

III

The development of the charter in Scotland

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The charter tradition in the kingdom of the Scots

The earliest written act of a king of Scots to survive in its original form was issued in the name of Duncan son of Malcolm, who reigned during 1094.¹ Written in Latin with ink on parchment, the document was produced by the act's beneficiary, Durham cathedral priory. The texts of 1264 Scottish royal acts survive from the period down to 1314, with 366 still existing as originals; 474 acts of Scottish earls survive from the same time, 162 as originals. The Church has provided the locus for a very large proportion of surviving texts and original documents, including 730 acts of bishops, 160 of which survive as originals.²

These are the numbers of acts that survive. The total number of documents originally produced would have been much higher. The quantity of parchment originals that has endured intact seems good, given the relative fragility of their medium of production, especially by comparison with the near-indestructible copper-plates of Bengal. Where the original Scottish documents are lost, moreover, their texts often survive because they have been copied into a codex, a cartulary, compiled in a monastery or cathedral as some kind of record of its muniments.³ Churches

¹ See pp. 73–5, below.

² Figures derived from the online database of these charters: Amanda Beam, John Bradley, Dauvit Broun, John Reuben Davies, Matthew Hammond, Michele Pasin (with others), *The People of Medieval Scotland, 1093–1314* (Glasgow and London, 2012), www.poms.ac.uk (accessed 12 April 2019).

³ The motivation for producing cartularies is far more varied than previously understood: for the latest work on this subject, Joanna Tucker, *Reading and Shaping Medieval Cartularies. Multi-Scribe Manuscripts and their Patterns of Growth: A Study of the Earliest Cartularies of Glasgow Cathedral and Lindores Abbey*, Studies in Celtic History (Woodbridge, 2020).

were the beneficiary of the largest part of the written acts that survive from the twelfth and thirteenth centuries, and cartularies survive from twenty Scottish ecclesiastical communities.⁴

This period also witnessed the foundation of many new monastic houses in Scotland, which came with substantial endowments by the original patron and smaller gifts by successors and followers of the primary benefactor. Dauvit Broun has shown how, of the seventy-six charters of Malcolm IV (1153–1165) that relate specifically to his kingdom's heartlands north of the Forth and south of the Mounth, all but six were issued to ecclesiastical beneficiaries. Sixty-four of these charters were for the benefit of monasteries founded, re-founded, or raised to the rank of abbey by King Malcolm or his immediate predecessor, David I (1124–1153).⁵ By contrast, the number of extant written acts to laymen is small, with only eleven of Malcolm's 161 surviving charters having been issued to laymen.⁶ Matthew Hammond, setting out the evidence that kings of Scots did not routinely issue charters to lay beneficiaries until late in the reign of Malcolm IV, if not William the Lion (1165–1214), has reinforced Broun's view that the adoption of charters by the laity was a late development.⁷

Broun has argued that, if we consider the usage of the Latin charter in England, where rates of production and survival were

⁴ Medieval Scottish cartularies are listed on the online resource, *Scottish Medieval Charters*, where the *Syllabus of Scottish Charters*, edited by Matthew Hammond, can be found, at scottishmedievalcharters.wordpress.com (accessed 12 April 2019); but also see Joanna Tucker, 'Understanding Scotland's medieval cartularies', *Innes Review* 70:2 (2019).

⁵ Dauvit Broun, *The Charters of Gaelic Scotland and Ireland in the Early and Central Middle Ages*, Quiggin pamphlets on the sources of mediaeval Gaelic history 2 (Cambridge, 1995), 6–7.

⁶ *Ibid.*, 7.

⁷ Matthew Hammond, 'The adoption and routinization of Scottish royal charter production for lay beneficiaries, 1124–1195', in *Proceedings of the Battle Conference 2013*, ed. David Bates, Anglo-Norman Studies 36 (Woodbridge, 2014), 91–115; Dauvit Broun, 'The adoption of brieves in Scotland', in *Charters and Charter Scholarship in Britain and Ireland*, ed. Marie Therese Flanagan and Judith A. Green (Basingstoke, 2005), 164–83.

higher, the impression is that it looks even more like the concern of the ecclesiastical world, and of monasteries above all.⁸

Arguing against the concept, proposed by Wendy Davies, of a 'Celtic Charter' in Scotland, Broun has pointed to the adoption of the *brieve* during the reigns of Alexander I (1107–1124) and David I, kings of the Scots, to send written commands to their officers and to make gifts to (religious) beneficiaries.⁹ In England, observed Michael Clanchy, 'laymen used documents among themselves as a matter of habit only when they became sufficiently familiar with literate modes to trust them', and this did not happen in England until the thirteenth century.¹⁰ The doctrine of the livery of seisin (Scots *sasine*) persisted, so that the recipient of a transfer of property had to have the property delivered to him in due order, and physically enter into possession of it, for which a document recording the conveyance was not necessary.¹¹ Written words were not enough unless accompanied by physical symbols. Bracton's *Laws and Customs of England*, a long treatise describing the English law, and written in the thirteenth century, explained that 'a gift may be valid though no charter has been made', and conversely, 'the charter may be genuine and valid and the gift incomplete.'¹² A convention in the drafting of written instruments also became universal, that the past tense was to be used in charters of gift, so

⁸ Broun, *The Charters of Gaelic Scotland*, 12–13.

⁹ For the view that pre-twelfth-century Scotland was without charters, see Broun, *The Charters of Gaelic Scotland*, 29–44, and *id.*, 'The writing of charters in Scotland and Ireland in the twelfth century', in *Charters and the Use of the Written Word in Medieval Society*, ed. Karl Heidecker (Turnhout, 2000), 113–31, at 114–20. Wendy Davies, 'The Latin charter-tradition in western Britain, Brittany and Ireland in the early mediaeval period', in *Ireland in Early Mediaeval Europe: Studies in Memory of Kathleen Hughes*, ed. Dorothy Whitelock, Rosamond McKitterick, and David N. Dumville (Cambridge, 1982), 258–80.

¹⁰ Michael T. Clanchy, *From Memory to Written Record: England 1066–1307* (3rd edn, Oxford, 2013), 50.

¹¹ Henry de Bracton, *De Legibus et Consuetudinibus Angliae*, ed. G. E. Woodbine, rev. and transl. S. E. Thorne, 4 vols (Cambridge MA, 1968–77), II, 124–5.

¹² *Ibid.*, 50.

that the donor would say, 'Know me to have given' (*Sciatis me dedisse*) rather than 'I give' (*Ego, N., dono*). In this way, the charter reflected the reality that the ceremonial conveyance of the property was the decisive element of the transaction. We should therefore not understand that every gift of land made in the twelfth century was recorded in a charter.¹³

Latin charters in twelfth- and thirteenth-century Scotland were not, however, mere rhetorical or historical instruments, but were written for the aid of the beneficiaries, expressing their rights in relation to the donor.¹⁴ Broun has made the point that their appeal and authority also lay beyond the bounds of a kingdom: the language of charters, their form, and the script in which they were written meant that they could be read and understood anywhere in Latin Christendom.¹⁵ They could, therefore, be used as the basis for appeals to the papal courts.¹⁶ Broun has concluded that,¹⁷

It should not be a surprise that kings also would be especially receptive to this new international awareness, if perhaps only to relish the exercise of kingship and the platform for wider recognition offered by such an active role as the Church's guardians . . . The conditions were right, therefore, for a document to gain currency which could formally encapsulate the power of kings and the authority of the rejuvenated Church. In these conditions [the charter] had the potential to be an effective instrument for safeguarding rights and property. Where both Church-reform initially and royal power subsequently became well established and gathered strength, the charter could eventually evolve into a stereotyped and standardised official document produced exclusively by a writing office, a stage which began to be

¹³ See Broun, *The Charters of Gaelic Scotland*, 13–16.

