

**Common burdens in the *regnum Scottorum*:
the evidence of charter diplomatic**

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It is well understood that common labour obligations reveal much about the workings of early medieval polities: how they organised their defences, the relationships within and between local economies, and the power of the state.¹ No full study of the nature and significance of common labour obligations (or burdens) in Scotland has yet been attempted.² Instead, it has long been assumed that there existed three burdens, levied on fiscal units of land throughout the kingdom, which aimed to support the itinerant king and provide him with money and men for the defence of his realm. These burdens were *cáin* (a tribute render, paid in kind), *coinnmed* ('conveth', a hospitality render) and *exercitus et expeditio* (army service within and without the kingdom).³ This argument was put across with characteristic strength by W. F. Skene in volume three of *Celtic Scotland* but received exciting corroboration in 1969 when G. W. S. Barrow published his article on 'Northern English society in the twelfth and thirteenth centuries' (also about Scotland, despite the title).⁴ But whether all these three obligations were common

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¹James Campbell, 'The late Anglo-Saxon state: a maximum view', repr. in James Campbell, *The Anglo-Saxon State* (London and Rio Grande, 2000), 1–30; Rosamond Faith, *The English Peasantry and the Growth of Lordship* (Leicester, 1997), 89–125; Andrew Bell, 'The Organisation of Public Work in Society by the State in Early Medieval England c. 800–c. 1300', unpublished D.Phil. dissertation (University of Oxford, 1996), 235–40.

²There have been three significant studies of the common army of Scotland: J. R. N. MacPhail (ed.), *Highland Papers*, Scottish History Society, 2nd ser. vol. 12 (Edinburgh, 1916), ii. 227–45; A. A. M. Duncan, *Scotland: the Making of the Kingdom*, (Edinburgh, 1975), 376–92; G. W. S. Barrow, 'The army of Alexander III's Scotland', in *Scotland in the Reign of Alexander III*, ed. N. H. Reid (Edinburgh, 1990), 132–47.

³See W. F. Skene, *Celtic Scotland: The History of Ancient Alban*, 3 vols. (Edinburgh, 1876–80), iii. 228–35; G. W. S. Barrow, 'Pre-feudal Scotland: shires and thanes', in G. W. S. Barrow, *The Kingship of the Scots: Government, Church and Society from the Eleventh to the Fourteenth Century* (Edinburgh, 1973, 2nd edn, 2003), 7–56, at p. 36; id., *Kingship and Unity: Scotland 1000–1300* (Edinburgh, 1981, 2nd edn, 2000), 64–5.

⁴G. W. S. Barrow, 'Northern English society in the twelfth and thirteenth centuries', *Northern History* 4 (1969), 1–28; repr. in G. W. S. Barrow, *Scotland and its Neighbours in the*

burdens levied by the king across all his lands remains open to debate. Since the publication of Barrow's article in 1969, there has been a tendency to assume that *cáin* and *coinnmed* were common obligations throughout the kingdom in the twelfth and early thirteenth century rather than examine whether this was indeed the case.⁵ As long ago as 1928, William Croft Dickinson laid down a casual (possibly unconscious) challenge to Skene's (and later Barrow's) position by stating that 'as in England, there seems to have been a general duty of service to castles, repair of bridges, and of service in the army' but no subsequent commentator has taken this remark any further.⁶

Questions therefore remain about the nature of common obligations in medieval Scotland. This study re-examines the common burdens levied by the king of Scots during the central Middle Ages from the starting point of a neglected aspect of Scottish charter diplomatic. It will then argue that our understanding of the nature of these burdens has been quite mistaken. In the process, the study will develop and provide a partial corrective to the work of G. W. S. Barrow and A. A. M. Duncan on the mechanisms for raising the king's common army during this period.⁷ The changing nature of those responsible for levying the common burdens in the *regnum Scottorum* will provide the context for a reassessment of what impact the rule of the 'Anglo-Norman' kings of Scots had on their existing resources. The overriding aim of this piece is therefore to provide a greater understanding of what the organisation of common burdens can reveal about structures of power in the medieval kingdom of the Scots, the participation of the king's government in local society and, indeed, the relative reach of that government.

Middle Ages (London and Rio Grande, 1992), 127–53; also W. D. H. Sellar, 'Celtic law and Scots law: survival and integration', *Scottish Studies* 29 (1989), 1–27, at pp. 16–18.

⁵See, for example, the references to *cáin* in Richard D. Oram, *David I: the King who Made Scotland* (Stroud, 2004), 92, 116, where it is assumed that the reader is aware of the meaning and distribution of the term.

⁶*The Sheriff Court Book of Fife 1515–22*, ed. W. C. Dickinson, Scottish History Society, 3rd series, vol. 12 (Edinburgh, 1928), 374; see now the brief remark in Simon Taylor and Gilbert Márkus, *The Place Names of Fife*, vol. 3, *St Andrews and the East Neuk* (Donnington, 2009), 595–6.

⁷Barrow, 'Army of Alexander III', 132–47; Duncan, *Scotland: the Making of the Kingdom*, 376–92.

UNDERSTANDING THE DIPLOMATIC OF SERVICE

The following are examples of an interesting and unusual formulation appearing in royal charters and in private deeds with regularity from the second half of the twelfth century. All these acts record land and churches held at one point by ecclesiastical beneficiaries:

1. Quare uolo ut predicti canonici predictas elemosinas habeant et teneant plenarie de me et heredibus meis ita libere et quiete sicut aliquam elemosinam liberius et quocius in Scotia habent et possident.⁸

(“Therefore I will that the aforesaid canons shall have and hold the aforesaid alms fully of me and my heirs so freely and quietly as they have and possess other alms freely and quietly in Scotia.”)

2. Quare uolo ut prenominati abbas et conuentus prefatam ecclesiam teneant et possideant de me et heredibus meis ita libere quiete plenarie et honorifice sicut aliqua domus religionis in toto regno Scottorum aliquam ecclesiam de aliquo barone liberius quocius plenarius tenet et honorificencius.⁹

(“Therefore I will that the aforementioned abbot and convent shall hold and possess the above church of me and my heirs so freely, quietly, fully and honourably as other religious houses throughout the kingdom of the Scots hold any other church of any other baron freely, quietly, fully and honourably”).

3. in liberam et perpetuam elemosinam ita plenarie de me et heredibus meis tenendam et habendam sicut predictus Dodinus eam unquam melius et plenius tenuit et habuit ita liberam et quietam sicut aliquam aliam elemosinam liberius et quocius tenent.¹⁰

(“To be had and held in free and perpetual alms of me and my heirs as fully as the aforesaid Dodin ever well and fully had and held it, as they hold any other alms freely and quietly.”)

4. Quare uolo ut prefatus Hugo prenominatam terram per rectas diuisas suas ita libere et quiete et honorifice omnibus diebus uite sue teneat et possideat sicut ecclesia Sancti Thome de Abirbrothoc terram illam de me uel alias terras et tenuras suas de me et heredibus meis liberius et quocius in liberam et

⁸Joseph Robertson, *Illustrations of the Topography and Antiquities of the Shires of Aberdeen and Banff*, 4 vols., (Aberdeen, 1847–69) [henceforth *Aberdeen-Banff Ill.*], ii. 17–18.

⁹*Aberdeen-Banff Ill.*, ii. 46–7.

¹⁰G. W. S. Barrow, with the collaboration of W. W. Scott, *Regesta Regum Scottorum Volume 2. The Acts of William I, 1165–1214* (Edinburgh, 1971) [henceforth Barrow, *Acts of William I*], no. 74.

perpetuam elemosinam tenent et possident.¹¹

(‘Therefore I will that the above Hugh shall hold and possess the aforementioned land by its right marches so freely and quietly and honourably for all the days of his life as the church of St Thomas of Arbroath holds and possesses that land of me or their other lands and tenures of me and my heirs freely and quietly in free and perpetual alms.’)

5. tenendam in liberam et perpetuam elemosinam de predicto Turpino episcopo de Brechin et eius successoribus ita libere et quiete plenarie et honorifice sicut carta sua testatur et confirmat.¹²

(‘To be held in free and perpetual alms of the aforesaid Turpin, bishop of Brechin and his successors, so freely and quietly, fully and honourably, as his charter witnesses and confirms.’)

These formulae all have the same underlying concept: a piece of land was to be held in alms by an ecclesiastical beneficiary of the donor and his heirs or successors (*tenendam in elemosinam de me et heredibus meis*, or *de eius successoribus*, in the case of Bishop Turpin) but without the specification of a rent or service which would normally follow a statement of tenurial dependence as expressed by *de me*, ‘of me’. There has been very little work done on the development of alms tenure in Scotland. A. A. M. Duncan has stated that gifts in ‘free alms’ were ‘elemosinary, unburdened with quotas of knight service or other renders’—but his statement has never been tested against the available

¹¹Barrow, *Acts of William I*, no. 203. At first glance, it might be thought that this charter *did* specify a rent or service in return for the land. This charter records the gift by William the Lion to his clerk, Hugh of Roxburgh, of the *abthen* land of Old Montrose. William’s charter states that Hugh is to hold the land ‘of St Thomas the archbishop and martyr of Arbroath’ for an annual render of three stones of wax. This seems clear enough but the matter is not so simple. The *quare uolo* clause continues: ‘therefore I will that the above Hugh shall hold and possess the aforementioned land by its right marches so freely and quietly and honourably for all the days of his life as the church of St Thomas of Arbroath holds and possesses that land of me or their other lands and holdings of me and my heirs in free and perpetual alms’. The deal struck between Hugh and the monks of Arbroath is one relationship of dependence; the fact that Arbroath would hold that land (that is, the *abthen* of Old Montrose) of the king (*de me*) and their other lands and holdings (*terras et tenuras*) ‘of the king and his heirs (*de me et heredibus meis*) represents another form of dependence and obligation. It is this latter, unspecified, type of dependence which is at issue here.

¹²Barrow, *Acts of William I*, no. 229; C. N. Innes & Patrick Chalmers, *Liber S. Thome de Aberbrothoc*, 2 vols. (Edinburgh, 1848–56) [hereafter *Arbroath Liber*], i. no. 75; original act, Edinburgh, National Archives of Scotland [NAS], RH 6/20.

evidence.¹³ There has been considerable research into the development of alms tenure in England and it is helpful to summarise its concerns here. Since Maitland wrote, it has been thought that alms land had three components: it was held in return for unspecified spiritual services; it was often, although not always, free from any temporal obligations; and, most importantly (for Maitland, although not for every commentator), it was subject only to ecclesiastical jurisdiction.¹⁴ Henry II's reign is usually seen as the period when the components of this tenure became clarified, defined and upheld in law.¹⁵ Recent work has stressed increasingly that these components were ideals and has shown just how frequently they were adapted and subverted according to particular situations. Yet this adaptation did not compromise the contemporary understanding of what the ideal form of alms-giving and alms tenure should be.¹⁶

The existence of the formula *tenendam in elemosinam de me et heredibus*

¹³Duncan, *Scotland: the Making of the Kingdom*, 144; also 288–9 for the issue of jurisdiction over land held in free alms. Alms tenure formulae are present in the earliest Scottish charter, that of Duncan II of 1094. Its dispositive clause notifies us that Duncan had 'given in alms' six vills to Durham 'with such sake and soke as St Cuthbert ever well held from those of whom he held alms'; Original, Durham Cathedral Muniments, Misc. Ch. 554, facsimile in A. A. M. Duncan, 'Yes, the earliest Scottish charters', *SHR* 78 (1999), 1–38, at 8, but this charter was drafted by a Durham scribe. It seems likely that alms formulae only became part of Scottish charter diplomatic for Scottish beneficiaries by the 1130s. See G. W. S. Barrow, *The Charters of King David I. The written acts of David I, king of Scots, 1124–53, and of his son Henry, earl of Northumberland, 1139–52* (Woodbridge, 1999) [henceforth Barrow, *David I*], no. 44.

¹⁴[Sir Frederick] Pollock & [F. W.] Maitland, [*The*] *History of English Law [Before the Time of Edward I]*, 2nd edn, 2 vols. (Cambridge, 1898), i. 240–1; see further, Elizabeth G. Kimball, 'Tenure in frank almoign and secular services', *English Historical Review* 43 (1928), 341–53; Elizabeth G. Kimball, 'The judicial aspects of frank almoign tenure', *EHR* 47 (1932), 1–11; Audrey W. Douglas, 'Frankalmoin and jurisdictional immunity: Maitland revisited', *Speculum* 53 (1978), 26–48; Audrey W. Douglas, 'Tenure in elemosina: origins and establishment in twelfth-century England', *The American Journal of Legal History* 24 (1980), 95–132; David Postles, 'Gifts in frankalmoin, warranty of land and feudal society', *Cambridge Law Journal* 50 (1991), 330–46; David Postles, 'Tenure in frankalmoin and knight service in twelfth-century England: interpretations of the charters', *Journal of the Society of Archivists* 13 (1992), 18–28; Benjamin Thompson, 'From "alms" to "spiritual services": the function and status of monastic property in medieval England', *Monastic Studies* 2, ed. J. Loades (Bangor, 1991), 227–61; Benjamin Thompson, 'Free alms tenure in the twelfth century', *Anglo-Norman Studies* 16 (1994), 221–43.

¹⁵Thompson, 'Free alms tenure', 236–41.

¹⁶Ib. 227–31.

meis in Scottish royal charters, private deeds and ecclesiastical *acta* has not been much examined but is problematic in the context of the literature as it stands. To hold a piece of land ‘of’ the donor and his heirs signified that the beneficiary’s tenure of the land in question was dependent on completion of a regular payment or service to the original donor and his heirs—and indeed there are many examples where we can see this clear relationship of dependence of the beneficiary on the donor by the render of a specified rent or return.¹⁷ Whenever rent or services were specified in charters and private deeds granting land to be held in alms, it was common for the formula *de me et heredibus meis* to be present. This fits in well with the current understanding that alms-land free from any expected return was an ideal, not a consistent reality. But the formula of dependence recorded in the examples given above—*tenendam in elemosinam de me et heredibus meis*—was present in charters and deeds drawn up for Scottish beneficiaries in which *no* rent or return was recorded: the land was to be held ‘in alms of me and my heirs as freely and quit as they hold their other alms’. What, if anything, did this unspecified dependence signify?

This type of unspecified dependent alms formula makes its first appearance in a royal charter in the reign of David I when that king confirmed Pittenweem and St Monance to the priory on the Isle of May 1141 × 1150; following this, it is used in a further five royal

¹⁷Pollock & Maitland, *HEL*, i. 244–6; Postles, ‘Tenure in frankalmoin’, *passim*, for examples see B. R. Kemp, *Reading Abbey Cartularies*, 2 vols., Camden Society 4th series (London, 1986–7), ii. no. 705. This deed records the gift of Burghfield in Berkshire by Aimery fitz Ralph, a man of William de Ferrers, earl of Derby, to Reading Abbey ‘in perpetual alms, free and quit, to be held of me and my heirs with the homage and service which the aforesaid Jacob [the previous tenant] was accustomed to do for me for as long as he held it of me’. This service was that which he owed his lord, William de Ferrers, earl of Derby. Indeed, William’s own deed confirmed that the monks of Reading now owed William the same service that Aimery had previously performed (and Jacob before him); Kemp, *Reading Abbey Cartularies*, ii. no. 706. See also N. C. Vincent, *The Letters and Charters of Henry II* (forthcoming) [hereafter Vincent] 4084, printed in Emma Mason, ‘The king, the chamberlain and Southwick Priory’, *Bulletin of the Institute of Historical Research* 53 (1980), 1–10, at p. 9, no. 2; see also Vincent 5121; manuscript copy in [London,] B[ritish] L[ibrary] MS Egerton 2823, fo. 64v. All the examples from Henry II’s *acta* are taken from the complete edition by Nicholas Vincent and have been given the reference as it will appear there. I am very grateful to Nicholas Vincent for giving me full access to these texts in advance of their publication.

charters, all concerned with land in Scotland.¹⁸ It makes five clear appearances in the surviving acts of Malcolm IV (1153–1165): the earliest, a confirmation of Alan and Geoffrey de Percy's gifts of Heiton and Oxnam in Roxburghshire to Whitby Abbey in Northumberland, is datable to 1153 × 1162.¹⁹ Rather surprisingly, the formula makes only six clear appearances in the rather more numerous surviving royal charters of William the Lion's reign (1165–1214).²⁰ Moreover, these

¹⁸Barrow, *David I*, no. 133. It is of note that the formula here is not *de me et heredibus meis* but simply *de me*: to be held of me (*de me*) 'sicut alie ecclesie elemosinarum mearum tenent melius et liberius'. For *de me et heredibus meis*, see nos. 162, 165, 205, 212, 213. Barrow posited that no. 213 (the grant of Mobbiscroft to Cambuskenneth Abbey) was issued in 1152 × 1153. But Barrow then remarked that this charter might 'have been updated by the copyist' for its place-names for *Karyy* (Karsie) and *Tulibody* (Tullibody). It must therefore be borne in mind that the formulae too might have undergone some alteration and updating (Barrow, *David I*, 157). It is, however, of note that Cambuskenneth also has a charter of David I containing an early diplomatic formula notifying them of the army service due from their lands (including Tullibody)—the king wills that the abbey possess the lands freely and quietly 'saving the defence of the realm' (*salva defensione regni*). For the significance of this, see below, 197–9. It might be thought that Barrow, *David I*, nos. 85–6 might also be early examples but closer reading shows this not to be the case. Barrow, *David I*, no. 85 is a grant to St Andrews (Fife) of the church of St Mary of Haddington, free from all secular services 'to be held freely and quit from all renders and customs from me and the thane and from all others who may hold Haddington of me and my heirs after me and their heirs'; it is the customs and renders, once held by the individual who held Haddington, which are being acquitted here: the church is not being held 'in alms of me and my heirs'. See also Barrow, *David I*, nos. 86, 116. The same is true of Barrow, *David I*, no. 182 (the gift and grant by David I of Kettlestoun in Linlithgow to Cambuskenneth Abbey 1150 × 1153): the formula reads that the abbey shall have Kettlestoun 'in perpetual alms, freely and quietly from all secular service as they hold the other lands which they have from me (*quas de me habent*)'. This formula is not a holding clause: dependence suggested by *de me* is simply a statement that the abbey has been the recipient of previous gifts and grants of land from the king.

¹⁹G. W. S. Barrow, *Regesta Regum Scotorum 1: The Acts of Malcolm IV 1153–65* (Edinburgh, 1960) [henceforth Barrow, *Acts of Malcolm IV*], no. 156. See also Barrow, *Acts of Malcolm IV*, nos. 106, 157, 186, 228. Barrow, *Acts of Malcolm IV*, no. 128 is a grant addressed to the Cistercian monks of Sawtry in Huntingdonshire, giving them the whole of Sawtry for the construction of the abbey. The monks were to hold these alms 'of me and my heirs as my own alms'. This charter survives as an original (BL Cotton Charter XV. 21) and its hand suggests that it was a thirteenth-century creation (certainly its endorsement suggests ?xiii cent.). The idiosyncratic charter diplomatic also suggests that it was drafted by the beneficiary.

²⁰Barrow, *Acts of William I*, nos. 203, 229, 337, 364, 373, 435; Barrow, *Acts of William I*, no. 263 is the confirmation of Malcolm IV's grant of Sawtry to the monks of Sawtry Abbey which the monks are to have and hold 'of me and my heirs in perpetual alms

occurrences are different in two ways from those in the charters of David and Malcolm: first, all those in William's charters are records of confirmations of gifts of other donors to particular religious institutions. Second, all refer to the piece of land in question being held not of the king and his heirs but of the donor and his heirs. Thus, a charter of William recorded the king's confirmation of Mael Coluim, earl of Atholl's, gift of the church of Moulin to Dunfermline Abbey and stipulated that the church would 'be held by them [the abbot and monks] in free and perpetual alms of the above Earl Mael Coluim and his heirs (*de prefato comite Malcolmo et heredibus suis*)'.²¹ Although it might be thought that dependent alms tenure formulae appear comparatively infrequently in William the Lion's charters, it should be remembered that there are only seven possible examples from the reign of Henry II of England (1154–1189), for whom so many more charters have survived. None of these correspond with the simplicity of association of alms tenure and dependence present in Scottish formulae in royal charters—that a piece of land was to be held 'in free and perpetual alms of me and my heirs'.²²

well and in peace, honourably and quietly, freely from all temporal exaction and service'.

²¹Barrow, *Acts of William I*, no. 337. Earl Mael Coluim's deed survives (C. N. Innes, *Registrum de Dunfermelyn* (Edinburgh, 1842) [henceforth *Dunf. Reg.*], no. 147) and records that the monks are to hold the church 'from me and my heirs (*de me et heredibus meis*) in free and perpetual alms so freely and quietly and honourably as freely, quietly and honourably as any alms are maintained in the same church of Dunfermline, saving the common aid of the king' (*excepto communi auxilio Regis*). The significance of this service will be developed below, 192–3, 195–7.

