clergyman and his entourage remained within the church's boundaries.[29]

Regardless of whether Justinian directly ordered these soldiers to remove the ecclesiastical authorities from the church or simply wanted to intimidate the churchmen into compliance, Vigilius tells us that he and his supporters had few options. Following this incident, a plethora of high-ranking imperial representatives — the general Belisarius, the patrician Cethegus, the *magister officiorum* Peter, the future emperor Justin II, the *comes excubitorum* Marcellus, and the *quaestor sacri palatii* Constantine — reportedly informed the clergymen that they 'would be dragged from [St Peter's] with all violence unless [they] consented to accept oaths', which (somewhat ironically) would affirm the refugees' safety once they had left their place of sanctuary.[30] In this version of events, the balance of authority had shifted since Vigilius had entered St Peter's. While the bishop originally sought to dictate the terms on which he would support Justinian, now the clergymen holed up in the church were faced with another embarrassing, if not outright dangerous, physical confrontation with imperial forces.[31]

Recognizing the seriousness of these circumstances, Vigilius did not just accept the oaths offered, but also attempted to wrest some control over the promises he was forced to receive. The bishop tells us that, in response to the pledges volunteered by Justinian's representatives, he demanded that

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especially conclusive about its authorship: Sotinel, 'The Three Chapters', p. 92; Price, *Council of Constantinople*, I, p. 165 n. 12.

28 *Letter from the Church of Milan to the Frankish Envoys*, ed. by Schwartz, p. 22: 'ut nisi ad sanctorum basilicas confugissent, et ad interitum uitae peruenerant' (Engl. trans. by Price, I, p. 168).

29 Vigilius, *Dum in Sanctae Euphemiae*, ed. by Schwartz, p. 4; *Letter from the Church of Milan to the Frankish Envoys*, ed. by Schwartz, p. 22. The latter further sensationalizes the scene by claiming that the columns of the church shattered in the struggle and that Vigilius was nearly fatally lacerated on the now-broken altar.

30 Vigilius, *Dum in Sanctae Euphemiae*, ed. by Schwartz, p. 4: 'postea uero dum nobis diceretur quod exinde, nisi sacramenta uoluissemus accipere, sub omni uiolentia traheremur' (Engl. trans by Price, I, p. 173). The same officials also treated with Vigilius when the latter was in St Euphemia's: *Dum in Sanctae Euphemiae*, ed. by Schwartz, p. 1.

31 *Letter from the Church of Milan to the Frankish Envoys*, ed. by Schwartz, p. 22, which claims that Vigilius only accepted these oaths as the danger posed by the soldiers and the imperial pressure to agree with Justinian's condemnation had lessened.

the oaths were sworn according to a particular formula, which he outlined in a written document to be delivered to the emperor.[32] Neither the specific formulations requested nor the bishop's justification for demanding a certain form of oath are made clear, but Vigilius presumably wanted the promise to be as binding as possible.[33] Although some accounts accuse Justinian's regime of frequently ignoring promises, we cannot take these sources, which utilized allegations of oath-breaking for rhetorical purposes, to indicate that the emperor had a wider reputation for perjury, nor that Vigilius's demand for a specific pledge to be given was influenced by any such presumptions.[34] Instead, it seems more probable that the clergyman sought to regain some semblance of control over his claiming of asylum by means of this gesture.[35] Indeed, it is no doubt for the same reason that Justinian refused to accept the formula requested by Vigilius and provided his own in its stead. The emperor's rejection reaffirmed that the bishop was in no position to make demands of the ruler, who remained the ultimate authority in this interaction.[36]

Interestingly, the oath eventually sworn by Justinian's officials included several points of reference which we might have expected a bishop of Rome to introduce into the swearing process. Vigilius tells us that the oath formula was placed 'over the altar and the gate of Saint Peter the apostle'.[37] While other late antique oaths were sworn over altars,[38] it was a particularly pointed decision to lay the text of the promise over this particular table, to which the bishop had clung while imperial soldiers attempted to drag him out of the church. Equally significant was the link to St Peter, the dedicatee of the church in which the churchmen were sheltering and the first bishop of Rome, whose see Vigilius held. The pact was augmented further by the promise's articulation over Peter's gate, not necessarily in reference to the church's doors, but rather to a conceptual representation of the heavenly portals, through which the saint was thought to offer or deny Christians

32 Vigilius, *Dum in Sanctae Euphemiae*, ed. by Schwartz, p. 4.

33 Paul the Silentiary, *Descriptio Sanctae Sophiae*, ed. by De Stefani, lines 63-65, pp. 52-53, reflects a belief that Justinian would never break an oath sworn in the name of Theodora, who had died in 548. Although the *ekphrasis* was delivered in 562/563, it is possible that Vigilius included a reference to the deceased empress in his oath formula with a similar thought process in mind.

34 Procopius, *Wars*, ed. by Haury and Wirth, II.2.9–10, p. 152; Procopius, *Secret History*, ed. by Haury and Wirth, 8.24–25, 13.26–27, 14.20, 21.16–19, pp. 54, 88, 93, 131; *Chronicon Paschale*, ed. by Dindorff, s.a. 532, p. 624. Cf. Pseudo-Zachariah Rhetor, *Chronicle*, ed. by Brooks, II, 9.16B, p. 125, which preserves a letter attributed to Severus, archbishop of Antioch 512-518, who rejected the need for an oath from Justinian as the emperor was reportedly trustworthy.

35 As noted below, Vigilius may also have feared that some loophole in the promise would be exploited, hence his desire to control what was included in the oath's formula.

36 Vigilius, *Dum in Sanctae Euphemiae*, ed. by Schwartz, p. 4.

37 Vigilius, *Dum in Sanctae Euphemiae*, ed. by Schwartz, p. 4: 'super altare et cataractam beati Petri apostoli' (Engl. trans. by Price, I, p. 173, with revisions).

38 As is presupposed by, for instance, John Chrysostom, *Homiliae XXI de statuis*, XV.14, col. 160.

entrance to paradise.[39] As was the case for some other late antique oaths, this element was presumably meant to underline that anyone who broke the pledge would be excluded from heaven.[40] Vigilius also reports that Justinian's officials took a 'corporate oath', which was sworn while touching certain sacred objects: 'a cross that contained within it a piece of wood from the Lord's passion' and the symbolic 'keys of Saint Peter the apostle'.[41] These items of enormous Christian significance represented both the power of the episcopal office and also a cornerstone of Christian belief. These oaths of safety were thus formulated to be as relevant to the circumstances as possible and included elements which provided additional reassurance that the clergymen would not be mistreated once they left the church. Even though his formula had been rejected, the bishop must have been happy with the pledge Justinian's representatives had deigned to give him.

Perhaps some lingering doubts remained. After all, the emperor had already shown his willingness to march soldiers into a church on two separate occasions, first when Vigilius was taken from Rome in 545 and second while in St Peter's. In the latter incident, imperial soldiers had broken the right of asylum by attempting to remove the clergymen from their place of refuge by force. The practice of claiming sanctuary had its roots in earlier periods but it was only from the fourth century that laws were instituted to affirm explicitly that individuals fleeing prosecution or persecution could expect protection if they sought shelter in a church.[42] Various influential figures who had fallen foul of the late antique imperial court took refuge in ecclesiastical buildings, typically to avoid being killed or to protest publicly against the regime. To lure these persons of interest to abandon the protection of asylum, political actors sometimes swore oaths of safety, comparable to those received by Vigilius. Once these individuals had left the buildings which offered them refuge, the oath-takers could then assert their influence over, or even kill, the recipient of such promises, without technically violating the right of sanctuary. One prominent example of this strategy is described by the account of Zosimus, who tells us that the *magister militum* Stilicho fled to a church in Ravenna after being denounced as an outlaw in 408. The history claims that soldiers sent to kill Stilicho persuaded the general to leave the building

39 On Christian conceptualizations of Peter and the gates to heaven, see most recently: Dijkstra, 'Imagining the Entrance to the Afterlife: Peter as Gatekeeper'.

40 Compare the governor's oath of office, implemented by Justinian in 535 as an anti-corruption measure, which threatens the swearers with various scriptural imprecations and Christ's judgement 'here and in the age to come (ἐνταῦθα καὶ ἐν τῷ μέλλοντι αἰῶνι)': Justinian, *Novellae*, ed. by Schöll and Kroll, VIII.*iur.*, p. 91. On this oath: Calore, '"*Iuro per deum omnipotentem …*": il giuramento dei funzionari imperiali'; Pazdernik, '"The Trembling of Cain"'.

41 Vigilius, *Dum in Sanctae Euphemiae*, ed. by Schwartz, p. 4: 'super crucem quae de ligno passionis domini habet inclausum, sed et super claues beati Petri apostoli praestitissent corporale iusiurandum' (Engl. trans. by Price, I, p. 173, with revisions).

42 Ducloux, *Ad ecclesiam confugere*; Shoemaker, *Sanctuary and Crime*, pp. 9-44; Girvés, 'Case Studies of Church Asylum and Exile'.

by swearing that they had only been ordered to keep him in custody, but once the commander had surrendered himself, new orders were revealed: contrary to the previous promise, Stilicho was to be executed.[43] The almost cartoonish version of events presented by Zosimus, whose account draws heavily on the excerpted history of Olympiodorus, most probably does not accurately represent how this interaction actually took place. Nevertheless, the historian's depiction of this interaction presupposes a late antique belief that such oaths could aid imperial attempts to navigate around the rules of asylum and kill fugitives.[44]

In the context of this belief, Vigilius's efforts to assert control over the promises made by Justinian's officials are therefore understandable, especially given that such oaths could be exploited by means of loopholes. In Stilicho's case, for instance, Zosimus purports that the soldiers had sworn that they were only commanded to guard the general. In the narrative we are given, this claim was technically true, as the order to kill Stilicho came after the troops had sworn, but the general's expectation — that he would be safe if he left the church — was evidently not fulfilled. Vigilius no doubt wanted to avoid this type of circumvention, which many individuals throughout antiquity used to wriggle out of their sworn commitments.[45] This concern for the potential exploitation of loopholes in the terms of this pact might further explain why the church leader asked that Justinian's officials swear according to an oath formula constructed by Vigilius himself. Perhaps the emperor had already decided to break or manipulate this pledge of safety, hence his rejection of the bishop's request.

Nevertheless, Vigilius was hardly in a position to argue with imperial demands concerning the articulation of this agreement. Oaths of safety were inherently taken from a position of superiority and indicated that the recipient/s had little choice but to accept the terms given. The balance of authority was not in Vigilius's favour, as is further evident in his mistreatment after leaving St Peter's. Even though the bishop's *While in St Euphemia's* reports that he expected no further abuses after these oaths had been sworn, the clergyman and his retinue were effectively imprisoned in their residences. Protesting against this treatment, Vigilius tells us that he and his colleagues 'thought it right a first, second, and third time to adjure the aforesaid officials (both by word […] and in writing) to keep the oaths they had given and to request the most pious emperor that, as had been sworn to us, we should suffer no anxiety or molestation'.[46] These requests were ignored. No longer in the safety of asylum, the clergymen remained in captivity.

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43 Zosimus, *Nea Historia*, ed. by Paschoud, v.34.3-4, pp. 50-51.

44 This belief is also evident in a number of other late antique sources: Wuk, 'Reconsideration'.

45 Wheeler, 'Sophistic Interpretations'; Bayliss, 'Artful Dodging'; Wuk, 'Uses of Oaths in Early Byzantine Imperial Politics', pp. 1067–71.

46 Vigilius, *Dum in Sanctae Euphemiae*, ed. by Schwartz, p. 5: 'praedictos iudices tam uerbo […] quam etiam scriptis semel secundo et tertio credidimus contestandos ut sacramenta quae

Surprisingly, Justinian's representatives tried to use the same tactic to lure Vigilius out of the church of St Euphemia in Chalcedon. The bishop tells us that the officials who had previously taken oaths to him in St Peter's and broken them shortly afterwards offered additional sworn assurances to the clergymen in their second place of asylum. Vigilius, no doubt remembering what had happened the last time he had accepted imperial promises, was not willing to accept these promises. The ecclesiastical leader states that he informed Justinian's representatives that he and his colleagues would remain in the building until the emperor recalled his prior statements concerning the Chapters. To Vigilius's mind, this stipulation made any oaths of safety redundant. The churchman explicitly explains that, if the imperial condemnations were overturned, peace would be returned to church affairs and he would thereby not need oaths to protect himself, but if the conflict around the Chapters' 'orthodoxy' continued, he would not leave St Euphemia's and thus would refuse the officials' promises.[47] Not to be deterred by this rejection, Justinian sent the *magister officiorum* Peter back to the church several days later to offer the same oaths of safety. Again, in his *While in St Euphemia's*, Vigilius tells us that he rebuffed the proposition and asserted that he would continue to claim sanctuary until some consensus on the Three Chapters was reached, with his previously private excommunication of Theodore Ascidas and Menas receiving imperial acceptance.[48] It seems that Vigilius, who several months earlier had relied on imperial promises to guarantee his well-being, had decided not to put much stock in Justinian's sworn word this time.

And yet, the bishop tells us that he still tried to make some use of promises which were volunteered. In his *While in St Euphemia's*, Vigilius articulates clearly that while he and the other clergymen in the church 'make no demands that oaths be given to us', the emperor could swear to permit a deputation of western churchmen to visit the imperial court on the bishop's behalf.[49] In particular, Vigilius suggests that he asked Justinian to guarantee on oath that these clergymen, led by his episcopal colleague and fellow asylum-seeker Datius of Milan, could undertake their duties 'without fear of danger'.[50] According to his letter, while Vigilius did not trust the emperor to obey this agreement when his safety was on the line, the bishop was willing to accept imperial promises concerning his supporters. Nevertheless, the church leader's request indicates that he could prioritize

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dederant, conservarent, et piissimo imperatori suggererent quatenus nullas inquietudines aut molestias, sicut nobis iuratum fuerat, pateremur […].' (Engl. trans. by Price, I, p. 174).

47 Vigilius, *Dum in Sanctae Euphemiae*, ed. by Schwartz, p. 1.

48 Vigilius, *Dum in Sanctae Euphemiae*, ed. by Schwartz, pp. 9-10.

49 Vigilius, *Dum in Sanctae Euphemiae*, ed. by Schwartz, p. 10: 'nulla sacramenta nobis dari deposcimus' (Engl. trans. by Price, I, p. 178).

50 Vigilius, *Dum in Sanctae Euphemiae*, ed. by Schwartz, p. 10: 'sine metu periculi' (Engl. trans. by Price, I, p. 178).

the practical reality of his situation ahead of a need to obey the scriptural rules on swearing oaths. Although Justinian had not always held true to his promises, Vigilius accepted the oaths taken by his representatives to facilitate their dealings and work towards an agreement concerning the status of the Three Chapters.

Moreover, it is significant that most of this information comes from a letter written by Vigilius himself. If the bishop was concerned that he would be criticized or judged for not obeying Jesus's prohibition, he could easily have omitted or minimized the references to these oaths. Instead, these promises loom large in the version of events with which the clergyman presents us. The inclusion of Justinian's pledges in this account played a crucial role in Vigilius's narrative of his experiences in Constantinople. By flagging up the oaths offered at St Peter's, the author could emphasize both the difficult circumstances in which he had found himself and also that he had attempted to work with Justinian to resolve the Chapters debate. Additionally, reference to both sets of asylum-related promises volunteered by the emperor's representatives permitted the churchman to vindicate his decision to enter and remain within St Euphemia's, while also informing the western clergy that he was doing all he could to ensure that their opinions were recognized in Constantinople, even if that meant outright opposition to Justinian.

Crucially, neither Vigilius's *While in St Euphemia's* nor the letter attributed to the Milanese clergy mention Jesus's prohibition, implicitly or explicitly. Instead, the authors of these communications highlight the pressures placed on the church leader and the subsequent need for him to accept the oaths given on behalf of Justinian. In the interests of continuing a dialogue with his ruler and pleasing his western supporters, both in practice and in his account of these interactions, Vigilius evidently had no problem with overlooking the scriptural proscription of oaths.

The Secret Oath of Vigilius

As Jesus's Sermon on the Mount only refers to the taking of oaths, the bishop may have thought that his acceptance of imperial sworn promises did not contradict this scriptural prohibition. Vigilius could have drawn a distinction between the actions of swearing and receiving pacts, with the latter being more permissible than the former. However, the church leader did swear at least one significant promise, to express his secret compliance with the emperor's condemnation of the Three Chapters. It is in response to this oath that Justinian claimed that it was inappropriate for clergymen to take oaths. And yet, Vigilius was not the only ecclesiastical authority to utilize sworn pacts in the events preceding the second Council of Constantinople. Even if no other clergyman took oaths in relation to the synod, the bishop was under incredible pressure to swear this promise. As with his acceptance of

Justinian's pledges of safety, the church leader had little choice but to offer his oath of opposition against the Three Chapters.

Vigilius swore this promise on 15 August 550, a year before he sought ecclesiastical asylum. Although the bishop had signed clandestine condemnations of the Chapters and handed them over to Justinian in June 547, the emperor did not trust these private affirmations to hold the bishop's support steady. Further red flags were no doubt raised once it became clear that the *Judgement*, disseminated the next year, had failed to win widespread approval and Vigilius requested a withdrawal of the controversial statement. It is at this juncture, two years after the *Judgement* was disseminated, that Vigilius offered his oath to Justinian.

This promise remained secret until 26 May 553, when the signed and dated text was delivered with other documents to the clergymen assembled for the Council of Constantinople. As the transcript was read out during the council's seventh session of the council, the text has been preserved in its entirety in the synodal acts. The document's main body is the oath formula taken by Vigilius, bracketed by introductory and conclusory notices that the oath's swearing was witnessed by Theodore Ascidas and the patrician Cethegus, who also subscribed the manuscript to affirm that the pledge's content was accurate.[51] The text was then sent to Justinian, who did not witness the pact's articulation but rather received the 'oaths in writing'.[52] While it is left unclear where Vigilius took the oath, the prefatory section states that Vigilius swore 'by the holy power of the nails with which our Lord and God Jesus Christ was crucified and by the four holy Gospels'.[53] In addition to confirming the inclusion of these significant Christian points of reference were the swearing process; the formula further describes the nails as 'the holy bridle', in reference to the nail which had been discovered by the empress Helena during her pilgrimage to the East in 326–328 and crafted into a bit for Constantine I's horse.[54]

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51 The structure of this transcript, where the oath formula is followed by the signatures of witnesses, is comparable to documentary papyri which record provincial economic interactions, often including the swearing of oaths. Most of these documents have survived in Egypt (Seidl, *Der Eid*; Wuk, 'Provincial Negotiation', esp. pp. 238-41), but see *P.Ital.* 2.43, ed. by Tjäder, II, pp. 150–53, dated to *c.* 542, a record of a settled dispute from Ravenna. The document features oaths sworn in lines 25, 30, 37, and 45, p. 150, and signatures of witnesses in lines 49-53, p. 152.

52 *Council of Constantinople II (553)*, ed. by Straub, VII.4.4, p. 186: 'iuramenta scriptis'.

53 *Council of Constantinople II (553)*, ed. by Straub, VII.11, p. 198: 'per uirtutem sanctam clauorum, ex quibus crucifixus est dominus deus noster Iesus Christus, et per sancta quattuor euangelia' (Engl. trans. by Price, II, p. 96, with revisions).

54 *Council of Constantinople II (553)*, ed. by Straub, VII.11, p. 298: 'sanctum frenum'. On Helena's pilgrimage and discovery of relics, see: Drijvers, *Helena Augusta*, esp. pp. 55–72.

This oath was evidently constructed to be as binding as possible, with the aim of holding the bishop to his promise to support Justinian's stance on the Three Chapters.[55] This affirmation of compliance is worth quoting in full:

> ita […] quod cum pietate uestra uno animo, una uoluntate hoc uelle, hoc conari, ita agere, quantum possumus, ut ista tria capitula, id est Theodorus Mopsuestenus cum scriptis suis et epistola quae dicitur Ibae, et conscripta Theodoreti contra orthodoxam fidem et contra duodecim capitula sancti Cyrilli dicta condemnentur et anathematizentur, et nihil pro his capitulis neque per me neque per eos quibus credere possum ex ordine clericatus aut laicis, contra uoluntatem pietatis uestrae aut agere aut loqui aut consilia dare secretius. et si quis mihi aliquid contrarium dixerit aut de istis capitulis aut de fide aut contra rem publicam, istum sine mortis periculo pietati uestrae manifestabo et quae mihi locutus est, ita ut propter locum meum personam meam non prodas. et me ista custodiente pietatem uestram honorem meum in omnibus seruare promisisti, sed et personam opinionemque meam custodire et cum dei adiutorio defendere, sed et priuilegia ecclesiae meae seruare. sed ut chartulae istae nulli ostendantur, nihilominus promisistis. promitto praeterea quod in ista causa trium capitulorum, quodcumque debet fieri, communiter tractamus et quod utile nobis uisum fuerit, hoc faciamus cum adiutorio dei.'
>
> ([I swear] to intend, attempt, and act, as far as I can, with one mind and will with your piety, to ensure that the Three Chapters, that is, Theodore of Mopsuestia with his writings, the letter attributed to Ibas, and the writings of Theodoret against the 'orthodox' faith and against the Twelve Chapters of the holy Cyril[56] are condemned and anathematised, and [I swear] to do, speak, or devise secretly nothing against the will of your piety in support of these [Three] Chapters, either by myself or through those in the clerical order or the lay state to whom I could entrust this matter. And if anyone says to me anything contrary either about these Chapters or the faith or against the state, I shall make him and what he said to me known to your piety without incurring danger of death, on condition that on account of my rank you do not betray my person. If I observe all

55 Note also that, like many other late antique oaths (Wuk, 'Provincial Negotiation', pp. 251-52), the *quaestor sacri palatii* Constantine describes Vigilius's promise as 'dreadful (terribilis)' at *Council of Constantinople II (553)*, ed. by Straub, VII.4.4, p. 186.

56 Cyril's 'Twelve Chapters', an aggressive statement of what the bishop considered to constitute 'orthodox' Christianity publicized in his *Third Letter to Nestorius* (the archbishop of Constantinople 428–431), was taken by some Christians to be a valid expression of Nicene 'orthodoxy' but denounced by others (most saliently, Theodoret of Cyrrhus) as unacceptable: de Halleux, 'Les douze chapitres'; Graumann, '"Reading" the First Council of Ephesus', pp. 36-41.

> this, you have promised that your piety will protect my honour in all respects, and also guard and defend with the help of God my person and my reputation, and also protect the privileges of my church. You have, however, promised that no one is to be shown this document. I promise in addition that in the case of the Three Chapters we shall transact in common whatever needs to be done, and that with the help of God we shall do whatever we judge to be expedient.)[57]

In this formula, Vigilius promised three things: 1) to endorse the imperial condemnation of the Chapters both publicly and privately; 2) to recruit support for the emperor's religious policies amongst western clergymen; and 3) to report all non-compliance to the court. Various aspects of these promises as articulated in the oath are particularly striking. In the first place, the pact's terms are stated without much room for the swearer to circumvent his sworn obligations. The Three Chapters are all explicitly named, so the bishop had no choice but to articulate his opposition to these specific individuals and their works, while the pledge not to work against the emperor mentions both laity and clergy, thereby covering essentially everyone in the empire. For a similar reason, the wording used is also pointedly absolute yet not precisely defined. Vigilius affirmed that he would report 'anything' said by 'anyone' against Justinian, just as he would plot 'nothing' to undermine the anathematization of the Chapters. Owing to these terms, the emperor could point to any activities which he perceived to constitute dissidence against his religious policies as something with which the clergyman should be concerned. This deliberately strategic wording is compounded by the clear parallel drawn between non-compliance with Justinian's enactments on the Chapters and acting against the state. Christian rhetoric often suggested that 'heterodoxy' posed a real threat against public welfare, and as Justinian's condemnations had the force of law, the implication of this comparison is that dissidence had to be punished firmly to benefit the empire.[58]

Equally striking is the framing of the oath's terms as a form of transaction between bishop and emperor. In return for the church leader's three related promises, the formula indicates that the emperor had agreed to safeguard the privileges of the Roman see, to protect the well-being and reputation of its episcopal leader, and to keep the oath itself secret. Naturally, these imperial obligations were conditional on Vigilius fulfilling his side of the bargain, and may have been used by Justinian to justify not only the revelation of the furtive pact at the Council of Constantinople but also the abuses suffered by the church authority during and following his time in asylum.

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57 *Council of Constantinople II (553)*, ed. by Straub, VII.11, pp. 198-99 (Engl. trans. by Price, II, pp. 96-97, with revisions).

58 'Heterodoxy' as dangerous to public welfare and punishable by law: Humfress, 'Roman Law', esp. pp. 129-31.

In this manner, the oath was meant to curtail the bishop's independence and firmly tie him to the emperor's doctrinal position. At first glance, two aspects of the formula seem to offer the churchman some flexibility in the execution of his sworn duties. According to the transcript, Vigilius affirmed that he would not only support imperial religious policies 'as far as I can' but also work with Justinian to do 'whatever we judge to be expedient'. Perhaps the emperor, having witnessed the failure of the *Judgement*, recognized the difficulty the bishop would face in attempting to convince his clergy to condemn the Chapters, and thus included these two elements to qualify Vigilius's pledge to promote Justinian's enactments. And yet, in the context of the formula's content and purpose, these statements did not allow the church leader to take a negligent approach to his obligations.[59] Instead, the oath-taker was meant to understand that he should fulfil the terms of the pact to the best of his ability. Moreover, the closing assertion that the clergyman would do 'whatever we judge to be expedient' paralleled the introductory affirmation that Vigilius would, without question, promote and defend the emperor's condemnation of the Three Chapters. As such, these aspects restricted the bishop's autonomy over his interventions in the ongoing doctrinal debate.

Given the clear limitation of the bishop's agency and the imperial pressure continuously exerted on Vigilius during his time in Constantinople, the clergyman was probably compelled to swear this secret pledge. However, the *quaestor* Constantine, who had, along with Justinian's other representatives, offered promises of safety to lure the church leader out of asylum in 551–552, alleged that Vigilius himself requested that he take this oath. According to the minutes from the Council of Constantinople, on Justinian's behalf the *quaestor* interrupted the synod's seventh session on 26 May 553 to give the attendant clergymen various documents in which Vigilius promised to work for empire-wide consensus that the Three Chapters were not 'orthodox'.[60] Constantine claimed that the bishop of Rome had asked to withdraw his unpopular *Judgement* and in return volunteered to swear that he would soon compose a resounding condemnation of the Chapters. Crucially, the official stated that 'as he is most pious, the emperor accepted this [offer], albeit reluctantly, for he thought it alien and inappropriate for priests to take such oaths. However, at [Vigilius's] insistence, [Justinian] was won over to accept oaths in writing'.[61] Although 'such oaths' could suggest that

59 Compare Justinian, *Novellae*, ed. by Schöll and Kroll, VIII.*iur.*, p. 90, where Justinian's governors, whose promise to oppose 'heterodoxy' was similarly qualified by the phrase, 'as far as is in my power (καθ' ὅσον δυνάμεως ἔχω)'. See further: Wuk, 'Constructing Christian Bureaucrats', pp. 480, 482.

60 These documents had already been promised in the council's first session: *Council of Constantinople II (553)*, ed. by Straub, I.7.12, p. 12. However, the precise content was not revealed until the synod's seventh session.

61 *Council of Constantinople II (553)*, ed. by Straub, VII.4.4, p. 186: 'quod ut piissimus imperator,

the emperor's supposed reluctance concerned the type of promise Vigilius had sworn, Constantine — and through him, Justinian — seems to refer implicitly to Jesus's prohibition.[62] The imperial representative's account, from which the title of this chapter is taken, intentionally misrepresents the events that had occurred in order to denigrate the bishop and depict the ruler positively. The contrast between the 'most pious'[63] Justinian, who purportedly thought that clergymen should never swear oaths, and the 'inappropriate' Vigilius, who used the practice willingly, was meant to pull the teeth from the bishop's conflicts against the emperor and shift public opinion in the ruler's favour.

Even in the improbable case that the bishop *did* insist that he take this oath, there is no indication that the other assembled ecclesiastical authorities judged Vigilius poorly for the act of swearing itself. Immediately after the transcript of the oath and the other secret documents were revealed, the presiding clergymen, led by Eutychius, archbishop of Constantinople following Menas's death in 552, sought to delay judgement on Vigilius until the council's next session on 2 June 553. The churchmen gathered for the synod were probably shocked by the previously confidential documents brought by the *quaestor* and certainly may have expressed some indignation at the oath Vigilius had sworn. And yet, although Constantine and Justinian decreed that the bishop should be omitted from the ecclesiastical diptychs and thus effectively be removed from service,[64] the council's acts do not preserve any explicit comments made by the church authorities present for the meeting concerning the swearing, or even the breaking, of the secret oath.

We can explain this lack of comment several ways. Firstly, although Vigilius's conduct, especially his lack of active involvement in the council and his vacillation on the Chapters, received some mild criticism in the seventh and eighth sessions, the churchmen assembled for the synod repeatedly avoided speaking openly against the bishop and emphasized their desire not to sever communications with the see of Rome.[65] Perhaps these clergymen, who had already effectively decided to anathematize the Chapters, were embarrassed for Vigilius and were hesitant to oppose the high-profile bishop. Equally, these individuals may have thought that the church leader would change his mind once again and condemn the Three Chapters before the council had ended, perhaps explaining the comments

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licet difficiliter, tulit et alienum et non conueniens esse putabat sacerdotes talia sacramenta subire, tamen ex eius instantia uictus [est] iuramenta scriptis suscipere' (Engl. trans by Price, II, p. 78, with revisions).

62 It is also possible that Constantine had in mind *Codex Iustinianus*, ed. by Krüger, I.3.25.1b, p. 35, dated to 456, which permits clergymen not to swear oaths in legal trials.

63 'Most pious' was a common imperial title, routinely featured in oath formulae: Bagnall and Worp, *Chronological Systems*, pp. 272-89.

64 *Council of Constantinople II (553)*, ed. by Straub, VII.14 and XVI.3, pp. 200-02.

65 *Council of Constantinople II (553)*, ed. by Straub, VII.13 and 17, VIII.4.3, pp. 200, 202, 208.

expressed in the synod's eighth session that the clergymen had hoped for some direct interaction with Vigilius.[66] At the least, Justinian's decree that the church leader should be removed from the diptychs was dated to 14 July 553, over a month after the conciliar discussions had finished, presumably with this hope in mind.[67] Nevertheless, the emperor had clearly grown tired of the bishop's wavering support for his policies, so we might expect some parties, such as Justinian's representatives, to frame Vigilius's effective suspension from office as the result of his perjury. Although the revelation of the oath formula at the council's seventh session was surely meant to emphasize the bishop's perjury and persuade the presiding churchmen not to support him, or possibly even depose him,[68] no explicit comment to this effect has been preserved in the conciliar minutes.

Theoretically, an overt statement of this type could have been made but not recorded in the acts, which were very much at the mercy of the notaries who created them. In many cases, we find that synodal scribes intentionally omitted or distorted aspects of the events described to misrepresent how important church deliberations took place and lend credence to the positions held by the emperors involved and the other 'winners' of such debates.[69] The minutes from the Council of Constantinople are no exception. As two extant yet different versions of the minutes have survived, we know that the records authorized by the imperial court underwent at least one *post-eventum* revision. The major difference between these two versions, which have both been preserved in Latin, is the substantial abridgement of the seventh session.[70] Particularly pertinent to our concerns is the shortening of Constantine's address to the council and the omission of the oath formula sworn by Vigilius.[71] All indications of conflict between the bishop of Rome, the emperor, and the clergymen caught in the middle were studiously removed from this later edition. This alteration of the imperially authorized version of events was most probably enacted around February 554, when Vigilius had again lent his public support to the Three Chapters condemnation through the publication of his second *Resolution*.[72] Having

66 *Council of Constantinople II (553)*, ed. by Straub, VIII.4.3, p. 208. Vigilius did later change his public stance by publishing his second *Resolution*, but this shift came in the year following the council's conclusion.

67 *Council of Constantinople II (553)*, ed. by Straub, VII.16.3, p. 202; Price, *Council of Constantinople*, I, p. 53 and II, pp. 74, 101 n. 94.

68 Sotinel, 'Emperors and Popes', p. 283; Price, *Council of Constantinople*, II, p. 73. Note also that ecclesiastical perjury could sometimes lead to expulsion from office, as is discussed below.

69 Millar, *A Greek Roman Empire: Power and Belief*, pp. 236-42, 250-54; Price, 'Truth, Omission, and Fiction'. See also Teitler, *Notarii and Exceptores* on imperial and ecclesiastical scribes more generally.

70 Price, *Council of Constantinople*, I, pp. 104-05.

71 The abridgement of Constantine's address can be found in the notes to the edition: *Council of Constantinople II (553)*, ed. by Straub, p. 184.

72 Price, *Council of Constantinople*, I, p. 104.

brought the bishop to heel and gained approval for the condemnation of the Three Chapters from those gathered for the council, Justinian seemingly wanted to hide his earlier attempts to discredit and criticize Vigilius.[73]

Owing to the heavily edited nature of these minutes, it is thereby possible that some ecclesiastical criticism regarding Vigilius's failure to follow Jesus's prohibition was expressed during the synod's discussions but ultimately not preserved. And yet, it may be that no such comments were made as the churchmen present for the council saw no issue with the swearing of oaths. After all, many late antique clergymen utilized this common social practice in a variety of contexts, especially in relation to church affairs.[74] In fact, several of the bishop's colleagues had used oaths themselves in the events leading to the Council of Constantinople. Through his letter which excommunicates Theodore Ascidas and Menas of Constantinople in August 551, Vigilius accused Theodore of having frequently sworn and broken oaths not to fan the flames of the Chapters controversy.[75] As this allegation immediately follows a description of the agreement between imperial and church actors not to issue any statements regarding the debate until an ecclesiastical synod had been convoked, the bishop presumably meant these oaths were taken as a part of this pact. In this version of events, not only was Theodore willing to use oaths, but Vigilius does not censure him for doing so. Even though much of the letter lambasts the bishop of Caesarea for his role in Justinian's enactments on the Chapters debate, the author only criticizes the recipient for breaking his sworn word.

Vigilius's emphasis of Theodore's perjury was meant to help justify the former's excommunication of the latter. In all periods of antiquity, oath-breakers were thought to be punished by the higher forces invoked during the swearing process, but various fourth- and fifth-century sources suggest that members of the clergy who violated sworn pacts could be subject to deposition and/or expulsion from Christianity.[76] Reference to Theodore's broken oaths could thereby explain Vigilius's excommunication of the bishop.

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73 Additionally, few other authors who discuss the council, such as Facundus of Hermiane, even mention Vigilius's secret oath, perhaps owing to the removal of this document from the redacted version of the acts. See Facundus of Hermiane, *Pro defensione trium capitulorum*, ed. by Clément and Vander Plaestem, IV.4.3–7, pp. 123–24, which condemns perjury without overt reference to Vigilius.

74 On clergymen swearing oaths in a variety of contexts, see Esders and Mierau, *Der althochdeutsche Klerikereid*; Wuk, 'Pragmatic Necessity'.

75 Vigilius, *Letter to Theodore Ascidas and Menas of Constantinople*, ed. by Schwartz, p. 12.

76 For instance: *Constitutiones apostolicae*, ed. by Metzger, VIII.47.25, p. 280; Sozomen, *Historia ecclesiastica*, ed. by Hansen, IV.24.6, 9, pp. 179-80. Wheeler, 'Perjury', on punishments for perjury; the contribution of Gerda Heydemann and Heiko Behrmann to this volume, on the Augustinian reinterpretation of Jesus's prohibition as pertaining predominantly to perjury.

The same is true of another letter of deposition, originally sent to the Roman deacons Sebastian and Rusticus but later read aloud in the seventh session of the Council of Constantinople.[77] In this communication, the bishop of Rome accuses the deacons of having furtively worked with other members of his clergy, who were unhappy with the *Judgement*, to undermine his authority. In relation to this indictment, we are told that both churchmen had previously taken oaths of allegiance to the bishop of Rome. The form of Sebastian's oath, which was volunteered to persuade Vigilius to appoint him as a temporary deacon, is outlined in particular detail. The clergyman swore with a hand on the Gospels and before witnesses to follow the bishop's orders and thereby complete the duties of his new office. According to the letter, Sebastian had also agreed that, if he broke this oath, he had to undertake a period of penance within a year of committing perjury, or else be permanently excommunicated.[78] Less space is devoted to Rusticus's oath, which was also taken while touching the Gospels and confirmed that the deacon, who was also Vigilius's nephew, had 'promised, among other things, never to desert [the bishop's] obedience'.[79] Importantly, the letter makes it clear that both of these oaths were taken voluntarily: Rusticus was 'influenced by [his] own volition to offer an oath' and Sebastian had similarly sworn 'of [his] own free will'.[80] Given that various late antique sources suggest that bishops often received comparable oaths of allegiance from their clergymen, both Vigilius and the deacons may have viewed these promises as a routine part of episcopal politics.[81] At the least, Vigilius reports that he trusted these oaths, the transcripts of which he retained, to ensure that Sebastian and Rusticus bowed to his authority.[82] As such, the bishop's only criticisms about these pledges relate to their breaking, not their taking.

Despite Vigilius's assertions that the deacons swore freely, the clergymen may have felt compelled to offer these promises, much as Vigilius himself had in his interactions with Justinian. At the least, one such oath was involuntarily extracted from a cleric named Anastasius in relation to the Three Chapters debate. On 14 July 549, Anastasius had been sent by Aurelian of Arles to deliver a missive to the bishop of Rome in Constantinople but, seemingly

77 Price, *Council of Constantinople*, I, p. 81 n. 21 dates the letter to March 550.

78 *Council of Constantinople II (553)*, ed. by Straub, VII.8.8, pp. 190-91. From the fourth century, some theologians, such as Basil of Caesarea (*Letters*, ed. by Courtonne, 217 CCXVII.64 and 82, II, pp. 212, 215-16) began to demand that oath-breakers complete penance.

79 *Council of Constantinople II (553)*, ed. by Straub, VII.8.6, p. 190: 'inter alia […] promisisse te numquam a nostro penitus obsequio discessurum' (Engl. trans. by Price, II, p. 84, with revisions).

80 *Council of Constantinople II (553)*, ed. by Straub, VII.8.6, p. 190: 'ad hoc es propria uoluntate perductus, ut … sacramenta praestares' (Engl. trans. by Price, II, p. 84, with revisions); VII.8.8, p. 190: 'propria uoluntate' (Engl. trans. by Price, II, p. 84, with revisions).

81 Compare, for instance, Gregory the Great, *Registrum epistolarum*, ed. by Norberg, XIII.35, II, p. 1037.

82 Criticisms of perjury: *Council of Constantinople II (553)*, ed. by Straub, VII.8.7, p. 190. Vigilius's trust in the oaths: *Council of Constantinople II (553)*, ed. by Straub, VII.8.9, II, p. 191.

in relation to Vigilius's time in St Peter's and subsequent imprisonment, the churchman was prevented from leaving the city. According to the letter attributed to the Milanese clergy, Anastasius, who wanted to return to Arles, 'contrived the scheme of promising that he would induce the minds of all the Gallic bishops to condemn the Chapters over which these scandals have arisen.'[83] Whether the cleric planned for this promise to include an oath is not specified, but the anti-Chapters faction in Constantinople bribed Anastasius and 'made him offer them a strict oath to bring this about'.[84] While we are not told precisely who forced the clergyman to swear, this sworn promise is similar to the secret oath taken by Vigilius, who also swore under compulsion so that he would be allowed to do something (namely, to withdraw his unpopular *Judgement*). The letter attributed to the Milanese clergy does criticize Anastasius, who had reportedly accepted bribes and spread lies about the bishop of Rome. And yet, as with the prior examples, this censure does not relate to the action of taking an oath. Rather, it is the purpose of the oath — to work for the condemnation of the Chapters — which rankled with the authors of the communication.

These various uses of and references to clergymen taking oaths, all without any apparent concern for the practice's scriptural prohibition, suggest that the religious authorities present for the Council of Constantinople may not have judged Vigilius poorly simply for the act of swearing. After all, many of the clergymen who attended the synod supported Justinian's condemnation of the Three Chapters and thus would have recognized the utility of tying the bishop of Rome to their doctrinal standpoint. Naturally, Vigilius's perjury, as well as his repeated wavering on both sides of the Chapters debate, would have angered many of the attendees at the council and evidently resulted in his effective deposition. Nevertheless, the church leader's ecclesiastical colleagues probably appreciated the immense pressure placed on the bishop of Rome during his time in Constantinople. Vigilius himself surely justified the need for his promise on these grounds. Even if the church leader actively considered Jesus's Sermon on the Mount when asked to swear this furtive oath, Vigilius could later argue that he had little room to manoeuvre in this interaction. In the face of considerable imperial hostility, the swearing of this promise was ultimately necessary, even if this action contradicted the guidelines set out in the scriptures.

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83 'Letter from the Church of Milan to the Frankish Envoys', ed. by Schwartz, p. 23: 'ipse, cum de Constantinopoli exire non posset, usus est consilio, ut promitteret se omnium episcoporum Gallicanorum ad damnanda capitula pro quibus haec scandala orta sunt animos inclinare' (Engl. trans. by Price, I, p. 169).

84 *Letter from the Church of Milan to the Frankish Envoys*, ed. by Schwartz, p. 23: 'cui et praemia plurima dantes districte sibi de hoc implendo sacramenta praestare fecerunt' (Engl. trans. by Price, I, p. 169, with revisions).

Conclusion

Was the involvement of Vigilius, or indeed any bishop, in the swearing of oaths 'alien and inappropriate', as Justinian claimed? This chapter has argued that, in certain circumstances, it was not. Even though the New Testament technically forbade this common social practice, church leaders often had to utilize sworn promises to facilitate their communications with other members of late antique society. The offering of oaths had a long history of usage in antique communities and could be socially beneficial. After all, oaths were meant to hold an individual to his/her commitments and could thereby help to overcome distrust and enmity. Consequently, there was regularly a social expectation, and sometimes a requirement, that oaths were sworn in a variety of contexts. In these scenarios, bishops and other religious authorities had to make a decision: either they obeyed Jesus's proscription or they complied with the demands of the circumstances.

Owing to the terse and often openly hostile relationship between Vigilius and Justinian, the interactions between the bishop of Rome and the imperial court in the events preceding the Council of Constantinople are particularly instructive. Prior to, during, and after the synod, Vigilius struggled to retain his authority and autonomy while Justinian sought to enforce compliance with his enactments and assert his influence on contemporary doctrinal debates. It is in this context of clashing wills that the bishop found that he needed to use oaths. In the hope that some consensus on the Chapters debate might be reached and in fear for his well-being, Vigilius did not just passively accept imperial promises of safety but actively sought to extract as much benefit from these pledges as he could. In this manner, the bishop bowed to the necessity of the circumstances. The same was true of the secretive oath to oppose the Chapters. Even if the bishop did personally have an issue with the swearing of promises, he wanted to recall his *Judgement* and so had no other feasible option but to use the practice, as Justinian's representatives probably expected.

In the documents related to the Council of Constantinople and the events which preceded the synod, we find no indication that Vigilius or any other clergymen were completely opposed to the use of oaths. On the contrary, sworn pacts seem to be a relatively frequent part of ecclesiastical politics in the sixth century. Even though Jesus had technically forbidden the utilization of such pledges, church authorities sometimes had to deviate from rules articulated in the scriptures and focus on what was salient to their current practical needs. This pragmatism was an important part of being a bishop in Late Antiquity, and we find that some theological authorities, such as Augustine of Hippo, conceded that the requirements of social interactions sometimes had to take precedence over the rules of Christianity.[85] In the

85 Augustine: see in particular MacCormack, 'Sin, Citizenship, and the Salvation of Souls', pp. 648-52.

extraordinary circumstances faced by Vigilius, this prioritization was even more justifiable. The bishop's failure to follow the scriptural guidelines was thus not 'alien and inappropriate'. Instead, Vigilius's willing use of oaths was a reflection of the frequent episcopal need to comply with the immediate demands of society.

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JAMIE WOOD

Making and Breaking Agreements in Early Medieval Iberia

Oaths, Pacts, and the Failure of Social Consensus

Introduction

One of the central debates in the historiography of the Iberian Peninsula in the early Middle Ages concerns the fall of the Visigothic kingdom to Arab-Berber armies in 711. The apparent tendency of the Visigothic nobility to remove their rulers forcibly, termed the *morbus Gothorum* by the Frankish chronicler known as 'Fredegar', contributed decisively to the long-term failure of the monarchy to secure the succession, leading to the instability that eventually provided the opportunity for the invaders. On this reading, the endemic insecurity faced by the kings contributed to the increasingly shrill demands for loyalty that were made by church councils and royal laws across the course of the seventh century. One of the foremost manifestations of this concern for the stability of royal power was the oath of loyalty to the king, first mentioned in the acts of the Fourth Council of Toledo, held in 633, and reiterated at several councils later in the seventh century.[1] As we shall see later in this chapter, subjects did not simply owe loyalty to their monarch, but kings were supposed to swear oaths, both before and at the point of accession, a point that underlines the negotiated and reciprocal nature of political power in Visigothic Iberia.[2] Oath-taking was but one of various methods that were deployed to tie the church and state more closely together and to harness provincial nobilities to the king in Toledo,[3]

1 *Council of Toledo IV* (633), ed. by Vives, c. 75, pp. 217–22. For an overview, see: Claude, 'The Oath'. Valverde Castro, *Ideología, simbolismo y ejercicio del poder real*, pp. 215–25, discusses faithfulness to the monarch, including the use of oaths.

2 King, *Law and Society*, pp. 41–46.

3 On the relationship between local elites — including bishops — and the Visigothic monarchy, see Castellanos, 'The Political Nature of Taxation'; Fernández, 'What is the De fisco Barcinonensi about?'; Koon and Wood, 'Unity from Disunity'; Martin, *La géographie du pouvoir*, pp. 99–140 and 191–203.

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The Oath in Late Antiquity and the Early Middle Ages: Religious Act, Social Bond, Holy Sacrament, ed. by Stefan Esders and Gerda Heydemann, CELAMA 46 (Turnhout: Brepols, 2026), pp. 99–125 BREPOLS PUBLISHERS 10.1484/M.CELAMA-EB.5.152874

while Rachel Stocking has demonstrated the extent to which bishops strove, across the seventh century, to establish a system of consensus government within the kingdom.[4]

Beyond the oath of loyalty, the Visigothic period in the Iberian Peninsula (roughly, the sixth and seventh centuries) provides a wealth of material on the making and breaking of oaths. One way of reading this evidence is to interpret it as a reflection of the difficulties that the royal government and the church had in making their authority felt in practice. Binding agreements of various kinds, such as oaths given in the sight of God, were thus necessary to ensure the loyalty of the population to the king, to guarantee transactions of various kinds, or to facilitate the practical functioning of ecclesiastical institutions. Oaths and cognate practices for generating and guaranteeing divinely witnessed associations were prevalent across the late ancient and medieval world.[5] Oaths can thus be viewed as part of a broader attempt to stabilize social and political structures that were in danger of breaking down as the seventh century neared its end. Alternatively, the prevalence of oath-taking and related mechanisms for generating agreements in the seventh-century Visigothic kingdom could be viewed as reflecting a well-developed legal and ecclesiastical culture, able to deploy a variety of methods for binding parties to one another and for containing conflict according to shifting contexts.

This chapter steers a middle path between these two readings of the sources, surveying evidence for the making and breaking of agreements in Visigothic-era Iberia in order to demonstrate that contemporary administrators had at their disposal a number of methods for generating binding agreements and deployed such instruments in order to solve specific problems. Agreements such as oaths of loyalty to the king and the pacts that individuals entered into when they were baptized or entered a monastic community were used across the socio-political scale — from the personal to the regional and the 'national' — in order to bind individuals and communities to one another more strongly. Changing contexts determined the development and use of oaths, but oaths were just one among a range of tools that could be deployed to articulate and constrain social relationships more generally. Comparison of these different kinds of agreements demonstrates that there was considerable interpenetration between ecclesiastical and royal spheres of legal activity and that oaths cannot be understood fully outside the theological and pastoral contexts in which they were generated, applied, and sometimes succeeded and sometimes failed.

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4 Stocking, *Bishops, Councils, and Consensus*.

5 Important recent studies on oath-taking include Morgan, *Roman Faith and Christian Faith*; Rapp, *Brother-making in Late Antiquity*; Esders, '"Faithful Believers"'; and the chapters collected in Sonntag and Zermarten, eds, *Loyalty in the Middle Ages*.

This chapter argues that the oaths served a similar function for small communities as they did for the monarchs and bishops who devised, promoted, and refined the oath of loyalty to the king. Theology, pastoral texts, and writings about monasticism demonstrate a similar desire to attain communal stability through the use of oath-taking as do church councils and royal laws. Writings about the use of oaths in the management of religious communities often predate kingdom-level royal and church laws, sources with which they share a considerable degree of technical terminology. In composing, or contributing to the writing of, legal sources pertaining to the kingdom, churchmen were thus highly likely to have been drawing on their experiences of experimenting with methods for stabilizing small ecclesiastical worlds even when they were considering the exigencies of royal power politics.

Oaths of Loyalty to the King: Consensus and the Maintenance of Hierarchical Social Relations

Oath-taking forms part of what scholarship on the development of militant subjects in modern contexts has termed 'binding circumstances'. Practices such as taking oaths, initiation rites and other kinds of ceremonies serve to tie group members to one another psychologically, to make them comfortable in situations in which they must learn obedient behaviours and later in situations in which they must maintain them.[6] Scholars have often commented on the possible military origins of early medieval oath-taking. The role of some barbarians as *foederati* — troops allied to the empire — is seen as feeding into the practices of oath-taking that were adopted in some post-Roman (barbarian) kingdoms as a means of binding the (military) elites to their rulers. Putting to one side the complexities of these debates as only peripherally relevant to the subject of this chapter, it is evident that oaths were connected to the military in the minds of some influential contemporaries in Visigothic Iberia. For example, Isidore of Seville recounts in the *Historia Gothorum* how King Theudis (531–548) extracted an oath from his followers ('coniurasse homines suos') that they would not avenge his murder.[7] Isidore here points towards what has traditionally been viewed as the origin of military oath-taking in the late Roman world: the personal bond between a general and his soldiers, who, without Theudis's intervention, would have been bound to act against the killer. A late-seventh-century law of King Egica lays down that when a new king ascends to the throne the members of the *officium palatinum* should present themselves to him in order to swear their loyalty.[8]

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6 Gibson, 'Training People to Inflict Pain', p. 76.

7 Isidore of Seville, *Historia Gothorum*, ed. by Rodríguez Alonso, first redaction 43, p. 244. The second redaction makes no mention of 'homines suos'.

8 King, *Law and Society*, p. 58.

The oath of loyalty to the king is perhaps the most well-known means by which the Visigothic monarchs sought to generate a divinely sanctioned personal bond with the population in order to ensure their loyalty.[9] Yet oaths seem to have been utilized more broadly across the Visigothic kingdom, as P. D. King made plain in his seminal study of its legal culture:

> The use of oaths in Visigothic society was understandably widespread, for what better means could be found of ensuring the reliability of a man's profession than its investment with a religious solemnity and binding force which left the declarant in no doubt as to the eternal sanction threatening untruth or breach of promise?[10]

There are numerous references to oaths throughout the Visigothic legal corpus, which King divides into two categories: first, those relating to a present state and/or to future behaviour; second, those confirming declarations concerning the past.[11] The fundamental role that oaths placed in the Visigothic legal system is demonstrated by the fact that witnesses were not permitted to testify in legal proceedings without first having been sworn ('testes sine sacramento testimonium peribere non possunt').[12] Although written evidence was said to take precedence, oaths were required to support the use of oral testimony:

> Hoc enim iustitie potius indagatio vera commendat, ut scripture ex omnibus intercurrant et iurandi necessitas sese omnino suspendat. In his vero causis sacramenta presetentur, in quibus nullam scripturam vel probationem seu certa indicia veritatis discussio iudicantis invenerit.
>
> (The true investigation of justice demands that written instruments should take precedence over everything else; and that necessity alone justifies the administering of oaths to the parties. But in those cases where there is no documentary evidence, or other proof, or where the judge shall not be able to decide without it, the parties to the suit shall be sworn.)[13]

Oaths were taken in cases where the judge was unable to decide between plaintiff and defendant.[14] There are frequent other references to the taking of oaths during legal proceedings,[15] including to monitor different aspects of

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9 Claude, 'The Oath'.

10 King, *Law and Society*, p. 113.

11 King, *Law and Society*, p. 114.

12 *Leges Visigothorum*, ed. by Zeumer, II.4.2, p. 95; II.4.5, p. 98, reiterates the need for those concerned in a case to give their testimony under oath (*sacramentum*). King, *Law and Society*, p. 103.

13 *Leges Visigothorum*, ed. by Zeumer, II.1.23, p. 70, ll. 13–20; Engl. trans. by Scott, *The Visigothic Code*, pp. 29–30.

14 *Leges Visigothorum*, ed. by Zeumer, II.2.5, p. 82, l. 17.

15 *Leges Visigothorum*, ed. by Zeumer, II.1.19, p. 66, ll. 7 and 19: oaths as a means of establishing whether those who failed to respond to the judge's summons did so wilfully or for valid

judges' behaviour, suggesting that, at least in the minds of those who were framing legal procedures, oaths served to guarantee the integrity of the system as a whole and not simply to monitor the faithfulness of plaintiffs and defendants.[16]

The laws of the seventh-century Visigothic kingdom were composed through a process of collaboration between the royal government and the ecclesiastical authorities, while bishops were granted a significant role in the legal process.[17] The Fourth Council of Toledo, presided over by Isidore of Seville in 633 and bringing together the bishops of the Visigothic kingdom, is traditionally examined for its role in establishing a progress for generating consensus around a new monarch, stressing that all the clergy and laymen of the kingdom should take oaths of loyalty to new kings upon their accession.[18] This ruling — or variations of it — is referred to repeatedly across the course of the seventh century, notably in canon 75 of the Fourth Council, which states repeatedly that the oath of fidelity (*sacramentum fidei*) given to kings must be preserved inviolate.[19] Disloyalty and rebellion are presented as coterminous acts of sacrilege because the oath of loyalty to the king was taken in God's name.[20] The bishops in council thus sought

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reasons; II.2.9, p. 86, l. 15: a freeman taking an oath in a case with a slave; V.4.13, p. 222, l. 20: oath by a master or testimony of witnesses necessary in the case of slaves selling the property of their master; V.5.1, p. 227, l. 19; V.5.2, p. 227, l. 25; V.5.3, p. 228, l. 6: swearing of oaths deployed in cases where property is committed or loaned to another; V.5.7, p. 229, l. 25: a master takes an oath to absolve themselves of acts of slaves acting falsely in their name; VI.1.2, pp. 248–49, ll. 27, 2–3 and 20: use of oaths in cases against freeborn persons; VI.5.7, p. 272, l. 18: someone who unintentionally kills another shall not be liable to punishment of death, even if he was convicted 'by oath or by the testimony of witnesses' ('cum aut sacramento aut testibus convictum fuerit'); VI.5.12, pp. 276–77, l. 4 and l. 4: oaths in cases of homicides involving freemen and/or slaves (King, *Law and Society*, p. 174 notes that the uncorroborated testimony of a slave was to no avail against his owner's oath of innocence, even in cases of murder); VI.5.16, p. 282, l. 4: oath taken in the case of pursuit of a fugitive into a church — oath confirms that they are a criminal; VII.2.8, p. 292, l. 1: oaths used in the case of a freeman receiving stolen goods as a means of proving his ignorance of the fact; VII.2.23, p. 297, l. 15: oath as a means of confirming innocence in case of an accusation of killing the animal of another; VII.5.2, p. 304, l. 12: oath by the person who drew up a document that has been destroyed or lost as a means of proving their contents; VIII.2.1, pp. 318–20, multiple occasions: oaths as a means of establishing the value of properties destroyed in fires in cities; VIII.3.5, p. 323, l. 8: oath determines value of destroyed vineyards; IX.1.4; IX.1.8; IX.1.14, p. 353, l. 21; p. 356, ll. 10 and 21; p. 360, l. 16: those sheltering fugitive slaves should take oaths to confirm that they did so unwittingly, did not assist in any subsequent flight or escape from their custody; X.1.14, p. 388, l. 6: oaths in disputes over tenancy agreements (see King, *Law and Society*, pp. 210–12). See also *Leges Visigothorum*, ed. by Zeumer X.1.19; X.3.5, pp. 390–91; p. 399, l. 5: to resolve a dispute, the oldest residents in an area should be sworn when there is no written record of land ownership.

16 *Leges Visigothorum*, ed. by Zeumer, II.1.20–22, p. 68, l. 5; p. 69, l. 7; p. 70, l. 3.

17 Koon and Wood, 'Unity from Disunity', pp. 793–808.

18 Velázquez, '"Pro patriae gentisque Gothorum statu"', pp. 161–217.

19 *Council of Toledo IV* (633), ed. by Vives, c. 75, pp. 217–22.

20 *Council of Toledo IV* (633), ed. by Vives, c. 75, pp. 217–18: 'Sacrilegium quippe est si violetur

explicitly to connect faith (*fides*) to political loyalty and religious conformity, instrumentalizing *fides* as a means of integrating the Christian community of *Hispania* both vertically (under the king and the bishops) and horizontally (within the Iberian Peninsula and the Nicene Church).

Subsequent councils, notably the Sixteenth Council of Toledo of 693, also emphasize the merits of the ruler and enjoin the clerics and laymen collectively to maintain their oaths (*sacramentum fidei*) and to offer no support to any plans to remove the king or his nominated successor.[21] Many church councils thus express a rather unidirectional and hierarchical vision of the relationship between the monarch and the people, in which the latter must swear loyalty to the former due to his exalted position. Other synods do, however, require the king, before taking up office, to swear to uphold certain practices and values, underlining the reciprocal nature of political bonds among the elite of the kingdom. The third canon of the Sixth Council of Toledo (638), for example, thanks King Chintila (636–639) for expelling the Jews from Spain and decreeing that only Catholics should live in Spain. The council goes on to state, with the agreement of the current king and the nobility, that, before ascending the throne, aspiring kings would be required, alongside other conditions of their oaths ('reliqua conditiones sacramenta'), to promise that they would not permit the Jews to violate the Catholic faith. Should they fail to do so, having become king, they would be anathematized.[22]

Some councils present the oath of loyalty as a means of reinforcing the king's authority, while others seek to tether royal power to the broader political interests of the elite, expressed through reciprocal oath-taking between the monarch and his subordinates. It is important here to emphasize the different contexts in which the councils took place. For example, in 633 the Fourth Council of Toledo justified the overthrow of Swinthila (621–631) by Sisenand (631–636), two years earlier, devoting considerable space within the aforementioned canon 75 to ratifying Sisenand's rule, anathematizing Swinthila for his crimes, exempting those who had broken their oaths to Swinthila by taking part in the rebellion, and condemning future acts of perjury.[23] Another interesting case is the oath that King Chindaswinth (642–653) asked the elite of the kingdom to swear to impose the terms of a law that he had passed against treasonous nobles who called in help from foreign powers.[24] In 653, the year that he took up sole rule having faced down

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a gentibus regum suorum promissa fides, quia non solum in eis fit pacti transgressio, sed et in Deum quidem in cuius nomine pollicetur ipsa promissio' (Engl. trans. my own): 'Thus it is sacrilege if the pledged loyalty to their king is broken by a people for not only is there a breach of a pledge in them but also against God in Whose name that promise was made'.)

21 For example, *Council of Toledo XVI* (633), ed. by Vives, c. 8 and 10, pp. 505–07, 509–12.

22 *Council of Toledo VI* (633), ed. by Vives, c. 3, pp. 236–37.

23 Thompson, *The Goths*, pp. 170–72.

24 See *Leges Visigothorum*, ed. by Zeumer, II.1.8 and VI.1.7, pp. 53–57 and 256; *Council of*

a rebellion, King Recceswinth (649–672), petitioned the bishops at the Eighth Council of Toledo to modify the terms of the oath that Chindaswinth, his father, had established in order that he might make more liberal use of his right to pardon traitors.[25] Recceswinth had not only to consider those who had been involved in the rebellion that he had just defeated, but also participants in earlier revolts, as he and his bishops were reminded in a letter from Fructuosus of Braga, which stated that 'If an impious oath makes it impossible to show mercy, then it is extremely cruel that the patronage of indulgence is denied to your royal and priestly clemency'.[26] Enforcing the terms of an oath that was too harshly framed would undermine the collective responsibility of the monarchy and the episcopacy for overseeing the social order. Oaths were deployed in particular political contexts, but could equally well be undone or modified when the situation changed.

The consistency with which oaths were referred to across a range of royal and ecclesiastical sources in the seventh century demonstrates clearly that they were viewed as useful tools for stabilizing the political hierarchy. Yet the vision of oaths as a form of social 'glue' may be traced back to council rulings of the sixth century, before the Visigothic monarchy had converted from a Homoian to a pro-Nicene position in 589 and subsequently developed a close working relationship with the episcopal elite of Hispania. Recceswinth's attempts to free himself from an oath that restricted his ability to exercise discretion in the treatment of rebels may, for example, be compared to canon 7 of the Council of Lérida, held in 546, which excommunicates for one year a litigant who takes an oath ('sacramentum') not to reconcile in any way ('ad pacem nullomodo redeat') with an opponent.[27] Although oaths were clearly viewed as potentially useful tools for preventing disputes, especially over the mid-seventh-century kingship, both Recceswinth and the bishops at Lérida recognized that they might provide individuals and groups with a reason to avoid resolving future conflicts. The socially constitutive potential of oath-taking thus had to be balanced with the possibility that,

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Toledo VII, ed. by Vives, c.1, pp. 249–53; Thompson, *The Goths*, pp. 190–95.

25 Thompson, *The Goths*, pp. 200–01.

26 Fructuosus, *Letter to Recceswinth*, see *Epistolae Wisigothicae*, ed. by Gundlach, Ep. 19, pp. 688–89: 'Quibus si impium iuramenti facinus abrogat misericordie bonum, regali saltim et sacerdotali clementia valde crudele est ut abdicetur indulgentie patrocinum' (*Iberian Fathers*, Engl. trans. by Barlow, vol. II, p. 211). Earlier in the letter Fructuosus had made a similar point, when he said that 'It is useless to put forth an oath as an excuse for an impious act, when it is clearly proved to be contrary to the words of Christ [...]' (Frustra iuramentum causa impietatis obtenditur, quod pro certo contrarium Christi sermonibus adprobatur; nulla fides est, que bonorum operum et misericordie caret affectu [...].) See also: Thompson, *The Goths*, pp. 183–84.

27 *Council of Lérida* (546), ed. by Vives, c. 7, p. 57: if anyone pledges himself by an oath never to become reconciled with his opponent, he must, on account of this sinful oath, be excluded for a year from communion, and he must blot out his fault by alms, prayers, and severe fasting.

over time, it might disrupt the bonds between leaders and their followers or between peers.

The persistent emphasis that is placed on oaths of loyalty in the aftermath of moments of political instability points further towards their potential value as a form of social 'glue', bonding individuals to their rulers and to each other. However, the Fourth Council of Toledo — like subsequent royal and ecclesiastical rulings — simultaneously justified the rebellion of the current king against his predecessor and anathematized anyone who was to rebel against him in future. This pattern was replicated across the seventh century and points towards the practical difficulty of making elective, consensus-based government work in practice. The repeated coupling of oaths of loyalty with conciliar proscriptions against rebellion indicates that oaths were, in practice, rather soluble.

A narrative source known as the *Historia Wambae Regis*, written by Bishop Julian of Toledo in the 680s, demonstrates how difficult it could be to make oaths 'stick' in practice and how they also continued to be viewed as potentially useful devices for forming — even sacralizing — political and social associations. Julian wrote his history in the aftermath of a rebellion by Duke Paul against King Wamba (672–680) in 673. Julian signals the perfidy of Paul and his followers by stressing the oaths of loyalty that they had broken. Paul had originally kept his oath to Wamba when he went to the province of *Narbonensis* to confront a rebellion, but that having been elected leader of the rebellion he then compelled the people to swear oaths to him instead of Wamba.[28] Julian states that in so doing Paul had broken the *fides* that he had pledged to Wamba, the legitimate ruler.[29] Keeping or breaking the oath and/or encouraging others to make oaths were matters of political

28 Julian of Toledo, *Historia Wambae Regis*, ed. by Krusch and Levison, *Iudicium in tyrannorum perfidia promulgatum*, ch. 2, pp. 530–31: 'non solum dissidentibus in fide persistendo non obstitit, sed etiam ipse dissidentia sui plurimos infideles effecit. In tyrannidem enim contra praedictum principem, gentem et patriam vertens, spoliavit se primum a fide promissa et, textrinii sui ordiniens telam, induit se periurii maculam. […] Post haec, quod nefas est dici, regnum contra Dei voluntatem arripuit et populos in hac nefaria electione sibimet iurare coegit, quo et contra fidem redditam agerent et necem vel deiectionem principi exhiberent, hunc praecipue ordinem in ipsa perversarum conditionum serie servans, ut gloriosum domnum nostrum Wambanem principem infaustum regem nominare auderet.' (Engl. trans. by Pizarro, p. 233: 'Not only did he [Paul] not confront the rebels and remain true to his oath, but instead by himself rebelling made many of his men disloyal. Hence, turning into a usurper against the aforementioned ruler, his people, and his fatherland, he first stripped himself of the loyalty he had sworn and, beginning to weave his web, he took on the stain of perjury. […] After that, and it is a monstrous thing to tell, he took on the kingship against the will of God and compelled the people to swear oaths to him in this criminal election, according to which they would act against their given words and bring either destruction or dispossession upon the ruler, keeping the following form in particular in the series of wicked oaths: that he dared call our lord King Wamba an ill-starred king'.)

29 Julian of Toledo, *Historia Wambae Regis*, ed. by Krusch and Levison, *Iudicium in tyrannorum perfidia promulgatum*, ch. 2; ch. 6, pp. 530; 533–34. See also: Claude, 'The Oath', pp. 7–8.

expediency, at least according to Julian. Records of these oaths were later produced at Paul's trial — they had been written down and signed and could thus be used as evidence against him and his fellow conspirators later.[30] It is also important to note that the judgement against Paul cites canon 75 of the Fourth Council of Toledo, which, as we saw earlier, was a foundational ruling about oaths of loyalty to the king, as further evidence of his guilt.[31] Despite Paul's flexible attitude towards oaths, a permanent written record was kept and the system was underpinned by a broader understanding of the legal and spiritual proofs that were required for legitimate oath-taking. Paul's punishment was justified by his failure to maintain the *fides* that he had promised when taking his oath.

Oath-taking was reciprocal in nature. Just as subjects were bound by oaths to their rulers, so the kings took oaths before and after taking up office and were, on occasion, required to swear oaths guaranteeing their conduct towards subordinates. For example, canon 31 of the Fourth Council of Toledo states that clerics can only accept office when appointed as judges by the king provided the king first takes an oath ('iureiurando') not to allow anyone who is found innocent to be executed.[32] Interestingly, it is the cleric who is

30 Julian of Toledo, *Historia Wambae Regis*, ed. by Krusch and Levison, *Iudicium in tyrannorum perfidia promulgatum* 6, pp. 533–34: 'Unde prolatae sunt conditiones, ubi spontanea promissione in electione gloriosi nostri Wambani regis ipse nefandissimus Paulus vel socii sui una pariter nobiscum consenserunt et inviolabiliter se ei vel patriae fidem observaturos sibi divini numinis sponsione testati sunt, quas etiam manus suae subscriptionibus notaverunt. Quibus conditionibus reseratis atque perlectis, ad confusionem perfidiae ipsorum subscriptio manus eorum in ipsis conditionibus eis aspicienda ostenditur. Post haec aliae conditiones, ad quas ipse perfidus Paulus populum sibi iurare fecerat, relectae sunt, in quibus iste impietatis et crudelitatis ordo servatus est, ubi ipsi Paulo omnes socii sui sub isto ordine iuraverunt, ut et fideles illi essent et unanimiter cum eodem contra gloriosum domnum nostrum Wambanem regem pugnarent […] infaustum regem iam dictum, gloriosum domnum nostrum Wambanem regem, ut, super praemissum est, in ipsis conditionibus nominantes, et cetera detestanda, quae in ipsis conditionibus reperiuntur scripta.' (Engl. trans. by Pizarro, pp. 237–38: 'Then the oaths were brought forth in which by a voluntary promise the most evil Paul himself and his associates, together with the rest of us, had consented in the election of our glorious lord, King Wamba, and sworn, taking the divine power as surety, that they would keep unbroken faith to him and to the land, which they also confirmed with the signature of their hands. These oaths having been opened and read, the signatures of their hands on these very promises are displayed for them to see, to the confusion of their treachery. And after these, other oaths, which the same foresworn Paul had made the people swear to him, are read, in which the following sort of impiety and treason was practiced: that all his accomplices swore to this Paul that they would be loyal to him and would all fight together with him against our glorious lord, King Wamba […]. In these oaths they called our glorious lord King Wamba "the ill-starred king", as already said, and many other detestable names which can be found written in the same oaths'.)

31 Julian of Toledo, *Historia Wambae Regis*, ed. by Krusch and Levison, *Iudicium in tyrannorum perfidia promulgatum*, ch. 7, pp. 534–35.

32 *Council of Toledo IV* (633), ed. by Vives, c. 31, p. 203.

punished for failing to adhere to this condition: if it leads to the shedding of blood, then he should be deposed.

The preceding examples make clear that, under certain conditions, oaths could be reinforced, modified, or dissolved. In Visigothic Iberia the bishops played a pivotal role in the process of oath modification. An interesting case is that which arose when Ervig succeeded Wamba in 680 after the former had been elected king when the latter had been temporarily incapacitated and received penance because he was thought to be on the brink of death, rendering him ineligible to return to the throne when he subsequently recovered. Controversy over this succession process resulted in the Twelfth Council of Toledo ruling, in 681, that all oaths sworn to the former ruler should be dissolved and that the population should follow Ervig.[33] At the Fifteenth Council of Toledo, held in 688, King Egica asked the assembled bishops to address the issue of conflicting oaths (*iuramentum*; *sacramentum*) he had sworn to his predecessor, Ervig.[34] He had sworn to protect the sons of Ervig when he married his daughter, but a second oath had been extracted on Ervig's deathbed to be just towards all inhabitants of the kingdom. Seeing as this might involve, from time to time, judging against the sons of Ervig, Egica requested a ruling from the bishops, who responded by judging in favour of the second oath on the basis that the common interest was more important than Egica's personal oath to Ervig. The Synod then gave its judgement regarding the two oaths, that in cases of conflict between the two the second should take precedence over the first.[35] The bishops justified their decisions through reference to the welfare of society as a whole.[36]

By the seventh century, oaths functioned, in theory and rather malleably in practice, as a means of aligning the population of the kingdom with the twin pillars of seventh-century Visigothic Iberia: the kingdom and the church. Churchmen also recognized the utility of oaths as a means of attaining social stability and reinforcing hierarchy within ecclesiastical institutions, for example, canon 27 of the Fourth Council of Toledo, held in 633, which ruled that when presbyters or deacons were established in *parrochias*, they must make a profession ('professionem facere') in front of their bishop to live chastely, by which they were bound ('alligo').[37] As we shall see in the next section, it may be the case that the origins of oath-taking in the Visigothic kingdom can thus be traced to the practices of ecclesiastical institutions as much as to the oaths of the late Roman military.

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33 *Council of Toledo XII* (681), ed. by Vives, c. 1, p. 387; De Jong, 'Adding Insult to Injury'; Claude, 'The Oath', p. 6.

34 *Council of Toledo XV* (688), ed. by Vives, prologue, pp. 450–52.

35 The synod also examined a third oath that Ervig had required the entire population to swear for the security of his sons.

36 King, *Law and Society*, p. 33 and n. 2.

37 *Council of Toledo IV* (633), ed. by Vives, c. 27, p. 202.

Monastic Pacts: Consensus and the Maintenance of Small Worlds

Just as the authors of royal and church laws envisaged oaths as a potentially useful means of fixing social relationships, theoretically tying subordinates more firmly to their superiors, so too did the authors of other kinds of normative sources from Visigothic Iberia propose methods for more firmly connecting individuals into the various social worlds to which they belonged. Writers of monastic rules seem to have been particularly concerned to establish mechanisms by which those who wished to join their communities could be tested in their profession, integrated into a new community, and then prevented — except under very unusual circumstances — from leaving. As in the case of oaths, legal and quasi-legal language was deployed to describe such instruments and considerable efforts were made to establish the exact terms under which they might be deployed, with debate once again focusing on the extent to which they were revocable (or not).

Monastic sources often express a rather negative attitude towards oaths, outlining the punishments due for the inappropriate use of oaths or for swearing falsely. This connected to more general prohibitions by ecclesiastical and secular authorities against swearing oaths that did not align particularly well with the need of individuals in the medieval period to belong to multiple groups and networks in order to attain or exercise patronage, security and/or a whole host of other social, economic, and political benefits.[38] In the Iberian monastic context, Leander of Seville (d. 600), ruled out oath-taking for nuns in *De institutione virginum et contemptu mundi*, a letter of advice on ascetic communal living written to his sister in the late sixth century.[39] In the early seventh century, the monastic *Rule* of Isidore of Seville, Leander's brother and predecessor as Bishop of Seville, listed taking oaths frequently ('qui saepius iurauerit') among the 'mild crimes' that are punishable by three days of excommunication.[40] The *Common Rule*, written in *Gallaecia* in the middle of the seventh century and usually associated with the monastic federation of Fructuosus of Braga, states that if children are caught 'swearing falsely' ('periurium deprehendo') then 'they are to be corrected […] immediately with a whip' ('Quodsi in aliquo qua e diximus deprehensi fuerint, continuo ab ipso suo decano uirga emendentur').[41] More generally, the rules from

38 Althoff, *Family, Friends and Followers*, pp. 6–7.

39 Leander of Seville, *De institutione virginum et contemptu mundi*, ed. by Campos Ruiz and Roca Melia, ch. 29, pp. 71–72: the chapter begins 'Nunquam iurare.'

40 Isidore, *Regula Monastica*, ed. by Campos Ruiz and Roca Melia, ch. 17, pp. 114–15: 'Delicta autem aut grauia sunt aut leuia. […] qui saepius iurauerit […] Haec igitur et his similia triduana excommunicatione emendanda sunt'; (unpublished Engl. trans. by Neil Allies: 'Crimes are either serious or mild. Somebody is guilty of a mild crime […] who often takes oaths […]. These and similar crimes must be punished with three days of excommunication').

41 *Regula Communis*, ed. by Campos Ruiz and Roca Melia, ch. 6, p. 183.

Gallaecia refer to the oaths (*sacramentum*; *iuramentum*) that are taken by those founding illegitimate monastic communities (*quasi monasteria*) as a means of protecting their worldly property.[42] The hostility of the monastic writers of Visigothic Iberia to oaths suggests that, contrary to strictures forbidding their use, oaths were actually being deployed as a means of bonding the members of monastic (or quasi-monastic) communities to one another. As in the case of oaths of loyalty to the king, accusations of their inappropriate use were potentially useful in debates over the legitimacy of different kinds of monastic institutions.

Although monastic rules make reference to oath-taking, a subject that, as we have seen, has engendered considerable debate in relation to royal power, much more scholarly attention has been devoted to the written agreements that are mentioned in a number of monastic sources. In a series of studies from the 1940s onwards, Charles Bishko explored the emergence and development of what he termed 'Galician pactual monasticism', a form of communal ascetic living that was characterized by the members of communities entering into written agreements (variously termed *pactum* and *consensoria* in the sources) with each other and/or their abbots.[43] The monastic pact (*pactum*) was probably written sometime between 660 and 675, is usually associated with the monastic communities founded by Fructuosus, and seems to have been appended to the rules of Fructuosus.[44]

The *Consensoria monachorum* was composed at about the same time in *Gallaecia* and circulated in the manuscript tradition alongside the rules of Basil and Isidore.[45] Both sources make frequent use of contemporary legal terminology in order to lay down the responsibilities of the monks and their abbots, stipulate what will happen if either breaks their side of the bargain, and, in certain formulations, grant the monks the right to withdraw from communion with an abbot should he not fulfil his duties.[46]

Bishko thought that the pacts were evidence that around 660 there was a breakdown in what he termed the 'basic institutions of orthodox monasticism' in *Gallaecia*, especially the authority of the abbot, and hence the emergence of a flatter hierarchy than could be found elsewhere in late antique Iberia, especially the institutions of the southern province

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42 *Regula Communis*, ed. by Campos Ruiz and Roca Melia, ch. 1 (on the oaths taken by family groups, their slaves and neighbours) and 2 (on priests founding 'so-called monasteries'), pp. 172–73, 175.

43 These studies are collected in Bishko, *Spanish and Portuguese Monastic History*.

44 *Pactum*, ed. by Campos Ruiz and Roca Melia, pp. 208–11.

45 Bishko, 'The Date and Nature', pp. 388 and 392: in all four manuscripts the *Consensoria* is tied to a monastic rule; in M and E, the work immediately follows Basil's rule, under the rubric *consensoria monachorum*, while in B and L it is included as an additional twenty-fifth chapter of Isidore's rule.

