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FORMALISING ARISTOCRATIC POWER IN ROYAL *ACTA* IN LATE TWELFTH- AND
EARLY THIRTEENTH-CENTURY FRANCE AND SCOTLAND*

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Whitfield Prize Winner

ABSTRACT. Our understanding of the development of secular institutional governments in Europe during the central middle ages has long been shaped by an implicit or explicit opposition between royal and lay aristocratic power. That is to say, the growth of public, institutional and/or bureaucratic central authorities involved the decline and/or exclusion of noble aristocratic power, which thus necessarily operated in a zero-sum game. While much research has shown that this conflict-driven narrative is problematic, it remains in our understanding as a rather shadowy but still powerful causal force of governmental development during this period. This article compares the changing conceptualisation of the relationship between royal and aristocratic power in the French and Scottish kingdoms to demonstrate, first, how narratives built at the periphery of Europe have important contributions and challenges to make to those formed from the core areas of Europe and, second, that state formation did not involve a decline in aristocratic power. Instead, the evidence from royal *acta* in both kingdoms shows that aristocratic power was formalised at a central level, and then built into the forms of government which were emerging in very different ways in both kingdoms in the late twelfth- and early thirteenth centuries. Set in broader perspective, this suggests that governmental development involved an intensification of existing structures of elite power, not a diminution.

To say that the twelfth and thirteenth centuries witnessed the development of secular and ecclesiastical government across Europe is to say nothing new. However, for polities ruled by the authority of single, secular individuals—kings, dukes and counts—how we understand that process is still an open question.¹ The traditional view has been that centralised governmental institutions in these polities developed out of a structural opposition between royal and aristocratic power. This narrative used to be expressed primarily in two ways. First, it was told as the growth of the 'public' against the 'private': bureaucratic governments with emergent judicial institutions developed across Europe during the twelfth and thirteenth centuries at the expense of private lordship, intruding ever more deeply into the capacity of lords to raise revenue, wage war and hold their own courts.² The second way essentially told this narrative in reverse: states developed when the most quintessentially private form of authority—lordship—grew to such an extent that it created a public state which (at least in theory) governed (at least some of) its people through institutions and offered them justice in its courts. The concept of 'feudal monarchy', introduced into historical analysis in the early twentieth century but abandoned in print over the century's last quarter, was at its heart a

* I am grateful to Chris Wickham, Alice Rio, Paul Hyams, Matthew McHaffie, John Sabapathy, and Dauvit Broun for reading drafts of this article, and particularly to Susan Reynolds for her heavy critique. All infelicities are my own responsibility. It has also benefited from the comments of the anonymous peer reviewers as well as from my presentation of early versions at the Sir James Lydon Research Seminar in Medieval History at Trinity College Dublin, the Medieval History Seminar at All Souls College, Oxford, and the colloquium held at Glasgow in April 2017, 'Identifying Governmental Forms in Europe, 1100–1350: Palaeography, Diplomats and History'. This paper is a research output of the AHRC-funded project, *Models of Authority: Scottish Charters and the Emergence of Government, 1100–1250* (Grant Ref: AH/L008041/1).

¹ This is not the case for communes, for which see C. Wickham, *Sleepwalking into a New World: The Emergence of Italian City Communes in the Twelfth Century* (Princeton, 2015).

² See the survey in S. Reynolds, 'The Historiography of the Medieval State', in M. Bentley (ed.), *Companion to Historiography* (London, 1997), 117–38. The most recent and wide-ranging position on medieval government is T.N. Bisson, *The Crisis of the Twelfth Century: Power, Lordship and the Origins of European Government* (Princeton, 2009) which, although puts forward a different explanation for the emergence of institutional government and is explicitly critical of Weber, nonetheless adopts an implicitly oppositional narrative (particularly 293–304). For the sharp distinction between public and private as underlying the medieval state outside of the historical discipline, see M. Mann, *The Sources of Social Power Volume I: A history of power from the beginning to A.D. 1760* (Cambridge, 1986), 390–3.

narrative of state formation, showing how governments developed by institutionalising the demands of lordship at the expense of other lords.³

The characterisation of royal and aristocratic is well known to be an inadequate one, not least because some polities were ruled by dukes, counts or councils rather than by kings nor were elites in secular states wholly lay.⁴ At its heart, however, it speaks to a structural tension between central, ruling authorities and the power and authority of elites who are, in theory, ruled by them. This tension has been explored and in many cases neutralised in recent scholarship, which has shown that the power of rulers and lords co-operated as much as came into conflict.⁵ Yet no narrative of practical co-operation during the central middle ages has thus far fully explained how this co-operation worked with, through or against governments as they institutionalised; co-operation either works outside administrative institutions (as in late thirteenth-century France) or in their absence (as in the German kingdom-empire under Frederick Barbarossa).⁶ As a result, the place of a structural opposition between royal and aristocratic power within accounts of medieval state formation remains ambiguous, no longer accepted yet not wholly discarded and not replaced. The aim of this paper is thus to explore the changing relationship between royal and aristocratic power in two polities in Europe

³ J.R. Strayer, *On the Medieval Origins of the Modern State*, with forewords by C. Tilly and W.C. Jordan (Princeton, 2005), 3–56; T. Bisson, 'The problem of feudal monarchy: Aragon, Catalonia, and France', *Speculum* 53:3 (1978), 460–78.

⁴ By an aristocrat, I mean a lay (non-urban) elite, defined legally and socio-economically. For difficulties with the word 'aristocratic', see T. Reuter, 'The medieval nobility in twentieth century historiography', in M. Bentley (ed.), *The Routledge Companion to Historiography* (London, 1997), 177–202; and in a German historiographical context, T. Reuter, 'Forms of Lordship in German Historiography', in M. Bourin and P. Martínez Sopena (eds), *Pour une anthropologie du prélèvement seigneurial dans les campagnes médiévales (XI^e–XIV^e siècles): Réalités et représentations paysannes* (Paris, 2004), 51–61. I have retained it here because I am not making an argument about the phenomenon and/or practice of lordship. Aristocratic, however, remains a problematic adjective, having connotations with cultural behaviour and social ambition as much as formal status, and is certainly problematic in an urban perspective, where lay elites in towns were often distinguished from landed aristocrats (although in that sense it is helpful in this paper, which is not examining urban elites). For the increasing focus on bishops as key political actors, see S.T. Ambler, *Bishops in the Political Community of England, 1213–1272* (Oxford, 2017).

⁵ For example, J. Firnhaber-Baker, *Violence and the State in Languedoc, 1250–1400* (Cambridge, 2014).

⁶ T. Reuter, 'The medieval German *Sonderweg*? The empire and its rulers in the high Middle Ages', in his *Medieval Polities and Modern Mentalities*, ed. J.L. Nelson (Cambridge, 2006), 388–412.

rather far north of the Alps—the kingdom of the Franks and the kingdom of the Scots—and in so doing remove that oppositional relationship as a causal force of secular state formation in both polities and question its importance more generally.

Why choose the French and Scottish kingdoms, particularly as they are so profoundly different in size and wealth? The French kingdom is an obvious choice as it has been held up as one of the normative case studies for a conflict-driven narrative of state formation. In the French kingdom, royal power was long thought to have grown at the expense of aristocratic power in a zero-sum game: kings first exercised their pre-existing feudal rights over lay aristocrats in the *regnum Francorum* and then explicitly hacked at the heart of aristocratic power by issuing proclamations against seigneurial violence and their right to wage war.⁷ Less explicit conflict between royal and non-royal lay power was also evident in the institutions of government themselves and the people who worked within them. Major aristocrats (titled and non-titled) did not often play formal roles within French royal government; indeed, there was an increasing spatial and functional separation between titled aristocrats and court-based governmental servants, moving from, as Dejoux has recently put it, the 'new men' of Philip Augustus, to the *baillis* and clerks of the *Parlement* under Louis IX, to the 'knights and clerks of the king of the last Capetians'.⁸ The judicial system was similarly structured, developing formal routes of appeal from seigneurial courts to the centre,

⁷ The literature is vast; see, for the traditional position, L. Halphen, 'La place de la royauté dans le système féodal', *Revue historique* 172 (1933), 249–56, and J.W. Baldwin, *The Government of Philip Augustus: Foundations of French Royal Power in the Middle Ages* (Berkeley, 1986), 259–303. See also J.-P. Poly and É. Bournazel, *La mutation féodale*, 3rd edn (Paris, 2004), 204–23. For a new understanding of the transformation of homage over the twelfth century, see K. van Eickels, *Vom inszenierten Konsens zum systematisierten Konflikt. Die englisch-französischen Beziehungen und ihre Wahrnehmung an der Wende vom Hoch- zum Spätmittelalter* (Stuttgart, 2002). For a new outline of the growth of French royal power, which anticipates much of what follows (although concentrates on reconceptualising the eleventh century), see D. Barthélemy, *Nouvelle histoire des Capétiens, 987–1214* (Paris, 2012), particularly 296–9, 321–2.

⁸ M. Dejoux, 'Gouverner par l'enquête en France, de Philippe Auguste aux derniers Capétiens', *French Historical Studies*, 37:2 (2014), 271–302, at 298–9; for governmental personnel, see Baldwin, *Government of Philip Augustus*, 106–36.

appeals which underlay the functioning of the thirteenth-century French *Parlement*.⁹ Crucial to the operation of the royal judicial (and indeed financial) system were inquests, which were used not only to investigate the abuses of royal officials against localities and local jurisdictions but also to recover 'usurped' regalian rights and, although the immediate governmental aims of Louis IX inquests have recently been convincingly challenged, it remains that their very activity served to further embed royal authority into the consciousness of increasingly geographically widespread localities.¹⁰

If the French kingdom traditionally offers an example of a conflict-driven narrative, then what does the kingdom of the Scots offer? For a start, any example of institutionalisation, in which aristocratic and royal power do not represent competing interests but are instead part of the same governing system, inherently challenges the traditional model of state formation outlined above. This is what we find in late twelfth- and thirteenth-century Scotland, which is rarely compared to any place in Europe other than England (and, less commonly, Ireland and Norway). Although it is common for Scottish royal government to be seen as an England in miniature, owing to its adoption and adaptation of some of the institutions and legal procedures of the southern kingdom, it has to be stressed that the structures of power—and therefore the institutions of rule which were created—were profoundly different in Scotland compared to those of England. Unlike in England, aristocratic power was well integrated into the central institutional framework of royal power in late twelfth- and thirteenth-century Scotland, the period when administrative units of government developed across the core area

⁹ J. Hilaire, *La construction de l'État de droit dans les archives judiciaires de la Cour de France au XIII^e siècle* (Paris, 2011), particularly 67–92; A. Harding, *Medieval Law and the Foundations of the State* (Oxford, 2002), chapters 5 and 6.

