

William Henry Stevenson and the continental diplomatics of his age

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Introduction

In the age of Stevenson continental diplomatics was in the very height of its development. This may have been partly due to the frequent finds of new, hitherto unknown originals of charters in only recently accessible archives and to the archeological discoveries of new papyri mainly from Egyptian soil. The leading diplomatic scholars of the time, however, considered newly developed methods of research as the main factor for the advancement of diplomatic studies.¹ It was **Theodor Sickel** (1826–1901) who insisted that the starting point for research in diplomatics had to be the original charters, i.e. not copies from chartularies of a later age.² It was **Julius Ficker** (1826–1902)³ who pointed out that diplomatic studies had to take the *formulae* into consideration, especially the dating clauses since the dates of the *actum* (the time of the legal process) and the *datum* (the time of the legal record) might be at variance with each other.⁴ And it was **Heinrich Brunner** (1840–1915),⁵ the legal historian, who approached the late Roman and early medieval charters from the point of view of legal history, stating that the medieval charters were of Roman, not of Germanic origin.⁶

¹ Th. v. Sickel, ed., *Lehre von den Urkunden der ersten Karolinger*; id., ed., *Acta Regum et Imperatorum Karolinorum digesta et enarrata* I (Vienna, 1867), pp. 30–42. Cf. A. de Bouïard, *Manuel de diplomatique française et pontificale* I (Paris, 1929), pp. 11–32. H. Bresslau, *Handbuch der Urkundenlehre für Deutschland und Italien* I, 3rd ed. (Berlin, 1958), pp. 42–3. R. Rosenmund, *Die Fortschritte der Diplomatie seit Mabillon vornehmlich in Deutschland-Osterreich*, Historische Bibliothek 4 (Munich, Leipzig, 1897), pp. 122–5.

² Sickel, *Lehre*, pp. 13–33; cf. Rosenmund, *Diplomatik*, p. 69. Sickel was a Member of the *Institut für österreichische Geschichtsforschung* since 1855, Professor of diplomatics and auxiliary sciences in Vienna since 1867, head of the Austrian Historical Institute in Rome 1883–1901. See: B. Bretholz, ‘Theodor von Sickel’, *Zeitschrift des Deutschen Vereins für Geschichte Mährens und Schlesiens* 13 (1909). M. Doblinger, ‘Theodor von Sickel und Josef von Zahn’, *Zeitschrift des Historischen Vereins der Steiermark* 23 (1927). W. Erben, ‘Theodor Sickel’, *Historische Vierteljahrsschrift* 11 (1908). Id., ‘Theodor Sickel’, *Mitteldeutsche Lebensbilder* III (Magdeburg, 1928). J.K. Mayr, ‘Der Presbyter Theodor Sickel’, *Jahrbuch für Geschichte des Protestantismus in Österreich* 67 (1951). Id., ‘Die Anfänge Theodor Sickels’, *MIöG* 62 (1954). O. Redlich, ‘Theodor Sickel’, *MIöG* 42 (1927). H. Steinacker, ‘Theodor von Sickel’, *Bericht des Akademischen Vereins deutscher Historiker in Vienna* 17/18 (1905/6–1906/7). M. Tangl, ‘Theodor von Sickel’, *NA* 33 (1908).

³ Professor of history at Innsbruck since 1852. See J. Jung, *Julius Ficker. Ein Beitrag zur deutschen Gelehrten-geschichte* (Innsbruck, 1907). E. Mühlbacher, ‘Julius Ficker’, *MIöG* 24 (1903). A. Schulte, ‘Julius von Ficker’, *Westfälische Lebensbilder* II (Münster, 1931). H. Steinacker, ‘Julius Ficker und die deutsche Geschichtswissenschaft’, *Die Universität Innsbruck* (Innsbruck, 1928); reprinted in his *Volk und Geschichte* (Brünn, Munich, Vienna, 1943). P. Wentzcke, ‘Julius Ficker und Oskar von Wydenbrug’, *MIöG* 62 (1954).

⁴ J. Ficker, *Beiträge zur Urkundenlehre* I (Innsbruck, 1877; Repr. Aalen, 1966) §§ 85–129. Cf. Rosenmund, *Diplomatik*, pp. 88–90.

⁵ Professor of legal history in Berlin since 1873. See E. v. Schwind, ‘Heinrich Brunner’, *MIöG* 38 (1920). *Almanach der Akademie der Wissenschaften in Vienna* 66 (1916). H. Brunner, *Abhandlungen zur Rechtsgeschichte* II (Weimar, 1931).

⁶ H. Brunner, *Zur Rechtsgeschichte der römischen und germanischen Urkunde* I (Berlin, 1880; repr. Aalen, 1961), p. 3. Cf. Rosenmund, *Diplomatik*, pp. 99, 101, 103, 114–15.

It was through the endeavours of these three scholars that diplomatics lost its primary affiliation with church institutions and, merging with other auxiliary sciences such as palaeography⁷ and papyrology,⁸ became acknowledged as an academic discipline, its leading representatives being accepted as university professors.

The generation of Sickel, Ficker and Brunner was followed by a group of scholars who while on the one hand side continuing the editorial efforts especially of Sickel on the other hand took considerable pains to establish comprehensive surveys and periodical publications in the field of diplomatics. This is true first of all for **Harry Bresslau**,⁹ whose *Handbuch der Urkundenlehre für Deutschland und Italien* became a classic in the field, in its second edition of 1912 unsurpassed to the present day.¹⁰ While Bresslau expressly limited the scope of his handbook to the medieval Reich, **Arthur Giry**¹¹ wrote the only truly comprehensive survey on medieval charters,¹² containing brief but substantial statements also on Anglo-Saxon charters.¹³ The great Italian medievalist **Luigi Schiaparelli**,¹⁴ specialist in the Lombard charters and editor of the first volume of the *Codice diplomatico lombardo*, produced several comprehensive articles on early medieval Italian charters and by these contributions took his share in establishing the *Istituto Storico Italiano per il Medioevo* in Rome and *Archivio Storico Italiano* as media for the organization and publication of diplomatic research.¹⁵ The only specialized periodical ever to have

⁷ Ludwig Traube, 1861-1907. Professor in Berlin since 1902. See H. Bresslau, 'Ludwig Traube', *NA* 33 (1907). Cf. *Rendiconti dell' Accademia dei Lincei* V/16 (1907). L. Traube, *Vorlesungen und Abhandlungen* I (Munich, 1909), pp. XLVIII-LXXIII.

⁸ Ulrich Wilcken, 1862-1944. Professor of ancient history in Berlin since 1917. See F. Zucker, 'Ulrich Wilcken', *Archiv für Papyrusforschung* 15 (1953).

⁹ 1848-1926. Professor of history at Strassburg since 1890. See his autobiographical notes in *Die Geschichtswissenschaft der Gegenwart in Selbstdarstellungen* II, ed. S. Steinberg, (Leipzig, 1926). Letters to Bresslau have been edited in 'Briefe namhafter Historiker an Harry Bresslau', *Die Welt als Geschichte* 14 (1954). Cf. F. Baethgen, 'Harry Bresslau', *Historische Vierteljahrsschrift* 24 (1929). K. Hampe, 'Harry Bresslau', *Zeitschrift für Geschichte de Oberrheins* 79 (1927). A. Hessel, 'Harry Bresslau', *AUF* 10 (1928). P. Kehr, 'Harry Bresslau', *NA* 47 (1928). H. Reincke-Bloch, 'Harry Bresslau', *HZ* 136 (1927). L. Schiaparelli, 'Harry Bresslau', *Archivio Storico Italiano* 85 (1927).

¹⁰ H. Bresslau, *Handbuch der Urkundenlehre für Deutschland und Italien*, 1st ed. (Leipzig, 1889; 2nd ed., Berlin, 1912). Cf. Rosenmund, *Diplomatik*, pp. 122-3. Rev. by E. v. Ottenthal in *MIöG* 39 (1923), pp. 128-35.

¹¹ 1848-1899. Professor of diplomatics at the *École des Chartes* since 1878. See the obituaries in *Bibliothèque de l'École des Chartes* 62 (1902), *Comptes-rendus des séances de l'Académie des Inscriptions et de Belles-Lettres* (1901), and *Correspondence historique et archéologique* 6 (1899).

¹² A. Giry, *Manuel de diplomatique* (Paris, 1894).

¹³ The period also produced several handbooks in the auxiliary sciences, such as those appearing in the two main series of German historical handbooks, Below-Meinecke's *Handbuch der mittelalterlichen und neueren Geschichte*, Sect. IV: *Hilfswissenschaften und Altertümer*, which included W. Ewald, *Siegelkunde* (Munich, Berlin 1914). W. Erben, 'Die Kaiser- und Königsurkunden', *Urkundenlehre*, ed. W. Erben, L. Schmitz-Kallenberg and O. Redlich (Munich, Berlin, 1907), pp. 37-369. O. Redlich, *Die Privaturkunden des Mittelalters* (Munich, Berlin, 1911). H. Steinacker's *Die Lehre von den nicht-königlichen (Privat-) Urkunden vornehmlich des deutschen Mittelalters* (Leipzig, 1906) appeared in the series *Grundriss der Geschichtswissenschaft*, edited by Alois Meister.

¹⁴ 1871-1934. Professor of history in Rome. See his obituary in *Archivio storico italiano* VII/22 (1935).

¹⁵ L. Schiaparelli, 'Le carte antiche del' Archivio Capitolare di San Pietro in Vaticano', *Archivio della R. Società Romana di Storia Patria* 24 (1901), pp. 393-496, and 25 (1902), pp. 273-354. Id., 'Alcune osservazioni intorno al deposito archivista della "Confessio S. Petri"', *Archivio Storico Italiano* V/34

existed in diplomatics only is the *Archiv für Urkundenforschung* founded in 1908 and edited by Karl Brandi of Göttingen.¹⁶ In the preface to the first volume Brandi himself claimed diplomatics to be a growing discipline vivid enough to support a serial publication.¹⁷

It was by no means by chance that the *Archiv für Urkundenforschung* was mainly edited by a Göttingen University professor, for, at Göttingen, the oldest institution of diplomatic studies has existed since the later part of the 18th century, the *Diplomatischer Apparat*. A foundation of the eighteenth century universal historian Johann Christoph Gatterer,¹⁸ it was developing into a German centre of studies in auxiliary historical sciences by the end of the 19th century, and it was Brandi himself who proposed to establish the central administrative office for the edition of medieval papal instruments there.¹⁹ Although such far-reaching plans proved futile eventually,

(1904), pp. 406-23. Id., 'Avviamento allo studio delle abbreviature latine nel medioevo', *ibid.* (1927,1), p. 125. Id., 'Charta augustana. Note diplomatiche', *ibid.* V/39 (1907), pp. 253-351. Id., 'Codice diplomatico longobardo', *ibid.* (1930, 1), pp. 155-6. Id., 'I diplomi dei re d'Italia. Ricerche storico-diplomatiche', *ibid.* V/49 (1912), pp. 443-9. Id., 'I diplomi di Berengario I', *ibid.*, V/33 (1904), pp. 441-4. Id., 'I diplomi di Ugo e di Lotario, di Berengario II e di Adalberto', *ibid.* (1925, 1), pp. 309-20. Id., 'Il Codice 490 della Biblioteca capitolare di Lucca e la scuola scrittoria lucchese', *ibid.* (1925, 1), pp. 321-2. Id., 'Influenze straniere nella scrittura italiana dei secoli VIII e IX', *ibid.* (1927,1), pp. 307-8. Id., 'La scrittura latina nell'età romana', *ibid.* (1921, 2), pp.291-8. Id., 'Note diplomatiche sui più antichi documenti cremonesi', *ibid.* (1927, 1), pp. 137. Id., 'Note diplomatiche sulle carte longobarde', *ibid.* (1932, 1), pp. 3-34, (1933, 1), pp. 3-66, (1934, 1), pp. 3-55. Id., 'Note paleografiche', *ibid.* (1926, 1), pp.3-23, (1926, 2), pp. 165-197, (1929, 2), pp. 165-207, (1931, 2), pp. 169-195, (1916, 2), pp. 3-126, (1914, 2), pp. 242-56, (1915, 1), pp. 246-322, (1924, 1), pp. 106-17, (1929, 1), pp. 3-28. Id., 'Note paleografiche e diplomatiche', *ibid.* (1924, 2), pp. 103-17. Id., 'Note sulle antiche bolle pontificie per Santa Maria di Pinerolo', *ibid.* V/29 (1902), pp. 1-11. Id., 'Tachigrafia sillibica latina in Italia', *ibid.* (1928, 1), pp. 318-19, (1928, 2), pp. 121-2. Id., 'Tachigrafia sillibica nelle carte italiane', *ibid.* IV/7 (1881), pp. 133-4. Id., 'Un diploma inedito di Berengario I in favore del Monastero di Bobbio', *ibid.* V/17 (1896), pp. 454-5.