¹⁴ See Davies, 'The donor', 165.

¹⁵ Broun, *Charters of Gaelic Scotland*, 25–6.

¹⁶ For the rise of this phenomenon, see John Reuben Davies, *The Book of Llandaf and the Norman Church in Wales* (Woodbridge, 2003), especially 32–45.

¹⁷ *Ibid.*, 26, 47.

reached by the Scottish kingship only in the very last years of the twelfth century.

The Diploma

The earliest extant Scottish charter is properly a royal instrument in the form of a diploma rather than a charter proper.¹⁸ The diploma concerns the disposition of land and rights but is not in the form of a letter. In the Scottish context, all the surviving diplomas are in favour of ecclesiastical beneficiaries. There is no clause of address, but instead the document begins with a solemn invocation of God (in Scotland, all surviving invocations are of the Holy Trinity, either as 'the Holy Trinity' or as 'Father, Son and Holy Spirit'). The grantor refers to himself in the first person, with the pronoun *Ego*, 'I'; the dispositive clause is in the present tense (*do, dono, concedo*, 'I give', 'I bestow', 'I grant', etc.); there is usually a solemn sanction at the end, invoking divine punishment and ecclesiastical penalties upon those who would infringe the terms of the act. A diploma is usually subscribed by signatories, and any witnesses have their names recorded in the nominative case rather than the ablative case. There are some departures from this form, especially in the Scottish context: most notably, there is not always a clause of sanction, the disposition is not always in the present tense, there are not always signatories, and witnesses are sometimes given in the ablative case. The essential diagnostic feature, then, is the use of *Ego* and the lack of an address. The earliest extant original royal act issued in the name of a Scottish king is therefore given below.

¹⁸ See pp. 86–89, below for a definition of the charter as a category in diplomatics.

KING DUNCAN FOR DURHAM CATHEDRAL PRIORY (1094)

Durham University Library, Archives and Special Collections,
 Durham Cathedral Muniments [DCD], Misc. Ch. 554
 (contemporary authentic duplicate). Edited by Archibald A. M.
 Duncan, 'The Earliest Scottish Charters', *Scottish Historical
 Review* 37 (1958), 103–35, at 119.¹⁹

[INTITULATIO] Ego Dunecanus filius regis Malcolumb
 constans hereditarie rex Scotie ꝛ [DISPOSITIO] dedi in
 elemosinam Sancto Cuthberto et suis seruitoribus
 Tiningeham . Aldeham . Scuchale . Cnolle . Hatheruuich . et
 de Broccesmuthe omne seruitium quod inde habuit Fodanus
 episcopus . et hec dedi in tali quitantia cum saca et soca.
 qualem unquam meliorem habuit sanctus Cuthbertus . ab illis
 de quibus tenet suas elemosinas . Et hoc dedi pro me ipso . et
 pro infantibus meis . et pro fratribus meis . et pro uxore mea
 . et pro infantibus meis . Et quoniam uolui quod istud donum
 stabile esset . sancto Cuthberto ꝛ feci quod fratres mei
 concessereunt . [SANCTIO] Qui autem istud uoluerit destruere
 . uel ministris sancti Cuthberti aliquid inde auferre ꝛ
 maledictionem Dei . et sancti Cuthberti . et meam : habeat .
 amen .

[ATTESTATIO] Crux Dunecani regis | scribtoris
 Græntonis

Aceard | Ulf | Eadgari ✕ | Malcolumb ✕
 Hermer | Hemming | Ælfric | Teobold | Vuiget
 Eaernulf

[TITLE] I Duncan, son of King Malcolm, by inheritance
 undoubted king of Scotland [DISPOSITION] have given in
 alms to Saint Cuthbert and to his servants, Tynninghame,
 Auldham, Scoughall, Knowes, Hedderwick, and at
 Broxmouth every service that Bishop Fothad had from that
 place; and I have given these in such quittance, with sake and
 soke, as Saint Cuthbert ever the better had from those from
 whom he holds his alms. And I have given it for myself, and
 for the soul of my father, and for my brothers, and for my

¹⁹ See the *Models of Authority* web resource for images of the manuscript and
 analysis of the text and palaeography; on line at www.modelsofauthority.ac.uk

wife, and for my children. And since I have willed that this gift should permanently belong to Saint Cuthbert, I have done what my brothers have allowed. [SANCTION] But let the one who would destroy this thing or take anything of it away from the servants of Saint Cuthbert, have God's curse, and Saint Cuthbert's, and mine. Amen.

[ATTESTATION] The cross of King ✠ Duncan | Of the scribe,
 ✠Grens
 ✠Achard | ✠Ulf | ✠Edgar | ✠Malcolm
 ✠Hermer | ✠Hemming | ✠Ælfric | ✠Uviet | ✠Theobald |
 ✠Ernulf

A second diploma, from the following year and the reign of King Edgar (1095–1107), survives only in a late medieval copy, but it is confirmed in two original *acta* of William II (Rufus), king of the English (1087–1100). A. A. M. Duncan has shown that the text, as it survives in DCD Misc. Ch. 559, is authentic.²⁰

KING EDGAR FOR THE CHURCH AND BISHOP OF DURHAM (29 August 1095)

DCD Misc. Ch. 559 (fifteenth-century copy of lost original). Edited by A. A. M. Duncan, 'Yes, the earliest Scottish charters', *Scottish Historical Review* 78 (1999), 1–38, at 16, 22–3.

[INVOCATIO] In nomine Patris et Filii et Spiritus Sancti Amen. [NOTIFICATIO] Notum sit omnibus Christi fidelibus presentibus et futuris quod ego [INTITULATIO] Edgarus filius Malcolmi regis Scottorum totam terram de Lodeneio et regnum Scotie dono domini mei Willelmi Anglorum regis et paterna hereditate possidens [DISPOSITIO] consilio predicti domini mei Regis Willelmi et fidelium meorum pro animabus patris mei et matris mee necnon et fratrum meorum Dunecani et Edwardi et pro salute corporis mei et anime mee et pro omnibus antecessoribus siue successoribus meis do Deo omnipotenti et ecclesie Dunelmensi et sancto Cuthberto glorioso pontifici et Willelmo episcopo et monachis in eadem ecclesia Deo seruiantibus et imperpetuum seruituris mansionem de Berwic et cum ista mansione has subscriptas

²⁰ A. A. M. Duncan, 'Yes, the earliest Scottish charters', *Scottish Historical Review* 78 (1999), 1–38.

mansiones scilicet [twenty place-names follow] et mansionem de Collingham et cum ista mansione has subscriptas mansiones scilicet [ten place-names follow]. Has superscriptas mansiones do Deo et sancto Cuthberto cum omnibus terris et siluis et aquis et theloniis et fracturis nauium et cum omnibus consuetudinibus que pertinent ad predictas mansiones et quas pater meus in eis habuit quietas et solidas secundum voluntatem Dunelmensis episcopi libere disponendas.

