

The Origins of the Crown

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SECRETED AWAY IN THE MIDST OF his posthumously published lectures on English constitutional history is one of those thought-provoking observations by Maitland which have lain largely undisturbed for ninety years:

There is one term against which I wish to warn you, and that term is 'the crown'. You will certainly read that the crown does this and the crown does that. As a matter of fact we know that the crown does nothing but lie in the Tower of London to be gazed at by sight-seers. No, the crown is a convenient cover for ignorance: it saves us from asking difficult questions. . . .¹

Partly under the influence of his reading of German scholars, most notably Gierke, Maitland had begun to address questions of this nature in a series of essays on corporate personality, and in a few luminous, tantalizing pages in the *History of English Law*.² Plucknett conceded that the issues raised by these questions, which he characterized as metaphysical, formed the foundations of legal history, but added, severely, that 'prolonged contemplation of them may warp the judgement.' Not, of course, that Maitland had been found wanting: Plucknett thought him acutely aware of the potential dangers of abstraction. But less well-seasoned timbers would scarcely bear up under the strain.³

Plucknett need not have worried. The judgements of English his-

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¹ Maitland, *Constitutional History*, p. 418; cf. Pollock and Maitland, i 525: 'that "metaphor kept in the Tower," as Tom Paine called it'; F. W. Maitland, 'The Crown as corporation', reprinted in his *Collected Papers*, iii 244–70 at 257; 'a chattel now lying in the Tower and partaking (so it is said [by Coke]) of the nature of an heirloom'; Gierke, p. xxxvi: '... the "Subject" (or subjectified object) that lies in the Jewel House of the Tower'.

² See esp. 'The corporation sole', 'The Crown as corporation', 'The unincorporate body', 'Trust and corporation', reprinted in *Collected Papers*, iii 210–43, 244–70, 271–84, 321–404; Pollock and Maitland, i 511–26 (which appealed to Heinrich Brunner: see his review in *Political Science Quarterly*, 11 (1896), 534–44 at 539); and his introduction to Gierke. Maitland's 'repeated perusal' of Gierke after the publication of the first edition of 'Pollock and Maitland' prompted some of the most substantial changes in the second edition; but these were concerned with ecclesiastical corporations: Pollock and Maitland, i 486 n. 1.

³ T. F. T. Plucknett, *Early English Legal Literature* (Cambridge, 1958), p. 16.

torians have, in this regard, never been put to the test. For both the essays, which concentrated on the later middle ages and the sixteenth and seventeenth centuries, and the section in the *History of English Law*, which focused on the thirteenth century, have been largely ignored since they were written.⁴ Although Maitland gave plenty of pregnant hints about the implications for the period prior to the thirteenth century, particularly in the *History of English Law*, they have not been pursued either. Yet for precisely these reasons the crown, usually appearing in the guise of the Crown, or 'The Crown', has continued its unthinking career in the historiography of medieval England, from the Anglo-Saxon period on. It is one of those 'foundations' of legal history which are assumed rather than contemplated. We still do read, in the work of the most distinguished authorities, that the Crown does this and the Crown does that. But as Maitland pointed out, the term tends to be used as a synonym for king.⁵ Elegance of expression is thereby sought at the cost of historical accuracy, for nothing in the sources justifies this usage. Moreover, in almost every instance where 'Crown' cannot simply be replaced by 'king', the sloppiness of thought detected by Maitland is still more apparent. For what is usually meant by 'The Crown' in these cases is something vaguely akin to 'state' or 'sovereignty' — certainly something distinct from the person of the king. But finding nothing corresponding to these anachronistic terms in the sources, historians turn instead to the more traditional-sounding 'Crown', in an undefined abstract sense. The Crown sounds traditional because, as Maitland himself demonstrated, it had become an important, if ill-defined, term in English constitutional debate from the later middle ages on. The imprecision of the term when used by historians is therefore, according to Maitland, no more than a reflection of its imprecision in the sources.

Although 'crown' is not used as a synonym for 'king' in the sources for the period on which I wish to concentrate — that prior to the thirteenth century, where Maitland effectively began his story — I was careful to qualify my comments about its use in other senses by historians. For

⁴E. H. Kantorowicz, *The King's Two Bodies. A Study in Medieval Political Theology* (Princeton, 1957) is the notable — and, of course, unEnglish — exception. It is only too easy to infer what Plucknett's opinion of this book would have been. F. Hartung, 'Die Krone als Symbol der monarchischen Herrschaft im ausgehenden Mittelalter', *Abhandlungen der Preussischen Akademie der Wissenschaften*, phil.-hist. Kl., 13 (1941), 3–46 at 6–19, does little more than summarize Maitland's analysis.

⁵Pollock and Maitland, i 525; 'Crown as corporation', 257.

there is some warrant for such usages in the sources. This does not apply to Anglo-Saxon England, where I have found no reference to *cynehelm* or *corona* as anything other than a physical object.⁶ But within twenty or thirty years of the Conquest *corona* begins to appear in contexts where it cannot refer simply to the physical object. I shall try to argue that there were in fact two apparently unrelated shifts in the meaning of the term; and that they represent distinct attempts to wrestle with the problems created for ecclesiastical tenure by a new system, consequent on the Conquest, in which all tenure depended upon the king.

The first instance I have traced is in the *De Iniusta Vexacione Willelmi Episcopi*, most of which consists of the *libellus* recording the proceedings taken by William Rufus against William of St Calais, bishop of Durham, in 1088. Professor Offler's case for its being a later (though still undated) forgery has recently sustained further, probably fatal, damage,⁷ and even he conceded that the author must have used material compiled in 1088.⁸ But if doubts linger about its authenticity, the emergence of the usage cannot be pushed much more than twenty years further forward, for in the *Historia Novorum* Eadmer uses *corona* and *corona regni* in what I take to be a closely related sense. What is this sense?

William of St Calais was suspected by William Rufus of being a party to the treasonable conspiracy against him on the part of the Anglo-Norman magnates in 1088 who 'regnum suum pariter sibi et coronam auferre volebant'.⁹ A down-to-earth reading of this would see it as a straightforward reference to the crown as physical object, albeit the distinctive symbol of the king's status. If so, there would be no reason, in this regard, to differentiate the *De Iniusta Vexacione* from, say, William of Poitiers, who emphasizes Duke William's transform-

⁶J. L. Nelson, 'The earliest surviving royal *ordo*', in B. Tierney and P. A. Linehan, eds, *Authority and Power: Studies on Medieval Law and Government presented to Walter Ullmann on his seventieth birthday* (Cambridge, 1980), pp. 29–48 at 45; J. Kirschner, *Die Bezeichnungen für Kranz und Krone im Altenglischen* (Munich, 1975). Note the shift into Latin to describe the *corona* which Archbishop Ealdred placed on William the Conqueror's head in ASC (D) s.a. 1066.

⁷M. Philpott, 'The *De Iniusta Vexacione Willelmi Episcopi Primi* and Canon Law in Anglo-Norman Durham', in D. Rollason, M. Harvey and M. Prestwich, eds, *Anglo-Norman Durham* (Woodbridge, 1995), pp. 125–37.

⁸H. S. Offler, 'The tractate *De Iniusta Vexacione Willelmi Episcopi Primi*', *EHR*, 66 (1951), 321–41 at 341; H. S. Offler, unpublished typescript edition of *De Iniusta Vexacione Willelmi Episcopi Primi per Willelmum Regem Filium Willelmi Magni Regis*, p. 7. I am indebted to Mrs Offler for permission to use this edition, which will supersede all existing editions. For convenience sake, I shall give references also to the version in *English Lawsuits*, no. 134.

⁹'Who wanted to take from him at the same time his kingdom and his crown': *DIV*, ed. Offler, p. 38; *English Lawsuits*, i p. 97.

ation into a king in terms of his assumption of a *corona*.¹⁰ That *corona* here begins to mean something more than, and something more specific than, simply a physical symbol of regality is indicated both by the context in which it is found, and by Eadmer's use of the term.

It first appears in the *Historia Novorum* in Eadmer's account of Anselm's confrontation with William Rufus at Gillingham at the beginning of 1095. At the king's urgent instigation Anselm had, in 1093, been brought over from Normandy in order to become archbishop of Canterbury. In his previous capacity as abbot of Bec Anselm had, long before, recognized Urban II as pope.¹¹ But Rufus, like his father before him, had studiously avoided recognizing either of the competing claimants for the see of Rome. At Gillingham Anselm sought the king's permission to petition Urban II for his archiepiscopal *pallium*, without which he would not be able to exercise many of the functions of his office.¹² Eadmer reports the king's outraged response:

the king said that he had not yet recognized Urban as pope, and that it had not been customary under him or his father for anyone to nominate a pope in the kingdom of England except by the king's *licentia* and *electio*, and that anyone who wished to snatch from him the power of this dignity, would be at one with someone trying to remove his *corona* from him.¹³

Close to the beginning of his book Eadmer had listed the 'new usages' which William the Conqueror had introduced into England, and, bearing out the claim put into Rufus's mouth, this *consuetudo* is one of them.¹⁴

When, shortly afterwards, Anselm was put on trial at the council

¹⁰ Guillaume de Poitiers, *Histoire de Guillaume le Conquérant*, ed. and trans. R. Foreville (Paris, 1952), pp. 216 ('Orant post haec [the submission of London] ut coronam sumat una pontifices atque caeteri summates, se quidem solitos esse regi servire, regem dominum habere vellere'; William was more anxious to have a peaceful kingdom than the *corona*), 220 (at his coronation the English are asked 'an consentirent eum sibi dominum coronari'; Ealdred, archbishop of York 'imposuit ei regium diadema'), 230 ('coronatus est'), 260 (Mathilda is commonly given the title of queen 'etsi nondum coronata'); cf. pp. 1 (on Cnut's death his son Harold Harefoot 'coronam eandem cum throno . . . obtinuit'), 30 (Edward the Confessor's acquiring the *corona* through Duke William's support), 146 (the English land had lost King Edward 'et ejus corona Heraldum ornatum'), 206 (the *corona* which Harold had perfidiously usurped). Note that the Bayeux Tapestry shows, and says it shows, Harold being offered a 'CORONAM REGIS' immediately before his coronation (although the crown depicted, in the coronation scene is different, and resembles the one which Edward is shown wearing): *The Bayeux Tapestry*, ed. D. M. Wilson (London, 1985), pl. 31.

¹¹ *S. Anselmi Cantuariensis Archiepiscopi Opera Omnia*, ed. F. S. Schmitt (6 vols, Edinburgh and London, 1940-61), iii ep. 124.

¹² R. W. Southern, *St Anselm: A Portrait in a Landscape* (Cambridge, 1990), pp. 268-70.

¹³ Eadmer, *Historia Novorum in Anglia*, ed. M. Rule (London, 1884), p. 53.

¹⁴ *Historia Novorum*, pp. 9-10; there are similarities between the contents, if not the phrasing, of Eadmer's list and a letter of Anselm's of 1099-1100: *Opera Omnia*, iii ep. 210.

of Rockingham, Eadmer records the archbishop's report of the king's words to him. We can have some confidence in accepting Eadmer's account as roughly accurate, not only because we know he was in close attendance on Anselm at this time,¹⁵ but also because it has been shown that he used the notes he had taken of Anselm's public statements and private conversation as the basis for the words he placed in the archbishop's mouth. They were not rhetorical compositions in the classical mode, of the type found in more conventional historians.¹⁶ The king's alleged words explain more clearly what attempting to remove his *corona* might mean: 'If in my kingdom you recognize this Urban or anyone else as pope without my *electio* and authority, or having already recognized him, you hold to him, you act contrary to the *fides* which you owe to me, and in doing so you offend me no less than if you sought to remove my crown.'¹⁷ In other words, according to Eadmer's account of Anselm's account of the king's words, breaking *fides* with the king was tantamount to trying to remove his crown, and recognition of a pope without royal approval, or refusal to renounce a recognition already given long before the pledging of *fides* to the king, amounted to such a breach of *fides*. The point is underlined by the bishops, accompanied by a few of the *principes*, in a time-serving reprimand to the trouble-maker:

The question is clear enough and needs no elaboration. For you should know that the whole kingdom is complaining against you that you are trying to remove from our common lord the crown and ornament of his rule [*quod nostro communi domino conaris decus imperii sui coronam auferre*]. Whoever takes from him the customs of the royal dignity takes from him at the same instant the crown and the kingdom. For we are convinced that one cannot be held properly [*decenter*] without the other.¹⁸

The bishops' words are an almost exact echo of the charge levelled against William of St Calais in 1088: obstinate refusal to renounce allegiance to a pope and rebellion are both characterized as trying to snatch simultaneously the king's crown and kingdom. In the view of the bishops, and that of the king, the crown and kingdom could not be

¹⁵ Southern, *St Anselm*, pp. 247–8, 411.

¹⁶ Southern, *St Anselm*, pp. 423–6.

¹⁷ *Historia Novorum*, p. 54. The same point is made, although the term *corona* is not used, in Eadmer's parallel account of the council in *Vita Anselmi*, ed. and trans. R. W. Southern (Oxford, 1972), pp. 85–6. William of Malmesbury, who used Eadmer as his principal source for these events, summarized the king's reasoning thus: 'Consuetudo regni mei est a patre meo instituta, ut nullus praeter licentiam regis appeletur papa. Qui consuetudines regni tollit, potestatem quoque et coronam regni violat. Qui coronam mihi aufert, inimicitias et infidelitatem in me agit.' (*De Gestis Pontificum*, ed. N.E.S.A. Hamilton (London, 1870), p. 87).

¹⁸ *Historia Novorum*, p. 58.

held *decenter* without the customs introduced, according to Eadmer, by William the Conqueror. Whether or not Eadmer was in this instance repeating the terminology used in the debates at Rockingham, for him the term *corona* clearly encapsulated the innovations in royal power introduced at the Conquest. After all, the title of his book might be translated as 'A History of the Novelties'. What were these novelties?

Some of them are set out in the list near the beginning, and from them Eadmer invites his readers to infer the rest. All of those mentioned are concerned with the claims to control which William the Conqueror and his sons enforced over clerics and the church in England. But Eadmer adds that although he has omitted whatever William might have promulgated 'in saecularibus' because it was none of his business, as an ecclesiastical historian, to discuss such matters, it would be easy enough to infer these other innovations from what he had to say about 'divine matters'.¹⁹ In other words, what was shown to be the case with the church was also true in the lay sphere. He listed these innovations because, he said, knowledge of them was essential to an understanding of the principal point of his book, its *causa*. Once this *causa* has been grasped, it becomes easy to see how and why he wrought his *corona*.

The *germen* of this *causa* is identified in his preface: 'From the time that William, comes of Normandy subdued this land to himself by warfare, no-one, prior to Anselm, was made a bishop or abbot in it who had not first been made the king's man [*homo*], and had received investiture of his bishopric or abbacy from the king's hand by the tradition of a pastoral staff.' The only exceptions to this, Eadmer scrupulously points out, are bishops of Rochester.²⁰ Like most prefaces, this was written after the rest of the book, when these issues of clerical homage and lay investiture had become the nub of the dispute between Anselm and William Rufus, and, more particularly, Henry I.²¹ We know that Eadmer must have written extremely detailed notes, or even some kind of draft, prior to the outbreak of the investiture contest in England,²² which was occasioned by Anselm's attendance (accompanied by Eadmer) at the Easter Council in St Peter's in Rome in 1099, where they both heard for the first time the papal prohibitions

¹⁹ *Historia Novorum*, p. 10.

²⁰ *Historia Novorum*, pp. 1-2.

²¹ Southern, *St Anselm*, p. 415.

²² R. W. Southern, *St Anselm and his Biographer* (Cambridge, 1963), pp. 299-300, shows that whereas the text of the first four books as it survives includes several references to a time after Anselm's death in 1109 (one of which (p. 211) implies that Archbishop Thomas of York, who died in 1114, is also dead), it must be based on notes made at the time of many of the events described.

against lay investiture and clerical homage.²³ For Eadmer in the course of his narrative says that Anselm, on his accession to the archbishopric in 1093, did homage to Rufus 'pro usu terrae'.²⁴ So while it might casuistically be true that Anselm had not received investiture at the king's hands — Rufus being so ill that the clerics around his sickbed had had to act in his stead²⁵ — with respect to homage Eadmer himself gives the lie to the claim he makes in his preface that Anselm had acted differently from earlier bishops and abbots. Eadmer's detailed account of Anselm's elevation to the see of Canterbury demonstrates that what made Anselm archbishop was not election or consecration; nor was it investiture. It was by Rufus's receipt of his homage, thereby seising him with the lands of the see, that Anselm became archbishop.²⁶ This was because, at Lanfranc's death, the church of Canterbury had escheated to the king.²⁷ Hence the pernicious powers of kings to exploit vacant churches.