²²Cf. Pollock & Maitland, *HEL*, i. 212–13. For the examples from Henry II's reign, see (1) Henry II's confirmation of the lands of St Maurice Cathedral Chapter, Angers, dated 1179 × May 1183, 'therefore I will and firmly command that the above church of St Maurice and the bishop and canons should have and hold those lands *of me in chief (de me in capite)* in free and perpetual alms' (Vincent 213; printed in Léopold Delisle [& E. Berger], *Recueil des Actes de Henri II, roi d'Angleterre et duc de Normandie, concernant les provinces françaises et les affaires des France* (Paris, 1906–27), no. 634. No surviving Scottish royal charter has an equivalent to *in capite* in this period. (2) Henry II's confirmation to Bromfield Priory 1154 × March 1166 (Vincent gives the possible date of ?March 1155) in which the king notifies that he has 'for the health of my soul and my ancestors and my heirs, have given and confirmed by my charter my church of St Mary of Bromfield with all its pertinences to the prior and monks there serving God, to be held of me and my heirs in perpetual alms . . . as my demesne chapel (*sicut dominicam capellam*)'. Original, BL Cotton Charter XVII. 4; reproduced in T. A. M. Bishop, *Scriptores Regis: Facsimiles to Identify and Illustrate the Hands of Royal Scribes in the Original Charters of Henry I, Stephen, and*

Whereas the formula seems to have been used less frequently in the diplomatic of royal charters, the opposite is the case when we turn to the deeds and acts drawn up for both lay and religious individuals. The earliest examples are from the third quarter of the twelfth century and the formulation was used continually throughout the central Middle Ages. Malcolm and William's mother, Ada de Warenne, gave land in Crail to St Andrews Cathedral Priory and declared that 'I will and command that the aforesaid canons shall possess and hold these lands in alms forever of me and my heirs for the soul of Earl Henry and for

Henry II (Oxford, 1961), no. 360. (3) Vincent 4301 (printed in *Calendar of Charter Rolls 1341-1417*, 395-6) is not authentic. (4) Henry II's confirmation (Vincent 2216, datable to June 1175 × October 1176) of the settlement made in the king's presence at Feckenham between Robert, bishop of Hereford and its community of canons, and John Marshal. The bishop and church were to hold their lands in Easton Royal (Wilts.) 'of me in chief' (*de me in capite*) and the king confirmed that 'I have handed over that land to the aforesaid bishop and church of Hereford to be held of me and my heirs always, as any barony of the bishop himself' (*de me et heredibus meis semper tenendam in capite sicut aliam baroniam ipsius episcopi*). This is not an association of alms land with hereditary dependent tenure—the land granted to the ecclesiastical community is to be treated as a *baronia*. (5) Vincent 180 is notification of the king's confirmation of the wapentake of Well (Lincs.) to Robert, bishop of Lincoln and its church: the wapentake is to be held 'of' the king but again it is not given in alms (charter printed in H. E. Salter, 'The charters of Henry II at Lincoln Cathedral', *EHR* 24 (1909), 303-13, at p. 307). (6) Vincent 166: notification of an agreement between the monks of Reading Abbey and Gloucester Abbey in which the church of Cam (Glos.) was confirmed to Gloucester but the monks would pay an annual six marks to Reading Abbey. The formula in question reads: 'the monastery of Gloucester shall hold the aforesaid church of Cam with all its pertinences *of me in chief as my own alms* (*de me in capite sicut propriam elemosinam meam*)', saving the six marks to be paid to the monks of Reading. And thus that the monks of Reading should receive and possess those six marks as my own alms (*tanquam propriam elemosinam meam*). It is necessary to point out here that this is not an alms tenure clause—the notion of the king's own alms has a different meaning, whether it be land, possessions or money. This notification is an original (BL Additional Charter 19606) and is printed in Kemp, *Reading Abbey Cartularies*, vol. i, 236-7, no. 285. See also Vincent 949, printed *Calendar Charter Rolls 1300-1326*, 354-6, no. 9. (7) Vincent 3133, a confirmation of the king's protection and liberties to Waltham Abbey contains a dependent clause but no alms tenure language: 'therefore I will and firmly command that my canons of Waltham shall have and hold the aforesaid tenements with all liberties in peace and quiet, freely and honourably, of me and my heirs in perpetuity'. Vincent is also doubtful of its authenticity. The charter is printed in R. Ransford, *The Early Charters of Waltham Abbey 1061-1230*, Studies in the History of Medieval Religion 2 (Woodbridge, 1989), no. 27.

the health of my soul and my predecessors and successors'.²³ Almost one hundred years later, Isabella de Brus gave a toft near Dundee to Lindores Abbey between 1237 and 1242 and commanded that it 'be held in pure and perpetual alms of me and my heirs'.²⁴ It remained extremely common for a donor to give land in alms to a religious institution and for that beneficiary to hold the land 'of' the donor without a return or service being recorded explicitly.²⁵

A general pattern can thus be discerned. Diplomatic formulae expressing the rather nonsensical notion of dependent alms tenure free from any expected return were common in private deeds and ecclesiastical acts but appeared rather less frequently in royal charters granting land and churches to ecclesiastical beneficiaries. Dependent alms formulae could appear in royal charters of confirmation, in which the beneficiary was said to hold a piece of land 'of' the donor and his

²³Thomas Thomson, *Liber Cartarum Prioratus Sancti Andree in Scotia. E registro ipso in archivis baronum de Pannure hodie asservato* (Edinburgh, 1841) [hereafter *St Andrews Liber*], 208. There is an earlier deed, that of Gospatric II, earl of Dunbar. This survives as an original and records the earl's confirmation of the lands of Hartside and Spott to Melrose Abbey in 1153 × 1159 and his command that 'the monks hold and have [these lands] of me and my heirs in perpetuity' (Original NAS GD 55/6; printed C. N. Innes, *Liber Cartarum S. Marie de Melros: Munimenta Vetusia Ecclesie Sancte Marie de Melrose*, 2 vols. (Edinburgh, 1837) [henceforth *Melrose Liber*], i. no. 6). But there are several worrying things about this deed. Most notably, the hand contains several elements which one would not expect before the 1170s in English scribal hands (such as the long descenders on **s** and **r**, and decorative serifs on some capital letters), suggesting that the deed as it stands is a product of the end of the twelfth century. I am grateful to Dr Tessa Webber for her help with the palaeography of this deed.

²⁴*Chartulary of the Abbey of Lindores*, ed. J. Dowden, Scottish History Society (Edinburgh, 1903) [henceforth *Lindores Cart.*], no. 50.

²⁵For examples, see C. N. Innes, *Liber S. Marie de Calchou*, 2 vols. (Edinburgh, 1846) [henceforth *Kelso Liber*], i. nos. 71, 214; C. N. Innes, *Registrum Monasterii de Passelet* (Edinburgh, 1832) [henceforth *Paisley Reg.*], 75; C. N. Innes, *Carte Monialium de Northberwic* (Edinburgh, 1847) [henceforth *North Berwick Charters*], no. 12; NLS MS Adv. 15.1.18, nos. 16, 41; *Arbroath Liber*, i. nos. 75, 112; *Melrose Liber*, i. nos. 60, 63; C. N. Innes, *Liber Ecclesie de Scon* (Edinburgh, 1843) [henceforth *Scone Liber*], nos. 21, 24, 56, 74, 91; *Dunf. Reg.*, nos. 147, 148; *Lindores Cart.*, nos. 2, 16, 18, 38, 50; W. A. Lindsay, J. Dowden and J. M. Thomson, *Charters Relating to the Abbey of Inchaffray* (Edinburgh, 1908) [henceforth *Inchaffray Charters*], nos. 14, 15, 26, 28, 37, 51, 56; C. N. Innes, *Registrum S. Marie de Newboile* (Edinburgh, 1849) [henceforth *Newbattle Reg.*], nos. 113, 114; NAS RH 6/15a; D. E. Easson and A. MacDonald, *Charters of the Abbey of Inchcolm* (Edinburgh, 1938) [henceforth *Inchcolm Charters*], no. 12; D. E. Easson, *Charters of the Abbey of Coupar Angus*, 2 vols. (Edinburgh, 1947) [henceforth *Coupar Angus Charters*], i. nos. 22, 35, 50, 52, 53, 57.

heirs without any return in rent or services being specified in either the original deed of donation or the royal confirmation charter. These formulae appear to express a relationship of dependence and obligation connecting donor, beneficiary and king which continued beyond the time of the gift but without any explicit statement about the nature of that dependence from either party. The ecclesiastical beneficiary was said to hold the land in free alms, free from any expected return, yet also held in a dependent relationship—‘of’ the donor and his heirs. The donor did not expect any material return from the gift but was still seen to exercise lordship over the land in question—the beneficiary held it ‘of’ him and his heirs.

It could be possible to explain this phenomenon away and argue that it reflects some of the problems associated with free alms tenure: in particular, the vulnerability of free alms land to external depredation and the possibility that the donor or a later heir would renege on the gift. Indeed, this possibility has been raised briefly about alms tenure clauses in England: a dependence clause would create a continuing link between donor and beneficiary if the beneficiary’s tenure were in any way challenged.²⁶ Only one attempt has been made to explain its appearance in Scotland. John Hudson argued that the particularly frequent occurrence of dependent alms tenure formulae might reflect ‘limits to the care with which lay and ecclesiastical landholding were distinguished’ in twelfth-century Scotland.²⁷ Hudson cited further one deed of Henry, earl of Northumberland, datable to 1139, and a second charter of David I, datable to 1147 × 1152. The first of these confirmed Brinkburn in Northumberland to the brethren of St Mary of the Isle in Norfolk ‘in feu and in alms’; the second granted to the monks of Coldingham one toft with its appurtenant houses in the vill

²⁶See Thompson, ‘Free alms tenure’, 288–9; in particular his citation of the formula of the writ of right in *Glanvill* in which a plaintiff could obtain a writ of right if he claimed that he held land of the defendant in free alms; *Tractatus de Legibus et Consuetudinibus Regni Anglie qui uocatur Glanvilla*, ed. G. D. G. Hall (Oxford, 1965), book xii, chapter 3 (137). This writ formula was not copied into the Scottish legal treatise, *Regiam Majestatem*, for which see the two editions, one in *Regiam Majestatem and Quoniam Attachiamenta based on the text of Sir John Skene*, ed. T. M. Cooper, Stair Society 11 (Edinburgh, 1947), 55–304; the other in *The Acts of the Parliaments of Scotland* vol. i, 1124–1424, ed. T. Thomson and C. N. Innes (Edinburgh, 1844) [hereafter *APS*, i], 595–641 (red foliation).

²⁷J. G. H. Hudson, ‘Legal aspects of Scottish charter diplomatic in the twelfth century: a comparative approach’, *Anglo-Norman Studies* 25 (2002), 121–38, at p. 127.

of Ednam, Roxburghshire, to be held 'in feu and alms'.²⁸ But the conflation here between *feudum* and *elemosinam* is extremely rare (these are the only two examples to survive) and anyway is conceptually different from a piece of land held in alms 'of the donor and his heirs'.²⁹ The *type* of tenure is not in question in this formulation; this relationship of dependence needs to be explained *because* it appears amid alms tenure formulae. The issue is whether that unspecified relationship of dependence between the donor and the beneficiary had any real meaning.

It is of interest that, while the formula *de me et heredibus meis* was becoming a frequent feature of the diplomatic of private deeds and ecclesiastical *acta* addressed to religious beneficiaries, another formula was introduced into the diplomatic of royal charters. This was the phrase *saluo servicio meo* ('saving my service'), found at the end of the body of the charter's text, following the holding clause and before the witness list. The earliest authentic example of that particular formula is from 1166 × 1170, in a charter of William the Lion's to Melrose Abbey.³⁰ This charter recorded the king's confirmation of the gift of land in Hownam, Roxburghshire, made by John, son of Orm, lord of Hownam and stipulated that the monks of Melrose should 'have and possess [the land] forever, so freely, quietly, fully and honourably as freely, quietly, fully and honourably as any alms are possessed in my kingdom as John's charter testifies and confirms, saving my service'.³¹ The formula *saluo servicio meo* became standard from then on: it was used in a further 93 surviving charters of William the Lion's and was a

²⁸Barrow, *David I*, nos. 81, 161; it is also important to remember that care was taken to distinguish the two on occasion. Another deed of Earl Henry recorded his grant of a toft in Berwick to Arnold, abbot of Kelso, to be held from the earl 'in feu as freely and quit as he [the abbot] holds the possessions of his church in alms'; Barrow, *David I*, no. 184.

²⁹It should anyway be noted that such conflations between fee and alms also appear in England, for which see the examples cited in Postles, 'Tenure in frankalmoign', 22–4.

³⁰There is an earlier example from Malcolm IV's reign: Barrow, *Acts of Malcolm IV*, no. 132 (surviving as an original: NAS GD 55/8). This charter is, however, suspect on both diplomatic and paleographical grounds.

³¹Barrow, *Acts of William I*, no. 72; John's deed is printed in *Melrose Liber*, i. no. 127 and records that the monks were to pay 20 shillings yearly as rent but makes no reference to the king's service; their similar witness lists (John's having more names but all corresponding with those listed in William's confirmation charter) suggests they were drawn up on the same occasion. But the hand of John's deed is extremely suspect and it may well be a later (but possibly accurate) copy of the original deed.

continued feature of the diplomatic of Alexander II's.³² It should be stressed that, despite its emphasis on service, it was not a formula used exclusively in charters to lay beneficiaries: in fact, 73 out of the 94 examples of *saluo seruicio meo* from William the Lion's reign were for ecclesiastical beneficiaries and recorded gifts to be held in alms.³³ The king's service, whatever its nature, was thus levied on land held in alms as much as it was on land held by laymen.³⁴

There appears to be a correlation between the use of *saluo seruicio meo* in royal charters and *de me et heredibus meis* in private deeds. This can be demonstrated by examination of 'pairs' of charters and deeds—that is, when both the deed recording the original gift and the royal charter of confirmation have survived. When the formula *de me et heredibus meis* occurs in the private deed, it is common for the phrase 'saving my service' (*saluo seruicio meo*) to appear in the royal confirmation charter. Thus, Morgrund, earl of Mar, granted the church of Tarland in Aberdeenshire with its appurtenant land to St Andrews Cathedral Priory 1165 × 1171 and specified that the canons should 'have and hold the aforementioned alms fully of (*de*) me and my heirs'.³⁵ William's confirmation charter confirmed that the canons should hold the earl's gift 'as they hold their other alms' but added that the land would be held 'saving my service'.³⁶ When the burden of service was lifted from the beneficiary, the clause in the royal confirmation charter could be altered to reflect the donor's continuing performance of the service. So

³²For Alexander II, see NAS RH 6/24; *Melrose Liber*, i. nos. 184, 185; *Arbroath Liber*, i. nos. 123, 126; *Kelso Liber*, i. no. 183. The formula changed after 1222 to the royal plural—*saluo seruicio nostro*—for which, see J. Anderson, *Selectus Diplomatum et Numismatum Scotiae Thesaurus* (Edinburgh, 1739), no. 33; *Arbroath Liber*, i. nos. 118, 120; W. Fraser, *History of the Carnegies, Earls of Southesk, and of their Kindred* (Edinburgh, 1867), ii. no. 25; *Dunf. Reg.*, no. 80; *Scone Liber*, no. 63.

³³For laymen, see Barrow, *Acts of William I*, nos. 266–9, 309, 320, 330, 347, 348, 377, 411, 412, 423, 446, 451, 470, 471, 474, 484, 486, 519; for ecclesiastical beneficiaries, see Barrow, *Acts of William I*, nos. 74, 78, 129, 191, 195, 209, 214, 225, 239A, 240, 241, 243, 246, 256, 257, 264, 276, 292, 296, 306, 307, 322, 331, 333, 342, 367, 373, 378, 381, 382, 385, 386, 396, 401, 413, 414, 425, 431, 434, 435, 441, 444, 445, 447, 448, 449, 456, 458, 461, 464, 466, 479, 480, 482, 483, 489, 492, 494, 495, 498, 503, 506, 508, 512, 513, 515, 516, 517, 518, 520, 521, 522.

³⁴See the precedents of this formula in Barrow, *David I*, nos. 156, 158; Barrow, *Acts of William I*, no. 265; see also *ib.* no. 142 and no. 209, addressed to St Neot's Priory in Huntingdonshire.

³⁵*St Andrews Liber*, 246–7; *Aberdeen-Banff Ill.*, ii. 14–15.

³⁶Barrow, *Acts of William I*, no. 129.

when William confirmed Walter fitz Alan's gift of Mauchline in Ayrshire to Melrose Abbey, he ordered that the land be held 'freely and quit in perpetual alms . . . saving my service which Walter owes me from Walter himself and his heirs'.³⁷ Nowhere in Walter's deed were the monks said to hold Mauchline 'of' or 'from' him or anyone else: it was Walter who would still perform the service despite having given the land to the monks.³⁸ As *salvo seruicio meo* became increasingly common in royal charters, the formula was often associated explicitly with dependent alms tenure formulae. So when William the Lion confirmed Walter of Lundin's gift of land in Balcormo in Fife to Cambuskenneth Abbey, his charter recorded that the monks were to hold the land 'of the aforesaid Walter and his heirs in free and quit and perpetual alms . . . so freely, quietly, wholly and honourably as the charter of the aforesaid Walter testifies, saving my service'.³⁹ The pairing of *de me et heredibus meis* with *salvo seruicio meo* in private deeds and royal confirmation charters to the church suggests that a charter or deed which recorded that a piece of land was to be 'held in alms of me and my heirs' was referring to a deal struck between the donor and beneficiary over who would perform the king's service and who had responsibility for its performance. Land held 'of' the donor and his heirs was land for which the donor was still responsible for the king's service from the land but the burden of actual performance fell on the newly-endowed beneficiary.

The correlation between dependent alms tenure clauses and service clauses is not always exact. Sometimes the formula *salvo seruicio meo* is present in the confirmation charter yet there is no explicit indication in the deed of the donor that any service was owed as a result of their alms-giving: had we only the donor's deed, we would not know that

³⁷Barrow, *Acts of William I*, no. 78; see the pairs in *Melrose Liber*, i. no. 137 and Barrow, *Acts of William I*, no. 240; *Arbroath Liber*, i. nos. 122 and 123; *Scone Liber*, nos. 21 (also surviving as an original, BL Additional Charter 66568) and 78. See further J. Stuart, *Records Illustrative of the Priory of the Isle of May* (Edinburgh, 1868) [henceforth *May Records*], no. 24 (also printed in *St Andrews Liber*, 381) and *Scone Liber*, no. 24; also the interesting formula in *Melrose Liber*, i. no. 32.

³⁸*Melrose Liber*, i. no. 66, also confirmed in the deed of Walter's son, Alan (*Melrose Liber*, i. no. 67); also note the absence of *de me et heredibus meis* in the deeds recording the gift of Crawford in Lanarkshire to Newbattle Abbey by Walter of Lindsay and his son, David, *Newbattle Reg.*, nos. 135–6; and, further *Arbroath Liber*, i. no. 67 and *Coupar Angus Charters*, i. no. 41; also *Newbattle Reg.*, no. 125; Barrow, *Acts of William I*, no. 243.

³⁹Barrow, *Acts of William I*, no. 373; see also no. 435.

any service was owed from the land.⁴⁰ But we should not expect absolute conformity. If *tenendam in elemosinam de me et heredibus meis* was present in every deed for which a confirmation charter survives with the formula *saluo seruicio meo*, this would assume an extremely high level of communication, consistency and, above all, cooperation, between those who drew up the deed of the donor and those who drew up the royal confirmation charter. Royal charters were sometimes drawn up on the same occasion as the deed they were confirming.⁴¹ But this is not always the case and many confirmation charters were clearly issued at different occasions than the donor's own deed. Moreover, it seems likely that it was possible for a donor or beneficiary to request the king to confirm a particular transaction, presumably in writing or in person. There are examples when a donor would request a bishop to add his authority to the donor's gift. A particularly unusual example is a surviving letter of Saer de Quinci in which he asked William Malveisin, bishop of St Andrews, to 'affix his seal' to Saer's gift of Dunnikier to Dunfermline Abbey.⁴² The point to take from all this is that the drafting of the deeds of donors and the king's confirmation charters would often take place on occasions separated in place and time. In light of this, the correlation between *de me et heredibus meis* in private deeds and *saluo seruicio meo* in the confirmation charters is surprisingly frequent and strong.

It is particularly noteworthy that the formula *saluo seruicio meo* was

⁴⁰See, for example, *Melrose Liber*, i. no. 99, confirmed in Barrow, *Acts of William I*, no. 307; *Arbroath Liber*, i. no. 91 and Barrow, *Acts of William I*, no. 225; *Kelso Liber*, i. no. 235 and Barrow, *Acts of William I*, no. 246; *Scone Liber*, no. 40 and Barrow, *Acts of William I*, no. 276; *Kelso Liber*, i. no. 139; Barrow, *Acts of William I*, no. 381; *Dunf. Reg.*, no. 154 and Barrow, *Acts of William I*, no. 396; *Dunf. Reg.*, no. 167 (surviving as original: NAS GD 160/269 (3)) and Barrow, *Acts of William I*, no. 495; *Arbroath Liber*, i. no. 63 and Barrow, *Acts of William I*, no. 503; *Arbroath Liber*, i. no. 65 and Barrow, *Acts of William I*, no. 506.

⁴¹*Arbroath Liber*, i. no. 35 and Barrow, *Acts of William I*, no. 339; W. Fraser, *The Melvilles Earls of Melville and the Leslies Earls of Leven* (Edinburgh, 1892) [hereafter Fraser, *Melville*], iii. no. 4 and Barrow, *Acts of William I*, nos. 266–9. On occasion, the king would witness a private deed; see the examples in NAS RH6/15a; *Arbroath Liber*, i. no. 81; *Dunf. Reg.*, nos. 147, 154; *Holyrood Liber* [see n. 123 for details], no. 37; C. N. Innes, *Registrum Episcopatus Glasguensis*, 2 vols. (Edinburgh, 1843) [henceforth *Glasgow Reg.*], i. no. 55.

⁴²*Dunf. Reg.*, no. 157. Saer was clearly particularly keen to get his deeds authenticated by as many people as possible. The scribe of the Newbattle cartulary wrote underneath Saer's deed confirming Prestongrange in East Lothian to the abbey that 'let it be known that there are four deeds (*carte*) of the aforesaid Saer of the same tenor under many different seals (*sub diuersitate sigillorum*)'; *Newbattle Reg.*, no. 65.

used in charters for laymen as well as religious beneficiaries. The clause appears in 21 royal charters of William the Lion drawn up for lay beneficiaries. Of these, fifteen concern the conveyance of land to be held by the beneficiary *in feudo et hereditate*.⁴³ This type of holding in feu and heritage is important because it is thought to represent ‘feudal’, heritable but dependent, tenure, particularly the holding of land in return for knight service. It is argued to have been an introduction by the ‘Anglo-Norman’ kings of Scots, probably from the late eleventh century onwards.⁴⁴ What was meant by the king’s service in these charters is thus very important for understanding the nature and extent of tenure *in feudo et hereditate* in twelfth-century Scotland (and the resulting issues of socio-political continuity and change raised by such an enquiry). These issues will be dealt with at greater length later in this study: only a simple point will be made here. The service denoted by the formula *saluo seruicio meo* was not a service pertaining exclusively to any type of tenure (if, indeed, we can confidently talk of ‘types’ of tenure in the mid- to late twelfth century)—whether it be tenure in feu, tenure in alms or tenure in frank marriage.

So when the king confirmed a gift *in feudo et hereditate*, it is clear that his own service as expressed by *saluo seruicio meo* was levied on the land in addition to whatever other service was agreed between the donor and the new tenant—whether that be knight service or rent. A clear example of this is in William’s confirmation of the shire of Kinninmonth to Odo, brother of Matthew, bishop of Aberdeen, given by St Andrews Cathedral Priory before 1194. Odo was to pay the canons of St Andrews an annual two marks in lieu of all services belonging to the priory but was still to perform the king’s service (*saluo seruicio meo* is present in William’s confirmation charter).⁴⁵ When explicit reference to the deal struck between donor and beneficiary is absent

⁴³Barrow, *Acts of William I*, nos. 266–9, 309, 330, 348, 377, 411–12, 423, 451, 470–1, 484.

⁴⁴There is an extremely long literature on this topic, most of which is conveniently summarised in Jenny Wormald, *Lords and Men in Scotland: Bonds of Manrent and Maintenance 1442–1603* (Edinburgh, 1985), 1–14 and Richard D. Oram, ‘Gold into lead? The state of early medieval Scottish history’, in *Freedom and Authority: Scotland c.1050–1650: Historical and Historiographical Essays Presented to Grant G. Simpson*, ed. T. Brotherstone and D. Ditchburn (East Linton, 2000), 32–43; G. W. S. Barrow, ‘The beginnings of military feudalism’ in G. W. S. Barrow, *The Kingdom of the Scots*, 2nd edn (Edinburgh, 2003), 250–78.