¹⁶ 1868-1946. Professor of history at Göttingen since 1902. See: W. Andreas, 'Karl Brandi', *HZ* 169 (1949). L. Arbusow, 'Karl Brandi', *Göttinger Universitätszeitung* 1 (1946). W. Goetz, 'Karl Brandi', *Jahrbuch der Bayerischen Akademie der Wissenschaften* (1949, repr. Goetz, *Historiker in meiner Zeit* (Köln, Graz, 1957). K. Jordan, 'Karl Brandi', *DA* 8 (1951). O. Graf v. Looz-Corswarem, 'Karl Brandi', *Historisches Jahrbuch der Görres-Gesellschaft* 62 (1949). O.H. May, 'Karl Brandi', *Niedersächsisches Jahrbuch für Landesgeschichte* 20 (1947). L. Schirmeyer, 'Karl Brandi', *Mitteilungen des Historischen Vereins für Osnabrück* 62 (1947). G. Schnath, 'Karl Brandi', *Neues Archiv für Landes- und Volkskunde von Niedersachsen* (1948). P.E. Schramm, 'Karl Brandi', *Zeitschrift der Savigny-Stiftung für Rechtsgeschichte, Germanistische Abteilung* 65 (1947). H.R. von Srbik, 'Karl Brandi', *Almanach der Akademie der Wissenschaften Wien* 197 (1947).

¹⁷ K. Brandi, 'Einführung', *AUF* 1 (1908), p. 3. The *AUF* persisted until 1944, 18 volumes appeared altogether. From 1937 to 1944 the journal formed an appendix to the *Deutsches Archiv für Geschichte des Mittelalters* (DA).

¹⁸ 1727-99. Professor of history at Göttingen since 1759. See H. Butterfield, *Man on his Past* (Cambridge, 1955), pp. 42-51. W. Dilthey, 'Das 18. Jahrhundert und die geschichtliche Welt', *id.*, *Gesammelte Schriften* III (Stuttgart, 1959), pp. 262-4. N. Hammerstein, *Jus und Historie* (Göttingen, 1972), pp. 357-74. A.H.L. Heeren, 'Andenken an deutsche Historiker aus den letzten fünfzig Jahren', *id.*, *Historische Werke* VI (Göttingen, 1823), pp. 450-68. P.H. Reill, 'History and Hermeneutics in the Aufklärung', *Journal of Modern History* 45 (1973), pp. 24-51. *Id.*, *The German Enlightenment and the Rise of Historicism* (Berkeley, 1975), pp. 78, 112-18, 142-3, 175-6, 180-1, 252-3. *Id.*, 'Johann Christoph Gatterer', *Deutsche Historiker* VI, ed. H.-U. Wehler (Göttingen, 1980), pp. 7-22. G. v. Selle, *Die Georg-August-Universität zu Göttingen* (Göttingen, 1937), pp. 132-5. J. Wach, *Das Verstehen* III, 2nd ed. (Hildesheim, 1966), pp. 43-<42>. H. Wesendonck, *Die Begründung der neueren deutschen Geschichtsschreibung durch Gatterer und Schlözer* (Leipzig, 1867).

¹⁹ H. Goetting, 'Geschichte des Diplomatischen Apparats der Universität Göttingen', *Archivalische Zeitschrift* 65 (1969), 11-46.

the Göttingen *Diplomatischer Apparat* has remained the only institute mainly for diplomatic research in a German university.²⁰

The only other German research institute to be mentioned in the context of the history of diplomatics is the *Monumenta Germaniae Historica* which - a result largely of Sickel's editorial endeavours - launched an as yet unfinished programme for the edition of medieval imperial/royal and private charters pertaining to the Reich since Merovingian times.²¹ This programme for the edition of charters was conducted by Sickel between 1875 and 1893.

The splitting up of the organisation of diplomatics on separate institutions for research (Göttingen), editions (MGH) and the training of archivists (Berlin, Marburg, München) was and remained a German peculiarity,²² other European countries largely following the French model of the *Ecole des Chartes*. This institution designed as a government related and university affiliated agency in 1821 for the integration of the training of archivists and librarians, editorial and research activities,²³ became the model for the *Institut für österreichische Geschichtsforschung* in Vienna,²⁴ the Institute of the Historical Research of the

²⁰ It is true that the *Archivschule* at Marburg, established in 1894, has to be considered as a place of research in auxiliary sciences (next to an academic training place for archivists), but it is not connected with the university (despite its head being normally a professor at the University of Marburg) and provides education facilities not for students of history, but only for candidates for the civil service in archives. These candidates have generally been expected to have completed their university education and to have received their doctorate. See W. Blöss, 'Die Anfänge archivarischer Berufsausbildung in Deutschland. Die "Archivschule" in Marburg 1894', *Archivmitteilungen* 9 (1959). A. Brackmann, 'Das Institut für Archivausbildung und geschichtswissenschaftliche Fortbildung am Geheimen Staatsarchiv Berlin-Dahlem', *Archivalische Zeitschrift* 40 (1931). Id., 'Das Dahlemer Institut für Archivausbildung', *Korrespondenzblatt der Gesamtvereinigung Deutscher Geschichts- und Altertumsverbände* 80 (1932). P. Gasser, 'Die Ausbildung der Archivare in Österreich', *Archivum* 4 (1954). H.L. Mikoletzky, 'Archivschulen', *Archivar* 9 (1956). H. Rall 'Die Anfänge der Bayerischen Archivschule', *Mélanges offerts par ses confrères étrangers à Charles Braibant* (Bruxelles, 1959). In Germany, there are specialized chairs for auxiliary sciences in the universities of Bamberg, Bochum, Bonn, Erlangen, Göttingen, Marburg, Munich, Trier, Tübingen, Würzburg. Cf. R. Vierhaus, ed., *Geschichtswissenschaft in der Bundesrepublik Deutschland. Institutionen der Forschung und Lehre* (Göttingen, 1985).

²¹ A full list of titles available and in preparation is provided in 'Monumenta Germaniae Historica', *Gesamtverzeichnis* (Munich, 1984). Cf. H. Bresslau, *Geschichte der Monumenta Germaniae Historica*, *Neues Archiv* 42 (Hannover, 1921). H. Grundmann, *Monumenta Germaniae Historica 1819-1969* (Köln, 1969). D. Knowles, *Great Historical Enterprises* (London, 1963), pp. 63-97 (reprinted from *TRHS* V/10, 1960). Rosenmund, *Diplomatik*, p. 73. G. Waitz, 'Die Bildung der neuen Centrallirection der Monumenta Germaniae', *NA* 1 (1876), pp.1-11.

²² This does not, of course, mean that these are the only German institutions related to the study of diplomatics. On the contrary the re-edition of Boehmer's *Regesta Imperii* (on which see Rosenmund, *Diplomatik*, pp. 43-8) and the *Germania sacra* project have been associated with the Akademie der Wissenschaften und der Literatur at Mainz and the Max-Planck-Institut für Geschichte at Göttingen respectively. On the latter see A. Brackmann, 'Über den Plan einer Germania sacra', *HZ* 102 (1909). P. Kehr, 'Zum ersten Band der neuen Germania sacra', *Sitzungsberichte der Preussischen Akademie der Wissenschaften. Phil.-Hist. Klasse* (1929). G. Wentz, 'Die Geschichte des Kaiser-Wilhelm-Instituts für deutsche Geschichte', *Blätter für deutsche Landesgeschichte* 86 (1941), 94.

²³ Founded in 1821. See *Livre du centenaire d'École des chartes* (Paris, 1922).

²⁴ Founded in 1854. See: O. Brunner, 'Das österreichische Institut für Geschichtsforschung und seine Stellung in der deutschen Geschichtswissenschaft', *MIöG* 49 (1935). H. Hirsch, 'Das österreichische Institut für Geschichtsforschung 1854-1934', *MIöG* 49 (1935). A. Lhotsky, *Geschichte des österreichischen Instituts für Geschichtsforschung*, *MIöG* Ergänzungsband 17 (Vienna, 1954). Id., 'Geschichtsforschung und Geschichtsschreibung in Österreich', *HZ* 189 (1959), pp. 412-18. *MIöG* 62 (1954). E. v. Ottenthal, *Das K.K. Institut für österreichische Geschichtsforschung 1854-1904* (Vienna,

University of London²⁵ and the *Istituto Storico Italiano per il Medioevo* in Rome.²⁶ Among these the *Institut für österreichische Geschichtsforschung* became the leading diplomatic institution which may be judged from the substantial contributions by Engelbert Mühlbacher and Theodor Sickel to the MGH *Diplomata* programme, both of whom were associated with the *Institut*. It is but consistent that next to Sickel also Heinrich Brunner - it is to say: two of three foremost diplomatists of Stevenson's age - had their connection to the *Institut*, the Thuringian Sickel as an academic teacher, the upper Austrian Brunner as a student.²⁷ And it is, therefore, no wonder that most

1904). L. Santifaller, *Das Institut für österreichische Geschichtsforschung*, Veröffentlichungen des Instituts für österreichische Geschichtsforschung 11 (Vienna, 1950). Th. Sickel, 'Das K.K. Institut für österreichische Geschichtsforschung', *MIöG* 1 (1880). Its leading members - apart from those already mentioned - are noted by F. Martin, J.K. Mayr, 'Wilhelm Erben', *Mitteilungen der Gesellschaft für Salzburger Landeskunde* 73 (1933). A. Mell, 'Wilhelm Erben', *Zeitschrift des Historischen Vereins für Steiermark* 28 (1934). O. Redlich, 'Wilhelm Erben', *Forschungen und Fortschritte* 9 (1933). H. Steinacker, 'Wilhelm Erben', *MIöG* 49 (1935). O. Redlich, 'Emil von Ottenthal', *Almanach der Akademie der Wissenschaften Wien* 81 (1931). L. Santifaller, 'Emil von Ottenthal', *Archivio Storico Italiano* 89 (1931). K. Brandi, 'Oswald Redlich', *Jahrbuch der Akademie der Wissenschaften zu Göttingen* (1943/4). M. Braubach, 'Oswald Redlich und Alois Schulte', *MIöG* 66 (1958). W. Goetz, 'Oswald Redlich', *Jahrbuch der Bayerischen Akademie der Wissenschaften* (1949). K. Lechner, 'Oswald Redlich', *Jahrbuch für Landeskunde von Niederdonau* N.F. 28 (1939/43). H. Nabholz, 'Oswald Redlich', *Zeitschrift für Schweizergeschichte* 24 (1944). L. Santifaller, 'Oswald Redlich', *MIöG* 56 (1948). Id., 'Oswald Redlich', *DA* 8 (1951). H.R. von Srbik, 'Oswald Redlich', *HZ* 169 (1949). M. Wutte, 'Oswald Redlich', *Carinthia* I/139 (1949).