By force of the Conquest bishoprics and many abbacies had become tenancies held by bishops and abbots directly of the king, that is, tenancies-in-chief. Not only do we have Eadmer's word for it that all new bishops (with the exception of bishops of Rochester) did homage to the king; some existing English bishops and abbots are elsewhere reported to have submitted to the Conqueror, and in the Norman sources the submission took the form of homage.²⁸ The same must have been true of other English bishops and abbots. That Eadmer was right to think that homage had transformed the tenure of bishops and abbots into a tenure dependent in most instances directly on the king, and that this must have applied to surviving English clerics too, is suggested by the fact that Æthelwig, abbot of Evesham, owed five

²³ Southern, *St Anselm*, pp. 280–4; cf. 191 for Anselm's ignorance of the decree prohibiting lay investiture issued at the Lateran synod of 1078.

²⁴ *Historia Novorum*, p. 41; for other evidence of Anselm's homage, see *RRAN*, i nos. 336, 337; for the significance of Eadmer's slip see Southern, *St Anselm and his Biographer*, p. 310.

²⁵ *Historia Novorum*, p. 35.

²⁶ *Historia Novorum*, p. 41: 'more et exemplo praedecessoris sui inductus, pro usu terrae homo regis factus est, et, sicut Lanfrancus suo tempore fuerat, de toto archiepiscopatu saisisi jussus.' This was immediately followed by Anselm's ceremonial reception and enthronement in Canterbury on 25 September. The election — or what passed for the election — had happened on 6 March: p. 35. He is described as being 'in pontificatu' prior to his consecration on 4 December: p. 42. See further Southern, *St Anselm*, pp. 189–91.

²⁷ *Historia Novorum*, p. 26. Eadmer uses the loaded verb *invadere* — usurp — to describe the manner in which the church of Canterbury came into the king's hands.

²⁸ *ASC (D)* s.a. 1066 (Ealdred, archbishop of York); *The Chronicle of John of Worcester*, ed. R. R. Darlington and P. McGurk (3 vols, Oxford, 1995–), s.a. 1066, ii 606 (Ealdred; Wulfstan, bishop of Worcester; Walter, bishop of Hereford); Guillaume de Poitiers, p. 216 (Stigand 'manibus ei sese dedit, fidem sacramento confirmavit'; it is implied that other unspecified pontifices submit).

knights 'de abb[at]ia tua' to the king by 1073 at the latest.²⁹ As Professor Holt has reconfirmed, the *servitia debita* are a post-Conquest phenomenon,³⁰ Æthelwig's case indicates that they were imposed on ecclesiastical tenants-in-chief at a very early stage. They are a mark of the new dependency, Rochester being the exception which proves the rule. For as Eadmer himself pointed out, a bishop-elect of Rochester did homage and swore fealty to the archbishop of Canterbury, not to the king, and the archbishop gave him his *episcopatus*,³¹ a bishop of Rochester owed military service to the archbishop, not to the king.³² Eadmer perceived the implications of this strict dependency more articulately than any other contemporary.

Its effect was to blur the distinction between the possessions held by a bishop or abbot and their respective offices, as is suggested by the use of the terms (*archi*)*episcopatus* or *abbatia* to mean either and both. According to the *De Iniusta Vexacione*, William of St Calais attempted to turn this to his own advantage. He argued that being disseised even of some of the lands of his see by the king's agents meant being disseised of his *episcopatus*, and he demanded its restoration to him before he would stand trial.³³ Although he accepted that the lands of the see — if not the *pecunia* and his *homines* — were held of the king,³⁴ by treating his *episcopatus* as an indivisible entity he sought to

²⁹ RRAN, i no. 63, which survives in a thirteenth-century cartulary copy; on the date, see R. R. Darlington, 'Æthelwig, abbot of Evesham', *EHR*, 48 (1933), 1–22, 177–98 at 17 n. 4. David Bates argues, *Regesta Regum Anglo-Normannorum: The Acta of William I, 1066–1087* (Oxford, forthcoming), no. 131, that it is probably (but not certainly) a forgery, dating either from early in Henry II's reign or from the thirteenth century. His main reason for doing so is that the writ is in some respects unusual, in terms of both diplomatic form and vocabulary, in comparison with other eleventh-century writs. But since there is no other surviving writ of summons from this period, the uniqueness of the writ cannot in itself count either in favour of or against its authenticity. He concedes that it is much simpler than the thirteenth-century writs of summons with which he compares it, but suggests that this may be because the forger lacked precise information. A more straightforward explanation would be that it is simpler because it is more primitive, representing the earliest stage in a new diplomatic form. If it is a forgery, then Bates — as he himself concedes — gives no entirely convincing answer to the question *cui bono*? For these reasons, I am inclined to support his alternative, traditional assessment: that it is a unique survival. I should like to thank David Bates for generously supplying me with print outs of this and a large number of other documents.

³⁰ J. C. Holt, 'The introduction of knight service in England', *ANS*, 6 (1984), 89–106.

³¹ *Historia Novorum*, pp. 196–7; further, R. A. L. Smith, 'The place of Gundulf in the Anglo-Norman Church', *EHR*, 58 (1943), 257–72 at 261–2; F. Barlow, *The English Church: 1066–1154* (London, 1979), p. 47.

³² *The Domesday Monachorum of Christ Church Canterbury*, ed. D. C. Douglas (London, 1944), pp. 70, 105, 106–7; J. H. Round, *Feudal England: Historical Studies of the XIth and XIIth Centuries* (London, 1909), p. 250.

³³ *DIV*, ed. Offler, p. 35; *English Lawsuits*, i p. 96.

³⁴ *DIV*, ed. Offler, p. 32; *English Lawsuits*, i p. 94; *DIV*, ed. Offler, pp. 27, 29, *English Lawsuits*, i pp. 91, 92, for *pecunia* and *homines*.

establish that he was justiciable as its holder only by other prelates — not lay and ecclesiastical barons sitting together in the king's court — and only in accordance with Canon Law.³⁵ He might be a *homo* and *fidelis* of the king,³⁶ of whom he held his lands,³⁷ but he was unwilling to concede that his *episcopatus* was a fief.³⁸ Ironically, Lanfranc was forced to respond that the king's concern was with William's fief, not his *episcopatus*, and that he would be tried solely with respect to the former before the undifferentiated king's court of lay and ecclesiastical tenants-in-chief.³⁹ In other words, he found himself arguing that a bishopric and the lands held by the bishop were in some sense distinct, and, by implication, that the former was not justiciable before the king's court according to secular law. Yet this was quite at odds with the system which Eadmer depicted and which William of St Calais sought to twist against the king: that *episcopatus* and *abbatia* were held by bishops and abbots of the king as a function of the *fides* they owed him, arising from the homage they had done. When the relationship between king and prelate ceased, either because of the death of the prelate or for some other reason — like Anselm's exiles⁴⁰ — the lands (and therefore the revenues) reverted to the king as lord. Although it is never suggested that stripping a bishop of his estates deposed him from his office, there was, therefore, a sacrilegious legal logic to Rufus's defiant boast, reported by Eadmer, that, after the death of Lanfranc, no-one would be archbishop of Canterbury 'except me'.⁴¹ The lands of the see had come into his hands by a process which Eadmer character-

³⁵ *DIV*, ed. Offler, pp. 31, 33, 37, 39; *English Lawsuits*, i pp. 93, 94, 97, 98. William appears to distinguish his *sedes* from his *episcopatus* — *DIV*, ed. Offler, pp. 36, 43, 45, 50; *English Lawsuits* i pp. 96, 100, 101, 104 — but it is clear from the context that by the former he means Durham itself, as the physical seat of his bishopric.

³⁶ *DIV*, ed. Offler, pp. 27, 29, 32, *English Lawsuits*, pp. 91, 92, 94.

³⁷ *DIV*, ed. Offler, p. 32, *English Lawsuits*, i p. 94.

³⁸ *DIV*, ed. Offler, pp. 39, 41; *English Lawsuits*, i pp. 98, 99.

³⁹ *DIV*, ed. Offler, pp. 35, 39, 41; *English Lawsuits*, i pp. 96, 98, 99. At one point Lanfranc inadvertently adopts William of St Calais' usage, when he promises that if the bishop dropped his threatened appeal to Rome, the king would restore to him his *episcopatus* (except the city of Durham): *DIV*, ed. Offler, p. 45; *English Lawsuits*, i p. 101. The treatment of Odo of Bayeux in 1082 which Lanfranc is said to have invoked as a precedent is misleading, perhaps deliberately so. Odo's fief in England had nothing to do with his office as bishop of Bayeux. Other treatments of the case focus on Odo's status as an earl in England, rather than on the nature of his tenure: William of Malmesbury, *De Gestis Regum*, ed. W. Stubbs (2 vols, London, 1887–9), ii 360–1; Orderic, iv 40–2; cf. Orderic, iv pp. xxvii–xxx. In the *DIV*, ed. Offler, p. 41, the two issues are blurred in Lanfranc's speech.

⁴⁰ First exile: *Historia Novorum*, pp. 88–9, repeated verbatim in *Vita Anselmi*, p. 100; *ep.* no 210. Second exile: *Historia Novorum*, p. 159; *Vita Anselmi*, p. 132: 'Rex . . . Heinricus . . . mox archiepiscopatum in dominium suum redegit, et Anselmum suis omnibus spoliavit.' (My italics.)

⁴¹ *Historia Novorum*, p. 30.

izes as usurpation;⁴² they had reverted to him. So, in a crucial sense, had the office been 'usurped' by the king. This might, even in the king's view, merit the damnation of his soul;⁴³ but it followed inexorably from the way in which the king had become the source of all tenure, both lay and ecclesiastical, at the Conquest. Hence Eadmer's invitation to his reader to infer the nature of the Conqueror's innovations in secular law from what he had to say about 'divine matters';⁴⁴ and hence his leitmotiv, adapting a classical commonplace, that 'all things, spiritual and temporal alike, waited on the nod of the king.'⁴⁵

This explains why Anselm's insistence on maintaining his previous recognition of Urban II was viewed as a breach of *fides* with the king: it meant that Anselm's links with the papacy were not strictly subject to royal sanction; that, in other words, they did not wait upon the king's nod. Rufus did not consider himself 'to be possessed of his royal dignity intact [*integrum*] so long as anyone anywhere throughout his whole land had or could be said to have anything other than through him, even if it were according to the will of God.'⁴⁶ Eadmer's strikingly tactile language shows why even something as untenurial as recognition of a pope without royal sanction was deemed to be an affront to the king's position as the lord on whom all tenures depended. The other bishops at Rockingham made the same point to Anselm: he was blaspheming against the king 'simply because in his kingdom and without his concession [Anselm] had dared to ascribe anything even to God.'⁴⁷ In post-Conquest England deference to God without royal sanction was, according to Eadmer, treated as no less an attack upon the king's possession of his dignity than the open rebellion with which William of St Calais was said to have colluded.⁴⁸ William of St Calais' subsequent request for the king's *licencia* to appeal to the papal *curia*,⁴⁹ and his attempt to make such an appeal even when permission had been refused,⁵⁰ amounted to a more nuanced, two-pronged attack on the king's position. Threatening to mount an appeal in the absence of a royal *licencia* contravened the royal control over communications between English clerics and the papacy which was one of the main

⁴² See above, n. 27.

⁴³ *Historia Novorum*, pp. 33–4.

⁴⁴ *Historia Novorum*, p. 10.

⁴⁵ *Historia Novorum*, p. 9; cf. pp. 32, 237.

⁴⁶ *Historia Novorum*, p. 60.

⁴⁷ *Vita Anselmi*, p. 86.

⁴⁸ Above, n. 9.

⁴⁹ *DIV*, ed. Offler, p. 41; *English Lawsuits*, i p. 99.

⁵⁰ *DIV*, ed. Offler, p. 45; *English Lawsuits*, i p. 101.

concerns of those of the Conqueror's innovations listed by Eadmer;⁵¹ and in any event Rufus had no more accepted one of the competing candidates for the Roman see in 1088 than he had done by 1093. Any appeal to the *curia* in 1088 would therefore have amounted to a recognition by William of St Calais of (in this case) Urban II, the very action which Eadmer said the king had characterized at Rockingham as trying to remove his crown.⁵²

For Eadmer, and just conceivably for William Rufus himself,⁵³ *corona* was therefore a shorthand term for the rights which the king possessed as a result of his unique tenurial position in post-Conquest England. It was a far more pointed metonym than the classical *nutum*. It evoked images of the ceremonies developed by the Norman kings to display with some regularity their newly won status in terms of this most distinctive item of regalia.⁵⁴ But the metonym was deeply ironic. Writing at Canterbury, Eadmer is likely to have been aware that the *laudes* sung at these crown-wearings conventionally opened with an acclamation of the pope as the pinnacle of the earthly hierarchy, followed by one of the king as *a Deo coronato*.⁵⁵ He is even more likely to have known that the traditional English prayer in the coronation *ordo* which accompanied the king's inaugural crowning opened with the words 'Coronet te deus corona glorie atque iusticie...'.⁵⁶ The

⁵¹ *Historia Novorum*, p. 10.

⁵² *Historia Novorum*, p. 54; this, of course, assumes that the *DIV* is a genuine record of proceedings in 1088. We know that William of St Calais appealed to Urban because a letter of Urban's, preserved in the *Collectio Britannica*, reprimanded Rufus and ordered the matter to be brought to judgement at the *curia*: *Epistolae Pontificum Romanorum Ineditae*, ed. S. Loewenfeld (Leipzig, 1885), no. 129.

⁵³ Above, p. 175.

⁵⁴ Above, n. 10; the impression of regularity given by *ASC* (E) s.a. 1086 (*recte* 1087) is to some extent belied by the details of the Conqueror's actual itinerary: D. Bates, 'The Conqueror's charters', in C. Hicks, ed., *England in the Eleventh Century* (Stamford, 1992), pp. 1–16 at 5–9. At Christmas 1070 he had a *corona* and other royal insignia brought to him in York: Orderic, ii 232. M. Hare, *The Two Anglo-Saxon Minsters of Gloucester* (Deerhurst Lecture, 1992), pp. 17–23, cautiously constructs an intriguing case for the introduction of ritual crown-wearing into England in the late 1050s, but there is no direct evidence.

⁵⁵ H. E. J. Cowdrey, 'The Anglo-Norman *Laudes Regiae*', *Viator*, 12 (1981), 37–78 at 70 for the *laudes* of 1068 (found in a section of BL, MS Cotton Vitellius E. XII which is to be associated with York rather than Canterbury: M. Lapidge, 'Ealdred of York and MS Cotton Vitellius E. xii', *The Yorkshire Archaeological Journal*, 55 (1983), 11–25); 72 for a late eleventh-century Canterbury text. Cowdrey argues, 65, that the absence of a pope's name from the latter makes it likely that these *laudes* were devised between 1084 and 1095, when no pope was recognized in England. His argument, 53, that the former carefully qualifies the subordination of king to pope has been questioned by J. L. Nelson, 'The rites of the Conqueror', *ANS*, 4 (1982), 117–32, 210–21 at 129.

⁵⁶ This prayer, found in Anglo-Saxon copies of the second recension of the *ordo* — for instance Cambridge, Corpus Christi College MS 44, a Canterbury pontifical of the second half of the eleventh century, printed in *Three Coronation Orders*, ed. J. Wickham Legg

Norman Anonymous explained the point with uncharacteristic conventionality (and terseness) in his commentary on the *ordo*.⁵⁷ Yet Eadmer's incorporeal *corona* was the antithesis of the physical crown worn by the king at his coronation and at crown wearings: it embraced the king's denial of due respect to the pope, and more generally his blasphemous refusal to allow anyone in his kingdom to ascribe anything to God other than by his leave. Whereas the crowning prayer presented the divinely bestowed *corona glorie atque iusticie* as the means by which, with right faith and good works, the king would eventually accede to the *corona* of the 'everlasting kingdom', according to Eadmer even William Rufus recognized that by exercising the rights encapsulated by the term *corona* he would bring upon himself everlasting damnation.⁵⁸ The crown thus defined in this world debarred the king from a crown in the next. It was a symbol of shame and injustice: the royal rights which it embodied contravened not only, in a peculiarly sacrilegious way, the papal prohibitions against clerical homage, but also, as both the *De Iniusta Vexacione* and Eadmer stress, the canonical requirement to place no bar on appeals to Rome. And the latter was not a recent papal ruling. It was laid down in Lanfranc's version of the Pseudo-Isidorian decretals, and marked for ease of reference, just in case William of St Calais' legendary memory should fail him, in the Durham copy of the collection to which the bishop referred during the hearing.⁵⁹ The injustice which took sacrilegious form when royal

(Henry Bradshaw Society, 19, 1900), p. 57 — is one of the few traditional forms preserved in the third recension: *The Pontifical of Magdalen College*, ed. H. A. Wilson (Henry Bradshaw Society, 39, 1910), p. 93. The earliest surviving pontifical (also from Canterbury) which contains the third recension of the *ordo* — Dublin, Trinity College MS 98 — has been attributed to Christ Church by Tessa Webber and dated to the very end of the eleventh century or the first years of the twelfth. The hands are, she informs me, typical of those in which the few surviving *acta* of Anselm are written; see further G. S. Garnett, 'The third recension of the English coronation *ordo*: the manuscripts', *Journal of Ecclesiastical History*, (forthcoming), esp. n. 60.