¹⁰ M. Dejoux, *Les enquêtes de saint Louis: gouverner et sauver son âme* (Paris, 2014), 371–9, has demonstrated the inquests' personally reparative aims, stressing their symbolic unifying power, which allowed for local complaints against the king, personalised through its officials, to be heard and pacified through acknowledgement without the explicit aim of reform, but which simultaneously operated as a force of subjection by placing the idea of government and royal authority at the heart of local society.

of the kingdom north and south of the Firth of Forth.¹¹ Aristocratic courts were not excluded from the developing royal justice system but were built into royal legislation: unlike in England, where knights of the shire took an oath to preserve the king's peace in local counties, in Scotland this oath (explicitly modelled on its English counterpart) was taken by the lay and ecclesiastical *magnates* to uphold the peace in their lands.¹² There was no class of 'new men' who staffed the emerging bureaucracy: major lay aristocrats served alongside bishops as the leading figures of the royal financial and judicial administration (so earls served as justiciars, chamberlains and, less often, sheriffs, while bishops and abbots were frequently chancellors). Crucially, this government developed a relatively complex and increasingly standardised set of administrative and judicial procedures, all communicated in writing, and royal *briefes* (equivalent to English writs, although different in scope) could initiate cases in aristocratic courts as well as bring them into royal courts. In this sense, later twelfth- and thirteenth-century Scotland provides an example of royal government not growing in opposition to aristocratic power but, instead, formalising it as a territorial authority and formally incorporating it into the structures of rulership and government within a single polity.

Scotland could be dismissed as a mere quirk on the periphery of Europe, not politically important nor financially weighty enough to challenge a narrative built at the core of Europe. Indeed, it can and indeed has been seen as a rather extreme example of 'Europeanization' or its insular counterpart, Anglicization, with its government—its sheriffs, justiciars, *briefes*

¹¹ A. Taylor, *The Shape of the State in Medieval Scotland, 1124–1290* (Oxford, 2016), with summary of argument at 438–55. The difference would not, however, be so profound at a local level: see K.J. Stringer, 'Law, Governance and Jurisdiction', in K.J. Stringer and A.J.L. Winchester (eds), *Northern England and Southern Scotland in the Central Middle Ages* (Woodbridge, 2017), 87–136, particularly 131–2.

¹² Taylor, *Shape of the State*, 169–72.

system, even documentary form—all being based on 'English' counterparts.¹³ However, the core/periphery opposition as a way of understanding change in general has been criticised, both as tool for understanding Europe in the central Middle Ages and more broadly.¹⁴ There are multiple cores and multiple peripheries all working simultaneously and, even when influence and adoption of practices, concepts and institutions found at 'cores' can be identified, they work out very differently in their new hosts. Accordingly, we should not dismiss alternative narratives found on our traditional peripheries: we should instead take them seriously and work out their implications in comparative perspective.

This article is therefore an experiment in comparative history: were the institutional governments which developed in the late twelfth- and early thirteenth-century Scottish and French kingdoms really founded on such opposite manifestations of the relationship between royal and non-royal power? It will be argued that, although the French experience seems superficially more conflict-driven than the Scottish, there are certain structural similarities between the two kingdoms in how the relationship between royal and aristocratic power was conceptualised. The comparison itself will be based on the internal diplomatic of royal written acts drawn up over the period, which offer comparable source bases. Throughout the period defined in this paper, *acta* were drawn up in the names of kings of both kingdoms, yet 'chancery'-produced documents only start to predominate among each surviving corpus towards the end of the twelfth century. In neither did any form of systematic record of all outgoing documentation take place under Philip Augustus, three famous 'registres'—*codices* containing outgoing and incoming *acta* and other administrative royal and non-royal documents—were produced but these *registres* did not keep a copy of all documents issued.

¹³ The defining approach remains R. Bartlett, *The Making of Europe: Conquest, Colonisation and Cultural Change, 950-1350* (1993), whose power came from its subtle treatment of 'peripheral' areas. For a comparative approach which emphatically does not adopt the framework of core/periphery, see C. Wickham, *Medieval Europe* (New Haven, 2016).

¹⁴ See below 00–00.

In short, for most of the period covered by this paper, royal acts offer a stable corpus of evidence with which to compare the two kingdoms.

In addition, the method of studying those acts—diplomats—is particularly useful in this context. Diplomats is one of history's auxiliary sciences and encompasses the technical and diagnostic study of the internal and external features of documents, traditionally those with some juridical value.¹⁵ But while diplomats has traditionally concentrated on the identification and development of different types of documents and their internal structures and formulae, there has been less attention given in general to what changing patterns of small formulae within twelfth- and thirteenth-century *acta* actually mean. What do the formulae of royal acts reveal about how the normative relationship between royal and aristocratic power was communicated?¹⁶ For France, this paper will argue that, as in Scotland, the internal formulae of royal *acta* shifted towards the end of the twelfth century to create a formal representation of legitimate aristocratic power which framed, if not created, a new political discourse and a new legal framework for these relationships of power. In both polities, the relationship between royal and aristocratic power did change, but in both, the parties to that relationship were more, not less, secure in their positions, although the consequences of this security were different in each kingdom. Institutional government thus did not mark a structural move against the phenomenon of aristocratic power but rather changed its terms: it gave it form, as part of the process of governmental consolidation itself.

¹⁵ For the focus on juridical documents, see T. Kölzer, 'Diplomatics', in A. Classen (ed.), *Handbook of medieval studies: terms - methods - trends* (Berlin, 2010), 405–23. That being said, diplomats has expanded its reach to include non-juridical documents, as acknowledged in O. Guyotjeannin and L. Morelle, 'Tradition et réception de l'acte médiéval: jalons pour un bilan des recherches', *Archiv für Diplomatik*, 53 (2007), 367–403.

¹⁶ The potential of the methods of diplomats and palaeography to illuminate medieval communication more broadly is examined in S. Barret, D. Stutzmann and G. Vogeler (eds), *Ruling the Script in the Middle Ages: Formal Aspects of Written Communication* (Turnhout, 2017). For particularly creative ways of thinking about legal norms and charter formulae, see P.R. Hyams, 'The charter as a source for the early common law', *Journal of Legal History* 12 (1991), 173–89; J. Hudson, *Land, Law and Lordship in Anglo-Norman England* (Oxford, 1994); M.W. McHaffie, 'Law and Violence in Eleventh-Century France', *Past & Present* 238 (2018), 3–41.

This process was achieved through discursive cooperation, rather than practical conflict, and manifested itself differently in different polities.

Comparison of the source base

Comparative history is founded on knowing what one is comparing, so how do the two source bases size up against one another? This is particularly important when comparing two kingdoms of such different size and scale as France and Scotland. The political composition of both kingdoms was different; the symbolic relationships of French kings with non-royal rulers within their own kingdom was profoundly and more directly competitive (particularly when those dukes and counts were also kings or other rulers elsewhere) than in Scotland, where eleventh- and twelfth-century competition centred on the kingship itself from individuals originating in different branches of a widely defined royal kin.¹⁷

Despite these differences, it is worth noticing some similarities. In both kingdoms, the number of surviving royal charters increases steadily over the twelfth century, as happened elsewhere in Europe.¹⁸ If one divides the number of surviving documents by the reign length, one is left with a *per annum* mean of the rates of survival. This of course bears little resemblance to the actual numbers of documents produced and so cannot be indicative of overall change. Nevertheless, the similarity in the overall trajectory of the figures remains striking, particularly as the archival context for preservation is similar. In Scotland, the numbers of surviving charters 1124–1214 *per annum* are: 5.4 surviving acts per year for David I (1124–53), 13.5 per year for Mael Coluim IV (1153–65), and 10.7 for William (1165–1214). The spike in the figures for Mael Coluim IV is interesting but explainable:

¹⁷ R. Oram, *Domination and Lordship: Scotland 1070 to 1230* (Edinburgh, 2007), 64–74, 108–22, 140–5.

¹⁸ M. Clanchy, *From memory to written record: England, 1066–1307*, 3rd ed. (Oxford, 2013); P. Bertrand, 'À propos de la révolution de l'écrit (X^e–XIII^e siècles): Considérations inactuelles', *Médiévales*, 56 (2009), 75–92.

Mael Coluim's reign was considerably shorter than William's (twelve years as opposed to forty-nine) and, in general across Western Europe in this period, proportionally far more charters were confirmed in the first few years of a king's reign. In addition, eleven out of Mael Coluim's 161 surviving charters were drawn up for Scone Abbey on a single occasion to replace the charters which the abbey claimed to have lost in a recent fire.¹⁹ Furthermore, scribes of the 'king's chapel' (*capella regis*) produced an ever-increasing proportion of surviving original charters during the reign of William the Lion (1165–1214).²⁰

Rates of survival of French royal charters are higher but broadly comparable. According to figures calculated by John Baldwin (based in part on notes from Jean Dufour and Michel Nortier), between 1059 and 1203, 5.7 *actes per annum* survive from the reign of Philip I (1059–1108), 14.0 *per annum* under Louis VI (1108–37); 19.1 *per annum* under Louis VII (1137–80), and 28.1 under Philip Augustus (1180–1223), up to 1203.²¹ In 1204, the earliest 'cartulary-register', containing transcripts of royal and non-royal *actes* (among other items), Register A, began to be compiled, whereupon the figure leaps to 41.1 *per annum*, which is no longer statistically comparable to either corpus.²² Yet, in both, the proportion of 'issuer-

¹⁹ *The Charters of David I, 1124–53 and of his son, Henry, earl of Northumberland, 1139–52*, ed. G.W.S. Barrow (Woodbridge, 1999); *Regesta Regum Scotorum Volume I: The Acts of Malcolm IV, 1152–65*, ed. G.W.S. Barrow (Edinburgh, 1960) [henceforth RRS, I]; *Regesta Regum Scotorum Volume II: The Acts of William I, 1165–1214*, ed. G.W.S. Barrow with collaboration of W.W. Scott (Edinburgh, 1971) [henceforth RRS, II]. These numbers do not include charters classified as spurious or non-contemporary but do include those which are, at present, being classed as non-contemporary either in their diplomatic or their palaeography as part of the research on the database for the AHRC-funded project, *Models of Authority: Scottish Charters and the Emergence of Government, 1100–1250* (Grant Ref: AH/L008041/1, and online at www.modelsofauthority.ac.uk).

²⁰ For royal scribes, see RRS, II, 88–90; discussed by D. Broun, *Scottish Independence and the Idea of Britain from the Picts to Alexander III* (Edinburgh, 2007), 191–206.

²¹ J. Baldwin, 'The kingdom of the Franks from Louis VI to Philip II (a) Crown and government', in D. Luscombe and J. Riley-Smith (eds), *The New Cambridge Medieval History: Volume 4, c.1024–c.1198* (Cambridge, 2004), 510–29, at 510–11, and note 1.

