

The Anglo-Saxon Chancery

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The Italian scholar Polydore Virgil, writing in the sixteenth century, ascribed the creation of the English royal chancery to William the Conqueror, stating definitely that the king instituted a *collegium* of scribes for writing diplomata.¹ Polydore was the victim of an erroneous view that is not yet extinct – the view that almost everything that we call civilization was introduced into this country by the Normans. Continental diplomatists have somewhat hastily concluded from this absence of a chancellor that there were no formal rules amongst the English for the drawing up of royal instruments,² and even our own Kemble concluded that there were no set formulae peculiar to certain kings that would enable us to distinguish the charter of one period from those of another, in the way it is possible to distinguish a Merovingian from a Carolingian diploma. There were, however fixed formulae used by the Anglo-Saxon kings, and it is possible by a careful study to distinguish the charters of one period from those of another and in some cases even between those of different kings. There were changes, reforms and developments in the method of drawing up these royal instruments, but as these are capable of being reduced to categorical order, it cannot be claimed that these changes argue the lack of a body of trained royal clerks whose duty it was to compose and write out the royal charters, for similar developments occurred in the chanceries of France and Germany.³ It is to this body of royal scribes that the word ‘chancery’ is applied in these lectures, although there is no evidence that they were known by that name. Sir Francis Palgrave, in his brilliant but erratic *English Commonwealth*, maintained that the Anglo-Saxon kings had an official known as a chancellor.⁴ That marvel of learning and perspicacity John Selden⁵ held, more correctly, that the title does not appear until the time of Edward the Confessor,⁶ and it is somewhat doubtful if it really occurs then as the legal designation of this officer. Kemble reached the same conclusion.⁷ As I believe this to be [the] correct view, I must plead guilty to giving these lectures a misnomer, justifying myself by the convenience of the term ‘chancery’, and claiming that if that institution did not exist in name in England before the Norman Conquest, it did in fact.

¹ *Anglicae historiae libri XXVI* (Basilae, 1534), p. 151: ‘Instituit item scribarum collegium, qui diplomata scriberent, et eius collegii magistrum vocavit cancellarium, qui paulatim supremus effectus magistratus, qualis hodie habetur.’

² Brunner, *Urkunde*, pp. 161-2. A. Giry, *Manuel de diplomatique* (Paris, 1894), pp. 794-7.

³ Clearly the writing was not left to the monks of the abbey, as was the case with feudal princes on the Continent. Cf. O. Posse, *Die Lehre von den Privaturkunden* (Leipzig, 1887), pp. 166 seq. H. Pirenne, ‘La chancellerie et les notaires des comtes de Flandre avant le XIII siècle’, *Mélanges Julien Havet* (Paris, 1895), pp. 733-48 (repr. Genève, 1972).

⁴ F. Palgrave, *The Rise and Progress of the English Commonwealth I* (London, 1832), p. 178.

⁵ ‘Einer der gründlichsten Forscher in der Rechtsgeschichte des Mittelalters.’ F.C.v. Savigny, *Geschichte de römischen Rechts im Mittelalter*, 2nd ed., II (Heidelberg, 1834), p. 167.

⁶ ‘A Brief Discourse Touching the Office of Lord High Chancellour of England’, in his *Opera omnia tam edita quam inedita III*, 2, ed. D. Wilkins (London, 1726), pp. 1465-70.

⁷ J.M. Kemble, ed., *Codex diplomaticus aevi Saxonici*, I (London, 1839), p. xci. 132.

We do not know what official name the clerks charged with the preparation of the royal deeds bore, or indeed if they had an official name. On the continent the head of these royal clerks acquired in course of time the Roman name of *cancellarius*,⁸ and by the time of the Norman Conquest he had entered upon that course of development which converted him from the principal scribe and the head of the king's chaplains into the most important executive officer under the king. The title was in use in England possibly in the time of Edward the Confessor, but certainly in that of William the Conqueror. By the time of Henry I, the chancellor already deputed so important a duty as that of the custody of the great seal.⁹ But it does not fall within the scope these lectures to trace the later development of the chancellor. The significant thing for us is the absence of any mention of him or his representative in the Old English royal charters. We could not in any case expect this official to bear the title of *chancellor*, for the Carolingian clerical *cancellarius* displaced the lay *referendarius* of the Merovingian kings,¹⁰ and it is under this Roman title that the English official would most likely appear. The charters are, however, silent as to his name or existence.

Professor Brunner, in his admirable essay on the Old English records, has truly said that the most striking peculiarity of the Anglo-Saxon charter is that it entirely ignores the writer.¹¹ As distinguished from the late Roman record, the Old English contains no authentication by its writer. The question of authenticity could be settled by examination of the witnesses, not by the testimony of the writer. From the diplomatic point of view this peculiarity places the Old English records at a disadvantage when compared with the Frankish royal instruments. The former necessarily appear informal, and the Englishman engaged upon the wearisome labour of attempting to distinguish genuine from forged instruments, cannot but envy the continental scholar, who can tell us almost to a day the period during which particular chancellors and scribes wrote or subscribed charters and can even identify the handwriting of the scribes.

The Introduction of Charters into England

This peculiar silence of the Old English royal instruments as to the writers has not been explained. It is, I venture to suggest, a result of the nature of the Germanic conquest of Britain. The use of written documents for the conveyance of land, the granting of immunities, or for the communication of the sovereign's will was, it need hardly be said, unknown to the Germanic tribes.¹² The Germanic chief establishing a kingdom in Italy or Gaul *found* himself surrounded by the highly technical administrative system of the Roman empire, and as the invaders were comparatively few in number, they made little change in the administration.¹³ The Germanic kings

⁸ Bresslau, *Handbuch* I, p. 279.

⁹ Cf. F.M. Pollock and F.W. Maitland, *The History of English Law*, 2nd ed., I (Cambridge, 1898), pp. 193-4, and II, p. 223.

¹⁰ Giry, *Manuel*, p. 716. Th. v. Sickel, 'Beiträge zur Diplomatik I. Die Urkunden Ludwigs des Deutschen bis zum Jahre 859', *Sitzungsberichte der Kaiserlichen Akademie der Wissenschaften in Wien*, phil.-hist. Kl. (1861), pp. 329-402, esp. p. 336. G. Waitz, *Deutsche Verfassungsgeschichte*, 3rd edn, II, 2 (Kiel, 1882), pp. 79-82. Bresslau, *Handbuch* I, pp. 279-280.

¹¹ Brunner, *Urkunde*, p. 161. After the establishment of the custom of sealing, the count of Flanders omitted the name of the writer of the charter, which had previously been mentioned: Pirenne, 'chancellerie', p. 735. Writer not mentioned in Bavaria: Bresslau, *Handbuch* I, p. 499.

¹² Bresslau, *Handbuch* I, p. 476. Brunner, *Urkunde*, p. 3. Id., *Rechtsgeschichte* I, p.392.

¹³ Cf. Bresslau, *Handbuch* I, p. 131.

willingly aped the state and formality of the Roman emperor,¹⁴ and accordingly surrounded themselves with ministers and officials bearing the same names and executing the same functions as those of the imperial court. The establishment of a chancery on the Roman-Byzantine model was a necessary outcome of this. Already in the time of Theodoric we find the Ostrogothic 'King of Italy' provided with the Roman chancery officials known as *referendarii*, *cancellarii* and *tabelliones*.¹⁵ These officials naturally reproduce the usages of the imperial chancery, and hence they draw up the instruments of their sovereign on the lines of those of the emperor. We unfortunately know little of the latter, but, as we might expect from the highly technical nature of the Roman legal and administrative systems, the imperial instruments were carefully authenticated. One means of doing so was by the attestation or recognition of the officer whom we should call at a later time the chancellor.¹⁶ The Roman completion clause was long represented in the royal instruments of Italy, France and Germany. (The latter, diplomatically speaking, marches with France, for its diplomas are derived from the Frankish monarchs.) In Italy and Gaul the Germanic invasions did not seriously affect the continuity of the legal and religious usages of the conquered countries, and the Gothic, Lombardic and Frankish kings were from the first familiarised with the use of written documents for legal purposes.

The situation was far different in Britain. There a century and a half of paganism separated the conquest from the conversion of the first English king. During the awful period of slow conquest and unceasing warfare all traces of Roman administration must have disappeared. It was not until after the introduction of Christianity that the necessity for written documents arose, and even then the demand was very slight. Professor Maitland has, with his usual brilliant insight, pointed out that the Old English royal diploma is almost exclusively ecclesiastical in its origin and use.¹⁷ In every early instance it relates, either directly or indirectly, to the dedication of land to the service of God.¹⁸ The effect was, apart from the grants of various exemptions, to put the land in question outside the operation of ordinary descent of land by the common law.¹⁹ It thus became *book-land* or land that did not descend like *folkland* automatically by customary Germanic law to members of a man's family or *gens*. Even the few tenth and eleventh century diplomas that are not made in favour of monasteries have obviously for their object the conferring upon the donee of the power of alienating the land by will or otherwise at his pleasure, and of exempting the land from the rigid laws of descent.²⁰ It was no doubt with view of cutting off the claim of the *gens* that land was so conveyed by the king to a noble or other layman, and even in the well-known case of the king 'booking' land to himself.²¹ The few late grants of lands forfeited for treason or other crimes were probably dictated by the same intention. In theory the *folkland* seems to have been inalienable outside the

¹⁴ Maffei has pointed out that the barbarian settlements in Italy did not change of influence in any way the drawing up of legal instruments: S. Maffei, *Istoria diplomatica* (Mantua, 1727), p. 51.

¹⁵ For Odowacer, see Bresslau, *Handbuch* I p. 156. For the *notarii*, cf. id., *Handbuch* I, p. 153.

¹⁶ Legi: Cf. Bresslau, *Handbuch* I, p. 153, cf. op. cit., p. 511.

¹⁷ F.W. Maitland, *Domesday Book and Beyond* (Cambridge, 1897), p. 243. H.C. Lodge, 'The Anglo-Saxon Land-Law', *Essays in Anglo-Saxon Law* (Boston, London, 1876), p. 101.

¹⁸ Maitland, *Domesday Book*, p. 242.

¹⁹ Lodge, 'Land-Law', pp. 77, 102.

²⁰ Lodge, 'Land-Law', p. 74 n 2. Cf. Maitland, *Domesday Book*, p. 244. E. Loening, *Geschichte des deutschen Kirchenrechts* II (Strassburg, 1878), p. 663.

²¹ Maitland, *Domesday Book*, pp. 246, 247 n 1.

gens,²² but in practice land could be acquired by a man otherwise than by inheritance.²³ Conveyances of land between laymen seems clearly to have taken place without the mediation of written deeds, and the need for written conveyances was not universally recognised until long after the Norman Conquest.²⁴ The conveyance of land by the witness of the Hundred or Shire Court, of which we hear before the Norman Conquest and of which traces are preserved in the Domesday survey,²⁵ no doubt represents an early English and Germanic system. Thus then, when Christianity introduced the need for written documents, there could have been no one in the king's court to compose them, and there were no notaries in private practice to whom the task could have been allotted. [1] The duty therefore naturally devolved upon the Italian missionaries. Our oldest existing charters are written in uncials of an Italian character, and are dated 679 and 692-3 [2], that is within eighty-three and ninety-six years respectively of the arrival of St. Augustine. There are texts pretending to go back to the time of that saint, but they are forgeries, and there are a few genuine charters slightly earlier than 679 preserved in later copies. Whether charters were drawn up by St. Augustine or his followers is doubtful. Certainly none of the texts that purport to date from his period can be accepted as genuine. Brunner has urged the possibility of the Old English charter being derived from remains of the Roman common law in Britain, although he holds that it was more probably derived from the Church, by whom it was borrowed from the Italian or Franco-Roman law-system²⁶. The former alternative is unlikely as we have no trace of the survival of Roman law in Britain. The O.E. charter is clearly of Italian origin, and it was introduced if not by St. Augustine himself, certainly by some of his immediate successors. A significant indication of this Italian religious origin is the fact that our second oldest original, the charter of Hodilred of Essex, in 692 or 693, [3] has a proem practically agreeing with that of a private deed of St. Gregory dated in 587 before he became Pope, and that the same proem is also used in what I believe to be the oldest royal charter, a charter preserved only in a very late copy - the foundation of Frithuwald, King of Surrey, of Chertsey abbey before 675, [4] usually and erroneously considered spurious. In Italy this proem also occurs in a deed formerly ascribed to St. Gregory, but which De Rossi had proved to belong to Gregory II (715-731).²⁷

Let us try to realize the position of the Italian missionary who found himself called upon to draw up a deed of gift to a newly founded monastery by an English king. [5] He could not regard the king, who did not lay claim to Roman pomp and who had not surrounded himself with a body of officials in imitation of the imperial household, as representing the emperor and as expected to echo the language and formulae of the imperial chancery. The officers required for the authentication of an imperial or royal diploma were non-existent, and the king, having nothing to do with written documents, had never felt the necessity of possessing a signet ring or seal.²⁸ The Italian therefore

²² Lodge, 'Land-Law', p. 73.

²³ . Young, 'The Anglo-Saxon Family Law', *Essays in Anglo-Saxon Law* (Boston, London, 1876), p. 181. Maitland, *Domesday Book*, p. 315.

²⁴ Pollock & Maitland, *History II*, pp. 82-82.

²⁵ Maitland, *Domesday Book*, p. 244. Later: Pollock & Maitland, *History II*, pp. 89-90. Loening, *Geschichte II*, p. 662 n 1.

²⁶ Maitland, *Domesday Book*, p. 250 n 2 (with commentary on Brunner, *Urkunde*, p. 187).

²⁷ P. Jaffé, W. Wattenbach, *Regesta Pontificum Romanorum I* (Lipsiae, 1885), No. 2184. G.B. de Rossi, 'Un insigne epigrafe di donazione di fondi fatta alla chiesa S. Susanna dal Papa Sergio I', *Bollettino di archeologia cristiana*, Ser. II, vol. 1 (1870), pp. 105-6.

²⁸ Maitland, *Domesday Book*, p. 230.

turned for a model to the private deed of his own country, with which he was, no doubt, much more familiar than with the imperial or royal instruments. Professor Maitland has described the O.E. royal diploma as a layman's copy of an Italian private deed.²⁹ As represented by the earlier texts it is a by no means unskilful reproduction. There were, of course, some necessary modifications introduced. The late Roman private deed did not contain a proem, and our oldest original charter is also devoid of one, [6] and charters are occasionally constructed without them until the ninth century. But side by side with this proem-less charter there existed in England the charter provided with a proem, and the latter class predominated. We have seen that Gregory the Great used a proem in a grant of his for religious purposes, and the Italian notaries in the seventh century and possibly earlier began to use a proem in deeds made especially for pious uses.³⁰ It was, no doubt, the ecclesiastical nature of the Old English diploma that called for the use of a proem. The proem was imitated either from imperial instruments or from papal or episcopal letters or records, which probably copied the use from the imperial chancery.³¹ Another innovation was the introduction of a sanction containing threats of divine punishment for infraction,³² in place of the sanction of the Italian private deed, which bound the descendants of the donor to maintain the deed under a pecuniary penalty. Some of our very early charters contain unmistakable traces of this latter sanction in the form of injunctions from the king to his heirs to observe his gift, with threats of punishment in a future world for breach instead of a pecuniary fine. This religious sanction is another peculiarity of the Old English royal diplomas, for the early Italian and Frankish diplomas impose a fine upon those contravening them. This, again, arose from the imitation of the usages of the imperial chancery. It is another proof that the English kings were considered, or considered themselves, outside the pale of the Roman legal system that it was deemed necessary to substitute a religious sanction for a legal one in their diplomas. This religious sanction was imitated from what we may call the ecclesiastical record, i.e. such writings as papal bulls, records of the proceedings of councils, and the like. It was probably the council proceedings that the draughtsmen had in mind, for the O.E. diploma has many points in common with them, including even the silence as [to] the writer. Indeed, we might conveniently describe the O.E. diploma as the late Roman private deed modified by the influence of the conciliar record. It was the influence of the latter also that caused the progressive increase in the number of the witnesses, who in the earliest charters barely exceed the legal number of witnesses of the Roman private deed, and who witness merely. They in fact represent the *rogatio testium* of Roman law.³³ Under the influence of the conciliar record they not only increase in number, but they begin to signify their consent and approbation of the grant,³⁴ and seem to become participators in its bestowal. This change in nature may have been induced in the case of the ecclesiastical witnesses by the feeling that they were responsible for the sanction,³⁵ for what was merely the expression of a pious wish in the mouth of the king became in their mouths a solemn anathema backed up by all the dread powers of the Church.

²⁹ *Ibid.*, pp. 230-1.

