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IN THE EMERGING STATES OF
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Abstract

The early twelfth century was notable for the centralization and consolidation of royal governance in the centre as well as the periphery of Europe. This paper presents a model of medieval kingship in which consent for the king's rule is founded upon a network of bargains and agreements between the king and magnates who hold local power. The model is applied to the administration of Scotland under King David I (1124–1153). David I consolidated and expanded his authority by providing magnates who held local power with incentives to cooperate through the strategic distribution of revenue and provision of protection services, including the enforcement of property rights, dispute resolution and the facilitation of exchange. This theory is also used to explain Scotland's appropriation of land in northern England following the death of Henry I of England in 1135, and its loss of the same territory after David I died in 1153.

¹ This paper is based on an M.Phil. dissertation completed at the University of Oxford in 2006. I would particularly like to thank Professor Nick Mayhew and Professor Avner Offer, who supervised the dissertation, for their invaluable contributions to this research. I am also grateful for feedback from Robert Gardner, Stacey Hynd, Alice Taylor, and Rachael Vorberg-Rugh, as well as from participants in the Economic and Social History Graduate Workshop and the Medieval Economic and Social History Seminar. Any errors or omissions are mine.

Like other regions in Europe's periphery, early twelfth-century Scotland represents a rich but little-studied example of the negotiation of power in the middle ages. The twelfth-century Scottish kings emerged from leading what was a loose conglomeration of often antagonistic regional groups to consolidate their authority over much of their own territory and appropriate valuable tracts of land in northern England.² Examining how and why this transformation occurred offers an opportunity to address questions that have engaged both social scientists and medievalists regarding the nature of medieval political power and, more broadly, how entitlements are established and defended with neither prolonged violence nor a third-party system of contract enforcement.

A central question in the study of medieval kingship is whether real power was centralized and held by a king and his delegates, or whether the balance of power rested in the hands of local or regional authorities, with the royal government playing a less dominant role. If a central monarch held absolute control over his kingdom (a notion that has been all but dismissed by historians), then why was baronial rebellion such a prevalent feature in medieval political life?³ On the other hand, if local or regional magnates held all real power, what incentive did they have for supporting a king at all? Drawing on the theoretical insights of the New Institutional Economics (NIE), this paper presents a model of medieval kingship as a private order institution which had emerged in the absence of a bureaucratic state to define and protect entitlements, based on agreements between the king and local magnates or others who held local power.⁴ In exchange for maintaining local control, magnates received protection services in the form of better-defended property rights and the facilitation of exchange. Changes in the power structure occurred with shifts in the bargaining power of the king, the magnates or the king's competitors in the protection market.

The hypothesis that medieval kings governed through implicit contracts with local magnates will be examined in the context of Scottish royal administration in the reign of David I (1124–1153) and his appropriation of territory in northern England from 1135–1153. David I's reign has long been considered significant in Scottish medieval historiography as the catalyst for significant and lasting change in Scotland's political structure, boundaries and relations with other medieval kingdoms.⁵ In medieval Scottish historiography, David's extension of royal authority in Scotland is generally at-

² The terms 'Scotland' and 'Scottish' are used throughout this paper for the sake of simplicity, though admittedly at some cost to accuracy. For further discussion of this issue, see D. Broun, 'Defining Scotland: the Scots before the Wars of Independence', in D. Broun, R.J. Finlay and M. Lynch (eds.), *Image and Identity: the Making and Re-Making of Scotland through the Ages* (Edinburgh, 1998), pp. 4–17.

³ For example, Epstein has convincingly challenged the 'absolutism' of the government of early modern France. S.R. Epstein, *Freedom and Growth: the Rise of States and Markets in Europe, 1300–1750* (London, 2000), ch. 3.

⁴ For a pioneering use of the concept of private order institutions in medieval history, see A. Greif, *Institutions and the Path to the Modern Economy: Lessons from Medieval Trade* (Cambridge, 2006).

⁵ Among others, A.D.M. Barrell, *Medieval Scotland* (Cambridge, 2000), p. 15; G.W.S. Barrow, *Kingship and Unity: Scotland 1000–1360* (Edinburgh, 2003), pp. 39–42; G.W.S. Barrow, *Scotland and its Neighbours in the Middle Ages* (London, 1992), p. 65; A.A.M. Duncan, *Scotland: the Making of the Kingdom* (Edinburgh, 2000), ch. 7; I.D. Whyte, *Scotland before the Industrial Revolution: An Economic & Social History c.1050–c.1750* (New York, 1995), p. 21.

tributed to his personal ties to England and his importation of ‘Norman’ institutions of government to replace pre-existing ‘Celtic’ institutions. According to this historiography, David used land grants to Anglo-Norman magnates and ecclesiastical institutions to introduce a new form of governance into Scotland, the success and persistence of which has been the subject of intense debate.⁶ Unfortunately, the limitations of the surviving evidence rob this debate of much of its meaning since it is far from clear what defines ‘Norman’ and ‘Celtic’ governance in this period and at what level of society. Reynolds suggests that ‘it might be worth approaching the changes that took place in the twelfth century without presupposing that any general and coherent pattern of feudo-vassalic relations and property rights existed ready to be imported by David I and his successors’.⁷ This paper attempts to provide such an alternative explanation for the mechanism by which David I, and indeed the rulers of other peripheral regions in Europe, were able to consolidate their rule during a period of rapid of economic, demographic and political change across Europe.⁸

Medieval kings, like other rulers, could maintain their authority over a region by coercion, legitimacy, or a combination of both. Machiavelli, in *The Prince*, emphasizes that the cheapest and least risky way to rule is through pre-existing legitimacy. Rulers expanding their authority into new territories find enemies both in those whom they have injured in the process of invasion as well as those who helped them to obtain their new holdings, as a new ruler will inevitably fail to meet the expectations of collaborators for his rule and their ability to benefit from it.⁹ In addition, ruling by coercion alone is extremely costly, both in terms of the need to mobilize coercive resources and in terms of opportunity cost.¹⁰ Mancur Olson, in his final work, describes a continuum on which societies are placed based on the relative incentives for production and predation. The opportunity costs of violence mean that ‘where there is a stronger incentive to take than to make – more gain from predation than from productive and mutually advantageous activities – societies fall to the bottom’.¹¹

It is from this insight that Olson builds his theory of the stationary bandit, in which he argues that a ruler with firm control over a given territory and a long-run outlook (the combination of which Olson defines as a ‘super-encompassing interest’) has an

⁶ The debate over the relative strength of ‘foreign’ and ‘native’ methods of governance dominates much of the historical literature on twelfth- and thirteenth-century Scotland. For a summary of this debate, see the introduction to C.J. Neville, *Native Lordship in Medieval Scotland: the Earldoms of Strathearn and Lennox, c. 1140–1365* (Dublin, 2005), especially pp. 3–6.

⁷ S. Reynolds, ‘Fiefs and Vassals in Scotland: A View from Outside’, *Scottish Historical Review* 82:2 (2003), p. 180.

⁸ R. Bartlett, *The Making of Europe: Conquest, Colonization and Cultural Change, 950–1350* (London, 1994), p. 2. For the importance of these changes in Britain, see B.M.S. Campbell, ‘Benchmarking medieval economic development: England, Wales, Scotland and Ireland, c.1290’, *Economic History Review* 61:4 (2008), p. 896.

⁹ N. Machiavelli, *The Prince*, ed. C. Gauss (New York, 1999), p. 29.

¹⁰ D.D. Haddock, ‘Force, Threat, Negotiation: the Private Enforcement of Rights’, in T.L. Anderson and F.S. McChesney (eds.), *Property Rights: Cooperation, Conflict and Law* (Oxford, 2003), p. 169.

¹¹ M. Olson, *Power and Prosperity: Outgrowing communist and Capitalist Dictatorships* (New York, 2000), p. 2.

incentive to invest in that territory and encourage production in order to enrich the pool from which he draws his revenue, thereby increasing his take. In other words, a stationery bandit has a material incentive ‘to settle down, to wear a crown, and to become a public-good providing autocrat’.¹² But for the stationary bandit to maintain control over his territory without the persistent use or threat of violence, he needs the consent of those he governs in order to rule. This consent is comprised of a network of agreements between the ruler and the ruled, which will be easier to maintain if the ruler limits predations and increases the general prosperity of the country, from which his subjects would also benefit.

While Olson followed his design of the stationary bandit model with the example of Stalin’s regime, this present work will use a case study of the expansion of royal government in early twelfth-century Scotland to provide an empirical view of a stationary bandit, namely the king of Scotland. Specifically, it will examine what kind of consent the king had to rule, and by whom this consent was granted. It will argue that Scottish royal rule during this period was the product of long-run equilibrium agreements between the king and those who already held power in a particular region, or those who were able and willing to incur the cost of subduing it. In these agreements, the king supplied protection services in exchange for the support of the magnate. This system of agreements allowed David I to extend his rule beyond what his very limited military power would have enabled. The content of these agreements was dictated by individual incentives faced by both the king and the local magnate, and changes in the balance of power can be observed when external or internal factors altered the incentives or bargaining power of either party.

