

Notes and Documents

Trinoda Necessitas

JOHN LELAND seems to have been the first scholar to observe that Anglo-Saxon royal grants usually contained a clause excepting military service and the repair of bridges and fortresses from the exemptions from secular services.¹ There was no collective term for these three burdens, either in Latin or in Old English,² although they are sometimes referred to as works or things from which no one was excused.³ *Trinoda Necessitas*, the term by

¹ *Collectanea*, ed. Hearne, ii. 54 (p. 53 of MS.): 'ex libro donationum ecclesiae Christi et S. Augustini' (Canterbury). He notes that in the charter of Lotharius in 697 (see p. 696, note 37 below) there occurs at the end 'exceptis his tribus, expeditione, pontis et arcis constructione', and remarks 'in omnibus antiquis Saxonum donationibus, quae bene multae in hoc libello erant, semper addita illa clausula erat'.

² They are specified singly both in the Latin and in the Old English charters, in the former by more or less elegant variations of common nouns, and in the latter by characteristically simple words: (1) *fyrd*, *fyrd-faru*, *fyrd-færeld*, *fyrd-söcn*, *fyrd-noþ*, whereof the Latin *expeditio* is a translation; (2) *brycg-böt*, *brycg-geweorc*; (3) *burh-böt*, *fæsten-geweorc* (Birch, *Cartularium Saxonicum*, ii. 121, 163, 173, 252, 410; iii. 71, 350; Kemble, *Codex Diplomaticus*, vi. 202; Laws of Æthelred, v. 26, Cnut, II, c. 10, c. 65; *Rectitudines Singularum Personarum*, c. 1, Liebermann, *Die Gesetze der Angelsachsen*, i. 242, 314, 352, 444) The Worcester substitution of *weall-geweorc* for *burh-böt* (Birch, iii. 443, 481, 524; Kemble, iii. 159 (256 *weall* omitted); Add. Charter 19,799, British Museum *Facsimiles of Ancient Charters*, vol. iv, plate 23) seems to be a survival of a Mercian form, for an original charter of 836 reads 'praeter vallis [read valli] et pontes [read pontis] constructionem' (Brit. Mus. *Facs.*, vol. ii, plate 24; Birch, i. 581). The nearest approach to a Latin collective term is the *communis labor*, which is used in contemporary charters of Eadred (Brit. Mus. *Facs.*, vol. iii, plates 14, 16; Birch, iii. 3, 29) and in some fifty other tenth- and eleventh-century charters preserved in chartularies. Compare also Birch, ii. 508, 556.

³ From contemporary charters: Offa, 'quod omni populo necesse est, ab eo opere nullum excussatum esse' (Brit. Mus. *Facs.*, vol. ii, plate 5; Birch, i. 381); Cenwulf, 'sicut tota illa gens de suis propriis hereditariis consuete faciunt' (Brit. Mus. *Facs.*, vol. ii, plate 13; Birch, i. 485); Edmund, 'nisi quod communi populo praevidendum est' (Ordnance Survey *Facs. of Anglo-Saxon MSS.*, vol. iii, plate 25; Birch, ii. 518; and in a chartulary text, Birch, i. 553 (cf. Kemble, iv. 149); Eadwig, 'quae omnibus communis sunt' (Napier and Stevenson, *Crawford Charters*, p. 10; Birch, iii. 688; and in a chartulary text, Birch, ii. 580; cf. Kemble, vi. 164, 186; iii. 310); Edward the Confessor, 'quae usuali ritu observantur' (Ord. Sur. *Facs.*, vol. ii, Earl of Ilchester, plate 3, later hand?; Kemble, iv. 85; chartulary text, Æthelred, Kemble, iii. 252). The following are recorded only in chartularies: 'quod omni plebi (or populo) commune est' (Birch, i. 539, 542, 547; ii. 13; iii. 54; cf. ii. 423, Kemble, vi. 181); 'quod (nobis) omnibus indigeri videtur' (Birch, ii. 488, 523, 531, 533; iii. 105); 'quod communiter omnibus conductum est' (Kemble, iv. 33); 'quod dumtaxat toti patriae commune est' (iv. 138); 'quae nunquam ulli possunt laxari' (Birch, i. 205);

which they are now universally described, owes its general acceptance to Blackstone⁴ and the law dictionaries. It was first introduced by Selden in the earliest of his publications, *Iani Anglorum Facies altera*, 1610. He there notices that these burdens are almost invariably excepted from the immunities, and that they are denoted *Trinoda Necessitas* in a grant of Pagham, Sussex, by King Ceadwealla to St. Wilfrid.⁵ In 1614, in the first edition of his *Titles of Honor*, he states that 'they are called by a speciall name *Trinoda Necessitas* in a Patent of K. Cedwalla',⁶ meaning the same charter. In the second edition, 1631, he writes more definitely that ecclesiastics in Saxon times 'held their lands free from all secular service besides that *Trinoda Necessitas*, as it was sometimes called',⁷ and in another passage he writes that they are, 'I remember, called in some charters in the church of Canterbury *trinoda necessitas*.'⁸ In the *History of Tithes*, 1618, he refers to 'that *trinoda necessitas*, whereto all lands whatsoever were subject, although otherwise of a most free tenure'.⁹ The term appeared in the second (posthumous) edition of Thomas Blount's '*Νομολεξικον*; a Law Dictionary', 1691, with the same mistake of '730' for 'DCLXXX' as in the second edition of the *Titles of Honor*. Bishop White Kennett, in 1695, inserted the term in his *Parochial Antiquities*,¹⁰ and repeated his definition in the fifth edition of Dr. Cowell's *Interpreter*, which he edited in 1701.¹¹ Two years later, Hickes, who was sheltered by Kennett during part of the time when his *Parochial Antiquities* were being compiled, speaks in his great work of the

'quae communiter fruenda sint' (p. 255); 'a quibus nullus nostrorum poterit expers fore' (ii. 440); 'tribus praetermissis non obmittendis' (pp. 549, 555); 'excepto quod omnibus est generale terris' (Kemble, iii. 357); 'quae indici solent' (Birch, i. 208; of other burdens, pp. 367 (= ii. p. 27), 373); 'ut communi iugo subiciatur, quod cunctis generaliter constat' (iii. 300).

⁴ *Commentaries*, 1766, i, c. 7, § 2; c. 9, § 5; ii, c. 6, § 5.

⁵ Lib. i, c. 42 (p. 57); *Opera*, ed. Wilkins, ii; col. 995.

⁶ Part II, c. 8, p. 301 (not in *Opera*).

⁷ Part II, c. 5, § 19, p. 697 (*Opera*, iii, col. 726).

⁸ Part II, c. 5, § 4, p. 622 (*Opera*, iii, col. 657).

⁹ c. viii, § 4, p. 207 (*Opera*, iii, col. 1184), referring to *Titles of Honor* as in note 6.

¹⁰ His glossary refers to p. 46, where he mentions a grant in 995 of land 'free from all secular service except the threefold necessity', with a reference to 'Thorne, p. 222', a mistake for col. 2222 in Twysden, *Decem Scriptores*, 'Evidentiae Eocl. Cant. Ex MS. in Collegio CC. Cant. dicto Thorne'. This is MS. C.C.C. 189, a twelfth-century one (M. R. James, *Catalogue of MSS. of C.C.C., Camb.*, p. 451). The grant purports to be one by Queen Ælfgifu-Emma in 995, an impossible date. It is printed by Kemble, *Cod. Diplom.* iii. 299, no. 697, from a fourteenth-century Canterbury register. In *Cod. Diplom.* iv. 298, Ælfgifu states that she had obtained Newington (co. Oxford), one of the manors of the grant of 995, from Cnut.

