

*The Liberty of Whitby Strand: The Origins and Significance of a Jurisdictional Immunity**

In the accounting year 1218/19, Aubrey, son of Richard of Cave, accused Walter of Grimston and Peter, a lay brother, of wounding. Peter was detained at Whitby ‘because of the liberty of Saint Hild’. Subsequently, Peter appeared before the justices at York in connection with the death of Gentilia the Jewess, but the bailiffs of Whitby came and ‘they requested the court of Saint Hild for him as a man of Saint Hild’; he was handed over and the decision was made to speak about it at Whitby.¹ Our partial record of this case is invoked here because it reveals, in passing, that Whitby Abbey controlled a jurisdictional immunity, later known as the Liberty of Whitby Strand; it does, of course, include a number of other intriguing details which will not receive attention. The Liberty comprised a range of franchises which are never enumerated in one place; they must be pieced together from a variety of documents. In the town and port of Whitby they included sake and soke, toll and team and infangthief,² burgage,³ a fair on the feast of St Hild with peace,⁴ authority over the merchant court, the court of common pleas, the sheriff’s tourn, the appointment of officers and the marriage of widows,⁵ and the resources of the harbour and

* Supportive correspondence with Richard Sharpe lies behind the research for this article; I am sad that it was not completed in time for him to read. Provisional analysis from the ‘Acta of Henry I and William II’ project was generously provided by David X. Carpenter, who also offered invaluable comments on an earlier draft. Nicholas Karn kindly allowed pre-publication access to his edition of the text by Abbot Stephen of St Mary’s, and Nick Vincent to his edition of the charters of Henry II. The Friends of Whitby Abbey, especially Roger Pickles, Stuart Tonner and Barrie Williams, have shared their facsimiles, translations, indices and maps. Dale Copley and Katy Dutton supplied essential assistance. Conversations with Hugh Doherty and Daniel Talbot shaped my thinking. Audiences at Cambridge, Chester, Oxford, Liverpool and Stirling listened to parts of this argument and offered positive critical suggestions. Special thanks are due to Tom Lambert, Katherine Wilson, Catherine Holmes, and the three anonymous reviewers who read and improved earlier drafts.

1. ‘propter libertatem Sancte Hilde’ and ‘petierunt curiam Sancte Hilde de eo sicut homine Sancte Hilde’: *Rolls of the Justices in Eyre, Being the Rolls and Pleas and Assizes for Yorkshire in 3 Henry III (1218–1219)*, ed. D.M. Stenton, Selden Society, lvi (1937), p. 291 (no. 795).

2. Table 2, nos 2, 8, 12, 14. For sake and soke, toll and team and infangthief, see J. Hudson, *The Oxford History of the Laws of England*, II: 871–1216 (Oxford, 2012), pp. 59–62, 289–91; T. Lambert, *Law and Order in Anglo-Saxon England* (Oxford, 2017), pp. 323–32.

3. Table 2, nos 8, 11, 12, 14. For burgage, see Hudson, *Oxford History of the Laws*, II, pp. 833–8.

4. Table 2, nos 8, 11, 12. For fairs, see E. Wedemeyer Moore, *The Fairs of Medieval England: An Introductory Study* (Toronto, ON, 1985).

5. *Cartularium abbatiae de Whiteby*, ed. J.C. Atkinson, Surtees Society, lxxix and lxxii (2 vols, Durham, 1879–81) [hereafter *CW*], ii, pp. 422–8 (no. 473) and pp. 501–5 (no. 562); *Calendar of the*

coastline including seaweed⁶ and wrecks.⁷ Beyond the town and port they included sake and soke, toll and team and infangthief,⁸ the right to preside over the ordeal,⁹ and the right to the pastures, forests, wastes and clearances, with freedom from interference by royal officials.¹⁰ These franchises were located within a fifty-five-mile boundary set out in the community's charters, corresponding to the mother-parishes of St Mary's at Whitby and St Mary's at Hackness (Fig. 1). The *Victoria County History* accepted claims in the abbey's charters that King William I established the Liberty—a reasonable conclusion at the time.¹¹ Otherwise, it has been overlooked.¹² This is despite continuing interest in the chronological development of jurisdictional immunities in relation to royal authority and power. The purpose of this paper is to show that the origins of the Liberty can be pinned down with unusual precision, because it appeared as a result of a series of forgeries presented to King Richard I in 1190 and King John from 1199 to 1205, and to use this exceptional opportunity to explore the circumstances in which it was created and its significance for royal authority and power.

Since the nineteenth century, jurisdictional immunities have been analysed as an index of royal authority and power. Frederick William Maitland accepted the thirteenth-century discourse that the king was the root of all legal rights, distinguishing jurisdictional rights (authority over legal procedures) from fiscal rights (the profits from justice), and considering the impact of their alienation on royal authority and power.¹³ Historians have often worked within Maitland's conceptual framework, though they have radically adjusted his conclusions. Maitland contended that Anglo-Saxon and Anglo-Norman kings had alienated jurisdictional and fiscal rights over even the most significant misdeeds, undermining their power, before Angevin legal reforms remedied this situation. Instead, Naomi Hurnard argued that kings

Patent Rolls Preserved in the Public Record Office, Edward III, IX: A.D. 1350–1354 (1907), p. 29 (24 Edward III, m. 6d, 24 Nov. 1350). For the sheriff's tourn, see H.M. Cam, *The Hundred and the Hundred Rolls: An Outline of Local Government in Medieval England* (London, 1930), pp. 118–28.

6. Table 2, nos 2, 9, 12, 14.

7. *Yorkshire Hundred and Quo Warranto Rolls*, ed. and tr. B. English (Leeds, 1996), pp. 128–9. For wreck, see S. Raich, 'Wreck of the Sea in Law and Practice in Eleventh- and Twelfth-Century England', *Anglo-Norman Studies*, xxxviii (2016), pp. 141–54.

8. Table 2, no. 10.

9. Table 3, nos 1, 2, 5, 6. For ordeal, see R. Bartlett, *Trial by Fire and Water: The Medieval Judicial Ordeal* (Oxford, 1986), esp. pp. 13–66.

10. Table 2, nos 2, 3, 7, 8, 11–15; *Yorkshire Hundred and Quo Warranto Rolls*, ed. English, pp. 128–9.

11. W. Page, ed., *A History of the County of York, North Riding: Volume 2* (London, 1923), pp. 502–28.

12. N.D. Hurnard, 'The Anglo-Norman Franchises (Continued)', *English Historical Review*, lxiv (1949), pp. 433–60, at 455, is the one exception. Cam, *Hundred and the Hundred Rolls*, pp. 260–85, Appendix IV, lists the hundreds of England and their lords in 1274, but at pp. 284–5 omits Whitby Strand.

13. F.W. Maitland, *Domesday Book and Beyond* (1897; reissued London, 1960), esp. pp. 307–46; F. Pollock and F.W. Maitland, *The History of English Law before the Time of Edward I* (2 vols, 2nd edn, Cambridge, 1898), i, pp. 42–50, 555–625, and ii, pp. 470–547.

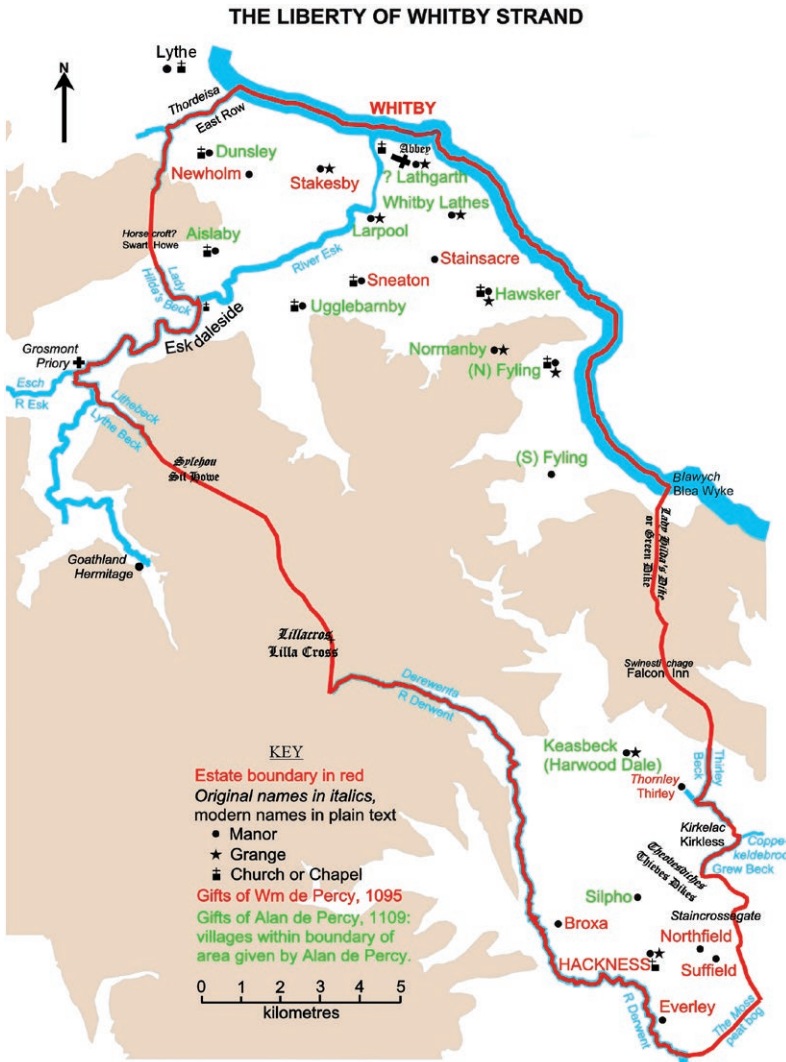


Fig. 1: The Liberty of Whitby Strand. Copyright Roger Pickles.

had only alienated rights over more minor misdeeds.¹⁴ Then Helen Cam pointed out that royal rights had developed over time, changing the immunities that kings could grant: the creation of jurisdictional immunities was not merely devolution but also evolution.¹⁵ Building on these approaches, Patrick Wormald reconstructed a picture of the

14. N.D. Hurnard, 'The Anglo-Norman Franchises', *English Historical Review*, lxiv (1949), pp. 289–327, and 'Anglo-Norman Franchises (Continued)'.

15. H.M. Cam, 'The Evolution of the Mediaeval English Franchise', *Speculum*, xxxii (1957), pp. 427–42.

pre-Conquest period in which kings retained jurisdiction over justice and only granted away the profits of justice.¹⁶ Nevertheless, Julia Crick illustrated how the pre-Conquest concept of bookland, which established freedom from some property conventions, provided a precedent and a language from which post-Conquest jurisdictional immunities developed.¹⁷ Most recently, Tom Lambert has argued for the abandonment of this thirteenth-century conceptual framework for the period before 1066,¹⁸ and Nicholas Karn has illustrated how a variety of strategies by lords to bring legal cases under their own jurisdiction in the late eleventh and early twelfth centuries led to a new culture of thinking in terms of, and arguing about, jurisdiction itself.¹⁹

One reason for these shifting positions is the exiguous and episodic nature of our evidence. Helen Cam warned that ‘To attempt to determine how long these [private] hundreds had been held by subjects is to plunge into the sea of uncertainties of which Richard fitz Neal speaks’.²⁰ Before the Quo Warranto proceedings of 1279–81, even for comparatively well-documented jurisdictional immunities, it has proven difficult to identify securely when they were created and what they included. This makes it hard to explore the dynamics of their creation in a way that throws light on royal authority and power, or to know whether individual instances were representative. A brief survey of our knowledge and understanding of the origins of particular jurisdictional immunities is helpful to illustrate this point.