²⁵ Founded in 1921. See: E. Barker, 'Lord Bryce', *EHR* 37 (1922), p. 220. E.S. de Beer, 'Sir Charles Firth', *History* N.S. 21 (1936/7), p. 2. T.J. Brown, D.H. Turner, 'Francis Wormald', *BIHR* 45 (1972), pp. 1-2. *BIHR* 'Introduction', *BIHR* 1 (1923/4), pp. 1-5. G.N. Clark, 'Albert Frederick Pollard', *DNB 1941-50*, p. 679. Id., 'Sir Charles Firth', *DNB 1931-40*, p. 274. G. Davies, 'Charles Harding Firth', *PBA* 22 (1936), p. 387. J.G. Edwards, 'Sir John Cecil Power, Bart.', *BIHR* 23 (1950), pp. 139-46. R. Fawtier, 'Charles Victor Langlois', *EHR* 45 (1930), pp. 85, 89. C.H.S. Fifoot, *Frederic William Maitland* (Cambridge, Mass., 1971), pp. 92-3. C.H. Firth, 'Dr S.R. Gardiner', *PBA* 1 (1903/4), p. 297. Id., 'The Study of Modern History in Great Britain', *PBA* 6 (1913/4), p. 144. H.A.L. Fisher, 'Frederick York Powell', *DNB 1901-1911*, p. 131. Id., 'The Institute of Historical Research and the Anglo-American Historical Conference', *History* N.S. 6 (1921/2), pp. 143-54. V.H. Galbraith, 'Thomas Frederick Tout', *DNB 1922-30*, p. 847. Id., 'James Tait', *DNB 1941-50*, p. 262-3. D. Goldstein, 'The Organizational Development of the British Historical Profession', *BIHR* 55 (1982), pp. 189-190. H. Hall, 'New Methods of Historical Enquiry', *Quarterly Review* 184 (1896), p. 122. R.A. Humphreys, *The Royal Historical Society* (London, 1969), p. 30. W. Hunt, 'Presidential Address', *TRHS* II/1 (1907), pp. 14-15. A.G. Little, 'Report on Editing Historical Documents', *BIHR* 1 (1923/4), pp. 6-25, and 3 (1926), pp. 13-26. Id., 'Professor Tout', *History* N.S. 14 (1929/30), p. 318. J.E. Neale, 'Albert Frederick Pollard', *EHR* 64 (1949), pp. 199-200, 202-203. W.A. Pantin, 'Frederick Maurice Powicke', *EHR* 80 (1965), p. 1. G. Parsloe, 'In memoriam E.J. Davis', *BIHR* 19/1942/3, p. 185. A.F. Pollard, 'The University of London and the Study of History', id., *Factors in Modern History* (London, 1907), pp. 265, 274-81. F.Y. Powell, 'The *Ecole des Chartes* and English Records', *TRHS* N.S. 11 (1897), pp. 31-40. Id., 'To the Reader', *Introduction to the Study of History*, English ed., ed. F.Y. Powell, C.V. Langlois and C. Seignobos (London, 1908), pp. IX-XI. F.M. Powicke, 'Andrew George Little', *DNB 1941-50*, p. 509. G.W. Porthero, 'Presidential Address', *TRHS* N.S. 16 (1902), p. XVIII. Id., 'Presidential Address', *TRHS* N.S. 18 (1904), p. 2. R.S. Rait, 'Frederick York Powell', *EHR* 19 (1904), p. 488. K.G. Robbins, 'History, the Historical Association and the National Past', *History* N.S. 66 (1981), p. 415. M. Smith and J.T. Shotwell, 'Frederic William Maitland', *Political Science Quarterly* 22 (1907), p. 287. F.M. Stenton, 'Speech of Sir Frank Stenton', *BIHR* 21 (1946/8), pp. 199-202. T.F. Tout, 'Presidential Address', *TRHS* IV/9 (1926), pp. 20-1. A.W. Ward, 'Presidential Address', *TRHS* N.S. 14 (1900), p. 17. Id., 'Closing Remarks', *PBA* 6 (1913/4), pp. 133-4. C.C.J. Webb, 'Reginald Lane Poole', *PBA* 25 (1939), pp. 316, 319. C.H. Williams, 'Albert Frederick Pollard', *BIHR* 22 (1949), pp. 3-5.

²⁶ Cf. *DocItalia*, 4th edn (Roma, 1985), p. 1028.

²⁷ Cf. Rosenmund, *Diplomatik*, pp. 59, 97.

of the leading diplomatists after Sickel, Ficker and Brunner, were also related to the *Institut*: Harold Steinacker,²⁸ Richard Heuberger,²⁹ Hans Hirsch,³⁰ Leo Santifaller.³¹

The formulation of leading opinions on the governing principles of diplomatic studies mainly originated from the group of scholars more or less closely associated with the *Institut*. While Sickel and Ficker limited the scope of their studies to diplomatics as such and concentrated upon the description of formal elements of the medieval charter, Brunner's main concern seems to have been to transgress the borderline between traditional diplomatics and legal history. And it was in this intermediating field that Brunner's teachings came to be accepted as something similar to general laws.

Some of the main aspects of Brunner's teachings concerned:

1. *The history of the early medieval charter*

Brunner repeatedly³² insisted that the medieval charter, being of Roman, not of Germanic origin, continued the *formulae* of late Roman public and private deeds and that all medieval charters could be classified either as *cartae* or as *notitiae*. These words which, as Brunner himself realized, were not of Roman, but of medieval origin,³³ referred to two different ways of compilation and of the legal use of charters. The *cartae* were supposed to function as a dispositive instrument, bearing the legal evidence in itself, i.e., a legal contract to be recorded in a *carta* would have been complete only by the very compilation of the charter; on the contrary the *notitia*, being a simple instrument of legal evidence (in Brunner's words), was designed to record a legal act performed and being valid independent of the written charter. This dichotomy of function, regarded as decisive by Brunner, was supposed to have led to an opposition of form: the *carta* being styled subjectively and containing *verba dispositiva* in the future tense, the *notitia* was written in an objective style with the *verba dispositiva* in preterite.³⁴ Although Brunner was not the first to discover the *notitia-carta* difference,³⁵ his combination of diplomatic form and judicial process in

²⁸ 1875-1965. Professor of medieval history and auxiliary sciences at Innsbruck since 1918. See Th. Mayer, 'Harold Steinacker', *Gedenkschrift für Harold Steinacker*, Buchreihe der Südostdeutschen Historischen Kommission 16 (Munich, 1966); and F. Huter, 'Harold Steinacker', *MIöG* 73 (1965).

²⁹ 1884-1968. Professor of medieval history at Innsbruck since 1919. Cf. R. Heuberger, in *Österreichische Geschichtswissenschaft der Gegenwart in Selbstdarstellungen* I, ed. N. Grass, Schlern-Schriften 68 (Innsbruck, 1950).

³⁰ 1878-1940. Professor of history in Vienna since 1926. See O. Brunner, 'Hans Hirsch', *HZ* 163 (1941); A. Dopsch, 'Hans Hirsch', *Almanach der Akademie der Wissenschaften Wien* 91 (1941); G. Leidinger, 'Hans Hirsch', *Sitzungsberichte der Bayerischen Akademie der Wissenschaften* (1940); H. Mitteis, 'Hans Hirsch', *Zeitschrift der Savigny-Stiftung für Rechtsgeschichte, Germanistische Abteilung* 61 (1941); J. Pfitzner, H. Zatschek, 'Hans Hirsch', *Zeitschrift für sudetendeutsche Geschichte* 4 (1940); K. Pivec, 'Hans Hirsch', *MIöG* 54 (1942); L. Santifaller, 'Hans Hirsch', *Historisches Jahrbuch der Görres-Gesellschaft* 61 (1941); D.W.H. Schwarz, 'Hans Hirsch', *Zeitschrift für Schweizergeschichte* 21 (1941); E.E. Stengel, 'Hans Hirsch', *DA* 5 (1942); H. Zatschek, 'Hans Hirsch', *Grosse Österreicher* XII (Vienna, 1957).

³¹ 1890-1974. Professor of history in Vienna since 1943. See L. Santifaller in *Österreichische Geschichtswissenschaft der Gegenwart in Selbstdarstellungen* II, ed. N. Grass, Schlern-Schriften 69 (Innsbruck, 1951); H. Appelt, 'Leo Santifaller', *MIöG* 82 (1974).

³² H. Brunner, 'Carta und notitia', *Commentationes in honorem Th. Mommseni* (Berlin, 1877), pp. 570-89. Id., *Urkunde*, pp. 3, 16-17. Id., *Deutsche Rechtsgeschichte*, 1st ed., ed. K. Binding, *Systematisches Handbuch der deutschen Rechtswissenschaft* II/1, 1/2 (Leipzig, 1887), p. 383ff.

³³ H. Brunner, *Urkunde*, pp. 8ff.

³⁴ H. Brunner, *Urkunde*, pp. 16-17.

³⁵ See, for example, J. Mabillon, *De re diplomatica* (Paris, 1681), III/4.

the evaluation of *cartae* and *notitiae* has ever since Brunner formed one of the bases for diplomatic teaching.³⁶

2. *The 'traditio cartae'*

Brunner insisted that the formal conclusion of the legal procedure of the compiling of the *carta* consisted in its transmission to the person for whom it had been designed. He thought of this *traditio cartae* as a continuation in substance of the Roman *stipulatio*, the verbal contract that was supposed to conclude, e.g., the legal transfer of private property. He regarded the change from the verbal contract in classical Roman *stipulatio*, the verbal contract in classical Roman law to the execution of a symbolic action as a result of the Germanization of Roman law.³⁷ His theory was widely accepted during his time,³⁸ found its way into persevering diplomatic enchiridia³⁹ and has thus continued to influence the students' mind although being controversial today.⁴⁰

3. *The definition of the private deed.*

Brunner accepted - without discussion - the diplomatic convention of classifying legal instruments into imperial/royal, papal and private deeds.⁴¹ The criterion was the evidential value assigned to a charter. Instruments issued from an imperial or royal chancery were believed to bear the highest possible degree of legal evidence, while on the other side private deeds were supposed to gain reliability either by confirmation of some public agent or by the signatures of witnesses.⁴² It was mainly through such aspects of the formulary that Brunner distinguished the legal status of a private and an imperial/royal deed, thus regarding the *formulae* as evidence for underlying legal customs. Such a view was at variance with Brunner's own statement on the conservative character of the medieval charter formulary,⁴³ which allowed the transmission of *formulae* regardless of the factual legal procedure. Diplomatic studies following Brunner proved beyond doubt that Roman *formulae* were used in the middle ages as pure elements of tradition without implying an

³⁶ Giry, Manuel, pp. 823-62. Bresslau, *Handbuch* I, pp. 49ff. A. v. Brandt, *Werkzeug des Historikers* <?> (Stuttgart, 1966), pp. 102-5. G. Tessier, *Diplomatique royale française* (Paris, 1962), pp. 229-30. Cf. H. Hirsch, 'Methoden und Probleme der Urkundenforschung', *MIöG* 53 (1939), p. 14.

³⁷ H. Brunner, *Urkunde*, pp. 4, 87-111, 261-72.

³⁸ F. Boye, 'Über die Poenformeln in den Urkunden des früheren Mittelalters', *AUF* 6 (1918), pp. 81-2. K. Brandi, 'Review of Facsimiles of Royal and Other Charters in the British Museum 1903', *Göttingische Gelehrte Anzeigen* 167 (1905), p. 967. Id., 'Der byzantinische Kaiserbrief aus St. Denis und die Schrift der frühmittelalterlichen Kanzleien', *AUF* 1 (1908), pp. 37-41. Id., 'Rvw of H. Steinacker, *Die antiken Grundlagen der frühmittelalterlichen Privaturkunde*, 1927', *HZ* 141 (1930), p. 348. Redlich, *Privaturkunde*, p. 24.

³⁹ E.g., Bresslau, *Handbuch*, pp. 49ff., and Giry, *Manuel*, pp. 572-4.

⁴⁰ Boüard, *Manuel* II (Paris, 1948), pp. 25-55. E. von Ottenthal, 'Rvw of H. Bresslau, *Handbuch der Urkundenlehre für Deutschland und Italien*, 2nd ed., 1912', *MIöG* 39 (1923), p. 134. H. Steinacker, "'Traditio cartae" und "traditio per cartam". Ein Kontinuitätsproblem', *Archiv für Diplomatik, Schriftgeschichte, Siegel- und Wappenkunde* 5/6 (1959/60), p. 10.

⁴¹ Redlich, *Privaturkunde*, p. VI. Id., 'Einleitung', *Urkundenlehre*, ed. Redlich, W. Erben and L. Schmitz-Kallenberg (Munich, Berlin, 1907), pp. 20-1. Cf. Boüard, *Manuel* II, pp. 7-11; Giry, *Manuel*, p. 00; O. Posse, *Die Lehre von den Privaturkunden* (Leipzig, 1887; repr. Berlin, New York, 1974), p. 62; Steinacker, *Lehre*, §1; and R. Heuberger, *Allgemeine Urkundenlehre für Deutschland und Italien* (Leipzig, Berlin, 1921), p. 3.

⁴² H. Brunner, *Urkunde*, pp. 158-9.

⁴³ H. Brunner, *Urkunde*, p. 3.

evidence for a connection to veritable legal actions.⁴⁴ Nevertheless, the classification of the charters in to imperial/royal, papal and private deeds has persisted.⁴⁵

4. *Regional variations in early medieval diplomatic style.*

Although admitting what he termed ‘charter territories’ Brunner’s main interest lay on general statements on the evidential value of charters in legal affairs, and he was willing to regard regional variations as but secondary. Brunner’s general assumption was that medieval law would have to be reconstructed according to the norms, values and terms conventional in the later nineteenth century, implying that the statement of a legal principle meant that it was valid as a general law. He therefore sought to describe elements of medieval law, including the charter, primarily in terms of a general characteristic, of a basic principle which would remain unchanged fundamentally even under conceptions of regional variation.⁴⁶ It was therefore not very difficult for later diplomatists to refute some of Brunner’s teachings as intelligent constructions which, however, appeared to be much less general in nature than Brunner had wished them to be.⁴⁷

These four examples may suffice to indicate the influence of Brunner’s teachings during his lifetime. Although, in part subject to criticism, they were established as leading opinions, their formulation was clear-cut and sensible, they appeared to be founded well on the sources. One must, therefore, not be surprised to realize that they found their way into Stevenson’s mind and formed the operational basis for Stevenson’s own diplomatic thought and work.