¹² Ibid, p. 11.

A Neo-Institutional Model of Medieval Kingship

The idea of reciprocal obligation as the basis for medieval governance is not a new one. In traditional definitions of feudalism as well as in more recent work which uses concepts of gift-giving and reciprocity from economic anthropology to interpret medieval grants, the notion that the king and the magnate owe something to one another remains fairly constant.¹³ However, the explanations these theories offer of the nature of the reciprocity involved, and why such a system remained relatively stable for such a long period of time are unsatisfactory, which is, in part, what has prompted criticism of feudalism as a concept.¹⁴ Contract theories of the state are also nothing new. However, as North notes, existing theories often fail to take into account the potential for the state to renege on the terms of the contract after it is agreed.¹⁵ The model put forward here attempts not only to provide an analytical foundation for theories of medieval government, but also to incorporate the potential for post-contractual opportunism. It argues that medieval kingship can be characterized as a private order institution which emerged to define and protect entitlements to resources in the absence of a bureaucratic state. It functioned through a series of long-run equilibrium agreements (treated here as implicit contracts) between the monarch and magnates who either already held local or regional power or were willing and able to incur the costs of obtaining it. Due to the high degree of location-specific assets held by the local magnate, the king had to provide a premium to prevent magnates from defecting to competitors in the protection market or attempting to establish themselves as competitors – a premium which would have been higher for those who held power over highly contested areas, such as near borders or rebellious provinces. The equilibrium changed with the bargaining power of either party.

Cooperation with others was clearly in the interest of a king who did not want to attempt to rule by force alone, or whose coercive resources would not support territorial expansion. By forming agreements with magnates who either already held power over a local area or had the means and willingness to establish it, he shifted the cost of local domination elsewhere, and could therefore expand his territory much farther and at lower cost than were he to attempt to conquer it militarily. Having influence over a broader territory also gave the king access to a larger labour pool, which was particularly desirable during the middle ages, when labour tended to be a scarcer resource than land.¹⁶ For their part, magnates also had incentives to cooperate with the king. The king could endow magnates' entitlements with greater legitimacy through ceremonies and written documents, which, by helping define and enforce property rights

¹³ A traditional definition of feudalism can be found in M.L.B. Bloch, *Feudal Society* (London, 1961), especially pp. 163–4. For the application of economic anthropology literature to medieval governance, see for example B.H. Rosenwein, *To be the Neighbour of Saint Peter: the Social meaning of Cluny's Property 909–1049* (Ithaca and London, 1989), and E. Cohen and M.B. de Jong, *Medieval Transformations: Texts, Power and Gifts in Context* (Leiden and Boston, 2001).

¹⁴ S. Reynolds, *Fiefs and Vassals: The Medieval Evidence Reinterpreted* (Oxford, 1996), pp. 18–27.

¹⁵ D.C. North, *Structure and Change in Economic History* (London, 1981), pp. 21–2.

¹⁶ S. Fenoaltea, 'Risk, Transaction Costs and the Organization of Medieval Agriculture', *Explorations in Economic History* 13 (1976), p. 143.

spared magnates at least some of the costs of doing so themselves.¹⁷ The king could also facilitate exchange between his subjects by supplying a system of third-party dispute resolution, available at least to magnates if not universally, or by supplying an official coinage.¹⁸ Further, the king might also, like Olson's stationary bandit, make investments to increase the production and therefore the prosperity of the kingdom. He could do this not only through more efficient property rights systems, but also through investing in infrastructure and creating tax incentives for increased trade. The magnates would also profit from such investment, giving them an added incentive to support a ruler and his heirs. This alignment of incentives of both kings and magnates encouraged the formation of agreements between them.

At the most basic level, a contract can be characterized as a 'voluntary alienation of freedom'.¹⁹ The central purpose of a contract is to serve as a mutual agreement which limits the range of possible behaviour that may be undertaken by the counter-parties, making certain exchanges possible which might not otherwise occur. According to Williamson, contracts need to be matched to the characteristics of transactions in terms of minimizing transaction costs.²⁰ Exchange relationships can be classified according to three criteria: uncertainty, the frequency with which transactions between the two parties are expected to occur, and the degree to which transaction-specific investments are required.²¹ For relatively standard exchanges, with discrete transactions which require no specific investments, a simple governance structure, such as a brief written contract, will suffice. The low uncertainty implied by standardization, the single transaction and the lack of specific investments mean that the contracting parties can easily define possible contingencies and design a contract that takes them into account.

However, in longer-term exchange relationships in which transactions are expected to occur frequently and one or both parties must make investments particular to that relationship, more complex structures are required. An agreement between a king and a magnate would have met these criteria. In order for either party to make any investments, according to the Olson model, the relationship would have needed to be long-running. The level of uncertainty as to contract compliance for the king and the magnate would also have been quite high, given the number of variables which might have affected either party's ability to uphold his end of the bargain. Both the indefinite length of the arrangement and the level of uncertainty contribute to the costs of

¹⁷ C.J. Milhaupt and M.D. West, 'The Dark Side of Private Ordering: An Institutional and Empirical Analysis of Organized Crime', *University of Chicago Law Review* 67:41 (2000), p. 50; North, *Structure and Change*, p. 23.

¹⁸ Y. Ben-Porath, 'The F-Connection: Families, Friends and Firms and the Organization of Exchange', *Population and Development Review* 6:1 (1980), p. 13. The facilitation of exchange as a service provided by private-order institutions is also discussed in D. Gambetta, *The Sicilian Mafia: The Business of Private Protection* (Cambridge, MA, 1993), p. 15.

¹⁹ J. Ghestin, 'The Contract as Economic Trade', in E. Brousseau and J.M. Glachant (eds.), *The Economics of Contracts: Theory and Application* (Cambridge, 2002), p. 103.

²⁰ O.E. Williamson, 'Credible Commitments', p. 537; O.E. Williamson, 'Transaction-Cost Economics: The Governance of Contractual Relations', *Journal of Law and Economics* 22:1 (1979), p. 233.

²¹ Williamson, 'Transaction-Cost Economics', p. 238.

contracting, and thereby influence the ultimate structure of the contract. The appropriateness of the contract structure to the transaction ultimately determines its capacity to be enforced.

Long-term contracts can either be explicit or implicit. As exchange relationships become longer and information about future contingencies less certain, however, explicit contracts become both more costly and less enforceable.²² Implicit contracts, on the other hand, allow responses to contingencies to be negotiated as they arise, and are enforced by the threat of withdrawing from the relationship if the terms of the contract are broken. The flexibility of implicit contracts makes them more likely to be maintained in the long term than incomplete explicit agreements.²³ Kings and magnates faced the practical impossibility of knowing every possible contingency which might affect the magnate's control over his local region or the king's ability to supply protection. An implicit contract was the most appropriate governance structure for long-term exchange relationships between magnates and kings.

In addition to the long duration and uncertainty pertaining to the king-magnate agreement, the relationship also required specific investments on the part of the magnates, who needed to establish and maintain their own local legitimacy. An asset specific to a particular relationship, person or location will lose a significant portion of its value if it is removed from that context.²⁴ In the case of the magnate-king relationship, the magnates would have invested heavily in location- and party-specific assets in constructing and maintaining their control over their local area. Specific investments are important in shaping contracts because the diminished value of the investment in another use or to another party leaves the party making the investment vulnerable to expropriation. A magnate, who had built up his authority in a specific region through constructing relationships with his constituents or by investments in military domination such as building a castle, could not transfer those investments at their full value to another region. Without some assurance from the king that these assets would not be expropriated, he would either have little incentive to form an agreement with the king, or he would under-invest in maintaining his authority in that region, which would result in the king's authority also being diminished.

The presence of significant specific assets in the king-magnate relationship and the potential for their expropriation are why the strength of the long-term agreements between them depended on the king's ability to make a credible commitment to upholding the agreements.²⁵ The extent to which a king could make credible commitments therefore played a major role in the magnate's incentives for bargaining with the king,

²² B. Klein, R.G. Crawford and A.A. Alchian, 'Vertical Integration, Appropriable Rents and the Competitive Contracting Process', *Journal of Law and Economics* 21:2 (1978), p. 303; B. Klein, 'The Role of Incomplete Contracts in Self-Enforcing Relationships', in Brousseau and Glachant (eds.), *Economics of Contracts*, p. 62; O. Hart and B. Holmstrom, 'The Theory of Contracts', in T.F. Bewley (ed.), *Advances in Economic theory: Fifth World Congress* (Cambridge, 1987), p. 132.

²³ I.R. Macniel, 'Contracts: Adjustments of Long-Term Economic Relations Under Classical, Neoclassical and Relational Contract Law', *Northwestern University Law Review* 72 (1978), p. 900.

²⁴ For further discussion of specific assets, see Klein, Crawford and Alchian, 'Vertical Integration', p. 298; Hart and Holmstrom, 'The Theory of Contracts', p. 130.