The Liberty of Durham grew from pre-Conquest conditions—the cult of St Cuthbert, his widespread lands, his sanctuary rights, and the absence of royal administrative structures beyond the River Tees—but was the result of the unusually prominent role of the bishop in regional administration and the cumulative acquisition of particular franchises across the twelfth century.²¹ The Liberty of Chester evolved as a result

16. C.P. Wormald, ‘Lordship and Justice in the Early English Kingdom: Oswaldslaw Revisited’, in W. Davies and P. Fouracre, eds, *Property and Power in the Early Middle Ages* (Cambridge, 1995), pp. 114–36; C.P. Wormald, ‘Oswaldslaw: An “Immunity”?’ in N.P. Brooks and C.R.E. Cubitt, eds, *St Oswald of Worcester: Life and Influence* (London, 1996), pp. 117–28; C.P. Wormald, ‘Maitland and Anglo-Saxon Law: Beyond Domesday Book’, in J. Hudson, ed., *The History of English Law: Centenary Essays on ‘Pollock and Maitland’* (Oxford, 1996), pp. 1–20.

17. J. Crick, ‘*Pristina Libertas*: Liberty and the Anglo-Saxons Revisited’, *Transactions of the Royal Historical Society*, 6th ser., xiv (2004), pp. 41–71.

18. T. Lambert, ‘Royal Protections and Private Justice: A Reassessment of Cnut’s Reserved Pleas’, in S.A. Jurasinski, L. Oliver and A. Rabin, eds, *English Law before Magna Carta: Felix Liebermann and Die Gesetze der Angelsachsen* (Leiden, 2010), pp. 157–76; Lambert, *Law and Order in Anglo-Saxon England*; T. Lambert, ‘Jurisdiction as Property in England, 900–1100’, in G. Kantor, T. Lambert and H. Skoda, eds, *Legalism: Property and Ownership* (Oxford, 2017), pp. 115–48.

19. N. Karn, *Kings, Lords and Courts in Anglo-Norman England* (Woodbridge, 2020).

20. Cam, *Hundred and the Hundred Rolls*, pp. 137–8; see also ead., ‘The Private Hundred in England before the Norman Conquest’, repr. in H.M. Cam, *Law-Finders and Law-Makers in Medieval England* (London, 1962), pp. 59–70; and H.M. Cam, ‘*Manerium cum Hundredo*: The Hundred and the Hundredal Manor’, *English Historical Review*, xlvii (1932), pp. 353–76.

21. J. Scammell, ‘The Origin and Limitations of the Liberty of Durham’, *English Historical Review*, lxxxi (1966), pp. 449–73.

of contingent factors—the great compact and uninterrupted marcher lordship and the talents of Earl Ranulf II de Gernons (1129–53), who introduced administrative innovations parallel to the emerging royal institutions.²² Neither Durham nor Chester can be pinned down to a particular moment of creation and neither may be taken as a guide to other jurisdictional immunities, because they ‘offer the extreme English examples of alienated *regalia*, and their inflated reputations falsify many assessments of the effectiveness of monarchy and the possible extent of immunities’.²³ The liberties of St John of Beverley and of St Wilfrid of Ripon looked back to the patronage of King Athelstan, but evolved from zones of personal sanctuary to territorial immunities over the course of the twelfth century, and the surviving documentation does not illuminate the details.²⁴ The Liberty of Oswaldslaw appeared thanks to the ingenuity of Bishop Wulfstan II of Worcester in composing returns to the Domesday inquest.²⁵ The Liberty of Bury St Edmunds had its foundations in Edward the Confessor’s grant of eight hundreds and a half in western Suffolk, but its immunities and exemptions resulted from the challenges posed by particular bishops, the creativity of forgers, and the efforts of individual abbots in the late eleventh and twelfth centuries; this created a rich archive whose complexities are still being teased out.²⁶ The Liberty of St Albans had its roots in a series of papal privileges acquired in the twelfth century, but was also expanded through an appeal to the Anglo-Saxon past that resulted in a portfolio of forgeries still under analysis.²⁷ The Liberty of Battle Abbey rested on the abbey’s status as a penitential foundation of William the Conqueror, but resulted from responses to episcopal encroachments in the twelfth century which prompted the fabrication of grants attributed to the Anglo-Norman kings.²⁸

22. G.J. White, ‘The Legacy of Ranulf de Gernons’, in P. Dalton and D.E. Luscombe, eds, *Rulership and Rebellion in the Anglo-Norman World, c.1066–c.1216: Essays in Honour of Professor Edmund King* (Farnham, 2015), pp. 111–24.

23. Scammel, ‘Origin and Limitations’, p. 452.

24. T.B. Lambert, ‘Spiritual Protection and Secular Power: The Evolution of Sanctuary and Legal Privilege in Ripon and Beverley, 900–1300’, in T.B. Lambert and D. Rollason, eds, *Peace and Protection in the Middle Ages* (Toronto, ON, 2009), pp. 121–40.

25. S. Baxter, ‘The Representation of Lordship and Land Tenure in Domesday Book’, in E. Hallam and D. Bates, eds, *Domesday Book* (Stroud, 2001), pp. 73–102.

26. H.W.C. Davis, ‘The Liberties of Bury St Edmunds’, *English Historical Review*, xxiv (1909), pp. 417–31; A. Gransden, ‘Baldwin, Abbot of Bury St Edmunds, 1065–1097’, *Anglo-Norman Studies*, iv (1982), pp. 65–76, 187–95; S. Foot, ‘The Abbey’s Armoury of Charters’, in T. Licence, ed., *Bury St Edmunds and the Norman Conquest* (Woodbridge, 2014), pp. 31–52; R. Purkiss, ‘Early Royal Rights in the Liberty of St Edmund’, *Anglo-Norman Studies*, xli (2019), pp. 155–74.

27. J. Sayers, ‘Papal Privileges for St Albans Abbey and its Dependencies’, in D.A. Bullough and R.L. Storey, eds, *The Study of Medieval Records: Essays in Honour of Kathleen Major* (Oxford, 1971), pp. 57–84; J. Crick, ‘Liberty and Fraternity: Creating and Defending the Liberty of St Alban’s’, in A. Musson, ed., *Expectations of the Law in the Middle Ages* (Woodbridge, 2001), pp. 91–103.

28. E. Searle, ‘Battle Abbey and Exemption: The Forged Charters’, *English Historical Review*, lxxxiii (1968), pp. 449–80; E. Searle, *Lordship and Community: Battle Abbey and its Banlieu, 1066–1538* (Toronto, ON, 1974).

Set in this context, the neglected evidence for the Liberty of Whitby Strand presents a valuable opportunity because it allows us to pin down the moments in which a jurisdictional immunity was created with unusual precision. This article begins by considering the positive evidence for the development of the abbey's endowment and franchises up to *circa* 1187, suggesting that the community held a narrower and non-territorial portfolio of franchises. It then argues that all of the community's documents relating to a territorial liberty with wider franchises before *circa* 1187 are forgeries. The article goes on to suggest that some of these forgeries were used to convince Richard I and John to acknowledge the existence of a territorial liberty with wider franchises. Finally, it considers the circumstances and motivations surrounding the creation of this territorial liberty and reflects on its significance for royal authority and power.

I

The evidence for the refoundation of Whitby Abbey and the development of its endowment and franchises is preserved in Domesday Book (1086 × 1088),²⁹ Abbot Stephen's history of the refoundation of St Mary's, York (1093 × 1122),³⁰ Symeon of Durham's *Libellus de Exordio* (1104–7 × 1115),³¹ a pamphlet composed at Whitby *circa* 1176,³² an Anglo-Latin poem surviving in a fifteenth-century manuscript,³³ and two cartularies compiled in the thirteenth and fourteenth centuries.³⁴ Tracking the evolution of the abbey's endowment is a delicate task because the earliest evidence is supplied by charters surviving in much later cartulary copies. Arguments for the authenticity of these charters will always remain provisional. First, the charters of lay patrons are

29. Facsimile and edition: *Great Domesday*, ed. R.W.H. Erskine and A. Williams (6 cases, London, 1986–92), tr. M.L. Faull and M. Stinson, *Domesday Book: Yorkshire* (2 vols, Chichester, 1986) [hereafter *DB*].

30. 'The Foundation Narrative', ed. and tr. N. Karn, in *Foundation Documents from St Mary's Abbey, York: 1085–1137*, ed. R. Sharpe (Woodbridge, 2022), pp. 380–407.

31. *Symeon of Durham. Libellus de Exordio atque Procursu istius hoc est Dunhelmensis Ecclesie*, ed. and tr. D. Rollason (Oxford, 2000).

32. Northallerton, North Yorkshire Record Office, ZCG VI 1, fos 1r–4v. Facsimile: *The Great Booke of Whitby: CD Rom Facsimile* (Hull, 1999). Edition: *CW*, i, pp. 1–10 (nos I–III), p. 341. Tr. B. Williams, *The Whitby Abbot's Book* (Whitby, 2014), pp. 13–16 and 138–40. Analysis: T. Pickles, 'Were Early Medieval Lists Bureaucratic? The Whitby "Abbot's Book", Folios 1r–4v', *Österreichische Zeitschrift für Geschichtswissenschaften*, xxxii, no. 3 (2021), pp. 66–90.

33. Cambridge, Trinity College, MS O.9.38, fos 69r–76v. Edition: A.G. Rigg, 'A Latin Poem on St. Hilda and Whitby Abbey', *Journal of Medieval Latin*, vi (1996), pp. 12–43.

34. The first is known as The Abbot's Book: Northallerton, North Yorkshire Record Office, ZCG VI 1, fos 1–70, belonging to the second quarter of the thirteenth century; fos 71–137, belonging to the second quarter of the fourteenth century, and some fifteenth- and sixteenth-century additions. The second, London, British Library [hereafter BL], Additional MS 4715, is a mid-thirteenth-century compilation comprising fos 9–15, 25–8, 73–5, 83–6, 107–12, 122–7, and 148–67, supplemented in the fourteenth century. Editions of both: *CW*. For a catalogue summary, see G.R.C. Davis, *Medieval Cartularies of Great Britain: A Short Catalogue* (London, 1958), pp. 118–19 (nos 1032, 1033).

likely to have been beneficiary-drafted, meaning that we cannot authenticate them through form and language, but only through external verification of historical details. Secondly, Whitby Abbey probably possessed genuine single-sheet originals or authentic copies of earlier lay and royal charters to use as the basis for plausible fabrications. Put simply, before the process of charter enrolment begins under King John, it is often possible to identify a forgery, but only ever possible to conclude that there are, as yet, no reasons to doubt the authenticity of a late copy. Keeping this in mind, several charters suggest that the endowment and franchises grew over a century, the pamphlet of *circa* 1176 provides a snapshot without any reference to a territorial liberty or its franchises, and this is consistent with entries in the Pipe Rolls as late as 1186/7.