¹¹ Kennett's editorship is recorded in the following note in the Bodleian copy (A. 4, 5 Jur.) on the fly-leaf: 'Thom. Tanner, Jan. 1, 1700-1. Ex dono doctissimi Viri mihique amicissimi R. White Kennett S. Th. Pr. qui hanc editionem nova praefatione additionibusque quamplurimis ornavit.' Kennett shares with Blount the responsibility for much of the antiquarian character of the older law dictionaries.

'trinoda, quam vocant, necessitas' as a technical term,¹² but, like Kennett, he gives no reference. From these two writers the Benedictine editors of Ducange inserted it in the second edition of his *Glossarium Mediae et Infimae Latinitatis*, 1733–36. In 1729, Giles Jacobs borrowed Kennett's definition in the first edition of his *Law Dictionary*, which reached its tenth edition in 1784. Kennett's definition was repeated in Timothy Cunningham's voluminous law dictionary, 1764; second edition, 1771.

Although Selden, in one case, speaks of the occurrence of the term *Trinoda Necessitas* 'in some charters',¹³ there is only one instance of its use in the texts that have come down to us. This solitary instance is the Paghham charter that he saw at Canterbury. It is, no doubt, the Cottonian Augustus II, 86, of which a facsimile is given in the British Museum, *Facsimiles of Ancient Charters* iv. plate 2. The term occurs in the attestation clause of the grantor: 'hanc cartam donationis meae cartulam scribere iussi, et absque trimoda necessitate totius Christiani populi, id est arcis munitione, pontis emendatione, exercitii congestione liberam perstrinxi.'¹⁴ This clause is unique in position and wording. The original reads clearly enough *trimoda*, as correctly printed by Kemble and Earle, although Mr. Birch prints *trinoda*, possibly in an attempt to reconcile it with the traditional form. This latter is simply a mistake or an emendation of Selden's, with a view to connect it with *trinodis*. But the existence of a late Latin *trimodus* is amply recorded.¹⁵ *Necessitas* was used in the Latinity of the charters in the sense of 'obligation', 'necessary charge'.¹⁶ One is tempted to suggest

¹² *Dissertatio Epistolaris*, p. 60 (*Linguarum Septentrionalium Thesaurus*, vol. ii).

¹³ Maitland, *Domesday and Beyond*, p. 273, similarly states, probably *ex maiori cautela*, that 'these burdens, three in number, are on a few occasions spoken of as the *trinoda necessitas*'.

¹⁴ Kemble, i. 24, no. 18; Earle, *Land Charters*, 283; Birch, i. 81, no. 50.

¹⁵ The word was formed on the analogy of *multimodus*, *mirimodus*, *omnimodus*, which were later formations from the Plautine adverbs *multimodis*, *mirimodis*, which were originally compounds of *multis modis*, *miris modis*. See Lindsay, *Latin Language*, 362. It is used in the sense of 'triple, threefold' by Isidore, *Etym.* ii, c. 17, 1, *De Differentiis*, ii, c. 39, § 154 (ed. Arevalius, v. 110); Lupus of Ferrières, *Vita S. Wigberti*, c. 30 (*Monum. Germ. Hist., Scriptt.* xv. 38); his pupil Heiric of Autun, *Vita S. Germani (Poetae Aevi Carolini)*, iii. 458; Milo, *Vita S. Amandi*, iii. 295 (ibid. iii. 595), *De Sobrietate*, i. 153 (iii. 620); Dudo of St. Quentin (Duchêne, *Scriptt. Normanniae*, 72 A). The Benedictines inserted it in Ducange from Wibert, *Vita S. Leonis*, c. 9, and Henschel further added a reference from Remi of Autun's glosses to Martianus Capella from Cardinal Mai's *Glossarium novum Latinitatis ex aliquot nostris editionibus et codicibus sumptum* (in his *Spicilegium Romanum*, vol. ix, Rome, 1843). Rémi was a pupil of Heiric, and the word was therefore in use in France in the ninth century. French scholarship in the following century played a large part in the renaissance of learning in England.

¹⁶ 799–802, *Brit. Mus. Facs.* i, pl. 9 (Birch, i. 285): 'in expeditionis necessitatem vires [read. vini] v tantummodo m[i]tantur' (nitantur?). 980, 1016, episcopal, Kemble, iii. 177, 366: 'exceptis sanctau Dei ecclesiae necessitatibus (atque utilitatibus).' 792, 795,

that it has arisen from a misunderstanding of the Theodosian Code,¹⁷ but it is probably a mere coincidence, although these passages were copied into the Digest of Justinian and into the Breviarium of Alaric, and were hence well known in southern France.

The Pagham charter is written in a heavy, compressed hand of the latter part of the tenth century, which shows signs of the characteristics of the Christ Church, Canterbury, hand of the end of this century and the commencement of the next.¹⁸

St. Albans, spurious, Birch, i. 367, 373; ii. xi. 'sit libera ab omni tributo et necessitate, seu regis seu episcopi.' 997, 1044, Winchester, Kemble, iii. 301; iv. 89: 'tribus exceptis communium utilitatum necessitatibus.' 945, Birch, ii. 568: 'exceptis tribus necessariis causis utilitatum.' 1002, Wherwell, Kemble, iii. 324: 'sequestratis solummodo trium causis necessitatum communium.' *Causa* occurs in early ninth-century charters as a descriptive term not only for all services and charges (Birch, i. 233, 285, 445, 467, 490, 511, 581; ii. 34), but also for the three great burdens (i. 285, 485, 509, 556, 597; ii. 18, 61, 113, 115, 158) and, later, in Edgar's statutes of Newminster (iii. 463); in eighth and ninth century texts from chartularies (Birch, i. 379, 412, 480, 497, 501; ii. 88); and in doubtful or spurious texts down to the eleventh century (i. 46, 84, 110, 113, 114, 233, 323, 334, 495; ii. 38, 142, 152, 165, 194, 245, 257, 269, 440, 545, 568; iii. 667; Kemble, iii. 209, 235, 277, 335; iv. 102, 135). In Old English *þing* covered the meaning of Latin *causa* as well as *res*, *negotium*, and hence this use of *causa* is not a proof of Romance influence in the Latinity. It is probably only a coincidence that is used for the corresponding Frankish burdens in a charter of Charles in 775 granting to the bishop of Metz 'ut de tribus causis, de hoste publico, hoc est de banno nostro quando publicitus promovetur, et uacta [= *Wacht*] vel pontos [sic] compendendum illi homines . . . immunes esse uidentur' (*Gallia Christiana*, xiii, *testimonia*, 370; Böhmer, *Regesta Imperii*, i. no. 174 (= 65 of first ed.); Sickel, *Acta Karolina*, ii. no. 36*). Or is this to be ascribed to the influence of the pupils of the English St. Boniface and Lull? *Res* was used interchangeably with *causa* in the Mercian-Kentish formulae of the latter part of the eighth century and beginning of the ninth (contemporary texts 770 to 856, Birch, i. 288, 381, 467, 491, 504, 509, 511; ii. 33, 100; chartulary texts (some dubious), i. 287, 289, 334, 448, 489, 495, 500, 507, 509; ii. 47, 59, 88, 106, 135, 142; iii. 667; dubious or spurious, 692 to 1042, i. 112, 157, 448, 510; ii. 47, 59, 106, xvii; iii. 54, 300; Kemble, iv. 65; vi. 191). *Difficultas* is used in a general sense, sometimes including the three burdens, in ninth-century charters from 805 to 867 (Birch, i. 449, 476, 509, 511, 581, 597; ii. 18, 30, 129), and in chartulary texts from 616 to 933 (i. 130, 391, 550, 565; ii. 20, 164, 250, 397, ii, xv, xvi, xviii).

