

UNCONSECRATED BURIAL AND EXCOMMUNICATION IN ANGLO-SAXON ENGLAND A REASSESSMENT

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This article investigates the ideologies which underpinned unconsecrated burial in late Anglo-Saxon legal and religious texts. The exclusion of sinners and criminals from Christian cemeteries has typically been interpreted by scholars as a form of excommunication or an attempt to facilitate damnation. However, a reassessment of legislative, diplomatic, and ecclesiastical sources reveals that this was not so. In tenth-century laws and charters, unconsecrated burial was imposed exclusively by secular authorities; it was only prescribed by ecclesiastical authorities from ca. 1000. This suggests that it originated as a temporal punishment but later came to be used as an ecclesiastical sentence. The following analysis of the textual evidence yields two interrelated arguments. First, this article demonstrates that through the mid-eleventh century, unconsecrated burial was a penalty distinct from ecclesiastical excommunication. Where excommunication was imposed upon living sinners, to coerce them to penance, unconsecrated burial was prescribed for the unrepentant or criminal dead, whose actions placed them beyond earthly help. Second, this article contends that written prescriptions for unconsecrated burial differentiated secular from ecclesiastical jurisdictions. Although laymen and clergy collaborated in the dispensation of law and justice throughout the Anglo-Saxon period, the written evidence for unconsecrated burial shows that this penalty fell either under the authority of secular or of ecclesiastical agents, demonstrating a clearer separation between these spheres than is usually recognized in pre-Conquest England.

INTRODUCTION

Unconsecrated burial — that is, the interment of corpses outside of Christian hallowed ground — was first prescribed as a judicial punishment in England during the second quarter of the tenth century, in the laws of King Æthelstan (r. 924/5–939).¹ The promulgation of this law coincided with the emergence of

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¹ The following abbreviations will be employed: Bosworth-Toller = T. Northcote Toller, *An Anglo-Saxon Dictionary Based on the Manuscript Collections of the Late Joseph Bosworth* (Oxford, 1898, repr. 1998); DOE = A. Cameron, A. C. Amos, A. diPaolo Healey et al., eds.,

formal liturgical rites for consecrating cemeteries, and Æthelstan's tenth-century successors continued to prescribe unconsecrated burial at a time when it was becoming increasingly common for the dead to be interred in hallowed ground. Legislative prescriptions for unconsecrated burial were thus intended to deprive offenders of a religious privilege that, by the mid-900s, was both desirable and attainable by much of the Christian population. Accordingly, modern scholars have tended to regard the exclusion of offenders from hallowed ground as a form of excommunication or a penalty designed to facilitate the deceased's damnation.² This interpretation is certainly valid for the eleventh century, when authors drew clear connections between unconsecrated burial and excommunication. Yet no written source provides this rationale before ca. 1000, when unconsecrated burial first started to be described in ecclesiastical texts — that is, at least sixty years after it began to be prescribed in Old English legislation.³ If the practice was in fact akin to excommunication, as has been widely postulated, then it is remarkable that it does not appear in any extant penitential, ecclesiastical curse, or canon law collection before the very end of the tenth century. Instead, for decades after its first appearance in the laws of Æthelstan, unconsecrated burial is attested only in the context of royal authority: all written evidence for the practice before ca. 1000 appears in lawcodes issued by kings and in charter descriptions of laymen administering secular justice under royal supervision. It was not until the turn of the millennium that ecclesiastical authors began to prohibit the interment of sinners in hallowed ground, and it was only from the mid-eleventh century that unconsecrated burial came to be explicitly associated with

Dictionary of Old English: A to I Online (Toronto, 2018), <http://tapor.library.utoronto.ca/doi/>; *Handbook* = Roger Fowler, "A Late Old English Handbook for the Use of a Confessor," *Anglia* 83 (1965): 1–34; S = catalogue number in P. H. Sawyer, *Anglo-Saxon Charters: An Annotated List and Bibliography* (London, 1968). Anglo-Saxon laws from the ninth century onward are cited from F. Liebermann, *Die Gesetze der Angelsachsen*, 3 vols. (Halle, 1903–16), following Liebermann's editorial titles and enumeration. The seventh-century laws of Æthelberht and Wihtred are cited from the edition of Lisi Oliver, *The Beginnings of English Law* (Toronto, 2002), with Liebermann's enumeration in brackets. Translations are my own, unless otherwise noted.

² The link with excommunication was established in a seminal article by E. M. Treharne, "A Unique Old English Formula for Excommunication from Cambridge, Corpus Christi College 303," *Anglo-Saxon England* 24 (1995): 185–211. See also Nicole Marafioti, "Punishing Bodies and Saving Souls: Capital and Corporal Punishment in Late Anglo-Saxon England," *Haskins Society Journal* 20 (2008): 39–57; Bonnie Effros, "Beyond Cemetery Walls: Early Medieval Funerary Topography and Christian Salvation," *Early Medieval Europe* 6 (1997): 1–23; Victoria Thompson, *Dying and Death in Later Anglo-Saxon England* (Woodbridge, 2004), 170–80.

³ By contrast, the requirement that certain offenders be excommunicated appeared in royal lawcodes from the seventh century onward: *Wihtred* 3 and 3.2 [= Liebermann *Wihtred* 3 and 4.1]; *Alfred* 1.7; *I Edmund* 2 and 6; *VII Æthelred* 5; *VIII Æthelred* 41; *Cnut 1020* 16–17; *II Cnut* 39 and 41.1–2.

excommunication in religious texts. Around the same time, unconsecrated burial began to fall out of use as a punishment for secular violations, and its appearance in royal law declined sharply.

Textual sources thus show a clear shift in the way that unconsecrated burial was deployed: it was prescribed by kings and implemented by secular authorities for most of the tenth century, but it was assigned by the clergy as a religious penalty in the eleventh. Although hallowed ground was widely understood to hold religious significance, and although consecrating cemeteries was indisputably an ecclesiastical prerogative, the earliest written evidence demonstrates that kings and secular agents routinely prohibited lawbreakers from being interred in churchyards, well before bishops began to decree that unreconciled sinners be excluded from hallowed ground. Accordingly, we must not assume that the rationale for unconsecrated burial remained stable across the pre-Conquest period, nor that the ideologies that underpinned the practice were self-evident.⁴ Because unconsecrated burial was originally connected with the administration of royal law and secular justice, rather than with ecclesiastical regulation, it is necessary to question whether — or to what extent — excommunication was in fact implicit in this practice.

This article will evaluate the textual evidence for unconsecrated burial in later Anglo-Saxon England and consider how understandings of the penalty evolved through the tenth and eleventh centuries. After an overview of the development of consecrated and unconsecrated burial, I will examine the tenth-century laws of Kings Æthelstan and Edmund, which contain the earliest mentions of unconsecrated burial in any English texts. I will then discuss policies implemented by King Edgar and the early legislation of King Æthelred II, promulgated toward the end of the tenth century, and consider a handful of case studies preserved in tenth-century charters. Finally, I will address eleventh-century treatments of unconsecrated burial in the work of Archbishop Wulfstan II of York and his ecclesiastical successors, a corpus which includes Old English treatises and religious regulations, as well as royal laws issued in the names of Kings Æthelred II and Cnut.

Two arguments will be proposed in the discussion below. First, this article challenges the assumption that unconsecrated burial was inherently linked with excommunication from its earliest appearances in Anglo-Saxon texts. While this association emerges clearly in the eleventh century, it must not be taken for granted in the tenth. The early sources sometimes prescribed excommunication alongside unconsecrated burial, but in such cases these were treated as distinct penalties to be implemented, respectively, by ecclesiastical and secular authorities. At other times, tenth-century sources required unconsecrated

⁴ Helen Foxhall Forbes, *Heaven and Earth in Anglo-Saxon England: Theology and Society in an Age of Faith* (Farnham, 2013), 296–98, 308–9, 313.

burial — without any mention of excommunication — as punishment for mundane offenses that would not ordinarily merit a severe religious penalty. The adaptability of unconsecrated burial, as well as its use by secular authorities before ca. 1000, indicates that its meaning was not yet fixed in this period.

A second argument of this article is that there was a distinction between secular and ecclesiastical jurisdictions in the administration of punishment in tenth- and eleventh-century England. The existence of separate jurisdictions in this period has long been questioned, largely because the laws disseminated by pre-Conquest rulers were so consistently presented as collective agreements by the king, leading bishops, and other secular and ecclesiastical advisors.⁵ Yet although lay and religious leaders collaborated in the production of Anglo-Saxon laws, and although the administration of justice was characterized by cooperation among these groups, the evidence for unconsecrated burial demonstrates that certain judgments and penalties fell distinctly under the authority either of secular or of ecclesiastical actors. This is not to suggest that secular and ecclesiastical jurisdictions were as sharply divided as they would come to be in the later Middle Ages. However, over the course of the tenth and eleventh centuries, there were various opinions about who was qualified to prescribe unconsecrated burial and which types of offenses — that is, sins or secular violations — merited such posthumous treatment. For most of the tenth century, the evidence shows that this penalty was assigned and implemented only by secular agents — kings and lay authorities — and that the clergy exerted little practical control over offenders' remains. By contrast, from the turn of the eleventh century until the Norman Conquest, the penalty was construed as a prerogative of the clergy, rather than secular judges. Therefore, I contend that lawmakers did in fact differentiate

⁵ The participation of ecclesiastical advisors in the compilation of royal lawcodes is acknowledged in the epilogue of *II Æthelstan* and the prologues of *Wihtréd*; *Ine*; *I*, *III*, and *VI Æthelstan*; *I*, *II*, and *III Edmund*; *V* and *VI Æthelred*. In the later tenth and early eleventh centuries, royal law required bishops and ealdormen to preside together over shire courts, enabling secular and ecclesiastical judgments to be issued at a single gathering: *III Edgar* 5.2; *II Cnut* 18.1. For a helpful overview of overlaps between secular and ecclesiastical law and justice in Anglo-Saxon England, see chapter 1 of Richard Helmholz, *Oxford History of the Laws of England*, vol. 1: *Canon Law and Ecclesiastical Jurisdiction from 597 to the 1640s* (Oxford, 2004), especially 17–19, 35–40, 55–58, 60–64. Scholars have traditionally approached the question of secular and ecclesiastical jurisdictions by comparing the Anglo-Saxon evidence with that of post-Conquest and later-medieval England, periods in which spheres of justice were more sharply delineated. However, closer examination of pre-Conquest evidence reveals a consistent distinction between secular and ecclesiastical jurisprudence: see especially Frank Barlow, *The English Church 1000–1066*, 2nd ed. (London, 1979), 137–53 and 232–76; Nicole Marafioti, “Secular and Ecclesiastical Justice in Late Anglo-Saxon England,” *Speculum* 94 (2019): 774–805. Recently, the very idea that legal jurisdictions would have been recognized in Anglo-Saxon England has been questioned: Tom Lambert, *Law and Order in Anglo-Saxon England* (Oxford, 2017), 301–6.

secular and ecclesiastical spheres of justice in late Anglo-Saxon England, as demonstrated by their prescriptions for unconsecrated burial.

The evidence that follows will be evaluated chronologically, to illuminate how the use of unconsecrated burial evolved over time. I do not propose that this evolution was linear, however. The earliest laws, composed between the 920s and the 940s, established unconsecrated burial as a royal prerogative while acknowledging its religious implications. Yet from the 960s through the 990s, royal policies divorced unconsecrated burial from spiritual and ecclesiastical concerns; it was presented in this period as a secular punishment, to be deployed by lay authorities against convicted offenders, like any other corporal penalty prescribed in royal legislation. Nevertheless, narrative accounts indicate that the religious dimensions of unconsecrated burial had not been forgotten. Descriptions in tenth-century charters reveal considerable anxiety surrounding the practice, as friends and families attempted to reclaim condemned bodies or secure them hallowed graves. I propose that this unease — and, perhaps, confusion about what the penalty actually meant — explains a second major shift. Around the year 1000, ecclesiastical authorities claimed Christian burial and its denial as their own prerogative: the privilege of a hallowed grave was now contingent on each individual's spiritual standing rather than the judgment of any layperson. This development led ecclesiastical authors to assert an explicit connection between unconsecrated burial and excommunication for the first time, as the eleventh century progressed.

It is important to recognize, of course, that the written sources provide only a limited picture of how unconsecrated burial functioned in practice. Its implementation surely diverged from the instructions committed to parchment. The handful of narrative sources describe processes that veered from the expectations outlined in prescriptive laws, and the archaeological evidence for exclusionary burial encompasses far more variations on the practice than were presented in any extant text. Accordingly, my focus on the written evidence has a precise objective: to identify and analyze the ideologies that underpinned unconsecrated burial, first in its use as a secular judicial punishment and later as an ecclesiastical penalty. The emergence of textual prescriptions and descriptions in the early tenth century suggests a new need to justify the use of burial as a punishment — a need which persisted over the subsequent 150 years.

BACKGROUND: CONSECRATED AND UNCONSECRATED BURIAL IN ANGLO-SAXON ENGLAND

In tenth-century law, unconsecrated burial was reserved for serious offenders: executed criminals, individuals killed while committing an unlawful act, or those who refused to repent of major sins before their death.⁶ Although such

⁶ The royal lawcodes which mention unconsecrated burial are all discussed in detail below: *II Æthelstan*, *I Edmund*, *I Æthelred*, *III Æthelred*, *IV Æthelred*, and *I–II Cnut*.

miscreants comprised only a small segment of England's population, "deviant" burials are visible in the archaeological record and have attracted considerable scholarly attention.⁷ Recent studies have illuminated the prevalence of execution cemeteries in isolated or border territories, situated well away from the hallowed ground of late Anglo-Saxon churchyards, and these sites seem to confirm that royal laws which mandated unconsecrated burial were more than merely aspirational.⁸ Such sites are attested across much of the Anglo-Saxon period, with the earliest known execution cemeteries dating from the seventh and eighth centuries.⁹ Nevertheless, it was only from the tenth century that English lawmakers began mandating burial practices in written legislation. The first mention of unconsecrated burial in any European text, in one of Æthelstan's lawcodes, decrees that perjurers who refuse penance "shall not be buried in any consecrated cemetery" when they die.¹⁰ This proclamation seems to be born of its time, since rites for consecrating cemeteries first emerged in the tenth century.¹¹ Before this period, burial in hallowed churches or in churchyards was a possibility for some — notably members of the clergy and lay elites — but not an expectation

⁷ For example, Andrew Reynolds, *Anglo-Saxon Deviant Burial Customs* (Oxford, 2009); Annia Kristina Cherryson, "Normal, Deviant and Atypical: Burial Variation in Late Saxon Wessex, c. AD 700–1100," in *Deviant Burial in the Archaeological Record*, ed. Eileen M. Murphy (Oxford, 2008), 115–30; D. M. Hadley, "Burying the Socially and Physically Distinctive in Later Anglo-Saxon England," in *Burial in Later Anglo-Saxon England, c. 650–1100*, ed. Jo Buckberry and Annia Cherryson (Oxford, 2010), 103–15; Jo Buckberry, "Osteological Evidence of Corporal and Capital Punishment in Later Anglo-Saxon England," in *Capital and Corporal Punishment in Anglo-Saxon England*, ed. Jay Paul Gates and Nicole Marafioti (Woodbridge, 2014), 131–48.

⁸ Reynolds, *Deviant Burial*, 155–57, 203–34; Andrew Reynolds, "The Definition and Ideology of Anglo-Saxon Execution Sites and Cemeteries," in *Death and Burial in Medieval Europe: Papers of the "Medieval Europe Brugge 1997" Conference*, vol. 2, ed. Guy De Boe and Frans Verhaeghe (Zellik, 1997), 33–41. Such policies were likely implemented by local authorities as well as by royal agents: Andrew Rabin, "Capital Punishment and the Anglo-Saxon Judicial Apparatus: A Maximum View?" in *Capital and Corporal Punishment in Anglo-Saxon England*, ed. Jay Paul Gates and Nicole Marafioti (Woodbridge, 2014), 181–99.

⁹ Anglo-Saxon execution cemeteries are surveyed in Reynolds, *Deviant Burial*, 96–151, with commentary at 151–79 and 219–27. Exclusionary burial was not limited to executions: see Hadley, "Socially and Physically Distinctive."

¹⁰ "Ne binnon nanum gehalgodum lictune ne ligce": *II Æthelstan* 26, discussed in detail below. See also Helen Gittos, *Liturgy, Architecture, and Sacred Places in Anglo-Saxon England* (Oxford, 2013), 45.

¹¹ Helen Gittos, "Creating the Sacred: Anglo-Saxon Rites for Consecrating Cemeteries," in *Burial in Early Medieval England and Wales*, ed. Sam Lucy and Andrew Reynolds, Society For Medieval Archaeology Monograph Series 17 (London, 2002), 195–208; Gittos, *Liturgy*, 42–49; and below, n. 26. For church-adjacent burial sites before the tenth century, see Dawn M. Hadley and Jo Buckberry, "Caring for the Dead in Late Anglo-Saxon England," in *Pastoral Care in Late Anglo-Saxon England*, ed. Francesca Tinti (Woodbridge, 2005), 121–47 at 126–27 — although the authors emphasize that burial near churches was not universal, neither in this earlier period nor in the tenth century.

for most Christians, who were more likely to be interred in local cemeteries or family plots.¹² Yet in order for the threat of unconsecrated burial to carry weight as a deterrent against illicit behavior, the Christian population must have considered burial in hallowed ground to be a desirable and feasible way to dispose of the dead. Archaeological evidence indicates that churchyard cemeteries became increasingly common in tenth- and eleventh-century England, and it is reasonable that exclusion from hallowed ground came to carry greater stigma during this period.¹³ The perceived efficacy of unconsecrated burial as a judicial punishment is borne out by its regular appearance in royal legislation. After Æthelstan's reign, the practice was prescribed in the lawcodes of Edmund (r. 939–946), Æthelred II (r. 978–1016), and Cnut (r. 1016–35), and it was evidently decreed by Edgar (r. 959–975), as well — that is, every king of England known to have issued written legislation between 925 and the Norman Conquest.

Despite the prevalence of unconsecrated burial in late Anglo-Saxon law and the visibility of deviant burial in the landscape, the legal rationale for posthumous exclusion was never stated explicitly in pre-Conquest sources. Nevertheless, two factors may explain its enduring appeal to lawmakers. First, exclusion from hallowed ground would permanently ostracize an offender from communities of law-abiding individuals. In other words, unconsecrated burial could function after an offender's death in much the same way outlawry or exile might function during his lifetime.¹⁴ The most extravagant manifestations of this logic can be identified in execution cemeteries, where criminals' bodies were not simply separated from the pious dead but denied the respectful burials that their law-abiding counterparts

¹² For the variety of burial practices in England before the tenth century, see Donald Bullough, "Burial, Community, and Belief in the Early Medieval West," in *Ideal and Reality in Frankish and Anglo-Saxon Society: Studies Presented to J. M. Wallace-Hadrill*, ed. Patrick Wormald (Oxford, 1983), 177–201; Jo Buckberry, "Cemetery Diversity in the Mid to Late Anglo-Saxon Period in Lincolnshire and Yorkshire," in *Burial in Later Anglo-Saxon England, c. 650–1100*, ed. Jo Buckberry and Annia Cherryson (Oxford, 2010), 1–25; D. M. Hadley, "Burial Practices in Northern England in the Later Anglo-Saxon Period," in *Burial in Early Medieval England and Wales*, ed. Sam Lucy and Andrew Reynolds, Society for Medieval Archaeology Monograph 17 (London, 2002), 209–28, especially 211–14; D. M. Hadley, "Burial Practices in the Northern Danelaw, c. 650–1100," *Northern History* 36 (2000): 199–216, especially 202–12; John Blair, *The Church in Anglo-Saxon Society* (Oxford, 2005), 59–63; Foxhall Forbes, *Heaven and Earth*, 273–78; Thompson, *Dying and Death*, 27–35; Gittos, *Liturgy*, 51–52.

¹³ Blair, *Church*, 463–66; Gittos, *Liturgy*, 52–53. Even with the rise of churchyard burial, the practice was not universal and earlier cemeteries remained in use: Hadley, "Burial in Northern England," 214–19 and 221–23; Cherryson, "Normal, Deviant"; Buckberry, "Cemetery Diversity."

¹⁴ Bryan Carella, "The Earliest Expression for Outlawry in Anglo-Saxon Law," *Traditio* 70 (2015): 111–43. Outlawry and excommunication might be issued together or in sequence, as Carella shows; and compare also *Cnut* 30 and 41.1–2, discussed by Treharne, "Old English Formula" (n. 2 above), 193–95.

enjoyed: corpses might be dumped together in burial pits, crammed into too-small graves, exposed to the elements, or prominently displayed as they rotted.¹⁵ While such treatment may have been particularly attractive to legislators, since a desecrated body could serve as a warning to living miscreants, unconsecrated burial also took less conspicuous forms. A corpse might be buried or abandoned in an isolated area, or submerged in a swamp or body of water.¹⁶ It is also possible that a dead offender would be allowed a respectful burial near his home or a church, even if his remains were prohibited from hallowed ground.¹⁷ In any of these scenarios, the non-normative disposal of a body could memorialize the deceased's offense and confirm his social exclusion.¹⁸ It might also negatively affect his survivors. From the tenth century, royal lawcodes anticipated that relatives would go to great expense to recover a kinsman's body from unconsecrated ground, suggesting that exclusionary burial would bring social, legal, or financial burdens upon a dead offender's family.¹⁹

The second factor which likely made unconsecrated burial appealing to legislators was religious: the condemned would be excluded from hallowed ground and, by extension, from the communities of pious Christians buried therein.²⁰ In royal law, this principle seems to be justified by the idea of legally protected ecclesiastical space.²¹ Churches were granted special privileges in Anglo-Saxon lawcodes from the seventh century onward, and even if these laws were initially meant to

¹⁵ Reynolds, *Deviant Burial*, 159–79; Reynolds, “Definition and Ideology”; Hadley and Buckberry, “Caring for the Dead,” 128–30; Buckberry, “Osteological Evidence”; Nicole Marafioti and Jay Paul Gates, “Introduction,” in *Capital and Corporal Punishment*, ed. Jay Paul Gates and Nicole Marafioti (Woodbridge, 2014), 1–16 at 7–9.

¹⁶ High-profile examples include the secretive burial of the body of King Edward “the Martyr” after his 978 assassination and the disposal of King Harold Harefoot's remains in a swamp in 1040: Nicole Marafioti, *The King's Body: Burial and Succession in Late Anglo-Saxon England* (Toronto, 2014), and see further below. Compare also S935 and S1377.

¹⁷ Ecclesiastical regulations sometimes denied a dead offender posthumous prayer but allowed him respectful burial. For example, the *Collectio Canonum Hibernensis* prohibits prayers for a clergyman killed while committing violence, but “still, he should not be deprived of burial” [sepultura tamen non privetur]: the text is edited by Hermann Wasserschleben, *Die irische Kanonensammlung* (1885; repr. Leipzig, 1966), 157, at xl.15.c. This canon was adapted in England by Abbot Ælfric of Eynsham and Archbishop Wulfstan of York in the eleventh century: Bernhard Fehr, *Die Hirtenbriefe Ælfrics* (1914; repr. Darmstadt, 1966), 55, at 2.178; J. E. Cross and Andrew Hamer, *Wulfstan's Canon Law Collection* (Cambridge, 1999), 20, 98, 167, at A.75 and B.159.

¹⁸ For execution cemeteries as commemorative sites, see Howard Williams, *Death and Memory in Early Medieval Britain* (Cambridge, 2006), 89–90.

¹⁹ *III Æthelred* 7–7.1 (discussed below); and compare L. J. Downer, *Leges Henrici Primi* (Oxford, 1972), 230–31, at 74.1–74.1c.

²⁰ For the possibility that such separation was a response to spiritual pollution, see Lambert, *Law and Order* (n. 5 above), 222–23; and see also below, n. 28.

²¹ Wendy Davies, “‘Protected Space’ in Britain and Ireland in the Middle Ages,” in *Scotland in Dark Age Britain*, ed. Barbara E. Crawford (St. Andrews, 1996), 1–19. For protected

buttress ecclesiastical policy, they established kings as legitimate guardians of religious sites.²² By the ninth century, royal law extended sanctuary protections to any church which had been consecrated by a bishop, a policy which linked legal privileges to liturgical ritual.²³ In the early tenth century, Æthelstan's prohibition of consecrated burial focused on the placement of the offender's corpse, requiring that it not be placed within the boundaries of a consecrated cemetery — thereby expanding the geographical scope of legally designated sacred space, from ecclesiastical buildings to a wider range of church grounds.²⁴ According to the logic of these lawcodes, a body that was denied a hallowed grave would not enjoy the legal protections attached to consecrated ground but would be left vulnerable to disturbance or desecration.²⁵

However, it was the liturgical rite of consecration, not the decrees of royal law, which gave hallowed cemeteries their distinctive status, and the spiritual

ecclesiastical space more generally, see Barbara H. Rosenwein, *Negotiating Space: Power, Restraint, and Privileges of Immunity in Early Medieval Europe* (Ithaca, 1999).

²² See especially *Æthelberht* 1, 6 [= Liebermann, *Æthelberht* 1].

²³ *Alfred* 5. Not all protected ecclesiastical space provided sanctuary: Davies, "Protected Space," 7–8, 12–13.

²⁴ *II Æthelstan* 26: n. 10 above and see further below. Æthelstan was credited with granting special sanctuary rights to numerous churches and their estates: Davies, "Protected Space," 9; T. B. Lambert, "Spiritual Protection and Secular Power: The Evolution of Sanctuary and Legal Privilege in Ripon and Beverley, 900–1300," in *Peace and Protection in the Middle Ages*, ed. T. B. Lambert and David Rollason (Durham, 2009), 121–40 at 128–31.

