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Guest Editor: Charles West

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Religious Exemption in Pre-Modern Eurasia, c. 300–1300 CE: Introduction

Charles West*

Claims to exemption from state demands on religious grounds were both common and important across Eurasia between the age of ancient empires and the onset of the Black Death. Yet although aspects of the topic have often been studied within particular geographical and cultural historiographical frameworks, the issue as a whole has hardly if at all been considered at the Eurasian scale. This is perhaps especially surprising given that such claims to exemption were located precisely at the intersection of religion and the state, two central themes for historical enquiry. This special issue of *Medieval Worlds* is intended to provide a preliminary but panoramic view of the subject, drawing on the collaborative expertise of fourteen historians based in nine different countries.¹

The value of taking a global historical perspective has been acknowledged for many years by historians working on canonical antiquity on the one hand – typically focused on comparisons between Rome and China – and by those working on the late medieval/early modern world on the other, as the integration of the Americas into already intensifying Eurasian exchange networks durably (and violently) shifted the material balance of power, as well as challenging long-held cultural assumptions on both sides of the Atlantic. If historians working on the period in between have in general been slower to recognise the possibilities afforded by globalising their approaches – though there were important pioneering attempts reaching back into the 1980s – that is partly because of the practical challenges involved.² This was a time of great and perhaps widening cultural diversity, and of relatively slow connectivity across Eurasia as a whole, even if by the late thirteenth century we may follow Janet Abu-Lughod and talk tentatively of a Eurasian ›world system‹.³

There are however many signs that earlier medieval history is now beginning to take the global turn.⁴ In any case, readers of this journal hardly need to be reminded of the value of taking a wider view. A globalised modern world naturally encourages historians to broaden

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2 Here it is important to mention the role played by R. I. Moore, who introduced perhaps the UK's first World History course stretching from antiquity to the modern world in Sheffield's Department of History in the 1980s.

3 Abu-Lughod, *Before European Hegemony*.

4 For instance, the Global Middle Ages research network, whose focus is in general a little later than that pursued here, reaching into the fifteenth and sixteenth centuries CE. See Holmes and Standen, *Defining the Global Middle Ages*, for a preliminary survey.

the scope of their enquiries, and to expand the scale of their analysis – and understandably so, since after all there is no ›right‹ scale for historical enquiry as a whole, only the right scale for addressing particular questions. And there is much to commend the Eurasian frame for pursuing the issue of religious exemption, as the studies that follow demonstrate, drawing on evidence from Western Europe, India, south-east Asia and China, not so much as to trace the connections as to study the similarities, and the contrasts, between different parts of this great landmass.

The studies that follow clearly bring out the challenges involved in such enquiry. If ›religion‹ and ›state‹ are vexed terms in the European tradition in which they developed, they are all the more problematic when applied to contexts far removed in both time and space. But though comparative research carried out in this vein must learn to deal with such methodological jeopardy, contributions to this special issue also indicate its potential rewards. It seems that almost everywhere in medieval Eurasia people claimed and were often granted – by virtue of their membership of a religious group or community – special treatment by the authorities that raised taxes and delivered justice. In this way, different kinds of resources were – as R. I. Moore suggests in the collection's framing paper – taken out of the normal circuits of exchange, and placed at one remove from the competing demands pressed by established families in the regions and by state authorities from the centre. Of course, precisely how this was done and with what consequences varied considerably, creating a diversity and breadth of experiences that should inform specialist interpretation of the many geographical and cultural areas covered here: comparative enquiry, after all, should aim not only to bring out the commonalities but also to define more clearly what was distinctive.⁵

Following Moore's framing paper, the first set of contributions sets out a series of developing cultural traditions relating to religiously-founded immunity. Kanad Sinha tracks how hermits were represented in ancient and medieval Indian literature. Occupying a liminal space between stable settlements in the plains and the cities and the untamed and threatening spaces of the vast Indian forest, and between the new styles of ascetic renunciation and the traditional Indian household centred on family and cult, these hermits were granted respect and privileges by kings who saw them as bridgeheads of civilisation. As forested lands were increasingly integrated into patterns of rule by other means, the position of hermits became more peripheral; yet at the same time, their hermitages became ever more fantastic in the literary imagination, harmonising nature and society.

Mario Poceski's paper similarly traces the impact of new forms of religious practice on established tradition and practices of rule, in this case in China. Here too Buddhist ideas of asceticism and renunciation clashed with traditional family-centred piety. The result was a large-scale but uneasy integration: state authorities regulated Buddhist monasticism, for instance by issuing certificates to permit formal conversion. But as early as the fifth century, the monk Huiyuan made the case that monks should not have to kneel before emperors – an argument that the emperor at the time seems to have accepted, in an intriguing symbolic concession that may remind western medievalists of later debates over investiture.

5 Wickham, *Problems in Doing Comparative History*.

Two papers then provide perspectives from the Latin West. Kriston Rennie's article continues with the theme of monastic exemption. Kings and bishops both competed to offer privileges to western Eurasian monastic communities in the early Middle Ages, but as the content of these privileges gradually came to focus on protection, it was the papacy in Rome that was best placed to issue exemptions, and thereby to bind monasteries to itself. Finally, Anne Duggan examines the central question of clerical immunity from state jurisdiction in the Latin West, from the time of the Christian Roman emperors through to the legal wrangling of the twelfth and thirteenth centuries. As in Poceski's China, the end-result was a messy and complex compromise, not least because the clerics themselves stepped back from demanding complete immunity: state power was too useful for that.

The second section of this special issue turns its attention more specifically to how religious exemption affected the distribution of resources, reminding us that exemption was never simply a matter of prestige or symbolism. In a jointly-written article, Dominic Goodall and Andrew Wareham compare two instances in which rulers conferred practical privileges of exemption: on the one hand upon the temple of Vat Phu in the Khmer empire (based in modern-day Cambodia), and on the other upon a series of churches in Mercia (modern-day midland England). These grants took very different forms – freedom from military obligations on the one hand and tax remittances in gold, spices and livestock (including elephants and turtles) on the other – and were moreover recorded in different ways, on parchment and in a recently discovered stone inscription. These rulers were thousands of kilometres apart, wielded wildly differing state capacities, and had no trace of direct or indirect contact between them that is discernible or even likely. Yet both sacrificed revenues and dues to religious communities, whether for intangible spiritual benefits or, more pragmatically, to normalise their growing demands elsewhere in their realms – or, most likely, both.

The ways in which the bestowal or withholding of exemption formed part of wider economic, political and ideological strategies is further brought out in the case of India by Ulrich Pagel and for China by Antonello Palumbo. Pagel shows how Buddhist monks attempted to negotiate state taxation in India through avoidance, legal argument and outright evasion in the early centuries of the first millennium. Yet despite their efforts, they failed to achieve the privileged status enjoyed by brahmins and Hindu ascetics, who were economically marginal but ideologically central to the dominant ruling structures. In a broadly contemporary ›Late Antique‹ China, as Palumbo demonstrates in a very wide-ranging paper, the limited exemptions enjoyed by Buddhist communities who took their place within a spectrum of state interactions with the growing monastic network. Simple plundering of their resources was another tactic that rulers had at their disposal, as was tight regulation: both proved vital in underpinning the halting but nevertheless tangible revival of imperial-scale rule that gradually differentiated eastern from western Eurasia.

This special issue's final section provides a very different perspective, moving away from structures to individuals, and from broad overarching trends to particular flashpoints, events and decisions. Claims to religious exemption inevitably worked within (and upon) pre-existing structures, but they were nevertheless articulated, and instrumentalised, by individuals and communities for specific reasons. Uriel Simonsohn presents a number of case studies to show how in the Islamic world – where institutional forms of religious exemption were much less important than individualised ones – individuals could instrumentalise the legal consequences of conversion to the faith to extract concessions from their own religious communities. Another kind of instrumentalisation is studied in Thomas Kohl's paper, which takes us to the middle Rhineland around the year 1000, and to a dossier of royal documents

written in favour of the bishop of Worms. That this dossier was forged by a wily bishop enhances rather than detracts from its interest, allowing Kohl to infer that the bishop was as concerned with the practical and political implications of immunity as with its symbolic content.

The final two papers look at the interactions between rulers and senior clerics in western Europe, in case studies separated by two and a half centuries. Rutger Kramer revisits a dispute over asylum that broke out in 802, involving the Frankish emperor Charlemagne and two of his most eminent courtiers, Alcuin and Theodulf. The issue of what to do with a fugitive cleric who had claimed sanctuary at Alcuin's monastery at Tours raised thorny questions about who held the right to decide about such cases, and how much room there was for exceptions to be made to church rules in Carolingian Francia. The question of where authority over clerics lay was still being debated in twelfth-century England, and it contributed to the assassination of Thomas Becket, the archbishop of Canterbury, in 1170. But through studying two representations of English kingship produced just a few years before that momentous event, around 1163, Judith Green points out that at that date such an outcome was far from inevitable: although tensions between King Henry II and Thomas were already noticeable, contemporaries still tended to see king and church as working together rather than in opposition. Together, all four of these papers show how behind what may seem like grand clashes of principles, there also lay personal interests, political scheming – and often enough, a considerable amount of collaboration and co-operation in pursuit of shared goals.

A concluding reflection is offered by Julia McClure, representing the vantage point of a late medieval global historian looking back at these relatively under-networked centuries. For McClure, the value of the collection lies partly in the uncovering of ›horizontal continuities‹ across Eurasia, in particular in questions of value plurality and the permeability of religious and secular forms of power; but she points out too the potential of the approach to excavating the ›vertical‹ or historical continuities that have done much to shape today's unequal world, and that deserve to be set in a much deeper historical context than is customary in an increasingly present-minded age.

As tax-collectors travelling up the Mekong River, canon lawyers arguing in Bologna and monks meditating in their mountainous retreat at Lushan would all surely have agreed, the question of religious exemption is an important one, with plenty of explanatory potential. Exemption concentrated resources, authorised practices of rule, shaped disputes over authority, and contributed to the delineation of the social order more generally, in ways that rhymed but never repeated each other over the great swathes of land and time that are explored in the articles that follow. Yet a collection such as this cannot claim to be comprehensive or definitive. Indeed it is our hope that our readers will be left asking for more: more comparisons, more sustained research, more exploration of a central and quite specific issue that rests at the heart of both the exercise and the classification of power in medieval Eurasia. These studies are therefore an exploration of an underworked theme that merits much more attention; they are also, we hope, an advertisement for the value and interest of a more global earlier Middle Ages.

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Treasures in Heaven: Defining the Eurasian Old Regime?

R. I. Moore*

The exemption of people and institutions recognised as religious from public obligations, including taxation and military and labour services, appears to have been universal in the complex societies of Eurasia at least from the end of antiquity until the end of the *ancien régime* – that is, in some cases, until the present. However, the systematisation between the tenth and thirteenth centuries CE of the nature and uses of such exemption was everywhere central to the great transformation of that epoch, essential to the emergence or construction of the *ancien régime* in Europe as in South India, China and Japan. Religious exemption was sometimes promoted and sometimes attacked by rulers, but it is best understood neither as supporting nor as undermining ›the state‹, but as providing a long-term balancing mechanism between centralising powers and local elites; the *waqf* may be seen as performing a similar function in Islamic societies.

Keywords: Eurasia; exemption; immunity; taxation; jurisdiction; monasteries; temples; waqf; kings; emperors; nobles; holy man; antiquity; ancien régime; transformation; modernisation; feudalism

The grounds of Hartfield, the comfortable home of Jane Austen's Emma, ›were small, but neat and pretty, and the house was modern and well built.‹¹ The Woodhouses, ›the younger branch of a very ancient family‹, had been settled there for several generations. They ›had long held a high place in the consideration of the neighbourhood‹, and the village of Highbury afforded Emma no social equals.² On the other hand, ›the landed property of Hartfield certainly was inconsiderable, being but a sort of notch in the Donwell Abbey estate, to which all the rest of Highbury belonged; but [the Woodhouses'] fortune, from other sources, was such as to make them scarcely secondary to Donwell Abbey itself, in every other kind of consequence.‹³ Some time around 1700, we conclude, the younger son of the ancient family from which Emma was descended had made fortune enough to establish himself respectably at a convenient distance from London, but not enough to purchase a substantial estate. He bought his land from the Knightleys of Donwell Abbey, who had acquired it at the dissolution of the monasteries, some century and a half earlier. We must infer that they welcomed the money. George Knightley had little to spare in 1814, even though his estate embraced two

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1 Austen, *Emma*, ch. 32, 253.

2 Austen, *Emma*, ch. 16, 129; ch. 1, 11.

3 Austen, *Emma*, ch. 16, 129.

whole parishes and ›neither fashion nor extravagance‹ had tempted his forebears to deplete their timber, or to replace the original house.⁴ By that time, however, the ›other sources‹ of the Woodhouse wealth had swollen enough to give Emma a fortune of £30,000, equal to that of Georgina Darcy in *Pride and Prejudice*, though Hartfield was certainly no Pemberley. Her elder sister had presumably had the same when she married John Knightley, seven years earlier. We should surmise that this wealth derived from banking, or from spices and other luxuries from the East Indies, rather than the slaves or sugar from the West that paid for the two carriages maintained by Mr Suckling of Bristol, the brother-in-law of the distressingly *arriviste* Mrs. Elton.⁵

Thus, with a few seemingly casual strokes of her brush, Jane Austen connects the great social transformations that carried England from the middle ages to the brink of industrial society. The dissolution of the monasteries had been crucial. It released something like a quarter of the nation's landed wealth to fuel a surge of social mobility – a ›rise of the gentry‹ among whom the Knightleys found a secure though modest place. It also stood and stands supreme – ›one of the most revolutionary acts in English history‹ in George Bernard's words⁶ – as the great symbol of the long and complicated processes through which the elementary structures of the medieval order gave way to those of the modern state. That so large a proportion of the kingdom was no longer exempt from royal taxation and jurisdiction – largely theoretical though the immunity had already become in practice⁷ – was a decisive step in unifying the land and resources of the entire realm within a single system of governance, tenure, patronage, and markets, and to make possible in their turn the military, commercial, and colonial ventures from which the fortunes of the Woodhouses and the Sucklings would be won.

That, at any rate, has been the conclusion of a galaxy of social theorists, economists and historians from a little before Jane Austen's time until a little before our own. In answer to the question ›Why Europe?‹, when one wonders how some civilizations of the world made the breakthrough to industrialism, the formation of the modern state has been seen almost unanimously as a necessary condition of economic modernisation, and the removal of religious exemption as a necessary condition of that formation. That this view has not been confined to book-lined studies, or even to glass and ivory towers, is sufficiently attested by the centrality, and often by the bloodiness and bitterness, of the struggle between ›Church‹ and ›State‹ everywhere in nineteenth- and much of twentieth-century Europe, from the moment in 1791 when the French made the dissolution of their monasteries and the appropriation of church lands one of the first and essential steps of their revolution. That the church in Greece remains exempt from taxation to this day is deeply contentious; in the opinion of many it is a substantial factor in that country's present fiscal and political distress.⁸

That alone makes the exemption of religious persons, places and institutions from the burdens and obligations of ordinary life significant well beyond the ranks of medieval historians. The reasons why these exemptions came into existence and the ways in which they

4 Austen, *Emma*, ch. 42, 336; ch. 26, 199.

5 Austen, *Emma*, ch. 22, 172.

6 Bernard, *Dissolution of the Monasteries*, 390.

7 cf. Maitland, *Constitutional History of England*, 506-514.

8 I owe this point to Mark Greengrass.

worked are important not only because their unravelling in modern times has been so necessary – and often painful and destructive – but also because we are not yet done with them. And, despite the great prominence almost always accorded to other aspects of religion in the development of societies and their cultures and institutions, religious exemption has featured hardly at all in any of the comparative discussions of world history that I know, and very little even in the secondary accounts of the character and development of particular societies and civilizations from which such comparative discussion necessarily proceeds. That is certainly more a confession of ignorance on my part than an accurate account of the historiography, and no doubt the subject has been taken much more seriously and studied more thoroughly by regional specialists than it implies. Nonetheless, this is a topic whose experts owe us, at the very least, the duty of contributing their knowledge and conclusions somewhat more assertively to wider discussion.

In the Roman world, exemption from civic obligations was one of the benefits that accrued to Christians with the conversion of Emperor Constantine in 312 AD. The property that pious donations showered on the Church thereafter remained liable to the regular land tax, but it was generally exempted from special or extraordinary levies. Its clergy were granted personal exemptions, the lower clergy from the poll tax and the taxes levied on merchants and craftsmen, and from billeting and *corvée* labour services; the higher from the civic and military obligations that weighed heavily on other citizens. As numbers grew, however, increasingly strenuous attempts were made to contain the cost and restrict the abuse of these privileges in various ways, by, for example, limiting the circumstances or conditions in which they could be claimed, or the number of people who might be ordained, and so forth.⁹ Similar privileges were accorded to the officials of synagogues, which were also exempt from billeting, until 383 in the western Empire and somewhat later in the eastern.¹⁰ For Jews these privileges had a longer history, which it is beyond my power to pursue: we should note at least that the decisions of their courts in civil disputes between those who resorted to them voluntarily were enforced by the imperial authorities, and that Jews were excused military service in the legions.¹¹

As the Roman Empire in the east mutated into the Byzantine world the principle of liability to the land tax remained, but it became increasingly common for emperors to include exemption from it or from other obligations with the grants of land that they made to the church for one reason or another, especially when founding monasteries. That is, the power to take taxes from the people who actually paid them, or to secure the very remunerative profits of justice from the people subject to it, were passed from the grantor – usually a monarch – to the grantee: usually a great lord, a church or a monastery. In principle, therefore, any such grant involved a transfer of power from a central authority to a local community or magnate. Sometimes the lavishness of such gifts provoked reaction, as when Nicephoros I (emperor 802-811) reclaimed for the imperial demesne donations of land made by his predecessor Irene, and subjected the tenants of churches and monasteries to the hearth tax from which, it seems, she had exempted them.¹²

9 Jones, *Later Roman Empire*, 894-937.

10 Jones, *Later Roman Empire*, 946.

11 Lane Fox, *Pagans and Christians*, 429.

12 Ostrogorsky, *History of the Byzantine State*, 188-189.

In the next century, the issue lay at the heart of one of the great crises of the Byzantine state, culminating in an absolute prohibition of any further increase of church property, including new monastic foundations, by the second Nicephoros, Phocas. A barrage of fulminations from his reign (963-969) and that of his predecessor Romanos Lekapenos inveighed against the powerful (*dunatoi*) who were usurping the land of the poor. Its purpose was to provide rhetorical cover for the attempt of those emperors to reassert their powers of taxation and jurisdiction, which had been lost to the provincial aristocracy of every part of the empire, often, though not only, under the guise of monastic endowment. Nicephoros Phocas' prohibition did not last, not least because, in Rosemary Morris's words, 'the weapons of the imperial authority were limited by the fact that the very class they sought to curb, the great landowners of the provinces, was also the source of the governmental elite.'¹³ It was soon revoked, probably by his immediate successor, Emperor John Tzimisces (r. 969-976), and the eleventh century was once more a period of great monastic foundations, often but by no means only funded from older, decaying institutions. An increasing proportion of these grants included immunity from taxation, and though emperors were more reluctant to give exemption from their jurisdiction, that too became increasingly common.¹⁴

None of this would have come as a surprise to the Venerable Bede, the English monk who in 734 had complained bitterly in a famous letter to Bishop Egbert of York of the prevalence of monasteries 'both numerous and large', which were 'useless to God and man because they neither serve God by following a regular monastic life nor provide soldiers and helpers for the secular powers who might defend our people from the barbarians.' 'There are', he explained, 'laymen who have no love for the monastic life nor for military service, who commit a grave crime by giving money to the kings and obtaining lands under the pretext of building monasteries, in which they can give free rein to their libidinous tastes; these lands they have assigned to them in hereditary right through written royal edicts, and these charters, as if to make them really worthy in the sight of God, they arrange to be witnessed in writing by bishops, abbots and the most powerful laymen. Thus they have gained unjust rights over fields and villages, free from both divine and human legal obligations...'¹⁵ To whatever extent this contributed to the expansion of monasticism in early medieval Europe it was certainly one of its effects, and a principal reason for the decay of the monastic life widely complained of in the following century.

But what comes around goes around. It soon suited noble patrons to redistribute the lands which they had secured for the monasteries in this way among their families and private followers. The resulting impoverishment and even disappearance of many monastic houses, conventionally and rhetorically attributed to the Vikings, was for King Alfred of Wessex, his West Saxon successors and many of their continental contemporaries, what made necessary the great revival of monasticism that from the middle of the tenth century powered 'the making of the middle ages' in Latin Europe. The foundation during the next two hundred years of some thousands of religious houses between the shores of the Mediterranean and the Baltic shaped both the real and the imaginative landscapes of the world – the construction and definition of the medieval Church itself – that was to be dismantled by Reformation and Revolution.

13 Morris, *The Powerful and the Poor*, 26.

14 Angold, *Church and Society*, 317-320.

15 Bede, *Ecclesiastical History*, 350-351.

The principle of religious exemption in a variety of forms was essential to this process. Exemption from royal taxation and jurisdiction meant in practice exemption from the sway of those who claimed royal authority for powers which had in fact been usurped, or at any rate exercised, by their own forebears. This was the instrument that guided Edgar the Peaceful (king of Wessex 959-975) in the establishment of new and as it were uncontaminated centres of power in those parts of his kingdom where his grasp was most tenuous, such as, in East Anglia, the great abbeys at Ely, Ramsey, Thorney and Peterborough. When Duke William I of Aquitaine founded the abbey of Cluny in Burgundy, in 909, he protected it from the control not only of secular lords but, crucially, of the local bishop of Macon, by granting it immunity from all authority save that of the Pope. (Two hundred years later the same exemption from episcopal authority was essential to the creation of another quintessentially medieval institution, the university.) In the years that followed, Cluny's authority in its lordship was entrenched and its privileges amplified and extended by a battery of exemptions and prohibitions that secured it immense wealth and opened the way for it to become by 1100 the head in one way or another of many hundreds of monasteries all over western Europe: castles were not to be built for forty miles around or tolls collected from those travelling between Cluny and the major towns of the surrounding region; disturbers of the peace of its lordship were excommunicated, and comprehensive rights were secured over the churches and cemeteries of its estates and parishes, and of the people who were born, married, worked, and died in them.¹⁶

And so on. I need not linger on the centrality of the principles both of the exemption of institutions from the customary claims and prerogatives of secular lordship, and of individual monks and clerics from the authority and jurisdiction of those lords and their courts, to the great conflicts between ›Empire and Papacy‹, or ›Church and State‹ of the eleventh century and beyond. The crucial point on which it depended was contained in a single event, or in the memory of a single event, at Laprade St. Germain, near Le Puy, in the Auvergne region of France, in 975.¹⁷ The chronicle that preserves it dates from the twelfth century, and may represent an idealised memory, or even one concocted at that time, rather than an accurate record of events. If so, it exemplifies all the more strikingly the essential principle upon which property in Europe was redistributed on a massive scale between the late tenth and the late twelfth century.¹⁸ It tells how Bishop Guy of Le Puy called a meeting with the local strong men (*militēs ac rustici*) to discuss the return of the lands which they had appropriated from his church; when they declined to co-operate he secured their agreement by springing a cleverly planned ambush with troops borrowed from his cousin in the neighbouring county. The paragraph of the chronicle immediately following the description of this triumph, however, records that Bishop Guy then made a division between his own personal revenues and those of the church, and required the cathedral clergy to embrace the common life – that is, to renounce personal property and vow themselves to chastity.

16 Constable, Review of Didier Méhu, 1345.

17 Lauranson-Rosaz, *L'Auvergne et ses marges*, 412-419.

18 Chronicle of St. Pierre du Puy in Devic and Vaissette, *Histoire du Languedoc*, V, 15.

In other words, the leading families of the diocese had returned land to the church for the support of those of their own members who occupied the cathedral stalls, on condition that it would remain the property of the church in perpetuity, not that of the bishop, and that it could not become the patrimony of new, rival dynasties, fathered by the canons. Bishop Guy's arrangements describe the pattern of innumerable settlements great and small for the next two hundred years, reinforced by increasingly precise and stringent stipulations about the life, demeanour and recruitment of both clergy and monks, which always ensured that the price of their endowment was an ever wider and more unbridgeable gulf between their lives and property and those of their brothers in the world.¹⁹ In this way the former oscillation between the enrichment of the church and its despoliation was ended, and western Europe was provided with a dual structure of landholding, by right of blood on the one hand and of profession and ordination on the other, elegantly articulated in such a way (since ordination negated hereditary rights) that a claim to either could be asserted only by disclaiming all interest or right in the other.

This was the foundation of the society of orders – those who worked, those who fought, and those who prayed – that was Europe's *ancien régime*.²⁰ The exemption of both people and institutions recognised as religious from worldly obligations was essential to its establishment, its character and its subsequent development. But it was not only, or particularly, European. The principle that entry to the religious life freed individuals from civic obligations, including military and labour services as well as personal taxes, and their communal property also from taxation, was widely, even perhaps universally accepted in South, Southeast and East Asia throughout our period. It is most familiar and its consequences most abundantly documented in the case of Buddhism, whose monks and monasteries constitute by far the most numerous set of such institutions in world history. But it was not in any way peculiar to Buddhists: Brahmins in India, Daoists in China, Shintoists in Japan, and many others enjoyed the same privileges. The Asian belief systems did not make the absolute truth-claims or demand exclusive allegiance of the kind associated in the west with Islam and Christianity.²¹ Religious exemption, therefore, was not connected with particular cults or teachings. It may have a long prehistory, at least in India, for it seems that when Buddhists appeared in China in the third century AD they brought with them their claims to the exemption of their property from taxation.²² Its direct and enduring consequence was contained in the term used in Chinese texts to describe consecrated property, *ch'ang-chou*: 'that which remains permanently.'²³ Everywhere temples and monasteries acquired property in all its forms and in great quantity, but especially and most importantly in land. Despite the setbacks occasioned by frequent and sometimes severe reaction, they accumulated immense wealth and retained it until modern times, when it became prominent among the targets of reformers and revolutionaries as regularly and at least as fiercely as in Europe. The Khmer Rouge regime in Cambodia (1975-1978) not only defrocked all Buddhist monks and murdered many thous-

19 Moore, *First European Revolution*, 81-101.

20 Duby, *Three Orders*.

21 Moore, *Medieval Christianity*.

22 Gernet, *Buddhism in Chinese Society*, 39.

23 Gernet, *Buddhism in Chinese Society*, 67.

ands of them, but demolished Pnomh Penh cathedral brick by brick,²⁴ as a symbol no doubt of French imperialism no less than of the old regime. A more benign manifestation of a similar sentiment was observed by Mikhail Adolphson, to whose fine work on Buddhist monasteries in Japan I am much in debt, when on his first visit to Kyoto in 1986 he was disappointed to find most of its great monasteries and shrines closed to visitors. They were on strike against the mayor, who wished to levy a tourist tax on forty of the main sites. Local opinion and the press might have been expected to support the monks in resisting this imposition on the tourist trade, but in fact they applauded the mayor for standing up to their customary avoidance of public obligations.²⁵

As far as I can see, then, leaving the Islamic world aside for the moment, religious exemption was not only common but in effect universal among the citted societies of Eurasia during a millennium and more from around 400 CE, or earlier. It seems also, however, that the nature and use of such exemptions was elaborated and systematised in many regions between the tenth and thirteenth centuries, when the world cultures or civilizations we know today were assuming clear identities, and the contours of the modern world were taking shape.

The nature of the structural role of exemption is less obvious. It was probably simplest, and most easily visible in China, where, if less than it appears on the highly polished surface, the continuity of political, governmental and social structures between the end of antiquity and the nineteenth century was nevertheless both considerable and remarkable. The rapid expansion of Buddhism in China from around 400 CE owed at least as much to aristocratic as to imperial patronage, especially in the south. ›That which remains permanently‹ was attractive to rulers in itself, as a source of the social stability that was always the primary objective of the imperial regime. Like their counterparts everywhere, Buddhist monasteries and temples were of great value as centres of colonisation and for the extension of agriculture, the creation of markets, the inculcation of culture and the articulation of social order. Nevertheless, religious exemption in China does not appear to have been either a goal or an instrument of imperial power. On the contrary, it was repeatedly limited or attacked, both in itself and still more when abused, as a major drain on the imperial treasury. The sale of certificates of ordination, for example, was a perennial and lucrative form of tax evasion. In what was probably the greatest such reaction, between 843 and 846, some 40,000 temples and shrines were suppressed, about 250,000 monks and nuns were deprived of their status, and around 150,000 labourers were freed – which is to say, in both cases, made liable to pay taxes.²⁶

On the other hand, though the Song dynasty, between the tenth and thirteenth centuries, is usually identified as the great period of Confucian or neo-Confucian revival, Buddhist temples and monks were lavishly supported by the court and officials, and considered essential to the regime as providing sites especially for commemorating war dead, marking imperial birthdays and death days, and housing specimens of imperial calligraphy and portraits of emperors, thus expressing and reinforcing links between emperor, literati and the people.²⁷ They continued to act as foci of communal activity, funded both by gentry families and by

24 Reid, *History of Southeast Asia*, 393.

25 Adolphsen, *Teeth and Claws*, 3.

26 Rossabi, *History of China*, 162-163.

27 Halperin, *Out of the Cloister*, 112-158.

magistrates, and to reflect and support local structures of power, including its rivalries. In 1667 there were about 80,000 registered temples for a population of around 150 million, and when Taiwan was colonised in the early years of the eighteenth century, temples were immediately established by the newcomers, though it seems that they were identified with particular social groups, such as officials and merchants, rather than intended as general instruments of sinification.²⁸

Brevity misleads, and this sketch would certainly have been less bland if it had considered the emergence of regional power bases, and the periodic rebellions in which Buddhist monks were frequently implicated. Nevertheless, it seems fair to conclude that after the tenth century religious exemption in China served predominantly, though mainly indirectly, to support the state. In Japan between the tenth and thirteenth centuries, on the other hand, a number of great Buddhist monasteries acquired a level of independent political power, including military power, which made them, along with the court elite of the capital on one hand, and the provincial warlords on the other, the third of the ›Gates of Power‹ which shared domination. Key to this ascendancy was the provision of financial support directly from the imperial treasury that gave way to what was in effect a system of immunities – the right to control cultivation over and collect taxes from designated parcels of land. That led, by a route very familiar to historians of Europe, to the acquisition of vast estates and their cultivators, who in hard times commended themselves and their lands to the monasteries, in the hope of protection and sustenance. Wealth required protection, which was provided both by aristocratic clans increasingly inclined to install sons as abbots, and by military forces built up by the monasteries themselves, often from a nucleus of warrior families which were employed to protect shrines and their pilgrims and revenues. For several centuries this made the support of the great monasteries around the capital necessary to contenders for power, and hence, in the view of Adolphson, significantly moderated the dominance of the court before the tenth century, and of the warrior clans thereafter.²⁹ The independent power of the monasteries was effectively ended during the thirty years or so of intense conflict from which a new and powerful central regime (the Tokugawa *bakufu*) emerged at the beginning of the seventeenth century. At that time the buildings of some of the greatest monasteries were destroyed, their treasures seized, their inmates and peasantry slaughtered and their lands greatly reduced. Their immunity from taxation was withdrawn – but, as we have seen, not forgotten – as part of the modernisation undertaken after the Meiji restoration of 1868.³⁰

China seems, then, to offer an example of how religious exemption might strengthen the state by providing legitimacy and supporting the informal networks that underpinned the formal exercise of power. Japan, on the other hand, has long been regarded as the classic case in which the state was undermined by the irreversible concession of the powers of taxation and jurisdiction without which it could hardly be said to exist, achieved not wholly, but significantly, through the mechanisms of religious exemption. Yet to frame the issue in those terms – whether religious exemption was a force friendly or inimical to the state – seems to me to beg the question. Nobody needs to be reminded of the perennial tendency of histo-

28 Naquin and Rawski, *Chinese Society*, 41-44.

29 Adolphson, *Gates of Power*, ch. 3-5.

30 Totman, *History of Japan*, 207-216, 300-301.

rians to place the state and its fortunes at the centre of their concerns, even to the point of exclusivity, or of how the agenda of the period between 600 and 1200 – and not only in the history of Europe – has traditionally been defined in terms of the decline and fall of the great empires of antiquity, and the extent of their survival, real and imagined. But that is not what the best historiography is saying now – such as, to take a distinguished example, *Reframing the Feudal Revolution* by Charles West.³¹ We are learning (dare I say, at last?) to do better, to think of power as capable of being exercised upwards as well as downwards, to consider the formation of communities as well as of states, and therefore to be curious about the agency of subjects as well as of sovereigns. West's reframing begins precisely by rejecting the traditional antithesis between ninth-century lords either as compulsive predators temporarily held in check by strong kings, or as proceeding merrily on their plundering way under cover of a skilfully constructed image of (Roman) imperial revival. They were indeed constrained, he argues, but not by royal power. Their conduct was shaped by competitive tension among themselves, in which, increasingly, the most effective means of securing advantage was by constructing a society continuously more ordered, and therefore both more productive and more exploitable. That ultimately meant the creation and expansion of village communities by every available means from brute force to pastoral care, not directed by any programme but shaped and reshaped by contingency and opportunity. It culminated, around the middle of the eleventh century, in the emergence of jurisdiction rather than direct exploitation as the key to the construction of enduring, universal power.³² To the creation of this new form of lordship, as we have already seen at Laprade, the principle, and the acknowledgement, of religious exemption was fundamental.

For a striking analogy we can turn to James Heitzman, who examined the role of religious donation in economic and social growth, supporting a spectacular temple culture, in the Chola kingdom in southern India (849-1279).³³ Like West, Heitzman rejected a traditional historiographical antithesis, in this instance between royal initiative and assemblies of cultivators as the source of the impetus. His analysis revolved instead around the ways in which local strong men acted as intermediaries between the two, using religious donation, and with it exemption from taxation, to bring new land into cultivation, in the process consolidating their own status both at court and in the localities. While their empire was expanding the kings were content with the enhanced symbolic presence conveyed by their patronage (in return for legitimacy), but when the gains of military expansion began to dry up, towards the end of the eleventh century, they began more aggressively to look inwards for revenue, which in turn caused the local notables to turn over yet more lands and revenues to the temples, as a means of keeping them in the family.

31 West, *Reframing the Feudal Revolution*.

32 West, *Reframing the Feudal Revolution*, *passim*: ch. 6, 173-198, is especially pertinent to the present comparison.

33 Heitzman, *Gifts of Power*.

In most, though not all, of the societies I have mentioned, religious exemption had a secular counterpart in which similar powers and rights were conferred on warriors, with similar consequences. I steer clear of the hoary and usually fruitless argument as to whether or not all such arrangements are properly called ›feudal‹. It is worth noticing, however, that that argument has generally been conducted on the same assumption as discussion of religious exemption, namely that it is about the concession of powers by the state, why such concessions were made, and with what consequences.

The ›concession‹ of a right or power presupposes a legitimate claim to it, but historians are under no obligation to underwrite the validity of such claims.³⁴ History does not have to start with states, either in theory or practice. The advance, of which I have taken Charles West and James Heitzman as exemplars, from the habitually top-down perspective, opens the possibility of reversing it. When Sir Richard Southern famously remarked that the great question in tenth-century Europe was how far the disintegration of authority could go, his answer was: until the point was reached where the effective political unit was the area that could be controlled by one man and his immediate followers.³⁵ Such men are usually called nobles, or lords, out of deference to their descendants, who formed the European aristocracy of the next millennium, but it has often been said that they might as accurately be described as gang-leaders or *capos*. Why should such a *capo* join in the pretence that he levied taxes or commanded services in his territory by permission of an outsider, of whatever royal or imperial pretensions, and one who in practice lacked the capacity to prevent him and others like him from doing so? The standard answer is that the *capo* longed for legitimacy, and for acceptance by the possessors of social prestige as one of themselves. Certainly we should not underestimate the power of that human craving, though we might ask more often than we do, ›legitimacy in whose eyes, and on what conditions?‹ There were in addition, of course, other advantages and opportunities, sometimes great ones, in participation in a wider political community. But there was also a price. If a sovereign could confer legitimacy he could also withdraw it, arbitrarily or in specified circumstances. And a time might come, as it did in both the Chola and the French kingdoms in the twelfth century, when a sovereign who had long been content to exercise his acknowledged authority merely symbolically, from a distance, acquired the capacity or inclination to do so directly. From the point of view of the local chieftain that risk was the converse of the one that the sovereign had taken in delegating power in the first place, that delegation might one day become permanent alienation. This is to say then that there were good reasons on both sides for a warrior or a group of warriors and a king, contemplating an exchange of a potential claim to power on the ground for present legitimacy, to regard one another with long-term distrust, regardless of their immediate interest in reaching an accommodation. The stand-off, I suggest, could be resolved by creating a neutral category of land and power, directly controlled by neither, but capable of advancing, at one remove as it were, the interests of both. A rough analogy might be with the constitution of the United States, in which the Supreme Court is conceived not directly as holding a balance between executive and legislature, but rather as independent of both, and therefore a safeguard against the tyranny of either.

34 Specifically rebutted, in the case of Western Europe by Brown, *Tyranny of a Construct*, and Reynolds, *Fiefs and Vassals*. For recent exploration of alternative approaches, Cooper and Leyser, *Making Early Medieval Societies*, including notably the papers of Fouracre, Costambeys and White.

35 Southern, *Making of the Middle Ages*, 79-96. The answer is not explicit.

In this light the ›exemption‹ should be understood not only as what the sovereign conceded to the chieftain, but also as what the chieftain withheld from the sovereign. That seems to me a pretty good description of what happened at Laprade in 975, made very nearly explicit in the surviving record of it. To say so, however, highlights the difficulty presented by the elephant of whose presence in my Eurasian room the reader must have been increasingly conscious, the Islamic world. Islam lacked not only many of the institutions – most obviously, monasteries or collective religious life in any institutional form – around which my discussion has revolved to this point, but the very distinction between secular and religious spheres on which it has been premised. It did, however, possess a legal device which served some of the same purposes, namely the *waqf*, ›an assignment in perpetuity of the income from a piece of property for charitable purposes.‹ The *waqf* placed the property in question under the care of the *qadi* (judge), and ultimately of the ruler; it was exempt in principle, and largely in practice, from arbitrary seizure. The variety of the property's income's uses was immense – supporting mosques, hospitals and schools, hostels for travellers, public fountains, caring for sick animals, providing a fund to insure servants against the cost of accidental damage.³⁶ In the eleventh century and after, its most spectacular deployment was in the foundation of the *madrashah* for the support of teachers and students, and which proliferated throughout the Islamic lands.

Like the monastery or the temple, the *waqf* offered advantages to the donors as well as to the recipients of its charity, as the only legal means of maintaining the integrity of a property against sub-division through multiple inheritance. It could become, in effect, a family trust. Thus, a donor's descendants might be bequeathed rights in a *waqf* foundation, such as a share of surplus income, or the right to go on living in the family house which had been handed over to it. *Mansabs* – bursaries for teachers or students associated with *madrashah* – rapidly became an important source of patronage, as entry to monasteries or cathedral canonries did in Europe. Thus, 29 *madrashah* were founded in Damascus between 1154 and 1224, almost all by members of prominent ruling or military households, including several women. One donor, for example, had been a governor of the city until he was dismissed and imprisoned, but on his release became a scholar in his *madrasa*, where he was buried, and his splendid tomb could be venerated.³⁷ In this way the military rulers, or rather occupiers, and their entourage, were able not only to make their property to some degree effectively heritable, but to associate themselves with the old civilian elites, and insert themselves into the social and sacred geography of the city, in much the same way that eleventh-century Norman hoodlums secured their souls and posthumous reputations by founding monasteries. Without commenting more directly on the extent to which the *waqf* may be said to fit my general model for the functions of religious exemption, therefore, it seems fair to suggest, at any rate, that it made possible the creation of something approximating to a public sphere which enjoyed a measure of protection against the domination of particular or sectional interests, and a high degree of protection against the vicissitudes of time and tyranny to which property in these lands remained vulnerable.

36 Southern, *Making of the Middle Ages*, 79-96. The answer is not explicit.

37 Chamberlain, *Knowledge and Social Practice*, 51-59.

On the other hand, the uncompromising individualism of Muslim religious life highlights a distinction which has probably deserved a larger place in this discussion. I have been describing religious exemption essentially as an institutional phenomenon, and as a device for regulating power relations among elites. But very frequently, most obviously in China, the personal exemption of individual ›monks‹ from civic obligations created acute difficulties for the state. In Latin Europe, as far as I can see, the question barely arose. A vigorously maintained tradition of effective episcopal authority – and increasingly from the ninth century the Rule of St. Benedict with its vows of stability and obedience – meant that a religious was effectively defined as such by ordination, or by his or her membership in a religious community. When individuals appeared, as of course they did, who claimed the status without such credentials, far from being legally privileged, they were seen and could be treated as anomalies. They might occasionally make a stir, but were more often sidelined, with more or less firmness, by a well-oiled machinery of pastoral discipline. The position was less clear-cut in Byzantium, however, and apparently less clear-cut again in India, where such people, including Muslim *ulema* and *sufis*, derived their claims to religious status – and with it sometimes very considerable social power – in part from the approbation of venerated teachers or fore-runners, and in part from their personal display of piety and ascetic renunciation.

This is no place, or time, for a comparative history of the holy man, which would stretch, I think, much further back in time, and over an even greater miscellany of societies.³⁸ Nevertheless, it is worth remarking that to the extent that he is to be understood as a vehicle for regulating in some manner relations between the powerful and the poor, the role of the holy man would be complementary to that which I have described for institutions, as regulating relations among the powerful themselves. This suggests that we should consider religious exemption not as one subject but as two, though frequently overlapping and interwoven. For me, this is a consoling thought. Since, in a moment of reckless bravado, I proposed the title for this article, it has cost me a good deal of apprehension. It was easy enough to see how religious exemption contributed in the tenth, eleventh and twelfth centuries to the construction of the societies and cultures which are recognisably those of the Eurasian *ancien régime*, and easy enough to see how its importance to that regime was attested by the urgency and passion with which it was eradicated when the regime was ended. It was less obvious how it could be said to define the beginning of a historical epoch. But the inclusion of the much more ancient and ambiguously problematic phenomenon of the holy man suggests that the answer is the same as that to several other current controversies as to what was ›new‹ in the tenth and eleventh centuries, and whether the transformation wrought by the totality of such developments constituted a revolutionary break with the past. It was not the individual elements that established or characterised the new regime. It was their combination.

38 The coincidence of title between this paper and Peter Brown's most recent meditation on the nature and functions of religious poverty (Brown, *Treasure in Heaven*) underlines not only the richness of both themes, but the desirability of relating them to one another a good deal more subtly than can be attempted here.

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Envisioning a No-Man's Land: Hermitage as a Site of Exemption in Ancient and Early Medieval Indian Literature

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Right from the emergence of sedentary settled society in early Indian history, there has been a perceived dichotomy between settled society (*grāma*) and the forest (*aranya*). Though each operated more or less independently, the state gradually became aware of the forest's resource potential and sought to establish its authority over the forest realm. Forest hermitages, the residences of ascetics who had renounced the organisation of the settled society, occupied a space between these two contrasting worlds. Hermits often acted as the agents of the settled society, a channel through which its hegemonic religious and cultural mores could enter the forest-scape. In return, the hermitages were granted certain exemptions. As ancient Indian literature shows, royal authority ended at the thresholds of the hermitages, where the king had to leave behind his royal symbols and paraphernalia. The Early Medieval period (sixth to thirteenth centuries) saw royal claims over the forest increase in India, especially as the kings started to donate forest land to various religious beneficiaries who were also granted tax exemptions. However, the idea of the hermitage as a ›no man's land‹, exempted not only from tax but from all forms of royal authority, remained present in Early Medieval texts.

Keywords: Hermitage; āśrama; vānaprastha; forest; settled society; exemption

For a long period of time, dynastic political history used to be the chief consideration in ancient Indian historiography. While with the predominance of Marxist historians from the 1960s onwards, social and economic aspects began to receive attention, and socio-cultural processes have been extensively explored, any discussion of political structures has necessarily revolved around the figure of the king. No doubt, kingship was the most important political institution in early India, and political power was often understood in relation to the king. But, were there any zones exempted from royal authority? What were the dynamics involved in such exemptions? This article tries to engage with such questions by studying a particular case, that of the forest hermitage or *āśrama*. I shall focus on the changing representation of the hermitage over time in literary sources – including both normative and creative literature – to understand the early Indian perception of the *āśrama* as an exempted zone, initially in reality, and later in fantasy. I shall also investigate the factors leading to the changes we can trace over time, by looking at texts composed in different periods and different socio-cultural milieux.

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The āśrama in the Brahmanical tradition

The word *āśrama* has a double connotation in the vocabulary of classical Brahmanism. On one hand, it stands for the hermitage – a place away from settlements, usually in a forest clearing, where the hermit lives with or without his family and students, mainly for the purpose of performing different rites and austerities. On the other hand, it signifies a system of four alternative/successive modes of life, namely: the *brahmacārin* (celibate student), *gṛhastha* (householder), *vānaprastha* (hermit) and *saṁnyāsīn* (renouncer). As Patrick Olivelle has shown, these four were probably initially devised as choices that a *dvija* (twice-born; or those born in the three upper *varṇas* of the Brahmanical caste-hierarchy) could legitimately adopt as his way of performing *dharma* (religio-social obligations), once his initial education was over. Later, this system was revised into a form in which the four modes were suggested as the successive stages in a twice-born man's life (or, alternatively, in the life of a *brāhmaṇa* male, belonging to the highest *varṇa*).¹ The system became so integral to the formulation of classical Brahmanism, alongside the *varṇa*-based caste hierarchy, that *varṇāśrama* soon became a term standing for the totality of *dharma*.

The two meanings of the term *āśrama* were therefore not entirely divorced from each other, though the homonymy between them could be a mere coincidence. After all, in the organisation of the *āśrama* system, the third stage was located in the hermitage. However, in the usual conceptualisation of the system, the *vānaprastha* seems to be the least important of the four stages. The *āśrama* system was perhaps devised to reconcile two different and opposing modes of a pious lifestyle – that of the householder and that of the renouncer – after the traditional ideal of Brahmanical *dharma*, centred round the householder, received a stiff challenge from religions such as Buddhism and Jainism, both of which championed ascetic renunciation. As Romila Thapar has shown, renunciation almost became a kind of ›counter-culture‹ to the orthodox culture of the Brahmanical householder.² While student-ship was a necessary precondition for both of the two dominant modes, the necessity of the hermit's life was unclear. As a result, the third stage was becoming obsolete in the scheme of the *āśrama* system in its classical form, after the early centuries of the Common Era, its memory preserved only in fantastic descriptions in legends, poetry and drama.³ Therefore, Thapar thinks that *vānaprastha* was just a preparation for *saṁnyāsa*.⁴ Charles Malamoud has argued that *vānaprastha* was utopian. It was unrealistic and hence deemed unfit for the ›age of iron‹. It was located in the distant past of the Vedic *ṛṣis* who had received the fountainhead of all knowledge, the Vedic revelation.⁵

Indeed, many depictions of the hermitage in early Indian literature are utopian, associated with the hoary antiquity of the Vedic seers. Yet there is evidence to suggest that the hermitage was not just a figment of classical poets' imaginations. The *assama/āśrama* was known in texts of the early Buddhist canon, much of which had taken shape in the mid-first millennium BCE.⁶ The Buddhists, possibly the biggest challengers to the Brahmanical

1 Olivelle, *Āśrama System*.

2 Thapar, *Renunciation*.

3 Olivelle, *Āśrama System*, 143, 174.

4 Thapar, *Householder and Renouncer*, 916.

5 Malamoud, *Cooking the World*, 86.

6 The dates of the Buddhist canonical texts are contested. However, at least parts of the early Buddhist *canons* – especially the *Nikāyas* and the *Vinaya Piṭaka* – were well-known by the early third century BCE when Aśoka prescribed their reading in an inscription.

religion, knew of the *jaṭila brāhmaṇas* (*brāhmaṇas* with matted hair) living in uninhabited wildernesses outside villages or towns.⁷ The early Buddhist text *Majjhima Nikāya* reports of the *assama* of a certain Rammaka, not very far from the town of Sāvasthi (Śrāvastī), in the Buddha's time (sixth/fifth century BCE).⁸ In fact, these *brāhmaṇas* were given a place of greater reverence by their opponents, compared to their village-dwelling counterparts.⁹ If they wanted to enter the Buddhist order, they were exempted from the probationary period of four months.¹⁰ Such conversions, for example the Buddha's conversion of a hermit named Kassapa who deserted the ›fire‹ (symbol of Brahmanical sacrifices), was a matter of pride to the Buddhists.¹¹ In other words, when early Buddhism was competing with Brahmanism in the mid-first millennium BCE, the hermitages were a known reality. In the fourth century BCE, the Greeks visiting India in the entourage of Alexander also encountered such hermits. Megasthenes, a Seleucid envoy to the Maurya court at the very end of the fourth century BCE, possibly referred to this group as *hylobioi*.¹²

So the hermitage was not a mere utopia, at least not before the Common Era; but it did have a certain significance which contributed to its association with the Vedic seers, the growth of utopian fantasies around it, and its inclusion in the scheme of the *āśrama* system. This article investigates these aspects, and also points out why the special status of the hermitage also ensured that it was an exempted space, contributing a great deal to its utopian depiction in literature. However, to understand the context of the hermitage's location in the *āśrama* system, it is necessary first to understand the duality of the householder and the renouncer in Brahmanical tradition, which was enclosed within the duality of the settled society and the forest.