Stevenson’s reception of continental diplomatics

Stevenson concluded his Sandars lectures with the profession that ‘we can wipe away the reproach implied in the oft made remark "that the Anglo-Saxon kings did not possess a chancery"’, indicating an implicit but very direct reference to a current continental diplomatic idea on the value of the Anglo-Saxon charters expressed among others in Girya’s *Manuel*.⁴⁸ By saying so, Stevenson not only expressed the wide-spread Victorian scholarly intention to prove the Englishness especially of legal institutions,⁴⁹ but also showed his concern and willingness to discuss continental diplomatic conceptions and to use continental diplomatic sources. It may, therefore, be regarded as fortunate that Stevenson was not only the first diplomatist to be able to make full use of Walter de Gray Birch’s edition of Anglo-Saxon charters but that he also found available to himself an increased diplomatic material of continental provenance, such as the then issued relevant volumes of the MGH *Diplomata* series, Gregorio di Catino’s *Regesto di Farfa*, the chartulary published in 1879 of the great and fortunately somewhat cantankerous Sabine monastery that preserved so many

⁴⁴ Cf. Brandi, ‘Review of Steinacker’, p. 347.

⁴⁵ Brandt, *Werkzeug*, p. 111.

⁴⁶ H. Hunke, ‘Germanische Freiheit im Verständnis der deutschen Rechts- und Verfassungsgeschichtsschreibung’, (unpublished LLD dissertation, Göttingen, 1972). E.Sjöholm, *Rechtsgeschichte als Wissenschaft und Politik. Studien zur germanistischen Theorie des 19. Jahrhunderts*, Abhandlungen zur rechtswissenschaftlichen Grundlagenforschung 10 (Berlin, 1972).

⁴⁷ Boye, ‘Poenformeln’, p. 38. Brandi, ‘Kaiserbrief’, p. 82. Id., ‘Review of Steinacker’, p. 348. Bresslau, *Handbuch* I, pp. 739-40, II, pp. 81-90. Redlich, *Privaturkunden*, p. 15. Id., ‘Allgemeine Urkundenlehre’, *MIöG* 39 (1923), p. 341. Cf. Bouïard, *Manuel* II, pp. 27ff. Steinacker, “‘Traditio cartae’”, pp. 57-63.

⁴⁸ Girya, *Manuel*, p. 795.

⁴⁹ Rosenmund, *Diplomatik*, p. 101.

early medieval Italian charters, Theodor Sickel's edition of the *Liber diurnus* that came out in 1889, and the fifth edition of Bruns' *Fontes iuris romani antiqui*, issued in 1887. However, the source material available to Stevenson was still somewhat precarious: Marini's edition of the late Roman papyri of 1805 was below the diplomatic editorial standard of Stevenson's time, disregarding material aspects of the papyri such as script and thereby preventing scholars from evaluating the diplomatic character of the papyri without studying the originals themselves (which was difficult due to the then still restrictive admission policy of the Vatican institutions of research). The chartulary of the Lombard monastery of San Salvatore (later Santa Giulia) at Brescia remained unused by Stevenson although being published in a fairly reliable edition.⁵⁰

The secondary literature of continental provenance used by Stevenson comprises the works of the leading diplomatists and legal historians of his age and the ubiquitous handbook literature, i.e. the relevant works of Brunner's,⁵¹ Ficker's,⁵² Sickel's,⁵³ and Waitz's,⁵⁴ as well as Bresslau's⁵⁵ and Giry's⁵⁶ handbooks. Among these works Brunner's *Zur Rechtsgeschichte der römischen und germanischen Urkunde* was most frequently quoted by Stevenson, thereby indicating the high degree of acceptance that he was willing to offer to Brunner's theories. Thus, Stevenson's views of Anglo-Saxon charters stood under Brunner's dominating influence, so much more as Brunner had been the first continental diplomatic scholar to write extensively on Anglo-Saxon charter evidence.⁵⁷ Brunner's influence upon Stevenson's statements and arguments may be deduced, among others, from the following six points:

1. Brunner, together with preceding legal historians and followed by Maitland, held that bookland was the result of an alienation of certain parts of land formerly under communal ownership into the hereditary right of a family.⁵⁸ Stevenson was ready to accept this theory which although but loftily supported by evidence from Tacitus' writings on the Germanic *gens*⁵⁹ had become widely accepted

⁵⁰ Cf. A. Chroust, *Untersuchungen über die langobardischen Königs- und Herzogsurkunden* (Graz, 1888), pp. 6-7. Cf. C. Brühl, *Studien zu den langobardischen Königsurkunden*, Bibliothek des Deutschen Historischen Instituts in Rom 33 (Tübingen, 1970), p. 203.

⁵¹ H. Brunner, *Urkunde*. Id., *Rechtsgeschichte*.

⁵² Ficker, *Beiträge*.

⁵³ Sickel, 'Beiträge'. Stevenson did not quote Sickel's *Lehre*, although in the latter work Sickel provided a comprehensive view of his diplomatic teachings.

⁵⁴ G. Waitz, *Deutsche Verfassungsgeschichte*, 3rd ed. (Kiel, 1882).

⁵⁵ H. Bresslau, *Handbuch der Urkundenlehre für Deutschland und Italien*, 1st ed. (Leipzig, 1889).

⁵⁶ Giry, *Manuel*.

⁵⁷ H. Brunner, *Urkunde*, pp. 149-208. Some hints may be gathered from earlier German works: R. Gneist, *Geschichte und heutige Gestalt der englischen Communalverfassung oder des Selfgovernment* I, 2nd ed. (Berlin, 1863), pp. 3-50; J.M. Lappenberg, *Geschichte von England* I (Hamburg, 1834), pp. 295ff.; K. Maurer, 'Ueber angelsächsische Rechtsverhältnisse', *Kritische Ueberschau der deutschen Gesetzgebung und Rechts-wissenschaft* 1 (1853), pp. 47-120, 405-431, 2 (1854), pp. 30-68, 388-440, 3 (1855), pp. 26-21 <?>.

⁵⁸ H. Brunner, *Urkunde*, p. 153. Cf. H.C. Lodge, 'The Anglo-Saxon Land Law', *Essays in Anglo-Saxon Law* (Boston, London, 1876), pp. 55-119. F.W. Maitland, *Domesday Book and Beyond* (Cambridge, 1897), pp. 226-31. Redlich, *Privaturkunden*, pp. 44, 46. E. Young, 'The Anglo-Saxon Family Law', *Essays in Anglo-Saxon Law* (Boston, London, 1876), pp. 121-82.

⁵⁹ Tacitus, *Germania*, c. 21, 26.

in eighteenth- and nineteenth-century scholarship.⁶⁰ Brunner made use of the theory to underline his point that the Anglo-Saxon landcharter was not unique - as had previously been assumed - but joined continental customs in borrowing what Brunner conceived of as the late Roman *traditio cartae*. He was able to do so by pointing out that the Anglo-Saxon landbooks were written records of the *traditio cartae* well evidenced apparently also from Italian and Frankish sources.⁶¹ For Brunner, thus, the Anglo-Saxon charters were but variations from the stock of Roman legal tradition, and Stevenson fully accepted Brunner's view.

2. From such a view a fundamental problem arose in the explanation of the ways of transmitting Roman legal traditions to the Anglo-Saxons. On the continent, in Spain, Italy and Gaul,⁶² the invaders and settlers of Germanic stock met with Roman or Romanized population groups who could be assumed to provide sufficient evidence for the tradition of Roman legal practice after the breakdown of the imperial government in the West, and thus it was possible to argue that the tradition of Roman legal practice into Gothic, Lombard and Frankish charters was due to the needs of the Roman and Romanized population groups under Germanic rule.

Such an explanation was to fail when applied to the British Isles, especially to the Anglo-Saxons. Brunner, not very explicit on this point, restricted himself to the mere statement that the Roman legal traditions in the Anglo-Saxon charter might either have come through residuary Roman vulgar law in Britain or through the church and favoured the latter alternative by using the general argument that much evidence might be produced for the influence of the church on the Anglo-Saxon charters.⁶³ He thus left the task to Stevenson to fill the gap by proving the dependence of the earliest Anglo-Saxon charters upon late Roman deeds in comparing the *formulae* of papal deeds by Gregory I and the Farfa charters on the one hand with the seventh-century Anglo-Saxon charters on the other.

Even so one problem not tackled at all by Brunner remained to be solved. How does one have to account for the fact that no genuine charter has survived from the time between the beginning of the Roman mission under St. Augustine in the later sixth century and the later part of the seven century? Stevenson's answer was that there must have been charters written - like in contemporary Merovingian Gaul - on the easily perishable material of papyrus. Stevenson was able to use the information provided by Bresslau in the first edition of his *Handbuch*,⁶⁴ but did not become aware of the fact that as late as in the tenth century a charter could be written down on papyrus.⁶⁵ He therefore failed to explain why the use of papyrus was to cease in

⁶⁰ E. Gibbon, *The History of the Decline and Fall of the Roman Empire* I (London, 1776), pp. 229-30. K.E. Digby, *An Introduction to the History of the Law of Real Property* (Oxford, 1875). W. Hoskyns, 'The Land-Laws of England', *Systems of Land Tenure* (London, 1879), 101ff. J.M. Kemble, *The Saxons in England* I (London, 1849), pp. 88-95.

⁶¹ H. Brunner, *Urkunde*, pp. 186-7.

⁶² Charter evidence for Roman legal practice related to private law in Vandal North Africa remained unknown to Stevenson. Cf. C. Courtois, L. Leschi, C. Perrat and C. Saumagne, eds., *Tablettes Albertini. Actes privés de l'époque vandale (Fin de V^e siècle)* (Paris, 1952), pp. 81-96, 143-69, 252-61.

⁶³ H. Brunner, *Urkunde*, p. 187. Brunner appears to have followed the so-called catastrophe theory pronounced before, for example, by Lappenberg, *Geschichte*, pp. 59-63.

⁶⁴ Bresslau, *Handbuch* II, pp. 481-94.

⁶⁵ P. Kehr, 'Ueber eine Papyrusurkunde im Staatsarchiv Marburg', *Abhandlungen der Gesellschaft der Wissenschaften zu Göttingen*, phil.-hist. Klasse N.F. 1, 1 (1896).

England by the end of the seventh century whereas it seems to have continued to be employed on the continent.

3. The consequence, then, is that Stevenson following Brunner⁶⁶ expressed his assumption of the ecclesiastical origin of the Anglo-Saxon charters and joined Maitland in stating that the persons who drew up the first and formative charters may have but insufficiently been acquainted with the formulary of the Roman charter.⁶⁷ Stevenson's (as well as Maitland's) most stringent argument could be drawn from the overall ecclesiastical destination of the Anglo-Saxon charters, 'with hardly any exceptions, ecclesiastical title-deeds'.⁶⁸

4. The circumstance that led Stevenson to the conclusion of the imperfect adaptation of Roman charters by clergymen in early Anglo-Saxon England rose from the close comparison of the formulary of Anglo-Saxon charters with their Roman predecessors. It became apparent that most of the *formulae* of the Anglo-Saxon royal instruments had to be connected not with imperial rescripts but with what Brunner had termed the late Roman private deed.⁶⁹ The reason why the Catholic missionaries chose the latter's formulary as their specimen was found by Stevenson in the status and *ambiente* of Kentish kingship which, Stevenson thought, was too limited in scope for the Roman clergymen to be regarded as an institution equivalent of that of the Roman emperor. The underlying concept was that the formal discrepancies between imperial and private instruments in Roman times were substantial enough not only to imply variation in evidential value, but also to have led St. Augustine and his successors to mistakingly employ the formulary of a private deed to instruments whose royal provenance must have been obvious to them.