²⁵ The brief legal treatise *Wulfstan* (ca. 1000), which explains how to refute charges of plundering the dead, may have been intended to address grave-robbing: this interpretation is offered by Patrick Wormald, *The Making of English Law* (Oxford, 1999), 371–72. Penances for violating or robbing graves are included in Continental penitentials known in England by the tenth or eleventh centuries: see for example the penitential of Haltigar, ed. Hermann Joseph Schmitz, *Die Bussbücher und die Bussdisciplin der Kirche*, vol. 1 (Mainz, 1883), 478, chap. 29; the penitential of Bede-Egbert, ed. Hermann Joseph Schmitz, *Die Bussbücher und die Bussdisciplin der Kirche*, vol. 2: *Die Bussbücher und das kanonische Bussverfahren* (Düsseldorf, 1898), 681, chap. 16; and the penitential of Theodore, ed. F. W. H. Wasserschleben, *Die Bussordnungen der abendländischen Kirche* (Halle, 1851), 592, chap. 23.14. For knowledge of these texts in England, see Allen J. Frantzen, *Literature of Penance in Anglo-Saxon England* (New Brunswick, 1983), 107–10 and 130–37; Carine van Rhijn and Marjolijn Saan, "Correcting Sinners, Correcting Texts: A Context for the Paenitentiale Pseudo-Theodori," *Early Medieval Europe* 14 (2006): 23–40. See also penances for violating graves in Cross and Hamer, *Wulfstan's Canon Law*, 84–85 at A.44. Despite these provisions, there is considerable evidence for grave disturbance in churchyards: Annia Kristina Cherryson, "Disturbing the Dead: Urbanisation, the Church and the Post-Burial in Treatment of Human Remains in Early Medieval Wessex, c. 600–1100 AD," *Anglo-Saxon Studies in Archaeology and History* 14 (2007): 130–42. The disturbance of graves in early medieval England is discussed more generally by Alison Klevnäs, "Overkill: Reopening Graves to Maim the Dead in Anglo-Saxon England," in *Limbs, Bones, and Reopened Graves in Past Societies*, ed. L. Gardela and K. Kajkowski (Bytów, 2015), 177–213; Thompson, *Dying and Death* (n. 2 above), 110–11.

protections created through ecclesiastical ritual were believed to have weightier long-term implications than any legal privilege. Latin rites for cemetery consecration were first recorded in England in the late tenth century, although the practice probably originated some decades before.²⁶ The earliest extant formula invokes divine favor for individuals interred within a consecrated cemetery — that is, “those who have received the sacrament of baptism and who are persistent in the catholic faith until the end of their life” — and asks God to protect the Christian dead from harm and corruption:²⁷

Once the peaceful bodies of your male and female servants have entered this cemetery, may you grant, o benevolent benefactor, the burial place protection from every incursion of evil spirits, so that after the resurrection of unified body and soul they may be worthy of receiving eternal blessedness, by your gift and permission. ... We entreat that you deign to keep, protect, and bless this cemetery of your saints from every filth and defilement of impure spirits, and that you do not cease to grant perpetual purity to the human bodies brought to this place.²⁸

²⁶ Gittos, *Liturgy* (n. 10 above), 45–51; Gittos, “Creating the Sacred” (n. 11 above), 201.

²⁷ “Quicumque baptismi sacramentum perceperint. et in fide catholica usque ad uitę terminum perseuerantes fuerint.” This passage is transcribed from the tenth-century Egbert Pontifical: H. M. J. Banting, *Two Anglo-Saxon Pontificals (the Egbert and Sidney Sussex Pontificals)*, HBS 104 (London, 1989), 58, with commentary at xi–xii and xv–xvii. The passage also appears in other early English recensions of the cemetery consecration rite: the tenth-century Dunstan Pontifical, the late tenth-century pontifical known as the Benedictional of Archbishop Robert, and the tenth- or early eleventh-century Claudius Pontifical I: Marie A. Conn, “The Dunstan and Brodie (Anderson) Pontificals: An Edition and Study” (Ph.D. thesis, Notre Dame, 1993), 78; H. A. Wilson, *The Benedictional of Archbishop Robert*, HBS 24 (London, 1903), 102; D. H. Turner, *The Claudius Pontificals (from Cotton MS. Claudius A. iii in the British Museum)*, HBS 97 (London, 1971), 61. The rite is included in five recensions of the Romano-Germanic Pontifical edited by Cyrille Vogel and Reinhard Elze, *Le Pontifical romano-germanique du dixième siècle*, 3 vols. (Vatican City, 1963), 1:193, no. 54; it also appears in the tenth-century sacramentary of Ratoldus, edited by Nicolas Orchard, *The Sacramentary of Ratoldus (Paris, Bibliothèque Nationale de France, lat. 12052)*, HBS 116 (London: 2005), 30–31. For surveys of English and Continental cemetery consecration rites, see Gittos, *Liturgy* (n. 10 above), 42–51; Gittos, “Creating the Sacred” (n. 11 above), 195–200.

²⁸ “Famulorum famularumque. tuarum corporibus in hoc cimiterium intransibis quietis sedem ab omni incursione malorum spirituum et tutelam benignus largitor tribuas. ut post animarum corporumque resurrectionem coadunatam. te donante atque concedente beatitudinem sempiternam percipere mereantur... Te flagitamus ut hoc sanctorum tuorum cimiterium ab omni spurcicia et inquinamento spirituum immundorum custodire. mundare. et benedicere digneris atque corporibus humanis huic loco aduenientibus sinceritatem perpetuam tribuere non desinas.” This passage is transcribed from the Egbert Pontifical, in Banting, *Two Anglo-Saxon Pontificals*, 58; and see the corresponding passages in Conn, “Dunstan and Brodie,” 77–78; Wilson, *Archbishop Robert*, 101–2; Turner, *Claudius Pontificals*, 60–61; Vogel and Elze, *Pontifical romano-germanique*, 1:192–93, no. 54; Orchard, *Ratoldus*, 30.

These requests for protection focus on human bodies (“corporibus humanis”) and the physical space in which they are to be placed (“cymiterium,” “sedem,” “loco”), yet the professed danger comes from evil spirits, who might injure or defile the dead. The vocabulary used for spiritual incursion (“incursione”) and pollution (“inquinamento”) might be applied as easily to human intruders as to malicious spirits, and these exhortations imply that evil forces could hinder a Christian’s salvation if his corpse were left without divine protection. Still, the consecration rite is not exclusively comprised of defensive prayers. Requests for protection are coupled with entreaties for divine favor:

O God, in whose mercy the souls of the faithful rest, assign your angel as guardian to this cemetery, and grant, gracious one, that all of those whose bodies are buried here may rejoice in a soul absolved from every sorrow, without end.²⁹

This rhetoric implies that individuals interred in consecrated churchyards would be well positioned to receive divine mercy in the afterlife, with a likelihood of absolution and salvation. According to this reasoning, excluded offenders were not simply separated in death from the community of the faithful; they also forfeited the posthumous spiritual protections and privileges that Christians might ordinarily claim. Liturgical rites for consecrating churchyards affirmed that hallowed burial was beneficial to the soul, and it is reasonable that the inverse was also true: that individuals deprived of consecrated graves faced a spiritual disadvantage in the afterlife. A person interred in unconsecrated ground lacked the Church’s protection in this world and the next; he was left to face God alone.

Unconsecrated burial has been widely linked in modern scholarship with excommunication: the formal separation of an incorrigible sinner from the Church and its rituals, implemented through a liturgical curse.³⁰ Because those who died in excommunication were generally believed to be condemned to hell in the afterlife, some recent studies of have postulated that unconsecrated burial was designed to facilitate the deceased’s damnation.³¹ Yet in the tenth

²⁹ “Deus cuius miseratione animae fidelium requiescunt. huic cymiterio angelum tuum deputes custodem. et da propitius ut omnium quorum hic corpora sepeliantur. animae absolutae ab omni dolore sine fine letentur.” This passage appears only in some recensions: the Latin is transcribed from Wilson, *Archbishop Robert*, 102; and see the corresponding passage in Conn, “Dunstan and Brodie,” 79.

³⁰ This definition applies to excommunication in later Anglo-Saxon England: Treharne, “Old English Formula” (n. 2 above), 189–99; Sarah Hamilton, “Remedies for ‘Great Transgressions’: Penance and Excommunication in Late Anglo-Saxon England,” in *Pastoral Care in Late Anglo-Saxon England*, ed. Francesca Tinti (Woodbridge, 2005), 83–105 at 94–102. For a longer historical view and descriptions of less formal modes of excommunication in the early Christian and early medieval period, see Elisabeth Vodola, *Excommunication in the Middle Ages* (Berkeley, 1986), 7–20.

³¹ See n. 2 above. For a nuanced reevaluation of this interpretation, see Foxhall Forbes, *Heaven and Earth* (n. 4 above), 294–313.

century, when unconsecrated burial was first prescribed in royal law, its association with excommunication or damnation must not be taken for granted. Patristic tradition held that the adverse treatment of a body could not injure the soul, and this position is antithetical to the idea that burial outside hallowed ground could, in itself, hinder a person's salvation.³² That said, it had long been recognized that burial at holy sites — notably among the saints (*ad sanctos*), or within or beside churches — could be spiritually beneficial, just as prayers and masses for the dead were believed to advance their prospects in the afterlife.³³ Although such efforts did not guarantee salvation, since judgment was left ultimately to God, early medieval authors asserted that burial at holy sites, like posthumous prayer, was advantageous to the soul. Accordingly, it was believed that such treatment should be reserved exclusively for the pious dead, who deserved spiritual assistance because of their virtuous lives. Gregory the Great argued that it was worthless to bury the sinful *ad sanctos*, since they would derive no benefit from holy ground; moreover, those who allowed such burials to take place would be sinning in their own right, by exalting the impious.³⁴ Carolingian ecclesiastics embraced similar views. Bishop Theodulf of Orléans (died 821)

³² Especially Augustine, *De cura pro mortuis gerenda*, ed. Joseph Zycha, CSEL 41 (Vienna, 1900), 4.8 (633–34), 8.10 (636–38), 18.22 (658). Augustine's position is summarized in the Old English *Scrifboc*, ed. Robert Spindler, *Das altenglische Bussbuch (sog. Confessionale pseudo-Egberti), ein Beitrag zu den kirchlichen Gesetzen der Angelsachsen* (Leipzig, 1934), 189–90 at 25b–c. Compare also R. D. Fulk and Stefan Jurasinski, *The Old English Canons of Theodore*, EETS s.s. 25 (Oxford, 2012), 14 at A.137. For commentary, see Foxhall Forbes, *Heaven and Earth* (n. 4 above), 267–69; Effros, “Beyond Cemetery Walls” (n. 2 above), 6–7; Éric Rebillard, *The Care of the Dead in Late Antiquity*, trans. Elizabeth Trapnell Rawlings and Jeanine Routier-Pucci (Ithaca, 2009), 85–88.

³³ Augustine, *De cura pro mortuis gerenda*, 4.16 (629–31) and 18.22 (658–59); Gregory the Great, *Dialogues*, ed. Adalbert de Vogüé and Paul Antin, *Grégoire le Grand: Dialogues*, tome III (*livre IV*), SC 265 (Paris, 1980), 176, at iv.52. For development of burial *ad sanctos*, see Peter Brown, *The Cult of the Saints: Its Rise and Function in Latin Christianity* (Chicago, 1981); Foxhall Forbes, *Heaven and Earth* (n. 4 above), 266–71. See also Deborah Mausekopf Deliyannis, “Church Burial in Anglo-Saxon England: The Prerogative of Kings,” *Frühmittelalterliche Studien: Jahrbuch des Instituts für Frühmittelalterforschung der Universität Münster* 29 (1995): 98–119.

³⁴ Gregory indicates that sinners would compound their sin through church burial; he also recounts divine punishments suffered by clergymen who buried sinners in churches: Gregory, *Dialogues*, 176–84, at iv.52–56. These chapters were accessible in England by the tenth century, as they are summarized in the *Hibernensis* and translated in the Old English version of the *Dialogues*: *Wasserschleben, Irische Kanonensammlung* (n. 17 above), 58–59, at xviii.8; Hans Hecht, *Bischofs Wærferth von Worcester Übersetzung der Dialoge Gregors des Grossen* (Leipzig, 1900), 339–42, at iv.52–56. Compare also Gregory, *Dialogues*, 188–94, at iv.57, in which Gregory orders and later rescinds exclusionary burial for a monk who hoarded gold; the Old English is in Hecht, *Bischofs Wærferth*, 344–46. See also Foxhall Forbes, *Heaven and Earth* (n. 4 above), 269–71; Effros, “Beyond Cemetery Walls” (n. 2 above), 2–4.

decreed that only priests and the just (“*iusti hominis*”) were worthy of burial in churches, while the 813 Council of Mainz ruled that no bodies were to be interred in a church unless they belonged to members of the clergy or faithful laypeople (“*fideles laici*”).³⁵ In England, the seventh-century Penitential of Theodore went a step further, instructing that the remains of any pagan (“*paganus*”) or gentile (“*gentiles*”) be thrown out of consecrated churches and decreeing that Christian altars must not be consecrated if bodies of the unfaithful (“*infidelium*”) were buried nearby.³⁶ These texts assert that sinful corpses were unworthy of burial among the virtuous and could pollute sacred space, but it does not necessarily follow that burial location in itself had the power to effect either damnation or salvation.³⁷ Rather, in the centuries before the rise of consecrated cemeteries, church burial was construed by early medieval authors as a desirable privilege, which might give the souls of good Christians further help in the afterlife but which would offer no benefit to sinners. Like canonical mandates to withhold prayer from the impious, exclusion from consecrated burial would deprive sinners of a spiritual advantage which might profit the faithful.³⁸

By the tenth century, however, Continental authors had begun to construe exclusionary burial not simply as a loss of privilege but as an element of spiritual punishment, as the practice became formally associated with excommunication.³⁹ The key to this connection was the fact that excommunication was, fundamentally, medicinal: it was intended to pressure obstinate sinners to repent of their misdeeds and submit to ecclesiastical correction, by threatening terrible

³⁵ Hans Sauer, *Theodulfi Capitula in England* (Munich, 1978), 314, chap. 9. The vernacular version, preserved in two eleventh-century manuscripts, renders the Latin “*iusti hominis*” as Old English “*rihtwis læwede*,” “righteous layman”: Sauer, *Theodulfi*, 315, chap. 9; and compare the adaptation of Theodulf’s passage by Wulfstan of York, in Roger Fowler, *Wulfstan’s Canons of Edgar*, EETS 266 (London, 1972), 8–9, chap. 29. The 313 Council of Mainz is edited by Albertus Werminghoff, *Concilia Aevi Karolini*, MGH *Conc.* 2.1 (Hanover, 1906), 272, at 36.iii; and see Deliyannis, “Church Burial,” 105–6.

³⁶ Arthur West Haddan and William Stubbs, *Councils and Ecclesiastical Documents Relating to Great Britain and Ireland* (Oxford, 1871), 3:190–91, at II.i.4–5, and 3:211, at Appendix 5; the text is attributed to Archbishop Theodore of Canterbury (r. 668–690). Alternatively, Theodulf of Orléans held that earlier generations of dead should not be expelled from churches: Sauer, *Theodulfi Capitula*, 314–15, chap. 9.

³⁷ Foxhall Forbes, *Heaven and Earth* (n. 4 above), 308–9.

³⁸ N. 17 above. Compare also Haddan and Stubbs, *Councils*, 3:194, at II.v.8; Spindler, *Altenglische Bussbuch*, 189, at 25a.

³⁹ References to excommunication are preserved in church councils from the fourth century onward, but it was only toward the late ninth century that rituals for excommunication began to coalesce: Genevieve Steele Edwards, “Ritual Excommunication in Medieval France and England, 900–1200” (Ph.D. diss., Stanford University, 1977), 13–17, and see 97–98 for a list of formulae which mention exclusion from Christian burial.

consequences in this life and the next.⁴⁰ Accordingly, although excommunication formulae conceded that a sinner could escape torment if he repented, their threats needed to be sufficiently dire in order to be effective. The earliest known excommunication rite, promulgated at Reims in 900, concludes its list of curses by delineating how excommunicants must be treated if they should die in their sin:

Let no priest ever celebrate masses, or — even if they are sick — receive their confession, or ever presume to give them holy communion, unless they return to their senses, even at the very end of life; but let them be given an ass's burial and be placed on a dung-heap upon the face of the earth; and let them be an example which may demonstrate cursing to the present generation and to future ones.⁴¹

This passage presents exclusionary burial as a corollary to excommunication, which would ensure that an unrepentant sinner would be deprived of salvific rites and privileges in death as well as in life. The rhetoric of the Reims formula was adapted by Regino of Prüm (died 915), who included four excommunication formulae in his canon law collection, the most terrible (“*terribilior*”) of which echoed the Reims formula: excommunicants were to “be given an ass's burial and be placed on a dung-heap upon the face of the earth.”⁴² Regino's succinct phrasing would subsequently be reproduced in redactions of the Romano-German Pontifical, as well as in the canonical compilations of Burchard of Worms, Ivo of Chartres, and Gratian.⁴³ These later adaptations follow Regino's example by making no reference to the body's use as an example to the living (a departure from the Reims formula) but treating exclusionary burial simply as a consequence of excommunication. Another early rite, falsely attributed to

⁴⁰ For medicinal excommunication and distinctions between excommunication and anathema, see Vodola, *Excommunication* (n. 30 above), 5–16; Lester K. Little, *Benedictine Maledictions: Liturgical Cursing in Romanesque France* (Ithaca, 1993), 30–33; Treharne, “Old English Formula” (n. 2 above), 189–90. Compare Edwards, “Ritual Excommunication,” 35–36.

⁴¹ “Nullus presbyter missas aliquando celebrare, nec si infirmati fuerint, confessiones eorum recipere, vel sancrosanctam communionem eis, nisi resipuerint, etiam in ipso fine vitae suae praesumat unquam dare; sed sepultura asini sepeliantur, et in sterquilinum super faciem terrae sint; ut sint in exemplum opprobrat maledictionis presentibus generationibus et futuris.” The formula is edited with commentary by Edwards, “Ritual Excommunication,” 134–38 at 138, with analysis at 26–41. The dung-heap and ass's burial are drawn from Jer. 8:2 and 22:19. See also Sarah Hamilton, “Interpreting Diversity: Excommunication Rites in the Tenth and Eleventh Centuries,” in *Understanding Medieval Liturgy: Essays in Interpretation*, ed. Helen Gittos and Sarah Hamilton (Farnham, 2016), 125–58 at 129.

⁴² “Sepultura asini sepeliantur et in sterquilinum sint super faciem terrae”: F. G. A. Waserschleben, *Reginonis Abbatis Prumiensis: Libri duo de synodalibus causis et disciplinis ecclesiasticis* (Leipzig, 1840), 375, at ii.416. Regino composed this text 906–13, and his reliance on the Reims formula is discussed by Edwards, “Ritual Excommunication,” 28. See also Little, *Maledictions*, 36–38 and 257; Hamilton, “Interpreting Diversity,” 129–33; and n. 41 above.

⁴³ Edwards, “Ritual Excommunication,” 51–61; Hamilton, “Interpreting Diversity,” 133; Little, *Maledictions*, 38.

Pope Leo VII and likely produced in the 940s, goes into greater detail about the treatment of dead excommunicants: “their cadavers shall be food for all the birds of the air and the beasts of the land,” for “if they will not repent, we close heaven and we deny the earth for burial.”⁴⁴ As evocative as this rhetoric may be, it must be noted that instructions about corpses and their disposal were not standard in early excommunication rites. Only one of four formulae recorded by Regino and only two of six preserved in Romano-German Pontifical manuscripts mention the treatment of excommunicated bodies after death.⁴⁵ Moreover, when they do appear, references to dead bodies are relatively brief. In Regino’s *terribilior* rite and the “Pope Leo” formula, as in the earlier Reims formula, only one or two phrases are dedicated to burial, appended to much longer explications of how an excommunicant must be punished in life.

Although excommunication formulae proliferated in Continental canon law and liturgical collections from the early tenth century, it is important to recognize that none is attested in any English manuscript before the mid-eleventh century.⁴⁶ One of the earliest, added to blank folios of the eleventh-century Lanalet Pontifical, echoes the language of Continental curses: excommunicated sinners who persist in their wrongdoing “shall not have any burial other than one for asses.”⁴⁷ This is the only formula recorded in England before the twelfth

⁴⁴ “Sintque cadavera eorum in escam cunctis volatilibus celi et bestiis agri ... si emendare noluerint, celum claudimus et terram ad sepeliendum negamus”: Harald Zimmermann, *Papsturkunden 896–1046*, 1: 896–996 (Vienna, 1984), 156, no. 88; and see also Vogel and Elze, *Pontificale romano-germanique* (n. 27 above), 1:315–17, no. xc, at 316–17. The text is adapted from Deut. 28:26, and compare also Ps. 78:2–3. For dating and analysis, see Edwards, “Ritual Excommunication,” 54–57 and 73–75. See also Little, *Maledictions*, 38–39 and 257–58; Hamilton, “Interpreting Diversity,” 135–39.

⁴⁵ Six excommunication formulae are edited in Vogel and Elze, *Pontificale romano-germanique* (n. 27 above), 1:308–17, chap. lxxxv–xc. Excommunication rites appear in only five of the eleven manuscripts used in Vogel and Elze’s edition, and one of these (Bamberg, Staatsbibliothek, Lit. 53) contains only the “Pope Leo” formula: *Pontificale romano-germanique*, 1:xli; and see also Hamilton, “Interpreting Diversity,” 133 n. 34. For the limitations of the modern edition of the Romano-German Pontifical, see Henry Parkes, “Questioning the Authority of Vogel and Elze’s *Pontificale romano-germanique*,” in *Understanding Medieval Liturgy: Essays in Interpretation*, ed. Sarah Hamilton and Helen Gittos (Farnham, 2016), 75–101.

⁴⁶ Treharne, “Unique Old English Formula” (n. 2 above), 201–2. For the earliest extant excommunication formulae in English manuscripts, see Hamilton, “Remedies” (n. 30 above), 104–5: of the twenty-two formulae listed, only seven (preserved in four manuscripts) can be confidently dated to the eleventh century, with another five (preserved in three manuscripts) dated around the turn of the twelfth century.

⁴⁷ “Nec habeant alteram quam asynorum sepulturam,” adapting Jer. 22:19. The text is edited by G. H. Doble, *Pontificale Lanaletense (Bibliothèque de la Ville de Rouen A. 27 Cat. 368)*, HBS 74 (London, 1937), 130–31, at fols. 183r–184r. The Lanalet Pontifical was produced in the first half of the eleventh century, but its precise dating is debated: an Old English note on fol. 196 states that the book was owned by Bishop Lyfing, but it is unclear whether this attribution refers to Lyfing, bishop of Wells and archbishop of

century that mentions the excommunicant's corpse.⁴⁸ Instead, the majority of early English rites frame exclusion in general terms. For example, one post-Conquest formula pronounces the following:

We anathematize and excommunicate and banish .N. from the fellowship of the holy mother Church, and just as these candles are extinguished, so shall his body and soul be extinguished in perpetuity, unless he repents and comes to penance.⁴⁹

There are intimations of physical penalties here. The sinner's body will be destroyed along with his soul, and he is to be expelled from — literally, placed

Canterbury (died 1020), or to Lyfing, bishop of Cornwall, Crediton, and Worcester (died 1046). The excommunication formula was added to fols. 183r–184r in a heavier hand, which the text's editor classifies as “an early hand, but probably somewhat later than the bulk of the book”; Victor Leroquais dates this script to the end of the eleventh century: *Les Pontificaux manuscrits des bibliothèques publiques de France* (Paris, 1937), 2:298; Doble, *Pontificale Lanaletense*, 130 n. 2. For dating and provenance, see David N. Dumville, “On the Dating of Some Anglo-Saxon Liturgical Manuscripts,” *Transactions of the Cambridge Bibliographical Society* 10 (1991): 51–52; David N. Dumville, “Liturgical Books for the Anglo-Saxon Episcopate: A Reconsideration,” in his *Liturgy and the Ecclesiastical History of Late Anglo-Saxon England: Four Studies* (Woodbridge, 1992), 66–95 at 86–87; Peter A. Stokes, *English Vernacular Minuscule from Æthelred to Cnut c. 990–c. 1035* (Cambridge, 2014), 55–57; M. J. Toswell, “St. Martial and the Dating of Late Anglo-Saxon Manuscripts,” *Scriptorium* 51 (1997): 3–14; Helmut Gneuss and Michael Lapidge, *Anglo-Saxon Manuscripts: A Bibliographical Handlist of Manuscripts and Manuscript Fragments Written or Owned in England up to 1100* (Toronto, 2014), 667, no. 922; N. R. Ker, *Catalogue of Manuscripts Containing Anglo-Saxon* (Oxford, 1957), 447–48, no. 374. Lester K. Little notes this formula's similarity to tenth-century Continental monastic curses: “La Morphologie des malédictions monastiques,” *Annales* 34 (1979): 43–60 at 51; *Benedictine Maledictions*, 48–50.

⁴⁸ Compare also the Sherborne Pontifical — BL Cotton Tiberius C.i, fols. 43–203 (Cotton Tiberius C.i) — which was written in Germany but was likely in England by the early 1070s: Gneuss and Lapidge, *Manuscripts*, 300–301, no. 376; Ker, *Manuscripts*, 260, no. 197; Hamilton, “Remedies” (n. 30 above), 95–96. The manuscript contains a version of the “Pope Leo” formula (fols. 195v–197r), as well as one of Regino's formulae, which does not mention burial (fols. 197r–199r). Regino's text is edited from this manuscript by Liebermann as *Excomm.* 1: *Gesetze*, 1:142–43. The “Pope Leo” formula is available in digital facsimile through the British Library, www.bl.uk/manuscripts/FullDisplay.aspx?ref=Cotton_MS_Tiberius_C_I&index=95. The next extant English formula to discuss an excommunicant's burial is a twelfth-century interpolation in the Red Book of Darley: below, n. 217.