To provide context for analysis of the documents, we must pay brief attention to the circumstances of the refoundation, elucidated by Alexander Hamilton Thompson and Janet Burton.³⁵ The refoundation was part of a broader movement to re-establish Northumbrian monasteries that were recorded in Bede's *Historia ecclesiastica gentis Anglorum*. Aldwin, prior of Winchcombe Abbey, and Reinfrid and Elfwy, monks of Evesham, travelled north in the 1070s. First they settled at Monkchester (Newcastle-upon-Tyne), then moved to Jarrow, after which Aldwin left for Melrose and Reinfrid left for Whitby.³⁶ Reinfrid was joined by Stephen (future abbot of St Mary's) in 1078.³⁷ The Domesday Book entry for Whitby suggests that King William I had granted the former comital manor at Whitby with its outlying berewicks and sokelands to Hugh, earl of Chester, who had granted it to William de Percy, and that two Whitby sokelands—two carucates at *Presteby* and four carucates at *Sowerby*—were used to endow a community.³⁸ Nevertheless, the community subsequently split: Stephen moved to Lasingham and then founded St Mary's, York, retaining control over the Whitby lands at *Presteby* and *Sowerby* in Domesday Book, while another group associated with Reinfrid and Serlo de Percy moved to Hackness, where Domesday records *terra S Hild*.³⁹ At some unknown time the Hackness contingent returned to Whitby, but Serlo remained only prior of Whitby; his successor, William de Percy, became first abbot of Whitby in 1109.⁴⁰

35. A.H. Thompson, 'Monastic Settlement at Hackness and its Relation to the Abbey of Whitby', *Yorkshire Archaeological Journal*, xxvii (1924), pp. 388–405; J.E. Burton, 'The Monastic Revival in Yorkshire: Whitby and St Mary's, York', in D. Rollason, M. Harvey and M. Prestwich, eds, *Anglo-Norman Durham* (Woodbridge, 1994), pp. 41–51; J.E. Burton, *The Monastic Order in Yorkshire, 1069–1215* (Cambridge, 1999), pp. 23–44.

36. *Symeon of Durham*, ed. and tr. Rollason, *Libellus*, iii. 21–2.

37. 'Foundation Narrative', ed. and tr. Karn, pp. 382–3 (§ 3).

38. *DB*, fos 305r (4 N 1), 380v (SN L 2).

39. 'Foundation Narrative', ed. and tr. Karn, pp. 382–99 (§§ 3–11); *DB*, fos 305r (4 N 1), 380v (SN L 2), 232r (13 N 13), 380v (SN D 9); Rigg, 'A Latin Poem on St. Hilda', p. 32, ll. 600–609; Oxford, Bodleian Library, MS Dodsworth 159, fo. 115v (edition in *CW*, i, p. xxxviii).

40. D.D. Knowles, C.N.L. Brooke and V.C.M. London, *The Heads of Religious Houses in England and Wales, 1: 940–1216* (2nd edn, Cambridge, 2004), p. 78.

Two charters are foundation grants by William de Percy and his son Alan de Percy. That of William de Percy is a grant to God and St Hild the Abbess, to found the abbey destroyed in former times, and to Prior Serlo and the monks, for the souls of William I, Queen Matilda, William II, Earl Hugh of Chester and William's family (Table 1, no. 1). Knowing the details of refoundation and the fact that William de Percy died in Jerusalem, presumably on the First Crusade, this should date to 1088 × 1096, and the witnesses seem acceptable.⁴¹ Since this includes an initial list of the community's properties which omits those entered into Domesday Book and retained by Abbot Stephen of St Mary's, York, at *Preteby* and *Sowerby*, it probably represents the return of the party from Hackness and their provision with property excluding those contested holdings.⁴² That of Alan de Percy is a grant made in the time of Henry I to the church of SS Peter and Hild at Whitby for the souls of William II and Henry I, Earl Hugh of Chester, and Alan's family (Table 1, no. 2). The reference to Henry I provides broad dating limits of 1100 × 1135, the witnesses seem acceptable, and William Farrer dated it 1100 × 1115.⁴³ Since this includes a second, longer list of the Abbey's properties, including one of the contested properties, *Sowerby*, and the date range is compatible with the election of William de Percy as abbot in 1109, it may reflect a moment when the independent status of the Hackness party, returned to Whitby, was established.⁴⁴

Table 1. Lay Charters

No.	Name	Date	Authenticity	Manuscript(s)	Edition(s)
1.	William de Percy	1088 × 1096?	Authentic copy?	Abbot's Book, fo. 8	(i) <i>CW</i> , i, pp. 31–3 (no. 27) (ii) <i>EYC</i> , ii, pp. 197–8 (no. 855) (iii) <i>EYC</i> , xi, p. 20 (no. 1)
2.	Alan de Percy	1109?	Authentic copy?	Abbot's Book, fo. 71	(i) <i>CW</i> , i, pp. 223–4 (no. 279) (ii) <i>EYC</i> , ii, p. 202 (no. 857)
3.	Alan de Percy	?	Forgery	(i) Abbot's Book, fos 8–9 (ii) BL, Add. MS 4715, fo. 6v	(i) <i>CW</i> , i, pp. 33–5 (no. 27) (ii) <i>CW</i> , ii, pp. 362–5 (no. 405) (iii) <i>EYC</i> , ii, pp. 203–5 (no. 859)

41. *Early Yorkshire Charters*, ed. W. Farrer (3 vols, Edinburgh, 1914–16), and W. Farrer and C. Clay (10 vols, Wakefield, 1935–65) [hereafter *EYC*], ii, pp. 197–8 (no. 855), and xi, p. 20 (no. 1).

42. Hamilton Thompson, 'Monastic Settlement at Hackness', pp. 393, 397, 399; Burton, 'Monastic Revival', p. 49; Burton, *Monastic Order*, p. 38.

43. *EYC*, ii, p. 202 (no. 857).

44. Burton, 'Monastic Revival', p. 49; Burton, *Monastic Order*, p. 38.

To these charters from lay patrons may be added one royal charter of confirmation and one papal privilege. Entered into the Charter Rolls in 1288/9 is a charter of King Stephen issued at York in February 1136, confirming grants by William I, William II and Henry I, and by William de Percy, Alan de Percy and William II de Percy (Table 2, no. 10). Though this survives as a late copy there are no obvious reasons to doubt its authenticity: it is one of a number of charters issued on this occasion, some surviving as single-sheet originals with seals, sharing aspects of form and overlapping witness lists.⁴⁵ This includes a list of holdings expanding on those in the charters of William de Percy and Alan de Percy, and specifies the standard franchises of sake and soke, toll and team and infangthief. More franchises could be hidden within the long 'quare volo' clause.⁴⁶ Nonetheless, if this charter is authentic, and if a wider range of franchises existed, it is surprising that they were not specified: the other charters issued included variable and specific franchises.

Copied into the thirteenth-century portion of the first Whitby cartulary is a privilege of Pope Eugenius III, including a longer list of properties, and mentioning no franchises (Table 3, no. 4). Again, though this is a late copy, there is no obvious reason to doubt its authenticity: it could have been acquired, like many others, during Eugenius's tour north of the Alps into France and Germany in 1147–8, preaching the Second Crusade; it compares favourably to others, and it has been accepted by editors.⁴⁷ Since the franchises specified by Stephen were royal and so were many of those in the later Liberty, they could have been confirmed here, but did not have to be; however, the Whitby monks later claimed freedom from synodal dues and the right to conduct ordeal, which were episcopal franchises based on supposed episcopal grants, and we might expect them to be mentioned.

45. *Regesta Regum Anglo-Normannorum, 1066–1154*, ed. R.H.C. Davis, R.J. Whitwell and C. Johnson (4 vols, Oxford, 1913–19) [hereafter *RRAN*], iii, p. 36 (no. 99), pp. 91–2 (nos 255–7), pp. 126–7 (no. 335), p. 144 (no. 373a), pp. 263–4 (nos 716–17), p. 330 (nos 906–7), p. 362 (no. 979), pp. 365–6 (no. 990). For context and analysis, see P. Dalton, *Conquest, Anarchy and Lordship: Yorkshire, 1066–1154* (Cambridge, 1994), pp. 221–7; D. Crouch, *The Reign of King Stephen, 1135–1154* (Harlow, 2000), pp. 39–41; G.J. White, *Restoration and Reform, 1153–1165: Recovery from Civil War in England* (Cambridge, 2000), pp. 50–54; E. King, *King Stephen* (New Haven, CT, 2010), pp. 53–6.

46. 'Quare volo et precipio quod bene et in pace et libere et honorifice et quiete teneant in bosco et plano et pratis et pasturis et aquis et molendinis et mariscis et vivariis et piscariis et stagnis et exclusis, infra burgum et extra, in feriis, in foris, in civitate et extra, in forestis, in divisis, in exitibus, in viis, in semitis et in omnibus locis et rebus, cum soca et sacha et thol et team et infangenethefe et cum omnibus libertatibus et quietationibus cum quibus melius et liberius tenerunt tempore regis Willelmi avi mei et regum Willelmi et Henrici avunculorum meorum'.

47. *Regesta Pontificum Romanorum ab Condita Ecclesia ad Annum Post Christum Natum MCXCVIII*, III, ed. Philippe Jaffé (Leipzig, 1888), p. 83 (no. 9645), Pope Eugenius III (1145–53), which may be compared with those with similar incipits, listed *ibid.*, Index, p. 603. For the likely occasion of 1147–8, see A.J. Duggan, 'The Benefits of Exile', in I. Fönnesberg-Schmidt and A. Jotischky, eds, *Pope Eugenius III (1145–1153): The First Cistercian Pope* (Amsterdam, 2018), pp. 171–95.

Table 2. Royal Charters

No.	King	Date	Authenticity	Manuscript(s)	Edition(s)	Enrolment
1.	William I or William II	1066 × 1100	Forgery	BL, Add. MS 4715, fo. 160 (Enrolment)	(i) <i>CW</i> , ii, pp. 495–6 (no. 555) (ii) <i>RRAN</i> , i, p. 61 (no. 228) (iii) <i>EYC</i> , ii, pp. 206–7 (no. 862)	TNA, Charter Rolls, 5 Edward II, m. 6 (no. 17)
2.	William II	1087 × 1100	Forgery	(Enrolment)	(i) <i>CW</i> , ii, pp. 527–8 (no. 579) (ii) <i>RRAN</i> , i, p. 105 (no. 421) (iii) <i>EYC</i> , ii, pp. 207–8 (no. 863)	TNA, Cartae Antiquae Roll DD, no. 25
3.	William II	1087 × 1100	Forgery	(i) Abbot's Book, fo. 47 (ii) BL, Add. MS 4715, fo. 153	(i) <i>CW</i> , i, p. 147 (no. 184) (ii) <i>RRAN</i> , i, p. 67 (no. 259) (iii) <i>EYC</i> , ii, pp. 208–9 (no. 864)	TNA, Charter Rolls, 5 Edward II, m. 6 (no. 17)
4.	Henry I	1108	Authentic copy?	(i) Abbot's Book, fo. 52 (ii) BL, Add. MS 4715, fo. 161v	(i) <i>CW</i> , i, p. 161 (no. 195) (ii) <i>RRAN</i> , ii, pp. 81–2 (no. 891) (iii) <i>EYC</i> , i, pp. 309–10 (no. 396)	
5.	Henry I	?1109	Forgery	(i) Abbot's Book, fo. 52 (ii) BL, Add. MS 4715, fo. 162v	(i) <i>CW</i> , i, pp. 161–2 (no. 196) (ii) <i>RRAN</i> , ii, p. 89 (no. 926) (iii) <i>EYC</i> , i, p. 310 (no. 398)	
6.	Henry I	?1109	Forgery	(i) Abbot's Book, fo. 52 (ii) BL, Add. MS 4715, fo. 170v	(i) <i>CW</i> , i, p. 162 (no. 197) (ii) <i>RRAN</i> , ii, p. 89 (no. 926) (iii) <i>EYC</i> , i, p. 310 (no. 397)	
7.	Henry I	?1111	Forgery	(i) Abbot's Book, fo. 50 (ii) BL, Add. MS 4715, fo. 162v	(i) <i>CW</i> , i, p. 155–7 (no. 190) (ii) <i>RRAN</i> , ii, p. 103 (no. 995) (iii) <i>EYC</i> , ii, pp. 209–10 (no. 865)	TNA, Cartae Antiquae Roll DD, no. 28 (24)