⁴⁵Barrow, *Acts of William I*, no. 330; see nos. 347–8, 412.

from the confirmation charter (and the original deed of donation does not survive), it is harder to discern what is meant by *saluo seruicio meo*, particularly when the formula is studied in isolation. So when William confirmed that Richard de Melville's gift to Geoffrey de Melville of Granton was to be held *in feudo et hereditate . . . saluo seruicio meo*, was this service the service of that single archer on a horse which Richard had owed the king when he first received the land from Malcolm IV?⁴⁶ Geoffrey Barrow assumed so.⁴⁷ But it will become apparent later in this study that serjeantry service, such as was once owed by Richard, could be levied concurrently with the burdens expressed by the opaque formula *saluo seruicio meo*. So in this case, the matter remains unclear.

But what *is* absolutely clear is that the notion of the king's service was applied to types of tenure other than tenure in feu. It was raised from lands given as part of a woman's dower (tocher in Scots). William confirmed Reginald Prat's gift of Muiravonside, given to Richard de Melville in frank marriage in 1189 × 1195, 'as freely and quietly, wholly and honourably as any tocher is held or ought to be held in my kingdom, saving my service'.⁴⁸ No other service, royal or otherwise, is specified in Reginald's deed: Richard is to hold the land 'of him and his heirs in feu and heritage . . . so freely and quietly as any knight in the whole land of the king of Scots possesses any marriage portion freely and quietly'.⁴⁹ Richard's marriage portion suggests that the king's service was owed from land held in free marriage regardless of any other service negotiated between the donor and the beneficiary. It is also clear that this service owed by laymen was not confined to land held by the so-called 'feudal' tenures of feu and heritage and free marriage. One finds *saluo seruicio meo* in two rare royal grants to laymen in which the formula denoting heritable tenure of a feu (*in feudo et hereditate*) is absent.⁵⁰ So between 1165 and 1171, William confirmed the lands of Glenduckie and Balmeadie in Fife to Orm mac Aeda 'to be

⁴⁶William's confirmation is Barrow, *Acts of William I*, no. 266; and see the corresponding documentation in Barrow, *Acts of William I*, nos. 267–9.

⁴⁷The grant by Malcolm IV to Richard de Melville is referred to in Barrow, *Acts of William I*, no. 45; for Barrow's comment, see Barrow, *Kingdom of the Scots*, 2nd edn, 256, 36n.

⁴⁸William's charter survives as an original, NAS GD 26, 1/4/9; printed Barrow, *Acts of William I*, no. 320.

⁴⁹Original, NAS GD 26, 1/4/8; printed Fraser, *Melville*, iii. no. 8.

⁵⁰Barrow, *Acts of William I*, nos. 14 and 486.

held of me and my heirs freely and quit and honourably from all service, saving my service which belongs to that land'.⁵¹ A further example is found in William's confirmation of Henry de Bohun's gift of two ploughgates and two oxgangs in Kilpunt, West Lothian, to William Noble on 28 May, 1208 × 1211. King William confirmed that William and his heirs were to hold the land 'of the aforesaid Henry and his heirs so freely and quietly, fully and honourably, as the charter of the above Henry witnesses, saving my service'.⁵² All this suggests that the service denoted by *saluo seruicio meo* was not levied only from lands held in alms tenure but from lands held *in feodo et hereditate*, *in liberam maritagium* and from land which was not said to be held by any particular type of tenure.

Before going on to detail the nature of this service, it should be noted that the king's service, denoted by the formula *saluo seruicio meo*, was sharply distinguished from that owed to a lord. A charter of Robert de Londres, lord of Lessudden in Roxburghshire, to his kinsman, Walter de Berkeley, the king's chamberlain, recorded Robert's gift of one ploughgate in Lessudden for an annual rent of two sore sparrow-hawks in return for quittance from all service 'which belongs to me, saving the king's service' (*saluo seruicio regis*).⁵³ William of Lindsay gave part of the land in Crawford, Lanarkshire, which he held under Swain, son of Thor, to Newbattle and stated that the land be held 'saving the service of the lord king, and the service belonging to Swain son of Thor and his heirs'.⁵⁴ The distinction between the lord's service and the king's service is made regularly in private deeds: sometimes the service owed to a lord could be described in rather woolly terms giving the impression that the scribe is simply listing words to add emphasis. A good example would be a royal charter (but drafted by a scribe of Melrose Abbey) in which William the Lion confirmed Walter of Windsor's gift of the territory of Clifton to Melrose Abbey 'free from all aids, pleas, gelds, scutages, cornages, from all service and secular

⁵¹Barrow, *Acts of William I*, no. 14; the absence of the formula *in feodo et hereditate* is surprising and very interesting, given that it had become a standard part of Scottish diplomatic practice, for which see Hudson, 'Legal aspects of Scottish charter diplomatic', at p. 126.

⁵²Barrow, *Acts of William I*, no. 486.

⁵³BL Additional Charter 76749; also *Newbattle Reg.*, nos. 64–5.

⁵⁴*Newbattle Reg.*, no. 135; see also no. 209; *Coupar Angus Charters.*, i, no. 57; *Melrose Liber*, i. no. 70; NAS RH 6/12.

exaction, . . . saving my service from Walter and his heirs'.⁵⁵ This distinction between the clearly delineated 'royal service' and the long list of lordly dues which may or may not have had practical application was also identified by W. H. Stevenson in 1914 in Anglo-Saxon diplomas: the 'woolly phrases' did not include the three common burdens of the early English kingdom known as the *trinoda necessitas*; this seems to be true also for the common burdens of the early Scottish kingdom.⁵⁶

The relationship between the diplomatic formulae *de me et heredibus meis* in private deeds and *salvo seruicio meo* in royal charters reveals that much of the land held by the church was subject to the king's service. Lay donors could pass on the burden of the king's service to the beneficiary, retain responsibility for its performance, or acquit the house fully of these burdens and perform them themselves. The remaining ties of dependence resulting from this complex situation meant that many donors could continue to exercise lordship over land

⁵⁵NAS GD 55/117; Barrow, *Acts of William I*, no. 214; for the identification of this scribe see Barrow, *Acts of William I*, 85. This deed may not, on first glance, seem quite such a good example as King William is presented as the 'donor' in a charter in which he is actually confirming the gift made by Walter of Windsor. It is interesting that this charter also contains a warrandice clause, which were extremely unusual in royal charters. John Davies has suggested that the use of *dare* in a confirmation charter and the presence of a warranty clause may have been because the land was under dispute; John Reuben Davies, 'The donor and the duty of warrandice: giving and granting in Scottish royal charters', 152–7, above. But there may also be another dimension here. Warrandice appears only seven times in the royal charters of King William: three of these were drawn up for Melrose Abbey by its scribes, probably during the English occupation of nearby Roxburgh castle during the period of English overlordship of Scotland and occupation of three castles in southern Scotland 1175–89 (Barrow, *Acts of William I*, nos. 195, 214, 265). It may be that William's authority was not only called upon by the abbey's scribes to strengthen their holding of land under dispute because also their holdings were coming under challenge because of the depredations of the English garrison (for complaints, see the Chronicle of Melrose *s.a.* 1190: see n. 101 for references to facsimile editions). This assessment of formulae in King William's charter to Melrose is particularly pertinent in this case: scutage is mentioned as part of the services owed but there is very little evidence to suggest that scutage was ever levied in Scotland, as it was in England, for which see Hector L. MacQueen, 'Tears of a legal historian: Scottish feudalism and the *ius commune*', *Juridical Review* (2003), 1–28, at p. 13.

⁵⁶W. H. Stevenson, '*Trinoda necessitas*', *EHR* 29 (1914), 689–703, at p. 701. For examples of 'woolly' formulae (signifying the customary service owed to a lord) together with *de me et heredibus meis* (signifying the king's service) see *Newbattle Reg.*, nos. 113–14; *Kelso Liber*, i. no. 214; *St Andrews Liber*, 238; *Inchcolm Charters*, nos. 12–13.

they had given in alms to ecclesiastical beneficiaries. A note entered in a thirteenth-century hand into a blank space in the *Registrum Vetus* of the bishopric of Glasgow confirms this very scenario. Here, we learn of an undated appeal to the pope complaining that the lord king and ‘certain magnates and secular officials’ were forcing bishops and other churchmen to follow secular courts and judgments for their holdings ‘for the reason of certain army-service and common aid—or forinsec service—which the grantors (*collatores*) of these feus have retained to themselves and their heirs’.⁵⁷ Some lands held by religious institutions were thus exempt from performing royal service while some were liable. The monks of Kinloss Abbey, for example, were to hold their lands as free as their donors’ charters testified ‘saving the king’s service from the lands from which we ought to have service’.⁵⁸ This situation may have been very confusing and difficult to keep track of unless properly managed.

LAND AND OBLIGATION

Before discussing the nature of the king’s service, it is necessary first to outline how it was levied. From the above alone, it is clear it was assessed on land and performed by those who held the land, unless it had been acquitted from its obligations by a donor or lord. Common are the clauses which state that the tenant is to perform the service ‘which belongs to the land’.⁵⁹

Whether there was a common unit of land assessment in Scotland south and north of the Forth is not clear. The *dabach* (pl. *dabaig*) appears to have been the universal measure of assessment in Scotland north of the Forth; the ploughgate for land south of the Forth. A property record entered in the gospel book of Deer recorded that Colbán, *mormaer* of Buchan, his wife, Eva, and Donnchad, son of Síthech, *toísech* of Clann Morgainn, ‘extinguished all church-lands . . . free from all burdens of that which would apply to the chief districts of *Alba* in

⁵⁷Edinburgh, Scottish Catholic Archives, JB 1/3, fo. 40v, printed *Glasgow Registrum*, ii. no. 535. I owe this reference to Dauvit Broun.

⁵⁸J. Stuart, *Records of the Monastery of Kinlos* (Edinburgh, 1872) [henceforth *Kinloss Recs.*], 114–16, at p. 116.

⁵⁹Barrow, *Acts of William I*, no. 14, *Scone Liber*, no. 75; see also Barrow, *Acts of William I*, no. 431; *Arbroath Liber*, i. no. 102.

general and on its chief churches so far as concerns four *dabaig*.⁶⁰ On 1 June 1235, Alexander II granted Scone Abbey his lands of Great and Little Blair in Gowrie and commanded that the canons perform ‘as much forinsec service as belongs to five *dabaig* of land’.⁶¹ But north of the Forth, the ploughgate also appears as a unit of assessment: between 1189 and 1195, William granted the land of Cassingray in Fife to Robert, son of Henry the butler, in return for doing ‘the forinsec service, as much as belongs to a half ploughgate of land in Kellie-shire’.⁶² There were also units north of the Forth known as *carucata Scoticana*—a ‘Scottish ploughgate’—and, again, service could be levied on these; indeed, it has been suggested that these Scottish ploughgates denoted the *dabach*.⁶³ Sub-divisions of ploughgates and *dabaig* were common and smaller units of land were also obliged to render the king’s service.⁶⁴ There were also regional variations, the most striking of which was the arachor, found exclusively in the Lennox. Service was also assessed upon the arachor (the Gaelic *arrachar* originally means ‘rowing’). In the late 1220s, Earl Mael Domnaich commanded that his clerk, Michael of Fintray, ‘perform the forinsec service of the lord king as much as belongs to half of one arachor in the Lennox’.⁶⁵ The relative sizes of and relationship between the *dabach*, ploughgate, Scottish ploughgate and arachor are complex and have been subject to

⁶⁰Translation is from Katherine Forsyth, Dauvit Broun and Thomas Owen Clancy, ‘The property records: text and translation’ in *Studies on the Book of Deer*, ed. K. Forsyth (Dublin, 2008), 131–43, at p. 141.

⁶¹*Scone Liber*, no. 67; also *Coupar Angus Charters*, i. no. 10. There has been much historiographical debate on whether the *dabach* corresponded to two or four ploughgates. For four, see Skene, *Celtic Scotland*, iii. 223–4; cf. R. A. Dodgshon, *Land and Society in Early Scotland* (Oxford, 1981), 73–89; for two see G. W. S. Barrow, ‘Rural settlement in eastern Scotland’, in Barrow, *Kingdom of the Scots*, 2nd edn, 233–49, at pp. 243–4; Alexis R. Easson, ‘Systems of Land Assessment in Scotland before 1400’ unpublished Ph.D. dissertation (University of Edinburgh, 1986), 53–60.

⁶²Barrow, *Acts of William I*, no. 286, also no. 402; NLS, MS Adv. 15.1.18, no. 61.

⁶³Barrow, ‘Rural settlement’, 239–41; G. W. S. Barrow, *The Anglo-Norman Era in Scottish History* (Oxford, 1980), 162; Easson, ‘Systems of Land Assessment’, 226.

⁶⁴*Arbroath Liber*, i. no. 67; also E[dinburgh] U[niversity] L[ibrary], Laing Charters, Box 2, no. 87, calendared in *Calendar of the Laing Charters 854–1837*, ed. J. Anderson (Edinburgh, 1899), no. 4; for common aid (*commune auxilium*) being levied on the oxgang see Barrow, *Acts of William I*, no. 404.

⁶⁵*Cartularium Comitatus de Levenax*, ed. J. Dennistoun (Edinburgh, 1833) [henceforth *Lennox Cart.*], 34–5.

much historiographical controversy; here is not the place to discuss it.⁶⁶ What can be said is that the levying of service on regionally particular fiscal units suggests that these burdens were imposed on pre-existing territorial units, whether arable or fiscal in origin, as the authority of the king of Scots spread. This supposition will be developed in greater detail below. What can be stressed is that the king's service was a burden placed upon the land; however, a lord could retain the burden of performance of this service even if he no longer had any right, proprietary or tenurial, over the land in question. The reasons for this will be discussed later in this paper.

THE NATURE OF THE KING'S SERVICE

It has long been believed, as noted at the beginning of this study, that the king's service was comprised of three elements: *cáin* (a tribute of foodstuffs, cattle and other renders); *coinnmed* (or 'conveth', a hospitality duty); and army-service, Latinised in charter diplomatic as one or both of *exercitus* and *expeditio* ('army' and 'hosting'). There are two important objections to this picture: it is very rare to find these three obligations listed together in royal charters; and, while military service was clearly assessed upon a fiscal unit (the *dabach* or ploughgate), *cáin* and *coinnmed* were not.⁶⁷ A recent but unfortunately (for the purposes of this study) unpublished investigation by Dauvit Broun has shown that *cáin* was not a universal tribute levied across all lands controlled by the king of Scots.⁶⁸ Broun identified the existence

⁶⁶K. H. Jackson, *The Gaelic Notes in the Book of Deer* (Cambridge, 1972), 116–17; Barrow, 'Rural settlement', 239–42; Easson, 'Systems of Land Assessment', 45–100, 197–265; now Alasdair Ross, 'The *dabach* in Moray: a new look at an old tub' in *Landscape and Environment in Dark Age Scotland*, ed. A. Woolf (St Andrews, 2006), 57–74. For the arachor see Easson, 'Systems of Land Assessment', 171–96 and Cynthia J. Neville, *Native Lordship in Medieval Scotland: the Earldoms of Strathearn and the Lennox c. 1140–1365* (Dublin, 2005), 99–102.

⁶⁷For rare occurrences of *cáin*, *coinnmed* and army service see *Lindores Cart.*, no. 42; *Arbroath Liber*, i. no. 146; and Barrow, *David I*, no. 158. For the levy of *cáin* and *coinnmed*, cf. Barrow, *Kingship and Unity*, 65 argues that *cáin* was levied on the *dabach* and ploughgate, equating *cáin* with the *geldum* referred to in Barrow, *Acts of Malcolm IV*, no. 169. The *geldum* in this charter does not refer to *cáin* but to *auxilium*, which was one of the three common burdens of the realm; see below, 195–6.

⁶⁸Dauvit Broun, 'Unfamiliar patterns of lordship in Scotland in the twelfth and thirteenth centuries', paper read at 'The Scottish Medievalists' Conference, Pitlochry, 5

of different types of *cáin* received by the kings of Scots (and other lords) in the twelfth and thirteenth centuries. One type was clearly a tribute render but was received from those areas only nominally under the control of the kings of Scots during this period. David I clearly believed that he received a render of *cáin* from Argyll ‘which belongs to Moray’ and (presumably) Argyll ‘which belongs to Scotia’; he granted a tenth of his revenue from Argyll of Moray to Dunfermline Abbey.⁶⁹ Galloway was also accustomed to pay a tribute of *cáin* and, after the province came under the control of Roland, son of Uhtred, in 1186, the procedures for its levy were redefined.⁷⁰ A record of a decision made at Lanark on 1 May 1187 × 1200 by the lawmen of Galloway reveals that henceforth, when the king needed to collect his *cáin* from Galloway, he would send his brieve to the *máir* of the province. They would then go to those who owed *cáin* and extract the payment of *cáin*, here recorded as an amount of 100 cows.

But outside Galloway and within the kingdom’s heartlands, *cáin* had assumed a second meaning: it denoted rent owed from a particular settlement received by whoever exercised lordship over the settlement, whether king or not. *Cáin* was also in the gift of a particular lord and could be reassigned elsewhere, creating complicated ties of obligation when lordship changed hands. Thus, David I could grant the ‘*cáin* of my hides and cheeses’ from his royal *maneria* of Scone, Coupar, Longforgan and Strathardle to Scone Abbey without transferring the estates themselves.⁷¹ Earl David of Huntingdon granted the canons of St Andrews Cathedral Priory quittance from all the *cáin* and *coinnmed* he had from Ecclesgreig as if it were a rent he customarily received from the monks.⁷² If *cáin* had originated as a tribute imposed on all lands, it seems that the changing tides of lordship and ownership, presumably initiated by the kings of Scots (in whose gift *cáin* originally may have been), had caused the transformation of *cáin* into something resembling

January 2003. I am grateful to Dauvit Broun for providing me with a copy of this important paper.

⁶⁹For the existence of Argyll ‘which belongs to Scotia’, see *Leges Scocie*, c. 1, edited in Alice Taylor, ‘*Leges Scocie* and the lawcodes of David I, William the Lion and Alexander II’, *SHR* 88 (2009), 207–88, at p. 254.

⁷⁰*Leges Scocie*, c. 20; edited in Taylor, ‘*Leges Scocie* and the lawcodes’, 278; translation at 286.

⁷¹Barrow, *Acts of Malcolm IV*, no. 243; also *Coupar Angus Charters*, i. no. 21.

⁷²*St Andrews Liber*, 238.

a rent or render which remained in the gift of the *potens* of the land if it had not already been granted to another.

Coinnmed has also been defined as a universal render despite even its most ardent proponents admitting that it could be received by lords other than the king.⁷³ *Coinnmed* was a hospitality duty, owed to the king or lord from a particular estate, and rendered in foodstuffs to provide him with the necessary sustenance as he journeyed round his kingdom. References to *coinnmed* are comparatively rare in the early twelfth century but become more frequent from the reign of Malcolm IV. In the early twelfth century, this hospitality duty was known as ‘waiting’ in Lothian alone but by the second half of the twelfth century, this term was also used for *coinnmed* north of the Forth.⁷⁴ *Coinnmed* was, like *cáin*, in the king’s gift and certain estates had been granted exemption: a charter of Alexander II, issued for Coldingham Priory on 16 May 1232, granted to the monks ‘the twenty annual marks, called waiting, which we and our ancestors were accustomed to receive from Coldinghamshire’.⁷⁵ While some renders of *coinnmed* continued to be paid in kind well into the last half of the thirteenth century, some were also converted into cash. The inventory made in 1296 detailing the items kept in the royal archives at Edinburgh Castle records the existence of ‘the roll of Abbot Archibald’, containing ‘ancient renders in money and ancient waytings’.⁷⁶ Archibald was abbot of Dunfermline between 1178 and 1198 and his roll demonstrates that these ancient payments were paid in kind or cash by the close of the twelfth century.

But *potentes* other than the king could receive *coinnmed*.⁷⁷ A brieve of Malcolm IV, addressed to the luminaries of the province of Fife, commanded that they were not allowed to take *coinnmed* from the tenants or lands of Dunfermline Abbey.⁷⁸ The implication is that the *potentes* of Fife were accustomed to taking *coinnmed* from their own lands. But the clearest evidence comes from the detailed proceedings of a lawsuit heard at the ecclesiastical synod held at Perth in 1206.⁷⁹ This

⁷³Barrow, *Acts of William I*, 52–3.

⁷⁴Barrow, *Acts of William I*, no. 154; cf. Duncan, *Scotland: the Making of the Kingdom*, 154, 449.

⁷⁵J. Raine, *The History and Antiquities of North Durham* (London, 1852), nos. 68–70.

⁷⁶*APS*, i. 118.

⁷⁷Barrow, *Acts of William I*, 52.

⁷⁸Barrow, *Acts of Malcolm IV*, no. 181.

⁷⁹Also cited in Barrow, *Acts of William I*, 52–3.

lawsuit turned on the claims of both the bishop of St Andrews and the secular lord, Duncan of Arbuthnott, to the Kirkton of Arbuthnott in the Mearns.⁸⁰ Fourteen men were called to give testimony over this matter and all found in favour of the bishop. Three of the statements heard in this lawsuit provide crucial evidence on the nature of *coinnmed* in this period. One Mael Brigitte, parson of nearby Newdosk, testified that ‘he had seen Bishop Richard [1163–1178] and Bishop Hugh [1178–1188] receive their *coinnmed* from the men of the land [the Kirkton of Arbuthnott] as in their own land’. A certain Gille Petair swore that he had seen the bishops ‘receive their *coinnmed* without any gainsaying as from their own men’. Somerled of Fetteresso swore that he had seen Bishop Roger (1198–1202) ‘refuse his *coinnmed* in one of his journeys because of the poverty of the men [of the Kirkton]’. The testimonies given by the three witnesses present a clear picture of the nature of *coinnmed*: it was perceived as an expected hospitality render from the inhabitants of a particular piece of land owed to the lord who had lordship over the territory in question. Some lords may have received *coinnmed* as a result of the king’s grant of land, with all the appurtenant privileges he had enjoyed from it. But a lord, whether ecclesiastical or lay, could receive *coinnmed* from his own lands in the same way as the king did from his: according to his need and the value of the estate in question.