²² *Recueil des actes de Philippe I^{er}, roi de France (1059–1108)*, ed. M. Prou (Paris, 1908); *Recueil des actes de Louis VI, roi de France (1108–1137)*, ed. J. Dufour, 4 vols (Paris, 1992–4). The acts of Louis VII have still not been edited but see *Études sur les actes de Louis VII*, ed. A. Luchaire (Paris, 1885). For Philip Augustus, *Recueil des actes de Philippe Auguste roi de France*, 6 vols, ed. H-F. Delaborde, C. Petit-Dutaillis, J. Monicat, M. Nortier (Paris, 1916–2005) [henceforth *Recueil*]. For the registers see *Les registres de Philippe Auguste*, ed. J. Baldwin with F. Gasparri, M. Nortier and E. Lalou (Paris, 1992); J. Baldwin, 'Les premiers registres Capétiens de Philippe Auguste à Louis IX', in X. Hermand, J-F. Nieuws, É. Renard (eds), *Décrire, inventorier*,

produced' documents also increased: kings were increasingly having acts written in their own name, produced 'in house', although the numbers of people involved in creating, drafting, authenticating and issuing these documents may well still have been small.²³ Thus, although the numbers are far greater on the French side, the two kingdoms witness the broader trend: across twelfth-century Europe, more documents were being produced by the institution of kingship itself.²⁴

Quite apart from scale, there are also some significant differences, of which there is space here to highlight only one. This is that Latin charters (defined here generically as some form of Latin document structured by the threefold division of protocol, text and eschatocol and having some form of legal function) only began to be drawn up and issued in the names of its kings in the twelfth century in the Scottish kingdom, while documents issued in the name of some form of *rex Francorum* survive from the early seventh century onwards.²⁵ This difference is important. The *novelty* of the Latin act in the twelfth-century kingdom of the Scots has prompted far greater historiographical examination of the capacity of the charter itself to reframe the political, social and economic landscape it claimed to represent than is the case in most work on French royal charters of the same period. For example, a longstanding question posed by Scottish historiography is how far the language of fiefs, inheritance and service both affected and represented changing conceptions of elite power in

enregistrer entre Seine et Rhin au Moyen Âge: Formes, fonctions et usages des écrits de gestion (Paris, 2012), 105–22. The manuscript images of these registers are now online and searchable as part of the HIMANIS project: <http://www.himanis.org/>.

²³ J. Dufour, 'Peut-on parler d'une organisation de la chancellerie de Philippe Auguste?' *Archiv für Diplomatik*, 41 (1995), 249–61.

²⁴ R-H. Bautier, 'Les actes de la chancellerie royale française sous les règnes de Louis VII (1137–80) et Philippe Auguste (1180–1223)', in J. Bistřický (ed.), *Typologie der Königsurkunden* (Olmütz, 1998), 99–113, at 106–7, 110.

²⁵ For the issue in Scotland, see D. Broun, 'The adoption of briefs in Scotland', in M.T. Flanagan and J.A. Green (ed.), *Charters and Charter Scholarship in Britain and Ireland* (Basingstoke, 2005), 164–83; M. Hammond, 'The adoption and routinization of Scottish royal charter production for lay beneficiaries, 1124–95', *Anglo-Norman Studies* 36 (2014), 91–115; for France, see, among many, H. Reimitz, *History, Frankish Identity and the Framing of Western Ethnicity, 550–850* (Cambridge, 2015), 98–102.

the twelfth-century kingdom, and particularly the kingdom in the first half of the twelfth century, the period when Latin acts were adopted by Scottish kings. The historiography has also focussed on how far this new written lexicon of territorial power—adapted from English example—destroyed, adapted or retained Gaelic words which represented rights over land.²⁶ To take an example: *cuit*—a Gaelic word meaning 'portion', which has been taken to mean a tribute render taken from land and rendered to elite title-holders—appears only in the Gaelic property records transcribed into the gospel book of Deer in the early twelfth century (but recording much earlier gifts) but was neither transposed nor transliterated in the Latin charter record. Put simply, the absence of written documents means that what *cuit* meant, where it went and what replaced it has become a much more pressing and open question than it would have been if we could track its lexical changes through earlier material.²⁷

By contrast, changes in the internal form of French royal acts have either received less attention or are considered as secondary to the broader subject of political change in the second half of the twelfth century. In particular, attention is given to the major territorial expansion of the effective authority of French kingship under Philip Augustus and how pre-existing ideas of the relationship between the king and other rulers within the French kingdom were extended to help cement this expansion (famously, the example that kings could receive but not perform homage).²⁸ Therefore, when small-scale internal diplomatic change is considered in French twelfth-century royal acts, the discussion focusses on how existing representations of the relationship between the king and his aristocrats were applied

²⁶ My preliminary attempt to make sense of it is in Taylor, *Shape of the State*, 176–87, and see also the insights in S. Reynolds, 'Fiefs and Vassals in Scotland: A view from Outside', *Scottish Historical Review*, 82 (2003), 176–93.

²⁷ For an explanation, see D. Broun, 'Statehood and lordship in 'Scotland' before the mid-twelfth century', *Innes Review*, 66 (2015), 1–71, at 20–4.

²⁸ Baldwin, *Government of Philip Augustus*, 260–6, although see Barthélemy, *Nouvelle histoire*, 289–322. This is despite the vast amount which has been done on 'les modalités de l'intégration'. See, as an example, B. Moreau and J. Théry-Astruc (eds), *La royauté capétienne et le Midi au temps de Guillaume de Nogaret. Actes du colloque de Montpellier et Nîmes (29 et 30 novembre 2013)* (Nîmes, 2015). For the position on royal homage, see Halphen, 'La place de la royauté'; Baldwin, *Government of Philip Augustus*, 259–303.

more ambitiously over a wider territorial area, whereas, for the Scottish kingdom, scholarship has focused on the effect which an obviously new vocabulary of elite power had on earlier power structures. We therefore need to interrogate how far this difference in national historiographical emphasis is borne out by the evidence itself.

The representation of aristocratic power in Scottish royal charters

What can we see in Scottish royal charters?²⁹ Some background is required before answering this question. Over the twelfth century, there was a significant change to the definitional basis of elite power: many forms of elite authority—to say nothing of official authority—became territorialised. An example of this would be what happened to the rank of *mormaer* (a Gaelic title, Latinised as *comes*, meaning 'great steward' or 'sea steward'). *Mormaír* held the highest ranking secular title under the king north of the Firth of Forth, and exercised extensive authority over a province, being primarily responsible for levying the provincial host. Over the twelfth century, however, the *mormaer* gradually stopped exercising extensive power over his titular province as a whole (the provinces of Fife, Mar, Buchan, Strathearn and Atholl all have attested *mormaír* in the first half of the twelfth century) and began to exercise more exclusive, intensive power over a limited area *within* his province, over a territory known as a *comitatus* ('earldom') from the 1170s at the latest.³⁰ The *mormaír* stopped raising common army service from their whole province and, instead, by the early thirteenth century had responsibility only for the levy of the common army from their *comitatus*, raising men and provisions from their lands in the same way as bishops, abbots, thanes, and knights did from theirs. *Mormaír* thus changed in two ways. First, they stopped being lords exercising extensive power at a provincial level over multiple, more local, authorities; like other lords,

²⁹ What follows summarises the content and argument made in Taylor, *Shape of the State*, 26–83, 102–13, 157–64, 172–87.

³⁰ For extensive and intensive power, see Mann, *Sources of Social Power*, I, 7–8.

they started exercising intensive power only over their own lands. Second, *mormaír*-land was seen to be held from the king. What happened to *mormaír* represents a major reorientation in the conceptualisation of elite lay power by which, during the second half of the twelfth century, elite lay power was territorialised and defined through *connected* landholding, that is, they were said in charters to hold their land from the king. These two developments coincided in twelfth-century Scotland but their precise form was not set. The most obvious example is from the twelfth-century German kingdom where not only were some major rulers granted extensive privileges in imperial diplomas which defined their *beneficia* or *feoda* as being part of the empire (*imperium*) or *regnum*—rather than held of the person of the king/emperor, as in Scotland—but also whose local and regional power territorialised and intensified particularly from the later twelfth century onwards.³¹

A closer study of the internal form of Scottish royal charters only confirms this broader trend.³² First, authentic royal charters recording land gifts to lay elites under King David I (1124–53) often described these gifts in personal terms. Land was to be held, 'with all those customs which Ranulf Meschin ever had in Carlisle and in his land of Cumberland' or 'as Udar the sheriff held it'. Phrases such as these could denote an extensive and undefined authority over a large tract of territory (as in the first example) but did not have to (as in the second example).³³ On occasion, it was specified that a beneficiary would hold his land from the king but this was in no way a standard requirement; indeed, there is only one authentic

³¹ R. Schieffer, 'Das Lehnswesen in den deutschen Königsurkunden von Lothar III. bis Friedrich I', in J. Dendorfer and R. Deutinger (eds), *Das Lehnswesen im Hochmittelalter: Forschungskonstrukte - Quellenbefunde - Deutungsrelevanz* (Ostfildern, 2010), 79–90. B. Arnold, *Princes and Territories in Medieval Germany* (Cambridge, 1991), chapters 1 and 3; G.A. Loud and J. Schenk (eds), *The Origins of German Principalities, 1100–1350: Essays by German historians* (Oxford, 2017); H. Vollrath, 'Politische Ordnungsvorstellungen und politisches Handeln im Vergleich. Philipp II. August von Frankreich und Friedrich Barbarossa im Konflikt mit ihren mächtigsten Fürsten', in J. Canning and O-G. Oexle (eds), *Political Thought and the Realities of Power in the Middle Ages* (Göttingen, 1998), 33–52.

³² What follows accepts the arguments presented in Hammond, 'Adoption and routinization' (above, note 24).