⁴⁹ “Anathematizamus et excommunicamus et a consortio sanctę matris ecclēsię eliminamus .N., et sicut hę lucernę extinguuntur, ita corpus et anima illius in perpetuum extinguantur, nisi respiscerit et ad satisfactionem uenerit.” This is a late eleventh-century addition to Cambridge, Corpus Christi College 265, at 211–13. The text is edited by Hans Sauer, “Die Exkommunikationsriten aus Wulfstans Handbuch und Liebermann's Gesetze,” in *Bright is the Ring of Words: Festschrift für Horst Weinstock zum 65. Geburtstag*, ed. Clausdirk Poller and Horst Weinstock (Bonn, 1996), 283–307 at 294, no. 3. Compare the Old English formula recorded in the mid-twelfth century, in Cambridge, Corpus Christi College 303 (CCCC 303): “he shall be cut off from the entrance of the holy church and from fellowship with all of God's chosen” [beon hi asyndreden fram infarelde þæra haligan gelapunge 7 fram ferscipe alre Godes gecorenre]; Treharne, “Unique Old English Formula” (n. 2 above), 210.

beyond the limits of (“eliminamus”) — the Church and its members. Yet although this prescription might well include unconsecrated burial, there is no direct mention of how the excommunicant’s corpse should be disposed of. Another contemporary formula provides further detail about the parameters of exclusion:

We bind and separate from the house of the Lord the enemies of the holy Church of God, .N., and we curse them through the authority of the apostolic see and through episcopal judgment, so that they shall have no fellowship with Christians, and they shall not enter a church of God, and neither shall mass be celebrated for them by anyone.⁵⁰

Again, there are restrictions here which could apply to dead excommunicants — they are denied access to churches and the clergy is forbidden to intervene with God on their behalf — but there are no explicit instructions concerning corpses. Other formulae offer greater geographical specificity, declaring that excommunicants must not enter the boundaries (“liminibus”) of churches, but while this spatial designation could well encompass consecrated churchyards, there is no straightforward prohibition against burial.⁵¹ Elsewhere, instructions appended to excommunication rites require that excommunicants not be recognized as Christians:

After that, the bishop must explain the excommunication to the people with ordinary words, so that they understand how terribly he is damned, and also so that they know that from that hour onward, he should not be considered a Christian but a pagan.⁵²

⁵⁰ “Ligamus et dissipamus inimicos sanctę Dei ecclesię de domo domini .N. et maledicimus eos per auctoritatem apostolice sedis et per episcopale consilium, ut nullam christianorum societatem habeant, ecclesiamque Dei non ingrediantur, neque missa eis ab aliquo celebretur”; Sauer, “Exkommunikationsriten,” 291–92, no. 1.

⁵¹ Notably, the Latin formula in the mid-twelfth-century manuscript CCCC 303, specifies that “we excommunicate, damn, and anathematize .N., and sequester him from the boundaries of the holy church of God” [excommunicamus, dampnamus, anathematizamus, atque a liminibus sancte Dei ecclesie sequestramus .N.]; Treharne, “Unique Old English Formula” (n. 2 above), 210. Similar language was used in the brief excommunication formula added to fol. 1v of the Dunstan Pontifical (BN lat. 943), although this was apparently written after the manuscript was brought to France in the later eleventh century: Hamilton, “Remedies” (n. 30 above), 96–97; the Dunstan Pontifical is available as a digital facsimile through the Gallica website, at <http://gallica.bnf.fr/ark:/12148/btv1b6001165p>. Compare also the formula in the Sherborne Pontifical (n. 48 above).

⁵² “Post hec episcopus plebi ipsam excommunicationem communibus uerbis debet explanere, ut omnes intelligant, quam terribiliter damnatus sit, et ut nouerint, quod ab illa hora in reliquum non pro christiano, sed pro pagano habendus sit.” These directions, drawn from one of Regino’s formulae, appear in the Sherborne Pontifical (n. 48 above); Vogel and Elze, *Pontificale romano-germanique* (n. 27 above), 311, at lxxxv.6. See also Edwards, “Ritual Excommunication” (n. 39 above), 66–67.

The redesignation of the excommunicant as a pagan (“pagano”) might prevent him from legitimately being buried in hallowed ground, based on the criteria provided in cemetery consecration rites, but this connection is not articulated in the text.⁵³

A similar pattern is evident in sanction clauses in Anglo-Saxon charters, which provide earlier evidence for excommunication in England and anticipate the exclusionary rhetoric of eleventh-century liturgical formulae. For example, an individual who violated the terms of a charter could be “alienated from the fellowship of the holy church of God, and from the body and blood of our lord Jesus Christ” or “expelled and excommunicated and tortured without end, now and later and continually into eternity,” unless he repented and made amends for his offense before death.⁵⁴ Although some sanction clauses include graphic details about posthumous torment, these focus on the offender’s spiritual body rather than his earthly remains: a violator might be “damned and buried in the lowest hell,” he might “lie forever in the bottomless pit of hell,” or he might have “his life shortened and his dwelling be at the bottom of hell.”⁵⁵ The fate of an excommunicant’s mortal body was not a significant concern for drafters of sanction clauses. Remarkably, the clearest pre-Conquest instructions for denying consecrated burial to an excommunicant do not come from any charter or liturgical rite, but from an Old English homily, committed to parchment in the second half of the eleventh century:

No one may bury him within a consecrated minster, nor even carry him to a heathen pit; rather, drag him out without a coffin, unless he repents.⁵⁶

⁵³ N. 27 above, and compare also the Penitential of Theodore’s call to remove bodies of pagans from churches, n. 36 above.

⁵⁴ “Siat se alienum esse a consortio sancte Dei ecclesie et a corpore et sanguine Domini nostri Iesu Christi ... nisi prius hic digna emendauerit penitentia ante mortem”: S515, edited by S. E. Kelly, *Charters of Malmesbury Abbey* (Oxford, 2005), 212, no. 25 and discussed further below. “Nunc et tunc et usque in sempiternum abdicatum et excommunicatum sine fine cruciandum”: S724, edited by S. E. Kelly, *Charters of Abingdon Abbey*, Part 2 (Oxford, 2001), 400, no. 100; this is a charter of King Edgar dated 964. See also Hamilton, “Remedies” (n. 30 above), 100–102; and the list of curses in pre-900 Anglo-Saxon sanction clauses compiled by the ASChart Project, at http://www.aschart.kcl.ac.uk/diplomatic/idx_curse.html.

⁵⁵ “Dampnatus atque sepultus in inferno inferiori”: S355, ed. S. E. Kelly, *Charters of Abingdon Abbey*, Part 1 (Oxford, 2000), 77, no. 18; this is a charter of King Alfred produced 892x899. “Ligge he efre on healle grundleasan pytte”: S817, ed. A. J. Robertson, *Anglo-Saxon Charters* (Cambridge, 1939), 70, no. 38; the charter is dated to Edgar’s reign, 963x975 (and compare S976). “Sy his lif her gescert. 7 his wunung on helle grunde”: S985, edited by Florence E. Harmer, *Anglo-Saxon Writs*, 2nd ed. (Stamford, 1989), 182, no. 26; the writ was issued by Cnut, 1017–1020. For damnation in sanction clauses, see Petra Hofmann, “Infernal Imagery in Anglo-Saxon Charters” (Ph.D. diss., University of St. Andrews, 2008).

⁵⁶ “Ne hi nan man ne burge binnan gehalgodan mynstre, ne furþum to hæþenum pytte ne here, ac drage butan cyste butan hi geswicon.” This passage is preserved uniquely in Oxford, Bodleian Library, Hatton 115, fols. 140–47 in an expanded version of Vercelli Homily IX: D. Scragg, *The Vercelli Homilies*, EETS 300 (1992), 159–83, at 161. See also

This vernacular passage is contemporary with the earliest excommunication formulae recorded in England, but it postdates by more than a century the first prescription for unconsecrated burial in Anglo-Saxon royal law.

Given how rarely English religious texts explicitly discuss the disposal of excommunicated bodies, as well as the late — usually post-Conquest — date of these sources, we cannot take for granted that early legal prescriptions for unconsecrated burial were informed by established ecclesiastical custom. Although exclusionary and deviant burials are well attested in the archaeological record, the ideologies behind these practices in the tenth and eleventh centuries may not be as straightforward as they seem.⁵⁷ While there can be little doubt that religion was central to tenth-century understandings of unconsecrated burial, since it was the expansion of hallowed ground and increased use of churchyard cemeteries that gave legal prohibitions their weight, there is no clear evidence that posthumous exclusion was used in England as an ecclesiastical penalty before the eleventh century. This is not to suggest that the clergy were not involved in promoting the practice. High-ranking ecclesiastics helped conceive, draft, and promulgate royal law throughout the later Anglo-Saxon period, and these advisors surely endorsed the inclusion of unconsecrated burial in royal legislation.⁵⁸ Nevertheless, the clergy's approval does not prove that this was an existing ecclesiastical custom. As the evidence below will demonstrate, it is more probable that unconsecrated burial was first conceived as a stand-alone punishment in royal law; it came to be deployed by religious authorities only some decades later.

THE MID-TENTH CENTURY: POLICIES OF KING ÆTHELSTAN (R. 924/5–939) AND KING EDMUND (R. 939–946)

The earliest mention of unconsecrated burial in any English text appears in the legislation of Æthelstan, in the final clauses of his longest lawcode, known conventionally as *II Æthelstan*. This is among the earliest pieces of legislation issued in Æthelstan's name and, like his later lawcodes, was compiled at a council of ecclesiastical and lay advisors.⁵⁹ The clauses on burial read as follows:

Trehearne, "Unique Old English Formula" (n. 2 above), 197–98; Thompson, *Dying and Death* (n. 2 above), 171–72.

⁵⁷ Foxhall Forbes, *Heaven and Earth* (n. 4 above), 296–98, 308–9, 313.

⁵⁸ For the clergy's involvement in lawmaking, see for example Wormald, *English Law* (n. 25 above), 299–300, 310, 330–39, 449–65; Oliver, *Beginnings* (n. 1 above), 14–20, 83–85; Lisi Oliver, "Royal and Ecclesiastical Law in Seventh-century Kent," in *Early Medieval Studies in Memory of Patrick Wormald*, ed. Stephen Baxter et al. (Farnham, 2009), 97–112.

⁵⁹ *II Æthelstan* was issued at a council at Grately. For the chronology of Æthelstan's codes and the makeup of lawmaking councils in his reign, see Wormald, *English Law* (n. 25 above), 299. Wormald questions whether Æthelstan was himself present at the Grately council, although the first person singular is used in *II Æthelstan* 25 (as Wormald notes).

26] And anyone who swears a false oath, and it becomes openly known against him, he shall never again be oath-worthy, nor shall he be buried in any consecrated cemetery once he has died, unless he has the testimony of the bishop, whose diocese he is in, that he has done penance as his confessor assigned him.

26.1] And let his confessor inform the bishop within thirty days whether he is willing to turn to penance. If he [i.e., the confessor] does not, let him compensate for that as the bishop prescribes for him.⁶⁰

This clause establishes two consequences for swearing a false oath. First, the perjurer would suffer a loss of legal status, since he would no longer be qualified to render oaths in judicial settings.⁶¹ This means that he could not testify in his own defense, should he be accused or charged of wrongdoing in the future, nor could he serve as a witness in other cases. A later law of Æthelstan requires all oath-worthy members of local communities to be prepared to testify in judicial proceedings, and a convicted perjurer would thus be disqualified from full participation in his legal community.⁶²

The second consequence is a conditional one: if the convicted perjurer fails to undertake penance within thirty days, he will not be allowed burial in any consecrated cemetery. The penitential requirement affirms that oath-breaking was not simply a violation of royal law but also an offense against God.⁶³ Prescriptions for penance were not unprecedented in Anglo-Saxon royal legislation, but *II Æthelstan* 26–26.1 go into greater practical detail than any earlier lawcode by delineating the roles of various clergymen and establishing a thirty-day timeframe for the offender to proclaim his intention to

Later codes state that the provisions of *II Æthelstan* were promulgated according to the king's wishes or in his presence: *V Æthelstan* Prol., *VI Æthelstan* 10.

⁶⁰ “Ond se ðe mannað swerige, 7 hit him on open wurþe, ðæt he næfre eft aðwyrþe ne sy, ne binnon nanum gehalgotum licetune ne licge, þeah he forðfore, buton he hæbbe ðæs biscopes gewitnesse, ðe he on his scriftscire sy, þæt he hit swa gebet hæbbe, swa him his scrift scife. 26.1] 7 his scrift hit gecyþe þam biscope binnon XXX nihta, hweþer he to þære bote cirran wolde. Gif he swa ne do, bete be þam þe se biscop him forgifan wille.” Patrick Wormald suggests that these provisions were added to the text in the later years of Æthelstan's reign: *English Law* (n. 25 above), 176–77, 291, 307–8.

⁶¹ Compare the early tenth-century *I Edward* 3: “Also, we said concerning those people who were false swearers — if that should be revealed, or if the oath should fail them or be overruled — that they should never afterwards be oath-worthy, but [only] worthy of the ordeal” [Eac we cwædon be þam mannum ðe mansworan wæran, gif ðæt geswutelod wære, oððe him að hurste oððe ofercyðed wære, þæt hy siððan aðwyrðe næran, ac ordales wyrðe].

⁶² *V Æthelstan* 1.5.

⁶³ Oaths were to be rendered in churches or amid devotional activity: see especially *Alfred* 33; *II Æthelstan* 23. The legal tract *Swerian* includes formulae to be used in oaths of accusation and exculpation during judicial inquiries: these require testors to swear “by the Lord” [on ðone Drihten] (clauses 1–6), “by the name of God almighty” [on ælmihtiges Godes naman] (7–9), and “by the name of the living God” [on lifiendes Godes naman] (10–11). Patrick Wormald dates the text to the tenth century: *English Law* (n. 25 above), 383–84.

atone.⁶⁴ Although decisions about the appropriate penance are left to the discretion of the clergy — the offender must do “as his confessor assigned” — the logistical focus of these clauses suggests that Æthelstan and his advisors were using royal law to standardize a religious process and ensure compliance among both the clergy and laity.⁶⁵ Accordingly, if a confessor should neglect to report a perjurer’s atonement to the bishop, he must compensate for being derelict in his duty.⁶⁶ If a convicted perjurer should fail to undertake penance in the required thirty-day period, he must be punished by being denied a consecrated grave at his death.

This formulation firmly links an offender’s mode of burial with his willingness to undertake penance in a timely manner. Yet while this punishment is only prescribed for those who refuse devotional action, it does not follow that prohibition from a consecrated cemetery was tantamount to excommunication or that it was even an ecclesiastical penalty. Three aspects of *II Æthelstan* 26–26.1 indicate that unconsecrated burial fell within the jurisdiction of secular authorities, not their ecclesiastical counterparts. First, the burial prohibition is framed as a restriction on geographical space: “nor within any hallowed cemetery shall he lie” (“ne binnon nanum gehalgodum licetune ne liege”). Although consecrated burial must have been a realistic and desirable possibility for laypeople during Æthelstan’s reign, the practice was far from universal in the early tenth century, and it is unlikely that the clergy exerted uniform control over burials.⁶⁷ *II Æthelstan* 26 denies an unrepentant oath-breaker an earthly privilege — burial in a desirable location — and imposes a restriction on his physical body, actions which were within the power of secular authorities to implement. Second, the requirement that the bishop give testimony (“gewitnesse”) about the oath-breaker’s penance means that he was not the person responsible for imposing or nullifying a sentence of unconsecrated burial. The bishop is presented as the only person qualified to confirm a perjurer’s penance, and he must testify to that fact — presumably at

⁶⁴ Compare *Wihfred* 3–3.2 [= Liebermann *Wihfred* 3–4]; *Alfred* 1.2–1.8.

⁶⁵ Æthelstan’s laws acknowledge the advice of bishops, and these policies were surely created in consultation with ecclesiastical advisors: Wormald, *English Law* (n. 25 above), 299–300.

⁶⁶ *II Æthelstan* 26.1 requires that the clergyman compensate (*bete*) as the bishop assigns, indicating penitential atonement rather than secular compensation: n. 60 above. See also *DOE* s.v. *betan*.

⁶⁷ The diversity of later Anglo-Saxon burial practices indicates that these were not dictated by the Church: tenth-century lay burial was probably overseen by family or community members, although local clergy were likely involved. See Bullough, “Burial” (n. 12 above); Hadley and Buckberry, “Caring for the Dead” (n. 11 above), 136–37 and 147; Thompson, *Dying and Death* (n. 2 above), 32–33, 45–46, 82–85; and compare also Helen Geake, “The Control of Burial Practice in Anglo-Saxon England,” in *The Cross Goes North: The Process of Conversion in Northern Europe, AD 300–1300*, ed. Martin Carver (York, 2003), 259–69, especially 266–67.

some sort of judicial hearing — in order to finalize the punishment. If this were an ecclesiastical case, rather than a secular one, the bishop would surely pronounce this sentence himself instead of merely testifying as a witness. Finally, the law's provision of a strict thirty-day window for a perjurer to begin penance is more consistent with royal policy-making than with ecclesiastical reasoning. Conditional penalties governed by time limits are attested in earlier Anglo-Saxon legislation, as well as in Æthelstan's other lawcodes.⁶⁸ By contrast, ecclesiastical calls for spiritual repentance did not come with an expiration date: a clergyman might argue that it was better to begin penance as soon as possible, so as not to compound one's guilt through obstinacy, but recalcitrant sinners were nevertheless encouraged to seek and receive absolution later in life, even on their deathbeds.⁶⁹ *II Æthelstan* 26–26.1 do not present the oath-breaker's death as imminent, which means that he could potentially turn to penance of his own accord after the first month had passed. However, even if a convicted perjurer were absolved of his sin after a delay, his sentence of unconsecrated burial would apparently still stand. Because posthumous exclusion is presented as an intractable punishment rather than a spiritual remedy, it is reasonable to conclude that this sentence was imposed and administered by secular, not ecclesiastical, authorities.

Æthelstan's successor Edmund built on this example, prescribing unconsecrated burial twice in his laws. Both references to the practice appear in *I Edmund*, a code concerned with religious matters. Although this text has been likened to canon law, it was promulgated by a mixed council of secular and ecclesiastical magnates convened by Edmund; accordingly, *I Edmund* should be understood as a document produced and disseminated under royal authority, whose statutes were enforceable by either secular or ecclesiastical actors, depending on the context.⁷⁰ The first clause, which focuses on sexual misconduct among the clergy, sets ecclesiastical and secular penalties for those who fail to live chastely, proclaiming:

1] that those in holy orders, who must teach God's people by their life's example, keep their chastity appropriately to their order — whether they are in male orders or female orders, however it is; and if they do not do so, then on account of that, they shall be liable for what the canon says. And that they will forfeit their worldly possessions and a hallowed burial place, unless they repent.⁷¹

⁶⁸ For example, *Alfred* 5–5.3, 42–42.4; *III Æthelstan* 3; *V Æthelstan* 3.1.

⁶⁹ N. 40 above.

⁷⁰ *I Edmund* Prol.; Wormald, *English Law* (n. 25 above), 310. For *I Edmund*'s differences from contemporary canon law, in both its form and content, see Michael D. Elliot, "Canon Law Collections in England ca 600–1066: The Manuscript Evidence" (Ph.D. diss., University of Toronto, 2013), 51–53.

⁷¹ "Þæt þa halgan hadas, þe Godes fole læron sculon lifes bisne, ðæt hi heora clænnesse healdan be heora hade, swa werhades swa wifhades, swa hwaðer swa hit sy. 7 gif hi swa ne don, þonne syn hi þæs wyrðe þe on ðam canone cweð, and þæt hi þolian worldæhta 7

Two distinct sets of punishments are prescribed here. The first is an unspecified canonical penalty, the earliest direct reference to a canon law sentence in English royal legislation. The second requires offenders to forfeit their property and be buried in unconsecrated ground, unless they repent.⁷² It appears that this clause envisions two systems of justice at work, in cases of sexual misconduct among the clergy. The canonical punishment cited in the first part of the clause would undoubtedly be imposed by ecclesiastical authorities, while the financial and physical punishments listed in the concluding sub-clause would presumably be administered as secular justice.⁷³

The response to clerical sex in *I Edmund* 1 spans two jurisdictions, each with its own set of consequences. Although the canonical penalty is not described explicitly, it likely required that unchaste clergy be deposed from holy orders and then undertake a course of penance.⁷⁴ This hypothesis is supported by the fact that the second, secular punishment treats clerical offenders like ordinary laypeople, subject to earthly justice and punishments; this would be reasonable if they had already been stripped of their ecclesiastical status.⁷⁵ In this context, the clause's final directive — “they will forfeit their worldly possessions and a hallowed burial place, unless they repent” — seems designed to motivate sinful clergy

gehalgodre legerstowe, buton hi gebetan.” This transcription follows Liebermann's edition, but see n. 72 below for the manuscript context.

⁷² I follow the earliest extant copy of this law, preserved in the early eleventh century in Cambridge, Corpus Christi College 201 (CCCC 201), at p. 96 (Liebermann's MS D). In this redaction, the two sets of punishments are described in separate phrases, with the second — beginning “And that they will forfeit” [And þæt hi þolian] — demarcated with its own rubricated initial. By contrast, versions preserved in twelfth-century manuscripts interpret the second set of punishments as an explication of the first: in these later redactions, the canonical punishment *consisted of* forfeiture and unconsecrated burial. However, these penalties are uncharacteristic of pre-Conquest canonical punishments, and it is more reasonable to interpret them as penalties imposed by secular authority, as they are in other Anglo-Saxon laws. Twelfth-century versions are edited by Liebermann, *Gesetze*, 1:184–85; and see Elliot, “Canon Law,” 51–55. Digital facsimiles of CCCC 201 are available through Parker Library on the Web, <https://parker.stanford.edu>; and the Early English Laws Project, <http://www.earlyenglishlaws.ac.uk/laws/manuscripts>.

⁷³ For differentiation of secular and ecclesiastical jurisdictions, see Carella, “Earliest Expression for Outlawry” (n. 14 above); Marafioti, “Secular and Ecclesiastical Justice” (n. 5 above).

⁷⁴ Deposition was prescribed for sexual misconduct in Late Antique canon law: Elliot, “Canon Law,” 17, 54; D. Whitelock et al., *Councils and Synods with Other Documents Relating to the English Church*, vol. 1: *A.D. 871–1204*, part 1 (Oxford, 1981), 62 n. 1. For deposition and penance required for a single clerical offense, see the Penitential of Theodore, in Haddan and Stubbs, *Councils* (n. 36 above), 3:184–85, at I.ix.1 and I.ix.8; *Handbook*, 21, lines 146–47.

⁷⁵ Compare *Alfred* 21, which requires homicidal priests to be deposed before receiving secular punishment. I discuss this strategy in Nicole Marafioti, “Crime and Sin in the Laws of Alfred,” in *Languages of the Law in Early Medieval England: Essays in Memory of Lisi Oliver*, ed. Stefan Jurasinski and Andrew Rabin (Leuven, 2019), 59–84.

to complete their assigned penance, even once they had been removed from holy orders. The conditional structure of this sentence is quite similar to that of *II Æthelstan* 26: a sinner will only suffer secular consequences if he refuses ecclesiastical correction. Edmund's innovation is to add a financial penalty — the forfeiture of earthly goods — to the physical punishment of unconsecrated burial.⁷⁶ Perhaps this was a practical consideration, meant to prevent obstinate ex-cleergy from living comfortably if they spurned the Church and persisted in a sinful relationship. In any case, *I Edmund* adopted the same approach toward unconsecrated burial as *II Æthelstan*, using the threat of posthumous punishment to incentivize penance before death.

The second reference to unconsecrated burial in *I Edmund* is also concerned with unrepented sexual misconduct, this time among the laity:

4] Whoever has intercourse with a nun, he shall not be worthy of a hallowed burial place — unless he repents — any more than a killer. We declared the same thing concerning adultery.⁷⁷

Once again, unconsecrated burial is not prescribed for the violation proper (illicit sex) but for the perpetrator's refusal to atone for it; the only direct consequence for committing adultery or having sex with nuns is a course of penance. This clause places sexual misconduct entirely within ecclesiastical jurisdiction, yet it was still deemed necessary to reinforce penitential sentences with the threat of bodily punishment. This policy should thus be understood as an attempt to buttress ecclesiastical policy with the force of secular justice. The same logic is applied to homicides in a comparative reference in *I Edmund* 4: unrepentant sexual offenders would not merit consecrated burial "any more than a killer." Homicides are not the grammatical subject of this clause, and given the seemingly off-hand nature of this remark, it should probably be understood as an addendum to the preceding decree:

3] If anyone spills a Christian person's blood, he shall never come into the king's vicinity until he undertakes penance, as the bishop instructs him and his confessor directs him.⁷⁸

I Edmund 3 follows the same pattern as the clauses governing sexual offenders: it is a perpetrator's refusal to submit to penance that triggers punishment in the

⁷⁶ Forfeiture was already well attested in Anglo-Saxon royal law: it was prescribed in response to religious violations in *I Æthelstan* 4, and compare also *Wihtried* 3.2 [= Liebermann, *Wihtried* 4.1].

⁷⁷ "Se þe wið nunnan hæme, gehalgodre legerstowe ne sy he wyrðe — buton he gebete — þe ma þe manslaga; þæt ilce we cwædon be æwbrice." These conditions presumably applied to laypeople, since the offending nun or clerical participant in adultery would already be subject to the provisions of *I Edmund* 1. Compare *Alfred* 8; see also Thompson, *Dying and Death* (n. 2 above), 171–75.