There are some particularly interesting similarities between the hospitality render known as the ‘farm of one night’ (*firma unius noctis*) received by English kings and lords from some of their demesne manors in late Anglo-Saxon England and the *coinnmed* received by the kings and *potentes* of Scotland in the twelfth and thirteenth centuries.⁸¹ The farm of one night was a food rent owed to the lord of the estate when he travelled around his lands and was owed to lords and kings alike.⁸² By the time of the compilation of Domesday Book, the farm was sometimes paid in cash as well as kind. It was not levied on the

⁸⁰John Stuart, ‘Decreet of the Synod of Perth, A.D. M CC VI’, *The Miscellany of the Spalding Club*, vol. 5, ed. John Stuart (Aberdeen, 1852), 209–13.

⁸¹C. Stephenson, ‘The *firma unius noctis* and the customs of the hundred’, *EHR* 39 (1924), 161–74; Pauline A. Stafford, ‘The “farm of one night” and the organization of King Edward’s estates in Domesday Book’, *Economic History Review*, 2nd series, 33 (1980), 491–502.

⁸²Stephen Baxter, *The Earls of Mercia: Lordship and Power in Late Anglo-Saxon England* (Oxford, 2007), 130–4.

fiscal unit – the hide or carucate – but was owed from a particular estate and its amount could vary.⁸³ A royal manor listed in Domesday Book as owing a certain number of night's farms did not pay the ordinary rent (also confusingly termed *firma*) usually owed from the king's manors. It is thus thought to be an ancient obligation, albeit one providing substantial revenue for the king or lord in question, which, for some manors, had been replaced by a fixed money rent by the time of Domesday Book. An entry in the Shropshire folios states that the manors of Chirbury, Maesbury and Whittington had together rendered a night's farm in the time of Æthelred II but did not do so in 1066.⁸⁴

There is a clear similarity in terminology between the 'farm of one night' and the references to *coinnmed* (or 'waiting') found in the transcripts of the now-lost Exchequer rolls. In the accounts for 1264, the 'waiting of one night' (*waitinga unius noctis*) owed from the royal estate of Fettercairn was proffered in cows, pigs, cheese, malts and hens.⁸⁵ John of Kinross, sheriff of Kinross, accounted for the revenue from that royal estate in 1264 and proffered the foodstuff owed 'for the waiting of four nights every year'.⁸⁶ In both these Exchequer entries, the amount of nights' waiting accrued over a yearly basis: this too echoes the situation found in late-eleventh-century England. These accounts also show that an estate owing *waitinga unius noctis* did not pay in addition a fixed money farm as was owed from many other royal estates listed in the 1264–6 Exchequer Roll transcript.⁸⁷ This again is similar to those manors owing a *firma unius noctis* but not a fixed money render or *firma*. All this suggests that *coinnmed* was not levied from fiscal units such as the *dabach* or ploughgate. As the king's service *was* clearly levied on such units, it seems very unlikely that *coinnmed* was levied as part of it.

If *cáin* and *coinnmed* were, by the mid-twelfth century, no longer universal burdens on all the land within the kingdom of the Scots (if

⁸³Stephenson, 'The *firma unius noctis*', 163–4; Stafford, '“Farm of one night”', 493. Oxfordshire organised its nights' farms by a different system: the whole county rendered a farm of three nights, for which see Stafford, '“Farm of one night”', 494; for examples of their differing values, see Baxter, *Earls of Mercia*, 132.

⁸⁴GDB, 253c–d; cited in Stafford, '“Farm of one night”', 494.

⁸⁵*The Exchequer Rolls of Scotland*, ed. J. Stuart et al., 23 vols. (Edinburgh 1878–1908) [ER], i. 12, 20.

⁸⁶ER, i. 16.

⁸⁷ER, i. 3 (farms of Dull and Inverquiech), 9 (Tannadice), 17 (Glendowachy), 19 (Dingwall), 21 (Formartine).

indeed they ever were), what service was meant by the phrase *saluo servicio meo* which appears in such abundance in the surviving corpus of charters and deeds? Of particular interest here is a royal charter issued to Orm mac Aeda, lay abbot (*ab*) of Abernethy, between 1173 and 1178. This charter survives as an original and was penned by the king's clerk, Richard of Lincoln, who was responsible for fifteen of the 159 surviving original charters of William the Lion and worked in the *capella regis* between 1165 and 1182. Richard was thus well placed to know the exact nature of the king's service.⁸⁸ The charter recorded the confirmation of the abbacy (or *apdaine*) of Abernethy to Orm to be held 'from me and my heirs in feu and heritage, freely and quietly from all services and customs, saving common aid, common army and common labour service'.⁸⁹ These three burdens of *auxilia*, *operationes* and *exercitus* (sometimes twinned with *expeditio*) appear to have made up the king's service. Between 1178 and 1187, William granted his ferry-boat of Montrose with its appurtenant land to Arbroath Abbey 'to be held in free and perpetual alms, freely and quietly from army and expedition and labour services and aids'.⁹⁰ In 1234, Alexander commanded his burgesses of Inverness and those men dwelling on the infeudated tofts in Kinmylies, Moray, to perform 'the forinsec service in aids (*auxiliis*) and armies (*exercitibus*)'.⁹¹ Although often mentioned together, the three services were seen as separate burdens: a landholder could be granted quittance from one burden but not from another.⁹² Between 1173 and 1178, William confirmed the gift of a ploughgate of arable in Kedlock, Fife, made by one Simon, son of Michael, to the Hospital of St Andrews and commanded that Simon was to acquit (*adquietare*⁹³) the land 'from army and labour services' but that the

⁸⁸BL Additional Charter 76697; for Richard of Lincoln see Barrow, *Acts of William I*, 86–7.

⁸⁹Barrow, *Acts of William I*, no. 152. This formula has been discussed briefly in Barrow, *Kingdom of the Scots*, 2nd edn, 272. Barrow argues that these services may have been required because 'knight-service was thought an inappropriate tenure for the abbot of Abernethy'. But what follows shows that the service required from Orm was not unusual; what is unusual was the high level of specification of these services.

⁹⁰Barrow, *Acts of William I*, nos. 228, 438.

⁹¹C. N. Innes, *Registrum Episcopatus Moraviensis* (Edinburgh, 1837) [henceforth *Moray Reg.*], no. 34.

⁹²Barrow, *Acts of William I*, no. 92; Barrow, *Acts of Malcolm IV*, no. 280.

⁹³The verb *acquietare/adquietare* does not mean that the service had been fully lifted; although the land had been acquitted from burdens of the king's service, the donor still

hospital would render 'the royal geld which is commonly taken from lands and alms throughout the kingdom of Scotland'.⁹⁴ Three-fold common burdens to raise the necessary men, money and defences for a military force to operate effectively were not uncommon within the British Isles and throughout Western Europe. Local rulers in Ireland imposed the burdens of *sloiged*, *cís* and *congbáil* (hosting, tribute and maintenance) on their people and territories.⁹⁵ The so-called *trinoda necessitas* of bridge-work, fortress work and hosting were, from the end of the eighth century, recorded in both Mercia and Kent and, from the ninth century, were imposed upon the whole of the developing English kingdom expanding from Wessex.⁹⁶ 'Three duties' of army service, watch-duty and bridge-work were also imposed on ecclesiastical lands throughout the Carolingian empire.⁹⁷

What did the burdens of *operaciones*, *auxilia* and *exercitus et expeditio* entail? Common labour-services were only defined on occasion, the clearest and earliest example being recorded in a text known as

had to perform it, despite no longer having proprietary right in the land in question. Adam de Hastings granted part of his land of Kingledoors in Peeblesshire to Arbroath Abbey between 4 December 1214 and 21 April 1222 and stated that: 'ego uero et heredes mei forinsecum seruicium domini regis quod ad terram illam pertinebit in omnibus adquietabimus' (*Arbroath Liber*, i. no. 122). Alexander II's confirmation charter, issued 21 April, 1215 × 1222, stated that the monks were to hold the land 'freely and quietly, wholly and honourably, as the charter of Adam made for the monks on this testifies, saving my service from the aforesaid Adam and his heirs' (*Arbroath Liber*, i. no. 123).

⁹⁴Barrow, *Acts of William I*, no. 169; the word *geldum* is rare in Scottish documentation and probably refers to *auxilium*, 'aid', an equation which would make sense, given that both were assessed on land and were not extraordinary taxation; cf. Barrow, *Acts of William I*, 53, Duncan, *Scotland: the Making of the Kingdom*, 213; Barrow, *Kingship and Unity*, 65. *Geldum* was often equated with *auxilium* in the charters and deeds drawn up for Arbroath Abbey, for which see 195–6, below.

⁹⁵K. Simms, *From Kings to Warlords: The Changing Political Structure of Gaelic Ireland in the Later Middle Ages* (Woodbridge, 1987), 130–3.

⁹⁶Stevenson, 'Trinoda necessitas', 689–98; cf. Eric John, *Land Tenure in Early England* (Leicester, 1960), 64–79; Nicholas Brooks, 'The development of military obligations in eighth- and ninth-century England' in *England before the Conquest: Studies presented to Dorothy Whitelock*, ed. P. Clemoes and K. Hughes (Cambridge, 1971), 69–84, at pp. 76–83.

⁹⁷MGH *Diplomata Karolorum I: Pippini, Carlomanni, Caroli Magni Diplomata* (Hanover, 1906), 91, cited in Guy Halsall, *Warfare and Society in the Barbarian West 450–900* (London, 2003), 76.

foundation-legend 'B' of St Andrews, dated to 1140 × 1152.⁹⁸ This text records that King *Hungus* (Onuist) gave 'this place, that is Kilrimont to God and St Andrew his apostle . . . with such freedom that the inhabitants of that place should be free and quit always from army and from castle-work and bridge-work'.⁹⁹ This liberty is echoed in the notificatory mandates of David I and Malcolm IV issued to Dunfermline Abbey. Both kings commanded that the men of Dunfermline Abbey should be quit from labour-service on 'bridges, castles and all other works'.¹⁰⁰ This burden should not be exacted from the monks 'unless the abbot and monks should wish to perform it by their own will' (*spontanea uoluntate*). When the monks helped the other worthy men of the kingdom build new royal castles in Ross (presumably in response to the invasion of Gofraid mac Domnaill meic Uilleim in 1211), the king issued a charter specifying that this work was done at his own request (*ad petitionem meam*) and commanded that the goodwill the monks exhibited on this occasion would not prompt the transformation of this *ad hoc* performance of labour-services on the king's fortifications into custom.¹⁰¹

⁹⁸W. F. Skene, *Chronicles of the Picts, Chronicles of the Scots* (Edinburgh, 1867), 186–7. A new edition of foundation-legend 'B' by Simon Taylor can be found in Taylor and Márkus, *Place-Names of Fife*, iii. 573 [Latin], 578–9 [translation]; for the date, see Simon Taylor, 'The coming of the Augustinians to St Andrews and version B of the St Andrews foundation legend' in *Kings, Clerics and Chronicles in Scotland, 500–1297: Essays in Honour of Margorie Oglivie Anderson on the Occasion of her Ninetieth Birthday*, ed. S. Taylor (Dublin, 2000), 115–23.

⁹⁹For the most recent analysis of the date of the dedication to St Andrews, see James E. Fraser, 'Rochester, Hexham and Cennrigmonaid: the movements of St Andrew in Britain, 604–747', *Saints' Cults in the Celtic World*, ed. S. Boardman, J. R. Davies and E. Williamson (Woodbridge, 2009), 1–17.

¹⁰⁰Barrow, *David I*, no. 37; Barrow, *Acts of Malcolm IV*, no. 213. Malcolm's brieve was based on the diplomatic of David's and thus suggests that either the monks brought David's brieve to the royal chapel for re-issue or that the monks caused both brieves to be drafted in house.

¹⁰¹Barrow, *Acts of William I*, no. 500; the charter was drawn up on 18 August either in 1211, 1212 or 1213. Gofraid mac Domnaill meic Uilleim had invaded *per consilium thanorum de Ros* (*Gesta Annalia I* in *Joannis de Fordun Chronica Gentis Scotorum*, ed. W. F. Skene, with translation by F. Skene, 2 vols. (Edinburgh, 1871–2) [henceforth Skene, *Fordun*], i. 278) in 1211 and William had led a preliminary (but unsuccessful) force against him that year; Dauvit Broun and Julian Harrison, *The Chronicle of Melrose Abbey: a Stratigraphic Edition*, vol. i, *Introduction and Facsimile Edition* (Woodbridge, 2007); *The Chronicle of Melrose from the Cottonian Manuscript, Faustina B ix in the British Museum: a complete and full-size facsimile in colotype*, with intro. by Alan Orr Anderson and Marjorie

As with *operaciones*, quittance from the burden of *auxilium* was strongly protected. On 23 April, 1201 × 1207, William granted that all the tofts he had given to Arbroath in his ‘burghs and manors’ should be free and quit ‘from all aids and labour-services belonging to me and my heirs’.¹⁰² In 1216, Alexander had marched to Dover to join Louis during the Anglo-Scottish war of 1215–17.¹⁰³ The Chronicle of Melrose records that Alexander advanced to Carlisle prior to his journey to Dover ‘with his whole army, saving the Scots from whom he had received supplies’.¹⁰⁴ Alexander needed all the resources he could get: a later charter, dated 7 March, 1217 × 1219, informed his kingdom that he had been forced to ask the men of the monks of Arbroath to perform *auxilia* alongside his burgesses and provide the king with the hides he had then sold in England ‘in our great necessity’ during his advance to Dover of the previous year. But, in a phrase echoing that of William’s charter to Dunfermline mentioned above, Alexander commanded that the *auxilium* the monks had granted *liberaliter* was against the freedom which his father, William, had granted them: yet again, the levying of aid was not to become *exemplum uel consuetudinem* (‘a precedent or custom’).¹⁰⁵

Auxilium is a complex phenomenon. The first clear reference to royal or common aid is a brieve of Malcolm IV, datable to between 1162 and 1164, which forbade the *mormaer* of Angus and the *uicecomites* of Forfar and Scone from collecting aid from the property of the abbot

Ogilvie Anderson, and index by William Croft Dickinson (London, 1936) [hereafter *Chron. Melrose*], s.a. 1211. Gofraid was killed not long after Alexander’s knighting by John on 4 March 1212; see *Rogeri de Wendouer liber qui dicitur Flores Historiarum*, ed. H. G. Hewlett, 3 vols. (London, 1886–9), ii. 60; *Gesta Annalia* I in Skene, *Fordun*, i. 278. It is thus probable that the charter was issued either in August 1211 or August 1212 and the new castles in Ross were built specifically to deal with the threat posed by Gofraid. For the relationship between *Gesta Annalia* I and John of Fordun, see Dauvit Broun, ‘A new look at *Gesta Annalia* attributed to John of Fordun’ in *Church, Chronicle and Learning in Medieval and Renaissance Scotland*, ed. B. E. Crawford (Edinburgh, 1999), 9–30; also Dauvit Broun, *Scottish Independence and the Idea of Britain from the Picts to Alexander III* (Edinburgh, 2007), particularly pp. 215–34.

¹⁰²Barrow, *Acts of William I*, no. 438.

¹⁰³Keith J. Stringer, ‘Kingship, conflict and state-making in the reign of Alexander II: the war of 1215–17 and its context’, *The Reign of Alexander II, 1214–49*, ed. R. D. Oram (Leiden, 2005), 99–156.

¹⁰⁴*Chron. Melrose*, s.a. 1216.

¹⁰⁵*Arbroath Liber*, i. no. 111.

of Scone.¹⁰⁶ A brieve of King William refers to the aid ‘which was fixed at Musselburgh’ and there is an earlier mention of ‘fixed aid’ in a charter of Malcolm IV to Coupar Angus Abbey, suggesting a process of consultation to determine the necessary amount.¹⁰⁷ This conclusion is strengthened by the association of *auxilium* and *geldum* found particularly in charters drawn up for Arbroath Abbey, which suggests that the right to aid was, at the very least, considered equivalent to the geld imposed upon units of assessed land in England, levied from the late tenth century until 1161–2.¹⁰⁸ Before 1207, Walter Sibbald confirmed Arbroath Abbey in its possession of the land which he had previously given as a tocher to Philip de Melville and proclaimed it free ‘from army and expedition and from all aids and gelds’.¹⁰⁹

It is probable that aid was rendered both in cash and in kind: the aid of 1216 was paid in hides by the monks of Arbroath but it is in no way unlikely that aid was levied in cash as well.¹¹⁰ Barrow suggested that the ‘aid fixed at Musselburgh’ mentioned in William’s brieve (itself datable on internal evidence to 1189 × 1195) was imposed on the whole kingdom to pay off the 10,000 marks William owed Richard I in return for the lifting of the English overlordship of Scotland which had been in effect since 1175.¹¹¹ This is not unlikely: William of Newburgh mentioned that William raised this sum ‘from his subjects’ through his royal authority (*imminentia regie potestatis*).¹¹² It is possible that an aid raised in kind was converted into cash by the king after its collection: in 1216, Alexander sold the hides given to him as aid by the men dwelling in the tofts held by Arbroath and his own burgesses.¹¹³ There is no evidence that *auxilium* was ever a render taken annually; it depended on the king’s need. Between 1223 and 1224, Robert, earl of Strathearn, gave the land called ‘Rait’ in Dunfallin and commanded that it be held

¹⁰⁶Barrow, *Acts of Malcolm IV*, no. 252; *uiccomites* has been left untranslated deliberately: see below, 217–20. For the suggestion that this aid was raised to help subsidise the marriage of the king’s sisters, see Barrow, *Acts of Malcolm IV*, 54.

¹⁰⁷Barrow, *Acts of William I*, no. 326; Barrow, *Acts of Malcolm IV*, no. 226.

¹⁰⁸See Duncan, *Scotland: the Making of the Kingdom*, 213; for danegeld, see Judith A. Green, ‘The last century of danegeld’, *EHR* 96 (1981), 241–58.

¹⁰⁹*Arbroath Liber*, i. no. 94; also nos. 50, 93.

¹¹⁰*Arbroath Liber*, i. no. 111.

¹¹¹Barrow, *Acts of William I*, 53–4.

¹¹²William of Newburgh, *Historia Anglicana* in R. Howlett, *Chronicles of the Reigns of Stephen, Henry II and Richard I*, Rolls Series 82, 4 vols. (London, 1884–89), i. 304.

¹¹³*Arbroath Liber*, i. no. 111.

‘from me and my heirs, freely and quietly from all service and secular exaction, excepting only the aid of the lord king when the lord king imposes common aid over the whole kingdom’.¹¹⁴

The evidence detailing the nature of the third burden of the king’s service—service in the king’s common army—is the most abundant. Indeed, it is most common for royal service to be specifically equated with service in the king’s common army – the host – rather than the rendering of *auxilium* or labour services. Between 1171 and 1174 William I confirmed his mother’s, Ada de Warenne’s, gift of Cambo in Fife to Robert of Newham to be held for ‘the service of one footsoldier in my army (*exercitus*) and for defending (*defendendo*) the aforesaid Cambo for half a Scottish ploughgate in my forinsec service’.¹¹⁵ Service in the common army could be commuted into a food rent, although this is comparatively rare and most examples come from documents concerning land within the Lennox.¹¹⁶ The quarter-arachor called ‘Gartchoneran’ in Kilmarnock, Lennox, was said to render ‘in the army of the lord king, as much food as belongs to one quarter-land in the Lennox’.¹¹⁷ Service in the king’s common army was not confined to the peasant class. A lawcode of Alexander II (discussed at greater length below) lists the fines owed from those who ignored his summons to serve in the king’s army: those liable were not only *rustici* (peasants) and *ógtigerna* (men of middling status) but also thanes, who held a noble rank equivalent to the thegns described in *Norðleoda Laga*, an early-eleventh-century tract on status in northern England.¹¹⁸

Ecclesiastical lands were rarely acquitted wholly from common army service: the only house known to have been exempt was the

¹¹⁴*Inchaffray Charters*, no. 52.

¹¹⁵Barrow, *Acts of William I*, no. 131; also *Moray Reg.*, no. 37; NLS MS Adv. 15.1.18, no. 68.

¹¹⁶But not all: the men of the Kirkton of Arbuthnott had to provide supplies *in expeditione domini regis*; Stuart, ‘Decreet of the Synod of Perth’, 210.

¹¹⁷*Lennox Cart.*, 84.

¹¹⁸See the new edition of this law given below in the appendix; for the most recent equation of Scottish thanes with English thegns, see Alex Woolf, *From Pictland to Alba: Scotland 789–1070* (Edinburgh, 2007), 346–7; for *Norðleoda Laga*, see Patrick Wormald, *The Making of English Law: King Alfred to the Twelfth Century. Volume 1: Legislation and its Limits* (Oxford, 2001), 391–4.

Cluniac priory on the Isle of May.¹¹⁹ Most houses and churches had to perform army service: Malcolm IV granted Kinclaith in Glasgow to its bishopric and commanded that it be held 'freely and quit . . . saving my army-services' (*saluis tamen exercitibus meis*).¹²⁰ Although Arbroath Abbey was to hold 'all gifts so freely and quietly', her lands were still subject to obligations for 'the defence of my kingdom' (*defensione regni mei excepta*).¹²¹ Before 1245, Robert, son of Warenbald, and his wife, Richenda de Berkeley, granted their 'whole feu in the parish of Fordun in Mearns' to Arbroath but stipulated that the monks must answer for 'the forinsec service of the lord king in the army and common aid'.¹²² Alexander II granted his lands in Callendar to be held in feu-farm to the canons of Holyrood on 9 January 1234 'free and quit from all service, aid, custom and exaction, saving the defence of the kingdom'.¹²³

There are few explicit mentions of common army service in charters to lay beneficiaries. Most are charters granting land in return for knight or serjeantry service and these are often rather perfunctory, giving few details. But the few fuller charters which do survive indicate that the king's service was still exacted from land held for military service *in feodo et hereditate*.¹²⁴ There were, of course, exceptions. In either 1252 or 1253, Gilbert of Cleish granted fifteen acres in Kinross to his nephew, John of Pitliver, with the stipulation that John do the king's forinsec service for that land. However, John was acquitted from the service if he served in the king's knightly army with Gilbert.¹²⁵ But it was more common for the king's service to be performed

¹¹⁹Barrow, *Acts of William I*, no. 158, for May, see A. A. M. Duncan, 'Documents relating to the priory of the Isle of May', *Proceedings of the Society of Antiquaries of Scotland* 90 (1956–7), 52–80.

¹²⁰Barrow, *Acts of Malcolm IV*, no. 265.

¹²¹Barrow, *Acts of William I*, nos. 197, 513. The abbey did, however, hold the land belonging to the ferry-boat at Montrose free *ab exercitu et expeditione*; Barrow, *Acts of William I*, no. 228. Donors could acquit the lands they granted to Arbroath from common army service, providing that they performed it themselves. See *Arbroath Liber*, i. no. 50; and William's confirmation Barrow, *Acts of William I*, no. 456.

¹²²*Arbroath Liber*, i. no. 261.

¹²³C. N. Innes, *Liber Cartarum Sancte Crucis: Munimenta Ecclesie Sancte Crucis de Edwinburg* (Edinburgh, 1840) [henceforth *Holyrood Liber*], no. 65.