46 Bishko, 'The Date and Nature', p. 390: opening *formulae* closely resemble the juridical language of contemporary church councils.

of Baetica, where Leander and Isidore had been active in the late sixth and early seventh century respectively.[47] The pactual sources suggest that communal agreements termed *pactum*, *sacramentum*, or *iuramenta* in our sources replaced, or at least supplemented individual charters of monastic profession.[48] Scholarship since Bishko has tended to focus on the inter-related issues of property and family in exploring monastic texts from *Gallaecia*, including the pacts. For example, Susan Wood identified what appear to be whole families living in their own houses, bound together by an oath (condemned by our texts, as we saw above, as an illegitimate form of ascetic association). She suggested that this represented the establishment of a new and artificial house community, and the pooling of resources that were formerly divided.[49]

Visigothic legal sources make frequent reference to *pacta*, often in association with other terminology relating to agreements. Bishko suggested that the usage of *pactum* was synonymous with terms such as *definitio* and *placitum* and the translator of the sources deploys 'contracts', 'agreements' and 'obligations', or similar, almost interchangeably.[50] While in some cases such vague formulations may be justifiable, in others, such as at *Leges Visigothorum* V.5.10 when several kinds of agreement are listed, it is clear that the lawmaker had some awareness that various kinds of document ('testamenta, iudicia, pacta, donationes vel cetera talia') might pertain in different circumstances.[51] The frequent association between *pacta*, *placita* and *definitiones* may additionally suggest that, as in the case of oaths outlined above, a theoretical preference for written agreements (of any kind) was married to a recognition that in practice all that might be available to judges was an informal or an oral agreement.

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47 Bishko, 'The Date and Nature', pp. 392–93, where he suggests that the mid-to-late seventh century witnessed a particularly tumultuous period in the monastic history of *Gallaecia*, with families often interfering in the business of monasteries to which their relatives had retired.

48 Bishko, 'The Date and Nature', p. 392: such developments brought with them the free election of abbots, as against the episcopal appointments that were sanctioned by canon 2 of the Fourth Council Toledo in 633.

49 Wood, *The Proprietary Church*, p. 23.

50 Bishko, The Date and Nature'. *Leges Visigothorum*, ed. by Zeumer, II.5.2, p. 107: 'Pacta vel placita' (Scott, *The Visigothic Code*, translates as 'contracts and agreements' at p. 65). See further *Leges Visigothorum*, ed. by Zeumer, II.5.4, p. 108: 'pactum vel placitum' twice (Scott translates as 'contracts or obligations' at p. 65); II.5.6, p. 108: 'definitiones vel placita' (Scott translates as 'contracts and agreements' at p. 65); II.5.7, p. 108: 'pactum aut mandatum vel placitum' (Scott translates as 'contract or obligation' at p. 66)); II.5.8, p. 109: 'placitum sive definitio' (Scott translates as 'obligation or contract' at p. 66); II.5.9, p. 110: 'Pactum […] sive placitum' (Scott translates as 'obligation, or contract' at p. 66); III.1.4, pp. 124–26: 'pacta vel definitiones' (Scott has 'contract' at p. 78).

51 *Leges Visigothorum*, ed. by Zeumer, V.5.10, pp. 230–31; Engl. trans. by Scott, p. 176: 'wills, decrees, agreements, donations, or other legal instruments of this kind'.

Examination of references to *pacta* in ecclesiastical sources can aid our efforts to understand the range of meanings and practical applications of such legal instruments. The document is made in the name of the Trinity[52] before moving on to make a statement of submission of the signatories to the community's leader according to the rule and authority of the apostles and fathers.[53] Chapter 18 of Fructuosus's *Rule* mentions pacts, indicating that he viewed such written agreements as an essential element of the monastic profession.[54] The pact then goes on to outline a series of punishments for misconduct within the monastery, focusing on those who intrigue with people outside the monastery (parents, brothers, sons, relatives, neighbours, or fellow monks if the abbot is away).[55] The concern for policing boundaries is driven home by the next section, which lays down the procedure for dealing with those who left the monastery without the consent of the abbot or his fellow brothers — the abbot shall have the right to pursue him and he shall be excommunicated from Christian gatherings, even if he is defended by a bishop, a layman or other monks.[56] Before the subscriptions,[57] the pact outlines the responsibilities of the abbot and how the monks could go about securing redress of grievances, stating that if the abbot was not willing to correct himself, then the monks would have the right of consulting other monasteries, or else a bishop who lives under

52 *Pactum*, ed. by Campos Ruiz and Roca Melia, pp. 207–08.

53 *Pactum*, ed. by Campos Ruiz and Roca Melia, p. 208: 'nos omnes qui subter notandi sumus, Deo et tibi Domino et patri nostro tradimus animas nostras, ut secundum edictum apostolorum et regulam et sicuti sancta patrum praecedentium sanxit auctoritas uno nos in coenobio Christo praecedente teque docente habitemus' (Engl. trans. Barlow, *Iberian Fathers. Volume 2*, p. 208: 'all of us whose names are subscribed below entrust our souls to God and to you, our master and our father, that we may live in one monastery under Christ's guidance and your teaching according to the edict of the apostles and the Rule, and as sanctioned by the holy authority of the fathers in the past').

54 *Regula Communis*, ed. by Campos Ruiz and Roca Melia, 18, p. 203: 'et postquam probatus in cunctis oboediens fuerit, et non in plumbi natura mollitus, sed acer perdurauerit in ferrum; postmodum exuatur saecularibus uestibus et induatur monasterii religiosis simplicibus, et adnotetur in pacto cum fratribus, et uiuat ínter monachos probatus et ipse monachus'; Engl. trans. Barlow, *Iberian Fathers. Volume 2*, p. 203: 'And when he has been shown obedient in all things, not soft by nature like lead, but hard as steel in endurance, then he may shed his worldly garments and be clothed with the poor, simple garments of the monastery and may be enrolled in the pact with the brothers and may live among the monks, himself a well-tried monk').

55 *Pactum*, ed. by Campos Ruiz and Roca Melia, pp. 209–10.

56 *Pactum*, ed. by Campos Ruiz and Roca Melia, p. 210, which is framed as the result of the signatory making a promise to the abbot and to God: 'We also promise to God and to you, our father […].' ('promittimus etiam Deo et tibi patri nostro'); Engl. trans. Barlow, *Iberian Fathers*, II, p. 208.

57 *Pactum*, ed. by Campos Ruiz and Roca Melia, p. 211: 'Haec sunt nomina qui manu sua unusquisque subscriptionem uel signum in hoc pacto fecit'; Engl. trans. Barlow, *Iberian Fathers*, II, p. 209: 'Here follow the names which each one, male or female, has subscribed to this pact with his or her hand or sign'.

the Rule, or a Catholic count who is a defender of the Church, should be invited to meet with them, so that, in their presence, the abbot may correct himself and fulfill the tenets of the Rule.[58]

The level of detail devoted to curtailing and, where necessary, channelling movement across the boundary of the community suggests that such contact was considered likely, a point that is reinforced by the frequent references that the monastic rules make to interaction with the 'world'. The authors of the pacts — like those who wrote the rules — clearly wanted to protect the monastery from outside interference, except under carefully delineated conditions, and other forms of written agreement suggest that in doing so their primary concern was to defend the property of the monastery.

One such written document, the *Consensoria monachorum* is framed as a 'common agreement' ('commune definitione') of all those 'who reside in the monastery' to have one opinion and 'possessions in common'.[59] Its similarity to the *pactum* is made plain by the fact that it prohibits the seizure of monastic property by any of those who are party to the agreement ('consentientes') on the grounds that this 'belongs to all according to the pact' ('per pactum ad omnes pertinent').[60] Reference is made throughout the *Consensoria* to civil law, the common agreement of the signatories, and apostolic tradition, a further indication of its legalistic nature.[61] As with the pact, although some space is devoted to dealing with conflicts and possible divergences in ascetic practice between monks,[62] the *Consensoria* seeks, above all, to regulate movement across the monastery's boundaries. It lays down the conditions under which an individual may enter the community

58 *Pactum*, ed. by Campos Ruiz and Roca Melia, p. 209: 'quod si corripere te minime uolueris, tunc habeamus et nos potestatem cetera monasteria commouere aut certe episcopum qui sub regula uiuit uel catholicum ecclesiae defensorem comitem et aduocare ad nostram conlationem ut coram ipsis te corripias, et coeptam regulam perficias'; Engl. trans. Barlow, *Iberian Fathers*, II, p. 209.

59 *Consensoria monachorum*, ed. by Migne, 1, col. 993D.

60 *Consensoria monachorum*, ed. by Migne, 8, col. 996A; Bishko, 'The Date and Nature', p. 390.

61 *Consensoria monachorum*, ed. by Migne, 1, col. 993D: 'Residentibus in monasterio in nomine Domini nostri Jesu Christi omnibus placuit, secundum apostolicam traditionem, unum sentire et communiter possidere […]. In Domino ergo jure observationis et legis nos teneamus, et in eo usque in finem permaneamus'; (Engl. trans. Barlow, *Iberian Fathers*, II, p. 217: 'we who reside in the monastery have all agreed, in accordance with apostolic tradition, to have one opinion and to hold possessions in common […] let us hold ourselves in the Lord under the terms of monastic agreement and civil law, and let us abide in these rules until the end'); 9, col. 996A: 'Omnia ergo quae in isto libro continentur, omnes fratres observent atque subscribant, quia unum in Domino esse desiderant' (Engl. trans. Barlow, *Iberian Fathers*, II, p. 220: 'All the brothers who desire to be one in the Lord shall observe all the things that are written in this book, and shall subscribe their names'.) Bishko, 'The Date and Nature', thought that the 'book' referred to in chapter 9 is a combination of the *Consensoria* and the rule to which it was appended.

62 *Consensoria monachorum*, ed. by Migne, 6, col. 995B, mentions dispute between brothers who have agreed a common pact ('unitate consistunt'); see also chapter 5.

(with the agreement of the abbot and the brothers),[63] before delineating procedures for leaving the monastery, for the transfer of property to or from the institution,[64] then stating that, should 'the enemy' invade or attack the monastery, the monks should come together wherever the abbot is located as soon as possible.[65] The following chapter states that anyone taking anything from the monastery, presumably in flight from the situation mentioned in the preceding chapter, must take it to the abbot.[66]

Bishko suggested that the closing sections of the *Consensoria* referred to relatives of monks trying to recover by force property that had been taken into the monastery and, given the overall concern of the source for property relations and protection of the community's boundaries, this seems likely.[67] More interesting for the purposes of this chapter, however, is the statement that the monks cannot be separated because they can never be divided 'once divine love has joined them'.[68] The titles and contents of these two sources, as well as the parties who are expected to be involved in their execution, suggest slightly different purposes, with the *pactum* forming a contract between the abbot and a group of monks and the *consensoria* implying a corporate agreement between monks. However, their form and many of the contents suggest strongly that such written agreements were essentially fulfilling the same purposes: establishing a written and signed covenant (alongside the rule) for the foundation, governance, and management of a monastic community and its property.[69] Another similarity is the negotiated nature of the agreements, both in their initial stages and, potentially, later,

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63 *Consensoria monachorum*, ed. by Migne, 2, col. 993D, discusses how to deal with anyone who wants 'to join a congregation of brothers who are in agreement' ('Si quis autem venire desiderat ad congregationem fratrum, qui in unum esse videntur'), while chapter 3, col. 994D, addresses someone who wants to enter the monastery and must be approved by existing members, the abbot and the prior (Engl. trans. Barlow, *Iberian Fathers*, II, pp. 217–18).

64 *Consensoria monachorum*, ed. by Migne, 4, col. 994D: 'Et quicunque provocatus ab aliquo de monasterio voluerit abscedere, aut redarguat provocantem, aut indicet abbati, cui utique de his quae in commune decrevimus nihil est subtrahendum' (Engl. trans. Barlow, *Iberian Fathers*, II, p. 218: 'Anyone who is incited by another to leave the monastery must either rebuke the inciter or inform the abbot, who may not fail to observe any of those things which we have decided together').

65 *Consensoria monachorum*, ed. by Migne, 7, col. 995C.

66 *Consensoria monachorum*, ed. by Migne, 8, col. 996A: 'quia non poterit proprie retinere quod per pactum ad omnes pertinet, et Deo utique est consecratum' (Engl. trans. Barlow, *Iberian Fathers*, II, p. 220): 'since he will not be able to retain as his own what belongs to all according to the pact and has accordingly been consecrated to God.'

67 Bishko, 'The Date and Nature', p. 383 interprets the hostility as referring to the *Regula Communis*, which on several occasions (chapters 1 and 18) establishes provisions are made in the case of relatives of a monk attempting to recover by force the property that he has brought to the monastery.

68 *Consensoria monachorum*, ed. by Migne, 7, col. 995C. On concepts of love within early monastic communities, see Rapp, *Brother-making in Late Antiquity*, pp. 85–86.

69 Bishko, 'The Date and Nature', p. 391.

meaning that they could potentially be modified, especially if one party or the other had not met their responsibilities. Such responsibilities focus on maintaining the integrity of the boundaries of the monastic community on an ongoing basis. Finally, both the *pactum* and the *consensoria* incorporate statements of faith. We shall address the possible significance of such statements in more detail in the next part of this chapter, although it is clear that the collective written agreement of the monks had the effect of validating such statements of faith, which in turn served to further sacralize the monks' association.

The extensive similarities between the different sources explain why they have frequently been grouped together and identified as key components of a specifically 'Galician' monastic tradition. Without denying that sources for monasticism in the north-west of the Iberian Peninsula in the early medieval period have a significant number of distinctive features in common, parallels can also be drawn with monasticism elsewhere in *Hispania*, not to mention neighbouring regions. We have already mentioned the collocation of Isidore's *Rule* (and that of Basil) with the *consensoria* in manuscripts, which suggests 'amicable relations' between monks belonging to what might otherwise easily be viewed as two competing traditions.[70] Furthermore, Isidore's *Rule* describes the administrative process by which new members entered his imagined monastic community:

> Omnis conuersus non est recipiendus in monasterio nisi prius ibi se scriptis sponderit permansurum. Sicut enim ii qui ad saecularem promouentur militiam in legionem non transeunt nisi antea in tabulis conferantur, ita et ii qui in spiritalibus castris caelesti militiae sunt signandi nisi prius professione aut uerbi aut scripti teneantur, in numerum societatemque seruorum xpi transire non possunt.
>
> (No convert is to be admitted into the monastery unless they have first promised to remain there in writing. Just as those who present themselves for service in a secular army cannot join up until they have registered, in the same way those who wish to sign up for the spiritual camps of the army of Heaven, unless they are first bound by a verbal or written declaration, cannot enter into the legion and alliance of Christ.)[71]

Although Isidore mentions the possibility of a verbal declaration of intention to join the community, the need for permanence suggests that a written record was necessary.[72] The circulation of Isidore's *Rule* alongside

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70 Bishko, 'The Date and Nature', p. 393.

71 Isidore, *Regula Monastica*, ed. by Campos Ruis and Roca Melia, 4, p. 95; unpublished English translation by Neil Allies.

72 Elsewhere in his corpus, Isidore demonstrates his knowledge of how military rosters were maintained in the past: Isidore, *Etymologiae*, ed. by Lindsay, 1.24: 'De notis militaribus'.

the *Consensoria monachorum* suggests (but by no means proves) that such agreements are somehow related to the kinds of declarations that Isidore's monks might have signed.

Late antique authors often referred to the agreements that bound female ascetics to Christ as functioning as a kind of marriage vow.[73] Similar patterns can be observed in texts from Visigothic Iberia. Such texts use similar vocabulary to the sources from *Gallaecia* to describe the means by which ascetics were bound to one another and into communities. For example, in a sixth-century text on living within a monastic community, Leander of Seville advises his sister Florentina to respect the agreement that she made on becoming a nun: 'keep the pact which you made with Christ' ('Et si pactum quod cum Christo pepigisti seruaueris').[74] Leander frequently uses marital metaphors elsewhere in the text to describe the relationship between Florentina and Christ.[75] Leander's use of pactual terminology to describe his sister's profession reinforces the sense that the semantic line between purely legal terminology and solely sacral concepts — and the instruments of association that they described — was rather blurred in practice.

The form and contents — including the utilization of specific legalistic terminology — of the monastic pacts from *Gallaecia* are not particularly unusual when viewed in a broader context. The pacts clearly relate to wider practices (both secular and ecclesiastical, if such a distinction pertains in practice) associated with making agreements and resolving disputes in late antique Iberia. The written agreements and the records of oath-taking — and quasi oath-taking behaviours — that they incorporated, mediated the relationship between the individual monk, or family group, and the ascetic community that they were about to join or to which they already belonged. Pacts functioned to align the monk and the small community with wider monastic networks. Connections were also made with a higher, divinely sanctioned plane through the stress that is frequently laid on Trinitarian statements of faith. While the *pacta* may have been a response to the struggles of the monastic movement in *Gallaecia*, analysis of the broader context in which they were made reflects the engagement of contemporaries with existing theological and legal trends that operated at other levels of Visigothic society, including that of the kingdom. The pacts, like the oath of loyalty to the king, sought to fix individual and collective social relationships on both the horizontal (with each other and with the community as a whole) and the vertical planes (with the abbot and within broader monastic networks).

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73 Elm, *'Virgins of God'*; Clark, 'The Celibate Bridegroom', pp. 1–25. Cf. *Leges Visigothorum*, ed. by Zeumer, III.1.5, p. 128, l. 12: oaths taken by bridegrooms at time of marriage in relation to giving a larger dowry than is expected in law; he may decide to maintain this amount through 'iuramenti reverentia'.

74 Leander of Seville, *De institutione virginum et contemptu mundi*, ed. by Campos Ruiz and Roca Melia, 31, p. 76; Engl. trans. by Barlow, *Iberian Fathers*, I, p. 228.

75 Leander does so extensively in *De institutione*, preface; cf. chapter 16.

The next section investigates how another kind of pact — that which all Christians entered into at the point of baptism — functioned as a parallel means of sacralizing relationships on both individual and collective levels.

Baptismal Pacts: Binding the Individual into the Community

The Visigothic kingdom is well known for the violence of its anti-Jewish rhetoric and for the increasingly onerous legal penalties that were imposed on Jews across the 600s, in both royal and ecclesiastical laws.[76] Such measures were often marked in the legislation through reference to the baptismal status of former Jews. The permanence of the baptismal sacrament had been a point of contention between Nicenes and Homoians in the sixth century, with the Homoian Visigothic king Leovigild removing the need for rebaptism upon entry into the Homoian church, a move that was considered as a persecution by later Nicene historians, but which seems to have been designed to bring together the Roman (Nicene) and Visigothic (Homoian) populations of *Hispania*.[77]

Following the conversion of the Visigoths to Nicene Christianity in 589 under Reccared I, Leovigild's son, the baptismal status of Jews (or former Jews) was increasingly emphasized as a means of enabling bishops and kings to draw a boundary between Christians and Jews, thereby underlining their status as defenders of Nicene orthodoxy. Across the seventh century steadily harsher measures culminated in the compulsory baptism of Jews. Some members of the Christian elite seem to have viewed the Jews as an existential threat to the integrity of the kingdom and, in addition to binding them into the permanent sacrament of baptism, oath-taking was one means by which bishops in council sought to ensure their faithfulness and loyalty.[78] Councils also used oaths to bind kings to enforce anti-Jewish measures. For example, canon three of the Sixth Council of Toledo, held in 638, thanked God that King Chinthila had recently enacted a series of anti-Jewish measures, before going on to decree that, before ascending the throne, every future king should swear an oath (*sacramentum*) that he would not tolerate Jewish unbelief. The bishops condemned violation of the oath or failure to uphold the anti-Jewish legislation by future kings.[79]

Monarchs also deployed royal laws as part of their efforts to bring the Jews — and, because much of the Jewish population of Hispania had been forced to convert to Christianity, former Jews — of the kingdom into line. The taking of oaths was seen as a means of ensuring that (former) Jews

76 Bradbury, 'The Jews of Spain'; González Salinero, *Las conversiones forzosas*; Albert, 'Isidore of Seville'; Gil, 'Judíos y cristianos'; Bachrach, 'A Reassessment'.

77 Wood, 'Religious Strategies of Distinction'.

78 Linder, *The Jews in the Legal Sources*, pp. 497–98.

79 *Council of Toledo IV* (633), ed. by Vives, c. 3, pp. 236–37.

remained faithful in their dealing with Christians.[80] For example, a series of laws of King Ervig (d. 687) uses oath-taking as a means of regulating relations between Jews and Christians. Former Jews who under oath prove themselves devout Christians can own Christian slaves and may have their property returned to them at the discretion of the king, while slaves who become Christian and swear oaths are freed from their Jewish masters.[81] Another law of Ervig lays down the conditions under which Jews can take an oath (*sacramentum*) after their conversion to Christianity, making use of the formula '*Iuro* …' on well over twenty occasions.[82]

Ervig's law built on repeated church council rulings which obliged the Jews to pronounce public oaths, including at the influential Fourth Council of Toledo (held in 633), the Eighth Council of Toledo (held in 653), and the Twelfth Council of Toledo (held in 681).[83] Such oaths essentially reiterated the Nicene Creed, which functioned on one level as a clear marker of orthodox identity.[84] However, on another level, as Hillgarth emphasized, the legalistic language of the Creed underscores its nature as a binding pact between God and men.[85] On this interpretation, the Creed acted not simply as a statement of faith, but as a binding legal agreement. Oath-taking and professions of faith thus functioned, in the case of former Jews, as a means of monitoring religious conformity and political loyalty (overlapping categories in the minds of seventh-century churchmen and kings in Visigothic Iberia), at the same time as they guaranteed legal and economic relations.

In the Iberian context, the second half of the sixth century, a period during which both the Sueves and the Visigoths converted to the Nicene confession, credal statements would presumably have taken on added valence as potential markers of political and religious loyalty.[86] Particularly relevant in this regard are the writings of Martin of Braga, active in the mid-to-late sixth century in *Gallaecia*. In his *Formula vitae honestae*, an advice text dedicated to the Suevic King Miro, Martin describes justice as a silent agreement of nature invented for the aid of many ('Quid est autem iustitia nisi naturae tacita conventio in adiutorium multorum inventa?').[87] In other writings, Martin defines specific ritual acts, especially baptism, as explicit sacral statements binding the individual to God. Baptism, in

80 On sworn profession of Christian faith by Jews, see: King, *Law and Society*, pp. 139–43.

81 *Leges Visigothorum*, ed. by Zeumer, XII.3.13, pp. 440–41: 'sacramentum'; XII.3.27, pp. 454–55: 'professione cum iurisiurandi'; XII.3.18, p. 448: 'professione et iurisiurandi'.

82 *Leges Visigothorum*, ed. by Zeumer, XII.3.15, pp. 443–46.

83 Linder, *The Jews in the Legal Sources*, pp. 497–98.

84 Wood, 'Religious Strategies of Distinction', pp. 3–17.

85 Hillgarth, 'Popular Religion in Visigothic Spain', pp. 26–27, 53.

86 Cf. Morgan, *Roman Faith and Christian Faith*, pp. 422 and 440 on the origins of credal statements and other affirmations of propositional belief in the context of disputes within early Christianity.

87 Martin of Braga, *Formula vitae honestae*, ed. by Barlow, 5, p. 246; Engl. trans. by Barlow, p. 94: 'What is justice but a silent agreement invented for the aid of many?'

particular, was viewed as the moment at which an individual attained full participation in the Christian community, a moment furthermore at which the Creed was routinely recited.

Especially important is Martin's *De correctione rusticorum*, written in the third quarter of the sixth century in response to a request for preaching resources from Polemius of Asturica (modern Astorga), a fellow bishop in the Suevic kingdom.[88] Martin provides a model sermon designed in various ways to castigate and educate the 'rustic folk' about their superstitious beliefs and practices, as is made plain in the first chapter: 'in order to chastise the rustics who are bound by old pagan superstition and offer more veneration to demons than to God'.[89] One of Martin's main rhetorical tactics is to remind the members of his imagined congregation that they had broken their bonds with pagan superstition and were now bound to the Christian God, making repeated use of legal terminology. For example, in Chapter 15, he says: 'consider the nature of the pact which you made with God in baptism' ('considerate quale in ipso baptism pactum cum deo fecistís'), returning to the same point at the end of the chapter:

> Consider, then, what sort of pact (*pactum*) you made with God in baptism. You promised to renounce the devil and his messengers and all his wicked ways, and you professed that you believe in the Father and the Son and the Holy Ghost and that, at the end of the world, you hope for the resurrection of the body and life everlasting.[90]

Baptism functions as a guarantee (*cautio*) and a pact (*pactum*, on multiple occasions) of faith, potentially broken by the audience's failure to remain faithful.[91] More specifically, they are said to have 'given up the sacred incantation', which he specifies to mean 'the creed you accepted in baptism', while those who cling 'to other incantations by magicians and evil-doers'

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88 Wood, 'Predicación, pedagogía y persuasión'.

89 Martin of Braga, *De correctione rusticorum*, ed. by Barlow, 1; p. 183: 'ut pro castigatione rusticorum, qui adhuc pristina paganorum superstitione detenti cultum venerationis plus daemoniis quam deo persolvunt'; Engl. trans. by Barlow, *Iberian Fathers*, 1, p. 71.

90 Martin of Braga, *De correctione rusticorum*, ed. by Barlow, 15, pp. 196–97: 'Ecce ergo considerate quale pactum cum deo fecistis in baptismo. Promisistis vos abrenuntiare diabolo et angelis eius et omnibus operibus eius malis, et confessi estis credere vos in patrem et filium et spiritum sanctum et sperare vos in fine saeculi carnis resurrectionem et vitam aeternam', Engl. trans. Barlow, *Iberian Fathers*, 1, pp. 80–81.

91 Martin of Braga, *De correctione rusticorum*, ed. by Barlow, 16, pp. 197–98: 'Ecce qualis cautio et confessio vestra apud deum tenetur!'; 'fidem vestram transistis et pactum quod fecistis cum deo disrupistis'; (Engl. trans. by Barlow, *Iberian Fathers*, 1, pp. 81–82: 'Lo, such is the guarantee and confession of yours that God holds against you!'; 'you have transgressed your faith and have broken the pact which you made with God'); Martin of Braga, *De correctione rusticorum*, ed. by Barlow, 17, p. 200 'Noli dubitare de misericordia dei. Tantum tu fac in corde tuo pactum cum deo, ut iam amplius culturas daemonum non colas'; (Engl. trans. by Barlow, *Iberian Fathers*, 1, pp. 83: 'Do not doubt the mercy of God. Only perform in your heart your pact with God not to practice the worship of demons any more […]'.

have 'lost the incantation of the holy creed and the Lord's Prayer'.[92] The situation was not irredeemable, however, because those who promised God and reformed in their heart and did not commit such sins again could expect pardon[93] provided they recall that they 'promised to believe in the creed, the resurrection of the flesh and eternal life'.[94] The pact could be reconstituted but only if the individual had reformed within. Baptism thus functioned as a sacred bond that served as a kind of legal agreement binding the Nicene community together by guaranteeing the adherence of the faithful to a specific credal formula and to a specifically Nicene political and religious hierarchy.

One of the rights reserved to bishops in the Visigothic kingdom was that of administering the sacrament of baptism, and church councils strove to maintain episcopal control of the process in the face of encroachment from other members of the clergy.[95] Councils operating at the level of the kingdom as a whole and within provinces legislated so that bishops operating in individual dioceses could position themselves as the key brokers of the sacramental contract between new Christians and the church. Like the oath of loyalty to the king, the 'pact' that Christians entered into at baptism functioned to integrate individuals who operated in the small world of the local community into a range of higher-scale levels within the Visigothic church. Like oaths, such pactual agreements were potentially rather soluble in practice, a fact that is made plain by the repeated efforts of ecclesiastics to make them 'stick'.

Conclusion

This chapter has surveyed some of the plentiful evidence for oath-taking in the Visigothic kingdom, seeking to contextualize such material in relation to a wider range of mainly ecclesiastical sources produced in monastic and episcopal contexts, from church council records to monastic rules, and theological and pastoral treatises. In an important study of prayers for brother-making (*adelphopoieisis*) that were peculiar to Byzantium, Claudia

92 Martin of Braga, *De correctione rusticorum*, ed. by Barlow, 16, pp. 199–200: 'Similiter dimisistis incantationem sanctam, id est symbolum quod in baptismum accepistis, quod est *Credo in deum patrem omnipotentem*, et orationem dominicam, id est *Pater noster qui es, in caelis*, et tenetis diabolicas incantationes et carmina. Quicumque ergo, contempto signo crucis Christi, alia signa aspicit, signum crucis, quod in baptismum accepit, perdidit. Similiter et qui alias incantationes tenet a magis et maleficis adinventas, incantationem sancti symboli et orationis dominicae, quae in fide Christi accepit, amisit et fidem Christi inculcavit, quia non potest et deus simul et diabolus coli'; Engl. trans. by Barlow, *Iberian Fathers*, I, pp. 81–82.

93 Martin of Braga, *De correctione rusticorum*, ed. by Barlow, 17, pp. 200–01.

94 Martin of Braga, *De correctione rusticorum*, ed. by Barlow, 18, p. 201: 'sed illud magis recordetis quod in symbolo vos credere promisistis, id est carnis resurrectionem et vitam aeternam'; Engl. trans. by Barlow, *Iberian Fathers*, I, pp. 83–84.

95 Wood, 'Religious Strategies of Distinction', pp. 16–17.

Rapp traces their origins to small-group monasticism of Late Antiquity.[96] Rapp suggests that the rituals that turned two men into brothers were probably understood as belonging to the same context as baptismal rites.[97] In this chapter I have sought to make a similar point: oath-taking in the Visigothic kingdom was one element within a well-developed repertoire of methods for fixing relations between individuals and communities in the sight of God, within and outside monastic contexts. Such practices drew on interpenetrating legal, theological, and pastoral traditions that sought to address the issue of how to maintain communal cohesion in the face of conflict over positions within the hierarchy, internal instability, and external threats from political enemies and religious 'others'.

I have argued that practices such as the oath of loyalty to the Visigothic king are best understood within broader contemporary political, social, and religious contexts, rather than solely as continuations of the recruitment practices of the late Roman military and/or of the traditions of 'Germanic' kingship.[98] When viewed in relation to such historical contexts and compared to other methods for generating divinely sanctioned agreements between individuals and communities, it is clear that oaths and pacts, for example, were designed to assuage anxiety about the stability of the political and religious order in Visigothic Iberia, often in the aftermath of moments of conflict. We have seen that such conflict could occur at the level of the kingdom, as in the case of rebellions against the king or the conversion of entire peoples from one confessional position to another, or could be focused on the smaller world of the monastery or the bishopric. Those who framed such agreements used legal and theological language to emphasize the fact that their attempts to bind individuals and communities more firmly together into a series of reciprocal relationships, from the king and the bishops downwards, had divine sanction.

These sources also speak to the instability of hierarchy within the Visigothic kingdom. The oath of loyalty to the king was deployed repeatedly in both royal and church laws in the aftermath of periods of unstable rulership, while its malleability is made plain by the willingness of bishops to absolve new kings of their former oaths. Yet such flexibility hints at an important element of oath-taking: its reciprocal nature. Kings were supposed to take oaths to their subjects, either in general or to carry out certain measures for the benefit of the kingdom as a whole. The same seems to have been true in the monastery, where although the abbot is consistently presented as the key authority figure, his authority is not paramount, but open to negotiation. The pacts play a mediating role in ensuring that both the leader

96 Rapp, *Brother-making in Late Antiquity*, pp. 88–179.
97 Rapp, *Brother-making in Late Antiquity*, p. 88.
98 King, *Law and Society*, p. 121: the widespread use of the oath 'recalled the typical German hearing'.

and his followers contribute to and benefit from their interaction. Pacts thus potentially reinforce the authority of the abbot, as laid down in the rule, but also establish the conditions under which such authority could be brought into question. Even the baptismal pact can, according to Martin of Braga, be reconstituted through internal reform.

The practical instability of pacts and oaths as mechanisms for achieving social consensus can be seen in the frequent complaints that are made about their failure by bishops in councils, writers of monastic rules, and the authors of royal laws, as well as by the provisions that were sometimes made to facilitate their dissolution. Analysis of oaths and pacts thus demonstrates the theoretical desire of Visigothic-era rule-makers to achieve consensus in an unpredictable world, the practical difficulties that they faced, and the ways that they innovated in order to overcome such challenges. The connections between such practices and texts such as the *De correctione rusticorum*, especially in terms of their use of cognate legal and credal terminology in calling forth divine sanction, demonstrates the extent to which 'legal' practices were informed by theological and pastoral concerns.

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III.

Fidelity and Political Theology

JENNIFER R. DAVIS

Rethinking the Oath of Fidelity during the Reign of Charlemagne

Introduction

quia ipse domnus imperator non omnibus singulariter necessariam potest exhibere curam et disciplinam

One of the features of the reign of Charlemagne that earned him the epithet of 'the great' was his towering ambition. This ambition led him to notable successes, and some equally notable failures. Yet, the willingness to try big things and ask for ever more from his people is among the defining characteristics of the reign. One of the most extraordinary demands Charlemagne ever made came in 802, when he commanded that every person in the empire participate in the shared project of assuring salvation for all and keeping faith with the king, each individually: 'that everyone should strive to fully maintain himself in the holy service of God according to God's precept and according to his own *sponsio* and according to his understanding and strength, because the lord emperor cannot provide the necessary care and discipline to everyone individually'.[1] This famous passage, with its far-reaching vision of royal responsibility for all subjects coupled with their duties to the king, their 'share of his moral responsibilities', as Henry Mayr-Harting put it,[2] is just one of the innovative features of the so-called *Capitulare missorum generale*, the capitulary that includes this audacious decree. The passage just cited is at the start of a series of chapters setting out a new vision of the oath, to be sworn to Charlemagne in his (relatively) new guise as

* I would like to thank the editors, Gerda Heydemann and Stefan Esders, for their patience and many helpful comments on this chapter. I have especially benefitted from numerous discussions about the oath with Stefan over the years. I am also grateful for the comments and suggestions of the participants and audience members at the original conference. Finally, I owe a debt to Britta Mischke and Karl Ubl for their comments on an earlier draft of this chapter.

1 *Capitulare missorum generale*, ed. by Boretius and Krause, no. 33, c. 3, p. 92. The Latin text and translation can be found in the appendix. Translations are mine when not otherwise noted.

2 Mayr-Harting, 'Charlemagne's Religion', p. 120. See also Mayr-Harting, 'Alcuin, Charlemagne', pp. 209–10.

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The Oath in Late Antiquity and the Early Middle Ages: Religious Act, Social Bond, Holy Sacrament, ed. by Stefan Esders and Gerda Heydemann, CELAMA 46 (Turnhout: Brepols, 2026), pp. 129–199 BREPOLS PUBLISHERS 10.1484/M.CELAMA-EB.5.152875

emperor.[3] The capitulary then proceeds to explain just what this new oath entails, and it is a long list, ranging from protecting the churches and the weak to assuring military service to the king.[4] The oath, as presented in 802, was a dynamic reimagining of what fidelity meant, one that not only illuminates the history of the oath in the early Middle Ages, but also the meaning of fidelity during the reign of Charlemagne and the tools used to attempt to enforce this new vision of fidelity. Moreover, exploring the reimagining of the oath under Charlemagne allows us to investigate how fidelity became deeply entwined with the project of the capitularies, and illuminates the ways in which law was directed to new ends, not always successfully.

Any effort to rethink the nature of the oath during the reign of Charlemagne must seek to build on Matthias Becher's essential research. Becher has already demonstrated compellingly how the court used the oath, and especially highly tendentious narratives about the oaths allegedly sworn by Charlemagne's cousin Tassilo, duke of Bavaria, in the course of his deposition, to articulate a revised understanding of fidelity. Tassilo served as a useful example to demonstrate a new vision of fidelity and rulership, which emphasized Charlemagne's leadership of the aristocracy, the divine sanctioning of his rule, and his responsibility for the weak, all of which justified the fidelity he demanded.[5] I aim to extend Becher's analysis by analysing how the oath as re-envisioned in 802 encompassed an ambitious but flexible understanding of loyalty and intersected with the project of the capitularies that presented the new oath. The reimagined vision in 802 depended on older processes of introducing the oath into communities and yet also pushed at the boundaries of what the capitularies could achieve. A new exploration of the oath thus holds the potential to refine our understanding of what fidelity meant to Charlemagne, to add to our understanding of his ideas and tools of rulership, and to enrich our exploration of the capitularies in general, and the pivotal *Capitulare missorum generale* in particular.

Before we can proceed to this analysis, a few preliminary remarks are necessary. First of all, while I will analyse the oath as re-envisioned in 802, that was hardly the first moment in Charlemagne's reign in which the oath garnered attention. Charlemagne had ordered at least one oath-swearing earlier in his reign,[6] and in particular in response to the revolt of

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3 *Capitulare missorum generale*, ed. by Boretius and Krause, No. 33, c. 2, p. 92; the text is in the appendix. The unique manuscript that preserves this capitulary is full of grammatical errors, as will be discussed below. The text given in this chapter follows the emendations introduced in the edition. For the issues of the discussion of the oath that are our focus, the language of the edition does not depart in any substantive way from that of the manuscript, BnF, MS lat. 4613. The capitulary can be found on ff. 83^{v}–91^{v} and can be consulted at <https://gallica.bnf.fr/ark:/12148/btv1b9066866b/f. 1> [accessed 30 January 2026].

4 *Capitulare missorum generale*, ed. by Boretius and Krause, no. 33, cc. 5 and 7, p. 93.

5 Becher, *Eid und Herrschaft*. His key arguments are brought together on pp. 195–216.

6 Becher, *Eid und Herrschaft*, pp. 195–201 and Esders, '*Sacramentum fidelitatis*', pp. 305–426.

Hardrad[7] and the consequent claim by some that they had not actually been disloyal to the king since they had never sworn loyalty in the first place.[8] While I will be focusing on the 802 framing of the oath and its reverberations in the last years of the reign, this interest in the oath was not a new development. The oath had a long history in the reign of Charlemagne, not to mention its even longer Frankish (and Christian and Roman) past,[9] and would continue to shape the politics of the later Carolingian period.[10] Indeed, oaths were one of the key building blocks of Carolingian society, functioning, to use Heiko Behrmann's apt phrase, as both 'the central nervous [system] and Achilles heel of Carolingian society'.[11] Oaths of all kinds were used and debated in the Carolingian world,[12] ranging from the ubiquitous judicial oaths,[13] to a

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7 Studies of Hardrad's revolt include: Brunner, *Oppositionelle Gruppen*, pp. 47–53; Brunner, 'Auf den Spuren', pp. 5–12; Davis, *Charlemagne's Practice of Empire*, pp. 140–49; Le Jan, 'Identité thuringienne'; Le Jan, 'Élites et révoltes', pp. 404–10; Nelson, 'Opposition to Charlemagne', pp. 18–20.

8 *Capitulare missorum*, ed. by Boretius and Krause, no. 25, c. 1, p. 66; the text is in the appendix. The capitulary notes both the 'ancient custom' of the oath and the particular problem caused by the revolt of Hardrad. This double motivation is noted by Ward, *The Oath of Loyalty*, p. 181. The revolt of Hardrad was not, however, the only proximate reason for the oath; see further n. 166 below.

9 On the Roman roots of the oath: Esders, '*Sacramentum fidelitatis*', especially Chapter 1. The early Merovingians clearly used oaths of loyalty, although explicit evidence is lacking for the later Merovingian period (summarized succinctly by Esders, '*Sacramentum fidelitatis*', p. 305). Nonetheless, Stefan Esders has argued that the Merovingians continued to employ oaths of loyalty: Esders, '*Sacramentum fidelitatis*', pp. 226–305 for a comprehensive analysis, and pp. 427–31 on continuities from the Merovingian period to the Carolingian. For a full discussion of the Merovingian evidence, arguing for variable use of the oath, see Eckardt, *Untersuchungen*. Other scholars see Charlemagne's use of the oath as more of a renewal of an older tradition. See, for example, Depreux, 'Les Carolingiens et le serment', p. 68. For the Frankish context, with attention to change from the Merovingians to the Carolingians, see Reimitz, 'The Promise of History'. On the Christian and Roman contribution to early medieval oaths, see Becher, *Eid und Herrschaft*, pp. 101–04. For the semantic range of the word '*sacramentum*' in Roman and early Christian usage, see Phelan, *The Formation of Christian Europe*, pp. 8–31. For a broad survey of oaths in ancient, Jewish, and Christian thought, see Esders, 'Schwur' and for their meaning in the early Middle Ages, Esders, 'Loyalty Oaths'.

10 Key moments in the history of the oath, focused on the Franks, are usefully surveyed in Nelson, 'Carolingian Oaths'. For the later use of the oath in the Carolingian period, see, among others: Depreux, 'Les Carolingiens et le serment'; Geary, 'Oathtaking and Conflict Management'; Ward, *The Oath of Loyalty*; Behrmann, *Instrument des Vertrauens*.

11 Behrmann, *Instrument des Vertrauens*, p. 11, repeated on p. 395.

12 For the varied use of oaths in the Carolingian world, see Depreux, 'Les Carolingiens et le serment', pp. 64–68. There is also a useful survey of the older literature in Holenstein, *Die Huldigung*, pp. 110–38.

13 To give just one example of such judicial oaths, see *Capitula cum primis constituta*, ed. by Boretius and Krause, no. 52, c. 3, p. 139: 'Ut nullus testes mittere in iudicium praesumat, sed comes hoc per veraces homines circa manentes per sacramentum inquirat, ut, sicut exinde sapiunt, hoc modis omnibus dicant' (That no one should presume to call witnesses for a judgement, but rather the count should inquire of reliable men in the area through an oath, so that whatever they know about the matter, they should say in all ways). For an interesting recent study of a judicial oath, see Haack and Kohl, 'Teudefred and the King'.

developing clerical oath,[14] to the famous vernacular Oaths of Strasbourg,[15] to stringent efforts to prohibit guilds or other supposed dangerous forms of oath.[16] Our focus will remain more narrowly on the oath of loyalty sworn to the ruler,[17] and how the understanding and use of that oath developed during

14 Esders and Mierau, *Der althochdeutsche Klerikereid*.

15 For recent literature, see Lo Monaco and Villa, eds, *I Giuramenti di Strasburgo/The Strasbourg Oaths*; McKitterick, 'The Oaths of Strasbourg'.

16 Oexle, '*Conjuratio* et *ghilde*'; more developed in Oexle, '*Conjuratio* und *Gilde*'. For a broader reading of the dangers and advantages of horizontal bonds, see Nelson, 'Peers'.

17 There has been a longstanding debate about whether the oath of fidelity to the ruler draws on an already existing oath of vassalage to a lord. While this problem has generated extensive debate, the downplaying of feudalism in contemporary scholarship has reshaped the discussion. Given that the evidence for vassalage in the Carolingian period is itself limited and contested, the weight of scholarly opinion now favours the view that there was little vassalage, not to mention 'feudalism' in the Carolingian period (usefully summarized by Becher, '*Omnes Iurent!*', p. 185, with reference to the key literature; also essential are Kasten, 'Das Lehnswesen — Fakt oder Fiktion?'; Kasten, 'Economic and Political Aspects'; Kasten, '*Beneficium*'). While we now put less emphasis on feudalism and vassalage, the question of a possible oath of vassalage still raises some problems. The issue is particularly acute for the 802 oath *formulae* which claim that a subject should be loyal to Charlemagne just as a man is to his lord (oath *formulae* are given on pp. 168–69 below), language that evokes what Depreux has called the addition of 'une dimension vassalique' to the relationship between the king and his people; Depreux, 'Les Carolingiens et le serment', p. 71. However, Becher argues there is not much difference between the 789 and 802 *formulae* in this regard (*Eid und Herrschaft*, pp. 145–47). Does this mean that there was a standard oath of vassalage drawn on for the oath to the ruler, or indeed clear distinctions between kinds of oaths, as has been proposed by Magnou-Nortier, *Foi et fidélité*, pp. 44, 55? The idea of a distinct differential between oaths to a ruler as king versus as lord, of the kind proposed by Odegaard, 'The Concept of Royal Power' cannot be found in the sources from the reign of Charlemagne. Although Odegaard, 'Carolingian Oaths' (see also his *Vassi and Fideles*) argues that the 802 oath is not an oath of vassalage, he does so by positing different types of oath, as just noted, but also downplaying the ambitious expectations of the 802 oath formula. A different window into the development of the oath language emerges from Becher's scholarship. Becher, *Eid und Herrschaft*, pp. 144–65 argues that as the concept of the vassal developed in the late eighth century, and particularly in light of how the court presented the case of Duke Tassilo, it became a way to emphasize military service. This is why the oath *formulae* invoke vassalage; that is, according to Becher, to insist on the military duties of the aristocracy in light of their fidelity to the king. The linking of vassalage to an oath is a consequence of the new oath, not a cause of it (Becher, *Eid und Herrschaft*, p. 215). Becher has strengthened this argument in his '*Omnes Iurent!*', demonstrating that vassalage had almost no role ('kaum eine Rolle', p. 192) in the development of ideas of fidelity. My own view is that vassalage is an ill-defined concept in the Carolingian period and that there is no clear evidence for any kind of standard oath of vassalage. I would interpret the oath formula as simply addressing Charlemagne as lord, without drawing a clear line between kingship and lordship, which is also the approach adopted by Reynolds, 'Afterthoughts', p. 6. This interpretation is further strengthened by Haack's demonstration that there is little clear sense of what vassalage meant in the early Carolingian sources, especially in terms of its military obligations (Haack, *Die Krieger*). We can thus best proceed to a discussion of the oath of fidelity under Charlemagne by leaving aside any further consideration of problems of vassalage. Similarly, the scholarship has moved on from any sense of an especially Germanic understanding of fidelity: on the now discarded idea of an especially Germanic 'Treue', see Esders, '*Sacramentum fidelitatis*', p. 9; for this older literature and its problems, see Kroeschell, 'Die Treue'.

the last years of Charlemagne's reign. The point, therefore, is not that the oath of loyalty as such is new, but rather that Charlemagne's reimagining of it marked a significant rethinking of what fidelity meant and how it might be achieved, from 802 on, but in ways that built on earlier ideas and tools of rulership.[18]

A second preliminary comment is also necessary. The capitulary that introduced the new oath in 802 has been the subject of extensive scholarly debate, including Steffen Patzold's important argument that the text is more a pastiche of materials rather than a coherent royal legislative statement, one that reflects what individuals copied much more than any kind of court vision.[19] This is part of a larger argument by Patzold, claiming that the capitularies as a genre do not really exist, and that instead what we have are individual *capitula* recorded by or on behalf of various aristocrats, and not fully royal law.[20] I have argued elsewhere that the capitularies themselves use a vocabulary of cross-referencing that makes clear that contemporaries did indeed see them as a recognizable, if varied and decidedly non-technical, genre.[21] For the purposes of this chapter, however, the key issue is how to characterize this one text, not to resolve all the (many) problems associated with the capitularies as a whole.[22]

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18 For the particular importance of oaths in the early medieval world, see Esders, 'Der Reinigungseid'.

19 Patzold, 'Normen im Buch'. Some of these arguments about the capitularies in general are now repeated in Patzold, 'Capitularies in the Ottonian Realm', especially pp. 115–20; Patzold, 'Benedictus Levita, I, 279', p. 86; Patzold, 'Integration durch Kommunikation', pp. 205–10. Patzold has now modified his views somewhat to allow for the emergence of a capitulary genre later in the Carolingian period; see Patzold, *Wie regierte Karl der Große*, pp. 56–74, 77–78. His argument that there was no capitulary genre, but just lists of topics compiled by recipients is largely followed by Tsuda, who emphasizes the emergence of a real genre and archiving practices under Charles the Bald, as he argues that the flexibility in terminology for capitularies in essence invalidates the idea of a genre: Tsuda, 'War die Zeit Karls des Großen'; Tsuda, 'Was hat Ansegis gesammelt'; Tsuda, 'Die sogenannten Kapitularien'; Tsuda, 'Zur Entstehung'. The lack of only a strict technical usage, however, need not preclude contemporaries having a sense of what we call capitularies as a category, nor does the existence of such a loose category imply a particular form of rulership using capitularies as Tsuda suggests. The difficult state of the manuscript does make it possible that in the case of this particular capitulary its chapters were brought together only by a later compiler, as I discuss below. For the state of the question on this point, see Mischke, 'Zerpflückt'. I thank Britta Mischke for sharing her work with me prior to publication.

20 Patzold builds on Christina Pössel's work emphasizing the shaping roles of recipients of capitularies, although she does not question the idea of capitularies as royal: Pössel, 'Authors and Recipients'. Compare, for example, Patzold, 'Capitularies in the Ottonian Realm', p. 119: 'If we pay proper attention to their textual transmission, then, capitularies should no longer be seen as normative texts originating from the ruler, but rather as lists of *capitula* produced by recipients'.

21 Davis, 'Cross-Referencing in Charlemagne's Capitularies'.

22 The key starting point for research on the capitularies remains Ganshof, *Recherches*. There are also useful overviews of the genre and its problems in Bühler, '*Capitularia relecta*'; Mordek, 'Karolingische Kapitularien'; Kaschke and Mischke, 'Capitularies'. And see now the website for the project to re-edit the capitularies <https://capitularia.uni-koeln.de/> [accessed 30 January 2026].

The essential starting point for our investigation is to insist on the royal voice evident in this text. For Patzold, the frequent alterations between the first person of the king and a third-person voice indicate that the text is not really a royal, court product at all.[23] Michael Glatthaar has instead used these alterations in voice to argue for passages that express different kinds of royal commands, mediated by different agents, but that nonetheless articulate a unified vision.[24] Not all chapters of this capitulary speak in the king's voice, but those that do, as François-Louis Ganshof long ago pointed out, are 'highly personal and emotional in tone'.[25] They get us close to what Jinty Nelson has called the very 'voice of Charlemagne'.[26] Ganshof saw the capitulary, and its new oath text, as specifically imperial, a view that I will argue against here.[27] However, his insistence on the coherence of the text, which he characterized as 'programmatic' is helpful, at least if we focus on the coherence of its ideas and not its formal features. This text does convey a vision, and it is a very strongly royal one. Indeed, I will seek to argue that the vision of the oath expressed in the capitulary gets at the key ideas that animated Charlemagne's political project. In so doing, we can see how the coherence of ideas about the oath extends to the capitulary as a whole, which is in fact held together, despite its surface disparate elements, precisely by what it has to say about the oath and its expression of fidelity to both king and God. The thread tying together the capitulary is its vision of the oath, which is not, as has been usually suggested, actually confined to its first chapters. Exploring the articulation of the oath in 802 allows us both to reinterpret this pivotal legal text, and also to illuminate some of the defining characteristics of Charlemagne's rulership, in particular its ambitious and yet diffuse nature, its focus on community-building, and some of the tensions attendant on its implementation. As a way of investigating the significance of the oath during the reign of Charlemagne, we will look at each of these features in turn.

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23 Patzold, 'Normen im Buch', pp. 338–41.

24 Glatthaar, 'Subjektiver und indirekter Stil', pp. 18–22.

25 Ganshof, 'Charlemagne's Programme', p. 57.

26 Nelson, 'The Voice of Charlemagne', although it must be noted that Nelson does not think Charlemagne's voice is particularly clear in this capitulary. See also Mayr-Harting, 'Charlemagne's Religion', p. 117; Buck, *Admonitio und Praedicatio*, p. 328. For stimulating attempts to get at the personal views of other Carolingian rulers, see Ubl, 'Die Stimme', and Koziol, 'Is Robert I in Hell?'

27 Compare also Buck, '*Capitularia imperatoria*'.

The Scope of Fidelity

quam magna in isto sacramento
et quam multa conprehensa sunt

Let us begin with the breadth of vision incorporated into the oath. The oath as formulated in the 802 capitulary insists upon its novelty. This feature alone already indicates the importance placed on the conception of the oath. Charlemagne and his men innovated a great deal, but most of the time the court preferred to present their plans as a revival of tradition.[28] The explanation of the new oath begins, however, by stating that the oath includes much more than people have understood previously; rather than simply entailing failing to commit or consent to harm to the emperor, the oath as envisioned in 802 is much more extensive. As the capitulary states: 'it should be explained to all publicly, so that everyone is able to understand, how great and how many matters are included in this oath'.[29] We must stress the force and innovation of this understanding of the oath. As Jinty Nelson has put it: 'In 802, the purpose of the oath was very much more positive, assertive and demanding'.[30]

The first part of the capitulary is then framed as an articulation of what is included in the oath, ranging from not deserting royal benefices,[31] to avoiding a full corpus of illicit judicial machinations[32] (although many of

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28 For example, *Capitula ecclesiastica ad Salz data*, ed. by Boretius and Krause, no. 42, c. 2, p. 119.

29 *Capitulare missorum generale*, ed. by Boretius and Krause, no. 33, c. 2, p. 92; the text is in the appendix.

30 Nelson, 'Charlemagne and Empire', p. 230. This does not mean that previous understandings of the oath were purely 'negative', in the sense of lacking active obligations. It just means that the court in 802 was advocating for a new and much expanded understanding of the corpus of obligations that might be included in the oath and what those entailed. For a defence of the 'positive' content of earlier oaths, see Esders, '*Sacramentum fidelitatis*', pp. 573–78.

31 *Capitulare missorum generale*, ed. by Boretius and Krause, no. 33, c. 6, p. 93: 'Ut beneficium domni imperatoris desertare nemo audeat, propriam suam exinde construere' (That no one should dare to desert a benefice of the lord emperor in order to construct his own property).

32 *Capitulare missorum generale*, ed. by Boretius and Krause, no. 33, c. 9, p. 93: 'Ut nemo in placito pro alio rationare usum habeat defensionem alterius iniuste, sive pro cupiditate aliqua, minus rationare valente vel pro ingenio rationis suae iustum iudicium marrire vel rationem suam minus valente opprimendi studio. Sed unusquisque pro sua causa vel censum vel debito ratione reddat, nisi aliquis isti infirmus aut rationes nescius, pro quibus missi vel priores qui in ipso placito sunt vel iudex qui causa huius rationis sciat rationetur con placito; vel si necessitas sit, talis personae largitur in rationem, qui omnibus provabilis sit et in qui in ipsa bene noverit causa: quod tamen omnino fiat secundum convenientiam priorum vel missorum qui praesentem adsunt. Quod et omnimodis secundum iustitam legem fiat; adque praemium, mercedem vel aliquo malae adulationis ingenio vel defensione propinquitatis ut nullatenus iustitia quis marrire praevaleat. Et ut nemo aliquit alicui iniuste consentiat, sed omni studio et voluntate omnes ad iustitia perficiendam praeparati sunt' (Trans. by Dutton, *Carolingian Civilization*, p. 71 [revised from a translation by D. C. Munro] with minor emendations: 'That no one, for any reason, shall make a practice in court of defending another unjustly, either from any desire of gain when the cause is weak, or by impeding a

these requirements are not in fact new, the comprehensive repackaging is).[33]

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just judgement by his skill in reasoning, or by a desire of oppressing when the cause is weak. But each one should render account for his own cause or tax [*census*] or account unless anyone is infirm or ignorant of pleading; for these the *missi* or the leading men who are at that assembly or the judge who knows the case in question shall plead before the court; or if it is necessary, such a person may be allowed as is acceptable to all and knows the case well; provided this is done wholly according to the agreement of the leading men or *missi* who are present. But in every case it shall be done in accordance with justice and the law; and that no one shall have the power to impede justice by a gift, reward, or any kind of evil flattery or from any hindrance of relationship. And that no one shall unjustly consent to another in anything, but that with all zeal and goodwill all shall be prepared to carry out justice').

33 For example, see the commands about benefices in Pippin's capitulary for Aquitaine that Charlemagne issued: *Pippini capitulare Aquitanicum*, ed. by Boretius and Krause, no. 18, c. 5, p. 43: 'Quicumque nostrum beneficium habet, bene ibi labored et condirgat [*sic*]; et qui hoc facere non vult, dimittat ipsum beneficium et teneant suas res proprias' (Whoever should have our benefice, there he should work and direct things well; and who should not want to do that, he should lose that benefice, and let him hold only his own property). See also the regulations on justice in the *Admonitio generalis*, ed. by Mordek, Zechiel-Eckes, and Glatthaar, cc. 62–63, pp. 212–16: 'Omnibus. Ut quibus data est potestas iudicandi iuste iudicent, sicut scriptum est: Iuste iudicate, fili hominum, non in muneribus, quia munera excecant corda prudentium et subvertunt verba iustorum, non in adolatione nec in consideratione personae, sicut in deuteronomio dictum est: Quod iustum est, iudicate, sive cives sit ille sive peregrinus, nulla sit distantia personarum, quia dei iudicium est. Primo namque iudici diligenter discenda est lex a sapientibus populo conposita, ne per ignorantiam a via veritatis erret. Et dum ille rectum intellegat iudicium, caveat, ne declinet, aut per adolationem aliquorum aut per amorem cuiuslibet amici aut per timorem alicuius potentis aut propter praemium recto iudicio declinet. Et honestum nobis videtur, ut iudices ieiuni causas audient et discernant.

Omnibus. Item habemus in lege domino praecipiente: Non periurabis in nomine meo nec pollues nomen domini dei tui. Et: Nec adsumes nomen domini dei tui in vanum. Ideo omnino ammonendi sunt omnes diligenter, ut caveant periurium non solum in sancto evangelio vel in altare seu in sanctorum reliquiis, sed et in communi loquella, quia sunt aliqui, qui per caritatem et veritatem iurant et cavent se a iuramento nominis dei et nesciunt, quia idem est deus, quod est caritas et veritas, dicente Iohanne apostolo, quia deus caritas est. Item ipse dominus in evangelio: Ego sum via et veritas. Ideo, qui in veritate et caritate iurat, in deo iurat. Item cavendum est, ne farisiaca superstitione aliquis plus aurum honoret quam altare, ne dicat ei dominus: Stulte et caece, quid est maius? Aurum vel altare, quod sanctificat aurum? Sed et nobis honestum videtur, ut, qui in sanctis habeat iurare, hoc ieiunus faciat cum omni honestate et timore dei et sciat se rationem redditurum deo uniuscuiusque iuramenti ubicumque sit, sive intra ecclesiam, sive extra ecclesiam. Et ut parvuli, qui sine rationabili aetate sunt, non cogantur iurare, sicut Guntbodingi faciunt. Et qui semel periuratus fuerit, nec testis sit posthaec nec ad sacramentum accedat nec in sua causa vel alterius iurator existat' (Trans. by King, *Charlemagne*, pp. 214–15: 'To all. That those to whom the power of judging has been given are to judge justly, inasmuch as it is written: "Judge justly, sons of men" (Ps. 58. 1), not with regard to gifts, "for gifts blind the hearts of the wise and pervert the words of the just" (Ex. 23. 8), nor with regard to flattery nor with regard to respect for persons, inasmuch as it is said in *Deuteronomy* (1. 16–17): "Judge what is just, whether he be a citizen or a *peregrinus*; let there be no distinction between persons, for the judgement is God's." For first the *judex* is diligently to learn the law composed for the people by wise men, lest he wander from the path of truth by ignorance. And when he perceives the right judgement, he is to beware that he does not turn away from it, does not, by reason

The first two provisions after the introduction of the oath are numbered one and two, and are then followed by a further five chapters.[34] After these seven points about fulfilling the oath, there is a note in the capitulary stating that all of the above-mentioned requirements are to be observed as part of the imperial oath.[35] This statement has usually been interpreted as blocking off this first part of the capitulary from the rest of the text as a definition of the oath. This reading is encouraged by the layout of the capitulary in the standard edition, which draws a line under this statement, thus physically reinforcing a separation of the first chapters from the rest of the capitulary. However, in the only surviving manuscript, this note follows at the end of Chapter 9 with no break in numbering or paragraph or layout.[36] The note simply ends Chapter 9, suggesting less of a hard break at this point than implied by the edition.[37] Exploring in more detail the overall organization of the capitulary can help us understand the framing of the oath more precisely.

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of someone's flattery or for the love of some or other friend or out of fear of some powerful man or through bribery, turn away from the right judgement. And it seems to us proper that *judices* hear and settle cases while fasting.

To all. Further, we have in the law the Lord's commandment: "You shall not swear falsely in My name; neither shall you profane the name of the Lord your God" (Lev. 19. 12) and "You shall not take the name of the Lord your God in vain" (Ex. 20. 7). For this reason let everyone be diligently admonished, in absolute terms, to beware perjury, not only on the holy gospel or on the altar or on saints' relics but also in everyday speech, for there are some who swear by love and truth, taking care to avoid an oath in God's name, and do not know that God is the same thing as love and truth, the apostle John saying that "God is love" (1 John 4. 16) and the Lord Himself, in the gospel, "I am the way and the truth" (John 14. 6). Whoever swears by truth and love, therefore, swears by God. Further, care is to be taken lest, with pharisaical superstition, anyone honours gold more highly than the altar, that the Lord may not say to him: "You fools and blind: which is greater, the gold or the altar that sanctifies the gold?" (Matt. 23. 17, 19). But this too seems proper to us, that whoever has to swear on the saints does this while fasting and with all respect and fear for God; and he is to realise that he will render account to God for each single oath, wherever it may occur, within a church or outside it. And that children who have not reached the age of reason are not to be forced to swear, as is the practice among the Burgundians [according to the Gundobadian law; my addition]. And whoever shall have once committed perjury is thereafter neither to be a witness nor to enter upon sworn obligations nor to take an oath in his own or someone else's legal case'). Part of the novelty is the linking of these commands to religious duties. See Esders, '*Fideles Dei et regis*: Ein Zeugma', pp. 343–66.

34 Most chapters are marked off by a chapter number and a paragraph break. However, the first two chapters explaining what the oath means, that is, Chapters 3 and 4, also begin with the verbal numbering of 'primum' and 'secundo'.

35 *Capitulare missorum generale*, ed. by Boretius and Krause, no. 33, note at the end of Chapter 9, p. 93: 'Hec enim omnia supradicta imperiali sacramento observari debetur' (For all these things above are to be observed [as part of] the imperial oath).

36 The chapter divisions in the manuscript do not fully coincide with the edition. As the chapter divisions in the *MGH* have been used in the scholarship to date, for ease of reference, I refer to the chapter divisions in the *MGH*.

37 BnF, MS lat. 4613, f. 85^{r}.

tantum fidelitate dom no imperatori · usq; inuita ipsius &
ne aliquē inimicum · insuum regnum causa inimicitię · inducat
& ne alicui · infidelitate illius consentiant · aut pretaciat · sed
ut sciant omēs ista miseratione hoc sacramentū habere · III ·

Primum ut unusquisq; & per sona propria se inscō dī seruitio
secundum dī preceptum & secundū sponsionē suam · plenū
conseruare studeat · secundū intellectū & uiresuas · quia ipse
dominus impr̄ non omnib; singulariter · necessariam potest ·
exhibere cujam & disciplinam ·

Statuit ut nullus homo · neq; cū p uri · neq; alio ingenio · uel
fraude · p nullius unquam · adolationē · uel premium · neq;
seruum dom ni imperatoris · neq; ter minū · neq ; terram nihil
q; quod uire potest · ritue pmaneat · ; Hullatenus contradicat ·
neq; abstrahere · aude at · uel celare · & ut nemo s fugitiuos ·
fiscalesuos · quise inuste & cū fraude · liberas dicunt celare
neq; abstrahere cum p uisio · uel alio ingenio presumat · V ·

Ut scīs eccl esiis dī · neq; uiduis · neq; orphanis · neq; peregri
nis fraude uel rapinā · uel aliquit iniurię quis facere pre
sumat · quia ipse dom nus imperator post dn̄m & scōs eius quorū
& protector & defensor esse constitutus est · VII ·

Ut beneficium dom ni imperatoris deser tare nemo au
deat propriamsuā exinde construere · VIII ·

Ut ostilebannum dom ni impr̄atoris nemo pretermit
tere presumat · nullusq; cōmixtā presumptiosum sit ·
ut illum de his qui hostem facere debuisunt exinde uel ali
qua propinquatis defensionē uel cuius muneris adolationē

85

dimittere audeant;

Ut nullum bannū uel preceptū dom̄i Imperatoris nullus omnino innullo marrire p̄sumat neq; opuseum fricare uel impedire uel minuere uel inalia contrariumfacere uoluntati uel preceptis eius & ut nemo debitū suū uel censū marrire audiat.

Ut nemo inplacito p alio rationare usum habeat defensionem alterius in iuste siue p cupiditate aliqua minus rationare ualente uel p ingenio rationis siue lusum iudicii marrire uel rationē suā minus ualente opprimendi studio. sed unusquisq; pro sua causa uel censū uel debito ratione reddat nisi aliquis isti infirmus aut rationes nescius pro quib; missi uel priores qui inipso placito sunt uel iudex q causa huius rationis sciat rationē complacito uel sine cessitas sit talis psone largitur ut rationē quiomnib; probabilis sit. & qui inipsa bene nouerit causa quod tam omnino fiat secundū conuenientiam priorum uel missum qui presentē adsunt quod & omnimodis secundū iustitiā legē fiat. adq; premiū mercedem. uel aliquo male adulationis ingenio. uel defensione p̄pinquitatis ut nullatenus iustitia quis marrire preualeat. & ut nemo aliquis alicui in iuste consentiat. sed omni studio & uoluntate omnis ad iustitia p faciendam preparatissimi. hec enī omnia supra dicta imperiali sacramento obseruari debeus.

Ut episcopis pbris. secūm canones uibant. & itaq; ceteros doceant;

Boretius, the editor of the capitularies, similarly prints a line after Chapter 24, to mark off a supposed segment on religious legislation from a final section addressing secular matters, before the capitulary ends with a concluding chapter.[38] Both of these lines are editorial interventions and introduce artificial divisions into the capitulary. While many of the chapters in Boretius's Part 2 do address the church and those in Part 3 matters of governance, an effort to characterize some as religious and some as secular contradicts the ethos of the era. Those are our divisions, not theirs.[39] To give just one example, the 'secular' section includes a condemnation of homicide in rather extraordinary terms.[40] The regulations envisioned — paying a fine, doing penance, avoiding feud — are ideas regularly articulated in Charlemagne's legislation.[41] But the language in which all of this is laid out is a departure from the norm; homicide is a sin, to quote the capitulary 'by which many Christian people perish'.[42] The presentation of homicide as an offence to God makes it clear that to characterize this as solely a secular proscription ignores many of the impulses behind it. The attempt to divide the capitulary into religious and secular segments fails.

In the case of setting off the first chapters on the oath, the clause specifying that all these above matters are included does offer firmer ground for introducing a division into the capitulary. But to do so is a mistake, as with a division of the text into religious and secular sections, and we might better understand the capitulary as a whole as an articulation of what fidelity, to God and to the king, means. Such an interpretation does require explaining the note after Chapter 9. This is where the somewhat mangled state of the capitulary in its tenth-century manuscript comes in, as well as the complexities of composition reflected in the surviving text. We must consider both of these issues in turn.

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38 *Capitulare missorum generale*, ed. by Boretius and Krause, no. 33, p. 96.

39 This is a well-studied topic. Two useful recent discussions are de Jong, 'The Two Republics' and Kramer, *Rethinking Authority*.

40 *Capitulare missorum generale*, ed. by Boretius and Krause, no. 33, c. 32, p. 97; text and translation can be found in the appendix.

41 For example, paying compensation for homicide: *Capitulare legibus additum*, ed. by Boretius and Krause, no. 39, c. 1, p. 113; doing penance for homicide: *Capitulare cum episcopis Langobardicis deliberatum*, ed. by Boretius and Krause, no. 89, c. 8, p. 189; avoiding feud: *Pippini capitulare*, ed. by Boretius and Krause, no. 95, c. 4, p. 201.

42 This clause is actually a reconstruction. The manuscript literally reads 'Homicidia pro quibus multis de operis populus christianus'. However, given the issues with the manuscript (which are discussed below) and the use of a similar clause elsewhere, including further on in this same chapter ('Quapropter ne populus nobis ad regendum commissos hoc malo pereat', corrected in the edition from the manuscript's 'Qua ne propter populus nobis ad requirendum commissos hoc male pereat'), I think the editor's emendation is correct.

The sole extant witness to the *Capitulare missorum generale* is Paris, Bibliothèque Nationale, MS lat. 4613, a tenth-century codex from Italy.[43] Despite the careful ordering and presentation of the capitularies contained in this manuscript, the text itself is highly corrupt, frustratingly often to the point of incomprehensibility.[44] The manuscript is also damaged, and currently is missing multiple folia, although Britta Mischke has identified several missing folia in a Vatican manuscript.[45] Our efforts to interpret the capitulary depend on the sense we can make of its frequently difficult language.[46] The sentence about the things contained in the oath is not itself grammatically problematic, but the frequent lapses in language do make clear that we are dealing with a later reworking of ninth-century law, and a reworking that was almost certainly not in all respects reflective of the text as originally produced in 802.

In addition to these difficulties of language and grammar, we need to recognize that what we have preserved does likely reflect several stages

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43 For descriptions, see the Capitularia project website: <https://capitularia.uni-koeln.de/en/mss/paris-bn-lat-4613/> [accessed 30 January 2026] and Mordek, *Bibliotheca*, pp. 469–76; Mischke, 'Zerpflückt'. Also useful is Kaschke, 'Handschrift des Monats Juli 2018'. Britta Mischke has told me that Antonio Ciaralli is soon to suggest an eleventh-century date for the codex. While we await the publication of his work, I will continue to refer to the manuscript as a tenth-century production. For the purposes of this study, a shift to an eleventh-century date would have no substantive impact on the argument, as the key point for present purposes is that the manuscript is post-Carolingian. I would like to thank Britta Mischke for her help with the dating question. There was at least some transmission of the capitulary in the Middle Ages, indicated for instance by its use in the eleventh-century *Collectio canonum V librorum* and in a twelfth-century manuscript of Burchard of Worms. On the later use (and adaptation) of the capitulary, see Mordek, '"Quod si se non emendent"'.

44 See Mordek, *Bibliotheca*, pp. 469–70. See also Buck, *Admonitio und Praedicatio*, pp. 171–78, although I do not agree that the two sections of the manuscript containing Charlemagne's capitularies can be easily divided into sections focused on religious or secular concerns, as was already suggested above about the capitulary itself. See also Mischke, 'Zerpflückt', p. 20 n. 9. The capitularies preserved in the manuscript have been called the '*Collectio Thuana*' in reference to an early modern owner of the collection. See Mordek, '"Quod si se non emendent"', p. 172. On this capitulary collection, see now the full discussion in Mischke, 'Zerpflückt'.

45 Mischke, 'Zerpflückt'.

46 How we interrupt the corrupt language of the codex has been debated, with Mordek, '"Quod si se non emendent"', pp. 172–74 suggesting that the scribe sought to consciously corrupt the legal texts as a sort of attack on Carolingian law-giving in Italy. On such possibilities of 'sabotaging' capitularies generally, see Zimpel, 'Unliebsame Herrscher-Erlasse'. For the case of our manuscript specifically, Mischke, 'Zerpflückt', pp. 21–25 now offers an even-handed assessment of the evidence. Her argument linking the working methods of the scribe of BnF MS lat. 4613 to those of other Italian jurists suggests to me that we are not dealing with a case of intentional distortion. Be that as it may, Mischke has made clear that the capitulary collection in the manuscript dates only to the late ninth or early tenth century. Regardless of the intentions of the manuscript's scribe, which we may never recover, the question relates to the later copying of capitularies in Italy, not to whatever emerged from Charlemagne's court in the early ninth century.

of composition, and in this sense Patzold is correct that the document is somewhat of a pastiche. The frequent alterations in voice may be one sign of the multiple layers of the capitulary that are reflected in the one surviving copy.[47] What I mean by this is that we can understand the capitulary as emerging from ongoing discussions, in which certain topics were addressed multiple times, which we can see reflected in chapters in the capitulary that address the same topics from different angles.[48] These variations in approach were all part of the debate, and the text as we have it does not make an attempt to smooth them out. The idea that texts would be drafted and then worked over is also supported by the example of other capitularies, like the *Capitula tractanda cum comitibus episcopis et abbatibus* and the *Capitula de causis cum episcopis et abbatibus tractandis*.[49] Both of these are agendas for a discussion, the second a revision and partial answer (often pointed) to some of the questions raised in the first.[50] But neither are fully complete, polished productions, nor is their relationship to each other entirely self-evident. They are more documents of practice, meant to be used to help discussion, debate, and implementation, but without the goal of presenting a fully solidified, polished, codified text. As such, they are typical of the capitularies, which were most decidedly not a law code.

The model of these linked capitularies may be even more important for the *Capitulare missorum generale*, if it too was a combination of some originally separate documents produced at roughly the same time. This is indeed possible given the nature of the manuscript, which presents its capitularies in a series of lists; if the *Capitulare missorum generale* was indeed one text from the start then, as Britta Mischke has pointed out to me, it would be the only list in the manuscript that included only one capitulary. However, given the late date and many infelicities of the manuscript, as well as the varied nature of the capitularies, I would argue that we must take the coherence of the text seriously. To my mind, the compiler of the manuscript in the tenth century is unlikely to have been the one to bring

47 Note here that while I agree with Glatthaar ('Subjektiver und indirekter Stil') on the essential unity of the text, I do think that the changes in voice can indicate stages of composition. Compare with n. 24 above. Ganshof suggests that the passages on sodomy and incest are so strongly worded 'that they read like last minute additions made on the orders of Charlemagne himself'. Ganshof, 'Charlemagne's Programme', p. 65; see also p. 57 on how the more 'emotional' passages may have elicited a direct 'intervention' from Charlemagne. What I envision is rather multiple drafts and suggestions that were never fully polished into a final, formal version.

48 See, for instance, the discussion of incest in Chapters 33, 35 and 38, pp. 97–98, the first of which is cited in n. 59 below.

49 *Capitula tractanda cum comitibus episcopis et abbatibus*, ed. by Boretius and Krause, no. 71, pp. 161–62; *Capitula de causis cum episcopis et abbatibus tractandis*, ed. by Boretius and Krause, no. 72, pp. 162–64. The latter text is re-edited by Ganshof, 'Note sur les "capitula"', pp. 21–25.

50 See Nelson, 'The Voice of Charlemagne', p. 82. Ganshof's insistence that the second document is full of simulated questions, shaped to convey the court's viewpoint on a number of matters, is essential. Ganshof, 'Note sur les "capitula"'.

these particular disparate pieces together, because the links evident in the text are so tied to early ninth-century political conditions and the compiler does not otherwise reveal sufficient appreciation of his legal texts to make it likely that he was the one to see the complex entanglements of this text. It is impossible to prove definitively, but it seems to me most likely that if the text was originally several lists, they were combined before they came to the attention of our scribe. However, it may well be that we are dealing with multiple groups of chapters produced at a series of linked meetings, a situation that we can find ample precedent for in the corpus of capitularies. And even if composed as a unified document from the start, the text still reveals multiple layers and stages of composition which, nonetheless, do not destroy its connective themes, evident for instance in the opening and concluding chapters that are not only linked, but do serve to bookend the text as a whole. We need to balance both the coherence and the divisions in the text.

If we think about the *Capitulare missorum generale* in this way, we can recognize the traces of discussion it reflects, and analyse, rather than attempting to explain away, these seeming contradictions. To give one example, we can recall the passage on homicide noted above.[51] The capitulary returns to the same topic[52] a few chapters later and announces (largely) the same penalties, but without any of the distraught rhetoric about the moral dangers of homicide.[53] It is not that one of these passages is more correct or more legal than the other. They are different ways of thinking about the same issue, and thus both are part of the political practices encouraged by the court. A similar repetition marks the capitulary's consideration of perjury. The topic is first noted as one of the requirements explicitly linked to the oath.[54]

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51 *Capitulare missorum generale*, ed. by Boretius and Krause, no. 33, c. 32, p. 97; the passage is cited in the appendix.

52 The second chapter focuses on murder of one's relatives, which is one of the forms of homicide addressed earlier in the capitulary. It is thus not a precise repetition of topic, but a return to the broad concern already raised.

53 *Capitulare missorum generale*, ed. by Boretius and Krause, no. 33, c. 37, p. 98: 'Ut hii qui patricidia vel fratricidia fecerit, avunculum, patruum vel aliquem ex propinquis occiderint, et iudicium episcoporum, presbiterorum caeterorumque iudicium obhedire et consentire noluerint, quod ad salutem animae suae iustumque iudicium solvendum missi nostri et comitis in tali custodia coartent, ut salvi sint nec caeterum populum quoinquinent usque dum in nostra presentia perducatur; et de res propria sua interim nihil habeant' (That those who perpetrate patricides or fratricides, who should kill a maternal uncle, a paternal uncle or any of his relatives, and does not want to obey and consent to the judgement of bishops, priests and of other judges, which [pertains] to the salvation of his soul and the performing of just judgement, [then] our *missi* and counts should confine him in such custody, so that they should be safe and not affect other people until he is led into our presence; and in the meantime he should have no use of his property). This translation smooths out some inconsistencies in grammar.

54 *Capitulare missorum generale*, ed. by Boretius and Krause, no. 33, c. 4, p. 92: 'Secundo, ut nullus homo neque cum periuri neque alii ullo ingenio vel fraude per nullius umquam

The need to avoid perjury is reiterated later in the same capitulary, this time in rather stronger language insisting on the sin involved.[55]

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adolationem vel praemium neque servum domni imperatoris neque terminum neque terram nihilque quod iure potestativo permaneat nullatenus contradicat neque abstrahere audeat vel celare; et ut nemos fugitivos fiscales suos, qui se iniuste et cum fraudes liberas dicunt, celare neque abstrahere cum periurio vel alio inienio presumat' (Trans. by King, *Charlemagne*, pp. 234–45: 'Second, that no man, either by perjury or by any other trickery or fraud, or through flattery or bribery of someone, is ever, in any way, to withhold or to dare to steal or conceal the lord emperor's *servus* or boundary-marker or land or anything that he holds by law and right; and that no one is to presume, by perjury or some other trickery, to conceal or steal dependents of his in flight from the fisc (*fiscales*) who unjustly and fraudulently say that they are free').