¹⁷ Lib. xi. 1, 25 (= Dig. x. 16, 10, Brev. xi. 1): 'obsistere commodis publicis et statutis necessitatibus non possunt privilegia dignitatum;' 16, 23 (= Dig. x. 48, 16, Brev. xi. 6): 'Ab inlustribus personis sordida munera et extraordinariae necessitatis damna removemus.' Lib. xv. 1, 7 (= Dig. xii. 1, 7, Brev. xiv. 7): 'quoniam . . . nonnulla opera . . . aestimant urbibus extruenda, ad huiusmodi necessitatem senatorum substantiam non vocetur.'

¹⁸ It, however, retains traces of the pointing of the letters characteristic of the middle of the tenth century. It may, therefore, be ascribed to some date near 975. The hand is identical with that of a Canterbury charter of Offa, dated 774 (Cott. Augustus II, 99; Brit. Mus. *Facs.* iv, pl. 4; Birch, i. 300), which uses the verb *perstringere* in a somewhat similar sense ('hoc . . . donum . . . signo . . . crucis . . . perstringimus'). A charter of Eadred, 955, has a similar use of this verb 'eo tenore huius munificentiae donum perstringens, ut,' &c. (*Ordn. Surv. Facs.* ii, Marquis of Bath, pl. 2; Birch, iii. 63). This is written in a hand somewhat resembling the two preceding charters. The same formula occurs in chartulary texts purporting to be grants by Eadred (Birch, iii. 59, 60, 64, 69, 94). A charter of 949 to Christ Church, Canterbury, which has many palaeographic features in common with the two charters in question,

It purports to be a grant, made in the year 680, by King Ceadwealla to Bishop Wilfrid, with the consent of the *subregulus* Ecgwald, and confirmed by King Æthelred (of Mercia), of 70 hides (*tributarii*) at 'Paganham' and neighbourhood, and of 10 hides at Tangmere to Wilfrid's brethren of St. Andrew's Church on the east bank of the haven called 'Uedring-mutha' (Pagham Harbour?). It is witnessed by Aldhelm, 'scholasticus archiepiscopi Theodori,' and Aldhelm is said to have drafted it (*dictitans . . . scribere iussi*),¹⁹ although it bears no traces of his pedantic and turgid style. There is an endorsement in a roughly contemporary hand, 'Uuilfridus æpiscopus cartulam hanc multimodasque et humillimas Theodoro archiepiscopo in Christo salutes,' which seems to imply that Wilfrid conveyed the charter (and land) to Theodore. In the twelfth century this was the Canterbury explanation of the acquisition of the property.²⁰

It is impossible to reconcile the date of the charter with the recorded history of this time. Wilfrid, who had been driven out of Mercia by Æthelred at the instigation of his brother-in-law, King Ecgrith of Northumbria,²¹ can hardly have reached Sussex before the summer of 681.²² Sussex was then an independent kingdom under the rule of King Æthelwealh, who granted to Wilfrid 87 hides at Selsey.²³ It is curious that the

but has some differences (Ordn. Surv. *Facs.* i, Canterbury, pl. 15; Birch, iii. 35, where it is assigned to the eleventh century; another 'original' in slightly later hand than the Canterbury charter in Brit. Mus. *Facs.* iii, pl. 15) also uses *perstringere* of writing the king's cross. It is significant that in this Dunstan is made to say in his attestation 'Ego Dunstan, indignus abbas, rege Eadredo imperante hanc domino meo hereditariam kartulam dictitando composui et propriis digitorum articulis perscripsi', much as in the Pagham charter 'Aldhelmus, scolasticus archiepiscopi Theodori, hanc cartulam dictitans, prout regis maiorumque imperia statuerunt, scribere iussi'. Cf. the Evesham charter of 1020-3 (Brit. Mus. *Facs.* iv, pl. 16, in later hand; Kemble, iv. 20): 'Ego Æþericus episcopus . . . iubente rege, sub testimonio optimatum, hanc scedulam dictitando perscribere iussi.' It seems clear that charters were being forged at Christ Church before the Norman Conquest.

¹⁹ See preceding note. The study of Aldhelm's works was reintroduced into England by the Benedictine revival in the tenth century, and Dunstan, one of the prime movers in this revival, was a great admirer of Aldhelm (Malmesbury, *Gesta Pontificum*, p. 407, § 255; R. Ewald, *Aldhelmi Opera*, p. 216, *Monum. Germ. hist., Auct. Antiquiss.*, tom. xv).

²⁰ Gervase of Canterbury, *Actus Pontificum Cantuariensis Ecclesiae (Opera)*, ed. Stubbs, ii. 340): 'Huic archiepiscopo Theodoro resignavit praedictus Wilfridus cartam et villam de Pageham, cum omnibus apendiciis, quam ei dederat rex Westsaxonum Cedwale nomine.' Bishop Stubbs remarks that this is founded upon a copy of this charter in question in the Lambeth MS. 1212, 'which Gervase probably used.' In Domesday, i. 16 b, col. 1, the archbishop of Canterbury is returned as holding 50 hides *ad geldum* at Pagham and 10 held of him by *clerici* at Tangmere.

²¹ Eddi, *Vita Wilfridi*, c. 40.

²² Karl Obser, *Wilfred der Ältere, Bischof von York*, Karlsruhe, 1884, p. 66. He mentions some of the anachronisms in the charter, and states that it had been condemned upon other grounds by Jod. Ebner, *De Cadwalla rege Saxonum*, Altdorf, 1736, an early instance of German study of our early history.

²³ Eddi, c. 41; Bede, *Hist. Eccl.* iv. 13.

Chichester registers contain a charter, dated 683, purporting to relate to a grant by Ceadwealla to Wilfrid of 87 hides at Selsey,²⁴ which is largely drawn up in the same words as the Cottonian charter. It is a point in favour of these charters that neither of them is intended to relate to Æthelwealh's grant,²⁵ which is recorded by Beda and Eddi, the sources to which we should expect a forger to have recourse. Wilfrid sheltered in Sussex Ceadwealla, then a fugitive from Wessex, and Wilfrid's benefactor Æthelwealh was subsequently slain by Ceadwealla.²⁶ Wilfrid remained in Sussex for five years, until the death of his arch-enemy, Egfrith of Northumbria.²⁷ Before the end of that time Ceadwealla, after conquering and reconquering Sussex, had made himself master of Wessex.²⁸ Theodore, towards the end of Wilfrid's sojourn in Wessex, became reconciled with him, and recommended him to Æthelred of Mercia, who had no personal cause for persecuting him after Egfrith's death²⁹ in 685,³⁰ and accordingly received him into his favour.