¹²⁴Barrow, *Acts of William I*, no. 474; see also Anderson, *Diplomata*, no. 33; Barrow, *Acts of William I*, no. 404; J. H. Ramsay, *Bamff Charters: AD 1232–1703* (Oxford, 1915) [hereafter *Bamff Chrs.*], no. 7.

¹²⁵Document printed in Barrow, 'Army of Alexander III', 146–7.

concurrently with any other military service owed from tenure of a feu than for the obligation of knights' service to render the performance of common army service unnecessary.¹²⁶ The most striking example comes from the earliest infeftment in Argyll by the kings of Scots. In a charter dated 1 August 1240, Alexander II granted five pennylands in Fincharn and other territories to Gille Epscoip mac Gille Críst in return for the service of half a knight 'and to do the Scottish service as the barons and knights north of the Forth do'.¹²⁷ The burdens of knight service and common army service were thus being imposed concurrently in areas newly under the control of the king of Scots. Such service was often a continuing burden on land held in feu-farm: Andrew, bishop of Moray, granted a *dabach* of land in Strathardle to the abbey of Coupar Angus in an act dated 26 July 1232 for an annual *reddendum* of three marks and the obligation to perform 'the forinsec service of the lord king which belongs to the land'.¹²⁸

By Alexander II's reign, knight service was sometimes included in the burdens of service. Alexander granted the lands of 'Brunsceth', Auchencrieff and 'Dergauel' near Dumfries to Melrose Abbey to be held 'from us and our heirs' in return for performing the 'forinsec service in aids which belongs to a quarter of a knight'.¹²⁹ In 1232, he granted Bamff, Perthshire, to the royal physician, Ness, for a quarter-knight's service along with 'the *other* forinsec service which belongs to these lands'.¹³⁰ This development had begun much earlier in England: *servitium forinsecum* was being used to refer to knight service as early as the beginning of Henry II's reign.¹³¹ Yet the examples which equate knight service with the king's service are few in thirteenth-century Scotland: it is far more common for the burdens of common service to be separated from those of knight service, a distinction confirmed in the narrative sources. Aelred of Rievaulx reported in his *Relatio de Standardo*, written by 1157, that David I himself commanded the armies of Scotia and Moray but appointed 'French and English knights' to

¹²⁶See also Barrow, *Anglo-Norman Era*, 164–6; *Bamff Chrs.*, no. 2.

¹²⁷MacPhail, *Highland Papers*, ii. 121–3.

¹²⁸*Coupar Angus Charters*, i. no. 38; also NLS MS Adv. 15.1.18, no. 61.

¹²⁹*Melrose Liber*, i. no. 207.

¹³⁰*Bamff Charters*, no. 1 (my emphasis).

¹³¹F. M. Stenton, *Documents Illustrative of the Social and Economic History of the Danelaw* (London, 1920), cxxvi–cxxxv, at p. cxxvii, cited in C. W. Hollister, *Anglo-Saxon Military Institutions on the Eve of the Norman Conquest* (Oxford, 1962), 37, 1n.

guard his own person.¹³² Jordan Fantosme separated the ‘thousand knights in armour’ from the ‘thirty thousand men without armour’ which William the Lion could raise in his attempt to wrest Northumberland and Cumberland from Henry II in 1173.¹³³ Fantosme later contrasted the Galwegians and Scots *de Albanie*, serving in the common army, with the barons who hold ‘their honours directly from the king’s royal person’.¹³⁴ Even in the thirteenth century, when knights’ service was described as forming part of the king’s common army on occasion, the two elements were still held to be distinct: Matthew Paris reported in 1244 that the Scots army was comprised of 1000 *armati* and 100,000 foot-soldiers ‘inspired by a common desire to defend their native land’.¹³⁵ Not much should be placed on the figures Paris cites; what is important is his distinction between the knightly and common army of Scotland was one also made both by Aelred and by Fantosme, writing long before.¹³⁶

The responsibility for calling out the common army lay with the king. Fantosme describes the onset of William’s campaign into northern England in 1174 by stating that ‘the king of Scotland summoned his knights, earls, all his best fighters’ to resume the hostilities.¹³⁷ William was present throughout the campaigns of 1173–4 but was not always required to lead his army. When William summoned his army against Domnall mac Uilleim in 1187, Howden reported that he said to the people there (*ad populum*) ‘I shall advance with you’, an offer which his people thoughtfully declined (not an indication, one hopes, of William’s skills as leader of his army).¹³⁸ The compiler of *Gesta Annalia* I commented that Alexander III ‘out of sheer will’ called three men out from every hide (*hyda*) to serve in the host (*in expedicione*) raised to support Henry III against Simon de Montfort in 1265.¹³⁹ This levy was a heavy burden: *Gesta Annalia* I adds that, on hearing of de Montfort’s defeat, Alexander released the Scottish people

¹³²Aelred of Rievaulx, *Relatio de Standardo* in Howlett, *Chronicles*, vol. iii, 179–99, at 191.

¹³³*Jordan Fantosme’s Chronicle*, ed. R. C. Johnston (Oxford, 1981), lines 327–8.

¹³⁴*Fantosme*, ed. Johnston, line 690.

¹³⁵Barrow, ‘Army of Alexander III’, 133.

¹³⁶Barrow, *Anglo-Norman Era*, 161–8.

¹³⁷*Fantosme*, ed. Johnston, lines 1185–6.

¹³⁸Roger of Howden, *Gesta Regis Henrici Secundi* in *Gesta Regis Henrici Secundi et Ricardi Primi Benedicti Abbatis*, ed. W. Stubbs, 2 vols. (London, 1867–8), ii. 8.

¹³⁹*Gesta Annalia* I in Skene, *Fordun*, i. 301; *hyda* does not appear in official sources: it is probable that the compiler of *Gesta Annalia* I was referring to the *dabach* or ploughgate.

‘from this vexation’, indicating that the size of this particular levy was uncommon. The amount of men and service a piece of land was expected to raise varied, probably according to the nature and severity of the campaign, echoing what is known about the raising of aid. The irregular nature of the burdens of forinsec service is expressed clearly in a deed of Alan Durward to Gille Brigte of Glencarnie in which Alan commanded Gille Brigte to perform the king’s service ‘when it should fall’ (*quando accidet*).¹⁴⁰

The word ‘forinsec’ has cropped up frequently in the foregoing paragraphs. Maitland showed long ago that ‘forinsec’ service denoted service owed to the king or overlord above what was owed to the immediate lord of the tenement.¹⁴¹ ‘Forinsec’ was used in a similar context in Scotland to describe the common burdens of the land owed to the king.¹⁴² Countless examples can be found with increasing frequency from Alexander II’s reign onwards. Following his mother’s interment at Balmerino Abbey, Alexander II gave and granted a plethora of lands to his new foundation on Christmas Day 1234 and quitclaimed the monks from ‘the common aid belonging to the said lands’ but commanded that they perform ‘the forinsec service in the army’ also levied on the land.¹⁴³ Before 1219 one Warin, son of Robert the Englishman, gave half a ploughgate of land in Duddingston to John Avenel, son of Gervase Avenel, and commanded that he do ‘the amount of forinsec [service] which pertains by law to that half ploughgate’.¹⁴⁴ It is very noticeable that *operaciones*, unlike *auxilia* or *exercitus*, are never described as ‘forinsec labour-services’. The clearest example of its absence is the note referred to above, which was entered into the *Registrum Vetus* of the bishopric of Glasgow in the mid-

¹⁴⁰Fraser, *Grant*, iii. no. 6.

¹⁴¹Pollock & Maitland, *HEL*, i. 217, n. 3.

¹⁴²Forinsec’ service was also called ‘Scottish service’ (*seruicium Scotticanum*) north of the Forth; see Duncan, *Scotland: the Making of the Kingdom*, 381–2; Barrow, *Kingdom of the Scots*, 2nd edn, 273.

¹⁴³*Arbroath Liber*, i. no. 102. See further *Dunf. Reg.*, no. 147; NAS RH 6/31.

¹⁴⁴*Inchcolm Charters*, no. 11; for further private deeds which mention forinsec service see *Melrose Liber*, i. nos. 137, 156; Edinburgh University Library, Laing Charters, Box 2, no. 87; *Coupar Angus Charters*, i. nos. 10, 57; NAS RH 6/16, *Inchaffray Charters*, nos. 33, 39, 52, 72; unpublished cartulary of Arbroath Abbey, BL MS Additional 33245, fos. 147r–v, 152r; *Scone Liber*, no. 75; *Arbroath Liber*, i. nos. 102, 122; W. Fraser, *The Chiefs of Grant* (Edinburgh, 1883) [hereafter Fraser, *Grant*], iii. nos. 4, 6, 8; *Dunf. Reg.*, no. 75; W. Fraser, *The Douglas Book* (Edinburgh, 1885), iii. nos. 2, 4–6.

thirteenth century.¹⁴⁵ Ecclesiastics were being forced to follow secular justice in some of their lands ‘for the reason of certain army-service and common aid—or forinsec services—which the grantors of those feus had retained to them and their heirs’. It is clear that *operaciones* were being levied in 1212, for the monks of Dunfermline were forced to send their men to help with the building of castles in the north to counteract the forces of Gofraid mac Domnaill meic Uilleim. But it is possible that the lack of references to *operaciones* may signify a general decline in their importance from the early thirteenth century onwards.

Furthermore, it is of note that *auxilium* is never mentioned in the earliest documentary evidence to detail the nature of the king’s service. It will be recalled that Version ‘B’ of the St Andrews foundation legend records the gift of Kilrimont by King *Hungus* (Onuist) to St Andrews with freedom from army and labour services but makes no mention of *auxilia*.¹⁴⁶ The grant of Kirkness by Mac Bethad, king of Alba (1040–1057), surviving in the Loch Leven property-records was freed from the burdens of ‘bridge-work and army-service’ but, again, *auxilia* are not mentioned.¹⁴⁷ It is clear that, by the time of William the Lion’s confirmation of the *apdaine* of Abernethy to Orm mac Aeda the three burdens of *operaciones*, *auxilia* and *exercitus et expeditio* were happily co-existing; nevertheless, it remains possible that the levy of *auxilia* was introduced in the mid-twelfth century whereas *operaciones* may have subsequently declined in importance. If so, this points to a number of interesting avenues to be followed: the growing importance of a cash economy (or produce to be converted into cash); the possible employment by the king of Scots of a more specialised labour force than one produced by social and political obligation; and the growing importance of financial aid for military operations. But all these suggestions are only speculations at this point.

What was the geographical spread of these burdens? The earliest references to army service date between 1145 and 1153 and refer to lands in Perthshire and Berwickshire.¹⁴⁸ Given the significance of Durham for the earliest Scottish charters, the early attestation of

¹⁴⁵*Glasgow Reg.*, ii. no. 535.

¹⁴⁶‘The St Andrews foundation account B and the Augustinian’s account’, ed. Taylor in Taylor and Márkus, *Place Names of Fife*, iii. 573.

¹⁴⁷*St Andrews Liber*, 114.

¹⁴⁸Barrow, *David I*, nos. 156, 158.

common burdens in Berwickshire is understandable.¹⁴⁹ But the reach of the king's service spread as far as his brieve: there is evidence of the king's service from the periphery of the kingdom as soon as royal charters survive from those areas. There is record of the king's service in the Lennox from the early thirteenth century. In 1224, Alexander confirmed a gift of Mael Domnaich, earl of Lennox (d. *c.* 1250), to Paisley Abbey with the caveat *saluo seruicio nostro* ('saving our service').¹⁵⁰ And in 1238, when Alexander II finally bestowed the earldom upon Mael Domnaich in a formal charter, he commanded the earl to 'perform the forinsec service which belongs to full villis (*plenarias villas*) in army-service and aids'.¹⁵¹

But the situation within Galloway may have been different. Land within this province, even that granted to beneficiaries within England, was still liable to perform the king's service. Between 12 May 1161 and *ca* 1170, Uhtred, lord of Galloway, gave the vill of Kirkgunzeon to Holm Cultram Abbey for an annual rent of £6 and acquitted the land from 'the service of the king of Scotland'.¹⁵² There are frequent references in narrative sources to contingents of Galwegian forces serving in the army of the king of Scots suggesting that this *seruicium regis Scottorum* included serving in the king's common army.¹⁵³ But Galloway was still accustomed to pay a tribute of *cáin* to the kings of Scots as late as 1187 × 1200.¹⁵⁴ It would be strange if Galloway was liable both for *cáin* and the three-fold common burdens of army-service, aid and labour-services. A revealing deed of Uhtred, lord of Galloway, suggests that land may have been liable only for *cáin* and army-service.¹⁵⁵ This deed was drawn up between 1161 and 1173 and recorded Uhtred's donation of the land of Loch Kindar in

¹⁴⁹For the significance of Durham, see A. A. M. Duncan, 'Yes, the earliest Scottish charters', *SHR* 78 (1999), 1–39; for a different perspective see Dauvit Broun, 'The adoption of brieves in Scotland' in *Charters and Charter Scholarship in Britain and Ireland*, ed. M. T. Flanagan and J. A. Green (Basingstoke, 2005), 163–85.

¹⁵⁰*Paisley Reg.*, 214.

¹⁵¹*Lennox Cart.*, 1–2; the reference to the unit of assessment as the vill, rather than the *dabach* or *arrachor* is nonetheless noteworthy.

¹⁵²Keith J. Stringer, 'Acts of lordship: the records of the lords of Galloway to 1234' in *Freedom and Authority*, ed. Brotherstone and Ditchburn, 203–34, at p. 214, no. 7.

¹⁵³See Howden, *Gesta*, i. 64, 67; ii. 8; Aelred of Rievaulx, *Relatio de Standardo* in Howlett, *Chronicles*, iii. 187, 189–90.

¹⁵⁴*Leges Scocie*, c. 20; printed in Taylor, 'Leges Scocie and the lawcodes', 278.

¹⁵⁵I am grateful to Dauvit Broun for sharing his thoughts on this with me.

Kirkcudbrightshire to Richard fitz Truite in return for the service of one knight.¹⁵⁶ It also records that whenever Uhtred rendered *cáin* from Cro and Desnes Ioan, Richard would pay Uhtred eight pounds of silver in return for quittance from 'all service and *consuetudines*' owed to both the king of Scots and also to Uhtred. But whenever Uhtred was released from his responsibility to render *cáin*, Richard would hold the land for the service of one knight. The deed suggests that 'service' and 'custom' was rendered in the periods when the king demanded his *cáin* from Galloway and was received by both the king and the lord of the province. It is possible that the king received *cáin* while Uhtred was responsible for raising 'service'. This service could be equated with army-service on the clear evidence of powerful Galwegian contingents serving under the lord of Galloway within but also clearly delineated from the common army of Scotland. This suggests that *cáin* was levied in Galloway when the king had defensive need of such revenue. To say this much may again be venturing into the realm of speculation; what is clear is that, in the twelfth century, Galloway did not render the three burdens of army, labour-services and *auxilia* but more ancient burdens of tribute and hosting, organised independently by the lord of the province.

MECHANISMS FOR RAISING THE COMMON BURDENS OF THE REALM

Who was responsible for raising the common army and the appurtenant burdens of *auxilia* and *operaciones* elsewhere in the kingdom? The attention this subject has thus far received has concentrated on the important role earls (known in Gaelic as *mormaír*, sing. *mormaer*) played in raising the king's common army.¹⁵⁷ Barrow has stated emphatically that 'the common army of Scotland was based on

¹⁵⁶Printed in Stringer, 'Acts of lordship', 215, no. 9.

¹⁵⁷Barrow, *Acts of William I*, 56–7; Alexander Grant, 'The construction of the early Scottish state' in *The Medieval State: Essays Presented to James Campbell*, ed. J. R. Maddicott and D. M. Palliser (London and Rio Grande, 2000), 47–71, at pp. 55–6. There is a problem in terminology here. It is a commonplace of past historiography to refer to the earls of medieval Scotland as exactly that, 'earls'. But it is unlikely whether contemporaries would have called them this: in Latin they were known as *comites*; in the Gaelic vernacular, *mormaír*. I have adopted the word earl when referring to the war of 1173–4 onwards and *mormaer* prior to that, though the division is somewhat arbitrary. For a discussion of the problems surrounding the derivation of the word *mormaer*, see Woolf, *From Pictland to Alba*, 342–5.

the earldoms and led by the earls' and there is plenty of evidence for this assertion (although Barrow's use of the word 'earldom', denoted by the word *comitatus*, is anachronistic if he was describing an early form of organisation—the word 'province' (*provincia*) should be preferred).¹⁵⁸ The epic poem written by Jordan Fantosme on the 1173–4 Great Rebellion records that amongst William's army (*ost*) were Earl Colbán of Buchan and Gille Críst, earl of Angus.¹⁵⁹ Fantosme mentions that William summoned 'his knights, the earls (*cuntes*), all his best fighters' in 1174.¹⁶⁰ The Chronicle of Melrose records that the earls of Scotland sent their armies to plunder Moray whilst on the king's campaign against Domnall mac Uilleim in 1187.¹⁶¹ In a striking deed, Earl Duncan of Fife 'granted and confirmed' to the monks of Mayquittance 'from army and expedition as King Malcolm confirmed to them by his charter'. An explanation of this unusual deed would be that Duncan was acting in his role of leader of the king's army of the province of Fife.¹⁶²

However, a royal enactment surviving in two legal compilations, the first attributed to Alexander II (1214–49), the second to David I (1124–53), suggests a rather different procedure at work.¹⁶³ There are eleven surviving witnesses of this *capitulum* in the 'David' tradition and thirteen from the 'Alexander' tradition. All are listed in the appendix to this article. The law in question survives as chapter 26 of *Statuta Regis Alexandri* (*SA*) and chapter 23 of the original structure of the lawcode attributed to David I, *Capitula Assisarum et Statutorum Domini David Regis Scotie* (*CD*).¹⁶⁴ The law details the fines owed if men of varying status

¹⁵⁸Barrow, *Acts of William I*, 57; for the problems assuming that the jurisdiction of Scottish earls or *mormaír* was identical to that of English earls, see Woolf, *From Pictland to Alba*, 342–5. The words *comitatus* and *provincia* were not synonymous, for which see Alice Taylor, 'Aspects of Law, Kingship and Government in Scotland c. 1100–1230', unpublished D.Phil. dissertation (University of Oxford, 2009), 165–72.

¹⁵⁹*Fantosme*, ed. Johnston, lines 471–6, at line 475.

¹⁶⁰*Fantosme*, ed. Johnson, lines 1185–6. Johnston wrongly translates *cuntes* as 'barons'; Fantosme usually used *cunte* to describe an earl. See his mention of 'le cunte Colbein' (line 472), 'le cunte d'Anegus' (line 473), 'les cuntes d'Escoce' (line 1342).

¹⁶¹*Chron. Melrose*, s.a. 1187; also *Gesta Annalia* I in Skene, *Fordun*, i. 288.

¹⁶²BL MS Egerton 3031, fo. 62v.

¹⁶³I have recently discussed and defended the authenticity of this law and its correct attribution to Alexander II in Taylor, 'Leges Scotie and the lawcodes', 240–2, but the arguments are worth setting out again here in greater detail.

¹⁶⁴For the structure of the true manuscript form of these two compilations, see Taylor, 'Aspects of Law, Kingship and Government', chapter 1; also the remarks in Taylor,

ignored the summons to serve in the king's common army. Despite the clear interest of this law, it has been little studied and, until recently, those scholars who have made use of it have relied upon the version prepared by Thomas Thomson for the first volume of the *Acts of the Parliaments of Scotland*, published in 1844.¹⁶⁵ This is unfortunate for Thomson's version is, in fact, a conglomeration of the David and Alexander traditions, and thus has no authority from any extant manuscript. The texts in the Alexander and David tradition differ over key readings and so new editions of each of them have been given in the appendix to this article. They have also been collated with Thomson's text to demonstrate which readings were preferred for *APS*, volume 1. It can be seen from these editions that while Thomson did use readings from both traditions, he clearly preferred that of *CD* to that in *SA* and, in particular, followed the version of *CD* given in MS **H**, although his enthusiasm for **H** did not extend to his relying as heavily on the copy of *SA* within the same manuscript.¹⁶⁶

There are several issues resulting from the existence of two textual traditions of this law. The first (but not the most important) is that *CD* and *SA* are not in agreement about the identity of the man against whom the king had summoned his army. All *SA*-texts identify the man as 'Domnall mac Niall' while all *CD*-texts agree that the wrongdoer was 'Arnald mac Niall'. Domnall mac Niall has been preferred here as it is argued below that the law belongs to Alexander II. The second problem is with the regnal year: the *CD*-texts all state that it was in the seventh year of the kingship of David I. But no regnal year is given in the *SA* versions and there is no narrative corroboration of this expedition to confirm that the 'seventh year of the kingship' is correct.

'*Leges Scocie* and the lawcodes', 245–6. The different recensions of *Capitula Assisarum et Statutorum Domini David Regis Scocie* (once known as 'The Assizes of David I') will be discussed in Taylor, 'The Assizes of David I, king of Scots, 1124–53', forthcoming.

¹⁶⁵There are brief analyses in Skene, *Celtic Scotland*, iii. 219–20; Grant, 'Construction of the early Scottish state', 56; Alexander Grant, 'Franchises north of the border: baronies and regalities in medieval Scotland' in *Liberties and Identities in Medieval Britain and Ireland*, ed. M. Prestwich (Woodbridge, 2008), 155–99, at p. 179; cf. Taylor, '*Leges Scocie* and the lawcodes', 240–2. No modern analysis has fully set out the problems associated with Thomson's text of this law.

¹⁶⁶**H** is the Cromertie manuscript; Thomson's preference for the Cromertie manuscript when producing his text of *Regiam Majestatem* was first commented on in J. Buchanan, 'The manuscripts of *Regiam Majestatem*: an experiment', *Juridical Review* 49 (1937), 217–31, at pp. 224–5. Buchanan referred to the Cromertie MS as **B**.

The date of 1221 normally ascribed to this law is therefore based on texts which associate it with David I, not Alexander II.

A third, slightly larger, problem is with a sentence which appears in Thomson's version of *Statuta Regis Alexandri*: 'the king should have the forfeiture of an earl if their thanes should stay away from the army'. This is quite an important sentence as it has been used to analyse the responsibilities and duties of thanes. It is reproduced in all the manuscript witnesses of *CD*. But ten of the thirteen manuscripts of *SA* (**C, K, L, M, O, P, Q, R, S, T**) do not provide the reading *thani eorum* but *aliqui eorum*—'any of their [the earl's] men', with *eorum* being used possessively. Which reading is therefore to be preferred? Were the earls receiving fines from the subordinate class of thanes or simply from a group of generally described 'men'? It is the opinion of this writer that *thani eorum* is to be preferred, despite the arguments for the text actually belonging to Alexander's reign, for the reading of *thani eorum* also appears in the three remaining manuscripts of *SA* (**H, I** and **N**). I have argued elsewhere that the texts of *CD* and *SA* were compiled separately and their original exemplars represent different textual traditions.¹⁶⁷ The reading of *thani eorum*, which appears in two textual traditions (suggesting that it was present in the original record of the enactment), is therefore preferred over one appearing within the Alexander tradition alone. The reading of *aliqui eorum* must therefore represent a variation within the transmission of the text of *SA* at a stage removed from the original compilation of the enactment.