Table 2. Continued

No. King	Date	Authenticity	Manuscript(s)	Edition(s)	Enrolment
8. Henry I	?1122	Forgery	(Enrolment)	(i) <i>RRAN</i> , ii, pp. 174, 345 (no. 1335)	TNA, Cartae Antiquae Roll CC 52, no. 27 (7)
9. Henry I	?1133	Forgery	(i) Abbot's Book, fo. 67 (ii) BL, Add. MS 4715, fo. 153 (Enrolment)	(i) <i>CW</i> , i, pp. 213–14 (no. 268) (ii) <i>RRAN</i> , ii, p. 264 (no. 1767) (iii) <i>EYC</i> , ii, pp. 211–12 (no. 867)	
10. Stephen	1136	Authentic copy?	(Enrolment)	(i) <i>CW</i> , ii, pp. 530–35 (no. 582) (ii) <i>RRAN</i> , iii, pp. 346–7 (no. 942) (iii) <i>EYC</i> , ii, pp. 212–14 (no. 868)	TNA, Charter Roll 5 Edward II, m. 6 (no. 17)
11. Henry II	?1155 × 1166	Forgery	Abbot's Book, fo. 47; BL, Add. MS 4715, fo. 154	(i) <i>CW</i> , i, pp. 147–9 (no. 185) (ii) <i>ChHII</i> , no. 2816	(i) TNA, Cartae Antiquae Roll CC 52, no. 27 (6) (ii) TNA, Cartae Antiquae Roll 52, no. 28 (27)
12. Henry II	?1174 × 1179	Forgery	(Enrolment)	(i) <i>CW</i> , ii, pp. 496–8 (no. 557) (ii) <i>EYC</i> , ii, pp. 214–16 (no. 870) (iii) <i>ChHII</i> , no. 2820	(i) TNA, C 53 no. 24, Charter Roll 14 Henry III part 2 m. 6, 13 Apr. 1230 (ii) TNA, Cartae Antiquae Roll DD 52, no. 28 (26) BL, MS Add. 4715, fos 153v–154r (163v–164r, 157v–158r)
13. Henry II	?1173 × 1182	Forgery?	Abbot's Book, fos 47v–48; BL, Add. MS 4715, fos 154v–155r	(i) <i>CW</i> , i, pp. 149–50 (no. 186) (ii) <i>EYC</i> , ii, pp. 216–17 (no. 871) (iii) <i>ChHII</i> , no. 2819	
14. Richard I	23 April 1190	Authentic copy?	Abbot's Book, fos 48–9	<i>CW</i> , i, pp. 150–53 (nos 187–8)	
15. Richard I	23 April 1190	Authentic copy?	Abbot's Book, fos 49–50	<i>CW</i> , i, pp. 153–5 (no. 189)	

Table 3. Papal and Episcopical Acta

No.	Prelate	Date	Authenticity	Manuscript(s)	Edition(s)
1.	Archbishop Thurstan	?1119 × 1122	Forgery	(i) Abbot's Book, fo. 54v (ii) BL, Add. MS 4715, fo. 148v	(i) <i>CW</i> , i, p. 170 (no. 204) (ii) <i>EYC</i> , ii, pp. 223–4 (no. 876) (iii) <i>EEA</i> , v, pp. 56–7 (no. 68)
2.	Archbishop Thurstan	1132 × 1138	Forgery	(i) Abbot's Book, fo. 52v (ii) BL, Add. MS 4715, fo. 148v	(i) <i>CW</i> , i, p. 163 (no. 198) (ii) <i>EYC</i> , ii, p. 224 (no. 877) (iii) <i>EEA</i> , v, pp. 57–8 (no. 69)
3.	Archbishop Henry Murdac	1148 × 1153	Authentic copy?	(i) Abbot's Book, fos 52v–53 (ii) BL, Add. MS 4715, fo. 150	(i) <i>CW</i> , i, p. 164 (no. 199) (ii) <i>EYC</i> , ii, pp. 225–6 (no. 878) (iii) <i>EEA</i> , v, pp. 102–3 (no. 130)
4.	Pope Eugenius III	1147–48	Authentic copy?	Abbot's Book, fos 31–2	(i) <i>CW</i> , i, pp. 117–20 (no. 149) (ii) <i>EYC</i> , ii, pp. 217–19 (no. 872)
5.	Archbishop Henry Murdac	?1148 × 1153	Forgery	Abbot's Book, fos 77v–80	(i) <i>CW</i> , i, p. 236–8 (no. 296) (ii) <i>EYC</i> , ii, pp. 225–6 (no. 878) (iii) <i>EEA</i> , v, pp. 103–4 (no. 131)
6.	Archbishop William Fitzherbert	?1153 × 1158	Forgery	(i) Abbot's Book, fo. 531r–v (ii) BL, Add. MS 4715, fo. 1491r–v	(i) <i>CW</i> , i, pp. 165–7 (no. 200) (ii) <i>EYC</i> , ii, pp. 226–7 (no. 879) (iii) <i>EEA</i> , v, pp. 80–81 (no. 104)

These four documents are supplemented by a pamphlet written at Whitby *circa* 1176. Bound within one of the Whitby cartularies is a quire (fos 1r–4v) written in a late twelfth-century hand comprising a book list, a refoundation narrative with lists of properties, an abbatial election oath, and a narrative of abbatial elections from the resignation of Abbot Benedict in 1148 to the election of Abbot Richard II in 1176.⁴⁸ The refoundation narrative introduces three paragraphs purporting to:⁴⁹

record here all the lands, possessions, forests, churches, tithes and liberties which the same oft-named William de Percy, together with Alan de Percy, his son, gave to the monastery of Whitby in the first times, and moreover in his last days before he set out for Jerusalem, or those which certain men of faith have given to our monastery of Whitby, or have granted as a permanent endowment for its security.

The first paragraph focuses on those from the founding family, listed by donor, but the second and third proceed geographically in a clockwise direction and include properties acquired in the 1160s and 1170s.⁵⁰ This text purports to record all liberties, but specifies simply the town, the sea port and the forests, and supplies a still longer list of properties within and without the later Liberty, making no reference to it or its franchises.

Based on this evidence, the abbey had a portfolio of narrower, non-territorial franchises before *circa* 1187. From William de Percy's foundation grant it derived control over the harbour and rights over the town and the sea port. The Anglo-Norman kings granted the standard franchises of sake and soke, toll and team and infangthief over parts of the endowment as it developed: Domesday Book and William de Percy's foundation grant suggest William I would have done this for lands around Hackness, and then William II and Henry I for those granted by William de Percy and Alan de Percy, confirmed in Stephen's charter.

48. The Abbot's Book, fos 1r–4v; Abbot's Book Facsimile, pl. 1–9 (see n. 32 above); *CW*, i, pp. 1–10 (nos 1–3), p. 341.

49. 'omnes terras, possessiones, forestas, ecclesias, decimas et libertates, quas saepe nominatus idem Willielmus de Perci, cum Alano de Perci, filio suo, monasterio de Witebi dederat in primis, necnon in ultimus tempore suis antequam Ierosolimam peteret, vel quique fideles monasterio nostro de Witebi dederunt vel concesserunt in elemosinam perpetuam, ad monumentum': *ibid.*

50. *CW*, i, pp. 1–7 (no. 1). Second paragraph: *CW*, i, p. 47 (no. 44), Burneston church (1161 × 1184); *EYC*, ii, p. 370 (no. 1059), Huntington church (1159); *CW*, i, p. 47 (no. 44), pp. 159–60 (no. 193), p. 168 (no. 202), p. 302 (no. 361), and *EYC*, ii, p. 171 (no. 828), p. 172 (no. 831), p. 229 (no. 882), Skirpenbeck (1150–1160); *CW*, i, p. 47 (no. 44), pp. 81–2 (nos 90–91), Slingsby church (*c.*1157?); *CW*, i, pp. 159–60 (no. 193), p. 167 (no. 201), pp. 304–5 (no. 364), and *EYC*, ii, p. 172 (no. 830), p. 173 (no. 832), Stamford Bridge (1150 × 1170); *CW*, i, pp. 46–7 (nos 43–4), Sutton-upon-Derwent (1160 × 1184); *CW*, i, p. 206 (no. 260), and *EYC*, i, p. 201 (no. 249), York Blake Street (1150 × 1160); *CW*, i, p. 208 (no. 262), and *EYC*, i, p. 217 (no. 279), York Staingate (1140 × 1148). Third paragraph: *CW*, i, pp. 178–9 (no. 219), and *EYC*, ii, pp. 236–7 (no. 891), Liverton (1165 × 1175); *CW*, i, p. 102 (no. 125), and *EYC*, ii, p. 53 (no. 705), Middlesbrough—William of Acklam (1170 × 1180); *CW*, i, p. 109 (no. 138), and *EYC*, iii, p. 462 (no. 1852), Middlesbrough—Roger Cousin (1160 × 1180); *CW*, i, pp. 65–7 (no. 71), p. 80 (no. 87), and *EYC*, ii, p. 246 (nos 902–3), Upleatham—Robert de Argenton (1165 × 1175).

Sometime between *circa* 1134 and *circa* 1176, the monks translated relics of St Hild from Glastonbury—where they had been taken in the tenth century—to Whitby, generating a new translation feast on 25 August, which was the date of the fair recognised as a franchise of the Liberty: the fair might have been established or have emerged as custom without yet being recognised as a royal franchise.⁵¹ Abbot Richard II de Waterville (1176–81) granted his right of burgage to the men of the town of Whitby, so the abbey may have claimed burgage soon after the pamphlet of *circa* 1176 was composed, whether or not it was acknowledged as a royal franchise.⁵² Yet the wider franchises of freedom from interference by royal officials, rights to oversee courts and legal procedures and rights to resources from wrecks or over forests are unlikely to have existed before *circa* 1187. In Domesday Book (1086 × 1088) the lands within what became the Liberty were split between the two wapentakes of Langbargh and *Dic* (Pickering Lythe).⁵³ The Pipe Rolls show Liberty lands being accounted for under these wapentakes and the continuing jurisdiction of the Yorkshire justiciars until 1186/7, including over pleas relating to rapine, wreck and forest.⁵⁴

51. William of Malmesbury, who finished writing *circa* 1134, suggests that the remains of Hild had been removed to Glastonbury in the tenth century, but those of others linked to her life had been translated at Whitby in the early twelfth century: *De Antiquitate*, in *The Early History of Glastonbury*, ed. J. Scott (Woodbridge, 1981), p. 69 (c. 21); *William of Malmesbury. Gesta Regum Anglorum*, ed R.A.B. Mynors, R. Thomson and M. Winterbottom (2 vols, Oxford, 1998–2002), i, cc. 50, 54; *William of Malmesbury. Gesta Pontificum Anglorum*, ed. M. Winterbottom and R. Thomson (Oxford, 2007), ii. 91. 8 and iii. 116. 2. Hugh Candidus, who accompanied Abbot Richard I from Peterborough to Whitby in 1148 and finished writing *circa* 1176, suggested that her remains were on Esk, meaning Whitby: Hugh Candidus, *Chronicon*, ed. W.T. Mellows (London, 1949), p. 63. For the new feast of translation, see *CW*, i, pp. 64–5 (no. LXX); A.D.H. Leadman, ‘St Hilda’, *Yorkshire Archaeological Journal*, xvii (1903), pp. 33–49; G. Buchannan, ‘The Feast Days of St Hilda’, *ibid.*, pp. 249–53.

