

ARTICLE

Move over Lyndwood: the York *Provinciale*

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Abstract

Lyndwood's *Provinciale* (c. 1433) contains the ecclesiastical legislation, and a gloss on it, of the Province of Canterbury. The York *Provinciale* (c. 1518), issued by Wolsey, Archbishop of York, contains the legislation of that province, but with no gloss. The Canterbury *Provinciale* is well known, and dominates in the works of ecclesiastical lawyers and in the church courts after the Reformation. The York *Provinciale* is little known, and much neglected after the Reformation by the ecclesiastical lawyers, and today by historians of canon law. The two *Provinciales* have never been compared. What follows remedies this neglect and compares these two legal entities, in terms of ten matters, namely, their: authors; sources; purposes; internal structure; authority (the Canterbury *Provinciale* was never ratified legislatively, the York one was, arguably as a legatine constitution and so superior in status to Canterbury's); geographical applicability (including York's adoption of Canterbury's provincial law in 1462 subject to its consistency with York law); position in historic debates; editions; use by the post-Reformation ecclesiastical lawyers; and use by modern scholars. It is time, therefore, for Canterbury's laws to share the limelight with the York *Provinciale*.

Keywords: medieval canon law; provincial autonomy; Lyndwood's *Provinciale*; York *Provinciale*

Introduction

When I was invited to give a lecture for the Ecclesiastical Law Society's *London Lecture Series*, I gave as its title the title of this article. When I learned that the talk was advertised on the Society's website, but before I had written the talk, I googled that title. Above the society website was an Artificial Intelligence Overview of the talk I had not yet written; it read:

The phrase 'Move Over Lyndwood: The York *Provinciale*' suggests a shift in focus from William Lyndwood's *Provinciale*, a significant work of English ecclesiastical law, to a potentially lesser-known but important text concerning the Province of York. Lyndwood's work primarily focused on the Province of Canterbury, while a 'York *Provinciale*' would likely address the legal aspects ... of the northern province.

Remarkable – and correct. Lyndwood's *Provinciale* written c. 1433 contains the earlier laws, and a gloss on them, of the Province of Canterbury. The York *Provinciale*, issued c. 1518 by Thomas Wolsey, Archbishop of York, contains the laws of that province, but with no gloss. Lyndwood's Canterbury *Provinciale* is well known and it dominates in the works of English ecclesiastical lawyers and in the church courts after the Reformation, and in scholarship today. The York *Provinciale* is little known, and much neglected both after the Reformation by the ecclesiastical lawyers, and today by historians of canon law in England. Equally remarkable, but not surprising in light of this neglect, is that the two *Provinciales* have never been compared systematically. What follows remedies this neglect and compares them.

But first, we must distinguish between a 'provincial' and a 'provinciale': a 'provincial' is a law of a province as found in a provincial constitution; and a 'provinciale' is a collection of the provincial laws or 'provincials'. And again, the 'provinciale' of Lyndwood includes the laws and his gloss; but Wolsey's York 'provinciale' has only the laws without any gloss.¹

The clerics behind the two Provinciales

William Lyndwood, author of the Canterbury *Provinciale*, lived from c. 1375 to 1446. From Linwood in Lincolnshire, he studied canon law at Cambridge and was perhaps a fellow of Pembroke Hall. Priested in 1407, he held several benefices and several cathedral prebends, for example at Exeter, Hereford, Lincoln and Salisbury. In 1417, Archbishop Chichele of Canterbury made him the Dean of the Arches. King Henry VI sent him on diplomatic missions to France, Holland, Flanders, Prussia and Portugal – and Henry made him Keeper of the Privy Seal. In 1441, Lyndwood became Bishop of St Davids. On his death, he left one law book to Oxford, two to Cambridge. He was buried at St Stephen's Chapel, Westminster. A body, thought to be his and found there in 1852, was reinterred in Westminster Abbey.

Lyndwood says Archbishop Chichele asked him to write the book. By 1422 he had edited the sources, the laws. From 1423 to 1430, he worked on the gloss. In 1434 he completed the index.²

The man behind the York *Provinciale* is more famous: Thomas Wolsey, Archbishop of York (1514–1530). His life, career, and closeness to Henry VIII are well known: on Henry's recommendation Pope Leo X made Wolsey bishop of Lincoln (February 1514), Archbishop of York (September 1514; which brought with it the office of papal *legatus natus*), and Cardinal (1515). In December 1515, Wolsey became Lord Chancellor (the Keeper of the King's Conscience) and in 1518 the Pope made him a *legatus a latere* (the *alter ego* of, and the next in authority in England to, the Pope whose special representative he became). We all know about Wolsey's work in European diplomacy, monastic reform, and extending the jurisdiction of Star Chamber, his failure to persuade Pope Clement VII to grant Henry an annulment

¹ However, this is not a distinction made in the indices of post-Reformation ecclesiastical law commentaries.

² See for example R H Helmholz, 'William Lyndwood', in M Hill and R H Helmholz (eds), *Great Christian Jurists in English History* (Cambridge, 2017) 45–67.

of his marriage to Catherine of Aragon, his indictment on a *praemunire* charge of having overstepped his legatine authority, his arrest in November 1530 near York for treason, and his death on 29 November while travelling from York going south to face the king.³

The York *Provinciale* was issued in 1518 by Wolsey when Archbishop of York.⁴ This was perhaps his greatest legislative moment in York. It was the counterpart of Lyndwood's Canterbury *Provinciale*. As we shall see, one reason Wolsey issued it was to protect the autonomy of the province. For example, in it a provincial constitution of 1504 states: 'no one [shall] annoy, hinder, arrest ... anyone who has been summoned, and is on the way, to Convocations, Synods, Visitations, General Chapters of Ordinaries, or to our Court at York or other Spiritual Courts', 'saving always ... the right and prerogative of our Lord the King and those which pertain to his Crown'. The penalty was greater excommunication.⁵

The sources of law used in the two *Provinciales*

Lyndwood's Canterbury *Provinciale* sets out the texts of the Constitutions of the Archbishops of Canterbury passed at councils and synods from 1222 to his time (from Stephen Langton to Henry Chichele) as well as the Legatine Constitutions of Otho (1237) and Othobon (1268). It also has Lyndwood's own fulsome gloss or commentary in which he invokes the papal law. Some post-Reformation ecclesiastical law commentaries list the provincial constitutions and the Archbishops of Canterbury and clerical assemblies (synods, etc.) responsible for their promulgation. For example, Edmund Gibson has an elaborate Table at the end of his great *Codex* (1713) of the Provincial and Legatine Constitutions of Canterbury, but not of York.

In turn, the York *Provinciale* contains the texts of 'the provincial constitutions of York',⁶ covering broadly the same period as the Canterbury *Provinciale* but beyond to 1518 – namely, those of Archbishops of York: Walter Gray (1216–1256); William Wickwane (1279–1285); William Greenfield (1306–1316); John Thoresby (1352–1373); John Kempe (1425–1452); William Booth (1452–1464); George Neville (1464–1476); Thomas Savage (1501–1507);⁷ and Thomas Wolsey (1514–1530). The

³ Of the very many studies, see for example the landmark study by A F Pollard, *Wolsey* (New York, 1953).

⁴ *The York Provinciale*, put forth by Thomas Wolsey, Archbishop of York, in the year 1518, edited and translated by R M Woolley (London, 1931). See below for a discussion of this edition.

⁵ York *Provinciale*, III.XVI.5: on the immunity of the church, a 'decree' of Archbishop Savage.

⁶ York *Provinciale*: before Book I appear the words: *Incipiunt opera super Constitutiones provinciales Eboracensis*: Woolley (note 4), 1.

