

Introduction

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When we think of charter diplomatic, our minds naturally turn to the process of establishing the authenticity of documents with which the name of Jean Mabillon (1632–1707) is indelibly associated. In the nineteenth and much of the twentieth century this was chiefly deployed in ascertaining the beginnings of royal bureaucracy, seen as a vital development in any nation's early development. In more recent times the general assumptions and methodological principles underlying the quest for the origins of government have been challenged, and diplomatics brought to bear on wider concerns—social, cultural and ideological.¹ The partnership between diplomatics and palaeography has also born fresh fruit in the deeper understanding of charters as artefacts, resulting in an appreciation that those who produced charters used a broader vocabulary of visual signals than is revealed by focusing only on the formal aspects of text and on the mechanics of production.² In large part these new approaches are rooted in a more holistic interest in the most obvious—albeit underexploited— aspects of charters: the way they look and what they say. Where shifting patterns across a mass of this material can be identified it has seemed natural to take this to represent fundamental historical

¹Mark Mersiowsky, 'Towards a reappraisal of Carolingian sovereignty charters', in *Charters and the Use of the Written Word in Medieval Society*, ed. Karl Heidecker (Turnhout, 2000), 15–26. For examples of work where aspects of diplomatic have been deployed as a source for the study of social history and cultural interactions, and ideas of kingship, see (respectively) S. D. White, *Custom, Kinship and the Gifts to Saints: the laudation parentum in Western France, 1050–1150* (Chapel Hill, NC, 1988); Huw Pryce, 'Culture, power and the charters of Welsh rulers', in *Charters and Charter Scholarship in Britain and Ireland*, ed. Marie Therese Flanagan & Judith Green (Basingstoke, 2005), 184–202; and Stephen P. Murrill, 'Prayers for the king and royal titles in Anglo-Norman charters', in *Anglo-Norman Studies* 32 (2010), 184–202. Marie Therese Flanagan, *Irish Royal Charters. Texts and Contexts* (Oxford, 2005), 237–50, is a salient example of what can be achieved when a wide range of perspectives provided by diplomatic evidence is brought together.

²*Graphische Symbole in mittelalterlichen Urkunden*, ed. Peter Rück (Sigmaringen, 1996), commented on by Karl Heidecker in *Charters and the Use of the Written Word*, ed. Heidecker, p. 12.

developments. There is a growing concern, however, that some of this evidence has been generalised and treated too readily as a mirror of reality, as if changes in the use of certain terms or the rise of particular forms necessarily reflect a social transformation. This has been most acute in the study of eleventh-century France. Dominique Barthélemy has disputed claims that the growing informality of documents—written in the third person (rather than first person) and with witness lists rather than subscriptions with crosses—is indicative of the collapse of earlier structures of authority. He has also challenged the idea that the appearance of *miles* as a title applied increasingly in charters to men of higher status can be read as evidence for the rise of a military elite.³

Although charter diplomatic, by tracking changes across a body of evidence, has the potential to shed light on significant historical developments, the results must be considered in detail rather than in general terms, and in the context of the original function of the documents and their archival background. A striking example of what can be achieved is Richard Sharpe's study of the writ-charters of Bury St Edmunds, where a close analysis of text and context led to a breakthrough in understanding this distinctive English form.⁴ The significance of a multi-faceted study of individual charters is nowhere more clearly displayed than in Marie Therese Flanagan's study of all fifteen charters of Irish kings surviving from the twelfth and thirteenth centuries, turning the tiny size of this corpus to advantage by subjecting each document to the kind of close scrutiny that would be a huge task to complete for a larger collection and impossible to publish in a single volume. A more focused approach to charter diplomatic that can yield new insights into more general historical issues is where a puzzling feature is

³Dominique Barthélemy, *The Serf, the Knight, and the Historian* (Ithaca, NY, 2009), 12–18, 30–4, 187–94; for more general discussion of the interpretation of this period and its sources, see 1–11, 302–13. This is an English translation of his *La mutation de l'an mil, a-t-elle eu lieu? Servage et chevalerie dans la France des X^e et XI^e siècles* (Paris, 1997), with additional introduction and conclusion where he discusses the original book's background and purpose and its reception.