55 *Capitulare missorum generale*, ed. by Boretius and Krause, no. 33, c. 36, p. 98: 'Et ut omnes omnino ad omnem iustitia exsequenda et missis nostris sint consentientes. Et usum periurii omnino non permittant, qui hoc pessimum scelus christiano populo auferre necesse est. Si quis autem post hoc in periurio probatus fuerit, manum dextera se perdere sciat; tamen hereditatem propria priventur usque ad nostrum iudicium' (And that all in all ways should consent to our *missi* in carrying out all justice. And they should not at all permit the performing of perjury, which evil sin it is necessary to remove from the Christian people. But if after this someone should be convicted of perjury, he should know that he will lose his right hand; moreover he will be deprived of his hereditary property until our judgement). The idea of losing a hand for perjury is first articulated in the Capitulary of Herstal in 779: *Capitulare Haristallense*, ed. by Boretius and Krause, no. 20, c. 10, p. 49: 'De eo qui periurium fecerit, nullam redemptionem, nisi manum perdat. Quod si accusator contendere voluerit de ipso periurio, stent ad crucem; et si iurator vicerit, legem suam accusator emendet. Haec vero de minoribus causis observandum; de maioribus vero rebus aut de statu ingenuitatis secundum legem custodiant' (Trans. by Loyn and Percival, *The Reign of Charlemagne*, p. 48: 'Concerning a man who commits perjury, that he cannot redeem it except by losing his hand. But if an accuser wishes to press the charge of perjury they are both to go to the ordeal of the cross; and if the swearer wins, the accuser is to pay the equivalent of his wergeld. This procedure is to be observed in minor cases; in major cases, or in cases involving free status, they are to act in accordance with the law'). Despite these two passages, the loss of a hand without possibility for redemption was an anomaly in Charlemagne's capitularies, which tend to leave room for a compensation payment. See, for example, *Capitulare missorum in Theodonis villa datum secundum, generale*, ed. by Boretius and Krause, no. 44, c. 11, p. 124: 'De periuriis ut caveantur, et non admittantur testes ad iuramentum antequam discutiantiur; et si aliter discuti non possint, separentur ab invicem et singulariter inquirantur. Et non solum accusatorem liceat testes eligere, absente suo causatore. Et omnino nullus nisi ieiunus ad iuramentum vel ad testimonium admittatur. Et ille qui ad testimonium adducitur, si refutatur, dicat ille qui eum refutat et probet, quare illum recipere nolet. Et de ipso pago, non de altero, testes elegantur, nisi forte longius extra comitatum causa sit inquirenda. Et si quis convinctus fuerit periurii, manum perdat aut redimat' (Trans. by King, *Charlemagne*, p. 249: 'Concerning perjuries: that men must beware of these. And that witnesses are not to be permitted to take an oath before they have been examined; and if they cannot be examined otherwise, let them be separated one from another and interrogated individually. And the accuser alone is not to be allowed to choose witnesses in the absence of his opponent. And in no circumstances is anyone who is not fasting to be permitted to take an oath or to give testimony. And if he who is brought to testimony is challenged, his challenger is to state and prove why he refuses to accept him. And let witnesses be chosen from the district [*pagus*] in question, not from another, unless the case has perhaps to be investigated at a considerable distance from the county. And if someone is convicted of perjury, he is to lose his hand or to

The passages are not precise matches, as the first chapter is focused on perjury in the context of royal property, while the second is a more general prohibition. Nonetheless, the two chapters concern the same main subject matter, from different standpoints. This kind of duplication of topic, and shift in tone, is typical of the capitulary and a sign of its status as more of a working document, rather than a perfectly polished legal statement.

In this light, we can argue that the capitulary reflects the discussions that went into shaping it, and thus preserves for us layers of composition that were never fully edited.[56] Many of these features can be explained by the oral context in which the text was produced. Yet, the combination of fully developed ideas with those that are left in a looser format suggests to me that what we are seeing is not just oral discussion, although that was clearly a factor, but also an incomplete process of revision.[57] The capitulary includes carefully crafted statements, such as the passage on the moral dangers of homicide,[58] but also chapters that assume additional knowledge and thus could not stand on their own, such as a reference to the incest that a certain Fricco committed with a nun.[59] Other chapters announce a general

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redeem it'). Or *Capitula cum primis constituta*, ed. by Boretius and Krause, no. 52, c. 4, p. 139: 'Ut nullus se periurare praesumat; et si fecerit, sicut in anterioribus capitulis mandatum est manum perdat aut redimat. Et hoc omnibus annuntiatum fiat, quid periurium aut falsum testimonium noceat' (That no one should presume to perjure himself, and if he should do this, just as it was commanded in previous chapters he should lose his hand or redeem it. And let this be announced to all, that perjury and false testimony are harmful). Given Patrick Geary's work on judicial violence in the Carolingian period, it is certainly possible that in practice perjurers lost a hand (see Geary, 'Judicial Violence'). However, this is not the typical expectation set out in the normative sources of the period. For the broad context of corporal punishment and its implications in the early Middle Ages, see Bougard, 'Le blason pénal'.

56 I have found helpful Ubl's discussion of how debate at assemblies can echo royal talking points, without being themselves strictly speaking formal pieces of legislation: see Ubl, 'Intentionen der Gesetzgebung'. His analysis of how discussion can reflect royal concerns is an important contribution to the literature that helps illuminate the processes of discussion that went into the *Capitulare missorum generale*, even though that text was obviously produced in Charlemagne's presence, and Ubl focuses on texts that were not produced directly in front of a king.

57 I would like to thank Karl Ubl for his suggestion to think more about the oral aspects of the capitulary.

58 The chapter on the dangers of homicide is highly corrupt grammatically, but it is nonetheless clearly a piece of rhetorical writing.

59 *Capitulare missorum generale*, ed. by Boretius and Krause, no. 33, c. 33, p. 97: 'Incestuosum scelus omnino prohibemus. Si quis nefanda autem fornicatione contaminatus fuerit, nullatenus sine districtione gravi relaxetur, sed taliter ex hoc corripiantur, ut caeteri metum habeant talia perpetrandi, ut auferetur penitus et inmunditia populo christiano, et ut reus ex hoc per poenitentia ammittat pleniter, sicut ei ab episcopo suo disponatur; et eadem femina in manus parentum sit constituta usque ad iudicium nostrum. Si autem iudicium episcopi ad suam emendationem consentire noluerit, tunc ad nostra presentia perducantur, memores exemplo quod de incestis factum est quod Fricco perpetravit in sanctimoniali Dei' (Trans. by Davis, 'Crime in the Carolingian World', p. 8: 'We fully prohibit the sin of incest. If anyone should be contaminated by such abominable fornication, he should not at all be released

principle, but one that would require further detail to actually implement, as when counts and *centenarii* are warned that they must provide for those travelling to the lord emperor as the *missi* ordain.[60] Without a conversation with an actual *missus*, the regulation is not particularly useful. But this reality points us to the way in which the chapter worked, which was to announce the general principle and then encourage the kind of consultation that would lead to cooperation among agents, a major concern of Charlemagne's court.[61] And indeed, we do have evidence of agents discussing material produced by the court during the reign of Charlemagne, such as a letter sent by a group of *missi* to the counts they will soon visit and correct,[62] or

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without grave punishment, but rather he should be corrected on account of this in such a way that others should have fear of perpetrating such things, so that wantonness should be thoroughly borne away from the Christian people. And the criminal on account of this should fully receive [emendation] through penance, just as should be assigned to him by his bishop; moreover the woman in the case should be placed in the hands of her relatives until we [that is, the king] judge the case. But if he should not want to consent to the judgment of the bishop for his emendation, then he should be led into our presence, mindful of the example of the incest that Fricco perpetrated on a woman consecrated to God'). For discussion of this case, see Davis, 'Crime in the Carolingian World', pp. 7–9.

60 *Capitulare missorum generale*, ed. by Boretius and Krause, no. 33, c. 28, p. 96: 'De legationibus a domno imperatore venientibus. Missis directis ut comites et centenarii praevideant omni sollicitudine, sicut gratia domni imperatori cupiunt, ut absque ulla mora eant per ministeria eorum, omnibusque omnino praecepit, quia hoc debiti sunt praevidere, ut nullam moram nusquam patiatur, sed cum omni festinatione eos faciant ire viam suam, et taliter providentiam suam habeant, ut missi nostri disponant' (Trans. by Dutton, *Carolingian Civilization*, p. 75 [revised from a translation by D. C. Munro]: 'Concerning embassies coming from the lord emperor. That the counts and *centenarii* shall provide most carefully, as they desire the grace of the lord emperor, for the *missi* who are sent out, so that they may go through their departments without any delay; and he commands to all everywhere that they ought to see to it that no delay is encountered anywhere, but they shall cause them to go on their way in all haste and shall provide for them in such a manner as our *missi* may direct').

61 For example, *Caroli Magni capitulare generale*, ed. by Mordek, c. 2, p. 990: 'Ut comites et iudices omnesque populi obędientes sint episcopis suis ad christianitatem suam et ad sanam doctrinam ad omnemque iusticiam, sicut christianis decet; et episcopi et clerici omnes comitibus sint consentientes ad iusticiam' (That counts and judges and all the people should obey their bishops in matters related to Christianity and to sound doctrine and to all justice, just as is proper for Christians; and bishops and all clerics should consent to counts in matters of justice).

62 This is the so-called *Capitula a missis dominicis ad comites directa*, ed. by Eckhardt, pp. 99–100: 'Nos igitur in ipsa legatione positi idcirco ad uos hanc direximus ępistolam, ut uobis et ex parte domni imperatoris iuberemus et ex nostra parte exortando precaremur, ut de omni re, quantum ad ministerium uestrum pertinet, tam ex his, que ad Dei cultum, quaquę ex his, que ad domni nostri seruitium seu ad christiani populi saluationem uel custodiam pertinet, totis uiribus agere studeatis. Preceptum est nobis omnino et omnibus reliquis missis a domino nostro, ut medio Apreli ei ueraciter renuntiemus, quid in regno suo ex his, que ipse in istis annis per missos suos fieri iussit, factum sit uel quid dimissum sit, ut facientibus gratias condignans reddat et non facientibus secundum quod ei placet increpationes meritas rependat. Et quid plura uobis exinde dicere possumus? Non uult omnino, nisi ut aut sic adimpletum ei nunciemus, sicut iussit, et quicquid exinde dimissum sit et per cuius neglegentiam dimissum sit. Nunc autem admonemus uos, ut capitularia

a reply by a court figure to a series of questions raised by an ecclesiastical *missus*.[63] In light of this interest in fostering political back-and-forth and in generating ideas rather than producing perfectly polished legislative statements, we can make better sense of the *Capitulare missorum generale*. The shifts and the repetitions in the capitulary are not a sign of it being a text stitched together by recipients nor an ineffective, incomplete text. Rather, they reveal something of the process which led to the composition of the capitulary and the varying concerns which shaped it. We might best think of it as a working white paper, rather than a polished composition like the *Admonitio generalis*.

In light of the fact that the manuscript clearly has introduced corruptions into the text, which in any case in itself reflects layers of discussion and debate, we can consider the note about what is contained in the oath in a new light. If we see the note as a comment rather than a conclusion, we can put less weight on it as reflecting a definitive end to all attention to the oath in the capitulary. As such, the note may sum up one part of the text (and one does wonder if this was originally a marginal note rather than a more integral part of the text), but without meaning that the rest of it does not also speak to the issue of the oath. That is, it is a relic of composition, not a formal division in a fully revised text. A throw-away comment in a messy text should not necessarily weigh more than the nature of the rest of the text.[64]

And the rest of the capitulary does present itself as an articulation of the oath. The idea that fidelity extends beyond the topics explicitly addressed in the first nine chapters of the text is made clear in the penultimate chapter,

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uestra relegatis et, queque uobis per uerba commendata sunt, recolatis et tale exinde certamen habere studeatis, pro quo et apud Deum mercedem et apud ipsum magnum dominum nostrum condignam retributionem suscipiatis' (Trans. by King, *Charlemagne*, pp. 258–59: 'Being appointed to this commission, then, we have sent you this letter that we may order you in the name of the lord emperor, and exhort and beseech you in our own, to apply yourself with all energy to dealing with all matters, insofar as they are the concern of your office, both those pertaining to the worship of God and those pertaining to the service of our lord or to the salvation and protection of the Christian people. For our lord has commanded us and all the other *missi*, without exception, to report to him truthfully in mid-April which of the things which, through his *missi* in recent years, he has ordered done have been done and which left undone in his realm, that he may render appropriate thanks to those who have done them and may repay with such deserved chastisement as may be his pleasure those who have not. And what more can we say to you on the matter? His sole desire is that we should report to him what has been carried out just as he ordered and what has been left undone in that regard and by whose negligence it has been left undone. And we admonish you now to reread your capitularies, [and, my addition] to recall the duties with which you have been charged orally and to strive to be so zealous with regard to these that you may receive both reward from God and fitting recompense from that great lord of ours').

63 Pokorny, 'Eine Brief-Instruktion'.

64 Despite the grammar problems and the reflection of stages of composition, the language of the capitulary as a whole can be argued to involve a reasonably high level of latinity. See Banniard, 'Niveaux de langue', p. 49.

when hunting in royal forests is defined as an act of infidelity.[65] More broadly, the capitulary is framed to make the point that fidelity infuses and shapes all aspects of political life. The first thing the capitulary says about the oath is that it means that everyone must maintain themselves in their own status in life, in a passage cited at the start of this chapter.[66] This idea is overtly articulated again at the end of the capitulary, when the text notes everyone must preserve themselves in the holy service of God, using language similar to that found at the start of the text.[67] Doing so is necessary because it is the path to salvation for king and people, as the capitulary puts it: 'for our eternal reward and that of all our *fideles*'. Fidelity to Charlemagne, not to mention fidelity to God, which the Carolingians typically conflated,[68] means each person living up to what is required of their particular station in life; it means signing on to the vision of community, at once Carolingian and Christian, which the court seeks to articulate.[69] This is an incredibly broad understanding of fidelity; there is little that it does not include.[70] The essential foundation for this view is the understanding of the oath as a *sacramentum*, both oath and sacrament, religious obligation and political bond, or, as Owen Phelan has put it, 'at once legally binding and theologically meaningful'.[71]

The ambition of this understanding of the oath is striking, but it is also not especially well-defined.[72] This is another reason why characterizing the

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65 *Capitulare missorum generale*, ed. by Boretius and Krause, no. 33, c. 39, p. 98; the text and translation is in the appendix. See also Goldberg, *In the Manner of the Franks*, p. 80. This expectation is not new (see Esders, '*Sacramentum fidelitatis*', p. 576), but the packaging of multiple obligations into an innovative, flexibly defined corpus of loyalty distinguishes Charlemagne's use of the oath.

66 The full text is in the appendix.

67 *Capitulare missorum generale*, ed. by Boretius and Krause, no. 33, c. 40, pp. 98–99; the text and translation is in the appendix.

68 This conflation has been often noted. See, for example, Esders, '"Faithful Believers"', pp. 371–73; Esders, '*Sacramentum fidelitatis*', pp. 127–40; Buck, '*Capitularia imperatoria*', pp. 21–26; Buck, *Admonitio und Praedicatio*, pp. 46–53. For disagreements surrounding the concept, see Reimitz, 'The Promise of History', pp. 155–57. For the roots of this conflation, see Becher, *Eid und Herrschaft*, p. 103, and for the wider context, Helbig, 'Fideles Dei et regis'. The fullest analysis is now Esders, '*Fideles Dei et regis*. Ein Zeugma', and, in a shorter version, Esders, '*Fideles Dei et regis*: A Zeugma'. I would like to thank Stefan Esders for sharing his unpublished work with me.

69 See also Heydemann, 'The People of God', p. 117.

70 For the continued resonance of this idea later in the Carolingian period, see Phelan, 'The Scope of Fidelity'.

71 Phelan, *The Formation of Christian Europe*, p. 4. This is a view shared by many early medieval societies: Esders, '"Faithful Believers"', p. 360. For the wide meaning of '*sacramentum*' and its roots, see Phelan, *The Formation of Christian Europe*, Chapter 1; Becher, *Eid und Herrschaft*, pp. 94–111.

72 The loose definition is also noted by Kolmer, *Promissorische Eide*, p. 85, but in the course of a discussion that suggests a formalism and failed effort to define everything covered by the oath (pp. 85–87), which is not how I interpret the broad language.

definition of the oath as only the seven rulings at the start of the capitulary fails. The conceptionalization of the oath is broad, but not specific.[73] We need to unpack what this means. The final chapter of the capitulary states that the *missi* should report on how members of the church have preserved 'in their *ministerium* and *professio* our *bannum* and decree'.[74] These are words I have largely left in the Latin here because of their complex resonance. They leave room for the *missi* to investigate just about anything. This final chapter, before making specific comments on ecclesiastics, all laymen, and lay officials, says generally that the *missi* should investigate the carrying out of 'all our decrees',[75] the same word that is then used specifically for inquiry into the manner of life of ecclesiastics, and which is also a word used generally for capitularies.[76] Given the grammatical and transmission problems with this capitulary, one hesitates to put too much weight on a

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73 We should note that the oath is structured to recognize that any one individual can do no more than what is feasible for his station and abilities, and thus that this broad framing is not setting people up for failure by not being able to do absolutely everything contained in the oath. See also Esders, '*Fideles Dei et regis*: Ein Zeugma'.

74 *Capitulare missorum generale*, ed. by Boretius and Krause, no. 33, c. 40, p. 98: 'qualiter unusquisque in suum ministerium vel professione nostrum bannum vel decretum habeat conservatum' (there is a full English translation in the appendix). The wide scope of the ban (the power to command) itself helps shape this broad conception; see Esders, '*Sacramentum fidelitatis*', pp. 444–59.

75 The final chapter begins: *Capitulare missorum generale*, ed. by Boretius and Krause, no. 33, c. 40, pp. 98–99: 'Novissime igitur ex omnibus decretis nostris nosse cupimus in universo regno nostro per missos nostros nunc directos, sive inter ecclesiasticos viros, episcopos, abbates, presbiteros, diaconus, canonicos, omnes monachos sive sanctimoniales, qualiter unusquisque in suum ministerium vel professione nostrum bannum vel decretum habeat conservatum'. I think the placement of the first comma is important for interpretation. In my reading (full translation in the appendix), the chapter requires the *missi* to look into the carrying out of all decrees, then with the words 'sive inter' begins to specify, by starting with the conduct of ecclesiastics. The grammar here is admittedly difficult, but I would contend that we start with a general command, before narrowing into an investigation first of the church, which is often the first topic to be addressed in a capitulary, and then moving on from there. For an example of beginning with church matters, see *Capitulare Baiwaricum*, ed. by Boretius and Krause, no. 69, c. 1, p. 158: 'In primis omnium iubendum est, ut habeant aecclesiae earum iustitias, tam in vita illorum qui habitant in ipsis ecclesiis quamque in pecuniis et substantiis eorum' (First of all it is commanded that churches have their justice, both in the lives of those who live in those churches as well as in their money and wherewithal).

76 Capitularies as decrees: *Capitulare Haristallense*, ed. by Boretius and Krause, no. 20, introduction, p. 47: 'Anno feliciter undecimo regni domni nostri Karoli gloriosissimi regis in mense Martio factum capitulare, qualiter, congregatis in unum sinodali concilio episcopis, abbatibus virisque inlustribus comitibus, una cum piisimo domno nostro secundum Dei voluntatem pro causis oportunis consenserunt decretum' (Happily in the eleventh year of the reign of our lord the most glorious king Charles in the month of May a capitulary was made, namely, bishops, abbots and illustrious men, the counts, gathering in one synodal council together with our most pious lord according to the will of God, they agreed to a decree [addressing] opportune causes). The word was often used for the texts we call capitularies before the term 'capitulary' emerged in the text cited just above. It is also often

particular word, but it seems to me significant that this is a reference to decrees in the plural: the *missi* investigate everything, not the results of one particular year's discussions. This broad language for what *missi* are to do is entirely characteristic of the capitularies, and one could adduce many more instances.[77] Where François-Louis Ganshof, the great student of the capitularies, saw the oath as framed in only restricted terms despite its expanded understanding of fidelity,[78] it seems to me its presentation in this capitulary is the opposite: it is everything in the royal decrees, not just a specific list. If keeping fidelity means maintaining oneself in one's own station and in the service of God, then the capitulary in essence equates fidelity with everything the king commands, which is ultimately in the interest of preserving this same service of God. However, this very breadth also makes it in a sense inevitably vague. Even if everything was fair game, in practice only limited questions could actually be asked as the

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used for papal law in the capitularies. For all of these points, see Davis, 'Cross-Referencing in Charlemagne's Capitularies'.

77 Examples include: *Capitulare missorum a. 802–813*, ed. by Boretius and Krause, no. 60, c. 4, p. 147: 'Praecipimus autem missis nostris, ut ea quae a multis iam annis per capitularios nostros in toto regno nostro mandavimus agere, discere, observare vel in consuetudine habere, ut haec omnia nunc diligenter inquirant et omnino innovare ad servitium Dei et ad utilitatem nostram, vel ad omnium christianorum hominum profectum innovare studeant et, quantum Domino donante prevalent, ad perfectum usque perducant. Et nobis omnino adnuntient, quis inde certamen bonum hoc adimplere habuisset, ut a Deo et a nobis gratum habeat; qui autem neglegens inde fuerit, ut talem disciplinam percipiat, qualem talis sit contemptor percipere dignus, ita ut ceteri metum habeant amplius' (Trans. by Davis, 'Inventing the *missi*', pp. 29–30: 'But we command to our *missi* that all those things which for many years now throughout our kingdom we have ordered in our capitularies to be done, taught, observed, and kept as custom, they should now diligently investigate and completely renew in the service of God and for our utility, and also for the benefit of all Christian men, and in as much as they are able by the gift of God, they should complete all these things. Moreover, they should report to us about everything from thence, that is, about how he [each *missus*] has managed to complete that worthy struggle, so that he should have God's grace and ours. But who from that point has been negligent, he should feel such discipline as is appropriate for a despiser [of our orders] to feel, in such a way that others should have greater fear'). *Capitula de missorum officiis*, ed. by Boretius and Krause, no. 66, c. 1, p. 155: 'Ut tales sint missi in legatione sua, sicut decet esse missos imperatoris strenuos, et perficiant quod eis iniunctum fuerit aut, si non poterint, domno imperatori notum faciant quae difficultas eis resistat, ne illud perficere possint' (That there are to be such *missi* in his legation, strenuous just as *missi* of the emperor should be, and they should carry out what was commanded to them, and if they are not able, they should make known to the lord emperor which difficulties they face, so that they are able to fix them). *Capitulare missorum Niumagae datum*, ed. by Boretius and Krause, no. 46, c. 1, p. 131: 'Ut unusquisque in suo missatico maximam habeat curam ad praevidendum et ordinandum ac disponendum secundum Dei voluntatem et secundum iussionem nostram' (That each should have the greatest care in his *missaticum* to provide and ordain and arrange [everything] according to the will of God and according to our command).

78 While he analysed the 802 oath as an elaboration from 789, with more detail and more emphasis on spelling out the dictates of fidelity, he still saw the oath as restricted in its conception. Ganshof, 'Charlemagne's Use of the Oath', pp. 116–17.

missi investigated the oath.[79] Fidelity for each person, then, was specific to their own circumstances and thus duties toward the king.

This sense of vague definition also emerges when we consider how the oath might have been explained and sworn locally.[80] *Missi* going out through the empire to take the oath from individuals in the regions would have presumably organized meetings to do so (or added this to regular assemblies held by counts, who also helped administer oaths),[81] at which they would explain what this new oath entailed.[82] Matthias Becher has already noted how competing ideas of fidelity necessitated that Charlemagne combine new oath texts with explanations for how to enforce them.[83] Moreover, the fact that the surviving oath *formulae* and the regulations for understanding the oath are all in written Latin makes it likely that this process of interpreting the oath for oral swearing involved translation back and forth from the vernacular.[84] There is no script for these explanations, beyond the capitularies themselves (the actual oath *formulae*, as I will suggest below, do not serve this purpose).[85] Such a process would almost

79 Which they were told to do, going back to the 789 oath-swearing: *Capitulare missorum*, ed. by Boretius and Krause, no. 25, c. 4, p. 67: 'Et nomina vel numerum de ipsis qui iuraverunt ipsi missi in brebem secum adportent'. There is a full translation in the appendix.

80 It is also worth noting that the very idea of fidelity is also flexible. See Esders, '*Sacramentum fidelitatis*', p. 160 for this observation.

81 For the role of counts in organizing oath-swearing, see Esders, Haubrichs, and Bassetti, *Verwaltete Treue*, chapter 3 (I would like to thank Stefan Esders for sending me this book prior to publication). The Carolingian evidence, however, does focus on *missi*: Esders, '*Sacramentum fidelitatis*', p. 252. For the nexus between capitularies, *missi*, and oath-swearing under Charlemagne, see Kikuchi, *Herrschaft*, p. 240.

82 See also Banniard, 'Niveaux de langue', p. 43; Esders, Haubrichs, and Bassetti, *Verwaltete Treue*, especially pp. 6–11.

83 Becher, *Eid und Herrschaft*, pp. 78–79.

84 Schmidt-Wiegand, 'Eid und Gelöbnis', offers some useful observations on the oral context of oaths, and the relationship between Latin and vernaculars. In the case of Charlemagne's 802 oath, we unfortunately cannot say much specifically about the impact of the vernacular and orality on the process of enforcing the oath.

85 Becher does note that in the case of the 802 oaths, the capitulary setting out the new oath and the capitulary with the oath *formulae* are tightly connected. See Becher, *Eid und Herrschaft*, p. 79. The relationship between the two capitularies, the *Capitulare missorum generale*, ed. by Boretius and Krause, no. 33, that presents the oath (and which is the focus of the analysis here) and the *Capitulare missorum specialia*, ed. by Boretius and Krause, no. 34 has traditionally been thought to involve no. 34 condensing no. 33 for use by the *missi*. For this view of the two capitularies, and other legislation of that year, the classic account is Ganshof, 'Charlemagne's Programme', pp. 56, 67–69. Innes, 'Charlemagne, Justice', pp. 194–203 has argued for inverting the relationship, and seeing the special capitulary as an earlier text related to missatical journeys, that was later further developed in the general capitulary. While there are a number of issues to be resolved in untangling all the 802–03 legislation, it does seem to me that the traditional relationship is correct, with the general capitulary explaining a series of ideas and discussions, which were partially implemented and discussed by the *missi*, as reflected in the various versions of the special capitulary. On these versions, see Eckhardt, 'Die *Capitularia missorum specialia*'.

inevitably result in different officials doing this differently, which, I have argued elsewhere, is entirely characteristic of Charlemagne's governance.[86] Charlemagne ordered *missi* to explain what he wanted and investigate how much of it was done locally.[87] Indeed such investigations are presented in the *Capitulare missorum generale* as part of what the *missi*'s fidelity to Charlemagne entailed.[88] As Charlemagne required so much of the *missi*, how the command to investigate was carried out would vary. For example, one capitulary ends with a broad set of instructions for the *missi*:

> Ut missi nostri, undecunque necesse fuerit, tam de iustitiis ecclesiarum Dei, viduarum, orphanorum, pupillorum et caeterorum hominum inquirant et perficiant. Et quodcunque ad emendandum invenerint, emendare studeant in quantum melius potuerint; et quod per se emendare nequiverint, in praesentiam nostrum adduci faciant.
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> (That our *missi*, in whatever respect it should be necessary, both about the justices of the churches of God, of widows, of orphans, of wards and of other men, they should inquire and complete (them). And whatever they should discover that needs emending, they should strive to emend as best as they are able; and what they are unable to emend themselves, they should have brought into our presence.)[89]

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86 Davis, *Charlemagne's Practice of Empire*, Chapter 1. On the flexibility with which *missi* would explain capitularies, see also Kikuchi, *Herrschaft*, pp. 195–99.

87 For instance, *Caroli Magni capitulare ecclesiasticum*, ed. by Mordek, c. 43, p. 989: 'Ut missi nostri unusquisque in sua legatione maximam curam habeat ad pręvidendum atque ordinandum simulque disponendum, admonendum et corrigendum necnon ad emendandum hęc omnia, quę in capitulariis nostris continentur et cetera, que in quibusque locis videntur esse necessaria emendandi atque custodiendi. Et quęcunque emendata sint vel quę emendare nequeunt, nobis omnino notum faciant, ut per misericordiam dei secundum suam voluntatem emendantur, quę emendanda sunt; et quę emendata sunt, in eadem emendatione semper in melius proficiant ad nostram mercedem ęternam coram deo et in nostrum omnium ęternam salutem et gloriam' (That our *missi* each in his legation should have the greatest care to provide and order and also arrange, to admonish and correct and also to emend all the things which are contained in our capitularies and other things, which in whatever places seem to be necessary to be emended and preserved. And whatever has been emended or whatever has not been emended, they should fully make known to us, so that they are emended through the mercy of god according to his will, whatever should be emended; and whatever should be emended, the same emendation should better profit our eternal reward in front of God and for our eternal salvation and the glory of all').

88 *Capitulare missorum generale*, ed. by Boretius and Krause, no. 33, c. 1, p. 92: 'Et ut ipsi missi diligenter perquirere, ubicumque aliquis homo sibi iniustitiam factam ab aliquo reclamasset, sicut Dei omnipotentis gratiam sibi cupiant custodire et fidelitate sibi promissa conservare' (And that those *missi* diligently inquire, wherever any man should claim that an injustice has been done to him by anyone, just as they want to preserve the grace of omnipotent God and to keep the fidelity promised to him). I would prefer to understand the fidelity as promised to the king, not God, but either interpretation is possible.

89 *Capitulare missorum item speciale*, ed. by Boretius and Krause, no. 35, c. 59, p. 104: Eckhardt has argued that this text is not actually a capitulary, but rather a reworking of capitularies

This language is notable for both its breadth and its lack of specificity. The ruling asks a great deal of the *missi*, but also offers them significant flexibility in how they might attempt to realize these commands.[90]

The *Capitulare missorum generale* works the same way. We should thus not read the *Capitulare missorum generale* as a strictly defined list of rules included in the oath, neither the first seven chapters after the oath is introduced, nor the capitulary as a whole. Rather, the text expresses a range of concerns relevant to those gathered at Aachen in 802; most of these concerns, as Rosamond McKitterick has noted, were not new ideas.[91] What the enforcement of the oath entailed was pointing out that loyalty meant participating in all the things the king set out during his long reign. The specific topics highlighted in the *Capitulare missorum generale* were part of those things included in the oath, but they were not the sum of it. The point was not to offer a precise checklist, but to sketch a broad principle, that of understanding loyalty as participating in the political practices cultivated by the Carolingians.

Our later references to the oath reinforce this understanding. The capitularies regularly note that oaths need to be re-sworn,[92] particularly for those who had not yet sworn fidelity,[93] but some capitularies go beyond the basic command to specify how the oath should be carried out.[94]

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by *missi*. This approach relies on too strict a sense of how capitularies could be composed, and in any case, this final chapter, in the first person voice of the emperor, clearly conveys royal commands. Thus, regardless of how we assess the composition of this text, I think the chapter can provide evidence of the expectations placed on the *missi*. See Eckhardt, *Die Kapitulariensammlung*, pp. 25–34. See also comments in Buck, *Admonitio und Praedicatio*, pp. 340–41.

90 See Davis, 'Inventing the *missi*' for this interpretation of missatical practice. This understanding of how *missi* work also helps us analyse the carrying out of the *Capitulare missorum generale*. Kikuchi, *Herrschaft*, pp. 104–11 argues that there is no solid evidence for the *missi* having a clean copy of the capitulary to take with them to enforce its decrees. But if the oath as set out in the capitulary was meant to be explained locally as the *missi* saw fit, the lack of a formal, final, polished document is not an impediment to implementation.

91 McKitterick, *Charlemagne*, pp. 257–58.

92 For instance, *Capitulare missorum item speciale*, ed. by Boretius and Krause, no. 35, c. 47, p. 104: 'Ut omnes fidelitatem promittant domno imperatori' (That all should promise fidelity to the lord emperor).

93 *Capitulare missorum in Theodonis villa datum secundum, generale*, ed. by Boretius and Krause, No. 44, c. 9, p. 124: 'De iuramento, ut nulli alteri per sacramentum fidelitas promittatur nisi nobis et unicuique proprio seniori ad nostrum utilitatem et sui senioris; excepto his sacramentis quae iuste secundum legem alteri ab altero debetur. Et infantis, qui antea non potuerunt propter iuvenalem aetatem iurare, modo fidelitatem nobis repromittant' (Trans. by King, *Charlemagne*, p. 249: 'Concerning the oath: that fidelity is not to be promised by oath to anyone except to ourself and to each man's own lord with a view to our advantage and that of his lord. Excepted is that oath which is rightly due from one man to another according to law. And children previously unable to swear because of their tender years are now to promise fidelity to us'). The text of this chapter changed during the revision of the capitulary; see Glatthaar, 'Die drei Fassungen', pp. 455–58.

94 Other capitularies make rather simpler demands about maintaining the oath. For instance, *Capitula a misso cognita facta*, ed. by Boretius and Krause, no. 59, c. 12, p. 146: 'Nullus

One capitulary orders the *missi* to have the oath re-sworn, and in the process to 'explain and interpret to those men how they ought to preserve that oath and fidelity toward us'.[95] A capitulary from the very end of Charlemagne's reign states: 'we command this to all men who want to preserve the fidelity promised to us, that they should observe these chapters and the similar ones in all ways'.[96] These passages emphasize the broad scope of fidelity, without precisely specifying all the details.

This is not to say that at particular moments, the oath did not have specific requirements. For instance, after the establishment of a plan to divide the empire between Charlemagne's three sons by his favourite wife, the *divisio regnorum*, the *missi* were told to make all swear to respect these new arrangements, in addition to ensuring that any who had not yet sworn fidelity to Charlemagne did so.[97] The language used in this 806 capitulary, known as the Capitulary of Nijmegen, to insist on the king's people swearing to respect the arrangements made for the succession echoes the language used to explain the *divisio regnorum* in the Royal Frankish Annals,[98] a nar-

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fidelitatem quam promissam habet domno imperatori infrangat, aut qui infractam habet non consentiatur ei' (No one should infringe the fidelity which he has promised to the lord emperor nor should he consent to anyone who has infringed it). It is likely that this capitulary was produced in 802 or soon after, so perhaps a more involved explanation was not seen to be necessary, given all the attention to the oath that year. For the date, see Mordek, *Bibliotheca*, p. 1087.

95 *Capitulare de iustitiis faciendis*, ed. by Boretius and Krause, no. 80, c. 13, p. 177: 'Ut missi nostri populum nostrum iterum nobis fidelitatem promittere faciant secundum consuetudinem iamdudum ordinatam; et ipsi aperiant et interpretentur illis hominibus, qualiter ipsum sacramentum et fidelitatem erga nos servare debeant' (That our *missi* have our people again swear fidelity to us according to the custom previously ordained; and they should explain and interpret to those men how they ought to preserve that oath and fidelity toward us).

96 *Caroli Magni capitulare generale*, ed. by Mordek, c. 40, p. 994. This chapter is fully translated at p. 158 below.

97 *Capitulare missorum Niumagae datum*, ed. by Boretius and Krause, no. 46, c. 2, p. 131: 'De sacramento. Ut hi qui antea fidelitatem partibus nostris non promiserunt promittere faciant, et insuper omnes denuo repromittant, ut ea quae inter filios nostros propter pacis concordiam statuimus pleniter omnes consentire debeant' (About the oath. That those who previously did not swear fidelity to our part, they should promise, and moreover all should swear anew, that those things which we established among our sons on account of the concord of peace, all ought to consent to them fully). Gerda Heydemann has suggested to me that it is possible that we should envision here two separate legal processes, of all swearing to respect the decisions about succession and also those who have not yet done so swearing fidelity to Charlemagne. It is entirely possible that these were understood to be different in legal terms and that they practically would have involved two separate swearings. However, their grouping together under the heading 'de sacramento' I think permits us to treat this chapter as presenting an expansive vision of the oath that can encompass both elements, general fidelity and adherence to a succession plan, as one corpus of ideas about fidelity.

98 *Annales regni Francorum*, ed. by Kurze, s.a. 806, p. 121: 'Illisque absolutis conventum habuit imperator cum primoribus et optimatibus Francorum de pace constituenda et conservanda inter filios suos et divisione regni facienda in tres partes, ut sciret unusquisque illorum, quam

rative composed at the Carolingian court.[99] This is particularly notable as the *divisio regnorum* itself makes no mention of agreement or consent, and simply presents the plan as Charlemagne's personal decision.[100] Using an oath of loyalty to ensure fidelity to an intended heir was an old tradition, so its inclusion here is very much in keeping with Frankish practice.[101] But the reference to the sons in 806 allows us to see how the broad vision of the oath could be deployed at particular moments to emphasize particular aspects of loyalty. In the case of the succession arrangements, a topic Charlemagne long struggled with,[102] sources associated with the court present divergent views, ranging from the *divisio*'s sole focus on Charlemagne's power to decide unilaterally, to the evocation of consensus and discussion in the Royal Frankish Annals, which was doubtless closer to the truth.[103] The Capitulary of Nijmegen then takes up one aspect of thinking about

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partem tueri et regere debuisset, si superstes illi eveniret. De hac partitione et testamentum factum et iureiurando ab optimatibus Francorum confirmatum, et constitutiones pacis conservandae causa factae, atque haec omnia litteris mandata sunt et Leoni papae, ut his sua manu subscriberet, per Einhardum missa. Quibus pontifex lectis et adsensum praebuit et propria manu subscripsit' (Trans. by Scholz with Rogers, *Carolingian Chronicles*, p. 85: 'When they had been dismissed, the emperor held an assembly with the nobles and magnates of the Franks to confirm and preserve peace among his sons and to discuss the division of the empire into three parts, so that each son would know which part to protect and to rule if he should survive his father. A testament was drawn up ratifying this decision, and it was confirmed by the oaths of the Frankish magnates. Stipulations were laid down for the sake of preserving peace. All this was committed to writing and carried by Einhard to Pope Leo so that he would sign it. After reading it the pontiff gave his consent and signed it with his own hand'). The emphasis on signing onto a capitulary is evocative of the capitularies that ask the people to consent to them, and the surviving manuscripts of oath signers. For these topics, see pp. 162–64 below.

99 For orientation into this pivotal but complex text, see, among others: Goosman, 'Memorable Crises', Chapter 2; Kaschke, *Die karolingischen Reichsteilungen*, pp. 173–79, 191–93, 277–83; McKitterick, *History and Memory*, pp. 101–13; McKitterick, *Charlemagne*, pp. 27–43; Reimitz, *History, Frankish Identity*, pp. 335–39; 411–32.

100 See in particular, *Divisio regnorum*, ed. by Boretius and Krause, no. 45, introduction, pp. 126–27, with discussion in Davis, *Charlemagne's Practice of Empire*, pp. 359–61.

101 See Becher, *Eid und Herrschaft*, pp. 120–28, who discusses the inclusion of the sons in the 789 oath and their exclusion in 802, as well as the earlier history of swearing oaths to heirs. See also the passage from the formulary of Marculf discussed below, n. 118.

102 Davis, *Charlemagne's Practice of Empire*, pp. 415–23.

103 It should be noted that despite the differing presentations of the succession in the *divisio*, the Capitulary of Nijmegen, and the Royal Frankish Annals, all sources do note the need to preserve peace as a justification for the arrangements made. The idea that the succession plan in fact depended on consent and discussion is supported not only by the practical reality that no succession plan is viable without the support of those who would survive Charlemagne (for which see Davis, *Charlemagne's Practice of Empire*, p. 359), but also by the clear reflection of discussion about the succession in narrative sources (particularly in the *Annales Mettenses Priores* and the *Chronicon Laurissense breve*, on which see discussion in Reimitz, *History, Frankish Identity*, pp. 367–86 and his references), and the importance of assemblies generally in Carolingian political culture (for which classic studies include Airlie, 'Talking Heads'; Reuter, 'Assembly Politics').

succession and one aspect of thinking about fidelity and puts its emphasis on these. The capitulary continues this targeted deployment of fidelity later in the text, when it notes that usurping benefices is a violation of fidelity.[104] At Nijmegen in 806, the court highlighted particular components of fidelity, while simultaneously continuing to assert the importance of fidelity in general. The flexible vision of fidelity developed in 802 could be directed to particular ends at specific moments, without diminishing the wide compass of what fidelity should entail.

In general, however, the royal presentation of the oath in the capitularies typically frames it as an embrace of the broad principles of Carolingian governance, without laying down a precise list of items to be checked off. The *Capitulare missorum generale* operates according to the same principles. It explains the main idea behind the oath, the sense of it as a necessary glue binding all into the Carolingian project, but then the chapters introduce specific points that emerged from the particular discussions at Aachen that lay behind the text. They were all included in the oath, but they were not all that was included in the oath. The oath introduces a general structure for political life, that of conceptualizing adopting all the Carolingian reforms as a criterion for belonging, and in so doing, shapes an understanding of fidelity that was at once far-reaching and yet not specific. One could demonstrate fidelity to the king in many ways, as long the fundamental requirements of basic loyalty and Christianity were met. The more precise aspects of fidelity could be lived out individually, each in the way proper to his own station in life, as the *Capitulare missorum generale* put it, and as the capitulary spelled out in its subsequent chapters. In this view, the *Capitulare missorum generale* does not just begin with a definition of the oath, rather, the text as a whole is an open-ended exploration of the oath.

The idea that this capitulary is fundamentally about the oath is reinforced by the depiction of the 802 assemblies in some of the minor annals. For instance, the Annals of St Amand note: 'The emperor Charles held a council at the Aachen palace, so that all generally should swear fidelity to him,

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104 *Capitulare missorum Niumagae datum*, ed. by Boretius and Krause, no. 46, c. 7, p. 131: 'Audivimus quod aliqui reddunt beneficium nostrum ad alios homines in proprietatem, et in ipso placito dato pretio conparant ipsas res iterum sibi in alodem: quod omnino cavendum est, quia qui hoc faciunt non bene custodiunt fidem quam nobis promissam habent. Et ne forte in aliqua infidelitate inveniantur; quia qui hoc faciunt, per eorum voluntatem ad aures nostras talia opera illorum non perveniunt' (Trans. by King, *Charlemagne*, p. 256: 'We have heard that some bestow our benefices on other men as allodial estates and with the price given in the agreement buy the same estates again for themselves. All steps are to be taken to ensure that this does not happen, for those who act thus are not keeping loyally the faith which they have promised us. And let them not be found in some or other infidelity, for it is by the will of those who act thus that such behaviour of theirs does not come to our ears'). The passage evokes, albeit not precisely, *Capitulare missorum generale*, ed. by Boretius and Krause, no. 33, c. 6, p. 93: 'Ut beneficium domni imperatoris desertare nemo audeat, propriam suam exinde construere'. See n. 31 above for translation.

monks, canons, and thus they did'.[105] Of course, the brevity of the account is typical of the genre of annals, which usually offer only very limited and highly selective accounts of any given year, and which often overlooked legal work.[106] Yet, this particular annalistic text, which betrays a number of signs of political consciousness,[107] nonetheless serves as an example of how an informed commentator (or commentators) could encapsulate the complex law-giving process of 802 as the swearing of the oath. If the oath indeed is seen as holding together the entire *Capitulare missorum generale*, then the depiction of law-giving in the Annals of St Amand is more sophisticated than it is typically given credit for being, even if the annals do not account for all the legal activities of the year.[108] While swearing the oath was far from the only thing that happened at Aachen in 802, it could stand for broader processes of discussion and reform. Indeed, in the telling of the *Annales Guelferbytani* the emperor sent out *missi* both to do justice and to make all free men swear the oath, presented here as swearing to the king's justice.[109] For the *Annales Sancti Amandi* the entire legislative efforts of the years around 802 can be summed up in the oath, while for the *Annales Guelferbytani* the oath is deeply implicated in the court's attempts to assure justice. Yet each in their own way places the oath at the heart of the legislative efforts of 802.

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105 *Annales sancti Amandi*, ed. by Pertz, s.a. 802, p. 14: 'Carlus imperator ad Aquis palatium concilium habuit, ut ei omnes generaliter fidelitatem jurarent, monachi, canonici, ita et fecerunt'. Some Carolingian sources suggest that monks should only promise fidelity, not swear it. In this light, one might wonder what exactly the annals mean by listing monks and canons at the end of the entry. For a broader survey of views about ecclesiastics and oaths, see Kolmer, *Promissorische Eide*, pp. 292–99; Esders and Mierau, *Der althochdeutsche Klerikereid*, pp. 273–81.

106 Davis, *Charlemagne's Practice of Empire*, pp. 202–05.

107 And which may be linked to Arn of Salzburg, the abbot of St Amand, who we will meet below putting the new oath into practice. See also Innes, 'Charlemagne, Justice', p. 159.

108 It is notable that the very full account of law-giving in the Annals of Lorsch omits any mention of the oath, and this despite seemingly quoting the capitulary legislation in certain places. See Annals of Lorsch, ed. by Katz, s.a. 802, pp. 45–46. For a capitulary quotation, see, for instance, *Capitulare missorum generale*, ed. by Boretius and Krause, no. 33, c. 26, p. 96: 'Ut iudices secundum scriptam legem iuste iudicent, non secundum arbitrium suum' (That judges judge justly according to the written law, not according to their own opinion), compared to the Annals of Lorsch, ed. by Katz, p. 46: 'et ut iudices per scriptum iudicassent' (and that judges should judge according to written [law]).

109 *Annales Guelferbytani*, ed. by Lendi, s.a. 801, p. 173: 'karolus imperator de roma perrexit in francia usque ad aquas et ibi plaidavit et inde transmisit missos suos super omnia regna sua iustitias faciendas et iurare fecerunt omnis liberi ad suam iustitiam' (Emperor Charles proceeded from Rome to Francia all the way to Aachen and he held an assembly there and from there he sent out his *missi* through all his kingdoms to do justice and to have all free men swear to his justice). The text likely telescopes events from 801 and 802 into a single entry, which is not atypical for the minor annals. *Iustitia* can have a primarily fiscal meaning, as has been argued particularly by Magnou-Nortier, 'Note sur l'expression'. But the usage of the word in Carolingian sources from the reign of Charlemagne is typically wider; it does mean justice, including, but not limited to, fiscal rights. This is particularly true of the capitularies. Helpful on this point is Fouracre, 'Carolingian Justice', pp. 801–02.

This is particularly worthy of note, as the minor annals engage in significant, but highly selective ways, with the topic of law.[110] As viewed from the minor annals, the oath is not just one of the concerns of the *Capitulare missorum generale*, but can represent the entire corpus of political decisions of the year. When we read the *Capitulare missorum generale* in this light, we are confronted with the true scope of Charlemagne's new vision of the oath, and its striking combination of breadth and lack of specificity. Moreover, this understanding of the oath entangles it inexorably with the capitularies, not just a vehicle for announcing new ideas about the oath, but as presenting the corpus of rules and ideas embraced by the king that fidelity could encompass. Fidelity, as it was newly defined in 802, meant following the capitularies in the way appropriate to each type of person.

I have suggested here that the new vision of the oath in the *Capitulare missorum generale* is not just a matter of the first chapters marked off in the edition, but is rather the guiding idea that links together the varied and sometimes contradictory chapters of the capitulary.[111] All taken together constitute the oath, because all of those imprecations are part of keeping faith with the new emperor. This claim that fidelity to Charlemagne means following the dictates of the capitularies is expressed particularly clearly at the end of the reign. In one of the last capitularies produced by Charlemagne's court, the idea that fidelity requires fulfilling the capitularies is explicitly announced:

> Illud autem omnibus hominibus prȩcipimus, qui fidelitatem nobis promissam custodire voluerint, ista capitula et his similia omnimodis observare, quisquis gratiam nostram habere voluerit; de istis autem capitulariis atque de aliis omnibus, quȩ a multis annis misimus per regnum nostrum, volumus nunc pleniter per missos nostros scire, quid ex his omnibus factum sit vel quis hȩc observet, quȩ ibi prȩcepta sunt, vel quis illa condempnat et neglegat, ut sciamus, quid de his agere debeant, qui tam multis annis dei prȩcepta et decretum nostrum contempserunt.
>
> (Indeed we command this to all men who want to fulfil the fidelity promised to us, that they observe these chapters and the similar ones in all ways, whoever wants to have our grace. But about these capitularies and all the others which we have sent through our kingdom for many years, we now want to know fully through our *missi*, what out of all these things has been done and who has observed these things, that are commanded there, and who scorns and neglects them, so that we know, what we [corrected from they as the editors suggest] ought to do about those who for many years have scorned the commands of God and our decrees.)[112]

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110 Davis, *Charlemagne's Practice of Empire*, pp. 202–05.

111 The capitulary is also held together conceptually by its grounding in a biblical framework. For this point, see Heydemann, 'The People of God', pp. 114–17.

112 *Caroli Magni capitulare generale*, ed. by Mordek, c. 40, p. 994, also cited in n. 96 above.

This 813 capitulary chapter articulates perhaps more clearly than any other text from Charlemagne's reign the connection between capitularies and fidelity. Fidelity meant keeping all the capitularies, in whatever combination was appropriate to each person or status group. Failing to do so risked correction from both ruler and God. All men should take up the broad vision of the capitularies and share in this ambitious political project, for therein lay fidelity.

It is this vision of fidelity that allows us to rethink the nature of the *Capitulare missorum generale* itself. As noted at the start of this chapter, one of the linchpins of Patzold's arguments undermining the idea of a genre of capitularies is the status of the *Capitulare missorum generale*. Because this text, so central to the aims of Charlemagne's rulership, is messy and contradictory and incomplete and survives in only one copy, Patzold argues that it is best understood as a sort of piecemeal jotting down of ideas by aristocrats and not a coherent statement of royal ideas and priorities. Part of the problem is assessing the impact of the clearly corrupt tenth-century manuscript that uniquely preserves the text. However, another component of the problem is how one assesses what a court product should have looked like. The messiness does not mean the capitulary was not produced by a court. It may not have been polished to the extent a text like the *Admonitio generalis* was, but there is also no reason why a court could not produce a working document that reflected discussion, disagreement, experimentation, and a struggle to figure out the best path forward. Indeed, that seems to me on the whole an excellent description of exactly how Charlemagne's court worked. However, the implications of the argument about ideas of the oath advanced here has further consequences for how we understand the capitulary. This is because the oath serves as the leitmotiv of the capitulary. Its existence of course does not cancel out the complications or contradictions in the text. But it does represent a coherent core that holds this document together. When we read the entire capitulary as a statement about the oath and what it meant, we can rediscover in it precisely the kind of intellectual coherence Patzold has argued it lacked. When read as a text about the oath, the *Capitulare missorum generale* can be restored to the status of 'programmatic' that Ganshof sought to give it. The text is programmatic about a vision of the oath that sought to animate Charlemagne's political project and this assertive vision holds the text together.

Both oaths of fidelity and capitularies were key tools that Charlemagne and his court employed to help manage the empire. They are linked, in that the capitularies introduce the new conception of the oath first articulated in 802 and because most of the normative framework for

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On the complex understanding of fidelity, see also Esders and Mierau, *Der althochdeutsche Klerikereid*, pp. 60–61.

swearing the oath is set out in the capitularies. In addition, Stefan Esders has recognized that 'we can observe a striking coincidence between a general oath of fidelity imposed on the population and an increase in capitulary legislation at various points of time'.[113] However, the link is even deeper. Esders has examined how the 789 oath linked fidelity to each person maintaining their own law, and thus connects loyalty to the king with the preservation of personal laws.[114] While the right to such personal laws remained, the 802 oath expresses a far wider view of the intersection between fidelity and the law. Each man swearing an oath to Charlemagne according to his *votum et propositum* meant signing on to the entire political project expressed by the capitularies, and thus joining fully the political community envisioned by the court.

The Oath and Community Building

Et ut omnes traderetur publice,
qualiter unusquisque intellegere posset

If we understand the oath to incorporate the body of capitularies writ large, then implementing and attempting to enforce such an oath becomes a more pressing problem. The court's response to this challenge was largely to embed the swearing of the oath in techniques of community-building that pre-dated the new vision of the oath. In exploring this process, I seek to add to important work by Jinty Nelson on oaths fostering a sense of political community[115] and by Stefan Esders on the mechanics of actually implementing the oath.[116] While our analysis thus far has emphasized the novel reimagining of the oath in 802, the actual implementation of that oath depended on already existing tools and techniques.[117] I have already noted that the court envisioned swearing the oath as a process of *missi* explaining locally what it meant, after which they, with the cooperation of counts, would record the actual act of swearing. One result of this method of swearing the oath was to cultivate bonds between local populations and the larger political project of the empire and its elite.[118] In this regard, the

113 Esders, '"Faithful Believers"', p. 364. See also Esders, 'Rechtliche Grundlagen', p. 429; Esders, Haubrichs, and Bassetti, *Verwaltete Treue*, p. 5; Esders, '*Sacramentum fidelitatis*', p. 424; Esders, 'Loyalty Oaths', p. 133.

114 Esders, 'Roman Law as an Identity Marker', pp. 341–42. This interpretation is based on *Capitulare missorum*, ed. by Boretius and Krause, no. 25, c. 5, p. 67, which can be found in the appendix.

115 Nelson, 'Charlemagne and Empire', pp. 230–31; Nelson, 'Peers', p. 38.

116 Esders, '*Sacramentum fidelitatis*', pp. 305–427, 631–37. See also his work on community building and the oath: Esders, '"Faithful Believers"'; Esders, Haubrichs, and Bassetti, *Verwaltete Treue*, pp. 122–30; Esders, 'Loyalty Oaths', pp. 121–24.

117 For the long history of having agents oversee the swearing of the oath, see Becher, *Eid und Herrschaft*, pp. 139–43.

118 See also Nelson, 'Peers', p. 38. Evidence from the reign of Louis the Pious strongly suggests

oath fits well with many other aspects of Carolingian rulership that similarly sought to foster such processes of discussion and such communal buy-in to the Carolingian ethos. The change in 802 is that the ideas the population are being asked to buy into by swearing the oath have expanded significantly, but the tools used to ask for such agreement were already in use.

The expansion in the idea of what fidelity meant could lead us to doubt that these ideas debated at court actually made much headway in the far-flung regions of the empire, particularly given this reliance on older tools for implementation. However, evidence that *missi* indeed came into communities to discuss political ideas with them can be found in our sources. Perhaps the most spectacular example comes from 803, from a capitulary that was also part of the corpus of texts produced by a number of assemblies and discussions in Aachen in the years from 801 to 803, that, as Matthew Innes has demonstrated, was part of a concerted effort to grapple with longstanding concerns about the nature of justice in a Christian society.[119]

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that oaths should be sworn locally, as is clear from the case of a particular count who was allowed to swear his oath at the palace as a special privilege: *Responsa missis data*, ed. by Boretius and Krause, no. 155, c. 4, p. 314: 'De causa Hruotmundi comitis: ut ei liceat hic in palatio sacramentum suum iurare, quia propter nostrum servitium sibi constitutum placitum intra patriam observare non licuit' (About the case of Count Hroutmund: that it is right for him to swear his oath here in the palace, on account of our service it is right for him not to attend the assembly established in his region). This expectation builds on Merovingian precedent. See, for example, the requirements for swearing fidelity set out in the Formulary of Marculf, in *Formulae*, ed. by Zeumer, I.40, p. 68: 'Ut leudesamio promittantur rege. Ille rex ille comis. Dum et nos una cum consensu procerum nostrorum in regno nostro illo glorioso filio nostro illo regnare precipemus, adeo iubemus, ut omnes paginsis vestros, tam Francos, Romanos vel reliqua natione degentibus, bannire et locis congruis per civitates, vicos et castella congregare faciatis, quatenus presente misso nostro, inlustris vero illo, quem ex nostro latere illuc pro hoc direximus, fidelitatem precelso filio nostro vel nobis et leudesamio per loca sanctorum vel pignora, quas illuc per eodem direximus, dibeant promittere et coniurare' (Trans. by Rio, *The Formularies of Angers and Marculf*, pp. 175–76: 'In order for the people to swear their submission. King A to Count B. Since, with the unanimous consent of our great men, we decided that our glorious son C should rule in our kingdom of D, we therefore order you to summon all your *pagenses*, Franks, Romans and those of any other origin, and to have them assemble in appropriate places in cities, village and strongholds, in order that they should promise and swear fidelity and submission to our excellent son and to ourselves, in the presence of our agent, the illustrious man E, whom we have sent out from our side for this purpose, in the places of the saints and on the relics which we have sent there through the same person'). If the relics sent out for the purpose of swearing the oath remained in the localities where the oath was sworn, they would serve as a permanent reminder of the ties linking locality and centre. I owe this idea, and the reminder to consider this passage, to Stefan Esders. See also Rio's commentary in her translation on the sending out of relics (p. 175). On the implications of this formula for oath-swearing during Charlemagne's reign, see also Nelson, *King and Emperor*, pp. 266–67.

119 Innes, 'Charlemagne, Justice'. Innes presents the entire body of 801–803 legislation as a corpus of texts addressed to questions of human and divine justice. Not all the texts addressed by Innes are actually capitularies and a number of them present problems of dating, although he makes a number of useful points about an extended discourse of justice in the capitularies.

The chapter from the 803 capitulary states: 'That the people should be questioned about the chapters which were recently added to the law, after all will have consented, they should make their subscriptions and signs in those chapters'.[120] This rather extraordinary chapter allows us to see some of how the decrees of Charlemagne and his men decided upon in Aachen might become known and potentially meaningful throughout the empire. It is consensus of a very particular sort that is asked for here: the community is asked to consent to the laws, but there is no sense that rejecting them is an option.[121] Yet, with the emphasis on 'interrogating' (the verb is *interrogetur*) the people about additions to the law, the capitulary stresses that the ideas debated at Aachen be discussed in more local communities.[122] The choice of verb allows us to envision some kind of educational testing process, a more judicial inquiry, an investigation of local expectation or some combination thereof.[123] Regardless of the exact process imagined, the phrasing of the chapter serves to highlight both the idea of community responsibility toward the law and the importance of discussion, in the sense of an at least somewhat public exchange about what the court intended.[124] By having the population consent and mark that consent the capitulary seeks to have the populace become, in a perfect world, invested in the capitularies, or at a minimum implicated in agreeing to them. In a sense, the capitulary envisions the creating of political ties between local communities who would hear about and discuss these legal ideas and the great assemblies at Aachen that proposed the changes. It is a vision, fundamentally, of law as community-building, an idea echoed in a capitulary chapter explicitly concerning the 'vulgar people', requiring everyone to make sure their dependents consent to and obey imperial commands.[125]

These kinds of processes of discussion had value in themselves. One agenda of items for discussion at an assembly notes the need to consider if

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120 *Capitulare missorum*, ed. by Boretius and Krause, no. 40, c. 19, p. 116: 'Ut populus interrogetur de capitulis quae in lege noviter addita sunt; et postquam omnes consenserint, subscriptiones et manufirmationes suas in ipsis capitulis faciant'.

121 This remark is not a statement about what gave capitularies their legal force in general terms, but is simply meant to underscore the rhetoric of a particular capitulary.

122 Note too that the use of the verb '*tradere*' in the *Capitulare missorum generale* has the sense of explaining clearly what the oath meant. See Banniard, *Viva voce*, pp. 402–04.

123 I would like to thank Gerda Heydemann for her suggestions about how to interpret this chapter.

124 The importance of debate in the Carolingian world has begun to receive more attention. See, for instance, de Jong and van Renswoude, eds, 'Carolingian Cultures of Dialogue, Debate and Disputation'.

125 *Capitulare missorum Aquisgranense primum*, ed. by Boretius and Krause, no. 64, c. 17, p. 153: 'De vulgari populo, ut unusquisque suos iuniores distringat, ut melius ac melius oboediant et consentiant mandatis et praeceptis imperialibus' (About the common people, that each should constrain his juniors, so that they better and better obey and consent to the imperial mandates and commands). For the military echoes of this terminology, see Esders, '*Sacramentum fidelitatis*', p. 362.

the Franks were truly Christian or not.[126] This rather remarkable question for a legislative assembly has been interpreted by Jinty Nelson as the sign of Charlemagne's own intervention, and of the king's need to answer at the Last Judgement for his rule over the empire.[127] Nelson is not wrong to see here an expression of anxiety about the responsibilities of judges, a theme sounded in many Carolingian sources.[128] But the chapter ends with a note of optimism,[129] when it is recorded that the question of the true Christianity of the Carolingians can easily be answered if 'we will be willing to diligently discuss openly (our) way of life'.[130] A reworked version of this agenda avoids engaging the question explicitly,[131] but the stress here on discussion and its potential should not be dismissed. These conversations about hard topics were at the heart of the Carolingian political project, even if they remained unresolved questions.

The evidence I have presented thus far reflects normative aspirations of the court, but we do have indications that such processes of discussion, and especially oath-swearing, were carried out.[132] For instance, one capitulary manuscript preserves a record of Count Stephen of Paris explaining capitularies so the population could consent to them.[133] Even if

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126 *Capitula tractanda cum comitibus episcopis et abbatibus*, ed. by Boretius and Krause, no. 71, c. 9, p. 161: 'Quod nobis despiciendum est, utrum vere christiani sumus. Quod in consideratione vitae vel morum nostrorum facillime cognosci potest, si diligenter conversationem coram discutere voluerimus' (Trans. by Nelson, 'The Voice of Charlemagne', p. 86: 'That investigation must be made into ourselves, whether we are really Christians. This can very easily be recognized by considering our (way of) life and our conduct, if we are willing conscientiously to discuss in front of each other (our) *conversatio*').

127 Nelson, 'The Voice of Charlemagne', pp. 82–85.

128 See, for example, a sermon pronounced by a *missus*, *Missi cuiusdam admonitio*, ed. by Boretius and Kraus, No. 121, pp. 239–40, here p. 240. On this text, see Buck, *Admonitio und Praedicatio*, pp. 157–238; 376–94; Buck re-edits this passage from the sermon (p. 400) from the Cava dei Tirreni, Biblioteca Statale del Monumento Nazionale Badia di Cava, MS 4.

129 Nelson, 'The Voice of Charlemagne', p. 81.

130 Nelson's slightly different translation of the entire chapter is given in n. 126.

131 The reworked text is the *Capitula de causis cum episcopis et abbatibus tractandis*, ed, by Boretius and Krause, no. 72, pp. 162–64; re-edited by Ganshof, 'Note sur les "capitula"', pp. 21–25. See p. 142 above for these two capitularies and their relationship.

132 See also Esders, '*Sacramentum fidelitatis*', pp. 631–37.

133 BnF, MS lat. 4995, f. 19^{v}; edited in Mordek, *Bibliotheca*, p. 551: 'IN CHRISTI NOM. INCIPIUNT CAP. LEGIS IMPERATORIS KAROLI NVPER INVENTA. ANNO TERTIO CLEMENTISSIMI DOMNI nostri karoli augusti sub ipso anno hæc facta capitula sunt et consignata stephano comiti ut hæc manifesta fecisset in ciuitate parisius mallo pubplico et ipsa legere fecisset coram illis scabineis quod ita et fecit. Et omnes in uno consenserunt quod ipsi uoluissent omni tempore obseruare usque in posterum; etiam omnes scabinei episcopi abbatis comitis manu propria subter firmauerunt' (In the name of Christ. Here begins the cap. [I leave this abbreviated as it could easily be either capitularies or chapters] of law of the emperor Charles recently found. In the third year of the most clement lord Charles our augustus in that year these chapters were made and consigned to Count Stephen so that he should make them known in the city of Paris at a public assembly and have them read out before those *scabini*, which he did. And all

no room was left for dissent, the note envisions an oral exchange in which the main ideas animating the capitulary could be aired publicly. An even more striking example survives in the form of a list of those who swore the oath, exactly as the capitularies say should be done, which was entered into an Italian capitulary manuscript in the mid-ninth century, as well as a similar list from Reims in 854.[134] Another capitulary manuscript preserved in Munich seems not to record swearers of the oath, but includes a list of names that may well represent the locals who consented to and signed the law in the manner envisioned above.[135] In all these examples, we can see the mechanisms by which the oath was brought into the localities, in ways that involved the population in actively embracing participation in the Carolingian political project and that fostered links between local political communities and imperial ones. And indeed, the mere process of attempting to have the oath sworn was in itself of value, as it underscored

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together consented that they wanted to observe [them]for all time in perpetuity; and also all *scabini*, bishops, abbots and counts signed below with their own hands). The manuscript is available online at <https://gallica.bnf.fr/ark:/12148/btv1b9066600w> [accessed 2 February 2026].

134 For both, see now Esders, Haubrichs, and Bassetti, *Verwaltete Treue*. Whether the Italian list represents a general oath-swearing, or the oaths of a more limited group, is not entirely clear.

135 I propose that the manuscript includes ninth-century names that represent the kind of 'subscriptions and signs' asked for in the *Capitulare missorum*, ed. by Boretius and Krause, no. 40, c. 19, p. 116 (cited above in n. 120), added in this case to national laws. The codex in question is Munich, Bayerisches SB, Clm. 4115. For description, see Mordek, *Bibliotheca*, pp. 305–07. The manuscript is digitized and available at <https://daten.digitale-sammlungen.de/0006/bsb00060127/images/index.html?fip=193.74.98.30&id=00060127&seite=1> [accessed 2 February 2026].

The date of the manuscript has been debated, but I follow Bischoff in dating it to the early ninth century. See Bischoff, *Katalog*, Part 2, p. 226. The names in question are found on fols 1^{r}, 15^{v}, 16^{r}, and 67^{v} and are added, according to Bischoff, later in the ninth century. Some are followed by the words 'pro omnibus'. They are transcribed and discussed in Bischoff, *Die südostdeutschen Schreibschulen*, 1, pp. 15–18, 2, pp. 196–97. Schützeichel, 'Die Personennamen', pp. 55–57 notes all marginal annotations, names or not, and of whatever date, and points out that the names on fol. 15^{v} are entered after the word 'iuret' in the text. Schützeichel also lists all the names, including some emendations of Bischoff's readings (pp. 58–63), arguing that the evidence of name-patterns and philology suggests an origin in the region of the Central Franconian dialect. These names have usually been interpreted as memorial entries (although Schützeichel, 'Die Personennamen', pp. 81–85 usefully considers a range of possibilities), but I think they may well represent consent to the laws. It is worth noting that this form of subscription must be distinguished from the oath lists noted above (as stressed by Esders, Haubrichs, and Bassetti, *Verwaltete Treue*). Another example of what Patzold, *Wie regierte Karl der Große*, characterizes as Carolingian listing culture might be found in the names added to Munich, Bayerisches SB, Clm. 14508, fol. 148, online at <https://daten.digitale-sammlungen.de/0004/bsb00046287/images/index.html?fip=193.74.98.30&seite=306&pdfseitex=> [accessed 2 February 2026], which might be names of those who paid tithes. See Zeller and others, *Neighbours and Strangers*, p. 96, n. 48. On this codex, see Mordek, *Bibliotheca*, pp. 339–42; Bischoff, *Katalog*, Part 2, p. 259; Bischoff, *Die südostdeutschen Schreibschulen*, 2, p. 243.

the political bonds holding the empire together and the king's interest in the entire realm.[136]

Of course, in many ways the oath of fidelity was intended to be a tool of political control, but it was also framed in such a way that it would encourage discussion of the new ideas and plans emerging from Aachen, discussions that would take place differently under the leadership of different aristocrats. This dividing of responsibilities, reliance on personal implementation, interest in discussion, and building on regional difference are all key features of Charlemagne's rulership.[137] Rather than standing out as a new specifically imperial concept in 802, the oath as it was presented in the later years of the reign emerged from longer-term practices of ruling and it fitted well with practices long held dear by the Carolingian court, as both McKitterick and Innes have made clear in noting earlier roots of some of the ideas expressed in 802.[138] However, the direct linking of many of these ideas to an expanded understanding of fidelity was new, even though it developed out of the history of the earlier years of the reign. By reconceptualizing fidelity in a wider, more ambitious, more aggressive way, and then drawing on older forms of discussion to introduce these new ideas, the court was harnessing older techniques to new ends and fostering more probing considerations of what fidelity meant on the local level. Despite the innovative vision of the oath of 802, its enforcement relied on older tools.

This dependence on traditional enforcement emerges particularly clearly when we consider the specific regulations for how the oath was to be sworn. We do have bits and pieces of evidence about how this was done, such as a ruling in 806 that those who had not yet sworn loyalty to the emperor should do so.[139] However, the fullest discussion of the actual mechanics of swearing the oath is to be found in the 789 *Capitulare missorum*, not in any of the numerous capitularies produced in 802 or after. Indeed, this capitulary is virtually entirely devoted to the topic of the oath,[140]

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136 See also Patzold, *Wie regierte Karl der Große*, pp. 53–54, in reference to lists of oath-swearers.

137 All are explored in Davis, *Charlemagne's Practice of Empire*.

138 McKitterick, *Charlemagne*, pp. 237–43, 257–58; Innes, 'Charlemagne, Justice'.

139 *Capitulare missorum Niumagae datum*, ed. by Boretius and Krause, no. 46, c. 2, p. 131, as cited in n. 97 above.

140 See analysis in Becher, *Eid und Herrschaft*, pp. 196–99. Haack, *Die Krieger*, pp. 77–79 suggests that this was never a coherent capitulary, but a series of chapters on different topics only put together by (presumably) the tenth-century compiler. There is of course no way to know for sure as this is the only surviving copy of the capitulary, but the hypothesis is not compelling. Most of the chapters in fact clearly build on each other and thus demonstrate their connections. Haack points out that the compiler often re-arranges texts, but most of this re-arranging involves skipping chapters, or dividing them at different places. In most cases where capitularies in this manuscript are preserved elsewhere, the chapters here are in the same order as in other codices, even if some are left out. This suggests skipping material, not inventing it. Haack's goal is to suggest that this capitulary does not provide clear

beginning with an explanation of why the oath was necessary;[141] then noting who was to swear the oath, which included high-ranking people[142] (with specific rules for monks),[143] as well as the general population and various types of dependent peasants;[144] commanding the *missi* to explain that everyone should have their own law and that the king will stand behind this principle;[145] and ending with the imperative to be prepared to do military service, one of the major requirements of fidelity going back to its Roman roots.[146] We have nothing of the kind for the 802 oath. Why? The primary answer is that these processes still stood; *missi* had been overseeing the oath and they kept on doing so.[147] It is entirely possible that the first time a general, all-encompassing oath of fidelity was exacted from the Franks was only in 789, albeit drawing on far older practices of more restricted oath-swearing.[148] Regardless of how we interpret the earlier history, the introduction of the new oath in 802 drew on practices that had become common during the decades of Charlemagne's already-long reign. As we have explored, the new understanding of the oath in 802 was implemented with pre-existing tools, even if some of these tools only emerged, or were intensified, during Charlemagne's own reign. Some capitulary provisions were obviously time-bound, but others were not, and these measures for enforcing the oath still served a purpose. However, can the same tools to enforce the oath fully work when the ideas they are meant to convey have shifted? There are some hints in our evidence that the combination of a new vision of the oath with older methods of having it sworn was not an entirely smooth combination.

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evidence for vassalage being linked to military service, an argument he makes convincingly. But his argument does not require this capitulary to be an invention, and there seems to me no cogent reason to assume it was. It is, however, the case that the division of this particular capitulary into chapters in the edition is partly an invention of Boretius, and is not found in the only manuscript, BnF, MS lat. 4613, as noted by Mordek, *Bibliotheca*, p. 472.

141 *Capitulare missorum*, ed. by Boretius and Krause, no. 25, c. 1, p. 66; the text is in the appendix.

142 *Capitulare missorum*, ed. by Boretius and Krause, no. 25, c. 2, pp. 66; the text is in the appendix. Esders, '*Sacramentum fidelitatis*', pp. 322–35, emphasizes, correctly, the greater expectations placed on those of higher status. While it is clear that their fidelity had to be different, if that was reflected in the actual *formulae* employed is not clear from the surviving evidence.

143 *Capitulare missorum*, ed. by Boretius and Krause, no. 25, c. 3, p. 67; the text is in the appendix.

144 *Capitulare missorum*, ed. by Boretius and Krause, no. 25, c. 4, p. 67; the text is in the appendix.

145 *Capitulare missorum*, ed. by Boretius and Krause, no. 25, c. 5, p. 67; the text is in the appendix.

146 *Capitulare missorum*, ed. by Boretius and Krause, no. 25, c. 6, p. 67; the text is in the appendix. On the military roots and implications of the oath, see further p. 000 below.

147 See also Becher, *Eid und Herrschaft*, p. 198.

148 Becher, *Eid und Herrschaft*, pp. 199–201. On the change in scope in 789, see also Esders, '*Sacramentum fidelitatis*', p. 424.

The Tensions of Rulership

non, ut multi usque nunc extimaverunt

Our surviving sources reveal some tensions in the implementing of the oath. As I have sought to argue, the oath relied on local swearing and explaining, led by various agents, each inevitably doing things in their own ways. The understanding of the oath as encompassing in a sense everything the king commanded similarly meant that with such a broad array of options available, the process of discussing and explaining locally would differ based on what aspects out of many a particular agent chose to stress at a particular moment. This *ad hoc*, personal process of explaining the oath would have only been exacerbated by the distance between the oath as framed in the normative sources and our surviving evidence of actual oath *formulae*. We have two sets of oath *formulae* from the reign of Charlemagne. The first is from 789,[149] and the second is associated with the 802 reform of the oath.[150] The 802 oath *formulae* are preserved in the so-called *Capitularia missorum specialia*, of which traces survive in six versions intended for six different *missatica*, or regions assigned to *missi*.[151] We know of two separate *formulae*, one of which survives in a variant version.[152] The issue I would like to focus on here is the wording of the *formulae* and how this relates to the explanation of the oath spelled out in the capitularies.[153]

The understanding of the oath presented in the capitulary legislation of 802, and reiterated in abbreviated form throughout the rest of the reign, does not fully correspond to the text of the oath linked to the 802 capitulary.[154] As noted, we have two primary versions of this later oath formula.[155]

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149 Becher, *Eid und Herrschaft*, pp. 79–85. As Stefan Esders has noted, the capitulary explaining rules for swearing the oath distinguishes the oaths of different groups of people, marking out, for example, the highest agents. Such differences likely were reflected in oral oath-taking, but we do not have written evidence spelling out how. See, for instance, Esders, '*Sacramentum fidelitatis*', p. 598. See further n. 142 above.

150 My discussion here will concentrate on the gap between the oath *formulae* and the capitulary explanations of the oath. For a full discussion of the language of the surviving *formulae*, and the relationships between them, see Becher, *Eid und Herrschaft*, pp. 90–194.

151 Eckhardt, 'Die *Capitularia missorum specialia*'.

152 Becher, *Eid und Herrschaft*, pp. 85–87.

153 For a linguistic analysis of these oath texts, see Banniard, 'Niveaux de langue', pp. 56–59. For their rhetorical nature, see Schmidt-Wiegand, 'Eid und Gelöbnis', p. 62.

154 Becher, *Eid und Herrschaft*, p. 88.

155 There is a variant of oath formula 1, which is preserved in two manuscripts, namely London, British Library, MS Egerton 2832, fol. 48^{v} and Montpellier, Bibliothèque interuniversitaire (section médecine), MS H 136, fols 175$^{r–v}$. On the Montpellier manuscript, see the Capitularia website <https://capitularia.uni-koeln.de/en/mss/montpellier-biu-h-136/> [accessed 15 April 2026] and description in Mordek, *Bibliotheca*, pp. 276–80. The manuscript can be consulted online <https://portail.biblissima.fr/ark:/43093/mdata9395b993de71e51c50e18b4145321e0925604e72>. On the London manuscript, see the Capitularia website: <https://capitularia.uni-koeln.de/en/mss/london-bl-egerton-2832/>

Table 1. Surviving oath *formulae* from the reign of Charlemagne

***Duplex legationis edictum*, ed. by Boretius and Krause, no. 23, ch. 18, p. 63 (789 oath formula):**	***Capitularia missorum specialia*, ed. by Boretius and Krause, no. 34, p. 101 (802 oath formula 1):**
De sacramentis fidelitatis causa, quod nobis et filiis nostris iurare debent, quod his verbis contestari debet: 'Sic promitto ego ille partibus domini mei Caroli regis et filiorum eius, quia fidelis sum et ero diebus vitae meae sine fraude et malo ingenio'.	Sacramentale qualiter repromitto ego, quod ab isto die inantea fidelis sum domno Karolo piissimo imperatori, filio Pippini regis et Berthanae reginae, pura mente absque fraude et malo ingenio de mea parte ad suam partem et ad honorem regni sui, sicut per drictum debet esse homo domino suo. Si me adiuvet Deus et ista sanctorum patrocinia quae in hoc loco sunt, quia diebus vitae meae per meam voluntatem, in quantum mihi Deus intellectum dederit, sic attendam et consentiam.
About oaths for the cause of fidelity, which they ought to swear to us and our sons, that they ought to swear in these words: 'thus I promise toward my lord king Charles and his sons, that I am faithful and I will be all the days of my life without fraud or ill will'.	How I re-promise by oath, that from this day forward I am faithful to lord Charles the most pious emperor, son of King Pippin and Queen Bertha, with pure mind and without fraud or ill will from my part to his part and for the honour of his kingdom just as rightly a man ought to be to his lord. If God aids me and the patronage of the saints which are in this place, so that all the days of my life through my will, in as much as God gives me understanding, thus I will attend and consent.