²⁵ Williamson, 'Credible Commitments', p. 519.

and determined in large part the king's ability to compete against others in the protection market. Schelling emphasizes that credible promises are not easy to make, because the strength or reliability of a commitment is difficult for the recipient to judge.²⁶

The ability of the king to make a credible commitment in bargaining with a magnate was influenced both by his strength relative to competitors as perceived by the magnate and the probability that his policies would continue in the long term. Signals of the former might have been public agreements with other magnates, through which those magnates effectively consented to the king's rule. In the context of kingship, the latter was best demonstrated by the presence of a viable heir. As North points out, one of the persistent sources of instability in the state is the fact that the ruler is, ultimately, mortal. Visual or written demonstrations of support for the king by the heir contributed to the king's ability to make credible long-term commitments in bargaining situations.²⁷

Credible commitments were essential not only in the establishment of agreements between kings and magnates, but also in their enforcement over time. As there was no third-party judicial system to enforce the terms of the contracts in case of non-compliance, the agreements had to be self-enforcing, which meant that they were upheld so long as both parties felt they would be better off by continuing the agreement than they would by ending it.²⁸ A magnate might choose to stay in a contractual relationship if he thought he could potentially gain more in the future by supporting the king than he could through either rebellion or declaring his allegiance to a competing ruler.

The king's bargaining power would increase with the number of magnates with whom he had implicit contracts for protection. If the king were weak, magnates might be better off providing protection and other services for themselves, and not cooperating with a king at all. This was arguably the position in Scotland prior to the twelfth century, when the kings of Scots had little power outside their homeland of Fife. However, as the number of magnates cooperating increased, the bargaining power of the remaining magnates without contracts would decrease. As Gambetta points out in relation to mafias, 'as more and more dealers buy protection ... there will be a progressively more genuine incentive to buy protection'.²⁹ No magnate would choose to be 'unaligned in a world of alliances', and therefore, the more support a king had from magnates, the more likely were unaligned magnates to negotiate implicit contracts with him.³⁰ However, the king's power was dependent upon the support of the

²⁶ T.C. Schelling, 'An Essay on Bargaining', *The American Economic Review* 46:3 (1956), pp. 299–300.

²⁷ North, *Structure and Change*, p. 29.

²⁸ L.G. Telser, 'A Theory of Self-Enforcing Agreements', *The Journal of Business* 53:1 (1981), p. 27; Klein, 'The Role of Incomplete Contracts', p. 62. The concept of self-enforcing agreements has been previously applied in medieval history in J.M. Veitch, 'Repudiations and Confiscations by the Medieval State', *Journal of Economic History* 46:1 (1986), esp. p. 32.

²⁹ Gambetta, *The Sicilian Mafia*, p. 30.

³⁰ D.D. Haddock, 'Force, Threat, Negotiation', p. 183.

magnates. This dependence acted as a constraint on any potential post-contractual opportunism by the king.

The king was also constrained by the fact that he faced competition from other suppliers of protection, either rival rulers within his own kingdom or neighbouring rulers with whom he competed for the support of border magnates. The king's bargaining power among magnates was extremely sensitive to the nature of his competitors, and how close a substitute for his services rivals were in a position to provide.³¹ If they were not provided with sufficiently enticing or credible incentives, magnates with potential close substitutes may have come to the conclusion that their future prospects for gain would be better under another ruler. No contract is infinitely self-enforcing, and when changes in the market occurred, magnates had to decide between compliance with existing contract terms, an opportunistic defection to a competing ruler or establishing themselves as a competitor in the region. The potential defection of magnates where the king had competition from close substitutes could be described as a medieval version of the Tiebout effect, in which people and resources can migrate if discontented with local governance.³² In this model, magnates could vote not with their feet but with their allegiance, shifting to another ruler if defection seemed likely to be more profitable than maintaining the contractual relationship with their present overlord. If the bargaining power of a king or royal house diminished, perhaps through a disputed succession impeding the king's ability to make credible commitments, then a rival could appear better able to fill the gap in supply. Kings could therefore expand their territory through negotiation up to the point where a competitor could offer greater potential future revenue to the local magnate, a point which would shift with the relative ability of rulers in an area to offer credible commitments to magnates who needed to make specific investments to maintain their position.

³¹ North, *Structure and Change*, p. 26.

³² In Tiebout's model, voter mobility provides an indication of the market for public goods. Anderson and Hill apply this concept to governance more broadly. C.M. Tiebout, 'A Pure Theory of Local Expenditures', *The Journal of Political Economy* 64:5 (1956), pp. 418–20; T.L. Anderson and P.J. Hill, 'The Evolution of Property Rights', in Anderson and McChesney, *Property Rights*, p. 136.

David I and Scottish Royal Governance, 1124–53

Examining the market for protection in Britain in the early twelfth century in the terms laid out above provides an alternative explanation for David I’s ability to both consolidate his authority in Scotland and expand it into northern England. To do this, it uses evidence from the 213 surviving charters from David I’s reign, along with narrative evidence from contemporary chroniclers.³³ David needed to negotiate with four principal types of magnates. Each contributed to expanding the king’s authority in different ways, and in return had different needs and incentives for cooperating with the king, summarized in Table 1 below. This section of the paper will explore the different characteristics of transactions with each type of magnate.

Table 1. King–Magnate Relations in Twelfth-Century Scotland

	Ecclesiastical (Bishop)	Ecclesiastical (Religious Order)	Secular (Foreign)	Secular (Scottish)
King’s Incentives	Local administration, ecclesiastical support for royal authority	Administrative technologies; supply of literate clerks	Superior military technology	Pre-existing legitimacy (low-cost governance)
Magnate’s Incentives	Potential to collect wealth; security; status	Land; opportunities to expand; trading privileges; money	Land; opportunities for increased wealth or status	Access to royal administrative structure, security of alliance, money

Ecclesiastical magnates were a fundamental ingredient of Scottish royal governance, and David is particularly well known for his reformations of the church. Along with other rulers across the European periphery in the twelfth century, he expanded ecclesiastical institutions in Scotland to a greater extent than any of his predecessors.³⁴ Out of the 213 surviving royal charters from David’s reign, 197 were issued to ecclesiastical institutions. This dominance is no doubt in part due to better survival rates for ecclesiastical charters, but Broun has argued convincingly that survival rates are not the whole story.³⁵

David’s support of the church has often been attributed to his personal religious beliefs.³⁶ His piety was extolled by contemporaries like John of Hexham and Ailred of

³³ The charters of David I and his son Henry have been edited in G.W.S. Barrow (ed.), *The Charters of David I; the Written Acts of David I King of Scots, 1124–53, and of his Son Henry, Earl of Northumberland, 1139–52* (Woodbridge, 1999).

³⁴ Bartlett, *Making of Europe*, p. 5. For further detail on reforms of the Church in Scotland before and during David’s reign, see I.B. Cowan and D.B. Easson, *Medieval Religious Houses: Scotland* (London, 1976), pp. 51–133.

³⁵ D. Broun, *The Charters of Gaelic Scotland Ireland in the Early and Central Middle Ages* (Cambridge, 1995), p. 10.

³⁶ For a review, see Oram, *David I*, ch. 12.

Rievaulx, though such references must be taken with a degree of scepticism since piety formed a central component in the medieval ideal of kingship.³⁷ Some authors, like Bouchard, discount all motives for monastic patronage apart from personal piety.³⁸ Others, however, place a greater emphasis on the secular incentives that motivated the founders and benefactors of monastic houses.³⁹ It has been argued that the importance of personal piety in medieval society was one reason the church was so influential in secular affairs and why the apparent piety of kings was so important for their leadership.⁴⁰ The strength of the pragmatic incentives facing David (as opposed to whatever personal religious incentive he may have had) is an indication of popular faith and its importance in shaping the power structures of the day.

Support for bishops was one element in David's reform of the church. Bishops were central figures in both religious and secular government, responsible for both ordaining priests and adjudicating in ecclesiastical courts.⁴¹ While it is no longer held that David founded the majority of bishoprics in Scotland, it is likely that he revived quite a few that had previously been vacant.⁴² Ailred claimed that 'for while he found three or four bishops only in the whole Scottish kingdom, and the other churches wavering without a pastor to the loss of both morals and property, when he died he left nine, both of ancient bishoprics which he himself restored and of new ones which he himself erected'.⁴³ Ailred's claim is bolstered by evidence from the charters, where thirteen bishops from nine bishoprics in Scotland appear as witnesses.

The extent of the pastoral care provided by Scottish bishops in this period is difficult to determine. That they were active in government, however, is obvious from their appearance as witnesses to royal charters. Their appearance in the charters is somewhat uneven, with some bishops appearing more than others. Bishops Samson of Brechin, for example, only appears in the witness list of one of David I's charters.⁴⁴ At the other extreme, Bishop John of Glasgow, appears in 37 charters issued by David or his son Henry.⁴⁵ This may indicate that certain bishoprics were more central to

³⁷ See A.O. Anderson, *Scottish Annals from English Chroniclers A.D. 500 to 1286* (Stamford, 1991), pp. 231–3.

³⁸ C.B. Bouchard, *Sword, Miter and Cloister: Nobility and the Church in Burgundy, 980–1198* (London, 1987), pp. 233–49.