The grāma and the aranya

»Goddess of wild and forest who seemest to vanish from the sight.
How is it that thou seekest not the village? Art thou not afraid?
What time the grasshopper replies and swells the shrill cicada's voice,
Seeming to sound with tinkling bells, the Lady of the Wood exults.
And, yonder, cattle seem to graze, what seems a dwelling-place appears:
Or else at the eve the Lady of the Forest seems to free the wains.
Here one is calling to his cow, another there hath felled a tree:
At the eve the dweller in the wood fancies that somebody hath screamed.
The Goddess never slays, unless some murderous enemy approach.
Man eats of savoury fruit and then takes, even as he wills, his rest.
Now have I praised the Forest Queen, sweet-scented, redolent of balm,
The Mother of all sylvan things, who tills not but hath stores of food.«¹³
– Hymn to the Forest, *Rg Veda*

7 *Dialogues of the Buddha*, trans. Rhys Davids, II.339.

8 *Majjhima Nikāya*, trans. Chalmers, I.160.

9 *Dialogues of the Buddha*, trans. Rhys Davids, I.104, III.94.

10 *Vinaya Piṭaka*, trans. Rhys Davids, I.71.

11 *Vinaya Piṭaka*, trans. Rhys Davids, I.36.

12 McCrindle, *Ancient India*, 98-105.

13 *Hymns of the Rg Veda*, trans. Griffith, X.146.

The primary concern of early Indian literature rests in the settled society (*grāma/kṣetra*). Still, the forest (*vana/araṇya*) has occupied a pivotal place in its domain. It featured as early as in the Ṛgvedic hymn to the *araṇyānī*, quoted above.¹⁴ Like the ›wine-dark sea‹ in Homer's *Odyssey*, it often constitutes the ›unknown other‹ in the imagination of poets. However, it would be wrong to assume that there is no realistic portraiture of actual life in the forest or its relationship with the settled society. In fact, this relationship is often expressed through a language of massive violence.

Thapar's key essay ›Perceiving the Forest: Early India‹, discussed the oppositional as well as the complementary relationships between the forest and the settled society, and the three-fold role of the forest as the site of hunting, hermitage and exile in Indian literature, especially in the early epics *Mahābhārata* and *Rāmāyaṇa*, both of which evolved over several centuries.¹⁵ In these texts, hunting, with almost the entire army in action, often took the form of a ›surrogate raid on nature‹. The violent and massive hunting of Duṣṭanta or the great carnage involved in the burning of the Khāṇḍava forest, both presented in the *Mahābhārata*, seem to be more the necessary precondition for power than simply a symbolic performance. The burning of the Khāṇḍava forest in the text, causing great slaughter and leading to the establishment of the city of Indraprastha, appears to establish a claim on the land as territory. The hunt could also be a mechanism of asserting control over grazing grounds. Thus, the Kuru kings of the *Mahābhārata* seem to have extended their control over the Dvaita Forest where they established a pastoral settlement. Their inspection of cattle became an excuse for hunting and the display of power. However, the resistance of the forest-dwellers to this infringement of the forest came in the form of the Gandharvas of Dvaita Forest who attacked the Kuru entourage. The Gandharvas are mentioned as one of the groups resisting the burning of the Khāṇḍava forest as well. The most frequent image of the forest people, in the epics, however, is of the Rākṣasas. They appear as unfamiliar forest-dwellers who obstruct hunting expeditions and harass those establishing settlements in the forest – including the hermits establishing their *āśramas* – in order to resist infringements of the forest space.

The antagonistic relationship between the forest-dwelling Rākṣasas and the settled society is reflected in the two exiles of the Pāṇḍavas, the chief protagonists of the *Mahābhārata*. Whenever the Pāṇḍavas enter the forest as exiles, this infringement is resisted by Rākṣasa chiefs like Hiḍimba and Kirmīra.¹⁶ On the other hand, when the Rākṣasa chief Baka tries to impose his authority on the settled society of Ekacakrā, by demanding the sacrifice of one human from one family of the village every day, he is slain by Bhīma, and his body becomes a public spectacle.¹⁷

14 The *Ṛg Veda* was composed in the second half of the second millennium BCE. However, the hymn quoted above comes from the Tenth Book of the *Ṛg Veda*, usually considered the latest book of the text, which can be dated to c. 1000 BCE.

15 The *Rāmāyaṇa* and the *Mahābhārata* are both popularly categorised as epics, and I am calling them ›epics‹ for the sake of convenience. The *Rāmāyaṇa* is traditionally known as *kāvya*, or creative literature; it grew over a long period of time, possibly originating in the seventh century BCE and going through major changes – including the addition of its last book and parts of the first book – till the fourth century CE. The *Mahābhārata* is usually categorised as an *itihāsa*, a major form of early Indian historical tradition. It possibly originated in a bardic tradition around the Later Vedic Kuru kingdom, originating around the ninth century BCE. It underwent several revisions, additions, alterations and interpolations to reach its present encyclopedic form by the fifth century CE. For a detailed discussion of the location of the forest in the *Mahābhārata*, especially the burning of the Khāṇḍava Forest, see Sinha, *Mahabharata's Spatial Politics*.

16 Vyāsa, *Mahābhārata*, trans. van Buitenen, vol. 1, I.139-143; vol. 2, III.12.

17 Vyāsa, *Mahābhārata*, trans. van Buitenen, vol.1, I.145-152.

The equation changed a little with the appearance of an organised state apparatus. In the Mauryan period (fourth-second centuries BCE) or immediately after it,¹⁸ the political theorist Kauṭilya viewed the forest as a source of resources and also discussed the diplomatic possibilities of alliances with the forest people. That the forest-dwellers still had a confrontational relationship with the state is indicated in the warning in Aśoka's (BCE 273-232) Rock Edict XIII, where the otherwise pacifist emperor cautioned the forest-dwellers that his tolerance had its limits. In the Gupta period, the enthusiastic conqueror Samudra Gupta (mid-fourth century CE) is known to have brought the *āṭavika* (forest) chiefs into servitude. Closer contacts between the two worlds were however facilitated by the grant of *agrahāra* lands in the forested regions in subsequent periods.¹⁹ As a consequence, the distinction between settled land and forest remained, but the antagonism became less marked. In Kālidāsa's *Abhijnānaśākuntala* (c. fourth-fifth century CE), Duṣṣanta's hunt loses its *Mahābhārata* ferocity. In Bāṇa's *Harṣacarita*, written in the seventh century CE, the picture of the forest is quite close to that of a village. The description of the nephew of the Śabara chief matches the stereotypes of the Rākṣasa, but he is no longer feared or exoticised. Rather, Bāṇa acknowledges him as someone who knows every leaf of the forest.²⁰

From the state's perspective, it was not however enough to acknowledge the forest as a place of both antagonism and complement to a complex society. Though the forest space was othered, it also had to be subordinated to the complex society over which the king ruled. B.D. Chattopadhyaya notes that the mystique of the forest, possessing mystical as well as evil characteristics, can be traced as early as the Ṛgvedic hymn to the *araṇyāni* and the *Āraṇyaka* texts. Society could nevertheless not treat the forest as completely separate, since the forest was an important source of resources and often pivotal to security strategies. It therefore had to be brought within society's moral and cultural authority, though as a marginal area. Forest dwellers were to provide services to society, but as marginal untouchables or outcasts. The attempt to culturally hegemonise the forest space, and the resistance of the forest dwellers, created a certain tension between the two. This led to the repeated references to the forest-dwelling Rākṣasas spoiling sacrifices. We have already seen that even emperor Aśoka, who had adopted an otherwise lenient and non-violent policy after his only military campaign at Kalinga, spoke apprehensively of the forest-dwellers, and issued veiled threats to make them adhere to the moral order.

18 Kauṭilya's *Arthaśāstra* had initially been unanimously dated to the Mauryan period by early colonial and Nationalist historians, on the basis of a supposed identification between Kauṭilya and Cāṇakya, Candragupta Maurya's mentor and prime minister in legends. The identification, mostly based on the later play *Mudrārākṣasa*, which was not composed before fifth century CE, has been rightly challenged. Therefore, the date of the *Arthaśāstra* is a contentious issue. Some of the prescriptions in the text curiously match the account of Megasthenes, the Hellenistic envoy to the court of Candragupta Maurya, strengthening the claim of the text as a Maurya document. However, some references, such as those to Chinese silk, definitely point towards a post-Maurya date. Therefore, many scholars, such as Thomas R. Trautmann, assume that the text contains more than one layer of authorship. This idea has been challenged by others, such as Surendra Nath Mital. In his recent translation of the *Arthaśāstra*, Patrick Olivelle has dated the entire text to the post-Mauryan period. Leading historians of early India – including Romila Thapar and Upinder Singh – tend to assume that some parts of the text were composed in the Maurya period, allowing for later interpolations or a later revision in the early centuries CE. See Trautmann, *Kauṭilya and the Arthaśāstra*; Mital, *Kauṭilya Arthaśāstra Revisited*; Olivelle, *King, Governance and Law*; Thapar, *Aśoka*; Singh, *History of Ancient and Early Medieval India*, 322-324.

19 *Agrahāra* meant tax-exempted plots of land granted usually to religious functionaries (such as the *brāhmaṇas*) or institutions (such as monasteries and temples).

20 Thapar, *Perceiving the Forest*, 173-191.

These attempts to impose hegemony became widespread from the Gupta Age period onwards. Samudra Gupta vanquished many forest-chiefs, and the practice of granting lands in forest areas gradually led to the transformation of many forest areas into settled villages or towns. The forest chiefs, through this incorporation, often also acquired both symbols and substance of political authority in the contemporary complex society. Sanskritisation became a major tool for that, as Chattopadhyaya shows from the Sanskrit inscriptions of Samkṣobha, a *parivrājaka mahārāja* subordinate to the Gupta kings, and of the Hoysalas. He also notes elements of Sanskritisation on the forest hunter Kālaketu of the *Caṇḍīmaṅgala*, a sixteenth-century Bengali text by Mukundarāma Cakravartī. Conversely, those chiefs who did not take part in the transformation remained forest chiefs, instead of becoming rulers matching the requirements of a complex state society, even up to the twentieth century, as Chattopadhyaya shows from the example of the forest *rājā* in the *Āraṇyaka*, a Bengali novel by Bibhutibhushan Bandyopadhyaya.²¹

With this background in mind, Malamoud shows how *araṇya* constituted the ›other‹ to the ›self‹ of the settled village, and could include all kinds of landscapes other than the cultivated village, ranging from forest to desert. The village was the settled society governed by social norms (*dharma*) observed by the householder (*grhastha*), while the forest was the ›other‹ world of wilderness. As a consequence, forest animals were not to be used for sacrifice, to prevent the householder from becoming a part of the other landscape. Yet, as the sacrifice implied human authority over both realms, the forest had nevertheless to be absorbed into the village. In the horse sacrifice, forest animals were tied to the posts where village animals were tied. But they were then set free, while the latter were sacrificed.

In early Indian society, the forest was therefore both within and outside the village: within, as the realm inferior to that ruled by *dharma* and subject to those worshipping Agni, the god of the sacrificial fire; outside, as the realm of unknown wilderness that might account for the Absolute Reality. It was the forest where, in contrast to the *grhastha*, the renouncer (*saṁnyāsin*) sought the Absolute, transcending the normative reach of *dharma*. Ascetics would sometimes use only the hollow of their hand as a dish for eating, while some others would directly eat with their mouths, like animals. Man could be a part of both worlds. He was the village animal *par excellence*, the ideal object of sacrifice, and the only animal who could also be a sacrificer. But in many cases he was also considered among the forest animals, including the list of sacrifices in the horse-sacrifice. The secret lay in the contrast of the *grhastha* and the *saṁnyāsin*, though each could be a stage in the same man's life.²²

From the Vedic period onwards, the Brahmanical religion was centred around the householder residing in the settled society. Sacrificial rites were the most important aspect of Vedic religion. It was a *grhastha*, a householder, who established a sacrificial fire. Thus, the householder was the pivot of *dharma*. In fact, the sacred fire's association with the village household was so enshrined in Brahmanical thought that a sick man was advised to pretend to leave the village, carrying his fire, presuming that the fire would cure the man in fear of being away from the village.²³ Therefore, continuation of the householder's life was the

21 Chattopadhyaya, State's Perception of the Forest, 23-37.

22 Malamoud, *Cooking the World*, 91-94.

23 Thapar, Householder and Renouncer, 923.

biggest concern of the normative Brahmanical treatises, which emphasised certain duties described as payment of debts and performance of sacrifices, including marriage and the begetting of offspring, Vedic study and the performance of rites, as well as the entertainment of guests.

To all of this, the *samnyāsin* represented a complete antithesis. Not only did he leave the village for the forest, he also ceased performing all the rites, including the fire sacrifices. Renunciation, extremely popular among the heterodox sects, was such a great threat to the Brahmanical concept of *dharma* that the *Baudhāyana Dharma Sūtra*, perhaps composed in the middle of the first millennium BCE and therefore one of the earliest treatises on *dharma*, described renunciation as the creation of a demon who wished to deprive the deities of the sustenance they received from sacrificial offerings.²⁴ The *samnyāsin* was legally and socially considered to be dead. The *Arthaśāstra* even excludes him from all legal transactions.²⁵ However, the appeal of renunciation, with its promise of spiritual liberation from the repeated cycle of birth and death, not only popularised the heterodox religions but also appealed to many adherents of the Brahmanical religion. The *Upaniṣads* (philosophical texts within the Vedic corpus, the earliest of which can be dated to c. 800-600 BCE), arising out of the same intellectual milieu that gave rise to the heterodox religions, championed renunciation. Olivelle has suggested that renunciation, both Brahmanical and heterodox, was the product of an urban culture patronised by kings, quite different from the rural *brāhmaṇa*-dominated belief system.²⁶ This counter-culture advocated the transcendence of rites, arguing that performance of rites – even if it could deliver its promise of heaven – brought only a temporary reward, while renunciation could indeed lead to spiritual liberation. The *Bṛhadāraṇyaka Upaniṣad*, one of the earliest *Upaniṣads*, says that those who live in the wilderness do not return, while those who win worlds by sacrifices return.²⁷ The same theme is elaborated by the *Chāndogya Upaniṣad* which states that those in the wilderness know and worship with the thought 'faith in our austerity', and so they reach Brahman (the Supreme Being); while those who live in villages and sacrifice return to the world when their merits are exhausted.²⁸ The idea became entrenched in the subsequent *Upaniṣads*, too. The *Muṇḍaka Upaniṣad*, possibly composed in the middle or the latter half of the first millennium BCE, says:

Deeming sacrifices and gifts as the best,
the imbeciles know nothing better.
When they have enjoyed their good work,
Atop the firmament,
They return again to this abject world.

But those in the wilderness, calm and wise,
who live a life of penance and faith,
as they beg their food;
Through the sun's door they go, spotless,
to where the Immortal Person is,
that immutable self.²⁹

24 *Baudhāyana Dharma Sūtra*, trans. Bühler, II.6.11.28.

25 Kauṭilya, *Arthaśāstra*, ed./trans. Kangle, III.1.12.

26 Olivelle, *Āśrama System*, 60-67.

27 *Bṛhadāraṇyaka Upaniṣad*, trans. Olivelle, 6.2.15-16.

28 *Chāndogya Upaniṣad*, trans. Olivelle, 5.10.1-2.

29 *Muṇḍaka Upaniṣad*, trans. Olivelle, I.2.10-11.

As Olivelle has noted, renunciation as a culture therefore advocated a mode of life completely the opposite of the householder's *dharma*. It prescribed »wilderness over village, celibacy over marriage, economic inactivity over economic productivity, ritual inactivity over ritual performance, instability over stable residence, inner virtue and experience over outward observance.«³⁰ Since the Brahmanical religion could not altogether ignore or dismiss the popular and powerful counter-culture of renunciation, it had to create a space for it. The *āśrama* system thus provided a model where both the householder's life and renunciation were presented as two of the four possible modes of performing *dharma*, though the desirability of the former was highlighted in all major treatises. The later reorganisation of the system, where the four modes were presented as successive rather than alternative stages, further secured the orthodox position by advocating renunciation only after one has performed the duties of a householder, particularly begetting male offspring who would continue the performance of sacred rites.

Of course, in that scenario, *vānaprastha* became a redundant stage. One could perform all of the necessary obligations as a householder and then – if one wished for liberation – become a renouncer. The hermit's life did not promise anything as special as renunciation did. What, then, was the significance of this intermediate *āśrama*? Why did poetic fancy associate such a redundant stage with the holiest of people, the Vedic seers? To answer these questions, we must first examine the kind of lifestyle prescribed for a hermit.

Life in a hermitage

The lifestyle of a hermit, as described in the oldest available Indian sources, was not much different from a Brahmanical householder, except that the hermit lived in the forest. The early Buddhist canon recorded these *brāhmaṇas* with matted hair as fire-sacrificers.³¹ The description of a marriage feast indicates that celibacy was not a necessary component of a hermitage.³² Similar ideas can be gleaned from the Brahmanical sources of the mid-first millennium BCE. For instance, the *Bṛhaddevatā* (c. 500 BCE) speaks of three generations of hermits: Atri, his son Arcanānas, and his grandson Śyāvāśva, indicating the belief that these Vedic seers were born and brought up in the hermitage and spent their entire lives – which included marriage and childbirth – there. They also had contacts with the settled society, which might amount to matrimonial relationships. Thus, Śyāvāśva married the daughter of the king Rāthavīti Dārbhya for whom he performed a sacrifice.³³ The same text describes how Atri's daughter, Apālā, was married.³⁴

Therefore, when the *āśrama* system was being conceived as a mechanism of four alternative lifestyles, the hermit's life was represented as one way of spending a man's entire adult life. *Āpastamba Dharma Sūtra*, composed in the latter half of the first millennium BCE, accordingly suggests that one could become a hermit either as a family man (who would bring his wife, children and fires to the forest) or as a celibate. While the married hermit would

30 Olivelle, *Āśrama System*, 67.

31 *Vinaya Piṭaka*, trans. Rhys Davids, I.71.

32 *Majjhima Nikāya*, trans. Chalmers, II.146.

33 Śaunaka, *Bṛhaddevatā*, trans. MacDonnell, V.50-81.

34 Śaunaka, *Bṛhaddevatā*, trans. Macdonnell, VI.99.

build a house, the celibate hermit was advised to wander about, subsisting initially on fruits and leaves, then on whatever would fall down from the trees, and finally on water, air and ether.³⁵

However, when the classical idea of the *āśrama* system was conceived, the life of a hermit became closely associated with old age. The earliest of the normative treatises or *Dharmaśāstras*, the *Manu Smṛti*, possibly composed in the early centuries of the Common Era, advised becoming a hermit after a man's skin had become wrinkled, his hair had turned grey, and he had become a grandfather.³⁶ Yet since that would mean that the man had already finished his obligations of studying the Vedas, fathering sons and offering sacrifices, the preconditions of renunciation according to the same text,³⁷ the necessity of the third *āśrama* became questionable. Indeed, life in a hermitage as a mere stage in a fourfold life-cycle was redundant. Manu had retained the option of remaining a hermit till the end of one's life, and dropping dead while walking and being without food at the end.³⁸ But, since in this new formulation, one would become a hermit or a renouncer only after performing a householder's duties, which was given maximum importance, the hermit's life started to become difficult to justify. If one looks at the epics, the only justification of this life stage was in relation to the king who could abdicate at a certain age while also nominating his successor, therefore nullifying any confusion over succession.³⁹ This custom of royal abdication was appreciated in early Buddhist literature as well.⁴⁰ Whether any king would have abdicated his throne while in his prime to become a hermit is a different question. But the ideal was there, and that it was not completely unheard of till at least the Gupta period (c. fourth-fifth centuries CE) is indicated by the Mehrauli Iron Pillar Inscription which shows that at least one Gupta Emperor retired after the end of a successful career.⁴¹

Nevertheless, texts from the Gupta period onwards show the gradual disappearance of the hermitage. The *Yājñavalkya Smṛti*, composed at least a century after the *Manu Smṛti*, kept the provision for becoming a forest hermit either with one's wife or after entrusting her to one's son. But, its declaration that after fulfilling the householder's obligations, one could renounce either as a hermit or directly as a householder, indicates that the hermit's life was no longer considered strictly necessary.⁴² The *Bhāgavata Purāṇa*, composed between the seventh and the ninth centuries CE, made the third stage completely optional.⁴³ Since the Early Medieval Period – between the sixth and thirteenth centuries CE – saw the establishment of several monastic sects within the Brahmanical religion, which valorised renunciation further, the appeal of renouncing at the earliest opportunity increased. These monasteries or *maṭhas* were also called *āśramas* at times. However, they were completely different from the forest hermitages in terms of location, organisation and ethos. In fact, rather than being separated from the settled agrarian society, these monasteries were often the bene-

35 *Āpastamba Dharma Sūtra*, ec. Garbe, II.21-23.

36 Manu, *Ordinances of Manu*, trans. Burnell and Hopkins, VI.2.

37 Manu, *Ordinances of Manu*, trans. Burnell and Hopkins, VI.35-37.

38 Manu, *Ordinances of Manu*, trans. Burnell and Hopkins, VI.31-32.

39 Vālmiki, *Rāmāyaṇa*, ed./trans. Pollock, II.20.21; Vyāsa, *Mahābhārata*, vol. 2, trans. van Buitenen, III.186.2-3.

40 *Dialogues of the Buddha*, trans. Rhys Davids, III.60-64.; *Majjhima Nikāya*, II.75-82.

41 *Corpus Inscriptionum Indicarum*, ed. Fleet, vol. III, 257-259.

42 Yājñavalkya, *Yājñavalkya Dharmaśāstra*, ed. Ganapati Sastri, III.45, 56-57.

43 *Bhāgavata Purāṇa*, ec. Acharya, XI.17.55.

ficiaries of lavish land grants and owners of large amounts of property. More importantly, by enhancing the prestige of the institution of direct renunciation, they contributed to the growing unpopularity of the hermit's *āśrama*. By the twelfth century, texts like Śrīdhara's *Smṛtirahasya* and the *Mahānirvāṇatantra* rendered the hermit's *āśrama* forbidden in the Kali Age (the present era according to the Purāṇic concept of cyclic time).⁴⁴

In sum, the hermitage was a reality in early times, but its relevance was as a different lifestyle for an entire lifetime, not as a stage in a four-part life-cycle. Moreover, its appeal was becoming reduced – in either form – from the Gupta period onwards, and had become completely obsolete at some point in the Early Medieval Period. We shall come back to what necessity it might have fulfilled in those earlier times, and why it became irrelevant in the post-Gupta period. Before that, let us see what kind of lifestyle was prescribed for and associated with the hermitage.

Most normative texts classify the hermits into two broad categories: those who took their wives along with them, and those who became celibate hermits by leaving their wives with their sons. Both, but especially the latter, were expected to perform a variety of austerities. The *Vaikhānasa Dharma Sūtra*, a normative text possibly composed in the Gupta period, speaks of many such practices, including eating at specific times, going about with upraised staffs, using stones or arrow-heads for grinding food, using only the teeth as mortar, living by gleaning, living on what one happens to see, living like pigeons or like deer, eating food from one's hands, living on stony fruits, living on sun-dried fruits, living on wood-apples, living on flowers, living on pale leaves, skipping meal times (eating once a day or every other day), lying on thorns, sitting in the *vīra* posture, lying between five fires, lying on stone, inhaling smoke, plunging into water, living in jars filled with water, remaining silent, hanging with their heads down, gazing at the sun, keeping their hands raised, and standing on one foot.⁴⁵ Similar descriptions are found in the *Rāmāyaṇa* about the different groups of hermits assembled in the hermitage of Śarabhaṅga:

»There were *vaikhānasas* and *vālakhilyas*, *samprakṣālas* and *marīcipas*. There were many ascetics of the sort that pound their food with stone or subsist on leaves. Some were sages who use their teeth as mortars, or keep themselves submerged; who subsist on water, or eat nothing but air. There were those who make their abode in the open, who always sleep upon the ground, or dwell only in the heights. There were self-mastering men who clothe themselves in wet garments or ceaselessly intone their prayers; who are ever engaged in ascetic practices or subject themselves to the five ascetic fires. All of them were possessed of brahmanical majesty and intensely concentrated in yoga, all the ascetics who came to visit Rāma in the ashram of Śarabhaṅga.«⁴⁶

In Kālidāsa's long poem *Kumārasambhava*, one of the finest pieces of Gupta-period court poetry, the divine protagonist Pārvatī became a hermit to perform austerities to please Śiva, the great god whom she wanted to marry. Dressed in bark clothes and matted hair, she slept on the bare ground and performed various austerities, including sitting in the middle of a

44 Olivelle, *Āśrama System*, 236-237.

45 *Vaikhānasa Dharmasūtra*, ed./trans. Caland, I.8.

46 Vālmiki, *Rāmāyaṇa*, ed./trans. Pollock, III.5.2-5.

ring of blazing fire in the summer and looking straight at the sun, drinking only the rain-water dripping down her body on its own, standing in water in winter, living only on the leaves that had fallen on their own, and then spurning even those.⁴⁷

From the earliest times, much of the classification of the hermits was on the basis of their observances, particularly in relation to food. The *Baudhāyana Dharma Sūtra* speaks of two kinds of hermits: *pacamānaka* (those who cook their food) and *apacamānaka* (those who don't cook their food). The first group includes the *sarvāraṇyaka* (those who eat all kinds of wild produce, further subdivided into vegetarians and non-vegetarians), *vaituṣika* (those who eat husked grains), *kandamūlabhakṣa* (those who eat bulbs and roots), *phalabhakṣa* (those who eat fruits), and *śākabhakṣa* (those who eat potherbs). The latter group includes the *unmajjaka* (those who do not use iron or stone implements), *pravṛttāśin* (those who eat only with their hands), *mukhenādāyin* (those who eat only with their mouths), *toyāhāra* (those who subsist on water only), *vāyubhakṣa* (those who subsist on air).⁴⁸ Similarly, Manu speaks of the hermits who eat cooked food, those who eat ripe fruits, those who use a stone for grinding, those who use their teeth only, those who live from day to day, those who store food for a month, those who store food for six months, and those who store food for a year.⁴⁹ The *Mahābhārata* follows a similar classification based on the storage of food for a month, for a year, for 12 years or living from day to day.⁵⁰

However, if these austerities brought the hermit curiously close to the renouncer, the most necessary obligation of a hermit remained the same as that of the householder: the performance of the fire sacrifices. Like a householder, and unlike the renouncer, the hermit had to sacrifice (although with wild grains) and entertain his guests (although with fruit and roots). In fact, one way of classifying hermits was on the basis of what they offered to the fire, such as *vaikhānasa* (those who tended the sacred fire with plants and trees grown on uncultivated land outside the village), *auḍumbara* (those who tended the sacred fire with figs, jujubes, wild rice and millet, fetched from the direction faced in the morning), *vālakhilya* (those who followed a regular livelihood for eight months, and offered flowers and fruits during the remaining four), and *phenapa* (those who feigned insanity, wandered about, ate withered leaves and rotten fruits, but tended the sacred fire).⁵¹ When Rāma, the protagonist of the *Rāmāyaṇa*, was exiled to the forest, every hermitage visited by him had marks of fire sacrifices, and everywhere he received hospitality of fruit and roots.⁵² The following is the typical depiction of a hermitage in the *Rāmāyaṇa*:

47 Kālidāsa, *Kumārasambhava*, trans. Rajan, V.8-28.

48 *Baudhāyana Dharma Sūtra*, trans. Bühler, III.3.1-15.

49 Manu, *Ordinances of Manu*, trans. Burnell and Hopkins, VI.17-18.

50 Vyāsa, *Mahābhārata*, vol. 15, ed. Belvalkar, XII.236.8-9.

51 *Vaikhānasa Dharmasūtra*, ed./trans. Caland, I.3.9.

52 Vālmiki, *Rāmāyaṇa*, ed./trans. Pollock, III.1.14-21; III.10.49; III.10.68; III.11.5; III.10.78.

»Spurious fire-sanctuaries made it beautiful, so too the sacrificial implements, the ladles and all, hide garments and *kuśa* grass, bundles of kindling, pitchers of water, roots and fruit.

Tall forest trees encircled it, holy trees that bore sweet fruit. It was a place of worship of offerings and oblations; a holy place echoing with the sounds of *brahma*, the sacred *vedas*.

Wild flowers carpeted it, and there was a lotus pond filled with lotuses. Ancient sages were present there, temperate men who ate only roots and fruit, wore bark garments and black hides, and shone like fire or the sun.«⁵³

Pārvatī, in the *Kumārasambhava*, despite performing austerities, also offers oblations to the Holy Fire, reciting chants.⁵⁴ A large section of Kālidāsa's play *Abhijñānaśākuntala* is located in the hermitage of Kaṇva. It depicts the life in the hermit household – with the hermit, his students, his foster daughter, and the women of the hermitage – in vivid detail. There also, the sacrificial fire receives much attention, and the inmates are careful about entertaining guests with fruit and other offerings.⁵⁵ The households included not only the inmates, but animals and plants. Vasiṣṭha's hermitage, in the *Rāmāyaṇa*, has numerous deer and birds.⁵⁶ Pārvatī, in the *Kumārasambhava*, nurtures saplings and feeds wild grains to gazelles.⁵⁷ Inmates of Kaṇva's hermitage in the *Abhijñānaśākuntala* protect their deer, while the hermit's foster daughter – Śakuntalā – has an intimate relationship with the trees, creepers, deer, fawns and peacocks in the hermitage.⁵⁸

A hermitage was also a centre of learning. Most depictions of hermitages also speak of the students of the hermits. Thus, Rāma and Lakṣmaṇa are received by Agastya's student, while Bharadvāja sends his students to provide welcome offerings to Vasiṣṭha in the *Rāmāyaṇa*.⁵⁹ Vasiṣṭha's students study the Vedas in his hermitage, in Kālidāsa's *Raghuvamśa*.⁶⁰ Such depictions continue even in later texts. In Bhavabhūti's seventh-century play *Uttararāmacarita*, Vālmiki's hermitage is full of students, including women. Even the hermitage of the Buddhist hermit Divākaramitra in the *Harṣacarita*, the biography of the seventh-century king Harṣa, composed by his court poet Bāṇa, shows students of different affiliations and sects – Buddhists, Jains, Bhāgavatas, Sāṅkhyas, Lokāyatas, Vaiśeṣikas, followers of Vedānta and Nyāya, students of the normative treatises and Purāṇas, Pañcarātras, etc. – following their own tenets, pondering, urging objections, raising doubts, resolving them, giving etymologies, disputing, studying and explaining.⁶¹

Bāṇa's other work, the novel *Kādambarī*, gives a picturesque description of a hermitage as imagined in the seventh century. In the hermitage of Jābālī, three sacrificial fires are maintained, and the hermits live in huts. *Śyāmaka* grains are spread out to dry in the sun. There are piles of gooseberries, cloves, *karkandu*, plantain, breadfruit, mango, jackfruit and palm.

53 Vālmiki, *Rāmāyaṇa*, ed./trans. Pollock, III.1.4-6.

54 Kālidāsa, *Kumārasambhava*, trans. Rajan, V.16.

55 Kālidāsa, *Abhijñānaśākuntala*, trans. Rajan, 246-7, 252.

56 Vālmiki, *Rāmāyaṇa*, ed./trans. Goldman, I.50.22-27.

57 Kālidāsa, *Kumārasambhava*, trans. Rajan, V.14-15.

58 Kālidāsa, *Abhijñānaśākuntala*, trans. Rajan, 246, 291-292.

59 Vālmiki, *Rāmāyaṇa*, ed./trans. Pollock, II.84.4; III.11.1.

60 Kālidāsa, *Raghuvamśa*, ed./trans. Devadhar, I.95.

61 Bāṇa, *Harṣacarita*, ed. Kane, 235-237.

Students loudly recite their lessons. Forest cranes peck at the offerings while cygnets eat the wild grain offerings. Myna birds are trained to chant the Vedas. Deer lick the children of the sages. Sages are absorbed in reading, deep philosophical discussion and yogic meditation. Guests are looked after, and rice is cooked with ghee. Some inmates put up thatched huts, others cement the courtyard with cow-dung or sweep the insides of the cottages; some clean the skin of the black buck and wash their bark garments, while yet others collect firewood, dry lotus seeds and string the rosary. Hermits' daughters leave palm-prints of yellow scented powder. Deer drink from the moat-like basin around a tree. Hermit boys secure their *kuśa* garments with ropes made of *darbha*.⁶²

In such a description, as Malamoud observed, the hermitage was a pure and peaceful society, without any division of labour or power structures. It was an organised social life without any alteration of the natural environment.⁶³ In its social life structure and the performance of rites and customs, it emulated the life of a householder. However, in its location in the forest, the use of bark garments and wild food, and the performance of austerities, it also contained elements of the renouncer. Moreover, students were also part of the hermitage establishment; it had elements of studentship, too. Therefore, the hermitage, rather than being the least important of the four *āśramas*, as it may apparently seem, was the only one containing elements of all four. No wonder that the word for the hermitage – *āśrama* – also signified the whole system of a fourfold life-cycle. The hermitage played a particularly important function, and that function also made it a site of exemption: for the hermitage was a *dharmāranya*, a forest space where the norms of the settled society – *dharma* – were observed. The hermitage thereby brought the culture and the authority of the settled society into the forest.

The Hermitage and the king: exemption, utopia and authority

In the *Abhijñānaśākuntala*, Mādhavya, the jester and friend of king Duṣṇanta, advises him to claim one-sixth of the produce of wild grains in Kaṇva's hermitage as tax. Duṣṇanta replies:

They pay a tribute far richer than a heap of priceless gems for the protection we provide them; and we cherish that far more. Think:
Perishable is the fruit of the yield
raised from the realm's Four Estates;
but imperishable is that sixth part
the hermits give us of their holiness.⁶⁴

Here, Kālidāsa justifies a tax exemption on the basis of the idea that the king receives a share of the merit acquired by the hermits through the performance of their austerities. Considering the relationship between the settled society and the forest discussed above, however, the hermits possibly played an important material role for the state as well. As Thapar observes, »The hermitages referred to in Indian sources, set in forest clearings, were often

62 Bana, *Kadambari*, trans. Rajappa, 40-43.

63 Malamoud, *Cooking the World*, 87-88.

64 Kālidāsa, *Abhijñānaśākuntala*, trans. Rajan, 284-5.

the vanguard of the colonization of the area by the settlers of agriculturists with or without state backing. Such hermitages were often under attack by those who claimed the forest as their territory or hunting ground.⁶⁵ As we have noticed above, the forest was the antithesis of the settled society in early Indian thought. The state nevertheless needed to keep the forest under its control, given that it was an essential source of resources. One of the modes of asserting such authority was coercion, as displayed in elaborate royal hunts. However, it was through the hermitages that the cultural component of the settled society entered the forest. With the sacrificial fire, the hermit brought the Brahmanical *dharma* to the forest, and established a centre of learning, and facilitated a process of culturally hegemonising the forest space. Thus, unlike the renouncer, the hermit was not socially or legally inconsequential to the state. Rather, he was the harbinger of the spread of Brahmanical culture, the successor of the Vedic seers. Thus, the hermitage was a no-man's land, within the forest yet also outside it. It furthered the royal interest, and hence deserved royal protection. But, it was not within the ambit of royal authority.

From the standpoint of the forest dwellers, the hermit and his fire sacrifices were an infringement on the forest space, symbolising the settled society's colonisation of the 'other'. This often provoked violent resistance, as seen in the activities of the demonic Rākṣasas in the epics. The forest, being outside the settled society, was the place of exile in the epics. However, even the exiled prince carried with him the responsibility of protecting the hermitages from the marauding Rākṣasas. In the *Rāmāyaṇa*, when the Rākṣasas disrupt the sacrifices in Viśvāmitra's hermitage, the hermit wants the young princes Rāma and Lakṣmaṇa to protect them. The king Daśaratha, despite his reluctance to send his sons out on such a dangerous mission, has to offer himself as an alternative and finally accedes to the demand.⁶⁶ Later, when Rāma goes to the forest as an exiled prince, the hermits seek his protection.⁶⁷ They specifically mention the danger from the Rākṣasas who are slaying the sages in every imaginable way, and warn Rāma that a king's right to taxation is contingent upon his performance of the duty to protect his subjects, including the hermits.⁶⁸ Therefore, the hermits, though exempted from paying taxes, enjoy the right to royal protection in exchange for the taxes paid by others. Similarly, Kālidāsa describes how the hermitage of Kaṇva is under Duṣṣanta's special protection, with an official in charge of protecting the hermitages. The hermits could request the king to protect the hermitage in person, in case of a threat.⁶⁹ Moreover, despite the peaceful portraiture of the hermitage, the hermit could himself in some cases adopt violent means against the forest dwellers. Agastya killed the demons Vātāpi and Ilvala, and gave to Rāma not just blessings but also weapons.⁷⁰

Similarly, even though austerity was the general condition in a hermitage, the hermit could also go to the settled society in search of wealth – which the king was expected to give. The *Mahābhārata* describes how Lopāmudrā, the wife of the hermit Agastya, wanted

65 Thapar, *Householder and Renouncer*, 922.

66 Vālmiki, *Rāmāyaṇa*, ed./trans. Goldman, I.18-19

67 Vālmiki, *Rāmāyaṇa*, ed./trans. Pollock, III.1.17-20.

68 Vālmiki, *Rāmāyaṇa*, ed./trans. Pollock, III.5.7-18; III.9.11-15.

69 Kālidāsa, *Abhijñānaśākuntala*, trans. Rajan, 252, 266.

70 Vālmiki, *Rāmāyaṇa*, ed./trans. Pollock, III.10.53-64 and III.11.29-34.

fine bedclothes and ornaments for cohabiting with him, and how he went to various kings to acquire these.⁷¹ Ṛṣyaśṛṅga, the son of the hermit Vibhāṇḍaka, born and brought up in a hermitage without any female company or luxury, could be seduced by a courtesan who brought costly viands, garlands, colourful and flamboyant clothes and fine liquors, and was brought to the kingdom of Aṅga for the performance of a ritual.⁷²

Yet, despite providing such protection and wealth, the king in principle had no moral authority over the hermitage. This was the special kind of exemption the hermits claimed for the crucial role they played in colonising the forest. Accordingly, a king was expected to get rid of his royal paraphernalia before entering a hermitage. Thus, in the *Rāmāyaṇa*, Bharata lays aside his weapons and equipment, dresses in linen garments, and proceeds on foot with the family priest Vasiṣṭha walking before him, when he enters the hermitage of Bharadvāja.⁷³ He summons in his army only after Bharadvāja so commands it.⁷⁴ Rāma similarly unstrings his bow before entering a hermitage.⁷⁵ In Kālidāsa's *Raghuvamśa*, the king and queen could enter Vasiṣṭha's hermitage only after descending from the chariot.⁷⁶

The hermitage, therefore, was a no-man's land neither governed by nor outside the purview of the state. These were places crucial for the settled society's interests but not within its ambit, and therefore exempted lands in various senses. In the utopian imagery that grew around the hermitage in early Indian literature, therefore, the same perception predominated; that is, that it was a zone of exemption from all kinds of power struggles and discords, not just political but also natural. In the utopian hermitage, all creatures – even naturally antagonistic ones – were imagined to have lived in complete harmony because of the hermit's special power. The *Rāmāyaṇa* describes Agastya's hermitage as having such a supernatural ambience:

Here gods and *gandharvas*, perfected beings and supreme seers, constantly attend upon Agastya, a seer given to rigorous fasting.
 Here no untruthful man may live, no one cruel or guileful, malevolent or licentious; that is the sort of sage he is.
 Here dwells gods and *yakṣas*, great serpents and birds, they too given to rigorous fasting and eager to uphold the ways of righteousness.
 Here great perfected beings cast off their bodies and new bodies ascended to heaven as supreme seers, in aerial chariots gleaming like the sun.
 Here gods will make one a *yakṣa* or offer immortality or various offices to good creatures who propitiate them.⁷⁷

71 Vyāsa, *Mahābhārata*, vol.2, trans. van Buitenen, III.94-96.

72 Vyāsa, *Mahābhārata*, vol. 2., trans. van Buitenen, III.110-113.

73 Vālmiki, *Rāmāyaṇa*, ed./trans. Pollock, II.84.2.

74 Vālmiki, *Rāmāyaṇa*, ed./trans. Pollock, II.84.9.

75 Vālmiki, *Rāmāyaṇa*, ed./trans. Pollock, III.1.9.

76 Kālidāsa, *Raghuvamśa*, ed./trans. Devadhar, I.54-5.

77 Vālmiki, *Rāmāyaṇa*, ed./trans. Pollock, III.10.87-91.

As the elderly and enfeebled hermits of Mataṅga's hermitage could not go to the holy pilgrimage sites themselves, their power of thought is supposed to have brought the seven seas to the hermitage!⁷⁸ Beasts mutually hostile in nature have forgotten their enmities in Pārvaṭī's hermitage in the *Kumārasambhava*.⁷⁹ In the *Abhijñānaśākuntala*, trees provide silk-garments, rose-red juice, and jewel ornaments with which to adorn Śakuntalā.⁸⁰ As the hermitage became less familiar in reality, the utopia around it became even more fanciful and fabulous in the imagination. Thus, the hermitages of Bāṇa's imagination in the seventh century CE are still more extraordinary. In Jābālī's hermitage, monkeys help the blind elderly sages to walk, elephants water the trees, and peacocks fan the sacrificial fires by waving their feathers. There are no bad deeds, anger, sharpness in temperament, lust, partiality, confusion, adulation for worldly wealth, or downward motion in any sense. The snake seeks respite from the heat by crawling under the dense feathers of the peacock. Young deer fawns drink milk from the lioness alongside their friends, the lion cubs. The lion sits in enjoyment as the elephant calves pull at his mane. Monkeys give up their restlessness and bring fruits for the children of the hermits.⁸¹ Similarly, in the hermitage of Divākaramitra, monkeys perform sacred rituals, devout parrots explain Buddhist scriptures, myna birds give lectures on the law, enlightened owls mutter the various births of the Buddha, and tigers give up meat-eating under the influence of Buddhist teaching.⁸²

If the hermits had such abilities as to discipline forest creatures, they were certainly then perceived as great instruments in taming the forest space and its residents. Though the king was bound to provide military protection – and financial grants – to them, this by no means marked his authority over such spaces. The disdain of the hermits for royal power and the norms of the settled society is reflected in the way Kālidāsa portrays the feelings of Śārṅgarava and Śāradvata, two residents of Kaṇva's hermitage, for Duḥṣanta's court. Śārṅgarava feels that the court, thronged with people, is like a house encircled by blazing fire, while Śāradvata looks at the courtiers like »a man freshly bathed views one seated massaged with oil; as one pure the impure, as one wakeful the sleeper; as one who can move freely sees one in bondage.«⁸³ Therefore, in another set of utopian stories, the hermits dazzle the kings with a spectacle of the wealth they are capable of producing if they so wish. For instance, the *Rāmāyaṇa* describes how Vasiṣṭha's wish-fulfilling cow treats his royal guests with sugarcane and sweets, parched grain and wines, excellent liquors, costly beverages, all sorts of food, mountainous heaps of steaming rice, savory soups, rivers of curds, and thousands of silver platters filled with various delicious confections.⁸⁴ When Bharata and his army reach Bharadvāja's hermitage, the hermit invokes the divine architects Viśvakarma and Tvaṣṭṛ to provide hospitality to them with all sorts of luxuries including palaces, stables, couches, chairs, carriages, spotlessly polished utensils, thrones, fans, parasol, and performances by celestial musicians and dancers. Even the trees are transformed into singers, dancers, entertainers and female attendants. There are arrangements for rubbing the

78 Vālmiki, *Rāmāyaṇa*, ed./trans. Pollock, III.70.21.

79 Kālidāsa, *Kumārasambhava*, trans. Rajan, V.17.

80 Kālidāsa, *Abhijñānaśākuntala*, trans. Rajan, 289.

81 Bana, *Kadambari*, trans. Rajappa, 41-46.

82 Bāṇa, *Harṣacarita*, ed. Kane, 235-237.

83 Kālidāsa, *Abhijñānaśākuntala*, trans. Rajan, 300.

84 Vālmiki, *Rāmāyaṇa*, ed./trans. Goldman, I.52.2-4.

body with oil, white sandalwood ointment packed in vials, other fragrant powders and ointments, tooth brushes, sparkling clean mirrors, nice clothing, shoes and sandals, collyrium boxes, combs, brushes, bows, armour, couches and chairs. The platters, trays, jugs, jars and cauldrons made of gold contain date palm liquor, long-aged wine, rice pudding, white rice, goat meat, boar meat, condiments, flavourful fragrant soups of fruit stock, steaming venison, peacocks and chicken. There are mounds of sugar and ponds of buttermilk scented with wood-apple, as well as sugarcane and sweet barley for feeding the horses, elephants, asses, camels and oxen.⁸⁵

What these stories suggest is the perception that the hermitages' exemption from royal authority was justified, the king being less powerful than the hermit. There are numerous legends according to which the royal violation of such exemption is punished. When the king Viśvāmitra forcibly wants to take away the wish-fulfilling cow of Vasiṣṭha's hermitage, referring to the maxim that all gems (signifying wealth) belong to the king, the cow produces armies who defeat the royal force.⁸⁶ That the hermitage can liquidate the authority of the king is indicated by the statement that, following the lavish hospitality offered in Bharadvāja's hermitage, the soldiers no longer recognised any master – Bharata or Rāma.⁸⁷ Similarly, in the *Mahābhārata*, when King Śaryāti's daughter Sukanyā playfully and unintentionally hurts the hermit Cyavana performing austerities, the latter punishes the king's escort with constipation till the king pacifies him by offering Sukanyā in marriage to him.⁸⁸ When the proud king Kārtavīrya first ransacks the hermitage of Jamadagni and later kills the hermit, the entire kingly caste – the *kṣatriyas* – faces violent and repeated extermination at the hands of Jamadagni's son, Bhārgava Rāma.⁸⁹ Moreover, this exemption is perceived as being one-way. When a hermit enters the royal territory and demanded a princess in marriage, the king is expected to comply.⁹⁰ Even in the Early Medieval period when the hermitage as an institution was becoming obsolete, the perception of the hermitage as a no-man's land – outside, and often counter to, royal authority – remained. So, in Bhavabhūti's *Uttararāmacarita*, when the family elders are infuriated with Rāma's unfair banishment of his wife Sītā, they leave his domain and go to the hermitage of Vālmiki.⁹¹ In Daṇḍin's eighth-century fantastic novel, the *Daśakumāracarita*, a defeated king goes into exile in the forests of the Vindhya. There, under the protection of the hermit Vāmadeva, the king raises ten princes who prepare themselves to avenge the defeat and ultimately succeed in their design. Therefore, the hermitage was still perceived as a place from where royal authority could be challenged.

Why then was the hermitage becoming obsolete in the post-Gupta period? As we have seen, the most important role played by the hermitage as an institution was as a mediator between the settled society and the forest in a period when there was a clear dichotomy between the two. However, a major shift in Indian history began during the Gupta period, and became manifest in the Early Medieval period. At the centre of this shift was *agrahāra*, or the grant of tax-exempted land to the *brāhmaṇas* and religious institutions. The *agrahāras*

85 Vyāsa, *Mahābhārata*, vol. 2, trans. van Buitenen, II.85.

86 Vālmiki, *Rāmāyaṇa*, ed./trans. Goldman, I.53-54.

87 Vālmiki, *Rāmāyaṇa*, ed./trans. Goldman, I.85.55-56.

88 Vyāsa, *Mahābhārata*, vol.2, trans. van Buitenen, III.122.

89 Vyāsa, *Mahābhārata*, vol. 2, trans. van Buitenen, III.116-125.

90 Vyāsa, *Mahābhārata*, vol. 2, trans. van Buitenen, III.115-116.

91 Bhavabhūti, *Uttararāmacarita*, ed./trans. Kale, 18-19.

enjoyed exemption not only from paying taxes, but also from civil and military interventions by the king. Such exemptions have been interpreted by Marxist historians as a marker of ›Indian Feudalism‹, an argument that began an intense debate that is beyond the scope of this article.⁹² But, interestingly, many grants were in forest regions, which meant that the grantees had to clear the forest and establish agricultural settlements. This politico-economic process had religious and cultural implications. As the *brāhmaṇa* landlords entered the forest space, and the forest dwellers came in closer proximity to them, there was a two-way exchange. As Chattopadhyaya's article cited above notes, the forest was now better understood, while the process of Sanskritisation was more direct. There was no longer the need for an institution like the hermitage to mediate between the two politico-cultural landscapes. Hermitage, a crucial cultural institution of the early period, was transformed into an imaginary utopia: however the utopia was still remembered as an exempted zone which was protected by but lay outside of the ambit of royal authority and was capable of acting counter to royal power.