There is one final problem arising from the existence of two complicated traditions of this law. There is a particularly interesting and important line found in the version of the law printed by Thomson: 'no earl or earl's sergeand shall come into the land of anyone holding of the king to exact this forfeiture unless [he be] the earl of Fife and he shall answer to the king to exact his rights for the earldom of Fife not as an earl but as a *maer*' ('steward').¹⁶⁸ Variants of this statement are found in some *CD*-texts: **E, F, H, N** and **U** all have only minor divergences from this: 'he shall answer to the king to exact his rights for the earldom of Fife not as an earl but as a *maer*'.¹⁶⁹ This sentence is not

¹⁶⁷Taylor, 'Aspects of Law, Kingship and Government', 70–1.

¹⁶⁸*Statuta Regis Alexandri II*, c. 2 in *APS*, i. 398.

¹⁶⁹Some manuscripts refer to the sheriff of Fife, rather than the earl of Fife (**E, F, K, N, O, P, R**). It seems likely that this represents a later textual mutation.

fully present in twelve of the witnesses of the law found in the *SA*-tradition. **C, I, K, L, M, N, O, P, Q, R, S** and **T** all read: ‘no earl or earl’s sergeand should come into the land of anyone holding of the king to exact this forfeiture unless [he be] the earl of Fife [coming] to exact his rights’. It is probable that these readings, all of the ‘Alexander’ tradition, are repetitions of an haplographic mistake made by an earlier scribe whose eye jumped from the first mention of *Fyffe* to the second, missing out *ille non sicut comes sed sicut [unus] marus* in his text.¹⁷⁰ This might suggest that behind these manuscript witnesses lay an exemplar of the law which read ‘and he shall come not as an earl but as a *maer*’; a sentence missed out in error by a later scribe of the law and an error which was then followed unconsciously by the scribes of manuscripts **C, I, K, L, M, N, O, P, Q, R, S** and **T**.

But there is a problem with this assumption. Another version of this sentence appears in *SA*, c. 26 in **H** but without the same haplographic error of the other *SA*-manuscripts. This reads: ‘and he shall [come] not as the earl of Fife but as the king’s third *maer* of Fife to exact his rights’.¹⁷¹ This variant reading is also found in five manuscripts of *CD* (**B, K, O; P** and **R**). **B** is the earliest. It reads: ‘unless he be the earl of Fife and he shall [come] not as the earl of Fife but as the king’s third *maer* of Fife to exact his rights’.¹⁷² Furthermore, the reading of *tercius marus* is supported by **K, O, P** and **R**. These are all relatively late manuscripts, dating from the late fifteenth to the late sixteenth century. But collation of the manuscripts of *CD* has revealed that these four manuscripts were part of a relatively accurate textual tradition flowing directly from the original exemplar.¹⁷³ It is hard to see how a scribe could have misread *tercius marus regis de Fyf* for *unus marus restat regi de Fyffe*, they must reflect different textual traditions. This writer knows of no documentary reference to a king’s ‘third *maer*’. However, royal *mair* of particular provinces did exist: chapter 20 of the legal compilation *Leges Scocie* reveals the existence of the *mair* of Galloway; and there is a reference to a *maer* of Gowrie in the early

¹⁷⁰The reason for the square brackets around *[unus]* will become apparent later.

¹⁷¹**H**: *Et ille non sicut comes de Fyffe sed sicut tercius marus regis de Fyffe*; the scribe of **H** could not have got this reading by consulting the *CD* version of this law which he had just transcribed; in **H** this reads: *marus restat Regi comitatus de Fyffe*.

¹⁷²**B**: *sicut tercius marus regis de Fyf*.

¹⁷³See Taylor ‘Assizes of David I’, forthcoming.

thirteenth century.¹⁷⁴ It is therefore possible that *tercius marus Regis* means that the earl of Fife was acting in addition to the activities of the existing royal *maír* of the province of Fife. We cannot know whether the haplographic error in all but one of the witnesses of *SA* conceals the reading of *tercius marus* or *unus marus*. But the fact that *tercius marus* is the reading not only of the one full text of this sentence in the Alexander tradition—**H**—but also the earliest manuscript of *CD* (and, indeed, in the group of manuscripts which seem to be later but accurate copies stemming from the original archetype of *CD*), strengthens the case that *tercius marus* was the reading in the original text of this enactment. As a result, this is the reading preferred in both the editions of the *CD*-text and the *SA*-text given in the appendix to this article.

The attribution to either David or Alexander can be secured by examining the procedure the law reveals for raising the army. The law establishes the forfeitures owed from those who stayed away when the king called out his army throughout the kingdom. It deals with the responsibilities of the earls first: ‘the king ought to have the earls’ forfeiture if their thanes should have stayed away from the army’, although it was not decided how much it should be. The lawcode continues: ‘concerning all others who stayed away from the army, *that is those from the lands of the bishops, abbots, barons, knights and thanes who hold of (de) the king*, the king alone should have the forfeiture’.¹⁷⁵ The distinction between the armies of the earls and those of the bishops, abbots, barons, knights and thanes is clear. The highest status groups in society, some of whom held immediately of the king, stood alongside the earls as responsible for raising his common army. Indeed, the earl was forbidden from coming into the lands of ‘anyone holding of the king’ to extract this forfeiture, unless it was the earl of Fife and even he would answer to the king ‘not as an earl but as the king’s third *maer* of Fife’. Indeed, it is possible that the earl of Fife was acting in his capacity as the king’s *maer* when he acquitted the monks of May from their obligation to service in the king’s *exercitus et expeditio*. Whilst there can be no doubt that earldoms had armies (they no doubt provided the most substantial forces), this lawcode suggests that earls were

¹⁷⁴*Leges Scocie*, c. 20, printed in Taylor, ‘*Leges Scocie* and the lawcodes’, 278, 286; *Compar Angus Chrs*, i. no. 34.

¹⁷⁵My emphasis.

responsible only for the levy from the lands of the lands of their earldom, not of the whole province; other lords were responsible for the levies from the lands they themselves held immediately of the king. By the time of the promulgation of this law, the common army of Scotland was organised on the basis of lordships, not by province under an earl: those who dwelt in the land of an earl would serve in his contingent; those who dwelt in the land of another lord, ecclesiastical or lay, would serve in theirs, regardless of the particular province where a lordship might lie.

A lawsuit surviving in the cartularies of Arbroath Abbey describes this exact scenario.¹⁷⁶ It turned on the claims of one Nicholas of Inverpeffer who accused Walter, abbot of Arbroath, of working to disinherit him from his land.¹⁷⁷ The case was heard at the abbot's court on 17 February 1250. During the proceedings of the lawsuit, thirteen men testified that they had seen Nicholas pay suit at the court of the abbot of Arbroath. Further, they witnessed that Nicholas was also accustomed to perform army-service (*exercitus*) and aid (*auxilium*) alongside the abbot's men, excepting the last occasion when the king (then the late Alexander II) raised an army for his expedition to Argyll in 1249, and then 'the same Nicholas sent his men in the army with the men of the lord king from the sheriffdom (*ballia*) of Forfar'.¹⁷⁸ Nicholas acted in this way because he feared the abbot was machinating against him and wished to have the king act as his *defensor* in the matter. Whatever the particulars of this case, it demonstrates that the king's common army was being levied in 1250 according to the holdings of the great lords of the realm: by virtue of holding of (*de*) the abbot of Arbroath, Nicholas of Inverpeffer was expected to serve in his contingent within the king's common army, although because of his dispute with the abbot, he withdrew from him and served the king directly (thus avoiding the hefty forfeiture he would otherwise have

¹⁷⁶*Arbroath Liber*, i. no. 250.

¹⁷⁷For more on Nicholas and Inverpeffer see Barrow, *Acts of William I*, no. 209; *Arbroath Liber*, i. no. 25.

¹⁷⁸*Ballia* seems to have been adopted first in royal charters and then in private deeds to describe areas of shrieval jurisdiction north of the Forth in the 1180s, during the reign of William the Lion. The earliest surviving example is datable to 1187 × 1189 (Barrow, *Acts of William I*, no. 281). For further examples, see Barrow, *Acts of William I*, nos. 354, 475; also *Dunf. Reg.*, no. 78; *Moray Reg.*, no. 40; *Scone Liber*, no. 60. I hope to elaborate on the significance of this diplomatic change on another occasion.

incurred). In light of this thirteenth-century evidence, therefore, it is more probable that the legislation belongs to Alexander II's reign. This means that the date normally assigned to this law is problematic: the regnal year (*anno regni sui septimo*) is given only in the copies which assign the law to David but not in those which assign it to Alexander. There are two possibilities here: first, the regnal year was present in the original text of the assize and was kept in by the compiler of *CD* but not by the compiler of *SA*; second, the regnal year was not present in the original text but was added by the compiler of *CD*. As the scribe of *CD* would add the words *Rex David* to the laws of his compilation to increase their authenticity but very rarely any additional dating information,¹⁷⁹ it is the opinion of this writer that the first option is more likely, even though it is difficult to see why the original compiler of *SA* would have excised this information.

It must be noted that the '1221' provisions may have been geographically limited. The text states that the legislation was enacted 'by all the *iudices Scocie*', and it is probable that *Scotia* here excludes Galloway for it is usual in these lawcodes for the *iudices* of Galloway to be present at legislative assemblies dealing with issues concerning the province.¹⁸⁰ The province of Carrick served in the army as a whole unit (not as separate units of lordships which would include that of the earl) and remained under the leadership (*duccio*) of the earl.¹⁸¹ But the key issue is whether the legislation described an existing situation or set out

¹⁷⁹*CD*, c. 1: *Assisa Regis David facta apud Striuelyn die lune proxima ante festum sancte Margarete Uirginis post primam coronacionem Philippi Regis Francie*; rubric of *CD*, c. 26: *Assisa Regis David de aquis*. The chapter is first witnessed in the legal compilation *Leges Scocie*, c. 7 (and there datable to 1180 and entitled *De eo quod nec episcopi nec abbates nec comitibus nec barones nec alias libere tenentes curiam teneant nisi uicecomes domini Regis uel eiusdem seruientes ibidem presens fuerit uel summonitus*); the second is in *LS*, c. 5 and there called *de aquis et ut filium cuiuslibet aque sit liberum*; for *Leges Scocie* [*LS*], see the edition in Taylor, 'Leges Scocie and the lawcodes', 246–88. The relationship between *LS* and the compilation attributed to David I cannot be seen in Thomas Thomson's editions in *APS*, i, but will be examined in my 'Assizes of David I' (forthcoming).

¹⁸⁰*LS*, cc. 18–19; printed in Taylor 'Leges Scocie and the lawcodes', 275–7.

¹⁸¹*Registrum Magni Sigilli Regum Scotorum*, vol. i, *A.D. 1306–1424*, ed. John Maitland Thomson (Edinburgh, 1912), no. 508; see further, Hector L. MacQueen, 'The laws of Galloway: a preliminary survey', *Galloway: Land and Lordship*, ed. G. Stell and R. D. Oram (Edinburgh, 1991), 131–43, at pp. 131–3 and Hector L. MacQueen, 'The kin of Kennedy, 'Kenkynnol' and the common law', *Medieval Scotland: Crown, Lordship and Community. Essays Presented to G. W. S. Barron*, ed. A. Grant and K. J. Stringer (Edinburgh, 1993), 274–96, particularly pp. 278–81.

new guidelines for levying the king's common army. There is only clear evidence dating in or after Alexander II's reign to demonstrate that the common army (and its appurtenant burdens) were levied and organised according to the holdings of major landholders. The case heard at the Abbot of Arbroath's court in 1250 shows this kind of organisation to be in place. More evidence can be found. In a case we have noted earlier, Gilbert of Cleish gave fifteen acres to John of Pitliver in 1252 or 1253 to be held 'of him and his heirs in feu and heritage' and commanded that 'when the common army of the lord king should come together, John should go *with me* in his own person and with his own horse in that army'.¹⁸² John, as subtenant, served in the common army under Gilbert of Cleish, his tenurial lord and superior. Earls continued to raise forces from the lands of their earldoms (which were not co-terminous with their province): Alexander II confirmed the earldom of Fife to Duncan's son, Malcolm, in a charter dated 21 March 1225 and commanded that he 'perform the service owed to us from that earldom (*de comitatu illo*)'.¹⁸³ But they may have raised this service by older mechanisms by which the thane exercised responsibilities not under the direct control of the king: even by the time of the legislation, 'it was not decided' what penalty the earls should pay if their thanes defaulted from the king's service.

It might be thought that all this thirteenth-century evidence suggests that the '1221' lawcode implemented new arrangements for levying the army rather than confirmed existing ones. Indeed, narrative sources prior to this date record only earls or provincial lords leading the king's common army, as we have seen already.¹⁸⁴ To these examples can be added the report of the fifteenth-century chronicler, Walter Bower. Bower recorded that when William raised an army to send against Domnall mac Uilleim's son, Gofraid, in 1211, he placed not only the earls of Atholl, Buchan and Malcolm, the son of the earl of Mar in charge, but also Thomas of Lundie, his doorward, who happened to be claiming the earldom of Mar along with the late earl's son.¹⁸⁵

¹⁸²Printed Barrow, 'Army of Alexander III', 146; my emphasis.

¹⁸³Original, NAS RH 6/29; *Lennox Cart.*, 19–20.

¹⁸⁴See above, 204–5.

¹⁸⁵Bower, *Scotichronicon*, gen. ed. D. E. R. Watt, 9 vols. (Aberdeen/Edinburgh 1987–98), iv. 464–5; for Thomas of Lundie see Matthew H. Hammond, '*Hostiarii Regis Scotie*: the

So this evidence suggests that earls were, for the most part, responsible for leading the king's common army during the twelfth century. But a distinction ought to be made between those responsible for leading the army and those responsible for raising it. That earls alone were solely responsible for raising the king's common army prior to the enactment of the legislation rather goes against the impression given by the text itself: it details only the size of the forfeitures owed for absence from the army and says nothing explicit about how the army was levied in practice. This suggests that the purpose of the legislation was to establish fixed forfeitures for absence, rather than implement a new system of organisation, even if the code did not fully achieve even this more limited aim. Furthermore, there is record of one army which was clearly outside the provincial structure in the twelfth century. The earliest surviving Scottish lawsuit, datable to 1124 × 1136, not only refers to the presence there of Constantine, earl of Fife, with his local lords (*satrapys*) and dependent men (*satellitibus*) with the *exercitu de Fyf* but also to the leaders (*duces*) of the army of the bishop of St Andrews.¹⁸⁶

It cannot be known whether the bishop's army was a private army or his contingent in the king's army but the possibility that it was the latter (or that it even acted as both) is strengthened by the evidence from a complex deed of Archibald, abbot of Dunfermline, drawn up between 1178 and 1198. The deed confirmed the land of Pinkie in Midlothian to William, son of Ingelram, and further augmented William's holdings by the gift of ten yokes of land between Pinkie and Tranent in East Lothian.¹⁸⁷ The deed continued: 'we also grant to him and his heirs the freedom of staying behind from the armies of the lord king unless the army be so common that the men of Inveresk and of the house of Monkton cannot stay behind'. It is unlikely that Abbot Archibald would have been able to grant exemption from common army service had he not been responsible for levying the men of his land when the king's need arose; indeed, the '1221' legislation provides for the forfeiture of men who have been given permission by 'the thane or knight' to stay away, suggesting that lords could grant

Durward family in the thirteenth century', *The Exercise of Power in Medieval Scotland c. 1200–1500*, ed. S. Boardman and A. Ross (Dublin, 2003), 118–38 at pp. 124–5.

¹⁸⁶Archibald C. Lawrie, *Early Scottish Charters Prior to A.D. 1153* (Glasgow, 1905), no. 80 (66–7).

¹⁸⁷*Dumf. Reg.*, no. 301.

exemption independently of the king, provided that they continued to meet their obligation by other means.¹⁸⁸ This further points to the conclusion that the army and the appurtenant burden of aid, had been levied by tenants-in-chief and great lords, both ecclesiastical and lay, on their own holdings prior to the '1221' legislation.

The prominence of lords revealed by the '1221' legislation in the mechanisms for raising the king's army is not unusual. Customs recorded in the Worcestershire folios of Domesday Book reveal that if a free man commended to a lord other than the king should ignore summons to the fyrd, his lord must pay a forfeiture of 40s if he—the lord—had failed to lead (*duxerit*) another in his place.¹⁸⁹ Earls are known to have used their contingents of the fyrd for their private ends: in 1065, having been appointed earl of Northumbria by the Yorkshire thegns, Morcar 'marched south with all the men of the shire, together with men from Nottinghamshire, Derbyshire and Lincolnshire' to Northampton where he was met by Harold Godwinson, acting on behalf of Edward the Confessor;¹⁹⁰ it is possible that these shires had been summoned by pre-existing obligations normally raised on behalf of the king. There is no parallel evidence in Scotland that lords used their contingents of the king's common army for private ends yet this does not mean they did not do so. Thomas de Colville was imprisoned in Edinburgh castle in 1210 'on account of the treachery he was working against his king and lord'. Although Thomas was a major landholder, it cannot be known whether he used his contingent in the

¹⁸⁸Barrow has argued that this deed revealed 'the active part which Archibald abbot of Dunfermline took in royal government between 1178 and 1187'; Barrow, *Acts of William I*, 57. Archibald did take an active part in royal government; in this deed, however, he was clearly acting in his capacity of abbot of Dunfermline, not royal *minister*. His deed begins with an address from 'Archibald, by God's grace abbot of the church of the Holy Trinity of Dunfermline *with all the convent of the same place*' (my emphasis) to 'all men whether cleric or lay belonging to the above church' and states that he has made the grant to William, son of Ingelram, 'with the common assent of our congregation'; *Dunf. Reg.*, no. 301. This is not the deed of a man acting in the capacity of a royal official.

¹⁸⁹GDB, fo. 172r; for an alternative translation see Richard P. Abels, *Lordship and Military Obligation in Anglo-Saxon England* (London, 1988), 151.

¹⁹⁰*The Anglo-Saxon Chronicle. A Collaborative Edition*, gen. ed. David Dumville and Simon Keynes, vol. vi, *MS D*, ed. G. P. Cubbin (Cambridge, 1996); vol. vii, *MS E*, ed. Susan Irvine (Cambridge, 2004): *s.a.* 1065.

king's common army in his machinations against the king.¹⁹¹ It is equally possible that he used his own private retinue; attestations of *milite (meo)* occur in private deeds from the end of the twelfth century.¹⁹²

It is probable that a greater proportion of lay and ecclesiastical lords had begun to take responsibility for performing the king's service in Scotland in the middle decades of the twelfth century. It is thus important that the formula expressing dependent alms tenure makes its most numerous appearances in the royal charters of this period. But there is also more compelling evidence. Between 1162 and 1164, Malcolm informed Gille Críst, *mormaer* of Angus, 'M', *uicecomes* of Forfar and 'E' (presumably Eógan), *uicecomes* of Scone, that he had granted to the abbot of Scone the right to collect *auxilia* from his own property (*pecuniae*) using his own *ministri* (officials) and commanded the *mormaer* (or earl) and *uicecomites* that they were 'not [to] come into those lands to collect the aforesaid aid'.¹⁹³ The brieve assumes the *mormaer* and the king's *uicecomites* to have been accustomed to collect *auxilia* from the abbot's possessions; the command clause demonstrates emphatically that such a situation was no longer permitted and the abbot had assumed full responsibility for the collection of aid.¹⁹⁴ The abbot of Scone continued to have responsibility for the collection of aid from his abbey's lands well into William's reign. Another brieve in favour of Scone, issued between 1189 and 1195, commanded that no one was to retain the men of the abbot of Scone who had fled from the

¹⁹¹*Chron. Melrose, s.a.* 1210; for Thomas's landholdings see Matthew H. Hammond, 'The use of the name Scot in the central middle ages, part 1: Scot as a by-name', *Journal of Scottish Name Studies* 1 (2007), 37–60, at pp. 52–4.

¹⁹²See *St Andrews Liber*, 247, 298–9, *Melrose Liber*, i. no. 32, 39, 296, *Aberdeen-Banff Ill.*, ii. 16–17, 20, *Arbroath Liber*, i. no. 86, *Dunf. Reg.*, no. 148, Original, NAS RH 6/41, BL Additional MS 33245 fols. 147r–v; *Lindores Cart.*, no. 41; see further Barrow, *Anglo-Norman Era*, 121–9. For private retinues co-existing with local sections of the fyrd in eleventh-century England, see Stephen Baxter, 'The earls of Mercia and their commended men in the mid-eleventh century', *Anglo-Norman Studies* 23 (2001), 23–46.

¹⁹³Barrow, *Acts of Malcolm IV*, no. 252; Eógan, *uicecomes* of Scone, is recorded only as 'E' in the address clause of this brieve but one Eógan, sheriff of Scone, attests Malcolm's confirmation charter to Scone (datable 24 May 1163 × 23 May 1164); Barrow, *Acts of Malcolm IV*, no. 243 and so was probably the 'E' of this address clause. *Uicecomes* has been left untranslated deliberately in this paragraph, for which, see below, 217–20.

¹⁹⁴An earlier example may be found, although this is less clear than the brieve of Malcolm IV; Barrow, *David I*, no. 158 and p. 129 for confirmation of the charter's authenticity.

abbey's land because of the recent *auxilium* which had been fixed at Musselburgh; the abbot of Scone 'or his sergeands' should be able to have their men 'wherever they may find them'.¹⁹⁵ No doubt the extensive endowment of bishoprics, the foundation of new monastic lordships such as Dunfermline, Melrose and Arbroath and the creation of new secular lordships, such as that in Renfrewshire and Lothian for Walter fitz Alan and the Garioch for William's brother, David, throughout the twelfth century prompted the assumption of responsibility for performing the king's service by major landholders as well as the earls (or *mormair*). Such a haphazard system, however, subject to the vicissitudes of lordship and land tenure, must have created severe confusion: a situation which is testified by the lawcode issued by Alexander II at Perth regarding the decision to fine all those who had been able to ignore the summons and 'stayed away from the army' when the king was in Inverness fighting against Domnall mac Niall.