52. The Abbot’s Book, fo. 66v; Abbot’s Book Facsimile, pl. 151 (see n. 32); *CW*, i, pp. 211–12 (no. 266). Knowles, Brooke and London, *Heads of Religious Houses*, p. 78.

53. The most convenient reference point is Faull and Stinson, *Domesday Book: Yorkshire*, ii, Maps and Map Keys, Map III with accompanying key.

54. *The Great Roll of the Pipe for the Eleventh Year of the Reign of King Henry the Second, A.D. 1164–1165*, Pipe Roll Society, viii (1887), p. 48; *The Great Roll of the Pipe for the Twelfth Year of the Reign of King Henry the Second, A.D. 1165–1166*, Pipe Roll Society, ix (1888), p. 37; *The Great Roll of the Pipe for the Thirteenth Year of the Reign of King Henry the Second, A.D. 1166–1167*, Pipe Roll Society, xi (1889), pp. 79, 100; *The Great Roll of the Pipe for the Fifteenth Year of the Reign of King Henry the Second, A.D. 1168–1169*, Pipe Roll Society, xiii (1890), p. 41; *The Great Roll of the Pipe for the Sixteenth Year of the Reign of King Henry the Second, A.D. 1169–1170*, Pipe Roll Society, xv (1892), p. 40; *The Great Roll of the Pipe for the Twenty-Third Year of the Reign of King Henry the Second, A.D. 1176–1177*, Pipe Roll Society, xxvi (1905), p. 73; *The Great Roll of the Pipe for the Twenty-Fourth Year of the Reign of King Henry the Second, A.D. 1177–1178*, Pipe Roll Society, xxvii (1906), p. 67; *The Great Roll of the Pipe for the Twenty-Fifth Year of the Reign of King Henry the Second, A.D. 1178–1179*, Pipe Roll Society, xxviii (1907), p. 19; *The Great Roll of the Pipe for the Twenty-Sixth Year of the Reign of King Henry the Second, A.D. 1179–1180*, Pipe Roll Society, xxix (1908), pp. 64, 68; *The Great Roll of the Pipe for the Twenty-Seventh Year of the Reign of King Henry the Second, A.D. 1180–1181*, Pipe Roll Society, xxx (1909), pp. 37, 40, 44; *The Great Roll of the Pipe for the Twenty-Eighth Year of the Reign of King Henry the Second, A.D. 1181–1182*, Pipe Roll Society, xxxi (1910), pp. 9, 40, 43; *The Great Roll of the Pipe for the Thirty-First Year of the Reign of King Henry the Second, A.D. 1184–1185*, Pipe Roll Society, xxxiv (1913), p. 68; *The Great Roll of the Pipe for the Thirty-Third Year of the Reign of King Henry the Second, A.D. 1186–1187*, Pipe Roll Society, xxxvii (1915), p. 88.

II

To this positive evidence for the development of the community's endowment and franchises we can add the negative evidence: all of the community's documents suggesting that the territorial Liberty with its wider franchises existed before 1187 are forgeries. By forgeries we mean here that they are unlikely to have existed in the form that we now have them at the time when they claim to have been issued; each individual document may nevertheless have resulted from a variety of circumstances, ranging from the addition to, or adaptation of, an earlier authentic or inauthentic document to complete fabrication. While working with this basic definition of forgery, it should be acknowledged that the concept and process of forgery is itself worthy of exploration in terms of its past lexical range, its situation within changing legal frameworks, its location within genres of composition, its relationship to authorial motivations or justifications, and the light it throws on memorial culture.⁵⁵ In identifying these documents as forgeries, and exploring how they were used to shape genuine royal grants, the arguments that follow make no assumptions about how contemporaries conceived of them or justified their creation, and the case set out above, that Whitby Abbey's historic rights were different from those claimed in these documents, is independent from their status as forgeries. Because the documents in question survive in thirteenth-century copies, palaeography is no help. Instead, we must argue from language, form and context. The community rooted the origins of its Liberty in royal and episcopal grants of franchises, and a patron's grant of a territorial lordship, so we can consider the documents relating to each idea in turn.

The majority of the documents from William I, William II, Henry I and Henry II which purport to record royal grants of franchises include Latin words and phrases which do not feature in our corpus of known surviving original charters issued by each of these rulers, or in those thought to be authentic copies of genuine originals. These words and phrases seem to reflect conceptions of royal authority and the process of property transfer that did not apply at the time the documents claim to have been issued. They do occur in other suspected forgeries. The charters are tabulated in [Table 2](#): 'ego' (nos 1, 2, 7),⁵⁶ 'concedo et

55. For some explorations of this issue, see T.F. Tout, 'Mediaeval Forgers and Forgeries', *Bulletin of the John Rylands Library*, v (1919), pp. 208–34; C.N.L. Brooke, 'Approaches to Medieval Forgery', *Journal of the Society of Archivists*, iii (1968), pp. 377–86; J. Crick, 'Insular History? Forgery and the English Past in the Tenth Century', in D. Rollason, C. Leyser and H. Williams, eds, *England and the Continent in the Tenth Century: Studies in Honour of Wilhelm Levison (1876–1947)* (Turnhout, 2010), pp. 515–44; A. Hiatt, 'Forgery as Historiography', in J. Jahner, E. Steiner and E.M. Tyler, eds, *Medieval Historical Writing: Britain and Ireland, 500–1500* (Cambridge, 2019), pp. 404–19; L. Roach, *Forgery and Memory at the End of the First Millennium* (Princeton, NJ, 2021).

56. Compare St Remi, Reims: *RRAN*, ii, p. 189 (no. 1412); R. Sharpe, D.X. Carpenter et al., *The Charters of William II and Henry I: History from the Writs and Charters of Two Norman Kings*, available online at www.actswilliamhenry1.wordpress.com [hereafter *Acta*], HI-Reims-St-Remi-2018-1, pp. 12–14.

confirmo' (no. 1, 7, 9);⁵⁷ 'dedisse et carta mea confirmasse' (no. 3), and 'sciatis me concessisse et dedisse et hac mea carta confirmasse' (no. 6);⁵⁸ 'sciatis me concessisse et confirmasse' (no. 9);⁵⁹ 'habeant et teneant' (no. 9);⁶⁰ 'in elemosinam perpetuam' (nos 1, 2, 9);⁶¹ 'pro animabus heredum meorum' (no. 1), 'pro animabus patris et matris mei et heredum meorum regum Angliae' (no. 2), and 'heredibus meis' (no. 7);⁶² 'dei gratia' (no. 1);⁶³ 'regia potesta' (no. 3), or 'regia auctoritate' (no. 11);⁶⁴ 'forisfacturam regiam' (no. 3);⁶⁵ and 'iugiter maneant' (no. 7).⁶⁶ One, a grant of Henry II (no. 12), is missing the 'Dei gratia' clause introduced in 1172/3, but should be dated 1174 × 1179. Moreover, several of these documents also include anachronistic or implausible details. Two grants of William I and William II (nos 1 and 2) name the recipient as St Peter, or SS Peter and Hild, of *Presteby* and Whitby, but, as we have seen, this conflates two separate places, the manor of Whitby and its sokelands at *Presteby*. After a split among the community's re-founders, Abbot Stephen of St Mary's, York, held the sokelands at *Presteby* in 1086 × 1088 and others apparently went to Hackness, only to return to Whitby in William II's reign, and it is not clear when they acquired *Presteby*. The supposed grant of William I included incompatible witnesses: Lanfranc (before 1089), with Prior Serlo, Bishop Osmund and William de Percy (after 1089).⁶⁷ A grant of Henry I (no. 8) that should date to 1122 refers to

57. Compare Bermondsey Priory: *RRAN*, ii, p. 27 (no. 620), and *Acta*, HI-Bermondsey-2018-1, pp. 25–7; Northampton: *RRAN*, ii, p. 70 (no. 833), and *Acta*, HI-Northampton-2020-1, pp. 33–41.

58. Compare Ernard Rufus: *RRAN*, ii, pp. 59–60 (no. 783), and *Acta*, HI-Ernald-Rufus-2014-1, pp. 1–8; St Nicholas, Exeter: *RRAN*, ii, pp. 35–6 (no. 662), and *Acta*, HI-Exeter-St-Nicholas-2018-1, pp. 21–3; Great Malvern: *RRAN*, ii, pp. 206–7 (no. 1490), and *Acta*, HI-Great-Malvern-2013-1, pp. 12–19; Northampton: *RRAN*, ii, p. 70 (no. 833), and *Acta*, HI-Northampton-2020-1, pp. 33–41; Richard Basset: *RRAN*, ii, p. 243 (no. 1668), and *Acta*, HI-Richard-Basset-2018-1, pp. 16–19; Saint-Valery: *RRAN*, ii, p. 62 (no. 797), and *Acta*, HI-Saint-Valery-2016-1, pp. 5–12.

59. Compare Barnwell: *RRAN*, ii, p. 92 (no. 939), and *Acta*, HI-Barnwell-2014-1, pp. 1–5; Tynemouth Priory: *RRAN*, i, pp. 94–5 (nos 366–8), and *Acta*, W2-Tynemouth Priory-2016-1, pp. 2–7; Hospital of St Peter, York: *RRAN*, i, p. 70 (no. 269), and *Acta*, W2-YorkStPeter-Hosp-2016-1, pp. 6–8.

60. Compare Barnwell: *RRAN*, ii, p. 92 (no. 939), and *Acta*, HI-Barnwell-2014-1, pp. 1–5; Ernald Rufus: *RRAN*, ii, p. 59 (no. 783), and *Acta*, HI-Ernald-Rufus-2014-1, pp. 1–8.

61. Compare Barnwell, *RRAN*, ii, p. 92 (no. 939), and *Acta*, HI-Barnwell-2014-1, pp. 1–5; Dunstable: *RRAN*, ii, p. 274–5 (no. 1826), and *Acta*, HI-Dunstable-2018-1, pp. 13–15; St Nicholas, Exeter: *RRAN*, ii, p. 35–6 (no. 662), and *Acta*, HI-Exeter-St-Nicholas-2018-1, pp. 21–3; Launde: *RRAN*, ii, p. 185 (no. 1390), and *Acta*, HI-Launde-2018-1, pp. 6–14.

62. Compare Ernald Rufus: *RRAN*, ii, pp. 59–60 (no. 783), and *Acta*, HI-Ernald-Rufus-2014-1, pp. 4–8; Richard Basset: *RRAN*, ii, p. 243 (no. 1668), and *Acta*, HI-Richard-Basset-2018-1, pp. 16–19.

63. Compare Bermondsey Priory: *Acta*, W2-Bermondsey Priory-2018-1, pp. 21–3; *RRAN*, ii, p. 109 (no. 1021), and *Acta*, HI-Bermondsey-2018-1, pp. 11–13; *RRAN*, ii, p. 27 (no. 620), and *Acta*, HI-Bermondsey-2018-1, p. 25–7. Ernald Rufus, *RRAN*, ii, pp. 59–60 (no. 783), and *Acta*, HI-Ernald-Rufus-2014-1, pp. 4–8.

64. *The Letters and Charters of Henry II, King of England, 1154–1189*, ed. N. Vincent (8 vols, Oxford, 2020) [hereafter *ChHII*], no. 2816.