⁷⁸ "Gif hwa Cristenes mannes blod ageote, ne cume he na on ðæs cyninges neawiste, ær he on dædbot ga, swa him biscop tæce 7 his scrift him wisige."

secular sphere — in this case, exclusion from the king's presence ("neawiste").⁷⁹ *I Edmund* 4 extends this penalty to include unconsecrated burial if the killer has still not repented at the time of his death.⁸⁰

Read together, *I Edmund* 1 and 4 indicate that unconsecrated burial was understood somewhat differently than it had been a generation earlier, in the reign of Æthelstan. In *II Æthelstan* 26, the prohibition focuses on geographical space: the dead offender must not be placed within the bounds of a consecrated cemetery ("ne binnon nanum gehalgodum lictune ne licge"). Fundamentally, this provision governs the actions of the living, delineating where they are permitted to inter an offender's corpse. In *I Edmund*, by contrast, consecrated burial is depicted as a privilege that can be revoked: the deceased may forfeit ("þolian") or be deemed unworthy ("ne... wyrðe") of a hallowed resting place. This new phrasing shifts responsibility from authorities to the offender. Where *II Æthelstan* simply excludes the dead from a communal space, *I Edmund* indicates that they failed to meet the criteria required for admission — that is, they disqualified themselves through their own sinful actions and refusal to repent. This rhetorical shift may reflect the widening expectation, across the tenth century, that dead Christians would be committed to consecrated ground; denying an offender a hallowed grave would bar him from a practice that was becoming increasingly common for laypeople. Yet the purpose of these clauses, in both Edmund's and Æthelstan's codes, was to regulate behavior among living perpetrators. The threat of unconsecrated burial would be effective only if an unhallowed grave were recognized as a worse option than penance, and the repeated appearance of this choice in tenth-century lawcodes suggests that it was.

This discussion raises two questions about the motivations behind Æthelstan's and Edmund's legal prescriptions for unconsecrated burial: why was it the kings' responsibility to bring offenders to penance, and why did their legal prescriptions focus on these particular sins? Æthelstan and Edmund were not the first rulers to issue religious regulations, and such initiatives were justified by the notion that Christian kings were obliged to protect and cultivate the Church. It is reasonable that their penitential laws were designed to place the weight of secular enforcement behind ecclesiastical requirements, and this might have been considered especially necessary in cases of perjury, sexual offense, and homicide, which could undermine the integrity of the Christian community. Yet in addition to being serious sins, these offenses were socially disruptive. Adultery devalued legitimate marriages; clerical sex threatened the credibility of the institutional Church; homicide damaged the stability of communities; and swearing false oaths undermined legal order. Moreover, these offenses had the potential to incite further

⁷⁹ It is conceivable that this prohibition could extend to an entire royal residence or *burh*: Bosworth-Toller, s.v. *neáh-west*, definition 1.

⁸⁰ Compare *II Edmund* 4.

conflict in the secular sphere, for victims of these actions (or their allies) might seek to retaliate against the perpetrators. In such a scenario, an offender's acceptance of penance — which required them to confess their guilt — could serve as a first step toward reconciliation with an injured party.

I have argued that unconsecrated burial functioned as a secular punishment in *II Æthelstan* and *I Edmund*, rather than an ecclesiastical penalty imposed by the clergy. Although the practice is invariably connected with the offender's spiritual state, it would be pushing the evidence too far to equate unconsecrated burial with excommunication in these texts. Of course, bishops participated in the deliberations behind these lawcodes, and it is significant that the threat of unconsecrated burial would function in much the same way as prescriptions for medicinal excommunication: both were designed to bring an offender to repentance, so that he would not be expelled from the Christian community or forfeit the benefits to which its members were entitled.⁸¹ Importantly, though, excommunication was prescribed elsewhere in *I Edmund*, and it stands to reason that unconsecrated burial — which was always assigned independently of excommunication in early tenth-century royal law — was understood as a distinct sentence.⁸² Accordingly, I conclude that in the laws of Æthelstan and Edmund, burial restrictions were deployed as a secular alternative to excommunication, to be imposed by lay authorities in order to combat spiritual obstinacy. Although consultation with religious authorities would be necessary at various stages, and although it is conceivable that a secular sentence of exclusionary burial might coincide with an ecclesiastical pronouncement of excommunication, it appears that decisions concerning the disposal of bodies fell within the sphere of secular authority.

THE LATER TENTH CENTURY: POLICIES OF KING EDGAR (R. 959–975) AND KING ÆTHELRED II (R. 978–1016)

By the end of the tenth century, unconsecrated burial had assumed a different purpose in royal law. Where the legislation of Æthelstan and Edmund only prescribed this penalty as an alternative to penance for offenders who refused to atone for their sins, mentions of unconsecrated burial in Edgar's and Æthelred's decrees make no reference to religious considerations. Under these kings, unconsecrated burial was presented only as punishment for secular wrongdoing, and there was no longer an option for offenders to reverse or mitigate their sentence through penance. Yet even as they moved away from earlier approaches, Edgar and Æthelred began introducing policies that normalized the use of consecrated churchyards. Their legislation did not regulate funerary practice directly, but rather addressed financial considerations associated with churchyard burial.

⁸¹ *II Æthelstan* Epil.; *I Edmund* Prol.

⁸² Compare *I Edmund* 2, 6. See also *Alfred* 7; *Wihtrud* 3, 3.1 [= Liebermann, *Wihtrud* 3, 4.1].

Edgar established the value of tithes due to different types of churches: those with cemeteries of their own were entitled to more substantial payments.⁸³ In a similar categorization, Æthelred established fines due to different types of churches should their protection be violated (“griðbryce”): small churches with graveyards were entitled to greater compensation than those without.⁸⁴ Æthelred’s laws also introduced the concept of soul-scot, a monetary payment rendered at the open grave to the deceased’s church.⁸⁵ These three laws took for granted that burial would be conducted under ecclesiastical supervision and that possession of a consecrated graveyard contributed to the status (and revenue) of individual churches.

Although these royal laws clearly connected burial with ecclesiastical dues and privileges, they never mandated particular religious practices — presumably because such matters were within the Church’s purview, not the king’s. This secular focus extended to Edgar’s and Æthelred’s prescriptions for unconsecrated burial. There are four extant references to these kings legislating the practice, one from Edgar’s reign and three from Æthelred’s. The earliest of these is not preserved in any surviving lawcode but was attributed to Edgar in a Latin hagiography produced in the 970s, either during the king’s reign or shortly after his death. Lantfred’s *Life of St. Swithun* reports the following:

At the command of the glorious King Edgar, a law of great severity was promulgated throughout England to serve as a deterrent against all sorts of crime by means of a dreadful punishment: that if any thief or robber were found anywhere in the country, he would be tortured at length by having his eyes put out, his hands cut off, his ears torn off, his nostrils carved open and his feet removed; and finally, with the skin and hair of his head flayed off, he would be abandoned in the open fields, dead in respect of nearly all his limbs, to be devoured by wild beasts and birds and hounds of the night.⁸⁶

⁸³ *II Edgar* 2–2.1 [= *I Cnut* 11–11.1]. See also Hadley and Buckberry, “Caring for the Dead” (n. 11 above), 122–23.

⁸⁴ *VIII Æthelred* 5.1 [= *I Cnut* 3.2], composed by Archbishop Wulfstan. Cemeteries are mentioned only in the recension in BL Cotton Nero A.i (MS G).

⁸⁵ *V Æthelred* 12–12.1 [= *VI Æthelred* 20–21, *VIII Æthelred* 13, *I Cnut* 13–13.1], composed by Archbishop Wulfstan. Soul-scot also appears in one manuscript version of *I Æthelstan*, but this seems to be a later interpolation by Wulfstan: Francesca Tinti, “The ‘Costs’ of Pastoral Care: Church Dues in Late Anglo-Saxon England,” in *Pastoral Care in Late Anglo-Saxon England*, ed. Francesca Tinti (Woodbridge, 2005), 27–51 at 33–34; Wormald, *English Law* (n. 25 above), 295.

⁸⁶ “Glorioso rege Eadgaro precipiente, ad deterrendos quosque malos horribili poena talis lex est constituta in Anglorum prouincia: ut si quispiam cleptes in tota uel predo inueniretur patria, caecatis luminibus, truncatis manibus, auulsis auribus, incisus naribus, et subtractis pedibus excrucietur diutius; et sic demum decoriata pelle capitis cum crinibus, per omnia pene membra mortuus relinqueretur in agris, deorandus a feris et aibus atque nocturnicanibus.” The text was composed in the 970s and is edited by M. Lapidge, *The Cult of St Swithun*, Winchester Studies 4.ii (Oxford, 2003), 310–13; I follow Lapidge’s translation.

This hagiographical account must be approached cautiously, as it introduces the story of an innocent man wrongly punished with many of these mutilations, only to be healed of his injuries by the intervention of St. Swithun. Nevertheless, it is reasonable to assume that this was in fact a policy enacted under Edgar, even though it is not preserved in surviving copies of the king's written law; the same set of mutilations appeared some fifty years later in Cnut's legislation, suggesting that these comprised a codified punishment in the late tenth and early eleventh centuries.⁸⁷ Yet in Cnut's laws, this is construed as a non-lethal penalty which would allow an offender to live long enough to repent of his sins and save his soul; there is no mention of his death or his corpse.⁸⁸ In the initiative attributed to Edgar, by contrast, offenders were to be subjected to a drawn-out death penalty, in which human agents would mutilate the body to the point of death and then let nature take its course. The offender is not explicitly forbidden from receiving consecrated burial, according to Lantfred, but the mandate to abandon the dying man in a field and leave him to be consumed by wild animals precludes the possibility of a hallowed grave.⁸⁹ There is no mention of saving the convict's soul in this formulation, and there does not seem to be any opportunity for him to reconcile with the Church before his sentence is imposed.

This represents a sharp departure from Æthelstan's and Edmund's legislation, where the threat of an unhallowed grave was used as an incentive for living offenders to undertake penance. Moreover, unlike the earlier kings' laws on unconsecrated burial, Edgar's policy prescribes this punishment for offenses that would have a relatively minor impact on an offender's soul. The actions which merited posthumous exclusion in Æthelstan's and Edmund's laws — perjury, homicide, and sexual misconduct — were serious sins in their own right, which could lead to a perpetrator's excommunication or damnation if he failed to repent. By

⁸⁷ *II Cnut* 30.4–30.5, composed by Archbishop Wulfstan; and compare also *I Æthelred* 1.5–1.6. The connection between Lantfred's account and Old English law was established by D. Whitelock, "Wulfstan *Cantor* and Anglo-Saxon Law," in *Nordica et Anglica: Studies in Honor of Stefan Einarsson*, ed. A. H. Orrick (The Hague, 1968), 83–92. Patrick Wormald doubts that this text preserves a lost written law, but he finds it reasonable that this passage recounts "a known initiative of late in Edgar's reign"; *English Law* (n. 25 above), 127. Compare the similar list of punishments in Ælfric of Eynsham's late tenth-century homily on the book of Maccabees: Walter W. Skeat, *Ælfric's Lives of Saints: Being a Set of Sermons on Saints' Days Formerly Observed by the English Church*, EETS o.s. 76, 82, 94, 114 (1881–1900), 2:74–77.

⁸⁸ *II Cnut* 30.5; Marafioti, "Punishing Bodies" (n. 2 above), 52–55. This is precisely what happens in Lantfred's text: the innocent man survives his mutilation and turns to God and St. Swithun. Similarly, one of Wulfstan's early lawcodes anticipates that a mutilated offender could survive a three-day period of abandonment, after which his body and soul might be healed: *Edward and Guthrum*, 10.

⁸⁹ Lantfred's reference to carrion recalls Deut. 28:26 and Ps. 78:2–3; compare the "Pope Leo" excommunication formula, n. 44 above.

contrast, Edgar's mandate is concerned with theft and robbery, offenses which are not construed as mortal sins in Anglo-Saxon penitentials.⁹⁰ On the contrary, penitential literature suggests that theft might incur relatively little sin and require minimal atonement, if the perpetrator's circumstances were truly desperate.⁹¹ Although it is possible that theft and robbery were understood as forms of oathbreaking, if they were directly prohibited by a loyalty oath that all subjects were required to swear, this rationale is not articulated in Lantfred's text.⁹² Instead, this punishment is described as a deterrent against wrongdoing ("ad deterrendos quosque malos"), to be implemented by secular judges at the direction of the king. As presented by Lantfred, this was not a religious initiative but a secular one.

Three further provisions on criminal burial appear in the early laws of Æthelred, issued in the period from 978 through 1007, before Archbishop Wulfstan began drafting the king's legislation in 1008. The first, preserved in *I Æthelred*, is concerned with bringing traitorous individuals to justice:

4] And if there is anyone who is faithless to the entire people, the king's reeve shall go to him and bring him under surety, so that he may be brought to justice by those who accused him.

4.1] If he does not have surety after that, he shall be slain and buried in foulness.

4.2] And if anyone defends him [i.e., at his death], they shall both be worthy of the same justice.

4.3] And whoever neglects and refuses to fulfill this — which is the decree of all of us — he shall give the king 120 shillings.⁹³

⁹⁰ The *Scriftboc* requires penances from seven days to five years, depending on the circumstances of the offense: Spindler, *Altenglische Bussbuch* (n. 32 above), 177, at vi.7b and 193–94, at xxviii.35–36. The *Canons of Theodore* require seven years of penance, which might be reduced if the thief settled with his victim: Fulk and Jurasinski, *Canons* (n. 32 above), 9, chap. 69, 71.

⁹¹ The *Old English Penitential* assigns different penances based on the thief's social rank and the stolen items: for those who steal out of necessity, three weeks of penance may be prescribed, but confessors are urged not to compel the needy to fast, "for love of God" [for godes lufan]: Josef Raith, *Die altenglische Version des Haltigar'schen Bussbuches (Sog. Poenitentiale Pseudo-Egberti)* (1933; repr. Darmstadt, 1964), 32, at ii.25 and 56–57, at iv.19–20. Compare also the seven-day penance prescribed in the *Scriftboc*, n. 90 above.

⁹² Patrick Wormald, *Papers Preparatory to the Making of English Law: King Alfred to the Twelfth Century*, volume II: *From God's Law to Common Law*, ed. Stephen Baxter and John Hudson (London, 2014), <http://earlyenglishlaws.ac.uk>, 119–29; Patrick Wormald, "Charters, Laws and the Settlement of Disputes in Anglo-Saxon England," in his *Legal Culture in the Early Medieval West* (London, 1999), 289–311 at 306–7; Lambert, *Law and Order* (n. 5 above), 210–13.

⁹³ "7 gif hwylc man sy, þe eallon folce ungetrywe sy, fare þæs cynges gerefa to 7 gebringe hine under borge, þæt hine man to riht gelæde þam þe him onspræcon. 4.1] Gif he ðonne borh næbbe, slea man hine 7 on ful legce. 4.2] 7 gif hwa hine forenne forstande, beon hy begen anes

This sequence focuses on offenders who cannot be brought to justice in an ordinary manner, because they lack surety — that is, protection offered by someone who assumes responsibility for the accused's future behavior and guarantees his participation in the judicial process. Once again, it is conceivable that this punishment was tied to oathbreaking, if the offense was deemed to have violated a subject's oath of loyalty.⁹⁴ However, as the clause is written, it is not the perpetrator's faithlessness which leads to unconsecrated burial but his inability to secure appropriate surety. After being taken into custody (under the reeve's surety) and brought to justice, he would require further surety — from an ally in good legal standing — in order to escape a death sentence, should he be convicted. An earlier clause of *I Æthelred* mandates that every freeman must have a trustworthy surety, and 4.1 is concerned with serious offenders who fail to meet this requirement: if they cannot secure the support of an upstanding member of the community, they are deemed unworthy of life or Christian burial.⁹⁵ The following subclauses continue to confirm that the key problem is disregard for proper procedure.⁹⁶ In 4.2, anyone who attempts to stop the offender's punishment would share his fate of death and unconsecrated burial, not because he participated in the offender's original violation but because he sought to undermine a mandated legal procedure. In 4.3, anyone who fails to enact the required procedures would be liable for a monetary fine due to the king, for disobeying royal law and disregarding a collective agreement.⁹⁷ Although death sentences are reserved for those offenders who actively subvert the law (as in 4.1–4.2), rather than those who passively refuse to fulfill it (as in 4.3), this sequence is primarily concerned that judicial procedures be properly followed.

In this construction, burial is one element of a multi-staged physical punishment. Unlike earlier legislation, in which unconsecrated burial was a punishment in its own right, *I Æthelred* 4.1 presents the disposal of an offender's corpse as a corollary to his death sentence, not as a stand-alone penalty.⁹⁸ Furthermore, this clause diverges from the diction of earlier Old English laws, notably in its lack of reference to physical space. In the first half of the tenth century, *II Æthelstan* prohibited unrepentant oathbreakers from burial in “any consecrated

rihtes wyrðe. 4.3] 7 se þe þys forsyttre 7 hit geforðian nylle, swa ure ealra cwíde is, sylle þam cyngre CXX sell'." This sequence adapts *III Edgar* 7–7.3, which do not mention burial.

⁹⁴ N. 92 above.

⁹⁵ *I Æthelred* 1; and compare *III Edgar* 6.

⁹⁶ Compare *III Edgar* 1.1, which declares everyone worthy of just judgments; and *III Edgar* 6 and *I Æthelred* 1, which declare that every person must have a surety in order to participate in judicial processes.

⁹⁷ One hundred and twenty shillings is the fine due for disobedience (*oferhyrness*) in earlier law: *I Edward* 2.1; *II Edward* 2; *IV Æthelstan* 7; but compare *II Æthelstan* 25.1–25.2.

⁹⁸ Compare *I Æthelred* 1.6 and 2.1, which require death for certain repeat offenders but do not mention burial.

cemetery” (“nanum gehalgodum lictune”), while *I Edmund* decreed that unrepentant killers and sexual offenders would forfeit a “consecrated burial place” (“gehalgodre legerstowe”).⁹⁹ *I Æthelred* 4.1 construes this fate somewhat differently, omitting any reference to consecrated ground and focusing instead on undesirability of the offender’s mode of burial: he is to be “laid” or “buried in foulness” (“on ful lecce”). This diction does not exclude the offender from any particular site nor suggest a loss of privilege; neither does it define the penalty in relation to normative practice, as earlier lawcodes had done. Instead, *I Æthelred* 4.1 creates a new category of undesirable burial. It is not entirely clear what “buried in foulness” indicates, however. One possibility is that such burial was defined by location. Old English *ful* was used in tenth- and eleventh-century charters to describe specific sites defined by pollution or some other unpleasantness: in addition to numerous references to unclean water, the term is applied to pits, ditches, roads, and lands.¹⁰⁰ The charters cite these landmarks as territorial boundaries, areas which were consistently used for deviant burial in the pre-Conquest period.¹⁰¹ Perhaps the condemned bodies envisioned in *I Æthelred* 4.1 would have been relegated to sites that were not simply unconsecrated but widely recognized as unclean — topographical features or burial places designated as *ful*.¹⁰²

It is also possible that “laid” or “buried in foulness” concerned the treatment of the body. The phrase may have been understood as a mandate to desecrate or dishonor the condemned corpse, perhaps in one of the modes attested in execution cemeteries, or perhaps by abandoning it to scavengers, as prescribed in Edgar’s

⁹⁹ *II Æthelstan* 26; *I Edmund* 1 and 4, all quoted above.

¹⁰⁰ In charter boundary clauses, the term is occasionally used to describe topographical features; I identified 102 attestations of this usage in the *Dictionary of Old English Web Corpus*. The vast majority of these refer to *ful* bodies of water, which were presumably unclean or unfit for drinking. However, there are nine royal charters of likely authenticity whose boundary clauses describe foul land, with the earliest dating to Æthelstan’s reign. A “foul pit” appears in charters of Edgar (S773, S786: “fulan pyt”) and Æthelred (S909: “foule putte”); a “foul ditch” appears in two charters of Æthelred (S842, S865: “fulan dic”); a “foul gap” or “pass” appears in a charter of Æthelred (S842: “fulan geate”); a “foul road” or “way” appears in charters of Æthelstan (S411: “fulan wege”) and Harthacnut (S993: “fulan wege”); and “foul land” appears in charters of Æthelstan (S437: “fulan rod”) and Edward the Confessor (S998: “fulan lande”). Compare references to a “foul road” or “way” in two stand-alone boundary clauses (S1542, S1556: “fulan wege”). *Dictionary of Old English Web Corpus*, compiled by Antonette diPaolo Healey with John Price Wilkin and Xin Xiang (Toronto, 2009); see also *DOE*, s.v. *ful*, definition 2.a. An association between *ful* sites and execution burial is suggested by Reynolds, *Deviant Burial* (n. 7 above), 224.

¹⁰¹ Reynolds, *Deviant Burial* (n. 7 above), 155–56, 203–27.

¹⁰² Compare references to “heathen burials,” which have been shown to apply to deviant or execution burials in tenth- and eleventh-century charter boundary clauses: Reynolds, *Deviant Burial* (n. 7 above), 219–22, 274–77. It is conceivable that *ful* was similarly used in charter boundary clauses to denote execution cemeteries or sites of deviant burial.

anti-theft policy. This interpretation of *ful* would foreground the body's disintegration: decomposition was ordinarily concealed by timely interment in a closed grave, but for a dead offender, corruption would become the defining feature of his mortal remains.¹⁰³ Alternatively, *on ful lecge* could mean that the deceased would be "buried in guilt," without a chance to make peace with the parties he had wronged or repent of his sins.¹⁰⁴ In such a scenario, the condemned might be deemed unworthy of the privileges which the Church ordinarily extended to the dead, including consecrated burial.¹⁰⁵ Such an outcome is not mentioned explicitly, however, and there is no direct discussion here — or in any other clause of *I Æthelred* — of religious belief or practice.¹⁰⁶ Æthelred's early laws conspicuously omit the religious language and policies that characterized the legislation of earlier kings, and I argue elsewhere that this rhetorical change was meant to create a clearer separation between secular and ecclesiastical jurisdictions.¹⁰⁷ By avoiding any reference to penance or hallowed ground, which figured in earlier tenth-century laws, *I Æthelred* 4.1 presents exclusionary burial as a secular response to an earthly offense — an addendum to the death penalty, rather than an incentive to spiritual repentance.

A possible outcome of such treatment is envisioned in *III Æthelred*, which establishes a procedure by which a thief's survivors might exonerate him after his conviction and death. This sequence assumes that the thief has already been killed:

7] And if anyone wishes to exonerate a thief, he shall give 100 as a pledge — half to the landowner and half to the king's port-reeve — and go to the triple ordeal.

7.1] If he is clean at the ordeal [i.e., if he succeeds], let him take up his kinsman. If he is foul [i.e., if he fails the ordeal], let the thief lie where he is buried and the relative pay 100.¹⁰⁸

The vocabulary here is standard for depictions of the ordeal, in which an individual able to refute a charge is deemed "clean" ("clæne"), while one who cannot is deemed "foul" ("ful").¹⁰⁹ According to these clauses, attempting to exonerate an executed thief would require not only physical suffering — the relative

¹⁰³ *DOE*, s.v. *ful*, definition 1.a.

¹⁰⁴ Compare the use of *ful* in descriptions of failed ordeals, n. 109 below.

¹⁰⁵ Nn. 34–38 above.

¹⁰⁶ Wormald, *English Law* (n. 25 above), 328.

¹⁰⁷ I discuss this point in greater detail in Marafioti, "Secular and Ecclesiastical Justice" (n. 5 above); Nicole Marafioti, "The Legacy of King Edgar in the Laws of Archbishop Wulfstan," in *Remembering the Medieval Present: Generative Uses of England's Pre-Conquest Past, 10th to 15th Centuries*, ed. Jay Paul Gates and Brian O'Camb (Leiden, 2019), 21–50, at 48–50.

¹⁰⁸ "And gif hwa þeof clænsian wylle, lecge an C to wedde, healf landrican 7 healf cinges gerefan binnan port, 7 gange to þrimfealdan ordale. 7.1] Gif he clæne beo at þam ordale, nime upp his mæg; gif he þonne ful beo, licge þar he læg, 7 gilde an C."

¹⁰⁹ See especially *Ordal* 5.2.

would have his hand burned by hot iron or water during the ordeal — but also a substantial financial risk, and it is reasonable to question why a relative would undertake a painful and potentially expensive exercise on behalf of a dead person.¹¹⁰ These clauses imply that a family would be motivated by a desire to move their kinsman's body: if they fail at the ordeal, the deceased must continue to “lie where he is buried” (“licge þar he læg”); if they are successful, they can exhume — literally “take up” (“nime upp”) — the body and assume possession of it. The language of this clause indicates that the condemned would have been interred in a way unacceptable to his survivors, likely in an execution cemetery or some undesirable site. Removing an innocent body from a *ful* burial (like the one prescribed in *I Æthelred* 4.1) could restore the honor of the dead man and his family, after the degradation of an execution, and enable a normative Christian burial in consecrated ground.

While it is logical that the family of a wrongly executed person would wish to repair his reputation and help advance his salvation, the process of posthumous exoneration outlined in *III Æthelred* 7–7.1 suggests that there may have been additional considerations that justified the physical and financial risks associated with the ordeal. The procedure for exoneration is much more strenuous under *Æthelred* than under earlier royal law, and this implies that family members were now being discouraged from seeking to redeem an executed relative.¹¹¹ Perhaps there was more at stake than simply the fate of a body in such cases. Forfeiture of property was an attested penalty for theft across the tenth century, and it is possible that a thief's heirs would be deprived of their livelihood once he was convicted.¹¹² *III Æthelred* 7–7.1 make no mention of forfeiture, but it is conceivable that success at the ordeal would allow the deceased's survivors to seek the restoration of their property. Although an unjust execution could not be reversed, the recovery of a wrongly convicted body would confirm that the original judgment was faulty and might serve as a first step toward challenging other aspects of an unjust sentence. In any case, it is clear from the scenario envisioned in *III Æthelred* 7–7.1 that “foul” burial was not designed to bring a living offender to penance but to affirm his guilt and enhance his physical punishment.