If the Canterbury charter had borne the date 685 or 686, there would be no historical objection to it. The *subregulus* Ecgweald is known only from this and the related Selsey charter. All the other persons concerned might have been present at a grant of Pagham in 685 or 686. The estate may have been handed over to Theodore by Wilfrid either as a peace-offering or on his final departure from Sussex. As the system of dating charters by the era of the Incarnation did not come into use until after Beda's death, the chronological difficulty might be obviated by assigning the addition of the year to the tenth-century copyist. The invocation³¹ and the proem³² and the anathema,³³ which

²⁴ Birch, i. 98, no. 64, from fourteenth-century registers, to which wrong references are given. See Poole's report on the muniments of the Bishop of Chichester, *Hist. MSS. Comm., Reports on MSS. in various Collections*, i. 179. The formulæ agree with those of the Canterbury charter, except a sentence from the chancery of Athelstan introducing the boundaries. The witnesses include Archbishops Wilfrid (of York), and Brihtwald of Canterbury, neither of whom could have witnessed as archbishop in 683, as well as Wilfrid himself. The Egdaldus episcopus appears to be the *sub-regulus* of the Canterbury charter. The Æthunaldus *subregulus* of the body of the charter suggests influence of Beda's Æthilnald.

²⁵ It is not impossible that the Selsey charter may represent in a corrupted form a re-grant by Ceadwealla and the Canterbury text a new grant by him to Wilfrid.

²⁶ Eddi, c. 42; Beda, iv. 15.

²⁷ Beda, iv. 13.

²⁸ Chron. A, &c.

²⁹ Eddi, c. 48.

³⁰ Beda, v. 24.

³¹ See Appendix below, p. 702.

³² The proem, commencing with the text 1 Tim. vi. 7, agrees with that of a contemporary charter of Offa, 759 (*Brit. Mus. Facs.* ii, plate 2; *Palaographical Society*, plate 10; Birch, i. 286), and of chartulary texts, mostly of dubious authenticity, from 670 to 796 (Birch, i. 45, 74, 92, 93, 259, 292, 306, 336), and of a spurious Winchester charter of 909 (Birch, ii. 293). The text was occasionally used in tenth-century proems, and the moral drawn from it is found in a doubtful charter of 869 and in a spurious one of 948 (Birch, ii. 142; iii. 24). Compare also Birch, iii. 391, 666.

³³ It is found with expansions in a charter of Osac, duke of Sussex, in 780 to Selsey, which is preserved in an (apparently) contemporary hand (Birch, iii. 671 = i. 331;

also occur in the Selsey charter, are found in seventh- and eighth-century charters. There are other features that also suggest an earlier origin than the tenth century: the writing of the text continuously without any break from beginning to the end; the writing parallel with the shorter side of the oblong parchment of the charter; and, a very early trait, the tendency, evidently not natural to the scribe, to write the words close together with little or no space between them. The composition of the boundaries in Latin is also an early feature. The length at which they are given is more in character with the later charters than with seventh-century ones. The earliest charters, in accordance with the Roman private deed, give the boundaries very briefly, but in some eighth-century instances they are noted at greater length in Latin,³⁴ as in this text. There are, however, no traces of the formulæ of the Roman private deed, which are so prominent in seventh- and early eighth-century charters and which linger on into the ninth. The grantee is not referred to in the second person, as is usual in the earliest texts. It is therefore doubtful whether the charter is a copy of a lost eighth-century original,³⁵

published in facsimile by Birch, 1892). The substantive part 'habere partem cum Iuda traditore Domini nostri Ihesu Christi' agrees very closely with an Italian formula of the eighth century (Carlo Troya, *Codice diplomatico Langobardo*, Naples, 1852-5, iii. 107; *Il Regesto di Farfa*, ed. I. Giorgi and Ugo Balzani, Rome, 1879, ii. 34, 39, 47, 80, 81; Anton Chroust, *Untersuchungen über die langobardischen Königs- und Herzogs-Urkunden*, Graz, 1888, 131), and may represent an early importation from Italy. The addition 'in inferno inferiori' is found in chartulary charters of 892-901, 946, 956 (Birch, ii. 224, 517, 570; iii. 173: cf. 230), in a formula that occurs in very suspicious texts (Birch, i. 255; ii. 152 (cf. 88, 110); iii. 173; Kemble, iv. 83 (cf. 150), 188, in which Judas is also mentioned). The examples in Birch, i. 181, 209 are obvious forgeries.

³⁴ In contemporary texts they are restricted to the four sides, as in the late Roman private deed, until well on into the ninth century. The inconvenience of so describing the boundaries of English villages led to the introduction of the detailed perambulation, of which there is one eighth-century example in Latin (Brit. Mus. *Facs.* ii, pl. 3; Birch, i. 314). Ninth-century examples in Old English occur in Ord. Surv. *Facs.* iii, pl. 14 (Birch, i. 518); Brit. Mus. *Facs.* ii, pl. 12 (Birch, i. 493); Brit. Mus. *Facs.* ii, pl. 30 (Birch, ii. 34); Brit. Mus. *Facs.* ii, pl. 36 (Birch, ii. 114). This method of describing the boundaries has been claimed by Seebohm, *English Village Community*, 9, as of Roman origin. From our documentary evidence it is clearly an English development, and the curious parallel cited by Seebohm from Hyginus is merely a coincidence. Compare Plato's will in Diogenes Laertius, iii. 30. It is certain that Roman influence cannot be the source of the Icelandic examples in the *Diplomatarium Islandicum*, ed. Sigurdsson, Copenhagen, 1857, &c., i. 576; ii. 3, 81, &c.

³⁵ One of the greatest difficulties of Anglo-Saxon diplomatics is the existence of copies of charters in later hands that contain no mark of being other than the original charters. The difficulty is increased by the absence of seals or any other certain method of validating an Anglo-Saxon charter. The practice began as early as the ninth century, as there are several texts in hands of that century that are copies of presumably genuine contemporary charters of the eighth and early ninth centuries. The Cottonian Charter xvii. i, dated 734, and Additional Charter 19,789 have been accepted as contemporary in the Brit. Mus. *Facs.* ii, pl. 1, 2 (Birch, i. 220, 267), although the former has an endorsement in the same hand by Berhtwulf of Mercia, 839-52. Traube, *Perrona Scottorum*, 1900, p. 509, has shown from the *compendia* that these texts were written later. The dating of early eighth-century hands is

or whether it is merely a skilful imitation of some of the main external peculiarities of the earlier charters. There is no attempt to imitate earlier handwriting beyond the tendency to omit the spaces between the words.

The mention of the *Trimoda Necessitas*, the feature that gives to this charter its adventitious importance, is by a strange irony the feature that most strongly condemns its authenticity. The genuine early charters contain no immunities, and consequently no exceptions from them. The earliest immunity occurs in a charter of 732, exempting the land from the *ius regium*.³⁶ The exception of the three great burdens is not found in unimpeachable texts until 770,³⁷ although there are two earlier instances that are

very difficult and uncertain. In the case of very early charters the use of papyrus, of which we have no record in England, might be the reason for the production of later copies on parchment. The imperial rescripts and all important documents were written on papyrus in the fifth, sixth, and seventh centuries (Maffei, *Istoria diplomatica*, Mantua, 1727, 54; B. Faas, 'Studien zur Überlieferungsgeschichte der römischen Kaiserurkunde,' in *Archiv für Urkundenforschung*, i. 187), and it was retained in use in the papal chancery until the eleventh century. In the Merovingian chancery papyrus was also the traditional material: the latest papyrus preserved is 657-73, the earliest parchment 679 (W. Erben, 'Papyrus und Pergament in der Kanzlei der Merowinger,' in *Mitteilungen des Instituts für österreichische Geschichtsforschung*, xvi. 125). The total disappearance of the Lombardic diplomas has been explained by the supposition that they were written on papyrus (*Neues Archiv*, xiv. 213, rejecting Chroust's views). Thus the Italians who introduced into England the model of the royal charter must have been familiar with the use of papyrus for official documents. It was imported into Marseilles from Egypt in Merovingian times (W. Heyd, *Geschichte des Levantehandels*, i. 25, citing Gregory of Tours, v. 5). In one case we have proof of falsification in the later copy. The original text of Cenwulf's grant of 811 (Birch, i. 468) is preserved (*Brit. Mus. Facs.* i, pl. 14); about the year 1000 this was copied at Canterbury, but a passage relating to other estates (Birch, i. 467, note 10) was interpolated (*Ordin. Surv. Facs.* iii, pl. 10, strangely described by Birch as 'contemporary'). This later charter is from the same *scriptorium* as the Pagham charter, and reproduces very carefully the orthography and characteristics (apart from writing) of the originals.