5. Stevenson saw the main supporting evidence for this argument in the existence of witness-lists forming part of the eschatocol of most of the Anglo-Saxon charters. Once more following Brunner⁷⁰ he concluded that the missionaries when compiling the formulary for the Anglo-Saxon charters used the model of the late Roman private deed because he supposed them to have considered the Kentish system of government wanting the bureaucratic capacities necessary for guaranteeing without

⁶⁶ Cf. consenting views by Boye, *Poenformeln*, pp. 143-4, Brandi, review of 'Facsimiles', pp. 955-6. Id., 'Fin lateinischer Papyrus aus dem Anfang des 6. Jahrhunderts und die Entwicklung der Schrift in den älteren Urkunden', *AUF* 5 (1914), p. 270. Redlich, *Privaturkunden*, p. 44.

⁶⁷ Maitland, *Domesday Book*, pp. 230, 244f.

⁶⁸ Maitland, *Domesday Book*, p. 226.

⁶⁹ H. Brunner, *Urkunde*, pp. 50-66. Stevenson compared mainly invocations, titles, proems, *rogationes testium*, *verba dispositiva*, *tenendum* clauses, sanctions, dating clauses, witness-lists. Cf. on the formulary of Roman private deeds: *Tablettes Albertini*, pp. 143-69. P. Classen, *Kaiserreskript und Königsurkunde. Diplomatische Studien zum Problem der Kontinuität zwischen Altertum und Mittelalter*, Byzantina Keimena kai Meletai 15 (Thessaloniki, 1977), p. 62. B. Faass, 'Studien zur Überlieferungsgeschichte der Römischen Kaiserurkunde (von der Zeit des Augustus bis auf Justinian)', *AUF* 1 (1908), p.190. For consenting views concerning their medieval successors see Boüard, *Manuel II*, pp. 68-80; and Boye, 'Poenformeln', pp. 116-17, 130, 133, 144. H. Bresslau, 'Internationale Beziehungen im Urkundenwesen des Mittelalters', *AUF* 6 (1918), p. 45. Chroust, *Untersuchungen*, pp. 6-7. Redlich, *Privaturkunden*, pp. 44, 45. M. Treiter, 'Die Urkundendatierung in angelsächsischer Zeit nebst Überblick über die Datierung in der anglo-normannischen Periode', *AUF* 7 (1921), pp. 56-7, 62.

⁷⁰ Brunner, *Urkunde*, pp. 158-9. Cf. Faass, 'Studien', p. 190, and Classen, *Kaiserreskript*, p. 62. C.G. Bruns, 'Die Unterschriften in den römischen Rechtsurkunden', id. *Kleinere Schriften II* (Weimar, 1882), 37-118. J. Aronius, *Diplomatische Studien über die älteren angelsächsischen Urkunden*, phil. diss. (Königsberg, 1883), pp. 34, 36, 40. Brandi, 'Kaiserbrief', pp. 71-2.

consent of witnesses the donees' right on charters mainly produced on behalf of the demands of the church.

6. In this context the question of the Anglo-Saxon chancery attained gravity. Stevenson, like many of his fellow researchers, observed that - in Brunner's words - the Anglo-Saxon charter *completely ignores the writer*,⁷¹ and thereby marks a point of difference to the late Roman private deed that normally seems to have borne the signatures of authenticating *tabelliones*.⁷² This would have to imply that the Anglo-Saxon kings lacked a chancery. Stevenson, however, took a different stance. He used the existence of a formulary employed in charters for different donees as evidence for a chancery, especially from the period of Mercian predominance onwards. His point was that if *formulae* were used in charters for different donees, no other institution except a royal central chancery could be made responsible for the charter production. Using neither the evidence for the existence of clerical *scribae* in the entourage of Theodore of Tarsus brought forth not before Pierre Chaplais⁷³ nor the reference in a letter by Lupus of Ferrières to King Æthelwulf of Wessex by a certain Felix 'qui epistolarum vestrarum officio ... fungebatur',⁷⁴ first adduced by Lappenberg,⁷⁵ Stevenson's argument was that ever since the beginning of Mercian predominance *formulae* were used in the Anglo-Saxon charters that cannot - except when compiled for Kentish donees - be traced to Roman origins, but formed the base for the formulary usage of the later Anglo-Saxon charters. The existence of boundary clauses together with the use of the vernacular as a language for royal charters appeared to be the results of the formative activity of a royal central chancery. His final point was the existence of the eleventh-century writs whose restricted but rigid formulary seemed to admit no other explanation but that they were products of a royal chancery.⁷⁶

Stevenson's positions and arguments in the light of later continental diplomatics

It has already been mentioned that continental diplomatics in the age of Stevenson was in its hey-day pretending rapid progress in its scholarship. It may be a tempting idea to argue the hypothesis that Stevenson who was well aware of this point left his lectures unpublished due to the rapid change of leading opinions from the time immediately preceding World War I.

⁷¹ H. Brunner, *Urkunde*, p. 171. Cf. Aronius, *Studien*, pp. 11-12. Brandi, review of 'Facsimiles', pp. 955-6. Id., 'Kaiserbrief', p. 81. Giry, *Manuel*, p. 795. J.M. Kemble, ed., *Codex diplomatics aevi Saxonici* I (London, 1839), p. xci. Ottenthal, 'Review of Bresslau', p. 132. Redlich, *Privaturkunden*, pp. 44, 46. Treiter, 'Urkundendatierung', p.55. Stevenson himself drew attention to the statement by Polydore Vergil that a chancery did not exist in England prior to Norman times (cf. Stevenson's note 1).

⁷² Boüiard, *Manuel* II, pp. 43-52. Bruns, 'Unterschriften', passim, Bresslau, *Handbuch* I, pp. 206-8, 628-33. Classen, *Kaiserreskript*, pp. 82, 187-8, Steinacker, *Grundlagen*, p. 93. Heuberger, *Urkundenlehre*, p. 21.

⁷³ P. Chaplais, 'The Origin and Authenticity of the Royal Anglo-Saxon Diploma', *Prisca Munimenta: Studies in Archival and Administrative History Presented to Dr A.E.J. Hollaender*, ed. F.Ranger (London, 1973), pp. 30-1. Id., 'Who Introduced Charters into England? The Case for Augustine', *ibid.*, pp. 105-6.

⁷⁴ MGH Epp VI, 22 n 13.

⁷⁵ Lappenberg, *Geschichte* I, p. 295 n 2. Cf. Bresslau, 'Beziehungen', pp. 50-1. A.Hessel, 'Studien zur Ausbreitung der karolingischen Minuskel', *AUF* 8 (1932), pp. 16-19.

⁷⁶ Cf. Bresslau, 'Beziehungen', pp. 48-59. Bresslau went as far as to argue that the chancery could have been imported from Denmark to England under Canute (*ibid.*, p. 52 with note 9).

A major early forum for international discussions among diplomatists was provided by the international congress of historical sciences in Berlin 1908.⁷⁷ In this year time became ready for a paper read by Harry Bresslau in section VIII (Auxiliary Sciences) on international relations in the production of medieval charters.⁷⁸ In the preface to the printed version of this paper Bresslau alluded to the then ongoing rapid progress in diplomatic studies and his own intention to foster them.⁷⁹

Bresslau's remark seems fully justified in view of what happened to Brunner's theories from 1910 onwards. That year witnessed the publication of Carl Freundt's book on the bonds in Greek and Roman antiquity claiming that Brunner had completely failed to include Greek material into his studies.⁸⁰ Later romanists seconded in stating that Brunner had ignored the historicity of Roman law and of the legal documents produced by setting absolute his observations on late Roman private law as a general statement on Roman law as such.⁸¹

In the same year 1910 the Austrian diplomatist Harold Steinacker started to launch an broad attack on some fundamental elements of Brunner's theories, supported by his colleague Richard Heuberger.⁸² Steinacker's attack, though, had a somewhat curious fate. He published a brief study on the *traditio cartae* in Visigothic law in 1914,⁸³ but left it to his colleague Heuberger to revise Steinacker's introduction to private deeds of 1906⁸⁴ for its second edition to be issued in 1921.⁸⁵ In this edition Heuberger reported Steinacker's new (and as yet largely unpublished) views of later Roman private deeds, while Steinacker himself produced as late as in 1927 the first volume of a penetrating study on the connections between the Roman and the early medieval private instruments. The second volume which was intended

⁷⁷ Internationaler Kongress für Historische Wissenschaften, Kongress-Tageblatt, No. 3, 7 August 1908, p. 156. *Programm des [3.] Internationalen Kongresses für Historische Wissenschaften*, Berlin, 6. bis 1. August 1908 (Berlin, 1908), p. 15. Cf. K.D. Erdmann, 'Geschichte der internationalen Historikerkongresse. Ein Werkstattbericht', XVI^e Congrès international des sciences historiques, Stuttgart du 25 août au 1er septembre 1985, III *Actes* (Stuttgart, 1986), 495-8; also in *Geschichte in Wissenschaft und Unterricht* 36 (1985), 535-53, and in *Storia della Storiografia* 8 (1985).

⁷⁸ Printed as Bresslau, 'Beziehungen'.

⁷⁹ Bresslau, 'Beziehungen', p. 19.

⁸⁰ C. Freundt, *Wertpapiere im antiken und frühmittelalterlichen Rechte* (Leipzig, 1910). Cf. reviews by Ferrari, *Byzantinische Zeitschrift* 20 (1911), 532-44, and Philippi, *Göttingische Gelehrte Anzeigen* (1912), 139-43.

⁸¹ E. Levy, *Westroman Vulgar Law* (Philadelphia, 1951), pp. 110, 128-9, 134, 136-7, 146, 148. A. Steinwenter, 'Die Deponierung von Privaturkunden in öffentlichen Archiven', in his *Beiträge zum öffentlichen Urkundenwesen der Römer* (Graz, 1915), 58-92. L. Wenger, *Die Quellen des römischen Rechts*, Denkschriften der österreichischen Akademie der Wissenschaften 2 (Vienna, 1953), pp. 736-7, 740, 744-5, 747-9.

⁸² Steinacker, *Grundlage*, pp. 75-86, 99. Id. "'Traditio cartae'", pp. 10, 15-26, 40-6. Heuberger, *Urkundenlehre*, pp. 6, 11, 12, 14, 19-20. Id., 'Cartam tradidi. Zum Ausklingen der traditio cartae', *Festschrift zu Ehren Oswald Redlichs*, Veröffentlichungen des Museum Ferdinandeum in Innsbruck 8 (Innsbruck, 1928), pp. 93, 99-100. Cf. Classen, *Kaiserreskript*, p. 181. Redlich, 'Urkundenlehre', pp. 343-4.

⁸³ H. Steinacker, 'Der Ursprung der "Traditio Cartae" und das westgotische Urkundenwesen', *Festschrift des akademischen Vereins deutscher Historiker in Vienna herausgegeben anlässlich der Feier des 25 jährigen Bestandes* (Vienna, 1914), 7-24. Id., *Grundlagen*, pp. 1ff. Heuberger, 'Selbstdarstellung', p. 25.

⁸⁴ Steinacker, *Lehre*.

⁸⁵ Heuberger, *Urkundenlehre*.

to contain Steinacker's views on early medieval private deeds never appeared. The first volume consisted of two parts, the first comprising some 120 pages and pretending to be written in the formative years of Steinacker's new theories (i.e. immediately after 1910), while the second part comprising some fifty pages contains additions to the first part - most clearly evidence of the transitory state of diplomatic scholarship in the years between the beginning of the century and the later twenties.

The publication history of Steinacker's theories left Brunner no chance to reply to them and prevented them from creeping into the second edition of Bresslau's *Handbuch* of 1912. They were somewhat hesitatingly received in Italy by Luigi Schiaparelli,⁸⁶ but fully accepted in France by Michel de Boüard.⁸⁷ Due to the fact that no comprehensive handbook of diplomatics had appeared in Germany since Bresslau's *Handbuch*,⁸⁸ Steinacker's revision of Brunner's main theories has ironically enough been somewhat thinly represented in the German-speaking countries.

It was, therefore, unjust to blame Stevenson for not having respected the views of Brunner's critics. On the contrary, the proper way to do justice to Stevenson will be to ask what may and can be done with his approaches, his arguments and his statements in full recognition of his dependence upon Brunner's theories.

The question will be tackled in two parts: 1) In which respects does the revision of Brunner's theories affect Stevenson's approaches, arguments and statements? 2) What could continental scholarship have gained by receiving Stevenson's lectures and printed publications?