[ATTESTATIO – signatores]

Signum ✠ Edgari Regis | Signum Alexandri fratris eius | S ✠ Menyanium Agulfi | S filii Doncani Eyluerti | S ✠ filii Eghe Omani | S ✠ Edgari aederling | Vhtredi | S filii Magdufe Constantini | S ✠ Roberti de Humet | S ✠ Aetele | A✠gulfi | S Alimoldi filii sui | ✠Dauid |

[DATUM – dies et locus] Hec carta firmata est iii^o kal. Septembris in cimiterio sancti Cuthberti apud Norham attestatio [ATTESTATIO – testes] presente Willelmo episcopo et Durgoto priore et Ansketillo preposito de Norham et Ilgero de Corneford et Waltero de Ualonis et Galfrido de Aldreio et Willelmo filio Alimodi et Johanne de Amundiulla et Rachone Lotharingo et Gilberto et Wilfrido et Alimodo filio Makodi et Anulfo fratre suo. Et presente maxima multitudine Francorum et Anglorum quorum nomina longum est inscribere. [DATUM – annus] Hoc autem factum est eo anno quo Rex Willelmus filius magni Regis Willelmi fecit nouum castellum ante Bebbanburgh' super Robertum comitem Northanhymbrorum.

[INVOCATION] In the name of the Father and of the Son and of the Holy Spirit Amen. [NOTIFICATION] Let it be known to all Christ's faithful, present and future, that I [TITLE] Edgar son of Malcolm the king of the Scots, possessing the whole land of Lothian and the kingdom of Scotland by the gift of my lord William, king of the English, and by paternal inheritance [DISPOSITION] Give with the advice of my aforesaid lord, King William, and of my sworn men, for the souls of my father and my mother, as well as of my brothers, Duncan and Edward, and for the salvation of my body and of my soul, and for all my ancestors and successors, to

Almighty God and to the church of Durham, and to Saint Cuthbert the glorious bishop, and to William the bishop, and to the monks serving God in the same church now and in perpetuity, the toun of Berwick, and with that toun these touns written below, that is [twenty place-names follow], and the toun of Coldingham, and with that toun these touns written below, that is [ten place-names follow]. These touns written above I give to God and to Saint Cuthbert with all the lands and woods and waters and tolls and wrecked ships and with all the customs which belong to the aforesaid touns and which our father had in them, quit and firm, freely disposed according to the will of the bishop of Durham.

[ATTESTATION – signatories]

The sign of ✠ Edgar the king | The sign of Alexander his brother | The s(ign of) ✠ Agulf son of Ingemar | The s(ign of) Kilvert son of Duncan | The s(ign of) ✠ Olaf son of Oggu | The s(ign of) ✠ Edgar Ætheling | of Uhtred | The s(ign of) Constantine son of Macduff | The s(ign of) ✠ Robert of Le Hommet | The s(ign of) Agulf son of Ætalus | The s(ign of) Ælfwald his son | ✠ David.

[DATE – day and place] This charter was made firm on the fourth kalends of September [29 August] in St Cuthbert's churchyard at Norham [ATTESTATION – witnesses] in the presence of William the bishop and Turgot the prior and Ansketill the reeve of Norham, and Ilger of Cornforth, Walter de Valognes, and Geoffrey de Aldrie, and William son of Ælfwald, and John de Amundeville, and Lorrainer the Racho, and Gilbert, and Wilfred, and Ælfwald son of Makod, and Aiulf, his brother. And in the presence of a large gathering of Frenchmen and Englishmen whose names would take too long to write. date [DATE – year] This was done in the year in which King William son of the great King William built a new castle in front of Bamburgh against Robert earl of the Northumbrians [i.e. 1095].

Some features of early royal diplomatic

A feature which made a brief appearance in Scottish royal *acta*, if only in cartulary copies, was the *arenga*, an introductory portion of text which expresses in general terms the motive for the issue of the document. The putatively earliest (and only) examples appear in cartulary copies of diplomas. The first, a diploma for the founding of Scone Abbey by King Alexander I and his queen, Sybilla, reads,²¹

Quia sicut rex et propheta Dauid testatur domum Dei semper decet sanctitudo ... ('For as David the king and prophet testifies that sanctity always becomes the house of God ...').

In the second example, King David I confirms jointly with his son and heir Henry, king designate, all that has been granted by Bishop Robert of St Andrews to the newly-formed cathedral priory of St Andrews in 1144.²²

Ad hoc nos diuina prouidentia in populo suo principes esse uoluit et debeamus et uelimus ipsi tanquam Domino et Creatori omnium subesse et subditis nostris magis prodesse quam preesse mala penitus extirpare bonum non solum ipsi facere uerum etiam beneficientes adiuare.

For this, Divine Providence has willed us to be princes among his people; and we ought to be, and also wish to be, subject to them as much as to the Lord and Creator of all, and rather to benefit our subjects than to rule them, thoroughly to root out those things that are evil, not only to do good for them, but also to aid those who act well.

The development and standardisation of diplomatic in Scottish royal acta of the twelfth and thirteenth centuries

Three principal categories of royal act developed in Scotland in the twelfth and thirteenth centuries: brieves, letters of

²¹ King Alexander and Queen Sybilla found Scone Priory, 1114 × July 1122; printed from the cartulary in *Liber Ecclesie de Scon*, Bannatyne Club (Edinburgh, 1843), 1 (no. 1), and in *Early Scottish Charters Prior to A.D. 1153*, ed. Archibald C. Lawrie (Glasgow, 1905), 28 (no. xxxvi).

²² Edited from the thirteenth-century cartulary of St Andrews Priory in *Charters of King David*, ed. Barrow, 114 (no. 126).

notification, and the charter. (There were proclamations, treaties, letters of correspondence, and others too, but they were not produced or did not survive in large enough quantities to be significant here.)²³

Brieves

Dauvit Broun has argued that it was kings, and probably Alexander I most of all, who promoted the adoption of brieves in the first half of the twelfth century.²⁴ The brieve derives its name from Latin *breue*; in England it is known as a writ.²⁵ Brieves were addressed to a specific person or group of persons, for example, a sheriff or sheriffs, burgh officers, earls or ecclesiastics, and would have been deliverable. In its simplest form a brieve allowed the king to enjoin those to whom it was addressed to do something or to refrain from doing something. An instruction followed immediately after the address and there was no notification clause. The text contained a specific command issued in the first person and directed in the second person: *mando tibi* ('I command thee') or later, *mandamus uobis* ('we command you'). The earliest surviving contemporary original brieve is from the reign of King Alexander I (1107–1124).²⁶

A(lexander) Dei gratia rex Scottorum, priori A(lgaro) et
totius conuentui ecclesie sancti Cuthberti salutem. Mando et
precipio uobis ut nullo modo intretis placitum neque in

²³ For a more detailed account of the development of Scottish royal diplomatic, see John Reuben Davies, 'Royal government in Scotland and the development of diplomatic forms, 1094–1249', in *Identifying Governmental Forms in Europe, 1100–1350: Palaeography, Diplomatics and History*, ed. Alice Taylor (Cambridge, forthcoming).