92 For details, see Sharma, *Indian Feudalism*; Mukhia, *Feudalism Debate*.

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Evolving Relationship between the Buddhist Monastic Order and the Imperial States of Medieval China

Mario Poceski*

The article explores central aspects of the relationship between the Buddhist monastic order and the various imperial states that ruled China during the medieval period (roughly between the third and the tenth centuries CE). It focuses especially on the points of tension created by the monastic order's efforts to establish a sense of autonomy and receive special economic, political, or social exemptions on one hand, and the royal imperium's assertion of absolute authority over all subjects on the other hand. While the monastic order's efforts to safeguard its independence and ward off the encroachment of a totalitarian state was largely a losing proposition, in a protracted process that involved complex socio-political negotiations and shifting religious realignments, the Buddhist clergy was able to secure important exemptions from the Chinese rulers' demands. Most notably, these included exemptions from certain forms of taxation, military conscription, and forced labour, which helped secure the economic foundations of monastic life and enhance the prominent place of Buddhism in Chinese society. To illustrate these issues, the article explores some of the key debates that pitted prominent Buddhist monastics such as Huiyuan (334-416) against key segments of the Chinese socio-political elites, many of whom were influenced by a Confucian ideology that was often inimical to monastic institutions.

Keywords: medieval China; Buddhism; Huiyuan; monastic order

Introduction

Within the broad context of East Asian history, among the most important large scale events that unfolded during the early centuries of the Common Era was the introduction and spread of Buddhism into China. Initially the foreign faith – primarily brought in by itinerant monks and Central Asian merchants – grew gradually, but over the course of several centuries it became the strongest and most popular religious tradition in China. Buddhism brought many new elements that greatly affected and enriched Chinese civilization. At the same time, over the course of its growth in the Middle Kingdom, the religion also underwent significant changes, as it faced the challenges of adapting to the cultural norms and social realities

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of the host country, as well as adjusting to the spiritual needs and intellectual predilections of its people. Among the many important developments that took place during this turbulent but fascinating epoch in Chinese history was the gradual establishment of some of the basic power relations, legal strictures, and institutional arrangements that came to characterize the church vis-à-vis its relationship with imperial China.

Broadly conceived, this article explores some of the major aspects of the relationship between the Buddhist Sangha (the monastic order) and the various imperial dynasties that ruled China during the early medieval period (approximately between the third and the sixth centuries CE), although in relevant places the coverage also extends into the late medieval period, especially the Tang 唐 dynasty (618-907). It is meant to serve as a wide-ranging survey of the topic, geared towards a broad audience that includes non-specialists; in this light, a substantial portion of the article is dedicated to providing an overview of the key issues and historical developments that shaped the state vs. church relationship in the Chinese context.

The article's focus is on some of the points of tension created by the seemingly irreconcilable worldviews and divergent institutional objectives that pitted the autocratic Chinese state(s) against the growing monastic order. On one hand, there were the monastic order's efforts to establish a sense of autonomy, receive economic and social exemptions, and secure legal prerogatives. At the same time, there was the royal imperium's assertion of absolute authority, accompanied with its persistent efforts to safeguard its capacity to impose various kinds of demands on all of its subjects.

These issues took central stage during the crucial periods of formative growth of Buddhism in China, and in due course they also had an impact on the transmission of Buddhism from China to the rest of East Asia. On the whole, the Sangha's efforts to safeguard a semblance of independence and ward off the encroachment of the totalitarian state was largely a losing proposition. Nonetheless, in a protracted historical process that involved complex socio-political negotiations and shifting religious realignments, the Buddhist clergy was able to secure important exemptions from the Chinese rulers' demands – most notably exemptions from taxation, military conscription, and forced labour. That, in turn, helped secure the economic foundations of monastic life and anchor the prominent place of Buddhism in medieval Chinese society.

More narrowly, the second half of the paper surveys some of the key debates that pitted prominent Buddhist monastics, such as Huiyuan 慧遠 (334-416), against key segments of the Chinese socio-political elites, many of whom were influenced by a prevalent form of Confucian ideology that was often inimical to monastic ideals and institutions. At their core, these protracted debates aimed at adjudicating the place of Buddhism in Chinese society, and setting the basic parameters that delineated the relationship between the Sangha and the imperial state. Nonetheless, it is interesting to note that in the Chinese context much of the external focus of the debates involved disputes and tussles over largely symbolic issues. Prime examples include the intertwined debates about whether monks should perform ritual bows in front of the emperor – examined in some detail later in the article – and pay ceremonial respects to their parents, as expressions of the prime Confucian virtues of obedience to authority and filial piety.

Chinese worldviews and institutions

When Buddhism entered China during the first century of the Common Era, the early followers and missionaries encountered a large and dominant empire, with a long history and well-established institutions. The Han 漢 dynasty (206 BCE-220 CE) ruled a vast area that, in addition to the traditional Chinese headland, also stretched westward into Central Asia and eastward into the Korean peninsula. The power and influence of the Eastern Han dynasty (25-220 CE), while perhaps less impressive than that of the Western Han dynasty (206 BCE-8 CE), still evoke comparisons with the Roman Empire in the West.¹ The empire's continued ability to control diverse local populations inhabiting a huge geographical domain was predicated on the existence of common political and cultural frameworks, which were already firmly established during the Western Han era.

By this time, Confucianism was recognized as a major element in social, political, and religious life, albeit within a larger pluralistic framework that allowed for contesting ideologies and alternative worldviews. The initial official acts that signalled an imperial endorsement of Confucianism took place during the rule of Emperor Wu 武帝 (r. 140-86 BCE), whose illustrious reign is often depicted as a high point of Han civilization. The long-ruling emperor was inspired by a syncretic Confucian system articulated by prominent scholars such as Dong Zhongshu 董仲舒 (c. 179-104 BCE). The new Confucian synthesis was meant to facilitate the establishment of a harmonious relationship between Heaven (*tian* 天) and the human realm, and by extension to glorify the emperor and his empire. To a large degree, the embrace of Confucianism as an official ideology of the imperial state by Emperor Wu and his successors was also predicated on political calculation and administrative expediency.

Within the highly centralized system envisioned by Confucian scholars and ideologues, the Chinese ruler wielded absolute power as the Son of Heaven (*tianzi* 天子), ruling over the whole world (*tianxia* 天下, lit. »all under heaven«). His absolute power and authority were predicated on the notion that he is in possession of »the mandate of Heaven« (*tianming* 天命). This came together with an expectation that the ruler would serve as a moral exemplar and exercise his royal prerogatives in a paternalistic manner, taking into account the general welfare and daily needs of the people. In practical terms, it meant that the emperor exercised royal authority and temporal power on behalf of Heaven, which acted as a moral agent and had ultimate control over human existence.

Such ideas represented a repackaging of ancient political and philosophical ideas that went back to the Western Zhou 西周 era (1122-771 BCE), which Confucius and his followers regarded as a golden age of Chinese civilization. At a basic level, this implied a divine sanction for existing governmental institutions and power arrangements. In his august role as the ruler of all, the emperor was helped by numerous scholar-officials (*shi* 士), primarily recruited from within Confucian circles, who constituted the imperial bureaucracy. The privileged status of Confucianism was further bolstered by the educational system, including the official system of examinations first instituted during the Han era, in which the Confucian classics played a central role.

1 See Adshead, *T'ang China*, 20-29.

Within the applied framework of Han politics and institutions, the ethical idealism of classical Confucianism was combined with the utilitarian statecraft and shrewd *realpolitik* of Legalism (*fajia* 法家), which provided a coherent system of political philosophy as well practical tools for governance. The Legalist system advocated strong authoritarian rule, effective administrative structures, and pervasive social control. It was also characterized by a strict penal code and ruthless suppression of all challenges to the state's power and authority. In the end, the Chinese state adopted a hybrid form of governing ideology and bureaucratic structure, which combined the lofty ideals of humanistically-oriented Confucian moralism and the hardnosed *realpolitik* of Legalist authoritarianism. This conception of a Confucian-legalist state remained highly influential throughout later Chinese history.² Clear echoes of it can still be discerned in the governing ideology and the political institutions of contemporary China, notwithstanding their communist veneer.

The pervasive power and totalitarian foundation of the unified imperial state are perhaps best conveyed by the expression *wangzhe wuwai* 王者無外 (lit. »nothing is outside of the king«), which can more widely be rendered as »there is nothing outside of the purview of the king's (emperor's) power and authority.«³ This implies that everything and everybody is included under the emperor's vast dominion. Naturally, this includes all forms of personal piety and organized religion. In essence, the authority of the emperor encompassed both the secular and the religious spheres, although the basic distinction between the two – or between church and state, as understood in the West – is not necessarily applicable in the ancient Chinese context.

Accordingly, with the help of its Confucian officials, the state tried hard to exert comprehensive control over all religious forces within its realm, attempting to deploy them in the service of the existing power structures.⁴ Within such a system, the existence of an autonomous priesthood or other independent holders of authority not controlled by the government were highly problematic, inasmuch as they could pose a challenge to the political status quo or develop into alternative centres of power. The state's obsession with control was such that at various times it attempted to extend its control into the pantheon of popular Chinese religion, which to a large degree was modelled on the imperial bureaucracy.⁵

Domestication of institutional religion

Generally speaking, the status of religion and its relationship with the state was not a major issue in ancient China, where there was nothing analogous to Christianity, Judaism, Buddhism, Jainism, or other large institutional religions of the kind that existed elsewhere. Even Daoism, usually identified as a major Chinese religion, did not really exist in an institutional sense before the second century CE, and the development of its doctrines and institutions was greatly influenced by Buddhism. Therefore, the incorporation of organized religion into

2 See, for instance, Zhao, *Confucian-Legalist State*.

3 The classical source for this oft-cited expression is *Gongyang zhuan* 公羊傳 (Yin 1.6). This is one of the three main commentaries of the *Spring and Autumn Annals* (Chunqiu 春秋), an important Confucian classic that traditionally is attributed to Confucius. See also Gentz, *Long Live the King!*, 77-78.

4 Yang, *Religion in Chinese Society*, 180.

5 See Feuchtwang, *Popular Religions in China*, and Hansen, *Changing Gods in Medieval China*.

the imperial system really became a main issue only after Buddhism was introduced into China. The situation was made more complex due to the fact that the new religion was primarily represented by its monastic order, which had no clear parallels in traditional Chinese society.

The *wangzhe wuwai* adage implied a Sino-centric conception of the world, and the term *tianxia* was conventionally used to refer to the Chinese empire. This had practical ramifications, since the grand concept of universal kingship – centred on the mythical image of the emperor as the Son of Heaven, who rules over the whole world – clashed with the experiential reality of non-Chinese states, over which the Chinese ruler often had little or no control. This reinforced the deeply ingrained distinction between Chinese and civilized on one hand, and foreign and barbarian on the other.⁶ At times, this kind of differentiation had racial or ethnic undertones. Nonetheless, by and large it was primarily deployed to highlight cultural distinctions, namely the deeply ingrained notion that China alone was fully civilized and its culture was superior to the cultures of other people.

This sort of cultural chauvinism was occasionally mixed or accentuated with other xenophobic elements. Nonetheless, there was no insurmountable racial gap that separated the Chinese and the non-Chinese. The operative assumption was that barbarians could be Sinitized, if they saw the light and accepted Chinese culture and institutions. This opened some space for the acceptance of foreigners, but the deeply entrenched presence of Sino-centric attitudes still created various sorts of problems for a foreign religion such as Buddhism. Moreover, as we will see below, the arrival of Buddhism brought serious challenges not only because the new religion brought an array of novel ideas and unfamiliar practices, but also because its ideals and institutions seemed inimical to entrenched cultural values, or did not fit neatly into central aspects of social life.

Monastic mores and ideals

One of the key features of Buddhism, which goes back to the founding of the religion in ancient India, was its emphasis on monasticism. The origins of Buddhist monasticism can be traced back to the *śramana* (*shamen* 沙門; lit. renunciates or ascetics) traditions that flourished in ancient India around the time of the Buddha (c. 480-400 BCE?).⁷ The *śramana* movement was diverse and included other notable traditions such as Jainism. Among its basic features was the adoption of a distinctive religious lifestyle – deemed conducive to a spiritual quest for higher knowledge – that tended to encompass asceticism, wandering, and mendicancy. Its followers were also known for their rejection of the prevalent Brahmanical orthodoxy, which included a rejection of the Vedas and the caste system.

The establishment in the fifth century BCE of the Buddhist monastic order, the Sangha (lit. »community«), was a singular event in the history of religion. From its inception, the order included both male and female monastics, known in Sanskrit as *bhikṣu* (C: *biqiu* 比丘) and *bhikṣuṇī* (C: *biqiuni* 比丘尼).⁸ In addition to the order's leading role in the growth and transmission of a great world religion, the development of discrete monastic ideals and

6 See Pan, *Son of Heaven and Heavenly Qaghan*, 22-24.

7 See Mizuno, *Beginnings of Buddhism*, 5-8; Hiraakawa and Groner, *History of Indian Buddhism*, 15-19.

8 For the role of nuns in South Asian Buddhism, see Dewaraja, *Buddhist Women in India and Precolonial Sri Lanka*; for East Asian Buddhism, see Meeks, *Nuns and Laywomen in East Asian Buddhism*. For canonical formulations of monasticism within the Theravāda tradition, see Wijayaratna, *Buddhist Monastic Life*.

institutions had a host of significant cultural, social, political, and economic ramifications, within and outside of India. The Sangha was conceived as an ideal community dedicated to the quest for truth and spiritual awakening, although in reality the order attracted all sorts of characters, both saints and scoundrels.

According to canonical formulations, monks (and nuns) were supposed to live pure and self-controlled lives regulated by the Vinaya, the monastic code of discipline,⁹ even if the degree of observance of the monastic precepts differed at various times and places. The monastic rules were meant to regulate various aspects of daily activity and organize religious life in ways that reflected central Buddhist beliefs and values. They codified an institutional structure that, in theory at least, was supposed to create communal conditions that were conducive to the cultivation of virtue and wisdom. To that end, they helped mould the internal attitudes and external behaviours of individual monks, by reinforcing central monastic ideals and facilitating canonically-sanctioned forms of spiritual cultivation.

Buddhist monastics constituted a large and well-ordered group of religious who were separate from the rest of society, with their own rules, procedures, rituals, mores, and practices. On a basic level, the act of becoming ordained as a monk (S: *pravrajyā*; C: *chujia* 出家, lit. »leaving home/family«) meant leaving the world, with all of its social relationships and cultural norms, and adopting a celibate way of life centred on religious pursuits and humanitarian service. This created a gap between the monks and the laity – which encompassed the socio-political elites as well as the general populace – even though in actual practice Buddhist monasteries were in contact with their surrounding communities. In addition, often the monks' vocational work had social dimensions.

Despite their autonomy, in India (and elsewhere) monastic communities tended to lack financial independence and economic self-sufficiency. In large part, this was by design, as the Vinaya rules proscribed profit-oriented economic activity. Furthermore, the central monastic ideals, especially the emphasis on detachment and transcendence, were largely inimical to the pursuit of power and the accumulation of wealth.¹⁰ Nonetheless, the maintenance and growth of large monastic communities was not cheap. The building and upkeep of temples and monastic dwellings, the procurement of daily provisions for the community, and the meeting of other practical necessities all had to be taken care of. Consequently, monasteries relied heavily on lay donations, and also tended to seek state support. At times, they also sought to supplement those sources of income with overtly commercial activities, even if they were not necessarily in accord with the letter or the spirit of the Vinaya.¹¹ The economic activities of Buddhist monasteries can even be seen as a form of religious »capitalism«, which evokes comparison with the growth of the Christian monastic economy in Europe during the Middle Ages.¹²

9 For surveys of the Vinaya, especially in the Indian context, see Holt, *Discipline*, and Prebish, *Buddhist Monastic Discipline*. For its East Asian adaptations, see Bodiford, *Going Forth*.

10 Of course, over the centuries many monks found ways to circumvent the assorted rules related to monastic simplicity and poverty, and sought ways to enrich themselves and their monasteries. As is the case with other religions, in Buddhism there was often a notable gap between professed religious ideals and lived reality.

11 For instance, see the survey of industrial installation and commercial activities undertaken by Chinese monasteries described in Gernet, *Buddhism in Chinese Society*, 142-191. For more on the monastic economy, see He, *Fojiao siyuan jingji ji qi yingxiang chu tan*.

12 Collins, *Weberian Sociological Theory*, 54-73.

Confucian-inspired critiques

Within the Indian context there was a general acceptance, even exaltation, of nominally independent and self-governing religious orders like the Buddhist Sangha. Ascetics and renunciates of various kinds tended to be respected in Indian society, and their religious way of life was deemed to be worthy of public support and approbation. This contrasted with the situation that obtained in China at the time when Buddhism was first introduced via the Silk Road, even though the practice of reclusion – religious or secular – was not unknown in China.¹³ The growing presence of the foreign religion thus posed a serious challenge for the imperium and the ruling elites: how to incorporate a large institutional body such as the Sangha into China's all-encompassing and authoritarian system, in which the ruler supposedly had total control over everybody and everything. The situation was made even more difficult by the fact that in China there was no real precedent for the existence of independent religious orders or institutions.

The expanding presence of Buddhism in China elicited a range of responses, from passionate acceptance to outright rejection. Tensions or conflicts between Buddhism and the imperial bureaucracy developed gradually. Initially, Buddhism was primarily a religion of foreigners and minority groups, mostly from Central Asia, with a small footprint and limited impact on local society. The situation started to change from the end of the Han era onward – a period of political instability and social turbulence – as Buddhism became more popular and started to attract an increasing number of Chinese followers, who came from various social strata. During this period, for the first time Chinese states and societies had to deal with organized religious movements – which included religious Daoism, in addition to Buddhism – that were large in scale, with complex visions of life and the place of humanity within the larger scheme of things. In the case of Buddhism, this included the introduction of novel ideals and institutions that transcended the familiar patterns of kinship ties, local bonds, and social hierarchies.¹⁴

The growth of Buddhism prompted a backlash from within official circles, which is reflected in the sets of critiques articulated by Confucian scholars and ideologues. What were the Chinese elites to make of a new religion with an otherworldly orientation, and which seemed to be primarily concerned with the individual's salvation and transcendence of the mundane world? Could its clergy somehow be incorporated into the Chinese system, or did it pose a grave challenge to political stability that could perhaps lead to a breakdown of the rigid social order? Were the contours of Chinese culture flexible enough to be able to absorb or integrate an alien faith?

One type of exclusionary critique was to reject Buddhism on an ethnocentric basis, on account of its foreign (»barbarian«) origins. Since China had the most glorious culture and had its own great sages such as Confucius and Laozi, the argument went, what need was there for a strange new religion that worshipped a foreign deity? Instead of adopting the beliefs and practices of culturally inferior people, the Chinese were better served if they upheld and strengthened their own traditions, which within key circles of power tended to be primarily construed in a Confucian fashion. This kind of critique, with the xenophobic sentiments that underscored it, continued for many centuries, as can be seen from Han Yu's 韓愈 (768-824)

13 For an overview of the various types of reclusion, see Berkowitz, *Patterns of Disengagement*.

14 Lewis, *China between Empires*, 196.

famous anti-Buddhist diatribe, »Memorial on the Buddha's Bone« (*Jian ying fo gu biao* 諫迎佛骨表), which he presented to Emperor Xianzong 憲宗 (r. 805-820) in 819.¹⁵ Nonetheless, criticisms of this sort already lost some of their potency during the Northern and Southern Dynasties (386-589). During this period many of the Chinese states, especially in the North, were ruled by non-Chinese people, who tended to have less vested interest in perpetuating a narrow vision of cultural hegemony, like the one promoted by Confucian ideologues.¹⁶

The main line of critiques against Buddhism, however, was directed towards the monastic order, which was perceived to be at odds with the existing socio-political structure and prevalent cultural norms. Since they were without clear-cut analogues in the Chinese historical experience, monks and monasteries were perceived to be alien and potentially threatening to the established order. A particularly sore point was the monks' celibate lifestyle and their rejection of family ties. This led to the grave accusation of monks being unfilial, especially by failing to produce male offspring, thus contravening the deeply ingrained practice of ancestor worship. From a Confucian perspective, this was a major transgression because it directly challenged the family system, which according to the Confucian classics formed the basic foundation of social and political order.¹⁷

Monks and monasteries were also attacked on economic grounds. Buddhist establishments were accused of being economically burdensome, as monks did not engage in any kind of productive labour. Furthermore, they consumed valuable resources and were expensive to maintain, thereby placing an unjustifiable financial burden on the state and the general populace. To make matters worse, they received tax exemptions, with negative impact on the imperial treasury. Finally, there were criticisms influenced by political considerations. In a culture without clear notions about religious freedom and the separation of church and state (as we understand them today), the monks' drive for a semblance of autonomy was perceived as being incompatible with the basic tenets of imperial ideology, which centred around the aforementioned notion that »nothing/nobody is outside of the purview of emperor's power and authority.«

Rapprochements

Notwithstanding the trenchant critiques articulated by its adversaries and detractors, Buddhism managed not only to survive but to flourish in China. Even before the Sui 隋 (589-618) and Tang dynasties, widely considered to be the golden age of Buddhism – as well as the high point of Chinese civilization – Buddhism developed into the most popular and powerful religion in China. Among the major reasons for the broad acceptance of Buddhism, observable among all social classes but especially strong at the top, were the apparent relevance and attractiveness of Buddhist beliefs and practices. At a basic level, Buddhism was able to meet a wide range of deeply-felt religious needs, in part by adapting to the native ethos and responding resourcefully to the spiritual predilections and cultural horizons of expectation of various segments of the local population.

15 See *Sources of Chinese Tradition*, ed. de Barry and Bloom, 583; Hartman, *Han Yü*, 84-86; Kenneth Ch'en, *Chinese Transformation of Buddhism*, 268-269.

16 Ch'en, *Buddhism in China*, 145-183; Lewis, *China between Empires*, 205-206.

17 For the early Buddhist-Confucian debates regarding filial piety, see Guang, *Buddhist-Confucian Controversy*, 421-425.

The new elements brought by Buddhism, which greatly enriched Chinese life and drastically reconfigured the religious landscape, included popular forms of cultic worship centred on various Buddhas and bodhisattvas,¹⁸ which often had explicitly utilitarian undertones. At the other end of the religious and intellectual spectrums, rarefied philosophical reflections were written on the meaning of life and the nature of reality. The Buddhist clergy also presented an array of rituals and solemn observances, as well as diverse techniques of spiritual cultivation, including meditation. In addition, Buddhism brought novel forms of literary and artistic expression, which facilitated the development of new aesthetic sensibilities and provided fecund avenues for creative expression, as can be seen from the many striking examples of Buddhist art created during this period.¹⁹ This protracted developmental process culminated with the emergence of distinctive schools (or traditions) of Buddhism that were unmistakably Chinese, such as Chan, Huayan, and Tiantai, which before long were also transmitted to Korea and Japan.²⁰

A key factor in the growth of Buddhism was the prudent negotiation of the political landscape, which involved a rapprochement with the imperial state and its bureaucratic apparatus. From the perspective of the Buddhist monks, they stood to benefit economically and politically if they could secure support from the state and the ruling elites. But at a more basic level, they had little choice but to adapt to the existing power structures, and take advantage of whatever exemptions they could secure from the totalitarian regimes that ruled China.²¹ Becoming a target of imperial wrath, prejudice, or violence was something they could ill afford, as evidenced by the devastating anti-Buddhist persecutions they suffered several times under hostile monarchs determined to wipe out the religion (and appropriate the monastic wealth). Prime examples include the persecutions undertaken by Emperor Wudi 武帝 (r. 561-578) of the Northern Zhou 北周 dynasty (557-581) during the 574-577 period, and Emperor Wuzong 武宗 (r. 840-846) of the Tang dynasty during the 842-845 period.²²

From the point of view of the emperors and the ruling class, the reasons behind their support (or tolerance) of Buddhism were varied. At a basic level, many of them found that, if used prudently, Buddhism could be a potent tool of political legitimization that could bolster their hold on power. This became even more meaningful after the collapse of the Han order in 220 CE. During the subsequent centuries of political division, many non-Chinese monarchs ruled over ethnically diverse populations, which tended to be predominantly Han Chinese. In this new world there was less fixation on Confucian orthodoxy, along with greater cultural openness and receptiveness to different philosophies or alternative value systems.

18 The bodhisattva ideal is at the core of Mahāyāna, the dominant form of Buddhism in China and the rest of East Asia. The bodhisattvas can be understood as celestial beings with great wisdom and power, or as advanced practitioners who pursue the supreme path to the realization of Buddhahood. In a second sense, everybody can aspire to be a bodhisattva.

19 See Poceski, *Introducing Chinese Religions*, 119-132, 144-48; Poceski, *Chinese Buddhism*, 207-216; Poceski, *Buddhism in Chinese History*, 53-56.

20 Poceski, *Introducing Chinese Religions*, 148-160.

21 For the methods used to control and manage the monastic order, see Bai, *Tang dai de sengji guanli zhidu*.

22 For more details about the persecutions, see Ch'en, *Buddhism in China*, 190-194, 226-33; Weinstein, *Buddhism under the T'ang*, 114-135.

Monks could become useful to the existing power structure by performing various rituals on behalf of the ruler and the dynasty, thereby securing blessings and divine support for their imperial patrons. In due course, this gave rise to »state protection Buddhism« (*huguo fojiao* 護國佛教).²³ There were also monks who attracted attention and a following by their supposed ability to perform miracles, which resonated among the elites as well as the general populace.²⁴ Another important factor that contributed to the fortunes (or misfortunes) of Buddhism was the personal piety of individual rulers. If an emperor turned out to be an enthusiastic devotee or follower of the Buddhist teachings, he could extend various forms of financial and political support to the religion, including the granting of exemptions to the monastic order. A prime example of this is Emperor Wu of the Liang dynasty 梁武帝 (r. 502-549), who during his long reign became well-known for his personal piety and extravagant support of individual monks and Buddhist institutions.²⁵

Exemptions

As part of the ongoing efforts at carving a suitable space for Buddhism and incorporating the monastic order into the social fabric and political structures of China, various imperial governments gave certain exemptions to individual monks and monasteries. One such exemption – release from the obligation to engage in a ritual action that demonstrates obedience to the ruler – is discussed in more detail in the next two sections. To provide additional context, here I briefly survey some of the other exemptions that were granted – as well as taken away – to members of monastic orders. These included exemptions from taxation (either of individual monks or of monastic lands and estates), military conscription, and compulsory labour service (or *corvée*, levied to commoners and often involving public projects such as building roads, military fortifications and irrigation canals, or clearing of new lands).

Generally, monks and nuns were exempt from personal taxes, military conscription, and compulsory labour services imposed by the state. There were specific legal provisions that dealt with these issues, and later dynasties tended to look to earlier ones for precedents. During most of the medieval period, the names of individual monastics were not added to the regular household registers used for the assessment of taxes, which were part of the official census compiled by the government. While monks and nuns were required to register with governmental authorities, their names were added to a separate register of monastics (*seng ji* 僧籍).²⁶

23 Some Buddhists composed apocryphal scriptures that asserted the potency of Buddhism in fulfilling that role. A prime example is the *Perfection of Wisdom Scripture for Humane Kings' Protection of their States* (仁王護國般若波羅蜜經), T 8, no. 246. For a study and translation, see Orzech, *Politics and Transcendent Wisdom*.

24 Zürcher, *Buddhist Conquest of China*, 145-147; Poceski, *Records of Mazu*, 62-68; Robert Ford Campamy, *Signs from the Unseen Realm*.

25 For Emperor Wu and Buddhism, see Makita, *Chūgoku Bukkyōshi kenkyū*, 215-234; Strange, *Representations of Liang Emperor Wu*, 124-128.

26 Ch'en, *Chinese Transformation of Buddhism*, 136.

The exemptions granted by the state to the monastic order are noted in a number of primary sources, secular and Buddhist. Below is an example from the Yuan dynasty (1279-1368), from a Chan monastic code that belongs to the »rules of purity« (*qinggui* 清規) genre. The text in question is *Chixiu baizhang qinggui* 勅修百丈清規 (Imperial Edition of Baizhang's Rules of Purity), compiled by Dongyang Dehui 東陽德輝 in 1338. The quoted passage appears at the very beginning of the code, which highlights the importance monks attached to the relationship between the state and the monastic order. This influential code includes much earlier material, and on the whole it exemplifies common views and conventional practices prevalent in late imperial China.

人之所貴在明道。故自古聖君崇吾西方聖人之教。不以世禮待吾徒。尊其道也。欽惟國朝優遇尤至。特蠲賦役使安厥居。而期以悉力于道。聖恩廣博天地莫窮。

What the people value is the realization of the Way. Therefore, since ancient times the sagely monarchs (of China) have honoured the teachings of our Western Sage (the Buddha). They have not subjected us, the Buddha's disciples, to the worldly norms of propriety. (This is the case because) they revere the Way. With respectful deliberation, the present imperial court has extended preferential treatment (to Buddhist monks) in a most outstanding manner. (Buddhist monks have been given) special exemptions from taxation and labour service, enabling them to peacefully reside (in their monasteries). That way, they are expected to extended all their energy towards (pursuit of) the Way. The imperial grace is as vast as heaven and earth, and is impossible to exhaust.²⁷

The text then goes on to explain that monks must repay their indebtedness to the imperial throne (*bao jun* 報君), primarily by staying true to their vocation. A noteworthy feature in this passage – also found in other texts – is the acknowledgement that the exemptions from taxes and labour service are special favours extended to the Sangha by the (supposedly) benevolent imperial government. At a basic level, the relationship between the two sides is not that of equals, as the government clearly has the upper hand. Since these exemptions are special favours rather than undeniable rights, presumably they can be revoked at any time by the state, which in the end has the final say in this (and other) matters. On the other hand, it is also true that if the government came too strongly against the monastic order, it risked alienating many of its supporters and sympathizers, who typically included members of the government's officialdom as well as large segments of the general population.

The basic assumption underlying these exceptions was that monks formed a different class of people, who had abandoned kinship ties and left society for a life dedicated to spiritual pursuits. Having left the mundane world of human relations, monks were not to be subjected to the same regulations and obligations as the general population. The recognition of a clear-cut difference between monastics and the laity, along with the affirmation of a special legal and social status that was tied up with it, were widely accepted in medieval China. Nonetheless, they did not go uncontested. In fact, they were challenged on numerous occasions, typically by rulers or officials with Confucian leanings or negative feelings towards Buddhism. The passage below illustrates such anti-clerical attitudes. This critique of monastic waywardness and delinquency is articulated by Huan Xuan 桓玄 (369-404), the warlord who appears again in the next section.

27 T 48.1112c20-24; translation loosely adapted from the *Baizhang Zen Monastic Regulations*, trans. Ichimura, 3.

京師競其奢淫。榮觀紛於朝市。天府以之傾匱、名器為之穢黷。避役鍾於百里、逋逃盈於寺廟。乃至一縣數千猥成屯落。

The monks in the capital (seem to) compete with each other in terms of their extravagance and depravity. Their ostentatious appearance can be seen everywhere at the royal court and in the cities. The imperial treasury is exhausted because of them, while the normal order of society is defiled and dishonoured by them. Those who avoid compulsory labour service crowd around together, coming from (as far as) a hundred miles, while those who evade taxes fill the monasteries and the temples. It has gone even as far as having thousands of them within a single district, forming (what is tantamount) to villages.²⁸

This kind of critique or challenge to monastic exemptions was often influenced by specific concerns or circumstances. For instance, in 577 there was a call for monks to sign up for military service because of a shortage of troops to deal with fighting taking place in an area covered by the present-day provinces of Anhui and Henan.²⁹ Similar proposals were also made several decades later, during the early years of the Tang dynasty, as recorded by Daoxuan 道宣 (596-667) in his *Guang hong ming ji* 廣弘明集 (Expanded Collection of Texts about the Promotion of Clarity). Then Fu Yi 傅奕 (554-639), a conservative official in the Tang government, suggested that monks should be rounded up and forced to form army units.³⁰ Fu Yi, who was well known for his animosity towards Buddhism, wrote a number of anti-Buddhist memorials that called for the suppression or eradication of the religion, which sparked debate at the capital.³¹

The basic notion that the monastic exemptions could be given or withheld by the ruling regime, in accord with time and circumstance, underscored the prevalence of state control over the monastic order and the religion as a whole. In medieval China, even monastic ordinations were typically controlled by the state, which asserted its right to decide who could join the monastic order. In order to be officially considered a properly ordained monk, an individual had to receive an ordination certificate (*jiedie* 戒牒) issued by the government.³² In theory, those receiving ordination were expected to possess proper religious motivation and lead pious lives governed by the monastic rules and other pertinent customs. However, the state's control of ordinations, coupled with the fact that the tax and labour exemptions that came with monastic status were attractive to many with little or no religious motivation, had unintended consequences, often with a negative impact on the make-up, functioning, and reputation of the monastic order.

A persistent problem in medieval China (which continued during later periods) was that the privileges granted to monks attracted all sorts of characters with questionable backgrounds and dubious motives. Many individuals »joined« a monastic order primarily or solely in order to receive ordination certificates, which would enable them to obtain tax-exempt

28 *Hong ming ji* 弘明集 12, T 52.85a17-20. The translation is loosely adapted from Zürcher, *Buddhist Conquest of China*, 260. See also Ch'en, *Chinese Transformation of Buddhism*, 92.

29 Gernet, *Buddhism in Chinese Society*, 32.

30 *Guang hong ming ji* 7, T 52.134c4-7. Also cited in Gernet, *Buddhism in Chinese Society*, 33. See also the discussion of Fu Yi in fascicle 13 of *Guang hong ming ji*.

31 See Twitchett, *Cambridge History of China*, 180; Weinstein, *Buddhism under the T'ang*, 7-8.

32 For the ordination certificates and the registration of monks, see Yifa, *Origins of Buddhist Monastic Codes in China*, 75-78.

status and avoid work service.³³ The presence of such fake monks swelled the official ranks of the monastic order, while reducing the number of adults subject to taxation. Predictably, this alarmed many officials in the government, some of whom presented memorials (official documents presented to the emperor) that criticized the granting of exemptions.³⁴ This kind of situation was an important factor behind the occasional purges of the monastic orders undertaken by the government, although usually there were other issues at play as well.

At the same time, the government often made the situation worse by some of the questionable ways by which it determined the allocation of ordination certificates. On a number of occasions, the certificates were put up for sale to whoever could afford them, with the revenue going to the government's coffers. Predictably, many who took the government on its offer were rich layman intent on dodging taxes. Such policies were short-sighted, in as much as they reduced the tax base and created fiscal problems further down the road. But often they were irresistible, as they enabled the authorities to raise large amounts of revenue within a short timeframe. A pertinent example is the sale of ordination certificates during the An Lushan 安祿山 rebellion (755-763), to which the cash-strapped central government resorted as a desperate measure to raise revenue.³⁵ But such lucrative sales were also undertaken at times when there was less political urgency or fiscal distress. Furthermore, they were abused by corrupt local officials, who used proceeds from the sales to enrich themselves.

There were also various problems related to the tax-exempt status of monastic lands and other properties. This were not granted as often or as readily as was the case with the tax exemptions extended to individual monks and nuns. In general, this kind of tax exemption was usually granted only to monasteries that received imperial patronage or were officially recognized by the state. While it brought undeniable economic benefits to those monasteries, the granting of such tax privileges also opened the door for various sorts of shady dealings and dubious practices. This included tax-dodging schemes in which wealthy landowners »donated« their land to monasteries in order to shelter it from taxes.³⁶

Huiyuan and his treatise

One of the best-known debates about the granting versus the withholding of specific exemptions for monastics took place in 402, during what was still a formative period in the history of Buddhism in China. The debate centred on a seemingly innocuous or symbolic issue: should monks be required to pay ritual obeisance to the ruler, as was expected of all imperial subjects? The main person making the Buddhist case – against the motion to deny the exemption – was Huiyuan, widely considered to be among the most influential monks during the early centuries of Buddhism's growth in China.³⁷ Huiyuan joined the ongoing debate, which initially developed at the imperial capital, from his monastic retreat at Lushan 廬山, located in the southern part of the empire.

33 Ch'en, *Chinese Transformation of Buddhism*, 137.

34 Gernet, *Buddhism in Chinese Society*, 38-40, 42.

35 Weinstein, *Buddhism under the T'ang*, 59-61.

36 Ch'en, *Chinese Transformation of Buddhism*, 139-142; Gernet, *Buddhism in Chinese Society*, 43-44; Makita, *Chūgoku Bukkyōshi kenkyū*, 144-146.

37 For Huiyuan's monastic biography, see *Gao seng zhuan* 高僧傳 6, T 50. 357c23-61b13; also translated in Zürcher, *Buddhist Conquest of China*, 240-253.

According to his biographical entry in *Gao seng zhuan* 高僧傳 (Biographies of Eminent Monks), compiled in 519 by Huijiao 慧皎 (497-554), during his youth Huiyuan received a classical education, having studied the Confucian classics as well as important Daoist texts such as *Laozi* 老子 and *Zhuangzi* 莊子.³⁸ While still a young man, he decided to leave the mundane realm and become a Buddhist monk. His monastic teacher was Daoan 道安 (312-385), arguably the most prominent and influential Buddhist leader of the time. Although originally a northerner, later in life Huiyuan moved south and settled at Lushan, the famous scenic mountain in Jiangxi. There he became a leader of a flourishing monastic community, centred at Donglin monastery 東林寺, which he established in the 380s. Although Huiyuan remained at his mountain monastery until his death in 416, his fame spread far and he came to be perceived as one of the foremost clerics in China.

Huiyuan was a person of varied talents and wide-ranging interests. Within and outside the Buddhist community, he was renowned for his compelling personality and respected as a charismatic leader who embodied cherished monastic ideals. The monastic regimen of doctrinal study, contemplative practice, ritual performance, and ethical observance he instituted at his monastery at Lushan became a model for monastic establishments in other parts of China. He is especially associated with the development of the Pure Land tradition in East Asia. In large part that is due to his establishment of a fellowship of committed practitioners – including both monks and laymen – who dedicated themselves to devotional and contemplative practices directed towards the attainment of rebirth in Sukhāvati, the pure land of Amitābha Buddha.

Huiyuan's main opponent in the debate was Huan Xuan, the warlord quoted in the previous section. He was a military man during the Jin 晉 dynasty (265-420), and a son of Huan Wen 桓溫 (312-373), the grand marshal of Jin and one of the greatest generals in fourth century China. Huan Xuan briefly came to usurp the throne, and in 403 he established a new dynasty named Chu 楚. His reign was very short-lived, however, as he was assassinated in 404. Soon after his occupation of the Jin capital in 402 and his seizure of dictatorial power, Huan Xuan started to initiate policies intended to curb the influence of Buddhism and reduce the size of the monastic order. This included a demand that monks should pay ritual obeisance to the ruler,³⁹ which elicited Huiyuan's famous response discussed in the next section. It is interesting to note that it was Huan Xuan himself who invited Huiyuan to join the debate, presumably because of Huiyuan's impeccable reputation and lofty stature.

Huiyuan's main line of reasoning and his arguments against Huan Xuan's anti-Buddhist stance and restrictive policies are preserved in the form of a polemical treatise titled *Shamen bujing wangzhe lun* 沙門不敬王者論 (Treatise on Monks not Venerating the Ruler).⁴⁰ The treatise is based on a letter that Huiyuan sent to Huan Xuan, in response to the dictator's

38 *Gao seng zhuan* 6, T 50.357c24-27.

39 Zürcher, *Buddhist Conquest of China*, 155-157, 231-239; Ch'en, *Buddhism in China*, 76-77.

40 For examples of modern articles that deal with Huiyuan's treatise and the controversy that inspired it, see Zhou, *Huiyuan shamen bu jing wangzhe lun de lilun jichu*; Gu, *Dongjin jingwang zhi zheng kao ping*.

request that Huiyuan present his views on the pro- and anti-Buddhist polemics that were raging in the capital. The entire treatise is preserved in fascicle five of *Hong ming ji* 弘明集 (Collection of Texts about the Promotion of Clarity), compiled by Sengyou 僧佑 (445-518).⁴¹ This large text (in fourteen fascicles) contains a wealth of information about the various anti-Buddhist discourses and polemics that unfolded during the fourth to early sixth century. It also contains a range of Buddhist responses to such criticisms, along with records that testify to the vigorous efforts of prominent monks and lay supporters to promote the teachings and practices of Buddhism. An abbreviated version of the treatise (or rather a brief outline) is also included in Huiyuan's biography in *Gao seng zhuan*.⁴² Moreover, its contents are reproduced, summarized, or discussed in later texts, such as *Ji shamen buying bai su deng shi* 集沙門不應拜俗等事 (fascicle two), which contains the whole text,⁴³ and *Fozu tongji* 佛祖統紀 (fascicle twenty-six), which only has a short outline.⁴⁴

Huiyuan's arguments

On the surface, the debate about whether monks should pay ritualized homage to the emperor seems to revolve around a largely symbolic issue. Nonetheless, there was much at stake, as the ritual act of bowing to the emperor was emblematic of key power relations and social hierarchies, and reflected larger philosophical and political issues. This was not really a new topic of discussion, as there had been a similar debate in 340, during the Eastern Jin 東晉 dynasty (317-420). At that time, during the reign of Chengdi 成帝 (r. 325-342), Yu Bing 庾冰 (296-344), a powerful aristocrat, proposed that the Buddhist clergy should show its subservience to the throne by bowing to the ruler. The Buddhist opposition at the time was led by He Chong 何充 (292-346), a Buddhist layman and high official in the central government, who vehemently disagreed with the anti-Buddhist proposal. After official deliberations at the imperial court, the pro-Buddhist arguments prevailed.⁴⁵

In essence, the debate was about the relationship between the monastic order and the imperial state – personified by the emperor – as well as the degree of supremacy and control that the government had over the religion. The basic power and authority of the emperor (and the government) were not really in question, as they were accepted as normative by all parties. The main issue to be adjudicated was whether monks, as a distinct group or class in medieval society, were different enough from other imperial subjects to warrant special permission to deviate from established norms of ritually appropriate behaviour. More broadly, it was about granting the monastic order a distinct status, perhaps even a semblance of autonomy, within the confines of the autocratic state.

41 T 2102, vol. 52. For a translation of the first seven fascicles, see, *Collection for the Propagation and Clarification of Buddhism*, trans. Ziegler. For a modern Chinese translation, see Lu, Huiyuan fashi shamen bu jing wangzhe lun wu pian bing xu jin yi.

42 T 50.360c18-361a10.

43 T 52.449a2-451b10. This text also contains a wealth of related materials, including letters, edicts, and memorials written by Huiyuan, Huan Xuan, and various officials.

44 T 49.262a29-c5.

45 See Ch'en, *Chinese Transformation of Buddhism*, 69-71; Zürcher, *Buddhist Conquest of China*, 106-110.

Huiyuan's treatise is divided into five sections. The first two detail the different aspirations and lifestyles of laypeople and monks, respectively. The third section describes the monks' search for ultimate truth and release from the bonds of *samsara*, the cycle of birth and death. The fourth section presents a response to a counterargument: an imaginary opponent contends that there is no higher truth than what has been revealed in the past by the great sages of China. The last section contains a somewhat abstract – and from a purely doctrinal perspective, not very sophisticated – argument about the Buddha as an immortal spirit, who permeates the everyday world of phenomenal appearances but is still separate from it. What follows is a short outline of some of the main parts of the treatise, accompanied with translations of several relevant passages, taken from the abbreviated version included in Huiyuan's biography in *Gao seng zhuan*.⁴⁶

Huiyuan begins his treatise with a discussion of Buddhist laypeople and their role in society. He is careful to point out that they are not different from other imperial subjects. They follow all secular laws and worldly customs, and in no way do they shy away from their duties towards the ruler, including the performance of appropriate rituals and the showing of utmost respect. At a basic level, the Buddhist laity do not pose any danger to the socio-political status quo, nor do they challenge the authority of the ruler and the imperial state.

一曰在家。謂在家奉法、則是順化之民。情未變俗、迹同方內。故有天屬之愛、奉主之禮。禮敬有本、遂因之以成教。

First, there are the laypeople. As householders, they follow the laws (of the state) and are (deferential) subjects who obey (the ruler). Without deviating from common customs and established norms, they act in accordance with existing rules. Consequently, they possess the (natural) love (that should be manifested) towards one's kin, and observe the rites that show deferential respects towards the ruler. On the basis of reverence and ritual, they become civilized individuals.⁴⁷

In the second section, Huiyuan goes on to describe the way of the religious and highlights the monastic distinction. Unlike the laity, he argues, monks have left society and do not follow normal patterns of behaviour, including the outward manifestation of filial piety and the ritualized showing of respect towards the ruler. Nonetheless, they do so for a lofty purpose: to plumb the depths of reality and transcend the everyday realm of suffering and imperfection. While their religious way of life precludes their participation in mundane activities, by realizing the goals of the Buddhist path monks bring real benefits to society. Moreover, in a deeper sense, the genuine pursuit of their vocation does not really contravene the basic (Confucian) principles of filial piety and reverence for the ruler.

46 For a translation of Huiyuan's treatise, see Hurvitz, 'Render unto Caesar' in Early Chinese Buddhism.

47 *Gao seng zhuan* 6, T 50.360c19-22. Cf. Zürcher, *Buddhist Conquest of China*, 251.

二曰出家。謂出家者、能遁世以求其志。變俗以達其道。變俗則服章不得與世典同禮。遁世則宜高尚其迹。大德故能拯溺俗於沈流、拔玄根於重劫。… 如令一夫全德、則道洽六親澤流天下。雖不處王侯之位、固已協契皇極在有生民矣。是故內乖天屬之重、而不逆其孝。外闕奉主之恭、而不失其敬也。

Second, there are the monks (lit. »those who have left home/family«). Monks are able to leave the (secular) world in order to pursue their (spiritual) aspirations. They do not follow social conventions, so that they can realize the Way. Having abandoned social conventions, their robes do not accord with the rules of propriety prescribed in the secular classics. Having left the (secular) world, they are obliged to act in a lofty manner. Monks of great virtue are able to save a sinking world from drawing into the stream (of samsara, or the cycle of birth and death), as well as pull out the mysterious root (of bad karma accumulated over) recurring eons. ... Even if only a single monk were to attain perfect virtue, then the (true) Way will extend to the six close relations and its benefits will spread throughout the world.⁴⁸ Although he does not assume the position of royalty, such a person assuredly contributes to the empire's efforts to benefit the common people. Therefore, although inwardly (monks) turn their back to the natural feelings (of emotional attachment) towards their kin, they do not betray (the virtue of) filial piety. Outwardly, although they do not show the (conventional) form of respect due to the monarch, they do not violate (the virtue of) reverence.⁴⁹

In the next section, titled »Those who seek the ultimate purport do not follow the ways of the world« (求宗不順化), Huiyuan builds upon his argument about the monastic distinction by elaborating on the monks' lofty ideals, and by reiterating the great significance of their spiritual quest for the transcendence of Nirvana. Given that monks seek to go beyond the limitations of the mundane realm, they cannot be burdened with worldly sentiments or commonplace expectations. Furthermore, because of the intrinsic worthiness of their aspiration, monks deserve high respect and special status in society.

故沙門雖抗禮萬乘、高尚其事。不爵王侯、而沾其惠者也。

Therefore, although monks (*śramana*) behave towards the emperor as if they were his equals, their conduct is virtuous. While they are not given noble titles such as prince or marquis, they are still recipients of (imperial) favours.⁵⁰

In the final two sections – the longest in the treatise – Huiyuan moves somewhat off topic, to deal with larger issues related to Buddhist doctrine and its relationship with Chinese traditions. This is especially true of the last section, where the central topic of discussion is the immortality of the soul. Because of this, and due to space limitations, I will not deal here with these two sections. But it is perhaps worth mentioning that in the fourth section Huiyuan presents a familiar set of arguments about the essential compatibility of Buddhism and Confucianism. While there are notable differences in the doctrines of the two traditions, he contends, their aims are essentially the same and they lead to the same goal.⁵¹

48 The six close relations are those of father, mother, elder brother, younger brother, wife, and son.

49 *Gao seng zhuan* 6, T 50.360c22-361a1. Cf. Zürcher, *Buddhist Conquest of China*, 251.

50 *Gao seng zhuan* 6, T 50.361a5-6. Cf. Zürcher, *Buddhist Conquest of China*, 252.