³⁹ For example, J. Burton, *Monastic and Religious Orders in Britain, 1000–1300* (Cambridge, 1997), ch. 10; E. Jamroziak, 'Making and Breaking the Bonds: Yorkshire Cistercians and their Neighbours', in T.N. Kinder (ed.), *Perspectives for an Architecture of Solitude: Essays on Cistercians, Art and Architecture in Honour of Peter Ferguson* (Turnhout, Belg., 2004), p. 65; Rosenwein, *To Be the Neighbor of Saint Peter*, p. 48; R.W. Southern, *Western Society and the Church in the Middle Ages* (Harmondsworth, 1970), pp. 228–9.

⁴⁰ This argument is made for England in J.A. Green, *The Government of England under Henry I* (Cambridge, 1989), p. 10. For more on religious belief in medieval society, see C. Harper-Bill, 'The Piety of the Anglo-Norman Knightly Class', *Anglo-Norman Studies* 2 (1979).

⁴¹ Southern, *Western Society*, p. 95; Bartlett, *Making of Europe*, p. 6.

⁴² Duncan, *Scotland*, pp. 257–8.

⁴³ Anderson, *Scottish Annals*, p. 233.

⁴⁴ Barrow, *Charters*, no. 136.

⁴⁵ *Ibid.*, nos. 1, 4, 21, 29, 30, 31/32, 33, 35–8, 41–2, 44, 52, 85–6, 90, 96–7, 99, 113, 115, 120, 125, 130, 137, 141, 147, 148–9, 151–2, 158 (David I); 70, 72, 121, 139 (Henry).

royal administration than others, perhaps a function of bishops often having been drafted from the ranks of royal officials and other secular magnates.⁴⁶ Bishop John, for example, had been David's tutor and then his personal chaplain.⁴⁷ His influence over royal administrative decisions is publicly announced in the charters, three of which are addressed to him individually.⁴⁸ In two charters he is named as having petitioned the king for the grant in question, or advised the king in the transaction.⁴⁹

The king benefited from bishops' provision of local administration, both secular and ecclesiastical. The public role of bishops in administration also had a symbolic benefit for David, in that it represented a public demonstration of ecclesiastical support for his rule.⁵⁰ For their part, bishops had good reasons to accept the position when it was offered, though not all did.⁵¹ A bishop's mitre could offer security that royal officialdom did not. While the king's personal chaplain might be summarily dismissed, it was difficult for even the pope to remove a consecrated bishop from office.⁵² Furthermore, the position of bishop offered potential wealth, particularly through the bishop's role as justice in ecclesiastical courts.⁵³

The other side of ecclesiastical development in this period was the dramatic increase, in number and variety, of monastic foundations in Scotland. In decision-making, monasteries acted uniquely as institutional magnates (though individual abbots were sometimes prominent figures who had much in common with bishops). It should be emphasized that David was not the first Scottish monarch to begin this process, which was taking place across the whole of Western Europe. His mother, Queen Margaret, founded Dunfermline Priory with Benedictine monks from Canterbury; his older brother Edgar was a benefactor of Coldingham Priory, and; Alexander I founded an Augustinian priory at Scone.⁵⁴ David invested heavily in broadening and strengthening the monastic presence throughout Scotland, the period saw both new foundations and the expansion of those that had been founded before David's accession to the throne. Monastic houses were the suppliers of useful administrative technology (particularly writing) and the personnel capable of putting it into practice. In addition, some monasteries provided social and other services in urban areas, and could develop otherwise remote tracts of land at little cost to the king.

⁴⁶ Southern, *Western Society*, p. 213.

⁴⁷ Barrow, *The Kingdom of the Scots*, p. 207.

⁴⁸ Barrow, *Charters*, nos. 10–12.

⁴⁹ *Ibid*, nos. 183, 90.

⁵⁰ Beetham describes evidence of consent as one source of political legitimacy. See D. Beetham, *The Legitimation of Power* (London, 1991), pp. 12–13.

⁵¹ Waltheof de Senlis, David's stepson, refused the bishopric of St Andrews when it was offered by Malcolm IV in 1159. Duncan, *Scotland*, p. 261.

⁵² Southern, *Western Society*, p. 171.

⁵³ *Ibid*, p. 113.

⁵⁴ I.B. Cowan and D.B. Easson, *Medieval Religious Houses: Scotland: With an Appendix on Houses in the Isle of Man* (London, 1976), pp. 49, 51, 83.

The introduction of written records into administration represented a fundamental shift in how transactions and bargaining were undertaken. A charter differed from witness testimony in that it potentially had a much wider distribution, and had a format that would be recognized across Europe.⁵⁵ They also allowed the king to make more credible long-term commitments, which was particularly important for institutional magnates which had longer time horizons than individuals. Charters provided a document that could potentially survive much longer than David or anyone who remembered his reign, and, perhaps more importantly, often included a clause indicating the assent and support of the future ruler. Of the 150 charters issued by David himself in favour of ecclesiastical beneficiaries, 23 indicate the support of Henry, his heir, for the grant in question. Henry's assent and support was expressed either through his attestation (in 11 charters), a clause explicitly stating his consent to the grant (in 14 charters), or both (in two charters).⁵⁶ Additionally, Barrow finds that 14 of Henry's charters merely repeat transactions recorded in his father's charters, and in two of Henry's charters he confirms charters of his father.⁵⁷

The demand among monastic houses for written documentation of grants and exchanges is thought to have been the catalyst for an increasing use of written records in both ecclesiastical and lay society across the frontiers of Europe.⁵⁸ David's reign was instrumental in encouraging this process of technological diffusion. By bringing additional monastic houses into Scotland, he had introduced on a larger scale than ever before a technology of governance that added a new dimension to contracting. Mokyr emphasizes that 'progress in exploiting the existing stock of knowledge will depend first and foremost on the efficiency and cost of access to knowledge'.⁵⁹ The foundation of monastic houses was one way in which the king could increase access to literacy and the Latin charter. Ecclesiastical institutions provided access to a supply of clerks who already possessed such knowledge and could put it to use in royal government, as well as train future clerks.⁶⁰

Different orders also offered specific additional incentives for the king. The Augustinian Order, for example, was known for pastoral work, including running hospitals, in urban or densely-populated areas.⁶¹ Through the provision of what might be called public goods, Augustinian houses provided a complement to royal government at relatively low cost to their royal founders. The Augustinians were introduced to

⁵⁵ D. Broun, 'The Writing of Charters in Scotland and Ireland in the Twelfth Century', in *Charters and the Use of the Written World in Medieval Society*, ed. K. Heidecker (Turnhout, Belg., 2000), p. 119.

⁵⁶ Barrow, *Charters*, nos. 14, 42, 71, 97–8, 120, 147, 149, 159, 174, 180 (attesting); 31–34, 39, 4, 52, 86, 96, 120, 147, 159, 172, 200 (consenting); 147, 159 (both). For discussion of warrentio clauses in grants to ecclesiastical institutions, see S.D. White, *Custom, Kinship and Gifts to Saints: the Laudatio Parentum in Western France 1050–1150* (London, 1988).

⁵⁷ G.W.S. Barrow, 'Introductions', in *Charters*, pp. 6–7.

⁵⁸ D. Broun, 'The Adoption of Brieves in Scotland', in M.T. Flanagan and J.A. Green (eds.), *Charters and Charter Scholarship in Britain and Ireland* (New York, 2005), p. 166; Broun, 'Writing of Charters in Scotland and Ireland', p. 121; Clanchy, *From Memory to Written Record*, p. 53.

⁵⁹ J. Mokyr, *The Gifts of Athena: historical Origins of the Knowledge Economy* (Princeton, 2005), p. 7.

⁶⁰ D.M. Walker, *A Legal History of Scotland: The Beginnings to A.D. 1296* (London, 1987), p. 167.

⁶¹ Burton, *Monastic and Religious Orders in Britain*, pp. 45–9.

Scotland by Alexander I, David's predecessor, who founded a priory at Scone in c. 1120.⁶² David I founded three major Augustinian houses during his reign: Holyrood outside Edinburgh (1128), Jedburgh (1138), and Cambuskenneth outside the royal burgh of Stirling (c. 1140).⁶³ Orders other than the Augustinians may have offered similar services within Scottish urban centres. A charter issued by David to the Tironensian Kelso Abbey seems to indicate that the Abbey was involved in the provision of education in Roxburgh. It confirms, among other things, 'all churches and schools of that same burgh with everything belonging to them'.⁶⁴

The Cistercians, on the other hand, preferred grants of remote tracts of land (or, as Burton puts it, 'the type of site and land with which it might best suit a founder to part') that they could manage themselves, which they did with legendary efficiency.⁶⁵ 'Settle the Cisterians in some barren retreat which is hidden away in an overgrown forest', wrote Gerald of Wales, and 'a year or two later you will find splendid churches and fine monastic buildings with a great amount of property and all the wealth you can imagine'.⁶⁶ By founding a Cistercian house, a king could, at relatively little cost, see previously underexploited or unexploited lands put to more productive use, thereby increasing the overall output and value of a territory. This was particularly true for territories like Scotland in this period where labour and other means to exploit land were scarcer than the land itself. David I founded four Cistercian houses (Dundrennan, Kinloss, Melrose and Newbattle).⁶⁷ All were placed at the periphery of the traditional Scots kingdom, in areas bordering competitors in the market for protection.