²⁴ Broun, 'The adoption of brieves'.

²⁵ Pierre Chaplais, *English Royal Documents: John to Henry VI, 1199–1461* (Oxford 1971); Richard Sharpe, 'The use of writs in the eleventh century', *Anglo-Saxon England* 32 (2003), 247–91; Richard Sharpe, 'Address and delivery in Anglo-Norman royal charters', in *Charters and Charter Scholarship*, ed. Flanagan and Green, pp. 32–52; Broun, 'The adoption of brieves'.

²⁶ DCD Misc. Ch. 563 (8 January 1107×23 April 1124). See the *Models of Authority* web resource for this and the other contemporary original DCD charters cited in this chapter (note 19, above).

aliquam diratiocinatione de terra de Suintune ante quam ueniat ante me. Tibi etiam domine prior notum facio quia de multis rebus multa uobis habeo secrete loqui, quam citius fieri poterit. Valete.

Alexander by the grace of God King of the Scots sends greeting to Prior Ælfgar and the whole community of the church of St Cuthbert. I command and enjoin you that you by no means enter a plea neither any vindication of rights concerning the land of Swinton before you come before me. I make known to you also, lord Prior, that I have many things to tell you secretly as soon as possible about many matters. Farewell.

The epistolary farewell, *ualete*, was soon lost, and a witness clause was added. In the reign of Alexander I's successor, David I, the place of date became a standard feature in royal acts, and it became normal for brieves to have a short witness clause. By the end of the reign of King Alexander II (1214–1249), the form of the simple brieve had become standardised.²⁷

A. Dei gratia rex Scott(orum) R. de Bernham' maiori et prepositis suis de Berwic' salutem . Mandamus uobis et precipimus, quatinus extraneos mercatores qui uenient usque prioratum de Coldingham' ad lanam et alias mercaturas prioris et conuentus de Coldingham emendas . nullo modo inpediatis ꝛ quin dictas mercaturas emere et abducere possint . saluis nobis antiquis consuetudinibus nostris . Test(ibus) P . Comite de Dunbar' . Walter(o) Olif(ard) Iustic' Laodon(ie) . Apud Edinburc . x^oii die Aprilis . anno regni domini regis vicesimo quarto .

A(lexander) by the grace of God king of the Scots to R(alph) de Bernham, the mayor, and his provosts of Berwick, greeting. We command and enjoin you that you by no means impede foreign merchants who come to Coldingham Priory to buy wool and other merchandise from the prior and convent of Coldingham, but that they be able to buy and take away the said merchandise, reserving to ourselves our ancient customs. As witnesses P(atrick), earl of Dunbar; Walter Oliphant, justiciar of Lothian. At Edinburgh on the

²⁷ DCD Misc. Ch. 619 (Edinburgh, 12 April a.r. 24 [1238]).

12th day of April, in the twenty-fourth year of the reign of the lord king.

During Alexander II's reign a novel development in a small number of briefs occurred. We find in a few *acta* a corroboration clause in which the document is described as *litterae patentes*, 'letters patent'. The earliest example of such a corroboration clause is from 1227.²⁸ The practice continued into the reign of Alexander III.²⁹ Examples of written instruments describing themselves as *litterae patentes* were being produced in the English royal chancery from at least 1166 onwards; at that time the term simply signified documents that were sealed open.³⁰ The kind of corroboration clause found in the briefs of Alexander II was often inserted in the texts of royal letters.

A brief of Alexander II from 1236, commanding Thomas (of Melsonby), prior of Durham, to deliver to Hugolinus, envoy and servant of Cardinal Rainer, the £40 which the king had sent to

²⁸ (1) Brief commanding the sheriff of Fife to pay the abbot of Dunfermline the eighth part of the king's profits of justice accruing from the sheriff's jurisdiction. Clackmannan, 17 August a.r. 13 [1227] (NLS, Dunfermline Cartulary, MS. Advocates 34.1.3A, fol. 50r (new pencil foliation), column 2 [mid-xiii cent. copy]); (2) Brief commanding Thomas, prior of Durham, to deliver to Hugolinus, messenger and *famulus* of Cardinal Rainer, the £40 which the king had sent to Durham by the hands of the monks of Coldingham in the previous year. Edinburgh, 29 May a.r. 22 [1236] (DCD Misc. Ch. 625); (3) Brief commanding provosts of Perth to pay yearly to the house of Dominican friars of Perth one wey of wax from the king's ferme of Perth, Forfar, 31 October a.r. 27 [1241] (NLS, Advocates Charters A. 4); (4) Brief to provosts of Roxburgh commanding them to pay Kelso Abbey, out of the king's burgh ferme of Roxburgh, 100s. each year at Whitsun (possibly c. 1230 × 1234) (NLS, Kelso Cartulary, MS. Advocates 34.5.1, fo. 15v [xiv cent. copy]); in Keith Stringer's forthcoming edition, *The Acts of Alexander II, King of Scots, 1214–1249*, Regesta Regum Scottorum 3, these are nos 134, 244, 282, 341.

²⁹ *The Acts of Alexander III, King of Scots, 1249–1286*, ed. Cynthia J. Neville and Grant G. Simpson, Regesta Regum Scottorum 4, pt 1 (Edinburgh, 2010), nos 15, 46, 82.

³⁰ Chaplais, *English Royal Documents*, 7.

Durham via the monks of Coldingham in the previous year, has such a corroboration clause.³¹

. A . dei gratia Rex scott(orum) . Th(ome) . Priori Dunelm(ensi) . dilecto amico suo . salutem . Mandamus vobis . precantes quatinus quadraginta Libras quas per monachos de Coldingham' anno preterito misimus vsque Dunelm(um) . Hugolin(o) nuntio et famulo domini Reiner(i) Cardinal(is) . habere faciatis . In cuius rei testimonium ꝛ has Litteras nostras patentes vobis transmittimus . Test(ibus) . E . Abbate de sancta Cruce . W . Olif(ard) . Iust(iciario) Laod(onie) . apud castr(um) puellar(um) . xxix . die Maii . Anno regni domini regis vicesimo secundo .

A(lexander) by the grace of God King of the Scots to his esteemed friend Thomas, Prior of Durham, greeting. We command you, entreating that you would see to it that Hugolin, the messenger and servant of the lord Cardinal Reiner, has the forty pounds which I sent to Durham last year via the monks of Coldingham. In testimony of this matter we dispatch these our open letters to you. As witnesses E(lias), abbot of Holyrood, and W(alter) Oliphant, justiciar of Lothian. At Maidens' Castle [Edinburgh], on the 29th day of May, in the twenty-second year of the reign of the lord King.

In the Scottish context at least, this type of *briefe* appears to be used when the subject of the act is the disposal of cash or property.