A final questionable reference to undesirable burial practice appears in *IV Æthelred* 4, preserved uniquely in a twelfth-century Latin translation.¹¹³ According to this clause, an individual killed in the act of resisting justice after

¹¹⁰ For varieties of ordeal, see *III Æthelred* 6.

¹¹¹ Compare *II Æthelstan* 11, which only requires an oath to exonerate a dead thief.

¹¹² Forfeiture for theft was attested in charters from the early tenth century: see for example S1445 (900x24), S443 (938), S753 (967), S792 (973), S1457 (975x87), S877 (996), S893 (998), S927 (1012); these are annotated by Patrick Wormald, “A Handlist of Anglo-Saxon Lawsuits,” *Anglo-Saxon England* 17 (1988): 247–81, at 261–64, nos. 25, 31, 37, 41, 45, 57, 60, 76.

¹¹³ Wormald, *English Law* (n. 25 above), 322.

committing forcible entry (“hamsocnam”) or in the midst of an assault on a royal road is to be buried (“iaceat”) in a particular way: “in ungildan ækere.”¹¹⁴ The precise meaning of this vernacular phrase is unclear. It is rendered “in an unhonoured grave” in the text’s standard translation, but this is a rather loose reading of the vocabulary.¹¹⁵ The term “ungildan” refers to the fact that the deceased had forfeited his right to wergild through his illicit actions, while “ækere” — which may be translated as “field” or “land” — gives the phrase a geographical focus.¹¹⁶ It is conceivable that this clause is relegating offenders to inferior burial places, reserved for those who are not entitled to wergild payments if they are killed.¹¹⁷ Alternatively, this diction could represent an imprecise rendering by a Latin translator of the Old English phrase *licgan ungilde*, “let him lie without compensation,” which appears elsewhere in Æthelred’s laws.¹¹⁸ As written, this clause diverges from Æthelred’s other prescriptions for exclusionary burial, in that the offenses it punishes — house-breaking and assault on roads — do not merit the death penalty outright. On the contrary, an offender who has recourse to violence but is not killed in the act is required only to render monetary compensation.¹¹⁹ Still, the burial restrictions required by *IV Æthelred* 4 align with the king’s other laws on exclusionary burial: the offender’s posthumous treatment is presented as an undesirable consequence of death, but there is no explicit prohibition against his interment in consecrated ground.¹²⁰

¹¹⁴ *IV Æthelred* 4 reads in full: “A person who commits house-breach within a town without permission, and commits the greatest infraction of resisting the law, or who attacks some innocent person on the royal road, if he is killed, let him lie in an *ungildan ækere*” [homo qui hamsocnam faciet intra portum sine licentia et summam infracturam aget de placito ungebendeo uel qui aliquem innocentem affliget in uia regia, si iaceat, iaceat in ungildan ækere].

¹¹⁵ A. J. Robertson, *The Laws of the Kings of England from Edmund to Henry I* (Cambridge, 1925), 1:75.

¹¹⁶ *DOE* s.v. *æcer*; Bosworth-Toller, s.v. *un-gilde*.

¹¹⁷ Robertson, drawing an analogy with the Old Norse phrase *i úgildum akri*, suggests that the Old English means “that he shall lie in the ground used for those for whom no wergeld is paid”; *Laws*, 2:325 n. 5. This interpretation follows Liebermann, who understands the dead to be buried in a dishonorable place reserved for those ineligible for wergeld: “liege er in dem nicht [durch Wergeld] entgoltenen [unehrlichen] Feld”; *Gesetze*, 1:235. Compare also Patrick Wormald, who reads *ungildan* as modifying *ækere*, rendering the phrase “in unredeemed ground”; *Papers Preparatory* (n. 92 above), 117.

¹¹⁸ *VI Æthelred* 38.

¹¹⁹ *IV Æthelred* 4.1 reads: “If he fights before requesting justice for himself, and he lives, he shall compensate the king with five pounds for forcible entry” [Si pugnet, antequam sibi rectum postulet, ac uiuat, emendet regis burhbrece quinque libris]. The subsequent clause establishes a further payment for offenders to reconcile with the wronged town.

¹²⁰ Compare Edgar’s policy, which requires severely mutilated thieves to be abandoned in the fields (*relinqueretur in agris*): n. 86 above.

Edgar's and Æthelred's policies built upon earlier tenth-century precedent: whatever other indignities foul, unclean, or unredeemed burial may have encompassed, these sentences surely entailed exclusion from Christian cemeteries. Nevertheless, the later tenth-century texts departed from earlier laws in three significant ways. First, these policies assigned exclusion from hallowed ground for secular offenses that were not construed as sinful. Where earlier kings reserved unconsecrated burial for offenders who willfully endangered their souls by refusing to repent of major sins, Edgar and Æthelred prescribed this penalty for thieves, as well as for problematic individuals whose actions disqualified them from participating in judicial processes and remedies. Although it is possible that such offenders were deemed to have violated a loyalty oath, their actions were never described as infidelity or oathbreaking, which might justify a religious penalty alongside a secular one. Instead, deprivation of normative Christian burial was presented as a secular punishment for secular violations. Second, unconsecrated burial was not paired with penance in Edgar's and Æthelred's policies, as it was in Æthelstan's and Edmund's laws. It was never presented as a conditional penalty, designed to motivate an offender to spiritual reconciliation, but as a straightforward consequence of wrongdoing, with no apparent possibility for mitigation before death. The objective of unconsecrated burial was no longer redemption but punishment. Third, unconsecrated burial was prescribed only for convicts whose death was certain, under Edgar and Æthelred; it was not a stand-alone penalty to be assigned whether or not the offender's death was imminent, as in the laws of their predecessors. This does not necessarily mean that unconsecrated burial was an automatic component of all death sentences, since most references to capital punishment in these kings' laws make no mention of burial.¹²¹ However, for the first time in Anglo-Saxon royal law, the posthumous fate of a body was determined directly by the mode of death: burial was only restricted for those who were executed or who died while resisting justice. Although the dishonorable disposal of such corpses may have already been common before Edgar's and Æthelred's reigns, it was only in the later tenth century that this practice began to be codified in legal texts. It does not follow, though, that the "foul" disposal of bodies would effect damnation — or that this was the intention of any tenth-century law. Although the denial of burial privileges may have been perceived as detrimental, it was never directly equated with excommunication in this period and was consistently presented as a punishment imposed by secular authorities, with no reference to ecclesiastical ritual.

¹²¹ *I Edgar* 2; *III Edgar* 7–7.1, 7.3; *I Æthelred* 1.6, 2.1; *II Æthelred* 6; *III Æthelred* 4.1, 8; *IV Æthelred* 5.4. It is certainly possible that the bodies of offenders executed under these laws were deposited in unconsecrated ground, but such treatment is not described as a punishment in these clauses, as it is in the clauses discussed above.

TENTH-CENTURY CHARTERS

Alongside the evidence for policies on unconsecrated burial in royal law, there is a small group of tenth-century charters that describe the implementation of this punishment. One was produced in Edgar's reign (S1447) and one in Æthelred's (S883); there are also references to the practice in two charters dated to Æthelstan's reign, although these were likely produced in the mid- or later tenth century (S414, S415). Collectively, these documents offer insight into how unconsecrated burial functioned in judicial contexts, under the jurisdiction of kings and laymen.

The only vernacular charter in this group, S1447, records a land dispute adjudicated by Edgar, probably in the 960s.¹²² After tracing the history of an estate at Sunbury, ownership of which is being confirmed in this document, the text recounts the fate of its former owner, Ecgferth.¹²³ During Edgar's reign, Ecgferth entrusted his land to Archbishop Dunstan of Canterbury, with the king's approval, to ensure that his wife and children would be provided for after his death. When Ecgferth died, however, his property was confiscated by the king, apparently as punishment for unspecified offenses. When Dunstan objected and claimed the property on behalf of Ecgferth's survivors, Edgar refused to restore it:

The king answered the bishop, "My councilors have declared all Ecgferth's property forfeit, because of the sword which hung on his hip when he drowned." Then the king took possession of the property which Ecgferth had owned — twenty hides at Send and ten at Sunbury — and gave it to Ealdorman Ælfheah.¹²⁴

Dunstan then tried another approach, offering to pay Ecgferth's wergild ("wer") to the king in exchange for the return of the property. Again, Edgar declined, referring the case to the ealdorman to whom he had granted Ecgferth's forfeited estates:

¹²² The text is edited by Robertson, *Charters* (n. 55 above), 90–93, no. 44, with commentary at 336–39. See also Scott T. Smith, *Land and Book: Literature and Land Tenure in Anglo-Saxon England* (Toronto, 2012), 79–93; Foxhall Forbes, *Heaven and Earth* (n. 4 above), 310; Wormald, "Handlist," 261–62, nos. 39–40.

¹²³ The first part of this charter describes a dispute which persisted through the reigns of kings Eadred and Eadwig and was finally settled under Edgar: the king and a Mercian council confiscated the land and reassigned it to an ealdorman, who subsequently sold it to Ecgferth.

¹²⁴ "Ɔa cwæð se cyng him to andsware mine witan habbað ætrecð Ecgferðe ealle his are. þurh þæt swyrd þe him on hype hangode þa he adranc. nam þa se cyng ða are þe he ahte .xx. hyda æt Sendan .x. æt Sunnanbyrg. 7 forgef Ælfheah ealdormenn"; Robertson, *Charters* (n. 55 above), 92, no. 44: I adapt Robertson's translation. Ælfheah was ealdorman of Hampshire: "Ælfheah 33," *Prosopography of Anglo-Saxon England*, <http://www.pase.ac.uk>. Edgar's grant of Sunbury to Ælfheah is recorded in S702, dated to 962 and witnessed by Dunstan.

Then the king said, “That [payment] can be offered in exchange for a clean grave for him, but I have left the whole case to Ælfheah.”¹²⁵

There is no further information on the fate of Ecgferth’s body. However, the charter states that six years after these events, Dunstan purchased Ecgferth’s estates from Ælfheah and became their legitimate owner.

The forfeiture of Ecgferth’s property and his deprivation of a “clean grave” are both presented in S1447 as consequences of a posthumous judgment against him. The nature of his offense is not stated, but his twofold punishment has precedent: a generation earlier, *I Edmund* 1 prescribed forfeiture and unconsecrated burial for unchaste clergy who refused to repent.¹²⁶ Yet Ecgferth was not a clergyman, and the evidence against him appears to have involved violence rather than sex, since it was reportedly his possession of a sword that led to his conviction. Ecgferth’s situation more closely resembles the scenario imagined in *IV Æthelred* 4, in which burial restrictions are imposed upon individuals killed while perpetrating a violent offense.¹²⁷ Moreover, Dunstan’s efforts on behalf of Ecgferth’s survivors evoke the provisions of *III Æthelred* 7–7.1, which envision family members attempting to exonerate a dead criminal. Nevertheless, Dunstan was not seeking to prove Ecgferth’s innocence, since he offered monetary compensation for his violation rather than attempting to exonerate him through a judicial oath or ordeal; his objective was only to recover the forfeited estates, which he claimed as trustee.¹²⁸ It seems that Dunstan’s efforts were rooted in a legal question: was property in fact subject to forfeiture if it had been legitimately entrusted to another party before any offense was committed? According to this charter, Edgar’s answer was yes, and his judgment meant that Dunstan would have to negotiate directly with the property’s new owner, Ælfheah. It would take six years for the two to reach a settlement concerning the property, but when the archbishop finally bought back the forfeited estates, he appears to have granted

¹²⁵ “Ða cwæð se cyng, þæt mihte beon geboden him wið clænum legere. ac ic hæbbe ealle þa spæce to Ælfhege læten”; Robertson, *Charters* (n. 55 above), 92, no. 44; I adapt Robertson’s translation. The concluding phrase has been translated differently by Scott T. Smith: “I have decided the entire case for Ælfheah”; *Land and Book*, 88. This rendering implies that Ælfheah was granted the forfeited land but not judicial rights over the case; in such an interpretation, it is not clear who would release the body or receive the *wer* payment. However, in other contexts, the phrase *ealle þa spæce* encompasses judicial rights, which informs my reading above; compare for example *VI Æthelstan* 4 and S806.

¹²⁶ *I Edmund* 1, discussed above. It has been suggested that Ecgferth drowned while undergoing a judicial ordeal by cold water, but it is illogical that he would have carried a sword during an ecclesiastical ritual: compare Nicolas Brooks, *The Early History of the Church of Canterbury* (Leicester, 1984), 249. Scholars have also proposed that Ecgferth committed suicide: see Robertson, *Charters* (n. 55 above), 338 for a refutation of this interpretation; also Smith, *Land and Book*, 87–88.

¹²⁷ See also the examples in Robertson, *Charters* (n. 55 above), 338.

¹²⁸ Compare *II Æthelstan* 11; *III Æthelred* 7–7.1.

Sunbury to Ecgferth's widow, thereby fulfilling his original agreement with the deceased.¹²⁹

It is possible, though, that Dunstan did recover Ecgferth's body in the aftermath of his death. The charter presents Edgar's suggestion — that the archbishop offer to pay Ælfheah for the corpse — as a direct quotation, phrased in the first person. The king's reference to Ecgferth's undesirable burial may have been remembered (or invented) years after the incident because this was precisely how events unfolded.¹³⁰ This suggestion must, of course, remain speculative. However, if Ecgferth was in need of a clean grave ("clænum legere"), he must have been buried at the time of his death in a manner that was considered unclean. The terms *clæn* and *ful* are often paired in Old English law and used to depict innocence and guilt; the clean ("clænum") grave of S1447 rhetorically anticipates the foul ("ful") burial prescribed a generation later, in Æthelred's laws.¹³¹ Yet where *III Æthelred* decreed that the bodies of condemned thieves could be relocated only if they were fully exonerated, Edgar indicated that Ecgferth's body could be acquired with monetary payment. The king thought it reasonable that Dunstan offer Ecgferth's *wer* — a fine or payment whose value was determined by its subject's social status — and this would have been a substantial sum, perhaps as much as £60.¹³² Significantly, this proposition implies that Dunstan, the archbishop of Canterbury, had no inherent right to claim Ecgferth's body for Christian burial.¹³³ Instead, possession of the body is presented in S1447 as corollary to a property dispute, to be negotiated with the ealdorman who held jurisdiction over the case. All parties evidently understood that Ecgferth's mode of burial was a penalty which could be mitigated with payment to a lay authority, implying that deprivation of a "clean" grave was a material punishment for an earthly crime.

The nature of Ecgferth's offense is never explained, however. S1447 asserts that he drowned, but the charter never states whether he died accidentally or whether

¹²⁹ S894 (dated 998) notes that the estate at Sunbury was entrusted by Dunstan to a certain widow named Æthelflæd for the duration of her life, after which it reverted to Westminster. Although Æthelflæd is never identified as Ecgferth's widow, it is reasonable that she would be the recipient of her husband's former estate, given Dunstan's earlier efforts on her behalf: Smith, *Land and Book*, 89 n. 69.

¹³⁰ The extant version of the charter was likely recorded in the period 968x988, after Dunstan had purchased the property in question: Smith, *Land and Book*, 80.

¹³¹ *I Æthelred* 4.1; and compare for example the use of *clæne* and *ful* in *III Æthelred* 7.1, n. 108 above. See also *DOE* s.v. *clæne*, definitions 6–7; Robertson, *Charters* (n. 55 above), 339.

¹³² For *wer* as a fine or compensation payment in the value of the offender's wergild, see Bosworth-Toller, s.v. *wer*, definitions 3.II–III. I have estimated Ecgferth's wergild at 1200 shillings (at twenty shillings to the pound), the value assigned to upper classes by the early eleventh century: *Cnut* 1020 Prol. By comparison, Dunstan would later pay £115 for the pair of forfeited estates: Robertson, *Charters* (n. 55 above), 92–93.

¹³³ Foxhall Forbes, *Heaven and Earth* (n. 4 above), 310.

he was killed while committing a violation. Still, two things are clear. First, his punishments were discrete, separable, and negotiable. If Ecgferth died in the midst of an illicit act, as seems probable, the relegation of his body to an unclean grave may have been automatic — but it was also reversible, if certain conditions were met. Nevertheless, the recovery of his body would not affect the fate of his forfeited property, which would remain in the possession of its new owner, according to Edgar’s judgment. The mitigation of one punishment would thus have no impact on the other. Second, there is no indication that Ecgferth’s mode of burial was determined by spiritual considerations. There was no apparent opportunity for him to escape his unconsecrated grave by submitting to penance, as the early tenth-century laws allowed, and neither were his survivors and advocates able to recover his body through devotional action (such as commissioning masses or giving alms on his behalf). The only way for his friends to gain access to the body was through a monetary payment equivalent to a legal fine, to be rendered to the ealdorman who held jurisdiction over the entire case (“ealle þa spæce”).¹³⁴ Unconsecrated burial is depicted in S1447 as a temporal punishment rather than a religious one, to be imposed and remedied by secular authorities, like any other judicial penalty.

The second late tenth-century charter that describes unconsecrated burial likewise portrays it as a secular punishment. S883 is dated to 995, during the reign of Æthelred.¹³⁵ Written in the king’s voice, the charter describes how five hides of land at Ardley, Oxfordshire came into Æthelred’s possession. The property had belonged to three brothers, who employed a servant who stole a bridle; when the brothers came to their servant’s defense, two were killed in the resulting skirmish. The brothers’ land at Ardley was forfeited, but there was disagreement concerning the disposal of their bodies:

Æthelwig, my reeve in Buckingham, and Wynsige, the reeve in Oxford, buried the aforesaid brothers among Christians. Therefore, Ealdorman Leofsige [of Essex], having heard word of this, came into my presence, accusing the aforesaid reeves of having unlawfully buried the slain brothers among Christians.¹³⁶

This may be understood as a conflict between regional and local authority, with the higher-ranking ealdorman challenging the decisions of the reeves responsible

¹³⁴ For the phrase *ealle þa spæce*, see n. 125 above.

¹³⁵ S883 is edited by Kelly, *Abingdon 2* (n. 54 above), 483–89, no. 125; I adapt the translation from Dorothy Whitelock, *English Historical Documents*, volume 1: c. 500–1042, 2nd ed. (London, 1979), 571, no. 118. See also Wormald, “Handlist” (n. 112 above), 262, no. 54; Foxhall Forbes, *Heaven and Earth* (n. 4 above), 310–12; Simon Keynes, *The Diplomas of King Æthelred “The Unready,” 978–1016* (Cambridge, 1980), 111–14.

¹³⁶ “Abeluug meus prepositus in Bucingham et Winsige prepositus on Oxonaforda inter Christianos predictos sepelierunt fratres. Leofsige igitur dux audito hoc uerbo meam adiit presentiam, prefatos incusans prepositos, peremptis fratribus non recte inter Christianos sepultis”; Kelly, *Abingdon 2* (n. 54 above), 484, no. 125.

for adjudicating the theft and the ensuing violence.¹³⁷ Æthelred was approached to arbitrate the dispute, and the charter frames his decision in terms of his personal relationship with the royal reeve Æthelwig:

I, however, not wishing to sadden Æthelwig, because he was dear and precious to me, permitted the buried men to rest with Christians and also, at the same time, granted him [Æthelwig] the aforesaid land [at Ardley] in perpetual inheritance.¹³⁸

This charter is the only extant document to mention Æthelwig, so it is impossible to know the extent of his relationship with the dead brothers or with Æthelred, who referred to him variously in S883 as “my reeve” (“meus prepositus”) and “my thegn” (“meo militi”).¹³⁹ Unlike Edgar’s charter, which allowed for the possibility of a clean grave in exchange for material payment, Æthelred’s charter indicates that the king’s judgment was based on empathy rather than financial interest: he was reluctant to grieve Æthelwig, a “dear and precious” (“carus et preciosus”) subordinate. Yet even though his decision is presented as royal mercy or perhaps even religious scruple, the king’s reeves were still accused of acting unlawfully (“non recte”). Based on *III Æthelred* 7–7.1 and *IV Æthelred* 4, accessories to theft who were killed while resisting justice were to be denied normative Christian burial, and the king’s judgment in S883 seems to condone his reeves’ disregard for the law.

The use of explicitly religious language in this charter is noteworthy. Where *I Æthelred* 4.1 requires dead offenders to be “buried in foulness” (“on ful legge”), S883 does not use comparable Latin vocabulary. Instead, the charter is concerned with whether or not the offenders ought to be buried “among Christians” (“inter Christianos”). The text records a judicial deliberation — presumably conducted in the vernacular and then rendered into Latin — and it is certainly possible that the participants used an Old English equivalent to this phrase, such as *mid cristenra*.¹⁴⁰ Alternatively, it is conceivable that this diction was a rhetorical choice by the charter’s drafter. Perhaps he used more evocative religious language to justify the reeve’s grief, or perhaps this was simply a logical rendering of the Old English *ful*.¹⁴¹ Whatever the explanation, this diction clearly links the

¹³⁷ For the participants, see “Æthelwig 3,” “Wynnsige 22,” and “Leofsige 17” in *Prosopography* (n. 124 above). For the reeves’ authority in this case, see John Blair, *Anglo-Saxon Oxfordshire* (Stroud, 1994), 103–4.

¹³⁸ “Ego autem, nolens contristari Æthelwig quia mihi erat carus et preciosus, una simul et sepultos cum Christianis requiescere permisi, et predictam terram eidem in hereditatem concessi perpetuam”; Kelly, *Abingdon* 2 (n. 54 above), 484, no. 125.

¹³⁹ “Æthelwig 3” in *Prosopography* (n. 124 above).

¹⁴⁰ This Old English phrase was used in the early eleventh century: see the passage quoted below, n. 168.

¹⁴¹ Compare the twelfth-century Latin translation in *Quadripartitus*: in *I Æthelred* 4.1, “buried in foulness” [in ful legge] is rendered “buried with the damned” [cum dampnatis inhümetur].

brothers' place of burial to their inclusion in the Christian community. It thus appears that Æthelred's early laws merely obscured the spiritual implications of exclusionary burial, rather than effectively dissociating it from religious practice.¹⁴² It is no wonder that S883 construes this as a troubling penalty, which could arouse pity in local law-enforcers and clemency in a king.

Despite the emotional affect of this passage, it is worth questioning whether there was more to Æthelred's decision than sympathy alone. It is significant that the king remitted only one element of the brothers' punishment: the burial restriction was waived, but the forfeiture was fully implemented. As in Edgar's charter, these two punishments are presented as distinct and separable. Likewise, in Æthelred's case as in Edgar's, control over the bodies and property was granted to a single person, in this case, the reeve Æthelwig. The primary purpose of S883 was to confirm his ownership of the brothers' forfeited estate, which was transferred to him by royal grant.¹⁴³ Moreover, Æthelwig apparently faced no penalty for burying the brothers in consecrated ground. It is striking that such preference would be shown to a reeve who was judged to have acted unlawfully. When this episode is read alongside S1447 — in which Archbishop Dunstan proffered significant sums to recover a condemned man's body and property — it is reasonable to hypothesize that Æthelwig also rendered some sort of payment to Æthelred, perhaps to compensate for his disobedience, or to keep the bodies in consecrated graves, or to offset the cost of the granted estate.¹⁴⁴ While Æthelwig may well have made an emotional plea before the king, I suggest that the charter's affectionate rhetoric obscures practical negotiations that enabled the reeve's advancement.¹⁴⁵ S883 may reveal a degree of resistance to unconsecrated burial among those who were meant to enforce it, but the text is clear that criminal bodies remained under secular control.

A final, tentative set of examples should be included with the charter evidence for unconsecrated burial: two charters that purport to have been issued in the reign of Æthelstan but were more likely produced in the mid- or later tenth

¹⁴² N. 106 above.

¹⁴³ Compare Edgar's grant of Egferth's forfeited land (and jurisdiction over his case) to Ælfheah, which declares the gift to be made "out of thanks for his great devotion" [pro obsequio ejus devotissimo]: S702, and n. 124 above.

¹⁴⁴ Fines for neglecting or disobeying royal law were standard throughout the tenth century: for example *I Æthelred* 4.3 (n. 93 above).

¹⁴⁵ The timing of this exchange may explain why the grant was presented as royal clemency: S883 was issued amid a series of penitential charters in which Æthelred sought to redeem past wrongs; by permitting the brothers' consecrated burial, Æthelred's judgment could be construed as an act of Christian mercy. Æthelred's penitential charters are discussed by Catherine Cubitt, "The Politics of Remorse: Penance and Royal Piety in the Reign of Æthelred the Unready," *Historical Research* 85.228 (2012): 179–92; Levi Roach, "Penitential Discourse in the Diplomas of Æthelred 'the Unready'," *Journal of Ecclesiastical History* 64 (2013): 258–76.

century.¹⁴⁶ S414, a grant of land to St. Peter's, Bath, and S415, a grant to Malmesbury Abbey, are each dated 931 and presented in Æthelstan's voice.¹⁴⁷ Both charters include the same narrative passage explaining how the lands in question had been forfeited to the crown some years earlier.¹⁴⁸ According to this account, a certain Alfred sought to ambush and blind Æthelstan shortly after his father's death in 924, before his accession to the kingdom.¹⁴⁹ Once the plot was revealed, Alfred was given a chance to prove his innocence: he was sent "to the church in Rome, where he would defend himself by swearing an oath in the presence of Pope John, and he did this in the presence of the altar of St. Peter."¹⁵⁰ Yet as soon as he had sworn, Alfred collapsed before the altar; he died three days later.¹⁵¹ At this point, the pope consulted Æthelstan:

And then the pope sent to us and asked our advice about what should be done with him, whether his body should be placed with other Christians. Once these things had been done and reported to us, the nobles of our kingdom, with a crowd of Alfred's relatives, beseeched with all humility that his body — with our permission — be placed with the bodies of Christians; and once we consented to their request, we sent back to Rome, and with the pope's agreement, he was placed near other Christians, even though he was unworthy. And so all of his property, both big and small, was adjudged to me.¹⁵²

Both charters include this explanation in order to affirm that the king "did not seize the aforementioned lands unjustly."¹⁵³ Rather, they assert that the forfeited

¹⁴⁶ These charters may have been created in response to a later challenge by Alfred's relatives, between the mid-tenth and mid-eleventh century: Kelly, *Malmesbury* (n. 54 above), 60–61, 214–16; S. E. Kelly, *Charters of Bath and Wells* (Oxford, 2007), 29, 75–77.