³³ But what precisely that meant was not made explicit, although one can reasonably assume that everyone was *expected* to know (or at least have the capacity to interpret) what customs Ranulf Meschin had and how Udar had held the land. The point, however, was that it was left open. See Broun, 'Property records', 328–9.

example of this from the reign of David I. However, this changed. It became standard by the 1170s for charters to command that land should be held 'from the king and his heirs' and, moreover, *in feudo et hereditate* ('in feu and heritage', to use Scots legal terminology) to specify a perpetual, heritable gift.³⁴ This too was a change: perennial inheritance was not often specified in charters of David's reign. Sometimes, the heritable capacity of the land was entirely absent, sometimes it was explicitly limited to a single generation and sometimes perennial inheritance was specified.³⁵ But it is only in the first decade of the reign of William the Lion (1165–1214), that we can be sure that the drafters of royal charters regularly categorised lay land as being given and held *in feudo et hereditate*, which were held *de rege*, and that they understood 'inheritance' as a perennial concept.³⁶ Finally, during the 1170s and 1180s, scribes in the *capella regis* introduced charter formulae which explicitly related to the rights of lay beneficiaries to jurisdiction over their land.³⁷ This formula was borrowed from English charter diplomatic but also added the words 'furca et fossa', denoting the right to a gallows and an ordeal pit, that is, rights to punishment and proof in cases concerning life and limb.³⁸ In addition, reference to a kingdom-wide set of (unnamed) practices started to be made primarily in *non*-royal charters. Land was to be held 'as freely and quit as other lands

³⁴ The emergence of *in feudo et hereditate* as a standard part of Scottish royal charters is difficult to track precisely, partly because the extent to which early royal charters were later reworked is only just being worked out. In David's reign, there are four single sheet charters surviving, of which three (*Charters of David I*, nos 16, 54, 210) are products of the nascent Scottish writing office, while a fourth (*Charters of David I*, no. 53) seems to be a later re-working by Durham of no. 54. Of the three, therefore, no. 54 (1136×7) contains the phrase 'In feudo 7 In hereditate sibi 7 hereditibus'; while no. 210 contains the phrase 'in feudo 7 hereditate illi 7 heredi suo'. There is no standardised form in Mael Coluim's reign either: the (contextually) famous charter of the king to Walter fitz Alan is an early thirteenth-century copy, containing an inflated text (*RRS*, I, no. 183). Yet the charter issued for Ralph Frebern (*RRS*, I, no. 256, issued 1162×4) does contain the phrase 'in feudo 7 hereditate'. This only survives as an eighteenth-century facsimile, although it is possible to detect the same hand which also drafted others of Mael Coluim's charters: *Diplomata Scotiae: Selectus Diplomatum et Numismatum Scotiae Thesaurus*, ed. J. Anderson (Edinburgh, 1739), plate 25. For this development in England, see Hudson, *Land, Law and Lordship*, 94–7.

³⁵ Inheritance limited to a single generation seems still to have occurred in royal charters of Mael Coluim IV (1153–65). The clearest example survives in antiquary transcript, which has been tampered with (at least in the eschatocol); London, British Library, MS Harley, 4693, fo. 46r (printed *RRS*, I, no. 190).

³⁶ For the earlier chronology in England, see Hudson, *Land, Law and Lordship*, chapter 3.

³⁷ Discussed by many, but see the essential work of Barrow (ed.), *RRS*, II, 49–51. The internal diplomatic of the only surviving text of the formula in Mael Coluim IV's reign (*RRS*, I, no. 184) is non-contemporary to the period, and represents, at the very least, an updating of the original charter.

³⁸ Some charters could be quite specific about the location of pits, see *RRS*, II, no. 152; on the decline (or abolition) of the ordeal in Scotland, see Taylor, *Shape of the State*, 280–4.

are held in the kingdom of the Scots/Scotland'. This formula first appeared in the 1150s but took off in the 1190s, occurring in just over 30 per cent of all surviving non-royal charters known to have been issued during that decade.³⁹

What these developments in charter diplomatic show is that elite power had come to be understood in royal charters as based on coherent pieces of inherited land, held with rights of jurisdiction, which was described as being held from the king. It was thus understood in abstracted and generally standardised terms. This is an important point for Scotland, where the historiography has long focussed on 'new' methods of landholding among an immigrant 'Anglo-Norman' aristocracy in the twelfth century and the 'old' methods exercised and/or abandoned by the Gaelic-speaking native aristocracy. But this new vocabulary of power emerging in the 1160s and 1170s was applied to everyone, regardless of origin. Elites cooperated with it because it had become the lexical register to understand their own authority. Even the authority to hold a court had become dependent not primarily on status or rank but on holding land, either from the king or from another lord. Being a court-holder, therefore, automatically meant co-operating with a changed political discourse. There was a new lexical register to express territorialised power that simply did not exist in the 1140s, but did by the 1190s, and which constituted a new, written, definition of elite power, used routinely. This does not mean that there was (yet) a distinct category of tenure 'in feu'; that development was a phenomenon of the second half of the thirteenth century, evidenced explicitly by legislation issued as late as 1318 by Robert I.⁴⁰ But it did mean that lay aristocratic power was understood as a uniform phenomenon (even if individual cases

³⁹ For a full examination of this, see D. Broun, 'Kingdom and identity: a Scottish perspective', in Stringer and Winchester (eds), *Northern England and Southern Scotland*, 31–85.

⁴⁰ *The Records of the Parliaments of Scotland to 1707*, gen. ed. K. Brown (St Andrews, 2011), 1318/27 (online at: <http://www.rps.ac.uk/mss/1318/27> (accessed 1 October 2017), and *Scottish Formularies*, ed. A.A.M. Duncan, Stair Society 58 (Edinburgh, 2011), A20/21.

differed in practice), based on the holding of hereditary land 'from' the king and commanding clear and autonomous jurisdictional privileges.

The change which occurred over the twelfth century was thus two-fold. First, aristocratic power itself changed: it became more limited to defined territories but was exercised in a more intensive and exclusive way. Second, the written definition of this power shifted from being understood on personal, individualised terms to being generalised and abstracted. The personalised early twelfth-century royal charters had given way to the abstracted and standardised charters of the 1170s and beyond. But these two changes had not come at the expense of aristocratic power itself: there was no zero-sum game between it and royal power. Elites exercised more autonomous power in their own lands than they had previously, with more individual responsibilities and liabilities. In addition, lords themselves had more opportunities to enhance their own status, power and finances through participating in the changed structures of royal government. As sketched out above, by the 1190s, the ways in which kings of Scots were ruling had transformed. By legislation of 1184, it was expected that new local royal officials, 'sheriffs' (*uiccomites*), would hold their courts every forty days and that a central court, which all major lay and ecclesiastical magnates had to attend, would be held under the authority of another new official, the royal justice. Accounting procedures were also developing through an itinerant audit of sheriff's revenue collections. Scottish government was institutionalising: royal courts had been created and their functioning, in theory, standardised. These changes eventually incorporated this new formal representation of aristocratic power: royal statutes (agreed by magnates) did not just introduce legal reform in royal courts, they expected the same procedures to be followed in aristocratic courts. In

this way, aristocratic power was part of royal power and vice-versa, rather than each operating in structural opposition to the other.⁴¹

Differences in source type, and the example of Guigues II, count of Forez, 1163–7.

What does this matter for French royal diplomatic? After all, the situation is entirely different. First, there was already a strong political discourse about non-royal dependence on the king in the *regnum Francorum* which is simply absent in the Scottish kingdom or at most undocumented. Some of this was emanating from Suger and Saint-Denis⁴² but, by the 1160s, there are good indications that it was a regular part of political talk and thinking, whether royal or non-royal.⁴³ Royal diplomas contained references to the extensive authority of the king's *corona*, a concept which was strategically appealed to in documents issued under the names of other lords, non-royal rulers and churchmen.⁴⁴ Chroniclers too adopted a language of elite dependence on the king within the French *regnum*. Hugh of Poitiers, for example, in his Vézelay chronicle, recorded Henry the Liberal, count of Champagne, threatening Louis VII with the transfer of his county to Frederick Barbarossa, despite admitting that he held it *de fisco regis* and *de feodo regis* (both expressions are used).⁴⁵ Yet royal diplomas for lay elites and non-royal rulers did not, until (roughly) the last two decades of the twelfth century, use this language frequently or routinely, as they did later.

⁴¹ See Taylor, *Shape of the State*, chapters 5 and 6.

⁴² For Suger's statements in his *de rebus in administratione gestis*, see *Oeuvres Complètes de Suger*, ed. A. Lecoy de la Marche (Paris, 1867), 161–2. For the notion that *homagium* distinguished the *comes Normannie* from the *rex Francorum*, see the *Brevis Relatio* on the c.945 agreement (E.M.C. van Houts, 'The *Brevis Relatio de Guillelmo Nobilissimo Comite Normannorum*, written by a monk of Battle Abbey, edited with a historical commentary', *Camden Fifth Series* 10 (1997), 5–48, at 45).

⁴³ For the performance of homage see J. Gillingham, 'Doing Homage to the King of France', in *Henry II: New Interpretations*, ed. C. Harper-Bill and N. Vincent (Woodbridge, 2007), 63–84; M. Aurell, 'Philippe Auguste et les Plantagenêt', in M. Aurell and Y. Sassier (eds), *Autour de Philippe Auguste* (Paris, 2017), 27–69.

⁴⁴ See, as representative, Y. Sassier, 'La *Corona Regni*: émergence d'une *persona ficta* dans la France du XII^e siècle', in E. Santinelli, C.-G. Schwentzel (eds), *La puissance royale: image et pouvoir de l'Antiquité au Moyen Âge* (Rennes, 2012), 99–110.

⁴⁵ Hugh of Poitiers, *Monumenta Vizeliacensia: Textes relatifs à l'histoire de l'abbaye de Vézelay*, ed. R.B.C. Huygens, 2 vols (Turnhout, 1976–80), trans. *The Vézelay Chronicle*, tr. J. Scott and J. O. Ward (Binghampton, 1992), 242, 243.

The difference between the presentation of the relationship between royal and aristocratic power in royal diplomas as opposed to other non-juridical, non-royal chronicles and letters, will be illustrated by a single case. In early summer 1163, Guigues II, count of Forez, had a letter written to Louis VII.⁴⁶ In it, the count wondered why the king had not summoned him to his host during his recent campaign in the Auvergne—'since I am yours, since I was raised by you to knighthood, since my father committed me to your care and protection (*sub cura et tutela vestra*), and since my whole land belongs to you'. The count continued: 'for I would have been there with you in your army, had not Count Girard [of Mâcon] and the schismatics of Lyon come into my land with an armed force'. Why had they come? Guigues continued: 'For they had come not only to disinherit me—if they could have—but also, more than that, to transfer my county (*comitatum meum*), which is from your crown (*qui de corona vestra est*), to the empire of the Teutons'.⁴⁷ This is particularly striking given that Forez was quite literally on the boundary between the French *regnum* and the Roman *imperium* and, indeed, it was during the 1140s, that the idea emerged that the Rhône (and the Saône) was indeed the frontier between the Empire and the French kingdom.⁴⁸ It might be thought that the complexity of this region explains Guigues's recourse to such unifying yet necessarily equally divisive ideas. However, the concept of the king's crown—of which individual churches, counties, duchies and mere land could all constitute a part—was used increasingly in letters, diplomas and charters from the Second Crusade onwards.⁴⁹ As Sassier has shown, the king's *corona* established '[une] sorte de cercle idéal dont chaque église du royaume serait un joyau

⁴⁶ Most recently discussed in A. Charansonnet, J.-L. Gaulin, P. Mounier and S. Rau (eds), *Lyon, entre Empire et Royaume (843–1601): Textes et documents* (Paris, 2015), 223–6, which includes full details on its preservation in the 'Saint-Victor' register.

⁴⁷ *Recueil des historiens des Gaules et de la France*, vol. 16, gen. ed. L. Delisle (Paris, 1878), no. 16.

⁴⁸ Charansonnet, Gaulin, Mounier and Rau (eds), *Lyon, entre Empire et Royaume*, 179–80 (centres of comital control in Forez), 183–7, 230–5.