³⁶ *Brit. Mus. Facs.* i, pl. 6, Birch, i. 215: 'et ius regium in ea deinceps nullum repperitur omnino, excepto dumtaxat tale quale generale est in universis ecclesiasticis terris, quae in hac Cantia esse noscuntur.' This is probably identical with the *tributum regale* of Offa (Birch, i. 342, 344; cf. 353, 381; chartulary texts 270, 274, 276).

³⁷ The earliest instance is a charter of Uhtred of Hwiccia, an under-king of Offa's, dated 770 (*Ordin. Surv. Facs.* ii; Worcester; Birch, i. 288): 'liberam esse . . . ab omni tributo, parvo vel maiore, publicalium rerum, et a cunctis operibus vel regis vel principis, preter instructio[n]ibus pontium vel necessariis defensionibus arcium contra hostes' (for the formulæ compare Offa's charter of 781 (see below) in Birch, i. 334). Hickes, i. 170, printed a variant text of this, dated 767, from the original then at Worcester, which was in a pre-Alfredian hand and which omitted the reversion to Worcester (Birch, i. 288). These texts agree with a charter of Offa, 793-6 (*Brit. Mus. Facs.* ii, plate 5; Birch, i. 381), in making *praeter* govern an ablative: 'praeter expeditionalibus causis [see above, note 16] et pontium structionum [sic] et arcium munitum, quod omni populo necesse est, ab eo opere nullum excussatum esse' (compare also the charter of Cenwulf of Mercia, 816 (Birch, i. 497), which Hickes (i. 173) printed from the lost pre-Alfredian original). Next in date is an endorsement, written between 799 and 802, on a charter of Offa dated 767 (*Brit. Mus. Facs.* i, plates 9, 10; Birch, i. 285): 'trium tamen causarum publicarum ratio reddatur, hoc est instructio

otherwise free from suspicion.³⁸ It is noteworthy that all these instances are Mercian. Mr. E. W. Robertson concluded that the obligation to repair bridges and fortresses was imposed *edicto regio* about the time of the Council of Clovesho in 742.³⁹ Unfortunately the passage upon which he relied in the record of this council is a late interpolation, although this is not denoted in any way in Kemble's text.⁴⁰ That these obligations were then imposed is improbable, for there are charters after the date of the emergence of the immunity clause without the exception⁴¹

pontuum [sic] et arcis, verum etiam in expeditionis necessitatem [see above, note 16] vires [read viri] v tantummodo m[il]itantur' [nitantur?]. In chartularies the immunity and exception clauses were often added. The charter of Hlotharius cited by Leland (see above, p. 689, note 1) is a case in point, for the original (Brit. Mus. Facs. i, plate 1; Birch, i. 70) has no such clauses (or date) as he quotes from the chartulary. Other instances of such additions from the early thirteenth-century Canterbury chartulary at Lambeth (MS. 1212) may be found in Birch, nos. 160, 161; 176, 199; 214, 215; 293, 294; 319, 320; 322, 323; 344, 345; 407, 408; 421, 422. A good instance of falsification in a chartulary so respectable as that of Heming may be found in the 781 charter cited above, where the formulae of the 767, 770 and 793-6 texts are perverted into an exemption from 'expeditionales causae'.

³⁸ Hickea, i. 169, prints among the Worcester charters written in pre-Alfredian hands an imperfect one of Æthelred of Mercia, 691 or 692 (Birch, i. 109), containing the passage 'ab secularibus omnibus servitutibus . . . levis sint in perpetuum liberati nisi tantum . . . et expeditione contra hostes non sunt. . .'. But it is noticeable that this clause did not occur in another grant of this king to Worcester, largely drawn up in the same words and with the same witnesses (Birch, i. 110), the original whereof was in Lord Somers's collection (Smith's *Beda*, p. 764; cf. Wanley, 299, no. 3), and was at least as old as the Worcester chartulary compiled within a few years of 1000 (*Lord Middleton's MSS. at Wollaton Hall*, p. 199, Hist. MSS. Comm.). The words quoted above have a suspicious resemblance to those of Cenwulf to Worcester, 798-822, obviously an endorsement on an earlier charter (Birch, i. 507; *Middleton MSS.*, p. 204): 'ab omnibus saeculariarum rerum honoribus duris et levis [sic], exceptis' &c. The charter in question may therefore have been written or interpolated about the end of the eighth century. The charter of Offa dated 730 (sic) in Birch, i. 326, in an eleventh-century hand (Brit. Mus. Facs. i, plate 11), another copy of which 'longe recentiori manu scripta' was in Lord Somers's collection (Wanley, 301, no. 5), was entered in the Worcester chartulary of about 1000 (Birch, ii. ix), and must therefore be older than the British Museum 'original'.

³⁹ *Scotland under her Early Kings*, Edinburgh, 1862, ii. 337 note.

⁴⁰ Kemble, i. 105, prints the text without any hint of variations in readings from 'Cart. Antiq. Cantu. M. 363; MS. Cot. Claud. D. II, fo. 30 b; MS. Lambeth 1212, fo. 308'. The last manuscript is one in which great liberties were taken with the texts of documents, as may be seen in part from the examples in note 37. The clause exempting church lands from worldly service except the three great burdens is an insertion in this manuscript and Claudius D. II, since it does not occur in the copy in Domitian A. VIII (the Canterbury MS. of the Chronicle), according to Birch, i. 236, note 11, or in the early Canterbury 'original' (Ordn. Surv. Facs. i, plate 1; Birch, i. 233), which seems to be in a hand of about the year 800. Stubbs, *Concilia*, iii. 342, while pointing out the difficulties about the witnesses to this record in the 'original', unfortunately preferred the text of the Lambeth MS.

⁴¹ Contemporary charters, 805-9, 811, 814, 823, 845, 867, 901 (Birch, i. 445, 474, 480, 511; ii. 30). In contemporary texts of 930 and 934 Athelstan grants the land 'sine iugo excoasae servitutis', with no exception (Birch, ii. 363, 403), and this sweeping exemption is found in chartulary texts of this king (349, 357, 378, 384, 386, 392, 394, 406 (=iii. 684), 408, 466) and in spurious charters of 921 and 961 (310; iii. 300). Other chartulary texts and later copy-charters, genuine, dubious, and spurious, are

and in some cases without the immunity clause.⁴² The liability to military service and to aid in the construction and repair of fortresses are such primitive requirements of any organized state that it is unlikely that they were suddenly imposed in the eighth century. The nature of these burdens is also a strong objection to their derivation from the Roman *munera*.⁴³ Moreover, in the earlier charters, again principally Mercian, the burdens are usually four not three, the fourth being the *angylde, singulare pretium*, upon which Maitland has written so ably.⁴⁴

i. 274, 276, 295, 330 (*Middleton MSS.*, p. 202), 333, 342 (late tenth century), 375, 380, 382, 386, 491, 507, 546, 552, 565, 584, 586; iii. 585, 594; Kemble, vi. 196. There is a great number of chartulary texts with no exceptions.