Both insist that the person swearing must remain faithful to the king, as a man ought to be to his lord.[156] One version requires fidelity to the king on his own part and for the 'honour of his realm', where the other demands fidelity for the king's realm and his law or his right. There are changes in formulation from these *formulae* compared to our earlier surviving example from 789,

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[accessed 4 August 2026] and the description in Mordek, *Bibliotheca*, pp. 226–31. The manuscript can be consulted online: <https://iiif.bl.uk/uv/#?manifest=https://bl.digirati.io/iiif/ark:/81055/vdc_100056032097.0x000001> [accessed 4 August 2026]. I cite here the Montpellier manuscript from the early ninth century (the London manuscript, which dates from the early tenth century is now divided into four codices; in addition to MS Egerton 2832, the manuscript is now preserved as BL, MS Egerton 269, BnF, MS lat. 4633; available online at <https://gallica.bnf.fr/ark:/12148/btv1b107212026> [accessed 2 February 2026]; and BnF, MS lat. 7561; available online at <https://gallica.bnf.fr/ark:/12148/btv1b107210836> [accessed 30 March 2026]). There are a few differences in the London manuscript, none of them substantive. Becher gives a cleaned-up version (*Eid und Herrschaft*, p. 86), based on earlier printed editions, but which similarly does not introduce significant changes. He also usefully clarifies the confusions introduced in the MGH edition. I have chosen the Montpellier codex because of its earlier date, not because of the idea that the manuscript was produced by a supposed 'leges-scriptorium', an idea now convincingly deconstructed by Karl Ubl, 'Gab es das Leges-Skriptorium'. Also helpful on the transmission of the oath *formulae* is Kikuchi, *Herrschaft*, pp. 115–16 n. 240.

156 On the development of this clause, see Esders, 'Fidelität und Rechtsvielfalt'.

	***Capitularia missorum specialia*, Montpellier, Bibliothèque interuniversitaire (section médecine), H 136, ff. 175^{r-v} (802 oath formula 1a):**	***Capitularia missorum specialia*, ed. by Boretius and Krause, no. 34, p. 102 (802 oath formula 2):**
	Sacramentale qualiter repromitto; Ego quod ab isto die inantea fidelis sum domno carolo piissimo imperatore filio pipino regis et bertradane reginae pura mente absque fraude et male ingenio de meam partem ad suam et ad honorem regni sui adque *iustitiam oboediens atque consenciens* sicut *recte* debet homo esse domini suo si me adiuuet deus et ista sanctorum patrocinia qui hoc loco sunt quia diebus uite meae per meam uoluntatem in quantum mihi deus intellectum dederit sic *adtendo et conseruo.*[157]	Item aliud. Sacramentale qualiter repromitto ego: domno Karolo piissimo imperatori, filio Pippini regis et Berthane, fidelis sum, sicut homo per drictum debet esse domino suo, ad suum regnum et ad suam rectum. Et illud sacramentum quod iuratum habeo custodiam et custodire volo, in quantum ego scio et intellego, ab isto die inantea, si me adiuvet Deus, qui coelum et terram creavit, et ista sanctorum patrocinia.
	How I re-promise by oath, that from this day forward I am faithful to lord Charles the most pious emperor, son of King Pippin and Queen Bertha, with pure mind and without fraud or ill will from my part to his part and for the honour of his kingdom and *obeying and consenting to justice* just as a man ought *rightly* to be to his lord. If God aids me and the patronage of the saints which are in this place, so that all the days of my life through my will, in as much as God gives me understanding, thus *I attend and preserve*.	Another again. How I re-promise by oath, that I am faithful to the most pious lord emperor Charles, son of King Pippin and Bertha, just as a man ought rightly to be to his lord, to his kingdom and to his right. And that oath which I swore, I hold preserved and I want to preserve it, in as much as I know and understand, from this day forwards, if God aids me, who created the heaven and earth, and the patronage of the saints [aids me].

which have been carefully analysed by Matthias Becher.[158] But despite the fact that changes were made, the *formulae* from 802, as we have them, do not actually fully reflect the broader understanding of the oath articulated in the 802 and later capitulary legislation. The variant that refers to obeying and consenting to justice as part of the oath does enlarge the scope of the text somewhat, but still does not correspond well to the new view of the oath. While the oath emerged from long-term practice in the reign, the linking of fidelity to broader ideas and practices so explicitly was a new development, but one that did not find much resonance in the language used to actually swear the oath (or what is presented to us, in Latin, as the language to be used). This is not to say that the *formulae* employed did not convey sophisticated elements,[159] but that they do not fully correspond to the new visions sketched in the capitularies.

What seems to be happening in the oath *formulae* is that relatively traditional language[160] was used to try to carry new weight, but without

157 The text in italics indicates the major changes between the MGH edition and the variant preserved in the London and Montpellier manuscripts.

158 See n. 150 above.

159 See Esders, 'Loyalty Oaths', pp. 125–27.

160 Becher, *Eid und Herrschaft*, fully explores the Merovingian roots of much of the language used.

adjusting the language fully to account for the new ideas it was meant to convey. The gap between conception and oral text was meant to be bridged by the *missi* who would explain what the new oath meant, regardless of the oath formula used. There are benefits to this loose oath formula, in that it could allow flexibility in how it was employed. A short oath formula could also have contributed to making the kind of community-building discussion I have investigated necessary. It also may well have been the case that the *formulae* mattered more as components of ritual, as part of the process of standing up and articulating one's fidelity, and thus that their actual language was not the most salient point. The traditional language of the *formulae* may also have been valuable solely because it *was* traditional. As I have suggested, the new oath text presented a much wider understanding of fidelity, in which any deviation from what was asked for in the capitularies could count as infidelity. In practice, this was of course not implementable, with the result that what the court was asserting was more the idea that any failure to live up to the capitularies *could* be characterized as infidelity, not that all such failures *would* be. This expansive conception of infidelity always co-existed with a more narrow understanding of infidelity in the sense of treason, a crime typically punishable by death.[161] One could thus argue that the persistence of a tightly defined oath formula allowed the court to maintain both visions of infidelity: the broad one articulated in the *Capitulare missorum generale* and meant to be both explained by the *missi* and flexibly enforced, and a narrow version encapsulated in the more traditional oath *formulae*.[162] There are thus several possible advantages to using a relatively brief and traditional formula to swear the oath.

Moreover, the articulation of the oath in the *Capitulare missorum generale* does leave room for a certain formalism otherwise in contrast to its broad conceptualization of the oath, in that it insists on the oath being sworn to Charlemagne in his new role as emperor, '*nominis esaris*'.[163] The evocation of empire in the context of the oath is perhaps best explained by the impact of what must have been a remarkable ceremony for Charlemagne's

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161 For example: *Capitulare Bononiense*, ed. by Boretius and Krause, no. 74, c. 4, p. 166: 'Quicumque absque licentia vel permissione principis de hoste reversus fuerit, quod factum Franci herisliz dicunt, volumus ut antiqua constitutio id est capitalis sententia erga illum puniendum custodiatur' (Trans. by King, *Charlemagne*, p. 265: 'As regards the punishment of anyone returning from the army without the leave and permission of the prince — which action the Franks call *herisliz* — it is our will that the ancient ruling be observed, namely, sentence of death'). How developed a sense of treason was in the early Middle Ages has often been debated. For our purposes, passages like the one just cited do make clear there is an expectation of the death penalty for infringement of sovereignty. I would like to thank Karl Ubl for his suggestions on this issue.

162 I owe the discussion of this distinction between oath conception and formula to Karl Ubl.

163 *Capitulare missorum generale*, ed. by Boretius and Krause, no. 33, c. 2, p. 92, cited in full in the appendix. On the longstanding link between oaths and 'name-theory', see Esders, 'Übereinstimmung von Name und Sache', p. 128. The command to swear in the name of Caesar rather than emperor is surprising, and worthy of further attention.

imperial coronation in Rome on Christmas Day, 800.[164] Yet, this imperial context of the oath can be a distraction from placing it within the context of Charlemagne's reign, in which the imperial coronation had very little impact.[165] The imperial overtones of the oath were largely dropped for the rest of Charlemagne's reign. The formalism in insisting that oaths be re-sworn so that they could be made in the name of Charlemagne's new role is thus less a reflection of the particularly imperial nature of the oath, but in fact a sign of the traditionalism of the oath *formulae*. The concern expressed here that the language be correct echoes the earlier justification for the 789 oath, in which the court insisted on having the oath sworn so that situations like the revolt of Hardrad, when those who rebelled attempted to justify themselves by noting that they had never sworn fidelity to the king, could be avoided in the future.[166] This anxiety about the correct use of words and the possible consequences of loopholes that improper language could provide is evident elsewhere in Carolingian culture.[167] However, in

164 For the varying versions of what actually happened, see Nelson, 'Why Are There So Many'.

165 Davis, *Charlemagne's Practice of Empire*, pp. 347–57; McKitterick, *Charlemagne*, pp. 115–16.

166 *Capit.* 1, *Capitulare missorum*, ed. by Boretius and Krause, No. 25, c. 1, p. 66, cited in full in the appendix. Hardrad's revolt should not be seen as the sole impetus for the oath-swearing, however. See Esders, '*Sacramentum fidelitatis*', pp. 305–21, 392, 423 for a range of factors leading to the oath-swearing, in particular the attack on the Avar regions.

167 Most obviously for the reign of Charlemagne is the concern that if one prays improperly, God will not understand. *Epistola de litteris colendis*, ed. by Martin, pp. 232–33: with abbreviations expanded: 'Nam cum nobis in his annis a nonnullis monasteriis saepius scripta dirigerentur, in quibus, quid pro nobis fratres ibidem commorantes in sacris et piis orationibus decertarent, significaretur, cognovimus in plurimis praefatis conscriptionibus eorundem et sensus rectos et sermones incultos; quia quod pia devotio interius fideliter dictabat, hoc exterius propter neglegentiam discendi lingua inerudita exprimere sine repraehensione non videbat. Unde factum est, ut timere inciperemus, ne forte, sicut minor erat in scribendo prudentia, ita quoque et multo minor esset quam recte esse debuisset sanctarum scripturarum ad intellegendum sapientia. Et bene novimus omnes, quod, quamvis periculosi sint errores verborum, multo periculosiores sunt errores sensuum' (Trans. by King, *Charlemagne*, p. 233: 'For numerous letters have been sent to us in recent years from various monasteries notifying us of the efforts made on our behalf in sacred and pious prayer by the brothers residing in them; and we have identified in most of these writings of theirs both correct sentiments and uncouth language. For what pious devotion dictated faithfully as regards matter, an uneducated tongue was unable, through neglect of learning, to express without fault as regards form. Wherefore it came about that we began to fear lest, as skill in writing was deficient, so also wisdom for understanding the holy scriptures might perchance be less than it ought properly to be. And we are all well aware that, although verbal errors are dangerous, errors of understanding are much more so'). I cite here the Oxford manuscript; Martin offers a full discussion of the language of the text and its nature. See also *Admonitio generalis*, ed. by Mordek, Zechiel-Eckes, and Glatthaar, c. 70, c. 224: 'Psalmos, notas, cantus, compotum, grammaticam per singula monasteria vel episcopia et libros catholicos bene emendate, quia sepe dum bene aliqui deum rogare cupiunt, sed per inemendatos libros male rogant. Et pueros vestros non sinite eos vel legendo vel scribendo corrumpere. Et si opus est evangelium, psalterium et missale scribere, perfectae aetatis homines scribant cum omni diligentia.' (Trans. by Dutton, *Carolingian Civilization*, p. 92 [revised from a translation by D. C. Munro]: 'Correct carefully the Psalms,

the context of the oath, the key point is that even the ambitious, innovative characterization of the oath in the *Capitulare missorum generale* maintained elements of older approaches to, and understanding of, fidelity. We should thus not overstate the difference between the 802 oath as presented in the *Capitulare missorum generale* and the surviving oath *formulae*; there are clear links between *formulae* and explication.

But there is nonetheless also a notable distance between the sophistication of the normative framing of the oath and the *formulae* used to enforce it that reflects a disconnect between ambition and the tools to realize it akin to other consequences of innovation during the reign of Charlemagne. It is a fair question to ask if any viable formula could have adequately encapsulated the conceptualization of the new oath into a soundbite. No doubt, no short, simple verbal formula could have fully conveyed the complicated, flexible idea of the new oath. I do think, however, that, had the court wished to, they could have got closer than they did. The capitularies present many pithy statements evoking complex ideas, including about fidelity. Even if expecting all of the new ideas associated with the oath to be conveyed in a single formula is unrealistic, we do need to take seriously the fact that they do not seem to have tried especially hard. Moreover, Charlemagne's men were clearly willing to use unwieldy *formulae* when they felt it necessary; the new imperial title itself is a good example.[168] Scholars have failed to successfully explain exactly what it was meant to mean;[169] it was simply awkward and inelegant, not to mention unclear. It thus seems necessary to treat the oath *formulae* we have as intentionally chosen and to try to make sense of them.

When we do so, it seems to me, we confront a case where the new ambitions of Charlemagne's governance were not entirely well served by the tools of rulership brought to bear on them, even when these tools were adapted partially to the new uses. This is not to say that the new oath did not work. Of course, Charlemagne could never have ensured that everyone lived up to their own station in life, but we do have hints of the ideas about the new oath percolating throughout the empire. The most dramatic example is a court case from Freising from later in 802 where witnesses were enjoined

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the signs in writing (*notas*), the songs, the calendar, the grammar, in each monastery or bishopric, and the catholic books; because often some desire to pray to God properly, but they pray badly because of faulty books. And do not permit your boys to corrupt them in reading or writing. If there is need of writing the Gospel, Psalter and Missal, let men of mature age do the writing with all diligence').

168 Charlemagne's formal imperial title was: 'Karolus serenissimus augustus a deo coronatus magnus pacificus imperator Romanum gubernans imperium, qui et per misericordiam dei rex Francorum et Langobardorum' (Charles the most serene augustus crowned by God great pacific emperor governing the Roman empire, and by the grace of God king of the Franks and Lombards) cited from his last surviving original diploma, *Pippini, Carlomanni, Caroli Magni Diplomata*, ed. by Mühlbacher and others, no. 218, p. 291.

169 There is a voluminous literature on this title. An excellent starting point into the topic can be found in Patzold's very clear 'Die Kaiseridee'.

to tell the truth because of the fidelity they had sworn to the emperor,[170] an injunction repeated in another court case a few years later.[171] Not committing perjury indeed was one of the points explicitly noted as comprising one of the obligations of the new oath.[172] The particular court case in Bavaria is explicable via the mediation of Arn of Salzburg, one of Charlemagne's most loyal and effective agents, who presided over the court case and had been present at Aachen in 802.[173] Arn's personal role may have made it easier for the ideas at Aachen to spread to Bavaria, but the court cases from different places nonetheless show us how the idea of loyalty encompassing all kinds of new elements was diffused throughout the empire. Some of the new ideas articulated in 802 did have resonance.

The evidence of the new vision of the oath being used in local courts does indicate that a concise formula for swearing the oath need not have limited discussion of the broader framing undertaken in 802. Yet, in the gap between the normative explication and the actual formula we do see hints of the cost of ambition, of a court using old tools in new ways, but without always fully matching tool to goal.[174] Ruling a vast empire in new ways created multiple tensions surrounding the implementation of royal practices, and I would suggest it is these growing pains that we see reflected in the contrast between the oath formula and the normative pronouncements of the capitularies. In its combination of new vision and older tools of enforcement, the oath then serves as a useful case study of the ambition of Charlemagne's rulership and also the challenges such ambition faced.

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170 *Die Traditionen des Hochstifts Freising*, ed. by Bitterauf, no. 186, pp. 178–79: 'Tunc praedicti missi dominici Arn archiepiscopus et Aduluuinus episcopus atque Orendil iudex ipsos homines qui hoc testificaverunt in medium vocaverunt et per sacramentum fidelitatis quem domno Karolo magno imperatori ipso praesente anno iuraverunt adtestati sunt eos, ut omnimodis absque ulla fraude vel ingenio ita ut veracissime de ipsa causa scirent ita in palam adnuntiarent' (Then the aforesaid royal *missi* Archbishop Arn and Bishop Adalwin and Orendil the judge called into the middle [of the assembly] those men who testified and through the oath of fidelity which they swore to lord Charles the great emperor in this present year, they attested that in all ways without any fraud or trickery that thus they most truthfully made known openly what they knew about that matter).

171 *Chartularium Sangallense*, ed. by Erhart and others, no. 197, p. 187: 'Tunc praedictus comis, convocatis illa testimonia, qui de ipso pago erant, interrogavit eos per ipsam fidem et sacramento, qua nostro domno datam haberent, quicquid exinde scirent veritatem dicerent. At illi dixerunt: "Per ipsum sacramentum, quod domno nostro datum habemus, scimus […]"' (Then the aforementioned count, calling together those witnesses, who were from that *pagus*, interrogated them through that faith and oath, which they had given to our lord, that whatever they knew about the matter they should speak the truth. But they said: 'through that oath, which we have given to our lord, we know […]'). For similar examples from later Carolingian Italy, see Esders, Haubrichs, and Bassetti, *Verwaltete Treue*.

172 *Capitulare missorum generale*, ed. by Boretius and Krause, no. 33, c. 4, p. 92, cited in n. 54 above.

173 Innes, 'Charlemagne, Justice', pp. 180, 184.

174 See also Nelson, 'The Voice of Charlemagne', p. 79 noting how 'the capitulary form was bursting at the seams'.

Conclusion

De fidelitate promittenda domno imperatori

The fidelity to be promised to the lord emperor in 802 thus depended on a vastly expanded understanding of loyalty. First, and most obviously, it turns the entire disparate body of capitulary material into a matter of fidelity. This is not a reflection of a carefully defined legal theory, but rather of a guiding principle that loyalty to the king is a political necessity. This emphasis on the centrality of loyalty also emerges from the language of the royal power to command, the ban, which moves semantically from being a term of command to the fine paid for infringing on such.[175] At least in the thought-world of the capitularies, there is no clear distinction between the king's power to command and the recompense due him for any failure to carry out his orders; a failure to do as commanded is by definition a failure of loyalty.[176] We can discover this attitude articulated beyond the capitularies as well. For example, in the context of a convoluted dispute about a criminal cleric who had been convicted by bishop Theodulf of Orléans, but had fled for sanctuary to St Martin, Tours, the court clearly articulated the importance of obedience.[177] The case raised multiple legal issues, some of which Charlemagne and his court responded to in a letter to Alcuin and in later capitularies.[178] However, the key point that the letter

175 *Capitula cum primis constituta*, ed. by Boretius and Krause, no. 52, c. 6, p. 140: 'De fugitivis hominibus ut, ubicumque inventi fuerint, ille qui eum retinet bannum dominicum cogatur, et ille fugitivus absque dubio in patriam ad dominum suum revertatur' (About fugitive men, that wherever they should be found, he who keeps him back should be forced to pay the lordly ban, and that fugitive without doubt should be returned to his lord in his homeland); *Capitulare missorum*, ed. by Boretius and Krause, no. 40, c. 20, p. 116: 'Ut nullus ad placitum banniatur, nisi qui causam suam quaerere aut si alter ei quaerere debet, exceptis scabineis septem qui ad omnia placita praeesse debent' (That no one is commanded [to attend] the assembly, unless who ought to make a legal claim for himself or if someone else has a claim against him, except for seven *scabini* who ought to be present at all assemblies). See also Esders, '*Sacramentum fidelitatis*', Chapter 3.

176 For the long development and deep resonance of this idea, see Esders, '*Sacramentum fidelitatis*', Chapter 3.

177 The case is known via five letters included in the corpus of Alcuin's letters, namely, Letters 245–49, pp. 393–98, 398–99, 399–401, 401, 401–04, respectively. Letters 245 and 246, which are largely similar, are letters from Alcuin to his students Candidus/Wizo and Nathan/Fridugis and then to an unnamed bishop, laying out his views on the case. Letter 247 is the response in Charlemagne's name (unfortunately, we do not know its author). Letter 248 to Arn of Salzburg is thought to be related to the case, although this is uncertain. It records Alcuin's sending away of a pupil for safety. Letter 249 is from Alcuin to Charlemagne in the aftermath of a visit from a royal missus. For discussion, see Bidu, 'Alcuin, Charlemagne'; Collins, *The Carolingian Debate*, Chapter 4; Kramer, 'The Exemption'; Meens, 'Sanctuary, Penance'; Noizet, 'Alcuin contre Théodulphe'; Wallach, *Alcuin and Charlemagne*, pp. 99–140. For the emphasis on obedience, see Bidu, 'Alcuin, Charlemagne', pp. 130, 134 and Davis, 'Crime in the Carolingian World', pp. 22–23.

178 See especially Meens, 'Sanctuary, Penance'.

raises in the midst of the dispute is that Charlemagne gave an order and Alcuin ignored it.[179] Legal theories mattered, but they mattered less than the fundamental principle of loyalty; in a sense, fidelity trumps law. Second, scholarship has emphasized the military implications of the oath,[180] appropriately so, but the oath as reimagined by Charlemagne's court was far more broadly understood. Finally, this way of understanding all capitularies as being implicated in fidelity creates a model of loyalty that was flexible and that developed over time. The capitularies were not an unchanging legal codification; they were rather statements, of variable nature, that were articulated at particular moments, some meant to have lasting impact and others obviously ephemeral.[181] The body of capitularies produced by Charlemagne was never collected into a single corpus because there was no reason to do so. The capitularies were produced and used piecemeal. What the key points contained in the capitularies were would thus change over time and according to the circumstances of the person using them, and thus the precise details of what loyalty meant would also develop. This does not mean that some basic points were not consistently embraced. As the *Capitulare missorum generale* itself insists, fidelity begins with not harming the king or consenting to such harm.[182] But the precise contours of the political requirements which were linked to loyalty, when seen as a reflection of the capitularies, left room for change and flexibility, as those faithful to Charlemagne sought to demonstrate that loyalty in relationship

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179 Alcuin, *Letters*, letter 247, p. 400: 'Sed et valde miramur, quur vobis solis visum sit nostrae auctoritatis sanctioni et decreto contraeundum; cum liquido pateat, et ex consuetudine veteri et ex constitutione legum latorum decreta rata esse debere, nec cuiquam permissum illorum edicta vel statuta contemnere. Et in hoc satis mirare nequivimus, quod illius scelerati hominis precibus, quam nostrae auctoritatis iussionibus obtemperare maluistis, cum nunc clarissime liqueat cum eodem homine amorem discordiae ex inruptione caritatis de hoc loco veluti egredi' (Trans. by Allott, *Alcuin of York*, p. 122, with emendations: 'We are amazed that you alone should think fit to go against the sanction of our authority and contradict [our] decree when it is transparently clear both from ancient practice and from the nature of enacted law that decisions must be binding and no one may disregard their edicts and statutes. We are more than amazed that you preferred to comply with the entreaties of this wretch than with our orders, for it is now quite clear that with this man a passion for discord is emanating, as it were, from this place through a breach of love').

180 On the military roots of the oath of fidelity, see Esders, 'Les origines militaires'; Esders, 'Rechtliche Grundlagen'; Esders, 'Treueidleistung'; Esders, '*Sacramentum fidelitatis*', passim.

181 For example, a plan to hold an assembly at a given date is clearly time-bound: *Capitulare missorum*, ed. by Boretius and Krause, no. 40, c. 29, p. 116. Other regulations seem clearly intended to be of longer duration, either because they are consistently repeated (such as the need not to take bribes) and/or because they at least seem to announce a general principle, such as the need to care for the poor and weak, a responsibility frequently sounded in a range of sources beyond the capitularies.

182 *Capitulare missorum generale*, ed. by Boretius and Krause, no. 33, c. 2, p. 92: 'tantum fidelitate domno imperatori usque in vita ipsius, et ne aliquem inimicum in suum regnum causa inimicitiae inducat, et ne alicui infidelitate illius consentiant aut retaciat'. Full text and translation can be found in the appendix.

to a malleable standard of what loyalty entailed. What emerges from this form of fidelity is an ongoing relationship between king and people, in which the specifics of how loyalty was acted out could, within set parameters, be negotiated and could change.

Where the real novelty and importance of the oath of 802 lies is in its linking of fidelity to the broader programme of Carolingian governance, specifically in the form of adherence to the capitularies. The oath, in its broad and ambitious understanding of fidelity, its lack of specificity in precise terms of enforcement, its embeddedness in processes of community-building, and its pushing against the bounds of the possible, was entirely typical of Charlemagne's rulership. It emerged from political practices and ideas that shaped the reign as a whole, but coalesced into a new form in 802. What Charlemagne did with the oath is in line with what he did with the capitularies generally: to take an old tool of rulership and expand it to new ends, even when such new ends strained at the boundaries of the possible. As such, the oath as reimagined in 802 encapsulated the ambitious vision and irregular enforcement that characterized Charlemagne's project of empire.

This penetrating but flexible understanding of the oath thus fits well with the nature of Charlemagne's reign, in its often-veiled innovations, its reactiveness, its irregularity, and its assertion of force. All of this may have worked well for Charlemagne. But these habits also set dangerous precedents, and the same is true for the oath. Charlemagne's framing of the oath may have been ambitious, but it was also risky.[183] During his own reign, this way of thinking about oaths could work, because it was held together by the loosely defined but deeply thought-out vision of loyalty expressed in the capitularies, one that could encompass a wide spectrum from infidelity to treason, without clearly stating firm lines between the two. Such a way of thinking about oaths and fidelity ceased to hold the political community together during the reign of Charlemagne's successor Louis the Pious. Indeed, the frequent oaths that Louis demanded of his aristocrats, and the perjury attendant on replacing one oath with another, became one of the major points of attack against Louis.[184] Mayke de Jong has elegantly traced

183 I owe this point to Stefan Esders.

184 *Relatio Episcoporum*, c. 2, ed. by Booker, pp. 16–17: 'Quod auctor scandali et perturbator pacis ac uiolator sacramentorum existendo pactum, quod propter pacem et unanimitatem imperii ecclesiaeque tranquilitatem communi consilio et consensu cunctorum fidelium suorum fuerat inter filios suos factum et per sacramentum confirmatum, super illicita potestate corruperit; et in eo quod fideles suos in contrarietatem eiusdem primi pacti et iuramenti aliud sacramentum iurare compulerit, in periurii reatum pro tantorum uiolatione sacramentorum procul dubio inciderit: et quantum hoc factum Deo displicuerit, liquido claret, quia postea nec ipse nec populus sibi subiectus pacem habere meruit, sed omnes in perturbationem poenam peccati sustinendo iusto Dei iudicio inducti sunt' (Trans. by Booker, *Past Convictions*, p. 261: 'That he (Louis), being an author of scandal, disturber of the peace, and violator of oaths, broke on unlawful authority the treaty, which, for the purpose of the peace and unity of the empire and the tranquility of the church [and] by the

how a discourse of admonition that began to emerge under Charlemagne was developed into a full political philosophy under Louis, but one that he lost control over and which was used against him.[185] Similarly, the new expansive way of thinking about oaths that emerged during the reign of Charlemagne gave Louis much to build on, but also became a tool that could be used against him. Oaths of fidelity could serve to lead the political community to salvation, or to judgement.

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resolution of the community and the consent of all his faithful men, had been made among his sons and confirmed through an oath. Because he compelled his faithful men to swear another oath, in opposition to that same first treaty and oath, without doubt he incurred the sin of perjury on account of the violation of such great oaths. Indeed, how much this deed was displeasing to God is perfectly clear, since afterward neither he nor the people subject to him deserved to have peace, but all were led into confusion, suffering by a just judgment of God the punishment of sin'). See also Esders, 'Loyalty Oaths', p. 127.

185 De Jong, *The Penitential State*.

Appendix: Key Capitulary Passages on the Oath during the Reign of Charlemagne

This appendix offers a full translation of the 789 *Capitulare missorum*, which first (explicitly) addressed the oath during the reign of Charlemagne and a translation of select passages from the *Capitulare missorum generale* of 802 that is the main focus of this chapter. In the case of the latter capitulary, I translate here only passages particularly important for my analysis. Full translations can be found in Dutton, *Carolingian Civilization*, pp. 69–78 (revised from a translation by D. C. Munro); King, *Charlemagne*, pp. 233–42; and a partial translation in Loyn and Percival, *The Reign of Charlemagne*, pp. 74–79. While I have consulted those translations, these given here are my own. Both of these capitularies, especially the *Capitulare missorum generale*, pose a number of problems of interpretation. When these are particularly relevant for the understanding of the passage or my analysis thereof, I signal this by putting text in brackets or addressing the matter in a footnote if more substantial discussion is needed. My goal in offering these translations is to get as close as I can to the meaning of the texts as we have them. These are thus pragmatic rather than elegant translations.

Capitulare missorum, ed. by Boretius and Krause, no. 25, pp. 66–67:[186]

De singulis capitulis quibus domnus rex missis suis praecepit, quomodo illa sacramenta debeant audire et facere.

(About the several chapters by which the lord king commanded to his *missi* how they ought to hear and to make those oaths.)

c. 1: Quam ob rem istam sacramenta sunt necessaria, per ordine ex antiqua consuetudine explicare faciant, et quia modo isti infideles homines magnum conturbium in regnum domni Karoli regi voluerint terminare et in eius vita consiliati sunt et inquisiti dixerunt, quod fidelitatem ei non iurasset.

(On account of that matter because of which oaths are necessary, they [the *missi*] should explain in order according to ancient custom, because in this way those unfaithful men wanted to carry out [literally, constrict] a great disturbance in the kingdom of lord king Charles and they took counsel and investigated [the possibility of threatening] his life, because they said that they [literally, he] had not sworn fidelity to him.)[187]

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186 A far smoother and more idiomatic translation can be found in Nelson, *King and Emperor*, pp. 264–66.

187 The *MGH* edition punctuates: 'magnum conturbium in regnum domni Karoli regi voluerint terminare et in eius vita consiliati sunt et inquisiti dixerunt, quod fidelitatem ei non iurasset'.

c. 2: Quomodo illum sacramentum iuratum esse debeat ab episcopis et abbatis sive comitibus vel bassis regalibus necnon vicedomini, archidiaconibus adque canonicis.

(How that oath ought to be sworn by bishops and abbots and also counts as well as royal vassals and also vice-lords, archdeacons, and canons.)

c. 3: Clerici qui monachorum nomine non pleniter conversare videntur et ubi regula sancti Benedicti secundum ordinem tenent, ipsi in verbum tantum et in veritate promittant, de quibus specialiter abbates adducent domno nostro.

(Clerics who do not seem to fully conduct themselves in accordance with the name of monks and where they hold rules according to the order of St Benedict, they should promise as much in word as in truth, about these they [the *missi*] should lead the abbots to our lord.)

c. 4: Deinde advocatis et vicariis, centenariis sive fore censiti presbiteri atque cunctas generalitas populi, tam puerilitate annorum XII quamque de senili, qui ad placita venissent et iussionem adimplere seniorum et conservare possunt, sive pagenses, sive episcoporum et abbatissuarum vel comitum homines, et reliquorum homines, fiscalini quoque et coloni et ecclesiasticis adque servi, qui honorati beneficia et ministeria tenent vel in bassallatico honorati sunt cum domini sui et caballos, arma et scuto et lancea spata et senespasio habere possunt: omnes iurent. Et nomina vel numerum de ipsis qui iuraverunt ipsi missi in brebem secum adportent; et comites similiter de singulis centinis semoti, tam de illos qui infra pago nati sunt et pagensales fuerint, quamque et de illis qui aliunde in bassalatico commendati sunt. Et si fuerint aliquis qui per ingenio fugitando de comitatu ad aliud comitatu se propter ipsum sacramentum distulerit aut per superbia iurare noluerint, semoti per brebem renuntiare sciant, et tales aut per fideiussores mittant aut si ipsi fideiussores non habuerint qui in praesentia domni regis illos abducant, sub custodia servent; aut si in illo vicinio habitare voluerint, sicut caeteri iurent. Et si fugitivum quis devenerint, domno regi nuntiatum fiant per ipsos missos.

(Then the advocates and the *vicarii*, *centenarii* and the priests outside [outside regular congregations?][188] and the general population, both

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The placement of the comma after dixerunt could suggest that the passage be translated as 'they said they took counsel and investigated [threatening] his life, because they [literally, he] had not sworn fidelity to him'. I think that taking dixerunt with quod fidelitatem better represents the sense of the (admittedly ungrammatical) chapter.

188 Britta Mischke has pointed out to me that one expects here another office-holder, not a cleric, and that perhaps a more logical phrase could be 'seu reliqui praepositi'. This is a useful

boys of age twelve up to elders, who should come to the *placita* and are able to carry out and preserve the command of lords, whether locals [*pagenses*] or men of the bishops or abbesses or counts, and the remaining men, those living on fiscal estates and *coloni* and ecclesiastics [men living on ecclesiastical estates] and *servi*, who are honoured with benefices and hold offices [*ministeria*] or who are honoured in vassalage with their lords and are able to have horses, arms and a shield and sword [*lancea spata*; conceivably a longsword or a sword and lance] and sax:[189] all should swear. And the names and number of those who swore those *missi* should bring with them in *breves* [short reports];[190] and similarly counts [should record the names] from each hundred individually, both of those who were born in the *pagus* and are locals, as well as those from elsewhere who were commended in vassalage. And if there should be anyone who fled from one county to another through treachery in order to disdain to [perform] this oath or did not want to swear because of pride, they [*missi*] should know [that they should] announce each in a *breve*, and they should send them [to the king] with their oath-helpers or if they do not have oath-helpers who they can lead [or who should lead them] into the presence of the lord king, they [the *missi*] should hold them in custody, or, if they want to live in that region, just like the others, they should swear. And if anyone should escape in flight, let this be announced to the lord king by those *missi*.)

c. 5: Explicare debent ipsi missi, qualiter domni regi dictum est, quod multi se conplagunt legem non habere conservatam, et quia omnino voluntas domni regis est, ut unusquisque homo suam legem pleniter habeat conservata; et si alicui contra legem factum est, non est voluntas nec sua iussio. Verumtamen si comis aut missus vel quislibet homo hoc fecit, fiat annuntiatum domni regi, quia ipse plenissime haec emendare vult. Et per singulos inquirant, quale habeant legem ex nomine. Et nullatenus sine comite de ipso pago istam legationem perficiant, excepto si ille comis in alia utilitate domni regis non fuerit aut aliqua infirmitates eum non detenuerit quod ibi esset non habeat.

(These *missi* ought to explain how it has been said to the lord king that many complain that their law has not been preserved for them, and that it is in all ways the will of the lord king that each man should

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suggestion, but it is hard to resolve the language as we have it into something coherent. It is also possible that some kind of clerics are indeed intended, as c. 2 of the capitulary addresses both lay officials and clerics in the same chapter. I have thus offered an admittedly not especially satisfying rendering of what the manuscript says, but I cannot provide a fully convincing explanation of the phrase.

189 On the armour called for in this passage, see Coupland, 'Carolingian Arms and Armor', p. 30.

190 On this term, see McCormick, *Charlemagne's Survey*, pp. 130–33.

have his law fully preserved. And if something has been done to anyone contrary to the law, it is not by his will nor his command. Nevertheless, if a count or a *missus* or whatever man does this,[191] it should be announced to the lord king, because he most fully wants to emend this. And they should inquire of each [making a complaint] individually, what kind of law they have by name. And by no means should they carry out this legation without the count from that *pagus*, unless if that count should be [occupied with] some useful matter for the lord king or if he should have some infirmity because of which he is not able to be there.)

c. 6: Ut parata servitia habeant ipsi missi una cum comitibus qui in eorum ministeriis fuerint, ut omnes generaliter hoc anno veniant hostiliter in solatio domni regis sicut sua fuerit iussio, et pacem in transitu custodiant infra patria; qui per epistolas suas de voluntate sua illis significare vult, quando vel ubi debeant inter se coniungi.

(Those *missi* together with the counts who [serve] in their *ministeria* should have supplies prepared, so that everyone in general should come to the army this year for the support of the lord king, just as is his command, and they should preserve peace while in transit within the *patria*; who wants to indicate to them [the *missi*] through their letters their will for when and where they ought to meet together [with them, may do so].)[192]

***Capitulare missorum generale*, ed. by Boretius and Krause, no. 33, pp. 91–99:**

c. 2: De fidelitate promittenda domno imperatori. Precepitque, ut omni homo in toto regno suo, sive ecclesiasticus sive laicus, unusquisque secundum votum et propositum suum, qui antea fidelitate sibi regis nomine promisissent, nunc ipsum promissum nominis cesaris faciat; et hii qui adhuc ipsum promissum non perficerunt omnes usque ad duodecimo aetatis annum similiter facerent. Et ut omnes traderetur publice, qualiter unusquisque intellegere posset, quam magna in isto sacramento et quam multa conprehensa sunt, non, ut multi usque nunc extimaverunt, tantum fidelitate domno imperatori usque in vita ipsius, et ne aliquem inimicum in suum regnum causa inimicitiae inducat, et ne alicui infidelitate illius consentiant aut retaciat, sed ut sciant omnes istam in se rationem hoc sacramentum habere.

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191 Nelson, *King and Emperor*, p. 266 translates the start of this sentence as: 'But if that has happened, let the count or *missus* report it'. While this does make sense as to what the chapter should logically say, I think that is not what its admittedly difficult grammar in fact suggests.

192 Nelson, *King and Emperor*, p. 266 translates the final clause: 'and he (the king) intends to let them know by letter about his will as regards when and where they must assemble'. This is also a possible reading.

> (About the fidelity to be promised to the lord emperor. And he commanded, that every man in his entire kingdom, whether ecclesiastic or lay, each according to his vow and way of life, who previously swore fidelity to him in his name of king, now should make this promise in the name of Caesar; and those who previously did not carry out this promise, all from the age of twelve up should do similarly. And it should be explained to all publicly, so that everyone is able to understand, how great and how many matters are included in this oath, not, as many have thought up to now, only [preserving] fidelity to the lord emperor in terms of his life, and of not leading any enemy into his kingdom for reason of enmity, or not consenting to or keeping silent about the infidelity of anyone, but all should know this oath to hold this meaning.)[193]

c. 3: Primum, ut unusquisque et persona propria se in sancto Dei servitio secundum Dei preceptum et secundum sponsionem suam pleniter conservare studeat secundum intellectum et vires suas, quia ipse domnus imperator non omnibus singulariter necessariam potest exhibere curam et disciplinam.

> (First, that everyone should strive to fully maintain himself in the holy service of God according to God's precept and according to his own *sponsio* and according to his understanding and strength, because the lord emperor cannot provide the necessary care and discipline to everyone individually.)

c. 32: Homicidia, pro quibus multitudo perit populi christiani, omni contextatione deserere ac vetare mandamus; qui ipse Dominus odia et inimicitie suae fidelibus contradixit, multommagis homicidia. Quomodo enim secum Deum placatum fore confidit, qui filium suum proximum sibi occiderit? Qualiter vero Christum dominum sibi propitium esse arbitretur, qui fratrem suum interficerit? Magnum quoque et inhabitaculum periculum est cum Deo patre et Christo coeli terrae dominatore, inimicitias hominum movere: quos aliquit tempus latitando effugere potest, sed tamen casu aliquando in manus inimicorum suorum incidit; Deum autem ubi effugere valet, cui omnia secreta manifesta sunt? qua temeritate eius iram quis extimat evadere? Quapropter ne populus nobis ad regendum commissos hoc malo pereat, hoc omni disciplina devitare previdimus; quia nos nullo modo placatum vel propitius habere, qui sibi Deum iratum non formidaverit: sed saevissima districtione vindicare vellimus qui malum homicidii ausus fuerit perpetrare. Tamen ne etiam peccatum adcrescat, ut inimicitia maxima inter christianos non fiat, ubi

193 A more fluid translation of Chapters 2 and 3 can be found in Nelson, *King and Emperor*, p. 396.

suadentes diabulo homicidia contingant, statim reus ad suam emendationem recurrat, totaque celeritate perpetratum malum ad propinquos extincti digna conpositionem emendet. Et hoc firmiter banniamus, ut parentes interfecti nequaquam inimititia super commissum malum adaugere audeant, neque pacem fieri petenti denegare, sed datam fidem paratam compositionem recipere et pacem perpetuam reddere, reum autem nulla moram compositionis facere. Ubi autem hoc peccatorum merito contingerit, ut quis vel fratres vel propinquum suum occiderit, statim se ad penitentia sibi compositam sumit, et ita ut episcopus eius sibi disponat absque ulla ambiguitate: sed iuvante Domino perficere suum remedium studeat, et componat occisum secundum legem et cum propinquis suis se omnino complaceat, et data fidem ullam inimicitiam exinde movere nemo audeat. Qui autem digna emendationem facere contemserit, hereditatem privetur usque ad iudicium nostrum.

(Homicides, on account of which many Christian people perish, we command with all entreaty that these are abandoned and forbidden; because the Lord himself opposes hatreds and enmities of his faithful, all the more homicides. For how should he trust that God should be pleased with him, who killed his son near to him? Indeed, how should he judge Christ the Lord to be propitious to him, who killed his brother? It is a great and unprecedented (*inhabitaculum*) danger in regard to God the father and Christ the dominator of heaven and earth, to provoke enmities among men: they are able to flee them (their victims and victims' families) for some space of time, but nevertheless by some chance he might still fall in the hands of his enemies; but where is he able to flee from God, to whom all secrets are manifest? By what temerity does he esteem himself able to escape God's anger? Therefore, lest the people committed to us to be ruled should perish on account of this evil, we command to avoid this with all discipline; because we in no way are able to have [God] pleased and propitious, who does not fear having God angry at him: but we want to punish with most fierce severity who should have dared to perpetrate the evil of homicide. Nevertheless, lest the sin should even increase, so that there should not be great enmity among Christians, when homicides should happen by the persuasion of the devil, immediately the criminal should return to his emendation, and with all speed he should emend the evil perpetrated to the relatives of the dead with worthy compensation. And this we firmly command by our ban (*banniamus*), that the relatives of the slain should by no means dare to intensify enmities in addition to the committed evil, nor deny to make peace with the one seeking, but faith having been given to receive the prepared compensation and to render perpetual peace, and the criminal should make compensation without any delay. But when it should happen due to the sins, that whoever may have killed

his brothers or relatives, immediately he should accept the penance set for him, and thus that his bishop should arrange [his penance] without any ambiguity: but with the help of God he should strive to carry out his remedy, and he should pay for the killed according to the law and he should reconcile himself with his relatives fully, and having given faith no one should dare to provoke any enmity from thence forth. But who scorns to make a worthy emendation, he should be deprived of his hereditary property until he comes to our judgement.)[194]

c. 39: Ut in forestes nostras feramina nostra nemine furare audeat, quod iam multis vicibus fieri contradiximus; et nunc iterum banniamus firmiter, ut nemo amplius faciat, sicut fidelitatem nobis promissa unusquisque conservare cupiat, ita sibi caveat. Si quis autem comis vel centenarius aut bassus noster aut aliquis de ministerialibus nostris feramina nostra furaverit, omnino ad nostra presentia perducantur ad rationem. Caeteris autem vulgis, qui ipsum furtum der feraminibus fecerit, omnino quod iustum est conponat, nullatenusque eis exinde aliquis relaxetur. Si quis autem hoc sciente alicui perpetratum, in ea fidelitate conservatam quam nobis promiserunt et nunc promittere habent, nullus hoc celare audeat.

(That in our forests no one should dare to steal our beasts, which we already have commanded to be done many times; and once again we firmly command, that no one do this any longer, and just as each wants to preserve the fidelity promised to us, thus he should avoid [such theft]. But whichever count or *centenarius* or our vassal or any of our ministers should steal our beasts, they are to be led to our presence [to render] account. But other common people, who commit such theft of beasts, they should pay in all ways what is just, and not at all should anything be lessened on this account. But if anyone perpetrates this with another knowing, he should not dare to hide this, because of preserving the fidelity which they promised to us and which they now have to promise.)

c. 40: Novissime igitur ex omnibus decretis nostris nosse cupimus in universo regno nostro per missos nostros nunc directos, sive inter ecclesiasticos viros, episcopos, abbates, presbiteros, diaconus, canonicos, omnes monachos sive sanctimoniales, qualiter unusquisque in suum ministerium vel professione nostrum bannum vel decretum habeat conservatum, vel ubi civibus ex his dignum sit ex bona voluntate sua gratias agere vel adiutoria inpendere vel ubi aliquid adhuc sit necessitatis emendare. Simili autem laicos et in omnibus ubicumque

194 I would like to thank Angela Zielinski Kinney for her advice on translating this passage.

locis, si de mundeburde sanctorum ecclesiarum vel etiam viduarum et orphanorum seu minimum potentium adque rapina necnon de exercitali placito instituto, et super ipsis causis, qualiter preceptum vel voluntate nostrae sint obhedientes, vel etiam qualiter bannum nostrum habeat conservatum, qualiterque super omnia unusquisque certamen habeat in sancto servitio Deo seipsum custodire: ut hec omnia bona et bene sint ad Dei omnipotentis laudem, et gratias referamus, ubi dignum est; ubi autem aliquid inultum esse credimus, sic ad emendandum omne studio et voluntate certamen habeamus, ut cum Dei adiutorio hoc ad emendationem perducamus et ad nostra eterna mercedem et omnium fidelium nostrum. Similiter et de comitibus vel centenariis, ministerialibus nostris, inter nos omnia supradicta nosse cupimus feliciter.

(Lastly therefore from all our decrees we want to know in our entire kingdom through our *missi* now sent out, whether among ecclesiastical men, bishops, abbots, priests, deacons, canons, all monks and nuns, how each one in his ministry and way of life has preserved our command or decree, and where it is appropriate out of good will to give thanks to people or to provide aid or where there is something still in need, to emend it. And similarly lay people and in all places everywhere, whether about the protection of the holy churches or widows and orphans as well as the less powerful and about rapine as well as the established massing of the army, and about those [other] matters, how they have been obedient to our command and will, and also how they have preserved our ban, and how above all each has fought to preserve himself in the holy service of God: so that we should give thanks for all these good things and [things done] well for the praise of omnipotent God, where it is appropriate; but where we believe something to be wrong, we will make an effort to bring this to emendation with all zeal and will, so that with the aid of God we bring this to emendation for our eternal reward and that of all our *fideles*. Similarly about counts and *centenarii*, our ministers, we want to know among us all the things noted above, happily.)

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HEIKO BEHRMANN

Oath-Taking and Perjury in the Annals of St Bertin

Tracing the Political Thought of Hincmar of Reims

Introduction

Annals present a challenging genre of historical writing, especially if we want to explore the deeper intentions behind these journal-like yearly records. Lawrence Stone defines a narrative as 'the organization of material into a chronological sequential order and the focusing of the content into a single coherent story'.[1] And for William H. Dray, 'a story confers both shape and meaning on events; it records not one thing after another […] but one thing because of another'.[2] Therefore annals are often not regarded as constructed narratives. For David Dumville, they are not even a distinct historical genre,[3] and with that he contradicts, for example, Rosamond McKitterick, who acknowledges annals not just as a 'new narrative genre',[4] but as the outstanding innovation of Carolingian historiography.[5]

Other studies seem to confirm this assumption. As Sarah Foot has shown, annals should not be seen as simple yearly records. Narratives with certain intentions are indeed to be found within annals and she recognizes them in the chronological framework itself. For Foot, the 'meaning of the form is Christological',[6] and she points out that the authors of annals did construct a significant plot via careful selection, omission, and sensitive

* In researching and writing this chapter I have benefitted from the generous support of the Gerda Henkel Stiftung. English translations of Latin quotes are mine unless indicated otherwise.

1 Stone, 'The Revival of Narrative', p. 3.

2 Dray, 'On the Nature and Role of Narrative in History', p. 28.

3 According to Dumville, 'What is a Chronicle?', pp. 4–5, annals represent a form of chronicle; he distinguishes both from the genre of *historia* and ascribes to the latter a more moralizing interpretation of the depicted events.

4 McKitterick, 'Constructing the Past in the Early Middle Ages', p. 103.

5 Innes and McKitterick, 'The Writing of History', pp. 199–201. Regarding the differentiation of *historia*, *annales* und *chronicon* see also Guenée, 'Histoires, annales, chroniques'.

6 Foot, 'Finding the Meaning of Form', p. 102.

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The Oath in Late Antiquity and the Early Middle Ages: Religious Act, Social Bond, Holy Sacrament, ed. by Stefan Esders and Gerda Heydemann, CELAMA 46 (Turnhout: Brepols, 2026), pp. 201–221 BREPOLS PUBLISHERS 10.1484/M.CELAMA-EB.5.152876

interpretation. And Matthias Becher convincingly demonstrates that the *Annales Regni Francorum* were indeed not written year-by-year to simply record past events but were rather carefully constructed to disseminate a certain picture of the past and the concept of rulership of Charlemagne and his inner circle.[7]

A common theme in such narratives is so-called 'poetic justice', most prominently represented in the histories written by Nithard. One of his key intentions was to show that Lothar I continuously broke his oaths without remorse.[8] This was an indicator of his unworthiness, his eventual defeat against his brothers therefore constituting a just and divine punishment. Since Hincmar of Reims was intensively concerned with perjury in many of his texts,[9] we would expect some poetic justice of a similar kind within the Annals of St Bertin, once Hincmar took over its authorship in 861. Yet, although the death of Lothar II and his magnates is described as a *iudicium Dei* in light of the false assurances he gave to Pope Hadrian II[10] — namely that he had had no further contact with Waldrada, with whom he in fact continued an illegitimate relationship during her excommunication — and of the oaths sworn by his *fideles* four years before,[11] perjury does not emerge as a central concern in the Annals of St Bertin. The term *periurium* appears only once (in its verbal form *periurare*), whereas he draws twice on the legal term *infidelitas*. Besides the one-time usage of the terms *desertare*, *subtrahere*, and *relinquere*, he draws three times on *deficere*. A clear pattern cannot be identified.

To some extent we may attribute this to the fact that Hincmar did not construct this work in hindsight, for the most part. As Marlene Meyer-Gebel was able to elucidate for the section written by Hincmar of Reims, some sections — especially in the last years of his archbishopric — were indeed written *en bloc* and in hindsight as longer passages, but the majority of the annual reports were recorded very soon after the event or at least soon after receiving news of it.[12] Hence, the construction of a retrospective narrative was hardly possible. Nevertheless, the annals written by Hincmar can clearly be identified as a mirror of his personality and his political thought.[13] Understanding it as such, we can assume that Hincmar followed particular guiding principles in the Annals of St Bertin just as he did elsewhere in his oeuvre. In this chapter I will attempt to explore these principles on the basis of Hincmar's concepts of oath and perjury and its embeddedness within

7 Becher, *Eid und Herrschaft*.
8 See Scharff, *Die Kämpfe der Herrscher und der Heiligen*, p. 159.
9 He even collected biblical and patristic quotes (and a contemporary poem) regarding this topic in his so-called *periurium*-dossier, on which he could draw on several occasions.
10 *Annales Bertiniani*, ed. by Grat and others, *a*. 869, pp. 154–56.
11 *Annales Bertiniani*, ed. by Grat and others, *a*. 865, pp. 119–21.
12 Meyer-Gebel, 'Zur annalistischen Arbeitsweise Hinkmars von Reims', p. 107.
13 Löwe, 'Geschichtsschreibung der ausgehenden Karolingerzeit', pp. 3–4.

the *Annales Bertiniani*. By means of this examination I hope to provide insight into the mind of the Archbishop of Reims as well as the concept of the oath in the later Carolingian era. After demonstrating that Hincmar demanded a greater sensitivity concerning the oath-taking by the king, we will explore his perspective on episcopal oaths. In doing so, we recognize striking parallels which can be explained by the concept of the royal and episcopal *ministerium*, to which the joint administration of Christianity applied. But first we must become aware of the terminological difficulties inherent in dealing with the oath in the Middle Ages.

Terminological Difficulties

Iuramentum, *sacramentum*, *professio*, *promissio* — there are a few terms that can characterize solemn pledges, but this does not necessarily mean that contemporaries used them synonymously. The distinction between a *sacramentum laicorum* and a *professio episcoporum* in Gondreville 872 unambiguously demonstrates this assumption. And even if the underlying intentions are not always clear for us, we should at least keep this in mind while working with the sources in question. With good reason, Charles Odegaard demanded that:

> We modern historians should cling as closely as possible to the words of the Carolingians; for every gap between their words and ours, there may occur unsuspected a further gap between their concept and ours. To be certain of recapturing the thought of men long dead, we must not only employ that historical imagination by which we guess at their concepts; we must also check our hypothesis at every step against what they have actually said, word for word, for their words are closer to their thoughts than ours can ever be. Indeed, now that they themselves are dead, their own words are the tests which in the last analysis our reconstructions of their thoughts must pass.[14]

And with this in mind, it is remarkable that since Hincmar took over the authorship of the Annals in the year 861, oaths are — with the exception of a fully quoted papal letter — solely named *sacramentum*. This is a circumstance that is noteworthy concerning the complete works of the archbishop. In his treatise regarding the divorce case of Lothar II,[15] he significantly references 'The oath, which is usually called *sacramentum*.' Subsequently he states that ordeal and oath 'survey through the eyes of the faith the things, which cannot be seen through earthly eyes'.[16] Hence, he alludes to a theology of sacraments. He perceives the oath, being the intersection between the

14 Odegaard, *Vassi and Fideles in the Carolingian Empire*, p. 12.

15 Hincmar of Reims, *De divortio Lotharii regis et Theutbergae reginae*, ed. by Böhringer.

16 Hincmar of Reims, *De divortio*, ed. by Böhringer, Responsio 6, p. 147: 'iuramentum, quod

world unseen and the earthly world, as a real sacrament, much like baptism and the Eucharist.[17] Given the fact that Hincmar constantly uses the term *sacramentum*, it should therefore attract our attention when he is apt to avoid such an unambiguous characterization. Indeed, this seems to be especially the case when approaching royal oaths.

Oath formulas are recorded in the accounts of royal meetings in the years 842, 854, 860, 867, and 870.[18] Regarding the Strasbourg Oaths in 842, we depend on the account of Nithard, since unfortunately no document survives. According to Nithard, besides the swearing of their *fideles*, Charles the Bald and Louis the German did take mutual oaths in person.[19] Concerning a meeting between Charles the Bald and Lothar II in Liège in the year 854, the terminology is similarly clear. The capitulary states: 'This is the oath (*sacramentum*) they swore to each other'.[20]

Regarding the Peace of Koblenz in 860, Hincmar of Reims can most likely be viewed as being in charge, and here, a distinct characterization of the oath as a *sacramentum*, contrary to the historiographical accounts, is not to be found within the capitulary. While the superscription *Sacramentum firmitatis Hludowici regis* is a fabrication of the first editor Jacques Sirmond,[21] the text itself only refers to a *promissio*. The same applies to the secret pact which was arranged between Charles the Bald and Louis the German in the year 867. The brothers secured for themselves the division of the realm of their nephew Lothar II two years prior to his death and Hincmar of Reims was one of the few participants. Here as well we seek for a *sacramentum*, without success. The capitulary simply uses the verb *promittere*.[22]

Yet both the solemn pledge of Koblenz and Metz conclude with a fairly clear reference: *Sic me Deus adiuvet et istae sanctae reliquiae* — 'So help me God and these holy relics'.[23] In the early Middle Ages it became common to take oaths upon relics, with the saints serving as guarantors of the given promise. As the 'agents' of divine power, the saints should punish the perjurer who dared to swear falsely on their relics. A capitulary of 803 declared that 'every oath (*sacramentum*) is to be sworn in the church or upon relics; [...] so God and the saints, whose relics those are, may help

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usitato nomine appelatur et sacramentum, quia in eo illud oculis fidei pervidetur, quod corporis oculis non conspicitur'.

17 See Prodi, *Das Sakrament der Herrschaft*, pp. 64–65.

18 See Schneider, *Brüdergemeine und Schwurfreundschaft*, p. 28.

19 Nithard, *Historiarum libri quattuor*, ed. by Müller, pp. 35–37.

20 *Hlotharii et Karoli conventus Leodii habitus*, ed. by Boretius and Krause, no. 207, p. 78: 'Hoc est sacramentum, quod sibi mutuo iuraverunt'.

21 *Hludowici, Karoli et Hlotharii II. conventus apud Confluentes*, ed. by Boretius and Krause, no. 242, p. 154, n. o.

22 *Hludowici et Karoli Pactiones Mettenses*, ed. by Boretius and Krause, no. 245, p. 168: 'Similiter et Karolus Hludowico promisit' ('Likewise Charles promised to Louis').

23 *Hludowici, Karoli et Hlotharii II. conventus apud Confluentes*, ed. by Boretius and Krause, no. 242, p. 155.

him, that he speaks truth'.[24] Therefore, it cannot be in our interest to deny the oaths taken in Koblenz in 860, but nevertheless we should be aware of the terminological difficulties, and all the more so, since the aforementioned formulas of 842 and 854, which were clearly marked as *sacramenta*, omit any distinct invocation of God or reference to relics in their texts.

And even if we do find clear evidence of an oath in the narrower sense of the word within the formula, it is notable that Hincmar again knows how to avoid the term *sacramentum* concerning the oaths that were taken in Koblenz in a later writing to Charles the Bald. In his *Expositiones ad Carolum regem pro Ecclesiae libertatum defensione*, written in 868, he quotes the exact wording of the oath, but simply refers to it as *firmitas*.[25] And it is at least remarkable that he omits any reference to God and His saints, instead ending his quote of the formula just before this reference and simply saying *et reliqua*.

We must ask therefore, why is a man, who uses the term *sacramentum* some thirty-four times in his annals from 861 to 882, so reluctant when it comes to his characterization of the oaths of Koblenz? Concerning the treaty of Aachen in 870 between Charles the Bald and Louis the German, it is Hincmar himself who, contrary to the characterization within the capitulary,[26] labels the mutual oaths within the Annals of St Bertin as *sacramenta*.[27] Yet in this case, Charles and Louis did not swear in person; instead, two of their *fideles* took the oaths on their behalf.[28] So we can assume that Hincmar tried to be very diligent concerning oaths with royal participation. And, as will be demonstrated later in this chapter, the king's promise within the coronation *ordines* for which he was responsible, indeed should not readily be called an oath. But first, we will look for traces within the Annals of St Bertin.

Royal Oaths in the Annals of St Bertin

The number of sworn declarations mentioned in the *Annales Bertiniani* illustrates the great importance of the oath in the ninth century. But during the twenty-two-year period in which Hincmar was responsible for the writing of the annals we encounter even more documented records of oaths than during the thirty years before he took over the authorship. On the one hand, this can be explained by his high position within the society of the realm. By being very well connected within the contemporary political world and through his role as advisor to both King Charles the Bald and

24 *Capitulare legi Ribuariae additum*, ed. by Boretius, no. 41, p. 118.
25 Hincmar of Reims, *Expositiones ad Carolum regem pro Ecclesiae libertatum defensione*, ed. by Migne, Expositio tertia, col. 1068.
26 *Pactiones Aquenses*, ed. by Boretius and Krause, no. 250, p. 192.
27 *Annales Bertiniani*, ed. by Grat and others, *a.* 870, p. 169.
28 On behalf of Charles the Bald: Count Engelramm and Count Theuderich; on behalf of Louis the German: Count Leutfrid and Count Radulf.

his son and successor Louis the Stammerer, he had enhanced access to information of such a kind. Until 840 — at first under supervision of the Archchaplain Fulco, from 835 onwards penned by Prudentius — the annals were still written at the court.[29] But with the death of Louis the Pious, the tradition of writing royal or imperial Frankish annals at the court chapel came to an end. In the year 844, Prudentius was appointed to the see of Troyes and did not, as Hincmar did, belong to the inner circle of Charles the Bald, and could even have been involved in the crisis of 858, when some of the magnates of the realm opposed Charles and called on Louis the German to occupy the realm of his brother.[30] Yet the personal attitude of Hincmar of Reims is another reason for his stronger focus on oaths. The oath played a crucial role in the life and work of the Archbishop of Reims. He collected, for instance, biblical and patristic quotes regarding perjury in his so-called *periurium*-dossier but referred to oath and perjury in many other works and letters as well.[31]

As a consequence of his strong involvement regarding the topic of oath and perjury, Hincmar of Reims developed an exceptional sensitivity concerning this issue. In particular, the relations between the one who swore and the one who received an oath seem to be a recurring theme in his works. As will be demonstrated later in this chapter, by careful selection of words and through open protest, Hincmar tried to counteract an interpretation of the relation between bishop and king which, in his eyes, would be an overly feudal take on this topic.

In the Annals of St Bertin, it becomes obvious that special care was taken with regard to the occasions and circumstances in which Carolingian kings could swear oaths. The king as the uppermost secular authority was — if at all — only obliged to take an oath when there was an equal status between the participants of the oath. Usually this came into focus on occasions where the rulers of the Carolingian realms met to negotiate agreements between each other. Yet a closer investigation shows that Hincmar obviously was a strong proponent of a more diligent and prudent use of the oath even on occasions such as those. Due to capricious declarations of allegiances, the conflict between the Carolingian kings after the death of Louis the Pious had led to a loss of trust within the elite — one could call it a 'crisis of loyalty'. As a result, efforts were made to protect the oath as a structural, trust-building element on the one hand and its concurrent sacral significance on the other. Consequently, a discourse within the political elite was necessary to preserve the oath and its sacred value, and Hincmar was

29 Janet L. Nelson suggests that at first the archchaplain Drogo still had the supervision of annal-production (See *Annales Bertiniani*, trans. by Nelson, p. 7).

30 See Nelson, 'The Annals of St Bertin', p. 181.

31 See e.g. Hincmar of Reims, *De presbiteris criminosis*, ed. by Schmitz; *De causa Teutfridi presbyteri*, ed. by Migne and *De regis persona et regio ministerio ad Carolum Calvum*, ed. by Migne.

especially concerned about oaths with royal participation. Significantly, in his *periurium*-dossier he collected mainly quotes with regal references and by doing so he constructed a text that could easily be read as a 'mirror for princes'. It is not by coincidence that he re-purposed this collection within his *De cavendis vitiis et virtutibus exercendis*[32] addressed to Charles the Bald.

Let us now examine the oaths taken by the Carolingian kings in the Annals of St Bertin. Up to 860, there are thirteen records to be observed in which kings take oaths that are clearly marked as such. Under Hincmar of Reims it appears to be increasingly difficult to detect explicit hints. However, according to the annals written by Hincmar, kings' rebellious sons had to take an oath to their fathers just as reported in this text before Hincmar assumed authorship. But should these strictly be understood as royal oaths?

The projection of possible West Frankish perspectives on East Francia should not be readily assumed, but Louis the German abandoned the traditional arrangements of sub-kingships granted to successors anyway.[33] It was not until his death that his sons Charles and Louis received the title *rex* in those parts of the realm allocated to them. Given the oath-taking of the sons of Charles the Bald in West Francia, this matter proves to be somewhat more difficult. In the year 862 Louis the Stammerer was obliged to pledge loyalty to his father after an unsuccessful insurrection.[34] Yet the assumption that Louis had received a part of Neustria as a sub-kingship in 856 is challenged by Brigitte Kasten.[35] Besides, Hincmar reports in the year 865 that Louis had been sent back to Neustria, with Charles the Bald neither restoring (*reddito*) to him his royal name nor withholding it.[36] Even though Louis the Stammerer became king of Neustria in 856, this *reddito* is a clear lead for the interim deposition after his revolt in 862.

A striking parallel can be seen in the oath that King Charles the Child of Aquitania had to swear to his father Charles the Bald in 863.[37] In contrast to Louis the Stammerer, in the Annals of St Bertin Charles is styled as *rex* after 855. Yet in 862, the magnates of Aquitania convinced their king to act against his father's wishes and marry the widow of the *comes* Humbert.[38] In the subsequent year, Charles the Child had to admit defeat and was obliged to swear an oath to his father. A deposition is not mentioned within the sources, but here as well we can find a hint in the annual record of 865 that seems to prove this assumption. In this year, the magnates of Aquitania requested from Charles the Bald that he allow his son 'to return

32 Hincmar of Reims, *De cavendis vitiis et virtutibus exercendis*, ed. by Nachtmann.
33 See Kasten, *Königssöhne und Königsherrschaft*, pp. 805–06.
34 *Annales Bertiniani*, ed. by Grat and others, *a.* 869, p. 92.
35 Kasten, *Königssöhne und Königsherrschaft*, p. 444 n. 61.
36 *Annales Bertiniani*, ed. by Grat and others, *a.* 865, p. 123.
37 *Annales Bertiniani*, ed. by Grat and others, *a.* 863, p. 104.
38 *Annales Bertiniani*, ed. by Grat and others, *a.* 862, pp. 90–91.

to Aquitania with the title and power of a king'.[39] Hence, Charles the Child had also apparently lost his *nomen regis* in consequence of his unsuccessful revolt. It is no coincidence that Hincmar reports immediately after the oath of loyalty of Charles the Child that Charles the Bald made all of the Aquitanians swear loyalty to himself.[40] As Brigitte Kasten has highlighted, Charles the Bald had already failed back in the 840s with his attempt to establish the principle of a *Zweiherrigkeit* ('double lordship').[41]

Since 861, the Annals of St Bertin are usually apt to avoid recording personal oath-takings by kings that are clearly marked as such. In the years 862[42] and 867,[43] Charles the Bald made his *fideles* swear on his behalf, just as the oaths taken in Aachen 870 were sworn by his counts Ingelramnus and Theodericus.[44] That such a procedure was not confined to the Western Frankish realm is revealed by the oath that was taken by twelve *fideles* of Lothar II in 865.[45] They had to promise, on his behalf, that he would receive his lawfully wedded wife Theutberga and would hold her as a king should his queen. And in 868 Lothar II obtained agreement from Louis the German that he would have an oath sworn to him *ex sua parte*.[46] This expression allows the assumption that Louis probably did not take this oath in person — or at least, that Hincmar would assume that. So we may presume that there was in principle a tendency towards royal oaths being sworn on the king's behalf in the second half of the ninth century. But, given that we are concentrating on Hincmar of Reims and his way of thinking, we ought to investigate those passages where he characterized royal oaths as *sacramenta*.

After 861, just five instances can be found in the Annals of St Bertin, in which kings took oaths explicitly in person. However, these examples must be considered in their historical context. Two of them are particularly illustrative.

First, in the year 875, Charles the Bald is on his way to Rome in order to be crowned Emperor by Pope John VIII after the death of his nephew Louis II of Italy. Louis the German sends his son Charles after him to thwart these plans. But after pledging mutual oaths, his son returns.[47] At this point Hincmar depicts Charles the Bald as someone who took an oath. Given the examination done thus far, at first this seems to be very unusual — especially

39 *Annales Bertiniani*, ed. by Grat and others, *a*. 865, pp. 117–18: 'Ad quorum multam petitionem filium suum Karolum necdum bene spassatum in Aquitaniam cum regio nomine ac potestate redire permittit' (Engl. trans. by Nelson, p. 122).
40 *Annales Bertiniani*, ed. by Grat and others, *a*. 863, p. 104.
41 Kasten, *Königssöhne und Königsherrschaft*, p. 430.
42 *Annales Bertiniani*, ed. by Grat and others, *a*. 862, p. 91.
43 *Annales Bertiniani*, ed. by Grat and others, *a*. 867, p. 137.
44 *Pactiones Aquenses*, ed. by Boretius and Krause, No. 250, p. 192.
45 *Annales Bertiniani*, ed. by Grat and others, *a*. 865, pp. 119–21.
46 *Annales Bertiniani*, ed. by Grat and others, *a*. 868, p. 150.
47 *Annales Bertiniani*, ed. by Grat and others, *a*. 875, p. 198.

since Charles, son of Louis, was not yet a *rex*. However, the attitude of Hincmar of Reims towards his king in the mid-870s is exceedingly negative. After 873, the Archbishop of Reims 'had fallen from the heights of royal favour'.[48] He strongly disagreed with Charles's imperial ambitions — in the eyes of Hincmar, the empire, as Jean Devisse states, was just 'une sorte de relique attachée à la mémoire de Charlemagne'. It was 'une grande idée', but not a 'réalité politique'.[49] He criticized Charles for setting off for Rome while leaving his realm internally unstable and encircled by enemies. Furthermore he felt passed over when the younger bishop, Ansegis of Sens, was to be made papal vicar north of the Alps in 876 instead of him.[50] Janet L. Nelson suggests that, when Louis the German invaded West Francia again in 875, Hincmar may indeed have intended to prepare the bishops of his diocese to yield to Louis through his writing *De Fide Carolo regi servanda*.[51] So on the one hand we can interpret this as a symptom of his dwindling influence. But it is also imaginable on the other that Hincmar simply did not attach much importance to concealing the oath or recomposing it in this case. However, his negative attitude towards Charles the Bald in these years, alongside his wounded pride, can clearly be seen here. It is very striking that just around this time, Hincmar took the opportunity to remind his readership of the oaths that were sworn back in 870 between the parties of Charles the Bald and his brother Louis — but this time, within his record of the Battle of Andernach of 876, he omits to mention that his *fideles* had sworn on the king's behalf. Now it was Charles himself who swore that oath.

A second example is Hincmar's portrayal of Charles the Fat, who had to cease besieging Boso of Vienne in the year 880 after mutual oaths were sworn between the two of them.[52] Meyer-Gebel assumes that the last years of the Annals of St Bertin were written in hindsight,[53] perhaps even, as René Poupardin suggests, shortly before Hincmar's death in Epernay in 882, when he had had to flee from the Normans.[54] Considering this, Hincmar would have written the whole depiction of Charles the Fat already aware of Charles's treaty with the Normans, whom he paid with gold and silver that he had taken out of the treasure of Saint Stephen of Metz and other saints. Additionally, he gave the revenue from the diocese of Metz, which actually was intended for the bishop, to Hugh, the son of Lothar II and his concubine Waldrada.[55] In view of that, Hincmar therefore intended to give a clear impression in his writing that not only had Charles the Fat had to

48 Nelson, *Charles the Bald*, p. 241.
49 Devisse, *Hincmar. Archevêque de Reims 845–882*, p. 803.
50 Schrörs, *Hinkmar*, p. 358.
51 Nelson, *Charles the Bald*, p. 239.
52 *Annales Bertiniani*, ed. by Grat and others, *a*. 880, p. 243.
53 Meyer-Gebel, 'Zur annalistischen Arbeitsweise Hinkmars von Reims', p. 104.
54 Poupardin, *Le royaume de Provence sous les Carolingiens (855–933)*, pp. 124–25, footnote 7.
55 *Annales Bertiniani*, ed. by Grat and others, *a*. 882, pp. 248–49.

concede to the rebellious Boso for now, who claimed to be king of Lower Burgundy and Provence, but that he had even had to admit an equal status by taking mutual oaths.

Hence, we can identify certain, usually critical, intentions regarding the occasions where Hincmar of Reims reports oaths sworn by kings within the Annals of St Bertin. However, in general there is a stronger sensitivity concerning royal oaths. This also becomes apparent within the coronation *ordines*, for which Hincmar of Reims was responsible, and which he documented extensively in his annals.

Coronation *Ordines*

In 869, Hincmar crowned and consecrated Charles the Bald as king of Lotharingia in Metz. With references to the treaty of Coulaines in 843,[56] for the first time now there was a royal commitment during the procedure of king-making.[57] But we should not necessarily conceptualize it as an oath either. Janet L. Nelson pointed out that in the promise of Charles the Bald we may observe the *Herrschereid* as recognized by Percy Schramm. She emphasized that, in terms of its linguistic form, it was simply an announcement whose closest analogues were the *adnuntationes* after the reign of Charlemagne.[58]

The coronation *ordo* of Louis the Stammerer in 877[59] gave Hincmar the opportunity to elaborate further the consecration rite of a king according to his ideals. An official *petitio episcoporum* demanded the compliance of ecclesiastical rights and privileges from the soon-to-be king, which he subsequently guaranteed through a *promissio*. In the previous week, the bishops and the designated king had already exchanged solemn pledges.

The characteristics of an oath are clearly to be seen within the pledge of loyalty of the bishops in 877;[60] it is not termed as such however, but rather as a *professio*. This should not be surprising, for in Gondreville, already back in the year 872,[61] there was clearly a distinction between the *professio episcoporum* and the *sacramentum laicorum*. But it is noteworthy that the subsequent pledge of Louis the Stammerer is named *professio* as well.[62] This is in line with our observations thus far, where Hincmar carefully minds avoiding distinct oaths of a king. Regarding the coronation *ordines* of Hincmar of Reims, Janet L. Nelson pointed out that he obviously wanted to draw a parallel between the appointment of a bishop and the coronation

56 For more see Classen, 'Die Verträge von Verdun und von Coulaines 843.'
57 See Nelson, 'Kingship, Law and Liturgy in the Political Thought of Hincmar of Reims', pp. 256–57.
58 Nelson, 'Kingship, Law and Liturgy in the Political Thought of Hincmar of Reims', p. 258.
59 *Capitula electionis Hludowici Balbi Compendii Facta*, ed. by Boretius and Krause, no. 283, pp. 363–65.
60 *Capitula electionis Hludowici Balbi Compendii Facta*, ed. by Boretius and Krause, no. 283, p. 365.
61 *Sacramenta apud Gundulfivillam facta*, ed. by Boretius and Krause, no. 277, pp. 341–42.
62 Interestingly, Louis does not invoke God, but instead calls the Church as witness (*teste ecclesia Dei*).

of a king. The fact that the king signed his pledge and handed it over to the bishops illustrates Hincmar's 'extension of canonical practice to cover the royal case, through a specific analogy with episcopal profession'.[63] But as has been demonstrated so far, the Annals of St Bertin suggest that Hincmar did not confine himself to the promises within the coronation *ordines*, but rather demanded a stronger sensitivity regarding oaths with royal participation in general. The analogy to the episcopacy can also be identified here as we will see, with a closer analysis of the oath-taking of bishops in the ninth century.

Episcopal Oaths

In the eighth and ninth centuries, we encounter a cleric's exemption from being obliged to take an oath as part of the wider societal discourse concerning the oath. After the *Regula Benedicti* forbade monks from oath-taking, in 789 Charlemagne allowed them to give a promise 'in word and truth' instead.[64] Yet it seems that there were efforts not to restrict this solely to monks. Within the *Admonitio generalis*, everyone is admonished to avoid perjury — but not just concerning oaths taken on the gospels, the altar, or relics, but also within the 'common speech', addressing those 'who evade to swear in the name of God and just pledge in love and truth'.[65] This instruction probably appealed in particular to clerics, who claimed a privilege because of the prohibition of swearing in the Gospel of Matthew.[66] A confirmation of this assumption can be seen in a similar expression by Bishop Gherbald of Liège: 'That no cleric shall swear something with an oath, but simply speak everything in purity and truth'.[67] Yet Charlemagne made an effort to enforce the oath sworn upon holy objects as the only valid one. In a previously mentioned capitulary from 803 he stated that 'every oath (*sacramentum*) is to be sworn in the church or upon relics; […] so God and the saints, whose relics those are, may help him, that he speaks truth'.[68]

But the revolts against Louis the Pious and the conflict between his sons after his death necessitated a new discourse on the oath. So at the synod of Meaux-Paris in 845/846, the bishops lamented the impious confusion of oaths

63 Nelson, 'Kingship, Law and Liturgy in the Political Thought of Hincmar of Reims', p. 263.

64 *Capitulare Missorum*, ed. by Boretius, no. 25, p. 67.

65 *Admonitio generalis*, ed. by Boretius, no. 22, p. 58: 'Ideo omnino ammonendi sunt omnes diligenter, ut caveant periurium, non solum in sancto euangelio vel in altare seu in sanctorum reliquiis, sed et in communi loquella; quia sunt aliqui qui per caritatem et veritatem iurant'.

66 On the prohibition of swearing see the contribution by Gerda Heydemann and Heiko Behrmann in this volume.

67 Gherbald of Liège, *First Capitulary*, ed. by Brommer, c. 19 p. 21: 'Ut nullus sacerdos quicquam cum iuramento iuret, sed simpliciter cum puritate et veritate omnia dicat'.

68 *Capitulare legi Ribuariae additum*, ed. by Boretius, No. 41, c. 11, p. 118: 'Omne sacramentum in ecclesia aut supra reliquias iuretur; et quod in ecclesia iurandum est, vel cum sex electis vel, si duodecim esse debent, quales potuerit invenire: sic illum Deus adiuvet et sancti quorum istae reliquiae sunt, ut veritatem dicat'.

in recent years and demanded now that 'a bishop of truth' at least should avoid an oath sworn *super sacra*, since 'fidelity is preserved in undisguised love'.[69] This sounds almost like a compromise. While the episcopacy could not establish a general exemption, they at least found a solution to elude the dilemma inflicted upon them by the prohibition of swearing.