Two variations on the simple form of *briefe* were also produced. The principal difference in the first was the more general character of its mandate, instruction or prohibition. The formula would be, for instance, *mando et firmiter precipio quatinus* ('I command and firmly enjoin that'), losing the personal object. The other variation was the *briefe* addressed generally *omnibus (pro)bis hominibus totius terre* ('to all (law-worthy) men throughout the land'), as well as collectively to

³¹ DCD Misc. Ch. 625 (*Acts of Alexander II*, ed. Stringer, no. 244); probably written by a royal scribe, who also wrote 622, and 624 (I am grateful to Professor M. T. J. Webber for this opinion).

regional or local officers corresponding to types of court – justiciar, shrieval, or burghal. Again, the verbs of instruction lack a personal object, ‘I command that’, rather than ‘I command you that’; and again, they are forms of notification, designed to be read out in the appropriate court.

In such a simple form there was little room for variation. Once a change in diplomatic practice had been made it was more-or-less consistently applied.

Letters with notification

The first category of letters with notification can still be categorised as a type of *brieve*: it has a special address plus a personal instruction introduced by a notification.

Alexander I gave notice to Ælfgar, prior of Durham, and the monks of St Cuthbert at Durham, that he had made a donation to them of Swinton, but that he had forbidden them to bring any suit concerning the land without his instruction, since he would grant them immunity in respect of all royal gifts made in alms.³²

A . dei gratia rex scottorum . A . priori omnique
congregationem S . Cuthberti . salutem . Sciatis quod ego
dono et concedo ex mea parte Deo et Sancto Cuthberto et
uobis suis monachis Swintunam totam liberam et quietam
tenendam et om[n]ino habendam sicut fratris mei Eadgari
regis uobis testatur . Et preterea precipio et defendo ne
aliquis uestrum ullo de modo de eadem Swintuna placitet aut
respondeat ulli homini nisi ego ipse ore ad os uel meis litteris
precepero . Quia ego et frater meus Daudid elemosinam fratris
nostri Eadgari . et nostram similiter . S . predicto et uobis
Monachis acquietabimus .

*Alexander) by the grace of God king of the Scots to Ælfgar
the prior and all the community of Saint Cuthbert greeting.
Know that I donate and concede for my part to God and
Saint Cuthbert and to you his monks Swinton, entire, free
and quit, to be held and entirely had just as my brother King
Edgar bore witness to you. In addition, I instruct and forbid
that any of you by any means bring suit or answer any man
unless I myself have given instruction in person or by my*

³² DCD Misc. Ch. 562.

letters, since I and my brother David shall acquiet the alms of our brother, and ours likewise, to the aforesaid saint and to you monks.

The king's subjects also required him to issue more general notifications, either new or supplementary to an existing charter of his predecessor, by which he could communicate and enforce or reinforce a right newly granted to or already held by one of his subjects; or more commonly they needed him to issue a prohibition based on the right or liberty granted. This was done in the form of a class of document addressed generally to men of the land holding legal status, the *probi homines*, giving notice of the transfer of rights to a beneficiary and usually issuing an injunction or prohibition. Such letters were not deliverable and were rather like charters in that they were meant to be a record of the transfer of rights.

This category of letters with notification was a modification of the first category, away from the *brieve* in the direction of the charter. A general address ('Alexander Dei gratia rex Scottorum omnibus probis hominibus tocius terre sue salutem') replaced the special address, but the text still lacked the confirmation clause of a charter (*hac carta confirmo*) and employed the form of notification which begins, *sciatis me/nos* ('know me/us [to have done such and such]') or *sciatis quod* ('know that'). The instructions and injunctions lack a personal object.

This was the form of instrument used when the king found occasion to improve the tenure of landholders already in possession of their land by conceding certain additional liberties or privileges, for example, tenure in free forest or tenure in free warren. Such grants were made with enough frequency that a standardised formula of wording became established during the reign of Alexander II.

The standard pattern of these *acta* was the address plus *omnibus probis hominibus*; notification plus operative verb; *quare* (or *et* or *unde*) plus injunction. This act of David I forms

the basic model for the Letters which became standardised during the reign of Alexander II:³³

. D . Rex Scott' . Omnibus probis hominibus totius terre sue francis . et anglicis . et Galweiensibus ꝫ salutem . Sciatis me dedisse et Concessisse Roberto de Brus in feudo et hereditate illi et heredi suo in foresto uallum de Anant ex utraque parte aque de Anant sicut diuise sunt a foresto de Seleschirche quantum terra sui protenditur uersus stradnut . et uersus Clud libere et quiete sicut aliud forestum suum tenet melius et liberius . Quare defendo ne ullus uenatur in predicto foresto nisi per ipsum super forisfactu . x . librarum . et ne ullus eat per predictum forestum nisi recta uia nominata . T . Waltero cancellario . et Hugone de Moreuilla . et Waltero filio Alani et Odenello de Vmframuilla . et Waltero de Lindeseia . et Ricardo de Moreuilla . Apud . Stapilgortune .

[TITLE] *D(avid) king of the Scots* [ADDRESS] *to all worthy men of all his land, French and English and Galwegian* [GREETING] *greeting.* [NOTIFICATION] *Know me to have given and conceded to Robert de Brus in feu and heritage to him and his heir under forest law Annandale on both sides of the Water of Annan just as the boundaries are from the forest of Selkirk as far as his land extends towards Nithsdale and towards the Clyde, freely and with immunity, just as well and freely as he holds his other forest.* [INJUNCTION] *Wherefore I forbid that anyone may hunt in the aforesaid forest unless with his permission, on pain of the forfeiture of ten pounds, and that anyone may go through the aforesaid forest unless by the proper named ways.* [ATTESTATION] *As witness Walter the chancellor, and Hugh de Morville, and Walter son of Alan, and Odenel d'Umfraville, and Walter of Lindsay, and Richard de Moreville.* [PLACE] *At Staplegordon.*

This second major class of letters with notification is closer in form to the charter proper, for it gives notice of a disposition which has given rise to the consequent instruction or injunction that the notification serves to relate. The notification of the type *Sciatis quod* or *Sciatis me/nos* is not diagnostic but it is usually a

³³ TNA, DL 25/78 (1150×24 May 1153); *Charters of David I*, ed. Barrow, 156 (no. 210).

signal that we are dealing with letters with notification rather than a charter. Previous scholarship has not recognised this distinction.

Charters

The charter proper was a development from letters with notification and can be identified from its confirmation clause. In other words, charters were a type of written instrument that identified themselves in a clause which runs (in its standard form) thus: *et hac carta mea/nostra confirmasse* ('and have made firm by this my/our charter').

The verb *confirmo*, used here, has nothing to do with 'confirming', in the sense of approving or re-affirming a previous *actum*, but signifies the making firm of the transaction that is the subject of the present instrument by embodying it in the form of a charter; that is, by writing it down in a more-or-less regular format and form, recording it on a discrete sheet of parchment in a judicially recognised pattern of phrases, sealed with a wax seal. In the settled practice of the late twelfth century onwards, where *confirmare* is used, it is really expressing what the document itself does in respect of the transaction. In the standard formulation, *hac presenti carta mea confirmasse* ('[know me] to have made firm by this my present charter'), the document is the means of 'establishing', 'strengthening', 'confirming' the action, and is to be found in all categories of transaction.

The first possible instance of a charter identifying itself might be David I's gift of lands in Lothian (including Coldingham) to the monks of Durham, dateable 23 April 1126 × 24 March 1127. The confirmation clause comes at the end as part of the dating clause.