⁵⁷ *Die Texte des Normannischen Anonymus*, ed. K. Pellens (3 vols, Wiesbaden, 1966), i 159. This is his only discussion of the crown.

⁵⁸ *Historia Novorum*, pp. 33–4, discussed above, p. 180.

⁵⁹ *Decretales Pseudo-Isidoriane et Capitula Angilramni*, ed. P. Hinschius (Leipzig, 1879), 'Decreta Felicis II. papae, confirmatio', cap. xiv, p. 489; Cambridge, Trinity College MS B. 16. 44, fo. 38v, cap. xviii (Lanfranc's personal copy, as demonstrated by Z. N. Brooke, *The English Church and the Papacy from the Conquest to the Reign of King John* (Cambridge, 1931), pp. 57–83); Cambridge, Peterhouse MS 74, fo. 46v, cap. xviii (William of St Calais' personal copy, as demonstrated by Philpott, '*De Iniusta Vexacione*', pp. 131–2. The marginal marks match the canonical citations and allusions in the *DIV*). The manuscript references for this canon are given in M. Philpott, *Archbishop Lanfranc and Canon Law*, D. Phil. thesis (Oxford, 1993), p. 123. The bishop explicitly mentions the book of Canon Law which he has before him: *DIV*, ed. Offer, p. 45, *English Lawsuits*, i p. 101. For details of other canons reserving a right of appeal to the apostolic see, see H. E. J. Cowdrey, 'The enigma of Archbishop Lanfranc', *Haskins Society Journal*, 6 (1994), 129–52 at 145 n. 79 (I am grateful

rights were asserted over clerics and the church was also inflicted on laymen, as Eadmer had hinted.⁶⁰ This was what *corona* meant, and why Eadmer considered it was created by the Conquest.

An irony — very possibly a deliberate irony — ⁶¹ which emerges from juxtaposing the *De Iniusta Vexacione* with the *Historia Novorum* is that William of St Calais, presented as the nimble-witted victim in 1088, was Anselm's chief prosecutor at Rockingham in 1095. He accused Anselm of trying to take from Rufus, contrary to his *fides*, 'what your lord and ours held of chief importance [*praecipuum*] in all his lordship [*dominatio*], and in which he certainly excelled all other kings...'⁶² — in other words, his *corona*.⁶³ So the author of *Quadripartitus* was not simply gushing sycophantically when he defined the 'unique majesty' of the king's lordship over his kingdom in similar terms.⁶⁴ He was also the author of the *Leges Henrici Primi*,⁶⁵ and therefore knew a thing or two about the king's power. But William of St Calais was probably even better qualified to comment on the uniqueness of Norman kings in England: not only had William in 1088 been in a position in many ways analogous to that in which Anselm found himself in 1095; it has also recently been shown that the 'very difficult affairs' in which William had revealed his *industria* in William the Conqueror's service⁶⁶ probably included the compilation of Domesday Book, for he has been convincingly identified as 'the man behind the Survey'.⁶⁷ Domesday Book can be used to confirm that William of St Calais, or Eadmer, was right; that the meaning of what the king held *praecipuum* in all his lordship, or his *corona*, was originally unique. As a metonym for royal powers over tenure derived from the Conquest

to John Cowdrey for supplying me with a copy of his essay in advance of publication). On William's memory, see Symeon of Durham, *Opera Omnia*, ed. T. Arnold (2 vols, London, 1882–5), i 120.

⁶⁰ *Historia Novorum*, p. 10.

⁶¹ For some striking parallels between the *DIV* and the *Historia Novorum*, see Offler, 'Tractate', 328 n. 2, 340 and n. 2.

⁶² *Historia Novorum*, pp. 60–1.

⁶³ *Historia Novorum*, pp. 53, 54, 58, discussed above, pp. 174–6.

⁶⁴ *Quadripartitus*, II, *praeatio*, 1–2, edited in Gesetze, i 542; for a translation, see R. Sharpe, 'The prefaces of *Quadripartitus*', in Garnett and Hudson, *Law and Government*, pp. 148–72 at 169.

⁶⁵ See Downer, *LHP*, pp. 12–28, and P. Wormald, '*Quadripartitus*', in *Law and Government*, pp. 111–47 at 135–9.

⁶⁶ *DIV*, ed. Offler, p. 26; *English Lawsuits*, i p. 91; cf. Florence of Worcester, *Chronicon ex Chronicis*, ed. B. Thorpe (2 vols, London, 1848–9), ii 22 for his role early in Rufus's reign: 'eiusque consiliis totius Anglie tractabatur respublica'.

⁶⁷ P. Chaplais, 'William of St Calais and the Domesday Survey', in J. C. Holt, ed., *Domesday Studies* (Woodbridge, 1987), pp. 65–77. The epithet was coined by V. H. Galbraith, *Domesday Book: Its Place in Administrative History* (Oxford, 1974), p. 50.

it will already be apparent that this incorporeal *corona* bears almost no relation to that more familiar abstraction, 'The Crown'.

It is a fundamental, and often observed, characteristic of Domesday Book that its layout demonstrates that the king is the ultimate source of all tenure. He is so because he is presented as the successor to his *antecessor*, Edward the Confessor;⁶⁸ the kingdom, the whole land, is his.⁶⁹ As Maitland put it, 'the king's land is the king's land and there is no more to be said about it.'⁷⁰ If the kingdom is his, the *terra regis* within it may be negatively defined as what William the Conqueror had not granted to his tenants-in-chief to be held of him.⁷¹ Entries describing land which the king has *in dominio*⁷² or *dominica terra regis*⁷³ may either, as in the former cases, be simply a synonym for *terra regis* thus defined, or, as in the latter case, may refer to the manorial demesne of a king's manor — that part of the manor not occupied by peasant tenants, but exploited directly by the king's agents.⁷⁴ Use of the term *in dominio* in either sense does not, therefore,

⁶⁸ Just as Domesday Book does not state explicitly that the king is the source of all tenure, so it never states explicitly that Edward is William's *antecessor*, although reference is made to Edward's *antecessores* as king: *DB*, i 137c, 142a. Both assumptions are connected, and are intrinsic to the framework of the survey. For writs referring to Edward as the Conqueror's *antecessor* or *praedecessor*, see *RRAN*, i nos. 22, 26, 53.

⁶⁹ *LHP*, 10. 1, Downer, p. 108: 'Hec sunt iura que rex Anglie solus et super omnes homines habet in terra sua . . .'; cf. *RRAN*, ii no. 531 (1101) which required the taking of an oath to Henry I 'terram meam Anglie ad tenendam & ad defendendam'; edited by W. H. Stevenson, 'An inedited charter of King Henry I, June-July 1101', *EHR*, 21 (1906), 505-9.

⁷⁰ Pollock and Maitland, i 520.

⁷¹ The boroughs require some qualification of this simple distinction, although they show no consistent pattern. Thus the city of Hereford is held by the king 'in dominio', but is outside the Herefordshire *terra regis* (*DB*, i 179a), whereas Bath is within the *terra regis* in Somerset (*DB*, i 87b): B. P. Wolffe, *The Royal Demesne in English History: The Crown Estate in the Governance of the Realm from the Conquest to 1509* (London, 1971), p. 19. It has been suggested that the information on boroughs was derived from sources other than, and probably earlier than, the survey: S. P. J. Harvey, 'Domesday Book and Anglo-Norman governance', *TRHS*, 5th ser. 25 (1975), 175-93 at 178. There are no questions about boroughs or towns in the terms of reference preserved in the *Inquisitio Eliensis: Inquisitio Comitatus Cantabrigiensis subijciuntur Eliensis*, ed. N. E. S. A. Hamilton (London, 1886), p. 97.

⁷² *DB*, i 16a, 30a-d, 38a-d, 56d-57a, etc.

⁷³ *DB*, i 57d.

⁷⁴ That Domesday uses the phrase *in dominio* or the like in these two quite different senses is established by R. S. Hoyt, *The Royal Demesne in English Constitutional History, 1066-1272* (Cornell, 1950), pp. 27-9. He shows that it was the manorial demesne which was regularly exempt from geld, like the manorial demesne of tenants-in-chief. On the generally low level of demesne agriculture in the *terra regis*, see S. P. J. Harvey, 'Domesday England', in H. E. Hallam, ed., *The Agrarian History of England and Wales*, vol. ii (1042-1350), (Cambridge, 1988), pp. 88-91.

complicate the distinction between *terra regis* and tenures dependent on the king; and it does not justify drawing distinctions between different categories of *terra regis* on anything other than a tenurial basis.

Indeed, 'the man behind the Survey' seems to have felt ill at ease with the categorisation of royal land in terms of anything other than its tenurial history. Thus the mysterious heading 'Dominicatus regis ad regnum pertinens in Devenesira' in Exon Domesday⁷⁵ was excised when the provincial draft was rearranged in the process of compiling Great Domesday. The lands included in this category in Exon are recorded as having been held by King Edward — or by a tenant 'under' him — TRE.⁷⁶ Although the main scribe of Great Domesday kept them together as a discrete section within the *terra regis*, he rearranged them⁷⁷ and labelled them differently: 'Haec XIX maneria fuerunt in dominio regis Edwardi et pertinent ad regem.'⁷⁸ In other words the scribe decided to categorise them explicitly in terms of the *antecessor*, rather than attributing them 'ad regnum'. Exon Domesday's second category of *terra regis* in Devon, grouped under the heading 'Dominicatus regis in Devenesira',⁷⁹ and comprising lands held TRE almost exclusively by members of the Godwine family, is rearranged by the Great Domesday scribe, and subdivided and labelled in terms of the individual *antecessores*. The final Exon category, 'Terra Mahillis reginae in Devenesira',⁸⁰ was also rearranged and preserved by the Great Domesday scribe, but again he felt it necessary to specify in his heading who had been the *antecessor*.⁸¹ Unlike Exon, in Great Domesday the newly labelled antecessorial categories are brought under the overall heading 'Terra regis'.⁸² Although the details differ, the general pattern is repeated in several of the other counties covered by Exon

⁷⁵ DB, iv 83a.

⁷⁶ DB, iv 83a–88a; DB, i 100b–c. The one exception is the city of Exeter, which comes under this heading in Exon, but which precedes the list of landholders and the *terra regis* in Great Domesday: DB, i 100a.

⁷⁷ For details, see the Phillimore edn: *Domesday Book*, vol. ix, *Devon*, ed. C. and F. Thorn (2 vols, Chichester, 1985), i. general notes, ch. 1. It has been shown that Great Domesday is probably the work of one main scribe and a corrector: M. Gullick and C. Thorn, 'The scribes of Great Domesday Book: a preliminary account', *Journal of the Society of Archivists*, 8 (1986), 78–80.

⁷⁸ DB, i 100c; the contraction could stand for 'pertinuerunt' rather than 'pertinent'.

⁷⁹ DB, iv 93a.

⁸⁰ DB, iv 108a.

⁸¹ DB, i 101b.

⁸² DB, i 100b.

Domesday: categories within what Great Domesday termed *terra regis* were relabelled by reference to *antecessores*.⁸³

Whatever the Exon scribes may have meant by distinguishing between *dominicatus regis ad regnum pertinens* and *dominicatus regis*,⁸⁴ it is clear that the Great Domesday scribe felt uncomfortable with such distinctions. Had he had the chance to revise that other provincial draft, covering the East Anglian shires and now known as Little Domesday, doubtless he would also have excised its few references to 'Terrae regis de regno' and the like.⁸⁵ In the same way the categorisation of royal manors as *de regione* in Little Domesday⁸⁶ or *de comitatu* in Exon⁸⁷ — which are probably equivalents, meaning lands traditionally assigned to the local earl — would be of no interest to whoever devised the final format of Great Domesday.⁸⁸ Thus the heading *mansiones de comitatu* does not survive in Great Domesday for Somerset. At these lingering traces of Anglo-Saxon distinctions between different categories of royal land⁸⁹ 'the man behind the Survey' snapped his mind

⁸³ For instance, the category labelled 'Dominicatus regis in Dorseta' in Exon — *DB*, iv 25a — is subdivided into lands which Edward had held (not distinguished by a specific heading) — *DB*, i 75a — and manors which Earl Harold had held TRE — *DB*, i 75b; for further discussion, R. W. Finn, *Domesday Studies: The Liber Exoniensis* (London, 1964), pp. 137–9. The appended list of the contents of about half the surviving sections of Exon, in a quite different order from that in which they are found in the manuscript, begins with 'Dominicatus Regis', with a half-formed letter 'S' between the two words: *DB*, iv 532a. A. R. Rumble, 'The palaeography of the Domesday manuscripts', in P. H. Sawyer ed., *Domesday Book: A Reassessment* (London, 1985), pp. 28–49 at 31, suggests that the scribe had originally intended to write 'Suus', but changed his mind and failed to delete the error.

⁸⁴ Some of the scribes who wrote entries for the *terra regis*, though not whoever wrote these two headings, are identified by T. Webber, 'Salisbury and the Exon Domesday: some observations concerning the origin of Exeter Cathedral MS 3500', *English Manuscript Studies*, 1 (1989), 1–18 at 12–13.

⁸⁵ *DB*, ii 289b, 119b.

⁸⁶ *DB*, ii 144a, 281b, 408b; cf. *DB*, i 298b.

⁸⁷ *DB*, iv 106b.

⁸⁸ Hoyt, *Royal Demesne*, p. 17. As V. H. Galbraith points out in his review of Hoyt, *EHR*, 67 (1952), 259–63 at 262 n. 1, Round's argument, *Feudal England*, p. 140, to the effect that *regio* in Little Domesday is a scribal blunder for *regno* may be rejected because each of five entries seems to be in the hand of a different scribe, and because in two of the entries (281b, 408b) the manor of Thorney is referred to consistently as *de regione*. For a breakdown of hands in Little Domesday, see A. R. Rumble, 'The Domesday manuscripts: scribes and scriptoria', in *Domesday Studies*, pp. 79–99 at 98–9. He appears to differ from Galbraith about the number of scribes involved in these entries, identifying three, but he agrees that the two Thorney entries are in different hands. Maitland, *Domesday Book and Beyond*, p. 167 n. 2, did not pursue his suggestion that *regio* meant kingship, as opposed to kingdom (*regnum*).

⁸⁹ A detailed examination of Alfred's will and Anglo-Saxon charters would begin to shade in the different ways in which an Anglo-Saxon king might exploit his estates, and demonstrate that reference to 'royal demesne' in the Anglo-Saxon period is a crude oversimplification. But such a study must be deferred until another occasion. In any case the present argument seeks to establish that the subtleties of Anglo-Saxon royal tenure are almost entirely irrelevant to 'The Crown'.

sharply shut. They were irrelevant to his purpose. Indeed, the form in which he attempted to establish continuity with the Anglo-Saxon past rendered such distinctions meaningless. That form, intrinsic to the framework of the survey, was the *antecessor*.

There may turn out to be some truth in Maitland's carefully hedged hunch that, in the Anglo-Saxon period, it would be on the death of a king that the necessity would first arise of drawing some distinction between what belonged to the king as king and 'what belonged to him — if we may use so modern a phrase — in his private capacity'.⁹⁰ But from the vantage point of 1086 such a view with regard to the death of Edward the Confessor would be erroneous in a twofold sense. First, there was no indication that such a distinction had been drawn on or after the 'day on which King Edward was alive and dead'.⁹¹ Far from Edward's estates being divided, they must have undergone massive accretion as lands Harold already held — many of them comital manors — were added to them; there is no indication that Edgar aetheling had been given, either by Edward or Harold, any of the estates which had been used for the maintenance of aethelings in the tenth century.⁹² Second, the lands which Harold, members of his family, and many other tenants had held prior to Edward's death were consolidated into Domesday's *terra regis*. There is no indication that these manors constituted a category or categories of *terra regis* in which the Conqueror enjoyed rights different from those he had in the lands the Confessor had held, simply *because* someone other than the king was recorded as having held them TRE. For instance, as Hoyt established, there is no strict congruence between (partial or total) geld exemption for certain royal manors and the manors Edward had held, although a majority of exempt royal lands are recorded as having been Edward's.⁹³ In Great Domesday even the grouping of royal estates

⁹⁰ *Domesday Book and Beyond*, p. 253.

⁹¹ For the formula, see V. H. Galbraith, *The Making of Domesday Book* (Oxford, 1961), p. 109; Galbraith, *Domesday Book in Administrative History*, p. 69. The fact that lands are recorded as having been held by Queen Edith TRE means that she was thought to have held them in some way distinct from her husband *prior* to his death.

⁹² S no. 937 (990–1006, probably 999). In view of its chronological framework, Domesday Book cannot prove that Edgar aetheling held no land under Harold. But it does show that he had held none by the time of Edward's death, and it seems unlikely that Harold remedied the omission. For Edgar's two manors in 1086, one of which was held of him, see *DB*, i 142a. There is no indication that either had ever been a royal estate of any description.