⁴² Contemporary texts, 738, 759, *circ.* 765, 767, 774, 778, 779, 859, 840 (Birch, i. 222, 266, 281, 284, 300, 301, 315, 317, 321; ii. 102, 154); charters of somewhat later date of 889, 898, 938, 949, 965 (ii. 202, 219, 436; iii. 34, 418), and the spurious eleventh-century Exeter charters dated 670 for 938 (431, 432, 433). Many chartulary texts occur without any immunity clause.

⁴³ As maintained by H. C. Coote, *The Romans of Britain*, London, 1878, p. 259. Mr. Justice Scrutton, *Influence of Roman Law*, p. 72, cited by Professor C. M. Andrews, *The Old English Manor*, Baltimore, p. 126, note, more wisely regarded this as nothing 'higher than a coincidence'. The coincidence is not very accurate. The Roman *munera aordida*, which were charged upon estates (*patrimonia*), included, among a variety of other compulsory works, that of repairing roads (*manatio* or *tutela vias sternendae*), although the most important roads were maintained by the state, and bridges. Senator Lodge concluded that the *Trinoda Necessitas* was in its origin due from all people, on the strength of the expressions to this effect cited above in note 3 (*Essays in Anglo-Saxon Law*, Boston, 1876, p. 81). According to the famous example in the Chronicle in 1097, the shires (cf. Maitland, *Domesday Book and Beyond*, p. 192) owing work to London were grievously oppressed by William in building a wall about the Tower and (London) Bridge. According to the eleventh-century return of those liable for maintaining Rochester Bridge (Birch, iii. 659) the liability lay upon certain manors and upon the lathes. Unless this and the Chester case in Domesday were merely convenient arrangements for collecting the services, they would seem to be something like the Roman *munera* charged upon the *patrimonia*. But *fyrd, expeditio*, differed *toto caelo* from the Roman *munera*, since the English was a personal service, whereas the Roman was an obligation to find recruits (*praebitio tironum*) for the army, which in the later empire was compounded for in money (*adaeratio tironum*). See generally upon this subject Emil Kuhn, *Die städtische und bürgerliche Verfassung des römischen Reichs*, Leipzig, 1864, 1865, i. 50 *seqq.* But Schröder, *Lehrbuch der deutschen Rechtsgeschichte*, ed. 5, pp. 205-6, apparently includes the German equivalent of the three obligations among those that are mainly of Roman origin. In Scotland the similar institution (Lawrie, *Early Scottish Charters*, p. 232) seems to be of English origin. In Wales 'expeditio' is used for the military service (*Liber Landavensis*, ed. Rhys and Evans, pp. 69, 118), which looks like English influence. Cf. *Calendar of Close Rolls*, 1279-88, p. 413, where 'expeditio', common tallage, and castle-work are reserved in a deed relating to Wales.

⁴⁴ *Domesday Book and Beyond*, pp. 274, 290. The instances are: contemporary charters, 815, 822, 831 (Birch, i. 491, 509, 556); genuine charters, 814, 851, 855 (Birch, i. 489, 507 = *Middleton MSS.*, p. 204); ii. 55 (omitting *burh-bōt*), 88, 173; dubious, 680 (i. 84); spurious, 878 for 916 (ii. 307). These are all charters of the Mercian rulers. In a few cases the obligations are reduced to two by omitting either *brycg-bōt* or *burh-bōt* in contemporary charters of 839, 847, 1021-3 (Birch, i. 597; ii. 34; Kemble, iv. 18); in one of 933 in late tenth-century hand (Birch, ii. 390); doubtful or spurious, 869, 940, 949, 970, 1060 (ii. 142, 480; iii. 41, 542; Kemble, iv. 142). In two cases *expeditio* is the only obligation, but the charters are plainly spurious (860, Birch, ii. 104; 994, Kemble, iii. 277), and in an Exeter charter of 1018 (*Ordin. Surv. Facs.*

The absence from the early charters of any mention of the three great burdens may be explained in three ways: (1) that originally ecclesiastical lands enjoyed no immunities whatever, so that there could be no exceptions; (2) that they were originally exempt from the three burdens; (3) that their immunities and their limitations were so well known by common law or ecclesiastical law that it was not necessary to mention them. The second theory is hard to reconcile with the later references to the inevitable nature of the three burdens, from which no one could be excused.⁴⁵ No. 3 might be covered by the *ius ecclesiasticum* and the like definitions of tenure in the early charters.⁴⁶ The first suggestion is in conflict with evidence of older date than that of the emergence of the immunity clause that ecclesiastical lands enjoyed certain exemptions from taxation and other things. There is a reference to their freedom from taxation in the laws of Wihtried of Kent, 696.⁴⁷ He is said to have granted ample freedom from taxation to the church at a Council held at Bapchild, which was confirmed by another held at Clovesho in 716.⁴⁸ The

ii, Exeter, plate 9, in slightly later hand; Kemble, iv. 2) this and *furorum* [sic] *captio* are the only exceptions. The *singulare pretium* is mentioned in two suspicious charters of 888 and 979 (= 879) as the only exception (Birch, ii. 170, 194).

⁴⁵ See above, p. 689, note 3.

⁴⁶ Vinogradoff, *Romanistische Einflüsse im angelsächsischen Recht*, p. 21 (in *Mélanges Fitting*), regards the term as a contrast to *folc-riht*, or *folc-land*, which is no doubt its main object as a definition of tenure. But the term, as with the later *frankalmoin*, probably also covered the incidents of the tenure. Compare the charter of Cenwulf, 814 'liberabo . . . ab omni vi saeculari[s] servitutis . . . sicut a primordio Christianae religionis territorias et proprias possessiones orthodoxi et eruditi viri statuerunt et postea firmauerunt' (Brit. Mus. *Facs.* ii, plate 13; Birch, i. 485). The three burdens are exempted. The Canterbury monks understood the *sempiterna aelemosina* of the Council of Kingston in 838 (Birch, i. 588) as 'liberam ab omni saeculari servitio et tributo regio', excepting the three burdens (Birch, i. 592, from Lambeth MS. 1212 (see note 37); Wilkins, *Concilia*, i. 178, from MS. Cott. Claud. D. II).

⁴⁷ C. 1: 'Cirice an freolsdome gafola' (Liebermann, *Die Gesetze der Angelsachsen*, i. 12). Case for case this may be latinized 'ecclesia (nom. sing.) in libertate tributorum', taking *an* to be the preposition *on*. Dr. Liebermann renders it accordingly: 'Die Kirche [sei] in Freiheit von Abgaben.' It is more natural to read *ciricean*, the form of the oblique cases of *cirice*. Schmid, *Die Gesetze der Angelsachsen*, p. 15, renders it accordingly: 'Die Kirche [mehrere man] mit der Freiheit von Zinsen.' The expression in any case is very unusual. It looks more like a rubric: '[Be] ciricean freolsdome gafola', but there are no such rubrics elsewhere in these laws.