⁷ See G Bray, 'The York Provinciale (c. 1518)', in G Bray (ed), *Records of Convocations XIV, York 1461–1625* (Cambridge, published online 5 March 2024) 493–500: Wickwane: this single 'canon' is an addition to 'statutes' of c. 1240; Greenfield: supposedly published at Ripon, 30 September 1306, perhaps at a synod supposedly held then, although most of them are much earlier, dating to the York canons first issued c. 1240 and updated over the years – only the last two (43–44) can be said with some certainty to be from 1306; Thoresby: published 29 September 1367 and surviving independently; 1367/4 is in fact a canon of William de la Zouch (1342–1352); Kempe: published 17 August 1440 and reissued by Neville 29 April 1466; Booth (see below notes 43 and 44); George Neville: many of these canons were issued 26 April 1466 – others attributed to him are of uncertain date; Savage: canons were passed in the 1504 convocation and are found in his register, fos 102v–103r.

texts of the laws state that the constitutions have been made by ‘the authority’ of a provincial council,⁸ or that ‘the decrees and constitutions’ were ‘set forth by us with the consent of our clergy’,⁹ or that they were made ‘with the counsel and help of those skilled in the laws’;¹⁰ and sometimes the texts refer to archiepiscopal ‘ordinances, prohibitions, and statutes’, some of which were amended for example due to their ‘lack of effectiveness’.¹¹

The Province of York was not of course governed only by these provincial constitutions. The principal source was the papal canon law. But, like Canterbury, alongside the papal law, the provincial legislation and the legatine constitutions, was the practice and procedure in the York church courts,¹² such as that in the ‘Precedent Book’ (late fifteenth century and held at Cambridge University Library) with ‘the form of all proceedings in matters ecclesiastical in the Court of York’; and the ‘York Precedent Book’, in the Bodleian, Oxford – the name on its cover is thought to be John Martiell, scribe to the York Chancery Court in the 1570s.¹³ Neither of these hugely important works has as yet been the subject of systematic study.

Then there are the great treatises of York jurists. One medieval jurist is John of Ayton (in Yorkshire) or Athon or Acton (in Suffolk); an official of the Court at York, his work on the legatine constitutions has been described as ‘the most important single collection of local law for the English Church’; Ayton refers, for instance, to a custom of York as to church court procedure.¹⁴ Post-Reformation York jurists of course include Henry Swinburne (d. 1624) on testamentary law, Henry Conset (1685, on court practice), and Richard Burn (and his four-volume work);¹⁵ but, as we shall see, their coverage of York law is generally piecemeal.

The purposes of the two *Provinciales*

Lyndwood wrote the book in the main for clergy – who, Lyndwood writes, were ‘commonly unlearned and ignorant of law’ – particularly for their pastoral ministries. As Paul Cavill writes: ‘Overwhelmingly, the *Provinciale* was a book written for and read by clergymen’.¹⁶ As we shall see, it also served the purposes of later post-Reformation church lawyers in their commentaries and church courts when these needed recourse to pre-Reformation canon law.

⁸ York *Provinciale*, II.I: Booth, on judgments (Woolley (note 4), 16).

⁹ York *Provinciale*, II.III.2, on holy days (Woolley (note 4), 19).

¹⁰ York *Provinciale*, III.XIII.3: Thoresby, on the celebration of the mass (Woolley (note 4), 40).

¹¹ York *Provinciale*, III.XIII.3: Thoresby on the celebration of masses (Woolley (note 4), 41).

¹² Papal law on court process was also supplemented by York provincials, e.g. Greenfield’s of 1311 (Wilkins, *Concilia Magnae Britanniae et Hiberniae* (1737) II.409–415) which after the Reformation Archbishop Lee (1531–1544) had read out in full court in 1536 and 1538: W J Sheils, *Ecclesiastical Cause Papers at York: Files Transmitted on Appeal 1500–1883* (York, 1983) ii–iii.

¹³ Cambridge University Library, MS Add 3115; Bodleian, Bucks Archd MS d4.

¹⁴ J H Baker, *Monuments of Endlesse Labours: English Canonists and Their Work, 1300–1900* (London, 1998) 29–42.

¹⁵ Ibid, 57–70 (Swinburne); 74 and 94 (Conset); 115–124 (Burn).

¹⁶ P Cavill, ‘The First Readers of Lyndwood’s *Provinciale*’, (2022) 24 Ecc LJ 2–13.

The purposes of the York *Provinciale* are different. First, the aims of the laws it sets out (as compared with the aims of the *Provinciale* itself): they are of ‘great utility’ and ‘lawfully promulgated by our predecessors the Archbishops of York in provincial synods’ to ensure ‘the preservation of the liberty of the Church and the defence of the faith’, to withstand the ‘assaults of the devil and of men’, and to seek ‘the betterment of conduct’ among the clergy.¹⁷

Second, the aim of the York *Provinciale* itself is to collect, codify, and promulgate afresh these provincial constitutions – and to command compliance with them; its preamble (*prooemium*) states: ‘with the consent ... of our suffragans and prelates and the clergy’, the constitutions are ‘to be strictly obeyed by all who are subject to us of our province of York’.¹⁸ The Surtees Society editors of the records of the northern convocations (in 1907) spoke of how Wolsey in 1518 ‘issued fresh Constitutions for the Province of York’ which had been ‘reconstructed in that year by Convocation’, and they were ‘reproduced’ and ‘re-edited’.¹⁹ And Woolley (in 1931) writes how the earlier constitutions were ‘codified’ by Wolsey.²⁰

Third, the York *Provinciale* sought to assert and protect the ecclesiastical autonomy of the Province. One example is the constitution of Greenfield (1306) and its ‘Prohibition against Appeals to the Court of Canterbury’. The constitution recites how the Archbishop of York, Primate of England, has ‘no superior in spiritual things except the Roman Pontiff’ and that ‘our Church of York’ rejoices in ‘the honour of Primacy’. As a result, the ‘sacred Synodal Constitution’ forbids any clerk or layman in a cause initiated in the Province of York to ‘cite or appeal to the Court of Canterbury’ or the Archbishop of Canterbury (except as Apostolic delegate). It then sets out the penalties for those who appeal to Canterbury and those who assist them; for example: beneficed clerks are deprived; office-holders are to be removed; unbeneficed clerks are barred from any honour or benefice; advocates and proctors must not plead and defend but bear ‘the mark of disgrace’; and laymen take no benefit under a will. But: ‘we particularly reserve to ourselves the remission of these sentences’ and ‘these injunctions we strictly order to be obeyed by all who make any pretence of liberty’.²¹ The fundamental principle is crystal clear: in spiritual matters only the Roman pontiff was the ecclesiastical superior to the Archbishop of York – not the Archbishop of Canterbury.²²

¹⁷ York *Provinciale*, Prooemium; see Wilkins (note 12), III.662 for the Latin version.

¹⁸ Ibid. See further below on the ‘internal structure’ of the two *Provinciales*.

¹⁹ The Publications of the Surtees Society, *The Records of the Northern Convocation* (1907) vol 113, at 207: ‘Cardinal Wolsey in 1518 issued fresh Constitutions for the Province of York; these had been reconstructed in that year by Convocation. Wilkins [note 12] gives the date but vaguely, as *circa* 1518. These Constitutions reproduce, under a new arrangement, those which had before been promulgated by previous Archbishops of York ... In this re-editing of the Constitutions, Wolsey re-affirms the need for sermons, “vulgariter absque cujuslibet subtilitatis textura fantastica,” and other teaching of moral law and ecclesiastical order’; the archbishops are then named in the following order: Nevill, Thoresby, Booth, Grenefeld, Kemp, Savage, Wickwane, and Gray.

²⁰ York *Provinciale*, Woolley’s (note 4), preface, x: ‘The Provincial Constitutions of York [were] codified by Wolsey’s directions and published in 1518’ (emphasis added).

²¹ York *Provinciale*, II.V, *De appellationibus* (Woolley (note 4), 22–24).

²² York *Provinciale*, Woolley’s (note 4), preface, xv; for the pope, see pp 58, 80, 140.