³⁰ G. Marini, *I papiri diplomatici* (Roma, 1805), p. 310a n 16.

³¹ Sickel, 'Beiträge', pp. 335-7.

³² Maitland, *Domesday Book*, p. 230.

³³ *Ibid.*, p. 249.

³⁴ *Ibid.*, p. 250, n. 4.

³⁵ *Ibid.*, p. 246.

The Earliest Anglo-Saxon Charters

Brunner has well remarked that the older the Germanic record is, the more distinctly does it bear the stamp of the late-Roman record.³⁶ This remark holds true of our Old English diplomas, for in the seventh century and in a less degree the eighth century they show strong traces of the Roman private deed in the shape of various *formulae*. In the later documents these *formulae* are not used, and we may therefore claim that their presence in a copy of [a] charter of which the original is not preserved is very strong evidence in favour of its authenticity. Few texts have been more generally condemned than the Chertsey charter of Frithuwald mentioned above, [7] partly on account of its early date, but more especially because in the chartulary in which it is preserved it is followed by boundaries that are late enough in date to contain a reference by name to a Norman knight. A glance at the text will shew that these boundaries do not form part of the charter, but were merely entered after in the chartulary.³⁷ An examination of the text of the charter shews, I think, clearly that it is genuine. It is therefore the oldest of our royal charters. On the other hand, the absence of these distinctively Roman *formulae* in an early deed renders its authenticity very doubtful.

Their derivation from the late Roman private deed

Our knowledge of the late Roman private deed is based upon the priceless papyri issuing principally from Ravenna. The earliest of these is dated 443 or 444,³⁸ but there are several fifth- and sixth-century examples. That they represent the late Roman and not a specifically Ravennese instrument is proved by the occurrence of the same form amongst Italian deeds of much later date, such for instance as the Neapolitan deeds, wherein we find the same model in use in the ninth and tenth centuries. Portions of the *formulae* occur also in the Frankish formularies for private deeds. These Ravenna deeds are written on papyrus, this material being then the traditional one for public instruments.³⁹ All Italian documents of this nature of the fifth, sixth and seventh centuries are on this fragile material,⁴⁰ the *charta* of the Digest of Justinian. The imperial rescripts were, if we may judge from the two fragments in existence, written upon papyrus, and the papal chancery continued to use it until the tenth century. The Ostrogothic and Lombard kings, imitating the imperial chancery,⁴¹ used papyrus for their diplomas, and the Merovingian kings used it until the end of the seventh century.⁴² Curiously enough we have no trace or record of the use of papyrus by the English kings.⁴³ It is tempting to explain the want of any genuine diplomas for the first three quarters of a century after the landing of St. Augustine by the theory that he or his companions and successors used this fragile and perishable material. But the slow progress of Christianity and the fact that the earliest original charter, that of 679, [8] is on parchment, renders the theory very hazardous. That documents of the period

³⁶ Brunner, *Urkunde*, p. 3.

³⁷ Maitland, *Domesday Book*, p. 492.

³⁸ Maffei, *Istoria*, p. 52. J. Mabillon, *De re diplomatica libri VI* (Paris, 1681), p.34.

³⁹ Roman official papers were on papyrus long after parchment introduction. Cf. J. Marquardt, *Das Privatleben der Römer*. Bearb. v. A. Mau, *Handbuch der römischen Altertümer*, 2nd ed., VII, 2 (Leipzig, 1886), p. 821 n. 6

⁴⁰ Maffei, *Istoria*, p. 54. Bresslau, *Handbuch I*, pp. 881-882. Papyrus supercedes way tablets by the fifth century (Bresslau, *Handbuch I*, p. 512).

⁴¹ Bresslau, *Handbuch I*, p. 882.

⁴² *Ibid.*, p. 882.

⁴³ Wanley, 'Praefatio ad catalogum', G. Hickes, *Thesaurus*.

of the conversion, documents in all probability written on papyrus, have disappeared from Canterbury we know from the evidence of Beda, who gives us copies of bulls from Pope Gregory and other that are derived plainly, as he states, from the originals at Canterbury,⁴⁴ and not, as has been sometimes thought, from the papal registers at Rome. It is possible that these disappeared in the fire at Canterbury Cathedral in Lanfranc's time, for Eadmer records that the ancient privileges of the see were then destroyed and that no copies of them were preserved in registers.⁴⁵ Recent discoveries in Egypt have tended to give us a much exaggerated view of the durability of papyrus, but in Europe its durability was much less than in antiseptic air of Egypt. Maffei has collected passages from the classics to show how short was the life of papyrus.⁴⁶ A two hundred year old papyrus was a remarkable thing in Pliny's eyes.⁴⁷ The use of parchment for legal documents has not been found earlier than the second half of the seventh century.⁴⁸ In France the oldest existing document on parchment is dated 670, and the oldest royal act is a precept of 677,⁴⁹ and in Germany the oldest deed on this material is dated 731, whilst the oldest Italian example is a notarial instrument of 716.⁵⁰ Our earliest English example of parchment is, as we have seen of the year 679. The latest Merovingian royal document on papyrus is dated 692.⁵¹ It is evident that in western Europe parchment superseded papyrus for diplomas in the second half of the seventh century. Papyrus is not met with in chancery use north of the Alps in the eighth century.⁵² Its suppression in the seventh century has been conjecturally explained as a consequence of the Arab conquest of Egypt in 634.

The affixing of a seal to instruments written on papyrus would be a difficult task,⁵³ and we might in this way explain another peculiarity of the Old English royal instruments, the absence of authentication by means of seals, especially as the late Roman private deed was not authenticated by a seal.⁵⁴ But the emperors presumably affixed their seals to their numerous instruments written on papyrus, and the Merovingian kings certainly sealed diplomas written on this material. The non-use of a signet or seal in the Old English diplomas is an outcome of their derivation from the late Roman private deed. It is probably also another proof that the English kings were considered by their Italian mentors as having no claim to invest themselves with the imperial insignia so freely adopted by the Germanic kings of Italy and Gaul. Amongst these insignia the signet ring or seal was included. The use of seals gradually descended from the king to his great lords. An important step in the encroachment of the mayor of the palace upon the powers of the Merovingian king is marked by the mayor adopting a seal for the authentication of documents. The use of seals by knights

⁴⁴ P. Ewald, 'Studien zur Ausgabe des Registers Gregors I', *Neues Archiv der Gesellschaft für ältere deutsche Geschichtskunde* 3 (1878), pp. 542-50.

⁴⁵ Eadmer, *Historia novorum in Anglia*, ed. M. Rule, RS 81 (London, 1884), pp. 15, 296.

⁴⁶ Maffei, *Istoria*, p. 53.

⁴⁷ *Historia naturalis* XIII/12. See further T. Birt, *Das antike Buchwesen* (Berlin, 1882), p. 364. Birt, *op. cit.*, pp. 504, 507, quotes from Galen.

⁴⁸ It was in use until 700: Bresslau, *Handbuch* I, p. 881.

⁴⁹ Bresslau, *Handbuch* I, p. 890.

⁵⁰ Giry, *Manuel*, p. 495.

⁵¹ Bresslau, *Handbuch* I, p. 883

⁵² Bresslau, *Handbuch* II, 3rd ed (1960), pp. 486-93.

⁵³ See Bresslau, *Handbuch* I, pp. 512, 516. Sealing of wills on papyrus: cf. Marquardt, *Privatleben*, p. 805 with notes 7, 8.

⁵⁴ Bresslau, *Handbuch* I, p. 513.

in the twelfth century was considered an impertinence by Richard de Lucy,⁵⁵ the great justiciar. He, no doubt, represents an ancient tradition when he contemptuously bursts out with the remark that 'of old it was not the custom for every petty knight to have a seal, which is only befitting to kings and important men'.

Thus, then, it would seem that the features that distinguished the Old English royal charters from the similar instruments of the Lombard and Frankish kings - that is the imitation of the Roman private deed, the absence of authentication or recognition by the chancellor, and the non-use of a seal - may all be ascribed to the fact that the early English king was looked upon as being outside the Roman world, and as not therefore to be invested with the outward signs of the imperial state. Perhaps we ought to mention another feature in this connexion - that is the authentication of the English diploma by numerous witnesses.⁵⁶ This is in itself a usage copied from the Roman private deed, but it is significant in another way. The imperial instrument needed no such extraneous authentication as the testimony of witnesses, since it was a document that could not be challenged or gainsaid. [10] Accordingly we find the diplomas of the Germanic Kings of Italy and France issued without the mention of witnesses, other than that implied by the recognition of the chancellor or his deputy. The foreign diplomas never wholly lose the character of a precept, whereas the Old English diploma is of the nature of a public instrument recording in solemn manner certain grants. It is neither a letter nor a precept.

Protocol

This is a character it has acquired from the late Roman private record, for the latter is in form a certificate drawn up in the first person by the donor and dictated by him to a public notary, making known that he has made such and such a grant or sale. It begins, in accordance with the provisions of one of Justinian's *Novellae*, which makes legally obligatory what had previously been permissive only, with a note of the consular and imperial years. Our earliest diplomas imitate this custom, substituting the regnal year of the English king. They also prefix a verbal invocation. This use invocations as the commencement of deeds, etc. was recommended by St. Chrysostom at the end of the fourth century, and an imperial edict of 395 prescribes their use.⁵⁷ In England the invocation is always a verbal one, but it could also be represented by a monogram of the Greek initials of the name of Christ. This monogram, the so-called *labarum* or *chrismon*, was the only invocation used in the Lombardic royal instruments and in the Frankish diplomas until the time of Charles the Great, who used the monogrammatic and verbal invocations jointly. We meet with instances of the use of both in the later English charters, but the early ones use a simple invocation of the name of Jesus, sometimes preceded by a cross. It is somewhat curious that the invocation should be so simple in the early English charters, for lengthy invocations of the Trinity and of the Virgin Mary occur in the early seventh century Graeco-Egyptian deeds amongst the Fayoum papyri. But Justinian begins a *novella* with an invocation as simple as that of the earliest of our charters: '+ In the name of Our Lord Jesus Christ, our God'. The

⁵⁵ *Placita Anglo-Normannica*, ed. M.M. Bigelow (London, 1879), p. 177. Cf. Pollock and Maitland, *History* II, p. 221.

⁵⁶ Maitland, *Domesday Book*, p. 250.

⁵⁷ Sickel, 'Beiträge', p. 335.

Chertsey charter commences with an invocation 'In nomine domini salvatoris Jesu Christi',⁵⁸ and it recurs in the Kentish charter of Oswine, A.D. 675, [11] and of Swæbheard, A.D. 676, [12] and of Nothhelm of Sussex 692. [13] These are from copies, but they are supported by the occurrence of the same formula in the charter of Hlothhari of Kent, A.D. 679, [14] and in that of Hodilred of Essex, A.D. 692, [15] of which we possess the originals, and in the record of the Council of Hatfield, A.D. 680, the text of which is preserved in Beda's *Historia Ecclesiastica*. [16] It also occurs with an additional clause 'regnante in perpetuum ac gubernante suam ecclesiam eodem domino nostro Jesu Christo' in the record of the Council of Hertford, A.D. 673, also preserved by Beda. [17] This additional clause is the nucleus of the later invocations, which omit the 'in nomine' and commence with the word 'regnante' or some equivalent, the whole forming an ablative absolute clause. The simple invocation 'In nomine domini nostri salvatoris Jesu Christi' would seem to be the original form introduced from Italy, for it is found in the very early eighth century Lombardic charters preserved in the interesting register of the great Sabine monastery of Farfa, and it was the normal form of the invocation in the precepts of the Lombardic dukes of Benevento, and became after 759 the usual form in the precepts of the Lombardic duke of Spoleto.⁵⁹ These Farfa charters, which commence in 718, are much nearer in form to the Old English diplomas than the late Roman record. Indeed, the agreement is so close that we can hardly resist drawing the conclusion that they represent a modification of the late Roman record of considerably earlier date, a modification that must have been in use in or near Rome in the later part of the sixth or the beginning of the seventh [century]. Farfa itself is no great distance from Rome, and it was for some time part of the Lombardic duchy of Spoleto. As the term Lombardic covered so large an era of seventh-century Italy, it will be convenient to speak of these charters as the Farfa forms instead of the Lombardic. The late Roman private deed appears side by side in the Farfa register with the Farfa form, and it was, in the opinion of Professor Brunner, an innovation of the fifth century on the much briefer and very different Roman private deed. If we have thus grounds for believing in a deliberate reformation of the private record in the highly organized legal system of Italy in the fifth century, we can hardly deny the possibility of the emergence of a new form, represented by the Farfa charter and the Old English diploma, in the sixth century, more especially as St. Gregory's grant of 587, already mentioned, has many features agreeing with the Farfa form, although it is drawn up in epistolary form and has the *rogatio testium* of the late Roman record.

Proem and dispositive section

We may now continue the comparison of the late Roman private deed and the Farfa charters with our earliest diplomas. The Farfa charter, after the invocation and the dating clause, inserts a proem, expounding the necessity of providing for one's soul in the future world by gifts to God in this, or the need for recording transactions in writing for the avoidance of disputes in the future. These are two of the most favourite themes of the proems of our earliest diplomas. The Farfa charter introduces with the words 'et ideo' the operative clause of the late Roman deed, which commences 'constat eum donasse, vedidisse' or the like. The Farfa charter converts this into the first person, and refers to the donee in the second person. Most of our earliest charters

⁵⁸ In use in Greek chancellaries until the middle of the eighth century.

⁵⁹ A. Chroust, *Untersuchungen über die langobardischen Königs- und Herzogsurkunden* (Graz, 1888), p. 137.

are made to a recipient who is addressed in the second person, and the use of the second person in this clause is evidence of high antiquity in an English charter. This use of the second person in the private deed of Wighard to the abbess Beorngyth of 672 preserved in the Bath chartulary in the library of Corpus Christi is one of several proofs in favour of the authenticity of this charter, which may claim to be the oldest English private deed in existence. [18] As private deeds do not come within the province of these lectures, I must justify this reference by the remark that the derivation of the Old English royal diploma from the Italian private deed is supported by the fact that English private deeds in early times make use of the same formulae as the royal instruments. The use of the second person goes out of use in the royal diplomas in the early part of the eighth century, the recipient being after that period mentioned invariably in the third person. Hence we may conclude that all secondary texts of charters in which the second person occurs are derived from genuine originals. (Here it is necessary to give expression to the warning that although we may satisfy ourselves by all the resources of diplomatic that the formulae of a late copy of a charter agree with the estimable date of the charter, we cannot guarantee in every case that the body of the charter has not been tampered with. Although the study of diplomatic may lead us to suspect clauses granting immunities as interpolations in a genuine text, it will afford us no guidance in detecting tampering with the names of the estates, their contents, etc. Sometimes an interpolation has the appearance of a gloss or marginal note that has crept in the body of the text in the chartulary. For instance Frithuwald's Chertsey charter, [18] in which the donee is mentioned in the second person, contains a clause 'sunt tamen diversa nomina de ipsa eadem terra supradicta, scilicet Cirotesege, Torpe' and six other local names. This clause breaks the construction, and is probably interpolated.) The second person is used in the original charters of Hlothhere in 679 [19] and of Hodilred in 692-3, [20] and in the charters of Nothhelm of Sussex, A.D. 692, [21] and Wihtried of Kent, A.D. 694, [22] and in a private deed of Æthelmod to the abbess Beorngyth, A.D. 681, [23] all of which are preserved in chartularies only. It also occurs in a charter of Ceadwealla of Wessex A.D. 688, [24] which seems to be genuine despite its presence in the suspicious Winchester chartulary and its date by the era of the Incarnation. But although the use of the second person is strong evidence in favour of the authenticity of an early charter, its absence cannot be argued as an objection to other early charters, for the third person seems to have been also used from the earliest time. This need not surprise us, for we have seen that it was used in the late Roman private deed. Another distinctive feature of the earliest English diplomas is the conveyance of the gift 'tibi et per te monasterio tuo'. With this clause may be compared such phrases in the Farfa charter as 'tibi ... abbati vel ad manachos tuos servientes in monasterio'.⁶⁰

Another ancient clause in the early charters is the declaration that the king has made the particular gift 'sana mente integroque concilio'. It occurs, for example, in the charters of Frithuwald [25] and Hodilred. [26] This sentence is derived from the Roman will. It is found in the form 'sanus, salbus (= salvus), sanaquoque mente integroque consilio' in Roman wills of A.D. 385 and 474.⁶¹ It occurs in the formulae for wills in Marculf's Frankish formulary, a work of the seventh century. In the Farfa charters, however, it occurs in deeds of exchange. The presence of this clause in a text of an early English charter is an argument in favour of authenticity. But it is not, when

⁶⁰ Papal formula. See *Liber diurnus*, ed. T. Sickel (Vindobonae, 1889), p. 61, No. LXV.