⁹³ Hoyt, *Royal Domesne*, pp. 18–21, esp. 19–20 nn. 30–32. Hoyt concedes, pp. 21–3, that the manors which Domesday records as owing the special payment of 'the farm of one [or more, or a fraction thereof] night[s] or days' come closest to justifying a theory of 'ancient demesne'. But there are examples of manors of this type which were no longer in King William's hands in 1086: Eastbourne, Beddingham (*DB*, i 20c); Beeding (*DB*, i 28a), etc. Conversely, where this custom applied to manors within the *terra regis* in 1086, they are not invariably said to

in terms of *antecessores* is scarcely found outside the south-western counties.⁹⁴ The king may have enjoyed different customs in his different estates, but the effect of the Conquest was to homogenize them all within the one overarching category.

The reason is simple. Although many different TRE tenants were identified for individual manors within the *terra regis* in 1086, and the king therefore appeared to have many *antecessores*, in fact the notion of the *antecessor* was modelled on the king's claim to be the legitimate, direct successor of Edward the Confessor.⁹⁵ In a crucial sense the king's own claim to the kingdom provided the template for determining the rights of every Domesday tenant. But each Domesday tenant succeeded his Edwardian *antecessor(es)* by force, either direct or mediated, of a royal grant or grants: this is rarely articulated, yet is implicit in the layout of Domesday Book. Indeed, the very concept of the *antecessor* — the person who was established to have held the land on the day of Edward the Confessor's death⁹⁶ — read back into the Anglo-Saxon past a strict tenurial dependency which was quite foreign to it. For there is no hint in Anglo-Saxon history that legitimate rights to land were to be defined by reference to the legitimate tenure of the throne, or that all land was held immediately or mediately of the king. So in their attempt to establish continuity with the Anglo-

have been held by King Edward: Brightlingsea (*DB*, ii 6a) is recorded as having been Harold's TRE, as are Writtle (*DB*, ii 5b), Lawford (*DB*, ii 6a) and Newport (*DB*, ii 7a); moreover, Great Baddow, which had been Earl Ælfgar's TRE, was held by St-Etienne, Caen in 1086 (*DB*, ii 21b). Because no *terra regis* in Essex is recorded as having been held by Edward, Round suggested, *VCH, Essex*, i 336, that manors were attributed to Harold which he had acquired only on becoming king. But this assumes that the explicit statements to the contrary are simply wrong; and it also ignores the parallel example of Great Baddow, held by Harold's successor as earl of East Anglia (Harold having ceased to be earl in 1053). Perhaps confusion arose because the nature of Harold's (and Ælfgar's) tenure of these manors puzzled the commissioners; as Round points out, one hide at Writtle held in 1086 by the bishop of Hereford is entered twice: in the *terra regis* as having been 'in feudo regis' TRE (*DB*, i 5b), and in the *terra episcopi Herefordensis* as having been 'feudo haroldi' (*DB*, i 26a). For the complexities and regional variations of the system as it applied to many — but by no means all — of Edward the Confessor's Domesday manors, see P. A. Stafford, 'The "Farm of One Night" and the organization of King Edward's estates in Domesday', *Economic History Review*, 2nd ser. 33 (1980), 491–502; for more general discussion, R. V. Lennard, *Rural England: 1066–1135* (Oxford, 1959), pp. 128–30. Hoyt demonstrates that there is no correlation between liability to render such a farm and geld exemption.

⁹⁴ Finn, *Liber Exoniensis*, p. 138.

⁹⁵ G. S. Garnett, 'Coronation and propaganda: some implications of the Norman claim to the throne of England in 1066', *TRHS*, 5th ser. 36 (1986), 91–116 at 105–7.

⁹⁶ This precision is not recognized by R. Fleming, *Kings and Lords in Conquest England* (Cambridge, 1991), p. 110 n. 8, in her only attempt to define the term. What 'held' meant in any specific context was often open to dispute and misunderstanding. With overlapping Anglo-Saxon rights of tenure, commendation, and soke it is a wonder that Domesday does not record more unresolved *clamores* and *invasiones*.

Saxon past, the Domesday commissioners unwittingly showed how all continuity had been severed. And the fact that *antecessores* other than King Edward are identified for King William in many of the manors subsumed within the *terra regis* does not derogate from Edward's role as William's *antecessor* in the whole kingdom; each of those lesser *antecessores* was such, by definition, in relation to Edward. The difference between the king and other Domesday tenants lay in the fact that William had not succeeded to these *antecessores* by royal grant; on the contrary, it was because he had not granted out these manors that someone else had not become *successor*. Many manors which had been King Edward's were held of the king by 1086. Thus does Domesday underline the nature of the distinction between the *terra regis* and the rest of the kingdom, and the king's role as the source of all tenure. Drawing a distinction in the Anglo-Saxon period between what belonged to the king as king and what belonged to him 'in his private capacity' left Maitland feeling uncomfortably anachronistic; Domesday Book shows that the effect of the Conquest was to render it nonsensical, indeed inconceivable. If William of St Calais was 'the man behind the Survey', he knew this better than anyone.

Domesday Book therefore corroborates much of Eadmer's analysis of post-Conquest kingship, and illustrates one of the few features of the new system which Eadmer did not perceive: that the rights of every tenant were defined by terms of reference modelled on the king's own. If, unlike 'the man behind the Survey', he failed to see this, he did appreciate its crucial corollary: that the king, as the source of all tenure, differed from other tenants in the sense that he was the only lord who was not a tenant; he was the only lord whose *dominium* was not in turn part of his own lord's subinfeudated land, for he had no lord. It was this unarticulated distinction between the *dominus rex* — a neologism where England was concerned, adopted by Eadmer⁹⁷ — and

⁹⁷ *Historia Novorum*, pp. 35, 48, 54, 55, 56, 57, 58, 66, 70, etc.; *Vita Anselmi*, p. 130. The term is more appropriately used by someone for whom the king was *dominus*, rather than by the king of himself: RRAN, i no. 101 (= Bates, *Regesta*, no. 71), a writ of Odo of Bayeux (1070–82/3); Bates, *Regesta*, no. 74, a writ of Odo of Bayeux (1070–82/3); RRAN, i no. 173 (= Bates, *Regesta*, no. 282), a grant by Herbert, son of Geoffrey, to the abbey of Troarn, confirmed by the king (1079–82); Bates, *Regesta*, no. 246, a grant to St-Ouen of Rouen by Ingelrann fitz Ilbert, confirmed by the king (1080); RRAN, i no. 192 (= Bates, *Regesta*, no. 101), grant of St Pancras, Lewes to Cluny by William de Warenne and his wife, attested by the king (1078–80/1); etc, etc. It is noticeable that all these *acta* are either recording grants to Norman donees, or (as in the case of RRAN, i. no. 192) are written in the style of a continental diploma, or are issued by Odo of Bayeux. *Dominus dux/comes/princeps* was

every other *dominus* that Eadmer attempted to encapsulate in his definition of *corona* or royal dignity. While Domesday shows why the king's position as lord was necessarily anomalous,⁹⁸ it also reveals why it was so difficult to conceive of the rights arising from this position in terms of an abstraction. For what Domesday Book describes is a society consisting in personal — and therefore in this context tenurial — bonds between individuals. As I have tried to show, the king was the nexus of all those bonds and his right to succeed Edward the Confessor provided the template for what might be termed that society's legal framework. It is very difficult indeed to make the mental leap from viewing the king's rights as inseparable from his person, to characterizing them as in some sense distinct from him — hence Great Domesday's redefinition of Exon Domesday's *dominicatus regis ad regnum pertinens* as belonging *ad regem*.⁹⁹ Paradoxically, Eadmer was forced into doing so by the king's anomalous position as lord. He was doomed to failure, but the reasons for his failure are illuminating.

In the *De Iniusta Vexacione* William of St Calais is shown to have been adept at wielding the canon law of *exceptio spoli*, whereby a cleric — usually a bishop — had to be in control of, or, if already dispossessed, restored to his church and its appurtenances before he could be tried. Indeed it could be said that the whole hearing turns on this issue.¹⁰⁰ Time and again he confounds the king's advisers — including Lanfranc, who was no mean lawyer himself — by demanding the restoration of his lands, money, and vassals,¹⁰¹ otherwise termed his *episcopatus*¹⁰² or *episcopium*,¹⁰³ of which he had been 'disseised

a term in Norman diplomatic before 1066: Fauroux, *Recueil*, nos. 107 (1046–7 or 1048); 135 (1037–55); 167 (1035–66); 169 (1035–66); 191 (1050–66); 211 (1055–66); 223 (1063–6); 225 (1063–6). It usually appears in documents recording grants by others which the duke confirms. The term is not found in genuine Anglo-Saxon royal charters. I am grateful to David Bates for help with this note.

⁹⁸ This is a major theme of my *Royal Succession in England: 1066–1154*, Ph.D. thesis (Cambridge, 1987), ch. 2.

⁹⁹ See above, pp. 185–6.

¹⁰⁰ Offler, 'Tractate', 332–3; Philpott, 'De Iniusta Vexacione', pp. 131–2, 134; Philpott, *Archbishop Lanfranc and Canon Law*, pp. 169–71; Cowdrey, 'Enigma', 143–5, 148–51.

¹⁰¹ *DIV*, ed. Offler, pp. 27, 29; *English Lawsuits*, i pp. 9, 92. Interestingly, the term 'investiture' is used as a synonym for restoring or reseatting the bishop with his *episcopatus*: *DIV*, ed. Offler, pp. 37, 38, 39; *English Lawsuits*, i pp. 97, 98. It is clearly not being used in its technical, canonical sense, which is surprising in a work which shows such sensitivity to Canon Law. Given that the distinction between clerical homage and lay investiture was clarified by the settlement of the investiture contest in England, this usage is another indication that the *DIV* is early in date.

¹⁰² *DIV*, ed. Offler, pp. 35, 36, 37, 38, 39; *English Lawsuits*, i pp. 96, 97, 98; for the equation, see above, p. 178.

¹⁰³ *DIV*, ed. Offler, p. 40; *English Lawsuits*, i p. 99.

unjustly'¹⁰⁴ and 'without judgement'.¹⁰⁵ Canons affirming this rule are marked for ease of reference in the manuscript of Lanfranc's version of the Pseudo-Isidorian decretals which William of St Calais almost certainly used at the hearing.¹⁰⁶ At Rockingham the poacher of 1088 found it very easy to turn gamekeeper: Eadmer reports that he told Anselm that he, Anselm, would have to restore to the king the *debita imperii sui dignitas* of which he had deprived Rufus¹⁰⁷ — what Eadmer elsewhere terms his *corona*¹⁰⁸ — before the adjournment in proceedings which Anselm sought could be granted. Eadmer thought William of St Calais had twisted the concept of *exceptio spoli* and applied it to the king, with the accused archbishop in the role of despoiler. Whereas the *res litigiosa* in 1088 had been William's *episcopatus*, that in 1095 was Rufus's *corona* or *dignitas*. What for Eadmer had been an incorporeal metonym for the king's rights derived from the Conquest, had begun to shade into an abstraction which was in some sense distinguishable from the king, for it could be taken away from him (not unlike a bishop's *episcopatus*). It might therefore be concluded that Eadmer's *corona* or 'royal dignity' was an adaptation of a canonical concept, developed on the basis of an analogy between the position of a bishop and that of a king. Drawing this analogy would be facilitated by the fact that the original model for the Domesday *antecessor* was the canonical *antecessor* — a previous holder of ecclesiastical office — and that Lanfranc, working from his Pseudo-Isidorian collection, is probably the author of the concept.¹⁰⁹ But such a conclusion would be erroneous, or at least it would demonstrate a revealing double-think on Eadmer's part.

For there was a sophisticated body of Canon Law relating to clerical office which could not, by definition, be applied to the king in post-Conquest England. He held no office, with rights and duties defined and delimited by a body of written — or any other form of — law. A successful claimant was not appointed to the equivalent of an *episcopatus* or *abbatia*. *Regnum* was not analogous to them, for in this period it lacked their particular ambiguity; while it had meanings other than the territorial entity — for instance, in regnal dates — it did not signify

¹⁰⁴ *DIV*, ed. Offler, p. 27; *English Lawsuits*, i p. 91.

¹⁰⁵ *DIV*, ed. Offler, p. 35; *English Lawsuits*, i p. 96.

¹⁰⁶ Above, p. 182. Philpott, *Archbishop Lanfranc and Canon Law*, p. 163; '*De Iniusta Vexacione*', p. 131, identifies Peterhouse MS 74, fo. 45v, ch. viii (Hinschius, p. 486, ch. ix); fo. 46, ch. xviii (Hinschius, p. 489, ch. xiv) as marked in this way. For other passages, see Cowdrey, 'Enigma', 144 n. 76.

¹⁰⁷ *Historia Novorum*, p. 60.

¹⁰⁸ *Historia Novorum*, pp. 53, 54, 58.

¹⁰⁹ Garnett, 'Coronation and propaganda', 106–9.

an office. The claimant became king when he was anointed as such and received his crown. As Maitland might put it, there was no more to be said. This inapplicability of Canon Law models may be demonstrated in two ways, from the records of royal government rather than canonical compilations.

First, a grant to a church was made sometimes to God and the saint to whom the church was dedicated, sometimes to the saint alone, sometimes to the church, sometimes to the abbot and monks or bishop and canons or other cleric(s), and to any combination of these.¹¹⁰ A gift made to God and a saint, or to the saint alone, was by definition made to an undying recipient. Maitland detected a tendency for the saint gradually to retire 'behind his churches; the church rather than the saint is thought of as the holder of the lands and chattels.'¹¹¹ In the process the saint's immortal personality rubbed off on the church: it became the undying subject of the tenurial rights which had been conferred upon it, or, in Maitland's rather Germanic phrase, 'an ideal, juristic person.' Little Domesday in particular is packed with entries recording the landed endowments of parish churches.¹¹² They might be located in manors held by tenants, and in some instances the priest is recorded as holding the church of the tenant of the manor,¹¹³ but the lands were appurtenances specifically of the churches. They were said to 'lie in the church', however far they might be physically from the building.¹¹⁴ Indeed, it was an exception deserving of special note when a church did not have lands attached to it.¹¹⁵ The interchangeability between church and saint is illustrated by those cases in which churches other than parish ones are recorded as dependent tenants holding manors, but Domesday's rubrics attribute tenancy to the saint,¹¹⁶ and vice versa.¹¹⁷ The land might be described as that of the saint, but the church held it of the king; or the land was the church's, held by the saint.¹¹⁸ In the cases of abbeys, bishoprics and some secular min-

¹¹⁰ Pollock and Maitland, i 243-4, 499-501; F. W. Maitland, 'Franklmoign in the twelfth and thirteenth centuries', *Collected Papers*, ii 205-22 at 210.

¹¹¹ Pollock and Maitland, i 500.

¹¹² To take a few random examples from Suffolk: *DB*, ii 281b (Thorney, Bramford); 282a (Blythburgh); 298b (Framsden); 303a (Ousden); 304a (Edwardstone); 330b (Kelsale); 331a (Denham).

¹¹³ *DB*, i 60b.

¹¹⁴ For example, *DB*, i 91c, 210d, both cited by Pollock and Maitland, i 499 n. 4.

¹¹⁵ *DB*, ii 286b (Cornard); 355a (Worlington); 382a (Undley), and the other examples cited by Lennard, *Rural England*, p. 306 n. 4.

¹¹⁶ *DB*, i 165d (St Mary's, Evesham); 166a (St Mary's, Abingdon; St Mary's, Pershore).

¹¹⁷ *DB*, i 165b (Lands of church of Bath; Lands of church of Glastonbury; Lands of church of Malmesbury).

¹¹⁸ *DB*, i 104b; 165b, both examples cited by Pollock and Maitland, i 500-1.

sters the sempiternal nature of the church did not arise simply from its personification in a saint: it was a corporational structure, defined in Canon Law. A church of this type remained the same even though the abbot and monks, or bishop and monks or canons, changed. There was, therefore, an articulated specificity about how the continuous life of such a church manifested itself, unlike the unalloyed mysticism of the parish church's saint. The Normans were already used to making perpetual grants to such churches by the time of the Conquest, long before the development of a fully-fledged formula of perpetual alms.¹¹⁹ A grant in perpetuity could only be made to a perpetual recipient.