Woolley sums up on protecting provincial autonomy: the York *Provinciale* saves ‘always the rights and the authority of his own province of York’; and all the references to Canterbury are ‘tinged with suspicion and jealousy’, leaving ‘little doubt that one at least of the reasons’ which led to it was ‘to prevent the northern parish priest from resorting to Lyndwood’.²³

The protection of the autonomy of York remained a theme in post-Reformation ecclesiastical law commentaries, but without any express mention of the York *Provinciale* of 1518. For example, Burn (1763) explains how the Ecclesiastical Licences Act 1533 transferring papal legatine powers of dispensation to the Archbishop of Canterbury did so, he writes: ‘Provided, that this act shall not be prejudicial to the archbishop of York, or to any bishop of this realm; but that they may lawfully dispense in all cases, in which they were wont to dispense by the common law or custom of the realm before the making of this act’;²⁴ indeed, ‘for until about the year 1466, the archbishop of York had jurisdiction over all the bishops of Scotland’.²⁵

The internal structure of the two *Provinciales*

Lyndwood modelled his ordering of the subjects treated in the *Provinciale* on that of the five books of the collection of Decretals of Pope Gregory IX – the *Liber Extra* (1234) – namely: *iudex, iudicium, clerus, connubia, crimen*. His *Provinciale* has 75 titles (compared with 185 in the decretals) and 240 chapters. Lyndwood did not set out the source materials in their historic or chronological order. Interestingly, Lyndwood includes two instruments from English temporal law: *Cicumspecte agatis* (1286) and some replies to *Articuli cleri* (1316).²⁶

The post-Reformation jurists recognised this systematisation. For instance, Stillingfleet (1696) writes that from ‘national Councils’ came ‘our Provincial Constitutions’, which Lyndwood ‘digested according to the Method of the Canon-Law, and has therein shown what part of the Canon-Law has any Force here; not by Virtue of any Papal or Legatine Power, but by the General Consent of the Nation, by which they have been received among us’ here.²⁷

²³ York *Provinciale*, Woolley’s (note 4) preface, xiv.

²⁴ R Burn, *Ecclesiastical Law* (1763) II.138 (on 25 Hen 8, c 21, s 9). See also E Gibson, *Codex Juris Ecclesiastici Anglicani* (1713), I.107 (on the same Act) and II.1050 on 23 Hen 8, c 9, s 7: ‘Provided always, that this Act be not in any wise hurtful or prejudicial to the Archbishop of York, nor to his successors, of, for, or concerning probate of testaments within his province and jurisdiction, by reason of any prerogative; any thing in this Act to the contrary notwithstanding’.

²⁵ Burn (note 24), II.445.

²⁶ B E Ferme, *Canon Law in Late Medieval England: A Study of William Lyndwood’s Provinciale with particular reference to Testamentary Law* (Rome, 1996).

²⁷ E Stillingfleet, *Obligation to Observe the Ecclesiastical Canons and Constitutions* (1696) 371.

The idea that Lyndwood's *Provinciale* was a 'digest' continued into the nineteenth century.²⁸

The presence of Lyndwood's gloss makes his *Provinciale* both a book of law and a law book. It is a collection, consolidation or codification of Canterbury's provincial laws and, with its gloss, a treatise on those laws discussed in the light of the *ius commune*. It also has an index.

The status of the gloss itself has become something of a talking point recently. Rupert Bursell laments how one edition 'omits the all-important glosses'.²⁹ For Philip Jones the constitutions were 'written law' and the practice and procedure of church courts were 'unwritten law', 'usage or custom'; however: 'the Lyndwood glosses were never part of English law *per se*, but they did form the basis (or part of the basis) of the practice and procedure of the ecclesiastical courts. It is the practice and procedure, the unwritten usage or custom, and not the mediaeval glosses which inspired it, that is the English law'. Nevertheless, for Jones 'the Lyndwood glosses are no doubt important to the study of the *history* of [those church] courts. However, that is history, not law. The [book] itself may only be of historical interest today'.³⁰ And yet, as we shall see, the gloss itself was an authority for post-Reformation lawyers.

Mirroring Lyndwood, the York *Provinciale* is also divided into five books (and each book into titles) which are ordered thematically not chronologically: I. the faith, constitutions, customs, and offices (archdeacon, etc.); II. judgments, courts, pleadings, holy days, oaths, and appeals; III. the life and duties of clergy, the alienation of church goods, donations, wills, burials, parishes and parishioners, tithes, religious houses, patronage, taxes and procurations, the celebration of masses, keeping the eucharist, the building of churches, the immunity of the church; IV. clandestine marriages; and V. offences, e.g. purgation, homicide, simony, penances and remissions, the meaning of words, and the sentence of excommunication.³¹ As I have already noted, however, the key difference is that Wolsey did not include a gloss.

It would be interesting to compare the two *Provinciales*' use of formalism and morality; for example, the York one states: 'the undue delay in suits which sometimes arises from the nice adherence to the procedure of the courts [is] burdensome to suitors and especially to the poor'; as a result, given that such 'has been decided in the common law' of the church: 'we decree that for the future procedure be taken quickly and plainly without following the rules and ordinary formalities of the law court' – by way of illustration, clergy who declare on oath that 'they are weighed down in poverty', and perform their office freely, are not to

²⁸ F J N Rogers, *Ecclesiastical Law* (1840), 269: the 'canons and constitutions' of the archbishops 'form still a part of what may be considered the national Canon law', 'all of which ... were digested and commented on by Lyndwood, and in that form presented a valuable depository of English ecclesiastical law'.

²⁹ R Bursell, *Liturgy, Order and the Law* (Oxford, 1996) 65n: that is, the edition of Bullard and Bell, for which see below.

³⁰ P Jones, 'Lyndwood's *Provinciale*, edited by J V Bullard and H Chalmer Bell, published 1929, Faith Press, London' in P Jones, *Ecclesiastical Law: Comments on English Ecclesiastical Law and Related Subjects*, see <https://ecclesiasticallaw.wordpress.com/2012/05/17/lyndwoods-provinciale/> (accessed 23 October 2025).

³¹ York *Provinciale*, Contents, v–ix.

be charged for paperwork by the advocates, proctors and other officials in York's consistory courts.³²

Like the *Canterbury Provinciale*, then, the *York Provinciale* is a collection, consolidation, or even codification of archiepiscopal provincial constitutions but, having no commentary or gloss and no index of subjects, it lacks the treatise-like quality of the *Canterbury Provinciale*.

The ratification of the two *Provinciales*: their authority

One key difference between Lyndwood's *Provinciale* and other contemporary works of canon law was that (as Brian Ferme points out): 'The continental collections were usually issued by metropolitan or diocesan authority, but Lyndwood's remained an unofficial book despite the fact that Chichele had urged him to undertake the project, possibly underlining the constant English view that local laws were perceived as supplements to the *ius commune*' of the Latin Church.³³ Nor it seems was Lyndwood a perfectionist: the historian C R Cheney discovered in the book false attributions, errors of date and transcription, and changes of wording.³⁴ The *Provinciale* of Lyndwood as a private collection and gloss must of course be distinguished from the provincials (provincial laws) which are contained in it, which were ratified as law.

The same applies to the *York Provinciale*: the earlier individual provincial constitutions collected in it had already been ratified as laws by the earlier archbishops and synods issuing them. However, the *York Provinciale* is fundamentally different from that of Lyndwood.

First, the *York Provinciale* itself (unlike Lyndwood's) was ratified as a result of a provincial legislative process at the convocation convened by Wolsey in c. 1518. Second, we might be able to go further and claim for the *York Provinciale* the authority of a legatine constitution. It was promulgated by Wolsey, as its preamble states, not only as Archbishop but as 'Legate of the Apostolic See' – *apostolicae sedis legatus*. Now Wolsey was made legate *a latere* (the *alter ego* of the Pope) sometime in 1518. The convocation at which the *Provinciale* was promulgated was c. 1518: Wilkins (in 1737) dates it as 'circiter' 1518, and Bray 1516–1523.³⁵

This is when the date of Wolsey's appointment as papal legate *a latere* and the date of the convocation at which the *Provinciale* is promulgated (and of the *Provinciale* itself therefore) become crucial. If Wolsey was *not* legate *a latere* at that point, but mere legate *natus*, the *Provinciale* itself remains a provincial (not legatine) constitution (codifying the earlier provincial constitutions in it). But if Wolsey had been appointed legate *a latere* before the convocation and

³² *York Provinciale*, V.5 (Woolley (note 4), at 60–61), *De verborum significatione* (of the meaning of words); the expression 'Common Law' is a translation of *in Iure Communi statutum fuit*; the words 'without following the rules and ordinary formalities of the law' are translated from *sine strepitu, et figura iudicii procedi valeat*.

³³ Ferme (note 26).

³⁴ C R Cheney, 'William Lyndwood's *Provinciale*', (1961) 21 *The Jurist* 405–434.