In a letter that Hincmar and his colleagues drew up when Louis the German invaded West Francia in 858, they explicitly referred to this decision. They denied swearing an oath to the East Frankish king, because it would be nefarious (*nefarium est*) if the tongue of a bishop had to swear in the name of God and his saints *super sacra*. They also emphasized that the hand of a bishop administers the sacrament of the Eucharist and other liturgical acts.[70] Moreover, they refused to be obliged to commend themselves into vassalage like *homines* had to and declined to swear an oath, because the evangelical, apostolic, and canonical authority forbade it.[71]

Heinrich Mitteis underlines that this letter was meant for a usurper and therefore does not want to see an implication regarding the attitude of the bishops concerning the West Frankish king.[72] Yet, Hans Hubert Anton recognizes not just an attempt to resist a usurper, but rather sees indeed a rejection of the oath of allegiance sworn by bishops in a more principal manner.[73] He highlights the bishops' insurgency against the growing feudal entanglements of clerics at that time. They attached much importance to facing the king, being the bearer of the *potestas regalis*, not as a kind of liegeman but as the bearers of the *auctoritas sacra*.[74] Thus Hincmar wrote one year later in a letter to Charles the Bald that they had sent a copy of the admonitions to him as well, so the West Frankish king could consider them, too.[75] The message hence may not be interpreted just as originating from this particular occasion, but rather as reflecting the mindscape of Hincmar and the wider West Frankish episcopacy.

Eighteen years later, Hincmar therefore argued in a similar way during the synod of Ponthion in 876, where Charles the Bald, the freshly crowned emperor, demanded a renewal of the oath of loyalty. Initially, Hincmar criticizes the usage of the term *senior* and suggests the term *imperator* instead.[76] Furthermore, he rejects pledging obedience *in omnia* to the

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69 Synod of Meaux-Paris *a.* 845/6, ed. by Hartmann, No 11, c. 38 and 39, p. 102: 'Ut nullus deinceps veritatis episcopus solito super sacra iurare praesumat. […] enim […] in caritate non ficta fides servatur'.

70 *Epistola Synodi Carisciacensis ad Hludowicum regem Germaniae directa*, ed. by Boretius and Krause, no. 297, pp. 439–40.

71 *Epistola Synodi Carisciacensis ad Hludowicum regem Germaniae directa*, ed. by Boretius and Krause, no. 297, p. 439.

72 Mitteis, *Lehnrecht und Staatsgewalt*, p. 75.

73 Anton, *Fürstenspiegel und Herrscherethos in der Karolingerzeit*, p. 321.

74 Anton, *Fürstenspiegel und Herrscherethos in der Karolingerzeit*, p. 322.

75 Hincmar of Reims, *De coercendis militum rapinis*, ed. by Migne, cols 954A and 955A.

76 Hincmar of Reims, *Juramentum quod Hincmarus Archiepiscopus edere jussus est apud*

emperor and sees a conflict between this absolute obedience and the duties of the episcopal office.[77] The doctrine of vassalage as the dominant social structure in the early Middle Ages has been rightly challenged by modern historians since Susan Reynolds, and it is very likely that clerics as well as higher secular officials were not bound by dependencies of this kind.[78] Yet it was in Hincmar's interest to defend the status of the episcopacy towards the king and to strongly reject a potential parallel to vassalage. Although the term *senior* was not a specific element of vassalage, we can detect Hincmar's objection in view of the lack of explicitness of his time and its ambiguous semantic levels.

Furthermore, Charles the Bald may have demanded a *sacramentum* from the bishops in Ponthion in 876 and therefore contradicted the episcopacy's efforts to avoid the obligation to swear *super sacra*, but instead just to hand over a subscribed *professio*. For at the end of his protest letter, Hincmar of Reims refers to the prohibition of swearing and then states that even the Arians, the Nestorians, and the supporters of Eutyches were not forced to swear a different oath (*sacramentum*), but simply had to give a signed *professio*. He then reminds Charles the Bald of his father's fall from power and emphasizes that even the initiator of this disgrace, Ebbo of Reims, did not have to swear another oath but had to hand over his signed *professio*. And now should he, as Hincmar continues, who gave so many *professiones* throughout his lifetime, be obliged to take a different oath (*sacramentum*)?[79]

The episcopacy's reluctance concerning oaths was not confined to the Western Frankish realm. At a synod in Pavia (850) the Italian bishops decided that, in regard to the prohibition of swearing, their speech should simply be a 'yes' or a 'no'. Though if it is necessary to convince someone, they should not swear *sicut militantibus saeculo*, but rather use a *Deus scit* or *coram Deo* according to the custom of the Apostles.[80]

Concerning the Eastern Frankish realm, the synod of Tribur 895 stated clearly: 'The hand consecrated by the body and the blood of Christ is contaminated by an oath'.[81] Hence, the cleric's sacrality was emphasized as the reason for the refusal of an oath. The canon discusses disputes between laymen and priests:

> Si quis presbyter contra laicum vel laicus contra presbyterum aliquam habet querimoniae controversiam, episcopo regente sine personarum

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Pontigonem, ed. by Migne, col. 1125B.

77 Hincmar of Reims, *Juramentum quod Hincmarus Archiepiscopus edere jussus est apud Pontigonem*, ed. by Migne, cols 1126A–D.

78 See Salten, *Vasallität und Benefizialwesen im 9. Jahrhundert*, pp. 26–31 and pp. 379–80.

79 Hincmar of Reims, *Juramentum quod Hincmarus Archiepiscopus edere jussus est apud Pontigonem*, ed. by Migne, col. 1128A–B.

80 Synod of Pavia *a.* 850, ed. by Hartmann, no. 23, p. 221.

81 *Concilium Triburiense*, ed. by Boretius and Krause, no 252, p. 224: 'Manus enim, per quam corpus et sanguis Christi conflicitur, iuramento polluitur'.

> acceptione finiatur; et laicus praeiuramento, si necesse sit, constringatur, presbyter vero vice praeiuramenti per sanctam consecrationem interrogetur, quia sacerdotes ex levi causa iurare non debent.
>
> (If a priest has a complaint against a layman or a layman against a priest, the dispute shall be closed by the concerned bishop without taking the status of the persons into account. If necessary, the layman shall be bound by a pre-oath (*praeiuramento*), while the priests shall be asked by the Holy Communion instead of such an oath, because a cleric must not swear over a minor case.)[82]

Especially within the Eastern Frankish realm, a reluctance developed against the juridical oath being taken by clerics, and the so-called *Abendmahlsprobe* was established as an alternative.[83] In West Francia, the Eucharistic ordeal did not find a similar dissemination. Hincmar even takes up a distinct position in favour of the oath of purgation taken by clerics.

After a few preliminary sentences, Hincmar begins his treatise *De presbiteris criminosis* with the determinations *De sacerdotum purgationes*, in which he quotes the forgeries of Benedictus Levita. He points out that even a cleric (*ipse ergo sacerdos*) shall purge himself by taking an oath on the four gospels — and shall have three, five, seven, or more oath-helpers who must be renowned clerics of the vicinity (*bonis ac vicinis sacerdotibus*). Although Hincmar's focus is on delinquent priests, he basically states the same for bishops by referring to Pope Leo III, of whom it was said that he had purged himself with twelve episcopal oath-helpers (*exemplo Leonis papae, qui duodecim episcopos in sua purgation habuit*).[84]

It is unclear why exactly Hincmar made an obvious difference between a purgation and other forms of the oath. Apparently, the reputation of the Church was more important than his objection. Besides, there are further disparities between these different forms of oaths. While Liutpold Wallach drew attention to the 'strange impression, even in a formal view' of the pope's oath of purgation and tried to explain this result by assuming a forgery,[85] Abigail Firey perceived a close resemblance between the formulas of penitential confessions and those of oaths of purgation (the oath of Leo III is sometimes even cited as a confession). These observations, however, 'permit an expansive understanding of confession'.[86] So maybe we should consider this in order to understand Hincmar's approval. But it cannot be the task of this chapter to examine this concept, so for now we can only discern that it is not easy to 'decode' Hincmar's world-view. But regarding

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82 *Concilium Triburiense*, ed. by Boretius and Krause, no 252, p. 224.

83 See Browe, *Die Eucharistie im Mittelalter*, pp. 242–43; Snoek, *Medieval Piety from Relics to the Eucharist*, pp. 134–35.

84 Hincmar of Reims, *De presbiteris criminosis*, ed. by Schmitz, p. 67.

85 Wallach, 'The Genuine and the Forged Oath of Pope Leo III', p. 43.

86 Firey, 'Blushing before the Judge and Physician', p. 173 n. 2.

this issue, we should certainly note that a cleric was only allowed to testify before an ecclesiastical court.[87]

As we have seen, Hincmar refers several times to the prohibition of swearing to explain his objections against episcopal oaths. While usually interpreting (by quoting Augustine and other fathers) the prohibition as a warning of perjury and seeing the oath as some kind of necessary evil, the Carolingian scholars were nevertheless aware of the words that their saviour had spoken: 'Do not swear at all' (Matthew 5. 33). The key to understanding lies in the pursuit of perfection. Jerome stated that Jesus did not demand the impossible, but the perfect,[88] and this interpretation of his teachings in the Sermon on the Mount has become firmly established in Christian exegesis. The Carolingian scholars were also familiar with Hilary of Poitiers, who stated that 'the practice of swearing is not for those who simply live in faith, because in them is always, what is, and not, what is not, and thus both work and speech are completely *in vero*'.[89] And, as Jerome said, 'the gospel truth does now receive an oath, seeing every speech of a faithful one as an oath'.[90] The *Regula Benedicti* already forbade the oath-taking of monks, but as shown, the potential exemption from being obliged to take an oath seemed also to be a part of the discourse concerning other clerics. And because the king, as Janet Nelson pointed out, 'had acquired his royal *dignitas* through an anointing and benediction performed by bishops, he could be considered bound by the same rules as applied to the bishops themselves as consecrated holders of office'.[91] This, however, included the diligence and sensitivity with which royal oaths should be treated.

Conclusion

Werner Goez pointed out for the High Middle Ages that kings and emperors had the privilege of not having to swear in person (*corporaliter*). Instead, an alternative has been established that royal oaths were sworn *in anima regis*.[92] We also encounter this practice of oaths sworn on behalf of rulers 'by their followers' in the ninth century. Although we may not detect an institutionalized privilege of such a kind in Carolingian times, its first outline seems to be traceable within the world-view of Hincmar of Reims. Echoes

87 *Registri ecclesiae Carthaginensis excerpta*, ed. by Munier, c. 59, p. 196 (cf. Hincmar of Reims, *De presbiteris criminosis* ed. by Schmitz, p. 79).

88 Jerome, *Commentariorum in Matheum libri IV*, ed. by Hurst and Adriaen, I.5. 44, p. 34: 'Sciendum est ergo, Christum non impossibilia praecipere, sed perfecta' (So you need to know that Christ has not taught the impossible, but the perfect).

89 Hilary of Poitiers, *In Matthaeum commentarius*, ed. by Doignon, IV.23. p. 142: 'Ergo in fidei simplicitate uiuentibus iurandi religio opus non est, cum quibus semper quod est, est, quod non est, non, et per haec eorum et opus et sermo omnis in uero est'.

90 Jerome, *Commentariorum in Matheum libri IV*, ed. by Hurst and Adriaen, I.5.34–38, p. 33.

91 Nelson, 'Kingship, Law and Liturgy in the Political Thought of Hincmar of Reims', p. 272.

92 Goez: '"… iuravit in anima regis"'.

of this concept can be found in other fields as well. In the Capitulary of Ver promulgated in 884, Carloman II declared that his royal vassals should have the honour of not needing to swear with their own hands as others have to, but that other people should swear on their behalf instead.[93] If royal vassals are endowed with such a privilege, then it is far from surprising that kings themselves would be very diligent concerning their oath-takings. And, as shown, this can be understood as being analogous to the episcopacy.

This can be explained with the dualism that emerged under the reign of Louis the Pious.[94] In this concept, episcopacy and kingship are seen as the two *personae* to which the administration of Christianity applied. The government of the *populus christianus* and the responsibility for the well-being of the *ecclesia* were in the hands both of the episcopal and the royal *ministerium*. Mayke de Jong described this as a dualism of a complementary kind.[95] For the cooperation of the ecclesiastical and secular office-holders, it was a necessity to ensure the orderly existence of human beings on earth.[96] Or in the words written by Walafrid Strabo: 'The house of God is made one with the union and love of each office; Christ's one body is formed by all the members of His offices, who contribute products for the benefit of all'.[97] Kings and bishops are, of course, the uppermost authorities within their respective spheres.

It remains unclear whether the *professio* instead of a proper oath was meant to keep the king from being deposed. While Marcel David thinks that Hincmar tried to save the kingship from excessive limitations of power, since the breach of a *professio* was merely punished with excommunication rather than with a deposition,[98] Janet L. Nelson underlines that neither a bishop nor a king could be spared from deposition even though they simply pledged *professiones*. Hincmar, however, remains unusually unspecific concerning an actual, earthly deposition of a king; the breach of such a promise had the impact of the loss of the *regia dignitas* in the eyes of God. Hence the legal consequence at least resonated in the background.[99]

In his so-called *periurium*-dossier Hincmar collected quotations of oaths with royal references and warned of the damage that a king would do when he commits perjury, so he obviously would not argue that a royal

93 *Karlomanni Capitulare Vernense*, ed. by Boretius and Krause, no. 287, p. 374.
94 See Patzold, 'Die Bischöfe im karolingischen Staat', p. 142.
95 De Jong, 'Ecclesia and the Early Medieval Polity', p. 130.
96 See Patzold, 'Die Bischöfe im karolingischen Staat', p. 147.
97 Walafrid Strabo, *De exordiis et incrementis quarandum in observationibus ecclesiasticis rerum*, ed. and trans. by Harting-Correa, c. 32, p. 194: 'Ceterum ex utriusque ordinis coniunctione et dilectione una domus Dei construitur, unum corpus Christi efficitur cunctis membris officiorum suorum fructus mutuae utilitati confererentibus'.
98 David, 'Le serment du sacre du IX^e^ au XV^e^ siècle', p. 60.
99 Nelson, 'Kingship, Law and Liturgy in the Political Thought of Hincmar of Reims', pp. 264–75.

oath should be rejected altogether. Yet, in the same document, he stresses that an oath should only be taken when great necessity demands it.[100] So Hincmar was, of course, aware of the aforementioned interpretations of the prohibition of swearing and probably demanded a greater responsibility concerning oaths of kings and bishops. From our modern perspective it seems rather odd to distinguish between a *sacramentum* and the *professiones* and *promissiones* of kings and bishops, especially since they are usually near identical. But as we have seen, it was important to Hincmar of Reims (and his West Frankish colleagues) to make a distinction between an oath sworn *super sacra* and a signed pledge, in which they obviously saw a compromise which satisfied the prohibition of swearing.

However, by adopting the oath into its scope of competence, the Church provided a crucial element of the assurance of power to the secular authorities. In return, the Church was acknowledged to have a prerogative of interpretation and a decisive voice regarding sanctioning. The oath therefore, more so than many other institutions, illustrates the indispensable cooperation between the ecclesiastical and the secular spheres. Hence, it should not be surprising that we encounter the oath as one of the central themes within the works of a man like Hincmar, whose involvement in both worlds was extensive.

100 Hincmar of Reims, *De divortio*, ed. by Böhringer, p. 149.

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IAN S. WARD

The End of the Carolingian Oath of Loyalty in the Tenth Century

Post-Carolingian studies have been experiencing a realignment in recent years as new research has shown ways to get beyond the traditional narrative of decline.[1] At the same time, new scholarship on the oath has provided ample reason to consider afresh the role played by the oath in the broader transformation of the Carolingian world.[2] There is urgent need for studies pertaining to the tenth century that help form a more detailed picture of the immediate and discrete consequences of the fragmentation of the Carolingian empire. As a 'leading indicator' of social change, the oath of loyalty (*sacramentum fidelitatis*) has much to tell us about the nature of this transformation.[3]

What I call the 'Carolingian oath of loyalty' was an accretion of ideas and practices drawing on Merovingian and Roman precedents that was formed in stages during the late eighth and ninth centuries.[4] It was a political oath, meant to bind the subject to the king in both a mystical and a legal sense, sworn by the individual but organized at the group level. By performing the

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* All translations, unless otherwise specified, are my own.

1 See for example Airlie, *Power and Its Problems*; Booker, *Past Convictions*; Groth, *In regnum successit*; and the excellent series of books out of Cambridge University Press: West, *Reframing the Feudal Revolution*; Glenn, *Politics*; MacLean, *Kingship and Politics*; and Innes, *State and Society*.

2 The Transformation of the Carolingian World project has begun to set a framework for new research: see the project website at <www.postcarolingianworld.ac.at>. On the oath, the work of Stefan Esders has reshaped our understanding of its meaning and history from the late Roman to the early medieval period: see his *Sacramentum fidelitatis*.

3 In economics, a 'leading indicator' is a measurable factor that changes earlier than the economy as a whole, helping to forecast emerging trends: Black and others, *Dictionary of Economics*.

4 See the contribution by Jennifer Davis in this volume. For the connection between Roman and Merovingian oath practice, see Esders, *Römische Rechtstradition*. For the earlier Carolingian context, see Becher, *Eid und Herrschaft*. The older scholarship is now woefully out of date: for the essence of those views, see Odegaard, 'Carolingian Oaths', and Ganshof, 'Charlemagne et le serment'.

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The Oath in Late Antiquity and the Early Middle Ages: Religious Act, Social Bond, Holy Sacrament, ed. by Stefan Esders and Gerda Heydemann, CELAMA 46 (Turnhout: Brepols, 2026), pp. 223–246 BREPOLS PUBLISHERS 10.1484/M.CELAMA-EB.5.152877

ritual of the oath — speaking the words and usually making a gesture of the hands — one pledged fidelity to the king and thereby became his *fidelis*. The precise oath formula and obligations of the pledge were modified over time through regular royal legislation in the capitularies. Under Charlemagne (d. 814), the oath was standardized and administered from the centre as an indispensable instrument of Carolingian rule. It had three defining features: 1) all free men of the realm were obligated to swear, 2) the oath formula was prescribed by law, and 3) horizontal oaths, known as *coniurationes*, that bound men of similar rank to each other and not the king, were forbidden.[5] Already under Charlemagne's son, Louis the Pious (d. 840), disagreements over the meaning and nature of the oath appeared, and over the course of the ninth century some new practices came about. A certain reciprocity or mutuality became apparent, where the king sometimes made promises to uphold the rights of the Church in return for its sworn obedience.[6] Likewise, the Carolingian civil wars of the 840s saw many sworn agreements made between Carolingian family members containing mutual conditions, such as the famous Oaths of Strasbourg.[7] Still, by the 880s, what had been defined in the capitularies had largely held steady. Little in the record suggests that the three components of Carolingian oath practice had weakened or diversified regionally.

Soon after the death of Charles the Fat in 888, however, things begin to look different. Imperial rule had always been incomplete, so even during the Carolingian heyday of the ninth century, not all oaths were administered at the explicit command of the king, not every vow was performed with perfect ecclesiastical oversight, and not all practice was encoded into law.[8] The breakdown of the authority of the Carolingians as the natural rulers of the Frankish kingdoms that occurred at the end of the ninth century made it all but inevitable that oath practice would diversify.[9] Yet, while scholars have long recognized the political breakdowns of the tenth century, most have portrayed oath practice as undisturbed. They have generally drawn a direct line between Carolingian forms of loyalty

5 For a discussion of horizontal relationships in Carolingian society, see Nelson, 'Peers in the Early Middle Ages'. For *coniurationes* more specifically, see the work of Oexle, 'Coniuratio und Gilde'and Brunner, *Oppositionelle Gruppen*, p. 169.

6 The contractual nature of the oath was already apparent in the Merovingian period. The *petitio* and *promissio* were introduced to the coronation ordines by Archbishop Hincmar of Reims in the 870s. See the account of Louis the Stammerer's coronation written by Hincmar in the *Annales Bertiniani*, ed. by Grat and others, *a.* 877, pp. 219–21. For the text of the *ordines* and comments, see *Ordo VIII* (Ordo of Louis the Stammerer – 877, ed. by Jackson.

7 The text of this extraordinary oath was set down by Nithard, *Historiae*, ed. and trans. by Lauer, III.5, pp. 100–11, writing in the 830s. For the role of the oath in conflict resolution during this period, see Geary, 'Oathtaking'.

8 Davis makes clear the often improvisational nature of Charlemagne's style of rule in her *Charlemagne's Practice of Empire*, p. 44.

9 See Airlie, 'The Aristocracy'.

and 'feudal' forms emergent in the eleventh century.[10] Outlined below are some reasons to object to this view.

Although oaths of loyalty are mentioned frequently in tenth-century sources, only a handful of original oath formulas survive. Their exact relationship to the oath formulas promulgated by the Carolingians in the ninth century is therefore difficult to reconstruct. This chapter focuses on the legal sources and manuscripts that, despite changes occurring in the documentary record, provide comparable information about the oath. The sometimes radically different patterns of text production nevertheless make it difficult to perform an apples-to-apples comparison of the ninth and tenth centuries. Our richest sources for eighth- and ninth-century oaths are the capitularies, a genre of legal text that virtually disappears in the tenth century as an instrument of legislation by post-Carolingian rulers.[11] Secular legislation after *c.* 877 mainly took the form of diplomas.[12] This shift in the sources is a fundamental problem of post-Carolingian studies. However, there are many tenth-century copies of Carolingian legal texts, including a large number of capitulary collections.[13] This evidence together suggests developments that undermine both the narrative of post-Carolingian decline and the scholarly consensus on the role of the oath of loyalty in the longer-term development of lordship in early medieval Europe, to which this chapter can only point.

The following three sections discuss the manuscript reception of the oath, the reception and use of Carolingian oath formulas, and the influence of Carolingian oath traditions in the tenth century. The analysis reveals a tendency toward the codification and historicization of Carolingian legal material, and that simultaneously Carolingian formulas either disappear from use or are recycled in new contexts stripped of their original administrative function. Finally, and most tellingly, we see tenth-century people searching for non-Carolingian oaths, either reaching back to pre- and non-Carolingian sources of authority or employing innovative and ad hoc solutions to their immediate concerns. Taking these developments in sum, it is reasonable to conclude that, once the political and textual activities that supported

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10 Continuity in oath practice is assumed by most traditional scholarship, especially in French. See, for example, Magnou-Nortier, *Foi et fidélité*, with critique by Débax, *La féodalité languodocienne*. Even more revisionist scholarship treats the period *c.* 800–1100 as cohesive, for example, Reynolds, *Fiefs and Vassals* and Bisson, *Crisis of the Twelfth Century*.

11 The last Carolingian capitulary was that issued by Charles the Bald at Quierzy (877); *Capitulare Carisiacense*, ed. by Boretius and Krause, no. 281, pp. 355–61 and *Capitula excerpta in convent Carisiacensi coram populo lecta*, ed. by Boretius and Krause, no. 282, pp. 361–62, though Otto I issued a quasi-capitulary at Frankfurt in 951, as well, see *Frankfurt (951)*, ed. by Hehl and Fuhrmann, no. 17, pp. 183–84; also ed. by Weiland, no. 8, p. 17.

12 For a treatment of some of the West Frankish diplomatic material, see Koziol, *Politics of Memory*. For a treatment of East Frankish symbolic communication, see Patzold, 'Von den Spielregeln ritueller Kommunikation', pp. 53–68.

13 Hartmann, *Kirche und Kirchenrecht um 900*, Appendix 1.

it disappeared in the tenth century, the Carolingian conception and practice of the oath of loyalty came to an end. What had been a precise legal instrument under an expanding government began to serve much more diverse functions in post-Carolingian society. This was a significant discontinuity in governance and a disruption of the norms of loyalty that characterized Carolingian society, but also an opportunity for people to fashion new structures and norms.

The Tenth-Century Reception of Carolingian Oath Texts

The first question to answer is: 'what did tenth century people know, and when did they know it?' We may attempt to reconstruct the reception of the ideas represented in Carolingian legal texts using the methodology of the 'social logic of the text', first outlined by Gabrielle Spiegel in 1990.[14] Reconstructing the social logic of legal compilations of the tenth century is only possible in the broadest terms due to the difficulties of precisely dating and locating most tenth-century manuscripts.[15] Nonetheless, these manuscripts can still provide insight into the approaches tenth-century compilers adopted to the oath of loyalty as part of the Carolingian legacy.

Carolingian royal capitularies were copied widely in the tenth century but with little apparent regard for oaths. There are roughly equal numbers of capitulary manuscripts dating to the tenth century as dating from the ninth century,[16] so older Carolingian manuscripts were certainly still in use during the tenth century, which might account for the overall decline in the number of manuscripts produced.[17] On the other hand, legal documents, especially charters, experienced something of a boom in the tenth century.[18] The Carolingian legal corpus continued to be cited regularly in diplomas and charters, synodal proceedings, histories, saints' lives, and other places,[19] but the reception of capitularies containing the classic Carolingian oath formulas was patchy compared to the reception of the capitularies as a whole.[20] We may therefore proceed on the assumption that Carolingian legal tradition

14 Spiegel, 'History' and Spiegel, *The Past as Text*, p. 53. For this methodology applied to Carolingian historiographical compendia, see Reimitz, 'Social Logic'.

15 The work of Jason Glenn on the extraordinary autograph manuscript of Richer of St-Rémi, noted above, n. 1, is a wonderful exception for the detailed picture he is able to reconstruct.

16 Hartmann, *Kirche*, pp. 68–69.

17 See Leonardi, 'Intellectual Life', pp. 186–211 with references.

18 Private documents grew in number, especially in Italy: see Bougard, *Justice*, p. 76.

19 See Hummer, 'Production and Preservation', and other contributions. For understanding capitularies in context, see Pössel, 'Authors and Recipients, 779–829'.

20 The number of eighth-century manuscripts for the early capitularies are very few indeed — there is only one early manuscript of the 789 Double Edict containing Charlemagne's first oath formula, St-Gallen, Stiftsbibliothek, Cod. Sang. 733 (early ninth century). See Mordek, *Bibliotheca capitularium*, pp. 676–80. Tenth-century copies are more abundant, thanks to the copying movement under Louis the Pious, but still relatively few.

was generally known through its manuscript transmission, though not necessarily the oath itself.

Regional variations in the manuscripts appear, reflecting different approaches to the Carolingian texts they preserve. One of the largest and most important compilations of law for the early medieval period, now at Gotha, represents an East Frankish approach.[21] Dating to the tenth and eleventh centuries, this massive manuscript of 397 folios was produced for the cathedral library at Mainz and incorporates material from several Carolingian-era collections, such as those of Ansegis, Benedict Levita, and Pseudo-Isidore, as well as several late- and post-Roman law codes, such as the *Lex Salica* and the *Lex Bavariorum*, that had been assimilated into the legal corpus of the ninth century. It also contains the so-called Capitulary of Frankfurt (951) concerning the protection of the church, issued by Otto I (d. 973), which was closely connected to the earlier collections to which it is appended in the manuscript.[22] The compilers were apparently aiming to be comprehensive in gathering legal texts that belonged to the legal panorama of Carolingian jurisdiction. The organization of the texts reflects a geographical and historical sensitivity: the four parts are organized into sections of ecclesiastical and secular texts, with an apparent emphasis also on Italy in certain sections.[23] The rubric is a typical series of descriptive headings which tell the reader where each new text begins and ends. But the manuscript lacks other finding aids, putting it entirely in the hands of the reader to locate passages relevant to any matter at hand. Without prior knowledge of the capitularies, the reader could only encounter useful material by reading straight through; and even knowing exactly what one is looking for is no guarantee of locating it in the hundreds of lightly ordered pages. This manuscript, in short, suffers from a syndrome typical of legal codices prior to the development of the 'legal science' in the twelfth century.[24] What distinguishes it from any Carolingian manuscript is its size and scope, not its contents.

These seem like minor differences, but one effect is that the oath of loyalty is lost in the sweep of texts. Details on the administration of the oath are absent: although the manuscript contains Charlemagne's 789 oath formula,[25]

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21 Gotha, Forschungs- und Landesbibliothek, MS Memb. I 84. See Mordek, *Bibliotheca capitularium*, pp. 131–49 for a description.

22 Gotha, Forschungs- und Landesbibliothek, MS Memb. I 84, fol. 145^{v}. For the edition, see *Frankfurt (951)*, ed. by Hehl and Fuhrmann, no. 17, pp. 178–84. For the *leges* in their Carolingian context, see Ubl, *Sinnstiftungen*; and Faulkner, *Law and Authority*.

23 Each section draws on particular manuscript groups from the ninth century, especially on the law book assembled by Lupus of Ferrières around 836, represented by Modena, Biblioteca Capitolare, O. I. 2 (late tenth-century, northern Italian) in sections II and IV. See Mordek, *Bibliotheca capitularium*, pp. 256–68.

24 See Kosto, '*Statim invenire ante*'. For a useful overview in English of developments in law after the legal reform of the twelfth century, see Gilchrist, *Canon Law*; Helmholz, *Spirit of Classical Canon Law*; Hoeflich and Grabher, 'Establishment of Normative Legal Texts'.

25 Gotha, Forschungs- und Landesbibliothek, MS Memb. I 84, fol. 221$^{r–v}$, as part of the second group of texts originally collected by Lupus of Ferrières.

the updated oath of 802 was left out, along with the pertinent instructions for the *missi dominici* who would have been expected to administer it to every free man of the realm. The collection is not a formulary, so was unlikely to be consulted for the wording of the oath itself. Rather, the Gotha manuscript seems to reflect a desire on the part of East Frankish scribes at the cathedral library of Mainz to codify all of Carolingian law.[26] In effect, this manuscript was a claim of lineage and belonging with the authoritative past as much as it was the compilation of a legal textbook. However, to the extent that tenth-century people relied on manuscripts for administering the law, this approach would have seriously limited the practical continuation of the oath of loyalty. There were simply too many gaps.

A similar impression comes from another large manuscript of the second half of the tenth century produced in southern Germany.[27] The first half of the 318 folios concentrates on penitential texts and church canons and the second half concentrates on secular law, mostly capitularies about the oath. The rubrication of this manuscript is a little more helpful for locating certain capitularies. In a long section devoted to the 'Worms Corpus', the blocks of capitula are broken up every few pages by a *capitulatio* — a table of contents for what is to follow. Within this section one finds the heading, 'De liberis hominibus qui imperatore nondum fidelitate promiserunt' (concerning free men who have not yet promised fidelity to the emperor), which directs an interested reader to the next page, where he finds the relevant capitulary of 829.[28] The capitulary itself is only an order by Louis the Pious to have his *missi dominici* travel through the territories and administer the oath of loyalty to those who have not yet taken it.[29] If the reader wants to know what words these men may have spoken for their oath, he will have to skip ahead some forty-two folios where, this time without a rubric to help him find it, Charlemagne's 789 oath formula is copied into the manuscript.[30]

The aims of these large East Frankish manuscripts, to the extent they are practical, seem historical and academic: to place Carolingian law on the shelf to be consulted alongside the plurality of other received legal traditions. The project of making such massive legal compendia must have been arduous, for it involved borrowing from other libraries, travelling to see in person what could not be borrowed, and separating the relevant from the irrelevant. It was work shaped decisively by the compilers who came

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26 Note, though, McKitterick, who argues that such manuscripts 'cannot categorically be denied a practical value as well', *Carolingians and the Written Word*, p. 56. See also the quantitative argument put forth by Bachrach and Bachrach, 'Continuity of Written Administration'.

27 Munich, Bayerisches SB, MS Clm 3853. Mordek, *Bibliotheca capitularium*, pp. 287–305.

28 Munich, Bayerisches SB, MS Clm 3853, fol. 248^{v}.

29 *Capitulare missorum*, ed. by Boretius and Krause, no. 188, pp. 9–10.

30 Munich, Bayerisches SB, MS Clm 3853, fols 290^{v}–291^{v}.

before. In this process, the extant compendia seem to have built on earlier collections all while straightforward copies were also being produced.[31] In any case, it is clear that material on the oath of loyalty was not a priority. The tenth-century compilers naturally would have developed a keen knowledge of the old texts, but a few copied lines on the old oath would scarcely have been enough to carry forth understanding of prescriptive Carolingian legislation, let alone constitute evidence that they remained in effect at the time these manuscripts were produced.

The tenth-century West Frankish manuscripts preserve oath texts at a comparatively high rate, with a spectacular concentration of legal manuscripts at Reims, many of which were bequeathed by Archbishop Hincmar (d. 882).[32] In manuscripts of the 'Reims group', the Ansegis-Worms corpus predominates, which was closely associated with the court of Louis the Pious, indicating a specific interest in royal legislation.[33] These manuscripts were subsequently used as exemplars for more than a dozen tenth-century manuscripts — one exemplar alone was used for no fewer than four tenth-century copies, as well as several ninth- and eleventh-century copies.[34] Sometimes the texts are literally torn from earlier manuscripts.[35] Facilitated by the legal library at Reims, this pattern of interaction with Carolingian tradition in West Francia continued right through the tenth century, though the exact effects of this are unclear. The similarity — and even duplication — of many manuscripts from the ninth and tenth century is perhaps unexpected, given the political upheaval. There were Carolingians on the West Frankish throne for much of the tenth century, but they were continually challenged by the rival Robertine/Capetian dynasty. Rather than undermine the authority of Carolingian texts, the conflict seems to have intensified engagement with it — without, we should stress, guaranteeing its status or influence as law. The Carolingian bent of the tenth-century West Frankish legal manuscripts might be understood as an attempt by the clergy at Reims to maintain a clear standard of royal authority in the face of political instability. Reims was far from neutral in the conflicts, but had a clear interest in the

31 See Patzold, 'Capitularies in the Ottonian Realm' and Mordek, *Bibliotheca capitularium*.

32 See Corcoran, 'Hincmar and his Roman Legal Sources'.

33 Typified by BnF, MS lat. 10758, a legal compendium of the late ninth century, possibly Hincmar's own autograph copy. Mordek, *Bibliotheca capitularium*, pp. 587–605. For the 'Reims Group', see Devisse, *Hincmar et la loi*, p. 71.

34 Tenth century: BnF, MS lat. 4760, MS lat. 4761/1, and MS lat. 4628 A; BAV, MS Reg. Lat. 447. Eleventh century: Berlin, SB, MS Phill. 1762; BnF, MS lat. 4638. Ninth century: BnF, MS lat. 4417. This is probably an incomplete list.

35 BnF, MS lat. 4634 has eight pages of Benedict Levita torn from a late ninth-century codex, while the rest of the manuscript is from a different, mid-ninth-century manuscript, BnF, MS lat. 4636, our earliest copy of Benedict Levita's collection. BnF, MS lat. 4634 adds a document of privileges from a *c.* 981 synod at Sens at the back of the manuscript, which was of course not in the earlier exemplars. Mordek, *Bibliotheca capitularium*, pp. 519–20.

preservation of law and order. The Carolingian oath of loyalty that was a part of this legal tradition had distinct moments of symbolic value even though it had ceased being administered in the same way.

Certain manuscript compilations provided more information on the oath than others. One of the highest concentrations of oath material is found in Paris, BnF MS lat. 9654, a Lotharingian compilation of the tenth and eleventh century. It gathers an impressive array of Carolingian material from Pippin III (d. 768) to Charles the Bald, as well as a handful of post-Roman *leges* — a collection therefore similar to the East Frankish manuscripts in scope but smaller in scale at only 172 folios. The manuscript includes more Carolingian oath formulas than any other: not just several of Charlemagne's capitularies on the oath but a section giving two later oath formulas, as well.[36] It therefore provided a unique level of detail on how the Carolingians administered the oath and how it factored into Carolingian rulership. But it is unclear what use such knowledge was to tenth- and eleventh-century Lotharingians, who by then had been ruled by the Ottonians for nearly a century. They were certainly not practising a Carolingian-style oath. More likely their interest was in the symbolic power of the Carolingian past. Lotharingians may have, for example, seen themselves as custodians of Carolingian tradition, as East and West Frankish dynasties vied for control of their region's political resources.[37] Whatever else a manuscript like MS lat. 9654 was used for, it was an effort to reconstruct and lay claim to the past.

The compilation of Carolingian oath texts in the tenth century was not intended to support the continuation of ninth-century Carolingian practices. These are not administrative documents. Interest in the Carolingian oath was connected to symbolic uses of the Carolingian past more generally. The exclusion of contemporary legal material from these collections is a further indication that it was circulating separately, and that the Carolingian past was mostly sealed off and bound separately from the present. The tenth-century manuscript evidence shows an eclectic attitude to the legal traditions of the ninth century as the symbolic needs of different regions diverged. This would have been a serious impediment to the continuation of oath practices linked to Carolingian written tradition.

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36 BnF, MS lat. 9654, with the 789 and 802 oaths on fol. 11^{r-v}, the agreement sworn between Charles the Bald, Louis the German, and Lothar II in 862 (*Hludowici, Karoli et Hlotharii II. conventus apud Saponarias*, ed. by Boretius and Krause, no. 243, pp. 159–65) on fols 81^{r}–83^{v}, and the 857 agreement between Charles the Bald and Lothar II (*Karoli II. et Hlotharii II. conventus apud sanctum Quintinum*, ed. by Boretius and Krause, no. 268, pp. 293–95) on fol. 78^{v}. Mordek, *Bibliotheca capitularium*, pp. 562–67.

37 For an overview of the struggle, see MacLean, 'Shadow Kingdom', pp. 443–57.

Disappearance of Carolingian Oath Phrases

The Carolingian oath of loyalty was a specific legal procedure that was meant to be performed using prescribed phrases. Its use was, as Elisabeth Magnou-Nortier put it, 'precise and limited'.[38] She compiled a list of the signature phrases of the Carolingian oath:

> 'Ego … ab ista die in antea fidelis ero' (I will be loyal from this day forward)[39]
>
> 'vobis adiutor ero' (I will be a supporter for you)[40]
>
> 'sicut homo per drictum debet esse domino suo' (just as a man ought by right to be to his lord)[41]
>
> 'sine fraude et malo ingenio' (without deceit and evil disposition)[42]
>
> 'ut unusquisque … suum parem adiuveti' (that each will support his peers)[43]
>
> 'sic me Deus adiuvet et estae reliquiae' (so may God and these relics help me)[44]

Two additional phrases, both of which appear numerous times in Carolingian oath formulas, also seem worthy of inclusion:

> 'consilio et auxilio' (counsel and aid)[45]
>
> 'secundum meum scire ac posse' (following my knowledge and ability)[46]

Although Magnou-Nortier saw the use of these phrases in the eleventh century as demonstrative of continuity with Carolingian practices, it is more prudent to treat them as textual artefacts of the Carolingian tradition rather than bundles of cultural practices.[47] In this way we are able to separate the narrow, technical meaning of a clause from the cultural context in which it was used. This avoids a problematic assumption and allows for a greater range of interpretation.[48] Hence, this list of phrases helps trace the

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38 Magnou-Nortier, 'Fidélité et féodalité', p. 458.
39 *Capitulare missorum Attiniacense*, ed. by Boretius and Krause, no. 261, p. 278.
40 *Sacramenta apud Gundulfi villam facta*, ed. by Boretius and Krause, no. 277, p. 342.
41 *Capitularia missorum specialia*, ed. by Boretius, no. 34, p. 101.
42 *Duplex legationis edictum*, ed. by Boretius, no. 23, p. 63.
43 *Hlotharii, Hludowici et Karoli conventus apud Marsnam secundus*, ed. by Boretius and Krause, no. 205, p. 72.
44 *Capitulare missorum Attiniacense*, ed. by Boretius and Krause, no. 261, p. 278. See above.
45 See Devisse, 'Essai sur l'histoire d'une expression'.
46 See Devisse, 'Essai sur l'histoire d'une expression'.
47 See Débax, who rejects Magnou-Nortier's view that Carolingian oaths were precursors of tenth- and eleventh-century oaths: *La féodalité languedocienne*, pp. 100–19.
48 This reflects the approach of Esders, 'Fidelität und Rechtsvielfalt'.

use of Carolingian texts, but not necessarily assuming the persistence of Carolingian ideology.

After the year 900 or so, the phrases from the list mostly disappear from use.[49] There is, however, one prominent exception: when Charles the Simple and Henry the Fowler swore friendship to each other at Bonn in 921, three different phrases from the list were used.[50] The ceremony was intensely Carolingian in form: everything was clearly modelled on earlier peace agreements sworn between Carolingian family members in the 840s and 850s, which were held in neutral locations like river islands and which were framed in confraternal terms using traditional formulas.[51] The oaths sworn at St-Quentin in 857 between Charles the Bald and Lothar II, for example, laid stress on their familial relationship (*carissimus nepos*) and the natural love and cooperation that should exist between them, 'just as an uncle to a nephew and a nephew to an uncle ought by law to save and sustain' ('sicut avunculus nepotem et nepos avunculum per rectum salvare et adiuvare debet').[52] At Bonn, Charles the Simple swore to be a friend to Henry, 'just as a friend ought to be to his friend' ('sicut amicus per rectum debet esse suo amico'), 'following my knowledge and ability' ('secundum meum scire ac posse'), invoking the help of God and 'these holy relics' ('sic me deus adiuvet et istae sanctae religuiae'). It is a clear echo of the Carolingian oath.

The painstaking imitation of ninth-century practice at Bonn raises some interpretative red flags when the content of the agreement is considered more closely. Charles was a Carolingian family member, but Henry was not; so while Carolingians in the ninth century had pinned their rhetoric of unity to their sense of fraternity, Charles and Henry swore to be 'friends' (*amici*).[53] The oath fails to specify the terms and conditions of this friendship, quite unlike earlier examples, whose propagandistic function never overrode the

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49 The *sicut per drictum* clause is the most widely attested, and Esders only identifies two uses on the Continent in the tenth century: one from Regino of Prüm's *De synodalibus causis* (*c.* 908) referring to marriage vows: Regino of Prüm, *Libri duo de synodalibus causis*, ed. and trans. by Hartmann, II.241–42, pp. 360–63. The other from the agreement at Bonn (921) is discussed below.

50 *Pactum cum Karolo rege Franciae occidentalis*, ed. by Weiland, no. 1, pp. 1–2; The meeting is noted by Flodoard, *Annales*, ed. by Lauer, *a.* 921, pp. 5–6, and Richer of St-Rémi, *Historiae*, ed. by Hoffmann, I.24, pp. 62–63, who suggests a subordinate Henry (still referred to as *dux*) was returning to loyalty to Charles. For the relationship between Charles and Henry, see Schmid, 'Unerforschte Quellen', p. 119.

51 See, for example, the Oaths of Strasbourg (842) in Nithard, *Historiae*, ed. by Lauer, III.5, pp. 100–11 where the *sicut* clause is translated into the vernacular, and the agreements at Meersen (851): *Hlotharii, Hludowici et Karoli conventus apud Marsnam secundus*, ed. by Boretius and Krause, no. 205, pp. 72–73; and Quierzy (858): *Sacramenta Carisiaci praestitia*, ed. by Boretius and Krause, no. 269, pp. 295–97.

52 *Karoli II. et Hlotharii II. conventus apud sanctum Quintinum*, ed. by Boretius and Krause, no. 268, pp. 293–95.

53 The Latin oath at Strasbourg stressed *fraternitas*, using the word several times in the formula: Nithard, *Historiae*, ed. by Lauer, III.5, pp. 100–11. See Althoff, *Amicitiae und Pacta*, p. 286.

need to spell out what an oath entailed — loyalty, mutual support, and so forth. Indeed, the three Carolingian formulas used at Bonn do not mention any of the traditional obligations but instead emphasize the authority of the text. These three phrases do not appear together in any other Carolingian oath formulas, a sign that the Bonn oath was a composite reconstructed from several sources. This suggests continued engagement with the traditions of the ninth century, but also a disconnect: a shift to new kinds of political bonds (*amicitia*), a concern with authority over instrumentality (Carolingian formulas, unspecified obligations), and the need to research and re-create the past.

None of this indicates the kind of continuity of practice that has long been assumed between Carolingian and high medieval oaths.

The agreement at Bonn is best understood in context as a piece of deliberately archaizing West Frankish propaganda primarily intended to reinforce the legitimacy of the embattled king Charles. The text appears to have been produced in West Francia for a West Frankish audience, emphasizing Charles's Carolingian credentials at a moment when the Robertines were gaining support as a dynastic alternative.[54] Although scholars have understood the Bonn agreement in the same vein as ninth-century agreements that were issued jointly by various Carolingian kings, there is no evidence an 'East Frankish' version of the text ever existed.[55] Henry, who tended to eschew Carolingian-style rulership, would probably not have portrayed the proceedings in such a Carolingian light in his own kingdom.[56] Charles, on the other hand, if he was the author, seems to have been straining to reconstruct an authentically Carolingian voice in this text to shore up his claims to legitimacy. Indeed, there was no broader conflict it was intended to resolve, in contrast to the ninth-century agreements on which it was modelled. The oath at Bonn, then, seems primarily a West Frankish enterprise.

The Bonn agreement is probably not evidence of a continuous Carolingian oath practice held in common on both sides of the Rhine and sustained by a vibrant manuscript culture. But it is a sign that the old traditions may have been transforming into a form of ritual, archaizing propaganda in the

54 The West Franks are listed first in each section and only Charles's oath is recorded verbatim, in addition to the strong circumstantial evidence discussed here. For the ideology of dynasty, see Costambeys and others, *Carolingian World*, pp. 386–88, 424–26, and 431–35.

55 Koziol wrote that Bonn 'was decidedly bilateral, reciprocal and equal': 'Charles the Simple', pp. 355–90.

56 Differing local interpretations of such ceremonies were common in late ninth-century sources. Compare for example the interpretations of the oaths sworn at Forscheim (872) in the *Annales Bertiniani*, ed. by Grat and others, *a.* 872, pp. 184–89 and the *Annales Fuldenses*, ed. by Friedrich Kurze, *a.* 872, pp. 75–77. For general views of Henry's style of rulership, see Fried, 'Die Königserhebung Heinrichs I.', pp. 267–318; and for the Ottonians generally, Althoff and Keller, *Heinrich I. und Otto der Große*, pp. 56–65.

service of kings whose horizons had shrunk. The West Frankish authors of the agreement knew the Carolingian material. It was not inappropriate for them to have used it — the formulas drawn from the old documents remained perfectly valid — and it is no surprise that Charles the Simple was looking to burnish his Carolingian credentials. But the very West-Frankishness of this text reveals a post-Carolingian mentality. For sceptics of Charles the Simple, the act of ostentatiously re-enacting Carolingian ceremonial paradoxically may have confirmed the existence and validity of alternative traditions.[57] The Bonn agreement highlights a new political calculus surrounding the oath beginning to emerge in the first quarter of the tenth century in response to a crisis of legitimacy. As we have seen, there was sustained interaction with Carolingian oath traditions in the tenth century, but the spotty reception of Carolingian oath texts and the drastically reduced circulation of Carolingian oath formulas suggests that a different stage in development had been reached, where a belonging with the Carolingian past was no longer assumed but had to be claimed, reconstructed, and adapted, or else rejected.

The Carolingian Legacy at Arm's Length

Attempts to appropriate Carolingian tradition in the tenth century were limited; although there were many uses of the Carolingian past, most had reason to hold it at arm's length. Non-Carolingians succeeded to the throne in both East and West Francia who were eager both to exploit the symbolic resources of Carolingian rulership and to imprint it with their own family mark. A loss of attachment to the Carolingian oath tradition becomes apparent in the practices these new regimes used to establish the loyalties of their subjects. By Henry I's time the Carolingian tradition of the oath had already been radically reinterpreted in East Francia under his predecessor, Conrad I (d. 918). In the aftermath of the rebellion led by the Alemannian dukes Erchanger and Berthold, the East Frankish church held the Synod of Hohenaltheim in September of 916, in the presence of a papal legate. Several features of the synod suggest a move away from Carolingian models.

In the first place, it was extraordinary for the church to take the lead in responding to a political rebellion in this way. Conrad's own involvement in the synod was small, as the East Frankish bishops invoked 'apostolic authority' and perhaps even sought legitimation of the proceedings from Pope John X through his legate, Peter of Orte, who was present.[58] Conrad

57 This is the warning at the core of Buc's critique of ritual, *Dangers of Ritual*. The political history of West Francia confirms this, as suggested in Koziol (who criticizes Buc's approach), *Politics of Memory*, pp. 121–22; and more generally by Althoff, *Macht der Rituale* and Schneidmüller, 'Widukind von Corvey', pp. 83–102.

58 *Hohenaltheim (916)*, ed. by Hehl and Fuhrmann, no. 1, pp. 1–40. See also Fuhrmann, 'Hohenaltheim', pp. 452–53.

had survived the rebellion in large measure because he had won the support of the upper clergy, so Hohenaltheim came at a moment when episcopal power was of decisive political importance.[59] Yet, the council emphasized the sanctity of the king's person and portrayed the sacramental oath of loyalty (*sacramentum fidelitatis*) as the ritual basis of his authority. The bishops discuss 'robur regum nostrorum' (the strength of our kings) and the treatment of he who 'iuramentum regis violat' (violates the oath to the king).[60] In these canons, the king is referred to as *christus Domini* — 'the Lord's anointed', a title sometimes used for the king in Visigothic council records but never at Carolingian councils.[61] It shows a markedly different disposition toward royal authority than had prevailed among churchmen in the later ninth century. Hincmar of Reims, for example, espoused the 'Two Swords' view of Pope Gelasius (d. 496), which according to Hincmar envisioned separate spheres of authority for king and bishop, but claimed that the bishop's authority was greater because it was prior to the king's.[62] Hincmar's strong view of episcopal authority came at a time of relatively strong kings. In the early tenth century, under a weak king who had barely survived this rebellion, the bishops at Hohenaltheim tried to bolster royal authority by lending the king an explicitly sacred title. Breaking with precedent to portray the king as a quasi-sacred figure worked for two reasons: first, it posed little danger in the moment to episcopal authority because Conrad was politically dependent on the church, and second, it staked out a greater political role in the realm for the East Frankish bishops as the sponsors of royal authority.

The oath gained a more prominent role in this conception of royal authority because of its sacramental nature. A more sacred conception of loyalty called for a greater role for the clergy in administering and enforcing the oath. The relationship between the king, the sworn royal subject, and the church thus had to be reconfigured. It was in some ways a reversal of the traditional rhetoric: instead of the church placing itself under the protection of the king, the church became Conrad's protector, giving itself the authority to punish the rebels.[63] At Hohenaltheim, what had begun as a rebellion of the magnates resulted in a symbolic coup for the episcopacy.

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59 Hellmann, 'Synode', pp. 131–32.

60 *Hohenaltheim (916)*, ed. by Hehl and Fuhrmann, no. 1, cc. 19–25, pp. 27–32. These canons draw heavily on language from two Visigothic councils in particular, *Toledo IV (633)*, ed. by Martínez Díez and Rodríguez, c. 75, pp. 248–55, and *Toledo VI (638)*, ed. by Martínez Díez and Rodríguez, c. 18, pp. 318–53.

61 Compare the language Hincmar used for bishops at *Quierzy (858)*, ed. by Hartmann, no. 41, c. 15, pp. 424–25. On the *christus Domini*, see Kern, *Gottesgnadentum*, pp. 68–88. For later Carolingian developments in sacral kingship, see, Nelson, 'National Synods', pp. 239–57.

62 See the classic article by Nelson, 'Kingship, Law, and Liturgy', pp. 241–79.

63 Hellmann, 'Synode', p. 135, who compares Hohenaltheim with the Council of Tribur (895), where the church placed itself under the protection of Arnulf of Carinthia, see *Tribur (895)*, ed. by Hartmann and others, no. 39, pp. 319–415. It is notable that while the synod of

Hohenaltheim was a step away from Carolingian oath tradition even in the way its text was constructed. The most recent editors, Horst Fuhrmann and Ernst-Dieter Hehl, have emphasized how the text of the synod was compiled from a variety of extant canon collections — most notably the ninth-century Pseudo-Isidore decretals and a *Collectio Hispana*, texts which circulated in ecclesiastical circles but were not associated with Carolingian kingship precisely because of their emphasis on ecclesiastical authority.[64] This is especially significant because the authors of the synod text chose not to draw on the royal capitularies, which would have been the main legal corpus dealing explicitly with the issues at hand, including the oath of loyalty. Use of the 'secular' capitularies at church councils had precedent, and would have been justified at Hohenaltheim due to the extraordinary remit granted by the circumstances.[65] Certainly, as stated above, East Frankish scribes of the tenth century were copying the capitularies into their legal compilations alongside what we might call 'canon law'. But instead of drawing on the capitularies for oath formulas, the scribes at Hohenaltheim used language from the Visigothic church councils. They condemn the typical activities that all oaths of loyalty sought to prohibit: plots on the life of the king, usurpations of the crown, and sworn conspiracies against him.[66] Although perhaps similar in spirit to the Carolingian oath of loyalty, the language is taken from the Sixth Council of Toledo (638).[67] For example, the prohibition on sworn conspiracies that appeared in Charlemagne's 789 doubt edict uses the construction 'coniurationes facere' (to form conspiracies), while Hohenaltheim uses Toledo's 'coniuratorum manus associare' (to join hands with conspirators).[68] More striking, when describing the act of swearing the oath, Hohenaltheim uses, 'manum suam in christum Domini mittens' (giving his hand to the Lord's anointed), a phrase which appears to be original.[69] It would appear in these passages that the authors of the Hohenaltheim text, while likely aware of the Carolingian formulations of the oath, found that the Visigothic councils spoke more directly to their new-found situation as self-appointed custodians of royal authority.

Hohenaltheim prescribed excommunication and tonsure for the rebel leaders, once they were neutralized Conrad had them executed the following year. The Visigothic comparison is apt here, since it seems the bishops at Toledo VI (638) were hoping to mitigate the harsher punishments sought by King Chindaswinth against the rebels. See Orlandis and Ramos-Lissón, *Historia de los concilios*, pp. 344–49.

64 Fuhrmann, 'Hohenaltheim', pp. 446–61.

65 See for example the typical oath language used at the Council of Pavia (876), see *Pavia (876)*, ed. by Hartmann, no. 3, pp. 20–21.

66 *Hohenaltheim (916)*, ed. by Hehl and Furhmann, no. 1, c. 20, p. 28.

67 *Toledo VI (638)*, c. 18, ed. by Martínez Díez and Rodríguez, pp. 327–28.

68 *Duplex legationis edictum*, ed. by Boretius, no. 23, p. 64; *Hohenaltheim (916)*, ed. by Hehl and Fuhrmann, no. 1, c. 20, p. 28.

69 *Hohenaltheim (916)*, ed. by Hehl and Fuhrmann, no. 1, c. 23, p. 30. See comments by Fuhrmann, 'Hohenaltheim', p. 448.

Such departures from established Carolingian precedent suggest a new attitude toward the received texts and different conceptions of the oath. To put it another way, as the East Frankish clergy witnessed the erosion of royal power under Conrad, they sought to buttress his authority with an alternative legal theory. The oath remained at the very centre of the discussion. But the search for a way to respond to the political crisis in an authoritative way led them to the pre-Carolingian Visigothic councils, and amounted to a reversal of longstanding royal ideology. The Carolingians themselves had undergone something similar in the eighth century as they looked for ways of responding to rebellion and as they made certain claims about the nature of their authority as kings. The 'Carolingian oath of loyalty' was a set of ideas and practices developed precisely under these circumstances. The Synod of Hohenaltheim was an early indication that the Carolingian model was losing traction in East Frankish legal discourse.

The West Franks, too, held their Carolingian inheritance at arm's length by the later tenth century. In 991, Archbishop Arnulf of Reims (d. 1021) was put on trial at the Synod of St-Basle for breaking his oath of fidelity to King Hugh Capet (d. 996).[70] His accusers charged him specifically with opening the city of Reims to the Carolingian pretender to the West Frankish throne, Charles of Lotharingia (d. 993), and conspiring with him against King Hugh. As the council made its preliminary consideration of procedures and evidence, it came to light that the oath Archbishop Arnulf had sworn to Hugh had been committed to writing, and with some deliberation this *Libellus fidelitatis* was brought forward as written evidence in the trial. The reaction to this in our sources is difficult to assess. On one hand, the oath formula includes Arnulf's statement that he will 'provide counsel and aid in all things according to my knowledge and ability' — a combination of two typical Carolingian oath phrases.[71] In other respects, Arnulf's oath is *sui generis*, apparently written up for the occasion and containing no other language with any precedent in early medieval law. It was also unusual for an oath of loyalty to have been written down and signed by the swearer, perhaps a sign that King Hugh had suspected Arnulf's loyalties from the start.[72] If so, we can see why Hugh, or Arnulf himself, would not have wanted

70 The text of the council of *St-Basle (991)*, ed. by Hehl and Servatius, no. 44, pp. 380–469. For the circumstances surrounding the council and some analysis of the ritual and textual elements, see West, *Reframing the Feudal Revolution*, pp. 163–67; Glenn, *Politics*, pp. 98–109; Koziol, *Begging Pardon*, pp. 1–4; and Giordanengo, 'Le concile de Saint-Basle', pp. 134–41.

71 *St-Basle (991)*, ed. by Hehl and Servatius, no. 44, c. 8, p. 399: 'consilium et auxilium, secundum meum scire et posse'. See above n. 40.

72 There is evidence of signed documents or *libelli* being brought forward in ninth-century trials, such as the cases of Ebbo of Reims and Theutberga, but such occurrences are rare. Arnulf's signed confession, similar in form, is included at the end of the council *acta*, *St-Basle (991)*, ed. by Hehl and Servatius, no. 44, c. 54, p. 449.

to draw on the Carolingian oath formulas that would invoke traditional obligations to a rival dynasty.

If this oath text represents some filtered-down Carolingian practice, it is far from clear what legal sway it held. Richer of Saint-Rémi tells us that some bishops were concerned about whether it was canonical to present an oath that was written down and signed, which was 'contrary to custom', as evidence in the trial.[73] Was Arnulf's 'oath' falsified evidence presented by the prosecution? It is, in fact, unclear whether the document was brought forward in Arnulf's defence or presented as evidence against him, but he did not deny that he had signed it, which would suggest it was at least accepted as authentic.[74] Gerbert of Aurillac, the author of the council *acta*, framed Arnulf's obligations of loyalty to Hugh by citing some of the same Visigothic material used at Hohenaltheim.[75] The *Libellus fidelitatis* is therefore a document — like the oaths at Bonn and the canons of Hohenaltheim — that illustrates debates and uncertainties surrounding the oath of loyalty in the late tenth century, as people grappled with the meaning of the Carolingian legacy.

The context of these debates was the final political ouster of the Carolingian family and the entrenchment of new dynasties. One can see the conundrum facing the bishops at St-Basle: they could not turn completely away from Carolingian legal precedent, which established the criminality of Arnulf's actions; but neither could they invoke the royal edicts that formed the basis of secular Carolingian law. The result was a mixture of texts and arguments in which the traditions of the eighth and ninth centuries occupied a smaller and smaller place. New visions of loyalty were taking shape in the tenth century as Carolingian forms of the oath fell out of favour. This experimentation effectively ended the distinctive approach to the oath developed by the Carolingians in the eighth and ninth centuries, but opened new possibilities for uses of the oath in post-Carolingian society.

Conclusion

This survey of the legal and documentary evidence suggests that the Carolingian oath that retained its distinctive features through the ninth century fell out of use in the tenth century as people experimented with alternative traditions and new ideas. The manuscripts show that the reception of Carolingian oath texts was fragmentary and reflective of diverging regional attitudes toward the Carolingian legal corpus. The diminishing use of Carolingian

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73 Richer of St-Rémi, *Historiae*, ed. by Hoffmann, IV.59, p. 273: 'Calumniantur enim contra leges divinas scriptum, lectum, reconditum'.

74 As noted by the translator in Richer, *Histories*, trans. by Lake, II, p. 468 n. 55.

75 He cites the Pseudo-Isidorean strain of Toledo IV: see note by the editors, *St-Basle (991)*, ed. by Hehl and Servatius, no. 44, pp. 434–35 n. 388 and p. 438.

oath phrases suggests a growing practical disconnect with these traditions, even as they retained symbolic value in certain situations. Other situations necessitated the rejection of Carolingian oath tradition and the search for more useful alternatives. Carolingian practices were not simply adopted or continued without debate. On the contrary, the need to come to terms with the ramifications of fragmentations and dynastic change was intensified. The process had reached a late stage by the end of the tenth century, at which point the Carolingian oath was no longer useful and alternative sources of political authority flourished.

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IV.

Framing the Oath in Early Medieval Theology, Exegesis, and Canon Law

STEFAN JURASINSKI

Augustine, Wilfrid, and the Priest's 'Oath' in the Laws of Wihtræd

This chapter is concerned primarily with an overlooked passage in the laws of the Kentish king Wihtræd (d. 725) and secondarily with the unacknowledged relations between this clause and later developments in English legislation. The clause in question (§ 14) is the first in any English legal compilation to prescribe how a priest ought to respond formally to an accusation of wrongdoing:[1]

> Preost hine clænsie sylfæs soþe in his halgum hrægle ætforan wiofode, ðus cweþende: *Veritatem dico in xro non mentior.*
>
> (A priest should clear himself with his own truth in his holy vestments before the altar, thus saying: *Ueritatem dico in Christo, non mentior*.)

Uncertainties over the interpretation of Wihtræd § 14 were first voiced about a century and a half ago and have never been satisfactorily answered in the decades since. The pages immediately following address these ambiguities with new evidence, setting forth the likeliest textual influences to have acted upon it and the schools of thought on licit forms of asseveration to which it appears to respond. Concluding sections consider the ways in which this clause illuminates other legislative treatments of ecclesiastical and secular obligations issued in the pre- and immediately post-Conquest eras.

We begin with the clause itself. It is important to understand that the ceremony it prescribes suffices alone to exonerate the presbyter; he need offer no further testimony. Clauses immediately prior and subsequent to this one establish that the same form of proof might be used by the 'head of a minster' (*mynstres aldor* (§ 13)) and by a deacon (§ 14.1). Though nearly all discussions of this ordinance refer to the affirmation made by the priest as an 'oath', there have been some notable qualifications. Felix Liebermann, whose edition of the text was not superseded until 2002, describes the

1 *The Laws of Wihtred*, ed. and trans. by Oliver, § 14, pp. 158–59. The Latin reads, 'I speak the truth in Christ, I do not lie.'

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The Oath in Late Antiquity and the Early Middle Ages: Religious Act, Social Bond, Holy Sacrament, ed. by Stefan Esders and Gerda Heydemann, CELAMA 46 (Turnhout: Brepols, 2026), pp. 249–265 BREPOLS PUBLISHERS 10.1484/M.CELAMA-EB.5.152878

passage just quoted as a 'formula of asseveration' ('Beteuerungsformel') and suggests in his *Sachglossar* (s.v. *Eidesersatz*) a connection between Wihtræd § 14 and much later instances of clerics' reluctance to participate in oaths.[2] The only overt objection of which I am aware to the view that § 14 prescribes an 'oath' was ventured by Oswald Cockayne, who noted in 1868 that the 'form of words […] does not involve the essence of an oath, the invocation of divine vengeance on perjury'.[3] Cockayne's remarks seem not to have been considered by Liebermann or any subsequent commentator, and it has been a matter of course in the decades since for the rite in Wihtræd § 14 to be referred to as an 'oath' in spite of the qualifications suggested by Liebermann's treatment.[4]

The origins of the language to be used by the priest have likewise gone unremarked in prior commentary. Neither Liebermann's nor the most recent edition of the text observe that the phrases to be intoned at the altar must derive from the writings of St Paul. The prescribed formula is quoted either from his Epistle to the Romans 9. 1 ('ueritatem dico in Christo, non mentior') or from 1 Timothy 2. 7 ('in quo positus sum ego praedicator et Apostolus, ueritatem dico, non mentior, doctor gentium in fide et ueritate').[5] Liebermann's labelling it a *Beteuerungsformel* tells only part of the story; it is more properly understood as a passage of Scripture adapted for use as a legal instrument.

Why the priest's asseveration in Wihtræd's laws hews so closely to the language of Scripture, and what this choice indicates about the development of forms of proof among clergy, will be suggested in what follows. Before proceeding further, however, we should be clear on what constitutes an oath as far as medieval sources are concerned. As Cockayne's observation makes clear, an oath becomes an oath when one party asserts that an obligation will be fulfilled, or an assertion of innocence vindicated, by inviting divine retribution in the event such assurances have been wrongfully offered. It is the threat of divine punishment that made such a gesture suffice as a form of proof during the Anglo-Saxon period and for most of the Middle Ages. That this feature is fundamental to oaths shows their likeness to ordeals, a mode of proof with which they often coincided until ecclesiastical support for the latter was withdrawn by the Fourth Lateran Council in 1215.[6] John Niles has pointed out the hazards of distinguishing the two as both rest upon the same fundamental assumptions:[7]

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2 *Gesetze*, ed. by Liebermann, , III, p. 24; II, p. 376. The standard edition is now *Beginnings of English Law*, ed. by Oliver (quoted earlier), whose chapter numeration differs from Liebermann's.

3 Cockayne, 'On Some Passages of the Saxon Laws', p. 114.

4 E.g., Chaney, *Cult of Kingship*, p. 183; perhaps also Stenton, *Anglo-Saxon England*, p. 62.

5 Quotations from the Vulgate New Testament are from *Nouum Testamentum Latine*, ed. by Wordsworth and White.

6 On the backgrounds of this development, see McAuley, 'Canon Law and the End of the Ordeal'.

7 Niles, 'Trial by Ordeal', p. 36.

> While it is true that the ordeal was reserved for special cases where a defence by oath alone was insufficient, one should not therefore conclude that it was a separate procedure that had nothing to do with the oath. On the contrary, the *raison d'être* of the ordeal was that it was a means of assaying the validity of the oath by direct appeal to God as supreme witness, whose judgments were not prone to error. The ordeal was an extension of the oath by material means, not an alternative to it.

Niles's observations regarding the uncertain distinction between oaths and ordeals suggest why clergy in the later Anglo-Saxon period adopted as a standard form of proof the 'Eucharistic ordeal', a rite that seems to belong as much in the first category as in the second. The rationale for this procedure again followed the language of Scripture. In 1 Corinthians 11. 27–31, St Paul asserts that those who receive the Eucharist unworthily 'eat and drink judgement against themselves' and suggests that bodily infirmity and death may ensue. It is doubtless on such grounds that we find, in the first legislation to address clerical proof after Wihtræd's, priests obliged to clear themselves not by reciting the Pauline formula in their vestments, as had earlier been prescribed, but by celebrating Mass, their reception of the Eucharist sufficing to expose them to divine wrath should they employ such means for the purposes of perjury. According to VIII Æthelred § 19, the priest 'shall say mass, if he dares, and by his own asseveration clear himself by the Holy Communion' ('mæssige, gif he durre, ladige hine on ðam husle silf hine silfne').[8] For the 'minister of the altar' (*weofodþén*) the 'ordeal of consecrated bread', also known as the *corsnæd* ritual, was available as an alternative to 'clear[ing] himself by the Holy Communion' ('buton he on husle ladian mote') (§ 22) but was the exclusive mode of proof for a kinless man in holy orders (§ 24).[9] The logic of the 'ordeal of consecrated bread' was presumably that it avoided potential profanation of the Mass and of the Host.[10]

Why the ordeal rather than the oath would replace what is prescribed in Wihtræd's ordinance as a form of proof for clerical defendants becomes apparent when we review briefly the history of doctrine concerning the latter practice (I am aware of no prior attempt to do so in commentary on earlier English law.) As we will see, re-examination of these texts tells us much about why the priest in Withræd's laws uses the language of St Paul.

All patristic discussions of oaths that shaped subsequent treatments in ecclesiastical law are commentaries on the dominical prohibition found in the gospel according to St Matthew (5. 33–37).[11] The Epistle of St James (5. 12)

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8 *VIII Æthelred*, ed. and trans. by Robertson, § 19, pp. 122–23.

9 *VIII Æthelred*, ed. and trans. by Robertson, § 22 and § 24, pp. 124–25.

10 On the *corsnæd*, see Niles, 'Trial by Ordeal'. It is possible that the bread employed in these rites was something like the *antidoron* of the Eastern church or the *panis benedictus* of the West.

11 On the dominical prohibition of swearing, see also (in the present volume) the chapters by Kollmann and Heydemann/Behrmann.

contains a similar admonition: 'Above all, my beloved, do not swear, either by heaven or by earth or by any other oath, but let your "Yes" be yes and your "No" be no, so that you may not fall under condemnation'.[12] Though both Matthew 5. 33–37 and James 5. 12 appear categorically to prohibit the oath, it is fair to say that they also echo Sirach 23. 9–12, a passage (as we will see) more influential than those just quoted on the thinking behind Wihtræd § 14:

> Do not accustom your mouth to oaths, nor habitually utter the name of the Holy One; for as a servant who is constantly under scrutiny will lack not bruises, so also the person who always swears and utters the Name will never be cleansed from sin. The one who swears many oaths is full of iniquity, and the scourge will not leave his house.

In prior commentary, it has often been pointed out that Matthew 5. 33–37 and James 5. 12 sufficed to settle the matter of whether swearing oaths was permissible for Christians until well into the fifth century.[13] Swearing was condemned in the Greek-speaking church by Origen, Basil, John Chrysostom, and Gregory Nazianzen.[14] In the West, it likewise found little favour with Hilary of Poitiers:

> Fides vero sacramenti consuetudinem removet, vitæ nostræ in veritate constituens, abjecto fallendi affectu, simplicitatem loquendi audiendique præscribens […] Ergo in simplicitate viventibus jurandi religione opus non est, cum quibus semper quod est, est: quod non, non: et per hæc eorum et opus et sermo omnis in vero est.
>
> > (Faith removes the habit of oathtaking and establishes the affairs of our lives in the truth. Once we have rejected an inclination toward deceit, a straightforward manner of speaking and hearing is prescribed […] For those who come in the simplicity of faith, there is no need for the observation of an oath; what is 'yes' is always 'yes', and what is 'no' is always 'no'. For these reasons, every work and word of theirs is trustworthy.)[15]

That a shift in attitude is discernible during the later fourth century is beyond dispute. Yet this has not always been described with sufficient care. Helen Silving's study, a standard point of reference on the subject for generations, attributes to St Jerome the view 'that Christ merely prohibited swearing by

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12 This and subsequent translations of Scripture are taken from the New Revised Standard Version as given in *The New Oxford Annotated Bible*, ed. by Metzger and Murphy.

13 'Acceptance of the oath in Christianity was achieved only after a considerable struggle, and even then the acceptance was not unqualified', Silving, 'The Oath: I', p. 1344.

14 See Gray, *Oaths and the English Reformation*, p. 17.

15 Hilary of Poitiers, *In evangelium Matthaei commentarius*, ed. by Migne, 4.23, col. 940; Engl. trans. by Matthews, p. 70 (§ 23).

heaven, earth, Jerusalem or one's own hand, and not oaths in general'.[16] A closer look at his wording suggests a more nuanced picture. Jerome does indeed assert that the dominical prohibition encompasses, in the narrowest sense, oaths by anything other than the divine name, rendering it essentially continuous with Mosaic law (cf. Deuteronomy 6. 13; Leviticus 19. 12):

> In lege praeceptum est ut non iuremus nisi per Dominum Deum nostrum. [...] Denique considera quod hic Saluator non per Deum iurare prohibuerit, sed per caelum et terram et Hierosolymam et per caput tuum.
>
> > (In the law it was prescribed that we ought not swear unless by the Lord our God [...] So bear in mind that here our Saviour did not prohibit swearing an oath by God, but by the heavens and the earth and Jerusalem, and by your head.)[17]

Yet Jerome goes on to liken even the oaths that were permitted under Mosaic law to sacrificial offerings of food and animals. This analogy suggests that the oath may be numbered among other practices superseded by the New Law:

> Et hoc quasi paruulis fuerat lege concessum ut quo modo uictimas immolabant Deo ne eas idolis immolarent, sic et iurare permitterentur in Deum, non quo recte hoc facerent, sed quo melius esset Deo id exhibere quam daemonibus.
>
> > (And this concession was made in the law, as to children, that just as they sacrificed victims to God lest they do so to idols, so they were permitted to make their oaths to God, not because they did rightly in doing so, but because it was better for it [the oath] to be made to God than to demons.)[18]

This is no endorsement of the oath. The licit oath of Mosaic law is described as an allowance (*concessum*) for what Jerome holds to be the imperfect and 'childish' ('quasi paruulis') piety of many in Israel; swearing by God is not a good in itself ('non quo recte hoc facerent') but better than an act of implicit idolatry.

The decisive change is evident not in Jerome's commentary but in that of St Augustine, perhaps the first to consider a seeming conflict between prohibitions on the oath and Paul's repeated invocations of the divine witness in his correspondence with the churches of Rome, Galatia, and Corinth:

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16 Silving, 'The Oath: I', p. 1344; cf. also Esders and Mierau, *Der Althochdeutsche Klerikereid*, p. 276; Gray, *Oaths and the English Reformation*, p. 17.

17 Jerome, *Commentariorum in Matheum libri IV*, ed. by Hurst and Adriaen, 1.5[34], p. 32 (my translation).

18 Jerome, *Commentariorum in Matheum libri IV*, ed. Hurst and Adriaen, 1.5[34], pp. 32–33.

> Sed tamen, quoniam iurat qui adhibet testem deum, diligenter considerandum est hoc capitulum, ne contra praeceptum domini apostolus fecisse uideatur, qui saepe hoc modo iurauit.
>
> (Inasmuch as a man is swearing if he is calling on God as his witness, this passage must be carefully considered in order that the Apostle may not seem to have acted against the precept of the Lord, for he often swore in this manner.)[19]

Here, I would suggest, is evidence of the germ of the procedure outlined in Wihtræd's laws, and for this reason Augustine's reflections are worth an extended look.

Augustine effectively begins the process of shifting the categorization of oaths from outright violations of divine precepts to vices that ought to be avoided whenever possible. The oath may be used 'only through necessity' ('nisi necessitate'); it is impermissible 'except when [one] sees that, unless men are assured by an oath, they are averse to believing what is to their benefit to believe' ('cum uidet pigros esse homines ad credendum quod eis utile est credere').[20] The oath remains a vice, but on grounds somewhat different from those argued for by St Hilary. While 'no one is to desire an oath as if it were something good' ('ne quisquam sicut bonum appetat iusiurandum'), its dangers reside in the 'habit engendered by the constant repetition of swearing' which leads one inevitably to 'false swearing' ('et assiduitate iurandi ad periurium per consuetudinem delabatur').[21] Effectively, Augustine here grafts onto what was earlier regarded as an unqualified prohibition the concerns about habitual swearing addressed in Sirach.

The views of Augustine would remain the foundation of pastoral teaching on oaths throughout the Middle Ages and into the era of the Reformation.[22] We would be mistaken, however, if we assumed that Augustine's interpretation of Matthew 5. 33–37 took hold throughout the Western Church upon issuing from his pen. The process of adoption may even have been more gradual than commonly assumed. In a sermon of Caesarius of Arles (d. 543), whose works were avidly read in later Anglo-Saxon England, we see the swearing of oaths listed among other grave vices (lying, detraction):

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19 Augustine, *De sermone Domini in monte*, ed. by Mutzenbecher, 1.17.51, p. 57; Engl. trans. by Kavanagh, p. 74.

20 Augustine, *De sermone Domini in monte*, ed. by Mutzenbecher, 1.17.51, p. 58; Engl. trans. by Kavanagh, p. 75.

21 Augustine, *De sermone Domini in monte*, ed. by Mutzenbecher, 1.17.51, p. 58; Engl. trans. by Kavanagh, p. 75.

22 The last of the *Thirty-nine Articles of the Church of England*, while prohibiting 'vain and rash Swearing', holds 'that the Christian Religion doth not prohibit, but that a man may swear when the Magistrate requireth, in a cause of faith and charity (jubente magistrate in causa fidei et charitatis)'; *A Theological Introduction*, ed. by Bicknell, p. 445.

> Non solum periurare, sed nec iurare consuescite, quia scriptura dicit: 'Vir multum iurans implebitur iniquitate, et non discedit de domo illius plaga' [Sir. 23. 12] Et Dominus: 'Nolite', inquid, 'iurare omnino; sit autem sermo vester: est est, non non' [Matth. 5. 37].
>
> (Accustom yourself not only to avoid perjury but to avoid the oath as well, for it is written: 'The one who swears many oaths is full of iniquity, and the scourge will not leave his house'; and the Lord: 'Do not swear at all', he said, 'let your speech be "yes, yes", "no, no"'.)[23]

While Caesarius's admonition culminates in Christ's 'swear not at all', the demand is here couched in language that may be construed as advising one at least not to make a habit of it (*nec iurare consuescite*), a view of swearing that was implicit in Hilary's commentary and further developed in Augustine's. The pastoral problem is now not so much the oath itself, which is understood implicitly as unavoidable in some instances, but the *vir multum iurans* of Sirach 23. 12. Excusing oneself from the oath on the grounds of scriptural injunctions alone, as seems to have been quite possible in earlier periods, was becoming impractical. Centuries later, priests would seek redress when forced to swear by bishops, finding their case supported for a time by emperor Henry III (d. 1056) but ultimately dismissed by Pope Honorius II, who decreed in the early twelfth century 'that clerics could swear the oath if ordered by their superiors'.[24]

The career of Caesarius of Arles places us within decades of the baptism of King Æthelberht, an event that served both to establish a Roman episcopal see in Kent and to prompt the composition of laws in the vernacular.[25] Remarks in Gregory of Tours's *Historiae* suggest that the views of Caesarius were in the minority in some parts of Western Europe already by the close of the sixth century. To prove non-involvement in a plot against the royal household, Gregory himself is obliged to 'say mass at three different altars and clear [him]self of the accusation by a sworn statement' ('dictis missis in tribus altaribus, me de his verbis exuerem sacramento').[26] There is something makeshift about the procedure forced on Gregory, and its having issued from a council involving King Chilperic and his bishops suggests that it was devised on the spot — as does Gregory's lament that the rites were undergone to satisfy the king even if 'contrary to the canons' ('et licet canonibus essent contraria, pro causa tamen regis impleta sunt').[27] Gregory's account demonstrates that the status of oaths by clergy was an

23 Caesarius of Arles, *Sermones*, ed. by Delage, Sermo 14.3, 1, p. 436; my translation.
24 Brasington, *Order in the Court*, p. 59.
25 See Bede, *Historia Ecclesiastica*, ed. and trans. by Colgrave and Mynors, II.5, p. 151.
26 Gregory of Tours, *Historiae*, ed. by Krusch and Levison, V.49, p. 261; Engl. trans. by Thorpe, p. 319.
27 Gregory of Tours, *Historiae*, ed. by Krusch and Levison, V.49, p. 261; Engl. trans. by Thorpe, p. 319.

unsettled question. It also suggests that Wihtræd § 14 exhibits a resistance to oaths by clergy unusual for its time.