⁴Richard Sharpe, 'The use of writ-charters in the eleventh century', *Anglo-Saxon England* 32 (2003), 247–91; id., 'Address and delivery in Anglo-Norman royal charters', in *Charters and Charter Scholarship*, ed. Flanagan & Green, 32–52.

found too frequently to be dismissed as a scribal quirk. The regular use of the day and month, but not the calendar or regnal year, in the dating clause of Scottish royal charters between 1195 and 1222, for example, would have been peculiarly ineffective if it had been intended as part of a system of maintaining a central record. It has been argued, however, that it should be viewed in the context of the kind of document that was routinely given this style of dating by the papal chancery and English royal scribes; seen in this light, this consistent but strange form of dating all royal acts can be read as a carefully calibrated statement of the Scottish kingship's status, suggesting that those closest to it did not yet regard it as of equal standing with English kingship.⁵

If a feature found regularly in charters appears puzzling because it defies any practical explanation, it seems natural to consider the possibility that it originated solely in the realm of ideas. This cannot be assumed in all cases, however. In the main, scholars have tended to regard such puzzles as idiosyncrasies, especially in the era before charters succumbed to the predictability and prolixity of lawyers and notaries. It is true that, on the whole, historians welcome documents that are not suffocated by what has been described as 'concatenations of obligatory formulae permitting scarcely any variation'⁶ because, without these constraints, there is more scope for them to reflect human experience. When the fruits of such freedom cannot be read so readily as a mirror of real life, however, there is an equally natural tendency to explain them as due to shortcomings in how the charter was drafted, especially where they deviate from the norms and expectations established by generations of scholars. There are, of course, many instances where early charters are expressed in ways that compromise their ability to function as enduring records.⁷ On the other hand, a feature in the

⁵Dauvit Broun, 'The absence of regnal years from the dating clause of charters of kings of Scots', *Anglo-Norman Studies* 25 (2003), 47–63.

⁶G. W. S. Barrow, 'The Scots charter', in *Studies in Medieval History presented to R. H. C. Davis*, ed. Henry Mayr-Harting & R. I. Moore (London, 1985), 149–64, at p. 149 (reprinted in G. W. S. Barrow, *Scotland and its Neighbours in the Middle Ages* (London, 1992), 91–104, at p. 91).

⁷Michael Clanchy, *From Memory to Written Record: England 1066–1307* (London, 1979), 231; 2nd edn (Oxford, 1993), 294.

diplomatic of a charter that seems odd to us, but is found repeatedly, cannot be ascribed so readily to scribal incompetence: its oddity is more likely to reflect the limits of our understanding than anything else.

Three of the studies in this book take their lead from puzzling features of charter diplomatic; in each case the key to the problem is in seeing the charters in their appropriate context. By relating them to aspects of landholding, government and law, these diplomatic conundrums, as refractions of the reality in which these documents were situated, can themselves be used to shed fresh light on these central issues. In the first study Richard Sharpe confronts the puzzle of why, in the address, it was only an option, not a necessity, to refer to French, English, Scots, Welsh and so on. The choice of peoples mentioned seems obvious in some instances, but perplexing in others. How can this be explained? Why mention them at all? In the second study John Reuben Davies examines why, in the disposition, the choice of words seems inappropriate in a number of cases. How, for example, can a donor be said to 'give' land which the beneficiary already possesses? Is this an occasional assertion of lordly authority, or simply poor drafting? Or is there another explanation? Poor drafting has also been suspected in the case of Scottish charters where land is said to be held in alms of the donor and his heirs, the launch-pad of the third study, by Alice Taylor. This seems extremely odd in an English context, but is found frequently in Scotland. Were Scottish scribes simply less careful or less well trained? Or, again, is there another explanation? In each study the investigation of these puzzles sheds fresh light on fundamental aspects of the history of this period: the use of different languages in public assemblies, and the eventual predominance of French there; the relationship between lord and tenant, donor and beneficiary; and the obligations owed by landholders to the king of Scots, how these evolved, and what they reveal about the nature of public authority in the Scottish kingdom.