Finally, monastic houses were also major commercial players in medieval Scotland. Starting in David's reign, a number of monastic houses held land in royal burghs, using it as a base for international trade.⁶⁸ Melrose Abbey, for instance, is believed to have been the largest producer of wool in medieval Scotland, and was active in trade with Flanders.⁶⁹ The charters reveal that David I often granted trading privileges to monastic houses.⁷⁰ The privileges granted were primarily exemptions from tolls and other customs levied on trade, but also included grants of market rights, rights to establish an ecclesiastical burgh, and grants of the king's peace to agents of the monastery engaged in trade. These privileges were intended to encourage the trad-

⁶² Two of Alexander I's surviving charters record him granting income and judicial rights to Scone priory – see A.C. Lawrie, *Early Scottish Charters Prior to A.D. 1153* (Glasgow, 1905), nos. 48–9.

⁶³ Burton, *Monastic and Religious Orders in Britain*, pp. 53–4; Cowan and Easson, *Medieval Religious Houses*, pp. 74–83.

⁶⁴ The charter reads: 'omnes ecclesias et scolas eiusdem burgi cum omnibus earum pertinanciis', Barrow, *Charters*, no. 183.

⁶⁵ Burton, *Monastic and Religious Orders in Britain*, p. 72.

⁶⁶ Gerald of Wales, *The Journey through Wales*, trans L. Thorpe (London, 2004), Book 1, ch. 3, p. 106.

⁶⁷ Cowan and Easson, *Medieval Religious Houses*, pp. 64–5.

⁶⁸ W.B. Stevenson, 'The Monastic Presence: Berwick in the Twelfth and Thirteenth Centuries', in M. Lynch, M. Spearman and G. Stell (eds.), *The Scottish Medieval Town* (Edinburgh, 1988), p. 108.

⁶⁹ *Ibid.*, pp. 109–111.

⁷⁰ Barrow, *Charters*, nos. 35, 90, 92, 117, 128, 134, 147, 186, 193 (David I); 63–4, 101, 199 (Henry).

ing activities of monasteries, which contributed both to the economic development of Scotland and to royal coffers.

David I offered other inducements to monastic orders in addition to trading privileges. Perhaps most crucially, 30 of his grants to monastic houses were of cash income collected and delivered by the king's delegates.⁷¹ As Barrow writes, 'when a small community of foreign clergy arrived in remote northern parts, not the least urgent of their needs must have been a supply of ready money'.⁷² One example is a charter issued in the 1140s to Dunfermline Abbey, in which the king granted:

A rent of a hundred shillings yearly for the clothing of the canons, from my cain of Perth, and this from the first ships that come to Perth for the sake of trade; and if it happens that they do not come, I grant to the aforesaid church, from my rent of Edinburgh forty shillings, and from Sterling twenty shillings, and from Perth forty shillings.⁷³

This shows not only that money might be difficult to obtain in Scotland (hence the alternative sources listed), and therefore was all the more valuable, but also that the royal burghs were possessed of royal officials whose duty it was to collect money rents, and transfer them to recipients. This was an asset provided by the king to Dunfermline Abbey that the Abbey could not provide for itself, which gave the Abbey a compelling incentive to cooperate with the king. The same was true of grants of trading privileges, which were only useful in the context of royal administration.

Additionally, the charters indicate that monasteries often relied upon royal intervention to enforce the entitlements they were granted. In 55 of the 197 charters issued to ecclesiastical recipients, the address clause deviated from forms of the general address (e.g. 'King David, by the grace of God King of Scots, to the bishops, abbots, earls, barons, justices, sheriffs, and all his responsible men, Scottish and English, of his whole land, greeting') and only addressed secular officials, notifying them of the grants. The frequency with which this adjusted address clause appears makes it difficult to believe that it is the result of simple scribal error.⁷⁴ Rather, the charters may have been issued by David I to monasteries in an effort to facilitate the protection of their entitlements. Some were more explicit in their indication of royal enforcement of monastic rights. A charter surviving in the Dunfermline Abbey cartulary, for example, instructs 'Constantine and all men belonging to the Church of the Holy Trinity' to pay 'all customs which you rightly owe to that church ... without argument'. If Constantine and the others should fail to do this, the charter instructs 'my grieve Swain not to

⁷¹ Barrow, *Charters*, nos. 3,6–8, 13–4, 26–7, 33, 47, 49, 56, 76, 105, 127, 140, 145, 147 (incl. 3 distinct grants), 159, 161, 185, 194 (David I); 95, 108–9, 183 (incl. 2 distinct grants), 146 (Henry).

⁷² G.W.S. Barrow, 'Scottish Rulers and the Religious Orders, 1070–1153', *Transactions of the Royal Historical Society* 3 (1953), p. 84.

⁷³ Barrow, *Charters*, no. 147.

⁷⁴ I thank Alice Taylor for bringing this exception to the general address to my attention with regard to a charter of David's successor, Malcolm IV.

suffer it, and that he should aid the prior that the church should have from them just as I have from my tenants'.⁷⁵

Implicit contracts between monastic houses and the king would remain self-enforcing so long as monasteries believed the king able and willing to enforce the rights and income they had been granted. Enforcement of contracts made the king's authority more credible, both to others with whom he had already contracted and to those with whom he might contract in the future. If the king could not supply promised revenue, or his charters had no effect in the enforcement of rights, it was no longer beneficial to the monastery for the implicit contract to be enforced, and monasteries could and did change allegiance to competitors in the protection market.

Monasteries were, however, somewhat limited in the range of post-contractual opportunistic behavior available to them. They could change allegiance to another ruler if they were located geographically within reach of another sphere of influence, but they could not take buildings or other assets with them to a new location if they were not. The period following the death of Henry I of England in 1135 provides several examples of monasteries 'voting' with their allegiance for a preferred ruler.⁷⁶ The strong system of allegiances which had created stability in England for three decades under Henry I collapsed with the crowning of Stephen of Blois as King at the expense of the unpopular Maud, Henry's daughter and chosen successor.⁷⁷ During this period the already distant north was left largely to its own devices, as Stephen and Maud battled for support in the south.⁷⁸ David took the opportunity provided by the English king's inability to defend northern magnates to begin a series of raids into England over the three years following Henry I's death. Out of at least seven raids from 1136–1138, Stephen responded to only two; the rest were met by negotiators or armed forces organized by the northern magnates themselves.⁷⁹ One of the northern chroniclers who left records of David's raids was Richard of Hexham, who emphasized the threat these raids posed to both lives and property.⁸⁰ Stephen's failure to protect the north revealed to northern magnates that their incentives for cooperating with him were limited, and many chose instead to defect and establish implicit contracts with David. One of these was Hexham Priory, where Richard of Hexham was canon and, after 1141, prior. Richard writes that 'David, king of Scotland and his son Earl Henry on behalf of themselves and of all of their followers granted their perpetual peace to that monastery and to its brethren and to all that pertained to it. And this they confirmed by their charters, which are preserved in that church: this only being provided that

⁷⁵ Barrow, *Charters*, no. 17.

⁷⁶ For a more detailed treatment of David's appropriations in northern England, see L.A. Gardner, 'Contracting for Legitimacy: A Study of Scottish Royal Administration and Territorial Expansion in the Reign of David I (1124–1153)', Unpublished M.Phil. thesis, University of Oxford (2006), pp. 51–66.

⁷⁷ For background on the death of Henry I and the succession dispute that followed, see R.H.C. Davis, *King Stephen, 1135–1154* (London, 1990) or E. King, *The Anarchy of King Stephen's Reign* (Oxford, 1994).

⁷⁸ Stringer, 'State-building in Twelfth-Century Britain', p. 53.

⁷⁹ Duncan, *Scotland*, pp. 219–221.

⁸⁰ Anderson, *Scottish Annals*, pp. 181, 187

they too should preserve peace with David himself and his followers.’⁸¹ Unfortunately, the charters to which Richard refers have not survived.

Seven charters have however survived for another northern monastery (Tynemouth Priory) which also changed its allegiance during this period. The earliest was issued in June 1138 at the siege of Norham Castle. In it, David grants his peace to the priory and its monks and tenants, with the assent of his son Henry. He commands that this peace should be enforced for Tynemouth ‘as long as they themselves should wish to hold the peace of us and our men’.⁸² Richard of Hexham reports that Tynemouth paid 27 marks of silver to David for this agreement.⁸³ A later charter, dated by Barrow to between 1141 and 1150, confirms all the lands and rights which Tynemouth held on the day Henry I died, including rights of taxation and the provision of justice.⁸⁴ This charter was re-issued by Earl Henry to lend longer-run credibility to its contents.⁸⁵ These charters indicate that the two houses had negotiated an alternative contract with David I during the English civil war. They were among a number of magnates to do so, and other examples will be discussed below. Several Scottish historians have emphasized that David’s appropriation of northern English territories was likely to have been the result of bargaining rather than purely coercion. Duncan writes that ‘King David himself had unwonted success in securing the castles which, at any rate in the future, were to defy Scottish invaders successfully’.⁸⁶ The implication is that the magnates who held those castles offered them up voluntarily to David, exercising the Tiebout option in changing their allegiance to a preferred overlord. Stringer concurs, arguing that ‘Anglo-Norman nobles and churchmen probably accepted Scottish dominance all the more readily because David’s stewardship was manifestly preferable to Stephen’s.’⁸⁷ David was in a much better position than Stephen to provide incentives for cooperation, not least because he could offer credible long-term commitments his opponent could not.