A letter from Pope Gregory II to Boniface in 726 furnished the definitive statement on whether priests might clear themselves with an oath, being quoted subsequently in a Carolingian capitulary and, ultimately, Gratian's *Decretum*. Here it is held that it is permissible for an accused presbyter or any other cleric ('presbytero vero vel quilibet sacerdos a populo accusatus') to clear himself by means of an oath ('iureiurando erit in medio'), offering thereby a testimony of his innocence before God 'to whom all things are naked and open' ('cui nuda et aperta sunt omnia'; cf. Hebrews 4. 13).[28] That the matter had to be raised at all suggests lingering uncertainties even at this late date.

In the shadowy period between Caesarius's denunciations and the concession of Gregory II falls the legislation of Wihtræd. It is worth noting that Wihtræd's laws, though occurring alongside the earlier collections of Æthelberht and of Hloðhere and Eadric in the sole manuscript witness to all three codifications, have little in common with them.[29] The year in which Wihtræd's laws were promulgated — 695, according to their prologue — was also one of particular consequence for the episcopal see established at the outset of the seventh century by Augustine and his cohort. Only two years prior, in 693, Birhtwold had succeeded Theodore of Tarsus as Archbishop of Canterbury.[30] 'A man with deep knowledge of the Scriptures and well versed in ecclesiastical and monastic teaching', Birhtwold's episcopate sought to keep intact the legacies of his eminent predecessor, who was easily the most formidable of the pre-Alfredian archbishops of Canterbury.[31] As Birhtwold is named among other bishops in their prologue, it seems reasonable to conclude that the laws of Wihtræd are a substantial witness to views prevalent among the leadership of the Kentish church, bearing potential traces of the cosmopolitan learning brought to Canterbury by Theodore as well as the thinking of Birhtwold himself.[32] The language of their preface suggests that they are perhaps best considered the proceedings of a council or synod (in the loose sense of the word typical of Anglo-Saxon materials).[33] Wihtræd

28 Bonifatius, *Die Briefe des heiligen Bonifatius und Lullus*, ed. by Tangl, Ep. 26, p. 45.

29 The laws of the seventh-century Kentish kingdom are found exclusively in *Textus Roffensis* (Medway Archive and Local Studies Centre, MS DRc/R1), whose composition 'can be tied down to the single year, 1123–4', Wormald, *Making of English Law*, p. 245.

30 See Bede, *Historia Ecclesiastica*, ed. and trans. by Colgrave and Mynors, v.8, p. 474.

31 Bede, *Historia Ecclesiastica*, ed. and trans. by Colgrave and Mynors, v.8, pp. 474–75: 'uir et ipse scientia scripturarum inbutus, sed et ecclesiasticis simul ac monasterialibus disciplinis […]'. See also Brooks, *Early History*, p. 78: 'The firm alliance of church and state in the Kentish kingdom and the stability of Wihtred's rule enabled Berhtwald to pursue his predecessor's wider ecclesiastical policies with the confidence that his own position was secure'.

32 On Theodore's intellectual background, see Bischoff and Lapidge, *Biblical Commentaries*. The matter is further explored in Oliver, 'Royal and Ecclesiastical Law in Seventh-Century Kent'.

33 According to Liebermann, *Gesetze*, III, p. 24: 'Of all laws prior to Edgar's these seem the most ecclesiastical' ('Von allen Gesetzen vor Eadgar lautet dieses am kirchlichsten'). On

himself is reduced to sharing credit for their provisions with the bishops of Kent: he is just one among several of the 'important people' ('ða eadigan') present at the council.[34] The *ignorantia litterarum* complained of by the king elsewhere suggests he added little to its proceedings.[35]

What, then, does Wihtræd's ordinance indicate about the reception of the ideas just described within the Kentish kingdom? First it is worth noting that the priest in Wihtræd § 14 does not clear himself by celebrating Mass (a practice that seems to have displeased Gregory of Tours). Use of the Mass as a form of proof would, of course, resurface in much later legislation, but there is no evidence of it here.

What the priest is doing is suggested by a potential seventh-century parallel to the usage of this ordinance that has yet to be recognized in commentary on Wihtræd's laws. The events in question, narrated in the life of Wilfrid, date to the year 680, making them of particular interest, as Wihtræd's laws date to 695; the *Vita* itself 'cannot have been written very long after Wilfred's death' in 709.[36] As is related in the *Vita*, Wilfrid is returning to England via Francia when he finds himself accosted and harshly questioned about his friendship with the Frankish king Dagobert, who had been murdered with the consent of his bishops. 'One of these bishops', we are told, 'met him [Wilfrid] with a great army, plotting impious schemes in his heart and intending, if God had not hindered […] to imprison our holy bishop [Wilfrid] and to reserve him for the judgement of Ebroin the duke'.[37] The bishop holds Wilfrid 'worthy of death' ('dignus es morte') and alleges collusion with Dagobert, a king who 'was slain to atone for [his] sins' ('malorum poenas luens occisus').[38] Though Wilfrid's biographer paints the unnamed bishop as little more than a tyrant, it should be remembered that bishops were at this time (as they had been since the reign of Constantine) invested with judicial authority.[39] The bishop is thus accusing Wilfrid of criminal wrongdoing and assuming the capacity to inflict punishment as he and his cohort earlier had on Dagobert.

Under such circumstances, Wilfrid's manner of responding is all the more relevant for the purposes of the present chapter:

> Sanctus vero pontifex noster humiliter respondit episcopo: 'Veritatem dico in Christo Iesu et per sanctum Petrum apostolum non mentior,

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the peculiar usage of 'synod' characteristic of pre-Conquest texts, see Cubitt, *Anglo-Saxon Church Councils*, p. 5 n. 11.

34 *Law of Wihtred*, ed. by Oliver, praef., p. 152.

35 *Gesetze*, ed. by Liebermann, III, p. 24.

36 *Life of Bishop Wilfrid*, ed. and trans. by Colgrave, p. x.

37 *Life of Bishop Wilfrid*, ed. and trans. by Colgrave, XXXIII, pp. 68–69: 'ex quibus unus cum ingenti exercitu obviavit, cogitans impie in corde suo, nisi Deus restitisset ei, […] sanctum pontificem nostrum anxiatum in custodia atque ad Yverwini ducis iudiucium reservare'.

38 *Life of Bishop Wilfrid*, ed. and trans. by Colgrave, XXXIII, pp. 68–69.

39 Brasington, *Order in the Court*, pp. 5–7.

> quod talem virum exulantem et in peregrinatione degentem secundum praeceptum Dei populo Israhelitico, qui accola fuit in terra aliena, auxiliatus enutrivi et exaltavi in bonum et non in malum vestrum, ut aedificator urbium, consolator civium, conciliator senum, Defensor Dei ecclesiarum in nomine Domini secundum eius promissum esset'.
>
> (Then our holy prelate humbly made reply to the bishop: 'I speak the truth in Christ Jesus and by the Apostle Saint Peter I lie not, that in accordance with the command of God to the people of Israel which dwelt a stranger in a strange land, I helped and nourished such a man living as an exile and a sojourner and I raised him up for your good and not for your harm that he might be the builder of your cities, the comforter of your citizens, the counsellor of your elders, and defender of the churches of God in the name of the Lord, even as he promised'.)[40]

In both the *Vita* of Wilfrid and the contemporaneous Wihtræd § 14, one sees an attempt to call God to witness in a way that will not violate outright the dominical prohibition on oaths, which was still capable at this time of being regarded as binding on members of the clergy — much later than most standard commentaries have assumed. If it is an oath at all, it is a 'safe' oath inasmuch as it does not diverge from the language of St Paul, whose having not acted *contra praeceptum domini* was the basic hermeneutical principle underlying Augustine's decisive judgement. Thus Cockayne is, in a sense, correct to discern in Wihtræd § 14 a reluctance to require the oath. This reluctance is amply demonstrated by clerics' use of the language of St Paul alone in refuting an accusation.

Further light is shed on the motives of Wihtræd's ordinance by the language with which it introduces the Latin formula. The priest is to clear himself 'by his truth' ('sylfæs soþe'). The thinking that underlies this phrase seems apparent in the Benedictine Rule: 'Bind yourself to no oath lest it prove false, but speak the truth with heart and tongue' ('non iurare ne forte periuret, veritatem ex corde et ore proferre').[41] In this period, secular as well as regular clergy would have been habituated to such language since the boundaries between these categories were less certain than they would be in later centuries.[42]

* * *

It has already been mentioned that other forms of proof would be adopted by clergy by the reign of Æthelred II (and perhaps in the years prior). By the later Middle Ages, clergy did indeed come to prefer the oath as it 'was

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40 *Life of Bishop Wilfrid*, ed. and trans. by Colgrave, xxxiii, pp. 68–69.

41 *The Rule of St Benedict*, ed. and trans. by Fry, c. 4, pp. 182–83.

42 Brooks, *Early History*, p. 188.

increasingly becoming a way for them to avoid any physical ordeal'.[43] That this was the case has suggested to many that clerical forms of purgation assigned in Wihtræd § 14 and subsequent laws reflect the high status of clergy at this time. Liebermann's brief discussion links such provisions implicitly with Wihtræd's earlier assertion (§ 12) that the word of kings and bishops was sufficient without an oath: together, Liebermann holds, this series of ordinances constitutes a single *Abschnitt* granting advantages in litigation to various secular and clerical estates. While the clergy were still as much obliged to clear themselves with an oath as the laity ('[d]er Klerus untersteht noch dem weltlichen Gericht'), they nonetheless enjoyed 'privileges both with respect to compurgation [i.e., they were relieved of the obligation to summon oath-helpers] and the manner of making a solemn asseveration' ('[d]och hat er Vorrechte sowohl in der Eideshilfe wie in der Beteuerungsart').[44]

As we have seen, one may not label the language prescribed for the priest an 'oath' without mischaracterizing its aims and context. Liebermann's broader point, however, is likewise far from unassailable. Perceptible in his views is some trace of arguments made much earlier by Henry Charles Lea, whose work on the medieval law of proof remains foundational and was certainly regarded as such in the late nineteenth and early twentieth century. In a tremendously learned note in the 1870 edition of his *Superstition and Force*, Lea regards 'an exemption from the necessity of swearing' as one of the 'numerous privileges assumed by the sacerdotal body'.[45] Lea held clerics' reluctance to swear an effect of their expanding power and increasing separation from the laity: 'As the line of demarcation between the clergy and the laity grew deeper and deeper, the effort was renewed, and the oath was regarded as a degradation to those engaged in the sacred ministry of the altar'.[46] In Lea's view, clergy who sought such privileges were motivated more by squeamishness about a worldly custom (and a desire to exempt themselves from secular jurisdiction) than fidelity to Scripture and patristic teaching on oaths.

It is hard to view Lea's argument apart from his belligerence toward Roman Catholicism, at times almost the organizing principle of his work.[47] His erudition makes him well worth consulting even today, but not without caution. Inasmuch as clerics, by virtue of their literacy, enjoyed advantages over other estates in their ability to set the terms by which litigation against them might proceed, the provisions reviewed in this chapter may indeed exhibit something of their clout. But to see the pursuit of clerical privileges as solely responsible for the form assumed by Wihtræd § 14 risks oversim-

43 Brasington, *Order in the Court*, p. 27 n. 8.
44 *Gesetze*, ed. by Liebermann, III, p. 28.
45 Lea, *Superstition and Force*, p. 31 n. 2.
46 Lea, *Superstition and Force*, p. 31 n. 2.
47 See, for example, the preface to Lea's *Studies in Church History*.

plifying what was at stake. Some hint of the humble situation of priests in Wihtræd's lifetime is evident in the laws of Alfred the Great (d. 899), which assume royal jurisdiction even over the inhabitants of the minster. Whereas Archbishop Wulfstan (d. 1023) would subsequently assert clear boundaries between the obligations of secular and monastic life — an effect, no doubt, of the earlier 'Benedictine' reforms — Alfred refers only to the 'minster', in his day a community housing both secular and regular clergy.[48] The 'minster' was as likely to be under the supervision of a secular magnate as an abbot or bishop and is thus expected in Alfred's laws to function like any other household in its manner of dealing with miscreants.[49] Accordingly, a clause on homicide by priests (§ 21) surfaces among a series of provisions dealing with such varied matters as dog bites (§ 23) and offences against the slave of a *ceorl* (§ 25).[50] Not yet is there a sense that the misdeeds of clerics require remedies substantially different from those imposed on laymen. Though the priest deemed guilty of homicide in Alfred's laws is subsequently laicized, the penalty is not the precondition but the consequence of his facing secular justice; like any other dependent, he is to be given up ('weorpe mon to honda') by those whose protection he theretofore enjoyed into the power ('hand') of the aggrieved. Should the lord of the minster be willing to pay his wergild, he may escape the secular consequences of his misdeeds as would any layman, rendering through acts of penitence satisfaction for his offence against divine law. The situation just described is unlikely to have differed all that much from what prevailed in seventh-century Kent, given

48 On the controverted Anglo-Saxon 'minster' and monastic reform, see Blair, *Church*, pp. 80–83 and 346–54, respectively. A developing sense of the necessity of separate clerical and lay jurisdictions is evident in Wulfstan's prescription that a priest guilty of homicide shall 'travel as a pilgrim as far as the Pope appoints for him' ('wrécnige swa wide swa se papa him scrife'), see *VIII Æthelred*, ed. and trans. by Robertson, § 26, and *II Cnut*, ed. and trans. by Robertson, § 41, pp. 196–97. Though this is not an unambiguously favourable outcome for the priest, it is significant that Wulfstan entrusts the meting out of penalties wholly to the Church; if secular justice is given any role in his punishment, Wulfstan omits to mention it both in Æthelred's laws and in Cnut's (where the clause appears again). A prior ordinance, likewise repeated in Cnut's laws (*VIII Æthelred § 25*/*I Cnut § 2d*), seems even to anticipate later notions of ecclesiastical and secular jurisdictions with its statement that a cleric living under a rule ought neither to demand nor pay compensation for acts of violence, for '[h]e leaves the law of his kindred (*mæglage*) behind when he accepts the monastic rule (*regollage*).' See *VIII Æthelred*, ed. and trans. by Robertson, *§ 25*, and *I Cnut*, ed. and trans. by Robertson, *§ 2d*, pp. 124–25. Gabel takes a different view from the one I've suggested: 'The tribunal which tried a lay offender under secular law likewise tried the criminous clerk according to the law of the Church', Gabel, *Benefit of Clergy*, p. 11.

49 Cf. Blair, *Church*, pp. 324–25: '[M]insters themselves were being more and more thoroughly absorbed [by the late ninth century] into secular public life, as royal and noble residences, land-management centres, fortresses, and towns. […] While there is no suggestion that the minsters ceased to function ecclesiastically, Alfred had no compunction about using these 'trifles' as a Christmas present for a valued advisor'.

50 The chapter numbers are those assigned in *Gesetze*, ed. by Liebermann, pp. 62–63.

the earlier reference in Wihtræd's laws (§ 13) to the presumably secular 'mynstres aldor' ('lord of the minster').[51]

As the clause reflects so plainly the lack of agreement within the Western Church on whether clergy might swear oaths, it would be obtuse to hold that Wihtræd § 14 shows little more than an attempt by clergy to secure legal advantages for themselves. When he wrote the following in his sermon on the Decollation of John the Baptist, Ælfric of Eynsham (a contemporary and correspondent of Archbishop Wulfstan) was not establishing the foundations of later clerical 'privileges' but asserting for purely doctrinal reasons the essential sinfulness of oaths, as had Basil and Chrysostom:

> God sylf forbyt ælcne að cristenum mannum, þus cweðende, 'Ne swera ðu þurh heofenan, forðan ðe heo is Godes þrymsetl. Ne swera ðu þurh eorðan, forðan ðe heo is Godes fotsceamol. Ne swera þu ðurh ðin agen heafod, forðan ðe ðu ne miht wyrcan an hǽr þines feaxes hwít oððe black. Ic secge eow, Ne swerige ge þurh nan þing, ac beo eower spræc ðus geendod, Hit is swa ic secge, oþþe hit nis swa. Swa hwæt swa ðær mare bið þurh að, þæt bið of ðam yfelan'. Crist sylf gefæstenode his spræce, þaða hé spræc to anum Samaritaniscan wífe mid ðisum worde, 'Crede mihi:' þæt is, 'Gelyf me'.
>
> (God himself forbids every oath to Christian men, thus saying, 'Swear thou not by heaven, for it is God's throne. Swear thou not by earth, for it is God's footstool. Swear thou not by thy own head, for thou canst not make one hair of thy locks white or black. I say unto you, swear ye not by anything, but be your speech thus ended, It is as I say, or it is not so. Whatsoever there is more by oath, that is of evil.' Christ himself confirmed his speech, when he spake to a Samaritan woman with these words, 'Crede mihi', that is, 'Believe me'.)[52]

Ælfric's endorsement of Christ's *crede mihi* as perhaps the only wholly acceptable form of asseveration shows how stringently many clergy read Matthew 5. 33–37 even as late as the eleventh century. That some even in the era after the Norman Conquest preferred to 'swear not at all' is evident in a purported 'writ of King Æthelstan for the church and chapter of Ripon'.[53] (That this was a community with historical ties to Wilfrid is probably no more than an intriguing coincidence.) Among the privileges conferred therein is an allowance 'that the men belonging to [the minster] be believed with their *yea* and *nay*' ('quod homines sui sint credenda per suum *ya* et per suum *na*').[54] Though the document uses post-Conquest formulae and is, in all likelihood, a thirteenth-century forgery, it shows for how long some English clergy

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51 *Law of Wihtred*, ed. and trans. by Oliver, § 13, p. 158.

52 Ælfric of Eynsham, *Sermon* 32 (The *Decollation of John the Baptist*), ed. and trans. by Thorpe, 1, pp. 482–83.

53 *Anglo-Saxon Writs*, ed. by Harmer, p. 14.

54 See the so-called *Writ of King Æthelstan for church and chapter of Ripon*, ed. by Harmer, p. 537.

— in this case (perhaps significantly) those living under a rule — would seek an entitlement to avoid the oath when finding themselves drawn into litigation.[55] Liebermann says that the clergy of seventh-century Kent claimed it as a 'privilege', and indeed, in a sense, they did.[56] But the grounds of this privilege perhaps had less to do with shoring up the power of clergy than with permitting their obedience to a dominical precept.

As the present chapter has shown, clerics' resistance to the oath prompted them over the centuries to devise a wide range of solutions. Most were intended to placate secular authorities while keeping the consciences of deacons and presbyters more or less intact. Wihtræd § 14 is an unrecognized witness to the long efforts of English clergy to follow the rule laid down in Matthew 5. 33–37, or at least its spirit. The result was an early manifestation of the forces that would lead later to the emergence of ecclesiastical and secular jurisdictions during the reign of William the Conqueror, the first English king to establish for bishops and agents of the crown more discrete spheres of influence than had theretofore been observed.[57] Only decades after William's death arose one of the signature institutions of medieval canon law: the requirement (termed *purgatio canonica*) that a cleric accused of wrongdoing be permitted to clear his name through an oath rather than ordeals and like practices (*purgatio vulgaris*).[58] Prior to the emergence of this norm over the course of the twelfth century, the oath might well be sworn by clerics, but only as a 'work of supererogation which the accused might impose on himself'.[59]

The foregoing suggests that the establishment of *purgatio canonica* is best understood as arriving at the end of a long period of trial and error. Acceptance of *purgatio canonica*, which insulated clergy from having to undergo the ordeal, effectively ended (with occasional exceptions) the period in which the dominical prohibition on oaths would trouble the consciences of elite clergy involved in litigation. Perhaps because clergy did not yet have to worry about the ordeal during the reign of Wihtræd, their greatest concern was the oath and its spiritual hazards. In Wihtræd's laws, these concerns were granted a kind of legislative recognition they would not receive again for the rest of the Middle Ages.[60]

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55 The document appears under the catalogue number S 456, and views on its provenance and authenticity are catalogued in *The Electronic Sawyer (Online catalogue of Anglo-Saxon charters)*, <https://esawyer.lib.cam.ac.uk/charter/456.html> [accessed 16 April 2026].

56 See above, n. 45.

57 *Gesetze*, ed. by Liebermann, I, p. 485; see also Haskins, *Norman Institutions*, pp. 30–39; Gabel, *Benefit of Clergy*, p. 11.

58 See Moriarty, *Oaths*, pp. 16–20; also Whitman, *Origins of Reasonable Doubt*, p. 88: 'clergy were the first to be compelled to swear in order to purge themselves, losing the option of resorting to a judgement of God'.

59 Moriarty, *Oaths*, p. 17.

60 According to Robert Bartlett, ordeals do not emerge into the historical record until the reign of Charlemagne, and Frankish influence accounts for its subsequent development elsewhere in Western Europe: see Bartlett, *Trial by Fire and Water*, pp. 9–10.

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‘Ego autem dico vobis: nolite omnino iurare’

Carolingian Interpretations of the Prohibition to Swear (Matthew 5. 33–37)

Introduction

The impact of the Bible on Carolingian notions of law and justice has often been emphasized. From the reign of Charlemagne onwards, efforts were made to harmonize biblical and ‘secular law’ and to reassess existing norms and practices through the lens of the Bible.[1] This approach generated debates about the salience, applicability, and interpretation of biblical law. In many cases, difficulties arose from contradictory proof texts from various parts of the Bible or from tensions between the Old and the New Testament. Moreover, many biblical precepts sat uneasily with Carolingian social and legal practices, thus requiring explanation or re-interpretation. The oath is a case in point, given its foundational role for Carolingian political order. The oath of fidelity which every male subject owed to the ruler since its institution by Charlemagne in 789 became the focus not only for forging bonds of loyalty and mutual service, but also for a wide range of legal obligations associated with it. The dispensation of justice likewise depended heavily on oath-taking as an instrument to re-establish social trust. Yet, Christ himself had forbidden oath-taking altogether in the Sermon on the Mount:

> Again you have heard that it was said to those of old, ‘You shall not swear falsely, but shall perform to the Lord what you have sworn’. / But I say to you, ‘Do not take an oath at all, either by heaven, for it is the throne of God, / or by the earth, for it is his footstool, or by Jerusalem, for it is

1 McKitterick, ‘Perceptions of Justice’; Nelson, ‘Law and its Applications’; Buck, *Admonitio und praedicatio*; Heydemann, ‘The People of God and the Law’; Heydemann and McKitterick, eds, *The Politics of Interpretation*. Unless otherwise noted, translations are by the authors.

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The Oath in Late Antiquity and the Early Middle Ages: Religious Act, Social Bond, Holy Sacrament, ed. by Stefan Esders and Gerda Heydemann, CELAMA 46 (Turnhout: Brepols, 2026), pp. 267–302 BREPOLS PUBLISHERS 10.1484/M.CELAMA-EB.5.152879

> the city of the great King. / And do not take an oath by your head, for you cannot make one hair white or black. / Let what you say be simply "Yes" or "No"; anything more than this comes from evil'.[2]

How, then, did Carolingian legislators and exegetes deal with this contradiction between New Testament law and current practice? In this chapter, we will investigate Carolingian interpretations of the prohibition to swear, seeking to elucidate how Carolingian exegetes and legal advisors addressed and worked around this tension between secular and biblical norms, but also used it to negotiate the rules and limits of acceptable oath-taking. Concentrating on the period between Louis the Pious and Hincmar of Reims, we will focus on the corpus of Carolingian commentaries on Matthew and compare the exegetical tradition to the reception of the prohibition in selected normative sources.

Biblical and Patristic Starting Points

The prohibition to swear as transmitted in Matthew 5. 33–37 and the Epistle of James continues a strand of oath-critical texts contained in the Hebrew Scriptures. Leviticus 19. 12 ('And ye shall not swear by my name falsely, neither shalt thou profane the name of thy God: I am the LORD') and Exodus 20. 7 ('thou shalt not take the name of the LORD thy God in vain') aim at ruling out oaths taken by other Gods than Yahweh and at limiting perjury. Wisdom literature likewise contains strong warnings against the dangers of oath-taking: 'A man that useth much swearing shall be filled with iniquity, and the plague shall never depart from his house' (Ecclesiasticus 23. 11).[3] At the same time, New Testament authors reacted to learned traditions current among Jewish groups such as the Pharisees as well as to contemporary practices of oath-taking.[4] Apart from criticism of the oath, both the Hebrew Bible and the New Testament contain numerous examples of oath-taking by patriarchs, kings, and even Yahweh himself. Certain passages in the Pauline epistles were understood by Christian readers as oath formulas and therefore used to legitimize the oath.[5] The contradictions between the prohibition to swear contained in the Sermon

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2 Matthew 5. 33–38; a parallel passage is found in the Epistle of James 5. 12. On both texts and their historical context, see Kollmann (in this volume); see also Kollmann, 'Das Schwurverbot Mt 5,33–37/Jak 5,12 im Spiegel antiker Eidkritik'; Kollmann, 'Erwägungen zur Reichweite'.

3 See Kreusch, *Der Eid*, pp. 52–54; Prodi, *Sakrament*, pp. 33–35; Esders, 'Schwur', cols 41–43; Seebaß, 'Eid II'.

4 See Kollmann, 'Erwägungen zur Reichweite'; Esders, 'Schwur', cols 45–47 ; Kreusch, *Eid*, pp. 58–59, 61–62.

5 Romans 1. 9; 1 Corinthians 15. 31; II Corinthians 11. 10; 1 Thessalonians 2. 5; 1 Thessalonians 5. 27; See also Hebrews 6. 16–18, which acknowledges the function of the oath as a means of conflict resolution; Kreusch, *Eid*, pp. 70–73; Dautzenberg, 'Eid IV'.

on the Mount and other biblical proof texts provided Christian readers with ample room for diverging interpretations.

In their interpretation of Matthew 5. 33–37, Carolingian writers were of course guided by their patristic predecessors. It is therefore necessary to briefly recapitulate these patristic starting points.[6] Many late antique thinkers through the fourth century, particularly in the Greek-speaking world, viewed the oath with scepticism. They used the prohibition to swear both to criticize practices that they found objectionable, and to reflect on the position of Christians within the political sphere. The most famous oath-critic is John Chrysostom, who challenged his congregation in Constantinople in a series of sermons to respect the prohibition to swear as contained in the Gospel of Matthew. In a homily on Matthew 5. 33–37, he argued for a strong (literal) interpretation of the prohibition to swear. Christians should refrain from using the oath to establish their credibility.[7] John drew a sharp contrast between the Old Testament, which according to him contained the law for a bygone age and therefore conceded the use of the oath to weaker humans, and the New Testament, where this is no longer the case. John also dismissed the argument that secular law not only allowed but even prescribed the use of the oaths in many contexts, for example with regard to the payment of taxes. John defined the oath as inherently sinful: its origin is evil (*a malo*), that is, it is transgressive. Although John understood the prohibition to swear as an absolute prohibition, he also used the Matthew passage to warn against the dangers of perjury.

Latin exegetes also expressed reservations against Christian oath-taking. Hilary of Poitiers, for example, argues along much the same lines as John Chrysostom, maintaining that while the Old Testament prohibition to swear only by the name of God represented an improvement in contrast with swearing by creatures and demons, Christ also forbade the oath in the name of God. According to Hilary, the restrictions against swearing by foreign gods represented an important step forward; yet he contrasted this with the higher moral expectations raised in the New Testament. Among Christians, *fides* renders the oath (described by Hilary as *religio iurandi*) superfluous, since they have to be committed to the truth in all circumstances. Christ outlaws both oath-taking in the name of God by Christians, and the use of oath-helpers such as heaven, earth, and head by the Jews.[8] Similar arguments are made by Chromatius of Aquileia, a contemporary of Ambrose.

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6 Patristic approaches to the oath have been well-studied, see Kreusch, *Eid*, pp. 76–112; Kolmer, *Promissorische Eide*, pp. 276–81; Prodi, *Das Sakrament der Herrschaft*, pp. 25–54; Uhalde, *Expectations of Justice*, pp. 86–104 and his contribution to this volume; Landau, 'Eid', pp. 383–83; Esders, 'Schwur', cols 47–52, with further bibliography.

7 John Chrysostom, *Hom. in evang. Matt.* 17.5–7, ed. by Migne, cols 260–66; see also John Chrysostom, *Hom. ad populum Antiochenum* 15, ed. by Migne, cols 160–61; see Prodi, *Sakrament*, pp. 39–40; Maxwell, *Christianization and Communication*, pp. 78–79, 112–13, 149–51.

8 Hilary of Poitiers, *In Matthaeum Commentarius*, ed. by Doignon, 4. 23–24, p. 142.

He developed the argument in such a way as to suggest an interpretation of the prohibition as targeting lying, the distinction between swearing and regular speech having lost its relevance since Christians were obliged to speak the truth in all circumstances.[9]

The turning point towards a more relaxed attitude to the oath is usually set at the end of the fourth century with the works of Jerome and Augustine. In Jerome's case, this is due not so much to his reading of Matthew than to his commentary on the prophet Jeremiah. Commenting upon Jeremiah 4. 2, Jerome defined criteria for a legitimate oath: it has to be truthful (*veritas*), it should be given only after careful consideration of the consequences (*iudicium*), and it has to serve a just cause (*iustitia*).[10] Yet this positive definition of the oath presents a contrast to the preceding passage, in which Jerome discusses the contradiction between the oath given to God by the Israelites to confirm the covenant and the prohibition to swear without offering a clear solution. Moreover, as Irina Kreusch has pointed out, such a positive approach towards the oath is lacking in Jerome's commentary on Matthew, written fifteen years earlier.[11] In his brief comments on Matthew 5. 33–37, Jerome largely followed the preceding exegetical tradition. He argued that Christ intended to forbid oaths by created things or foreign gods. The reason for this is that an oath constitutes an act of veneration, which should only be rendered to God alone. It seems that Jerome took this rule as valid also for Christians, since he summarized it as addressed to 'us', that is, Christians, and concluded that Christ does not prohibit the oath in the name of God, only that *per creaturas*.[12] However, there remains a strong contrast between Old Testament practices and the New Testament, which Jerome sets apart: 'The evangelical truth, however, does not accept the oath'.[13] Like Hilary, he rehearses the ideal according to which every utterance by a Christian is supposed to be as sincere and trustworthy as an oath.

The real shift, therefore, as regards the exegesis on Matthew, comes not with Jerome, but with Augustine, whose *On the Lord's Sermon on the Mount* became fundamental for all later interpretations of Matthew 5. 33–37.[14] Augustine contrasted Christ's words not with Old Testament law, but with the letters of Paul, which show the apostle using oath formulas in multiple

9 Chromatius of Aquileia, *Tractatus in Matthaeum*, XXIV, ed. by Étaix and Lémarié, c. 1–11.

10 Jerome, *In Hieremiam*, ed. by Reiter, 1.69, p. 40.

11 Kreusch, *Eid*, pp. 83–88.

12 Jerome, *Commentariorum in Mattheum*, ed. by Hurst and Adriaen, 1.5.34–37, p. 32.

13 Jerome, *Commentariorum in Mattheum* , ed. by Hurst and Adriaen, 1.5.34–37, p. 33: 'euangelica autem ueritas non recipit iuramentum cum omnis sermo fidelis pro iure iurando sit'.

14 Augustine, *De sermone Domini in monte*, ed. by Mutzenbecher, 1.17.51, pp. 56–59. On Augustine's views on the oath, see the chapters by Uhalde and Elm in this volume; Uhalde, *Expectations of Justice*, pp. 88–92; Kreusch, *Eid*, pp. 93–107; Wuk, 'Augustine and the Making of Christian Oaths'. We should like to thank Michael Wuk for exchanging unpublished work and for useful suggestions to this chapter.

instances. Augustine used Paul's example to deduce that Christ could not have intended a general prohibition to swear but only to warn against perjury.[15] While the oath is not a good thing, it is not evil by itself, but sometimes necessary to persuade those who otherwise lack *fides* to believe in or trust a promise. Augustine underlined that an oath is not sinful provided it is truthful and conforms to the criteria of *necessitas* and *utilitas*.[16] This interpretation is in stark contradiction with John Chrysostom's approach, who argued that the oath is inherently evil and cannot be justified by an appeal to necessity. In a Sermon on the Epistle of James (5. 12), written in response to the Pelagians' assertion of a strict prohibition to swear, Augustine deduced from Leviticus 19. 12 that truthful oaths were legitimate according to Old Testament law. The oath could therefore not be inherently sinful, and Christ's prohibition should not be read as a prohibition in the strict sense.[17] As in *On the Sermon on the Mount*, Augustine issued a staunch warning against the dangers of the oath, reminding his audience that all oaths were owed to God (even if sworn by creatures) and therefore had to be kept. He thus suggested that oath-taking should be refrained from as much as possible to avoid perjury, and highlighted that the moral responsibility lay with the party who demanded the oath.[18] Augustine's exegesis was shaped by his distinctive approach towards Old Testament law, as well as by pragmatic concerns. Acknowledging the limited potential of humans to reach spiritual perfection, he accepted the oath as an indispensable means to regulate social relations. Concurrently, he highlighted its dangerous consequences and argued for its restrictive use in cases where it is both necessary and useful.

Carolingian Reception of the Patristic Legacy

While Jerome and Augustine therefore provided the exegetical tools to explain away the prohibition to swear, and to deflect its consequences, a brief overview of the reception of this tradition in the early ninth century reveals more ambiguity than allowed for by modern assumptions about the prevalence of the Augustinian approach. As we have seen, there were considerable divergences between Augustine's *On the Sermon on the Mount* and Jerome's Matthew commentary. Moreover, early medieval exegetes — unlike modern historians — used Jerome on Matthew without linking with his more positive evaluation of the oath in the commentary on Jeremiah.[19]

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15 Augustine, *De sermone Domini in monte*, ed. by Mutzenbecher, 1.51, p. 58, ll. 1248–55.

16 Augustine, *De sermone Domini in monte*, ed. by Mutzenbecher, 1.51, p. 59, ll. 1255–68.

17 Augustine, *Sermo 180 on Iacob 5. 12*, ed. by Boodts, cc. 3–4, pp. 32–34; Uhalde, *Expectations of Justice*, pp. 102–04.

18 Augustine, *De sermone Domini in monte*, ed. by Mutzenbecher, 1.17.51, p. 57; Augustine, *Sermo 180 on Iacob 5. 12*, ed. by Boodts, cc. 7–11, pp. 37–45.

19 As is rightly pointed out by Kreusch, *Eid*, pp. 91–92.

Carolingian commentators on Matthew worked directly with Jerome's oath-critical position as contained in his *On Matthew*. We should therefore resist the urge to harmonize the two texts.

Moreover, not all early medieval exegetes perceived Augustine as the 'father of the legitimate oath' he has been made out to be in modern scholarship. Thus, a series of texts which have been associated with insular traditions of exegesis circulated in continental manuscripts during the Carolingian period.[20] While the exegetical argument is usually based on Augustine, these texts select and re-arrange bits and pieces of Augustinian text in such a way as to communicate a more negative view on the oath. For example, the *Liber quaestionum in evangeliis* drew a sharp contrast between the Old Testament practices (continued by the Pharisees) and the New Testament with its prohibition to swear. While the Pauline epistles are cited together with Augustine's point that the oath is not evil, but stems from evil, the text does not repeat his positive affirmation that swearing in itself is not sinful.[21]

The commentary on Matthew written in the years around 815 by Claudius of Turin is the first among a series of commentaries on Matthew written by Carolingian scholars during the ninth century.[22] Claudius's text clearly shows the need for a simplified and more consistent version of Augustine's argument in *De sermone Domini in montem*. He shortened Augustine's text, retaining only the key passages in which Augustine argued for the legitimate use of oaths and explained the prohibition to swear with the danger of perjury. Claudius also repeated Augustine's interpretation that the problem of evil associated with the oath resides in the lack of faith exhibited by the

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20 For example: Anonymous, *Liber quaestionum in euangeliis*, ed. by Rittmueller (see Introduction, pp. 79*–119*); Anonymous, *Pauca problesmata de enigmatibus ex tomis canonicis*, BnF MS lat. 11561, fols 190va–191ra; Frigulus, *Commentarius in evangelium secundum Matthaeum*, ed. by Forte, 5.33–37, pp. 153–55; *Commentarius in Matthaeum e codice Vindobonense 940*, Vienna, ÖNB MS lat. 940, fol. 47^{v}–48 (Bischoff, 'Wendepunkte' no. 17.I, pp. 245–47; Mantegazza, 'Commentarius in Mattheum'; Ó Corráin, *Clavis* no. 73, pp. 116–17). On the problem of delineating a corpus of 'Irish' exegesis see Stansbury, 'Irish Biblical Exegesis'.

21 Anonymous, *Liber quaestionum in euangeliis*, ed. by Rittmueller, Mt 5.33 and 5.35, pp. 118–19: 'NON PERIURABIS. Ecce iota. 'Iustitia Pharisaeorum non periurare'; iustitia apostolorum OMNINO NON IURARE […] EGO AUTEM DICO. *Ecce apex. NON IURARE Sicut loqui falsum non potest qui non loquitur, sic periurare non potest qui non iurat*' (You shall not swear falsely. This is the *iota*. The justice of the Pharisees is not to swear falsely; the justice of the apostles is not to take an oath at all […] But I say to you. This is the *apex*: You shall not swear. Just as he who does not speak cannot speak falsely, he who does not swear can not commit perjury).

22 Only partial editions of Claudius's text exist. The prefatory letter has been edited by Dümmler, pp. 593–96. McMenomy, 'The Matthew Commentary of Claudius, bishop of Turin', contains an edition of the first part. For Matthew 5. 33–37, we follow the manuscript New York, HP Kraus s.n. (private collection). We would like to thank Rosamond McKitterick (Cambridge) for providing us with a microfilm copy and material on this manuscript. On Claudius and Matthew, see Stoll, 'Drei karolingische Matthäus-Kommentare', pp. 49–53; Boulhol, *Claude de Turin*, esp. pp. 227–49 on Claudius as an exegete.

person demanding the oath.[23] To these excerpts from *De sermone Domini in montem*, Claudius added a further passage taken from *Contra Faustum*, which contains a very concise statement about the legitimacy of oath-taking: although perjury constitutes a grave sin, a truthful oath is not sinful. The passage also helped to explain the contradiction between Matthew and Paul, arguing that Paul had used the oath only in writing, hence after careful reflection, while avoiding it in spoken form.[24] Claudius thus aimed at a clear and unambiguous rendering of Augustine's message. The clarity of his message was, of course, partly achieved by leaving out any mention of Jerome's competing approach.

In Hrabanus's commentary on Matthew, completed only a few years later in 820/821 and dedicated to Haistulph of Mainz, Jerome's text is brought back into the discussion. This text was very successful in the early Middle Ages. Raymond Kottje has identified more than thirty-one manuscripts (seventy-six including excerpts, fragments and deperdita), nine of which date to the ninth century. In addition, there are six fragments/lost manuscripts dated to the ninth century.[25] Hrabanus cited the text almost verbatim, including Jerome's final point that the gospel truth does not accept the oath. To this, Hrabanus added those passages from *De sermone Domini* in which Augustine had used Paul to deduce that even if oaths were not desirable, they were indeed sometimes necessary. A righteous oath was not sinful.[26] Like Augustine, Hrabanus accepted the difficulty of getting rid of an established personal habit or social custom such as the oath; he therefore conceded the use of the oath on pastoral grounds. In Hrabanus's Matthew commentary, Jerome's and Augustine's approaches are set beside each other, but without any sustained attempt at harmonizing them. If anything, the reader can infer Hrabanus's preferences from the positioning of the excerpts, with Augustine's more positive evaluation coming second.[27]

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23 Claudius of Turin, *Commentum in Matthaeum*, New York, HP Krause, fols 37va–38va. For a more detailed discussion of Claudius's reception of Augustine on oaths, see Wuk, 'Augustine and the Making of Christian Oaths'.

24 Claudius of Turin, *Commentum in Matthaeum*, New York, HP Krause, fols 37^{vb}, using Augustine, *Contra Faustum* 19. 23.

25 Kottje, 'Die handschriftliche Überlieferung', pp. 260–62, <www.mirabileweb.it/title/commentarium-in-matthaeum-title/5271>. On the Matthew commentary, see Stoll, *De virtute in virtutem*, pp. 71–75. For Hrabanus as an exegete, see De Jong, 'The Empire as Ecclesia'; De Jong, 'Old Law and New-found power'; Reinelt, 'Hraban als Exeget'.

26 Hrabanus Maurus, *Expositio in Matthaeum*, ed. by Löfsted, II (5.33–37), pp. 157–58, ll. 57–62.

27 Hrabanus's comments on Matthew 5. 37 reveal some scepticism towards the oath: 'The Lord who prohibits us from swearing also shows to us how we ought to speak (Qui iurare nos prohibuit, quomodo loqui oportet docuit)', namely, the simple truth. The repetition of 'yes' and 'no' is interpreted as the need to establish the truth of our words by our deeds. Hrabanus, *Expositio in Matthaeum*, ed. by Löfstedt, II. 5.37 p. 159.

The commentary ascribed to Ps-Bede is probably a reworking of Hrabanus's work, although the issue remains debated.[28] Its author attempted to solve the contradictions by cutting out all formulations that hinted at a general ban on oath-taking for Christians, most importantly, Jerome's final statement about the rejection of the oath. At the same time, he presented an extremely condensed version of Augustine's argument: to avoid swearing shields us from committing perjury; oaths should therefore be used carefully and only when necessary.[29] He also clarified Augustine's point about the inherent sinfulness of oaths:

> Non dixit: quod amplius est, *malum est*, sed *a malo est*, ab illius videlicet infirmitate, a quo cogeris jurare; et haec infirmitas, malum est, tu autem bene facis, qui bene juratione uteris, ut alteri persuadeas quod utiliter suades.
>
> (He does not say: the oath is evil, but stems from an evil, that is, the weakness of the person who coerces you into swearing. This weakness is evil. Yet you are acting rightfully when you are using the oath justly in order to persuade another person of a useful argument.)[30]

Against this background, the earlier Carolingian commentaries on Matthew represent an attempt to render the patristic tradition more accessible by selecting, simplifying, and clarifying the arguments. In this sense, they fulfilled an important function in Carolingian debates about the interpretation and application of biblical norms.[31] To contend that there were no significant developments regarding the theory of the oath in early medieval exegesis is therefore surely missing the point.[32]

Sanctifying the Oath: Paschasius Radbertus

The most sustained effort to re-think both Augustine's and Jerome's exegesis on the prohibition to swear and to integrate their differences can be found in the Matthew commentary written by Paschasius Radbertus. Like Radbert's most famous work, the *Epitaphium Arsenii*, the commentary on Matthew was written in two stages. Books 1–4, covering Matthew 1–7, were written in the late 820s, when the discussions about the reform of the realm reached its peak at the synod of Paris in 829 and before Wala's exile in 831; the second part, books 5–12, were written in old age after Radbert had stepped

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28 Stoll, *De virtute in virtutem*, p. 48; Cantelli Berarducci, 'Rabano Mauro esegeta', pp. 355–56.

29 Ps. Bede, *In Matthaeum Evangelii expositio*, ed. by Migne, col. 29A.

30 Ps. Bede, *In Matthaeum Evangelii expositio*, ed. by Migne, col. 29B/C; compare Hrabanus Maurus, *Expositio in Matthaeum*, ed. by Löfstedt, II. 5. 37, p. 159, ll. 95–99, who preserves more of Augustine's original scepticism in this passage.

31 See Cantelli Berarducci, 'Rabano Mauro esegeta', p. 123; a similar point is made by Shimahara, *Haymon d'Auxerre*, p. 119 with n. 172.

32 Kolmer, *Promissorische Eide im Mittelalter*, p. 49.

down as an abbot, thus sometime in the 850s or early 860s.[33] It is likely that Radbert had considerable legal knowledge, even if Klaus Zechiel-Eckes's suggestion that he may be the mastermind behind the Pseudo-Isidorian forgeries continues to be debated.[34]

In his exegesis, Radbert unmistakeably legitimized the oath. He also further developed Augustine's exegetical approach to develop a perspective on the oath as a sacrament. A close comparison between Radbert and his two main sources shows how he subtly developed their message further. Like Jerome, Radbert interpreted the first part of the Matthew passage not as a general prohibition to swear, but as a prohibition to swear in the name of creatures rather than the creator. But in contrast to Jerome, he saw this part of Christ's commandment as directed specifically against a Jewish rather than a Christian audience, and he was very careful to maintain that distinction by placing the first part of the Matthew passage firmly in the context of a critique of ancient Jewish practices.[35] Radbert combined this with Augustine's interpretation of the Jewish substitutes — earth, heaven, and head — the starting point being the criticism that the Jews believed they could break such oaths with impunity. Against this view, Radbert forcefully underlined that oaths by substitutes were equally binding, since an oath by created beings ultimately refers to the creator and all oaths are thus owed to God.[36] In this way, Radbert managed to historicize the first part of the Matthew passage, the point of reference for Christ's teaching being Jewish practices, and to shift its meaning from a prohibition to swear towards an affirmation of the binding force and religious significance of every oath.

At the same time, Radbert cut out the references to Christian practice included in his sources. Whereas Jerome had blurred the distinction between Jewish and Christian addressees by asserting, for example, that the law enjoins 'us' from swearing in the name of created things, Radbert spoke of this ban as a rule for the 'people of the flesh (*populus carnalis*)'.[37] A few lines later, Radbert inserted a passage from Hilary's commentary to reinforce his criticism of supposedly Jewish custom. Where Hilary had stated that Christ had intended both to

33 On Radbert's life and work, see now De Jong, *Epitaph for an Era*; Ganz, *Corbie in the Carolingian Renaissance*, pp. 29–33; on the text, see Stoll, *De virtute in virtutem* pp. 74–78; Schönbach, *Über einige Evangelienkommentare des Mittelalters*, pp. 142–74; Peltier, *Pascase*, pp. 100–02.

34 Zechiel-Eckes, 'Auf Pseudoisidors Spur'; Zechiel-Eckes, *Fälschung*; De Jong, 'Pascasius Radbertus and Pseudo Isidore'; on Ps-Isidore and the Bible: Zechiel-Eckes, 'Politische Exegese'; Firey, 'Lawyers and Wisdom'.

35 Paschasius Radbertus, *Expositio in Matthaeum*, ed. by Paulus, III. 5. 33, pp. 338–39.

36 Paschasius Radbertus, *Expositio in Matthaeum*, ed. by Paulus, III. 5. 35, p. 340, ll. 3377–82.

37 Paschasius Radbertus, *Expositio in Matthaeum*, ed. by Paulus, III. 5. 33, p. 338: 'Nam *per quod quis*que *iurat aut ueneratur aut diligit aut timet*. Idcirco carnali populo *iur*are *per Deum* ex *lege* licitum erat' (For a person venerates or loves or fears that by which he swears. Therefore it was lawful for the fleshly people to swear by God). Compare Jerome, *Commentariorum in Matheum*, ed. by Hurst and Adriaen, I 5. 34–37, p. 32, ll. 645–49.

eliminate oaths by Christians *and* to restrict Jewish superstition, Radbert left out the first part of the statement referring to Christians.[38] Although he took over almost all of Jerome's commentary *en bloc*, he cut off the final, oath-critical sentence stating that 'the truth of the Gospel does not accept the oath, since every speech of a faithful Christian is to be held like an oath' (Euangelica autem ueritas non recipit iuramentum cum omnis sermo fidelis pro iure iurando sit), to which he returned only much later in the text.[39]

Having explained the prohibition to swear by setting it firmly in its historical context, Radbert then turned to its meaning for Christians, and proceeded to qualify it further with the help of Augustine. Augustine's long and complicated argument about the apostle Paul and his habit of swearing reappears in an extremely condensed form in Radbert's text: 'Given that the apostle Paul is seen to have sworn often', he drily remarked, 'and that among Christians, oaths affirming the truth are frequently conceded in order to satisfy the other party, it follows (*liquet*), that Christ did not mean to prohibit the oath entirely'.[40] The norm was thus reinterpreted in light of current practice. To Augustine's explanation that the oath is sometimes necessary to persuade those who are too weak to believe (or trust) otherwise, Radbert added again a reference to contemporary practice: 'Therefore, the church frequently allows its members to use the oath in order to forge peace and to establish *fides*.'[41] This statement is remarkable in its explicit claims about the legitimacy of oaths, which are sanctioned by the church in specific circumstances because of their important social function (as opposed to the rather general argument of *necessitas*). It is unique among the Carolingian commentaries.[42]

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38 Compare Paschasius Radbertus, *Expositio in Matthaeum*, ed. by Paulus, III. 5. 35, p. 339, ll. 3329–3332, with Hilary of Poitiers, *In Matthaeum*, ed. by Doignon, 4. 24, pp. 142–44, where the statement begins: 'Non solum nos reddere Deo sacramenta non patitur, quia omnis Dei ueritas dicti factique nostri simplicitate retinenda est, sed superstitionem contumaciae ueteris condemnat' (Not only does the Lord not permit us to render our oaths unto God, because all of God's truth ought to be retained in a straightforward manner by our words and deeds, but he also condemns the superstitious pride of the ancients). Engl. trans. by Williams, p. 70.

39 Jerome, *Commentariorum in Mattheum*, ed. by Hurst and Adriaen, I. 5. 33–37, p. 33. Compare Paschasius Radbertus, *Expositio in Matthaeum*, ed. by Paulus, III. 5. 37, pp. 341–42: 'Quia omnino euangelica ueritas non recipit iuramentum sed alterius infirmitas id cogit dum quilibet simplicem non potest recipere ueritatem' (Because the evangelical truth does not accept the oath at all, yet the weakness of the other requires it, since he cannot accept the simple truth).

40 Paschasius Radbertus, *Expositio in Matthaeum*, ed. by Paulus, III. 5. 36, p. 341: 'Sed tamen quia uidetur apostolus quam saepe iurasse et ueritatis sacramenta inter Christianos pro satisfactione alterius licet a malo sint frequentius conceduntur liquet quod Christus penitus iurare non prohibuit'.

41 Paschasius Radbertus, *Expositio in Matthaeum*, ed. by Paulus, III. 5. 36, p. 341, p. 341: 'Hinc est quod eclesia suos pro pacis foedere fideique adsensu frequenter iurare concedit'.

42 It therefore seems that Radbert's stance on oaths in the Matthew commentary is not easily compatible with that displayed in the pseudo-Isidorian decretals, as noted by Esders,

On the other hand, the comparison with Augustine shows Radbert cutting down the oath-sceptical rhetoric of his source, for example leaving out the exhortation to refrain from using oaths as much as possible (although he did reproduce Augustine's maxim that not swearing is the best guard against perjury). He also used Augustine to neutralize Jerome's final sentence about the rejection of the oath in the gospel, which he had cut out earlier and which reappears in a different context:

Paschasius[43]	**Jerome**[44]	**Augustine**[45]
Aliter autem: *Sermo uester* inquit *sit est est non non*. Quia omnino *euangelica ueritas non recipit iuramentum*, sed alterius *infirmitas* id *cog*it dum quilibet simplicem non potest recipere ueritatem. Verum quod *omnis sermo fidelis* recte *pro iureiurando* accipitur.	*Euangelica autem ueritas non recipit iuramentum* *cum omnis sermo fidelis pro iure iurando sit.*	tu enim non malum facis, qui bene uteris iuratione, quae etsi non bona tamen necessaria est, ut alteri persuadeas quod utiliter *suades; sed a malo est illius, cuius infirmitate iurare cogeris*

Radbert split Jerome's sentence into two parts and balanced it by combining it with Augustine's point that the weakness of others sometimes necessitates (and legitimizes) the oath. The result of this cutting, pasting and adding is a much more straightforward message about the legitimacy of the oath.

There is also an important point to be made regarding the language of the oath. Returning to Radbert's argument about oaths by heaven, earth, Jerusalem, and so on, we can note that he developed Augustine's point further. For Radbert, the binding force of such oaths results from the figurative — or sacramental — quality of the language used. For example, when we swear by the earth, we really swear by the holy church, and when we swear by the head, we really swear by Christ. Radbert concluded:

> Si quis uero non se teneri iuramento quia creatura esse cernitur cogitet quod in his omnibus praestantiora figurata lateant sacramenta et intellegat se debere illi cui in eisdem sacratiora clauduntur et adumbrantur archana.
>
> (If someone thinks that he does not need to keep the oath [by these things], let him consider that hidden in these things, much more outstanding sacraments are prefigured, and he should understand that he owes the oath to God for whom these holy and secret things are concealed and foreshadowed.)[46]

Kaschke, and Kramer, 'Relatio', p. 150, where an absolute prohibition to swear is reaffirmed, although this latter text is concerned with episcopal oaths.

43 Paschasius Radbertus, *Expositio in Matthaeum*, ed. by Paulus, III. 5. 37, p. 341.

44 Jerome, *Commentariorum in Mattheum*, ed. by Hurst and Adriaen, I. 5. 33–37, p. 33.

45 Augustine, *De sermone Domini in monte*, ed. by Mutzenbecher, I. 17. 51, p. 59.

46 Paschasius Radbertus, *Expositio in Matthaeum*, ed. by Paulus, III. 5. 36, p. 341, p. 340.

The word used for the spiritual meaning contained in such oaths is *sacramentum*. The primary sense here is a technical, exegetical one, where *sacramentum* refers to the spiritual interpretation of the Scriptures much like *typus* or *figura*. However, there is an important similarity between the *sacramentum* of biblical language, the liturgical sacraments, and the sacrament of the oath, as Radbert underlined in his treatise on the Eucharist, *De corpore*. In all cases, beneath an outer form or species, faith allows for the discernment of an inner, invisible truth, reality, or force.[47] In connecting the oath with the meaning of *sacramentum* as type or figure, Radbert thus made a point about the figural quality of the signs underlying both.[48]

Given this perspective of a theory of sacraments, the complex argument about truthful speech developed by Radbert in the final part of the commentary, explaining *let your yes be yes, your no be no*, becomes more accessible. On the one hand, this served to shift the focus of the passage away from avoiding oaths towards avoiding lies. The starting point is the notion of an ideal situation of communication where the oath is not needed because every speech act is as sincere as an oath; for Christians, the distinction between a simple statement and an oath becomes irrelevant, for there is always supposed to be a connection between the spoken words and an inner truth. When we speak the truth, we speak it through God, as it were: our words participate in the divine truth, correspond with it, or represent a small part of it.[49] Christians can achieve this participation in God's truth through faith, just as they participate in Christ's body through the Eucharist. Such reflections can be read as a critique of the oath as something superfluous in the formal sense, and indeed, Radbert closes his commentary with a reference to the fourth beatitude (Matthew 5. 6: 'Blessed are they who hunger and thirst for righteousness, for they shall be satisfied'), thus linking the prohibition to swear with the gradual advancement towards perfection. An ideal Christian community in possession of *iustitia* would therefore not need to use oaths.[50] However, his points can also be read in the sense that an oath spoken by Christians has a special quality because of its participation in the higher, divine truth. The latter interpretation is suggested by a parallel passage from the *Vita Adalhardi*, which has been noted by Owen Phelan. There, Radbert

47 Paschasius Radbertus, *De corpore et sanguine domini*, ed. by Paulus, c. 3, pp. 23–25; cf. Otten, 'Between Augustinian Sign and Carolingian Reality'.

48 For *sacramentum* and its multiple meanings, see Stock, *Implications of Literacy*, pp. 254–59 and 261–22. On Radbert, see Phelan, *The Formation of Christian Europe*, pp. 88–47; Phelan, 'Horizontal and Vertical Theologies'. On patristic foundations: Uhalde, *Expectations of Justice*, p. 84; Dodaro, 'Sacramentum'; Gärtner, 'Sacramentum'.

49 Paschasius Radbertus, *Expositio in Matthaeum*, ed. by Paulus, III. 5. 37, p. 342: 'Veritas autem Deus est. Et quisquis uerum loquitur utique ex illo loquitur' (The truth, however, is God. Whoever speaks the truth, indeed speaks through Him). See Chazelle, 'Figure, Character and the Glorified Body', p. 9.

50 Paschasius Radbertus, *Expositio in Matthaeum*, ed. by Paulus, III. 5. 37, pp. 342–43. ll. 3449–3454; cf. Stoll, *De virtute in virtutem*, p. 262.

contrasts the *fides* and obligation established by an oath, even among pagans, with the promises given by Christians *in veritate* (thus, by simply speaking the truth), affirming the greater credibility and trustworthiness of the latter.[51]

In his commentary on Matthew 5. 33–37, Radbert thus carefully integrated the diverging strands of patristic exegesis to formulate an unambiguous message regarding the legitimacy of the oath. He explicitly sanctioned the oath as an instrument to generate social stability and trust. Moreover, we can observe a tendency to view the oath in terms of sacramental theory, thereby underlining the holiness, trustworthiness, and inviolability of Christian oaths. During the 820s and 830s, when Radbert was writing, debates about the legitimacy of oath-taking and its limits intensified.[52] The shifting plans for Louis's succession led to a sequence of contradictory oaths to be taken by Louis's subjects. The abandonment of the *Ordinatio imperii* of 817, which had been solemnly enacted and confirmed by oaths, was one of the issues that brought Louis's elder sons and their supporters into dissent with the emperor. Louis's broken promises at the assembly of Compiègne in 830 to oust Bernhard and Judith and to re-instate Lothar as co-emperor was a serious charge levelled against the emperor by Radbert.[53] In 833, the forcing of his subjects to commit perjury was one of the main charges levelled against Louis when he was temporarily deposed after many of his supporters had deserted him on the 'field of lies', breaking their oaths of fidelity.[54] Vice versa, Louis's opponents were accused of breaking their fidelity towards the emperor. Radbert's *Epitaphium Arsenii*, in turn, was written mainly to defend its subject, Wala, from such accusations and to demonstrate his unwavering fidelity (*fides*) to God, king, and country.[55] In light of the political developments and the ensuing civil wars between Louis's sons, Paolo Prodi has spoken of a crisis of the oath.[56] However, one may well turn this around and observe efforts to use the oath as a means to stabilize social and political bonds in times of crisis. It is in this context, perhaps, that we can interpret Radbert's exegetical strategy to legitimize and sanctify the oath in the Matthew commentary.

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51 Paschasius Radbertus, *Vita Adalhardi*, cols 1841–64; see also Verri, 'Edizione critica'; see Phelan, *The Formation of Christian Europe*, p. 41.

52 Esders, Kaschke, and Kramer, eds, 'Relatio episcoporum (a. 833)', pp. 145–50.

53 Paschasius Radbertus, *Epitaphium Arsenii*, ed. by Dümmler, II.10, p. 73; see also Esders, Kaschke, and Kramer (eds), 'Relatio episcoporum (a. 833)', p. 160; for comment: De Jong, *Epitaph for an Era*, pp. 159–62; De Jong, *Penitential State*, pp. 208–09.

54 Esders, Kaschke and Kramer, eds, 'Relatio episcoporum (a. 833)', cc. 2 and 5, pp. 162–63 and 165–66. In addition, forcing an oath on his subjects to turn against his own sons was considered a misuse of oath-taking: c. 7, p. 166. On the centrality of oaths in this document, see Esders, Kaschke and Kramer, eds, 'Relatio Episcoporum (a. 833)', pp. 145–50.

55 See De Jong, *Epitaph for an Era*, pp. 149–99, esp. pp. 188–92; De Jong, 'For God, King and Country'.

56 Prodi, *Sakrament der Herrschaft*, p. 83.

Radbert's younger contemporary, Christian of Stavelot, wrote his *Commentary on Matthew* probably around 865, and therefore after the fraternal wars and the division of the realm which had occurred in the 840s.[57] In this text, he continues the tendency of ninth-century exegetes to explain away the prohibition to swear, re-interpreting it as a permission of truthful oaths and using it to legitimize Christian oath-taking. Like Radbert, Christian worked from patristic tradition, but unlike Radbert, he did not cite any patristic authors verbatim, thus avoiding the traditional line of argument. Christian's starting point was that there was no contradiction between the Old and the New Testament. According to Old Testament law, God had conceded to swear in his name, and, as Christian continues, 'he also does not forbid us from doing so, he merely teaches us perfection, which means that among Christians, faith (*fides*) should prevail to such an extent as to render invoking the Lord's Name superfluous. Perjury is forbidden for them [i.e., the Jews] as it is for us'.[58] Following Cassiodorus, Christian then explained the meaning of perjury through its (supposed) etymology: it means 'to swear badly' as opposed to 'swearing rightfully' (*iure orare*).[59]

For Christian, there is no prohibition to swear in Matthew's gospel, only a prohibition on perjury. He took up Hilary's idea (also present in Radbert) that an ideal Christian community should be united through faith (*fides*) so as to render the oath unnecessary, but derived a very pragmatic stance from it: this was an ideal of perfection, which he may have thought was only accessible by monastic communities. Christ had not meant to impose it on everyone in the form of a general prohibition of the oath. Christian repeated this line of argument in his commentary on Matthew 5. 37 ('let your yes be yes, your no be no'). He stated explicitly that an oath in God's name did not violate Christ's commandments. Rather, Christ's intention had simply been to warn against perjury and lying, exhorting us to be content with the simple truth. Again, to renounce the oath is earmarked as a task for spiritually advanced persons, not for ordinary Christians.[60]

On a pragmatic level, Christian therefore worried more about perjury than about the oath. The patristic critique of the Jews who thought their oaths less binding when they had sworn them by a creature rather than

57 On Christian and his commentary, see Ponesse, 'The Instruction of Monks'; van Meter, 'Christian of Stavelot'; Laistner, 'A Ninth-Century Commentator'; Dümmler, 'Über Christian von Stavelot'.

58 Christian of Stavelot, *Expositio super Librum generationis*, ed. by Huygens, v. 33, p. 150: 'Ne Iudaei per idolorum nomina iurarent, permisit eis dominus iurare per nomen suum, nec nobis etiam inhibuit sed perfectionem nobis docuit, quod ea fides sit habenda inter Christianos, ut non sit necesse testem nomen domini interponere; periurium illis et nobis prohibitum est.'

59 Christian of Stavelot, *Expositio super Librum generationis*, ed. by Huygens, v. 33, p. 150. Cf. Cassiodorus, *Expositio psalmorum*, ed. by Adriaen, XIV. 4, p. 135 and CXVIII.106, p. 1104.

60 Christian of Stavelot, *Expositio super Librum generationis*, ed. by Huygens, v. 37, p. 152.

in God's name, was brought up to date in Christian's text so as to suit the practice of Christian oath-taking. Rather than attacking Jews, he criticized Christians who thought that false oaths sworn at altars did not constitute perjury. Against such misconceptions, Christian explained that God understands the oath in the same way as the human recipient, adding that we owe all oaths to God, regardless of whether or not the altar contained saints' relics or not.[61] Christian added an exemplum taken from the Old Testament designed to warn against the severe punishments that perjurers would incur. He reminded his readers of the story of King Zedekiah, who had broken a sworn agreement/oath of fidelity towards the Babylonian king Nebuchadnezzar, preferring an alliance with the ruler of Egypt instead. Following his broken oath, Zedekiah was captured by Nebuchadnezzar and his realm fell into the hands of Babylonian armies (Ezekiel 17). The message was clear: oaths (and sworn treatises) were to be kept; breaking them had grave (political) consequences, even if the oath was sworn to a party of a different faith.[62] Although it remains unclear whether Christian had in mind a particular event from his recent past, it is interesting to remember that the commentary was written shortly after the treaty of Koblenz in 860, which was supposed to finally constitute peace between the competing kings. Significantly, the same anecdote was also repeatedly used by Hincmar, who not only played a decisive role in the Peace of Koblenz, but also had a fundamental interest in (royal) oaths.[63] It occurs not only in his dossier on perjury, but also in a moral treatise he had written for Charles the Bald as well as in the acts of the synod of Douzy in 871, where it served to underline the gravity of perjury in the case against Hincmar of Laon.[64]

In any case, Christian of Stavelot's reading of the prohibition to swear as a prohibition from perjury makes sense given the experiences of the 840s. The *Bruderkriege* led to a still increased importance of oath-taking, even as the conflict revealed the weakness of the oath as a means to establish political stability. The famous Strasbourg Oaths (842), when Charles the Bald and Louis the German allied against their brother Lothar, were the first of a series of solemn pledges made by the Carolingian kings to ensure peace between the newly formed, competing kingdoms and to imply the continuing existence of the Carolingian empire by the so-called *Brüdergemeine*.[65] Moreover, the conflict generated a 'compétition pour les serments de fidelité' as members of the aristocratic elite shifted their alliances in an effort to safeguard, or enhance, their *honores*.[66] In 845/846, the synod of Meaux-Paris

61 Christian of Stavelot, *Expositio super Librum generationis*, ed. by Huygens, v. 33, pp. 150–51.

62 Christian of Stavelot, *Expositio super Librum generationis*, ed. by Huygens, v. 33, p. 151.

63 See Behrmann's other contribution in this volume.

64 Hincmar, *De divortio*, Resp. 6; Hincmar, *De cavendis vitiis*, ed. by Nachtmann, I.9, pp. 163–65; *Synod of Douzy a. 871*, ed. by Hartmann Text C, c. 2, pp. 488–89. See below.

65 See Schneider, *Brüdergemeine und Schwurfreundschaft*.

66 Pezé, 'Compétition et fidélité à l'épreuve de la guerre de succession', p. 147; in retrospect,

complained about the 'multiple confusion of oaths and perjuries' caused thereby.[67] Against this background, Christian's priorities were to leave to one side the question of whether oaths were legitimate at all, and to focus all the more forcefully on preventing perjury. Nevertheless, as we will see, the prohibition to swear was taken up in a literal sense by the bishops in the 840s, but with an eye towards promoting their own exemption from the obligation to take an oath.

The Prohibition to Swear and the Role of Bishops

As we have seen, Carolingian exegetes between Claudius and Christian worked to clarify and reinforce the patristic legitimation of the oath. The prohibition to swear was relativized by focusing on perjury or by limiting its audience to Christians striving for perfection, most notably monks. At the same time, the Carolingian commentaries show their authors reacting to political debates in which oath-taking and its problems played a decisive role. This raises the question of how the prohibition to swear and its exegesis was received and adapted in normative texts dating to the same period.

The oath played an important role in Carolingian legislation since the introduction of the oath of fidelity in 789.[68] Capitularies issued under Charlemagne concentrated on regulating the oath and its forms without questioning its legitimacy. Only specific types of oaths, taken by certain groups of people, were banned, for example oaths that constituted horizontal groups and potentially conflicting loyalties.[69] Following the rule of Benedict, which prescribes 'not swearing, in order to avoid perjury' and 'to speak the truth from the heart and the mouth', monks were exempt from the oath of loyalty required from every male subject in 789.[70] The main focus, however, was on measures to prevent perjury, which was perceived as a

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Hincmar of Reims described the conflict not so much as a war between the royal brothers, but rather as a struggle between magnates, cf. Hincmar of Reims, *Instructio ad Ludovicum Balbum regem*, ed. by Migne, c. 4, col. 985C.

67 *Synod of Meaux-Paris a. 845/6*, ed. by Hartmann, no 11, c. 39, p. 103 ('multiplex iuramentorum et periurorum confusio').

68 Becher, *Eid und Herrschaft*; Esders, 'Sacramentum fidelitatis'; Nelson, 'Carolingian Oaths', pp. 39–41; Davis in this volume.

69 For example, *Brevarium missorum Aquitanicum*, ed. by Boretius, no. 24, cc. 15–16, p. 66; *Synod of Frankfurt a. 794*, ed. by Boretius, no. 28, c. 31, p. 77; *Capitulare Missorum in Theodonis villa*, ed. by Boretius, no. 44, cc. 9–10, p. 124; see Oexle, 'Conjuratio und Gilde im frühen Mittelalter'; Holenstein, *Die Huldigung der Untertanen*, pp. 18–21; Nelson, 'Carolingian Oaths'; Davis in this volume.

70 *Capitulare missorum a. 789*, ed. by Boretius, no. 25, c. 3. p. 67; Cf. *Regula Benedicti*, ed. by Hanslik, 4.27–28, p. 33: 'Non iurare ne forte periuret, veritatem ex corde et ore proferre'; for dating this capitulary to 789 see Becher, *Eid und Herrschaft*, p. 79.

grave danger to the social and religious order.[71] This preoccupation with perjury is consistent, to a certain extent, with an Augustinian approach towards the prohibition to swear in Matthew as motivated by the need to avoid perjury. It is difficult, however, to trace the direct influence of the exegetical tradition in Charlemagne's capitularies, which seems to have been mediated through other texts such as the *Collectio Hibernensis* or Isidore of Seville's *Sententiae*.[72]

In the later phase of Charlemagne's reign, it seems that this interpretation of Matthew 5. 33–37 was being challenged by some people. The synod of Tours 813 re-asserted a literal understanding of Matthew's prohibition: Christ had forbidden all kinds of oaths ('omne genus iuramenti'.[73] The compilators of the canon combined this with a reading of the second commandment (Exodus 20. 7) as a prohibition to swear rather than as referring to perjury, a rather unusual exegetical choice, but one that is also present in Ps. Bede. The ecclesiastical capitulary discovered by Mordek and Schmitz and dated by them to 813 in turn re-asserted the meaning of Exodus 20. 7 as banning perjury, and neglected to mention the Matthew passage.[74] The general capitulary of 813 referred its audience back to previous capitulary legislation (rather than to the synodal acts), and a *Capitulare missorum*, probably also dated to 813, chooses a different passage, namely Ecclesiasticus 23. 12 ('Vir multum jurans implebitur iniquitate') to discuss the matter, thus eschewing the thorny issue of how to interpret Matthew 5. 35–37.[75]

As we have seen, political oaths and the related question of fidelity became a central issue in the struggle between Louis and his elder sons, leading to the rebellions of 830 and 833. After Louis had been re-instated a second time, the bishops assembled at the synod of Aachen in 836 took up many aspects of reform debated in Paris in 829. They reaffirmed the obligation of bishops to take and preserve the oath of fidelity towards the ruler. Bishops and clergy who break their oath and enter into a rebellion

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71 *Admonitio generalis*, ed. by Mordek, Zechiel-Eckes, and Glatthaar, c. 63, pp. 214–16; *Capitulare generale missorum*, ed. by Boretius, no. 33, c. 36, p. 98; *Capitula cum primis constituta*, ed. by Boretius, no. 52, c. 4, p. 139; *Capitulare missorum a. 808*, ed. by Boretius, no. 53, c. 3, p. 140; *Capitula a misso cognita facta*, ed. by Boretius, no. 59, c. 6, p. 146; *Capitulare missorum Aquisgranense secundum*, ed. by Boretius, no. 65, c. 10, p. 154; *Capitulare de iustitiis faciendis*, ed. by Boretius, no. 80, c. 3 and 13, pp. 176–77; *Capitulare Missorum in Theodonis villa*, ed. by Boretius, no. 44, c. 11, p. 124; *Capitulare Aquisgranense*, ed. by Boretius, no. 61, c. 6, p. 148; Diesenberger, *Predigt und Politik*, pp. 272–78; Brunner, *Zeugen- und Inquisitionsbeweis*, p. 26.

72 *Collectio Canonum Hibernensis*, ed. by Flechner, c. 34, pp. 240–48; Isidore of Seville, *Sententiae*, ed. by Cazier, II.31, pp. 155–56.

73 *Synod of Tours a. 813*, ed. by Werminghoff, c. 43, p. 292.

74 *Capitulare ecclesiasticum Caroli magni*, ed. by Mordek and Schmitz, 'Neue Kapitularien', c. 26, p. 409. The date is disputed. See Glatthaar's Introduction to *Admonitio Generalis*, pp. 126–35, where he argues for 806.

75 *Capitulare generale Caroli magni*, ed. by Mordek and Schmitz, 'Neue Kapitularien', c. 15, p. 417; *Capitula missorum* 813 (?), ed. by Boretius, no. 83, c. 9, p. 182.

against the emperor are warned that they will have to face the verdict of a synod and the loss of their rank. Laypeople accused of infidelity were likewise confronted with ecclesiastical sanctions.[76]

The tone changed markedly in the acts of the synods of the 840s, which attempted to redraw the balance between church and realm in an empire now divided between Louis's three sons and shaken by the recent civil wars. The synod of Meaux-Paris, which represented the culmination of a longer debate, formulated a series of canons containing an ambitious programme of reform for the reign of Charles the Bald. This included a prohibition to swear addressed especially to bishops:

> Ut nullus deinceps veritatis episcopus solito super sacra iurare praesumat, quod mysterii causa sancti quesierint patriarche et fecerint. Non enim in hesitatione et malitia exigentis, sed in caritate non ficta fides servatur. Quod qui transgredi ausu temerario praesumpserit quolibet modo inlectus, censure ecclesiastice sine retractatione subiaceat.
>
> (No bishop of the truth shall from now on dare to swear the customary oath over holy things (*super sacra*), as the holy patriarchs strove to do and actually did for the sake of mystery. For fidelity (*fides*) is preserved not through the hesitation and malignancy of him who demands [the oath], but rather through genuine charity (*caritas non ficta*). If someone dares to transgress this prohibition with audacious hazard in any way, he will be submitted to ecclesiastical censure without appeal.)[77]

This canon should most likely be interpreted as a ban against taking oaths over the altar or saints' relics, a solemn form which the compilers of the canon obviously assumed to be the (hitherto) customary form of oath-taking. As the phrasing makes clear, these formal requirements were made by the recipient of the oath — and indeed, royal capitularies dating to the reign of Charlemagne prescribe that oath-taking should take place in the presence of relics. Their reference to the distrust and malignancy of the oath's recipients can remind us of Augustine's argument that the evil origin of the oath lies in the weakness of the party who lacks faith/trust without it. However, as the bishops argued (thereby partly undermining Augustine's reasoning), one should not let this distrust determine the way in which trust is established. Rather, the bond of love (*caritas*) should strengthen the credibility of the oath and establish trust. This, in turn, is reminiscent of another exegetical argument (made by Hilary of Poitiers and others):

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76 *Synod of Aachen a. 836*, ed. by Werminghoff, c. 24 (12), p. 710; on the synod, see Anton, 'Zum politischen Konzept karolingischer Synoden', pp. 75–77; Patzold, *Episcopus*, pp. 211–18; Hartmann, *Die Synoden der Karolingerzeit*, pp. 190–93.

77 *Synod of Meaux-Paris a. 845/6*, ed. by Hartmann, c. 38, pp. 102–03.

in an ideal Christian community, faith (*fides*) and mutual love as both its precondition and consequence render the oath superfluous.

Paolo Prodi has interpreted the canon of Meaux-Paris as a move to exempt bishops from oath-taking and associated this with a broader trend to distinguish the bishops as ecclesiastical leaders from the realm of secular power.[78] This interpretation is strengthened by the context in which the canon occurs in the acts, which likewise debate the boundary between the ecclesiastical and the secular sphere. The preceding canon cited II Tim. 2. 4 ('let no one who serves God involve himself in secular affairs') to underline the prohibition for bishops to wear arms and engage in warfare. The next chapter, in turn, discussed the frequent occurrence of contradictory oaths and perjury during the period of fraternal strife. The bishops strongly condemned this 'confusion of oaths', pointing to the prohibition of perjury in Lev. 19. 12. Citing Gregory the Great's dialogues, they lamented the many perjurers who were punished by the saints at their shrines. This can also be read as a reminder to the Carolingian kings that they would be answerable for the spiritual danger that their subjects incurred as a result of such political failure. In this context, the ban on swearing *super sacra* constitutes an attempt by the synod to protect the bishops from the consequences of similar political turmoil in the future.[79]

That the oath functioned as a symbolic point of reference for defining the position of bishops in the middle of the ninth century is likewise suggested by a canon of the synod of Pavia in 850. Under the direction of Joseph of Ivrea, Theodemer of Aquileia, and Angilbert of Milan, the synod issued twenty-four canons that were sent to the newly crowned emperor Louis II. These canons show close links to political discussions conducted north of the Alps. In the first part (cc. 1–8), the synod addressed the office and duties of bishops and their moral conduct. In this context, c. 4 cited Matthew 5. 37, but refashioned it as addressed to bishops in particular:

> Sit sacerdotis eloquium spiritali sale conditum, non iniuriosis et protervis et coturnosis vocibus tumidum. Sit sermo episcopi iuxta evangelium: *Est, est. Non, non*; si quid enixius adfirmandum durę fortisan audientium mentes exigunt, more potius apostolico interponat suę locutioni: *Deus scit* aut *coram deo*! quam *per imperatoris gratiam*, sicut militantibus seculo iurare celebre est, sua dicta confirmet.