Hec carta firmata est anno ab incarnatione domini .m.c.xxvi
tercio anno regni mei aput Pebles ('This charter was made
firm in the 1126th year after the incarnation of the Lord, in
the third year of my reign, at Peebles').³⁴

³⁴ DCD Misc. Ch. 567, 568.

The palaeography, the diplomatic and the witness list, however, are under suspicion.³⁵ The phrase nevertheless probably came into use towards the end of David I's reign.

Charters, then, were instruments of disposition in epistolary form; they begin with a collective address (in royal charters, often to archbishops, bishops abbots, priors, earls, barons, justiciars, etc.) or a general address and notification; they are described as a 'charter' in the dispositive clause (*hac presenti carta mea*); they effected a disposition defined in the body of the text, usually the donation or gift of property or the granting of legal rights; and they list witnesses, whose names are given in the ablative case.

Richard Sharpe identified five types of transaction embodied in charters in the Anglo-Norman context. The categories, as I have shown elsewhere, apply also to the Scottish situation, and can be expressed in the following way. (1) The gift of land. (2) The gift of rights or the licensing of another action. (3) The licensing by a lord of a gift of land made by a tenant. (4) The reaffirmation to a tenant of his holding land as under the lord's predecessor. (5) The gift to a tenant's heir, by his lord, of succession to land as held by the *antecessor*.

The most crucial verb is *dare*, 'to give', which signifies that the giver desires that the thing given should become the property of the recipient; *concedere*, 'to grant, to concede', can be understood on the basis that the subject has shown his consent.

When one gives (*dare*) or bestows (*donare*), one is identifying oneself as the donor of a gift or donation (*donum* or *donatio*); this is exact legal terminology stated for the benefit of the donee, expressing his right in relation to the donor. As donor, the one giving opens himself to the obligations of warrandice (the guarantee of the tenant's possession of the land) attached to lordship.³⁶

³⁵ See for example, *Charters of King David*, 69.

³⁶ Warrandice was an obligation owed to the tenant of land, by the donor, to defend him in his possession of that land against all claims; it was therefore, in practice, an obligation to come to court if 'vouched' (called) by the tenant, in order to defend an action brought against him for the possession of that land.

In Sanskrit donative inscriptions the word for the method of giving as a ‘gift’ is *dāna*, with *dānam* being a ‘donation’; in Latin the same Indo-European root provides the noun *dōnum*, ‘gift’, and verb *dōno*, ‘I give’.³⁷ In this way, the concept of transferring the ownership of property by giving as a gift is at the heart of property records, whether from Scotland or Bengal.

The significance of *dōno/dōnātio* in the Scottish material may usefully be illustrated in a charter of Alexander III (1249–1286) for Melrose Abbey of 1266.³⁸

Sciatis nos concessisse et hac carta nostra confirmasse
concessionem et confirmationem illam quam Alexander
senescallus Scocie fecit Deo et ecclesie sancte Marie de
Melros ... super donacione illa quam Ricardus le Waleys
tenens ipsius Alexandri fecit eisdem monachis

*Know us to have granted and made firm by this our charter
the grant and confirmation that Alexander, Steward of
Scotland, made to God and the church of Saint Mary at
Melrose ... concerning the donation that Richard Wallace,
Alexander’s own tenant, made to the same monks.*

Here is laid out an exposition of the full hierarchy of lordship and terminology of giving and granting. The king, as chief lord, has allowed or licensed the ‘grant and confirmation’ made by Alexander Stewart; Alexander Stewart in turn has ‘granted’ or allowed the donation of the land of Barmuir (Tarbolton, Ayrshire) and *Godenech* that has been made by Richard Wallace, who is explicitly described as Alexander Stewart’s tenant. We

See S. J. Bailey, ‘Warranties of land in the thirteenth century’, *Cambridge Law Journal* 8 (1942–4), 274–99, at 274.

³⁷ See p. 3, above. For example, the Bharat Kala Bhavan copper-plate of Rājyapāla, year 2 (10th century CE), line 48 (ed. Ryosuke Furui, ‘Bharat Kala Bhavan copper plate inscription of Rājyapāla, year 2: re-edition and reinterpretation’, *Puravritta* 1 (2016), 41–56, at 48); Rajibpur copper-plate of Gopala IV, Year 2 and Madanapala, Year 2 (2th century CE), lines 52–53 (ed. Ryosuke Furui, ‘Rajibpur copperplate inscriptions of Gopala IV and Madanapāla’, *Pratna Samiksha*, new ser. 6 (2015), 39–61, at 45); Rajibpur copper-plate of Madanapāla, year 22 (12th century CE), lines 50–1 (*ibid.*, 53).

³⁸ Cosmo Innes, *Liber S. Marie de Melros*, 2 vols (Edinburgh, 1837), i, 288 (no. 326).

also witness the use of *confirmatio* ('confirmation') to describe Alexander Stewart's action in relation to Richard Wallace's gift: the conjunction of the term *confirmatio* with *concessio* suggests that the *confirmatio* is the embodiment of the *concessio* in a charter.

The royal name and title

Like all royal instruments – beyond treaties, letters of correspondence or acts in the strict diploma form – royal *acta* began with a protocol, made up of (a) the king's name and title, (b) address, (c) salutation. Parts (a) and (b) quickly became standardised across all briefs, letters with notification and charters.

It is in the title that we come closest to any concept stating the genealogical legitimacy of the king. This occurs only twice in our material, and both times in the earliest royals *acta*, of Duncan and of Edgar, that we have already encountered.

Ego Dunecanus, filius regis Malcolumb, constans hereditarie rex Scotiae ('I Duncan, son of King Malcolm, undoubted king of Scotia by hereditary right').

Edgarus filius Malcolmi regis Scottorum ('Edgar, son of Malcolm king of the Scots').

The four extant contemporary original acts of King Edgar all survive in the archive of Durham cathedral and are types of notification. In Edgar's acts the title is more-or-less uniform: *Eadgarus rex Scottorum*.³⁹

One of Edgar's acts, however – probably the latest – includes the phrase, *Dei gratia* ('by the grace of God') in the royal style.⁴⁰ Given that the three surviving original acts of Alexander I are consistent in the royal style, *A. dei gratia rex scottorum Dei gratia*, the practice of adding *Dei gratia* to the royal title could perhaps have been adopted at the end of Edgar's reign.⁴¹ From this point onwards, moreover, until the reign of Alexander II, the

³⁹ DCD Misc. Ch. 555–558.

⁴⁰ DCD Misc. Ch. 558.