³⁵ Wilkins (note 12), III.662; G Bray (note 7), 493. See also Surtees Society, *The Records of the Northern Convocation* (1907) vol 113, at 207.

promulgation of the York *Provinciale*, it would acquire the status of a 'legatine constitution' with papal authority (a legate *a latere* being *alter ego* of the Pope). In either case, the York *Provinciale* has greater authority than Lyndwood had in Canterbury.

In any event, as its preamble states, the York *Provinciale* was issued by 'Thomas, by divine permission Archbishop of York, primate of England, legate of the Apostolic See, by all and singular abbots, priors, ministers, rectors, vicars, and other ecclesiastical prelates, all other clergy of our Province of York'.³⁶ Indeed, very importantly, the binding juridical words *promulgamus*, *volumus* and *mandamus* are used in the preamble to underline its authority.³⁷

In short, the Canterbury *Provinciale* was a private legal collection and treatise (albeit one which Lyndwood says was requested by the Archbishop Chichele) which seems not to have been ratified legislatively in Canterbury at the time of its formation by an ecclesiastical authority (such as convocation) – and it would seem odd for such an authority to ratify as law an entity containing both law (the provincials) and a private gloss;³⁸ although later (as we shall see) it acquired a distinct authority among the post-Reformation church lawyers and courts. By way of contrast, the York *Provinciale* was ratified legislatively by a Convocation and an Archbishop who was perhaps then a legate *a latere* (so making it a legatine constitution).

The significance of the latter point may be thought to be bolstered by the view of Maitland who wrote that, citing Lyndwood himself and reciting the Latin in a footnote: 'Nor is it merely by papal decretals that the legislative powers of the archbishop are curtailed. The pope, of course, is his superior, but so is a legate sent here a *latere*. No English prelate, no English council, has any power to repeal or override the statutes set by Otto and Ottobon'.³⁹

As a result, if Wolsey was papal legate *a latere* when he promulgated the York *Provinciale*, then it is distinctly arguable that the *Provinciale* acquired the status of a legatine constitution itself, and, perhaps, by way of adoption, likewise the provincial constitutions that it contains. Whether ratified as (mere) provincial law or as legatine law, the fundamental point is that the York *Provinciale* had greater authority in York than Lyndwood's *Provinciale* in Canterbury.

We also note that at the Reformation, the provincial constitutions in both *Provinciales* were ratified by Parliament in the sense that the Submission of the Clergy Act 1533 provided as follows: 'That such Canons, Constitutions, Ordinances,

³⁶ See for example Bray (note 7), at 494: '[130r] Prooemium: Thomas, permissione divina Ebor[ac]um archiepiscopus, Angliae primas, apostolicae sedis legatus, universis et singulis abbatibus, prioribus, ministris, rectoribus, vicariis et aliis ecclesiarum praelatis, ac quibuscunque clericis nostrae Ebor[ac]um provinciae, salutem in Domino sepiternam'.

³⁷ York *Provinciale*, Prooemium; see Wilkins (note 12), III.662: 'Constitutiones Eboracensis Provinciae a Thoma ibidem archiepiscopo et legato circiter annum Domini M.D.XVIII recognitae et secundum titulos promulgatae Ex MS. Penes Thomas episc. Assaven'; and 'et legatine promulgatae'; the word 'promulgamus' also appears; and: 'et ab omnibus subditos nostrae Eboracensis provinciae firmiter observari volumus et mandamus'.

³⁸ Quare: is there any evidence of ratification of the Canterbury *Provinciale* by later e.g. Convocations?

³⁹ F W Maitland, *Roman Canon Law in the Church of England* (London, 1898) 25, citing 'Lyndwood, 154, gl. ad. v. adjiciendo': 'et verum erst quod constitutiones legatini non poterint archiepiscopus tollere, quia inferior non potest tollere legem superioris'.

and Synodals Provincial, being already made, which be not contrariant or repugnant to the laws, statutes and customs of the realm, not to the damage or hurt of the King's Prerogative Royal, shall now still be used and executed, as they were afore the making of [that] Act, till such time as' they were revised.⁴⁰

The geographical applicability of the two *Provinciales*

Needless to say, as a matter of law Lyndwood's Canterbury *Provinciale* applied only within the territorial limits of the southern Province, the reach of the provincial constitutions in it. In his coverage of the Province of Canterbury, Lyndwood included Wales but he barely mentions the Province of York. Yet, there is evidence that manuscripts of Lyndwood were circulated in the northern Province. For example, in 1499, Richard Fox (Bishop of Durham) gave a manuscript copy of the *Provinciale* to the collegiate church of Bishop Auckland – but the scribe attributed the commentary to 'Sherwood' (Fox's predecessor) not 'Lyndwood'.⁴¹

However, a remarkable thing happened almost sixteen years after Lyndwood died: the provincial constitutions of Canterbury were received as law in the Province of York in 1462, but only to the extent that they were not repugnant to the provincial constitutions of York. The law which effected this was promulgated by Archbishop Booth.⁴² An English version of it appears in Johnson's *Collection of the Laws and Canons of the Church of England* (1720). The text follows the statement that in 1462 'the Province of York receives the Provincials of Canterbury' when 'William Booth, lord archbishop of York, held a convocation in his cathedral church, in which the following constitution was made' on 1 September 1462:

It is to be remembered that the prelates and clergy in convocation 1462, do unanimously will and grant that the effects of the provincial constitutions of the province of Canterbury had and observed before these times, being no wise repugnant or prejudicial to the constitutions of York, be admitted, but not otherwise, nor in any other manner: and that such constitutions of the province of Canterbury, and the effects thereof in manner aforesaid, be inserted among the constitutions of the province of York, and incorporated to be kept together with them for the future, and be observed for law, as there is great occasion, and as decency requires.⁴³

⁴⁰ See N Doe, 'Pre-Reformation Roman Canon Law in Post-Reformation English Ecclesiastical Law' (2022) 24 Ecc LJ 273–294 at 283.

⁴¹ Cavill (note 16), 2–13.

⁴² I am grateful to Professor John Baker for directing me to Wilkins and Johnson (see below) on this by email: 'the constitution of 1462 ... suggests that there was some written collection of York constitutions before 1462'.

⁴³ J Johnson (ed), *A Collection of the Laws and Canons of the Church of England ... Translated into English* (1851 edition), ii. 513. There is a marginal note to (for which see below) 'Latin Wilkins, vol. iii. p. 663'.

Wilkins set out the Latin text in his great *Concilia Magnae Britanniae et Hiberniae* (1737).⁴⁴

Most post-Reformation ecclesiastical law commentaries mention this 1462 York provincial constitution briefly, but without detailed analysis. For example, according to Gibson (1713): 'though the Provincial Constitutions, being made in Synods of the Province of Canterbury only, could have no direct influence or authority beyond the limits thereof, yet were copied after in the Province of York, and seem to have been received there as the Ecclesiastical Laws of the English Church'.⁴⁵ Blackstone considers that the southern constitutions were 'adopted also by the province of York in the reign of Henry VI'.⁴⁶ For Richard Burn (1763) the constitutions in Lyndwood's book, 'although made only for the province of Canterbury, yet were received also by the province of York in convocation, in the year 1463' (his date).⁴⁷

In the nineteenth century, some ecclesiastical law commentators continued to use the language of York's 'reception' and 'adoption' of the southern constitutions, but others of York's 'incorporation', 'acceptance' or 'approval' of them and of the expansion of the 'authority' of the Canterbury constitutions; and some are vague on dates and not very accurate. Williams (1813): Canterbury's constitutions were 'adopted also by the province of York, in the reign of Henry VI'.⁴⁸ Rogers (1840): while 'synods' were held for Canterbury from 1222, 'arranging and consolidating a system of ecclesiastical polity' there, 'hardly anything however during the same period was done in the province of York' – and here of course Rogers is quite wrong – and he continues: 'but in the year 1462, it was decreed by a convocation of that province, that the effect of the constitutions of the province of Canterbury, which were not repugnant or prejudicial to those of York, should be admitted there, but not otherwise, nor in any other manner, for that purpose should be inserted and incorporated with their own'.⁴⁹ Like Williams, Stephens (1848) writes that the Canterbury provincial constitutions were 'adopted also by the province of York, in the reign of Henry VI'.⁵⁰ For Blunt (1872) the medieval Canterbury constitutions were 'accepted and adopted' by the convocation and province of York in '1463', and 'thus acquired a legislative authority throughout the whole Church of England', although technically each set was 'only binding on the province which framed them' and so

⁴⁴ Wilkins (note 12), III.662, *Constitutiones Eboracensis Provinciae* (Pope Leo X, Archbishop William Warham, 1518, King Hen VIII 10) at 663, 1 September 1462, William Booth [Archbishop of York, 1452–64], Provincial Convocation: 'In convocatione provinciali habita primo Sept. anno Dom. Mcccc.Lxii. WILLIEL. BOOTH. Memorand. quod praelati et clerici in praedicta convocatione volunt et concedunt unanimiter, quod effectus constitutionum provinciae Cantuariensis ante haec tempora tentarum et habitarum, constitutionibus provinciae Eboracensis nullo modo repugnantium, seu praepjudicialium (et non aliter, nec alio modo) annumeruntur, et quod hujusmodi constitutiones provinciae Cantuariensis et effectus earundem (ut praefertur) inter constitutiones provinciae Eboracensis, prout indiget et decet, inserantur, et cum eisdem de caetero servandae incorporentur, et pro jure observentur'.