78 Prodi, *Sakrament der Herrschaft*, p. 86. See also Heiko Behrmann's other contribution in this volume.

79 That the bishops assembled in Meaux-Paris did not reject oath-taking as such is suggested by a canon on the Sendgericht (although its attribution to the synod is not certain). The canon foresees sworn testimony by laypeople in front of the episcopal court: *Synod of Meaux-Paris a. 845/6*, ed. by Hartmann, canon extravagans 3, pp. 130–31; On Sendgerichte see Koeniger, *Die Sendgerichte in Deutschland*; Hartmann, *Kirche und Kirchenrecht um 900*, pp. 245–61 ; Schieffer, 'Zur Entstehung des Sendgerichts im 9. Jahrhundert', and now Hicklin and others, *Local Priests*, pp. 173–213.

> (The bishop's speech should be according to the Gospel: 'Let your yes be yes, your no, no.' If the minds of the audience perhaps necessitates further confirmation, they should add to their statement following the apostolic custom: 'God knows!' or 'before God' rather than confirming their speech 'by the grace of the emperor', as laypeople (secular officials) are known to swear.)[80]

Although it is not entirely clear which kind of oaths the synod envisaged, it is important to note that what was at stake were the requirements for bishops which resulted from their rank and pastoral duties. As in Meaux-Paris, the synod of Pavia deemed it important that episcopal oaths should be distinct from those sworn by laypeople, at least with regard to their form. Like Augustine, they invoked Paul's letters as an alternative to the prohibition contained in Matthew. But in contrast to Augustine, the bishops used Paul as an example to determine the proper form of episcopal oaths in contradistinction to regular oath-taking. They also avoided using the words 'oaths' or 'swearing', preferring to speak simply about 'confirming one's speech'. Thereby, they also underlined the bishops' special place as apostolic successors. The context for this prescription is yet again an attempt to demarcate the episcopal persona from the secular sphere: the chapter starts by invoking the ban on hunting and ostentatious representation of wealth, two points which were traditionally imposed on bishops to distance them from their secular peers.[81]

In West Francia, the bishops returned to the argument developed in Meaux-Paris at the synod of Quierzy in 858. In their synodal letter to Louis the German, which was drafted by Hincmar of Reims, the bishops rebuked Louis's invading his brother Charles's territory. Defying the elder brother's ambitions at taking over the West Frankish realm, they invoked the 'evangelical, apostolic, and canonical prohibition to swear' ('quod nos evangelica et apostolica atque canonica auctoritas vetat') which hindered them from rendering the oath of fidelity ('iurationis sacramentum') to Louis. The bishops argued that their status was distinct from that of laypeople and precluded bonds of fidelity as they existed between laymen and their secular lords. They further justified their rejection of the oath by invoking their role in transmitting the sacraments: their hands had been anointed to consecrate the host and their tongue to impose penance and reconciliation; they should not be desecrated by swearing a secular oath *super sacra*.[82] This argument draws on the assimilation of oath and sacrament, which we have

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80 *Synod of Pavia a. 850*, ed. by Hartmann, c. 4, p. 221; see Hartmann, *Synoden*, pp. 242–44; for the conception of the episcopal office in synodal texts of the second half of the ninth century, see Patzold, *Episcopus* pp. 266–87.

81 See Prinz, *Klerus und Krieg im früheren Mittelalter*, pp. 1–35; Felten, *Äbte und Laienäbte im Frankenreich*, pp. 20–22.

82 *Synod of Quierzy a. 858*, ed. by Hartmann, c. 15, p. 425.

observed in Radbert's exegesis. In both texts, the homonymy of the two served to postulate that the oath functioned in a similar way as the other sacraments. The synod of Quierzy, however, aimed to distinguish the ecclesiastical sacraments from the secular oath. To a certain extent, their claim that the prohibition to swear applied to bishops rested precisely on the exegetical arguments which legitimized and sanctified the oath by associating it with the sacraments.

This perspective on episcopal oaths was of course partly situational: the bishops' aim was to delineate a position from which they could avoid taking sides without antagonizing Louis. The situational character of their argument becomes entirely clear when we consider that the bishops conceded that oaths of purgation were a legitimate means to be used by clerics, including bishops, in court. Moreover, in the following year Wenilo of Sens, one of Louis's most important supporters, was charged with having broken his oath of fidelity towards Charles the Bald.[83] However, the same letter was also sent to Charles the Bald, indicating that the bishops intended their points to be valid beyond the immediate political crisis. The synodal letter of 858 thus demonstrates that bishops used the oath in an attempt to re-define and re-calibrate the political relationship between the ruler and the episcopate.[84]

Similar aims can be discerned in Hincmar of Reims's fervent protest against the new formula for the oath of fidelity proposed by Charles the Bald after his coronation as emperor in 876 in Ponthion.[85] Hincmar criticized the formula and its elements by pointing out that it contradicted biblical norms and the principles of pastoral duties. As in Quierzy, he was anxious to dissociate the bishops from secular bonds of fidelity. He rejected the promise of advice and help ('consilium et auxilium') as well as the notion of unconditional obedience ('oboediens in ominbus'), pointing out that such a wide-ranging commitment could result in a conflict between the bishops' religious duties and his loyalty towards the ruler.[86] He likewise rejected describing the ruler as the bishop's *senior*, invoking the famous letter by Pope Gelasius on the two powers to support his point.[87] Hincmar was keenly aware of how the oath defined power relations between the ruler and the bishops as office-holders, and that the bishops' elevated political and spiritual role had to be taken into account. Amongst an impressive array of biblical citations adduced to support his position, we also find citations of

83 *Synod of Savonnières a. 859*, ed. by Hartmann, c. 7, p. 460 and Texts B and C, pp. 464–72.

84 Prodi, *Das Sakrament der Herrschaft*, pp. 86–87; Anton, *Fürstenspiegel und Herrscherethos in der Karolingerzeit*, p. 321; Patzold, *Episcopus*, 271–73, 280.

85 Hincmar of Reims, *Juramentum*, ed. by Migne, cols 1125A–1128D; see Patzold, *Episcopus*, pp. 408–09; see also Heiko Behrmann's contribution on Hincmar in this volume. Note that the ascription of the oath formula to Hincmar is only transmitted in Sirmond's edition, a point we owe to Britta Mischke.

86 Hincmar of Reims, *Juramentum*, ed. by Migne, col. 1126B.

87 Hincmar of Reims, *Juramentum*, ed. by Migne, col. 1125B.

the prohibition to swear. Hincmar cited both the version of the Gospel of Matthew and the Epistle of James in abbreviated form, which suggested an interpretation of these passages as bans of all kinds of oaths.[88] The following argument, however, shows a very specific interpretation of the prohibition to swear which set it apart from the standard exegesis and addressed the situation at hand. Hincmar explained the warning that everything exceeding the simple affirmation of truth springs from evil in a way that differed markedly from the Augustinian interpretation. Hincmar understood the evil at the origin of the oath in two ways: it was either constituted by the imprudence of the person who swears improperly and without caution ('a malo male et incaute iurantis'), or it referred to the sinfulness of the person enforcing an improper oath ('male et sine causa iurare cogentis').[89] The first interpretation targeted such oaths as criticized by Hincmar earlier in the text because they imposed excessive obligations on the oath-taker or generated a conflict of interest with his pastoral duties. Such an oath should thus be rejected by the oath-taker. The second interpretation follows Augustine, but with a significant modification: in contrast to Augustine, Hincmar did not highlight the weakness of the recipient of the oath, but rather, that the oath is demanded in improper form (*male*) and without reason (*sine causa*).[90] This fits well with Hincmar's assertion that he had already professed fidelity towards Charles in written form years ago, and moreover demonstrated his unshakeable loyalty during long years of service to the king.

The conciliar texts (and to a certain extent, Hincmar's note of protest) thus used patterns of interpretation developed in (patristic) exegesis to deflect the prohibition to swear in a selective manner to make the opposite point and argue against the legitimacy of (certain types of) oaths. In all of these texts, the prohibition to swear is mobilized as part of a discussion of the position of bishops within Carolingian society and their relation to the ruler. The tendency to exempt bishops from formal oath-taking in certain contexts, as had long been accepted for monks following the rule of Benedict, fits well with the observation that some (West Frankish) bishops issued episcopal statutes which show a negative attitude towards oath-taking in general. However, as the writings of Hincmar of Reims show, such arguments were always situational and could be modified to suit the needs of the moment. At the synod of Douzy in 871, Hincmar used a different set of exegetical arguments against his nephew Hincmar of Laon, who had been accused of infidelity towards Charles the Bald. In a statement drafted by the elder Hincmar, the bishops cited the prohibition to swear (in the version of the Letter of James), not to delegitimize episcopal oaths of fidelity, but rather to underline that all oath-takers will be judged by

88 Hincmar of Reims, *Juramentum*, ed. by Migne, col. 1128A.
89 Hincmar of Reims, *Juramentum*, ed. by Migne, col. 1128A.
90 Hincmar of Reims, *Juramentum*, ed. by Migne, col. 1128A.

God in the end. This interpretation was derived from Bede's Homily on Matthew 14. 7, in which Bede discussed the oath sworn by Herod to his stepdaughter Salome, which led to the killing of John the Baptist.[91] The story of Herod demonstrated, according to Bede, that it was better to commit perjury than to keep an imprudent oath obliging to a still greater crime. By contrast, Hincmar of Laon had not sworn a sinful oath, but rather broken a perfectly legitimate oath of fidelity, thereby committing perjury. The text continues with a series of biblical and patristic citations taken from Hincmar of Reims's dossier on perjury, which served to establish that perjury was indeed a grave sin.[92] To make the point that perjury constituted an offence against God and was therefore subject to divine sanctions, Hincmar used the biblical story of King Zedekiah's broken oath alongside Jerome's commentary, an episode also cited by Christian of Stavelot in his exegesis of the prohibition to swear.[93] Like Christian, Hincmar cited Cassiodorus's definition of the oath as 'quasi iure orare, id est iuste loqui' to distinguish a truthful oath from perjury.[94]

The prohibition to swear also appears in an even more radical re-interpretation, in the acts of the synod of Douzy in 874. The synod dealt with the case of a priest named Huntbert who was accused of having fathered a child with Duda, a nun, and having supported her in a rebellion against the abbess of her monastery.[95] Hincmar carefully established the legitimacy of hearing sworn testimony to support the case against the priest, a delicate question given the fact that the witnesses were nuns. Hincmar cited Matthew 5. 37 ('let your yes be yes, your no be no'), not to warn against oath-taking and perjury, but rather to make the point that the use of oaths was legitimate to establish the truth in cases of *necessitas*. He also cited the passage from Augustine's *De sermone Domini in montem* in which Augustine had located the problematic aspect of swearing with the weakness of the recipient party, which constituted the *necessitas* of the oath. Given that there was

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91 *Synod of Douzy a. 871*, ed. by Hartmann, Text C, c. 2. p. 488; cf. Bede, *Homeliarum evangelii libri II*, ed. by Hurst, II. 23, pp. 351–53.

92 *Synod of Douzy a. 871*, ed. by Hartmann, Text C, pp. 488–89; On the so-called *periurium*-dossier see the edition of Hincmar's *De Divortio*, ed. by Böhringer, 'Einleitung', pp. 71–74; See also Heiko Behrmann's contribution on Hincmar in this volume.

93 *Synod of Douzy a. 871*, ed. by Hartmann, Text C, c. 2, p. 489; cf. Jerome, *Commentariorum in Hiezechielem*, ed. by Glorie, V. 17.11–18, 19–21, pp. 219–21.

94 *Synod of Douzy a. 871*, ed. by Hartmann, Text C, c. 2, p. 488: 'Iurare est hominum sub testatione divina aliquid polliceri. Iurare enim dictum est, quasi iure orare, id est iuste loqui. Tunc autem quispiam iuste loquitur, quando ea, quae promittit, implentur' (Swearing in human terms means promising something by calling God to witness. For *iurare* (swearing) is actually *iure orare* (pleading rightly), that is, speaking justly. Now a person speaks justly when what he promises is fulfilled). Cf. Cassiodorus, *Expositio psalmorum*, ed. by Adriaen, XIV. 4, p. 135 (Engl. trans. adapted from Walsh, I, p. 159).

95 For the details of the case, see Schmitz, *De presbiteris criminosis*, pp. 13–15; Ubl, *Inzestverbot und Gesetzgebung*, p. 344.

necessitas in this case, Duda and her fellow-nuns were supposed to swear *super sacrosancta evangelia et cetera divina mysteria*.[96]

Exegetical Dissent: The Anonymous on Matthew and Haimo of Auxerre

As we have seen, the re-interpretation of the prohibition to swear devised by exegetes like Augustine generated a stock of arguments which were taken up by Carolingian thinkers and developed further in strikingly varied ways. Carolingian exegetes like Radbert and Christian pushed the boundaries of interpretation even further to suggest not only the legitimacy of oath-taking, but even a sacral quality of Christian oaths. Elements of the same exegetical tradition could be mobilized in other contexts, however, to enforce the prohibition to swear in a more literal sense with regard to certain groups or specific situations. We should therefore not assume a straightforward narrative leading towards the justification and sanctification of the oath. Indeed, some exegetes voiced strong criticism of oath-taking and its acceptance by a Christian society.

An oath-critical stance can be found, for example, in an anonymous commentary on Matthew dating to the middle of the ninth century and edited by Löfstedt.[97] Little is known about its author and the context of its composition, although the text has been associated with traditions of insular exegesis.[98] Like Augustine, the anonymous author contrasted Christ's prohibition with the conflicting testimony derived from other biblical texts. He not only demonstrated Paul's use of the oath in his letters, but even deduced from Old Testament passages which he interpreted as referring to Christ that the Lord himself had sworn. How then, he asked, could Christ swear and prohibit the oath at the same time? However, the anonymous author drew an entirely different conclusion from these contradictory passages than other exegetes influenced by Augustine. Rather than constituting an argument against a literal interpretation of the prohibition to swear, these examples reinforced the message. Christ, as well as Paul, were allowed to swear because they were not susceptible to lies and perjury. They functioned as mouthpieces of the Holy Spirit. By contrast, 'we humans who are prone to lie are not supposed to swear, except insofar as the Lord concedes it'.[99]

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96 *Synod of Douzy a. 874*, ed. by Hartmann, *Definitio*, c. 5, p. 590.

97 *Anonymi in Matthaeum*, ed. by Löfstedt, 5. 33–37, pp. 54–55.

98 Bischoff, 'Wendepunkte in der Geschichte der lateinischen Exegese', p. 226; *Anonymi in Matthaeum*, ed. by Löfstedt, 'Einleitung', p. xv. Earlier, Löfstedt came to a different conclusion in 'Zum Matthäuskommentar in CLM 14311', p. 266.

99 *Anonymi in Matthaeum*, ed. by Löfstedt, v. 33, p. 54: 'Ergo eis licebat iurare, nam nobis, qui mendaces sumus, non licet, nisi quantum Dominus docuit'. As an alternative interpretation, the Anonymous defines God's oath as an immutable promise, thereby mitigating the apparent contradiction. Augustine's statement, according to which a truthful oath is not to be considered sinful, is missing from the text, however.

Whereas Christian and others had viewed renunciation of the oath as a task for spiritually advanced Christians and a sign of perfection, the anonymous commentator turned this around. To him, spiritual perfection was the precondition for the legitimate use of oaths: for ordinary humans who are prone to perjury, the oath remains forbidden. However, the wording of the commentary — 'except insofar as the Lord teaches' — leaves some discretion for the use of truthful oaths.

Around the same time, Haimo of Auxerre took up an oath-critical argument that presented a stark contrast with the Augustinian interpretation in his commentary on Revelation, a passage signalled by Paolo Prodi.[100] Haimo contrasted Revelation 10. 5–6 ('And the angel whom I saw standing on the sea and on the land raised his right hand to heaven / and swore by him who lives forever and ever, who created heaven and what is in it, the earth and what is in it, and the sea and what is in it, that there would be no more delay') with Matthew 5. 34, which he cited verbatim. Like the Anonymous on Matthew, Haimo argued that humans — as opposed to angels or saints — were not allowed to swear because they tend to commit perjury. In stark contrast to Augustine's view, Haimo affirmed that the oath is inherently sinful. If it were otherwise, the Lord would not have forbidden it. Only God is able to swear properly, that is, to guarantee the truthfulness of the oath, or, in other words, to perform the oath as the ultimate speech act which refers to its own fulfilment.[101] This argument was based on the commentary of Haimo's eighth-century predecessor Ambrosius Autpertus.[102] Alcuin, writing in the early ninth century, had considerably softened Ambrosius's sharp criticism of the oath and avoided drawing a connection between Revelation 10. 5–6 and Matthew 5. 33–37, leaving out the statement about the sinfulness of the oath.[103] By contrast, Haimo retained both aspects of Ambrosius's argument, forcefully re-stating the criticism of oath-taking in his own words:

> Sed sciendum quia homines recte jurare prohibentur, quia saepe in juramento falluntur: non enim homines a juramento Deus cohibuisset, si in eo peccatum deesse cognovisset. Deus itaque jurare potest, qui non mentitur aliquando. Juramentum autem ejus est omnis sermo illius, quia quidquid loquitur, absque ulia ambiguitate completur.

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100 Prodi, *Sakrament der Herrschaft*, p. 83 n. 81.

101 Haimo of Auxerre, *Expositio in Apocalypsin*, ed. by Migne, cols 1063D–1064A: On this commentary see Iogna-Prat, 'L'oeuvre d'Haymon d'Auxerre', p. 162; Savigni, 'Il commentario di Aimone'; Palmer, *Apocalypse*, pp. 167–69; on Haimo's exegesis, Shimahara, *Haymon d'Auxerre*.

102 Ambrosius Autpertus, *Exposition in Apocalypsim*, ed. by Weber, v.10.5–7, pp. 396–97, ll. 9–18.

103 Alcuin, *Commentarii in Apocalypsin*, ed. by Migne, v. 6, col. 1145A, simply contrasts God's infallibility to humans' proneness to perjury ('nisi quia homines saepe juramento falluntur, ipse vero qui veritas nunquam fallitur') without deriving from this the argument for a general prohibition to swear. He also avoided mentioning Matthew 5. 33–37.

> (It is to be noted that humans are justly banned from swearing because they frequently incur sin through the oath. God would not have prohibited men from swearing if he had judged the oath to be free from sin. Therefore, God is capable of swearing, since he never lies. All his utterances amount to an oath, since he unambiguously accomplishes everything he says.)[104]

From the confrontation between Old Testament examples and evangelical prohibition, Haimo thus drew the opposite conclusion to most of his Carolingian colleagues. His fervent scepticism towards the human ability to abide by their sworn oaths shows how problematic the oath's function as an instrument to establish *fides* had become to some. Certainly, the events of the 830s and 840s contributed to this scepticism. It also demonstrates that there was no single coherent development in Carolingian exegesis of the prohibition to swear, but rather a polyphonic debate.

Conclusions

The exegetical and normative texts discussed in this chapter reveal an astonishing diversity of approaches and interpretations of the prohibition to swear in the Carolingian period. The meaning of the prohibition to swear, and its applicability to different social groups and contexts remained a matter of debate throughout the ninth century, despite the reception of the influential commentaries by Augustine and Jerome. The oath was thus as intensely problematized as it was essential to the legitimacy and functionality of Carolingian political culture.

Earlier exegesis circulating in the early ninth century showed a more ambivalent attitude towards the oath than notions of Jerome and Augustine as 'fathers of the legitimate oath' would suggest. In commentaries written from the reign of Louis the Pious onwards, we can observe an effort to simplify and clarify the (contradictory) patristic traditions regarding Matthew 5. 33–37, with an edge towards neutralizing the prohibition to swear. This exegetical trend most likely resulted from political debates about the legitimacy of oath-taking and its limits which occurred in the context of Charlemagne's late reforms. Exegetes like Radbert, Haimo, and Christian likewise reacted to the political crisis during the reign of Louis the Pious and his sons. However, there is no linear development in the exegesis of the prohibition to swear. Radbert's commentary with its careful integration of a divergent patristic legacy and sophisticated reflection about the oath as a sacrament enjoyed a relatively limited circulation, to judge by the extant manuscripts. On the other hand, earlier texts, including the patristic commentaries, continued to be copied and used. Christian of Stavelot argued that renunciation of

104 Haimo of Auxerre, *Expositio in Apocalypsin*, ed. by Migne, col. 1064A.

the oath was an aim for spiritually advanced communities, while ordinary Christians needed to be reminded of the dangers of perjury and the binding force of every oath. By contrast, Haimo of Auxerre re-asserted a literal interpretation of the prohibition to swear and voiced strong criticism of the oath as inherently sinful.

The analysis of selected normative texts likewise testifies to a varied and situational approach towards the prohibition to swear. It could be ignored, re-channelled into efforts to prevent perjury, or applied to selected social groups and contexts. On the one hand, there was a trend to view the oath as a sacred act and to enhance its binding force through the addition of Christian rituals such as relics and fasting. On the other hand, from the 840s onwards, the oath becomes a key point in efforts to negotiate the balance between the secular and the ecclesiastical sphere and to redefine the position of bishops as ecclesiastical office-holders and subjects of secular rulers. Taken together, the normative texts reveal an interconnectedness of exegesis and legal debates. The compilers of conciliar canons and capitularies not only read and received the exegetical tradition, but they were also capable of deploying it strategically for their own arguments.

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OWEN M. PHELAN

Between the Fathers and the Masters

The Centrality of Oaths to the Development of an Episcopal Understanding of Marriage in Carolingian Europe

'This [good of marriage], in fact, is threefold: fidelity, offspring, and sacrament.'[1]
Augustine of Hippo, *The Literal Meaning of Genesis*

'For Augustine says: "It is not in doubt that a woman has no part in marriage, with whom it is clear that there was no intermingling of the sexes."'[2]
Peter the Lombard, *Sentences*
Gratian, *Decretum*

Positioned between early Christian theorizing about marriage and its high medieval regulation, ninth-century episcopal reflections on matrimony help historians 'make sense of the oath' in the early medieval world.[3] Solemn oaths, *sacramenta*, provide the crucial structuring device for Carolingian analyses of matrimony's nature and for understanding its consequences.

* I would like to thank Stefan Esders, Lukas Bothe, and Gerda Heydemann for inviting me to participate in the International Conference on 'Making Sense of the Oath in Antiquity and the Earlier Middle Ages'. I would also like to thank Lynda Coon, Neil Dhingra, Timothy J. Fitzgerald, Valerie L. Garver, John-Mark Miravalle, Thomas F. X. Noble, Charles West, and James Williams for thoughtful criticism of earlier drafts of this chapter. Remaining errors of fact, judgement, or style are my own. All English translations are my own, although I have indicated existing English translations where available.

1 Augustine of Hippo, *De Genesi ad litteram*, ed. by Zycha, IX.7, p. 275: 'hoc autem tripertitum est: fides, proles, sacramentum.' The summary is immediately followed by a reference to his own treatise *On the Good of Marriage*, in which he considers the topics further and to which Carolingian authors often refer. Augustine of Hippo, *De bono coniugali*, ed. by Zycha, pp. 185–231.

2 Peter Lombard, *Sententiae in IV libris distinctis*, ed. by Ignatius Brady, d. 26.c. 6.a2., p. 420: 'ait enim Augustinus: non dubium est illam mulierem non pertinere ad matrimonium, cum qua docetur non fuisse commixtio sexus'; see also *Decretum Magistri Gratiani*, ed. by Friedberg, C.27 q 2 c. 16, p. 1066.

3 For a general introduction see Toubert, 'La théorie du mariage', pp. 233–85.

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The Oath in Late Antiquity and the Early Middle Ages: Religious Act, Social Bond, Holy Sacrament, ed. by Stefan Esders and Gerda Heydemann, CELAMA 46 (Turnhout: Brepols, 2026), pp. 303–332 BREPOLS PUBLISHERS 10.1484/M.CELAMA-EB.5.152880

Thus, early medieval explanations of nuptial *sacramenta* neatly tie together the sub-themes of this volume: the oath's religious significance, its social importance, and its holy nature. Carolingian ruminations on marriage reveal an understanding of the oath at once deeply integrative, showing how early medieval ecclesiastical leaders understood profound connections between different dimensions of human lives, and intellectually generative, giving rise to thoughts on how to balance cosmological concerns with political demands, subjective perceptions with objective evidence, individual rights with common goods, and sacred duties with secular obligations.

Two influential Carolingian bishops offer specific and extended attention to marriage which reveals a common understanding of *sacramenta* across political, geographical, and chronological distance. Jonas of Orléans wrote about marriage during the reign of Charlemagne's son in the 820s, and Hincmar of Reims turned his considerable analytical talents to the subject a generation later under the rule of Charlemagne's grandsons and great-grandsons in the 860s. Both authors demonstrate a concern to make sense of the nuptial oath as simultaneously a religious act, a social bond, and a holy sacrament. Both bishops argued their cases through a sacramental paradigm established by a theology of baptism, which brings to light how bishops taught early medieval audiences about oaths and how they tried to set in people's minds habits of and expectations for *sacramenta*.[4] Moreover, records of early medieval dowries, property transfers anchoring betrothals, reflect Jonas's and Hincmar's teachings about the nuptial sacrament. *Formulae* for these dotal charters confirm the broad scope and integrating effect of the paradigm. The charters' theology exposes the intellectually generative aspects of early medieval marriage oaths and sensitizes us to vectors of transmission and reception of key concepts through various contexts, such as liturgical rites and lay *specula*. Examining oaths in the context of Carolingian presentations of matrimony illuminate three features underlying the general phenomenon of oaths in early medieval Europe. First and fundamentally, oaths established intimate, binding relationships. Second, oaths effected unifying relationships by accomplishing both the audible and visible signs of these relationships as well as the inaudible and invisible truths to which Carolingian thinkers believed the signs pointed. Third, Carolingian authors promoted sacramental relationships established by oaths not as subjective or personal judgements, but rather as integrating phenomena with broad ecclesiological, spiritual, social, legal, and economic dimensions.

Jonas of Orléans (760–843) emerges among the vanguard of the second generation of the Carolingian Renewal and served as a trusted advisor and dogged supporter of Charlemagne's son, Louis the Pious, through the 820s and turbulent 830s.[5] The Bishop of Orléans explores the sacrament of

4 Phelan, *The Formation of Christian Europe*.

5 For a brief overview of Jonas's life see the editor's commentary in Jonas of Orléans, *De institutione regiae*, ed. by Dubreucq, pp. 9–26.

marriage in his *De institutione laicali*, a treatise on lay formation composed in the 820s.[6] In the book, Jonas presents a proper understanding of marriage as a crucial piece of moral formation. The work is organized into three books. The first book concentrates on the sacrament of baptism, its doctrinal and social rationale and consequences. The second book turns to matrimony and the third surveys virtues and vices and the last things. Importantly, the three books possess a structural logic, with each book setting a foundation for the next. Even as Jonas recognizes that the married state is distinguishable from other ways of life, with its own peculiar privileges and demands, the lives of married people rest upon a common Christian theological and cultural foundation and tend toward the same ultimate end. In short, Jonas's understanding of baptism undergirds his conception of matrimony and his understanding of baptism and matrimony structures his view of the virtues and vices which frame one's final judgement. Also important is that Jonas distinguishes, but does not separate, his doctrinal and moral discussions. Matrimony does not have a doctrinal importance *and* a social importance. Matrimony has *an* importance that is doctrinally and socially consistent and intelligible.

At the outset of Book 2, Jonas moves from explaining what pertains to all Christians generally to what relates more specifically to those leading a married life. Here, the Bishop of Orléans explains the basic purpose of marriage:

> Innumerabilia quippe sunt et ineffabilia eius bona. inter quae bonum esse coniugium et in exordio creationis humanae a Deo esse institutum, liber demonstrat *Geneseos*, in quo legitur: 'propter hoc relinquet homo patrem suum et matrem; et adhaerebit uxori suae; et erunt duo in carne una.' item ibi: 'et fecit Deus hominem, ad imaginem Dei fecit eum, masculum et feminam creauit eos, et benedixit eis dicens: crescite et multiplicamini et replete terram'.
>
> (Indeed, the good things God has made are ineffable and without number; among them is marriage, instituted by God at the outset of the creation of man. As the book of Genesis explains, in which we read: 'For this reason a man will leave his father and his mother, and will cleave to his wife, and they will be two in one flesh' (Genesis 2. 24), and again, 'and God made man, to the image of God He made him, male and female. He created them, and He blessed them saying: Increase and multiply and fill the whole earth' (Genesis 1. 27–28).)[7]

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6 Veronese, 'Contextualizing Marriage', pp. 436–56; Odile Dubreucq, 'Introduction' in Jonas of Orléans, *De Institutione laicali*, ed. by Dubreucq, pp. 88–103. The work survives in two similar recensions, an initial version composed for Count Matfrid of Orléans and a second recension perhaps for a wider audience in which Jonas reorganized some of the chapters.

7 Jonas of Orléans, *De institutione laicali*, ed. by Dubreucq, II.1, p. 314.

With this opening, Jonas inaugurates his treatment of marriage with three points. One, marriage is good. Two, marriage is the creation of a single, integrated body. Three, marriage guides the continuation of the human race. After the goodness of marriage, which Jonas intuits from the simple fact that he understands God to have established it, Jonas appends two subsequent points which he derives from specific biblical quotations from the book of Genesis: that two become one (Genesis 2. 24) and that from the one many are generated (Genesis 1. 27–28). The generation and education of children are central to Jonas's understanding of marriage's importance.[8] The Bishop of Orléans, however, understands offspring as logically secondary to union.[9]

Jonas weaves his thoughts on marital union and its consequences throughout Book 2, and almost always does so in a creative dialogue with earlier Christian tradition. For nearly every point, the bishop develops or clarifies his thoughts through the juxtaposition of passages from fathers such as Augustine, Ambrose, and Jerome. For example, he cites a section of Augustine's treatise *On Marriage and Concupiscence* which culminates with the observation that 'it is certainly not fecundity only, the fruit of which consists in offspring, not chastity only, whose bond is fidelity, but also a certain nuptial *sacramentum* which is entrusted to believers united in marriage'.[10] Crucially, Jonas hides neither his dependence on nor his agreement with Augustine. Jonas identifies the source of his quotation as 'Augustine also in his book to Count Valerius'.[11] Through the quotation, Jonas shares Augustine's view that matrimony, and marital union in particular, centres on a solemn oath that binds two people together into one flesh. However, a comparison of Jonas's reflections with Augustine's reveals how Jonas depends on the late antique bishop for basic concepts and vocabulary, even as he goes beyond his predecessor in emphasis and explanation. While Augustine writes about the three goods of marriage (*fides*, *proles*, and *sacramentum*), he neither concentrates upon nor prioritizes *sacramentum* in the way Jonas does. Augustine twice cites Genesis 1. 27–28 as a point of departure for consideration of offspring, but he never uses

8 Maccioni, '"It is Allowed"', pp. 119–22; Jegen, 'Jonas of Orléans', pp. 188–96.

9 The idea is pointed to from a social perspective, rather than a theological or legal one in Maccioni, '"It is Allowed"', pp. 116–17. The idea is also hinted at, but not developed in Bishop, 'Bishops as Marital Advisors', p. 63.

10 Jonas of Orleans, *De institutione laicali*, ed. by Dubreucq, II.5, p. 364: 'quoniam sane non tantum fecunditas cuius fructus in prole est nec tantum pudicitia cuius uinculum est fides, uerum etiam quoddam sacramentum nuptiarum, commendatur fidelibus coniugatis'. Jonas draws the selection from Augustine of Hippo, *De nuptiis et concupiscentia*, ed. by Urba and Zycha, I.(10).11, p. 222.

11 Jonas of Orléans, *De institutione laicali*, ed. by Dubreucq, II.5, p. 362. 'Augustinus quoque in libro ad Valerium comitem'. On Jonas's reception of Augustine, especially on marriage, see Savigni, 'Jonas of Orleans', pp. 1232–33. For a summary of the reception of Augustine's teaching on marriage, including key concepts and influential manuscript traditions, see Reynolds, 'Marriage', pp. 1369–74.

Genesis 2. 24. Furthermore, Jonas's basic concern becomes clear not only through this contrast with Augustine, but also through the arrangement of the citations themselves. Jonas cites the second chapter of Genesis before the first chapter of Genesis, assigning a priority to the concept that runs against Augustine and against the biblical narrative. Jonas orders the three goods of marriage: *fides*, *sacramentum*, *proles*, with the second securing the first and providing for the third.

Book 2 builds upon interpretive moves made in Book 1 of *De institutione laicali*, where Jonas had set the stage for his understanding of matrimony through an explanation of baptism, again like Augustine, but also again, in a different way. Augustine writes about the similarity of the *sacramentum* of baptism to that of matrimony in the very same paragraph of *On Marriage and Concupiscence* cited by Jonas above.[12] Rather than tightly juxtaposing baptism and matrimony, however, Jonas works over a longer textual horizon and lays down his foundational ideas on the *sacramentum* of baptism at the outset of Book 1.[13] For Jonas, baptism establishes the frame for understanding matrimony because matrimony, like baptism, is a *sacramentum*. The most basic aspect of baptism is its establishment of a single community bounded by fidelity, unified in the body of Christ, and professing faith in God. Jonas explains that in baptism a person swears two pacts. In a section notably devoid of direct patristic citations, Jonas teaches in his own words that

> in baptism each of the faithful binds himself to God by the bonds of two pacts: one by which he professes to renounce the devil and all his works and pomps, another by which he professes that he believes in the Father and in the Son and in the Holy Spirit.[14]

The *sacramentum* establishes a relationship and secures the unity of a community body. Jonas's perspective, while notable for pushing beyond patristic discussion, is also significant for its similarity to that of other Carolingian authors, particularly in its presentation of baptism's significance in modelling pacts. Jonas's representativeness is hinted at in the writings of others, like his predecessor at Orléans, Theodulf, and his episcopal neighbour to the north, Jesse of Amiens.[15]

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12 Augustine of Hippo, *De nuptiis et concupiscentia*, ed. by Urba and Zycha, 1.(10).11, pp. 223–24.

13 That Jonas saw social connections between baptism and marriage, specifically with education as a consequence of both is noted in Veronese, 'Contextualizing Marriage', pp. 451–52; see also Phelan, *The Formation of Christian Europe*, pp. 208–39.

14 Jonas of Orléans, *De institutione laicali*, ed. by Dubreucq, 1.3, p. 156: 'duarum pactionum nexibus unusquisque fidelis Deo in baptismate se obligauit: altera qua abrenuntiare diabolo et omnibus operibus eius et omnibus pompis eius, altera qua se in Patrem et Filium et Spiritum sanctum credere professus est'.

15 For Theodulf of Orléans, see 'Text 16', in *Water and the Word*, ed. by Susan A. Keefe, pp. 280–321, at 300; for Jesse of Amiens, see 'Text 30', in: *Water and the Word*, ed. by Susan A. Keefe, pp. 405–28, at 423.

While Jonas's most developed ideas appear in *De institutione laicali*, he promulgates his perspective among his peers through his work for Louis the Pious at the Synod of Paris in 829.[16] Similarities between Jonas's advice to Matfrid and the council's advice to Louis are legion. The Council promulgated its decrees in two books, a first addressed to clergy and a second to 'kings and princes and all the faithful generally' nestled between an introduction and a final episcopal letter.[17] The two substantial books give the impression of a treatise more than of a set of canons. Book 1 begins with three general canons which frame the entire exercise as a study in Christian community. The first canon states that the Christian religion consists of faith and good works consequent to baptism and formation. The second canon focuses on Jonas's corporate concerns and a principal consequence of baptism: incorporation into the Church. Jonas writes: 'The universal holy church of God is one body whose head is Christ'.[18] The third canon further develops an ecclesiological framework through a Christologically informed corporate analogy and describes how that one body of the Church is a unity of two persons, the sacerdotal and the regnal.

In the heart of the Council's first book, discussion turns to the importance of the *sacramentum* of baptism. Not only is it important for bishops and priests to ensure that the sacrament is offered to people entrusted to their care, but also that they exactingly instruct their congregations about the nature of sacraments and faith. Chapter 9 echoes *De institutione laicali* and explains 'that it is especially necessary that all the faithful be mindful of the pact which they made with God in baptism'.[19] After a description of the relationship one creates with God, Jonas explains how one renounces the devil, his works, and his pomps. Importantly, Jonas concludes his reflection for his colleagues with an emphasis on the analogical value of baptismal promises for other areas of life. 'If the laws of human pacts are preserved, more immovably nevertheless and more fervently are to be observed inviolably the laws of so great a pact which was made with God.'[20] Jonas and the council fathers understand pacts to structure human life in early medieval Europe and that everyday moral and legal decision-making connects to that most basic and foundational pact for people and society: the basic promise each Christian

16 On the Synod of Paris, see Hartmann, *Die Synoden der Karolingerzeit im Frankenreich und in Italien* (Paderborn: Schöningh, 1989), pp. 181–87. On Jonas and his writings at the Council, see Jegen, *Jonas of Orleans*, pp. 242–98.

17 *Concilium Parisiense a. 829*, ed. by Werminghoff, Explicit l. 1, p. 649: 'regibus et principalibus et generaliter de omnibus fidelibus'.

18 *Concilium Parisiense a. 829*, ed. by Werminghoff, Book I, ch. 2, p. 610: 'quod universalis sancta Dei ecclesia unum corpus eiusque caput Christus sit'.

19 *Concilium Parisiense a. 829*, ed. by Werminghoff, Book I, ch. 9, p. 615: 'quod summopere omnes fideles miminisse oporteat pacti, quod in baptismate cum Deo fecerunt'.

20 *Concilium Parisiense a. 829*, ed. by Werminghoff, Book I, ch. 10, p. 617: 'verum si iura humane pactionis firmiter conservantur, fixius tamen atque ferventius iura tanti pacti, quae cum Deo facta sunt, inviolabiliter sunt observanda'.

makes with God at baptism. Interestingly, the tactic here encourages people to consider the most fundamental commitments of Christianity in light of their daily experience. The Synod returns to this same idea and language in Book 2, when directly addressing the laity. Jonas and his fellow bishops encourage lay folk to reflect on how their most fundamental promise to God ought to inform their daily lives.

> necesse est, ut unusquisque fidelis penetralia cordis sui rimetur et, si fidem Christi, quam percepit, operibus non exornat, pacti, quod cum Deo in baptismate fecit, se praevaricatorem esse cognoscat.
>
> > (It is necessary that each faithful person search the innermost parts of his heart and, if he does not adorn with works the faith of Christ which he gained, let him recognize that he is a transgressor of the pact which he made with God in baptism.)[21]

The bishops now reverse tack. People should consider how their fundamental commitments at baptism should shape and guide their everyday moral decisions. In *De institutione laicali* and at the Synod of Paris, Jonas's analysis of matrimony illuminates a paradigm of oaths drawn from his understanding of baptism. The intellectual framework wrought for baptism's *sacramentum*, particularly its incorporative action, helps to define marriage's religious and social significance as well as its holy nature. Moreover, the Bishop of Orléans propagates his understanding to clergy and laity through both a moral speculum and conciliar decrees.

A generation later, similar sentiments, but more developed, appear in the writings of Hincmar of Reims (806–882).[22] The powerful and prolific archbishop was a leading ecclesiastical official in the second half of the ninth century and an important advisor and supporter to Louis the Pious's youngest son, Charles the Bald (823–877). His reflections on marriage are much less theoretical and moralistic than Jonas's, which is not surprising insofar as divorce had become a burning contemporary issue. Thus, Hincmar offers a more exacting and exhausting, yet subtle and often oblique, legal and exegetical analysis. Still, we find in Hincmar the same basic intellectual architecture found in Jonas, which depends on analysis of the same Augustinian texts used by the Bishop of Orléans.[23] Marriage is a *sacramentum* because it incorporates and it signifies a hidden reality. Moreover, a proper understanding of the *sacramentum* of baptism clarifies a proper understanding of matrimony.

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21 *Concilium Parisiense a. 829*, ed. by Werminghoff, Book II, ch. 7, p. 659.

22 The classic biography of Hincmar is the exhaustive Devisse, *Hincmar, archevêque de Reims*. More recently, a collection of essays on Hincmar's life has been published as *Hincmar of Rheims, Life and Work* by Rachel Stone and Charles West.

23 Van Name Edwards, 'Hincmar of Rheims', p. 1145.

Hincmar finds himself on a number of fronts wrestling with the seemingly growing problem of divorce and remarriage in the Frankish world. At least three times, Hincmar has to address the issue, twice in letters and once in a standalone treatise, all of which function as *responsa* drafted in reply to specific questions about concrete marriage cases. As with Jonas, Hincmar's analysis of matrimony depends upon the *sacramentum* of baptism, which as archbishop he has helped ensure enjoyed a wide and consistent presentation to Frankish audiences. In his episcopal capitularies, the archbishop sets out instructions for his own diocese and those of his suffragans spanning the west and central Frankish worlds. Yet these statutes are also broadly representative, reflecting concerns found in capitularies surviving from across Frankish Europe. Hincmar promotes widely held teachings on oaths, particularly baptismal *sacramenta*. His first episcopal capitulary, issued in 852, agrees with the proceedings of the Council of Paris from 829 insofar as baptism, as a *sacramentum*, structures how he wants priests and laity alike to understand Christian fidelity.[24] In another example, Hincmar disseminated among the priests of the archdiocese of Reims a lengthy letter describing how he wanted priests to conduct public baptisms, including explanations of catechetical points and requirements for scrutinies of adult catechumens as well as of sponsors for those who are of a 'weaker age'.[25] Like Jonas, Hincmar views the *sacramentum* of baptism both as a model oath in the abstract and as a concrete opportunity to promote broad understanding of and appreciation for a paradigm of oaths.

In November 860, Hincmar composed a relatively brief letter in response to a question put by Archbishop Gunther of Cologne on the marital strife of Engeltrude and Boso. Engeltrude was a first cousin once removed through her mother to the Emperor Lothar. She was also the daughter of Matfrid of Orléans, a pre-eminent figure at Louis the Pious's court and the addressee of Jonas's initial recension of *De institutione laicali*. Boso was an Italian count from an influential Frankish family group. In the late 850s, Engeltrude fled from Boso and approached Lothar and Gunther for protection. As Hincmar reports that he understands the case, Engeltrude had confessed to adultery and fled in fear of her life. Whatever other political dimensions exist to the case — and certainly there are some — what concerns us here, even more than the conclusion Hincmar draws, is the shape of the archbishop's analysis.[26] Hincmar considers the problem from an ecclesiological perspective in order appropriately to apply canon law. In this case, he sidesteps the

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24 Hincmar of Reims, *Erstes Kapitular* I, ed. by Pokorny and Stratmann. For context, see Van Rhijn, *Shepherds of the Lord*, pp. 151–52; McKitterick, *The Frankish Church and the Carolingian Reforms*, p. 63.

25 Hincmar of Reims, *Epistolae*, ed. by Migne, ep. XVIII, col. 104D–110A, at 105B: '*fragiliori vero aetati*'.

26 For more context see Stone, '"Bound from Either Side"', pp. 467–82; Heidecker, *The Divorce of Lothar II*, p. 97.

difficult question of what to do with Engeltrude and/or Boso and rules that it is neither Gunther's problem nor within his competence to resolve, but rather that the matter should be adjudicated in Italy in the diocese where the couple married and lived, and presumably, sinned. Setting the conclusion to one side, we can see that Hincmar begins his analysis by establishing that the couple were validly married and so should be treated as one.

> Desponsavit, dotavit, publicis nuptiis honoravit et sibi in coniugii copula sociavit et unum corpus unamque carnem secum effecit, sicut scriptum est: 'Erunt duo in carne una; iam non sunt duo, sed una caro'; et: 'Quod Deus iunxit, homo non separet'
>
> > (He [Boso] betrothed, endowed, and honoured with public marriage that woman and united her to himself in the marriage bond and made her one body and one flesh with him, just as is written: 'There will be two in one flesh; now they are not two but one flesh' [Matthew 19. 5, Mark 10. 8] and 'what God has joined let not man separate' [Matthew 19. 6, Mark 10. 9].)[27]

In citing Jesus's reference to the Genesis passage crucial to Jonas's explanation of matrimony, Hincmar identifies the most basic sacramental effect of matrimony as unity. The importance of this view is rendered all the more striking insofar as it is completely superfluous to the archbishop's point about jurisdiction, instead harkening back to an idea he penned several years earlier in an *ordo* containing the earliest surviving instance of a wedding prayer paraphrasing Jesus's pronouncement on marital unity. On 1 October 856 at Verberie, Charles the Bald's daughter, Judith, married Æthelwulf, King of Wessex. For the ceremony, Hincmar composed 'accept this ring, a sign of faith and of love and also of the bond of conjugal union, so that "no one may separate whom God joins", [cf. Matthew 19. 6, Mark 10. 9] who lives and reigns forever and ever'.[28] Hincmar's liturgical rendering contains three subtle and illuminative changes from the biblical text of the Latin Vulgate.[29] First, the phrases are inverted, which emphasizes the unity of the couple over God's action. It is not 'what God joins, let no one separate', but rather 'let no one separate what God joins'. Second, a change of tense from the perfect to the present brings God's past action in the Garden of Eden and Jesus's teaching to the Pharisees into the present wedding ceremony. Third, and most importantly, Hincmar writes about 'whom' God has joined instead of 'what', underscoring the two individual people bound together

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27 Hincmar of Reims, *Hincmari archiepiscopi Remensis epistolae*, ed. by Schieffer, ep. CXXXV, p. 82.

28 *Coronatio Iudithae Karoli II. Filiae*, ed. by Boretius and Krause, p. 426: 'Accipe anulum, fidei et dilectionis signum atque coniugalis coniunctionis vinculum, ut "non separet homo, quos coniungit Deus", qui vivit et regnat in omnia saecula saeculorum'.

29 On points two and three see Reynolds, *How Marriage Became One of the Sacraments*, pp. 92–93.

in marriage.[30] Hincmar understands the marital oath first and foremost to unify two people. Contested cases will lead to analysis and development, but not an overturning, of this basic conviction shared with Jonas.

In another letter, also written late in 860, Hincmar weighed in on the efforts of Count Stephen of Auvergne to gain a divorce.[31] The archbishop offers his canonical analysis to fellow bishops tasked with adjudicating the case at an episcopal court. Again, complicated political and canonical context informs Hincmar's discussion and conclusions.[32] The conflict involves two important family groups in West Francia, including his own kin. Fascinatingly, Stephen raises the question of what exactly establishes a marriage insofar as he admits participating in a wedding ceremony, but claims not to have consummated it out of fear for his soul. He confessed to having had, before his wedding, a sexual relationship with a relative of his wife. According to canon law as Stephen understood it, consummation with his wife then would have been incestuous. That Hincmar is inclined to find in Stephen's favour and the many different possible explanations for why he was so disposed is of less importance to us than how he thinks about the *sacramentum* of matrimony. His point of departure is in fact the same as that for Engeltrude's case. 'Legally betrothed, dowered, and honoured with public marriage the woman is united in the marriage bond and from two one body and one flesh are made, just as is written: "There will be two in one flesh; now they are not two but one flesh" [Matthew 19. 5, Mark 10. 8] and "what God has joined let not man separate" [Matthew 19. 6, Mark 10. 9].'[33] Priority is again assigned to the sacramental unity wrought by the pacts made in matrimony. But unlike for Boso's case, Hincmar renders a judgement on Stephen's petition and finds for the count.

The archbishop's reasoning depends upon the unitive effect of the sacrament and the ontological underpinnings of sacramental analogy, the broad strokes of which are shared with many of his contemporaries.[34] With respect to matrimony in particular, Hincmar follows an analysis of Augustine juxtaposed with a decretal of Pope Leo the Great (*c.* 400–461) to Rusticus of Narbonne found in the Pseudo-Isidorean collection, but with a twist. Writing in response to a series of questions posed by Rusticus of Narbonne, Pope Leo tackles the problem of how to determine if a woman is married.

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30 For Matthew 19. 6 see *Biblia Sacra iuxta Vulgata Versionem*, p. 1555: 'quod ergo Deus coniunxit homo non separet'.

31 Reynolds, *How Marriage Became One of the Sacraments*, pp. 222–31; Fransen, 'La lettre de Hincmar', pp. 133–46.

32 Heidecker, *The Divorce of Lothar II*, pp. 97–98.

33 Hincmar of Reims, *Hincmari archiepiscopi Remensis Epistolae*, ed. by Schieffer, ep. CXXXVI, p. 92; 'Legaliter desponsata, dotata, publicis nuptiis honorata femina coniugii copulae sociatur et ex duobus unum corpus unaque caro efficitur, sicut scriptum est: "Erunt duo in carne una; iam non duo, sed una sunt caro"; et: "Quod Deus iunxit, homo non separet."'

34 See, for example, Phelan, 'Horizontal and Vertical Theologies'.

After a citation from Genesis 21, which Leo suggests distinguishes among a wife, a concubine, and a slave, the pope concludes

> Unde cum societas nuptiarum ita ab initio constituta sit, ut praeter sexuum conjunctionem haberet in se Christi et Ecclesiae sacramentum, dubium non est eam mulierem non pertinere ad matrimonium, in qua docetur nuptiale non fuisse mysterium.
>
> (Hence, since the fellowship of marriage was constituted thus from the beginning, so that beyond the joining of sexes it has in itself a *sacramentum* of Christ and of the Church, there is no doubt that a woman has no part in a marriage in which the nuptial mystery is known not to be.)[35]

Leo's analysis is that sexual union alone does not establish a marriage, and that a wedding rite is also required. This letter makes its way into the Pseudo-Isidorean decretals, and thus into early medieval canonical discussion, where the passage quoted is cited in a section entitled 'that one may be a wife, another a concubine, and he does not err who delivers his daughter to one who has a concubine'.[36] Hincmar's analysis reveals the fluidity between exegetical, theological, legal, and social reasoning common to Carolingian thinkers and fundamental to Hincmar's work.

In Stephen's defence, Hincmar engages Leo's teaching and stands the pope's logic on its head. If coitus and a public wedding ceremony are both required for a marriage, and Leo asserts that sex without a wedding ceremony does not yield a marriage, then certainly a wedding ceremony without consummation cannot establish a marriage. In his letter, Hincmar cites Leo in concluding 'then marriage has the *sacramentum* of Christ and the Church in it and then that woman is known to belong to the marriage, in whom both sexual intercourse and the nuptial mystery are known to have been'.[37] Hincmar's canonical move rests upon an even more explicit ecclesiological analysis that undergirds marriage's most basic aspect as communal.[38] Marriage creates a unity of multiplicity like the Church, which consists of many baptized people joined into the one body of Christ.

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35 Leo the Great, *Epistolae*, ed. by Migne, ep. CLXVII, cols 1204B–1205A.

36 *Decretales Pseudo-Isidorianae et Capitula Angilramni*, ed. by Hinschius, pp. 615–18, at 617. On Hincmar's engagement with Pseudo-Isidore more generally, see de Jong, 'Hincmar, Priests and Pseudo-Isidore', pp. 268–88. On the Pseudo-Isidorean Decretals more generally, see Jasper and Fuhrman, *Papal Letters in the Early Middle Ages*, pp. 135–95; and de Jong, 'Paschasius Radbertus and Pseudo-Isidore', pp. 149–77.

37 Hincmar of Reims, *Hincmari archiepiscopi Remensis Epistolae*, ed. by Schieffer, ep. CXXXVI, p. 93: 'tunc habent nuptiae in se Christi et ecclesiae sacramentum et tunc pertinere noscitur mulier illa ad matrimonium, in qua et sexuum commixtio et nuptiale docetur fuisse mysterium'.

38 While much of the more recent scholarship on Hincmar has examined the social or political contexts within which he worked, some older scholarship focused on his theological perspective which lifts out important continuities across Hincmar's writings. See Nelson,

In matrimony, the inner unity of the sacrament is outwardly symbolized by the sexual joining, here referred to in a way that points to the inner truth veiled by the *sacramentum*. Hincmar's figurative reasoning can be clarified with reference to the ever-present explanations of Isidore of Seville, who reminds us in his *Etymologies* that 'wedding festivities are called nuptials because there the heads of the newlyweds are veiled for the first time'.[39] The sign of the *sacramentum* veils the sacrament's substance.

Respectful of tradition represented by figures like Augustine and Leo the Great, and attentive to contemporary social and political concerns for defending the indissolubility of marriage — a concern Hincmar himself shares on ecclesiological and sacramental grounds — the Archbishop of Reims scrutinizes Christian marriage laws enforced by Carolingians and sees a way through: the annulment.[40] Under what circumstances is there not a binding oath, an indissoluble sacrament? Hincmar's analysis flows from Augustine's position in *On Marriage and Concupiscence*, where the North African church father concludes: 'the matter of this sacrament is without doubt that male and female, joined by marriage, as long as they should live, should persevere joined inseparably, nor is it allowed to separate man from wife except in case of fornication'.[41] In order to be true, the physical joining must point to a spiritual incorporation accomplished in a *sacramentum*. If either the words or the actions are not present there is a problem. Hincmar chooses to focus on the nature of the oath. No unity exists where the external and the internal do not correspond. As presented to Hincmar, Stephen's nuptials did not make a true marriage, 'not having the *sacramentum* of incorporation of the unity of Christ and of the Church, but drawing a veil over shamefulness, and the whole thing, that was done in this, was a figment of simulation, not of the truth'.[42] In this case the sign of the wedding misleads because the marriage is not complete and therefore

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'Kingship, Law and Liturgy'; Ullman, *The Carolingian Renaissance and the Idea of Kingship*; Morrison, *Two Kingdoms*; and most especially, Morrison, '"Unum ex multis"'.

39 Isidore of Sevilla, *Etymologiarum*, ed. by Lindsay, IX.7.10, [s. p.]: 'Vnde et nuptiae dicuntur, quod ibi primum nubentium capita velantur'. On Isidore's ubiquity in Carolingian Europe see Fontaine, 'La figure d'Isidore de Séville', pp. 195–211.

40 On the importance of indissolubility to the Carolingians see Imbert, 'L'indissolubilité du mariage à l'époque carolingienne'. That Hincmar's focus on validity is a new idea, along with some of the political and social context, see Bof, 'Raymond's Daughter's Divorce'; and the attribution to Hincmar of the invention of a 'coital theory of marriage', see Brundage, *Law, Sex and Christian Society*, p. 136.

41 Hincmar of Reims, *Hincmari archiepiscopi Remensis Epistolae*, ed. by Schieffer, ep. CXXXVI, p. 94. 'Huius procul dubio sacramenti res est, ut mas et femina conubio copulati, quamdiu vivant, inseparabiliter coniuncti perseverent, nec liceat excepta causa fornicationis a coniuge coniugem dirimi'.

42 Hincmar of Reims, *Hincmari archiepiscopi Remensis Epistolae*, ed. by Schieffer, ep. CXXXVI, p. 95. 'non habentes incorporitationis unitate Christi et ecclesiae sacramentum, sed superducentes turpitudini velamentum, totumque, quod in eis est actum, figmentum simulationis fuit, non veritas'.

there is no marriage. In a true sacrament, the outer sign completes the inner reality. Again, Isidore's *Etymologies* clarifies. The Bishop of Seville explains that 'a *sacramentum* is in any celebration when a thing is done thus so that it is understood to signify something which ought to be accepted as holy'.[43] Carolingian reception of Isidore's idea and its application in a liturgical context is testified to by Hincmar's contemporary, Paschasius, who for his treatise on the Eucharist revises the definition as 'anything handed down to us in any divine celebration as a pledge of salvation, where the thing done visibly is far different from what is worked invisibly within, which should be received in a holy manner'.[44] Hincmar analyses sacraments within an ecclesiological frame, as he continues with a citation of Jerome who argues in his commentary on Paul's epistle to the Ephesians that

> the bond is holy in man and in woman, in the way in which there is a holy union in Christ and in the Church. But just as not every congregation of heretics can be said to be the Church of Christ, nor is Christ its head, so not every marriage, in which one is not joined to one's husband according to the precepts of the Church can be rightly called a marriage, but rather adultery.[45]

That Hincmar sees sexual union as an outward sign of an inward truth, and that this sign is constitutive of the sacrament he clarifies in his conclusion, an illuminative reworking of his quotation from Pope Leo: 'it is not to be doubted that that woman does not belong to a marriage in which the *sacramentum* of Christ and of the Church is not shown by sexual intercourse, that is, that the nuptial mystery is there'.[46] Without the external signs, there can be no sacrament.

Hincmar explains, defends, and elaborates on his analysis of the sacramental foundation for marriage by turning to that most fundamental and paradigm-setting sacrament: baptism.

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43 Isidore of Sevilla, *Etymologiarum*, ed. by Lindsay, VI.19.39, [s. p.]: 'Sacramentum est in aliqua celebratione, cum res gesta ita fit ut aliquid significare intellegatur, quod sancte accipiendum est'.

44 Paschasius Radbertus, *De corpore et sanguine Domini*, ed. by Paulus, p. 23. 'quicquid in aliqua celebratione diuina nobis quasi pignus salutis traditur, cum res gesta uisibilis longe aliud inuisibile intus operatur quod sancte accipiendum sit'.

45 Hincmar of Reims, *Hincmari archiepiscopi Remensis Epistolae*, ed. by Schieffer, ep. CXXXVI, pp. 96–97: 'quomodo in Christo et in ecclesia sancta coniunctio est, ita et in viro et muliere sancta sit copula. Sicut autem non omnis congregatio hereticorum Christi ecclesia dici potest nec caput eorum Christus est, sic non omne matrimonium, quod in viro suo secundum Christi praecepta non iungitur, rite coniugium appellari potest, sed magis adulterium'. See Jerome, *Commentariorum in epistolam ad Ephesios libri tres*, ed. by Migne, III.5, 530D–531A.

46 Hincmar of Reims, *Hincmari archiepiscopi Remensis Epistolae*, ed. by Schieffer, ep. CXXXVI, p. 97: 'dubium non est eam mulierem non pertinere ad matrimonium, in qua coniunctione sexuum non docetur Christi et ecclesiae sacramentum, hoc est nuptiale fuisse mysterium'.

> quae ut plurimum in omni salutari actione, tum etiam in hoc negotio, in quo per nuptiale mysterium vir et uxor una caro efficiuntur, sed et in baptismate operosius operatur, quo per fidei sacramentum, non solum generaliter omnis ecclesia corpus Christi, ut dicit apostolus, et plenitudo fit eius, verum singillatim singulus quisque fidelis Christo incorporatus membrum eius efficitur.
>
> (Just as it [the *sacramentum*] works very much in that saving action, then also in this matter, in which through the nuptial mystery man and wife are made one flesh, but also more actively in baptism, in which through the *sacramentum* of faith, not only is the whole Church made the body of Christ, just as the Apostle says but such plenitude happens individually, as each individual faithful of Christ is made an incorporated member of him.)[47]

Sacraments incorporate through words and actions. The reference to baptism clarifies the nature and duration of sacramental unity. Hincmar summarizes in his own words:

> 'Hinc liquido demonstratur, quia, sicut semel acceptum baptismatis sacramentum, quo quisque fidelis in unitate catholicae ecclesiae Christo incorporatur, postea nulla interveniente causa amittitur, sic et vinculum coniugale legaliter et nuptialiter celebratum indissolubiliter manet conexum, licet fornicationis causa vel quacumque de causa videatur separatum'.
>
> (Hence it is clearly demonstrated that just as the *sacramentum* of baptism once received, by which each faithful person is incorporated into the unity of the Catholic Church in Christ, is afterwards lost by no intervening cause, so also the marital bond legally and nuptially celebrated, remains tied, indissolubly, although it may seem to be separated in the case of fornication.)[48]

Truly established *sacramenta* bind indissolubly. Turning to Augustine, Hincmar develops the consequences of marriage and explains the scope of indissolubility again with reference to baptism. Hincmar concludes, 'she will lack it [the bond] if her husband should die, but the excommunicated criminal will never lack the sacrament of regeneration, even if reconciled, because God never dies'.[49] Just as an excommunicated heretic retains the

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47 Hincmar of Reims, *Hincmari archiepiscopi Remensis Epistolae*, ed. by Schieffer, ep. CXXXVI, pp. 99–100.

48 Hincmar of Reims, *Hincmari archiepiscopi Remensis Epistolae*, ed. by Schieffer, ep. CXXXVI, p. 101.

49 Hincmar of Reims, *Hincmari archiepiscopi Remensis Epistolae*, ed. by Schieffer, ep. CXXXVI, p. 101: 'Carebit autem, si mortuus fuerit vir eius; reus vero excommunicatus ideo numquam carebit regenerationis sacramento etiam non reconciliatus, quoniam numquam moritur Deus.' See Augustine of Hippo, *De adulterinis coniugiis* ed. by Zycha, II.5, p. 386.

sacramental bond of baptism, so also a woman dismissed for adultery retains the sacramental bond of marriage until her spouse dies. A pact uniting one with God never ends because God lives in eternity. The unity of marriage, however, is severed by the death of a spouse, and only the spouse's death. A valid marital *sacramentum* endures unbreakable, like a baptismal *sacramentum* and, for that matter, a royal *sacramentum*.[50] And, like pacts sworn to God or to the king, nuptial pacts created duties and obligations enforceable under both civil and ecclesiastical law because of their fundamental importance — spiritually, socially, politically, and legally — to society.

By far, Hincmar's most robust treatment of the sacrament of matrimony appears in a treatise entitled by its modern editor *The Divorce of King Lothar and Queen Theutberga*. The drama of Lothar and Theutberga's rocky marriage ran for more than a decade from 858 until Lothar's death in 869.[51] Hincmar's lengthy tome appears early in the year 860, near the beginning of the unfolding scandal. The work is organized as a response to the Lotharingian clergy and laity who sought the archbishop's counsel. Hincmar breaks down his investigation into twenty-three separate questions and answers. Seven appendices are added to seven follow-up questions sent to the archbishop around six months after the initial inquiry. So, rather than a systematic explanation of marriage and divorce, Hincmar's effort responds to two series of questions. But due to the complexity of some of the questions, the archbishop's answers are often further broken down, subdivided, and include contextual topics only tangentially related to the questions posed. On the one hand, such a hodge-podge complicates our understanding of Hincmar's approach to marriage, perhaps by the author's design, given the sensitivity and high stakes of the issue.[52] On the other hand, such an organizational strategy provides readers with a detailed and substantial glimpse into Hincmar's thought process. However intricate and convoluted the text — and the context, for that matter — Hincmar's views on the sacrament of matrimony reflect now familiar categories, which underscore the corporate concerns and inner substance fundamental to Carolingian oath-taking.

In providing prolix and nuanced answers to his interlocutors, Hincmar draws numerous texts into his discussion of matrimony, sometimes expanding what texts count as relevant in ways that strain credulity. For example, and

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50 See, for example, the discussion of formulations in Carolingian annals in Phelan, *The Formation of Christian Europe*, pp. 67–69.

51 See Stone and West, 'Introduction' in *The Divorce of King Lothar and Queen Theutberga*, pp. 1–81; Heidecker, *The Divorce of Lothar II*; Airlie, 'Private Bodies and the Body Politic'.

52 A recent appraisal characterizes the treatise as a 'masterpiece of equivocation', Bof and Leyser, 'Divorce and Remarriage Between Late Antiquity and the Early Middle Ages', p. 156. On the case's broad implications for society as seen by Hincmar, see Joye, 'Family Order and Kingship According to Hincmar'; and Airlie, 'Private Bodies and the Body Politic'.

unsurprisingly, several of his investigations focus on oaths. In an introductory comment to a catena of authorities in which he defines what oaths are and how they work, Hincmar asks his readers to take *iuramenta* for *sacramenta*, making the incredible claim that the latter is the more common and typical term.

> Qua de re ad investiganda ac comprobanda et quasi oculato visui praesentanda quaeque dubia vel obscura … duo sanxit auctoritas, iudicium scilicet et iuramentum, quod usitato nomine appellatur et sacramentum, quia in eo illud oculis fidei pervidetur, quod corporis oculis non conspicitur
>
> (Authority approves of two means of investigating, testing and as it were bringing into sight any kind of doubtful and obscure matters. These are *iudicium* [ordeal] and *iuramentum* [solemn oath], which is usually called *sacramentum*, for in these a matter is seen by the eyes of faith, what is not perceived by earthly eyes.)[53]

Hincmar's elision of terms is not only useful for helping us to see the Carolingian sacramental paradigm, it also shows the breadth and depth of his commitment to the same paradigm. In addition to *iuramenta*, Hincmar interprets judicial ordeals as he does *sacramenta*.[54] The pay-off for Hincmar is identical to the one found in his earlier letters on marriage and divorce: a necessary correspondence in a *sacramentum* between the visibly observable and the invisible truth. The rest of the chapter explains how ordeals by water are useful and does so by a comparison of water ordeals to baptisms, which like baptism has a visible sign through which an invisible truth may be known.[55]

> Nam et quando qui putatur et qui est noxius in aquam examinandus dimittitur, a dimittentibus secundum quendam modum formae baptismatis dominus invocator, quatenus veritas, unde requiritur, demonstretur et tenebras ignorantiae nostrae inluminare dignetur.
>
> (For when anyone who is thought to be guilty, and who is, is sent to be tested in the waters, the Lord is invoked by those who send him according to a certain measure of the form of baptism so that the truth which is sought may be shown forth, and He might deign to enlighten the shadows of our ignorance.)[56]

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53 Hincmar of Reims, *De divortio Lotharii regis et Theutbergae reginae*, ed. by Böhringer, 6, p. 147; for an Engl. trans. see Stone and West, *Divorce of King Lothar*, or Throop, *Hincmar of Rheims*.

54 On ordeals in the Middle Ages generally, see Bartlett, *Trial by Fire and Water*.

55 The archbishop's reasoning remains consistent across controversies. In a letter to Bishop Hildegar of Meaux specifically analysing the legal, historical, and theological underpinnings of ordeals, the archbishop reproduces many of the same points. Hincmar of Reims, *Epistolae*, ed. by Migne, ep. xxv, col. 161D.

56 Hincmar of Reims, *De divortio Lotharii regis et Theutbergae reginae*, ed. by Böhringer, 6, pp. 155–56.

Hincmar uses the vocabulary of 'form' throughout his writings to identify governing standards which supply models of authenticity for analogous activities.[57] That Hincmar compares many kinds of *sacramenta* — not just matrimony — to baptism highlights the breadth and importance of the paradigm, just like Jonas's considerations at Paris in 829. In Hincmar's response to the seventh question, he writes about purgation via oath and how necessary it is that such oaths be made to God. In defence of the practice, he observes 'and therefore in baptism, it is not the putting away of the filth of the flesh which cleanses, but the answer and confession of a good conscience towards God'.[58] Strikingly, Hincmar emphasizes the importance of the oath or pact established in baptism over the importance of purification by washing.

A peculiar set of surviving documentary evidence from the early Middle Ages casts a sideways light on episcopal teachings on wedlock. Hincmar, for example, consistently pointed to betrothal, dowry, wedding, and coitus as the crucial elements he examined in evaluating marriage. While three of these elements leave little textual evidence, several examples of dotal charters survive in the form of *formulae*, descriptive material turned into normative texts.[59] In some ways, these sources are notoriously difficult, most especially because their intentionally non-specific nature makes identifying particular circumstances of origin or instances of use elusive. However, at least some scribes or other officials believed *formulae* to have value beyond single instances, and that they were often copied into manuscripts among different kinds of sources provides a kind of context and so opens up some tantalizing possibilities.[60] Moreover, that *formulae* are, well, formulaic reveals connections between theory and practice as law and custom are put into forms in which they can be applied, particularly if the complexity of literacy in the early Middle Ages includes both oral and written dimensions.[61] Oaths, in particular, often assumed elements spoken or remembered.[62] Some surviving dotal *formulae* appear in formularies, while others, termed *extravagantes* by their nineteenth-century editor, are preserved outside of discrete collections and sit among various other kinds of texts.[63] Dotal *formulae* touch upon precisely the same sacramental concerns outlined by Jonas and Hincmar

57 Morrison, '"Unum ex multis"', pp. 608–09.

58 Hincmar of Reims, *De divortio Lotharii regis et Theutbergae reginae*, ed. by Böhringer, 7, p. 161: 'Unde et in baptismo non mundat carnis depositio sordium, sed interrogatio ac confessio conscientiae bonae in deum'.

59 *Formulae Merowingici et Karolini Aevi*, ed. by Zeumer. On the genre see Rio, *Legal Practice and the Written Word*.

60 A stimulating essay on literacy, letters, and their scholarly use — including references to formularies — that focuses on what scholars must not have, given what we do possess, is Garrison, '"Send More Socks"'.

61 Rio, 'Charters, Law Codes, and *formulae*'; Nelson, 'Literacy in Carolingian Government'.

62 Nelson, 'Literacy in Carolingian Government', p. 268.

63 Rio explains that that the *Formulae extravagantes* is something of a grab-bag within which the

and central to this volume, namely the oath's religious significance, social importance, and holy nature. They emphasize the doctrinal foundations of matrimony and their catechetical explanations, are explicit about the economic and political consequences of marriage, and establish theological and liturgical contexts for connubial contracts.[64]

Seven surviving *extravagantes* dotal charters, while differing in particular details, share a common tripartite shape. Generally, they invoke God the Creator, then they reflect upon the nature of matrimony, and finally they enumerate contractual details complete with names, consent clauses, and property descriptions. Acknowledgement of God's creative work provides a theological context for dotal charters that reflects Carolingian approaches to marriage more generally. Six of the seven explicitly invoke God. These mentions range from simple and straightforward to quite elaborate, and all contain at least some substantial theological views. One charter begins 'the almighty Creator of the universe, by whose powerful goodness the things that are began substantially to be, made man from the dust of the earth […]'.[65] The charter's opening underscores God's creation *ex nihilo*, the goodness of that creation, and that God created man in particular. Another commences more esoterically 'the supreme and ineffable Father, whose superessence precedes by the excellence of its nature even the atoms and the void […]'.[66] While this second text employs difficult vocabulary and presumes a reasonably sophisticated knowledge of philosophy, it touches on the same themes as the first even as it goes to greater lengths and in some detail. For example, it explains that the ultimate purpose of human procreation is to fill the places left vacant in heaven when Lucifer and his angels fell.[67] In addition to basic theological claims, all the dotal charters contain liturgical framing which points to the contexts within which these documents were used. Specific rhetorical trajectories and liturgical cadences make them suitable for use in wedding liturgies.[68] For example, the second charter cited even concludes with a doxology: 'Amen. Blessed be God'.[69] While the jargon-laden theology of this second charter stands out, the catechetical quality of its theology

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editor stashed all the texts he was not quite sure how to organize, Rio, *Legal Practice and the Written Word*, p. 162.

64 Reynolds, 'The Dotal Charter as Theological Treatise'.

65 *Formulae extravagantes*, ed. by Zeumer, I.9, p. 538. 'Universitatis cunctipotens Creator, ex cuius bonitate potestativa ea quae sunt substantialiter esse ceperunt, de limo terrae homini facto […]'.

66 *Formulae extravagantes*. ed. by Zeumer, I.13, p. 541. 'Summus et ineffabilis pater, cuius super essentia ipsas etiam athomos et inane principalitate naturae percurrit […]'. I follow Reynolds in reading *precurrit* for *percurrit*, Reynolds, 'Dotal Charters', p. 161.

67 *Formulae extravagantes*. ed. by Zeumer, I.13, pp. 541–42. Reynolds explains that this tradition of interpretation goes back to Augustine and, in the form found in this charter, likely is influenced by Gregory the Great's Gospel homilies. See Reynolds, 'The Dotal Charter as Theological Treatise' pp. 61–62.

68 Reynolds, 'Dotal Charters in the Frankish Tradition' p. 131.

69 *Formulae extravagantes*. ed. by Zeumer, I.13, p. 542: '*AMIN. Benedictus Deus*!'

and that found in the other charters is reminiscent of baptismal scrutinies and so connects liturgical contexts to a central concern of the Carolingian renewal more generally, namely, that people know and understand what they promise and why — a concern certainly emphasized by, but not limited to Carolingian bishops.[70] In this light, Hincmar's emphasis on the public nature of Christian marriages addresses several concerns, including distinguishing it from heathen custom, but also underscoring the formation possibilities of liturgical ceremonies and the formal instruction often accompanying them in one way or another. Across the ninth century, bishops stressed the preaching and teaching connected to liturgical activities, from chanting the Mass to conducting baptisms.[71] They saw liturgies, such as baptisms, as opportunities for instruction, even if not always successfully pursued or fully taken advantage of by their clergy.[72] Weddings need not be seen as different. As with many early medieval liturgical events, weddings — like the nuptial promises they contain — embrace theological, liturgical, economic, social, political, and legal dimensions of early medieval life.

After opening reflections on God as the Creator, the dotal charters proceed with treatments of the scriptural basis for marriage, just like Jonas and Hincmar. Five of the seven *extravagantes formulae* cite Genesis 2. 24: 'For this reason a man will leave his father and his mother, and will cleave to his wife, and they will be two in one flesh.' And one of the two lacking the Genesis citation still emphasizes the unitive importance of marriage, but prefers the Pauline epistles for an authority: 'Paul the Apostle, teacher of the Gentiles, showing how such a union should be confirmed and inseparably maintained, said […].'[73] In addition, three charters preserved in popular formulary collections contain the quotation from Genesis 2. 24, while two others include Jesus's similar pronouncement in both the Gospel of Matthew (19. 6) and the Gospel of Mark (10. 9).[74] Moreover, four of the seven *extravagantes* dotal charters also cite Genesis 1. 28, 'increase and

70 See, for example, the *Histories* of Nithard, a courtier and member of Charles the Bald's retinue, especially his description and discussion of the famous Strasbourg Oaths. Nithard, *Historiarum libri quattuor*, ed. and trans. by Philippe Lauer, III.5, pp. 112–18. For more, consult Phelan, 'The Scope of Fidelity in Nithard's Ninth Century', pp. 21–47.

71 For an early example see the culminating thoughts in Theodulf of Orléans, *Erstes Kapitular*, ed. by Brommer, XLV, p. 141. For a later example, see Hincmar's detailed instructions to his diocesan clergy on conducting baptisms, and cited above, at Hincmar of Reims, *Epistolae*, ed. by Migne, ep. XVIII, cols 104D–110A.

72 On the importance of public baptisms to Carolingian bishops see Phelan, *The Formation of Christian Europe*, pp. 70–72.

73 *Formulae extravagantes*. ed. by Zeumer, I.9, p. 538: 'De hac copulatione doctor gentium, apostolus Paulus, confirmanda atque inseparabiliter tenenda dixit […]'.

74 Genesis is quoted in *Formulae salicae Bignonianae* 6, p. 230; *Formulae salicae Merkelianae* 15, p. 247; *Marculfi formulae* I.12, p. 50. The Gospel is quoted in *Formulae Bituricenses* 15, p. 174; *Cartae senonicae* 25, p. 196. All *formulae* cited here are included in *Formulae Merowingici et Karolini Aevi*, ed. by Zeumer.

multiply and fill the whole earth'. Thus do the charters support Jonas's and Hincmar's accent on the unitive function of marriage as most fundamental and the procreative aspect as secondary in importance. Together, all of the surviving dotal charters reveal ways in which Carolingian teachings on marriage intersected with lay audiences by locating theological anchors in documents of legal, social, and economic importance.

Dotal charters from the early Middle Ages display a message consistent with that seen in the writings of Jonas and Hincmar with differences just significant enough to contribute to a sense of conversation, while at the same time underscoring for us broad agreement on the basic feature of discussion. All were expected to know and understand the scope and significances of matrimonial *sacramenta*. As obvious as the theological content of the charters is, no less evident are the social, economic, and legal dimensions. Just as more complicated concerns intersect with Jonas's and Hincmar's treatments of wedlock, the charters contain references to property and technical vocabulary drawn from Roman law. This juxtaposition of liturgical and legal concepts and terms is not at all foreign to Carolingian bishops like Hincmar. For example, in *De Divortio*, in a section where the Archbishop of Reims reflects on contract law and charters in particular, he describes baptism and the recording of names by people of age who seek the *sacramentum* with a treatment of Roman law and contemporary chancery practices.[75] Legal data juxtaposed with theological affirmations draw dotal charters further into a liturgical setting where participants could be expected to acknowledge and explain them, perhaps along the lines Jonas laid out for Count Matfrid or Hincmar directed to the clergy and laity of Lotharingia. In these charters, as in the writings of Carolingian bishops, the *sacramenta* fixed at the heart of marriage contracts were not theological *or* social, but liturgical *and* economic, theological *and* social, catechetical *and* legal at the same time.

A richer understanding of the *sacramenta* at the heart of Carolingian episcopal teachings on nuptial oaths casts a new light on two further pieces of textual evidence suggestive of the broad audience for Carolingian approaches to marriage. First, the wedding prayers advanced by Carolingian liturgists, particularly the nuptial prayers in the so-called Gregorian Sacramentary, the *Hadrianum*, sent from Rome at Charlemagne's request, offer a backdrop against which to interpret teachings on marriage oaths.[76] The sacramentary's preface and blessing for marriage touch on the same themes and texts identified by Jonas and Hincmar and the dotal charters. The preface marvels: 'For you have joined people in marriage with the sweet yoke of concord

75 Hincmar of Reims, *De divortio Lotharii regis et Theutbergae reginae*, ed. by Böhringer, 12, pp. 189–93. On Hincmar's general facility with Roman law see Cororan, 'Hincmar and his Roman Legal Sources'.