Each of these three studies deals with one of the essential elements in a charter donating land: the address, the disposition and the holding clause. The final standard ingredient is the 'testing clause' listing the witnesses, and is the subject of the fourth study.

Rather than focusing on a puzzling phrase or choice of words, this broaches a more general problem: were witnesses present when the charter was drawn up? This question has in the past been tackled with reference to the common law on charter-witnesses and the validity of charters, and in the light of letters written by a donor to witnesses who were named in his or her charter even though they were absent at the time. As well as revisiting this material, the study introduces a new palaeographical perspective into the discussion, and argues that a deeper understanding of the process of recording a transaction and creating a charter can shed new light not only on the presence of witnesses but also on the relationship between transaction and charter.

Overall, then, the intention of the book is to show that charter diplomatic is more than a dry technical counterpart to the rich information about social relationships, identity, law and politics that can be gained from reading charters. It can lead to fresh insights about language and identity, land law and kingship. Although the focus of this book is Anglo-Norman Britain, the general approach exemplified in these studies would be applicable anywhere with a sufficient corpus of charters prior to the emergence of lawyers. The discussion of the presence of charter-witnesses also suggests that there is significant life yet in a question that has challenged generations of scholars in Britain—an issue which has reached a different consensus across the Channel.⁸ The book also has another purpose. It is an exercise in British history that places Scottish material centre stage, as well as showing that Scottish evidence can only be understood in a British context. Even in the first study, the

⁸In Britain it is now widely assumed (notwithstanding some recurring anxieties) that witnesses were present (see below, p. 236). In contrast, Barthélemy, *The Serf, the Knight, and the Historian*, p. 19, regards lists of witnesses, unlike subscribed crosses, as having ‘something virtual, even fictitious’ about them: ‘what was expected of them was testimony if required, namely, that they would defend the act’; they need not, therefore, have been present when they were named in the charter as witnesses. Barthélemy draws here on the fuller discussion in Olivier Guillot, *Le Comte d’Anjou et son entourage au XI^e siècle*, 2 vols. (Paris, 1972), vol. ii, 12–19. This position is essentially the same as what was (on the basis of very different evidence) regarded as the consensus in Britain more than half a century ago: see below, pp. 238, 248–9.

only one of the four to offer a comprehensive pan-British discussion, it is the Scottish dimension that poses the most searching questions. In the third study, devoted to a central aspect of Scottish kingship, the English dimension is essential for unlocking the diplomatic conundrum that leads to a new understanding of common burdens in Scotland. The second study, by taking Scottish evidence as its base, raises questions about land law and charter terminology that now needs to be considered elsewhere in Anglo-Norman Britain. It could be argued that the core business of the fourth study could just as well have been dealt with using English evidence alone; even so, the Scottish material not only helps to sharpen the focus on important issues (letters to absent witnesses, the inclusion of a dead witness), but provides unique insights into the potential involvement of witnesses in the recording of their names—an issue with resonances in French charter scholarship, albeit from a markedly different perspective.⁹ Scotland was, of course, distinctive, not least for being by far the most significant part of the Anglo-Norman world that developed independently of English royal jurisdiction. Indeed, our understanding of this is enhanced by the studies of addresses and common burdens in this book, both of which suggest that public authority in twelfth-century Scotland lacked the infrastructure found in England. Although the importance and prominence of the Scottish dimension is different in each study, it is hoped that, together, they show that British history in the Anglo-Norman era can function not only as a comparative exercise, or by tackling the central question of English power and Anglicisation, or through fine-grained cross-border case studies, but also as an integrated field in which Scottish material plays an essential part. In few areas of study is this likely to be more fruitfully pursued than in diplomatics.

⁹See Guillot, *Le Compte d'Anjou et son entourage*, ii. 10, who pointed to the fact that witnesses who subscribed *signa* in their own hand touched the charter and viewed this as an important ritual reminiscent of touching relics; he also argued (p. 9) that the cross, symbolising the gift of eternal life through Christ's death, also, through the *signa*, endowed a kind of eternal life to the deed being witnessed.