⁴⁹ For Suger's role, see Sassier, 'La *corona regni*', 102–3.

ou un *membrum*, dont dépendrait chaque fief ou chaque vassal du roi'.⁵⁰ Indeed, the reference to the king's crown could also be used by third parties in order to appeal to the king to persuade him to do things he did not necessarily want to do. It is clear that Stephen, abbot of Cluny, knew this well in 1166, when he petitioned Louis VII for help against the count of Mâcon in Burgundy, exhorting the king to remember that Burgundy was part of Louis's kingdom as well and that no good would come to the 'body' of the kingdom if one of its parts (Burgundy) perished through sickness while the other (France) abounded in health.⁵¹

It is important, however, to understand these claims not as legally enforceable realities but, instead, as part of a complex political discourse, which was distinct from the relationships constructed, claimed and recorded in charters and diplomas. In the paschal year 1167, Louis VII met Guigues of Forez at Bourges and a surviving diploma records what happened. The diploma takes the form of a chirograph, one of three of this type of record surviving as an original from Louis's reign. It is a reasonable assumption that, as the surviving copy was kept in the Trésor, the second copy—if not more, for diploma-chirographs were drawn up in multiple copies—would have been kept by Guigues.⁵² The simple diploma states that Guigues, the king's 'friend' (*amicus*), came to 'us and our court' to settle his business. At Bourges, 'he received from us the castles which he had never before had from a lord', that is, Montbrison and Montsupt, and did homage and fealty for them (*de eis*) to the king (*nobis*). The diploma continued: 'rejoicing in the bond he had entered into with us, and eagerly desiring to transfer (*trahere*) himself to us, he also placed in our homage (*in hominium*

⁵⁰ Y. Sassier, *Structures du pouvoir, royauté et res publica: France, IX^e–XII^e siècle* (Rouen, 2004), 215.

⁵¹ *Recueil des historiens des Gaules et de la France*, vol. 16, 130–1: 'Quid prodest in eodem corpore sic partis alterius provideri salutem, quod altera morbo depereat? Quasdam plerumque latius videmus serpere lues, et dum minus mala caventur, ex insperato sana putridis vitiari. Non sola Francia de regno vestro est, licet sibi nomen Regis specialius retinuerit. Est et Burgundia vestra. Nihil magis illi quam isti debetis.'

⁵² Paris, Archives Nationales, K 24, no. 14 (paschal year 1167); calendared in Luchaire, *Études*, no. 537, and printed in *Monuments Historique*, no. 602. On its chirograph form, see F. Gasparri, *L'Écriture des actes de Louis VI, Louis VII et Philippe Auguste* (Geneva and Paris, 1973), 116–17.

nostrum) these other castles [...]. This was not the end of the agreement between the two. The diploma records that the count then asked the king for the *ius* which he had as a result of the royal *dignitas* in six further castles 'to increase his fief', and this, the king said, 'by the counsel of our *fideles* ... we have granted to him, and confirm with our seal, with the monogram of our name inscribed below'.

There are two noteworthy points here. First, the (admittedly terse) narrative structure seems, at this point, to be a standard part of the (admittedly few) surviving twelfth-century diplomas recording royal gifts or confirmations of land to lay elites.⁵³ This is important because, as we shall see, this narrative structure of the text of the diploma eventually gave way to an entirely different way of recording gift-giving and confirmation to lay individuals. But the narrative structure is important here because it renders the agreement between Louis and Guigues both personal and performed, while at the same time invoking some legal norms and concepts which were clear to them but not to us. The diploma presents their relationship as, broadly, a voluntary one, confirmed and constituted by legal norms. After Guigues had performed homage and sworn fealty (which he had never done before) for two castles (Montbrison being the *caput* of his county), he rejoiced in his actions and transferred more of his castles into the king's homage.

The narrative and personal style of this 1167 diploma is important and I will return to it. Of immediate relevance here, however, is the diploma's statement that Guigues, the king's *amicus*, had 'never before' held his two major castles from a lord, as he was now doing from Louis. This new relationship was cemented by the performance of homage and the swearing of fealty. This seems to be directly at odds with the letter written under Guigues's name to

⁵³ For an earlier example, see *Recueil Louis VI*, no. 65.

Louis VII only three years earlier (at the most). This letter proclaimed that Guigues's 'whole land' belonged to the king and, indeed, his whole county was 'of the king's crown'. The distinction here between the political claims of the letter and the legally framed diploma is important. By appealing to the king's *corona*, the letter invoked a formal, territorially-connected relationship between king and count which was, in fact, only explicitly created by the 1167 diploma, issued a few years later, which stresses the novelty of the arrangement confirmed between the two parties. The claim in Guigues's letter—that his 'whole land belonged' to the king—seems to be directly contradicted by the diploma's statement that Guigues had never before held two of his chief castles from a lord. Although this is a simple point, it is worth stressing: there was a different and more limited register of the relationship between Louis and Guigues in the diploma than was present in the non-judicial letter. Of course, diplomas themselves did contain extremely ambitious statements about, among other things, the power and authority of the king's majesty and crown.⁵⁴ But, when describing the individual relations between king and count, it seems that, as late as 1167, one had to be rather more circumspect.

The flexibility of the conceptual frameworks used to describe the relationship between the king and aristocrats therefore differed between charters and letters and, indeed, charters and chronicles. Letters and chronicles contained highly politicised understandings of power relations but these types of document were not understood as containing legal value. They could thus interpret French royal territorial supremacy liberally and contextually to support or

⁵⁴ See the examples in Sassier, 'La *corona regni*', 103–4; and, most obviously, in the 'golden bull' issued for Aldebert, bishop of Mende in 1161, in which Aldebert acknowledged that his bishopric was held of the kingdom's crown (*de corona regni nostri*) and swore *fidelitas* (*Layettes de Trésor des chartes*, ed. A. Teulet (Paris, 1863), [henceforth *Layettes*] I, no. 168). The powers granted to Aldebert were great, but the personalised construction of the relationship between bishop, bishopric, king and crown is still present in the diploma, and it is of note that the celebratory short chronicle written around 1170 by a clerk of Mende does not mention this but instead 'in perpetuum regiam potestatem plenamque jurisdictionem super omnes homines'; *Chronicon breve de gestis Aldeberti*, in *Les miracles de Saint Privat, suivis des Opuscules d'Aldebert III, évêque de Mende*, ed. C. Brunel (Paris, 1912), also discussed in Bisson, *Crisis*, 312–14, but with different emphases.

challenge the different aims and ambitions of the parties concerned. This was different in diplomas. Leaving aside the 1167 diploma's representation of Guigues's emotional response to his new relationship with the king as of one of great happiness and joy, we can see that the document provided a quite simple view of Guigues's new status: he had *more* rights in his land and, by holding them 'of' the king, created a new relationship which looked forward, rather than backwards, was cemented by Guigues's performance of homage and fealty and was not wholly in contradiction of his own local power.

The key point about these precisely constructed narratives is that they seem to have been legally descriptive: they described the relationship which two parties entered and did so in non-standard terms, without making anything like the same claims Guigues had made in his earlier letter. That is, although they used and invoked well-trodden yet broad concepts (such as *homagium*, *fidelitas* and *ius*), they *applied* them to describe a relationship performed and constructed at Louis's court in Bourges. Louis's surviving diplomas for lay people are formulaically very different in narrative and word order, although sometimes the same words appear.⁵⁵ There was, in short, no standard lexical framework which could be used to describe the relationship between kings and other aristocrats, lords or non-royal rulers, in abstract and replicable terms. The noteworthy point, however, is not the diversity of internal lexical form in the 1160s, but that this personalised diversity was replaced with standardised and abstracted formulae during the first two decades of the reign of Philip Augustus.

Creating forms of legitimate aristocratic power

⁵⁵ See the examples in Luchaire, *Études*, no. 353, 537, 636.

Perhaps from as early as the mid-1180s, but certainly from the mid-1190s, there is an identifiable explosion in French royal *acta* in the number of formulae used to describe the way in which land, rents and monies were given and what was expected as a result.⁵⁶ These formulae appear in royal *acta* regardless of type; thus, they appear in both diplomas and the less solemn *chartes*, a developing type of document which outnumbered diplomas among Philip Augustus's surviving acts from the mid-1190s onwards.⁵⁷ Philip's *acta* start regularly recording that land or monies were to be given by the king or were to be held by the beneficiary 'in fief and homage' (*in feodum et hominagium*), 'in fief and liege homage' (*in feodum et hominagium ligium*), 'in liege homage' (*in ligium homagium*) or in 'liege fief' (*in feodum ligium*), with the beneficiary having done *hominagium* to the king. In the 1190s, there was much variety in the formulae used; however, to give land *in feodum et hominagium ligium* and *in hominagium ligium* eventually became standard. 'Liege homage' is an interesting phenomenon, denoting the performance of homage to your chief lord. The attractiveness of the concept to rulers, both royal and non-royal, is clear but should not be assumed, as many rulers (including the king of Scots) did not make use of it nor did those who did use it all the time.⁵⁸ This is a simple example of how the formula was used in a royal charter, which survives as an original from 1212, and concerns land in the Auvergne.⁵⁹

⁵⁶ The earliest surviving appearance of *in feodum et hominagium ligium* seems to be the diploma partially copied into the *Livre noir* of Saint-Maur-des Fossés (s.xiii); printed *Recueil*, I, no. 121, issued in the paschal year 1184. The orthography is *homagium ligium*, which may be significant, or may just be the copyist's preference; I have not examined the manuscript. For other early examples, mostly preserved in the registers (particularly A), see *Recueil*, I, no. 556, 560, II, 764, 770, 793, 794 (cancelled), 797, 798, 801. The 1184 example is important, as it predates the loss of the French royal archives at Frétéval in 1194.

⁵⁷ For the tendency to over-typologise diplomatic developments under Philip Augustus, see S. Barret and J.-F. Moufflet, 'Forms, Typology and Normalisation: French Royal Charters in the Thirteenth Century', in A. Taylor (ed.), *Identifying Governmental Forms in Europe, c.1100–c.1300: Palaeography, Diplomats and History*, forthcoming.

⁵⁸ See Aurell, 'Philippe Auguste', 55–60, for its use in French high politics.