76 Briefly, see the discussion and notes in Hen, *The Royal Patronage of the Liturgy*, pp. 74–78.

and the unbreakable bond of peace, so that the chaste fruitfulness of holy marriages may serve to increase the adoptive children of God'.[77] The union forged by the *sacramentum* comes first and on that basis is set the importance of progeny. The nuptial blessing amplifies:

> Deus qui potestate uirtutis tuae de nihilo cuncta fecisti, qui dispositis uniuersitatis exordiis homini ad imaginem dei facto, ideo inseparabilem mulieris adiuorium condidisti, ut femineo corpore de uirili daris carnem principium, docens quod ex uno placuisset institui, numquam liceret disiungi;
>
> deus qui tam excellenti mysterio coniugalem copulam consecrasti, ut Christi ecclesiae sacramentum praesignares in foedere nuptiarum.
>
> Deus per quem mulier iungitur uiro, et societas principaliter ordinata ea benedictione donatur quae sola nec per originalis peccati poenam nec per diluuii est ablata sententia.
>
> (O God you made all things out of nothing by your power. When you had laid the foundations of the universe, you created man in the image of God, and made woman as man's inseparable helper, bringing the woman's body into being out of the man's flesh, teaching us thereby that what it had pleased to create out of an original unity must never be put asunder.
>
> O God, you have consecrated the bond of marriage with such an excellent mystery as to prefigure in the covenant of marriage the *sacramentum* of Christ and his Church.
>
> O God, through you a woman is joined to her husband and society is chiefly ordered by that blessing which was neither lost by original sin nor washed away in the flood.)[78]

The *Gregorian Sacramentary*'s marriage blessing opens with an acknowledgement of God as the omnipotent creator of all, who created humanity and the *sacramentum* of marriage. The prayer continues by alluding to the crucial passages in Genesis. Moreover, it numbers marriage among the good things created by God, strikingly identified as a pre-lapsarian good so fundamental to God's plan as not to be forfeited by the Fall or obliterated by the Flood. Crucially, and by ineradicable design, marriage unifies. The good identified in the prayers is the marital union which foreshadows the unity of the Church. The notes hit by the Gregorian liturgy resonate

77 *Sacramentarium gregorianum*, ed. by Deshusses, #835, p. 309: 'Qui foedere nuptiarum blando concordiae iugo et insolubili pacis uinculo nexuisiti, ut adoptionem filiorum, sanctorum conubiorum faecunditas pudica seruaretur'.

78 *Sacramentarium gregorianum*, ed. by Deshusses, #838a, p. 310.

throughout the works of Jonas and Hincmar and the dotal charters, even as they differ markedly both from those liturgical efforts that came before and those that will follow.[79]

Second, surviving from the middle of the ninth century is a unique testament to what Carolingian elite lay women knew and thought about education and the wide array of topics that comprise instruction. On 30 November 841 Dhuoda of Uzès began a manual of advice for her son, William, a hostage at the court of Charles the Bald. As such, Dhuoda's work focuses on a Carolingian Christian world-view and the practical moral directives structuring that world. Her maternal, lay, and intimate perspective for her son distinguishes her work from the more programmatic or ecclesiastically driven efforts of her clerical contemporaries. In a section of Book 3, where she reflects on God's providential ordering of the world and man's place in creation, she quotes a poem:

> Relinquet ob rem patremque matrem,
> Et adhaerebit sibi uxorem,
> Eruntque una in carne duo,
> Cuncta dominantes sibi subiecta,
> Ratio capax scandantes.
>
> (On account of this he will leave his father and mother,
> And he will cleave to his wife,
> And the two will be one flesh,
> Ruling all that is placed under them,
> Rising through reason's faculty.)[80]

A couple of aspects of Dhuoda's rumination sheds helpful light on how at least one lay woman thought about marriage. Most directly, she sets sacramental nuptial unity at the heart of the providential ordering of man's creation and redemption, and that progeny flows from this union. In a theological explanation, she continues that God designed human propagation through marriage in order to fill the spaces in heaven left open by the fall of the angels. 'The High Omnipotent One deigned to fashion man out of the mud of the earth to restore the number of the angels and to share in their rank.'[81] The progeny issuing from the union of man and women are ultimately to enter a heavenly union. Strikingly this theological teaching

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79 Similar prayers appear nowhere in the marriage blessings of the *Bobbio Missal*, while the prayers of the *Verona collection* and *Gelasian Sacramentary* emphasize offspring over unity. See *Bobbio Missal*, ed. by Lowe and Wickham Legg, #550–52, pp. 167–68; *Sacramentarium Veronense*, ed. by Mohlberg and others, pp. 139–42; *Liber sacramentorum romanae ecclesiae (Vat. Reg. 316)*, ed. by Mohlberg and others (Rome: Herder, 1960), pp. 208–10.

80 Dhuoda, *Liber manualis*, ed. by Riché, III.10, p. 182; For an Engl. trans. see Neel or Thiebaux.

81 Dhouda, *Liber manualis*, ed. by Riché, III.10, p. 184: 'Omnipotens summus ad recuperandum angelorum numerum dignitatem sociandumque, hominem ex terrae limo plasmatum dignatus est'.

mirrors the surviving dotal charter cited above. More indirectly, Dhuoda's literary instinct here is not to cite the scriptural passage directly, as she is more than capable of doing. Rather, she very self-consciously quotes an unnamed poet referring to and interpreting Genesis 2. 24. That the poem is familiar enough for Dhuoda to prefer it and that it provides a glimpse of otherwise lost popular literature and that this literature focuses on the same themes in the same ways that Jonas and Hincmar do only further underscores how deeply set convictions about marriage *sacramenta* were in the minds of the laity in ninth-century Europe.

An analysis of Carolingian episcopal explorations of marriage, surviving dotal charters, and references to matrimony in liturgical and advice literature helps us to make sense of oaths in the early Middle Ages. Early medieval authors encouraged their audiences to make sense of matrimony through an examination of its rich sacramental nature. Matrimony is a holy sacrament because it is a gift from God with visible temporal aspects and correlative invisible spiritual consequences. A sacrament's religious signs represent, establish, and define intimate bonds as real spiritually as they are socially and politically. Audible words and visible deeds establish a profound and authentic bond where the visible actions point to the invisible reality. The resulting relationship should be understood to be indissoluble and carry duties and obligations civilly and spiritually enforceable. Moreover, Carolingian authors rendered sacraments intelligible to Carolingian audiences through the broadly available experiences and explanations of baptism, the fundamental and paradigmatic sacrament, emphasized in Jonas and Hincmar through specific comparisons and by their insistence on public wedding ceremonies, perhaps informed by the formulaic standards found in dotal charters. Popular liturgical prayers and the imagination of a lay noblewoman emphasize the unitive sacramental core of marriage and underscore the breadth and significance of oaths as a structuring device in early medieval Europe. While this illuminative and innovative theology of marriage reveals a significant and distinctive moment in Western history, the impact of Carolingian approaches to nuptial oaths is not confined to the ninth century. At the same time as early medieval developments reflect deep engagement with the works of patristic authorities, such as Augustine of Hippo (354–430), they set trajectories of interpretation that would govern high medieval debates on marriage through their canonization in influential texts by Peter Lombard (1100–1160) and Gratian (fl. mid-twelfth Century).[82] The intellectual architecture erected by Carolingian bishops like

82 On Augustine among the Carolingians generally, see Otten, 'The Reception of Augustine in the Early Middle Ages'; Contreni, 'Carolingian Era, Early'; Kelly, 'Carolingian Era, Late'. On Augustine's influence on marriage teachings generally, see Reynolds, *Marriage in the Western Church*. A broad study of the impact of Carolingian texts on twelfth-century thought remains to be written.

Jonas and Hincmar out of the timbers of patristic reflections on marriage and sacraments created enduring monuments of sacramental teaching upon which subsequent generations of Western Christian thinkers would work and reflect even if to different ends. In the twelfth century, Anselm of Laon (d. 1117) incorporates selections from Jonas's *De institutione laicali* into his *Sententiae*, an early attempt to systematize Christian theology and one that would blaze a trail for theologians like Peter Lombard to follow and prove influential on canonists like Gratian.[83] Even more famously, amid the pivotal twelfth-century debates over marriage waged between the so-called 'consentist' and 'consummationist' camps, a key text for the latter position attributed to Augustine and cited by both Peter Lombard and Gratian (and quoted at the outset of this chapter) is not actually found among the writings of the prolific North African church father, but is in fact first offered by Hincmar of Reims in his analysis of Count Stephen's case for an annulment.[84]

83 Anselm of Laon, *Systematische Sentenzen*, ed. by Bliemetzrieder, pp. 134–35. See, for example, Larson, 'The Influence of the School of Laon on Gratian', pp. 197–244.

84 For a brief treatment of the twelfth-century context, see Finn, 'Sex and Marriage in the *Sentences* of Peter Lombard', or more generally, Reynolds, *How Marriage Became One of the Sacraments*.

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STEFAN ESDERS

Dissolving Oaths of Loyalty, Sixth–Eleventh Centuries

Constellations, Actors, Procedures, and Arguments

Within ancient and medieval texts, it is often emphasized that oaths needed to be true and should be faithfully kept, and that any individual who broke an oath or committed perjury could expect to be punished most severely by heavenly sanctions — not only after death, but also during their lifetime on earth, if not directly on the spot.[1] There was clearly a tension between the claim that oaths should be regarded as valid and awe-inspiring on the one hand, and the fact that not saying the truth under oath or not keeping sworn promises was a human reality that was to some degree inescapable. It therefore appears that any society relying upon the use of oaths on a large scale also required rules and procedures to allow it to cope with the problem of perjury as well as to absolve an individual from a promise given under oath. In contrast to perjury, surprisingly or not, the issue of declaring promissory oaths invalid by dissolving them is not very prominent in our ancient and medieval sources.[2] Apparently, explicit considerations on this topic could be seen as an infringement upon the validity of oaths themselves, or even be understood as an encouragement to violate them all too easily.

How an individual could cope with the fact that he or she needed to break an oath or had already done so must always have touched upon fundamental issues of religious 'belief', conscience, and the inner self,[3] as the power of oaths lay in the nexus between external power and self-coercion.[4] Individual guilt caused by the violation of an oath became even more complicated when it came to communicating it to others, since the nature of any an oath was (and still is) that it narrows the discourse within a society on

1 Kolmer, *Promissorische Eide*, pp. 314–50.
2 Blidstein, 'Losing Vows and Oaths'.
3 Holenstein, 'Seelenheil und Untertanenpflicht'; Holenstein, 'Gewissheit, Gewissen und Seelenheil in der Vormoderne'.
4 Holenstein, *Die Huldigung der Untertanen*, p. 52.

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The Oath in Late Antiquity and the Early Middle Ages: Religious Act, Social Bond, Holy Sacrament, ed. by Stefan Esders and Gerda Heydemann, CELAMA 46 (Turnhout: Brepols, 2026), pp. 333–364 BREPOLS PUBLISHERS 10.1484/M.CELAMA-EB.5.152881

legitimate and illegitimate action.[5] Justifying the breaking of an oath was no less difficult towards other members of society than towards God, as it was seen as an infringement of the religiously founded idea of trust that bound together individual and society. The question of how sworn promises could be made void thus leads us into a contested field where the power of the oath as such was out of question, but where human activity constantly created tensions and called for practical and intellectual solutions when oath-bound relations became fragile.

Individuals often sought to cope with having broken an oath by performing religious rites[6] such as sacrifices or prayers and by doing penance.[7] However, the more important an oath was regarded in political terms by wider strata of society, so that any violation cast not only doubt about an individual's own trustworthiness, but also threatened the very idea of trust within a society, the more any dissolution of such oaths needed to entail a far more complex, 'official' procedure.[8] If promissory oaths were 'sacraments of power',[9] they could only be rendered invalid by an earthly person or institution that was acknowledged and formally recognized to be in charge of the highest authority and that was believed to be in an intimate relationship to the religious sphere. The following sketch aims to provide an outline of how, in the late Roman and early medieval periods, promissory oaths could be dissolved by authorities that were understood to be entitled to do so, while special attention will be paid to historical situations in which a dissolution of oaths was regarded as necessary. As many promissory oaths were considered to be political in nature, the issue of how oaths could be dissolved leads us directly to situations of rapid political change, such as usurpations and transition between regimes. These conflicts triggered reflections on the oath and also found their way into the narratives of historiographical works. As will be observed, Christian thought on the legitimacy of swearing and on sacramental power was fundamental here, echoing late antique and early medieval discussions on this topic.

The Roman Military Oath, its Dissolution and the Priestly 'Power to Bind and Solve'

To prepare the ground for this study it seems worthwhile to first take a brief look at pre-Christian types of dissolving promissory oaths in the Roman world. In the Roman imperial period, military oaths were a crucial instrument for integrating soldiers of the legions and auxiliary units into the army.

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5 Esders, 'Loyalty Oaths'.

6 Blidstein, 'Losing Vows and Oaths'.

7 Oakley, 'The Penitentials'; Meens, *Penance in Medieval Europe*, p. 65.

8 Cf. Kolmer, *Promissorische Eide*, pp. 344–50 for the eleventh century and after.

9 Prodi, *Il sacramento del potere*; German translation: Prodi, *Das Sakrament der Herrschaft*. See also Esders, 'Loyalty Oaths'.

They formed the basis of a soldier's life-long commitment and willingness to sacrifice his life, and made him subject to military law.[10] Although the procedure by which an individual was enlisted in the Roman army included several steps of individual significance, it would be misleading to see this as an esoteric initiation procedure. This becomes evident from the fact that releasing a soldier from the military oath which he had sworn to the emperor upon joining the army was a routine act to which imperial laws repeatedly refer.[11] It was often described with the Latin word *exauctorare* or *exauctoratio*, which appears to have meant more generally the procedure of dismissal, while the semantic field of the verb *solvere*, which is also often found in this context, seems to have referred more specifically to the oath and the obligation created by it. Apart from such more general references in imperial rescripts and laws, we can only rarely observe how discharging a soldier from his oath of loyalty was actually put into practice. For example, according to a mid-third-century inscription from the Lower Danube, a soldier named M. Aurelius Mucianus, member of the *vigiles*, was on early retirement from military service due to his bad health and was also absolved from his military oath by order of the emperor Philippus Arabs. The document reports in full detail the military career of the soldier and his entitlement to 'public grain' (*frumentum publicum*), after the emperor had formally declared his will to absolve him from his oath (*sacramento solvi volumus*).[12] It has been rightly emphasized that due to the personal nature of the relationship between soldier and *princeps*, the latter, as highest commander of the army, was alone entitled to absolve the military oath.[13] While it must have been a regular procedure to dissolve oaths in Roman times,[14] this could by definition not be put into effect all too easily, as it would have caused an enormous risk for political and military stability, paving the way for usurpation.[15] For this reason the Roman emperor, who also often acted as proxy for a God by whom people swore oaths,[16] had to get involved directly in loosening the bonds created by the military oath — at least in case of *honesta missio* — whereas in cases of dishonourable discharge, the soldier's becoming an *infamis* was understood to solve the oath automatically.[17] However, the overall impression conveyed by the document

10 Campbell, *The Roman Emperor and the Army*, pp. 19–32; Staecker, *Princeps und miles*, pp. 293–308; for the late Roman period, see now Wuk, '*Religionibus firmis iuramenta constricta*?'.

11 See Speidel, '*Honesta Missio*'.

12 *L'année épigraphique*, 2003, no. 2040; 2006, nos 77 and 1867; 2007, no. 65. See von Saldern, 'Ein kaiserliches Reskript', according to which the inscription is quoted here.

13 Von Saldern, 'Ein kaiserliches Reskript', p. 302.

14 Rüpke, *Domi militiae*, pp. 87–88.

15 See the contributions in Paschoud and Szidat, eds, *Usurpationen in der Spätantike*.

16 Hopkins, 'Divine Emperors'.

17 See Ulpian in his commentary on the praetor's edict in *Digesta*, ed. by Mommsen, III, ch. 2 (*De his qui notantur infamia*), para. 2, 2, pp. 36–37.

quoted that absolving a soldier from his military oath was an administrative practice rather than an actual ritual, is countered by the fact that in case of *honesta missio* the dissolution of military oaths was often practised in public and accompanied by some kind of sacrifice in accordance with the Roman army religion.[18]

Naturally, there were also more 'irregular' procedures for enlisting soldiers. In situations of crisis the *coniuratio* was a method by which soldiers swore loyalty to one another when the supreme commanders had fallen.[19] More meaningful is the context of usurpation, when a military unit decided to raise a new emperor to the throne to whom they promised by oath to be loyal. Roman historiographers such as Tacitus repeatedly refer to this practice.[20] It allowed the reversal of the framework of legitimacy in which the soldiers operated so that 'bandits became soldiers' (*latrones milites facti sunt*), although next to nothing is known about how the oaths previously sworn to the ruling emperor were made invalid in such situations.[21] We may suspect, however, that it may not have been sufficient to simply swear a new oath.

Patriarch Gregory of Antioch and the Problem of Shifting Military Loyalty (588)

The fact that a regular dissolution of loyalty oaths was practised in the Roman army in the context of *honesta missio* may lead us to ask further by which procedures military oaths were dissolved in the Christian late antique and early medieval periods, and who was entitled to do so. By looking at the military manual written by Vegetius around 400, we can gather important information about the military oath itself, but not about the practice of dissolving a military oath.

Our first more elaborate example that relates the dissolution of military oaths is much later and comes from the late sixth-century Roman East. In his report about a revolt against the rule of the emperor Maurice (584–602) conducted by a part of the army based at Antioch (Theupolis), the church historian Evagrius Scholasticus recounts how his personal hero, Patriarch Gregory of Antioch,[22] on behalf of the emperor successfully persuaded the rebellious soldiers to give up their cause and rejoin the emperor's side by accepting Maurice's controversial brother-in-law Philippicus as military

18 Stoll, '"Entlassungsweihungen" aus Bostra und die *honesta missio*', pp. 267–73.

19 Bleicken, '*Coniuratio*'.

20 Flaig, *Den Kaiser herausfordern*.

21 Burian, '*Latrones milites facti*'; MacMullen, 'The Roman Concept Robber-Pretender'; Shaw, 'The Bandit'.

22 On Gregory's depiction in Evagrius's *Ecclesiastical History*, see Leppin, 'Roman Identity in a Border Region', pp. 249–54.

commander in 588. Evagrius presents Gregory as a peace-maker by putting a long and memorable speech into his mouth,[23] in which he praised loyalty and obedience towards the emperor as a genuine Roman virtue; moreover Gregory presented the prospect of an amnesty by underlining Maurice's Christian motivation to pardon the rebels and show mercy, 'since an emperor's heart is in the hand of God' (Proverbs 21. 1),[24] whereas a fight of Christians against Christians should be avoided at all costs. What made a reconciliation difficult in this case, however, was the fact that the rebels had sworn a solemn oath to the duke of Phoenicia Libanensis Germanus which among other things apparently included the promise to never accept Philippicus as military commander. A solution of this oath was therefore among the preconditions of their volte-face, and it is here where the Patriarch of Antioch came into his pastoral function, using the feast of Easter to call for God's help and for forgiveness. Evagrius reports that Gregory,

> Τοσαῦτα εἰπὼν καὶ πλεῖστά γε ἐπιδακρύσας, ὥσπερ ἐκ θείας τινὸς ῥοπῆς ἁπάντων τὰς γνώμας ἐν ἀκαρεῖ μετατέθεικεν οἵπερ ἐξήτησαν ὑπεξελθεῖν τοῦ συλλόγου καὶ καθ᾽ αὑτοὺς περὶ τῶν πρακτέων βουλεύσασθαι. Ἦκον τοίνυν οὐ μετὰ πολὺ σφᾶς αὐτοὺς τῷ ἱερεῖ ἐγχειρίσαντες. Καὶ δῆτα Φιλυιππικὸν αὐτοῖς ἐξονομάσαντος ἵν᾽ αὐτοὶ στρατηγὸν σφίσιν ἐξαυτήσωσι, ὅρκοις δεινοῖς ἔφασκον περὶ τούτου διομόσασθαι καὶ τὸ σύμπαν στράτευμα. Ὁ δέ, μηδὲ πρὸς τοῦτο μελλήσας ἢ ὅλως ἐλινύσας, ἱερεὺς ἔφη κατὰ συγχώρησιν εἶναι ἐξουσίαν τε ἔχειν λύειν καὶ δεσμεῖν ἐπὶ γῆς τε καὶ οὐρανοῦ, καὶ τῆς θείας ἀπεμνημόνευε φωνῆς. ᾽Ενδόντων δὲ καὶ πρὸς τοῦτο, τὸν θεὸν λιταῖς καὶ προσευχαῖς ἐξωσιοῦτο καὶ τοῦ ἀχραὰντου αὐτοῖς μεταδοὺς σώματος – ἦν γὰρ ἡ πάνσεπτος ἡμέρα δευτέρα ἡ τῷ ἁγίῳ ἐγγίζουσα πάθει –, πάντας δειπνίσας ἀμφὶ τοὺς δισχιλίους, στιβάδων ἐπὶ τῆς πόας σχεδιασθεισῶν, ὑπέστρεφε κατὰ τὴν ἑξῆς. Ἔδοξε δὲ αὐτοὺς συλλεγῆναν ἡ βούλοιντο. Μεταπέμπεται τοιγαροῦν Φιλιτπικὸν, ἐν Ταρσοῖς τῶν Κιλίκων διάγοντα ἐπειγόμενόν τε κατὰ τὴν βασιλέως, ἀναγαγὼν τῇ βασιλείᾳ περὶ τούτων στείλας τε καὶ τὰς παρὰ τοῦ στρατοῦ περὶ Φιλιππικοῦ δεήσεις. Ὑπαντῶσι τοίνυν τῷ Φιλιππικῷ κατὰ τὴν Θεουπολιτῶν γενομένῳ, καὶ τοὺς ἠξιωμένους τῆς θείας παλιγγενεσίας εἰς ἱκετείαν προσλαβόμενοι προσπίπτουσιν αὐτῷ· καὶ δεξιὰς ἀμνηστίας λαβόντες σὺν αὐτῷ τὰς ἐπιστρατεύσεις ποιοῦνται. Οὕτω μὲν δὴ προκεχωρήκει ταῦτα.
>
> (after speaking such words and weeping most copiously, in an instant he converted the opinions of everyone, as if through some divine impulse. They requested leave to withdraw from the gathering and to deliberate by themselves about what was to be done. Shortly thereafter they came and entrusted themselves to the priest [Gregory]. Next, after

23 Evagrius Scholasticus, *Historia ecclesiastica* VI. 12. Greek text taken from Evagrius Scholasticus, *Historia ecclesiastica. Kirchengeschichte*, trans. into German by Hübner, vol. II, pp. 632–36.

24 On this often-cited phrase and its impact on Christian conceptions of rulership see Hattenhauer, 'Das Herz des Königs in der Hand Gottes'.

> he had named for them Philippicus that they might request him to be their general, they said that the entire army indeed was bound by strict oaths concerning him. To this he said, without delay or any demur, that he was priest by permission of God, and had the power to bind and loose on earth and in heaven, and he reminded them of the sacred word. When they acceded to this as well, he propitiated God with supplications and prayers; and after sharing with them the immaculate body — for it was the all-revered Monday adjacent to the holy Passion — he feasted them all, about 2000 in number, on couches improvised on the grass, and returned home on the following day. It was resolved that they should assemble wherever they might choose. Accordingly he sent for Philippicus, who was staying at Tarsus in Cilicia while hastening towards the imperial city, and he provided a report about these matters to the imperial power and sent the army's requests concerning Philippicus. Accordingly, once Philippicus had come to the city of the Theopolitans [= Antioch], they met him and, taking as their helpers in the petition those who had been deemed worthy of the sacred rebirth, they prostrated themselves before him. After receiving pledges of amnesty they returned to campaigning with him. Thus indeed did these events proceed.)[25]

Evagrius more than once emphasized the power of the Christian religion to bring about loyalty towards the emperor and the Roman empire.[26] If his idealized portrayal can be trusted, Gregory, who was on good terms with Philippicus,[27] sought to arrange the political conversion of the rebels by making it part of the Easter ceremonial, which consisted of supplications, prayers and the celebration of the Eucharist, while also including an element of religious conversion, as the newly baptized somehow functioned as warrantors of a pardon agreement concluded by the rebels with Philippicus.

With regard to the dissolution of oaths, most remarkable is Evagrius's explicit statement that Gregory claimed to carry this out by using his power to bind and loose. It was taken from the famous passage in Matthew 16. 18–19: 'And I tell you that you are Peter, and on this rock I will build my church, and the gates of Hades will not overcome it. I will give you the keys of the kingdom of heaven; whatever you bind on earth will be bound in heaven, and whatever you loose on earth will be loosed in heaven.' Gregory's alleged use of the passage is a clear reminder that in late antique exegesis it was by no means exclusively used to advocate for the primacy of the bishop of

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25 Evagrius Scholasticus, *Historia ecclesiastica*, VI, 13, ed. by Hübner, vol. II, p. 636. English trans. by Whitby, pp. 304–-305.

26 See Leppin, 'Evagrius Scholasticus'.

27 Cf. Evagrius Scholasticus, *Historia ecclesiastica*, I, 13, 25, ed. by Hübner, vol. II, pp. 162–64. On the passage see also Blidstein, 'Losing Vows and Oaths', pp. 296–97.

Rome.[28] Other passages in the New Testament (Matt. 18. 18 and John 20. 23) which attributed the power of the keys to all apostles and the whole church stood against this.[29] It was only due to a specific tradition of exegesis that the papacy could use the power to bind and loose as described in Matthew 16. 18–19 in reference to Peter. In Roman eyes, Peter was the first confessor to believe in Christ as messiah: this not only served to justify the bishop of Rome's claim for primacy in terms of jurisdiction and excommunication, but also for claiming the power of dissolving oaths to be an exclusive papal prerogative.[30] However, it is known that in the late antique period, the church of Antioch also used the Petrine doctrine,[31] while it should be noted that most late antique exegetes saw the power to bind and loose attributed to every priest.[32] In such a general perspective, it could be used to justify a priest's power to absolve believers from their sins.

It becomes clear from this passage that the power to bind and loose was attributed to Peter, but in a more general sense to priests, bishops, and patriarchs it could serve as a most powerful argument for attributing to the higher Christian clergy the power not only to remedy sins, but also to absolve believers from oaths they had sworn. Naturally, this required a justification rooted in the assumption that the promise given under oath needed to be considered as unjust or unlawful. For, exegetically thinking, Christian ideas about the loosening of promissory oaths needed to be brought in accordance with Christ's teaching in the New Testament that actually forbade swearing (Matt. 5. 33–38, James 5. 12),[33] but also with emerging canon law.[34]

Oaths Causing Transpersonal Obligations? A Model Case from Visigothic Spain (653)

This is also relevant, if we explore another historical episode which provides us with some more detailed evidence on the topic of the loosening of oaths. It seems as if it was in the Visigothic kingdom where, in the post-Roman West, the question of absolving subjects from oaths sworn to their kings was extensively discussed for the first time. At the Eighth Council of Toledo, held in 653, we find the subtlest argumentation on the issue of dissolving oaths, which also took into account the complicated theological and moral implications of this kind of action.[35] That we know so much about

28 See Ludwig, *Die Primatworte*.
29 Ubl, 'Der Mehrwert der päpstlichen Schlüsselgewalt', p. 191.
30 As demonstrated by Ubl, 'Der Mehrwert der päpstlichen Schlüsselgewalt'.
31 See Ludwig, *Die Primatworte*, p. 55.
32 See also Ubl, 'Der Mehrwert der päpstlichen Schlüsselgewalt', p. 193.
33 Kreusch, *Der Eid zwischen Schwurverbot Jesu und kirchlichem Recht*, pp. 54–112.
34 Esders, 'Schwur', pp. 29–70.
35 See in greater detail Esders, '*Regem iura faciunt, non persona*', pp. 113–28.

this particular case stems from the controversial and tyrannical regime of King Chindasvinth (642–653), who, according to a Frankish source, had executed hundreds of aristocratic opponents on the charge of high treason,[36] and persecuted his opponents as traitors, rebels, and fugitives making a common cause with external enemies. A rehabilitation of his victims and opponents under his son and successor Reccesvinth (649/653–672) was deemed impossible by the fact that Chindasvinth, who was already in his eighties when ascending to the throne, had urged all people in a general oath of fidelity to promise that they would obey his decisions even after the ruler's death. Apparently shortly after Chindasvinth's demise, the abbot Fructuosus, who would later become metropolitan bishop of Braga, presented a list of demands to King Reccesvinth, calling for a general amnesty and arguing that royal and priestly mercy should rank higher than stubborn adherence to an unjustly sworn oath.[37] It was indeed the 'transpersonal' quality of the oath-bound obligation which urged the sixty-six bishops and abbots who were assembled at Toledo along with eighteen major laymen, among them several palace officials,[38] to perform a remarkable balancing act. Staying loyal to Chindasvinth's son Reccesvinth and not questioning the validity of the loyalty oath per se, they tried to negotiate a settlement with those who had suffered from Chindasvinth's governmental actions in a lengthy canon.

Without mentioning him explicitly (and referring to him as *gloriosus rex* in another passage), the bishops argued that Chindasvinth's practice of having his people swear contradictory oaths, the validity of which extended even into the period after his death, had rendered their task of mitigating the conflicts arising from this almost impossible. At the synod, a discussion arose about whether the verdict on condemned fugitives and traitors could somehow be mitigated, while upon closer inspection of the oath formula (the *series conditionum*), according to which the people had been forced to swear in a 'hostile act' (*hostilitatis vastitas … nos iurare coegerat*), they realized that these contained 'such a vast texture of obligations' (*tanta obligationis textura*) which should be considered as an infringement upon piety itself. Knotted in a mesh, these oath-sworn obligations did not so much prevent transgressions but rather constrained the innermost of piety. The reason for this, it was argued, was a double fear, namely that God's name could be defiled, and that this might restrict the chance to show mercy. The bishops continued by saying that they had had lengthy and controversial discussions about this

36 Fredegar, *Chronicle*, ed. by Krusch, IV, 82, pp. 162–63; see Esders, 'Grenzüberschreitende Mobilität als Problem politischer Loyalität'.

37 Fructuosus, Abbot of Dumio, *Letter to King Reccesvinth*, ed. by Gundlach, no. 19, pp. 688–89. See Thompson, *The Goths in Spain*, pp. 200–01 and Orlandis and Ramos-Lissón, *Die Synoden auf der Iberischen Halbinsel*, pp. 204–05.

38 On this council, see Orlandis and Ramos-Lissón, *Die Synoden auf der Iberischen Halbinsel*, pp. 201–14, and the excellent discussion by Suntrup, *Studien zur politischen Theologie im früh-mittelalterlichen Okzident*, pp. 266–89.

and had indeed been close to entering into a schism about this issue, which is why they ultimately decided to repent and invoke the inspiration of the Holy Spirit. Divinely inspired, this should lead their ship out of dangerous waters and bring it back into the safe harbour of consent. After having called for God's help, the bishops returned to the topic of swearing, emphasizing that fugitives and their rebellions had caused the necessity to exact most rigorous oaths (*acerrima iuramenta*) from the people — again without mentioning Chindasvinth in person. Since there was no way to deny that these oaths had invoked God's name, it appeared clear to the bishops at first sight that these oaths as such could not be absolved, quoting Old Testament provisions on perjury from the books Exodus (Exod. 20. 79) and Leviticus (Lev. 19. 12). However, they conceded that the acerbity contained in these oaths could and indeed should be softened and loosened, since they had caused an accumulation of sins. Henceforth they quoted Isaiah to argue for a dissolution of impious obligations: '*Dissolue colligationes inpietatis, solue fasciculos deprimentes*'; moreover, passages taken from Paul and James and from the gospels of John, Matthew, and Luke were quoted as 'eternal law' (*aeterna lex*) to argue for mercy and forgiveness of sins and against hatred and homicide. Seen from this perspective, oaths seemed to stand against oaths, as they raised contradictions and tended to play out mercy, justice, truth, and peace against one another. Up to this point, the bishops' main point was that they were caught in a terrible situation of contradicting norms which had all been validated by the religious instrument of oaths. This conflict of religiously motivated norms, they argued, should not result in declaring any of these norms invalid or call them into question. Rather, they posed their episcopal task to weigh up certain norms against one another and find a compromise. The same holds true for their treatment of the issue of oaths. Naturally, they did not want to question the oath intrinsically or diminish its use and importance, but rather were looking for a cautious way to mitigate problems by dissolving an oath they considered as sworn against the essential values of the Christian religion. For this reason, the canon posed the question of whether an unlawful promise given under oath had to be kept or not. Of course, it does not have to be kept, if you have sworn to kill your father, to defile a virgin, or to commit sacrilege! God's name must not be tainted, they stated, neither by perjury nor by fulfilling an irreligious promise. The bishops referred to Christ's prohibition to swear in the New Testament here, saying that despite this prohibition many oaths were necessary and indispensable, for instance for the sake of establishing peace.[39] Moreover, they finally referred to Isaiah who mentions that God had, himself, sworn. Oaths should therefore be regarded as valid, but must not exclude the opportunity to grant mercy and show compassion.

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39 For this 'Augustinian' argument, see the contribution by Gerda Heydemann and Heiko Behrmann in this volume.

This, then, was the starting point for the bishops' argument that they wanted to show mercy, but in a way that would not raise God's punishment. In their view, quotations from the books of Job (Job 29. 13 and 30. 25) and Solomon (Prov. 24. 11) showed how consolation and salvation came to those who saw themselves struggling for survival but showed contriteness. Promulgating their intention to grant mercy, the bishops presented the problem of incautiously given promises by manoeuvring between two evils: by committing perjury they would insult the creator and pollute themselves, but by keeping a bad promise, they would condemn God's commands, cause damage to their neighbour, and kill themselves by a sword that was even more cruel. In the first case, by perjury, they were only pierced twice, whereas in the second, by keeping their promise, they could expect to be pierced three times. But the Lord said that he preferred mercy to sacrifice. Thus, the bishops were determined to grant mercy (obviously meaning that they were willing to accept perjury in this particular case) on the condition that the ruler, King Reccesvinth, would likewise pardon, so that the people and the country — the *gens* and the *patria* — should be in no danger nor suffer any loss. Having made this single exception, however, the bishops stated that all future oaths regarding royal authority and the protection of the people and the country should be regarded as unabsolvable. In addition, they declared that any judgement imposing mutilation or the death penalty on an offender for religious crimes should be abandoned.

The final part of the bishops' lengthy and complex argument consisted of a long list of testimonies taken from scripture and the church fathers that should demonstrate that their decision was in accordance with the holy faith. Here, they first referred to the fact that even God has changed his promises several times, that he regretted things he had previously said to his people, and revised his verdicts once his people showed repentance. Repentance was the key to transforming God's judgement, and this is why the people of Israel could escape God's punishment in the case of Niniveh. The bishops went on to quote Ambrose (*De officiis ministrorum I, 49* and *III, 12*) who discussed the case of Herod who had promised Herodias to fulfil any promise, and felt obliged to keep his promise when she asked him for the head of John the Baptist; Ambrose had also referred to the case of Jephthah, who sacrificed his daughter since he had promised that he would offer up as a burnt offering the first thing to come out of his house after his victory. Ambrose's authority is invoked by the bishops to argue against any ignominious promise. In such cases, committing perjury would have been much better than keeping the promise. Ambrose is now followed by Augustine, who in his commentary on the psalms (*Enarr. in psalm.* V. 7 and LXXXIX, 24), had distinguished two types of lies to be considered as lesser evils, that is, when we lie as part of a joke, or in order to do something useful and good. Moreover, Augustine stated that truth should not infringe upon mercy, which brought the bishops to refer to Pope Gregory I's *Moralia in Job*, where he is discussing the image of the monster Behemoth, who is

helplessly trying to absolve himself from guilt, and thereby becomes ever more closely connected to guilt (Job 40. 12) — an image that seems to allude to the *tanta obligationum textura* mentioned at the beginning of the canon. The message here is again to weigh the sinful alternatives against each other and choose the lesser evil (*Moralia in Hiob* 32, 20, 39). The final authority invoked is Isidore of Seville, who in his *Sententiae* had stated that an incautiously sworn oath which promised something bad, need not be observed, just as a husband should not feel obliged to stick with an adulterer; it would be better not to fulfil the oath than to remain in the disgraceful act of adultery (*Sent*. II, 31. 9). A promise fulfilled by a crime is godless (*Syn*. II. 2), which is why the bishops concluded by saying that like Paul, they would prefer to be cursed and separated from Christ than to remain embedded within a crime (Rom. 9. 3).[40]

In their long argument with its documentary appendix, the bishops tended to argue for committing perjury rather than for fulfilling a shameful oath, since this would not have affected their relationship to God alone, but would also have affected third persons. This also becomes clear from the fact that their argument contains clear references to the oaths sworn for *rex*, *gens*, and *patria* of the Goths.[41] Their literal quotations from the Bible and the church fathers make amply clear that the bishops did all they could to demonstrate that their act should be considered to be in accordance with scripture and biblical authority, while they acted as a synod, thereby invoking the idea of *consensus* and conferring the highest degree of authority upon their decision. Moreover, they were visibly keen to prevent this from becoming a precedent for the future, but to remain a singular exception once for all. The argument put forward demonstrates that the bishops at Toledo had to be extremely cautious in weighing up criteria which could allow them to absolve the Visigothic people from some of the obligations they had incurred through their oaths formerly sworn to Chindasvinth. However, we are not told in the passage how precisely this absolution took place, whether they declared the oath invalid, or whether they were thinking of pastoral remedies to purge from the sin of perjury. There seems to have been some inspiration not only by Fructuosus, but also by Taio of Saragossa here, since Taio, who had been in Rome to obtain the missing books of Gregory the Great's *Moralia in Hiob*, was, as can be gleaned from the pages of his *Sententiae*, an admirer of Augustine and Gregory the Great in particular. But interestingly, Taio's reference to the bishops' power to bind and loose is not quoted in the

40 *Eighth Council of Toledo* (653), c. 2, ed. by Díez and Barbero, pp. 386–412. A German translation of this is given in Esders, '*Regem iura faciunt, non persona*', pp. 115–22.

41 On the background, see Velázquez, '*Pro patriae gentisque Gothorum statu*'. At this time, King Reccesvinth was fighting a revolt by Froia, on which see Thompson, *The Goths in Spain*, pp. 199–201, and Riess, *Narbonne and its Territory in Late Antiquity*, pp. 176–78.

canon — presumably because it was very general in tone and did not contain any specific reference to oaths.[42]

The debate on the political oath in Visigothic Spain appears to have been far more sophisticated than anything else we find concerning political oaths, their nature, validity, obligations, and limits in any other 'barbarian' kingdom. This debate needed to be continued later in the seventh century, as shall be demonstrated briefly here by another incident which happened under King Ervig (680–687) at the twelfth synod of Toledo held in 681. Again, it was the appointment of a new ruler that led to a debate about the endurance of oaths sworn to his predecessor. However, the case presented here was different. King Wamba, to whom his subjects had sworn fidelity back in 672, had been poisoned, and the bishops accordingly administered his last sacraments and supported preparations for the election of a new king by declaring the old one deposed. In fact, at Toledo the bishops did all they could to bestow legitimacy on the new ruler Ervig, by confirming three documents allegedly signed by Wamba. In these documents, it was stated that Wamba, after having performed all liturgical rites for penance, had appointed Ervig to be his successor and had ordered that Ervig be anointed as the new king.[43] It seems as if these criteria were somehow modelled on the case of King Chindasvinth, who had appointed his son as co-ruler and undertaken penance on his deathbed.[44] Accordingly, the oaths sworn to Wamba could now be dissolved. There was even a third Visigothic debate on the absolution of oaths, which took place under king Egica (687–702) in 688 and was centred around two sworn promises Egica had made to his predecessor Ervig, which Egica after having been elected king perceived to be contradictory. Here again, the collective judgement of the bishops assembled at Toledo declared that the king be absolved from one of these oaths.[45]

That the Visigothic episcopate spent so much time on the question of the release from oaths sworn to a previous ruler was rooted in the very close and intimate cooperation between kings and bishops within the political culture of the Visigothic kingdom, so prominently visible in the eighteen synods held at the royal capital of Toledo and in their conciliar acts and in royal proclamations following these synods' decisions. No less important was that electoral kingship mattered much in the Visigothic realm,[46] while the rituals of royal inauguration and deposition included, aside from the oath, many other ritual and liturgical components such as anointing and

42 Taio, *Liber sententiarum*, ed. by Miquel, II, 38, pp. 195–97.

43 See Orlandis and Ramos-Lissón, *Die Synoden auf der Iberischen Halbinsel*, pp. 252–53.

44 Cf. Esders, '*Regem iura faciunt, non persona*', pp. 110–13.

45 See Orlandis and Ramos-Lissón, *Die Synoden auf der Iberischen Halbinsel*, pp. 282–83 and 290–92.

46 See Esders, 'Chindasvinth'.

penance.[47] These factors had many repercussions in the careful elaboration of oath formulas for both the king and his subjects to be sworn on a new ruler's accession, the so-called *conditiones sacramentorum*. For our purposes here it must suffice to say that the Visigothic bishops' cautious and careful deliberations became widely known outside of the Iberian Peninsula following the fall of the Visigothic kingdom in 711, which they did through the spread of the *Collectio canonum Hispana*, later becoming widely known in the Frankish kingdom.

Pope Zachary (d. 752) and Pippin III's Loyalty towards the last Merovingian King

The beginning of Carolingian rule over Francia was also a cause of dissolving oaths of loyalty. Despite the apparent weakness of the last Merovingian kings, there can be no serious doubt that the change of dynasty in the Frankish kingdom that took place in 750/51 by the mayor Pippin's usurpation of the royal title was a major turning point in how Carolingian royal legitimacy came to be constructed in ritual and reconstructed in later historiography.[48] Ironically, this perhaps most important case for the dissolution of political oaths is certainly not the most prominent in our sources, as Carolingian historiography appears to have masked Pippin III's grip on Frankish kingship in a way that does not draw attention to the issue of oath-making. Instead, in the Royal Frankish Annals we find emphasized that Pope Zachary acknowledged the deposition of the last Merovingian king Childeric III and the nomination of Pippin as Frankish king; since the realities of power and the legitimacy of the *ordo* should be congruent again, 'rather he, in whose hand royal power was, should be called king than he, who remained without royal power'.[49] None of our extant Frankish sources on this important episode records that the envoys or indeed Pippin himself had been absolved from an oath they had sworn to the last Merovingian king Childeric III, let alone the multitude of his Frankish subjects.

There is only one independent source providing more detail on this. In his world chronicle, the Byzantine historian Theophanes (d. 808) mentioned that Pope Stephen released Pippin from his oath, which he erroneously attributed to the year 724:

> ὁ αὐτος Πίπινος … καὶ θαυμάζεται καὶ φιλεῖται παρὰ τοῦ ἔθνους, οὐ μόνον διὰ τοῦτο, ἀλλὰ καὶ δι᾽ ἄλλα προτερήματα, καὶ προηγεῖται τοῦ ἔθνους πρῶτος οὐ κατὰ γένος, λύσαντος αὐτὸν τῆς ἐπιορκίας τῆς πρὸς τὸν ῥῆγα τοῦ αὐτοῦ Στεφάνου, καὶ ἀποκείραντος τὸν πρὸ αὐτοῦ ῥῆγα καὶ ἐν μοναστηρίῳ μετὰ τιμῆς

47 On the widely studied topic of Visigothic kingship, see, e.g. De Jong, 'Adding Insult to Injury'; Bronisch, *Reconquista und Heiliger Krieg*, pp. 62–77.

48 See the contributions in Becher and Jarnut, ed., *Der Dynastiewechsel von 751*.

49 *Annales regni Francorum ad a. 749*, ed. by Kurze, p. 8.

καὶ ἀναπαύσεως περιορίσαντος. οὗτος ὁ Πίπινος δύο υἱοὺς ἔσχεν, Κάρουλον καὶ Κάρουλόμαγνον, τὸν ἀδελφὸν αὐτοῦ'

> (he was the first to rule his nation not by virtue of heredity, the said Stephen having absolved him of his oath to the king, tonsured his predecessor and confined him honourably in a comfortable monastery. This Pipin had two sons, the brothers Karoulos and Karoulomagnos.)[50]

Theophanes' account appears confused, as the chapter is mainly concerned with Pope Stephen II (752–757) and his dealings with the Lombard king Aistulf (749–756) and his flight to the kingdom of the Franks. In reporting this, the author confuses King Pippin with Charles Martel (which may have also caused him to erroneously insert this into his chapter on the year 724) and the latter's successful campaign against the Arabs in 732, before returning to Pippin and his appointment as king (750/751) in the quoted passage. In doing so, Theophanes also erroneously attributed the whole procedure of dissolving the oath and deposing the last Merovingian king to Pope Stephen II, not his predecessor Zachary.[51] Nonetheless, we find this passage translated into Latin by Anastasius Bibliothecarius in his *Chronographia tripertita* written in the 870s on the basis of the histories of Georgius Synkellos, Theophanes Confessor, and Nikephoros the Patriarch. Anastasius wrongly attributed these events to the year 734 and translated τῇ ἐπιορκίᾳ by *periurium*.[52] As it seems, it was his work that made knowledge of the oath issue accessible in Rome.[53]

Despite these errors (and the overall confusion in Theophanes' account on the last Merovingians),[54] the report appears trustworthy for the fact that the major-domo's oath of loyalty towards the Merovingians was dissolved

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50 Theophanes, *Chronographia*, AM 6216 (AD 723/4), ed. by de Boor, p. 403; Engl. trans., *Chronicle of Theophanes*, by Mango and Scott, p. 557.

51 Whom the Royal Frankish Annals (above n. 49) see as the addressee of the Carolingian inquiry. See McKitterick, 'Die Anfänge des karolingischen Königtums'.

52 Anastasius Bibliothecarius, *Chronographia tripartita*, AM 6234, AD 734, ed. by De Boor, p. 273: 'Pipinus … et admirationi habetur, et amatur a gente, non solum propter hoc sed et propter alia praecipua gesta, et praeficitur genti non ignobiliter primus, solvente scilicet eum a periurio in regem commisso eodem Stephano; qui et totondit decessorem eius regem, et in monasterio cum honore et requie circumscripsit. hic Pipinus duos filios habuit, Carulum scilicet et Carulomagnum fratrem eius.' (Pepin … is held in admiration, and loved by the people, not only because of what I have just said [i.e. his victory against the Arabs — S.E.], but also because of other special deeds, since he was placed, though not of low descent, as the first above his nation, when the said Stephen solved him from perjury after having made him king; he also sheared his predecessor as king, and confined him in a monastery with honour and peace. This Pepin had two sons, Charles and his brother Charlemagne.) (my translation)

53 Affeldt, 'Königserhebung Pippins und Unlösbarkeit des Eides', pp. 332–33.

54 See also Montinaro, 'Byzantium, the Merovingians, and the Hog', pp. 151–58.

with the help of the pope, as has been argued by Josef Semmler.[55] Whereas the papal unction of Pippin as king according to Semmler appears to have indeed been performed by Pope Stephen II in 754 on the occasion of his visit to the Frankish kingdom, it is not clear if the dissolution of the oaths took place on this occasion or could have been made earlier. We may thus only speculate how this dissolution was put into effect by the pope. If Theophanes and Anastasius Bibliothecarius were right, it would seem as if the pope forgave Pippin his sin for having committed perjury by betraying King Childeric III, which would have included some sort of penance. If we prefer to assume alongside Semmler that the dissolution of the oath would have been at the heart of the negotiations to which Pippin had despatched bishop Burchard of Würzburg and the chaplain Fulrad as envoys in 750,[56] this would mean that Pippin made penance in absentia for a grave sin he was only about to commit. It thus seems more likely to me that the oath issue was only resolved in 754.

Dissolving an Oath Given under Force: King Louis II of Italy and Pope Hadrian II (872)

A somewhat different type of oath to be dissolved from the later ninth century again involves interaction between the pope in Rome and a Carolingian ruler. When campaigning in southern Italy in August 871,[57] King Louis II of Italy was with the duke Adalgis of Benevento who forced him to swear an oath that he would not take revenge and never again invade the territory of Benevento.[58] The immediate background to Adalgis's attack on Louis was that he had received Byzantine support in southern Italy. Moreover, after the death of Lothar II in 869 the news of Louis's capture and rumours about his alleged death led to increased interest amongst his cousins in Italy and the Alpine regions. Our chief source, Regino of Prüm, narrates how Adalgis 'at the instigation of the Greeks' rebelled against King Louis II, himself professing under oath his innocence in order to treacherously capture the emperor, before releasing him on the oath-bound condition that Louis would never return to Benevento. Only in the following year, on his way back to northern Italy, Louis met the pope:

> Anno dominicae incarnationis DCCCLXXII Ludowicus imperator Romam venit ibique conventum celebrans coram summo pontifice multa super Adalgisi tyrannide conquestus est. A senatu Romanorum idem Adalgisus tirannus atque hostis reipublicae declaratur, bellum

55 Semmler, *Der Dynastiewechsel von 751*, pp. 22–27.
56 *Annales regni Francorum* a. 749; see above, n. 49.
57 On the background, see Gantner, '"Our Common Enemies Shall Be Annihilated!"'.
58 For a reconstruction, see Granier, 'La capitivité de l'empereur Louis II à Bénévent'.

> adversus eum decernitur. Iohannes papa imperatorem a iuramento, quo se obligaverat, auctoritate Dei et sancti Petri absolvit, affirmans nihil sibi obesse, quod ob mortis periculum evadendum coactus fecerat, nec sacramentum esse dicendum, quod contra salutem reipublicae, quamvis cum multis execrationibus, fuerit prolatum.
>
> (In the year 872 of the incarnation the emperor Louis came to Rome and celebrated an assembly there, where in the presence of the highest pontiff he complained extensively about the tyranny of Adalgis. This Adalgis was declared a tyrant and enemy of the state by senate of the Romans, as it was decided to wage war against him. Pope John with the authority of God and saint Peter absolved the emperor from the oath, by which he had bound himself, emphasizing that it counted for nothing against him because he had been forced to make it to escape the danger of death; and that that which was spoken against the well-being of the state was no oath, however many imprecations it was made with.)[59]

Taking and dissolving oaths and the danger of perjury are a key theme in Regino's narrative, which the author brings to a conclusion by recounting how Louis, after having been absolved from his oath, resumed the war against Adelgis (who eventually took flight to the island of Corsica), but did not personally engage in leading the army to southern Italy, but sent his wife, Queen Angilberga, with the army in order that he might not be deemed perjurious by his supporters.

Historians have dismissed the story about Angilberga, as Regino often does not seem to be a very reliable witness.[60] Although he had finished his chronicle by 908 and thus was not too distant from the events he was describing here, Regino's narrative contains several further inaccuracies. According to him the pope involved in these events was John VIII (872–882), but we know from other sources that it was actually his predecessor Hadrian II (867–872), while Regino also confused the royal and imperial title of Louis II. Nonetheless, the story about Angilberga can at least be taken as evidence for a continuing problem of Louis's legitimacy even after having been released from the oath he had given to Adelgis.

The oath that Louis II was forced to swear was not an oath of loyalty, rather it contained a specific promise. It is interesting that Regino took this opportunity to insert a debate on legitimacy and oath-taking. Right at the beginning, he remarks that even the senate in Rome declared Adalgis a 'tyrant and public enemy' (*tirannus atque hostis reipublicae*).

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59 Regino, *Chronicon*, a. 872, ed. by Kurze, pp. 104–05; trans. by MacLean, *History and Politics*, p. 167. On this passage, see in particular Behrmann, *Instrument des Vertrauens*, pp. 140–41; see also Goetz, *Die Chronik Reginos von Prüm*, p. 40.

60 See the notes in Böhmer, *Regesta Imperii*, I, 3, 1, ed. by Zielinski, no. 349, p. 143.

Moreover, Regino states that Louis was dissolved from the oath he had bound himself with (*a iuramento quo se obligaverat*), by the authority of God and St Peter (*auctoritate Dei et sancti Petri*) which seems to allude to the above-mentioned priestly 'power to bind and solve', claimed here as connected to the successor of St Peter. In addition, Regino provides two arguments why the dissolution of the oath is justified here. First, because Louis had not sworn this oath voluntarily, but in danger of death (*ob mortis periculum*); this seems to refer to the assumption that voluntary swearing was considered to be a precondition for regarding an oath as legitimate despite Christ's prohibition in the Sermon on the Mount,[61] and it could also be seen as an allusion to phrases such as *mea sponte* often used in early medieval oath formulas.[62] Secondly, because Louis's oath was sworn against the well-being of the state (*contra salute reipublicae*), it could for Regino not be called a *sacramentum*. This seems to correspond to the fact that since Roman times, vows and oaths of loyalty were often sworn for the *salus* of the ruler.[63] In this perspective, the oath was regarded as invalid as it was classified as illegal, contrary to a ruler's mandate and given to a tyrant.[64] Moreover, the argument seems to suggest a difference in wording between *iuramentum* and *sacramentum*, as Heiko Behrmann has pointed out,[65] since it implies that the pope liberated Louis from a *iuramentum* only. It needs to be emphasized here that the dissolution of the oath was a crucial point for Regino, since he was also an expert in canon law and familiar with all kinds of oath issues.[66]

Further information coming from other sources makes clear that Louis's legitimacy was so seriously strained by his period in captivity and by the charge of perjury that he sought to regain it via a 'counter-ritual' with the assistance of the pope. For we know that on the same occasion Louis was crowned emperor again.[67] Such a renewed coronation was not unusual, but was apparently used here to restore the status quo ante. Again, we gain the impression that it took a great deal of effort to make void a solemn promise given in the name of God. Indeed, Regino retained some scepticism.

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61 Kreusch, *Der Eid zwischen Schwurverbot Jesu und kirchlichem Recht*, pp. 127–35.

62 On oath formulas, see Esders, 'Loyalty Oaths', pp. 124–29.

63 See, e.g. Daly, '*Vota publica pro salute alicuius*'.

64 Cf. Grotz, *Erbe wider Willen*, p. 300.

65 Behrmann, *Instrument des Vertrauens*, p. 141.

66 In Regino's *Libri duo de synodalibus causis*, there are numerous provisions on the use and legitimacy of oaths and on oath formulas: see the index to the German translation by Hartmann, p. 850 s.v. 'Eid' and 'Eidformulare'.

67 Cf. Böhmer, *Regesta Imperii* I, 3, 1, no. 349, pp. 142–43.

Pope Gregory VII (1073–1085), a Self-Proclaimed 'Master of the Oath'

Of the examples for the dissolution of oaths discussed so far, the Visigothic and Frankish cases were eventually used as historical precedent in the eleventh century in the context of the Investiture Controversy,[68] in which many discussions on the oath culminated.[69] Pope Gregory VII's claim that the pope, being the successor of St Peter, was in a position to lawfully dissolve oaths of loyalty which had been sworn to a secular ruler turned out to be a bone of contention here. In his famous 'Dictatus papae', a statement of twenty-seven programmatic sentences on the rights and prerogatives of the pope inserted in his letter collection in the middle of epistles dating from the year 1075,[70] Gregory not only emphasized the pope's right to depose emperors (*Quod illi liceat imperatores deponere*),[71] but also to absolve an unjust ruler's subjects from the bond of fidelity by which they were tied to him: *Quod a fidelitate iniquorum subiectos potest absolvere* is the very last clause of the *Dictatus papae*. The sentence does not claim that the right to dissolve oaths is exclusively reserved for the pope. Still, taken together with the other elements for papal supremacy as formulated in the 'Dictatus papae', it can be seen as indicating that the pope saw himself also as the ultimate resource in this business. The sentence demonstrates that the pope knew how to lay the axe at the religious and political legitimacy of a ruler by focusing on that ruler's acceptance by his subjects.[72] Indeed, in Bruno of Merseburg's account of Henry IV's civil war with the Saxons it is the German princes who asked Gregory VII rhetorically in 1078, how someone could be king, to whom no one is obliged by the bond of fidelity, only to state programmatically: 'Without the oaths being observed, the office of the royal dignity can in no way be administrated.'[73]

Gregory's statement did not come out of the blue. Already in December 1074, in a letter addressed to the clergy and lay people of the diocese of Constance, he loosened the *fideles* of the diocese of Konstanz of the fidelity they owed to their bishop Otto, whom the pope had deposed for his disobedience towards him.[74] The programmatic statement of 1075 appears

68 Struve, 'Das Problem der Eideslösung in den Streitschriften des Investiturstreites'.

69 See Prodi, *Das Sakrament der Herrschaft*, pp. 91–140.

70 See in particular Fuhrmann, '*Papst Gregor VII*'; for the (mostly patristic) sources of the text, see Moens, '"*Dictatus Papae*" vel *dicta aliorum*?'.

71 Gregory VII, *Dictatus papae*, c. 12, ed. by Caspar, II, no. 55a, p. 204.

72 Gregor VII, *Dictatus papae* c. 27, ed. by Caspar, II, no. 55a, p. 208: 'Quod a fidelitate iniquorum subiectos potest absolvere'.

73 Bruno, *De bello Saxonico*, ed. by Hans-Eberhard Mohmann, c. 108, p. 97: 'Sine sacramentorum autem observatione regiae dignitatis officium nequaquam administrari potest'.

74 Paul of Bernried, *Vita Gregorii*, ed. by Watterich, c. 38, I, p. 492: 'Nam si, ut totiens iam praediximus, praeceptis apostolicis voluerit esse contrarius, ab omni illius subiectionis iugo beati Petri auctoritate vos absolvimus ita universos, ut, si etiam de sacramenti obligatione

as an application of this to the ruler, but also as a prospective generalization. Indeed, in the quoted passage of the 'Dictatus Papae', Gregory VII, in calling the ruler simply an *iniquus*,[75] deliberately omitted any formal title such as *rex* or *imperator*. The wording betrays some influence of the theory of just kingship,[76] but may also be linked to Jerome's influential statement that any Christian oath would have to be true, sworn with judgement and be just.[77]

Gregory VII has often been portrayed as a pope very conscious of papal power and its ultimate justification, but not very much interested in the legal details when it came to delineating papal supremacy.[78] In fact, some historians have interpreted the 'Dictatus papae' as a list of headings of a projected canon law collection that the pope wanted his collaborators to compile.[79] While the right to dissolve oaths could through exegesis be deduced from the doctrine that the pope as Peter's successor had the power to bind and solve, such a claim was much more difficult to defend with recourse to canon law texts. Gregory's focus therefore was more on historical precedent here than on legal argument.[80] Thus in his famous letter to bishop Hermann of Metz, written in 1076 to give a long justification for his having deposed King Henry IV, Gregory VII draws on a series of historical precedents for rulers who had been excommunicated or even deposed by clerics.[81] However, he presented only one precedent of how the subjects of a ruler were dissolved from the oath of fidelity, that being the well-known and above-discussed events of 750/751 (or 754). Addressing King Henry's supporters, Gregory said that 'they should consider why pope Zachary deposed the king of the Francs and dissolved all Francs from the bond of oath they had sworn to him'.[82] Of course, this precedent raises considerable doubts about whether it can be reasonably compared to Gregory's actions at all. For, as we have seen, it was only one person whom Pope Zachary could have released from the oath in 750, while there is virtually no evidence that Pope Stephen, if

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quilibet ei fuerit adstrictus, quamdiu Deo omnipotenti et sedi apostolicae rebellis extiterit, nulla ei fidelitatis exhibitione fiat obnoxius'. (For, if he (Henry), as we have already said so frequently, wants to be contrary against the apostolic precepts, we absolve you, by the authority of the blessed Peter, from the yoke of all subjection to him in such way that if anyone has also been snared to him by the obligation of the oath, as long as he (Henry) acts rebellious against the almighty God and the apostolic see, he should by no exhibition of faith be obliged to him.) (my translation)

75 Herzfeld, *Papst Gregors VII*.

76 On this, see e.g. Peters, *Rex inutilis*.

77 Kreusch, *Der Eid zwischen Schwurverbot Jesu und kirchlichem Recht*, pp. 83–93.

78 Fuhrmann, 'Papst Gregor VII. und das Kirchenrecht'.

79 See Hofmann, 'Der Dictatus papae Gregors VII'.

80 See also Goetz, 'Geschichte als Argument'.

81 On this letter, see Ubl, 'Der Mehrwert der päpstlichen Schlüsselgewalt', pp. 208–09.

82 Gregory VII, *First Letter to Hermann of Metz* (1076), ed. by Caspar, No. IV, 2, p. 294: 'Considerent, cur Zacharias papa regem Francorum deposuerit et omnes Francigenas a vinculo iuramenti, quod sibi fecerant, absolverit'.

he can be credited with the dissolution during his visit to Francia in 754, also released all the Franks from their oath on this occasion.

Interestingly Gregory VII, in another letter written to bishop Hermann of Metz five years later in 1081, that is after his second deposition and banishment of Henry IV, gave a longer justification referring here to the power attributed to Peter to bind and dissolve, of which the king, as one particular sheep entrusted by God to the pope, could not be excluded. Here, Gregory repeated the reference to Zachary and Pippin verbatim, but this time added that the holy church quite often acts exactly this way when absolving soldiers from their oath, as happens in the case of bishops deposed from their pontifical grade by the pope's apostolic authority.[83] Since he gave no further historical examples that involved rulers and their subjects it would be not too far-fetched to call Gregory VII the first self-acclaimed ecclesiastical 'master of the oath'.[84]

Justifying the Papal Dissolution of Oaths in the Age of the Investiture Controversy

Nonetheless, the pope's power to dissolve oaths became hotly and controversially debated in the years that followed. Several 'Streitschriften' were written,[85] in which historical precedents for the pope's control of the oath were discussed on a broader base of evidence. One of the earliest and most important statements put forward against Gregory VII was made in 1080 by Wenrich, a scholar from Trier, royal supporter and later Bishop of Piacenza. In a letter written in the name of bishop Theoderic of Verdun, and addressed to Gregory VII under the pretext to support the pope,[86] Wenrich emphasized that in accordance with Old and New Testament an oath would have to preserved even against an unjust ruler. Moreover, Wenrich criticized that the pope had not asked the king's subjects whether they wanted to become released from their oath or not, but simply declared their oaths dissolved and void. Wenrich thus raised an important point — could even the highest cleric be responsible for oaths that had been sworn by thousands of individuals as an expression of their own free will?[87]

Another treatise composed in favour of the king is the so-called 'Liber de unitate ecclesiae conservanda', probably written by a monk of the monastery of Hersfeld in the late eleventh century.[88] The author quoted

83 Gregory VII, *Second Letter to Hermann of Metz* (1081), ed. by Caspar, No. VIII, 21, pp. 547–48 and 554.

84 See Weinfurter, 'Die Päpste als "Lehnsherren"', pp. 35–36.

85 See most recently, Spahn, *Die Bibel als Norm?*; Nix, *Widerständiges Wissen*.

86 *Epistola sub Theoderici episcopi Virdunensis nomine composita*, ed. by Francke, pp. 284–99. For a comprehensive discussion, see Melve, *Inventing the Public Sphere*, I, pp. 281–346.

87 *Epistola sub Theoderici episcopi Virdunensis nomine composita*, ed. by Francke, c. 6, pp. 293–96.

88 *Liber de unitate ecclesiae conservanda*, ed. by Schwenkenbecher, pp. 184–284. On this text, see

both the historical precedent referred to by Gregory in his second letter to Hermann of Metz, as well as his emphasis on the power conferred by God on St Peter to bind and dissolve.[89] But looking at Gregory's letter from some distance, the author says that the oath is a holy sacrament, a sacred sign making invisible things visible, which is why not even the pope was allowed to dissolve it. In addition, he discussed Old and New Testament references to the oath, as well as the prohibition to swear and finally added a long historical excursus in order to refute Gregory's argument about the last Merovingian, saying that Childeric III in fact was only king by name, while the mayors of the palace exercised royal power. This eventually led him to admonish his readers: 'Consider this series of historical events and look carefully, if you can find any evidence that the Roman pontiff actually dissolved the Franks from their oath at all — for such a sacrament of faith, a *sacramentum fidei*, as is proved by the Holy Scripture, nobody is allowed to dissolve, unless he wants to make the dissolved person a liar, a perjurous and thus a condemned'.[90] Indeed there was an outcry among the king's supporters, among them many clerics, who said that in dissolving the oath the pope introduced perjury on a hitherto unseen scale into society. And for any theologian interested in the character of sacraments, an oath that was to be regarded as a *sacramentum* could not easily be solved or made void by a human being, not even the pope.[91] And historically, the author countered Gregory's argument by stating that the popes Zachary and Stephen did not absolve the Franks from their oath of fidelity towards the Merovingian king, but only gave their consent to a decision taken by Frankish princes.

Wido, who became bishop of Osnabrück in 1093, wrote a treatise in 1085 on the controversy between Hildebrand and the emperor Henry IV which is preserved today in substantial excerpts.[92] Wido emphasized that the election of the pope needed to be confirmed by the king and thus regarded the election of Gregory VII as invalid,[93] and like the author of the 'Liber de unitate ecclesiae conservanda', he believed that Gregory's dissolving of subjects' oaths sworn to King Henry was an act against God's mandate; quoting a council held at Toledo, he emphasized that

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Nix, *Widerständiges Wissen*, pp. 34–99.

89 Most important passages related to this topic: *Liber de unitate ecclesiae conservanda*, ed. by Schwenkenbecher, I. 2, 4, and 16; II, 34; III, 2, pp. 186, 188–90, 208–09, 260–61, and 283. On the issue of oaths in this treatise see the study by Affeldt, 'Königserhebung Pippins und Unlösbarkeit des Eides'.

90 *Liber de unitate ecclesiae conservanda*, ed. by Schwenkenbecher, c. 16, p. 209; see also *Liber de unitate ecclesiae conservanda*, ed. by Schwenkenbecher, c. 15, p. 208.

91 See also Prodi, *Das Sakrament der Herrschaft*, p. 108.

92 Wido of Osnabrueck, *Excerpta ex Widonis Osnabrugensis libro de controversia inter Hildebrandum et Heinricum imperatorem*, ed. by von Heinemann. On this text, see also Melve, *Inventing the Public Sphere*, pp. 342–46.

93 Wido of Osnabrueck, *Excerpta ex Widonis Osnabrugensis libro de controversia inter Hildebrandum et Heinricum imperatorem*, ed. by von Heinemann, pp. 465–68.

even a person who has sworn a bad oath needs to undertake a qualified penance for it: even King Zedekiah of Judah who had sworn fidelity to King Nebuchadnezzar was given into Babylonian captivity and died there because he had despised the oath he had sworn to Nebuchadnezzar in the name of his Lord.[94] Hildebrand, Wido argued, had made a multitude of Henry's subjects perjurious and thus had deservedly lost the pontifical privilege he abused.[95]

As we have seen from his letters, Gregory VII could only furnish one example as a precedent for what he had thought of in 1075 and put into effect in 1076. As was so often the case, Gregory took the first major step forward, but left it to his supporters to find an *ex post* historical justification for his action. However, there were not too many other examples for the dissolution of an oath sworn to a ruler, as it took considerable historical knowledge to go beyond the case of Pippin and the last Merovingians. The most learned supporter of Gregory VII's mission was Manegold of Lautenbach, who in a letter dedicated to archbishop Gebhard of Salzburg written in 1085 discussed at length the issue of oaths and perjury, quoting authorities ranging from the church fathers to Isidore of Seville and even to the 'De divortio' written by Hincmar of Reims.[96] In this treatise he tried to refute the arguments put forward by Wenrich of Trier and strongly argued for the possibility that an unjust ruler could, and indeed has to, be deprived from his office.[97] The dissolution of oaths, intimately connected to this topic, figures prominently in his work, which Manegold presented as a historical precedent for the above-mentioned case of Louis II, and which he quoted liberally from the chronicle of Regino of Prüm.[98] However, this had been a ruler's oath, and not even an oath of loyalty. For this specific type of oath, there was only one historical model Manegold of Lautenbach could resort to, as his intimate knowledge of canon law made him turn his attention to the councils held in seventh-century Toledo under Visigothic rule. Drawing on this material, Manegold quoted (under the wrong number) the decision taken by fifty-two bishops present at the Eighth Council of Toledo in 653.[99] It is here where Manegold of Lautenbach found a drastic argument in favour of the episcopate's power to dissolve the oaths sworn to a ruler:

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94 Wido of Osnabrueck, *Excerpta ex Widonis Osnabrugensis libro de controversia inter Hildebrandum et Heinricum imperatorem*, ed. by von Heinemann, p. 470.

95 Wido of Osnabrueck, *Excerpta ex Widonis Osnabrugensis libro de controversia inter Hildebrandum et Heinricum imperatorem*, ed. by von Heinemann, p. 470.

96 Manegold of Lautenbach, *Liber ad Gebehardum*, ed. by Francke.

97 Cf. Fuhrmann, 'Volkssouveränität und Herrschaftsvertrag bei Manegold von Lautenbach'.

98 Manegold of Lautenbach, *Liber ad Gebehardum*, ed. by Francke, c. 48, p. 393. See section on Louis II of Italy and Pope Hadrian II, pp. 347–49 above. For Regino, see above, n. 59.

99 Manegold of Lautenbach, *Liber ad Gebehardum*, ed. by Francke, c. 49, p. 397. On the eighth council of Toledo (853), see above, Section 3.

> Absit etiam, si publicis sacramentorum gestis, quod Deus avertat, a quibuslibet illicita vel non bona extitisset conditio alligata, que aut iugulare animam patris aut agere compelleret stuprum sanctissime virginis, numquid non tollerabilius esset stulte promissionis reicere notam, quam per illicitam promissorum custodiam exhorrendam criminum inplere mensuram?
>
> (Let it be far from our hearts, but consider if in the administration of public oaths, what God may avert, an illicit or bad condition has been tied up by certain persons, which would coerce one to dagger one's father's soul or to inflict desecration upon a most holy virgin: Would it really be less tolerable to reject the mark of such a stupid promise than to fulfil the terrible measure of crimes by keeping illicit promises?)[100]

Earlier in his work, Manegold was particularly attracted by another Visigothic incident dealt with above, the twelfth synod of Toledo assembled by King Ervig and held in 681:[101]

> Similiter etiam Wamba Hispaniarum rex ab episcopis tonsuratus ad agendam penitentiam includitur, et Ervigius in regnum subrogatus ab eisdem regali unctione consecratur. Unde et sacramenta eidem Wambae exhibita in tercio decimo Toletano concilio ab LI episcopis celebrato sunt resoluta, ubi inter cetera decernitur ita: 'Dignum satis nostro cetui visum est, ut predictis difinitionibus scripturarum nostrorum omnium confirmatio apponatur, ut, qui ante tempora in ocultis [Dei] iuditiis prescitus est regnaturus, nunc manifesto in tempore generaliter omnium sacerdotum habeatur difinitionibus consecratus. Et ideo soluta manus populi ab omni vinculo iuramenti, quae praedicto viro Wambe, dum adhuc regnum teneret, alligata permansit, hunc solum serenissimum Ervigium principem obsequendi gratia servitutis famulatu sequitur et libera, quem et divinum iuditium in regno praelegit et totius populi amabilitas exquisivit'.
>
> (In the same manner also Wamba, the king of the Spanish was tonsured by the bishops and became locked up for performing penance, and Ervig, who was subsequently chosen king to the kingdom, was consecrated by the same bishops through royal anointing. For this reason also the oaths sworn to Wamba were dissolved at the 12th council of Toledo, celebrated by 51 bishops, where among other things this was decided: 'It was deemed sufficiently worthy to our assembly, to add to the aforementioned definitions of scriptures a confirmation made by all of us, that he, who ahead of time in the

100 Manegold of Lautenbach, *Liber ad Gebehardum*, ed. by Francke, c. 49, p. 397.

101 See the section on oaths in Visigothic Spain, pp. 339–45 above.

> secret judgements (of God) is foreknown to reign, right now through the definitions of all priests should be held in general as consecrated. Therefore, after the hand of the people has been absolved from all binding oaths, which (hand) for the aforementioned Wamba, as long as he held kingship, had remained bound, (the people) in grateful and voluntary service of servitude follow this most serene prince Ervig alone, whom divine judgement preselected for kingship and who was chosen by the amiability of the whole people.')[102]

For Manegold, despite his intention to justify Pope Gregory VII's actions, episcopal *consensus* established at councils[103] could serve as an instrument to loosen political oaths, as he carefully selected material from the Visigothic councils transmitted to him by the *Collectio canonum Hispana* or by the *decretum* of Burchard of Worms.

Manegold's addressee, archbishop Gebhard of Salzburg, also wrote — like Gregory VII — a treatise to bishop Hermann of Metz, in which he discussed the issue of dissolving oaths at length and arrived at the conclusion that there are cases in which it is not advisable to keep an oath.[104] Moreover, Gebhard regarded the deposition of the ruler as automatically absolving his subjects from their oaths, while the power to bind and loose gave the pope a means to remedy their sin. But Manegold was thinking in particular of the bishops here who had sworn an oath of fidelity towards Henry IV, but also an oath of obedience to the pope which should be regarded as a higher value: any sworn declaration given by a bishop had to be in accordance with his status as bishop, and any conflict arising from this should thus be subject to canon law alone.[105]

Conclusion

It is difficult to deal with the topic of the dissolution of political oaths in the early medieval period without having in mind the culmination of debates on this issue in the treatises written during the Investiture Controversy. Still, one should exercise caution in following those lines of historical precedent that were developed by papal supporters in the treatises written in the late eleventh century. After all, the claim in particular that the pope was justified in dissolving unlawful or unjust oaths could not easily be deduced from canon law. As we have seen, it was only the decisions of the Visigothic bishops assembled at Toledo in 653, 681, and 688 that justified the dissolution of oaths sworn to a ruler who was considered unjust or

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102 Manegold of Lautenbach, *Liber ad Gebehardum*, ed. by Francke, c. 29: *Libelli de lite* 1, p. 363–64.

103 On episcopal and synodal *consensus*, see Esders, 'Zwischen Historie und Rechtshistorie', pp. 451–55.

104 Gebhard of Salzburg, 'Letter to Hermann of Metz', ed. by Francke, cc. 23–32, pp. 272–78.

105 Gebhard of Salzburg, 'Letter to Hermann of Metz', ed. by Francke, cc. 28–31, pp. 276–78.

unlawful. But the Visigothic example was one that focused on the role of the bishops assembled at a synod, rather than the pope.

It is true, however, that among the most important preconditions of Gregory VII's ideas on this topic, early medieval bishops and synods had claimed a special responsibility for the legitimate uses of oaths and for the grave sin or crime of perjury, while they concurrently emphasized the quality of the oath as a sacrament. Accepting the oath as a legitimate religious act required some justification, because oath-taking had been forbidden by Christ in the Sermon on the Mount. But the more situations and conditions were fixed over the centuries, in which an oath could be regarded as lawful and even as an act to honour God, and the more perjury evolved as a separate topic in early medieval canon law collections, the more we are in a position to understand why Gregory VII could arrive at such a radical claim as formulated in the 'Dictatus Papae'. Still, it deserves to be emphasized how meagre the evidence for historical precedent actually was.

Since the Latin word *periurium* could mean both perjury and oath-breaking, it is difficult to say what 'dissolving an oath' actually meant in any given situation. There is scant evidence concerning how the dissolution of an oath actually happened, what kind of appurtenant ritual was performed and how the result was communicated to the people. Oaths could not simply be declared void, when so many people had individually obligated themselves by swearing. Moreover, the very idea of dissolving an oath stood in tension with the nature of the oath as an irrevocable sacrament. Theologically, it makes sense to distinguish between attributing to a person a spiritual remedy for committed perjury and a priestly action to dissolve an obligation that was made under oath. Therefore, if we look for an ultimate reference point for the power to dissolve Christian oaths in the latter sense, this needs to be seen in the power to bind and loose. However this power was by no means exclusively reserved for the pope, but was deeply rooted in pastoral care to remedy the sinful behaviour of the believers as placed in the hands of priests and bishops. As for political oaths, synods, based on the idea of episcopal *consensus* and making decisions by divine inspiration, could be a powerful instrument for dissolving oaths. Although popes could become involved in such procedures, it was long time until Gregory VII made this a method of papal intervention in regionally distant relations between rulers and their subjects. Until the eleventh century, interest in this topic rather seems to have been driven by the need to master particularly awkward situations. It was only in the eleventh century that the papacy came to deal with the topic in what may be a called a prospective way. Gregory VII regarded the mastery of the oath as a key element to put his doctrine of Petrine authority into practice. Following a long-term development that had made the handling of oaths a prime matter of canon law, and linking it through the power to bind and loose to Petrine doctrine, Gregory VII clearly saw that royal power ultimately rested upon the oath of loyalty sworn by his followers and subjects. Considering the oath as the ultimate representation

of royal power, it was here that the Pope could intervene powerfully in the complicated fabric of social relations that created political legitimacy. Still, this claim remained controversial, as theologians argued that not even the pope could have the right to induce so many people to commit what many believed to be perjury. Although historically ill-founded, Gregory VII's claim that the papacy should have the ultimate authority to dissolve oaths of loyalty sworn by subjects to their kings provided an important starting point for the development of papal practice regarding this matter in the late medieval period.[106]

106 On the late medieval development and papal doctrine on the dissolution of oaths see Silbernagl, *Die Eides-Entbindung nach dem canonischen Rechte*; Buisson, *Potestas und Caritas*; Helmholtz, 'Religious Principles'.

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