The option to defect to another ruler was really only practicable for monasteries in border regions, as the extent of their fixed assets limited their mobility. Foreign secular magnates were significantly more mobile than institutional magnates, though they still need to make specific investments in order to assert their authority in the region. As noted above, foreign magnates are prominent in Scottish historiography as the agents of Scotland’s ‘feudalization’.⁸⁸ According to much of the historiography, when foreign magnates were granted land in Scotland, they imposed the forms of lordship familiar to them on their new domains, thus transforming Scotland’s political struc-

⁸¹ Anderson, *Scottish Annals*, p. 183.

⁸² Barrow, *Charters*, no. 66.

⁸³ Anderson, *Scottish Annals*, p. 182.

⁸⁴ Barrow, *Charters of David I*, no. 144.

⁸⁵ *Ibid.*, no. 84.

⁸⁶ Duncan, *Scotland*, p. 219.

⁸⁷ Stringer, ‘State-building in Twelfth-Century Britain’, p. 53.

⁸⁸ For different views on this process, see R.L.G. Ritchie, *The Normans in Scotland* (Edinburgh, 1954); Neville, *Native Lordship*.

ture. As will be argued below, land grants to foreign magnates did contribute to David I's ability to centralize his authority, but the focus of the existing historical literature on the cultural affiliation of new magnates is misleading. Bartlett argues that across the frontiers of Europe during this period, 'descent did not dictate political alignments, and natives and settlers did not form two distinct "sides"'.⁸⁹ In reference to the European lordship of Hugh de Lacy over his lands in Ireland, Davies argues that it was quite possible for magnates to assert power in different ways depending on local circumstances, noting that de Lacy administered some parts of his Irish land in a way 'commensurate with that of an Irish king' and other parts in a way 'perfectly comprehensible in terms of the pattern of seigniorial authority in contemporary England'.⁹⁰ The manner in which a territory was governed was determined by practical rather than cultural considerations and foreign magnates, when granted land, did not necessarily impose a standardized form of governance on their territories.

Granting lands to foreign magnates was a tool used by many rulers of peripheral regions at the time. Bartlett compares Scotland's experience to that of the West Slav region, where rulers also encouraged foreign immigrants.⁹¹ The major incentive in both Scotland and other regions was the military technology foreign magnates brought with them, which constituted 'useful knowledge' in the same way the knowledge of the Latin charter provided David with an incentive to found monasteries in his realm. Incoming foreign magnates came with knowledge of the core components of warfare in the central middle ages: knights, bowmen and castles.⁹² Castles and knights were particularly useful in expanding and consolidating the rule of the kings of Scots, and appear most often in the records. It should be noted that the effectiveness of knights and castles were to some extent depending on geography. However, 'in most cases, armoured cavalry, castles, siege machines and crossbowmen were powerful and desirable. This is demonstrated most clearly in those cases where rulers of geographically peripheral areas consciously fostered the adoption of new military methods'.⁹³

Scotland was one such case. Out of both surviving charters and those believed to have existed, Barrow has identified five land grants made to foreign magnates in exchange for knight service.⁹⁴ Ailred of Rievaulx, in his account of the Battle of the Standard in 1138, attributes to Robert de Brus (one of the grantees listed by Barrow) a speech reminding David of the gains he had obtained owing to the military prowess of his foreign magnates. 'Thou thyself, oh king, when though didst demand from thy brother Alexander the part of the kingdom which the same brother had bequeathed to thee at his death didst obtain without bloodshed all that thou wouldst, through fear of

⁸⁹ Bartlett, *Making of Europe*, p. 32.

⁹⁰ R.R. Davies, *Domination and Conquest: the Experience of Ireland, Scotland and Wales 1100–1300* (Cambridge, 1990), p. 46.

⁹¹ Bartlett, *Making of Europe*, p. 282.

⁹² *Ibid.*, p. 60.

⁹³ Bartlett, *Making of Europe*, pp. 72–83.

⁹⁴ G.W.S. Barrow, 'The Beginnings of Feudalism in Scotland', *Bulletin of the Institute for Historical Research* 29 (1956), p. 4.

us.⁹⁵ If Ailred's account of how David obtained from the recalcitrant Alexander I the lands their elder brother Edgar had left him in Cumbria is correct, even the credible threat of foreign military force was able to bring great benefit. It was most likely this benefit, rather than any particular affinity for Anglo-Norman institutions, which gave David I and the West Slav rulers an incentive to grant lands to foreign magnates.

Foreign magnates also brought with them the castle, which Davies describes as 'the instrument and symbol par excellence' of domination.⁹⁶ That the ability and willingness to build castles was an incentive for David in granting lands to foreign magnates is evident in the location of the lands granted, which bordered the lands of competitors in the protection market.⁹⁷ David's grant to Robert de Brus of Annandale is perhaps the best known example of this. Robert's lands bordered those of the rulers of Galloway, who stood to compete with the kings of Scots in the market for protection in the southwest. During David's reign, Fergus of Galloway and his son, Uhtred, cooperated with the king, though perhaps reluctantly. They appear in the witness lists of four royal charters and there is little evidence of hostile relations between the two parties.⁹⁸ Later events after David I's death, however, revealed that the scope for self-enforcement in that particular implicit contract was quite limited. Robert's castles solidified David's domination of that region. As Bartlett puts it, 'here was created, on the borders of the dissident province of Galloway, a large fief, with motte-and-bailey castles, held by a Norman baron, in close connection with the king.'⁹⁹ The same was true of the Morvilles, whose younger son Hugh de Morville appeared in Scotland in 1120s and was granted the lands of Lauderdale in Berwickshire, where Hugh erected a castle, and Cunningham in Ayrshire.¹⁰⁰

Given the potency of foreign military power, it is small wonder that foreign magnates played such a dominant role in David's governance of Scotland. The witness lists of charters issued by David and his son Henry are populated heavily by foreign magnates, not only by members of the Morville (90 charters) and de Brus (37 charters) families, but also by people like 'Aimar the knight', who witnessed four charters.¹⁰¹ The public participation of foreign magnates in David's government demonstrated the support of significant military power for his rule, in much the same way as

⁹⁵ Anderson, *Scottish Annals*, p. 193.

⁹⁶ Davies, *Domination and Conquest*, p. 40.

⁹⁷ G.G. Simpson and B. Webster, 'Charter Evidence and the Distribution of Mottes in Scotland', in K.J. Stringer (ed.), *Essays on the Nobility of Medieval Scotland* (Edinburgh, 1985), pp. 6–7.

⁹⁸ Barrow, *Charters*, nos. 51, 56–8.

⁹⁹ Bartlett, *Making of Europe*, p. 79.

¹⁰⁰ Stringer, 'The Early Lords of Lauderdale, Dryburgh Abbey, and St Andrew's Priory at Northampton', in *Essays*, p. 46.

¹⁰¹ Barrow, *Charters*, nos. 142, 92, 75, 89, 131, 161, 138, 111, 93, 94, 4, 6, 49, 40, 76, 16, 66, 48, 194, 101, 79, 57, 140, 154, 214, 210, 107, 182, 213, 7, 180, 133, 141, 98, 8, 200, 23, 196, 11, 27, 181, 37, 38, 13, 3, 54, 25, 187, 139, 125, 143, 97, 153, 144, 46, 209, 41, 30, 84, 208, 175, 197, 82, 124, 149, 201, 96, 121, 69, 68, 166, 34, 42, 44, 120, 85, 70, 158, 28, 173, 86, 167, 174, 130, 159, 14, 33, 216 (Hugh de Morville); 210, 177 (Richard de Morville); 16 (William de Morville); 137, 62, 61, 8, 7, 27, 40, 49, 30, 24, 23, 3, 45, 170, 196, 144, 143, 31/32, 37, 82, 28, 83, 41, 149, 107, 60, 73, 25, 139, 34, 46, 82, 14, 130, 121, 120 (Robert de Brus); 147 (Peter de Brus); 30, 29, 28, 14 (Aimar the knight).

the appearance of bishops demonstrated the support of the Church. This no doubt affected the assessments other magnates made of the potential costs and benefits of upholding a contract with David I or engaging in opportunistic behaviour.