1. *In what respects does the revision of Brunner's theories affect Stevenson's approaches, arguments and statements?*

a) Stevenson's position that bookland was alienated folkland (as land owned by the *gens*) cannot be upheld in view of the fact that the earlier theory of communal ownership of land in early medieval Europe has been proved to have resulted from Romantic ideas of the 'law of primitive peoples'⁸⁹ and to have hardly anything to do with written and archaeological sources of the time. On the contrary, archaeological, philological and historical research seems to have provided abundant evidence that Germanic and early medieval societies formed hierarchically structured groups in which the *gens* (*Sippe*) had but limited legal functions.⁹⁰ Thereby, later views of the bookland-folkland dichotomy have been changed.⁹¹

⁸⁶ Schiaparelli, 'Note diplomatiche sulle carte longobarde', pp. 34-66, who tried to save Brunner's view in part by arguing that Brunner's concept of the medieval *traditio cartae* were rooted in an ancient *traditio super altare*. Cf. E. Goldmann, 'Cartam levare', *MIöG* 35 (1914), 1-159. B. Pagnini, 'La notitia testium', *Atti del'Istituto Veneto di Scienze, Lettere ed Arti. Classe di Scienze morali e Lettere* 92, 2 (1937/8), 1-17. G.Ferrari, 'Il documento privato dell'alto medioevo e i suoi presupposti classici', *Archivio Storico Italiano* VII/12 (1929), 3-16.

⁸⁷ Boüard, *Manuel* II, pp. 27ff., 43. Cf. Steinacker, "'Traditio cartae'", pp. 12, 14, 35.

⁸⁸ Instead, major handbooks of the age have been reprinted: Bresslau, *Handbuch* in 1958; Brunner, *Urkunde* in 1961; Posse, *Lehre* in 1974; Redlich, *Privaturkunden* in 1960; Steinacker, *Grundlagen* in 1975.

⁸⁹ E.g., L.H. Morgan, *Ancient Society* (Chicago, 1877); and F. Engels, *Der Ursprung der Familie, des Privateigentums und des Staates* (Hottingen-Zürich, 1884).

⁹⁰ O. Brunner, *Land und Herrschaft*, repr. ed. (Darmstadt, 1981), pp. 254-303. W.Schlesinger, *Die Entstehung der Landesherrschaft*, repr. ed. (Darmstadt, 1984), pp.86-92. Id., 'Randbemerkungen zu drei Aufsätzen über Sippe, Gefolgschaft und Treue', *Alteuropa und moderne Gesellschaft. Festschrift für Otto Brunner* (Göttingen, 1963), pp.11-59. Also in his *Beiträge zur deutschen*

b) The primarily negative definition of the private instrument as a non-imperial/non-royal deed has thoroughly been questioned. The term private deed seems to have been brought into opposition to the term imperial/royal deed by Ficker purely for the purpose of describing obvious differences in form and evidential legal value, while admitting *expressis verbis* that *for other purposes a narrower definition might be more adequate*.⁹² It may have been due to Brunner's work that the dichotomy of imperial/royal and private deeds (occasionally extended by the group of papal instruments) attained a somewhat sacrosanct nature that allowed a convenient classification for the purpose of handbook writing. Nevertheless, Steinacker himself seems to have doubted the validity of the opposition,⁹³ but did not publish his views. He did, however, use the results of Romanist research when arguing that especially in the late Roman period the private deeds were bound to be officially registered in the *gesta municipalia* were they to gain full evidential legal value.⁹⁴ It has since been pointed out that the general development of legal organization - under Greek influence - tended towards a more frequent and intensive regulation of private affairs by government and municipal agencies culminating in Justinian's reforms.⁹⁵

Such a change of views would imply that Brunner was mistaken in supposing that the strict control of the legal process in private affairs was Roman *per se* and that the differences between imperial/royal and private deeds especially in their legal evidential value were not as striking as Brunner himself had thought. And it would, last but not least, indicate that Brunner erred in believing that the choice by an individual or by a given community of a certain charter formulary was bound to indicate the prevalence of corresponding legal evidential values.

Stevenson must have been aware of these problems at least to a certain extent. His comparisons of *formulae* of late Roman private deeds and Anglo-Saxon charters showed to him that it was obviously possible to transfer certain *formulae* from one into a completely different legal framework without bringing forth a change in the latter. On the other hand, Stevenson kept himself limited to the imperial/royal and

Verfassungsgeschichte des Mittelalters I (Göttingen, 1963), pp. 286-334. Id. 'Herrschaft und Gefolgschaft in der germanisch-deutschen Verfassungsgeschichte', *Herrschaft und staat im Mittelalter*, ed. H. Kämpf, Wege der Forschung 2 (Darmstadt, 1963), pp. 139-90. R. Wenskus, *Stammesbildung und Verfassung*, 2nd ed. (Köln, Vienna, 1977), pp. 300-5. H. Eggers, 'Lübsow', *Prähistorische Zeitschrift* 34/5 (1949/50).

⁹¹ P. Vinogradoff, 'Folcland', in his *Collected Papers* I (Oxford, 1928), pp. 91-111. Id., 'Das Buchland', *ibid.*, pp. 168-91. T.F.T. Plucknett, 'Bookland and Folcland', *Economic History Review* 6 (1935), pp. 64-72, reprinted in his *Studies in English Legal History* (London, 1983). E. John, *Land Tenure in Early England*, Studies in Early English History 1 (Leicester, 1960), pp. 1-63. Id., *Orbis Britanniae and Other Studies*, Studies in Early English History 4 (Leicester, 1966), pp. 64-127. H.R. Loyn, *The Governance of Anglo-Saxon England* (London, 1984), pp. 43, 151-2. H. Vollrath-Reichelt, *Königsgedanke und Königtum bei den Angelsachsen*, Kölner historische Abhandlungen 19 (Köln, Vienna, 1921), pp. 192-225.

⁹² Ficker, *Beiträge* I, p. 51. Cf. *id.*, pp. 63-64, 106-107. Ficker (p. 51) refers to Sickel as the first to have observed that the formulary for private deeds influenced the formulary for regnal deeds in Carolingian times.

⁹³ Reported by Brandi, review of Steinacker, p. 347. Cf. Ottenthal, review of Bresslau, p. 133; Redlich, 'Urkundenlehre', p. 344; and Rosenmund, *Diplomatik*, pp. 107, 116.

⁹⁴ Steinacker, *Grundlagen*, pp. 101, 120. Id., "'Traditio Cartae'", pp. 8-9, 38. Cf. Bruns, 'Unterschriften', *passim.*; Steinwenter, 'Deponierung', *passim.*; Id., 'Zum Problem der Kontinuität zwischen antiken und mittelalterlichen Rechtsordnungen', *Jura* 2 (1951), pp. 00-0; Boye, 'Poenformeln', pp. 79-82, 86, 88-9, 133; and Redlich, 'Urkundenlehre', pp. 343-5.

⁹⁵ Wenger, *Quellen*, pp. 737, 740.

private deed dichotomy to the extent that he tried to explain the use of the late Roman private deed formulary for the earliest Anglo-Saxon charters by means of the idea that their drafters may have found themselves unable to employ the Roman imperial formulary on the charters of the rulers of Kent whom they were supposed to have regarded as inferior to the Roman emperors.

The adequate use to be made of Stevenson's approach would, therefore, consist in employing Stevenson's method of the analysis of *formulae* with the aims of an explanation of what the formulary of the late Roman private deed may have meant to the drafters of the earliest Anglo-Saxon charters and which changes the continuous application of Roman *formulae* may have effected upon legal practice in early medieval England.

c) The hardest attack on Brunner's theories afflicted his idea of the *traditio cartae*. Steinacker, after 1910 set out to produce evidence that Brunner was misled that the *traditio cartae* as an early medieval formal concluding act for the transmission of land by charters was in itself of Roman heritage. Brunner had misconceived his *traditio cartae* as a continuation in substance of the ancient Roman *stipulatio*, the verbal act for the conclusion of private contracts. On the contrary, Steinacker was able to show that there was no continuity *in re*, but a tradition of the word *stipulatio*, which continued to be used as a meaningless formula in post-Justinian times. Thus reduced to a medieval phenomenon, the *traditio cartae*, nevertheless, remained indicative of the otherwise well-known preference in Germanic law of symbolic acts in legal affairs, such as the Lombard *wadia* or the Germanic *feruca*.⁹⁶

Steinacker's revision of Brunner's *traditio cartae* theory led to a general rethinking of the meaning and importance of Roman *formulae* in early medieval charters. Peter Classen, in his doctoral dissertation, was able to argue that the Roman imperial rescripts in the same way as the medieval royal *diplomata* originated from the formulary of the letter (*epistola*) and that the tradition of the Roman formulary in the medieval *diplomata* was a continuation in form but not in substance.⁹⁷

Stevenson, already in his lectures, was able to demonstrate that it was possible to deal with the Roman elements in the early Anglo-Saxon charters without recurring to Brunner's *traditio cartae* theory. He even went further to show that it was possible to cast doubts upon this theory and make sense of the Roman *formulae* nevertheless. Brunner had insisted that the frequent use of the future tense in the *verba dispositiva* was peculiar to the Anglo-Saxon charters.⁹⁸ Stevenson coolly replied that the use of

⁹⁶ Steinacker, *Grundlagen*, pp. 74-75, 81-87, 99-100, 120. Id., "'Traditio cartae'", pp.8-9, 13, 27-8, 54-6. Cf. Rosenmund, *Diplomatik*, pp. 106-108. Heuberger, *Urkundenlehre*, pp. 29-30. Id., 'Cartam tradidi', pp. 99- 100. Ottenthal, review of Bresslau, pp. 133-4. Redlich, *Privaturkunden*, pp. 53-4.

⁹⁷ Classen, *Kaiserreskript*, pp. 17-19, 58-60, 62, 105-7, 172-3, 177-8, 181-2, 187-8, 208, 210. Id., 'Spätromische Grundlagen mittelalterlicher Kanzleien', id., *Ausgewählte Aufsätze, Vorträge und Forschungen* 28 (Sigmaringen, 1983), pp. 67-84. Classen, ed., 'Fortleben und Wandel des römischen Urkundenwesens im frühen Mittelalter', *Recht und Schrift im Mittelalter*, Vorträge und Forschungen 23 (Sigmaringen, 1977), pp. 13-54.

⁹⁸ H. Brunner, *Urkunde*, p. 165, based upon Kemble, *Codex*, p. xxviii. Interestingly enough, Kemble simply stated that 'Do, dono, concedo, trado are the most in use, sometimes singly, sometimes combined, and one noticeable peculiarity is that, in place of the present tense do, we usually have the future dabo is being turned under Brunner's authorship into the comprehensive 'Eine andere Eigenthümlichkeit der angelsächsischen Traditionsurkunden besteht darin, dass die [!] verba dispositiva, die granting words, am häufigsten [!] im Futurum erscheinen.' Brunner's sole supporting evidence is, though, Kemble's statement.

the future tense was counterbalanced by the equally frequent use of the present perfect tense in the *verba dispositiva* and of the future even in the clauses used in witness-lists. He also argued that he was unable to believe that Brunner's refined juristic theory could have been found plausible in the context of early medieval legal practice. Stevenson's remark, although limited to the Anglo-Saxon charter material, was fundamentally destructive, and thus he may count as one of the earliest critics of Brunner's then generally applauded *traditio cartae* theory.

d) Following the tracks beaten by Stevenson, the diplomatist as well as the historian has the task to primarily pursue the societal functions which were assigned to the Anglo-Saxon charters in Anglo-Saxon times while casting an eye on the legal performance that they had to be fit for. This task presupposes an awareness of the social structures of that period. Brunner as well as his critics agree that once basic element of social structure in Anglo-Saxon England was the orality of communication. This assumption included that the operating basis upon which legal contracts had to be concluded was formalized action in community and not the compilation of a written document. Then it may safely be concluded that the written charter of Roman provenance formed an alien element in the society of the Germanic invaders and settlers in the British Isles.

The starting point for Brunner's theory was that the coming-up of charters among the Germanic societies in early medieval Europe was indicative of an initial Romanization of society. Thus, Brunner was led to inquire into institutions suitable for the production, authentication and preservation of charters in the early medieval Germanic kingdoms. He was not primarily interested in finding out in what way the formal substance of the Roman charters was modified in the course of its transmission into the septentrionalic kingdoms. It is, to be sure, primarily the Anglo-Saxon charter that - irrespective of its Roman traditions - exhibits more formal differences to its Roman predecessor than continental charters (royal as well as private), and it has been well known that the more important of these peculiarities of the Anglo-Saxon charter formulary can be summarized under the following four points:

- i The Anglo-Saxon charter observes no significant formulaic differentiation between private and royal deeds;⁹⁹
- ii The Anglo-Saxon charter formulary comprises a limited amount of formulae, i.e., regularly lacks - among others - of the *promulgatio* and the *attestatio*;¹⁰⁰
- iii The Anglo-Saxon charter formulary appears to have required witness-lists generally;¹⁰¹
- iv The Anglo-Saxon charter before the eleventh century seems to have been unsealed.¹⁰²

⁹⁹ Nor strictly between *carta* and *notitia* in Brunner's sense.