⁴¹ DCD Misc. Ch. 561, 562, 563.

royal name (as in English chancery practice) was represented by the initial letter alone. As in England, one may start to be suspicious of any purported original that does not follow this convention. The evidence of original single sheets indicates that *Dei gratia* remained in the title during the first half of the reign of David (1124–1153) but was dropped in the 1140s. There is nevertheless reason to be suspicious, both on diplomatic as well as palaeographical grounds, of several originals in the corpus where *Dei gratia* occurs.⁴² Geoffrey Barrow put this variation in practice down to a change of chancellor in 1135, from Herbert (bishop of Glasgow) to William Comyn, who was experienced in English chancery practice where *Dei gratia* had not yet entered the royal *intitulatio*.⁴³ We might also consider the possibility that production of charters by beneficiaries was also causing inconsistencies at this point. The pious formula did legitimately reappear, however, during the reign of William the Lion (1165–1214), becoming standard from 1173×1174, following English chancery practice, and continuing through all subsequent reigns.⁴⁴

Whereas the king's name was uniformly abbreviated to its initial letter from the reign of Alexander I onwards, Alexander II's name, by contrast, is not consistently abbreviated in the originals and is either spelled out in full or shortened to *Alex'*, probably to distinguish him from his predecessor of the same name.⁴⁵

⁴² DCD Misc. Ch. 567, 568, 571, 572; BL, LFC Charters, xxx.1; National Records of Scotland, GD 90/1/1. (I am again grateful to Dr M. T. J. Webber for her opinion on this.)

⁴³ Barrow, *Charters of David I*, pp. 11–12; Barrow also pointed to the sporadic continued practice until 1150, especially in solemn privileges; all the examples, however, are cartulary copies or have anachronistic palaeographical features.

⁴⁴ *Dei gratia* was introduced into the royal style in the protocol of English chancery documents around May 1172; Chaplais, *English Royal Documents*, p. 13.

⁴⁵ There are five extant contemporary originals, from early in the reign, where 'Alexander' is spelled out; three are charters with the full general address, 'to bishops, abbots, earls, barons, sheriffs': NRS, Register House Charters, RH6/25 (1215); GD55/174 (1215); DCD Misc. Ch. 622 (1219). Two other

The final part of the protocol, (c) the salutation or greeting, was always the same, *salutem*.

The general or universal address

By far the most common form of the general address at the end of the period, in the charters of Alexander II, was *omnibus probis hominibus totius terre sue, clericis et laicis, salutem* ('to all worthy men of the whole of his land, clerk and lay, greeting'); a simpler variant, without *clericis et laicis*, is found in Letters of Notification granting privileges.

The first secure contemporary instances of the exact formula occur in originals produced for Holyrood Abbey late in the reign of Malcolm IV.⁴⁶ From this time onwards *omnibus probis hominibus totius terre sue (clericis et laicis) salutem* becomes more frequent in the address clause of surviving original royal *acta*.

From the beginning of William the Lion's reign (in 1165) down to the early 1170s the short form of the general address, beginning *omnibus probis hominibus*, predominates in originals.⁴⁷ From about 1172×1173, however, the longer address beginning with prelates and the nobility is prevalent, but 'omnibus probis hominibus totius terre sue clericis et laicis

contemporary originals, from the end of the reign, have the short universal address: GD55/239 (1246); NLS, Charter B 1357 (1248).

⁴⁶ (1) NRS, GD 24/13/231 (charter of confirmation for Holyrood Abbey, 1161×1164): *The Acts of Malcolm IV, 1153–65*, ed. G. W. S. Barrow, *Regesta Regum Scottorum 1* (Edinburgh, 1960), no. 231. (2) NRS, GD 24/13/232 (charter of gift for Holyrood Abbey, 1161×1164): *Acts of Malcolm IV*, ed. Barrow, no. 232.

⁴⁷ The originals are (1) charter of gift for Henry son of Gregory the clerk, 1165×1174, 'Omnibus probis hominibus tocius terre sue salutem' (original now lost): *The Acts of William I, King of Scots, 1165–1214*, ed. G. W. S. Barrow, *Regesta Regum Scottorum 2* (Edinburgh, 1971), no. 43. (2) NRS, GD 1/4/2 (charter of gift to Gregory de Melville, 1166×1171): 'Omnibus probis hominibus tocius terre sue clericis et laicis salutem', *Acts of William I*, ed. Barrow, no. 45. (3) NRS, GD 28/1 (charter of confirmation for Hugh Giffard, 1166×1171): 'Omnibus probis hominibus tocius terre sue, clericis et laicis, Francis et Anglis, Scottis et Galweiensibus, salutem', *Acts of William I*, ed. Barrow, no. 48.

salutem' is the standard secondary component in the clause.⁴⁸ (I have been able to discern no pattern to this phenomenon – it occurs across beneficiary archives and is not peculiar to any particular type of *actum*.) From 1198 onwards practice had become firmly established, and 'omnibus probis hominibus totius terre sue clericis et laicis salutem' was the standard address for charters, more often on its own, but also as the set conclusion to the longer general address.⁴⁹ By the reign of Alexander II, practice had become fixed.

The development of government and the standardisation of diplomatic forms

By the reign of Alexander II, the repertoire of royal instruments had developed a standardised pattern that hardly varied. The cause of this standardisation and the preponderant use of letters of general notification, I have argued elsewhere, can be linked to specific developments in Scottish law and royal policy.⁵⁰

Four specific developments happened after David I's briefs. (i) A date of time, by day of the month, was introduced in the last two decades of William's reign.⁵¹ (ii) The year was introduced in the seventh year of Alexander II, the year of grace at first being employed, the regnal year with day of the month taking over. (One sees in Scotland a correspondence with English practice.)⁵²

⁴⁸ For example, NRS, GD 48/1 (a charter of gift, 1172×1174, for Ralph Ruffus), is addressed, 'Episcopis, abbatibus, comitibus, baronibus, iusticiis, ministris, et omnibus probis hominibus totius terre sue, clericis et laicis, salutem' ('to bishops, abbots, earls, barons, justices, officials, and all worthy men of his whole land, clerk and lay, greeting'): *Acts of William I*, ed. Barrow, no. 135; see also nos 136, 141, 146, for further originals with the same full general address; nos 143 and 145 are examples of originals from the mid 1170s with the short general address.

⁴⁹ NRS, GD 24/13/242 (charter of confirmation for Holyrood Abbey, 1198): *Acts of William I*, ed. Barrow, no. 401; see also nos 402, 403, 410, 414, for further originals with the same short general address.

⁵⁰ See Davies, 'Royal government'.

⁵¹ Chaplais, *English Royal Documents*, 13; see also Dauvit Broun, 'The absence of regnal years from the dating clause of charters of kings of Scots, 1195–1222', *Anglo-Norman Studies* 25 (2003), 47–63.

⁵² See Chaplais' examples of writs, *English Royal Documents*, 54–5.

(iii) Early in the reign of Alexander II the plural of majesty was introduced: personal pronouns and verbs changed from first person singular (*me, mando*) to first person plural (*nos, mandamus*). This had been happening in England since the reign of Henry II. (iv) In apparent imitation of the English Writ Patent, a form of Brieve Patent was introduced, but rarely used. In the significant parts of *acta* which define a royal instrument, that is, the protocol, the notification, and the eschatocol – especially the form of the date – there was no variation from beneficiary archive to beneficiary archive. Most particularly, in royal grants – that is, the granting of rights for the improvement of tenure – the whole form was exactly standardised by the reign of Alexander II. So, no matter the beneficiary, a grant – say – of free forest would always have been formulated in the same way.