The reference to the activities of the *nicecomes* in the Malcolm IV breve to Scone Abbey raises another important issue: the role of royal officials in raising the common burdens of the kingdom of the Scots. It has long been assumed that sheriffs began to play as great a role in raising the common army as the earls. But, as the earl's role was curtailed, possibly from as early as Malcolm IV's reign, it is worth looking in greater detail at the military responsibilities of the sheriff here. In a recent synthesis on the role of the sheriff, Michael Brown argued that, although the sheriff's 'key role' was in judicial, not military matters, contingents of the common army were nonetheless raised 'according to sherriffdom and served under royal officials'.¹⁹⁶ In an article on the origins and development of the sheriff in Scotland published in 1923, C. A. Malcolm cited Clause 29 of the 1318 legislation of Robert I, and stated that the sheriff was ultimately responsible for the mustering of the common army throughout the thirteenth century.¹⁹⁷ It is of note that some sheriffs in late Anglo-Saxon England were, along with earls, responsible for raising and leading the *fyrð* when it was called out. The oft-cited customs of

¹⁹⁵Barrow, *Acts of William I*, no. 326.

¹⁹⁶Michael Brown, *The Wars of Scotland: 1214–1371* (Edinburgh, 2004), 96–7.

¹⁹⁷C. A. Malcolm, 'The office of the sheriff in Scotland: its origins and early development', *SHR* 20 (1923), 129–41, at pp. 131–2.

Shrewsbury, recorded in the Shropshire folios of Domesday Book, state that the sheriff was responsible for summoning the burgesses when the *fyrð* marched into Wales while those of Hereford record its sheriff to be responsible for leading the free tenants of the borough again into Wales when required (although it is of note that both these were in charge of 'frontier' shires).¹⁹⁸ Local boroughs and later shire communities are frequently mentioned in the Anglo-Saxon Chronicles as forming independent contingents of the king's army and fighting on his behalf, although whether these shire units were raised by the new office of the sheriff is not clear from these chronicle entries.¹⁹⁹

But it is hard to see the sheriff exercising similar levels of responsibility in Scotland. The legislation of Robert I is late and pertains to the war-stricken Scotland of the early fourteenth century following a period when Edward I had reformed the organisation of the sheriffdoms within Scotland.²⁰⁰ The sheriff was responsible for leading the 'men of the lord king of the sheriffdom of Forfar' mentioned in the case between the abbot of Arbroath and Nicholas of Inverpeffer but these men were tenants of the king's demesne.²⁰¹ Most instructively, the sheriff is nowhere to be found in the '1221' legislation: forfeitures were owed to the king and the earl if 'the (earl's) thanes should have stayed away' and were shared between the king and the 'thane or knight' if the peasants under their lands had failed to serve. It is possible that the sheriff had a supervisory responsibility over the collection of these fines, much as he did over the collection of teind—primarily the responsibility of the 'thane or lord' in the bishoprics of Moray and St Andrews.²⁰² The brieve of Malcolm IV to Scone seems to show that sheriffs did, at one stage, raise *auxilium* for

¹⁹⁸GDB, fo. 252r; GDB, fo. 179r; for the military role of the sheriff, see W. A. Morris, *The Medieval English Sheriff* (Manchester, 1927), 27–8, 58–60.

¹⁹⁹*The Anglo-Saxon Chronicle. A Collaborative Edition*, gen. ed. David Dumville and Simon Keynes, vol. ii, *MS A*, ed. Janet M. Bately (Cambridge, 1986), s.a. 917, 1001; vol. v, *MS C*, ed. Katherine O'Brien O'Keefe (Cambridge, 2001), s.a. 1001, 1003.

²⁰⁰G. W. S. Barrow, *Robert Bruce and the Community of the Realm of Scotland* (Edinburgh, 1965; 4th edn, Edinburgh, 2005), 386. Even this legislation refers to a degree of co-operation between the sheriff and the lords of the lands: 'every sheriff of the kingdom should, together with the lords of the place (within his sheriffdom) investigate concerning this and raise a muster immediately after the aforesaid octave of Easter': <http://www.rps.ac.uk/mss/1318/29> (accessed 22 April 2010).

²⁰¹*Arbroath Liber*, i. no. 250.

²⁰²Barrow, *Acts of William I*, no. 281.

lands outwith the king's demesne. But the *nicecomites* of Forfar and Scone referred to in the address clause may not have been one and the same as the sheriffs who had been introduced south of the Forth and as far north as Perth in the reign of David I: it is possible that they were not 'sheriffs' but 'thanes' (or *toisig*).²⁰³

It is clear from the text of the '1221' legislation that thanes were, along with knights, responsible for raising the king's common army in the localities; it has also long been acknowledged that the earliest sheriffdoms were centred on royal estates run by men previously or also known as thanes.²⁰⁴ Evidence for the proposition that the *nicecomites* in the brieve of Malcolm IV should be translated as 'thanes' is found in the Loch Leven property-records, entered in the thirteenth-century cartulary of St Andrews Cathedral Priory. But while these records were written in the cartulary in Latin, some of the transactions they record were considerably earlier and must have been originally written in Gaelic. They are thus extremely problematic texts: a later scribe must have had to find equivalent Latin terms for Gaelic noblemen, heads of kindreds, and officials. The gift of King Mac Bethad of Kirkness, acquitted from the exactions of 'king and king's son, *nicecomes* and anyone else' is one of these problematic references.²⁰⁵ The *nicecomes* here cannot be denoting a 'sheriff' for sheriffs were not introduced until the reign of David I, and in that period they were mostly located in Scotland south of the Forth.²⁰⁶ So what was meant by *nicecomes* in this property record?²⁰⁷

A solution to this particular problem may be found by examining the so-called *Leges inter Brettos et Scottos* whose earliest surviving witness

²⁰³For the relationship between thanes and *toisig*, see Skene, *Celtic Scotland*, iii. 291; Skene, *Fordun*, ii. 446–8; Broun, 'The property records in the Book of Deer as a source for early Scottish society', *Studies in the Book of Deer*, ed. Katherine Forsyth (Dublin, 2008), 313–60, particularly pp. 333–5; cf. G. W. S. Barrow, *Feudal Britain: the Completion of Medieval Kingdoms 1066–1314* (London, 1956), 133; Barrow, *Kingdom of the Scots*, 2nd edn, 33–43; Alexander Grant, 'Construction of the early Scottish state', 47–71; Grant, 'Franchises north of the border', 21–3.

²⁰⁴Alexander Grant, 'Thanes and thanages, from the eleventh to the fourteenth centuries', in *Medieval Scotland: Crown, Lordship and Community. Essays presented to G. W. S. Barrow*, ed. A. Grant & K. J. Stringer (Edinburgh, 1993), 39–81, at p. 51.

²⁰⁵*St Andrews Liber*, 114.

²⁰⁶Although see Taylor and Márkus, *Place Names of Fife*, iii. 596, in which this passage is translated as 'king and king's son, sheriff and anyone else'.

²⁰⁷E. W. Robertson, *Scotland under her Early Kings*, 2 vols. (Edinburgh, 1862), ii. 470–1.

is in chapter 21 of the legal compilation, *Leges Scocie*, which survives in a manuscript datable to 1267 × 1272.²⁰⁸ This lists the social ranks of Scottish society with their equivalents in the kin-group. Thus, a *cunte* was on the same stratum as the ‘son of a king’ (*le fiȝ le Rei*). A thane was the equivalent of a ‘son of the *mormaer*’ (*a un fiȝ a cunt ou a un thayn*). Given the equivalence of position recorded in the so-called *LBS*, the *filius regis* found extracting customs and burdens from the men of the vill of Kirkness may have been one and the same as the *mormaer*, while the *nicecomes* was not a sheriff at all but a thane.²⁰⁹ It is therefore just possible that the *nicecomites* of Forfar and Scone in the brieve of Malcolm IV were acting not in their new official capacity as sheriffs but were performing their long-exercised role of extracting the common burdens of the realm alongside the *mormaer*. Indeed, that *mormaír* (earls) and *toísig* (thanes, sing. *toísech*)²¹⁰ were once solely responsible for raising the common burdens of the realm is given added support from the evidence of the property record of the first half of the twelfth century entered in the Book of Deer, already mentioned during this study. This recorded that Colbán, *mormaer* of Buchan, his wife, Eva, and Donnchad, son of Síthech, *toísech* of Clann Morgainn, ‘extinguished all church-lands . . . free from all burdens of that which would apply to the chief districts of *Alba* in general and on its chief churches so far as concerns four *dabaig*’.²¹¹ The most logical explanation of their ability to quit the lands from the common burdens of the realm is that Colbán, as *mormaer* and *toísech*, was ultimately responsible for the levy at a provincial and a local level, and Donnchad, as *toísech*, from his kin-group and local area.²¹² The new landholders of the twelfth centuries—

²⁰⁸For *Leges inter Brettos et Scottos* see the edition and commentary in Taylor, ‘*Leges Scocie* and the lawcodes’, text at pp. 278–9, translation at pp. 286–8, commentary at pp. 237–43; for further comment, see most recently Woolf, *From Pictland to Alba*, 346–9; then F. W. L. Thomas, ‘Proposed correction of the text *Leges inter Brettos et Scottos*’, *PSAS* 19 (1884–5), 73–4; Duncan, *Scotland: the Making of the Kingdom*, 107–8; K. H. Jackson, ‘The Britons of Southern Scotland’, *Antiquity* (1955), 77–88; D. S. Thomson, ‘Gaelic learned orders and *literati* in medieval Scotland’, *Scottish Studies* 12 (1968), 57–78; also MacQueen, ‘Laws of Galloway’, 135–6, 141–2.

²⁰⁹*St. Andrews Liber*, 114.

²¹⁰For the equation of the thane and the *toísech*, see Taylor, ‘Aspects of Law, Kingship and Government’, 172–91.

²¹¹Forsyth, Broun and Clancy, ‘Property records: text and translation’, 141.

²¹²For Colbán as both *mormaer* and *toísech* of Clann Chanann, see Broun, ‘Property records in the Book of Deer’, 348–9.

the knights and abbots—merely fitted into and shared these responsibilities, thus acting against the existing provincial framework for their levy. If the sheriff was involved in the mustering of men outwith the royal demesne, he must have done so only when those *potentes*—be they earl, bishop, knight or thane—were unable or unwilling to fulfil their responsibilities. Unlike the sheriff of late Anglo-Saxon England, the medieval Scottish sheriff seems to have had only a limited role in raising the common burdens of the realm.

CONCLUSION

All land within the kingdom of the Scots was, in theory, assessed for the performance of three burdens taken commonly throughout the kingdom: *auxilia*, *operaciones* and *exercitus*. These three burdens or services were owed to the king of Scots above whatever was owed to any other lord, ecclesiastical or lay, and are similar in form (but not in content) to the *trinoda necessitas* imposed in England between the ninth and end of the eleventh century. It is difficult to discern the origins of these obligations in Scotland and the task is made harder, perhaps impossible, by the lack of documentary evidence before the twelfth century. What can be said is that they point to the existence of an early system of assessment, levied on a Gaelic unit—the *dabach*—whose origins must stretch far beyond the end of the eleventh century.²¹³ It would also appear that these burdens were raised on a provincial basis under a *mormaer*, with individual *toisig* responsible for the local levy. This system was not inflexible: twelfth-century evidence points to an extension of these burdens over the periphery of the kingdom and the weakening of the provincial framework for their levy. The common burdens of the realm provided for its defence both internally, through building fortifications, and externally, by summoning a mass levy of fighting men and providing them with necessary supplies—a system of manpower, revenue and labour which may have had a very long and changing history.

During the twelfth and thirteenth centuries, the key issue the charter evidence presents was over who would perform the service of the king of Scots: if land was given to a religious house, would it still be burdened with the king's service; would the donor perform it himself;

²¹³Barrow, 'Rural settlement', 248–9; Ross, 'The *dabach* in Moray' (n. 66, above).

or would the burden be lifted entirely? There is ample evidence that all three solutions were used, presumably with varying degrees of effectiveness. What must be taken from this is that even the increasing pressure to lift secular burdens from religious institutions did not ensure that their land would be free from existing burdens: alms land as much as land held by laymen was liable for the performance of common burdens. This obligation was often expressed by a notion of vague dependence in alms tenure clauses—land was to be held in alms *de me et heredibus meis* or *saluo servicio meo*. This issue remained even in a lay sphere with the introduction of different forms of land tenure and obligation: if land given to laymen was held at feu-farm or in return for knight service, what happened to the common burdens already levied on the land? There is some evidence to suggest that knights' service took precedence over service in the king's common army but the overwhelming impression is that common army service (and the appurtenant burdens of *auxilia* and *operaciones*) continued to be performed concurrently with service in the king's feudal host. This points to a dual structure of military obligation in Scotland during the twelfth and thirteenth centuries but one which was heavily weighted in favour of the king's common army, its provision and defence. A series of feudal obligations, based on the knight, knight's feu, and knights' service, merely overlaid this structure; in no way did it replace it.

All this suggests that the kings of Scots were exceptionally well-endowed with resources, the size of any particular levy varying according to the will or need of the king and his counsellors. It could be extensive: Fantosme remarked of the 1173 host (albeit with some hyperbole) that 'such an army had not come out of Scotland since the days of Elijah'.²¹⁴ Indeed, as the authority of the kings of Scots spread over what would become modern Scotland, it might be assumed that the concurrent rise in the service owed to the king contributed to the increasing strength of the crown. However, the evidence suggests that the kings of Scots placed unconscious limits on their control of their own resources during the twelfth century by making lords of varying status, not the new class of royal officials, continue to be responsible for the collection of their service. It has long been thought that one burden of the king's service—the common army—was raised upon the earldom and, later, the sheriffdom; a previously understudied lawcode

²¹⁴Fantosme, ed. Johnston, line 476.

of Alexander II shows that responsibility in fact fell upon all the great lords of the kingdom, be they earl, baron, knight or thane, bishop or abbot. A brieve of Malcolm IV, whereby the responsibility for collecting *auxilia* was transferred from the *mormaer* and *uicecomites* to the abbot of Scone, suggests that the hold of *mormair* (and *toisig*) upon the levying of common burdens had loosened and that the provincial framework had been changed and adapted, probably the result of the shifting pattern of lordship developing during the reigns of David I and his grandsons. The settlement of new families in Scotland both north and south of the Forth and the extensive endowment of religious houses and bishoprics may have prompted the assumption of responsibility for the king's service by lords other than *mormair* who were too powerful to come under the jurisdiction of the local *mormaer*.²¹⁵ The crucial period of this shift seems to have been the middle of the twelfth century, arguably during the reign of Malcolm IV.

Ecclesiastical and secular lords also played a similar role in summoning and leading the *fyrð* in eleventh-century England. But their control was counter-balanced by networks of royal officials, of sheriffs and reeves, who also assumed responsibility for the levy at a local level. It is particularly noteworthy that no similar administrative infrastructure was ever implemented in Scotland to run underneath or over the heads of the great lords who were responsible for levying the common army. The only evidence that the common burdens of the kingdom may have been collected exclusively by royal officials is the brieve of Malcolm IV which transferred the responsibility for *auxilia* from the *mormaer* and *uicecomites* to a lord—in this case the abbot of Scone. But it is probable that the *uicecomites* here were not sheriffs but thanes (or *toisig*). In contrast to what has previously been thought, the sheriff was only obliged to collect common burdens from crown lands: Nicholas of Inverpeffer sent his men to serve ‘in the army with the men of the lord king from the sheriffdom of Forfar’ in 1249 after refusing to answer the summons of the abbot of Arbroath from whom he held his land.²¹⁶ The sheriff is noticeable in the ‘1221’ enactment of Alexander II only by his absence. All this points to the conclusion that the common burdens of Scotland were not an obligation performed

²¹⁵For a *ri Mureb*, see Alex Woolf, ‘The Moray question and the kings of Alba’, *SHR* 79 (2000), 145–64.

²¹⁶*Arbroath Liber*, i. no. 250.

within a kingdom-wide administrative structure but were levied through the changing tides of landholding, lordship and dominance. The lack of a stable, binding and centralising mechanism for the levying of royal obligations raises questions about how far the organisation of common burdens within the kingdom had the potential to contribute to the ultimate development of the authority of the kings of Scots. All land was, in theory, subject to the three burdens of public works, aid and military service but these were raised through the mediation of private lords, answerable to no one but the king himself (the *mormaer* and *nicecomites* were even prohibited from coming into the abbot's lands to collect *auxilia*). This points to a society where royal authority, although geographically extensive, did not permeate far past the *potentes* of the realm whose exercise of their own power must have become more intensive as a result of the key part they played in levying the common burdens of the realm. Understanding the mechanisms for raising such burdens as well as their nature and extent can thus reveal far more about the relative strength and reach of medieval states and governments.

APPENDIX: *The Law of Armies* (1221?).**Table 1: Manuscripts containing *Capitula Assisarum et Statutorum Domini David Regis Scocie (CD)* and *Statuta Regis Alexandri (SA)*.**

NOTE: Those MSS containing *CD* have been denoted by a **d**; those containing *SA* by an **a**. All those witnesses of *SA* which do not contain the '1221' law (for which see Taylor, '*Leges Scocie* and the lawcodes', 245–6, n. 142) have been omitted here but for a full list see Taylor '*Leges Scocie* and the lawcodes', 248–9. This table is adapted from the table of 'Auld Law' manuscripts given in the *Leges Scocie* article.

| Ascription | Library Reference Number | Appellation | d/a ? | Date |
|------------|--|------------------|------------|------------------------|
| B | Edinburgh, NAS, PA5/2 | Ayr MS | d | 1318×29 |
| C | Edinburgh, NLS MS. Acc. 21246 | Bute MS | da | ×1424 |
| D | NLS MS. Adv. 24.4.13 | | d | 1439 |
| E | NLS MS. Adv. 25.4.10 | Alexander Foulis | d | 1454 |
| F | London, BL MS. Additional 18111 | | da | ×1460 |
| H | NLS MS. Adv. 25.5.10 | Cromertie | daa | c.1470 |
| I | Edinburgh, EUL MS. 207. | | a | c.1475 |
| J | NLS MS. Acc. 16497 | Arbuthnott | da | 1470×90 |
| K | NLS MS. Adv. 25.5.6 | Monynet | da | 1488 |
| L | London, Lambeth Palace Library [LPL], MS. 167 | Lambeth | a | 1480×1500 |
| M | St Andrews, University Library, MS. Kf.51.R4 | | a | 1492× |
| N | NAS, PA5/3 | Drummond | da | Late 15 th |
| O | NLS MS. Adv. 25.5.9 | John Bannnatyne | da | 1520 |
| P | BL MS. Harley 4700 | Harley | da | Early 16 th |
| Q | Cambridge, University Library [CUL], MS. Ee.4.21 | | a | c.1541 |
| R | Glasgow University Library, MS. Murray 548 | Phillipps MS | da | 1546 |
| S | NLS MS. Adv. 25.4.12 | Thomas Bannatyne | a | Late 16 th |

| | | | | |
|----------|---|--------|----------|----------------------|
| T | BL MS. Additional 48033 ²¹⁷ | | a | 1570 |
| U | NLS MS. Adv. 24.4.11 | Hailes | d | mid-15 th |

The '1221' legislation was given different titles in *CD* and *SA*. The witnesses of *CD* give variants on the title, 'on the forfeitures imposed on those who stayed away from the king's army, according to their status', while its title in the witnesses of *SA* is always 'on the law of armies'. There are several witnesses of *CD* and *SA* which do not contain Latin texts of the '1221' legislation (**C**, **H**, **F** and **J**). **F** contains a full copy of *CD* but a shorter version of *SA*, containing four chapters, but not the law on armies. A similar short version of *SA* also appears in a manuscript I have elsewhere called **G** (Edinburgh University Library, MS 206, fos. 88/89v–93/94v; for the ascription, see Taylor, '*Leges Scocie* and the lawcodes', 248). I have given a brief description of this shorter *SA* of **F** and **G** in Taylor, '*Aspects of Law, Kingship and Government*', 52–3.

A folio has been cut from **C** in the middle of its otherwise complete witness of *CD*; thus, *CD*, cc. 19–25 are missing. As the '1221' legislation appears in *CD* as chapter 23, **C**'s version could not be collated into this edition. MS **H** has two witnesses of *SA*, one between fos. 24r–25r, the other at fos. 128r–132r. The first text of *SA* in **H** contains a list of 26 *capitula* (not 29 as in most other versions of *SA*). But the scribe has transcribed only the first six chapters, and the text ends abruptly in the middle of chapter 6—thus, the 'law on armies' is missing. The second witness of *SA* in **H** is complete and has been collated here. There is no Latin version of '1221' in *CD* of **J** (which is anomalous; see the note in Taylor, '*Leges Scocie* and the lawcodes', 226, note 72 and in Taylor, '*Aspects of Law, Kingship and Government*', 64). **J**'s version of *SA* contains 30 chapters, of which the first fourteen are in Latin, the remainder in Scots. The 'law on armies' given in Scots, at chapter 27, is entitled *Off ye law of ostyng* (**J**, fo. 213v), and does not contain the preamble on the place of the assize and the event which prompted its promulgation.

²¹⁷The reference to **T** is to BL Additional MS 48033, and not 43033, as was misprinted in Taylor, '*Leges Scocie* and the lawcodes', 249.

CAPITULA ASSISARUM ET STATUTORUM DOMINI DAUID REGIS
SCOTIEDE FORISFACTIS LEUANDIS AB ILLIS
QUI REMANENT AB EXERCITU

MANUSCRIPTS: **B**, fos. 36r–37r; **D**, fo. 119r–v; **E**, fo. 32r; **F**, fo. 128r–v; **H**, fo. 20r; **K**, fos. 194v–195r; **N**, fo. 198v; **O**, fo. 127r–v; **P**, fo. 137r–v; **R**, fo. 135r; **U**, fo. 95r; **SRA** = *Statuta Regis Alexandri II*, c. 2, in Innes and Thomson, *APS*, i. 398.

23. *De forisfactis leuandis ab illis qui remanent ab exercitu Regis secundum condiciones personarum.*²¹⁸

Recordacio facta coram ²¹⁹Rege Dauid²²⁰ apud²²¹ Perth²²² per omnes Iudices Scocie die Iouis in²²³ integra ebdomada²²⁴ quadragesime anno regni sui²²⁵ septimo²²⁶ postquam Rex²²⁷ fuit²²⁸ in exercitu²²⁹ apud²³⁰ Innernys²³¹ contra Arnaldum²³² filium Nigelli de illis²³³ qui ab exercitu

²¹⁸**D**: *De forisfactis leuandis ab absentibus ab exercitu per Comitem de Fiff; E, F: *De forisfactis leuandis ab illis qui remanent ab exercitu et quod comes de Ffife [F: Ffife] solus potest intrare terram Regis ad leuandum forisfactum; H, SRA*: *de forisfactis absencium ab exercitu; K, O, P, R*: *de forisfactis leuandis ab illis qui remanent ab exercitu Regis; N*: *de forisfactis leuandis ab illis qui remanent ab exercitu; U*: *de forisfactis leuandis de absentibus ab exercitu. Et quod Comes de Fiff solus potest intrare terram Regis ad leuandum forisfactum.**

²¹⁹**D, H**: *domino* before Rege.