⁴⁵ Gibson (note 24), preface x.

⁴⁶ Blackstone, *Commentaries on the Laws of England* (1765–69), Introduction, section 3.

⁴⁷ Burn (note 24), preface, viii.

⁴⁸ D Williams, *Canonical Duties* (1813), 4.

⁴⁹ Rogers (note 28), 269: he cites Johnson (note 43), 'Canons, 2, 1463', although Johnson actually dated them to 1462: see above.

⁵⁰ A J Stephens, *A Practical Treatise of the Laws Relating to the Clergy* (1848), I.225.

were of 'equal authority'.⁵¹ Again, Thomas Lacey (in 1903) writes that the *Provinciale* 'was formally approved by the Convocation of York, in ... 1462 and thenceforward became one of the main standards of ecclesiastical law' here.⁵²

As the twentieth century progressed, however, references to the York law of 1462 were rare. Charles Green (1937) is an exception. He questions the view that after 1234, when 'the Pope of Rome emerges as the Supreme Judge and the Supreme Lawgiver', there was no 'insular Canon Law' in England; for Green, there was – in Lyndwood's 'celebrated *Provinciale*, in which, at the request of Chichele, Archbishop of Canterbury, he codified and annotated the Canons and Constitutions made and promulgated in English Ecclesiastical Councils'; and: 'still more significant, because it purposes to be a legislative enactment', in the 'resolution' of the Convocation of York 'in 1463' on the southern law, the text of which he then recites.⁵³

Remarkably, moreover, recent studies by historians of canon law in England do not index the 1462 York law, including those of Richard Helmholz, John Baker and Roland Marchant.⁵⁴ However, one exception is Gerald Bray, in a publication from 2024, being one volume of his monumental records of the convocations; he writes: 'William Booth (1452–1464). On 1 September 1462 the convocation agreed to allow the validity of all Canterbury canons which were not expressly contradicted by York ones. A memorandum to this effect is in Booth's register, fos. 342v–342Ar. Booth's canons do not appear to be recorded elsewhere'.⁵⁵ That is all Bray says about the 1462 York law; but he lists the York provincial constitutions.⁵⁶ Paul Cavill (in his 2022 study) simply says: 'The decision of the northern convocation in 1462 to adopt Canterbury's legislation made the *Provinciale* much more relevant to York'.⁵⁷

The 1462 law also appears in the York *Provinciale* of 1518, so making it important for the story of that *Provinciale* and its relationship with the Canterbury *Provinciale*. However, it must be emphasised that the 1462 York law ratified only Canterbury's constitutions not the Lyndwood *Provinciale* itself. The 1462 York law itself makes no mention of Lyndwood. Nor did Canterbury ever reciprocate with a law similar to the 1462 York law incorporating York laws, subject to the same *proviso*, into the corpus of the Canterbury laws. Yet there is something of a parallel between the 1462 York adoption of Canterbury's provincial laws and the later adoption by the Convocation of York of the Canterbury Convocation Canons Ecclesiastical of 1603/4.⁵⁸ York chose simply to receive these Canons not legislate *de novo*.

⁵¹ H Blunt, *Church Law* (1872), 14.

⁵² T Lacey, *A Handbook of Church Law* (London, 1903) 43: emphasis added.

⁵³ C A H Green, *The Setting of the Constitution of the Church in Wales* (London, 1937) 93–94, on the significance of 1234 for papal authority and law, citing F W Maitland, *Roman Canon Law in the Church of England* (London, 1898) 129–130 and Z N Brooke, *The English Church and the Papacy*, 212; and 94, on York, citing *The Publications of the Surtees Society*, vol 113, lxi.

⁵⁴ R A Marchant, *The Church Under the Law: Justice, Administration and Discipline in the Diocese of York 1560–1640* (Cambridge, 1969): some Archbishops are mentioned, but there is no index mention of the 1462 law.

⁵⁵ G Bray, 'The York *Provinciale*' (c. 1518), in Bray (note 7), 493–500.

⁵⁶ See above.

⁵⁷ Cavill (note 16), 2–13.

⁵⁸ See for example Gibson (note 24), preface, x: the 1462 York law received the southern laws in the same way that the Canons Ecclesiastical 1603 were 'received, and passed, about two years after, in the Province of York'.

It is also interesting to note that the formula used in the York law of 1462 was conceptually, in its essentials, a mirror image of that used in the Submission of the Clergy Act 1533. Both use the principle of incorporation of law if it satisfies the reception and non-repugnancy tests.

The editions of the two *Provinciales*

The Lyndwood *Provinciale* was one of the first law books printed in England, c. 1483 – two years after common lawyer Thomas Littleton's book *Tenures* (1481). It was printed at Oxford by Theoderic Rood (from Cologne), then in Paris in 1501 and 1505,⁵⁹ and at Antwerp in 1525. The edition that is most used today is that printed at Oxford in 1679 by Richard Davis.

There were other editions of only the legislative texts without Lyndwood's gloss. The first was printed in 1496 by Wynkyn de Worde (Winandus van Worden, d. c. 1534) who worked at Caxton's house. Its title is: *Constitutiones provinciales ecclesiae Anglicanae*. It was re-printed in 1499 (by de Worde and Richard Pynson, from Normandy, d. c. 1529), c. 1505 (by Pynson), in 1508, 1517, 1526 and 1529 (all by de Worde), and in 1557 (by Thomas Marshe).

All these editions were in the original Latin. But in 1534 Robert Redman published an English translation of the laws but not the gloss: 'Constitutions Provinciales'. The next was in 1664 with another in 1929 by Bullard and Bell but again only with the laws not the gloss.⁶⁰

The whole Latin text of the York *Provinciale* appears in Wilkins (1737) with extracts in English in Johnson (1720).⁶¹ The first edition of it in English is that of 1931 by Reginald Maxwell Woolley (1877–1931), an Anglican cleric and author. He writes: 'The Provincial Constitutions of York codified by Wolsey's directions and published in 1518, have hitherto only once been printed in Wilkins' *Concilia* ... There is only one known MS of these Constitutions (Bodl MS Add C 64), which is a certified copy more or less contemporary in date'. Importantly, Woolley continues: 'The Provinciale was never printed in his day'.⁶²

So, the Lyndwood *Provinciale* was first printed within forty years of Lyndwood's death and then multiple times thereafter. The York *Provinciale* was not. The only copy seems to be a manuscript now in the Bodleian although extracts from it were printed in English in Johnson (1720) and in Latin in Wilkins (1737). Later print-runs of the Lyndwood *Provinciale* included only the laws not the gloss. The York *Provinciale* had no gloss. The last edition of the Lyndwood *Provinciale* (without the gloss) is 1929; that of the York *Provinciale* 1931.

⁵⁹ John Ayton's gloss is appended to the Paris editions.

⁶⁰ See Jones (note 30).

⁶¹ Wilkins (note 12), III.662–681; Johnson (note 43), ii. 513.

⁶² The York *Provinciale*, put forth by Thomas Wolsey, Archbishop of York, in the year 1518, Woolley (note 4).