Just as David needed reasons to invite foreign magnates into Scotland, the magnates themselves needed reasons to accept. Asserting themselves in a new territory required investments in the shape not only of the castles and knights for which David had invited them but also in building relationships with smaller-level landholders in their new territories, to ensure a revenue stream sufficient to justify their investments. The general trend of aristocratic migration across Europe during this period suggested that foreign magnates capable of exercising considerable military power often saw greater opportunity abroad than they did at home.¹⁰² Rulers like David I provided opportunity for gain primarily through speculative grants of vast areas of land, or grants over which the recipient is expected to establish control (as opposed to a grant of territory already under royal or other authority).¹⁰³ Davies writes that ‘we have, perhaps, not stood sufficiently in awe of the scale of these grants’. Robert de Brus’ Annandale, for example, is estimated to have extended over 200,000 acres.¹⁰⁴ Fortunately for David I and other peripheral rulers, this was precisely the type of grant they were in the best position to give. There were undoubtedly vast territories like that of Annandale nominally under royal control, which the kings of Scots did not have the resources to manage effectively, thus leaving them vulnerable to expropriation by competitors. By granting such territory to foreign magnates (or Cistercian monasteries, as argued above), the king could consolidate his hold over it and see it made more productive. The magnate, in turn, had the opportunity for significant material gain.

As in the case of the monasteries, however, there was the potential for post-contractual opportunism. The military strength of foreign magnates meant they might establish themselves as competitors in the region, reneging on their implicit contract with the king, and the king could do little about it if he did not have sufficient support from other magnates to retaliate. Like monasteries, those in border regions could also change allegiance, which would allow them to renege on their current contracts without losing what they had invested in establishing their authority locally. The period immediately following Henry I’s death again provides an example of secular magnates who changed allegiance to another ruler when their existing contracts failed to offer sufficient future gain. One example was Eustace FitzJohn, one of Henry I’s magnates whose lands in the Northumbria made him less able to benefit from what limited protection services the English royal government was able to offer after 1135, but better able to contract with David I.¹⁰⁵ The location of Eustace FitzJohn’s holdings also gave David I an incentive to try to tempt Eustace to defect. Eustace’s barony and castle at Alnwick, for example, were significant for strategic reasons in that the bar-

¹⁰² For an overview of aristocratic expansion during this period, see Bartlett, *Making of Europe*, ch. 2.

¹⁰³ Bartlett, *Making of Europe*, p. 51.

¹⁰⁴ Davies, *Domination and Conquest*, p. 37.

¹⁰⁵ For information on Eustace FitzJohn, see P. Dalton, ‘Eustace Fitz John and the Politics of Anglo-Norman England: The Rise and Survival of a Twelfth-Century Royal Servant’, *Speculum*, 71 (1996), pp. 358–383.

ony ‘stretched across the lowland plain between the Cheviot Hills and the North Sea, a natural invasion route for Scottish armies’.¹⁰⁶ Eustace also held the castle at Bamburgh, which David I had been attempting to seize. There is evidence that a cooperative relationship existed between Eustace and the Scottish king both during and after Henry I’s reign. In total, he attested nine charters for David I and Earl Henry, a non-trivial number next to the 25 he witnessed for Henry I.¹⁰⁷ Two of his attestations for David were before Henry I’s death. He was a witness to David’s famous grant of Anandale to Robert de Brus, probably in 1124, and he witnessed a charter in 1127 confirming that Thurstan of York had consecrated Robert, Bishop of St Andrews.¹⁰⁸

Precisely when Eustace changed allegiance to David I is not known. It was certainly by August 1138, when he fought with David’s army at the Battle of the Standard.¹⁰⁹ The two surviving Scottish royal charters issued in favour of Eustace reveal efforts to provide Eustace with revenue in exchange for his continued provision of local control and administration in Northumbria. A charter issued by David’s son Henry in his position as the earl of Northumbria confirmed and restored to Eustace everything he held in Northumbria of Henry I. It also granted further lands which had been a part of Earl Henry’s demesne from his marriage to Ada de Warenne as well as the fee and service of Robert de Muntut of five knights. Eustace also had rights of taxation and legal jurisdiction in his lands.¹¹⁰ Another charter issued between 1139 and 1141 by Earl Henry granted Tottenham, part of the Honour of Huntingdon, to Eustace, minus the ten librates of land he had already granted to Robert Foliot. It is unclear whether this second grant had any value after 1141, when Huntingdon and Northampton were lost.¹¹¹ However, Henry’s grants in Northumbria, along with the incentive of credible promises of property rights enforcement, were enough for Eustace to maintain his allegiance with David I until the end of the latter’s reign. He continued to witness royal charters, attesting for the last time as late as 1152 from Wadworth in Yorkshire.¹¹²

Land grants to foreign magnates in Scotland did not, as in England, involve dispossessing large numbers of Scottish magnates. Where he could establish agreements with them, David seems to have preferred to leave them be.¹¹³ Scottish magnates had the advantage of pre-existing legitimacy and could govern cheaply, without having to invest in establishing their rule. The problem for Scottish magnates was that their assets were highly location-specific. Unlike foreign magnates, they could not import any superior military technology to other regions; their primary asset was the advan-

¹⁰⁶ Dalton, ‘Eustace FitzJohn’, p. 365.

¹⁰⁷ Barrow, *Charters of David I*, nos. 16, 29, 59, 60, 65, 74, 76, 81, 102; Dalton, ‘Eustace FitzJohn’, p. 360.

¹⁰⁸ Barrow, *Charters of David I*, nos. 16, 29.

¹⁰⁹ From Ailred of Rievaulx, ‘Relatio de Standardo’, in Anderson, *Scottish Annals*, p. 199.

¹¹⁰ Barrow, *Charters of David I*, no. 82.

¹¹¹ Duncan, *Scotland*, p. 221.

¹¹² Barrow, *Charters of David I*, no. 59.

¹¹³ Neville, *Native Lordship*, p. 16.

tage of inherited legitimacy, which had virtually no salvage value if the magnate attempted to move to a different location. Happily for historians, this makes Scottish magnates the best index of the scope for self-enforcement in king-magnate implicit contracts. We rarely learn about those foreign magnates, ecclesiastical or secular, with whom implicit contracts could not be agreed and who therefore never appeared in Scotland. But because Scottish magnates were tied to their own location, breach of contract is likely to appear in surviving records as a rebellion of one sort or another.¹¹⁴

Less happily, the king's relations with Scottish magnates are the least-documented and least-studied of all the groups of magnates. None of David's surviving charters are in favour of Scottish magnates, though they do appear regularly in witness lists. It may be that charters were less in demand among Scottish magnates because they had less need of royal backing for their entitlements. There is strong evidence that the Earls of Fife, believed to have been the Scottish magnates with the strongest cooperative relations with the king, received a charter re-granting their lands to them in exchange for knight service.¹¹⁵ Much has been written about this putative charter, and rightly so, for it demonstrates explicitly that charters were more than simple notices of resource transfers. This act, however, is only known from its mention in a later act, and for the rest we are reduced to speculation.

If Scottish magnates already possessed legitimacy in their own particular territories, what could induce them to cooperate with the king? This question goes to the heart of the analysis of medieval royal power offered here, and the answer is that the king could potentially offer revenue that the magnate could not obtain alone. Alliance with the king offered access to an emerging administrative structure from which the magnate could potentially benefit. Specifically, this meant that the magnate could take advantage of economies of scale in the enforcement of property rights, and opportunities for third-party dispute resolution administered by royal officials.¹¹⁶ Furthermore, the magnate could gain access to burghs, or legally-chartered towns holding royal monopolies particularly in international trade.¹¹⁷ The organization of trade within the burghs included specialized systems of law and regulation designed to facilitate trade; the earliest known Scottish legislation on weights and measures, for example, was known as the 'Assisa Regis David'.¹¹⁸ Access to burghs also meant access to cash, primarily through international commerce.¹¹⁹ Through David's reign, which saw the

¹¹⁴ The most comprehensive examination of rebellions in medieval Scotland is A.M. McDonald, *Outlaws of Medieval Scotland: Challenges to the Canmore Kings, 1058–1266* (East Linton, 2003).

¹¹⁵ Barrow, *Charters*, no. 268.

¹¹⁶ While there is no surviving written evidence of royal dispute resolution involving Scottish magnates, one of David's surviving charters shows the resolution of a dispute over property between a foreign magnate, William Peverell, and Thorney Abbey. See Barrow, *Charters*, no. 5.

¹¹⁷ For the development of royal burghs in Scotland, see B. Dicks, 'The Scottish Medieval Town: a Search for Origins', in G. Gordon and B. Dicks (eds.), *Scottish Urban History* (Aberdeen, 1963), pp. 23–51; M. Lynch, M. Spearman and G. Stell (eds.), *The Scottish Medieval Town* (Edinburgh 1988); Duncan, *Scotland*, ch. 18; Barrow, *Kingship and Unity*, ch. 6; Walker, *A Legal History of Scotland*, ch. 8.

¹¹⁸ E. Gemmill and N. Mayhew, *Changing Values in Medieval Scotland: A Study of Prices, Money and Weights and Measures* (Cambridge, 1995), pp. 85–7.

¹¹⁹ Bartlett, *Making of Europe*, p. 39.

minting of Scotland's first official coinage after 1136, the control of money became an increasingly important part of royal administration.¹²⁰ Money, and particularly official coinage, was therefore something that Scottish magnates could not easily provide for themselves without access to the trade concentrated in royal burghs, and this provided an incentive for Scottish magnates to establish and enforce implicit contracts with the king. Their affiliation with the king might have additionally reinforced their authority at home, providing them a further incentive for cooperation.