Traces of legal precision in the corporate structure of such churches have been left in Domesday Book, where the lands of a bishop or abbot are sometimes distinguished from those of the canons or monks.¹²⁰ The division of revenues occasionally manifests itself in recorded tenurial distinctions: the canons of Chichester are said to hold sixteen hides 'communiter' within the land of the bishop of Chichester.¹²¹ The canons of St Paul's appear to be treated as a (collective) tenant-in-chief, distinct from the bishop of London; and the lands they held are some-

¹¹⁹ For the significance of grants *in perpetua hereditate* and *in perpetuam hereditatem* to churches in Normandy before 1066, see J. C. Holt, 'Feudal society and the family in early medieval England. II. Notions of patrimony', *TRHS*, 5th ser. 33 (1983), 193–220 at 199–204; for examples, see Fauroux, *Recueil*, nos. 43 (1015–26), 71 (1034), 83 (1030–5), 84 (1030–5), 93 (1035–c. 1040), 101 (1043), 123 (1051), 201 (1051–66), 202 (1051–66), 233 (1066). On alms and alms tenure in Normandy, see J. Yver, 'Une boutade de Guillaume le Conquérant. Note sur le genèse de la tenure en aumône', *Etudes d'histoire du droit canonique dédiées à Gabriel Le Bras* (2 vols, Paris, 1965), i 783–96; E. Z. Tabuteau, *Transfers of Property in Eleventh-Century Norman Law* (Chapel Hill, N.C., 1988), pp. 36–41. On the reasons for the replacement of the language of inheritance, which was becoming lay, with that of alms, see J. G. H. Hudson, *Land, Law, and Lordship in Anglo-Norman England* (Oxford, 1994), pp. 90–1.

¹²⁰ In Kent the lands of the church of Canterbury are divided into three sections: 'Terra Archiepiscopi Cantuariensis' (*DB*, i 3a–4a); 'Terra Militum Ejus' (4b–c); 'Terra Monachorum Archiepiscopi' (4d–5b). But each entry for the manors in the third section begins 'Ipse Archiepiscopus tenuit . . .', showing that manors which were in some respect specifically devoted to the maintenance of the monks were still formally held by the archbishop of the king. (Sandwich is the one apparent exception to this, being said to belong 'ad dominium monachorum' (5b); but it is also entered in the first section where it is said to be for 'the clothing of the monks' (3a); cf. *Domesday Monachorum*, p. 89). The division of revenues is shown to be pre-Conquest by B. W. Kissan, 'Lanfranc's alleged division of lands between archbishop and community', *EHR*, 54 (1939), 285–93. There is a parallel in the nine manors devoted to the sustenance of the monks of Sherborne, one of which is said to be held by the monks, and the other eight by the bishop of Salisbury, within whose land they are all listed: *DB*, i 77a–b. For a manor which had been part of the 'dominica firma monachorum' within the land of [the abbey of] St Peter, Cerne Abbas, *DB*, i 78a; for several examples within the manors listed under the rubric 'Terra Abbatie de Elyg', *DB*, i. 191b. For further Domesday and other evidence, see Hudson, *Land, Law, and Lordship*, p. 235; M. Howell, 'Abbatial vacancies and the divided mensa in medieval England', *Journal of Ecclesiastical History*, 33 (1982), 173–92 at 173–7.

¹²¹ *DB*, i 17a.

times said to have been given to St Paul or to 'lie in St Paul's church'.¹²² Most of the lands of the church of Hereford, including those held variously by the bishop, the canons, the nuns, and some constituent churches, are detailed under the sub-rubric: 'Hae terrae subter scriptae pertinent ad canonicos de Hereford'.¹²³ But as even these exceptional examples indicate, in the case of episcopal and abbatial churches Domesday Book tended to identify a cleric or clerics of the church as tenant just where the church's corporate status was easiest to define, and where, therefore, one might more readily conceive of the church, rather than its cleric (or clerics), as the holder of its land and chattels.

This is only a tendency, with many exceptions where the *ecclesia* or saint is recorded as holding.¹²⁴ But the point may be highlighted by the infrequency of two other terms. On those few occasions where *episcopatus* appears in Domesday as a subject of tenurial rights, it is usually mentioned in passing, in the middle of the entry.¹²⁵ A rubric of the type 'Terra Episcopi Tedfordensis ad episcopatum pertinens TRE', found in the provincial draft which is Little Domesday,¹²⁶ is even rarer than one attributing the king's lands 'ad regnum' or 'ad regionem'.¹²⁷ Appearances of *abbatia* in anything like this sense are almost non-existent.¹²⁸ The reason for Domesday's tendency in the cases of bishoprics and abbeys to attribute tenurial rights to the clerics, rather than to the church, is that the bishops and many abbots held directly of the king. To attribute tenure in these cases to the church, or *episcopatus*, or *abbatia*, or even to the saint, was to cut against the grain of Domesday Book. Such a church's status as an abstract subject of tenurial rights fitted ill with the precarious tenurial dependence of

¹²² DB, i 34a, 136b, 211a; ii 12b; *Early Charters of the Cathedral Church of St Paul, London*, ed. M. Gibbs (Camden Third Series, 58, 1939), pp. xviii n. 2, xxii-xxiii; cf. DB, i 127b-128b, 'Terra Episcopi Lundoniensis', which rubric includes manors held collectively by the canons, and by individual canons holding of the canons as a collectivity.

¹²³ DB, i 181c.

¹²⁴ See the entry for the bishopric of Worcester in the Gloucestershire survey, where 'Æcclesia de Wirecestre' and 'Sancta Maria de Wirecestre' are recorded as holding, but note that subtenants hold of the bishop, not of the church or saint: DB, i 164b-165a; cf. DB, i 103c-d for the 'Æcclesia de Tavestoch' holding, but the tenants holding of the abbot. Both examples cited by Pollock and Maitland, i 501.

¹²⁵ For instance, DB, i 43a, 58b, 77a, 89b, 127b; ii 117b, 194a, 195a.

¹²⁶ DB, ii 191a.

¹²⁷ Above, pp. 185-6.

¹²⁸ DB, i 78b, 104a (both entries recording that a manor is *caput abbatiae*, and therefore only questionably using the term in this sense), 252a, 252c; ii 218b (*sedes abbatiae*, also questionable), 381b (for the *abbatia* being in the king's hand). In *Domesday Book*, ix, *Devon*, ii ch. 5.2, the editors point out that the contraction in one of the entries for Tavistock Abbey (cf. above, n. 109) may mean that the abbey, rather than the abbot, holds the manor of Milton. The fact that the contraction *abb* may stand for either does not affect my point, because its appearance in Domesday is rare.

its bishop or abbot on what Eadmer termed the king's nod. It was precisely in the case of tenancy-in-chief that the structuring of post-Conquest society on the basis of personal — and therefore in this context tenurial — bonds between individuals was most evident. Indeed, it was the unresolved tension between the king's rights as lord within this structure and the existence of episcopal and abbatial churches as corporate entities which gave rise to Eadmer's incorporeal *corona*.

As Eadmer appreciated, this tension was most evident when the *dominus rex* resumed immediate lordship over an ecclesiastical barony, usually on the death of the ecclesiastical baron. But the escheat of a bishopric or abbey did not mean that it ceased to exist. The lands and chattels were administered on the king's behalf as a discrete entity, sometimes (but by no means always) by a member of the cathedral chapter or monk of the house: thus on William of St Calais' death a certain 'G. Dunelmensis' was charged with this task by Rufus.¹²⁹ Not only did the *episcopatus* or *abbatia* remain in being in its material aspect, although in the king's hand, it did so in its spiritual aspect too. The church did not cease to function because its lands had reverted; indeed revenues accruing from its spiritual functions would form an element in the receipts which the king, or those to whom he had sold his rights, now enjoyed. In some cases the amount of material support allowed by royal agents to the chapter or monks from the escheated lands became a cause of resentment,¹³⁰ but, whatever the amount, the king thereby recognized the continuing life of the church during a vacancy.¹³¹ The existence of a church of this type as an abstract entity, and the discrete nature of its endowment in terms of lands, chattels, and men, was therefore acknowledged at the very point at which the royal lordship, decried by Eadmer as tyranny,¹³² was at its most intense.

¹²⁹ T. A. M. Bishop and P. Chaplais, eds, *Facsimiles of English Royal Writs to A.D. 1100 presented to V. H. Galbraith* (Oxford, 1957), pl. x (1096-7); 'G.' has been plausibly identified with the monk Geoffrey, who seems to have been the bishop's administrative deputy: Offer, *DIV*, pp. 81-2. But custodians were by no means always members of the chapter or monks of the house: for examples of royal officials performing the role, see M. Howell, *Regalian Right in Medieval England* (London, 1962), p. 7. Rufus auctioned the custody of Canterbury to the highest bidder: Eadmer, *Historia Novorum*, pp. 26-7.

¹³⁰ The evidence is surveyed by Howell, *Regalian Right*, pp. 14-17.

¹³¹ Bury St Edmunds, where royal custodians during an abbatial vacancy later had no claims over lands specifically assigned to the monks, seems to have been unique: see *Feudal Documents from the Abbey of Bury St Edmunds*, ed. D. C. Douglas (London, 1932), no. 35; Jocelin of Brakelond, *Cronica de Rebus Gestis Samsonis Abbatis Monasterii Sancti Edmundi*, ed. and trans. H. E. Butler (Edinburgh, 1949), pp. 8, 72-3, 81; discussed by Howell, 'Abbatial vacancies', 177-8.

¹³² *Historia Novorum*, p. 61.

Where the dividing line lay between the spiritual functions of the church and the king's lordship was by no means clear; but the continuing existence of the church made it necessary to draw a dividing line somewhere.

The example of ecclesiastical vacancy leads me to the second way in which governmental records show that the canonical definitions at the back of Eadmer's mind were inapplicable to the case of the king. Henry I's first undertaking in his coronation charter was to 'make the church of God free', in the sense that he would not sell it or put it out to farm 'nec, mortuo arhiepiscopo sive episcopo sive abbate, aliquid accipiam de dominio aeclesiae vel de hominibus eius donec successor in eam ingrediatur'.¹³³ In other words the draftsman of the charter recognized that the church had and continued to have *dominium* while it was in the king's hand following the death of the bishop or abbot. The church, not the dead bishop or abbot, also continued to have vassals, for the possessive adjective 'eius' can only refer to it; the king is, temporarily, their direct lord, but they remain the church's. The church, the undying subject of rights, is what the *successor* will enter into when the king accepts his homage, thereby seising him.

In this crucial respect the charter shows that escheat during an ecclesiastical vacancy differed from escheat on the death of a lay tenant-in-chief. For in the latter case the land was attributed to no abstract entity, but rather to the 'heir'. Henry undertook that an heir 'shall not redeem *his* land as he did in the time of my brother, but shall relieve it by a just and lawful relief.' 'Likewise' the vassals of his barons 'shall relieve *their* lands from *their* lords'.¹³⁴ A daughter left as 'heir' shall be given in marriage 'cum terra *sua*', only with the counsel of Henry's barons.¹³⁵ In each case the land is described as the 'heir's' prior to his (or her husband's) being seised with it. The draftsman thereby demonstrated both the extent to which the Normans were accustomed to heirs inheriting, and the fact that post-Conquest dependency sliced through such Norman conventions, for the heir's land could not be held by the heir (or the heir's husband) until the lord had decided to accede to the heir's claim, and had seised him (or her husband) with it. Henry's promise that the widow or the most suitable relative should be *custos* of the land and children of a dead tenant-in-

¹³³ *Cap. 1.1*; *Gesetze*, i 521-3: '... nor, on the death of an archbishop or bishop or abbot, will I take anything from the demesne of a church or from its men until a successor has entered into it.' I am grateful to Martin Brett for allowing me to use the typescript of his edition, which supersedes Liebermann's; his edition of this clause is in *Councils & Synods*, I, ii 652-5.

¹³⁴ *Cap. 2, 2.1*.

¹³⁵ *Cap. 3.2*; on which see Holt, 'Notions of patrimony', 218.

chief, and his order to his barons to treat the sons and daughters or the wives of their vassals 'likewise', may well have been another concession to those conventions, effectively recognizing in advance the claim(s) of the infant(s), and renouncing lordly control of land and heir.¹³⁶ But these clauses show that in the case of a (lay) heir there was nothing to correspond to the undying church into which a (clerical) successor entered. As Domesday Book also reveals, in the case of the church it was impossible to maintain a purely personal interpretation of lordship and tenure.

The charter reveals that, conceptually speaking, the king fell closer to the lay side of this divide. I have tried to show elsewhere that there is a partial analogy between the charter's precise delineation of the three day period of interregnum following Rufus's death and prior to Henry's coronation, and its treatment of escheat during an ecclesiastical vacancy.¹³⁷ But the analogy is only partial, in two linked respects. First, by definition the kingdom could not escheat to any lord, as the churches previously held by clerical tenants-in-chief did to the king (or, indeed, as the lands held by a lay baron did). There was, therefore, no way in which the draftsman could conceive of how the fines, pleas, and debts which had been owed to Rufus had not lapsed with his death, but had somehow bridged the gap and started to be due to Henry at his coronation. Nevertheless, this is how he presents them.¹³⁸ Second, the charter's opening clause demonstrates that in the king's case there could be nothing analogous to a church, or saint, or cathedral chapter, or convent of monks. It states: 'Sciatis me Dei misericordia et communi consilio baronum regni Angliae eiusdem regni regem coronatum esse.' (Note, by the way, the stress on crowning, echoed elsewhere in the charter, rather than anointing.¹³⁹) The charter is full of references to Henry's *barones* and *homines*.¹⁴⁰ They are assumed to be *his* from the point at which he became king, before most of them could have done homage to him. It seems that homage, like fines, pleas, and debts, was understood to have been somehow carried over the interregnum. But the draftsman of the charter clearly did not feel that the barons, who, like a conventional honorial court, are presented as offering their 'common counsel' that Henry should be crowned, could be described as Henry's, for he was not yet king. Since a baron was a tenant-in-

¹³⁶ *Cap.* 4.1, 2; for this interpretation, see S. F. C. Milsom, 'The origin of prerogative wardship', in Garnett and Hudson, *Law and Government*, pp. 223-44 at 234-7.

¹³⁷ Garnett, 'Coronation and propaganda', 114-15. As should be clear from the above, I now think my use of the term royal office anachronistic.

¹³⁸ *Caps.* 9, 6.

¹³⁹ *Cap.* 1; for coronation, see also *cap.* 9.

¹⁴⁰ Address clause; *caps.* 2, 3, 4, 7, 8, 10; for the Conqueror's barons, *cap.* 13.

chief, a status which depended on a personal relationship with a king, they could not be described as Rufus's either, for Rufus was dead. Hence the nonsensical neologism *barones regni Angliae*. It was a nonsense because homage could only be owed to a person, not to an abstraction. If the draftsman had in mind a parallel with his attribution of vassals (*homines*) to churches during a vacancy, he was anxious to drop it at the earliest possible juncture. As soon as Henry has been crowned he started to term the barons 'mine'. The kingdom could not have barons in the same way that a church had vassals or *dominium*, because it was not a well-defined abstract entity. As a figment to stop a gap,¹⁴¹ the draftsman's *regnum* left a lot to be desired. It could not act as a bearer of rights previously exercised by Rufus, in the interim before Henry acceded to it and began to exercise them anew.

Moreover, the seemingly closer parallel with lay escheat turns out to be largely illusory. There was, for instance, no parallel between Henry and a lay heir attempting to recover land described as 'his' from a lord who (in the case of an aspiring subtenant, but apparently not in that of an aspiring tenant-in-chief) might also be described as 'his'. This was because the king was the only lord who was not a tenant, holding of a lord. Seigneurial conventions of escheat therefore could not fit the case of an interregnum: it remained an inexplicable void, when the king's rights were in temporary abeyance, and when the king's peace had ceased to exist.¹⁴² The king was the necessary contradiction of the terms of the system which depended upon him.

Henry I's coronation charter, like Domesday Book, therefore shows why Eadmer's *corona* was not evidence of some precocious notion of the king's two bodies — that 'marvellous . . . display of metaphysical — or we might say metaphysiological — nonsense'.¹⁴³ Indeed, insofar as Eadmer's notion is an abstract one, the main focus of his book demonstrates that he would have seen his *corona* as the virtual antithesis of the undying royal dignity, which is what is usually understood by the term 'Crown'. His account of William of St Calais' invocation of *exceptio spoli* at the council of Rockingham may have led him to explore the partial analogy with ecclesiastical office, much like the draftsman of Henry I's coronation charter. If so, he had far too sharp a legal mind, and had thought too deeply about the position of bishops and abbots following the Conquest, to conclude that the analogy was a perfect one. For he realized that Norman kingship in England was, of necessity, more anomalous than analogous, and this is what he

¹⁴¹ 'Corporation sole', 242.

¹⁴² *Caps.* 12, 14, discussed by Garnett, 'Coronation and propaganda', 114–15.

¹⁴³ 'Crown as corporation', 249.

attempted to encapsulate in his *corona*. As William of Malmesbury — no indulgent critic — wrote, 'He expounds it all so clearly that in some sense it seems to happen before our very eyes.'¹⁴⁴ Towards the end of his essay on the corporation sole Maitland uttered one of his lapidary epigrams: 'English law has liked its persons to be real.'¹⁴⁵ Writing long before the emergence of the Common Law which Maitland was considering, Eadmer, who was no mean aphorist himself, could only have nodded in wry agreement.