The two *Provinciales* as a focus of debate: provincial law versus papal law

As is well known, Lyndwood's *Provinciale* featured in the great Stubbs–Maitland debate at the end of the nineteenth century. Stubbs argued that papal law was binding on the church in England only if ratified by its native provincial laws. For Maitland, papal law was absolutely binding of itself, like parliamentary statute. Richard Helmholz in 1990 maintained that their choice need not be made: their positions were too positivist; they incorrectly saw the issue as one of competing sovereignties – Rome and England; and, above all, neither Stubbs nor Maitland accommodated how medieval canon law allowed flexibility and local variation. For Helmholz, Lyndwood knew this: provincial law could and did diverge from the *ius commune* when this was justified by reasonable long usage in England.⁶³ As a result, Lyndwood sometimes rejects native provincial law as *ultra vires* papal law, even if it is based on long usage, and sometimes Lyndwood also rejects provincial law as contrary to customary law.

The York *Provinciale* does not seem to have featured in the Stubbs–Maitland debate. Woolley in his 1931 edition seems to correct this in part at least.⁶⁴ His basic finding is that, as for Lyndwood provincial law gave way to papal law,⁶⁵ so too for Wolsey: because the Pope is superior to the Archbishop of York.⁶⁶ In point of fact, the York *Provinciale* does invoke papal law, as well as legatine law, and on occasion it seems to mirror Canterbury's provincial laws.

First, occasionally the York *Provinciale* uses papal law; for example: the Clementines are used as a source for laws of the Council of Vienne 1311; and the Sext is used for canons of the Council of Lyons 1245,⁶⁷ and for a canon of the

⁶³ R H Helmholz, *Roman Canon Law in Reformation England* (Cambridge, 1990), 4–20. Stubbs (1825–1901) was Regius Professor of Modern History at Oxford 1866–1884, Bishop of Chester 1884–1889 and Oxford 1889–1901. Maitland (1850–1906) was Downing Professor of the Laws of England at Cambridge (1888). See also R Sandberg, *A Historical Introduction to English Law: Genesis of the Common Law* (Cambridge, 2023) 207–209.

⁶⁴ York *Provinciale*, Woolley's (note 4) preface, x: that there were two 'provincialia' in England, 'contemplating as they do divergence on various points, raises the whole question as to what constituted the authoritative Canon Law of the Church of England. If Lyndwood was of force only in the Southern Province and Wolsey only in the Northern, what was the relation of both to the Roman *Corpus Juris Canonici*?'; xi: 'There can hardly be any doubt, it seems to me, that the Roman *Corpus* was generally accepted in England, as it was elsewhere in Europe, as expressing the *Commune Jus* of the whole Western Church. But it would seem to be equally clear that in particular cases England (and other countries) had their own particular laws'.

⁶⁵ York *Provinciale*, Woolley's (note 4) preface, xiii, e.g. 'Lynd. III. t. iii. *Licet bonae memoriae. Ad v. adjiciendo. Constitutiones legatinas non poterint archiepiscopus tollere quia Inferior non potest tollere Legem Superioris*'.

⁶⁶ York *Provinciale*, Woolley's (note 4) preface, xv; also: 'the [York] Constitutions claim for themselves authority generally as being Canons of Provincial Councils of York. The Pope is referred to on three occasions as the Archbishop's Superior, and on one of these (p 80) as being the only Superior that the Archbishop knows, an interesting and late claim to equality with the Archbishop of Canterbury for the Archbishop as Archbishop and not just for Thomas Wolsey, Archbishop and Legate; and again, certain causes of absolution are reserved to the Pope (p 58) and dispensations in matrimonial cases. Possibly the Pope is the authority referred to in general terms as 'our Superiors' (p 140)'. But see also 56: there is 'no single explicit reference to the Roman *Corpus*'.

⁶⁷ For the Clementines, see York *Provinciale* V.IV.3 (p 56); for the Sext see V.V (p 60).

Fourth Lateran Council 1215 (which forbids clergy to wear frivolous garments, in order to distinguish them from laity).⁶⁸ But another York constitution (according to Woolley) trumps papal law by ordering that the administration of wills 'shall be in accordance with the customs of the Church of England'.⁶⁹ The York law also refers to the broad categories 'the law and liberty of the Church', 'the laws and jurisdiction of the Church', and 'the sacred canons' and 'the civil laws' to be respected 'out of reverence for God' as when one who is praying in church must not be arrested there.⁷⁰

Second, the York *Provinciale* and legatine law. Basically, a York provincial law must be consistent with legatine law (which, whilst made in England, is promulgated in the name of the Pope). For example, a constitution of Archbishop Thoresby (1367) states that any decision in a matrimonial cause 'contrary to the tenor of this present constitution' is void 'Saving always the Constitutions of Otho of blessed memory sometime legate of the apostolic see of England concerning the cognisance of such cases, then accordingly promulgated, and any other constitutions, canons, and statutes put forth on the aforesaid matters, from which it is not our purpose to detract in any respect, but that such be obeyed is our will and our decree'.⁷¹ However, equally, a York provincial constitution could supplement a legatine law – like a constitution of Neville (1466) which increased a censure 'beyond' that fixed in a 'legatine decree' of Othobon penalising those in religious orders who lived outside their monastery.⁷²

Third, some York constitutions mirror those of Canterbury. For example, laws issued by Neville in 1466 reaffirm a constitution of Peckham 1279 (on correcting the ignorance of priests), mirror a canon of Stratford 1342 (on courts, on donations, on tithes, and on church immunities), and repeat a canon of Winchelsea 1305 (on tithes);⁷³ and a law of Greenfield 1306 (on wills) mirrors a canon of Langton 1222.⁷⁴ Last century Richard Helmholz too found a number of instances where York laws adopted the provincial law of Canterbury, like a Council of Oxford constitution of

⁶⁸ York *Provinciale*, III.I.2, Woolley (note 4): 'Lateran IV. Canon 16 (1215)' and a constitution of Greenfield (1306): 'As the life of priests should be distinct from that of the laity, so it is seemly that they should be distinguished in their habit and deportment. Therefore we forbid them to use in public (against the constitution of the general council) sleeved coats or other frivolous garments, or such as suggest light conduct: otherwise let such garments be applied to the fabrics of the churches where they dwell or which they serve'.

⁶⁹ York *Provinciale*, III.VIII.3, 'decree' of Greenfield (1306): the 'statute' protects the rights of testators 'in accordance with the freedom and customs of the Church of England' (*Ecclesiae Anglicanae*); see also Woolley's (note 4) preface, xv and 104.

⁷⁰ York *Provinciale*, III.XVI: 'Since the Church of God according to the Gospel verily should be the house of prayer, and the sacred canons and the civil law out of reverence for God (*sacrique canones, et leges civiles, ob rei reverentiam*), and so that Christ's faithful should more peacefully give themselves to prayer in the same, [we] have deliberately decreed that no one fleeing to the same or abiding in the same for prayer or any other reason be haled forth of the same, or have citation served or be arrested in the same'.

⁷¹ York *Provinciale*, II.I.2, *De iudiciis*.

⁷² York *Provinciale*, III.X, *De religiosis domibus*: Woolley (note 4), 'Constit. Othob', 42' (pp 38–39).

⁷³ York *Provinciale*, I.V.3 – Peckham (p 8); II.2 – Stratford (p 17); III.V – Stratford (p 31, Woolley (note 4) in a note citing Lynd III xi); III.IX – Stratford (p 36, Woolley citing Lynd III XVI iii); III.XVI – Stratford (p 48); III.IX – Winchelsea (p 37, Woolley citing Lynd III XVI vii).

⁷⁴ York *Provinciale*, III.VI – Woolley in a note citing Lynd III XIII i (p 32).

defamation 1222.⁷⁵ The precise relationship between on the one hand the York *Provinciale* and its laws and on the other papal law, legatine law, and Canterbury provincial laws is ripe for more detailed study.