⁶¹ C.G. Bruns, *Fontes iuris romani antiqui*, 5th edn (Freiburg, 1887), pp. 300, 303.

unsupported by other early *formulae*, to be taken as conclusive proof that the text in which it occurs is genuine. For example, it occurs in the forged charter of Æthelberht of Kent, A.D. 605, [27] a forgery so clumsy that it was condemned by the ecclesiastical authorities at London in 1181.⁶²

The *verba dispositiva* or 'operative words' in a few of our earliest charters are derived from the late Latin private deed. They are also found in the Farfa charters and generally in the Lombardic private deeds. In Frithuwald's charter the words are 'a praesente die dono, concedo, transfero, et de meo iure in tuum transcribo'. [28] In Hodilred's charter they are 'perpetualiter trado et de meo iure in tuo transscribo'. [29] Wihtrud of Kent, in 694, uses the words 'a praesenti die et tempore tibi ... terram contulimus inperpetuum possidendam' [30] and in 696 'a praesenti die et tempore a nostra iurisdictione transferentes inperpetuum tradimus possidendam'. [31] The charter of St. Gregory of A.D. 587 contains the clause 'dono, cedo, trado et mancipo, et ex meo iure in vestro iure dominioque transcribo'. A sixth-century fragment of papyrus begins with the words 'et in iur ... omni ... in potestatem perpetem transcribo, cedo, trado et mancipo'. [32] Another fragment of the middle of the ninth century contains the words 'a praesenti die refundere et refundo, seu transferre atque transfero, et ad (= a) meo iure meoque dominium ... alieno seu transcribo in iura et dominium vestrum'. [33] The Lombardic formula was 'a presenti die dono, cedo, trado et mancipo iure directo transscribo'.⁶³ A Frankish example of the year 804 is 'transfundo atque transfirmito ... et dono ... de iure meo in iure et dominatione ipsius monasterio ... trado perpetualiter a die presente ad possidendum'.⁶⁴

We may here consider another clause of Roman origin in the early Old English charter that defines the dominium thus transferred. In the charters it usually follows after the description of the land conveyed. In Frithuwald's charter we read 'omnia teneatis et possideatis, et quodcunque volueritis de eisdem terris facere tam tu quam posteris tui liberam licenciam habeatis'. [33] In the original charter of Hodilred the clause appears as 'ut tam tu quam posteris tui teneatis, possideatis, et quaecumque volueris de eadem facere terra liberam habeatis potestatem'. [34] Other instances may be found in the charter of Eadric of Kent, A.D. 686, [35] of Wihtrud of Kent in 694, [36] and, slightly varied, in a charter of Oswini of Kent in 675. [37] It also occurs in a charter of Cenwulf of Mercia and his wife in 799, preserved in a copy of *circ.* 1000, which is remarkable for the number of early formulas contained in it. [38] Probably the explanation of this retention or re-appearance of these Roman *formulae* is that the charter relates to Kent, and it is the Kentish charters that contain the strongest evidence of Roman origin. This charter contrasts so strongly with the Mercian charters that we must assume imitation of Kentish usages or that the wording of the charter is founded upon some lost seventh-century Kentish instrument. The clause now under consideration became converted into a clause giving liberty to bequeath the land or a provision that it should revert after the donee's life to a specified monastery. The original clause occurs as early as 489⁶⁵ in the Italian papyri. In a fragment that has been assigned to no less a person than Odoacer we have the words 'quos utendi, possidendi, alienandi, vel ad posteros remittendi livero (= libero) potiaris

⁶² Gervase of Canterbury, *Chronica*, RS 73, 1 (London, 18??), pp. 296-7.

⁶³ Brunner, *Urkunde*, pp. 21-2.

⁶⁴ Brunner, *Urkunde*, pp. 124-5.

⁶⁵ Bresslau, *Handbuch* I, p. 156.

arvitrio (= arbitrio).⁶⁶ This suggests comparison with a charter of Wihtried of Kent in 696 'quicquid exinde facere volueritis, vestri erit arbitrii'. [39] In a sixth-century papyrus we find a form of the clause even nearer to the English use: 'quicquid ex eadem portione iuris mei facere maluerint ... liberam et perpetem in omnibus habeant potestatem'. In the famous Naples papyrus of 551, so remarkable for its attestations in Gothic, the *formula* occurs as 'possideas, habiturus licentiam possidendi, nec non ad tuos posteros transferendi, vel quibus cumque tu contractibus alienare malueris', etc. In Marculf's formulary the clause occurs as 'ut a praesenti die ... habeat, teneat atque possideat, et suis posteris ad possidendam relinquat, vel quicquid exinde facere voluerit ... liberam habeat potestatem'.⁶⁷ The student of our late medieval records may be astonished to meet with a representative at so early a date of the familiar *habendum et tenendum* clause of English conveyances, but the germ of it can be traced back to the late Roman private deed. It is interesting to note its representative in our early private conveyance, the grant by Wighard in 672, [40] where it occurs as 'ut habeas, teneas, iure dominio tam tuo quam monasterii tui vindices ac defendas'. I have quoted the whole of this phrase because it also represents one [of] the formulae of the late Roman private deed. The instances are few. In the private deed of Æthelmod, A.D. 681, the form is 'ut habeatis iure dominioque vestro, quam monasterio vestro vindicetis'. [41] In Oswini of Kent, A.D. 689, it is 'ut praefatam terram ... sibi vindicent ac defendant cum omnibus suis pertinentiis'. [42] It is cut down in Wihtried's charter of 694 to 'successoresque tui defendant inperpetuum', [43] a form that occurs also in Cenwulf's charter of 799 already referred to. [44] In the original charter of Hlothhere of Kent, A.D. 679, it appears as 'teneas, possideas tu posterique tui imperpetuum defendant'. [45] The Italian origin of the clause is proved by its occurrence in St. Gregory's grant of 587 in the clause 'monasterium habeat, teneat, possideat, iure dominioque suo in perpetuum vindicet et defendat'. In a sixth-century Ravenna deed it appears as 'habeant, teneant, possideant, iuri dominioque more quo voluerit imperpetuo vindicent atque defendant'. Here as in St. Gregory's deed the clause occurs after the mention of the retention of the usufruct by the donor, and it seems to have some reference to the reversion after the lapse of the usufruct. In a papyrus of 591 the vendor says 'hac suo iuri dominiumque more quo voluerit in perpetuo vindicare recte liceat eidem comparatori'.⁶⁸ Other instances occur in the papyri with slight variations.⁶⁹

In the earliest O.E. diplomas this defining clause is followed by another clause that derives its origin from the late Latin private deed. This occurs in Frithuwald's charter in the following form 'Nunquam me ullo tempore here deque meo contra hanc donationis meae cartulam esse venturis'. [46] This clause, with a slightly different arrangement, appears in the charter of Eadric, King of Kent, A.D. 686, [47] and in the charter of Ceadwealla of Wessex, A.D. 688, [48] where it is converted into the nominative and provided with a verb in the indicative. In the charter of Wihtried of Kent, A.D. 694, [49] it is used with an unimportant change, and the same form occurs in Cenwulf's charter of 799. [50] It is represented in St Gregory's grant of 587 by the words 'spondeo atque promitto nunquam me heredes successores meos ... contrariam inferre voluntatem, sed in huius mei heredes, successoresque meos promitto fidem

⁶⁶ Marini, *Papiri*, p. 128, No. 82. Tjäder, *Papyri*, no. 127.

⁶⁷ I/30 (MGH Form, p. 61). Gregorio di Catina, *Il Regesto di Farfa*, ed. I. Giorgio, U. Balzani (Roma, 1878), p. 51.

⁶⁸ Marini, *Papiri*, p. 188, no. 122. Tjäder, *Papyri*, no. 37.

⁶⁹ Marini, *Papiri*, p. 133, no. 86. Tjäder, *Papyri*, no. 13. Marini, p. 186, no. 121. Tjäder, no. 36.

cartulae duraturos'. In a papyrus of 553 it appears as 'contra quam donationem nullo tempore nullaque ratione me posteros successoresque meos venturos esse polliceor, invocato tremendi diem iudicii'.⁷⁰ In the Farfa charters it occurs as 'ab hac die neque a nobis neque ab heredibus nostris contra hanc cartulam venditionis nostrae ire aux vexare promittimus'. These Farfa charters also contain a clause that is well represented in the O.E. charters. The Farfa formula is 'et cartula ista venditionis in sua permaneat nicholiminus firmitate'.⁷¹ This appears in O.E. as an accusative absolute clause, as in the charter of Hlothhere of Kent, A.D. 679, [51] and of Hodilred, A.D. 692-3, [52] where it follows the anathema, 'manentem hanc donationis chartulam in sua nihilominus firmitate'. In an abbreviated form it is used in the charter of Ceadwealla of Wessex, A.D. 688, [53] and in the full form but converted into an ablative clause, no doubt by the scribe of the chartulary, in the charter of Oswine of Kent, A.D. 689, [54] and in that of Wihtried of Kent, A.D. 696. [55] It occurs, however, as an ablative in the original charter of Æthelbald of Mercia, A.D. 734. [56] The use of the accusative absolute is noteworthy. It is probably to be ascribed to Italian influence, for instances of the confusion between accusative and ablative are common in the Vulgar Latin of Italy of the seventh and eighth centuries. They also occur in Merovingian Latin, but the Vulgar Latin characteristics are almost unknown in English deeds, because an Englishman learned Latin as a foreign tongue and he could not confuse it with his vernacular, as the Italian or Gaul did. For the same reasons Germans were writing reasonably correct Latin before the great reformation of Latin by Charles the Great with the assistance of our learned countryman Alcuin.

Sanction or anathema

The next clause demanding our attention is the sanction or anathema. As we have already seen, this sanction is peculiar to English royal diplomas, and it is undoubtedly copied or imitated from the ecclesiastical record. The papal bulls throughout the middle ages contain an anathema formula that, despite its great length and rhetorical character, bears clear proof of an origin in a simpler form closely resembling the O.E. one. The records of the early English councils afford us even closer parallels. This sanction in our earliest diplomas is very simple in form, and contrasts strongly with the lengthy and rhetorical formulae of the later charters. In the early instances it is a wish or a declaration that those guilty of infringing the terms of the gift shall be separated from Christian society or from the Holy Sacrament in this world and from participation in the heavenly realms hereafter. We may commence our examples again with the Chertsey charter, [57] and we shall find that it bears proof of its seventh-century origin even in this clause. The words are 'Quod si quis contra hanc donationem et confirmationem venire temptaverit, sit hic separatus ab omni societate Christiana et a caelestis regni participatione privetur'. If we compare this with the original charter of Hlothari of Kent in 679, [58] we cannot fail to be struck by the close resemblance. Here the anathema is 'Quisquis contra hanc donationem venire temptaverit, sit ab omni Christianitate separatus, et a corpore et sanguine domini nostri Jhesu Christi suspensus'. The copy-charter of Eadric of Kent uses only the

⁷⁰ Marini, *Papiri*, p. 133, no. 86. Tjäder, *Papyri*, no. 13.

⁷¹ Maitland, *Domesday Book*, p. 230.

second half of this formula: 'sit separatus a participatione corporis et sanguinis domini nostri Jhesu Christi'. [59] The expulsion from Christian society is the sanction invoked in a somewhat expanded form in the charter of Ceadwealla of Wessex, A.D. 688. [60] But both punishments are threatened in the copy-charter of Oswine of Kent, A.D. 689, [61] and in that of Wihtred of Kent, A.D. 694. [62] The original charter of Hodilred, A.D. 692-3, [63] in some measure anticipates later usages in regard to this clause, although the resemblance to the early forms we have just quoted is still apparent. The clause is 'Si quis contra hanc donationis cartulam venire temptaverit aut corrumpere, ante omnipotentem Deum et Jesum Christum filium ejus et Spiritum Sanctum, id est inseperabilem Trinitatem, sciat se condemnatum et separatum ab omni societate Christiana'. The early charters are distinguished from the later ones not only by the brevity of the anathema, but by its comparative mildness. They are indeed benevolent wishes when compared with the ferocious, bombastic and blood-curdling anathemas of the later documents. We may safely lay down the rule that in early deeds the sanction clause must be brief, mild, and expressed in plain, straightforward diction, free from the tinsel rhetoric of later times. Indeed, this freedom from rhetorical exuberances is a pronounced characteristic of the earliest charters, but whilst the presence of grandiloquent phrases and wire-drawn clauses in an early text would justify our rejecting it as genuine, we cannot say that an early charter is genuine merely because it is free from verbal extravagance, because some of the most ignorant forgeries of the twelfth century are composed in as plain and bald language as it is possible to use. The twelfth-century charter errs on the side of excessive brevity and harshness, and familiarity with it caused many of the forgers of O.E. charters to fabricate charters that could by no imaginable possibility be condemned on the grounds of rhetorical redundancy. But these concisely-worded forgeries are at once condemned when we examine their formulae and test them by those of our earliest charters.

Following the sanction in the older charters generally comes the clause 'manentem hanc donationem, etc. in sua firmitate', a clause whose Italian origin we have just established.

Witnesses

The clause usually following this is one to which I wish to direct especial attention, as it is an unquestionable proof of the imitation of the late Roman private deed. As it is a Roman legal formula, it is not open to the objection that might possibly be urged against some of the agreements in formulae that we have examined above - namely, that these clauses, meeting common needs and being the expression of common thoughts, might have originated in England independently of Italian reminiscences of the Roman private deed. In a lecture it is somewhat difficult to make thoroughly plain the essential identity of formulas that are apparently differentiated by the occasional omission or addition of a word or the replacement of a word by a synonym. Although I do not think that these trifling variations, which occur, it must be borne in mind, also in the Italian private deeds, affect the conclusion that the several Old English formulae with which we have dealt are borrowed directly from Italy, it is nevertheless gratifying to advance proofs that are not open to cavils of this nature. Such proof is, I claim, afforded by the clause in our early texts introducing the ratification of the

witnesses. For this clause is no less than the formula by which the Roman notaries introduced the attestations of the legal witnesses, who played so important and well-defined a part in Roman deeds. Its presence in the English diplomas is a noteworthy proof of the influence that the formulas of the late Roman private deed had upon the men who supplied the models for our earliest instruments. Moreover, it is another proof, and one of great importance, that the Italian missionaries in drawing up the earliest English royal charters took for their model the Italian private deed and not the instruments of the emperor or the close imitations thereof issued by the Germanic kings in Italy.

In my former lecture, it will be remembered, I endeavoured to explain the singular fact that the Old English royal instrument is, alone amongst the royal documents of western Europe, drawn up on the model of the Italian private deed instead of on that of the imperial or royal rescript, by the theory that the newly converted Christian king of the still pagan English kingdom was regarded as being outside the pale of the Roman legal or administrative system, and as therefore not to be expected or perhaps allowed to speak in the words of the emperor, as his brother Teutonic kings did in Italy, Gaul and Spain. The imperial instruments did not, as Professor Ficker has explained, need authentication by witnesses. The sanction of the imperial power was so great that the confirmation of witnesses of an imperial instrument, besides being unnecessary, would have been considered derogatory. The will of the emperor could not be gainsaid, and therefore his instruments could [not] be challenged or disputed. The Germanic kings of Italy and Gaul laid claim to the power and privileges equal to those of the emperor, they surrounded themselves with courts and officials in reproduction of the imperial court, and they therefore naturally used the formula of the imperial chancery. Therefore we may claim that the issue of diplomas uncorroborated by witnesses was an outward sign of these quasi-imperial pretensions and state of the Germanic kings of Italy and France. The early English kings, separated, as we have said, by a century and a half of paganism from the influence and glamour of the Roman empire, could have had no traditions on which to base pretensions similar to those of the continental kings settled within the ancient boundaries of the empire, which presented itself as a living organism to their view. The mighty traditions of the empire continued to dazzle the imagination of the Germanic warrior-kings long after they had learned how weak and rotten was the Roman power. The traditions retained sufficient power even after the empire had practically vanished from western Europe and its waning glories had been smirched in the moral sloughs of Byzantium, to rivet the imagination and beget the imitation in the great mind of Charles the Great.