¹⁴⁷ S414 is preserved uniquely in a twelfth-century cartulary of Bath: Cambridge, Corpus Christi College 111; the text is edited by Kelly, *Bath and Wells*, 72–75, no. 5. S415 is preserved in three manuscripts produced between the thirteenth and fifteenth centuries: the text is edited with commentary by Kelly, *Malmesbury* (n. 54 above), 211–18, no. 25. See also Wormald, *English Law* (n. 25 above), 307–8.

¹⁴⁸ These are nearly identical. In the quotations below, I follow S415.

¹⁴⁹ Kelly, *Malmesbury* (n. 54 above), 212, no. 25; and compare Kelly, *Bath and Wells*, 73, no. 5. See further n. 155 below.

¹⁵⁰ "Ad Romanam ecclesiam, ut ibi se coram apostolico Iohanne iureiurando defenderet. Et hoc fecit coram altare sancti Petri"; Kelly, *Malmesbury* (n. 54 above), 212, no. 25; and compare Kelly, *Bath and Wells*, 73, no. 5.

¹⁵¹ Kelly, *Malmesbury* (n. 54 above), 212, no. 25; and compare Kelly, *Bath and Wells*, 73, no. 5.

¹⁵² "Et tunc apostolicus ad nos remisit et quid de eo ageretur a nobis consuluit, an cum ceteris Christianis corpus illius poneretur. His peractis et nobis renunciatis, optimates nostre regionis cum propinquorum illius turba efflagitabant omni humilitate ut corpus illius per nostram licentiam cum corporibus poneretur Christianorum nobisque illorum efflagitationi consentientibus Romam remissimus et, consentiente papa, positus est ad ceteros Christianos, quamvis indignus esset. Et sic iudicata est mihi tota possessio eius in magnis et modicis"; Kelly, *Malmesbury* (n. 54 above), 212, no. 25; and compare Kelly, *Bath and Wells*, 73, no. 5.

¹⁵³ "Nos has prefatas terras non iniuste rapuisse"; Kelly, *Malmesbury* (n. 54 above), 212, no. 25; and compare Kelly, *Bath and Wells*, 73, no. 5.

property came into Æthelstan's possession "just as all the magnates in the kingdom of the English decided, as well as John, the apostolic pope of the Roman church."¹⁵⁴ As in the charters from Edgar's and Æthelred's reigns, exclusionary burial and forfeiture are presented in S414 and S415 as distinct and separable penalties: the kingdom's magnates requested that Alfred be interred with Christians, but they nevertheless declared his property forfeit, presumably as punishment for treason.

Although these charters cannot reliably be dated to Æthelstan's reign in their current form, it is possible that their account of Alfred's death and burial originated in the 920s or 930s. There is indeed evidence that Æthelstan's accession met with resistance in Winchester between his father's death in July 924 and his coronation in September 925; Alfred was later remembered to have plotted with the king's half-brother, Eadwine, to have Æthelstan blinded in the city.¹⁵⁵ The narrative in S414 and S415 is consistent with this version of events, but it attributes the conspiracy entirely to Alfred's jealousy and malice, with no mention of a royal challenger.¹⁵⁶ The ætheling Eadwine lived until 933, and it is conceivable that the drafter of this passage sought to downplay the political conflict behind these events by omitting any mention of dynastic in-fighting.¹⁵⁷ Æthelstan's concession to his subjects' request that Alfred's body be buried among Christians could likewise be read as a diplomatic decision, intended to prevent any retaliation for treating a politicized corpse dishonorably. Another striking link to Æthelstan's reign is the fact that the king's laws prohibit consecrated burial for unrepentant perjurers — literally, those who "swear a false oath" ("mannað swerige").¹⁵⁸ S414 and S415 imply that Alfred swore a false oath of innocence, with his sudden illness and quick death revealing his guilt; the claim that this oath was rendered before the pope, at one of the holiest sites in Christendom, implies that divine justice was at work in this case. The charters' assertion that Alfred was "unworthy" ("indignus") of burial among Christians is consistent with the logic of *II Æthelstan* 26–26.1, even if his penalty was ultimately waived by royal fiat.

Despite these considerations, S414 and S415 were almost certainly created in their extant form after Æthelstan's death. Their witness lists appear to have

¹⁵⁴ "Quemadmodum iudicauerunt omnes optimates regionis Anglorum, insuper et apostolicus pape Romane ecclesie Iohannes"; Kelly, *Malmesbury* (n. 54 above), 212, no. 25; and compare Kelly, *Bath and Wells*, 73, no. 5.

¹⁵⁵ Wormald, *English Law* (n. 25 above), 307–8; Marafioti, *King's Body* (n. 16 above), 56–60.

¹⁵⁶ Alfred is said to be envious ("emulus") of the king's good fortune, and the charters have Æthelstan referring to him as "my rival" ("emulum meum"). Kelly, *Bath and Wells*, 77–78; and n. 149 above.

¹⁵⁷ Eadwine died under suspicious circumstances, in which Æthelstan was later rumored to have had a hand: Marafioti, *King's Body* (n. 16 above), 60 n. 33.

¹⁵⁸ *II Æthelstan* 26–26.1, n. 60 above; and see Wormald, *English Law* (n. 25 above), 307–8.

been drawn from a 941 charter issued by Edmund, which has the same proem as S414 and S415.¹⁵⁹ In this context, it may be telling that the earliest legislative pairing of forfeiture and unconsecrated burial appeared in Edmund's reign.¹⁶⁰ However, the descriptions of exclusionary burial in S414 and S415 more closely anticipate the rhetoric of later tenth-century charters. Where Æthelstan's and Edmund's laws merely prohibit the condemned from hallowed ground, Æthelred's 995 charter explicitly frames this penalty as isolation from other Christians. In S883, Æthelred refers to burial "with Christians" ("cum Christianis") and "among Christians" ("inter Christianos"); in S414 and S415, Æthelstan refers to burial "with other Christians" ("cum ceteris Christianis"), "with the bodies of Christians" ("cum corporibus... Christianorum"), and "near other Christians" ("ad ceteros Christianos"). In these three charters, descriptions of burial focus exclusively on the deceased's physical proximity to other Christians, not on the quality of the ground or grave. Furthermore, Æthelstan purportedly allows consecrated burial because he is sympathetic to the pleas of the dead man's friends — just as Æthelred would, in S883 — not because the perpetrator had performed penance, as early tenth-century laws prescribed. Alfred is still deemed "unworthy" ("indignus") of Christian burial, in S414 and S415, but this penalty is overridden by royal mercy. Once again, unconsecrated burial is construed as a temporal punishment, to be imposed or rescinded by secular authority; even the pope reportedly deferred to Æthelstan's decision on whether or not to grant Christian burial.

I would offer two observations based on the analysis of these tenth-century charters. First, there is a divide between Latin and Old English accounts of unconsecrated burial. Edgar's vernacular pronouncement in S1447 is consistent with descriptions in late tenth-century law, in its focus on the quality of the grave: it can be either "clean" or "foul." By contrast, the Latin descriptions of judgments attributed to Æthelred in S883 and to Æthelstan in S414 and S415 focus on the condemned's isolation from the Christian dead, treating unconsecrated burial as ideological exclusion from a community rather than physical exclusion from a desirable burial site. Certainly, this difference may be explained by rhetorical style: the Latin charters provide narrative accounts of deliberative judgments, while Edgar's declaration in the Old English S1447 — like the tenth-century vernacular laws — is prescriptive. Still, the Latin charters' consistent descriptions of offenders being posthumously excluded from Christian cemeteries affirm that this punishment was connected to religion, even if the policies set by Edgar and Æthelred made no explicit reference to its spiritual dimensions.

¹⁵⁹ The witness list and proem may have been modeled on S476, a grant by Edmund dated 941; compare also S480, a grant by Edmund dated 942, which shares parts of the proem with S514 and S515. Alternatively, the model may have been a lost charter of Edmund: Kelly, *Malmesbury* (n. 54 above), 215; Kelly, *Bath and Wells* (n. 146 above), 75–76.

¹⁶⁰ *I Edmund* 1 (n. 71 above).

The second observation is that all four of the charters on unconsecrated burial depict the law being superseded by royal clemency, at the petition of the deceased's friends. Posthumous exclusion is repeatedly construed as a distressing punishment, even for individuals whose guilt has been established; some survivors evidently considered it worth the effort and expense to seek consecrated burial for the dead.¹⁶¹ Where royal laws establish how unconsecrated burial ought to be prescribed — for certain unrepented offenses in the early tenth century, for certain secular violations in the later tenth century — the charters indicate that this remained a negotiable sentence, at least for those with persuasive advocates and access to high-level authorities.¹⁶² These texts confirm that exclusion was a punishment to be assigned or rescinded by secular magnates, but they also reveal a divide between prescription and practice. In each of the charters, advocates of the deceased had opportunities to secure consecrated burial, even though they recognized that sentences of forfeiture would stand. Although the negotiation of judicial punishments may have been a relatively common feature of Anglo-Saxon lawsuits, the flexibility surrounding unconsecrated burial sentences suggests that waiving this penalty would not undermine secular authority. On the contrary, the Latin charters indicate that allowing convicted offenders to receive Christian graves was a praiseworthy expression of royal mercy. This logic also suggests, however, that there was some degree of discomfort with the use of unconsecrated burial as a secular punishment. Certainly, the claim in S883 that Æthelred's clemency was inspired by a friend's grief indicates that such an explanation would be palatable to an elite audience. Likewise, there is no reproach for the crowds that beg Æthelstan for mercy in S414 and S415. Even Edgar's straightforward proposal, in S1447, that a "clean" grave be acquired through the payment of a standard fine, indicates that it was reasonable for this part of the offender's sentence to be reversed. Even though Edgar's and Æthelred's legal policies departed from earlier law by presenting exclusionary burial as a non-negotiable and secular punishment, the charter evidence indicates that this penalty was in fact seen to have religious implications, and that it could also be waived or reversed.

THE EARLY ELEVENTH CENTURY: ARCHBISHOP WULFSTAN OF YORK (R. 1002–1023)

The legal and diplomatic sources reviewed thus far indicate that unconsecrated burial should not be understood as a form of religious excommunication in tenth-century law. Although dead offenders might be denied normative interment in hallowed cemeteries, the written evidence consistently depicts this practice as a

¹⁶¹ Compare *III Æthelstan* 7–7.1.

¹⁶² Andrew Rabin, "Old English *Forespeca* and the Role of the Advocate in Anglo-Saxon Law," *Mediaeval Studies* 69 (2007): 223–54.

punishment to be imposed by secular authorities. Unlike excommunication, which was imposed by the clergy through liturgical ritual, unconsecrated burial was prescribed and administered exclusively by kings and lay magnates; even high-ranking ecclesiastics had to petition secular judges if they wished to secure Christian graves for the condemned. In the tenth century, a sentence of unconsecrated burial did not constitute formal expulsion from the Church or condemnation to hellfire. Rather, it was the deprivation of an earthly privilege. A convicted offender might be required to forfeit a consecrated grave, in accordance with secular justice, just as he might be required to surrender a fine, his property, or his life. In the documents discussed above, there is not one explicit connection drawn between exclusionary burial and the deceased's fate in the afterlife.

Nevertheless, unconsecrated burial was consistently recognized as an undesirable and harmful penalty. All of the charters depict friends or relatives seeking to save or recover bodies from unconsecrated ground, even when there was no chance of reversing the deceased's other punishments, and this suggests that the practice was especially distressing to survivors.¹⁶³ Royal legislation also anticipated that the living would seek to reverse a sentence of unconsecrated burial. Æthelstan's and Edmund's laws included procedures by which convicted offenders might escape this punishment, and *III Æthelred* 7–7.1 expected families to risk financial and physical harm in order to secure their kinsman a hallowed grave. While such measures could be motivated by various considerations — a desire to honor a relative, use a traditional burial place, or revive a family's reputation — it is likely that religious concerns were also a factor. If the Christian dead enjoyed spiritual protections and benefits from hallowed ground, it stands to reason that individuals subjected to exclusionary burial would find themselves at a disadvantage in the afterlife. In the early tenth-century laws of Æthelstan and Edmund, an unhallowed grave perpetually affirmed the sin of an unrepentant offender: though administered by a secular authority, unconsecrated burial was a testament to the deceased's spiritual obstinacy in refusing penance. Yet this rationale was no longer articulated in laws and charters by the end of the century. The legal vocabulary for exclusionary burial had shifted by the reigns of Edgar and Æthelred: the condemned were relegated to “foul” (*ful*) burials instead of “clean” (*clæn*) ones, with no mention of consecrated ground. Posthumous exclusion was no longer reserved for unrepentant sinners but was now prescribed for various offenses — including treason, theft, and illicit violence — which were presented as violations against earthly authorities rather than sins against God. I suggest

¹⁶³ This is not to suggest that forfeited property could not be reclaimed, for there are numerous instances of kings reversing earlier judgments and restoring confiscated property: Wormald, “Handlist” (n. 112 above), 250–52.

that this new approach under Edgar and Æthelred blurred the distinction between secular and religious wrongdoing. Despite the secularized vocabulary used to describe the practice by the later tenth century, it is probable that *ful* burial in unconsecrated ground was still believed to have dire religious implications. If so, contemporaries may well have reasoned that secular authorities had the power to impose spiritually detrimental punishments upon individuals convicted of earthly crimes.¹⁶⁴

At the turn of the eleventh century, a different approach began to be articulated. Its chief proponent was Archbishop Wulfstan of York, who, from 1008 onward, drafted royal laws for Kings Æthelred and Cnut. Wulfstan was a prolific author, who produced homilies and sermons, religious regulations, and royal law throughout his episcopal career; he was also an avid compiler, who preserved and revised earlier texts.¹⁶⁵ His corpus was influential beyond his lifetime, for later generations of ecclesiastical authors drew from his religious writings, and the legislation he penned for Cnut in the early 1020s remained relevant through the Norman Conquest. Wulfstan wrote repeatedly about unconsecrated burial, and his career marks another shift in the way this practice was understood. Where the tenth-century evidence placed exclusionary burial within the jurisdiction of secular authorities, Wulfstan presented the disposal of the dead as an ecclesiastical prerogative. He emphasized that an individual's place of burial must be determined by his spiritual state and, accordingly, that judgments about the disposal of the Christian dead be issued by clergy, not laymen. The following pages will first evaluate Wulfstan's sermons, laws, and religious regulations on the topic, and then examine prescriptions for unconsecrated burial in his penitential compilation, the *Old English Handbook*.

Wulfstan closely associated consecrated burial with Christian devotional obligations. According to his regulatory and homiletic writings, a person must know the Pater Noster and Creed in order to be worthy of Christian communion and a hallowed grave. Wulfstan explicitly drew this connection twice in his early career, first in his collection of religious regulations known as the *Canons of Edgar*, likely composed between 1004 and 1008:

22] And we instruct that everyone should learn to know the Pater Noster and Creed, as much as he wishes to be worthy of burial in hallowed ground or of communion. For anyone who does not wish to learn it is not properly a Christian, nor

¹⁶⁴ Marafioti, "Punishing Bodies" (n. 2 above).

¹⁶⁵ For Wulfstan's career and influence, see especially Dorothy Whitelock, "Archbishop Wulfstan, Homilist and Statesman," *Transactions of the Royal Historical Society*, 4th ser. 24 (1942): 25–45; Patrick Wormald, "Archbishop Wulfstan and the Holiness of Society," in his *Legal Culture in the Early Medieval West: Law as Text, Image, and Experience* (London, 1999), 225–51; Matthew Townend, ed., *Wulfstan, Archbishop of York: Proceedings of the Second Alcuin Conference* (Turnhout, 2004).

can anyone who does not know it lawfully sponsor another person at baptism or for confirmation by the bishop, before he learns it.¹⁶⁶

A similar passage appears in a sermon on baptism, also composed in the first decade of the eleventh century:

he who will not learn it [i.e., the Pater Noster and Creed] is not properly a Christian. And whoever does not know it cannot lawfully sponsor anyone at baptism or for confirmation by the bishop, until he learns it. Nor shall anyone who does not wish to learn it during his lifetime — at least in English, unless he is able to learn it in Latin — be lawfully worthy of communion or a clean grave.¹⁶⁷

Both passages construe consecrated burial as a privilege reserved for good Christians, which — like participation in communion — signals their inclusion in the religious community. Where tenth-century charters and laws indicate that only serious offenders would be forbidden hallowed graves, Wulfstan's approach would exclude anyone who could not meet fundamental devotional criteria. In the archbishop's discourse, it is incumbent upon every Christian to prove himself worthy ("wyrðe") through his actions in life. Burial in hallowed ground ("gehalgodan") or a clean grave ("clænes legeres") was a privilege to be earned through personal devotion, not a right to be forfeited through misbehavior.

After the first decade of the eleventh century, there is no mention of unconsecrated burial in Wulfstan's extant laws and sermons until the final years of his life. Two of the archbishop's later compositions, penned toward the end of his career, expand upon his earlier prescriptions. In Napier 59, a sermon of ca. 1020 which outlines the obligations of lay Christians, Wulfstan adapts the text of his *Canons of Edgar* as follows (new elements are underlined):

¹⁶⁶ "And we lærað þæt ælc man leornige þæt he cunne pater noster and credon, be þam þe he wille on gehalgodan licgan oððe husles wyrðe beon; forðam he ne bið wel cristen þe þæt geleornian nele, ne he nah mid rihte oðres mannes to onfonne æt fulluhte ne æt biscopes handa, se þe þæt ne cann, ær he hit geleornige"; Fowler, *Canons of Edgar*, 6 (n. 35 above), with dating at xxvi–xxx. I follow the version in CCC 201 (MS D) in the quotation above, but compare Oxford, Bodleian Library, Junius 121: Fowler, *Canons*, 7; and n. 72 above. See also Jay Paul Gates, "Preaching, Politics and Episcopal Reform in Wulfstan's Early Writings," *Early Medieval Europe* 23 (2015): 93–116; and further n. 168 below.

¹⁶⁷ "He ne bið wel cristen þe þæt geleornian nele, ne he nah mid rihte æniges mannes æt fulluhte to onfonne, ne æt biscopes handa se ðe þæt ne cann, ær he hit geleornige, ne he rihtlice ne bið husles wyrðe ne clænes legeres, se ðe on life þæt geleornian nele, huru on Englisc, buton he on Læden mæge." The text is edited by Dorothy Bethurum, *The Homilies of Wulfstan* (Oxford, 1957), 183, no. 8c, lines 148–53; Bethurum dates the text later than the *Canons of Edgar* but earlier than 1008. The passage was adapted after Wulfstan's death in the composite homily *Sermo Bone Praedicatio*: Arthur Napier, *Wulfstan* (Berlin, 1883), 32, no. 58, lines 3–8; and see Hiroshi Ogawa, *Language and Style in Old English Composite Homilies* (Tempe, 2010), 48–62.

We teach that every Christian person learn at least — so that he knows how to correctly understand the true faith — the Pater Noster and Creed, by means of which he will rest after death with Christian people in a consecrated resting place and have prayers, or earlier in this life be worthy of communion. Because he is not a proper Christian, who refuses to learn that, nor can he lawfully sponsor another person at baptism or for confirmation by the bishop before he learns it, so that he knows it well.¹⁶⁸

In addition to articulating the communal aspects of consecrated burial and its spiritual benefits, Wulfstan's revisions emphasize the importance of understanding and knowledge during a person's lifetime, describing these as necessary for true belief ("rihtne geleafan").¹⁶⁹ These additions clarify that inclusion in the Christian community requires more than rote memorization of the Pater Noster and Creed. Rather, in order to be worthy of communion and consecrated burial, an individual must know ("cunne," "cune") these prayers and apply them toward a fuller understanding of the faith.¹⁷⁰ Wulfstan went on to codify this principle in royal law in the early 1020s. In the first section of his two-part code *I–II Cnut*, the archbishop expounded upon the connection between prayer and true faith:

22] And we instruct that every Christian person at least learn to know the true faith and understand correctly, and learn the Pater Noster and Creed.

22.3] And in those holy prayers are seven requests: anyone who inwardly recites with those, he shall always pray to God himself for every necessity which a person needs, both for this life and for the one to come.

22.4] But how can anyone ever pray for himself inwardly to God, unless he inwardly hold correct belief in God?

22.5] Therefore, anyone [who does not learn the Pater Noster and Creed] cannot remain among Christian people after death nor rest in a consecrated cemetery, nor can he accept holy communion in this life.

¹⁶⁸ "We lærað, þæt ælc cristen man geleornige huru, þæt he cunne rihtne geleafan ariht understandan, and paternoster and credan, be ðam þe he wylle æfter forðside mid cristenra gemanan on gehalgedan restan and gebedrædenne habban oððon ær on life husles beon wyrðe, forðam he ne byð wel cristen, þe ðæt geleornian nele, ne he nah mid rihte opres mannes to onfonne æt fulluhte ne æt biscopes handa, ær he hit geleornige, þæt he wel cune"; Napier, *Wulfstan*, 307, no. 59, lines 20–28. For a translation with commentary, see Andrew Rabin, *The Political Writings of Archbishop Wulfstan* (Manchester, 2015), 154–58; see also Joyce Tally Lionarons, *The Homiletic Writings of Archbishop Wulfstan: A Critical Study* (Woodbridge, 2010), 35. The text is preserved uniquely in the York Gospels (York, Minster Library, MS Additional 1) and is annotated in Wulfstan's hand: Neil Ker, "The Handwriting of Archbishop Wulfstan," in *England before the Conquest: Studies in Primary Sources Presented to Dorothy Whitelock*, ed. Peter Clemoes and Kathleen Hughes (Cambridge, 1971), 315–31, at 330–31.

¹⁶⁹ Compare n. 166 above.

¹⁷⁰ *DOE* s.v. *cunnan*, definitions IA and IID.

22.6] He is not a proper Christian, who refuses to learn that, nor can he lawfully sponsor another person at baptism or for confirmation by the bishop before he learns it, so that he knows it well.¹⁷¹

This sequence articulates more clearly than the other passages how the Pater Noster and Creed facilitate true belief (“rihtne gelefan”) and thereby enable Christians to cultivate personal relationships with God. In addition to introducing a new focus on inward devotion and faith, Napier 59 and *I Cnut* 22–22.6 describe consecrated burial differently than Wulfstan’s early-career writings. Where the texts from the early 1000s focus on an individual’s physical placement in consecrated space — hallowed ground (*gehalgodan*) or a clean grave (*clænes legeres*) — the sources from the 1020s are concerned with community.¹⁷² Napier 59 asserts that a pious individual will merit interment “with Christian people in a consecrated resting place,” while *I Cnut* 22.5 decrees that those who fail to learn their prayers must not be buried “among Christian people nor rest in a consecrated cemetery.”¹⁷³ In these texts, burial in hallowed ground signifies full membership in the Church.

By the 1020s, it appears that Wulfstan regarded consecrated burial as a standard way to dispose of the Christian dead. Because interment in a hallowed cemetery was a privilege that could be earned only by true Christians, according to the archbishop’s logic, it could not be granted to anyone who failed to meet the devotional requirements for inclusion. Based on the passages discussed so far, it is reasonable to posit that Wulfstan envisioned ecclesiastical authorities, rather than secular ones, making decisions about burial, since the clergy were best qualified to evaluate an individual’s faith and devotion. The consistent pairing of burial and communion in these texts suggests that the same religious criteria would be applied in decisions about exclusion, whether the sinner were alive or dead at the time of judgment. Significantly, however, Wulfstan did not conflate excommunication and unconsecrated burial. Rather, he treated them as parallel forms of religious exclusion for the living and the dead. This was a departure from the

¹⁷¹ “22] And we lærað, þæt ælc Cristen man geleornige, þæt he huru cunne rihtne gelefan 7 ariht understandan 7 Pater noster 7 Credan geleornian ... 22.3] And on þam godcundan gebede syn VII gebedu; mid þam se ðe hit inweardlice gesingð, he gearndað to Gode sylfum ymbe æfre ælce neode, þe man beþearf aðor oððe for þysum life oððe for ðam toweardan. 22.4] Ac hu mæg þonne æfre ænig mann hine inweardlice to Gode gebiddan, butan he hæbbe inweardlice rihtne gelefan to Gode? 22.5] Forþam he nah æfter forðsiðe Cristenra manna gemanan ne on gehalgedan lictune to restene, ne he nah þæs halgan husles to onfonne her on life. 22.6] Ne he ne byð wel Cristen, þe þæt geleornian nele, ne he nah mid rihte oðres mannes to onfonne æt fulluhte ne æt biseopes handa þe ma, ær he hit geleornige, þæt he hit wel cunne.”