The use of the two *Provinciales* in the post-Reformation historic sources

The Canterbury laws in Lyndwood survived in England after the Reformation on the basis of their reception before it and the rule in the Submission of the Clergy Act 1533 that the ‘synodals provincial’ (etc.) continued to apply if they had been used beforehand and were not repugnant to the law of the realm. Most assume that the same applied to the papal law which Lyndwood glossed.⁷⁶ As a result, Lyndwood continued to be used after the Reformation by English ecclesiastical lawyers in their commentaries. All the great works – from Godolphin (1678) through Oughton (1728) and Burn (1763) to Phillimore (1873) – cite Lyndwood, often for what they style ‘the national canon law’ contained in it.⁷⁷ For example, John Godolphin (in 1678) writes: ‘Among the many learned ecclesiastics ... William Lindwood (who finished his industrious and useful work of the Provincial Constitutions about the year 1433 in the time of King Henry VI) seems to be of the highest renown’ and with ‘his gloss thereon, being in itself as a Canonical Magazine, or a Key which opens the Magazine of the whole Canon Law’.⁷⁸ Gibson (1713) has a table of the provincial constitutions at the end of his *Codex*.⁷⁹

In turn, the Lyndwood remained a widely recognised authority in English courts. There are so many examples: *Hutchins v Glover* (1618) on patronage and *Patten v Castlemain* (1753) to justify customary payments to clergy to conduct marriages; in *Miller v Bloomfield* (1823), Lyndwood is described as one of the ‘ancientest and the best of our canonists’,⁸⁰ and in *Mastin v Escott* (1841)

⁷⁵ R H Helmholz (ed), *Select Cases of Defamation to 1600* (London, vol 101, 1985) xiv: as to this 1222 Canterbury law (implementing a Fourth Lateran Council 1215 law) a ‘version of it was adopted in the diocese of York, and the dioceses of Durham and Carlisle followed suit’; see also 6–8, *Robinson c Rayner*, Diocese of York, consistory court, 1424/5 – Robinson accused Rayner of calling Robinson a ‘false side-glance thief’; the proctor for Robinson ‘intends to prove that ... Rayner ... has culpably incurred ipso facto the sentence of a major excommunication issued by a synodal constitution of York most properly published and observed in the matter against those who impute crimes falsely and for the sake of hatred or gain; or else [has incurred] the canonical sanction to be imposed canonically by discretion of the competent judge in this matter against the imputers of those crimes which revile public morals according to the form of the aforesaid constitution’.

⁷⁶ Doe (note 40), 273–294.

⁷⁷ See for example H Prideaux, *Directions to Churchwardens* (1692, 1830 edition) 39; Gibson (note 24), I.132–133 and II.850; Rogers (note 28), 163–165, 169, 236, 275–276; T Oughton, *Ordo Judiciorum* (1728) Title X.III (Law Ed. 24–25); Burn (note 24), preface, viii and I.80; Blackstone (note 46), Introduction, section 3; Stephens (note 50), I.674 and II.1265.

⁷⁸ Godolphin, *Repertorium Canonum or An Abridgment of the Ecclesiastical Laws* (1678): Introduction, 21.

⁷⁹ Gibson (note 24), at the end of vol II, ‘A Table of the Provincial and Legatine Constitutions’ in the order in which they were made and the order in which they appear in Lyndwood.

⁸⁰ *Hutchins v Glover* (1618) Cro Jac 463; *Patten v Castlemain* (1753) I Lee 387; *Millers v Bloomfield and Slade* (1823) 162 ER 176; *Mastin v Escott* (1841) 163 ER 553 at 567. See also the Court of the Arches in *Kemp v Wickes* (1809) 161 ER 1320 at 1325: the *Provinciale*’s legatine constitutions were ‘laws made in this country under the sanction of the Popes’ legates’, and the provincials ‘in Convocation under several Archbishops’.

as ‘a most learned and sound expositor of the law’ and ‘the standard authority on all points of the canon law which may arise in the administration of justice in these courts’, but not ‘at the present day, except ... that law remains unaltered from his time’.

By way of contrast, the York *Provinciale* is nowhere mentioned in the index (or it seems text) of the work of the post-Reformation ecclesiastical lawyers (again from Godolphin in the late seventeenth century to Phillimore in the nineteenth century). Indeed, these commentaries mention York, its archbishop, its courts, and as we see below, its constitutions, but only briefly and without any detail. Their principal focus is on Canterbury.⁸¹ This neglect might be linked to economics: Canterbury was the main market for these books; for example, Gibson in the table of subscribers for his two-volume work on ecclesiastical law, six pages of 12 columns list Canterbury subscribers; only one and part of a column list York subscribers.⁸² That Richard Burn (1763) does not mention the York *Provinciale* may be thought particularly surprising given that Burn was diocesan chancellor of Carlisle and a priest in Westmorland.⁸³

However, some of these post-Reformation ecclesiastical law commentaries do mention some York provincial constitutions (but without mentioning the York *Provinciale*); for example: according to Burn a constitution of Gray Archbishop of York on tithes is ‘in a great measure copied’ in a constitution of Winchelsea Archbishop of Canterbury;⁸⁴ Rogers (1840) writes how ‘a licence to marry, not in the parish church, seems to be recognised in the [Canterbury] constitutions of archbishop Mepham, 1328’ and ‘to marry without banns, by the constitution of Zouch, archbishop of York in 1347’;⁸⁵ Stephens (1848) mentions how Pope Alexander III sent a decree to the Archbishop of York concerning the union of benefices;⁸⁶ and Blunt (1872) gives an example of how the province of York adopted in 1534 a ‘Canon’ passed by the Canterbury Convocation two months earlier excluding papal jurisdiction in England.⁸⁷

⁸¹ Godolphin (note 78), 100–104.

⁸² Gibson (note 24), II: A Catalogue of the Subscribers. See generally, N Doe, ‘The Chancery Court of York: A Forgotten Jurisdiction?’ (2025) 27 *ELJ* 298–316.

⁸³ Burn (note 24) I, preface xxi, 90, 272.

⁸⁴ *Ibid.*, III.413.

⁸⁵ Rogers (note 28), 528: for Mepham he cites ‘Johnson’s *Canons*’, and for Zouch he cites 1 Hag Con 439 – these licenses are authorised by 25 Hen 8, c 21, under power transferred from the pope.

⁸⁶ Stephens (note 50), II 1307: ‘The pope formerly granted unions [of benefices]; thus Alexander III sent a decree to the Archbishop of York’ concerning the matter.

⁸⁷ Blunt (note 51), 17: ‘[14.] A convocation of the clergy held on March 31st, 1534, under Thomas Cranmer, Archbishop of Canterbury, passed a canon, most important in English history, declaring that ‘the Bishop of Rome has no greater jurisdiction conferred on him by God, in this kingdom of England, than any other foreign bishop’ [citing Wilkins (note 12), iii. 769] The same canon was passed by the convocation of York, under Archbishop Lee, on May 5th, 1534 [again citing Wilkins (note 12), 782].’

These commentators also identify points of divergence between Canterbury and York.⁸⁸

The two *Provinciales* in modern canonical scholarship and practice

Lyndwood was cited at least 43 times in the report of the Archbishops' Commission on Canon Law 1947.⁸⁹ But he is less invoked today by the practitioners of English ecclesiastical law: Mark Hill has three and a half lines on him,⁹⁰ although *Halsbury's Laws of England*, in its 2025 edition on *Ecclesiastical Law*, boldly states: 'The principal source of our knowledge of the canon law within the Province of Canterbury is the *Provinciale* of Lyndwood. The constitutions contained in Lyndwood, the general usages of the church and certain portions of the canon law admitted by those usages are still part of the law of the Church of England'.⁹¹

The position is different in the academic world. Lyndwood's *Provinciale* is the object of extensive attention today by historians of medieval canon law who describe him, variously, as for instance: 'the best known of all medieval English canonists' (John Baker); 'medieval England's leading canonist' (Richard Helmholz); and 'a canonist who may well be compared favourably with his continental peers' (Walter Ullmann). There are also major studies on him by

⁸⁸ H Conset, *The Practice of the Spiritual or Ecclesiastical Courts* (1685) I.1.2 (3) – on the number of court days; Oughton (note 77), LXIX.III (152) – on costs, etc. under 'the ancient custom of the courts of the Archbishop of Canterbury'; Burn, *Ecclesiastical Law* (the sixth edition, 1797) IV.250–251 – two witnesses must prove a contested will 'throughout the province of Canterbury. But within the province of York, it has been usual (though now discontinued in some of the dioceses) to swear one witness to the will'; and II.485: 'by the custom established in the province of York (and at that time throughout the whole kingdom) a certain portion of the deceased's personal estate ought to go ... for the welfare of the soul of the deceased, which portion such person himself could not otherwise dispose of by will, nor his administrator after his death in case of intestacy'; Williams (note 48), 656: 'As to the custom of the province of York, it differs from that of London in only two material points: one is, that in the province of York, the child's share is fully vested in him immediately on the death of his father, and in case of his own death, will go to his representatives; whereas, by the custom of London, it does not vest in him till the age of twenty-one: if therefore he dies under that age, whether single or married, his part will go to his surviving brothers and sisters ... The other is, that in the province of York, the heir at common law, who inherits any land, either in fee or tail, is excluded from any portion of the personal estate'.