⁴⁸ *Ordn. Surv. Facs.* iii, plate 2; Birch, i. 128. The record of the two councils is on one piece of parchment, assigned by Birch to the twelfth century, but probably dating from the middle of the eleventh; it has the curious ligature of *ra* (Thompson, *Introduction to Greek and Latin Palaeography*, 430, no. 172), characteristic of Winchester hands in the continental script. The manuscript seems, however, to have come from Christ Church, Canterbury, and to be copied from an earlier original, at least as old as the beginning of the ninth century (see next note). As the text has two anathema clauses, it is probable that the passages relating to Christ Church and Rochester are interpolations. The immunity clause agrees with Mercian-Kentish ones of the early part of the ninth century (contemporary texts, Birch, i. 509, 511 (cf. 491); ii. 18, 129; from Canterbury chartularies, i. 565; ii. xv, xvi, xviii, and a spurious text of 616-18 from the same source, ii. ii). See also Stubbs, *Councils*, iii. 241.

manuscript evidence for these councils is unsatisfactory. A document in a hand about a century later than his time recording the proceedings at the Council of Clovesho under King Æthelbald in 742, refers to Wihtréd's *institutio vel praeceptum*, and states that he granted the church immunity from secular services and other things.⁴⁹

We are on firmer ground when we approach the evidence of Beda. Besides vague references to the *privilegia* of the Northumbrian monasteries at the commencement of the eighth century, he speaks definitely of *privilegia* granted by kings, bishops, and others to monasteries, whereby they became 'liberi a divino simul et humano servitio'.⁵⁰ In 732 Æthelbert of Kent granted exemption from the *ius regium*.⁵¹ A little later St. Boniface, in a letter to Cuthbert, archbishop of Canterbury 740 to 762, mentions among English irregularities the compulsory labour of monks upon royal works and buildings.⁵² In a letter written to King Æthelbald of Mercia, about 745-6, he reproves him for withdrawing many *privilegia* from churches and monasteries, and complains that the king's ministers exact greater *violentia* and *servitus* from the monks than had been usual. In a noteworthy passage he affirms that the *privilegia* of the churches in England had remained inviolate from the conversion under St. Gregory until the commencement of the eighth century.⁵³ As

⁴⁹ Ord. Surv. *Facs.* i, plate 1; Birch, i, 233, written in a hand of about the year 800. See note 40. Offa is alleged to have confirmed the privilege of Wihtréd and Æthelbald, in yet another shadowy synod at Clovesho, in 792, according to a Canterbury thirteenth-century chartulary (Birch, ii, ix). The confirmation of Edgar in 958 (iii, 241) is obviously spurious. The Ingulfine grant of Æthelbald in 719 (i, 205) is merely an extract from the 749 text (p. 254), which has the exception of the three great burdens in words agreeing with the first undoubted example (see note 37). Stubbs, *Councils*, iii, 386, expresses no opinion upon the authenticity of this record. But the proem occurs in a spurious Abingdon charter of 956 (Birch, iii, 173), which has the same anathema, a very suspicious one (cf. note 33). The privilege of Leo III in 811 (Birch, i, 469; Royce, *Winchcombe Landbook*, i, 21) preserves early papal *formulae* (*Liber Diurnus Romanorum Pontificum*, ed. Sickel, Vienna, 1889, 23, 113, 118, 129, 135), but has extraneous and probably later matter. The *Liber Diurnus*, p. 122, shows that Offa and his queen Cynethryth obtained papal privileges for monasteries founded by them.

⁵⁰ In the *Historia Abbatum*, c. 6, he relates that the founder of Wearmouth (674) 'non vile munus adtulit, epistolam privilegii a venerabili papa Agathone, cum licentia, consensu, desiderio et hortatu Ecgfridi regis acceptam, qua monasterium, quod fecit, ab omni prorsus extrinseca irruptione tutum perpetuo redderetur ac liberum'. *Epistola ad Ecgbertum*, § 12, of the privileges of pretended monasteries granted by royal edict, 'Sicque usurpatis sibi agellis sive vicis, liberi exinde a divino simul et humano servitio, suis tantum inibi desideriiis, laici monachis imperantes, deserviunt.'

⁵¹ See note 36.

⁵² *Epistolae Merovingici et Karolini Aevi*, ed. Dümmler, i, 356 (*M. G. H., Epp.*, tom. iii): 'De violenta quoque monachorum servitute operibus et aedificiis regalibus, quae in toto mundo Christianorum non auditur factum nisi in gente Anglorum.'

⁵³ *Ibid.* p. 343: 'Praeterea nuntiatum est nobis, quod multa privilegia ecclesiarum et monasteriorum fregisses et abstulisses inde quasdam facultates. . . Et dicitur, quod prefecti et comites tui maiorem violentiam et servitatem monachis et sacer-

Boniface, who was born in England probably between 672 and 675, left this country finally in 718,⁵⁴ he is obviously speaking from personal knowledge.

Boniface's statement that the *privilegia* of the churches in England dated back to the conversion agrees with the statement in the charter of 814 in note 46. This is not conclusive evidence, as it may in both cases be an independent assumption. But it is a reasonable assumption that the Roman missionaries would at the conversion endeavour to obtain the same privileges that the church enjoyed in the empire. Gregory himself made greater claims, for in a letter to the Frankish kings in 599 he asserted boldly that 'ecclesiarum praedia tributa non praebeant',⁵⁵ although a few only of the Frankish ecclesiastical estates were so exempt, not by Roman or ecclesiastical law but by special royal grants.⁵⁶ Gregory had probably in his mind—the church had always a long memory for its privileges—the numerous exemptions formerly possessed by the church in the empire. These were gradually withdrawn owing to the economic stress of the fourth century, until in the latter days of the Western Empire all had been rescinded.⁵⁷ The immunity of the church from contributing to the maintenance of roads and bridges was withdrawn as far back as 423.⁵⁸ It is probable, therefore, that exemption from these two burdens did not figure in the list of *privilegia* claimed by the Roman ecclesiastics in England. It is noteworthy that the Frankish immunity did not include exemption from the obligation described by the Canterbury forger as *Trimoda Necessitas*.⁵⁹

The English exemptions from all worldly service and tribute, however minutely specified, did not, it is evident, include immunity from the three great burdens.⁶⁰ In chartularies it was

dotibus inrogent, quam ceteri ante Christiani reges fecissent. Igitur, postquam apostolicus pontifex Sanctus Gregorius, ab apostolica sede missis praedicatoribus catholicae fidei, gentem Anglorum ad Deum verum convertit, privilegia ecclesiarum in regno Anglorum intemerata et inviolata permanserunt usque ad tempus Ceolredi, regis Mercionum, et Osredi, regis Daerorum et Berniciorum.'

⁵⁴ Albert Hauck, *Kirchengeschichte Deutschlands*, Leipzig, 1904, &c., i. 449, note 3, 457.

⁵⁵ Ep. ix. 215, *Registrum*, ed. Ewald and Hartmann, ii. 202, 13 (*M. G. H.*, *Epp.*, tom. ii).

⁵⁶ Edgar Loening, *Geschichte des deutschen Kirchenrechts*, Strassburg, 1878, ii. 723 seq.

⁵⁷ Loening, i. 232.

⁵⁸ Cod. Theod. xv, c. 3.

⁵⁹ Sickel, *Beiträge zur Diplomatik*, v. 363 (*Sitzungsberichte d. phil.-hist. Classe d. kais. Akademie d. Wissenschaften*, xlix. 363, Vienna, 1865).