The potency of these incentives varied between individual magnates, largely for geographic reasons. The earls of Fife, for example, had the strongest relationship with the king. The charters reveal them to have been exceedingly active in royal government, beyond even what is suggested by the probably charter re-granting their lands. Subsequent earls of Fife appear in the witness lists of 43 charters.¹²¹ The extensive involvement of the earls of Fife with royal government should not be surprising, given the location of their lands along the eastern coast of Scotland, where most commercial and administrative activity occurred. Charter witness lists provide examples of other Scottish magnates who publicly supported David's rule, but none to such an extent as the earls of Fife.¹²² This should not be surprising, given Scotland's geography. Travel and communication between the different regions of Scotland was difficult in the 12th century, and more remote regions like Caithness in the far northwest would be less likely to benefit from royal administrative services, which were concentrated in the east-central and south-eastern regions of Scotland. As McDonald points out, 'the marginal Atlantic zones of the kingdom were home to not one urban centre' in the middle ages.¹²³ The magnates whose implicit contracts with the Scottish kings had limited scope for self-enforcement held territory largely in these marginal regions, which were beyond the reach of most administrative and economic developments.¹²⁴

The loss of potential financial benefits was not the only factor indigenous magnates had to consider in choosing between opportunism and cooperation. Another was the potential cost of retaliation by the king. While the king could not rule a region by force alone without magnate cooperation, he could punish magnates who chose opportunism. This is one way in which the king's relationships with foreign magnates affected his relations with Scottish magnates. The superior military technology offered by foreign magnates made the potential costs of opportunism much higher than they would have otherwise been. These costs, however, were also to some extent a function of geography. Heavy cavalry, for example, was less effective in marshy or

¹²⁰ W.W. Scott, 'The Use of Money in Scotland, 1124–1230', *Scottish Historical Review* 58 (1979), p. 108.

¹²¹ Barrow, *Charters*, nos. 188, 194, 167, 91, 216, 133, 156, 89, 129, 99, 178, 189, 54, 97, 53, 127, 125, 165, 124, 96, 212, 151, 136, 153, 68, 70, 69, 56, 166, 86, 173, 90, 171, 174, 159 (Earl Duncan); 133 (Earl Constantine); 37, 36, 38, 147, 34, 33, 14. (Earl Gillemichael)

¹²² J. Bannerman, 'MacDuff of Fife', in A. Grant and K.J. Stringer (eds.), *Medieval Scotland: Crown, Lordship and Community* (Edinburgh, 1998), p. 22.

¹²³ McDonald, *Outlaws*, p. 170.

¹²⁴ For the regional distribution of burghs and charter place-dates, see A.A.M. Duncan, 'Burghs in Existence by 1153' and G.W.S. Barrow, 'Place-dates to 1153', in P.G.B. McNeill and H.L. MacQueen (eds.), *Atlas of Scottish History to 1707* (Edinburgh, 1996), pp. 159, 196.

mountainous areas, which meant that for those magnates who ruled over this type of territory, the potential costs of opportunism would be less than otherwise.¹²⁵

The limits of self-enforcement for Scottish magnates became more visible in 1153, when David I died and his 12-year old grandson, Malcolm IV, ascended the throne. The early 1150s saw dramatic changes in the protection market throughout Britain. In 1152, David's son Henry, whose presence in the charters had enabled David to make credible long-run commitments to magnates, predeceased his father (so far as we know, unexpectedly), leaving three young sons. David arranged for the eldest, the future Malcolm IV, to be taken through the country by the Earl of Fife and thereby announced as the future king.¹²⁶ This was perhaps an attempt to salvage the credibility of the long-run commitments that had contributed greatly to his bargaining power. David's own death the following year, however, meant that within two years, Scotland had gone from having a strong, long-reigning king with a capable heir to being ruled by a child. King-magnate relations shifted accordingly, and some of the indigenous magnates who had witnessed his grandfather's charters, demonstrating consent for his rule, rebelled under Malcolm. One of these was Fergus of Galloway, who launched a rebellion almost as soon as Malcolm IV had taken David's place on the throne.¹²⁷

Malcolm's youth and childlessness would have seriously inhibited his ability to make credible long-run commitments to magnates. That he apparently suffered from ill health (he died in mid-twenties) no doubt also contributed to diminished confidence among magnates regarding potential gain from long-run contracts with him. The self-enforcement of an implicit contract between king and magnate required that both parties considered the discounted future gain of continuing the relationship greater than the potential gains of opportunistic behaviour in the present. The shorter the horizon of potential future gains, the less likely they were to seem greater than the immediate gains of opportunism. For many indigenous magnates (though not all, the earls of Fife having maintained their relations with the crown), the difference between David I's ability to provide long-run incentives and that of Malcolm IV meant the difference between self-enforcement in David's reign and opportunism in Malcolm's.

¹²⁵ Bartlett, *Making of Europe*, p. 77.

¹²⁶ A.A.M. Duncan, *The Kingship of the Scots 842–1292* (Edinburgh, 2002), pp. 70–1.

¹²⁷ McDonald, *Outlaws*, p. 87.

Conclusion: the Fragility of Medieval Kingship

Malcolm's brief reign also saw the loss of the territory David I had appropriated in northern England. David had succeeded in expanding his territory after the death of Henry I of England in 1135, when competition between Henry's daughter Matilda and Stephen of Blois to succeed him erupted in civil war. Magnates in northern England shifted their allegiance to David as neither Matilda nor Stephen could credibly commit to protecting their entitlements. Malcolm's bargaining power compared unfavourably to that of Henry II of England, who came to the throne after Stephen's death in 1154. Henry II was a proven military leader and, through his marriage to Eleanor of Aquitaine, controlled most of what is now France, making his capacity to compensate magnates for their continued provision of local control far superior to that of Malcolm.¹²⁸ Northern magnates therefore shifted allegiance again, and the territory that had been gained within five years of Henry I's death was lost again within five years of David's.

This dramatic shift in the balance of power is suggestive of the susceptibility of medieval royal authority to changes induced by both internal and external shocks. The bargaining power that had allowed David to consolidate and expand his authority was based on his ability to make magnates believe that they could gain more through a long-run contractual relationship with him than through opportunistic behaviour. To do this, David provided both material grants and protection services from which magnates stood to benefit. In return, magnates supported David's rule and maintained local control in their particular territories. The central component of these relationships was inter-temporal decision-making. Both parties had to make decisions in the present which depended upon the expectation of future benefit. The long duration of contractual relations and the resulting uncertainty impeded magnates' abilities to accurately assess the relative costs and benefits of opportunism and cooperation. Such a shock might be the development or adoption of a new technology. The Latin charter, for example, assisted David in lending credibility to his commitments by putting them in a format with a potentially broader reach, temporally and spatially, than verbal testimony.

An unexpected change in the anticipated order of succession was another shock that required reassessment on the part of magnates as to whether they should maintain their existing cooperative agreements, or behave opportunistically and rebel or defect to another overlord. David I enhanced the long-term believability of his agreements through the public consent of his son and heir, whose actions as co-regent effectively provided a guarantee that contracts would continue in the next generation. The rebellions which appeared on Scotland's periphery on Malcolm IV's accession to the throne and the loss of the northern English territories revealed the damage to the Scottish kings' credibility caused by Earl Henry's premature death in 1152 followed shortly by David's own death in 1153.

The vulnerability of this system of governance to such shocks was perhaps its primary weakness, and it had serious developmental and human consequences for me-

¹²⁸ Davis, *King Stephen*, p. 113.

dieval society. Both kings and magnates had encompassing interests in the income of their territory which should have made them limit predations. Predation was limited where credible commitments could be made ensuring that property rights would be enforced and that the return on transaction-specific investments would not be expropriated. The peace which existed in Scotland under David I (and in England under Henry I) can be explained in these terms. It was when these commitments were expected to fail that present opportunism seemed more conducive to greater gain than future cooperation, and peace dissolved into violence, as it did in the rebellions which plagued Malcolm IV's reign, or in England's civil war. Little is known about economic performance in Scotland or England at this early period, making comparison between periods of stability and unrest difficult, but it seems reasonable to assume from the descriptions of contemporary chroniclers that with political stability came greater incentives to make rather than to take, and thus greater prosperity.

The study of Britain, and particularly Anglo-Scottish relations, provides a unique opportunity to apply this model because the protection market had relatively few major players. To apply this model to relations between kings and magnates in continental Europe would produce a rewarding but far more complex picture. European magnates would have had more varied opportunities for defection as they were less limited by geographical boundaries than their counterparts on the British Isles. These opportunities would have given them greater bargaining power, and may explain in part why the centralization of the British government in the medieval and early modern periods seems exceptional in comparison.¹²⁹ Such an analysis could contribute greatly to the study of concurrent processes of development across Europe during the middle ages.

¹²⁹ Epstein, *Freedom and Growth*, p. 14.

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