⁵⁹ The appearance of the formula *in feodum et hominagium ligium* and other, similar, formulae has been noticed before, but can be analysed as Norman-inspired phenomena, resulting from Philip's conquest of the duchy in 1202–3, although many survive in Register A, which is very Norman-focused. See S. Reynolds, *Fiefs and Vassals: the Medieval Evidence Reinterpreted* (Oxford, 1994), 276–8, and scholarship cited there. See particularly Bisson, 'The problem of feudal monarchy', 473–7, and revisited in Bisson, *Crisis*, 305–6, which states that the 'management of vassals, fiefs and tenurial obligations could easily be integrated with new

Philip, by God's grace, king of the Franks. All whom these letters reach know that we have given to our beloved and sworn man, Bertrand de la Tour, the castle of Orcet, and Montpeyrour, and Coudes, with all their pertinents, to be held from us and our heirs in perpetuity, in fief and liege homage (*in feodum et hominagium ligium*), saving any external right, as Bertrand himself was holding these things on the Wednesday before the feast of St John the Baptist, when I received his homage about this matter.⁶⁰

There are three notable points about *in feodum et hominagium ligium* and other related formulae. First, they are inherently non-personal and thus create a framework into which individuals, monies and lands could fit. In this, they differ from diplomatic practice under Louis VII when narratives were written into diplomas to fit the individual case. Also, unlike the use of homage in Louis VII's diplomas, the appearance of *hominagium* in the formula *in feodum et hominagium ligium* did not in itself denote the performance of homage (the Bertrand de la Tour example is a clear example of this; his performance is added to the end of the standard formula).⁶¹ Second, these formulae describe only lay relations, which is striking in France, given that churchmen and ecclesiastical and monastic institutions are recorded as holding *feoda* (whatever that meant) and receiving homage in their own charters and agreements.⁶² Based on their use, it seems that these formulae were intended to describe relations between lay people.

techniques of power'. The difference is that I would argue that the 'management of vassals' etc. was *part* of the new techniques of power.

⁶⁰ *Recueil*, III, no. 1251.

⁶¹ However, it is of note that some earlier examples did, see *Recueil*, II, nos 734–5.

⁶² See, for example, the famous diploma about the county of Amiens, in *Recueil*, I, no. 139, also no. 445. The relationship between counts and (arch)bishoprics is also interesting. In 1179 (at Lateran III), William, archbishop of Reims, obtained a papal bull from Alexander III stating that Henry, count of Champagne, was 'known to have a fief from your church, which he is held to do liege homage (*ligium hominum*) to you, save the

Third, the formula *in feodum et hominagium ligium* or *in hominagium ligium* was, in its infancy, a consciously *royal* tag or identification. Only later, in the thirteenth century, does it appear in the internal diplomatic of the *acta* of other non-royal rulers and lords. This is obviously a difficult statement to prove quantifiably.⁶³ That being said, I have not been able to find another pre-1190 non-royal example by searching the *Chartae Galliae* or *Diplomatica Belgica* databases or through preliminary searches through collections of major counts, in particular those of Champagne, whose records are notable for the presence of early inquests into the status of their men, adding the status label 'ligius' where appropriate.⁶⁴ The orthography of *hominagium*, with the additional three minims constituting the 'in', is also relatively unusual. There are, found through *Chartae Galliae*, only a couple of early examples from the cartulary of Saint-Aubin from the 1080s.⁶⁵ The suggestion that a formulation of *in feodum et hominagium ligium* was originally consciously a royal one is, on the other hand, shown on the few attested occasions when Philip's writing office re-issued documents previously issued under another ruler's authority. In May 1199, Philip confirmed a charter of Arthur, duke of Brittany, granting the sénéchal-ship of Anjou and Maine to Guillaume des Roches.⁶⁶ In August 1204, after Philip learnt of Arthur's death, the document was issued again, this time solely as Philip's gift. But whereas his earlier confirmation had

king's *fidelitas*'. The precise wording of this bull would have been drafted by Reims; see *Documents relatifs au comté de Champagne et de Brie, 1172–1361*, ed. A. Longnon (Paris, 1901), I, 466 (no. 2).

⁶³ The obvious point that the concept of liege homage itself was not a primarily French royal formulation still needs to be stated; see the liege homage of Simon, duke of Lotharingia, kinsman of Philip of Flanders, 'against all men save the emperor' in an agreement made in Philip's court in 1179 (*De oorkonden der graven van Vlaanderen (juli 1128–september 1191)*. Bd 3: *Regering van Filips van de Elzas*, ed. T. de Hemptinne, A. Verhulst and L. de Mey, (Brussels, 2009), no. 536, 29–31; online at <http://www.diplomatica-belgica.be/>, ID 8617; accessed 31 January 2018). The earliest datable mention of *ligius* has been suggested by West to come from the region west of the Meuse in 1055; C. West, *Reframing the Feudal Revolution: Political and Social Transformation between Marne and Moselle, c.800–c.1100* (Cambridge, 2013), 210–11, and note 48.

⁶⁴ The earliest is from 1172, and is printed in *Documents*, ed. Longnon, I, 1–53.

⁶⁵ *Cartulaire de l'abbaye de Saint-Aubin*, 3 vols, ed. B. de Brouillon and E. Lelong, (Angers, 1896–1903), I, nos 73, 127; *Chartae Galliae* also provides examples from the abbey of Saint-Crépin-le-Grand, Soissons: Acte n°212797 in *Chartae Galliae*: <http://www.cn-telma.fr/chartae-galliae/charte212797/> [1146], and the cathedral of Amiens in 1167 (Acte n°201735 in *Chartae Galliae*): <http://www.cn-telma.fr/chartae-galliae/charte201735>.

⁶⁶ *Recueil*, II, no. 608.

used the formula *in feodum et hereditatem*, which was probably present in Arthur's original charter (which no longer survives), his later confirmation, issued after having taken Anjou and Maine into his own hands, used *in ligium hominagium* and excised the 'foreign' formula *in feodum et hereditatem*, thus reconfiguring it according to the standards of his own writing office.⁶⁷

Thus, from perhaps as early as the mid-1180s, a new range of small-scale, diplomatic formulae were gradually introduced into French royal charters to denote lay relations between exclusively the French king and aristocrats. These formulae appear first to have been introduced for gifts of land and monies within the old French domaine but, crucially, could be applied to all levels of society and to different geographical regions with very different relations with the French kingship. The point was that the formulae claimed to level all recipients; they all had the same relationship with the king *qua* king, which placed, in theory not practice, the lordship held by Bertrand de la Tour in the Auvergne in the same position vis-à-vis the king as the countess, her son, and county of Champagne.⁶⁸ The major ideas which lay behind it were that the public, legitimate basis of *all* aristocratic power was territory, hereditability, dependence on the king and, increasingly, kingdom-wide. Unsurprisingly, it was within this new conception of aristocratic power, and in particular the emphasis on homage, that Philip's government began to propagate statements which pertained to inheritance, succession and the conceptual authority of the king's court to judge

⁶⁷ *The Charters of Duchess Constance of Brittany and Her Family, 1171–1221*, ed. J. Everard and M. Jones (Woodbridge, 1999), A15. In July 1202, Arthur had performed liege homage to Philip for his '*feodum* of Brittany, Anjou, Maine and the Touraine', recorded in one of Philip's charters, and later transcribed in abbreviated form in Register A. *Recueil*, II, no. 723; *Recueil*, II, no. 829. The phrase *propter fidele servitium* does begin to appear in Philip's acts from 1203–4; it may well be that the influence here was (broadly defined) Angevin, as a slightly different version of it was standard among English royal *acta* and was used in Arthur's charters as *pro fidei servitio*.

⁶⁸ See: *Layettes*, I, no. 713, 734, 1033.

the complaints of his ruled magnates, rules which were explicitly said to be part of the 'usage and custom of France'.⁶⁹

These new rules were laid down explicitly within this new lexical representation of aristocratic power, framed by the words *feoda*, *hominagium* and *ligium hominagium*. Their terms were unambiguously standard and public. On 1 May 1209, Philip, along with five named magnates and 'many other magnates of the kingdom of France', agreed a new rule about inheritance.⁷⁰ The document linked the agreement of these six individuals with the idea of a public *regnum*: six men from the *regnum Francie* agreed 'unanimously' and 'made firm' the rule with 'public assent' (*assensu public*). The rule was explicitly new: it was to take force from 1 May onwards and was concerned with 'feudal holdings'. In case anyone was unsure what this meant, the document helpfully defined it: a feudal holding was 'whatever is held from a liege lord (*de domino ligio*) or when a division has been made in whatever way'. The definition of 'feudal holding' was thus extremely broad and vague. That, presumably, was the point. It stipulated that all those who hold parts of the same fief (i.e. when a fief was divided) should hold first from the 'lord of the fief' with no intermediary. What this meant was that all should be tenants of the lord of the fief, rather than each other. In this way, the rule laid down a powerful position that required, at least in its ambition, the reshuffling of landed relationships into a single hierarchy which led back, inextricably, to the king.

⁶⁹ For the adoption of custom-formulae in *actes*, see D. Power, *The Norman Frontier in the twelfth and early thirteenth centuries* (Cambridge, 2004), 144–61. But it was still optional. Non-royal counterparts to royal documents could remove the statement, as occurred in Stephen, bishop of Noyon's notification of 1213 which contains the famous phrase that the kings of France were not accustomed to do homage: whereas Philip's diploma (surviving in Register C: Paris, Archives Nationales, JJ 7, fo. 56r) describes this as the 'usage and custom of the kingdom of France' (*Recueil*, III, no. 1309), Bishop Stephen's notification simply calls it the 'usage and custom approved until this day' (*Layettes*, I, no. 1053).

⁷⁰ *Recueil*, III, no. 1083.

It has been shown that it was extraordinarily difficult to enforce the 1209 rule, nor did it apply everywhere.⁷¹ Yet, although enforcement and compliance are important to consider when understanding rules and the relationship between rules and the exercise of authority, it is still important to consider, first, how rules conceptualise the ruled and, second, what authority or authorities claim the right to make, endorse and disseminate those rules. Both these considerations can be illustrated through the example of the judgement over the inheritance of Theobald IV to Champagne. This has traditionally been used to underline the growth of Philip's seigneurial authority, yet it is worth reconsidering. In July 1216, a letter patent of Philip announced the judgement of the 'peers of the kingdom' concerning the disputed inheritance of the county of Champagne.⁷² The claim of young Theobald IV, under the protection of his mother, Blanche of Navarre, to the county of Champagne had been challenged by his cousin, Philippa, and her husband, Erard of Brienne. Theobald's claim was upheld not by Philip but by the peers of the kingdom, who invoked a rule in order to do so. The rule is given in full in the letter patent: 'after anyone is seised of any fief by the lord of the fief, the lord of the fief ought not to receive another in homage for the same fief for as long as he who is seised of the fief by the lord of the fief wants and is prepared to do right and to make suit at the court of the lord of the fief'. That is to say, once you had a fief, it could not be given to anyone else, unless you had done something wrong. Theobald had performed homage to Philip and had made suit at his court; the court—representing the kingdom—decreed that he had followed the rules (whether Theobald was aware of it or not) and so stated that it could not even hear Erard and Philippa's claim. By making rules concerning the practices of homage, inheritance and jurisdiction which were internal to fiefs (*feoda* in 1216 or *feodales tenementa* in 1209) and by invoking the twin concepts of the

⁷¹ P. Petot, 'L'ordonnance du 1^{er} mai 1209', *Recueil de Travaux offerts à M. Clovis Brunel*, 2 vols (Paris, 1955), II, 371–80, particularly 376–9.