¹⁷² Nn. 166 and 167 above. See also Lambert, *Law and Order* (n. 5 above), 221–22 — although Lambert regards *I Cnut* 22–22.6 as an ideological statement rather than a set of practical decrees: 222 at n. 78.

¹⁷³ Compare the diction of the Latin charters, above.

tenth-century legal and judicial descriptions of unconsecrated burial, in which it was deployed by lay authorities as a secular punishment. The new approach advocated by Wulfstan likely drew upon Continental models, which had begun linking exclusionary burial with religious excommunication more than a century earlier.¹⁷⁴ Yet it is also possible that Wulfstan was responding directly to an English judicial practice that he viewed as secular overreach. As archbishop, it is conceivable that he sought to expand ecclesiastical control over disposal of the dead and clarify the spiritual implications of unconsecrated burial — especially if contemporaries believed that secular authorities could injure a criminal’s soul by depriving him of a hallowed grave.¹⁷⁵

Nevertheless, there is one instance in Wulfstan’s legislation where he appears to accept and promulgate tenth-century legal attitudes toward unconsecrated burial. In *II Cnut* 33–33.2, Wulfstan quoted verbatim Æthelred’s early decree on faithless (“ungetrywe”) individuals who lack surety: if such a person is convicted, the law dictates, “let him be killed and buried in foulness.”¹⁷⁶ The death sentence and exclusionary burial mandated in *II Cnut* 33–33.2 seem uncharacteristic of Wulfstan’s life-sparing approach to justice, and I have suggested elsewhere that this was an instance of the archbishop appropriating an earlier law without revision.¹⁷⁷ This explanation is unsatisfactory, however, not least because Wulfstan was adept at adapting earlier legislation and aligning it with his own ideology. It is more probable, I now propose, that this older decree assumed new meaning in the 1020s, thanks to Wulfstan’s career-long redefinition of burial as a religious matter, as well as his understanding of what faithless behavior entailed. In his *Sermo Lupi ad Anglos*, Wulfstan lamented the kingdom’s “great faithlessness (“ungetreowða”) against God and in the world,” and it is reasonable that he understood the faithless (“ungetrywe”) individuals of *II Cnut* 33 to have offended in both the spiritual and secular spheres.¹⁷⁸ Moreover, given the

¹⁷⁴ Nn. 41–45 above.

¹⁷⁵ Marafioti, “Punishing Bodies” (n. 2 above), 51–56.

¹⁷⁶ “Slea hine man 7 on fulan lecge”; *II Cnut* 33.1. Compare *I Æthelred* 4–4.3 (n. 93 above).

¹⁷⁷ Marafioti, “Punishing Bodies” (n. 2 above), 52 n. 47. A guiding principle of Wulfstan’s legislation is that death sentences not be issued for minor offenses: see *V Æthelred* 3, *VI Æthelred* 10, *II Cnut* 2.1. Several of his laws stipulate that an offender might be liable to forfeit his life, but these clauses all offer the possibility of mitigation: see *I Cnut* 2.2; *II Cnut* 43, 59, 61. Outside of *II Cnut* 33, Wulfstan prescribes outright death sentences only for proven treason against the king (*V Æthelred* 30, *VI Æthelred* 37, *II Cnut* 57); he also stipulates in *II Cnut* 26 that an individual proven to have plotted against his lord or committed theft “shall never seek his life” [næfre feorh ne gesecean].

¹⁷⁸ “Forðam syn on lande ungetreowða micle for Gode and for worulde.” This statement appears in all recensions of the text: Bethurum, *Homilies* (n. 167 above), 257, no. 20(BH), lines 64–65; 263, no. 20(C), lines 77–78; and 270, no. 20(EI), lines 71–72. The mention of faithlessness in the *Sermo Lupi* is followed by a condemnation of lord-betrayal (*hlafordswice*), the

conditions for consecrated burial listed in *I Cnut* 22, it seems impossible that the faithless offender of *II Cnut* 33 would meet the religious criteria needed to secure a hallowed grave. A true Christian could presumably call on upstanding members of his religious community to provide legal and financial support, thereby saving him from the punishments imposed upon individuals who lacked surety; one might imagine a bishop standing as an advocate and providing surety in such a case.¹⁷⁹ By contrast, a person who was faithless “to the entire population” (“eallum folce”) would have proved himself unworthy of inclusion in earthly and spiritual communities. Such an individual would thus merit the twofold punishment prescribed in *II Cnut* 33–33.2: a death sentence for his treachery against the community and unconsecrated burial for his refusal to lead a good Christian life.¹⁸⁰

A final text must be included among Wulfstan’s discussions of unconsecrated burial: the six-part penitential collection known as the *Old English Handbook*.¹⁸¹ This penitential was almost certainly compiled by Wulfstan or at his direction, and it survives in multiple manuscripts associated with the archbishop.¹⁸² All three of the *Handbook*’s references to unconsecrated burial appear in Part IV of the text, a list of penitential tariffs based on two earlier collections: Wulfstan drew from the late tenth-century *Old English Penitential*, which was itself a vernacular rendering of a Latin penitential by Bishop Haltigar of Cambrai (died 829).¹⁸³

only other offense in Wulfstan’s legislation that requires an outright death sentence (see n. 177 above). Compare also judicial procedures for untrustworthy individuals (*ungetrywan men*) in *II Cnut* 22.1–3, 25, and 30. Wulfstan’s extended attention to faithlessness suggests that he sought to define and set standard procedures for a nebulous category of offender.

¹⁷⁹ For legal advocacy, see Rabin, “Old English *Forespeca*” (n. 162 above). For surety, see Lambert, *Law and Order* (n. 5 above), 273 and 279–80.

¹⁸⁰ Alternatively, faithlessness to the population might be understood as treason, which would merit death (see n. 177 above).

¹⁸¹ The text is edited in *Handbook*, 16–34. See also Frantzen, *Literature of Penance* (n. 25 above), 139–41. Wulfstan’s authorship is demonstrated by Melanie Heyworth, “The ‘Late Old English Handbook’ for Use of a Confessor: Authorship and Connections,” *Notes & Queries* 252 (2007): 218–22; and see also Catherine Cubitt, “Bishops, Priests and Penance in Late Saxon England,” *Early Medieval Europe* 14 (2006): 41–63, at 53–54; *Handbook*, 6–12; Wormald, *English Law* (n. 25 above), 353.

¹⁸² Six manuscripts preserve the *Handbook* in its entirety, all produced in the eleventh century and all associated with Archbishop Wulfstan or with his see of Worcester (r. 1002–1016): *Handbook*, 1–3 and 10; Heyworth, “Late Old English Handbook”; Cubitt, “Bishops, Priests, and Penance,” 60.

¹⁸³ The *Old English Penitential* is edited by Raith, *Altenglische Version* (n. 91 above). The text and its dating are discussed by Frantzen, *Literature of Penance* (n. 25 above), 133–39; divergences from Haltigar’s penitential are discussed by Fulk and Jurasinski, *Canons* (n. 32 above), 1–li. Knowledge of Haltigar’s penitential in tenth-century England is examined by Philip G. Rusche, “St. Augustine’s Abbey and the Tradition of Penance in Early Tenth-

Of the three *Handbook* clauses that mention unconsecrated burial, two are concerned with sexual misconduct. The first states that anyone who forsakes his marriage by taking a second wife is an adulterer, who — along with his new wife and any witnesses to the marriage — would be subject to the following punishment, if he failed to repent:

No one may give him the rites appropriate for Christian people, neither in death nor in life; nor may anyone bury him with Christian people.¹⁸⁴

Like those who refuse to learn the Pater Noster and Creed, unrepentant bigamists and their abettors are prohibited from Christian rituals and cemeteries. A second *Handbook* clause prescribes a lifetime's worth of penance for anyone who marries two siblings in succession, the first having died.¹⁸⁵ While individuals who repent of this sin would ultimately be allowed last rites, those who continue in this illicit arrangement until their death would not:

If anyone persists in such evil sin until his life's end without turning from it entirely, we do not know any advice to give him, except that it is dependent upon God's judgment; he cannot go to a clean [grave].¹⁸⁶

These clauses evoke the sexual misconduct clauses in *I Edmund*, in which consecrated burial is forbidden only to those who persist in sin and refuse to atone. Yet the *Handbook* does not assign unconsecrated burial for sex among the clergy or adultery among the laity, the offenses that merited that punishment under Edmund's laws.¹⁸⁷ Furthermore, a number of sexual actions condemned as serious offenses in the *Handbook* — including rape, homosexual acts, and bestiality — do not merit exclusion from Christian cemeteries.¹⁸⁸ Instead, the

Century England," *Anglia* 120 (2002): 159–83; Elliot, "Canon Law" (n. 70 above), 191–93. I rely on Raith's edition for the Latin, but see Rusche, "St. Augustine's Abbey," 160 n. 3 for other editions of Haltigar's penitential.

¹⁸⁴ "Ne sille man nan ðara gerihta þe Cristenum mannum gebired, ne for deaðe ne for life, ne hine man ne lece mid Cristenum mannum"; *Handbook*, 22, lines 174–76.

¹⁸⁵ *Handbook*, 22–23, lines 187–92.

¹⁸⁶ "Gyf hwa on swilcum manfullum sinscipe þurhwunað oð his lifes ende buton ælcere geswicnesse, ne cunne we him nænne ræd gepencan, buton hit is æt Godes dome gelang; ne he to clænan ne mot"; *Handbook*, 23, lines 193–96. Although there is no word for "grave" or "cemetery" in the Old English, the meaning of this final clause can be reasonably deduced from the attention to burial rites in this section of the *Handbook*: see n. 185 above.

¹⁸⁷ In the *Handbook*, lay adultery requires a lengthy fast, seduction by clergymen requires deposition from holy orders, and various types of fornication by the clergy are assigned penances but not unconsecrated burial: *Handbook*, 22, lines 171–72; 23, line 204; and 24, lines 228–42. Compare also *Handbook*, 22, lines 179–82: if a man has both a wife and a mistress, "no priest may give him any of the privileges with Christian men, unless he turns to penance" [ne do him nan preost nane gerihta mid Cristenum mannum, buton he to bote gecyrre]; this prohibition could conceivably encompass consecrated burial.

¹⁸⁸ For example, *Handbook*, 22, lines 164–70 and 23, lines 200–201.

Handbook's sexual misconduct clauses reserve unconsecrated burial for those who flaunt ecclesiastical authority by persisting in forbidden relationships, rather than those who commit prohibited acts on occasion. Although a sentence of posthumous exclusion might conceivably be used as an incentive to penance, as in *I Edmund*, the *Handbook* treats this penalty as a last resort, to be imposed when all other modes of correction have failed.

A third prescription for unconsecrated burial in the *Handbook* departs from this model, making no mention of renouncing sin or undertaking penance in life. Instead, it concerns individuals who are already dead:

If a person kills himself by his own will with a weapon or by some instigation of the devil, it is not permitted that any masses be sung for that person, nor that his body be committed to the earth with the singing of any psalms, nor that his body be buried in a clean grave. The same judgment shall be given to those who, as punishment for their guilts, lose their life — that is thieves, and those who commit *morð*, and lord-betrayers.¹⁸⁹

Here, unconsecrated burial is construed as a posthumous penalty, which cannot be mitigated by the deceased before his death. The final set of prescriptions aligns with the treatment of dead criminals recorded in the tenth-century charters, as well as with *I Æthelred 4* and *II Cnut 33*: in all of these texts, unconsecrated burial is applied as an addendum to a death sentence or imposed upon those who died while perpetrating a violation. Yet the equation of suicides and secular offenders in the *Handbook* has problematic implications. Suicides would inevitably die in a state of unrepentance, since the act of killing oneself was deemed a sin against God; this, presumably, justified the decision to withhold last rites and consecrated burial.¹⁹⁰ By prescribing the same fate for individuals condemned for committing a secular offense, however, the *Handbook* implies that they too would be unable to reconcile with God in this lifetime and would necessarily die in sin.

At first glance, such a position seems antithetical to Wulfstan's logic elsewhere. He repeatedly legislated that convicts be allowed to confess their sins before capital punishment was administered, and throughout his career, he

¹⁸⁹ “Gyf man hine sylfne gewealdes ofslihð mid wæpne oððe mid hwilcum deofles onbringege, nis na alifed þæt man for swilcne man mæssan synge, ne mid ænigum sealmsange þæt lic eorðan befæste, ne on clænan legere ne licge bebirged. Ðone ilcan dom man sceal don þam þe for his gilta pinunge his lif alæt — þæt bið þeof and morðwyrhta and hlafordswica”; *Handbook*, 21–22, lines 157–63. Compare Cross and Hamer, *Wulfstan's Canon Law* (n. 17 above), 112, at A.104, a canon of the 560 Council of Braga which denies funeral rites to suicides and “those who are being punished for their misdeeds” [his qui pro suis sceleribus puniuntur]. For this canon's influence on Wulfstan's legal thought, see Lambert, *Law and Order* (n. 5 above), 222–23 n. 83.

¹⁹⁰ For suicides' burial in Anglo-Saxon England, see Foxhall Forbes, *Heaven and Earth* (n. 4 above), 300–1.

prescribed non-lethal penalties so that offenders' bodies and souls — "God's handiwork and his own purchase" — could be rehabilitated during their earthly lifetimes.¹⁹¹ Yet this apparent inconsistency can be explained by the different audiences Wulfstan envisioned for his legislation and the *Handbook*. In laws promulgated on behalf of kings, the archbishop discouraged secular authorities from imposing punishments that could hinder a convict's salvation. This policy was grounded in notions of Christian mercy, but it also touched on an important jurisdictional matter: lay authorities were not entitled to make judgments that could affect an offender's soul; this was an ecclesiastical prerogative. Part IV of the *Handbook*, which contains all three of the text's references to unconsecrated burial, is addressed explicitly to bishops and priests, not to secular authorities.¹⁹² This indicates that decisions about Christian burial — even in cases concerning executed criminals — were to be made by the clergy, an apparent departure from earlier practice. As delineated in the *Handbook*, once a death sentence was administered in accordance with secular justice, it was a clergyman's responsibility to impose the posthumous penalty of unconsecrated burial, since the condemned had failed to earn a hallowed grave through lifelong Christian devotion.

Although the *Handbook* treats unconsecrated burial as a clerical prerogative, it does not conflate this penalty with excommunication. Rather, its prescriptions for unconsecrated burial are followed by three decrees that require living offenders to be expelled from the Church. These clauses, which address rape and abduction, state outright that a perpetrator "be excommunicated" ("beo he amansumod") — a command which has no parallel in the unconsecrated burial clauses.¹⁹³ The prescriptions for excommunication make no mention of the offender's death or burial; instead, they present this sentence as an immediate ecclesiastical response to an illicit act. The *Handbook*, like Wulfstan's homiletic and legislative pronouncements, treats excommunication and unconsecrated burial as distinct penalties — for the living and the dead, respectively — which could be prescribed independently of one another.

There is a further striking feature of the *Handbook* canons: in at least two of the three clauses, the prescriptions for unconsecrated burial were apparently composed by Wulfstan and not adapted from a source text. In their discussions of suicides and executed criminals, the penitential of Haltigar and the *Old English Penitential* stipulate that the dead should not be commemorated or buried with

¹⁹¹ "Godes handgeweorc 7 his agenne ceap"; *V Æthelred* 3, and also *VI Æthelred* 10.1; *II Cnut* 2.1. For confession, see *Edward and Guthrum* 5; *II Cnut* 44–44.1.

¹⁹² See the introduction to section IV: *Handbook*, 20, lines 113–29.

¹⁹³ *Handbook*, 23, lines 197–206.

Penitential of Haltigar	<i>Old English Penitential</i>	<i>Handbook</i>
iv.6] De his qui sibi quacumque negligentia mortem inferunt, et de his qui pro suis sceleribus puniuntur. (Ex concilio bracarense, cap. VI): Placuit ut hi qui sibi ipsis aut per ferrum aut per venenum aut per precipitium vel quolibet modo violenter inferunt mortem, nulla illis in oblatione commemoratio fiat neque cum psalmis ad sepulturam eorum cadavera deducantur. . . . Similiter et de his placuit qui pro suis sceleribus puniuntur.	ii.5] Se man se ðe hyne sylfne ofslyð mid wæpne oððe for hwylcum mislicum deofles onbringe, nis hit na alyfed þæt man for swylcum men mæssan singe oððe mid ænigum sealmsange þæt lic eorðan befæste. Pæne ylcan dom man sceal don þam ðe for his gylta pinunga his lif alett [þeof morðwyrhta hlafordswica (= Junius 121). ¹⁹⁴	Gyf man hine sylfne gewealdes ofslihð mid wæpne oððe mid hwilcum deofles onbringe, nis na alifed þæt man for swilcne man mæssan synge, ne mid ænigum sealmsange þæt lic eorðan befæste, ne on clænan legere ne liege bebirged. Done ilcan dom man sceal don þam þe for his gilta pinunge his lif alet — þæt bið þeof and morðwyrhta and hlafordswica.

Figure 1. Sources for *Handbook* clause on suicides and executions

psalms, but it is only the *Handbook* which specifies that the body should also be denied a clean grave (Figure 1).

¹⁹⁴ The concluding phrase “þeof morðwyrhta hlafordswica” appears only in Junius 121: see further on this manuscript below. These three offenses — theft, illicit killing (*morð*), and lord-betrayal — are also listed in Wulfstan’s laws for Cnut and his homily Napier 51 as irredeemable (*botleas*) under earthly law: see *II Cnut* 26 [= *III Edgar* 7.3] and 53; Napier, *Wulfstan*, 274, lines 23–24 (n. 167 above). See also Bethurum, *Homilies* (n. 167 above), 37; Wormald, *English Law* (n. 25 above), 337 n. 334; Lionarons, *Homiletic Writings* (n. 168 above), 170–71; Rabin, *Political Writings* (n. 168 above), 127; Lambert, *Law and Order* (n. 5 above), 193–94; Bruce R. O’Brien, “From *Morðor* to *Murdrum*: The Preconquest Origin and Norman Revival of the Murder Fine,” *Speculum* 71 (1996): 321–57 at 347 n. 121. For an extended analysis of the term *morð* in Cnut’s laws, see Stefan Jurasinski, “*Reddatur Parentibus*: The Vengeance of the Family in Cnut’s Homicide Legislation,” *Law and History*

The penitential of Haltigar never mentions burial in relation to those who married two siblings, and neither do two of the three manuscripts that preserve the corresponding canon of the *Old English Penitential* (Figure 2). The only version of this text which prohibits consecrated burial is preserved in Oxford, Bodleian Library, Junius 121, a manuscript closely associated with Wulfstan.¹⁹⁵ Although it is possible that this condition was included in a tenth-century copy of the *Old English Penitential*, which was later reproduced by Wulfstan or one of his circle, it seems more likely that the prohibition against a clean grave in Junius 121 — which employs the exact same phrasing as the corresponding clause in the *Handbook* — was added by Wulfstan or his scribe.

It is only in the *Handbook*'s clause on bigamy that the prescription for exclusionary burial is clearly drawn from an earlier source (Figure 3). Although Haltigar's penitential does not provide instructions for burial, all manuscripts of the *Old English Penitential* specify that a bigamist who dies in his sin may not be buried with other Christians, and the *Handbook* reproduces this condition in similar language.

The inclusion of this prescription in the *Old English Penitential* suggests that unconsecrated burial had in fact begun to be recognized as an ecclesiastical penalty before Wulfstan compiled the *Handbook*. Both texts are difficult to date precisely, since they survive exclusively in eleventh-century manuscripts, but the *Old English Penitential* is typically attributed to the later tenth century, although it may have been produced in the early eleventh.¹⁹⁶ While this text must have been produced before the *Handbook*, for which it was a source, it is possible that the *Old English Penitential* was compiled during Wulfstan's ecclesiastical career and reflects an approach to unconsecrated burial that may have been

Review 20 (2002): 157–80; and for its use in Old English penitential literature, see Stefan Jurasinski, *The Old English Penitentials and Anglo-Saxon Law* (Cambridge, 2015), 44–45.

¹⁹⁵ Junius 121 contains a version of Wulfstan's "commonplace book," a collection of texts compiled by or for the archbishop, which provided source material for his own work. The texts are preserved in various combinations across several eleventh-century manuscripts, including some — like the late eleventh-century Junius 121 — which survive only as copies produced after Wulfstan's death. See especially Dorothy Bethurum, "Archbishop Wulfstan's Commonplace Book," *PMLA* 57 (1942): 916–29; Hans Sauer, "The Transmission and Structure of Archbishop Wulfstan's 'Commonplace Book'," in *Old English Prose: Basic Readings*, ed. Paul E. Szarmach (New York, 2000), 339–93; Wormald, *English Law* (n. 25 above), 213–19. See also above, nn. 166 and 182.

¹⁹⁶ Peter Clemons argues that the penitential was authored by Byrhtferth of Ramsey (died ca. 1020), based on stylistic similarities with his work: C. R. Dodwell and Peter Clemons, *The Old English Illustrated Hexateuch: British Museum Cotton Claudius B.IV*, Early English Manuscripts in Facsimile 18 (Copenhagen, 1974), 51–52. However, this attribution is challenged by Peter S. Baker, "The Old English Canon of Byrhtferth of Ramsey," *Speculum* 55 (1980): 22–37.

Penitential of Haltigar	<i>Old English Penitential</i>	<i>Handbook</i>
iv.14] De his qui duobus fratribus nupserit vel duas sorores acceperit. (Ex concilio neocesariensi, cap. II): Mulier si duobus fratribus nupserit abiciatur usque ad mortem; verumtamen in exitu propter misericordiam si promiserit quod facta incolumis hujus conjunctionis vincula dissolvat, fructum pœnitentie consequatur. Quod si defecerit mulier aut vir in talibus nuptiis, difficilis erit pœnitentia in vita permanenti.	ii.11] Be þam men þe wifað on twam geswusternum, oððe wif nimð broðor æfter oðrum. Gif hwylc wif twegen gebroðro nymð hire to gemæcean, oðerne æfter oðrum, todo man hi, & beon hi on dædbote þa hwile ðe hi lybban swa hira scrift him tæce. & æt hira forðsiðe do se sacerd him þa gerihto swa man cristenum mannum deð, gif hi þæt gehatað þæt hi leng betan woldon gif hi leng lybban mosten. Gif hwa on swylcum manfullum sinscipe ðurhwunað oð his lifes ænde, ne cunne we him nane bote tæcean, butan hit is æt godes dome gelang [ne he to clænan ne mote (= Junius 121)].	Gyf hwilc wif twegen gebroðra nymð hire to gemæccan oðerne æfter oðrum, todo man hi and beon hi on dæd-bote georne þa hwile þe hi libban swa heora scrift him tæce; and æt heora forðsiðe do se sacerd heom þa gerihta swa man Cristenum mannum deð, gif hi þæt gehatað þæt hi lengc betan woldan gif hi lengc libban moston. Gyf hwa on swilcum manfullum sinscipe þurhwunað oð his lifes ende buton ælcere geswicenesse, ne cunne we him nænne ræd geþencan, buton hit is æt Godes dome gelang; ne he to clænan ne mot.

Figure 2. Sources for *Handbook* clause on marrying siblings

gaining momentum ca. 1000.¹⁹⁷ Certainly, its prescription for exclusion from Christian cemeteries indicates that Wulfstan was not alone in his effort to bring

¹⁹⁷ For the relative dating of the *Old English Penitential* and the *Handbook*, see *Handbook*, 12–14; Frantzen, *Literature of Penance* (n. 25 above), 137–41; Jurasinski, *Old English Penitentials*, 39–40.

Penitential of Haltigar	<i>Old English Penitential</i>	<i>Handbook</i>
iv.10] De his qui uxores aut quae viros dimitunt ut sic maneant (Ex concilio africano, cap. LXIX): Placuit ut secundum evangelicam et apostolicam disciplinam neque dimissus ab uxore neque dimissa a marito alteri conjungantur, sed ita maneant aut sibimet reconcilientur. Quod si contempserint, ad penitentiam redigantur.	ii.8] Se man þe his riht-æwe forlæt 7 oðer wif nimð, he bið æwbreca: ne sylle him nan preost husl ne nan ðara gerihta þe cristenum men gebyreð, 7 gif him forðsið getimað, ne lecge hine man na mid cristenum mannum;	Se þe his æwe forlæt and nymð oðer wif, he bið æwbrica; ne sille man nan ðara gerihta þe Cristenum mannum gebireð, ne for deaðe ne for life, ne hine man ne lecge mid Cristenum mannum; and be wife ealswa, and þa magas þe æt þam dihte wæron, þolian þone ylcan dom buton hi ær gecirran willan and geome gebetan.
iv.11] Quod hi qui intercedente repudio divortium pertulerunt aliisque se junxerunt nuptiis adulteri esse monstrentur. (In decretali papae Innocentis, cap. XXVI): Qui viro vel uxore vivente quamvis dissociatum videatur esse conjugium ad aliam copulam festinaverunt neque possunt adulteri non videri in tantum ut etiam he persone quibus tales conjuncti sunt, etiam ipse adulterium commisisse videantur. . . . Et ideo omnes a communione fidelium abstinendos. De parentibus autem aut propinquis eorum nihil tale statui potest, nisi in-centores illiciti consortii fuisse detegantur.	7 gif wif hire riht-wer forlæt 7 cysð oðerne, beo heo þæs ylcan domes wyrðe þe her bufan sægð. 7 þa magas þe æt þam dihte wæron ðolien þæne ylcan dom, butan hi ær to bote gecyrron wyllon swa hire scrift him tæce.	