¹⁰⁰ This phrase is here being used in the meaning it had in the Roman formulary and its description by Brunner as the *tabellio*'s the phrase is occasionally used also in the sense of witness-list. Cf. Bresslau, *Handbuch* I, p. 48; Id., 'Beziehungen', pp. 44-45; and Classen, *Kaiserreskript*, pp. 181-2.

¹⁰¹ Brandi, review of *Facsimiles*, p. 956. Bresslau, 'Beziehungen', p. 59. Maitland, *Domesday Book*, pp. 250-3. Otenthal, review of Bresslau, pp. 133-4. Steinacker, "'Traditio cartae'", p. 69. H. Brunner, *Urkunde*, pp. 158-9.

¹⁰² Brandi, review of *Facsimiles*, p. 955. Bresslau, 'Beziehungen', p. 47 n 1. Redlich, *Privaturkunden*, p. 45. W. Ewald, *Siegelkunde*, p. 33. Maitland, *Domesday Book*, p. 265.

What, then, are these peculiarities apt to show?

Legal practice in at least early Anglo-Saxon England did not require formulaic differentiation between private and royal deeds for the purpose of meeting the respective demands of hierarchically shifted levels of the evidential and testimonial power of charters. That is, the charter formulary remained the same in whosever name charters were compiled. Thus, there is no reason for assuming a specialization of chanceries or at least *scriptoria* for the compilation of royal or for private deeds. On the contrary, the charter producing agency seems to have used a similar formulary of charters for whatever kind of doner.

The late Roman bureaucratic mode of the production, authentication and preservation of charters made a difference between the conclusion of a legal act and its publication. Imperial edicts and *subscriptions* were designed to make known to the public statements by the emperor¹⁰³ and, therefore, contained in themselves *formulae* to anticipate the publication process. In private law, the legal contract in late Roman antiquity had to be deposited publicly in order to receive full legal recognition,¹⁰⁴ but it did not have to be rendered public in this way. In late Roman society (at least in Italy, Gaul and Spain) degrees of legal recognition and, consequently, of evidential value of charters were generally accepted, and it depended on the modalities of the use of written charters to what extent their formulary was basic for the evidential value.

In early Anglo-Saxon England, on the contrary, such a differentiation seems to have operated, if at all, in a different societal context. In such a society, fundamentally structured upon oral means of communication, the conclusion of a legal contract with traditional recognition would have to contain the performance of a formal action in the presence of witnesses who would be in a position to argue against or in favour of the genuiness of claims that might be pronounced by one of the contracting parties. The introduction of written documents as supporting evidence would not ease but complicate this business for it was easier to falsify written documents than to induce a witness to a false testimony.¹⁰⁵ The necessity to conclude a legally recognized and valid contract in the presence of witnesses renders the conclusion public - at least with limitation to the witnesses of the performance of the undergoing concluding formal action. It is therefore but consistent that when charters were introduced into such a legal framework, *formulae* expressing an additional act of publication in the written text were meaningless and thus rejected. Then, the fact that the Anglo-Saxon charters lack *promulgatio* as well as *attestatio* can be explained well by the oral structure of socially sanctioned legal processes into which these charters were set and it does not necessarily have to imply that the drafters of the early Anglo-Saxon charters had but a faint idea of what they were doing.¹⁰⁶

¹⁰³ Classen, *Kaiserreskript*, p. 19 with n. 69, p. 24. Cf. Faass, 'Studien', pp. 227-32, esp. 230; U. Wilcken, 'Zu den Kaiserreskripten', *Hermes* 55 (1920), pp. 1-42.

¹⁰⁴ Steinacker, *Grundlagen*, pp. 77-78. Steinacker, "'Traditio cartae'", pp. 38-46. Wenger, *Quellen*, pp. 740-4.

¹⁰⁵ On the continent, this is well evidenced by an anecdote from Gregory of Tours (*Historiae Francorum Libri X*, IV.46) and by the severe punishments to be inflicted upon persons who committed the crime of falsely decrying (royal) charters as not genuine according to the Salican and the Ribuarian laws. *Lex Salica*, 100-Titel-Text, LXXXIII, 2. *Lex Ribuarica*, LIX, 3.

¹⁰⁶ It may be important to realize that it is a peculiarity of the Anglo-Saxon in comparison to the Lombard and Frankish charters to lack both the *promulgatio* and the *attestatio*. While the Frankish

In eleventh-century England, the writ type of charter evidences a process of literalization in so far as a *promulgatio* equivalent of that in the laws of the early Anglo-Saxon kings regularly forms part of this type of charter formulary in spite of its extremely brief shape.¹⁰⁷ The writ, thus, is shown to be a document designed to render the issuing person's decision public and therefore allows the argument that the Roman differentiation between the conclusion and the publication of the legal contract had then become accepted in Anglo-Saxon law. The argument implies that English society in the eleventh century had been literalized to a degree it could give sense to such a differentiation.

The writ but marks an advanced level of the presumably longer development towards literacy in Anglo-Saxon society. Brunner and his critics agreed that the Anglo-Saxon charter formulary owes its peculiarities to the overall ecclesiastical influence.¹⁰⁸ Since the Anglo-Saxon kings as the highest representative of a fundamentally orally structured society can hardly be expected to have had a thorough interest in compiling, authenticating and preserving charters, it may be safe to conclude that it was members of the church to whom the attempt to lay a legally sound base for their property in land by means of charters can be traced back. It then becomes difficult to assume that the king provided a *body of trained royal clerks whose duty it was to compare and write out the royal charters*,¹⁰⁹ for it appears to have been the church who insisted upon issuing of charters for their landed property. Furthermore, since it was but the church who was in a position to provide the means and the knowledge for writing in early Anglo-Saxon England it seems to be safe to argue in favour of the church as the decisive agency for the introduction of charters into Anglo-Saxon law. Stevenson's method of the analysis of the *formulae* takes us as far as to recognize one or a few central *scriptoria* undertaking the task of compiling and preserving the charters. Stevenson's method does not by itself allow us to conclude automatically that such an institution has to be viewed at as a royal chancery.

Recent diplomatic scholarship following Richard Droegereit's doctoral dissertation on the Anglo-Saxon chancery¹¹⁰ has tended towards accepting the view that the existence of a chancery may have depended upon the efficiency of government under certain rulers, e.g., Æthelbald and Offa of Mercia, Æthelstan,

(royal) charters contain both *formulae*, the Lombard charters lack a *promulgatio* while containing an *attestatio*. Cf. Classen, *Kaiserreskript*, p. 199. H. Brunner, *Urkunde*, pp. 79-84. Brühl, *Studien*, pp. 30-2, 92. Sickel, *Lehre*, pp. 1-2, already drew attention to the fact that OHG *urkundo(-i)* originally comprised the meaning *testis/testimonium* and could signify living witnesses as well as verbal testimony and symbolic formal acts.

¹⁰⁷ See F.E. Harmer, ed., *Anglo-Saxon Writs* (Manchester, 1952), p. 15. P. Chaplais, 'The Anglo-Saxon chancery: from the Diploma to the Writ', *Prisca Munimenta. Studies in Archival and Administrative History Presented to Dr A.E.J. Hollaender*, ed. F. Ranger (London, 1973), pp. 51-62.

¹⁰⁸ One of the important points in this argument is the purely ecclesiastical character of the anathema in the Anglo-Saxon charters and its parallels to *formulae* of papal instruments. See Brandi, review of *Facsimiles*, pp. 955-6. Bresslau, 'Beziehungen', p. 45. Boye, 'Poenformeln', pp. 116-17, 130, 133, 144. J. Studtmann, 'Die Pönformel der mittelalterlichen Urkunden', *AUF* 12 (1932), pp. 271-4. H. Voltolini, 'Die Fluch- und Strafklauseln mittelalterlicher Urkunden und ihre antiken Vorläufer', *MIÖG Ergänzungsband* 11 (1929), p. 71.

¹⁰⁹ Stevenson's definition of a chancery in the second paragraph of his Sandars lectures (see below p. 00). Cf. Classen, *Kaiserreskript*, p. 82. Aronius, *Studien*, p. 31. Brandi, 'Kaiserbrief', p. 81. M.P. Parsons, 'Beiträge zum angelsächsischen Urkundenwesen bis zum Ausgang des neunten Jahrhunderts' (unpublished PhD. dissertation, Vienna, 1938) II, p. 2.

¹¹⁰ R. Droegereit, 'Gab es eine angelsächsische Königskanzlei?', *AUF* 13 (1935), pp. 335-436.

Edgar, etc.¹¹¹ Apart from the difficulty in measuring efficiency (especially in medieval times) and apart from the problem whether or not a royal chancery can be regarded as an indicator for efficiency, the major question is whether the conception can make sense that the evidential value of charter (which is to be valid forever) may under one ruler rest upon its being issued from a royal chancery, while under the subsequent ruler it may rest upon its originating from a purely ecclesiastical *scriptorium*. Obviously, such a system could operate only under the auspices of austere insecurity in legal affairs, and it is therefore difficult to conceive especially in view of the conservative character of medieval law. The question of the chancery is, thus, not a purely palaeographical one, but has to be linked to the question for the means of authentication in Anglo-Saxon England. If the authentication of charters was not necessarily depending on a royal chancery, the question whether the body of trained clerks can be located in the royal entourage or in a monastic *scriptorium* becomes secondary and leaves the first rank to the question what made an Anglo-Saxon charter authentic, i.e., where its evidential value originated from.¹¹²

Brunner as well as his critics again agreed in stating that law in early medieval societies rested on formal actions for the conclusion and authentication of legal acts.¹¹³ Since there was hardly a means to perpetuate such formal actions, it was necessary to perform them in the presence of witnesses who were in a position to testify the authenticity of the legal act concluded and to transmit their testimony to subsequent generations if necessary. The publication in conclusion of a legal act (e.g., a contract) was, therefore, an essential means of authentication in early medieval law.

In this connection the *rogatio testium* has to be regarded as an integral part of the authentication of private legal acts in medieval law whatever the provenance of the *formulae* was that were used to record the testimony of the witnesses in such a charter. What was decisive for the achieving authenticity in a private legal act seems to have been the *rogatio testium* and the subsequent act of witnessing as such, not the written record of it.

The existence, then, of witness-lists in the eschatol of Anglo-Saxon charters may be explained as a compromise between the intentions of the church to obtain a written proof for their ownership of landed property on the one hand and of the insistence of the king to conclude the contracts with the church as legal acts by means of the *rogatio testium* and the act of witnessing.¹¹⁴ We do not seem to have another choice except to assume that this compromise was being achieved in the course of the period from which no genuine charters have survived. Anyhow, the compromise seems to indicate that the performance of the *rogatio testium* and the act of witnessing cannot be valuated as a result of a lack of governmental facilities on the part of the early Anglo-Saxon, especially Kentish, kings but will have to be counted as a result of royal demands addressed to the scribbling clergymen around the king. Then, Stevenson's lectures induce us to acknowledge that it was not only the Franks who

¹¹¹ Chaplais, 'Chancery', pp. 43-62.

¹¹² Cf. H. Kleinschmidt, *Untersuchungen über das englische Königtum im 10. Jahrhundert*, Göttinger Bausteine zur Geschichtswissenschaft 49 (Göttingen, 1979), pp. 64-102.

¹¹³ See above note 97.

¹¹⁴ Presumably in conjunction with the formal handing over of the charter, i.e., Brunner's *traditio cartae* or Goldmann's *cartam levare*. Brunner himself drew attention to ninth century Frankish charters in which the *traditio cartae* was mentioned as a publicising act (H. Brunner, *Urkunde*, pp. 260-1). Cf. Heuberger, 'Cartam tradidi', pp.100-1.

were the pace-makers in the development *from bureaucracy to the state founded upon ancient law and personal relationship*,¹¹⁵ but contemporaneously and nonetheless the Anglo-Saxons.