51 For the last two sections, see Hurvitz, »Render unto Caesar« in *Early Chinese Buddhism*, 103-114.

Apparently Huiyuan's arguments proved persuasive, as Huan Xuan abandoned his original plan to purge the monastic order and force its members to pay him obeisance. Nonetheless, this did not put an end to the larger debate about this and other monastic exemptions, and more broadly about the relationship between the state and the Buddhist order. For instance, in 606 Emperor Yang 煬帝 (r. 604-618) of the Sui dynasty – on the whole, a period of great flourishing for Buddhism – ordered a reassessment of the same exemption, as part of a broader effort to gain greater control over the monastic order.⁵² Similarly, in 662 Emperor Gaozong 高宗 (r. 649-683), the third monarch of the Tang dynasty, issued a decree ordering monks to pay ritual obeisance to both their parents and the emperor.⁵³

The anti-Buddhist measure proposed by Gaozong followed an edict issued five years earlier, in which he forbade monks to receive homage from their parents. After vigorous debate at the capital, which involved the participation of numerous court officials, aristocrats, and prominent monks such as Daoxuan, the emperor decided on a compromise solution: the traditional exemption from paying ritual homage to the emperor was reaffirmed, but monks were asked to kneel before their parents, as an expression of filial piety. After encountering further vocal opposition, the emperor decided to rescind that decree as well, although that still did not put the whole issue to rest.⁵⁴

Concluding remarks

In general, over the centuries the centralized state(s) made some adjustments that made it possible to incorporate Buddhism into China's socio-political structures. This in turn made it possible for the religion to take firm root in Chinese soil and become a major factor in the social and cultural spheres. Nonetheless, the state never really gave up on the core ideological principles – largely based on Confucian texts and traditions – that underpinned its exercise of total control and absolute authority. While the general political climate and specific state policies varied somewhat from one dynastic period to another, on the whole the various rulers and their imperial bureaucracies pursued policies aimed at controlling, co-opting, and exploiting Buddhism and other religions in ways that ultimately benefited the state and enhanced its grasp of power.⁵⁵ In that sense, Buddhist monks and other religious were never able to enjoy a free exercise of religious belief and practice. By extension, the relationship between the state and the Buddhist order was never one of equals, as the state ultimately wielded complete political power and could exert control over all facets of Chinese life, including religion.

52 Xiong, *Emperor Yang of the Sui Dynasty*, 167-168.

53 Weinstein, *Buddhism under the T'ang*, 32-33; Ch'en, *Chinese Transformation of Buddhism*, 78-80. For the text of the original edict, see *Quan tang wen* 全唐文 14.66c.

54 Weinstein, *Buddhism under the T'ang*, 34. As noted by Weinstein, the debate continued to resurface on and off for another century.

55 Yu, *State and Religion in China*, 3-4.

Buddhism presented perhaps the strongest challenge to the existing order, as its basic doctrines and practices were not necessarily in tune with native norms and entrenched values. This engendered various tensions and discords, which had to be addressed by ongoing negotiations and adjustments.⁵⁶ The formative growth of Buddhism in China was helped by the relatively open attitudes that prevailed during the centuries of political disunion, which created peculiar historical circumstances that were favourable to the establishment of a new faith transmitted from foreign lands. However, in the end the monastic order lost the struggle for religious freedom, and had to come to terms with the prevailing imperial ideology and accede to the state's supremacy.⁵⁷ The general historical pattern was to exert increasing control and to co-opt monastic institutions by incorporating them into the social, political, and economic structures regulated by the autocratic state.

By and large, Buddhist monks ended up being allied with the Chinese state, although there were some who withdrew into seclusion and avoided political involvement. Virtually none of them pursued the third option available to religious groups: to engage in active struggle with the political establishment, and to try to challenge the status quo by becoming politically active or dominant.⁵⁸ In China that sort of revolutionary activity was occasionally pursued by marginal religious groups and popular movements – labelled heresies or evil cults, in official parlance. Buddhism and other major religions were basically drafted into becoming part of the mainstream establishment, while occupying a subservient position vis-à-vis the state.

By looking at some of the specific religious milieus and historical contexts of medieval China, including the professed pieties of individual monarchs and the political predicaments they faced, this article indirectly points to interesting parallels between the situations that obtained in China and elsewhere, especially Christian Europe. At the same time, its analysis also calls for a critical reassessment of some of the central concepts and entrenched paradigms that often guide scholarly and popular discussions about church versus state relations. More specifically, the materials presented here problematize the basic religious-secular dichotomy, especially the supposed opposition that pitted the church (here represented by Buddhism) against the secular state (represented by the various Chinese empires that rose and fell during the medieval period).

Notwithstanding the many fascinating parallels with important historical developments in Europe and the Middle East, Buddhism does not quite neatly fit into the established category of religion (narrowly defined), which is largely constructed in terms of Eurocentric models and conceptions. In the same vein, setting aside the one-sided (and largely misleading) narrative promoted by Confucian ideologues (and their sympathizers), on the whole the premodern Chinese state was hardly secular, or narrowly Confucian. Much like the modern communist government, the imperial state was religiously obsessed with its own political power and absolute authority,⁵⁹ which were repeatedly asserted with dogmatic conviction and guarded by whatever means necessary, including ideological posturing, blatant propaganda, and brute force.

56 Yu, *State and Religion in China*, 92.

57 Ch'en, *Chinese Transformation of Buddhism*, 124.

58 For these responses to the state's control over religion, see Yang, *Religion in Chinese Society*, 105.

59 Yu, *State and Religion in China*, 145.

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The Normative Character of Monastic Exemption in the Early Medieval Latin West

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This paper examines the normative character of monastic exemption in the Latin West, that is to say, the negotiated interaction between monasteries and bishops. In tracing the formation and development of exemption privileges between the fifth and ninth centuries, it argues for an emerging pattern under the Franks that proved central to developing notions of spiritual and physical protection. As a consequence of this novel mentality, a monastery's relationship with its surrounding environment became characterised by greater degrees of freedom and protection than ever before. This unique transformation took time to develop, however, forging alliances that effectively shifted individual monasteries away from their Frankish protectorate towards the spiritual centre in Rome. The consequences of this landmark shift, it is argued, benefited the early medieval papacy in its burgeoning claims of centralized power and legitimacy.

Keywords: monasticism; exemption; immunity; papacy; protection; Carolingian; Merovingian

The history of monastic exemption in the Latin West is not a story of exclusion; it only appears that way. As Timothy Reuter and Chris Wickham explained, »exemption means closeness to the centre, not distance from it.«¹ This curious paradox raises the question of what monastic exemptions were meant to achieve – both for the beneficiary and the grantor, the recipient monastery and the donor. It highlights the need to understand the contemporary meaning and political currency of these privileges, giving due attention to individual circumstance, initiative, and context. It also casts doubt on a familiar historiographical narrative that positions monastic exemptions in particular as key instruments of growing monastic emancipation from both secular and diocesan control.² Indeed, treated as ›offensive‹ and ›defensive‹ weapons against episcopal abuses, they are frequently (mis-) represented as *de facto* conservators and guarantors of ecclesiastical ›liberty‹ (e.g., *libertas ecclesiae*).³ This popular interpretation conveys a backwards (teleological) reading of monastic exemption, in which

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1 Wickham and Reuter, Introduction, 15. See also Remensnyder, *Remembering Kings Past*, 209.

2 See especially Schreiber, *Kurie und Kloster im 12. Jahrhundert*, 2.258; *ibid*, Kluny und die Eigenkirche, 412-418; Lemaignier, Political and Monastic Structures, 112. For some convincing counter-arguments, see Tellenbach, *Church in Western Europe*, 116; Brackmann, *Zur politischen Bedeutung der kluniazensischen Bewegung*, 21-27; Sackur, *Cluniacenser*, 2.440-449, 464-465; Fliche, *La réforme Grégorienne*, 1.39-60; Tellenbach, *Church, State, and Christian Society*, v-xvii, 42-47, 76-85, 93-95, 186-192; Cantor, *Crisis of Western Monasticism*, 61; Cowdrey, *Cluniacs*, xiv, n.1.

3 Falkenstein, *Papauté et les abbayes françaises*, 1.

the papacy appears as inevitably triumphant.⁴ In the broader institutional development of exemption, however, a more organic picture emerges, one whose canvas reveals incremental changes in the external governance of medieval monasteries. The outcome of these transformations, it will be argued, contributed to defining the ›normative character‹ of monastic exemption, whose cumulative development from fiscal immunity to combined privileges of freedom and protection spans many early medieval centuries.

The purpose of monastic exemption

Let me begin with a brief consideration of *purpose* and *intention*. Privileges of monastic exemption, which defined a monastery's relationship with the bishop and his diocese, almost uniformly emphasised ›peace‹ and ›tranquillity‹ as their fundamental objectives.⁵ These pre-requisites for the observance of spiritual life were not just the concern of monastic communities; they were indisputable conditions acknowledged and supported by secular and ecclesiastical rulers alike. As many contributors to this special issue have demonstrated, their individual principles reveal a co-operative process, contributing to – and helping historians better understand – transforming power structures and nascent institutions. In one sense, this desired outcome (both medieval and modern) helps explain an exemption's *raison d'être*, the effects of which were seen as benefiting medieval society more generally. There are some basic assumptions underpinning exemptions, namely the notion that limiting one party freed another from an unnecessary burden; that bishops and kings wanted to interfere, and indeed were interfering, in a monastery's spiritual or economic affairs; and that social behaviours (perceived or real) were threatening the status quo – an imagined ideal of relations between the monastery and its surrounding community in a time when such relationships were themselves taking shape across early medieval Europe.

According to a privilege of monastic exemption preserved in the *Formulary of Marculf*, a collection of formula or sample documents written in Francia c. 700, a monastery's harmonious existence was a pre-requisite to ensuring the ›happiness of the land and the tranquillity of the king.« For this reason, numerous charters from Merovingian and Carolingian Francia (sixth to ninth centuries) were explicitly concerned with the protection intended for monastic property: as a consequence of a grant of an exemption privilege to a monastery, as this formula stated, the bishop was bound never to infringe on any gifts, villas, unfree servants, ›or anything or anybody.«⁶ He should never diminish any of the monastery's property

4 See especially, Goetting, *Klösterliche Exemption*, 105; Schreiber, *Kurie und Kloster im 12. Jahrhundert*, 65-68; Knowles, *Monastic Order in England*, 572. For a good critique of this problematic methodological position, see Kölzer, *Bonifatius und Fulda*, 43; Kéry, *Klosterfreiheit und päpstliche Organisationsgewalt*, 84-86, 95-97.

5 For a cogent scholarly distinction between ›exemption‹ and ›immunity‹, see Rosenwein, *Negotiating Space*, 3-4. On the latter's fiscal and judicial (technical) characteristics, see Murray, *Merovingian Immunity Revisited*, 915-917.

6 *Marculfi Formulae*, I. 2, ed. Zeumer, 41-43.

under the pretext of an exchange, or take away anything out of the ornaments of the [divine] service and the offerings presented at the altar, or presume to go into this monastery and its cells in any circumstances other than to celebrate mass, if that is the will of the abbot and his congregation, without any expense on their part, so that, according to the wishes of the delegation and this solemn document, all [of the property given] there may benefit this monastery more easily, without any interference.⁷

In matters pertaining to the law, no judicial authority could interfere »in order to hear legal cases or to collect anything there.« In all, the extent of such privileges promised full immunity to the monastic community, which translates here into receiving »all dues being conceded to themselves; and whatever our fisc could perhaps have expected from the persons, whether free or unfree, who live in their fields or anywhere [on their lands] is to benefit them in its entirety...«⁸ According to this formula, the conferral of monastic exemption deliberately kept both the king and the bishop at a safe distance from the monastery. This was the accepted standard – a theoretical commonplace of effective ecclesiastical governance in the pursuit of the *vita religiosa* and a stable/secure Christian society.

Complete separation of a monastery from the diocesan bishop, however, was a spiritual, disciplinary, and administrative impracticality. The local bishop continued to provide necessary services throughout his diocese, a provision that traditionally subjected monks and monasteries to his jurisdictional authority. The nature of this relationship, especially as it related to matters of abbatial election, visitation, and ordination, was famously defined at the council of Chalcedon in 451. Canon 4 in particular outlined a notion of diocesan jurisdiction and responsibility that was later confirmed at the Merovingian (royal) councils of Agde (506) and Orleans (511).⁹ Stating explicitly that »the monks in every city and district shall be subject to the bishop ...«, this canon likewise emphasised his role in »the needful provision for the monasteries.«¹⁰ For in essence, as the canon further stipulated, »those who truly and sincerely enter in the solitary life are to be accorded due honour.« Therefore, to prevent unnecessary and unwanted disturbances, which might disrupt churches and/or public affairs, the bishop was necessarily responsible for the improvement of discipline and the inalienability of ecclesiastical property.

7 *Marculfi Formulae*, I. 2, ed. Zeumer, 42: ...*vel aliquid quasi per commutationes titulum minuari, aut de ministerii ornamenta vel de offertione in altario inlata abstollere; nec ad ipso monasterio m vel cellolas eius nisi tantum pro lucranda oratione, ipsud si fuerit cum voluntate abbatis vel eius congregatione, absque dispendio eorum, aliter accedere penitus non presumat; quo facilius secundum delegationibus votum vel huius seriae auctoritatem ad ipso monasterio absque ullius inquietudine ibidem cuncta proficiant in augmentis.*

8 *Marculfi Formulae*, I. 2 ed. Zeumer, 41-43.

9 *Concilia Galliae*, canon 27, ed. Munier, 205; cf. Szaivart, *Entstehung und Entwicklung*, 268. *Concilia Galliae*, canon 19, ed. Munier, 10: *Abbates...in episcoporum potestate consistant...Monachi autem abbatis omni se oboedientiae devotione subiaciant.* cf. Ewig, *Beobachtungen zu den Klosterprivilegien*, 54-55.

10 Price and Gaddis, *Acts of the Council of Chalcedon*, 3.95-96. On its influence see Ueding, *Kanones von Chalkedon*, 2.569-676.

The development of monastic exemption

This balanced intervention in monastic affairs influenced the developing law of exemption in late Antiquity and the early Middle Ages. Its provisions were confirmed at many subsequent church and Frankish councils between the sixth and ninth centuries, suggesting both their importance and wide dissemination throughout western Christendom.¹¹ This solid body of conciliar and legal evidence for the early Middle Ages positions the monastery and its inhabitants firmly within the bishop's care of souls (*cura*), command (*ordinatio*), and administration (*dispositio*). Yet significantly, the existence and repetition of conciliar prescriptions down the centuries does not strictly imply subordination to episcopal rule, at least not to the detriment of a monastery's internal spiritual objectives. Indeed, from the origins of a western monastic tradition, exemption created an administrative, spiritual, and judicial bond between a monastery and its diocesan bishop.

In practice, the bishop provided a dominant force in realising this outcome. This harmonious, working relationship within the diocese was certainly visible in the seventh century from the so-called ›episcopal privileges‹ (*Bischofsprivilegien*) that were issued by a number of Frankish bishops for monasteries in their diocese: Bishop Burgundafaro of Meaux for Rebais (637)¹²; Bishop Landeric of Paris for Saint-Denis (653/55)¹³; Bishop Audobert of Paris for Saint-Maur-des-Fossés (645)¹⁴; Bishop Emmo of Sens for Sainte-Colombe (660 and 695/96) and Saint-Pierre-le-Vif (660)¹⁵; Bishop Audomar of Thérouanne for Saint-Bertin and Sithiu (663)¹⁶; Bishop Numerian of Trier for St Dié (663/75)¹⁷; Bishop Berthe Frid of Amiens for Corbie (664)¹⁸; Bishop Drauscus of Soissons for Saint-Médard at Soissons (667)¹⁹; Bishop Aredius of Vaison for Groseaux (683)²⁰; Bishop Aiglibert of Le Mans for Notre-Dame in Le Mans (683)²¹; Bishop Bertrand of Châlons for Montier-en-Der (693)²²; and Bishop Agérard of Chartres for Notre-Dame in Blois (696).²³ The renunciation of certain political, spiritual, and administrative rights underscores a clear pattern for privileges between bishops and monasteries in Merovingian Francia, from which evidence Eugen Ewig mapped his classic interpretation of ›big exemption‹ (*grosse Freiheit*) and ›little exemption‹ (*kleine Freiheit*).²⁴ In

11 For example, the councils of Epône (September 517), Orleans (533 and 541), Arles (554), Tours (567), Chalon-sur-Saône (647/653), and Ver (755).

12 See Pontal, *Synoden im Merowingerreich*, 204-210.

13 *Diplomatum imperii* I, ed. Pertz, no.85, 218.

14 *Diplomatum imperii* I, ed. Pertz, no.87, 225-227.

15 *Diplomata* II, ed. Pardessus, no. 275, 39.

16 *Diplomatum imperii* I, ed. Pertz, no.101, 260-261; *Diplomata* II, ed. Pardessus, no.344, 123.

17 *Diplomata* II, ed. Pardessus, no.360, 147f.

18 *Diplomata* II, ed. Pardessus, no.345, 126.

19 Ewig, *Formular von Rebais*, 471; cf. Schwarz, *Jurisdicio und Condicio*, 70-71.

20 *Diplomata* II, ed. Pardessus, no.401, 191-195.

21 *Diplomata* II, ed. Pardessus, no. 451, 253-255.

22 *Diplomata* II, ed. Pardessus, no.423, 221; cf. *Cartulary of Montier-en-Der*, 4.ed./trans. Bouchard, 52-58.

23 *Diplomata* II, ed. Pardessus, no. 435, 234-236.

24 See Ewig, *Beobachtungen zu den Klosterprivilegien*, 58ff.; Rio, *Formularies of Angers and Marculf*, 128-129; Kölzer, *Bonifatius und Fulda*, 43.

the former case, the bishop might willingly grant (in the fullest sense) protection for the monastery's property, freedom for abbatial election, freedom to perform rites and ordination, jurisdictional independence from the diocesan bishop and freedom from tithes. In its stricter sense (the latter case), the bishop might retain his right to perform ordinations, consecrations, and blessings – a role in the life and governance of the monastery, which weakened significantly in the following four centuries (c.700-c.1100).

The formation of episcopal care and responsibility in the early Middle Ages runs parallel to the history of monastic exemption. In addition to the early conciliar legislation (mentioned above), monastic rules also played some part in the development of exemption. Chapter 64 of the sixth-century *Rule* of St Benedict – later the most influential guide to monastic life – determined the bishop's role in a key element of a monastery's internal affairs, his influence on »The Appointment of the Abbot« (*De ordinando abbate*).²⁵ The bishop's territorial jurisdiction over religious communities meant that he had an interest in the quality of the abbatial candidates, a role best exemplified in the formulaic episcopal privileges granted to Rebais (637), Saint-Médard at Soissons (666), Corbie (667), Galilea (667), Saint-Colombe (670), Montier-en-Der (692), and Novalesa (728).²⁶ While the bishop's role was notably limited in matters of abbatial election, his judicial force was still recognised in matters of disobedience, the sudden death of an abbot, or electoral mistakes.²⁷ Following the arrival in Burgundy of the Irish monk, Columbanus (d. 615) – a figure responsible for foundations at Luxeuil and Bobbio – a new measure of spiritual freedom within the monastery was introduced, which challenged the authority of many local bishops.²⁸ As reflections on the internal spiritual and administrative governance of monastic life, changing regulations served to define more coherently the monastery's political and legal position within the wider diocesan structure. For this reason, Frankish kings were equally invested in preserving the monastic life. Alongside bishops, they too issued privileges of exemption to monasteries, aimed primarily at preventing the exploitation of ecclesiastical persons or properties placed under their direct protection. From antiquity, according to Marculf's formulary, monasteries had remained »under the privilege of freedom.«²⁹ Owing precisely to the decrees of royal sanction, they enjoyed peace, salvation, and validity for both present and future purposes. The nature of this protection resembles another formula in Marculf's collection, which offers royal protection for properties, retainers, and persons (I, 24) – that is, »to those who are known to be in need of it.«³⁰ This Merovingian template goes further to protect people and properties from »unlawful attacks of evil men, so that the said church – or monastery – shall remain in peace along with all its property, under the protection [*mundeburdium*] and defence [*defensione*]« of the mayor of the palace or his delegate. Cast in this light, the exemption functions as a diplomatic axis for

25 *La règle de Saint Benoît*, II, 648–653.

26 Hallinger, *Regula Benedicti* 64, 121, esp. n. 2.

27 *La règle de Saint Benoît*, II, pp.648–53; *La règle du maître*, ed./trans. de Vogüé, cc. 92–94; cf. Szaivert, *Die Entstehung und Entwicklung*, 273.

28 O'Hara, *Vita Columbani* in *Merovingian Gaul*, 140–143; Fox, *The Bishop and the Monk*, 179–181; Dunn, *Emergence of Monasticism*, 158–160; Bittermann, *Influence of Irish Monks*, 234; Wood, *Merovingian Kingdoms*, 186; Ewig, *Formular von Rebais*, 456–484. For some contemporary examples see *Diplomata* II, ed. Pardessus, nos 254, 275, 333, 345, 360, 514, 543, 596.

29 *Marculfi Formulae*, ed. Zeumer, I. 1.

30 *Marculfi Formulae*, ed. Zeumer, I. 24.

early medieval politics: it bound the monastery to its diocesan bishop, and the bishop to his (secular) superior, the mayor of the palace or the king.³¹ As a mechanism of power, moreover, it opened the doors for more binding political relationships between the monastery and the world it inhabited.

The exemption's dominant character, therefore, was fast becoming ›control‹. Whoever possessed the authority to issue privileges was displaying their ability to govern. In this way, the granting of specific rights and liberties to monasteries was a »gesture of authority«³² openly exercised by generations of secular rulers and bishops, with perceived advantages to both parties. What this means in practice is the key question – a consideration that necessarily introduces the developing idea of ›protection‹ (*mundeburdium/tuitio/defensio*) into the equation. Although visible in the charter evidence and language from the early seventh century, the significance of protection in monastic exemption charters becomes clearer at the council of Compiègne (757), convened under Bishop Chrodegang of Metz, where privileges for the monastery of Gorze were first issued.³³ Presenting an exemption that was deliberately protective, the privileges for this monastery permitted episcopal visitation of the monastery ›when it pleased‹ the bishop; protected the bishop's rights of ordination and remuneration; required the bishop's consent and will in matters of abbatial election³⁴; and ultimately subjected the monastery to the bishop.³⁵

Notwithstanding the traditional rights espoused in its text, the privilege for Gorze is considered unique and unprecedented. Its inclusion of protection demonstrates what Barbara Rosenwein called a »sea change – from prohibition to control.«³⁶ That is to say that this mid eighth-century exemption balanced episcopal control over the monastery with the bishop's duty of care in securing its general wellbeing. Rather than defining the prohibitions on episcopal intervention (i.e., what the bishop could *not* do) – as had been customary in monastic exemption charters – the privilege instead emphasised the bishop's rights to intervene (i.e., what he *could* do). With echoes of Chalcedon and the first Marculf formula, the monastery of Gorze obtained its freedoms through the joint promise of subjection and protection. In this way, as the charter relates, the monastery was subject ›to the protection and safeguard of the church of Saint Stephen of Metz.« This association permitted the monks continued prayer »for the life and safety of the kingdom, for the stability of the kingdom of the Franks, for their bishops, and for those placed under them.«³⁷

Physical protection was an emerging theme in this relationship. Under the Frankish rulers Charlemagne and Louis the Pious, the granting of monastic immunity was intimately connected to notions of protection, defined formulaically in the charter evidence as ›immunity and protection‹ (*immunitas atque tuitio*).³⁸ This division of monastic exemption into

31 Wood, *Merovingian Kingdoms*, 194. See also Szaivert, *Entstehung und Entwicklung*, 275ff.

32 Bouchard, *Rewriting Saints and Ancestors*, 141.

33 See *Concilia aevi Karolini*, ed. Werminghoff, 60-63 and *Cartulaire de l'abbaye de Gorze 4*, ed. d'Herbomez, 9-13.

34 For a systematic analysis, see the appendix in Rosenwein, *Negotiating Space*, 221-224.

35 Rosenwein, *Association through Exemption*, 72.

36 Rosenwein, *Negotiating Space*, 99.

37 *Concilia aevi Karolini*, ed. Werminghoff, 61; *Cartulaire de l'abbaye de Gorze 4*, p.11.

38 See Rosenwein, *Negotiating Space*, 132; Felten, *Äbte und Laienäbte im Frankenreich*, 190ff.; Stengel, *Immunität in Deutschland*, 433-437.

two complementary – yet distinctive – categories can be seen in December 777, when Abbot Fulrad of Saint-Denis was granted ›immunity‹ for the monastery of Salornnes, located in the Moselle region of northern Francia. Confirming decisions made at the earlier-held council in Paderborn, Charlemagne decreed that the Frankish monastery should be placed directly »under the immunity and privilege of Saint-Denis ...« He went further by stating that this religious house should also be placed »under the protection [*tuitio*] and defense [*defensio*] of the king and his leading men without impediment from the bishop of Metz.«³⁹

According to the Frankish diploma, Bishop Angilram of Metz willingly conceded these unique freedoms to the monastic community and its abbot, thereby openly limiting his authority and jurisdiction. When Charlemagne asked the bishop whether he truly consented to these privileges, he replied that »he did not deny it« (*ipsa nullatenus denegavit*). Neither the bishop »nor his successors nor any archdeacons or *missi* from his church at Metz could exercise the bishop's right to do ordinations or bless the chrism and altars at Salornnes unless asked to do so by the abbot of Saint-Denis.«⁴⁰ From this point onward, the responsibility of care for ecclesiastical properties and persons belonged exclusively inside the cloister walls. While not entirely removing Salornnes from episcopal care and responsibility, this particular exemption shifted the governance of this medieval monastery towards the monks living there.

The normative character of exemption thus evolved with the novel introduction of protection into the texts under the Merovingian rulers of Francia, and its subsequent elaboration by the Carolingians.⁴¹ Exemption was transformed from the exclusively fiscal concerns exhibited in late imperial Rome towards promises of spiritual and administrative freedoms.⁴² This institutional growth began with grants for monasteries and churches, which had become a prominent and practical dimension of Frankish governance after the sixth century.⁴³ According to the surplus of protective vocabulary in the charter evidence from the eighth and ninth centuries, moreover, exemption was being framed by a new rhetorical and legal dimension: a new idiom of Frankish governance that increasingly emphasised peace, secu-

39 *Die Urkunden Pippins, Karlmanns und Karls des Großen*, no. 118, ed. Mühlbacher, 165. For the earlier grant by Pope Stephen II, see Grosse, *Papsturkunden in Frankreich*, nos. 2a-b, 67-70. See also Schwarz, *Iurisdicio und Condicio*, 96.

40 See Latin text in Rosenwein, *Negotiating Space*, appendix 3, 225.

41 See Blumenstock, *Der päpstliche Schutz im Mittelalter*, 18ff. For various arguments about its connection to the judicial and patrimonial privileges granted to monasteries in the eighth century, see especially Heinrich Appelt; Hans Hirsch; Magnou-Nortier, Josef Semmler, Alexander Murray, Walter Goffart, and Barbara Rosenwein. For a thorough analysis of immunities from the time of Louis the Pious, see Stengel, *Immunität in Deutschland*, ch. 1, 2.

42 For its Roman meaning, see especially Murray, *Merovingian Immunity Revisited*, 913-928.

43 For an excellent case study, see Ewig, *Privileg des Bischofs Berthefrid*, 538-583. Cf. *Codex Justinianus* 1.3.16, ed. Kruegger, 32. Rosenwein, *Francia and Polynesia*, 373.

uity, tranquillity, and stability through *tuitio*, *defensio*, and *mundeburdium*.⁴⁴ While the key political players in this negotiation remained unchanged – the monks, the bishop and the king – the commodity on offer (i.e., protection) served to re-define the exemption's central character and inherent use-value.

This institutional change was permanent and reoccurring. Monasteries that were successful in acquiring such privileges became – as a direct consequence – more active in upholding and asserting them. From the monks' perspective, it was necessary to confirm the various claims to autonomy and patrimony professed in these charters, sometimes as a matter of political expediency.⁴⁵ The existence and organisation of monastic cartularies, which began in the late eleventh and early twelfth centuries in West Francia, demonstrate clearly the exemption's importance in establishing authoritative connections with local ecclesiastical and secular powers.⁴⁶ A monastery's heritage, internal development, and prosperity was fostered through such external (allied) relationships; in this way, through their initial granting and subsequent confirmation(s), monastic exemptions maintained a traditional role in preserving the kingdom's strength and stability. With the added promise of protection, they also came to function as a more secure guarantee of monastic rights and liberties.

Monastic exemption and the papacy

The papacy in Rome understood this potential exceedingly well. Like the Frankish kings and bishops before them, early medieval popes had been issuing exemption privileges to monasteries for centuries. Bearing in mind the *ad hoc* and *ad personam* factors that invariably shaped the day-to-day business of monastic exemption, it is worth asking how the new emphasis on protection in the privileges allowed the papacy »to become a more important player.«⁴⁷ This question cannot be isolated from the episcopal and secular practices outlined above, but has to be viewed as the next stage of an evolutionary process of monastic rights and liberties. The changing dimensions of exemption are part of a much longer institutional development – a political and jurisdictional exercise that evolved over time, under different political leadership, and with increasing experience, want, and need.⁴⁸ Avoiding the pitfall of

44 *Die Urkunden Pippins, Karlmanns und Karls des Großen*, no. 178, ed. Mühlbacher, 240 (Caunes); *ie Urkunden Pippins, Karlmanns und Karls des Großen*, no. 264, ed. Mühlbacher, 384 (St Peter at Monte Piciaculi); *Die Urkunden Lothars I. und Lothars II.*, ed. Schieffer, no. 32, 109 (Nonantola); *Die Urkunden Lothars I. und Lothars II.*, ed. Schieffer, no. 51, 147-148 (Farfa); *Die Urkunden Lothars I. und Lothars II.*, ed. Schieffer, no.134, 299 (Cruas); *Die Urkunden Lothars I. und Lothars II.*, ed. Schieffer, no. 200, 354 (St-Maximian at Trier); and *Die Urkunden Ludwigs II.*, ed. Wanner, nos. 31 (p. 129) and 42 (p. 152) (Bobbio). The remaining charters of Louis the German and Charles III provide characteristically similar privileges for monasteries like Klempten (*Die Urkunden Ludwigs des Deutschen, Karlmanns und Ludwigs des Jüngeren*, ed. Kehr, no. 107, 155), Hersfeld (*Die Urkunden Ludwigs des Deutschen, Karlmanns und Ludwigs des Jüngeren*, ed. Kehr, no. 32, 40-41), Herisi (*Die Urkunden Ludwigs des Deutschen, Karlmanns und Ludwigs des Jüngeren*, ed. Kehr, no. 137, 191), Saint-Maur-des-Fossés (*Die Urkunden Pippins, Karlmanns und Karls des Großen*, no. 149, ed. Mühlbacher, 241), and Farfa (*Die Urkunden Pippins, Karlmanns und Karls des Großen*, no. 179, ed. Mühlbacher, 274).

45 Berkhofer, *Day of Reckoning*, 57. See also Lohrmann, *Formen der Enumeratio bonorum*, 281-311.

46 See especially Bouchard, *Rewriting Saints and Ancestors*, ch. 1, 2; Bouchard, *Monastic Cartularies*, 22-32.

47 Rosenwein, *Negotiating Space*, 134.

48 Kölzer, *Bonifatius und Fulda*, 43; Kéry, *Klosterfreiheit und päpstliche Organisationsgewalt*, 93.

anachronism, the critical questions remain: whether a political endgame was ever imagined in this historical process, or whether the papacy ever marshalled a ›concrete strategy‹ through intensifying practice, organisation, or jurisdictional claims before the eleventh century.⁴⁹

The papacy achieved the status of a guarantor of monastic freedom and protection primarily through its administrative and legal role in confirming privileges, commonly entering into a relationship with a monastery after its foundation – that is, once the monastery was already established in the local community. In this respect, the papacy appears as a late third party to the negotiations, regularly usurping rights previously granted by and owed to bishops and kings.⁵⁰ The majority of the formulaic charter evidence highlights the pope's (at first) marginal role in this regard. But the action itself can be interpreted as a firm demonstration of Roman power in the distant Christian provinces: confirming privileges of freedom and protection acknowledged and reinforced existing relationships between various monasteries and Rome.

It also forged many new relationships between individual popes, monks, and monasteries, whose political and judicial orientation towards Rome represents a break with tradition. The earliest example of this relationship is attributed to Pope Honorius I (625-638), who issued an exemption privilege to the northern Italian monastery of Bobbio in 628, effectively freeing it from the control of its diocesan bishop, Probus of Tortona.⁵¹ According to the contemporary *Vita Columbani*, the bishop was ›trying to make the abbot and the monastery's livelihood subject to him.«⁵² Unable to rely on the ecclesiastical agent who was meant to protect the monastery, the monks looked elsewhere for support; as the charter determines in principle, the defence of freedom from the bishop's interference lay exclusively with the pope in Rome. Susan Wood has argued that this form of protection was ›not an alternative lordship, but moral support for a church's possessions and independence (which would require some exemption from episcopal authority as then manifesting itself).«⁵³ In truth, however, this powerful precedent eventually did give way to the idea of Rome's jurisdictional authority, which gradually came to embody the role of a centralised power. In other words, the language and promise of papal protection constituted a number of early medieval exemptions in the seventh and eighth centuries, establishing a longer pattern of Roman intervention.⁵⁴ And it existed and prevailed alongside episcopal and royal privileges of a similar nature, which political reality brings us back to our opening question of necessity and purpose.

49 Kéry, *Klosterfreiheit und päpstliche Organisationsgewalt*, 112-113, 84-85; Pfaff, *Päpstliche Klosterexemtionen*, 91.

50 E.g., Monte Cassino, Farfa, Fulda, Saint Denis, San Vincenzo a Volturno, Nonantola, Subiaco, Fleury, and Vézelay.

51 *Codice diplomatico del monastero di San Colombano di Bobbio*, I.10, ed. Cipolla, 100-103; *Italia Pontificia* 6/2, ed. Kehr, 249, no.6; Levison, *England and the Continent*, 109; *Liber Diurnus*, ed. Foerster, 77; Schwarz, *Iurisdicio und Condicio*, 58.

52 *Vita Columbani*, II.23, ed. Krusch, 281f.4 f.

53 Wood, *Proprietary Church*, 196.

54 Anton, *Studien zu den Klosterprivilegien*, 141. Some early examples from this period include Rebais in 637, where we find the expression *B. Petri tuitio*. In the last quarter of the seventh century (678-681), Pope Agatho promised the English monasteries of London and Chertsey the protection (*tuitio*) of the apostolic see. Pope Sergius I granted privileges for the English monastery of Malmesbury (c. 701), and Pope John VII for Farfa (705), which placed these monasteries firmly ›*sub iurisdictione atque tuitione*‹ of the apostolic see. Employing similar language in their charters, false privileges were also issued under the names of Popes Benedict II for Saint-Gilles (JL †2127), Stephen II for Fulda (JL †2319), Vinzenzo a Volturno (JL †2320), Figeac (JL †2321), and St Vaast d'Arras (JL †2328).

What did papal protection really offer monasteries? As evidence of this evolving relationship, consider the royal monastery of Fulda, which famously acquired its first papal exemption in November 751.⁵⁵ Sought on the monks' behalf by the missionary and legate to Germany, Saint Boniface, the privileges that Pope Zacharias granted were intended to limit the bishops of Mainz and Würzburg from interfering in the community's internal governance.⁵⁶ Complying with Boniface's wish, the pope expressly forbade »any priest of any church except the apostolic see to have any rights whatsoever in the aforesaid monastery, so that no one shall presume, except by invitation of the abbot, even to celebrate Mass there, and so that the monastery shall firm and forever be endowed with all rights implied in the apostolic privilege.«⁵⁷ Despite this papal exemption, the monastery of Fulda remained threatened by the overbearing bishop of Mainz (Lull), prompting King Pippin to place it under his direct protection in the mid-760s. According to the *Vita Sturmi*, a biography of the monastery's first abbot, the Frankish ruler not only honoured the »privilege that blessed Pope Zacharias, the supreme pontiff of the apostolic see, had formerly granted to the holy Boniface«, but he also »ordered that the well-being and defence [*defensio*] of the monastery be placed ›in the hands of no one other than the king‹.«⁵⁸

The papacy played an active role in executing and achieving this outcome. With the help of its privileges, Fulda effectively traded episcopal power for royal protection.⁵⁹ In practice, Pope Zacharias both enabled and facilitated this relationship, leaving the Frankish ruler as the *de facto* enforcer of Fulda's exemption privileges. The former's authority made the connection possible, with political, spiritual, and fiscal profits to be gained on both sides of the arrangement.⁶⁰

The explicit politicization of papal protection transformed the character of monastic exemption permanently. For many historians, these promises of *tuitio* to monasteries both north and south of the Alps were effective weapons of papal power and monastic freedom, offering a viable way to »monopolise control«⁶¹ and express »the Church's growing autonomy.«⁶² This interpretation builds on the oft-cited, and still important, work of Alfred

55 *Liber Diurnus*, ed. Foerster, 32. For a thorough study of Fulda, see Rathsack, *Fuldaer Fälschungen*, and Kéry, *Klosterexemption in der Einöde?*, 75-110. See also Lübeck, *Exemption des Klosters Fulda, 132-153*, and Lübeck, *Fuldaer Abtwahlprivilegien*, 340-389.

56 *Codex diplomaticus Fuldensis* 4a-b, ed. Dronke, 2-4.

57 *S. Bonifatii et Lulli Epistolae*, ep. 89, 203-205.

58 *Vita S. Sturmi Abbatis Fuldensis*, ed. Pertz, ch. 20, 375. Raaijmakers, *Making of the Monastic Community*, 51.

59 De Jong, *Carolingian Monasticism*, 624.

60 The exemption for Fulda – which also formed the basis of Formula 32 in the *Liber Diurnus* – inspired numerous other confirmations given to this monastery by Popes Stephen II (784), Hadrian I (784), Leo III (811), Gregory IV (828), Leo IV (850), Benedict III (857), Nicholas I (859), John VIII (875), Marinus (943), Agapitus II (948 and 950), John XII (961), and Clement III. The model for this exemption inspired subsequent charters for the monasteries of Saint Salvator (Brescia), Santa Maria (Pfäfers), Hersfeld, Reichenau, Santa Maria in Bagno, Gandersheim, Saints Germanus and Michael (Cuxa), San Martino (near Pavia), Saint Caecilia (Montserrat), Saint Peter (Rodas), Sant'Antimo, Saint Salvator (Montamiata), Saint Genesii (Besalu), Lorsch, Saints Salvator and Benedict (Leno), San Cugat del Vallés, Fruttuaria, and Monte Cassino. See *Liber Diurnus Romanorum Pontificum* 32, ed. Foerster, 93-94; Santifaller, *Verwendung des Liber diurnus*, 299.

61 Boureau, *Privilege in Medieval Societies*, 623.

62 Boureau, *Privilege in Medieval Societies*, 625.

Blumenstock, Paul Fabre, Hans Hirsch, Heinrich Appelt, Hans Hubert Anton, Edward Stengel, Georg Schreiber, Willy Szaivert, and Ludwig Falkenstein (among others), whose version of exemption history and papal protection explains the papacy's broader institutional and jurisdictional development in the early Middle Ages.⁶³ But it frames the question in practical rather than ideological terms, advancing the argument for the papacy's conscious involvement in the process, which inevitably shaped the contemporary meaning and value of exemption privileges for all concerned parties. Whether an exempt monastery became directly subordinate to the papal Curia as a result is a complex political question, contingent upon the community's individual circumstances and negotiating abilities.⁶⁴ But it is accurate to say that this growing institutional practice introduced a powerful political dimension to medieval papal-monastic governance. Binding the monastery more firmly to the spiritual centre in Rome, the papacy's offer of protection gradually became a central and normative characteristic of monastic exemption privileges.

This monastic orientation towards Rome, however, was not a foregone conclusion. That is, its growing practice was never inevitable in the longer and intersecting histories of medieval monasticism and the papacy. Yet it was not fate that brought these two together; forging and sustaining a special relationship with the popes in Rome was an intensely political and strategic game. Gerd Tellenbach rightly warned against any notion that »popes are supposed to have made use of exempt monasteries in a planned action aimed at bringing their claims of universal episcopacy to bear.«⁶⁵ As recent studies of the medieval papacy suggest, »contingency« played a far more decisive role in determining its future direction and historical development.⁶⁶ This interpretation counters any notion of a coherent papal policy, strategy, or movement of exemption. But it does not abrogate evolutionary forces, whose continued practice represents what Egon Boshof rightly characterized as a »*traditio Romana*« (or »Roman tradition«).⁶⁷ In short: the cumulative practice of exemption in the early Middle Ages, powered by the papacy's growing organizational skills, jurisdictional claims, and authoritative leadership, added significant value to what can be called a commodity of political exchange. Ostensibly limiting local and regional interference, whether secular or ecclesiastical, papal exemptions bolstered the monastery's independence. They also bound the monks more closely to the apostolic see, forging relationships with Rome that redressed existing political structures and hierarchies.⁶⁸

63 See bibliography.

64 Szaivert, *Entstehung und Entwicklung*, 296.

65 Tellenbach, *Church in Western Europe*, 114.

66 See especially Noble, *Narratives of Papal History*, 18; Larson, *Introduction*, 1.

67 Boshof, *Traditio Romana* und Papstschutz.

68 See especially Lemarignier, *Structures monastiques*; Lemarignier, *L'Exemption monastique*; and Lemarignier, *Étude sur les privilèges*.

Conclusion

The offer of apostolic protection augmented the Frankish exemption privileges that had been granted to monasteries by kings and bishops in the seventh, eighth, and ninth centuries.⁶⁹ While the Carolingians were also in the business of providing ecclesiastical protection (*Königsschutz*)⁷⁰, the papacy was offering a more substantial, spiritual, and arguably permanent solution. From the ninth century onward, Rome's protection was considered by monastic communities to be more static, stable, and seemingly desirable than what kings could offer – far more than just a »deliberate echo of the royal protection ceremonies.«⁷¹ Distinguishing itself from earlier episcopal practice, moreover, the papacy was never setting a limit to its authority by granting privileges. Rather the opposite was occurring, as medieval popes increasingly capitalised on a growing demand for exemption from episcopal intervention from the monasteries. Protection, as this article has suggested, was not only a key driver in the delivery of exemption – it was central to the institution's development, contemporary value, and normative character.

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- 69 Paul I for S. Salvatore and Saint Giulia in Brescia (762) (*Regesta Pontificum Romanorum*, ed. Jaffé *et al.*, 2350; *Italia Pontificia* 6/1, ed. Kehr, 320, no. 1). In 971, Pope John XIII issued specific privileges for Glastonbury, which gave the monastery power to ordain its monks while restricting any outside interference in matters of correction (JL 3751; PL 135:984). Pope Stephen VIII for Vincenzo a Voltorno (930) (JL 3581). In 1022, Pope Benedict VII recognised S. Sophia in Benevento as subject to the apostolic see and thus exempt from the authority of Montecassino (*Patrologia Latina* 139, ed. Migne, 1625; JL 4037). In 963, Pope Leo VIII granted Montmajour (JL 3702; PL 134:994 - Si semper sunt (Form 77)). Gregory VI confirmed the privileges of St Peter in Perugia in 1045 (JL 4123). S. Salvatoris in Insula (Senensi) 1050 – confirmed (JL 4231). Ditto for Amiate (JL 4232) and St Maurice-d'Agaune in 1050 (JL 4246). In 1057, Stephen IX confirmed the possessions and privileges of S Prosper in Reggio (JL 4376); the same was done in 1063 for Fruttuaria (JL 4499). In 1071, under Alexander II, the monastery of Saints Peter and Paul at Cremona had its liberty confirmed, detailing that payment of the annual census should be paid to Milan (JL 4687).
- 70 Consider the examples of St Hilaire-de-Carcassonne (814/15), St Peter in Ghent (815), St Wandrille (815), Montolieu (815), St-Maur-des-Fossés (816), Cornelimünster (817), Belle Celle (819), Conques (819), Montier-en-Der (827), St Colombe in Sens (833), and St Gallen (854). See Semmler, *Traditio und Königsschutz*, 12-13; Boshof, *Traditio Romana* und Papstschutz, 5ff.
- 71 Hirsch, *Untersuchungen zur Geschichte*, 387.

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Abbreviations

JE = Jaffé, Ewald: *Regesta Pontificum Romanorum*.

JL = Jaffé, Löwenfeld: *Regesta Pontificum Romanorum*.

Clerical Exemption in Canon Law from Gratian to the Decretals

Anne J. Duggan*

The question of clerical exemption from secular judgment was a core constituent of the fierce dispute that set King Henry II of England against Archbishop Thomas Becket of Canterbury in 1163 and culminated in the latter's murder in Canterbury Cathedral in 1170. This paper traces the Roman origin of immunity, its confused treatment in Gratian's *Decretum*, and the working out of a reasonable *modus vivendi* through episcopal-papal consultation in the following eighty or so years.

Keywords: clerical exemption: origins, definition, restriction. Ad falsariorum. Si quis suadente. Papal judgments: Eugenius III, Alexander III, Lucius III, Urban III, Celestine III, Innocent III.

It is important to recognize that the institutional framework of the medieval Church in the Latin West was conditioned by the structures of the late Roman world, from which, especially in legal matters, it absorbed much of its language and the concept of *ordo iudiciarius* – the due process of law. Bishops from the time of Emperor Constantine had their own *audientia episcopalis*, a court modelled on that of provincial governors.¹ Its principal job was the maintenance of ecclesiastical discipline as defined in Church assemblies from the Council of Arles (314) onwards, but it also dealt with disputes between ecclesiastical persons and entities and could, at the wish of the litigants, take cognizance of *injuria* (delicts) alleged by lay and clerical persons using a summary process². Such courts were instructed to follow civil procedure in the conduct of appeals.³

Furthermore, the position of the Church in the civil order was recognized by imperial laws in the Theodosian Code (issued in 438)⁴ and especially in Emperor Justinian's *Corpus iuris* (issued in 529-534), where the second section of Book 1 of the *Codex* was devoted to »the sacrosanct churches and their properties and privileges.«⁵ Religious and sanctified things

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1 Gaudemet, *Formation du droit séculier*, 230, 498.

2 Justinian, *Novellae*, 83.1pr; *Authenticum*, ed. Haenel, 84.1pr: *si quis habet adversus eos [bishops, priests, monks] quamlibet pecuniariam causam, prius ad deo amabilem episcopum pergat sub quo constitutus est, et interpellat eum et ex non scripto iudicium mereatur, Et si hoc fiat, nec inquietet eum nec trahat ad auditoria civilia neque a sacro eum vacare faciat ministerio, sed ex non scripto et examinetur negotium sine damnis et accipiat formam forsitan etiam scriptam, si hoc quoque partes voluerint et poposcerint, et liberentur alterutro certamine.* Cf. Gratian, C.11 q.1 c.45: *Ubi autem dirimere episcopus uult, sine scriptura omnia procedant, et diffinitiva sententia ab eo sine scripturis feratur.*

3 *Codex Theodosianus*, ed. Krueger, 16.2.23: *Qui mos est causarum civilium, idem in negotiis ecclesiasticis obtinendus est;* cf. Jasper, *Beginning of the Decretal Tradition*, 7-9.

4 *Codex Theodosianus*, ed. Krueger, 16.2.12; 16.2.47§1.

5 *Codex Theodosianus*, ed. Krueger, 1.2: *De sacrosanctis ecclesiis et de rebus et privilegiis earum.*

(*res religiosae*,⁶ *sanctae*⁷) were under divine law (*divini iuris est: Institutes* 2.1.7), and sacred things (*res sacrae*) – churches and gifts dedicated to the service of God by bishops (*pontifices*) – were specially protected. Even if the church falls down, the ground remains sacred.⁸ In the first chapter of Justinian’s Novel 86 (AD 539), which deals with co-operation between bishops and provincial judges in the delivery of justice, bishops were ›beloved of God‹ (*deo amabilis*) and most sanctified (*sanctissimus*), and they were frequently called ›most religious‹ (*religiosissimus*) in the *Codex*.⁹ The whole clerical establishment (bishops, priests, deacons, subdeacons, and the minor clerics of acolyte, exorcist, lector and porter),¹⁰ together with the growing ascetic and monastic orders (anchorites, monks, and nuns), was protected by the law, its property declared inalienable¹¹ and inviolate:¹²

Those things which belong to the right of the most holy church, or shall later come to it, should, like that sacrosanct and religious Church itself, be reverently preserved inviolate (*intacta*).