In its origins, therefore, a fitting description for this incorporeal, post-Conquest *corona* might be 'juristic abortion', which was one of Maitland's two suggested characterizations of the (much later) corporations sole of Crown and parson (his alternative — 'a natural man' — is clearly inapplicable in this case).¹⁴⁶ But despite this unpromising first appearance, during the first half of the twelfth century *corona* emerged as part of the official language of royal government, rather than a term of reproach from its critics. The chronological coincidence between the emergence of these two usages appears to be just that: I have been unable to establish any link between them, and, as should become clear, the quite different official sense of the term makes the existence of any such link highly unlikely. The fragile nature of the early evidence for the official *corona* will support no more than a few suggestions about the reasons for its apparently independent emergence.

The first instances I have identified date from early in the reign of Henry I. In the writ he issued in June-July 1101 to strengthen support for himself in the face of his brother's invasion, he referred, in a straightforwardly physical way, to his first reception of a *corona*.¹⁴⁷ But two other writs issued at much the same time use the word quite differently. The king ordered that the soke of eight and a half hundreds should continue to be fully attached to the 'monastery' of Bury St Edmund's 'forever (*omnibus diebus*) with all liberties and dignities and penalties (*forisfacturae*) belonging to the king's crown (*ad coronam regis pertinentibus*). This soke had been given to 'St Edmund' by Edward the Confessor 'in alms (*in elemosinam*) in all things as fully as he himself held it in his hand and confirmed by his charter, which I

¹⁴⁴ *Gesta Pontificum*, p. 74.

¹⁴⁵ 'Corporation sole', 242.

¹⁴⁶ 'Corporation sole', 243; cf. 'Crown as corporation', 251.

¹⁴⁷ *RRAN*, ii no. 531, printed by Stevenson, 'Inedited charter', 506.

have seen.¹⁴⁸ The phrase does not appear in earlier royal confirmations to the abbey, or in Edward's original grant.¹⁴⁹ It seems to be a synonym for the 'regales consuetudines' of Abbot Baldwin's *Feudal Book*.¹⁵⁰ The second example is also a grant of jurisdictional rights, to 'God and the church of St Martin of Battle'. Anyone seeking to implead one of the abbot's men had to do so in the abbot's court: this privilege is characterized as *regia dignitas*, and the abbot, or any of the monks who happened to preside in the court, was to do 'full justice with royal dignity'. If the suit could not there be brought to a conclusion, it was at the abbot's summons to be transferred to the king's court, so that 'salvo jure et dignitate signi regiae coronae, id est ecclesiae sancti Martini de Bello' it might be finally settled in the presence of the abbot.¹⁵¹ Provided this document is the original it seems to be, this phrase, coined in a royal charter, looks like the source of the usage which may be traced through the Battle forgeries and the *Battle Chronicle*: the abbey is 'signum corone regie Anglie', a symbol of what the Conqueror had won on the battlefield where he founded it.¹⁵² It is equated with 'that which gave me my crown'.¹⁵³

These two usages of *corona* appear to be different. In the case of Bury St Edmunds, the soke rights which were confirmed were defined in terms of the 'liberties, dignities and penalties (*forisfacturae*)' belonging to the 'king's crown'; in the case of Battle, the abbey's jurisdictional rights were defined in terms of 'royal dignity', but this 'right and

¹⁴⁸ *RRAN*, ii no. 644, edited by Douglas, *Feudal Documents*, no. 21 (Sept. 1102–Easter 1103); for Edward the Confessor's grant, see F. E. Harmer, *Anglo-Saxon Writs* (Manchester, 1952), no. 9, and for the circumstances, pp. 145–8.

¹⁴⁹ Douglas, *Feudal Documents*, nos. 3 (1066–70), 4 (1066–70), 6 (1066–87, probably early in the reign), 12 (probably 1087), 15 (1087–1100), 16 (1087–98), 18 (1087–1100), 19 (1093–1100).

¹⁵⁰ *Feudal Documents*, p. 9; also civ–clvi.

¹⁵¹ *RRAN*, ii no. 529 (1101, c. June 24); discussed by E. Searle, *Lordship and Community: Battle Abbey and its Banlieu 1066–1538* (Toronto, 1974), p. 212. N. Hurnard, 'The Anglo-Norman franchises', *EHR*, 64 (1949), 289–327, 433–60 at 436 argues that no forger would have invented a provision for dealing with the incompetence of the abbot's court to settle a case.

¹⁵² *RRAN*, i no. 113, a charter attributed to William I, which David Bates, *Regesta*, no. 17, argues was forged in the late twelfth or early thirteenth century; see also no. 262, also attributed to William I, discussed in following note; *The Chronicle of Battle Abbey*, ed. and trans. E. Searle (Oxford, 1980), pp. 108, 160, 170, 178, 182 ('signum triumphi').

¹⁵³ *RRAN*, i no. 262: 'sicut illa que mihi coronam tribuit, et per quam viget decus nostri regiminis'. This charter survives in two versions; the first was shown by E. Searle, 'Battle Abbey and exemption: the forged charters', *EHR*, 83 (1968), 449–80 at 458–9, to have been forged between Henry II's first hearing, in Lent 1155, of the dispute between the abbot of Battle and the bishop of Chichester, and 28 May 1157, when it was presented to the king at Colchester. Bates, *Regesta*, no. 23, further narrows the date to 1156–7. It is notable that the forged charter of William I which Searle, 'Battle Abbey and exemption', 454–5, argues was produced before the king in 1155 does not contain this particular phrase: *RRAN*, i no. 62 (= Bates, *Regesta*, no. 22).

dignity' was what the king conferred on the abbey as 'the emblem of the royal crown'. For Bury, the crown was an abstract subject of rights; for Battle, it is not clear that the crown, although abstract, was a subject of rights at all. Battle's exceptional status, arising from the Conqueror's motives in founding it, is reflected in its unique characterization as the symbol of an abstraction. But the charters of Henry I provide several parallels with the confirmation to Bury.

Thus between 1107 and 1111 Henry granted 'in perpetuum' to God, St Benedict and Aldwin, abbot of Ramsey, sake and soke, tol and team, infangenetheof, forestal, blodwite, murdrum, treasure trove, 'and all other liberties belonging to my crown (*libertates coronae meae pertinentes*) in the land they hold within one league (*leugata*) around the church of St Benedict, and all other pleas belonging to my crown (*placita coronae meae pertinentia*) as I myself hold best and most fully in my kingdom.'¹⁵⁴ So although the use of *corona* with respect to Battle appears different, there are obvious similarities between the liberties — characterized as 'royal dignity' — conferred upon it, and the liberties belonging to the king's crown which were confirmed on Bury and conferred on Ramsey. It seems that the abstraction of *corona* was in some way originally connected with the grant by the king of special jurisdictional liberties or immunities to churches. Why did it begin to be conceived of as an abstract subject of rights in this context?

Paradoxically, the charters later forged in favour of Westminster and Battle, largely for the benefit of royal and papal audiences, explain the meaning of the term with an elaborated precision not found in the terse formulae of genuine royal documents. Kings had donated physical crowns to churches prior to the Conquest.¹⁵⁵ William the Conqueror and Queen Mathilda bequeathed crowns to their respective pre-Conquest penitential foundations in Normandy. In contrast, the king's penitential foundation in England symbolized the immaterial crown; it

¹⁵⁴ RRAN, ii no. 999; cf. nos. 1134 (1107–16), 1301 (1121, after August 5; there is some doubt about its authenticity), 1325 (1122, May 17–20).

¹⁵⁵ In a charter of dubious authenticity in favour of Christ Church, Canterbury — S 959 (1023) — Cnut is said to have laid his crown on the altar when he gave Sandwich; two centuries later Gervase of Canterbury, ii 56, states that the crown was given together with Sandwich. According to Henry of Huntingdon, *Historia Anglorum*, p. 189, after his celebrated experience of the incoming tide Cnut refused ever again to wear a crown, and placed his on a crucifix. For these and other examples, including a possible gift to the church of Winchester by Cnut, and a gift to the college at Waltham by a noblewoman, see M. K. Lawson, *Cnut. The Danes in England in the Early Eleventh Century* (London, 1993), pp. 134–7.

did not receive a material one.¹⁵⁶ The case of Westminster exemplifies the transition between these two usages: we can, as it were, watch the physical crown begin to dematerialize.

For Westminster allegedly possessed Edward the Confessor's crown and other regalia. If Prior Osbert of Clare, writing in or not long after 1138, is to be believed, a crown, ring, and sceptre had been found when Edward's tomb was opened in 1102.¹⁵⁷ If so, they were not initially treated by everyone at the abbey with the reverence which Osbert thought they deserved: the abbot and some of the monks seem still to have been ready to sell off Edward's regalia in 1138.¹⁵⁸ It was at this time that Osbert probably set about forging the charters which, amongst other things, justified the abbey's claim to be the repository of the regalia.¹⁵⁹ The key document in this regard is the so-called third charter of Edward, which recites a spurious bull of Pope Nicholas II to this effect.¹⁶⁰ But, like the other Anglo-Saxon charter forged by Osbert to justify Westminster's role as the *locus consecrationis* or *sedes regia* of the kingdom, it makes no specific mention of a crown.¹⁶¹ The term does appear in the so-called first charter of the Conqueror, also the work of Osbert.¹⁶² This records that Edward the Confessor had left

¹⁵⁶ L. Musset, ed., *Les Actes de Guillaume le Conquérant et de la reine Mathilde pour les abbayes caennaises*, (Mémoires de la société des antiquaires de Normandie, 37, Caen, 1967), no. 24 (1096–8) (= *RRAN*, i no. 397), a notice recalling the Conqueror's gift, on his deathbed, to St-Etienne of a crown used at crown-wearings together with other items of regalia, some of which are said to belong to the crown. They were all redeemed by William Rufus in return for the gift of a manor. Cf. *RRAN*, ii nos. 601 (1101–2), 1575 (1129). Musset, *Abbayes caennaises*, no. 16 (probably 1083) (= Bates, *Regesta*, no. 63), a notice of Mathilda's gift to La-Trinité.

¹⁵⁷ M. Bloch, 'La vie de S. Edouard le Confesseur par Osbert de Clare', *Analecta Bollandiana*, 41 (1923), 5–131 at 121. Osbert was almost certainly not an eye witness: *The Life of King Edward Who Rests at Westminster*, ed. and trans. F. Barlow, 2nd edn. (Oxford, 1992), p. 151.

¹⁵⁸ What purports to be a letter of Pope Innocent II rebuking the abbot and convent of Westminster: *Papsturkunden*, i no. 24. B. F. Harvey, 'Abbot Gervase de Blois and the feefarms of Westminster Abbey', *BIHR*, 40 (1967), 127–42 at 128–9, shows that the letter is likely to have been the work of Osbert.

¹⁵⁹ P. Chaplais, 'The original charters of Herbert and Gervase, abbots of Westminster (1121–1157)', in P. M. Barnes and C. F. Slade, eds, *A Medieval Miscellany for Doris Mary Stenton*, (PRS, ns 36, 1962), pp. 89–110.

¹⁶⁰ S 1041 (1065, December 28).

¹⁶¹ Both phrases are found in the so-called first charter of King Edgar, discussed by Chaplais, 'Original charters', p. 94: S 774 (969). The phrase *sedes regia* is found also in the third charter of the Confessor, and in a letter sent by King Stephen to Innocent II and drafted by Osbert: *The Letters of Osbert of Clare, Prior of Westminster*, ed. E. W. Williamson (Oxford, 1929), no. 17.

¹⁶² *RRAN*, i no. 11 (1067) (= Bates, *Regesta*, no. 290); cf. the so-called *Telligraphus regis Willelmi primi videlicet Conquestoris*, *RRAN*, i no. 251 (= Bates, *Regesta*, no. 323), in the early sections of which there are extensive verbal parallels with William's 'first' charter. But note that the *Telligraphus* includes no reference to *corona*. The documents diverge when the

a crown and other (unspecified) regalia to Westminster, that William had there been solemnly crowned with the *corona regni* in the year of his victory, and refers twice to the regular thrice-yearly crown-wearings which took place there (and at Winchester and Gloucester). William had, allegedly, granted Battersea, with its berewick of Wandsworth, to the abbey, in order to redeem 'the crown of the aforementioned king and the other royal insignia'. There is no reason to believe that this had been the king's motive when he had given the manor,¹⁶³ but the practice is attested elsewhere in the notices recording grants and confirmations of lands in England by William Rufus and Henry I to St-Etienne, Caen in order to 'redeem' the crown which the Conqueror had bequeathed to it (which is also said to have been used at crown-wearings).¹⁶⁴ The practice was not, therefore, simply a pious invention on Osbert's part; and thus far *corona* in his forgeries seems to be conventionally physical.

That its physicality may begin to be qualified in this charter is indicated by the record of the king's confirmation 'ob reverentiam et coronae meae dignitatem' to the churches of Westminster, Winchester and Gloucester of certain customs 'which the wise men attest they had of old' — in other words, in the time of King Edward.¹⁶⁵ The Conqueror is presented as doing so in recognition of the *dignity* of his crown (formerly Edward's), which he wore at the regular, formal crown-wearings staged in these churches. Indeed, it might be argued that Osbert considered this was implicitly true of the other grants to Westminster catalogued in this quasi *pancarte*:¹⁶⁶ all of them sprang from the fact — elaborated in the preamble — that William had received the *corona regni*, along with royal anointing, in the abbey; and Battersea was explicitly said to have been given to redeem this crown. A crown the dignity of which the king recognized in making a grant to the church

'first' charter goes on to detail grants made to Westminster by the citizens of London, and the *Telligraphus* describes grants made by the barons. Chaplais, 'Original charters', pp. 92–5, shows that Osbert is the author of the 'first' charter. Westminster is there described as 'prima sedes regalis'. Cf. also the so-called 'third' charter, also the work of Osbert: *RRAN*, i no. 90 (= Bates, *Regesta*, no. 305).

¹⁶³ *RRAN*, i no. 45 (1066–7); *DB*, i 32b records that it was given to St Peter 'in exchange for Windsor'.

¹⁶⁴ Musset, *Abbayes caennaises*, no. 24, *RRAN*, ii nos. 601, 1575; there is no indication that Mathilda's crown was ever redeemed from La-Trinité.

¹⁶⁵ Various liberties are confirmed to the abbey as they were 'tempore regis Eaduuardi'; and other customs 'as I was informed by the English nobles and the wise men'.

¹⁶⁶ David Bates, *Regesta*, no. 290, compares this charter with a Norman *pancarte*, but points out that it is different in two respects: it purports to have been issued on a single occasion, which *pancartes* do not, and its witness list is a complete fabrication, rather than being adapted from a genuine document of the Conqueror's reign.

from which he had redeemed it, and where he regularly wore it, was on the way to becoming something more than a physical object; it was already the subject of a dignity. The gap is not great between this and the characterization of the abbey itself as *corona regni*, the description in Pope Innocent II's supposed mandate of 1133, addressed to Henry I, which exempted the abbey from the authority of the diocesan, made it a 'special daughter' of the Roman church, and committed it to the protection of the king and his successors.

This has hitherto been accepted as genuine by most authorities,¹⁶⁷ but is almost certainly a heavily interpolated version of a genuine document.¹⁶⁸ As Barbara Harvey has explained to me, it is highly unlikely that in this period a pope — even one in Innocent II's weak position — would have labelled a church thus in correspondence with a king. Moreover the neat attempt to explain away the bishop of London's celebration of masses in the abbey as having no bearing on the abbey's claim to immunity from episcopal jurisdiction looks suspiciously like the work of the monks, rather than of a pope.¹⁶⁹ Given the link between custody of the regalia and immunity established in Osbert's forged bull of Paschal II,¹⁷⁰ and his probable forging of the letter of Innocent II (on the basis of a simpler, genuine document entrusted to him in Rome in 1139) which uses the same phrase about the regalia,¹⁷¹ Innocent's supposed mandate clearly fits into a Westminster tradition, inaugurated by Osbert. The reference to 'regum antiquorum privilegia', the clause of exemption from episcopal jurisdiction, and the clause enjoining Henry I to take the abbey under his special protection, all occur in more general terms in the forged bull of Nicholas II, which is certainly Osbert's work.¹⁷² However, there is no evidence that Osbert ever referred to Westminster as *corona regni*,¹⁷³ and Pierre Chaplais thinks it likely that Innocent's mandate was not interpolated

¹⁶⁷ *Papsturkunden*, i no. 17; cf. E. Mason and J. Bray, eds, *Westminster Abbey Charters 1066-c. 1214* (London Record Society, 25, 1988), no. 155. It is described as 'dubious' by Searle, 'Battle Abbey and exemption', 458.

¹⁶⁸ Pierre Chaplais points out to me that the mention of the monk Godfrey would be an odd insertion in a complete fabrication.

¹⁶⁹ Personal letter; Pierre Chaplais has kindly told me that he concurs.

¹⁷⁰ *Papsturkunden*, i no. 9; on which see Chaplais, 'Original charters', p. 92.

¹⁷¹ Above, n. 158.

¹⁷² Pierre Chaplais, personal letter.