65. D.X. Carpenter, pers. comm.

66. D.X. Carpenter, pers. comm.

67. *RRAN*, i, p. 61 (no. 228); *EYC*, ii, pp. 206–7 (no. 862); *Regesta Regum Anglo-Normannorum: The Acta of William I (1066–1087)*, ed. D. Bates (Oxford, 1998), p. 9.

the fair of St Hild, but, as we have seen, this was probably the result of a translation from Glastonbury to Whitby between *circa* 1134 and *circa* 1176.⁶⁸ The grants of William I, William II and Henry I (nos 1–3, 7–9, 11, 12) are suspect because the grant of Stephen (no. 10) confirms charters of these kings but makes no reference to specific franchises. These earlier grants and those of Henry II (nos 11–13) also seem to conflict with the entries in the Pipe Rolls up to 1186/7 and with the absence of the territorial Liberty or its franchises in the Whitby pamphlet of *circa* 1176.

All the episcopal grants purporting to record exemptions and privileges have been considered spurious by their modern editor, Janet Burton. First, three of these documents suggest a process of copying and interpolation: the text of a grant of Thurstan (Table 3, no. 1) is corrupt; and what may be an authentic grant of Henry Murdac (Table 3, no. 3) seems to be the basis for another (Table 3, no. 5) with questionable additions. Secondly, one of these documents has an unlikely witness list: another supposed grant of Thurstan (Table 3, no. 2) is witnessed by Abbot Richard of Fountains and Abbot Geoffrey of St Mary's, York, who were at odds. Thirdly, these documents include grants of wide privileges to the rights of St John of Beverley and St Wilfrid of Ripon which are not a feature of authentic acts of the archbishops (Table 3, nos 1, 2, 5, 6) and, in one case, these privileges are associated with a single property in an incomprehensible manner (Table 3, no. 2). Fourthly, a supposed grant of William Fitzherbert (Table 3, no. 6) claims to confirm what has been granted by William (I or II?), Henry I and Stephen, specifying the liberties of St John of Beverley, St Wilfrid of Ripon and St Peter of York, but we have seen that these privileges exist only in forgeries and not in our charter of Stephen.

To support the idea that these franchises operated within a territorial boundary, the community preserved a questionable charter of Alan de Percy (Table 1, no. 3). This is problematic on several grounds. Its form is unusual: it begins with a story that Alan granted lands at North Fyling, South Fyling, Normanby and Hawsker, previously sold by Tancred the Fleming to Abbot William (occurs 1109) and then returned to Alan; it then segues into a claim that Alan granted everything in his fief within the limits of the boundary it set out—unlike the community's other early foundation charters, it fails to list the lands individually. Its witness list is suspicious: Fulk, steward in the time of Domesday Book (1086 × 1088) witnesses alongside Alan, son of Reginald Buscel, and Ralph de Everley (fl. 1120–50).⁶⁹ Its language seems anachronistic: it suggests Tancred 'quit claimed' the lands. Its historical claims conflict with other documents: at this time the property at Hawsker was known as *Gnipe* and Alan was supposed separately to have granted lands

68. Above, n. 51.

69. *EYC*, ii, p. 202 (no. 857).

including *Gnipe*.⁷⁰ The story in this charter seems to lie behind charters of Henry I and Henry II which include references to the franchises and outline the boundary; we have already suggested that these were forgeries (Table 2, nos 7 and 13).

III

Together, this evidence, positive and negative, suggests that the Liberty of Whitby Strand, as a territorial liberty with wider franchises, appeared after 1187. By comparing these forgeries with one another, and with the evidence from the reigns of Richard I and John, it is possible to suggest a sequence of forgery that underpinned its appearance.

The community preserved two charters of Richard I, which seem to be the earliest authentic documents relating to the Liberty. The first confirmed all the donations of William I, William II, Henry I and Henry II, as well as William de Percy, Alan de Percy and William II de Percy, and also granted and confirmed all the main elements of the Liberty (Table 2, no. 14). The second granted and confirmed lands, woodlands and pastures with freedom from interference by officials within the territorial boundary (Table 2, no. 15). These charters have no suspicious features; they are dated to Châlons, 23 April 1190, which is consistent with Richard's reconstructed itinerary; they post-date the Whitby pamphlet of *circa* 1176; and they are supported by the absence of references to Whitby lands and forest pleas in the Pipe Rolls after 1186/7.⁷¹ John confirmed two charters of Richard I, perhaps these.⁷² Our earliest forgeries are likely to be the documents on which these charters depended.

A group of four charters—one of Henry I, two of Henry II, and the first of Richard I—share an identical order and identical wording for the main elements of the Liberty and grants of royal lands, showing that they are interrelated; but significant extensions suggest that the second charter of Henry II and the charter of Richard I were elaborations (Table 2, nos 8, 11, 12, 14). The second charter of Henry II and the charter of Richard I include two identical additions: to the seaport and its liberties and customs, they add the right to seaweed from their whole land; and to the existing grant of lands at Hackness, Northfield and Burniston, they add the idea that they were given in perpetual alms. The second charter of Henry II extends the clause relating to freedom

70. For *Gnipe* as the earlier name of Hawsker: *DB*, fo. 305r (4 N 1); *CW*, i, no. 220, and no. 1. For Alan's earlier grant, see *CW*, i, pp. 223–4 (no. 279); *EYC*, ii, p. 202 (no. 857).

71. L. Landon, *The Itinerary of King Richard I, with Studies on Certain Matters of Interest Connected with his Reign* (London, 1935), p. 32 (no. 283, 23 Apr. 1190).

72. *The Great Roll of the Pipe for the Fifth Year of the Reign of King John: Michaelmas 1203*, ed. D.M. Stenton, Pipe Roll Society, new ser., xvi (1938), p. 203; *The Great Roll of the Pipe for the Sixth Year of the Reign of King John: Michaelmas 1204*, ed. D.M. Stenton, Pipe Roll Society, new ser., xviii (1940), p. 196.

from interference, stating ‘and I forbid anyone from having common between the limits and boundaries of the aforementioned church and abbot and monks, in woods or pastures, except through their permission’.⁷³ The Richard I charter includes this extension and interpolates further phrases: ‘And they should freely have their foresters and officials for the safekeeping of their woods and pastures’;⁷⁴ ‘And we quit-claim to them the wastes, assarts, and regards of the forest’.⁷⁵ The likelihood is that we have three forgeries created late in the reign of Henry II, presented to Richard, and used as the basis for his charter.

The second charter of Richard I (Table 2, no. 15) refers to a charter of Alan de Percy as the basis for its boundary clause and reproduces the version of the boundary clause found in our forged charter of Alan de Percy (Table 1, no. 3). It is possible that this forgery was also created for presentation to Richard and used as the basis for his charter. The forged Alan de Percy charter narrated the circumstances in which lands had been acquired at North Fyling, South Fyling, Normanby and Hawsker, and then claimed a grant of all properties within a boundary. Strikingly, the land at South Fyling was in dispute in the time of Abbot Richard II (1176–81), because the abbey possessed three copies of quitclaims by Robert of Egton, concerned to specify that it should not again be alienated and that Robert or his heirs would make no further claims over it, and acquired a confirmation from Henry II in April 1180 × 1182.⁷⁶ This dispute could be the occasion for the invention of the story about Tancred the Fleming and an earlier version of this charter. To this earlier version the community could have added the claim of Alan’s grant within territorial bounds for presentation to Richard. The charter of Richard refers only to a charter of Alan de Percy, not to any of Henry I or Henry II, suggesting that our forged charters of Henry I and Henry II, which included the boundary, came later (Table 2, nos 7 and 13).

The Whitby Abbey community had its territorial Liberty and franchises recognised by John, and further forgeries were apparently produced for these occasions. Charters of Alan de Percy, Henry I and Henry II were used to secure the de-afforestation of the community’s lands in 1204.⁷⁷ Interestingly, one of our forged charters of Henry I (Table 2, no. 7) claims that he afforested the lands at Whitby and supplies a version of the boundary clause different from that given in forged charters of Alan de Percy (Table 1, no. 3) and Henry II (Table

73. ‘et prohibeo ne aliquis infra metas et divisas predictae ecclesie et abbatis et monachorum commune habeat in memoribus et pasturis eorum nisi per licentiam eorum’.

74. ‘Et habeant libere forestarios et ministros suos ad nemora sua et pasturas suas custodiendas’.

75. ‘Et clamamus eos quietos de vastis et essartis et regwardi forestae’.

76. The Abbot’s Book, fos 13v, 43v, 51, 60v; Abbot’s Book Facsimile, pl. 45, 105, 120, 139; *CW*, i, nos 49, 174, 192, 234; *ChIII*, no. 2824.

77. *Rotuli Chartarum in Turri Londinensi Asservati*, I, pt I, ed. Thomas Duffus Hardy (London, 1837), p. 121 (5 John, m. 11, 1204).

2, no. 13); John's charter followed this different version.⁷⁸ This forged charter of Henry I (Table 2, no. 7) was therefore probably created to explain the circumstances of afforestation and to persuade John to reverse this act in 1204, and one of the forged charters of Henry II (Table 2, no. 13) may also have been created for this occasion.

The remaining forgeries concerning the Liberty and its franchises cannot be connected with particular contexts. The episcopal documents (Table 3, nos 1, 2, 5 and 6) should be contemporary with, or subsequent to, the royal documents created to present to Richard I, because they invoke the idea of a grant of the liberties of St John of Beverley and St Wilfrid of Ripon, for which these royal documents are the earliest evidence, and they existed to be entered into a cartulary in the second quarter of the thirteenth century. The royal documents (Table 2, nos 1, 2, 3, 9) seem to be later than those already considered because they depart from the formulae used in them and sometimes make claims to greater liberties; all of them existed for enrolment or copying into a cartulary in the thirteenth century.

From John's reign the Liberty and its wider franchises were recognised. John adjudicated over a dispute between the abbot of Whitby and the men of Whitby over burgage, restoring it to the abbot,⁷⁹ and debts were entered into the Pipe Rolls relating to freedom from interference by royal officials.⁸⁰ The Liberty began to be named and accounted for separately in royal rolls.⁸¹

78. Abbot's Book, fos 50v–51r; *CW*, i, pp. 157–8 (no. 191). I owe this observation to David X. Carpenter.

79. For Abbot Richard's original grant and its confirmation by King John in 1199: *CW*, i, pp. 211–12 (no. 266), and *EYC*, ii, pp. 231–4 (no. 886); *The Cartae Antiquae, Rolls 1–10*, ed. L. Landon, Pipe Roll Society, new ser., xvi (1939), pp. 134–5 (no. 279). For the dispute and its resolution from 1199–1201: *The Great Roll of the Pipe for the First Year of the Reign of King John: Michaelmas 1199*, ed. D.M. Stenton, Pipe Roll Society, new ser., x (1933), p. 54; *The Great Roll of the Pipe for the Third Year of the Reign of King John: Michaelmas 1201*, ed. D.M. Stenton, Pipe Roll Society, new ser., xiv (1936), pp. 157–8; *Rotuli Curiae Regis: Rolls and Records of the Court Held before the King's Justiciars or Justices* (2 vols. London, 1835), ii, p. 145 (1 John, 8 Nov. 1199); *Rotuli Chartarum in Turri Londinensi Asservati*, I, pt I, ed. Hardy, p. 84 (2 John, m. 16, 1201); *Rotuli de Oblatis et Finibus in Turri Londinensi asservati Tempore Regis Johannis*, ed. Thomas Duffus Hardy (London, 1885), p. 24 (1 John 1199, m. 17), p. 100 (2 John 1200, m. 15); *Cartae Antiquae, Rolls 1–10*, ed. Landon, ii, p. 145.