Its churches were places of sanctuary;¹³ its sacred vessels protected,¹⁴ and serious assaults on its priests and ministers were prosecuted as public crimes.¹⁵ Moreover they all enjoyed judicial privilege, defined in Justinian’s Novel 83, issued in 539, based on the Roman principle that in civil matters (disputes between private persons, including *causae pecuniariae*: debts, damages, fines) a person should be judged by his own judge. This meant that clerics,

6 *Justinian’s Institutes*, trans. Birks and McLeod, 2.1.9: *res religiosae* included tombs and burial grounds.

7 *Justinian’s Institutes*, trans. Birks and McLeod, 2.1.10: ›Sanctified things – *res sanctae* (city walls and gates) – are also in a certain sense under divine law: they cannot become private property. We call them sanctified because anyone who offends against them faces a capital penalty.‹ ›Sanction’ refers to punishments specified by the law.

8 *Justinian’s Institutes*, trans. Birks and McLeod, 2.1.8; cf. 1.2.21–23.

9 *Novellae constitutiones*, ed. Krueger, 86.1 and 3. Where the provincial judge does not dispense justice to a litigant, the bishop is to intervene; if that fails, he can send litigants to the emperor with letters explaining the matter, so that the emperor can deal with the judge. *Codex Iustinianus*, ed. Krueger, 1.2.16pr; 1.3.26, 28.2, 54.11, etc.

10 A schedule of clerics attached to the Roman church under Cornelius (251) lists 46 priests, 7 deacons, 7 subdeacons, 42 acolytes, and 52 ›lesser clerics‹; cf. *Codex Iustinianus*, ed. Krueger 1.3.6: *Presbyteros diaconos subdiaconos atque exorcistas et lectores, ostiarios*.

11 *Codex Iustinianus*, ed. Krueger, 1.2.14pr, §§1, 3, 4, 5, etc.; 1.2.22pr.

12 *Codex Iustinianus*, ed. Krueger, 1.2.14§2.

13 *Codex Iustinianus*, ed. Krueger, 1.12.0: *De his qui ad ecclesias confugiunt vel ibi exclamant*, esp. 1.12.2: *nemini licere ad sacrosanctas ecclesias confugientes abducere: sub hac videlicet definitione, ut, si quisquam contra hanc legem venire temptaverit, sciat se ad maiestatis crimen esse retinendum* (AD 409); cf. *Codex Iustinianus*, ed. Krueger, 1.13.0. *De his qui in ecclesiis manumittuntur*.

14 *Codex Iustinianus*, ed. Krueger, 1.2.21pr (Justinian, 529); although they could be sold or pledged for the redemption of captives: 1.2.21§2.

15 *Codex Iustinianus*, ed. Krueger, 1.3.10§1 (AD 398): *atroces sacerdotibus aut ministris iniurias veluti publicum crimen persequi ac de talibus reis ultionem mereri*.

anchorites, monks, and nuns were subject to the *audientia episcopalis*,¹⁶ and lay people were subject to its jurisdiction in religious matters. Episcopal jurisdiction was seen as part of the imperial system of law; bishops co-operated with their secular counterparts in dispensing justice, although that did not make them civil judges.¹⁷ On the other hand, breaches of the public (criminal) laws were determined by the public judges according to those laws, but severe penalties could not be imposed on ordained clerics until the bishop had deprived them of their clerical status.¹⁸

Preserved and transmitted in the enucleated compilations which constituted the Theodosian Code and the Justinian *Corpus iuris*, these are the deep roots of the *privilegium fori* or ›privilege of the forum/court‹, which protected clerics and religious from secular judgment in the Middle Ages. The Parisian theologian Hugh of St-Victor explained its practical effects in his treatise on the sacraments in the mid-1130s:¹⁹

For example, a secular judge is allowed to lay hands on a layperson if he sins, not on a cleric. [...] Secular matters should be examined by the secular power; spiritual and ecclesiastical matters by the spiritual power. [...] In regard to the person, then, justice is violated if a secular judge lays hands on an ecclesiastical person.

The phrase ›lay hands on (*manum mittere*)‹ carried special significance. It denoted a physical assault on the protected body of the cleric, here extended to all ›ecclesiastical persons‹, including monks and nuns, but it did not include civil procedures, in which there was no arrest, no seizure, and no imprisonment pending trial.

As the leading theologian of his generation, Hugh's teaching reached a wide audience, but his contemporary, Master Gratian, the founder of the school of canon law in Bologna, provided a much more comprehensive examination of the *privilegium fori* in his ground-breaking *Concordia discordantium canonum* (*Concordance of discordant canons*), popularly known as

16 *Codex Iustinianus*, ed. Krueger, 1.4.0: *De episcopali audientia et de diversis capitulis, quae ad ius curamque et reverentiam pontificalem pertinent*; cf. Council of Chalcedon (451), c.9: *Liber Extra*, ed. Friedberg, 2.2.1: *Si quis clericus adversus clericum negotium habeat, non deserat episcopum proprium, et ad saecularia percurrat iudicia, sed prius apud ipsum actio ventiletur, vel certe consilio eiusdem episcopi apud alios, quos utraque pars voluerit, iudicium obtinebunt.* Cf. Nov. 83pr (*Authenticum.*, ed. Haenel, 84pr): *si quis habet adversus eos quamlibet pecuniariam causam, prius ad deo amabilem episcopum pergat sub quo constitutus est, et interpellet eum et ex non scripto iudicium mereatur. Et si hoc fiat, nec inquietet eum nec trahat ad auditoria civilia neque a sacro eum vacare faciat ministerio, sed ex non scripto et examinetur negotium sine damnis et accipiat formam forsan etiam scriptam, si hoc quoque partes voluerint et poposcerint, et liberentur alterutro certamine.*

17 Caroline Humfress has recently (2011) described the Church ›as a fundamental part of late Roman dispute processing‹, although she does not draw a direct line of development from this episcopal jurisdiction to the later *privilegium fori*: *Bishops and Law Courts in Late Antiquity*, at 377 and 380.

18 *Novellae*, 83pr, §2; *Authenticum*, ed. Haenel, 84pr, §2: *Si tamen de criminibus conveniantur, si quidem civilibus, hic quidem competentes iudices, in provinciis autem harum praesides sint iudices, non transcendente lite mensium duorum spatium ex quo litis contestatio fit, quatenus brevis imponatur causas terminus. Illud palam est, si reum esse putaverit eum qui convenitur provinciae praeses et poena iudicaverit dignum, prius hunc spoliari a deo amabili episcopo sacerdotali dignitate, et ita sub legum fieri manu.* Cf. Gratian, C.11 q.1 c.45§1.

19 *De sacramentis*, Part 2, c.8 (PL, clxxvi, 420-421): [...] *quemadmodum saeculari iudici in personam laicam si peccaverit manum mittere licet, in clericum non licet.* [...] *negotia saecularia a potestate terrena; spiritualia vero et ecclesiastica a spirituali potestate examinentur.* [...] *Secundum personam ergo iustitia violaretur si iudex saecularis in ecclesiasticam personam manum mitteret.*

the *Decretum* (vulgate edition, 1140-1145). This was a systematic compilation of ecclesiastical law, in three books, designed to underpin the study and application of the law of the Western Church.²⁰ Its defining features were its inclusion of segments of Justinianic law, especially relating to judicial process, and its adoption, particularly in Part II, of the dialectical technique of argumentation, in which authorities were organized *pro* and *contra* around thirty-six major cases, including, for example, marriage (*causae* 27-36). Each case was divided into problems (*questiones*), in which the relevant authorities were set out in individual segments (*capitula*), and accompanied by the Master's own *dicta* (pronouncements), which attempted to resolve any contradictions. No fewer than fifty chapters in Causa 11, questio 1 deal with the matter of clerical immunity.²¹ Broadly, and based on the concept that each has his own court (*forum*), Gratian assembled the canons to demonstrate that clergy and laity belonged to separate but not mutually exclusive jurisdictions. In a (civil) dispute between a lay person and a cleric, or vice versa, the dispute should be determined in the court of the defendant according to the Roman legal principle that the plaintiff should seek redress in the defendant's court (*actor forum rei sequatur*).²² This meant that clergy should not be summoned before lay courts either by other clergy or by laymen;²³ but where a cleric wished to pursue a layman in a civil action, he had to sue in the layman's court. Gratian stated the principle of clerical judicial privilege trenchantly in his assertion before chapter 32, which concludes:²⁴

The drawing of a cleric before a civil judge is prohibited by the sacred canons and the external (*forensibus* = secular) laws, both in civil and in criminal cases.

– a conclusion most memorably supported in c.5 §1 by an extraordinary declaration of the judicial immunity of Christian bishops attributed to the emperor Constantine at the Council of Nicaea (325): »You can be judged by no-one, because we reserve you for the judgment of God alone.«²⁵ The same quotation appears later in the *Decretum* in a passage attributed to »Pope Melciades« (Melitiades 311-314), where it is followed by an even more extravagant statement of episcopal privilege: »For you have been called gods, and therefore you cannot be judged by men.«²⁶ Although derived from the ninth-century Pseudo-Isidore (in which

20 *Decretum Gratiani*, ed. Friedberg, in *Corpus Iuris Canonici* 1. It is not possible to review here the still lively debate about the authorship and dating of this work, which was ignited by Winroth's *Making of Gratian's Decretum*, but see Pennington's review in *Speculum*, lxxviii (2003) 293-297 and Wei, *Later Development of Gratian's Decretum*. For the mysterious Master Gratian, who may have finished his career as bishop of Chiusi in the mid-1140s, see Winroth, *Where Gratian Slept*; and Pennington, *Biography of Gratian*.

21 Cf. Duggan, *Making Old Law »New«*, nn. 19-60.

22 Gratian, C.11 q.1 c.15: rubric, derived ultimately from *Codex Iustinianus*, ed. Krueger, 3.19.3: *Actor rei forum, sive in rem sive in personam sit actio, sequitur. sed et in locis, in quibus res propter quas contenditur constitutae sunt, iubemus in rem actionem adversus possidentem moveri*; cf. *ibid.* 3.13.2. For a succinct summary, see Berger, *Encyclopedic Dictionary of Roman Law*, 476, s.v. »Forum«.

23 Gratian, C.11 q.1 c.16.

24 *Sacris enim canonibus et forensibus legibus tam in civili quam in criminali causa clericus ad civilem iudicem pertrahendus negatur*.

25 Gratian, C.11 q.1 c.5 §1: *Vos a nemine diiudicari potestis, quia ad Dei iudicium solius reseruamini*.

26 Gratian, C.12 q.1 c.15: *Vos ... reseruamini. Dii etenim uocati estis, et idcirco non potestis ab hominibus iudicari*.

genuine and false ›canons‹ are intermingled),²⁷ the Constantinian pronouncement has an earlier source in Rufinus of Aquileia's two-book addition (ix-x) to his summary Latin version (c. 402) of the *Ecclesiastical History* of Eusebius of Caesarea Maritima (c. 323): »For you have been given to us as gods by God, and it is not fitting that a man should judge gods«, followed by a quotation of Psalm 81 [82].²⁸

This broad consensus, however, was disturbed by four canons among the 50 arrayed in Causa 11, questio 1, which recorded what appeared to be forms of *traditio curie*, in which clerics were stripped of their immunity and transferred to another (secular?) court for punishment.²⁹

The first, the ›Pius canon‹, *Si quis sacerdotum*, attributed to ›Pope Pius‹, reads,³⁰

If any priest or any other cleric is disobedient to his bishop, or plots against him, or inflicts insult, false accusation, or abuse upon him, and can be convicted of it, as soon as he is deposed he is to be handed over to the *curia* (*mox depositus curiae tradatur*) and receive retribution for his wrongful act (*et recipiat quod inique gessit*) (Coloss. 3: 25).

The second, the ›Fabian canon‹, *Statuimus*, reads,

We decree that if any cleric is rebellious or plots against his bishop, having been removed from the clergy (*submotus a clero*) in the presence of the court (*iudicium*), let him be handed over to the *curia* (*curiae tradatur*), which he is to serve all the days of his life, and remain defamed without hope of restoration (*et infamis absque ulla spe restitutionis permaneat*).³¹

Both seem clear enough: in cases of violent rebellion against episcopal authority, a bishop can degrade the cleric and transfer him to a secular court for punishment. Unfortunately, neither text is what it appears to be. Far from being authentic decrees of Popes Pius I (c.AD 140-154) and Fabian (AD 236-250), the canons were ›confected‹ in northern France in the ninth century and transmitted in the compilation which historians have dubbed Pseudo-Isidore, because it was attributed to a fictitious ›Isidorus Mercator‹. This ›Isidorus‹, in turn, was easily confused with the real Isidore of Seville (c.560-636), author of the *Etymologiae*, the early medieval equivalent of a general encyclopaedia, and so carried the authority of a great name.

27 Pseudo-Isidore, 248: *Vos a nemine diiudicare potestis, quia solius Dei iudicio reservamini, dii etenim vocati estis. Idcirco non potestis ab hominibus iudicari*; cf. *PL*, cxxx, 243. Pseudo-Isidore did not attribute this text to the supposititious pope. Under the title, *De primitiva ecclesia et sinodo Nicena*, it followed a letter from ›Melchiades‹. Gratian (or an intermediate source) mistakenly linked the two. For Pseudo-Isidore, see below at nn. 33-34.

28 Rufinus, *Historia Ecclesiastica*, 468: [...] *Vos etenim nobis a Deo dati estis dii, et conveniens non est ut homo iudicet deos*; trans. Amidon, *The Church History of Rufinus of Aquileia*, 10.

29 Gratian, C.11 q.1 c. 18, the ›Pius‹ canon; c. 20, the ›Gregorian‹ canon; c. 31, the ›Fabian‹ canon; c. 45, *Novellae*, 83.1= *Authenticum*, ed. Haenel, 83.1. For the following, see Duggan, *Thomas Becket*, 50-54.

30 C.11 q.1 c.18, *Si quis sacerdotum uel reliquorum clericorum suo episcopo inobediens fuerit, aut ei insidias parauerit, aut contumeliam, aut calumpniam, uel conuicia intulerit, et conuinci potuerit, mox depositus curiae tradatur, et recipiat quod inique gessit* [St Paul, Coloss. 3: 25].

31 Gratian, C.11 q.1 c.31: *Statuimus, ut, si quis clericorum suis episcopis infestus aut insidiator extiterit, mox ante examinatam iudicium submotus a clero curiae tradatur, cui diebus uitae suae deseruiat, et infamis absque ulla spe restitutionis permaneat*.

Until recently, the dating and context of Pseudo-Isidore were narrowed to 847-52, either in the entourage of the deposed Archbishop Ebbo of Reims or, more generally, among the opponents of the powerful Hincmar of Reims (845-882) who had supplanted Ebbo in 845.³² Klaus Zechiel-Eckes has proposed an earlier historical and geographical context in the defence of Archbishop Ebbo of Reims in the political crisis of 833 and the monastery of Corbie, directed by Paschasius Radbertus.³³ The compilers' aim was to protect bishops and other ecclesiastical persons and institutions from secular abuse and confirm episcopal authority with an assemblage of authentic ancient canons, augmented by cleverly confected ›judgments‹ attributed to early popes and councils.

Set in the context and purpose of their fabrication, it is highly unlikely that they were intended to subject priests and clerics to lay judgment and/or punishment. The key to understanding these texts is the interpretation of the Latin noun *curia*. This word had a wide lexical range in the Middle Ages. Niermeyer's dictionary of medieval Latin, for example, lists 21 meanings, ranging from law-court/tribunal to assembly, household, courtyard, and prison.³⁴ In the ›Fabian canon‹, certainly, *curia* implies something different from a judicial forum. Having been ›removed from the clergy in the presence of the (bishop's) court (*iudicium*)‹, the condemned cleric was to be handed over to the *curia*, ›there to serve all the days of his life‹. This implies transfer, not to another, possibly lay, court but to a form of servitude, in the bishop's household or administration, probably modelled on late Roman curial status, which itself was a form of enforced service of the local municipal authority (*curia*), originally imposed on certain categories of secular malefactors.³⁵ A decree of the emperors Arcadius, Honorius and Theodosius at the end of the fourth century, transmitted in the Theodosian Code (438), had imposed such curial service as a penalty for degraded or renegade clergy:³⁶

Let the *curia* immediately claim for itself ... any cleric whom the bishop judges unworthy of his office and segregates from the service of the Church [...].

32 Fuhrmann, *Einfluss und Verbreitung*, i, 193-196; Fuhrmann, *Pseudo-Isidorian Forgeries*, 135-195.

33 Zechiel-Eckes, *Ein Blick in Pseudoisidors Werkstatt*; Zechiel-Eckes, *Auf Pseudoisidors Spur*; Zechiel-Eckes, *Fälschung als Mittel politischer Auseinandersetzung*; Richter, *Stufen pseudoisidorischer Verfälschung*, at 36 n. 201. For an excellent summary of the present state of this complicated question, see Knibbs, *Interpolated Hispana*. Cf. Fried, *Donation of Constantine*, 101-103; Schieffer, *Zeit des karolingischen Großreichs*, 159.

34 *Mediae Latinitatis lexicon minus*, ed. Niermeyer, i, 378A-381A.

35 Berger, *Encyclopedic Dictionary of Roman Law*, 612-613, s.v. ›Ordo decurionum‹, *ad fin.*, »Under Justinian the curia became a kind of a penitentiary since the assignment to the *curia* was applied as a punishment.« Such a punishment was applied in Tuscany in the late eleventh century, where the *curia* concerned was the household/court of Countess Mathilda of Tuscany: Duggan, *Becket Dispute*, 12.

36 *Codex Theodosianus*, ed. Krueger, 16.2.39: *Quemcumque clericum indignum officio suo episcopus iudicaverit et ab ecclesiae ministerio segregaverit, aut si qui professum sacrae religionis obsequium sponte dereliquerit, continuo eum curia sibi vindicet, ut liber illi ultra ad ecclesiam recursus esse non possit, et pro hominum qualitate et quantitate patrimonii vel ordini suo vel collegio civitatis adiungatur....*; cf. Duggan: *Becket Dispute*, 8-10.

It is likely that the forgers of the Pius and Fabian canons had this decree in mind when they constructed their own papal variant, but their *curia* was the *curia episcopalis* not the secular *curia*. In both cases, the convicted cleric is reduced to a form of penitential servitude in the bishop's household. The question of secular judgment or penalty did not arise.³⁷

Support for this interpretation is found in the judgment given by Pope Gregory VII in a council in Rome (1079) against the canons of Lucca cathedral, who had rebelled against Bishop Anselm (1071, 1073-1083). Gregory's judgment was based on the authority of the Fabian canon in its original form (without the word *depositus*)³⁸ and another Carolingian confection ascribed to ›Pope Stephen‹, which said much the same thing,³⁹ quoted *verbatim*. The Luccesi canons were excommunicated and deprived of office and benefice⁴⁰; the *Life of St Anselm of Lucca* claimed that Countess Matilda of Tuscany, ›calling them slaves, summoned them to the service of the *curia*.‹⁴¹ The judgment had no effect, but its interpretation of the Fabian canon is important in the present context.

Gratian was not unaware of the non-judicial meaning of *curia*, having presented a string of genuine canons from early popes (Innocent I 401-417, Gelasius I 492-496, Gregory I 590-604) which stated that men assigned to public administrative service (*curiales*) were debarred from sacred orders,⁴² but he did not recognize that the *curia* in the ›Pius‹ and ›Fabian‹ canons described a similar administrative institution. Reading it to mean (secular) court, he confidently declared at the end of his summary, following *Questio 1*, chapter 30, that:

In a criminal case no cleric is to be produced before a civil judge, except with the consent of his bishop, as, for example, when they (*sic*) are found incorrigible, and then, having been deprived of office, they are handed over to the *curia*, as Pope Fabian affirms,⁴³

followed by the Fabian canon (c.31).

37 What are we to make of the incident in which Ivo of Chartres rebuked the bishop of Orléans who had caused a deacon whom he had freed at Ivo's request to be taken to prison by his servants, and *verberatum, spoliatum, per manus servorum trahi fecistis ad carcerem, et curiae traditum...non damnatus a vobis curiae traderetur, ubi more furis, contumeliis et injuriis quotidianis cruciaretur?* PL, clxii, 64-65 no. 53 at 64.

38 The term ›deposed (*depositus*)‹ was not in the ›Pius canon‹ as it appeared in Pseudo-Isidore, but it had been intruded, intentionally or by mistake, into two of Gratian's sources: Anselm of Lucca, *Collectio canonum* (c.1083), viii.17 (PL, cxlix, 519) and the *Polycarpus* by Cardinal Gregory of S. Crisogono (1111), iv.35.22: www.mgh.de/datenbanken/kanonessammlung-polycarp/ (retrieved on 17 November 2017).

39 Pseudo-Isidore, ed. Hinschius, 186, c.11; Gratian, C.3 q.4 c.8: *Clericus vero qui episcopum suum accusauerit, aut ei insidiator extiterit, non est recipiendus, quia infamis effectus est, et a gradu debet recedere, ac curiae tradi serviturus.*

40 Gregory VII, PL, cxlviii, 546-547 (Reg. VII.2).

41 PL, cxlviii, 910, *Prolatis ergo canonibus, et lecto capitulo sancti martyris et episcopi Fabiani, qui conspiratores et insidiatores suorum episcoporum curiae tradendos instituit, iudicio totius sanctae synodi etiam ipsi curiae traduntur. Tunc fidelis et prudens marchionissa Mathilda servos illos appellans, in servitutum curiae vocavit eos.*

42 Gratian, D.34 c.10; D.50 c.59; D.51 cc. 1-3, 5; D.53 c.1; D.55 c.1. Cf. D.61 *dictum ante* c.11, etc.

43 Gratian, C.11, *dictum post* q.1 c.30.

The third case, the so-called ›Gregorian‹ canon, attributed in Gratian's *Decretum* to Pope Gregory I (590-604), was a genuine letter of the sixth-century Pope Pelagius I (555/1-560/1) addressed to the Byzantine general Narses, then controlling northern Italy in the aftermath of the Gothic wars launched by Emperor Justinian. The key passage read,⁴⁴

We request that you send the pseudo-bishop Paul of Aquileia and the bishop of Milan to the most merciful prince under appropriate guard, so that [...] [each] may be subject to the punishment of the canons.

This also related to a form of ›handing over‹, but it was not for secular judgment or secular punishment. The two bishops were to be transferred to Constantinople where the emperor (Justinian) would impose the appropriate canonical penalty on them.⁴⁵ Since both the identity of the pope and the context were unknown to Gratian, he could be forgiven for interpreting it to mean, as he proclaimed in the heading, that »Those whom the Church cannot correct may be corrected by princes,«⁴⁶ although the phrase »according to the canons« might have given him pause.

The fourth example derives from a *novella* of Emperor Justinian.⁴⁷ As transmitted by Gratian, its key clause reads:⁴⁸

If a case concerning a criminal matter arises, competent [judges] may, when required, impose a judgment consonant with the laws, but in such a way that the discussion of the case should not exceed two months from its formal presentation [...]

Even so, »A cleric may not be punished unless having been found guilty he is deprived of the priesthood or clerical honour by his bishop.« This imperial decree subjected clerics accused of secular crime to secular process, but the cleric could not be punished – that is, subjected to the penalties of the public law – unless he was deprived of his clerical status after his guilt had been proved and the *praeses* had determined that it merited the punishment of the *leges*. Until then, his person was sacrosanct. After supporting this imperial constitution with canons from the early Church councils of Chalcedon (451) and Agde (506),⁴⁹ Gratian summed up his argument in his long comment following c.47:⁵⁰

44 Gratian, C.11 q.1 c.20: *Istud est, quod a uobis poposcimus [...] ut Paulinum Aquileiensem pseudoepiscopum, et illum Mediolanensem episcopum ad clementissimum principem sub digna custodia dirigatis, ut et iste [...] canonum uindictae subiaceat.*

45 Paul was suspected of Arianism, having opposed Justinian's condemnation of the Three Chapters (544) and the bishop of Milan had consecrated him against papal instructions. Narses took no action since he did not wish to inflame an already disturbed situation in the region.

46 Gratian, C.11 q.1 c.20, rubric.

47 *Novellae*, 83pr§2 = *Authenticum*, ed. Haenel, 84pr§2.

48 Gratian, C.11 q.1 c.45; cf. Ivo, *Decretum*, vi.427 (Constitutio 83); *Anselmo dedicata*, 3.243 (250).

49 Gratian, C.11 q.1 cc.46-47. The Agde canon also occurs in Gratian, D.50 c.7: *Si episcopus, presbiter, aut diaconus capitale crimen commiserit, aut cartam falsauerit, aut falsum testimonium dixerit, ab officii honore depositus in monasterio detrudatur et ibi quamdiu uixerit laicam tantummodo communionem accipiat.*

50 Gratian, C.11 q.1 *dictum post c.47*: *Ex his omnibus datur intelligi, quod clericus ad publica iudicia nec in ciuili, nec in criminali causa est producendus, nisi forte ciuilem causam episcopus decidere noluerit, uel in criminali sui honoris cingulo eum nudauerit. [...] Prohibentur ergo clerici a cognitione negotiorum secularium uirorum, non secularium causarum. Negotia quippe clericorum, siue criminalia siue ciuilia fuerint, non nisi apud ecclesiasticum iudicem uentilanda sunt.*

From all these it can be deduced (*intelligi*) that, neither in a civil nor in a criminal case is a cleric to be brought before public courts unless the bishop does not wish to hear the civil case, or in a criminal case, has stripped him of his status. [...] Therefore clerics are forbidden cognizance of the cases of secular men but not of secular cases. For clerical cases whether criminal or civil can be brought forward only before an ecclesiastical judge.

With all its ambiguities, Gratian's analysis became the essential starting-point for the definition of clerical exemption thereafter. In one of the earliest commentaries on the *Decretum*, finished c.1164,⁵¹ the Bolognese jurist Rufinus summarized what he saw as the essence of the Master's teaching:⁵²

Bishops and priests cannot for any case be accused before a secular judge, because secular judges cannot judge them [...]. What therefore is to be done? Let the cleric or bishop be summoned before the ecclesiastical judge, and after he has been convicted of a secular crime by lawful proof, if the crime is particularly terrible, let him be stripped of the dignity of his office and then released to be punished by the secular judge according to the criminal laws (*a seculari iudice secundum leges publicas puniendus*).

To Gratian's test of ›incurability‹, Rufinus added the test of grievous criminality as grounds for exposing clerics to secular punishment, and he very much clarified the language. The ambiguous *curia* is dropped in favour of ›secular‹ and ›ecclesiastical‹ judges.

Outside the classroom, bishops began to raise questions about the application of the *privilegium fori* to concrete problems in their own dioceses, to which popes replied on an *ad hoc* basis. Their responses show the papal Curia struggling to maintain the principle of clerical immunity while allowing that the protection could be withdrawn or withheld in certain situations. This adaptation can be traced through the pontificates of five popes (Eugenius III, Lucius III, Urban III, Celestine III, and Innocent III), whose *responsa* helped to form the new ›decretal law‹ on clerical privilege in the *Liber Extra*, also known as the *Gregorian Decretals*. This compilation of what contemporaries called ›new law‹, supplementary to Gratian, was issued by Pope Gregory IX in 1234 for use in schools and courts throughout the Latin Church.

The first modifications came from Pope Eugenius III (1145-1153) in a decretal letter known from its opening Latin words as *Litteras fraternitatis*, issued from Viterbo on 26 November 1146 in reply to questions posed by Bishop Jocelin of Salisbury.⁵³ Asked if Jocelin should protect delinquent clergy from arrest by secular authorities, Eugenius said that he should not, and defined ›apostasy‹ as grounds for withdrawing clerical immunity:⁵⁴

51 Argued by Gouron against Singer: Sur les sources civilistes, at 68.

52 Rufinus, *Summa decretorum*, ed. Singer, 309: *Quid igitur faciendum erit?... Conveniatur clericus vel episcopus ante iudicem ecclesiasticum, et postquam ibi fuerit de crimine forensi legitima probatione convictus, si adeo horrendum crimen fuerit, spoliabitur proprie dignitatis officio et dimittetur post hec, a seculari iudice secundum leges publicas puniendus.*

53 Jocelin de Bohun, bishop of Salisbury 1142-1184: JohnS, *Letters*, ii, 360-361 n. 1.

54 *Litteras fraternitatis tue*: JL 8959; WH 736§b: *Liber Extra*, ed. Friedberg, 5.9.1 (wrongly attributed to Alexander III): *Praeterea clerici, qui, relicto ordine clericali et habitu suo, in apostasia tanquam laici conversantur, si in criminibus comprehensi teneantur, per censuram ecclesiasticam non praecipimus liberari.* For the original letter, with variants, arenga and date, see *Epistolae pontificum Romanorum ineditae*, ed. Loewenfeld, 103-104 no. 199. For this concept of ›apostasy‹, see Gratian, D.50 c.69: *Hii qui post sanctam religionem apostant et ad seculum redeunt* (cf. Arles (443/452)).

We do not command that clerics who, having abandoned their order, habit, and office, live in apostasy like laymen, should be freed by ecclesiastical censure if they are held after being seized in the commission of crimes.

The ›censure‹ to which Eugenius referred was canon 15 of the Second Lateran Council (1139), a canon known by its opening words as *Si quis suadente*, which had imposed automatic excommunication on all who laid violent hands on clerics or monks, a sentence which could not be lifted by the diocesan bishop, except at the point of death, until the delinquent had gone in person to the Apostolic See.⁵⁵ Eugenius implied that lapsed clerics who committed crimes were not protected by *Si quis suadente*, on the unspoken principle that ›he who abuses a privilege deserves to lose it.‹⁵⁶ Similarly, Eugenius instructed Bishop Jocelin to forbid his clerks to act as estate managers for laypersons: if they did, and were seized for fraud in a financial matter, it was improper that they should be protected by the Church in which they had created scandal.⁵⁷ In other words, they should not be allowed to appeal to *Si quis suadente* if they were suspected of misappropriation.

These replies should be seen in the context of the civil war in England (1138/1139-54) between King Stephen and the ›Empress‹ Matilda, which was causing localized breakdowns in law and order. Jocelin of Salisbury had sought special authority to deal with clerical criminals (*malefactores*) in his diocese, and the full text of the pope's response, which was not transmitted in the canonical tradition, makes it clear that Eugenius was authorizing exceptional action for exceptional cases.

55 Lateran II, ed. Alberigo, c.15: *Item placuit ut si quis, suadente diabolo, huius sacrilegii reatum incurrerit quod in clericum vel monachum violentas manus iniecerit, anathemati subiaceat, et nullus episcoporum illum presumat absolvere, nisi mortis urgente periculo, donec apostolico conspectui presentetur, et eius mandatum suscipiat*: Brett and Somerville, *Transmission of the Councils*, at 267. The same decree, without the ›point of death‹ exception, had been issued at Clermont in 1130 and Reims in 1131 (*ibid.*, 253). When the Lateran canon reached Gratian (C.17 q.4 c.29) it was given an apparatus of Roman authorities in *dictum post c. 29*, which cited the *Codex* and *Digest* by title and lex: *primo libro Codicis legitur, titulo ›de episcopis et clericis‹ [Codex Iustinianus, ed. Krueger, 1.3] et lege: ›Si quis in hoc genus sacrilegii proruperit‹ [Codex Iustinianus, ed. Krueger, 1.3.10pr] et in Digestis titulo ›Ad legem Iuliam pecuniarum repetundarum‹ [recte: *Ad legem Iuliam peculatus et de sacrilegis et de residuis*: Dig. 48.13; cf. *Justinian's Institutes*, trans. Birks and McLeod, 4.18.9], *lege ultima* [recte: *prima*: Dig. 48.13.1] which declared that all violence within or against churches, cults, priests and ministers should be treated like public crime and treason and punished *capitali sententia*.*

56 Cf. Simplicius (468-483), PL, lviii, 35-37 ep. 2, at 36: *nam privilegium meretur amittere qui permissa sibi abutitur potestate*; Ivo of Chartres, *Decretum*, 5.140 (qu. Simplicius), PL, clxi, 371: *Nam privilegium meretur amittere, qui permissa sibi abutitur potestate*; Hugh of St.Victor, *Expositio Moralis in Abdiam*, PL, clxxv, 373: *quia privilegium meretur amittere, qui concessa dono abutitur, vel permissa potestate*; Wibald of Stavelot, PL, clxxxix, 1204-1210 no. 114, at 1208: *privilegium meretur amittere qui privilegii abutitur libertate*; Innocent III, below, at n. 101.

57 *Liber Extra*, ed. Friedberg, 3.50.1 (wrongly addressed to the bishop of Lucca): *Sacerdotibus autem et clericis tuis denuncies publice, ne ministri laicorum fiant, nec in rebus eorum procuratores existant. Quod si postmodum facere praesumpserint, et occasione ipsius administrationis propter pecuniariam causam deprehendantur in fraude, indignum est eis ab ecclesia subveniri, per quos constat in ecclesia scandalum generari*. It is significant that Henry II took legal action against Thomas Becket in 1164 for alleged peculation: see Duggan, *Roman, Canon, and Common Law*, 379-408, at 386-387.

Therefore, desiring to have regard for the peace and tranquillity [of your diocese], we order you to restrain your criminals with appropriate punishment, and we are prepared to subject them to more severe penalty if they do not come to their senses and desist from their depravity.⁵⁸

What that ›more severe penalty‹ may have been is uncertain, but it may have implied a willingness to abandon such violent men to the tender mercies of the secular power if they remained recalcitrant. It is unlikely, however, that he contemplated a general withdrawal of the *privilegium fori*. Indeed, earlier in the same year (9 June 1146), in a letter to Bishop Tebaldo of Verona (1135-1157), Eugenius had condemned the exercise of disciplinary power over delinquent clerics by laymen. After stating the principle that ›clerical affairs and the discipline of clerics belong to bishops and their officials‹, the pope condemned the practice of laymen ›seizing and correcting‹ (*distringere et corrigere*) clerics who committed sexual sins (*si carnaliter peccaverint*) and mandated the bishop to restrain them by ecclesiastical censure.⁵⁹ Although this letter survives only in a single copy made in Verona, the key segments of the more ambiguous Salisbury consultation were copied into collections of decretal letters in England and then transmitted to Continental collectors, eventually becoming part of the formal law studied in Bologna,⁶⁰ and so helped to consolidate Gratian's reading of the earlier tradition.

Meanwhile, the question of *privilegium fori* blew up in a big way in England eighteen years later (1164), when King Henry II decreed in clause 3 of a set of royal edicts known from where they were issued as the ›Constitutions of Clarendon‹ that:⁶¹

Clerks charged and accused of any matter shall ... come before the king's court to answer there concerning matters which shall seem to the king's court to be answerable there, and before the ecclesiastical court for what seems to be answerable there, but in such a way that the king's justice shall send to the court of holy Church to see on what ground (*qua ratione*) the case is there tried. And if the clerk shall be convicted or shall confess, the Church ought no longer to protect him.

How far Henry's formulation was compatible with the canon law is a moot point: note its broad reach – »accused of any matter...concerning any matters which shall seem to the king's court to be answerable there« – and the total absence of episcopal discretion. Equally

58 *Ideo que paci et tranquillitati eius [Salisbury diocese] intendere cupientes, malefactores tuos animadversione debita coerceri precipimus eosque severiori vindictae, nisi respiscant et a sua pravitate desistant, pro debito officii nostri subiicere parati erimus: Epistolae pontificum Romanorum ineditae*, ed. Loewenfeld, 103.

59 *Clericorum negotia et correctiones ad episcopos vel ad eorum ministros specialiter pertinere nulli credimus esse incognitum*, in Arabello, ›Nulli credimus esse incognitum‹, 233-244, at 244, from Verona, Bibl. Capitolare, cod. CV (98), fol. 2va-b, *Clericorum negotia*, Tavola 1: copied directly from the original *responsum* in script which reproduced Chancery style, with capitals and titles and the date: DAT. VIT[ER]BI.V.IDUS IUN[II].

60 *1 Comp.* 3.6.2 (§a), 5.8.2 (§b: ›Alex. III‹), 3.37.8 (§c: addressed ›Lucell. Archiep.‹); *Liber Extra*, ed. Friedberg, 3.6.2 (§a), 5.9.1 (§b: ›Alexander III‹), 3.50.2 (§c: ›Lucanensi episcopo‹).

61 Translated from Stubbs, *Select Charters*, 164-165.

moot is its accuracy as a statement of English customary law,⁶² but the matter was settled, broadly in the Church's favour in 1175/1176, when Henry II reached a compromise following negotiation with Pope Alexander III's legate, Hugh Pierleone:

We have conceded ... that a clerk shall not in future be drawn in his own person before a secular judge for any criminal matter (*de aliquo criminali*), or for any trespass (*de aliquo forifacto*), except the trespass of my forest, and except for lay fee for which lay service is owed to me or to another secular lord.

Breach of the forest law was a significant exception,⁶³ since its penalties could be brutal,⁶⁴ but the main principle of clerical exemption from secular punishment held for criminal cases throughout the Middle Ages in England, with some significant modifications, and was not finally abolished until 1827. Generally speaking, a cleric who pleaded clergy was tried, and then released to the bishop's proctor, with notification of the verdict for the bishop's information. If he had been acquitted, there was nothing further to do; if he had been convicted, he could try to purge himself in the bishop's court; if he failed, he would be imprisoned for life in an ecclesiastical prison.⁶⁵ The question of ordeal did not arise, since that form of proof was abolished in England in 1219 in the wake of the Fourth Lateran Council's withdrawal of ecclesiastical involvement in the process in 1215.⁶⁶ The number of clerics involved seems to have been small and mostly confined to the category of clerks who had received the tonsure as a mark of their clerical status but had not been promoted to even the lowest clerical order,⁶⁷ and the majority were found not guilty. Generally speaking, the process worked well – so well, in fact, that from the later Middle Ages onwards, as Dick Helmholz showed, in England, clerical privilege was »enlarged to encompass all laymen who could pass a »literacy test«

62 It is worth remembering that while he was bishop of Hereford (1148-1163) Gilbert Foliot expressed astonishment that Elias de Say had tried a priest in his own court: »a power which kings and emperors, in spite of much sweat and labour, have not been able to obtain against her until this day«: van Caenegem, *English Lawsuits*, ii, no. 413.

63 The Forest justices, protected against *Si quis suadente* by the king, were given explicit authority to proceed against clerics in the Assize of the Forest (1184), c.9, Stubbs, *Charters*, 188: »[the king] has given strict orders to his foresters that if they find any such [clerics] trespassing there, they shall not hesitate to lay hands upon them in order to arrest them and to secure their persons, and he himself will give them his full warrant (*praecepit bene forestariis suis quod si invenerint eos forisfacientes, non dubitent in eos manum ponere, ad eos retinendum et attachiandum, et ipse eos bene warrantizabit*).«

64 For the Forest Law, which preserved large tracts of land for royal hunting, see Green's article in this special issue. In 1159 the prominent English cleric John of Salisbury railed against the brutality of the foresters who »subject God's image to »exquisite« tortures in defence of wild animals and have not feared for a brute beast's sake to destroy a human being (*homo*) whom the Son of God redeemed with his blood«: *Policraticus*, i.4 (PL, cxc, 396). Stubbs (*Charters*, 185) described it as »cruel to man and beast.«. The worst penalties (death and mutilation) were abolished in the Charter of the Forest (1217): Stubbs, *Charters*, 346-347, *Nullus de cetero amittat vitam vel membra pro venatione nostra*. Instead, if he had the wherewithal to pay, the guilty man was to be heavily fined; if he did not, he was to be imprisoned for a year and a day, after which he would be freed if he could find pledges to guarantee his future good behaviour; if he could not find pledges, he had to abjure the realm.

65 *London Trailbaston Trials*, ed. Pugh, 14-16; *Wiltshire Gaol Delivery*, ed. Pugh, 14-16; cf. Pugh, *Imprisonment in Medieval England*, 134-139. See Helmholz, *Oxford History of the Laws*, 508-514.

66 Lateran IV, ed. Alberigo, c.18, *Sententiam sanguinis*, specifying the ordeals of cold water and hot iron; *Councils and Synods*, ed. Whitelock, 2/i, 49.

67 *Wiltshire Gaol Delivery*, ed. Pugh, 252, s.v. clergy, benefit of, pleaded; delivered to the bishop.

and eventually extended to women as well.« In this way, »benefit of clergy became a means of protecting a segment of the population from the harsh punishments customarily meted out to criminals under the common law. It also made important differences in the internal life of English criminal law. Determining which crimes were »clergyable« and which were not became a means of drawing distinctions between different kinds of criminal offenses and eventually of developing the substantive law itself.«⁶⁸

Outside England, Pope Alexander III maintained the principle of clerical jurisdictional immunity in responses to Uppsala and Salerno. In the first, to Archbishop Stephen in 1171/1172, which cited Gratian liberally,⁶⁹ Alexander declared that »clerics should not undergo secular trials, especially the ordeal of hot iron (*igniti ferri examen*) or any other »atrocious trial« (*exsecrabile iudicium*)«;⁷⁰ in the second, a much better known response to Bishop Romuald II of Salerno in 1177 (*Licet preter*), he re-stated the principle that clerics were subject only to episcopal jurisdiction:⁷¹

At si clerici: If clerics are convicted or confess before a secular judge, they are not to be condemned by their bishop because a sentence issued by someone who is not his own judge is not binding;

Si vero coram episcopo: but if they confess or are convicted of crimes by lawful proof before their own bishop they should be suspended from their orders and permanently removed from service at the altar.

De adulteriis: but for adultery and other lesser crimes, their bishops may allow them to serve in their orders after they have done penance.

before concluding that a cleric deposed for his excesses in office »should not be handed over to the secular judge or crushed with a double penalty.«⁷² This was an oblique reference to the »double punishment« argument deployed during the Becket controversy. Two years later in the Third Lateran Council (1179), Alexander imposed excommunication on any layman who compelled clerics or bishops to submit to his judgment.⁷³

Although Pope Lucius III (1181-1185) maintained the principle when he instructed the archbishop of Esztergom that clerics could be judged only by ecclesiastical judges, even if local custom held to the contrary in respect of thieves,⁷⁴ he recognized that there were circumstances in which it was necessary for the Church to rely on secular force in its own defence. The catalyst was the forgery of papal letters that was reported to Lucius in 1185.

68 Helmholz, *Ius Commune in England*, 190.

69 Gratian, C.11 q.1 cc.5, 12, 14, 20, and 22.

70 *Constituti a Domino*, Tusculum, 10 September, 1171/2: *PL*, cc, 854-860 no. 979 (JL 12117), at 858. For date, see Falkenstein, *Die Sirmondsche Sammlung*, esp. 277 no. 19: JL 12117.

71 WH 620§f: *Liber Extra*, ed. Friedberg, 2.1.4. See Landau, *Ursprünge und Entwicklung*.

72 *Liber Extra*, ed. Friedberg, 2.1.4, in fine: *sed non debet quemlibet depositum pro suis excessibus, quum suo sit functus officio, nec duplici debeat ipsum contritione contere, iudici tradere saeculari*.

73 Lateran III, in *Conciliorum oecumenicorum decreta*, ed. Alberigo, c.14§d: *sane quia laici quidam ecclesiasticas personas et ipsos etiam episcopos iudicio suo stare compellunt, eos qui de cetero id praesumpserint, a communione fidelium decernimus segregandos*.

74 »Clerici vero«, *Liber Extra*, ed. Friedberg, 2.1.8, §d of *In apostolice sedis*, WH 14, datable only by Lucius III's pontificate. For the full text, see Duggan, *Decretal Letters to Hungary*, at 14-17, esp. 16; repr. with the same pagination in idem, *Decretals and the Creation of the »New Law«*, no. V.

This was no new problem. As early as 1131, the deathbed confession of the French monk, Guerno of St-Médard (Soissons), was recounted to Pope Innocent II at a council at Reims (1131). Guerno had confessed to forging papal privileges for monastic houses in England and Normandy,⁷⁵ among which were St Augustine's and Christ Church, Canterbury and St-Ouen (Rouen).⁷⁶ Fifteen years later (1146), Pope Eugenius III had instructed Bishop Nicholas of Cambrai to deprive of office and benefice the canons or clerics who had presented a forged papal letter, until they brought the document to his presence to answer to him for the offence.⁷⁷ Twenty or so years later still (1160-1174), Pope Alexander III instructed Bishop William de Turba of Norwich to deprive the priest who had forged (*falsavit*) the papal letters which the bishop had sent to the Curia and, »if he can be found«, place him in »some monastery of strict religion« (*aliquod monasterium districtae religionis*) to suffer the penalty for so grave a crime, so that others may be deterred. If any others are found, the bishop can hold them in the strictest custody (*artissime custodie*), without right of appeal, »until you receive an apostolic mandate on the matter«.⁷⁸

At a time when ecclesiastical rights and privileges as well as much of the practice and jurisprudence of the Latin Church were being shaped by reliance on papal privileges and judicial letters (*decretales*), the forgery or falsification of papal documents presented a major problem, and popes from Lucius III (1181-1185) onwards were forced to authorise increasingly strong actions to punish and deter. Responding to a report from Archbishop Walter of Rouen that persons had been discovered forging *litteras apostolicas* in the lands of the English king (Henry II), Lucius authorized the archbishop in *Improba pestis falsitatis* (a letter issued from Verona, 16 October 1185), to deprive the guilty clerics of their order and benefice and to keep them in close custody until the pope issued further instructions, while any laymen should be handed over to the king for judgment, »so that this pestilence which is recognized as pernicious by everyone may be condemned by both ecclesiastical and secular judgment, together with its authors«.⁷⁹ The two powers were to collaborate in the eradication of the scourge of forgery, which affected both jurisdictions. Although important as evidence of curial attitude to forgery, this letter had little long-term impact, since it was not included in the *Liber Extra*.

75 Guerno's confession was recorded in a letter to Adrian IV from Archbishop Hugh of Rouen, who heard it from Bishop G. of Chalons, formerly abbot of St-Médard, who heard the monk's confession: *Litterae Cantuarienses*, iii, ed. Brigstocke Sheppard, 365-367; cf. Berkhofer, Guerno the Forger; idem, Forgery and Alexander III's *Scripta autentica*. For the broader problem, see Duggan, *Improba pestis falsitatis*.

76 Morey and Brooke, *Gilbert Foliot*, 131 and n. 2; cf. John of Salisbury, *Letters*, i, ed./trans. Millor *et al.*, nos. 57, at 98 (where the forging of papal letters is called *lèse majesté*), 67, 73 at 117, and 86.

77 *PU Nederlanden*, i, 175 no. 59: *tibi precipimus, quatenus canonicos siue clericos, qui falsum scriptum tibi ex parte nostra presentauerunt uel presentari fecerunt, officio uel beneficio priues ecclesiastico, donec cum eodem scripto responderi et satisfacturi nostro se conspectui representent.*

78 Last § of *Ex tenore litterarum*: WH 488§d; *Collectio Belverensis*, 14; *Appendix concilii Lateranensis*, ed. Crabbe, 26.3; *1 Comp.* 5.16.3; cf. *Claustr.* 132§4. The *Collectio Belverensis*, the *Appendix concilii Lateranensis*, and *1 Comp.* read *si inueniri poterit*; *Claustr.* reads *si inde evinci poterit*.

79 *ut iudicio uidelicet tam ecclesiastico quam mundano pestis illa que communiter omnibus perniosa dinoscitur cum suis actoribus condempnetur*: WH 546; *2 Comp.* 5.9.1 (whence Mansi, 22, 482) mistakenly reads *litteras publicas* for *litteras apostolicas*. The correct reading is transmitted in *1 Rot.* 17.9. For the correct text, see Duggan, *Improba pestis falsitatis*, 354-355, no. 17.

It was another shocking case of forgery, discovered by the same archbishop of Rouen, which precipitated the fateful step of exposing clerical criminals to a form of punishment similar to that imposed on laymen, although in this instance, it was a prelate who imposed it. When Archbishop Walter asked what should be done with clerics who had forged the seal of King Philip II of France, Pope Urban III (1185-1187) replied in the decretal *Ad audientiam* that they should not lose a *membrum* (which could mean castration), nor should he inflict a corporal penalty that might endanger life. Instead, after degrading them, he should have them branded as forgers and compelled to abjure the province.⁸⁰ It is highly likely that Walter had reported the severe penalties, then current practice in the Anglo-Norman realm, where not only counterfeiters of coin but also those found with false money in their possession risked castration and the loss of their right hands.⁸¹ Urban III's solution – degradation, branding, and expulsion from the province (Normandy) – seems to me to be an echo of the Roman *Lex Cornelia de falsis*, which prescribed death for slaves and deportation for everyone else.⁸² But the pope stopped short of transferring the guilty clerics to the secular jurisdiction for punishment.