¹⁷³ There is nothing of this sort in his *Life of Edward the Confessor*. In *Letters of Osbert*, no. 17, p. 86, he refers to the 'ornaments' with which Edward had endowed the abbey, and describes it as 'regia sedes mea et specialis sanctae Romanae ecclesiae filia'. This characterization of the abbey's relationship with the Roman church is, of course, found in Innocent's forged mandate.

until much later in the twelfth century.¹⁷⁴ Whether it was Osbert's own work or a later development of his work is not very important in the present regard: what is important is that there was some sort of association between the abbey's characterization as *corona regni* and claims to immunity from the authority of the diocesan.

This association becomes clearer in the case of Battle Abbey, where there was no question of the presence of a physical crown to act as a spur to abstraction. The description of the abbey as *signum corone regie Anglie*, first coined in an apparently original charter of Henry I,¹⁷⁵ is amplified in the Battle forgeries. Thus in the forged charter of William the Conqueror presented to Henry II at Colchester at Pentecost 1157, William is made to ordain that the church 'together with the *leuga* surrounding it, should be as free from all domination and oppression of bishops as that which gave me my crown, and through which the splendour of our rule is strengthened (*sicut illa quae mihi coronam tribuit, et per quam viget decus nostri regiminis*).'¹⁷⁶ It has been suggested that the equation here is with Westminster.¹⁷⁷ The likelihood that this was what was in the forger's mind is strengthened by the fact that the surviving fragments of a seal have been identified with the forged so-called first seal of the Conqueror, used on Westminster forgeries, including Osbert of Clare's first charter of William.¹⁷⁸ The dispute which this charter was forged to settle was over Battle's claim to immunity from the jurisdiction of the bishop of Chichester.¹⁷⁹ But why, at Westminster and Battle, were claims to immunity from the jurisdiction of the diocesan somehow encapsulated in a description of the church either as an item of regalia or as a symbol of that item?

The Battle forgeries point the way to an answer. In what purports to be the foundation charter, which Searle has shown was read out to

¹⁷⁴ Personal letter. He regards the fact that the mandate is not quoted in the forged charters of Stephen and Henry II — *RRAN*, iii nos. 928–9; J. C. Holt and R. Mortimer, eds, *Acta of Henry II and Richard I* (List & Index Society, special ser. 21, 1986), no. H 294 — as an indication that it was concocted late in the twelfth century.

¹⁷⁵ *RRAN*, ii no. 529; see above, n. 151.

¹⁷⁶ *RRAN*, i no. 262 (= Bates, *Regesta*, no. 23).

¹⁷⁷ D. Knowles, 'Essays in monastic history, IV. The growth of exemption', *Downside Review*, ns 31 (1932), 201–31, 396–436 at 222 n. 1. Searle, 'Battle Abbey and exemption', 458 n. 3 asserts that the phrase refers to Battle, and that it is 'merely borrowed from Westminster'; but she thereby ignores the use of 'sicut', and the fact that the phrase is found in no document in favour of Westminster.

¹⁷⁸ Bishop and Chaplais, *Facsimiles*, pp. xxi–xxii; Bates, *Regesta*, nos. 23, 290. The original of the interpolated version of this Battle charter, now lost, still survived in the seventeenth century, when Selden drew the seal: Eadmer, *Historiae Novorum sive Sui Saeculi, Libri VI*, ed. J. Selden (London, 1623), p. 166. Bates comments that this also shows some similarity with the forged seal used at Westminster, although the correspondence is by no means exact.

¹⁷⁹ Searle, 'Battle Abbey and exemption', 458–9 and *passim*.

Henry II for confirmation in Lent 1155, having probably been forged after Stephen's death, William the Conqueror is made to endow the abbey in a single act with what appears to be an accurate list of its possessions as recorded in Domesday Book.¹⁸⁰ Amongst other things, he gives the abbey the *regale manerium* of Wye together 'with all its appendages *ex mea dominica corona*, with all liberties and royal customs, as freely and quit as I held it most freely and quit, or as a king is able to give', followed by a long list of exemptions. Together with its own hundred, Wye had, according to Domesday Book, 'sake and soke and all penalties which justly belonged to the king from twenty-two hundreds.'¹⁸¹ This is merely an addition to the king's concession of 'the dignity of royal authority', meaning that the abbey has its own court and 'royal liberty and custom' to deal with its affairs and to do justice — in other words, what Henry I had granted in 1101.¹⁸² In exercising this dignity it was to be 'free and quit in perpetuity from all subjection to bishops or domination by other persons'; moreover its *leuga*, within which the church was to enjoy liberties similar to those granted with Wye, was to be 'free from all custom of earthly service and all exactions by bishops.' Holes became apparent in this charter when it was challenged in the royal court at Lent 1155.¹⁸³ As we have seen, the charter forged to plug them not only equated Battle, in terms of its immunity from diocesan jurisdiction, with 'that which gave me my crown', it also warned that anyone acting against the liberties and dignities of the church would commit a *forisfactura regiae coronae*.¹⁸⁴ It equated the abbey's freedom from subjection with that of a king's *dominica capella*; in other words, what the forged foundation charter asserted about the grant of Wye was in this sense true of all the lands and jurisdictional rights with which the abbey was endowed.¹⁸⁵ Battle

¹⁸⁰ RRAN, i no. 62 (= Bates, *Regesta*, no. 22); Searle, 'Battle Abbey and exemption', 454–5; for the uproar in the king's court occasioned by the reading out of the charter, see *Battle Chronicle*, p. 158. For the abbey's endowment as recorded in Domesday Book: DB, i 11d, 17d, 34a, 59d–60a, 157a; ii 20b.

¹⁸¹ DB, i 11d; cf. *Battle Chronicle*, pp. 76–8.

¹⁸² RRAN, ii no. 529, discussed above, p. 200.

¹⁸³ Searle, 'Battle Abbey and exemption', 454–5; *Battle Chronicle*, p. 158.

¹⁸⁴ RRAN, i no. 262 (= Bates, *Regesta*, no. 23).

¹⁸⁵ J. H. Denton, *English Royal Free Chapels, 1100–1300. A Constitutional Study* (Manchester, 1970), pp. 82–5, argues that Battle was not a 'royal demesne chapel'. One of his reasons for doing so is that it was 'apparently not founded on royal demesne', by which he can only mean that the site of the abbey was recorded in Domesday Book as having been held by someone other than the king TRE: DB, i 17d. But this interpretation misses the point repeatedly emphasized in the *Battle Chronicle*, pp. 36, 148: that the Conqueror gave to God the field on which he had won the battle, as freely as he had won it. Whether or not Edward had held the lands was irrelevant. Denton, pp. 41–4, attributes considerable significance to the case of the 'royal free chapel' of Wolverhampton. In what purports to be a confirmation

was a symbol of the crown not only because it was founded on the spot where William had won his crown, but also because by royal grant it enjoyed throughout its lands liberties so absolute that they could only be defined in terms of the king's own rights. Exemption from episcopal jurisdiction was an important liberty; but it was only one aspect of a much more widely drawn immunity. Such is the refrain of the *Battle Chronicle*, much of which is based on these and other forgeries.¹⁸⁶ This explains the references to the 'dignity of royal authority' and 'royal custom', and the similar concessions of exemption from *regia consuetudo* or 'omnes leges et consuetudines que ad me pertinent' in Osbert's 'first' charter of the Conqueror in favour of Westminster Abbey.¹⁸⁷ But it would not explain the fact that what has been granted is occasionally attributed to the *corona*, rather than to the king. And this usage is not an invention of the Battle forgeries; as we have seen, it is warranted by genuine royal documents from early in Henry I's reign. So why did it arise?

The early examples of Bury St Edmunds and Ramsey show that, except in the unique case of Battle, originally it was royal liberties and *placita* — jurisdictional immunities and rights conceded exclusively by the king — which were conceived of as attributes of the crown.¹⁸⁸ The usage seems sometimes to have been extended to land because lands were also part of the king's *dominium*. That the crown should have been selected as the subject of royal judicial rights may perhaps be explained in the same way as Eadmer's ironic usage: it was the symbol of royal justice in the coronation *ordo*.¹⁸⁹ But that does not in itself explain why the subject came to be an abstraction distinct from the king. In the *Leges Henrici Primi*, composed c. 1114–18, the *dominica placita regis* are precisely that¹⁹⁰ — the pleas reserved to the king everywhere, 'whether it be on the king's *terra dominica* and soke, or someone else's'.¹⁹¹ The list of '*iura* which the king of England has alone

by Robert of Limesey, bishop of Coventry, of the gift of the church of Wolverhampton to the monks of Worcester, Wolverhampton is characterized thus: 'una erat antiquitus de propriis regis capellis que ad coronam spectabant.' It has been dated to 1102–13: *The Cartulary of Worcester Priory (Register I)*, ed. R. R. Darlington (PRS, ns 38, 1968), no. 265. If this were genuine it would be by far the earliest description of a 'royal chapel' in these terms. However Pierre Chaplais has kindly advised me that in his view it is a later forgery.

¹⁸⁶ Searle, 'Battle Abbey and exemption', 449, 454–5, 458–9; *Battle Chronicle*, pp. 8–9.

¹⁸⁷ *RRAN*, i no. 11 (= Bates, *Regesta*, no. 290).

¹⁸⁸ Above, pp. 199–201.

¹⁸⁹ Above, p. 182.

¹⁹⁰ *LHP*, 10.4; cf. 7.3, 52, 60.3, Downer, pp. 108; 100, 168, 192; and Henry I's 'Decree on county and hundred courts', 2.1, where the king's pleas are described as 'mea dominica necessaria': *Gesetze*, i 524.

¹⁹¹ *LHP*, 19.1, Downer, p. 122.

and over all men in his land, reserved through a proper ordering of peace and security'¹⁹² includes many of the pleas which were specially conceded on occasion to recipients like Bury St Edmunds, or Ramsey, or Battle. But nowhere in the *Leges Henrici Primi* are they termed *placita coronae*, perhaps because the compiler's sources were for the most part Anglo-Saxon law codes, in which this early twelfth-century neologism is not found.¹⁹³ Conversely the author of the *Leis Willelme* (1090–1135) departs from his source, Cnut's second code, to label certain pleas as belonging 'a la curune le rei'.¹⁹⁴ The term appears in Henry's surviving pipe roll, which records a render for keeping 'placita que corone regis pertinent',¹⁹⁵ and he conceded that the citizens of London should keep and plead 'placita corone mee'.¹⁹⁶ Although both these instances from the end of the reign relate to lay recipients, it is striking that the term is first used to define what is being granted to churches, and in this lies the key to the invention of an abstract subject for the king's rights, distinct from the king himself.

At an earlier stage of the argument I tried to show that the undying quality of a church fitted uneasily into the personal, dependent system of tenure created in England after the Conquest, and that this incongruity was, of necessity, most striking in the case of bishoprics and abbeys. Bishops and abbots died, but their churches did not. Bishops and abbots, as tenants-in-chief, held lands of the king, but although the lands reverted to the king on their deaths, the lands continued, even while in the king's hands, to be the lands of the churches.¹⁹⁷ Gifts of land were made to churches in perpetuity long before the formula of tenure in 'free, pure and perpetual alms' became fixed in the twelfth century.¹⁹⁸ It was the perpetual nature of the endowment which secured spiritual benefits for the donor.¹⁹⁹ Such gifts were possible for two reasons: because the donees — that is to say, the churches, not individual clerics — were perpetual; and because donors could somehow assert more than a life-interest in the land given. In the latter respect

¹⁹² *LHP*, 10.1, Downer, p. 108.

¹⁹³ I am indebted to John Hudson for this suggestion.

¹⁹⁴ *Leis Willelme*, 2a, in *Gesetze*, i 492; cf. I Cnut 2.3; II Cnut 12, 14.

¹⁹⁵ *PR 31 Henry I*, p. 91.

¹⁹⁶ C. N. L. Brooke, G. Keir, and S. Reynolds, 'Henry I's charter for the city of London', *Journal of the Society of Archivists*, 4 (1973), 558–78 at 575. They cast some doubt on the charter's authenticity, but even their most sceptical assessment would only push it forward into Stephen's reign. A powerful case for its being genuine after all — a possibility conceded by the editors — is put by C. W. Hollister, 'London's first charter of liberties: is it genuine?', *Journal of Medieval History*, 6 (1980), 289–306.

¹⁹⁷ Above, pp. 195–6.

¹⁹⁸ B. J. Thompson, 'Free alms tenure in the twelfth century', *ANS*, 16 (1994), 221–43 at 235–7.

¹⁹⁹ Thompson, 'Free alms tenure', 229.

it has been suggested that in early Normandy it was the growth of such gifts in perpetuity which strengthened the hereditary right of the donor.²⁰⁰ In the first forty years after the Conquest no one other than the king appears to have held by hereditary right;²⁰¹ but there is no evidence for there being a logical nexus between his assertion of this right and his granting lands and rights to churches in perpetuity.²⁰² Indeed, the king's rights over ecclesiastical tenants-in-chief appeared to slice through the perpetual implications of the endowments of episcopal and abbatial churches. The implicit contradiction was at its sharpest in a case like Battle, founded by the Conqueror in compliance with the injunction of Ermenfrid of Sion's penitential ordinance that any member of the invading army with sufficient resources should 'redeem [his sin] with perpetual alms, either by founding or enlarging a church'.²⁰³ Yet even perpetually-endowed Battle escheated to the king when its abbot died, however benevolently the royal custodians administered their charge.²⁰⁴ In post-Conquest England this tension was irresolvable. Two pieces of evidence may suffice to illustrate this point. Henry I's foundation of Reading Abbey, which was almost certainly endowed with jurisdictional rights 'inasmuch as they belonged to the *regia potestas*',²⁰⁵ enjoyed the special privilege of custody by the prior and monks during an abbatial vacancy.²⁰⁶ And *Glanvill* later stated that the baronies of ecclesiastical tenants-in-chief were 'of the alms of the lord king'.²⁰⁷

It was, I suggest, because the king granted jurisdictional rights in perpetuity to certain churches that draftsmen began in the early twelfth century to attribute them to a subject other than the king. It was the perpetual nature of the gift to a perpetual donee which made draftsmen grope for something other than the mortal donor to which the rights being granted might be attributed. It is striking that all the early writs in which the term *corona* is used in this sense, with the unique exception

²⁰⁰ Holt, 'Notions of patrimony', 199-204.

²⁰¹ Holt, 'Notions of patrimony', 214-16.

²⁰² *RRAN*, i nos. 101 (1070-82/3), 246, (1066-87), 274 (1080-7), 283 (1070-87), *Feudal Documents*, no. 9 (1066-87), for some instances of the Conqueror making grants to churches in perpetuity. I am grateful to John Hudson for supplying me with many of these examples.

²⁰³ *Councils & Synods*, I, ii 583.

²⁰⁴ For the vacancy of 1102-7, see *Battle Chronicle*, pp. 108-18.

²⁰⁵ *Reading Cartularies*, i nos. 1, 2, 18, 20, 21, and pp. 18, 20-1. Although many of these charters are regarded by the editor as interpolated or spurious in their present form, the consistency of terminology is striking. It looks as if Reading's *regia potestas* was a synonym for *corona*.

²⁰⁶ *Reading Cartularies*, i nos. 1, 18, 20, and p. 18.

²⁰⁷ *Glanvill*, vii 1, Hall, p. 74.

of Battle, record grants which are explicitly said to be perpetual; and in the case of Battle it seems very likely that the gift was intended to be permanent. It is as if the *corona* is in this sense a reflection of the undying church. It is also striking that, with the possible exception of Henry I's charter to Battle Abbey, the first instances look to be in beneficiary-drafted documents. If so, the surviving pipe roll and the charter to the Londoners show that the royal administration was quick to pick up the usage.

Instances under Henry I are few, and the example of Reading indicates that the terminology probably took some time to become formalized. Under Stephen the usage continued in much the same vein. When confirming the gift made to the 'church of St John the Baptist at Colchester and the monks there serving God', Stephen added that the church and monks should hold this land free and quit 'of all secular exaction and service, and especially quit of danegeld and pleas and customs belonging to my crown.'²⁰⁸ Sometimes 'customs pertaining to the dignity of my crown' were reserved.²⁰⁹ Much the same is true of *placita coronae*, although in their case reservations are more common.²¹⁰ But the unusual circumstances of the reign also led to a new emphasis of the abstraction of the concept.

At Midsummer 1141 Mathilda, styled *regis Henrici filia et Anglorum domina*, made Geoffrey de Mandeville, amongst other things, chief justice in Essex 'hereditabiliter mea et heredum meorum de placitis et forisfactis quae pertinuerint ad coronam meam...'.²¹¹ Mathilda may have recovered a crown from the treasury in Winchester where this charter was issued,²¹² but she had not yet been crowned, nor was she

²⁰⁸ *RRAN*, iii nos. 235 (1136–52); cf. nos. 658, 659 (1140–54), both grants in perpetuity to Peterborough Abbey.

²⁰⁹ *RRAN*, iii nos. 34 (1140–52), grant to Barking Abbey 'salvis meis regalibus consuetudinibus que ad coronam meam pertinent'; 846 (1147–8), to 'the soldier-brothers of the Temple'.