But to return from this digression. The late Roman private deed was required to have a number of witnesses, fixed by law at five or seven. Their functions in Roman was very much more important than those of the witnesses to the early English charters, and the application to the latter of the legal formula pertaining to the former is a fact remarkable in many ways. In the eyes of the Roman lawyer the functions of the Roman and of the English witnesses could hardly be confused, and the use of the Roman technical expression in the early English charters seems to support Professor Maitland's suggestion that the Old English charter is a reproduction or reflection of the Roman private deed by a man who was not a lawyer.⁷² In the late Roman deeds

⁷² Maitland, *Domesday Book*, pp. 230-2.

each witness attests in set formulae that, being called (*rogatus*) by the donor or executor of the deed, he has witnessed the making of the conveyance or exchange, the payment of the purchase price, and the like, that he has witnessed the subscription by the donor, the delivery of the deed to the donee by the donor, and he subscribes himself as a witness. A cross was prefixed to the signature. These witnessing clauses are well represented in the charter of St. Gregory in 587 to which I have referred so frequently. In our earliest charters the witnessing is cut down or replaced by the words 'signum manus' followed by the witness's name and by the word *testis*, though this latter word is not always given. The attestation is preceded or followed by the sign of the cross. The number of witnesses is not restricted to the Roman numbers, although they are, as contrasted with the later usages, few in number. It is noteworthy that the simple attestation 'Signum manus' is used in the Farfa charter. The Roman witnesses state in their attestations that they were invited (*rogati*) to subscribe by the executor of the deeds. This calling of witnesses is the *rogatio testium* prescribed by law for the validation of private deeds. In later times its shadow falls across the path of the student of English records in the shape of the attestations of the notaries public, who brought a survival of the formula with them from Italy. In the late Roman deeds this *rogatio testium* is referred to in the subscription of the donor, wherein he has read, consented to and subscribed the deed, that he has dictated it to the notary, and that he has desired or invited witnesses to subscribe. The latter clause is given in the words 'et testes ut subscriberent conrogavi' in a Ravenna charter of 523, in St. Gregory's deed and in several sixth-century papyri. Another formula of the same period is 'et testibus obtuli subscribendam', or 'testibus a me rogatis obtuli subscribendam'. Turning to our earliest charters we find in the Chertsey charter of 675 'testes ut subscriberent rogavi', in Hlothhere's charter of 679 the same word for word, [64] and also in the charter of Oswine of Kent, A.D. 689. [65] Hodilred's charter of 692-3 is without these words. [66] In the charter of Oswine of Kent, A.D. 675, the king states that he has *conduxit* the witnesses 'ad subscribendum ac ad consenciendum mihi huic donationi'. [67] Swæbheard of Kent c. 676 states he has requested (*rogavi*) his *principes* to subscribe the cross. [68] In 686 Eadric of Kent states that he has requested (*rogavi*) archbishop Theodore and other witnesses to subscribe. [69] Wihtred of Kent, A.D. 694, states that he has requested his *principes* to affix the sign of the cross. [70] This charter is noticeable for having another clause, an exceedingly rare one, that is derived from the late Roman private deed. This is the sentence 'Quam saepedictam cartulam scribendam dictvi, et tibi Eabbae abbatissae tradidi conservandam'. The *testes ut subscriberent rogavi* formula occurs in another charter of this king dated in 696, [71] and in an original charter of his dated in 697, [72] and in a charter of 699. [73] There are several variants of this formula in the early charters, but these need not detain us. It occurs, somewhat modified, but with the essential words 'ut subscriberet rogavi' in Æthelmod's private deed of 681. [74]

Side by side with this formula there occurs in our early charters another one that is also derived from the late Roman deed, and that is, like the phrase just considered, strong evidence in favour of the authenticity of a text in which it occurs. The late Roman deed was subscribed by the donor, sometimes in Greek, or even in Gothic. When, as occasionally happened, the donor was unable to write, it is stated that he had made or impressed the sign of the cross by reason of his ignorance of letters. In a papyrus of 553 the donor, a Gothic woman named Runilo, states that 'propter ignorantiam litterarum signa inpraessimus'. The word *imprimere* is thus used in papyri of 551 and 572, but in most instances the verb is *facere*. Thus we read in a sixth-

century fragment 'propria manu pro ignorantia litterarum signum venerabilem sanctae Crucis feci'. This clause is hardly one that we should expect to meet with in our early diplomas, for it would have been exceptional to find a king in the seventh century who could write. The presence of this clause may therefore safely be ascribed to the imitation of the late Roman private deed, and it is a strong argument in favour of the authenticity of any text containing it, for it soon went out of use. Its supersession must have been hastened by a perception of its inappropriateness in England, more especially as the bishops, who presumably could write, ceased to subscribe, and the crosses that stand for their attestation were written by the clerk who wrote the diploma. Frithuwald is made to say 'signum sanctae crucis + pro ignorantia literarum expressi', an unimportant variation of the Italian *impressi*. [75] The same words, but different order, occur in the charter of Oswine of Kent, A.D. 689, [76] in [those] of Wihtrud of Kent, A.D. 694 and 696, [and] in two original charters of this king of the year 697. [77] They are also found in the charter of Cenwulf in 799, [78] to which I have already drawn attention for its remarkable retention of late Roman formulae. Sometimes the words 'propria manu' are added. The words 'pro ignorantia literarum' were omitted occasionally in the seventh century, and then the phrase became 'propria manu signum crucis impressi'. This, again, is an evidence of antiquity, but a mention of the fact that a king has written or affixed the cross by his own hand must not be accepted as a proof that the charter containing it is genuine. A post-Conquest forger will occasionally refer to these autograph crosses, for the Norman kings sometimes affixed the cross to deeds in their own hands, and Norman forgers must have been acquainted with the French custom of signing with autograph crosses, a custom derived by another channel from the same source as the early Old English usage.

Forgery of Anglo-Saxon Charters

This re-appearance in England after the Norman Conquest of diplomatic usages and even *formulae* that had been in use in the earliest periods of the Old English charters is one of the great difficulties that we have to deal with in attempting to settle the question of the authenticity of Old English charters preserved in later copies. The difficulty arises, of course, from the common origin in the late Latin private deed of the Old English charter and the Frankish private deed, the parent of the Norman. There are many formulae in the Frankish formularies that were not used in England until after the Norman Conquest, and we may safely condemn any O.E. text in which they occur. But we must not assume that because certain Formulae met with in these Frankish formularies are found also in an O.E. charter that the latter is a forgery. We have seen, to take one example, that the clause 'quicquid exinde facere volueris liberam habeas potestatem' is used in genuine O.E. charters of the seventh century, and we should therefore be manifestly wrong if we condemned a copy of an O.E. charter because it contained these words and because they occur in the formulary of Marculf. It is unnecessary to multiply examples, for I have taken care to point out instances where the *formulae* of the late Roman private deed are common to the Old English diplomas and to the Frankish formularies. In this as in every other study we must not form hasty conclusions upon the evidence of a solitary instance or formula in a text. Occasionally a forger of a charter will deliberately borrow a clause from a genuine O.E. charter, although he generally betrays himself by ascribing the charter to a king who did not use the particular formula. The question of authenticity of a given

text can only be settled by the careful consideration of a number of factors and by the application of numerous minute tests. Nothing, for instance, could be more misleading than to conclude from the occurrence of the Roman formula 'sana mente integroque concilio' in the granting clause of the charter of Æthelberht of Kent, A.D. 605, [79] that this text was genuine because, as we have seen these words were undoubtedly used in O.E. charters of the seventh century. This charter is, contrary to the O.E. usage, addressed, after the manner of letters patent, 'omnibus suae gentis fidelibus'; it used the Norman-Latin *redditus* 'rent' and *donaria* for *dona*; it mentions the writer, who is described as *referendarius*, a Romano-Merovingian chancery title that was never in use in England, and another Frankish official is converted by some blunder into a 'Graphio comes'. An equally impudent and even clumsier forgery is the charter of Wulfhere of Mercia to Peterborough (Medeshamstede) abbey in 664. [80] This charter abounds with Norman terms and forms such as *francum plegium*, *caruca* (of land), late legal terms such as *in puram et perpetuum elemosinam*, and formulae from twelfth-century writs and charters. Yet when we come to the end of this egregious forgery, we find a lengthy anathema that is not only drawn up in the O.E. form but was actually in use in England nearly four centuries after the pretended date of this precious charter. And it is provided with a string of witnesses after the Old English model, a considerable portion of whom might really have witnessed a charter in the year 664. When, however, we find a charter such as that of Frithuwald [81] to which I have so frequently referred in which practically every sentence that could be possibly fixed in character can be proved to have been in use in England at the date of the charter and to have gone out of fashion within a short period of that date, we may safely conclude that the text was derived from a genuine charter. The evidence in favour of this charter is strengthened by the fact, which emerges from the foregoing examination of the *formulae* reproduced from the late Roman private deed, that this charter in several instances preserves fuller forms of these Roman clauses than occur elsewhere in our early charters. It is a somewhat sad reflection for the diplomatist that there can be no absolute certainty as to the authenticity of a charter in the absence of the original, and the arguments from the study of the *formulae* will not ensure him against the possibility that the portion of the charter that cannot well be tested by diplomatic - that is the quantity and name of the land conveyed, the person or monastery to whom it is conveyed, the immunities and privileges conferred - may be the product of some monastic forger, or may have been modified or interpolated before it was finally recorded in a chartulary. In these cases the character of the witness must be considered. We could hardly believe a Crowland or a Peterborough chartulary in any case, and where there was any doubt we should not be inclined to decide favourably on the evidence of the Evesham or the Winchester chartularies. If, on the other hand, the text before us rested upon the respectable authority of Heming's Worcestershire chartulary or Ernulf's Rochester chartulary, [82] the weight of their general honesty and accuracy of transcription in cases where we can check them should turn the wavering balance in favour of the text under consideration. There is only one theory that would throw doubt upon the authenticity of Frithuwald's charter. [83] It is one that we should do well to bear constantly in mind, for it is a theory that deprives all diplomatic as distinguished from palaeographical tests of their efficacy. This disturbing theory is the possibility of a forger borrowing a genuine charter of a particular king, copying the whole of its formulas and witnesses, and in fact producing a text differing only from his original in the description of the land or enumeration of the privileges intended to be granted by it. The charter thus prepared would break down when its handwriting was examined, but it would not be the charter itself that

we should have before us, but a later copy in a chartulary, which would preclude all evidence from handwriting. For it is a remarkable fact that the great majority of the forged charters have come down to [us] through the medium of later copies, and an original forged charter is quite as rare as an original genuine charter.

The production of a forged charter in the manner just described represents the highest development of the forger's art. There are several indications amongst the later texts of this intelligent imitation of genuine charter, but fortunately the preparation of texts in this way demanded skill and foresight that were exceedingly rare amongst the monastic forgers. They were free from any control of diplomatic criticism. This immunity from diplomatic tests is well exemplified by the not infrequent forgeries of O.E. charters on the lines of the Merovingian or later Frankish or even twelfth century Anglo-Norman diplomas and charters, and by the persistence of the baseless notion that it was a custom of the Old English kings to deck out their diplomas with gold and red initial letters, chrismons and crosses - a notion that was shared by English judges and lawyers as late as the times of Elizabeth.

But the probability of the frequent occurrence of undetectable forgeries formed by direct copying of genuine charters is seriously reduced by the operation of numerous factors. To account for such a forgery we have first to assume the existence of a monk possessing the knowledge that the Anglo-Saxon diploma differed in form from the charter of his own time, and intelligent enough to perceive that his forged charter might be tested by comparison with genuine charters. The former piece of knowledge would naturally be more likely to be impressed upon a man who was conversant with the archives of a monastery containing genuine O.E. charters, than it would be upon a member of a monastery that did not possess a single O.E. charter. It is perhaps unfair to measure the ordinary monastic forger by the high intellectual standard of William of Malmesbury, but we may at any rate recall his acute observations upon the different nature of the Latinity used in the O.E. diplomas to that employed in French and Norman charters. When we have forgeries originating in monasteries that possessed genuine O.E. charters we do see conscious and clever imitations of O.E. formulas. Thus the Winchester and Malmesbury forgeries are skilful productions that do not bear very obvious marks of spuriousness, whilst some of the texts from Worcester are so cleverly prepared that opinion will long be divided as to whether they are genuine or spurious. On the other hand the forgeries from Crowland, Peterborough, and Westminster are so clumsy and so unlike any O.E. diplomas that their spurious nature is at once apparent. The reason of this [is], no doubt, to be found in the unfamiliarity of the monks of these monasteries with O.E. instruments.

Our next assumption necessary for the fabrication of an undetectable charter is that the forger, in addition to possessing the knowledge that the O.E. charter differed in form from that of his own day, was also aware that the O.E. kings did not all use the same formulas, and in fact that the O.E. royal instruments went through a series of well marked developments. This is a fact that we are only just beginning to realize, and it is unlikely that any twelfth-century forger, with his necessarily exiguous opportunities of seeing and comparing O.E. charter, should have become aware of this. He might, however, erroneously suggest to us that he had noticed these differences, for if he were a man lacking in originality and finding [it] easier to copy and adapt a genuine charter than to invent a brand new one, he might by luck or choice take as his model a charter of the very king upon whom it was necessary or desirable to father his

production. This, however, seldom happened, either from want of intelligence on the part of the forger or from the forger's inability to lay his hand upon a charter of the particular king whose name he wished to take in vain. Generally it sufficed the forger if the charter that he chose as his model came from any O.E. king. We should therefore expect on *a priori* grounds that the charters most commonly imitated by the forgers were those of kings who had left the greatest number of instruments behind them. This is exactly what happened. The greater portion of the charters in existence date from the century or century and a quarter before the Norman Conquest, and it is the charters of this period that are most frequently imitated. Thus when a monk wants to forge a charter for a seventh- or eighth-century king, he will generally, if he imitates an O.E. charter at all, make the early king speak in the words of Æthelstan or Edgar. If the forger was not restricted in his choice of a king to whom to ascribe his bogus charter, as he was sometimes restricted when he wished to invent a foundation charter and it was well known who was the founder of this monastery, he would most likely father his forgery upon Æthelstan or Edgar, and thus add to the number of texts bearing their names that might serve as the starting point of fresh forgeries. There were, of course, reasons why these kings were such great favourites. Æthelstan was the first real king of all England, and he thus occupied a strong historical position in the eyes of the men of the twelfth century. Moreover, he was the hero of many popular stories, and he was the one O.E. king who impressed himself most strongly upon the imagination of the twelfth and thirteenth century. He was a hero of romance, and his real acts and deeds were almost buried beneath the crust of fictions, legal, monastic and popular, with which they were overlaid. Edgar was also a very great favourite with the forgers. Of him also many tales were told amongst the common folk, and he was a great historical figure. Englishmen long remembered the glories of his reign, and the peace and good government of this youthful king were objects they long sighed for. But what rendered him so great a favourite with the monkish forgers was not these considerations, but the great position that he held in the history of monasticism as the re-introducer of monks into England, the friend and patron of Æthelwold, 'the father of the monks', and of the still greater St. Dunstan, whose figure seemed to Englishmen of the twelfth and thirteenth centuries to stand forth more clearly and powerfully than that of any other ecclesiastic or statesman in the twilight of the little-known times beyond the Norman Conquest.

Next to these two great kings the most favourite monarch with the forgers was Offa, the great king of Mercia. He was known to history as a powerful king, a founder of monasteries, and the father of saints. This memory was carefully cherished at the great and influential monastery of St. Albans and its cells. His long reign was recorded by a great number of charters. Many forged charters were drawn up in his name, and his genuine charters seem to have afforded the model for most of the spurious charters pretending to date before his time. The explanation of this must surely be that the intelligent forgers of these early charters perceived that there were differences in the chancery-usages of the Old English kings, and therefore took care to choose for imitation the oldest model accessible to them. This in most cases must have been instruments of Offa.