That step was taken, with considerable reluctance, by Pope Celestine III in *Cum non ab homine*, which instructed Archbishop Eirik of Nidaros in 1191-1192 that neither kings nor any secular person could judge clerics ›apprehended for robbery, homicide, perjury, or any other crimes‹. Instead they should be arraigned, tried, and deposed by their bishops, and if they remained defiant and incorrigible after excommunication and anathema, since the Church had nothing further that it could do, they could be restrained by the secular power ›by exile or any other lawful penalty‹⁸³ – a phrase which excluded mutilation or death. The test for Celestine, as it had been for Gratian and his principal commentators, including Rufinus,⁸⁴ was incorrigibility, since the Church has nothing further (*cum ecclesia non habeat ultra*).⁸⁵

Pope Innocent III took the next steps, first in response to the problem of industrial-scale clerical forgery⁸⁶ and then to the question of violent clergy. In the opening months of his pontificate in 1198, Innocent reported the discovery, in Rome itself, of a group who had forged Celestine III's seal, as well as his own, to validate counterfeit papal letters, together with numerous letters already sealed. The culprits were imprisoned on Innocent's orders and, in letters to Archbishop William of Reims and all archbishops, the pope warned the whole Latin Church about the risk of counterfeit papal letters reaching their provinces. The recipients

80 *Ad audientiam*: 1 Rot. 17.16; Gilbertus Anglicus (1203) 5.7.2; X 5.20.3.

81 Green, *Government of England*, 89-90.

82 *Dig.* 48.10. The *crimen* covered every kind of forgery or falsification, including the use of false documents or seals ›fraudulently and with evil intent (*dolo malo*)‹. Urban III, the former Umberto Crivelli, had been a professor of law at Bologna in the 1150s.

83 Cf. Urban III, *supra*, at nn. 79 and 81

84 *Supra*, at n. 51.

85 JL 17639 (to the archbishop of Nidaros): WH 273; *Gilb.* 2.1.1; *Liber Extra*, ed. Friedberg, 2.1.10§§ad: *sive in furto vel homicidio vel periurio aut falso testimonio seu quibuscumque fuerint criminibus deprehensi*. For the text, lacking the arenga, see Holtzmann, *Krone und Kirche*, 397-400 no. 13. For the arenga, ›Cum non ab homine ... conuocauerit‹, see *idem*, ›Collectio Seguntina‹, 431 no. 43, which also provides the date. Full text and translation in Duggan, *Manu sollicitudinis*, 231-235 no. 3.

86 For the general problem, see Herde, *Römisches und kanonistisches Recht*.

were ordered to issue a general sentence of excommunication (which could be raised only by special papal mandate) against any who did not within twenty days hand over or destroy false letters in their possession, lest the survival of such forgeries caused injury to anyone in the future.⁸⁷ This particular nest of forgers may have been active for some time. Six years earlier (December 1191), Pope Celestine III had alerted the dean of Rouen and the Norman bishops about letters forged in Rome (*in Urbe*) and advised them to seize any suspicious letters which might have reached them.⁸⁸

But Innocent did not stop there. As well as initiating reforms in the papal Curia to reduce the opportunity for such criminal activity in the future,⁸⁹ he issued a general constitution in 1201, known as *Ad falsariorum confundendam malitiam*. This anathematized all forgers of papal letters, together with their aiders and abettors, and decreed that clerics apprehended for forgery should be degraded by the ecclesiastical judge and handed over to the secular power for punishment according to the legal constitutions (*legitimas constitutiones*) by which laymen convicted of forgery were lawfully punished. This marked the first significant breach in the concept of clerical immunity from secular punishment,⁹⁰ but it was sufficiently contentious for Bishop Peter of Paris⁹¹ to ask for clarification in 1209 in relation to a forger seized in Paris on papal orders. The clarification came in the decretal *Novimus expedire*, in which Innocent, citing his own decree (*Ad falsariorum*), and the opinion of »some of his predecessors« (almost certainly Celestine III in his *Cum non ab homine*),⁹² explained the process of *traditio curie*:⁹³

87 *Dura saepe, Liber Extra*, ed. Friedberg, 5.20.4 (*PL*, ccxiv, 202-203 no. i.235), 21 May 1198: *bullas tam sub nomine nostro, quam bonae memoriae Coelestini Papae praedecessoris nostri, quas falso confinxerant, et quam plures literas bullis signatas invenerimus apud eos.*

88 *Per falsarios*, 21 December 1191: Duggan, *Improba pestis falsitatis*, 356-357 no. 19: *faciatis eos omnes omni dilatione postposita capi et tamdiu sub arcta custodia detineri, donec id nobis intimatum, ut quid exinde fieri debeat vobis significare possimus.*

89 Zutshi, Innocent III, at 86-87 (cf. *Liber Extra*, ed. Friedberg, 5.20.4). The consequences of this reform of chancery practice are manifest from 1204 in the way in which documents were marked with the initials of the scribe and of the notary who oversaw their issue, as well as notations which marked those to be copied into the papal register: *ibid.*, 9294. For the reorganization of the registry in 1206 under the new chancellor, John, cardinal deacon of S. Maria in Cosmedin, see *Selected Letters of Pope Innocent III concerning England*, ed. Cheney and Semple, xxix.

90 *Liber Extra*, ed. Friedberg, 5.20.7: *saeculari potestati tradantur secundum constitutiones legitimas puniendi, per quam et laici, qui fuerint de falsitate convicti, legitime puniantur.*

91 Peter de la Chapelle, bishop of Paris 1208-1219.

92 Above, at n. 84.

93 *Liber Extra*, ed. Friedberg, 5.40.27 (16 February, 1209): *ut clericus, qui propter hoc vel aliud flagitium grave, non solum damnabile, sed damnosum, fuerit degradatus, tanquam exutus privilegio clericali saeculari foro per consequentiam applicetur, quum ab ecclesiastico foro fuerit proiectus; eius est degradatio celebranda saeculari potestate praesente, ac pronuntiandum est eidem, quum fuerit celebrata, ut in suum forum recipiat degradatum, et sic intelligitur tradi curiae saeculari; pro quo tamen debet ecclesia efficaciter intercedere, ut citra mortis periculum circa eum sententia moderetur.* Cf. *PL*, ccxv, 1562-1563 no. xi.257. It was this definition that led Maitland to argue that Henry II's proposals for *traditio curie* in Clarendon's cl. 3 was in conformity with canon law: Maitland, *Roman Canon Law*, 144-145.

A cleric who has been degraded for this (forgery) or any other grave crime (*grave flagitium*), not merely worthy of condemnation (*damnabile*) but pernicious (*damnosum*), is then brought to the secular court (*forum*) as one stripped of his clerical privilege, when he is cast out of the ecclesiastical forum; his degradation must be conducted in the presence of the secular power, which must be notified in advance so that it can take the degraded cleric into its forum, and he is thus understood to be surrendered to the secular court. Nevertheless, the Church should intercede effectively (*efficaciter*) on his behalf so that the sentence does not involve the danger of death (*periculum mortis*).

In this particular case, Innocent directed that the cleric was to be confined in prison for life, but he extended the application of *traditio curie* to other grave and pernicious crimes. Here he was almost certainly following the example of Lucius III's constitution, *Ad abolendam*, issued at Verona in 1184, which decreed that degraded and excommunicated heretic clerks should be handed over to the secular authorities to receive due punishment (*animadversio debita*), unless they immediately repudiated their heresy and did penance.⁹⁴ The same phrase was repeated in Innocent III's Lateran IV, c.3⁹⁵ and in Pope Gregory IX's *Excommunicamus* of 1231: »Those condemned by the Church should be abandoned to secular judgment to be punished with due severity, clerics being first degraded from their orders.«⁹⁶

Innocent III did not define the meaning of »not merely worthy of condemnation but pernicious«, but he probably had in mind the serious crimes enumerated in Pope Celestine III's *Cum non ab homine*, which had listed robbery, homicide, perjury, and false testimony and specified »exile or some other lawful penalty«, as well as Pope Urban III's exclusion of mutilation or any corporal punishment that might endanger life.⁹⁷ Both letters had already entered the legal curriculum in Bologna, having been included in a Bolognese collection made by the English canonist Gilbertus Anglicus in 1203.⁹⁸ Included in the *Liber extra* promulgated in 1234, Innocent III's *Novimus expedire* opened the door to more routine rendition of degraded clerical criminals in cases deemed exceptionally grave and pernicious by the ecclesiastical court. It became the ultimate penalty in the Church's armoury. In all cases, however, the right to judge clerical criminals remained with ecclesiastical judges.

94 *Liber Extra*, ed. Friedberg, 5.7.9: *clericus est vel cuiuslibet religionis obumbratione fucatus, totius ecclesiastici ordinis praerogativa nudetur, et sic omni pariter officio et beneficio spoliatus ecclesiastico, saecularis relinquatur arbitrio potestatis, animadversio debita puniendus, nisi continuo post deprehensionem erroris ad fidei catholicae unitatem sponte recurrere, et errorem suum ad arbitrium episcopi regionis publice consenserit abiurare, et satisfactionem congruam exhibere.*

95 Lateran IV, in *Conciliorum oecumenicorum decreta*, ed. Alberigo, c.3 (X 5.7.13): *Damnati vero praesentibus saecularibus potestatibus aut eorum ballivis relinquuntur animadversio debita puniendi, clericis prius a suis ordinibus degradatis, ita, quod bona huiusmodi damnatorum, si laici fuerint, confiscantur: si vero clerici, applicentur ecclesiis, a quibus stipendia receperunt.* It was not in his decree against heretics, *Vergentis in senio* (1199), X 5.7.10-11.

96 *Liber Extra*, ed. Friedberg, 5.7.15: *Damnati vero per ecclesiam saeculari iudicio relinquuntur, animadversio debita puniendi, clericis prius a suis ordinibus degradatis.*

97 Above at nn. 82 and 79.

98 Gilbertus Anglicus (1203), 5.7.2 (Urban III); 2.1.1 (Celestine III). »Gilbertus und Alanus«. Designed as a supplement to 1 *Comp.*

The need to provide secure detention for aggressive clerics also provided further grounds for relaxing the reach of *Si quis suadente*. In 1203 Innocent III replied to a consultation from Archbishop Anders Sunesen of Lund who asked what should be done with clerics who were so violent that they could not safely be placed in monasteries. Innocent instructed that bishops must place them in secure detention (*sub arcta custodia detinere, qui, quum sint incorrigibiles, nec in monasteriis valeant custodiri*), »since it is in the public interest that crimes do not remain unpunished.«⁹⁹ On the question of their capture, laymen who acted on instructions from bishops in the arrest of such men did not incur the sanction of the canon, but could seize them, even violently, and convey them to (ecclesiastical) judgment, as long as it was at the command of prelates, to whose jurisdiction the punishment of criminous clerics belonged, and the violence was proportionate to the resistance offered.¹⁰⁰ The solution in Denmark, as indeed it was in contemporary England, was close collaboration between the lay power and the Church in the apprehension and punishment of dangerous clerics: secular coercive power was harnessed to the disciplinary authority of the Church, but bishops bore the burden of providing the secure detention deemed necessary.

There remained the problem of renegade clerics who claimed immunity. In 1213, Count Ferdinand of Flanders and the dowager Countess Matilda complained to Innocent III about men who cut their hair and claimed clerical privilege when they were arrested for crimes, even though nothing in their earlier dress or occupation suggested that they were clerics. Writing to the three Flemish bishops (Thérouanne, Arras, Tournai), Innocent quoted the ancient adage that »he who abuses the power entrusted to him deserves to lose the privilege«,¹⁰¹ reinforced by a favourite maxim of his own, that »he who breaks the law invokes its aid in vain«,¹⁰² and ordered, that »if, after three warnings, such men refuse to mend their ways, they should be excluded from the immunity established for the protection of clerics and control of lay violence.«¹⁰³

99 *et publicae utilitatis intersit, ne crimina remaneant impunita: Ut famae tuae*, 10 Dec. 1203: 3 *Comp.* 5.21.8; X 5.38.35; *Reg.* vi. 181(183). On the maxim, *publicae utilitatis intersit*, see Fraher, *Theoretical Justification*. Misled by the erroneous address to »London« in X, Fraher saw links with the Becket controversy. The maxim was used again in the Sorrento case in 1213: *PL*, ccxvi, 928-931 (*Reg.* xvi. 139), at 929.

100 *et ad iudicium trahere possunt, si oporteat, etiam violenter, dum tamen id de mandato faciant praelatorum, quorum illi sunt iurisdictioni subiecti [...] dum tamen non amplius eorum violentia se extendat, quam defensio vel rebellio potius exigit clericorum.*

101 Above, n. 55.

102 *Liber Extra*, ed. Friedberg, 5.39.45: *Frustra legis auxilium invocat qui comittit in legem*. For earlier use, see *PL*, ccxiv, 965; ccxv, 207, 633; ccxvi, 241; for probable Roman antecedents: *Codex Iustinianus*, ed. Krueger, 4.4.37§1 and 6.30.22§12.

103 *Liber Extra*, ed. Friedberg, 5.39.45: *volumus et mandamus, ut tales, si tertio a te commoniti se ipsos contempserint emendare, illius efficiantur immunitatis extorres, quae pro clericorum tutela et laicorum violentia coercenda dignoscitur instituta.*

The story of clerical exemption is typical of the way in which theoretical principles were progressively refined in the eighty years following Gratian's completion of the *Decretum* c.1141-1145, through a process of repeated consultation between regional prelates and the papacy.¹⁰⁴ Confronted by the realities of life outside the classroom, broad statements of clerical privilege and exemption gave way to recognition that outrageous behaviour, or out and out apostasy, undermined the privileges conferred by religious profession and ordination. As early as 1146 Eugenius III had instructed an English bishop to withdraw the protection of *Si quis suadente* from men who had abandoned their calling, and his successors were prepared to do likewise, as long as the Church retained the right to maintain or withhold the privilege.

104 Duggan, *Making Law or Not?*, esp. 64-65.

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Nothing to Declare: Status, Power and Religious Aspiration in the Policies of Taxation in Ancient India

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This paper examines a group of legal, religious and commercial privileges connected with revenue collection in ancient Indian society.¹ These privileges, I argue, derive from and reflect the standing of Buddhist monks in that period. Much of the discussion that follows centers around the Saṅgha's status in Indian tax law. It charts the factors that led Buddhist monks to call for tax immunity for the goods they carried on their travels across northern India. In this sense, the article is about money. But tax collection, although central to a state's financial health, is not exclusively informed by fiscal considerations. Some of the Buddhists' pleas for tax exemption sprang from privileges long held by their brahmanical peers. They clamoured for the very same rights that Indian political treatises (*dharmaśāstra*) extended to brahmins and Hindu ascetics. Taxation is also a tool deployed to manage social privilege and economic division in society and hence reflects the values its rulers seek to promote. As a result, this investigation explores the ranking of the Buddhist community within the wider arena of religious proliferation in ancient India. It contributes then to this special issue through its focus on tax exemption.

Keywords: Buddhist Monasticism; Indian Buddhism; History of Buddhism; Economic History of Ancient India; Buddhism in Society; Buddhism and the State; Vinaya Studies

Many of the religious traditions that sprang up in India in the fifth/sixth century BCE came to compete for patronage and recruitment in a bid to enhance their influence among the population. The *Sāyanāsanavastu* section of the Mūlasarvāstivāda *vinaya* (which constitutes the monastic code for the Buddhist monks and nuns of the Mūlasarvāstivāda School) records an encounter between the Buddha's followers and a group of competing mendicants where they argue about money. It is not their own money though. The funds belong to a lay supporter, Anāthapiṇḍada, who wishes to pay for a religious foundation. This person is very rich indeed: his profession is banking. He ranks among the earliest and most generous sponsors of the Buddhist community:

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1 Much of the research that underpins this essay was first published in my 2014 book: *Buddhist Monks in Tax Disputes*. I would like to thank the editors of this volume for accepting the current contribution for inclusion in the proceedings of »Religious Exemption and the State 400-1300«, Sheffield University, 14th to 16th April 2016.

The householder Anāthapiṇḍada gave that piece of land to Prince Jeta. The Prince then had built an entrance hall of a temple (*vihāra*) on that land for the Blessed One. Then, the followers of the other religious traditions came together, angry and annoyed, to confer: ›The householder Anāthapiṇḍada has pledged to build a temple for the Blessed One‹. They decided to approach Anāthapiṇḍada and when they reached him, they said: ›Householder, you cannot have a vihāra built for the mendicant (*śramaṇa*) Gautama.‹ He replied: ›And why not?‹ ›We divided up the towns. Rājagṛha belongs to the mendicant Gautama; Śrāvastī belongs to us.‹ Anāthapiṇḍada retorted: ›You may have divided up the towns, but not my personal property. I shall build religious foundations for whomever I please.‹²

The passage contains an example of the rivalry that existed between the Buddhists and their religious peers. Here they vied for sponsorship. Elsewhere we encounter competition in recruitment and political access. In order to avoid open conflict, the different groups had carved up the territory in which they sought to establish themselves. In this instance, the matter was resolved internally: the Buddhists prevailed since they went on to defeat their opponents in a display of miracles. In other cases, though, when consent was not achieved, conflicts of this type called for arbitration drawing on the secular authorities. It then fell to the king and his ministers to manage the proliferation of these groups.

They did so through various political and financial instruments. In fiscal matters, the state in ancient India was able to control the strength of the different traditions through taxation; it could extend privileges to one faction but withhold them from another. The brahmanical treatises of governance contain good evidence that this was common practice. Fiscal policies, in other words, were used as a means to influence the fortunes of the religious traditions that had sprung up in the 5th century BCE and later. Their enforcement, in turn, impacted on the individual. Revenue collection often took place in delicate situations dominated by displays of state power. Most Buddhist monks emerged from these encounters with their dignity intact. Others were less adept and slipped into situations of conflict, jeopardising both the repute of the Saṅgha and their personal safety.

In this essay, I examine the ways in which the Saṅgha responded to such pressures. To begin with, I chart the monks' fiscal obligations, introducing the principles that governed taxation in ancient India and sketching their application. For this, I turn primarily to brahmanical legal treatises, such as the *Arthaśāstra*, *Mānava Dharmasāstra* and a number of connected sources. The dates of these texts have been much debated, but Olivelle, in an article devoted to this very subject, proposed the following chronology for the key works which I use here: *Mānava Dharmasāstra*: 2nd cent CE; *Nāradaśmṛti*: 5/6th cent. CE; *Vaiṣṇava Dharmasāstra*: 7th cent. CE; *Yājñavalkyaśmṛti*: 4/5th cent. CE; and, perhaps most importantly, the *Arthaśāstra* of Kauṭalya/Viṣṇugupta: 3rd/4th cent. CE.³ These early legal treatises, more often than not, group the Buddhists together with other heterodox communities (Jains, Ajīvakas, etc.). Some subsume the Buddhist monks in one (or more) of the classic genres of Indian religious practitioners: renunciants (*pravrajita/parivrājaka*), ascetics (*tapasvin*) or mendicants (*bhikṣu*). In doing so, they deny them a separate identity and withhold from them a distinct

2 Gnoli, *Gilgit Manuscript of the Śayanāsanavastu*, 20.

3 Olivelle, *Dharmasāstra*, 57.

status in law.

Most of the Buddhist material on tax liability appears in the *Vinayavibhaṅga* section of the Mūlasarvāstivāda *vinaya*, already quoted above. This text records a series of incidents where monks run into difficulty during customs inspections. The date of the Mūlasarvāstivāda *vinaya* has yet to be established. For much of the last century, scholars placed the version(s) that we have today into the 3rd/4th or even 5th centuries.⁴ This rather late origin is no longer universally accepted since many connect the *vinaya* now with the Kūśānā rulers of the second century CE.⁵ More material on taxation is included in the Pāli *vinaya*, in the Jātakas and in Buddhist narrative literature, but these do not add substantially to what we learn in the Mūlasarvāstivāda *vinaya*.

The commentaries upon this *vinaya*, most notably that by the 8th-c. monk Śākyaprabha, are the first to set out what one might call a systematic Buddhist strategy on tax liability. In the first instance, they draw on material found in the *vinaya*, but then proceed to align it with the tax policies developed in the brahmanical law books. This allowed the commentaries' authors to highlight bias in the law and rebut brahmanical claims to privilege. Much of their opposition to the existing revenue formulae sprang from the tax tariffs applied to donations. Any property offered to Buddhist monks, they argued, should be altogether tax exempt since, once handed over to the Saṅgha, it had left the world; such donations did not constitute commercial transfers but served to secure the spiritual advance of its donors. Their content had become, quite literally, priceless. It is not unexpected for an organization that relied for much of its start-up capital on the generosity of lay supporters to formulate such a position.

The Saṅgha's revenue coding and its calls for reform, coupled with the state's strict enforcement to contain repeat offending, suggest that the royal treasury had genuine reasons to worry about monastic tax compliance. The Saṅgha developed a series of strategies to avoid paying tax; some legal, other less so. Much of this resistance sprang from the rights and privileges that the state had granted to their contemporary Hindu ascetics who had been exempted from most forms of taxation. This created conflict. We do not know if the monks' protestations of discrimination generated any impact. The brahmanical law books of the later centuries contain no traces of any. They merely repeat the very principles first set out in the early *dharmasāstras*. In ancient India, it would seem, the calls of the Buddhists for tax reform achieved little in the end. In China, too, (as Palumbo discusses in this special issue), the Saṅgha remained liable to taxation, despite some concessions.

4 Lévi, *Éléments de formation du Divyāvadāna*, 120-121; Lamotte, *History of Indian Buddhism*, 657.

5 Schopen, *Hierarchy and Housing in a Buddhist Monastic Code*, 9; Schopen, *Buddhist Monks and Business Matters*, 20-21; Schopen, *Learned Monk as a Comic Figure*, 215.

The context of exemption

The *Vinayavibhaṅga* of the Mūlasarvāstivāda *vinaya* contains evidence that, during the lifetime of the historical Buddha, his monks and nuns were exempt from payments of road tolls, customs duty and river crossing fees⁶:

At one time, the Blessed One walked towards Śrāvastī amidst a forest [beset] with bandits in the company of King Bimbisāra of Magadha, 80,000 gods and a large number of brahmins and householders, also from Magadha, who had been established in the [four Noble] Truths. After [the Buddha] had converted Prasenajit, King of Kośala, with the *Kumāradṛṣṭāntasūtra* (D 296), the two, [king and queen], gave what the prince had left behind to the monks and what the retinue of the queen had left behind to the nuns. In that period monks were sent out without [fear of] duty payments, security fees or ferry tolls, and the teaching of the Blessed One spread [rapidly].

Our source does not reveal for how long this exemption lasted, nor does it disclose the ruler(s) who introduced it. If it was a local initiative, sponsored by the king of Magadha in north-eastern India, it would presumably not have reached significantly beyond his sphere of influence. Furthermore, the *Vibhaṅga* does not divulge the beneficiaries: did the privilege apply only to the Buddhists or was it extended to all traditions? It cannot have been very widespread. Another passage in the *vinaya* indicates that the general collection of customs duty together with transport and security fees had, by then, become commonplace in the North East:

The householder Anāthapiṇḍada asked: ›With the permission of the Blessed One, I wish to institute a festival of the stūpa of the Noble Śāriputra.‹ The Blessed One replied: ›O householder, you may do it with my permission.‹ When Prasenajit, King of Kośala, had heard how the Blessed One had permitted to institute the festival of the stūpa of the Noble Śāriputra upon Anāthapiṇḍada's request, he thought: ›This is excellent, I too shall help with this.‹ He then sounded the bell and declared: ›Gentlemen, the city dwellers who live in Śrāvastī and the multitudes of people who have come together from other places, should listen: At the time when the festival of the Noble Śāriputra occurs, for those who have come bringing merchandise, there is no customs duty, no road toll or ferry toll. Therefore, they must be allowed to pass freely.‹ At that time, 500 overseas traders who had made a great deal of money from their ships arrived in Śrāvastī. They heard then how the king, sounding the bell in Śrāvastī, had ordered: ›Whoever, at the time when the festival of the stūpa of the Noble Śāriputra takes place, comes bringing merchandise, for those there is no customs duty, no road toll and no ferry toll. Therefore, they must be allowed to pass freely here.‹⁷

These two passages indicate that in Kośala (in modern-day Uttar Pradesh) during the reign of Prasenajit (fifth century BCE), the state resorted to tax collection, as a fiscal instrument, to fund its administration. The kingdom's close political and economic ties to Magadha make it unlikely that the two would have adopted two radically different revenue systems.

6 Ca, 73r7-v2. Pagination to the Tibetan of the Mūlasarvāstivāda *vinaya* refers to the sDe dge (Derge) bKa' 'gyur; see *The Tibetan Tripitaka*, ed. Barber. For quotations from the *Dharmaśāstras*, I generally draw on the work of Patrick Olivelle whose command of this material is without parallel.

7 *Kṣudrakavastu*, Tha, 246v3-247r1.

In short, it is probably safe to assume that Magadha, just as Kośala, levied customs duty on goods in transit and charged travellers for the use of its highways and ferries, but issued on occasion exemptions to certain groups.

These records of early tax immunity preserved in the Buddhist monastic code have parallels in brahmanical literature. The law codes set out in its treatises of political science introduce a consistent and carefully calibrated set of principles of exemption. The third- or fourth-century *Arthaśāstra*, most prominently, establishes that all goods transported for religious purposes escape taxation:

The following should pass without customs duty: [...] articles received on the occasion of a sacrifice, a religious ceremony, or a birth; articles for use in special rituals such as divine worship, tonsure, Vedic initiation, first shave and consecration for a religious observance.⁸

Kauṭalya was not the only to issue tax privilege to the members of religious orders. Other sources put forth a similar immunity. The *Āpastamba Dharmasūtra*, too, exempts ascetic practitioners (*tapasvin*) from all revenue obligations:

The king should get [the security officers] to collect lawful taxes. The following persons are exempt from taxes: vedic scholars, women of all classes, pre-pubescent boys, those who are living in someone's house for the purpose of study, ascetics devoted to the Law (*tapasvinaś ca ye dharmaparāḥ*) [...] and those who are excluded from acquiring property.⁹

The *Vasiṣṭha Dharmasūtra*, in turn, extends tax privileges for renunciants (*pravrajita*) to other members of society:

There is no tax (*śulka*) on [...] craftsmen, children, and messengers; on what is received as alms or what remains after a robbery; and on vedic scholars, wandering ascetics (*pravrajita*), and sacrifices.¹⁰

Further exceptions appear in the *Mānava Dharmasāstra* and *Vaiṣṇava Dharmasāstra*.¹¹ Both institute tax immunity to (pregnant) women, young boys, vedic students and renunciants prohibited from acquiring property. Some texts also broaden the privileges to include exemption from transportation fees at river crossings. The *Vasiṣṭha Dharmasūtra* contains a particularly detailed account:

The following [people] are exempt from tolls: vedic scholars, officials of the king, destitutes, wandering ascetics (*pravrajita*), children, old people, youngsters and new mothers as also couriers, young women and widows. If someone crosses a river swimming, he should be made to pay one hundred times the toll.¹²

8 *Tibetan Tripiṭaka*, ed. Barber, KA, 2.21.18.

9 *Dharmasūtras*, ed./trans. Olivelle, 2.26.9-17.

10 *Dharmasūtras*, ed./trans. Olivelle, 19.37.

11 *Manu's Code of Law*, ed. Olivelle, 8.407; *Law Code of Viṣṇu*, ed. Olivelle, 5.131-132.

12 *Dharmasūtras*, ed./trans. Olivelle, 19.23-25.

I cite these last few passages for the consensus they display. The views they articulate spring perhaps from a common source or direct borrowing from one another. But this does not compromise their value: the fact that their authors all agree on the same exemptions shows just how widespread these privileges had become.

The tax code(s) of the *dharmasāstras* offer immunity to those without ready access to wealth, in particular to practitioners of religion. Yet, they do not align well with the excise disputes preserved in the Mūlasarvāstivāda *vinaya*. That text records many episodes where Buddhist monks and nuns were required to pay customs duty. Initially, the Buddha is content to lay down the general principles that govern customs violations:

At a time when the Blessed One had realised the unsurpassed gnosis but had not [yet] spread the teaching, at the time when it was easy to rebuke monks but hard to rebuke householders, at that time a large group of monks travelled the country in the company of friendly merchants. When they had come to a customs office, the monks said to the merchants: ›Respected Gentlemen, we have some goods that are liable to duty. So that the customs officers shall not begin to assess the duty [for those goods], could somebody smuggle [the goods] past the customs office and then give them [back to us]?‹ The merchants replied: ›Noble Sirs, we are happy to comply with your request and smuggle [the goods past the customs office].‹ The merchants then smuggled the monks' goods that were liable to duty past the customs office and gave them [back]. As the monks continued their journey, they arrived eventually at a *vihāra*. Here a [local] monk greeted them: ›Venerable Sirs, welcome, welcome. Did you travel well? Were you not harassed by customs officers (*śaulkika*), security forces (*gaulmika*) or ferrymen (*tārapaṇyika*)?‹ The monks replied: ›Venerable Sirs, we travelled well and were not harassed by anybody.‹ The monk then enquired: ›Did you not have any goods liable to duty?‹ They replied: ›It is true, we had goods liable to duty but [our] merchant friends smuggled them past the customs office and then gave them [back to us].‹ The [local] monk replied: ›Is it fitting for you to evade arrival duty?‹ They replied: ›Whether it be fitting or unfitting, that is the way in which we smuggled [our goods].‹ The monks then grew remorseful, fearing that they had exposed themselves to an offence leading to expulsion, and recounted in detail the incident to the [local] monks. Those, in turn, reported it to the Blessed One who declared: ›O monks, those monks [here] are free from fault, but monks must not embark on the evasion of arrival duty. If they embark on the evasion of arrival duty, they come to be guilty of an offence.‹¹³

This passage is the first in our *vinaya* to recount a dispute at the customs office. But it also contains interesting detail about the status of monks and their proximity to the mercantile sector. First, it corroborates recent research which establishes that Buddhist monks (and nuns) were allowed to possess personal property, sometimes on a large scale. In this episode, their property was so substantial as to be liable to customs duty. Second, it sets out, beyond doubt, that the followers of the Buddha were expected to pay tax as they crossed administrative boundaries. This cannot be readily reconciled with the immunities offered to men of religion set out in the brahminical law books. Third, the monks asked a group of

13 *Tibetan Tripiṭaka*, ed. Barber, Ca, 72v6-73r7.

supportive merchants to help them smuggle their possessions past the customs office: they clearly feared close scrutiny of their baggage. This suggests that these monks and merchants travelled together or were very close, perhaps both. Finally, their local peers appear surprised when our travellers report that they enjoyed hassle-free travel and smooth passage through the customs point. To them, this was highly unusual: evidently Buddhist monks usually expected trouble when passing through customs.

Categories of taxation in ancient India

The brahmanical treatises of political science distinguish between six main forms of taxation: annual tribute paid on land (*bali*), tax on earnings (*bhāga*), income tax (*veśya*), sales tax (*vaṇik*), a special tax levied on top of the king's regular share (*kara*) and customs duty (*śulka*). The reach and content of these taxes is not always clear, even though they are all well attested in our sources. I shall now discuss, briefly, the most important fiscal instruments in ancient India.

First, let us examine *bali*. The *Nāradaśmṛti* identifies *bali* as a synonym for *bhāga*: ›The king's revenue comes from another source called ›one-sixth of the earth‹ (*bhūmeḥ ṣaḍ-bhāga*).¹⁴ This levy (*bali*) constitutes his wages for protecting his subjects.‹ The *Vaiṣṇava Dharmaśāstra*, in turn, describes *bali* as an annual tax payment that includes *bhāga* as well as several other levies:

From his subjects the king should collect as taxes (*bali*) every year a sixth portion of the grain, as also of all other crops; two percent of farm animals and gold, as also of clothes; and an eighth portion (*āṣṭabhāga*) of meat, honey, ghee, herbs, perfumes, flowers, fruits, roots, juices, vegetables, leaves, skins, earthenware, stoneware, and wicker articles.¹⁵

Bhāga constituted a levy on earnings. It is often interpreted as the main tax and represents the king's share of all profits. Most sources speak of it as a sixth part of one's income.¹⁶ *Bhāga* was indexed to land. It was typically paid by peasants through agricultural produce. It was a universal tax that knew no exemption: ›Even forest dwellers, therefore, present one-sixth of their gleanings, with the thought: ›This is the share of him who provides protection‹.‹¹⁷ The *Mānava Dharmaśāstra* offers the following definition of *bhāga*:

Of livestock and gold, the king shall take one fiftieth share (*bhāga*), and of grains, one eighth share, or a sixth or a twelfth. He shall also take a sixth share of trees, meat, honey, ghee, perfumes, herbs, condiments, flowers, roots, fruits, leaves, vegetables, grass, skins, cane, earthen vessels, and everything made of stone.¹⁸

14 Lariviere, *Nāradaśmṛti*, 18.45.

15 *Law Code of Viṣṇu*, ed. Olivelle, 3.22-25.

16 Scharfe, *Investigations in Kauṭalya's Manual*, 160-1611; *Tibetan Tripiṭaka*, ed. Barber, KA, 2.15.3; 2.6.3, KA, 1.13.2-9.

17 *Tibetan Tripiṭaka*, ed. Barber, KA, 1.13.9.

18 Manu, *Manu's Code of Law*, ed. Olivelle, 7.130-132.

The third type of tax is called *kara*. It is usually interpreted as a special, one-off, tax payment.¹⁹ This is also the view of the *Arthaśāstra*: ›[A demand for this tax (*kara*)] should be posed only once, not twice.‹²⁰ The *Manāva Dharmasāstra*, however, does not agree. It considers *kara* to be a tax specifically collected from merchants, at regular intervals throughout the year:

The king should levy taxes (*kara*) on traders after taking into consideration the price of purchase and sale, the distance of transport, maintenance of other expenses, and the cost of security. [...] As leeches, calves, and bees eat their food a little at a time, so a king should gather annual taxes (*kara*) from his realm a little at a time.²¹

I turn now to *śulka*. In essence, *śulka* is a tax imposed on movable property, charged at border crossings and administrative boundaries. In many ways, it corresponds to modern-day customs duty. Manu, in his *Manāva Dharmasāstra*, explains that *śulka* is distinct from *bali*, *bhāga* and *kara*:

When he protects Vaiśyas with his weapons, [a Kṣatriya] may collect a levy (*bali*) in accordance with the Law: from Vaiśyas, one-sixth share (*bhāga*) of the grain crop and a duty (*śulka*) of one-twentieth on other commodities, with a minimum of 1 *kārṣāpaṇa*; from Śūdras, artisans and craftsmen, the contribution of their services.²²

The *Vaiṣṇava Dharmasāstra* distinguishes between duty on domestic goods and duty on merchandise that has been imported:

The king takes as his share (*bhāga*) one sixth of the good and bad deeds of all his subjects. Furthermore, he should levy a duty (*śulka*) of ten percent on merchandise produced within his realm, and five percent on merchandise produced in a foreign country.²³

These last few quotations, although useful for the rates they disclose, do not position *śulka* within the wider system of taxation. This is done in the *Arthaśāstra*. The *Arthaśāstra* is the first brahmanical law book to describe Indian state revenue collection in detail. It distinguishes between tax collected in the city and tax collected in the country. Many city levies were connected to trade and manufacture: (1) duty (*śulka*), (2) calibration fees (*pautava*), (3) payments to the director of the mint (*lakṣaṇādhyakṣa*) and (4) to the director of passports (*mudrādhyakṣa*), (5) liquor tax (*sūra*), (6) slaughter fees (*sūnā*), (7) fees resulting from the sale of ready-made goods (*sūtra*, *taila*, *ghṛta*, *kṣāra*), (8) penalty charges for the fraudulent manipulation of merchandise (*paṇyasamsthā*), (9) income tax (*veśya*), (10) gambling tax (*dyūta*), (11) property tax (*vāstuka*), (12) tradesmen tax (*kāru/śilpin*) and (13) a gate levy (*dvāradeya*).²⁴

19 Scharfe, *Investigations in Kauṭalya's Manual*: 163; Brucker, *Wirtschaft und Finanzen*, 109.

20 *Tibetan Tripiṭaka*, ed. Barber, KA, 5.2.17-30, esp. 30.

21 Manu, *Manu's Code of Law*, ed. Olivelle, 7.127, 129.

22 Manu, *Manu's Code of Law*, ed. Olivelle, 10.119-120.

23 *Law Code of Viṣṇu*, ed. Olivelle, 3.28-30.

24 *Tibetan Tripiṭaka*, ed. Barber, KA, 2.6.2.

Country taxes are more diverse in nature. They were charged for services and produce:²⁵ (1) levies collected from the king's own holdings (*sītā*)²⁶, (2) tax on the yield of private holdings (*bhāga*), (3) a special tax (*kara*), (4) sales tax (*vaṇik*), (5) payments to river guards (*nadīpāla*), (6) fees for river crossings (*tara*), (7) hire charges for the use of government boats (*nāva*), (8) payments to guards stationed in coastal/riverside areas (*pattana*), (9) road tolls (*vartanī*) and (10) surveying fees (*rajju*).

In light of the reach of governmental tax collection, the Buddhist community did well to seek to protect its assets. As its members developed its economic interests – in large measure in close alliance with the mercantile sector – they identified strategies to argue for substantive exemptions. Some derived from tax privileges long held by their brahmanical peers, other focus on the non-commercial nature of the Saṅgha's wealth. It is to these claims that I shall turn next.

Buddhist calls for tax exemptions

Alarmed by the mounting demands at customs in response to the growing wealth of their monasteries, Buddhist legal experts began to draft proposals to effect changes in tax policy. In particular, they sought to influence the profile of the tax register and have certain items removed from it altogether. Predictably enough, they set out to secure tax immunity for those transactions that underpinned the wealth of their monasteries: the donations of their lay practitioners. The commentators sought this not only for property offered to the Buddha, Dharma and Saṅgha, but included goods gifted within the family unit of a monk. To them, religious donations constituted non-commercial property which should not be included in the tax register at all.

Most prominently, Śākyaprabha held that all goods, carried for reasons other than profit, should be exempt from tax. Initially, he envisaged such dispensation to apply only to the monks' utensils (*upakaraṇa*), but soon came to include medicine, travel provisions and other items of daily use. He puts forth his arguments in the *Mūlasarvāstivādiśrāmaṇerakārikāvṛttiprabhāvati*:

›Merchandise‹ is produced to be traded for a profit. Therefore [articles] which are not merchandise are not liable to duty. So, the utensils for living of ascetics should be recognized to be unsuitable for duty assessment. If the ascetics' utensils for living are nevertheless deemed liable to duty, one should under no circumstances embark on that particular journey. The authority on this is the [*Vinaya*]*vibhaṅga* where the [Buddha] forbids this, declaring: ›One must never embark on a journey [with] articles liable to duty.‹²⁷

25 *Tibetan Tripiṭaka*, ed. Barber, KA, 2.6.3.

26 Scharfe, *Investigations in Kauṭalya's Manual*, 243-245.

27 *Tibetan Tripiṭaka*, ed. Barber, Śu, 100r4-5.

Śākyaprabha then widens his call for immunity to all property that is not traded in business transactions:

Therefore, only [articles] produced for trade in the world warrant duty assessment, but other [goods] do not. The Blessed One said: ›Since the secular authorities consider a single woollen cloth to be of great value, because the ascetics' utensils for living are not liable to duty, you should ship it with your utensils [only] after you have turned it into a robe.‹ Well then, why did the Blessed One say: ›In order to achieve exemption from duty [for the cloth], dip it into water or fray it; [only] then should you ship it?‹ He said this because he thought: ›Such [conduct] is without reproach. If customs officers spot multiple utensils, they become suspicious that these might be fit for duty assessment. It is not good if they then file charges.‹ Others hold that the Buddha said this in order to achieve duty exemption for [utensils] that have turned into merchandise.²⁸

In this extract, the Buddha's view, as quoted, rests on the premise that mendicant utensils normally are not tax exempt. He therefore advises monks not to carry utensils in large volume: shipments of commercial scale will incur customs duty. Finally, the Buddha instructs his monks how best to sidestep all charges on new, unfinished cloth: make it look old.

Several monks heeded his advice to conceal the nature of their shipment at customs. The *vinaya* recalls an episode where a roll of uncut cloth lands a monk in conflict with the law:

The Buddha, Blessed One was dwelling in Śrāvastī, in the Jetavana, in the garden of Anāthapiṇḍada. At that time, a certain monk was admitted to stay for the summer in Rājagṛha. After the three months of the summer had passed, without him acquiring a [new] robe [first], he set out for Śrāvastī to pay homage to the Blessed One. His [fellow] monks then advised him: ›Venerable Sir, better do not hurry away until you have obtained a [new] robe.‹ When he did not stay because he resented [the delay], a monk gave him an uncut roll of cloth. He then thought: ›If [I] were to render this cloth permissible (*ruṅ̃ bar byed pa*), I would not [have time to] see my fellow mendicants. Therefore, I shall have a friendly monk render it permissible.‹ He then said to the friendly monk: ›While I look up [some] fellow mendicants, please render this uncut roll of cloth permissible and put it into my bag.‹ Since [the friendly monk] was a lazy person, he did not render [the cloth] permissible but placed it directly into the bag. After the [first] monk had travelled [for a while], carrying the bag, he arrived eventually at a customs office. The officer said: ›Noble Sir, do you have any goods that are liable to customs duty?‹ ›Respected Gentleman, I do not.‹ ›Please allow me then to carry out a search.‹ When the officer began to examine [his luggage] he spotted the cloth and said: ›Noble Sir, you went forth to the well-spoken Dharma/Vinaya, so why do you lie to me for the sake of this uncut roll of cloth?‹ The monk replied: ›Respected Gentleman, I did not know [about it]. When I received this uncut roll of cloth on my departure, I said to a friend: ›While I look up [some] fellow mendicants, please render this uncut roll of cloth permissible. Then put it into my bag.‹ Since [my friend] is a lazy person, he did not render it permissible but placed it directly into my bag.‹ The customs officer replied: ›Noble Sir, he is not your friend but, in this case, he is my friend. Therefore, please give to me [now] the customs duty that is due and leave.‹²⁹

28 *Tibetan Tripiṭaka*, ed. Barber, Śu, 100r7-v3.

29 *Tibetan Tripiṭaka*, ed. Barber, Ca, 81r3-81v6.

The passage does not explain what process turns an uncut or raw cloth into a permissible, tax-exempt cloth. Perhaps the cloth needed to be sewn into a robe to pass customs, or perhaps be soiled into a worn-looking rag. The term ›render it permissible‹ (*ruñ bar byed pa*) is not infrequent in the Mūlasarvāstivāda *vinaya*, mostly linked with rolls of cloth sewn into robes and the preparation of food.³⁰

A little later, another *vinaya* commentator, Vinītadeva (c. eight cent.), draws on this and other passages to draft an overarching principle of exemption for Buddhist monks. His *Triśa-takārikāvyaḥkyāna* says that property which lacks commercial value, personal possessions and goods belonging to others should be tax-free:

What sort of articles in particular are liable to customs duty? [Articles] that the secular authority has established to be of commercial interest, but not those intended for [personal] use, such as garments; what has been dedicated to others is not [liable to duty] either, nor is gold.³¹

The Saṅgha argued for these exemptions to be extended to gifts and materials used in worship. Both of these mattered, since a large proportion of lay sponsorship reached the Saṅgha as offerings and ritual provisions. In the *Vinayavibhaṅga*, we encounter two episodes that flag up complications that derive from unguarded donations.³² The second discusses donations to the Saṅgha:

On his travels through the country, the monk prepared three bags filled with multi-coloured cloth destined for the Buddha, Dharma and Saṅgha. After he had stayed for as long as he liked in the country, he took his begging bowl and cloak, and departed for Śrāvastī. After he had travelled for a while, he arrived eventually at a customs office. The tax officer said: ›Noble Sir, do you not have any articles liable to customs duty?‹ The monk replied: ›Respected Gentleman, I do not.‹ The customs officer then said: ›Please allow me to inspect [your luggage].‹ When [the officer] began to examine [the luggage] of the monk and spotted three bags filled with multicoloured cloth, he said: ›Noble Sir, these three bags filled with multicoloured cloth may be small, but you are [still] required to pay duty as if they were to amount to a camel load.‹ The monk replied: ›Respected Gentleman, I am not the owner of these [bags].‹ ›Noble Sir, well then, to whom do they belong?‹ ›One belongs to the Buddha, one belongs to the Dharma and one belongs to the Saṅgha.‹ ›Noble Sir, since I do not know either the Buddha, Dharma or Saṅgha, hand over the duty payment and leave.‹ [Since the monk could not pay,] the officer locked him up for a long time and then let him go. When the monk arrived eventually in Śrāvastī, he grew remorseful and told the [local] monks what had happened. They, in turn, reported it to the Blessed One who declared: ›O monks, this monk is without offence, but he should not have gone about it in that way. He should have spoken a commendation of the Buddha, Dharma and Saṅgha in front of the customs officer. (At this point the Buddha gives a long laudatio of the Buddha, Dharma and Saṅgha.) If [the officer] lets him go after he has spoken such commendation of the Buddha, Dharma and Saṅgha, it is good. If he does not let him go, [the monk] should proceed to pay the customs duty.‹³³

30 For instance, *Tibetan Tripiṭaka*, ed. Barber, Cha, 58v2–63v3, esp. 60r1– 61v2.

31 *Tibetan Tripiṭaka*, ed. Barber, Śu, 189r7–v1.

32 *Tibetan Tripiṭaka*, ed. Barber, Ca, 75v5–76v4; Ca 76v5–78r4.

33 *Tibetan Tripiṭaka*, ed. Barber, Ca, 77r2–78r1.

This passage alerts us to an important aspect of tax liability: ownership. The monk argues that the rolls of cloth he carries in his luggage belong to the Buddha, Dharma and Saṅgha even though he has as yet to hand them over. The question of possession is not brought up at all (Ca, 77r5-6). Had the monk held papers linking the cloth to the Triple Jewel, he would, one imagines, been waved through. But perhaps our monk was simply unlucky. The officer did not recognize him as a follower of the Buddha and so failed to perceive the religious destination of the shipment; if he had, he might have acknowledged the immunity. Both ownership and provenance clearly mattered in tax law. Its treatises call for all goods, and especially those from abroad, to bear a stamp and be accompanied by transit papers that identify their owner, origin and destination (eg, KA, 2.21.2). Since the monk cannot produce any papers, the customs officer assumes the cloth to be his own.

Over time, as the donations it received grew in scale, the Saṅgha began to clamour for religious offerings, as a category, to be removed from the tax register. It stood to suffer significantly if the current regime was to be kept in place. Śākyaprabha was again the most outspoken critic of current practice:

The *[Vinaya]vibhaṅga* says: ›If [a monk] carries [goods] destined for the Triple Jewel or [his] parents, he should speak their praise [to avoid duty payment] or carry them after he has paid up.‹ [This is so] because [the Buddha] said: ›When [a monk] pays [duty] on anything [he carries]‹, he should realise that it is then identified to be [an article] that turned into merchandise. This is also possible since the Blessed One permitted it, saying: ›[He] will carry [them] as merchandise.‹ If, however, [the articles] are not merchandise and he is under a lot of pressure at the time, since he is told that this precisely is customary for ascetics, he is under close scrutiny. The Buddha's statement: ›After [a monk] who is under close scrutiny pays the duty‹, should be understood as explanation because it is similar to a payment.

The authority on this is the **Mūlavibhāṣā (rtsa ba'i bye brag tu bśad pa)*: ›if [the articles] are [already] the property of a stūpa or Saṅgha, he should not defray duty from what it is that he has to carry destined for a stūpa or a Saṅgha. Why? Because [he] does not carry this as a means to conduct business. He should never take [anything] from those articles even though they may resemble merchandise. But why? [Because] he carries them in order to worship, not in order to make a profit. If [the articles] belong [already] to [his] teacher, preceptor, father or mother, he should not defray duty from what he carries destined for his teacher, preceptor, father or mother. Why? Because [he] does not carry them as a means to conduct business. He should never take [anything] from those articles even though they may resemble merchandise. But why? [Because] he carries them in order to worship, not in order to make a profit. They are gifts. For example, if one were to carry [a gift] to one region or another, [the monk] should not defray duty from that [gift]. Why? [It is as I said] before, ending in: ›He carries [the article] as a gift, not to make a profit.‹ If it is an article of [general] use, he should never defray duty from what he carries for its use, whatever it may be. [It is as I said] before, ending in: ›He carries [the article] for its use, not to make a profit.‹³⁴

34 *Tibetan Tripiṭaka*, ed. Barber, Śu, 100v4-101r4.