²²⁰**E, F, K, N, O, P, R**: *Dauid Rege; U*: *domino Dauid Rege primo* for Rege Dauid; **SRA**: *domino Rege.*

²²¹**B**: *apud* inserted above in red by same hand.

²²²**F**: *Perth per omnes Iudices Scocie die Iouis in integra ebdomada quadragesime anno Regni sui septimo* absent; text resumes at *postquam*; inserted in bottom margin by later glossing hand.

²²³**H, SRA**: *prima.*

²²⁴**K, O, P, R**: *ebdomida.*

²²⁵**B**: *sui* absent.

²²⁶**K, P**: *septimi.*

²²⁷**D**: *ipse.*

²²⁸**K, O, R**: *fuert.*

²²⁹**N**: *in exercitu* after *Innerness.*

²³⁰**N**: *ad.*

²³¹**D, F, K, N, P, R, U**: *Innerness; E*: *Innernes*; **H**: *Ennyrness; O*: *Inueryss*; **N**: *ad* before *Inuerness; SRA*: *Invernes.*

²³²**SRA**: *Donaldum.*

²³³**K, O, P, R**: *ilis.*

defuerunt²³⁴ quod Rex debet habere forisfactum²³⁵ Comitum si thani eorum remanserint ab exercitu sed²³⁶ quantum²³⁷ esse debet²³⁸ ibi²³⁹ non fuit discussum. De omnibus uero aliis qui ab exercitu remanserint²⁴⁰ scilicet de terris Episcoporum Abbatum baronum militum et thanorum qui de Rege tenent debet Rex²⁴¹ solus²⁴² habere forisfactum scilicet de thano ui²⁴³ uaccas et unam iuencam²⁴⁴ de octhyrin²⁴⁵ xv oues uel²⁴⁶ sex solidos sed inde non habebit Rex nisi²⁴⁷ medietatem²⁴⁸ et thanus²⁴⁹ uel miles aliam medietatem de rustico autem²⁵⁰ unam uaccam et unam ouem et hoc²⁵¹ similiter debet²⁵² diuidi inter Regem et thanum uel militem. Sed ubi per militis aut thani licenciam²⁵³ ab exercitu remanserint²⁵⁴ Rex²⁵⁵ solus habebit forisfactum. Nullus uero comes²⁵⁶ aut seruiens²⁵⁷ comitis²⁵⁸ in terram²⁵⁹ alicuius de Rege tenentis²⁶⁰ ad hoc forisfactum exigendum

²³⁴**E**: *defuerint*; **K, O, P, R**: *fuertint*; **U**: *defuerant*.

²³⁵**B**: *forisfacturam*.

²³⁶**F**: *set*.

²³⁷**B**: *quantum* absent, inserted above in later glossing hand; **D, U**: *quando*.

²³⁸**B**: *dabit*.

²³⁹**D, E, H, N, U, SRA**: *ibi* after *fuit*; **F**: *ibi* absent.

²⁴⁰**U**: *defuerint*.

²⁴¹**U**: *Rex* absent.

²⁴²**D**: *solus* after *habere*; **E, F, K, N, O, P, R**: *solus* before *Rex*.

²⁴³**D, E, F, N, U**: *uii*; **H**: *septem*.

²⁴⁴**B**: *iuencam*.

²⁴⁵**D, E, F, U**: *octhierne*; **H, SRA**: *oghtierne*; **N**: *oyberene*; **P**: *otthyryni*.

²⁴⁶**B**: *et*.

²⁴⁷**B**: *nisi* absent, inserted above in later glossing hand.

²⁴⁸**R**: *midietatem*.

²⁴⁹**B**: *et thanus* absent, inserted above in later glossing hand.

²⁵⁰**D**: *autem* absent; **E, F, H, K, N, O, P, R, U, SRA**: *uero*.

²⁵¹**D, E, F, H, K, N, O, P, R, U, SRA**: *hec*.

²⁵²**D, E, F, H, U, SRA**: *debent*.

²⁵³**D, E, F, H, K, N, O, P, R, U, SRA**: *per thanum uel militem licenciam habeant* [**H, N, U, SRA**: *habent*] *quod* instead of *per militis aut thani licenciam*.

²⁵⁴**U**: *de remanendo ab exercitu* instead of *ab exercitu remanserint*.

²⁵⁵**F**: *uero* before *solus*.

²⁵⁶**E, F, K, N, O, P, R, U**: *nicecomes*.

²⁵⁷**D, H, SRA**: *seruiens*; **K, O, P, R**: *seruien*?

²⁵⁸**E, F, K, N, O, P, R**: *nicecomitis*; **U**: *nicecomitis seruiens*.

²⁵⁹**B, D, K, N, O, P**: *terra*.

²⁶⁰**F**: *Regis tenentis* instead of *de Rege tenentis*.

uenire debet²⁶¹ nisi²⁶² comes de Fyf²⁶³ et ille non sicut comes sed sicut tercius marus Regis²⁶⁴ de Fyf²⁶⁵ ad rectitudines suas²⁶⁶ exigendas. De gaeules²⁶⁷ uero²⁶⁸ ubi²⁶⁹ Rex et comes impartuntur²⁷⁰ Rex et comes habebunt medietatem et²⁷¹ thanus ²⁷²aliam medietatem sed²⁷³ ubi thanus ipse²⁷⁴ fuerit in forisfacto forisfactum²⁷⁵ diuidetur²⁷⁶ inter Regem et Comittem.

²⁶¹**U**: *debet uenire* and after *nicecomitis seruens*.

²⁶²**E, F, N**: *sed tantum* instead of *nisi*; **H, K, O, P, R, SRA**: *nisi tantum*; **U**: *sed*.

²⁶³**D, K, P, R, U**: *Fiff*; **E**: *Fjiff*; **F**: *Fyff*; **H, SRA**: *Fyffe*; **N, O**: *Fiffe*.

²⁶⁴**D**: *unus marus restat Regi de Fiff* instead of *tercius marus Regis*; **E**: *marus restat Regi comitatus de ffife* [**H**: *Fyffe*] instead of *tercius marus Regis de Fyf ad rectitudines suas exigendas*; **F**: *marus unus restat Regi comitatus de Fyffe ad rectitudines suas exigendas* for *tercius marus Regis de Fyf ad rectitudines suas exigendas*; **H, N, U, SRA**: *unus marus restat Regi comitatus de Fiffe* [**H, SRA**: *Fyffe*; **U**: *Fiff*].

²⁶⁵**D, K, P**: *Fiff*; **O**: *Fiffe*; **R**: *Fyff*.

²⁶⁶**U**: *suas* before *rectitudines*.

²⁶⁷**B**: *caneles*; **E**: *galenes*; **K, O, P, R**: *cauelis*.

²⁶⁸**N**: *uero* after *ubi*.

²⁶⁹**F**: *ubi* absent.

²⁷⁰**B**: *impartuntur*; **E**: *impar tantum tunc* instead of *impartuntur*; **P**: *impertuntur*.

²⁷¹**N**: *sed*.

²⁷²**N**: *habebit* before *aliam*.

²⁷³**B**: *set*.

²⁷⁴**D, E, F, H, N, O, R, U, SRA**: *ipse* before *thanus*; **K, P**: *ipse* absent.

²⁷⁵**D, E, F, H, N, SRA**: *forisfactum* absent; **U**: *hoc*.

²⁷⁶**D, O, U**: *diuidetur* after *comitem*; **F**: *diuidentur*, and after *comitem*; **K, N, P, R**: *diuidet* and after *comitem*.

DE LEGE EXERCITUUM
STATUTA REGIS ALEXANDRI

MANUSCRIPTS: **C**, fo. 146r–v; **H**, fo. 131r–v; **I**, fo. 76v–77r/152–3; **K**, fo. 82r; **L**, fo. 155r–v; **M**, fo. 59r–v; **N**, fos. 190v–191r; **O**, fo. 77r–v; **P**, fo. 192r–v; **Q**, fo. 108v–109r; **R**, fo. 76v; **S**, fo. 112r–v; **T**, fo. 21r; **SRA** = *Statuta Regis Alexandri II*, c. 2 in Innes and Thomson, *APS*, i. 398.

26. *De lege exercituum*.²⁷⁷

Recordacio facta coram domino Rege²⁷⁸ apud Perth per omnes Iudices Scocie die Iouis proxima²⁷⁹ in²⁸⁰ 281*integra ebdomada*²⁸² quadragesime²⁸³ postquam Rex fuit in exercitu²⁸⁴ apud²⁸⁵ Inness²⁸⁶ contra Donaldum filium Nigelli de illis²⁸⁷ qui ab²⁸⁸ exercitu Regis defuerint²⁸⁹ Rex habebit²⁹⁰ forisfactum Comitum²⁹¹ si thani eorum²⁹² ab exercitu²⁹³ remanserint²⁹⁴ sed non fuit discussum quantum.²⁹⁵ De omnibus uero²⁹⁶ aliis qui ab exercitu remanserint²⁹⁷ scilicet²⁹⁸ de terris

²⁷⁷**SRA**: *de forisfactis absencium ab exercitu*.

²⁷⁸**K, O, P, R, T**: *Alexandro* after *Rege*.

²⁷⁹**H**: *proxima* absent; **Q, S**: *proximo*; **SRA**: *prima*.

²⁸⁰**I, N, SRA**: *in* absent.

²⁸¹**H, K, O, P, R, T**: *prima* before *integra*.

²⁸²**I, L, O, P, R**: *ebdomida*.

²⁸³**R, T**: *quadragesima*; **SRA**: *anno regni sui septimo* after *quadragesime*.

²⁸⁴**L**: *excercitu*.

²⁸⁵**I**: *apud* absent.

²⁸⁶**H**: *Innessesse*; **I**: *Inuirnes*; **K, M**: *Inuernes*; **L, S**: *Innerness*; **Q**: *Innerys*; **T**: *Inverness*; **SRA**: *Invernes*.

²⁸⁷**H, K, L, M, R**: *ylis*; **H**: *ylis* scored out and *illis* written over the top; **O, P, T**: *ilis*.

²⁸⁸**N**: *de*.

²⁸⁹**I, K, N, O, P, Q, R, S, T**: *defuerant*; **M, SRA**: *defuerunt*; **SRA**: *quod* after *defuerint*.

²⁹⁰**SRA**: *debet habere*.

²⁹¹**C, I, K, L, M, N, O, P, Q, R, S, T**: *comitis*.

²⁹²**C, K, L, M, P, Q, R, S, T**: *aliqui eorum* instead of *thani eorum*; **O**: *aliquis eorum*.

²⁹³**I, N, SRA**: *ab exercitu* after *remanserint*.

²⁹⁴**I**: haplographic error so that the scribe has jumped from this *remanserint* to the second *remanserint*, leaving the sentence reading: *si thani eorum ab exercitu remanserint scilicet de terris Episcoporum* etc; **K, P, Q, S, T**: *remanserunt*; **N**: *defuerint ab exercitu*.

²⁹⁵**SRA**: *quantum esse debet non fuit ibi discussum* for *non fuit discussum quantum*.

²⁹⁶**C, K, L, M, O, P, Q, R, S, T**: *uero* absent.

²⁹⁷**C, I, K, P, Q, S**: *remanserunt*.

²⁹⁸**C, et; N**: from *non* to *scilicet* absent; **Q, S**: *scilicet* absent.

Episcoporum Abbatum baronum militum ²⁹⁹thanorum³⁰⁰ qui de Rege tenent Rex solus³⁰¹ habebit³⁰² ³⁰³forisfactum ³⁰⁴de thano sex uaccas et unum³⁰⁵ iuencam³⁰⁶ de okeherne³⁰⁷ xv oues uel³⁰⁸ sex solidos sed inde non habebit Rex³⁰⁹ nisi medietatem³¹⁰ et thanus uel miles aliam medietatem³¹¹ ³¹²de rustico ³¹³unam uaccam et ³¹⁴ouem et hoc³¹⁵ debet³¹⁶ diuidi inter Regem³¹⁷ et thanum uel³¹⁸ militem. Sed³¹⁹ si³²⁰ per licenciam thani uel militis ab exercitu Regis remanserit³²¹ Rex solus³²² habebit forisfactum. Nullus uero³²³ comes aut³²⁴ seruiens³²⁵ comitis in terram³²⁶ alicuius de Rege tenentis ad hoc forisfactum

²⁹⁹**N, SRA:** *et* before *thanorum*.

³⁰⁰**H:** *thaynorum* – *thaynus* throughout.

³⁰¹**I, K, L, M, N, O, P, Q, R, S, T:** *solus* absent.

³⁰²**SRA:** *debet* Rex *solus* *habere* for *Rex solus habebit*.

³⁰³**I:** *solummodo* before *forisfactum*; **K, L, M, O, P, Q, R, S, T:** *simili modo* before *forisfactum*.

³⁰⁴**SRA:** *scilicet* before *de*.

³⁰⁵**H:** *unam*.

³⁰⁶**I:** *iuuen'*; **K, L, N, O, P, R, S:** *iumentum*; **Q:** *iuuencum*; **T:** *iuuentum*.

³⁰⁷**H:** *oghtherne*; **I, K, O, Q, S:** *oykyberne*; **L, M:** *okiberne*; **N:** *oykerne*; **P:** *oykeyberne*; **R, T:** *oykyhern'*; **SRA:** *oghtherne*.

³⁰⁸**K, L, M, N, O, P, R, S, T:** *et*.

³⁰⁹**T:** *Rex* absent.

³¹⁰**L:** *dimedietatem*.

³¹¹**K, P:** *et thanus uel miles aliam medietatem* absent (haplographic error); **L, Q, S:** *dimedietatem*.

³¹²**L:** *scilicet* before *de*.

³¹³**SRA:** *vero* before *unam*.

³¹⁴**SRA:** *unam*.

³¹⁵**T, SRA:** *hec*.

³¹⁶**SRA:** *similiter debent* for *debet*.

³¹⁷**R, T:** *rusticum*.

³¹⁸**L:** *ac*.

³¹⁹**H:** *et*.

³²⁰**SRA:** *ubi*.

³²¹**C:** *remanserunt*; **I, K, O, P, Q, R, S, T:** *remanserint*; **N:** *remanserit aliquis ab exercitu Regis* for *ab exercitu Regis remanserit*; **SRA:** *per thanum vel militem licenciam habent* instead of *per licenciam thani nel militis licenciam remanserint*.

³²²**N:** *tunc solus Rex* instead of *Rex solus*.

³²³**I, K, L, M, N, O, P, Q, R, S, T:** *autem*.

³²⁴**L, N:** *uel*.

³²⁵**SRA:** *seruiens*.

³²⁶**C, I, K, L, M, O, P, Q, R, S, T:** *terra*.

exigendum³²⁷ debet uenire³²⁸ nisi³²⁹ comes³³⁰ de Fyffe³³¹ et ille non sicut comes de Fiffe³³² sed sicut tercius³³³ marus Regis de Fiffe³³⁴ ad rectitudines suas exigendas. De cauel³³⁵ uero³³⁶ ubi Rex et comes impartuntur³³⁷ Rex et comes habebunt³³⁸ ³³⁹medietatem³⁴⁰ forisfacti³⁴¹ de exercitu et thanus aliam medietatem³⁴² ³⁴³ubi ipse thanus fuerit in forisfacto³⁴⁴ forisfactum³⁴⁵ diuidetur inter dominum³⁴⁶ Regem et Comitem.

³²⁷**N**: *exigendum* absent.

³²⁸**SRA**: *venire debet*.

³²⁹**SRA**: *tantum* before *comes*.

³³⁰**L, Q**: *uicecomes*.

³³¹**H, R, T**: *Fiffe*; **I, L, Q**: *Fyff*; **K, O, P**: *Fiff*; **M**: *Fyfe*; **N**: *Fife*.

³³²**SRA**: *de Fiffe* absent.

³³³**SRA**: *unus*.

³³⁴**C, K, L, M, N, O, P, Q, R, S, T**: *et ille non sicut comes de Fiffe sed sicut tercius marus Regis de Fiffe* absent; a haplographic error, for which, see above, 208–9; **SRA**: *restat Regi comitatus de Fyffe ad rectitudines suas exigendas*.

³³⁵**H**: *caueles*; **K**: *cauelis*; **L**: *camel*; **P**: *camelis*; **O**: *canel*; **Q, S**: *cannel*; **SRA**: *gaveles*.

³³⁶**I, T**: *uero* absent.

³³⁷**I, L, M, N, P, Q, S**: *departiuntur*; **K, O, R, T**: *dipartiuntur*.

³³⁸**C**: *Rex habebit* instead of *Rex et comes habebunt*.

³³⁹**K, O, P, Q, R, S, T**: *unam* before *medietatem*.

³⁴⁰**L**: *dimedietatem*.

³⁴¹**SRA**: *forisfacti* absent.

³⁴²**L**: *dimedietatem*.

³⁴³**SRA**: *sed* before *ubi*.

³⁴⁴**P**: *forisfacto*.

³⁴⁵**I, P**: *fforisfactum*; **SRA**: *forisfactum* absent.

³⁴⁶**I, K, L, M, N, O, P, Q, R, S, T**: *dominum* absent.

SIDE-BY-SIDE TRANSLATION OF THE LAW ON ARMIES IN *CD*
and *SA*.

The chapter of Assizes and Statutes of David, king of Scotland, chapter 23.

On the forfeitures imposed on those who stayed away from the king's army, according to their status.

The record made in the presence of King David at Perth by all the lawmen of Scotia on the Thursday of the first full week of Lent in the seventh year of his kingship after the king was among his army at Inverness against Arnald son of Niall concerning those who had stayed away from the army.

[It was decided] that the king ought to have the earls' forfeiture if their thanes had stayed away from the army but it was not discussed here how much [the fine] should be.

From all others who had stayed away from the army, that is those from the lands of the bishops, abbots, barons, knights and thanes who hold of the king, the king alone ought to have the forfeiture.

That is, from a thane, six cows and a bull; from an *ógtigern*, 15 sheep or six shillings but from

The Statutes of King Alexander, chapter 26.

On the law of armies.

The record made in the presence of the lord king at Perth by all the lawmen of Scotia on the next Thursday of the first full week of Lent after the king was among his army at Inverness against Domnall mac Niall concerning those who had stayed away from the king's army.

[It was decided] that the king shall have the earls' forfeiture if their thanes had stayed away from the army but it was not discussed how much [the fine] should be.

From all other who stayed away from the army, that is those from the lands of the bishops, abbots, barons, knights, thanes who hold of the king, the king alone shall have the forfeiture.

From a thane, six cows and a bull; from an *ógtigern*, 15 sheep or six shillings but from him the

him the king shall only have half, and the thane or knight the other half. From a peasant, one cow and one sheep and this shall be shared in the same way between the King and the thane or knight.

But where any have stayed away from the army by permission of the knight or thane, the king alone will have the forfeiture.

No earl or earl's sergeand ought to come into the land of anyone holding of the king to exact this forfeiture unless he be the earl of Fife and he shall come to exact his forfeitures not as an earl but as the king's third *maer* of Fife.

From *gabhail* [apportioned holding: see note on *gabhail*, below], for which the king and earl share responsibility, the king and the earl shall have half the forfeiture and the thane the other half. But where the thane himself is in forfeiture, the forfeiture should be shared between the king and the earl.

king shall only have half, and the thane or knight the other half. From a peasant, one cow and sheep and this shall be shared in the same way between the King and the thane or knight.

But if any stayed away by permission of the thane or knight, the king alone will have the forfeiture.

No earl or earl's sergeands ought to come into the land of anyone holding of the king to exact this forfeiture unless he be the earl of Fife and he shall come to exact his rights not as an earl of Fife but as the king's third *maer* of Fife.

From *gabhail* [apportioned holding: see note on *gabhail*, below] for which the king and earl share responsibility, the king and the earl shall have half of the forfeiture of the army and the thane the other half. But where the thane himself is in forfeiture, the forfeiture should be shared between the king and the earl.

NOTE ON GABHAIL

Gabhail is denoted both by *cavel* in all *SA*-texts and some *CD*-texts and *gavel* in other *CD*-texts. *Cavel* is normally the preferred reading and has an understood etymology. *The Concise Scots Dictionary* gives the meaning of *cavill/cavel* ‘a piece of wood used in casting lots . . . division or assignment by lot’; *The Concise Scots Dictionary*, ed. Mairi Robinson (Edinburgh, 4th edition, 2005), 89 (from *DSL*, online at www.dsl.ac.uk). Simon Taylor has suggested that, when used as a place-name, the word could mean ‘piece of land apportioned by lot’; Simon Taylor and Gilbert Márkus, *The Place Names of Fife*, vol. 1, *West Fife between Leven and Forth* (Donnington, 2006), 325. The same could be said if it was used to denote a particular type of land. *The Dictionary of the Scottish Language* gives a Germanic origin for the word (related to OE *gafol*, ‘tribute or rent’, which could be Latinized as *gabulum*, *gabulum*, *gavelum* etc.). Simon Taylor has informed me that this element also occurs in northern England, for which see *The Place Names of Northumberland and Durham* (Cambridge, 1920), i. 238. This would seem to suggest that *caveles* was a straightforward Old English borrowing. But there may be other avenues here. While **B** gives the reading *caveles* (and **K**, **O**, **P** and **R** give *cavelis*), **D** reads *gaveles*—a reading repeated in the David-texts in **F**, **H**, **N** and **U** (**E** gives a corrupt reading of *galenes*). All these MSS are part of the first recension of the text of *CD*, whose archetype has been designated γ in my forthcoming study of David’s assizes. This recension, containing **D**, **E**, **F**, **H**, **N** and **U**, was transmitted independently from the other extant witnesses of *CD* (**B**, **C**, **K**, **O**, **P**, **R**). There may be a connection between *gaveles* and ScG *gabhail*, ‘holding’. The Latinised *gabhail* (as ‘gavel’) did appear in place-names: see *Lethgavel* (now Lethgaven) in *Lindores Cart.*, no. 116 and the possible *Dergavel* in *Melrose Liber*, i. no. 207. So what we may be seeing is the Latin translation of a Gaelic word (*gabhail*) into Latin, not a straightforward OE borrowing, which was then corrupted into the form *cavel*. It is of interest that there are a few mentions in early Irish law of kin-land being divided by lot, for which see Fergus Kelly, *A Guide to Early Irish Law* (Dublin, 1988), 209. Whether the place-name *gavel/cavel* originally meant ‘kin-land divided by lot’ is, at this stage, only a suggestion and must be the subject of a much fuller inquiry. For the moment, I have settled on the tentative translation of ‘apportioned holding’. I am very grateful to Simon Taylor and Dauvit Broun for their help on this; any misrepresentations are my own.