⁸⁹ *The Canon Law of the Church of England* (1947), e.g. 135 Draft Canon XLIV: 'When any person is sick or dying in any Parish, the Minister, having knowledge thereof, shall resort unto him to instruct and comfort him in his distress according to the Order for the Visitation of the Sick' etc.; margin: 'Lynd. pp. 63, 64'.

⁹⁰ See for example M Hill et al, *Ecclesiastical Law*, 4th edn (Oxford, 2018), para 1.10.

⁹¹ *Halsbury's Laws of England* (5th edn, 2025), vol 34, para 5. It is also said that 'Considerable weight is given to the treatises of historic writers on the ecclesiastical law which have been accepted as authoritative by the ecclesiastical courts' (para 6); see also para 8, note 3. The 2011 edition erroneously suggested that Lyndwood's *Provinciale* was of equal application in both provinces: 'The principal source of our knowledge of the application of the canon law within *England* is the *Provinciale* of Lyndwood. The constitutions contained in [the work], the general usages of the church and certain portions of the canon law admitted by those usages are still part of the law of the Church of England' (para 4) [emphasis added].

Brian Ferme in 1996, about Lyndwood and testamentary law,⁹² and more recently by Paul Cavill in his article on Lyndwood's early readers in the *Ecclesiastical Law Journal* (2022).⁹³

By way of profound contrast, remarkably, ecclesiastical law commentaries of the twentieth century make no mention of the *York Provinciale*. Again, Charles Green (1937) is a rarity, as we have seen,⁹⁴ as is Carson Ritchie with occasional references to the *York Provinciale*.⁹⁵

Similarly, in more recent years, as with the 1462 York law, once again studies by historians of medieval and later canon law in England make no mention of the *York Provinciale* 1518, including, once more, surprisingly, Richard Helmholz, John Baker and Roland Marchant.⁹⁶

Even the brilliant Gerald Bray (2024) has only a few lines on the *York Provinciale*; he writes:

The *York Provinciale* is a collection of York statutes made by or for Cardinal Wolsey sometime between 1516 and 1523, following the pattern familiar from William Lyndwood's *Canterbury Provinciale*, which appeared in 1433, and the Roman canonical tradition going back to the *Liber extra* of 1234 and beyond. It may have been Wolsey's intention that the *Provinciale* should have been adopted at a provincial council, but if so, it seems to have been overtaken by events and ... never published.

With due respect to Professor Bray, the evidence seems to be that the *York Provinciale* did not fully follow the pattern of Lyndwood's *Provinciale*; and the evidence suggests that the *York Provinciale* was indeed adopted at a provincial council as its own *prooemium* testifies.

Nevertheless, Gerald Bray continues: 'However, it is valuable as a repository of already existing legislation, some of which no longer survives elsewhere. In this edition, the canons are printed in their correct chronological place, as described below. The preface was composed especially for the *Provinciale* and is printed here'.⁹⁷ That is a major step forward.

Conclusion

I began with an extract from an AI online overview on the title of this study. The overview also stated: 'The existence of a dedicated legal text for the Province of

⁹² See Baker (note 14), 43–55; Helmholz (note 2), 45–67; W Ullmann, *Law and Politics in the Middle Ages* (London, 1975) 175; Ferme (note 26); and B E Ferme, 'Lyndwood and the Canon Law: The Papal *Plenitudo Potestatis* and the College of Cardinals' in N Doe, M Hill, and R Ombres (eds), *English Canon Law* (Cardiff, 1998), 13–22.

⁹³ Cavill (note 16), 2–13.

⁹⁴ Green (note 53), 95, citing *The York Provinciale*, edited and translated by Woolley (note 4), x.

⁹⁵ C I A Ritchie, *The Ecclesiastical Courts of York* (Arbroath, 1956) 61–62, citing *York Provinciale*, Bk I, Title VII: a constitution of Greenfield (1306) citing the Woolley edition (note 4), 13.

⁹⁶ Marchant (note 54): some Archbishops are mentioned, but there is no index mention of the 1462 law.

⁹⁷ Bray (note 7), 493–500.

York would be significant, as it would reflect a distinct legal tradition and potentially different interpretations of canon law compared to the *Provinciale*; and: ‘The phrase “Move Over Lyndwood” suggests a move away from the dominance of Lyndwood’s work and towards a greater understanding of the legal and administrative processes within the Province of York’. The latter is, absolutely, what I have hoped to show in this study; and that the two *Provinciales* are worthy of comparison. I conclude with a summary of their similarities and differences.

First, the similarities between Lyndwood’s *Canterbury Provinciale* and York’s *Provinciale*: (1) behind both are clerics; (2) both contain provincial constitutions; (3) both collect, consolidate and codify provincial laws; (4) both are ordered thematically; (5) both acquired an authority; (6) both applied of their own force only within their province; (7) both were printed in several editions; (8) both invoke papal law and address its relationship with provincial law; (9) the provincial laws in them were cited well after the Reformation by ecclesiastical lawyers in their commentaries; and (10) both are known to scholars even today.

Second, there are profound differences: (1) Lyndwood the cleric-canonist is known only by a small circle of church law specialists – Wolsey the cleric-statesman is world-famous; (2) Lyndwood’s *Provinciale* has Canterbury laws and legatine constitutions – York’s *Provinciale* has provincial laws but occasionally mentions legatine laws; (3) Lyndwood seeks to educate the clergy – Wolsey’s aim is to govern and to protect the autonomy of his Province of York; (4) Lyndwood has laws and a gloss, Wolsey has just the laws with no gloss; (5) Lyndwood’s *Canterbury Provinciale* in its entirety was never ratified legislatively in Canterbury – York’s *Provinciale* was ratified certainly by a convocation and perhaps by the legatine quasi-papal authority of Wolsey (next only to that of the Pope); (6) Canterbury’s provincial laws were adopted in 1462 by a provincial constitution of York to the extent that they were not inconsistent with York laws – Canterbury never did the same with the York *Provinciale* – the 1462 adoption pre-figures York’s adoption of the 1603 Canons; (7) Lyndwood went into many early editions – York had to wait till the early eighteenth century; (8) Lyndwood was debated by Stubbs and Maitland on whether papal law trumped provincial law – York’s *Provinciale* had to wait till 1931 for similar study but this never was more widely debated; (9) Lyndwood was cited and celebrated countless times by the post-Reformation ecclesiastical lawyers – the York *Provinciale* was totally neglected; and (10) modern scholars of medieval canon law in England focus on the Lyndwood *Provinciale* but the majority neglect the York *Provinciale*.

However, this is simply an exploratory comparison of the two *Provinciales*. Further work needs to be done on, for example: (1) the details of the ratification of the York *Provinciale* and the implications of what is suggested here as its possible status as a piece of legatine legislation; (2) the extent to which the 1462 York law adopting the Canterbury laws was actually used in practice in York; (3) the relation of the York *Provinciale* and its provincial constitutions to papal law, legatine law, and the Canterbury provincial laws; (4) the precise extent to which York’s church courts used the York *Provinciale*; and (5) the extent to which historians of the Tudor period and of Wolsey in particular have studied the York *Provinciale*.

Perhaps, then, it is time for the northern Province to set up its own equivalent to the biennial Lyndwood Lecture (a collaborative venture with the Roman Catholic

Canon Law Society of Great Britain and Ireland dating from 1996) in the form of a Wolsey Lecture. Whether or not that happens, it is high time for Lyndwood to move over, a touch, to give York more room.

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⁹⁸ See further M Ellis, 'Sheila Cameron CBE KC' (2026) 28 Ecc LJ 153–155.