2. *What could continental scholarship have gained by receiving Stevenson's lectures and printed publications?*

Continental diplomatists have reiterated over and over again three observations only partly correct:

a) The first observation is bound mainly to Stevenson's own well-known apodictive statement of 1895 that it cannot be said that the old English charters have yet been edited.¹¹⁶ Stevenson might be understood as criticising Kemble's edition and as complaining he incomplete state of Walter de Gray Birch's work in that year. Today it appears to be unjustified that continental diplomatic scholars seem to have used Stevenson's statement as an excuse for their own reluctance to deal seriously with insular charter material. Birch's edition could be used for a number of problems, as Stevenson himself has shown, and continental scholars could work on manuscripts in England, as Felix Liebermann had ably demonstrated.¹¹⁷

b) The second observation records a lack of publications on Anglo-Saxon charters and deplors it.¹¹⁸ To be sure, it is possible to quote some scattered remarks on Anglo-Saxon charters by nineteenth-century continental scholars, but these are seldom comprehensive and conclusive with the recorded exception of Brunner's work.¹¹⁹ This observation is true then only for continental scholarship since charter studies had their tradition in the British Isles going back at least as far back as to George Hicke.¹²⁰

c) The third observation concerns the apparently basic characteristic feature of Anglo-Saxon charters: their insularity. Several diplomatists refer to Anglo-Saxon charters in their works by pointing out the one or other peculiarity of this group of sources.¹²¹ Diplomatic attempts to explain these peculiarities beyond the range of

¹¹⁵ Classen, *Kaiserreskript*, p. 210. Cf. Steinacker, "‘Traditio cartae’", pp. 71-2.

¹¹⁶ A. Napier and W.H. Stevenson, eds., *The Crawford Collecton of Early Charters*, Anecdota Oxoniensia, Mediaeval and Modern Series 7 (Oxford, 1895), p. viii. Cf. Aronius, *Studien*, pp. 2-10; Brandi, review of *Facsimiles*, p. 956 n 2; Chaplais, 'Origin', p. 29; Parsons, 'Beiträge' I, p. 1, II, p. 1; and Treiter, 'Urkundendatierung', pp. 53-4.

¹¹⁷ F. Liebermann's edition, *Die Gesetze der Angelsachsen* (Halle, 1903-16), has been praised for the editor's endeavours to consult the original manuscripts (Neue Deutsche Biographie XIV (Munich, 1985), p. 480).

¹¹⁸ Bresslau, 'Beziehungen', p. 44. Cf. Treiter, 'Urkundendatierung', pp. 53-4. Parsons, 'Beiträge' I, p. 11.

¹¹⁹ See note 58.

¹²⁰ G. Hicke, *Linguarum septentrionalium thesaurus grammatico-criticus* III (Oxford, 1705), dissertatio epistolaris, pp. 46ff. Cf. W. Bonser, *An Anglo-Saxon and Celtic Bibliography* (Oxford, 1957), nos. 253-431. The list of titles on charters in S.B. Greenfield and F.C. Robinson, *A Bibliography of Publications on Old English Literature* (Toronto, 1980) contains but a very rough selection, the criteria for which are too airy to be submitted to discussion. Cf. H. Kleinschmidt, 'Zur fachbibliographischen Erschliessung des Schrifttums zur altenglischen Literatur', *Bibliothek* 10 (1986), no. 1/2.

¹²¹ Boye, 'Poenformeln', pp. 78, 116-17, 130, 133, 144. Brandi, review of *Facsimiles*, pp. 954-6. Id., 'Kaiserbrief', p. 81. Id., 'Papyrus', p. 270. Bresslau, 'Beziehungen', pp. 20, 44-56. Giry, *Manuel*, pp. 434, 514, 741, 794-9. L. Deslisle, 'Les formules *Rex Anglorum et Dei Gratia Rex Anglorum*', *Bibliothèque de l'Ecole des chartes* 68 (1907), pp.525-34. Hessel, 'Studien', pp. 16-19. Ottenthal,

Brunner's work remained few and are largely written as doctoral dissertations¹²² or as reviews.¹²³

The overall impression to be gathered from these three observations is that the continental diplomatist's interest in Anglo-Saxon charters has been somewhat limited in scope. Overviewing the relevant remarks and comments to be found here and there in the continental diplomatic literature in the age of Stevenson one seems to be justified in following Treiter's impression that the lack of scholarly interest in Anglo-Saxon charters among continental diplomatists may be due primarily to their belief that the British Isles formed a separate historical unit hardly of concern to those studying continental affairs.¹²⁴

It is, therefore, not amazing that Stevenson's lectures as well as his published articles were somewhat hesitatingly received on the continent. Although his major articles appeared in the *English Historical Review*,¹²⁵ they are difficult to be found in the notes by continental diplomatists when they had something to say on Anglo-Saxon charters.¹²⁶ Therefore, Harry Bresslau's complaint seems to be fully correct that as late as in 1918 Stevenson's published works had virtually been unreceived on the continent,¹²⁷ although some of them had been reviewed in widespread continental journals, e.g., by Felix Liebermann.¹²⁸

So much worse was the fate of Stevenson's Sandars lectures. Although Charles Gross had referred to them in his first edition of *Sources and Literature of English History* in 1900,¹²⁹ the lectures remained unnoted until Mary Prescott Parsons mentioned them in her 1937 Vienna dissertation on the early Anglo-Saxon charters.¹³⁰ Apparently she had not been able to see Stevenson's manuscript, but

review of Bresslau, p.130. Redlich, *Privaturkunden*, pp. 43-5. Rosenmund, *Diplomatik*, p. 111. Studtmann, 'Pönformel', pp. 271-4. Voltelini, 'Fluchklauseln', p. 71. F. Wissmann, 'Förmlichkeiten bei den Landübertragungen in England während der anglo-normannischen Periode', *AUF* 3 (1911), p. 251.

122 Aronius, *Studien*. Droegereit, 'Gab es'. Parsons, 'Beiträge'. Treiter, 'Urkundendatierung'.

123 Brandi, review of *Facsimiles*, pp. 954-75. F. Liebermann, review of Napier and Stevenson, ed., *Crawford Collection of Early Charters*, in *Archiv für das Studium der neueren Sprache und Litteraturen* 96 (1896), pp. 214-16.

124 Treiter, 'Urkundendatierung', pp. 53-4.

125 W.H. Stevenson, 'The Old English Charters to St. Denis', *EHR* 6 (1891), pp. 736-42 (see below pp. 00-00). Id., 'An Old English Charter of William the Conqueror in Favour of St.Martin's-le-Grand, London, A.D. 1068', *EHR* 11 (1896), pp. 731-44, 12 (1897), pp. 105-10 (see below pp. 00-00 and 00-00). Id., 'Yorkshire Surveys and Other Eleventh Century Documents in the York Gospels', *EHR* 27 (1912), pp. 1-25 (see below pp. 00-00).

126 Cf. the articles by Boye, Brandi, Hessel, Studtmann, Voltelini quoted in note 122.

127 Bresslau, 'Beziehungen', pp. 44 n 3, 47 n 1.

128 Cf. F. Liebermann's articles and reviews mentioning Stevenson's works (in addition to the review mentioned in note 124): 'Liber custumarum von Northampton', *Archiv für das Studium der neueren Sprachen und Litteraturen* 104 (1900), p. 361. Id., "'Mystery Plays" in a Chapel in the Fourteenth Century', *ibid.*, p. 360. Id., review of Stevenson, ed., *Asser*, in *Deutsche Literaturzeitung* 25 (1904), pp. 480-4. Id., 'Zur Kritik der Urkunden und Klosterreformliteratur der Angelsachsen', *Archiv für das Studium der neueren Sprachen und Litteraturen* 142 (1921), p. 250. Id., 'Zu den ags. Annalen', *ibid.* 145 (1923), p. 254. Id. 'Zu Wihtraeds Gesetz', *ibid.* 146 (1923), p. 242.

129 Ch. Gross, *The Sources and Literature of English History*, (London, 1900), p.207, No. 1421. Gross omitted the reference in his second edition of 1915 (which was reprinted in 1970).

130 Parsons, 'Beiträge' I, p. 17.

reports Austin Lane Poole's intention in 1935 to publish the lectures in the near future.¹³¹ Parsons's dissertation remained largely unprinted, however.¹³²

The distance that continental diplomatists kept towards Stevenson's and the work of other British diplomatists has to be regarded as unfortunate because the few continental scholars who focused their interest upon the Anglo-Saxon charters were thereby forced to work themselves into the material without the guidance that Stevenson's lectures in the main could have provided. Thus, Michael Tangl, as late as in 1916, 'discovered' that the first use of the Christian era was to be found in Anglo-Saxon charters.¹³³ Thus, Richard Droegereit 'discovered' the dependence of the formulary of Æthelstan's so-called Malmesbury charters on the style of St. Aldhelm in 1935.¹³⁴ And thus Parsons 'discovered' the Roman origin of the ecclesiastical sanctions in the Anglo-Saxon charters.¹³⁵ These observations were at the time all but discoveries which indicates the gap between the standard of continental and British scholarship on Anglo-Saxon charters. Furthermore, without taking notice of Stevenson's lectures, Droegereit could be misled to believe that King Æthelstan invented an Anglo-Saxon chancery, using, as Droegereit thought, continental models.¹³⁶ And Droegereit again could be trapped to launch a futile broad attack on all tenth-century charters bearing the title *basileus* and hope to erase in this way what he conceived of as an erroneous conception of imperial titles supposedly fathered upon Anglo-Saxon kings.¹³⁷

¹³¹ Parsons, 'Beiträge' I, p. 17, II, p. 21 n 23.

¹³² Parsons's chapter on the dorsal notes ('Beiträge' I, pp. 114-118) appeared in print in an enlarged version under the heading 'Some Scribal Memoranda for Anglo-Saxon Charters of the 8th and 9th Century', *MIÖG Ergänzungsband* 14 (1939), pp. 13-32. Cf. Droegereit, 'Gab es', pp. 430-3.

¹³³ M. Tangl, 'Studien zur Neuausgabe der Bonifatius-Briefe I', *NA* 40 (1916), pp. 774-775. Cf. Treiter, 'Urkundendatierung', pp. 73-4.

¹³⁴ Droegereit, 'Gab es', pp. 411-12. It is curious that exactly on this point, Stevenson's advice had been asked for by a Doktorand of the University of Berlin apparently in the course of the First World War. Stevenson replied in a letter of which parts appeared in print:

It is quite clear that after the union of the Kingdom under Æthelstan the royal chancery (if we may use the term) was in possession of fixed formulas and methods of drawing up charters. This favours the view that the actual scribes of the charters would be royal clerks. It is certain that some at least of the clerks of the O.E. chancery passed into the service of William the Conqueror, and that the double-faced, dependent seal was used in England for sealing writs before this time, and was adapted by him, the Norman and French seal being, like the imperial one, affixed to the face of the parchment, what the French call a real plaque. The invariable use of West Saxon in the charters, even outside of Wessex, proves that there was a chancery language, and this militates against the theory that the charters were drawn up by the recipients. West Saxon was not only the chancery language but also the literary language, so that the last argument is perhaps not a conclusive one. Already in Æthelstan's time we find charters in the hand of one and the same scribe in different parts of England. In this case the reference seems unavoidable that the writer was a royal clerk.

(H. Kügler, *ie und seine Parallelförmigkeit im Angelsächsischen*, diss. phil. (Berlin, 1916), p.10.)

¹³⁵ Parsons, 'Beiträge' I, pp. 119-27.

¹³⁶ Droegereit, 'Gab es', p. 411.

¹³⁷ R. Droegereit, 'Kaiseridee und Kaisertitel bei den Angelsachsen', *Zeitschrift der Savigny-Stiftung für Rechtsgeschichte*, Germanistische Abteilung 69 (1952), pp. 223-73. Droegereit's argument was directed against E.E. Stengel, 'Kaisertitel und Souveränitätsidee', *DA* 3 (1939), pp. 2-55, reprinted in his *Abhandlungen und Untersuchungen zur Geschichte des Kaisergedankens im Mittelalter* (Köln, Graz, 1965), pp.239-86. Also Droegereit attacked H. Löwe, *Die karolingische Reichsgründung und der Südosten*, *Forschungen zur Kirchen- und Geistesgeschichte* 13 (Stuttgart, 1937), pp. 243ff., and W.

Stevenson's views of the Anglo-Saxon charters as legal instruments, his methods of studying analyzing the *formulae* and, last but not least, the publication history of his lectures may remind us of what we are supposed to do: to regard the *orbis Britannicus* as an integral part of European history.

Levison, *England and the Continent in the Eighth Century* (Oxford, 1946), pp. 121-5. Cf. Kleinschmidt, *Untersuchungen*, pp. 78-85.