⁷² *Recueil*, IV, no. 1438. For a recent discussion of the meaning of 'pares', see T. Evergates, *The Cartulary of Countess Blanche of Champagne* (Toronto, 2010), 18–19.

dominus feodi and the *dominus ligius*, the king's ordinances used the new diplomatic register to claim that all similar landholdings could be understood as hierarchical, personal and juridical relationships which were subject to the same rules, regardless of geographic distance, regional difference or common sense, and that these rules pointed straight to the king.

Second, the authority which disseminated this rule was not only the king; indeed, the claim to make rules about aristocratic power was not made in opposition to it, but rather made through it. The eighteen peers, bishops and barons of the realm made the 1216 judgement but they also disseminated it.⁷³ It is easy to concentrate on Philip's letter patent announcing the judgement but it should not be forgotten that the very same text was also issued under the names of those who made the judgement (nine lay lords and nine bishops), an action initiated and ordered by the king himself.⁷⁴ All these letters patent follow the structure and wording of Philip's letter almost wholly precisely and so were also written in the new lexical register of the royal writing office and had the seals of the issuer affixed to them.⁷⁵ Interestingly, despite the fact that none of these acts diverge from the text and substance of Philip's letter patent, adjustments were nonetheless made to recast a royal letter patent under the authority of another effectively. The letter patent of Odo, duke of Burgundy, for example, recorded that Blanche had been cited personally by the duke (and two others), and showed Odo's higher rank over Blanche by describing her as *dilecta et fidelis nostra* (which echoed the king's act) and then inserting his own presence into Blanche's corroboration of the judgement, which occurred not just in the king's presence and that of his barons, but, in Odo's letter, 'in the lord

⁷³ The details of this complex and longstanding case are summarised in T. Evergates, *The Aristocracy in the County of Champagne 1100–1300* (Philadelphia, 2007), 34–42, 284–92.

⁷⁴ Philip's commands are found in *Recueil*, IV, nos 1437–8, and *Cartulary of Countess Blanche*, ed. Evergates, nos 285–6; see also the table found at *ibid.*, 19.

⁷⁵ *Cartulary of Countess Blanche*, ed. Evergates, nos 24, 39–47, 396–401. Only the seal of one of the originals survives as a fragment (that of Gaucher, count of Saint-Pol: Paris, Archives Nationales, J198, no. 36).

king's presence, in our [Odo's] presence, and in that of the barons of the kingdom of France'.⁷⁶ This contrasts with the statements in the letters of counts of lesser status. For example, the act of Gaucher, count of Saint Pol, called Blanche *karissima domina nostra*, and stated that Blanche's corroboration had occurred *coram domine rege et coram baronibus regni*.⁷⁷ In this way, although all the documents themselves would have *sounded* royal, there were a few subtle alterations in each act which personalised the 1216 judgment, and the legal rule it cited, thus further authenticating its issue and dissemination under the authority of the archbishop, bishops, duke, counts and barons who made the judgement.

At least some of these acts *looked* royal as well. Only seven of the 18 acts of those listed in 1216 survive as originals, all now kept by the Archives Nationales in Paris. Although it has been suggested that three of these acts were written by the same scribe, it is extremely difficult to be sure about this: although there are similarities in letter forms, the speed of the ductus and the pen nibs used can be quite different. What is clear, however, is that all but one of the originals were written in hands which were similar to the script registers traditionally called *diplomata gothica* and *diplomata cursiva*, which emerged during the late twelfth and early thirteenth centuries (and which were used for the developing form of the French letter patent, *mandements* and the royal registers). Indeed, we know that these documents were drawn up on royal orders and at least one copy of each was kept in the royal archives, as they have survived through their preservation in the Trésor des chartes. But these aristocratic and episcopal letters were not just for the benefit of royal authority: further copies were drawn up for Blanche and Theobald themselves and these were deemed as just as important as the royal

⁷⁶ Paris, Archives Nationales, J198, no. 38 (printed *Cartulary of Countess Blanche*, ed. Evergates, no. 39). The same extra spotlight was given to the archbishop of Reims in his deed (Archives Nationales, J198, no. 34; *Cartulary of Countess Blanche*, ed. Evergates, no. 396).

⁷⁷ Paris, Archives Nationales, J198, no. 36 (printed *Cartulary of Countess Blanche*, ed. Evergates, no. 44). John, count of Beaumont's deed calls her 'domina nostra' (cartulary copy only: *Cartulary of Countess Blanche*, ed. Evergates, no. 40); William, count of Joigny, also calls her 'karissima domina nostra' (Archives Nationales J209, no. 21; *Cartulary of Countess Blanche*, ed. Evergates, no. 43).

letter patent itself by the scribes who produced the champanois archival series during the later 1210s and 1220s because they were copied first into the comital cartulary and then into the cartulary prepared for Blanche herself. All the documents were framed as public letters, normally addressing the *universi*; we cannot know whether further copies were drawn up for preservation by the issuers or how far they were circulated more widely but what can be said is the multiple authorities were deemed necessary to circulate the judgement independently.⁷⁸ Co-operation—wider acceptance of and participation in these new categories—was thus present in the way in which the 1216 judgement was disseminated.

This episode raises many questions about the multiple functions of the dissemination of documents, the authority of rule-making, and the nature of political cooperation in the early thirteenth-century French kingdom. First, there was a clear and direct relationship between the judgement of the 'peers of our realm' and the dissemination of the document recording judgement containing the rule: the authority of the king, aristocrats and bishops was required to do this. Yet the document they each disseminated was not written in their own 'house style' but in what seems to be a consciously identifiable royal diplomatic register, which was then subtly adapted to reflect the status of the issuer in question and his formalised relationship with the other named parties in the document. In short, the letter patents were simultaneously royal *and* non-royal. But the royal did not trump the non-royal, nor the other way around. Blanche and her cartulary-compilers did not see only the royal letter patent as meaningful: the champanois clerks kept all the documentation, copying each letter patent into their cartularies. In this way, the production and preservation context of the 1216 judgement not only illustrates the symbolic power of kingship but also the necessary co-option and

⁷⁸ The originals are *ibid.*, nos 39, 41, 43–4, 46, 396–7, all kept in the Archives Nationales; see also the brief but extremely pertinent discussion in *Cartulary of Countess Blanche*, ed. Evergates, 17.

cooperation of multiple authorities in disseminating the new framework of aristocratic and royal power and the growing body of rules (enforceable to some extent) associated with it.

It is important not to understand cooperation here solely as political action, as adherence or otherwise to the king. Indeed, there were many well-defined political resistances to the ambitions of Philip Augustus. For every Blanche of Navarre who appealed to and was protected by the king there was a Renaud of Danmartin who resisted him, often with serious consequences as King John found out so very publicly. But to think that political resistance represents governmental form in its entirety may be to mistake the trees (political actors) for the wood (the structures of power in which they operated). This is a particularly important point to grasp in the case of the French kingdom because there are so many examples of political and military resistance to the rule and ambition of Philip Augustus (and well into the reign of Louis IX). By contrast, political resistance in the twelfth- and early-thirteenth Scottish kingdom has traditionally been analysed more in dynastic terms (rival claimants or 'pretenders' to the kingship) than as ideological positions against the centralising power of the king, although there may have been that too but there is less evidence of it and so less historical analysis of it. Resisters in the French kingdom—whether King John, Renaud of Danmartin or Fernando of Flanders—resisted concrete royal power but not the framework of royal authority itself which was being reconstructed across two generations, often with explicit aristocratic involvement or, in other words, 'consensus'. Indeed, political resistance, as much as adherence and consensus, can underscore the legitimacy of formalised power by merely acknowledging its existence as something *to be resisted*. As in Scotland, cooperation should be understood as participation in a new discursive framework of government, encompassing actions of political resistance as much as political adherence, in which

aristocratic power was redefined as dependent on the king, but yet was also part of his authority and responsible for its spread.

Conclusion

This paper has suggested a shift in the function of the internal formulae of French and Scottish royal *acta* in the late twelfth century, at least when describing and conceptualising aristocratic power. Both moved from describing individualised relationships between king and lord to a formal and public representation of legitimate lay aristocratic power, a representation based on territory, hereditability, and dependence on the king, which was crucially projected explicitly across the kingdom, and could, theoretically, be applied to anywhere within the kingdom. This formal representation of aristocratic power was, in both kingdoms, subject to ever-growing legal prescription and rule-making. The legal description which we find in Louis VII's diplomas did not always reflect practical realities and was not politically and morally neutral. Yet, like the charters of David I, Louis's diplomas described individual circumstances and occasions—and stressed royal rights while doing so—but did not attempt to place the relationship between king and lord within a pre-existing and standard set of formulae. His diplomas and charters described *past* actions rather than categorised a future relationship. This changed in both kingdoms under Philip Augustus and William the Lion. In the French kingdom, a few decades after formalised representations of the relationship between royal and aristocratic power started to be used in royal *acta*, rules about that category began to be disseminated. In so doing, royal acts were prescribing that the relationship between kings and aristocrats was not one between individual king and individual lord, nor even between lord and fief-holder, but between the idea of a ruler and the

idea of a ruled group, the legitimacy of whose power was, in theory, dependent on those formal rules.

The comparison with the kingdom of the Scots allows for this shift in the French kingdom to be identified more clearly, precisely because similar (but certainly not identical) trends were apparent in that far-away northern kingdom. In both kingdoms, one can identify not only the emergence of the idea of a normative relationship between royal and aristocratic power within the territory claimed by the issuing authority but also the written language used in formal documents to realise that idea. This is why giving the narratives constructed on the ‘periphery’ of Europe their own space to breathe and inform and challenge narratives formed at the centre is particularly important. As noted above, the kingdom of the Scots has been held up as a rather extreme example of Europeanization or, in its more insular form, ‘Anglicization’, and there are reasons why this has occurred.⁷⁹ But the research of historians of medieval Scotland over the past twenty to thirty years has also shown the inadequacy of thinking in those terms. The documentary form and governmental institutions of England influenced those of Scotland but did not determine them. Indeed, the adaptations made by the scribes and officials of the Scottish royal writing office to ‘English’ forms reveal a clear and self-conscious understanding of the different institutional, political, social and economic contexts of the two kingdoms.⁸⁰ Thinking of Scotland along the terms of the ‘core’ (quite apart from the issue of where one locates the ‘core’ in the first place) misunderstands not only the form of Scottish royal government but also mischaracterises and oversimplifies that of the

⁷⁹ For Anglicization, see R.R. Davies, *The First English Empire: Power and Identities in the British Isles, 1093–1343* (Oxford, 2001), 142–71.