80. *The Great Roll of the Pipe for the Second Year of the Reign of King John: Michaelmas 1200*, ed. D.M. Stenton, Pipe Roll Society, new ser., xii (1934), p. 109, debt 'pro habenda protectio ne trahatur in placitum' which continues to be recorded until settled in 1204; *The Great Roll of the Pipe for the Tenth Year of the Reign of King John: Michaelmas 1208*, ed. D.M. Stenton, Pipe Roll Society, new ser., xxiii (1947), p. 157, where the pleas of the forest includes Whitby Strand, 'v m. pro respectu', which continues to be recorded until 1210.

81. *The Memoranda Roll for the Tenth Year of the Reign of King John (1207–8)*, ed. R. Allen Brown, Pipe Roll Society, new ser., xxxi (1957), p. 47: within the entry for Pickering Lythe there seems to be a separate list for the debts owed from Whitby Strand, but without naming the Liberty. *The Great Roll of the Pipe for the Eighth Year of the Reign of King John: Michaelmas 1206*, ed. D.M. Stenton, Pipe Roll Society, new ser., xx (1942), p. 206 (1206), and *The Great Roll of the Pipe for the Ninth Year of the Reign of King John: Michaelmas 1207*, ed. A.M. Kirkus, Pipe Roll Society, new ser., xxii (1946), p. 89, where Whitby has a separate entry; *The Great Roll of the Pipe for the Twelfth Year of the Reign of King John: Michaelmas 1210*, ed. C.F. Slade, Pipe Roll Society, new ser., xxvi (1951), p. 219, where the list of amercements includes *Compotus Abbatiae de Whitebi*, but the rest of the membrane is badly damaged; *Calendar of the Patent Rolls Preserved in the Public Record Office: Edward I, A.D. 1292–1301* (1895), p. 529; *Calendar of the Patent Rolls Preserved in the Public Record Office: Edward I, A.D. 1313–1317* (1898), p. 544, describing Whitby Strand as a wapentake; *Calendar of the Patent Rolls Preserved in the Public Record Office: Edward I, A.D. 1321–1324* (1904), p. 100.

The abbots acquired verderers,⁸² coroners,⁸³ sheriffs⁸⁴ and a prison.⁸⁵ They secured the holding of some assizes at Whitby.⁸⁶ Occasionally we can see the Liberty in operation, with the abbot's right to capture and hand over men within its boundaries, or have the cases of his own men heard at Whitby, respected.⁸⁷

IV

The Liberty of Whitby Strand, as a territorial liberty with more substantial franchises, was not an Anglo-Norman but an Angevin jurisdictional immunity. The community created lay, royal and episcopal documents to persuade Richard I and John to acknowledge their legal jurisdiction within territorial bounds. It remains to consider why the community invented this Liberty and why Richard I and John accepted their invention.

The desire to transform a narrower portfolio of franchises into a territorial liberty with a wider portfolio of franchises must be set within the context of changes to lordship and legal culture over the century after the Norman Conquest of 1066. Stephen Baxter has argued that, before 1066, a complex framework of lordship was in place, defined by three potentially independent relationships: tenurial (determined by the holding of land), commendatory (determined by the taking of an oath) and legal (determined by the possession of rights to proceeds from legal fines), which created overlapping lordship networks.⁸⁸ Following George Molyneux's analysis, from Edgar's reign (r. 959–75) onwards this framework of lordship

82. *Calendar of Inquisitions Miscellaneous (Chancery)*, II (London, 1916), p. 24 (no. 104, 4 June 4 Edward II); *Calendar of the Close Rolls Preserved in the Public Record Office: Edward II, A.D. 1313–1318* (1893), p. 42.

83. *Excerpta e Rotulis Finium in Turri Londinensi asservatis, Henrice Tertio Rege AD 1216–1272*, XI: AD 1246–72 (London, 1836), p. 420 (49 Henry III, m. 8, 1265).

84. *Calendar of the Close Rolls Preserved in the Public Record Office: Edward I, A.D. 1272–1279* (1900), p. 423.

85. *Ibid.*, p. 398.

86. *Feet of Fines for the County of York: 16–30 Henry III, 1232–1246*, ed. J. Baker, Yorkshire Archaeological Society, lxxvii (1925), pp. v–vi, 91–2 (11 Aug. 1240), 140–41 (1 June 1246).

87. *Rolls of the Justices in Eyre, Being the Rolls and Pleas and Assizes for Yorkshire in 3 Henry III (1218–19)*, ed. D.M. Stenton, Selden Society, lvi (1937), p. 291 (no. 795). *Curia Regis Rolls of the Reign of Henry III: 9 to 10 Henry III* (1957), p. 245 (no. 1204) (rot. ii, m. 19, 1225): Robert of Butterwick petitioned against Abbot Roger of Whitby about land pertinent to Hackness, but the Liberty was established and respected, with Robert led to the court at Whitby. *Calendar of the Close Rolls Preserved in the Public Record Office: Henry III, A.D. 1237–1242* (1911), p. 122: Henry instructed the sheriff of York to secure Roger of Duffield for a hearing before the itinerant justices, but notes that if he has been received into the Liberty of the Abbot of Whitby, he is to arrange for the abbot to have him escorted out and placed into the king's hands.

88. S. Baxter and J. Blair, 'Land Tenure and Royal Patronage in the Early English Kingdom: A Model and a Case Study', *Anglo-Norman Studies*, xxviii (2006), pp. 19–46; S. Baxter, *The Earls of Mercia: Lordship and Power in Late Anglo-Saxon England* (Oxford, 2007); S. Baxter, 'Lordship and Justice in Late Anglo-Saxon England: The Judicial Functions of Soke and Commendation Revisited', in S. Baxter, C.E. Karkov, J.L. Nelson and D. Pelteret, eds, *Early Medieval Studies in Memory of Patrick Wormald* (Aldershot, 2009), pp. 383–420.

operated within a relatively uniform landscape of local and regional assemblies—the hundreds or wapentakes and shires—which were the basis for all administrative processes.⁸⁹ It may be anachronistic, and unhelpful, as Tom Lambert has suggested, to think of them as royal or public assemblies with royal agents reflecting royal jurisdiction over procedures and fines.⁹⁰ They evolved from earlier communal assemblies rather than from delegation of royal rights. Local men with pre-existing wealth and standing were selected to preside over them. There was a distinction between royal representatives, judges and collective decisions. People do not seem to have thought in terms of jurisdiction. This framework of lordship and assemblies probably militated against lordly courts, as Nicholas Karn has observed. Wealthier lords commanding wider networks of loyalty could always hope to influence the outcome of decisions and may occasionally have had exclusive lordship—tenurial, commendatory, or legal—within an assembly, but the likelihood of overlapping lordship networks made it difficult to conceive of lordly courts.⁹¹

The Norman Conquest seems to have simplified lordship, as George Garnett has argued most recently and forcefully, establishing the king as the landlord of all England, conflating these three formerly independent tenurial, commendatory and legal relationships, and thereby reducing the incidence of overlapping lordship networks.⁹² In turn, as Nicholas Karn observes, this made lordly courts a more realistic prospect. The result, Karn argues, is that the functioning of hundred or wapentake and shire assemblies declined as more lords sought to expand their exclusive legal authority and establish lordly courts, prompting Henry I to introduce royal justices as a remedy and to assert royal jurisdiction over hundreds and shires, which gradually encouraged everyone to begin thinking in terms of, and arguing over, jurisdiction.⁹³ This foreshadowed the legal reforms of Henry II's reign, which, as Paul Brand demonstrated, had the effect of drawing local societies ever closer under royal jurisdiction and administration: the commissioning of regular nationwide eyres, the establishment of professional justices sitting in judgement, responding partly to the demand occasioned by the formalisation of pleas through assizes, and the creation of new written records.⁹⁴ In parallel to these changes the king's peace was extended to everyone at all times and expanded to include

89. Molyneux, *Formation of the English Kingdom*, pp. 116–94; see also Lambert, *Law and Order*, pp. 242–53.

90. Lambert, *Law and Order*, pp. 138–54, 296–301.

91. Karn, *Kings, Lords and Courts*, pp. 28–50.

92. G. Garnett, 'Conquered England, 1066–1215', in N.E. Saul, ed., *The Oxford Illustrated History of Medieval England* (Oxford, 1997), pp. 61–101; G. Garnett, *Conquered England: Kingship, Succession, and Tenure, 1066–1166* (Oxford, 2007).

93. Karn, *Kings, Lords and Courts*, esp. pp. 101–51, 175–203.

94. P. Brand, '“Multis Vigiliis Excogitatam et Inventam”: Henry II and the Creation of the English Common Law', *Haskins Society Journal*, ii (1990), pp. 197–222, repr. in id., *The Making of the Common Law* (London, 1992), pp. 77–102.

homicide; the resolution of disputes shifted from collective oaths to trial by ordeal; and the approach to encouraging compliance evolved from supporting local legal communities to discovering their failures and applying collective punishments.⁹⁵ Increasingly, law was thought of, not as personal, but as territorial—the common law of the land or realm. Altogether these changes made it possible for the monks of Whitby Abbey to think in terms of a lordly court, a jurisdictional immunity and a territorial basis for legal rights, and gave them greater reason to pursue jurisdictional immunity.

The creation of the forged documents and the acquisition of royal consent probably owed much to the efforts of Abbot Peter of Whitby.⁹⁶ Apart from his role in acquiring these royal concessions, revealed here, we know almost nothing about him from other sources, but two further documents preserved in the Whitby cartularies bear witness to his energies through their unusually detailed emphasis on documentary investigation and production. The first involves an investigation into the origins of an annual payment owed by Abbot Warin (d. 1211) and the monks of Rievaulx: *inter alia* it provides a thorough, detailed historical account of the history of the property arrangements from 1109 onwards through which this payment had arisen, and invokes the results of an enquiry into the Exchequer rolls.⁹⁷ The second records that Peter granted land in York to Abbot Warin and the monks of Rievaulx and it ends by noting that the grant has been recorded as a chirograph: ‘And this document is divided into two parts, with the seal of the Abbot and Community of Whitby hanging on the Abbot and Community of Rievaulx’s part, and the seal of the Abbot and Community of Rievaulx hanging on the Abbot and Community of Whitby’s part’.⁹⁸

The timing of the Liberty’s creation and the confirmation of its franchises probably resulted from the circumstances surrounding the accessions of Richard I and John. The analysis above suggests that the most significant royal concessions were acquired in 1190 and from 1199 to 1205. Unfortunately, although we know that protracted negotiation lies behind royal charters, we usually lack any evidence, as is the case in this instance.⁹⁹ Yet we can deduce some likely reasons for royal acquiescence. Following his accession, Richard embarked on the organisation of an expensive crusade: as Roger of Howden testifies, he took the decision to ‘put up for sale everything he had, that is castles, towns, estates’, a statement followed by a copy of Richard’s charter selling Sedbergh to Bishop Hugh of Durham, including the wapentake and

95. Lambert, *Law and Order*, pp. 358–63.

96. Knowles, Brooke and London, *Heads of Religious Houses*, i, p. 78.

97. *CW*, i, pp. 329–31 (no. 382).

98. ‘Et hoc scriptum in duas partes dividitur, dependente sigillo Abbatis et Conv. de Wyteby in partem Abbatis et Conv. [de] Rievallie, et depend. sig. Abbatis et Conv. [de] Rievallie in partem Abbatis et Conv. de Wyteby’: *CW*, i, p. 203 (no. 255).