For Śākyaprabha, profit alone legitimates taxation. Goods that change hands outside a commercial framework do not generate income and should hence be exempted from tax. Donations to the Saṅgha yield spiritual merit, not financial return. Irrespective of their origin or appearance, they do not qualify as merchandise. The act of offering is completed the moment the donor resolves to carry out the donation, not at the point of transfer. As a result, goods intercepted at the customs house *en route* to the recipient no longer belong to the donor. He cannot be asked to pay tax for property that he no longer controls.³⁵

Śākyaprabha calls for changes to the tax register; he does not incite to tax evasion. The Saṅgha understood the need to comply with the treasury's tax demands. In the *vinaya*, tax evasion features among the *pārājika* offences as a specific type of theft, punishable through permanent expulsion. Dharmamitra (c. 800), in his *Vinayasūtraṭīkā* (D4125), points out the dangers tax violations bring to the community: ›In order to avert a law-suit with the customs officers, etc., it is said that [monks] should not travel with [goods] liable to taxation.‹³⁶ Guṇaprabha, two centuries before him, already called for full compliance with the law:

Any property that is liable to duty, even if it is dedicated to the Triple Jewel or [to one's] parents, if the custom officer does not permit it, must be surrendered to customs. If it is not handed over [for tax assessment], it is a serious offence.³⁷

Status, power and religious aspirations

Let us now step away from our Buddhist sources to explore their links to the religious and secular contexts within which their authors articulated their calls for tax exemption. Very early on, perhaps already during the lifetime of Śākyamuni himself – if we can trust the later monastic codes – Buddhist mendicants came to be granted tax privileges. Initially, these exemptions were instituted for specific festivals, but already applied then to the mercantile sector. Merchants, we now know, enjoyed a particularly close association with the Saṅgha and played a major role in its rise to prominence in India, and beyond.

As the Saṅgha began to acquire ever increasing wealth, mainly through donations, it began to put in place measures to protect its assets. Chief among these were its efforts to secure tax exemptions at borders when its monks crossed from one administrative sector to another. The *vinaya* documents several instances of clandestine evasion, usually by individual monks and on a small scale. Without exception, its authors condemn all forms of tax violation, fearing legal repercussions for their peers and the community at large. Before long, however, they began to explore ways to minimize customs exposure, by making new goods look old, and the like.

But these constituted feeble responses to a much larger problem: with the steady increase of donations to the Saṅgha, in both volume and frequency, its tax liabilities began to rise to new levels. This would have affected the Saṅgha's treasury, to be sure. But more importantly perhaps, it would have soured its relationships with the donors who expected their entire

35 This argument is not without difficulty since the *vinaya* allows lay donors to retain a degree of control and ownership over their donations. This applies in particular, but probably not only, to donations of monastic property, such as temples, fittings and furniture. For several papers that touch on the topic of ownership of donations, see: Schopen, *Buddhist Monks and Business Matters*, in particular 219-259.

36 *Tibetan Tripitaka*, ed. Barber, 'U, 116r2.

37 *Tibetan Tripitaka*, ed. Barber, Lu, 55r7-55v1.

gifts to be available to the community to secure the highest possible merit in return. In short, the community needed to find a way to control its tax liabilities so as to protect existing assets and to retain its links to the lay sector for future donations. Its preoccupation shifted from tax disputes that involved individual monks to a more far-reaching challenge that would protect all donations from the probing eyes of the inland revenue.

It is difficult to pinpoint the moment when this challenge unfolded. The *vinaya* itself does not document any such effort. Discussions about the taxable status of donations appear first in the commentaries on the *vinaya*. Some of these were compiled in the 7th century CE, others later still. They were written at a time when Buddhist monasteries in India approached the apex of their wealth and prestige; at a time when the Saṅgha would have been in unprecedented receipt of donations.

The arguments our commentators put forward in support of tax exemption for donations are very simple. First, donations do not constitute commercial transactions; they do not serve to generate income. As a result, they fall outside the tax register and should be exempted. It is not clear whether this contention ever gained traction. It is not documented outside Buddhist sources. While plausible and in line with contemporary tax theory, it does not appear in the premodern Indian tax treatises that I consulted for this study. Such a concession would have led to a significant loss of revenue for the state, in particular during the efflorescence of Buddhist monasticism (sixth to tenth centuries CE).

Second, these commentaries argued that monks and nuns should be exempt from paying taxes because their brahmanical peers enjoyed this very status, and had done so for centuries. The *vinaya* commentaries call on the authority of the *dharmasāstras* to give weight to this contention. It is true that practically all extant law books issue immunity from taxation to renunciants, from Manu to Kauṭilya. Apastamba (first cent. BCE?) ranks among the first to propose this exemption:

The king should get [the security officers] to collect lawful taxes. The following persons are exempt from taxes: vedic scholars, woman of all classes, pre-pubescent boys, those who are living in someone's house for the purpose of study, ascetics devoted to the Law [...] and those who are excluded from acquiring property.³⁸

If brahmanical ascetics enjoy freedom from taxation, so should their Buddhist peers, the commentaries propose. *Prima facie*, this is a cogent stance since it calls for parity before the law. The devil is in the detail, though. While Buddhist and Brahmanical mendicants aspired to a similar soteriological goal and deployed cognate methods to achieve salvation, their personal circumstances could be very different. Buddhist monks were allowed to own personal property, and many did so. The monastic codes of all schools record instances where monks and nuns bring considerable private wealth to the Saṅgha, wealth which they continue to control even after ordination. As a result, at customs points, toll booths and river crossings, Buddhist monks constituted rich pickings. They would have been a lucrative source of revenue for the treasury. To be sure, not all monks enjoyed the privilege of wealth and few would have carried their possessions across boundaries, but those who did would have become welcome targets.

38 *Dharmasūtras*, ed./trans. Olivelle, 2.26.9-17.

The life of Brahmanical ascetics, in contrast, was governed by a strict code of renunciation and self-denial (see Kanad Sinha in this issue). Gautama,³⁹ Vasiṣṭha⁴⁰ and Manu,⁴¹ all require religious mendicants to make do with minimal provisions:⁴²

To achieve success, [the renunciant] must always wander alone, without any companions; recognizing that success comes to the solitary man, he will forsake no one and no one will forsake him. He should live without fire or house, enter a village to obtain food, be dispassionate, keep no store, and remain a silent sage and mentally composed. A [begging] bowl [to collect food], the foot of a tree [as lodging place], a ragged piece of cloth [as garment], a solitary life, and equanimity towards all – these are the marks of a renunciant.

A wandering ascetic should be shaven-headed, free from selfish yearning, and without possessions. He should go randomly to seven houses to beg for almsfood at a time when smoke is not rising from the kitchens and the pestles have been laid aside. He should wrap himself with a single piece of cloth or with an antelope skin. Covering his body with hay cut for the cows, he should sleep on the ground. Let him not keep a fixed residence, staying at the outskirts of a village, in a temple or an abandoned house, or at the foot of a tree. [...] Living always in the wilderness, let him never walk within sight of village animals.⁴³

More importantly to us, the brahmanical ascetic was not allowed to engage in business transaction of any kind: ›[...] Transactions (*vyavahāra*) other than these shall not be valid, as also those executed by dependents [...], a notorious criminal, renouncer (*pravrajita*), cripple or someone who has fallen on hard times.⁴⁴ According to Gautama, he even lost the right to ownership of property that had been taken away from others:

When others make use of the property of a person who is neither mentally incapacitated nor a minor before his very eyes for ten years, it belongs to the user, unless the user is a vedic scholar, a wandering ascetic (*pravarjita*), or a royal officer.⁴⁵

Without access to substantive wealth of any kind, the brahmanical mendicant was of little interest to the tax collectors of the king. Poor, protected by the law and with no ties to the world, he easily navigated customs offices and toll stations on his travels. Not so the Buddhist monk. He often commanded personal wealth and was a member of an affluent organization that had erected monasteries across India and enjoyed close ties with the mercantile sector.

This prosperity propelled both the Saṅgha's pleas for tax exemption and the state's rebuttal of their claims. The followers of the Buddha sought to retain the community's wealth in order to maintain the monasteries it had built and expand its reach across the subcontinent.

39 *Dharmasūtras*, ed./trans. Olivelle, 3.11-25.

40 *Dharmasūtras*, ed./trans. Olivelle, 10.1-29.

41 Manu, *Manu's Code of Law*, ed. Olivelle, 6.33-60.

42 Manu, *Manu's Code of Law*, ed. Olivelle, 6.42-44.

43 Vasiṣṭha, *Dharmasūtras*, ed./trans. Olivelle, 10.6-16.

44 *Tibetan Tripiṭaka*, ed. Barber, KA, 3.1.12.

45 *Dharmasūtras*, ed./trans. Olivelle, 12.37-38.

Its lawyers, rather cleverly, drew on religious and cultural values that shaped Indian society at the time to legitimize exemption. Buddhist monks called for tax immunity because they had long been granted to their Hindu peers; they considered them justified because they viewed all aspects of their activity religious, and hence beyond the remit of the state. Tax collection should not be allowed to compromise the scope of their institutional aspirations. The wealth that the monasteries had accumulated belonged ultimately to the Buddha. It sprang from the donations of their patrons in order to secure spiritual merit. The communities he founded put these resources to good use in order to safeguard the survival of his teachings. The property of the Saṅgha was thus quite divorced from lay aspirations of profit and power. Much of this property may have originally sprung from lucrative trade and shrewd investments, but once handed over to Buddhist communities, these links were severed. Now removed from society and the rules that govern it, just as the monks and nuns who managed the Saṅgha's wealth, the king had lost all claim to it.

The inland revenue disagreed with this interpretation. Its officers rejected the monks' claims to tax exemption. To them, the followers of the Buddha were fair game: mendicant or not. Their task was to appraise the value of the goods passing through customs, not the sanctity of their owners.

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Exemption not Granted: The Confrontation between Buddhism and the Chinese State in Late Antiquity and the ›First Great Divergence‹ between China and Western Eurasia

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Starting from the end of the fourth century, the Buddhist monastic community in China entered a protracted confrontation with a variety of political regimes, Sinitic and barbarian, significantly affecting their own processes of state formation and the reconstitution of a unified empire after a long period of division. Although elites and rulers often lavished patronage upon the clergy, and used Buddhism to buttress their authority, the overall response of these regimes, especially in the north, was unforgiving. Four persecutions from 446 to 955 and increasingly tight regulation effectively undermined monastic prerogatives, ultimately thwarting the emergence of a Buddhist ›church‹ in China. The last major episode of suppression intriguingly took place only a few years before the founding of the Song dynasty (960-1279) and China's subsequent transition towards what many historians have seen as her first modern period. Buddhism did live on in the new era, but as a social body it was terminally hamstrung by the state's inflexible grip.

Comparing this trajectory to the fortunes of Christianity in the late antique Mediterranean and then in early medieval Europe raises several counterfactual questions. One of the most important perhaps concerns the long-term effect that religious exemption, or the lack thereof, respectively had on imperial state formation on the two sides, in what Walter Scheidel has called the ›First Great Divergence‹ between China and Western Eurasia. Whether the rise of the Christian church with its privileges may have decisively stood in the way of an imperial resurgence in the West is an already old question; but whether, conversely, the Chinese state's successful confrontation with Buddhism was key to its extraordinary endurance as an imperial entity is a still largely unexplored avenue of inquiry, which this paper intends to probe.

Keywords: China; Buddhism; Late Antiquity; Great Divergence; taxation; religious exemption; population registration; imperial formation

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Did the Buddhist clergy enjoy forms of religious immunity in premodern China? In addressing this broad question, allow me to start with a mildly facetious warning: let's not take any exemption for granted; or put another way, let us bracket our assumptions about who would grant exactly what, and to whom. We need, in fact, to pierce through a thick layer of hindsight wrapping all those things we want to know about in the past – state, church, religion, to name but few.

My remarks will be mostly confined to medieval China, though not even this plain compound should be seen as entirely uncontentious. Several Sinologists, Michael Nylan for example, have cautioned that any backward projection of ›China‹ may mislead us »to imagine the early dynasties on the model of the modern nation-state«, rather than the contested purview of courts and elites presiding over fluid processes of ethnic and political formation.¹ As for the ›medieval‹, its catches have been exposed long enough for us to sense the awkward in its application to Chinese history between two major imperial breakdowns, the Han 漢 in the third century and the Tang 唐 in the tenth.² These caveats, to be sure, are only there to whisper critical nuance, not certainly to trumpet from the outset a terminological fundamentalism that would soon leave us speechless, should we rashly stick to it. But at least they should suggest reasons why the words ›Late Antiquity‹ are in my title. This paradigm, by no means undisputed in itself, may well lend narrative coherence to a significant swathe of global history: I have started suggesting elsewhere, and will do at greater length in forthcoming work, that the centuries in which the Roman empire dissolves and Christianity rises have interesting things to say when looked at from the perspective of the entire Old World *oikoumene*. The emergence, across boundaries, of communities defined by a new mode of discourse that we now identify as ›religion‹ is, in fact, a crucial marker of this period well beyond the Mediterranean, and most certainly in Buddhist Asia.³ Conceiving this shift as a tale of churches and states, of religious groups vying with secular rulers, would probably miss much of the process that brought these entities to define and establish themselves against each other through the negotiated devolution of a common metapolitical order.⁴ My global Late Antiquity starts therefore with the crisis and demise of the two great imperial formations at the opposite ends of the Old World, the Roman and the first Chinese empire, followed on both

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- 1 See her introduction to Nylan and Loewe, *China's Early Empires*, 2-3; cf. Teiser, *Reinventing the Wheel*, 42-43, 49. Such remarks are now frequent among scholars of modern and late imperial China, although still rare in historical discourse on earlier periods. For a forceful critique of the notion of ›China‹ in premodern history, see Dirlik, *Born in Translation*.
 - 2 On the trouble with the ›Medieval‹ see, among many others, Robinson, *Medieval, the Middle Ages*; Reuter, *Medieval*. On China in particular, see Barrett, *China and the Redundancy of the Medieval*, and Tanigawa, *Rethinking ›Medieval China‹*, 1-12.
 - 3 See Palumbo, *From Constantine the Great to Emperor Wu*, and Palumbo, *Buddhist Eschatology and Kingship*. Important critical reassessments of the concept ›Late Antiquity‹ are in Giardina, *Esplosione di tardoantico*; Marcone, *Tarda antichità*; Marcone, *Long Late Antiquity*; James, *Rise and Function*. I make no claim to break entirely new ground: S. A. M. Adshead, for example, has seen a ›China in Late Antiquity‹ between 400 and 1000 (although that chiefly meant mapping China's history against the latter period in the West), and Jerry Bentley proposed a global ›post-classical age‹ from about 500 to 1000 AD. See Adshead, *China in World History*, 54-108, and Bentley, *Cross-Cultural Interaction*, 763-766 (partly contradicted in Bentley, *Hemispheric Integration*). Neither periodization, however, takes Late Antiquity seriously (and both leave out the fourth century, arguably the defining segment of this age).
 - 4 See Palumbo, *From Constantine the Great to Emperor Wu*, 118-122, and pp. 131-143 in this paper.

sides by political and social fragmentation and the simultaneous ascendancy, from the fourth century, of large social bodies centred on ›religion‹, what we call Christianity and Buddhism respectively. These remarkably similar trajectories, however, appear to have parted at the end of the sixth century. While the Chinese sphere then recovered a political, cultural and territorial unity that it was to keep until modern times, the Roman Empire never came back, as neither Byzantium nor the Islamic caliphates were able to reinstate comparable polities in western Eurasia. So, at least, some of those few who have peered out of regional histories have remarked.⁵ One of them, Walter Scheidel, has called this phenomenon the ›First Great Divergence‹, as opposed to *the* Great Divergence that Kenneth Pomeranz has set in modern times.⁶ According to Scheidel, this early parting of the ways between China and the West projected long shadows on their respective futures:

...the cyclical restoration of a China-wide empire in the East and the decline of empire and central government in the West, followed by the slow creation of a polycentric state system that proved resistant to any attempts to impose hegemony.

Entering modernity as a dynamic political pluriverse would have given Europe a fateful edge over its once-thriving East Asian counterpart. The rest is well known.⁷

Let me hasten to point out that I find this narrative none too convincing. One reason is that the imperial comeback at the end of the sixth century may have been far less of the watershed these scholars imagine, as the dynastic polities that made it were considerably more precarious than they admit. The Tang in particular, after a glorious ride of a hundred years, from the mid-eighth century could only cast a ritual authority over a largely fragmented territory that in 907 would shed even this fiction of unity. One should wait at least until the advent and consolidation of the Song 宋 from the end of the tenth century for the imperial cycle in China to acquire its unique endurance, but that would have been an altogether different world.⁸ Yet, a divergence there was, and after so much history in parallel one should be no less than intrigued at how it came about. What I would like to start assessing here is how the tugs of war, at times very warlike indeed, between newly emerging monastic bodies and political elites shaped the respective destinies of the Buddhist community and the imperial entity in China, before and until the latter seemingly found its alchemy for self-perpetuation, at the end of the first millennium of the Common Era.

5 See, for example, Adshead, *China in World History*, 55, and Lewis, *China between Empires*, 54.

6 Pomeranz, *Great Divergence*, influentially arguing that China and Europe shared a not too dissimilar path of development up to the Industrial Revolution. For a valuable long-term view of this question see now Davids, *Religion*, which focuses on the different role of religious institutions in the formation of human capital and the circulation of useful knowledge in China and Europe between 700 and 1800.

7 See Scheidel, *State Formation* (quotation on p. 11); also *Fiscal Regimes*, 194. Adshead, whose influence on Scheidel is apparent, had sketched similar insights (*China in World History*, 55).

8 For an excellent overview contrasting the radical changes in China between the eighth and the eleventh centuries, see Bol, *Neo-Confucianism in History*, 7-42. Note that even the Song is too early for some historians: according to Arif Dirlik, »[i]t was the Ming (1368-1644) and Qing (1644-1911) dynasties, following Yuan (Mongol) consolidation, that created the coherent and centralized bureaucratic despotism that we have come to know as ›China‹.« Until then, there had been »ongoing political fluctuation between dynastic unity and a ›multistate polycentric system‹« (Born in Translation).

The early centuries of Buddhism in China: exemptions without a religious order?

Even those who are less familiar with Buddhism will have been baffled by my hint above at its rise from as late as the fourth century AD. Didn't the Buddha live long before that, indeed long before Jesus? And was there not a Buddhist monastic community, the *saṃgha*, in place from the early days? In India, of course, Buddhist monks and devotion had been around since at least the time of the Maurya emperor Aśoka (third century BC). However, the normative image of a highly structured monastic community that emerges from the *vinayas*, the disciplinary codes of a number of Buddhist schools, earns very little corroboration from the extant epigraphic and archaeological record before the early centuries of the Common Era, as the research of Gregory Schopen has argued, profusely and trenchantly, for the past three decades.⁹ Even by the time when such normative standards were no doubt extant, from the third to the early fourth centuries AD, a Buddhist order was still much of a chimera, at least in places like the Central Asian kingdom of Kroraina, where an Indian community of part-time monks with wives, children, slaves, and properties had to rely on the local king for its own regulation.¹⁰

Be that as it may, we know that, in China, Buddhist worship and doctrines entered court circles around the turn of the Common Era. From the late second century, we learn of individual monks and monasteries, especially in connection to the translation activities of a few foreign masters.¹¹ But before the end of the fourth century, which means a considerable amount of time since our earliest evidence, there is very little suggestion of organized Buddhist clergies. Communal activities seem to have clustered around rather large sacred areas centred on a sanctum enshrining some kind of vestiges of the Buddha, statues or relics. These establishments, named in the sources as ›Buddha shrines‹ (*Futu ci* 浮屠祠) or simply ›*buddhas*‹ (*Futu* 浮屠), could seemingly host up to thousands of people on occasion, but what relationship they had with regular monks, or even whether regular monks as defined in the *vinayas* existed at all at this stage, is not altogether clear.¹²

This scenario is immediately relevant to the question of religious exemption, certain forms of which begin to be mentioned from the fourth century in consistently accusatory reports. Thus in ca. AD 335, the Xiongnu ruler Shi Hu 石虎, then holding sway in the northern part of a divided China and himself a Buddhist devotee, invited his Chinese officials to deliberate on whether such worship was appropriate for the common people in the hamlets and villages, and noted his concern that among the *śramaṇas* (Buddhist monks), now very numerous, there were some who were criminals or labour service dodgers (*biyi* 避役), and

9 See the numerous essays collected in Schopen, *Bones, Stones, and Buddhist Monks*; and *Buddhist Monks and Business Matters*, notably the discussion at 73-80. A useful summary of the state of our knowledge of the *vinayas* and their dates is in Clarke, *Family Matters*, 18-21.

10 On the monks of Kroraina see Hansen, *Religious Life in a Silk Road Community*, and van Schaik, *Married Monks*. The persistence of family ties in Indian Buddhist monasticism is extensively discussed in Clarke, *Family Matters*.

11 For standard accounts of this early stage, see Ch'en, *Buddhism in China*, 21-53, and Zürcher, *Buddhist Conquest of China*, 22-57.

12 I have given a preliminary inventory of the evidence for these establishments in Palumbo, *Apropos of the Stūpa of Kang Senghui*. On the terminological obscurity concerning Buddhist ›shrines‹ and ›monasteries‹ in the early period, see Barrett, *From Shrine to Monastery*.

many who were just not monks.¹³ Several decades later, in 404, a Southern lord has similar remarks: »evaders of labour service (*biyi* 避役) gather in a hundred hamlets, fugitives make crowds in monasteries and temples.«¹⁴ Again in the south, in 458, a ruler complains that the community of monks had turned into a »harbour for fugitives« (*busou* 逋藪).¹⁵ Some scholars have seen in these scattered records early indications of fiscal exemption for the monastic community.¹⁶ However, things are less straightforward and arguably more interesting. What we have here are in fact repeated references to fugitives, criminals, and people shirking corvée duties found in large numbers in Buddhist temples and among the monks. Nothing is said about any avoidance of or exemption from taxes in general. Labour service (*yi* 役) was a fiscal obligation of sorts for adult male peasants, who could be called on limited shifts of up to one month per year, normally in their locality; its brunt, however, was chiefly borne by convicts and enslaved prisoners, who would serve considerably longer terms in the harshest conditions and anywhere the state authority commanded them.¹⁷ The regular association in our early sources between fugitives and corvée absconders suggests that it was notably this group they had in view rather than the ordinary peasantry. Significantly, it does look as though Buddhist temples and monastic communities enjoyed some kind of extraterritoriality, since those evading arrest or labour conscription could find sanctuary in them. It remains to be seen whether such immunity attended to monastic status, or rather to the power of place. By the time of our records (fourth-fifth centuries) an organized *samgha* was no doubt emerging, but while nothing proves that Buddhist monks enjoyed special privileges, much would seem to suggest the opposite, as we shall see.

Some of our earliest evidence of a Buddha-shrine concerns Zhai Rong 窄融, a warlord in the Jiangsu 江蘇 region at the end of the Han, who around AD 194 used his authority to erect a very large sacred compound of this sort, reportedly making room for more than 5,000 people (a figure that could double on festive occasions). In order to attract devotees to his Buddhist foundation and allow them to »receive the doctrine« (*shou dao* 受道), Zhai

13 *Gaoseng zhuan* (T vol. 50 no. 2059), 385b28-c4; cf. Wright, Fo-t'u-têng, 354-356. All translations are mine unless otherwise noted. Shi Hu (r. 334-349) was a sovereign of the north in the short-lived Later Zhao 趙 dynasty; his request sparked the earliest official remonstrances against Buddhism on record in China.

14 *Hongming ji* (T vol. 52 no. 2102), 85a18-19, reporting the words of Huan Xuan 桓玄 (d. 404), who had freshly usurped the Jin 晉 throne in Jiankang and was then trying to crack down on the Buddhist clergy. Cf. Zürcher, *Buddhist Conquest of China*, 260, who (mis)understands *butao* 逋逃 in the second part of the sentence as referring to tax-evaders, as does Ch'en, *Chinese Transformation of Buddhism*, 92; not so Gernet, *Buddhism in Chinese Society*, 42.

15 See *Song shu*, 97.2386-87; also in *Guang hongming ji* (T vol. 52 no. 2103), 278b8-12. These were the words of emperor Xiaowudi 孝武帝 of the Liu Song 劉宋 (r. 454-465), ordering a purge of the clergy after a rebellion that had implicated a Buddhist monk. Here too, Zürcher (*Buddhist Conquest of China*, 261) sees a reference to »tax-evaders« that is just not in the text.

16 See above, note 14.

17 See Lewis, *Early Imperial China*, 286, 288-289; Pearce, *Status, Labor, and Law*, 92-95 and *passim*. The imposition of labour service on the general population could be far more severe, as in southern China at the end of the fifth century (see He, *Buddhism in the Economic History of China*, 8 n. 6), but the evidence remains occasional and counterintuitive (enslaving the peasantry on public works would rapidly have killed an agrarian economy). Under the Northern dynasties, in the fifth and sixth centuries, corvée exploitation of convicts progressively made room for the establishment of separate hereditary groups of bondsmen and servile households recruited from war captives and craftsmen with their families. The system, however, petered out during the Tang: see Pearce, *Status, Labor, and Law*.

Rong would exempt the local population from other corvée duties (*fu qi ta yi* 復其他役).¹⁸ In this case at least, we can be sure that those granted exemption from labour service were not monks, but laypeople from surrounding areas, and in droves.¹⁹ Although such a privilege appears to have ensued from the ad hoc initiative of a local leader, it stands to reason that a Buddha-shrine with its vast compound would be seen as justifying that privilege on sacred grounds. Indeed, one further document from the same third-century source points rather neatly in this direction. In a report on the kingdom of Han 韓 in the Korean peninsula, we read of shamanic precincts called *sodo* (Ch. *sutu* 蘇塗), large enough to be deemed as »separate districts« (*bie yi* 別邑), where heavenly spirits were worshipped around a sacred pole at the centre. The Chinese historian notes, »if fugitives get inside them, they (i.e. the masters of the *sodo*) never hand them over, as they are fond of those who practise banditry«; next he adds that »the principle on which the *sodos* are established is similar to the *buddhas*, but their religious practice is different.«²⁰ In other words, the *sodos* of Korea were sacred areas where criminals and fugitives could take sanctuary, and to the author of our source they immediately called to mind the Buddha-shrines in China. It does seem, then, that from a very early date Buddhist compounds enjoyed some form of asylum privilege, which evidently extended to their visitors and residents, but was not inherent to any religious personhood of the latter. At the end of the third century, when these notes were written, there were just over 3,700 monks and nuns and 180 Buddhist temples in all of China according to one count.²¹ The former figure was probably only a rough estimate, since no monastic registration is attested at this time, and if it referred, as it seems reasonable, to the garbed and shaven-headed ones that one would outwardly recognize as religious professionals (whatever their actual status), more substantial numbers must have been around the Buddha-shrines. Still, the size of the Buddhist clergy in this long period must have been overall inconsiderable, its very existence as a religious order ill-defined, its exemptions accordingly unobtrusive – until all this started to change.

18 See *Sanguo zhi*, 49.1185; translations in Gernet, *Buddhism in Chinese Society*, 295, and Zürcher, *Buddhist Conquest of China*, 28. A shorter account, omitting the reference to corvée exemption, is in *Hou Han shu*, 73.2368.

19 Gernet (*Buddhism in Chinese Society*, 30) understands the expression »receive the doctrine« (*shou dao* 受道) in the story as a reference to some sort of Buddhist monastic ordination, noting that »the act of entering into religious life freed an individual from his duties as a layman«, and perches on this straw of evidence to argue that tax exemption was the rule for monks. This does seem a long shot. Apart from the unlikelihood that monastic ordination could be performed on such a grandiose scale at this early stage, the context suggests something different. Elsewhere, the author of the *Sanguo zhi* uses the same expression (*shou dao* 受道) in connection to those who »received the doctrine« from the Taoist master Zhang Ling 張陵 (fl. 125-144), paying a fee of five pecks of rice in exchange (*Sanguo zhi*, 8.263). Here it is clear that religious instruction for ordinary people is meant rather than ordination or initiation into priesthood.

20 *Sanguo zhi* (completed in ca. 284), 30.852 (諸亡逃至其中, 皆不還之, 好作賊。其立蘇塗之義, 有似浮屠, 而所行善惡有異。). On the Korean *sodo*, see Grayson, *Korea*, 20.

21 *Bianzheng lun* (T vol. 52 no. 2110), 502c18-19. Unlike Gernet (*Buddhism in Chinese Society*, 6), I understand the mention of the »two capitals« (*er jing* 二京) in this passage as referring to what precedes rather than what follows, which means that the numbers of monks and temples are national totals (as demanded by the context) rather than for the two main cities only. The *Bianzheng lun* is a seventh-century work of Buddhist apologetics, and some of its information should be taken with a pinch of salt; however, there is nothing inherently implausible in its historical statistics on the size of the Buddhist community from the Western Jin (266-316) to the Sui (581-618). It should be noticed that from 280 and until their demise, the Western Jin had been able to unify Chinese territory, if only for three decades and before a more decisive breakup; hence the *Bianzheng lun* totals are likely to refer to both north and south.

The first confrontation between Buddhism and the state

Everything does change in the fourth century. Especially from its latter half, the *samgha* in China starts looking as more and more of a separate social body, with its own leaders such as Dao'an 道安 (312-385), commanding authority along a network that stretches across the boundaries of a territory still divided between ›barbarian‹ kingdoms in the north and Sinitic dynasties in the south. It is Dao'an who introduces a common surname for all Buddhist monks – Shi 釋, a Chinese transcription of Śākya, the clan name of the Buddha – to signal their corporate identity. A wave of foreign missionaries from northwest India and Central Asia leaves its mark from north to south. The *vinaya* codes, first in fragments, then in full in the first decades of the fifth century, are finally translated into Chinese, and so are the first monuments of Buddhist scholasticism as well as the four *āgamas*, the complete scriptural collections of the mainstream tradition.²² At the turn of the century, a disciple of Dao'an, Huiyuan 慧遠 (344-416), stands up to a southern ruler to make a passionate plea for the monks' exemption from the obligation to revere the emperor, in a daring blow to custom and convenience.²³ A head-count now gives 24,000 monastics in the south alone, but certainly far bigger numbers were swarming across the barbarian north, and everywhere, rulers and ruled were falling for them.²⁴ For all its extraordinary success, though, this viral blob of ostensibly meek skinheads, who according to a contemporary polemicist were even collecting taxes from the populace to fund luxurious temples and monasteries for themselves,²⁵ was soon to make waves of resentment.²⁶ In 446, the Wei 魏 emperor Taiwudi 太武帝 (r. 423-452), who at the head of his Inner Asian Xianbei 鮮卑 tribes had established himself as the overlord of the north, ordered an all-out persecution of Buddhism.²⁷ Mass killings of monks were certainly commanded, although we do not know on what scale they were carried out, especially in the provinces; monasteries were destroyed, statues were melted down, their precious metal probably impounded for the imperial workshops. To those who escaped, this was the end of the Dharma at the turn of its millennium, as the prophecy would have it.²⁸

22 On these developments, see Palumbo, *Models of Buddhist Kingship*, 314-317; Palumbo, *Early Chinese Commentary*, 1-3, 9-36 and *passim*; Palumbo, *From Constantine the Great to Emperor Wu*, 103-106.

23 On this important episode, see Hurvitz, ›Render unto Caesar‹, and Zürcher, *Buddhist Conquest of China*, 231-238.

24 *Bianzheng lun* (T vol. 52 no. 2110), 503a3-4.

25 The anonymous critic is quoted in a Buddhist apologetic tract, aptly titled ›On the rectification of calumnies‹ (*Zhengwu lun* 正誣論); see T vol. 52 no. 2102, 8a18-19, and cf. Link, *Cheng-wu lun*, 151-154. Remarkably, the equally anonymous Buddhist apologist does not at all reject the charge, but rather argues for the appropriateness of lavish expenditures on the symbols of the Buddhist religion. I tend to agree with Liu Yi (Shi lun *Huahu jing* chansheng de shidai, 97-102), who places the *Zhengwu lun* in the early fifth century, although the mid-fourth-century date preferred by other scholars (e.g. Zürcher, *Buddhist Conquest of China*, 304) cannot be excluded.

26 On the rise and themes of anticlericalism in early medieval China, see Ch'en, *Anti-Buddhist Propaganda*; Zürcher, *Buddhist Conquest of China*, 254-285; Hureau, *L'apparition de thèmes anticléricaux*.

27 Tsukamoto, Hoku Gi Taibutei; in English, see Ch'en, *Buddhism in China*, 147-153; cf. Ch'en, *Some Factors*.

28 On the eschatological dimensions of the persecution of Buddhism in the fifth century, see Palumbo, *Buddhist Eschatology and Kingship*.

But it was not really the end, quite the opposite in fact. Shortly after Taiwudi's death, in 453, Buddhism was restored, and from then on it took a spectacular expanding trajectory that, in the north, saw the development of a sizeable monastic economy.²⁹ All this happened under the strict oversight of the imperial government, which appointed controllers of the clergy to rein in the unruly and scattered congregation of monks.³⁰ In the 470s, a number of major developments occurred in quick succession. Monastic residence was enforced through severe limitations to the freedom of movement for Buddhist clerics.³¹ Mandatory monastic registration, which may have been introduced earlier, produced its first results in 477, with a census counting 77,258 monks and nuns and 6,478 monasteries.³² At the same time, the post-nomadic Northern Wei regime acknowledged and encouraged the role of Buddhist establishments in its still fitful agrarian conversion with the creation of two new categories of taxpayers, the ›*samgha* households‹ and the ›*buddha* households‹. The former included resettled captives from newly conquered territories as well as affluent farmer households, who were to contribute a hefty yearly tax in grains to the local monastic administrations (*samgha* Office, *sengcao* 僧曹), formally to be redistributed to the needy in years of poor crops. The latter group should be understood as ›households attached to the *buddhas*‹, the archaic name for Buddhist sacred areas we have encountered above: it was made of convicts and state slaves with their families, who were tasked with the maintenance of temples, but also with »working the fields and bringing in the grains« (*yingtian shusu* 營田輸粟). Both institutions are said to have successfully spread to the provinces.³³ We should not fail to observe here that the bondsmen of the ›*buddha* households‹ were drawn from the very same categories – criminals and slaves – we have identified above as those reportedly crowding at the Buddha-shrines in search of sanctuary from forced labour. If so, what at first sight looks like a massive privilege granted to the monastic community may rather have been a ruse to make the status quo legal in the mutual interest of the clergy and the state, especially if the grains the temple bondsmen were made to grow and »bring in« were actually to be at least partly paid into the state granaries.³⁴ The same marriage of convenience was soon to be exposed for

29 On the growth of the monastic economy from the late fifth century, see the classic study by Gernet, *Buddhism in Chinese Society* (originally published in French in 1956), but cf. the judicious reassessments in He, *Buddhism in the Economic History of China*, especially 12-30 on the situation at the end of the period of division.

30 When the proscription was overruled in 453, an eminent monk from Kashmir was appointed Controller of the Clergy (*Daoren tong* 道人統) on the same occasion; see *Wei shu*, 114.3036; cf. Hurvitz (trans.), *Wei Shou*, 71. The office continued under the following rulers, with counterparts at province and commandery level. On the Northern Wei imperial administration of the Buddhist clergy, see Xie, *Zhonggu Fojiao sengguan zhidu*, 51-74.

31 This happened in 472: see *Wei shu*, 4A.137 and 114.3038; cf. Hurvitz (trans.), *Wei Shou*, 76.

32 *Wei shu*, 114.3039; cf. Hurvitz (trans.), *Wei Shou*, 78-79. See also below, note 107.

33 *Wei shu*, 114.3036; cf. Hurvitz (trans.), *Wei Shou*, 72-73; Tsukamoto, Hoku Gi sōgiko – buttoko; Gernet, *Buddhism in Chinese Society*, 100-107; Ch'en, *Buddhism in China*, 154-158; Pearce, Status, Labor, and Law, 117-118. Note that Gernet (*ibid.* 100, 104-105) understands the »monastery households« (*si hu* 寺戶) mentioned at the end of the *Wei shu* passage as yet another type of institution, but this is in fact an alternative name for the ›*buddha* households‹. Compare the role and function of the *prebendarii* in medieval European monasteries, as briefly discussed in Wickham, *Framing the Early Middle Ages*, 300-301.

34 Other scholars (as per the preceding note) have seemingly understood the expression *shusu* 輸粟 in the *Wei shu* passage on the *buddha* households as referring to grains harvested exclusively for the monastery. In other occurrences within the same source, however, the term regularly refers to in-kind payments into state granaries: see *Wei shu*, 9.246, 110.2861 (twice).

the *samgha* households, although the Wei government would make sure everyone knew who was wearing the trousers. Responding to complaints that the charity grains were being misused for usurious loans to impoverished peasants, an edict in 511 brought their management back from monastic administrators to state officials.³⁵

Under these circumstances, the monastic community in the north kept on swelling, and by the end of the Wei dynasty, in the 530s, its statistics were staggering: 47 large state monasteries, 839 monasteries owned by aristocratic families, 30,000 temples across the realm, and an astonishing two million monks and nuns, although the last figure is expressly presented in one source as an estimate, taking into account large numbers of commoners who had joined the clergy to escape fiscal obligations.³⁶ This brings us back to our initial question.

The ambiguous fiscal status of the monks in the Period of Division

So, did these monks pay their taxes after all? How much of an exemption were they really enjoying? And what was the interest of the state in all this, the same state that was now intent on clenching the *samgha* in a firm bureaucratic grip, but only decades earlier had entertained no qualms in seeing to its effective annihilation?

Let us register in the first place that, in medieval China, no single document avers tax exemption for the clergy as a standing regulation.³⁷ Jacques Gernet's groundbreaking, brilliantly chaotic *Les aspects économiques du bouddhisme dans la société chinoise du V^e au X^e siècle* (first published in 1956) may have fostered some lingering confusion on this issue: general monastic exemption from taxes was explicitly decreed only under the Mongol Yuan 元 dynasty (1279-1368), which, on the other hand, extended it to all religious communities in the khanate (including Taoists, Muslims, and Christians).³⁸

One should also bear in mind that the *vinaya* does not appear to condone tax evasion – which is equated to theft and thus classed as a *pārājika*, a major offence demanding expulsion from the order – although most monastic codes only envisage custom duties for itinerant monks, whilst offering no legislation on issues of poll or land tax.³⁹ The Buddha's admonitions to the clergy to pay their dues to the revenue officer would have been known in China since the first half of the fifth century, when several such codes were made available

35 See *Wei shu*, 114.3041-42; cf. Hurvitz (trans.), *Wei Shou*, 87-88, and the discussions in Ch'en, *Buddhism in China*, 156, and Gernet, *Buddhism in Chinese Society*, 103-105. Despite Confucian finger-pointing at the greedy clergy in court circles, we should not forget that monastic administrators were clerics appointed by the state, and worked hand in glove with their patron. Lending on interest accruing from the inalienable property of the *samgha* was approved practice in some *vinayas*, as was the monastic ownership of slaves, both in China and in India: see respectively Gernet, *ibid.* 102-103, 158-166 and Schopen, *Buddhist Monks and Business Matters*, 45-90, 193-218.

36 *Bianzheng lun*, 507b26-c1; and *Wei shu*, 114.3048; cf. Hurvitz (trans.), *Wei Shou*, 103. It is the latter source, completed in 554, that adds qualifying comments on the huge numbers of the clergy. I return to this at the end of the next section.

37 Pace Denis Twitchett (*Financial Administration*, 26, 250 n. 27), claiming that the Tang code did have such a stipulation; cf. Johnson (trans.), *The Tang Code*, 128-129.

38 See Schurmann, *Mongolian Tributary Practices*, 323-325; Atago, *Zeiryō yūmen ni tsuite*; Sagaster, *History of Buddhism among the Mongols*, 382-389. It is a document of the Mongol period that Gernet (*Buddhism in Chinese Society*, 31) quotes as evidence of a general monastic immunity from taxation; cf. He, *Buddhism in the Economic History of China*, 39-40.

39 See now the thorough research on these issues in Pagel, *Buddhist Monks in Tax Disputes*, focusing on the *vinaya* of the Mūlasarvāstivāda school.

in translation.⁴⁰ These texts, the Indic original of which is lost, nevertheless reveal important differences: while the *vinayas* of the Sarvāstivāda and of the Mahīśāsaka schools make no special pleading for the *saṃgha*, that of the Mahāsāṃghikas claims that only commercial items should be taxable, not those belonging to Buddhist monks and nuns or heretical renunciants (read Brahmins).⁴¹ The *Dharmaguptaka-vinaya* goes further: the *bhikṣus* have no law to pay taxes (比丘無輸稅法), and they only sin if, with a thieving intent, they help laypeople to evade customs.⁴² All these rules in which errant monks serve as accessories to tax-evading merchants were probably devised in an Indian society where taxation of trade factored prominently into fiscal revenues; against the agrarian backdrop of their Chinese translations, they would hardly have come across with the force of a ›render unto Caesar‹, though neither would they give much ammunition to a case for exemption. The normative position of the clergy, again as expressed in its disciplinary codes, seems to have been a guarded expectation to be left alone by the state on account of its ascetic withdrawal from worldly business, albeit with a number of very telling provisos. Surviving *vinayas* from a number of different schools include a section detailing the conditions restraining admission into the monastic order.⁴³ Here, among other things, one learns that slaves,⁴⁴ debtors,⁴⁵ those pursued by justice,⁴⁶ and those in the king's service, notably soldiers,⁴⁷ could *not* receive ordination. It is certainly

40 See *Shisong lü* (translation of the *Sarvāstivāda-vinaya*, AD 406, T vol. 23 no. 1435), 379c5-23; *Sifen lü* (*Dharmaguptaka-vinaya*, AD 412, T vol. 22 no. 1428), 573c12-13, 681b18-682a8; *Mohesengqi lü* (*Mahāsāṃghika-vinaya*, AD 418, T vol. 22 no. 1425), 252b12-253b1; *Mishasai bu hexi wufen lü* (*Mahīśāsaka-vinaya*, AD 425, T vol. 22 no. 1421), 7a11-12. On the translation of these codes into Chinese, see Heirman, *Vinaya*.

41 *Mohesengqi lü* (T vol. 22 no. 1425), 253a26-29.

42 *Sifen lü* (T vol. 22 no. 1428), 574c7-11.

43 See Lamotte, *History of Indian Buddhism*, 166-171 for a useful overview of the parallel structure of the extant codes.

44 See *Shisong lü* (Sarvāstivāda, T vol. 23 no. 1435), 151c13-29; *Sifen lü* (Dharmaguptaka, T vol. 22 no. 1428), 807b19-c6; *Mohesengqi lü* (Mahāsāṃghika, T vol. 22 no. 1425), 421b17-c12; *Mishasai bu hexi wufen lü* (Mahīśāsaka, T vol. 22 no. 1421), 115b10. For a translation of the version in Pali from the canon of the Theravāda school, see Horner, *Book of the Discipline* (IV), 95-96.

45 See *Shisong lü* (Sarvāstivāda, T vol. 23 no. 1435), 152a1-17; *Sifen lü* (Dharmaguptaka, T vol. 22 no. 1428), 807c15-28; *Mohesengqi lü* (Mahāsāṃghika, T vol. 22 no. 1425), 420a18-b6; *Mishasai bu hexi wufen lü* (Mahīśāsaka, T vol. 22 no. 1421), 115a26-b10. For the Theravāda version, see Horner, *Book of the Discipline* (IV), 95.

46 See *Sifen lü* (Dharmaguptaka, T vol. 22 no. 1428), 807c6-15. Theravāda: see Horner, *Book of the Discipline* (IV), 93-94.

47 See *Shisong lü* (Sarvāstivāda, T vol. 23 no. 1435), 156a8, 156b1 (no narrative); *Sifen lü* (Dharmaguptaka, T vol. 22 no. 1428), 811c1-13; *Mohesengqi lü* (Mahāsāṃghika, T vol. 22 no. 1425), 419c26-420a18; *Mishasai bu hexi wufen lü* (Mahīśāsaka, T vol. 22 no. 1421), 116b1-18. Theravāda: see Horner, *Book of the Discipline* (IV), 91-92. Note that while the article and its etiological narrative refer to a soldier, the Pali and Sanskrit term for the latter, *rājabhaṭa*, literally means ›a king's servant‹, and is accordingly understood in the Chinese translations as ›an official‹ (*guanren* 官人). The exception is the *vinaya* of the Mahāsāṃghikas, where a literal rendition of *rājabhaṭa* as *wangchen* 王臣, ›a king's servant‹, could be construed as referring specifically to officials but also to any subject serving the ruler. The extensive implications of this wording are here balanced by an interesting casuistry (*ibid.*), in which the Buddha distinguishes four types of such subjects: those with rank and salary, those with rank but no salary, those with salary but no rank, those with neither rank nor salary. He explains that the first two categories are not allowed to become monks either ›in this kingdom‹ or in other kingdoms. Those with salary but no rank are not allowed into the order ›in this kingdom‹, but they may in other kingdoms. Those with neither rank nor salary are admitted as monks in every kingdom. This formulation would arguably make room for the acceptance into the clergy of virtually everyone in the king's service (thus including conscripts and corvée labourers), with the sole exception of rank- and salary-holders.

significant that in some though not all of the *vinayas*, the relevant rules, which the Buddha establishes so as not to irk those in power and thus safeguard the integrity of the *saṃgha*, are often presented as exceptions to a generic immunity granted by the king to all monks and nuns: »There is nothing to do against those who go forth among the recluses, sons of the Sakyans.«⁴⁸ However, it is not difficult to see that anyone owing taxes and corvées to the state would easily fall within one or the other of the categories above, so that the monastic community would have had to tread on eggshells only to abide by its own standards. This is most paradoxically reflected in what must be an interpolation – and all the more interesting for us *because* it is an interpolation – in the discipline of the Dharmaguptakas. This *vinaya* is unique in that it expressly includes among those barred from ordination »someone having [their] name [in the state] registers, or someone evading state taxation« (或有名籍, 或避官租賦).⁴⁹ The context in which this passage occurs suggests that it was inserted directly into the Chinese text, although it is difficult to determine whether this happened at the time of its initial translation in 412 or later, possibly under the Tang, when the *Dharmaguptaka-vinaya* rose to normative prominence in China.⁵⁰ Whoever tampered with it and made up this rule must have faced the situation it claims to counter; but if our interpolation does seem to confirm from the inside a recurrent outsider accusation that people would join the Buddhist clergy only to shelter themselves from taxation, it does not thereby also prove the existence of a legal exemption in the background. In fact, it rather contradicts it: for if monks were not to pay taxes, why would anyone not paying taxes be denied ordination as a monk?⁵¹ This apparent non sequitur can be accounted for in different ways. The authors of the rule, for example, may have lived in a society where taxation only hit certain sectors of the population, or at least so they wished. Elites extracting revenue chiefly from trade or from routine plunder may well have allowed that, after all, and it may be no coincidence that the one

48 Horner, *Book of the Discipline (IV)*, 93-94 (cases of fugitives from justice), 95 (debtor and slave), translating a formula appearing no less than four times in the *vinaya* in Pali of the Theravāda school, and alleging to report a decree of the Magadhan king Bimbisāra, a contemporary and well-wisher of the Buddha. Among the four codes translated into Chinese in the fifth century, only those of the Dharmaguptakas and Mahīśāsakas report this ruling in favour of the monks, although in somewhat different words: see respectively *Sifen lü* (T vol. 22 no. 1428), 807b28-c2, 807c22-24, and *Mishasai bu hexi wufen lü* (T vol. 22 no. 1421), 115b1-2. The *vinaya* stories quoting the decree show both that it could be invoked for immunity (e.g. for debtors or fugitives seeking refuge among monks) and that it did not work (since ordination for such immunity-seekers was disallowed).

49 *Sifen lü* (T vol. 22 no. 1428), 814a21-22. The line is already in a manuscript fragment of the *Dharmaguptaka-vinaya* from Dunhuang, probably dating to the eighth century (ms. 北 6806 [芥 011], now BD06011), although here the word »taxes« (*zufu* 租賦) is replaced (deliberately?) by a meaningless homophone (租傳); see Huang, *Dunhuang baozang*, vol. 102, 38.

50 The clauses have no parallels in the other *vinayas*. Moreover, they occur in a section itemizing disabilities and physical deformities on account of which one cannot become a monk: see *Sifen lü* (T vol. 22 no. 1428), 814a18-b20; cf. Horner, *Book of the Discipline (IV)*, 115-116. In this graphic gallery – including the dumb, the deaf, the blind, the hairless, the toothless, all sorts of amputees, men with scabs, with swelling tumours, with one or no testicles, with strange-coloured eyes, with beastly bodies or faces, and much more – healthy tax-evaders do stand out as intruders. The reference to name registers (*mingji* 名籍) and in-kind tax (*zufu* 租賦, cf. Twitchett, *Financial Administration*, 2, 208 n. 10) also has a distinct Chinese ring to it. For the general adoption of the *Dharmaguptaka-vinaya* under the Tang, see Heirman, *Vinaya*, 194-195.