⁶⁰ Selden, *Iani Anglorum Facies altera*, i, c. 42, p. 57 (*Opera*, ii, col. 995), has a strange passage in which he states that in a council (*Ordinum deliberatio*) held in the reign of Henry III this question was considered, when royal instruments were examined, and when, in the words of Matthew of Paris, it was found that the kings 'semper reservarent propter publicam utilitatem' three things, to wit 'expeditionem, pontis et arcis reparaciones vel refecciones, ut per eas resisterent hostium incurisibus'. I have been unable to trace this passage in Paris.

easy to make the grants include exemption from the latter by suppressing the exception clauses or by changing a preposition. The monasteries most notorious for forgeries produced late and clumsy fabrications purporting to grant to them exemption from the three burdens.⁶¹ It has been doubted whether such exemptions were ever granted. There is, however, one clear and indisputable case in the charter of Athelstan to Crediton in 930.⁶² *Exceptio probat regulam.*

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APPENDIX

It is noteworthy that the invocation 'In nomine Salvatoris nostri Iesu Christi' occurs only in the Pagham and Selsey charters and, with the addition of 'et omnium Sanctorum Eius', in a spurious Christ Church, Canterbury, text of 946.⁶³ It is abridged from 'In nomine Domini Dei et Salvatoris nostri Iesu Christi' (the *et* whereof is frequently omitted, correctly if Sickel, *Acta Karolína*, Vienna, 1867, 278, is right in identifying this invocation with the Ἐν ὀνόματι τοῦ δεσποῦτος Ἰησοῦ Χριστοῦ τοῦ Θεοῦ ἡμῶν of Justinian, *Novel.* 17), which was introduced into England by St. Augustine or his followers. It is used in a council record of Gregory the Great,⁶⁴ and in a grant in 587 from Gregory to the monastery of St. Andrew sub Clivo Scauri,⁶⁵ of which both he and Augustine had been members. This grant, the authenticity of which has been much discussed, seems to have been the model upon which the uncial charter of Hodilred of Kent, 692,⁶⁶ was formed, as the two agree both in the invocation and in the proem, as well as in common *formulae*, upon which no stress can be laid. In view of the origin of the earliest English royal diplomas from the late Roman private deed, it is significant that this invocation is found in over a hundred instances in the Lombard private deeds, ranging from 650 to 772.⁶⁷ Its use in the Lombard royal grants is doubtful, but it is found in the Beneventan ducal precepts, which were more closely related to the late Roman private deed.⁶⁸ It occurs in a very early formula in the *Liber Diurnus*

⁶¹ Birch, i. 171, 181, 208, 324 (see note 38), 367, 373 (= ii. 25), 388; iii. 552, 692; Kemble, iii. 235, 249 (same formula as Birch, iii. 692), 358; iv. 82, 146, 187.

⁶² Birch, iii. 681; *Crawford Charters*, no. 4, a contemporary charter, written in a hand resembling his charters of 931 and 934 (Brit. Mus. Facs. iii, plates 3, 5).

⁶³ Birch, ii. 569.

⁶⁴ Ep. xi. 15, *Registrum*, ed. Hartmann, ii. 275.

⁶⁵ *Ibid.* ii. 437.

⁶⁶ Brit. Mus. Facs. i, plate 2; Birch, i. 115. This charter would seem, from the inorganic *h* in Hodilredus, Hedilburge, to be the product of a Romance-speaking scribe. If it is really contemporary, the foreign writer may also be responsible for the inexplicable use of *e* for unaccented O.E. *i* in Oedel-, Hædde. There is no sure evidence of this change before 770, unless the 740 charter (Brit. Mus. Facs. i, plate 8; Birch, i. 231) is contemporary, which the mistake in date alone makes doubtful. Sievers, in *Anglia*, xiii. 13, fixed the date of the change in 740 on the strength of this charter, supported by the Clovesho record of 742, which is later (see note 42), and a charter of 759 (Brit. Mus. Facs. ii, plate 2; Birch, i. 266), which Traube regarded as later in date (*Perrona Scottorum*, 509).

⁶⁷ See Carlo Troya, *Codice diplomatico Longobardo*, Naples, 1852-5, *passim*, and the Farfa Register, ii. 20, 25, 26, 28, 33, 34, 35, 36, 38, 40, &c.

⁶⁸ Anton Chroust, *Untersuchungen über die langobardischen Königs- und Herzogs-Urkunden*, Graz, 1888, 24, 89.

Romanorum Pontificum (ed. Sickel, formula 76, p. 80).⁶⁹ In England this ancient invocation was employed in the records of the Councils of Hertford and Hatfield in 673 and 680 ;⁷⁰ in our earliest original royal charter, that of Hlotharius of Kent, 679,⁷¹ and in four eighth-century contemporary texts,⁷² and in two charters of that century preserved in early ninth-century copies,⁷³ and in several chartulary texts of the eighth century that seem to be genuine.⁷⁴ It is found in a ninth-century charter the date of which has been altered by erasure from *decclx* to *cccxc*⁷⁵ of Æthelberht of Kent.⁷⁶ The invocation occurs in dubious or spurious charters between 675 and 826.⁷⁷ The later examples from 888 to 944⁷⁸ are spurious, and the group of St. Paul's and Chertsey charters of the tenth and eleventh century⁷⁹ are the work of one forger. The invocation with the insertion of 'Sancti' before 'Salvatoris' appears in four genuine texts of 813 and 814.⁸⁰

Charles Constantine of Vienne

MUCH doubt exists over the precise birth and name of Charles Constantine, the son of the Emperor Lewis III. He appears first, apparently as grown up, in 923. He is count of Vienne, doubtless by his father's grant in 927, and he held the county at least as late as 962.¹ But he did not succeed Lewis III in the kingdom of Provence, and M. Poupardin finds the explanation of his disinheritance in the belief, suggested by a phrase of Richer, that he was a bastard. His by-name of Constantine has likewise been a subject of discussion. Dr. Poole² proves it was not a surname proper, and considers it a mere local appellative, invented by Flodoard, to describe his connexion with Provence—Arles being

⁶⁹ See also Gaetano Marini, *I Papiri diplomatici*, Rome, 1805, 343 b; ninth- and tenth-century examples, 126, 155, 162, 165, 166, 195, 201.

⁷⁰ Bede, iv, cc. 5, 15 (17).

⁷¹ Brit. Mus. Facs. i, plate 1; Birch, i. 70.

⁷² Birch, i. 215, 231, 281, 511.

⁷³ Brit. Mus. Facs. ii, plates 1, 2; Birch, i. 220, 266: cf. Traube, *Perrona Scottorum*, 509.

⁷⁴ Birch, i. 59, 60, 67, 106, 113 (cf. 114), 206, 216, 229 (cf. 253), 274 (cf. 294), 352, 358, 363, 413; ii. p. viii; iii. 666.

⁷⁵ This may have been done in order to identify it with Birch, i. 358, dated 789, with which it agrees in invocation and proem. Both are grants to the two Bishops Wermund of Rochester of the respective dates.

⁷⁶ Brit. Mus. Facs. ii, plate 35, written in a somewhat later hand than 860, but not eleventh century, as stated by Birch, ii. 109.

⁷⁷ Birch, i. 64, 92, 93, 105, 116, 123, 143, 146, 156 (cf. 157), 163, 165, 166, 212, 279, 281, 539, 547; ii, p. v.

⁷⁸ Birch, ii. 79, 194, 553.

⁷⁹ Birch, ii. 451; Kemble, iv. 250; Birch, iii. 469; Kemble, iv. 151.

⁸⁰ Birch, i. 478, 481, 483, 485.

¹ See for these facts Poupardin, *Provence*, pp. 209, 225, 229, 234, and *Bourgogne*, pp. 247-9.

² *Ante*, xvii (1912), pp. 308-9.