⁸⁰ For the state of the field in 2013, see the extremely full analysis in Matthew Hammond, ‘Introduction: the Paradox of Medieval Scotland, 1093–1286’, in M. Hammond (ed.), *New Perspectives on Medieval Scotland, 1093–1286* (Woodbridge, 2013), 1–52; see further, J. R. Davies, ‘Royal government in Scotland and the development of diplomatic forms, 1094–1249’, in Taylor (ed.), *Identifying Governmental Forms* (forthcoming); Taylor, *Shape of the State*, 446–9; M. Hammond, ‘Domination and Conquest? The Scottish experience in the Twelfth and Thirteenth Centuries’, in S. Duffy and S. Foran (eds), *The English Isles: Cultural Transmission and Political Conflict in Britain and Ireland, 1100–1500* (Dublin, 2013), 68–83.

English.⁸¹ This kind of criticism of a 'core-periphery' model of European change is well known, and has been raised in the scholarship of most areas deemed to be 'peripheral'.⁸² If we cast entire regions as 'core' and thus dominant in our interpretative narratives, and others as 'peripheral', and fundamentally responsive to those narratives, we lose the opportunity to think how the narratives from the 'periphery' can challenge and build much bigger narratives of change in comparative perspective.

This is what the kingdom of the Scots does for the much more dominant example of the French kingdom (consciously by-passing, so to speak, its traditional 'model', the English kingdom). It is possible to identify real similarities not in precise language but in overall direction in the royal *acta* of both kingdoms. In both, aristocratic power came to be conceptualised as territorial, often heritable and, crucially, connected with the king. What this new, standardised representation meant and why it appeared can be linked to government.⁸³ During the very period when these new formulae were introduced in charter diplomatic, the more traditional institutional forms of governing were also developing and royal authority was, quite literally, geographically expanding. William's government was insisting that all aristocrats should not only have courts but also royal officials present at them and that these officials should themselves hold their own courts; Philip's government was introducing systems of travelling justices and conducting mass inquests of his forest rights, fief-holders in

⁸¹ Stringer, 'Law, Governance, and Jurisdiction', 104–29.

⁸² To list only two: H. Pryce, 'Welsh Rulers and European Change, c.1100–1282', in H. Pryce and J. Watts (eds), *Power and Identity in the Middle Ages: Essays in Memory of Rees Davies* (Oxford, 2007), 37–51; S. Bagge, *From Viking Stronghold to Christian Kingdom: State Formation in Norway, c.900–1330* (Copenhagen, 2010).

⁸³ The role of university-educated masters (in law) in royal administration has been identified as catalyst for change, see J.W. Baldwin, 'Studium et regnum: the penetration of university personnel into French and English Administration at the Turn of the Twelfth and Thirteenth Centuries', *Revue des études islamiques* 44 (1976), 199–215; O. Deschamps, 'L'essor des droits savants à l'époque de Philippe Auguste', in Aurell and Sassier (eds), *Autour de Philippe Auguste*, 145–68. However, the precise intellectual inheritance of these formulae needs more consideration, and there is no space to do so here. Reynolds argues that the study of *Libri Feudorum* had little effect on growing professional government in the French kingdom, and argues that the values about the kingdom and royal authority which underpinned thirteenth-century professional government emerged from the 'ideas, values and practices ... in twelfth-century and earlier sources' Reynolds, *Fiefs and Vassals*, 258–322, at 320–1.

Normandy, and the extended royal domain of Artois, the Vermandois and Valois. In both kingdoms, the shift can be characterised as a move from formally undifferentiated power between rulers and lords of many varieties (royal and non-royal) to the formally differentiated power of kings and aristocrats (many of whom might still exercise the functions of ruling).

The idea that the requirements of governments transform and simplify local practices into something standardised for their own needs is, of course, not new. In *Seeing Like a State*, first published now twenty years ago, James C. Scott argued that power of the modern state (and, concurrently, its fatal flaw) was its necessary ambition 'to make a society legible', contrasting imperial/central demands for information with local and diverse knowledge, and arguing that the state always discarded the latter because it was not necessary to its own needs.⁸⁴ 'Legibility', for Scott, was a method of domination and coercion: the state transforms divergent local practices and knowledge into abstract categories, unifying them in the aim of obtaining revenue over newly incorporated or managed areas. In a similar sense, the introduction of a standard set of formulae in royal acts in the late twelfth century made aristocratic power legible to the king. In addition, in thinking about 'legibility', we should not confuse standardisation at the centre with uniformity in practice at a local or even regional level.⁸⁵ The anthropologist Maxim Bolt has recently reminded us of the necessary 'unevenness of institutionalisation', by which state institutions do not reach all areas under their authority in the same way, the difference determined by the degree and diversity of the

⁸⁴ In *Seeing like a State*, James C. Scott argued that one major aspect of the modern state (and its fatal flaw) was its necessary ambition to 'make a society legible, to arrange the population in ways that simplified the classic state functions of taxation, conscription and the prevention of rebellion', which necessarily involved ignoring local knowledge. Scott's work conceptualises these legible simplifications as maps, and remarks on the 'power of maps to transform as well as merely to summarize the facts that they portray': J.C. Scott, *Seeing like a State: How certain schemes to improve the Human Condition have failed* (New Haven, 1998), quotations at 2, 87. Scott's work is not often used when thinking about the Middle Ages, but the twin ideas of 'legibility' and 'simplification' are extremely useful here: the point of a formalised idea of aristocratic power outlined here was *not* to describe its realities and varieties but to claim it as ruled power, and, in effect, transform the phenomenon.

⁸⁵ See also Broun, 'Kingdom and Identity', 73–4.

state's interactions with its subjects (or, in this case, lords and other rulers).⁸⁶ The development of a common vocabulary of legible aristocratic power did emphatically not make all aristocrats the same, or the French (or Scottish) aristocracy a monolith; what it did so was to project the *idea* of a formal, normative basis for the legitimate exercise of that power in relation to the king.

It is revealing of the long dominance of formal administrative institutions over our understanding of government that we have missed not only how the creation of equally formal and standardised representations of legitimate aristocratic power by the centre changed the framework of elite relationships with their ruler but also how the creation of a formal and public register of aristocratic power itself was part of governmental consolidation.⁸⁷ But this process was not one way: domination does not explain everything, particularly when the object of legibility is a powerful elite. In Scotland, the aristocracy sought out this new territorial definition of their power because, in part, this very definition was an intensification of the extensive authority which they had previously exercised and the definition had also become the way to protect their inheritance. This royally-defined register was the main way a lord could be powerful, could exercise his authority, and thus it increased aristocratic power at a local level. This did not happen in the same way in France but it did happen. The formalisation of aristocratic power by the centre did not necessarily increase aristocratic power at a local level (apart from in the case of new gifts) nor did it necessarily offer new avenues for advancement within formal institutions of government themselves. It instead protected the legitimacy of the aristocrat and his or her title-holding itself and through that protection advanced the framework of hard royal authority. The gain in aristocratic power was thus not at a local level but at a central one. Although the outcomes were

⁸⁶ Maxim Bolt, 'Fluctuating Formality: anthropology and the structure of difference', The Malinowski Memorial Lecture, London School of Economics, 17 May 2018.

⁸⁷ See, with different emphases, Reynolds, *Fiefs and Vassals*, 288–95, 316–9, 320–2, 479–92.

different, in both kingdoms, the idea of aristocratic power itself was made, not broken, by institutional government. The development of more centralised governments, and therefore changing opportunities for status and rewards, increased and cemented elite power rather than acted against it. Once this is recognised, we can better understand how and why practical co-operation between kings and aristocrats has become the one of the dominant ways of understanding central and later medieval power structures and can ask instead why forms of structural co-operation differed across Europe.

What is the significance of this position for the traditional narrative of state formation outlined at the start of this paper? First, to write of aristocratic power as a uniform phenomenon, differentiated formally from royal authority prior to (roughly) the last quarter of the twelfth century in both kingdoms may be to misunderstand the practice and structures of politics and government in the twelfth century. Further research is necessary to confirm this trend elsewhere, although we should not expect the same chronological focus or indeed trends. Late eleventh- and early twelfth-century England, for example, might well offer an earlier example, while how far the twelfth-century German empire offers an alternative narrative, seeing the emergence of territorialised princely power without a similar institutionalisation of royal authority, needs to be explored in more depth as it has been argued that the territorialisation of princely power also involved an intensification of their governing authority within the empire.⁸⁸ Equally, later thirteenth-century Norway saw the rise of governance-through-documentation but not, it appears, the emergence of a uniform idea of a territorially dependent aristocracy even though, as in Scotland, landed elites acted as

⁸⁸ See also G. Garnett, *Conquered England: Kingship, Succession and Tenure, 1066–1166* (Oxford, 2007); Hudson, *Land, Law and Lordship*. For Germany, see Arnold, *Princes and Territories*, chapter 3; and, more generally, Bisson, *Crisis*, 295–9.

officials in local administration.⁸⁹ Formalising aristocratic power, therefore, need not mean an aristocratic power outside governmental institutions (as in France) but *as* those governmental institutions (as in the German empire/kingdom, and, in a different way, in Scotland).

But these are questions for other occasions. What the congruence of the two very different examples of France and Scotland discussed here suggests is that state formation did not occur as part of a structural conflict between kings (or other non-royal rulers) and aristocrats with the former gaining at the expense of the latter. The kingdom of the Scots offers an example of an institutional and (relatively) bureaucratic government which was not only based on aristocratic power but which also defined and standardised it or, in the words of James Scott, made it ‘legible’ at the level of royal government. The early thirteenth-century French kingdom offers a different perspective: the chancery created a formal representation of ‘legible’ aristocratic power which was not explicitly incorporated into the institutions of royal government, as it was in Scotland, but which later on in the thirteenth century allowed for individual aristocratic rulers (particularly if they were members of the royal family) to develop their own governmental mechanisms. This was sometimes a dangerous or at least ambivalent road, as Gaël Chenard has recently shown us in his ground-breaking work on Alphonse of Poitiers, but the institutional space was there for aristocratic government to develop alongside and with royal government rather than in imitation of it.⁹⁰ It is perhaps better to abandon finally the hopeful position that the development of institutional government was somehow bad for aristocratic power and acknowledge instead that, although the nature of its authority changed, the phenomenon of aristocratic power in and of itself grew through the government of which it constituted a part—different parts in different

⁸⁹ S. Bagge, *From Viking Stronghold to Christian Kingdom: State Formation in Norway, c.900–1330* (Copenhagen, 2010).

⁹⁰ G. Chenard, *L’Administration d’Alphonse de Poitiers, 1241–1271* (Paris, 2017).

places, of course, but parts all the same. The removal of this causal force from our narrative of state formation means that we must reconceptualise how and why institutional governments not only developed but developed in such varied ways in the central Middle Ages. The institutional forms of Scottish and French royal governments were, after all, different, as outlined at the start of this paper. If we are to understand why the manifestations of government differed so significantly, other dynamics must be explored—such as the relationship between local and central forms of power and authority and how far pre-existing methods of resource extraction were co-opted by central authorities—but not, or not only, those of high politics.