Figure 3. Sources for *Handbook* clause on bigamy

burial practice into the ecclesiastical sphere around the turn of the eleventh century. Indeed, the *Handbook*'s prohibition against burying such offenders "with Christian people" ("mid cristenum mannum") was anticipated by the tenth-century Latin charters, which discussed whether offenders should be buried "with Christians" ("cum Christianis").¹⁹⁸ At the same time, the *Handbook* and *Old English Penitential* clauses that characterize any bigamist as an adulterer ("æwbrica," "æwbreca") and relegate the unrepentant to unconsecrated ground are consistent with early tenth-century law: *I Edmund* 4 prohibits anyone convicted of adultery ("æwbrice") from receiving a consecrated grave.¹⁹⁹ Yet even as they affirm the legitimacy of *I Edmund*'s approach, these penitentials provide a more nuanced discussion of adultery and its remedies, as well as clarifying that exclusionary burial was a punishment for the clergy — not secular authorities — to assign.

As this survey has demonstrated, Wulfstan addressed unconsecrated burial more frequently than any previous English author. Rather than assuming that the justifications for and implications of this practice would be understood by his audience, as had earlier legislators and drafters of charters, Wulfstan delineated the circumstances under which posthumous exclusion was appropriate and entrusted decisions about Christian burial to the clergy. This clarity suggests that the archbishop aimed to combat popular confusion and affirm ecclesiastical control over burial practice. Nevertheless, it appears that Wulfstan's own thinking on this subject evolved across his career. He made the criteria for Christian burial more stringent over time, at first requiring only the ability to recite the Pater Noster and Creed, but later asserting that memorization of these prayers must be accompanied by inward understanding. This condition likely informed his condemnation of executed criminals to "foul" graves in *II Cnut* 33.1: even if a convict could recite the Pater Noster and Creed, his illicit action — faithlessness to the entire population — proved that he had rejected any true understanding of the Christian faith. Perhaps Wulfstan's compilation of the *Handbook* and his close reading of earlier penitential literature helped justify this later approach. One clause of the *Old English Penitential* confirmed that the clergy were empowered to bar unreconciled sinners from Christian cemeteries, and both the *Old English Penitential* and Haltigar required executed offenders and suicides to be deprived of prayers and burial rites after death. It is logical that Wulfstan, in his reworking of these canonical texts, would find support for a broader application of posthumous exclusion in his own legal and penitential prescriptions.

Still, it is worth noting that Wulfstan was restrained in his calls for unconsecrated burial. Like excommunication, he prescribed it rarely, in cases where other forms of correction had failed to bring a sinner to repent. Yet it is clear in Wulfstan's

¹⁹⁸ S883, and compare also S414 and S415: all are discussed above.

¹⁹⁹ It may be significant, in this context, that both pre-Conquest copies of *I Edmund* are preserved in Wulfstanian manuscripts: Wormald, *English Law* (n. 25 above), 309.

writings that these were two distinct penalties, to be imposed under different circumstances. Excommunication was fundamentally a medicinal treatment: it was intended to pressure stubborn sinners to seek penance and reconciliation during their lifetimes, so they might amend their ways and save themselves from damnation. Such rehabilitation would be impossible for someone who was already dead, and it would be the antithesis of Christian mercy to excommunicate a condemned criminal unless he was given a chance to redeem his soul before his execution.²⁰⁰ It is certainly possible that an individual could be subjected to both penalties if he refused to repent of his sins, since an excommunicant who declined penance in life might reasonably be barred from Christian cemeteries at his death. However, Wulfstan never indicated that these sentences would be imposed simultaneously, and he never conflated them. Instead, his writings demonstrate that he understood unconsecrated burial as a sort of spiritual compromise, which allowed the Church to surrender responsibility for an irredeemable soul. The clergy would not curse executed criminals, suicides, or those who died without a proper understanding of their faith, but neither would they provide them spiritual assistance by praying for them or allowing their bodies to lie in hallowed ground. With all earthly remedies exhausted, the sinner's fate would rest entirely with God: "we do not know any advice to give him, except that it is dependent upon God's judgment."²⁰¹

CONCLUSIONS: THE LATER ELEVENTH CENTURY

Wulfstan's clearest achievement, in the regulatory texts discussed above, was to establish that judgments concerning unconsecrated burial rightly fell under ecclesiastical, not secular, jurisdiction. His efforts were likely inspired by a desire to eliminate confusion about the practice, and it is possible that Wulfstan's was just one of numerous voices advocating such a distinction around the turn of the eleventh century. However, it was his forceful articulation of this principle that seems to have influenced subsequent generations of ecclesiastical authors who deployed unconsecrated burial as a religious penalty. Wulfstan's legacy on this topic is especially pronounced in a set of regulations for clergymen, known as the *Northumbrian Priests' Law*. This text draws upon Wulfstan's legislation and is preserved uniquely in a late eleventh-century compilation of the archbishop's writings, but it was composed after his death and departs somewhat from his approach to unconsecrated burial.²⁰² Two passages mandate posthumous exclusion for individuals who died without having repented of certain sexual sins.

²⁰⁰ Wulfstan required that condemned (*deaðscyldig*) men be given chance to confess before death: *Edward and Guthrum* 5; *II Cnut* 44; see also n. 191 above.

²⁰¹ N. 186 above.

²⁰² Wormald, *English Law* (n. 25 above), 396–97; Rabin, *Political Writings* (n. 168 above), 197, with a translation at 198–206.

The first applies to those who keep more than one wife or marry within a prohibited degree of kinship:

61.2] And if anyone does so, he shall not have God's mercy, unless he turns and does penance, as the bishop teaches.

62] Then, if he dies in that unlawfulness, he shall forfeit a clean grave and God's mercy.²⁰³

The text then turns to sexual activity with nuns:

63] If anyone fornicates with a nun, they shall both be liable for their wergild, both he and she.

63.1] And if they should die in that [state], they shall forfeit a clean grave and God's mercy.²⁰⁴

The offenses described in these clauses — polygamous or illicit marriages, clerical sex — are consistent with those listed in earlier prescriptions for unconsecrated burial.²⁰⁵ Their diction recalls tenth-century laws which identified hallowed burial as a privilege which a sinner could forfeit (*polige*).²⁰⁶ As in Wulfstan's writings, these clauses prescribe one type of exclusion for living sinners and another for the unreconciled dead; they also take for granted that Christians would ordinarily be buried in consecrated ground.²⁰⁷ Yet they depart from the archbishop's approach in other ways. Where Wulfstan commanded the clergy to withhold ecclesiastical rituals such as communion, prayer, and commemoration of the dead, these clauses of the *Northumbrian Priests' Law* make no mention of the earthly Church, asserting instead that an unrepentant sinner would endure divine punishment: once dead, "he shall forfeit God's mercy."²⁰⁸ In Wulfstan's canon, "God's mercy" ("Godes mildse") is something to be earned through pious devotion, but in the *Northumbrian Priests' Law*, it is something for Christians to lose or forfeit.²⁰⁹ The phrase may have been used in this later text as an euphemism for excommunication, but it conveys a certainty about God's judgment that was absent from earlier discussions of burial. These appear to be the first direct

²⁰³ "7 gif hit hwa gedo, nabbe he Godes mildse, buton he geswice 7 bete, swa biscop getæce. 62] Gif he þonne on ðam unrihte geendige, þolige he clænes legeres 7 Godes mildse."

²⁰⁴ "Gif hwa wið nunnan forlicge, sy ægðer his weres scildig, ge he ge heo. 63.1] 7 gif hi on ðam geendige, þolige he clænes legeres 7 Godes mildse."

²⁰⁵ *I Edmund* 1 and 4. Compare also the *Handbook*, 22–23, lines 173–78, 187–96; and the *Old English Penitential* in Raith, *Altenglische Version* (n. 91 above), 20–22, at ii.8 and ii.11.

²⁰⁶ The only earlier law to construe consecrated burial as a right that could be forfeited (*polian*) was *I Edmund* 1, n. 71 above.

²⁰⁷ Napier 59 and *I Cnut* 22.5, nn. 168–171 above; *Handbook*, 22, lines 174–76, quoted n. 184 above.

²⁰⁸ Nn. 203 and 204 above.

²⁰⁹ See *VII Æthelred* 7; Napier, *Wulfstan* (n. 167 above), 129, no. 27, lines 10–12 and 268, no. 50, lines 31–32.

statements by an English author in which unconsecrated graves are linked to damnation, rather than exclusion from the Christian community on earth.

It is also worth returning to the Hatton 115 homily, which has been cited as evidence of a connection between excommunication and unconsecrated burial.²¹⁰ This passage was written in the second half of the eleventh century, but the offenses it describes are consistent with those listed in pre-Conquest texts:

And the priest who keeps a nun until his death, or the layman who keeps a mistress in violation of his marriage vow, or whoever keeps a relative [in a union] until his final day, they shall all be excommunicated from all of the holiness of those who live in heaven and on earth. No one shall celebrate any mass where they may be present, nor give the Eucharist or consecrated bread, nor shall anyone bury him within a consecrated minster or even carry him to a heathen pit; rather, drag him out without a coffin, unless he repents.²¹¹

As in earlier sources, individuals who persist until their death in sexual offenses — clerical sex, adultery, and incestuous unions — are to be excluded from the Church. The Hatton 115 homilist followed Wulfstan in establishing parallel consequences for unrepented misconduct in life and death, but he delineated more clearly than any previous author how disrespectfully the corpse should be treated. Excommunicants like these were not simply to be prohibited from hallowed ground; they were unworthy of even a “heathen” burial in an unconsecrated pit and deserved to have their bodies exposed to the elements.²¹² This treatment evokes Edgar’s policy, a century earlier, which relegated the corpses of condemned thieves to animal scavengers, but it also signals a departure from Wulfstan’s approach. While the archbishop’s early eleventh-century writings depicted unconsecrated burial as a passive form of abandonment by the clergy once all efforts at eliciting penance had failed, the Hatton 115 homily condoned the active abandonment of dead bodies and their deliberate exclusion from hallowed ground.

The Hatton 115 homily and the *Northumbrian Priests’ Law* were both committed to parchment around the time that excommunication formulae are first attested in England, and this may help explain the more forceful connections they drew between unconsecrated burial and spiritual exclusion. Some of the earliest extant formulae were transmitted to England in a German manuscript containing a

²¹⁰ N. 56 above.

²¹¹ “7 se preost se þe hæbbe nunnan oð his ende, oððe læwde man se þe hæbbe cyfese ofer his æwe, oððe hwa him to gesybne man hæbbe oð his endedæg, syn hi ealle amansumude of ealra heofonwara haligdome 7 eorþwarena. Ne gesinge þær nan man nane mæssan þær hi inne syn, ne hysl ne gehalgodne hlaf ne sylle, ne hi nan man ne byrge binnan gehalgodan mynstre, ne furþum to hæþenum pytte ne bere, ac drage butan cyste butan hi geswicon”; Seragg, *Vercelli* (n. 56 above), 161. See also Treharne, “Unique Old English Formula” (n. 2 above), 197–98.

²¹² Compare references to a “foul pit” (“fulan pyt”) in three tenth-century charter boundary clauses, n. 100 above.

version of the Romano-German Pontifical: BL Cotton Tiberius C.i was compiled on the Continent in the mid-eleventh century but was apparently in England by the 1070s.²¹³ The manuscript includes an adaptation of one of Regino's excommunication rites and a version of the "Pope Leo" formula, which commands that excommunicated corpses be left as food for scavenging animals and proclaims that "we close heaven and deny the earth for burial."²¹⁴ Another early example, the Lanalet Pontifical formula, specifies that when excommunicants die, they "shall not have any burial other than one for asses."²¹⁵ The appearance of such formulae — and, presumably, the formalization of excommunication rituals that led to their codification — may well have influenced English vernacular texts, leading the author of the *Northumbrian Priests' Law* to associate unconsecrated burial with damnation and the Hatton 115 author to diverge from his source by explaining how to dispose of excommunicated corpses.²¹⁶

Still, it is remarkable that so few English formulae mention how the bodies of excommunicants should be disposed of. Aside from the Lanalet Pontifical, the only known eleventh-century excommunication formula to reference burial is contained within a German pontifical. It was not until the twelfth century that another English formula mentioned burial, but even at this later date, such language was not standard or automatic: of the nineteen formulae written in English manuscripts from the later eleventh century through ca. 1200, only one makes any reference to the sinner's corpse.²¹⁷ Moreover, although the eleventh-century ecclesiastical authors who mentioned unconsecrated burial associated it with excommunication or damnation, it nonetheless continued to be used as a secular punishment during this century, most notably in cases of treason. Cnut, at the beginning of his reign, executed Ealdorman Eadric "Streona" of Mercia and reportedly had his body relegated to unconsecrated ground.²¹⁸ In 1040, King

²¹³ Sarah Hamilton notes that of the various recensions of the Romano-German Pontifical attested in England in the mid-eleventh century, the Sherborne Pontifical (Cotton Tiberius C.i) was the only one to include excommunication formulae: "Remedies" (n. 46 above), 95–96; and n. 48 above.

²¹⁴ N. 44 above.

²¹⁵ "Nec habeant alteram quam asynorum sepulturam"; Doble, *Pontificale Lanaletense* (n. 47 above), 131, adapting Jer. 22:19.

²¹⁶ N. 56 above.

²¹⁷ This long excommunication formula was added, in an early twelfth-century hand, to the mid-eleventh-century manuscript Cambridge, Corpus Christi College 422 (the Red Book of Darley), pp. 310–15. The passage on burial, adapted from Deut. 28:26, reads: "Sit cadaver eius canibus relictum et volatilibus caeli et non sit qui sepelliat eum." The text is edited as *Excomm.* 6 in Liebermann, *Gesetze*, 1:436–37; see also Edwards, "Ritual Excommunication" (n. 39 above), 89–108 and 252.

²¹⁸ According to Hemming's Cartulary, produced in the later eleventh century, Eadric was "killed, and dishonorably thrown outside the wall of London, and he was not even judged worthy of burial" [occisus, atque extra muram Lundonie ignominiose projectus,

Harthacnut ordered the corpse of his predecessor Harold Harefoot — whom the new king's partisans identified as a usurper — to be exhumed from its grave at Westminster Monastery and deposited in a swamp.²¹⁹ William the Conqueror was remembered as having consigned Harold Godwineson's remains to an unconsecrated grave after the Battle of Hastings, and some twenty years later, he executed Earl Wæltheof of Northumbria for treason and had his body dumped in a ditch.²²⁰ In three of these four cases, there are accounts of the executed bodies later receiving a consecrated burial: Harold Harefoot's corpse was secretly recovered and buried in a London churchyard, but Harold Godwineson's and Wæltheof's remains were reportedly released to monastic communities for burial, with William's permission.²²¹ Significantly, in all four of these cases, it was not the clergy but the king who held jurisdiction over the burial — and, in the post-Conquest cases, the recovery — of condemned bodies.

Notwithstanding these high-profile examples from the early Conquest period, the use of unconsecrated burial as a secular punishment declined in England under Norman rule. Anglo-Saxon execution cemeteries fell out of use under the new regime, as capital punishment went out of favor, and it appears that executed bodies began to be interred in churchyards.²²² Unconsecrated burial still remained

nec etiam sepulture iudicatus est dignus]: T. Hearne, *Hemingi Chartularium Ecclesie Wigorniensis* (Oxford, 1723), 281. See also Jay Paul Gates, "The 'Worcester' Historians and Eadric Streona's Execution," in *Capital and Corporal Punishment in Anglo-Saxon England*, ed. Jay Paul Gates and Nicole Marafioti (Woodbridge, 2014), 165–80, especially 168–74; Jay Paul Gates, "A Crowning Achievement: The Royal Execution and Damnation of Eadric Streona," in *Heads Will Roll: Decapitation in the Medieval and Early Modern Imagination*, ed. Jeff Massy and Larissa Tracy (Leiden, 2012), 53–72.

²¹⁹ The exhumation is first recorded in the Anglo-Saxon Chronicle (MSS C and D) for the year 1040, which reports that Harthacnut "ordered the dead Harold to be dragged up and to be thrown into a fen" [let dragan up þæne deadan Harald 7 hine on fen sceotan]: Katherine O'Brien O'Keeffe, *The Anglo-Saxon Chronicle: A Collaborative Edition*, 5: *MS C* (Cambridge, 2001); G. P. Cubbin, *The Anglo-Saxon Chronicle: A Collaborative Edition*, 6: *MS D* (Cambridge, 1996). It may be significant that the chronicler specified that Harold was dragged ("dragan") from his grave, just as the Hatton 115 homily instructed its audience to drag ("drage") excommunicants out without a coffin; see n. 211 above. The episode was later recounted in greater detail by John of Worcester and William of Malmesbury: Marafioti, *King's Body* (n. 16 above), 144–60 and n. 221 below.

²²⁰ For Harold Godwineson, see Leslie Watkiss and Marjorie Chibnall, *The Waltham Chronicle* (Oxford, 1994), 50–57. For Wæltheof, see Marjorie Chibnall, *The Ecclesiastical History of Orderic Vitalis*, 6 vols. (Oxford, 1969), 2:322–323, at IV.ii.267.

²²¹ For Harold Harefoot, see: R. R. Darlington and P. McGurk, *The Chronicle of John of Worcester*, 3 vols. (Oxford, 1995), 2:530–31; William of Malmesbury, *Gesta Regum Anglorum: The History of the English Kings*, 2 vols., ed. R. A. B. Mynors, R. M. Thompson, and M. Winterbottom (Oxford, 1998), 1:336–37, at ii.188.4; Marafioti, *King's Body* (n. 16 above), 154–55. For Wæltheof, see Chibnall, *Ecclesiastical History*, 2:322–23, at IV.ii.267.

²²² For example, the Articles of William I require criminals to be mutilated instead of killed: Liebermann, *Gesetze*, 1:488, *WI art 10*; 1:489, *WI art Fr 10*; and 1:491, *WI art*

a possibility, as demonstrated by late eleventh- and twelfth-century religious texts that threatened excommunicants with unhallowed graves, but archaeological evidence for the practice is scarce for the Norman and Angevin periods.

That said, there is evidence that exclusionary burial was employed in England well before it was prescribed in royal law or threatened in ecclesiastical curses. The earliest known English execution cemeteries date to the seventh and eighth centuries, but it is not until the tenth century that we can see ideological justification for the practice: the earliest rites for consecrating cemeteries date to this period, as do the earliest legal prohibitions against burial in hallowed ground. It is reasonable that posthumous separation was already customary for certain categories of offenders by the time the practice began to be codified as exclusion from hallowed ground. This does not mean, however, that exclusionary burial practices were standardized or that their significance was undisputed, even in the later Anglo-Saxon period. On the contrary, the evidence surveyed here indicates that exclusion was understood and employed in various ways. In the first half of the tenth century, unconsecrated burial was conceived as a secular punishment with a religious justification: conditional prohibitions from hallowed ground were used in the laws of Æthelstan and Edmund to pressure offenders to repent and reconcile with the Church. By the later part of the century, the laws of Edgar and Æthelred treated exclusionary burial as standard for certain capital offenders, yet it was never construed as an incentive to spiritual redemption; rather, it was presented as a physical punishment for temporal violations. Importantly, this shift occurred as consecrated burial was becoming more accessible to the lay population and was increasingly considered normative — perhaps even spiritually necessary — among some communities. If interment in hallowed cemeteries was now widely perceived as standard practice for the Christian dead, exclusion from consecrated ground would represent a clear separation from the religious community, even if that exclusion were threatened or imposed by a lay authority.

It is likely, given this context, that royal prescriptions for unconsecrated burial were in fact understood by some of the tenth-century population as tantamount to excommunication. Even if this explanation was never formally stated or endorsed by the Church, charter narratives indicate that the living might go to great expense to save or retrieve remains of the condemned from unconsecrated graves, and it is reasonable that such actions would be motivated in part by spiritual concerns. Wulfstan's efforts to define religious criteria for hallowed burial and give the clergy authority over the disposal of Christian bodies imply that such clarification was necessary by the early eleventh century. Although he stopped short of equating posthumous exclusion with excommunication,

Lond 17. See also Christopher Daniell, "Conquest, Crime and Theology in the Burial Record: 1066–1200," in *Burial in Early Medieval England and Wales*, ed. Sam Lucy and Andrew Reynolds, Society for Medieval Archaeology Monograph Series 17 (London, 2002), 241–54.

Wulfstan presented these as parallel penalties, each concerned with an offender's status in the religious community. Still, he did not eliminate prescriptions for exclusionary burial in royal law, and eleventh-century kings continued deploying the practice, notably in cases of treason. In the generations after Wulfstan's death, English ecclesiastical authors began to adopt the logic of Continental excommunication formulae in their descriptions of unconsecrated burial, with a sinner's posthumous exclusion confirming the condemnation of his soul in the afterlife. While it is fair to state that unconsecrated burial was formally equated with excommunication in England by the later part of the eleventh century, it took more than a century for this association to be firmly established.

A final conclusion to be drawn from this evidence is that the line between secular and ecclesiastical jurisdictions in pre-Conquest England was not as hazy as generally believed. Although the clergy contributed heavily to the composition and promulgation of royal lawcodes, it does not necessarily follow that they were empowered to oversee the implementation of royal policies or issue judgments in secular matters, even when those matters concerned Christian burial. Such limitations are evident in the tenth-century charters. S1447, S414, and S415 present the loftiest clergymen — the archbishop of Canterbury and the pope — deferring to the king's judgment in decisions about burial. In S883, the only extant charter concerned with the implementation of legally mandated burial restrictions, the fate of the offenders' corpses is determined entirely by laymen; the deliberation and judgment reportedly involved reeves, an ealdorman, and King Æthelred, without any mention of clergymen. Although the bishops and other clergymen who attested this charter may have advised Æthelred as he formulated his judgment, the text of S883 unambiguously depicts burial as a matter to be decided by the king and his secular agents.²²³ Likewise, the contentious exchange between Archbishop Dunstan, King Edgar, and Ealdorman Ælfheah in S1447 demonstrates that the kingdom's highest-ranking clergyman had no automatic claim to a Christian's corpse or authority over its place of burial. The legal policies of Edgar and Æthelred conform to this pattern as well, with unconsecrated burial prescribed by royal decree for secular offenses. The texts which preserve these royal policies make no mention of sin or penance, nor do they acknowledge the clergy's participation in issuing or executing sentences of unconsecrated burial.

The laws of Æthelstan and Edmund also draw distinctions between ecclesiastical and secular penalties, even though they explicitly link unconsecrated burial to offenders' spiritual state. *II Æthelstan* 26 allows unconsecrated burial to be imposed even if a perjurer had done penance for his offense, indicating that this was not an ecclesiastical response to unredeemed sin but a secular

²²³ The charter is attested first by Æthelred himself, the archbishop of Canterbury, and ten bishops; these are followed by five ealdormen (*dux*), ten abbots, and thirteen thegns (*minister*).

penalty meant to punish unlawful behavior. *I Edmund* 1 states that unchaste clergy would be subject to both canonical and secular penalties, and unconsecrated burial is listed as part of the latter category. The fact that there is no explanation of the canonical punishment in this clause, nor in the prescriptions concerning homicide and sexual misconduct among the laity in *I Edmund* 4, confirms that the specific details of ecclesiastical penalties were outside the scope of this lawcode and would need to be determined separately, by members of the clergy. These laws aimed to bring certain offenders to penance by threatening unconsecrated burial, but they pointedly did not encroach on the clergy's right to issue ecclesiastical judgments, canonical penalties, and spiritual remedies.²²⁴ A century later, Wulfstan adapted this approach in his own royal legislation: unconsecrated burial could be prescribed for individuals whose actions placed them outside the Church's communion, but it was the clergy who would determine whether this standard had been met. The archbishop's other writings clearly present decisions about consecrated burial as an ecclesiastical prerogative and not a secular one, a position that affirmed the Church's authority over funerary ritual and disposal of the dead. The site of a person's grave signaled his membership in or exclusion from the Christian community, according to Wulfstan, so judgments concerning burial places, like judgments of excommunication, could legitimately be made only by the clergy. Although this approach departed from earlier understandings of unconsecrated burial as a secular punishment, Wulfstan and the tenth-century lawmakers all recognized that this penalty fell within one jurisdiction — either ecclesiastical or secular — to the exclusion of the other.

Of course, these theoretical distinctions between ecclesiastical and lay authority may not have been consistently reflected in practice. Perhaps lay authorities tended to seek ecclesiastical advice before denying anyone a hallowed grave, or perhaps high-ranking clergy began using this secular sentence as part of their own ecclesiastical judgments before the eleventh century.²²⁵ Indeed, lay and clerical judges might issue the same penalties — such as fines or compensation payments — for different offenses, and it would not be surprising if unconsecrated burial was also used in both spheres of justice. Yet unlike monetary penalties, unconsecrated burial was associated from its inception with Christian ritual, and its use as a secular punishment could thus have raised troubling questions. Did an unconsecrated grave merely confirm a person's state of sin, or did it actually effect his damnation? Were kings, ealdormen, and reeves in fact empowered to deny spiritual benefits to the deceased, or was this a prerogative reserved for the clergy? Could a condemned convict attain salvation if his corpse were excluded from unconsecrated ground, or did his sinful actions make his burial place

²²⁴ Barlow, *The English Church* (n. 5 above), 139, 145–46, and 152–53.

²²⁵ For secular punishments issued by clergy in tenth- and eleventh-century England, see Marafioti, "Secular and Ecclesiastical Justice" (n. 5 above), 785.

irrelevant? The diverse contexts and justifications for unconsecrated burial in tenth- and eleventh-century texts suggest that there was confusion about how the penalty ought to be deployed, and by whom. By designating unconsecrated burial either a secular or an ecclesiastical penalty, the sources surveyed here aimed to allay this confusion. Such efforts do not seem to have been entirely successful, given how differently each tenth- or eleventh-century author understood the practice. However, by treating unconsecrated burial as either a secular or an ecclesiastical penalty — and never both at once — these texts recognize distinct jurisdictions for lay and religious authorities.

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