Now if we assume that a monk of the twelfth century found it necessary to forge a seventh-century foundation charter, we should expect him, if he was a clever forger, to take as his model a charter of Æthelstan or Edgar. If he was very clever, we should expect him to imitate a charter of Offa's. What adjective should we apply to the

imaginary forger of the Chertsey charter [84] who could have mastered the Roman formulas in the handfull of our earliest charters, and who could moreover use correctly fuller Roman formulas than those occurring in the texts that have come to us? Several of these formulas, were, it is true, still in use in Italy in the twelfth century, and it is not without the bounds of possibility that an Italian monk, familiar with these forms in his own country, might have been at Chertsey in the twelfth century and have prepared this charter. But I think we may rule out this possibility, for an Italian monk would scarcely be the person to whom the task of forging an O.E. diploma would be assigned, and it is unlikely that, if he did undertake the task, he could have been aware that these Roman formulas were used by English kings in the seventh century. Moreover, it is making very heavy demands upon even Italian ingenuity to assume that our hypothetical Italian monks could have distinguished so accurately between the late Roman formulas that were and those that were not used in English diplomas in the seventh century, and that he should also have known what clauses and expressions in the private deeds of his own country should be omitted from the seventh-century English diplomas as later Italian developments and additions. [85] But the Chertsey chartulary⁷³ has fortunately provided us with evidence that its official forger, so far from being capable of exhibiting the high intelligence, one might say the genius, required for forgery of Frithuwald's charter, [86] was a very indifferent craftsman. It was found necessary to provide a charter conveying to the monastery some score or so of estates, and the Chertsey monks deemed it advisable to ascribe their bestowal upon the monastery to Frithuwald, their founder. The forger began well by taking the genuine charter of Frithuwald for his model. From this he copied the invocation, the witnesses and the witnessing clauses, and made up the introductory sentences, really the operative clauses, by bringing together in different order various clauses from the original charter. He then made the king use the *pluralis majestatis* in accordance with the usages of his own time. He then gives a list of the lands conveyed, adds a very wide exemption from worldly services that it is unrepresented in the original, and then adds a monstrous anathema that occurs also in the Chertsey forgeries assigned to later kings, and which is clearly based upon ten[th] century models. Moreover, he gave to this precious production the impossible date of 727, which he describes as the 'year of the Incarnation', an era that did not come into use for legal documents in England or in western Europe until the eighth century. This ignorance as to the date of Frithuwald's reign is a good proof of the late date of the forgery. [84] The genuine charter is dated simply by the day of the month, the king's regnal year, the system of dating in use at that period, being for some reason omitted. The contrast between the genuine and forged charters is instructive. We should condemn the latter simply on the ground of the long enumeration of the estates, for these long strings of names are alien to the O.E. diploma, which will convey a great tract of country under a single local name. The long enumeration is an imitation of the Norman charters of confirmation, wherein all the estates of a monastery were named. We thus see that the authenticity of the Frithuwald charter of circa 675 is evident from comparison with the forged one of 727, [88] no less than from the text of its formulas by a singularly severe diplomatic test. As it comes so well out of the ordeal, we may surely conclude that it is a copy of a genuine seventh-century charter. The conclusion is of interest, for this charter is the only early royal charter prior to the original charter of Hlothhari in 679 [89] that has passed the examination of its diplomatic formulae.

⁷³ Chertsey Chartulary (BL, Ms. Lansdowne 435).

We may therefore install it in the honourable position of the earliest English royal instrument.

The genuine seventh-century charters are few in number, and they are outnumbered by texts that must be condemned as spurious. From Evesham we have several clumsy and impudent forgeries. The monks of Canterbury fabricated charters to replace those that had been destroyed. Their brethren at Glastonbury and Winchester begin their long series of forgeries with texts pretending to come from this century. The monastery of Malmesbury, a competitor in infamy with Glastonbury, contributes several bogus charters, Abingdon, Chertsey, and Barking also figure in the list of forgeries, and even Worcester, the guardian of so many genuine early charters, does not escape the contagion of falsification. The Peterborough forgery we have already discussed.

The Decay of the Monasteries

The consideration of the history of some of these monasteries would alone throw doubt upon the authenticity of their early charters. St. Æthelwold, St. Dunstan, and King Edgar restored or rather re-founded in the tenth century several of the early monasteries, such as Peterborough and Ely, which had altogether disappeared.⁷⁴ Abingdon had barely escaped the same fate⁷⁵. In these cases the lands of the old foundations escheated to the king's *fiscus*, the word used by Ælfric in his Life of St. Æthelwold, or to certain noblemen. From what we know of the avidity displayed by kings, bishops and noblemen at the end of the eighth century in obtaining the 'books' of land that had been invested with royal charters, we cannot doubt that when an ancient monastery decayed or was despoiled by king or noble, its charters were transferred to the king or noble. The tenth-century re-founders of the monasteries were compelled to re-purchase the lands of the old foundations, and they obtained new charters of immunity, etc. from the king. It is, of course, not out of the question that they recovered the early charters and handed them over to the new foundations. But the old charters must have disappeared in many instances, for we read of the stealing or destruction of 'land-books' as one of the steps taken by those who desired to obtain wrongfully possession of lands belonging to a monastery.⁷⁶ Moreover, it is evident that the re-founders of the monasteries did not always succeed in obtaining recovery of the old possessions of a particular monastery, and that the revived abbey was frequently endowed with lands quite distinct from those of the old abbey. Records or traditions of the original founders of the vanished monasteries existed in most cases, and the inmates of the re-established house, being by no means deaf to the claims of antiquity, usually went behind the re-foundation and produced charters professing to come from their original founder. In default of other evidence, his name could readily be recovered from the curious list of founders of monasteries, some of which we do not know outside this list, appended to or connected with the tract on the Saints of England that has recently been edited and dissected, in his usual able manner, by Professor Liebermann.⁷⁷

⁷⁴ Ælfric, *Vita S. Æthelwoldi*, ed. J. Stevenson, RS II/2 (London, 1858), pp. 261-2.

⁷⁵ *Ibid.*, p. 257.

⁷⁶ So also in France and Burgundy. See the seventh and eighth century examples by Loening, *Geschichte II*, p. 663 n 2.

⁷⁷ F. Liebermann, *Die Heiligen Englands* (Hannover, 1889), pp. 10-20.

This decay of monasteries arose from various causes. In Mercia and East Anglia it was largely the result of the ravages of the Danes. In Northumbria scarcely a single monastery survived the incessant attacks and ravages of the Northmen, and we accordingly find that kingdom unrepresented by charters until the closing years of the tenth century, with the exception of a curious charter of 685 regarding a gift of land to St. Cuthberht by King Ecgfrith of Northumberland. [90] This is a somewhat suspicious document, since its proem is clearly made up from the language of Beda. The early eleventh-century *Historia de Sancto Cuthberto* refers to this and to numerous other early grants,⁷⁸ so that it is possible that the monks of Lindisfarne, who alone of the Northumbrian societies ensured the preservation of ancient MSS., may have carried some of their early charters about during their pious wanderings with the body of St. Cuthberht. Perhaps some of the Northumbrian charters escaped the fury of the Dane only to perish at the hands of Englishmen during the fratricidal strife of the seventeenth century. For during that regrettable war the bulk of the records of the northern monasteries were destroyed by fire at York.

The mention of Northumbria recalls to our mind the name of the illustrious Beda, the teacher of western Europe in history, science and chronology. His well-known letter to bishop Egbert,⁷⁹ written in 734, proves how wide was the use of royal diplomas for monasteries at this time, and also suggests, by his account of private ownership of some of these monasteries and of the great abuses of which they were the scene, other reasons for the decay of monasteries and the alienation of their lands. The learned monk, in the evening of his pure and well-spent life, blames the carelessness of bygone kings who had scattered their foolish donationes so widely that it was difficult to find a vacant place for the establishment of a bishop's see.⁸⁰ There are, he says, numerous places invested with royal privileges (*stilo stultissimo in monasteriorum ascripta vocabulum*)⁸¹ absolutely devoid of monastic conversation, and that are, as the folk say, useful neither to God nor man. The binding nature and religious character of these royal diplomas is well brought out by the fact that he deemed it necessary to argue that the conversion of a monastery so protected into a bishop's see could not be regarded as a sin, whereby the unjust judgments of princes might be corrected by the examination of better princes, and the lying stile of wicked scribes be cancelled and annulled by the discreet sentences of wise priests. Incidentally we obtain evidence that the Northumbrian royal diploma had the same objects and was drawn up in much the same way as the early instruments that have come down to us from Kent, Mercia, and Wessex. Beda complains that the lay owners of these private monasteries obtain from the king, in exchange for money, grants of territory under the pretext of founding monastries, and that they cause the land to [be] 'ascribed' to them in hereditary right by royal 'edicts', and that they obtain the confirmation of their 'letters of privileges' by the subscription of bishops, abbots and powerful laymen, as though the letters were truly worthy of God.⁸² They thus, he observes, obtain land freed alike from divine and human service, meaning that they have obtained exemption of the land from worldly service by the royal privilege and that they neglect to perform any religious duties, the

⁷⁸ *Historia translationum S. Cuthberti, Symeonis Dunelmensis Opera omonia et collectanea* I, ed. J.H. Hinde, Surtees Society 51 (Durham, 1868), pp. 158-201,

⁷⁹ *Councils and Ecclesiastical Documents Relating to Great Britain and Ireland* III, ed. A.W. Haddan and W. Stubbs (Oxford, 1871), pp. 320-1.

⁸⁰ *Ibid.*, p. 321.

⁸¹ *Ibid.*, p. 319.

⁸² *Ibid.*, p. 321.

implied condition of the grant of such immunity. The bishops he blames for subscribing these privileges, even when they do so in obedience to the king's orders. In his *History of the abbots* of his monastery, Beda tells us that Benedict Biscop, the founder and first abbot of Wearmouth in 674, obtained a letter of privilege from pope Agatho, with the king's licence, rendering the monastery free from all outside interference.⁸³ The third abbot Ceolfrid is recorded to have obtained a similar privilege from pope Sergius, which was brought home, explained before a synod (i.e. council), and confirmed by the subscriptions of the bishops present and of the king.⁸⁴ In the eighth century the old connexion between the royal diploma and the ecclesiastical synod is well exemplified by the numerous instruments that are on the border line between a royal charter and the official note of the proceedings of an ecclesiastical council. We have, it will be remembered, claimed that the early O.E. royal diploma was from the first influenced by the conciliar document, and it does not entirely escape the influence of or sever the connexion with the latter until the tenth century. The semi-ecclesiastical nature of the royal diplomas is also illustrated by the eighth- and ninth-century instances where disputes as to the title conferred by them are discussed and adjudicated upon by ecclesiastical councils attended by the king. But these councils, it must be remembered, are not exclusively ecclesiastical in their character.

Latin Charters of the Eighth Century

The greater number of the genuine charters of the eighth century are Mercian and Kentish. Of the West Saxon kings we hear little. This is what we should expect from the history of the period. The eighth century was the hey-day of the Mercian power. The kings of Mercia conquered Kent and other kingdoms, and in Offa they produced the greatest English king of the century. He and his predecessor Æthelbald occupied the Mercian throne for eighty years, with the exception of the few days of Beornred's reign. Æthelbald issued many diplomas, and Offa even more. Both kings are of importance in the history of the O.E. diploma. They introduce modifications in the forms of instruments and commence to use formulas that were, owing to the imitation of their instruments by the West Saxon kings, long represented in more or less modified form in the later O.E. royal diplomas. The changes involve the progressive disuse of the formulas derived from the late Roman private deed, although the spirit of these Roman formulas is present. It is in the Kentish charters of the seventh century that most of these Roman formulas occur, and it is the Kentish charter of the eighth century that best preserves them. So strong is the formalism that the Mercian king will use Kentish models when issuing charters relating to Kent, using different formulas in Mercia. The eighth-century charters may, indeed, be divided into the two classes, Mercian and Kent, so far as concerns their form.

⁸³ 'De vita sanctorum abbatum monasterii in Wiramutha et Girvum', Migne PL 94, col. 717. For an exemption from the bishop, see *Liber diurnus*, p. 118. Cf. *Councils* III, p. 319. Loening, *Geschichte* II, p. 391.

⁸⁴ *Vita Sanctorum Abbatum*, Migne PL, col. 725.

Kentish charters

We may first consider the Kentish, as it is the oldest and the smallest group. One of its characteristics was, it may be remembered, the use of the second person singular for the donee, a use derived from the Roman private deed, which was drawn up in epistolary form. Of twenty-three eighth-century charters drawn up in this way, twenty-one relate to Kent, the other two being Hwiccian. The most marked feature of the Kentish charters is the retention of the Roman formulas. They are fewer in number than in the preceding century. Some of the older formulas are, however represented by clauses that are inspired by the Roman clauses, although they do not agree verbally. The granting words are no longer Roman, and the formula is reduced to simple verbs such as *dono*, *tribuo*, *confero*, etc. The defining words of the Roman formula *a praesenti die et tempore* occur in an original charter of 732 [91] and in the Kentish charter of Cenwulf of Mercia and his wife in 799, [92] which we have previously cited for its retention of Roman formulas - a retention so remarkable that I have suggested that it is a repetition with modifications of a lost seventh-century charter. It contains the Roman formula 'propria manu pro ignorantia literarum signum sanctae crucis ... expressi'. The reference to ignorance of letters does not occur elsewhere in the charters of the eighth century, and it fell into disuse about the end of the previous century, no doubt, as I have suggested, by reason of its inappropriateness. But with the excision of the reference to ignorance of letters, the clause was still used in Kent in the eighth century. Thus we have in a contemporary charter of Æthelberht of Kent in 732 'signum sanctae crucis expressi'. [93] The same words are used in a charter of Eadberht of Kent in 761 [94] and in Cenwulf's charter of 799. [95] King <Sigereð> in 759 x 765 slightly varies the formula into 'hoc signaculo sanctae crucis expressi'. [96] A Kentish charter of Offa in 788 is noteworthy for using the words *signum crucis impressi*. [97] This is the verb used in three sixth-century Italian papyri. In the eighth century in England this formula was varied by omitting first the words *propter ignorantiam literarum*, and then the reference to the sign of the cross and the substitution of verbs like *munio*, *confirmo*, *corroboro* for *imprimere*, a change that weakened the necessity for mentioning the sign of the cross. So that eventually the sole remnant of the late Roman formula is the expression *propria manu*. This was widely, though not universally, used in the eighth century, more especially in charters relating to Kent.

Roman formula granting powers to alienate the land conveyed by the deed occurs in its oldest and best form in Cenwulf's charter of 799 as 'quicquid exinde facere volueritis liberam [h]abeatis potestatem'. [98] In the eighth century this clause underwent modification, but we can still perceive the verbal resemblances. Thus in an original charter of Eardwulf of Kent in 765 we read 'ut quicquid de ea fieri volueritis, sive in donando, sive in accomodando, vel in commutando, liberam sempernaliter postestatem habeatis'. [99] In the charter of Sigereð of Kent, <759> x 765, the clause appears as 'ut possidendi vel habendi sive vendendi etiam tradendi cuicumque voluerit, liberam per omnia habeat potestatem'. [100] The clause is here in course of development to the form it finally assumed in the O.E. diplomas.

The Roman clause precluding the heirs of the donor from contravening the gift occurs in the archaic charter of Cenwulf in 799 in the ancient form of 'numquam me [h]eredesque mei contra hanc cartulam descriptionis nostrae aliquando esse venturus (read venturos)', [101] but it is usually represented by an injunction upon the donor's

successors, which is occasionally merged in the anathema. [102] This charter of 799 stands alone in the eighth century in retaining the Roman clause empowering the donee to claim and defend the land. It occurs in the reduced form of 'successoresque vestri defendant in perpetuum'. [103]

The strongest of these Roman survivals in the Kentish charters of century are the formulas representing the *rogatio testium*. The formula in the late Roman private deed was, it will be remembered, 'testes, ut subscriberent, conrogavi', and in my first lecture instances of the seventh-century English use of this formula, in which the simple verb *rogavi* is substituted for the compound, were given. The form thus produced, 'testes, ut subscriberent, rogavi', appears in a Kentish charter of Offa in 759 x 764, [104] and in another Kentish charter of his in 764, [105] where it is followed by the clause 'quorum infra nomina asscripta tenentur'. This clause seems to be due to Mercian influence, for clauses in the same words or words of the same meaning are used in the Mercian charters, where they are preceded by such words as 'Hiis testibus consentientibus'. The formula thus produced eventually drove out the old Roman formula, even in Kent, and remained in use, with unessential changes, until the end of the Old English period. The Kentish charters of the eighth century have several variations of the Roman formula, such as the substitution of *peto* for *rogo*, the change to 'testes religiosos, ut id ipsum facerent, adhibui' or 'adhibeo', or to 'testes, ut id ipsum (consentientes) agerent, feci'. [106] The verbs *adhibere* and *facere* are used in this formula in the late Roman private deeds, but I have not been able to discover any seventh-century instances of their use in England.

The Kentish charters also retain the clause 'Manente hac chartula in sua firmitate', whose Italian origin we have previously shown. Out of fourteen instances in the eighth century, no less than twelve are Kentish, one being Mercian (Hwiccian), the other occurring in the somewhat suspicious charter of Swæbræd of Essex, A.D. 704. [107]

The occurrence of this Italian formula in a Hwiccian charter is supported by the original charter of three *reguli* of that kingdom, confirmed by Offa, the Mercian overlord, in 759. [108] Although this particular formula does not occur in this charter, the Roman origin of the charter is established by the presence of five Roman formulas. In the seventh century we have also met with traces of the Roman formulas in this district, which during the eighth century gave up the Roman formulas for those of Mercia.