²¹⁰ *RRAN*, iii nos. 3 (1139–54), warranty that the abbot of Abingdon and his men shall plead pleas of the crown only before the king at Oxford; 36 (1139–52), granting Becontree Hundred to Barking Abbey with all the rights and liberties enjoyed by Bury St Edmunds and Ely in their respective hundreds, 'salvis tantum placitis corone mee que per justitiam meam debent placitari'; 767 (1135–45), grants in Beccles to Bury St Edmunds, the king retaining nothing except 'placita corone mee pertinentia'.

²¹¹ *RRAN*, iii no. 274 (= iv pl. xiv); J. C. Holt, review of *RRAN*, iii, iv in *Economic History Review*, 2nd ser. 24 (1971), 480–3 expresses doubts about the authenticity of this charter, but it is hardly surprising, given the circumstances in which it was issued, that the charter has unusual characteristics.

²¹² *Gesta Stephani*, ed K. R. Potter (Oxford, 1976), p. 118; Florence of Worcester, ii p. 130. The crown worn by Mathilda on her authentic seal must have been intended to represent its legend: '+ MATHILDIS DEI GRATIA ROMANORUM REGINA.' See *RRAN*, iv pl. xiii.

queen.²¹³ Yet the royal pleas she conceded to Geoffrey were labelled as belonging to her (abstract) crown. With the exception of Henry I's charter to the Londoners, this is the first charter record of such a grant to a lay recipient; it is noteworthy that it was made 'hereditarily', with Mathilda attempting to bind her heirs to recognize the gift.

When her heir arrived in England in 1153, the motives for Angevin adaptation of this usage became clearer. Between January and May 1153 — in other words, long before the deal struck with the king at Winchester in November 1153 — Duke Henry conceded and confirmed to St Augustine's, Bristol all the 'lands and revenues belonging to the crown of England, which have been given in alms or shall be given in the future to the said church of St Augustine and the aforesaid canons by me or by another.'²¹⁴ Henry as duke had given lands and revenues said to have belonged to the crown, which on this occasion was defined as that of England, rather than the duke's, perhaps because he assumed the right to confirm what had been given 'by another' (it being clear who that other, with the unmentionable name, was). In an original charter confirming the foundation of Biddlesden Abbey, which was certainly issued before April 1154, and probably c. 7 June 1153 — therefore also prior to the 'treaty' of Winchester — he gave it a long list of jurisdictional and financial exemptions, rounded off with the phrase 'and all customs belonging to my crown'.²¹⁵ A charter recording grants 'in perpetual alms' by the duke to Bermondsey Priory which cannot be dated more precisely than 1153–April 1154, describes the revenues as belonging 'ad coronam regis': Henry could dispose of these now, but undertook to confirm the gifts 'with royal authority' and to corroborate them 'with the witness of the royal seal' if and when 'with the support of God I shall accede to the kingdom of England'.²¹⁶ The explicit contrast drawn in this charter between the duke's ability to grant as duke what belonged to the 'king's crown', and his promise to confirm these grants if and when he became king, makes the point nicely. He claimed to control what belonged to the abstract crown,

²¹³ A seal once attached to the charter may have had the legend 'S. MATILDIS IMPER-ATRIX ROM' ET REGINA ANGLIAE'; for doubts about the accuracy of the seventeenth-century transcriptions, and for a full consideration of the other charters in which Mathilda uses the title *Anglorum regina*, see Holt, review of *RRAN*, iii, iv, 482; J. O. Prestwich, 'The treason of Geoffrey de Mandeville', *EHR*, 103 (1988), 283–312 at 311–12; M. M. Chibnall, 'The charters of the Empress Mathilda', in Garnett and Hudson, *Law and Government*, pp. 276–98 at 279–80.

²¹⁴ *RRAN*, iii no. 126 (Jan.–May 1153).

²¹⁵ *RRAN*, iii no. 104 (1153–Apr. 1154, probably c. 7 June 1153).

²¹⁶ *RRAN*, iii no. 90 (1153–Apr. 1154).

although he had as yet no physical crown,²¹⁷ just as he did not yet have the royal seal. For both Mathilda and Henry, claiming to be Henry I's rightful heirs, and on the whole refusing explicitly to recognize Stephen's existence prior to the 'treaty' of Winchester,²¹⁸ clutched at the abstract crown with even more urgency than at the physical one. Circumstances forced them — or rather, the draftsmen of their charters — to postulate the existence of an entity distinct from the person of the king to which royal rights might be attributed. And in the charter issued by the king summarizing the agreement reached at Winchester in November 1153, Stephen himself recognized the complete severance of the abstract crown from the physical one: for he ordained that castles belonging 'ad coronam' should be handed over to the duke on his, Stephen's, death, long before Henry would be crowned.²¹⁹

This formulation of an abstract crown as a passive subject of royal rights had a distinguished future, unlike that revealing pair of juristic abortions, Eadmer's *corona* and the *regnum* of Henry I's coronation charter. It may be traced through the administrative, diplomatic, legal and chronicle records of Henry II's reign, to the London version of the *Leges Edwardi Confessoris*, and thence to *Bracton*.²²⁰ But that is another story, and one which others, including Maitland, have already told in part.²²¹ This attempt to delve into the origins of 'The Crown' should have demonstrated that originally it had nothing to do with the convenience of the royal administration in the absence of the king,

²¹⁷ *RRAN*, iii no. 725 (c. 7 December 1154), in which Henry terminates a dispute immediately prior to crossing the Channel 'ad suscipiendam coronam regni Anglorum'.

²¹⁸ Mathilda exceptionally refers to Stephen as king in *RRAN*, iii no. 274 because with him imprisoned, she considered that she had won and was about to be crowned as queen; cf. nos. 368 (Feb.-July 1141), 393 (25 July 1141), 275 (dated by the editors to 25-31 July 1141, but now convincingly redated to the first half of 1142, probably in the spring or early summer, by Prestwich, 'Treason of Geoffrey de Mandeville', esp. 286-94, and 'Geoffrey de Mandeville: a further comment', *EHR*, 103 (1988), 960-6 at 964.

²¹⁹ *RRAN*, iii no. 272 (Nov.-Dec. 1153).

²²⁰ The fullest analysis of the period up to Edward I's reign may be garnered from Kantorowicz, *King's Two Bodies*, esp. pp. 149-87 (for *Bracton*), 342-64; cf. E. H. Kantorowicz, 'Inalienability: a note on canonical practice and the English coronation oath in the thirteenth century', *Speculum*, 29 (1954), 488-502; H. Hoffmann, 'Die Unveräußerlichkeit der Kronrechte im Mittelalter', *Deutsches Archiv*, 20 (1964), 389-474 at 420-33.

²²¹ Hoyt, *Royal Demesne*, pp. 120-4, 140-7, 162-5; Holt, *Magna Carta*, pp. 88, 93-5, 118-19, 286; 'Ricardus rex Anglorum et dux Normannorum', reprinted in his *Magna Carta and Medieval Government* (London, 1985), pp. 67-84 at 67-8; 'Rights and liberties in Magna Carta', reprinted in *Magna Carta and Medieval Government*, pp. 203-16 at 207-9.

one of the reasons sometimes given for its emergence.²²² As Maitland himself pointed out, it was perfectly possible for the royal administration to function in the king's name in his absence,²²³ and this is precisely what it can be shown to have done, even during an interregnum.²²⁴ Nor in its origins may 'The Crown' be said to have anything to do with what Maitland was pleased to call 'the continuous life of the State',²²⁵ except in a heavily qualified sense — as a reflection of the undying nature of the churches to which kings made grants, and in the peculiar circumstances of Stephen's reign as an Angevin circumlocution to avoid addressing the issue of how Mathilda and Henry disposed of royal rights. If the argument presented above be valid, it has also shown that the concept of 'The Crown' cannot be attributed to the influence of Suger and the diplomatic practice of St-Denis.²²⁶ Not only does the English usage long predate Suger's coining of the term around about 1150,²²⁷ the circumstances which gave rise to the abstract crown in post-Conquest England were quite different from those in Capetian France, hence the precision of its meanings in the former context and its vagueness in the latter.

Maitland drew attention to 'a certain thoughtlessness or poverty of ideas' which he said the Conquest had 'facilitated',²²⁸ by which I take him to mean the implications of the system of dependent personal tenure discussed earlier in this essay. But the invention of the abstract crown, whether by Eadmer or (with a quite different meaning) by those who drafted royal charters, showed why it rapidly became impossible to

²²² Prestwich, 'Treason of Geoffrey de Mandeville', 300.

²²³ Pollock and Maitland, i 512.

²²⁴ See, for instance, the *essoins* roll of the quinzaine of Easter (2 May) 1199, which is entitled 'Anno regni regis Ricardi x'; and the fixing in this roll of a day of appearance in a plea in which one party was said to have proceeded in a suit 'contra preceptum Domini Regis': *RCR*, i 259, 264, discussed at pp. lxxxiv–lxxxv. This record must have been made after Richard's death on 6 April. It shows that the judicial system continued to function, and that the dead king's instruments were regarded as valid. Reference is made to John as *dominus dux* — 266, 274, 288, 290, 324 etc. — and as *dominus Angliæ* — 307, 309, 311, 314 etc. — in the period before he became king (at his coronation); but there is no indication that royal authority was considered to be vested in some sort of abstraction during the interregnum. This is a subject to which I hope to return.

²²⁵ *Gierke*, p. xxxvii.

²²⁶ B. W. Scholz, 'Two forged charters from the abbey of Westminster and their relationship with St Denis', *EHR*, 76 (1961), 466–73, shows that some Westminster forgeries were influenced by St-Denis models, possibly — as suggested by Chaplais, 'Original charters', p. 92 — a St-Denis formulary. But there is no evidence that the Westminster usage of *corona* was borrowed from this source.

²²⁷ E. Bournazel, *Le Gouvernement capétien au xii^e siècle, 1108–1180* (Limoges, 1975), pp. 171–3, who argues that the formulation of an abstract notion of the crown was due to Louis VII's protracted absence on crusade; cf. Kantorowicz, *King's Two Bodies*, pp. 340–2.

²²⁸ *Gierke*, p. x.

preserve that thoughtlessness unalloyed, at least where the king was concerned. In his eulogy of Maitland, Plucknett quotes with empiricist approval Maitland's aphorism that, where law is concerned, 'logic yields to life, protesting all the while that it is only becoming more logical.'²²⁹ In the unusual case of the crown, however, it would be more true to say that life had to yield to logic.²³⁰

²²⁹ *Year Books of Edward II. 1 & 2 Edward II, A.D. 1307-1309*, ed. F. W. Maitland, (Selden Soc., 17, 1903), p. xix.

²³⁰ I am grateful to John Hudson and Magnus Ryan for discussing this essay with me on a number of occasions, and to David Bates, Pierre Chaplais, Barbara Harvey, Jim Holt and Richard Sharpe for remedying my ignorance on particular points. The medievalists at St Andrews generously invited me to give the first part of the argument a trial outing. I am also grateful to the British Academy for funding a term's special leave, during which I did much of the reading and thinking.

Abbreviations

- ANS — *Proceedings of the Battle Conference on Anglo-Norman Studies*.
ASC — *Anglo-Saxon Chronicle*.
ASE — *Anglo-Saxon England*.
(BI)HR — (*Bulletin of the Institute of Historical Research*).
BL — British Library
BN — Bibliothèque Nationale.
Bracton, Thorne — *Bracton De Legibus et Consuetudinibus Angliae*, ed. & trans S. E. Thorne (4 vols, Cambridge, Mass., 1968–77).
BNB — *Bracton's Note Book*, ed. F. W. Maitland (3 vols, London, 1887).
CLJ — *Cambridge Law Journal*
CMA — *Chronicon Monasterii de Abingdon*, ed. J. Stevenson (2 vols, London, 1858).
Collected Papers — H. A. L. Fisher, ed., *The Collected Papers of Frederic William Maitland* (3 vols, Cambridge, 1911).
CRR — *Curia Regis Rolls* (HMSO, 1922–).
DB — *Domesday Book seu Liber Censualis Wilhelmi Primi Regis Angliae*, ed. A. Farley and H. Ellis (4 vols, London, 1783, 1816).
Dialogus — Richard FitzNigel, *Dialogus de Scaccario*, ed. & trans C. Johnson, rev. F. E. L. Carter & D. E. Greenway (Oxford, 1983).
Domesday Book and Beyond — F. W. Maitland, *Domesday Book and Beyond* (repr. with Foreword by J. C. Holt, Cambridge, 1987).
EHR — *English Historical Review*
Elton, Maitland — G. R. Elton, *F. W. Maitland* (London, 1985)
English Lawsuits — *English Lawsuits from William I to Richard I*, ed. R. C. van Caenegem (2 vols, Selden Soc., 106, 107, 1990–1).
EYC — *Early Yorkshire Charters*, vols. I–III, ed. W. Farrer (Edinburgh, 1914–16); index to vols. I–III, ed. C. T. & E. M. Clay; vols. IV–XII, ed. C. T. Clay (Yorks. Arch. Soc. Rec. Ser. Extra Ser., 1935–65).
Fauroux, Recueil — *Recueil des actes des ducs de Normandie*, ed. M. Fauroux (Mémoires de la société des antiquaires de Normandie, 26, Caen, 1961).
Fifoot, Life — C. H. S. Fifoot, *Frederic William Maitland: a Life* (Cambridge, Mass., 1971).
Garnett and Hudson, Law and Government — G. S. Garnett and J. G. H. Hudson, eds, *Law and Government in Medieval England and Normandy: Essays in Honour of Sir James Holt* (Cambridge, 1994).
Gervase — Gervase of Canterbury, *The Historical Works of Gervase of Canterbury*, ed. W. Stubbs (2 vols, London, 1879–80).
Gesetze — *Die Gesetze der Angelsachsen*, ed. F. Liebermann, (3 vols, Halle, 1903–16).

- Gierke — F. W. Maitland, trans, *Political Theories of the Middle Age*, by Otto Gierke (Cambridge, 1900).
- Glanvill, Hall — *Tractatus de Legibus et Consuetudinibus Regni Anglie qui Glanvilla vocatur*, ed. and trans G. D. G. Hall (Edinburgh, 1965).
- Holt, *Magna Carta* — J. C. Holt, *Magna Carta* (2nd edn, Cambridge, 1992).
- JMH — *Journal of Medieval History*.
- Letters, i — C. H. S. Fifoot, ed., *The Letters of Frederic William Maitland*, vol. i (Selden Soc., Supplementary Ser., 1, 1965).
- Letters, ii — P. N. R. Zutshi, ed., *The Letters of Frederic William Maitland*, vol. ii (Selden Soc., Supplementary Ser., 11, 1995).
- Letters to George Neilson — F. W. Maitland. *Letters to George Neilson*, ed. E. L. G. Stones (Glasgow, 1976).
- LHP, Downer — *Leges Henrici Primi*, ed. & trans L. J. Downer (Oxford, 1972).
- LQR — *Law Quarterly Review*
- Maitland, *Constitutional History* — F. W. Maitland, *The Constitutional History of England* (Cambridge, 1908).
- MGH — *Monumenta Germaniae Historica*.
- Milsom, *Legal Framework* — S. F. C. Milsom, *The Legal Framework of English Feudalism* (Cambridge, 1976).
- ns — New Series
- PBA — *Proceedings of the British Academy*.
- PKJ — *Pleas before the King or his Justices, 1198–1202*, ed. D. M. Stenton (4 vols, Selden Soc., 67, 68, 83, 84, 1952–67).
- Pollock and Maitland — Sir Frederick Pollock and F. W. Maitland, *The History of English Law before the Time of Edward I* (2 vols, 2nd edn reissued with a new introduction and select bibliography by S. F. C. Milsom, Cambridge, 1968).
- PP — *Past and Present*.
- PR — *Pipe Rolls*
- PRO — Public Record Office
- PRS — Pipe Roll Society
- RCR — *Rotuli Curiae Regis. Rolls and Records of the Court held before the King's Justiciars or Justices*, ed. F. Palgrave (2 vols, Record Commission, 1835).
- Reading Cartularies — *Reading Abbey Cartularies*, ed. B. R. Kemp, (2 vols, Camden Soc., 4th Ser. 31, 33, 1986, 1987).
- Reg. Ant. Linc. — *The Registrum Antiquissimum of the Cathedral Church of Lincoln*, ed. C. W. Foster and K. Major (10 vols, Lincoln Rec. Soc., 1931–73).
- RRAN — *Regesta Regum Anglo-Normannorum, 1066–1154*, ed. H. W. C. Davis *et al.* (4 vols, Oxford, 1913–69).
- S — P. H. Sawyer, *Anglo-Saxon Charters: an Annotated List and Bibliography* (London, 1968).
- Stenton, *English Feudalism* — F. M. Stenton, *The First Century of English Feudalism 1066–1166* (2nd edn, Oxford, 1961).
- Stubbs, *Charters* — *Select Charters and other Illustrations of English Constitutional History*, ed. W. Stubbs (9th edn, Oxford, 1913).
- TRHS — *Transactions of the Royal Historical Society*
- VCH — *Victoria County History*