First, kings maintained their power in Scotia during the twelfth century in part by giving away substantial gifts of land.⁵³ In particular, William the Lion appears as the most significant giver of gifts – indeed, it has been commented that he was ‘rather profligate’ in giving away large, extensive estates, normally to be held for the service of a single knight. William’s reign (1165–1214) saw gifts for knight service to the value of nearly twenty-eight knights. But the supply of land, particularly in the heartlands of Scotia, appears to have dried up in the thirteenth century. The policy of ‘land patronage’ had its limits, and Alexander II was unable to sustain the pace of William’s gifts in Scotia, and his reign saw a significant curtailment of the alienation of the royal demesne in return for knight service. During Alexander’s reign there was only one new gift of land made in return for the service of a whole knight and, even then, it was an exchange.⁵⁴ A further eleven gifts were made for the service of a fraction of a knight: these amounted to the service of an additional three-and-a-half knights only. The subsequent reign of Alexander III saw one gift of land for knight service, and that for only half a knight.

⁵³ See Taylor, *Shape of the State*, 82.

⁵⁴ NRS, GD 86/1; *Acts of Alexander II*, ed. Stringer, no. 194.

Second, the tailing-off of new gifts from the royal demesne coincided with a considerable increase in the granting of improvement of tenure: that is, the augmentation of rights, liberties, and protections in lands already held of the king. As an illustration of a wider phenomenon, we can see that King David I made just one grant of tenure under forest law; during the reign of Malcolm IV (1153–1165) there was again just one grant amounting to tenure in free forest; King William the Lion (1165–1214) made seven grants amounting to tenure in free forest or free warren; and by contrast, Alexander II (1214–1249) made at least 27 grants of tenure in free forest and free warren.⁵⁵

These grants of rights, liberties and protections are the kinds of *acta* that would have tended to increase the perception of lordship, avoid further alienation of the royal demesne, and increase business in the royal and regional courts. The granting of these rights and protections would have produced more opportunities to bring actions in the king's court.

This leads to the third phenomenon. Opportunities to bring actions in the king's court were further increased from 1230 when two new actions were allowed. In the first place, a tenant was enabled to sue the lord who put him out of his property without cause or due process by bringing an action of novel dissasine (recent dispossession). The statute of novel dissasine, the procedure whereby somebody could accuse another of unlawfully dispossessing them of land and/or chattels, states explicitly that the case would be initiated by a brieve from either the king or the justiciar, and the justiciar or sheriff would then conduct the inquest to see whether the claimant was telling the truth.⁵⁶ Secondly, perhaps in 1230 or sometime in the following decade, a lord whose tenant died had to put that tenant's heir in

⁵⁵ *Charters of David I*, no. 210; *Acts of Malcolm IV*, ed. Barrow, no. 311 (text does not survive); *Acts of William I*, ed. Barrow, nos 314, 340, 346, 463, 565 (forest); no. 46, 335 (warren); *Acts of Alexander II*, ed. Stringer, nos 54, 57, 89, 201, 206, 213, 214, 220, 226, 238, 242, 243, 253, 260, 269, 275, 277, 288, 289, 310, 321 (free forest); nos 158, 327, 328, 331, 337, 343 (free warren).

⁵⁶ *Statuta Regis Alexandri* (MS. version), c. 7, ed. & transl. by Alice Taylor, 'The assizes of David I, king of Scots, 1124–53', *Scottish Historical Review* 91 (2012), 197–238, at 217–8; see also Taylor, *Shape of the State*, 162–3.

possession or else be liable to an action of mortancestry and an inquiry by a jury into the title under which the possessors of a property held it.⁵⁷

Already Alice Taylor has shown that from the 1170s onwards royal *acta* were emphasising individuals' jurisdiction over their own land. The king's authority granted specific jurisdictional rights to individuals to be held in the land given or confirmed by the king, particularly jurisdiction over punishment. Royal charters show that the king received a forfeiture when privileges over land, such as retention of neyfs and forest rights, were infringed.⁵⁸ Taylor would even see charters as leading the development of the law.⁵⁹ The number of legal brieves increased substantially during the thirteenth century and allowed royal justice to be available in a far more regular and standard way than before.⁶⁰

We have seen how kings from Alexander I onwards used the Brieve to command their officials and magnates. By the end of the period Alexander II was using Latin letters extensively to grant rights and privileges and to initiate legal processes in courts. Government through the written word, as Alice Taylor has told us, meant not only command and notification but now also anticipation of and provision for the needs of the people. Writing had become the way by which such provision could be accomplished in standard ways. The same format was used for time-limited orders as much as for authoritative legal corroboration of property ownership.

We have seen how the standardisation of diplomatic was most apparent in the set parts of *acta* – the protocol and eschatocol. The structure of *acta* followed a set pattern too, according to their nature. Royal models were closely adhered to in these instances, especially in grants of rights. When it came to royal charters, however, especially those concerned with the

⁵⁷ Alice Taylor, *The Shape of the State in Medieval Scotland* (Oxford, 2016), 272; Hector L. MacQueen argued for 1230×1237 (*Common Law and Feudal Society in Medieval Scotland* [Edinburgh, 1993], 169–70).

⁵⁸ Taylor, *The Shape of the State*, 173.

⁵⁹ *Ibid.*, 174.

⁶⁰ *Ibid.*, 298.

conveyance of property, the influence of certain beneficiary institutions can also be observed.⁶¹ The most striking development was the self-contained and distinctive nature of Cistercian diplomatic, embodied most notably in the archive of Melrose Abbey. Here one encounters the long and detailed boundary clause; the dispositive form of holding clause linked to the boundary clause, which made explicit what had been included in the gift; and the distinctive warrandice clause, which not only explicitly guaranteed the gift, but also explicitly guaranteed exemption from services. Both the evidence from Melrose and the earlier evidence from Durham show how it was the beneficiaries themselves rather than the donors, even when the donor was the king, who were influencing the content of charters, and the development of diplomatic.

Conclusion

Diplomatic forms and patterns of royal *acta* in Scotland became standardised by the beginning of the thirteenth century and tended to follow contemporary English developments. Textual models of royal authority were dominant. Beneficiaries knew how to write a royal charter, and rather like the products of the papal chancery, royal *acta* could be recognised and their form diagnosed and authenticated by their diplomatic features.

By the end of King Alexander II's reign, an intensifying administrative structure and an increasingly uniform legal system were developing in Scotland. This administrative intensification and uniformity was also coincident with a sharp rise in grants of rights, improvements in tenure, and a more prominent role for royal courts in matters of property.

Sayantani Pal's analysis (above) of the copper-plates of Bengal shows how the form and format of the plates and their inscriptions tended to be most regular in the context of stable, regional, dynastic rulership, especially that of the Pāla dynasty (from the mid-eighth century to the mid-twelfth). Among the local rulers of the twelfth and thirteenth centuries, too, even though there was not a fixed form for the writing of copper-

⁶¹ See Davies, 'Royal government'.

plates, a general acquaintance with the required features of donative inscriptions, as prescribed in the normative texts, can be observed in all the records. We are therefore led to conclude that the insights from early medieval Bengal, combined with a more detailed understanding of the development of diplomatic in twelfth- and thirteenth-century Scotland, tend to corroborate Dauvit Broun's view about the adoption of charters outlined in the first part of this chapter. In other words, where there was an appeal to wider authority, or where there was a centralising authority, it made sense to adopt written records – records that developed a standardised form and format.