Mercian charters

The eighth-century charters of this great midland kingdom are, as we have said, of great importance in the history of the O.E. royal diploma. In them are discovered the germs of the formulas of the later O.E. charters, and even of the characteristic language of the latter. The Mercian charters of this period have no traces of the Roman formulas, except when they relate to Kent, beyond the occasional appearance of the words *propria manu* in the attesting clause. They are simple and direct in style, and substitute concise paraphrases for such of the Roman clauses as they retain. Sometimes they are without proems; sometimes even without invocations, unless the latter was represented by a monogram. Offa sometimes prefixes a monogrammatic and a verbal invocation. Even in the form of the invocation the Mercian charters

influenced the form of the later O.E. diplomas. The Mercian kings occasionally use the old invocation 'In nomine Domini nostri Jesu Christi', [109] frequently with the added words 'salvatoris mundi'. But this form is varied by the substitution of the Trinity, or the invocation of the *Deus summus*. [110] In Offa's time the invocation is occasionally extended by the addition of a sentence expressing the power of the deity. These formed the starting point of the invocations of the later diplomas, which are characterised by the great length and highly rhetorical nature of their invocations. Sometimes these explanatory clauses are tacked on to the old form of invocation as in an original charter of Offa's in 774 [111] 'In nomine Jesu Christi, salvatoris mundi, Qui est et Qui erat et Qui venturus est, per quem reges regunt and dividunt regna terrarum'. [112] The characteristic invocation in the later O.E. diplomas begins with a present participle singular in the ablative case. This usage is derived from the Mercian charters. The record of the proceedings of the Mercian council of Clovesho in 742 commences with '+ Regnante in perpetuum Deo et domino nostro Jhesu Christo', [113] and the same invocation omitting 'Deo et' occurs in an original charter of Offa's in 779. [114]

The Mercian kings also afforded a model to later times in their proems, not only in the themes, but even in the phraseology. These Mercian proems are imitated in many of the eighth-century charters. [115] One of the favourite proems of this and later times was the one beginning 'Nihil intulimus in hunc mundum', derived from Paul's epistle to Timothy,⁸⁵ with the addition that worldly things should therefore be exchanged for heavenly. This text occurs as the commencement of private deeds in Marculf's formulary, but the addition differs from the English model. Another favourite is a proem setting forth the desirability of committing events to writing to avoid future disputes, although they ought not to need any such support.

Frequently, however the Mercian charter has no proem, but in Offa's time it had generally a movent clause, setting out that he has deemed it fitting that he should bestow upon God something however small for the absolution of his sins, etc. This movent clause generally appears even when a proem is used. The clause empowering the recipient to alienate, bequeath, etc. the land, instead of appearing in the Roman form after the *tenendum* clause, which is usually omitted, follows as an *ut* clause immediately after the description and name of the land conveyed. This is the position it held until the end of the O.E. period. Already in the charters of Æthelbald [116] and Offa [117] we meet with a form of this clause that became the favourite one in later times and that continued in use until the eve of the Norman Conquest. In a charter of the former king issued between <716> and 737 this clause is expressed by 'ut et ipse quamdiu vita comite voluerit prospere possideat, et cuicumque <placuerit> vel se vivente vel obeunte ea conditione qua sibi traditum acceperit licenter omnino nobis concedentibus libens tradat'. [118] This formula, with the omission of the conditional clause and with modifications, but with the retention of the phrase <'vita comit'>, that is during life, may be found in numerous tenth- and eleventh-century charters. In the later charters, it is generally provided with a different termination, which is, however, a modification of a formula that originated in the Mercian chancery. This is the clause 'vel cuicumque ei placuerit derelinquendum' or 'ut derelinquat'. [119]

⁸⁵ I/6, 7.

Another feature derived from the Mercian chancery is the use of the 'devotional formula', [120] that is to say the introduction of such phrases as 'by the grace of God' between the king's name and title. Æthelbald uses 'divina dispensante gratia', and Offa, besides using short devotional formulas, anticipates, the later use of long clauses in this position.

But the most remarkable feature of the Mercian charters is the use of the future tense in the operative words. From Mercia this use spread to Kent, Wessex, and other districts, and it is found, with gradually decreasing frequency, throughout the ninth century and, apparently, in the reign of Edward the Elder and in that of Edgar. It occurs also in private deeds. The present was, however, also used in Mercia, and sometimes two verbs will be used, one in the present and the other in the future tense. The Mercian kings were fond of accompanying the verb in this clause with a synonymous present participle, such as *perdonans attribuo*, *donans concedo*, and the like, a custom that is paralleled by the later French diplomas and by the twelfth-century English royal charters.⁸⁶

Professor Brunner has attempted to explain this singular use of the future in the operative words by the theory that the transaction represented by the charter was not technically completed until the charter was handed over to the person in whose favour it was drawn.⁸⁷ This delivery (*traditio*) of the instrument was on the continent a necessary legal step for completion of private deeds, and it was recorded in the deed - a custom that induced the use of *datum*, whence our date, in place of the *actum* of the Roman deed. But this supposition attributes to the Old English a rigid legal refinement that was alien to their loosely-knit legal system. Moreover, the future is also used in the attesting clauses. There are numerous instances of its use in both positions, but some of the examples in later copies of charters are probably to be ascribed to ignorant alterations of such eighth-century forms as *donabi* for *donavi*.

Another Mercian innovation was the substitution of *scriptum* or a synonym for the *actum* of the earlier deeds, but the later charters reverted to the latter.

Boundary clauses

The eighth-century charters afford numerous instances of a marked feature of the English diplomas - that is the description of the boundaries of the land conveyed. On the continent such information is given very rarely, with the exception of Italy, where there are several instances in the Farfa charters and an instance even occurs in the papyri. The seventh-century English charters do not usually specify the boundaries. They are, however, given in the original charter of Hlothhere of Kent, A.D. 692-3, [121] and in the original charter of Wihtried of Kent, A.D. 697. [122] In both these cases they are given very briefly. They evidently consist merely of the mention of a boundary on the north, south, east and west. In the eighth century they are given at greater length, although they do not usually supply anything like the minute detail of later times. [123] They are still mostly given briefly with reference to all or some of the four cardinal points of the compass. [124] But very lengthy boundaries appear in the original charter of Cynewulf of Wessex, A.D. 814. [125] Many charters do not

⁸⁶ Giry, *Manuel*, pp. 795-6.

⁸⁷ Rare abroad. Cf. Bresslau, *Handbuch* I, p. 5 n 3.

give any details of the boundaries. In two cases the texts say that the boundaries are omitted because they are so well known. [126] The boundaries are given invariably in Latin in the original charters and in those that are free from doubt. There are several examples in English in the collections, but these are clearly from their position in the texts subsequent additions in the chartularies, or they are contained in texts that are spurious or suspicious. [127]

Vernacular texts

There is one charter of this period in English. It bears the name of Æthelbald of Mercia, between 743 and 745. [128] But if genuine its language has been modernised, and some of the phrases strongly suggest that it is merely a translation of a Latin original.

Dating by the era of the Incarnation

An innovation of world-wide importance was introduced into the English deeds in the eighth century. This was the use of [the] era of the Incarnation in place of the dating by the king's regnal years. The oldest undoubted instance of the use of this era is in an original charter of Æthelbald of Mercia in 736, written in uncials.⁸⁸ [129] The adoption of this system of dating seems to have occurred about this year, for Æthelberht of Kent dates by regnal year and indiction in 732 [130] and Æthelbald of Mercia expresses the date in the same way in 732 and 733, [131] the latter a ninth-century copy. In 742 the era was used in the account of the proceedings of the Mercian council of Clovesho. After this date its use became fairly regular in the royal diplomas. In 816 the council of Chelsea prescribes that the year of the Lord shall be given in the accounts of council proceedings, but this is not, as sometimes understood, an innovation.⁸⁹

The first writer to compute from the Incarnation was the early third-century Sextus Julius Africanus, but, although this computation was used by other ecclesiastical writers, it was not until the eighth century that it acquired the character of an era. In the early part of that century the Roman Dionysius Exiguus substituted it for the Diocletian era in his Easter tables, which were eventually to end the interminable conflicts regarding the observance of Easter in the west. The English church was one of the earliest and strongest upholders of the Dionysian system of computing Easter,⁹⁰ and used his later tables and their continuation until 721 by an unknown abbot Felix Cyrillitanus.⁹¹ The era made little progress in the seventh century. No instances are known of its use for dating legal or historical documents, and the very few instances of its use in the sixth and seventh century shew that it was not employed for this purpose. The Easter tables were continued by Beda, from 721 until 1063, and the cycle of 532 years thus introduced by him rendered the continuation of his tables a very simple matter, for after the lapse of the cycle one had only to revert to the first

⁸⁸ The text is derived from Hemming's Worcester chartulary, but high as is the character of that work, it is not free from forgeries in these early times. The charter is accepted by J. Earle, *A Hand-Book to the Land-Charters and Other Saxon Documents* (Oxford, 1888), pp. 41-42, as genuine and as an interesting specimen of eighth century English.

⁸⁹ Earle, *Land-Charters*, pp. xxxiii-xxxiv.

⁹⁰ It may be remembered that the English church had close connections with Rome at that time.

⁹¹ F. Rühl, *Chronologie des Mittelalters und der Neuzeit* (Berlin, 1897), p. 131.

year of the cycle. Beda's Easter-cycle was, in the language of Professor Rühl, 'the basis of all the medieval Easter computations; all later computists are dependent upon it; all the details concerning the year- characteristics, the age of the moon, etc. are taken from it'.⁹² Beda was in addition to this the author of a work on chronology that remained the standard work on the subject throughout the middle ages. This was the work 'De Temporum Ratione', written in 725. The chronicle 'De sex aetatibus mundi' appended to this work had an enormous circulation throughout Europe. In it Beda occasionally dates events by the era of the Incarnation. In 731 he wrote his great 'Historia Ecclesiastica', the first historical work in which the era is regularly used. The fact that our great Northumbrian scholar was the real introducer of the modern era is now generally admitted.

The use of the era soon spread from England. In 742 and 744 it appears in the account of the Frankish councils, and its use there had been ascribed by Mabillon and Jan, the learned historian of the era, to the influence of the English St. Boniface, who presided over these councils.⁹³ In 801 it appears in the Frankish diplomas, gradually displacing the dating by regnal years. It was not until the eleventh century that it found admission into the papal chancery, and it was even then long before it became generally used.⁹⁴

Professor Sickel formulated the rule that dates by the era of the Incarnation in copies of Frankish charters before 801 are proof of forgery or are to be regarded as additions of the later copyists.⁹⁵ Similarly we may formulate the rule that the occurrence of a date by this era in an English charter prior [to] 736 or so must be treated either as proof that the text is spurious or that the date has been added by the copyist, much in the same way as Beda explains the date of a papal letter by the equivalent year of the Incarnation. We possess texts of numerous charter bearing dates by this era older than 736. By far the greater number of these must be branded as spurious on other grounds, such as the use of later formulas, even twelfth-century ones, the mention of impossible witnesses, etc. The two Canterbury charters of 605 are obvious forgeries, because they mention the Frankish *referendarius* and *graphio* amongst the members of the court, whilst the second one begins with the Anglo-Norman 'Notum sit omnibus'.⁹⁶ The charter of Eadbald, A.D. 618, contains tenth-century formulas. [131] Wulfhere's charter of 664 we have already examined and found wanting. [132] The charter of <Cenwalh>, 670, has the tenth-century term *basilleos*, and comes from the Glastonbury chartulary, which swarms with forgeries. [133] Cynewalh of Wessex, circ. 672, is made to use tenth-century formulas, [134] and the charter is witnessed by bishops and others who were active a century and a quarter after his time. The charter of Wulfhere of Mercia, dated 624, assumed to be an error for 674, is derived from a tenth-century copy, to which the date is, apparently, added in another hand. [135] Several of its witnesses are mentioned in charters of Æthelbald of Mercia about the year 740. Time will not allow me to analyze the other charters that conflict with the

⁹² Rühl, *Chronologie*, pp. 132-3

⁹³ Sickel, 'Beiträge', p. 346.

⁹⁴ Cf. among the more recent comprehensive handbooks on chronology: H. Grotefend, *Zeitrechnung des deutschen Mittelalters und der Neuzeit*, 2 vols. (Hannover, 1891-8). H. Lietzmann, *Zeitrechnung der römischen Kaiserzeit, des Mittelalters und der Neuzeit*, 3rd ed. (Berlin, 1956). Bresslau, *Handbuch*, 3rd ed. (1960), ch. 16

⁹⁵ Letter in Mabillon, *De re diplomatica*, c. 6, para. 7. Not used in the seventh century: Sickel, 'Beiträge', p. 343.

⁹⁶ Noticed by Hickee, *Thesaurus*, p. 80, note (*dissertatio epistolaris*).

rule laid down. Most of them come from poisoned sources, such as the Evesham, Malmesbury, and Glastonbury chartularies, and at most it is only in the case of two or three charters that we need consider the question of insertion of dates by the era of the Incarnation. One of these is the charter of Swæbred of Essex, A.D. 704, the text of which has come down to us in an early ninth-century hand. [136] Another is the record of the confirmation at Cloveshoh in 716 of Wihtred's grant at the council of Bapchild, c. 700. [137] The oldest copy of this is a twelfth-century one, and it is attested by some witnesses who could not have subscribed in 716. The council of Bapchild is involved in suspicion, and the later references to it are not free from doubt.

Latin Charters of the Ninth Century

The ninth century witnessed the rapid rise of the kings of Wessex and the decline of the power of Mercia.⁹⁷ In the early years of the century Mercia was governed by King Cenwulf, who is represented by a great number of charters and other documents. His charters are usually without proems. They continue the characteristics of Offa's charters, using the future tense in the operative clauses, although not exclusively. We have already referred to his Kentish charter of 799, [138] which is remarkable for its retention of Roman formulas. He subscribes Kentish charter *propria manu*, but this comes to be the only Roman element in the Kentish charters, which cease to be drawn up differently to the Mercian charters. A few instances, however, occur during the century of the Kentish use of the second person singular for the donee. [139] The taste for lengthening the invocation continues. We have in Cenwulf's charters '+ In nomine Dei excelsi, Qui est spes omnium finium terra et in mare longe'. [140] There are also instances of the use of a true invocation, followed by a long defining clause such as '+ In nomine Sancti Salvatoris Dei et domini nostri Jhesu Christi. Regnante ac gubernante eodem domino Jhesu, simulque Spiritu Sancto gubernacula in imis et in arduis disponendo ubique regit', followed by a proem. [141] This defining or explanatory clause formed the model of the invocation of the later charters until the end of the O.E. period. There are other Mercian invocations that contain formulas or remarkable words that were borrowed by the compilers of the later charters. Indeed these latter are clearly developments from the Mercian charter. These latter early in the ninth century begin to afford specimens of the expansion of sentences by the use of unnecessary words, [142] such as introducing the name of the estate by clauses like 'in loco, quam (sic) ruricolae Seleberhting lond solent clamare', in 815; 'quod ab incolis terre illius nominatur at Sceldes forda', 824 for 834; 'in illo famoso loco qui appellatur', etc. [143] The use of such periphrases is a marked characteristic of the later charters. The Mercian diplomas of this century evince an inclination for the use of high-sounding words, and Greek words are occasionally used. These are the beginnings of the characteristics of the later charters. Offa already uses the word *caraxare*, an adaptation of the Greek <mmmm> in the sense of 'write'. This was a not uncommon Low Latin verb, and it is perhaps hardly fair to quote it except as an instance of the preference for recondite words. The Mercian charters also shew signs of the use of fixed formulas. Offa's diplomas, although not strictly formal, afford evidence of the use of sets of fixed formulas. There were several formulas in use for the various clauses of his instruments, just as was the case in the tenth and eleventh centuries.

⁹⁷ On the consent of the *witan* see Maitland, *Domesday Book*, p. 248.

Our attention must now be directed to the West Saxon charter, for this century witnessed the extinction of the other kingdoms, and the course of events showed that the West Saxon kings were destined to become monarchs of England. Their triumphant progress began with the ninth century, the reign of Egberht commencing in the year 802. We do not know much of the charters of this king, for most of the texts ascribed to him come from Winchester and carry with them marks of their spurious nature. There is only one charter preserved in what claims to be the original form. [144] It is dated 830, and it seems to be in [a] somewhat later hand. But it is Mercian in form, with no proem. There is a charter of his dated 823, an error for 828, preserved in the *Textus Roffensis*, a chartulary of the highest character, that we may accept as genuine. [145] This again is Mercian in form. If we compare it with the original charter of Wiglaf of Mercia in 831 we notice several agreements in formulas, especially in the anathema. [146] There is a short Kentish charter of his in 838 that also seems to be genuine. This is also on the Mercian, not on the Kentish model. We may therefore conclude that this king imitated the charters of the Mercian kings.