99. R. Sharpe, ‘Doing Business with William Rufus: The Haddenham Narrative’, in B.R. O’Brien and B. Bombi, eds, *Textus Roffensis: Law, Language and Libraries in Early Medieval England* (Turnhout, 2015), pp. 363–86, for enlightening discussion of a rare exception to this rule.

immunities from royal administration.¹⁰⁰ This was a propitious moment to bargain for a jurisdictional immunity. At the same time, Richard nominated his half-brother, potential rival, and Chancellor, Geoffrey Plantagenet, to the vacant archiepiscopal see at York. Geoffrey's nomination was controversial because the cathedral chapter had already elected Hubert Walter, dean of York. Geoffrey was nominated on 20 July 1189 and elected on 10 August 1189, but his consecration was delayed until 1191. It seems possible that Richard was pursuing a strategy to divert a potential rival into an ecclesiastical career.¹⁰¹ The abbot of Whitby had played a key part in the last, infamous disputed election at York, a role remembered at this time.¹⁰² Richard I and his advisers may have considered the confirmation of a territorial immunity with a wider portfolio of franchises a sensible policy to secure the loyalty of Whitby during this dispute. An archiepiscopal interregnum also presented an opportunity for gains at the archbishop's expense. Richard Sharpe and David X. Carpenter have shown that the men of Beverley used an earlier archiepiscopal vacancy to acquire burgage through the presentation of a forged archiepiscopal act to Henry II.¹⁰³ The Liberty of Whitby Strand included claims to jurisdiction over the ordeal and exemptions from synodals, apparently backed up by forged archiepiscopal acts; some or all of them might belong to this time.

On his accession to the throne, John faced the costs of his brother's ransom and the war to defend and recapture Normandy, exacerbated by inflation.¹⁰⁴ The revenue from confirming this territorial Liberty and its franchises would have been similarly welcome. At the same time John was engaged in a protracted stand-off with the king of the Scots.¹⁰⁵ The Esk mouth at Whitby was the only estuary between the Tees and the Humber, a crucial port, and a necessary stopping point for invasion and supply routes.¹⁰⁶ Earlier, Whitby had been involved in the game-playing between Stephen and David, king of the Scots.¹⁰⁷ During

100. Roger of Howden, *Chronica*, ed. William Stubbs (4 vols, London, 1868–71), iii, quotation at p. 13, 'rex exposuit venditioni omnia quae habuit, scilicet castella, villas, et praedia', and charter at pp. 13–15; J. Gillingham, *Richard the Lionheart* (1978; 2nd edn, London, 1989), pp. 131–4.

101. Gillingham, *Richard the Lionheart*, p. 135; R.V. Turner, 'Richard I and English Episcopal Elections', *Albion*, xxix (1997), pp. 1–14, at 4–5.

102. For the details, see J. Burton, 'William of York [St William of York, William fitz Herbert] (d. 1154), archbishop of York', *Oxford Dictionary of National Biography*. The evidence that this was remembered is supplied by the continuing cult of St William at York and an *apologia* for Whitby's part in the resignation of Abbot Benedict of Whitby in 1148, the election of Abbot Richard I and his time in office in the pamphlet of c.1176: *CW*, i, pp. 8–10; Pickles, 'Were Early Medieval Lists Bureaucratic', pp. 80–83.

103. D.X. Carpenter and R. Sharpe, 'Subversive Acts: The Early Charters of the Borough of Beverley', *History*, ciii (2018), pp. 719–36.

104. W.L. Warren, *King John* (New Haven, CT, 1997), pp. 51–153.

105. A.A.M. Duncan, 'John King of England and the Kings of Scots', in S.D. Church, ed., *King John: New Interpretations* (Woodbridge, 1999), pp. 247–71, at 247–55.

106. M. Kowaleski, 'Port Towns: England and Wales, 1300–1540', in D.M. Palliser, ed., *The Cambridge Urban History of Britain*, I: 600–1540 (Cambridge, 2000), pp. 467–94, at 472–4.

107. Dalton, *Conquest, Anarchy and Lordship*, pp. 221–7; Crouch, *Reign of King Stephen*, pp. 39–41; White, *Restoration and Reform*, pp. 50–54; King, *King Stephen*, pp. 53–6, 215–18.

the later Scottish wars, the abbey was expected to provide troops and supplies.¹⁰⁸ John and his advisers are unlikely to have missed the potential for using these confirmations to encourage loyalty from the lords of a strategically important north-eastern port.

V

The origins of the Liberty of Whitby Strand have implications for our understanding of royal authority and power. The thirteenth-century discourse that the king was the root of all legal rights can encourage an anachronistic view of the English kingdom in which there was a single source of legitimate authority at the apex of a clearly defined hierarchy. From this perspective, kings appear to hold great authority to exercise power through a panoply of rights which they may delegate to others. In turn this can prompt a misleading dichotomy between public and private power, with royal or seigniorial courts in which royal or aristocratic officials or agents dispensed the king's or the lord's justice.¹⁰⁹ Based on this dichotomy, we may create neat typologies that do an injustice to the realities of the past—'regalian', 'ecclesiastical' or 'baronial'; 'liberty' or 'immunity' as opposed to 'episcopal exemption' or 'sanctuary'—and distinctive sorts of rights: 'jurisdictional' or 'procedural' as opposed to 'fiscal'.¹¹⁰ In line with our established critiques of this view, the evidence for the Liberty of Whitby Strand confronts that thirteenth-century discourse and evades these straightforward categories.

The documents forged to persuade Richard I and John to acknowledge the Liberty reflect a polycentric conception of authority and power.¹¹¹ They appeal simultaneously to the reputations and rights of St John of Beverley and St Wilfrid of Ripon and to earlier royal and archiepiscopal precedents. The Liberty defies easy categorisation. In one sense it was a sanctuary. The liberties of St John of Beverley and St Wilfrid of Ripon, which were a primary point of reference, began as personal sanctuaries that evolved into territorial jurisdictional immunities.¹¹² The boundaries included a series of sites connected with the cult of St Hild: Lady Hilda's Beck, Hilda's Spring,

108. M.C. Prestwich, "'*Tam infra libertates quam extra*': Liberties and Military Recruitment', in M.C. Prestwich, ed., *Liberties and Identities in the Medieval British Isles* (Woodbridge, 2008), pp. 111–19, esp. 115.

109. N. Karn, 'Centralism and Local Government in Medieval England: Constitutional History and Assembly Politics, 950–1300', *History Compass*, x (2012), pp. 742–51, is an elegant exploration of this problem.

110. B.H. Rosenwein, *Negotiating Space: Power, Restraint and Privileges of Immunity in Early Medieval Europe* (Ithaca, NY, 1999), pp. 1–18, makes this point very effectively.

111. R.R. Davies, 'The Medieval State: The Tyranny of a Concept?', *Journal of Historical Sociology*, xvi (2003), pp. 280–300, esp. 287–90, 295, for polycentric ideas of authority as a feature of medieval society.

112. Lambert, 'Spiritual Protection and Secular Power', *passim*.

Lady Hilda's Dykes. During the thirteenth century it was known as the Liberty of St Hild and the men of St Hild apparently testified in a legal dispute that the boundary had been laid out by Hild in AD 660.¹¹³ Yet it was also a royal immunity. It owed its origins to royal grants, fictional and real. It included freedom from interference by royal officials, resulting in separate entries in royal accounts, and its categorisation as a royal unit of administration, a 'wapentake'. Moreover, it was an episcopal exemption—from synodal payments and episcopal oversight of ordeal.

The unusual precision with which we can pin down the origins of the Liberty of Whitby Strand permits analysis of the historical circumstances of its creation. This belies any notion that royal authority allowed kings to wield power through the occasional choice to delegate their rights. Members of Whitby Abbey, through the creation of documents appealing to a range of sources of authority, presented at opportune moments, persuaded kings to endorse the existence of their own selection of rights within an area that they delimited. This illustrates Keith Stringer's point that the modalities and scale of domination 'depended on local or regional power structures, relations and aspirations' and government was 'mediated through and contingent on, other political forces', so that 'a greater concentration of power was created when the centre cooperated with local authorities'.¹¹⁴

The Liberty of Whitby Strand represents the transformation of a narrower portfolio of non-territorial franchises into a territorial liberty with wider franchises, which illustrates how royal authority and power was constructed through the negotiation of space. Although the Liberty was conceived as a territory, it was not a physical entity but a social and cultural projection—a space transformed into a network of places.¹¹⁵ The boundary comprised physical features connected by the idea that they were, originally, the limits of the mother-parishes of the churches of Whitby and Hackness, and, subsequently, of the Liberty. This act of invention depended on existing networks of lordship, parochial allegiance and economic co-operation between the abbey and its tenants.¹¹⁶ These connections were reinforced in social memory through the perambulation and recitation of the boundary, and, presumably, through the telling of stories—for instance, the story

113. The surviving evidence for the dispute is *CW*, ii, pp. 393–9 (nos 444–6), pp. 585–600 (no. 592), and p. 626 (no. 594); *Calendar of the Close Rolls Preserved in the Public Record Office: Edward I, A.D. 1279–1288* (1902), pp. 153–4. The testimony of the men of St Hild no longer survives but was observed and recorded by Lionel Charlton, *The History of Whitby and of Whitby Abbey* (York, 1777), pp. 225–7.

114. K. Stringer, 'States, Liberties and Communities in Medieval Britain and Ireland', in Prestwich, *Liberties and Identities*, pp. 5–36, quotations at 7–8.

115. This rests on the helpful terminological distinctions suggested by L. Jerram, 'Space: A Useless Category for Historical Analysis?', *History and Theory*, lii (2013), pp. 400–419.

116. T. Pickles, 'The Social History of a Medieval Fish Weir, c.600–2020', *Social History*, xlvii (2021), pp. 349–71, at 363–6, explores the evidence for these overlapping networks in more detail.

of Lilla Howe or Lilla Cross, which was located at the spring point of the River Derwent, and which probably commemorated King Edwin, Hild's great uncle, and his heroic servant, Lilla, who, at a royal vill on the Derwent, threw himself in front of a poisoned dagger and died for the king.¹¹⁷ The boundary encompassed a geographical region, but the Liberty was a cognitive construct: as the *Quo Warranto* proceedings reveal, not quite everything and everyone within the boundary was subject to the Liberty.¹¹⁸ Following Barbara Rosenwein's astute analysis of earlier Continental immunities, by constructing the idea of this Liberty and negotiating its existence as a landscape excluding aspects of royal administration, some only recently introduced under Henry II, at the accession of his successor, members of the community effectively brought these rights into being by endorsing the idea that they existed everywhere else through the creation of a spatial taboo.¹¹⁹ In this way, the Liberty provides an earlier illustration of Tom Johnson's argument that jurisdiction was not 'a thing-in-itself, an expression or constitution of communities and territories ... [but] a medium, an ongoing process of connecting these entities with authority'.¹²⁰ Jurisdictional immunities were therefore not static constitutional structures, nor fixed physical entities, but dynamic social and cultural projections. Members of local societies, working within a polycentric notion of authority, drew on a range of cultural resources—local and universal—to communicate and negotiate legal rights. The authority and power of a saint, a king or an archbishop, was, at any one moment in time, partly the product of these dialogues, and was, over time, in constant flux.

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117. The story is told in Bede, *Historia ecclesiastica gentis Anglorum*, ii. 9, ed. and tr. B. Colgrave and R.A.B. Mynors (Oxford, 1969), pp. 164–7. A copy of this text appears in the Whitby pamphlet of c.1176, in a book list: *CW*, i, p. 341. The boundary clauses in the forged documents considered above note that this is the point where the Derwent rises.

118. *Yorkshire Hundred and Quo Warranto Rolls*, ed. English, p. 129.

119. Rosenwein, *Negotiating Space, passim*.

120. T. Johnson, 'The Tree and the Rod: Jurisdiction in Late Medieval England', *Past and Present*, no. 237 (2017), pp. 13–51, quotation at 25.