Egberht's son Æthelwulf continued the Mercian model, and his charters show clearly the regular use of set formulas. [147] In particular the anathema contains clauses that continued in use until the end of the O.E period. Some of these clauses were used by Egberht. Many spurious charters were fathered upon Æthelwulf. They contrast strongly with the genuine ones. It is difficult to believe in the authenticity of the charters relating to his well known 'donation' of a tenth of his land for pious purposes, which has been wrongly brought in to connexion with the system of tythes, and has even been suggested as the source of the glebe owned by parish churches. The charters of Æthelwulf's sons present no material changes. The son that we would fain know most about is represented by only one charter that we can feel any confidence in. It is curious that the one Old English king best known to the ordinary Englishman, the king who is still the 'darling of the English' should have left so little record in the shape of charters, and that the authors of spurious charters should have so seldom devoted their attention to him. It is otherwise than by diplomas that the great Alfred has graven his name so deeply in English history. In the history of law, of language, and of literature he occupies a proud and foremost place, and he can well afford to see his importance in English diplomatic eclipsed by a Cenwulf, an Æthelwulf, or even an Offa.

Latin Charters of the Tenth Century

Edward the Elder

The end of the ninth century produced, as we have seen, few charters, and the first quarter of the tenth is similarly represented by very few texts.⁹⁸ Edward the Elder's name is attached to a considerable number of texts, but it is clear that in most of these cases his name has been taken in vain. The Winchester and Malmesbury texts come from very untrustworthy sources, and several of them are evidently forged upon the basis of later royal charters. Two only of the texts ascribed to this king have any claims to rest upon contemporary MSS. One of these, the king's grant to Bishop Frithustan in 909, [148] is in somewhat later handwriting, and its import begets great

⁹⁸ Note the English charter [S 1443 (BCS 605)] from the Codex Wintoniensis (BL, Add. Ms 15350), which is booked up by the *Liber Vitae*, ed. W. de Gray Birch [(London, Winchester, 1892)], pp. 211-13,

suspicion in our mind, which is not removed by an examination of the English of the boundaries. The other one, a charter of 903, is equally doubtful. [149] The remarkable thing about the texts ascribed to Edward is the numerous references they contain to the writing of 'new books' or diplomas to replace lost ones. Most of the texts are highly rhetorical, but some of these are demonstrably later. Probably this king's instruments were not noticeable for pomposity.

Æthelstan

The same cannot be said of those of his successor Æthelstan, which mark an important stage in the history of the O.E. diploma. From this time onwards the charters become noticeable for the pomposity of their language, and it must have been tenth-century charters that inspired the comments of William of Malmesbury upon the turgid language of the instruments of the O.E. kings.⁹⁹ In Æthelstan's time this inflated rhetoric reaches its highest development. This monarch's charters are drawn up on well defined lines, and it is evident that his chancery must have been in possession of [a] well defined formulary. Indeed, we can detect the use of different formulas at different periods of his reign. He used several proems, and there are alternative formulas for the other parts of his charters. Several of his formulas were used by his immediate successors, and we find later kings reviving his titles after considerable intervals of disuse. Indeed, the charters of the latter part of his life, which were comparatively simple in form and diction, served as the model of those of his successors, and even his pompous charters seem to have begotten imitation, not reproduction, in the chancery of Æthelred.

The diplomas of Æthelstan contain traces of their ultimate origin in the Mercian charter, disguised as they may be by clouds of words. The Latin of Æthelstan's charters is of a most extraordinary nature. The tendency that we have noticed in the Mercian and ninth-century [charters] towards circumlocution is developed in Æthelstan's chancery to the highest perfection. The object of the compilers of these charters was to express their meaning by the use of the greatest possible number of words and by the choice of the most grandiloquent, bombastic words that they could find. Every sentence is so overloaded by the heaping up of unnecessary words that the meaning is almost buried out sight. The invocation with its appended clauses, opening with pompous and partly alliterative words, will proceed amongst a blaze of verbal fireworks throughout twenty lines of smallish type, and the pyrotechnic display will be maintained with equal magnificence throughout the whole charter, leaving the reader, dazzled by the glaze and blinded by the smoke, in a state of uncertainty as to the meaning of these frequently untranslatable and usually interminable sentences.¹⁰⁰

The charters are no less remarkable for the length of the sentences than for the extraordinary nature of the words pressed into use, most of which continued in use until the end of the O.E. period. In Latin there is a preference shown for most unusual words, and they are frequently made to bear a perverted meaning that was alien to them. There is a great use of frequentative forms of verbs, and inchoatives in *-escere* are much affected. There is a passion for substantives in *-amen*, *-usculus*, *-unculus*, etc. and for adverbs in *-atim*. Verbs, substantives, and adverbs are freely coined with these

⁹⁹ William of Malmesbury, *Gesta Pontificum* (Vita Aldhelmi), ed. N.E.S.A. Hamilton, RS52 (London, 1870), V/196.,

¹⁰⁰ Cf. F.A. Specht, *Geschichte des Unterrichtswesens in Deutschland* (Stuttgart, 1885), p. 107 n 2.

terminations, which are used not for the expression of any significance varying from the simple words, but merely because they make the word longer and more gaudy. Indeed, words may be said generally to be chosen more for sound than meaning. The resources of the Latin language were inadequate to supply the craving for pompous words, and Greek was freely brought into requisition. A small portion of these came from the Vulgate, such as *peripsema*, *holocaustoma*, whilst from the Fathers came such words as *protoplastus* (applied to Adam), *typhus* 'pride', *paradigma* (for a Gospel text), *polyandrium* 'cemetery', etc. But there are numerous other Greek words, which may have been derived from Latin Greek glosses. There are also a few Hebrew words, such as *iduma* for *yadhayim* 'hands', and the Hebrew *gebor* 'man' occurs in the compound *gibonifer*. Greek invocations sometimes occur, such as *agonista* and *symphonista* for 'evangelist', *karisma* <mmmm> in the sense of 'charter' or perhaps 'gift', a meaning it bears in the New Testament Greek.

This highly embroidered, flatulent Latinity was an outcome of the rhetorical schools of Italy and Gaul in the fifth century. It is well exemplified in the tumid diction of Theodoric the Great's secretary Cassiodorus. But it was in Celtic hands that it reached the acme of artificiality, pomposity, and obscurity. There are few more curious monuments of pedantic involution of meaning, turgidity, and delphic obscurity than the tract known as *Hisperica Famina*,¹⁰¹ which is supposed to be the production of an Irish monk of the sixth century. Some of the words used in this tract are met with in the Latin of Æthelstan's chancery, but they were not, I think, derived directly from the *Hisperica Famina*. The more immediate source was, I think, the pompous compositions of the English St. Aldhelm,¹⁰² a marvel of learning, if not of literary taste and judgement, for the seventh century. His prose and poetic works in praise of virginity were admired and studied as much for their subject as for their style. Aldhelm was born within half a century or so of the conversion of the English to Christianity, and he had opportunities of learning Greek and Hebrew from Archbishop Theodore and Hadrian.¹⁰³ At Malmesbury he was brought under the influence of the Irish monks, and it is, no doubt, to them that we ascribe the credit or blame for his literary stile. The student of Old English will perhaps be inclined to say 'credit', for it was the obscurity of Aldhelm's stile and the abstruse nature of his vocabulary that called into existence the numerous copies of his work with interlinear glosses in O.E. His works have produced the greater part of the O.E. glosses, and the copies containing these glosses prove to us how widely his works were read and studied in England. The occurrence in his works of most of the strange Latin and Greek words used in the chancery Æthelstan and his successors induces me to believe that his works were the quarry whence these words were taken, and the belief is strengthened by meeting in Aldhelm with phrases that are used in Æthelstan's charters.

From the time of Æthelstan there is a remarkable change in the sanctions. [150] Hitherto the infringer has been usually notified that he must answer for his trespass before the tribunal of God. Now the decision and sentence of that tribunal is anticipated, and the infractor is condemned to share the punishment [of] the great betrayer, and the rhetorician revels in pompous words describing the sound of the last trump, the rising of the dead, and the sufferings of the unfortunate culprit in the

¹⁰¹ I.M. Stowasser, ed., *Incerti auctoris Hisperica famina*, Jahresbericht des Franz Joseph-Gymnasiums 1886/7 (Vindobonae, 1887).

¹⁰² See on Aldhelm: Specht, *Geschichte*, pp. 104 seq.

¹⁰³ Specht, *Geschichte*, pp. 7, 107. Cf. Beda, *Historia*, IV/2, Aldhelm, *Epistolae*, MGH AA XV, p. 492.

flames of Hell. Other tenth-century sanctions picture the punishment of the recalcitrant one in frying pans of the demons. The resplendent Latinity of the time leads the authors of these anathemas to the anachronism of describing the Christian Hell in the word of the classical netherworld. [151] Not only do demons inhabit Tartarus, but the delinquent is puzzled by the presence of the cool floods of Acheron, Cocytus, and Styx, and he is even threatened with boiling in the pitch-filled cauldron of Vulcan.¹⁰⁴ [152] In a sanction that originated in Æthelstan's chancery and that long remained in use the unfortunate gainsayer is condemned 'to dwell in thrilling regions of thick ribbed ice' and to be subject to the attentions of the Pennine army of malignant spirits - those medieval obsessions whose malignancy is so highly coloured that it not unfrequently broadens into farce.

One of the outcomes of this striving after uncommon words was the use of *basileus* instead of *rex*, but this word can scarcely be adduced as proof of the claim of imperial rank. It is used as a more genteel word than *rex*, and the kings occasionally revert to the latter word. It is doubtful whether Æthelstan used this word in his charters, although there are many instances ascribed to him. If he did use it, he probably did not begin to do so until after the battle of Brunanburh in 937. He is certainly called 'Anglorum basyleos et curagulus totius Bryttaniae' [153] in a contemporary dedication of a copy of the Gospels to Christ Church, Canterbury, a stile that he uses, substituting *rex* for *basileus*, in a contemporary charter of 939. [154] The title of *basileus* is certainly used by Edmund, although he does not use it exclusively, and it continued in use until the end of the O.E. period, and was thus handed on to William the Conqueror.

The Latin charter after Æthelstan

The charter of Æthelstan just cited presents a strong contrast to the inflated Latinity of the documents of the early part of his reign. It is much shorter in form, although still somewhat rhetorical in places. Evidently this model was the one generally followed by Æthelstan's successors, and some of the formulas contained in it continued long in use. From this time until the end of the O.E. period it may be said that the form of the diploma has become settled. There are several formulas for each constituent part of an instrument, and the chancery of one king may prefer one formula to another, but the formula thus disused may come into use again in the next reign or even after the lapse of several reigns. These variations are especially noticeable in the stiles of the kings, the immunity clause, and the sanction. With one or two doubtful exceptions, the magniloquent proems and sanctions of Æthelstan are not reproduced by his successors. There is a continuity between the usages of the kings. Edmund uses the later formulas of Æthelstan with occasional modifications and with a different stile. He introduces the adjective *industrius* into his title, and we find instances of this adjective until the days of Edward the Confessor. Eadred similarly inserts the adverb *indeclinabiliter*, apparently in the sense of 'after mature consideration', 'unchangeably', into his attestation clause, and this has a similar history, and was used even by William the Conqueror. Edgar introduces a few modifications of formulas, and these modifications become stereotyped. After his reign the only change of any moment is that under Æthelred the practice arose of composing special proems for individual deeds, although some of the old proems are also used. In his reign the proems

¹⁰⁴ Cf. Giry, *Manuel*, p. 654 n 5.

frequently run to an enormous length, and are practically sermons. The vocabulary until the end retains the characteristics acquired in Æthelstan's time, but the language, although inflated and prolix, never again attains the imposing sonority and brazen magniloquence of Æthelstan's time.

The general agreement and common use of formulas thus sketched does not exclude a certain licence and variety that serve to distinguish the charters of one king from those of another. There will be differences in the style affected by the kings, in the manner in which they attest, and in the form in which the attestations of the witnesses is recorded. The emergence of old formulas from a period of disuse, to which we have referred, strongly suggests that the chancery must have possessed some collection of formulas, and this conclusion is strengthened by the use of interchangeable formulas for a particular section of the charter, and also by the instances in which a certain number of the stereotyped clauses of a particular formula are taken out of their setting and fitted on to parts of another formula. The varying combinations thus produced are numerous.

A curious feature may be mentioned in this connexion: that the occasional re-appearance in the tenth century of two of the formulas of the late Roman private deed that engaged our attention in the first lecture. One is the 'quicquid exinde facerint voluerint liberam in omnibus habeant potestatem faciendi', and the other 'manente tamen hac chartula nihilominus in sua firmitate'. [155] Occasionally, too, the king will use the Roman formula 'propria manu signum crucis expressi'. But as a rule the Roman formulas of the early charters are represented by formulas having nothing in common with them except the purport of the clause, and even that bond is sometimes missing.

The influence of the ecclesiastical origin of the diploma was strong enough to ensure its continuing to be drawn up in Latin until it finally died out in the twelfth century, despite the fact that the English were writing wills and other legal documents in the native tongue from at least the very beginning of the eighth century. We have also an original charter in English by King Beorhtwulf of Mercia in the middle of the ninth century. [156] There are, it is true, in the collections of O.E. charters several other instances of diplomas drawn up in English. But these are clearly to be regarded as translations. In several cases the original Latin texts exist; in others we can detect in the language proof that they are translated from Latin. By the tenth century the boundaries come to be written in English, which wholly displaces Latin for this purpose. After the Norman Conquest, strange to say, we meet with traces of the employment of diplomas drawn up in Latin and in English.

The Old English Writ

Hitherto we have dealt exclusively with the O.E. diploma. We must now turn to another class of record that began to displace the diploma in the eleventh century and that eventually superseded it in the next century.¹⁰⁵ This is the document that we may call the writ. It and the diploma represent two classes of records that were in use amongst the Romans. One is the dispositive record, that is the document that is in itself the vehicle of the gift, which is not completed until the delivery of the document.

¹⁰⁵ In Scandinavia: Bresslau, *Handbuch* I, p. 515 n 5.

This is the diploma, the document with which we have been hitherto concerned. The other is an instrument that notifies a transaction that is already completed. The distinction between the two classes of documents was hinted at by Sickel and finally established by Brunner.¹⁰⁶ On the continent the former class is called the *carta* and the latter *notitia*, but in England we are compelled to use the terms diploma and writ.

But the fact that the distinction represented by these two forms of records existed amongst the late Roman record must not lead us to believe that we shall [?] a Roman prototype for the English writ. The connexion is rather in the purport than in the form of the Roman and the English instruments. It is true that we find close parallels to the English writ amongst the Greek papyri from Fayoum. We must not, however, lay too great stress upon this agreement in form, for it is most probably to be accounted for by the fact that they are both epistolary in form, and that they are both royal mandates addressed to certain officers.

The earliest English writ that is genuine is that of Cnut in favour of archbishop Æthelnoth of Canterbury. [157] It is written in the fine MS. known as MacDurnan's Gospels preserved at Lambeth Palace, in a contemporary hand. Kemble recognised that this writ was the archbishop's investiture of temporalities, and its importance in legal and diplomatic history has [been] brought out by Professor Maitland in his usual inimitable manner.¹⁰⁷ The writ is in English, a feature probably arising from its close connexion with the shire-moots. We have seen that the English, with their usual independency and originality, used their own language in wills and other legal documents in the ninth century. With the exception of the Gothic attestations in the Italian sixth-century deeds, there is no trace of any Germanic race drawing up legal documents in their own tongue at so early a date. [158] At the very end of the twelfth century we meet in Iceland with deeds in the native language. The earliest German record in the vernacular comes from the middle of the thirteenth century, and the French are no earlier. The Norman Conquest strengthened the hold of Latin as the legal language, although we have traces of the use of English by Norman bishops and abbots in the twelfth century and of the drawing up of leases in that language in the twelfth century. French comes into occasional use for legal deeds in the thirteenth century, and English makes its appearance at the opening of the fifteenth century, when it entered upon a lengthy struggle with Latin for the mastery that was not finally settled by the absolute defeat of the foreign tongue until the middle of the last century.

We have already laid down the position that transfers of land were in O.E. times effected without written documents by the witness of the suitors of the shire-moot or hundred-court, an undoubted survival of early Germanic law. When the boroughs obtain importance in the constitutional scheme, their courts are invested with the duties of the shire-moot and of the hundred-court. The later medieval borough is not satisfied until it has reached the rank and is invested with the officers of a county, and we have witnessed in our day the creation of new class of county boroughs. The beginning of this long municipal struggle is far back in the mists of our early history. As early as the ninth century we have, in a note appended to a charter of 839, [159] evidence that land was conveyed by the witness of the inhabitants of a city, no doubt in their borough court. The noteworthy feature about this passage is that land that had

¹⁰⁶ Cf. Bresslau, *Handbuch* I, pp. 57-58. Brunner, *Rechtsgeschichte*, p. 395. Id., 'Carta', p. 571.

¹⁰⁷ Maitland, *Domesday Book*, pp. 259-67.

been granted by a royal instrument could be transferred before a popular assembly. The instrument or 'book' was, it is true, handed over at the same time. This important note is in English to this effect 'Lulla bought this book and this land from Æthelwald with the witnesses of all these port-men' - (inhabitants of the town of Canterbury). A later note in the same charter, also in English, testifies that Archbishop Dunstan bought the land from a woman and her two sons by the witness of the monastery at Christ Church and of the body of the burghers (*burhwered*). In Cnut's time we have an instance of the endorsement of a mortgage in English on the back of a diploma of Æthelstan's, and that the bishop had signified that he had granted this mortgage to the wise men of the borough of four Devonshire boroughs. [160]

From these and other instances we can see how important was the position held by the local courts as witnesses and recorders of transfers of land. In the Domesday Survey we have numerous proofs that questions of title were decided by them. In order to execute this function properly, it is obvious that they must have been advertised of every change in the ownership of land in their district. Otherwise the appeal to their memory in questions of disputed titles would have possessed little legal value. It therefore follows that when the king made a grant of land by diploma, he must have signified the fact in some way to the shire-moot or borough court. In the days of the small kingdoms this might have been done by a verbal message, or the king might even have trusted such a public action as the bestowal of a diploma to have come to the knowledge of the men in the neighbourhood of the land conveyed without his direct interposition. But with the expansion of the kingdom this system could not work satisfactorily. What was possible to a king of Sussex or Essex would be difficult for the ruler of the great kingdoms of Mercia or Wessex. It would be more difficult still for the king who ruled from the English Channel to the Firth of Forth. It is no wonder therefore that the custom arose of the king signifying in writing to the suitors of the shire-moot that he had made a particular grant. The instrument used was the writ, and the fact that it was addressed to the shire-moot rendered its preservation doubtful. In the few cases where they were preserved the abbey or person in whose favour they were issued would seem to have presented them to the shire-moot, to have had them read, and to have regained possession of them and treasured them as muniments of title. As a rule the abbey would be satisfied by preserving the solemn diploma. In one instance only have I been able to find that the diploma and the writ were both preserved. In another instance in the time of William the Conqueror the diploma is preserved and we have a record of the sending of the writ to the shire-moot. As the chances of the preservation of the writ, until it displaced the diploma, were so small, there is no reason why we may not assume that the writ was in use long before the earliest instance of it that has come down to us. This is an assumption that is supported by the form of the writ, and by the fact that Cnut is not known as an innovator in chancery usages. Being addressed to the unlettered shiremen, the writ was necessarily in English, and it has certain fixed formulas and alliterative jingles that are, as Professor Maitland has well observed, suggestive of greater antiquity than the time of Cnut. The history of the writ seems to have gone through three stages. First, it is delivered to the shire-moot, and nothing more is heard of it. Second, occasionally the party in whose favour it is drawn up, obtains possession of it and keeps [it]. Third, it has become a usual custom thus to retain the writ, which takes its place as a muniment of title and gradually renders the issue of the diploma unnecessary. Owing to its elastic form the writ can be made to do almost anything. Hence it is used for the promulgation of laws; by the addition of [an] enacting clause

it gradually develops into the royal charter and thus continues in use until the time of Queen Anne. It is made to convey the king's will to other persons than the suitors of the shire-moot, and at the end of the twelfth century it becomes differentiated into letters patent and letters close, the two great instruments for the government of England for many centuries. In the form of letters patent it is still in use. Already by the end of the eleventh century we can trace in it the lineaments of the later judicial writs - an interesting progeny upon which Professor Maitland, our modern Selden, has thrown so much light.¹⁰⁸

The writs of Christ Church, Canterbury, afford us a convenient epitome of the history of the writ. They begin with this famous writ of King Cnut, which it is advisable to lay before you in a translated form. [161] After the sign of the cross, it proceeds, in the brief, business-like language of the writ: 'King Cnut greets in friendly wise all my bishops and my earls and my reeves in every shire wherein Archbishop Æthelnoth and the monastery at Christ's Church has land. And I notify to you that I have granted to him that he shall be worthy of his sac and of his soc, and of 'grið-bryce', and of 'ham-socn', and of *forestall*, and of intaken thief, and of 'flymenafyrmð' over his own men within borough and without, and over Christ Church, and over as many thegns as I have granted to him. And I will that no man shall claim any jurisdiction therein except he and his bailiffs, because I have given these rights to Christ for the redemption of my soul for ever, and I will that no man shall ever infringe this under pain of forfeiting my friendship.'

This writ, it will be seen, invests the archbishop, who filled the see from 1020 to 1038, with certain jurisdictions and immunities over his land, and it is one of the most important documents we possess for the early history of private jurisdiction. The writ would seem to have transferred these rights without their being mentioned in the formal diplomas.¹⁰⁹ There is preserved at Paris an original writ of Edward the Confessor signifying to the bishop of the diocese, the earl, and to all his thanes in Oxfordshire that he has granted Taynton of the great monastery of St. Denis near Paris, 'and all the things that pertain thereto of right, in wood and in field, with sac and with soke, as fully and as entirely as it was when in my hands'. [162] This writ has the usual direction of the writ, the Canterbury one being unusual in its more general address. The St. Denis writ is also noticeable for having a sanction, and for containing a clause 'and I will that the bishop shall draw up an instrument (*boc*) relating to this, with my full leave'. A Wulfwig, it may be noted, is called 'cancellarius' in a Westminster forgery of 1045. [163] In the diploma, which claims to have been written by bishop Wulfwig and is dated 1059, [164] no mention whatever is made of the jurisdiction conveyed by the sac and soke of the writ, unless it is covered by the clause exempting the land from everything except the contributing to military expeditions and to the repairing of fortresses and bridges. If private jurisdictions could thus be conveyed without being mentioned in diplomas, we have a fact of very great importance in the history of the growth of private jurisdiction, and the testimony of the St. Denis writ deserves additional importance from the fact that it relates to a new gift, not to the confirmation of already existing rights and immunities.

¹⁰⁸ Hickes, *Thesaurus*, pp. 63 seq. (Dissertatio epistolaris). Maitland, *Domesday Book*, pp. 262-264. Cf. Earle, *Land-Charters*, p. 232.

¹⁰⁹ Cf. in the Oswaldslaw charters [S 731 (BCS 1135)] foot. See also W. Dugdale, *Monasticon Anglicanum*, 2nd ed., VI, 2 (London, 1846), pp. 1077-8.

The Canterbury writ, on the other hand, merely invests the new archbishop with the existing rights of his see. [165] This is, perhaps, not absolutely clear from the words of the writ itself, but the conclusion that this is the intention is forced upon us by a consideration of the later writs. Succeeding archbishops obtained writs in precisely the same words down to the reign of Richard I, and also another writ investing them with the lands of the archbishopric. The oldest instance of the latter writ is that of archbishop Stigand in 1052. [166] From this time onwards the writs of all the archbishops are preserved in the originals or in copies. It is a good proof of the continuance of the O.E. chancery and administrative system under William the Conqueror that archbishop Lanfranc was invested with the jurisdiction of his lands with a writ drawn up in O.E. in the same words as the writ of Cnut. Similarly Archbishop Anselm received English writs under William II on his election in 1093,¹¹⁰ and again when he was received into the favour of Henry I in 1105. The writs of William Rufus and Henry seem to have been accompanied by a Latin version. This was certainly the case in 1114 when writs were issued for Archbishop Ralph, and apparently in the case of archbishop William in 1123. Theobald in 1139 received a bilingual writ, and again upon the accession of Henry II in 1154. After this time the English version disappears, but the Latin, reproducing the language of Cnut's writ, was used by Richard I and John. This Latin version might be taken as a type of the royal charter of the Norman kings, which is generally assumed to be formed on Norman lines, whereas it is in every feature plainly and undoubtedly the O.E. writ in a Latin dress.

Series of writs almost as complete and as convincing might be adduced from St. Augustine's, Canterbury, from Winchester, Westminster, and Chertsey abbey. The monastery of St. Peter's at Ghent received from Henry I and Henry II and John Latin writs that were mere translations of a writ of Edward the Confessor.

The writ of Cnut cited above does not stand alone, for we have later copies and translations of half a dozen or more writs of his. In his diplomas Cnut followed the usages of the chancery of Edgar and Æthelred, but the writ in his time was probably already beginning to displace the diploma. We have, perhaps, evidence of this in the reign of Edward the Confessor. This king issued some twenty-five English writs relating to the estates conferred upon Westminster abbey by him, but he seems to have issued no diploma, a defect that the monks endeavoured to remedy about the year 1100 by forging no less than three diplomas for him. The king died, it is well known, before the completion of the abbey, but it is difficult to believe that he deferred the making of a diploma until the completion of the buildings. The citizens of London obtained from William the Conqueror a confirmation of their liberties soon after the Conquest. This confirmation took the form of a writ in English. This venerable slip of parchment, the first model of the long series of town charters, may have been the first application of the writ to a purpose of this sort, but even if this was so, it is a testimony of the growing popularity of the writ. This writ is noticeable for the appearance of the words 'French and English' in the address clause, for these words became fixed as a part of the address clause of writs in the eleventh and twelfth centuries, and as the writ became the model of the private charter, they are commonly met with in the deeds of nobles and others.

¹¹⁰ Cf. Eadmer, *Historia novorum in Anglia*, pp. 31-7, 166.

Conclusions

considerable number of writs in English have come down to us, in originals or copies, from the chancery of William the Conqueror, and I have adduced the fact as proof that there was, to say the least, a considerable English element in his chancery. Because one or two pedigrees go back to the Norman Conquest and many hundreds of bogus ones pretend to do [so], it is too generally assumed that there was nothing in England before the Norman Conquest that could be considered civilisation. It has been recently assumed that England, even after twenty years of Norman rule, was unable to produce sufficient clerks possessing the modicum of Latin necessary for the compilation of the Domesday Survey. A generation before the Norman Conquest there were a handful only of newly founded monasteries in Normandy itself, and education was at a very low ebb.¹¹¹ It was practically brought into the country by foreigners such as Lanfrank and Anselm. England, on the other hand, during this period was a hive of busy authors and transcribers. The MSS. in existence in Latin written in England during the century preceding the Norman Conquest may be counted by the hundred. There was in addition an enormous vernacular literature that has not its equal anywhere in western Europe. England produced a Latin grammar in the native tongue, the work of the great prose writer Ælfric, long before any other nation. There are treatises on science in English, and in Byrhtferth of Ramsey the English produced a writer on chronology whose writings were still studied on the continent in the sixteenth century. When we consider the mass of Old English literature, a literature that enormously outweighs the vernacular literature of the whole of western Europe of the same period, and that the MSS. that have come down to us necessarily represent only a fragment of the production, we can see no reason to shrink from a comparison of the culture of England with that of Normandy, even when backed up by contributions from France. Within a century of its conversion to Christianity England produced the great scholar Aldhelm, the only man of Germanic race who figures in the list of authors quoted in the ordinary Latin lexicons, and the truly Venerable Beda,¹¹² whose works as historian and scientist had an influence second to none in Europe throughout the whole of the Middle Ages. In the eighth century it evangelized Germany,¹¹³ and learned Englishmen and equally learned Englishwomen kindled the torch of learning in various quiet nooks of Germany and Holland.¹¹⁴ Nor must we forget the very important part played by the great educationalist Alcuin under the auspices of the mighty Charles in that great revival of classical learning that challenges comparison in its far-reaching effects with the later and better known Renaissance. After the withering effects of the Danish invasions passed away, Englishmen and Danes applied themselves with equal energy to tending the lamp of learning, re-kindled into life by the inspiration of Alfred, triply great as ruler, warrior, and scholar, backed up by the tireless efforts of the saintly Æthelwold and of the great intellect of Dunstan. Their influence had not exhausted itself by the time of the Norman Conquest. The two most

¹¹¹ It may be doubted whether William had a chancery in Normandy. The great feudatories, even the count of Flanders, caused their charters to be written by the destinators at time (Pirenne, 'chancellerie', p. 736). In 1089 the count instituted the prevost of St. Donatien of Bruges as chancellor of Flanders and placed him at head of his notaries and chaplains (Pirenne, loc. cit.), granted to him and his successors who held it until the end of the twelfth century. Cf. Bresslau, *Handbuch* I, p. 454. W.H. Stevenson, 'An Old English Charter', *EHR* 11 (1896), pp. 731-44; *EHR* 12 (1897), pp. 107-10.

¹¹² . 'In vorzuglicher Weise der Lehrer des ganzen Mittelalters', Specht, *Geschichte*, p. 7.

¹¹³ Specht, *Geschichte*, pp. 7-11

¹¹⁴ Cf. Specht, *Geschichte*, pp. 8, 10.

famous scribes in England in the early days of the twelfth century were Englishmen at Canterbury. One of them was Mainer, the writer of the magnificent bible in three folio volumes, which, in the words of a French scholar, is one of the treasures of the library of Sainte-Genevieve. The other was Eadwine, the writer of the sumptuous Psalter with English and French glosses preserved in the library of Trinity College. A contemporary of theirs was an English scholar whose reputation was so great that he was designated by the pope as mentor of the saintly and scholarly Anselm when he became archbishop. This was the monk Eadmer, who became the trusted friend and defender of Anselm, and his companion in his toilsome wanderings in exile, and who has proved by the admirable style, lucid arrangement, and correct Latinity of his loving life of the great archbishop that he was no unfit companion for the scholarly prelate.

There is, I maintain, no necessity either on the grounds of the lack of educated English clerks or of deficient intelligence for the assumption that has been so freely made, owing to the ordinary Englishman's ignorance of Anglo-Saxon history, that William the Conqueror imported from Normandy an organized chancery. There is no evidence to prove that he possessed a very highly organized chancery in Normandy before the Conquest of England. It is an assumption based simply upon the fact that he called the head of his chancery chancellor, and that he used a seal. It has been again assumed that he used a seal as invariably as the later kings did. Professor Maitland has, however, taught us that even in the times of the Anglo-Norman kings the seal was not invariably used, and that in fact solemn and important documents were validated rather by the apposition of the sign of the cross than by the affixing of a seal. This is, in fact, the custom of the Old English chancery. The writ was necessarily validated by a seal, and the gradually increasing use of this form of record has led to the erroneous conclusion that the Norman kings sealed all their documents. As the writ gradually assumed some of the functions and even the formulas of the diploma, it was natural that the latter, a gradually decreasing class of record, should occasionally bear a seal. This was, in fact, a development that the diploma would probably have gone through in England if William had never crossed the sea. It must be remembered that the dependent 'seal of majesty' was in William's day somewhat of a novelty, imitated from the dependent bulla of the papal chancery. The Anglo-Saxon chancery forestalled by several centuries the chanceries of western Europe in the introduction of a change that was far more important than mere formalism. This was the production of a chancery form of the native tongue. It is quite evident that as early as the tenth century the chancery officials used a form of West Saxon that was more conservative in its grammatical forms than the ordinary language.¹¹⁵ It was used in charters relating to Mercia, Kent, and even to Northumbria, and it was familiar enough at York for the canons, whose own tongue was Northumbrian strongly impregnated with Scandinavian, to understand and accurately copy Cnut's letter from Rome. Nay more, the so-called 'Laws of the Northumbrian Priests' were drawn up in this chancery West Saxon. The English chancery clerks of William and his successors used this chancery English when they issued writs in English. A chancery that could thus anticipate the other west European chanceries in providing a common literary language, which it was strong enough to keep free from the grammatical decay and confusion of the colloquial tongue, cannot have been otherwise than an organized

¹¹⁵ Giraldus Cambrensis, *Descriptio Cambriae* I, c. 6, in his *Opera*, ed. J.F. Dimock, RS 21, 6 (London, 1885), pp. 177-8, notices the use of English (West Saxon) for Beda, Raban and King Alfred *vel aliorum quorumlibet*..

institution. When it was able, moreover, to provide the substructure upon which the whole of the later royal records were erected with the aid of few unimportant foreign elements, we may reasonably claim that it must have been both a strong and a well-organized institution with definite regulations and formulas. Therefore we can wipe away the reproach implied in the oft made remark 'that the Anglo-Saxon kings did not possess a chancery'.