51 In a way, it would have been like banning the poor from becoming monks, while monks were expected to live in poverty.

regime granting tax immunity to all clergies were the Mongols.⁵² Alternatively, the rule may have countenanced a scenario where one would seek monastic ordination before becoming a taxpayer, or after ceasing to be one. None of this makes much sense in China, however, and the likelihood is that the clause barring tax-evaders from admission into the *samgha* simply gave a perfunctory cue of disapproval to a state of things that, however widespread and indeed unavoidable, would lack any official sanction. Whether such a rule could ever be applied in practice was in fact entirely contingent upon the absence of a universal system of taxation, or of the state's ability to enforce it: this is a crucial issue to which I return below. A similar quandary would engulf any attempt to observe the prohibition, in this case attested in all the *vinayas*, for soldiers to become Buddhist monks: it could probably work in a state with an elite mercenary army, much less in one recruiting its military through conscription or large-scale enlistment, such as the territorial soldiery established at the end of the Northern dynasties and in the early Tang.⁵³

May I repeat myself at this point: let's not take any exemption for granted. The disciplinary codes translated in the fifth century, on the eve of the first major confrontation between Buddhism and the state in China, would set a normative template for a regular clergy whose existence was still largely theoretical. But if these very codes could not spell out a clear stance on fiscal and penal immunity, why should we expect the ruling elites to have warranted what the monastic elites were unable to ask?

Scattered evidence from the period of disunion should accordingly be read afresh, and without prejudice. In the south we should note a document by Xun Ji 荀濟 (d. 547), a vehement critic of the pro-Buddhist policies of emperor Wu 武 of the Liang 梁 (r. 502–549). Xun notes that »monks come from the poor, and they scheme to avoid taxes and corvées« (僧出寒微, 規免租役).⁵⁴ His wording suggests that, while monastic status may have offered loopholes to evade fiscal duties, it granted no legal exemption as such.⁵⁵ In the north, an apocryphal Chinese *sūtra* probably dating from the early sixth century voices the distress of its surely monastic author at the vexing levies that state authorities were forcing on the

52 The Mongols, of course, did not lack their own taxation systems and, in time, tended to adopt many of those of the sedentary peoples they had conquered, including the Chinese. However, they relied on requisitions and extraordinary levies far more than they were able to develop forms of regular tribute. Compare Schurmann, *Mongolian tributary practices*, and Smith, *Mongol and Nomadic Taxation*, two classic studies respectively stressing the former and the latter aspect.

53 On this territorial army, the so-called *fubing* 府兵, see Graff, *Medieval Chinese Warfare*, 189–193 and *passim*.

54 See *Guang hongming ji* (T vol. 52 no. 2103), 130c6–7. A nearly complete translation of Xun Ji's memorial is in Ch'en, *Anti-Buddhist Propaganda*, 184–192; see also the discussion in Strange, *Representations of Liang Emperor Wu*, 67–77.

55 Kenneth Ch'en translates the key phrase *guimian zuyi* 規免租役 as »according to the law, they are exempt from taxation« (*Anti-Buddhist Propaganda*, 189). This is wrong: the term *gui* 規 can also mean a »rule«, although it would be unusual for state regulations, but in the present passage it must have the alternative meaning »to scheme«; in fact, the compound *guimian* 規免 is well attested in medieval Chinese in the sense of »finding ways to avoid [something unwanted]«, see Luo, *Hanyu da cidian*, vol. 10, 324. Cf. a nearly identical phrase within a passage in the *Sui shu* (24.681), describing a situation of widespread tax evasion in the Shandong area in the early years of the Sui dynasty (the 580s): »Out of every ten people, the layabouts dodging corvée duties were six or seven. There were slackers everywhere, some pretending to be old and some young, scheming so as not to pay taxes« 避役惰遊者十六七。四方疲人, 或詐老詐小, 規免租賦. Briefly, and it is no minor difference, what Xun Ji complains about is monastic tax evasion, not tax exemption.

saṃgha.⁵⁶ On the other hand, an anonymous memorial submitted in 486 under the Northern Wei complains that, after the introduction of monastic registration, people had been trying to take advantage of it as they would »falsely claim to have entered the path in order to avoid paying taxes« (假稱入道以避輸課).⁵⁷ A similar grievance will be raised several decades later: in the *Wei shu* 魏書 (ca. 554), the historian remarks that after the Zhengguang 正光 era (520–525), as the state authorities were increasingly imposing conscription to face a general crisis, »locally registered people would associate with those who have entered the path on the pretence that they revere the *śramaṇas*, but in fact to avoid taxes and corvées« (所在編民, 相與入道, 假慕沙門, 實避調役).⁵⁸ These documents stop short of admitting unambiguously that monks were exempt, but they do reinforce a view of the monastery as a tax haven of choice for fiscally battered populations. The big claim finally comes in 570 and again in the north, just before the second great proscription of Buddhism, although the source is not entirely unbiased: a lay apologist for the *saṃgha* brags that Buddhist monks, unlike Taoist priests, do not serve as soldiers or pay in-kind taxes (*zu* 租), and enjoy such exemptions because they are ultimately of royal stock.⁵⁹ Yet, a nearly contemporary document puts this boast in context. In 567, at the same northern court, the maverick monk Wei Yuansong 衛元嵩 (d.u.) had pleaded for sweeping religious reformation, denouncing the corruption of the clergy. One of his proposals was that unseemly rich monks be made to pay an exemption tax: »if wealthy monks pay a tax to be exempted from fiscal liability (*ding* 丁), then all monks will certainly disdain ceasing to pay taxes, and will strive to check stinginess and greed« 富僧輸課免丁, 則諸僧必望停課, 爭斷慳貪.⁶⁰ Wei's request conveys that while the monastic elite indeed enjoyed fiscal privileges, avoiding taxation was more of an endeavour for the larger mass of the *saṃgha*, which could be put off it as long as an example was set with their most powerful members.

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- 56 See *Xiangfa jueyi jing* (T vol. 85 no. 2870), 1337b16-23; Tokuno, *Book of Resolving Doubts*, gives an introduction and a full translation of this text (the passage on the taxation of the clergy is at 266-267). For the date of the scripture, see Lai, *Dating*; although Lai's attempt to anchor the authorship of the *sūtra* to a specific time and place (Luoyang, AD 517-520) is fragile, he convincingly argues that the text polemically reflects the situation of Buddhism under the Northern Wei in the early decades of the sixth century. Cf. also the brief discussions in Gernet, *Buddhism in Chinese Society*, 25 and 48 (Gernet, however, misdates the *sūtra* to the late Tang period).
- 57 Monastic authorities were accordingly asked to perform a scrutiny of the clergy, which resulted in a rather negligible 1,327 monastics being defrocked (slightly less than 2% of the total monastic population in the census of 477). See *Wei shu*, 114.3039; Hurvitz (trans.), *Wei Shou*, 79-80; cf. Gernet, *Buddhism in Chinese Society*, 38.
- 58 *Wei shu*, 114.3048; the comment is given as background to the sensational figure of two million monks and nuns in this period, which I have discussed above. The word for 'taxes' here is *diao* 調, which more specifically refers to a levy paid in fabrics: see Twitchett, *Financial Administration*, 2, 208 n. 10. Cf. the slightly different translations of this passage in Hurvitz (trans.), *Wei Shou*, 103, and Gernet, *Buddhism in Chinese Society*, 38, who both misunderstand the key phrase *xiangyu rudao* 相與入道. On the Northern Wei crisis providing the context for these remarks, see the excellent analysis in Pearce, *Yü-Wen Regime*, 146-179.
- 59 This was mathematician and calendar expert Zhen Luan 甄鸞 (fl. 535-570) in his *Xiao Dao lun* 笑道論, a corrosive lampoon of the Taoists that caused a stir at the Northern Zhou 周 court in Chang'an 長安: see *Guang hongming ji* (T vol. 52 no. 2103), 146c22-24. For a full study and translation of this text see Kohn, *Laughing at the Tao* (p. 82 for the passage in question). We have seen above that from the late fourth century, Buddhist monks in China had adopted the common surname Śākya and thus made themselves into kinsmen of the Buddha, whose royalty is alluded to in Zhen Luan's claim.
- 60 *Guang hongming ji* (T vol. 52 no. 2103), 132b11-14; cf. Gernet, *Buddhism in Chinese Society*, 32, for a very different understanding of this passage. The term *ding* 丁 referred to a male adult liable for tax and corvée labour, and was also used by synecdoche for the latter in particular; see Pearce, *Yü-Wen Regime*, 513, 516-518. On Wei Yuansong, traditionally seen as an instigator of the suppression of Buddhism under the Northern Zhou, see Ch'en, *Buddhism in China*, 187-190; Tsukamoto, *Hoku Shū no haibutsu*, 490-510.

The foregoing evidence is doubtless contradictory, and inconclusive at best: only a very selective reading of the sources can warrant the conclusion, currently held by several Chinese scholars, that tax immunity was the rule for Buddhist monks during the period of division.⁶¹ Moroto Tatsuo 諸戸 立雄, who has studied the issue of monastic taxation in medieval China in some detail, acknowledges that things are none too clear before the Tang: monks were not on ordinary household registers, but if they were probably excluded from individual imposition (most certainly from *corvée* labour), their estates may have been taxed nevertheless, something which becomes more certain after the fiscal reforms of the late eighth century.⁶² Nor can such a clear-cut line be drawn at this stage between the regular *samgha* and the registered population, for the latter, as we have seen, could suddenly swell the ranks of the former. Between the two worlds, especially in the north, there was in fact an extensive grey zone of rural monasticism, deeply rooted in the local society and often populated by hybrid figures of monastic householders and peasants, more similar to the married monks of Kroraina than to the role models in the *vinayas* and the urban clergy.⁶³ Tackling this phenomenon, which had no clear equivalent in the south, was thus tantamount to substantially extending the fiscal reach and economic basis of the state.⁶⁴ The northern regimes, as we are going to see, would rise to this challenge with remarkable success, rewriting the rules of the imperial game in the process.

The fall and fall of the tributary state

Two preliminary conclusions can probably be drawn from our discussion so far. The first is that forms of exemption for the Buddhist clergy did exist in China during the period of division, but rather *de facto* than *de jure*. Evidence of taxation is consistent with this scenario and should not be construed as an exception to a rule: there was no rule. The second point is that whatever privilege there was, it appears to have descended, initially at least, less from the dubious charisma of the monks than from the sacred aura of the Buddha-shrines; communities established within the hallowed precincts of the *buddhas* would apparently acquire some of their immunities, and this would also explain why, for a long time, those escaping jail or conscription would flock to them.

To discern a meaningful image in this hazy picture, however, we may need to stand back and consider the broader setting. The word 'exemption', in particular, should be used with some caution, for as soon as we use it to refer to the state's withdrawal from demands imposed on some of its subjects, we are already assuming an absolute power of that state to im-

61 See, for example, Xie, *Tangdai siyuan sengni mianfu*, 66; Zhang and Liu, *Han Tang zhi ji Fojiao*, 129-130. These scholars, however, agree that forms of taxation of the clergy were present already during the Tang period.

62 Moroto, *Chūgoku Bukkyō*, 337-443, especially 403-406, 434-437. Note that Gernet, whose *longue durée* narrative hops back and forth between different centuries and regimes, settles at one point on a similar conclusion (*Buddhism in Chinese Society*, 43).

63 On rural Buddhism under the Northern dynasties, see Hou, *Wu-liu shiji beifang minzhong Fojiao xinyang*, and Liu, *Art, Ritual, and Society*. On irregular monks see Gernet, *Buddhism in Chinese Society*, 37-43 (although his thesis that the expression *rudao* 入道 refers to such 'lay monks' does not seem to have ground). The best evidence on rural monasticism in medieval China is unfortunately concentrated in the northwestern periphery (Dunhuang) and at a later period (ninth-tenth centuries); for an extensive discussion, see Hao, *Tang houqi* (partly summed up, with further materials, in Hao, *Social Life*). Cf. Ashkenazi, *Holy Man versus Monk*, for the significance of this phenomenon on the other side of the Late Antique *oikoumene*.

64 Epigraphic evidence for the period of division suggests a far more limited rural penetration of Buddhism in southern China, where, despite aristocratic patronage of the clergy in the main metropolitan centres, the alliance between court and local elites appears to have stifled everything in between; see Liu, *Return of the State*.

pose and exact those demands. This may well be what a state is about, monopoly of violence and all, but if so, here is another word that invites prudence. For in Late Antique China at least, the various ›states‹ that contested its territory simply did not have that power.⁶⁵

A degree of functional weakness, especially in fiscal matters, had been connatural with the Chinese imperial formation almost from the outset. The Han dynasty had survived for centuries on a regime of low land tax, not out of frugality, but to avoid both the empowerment of collectors in the provinces and a fiscal overload that would have quickly eroded the tax base. The bulk of the peasantry who were not landowners were in any case already ground down under the heavy rents owed to their landlords, which included the court itself.⁶⁶ There was also a poll tax cashed from across the empire, but the government chiefly relied on its own demesnes and on tributary resources from the region around the capital rather than from the broader territory; provisioning that area was therefore key to maintaining the sway of the imperial centre over the periphery.⁶⁷ Taking these and other aspects into account, Andrew Eisenberg has described the premodern Chinese polity in Weberian terms as a patrimonial regime in which a single extended household ruling from a royal court exerted varying degrees of military and fiscal coercion over semi-autonomous local elites acknowledging its suzerainty.⁶⁸ In Eisenberg's effective characterization, the fulcrum of this deliberately inefficient power structure »was essentially a regionally based garrison regime with tentative ties to its provinces«.⁶⁹

However, the inherent, long-term limitations of the imperial formation in China should not obscure the epic dimensions of its collapse in the Late Antique transition. Demographic data are a sobering token of this shift. In the second century AD, the Han empire, Rome's twin in eastern Eurasia, ran several censuses giving returns between 9.2 and 10.8 million households with 47.6 to 56.5 million individuals.⁷⁰ One century later, however, the three kingdoms that took its place could only count 1,473,433 households and 7,672,881 individuals altogether.⁷¹ Comparably low population figures are randomly recorded throughout the age of division, especially in the south.⁷² What happened? Since neither bubonic plagues

65 A significant strand of contemporary political theory is indeed unwilling to consider premodern empires as ›states‹ at all, reserving the term instead for the polities defined by sovereignty and mutually exclusive territoriality that emerged in Europe from the end of the Middle Ages (and to those later following their model): see, for example, Kratochwil, *Of Systems, Boundaries, and Territoriality*; Spruyt, *Sovereign State and Its Competitors*. This view clearly has merit, not least here because it bears on the problematic historical relationship between modern China and its imperial predecessors. Many of its assumptions, however, sit rather uncomfortably with evidence from outside premodern Europe, something which would warrant fuller discussion elsewhere. In the present context I will keep to a minimal definition of ›state‹ as any political organization making absolute claims over territory and people, with further qualifications in the discussion below.

66 The land tax amounted to a paltry thirtieth of the crop through most of the Han dynasty, but rents varied between a half and two thirds, depending on whether peasants had to borrow oxen, seeds, and implements from their landlords. See Crowell, *Government Land Policies*, 87-92, 105-113.

67 See Nishijima, *Economic and Social History*, 597-598; Ebrey, *Economic and Social History*, 617-622; Lewis, *Early Imperial China*, 289-298; cf. Deng, *Imperial China*, 313-314.

68 See Eisenberg, *Weberian Patrimonialism*, and Eisenberg, *Kingship*, 1-21.

69 Eisenberg, *Weberian Patrimonialism*, 97.

70 See the table in Bielenstein, *Chinese Historical Demography*, 12, and the discussion in Tang, *San lun*, 83-105.

71 See *Tongdian*, 7.145.

72 See Bielenstein, *Chinese Historical Demography*, 16-19.

nor nuclear bombings are attested in China in this period,⁷³ we can agree in principle with Nishijima Sadao (and many others) that these tallies should rather be seen as proxies for »the actual number of individuals on whom the state could lay hands and who were subject to taxation and labor service.«⁷⁴ Behind this demographic debacle, then, there would have been the sustained failure of the Late Antique regimes that replaced the Han, both alien and Sinitic, to do their basic job, to count and tax people.

Here again Chinese history appears to run on a parallel track to the Western end of the Old World, for there too one observes a similar waning of the fiscal reach of the state in the collapsing Roman empire, followed by the advent of smaller polities under Romano-Germanic rulers that were unable or unwilling to enforce taxation, and relied instead on the lands they could directly control. Chris Wickham has explained this transition in Marxian terms as one involving two competing modes of production: a tributary mode, in which a strong state drawing resources from taxation could enjoy a large degree of autonomy from and power over local elites, and a feudal mode where a weak state was instead beholden to rent-taking aristocracies. Both modes could coexist within the same polities, but while the tributary state seemingly managed to survive and endure in China and other premodern Asian empires, it vanished in the West, where land and rent defined the early Middle Ages.⁷⁵ Walter Scheidel has then built on Wickham's metanarrative to refine his thesis of a »First Great Divergence«, presenting the return of a unified empire in China at the end of the sixth century as a resurgence of the »strong tributary state«, heralded by a significant rise of population counts in the north after the demographic eclipse of the post-Han period.⁷⁶

Seductively elegant though they are, these models fit China's Late Antiquity only imperfectly. We should note in the first place that low census figures do not necessarily imply a demise of the state, nor rising demographic tallies its strengthening. In the third century, for example, the two regional kingdoms of Shu Han 蜀漢 (221–263) in the west and Wu 吳 (222–280) in the south were able to maintain impressive bureaucracies against dramatically

73 I have left this cheeky remark from the conference paper, but in the meantime Morelli *et al.*, *Yersinia pestis*, came to my notice. Their discovery, based on cutting-edge genome sequencing techniques, that the bacterial agent of plague probably »evolved in or near China« more than 2,600 years ago casts a sinister light on repeated but vague reports of epidemics in Chinese historical sources. Cf., however, the different responses of plague historians to their conclusions in Little, *Plague Historians in Lab Coats*, and Benedictow, *Yersinia pestis*. At present, the earliest certain instance of the bubonic plague (now also confirmed through historical DNA testing) remains the Justinianic Pandemic that spread in the Eastern Mediterranean and its inlands from the sixth century AD, whereas Chinese literary evidence does not suggest any comparable episode for scale and symptoms before this outbreak. This is not to deny the probable role of epidemics in Chinese demographic trends, as I hint below.

74 Nishijima, *Economic and Social History*, 596. Some scholars have been willing to assume a massive population decline, especially from the late third century, on account of natural causes such as war and epidemics (Yang, *Notes on the Economic History*, 114) or a major environmental crisis (Chin, *Climate Change and Migrations*, 57–59). These scenarios are probably relevant to specific demographic fluctuations, but they cannot explain the aggregate data nor the long-term trends. Cf. the sensible observations in Bielenstein, *Chinese Historical Demography*, 13, and Graff, *Medieval Chinese Warfare*, 35–37.

75 See Wickham, *Uniqueness of the East* (with a focus on China at 172–175), and *Framing the Early Middle Ages*, 56–62.

76 Scheidel, *Fiscal Regimes*.

diminished populations.⁷⁷ This suggests that, in these vast areas, the number of registered households and individuals shrank much faster than the state apparatus that was meant to control them. Exogenous factors must have been at play that cannot be discussed in detail here, but it is plausible to assume that a real depopulation brought about by famines, epidemics, and violence, while it cannot possibly account for the full scale of the demographic contraction in this period, may have increased the tax burden beyond bearing for those that remained. Faced with a spiral of flight and fiscal disobedience, the still sizeable bureaucracies of the post-Han states probably concentrated their efforts on manageable fractions of their nominal territories and populations.⁷⁸

Tellingly, both Shu Han and Wu were eventually overwhelmed by a northern regime whose own crippled demographics did not prevent it from deploying large armies and achieving a short-lived reunification of China. Since the 190s, the Cao 曹 clan, which would soon rule the north in its own right as the Wei 魏 dynasty (220-266), had effectively addressed the fiscal problem by means of state-owned agricultural colonies (*tuntian* 屯田) manned by conscripted civilians. These were removed from the authority of the Board of Revenue and accordingly exempted from taxes and corvées, but had to pay a rent of 50-60% of their yield to the government.⁷⁹ The farmers in the colonies were seemingly hidden from censuses, and in 263 the Cao Wei state could only count 663,423 households and 4,432,881 individuals, a dismal percentage of the north China population under the Eastern Han.⁸⁰ The system nonetheless produced enough resources to give the northern kingdom, which would switch to the Jin 晉 dynasty in 266, a decisive edge over its two rivals.⁸¹ One of the first acts of the Jin government was to dismantle the special administration of the colonies, and of the colonies

77 In 263, when Shu Han was defeated and annexed by the Cao Wei 曹魏 kingdom (then ruling in the north), it reported a population of 280,000 households and 940,000 individuals, with 40,000 government employees (*li* 吏), thus one every 7 households/23.5 individuals. When it was Wu's turn to be conquered by the north in 280, it counted 523,000 households, 2,300,000 individuals, and 32,000 clerks, one every 16.3 households/71.9 individuals. See respectively *Sanguo zhi*, 33.900 (comm.) and 48.1177 (comm.). These ratios of administrators against population should be compared to the data for the whole Han empire around the time of its demographic peak in AD 2 (12,233,062 households, 59,594,978 individuals, see *Han shu*, 28B.1640); a few years earlier, in 5 BC, there is an overall count of 130,285 government employees (see Bielenstein, *Bureaucracy of Han Times*, 156, 205 n. 1), which means a considerably lower ratio of one every 93.9 households/457.4 individuals. Thus the ›weak states‹ that succeeded the Han could actually deploy many more clerks as a proportion of the registered population than their ›strong‹ predecessor.

78 Recent archaeological evidence from Zoumalou 走馬樓 at Changsha 長沙, Hunan has offered a snapshot of heavy taxation and tight governmental control of the population in a single district in the southern kingdom of Wu during the period AD 232-238 (for a good overview, see Lu, *Managing Locality*). This cannot have been the norm across the entire territory, as it does not fit the bigger picture of the period. Describing the situation in the Northeast a few decades earlier, a contemporary observer also notes that the few left on the household registers were made to pay considerably more tax than was their due: see the quotation from Sima Biao's 司馬彪 (240-306) *Jiuzhou chunqiu* 九州春秋 at *Sanguo zhi*, 6.195 (commentary).

79 See Nishijima, *Chūgoku keizaishi kenkyū*, 297-379; Crowell, *Government Land Policies*, 151-171. This Wei dynasty of the (Chinese) Cao clan should not be confused with the (non-Chinese) Northern Wei (386-534) discussed above and again below.

80 See *Tongdian*, 7.145.

81 Shu Han was conquered in 263, and Wu in 280; see above, note 77.

themselves once the conquest of the south was completed in 280.⁸² The former measure must have involved a registration of the previous state tenants, for we see a demographic spike at this point, with the population in the north appearing to increase nearly fourfold in less than two decades, albeit still tallying well below the Eastern Han records.⁸³ But if the newly unified Jin empire toyed with the idea of bringing back a proper tributary state, it failed miserably: its land policies to this effect remained a dead letter, and within a single generation the empire itself disintegrated again, this time for a much longer break.⁸⁴

This overview warrants some adjustment to the Wickham/Scheidel model. A ›strong state‹, with enough resources and soldiers to successfully entertain imperial ambitions, could subsist as a militarized rent-taking landlord, whilst relinquishing much of its tributary prerogatives and census scope. Less successfully, it could still linger on in patches, with its bureaucracies ganging up on the easier bits of the tax base. Conversely, the rapid expansion of population registration that ushered in the Jin reunification in the second half of the third century did not result in a stable tributary empire. I shall briefly explore below some of the reasons behind this failure, but two quick observations are in order. One is that ever since the long decline of the Han dynasty, no fiscal leviathan was in place to restrain the emergence of social and political actors that could compete with the patrimonial centre, or simply ignore its demands. More importantly, however, even in the glory days of the tributary empire, taxation may have been less about the extraction of revenue than it was about the assertion of territorial suzerainty, a ritual measure of the extent to which the centre could command compliance from the periphery: through periodical intimidation no doubt, but also through the exercise of an imperial authority that would encompass what we parse as the economic, political, and religious spheres – what I call the metapolitical order.⁸⁵ It is this order that collapsed in the Late Antique transition; it is its reconstitution that local elites and Buddhist communities would challenge from different perspectives.

82 The separate administration for the agricultural colonies was abolished first in 264, at the very end of the Cao Wei, when the government was already firmly in the hands of the Sima 司馬 clan that would soon establish the Jin dynasty; it was then confirmed in 266 in the name of the new regime. See *Sanguo zhi*, 4.153 and *Jin shu*, 3.55. For the conclusion that the colonies survived the change of jurisdiction until around 280, I rely on the analysis in Crowell, *Government Land Policies*, 167-168, 183-187.

83 We go from 663,423 households for the Cao Wei only in 263 to 3,770,000 households for the unified empire in 282 (see *Sanguo zhi*, 22.636, comm.). If we deduct from the latter figure the 280,000 households added from Shu Han in 263 and the 523,000 households from Wu in 280 (above, note 77), we have a spectacular increase of 2,303,577 households over this short period. Tang Changru (*Clients and Bound Retainers*, 117-118) also notes this demographic expansion, although with more conservative figures based on a Jin census in 280, and links it to scattered evidence of stricter controls on registration evasion in northern China at the time. However, a simpler explanation is that the increase came from the registration of households previously under the separate administration for agricultural colonies.

84 See Yang, *Notes on the Economic History*, 166-169 (translating a traditional account) and the focused discussion in Crowell, *Government Land Policies*, 183-205.

85 This suggestion will probably be anathema to Wickham's analysis, although it is not necessarily in contrast with it to assume, as I do, that the tributary reach was an expression of imperial suzerain power rather than its basis.

The former, emboldened by the implosion of the centre, would progressively gain confidence in advancing an alternative view of society, where status no longer descended from service to the state – at least not only or even chiefly – but from birth into a local community with its hierarchies, and clientship into one replaced allegiance to the other.⁸⁶ Forms of manorialism, in which helpless peasantries running away from a crumbling administration would cluster around the fortress of some provincial magnate, had been spreading ever since the troubles at the end of the Han. However, it was especially from the early fourth century, after the Jin lost control of the north under nomadic pressure, that the territorial power of the great local clans became entrenched. Strong enough to shield themselves and their large numbers of retainer households from the fiscal demands of the state, they effectively stalled any attempt at a recovery of the tributary empire.⁸⁷ In the south, the trend would prove irreversible, as the increasingly short-lived dynasties ruling from Jiankang 建康 – hobbled between the centrifugal agency of the aristocracy and waves of northern émigrés that persistently shirked registration – could never reach an effective control of their populations.⁸⁸

Buddhism in the fiscal resurgence of the northern regimes

The great clans that remained in the north China plain after it fell to Central and Inner Asian tribes soon negotiated similar privileges with the new rulers, who were more than willing to use their services to squeeze surplus from the peasantry.⁸⁹ Some of these ›barbarian‹ leaders, and to a lesser extent their peoples, were in fact already partly Sinicized; the volatile polities they established match most of the features of other post-nomadic states set by pastoralists who gradually abandon their lifestyle and economy in territories that are not suitable to them, often ruling in ›an almost permanent state of military mobilisation‹ and without a stable institutional framework.⁹⁰ Despite attempts to install Chinese-style bureaucracies that could control the population, these regimes generally ruled by might, and regularly resorted to heavy-handed relocations of war captives and peasant households to support their power bases.⁹¹ This was initially also the case for the Xianbei tribe of the Tuoba 拓拔, who would found the (Northern) Wei 魏 dynasty (386-534) at the end of the fourth century, and finally

86 The point is well made in Pearce, *Status, Labor, and Law*, 107-108.

87 On this problem see, among others, Elvin, *Pattern of the Chinese Past*, 34-44; Tang, *Clients and Bound Retainers*; Tang, *San lun*, 23-39.

88 See Ochi, *Nanchō no koseki mondai*; Crowell, *Northern Émigrés*; Tang, *San lun*, 83-94.

89 See Tang, *Clients and Bound Retainers*, 122-124.

90 I borrow these definitions and the quote from Wink, *Post-Nomadic Empires*, 120, 128. On the Sinicization of the nomadic elites in the north China plain, see Honey, *Sinicification and legitimation*.

91 See Nishimura, *Chūgoku keizaishi*, 92-106; Tang, *San lun*, 115-118. These states could occasionally show tributary capacities. The Former Yan 前燕 kingdom (337-370) established by the Murong 慕容 branch of the Xianbei in an area between modern Beijing and the Liaodong region, but stretching south into the Central Plain in its final years, by the time of its defeat by the Former Qin 前秦 in 370, was able to count 2,458,969 households and 9,987,935 individuals distributed over 157 commanderies and 1,579 districts; see *Jin shu*, 113.2893. This was nearly as much as the census records for the unified Jin empire, covering a much larger territory, in 280. Tang Changru (*San lun*, 94-99) links the Former Yan (isolated) demographic exploit to a tightening of registration control after 360; Kenneth Klein, however, remarks that the Murong success in establishing an agrarian state in the northeast could benefit from somewhat exceptional environmental circumstances, a ›dual insulation – from the pressures of the Central Plain and of the Mongolian steppe‹ as well as a limited presence of large landholders (*Contribution of the Fourth Century Xianbei*, 28-29).

impose their supremacy over all of northern China in 439.⁹² A few years later, as we saw, their emperor would order the first great persecution of the Buddhist clergy.⁹³ What we did not mention is that at this stage, fearsome and ruthless though they doubtlessly were, these Xianbei lords of the north were still clumsy greenhorns in the complexities of a bureaucratic state – bulls in a China shop, as it were. Semi-permanent warfare and booty distribution were the main glues sticking their fractious elite together, but the very consolidation of conquest set a timer on this expedient for stability.⁹⁴ They also lacked a professional administration, as their officials did not receive salaries, but were allowed to grab what they could from their bailiwicks.⁹⁵ Such a system evidently could not be either popular or efficient: frequent tax holidays granted in the early reigns of the dynasty surely were not acts of generosity, but acknowledgments of the difficulties of regular collection and the necessity to mollify an exasperated populace.⁹⁶ To control the local communities, the government had to rely on the heads of the great clans, who, exactly like their far more powerful counterparts in the south, could thus hide large numbers of dependent households.⁹⁷

Yet, it was this very same improbable regime, on the mere survival of which any wager would have seemed foolhardy after so many nomadic meteors had flickered out of the north China sky, that in the latter half of the fifth century contrived to reinvent itself as the strongest tributary state since the Han, and lay the foundations for the return of a unified empire one century later. Under Emperor Xiaowen 孝文帝 (r. 471–499), a sweeping series of measures dramatically enhanced the fiscal and political authority of the Northern Wei central government and its ability to lead an agrarian society. From 473 inspectors were sent across provinces and districts to enforce household registration and ferret out hidden dependents and absconders.⁹⁸ In 484 fixed salaries funded by tax income at last were introduced for state officials.⁹⁹ One year later, a groundbreaking new policy known as the ›Equal Field‹ (*juntian* 均田) created firm rules for tax liability and land allocation under government supervision

92 On the background of the Tuoba Xianbei and the rise of the Northern Wei empire, see Klein, *Contribution of the Fourth Century Xianbei*, and Holcombe, Xianbei in Chinese History, 15-22, with further references.

93 See above, p. 124

94 See Eisenberg, Warfare and Political Stability. Klein (*Contribution of the Fourth Century Xianbei*, 115-116, 192-194 n. 32) charts all instances of booty distribution under the Northern Wei and notes their sharp drop after the mid-fifth century. Here my analysis expands on Pearce, *Yü-Wen Regime*, 47-48.

95 See e.g. *Wei shu*, 24.625.

96 See Klein, *Contribution of the Fourth Century Xianbei*, 114-115 and 191-192 n. 29.

97 The system was known as ›Supervision and Protection by Lineage Heads‹ (*zongzhu duhu* 宗主督護): see *Wei shu*, 110.2855; *Tongdian*, 3.61; cf. Gao, Bei Wei *zongzhu duhu*.

98 *Wei shu*, 7A.139, 42.954, 51.1129.

99 *Wei shu*, 7A.153-154. Two years later, the salaries of local administrators were indexed to the population in their bailiwicks, thus indirectly promoting census surveillance (*Wei shu*, 7B.161).

that would shape the agrarian state for the next three centuries to come.¹⁰⁰ To support its implementation and stamp out registration fraud, critical synergies were established with the local communities.¹⁰¹ Some of these measures, notably the ›Equal Field‹, were expressly meant to promote agriculture through the maximization of land cultivation, and curb the engrossment of arable land at the hands of the powerful clans. While the latter objective is unlikely to have been fully achieved or even pursued, the reforms did assert the government's exclusive right over land and population across every inch of territory, and with it the idea that service to the state was the only legitimate source of economic status.¹⁰² The suzerain ideal was back.

Once the new tributary foundations of the Northern Wei regime were in place, a spate of edicts in the 490s finally put some heavy Chinese make-up on its post-nomadic face, forcing Chinese customs and surnames on its elite, and moving the capital south from Pingcheng 平城, at the edge of the steppe, to Luoyang 洛陽 in the Central Plain, where Han and Jin monarchs had once ruled over a unified empire.¹⁰³

These developments are remarkable enough in themselves; seen against the trajectory of Buddhism in the same period, however, they present us with a gaping paradox, at least if we hold to the deep-seated view of monasticism as a major source of strain on the tributary state.¹⁰⁴ For we have seen that the second half of the fifth century was also when the Buddhist community and a monastic economy grew impetuously in northern China, with the proliferation of religious establishments that claimed immunities for their residents, on account of an altogether different brand of holiness from the one set in the imperial tradition: faced with a centrifugal force of this magnitude, with the great clans still riding roughshod over its fiscal demands and in the absence of an efficient bureaucracy, the Northern Wei state should rather have had a hard time staying afloat, never mind becoming so much stronger. But this is not what happened, and it bears wondering whether a very different dynamic, however counterintuitive, may have been at work in this transition.

It is certain that, within a single generation, the Northern Wei rulers conceived and deployed the two fundamental attitudes the Chinese state would countenance in its confrontation with Buddhism during the following five hundred years: a frontal assault with spoliation versus tight regulation and control (stripping or strapping, one might say). The great persecution of 446 was virulent in its rhetoric and violent in its execution, but whatever else may

100 See *Wei shu*, 7A.156, with the full text of the edict at 110.2853-55. See also the memorial by Li Anshi 李安世 (d.u.) (*Wei shu*, 53.1176; tr. in Twitchett, *Financial Administration*, 210-211), which is said to have inspired the policy. Under the new rules, male and female adults (married couples in later versions) replaced the household (*hu* 戶), by now a screen for hidden retainers, as the basic taxable unit; they received fixed amounts of land from the state, with an obligation to farm it and pay in-kind taxes on it until the end of their working lives, at which point they would return their allotments. The policy also established land allocations for official post-holders, to be returned at the end of tenure. The most comprehensive treatment of the ›Equal Field‹ system and its background is probably still Hori, *Kindensei no kenkyū*; see also Crowell, *Government Land Policies*, 305-317. The overview in Twitchett, *Financial Administration*, 1-11, shows well the continuity of the system into the Tang period.

101 This was done in 486 by putting ›Three Chiefs‹ (*sanzhang* 三張) – chosen from local elders respectively at neighbourhood, hamlet, and ward level – in charge of supervising tax and corvée registration in collaboration with the state authorities. See *Wei shu*, 7B.161, 110.2855, and 42.954.

102 Cf. the observations in Elvin, *Pattern of the Chinese Past*, 48-50.

103 On these Sinicizing edicts see Lu, *Cong Pingcheng dao Luoyang*, 149-194, and the discussion in Holcombe, Xianbei in Chinese History, 24-28, noting the persistence of Xianbei traits in the ruling strata after the reforms.

104 A typical expression of this view is the account in Gernet, *Buddhism in Chinese Society*, 29-62.

have inspired it, it was launched after the last conquest in the north had stalled the Tuoba juggernaut and caused a dangerous lull in the previously regular distribution of booty.¹⁰⁵ If the great raid on the monasteries was really addressing a crisis in the traditional nomadic economy of predation, it must be significant that the main opponent of that raid and partisan of Buddhism in court circles, the Crown Prince Tuoba Huang 拓拔晃 (428-451), was also the one who, in those same years and circles, was championing a full-scale conversion to an agrarian economy, involving accurate land surveys and registration of the peasantry.¹⁰⁶ These advocacies may or may not have been linked in the eyes of the young prince, but there is room to speculate that a growing segment of the Northern Wei elite would see Buddhism as an opportunity for a radical transformation of the state rather than an internal surrogate for the vanishing foe to plunder. In this respect, the imperfect synchronism between the controlled revival of Buddhism and the agrarian turn in the second half of the fifth century should give us pause for thought. It is not the case that an already well-oiled bureaucratic machine caught the monastic community in its cogs, as we might be tempted to assume with hindsight from later dynasties that yet built on the Northern Wei experience. It seems, instead, that the policies mandating the registration of the clergy and the creation of monastic administrators preceded the great wave of census control and the professionalization of the officialdom, or at best, they unfolded in parallel.¹⁰⁷ And it is, again, simply not true that a clear fiscal apparatus and policies were already in place that could define tax liabilities or exemptions for the Buddhist monks. It seems, instead, that ad hoc forms of land tenure for monasteries such as the *buddha* and *samgha* households were introduced before effective regulations on land and taxation were devised for the commoners.¹⁰⁸

It almost looks as though the Tuoba government was testing its ability to count, tax, survey and control people and territory on the Buddhist clergy before tackling the big target.¹⁰⁹

105 The chart with a timeline of booty distribution on p. 115 of Klein, *Contribution of the Fourth Century Xianbei*, speaks for itself. From the detailed breakdown on pp. 192-194 n. 32, we can see that until 434, loot sharing among Tuoba generals after military victories took place at least once a year, but from then and until 447 there was a single instance following the conquest of the Northern Liang 涼 in 439. In this light it is probably relevant that the persecution of 446 was unleashed in the course of a military expedition against rebels in the area of Chang'an, and triggered by a charge of involvement in the rebellion against local monks; see *Wei shu*, 114.3033-34; cf. Hurvitz (trans.), *Wei Shou*, 64-65.

106 See *Wei shu*, 4B.108-109; *Zizhi tongjian*, 124.3902; Nishimura, *Chūgoku keizaishi*, 106-112; cf. Crowell, *Government Land Policies*, 302-304. On Tuoba Huang's Buddhist faith and his protection of the clergy during the persecution, see *Wei shu*, 114.3034-35; cf. Hurvitz (trans.), *Wei Shou*, 66, 68-69. The economic activism of the prince (regularly mentioned under his posthumous name Gongzong 恭宗 in the sources) drew sharp criticism from Chinese courtiers: see *Wei shu*, 48.1071-72; cf. Elvin, *Pattern of the Chinese Past*, 46.

107 The first census figures for the clergy date from 477, but in 472 an edict was banning the circulation of unregistered monks: (*wuji zhi seng* 無籍之僧), implying that registration already existed then; see *Wei shu*, 114.3038; cf. Hurvitz (trans.), *Wei Shou*, 76. This edict was issued at the beginning of Xiaowendi's reign, within weeks from another one formally encouraging the expansion of agriculture (*Wei shu*, 4A.137), a starting shot for the series of major policies discussed above. On monastic administrators, see above, note 30.

108 Cf. pp. 125 and 137 above. Tsukamoto (Hoku Gi sōgiko – buttoko, 112-120) suggests a date between 469 and 476 for the establishment of the *buddha* and *samgha* households.

109 In some cases, a specific connection seems clear. In 488, in order to further strengthen the income base for the government, a proposal was successfully passed to establish state-owned farms, no doubt following the distant model of the Cao Wei agricultural colonies; see *Wei shu*, 62.1385-86, 110.2856-57. The taxation rate of sixty bushels of grain for these farms, however, was identical to that of the earlier *samgha* households, as noted in Tang, *Clients and Bound Retainers*, 124-125.

But surely there was more to it than that. In an age dominated by locality and birth in the definition of an individual's loyalties and obligations, and in which the idea of universal empire could no longer find a political referent, the Buddhist community was the only institution in the real world that had kept some essential traits of that idea – its translocal orientation and its de-emphasis on birth – most visible. Buddhist establishments were literally everywhere, as once had been the relay stations for the Han imperial couriers and envoys, and kept in existence some form of the network of long-distance exchange that a large tributary state should have been able to offer.¹¹⁰ Registering the clergy was evidently no minor exercise, as it involved having government eyes and hands in nearly every district and village, sifting through rural communities where the peasant and the monk often blurred into each other, but also poking around the great clans' turf. These checks should accordingly be seen as a major investment in population control and territorial suzerainty, especially if the state promoting them was one piously endorsing Buddhism, as the Northern Wei did from 453.¹¹¹

Significantly, it is only after the ›Equal Field‹ policy was introduced – indeed, immediately after, in 486 – that we come across the first clear reference to people falsely claiming monastic status in order to avoid taxation.¹¹² This is presumably because, as Moroto has observed, the new regime linked fiscal duties to land allocation, and monks were not grantees under its terms, but were bound to a separate registration from ordinary householders.¹¹³ But even though they were not formally taxpayers now that formal rules did exist, it does not follow that monks were thereby sheltered from any exaction, as the state could descend on them whenever it saw fit.¹¹⁴ We should not expect a court officially worshipping Buddhism, or a monastic elite in cahoots with that court, to leave records of such infringements, but grassroots Buddhists had their own samizdat, often in the form of apocryphal sūtras where the Buddha was made to utter bleak prophecies about a dystopian future that happened to be their present. One such text, already hinted at above, is the ›Scripture on the Resolution of Doubts Concerning [the Age of] the Imitation Law‹ (*Xiangfa jueyi jing* 像法決疑經), reflecting conditions in the north around the turn of the sixth century. Here one reads of impious state officials »robbing through levies the properties of the *samgha*« (稅奪眾僧物), taxing their livestock and grain down to smallest things, and bossing around the serfs (*nubi* 奴婢) of

110 On this dimension of Buddhism see Neelis, *Early Buddhist Transmission*; compare Chris Wickham's reflections on the nexus between taxation and long-distance exchange in the Late Antique Mediterranean (*Framing the Early Middle Ages*, 708-720). Similar analyses with a focus on China are a desideratum. There, the formidable potential of the monastic network is best documented in its international dimension, thanks to the travelogues of Chinese monks who could rely on it in their pilgrimages to Central Asia and India; most famous in our period is Faxian 法顯 (d. ca. 423), on whom see Deeg, *Gaoseng-Faxian-zhuan*. Within medieval China itself, network exchange between monasteries is still largely understudied; a preliminary exception that I am aware of is Lu, Zhishi zhi wang.

111 We lack detailed demographic tallies for the Northern Wei period, but a contemporary estimate that toward 520 the population was double the Jin census count in 280 (for a unified empire) seems credible, also in view of later data; see *Wei shu*, 106A.2455. This would mean no less than five million households in the north alone, as noted in *Tongdian*, 7.146.

112 See above, p. 130 and note 57.

113 See Moroto, *Chūgoku Bukkyō*, 342-343. Cf. Twitchett, *Financial Administration*, 208 n. 8.

114 The memorial of 486 making the first connection between bogus monastic registration and tax evasion almost seems to threaten as much when it spurns those resorting to this subterfuge as »foolish people trying their luck« 愚民僥倖; see *Wei shu*, 114.3039.

the clergy.¹¹⁵ These grievances appear to bear out our suspicion that the *buddha* and *saṃgha* households were in fact means for the state to extract revenue from the peasantry through the monasteries, even though the latter, at least their leaders, are likely to have received their cut and (mostly) lived happily with it. Another apocryphal text from the same background (though one that eventually made its way into the orthodox canon thanks to the ambiguities of its message) is the ›Scripture for Humane Kings‹ (*Renwangjing* 仁王經), which voices shrill frustration at the Northern Wei state control of the Buddhist community. The Buddha here blasts a latter age in which arrogant rulers install superintendents and registrars for the clergy, laypeople take the high seats in monasteries, and conscripts become *bhikṣus*; he warns that monks and nuns who are included in the registers and commanded by state authorities are not his disciples, for the law they obey is one for convicts and slaves.¹¹⁶ These snippets do not really match the picture of a monastic community offering free rides to crowds of tax evaders, and basking in the glories and comforts of an imperial patronage so well attested in the records of Buddhism at the new capital Luoyang, or in the elite-sponsored programmes of Buddhist statuary and epigraphy at Yungang 雲崗 and Longmen 龍門.¹¹⁷ It is a tale of two *saṃghas*, then, that runs through the revival of the tributary empire: one pampered, the other bullied, both finally hanging by a capricious thread spun in court politics.

After fifty years from the reforms that had turned around its power structure, the Northern Wei state eventually collapsed under the weight of its internal contradictions, notably an unresolved conflict between the Sinicized and more conservatively Xianbei strands of its elite, and the growing restiveness of its military, once paramount but now largely sidelined. It was a revolt of garrisons that, between 524 and 534, dragged the dynasty to its doom and brought about its split into two halves under Sino-Xianbei warlord clans, the Yuwen 宇文 in Guanzhong and the Gao 高 in Henan and Shandong. These ruled at first through figureheads from the deposed dynasty, respectively as the Western Wei (535-557) and Eastern Wei (534-550), then in their own right as the Northern Zhou 周 (557-581) and the Northern Qi 齊 (550-577).¹¹⁸ Both regimes resumed, tweaked and continued the land policies of the Northern Wei.¹¹⁹ Their circumstances, however, were radically different, and a showdown was to be expected. The eastern state commanded far stronger agricultural resources, population, and

115 See above, pp. 129-130 and note 56. In Buddhist eschatology, the age of the ›Imitation Law‹ (Ch. *xiangfa* 像法, Skt. *saddharma-pratirūpaka*) is one in which a debased teaching and practice supersede the correct *dharma*; some traditions placed its onset one thousand years after the Buddha's *parinirvāṇa*, a threshold that, in China, many believed had just been crossed in the second half of the fifth century (full discussion to appear in Palumbo, *Buddhist Eschatology and Kingship*).

116 See *Renwang banruopoluomi jing* (T vol. 8 no. 245), 833b19-23, c15-18. This is the original text from the late fifth century (an expanded version, heavily influenced by Esoteric Buddhism, would be produced in the eighth century). On the *Renwang jing* see Orzech, *Politics and Transcendent Wisdom*, especially 107-121 on the historical context of the fifth-century version.

117 On the patronage of the Northern Wei aristocracy for the Buddhist caves at Yungang and Longmen, see respectively Caswell, *Written and Unwritten*, and McNair, *Donors of Longmen*. On the apogee of Buddhism at Luoyang in the final decades of the dynasty, see Jenner, *Memories of Loyang*.

118 On these developments see conveniently Lewis, *China between Empires*, 81-85; Holcombe, Xianbei in Chinese History, 28-34; and the extensive treatment in Pearce, *Yü-Wen Regime*.

119 Indeed, the first direct evidence of the ›Equal Field‹ system comes from the Western Wei, in a document of AD 547 from the northwestern outpost at Dunhuang. See Twitchett, *Financial Administration*, 207-208, and Pearce, *Yü-Wen Regime*, 511-518.

tributary infrastructure; its ruling elite in the Central Plain also inherited the servile households previously attached to the Northern Wei court, but corruption and factional instability, fuelled by ethnic tensions, were soon to squander much of its advantage.¹²⁰ The Yuwen regime in the west was an outlier: clinging to the less populated, poorer half of the former Tuoba empire, starved of revenue and manpower, it nonetheless rose to the challenge under the iron hand of its Xianbei military elite, and through reforms that gained momentum after the conquest of Sichuan from the south and a political revamping as the (Northern) Zhou dynasty in the 550s.¹²¹ In both states the Buddhist presence was massive, but while the thriving economy of the east made room for control-cum-patronage and a functional accommodation between the elite and the clergy (much along the lines of the late Northern Wei), severe limitations on resources in the west meant that an appetite for spoliation was always lurking.¹²² This is, in fact, what happened in the end. In 574, more than one century after the Northern Wei persecution, the Yuwen regime under Wudi 武帝 (r. 560-578) launched a second and more radical proscription of Buddhism, this time comparatively subdued in its rhetoric and probably also in its violence, but ruthlessly explicit in its aim to appropriate to the state the staggering wealth of the *samgha*, and even more its huge reservoir of manpower.¹²³ Ideological motivations, of course, were by no means absent, but a major mobilization seems to have been the immediate trigger. Only months before the proscription was launched, an edict had quashed the traditional Xianbei monopoly of the military and made room for large-scale conscription of Chinese commoners, lured with their cancellation from household registers and attendant tax and labour duties.¹²⁴ Defrocking the clergy and returning them en masse to those very registers would evidently make up for this shift, or further swell army ranks should any laicized monks opt to join them. The ploy tipped the scales in the northern contest for power, as it gave the Yuwen regime all the boots on the ground¹²⁵ it needed to wipe out its once formidable eastern rival: Northern Qi was conquered in 577, and the great expropriation of the *samgha* continued there, but on a much grander scale that was commensurate to

120 Lü, *Bei Qi zhengzhi shi yanjiu*; Pearce, Status, Labor, and Law. The growing success of population registration under the eastern state is shown in its census records: 2,005,676 households in 550 (Bielenstein, Chinese Historical Demography, 18, adding the subtotals in *Wei shu*, 106A-C), 3,030,000 households in 559-560 (*Sui shu*, 29.807), and a peak of 3,032,528 households and 20,006,880 individuals in 577, at the end of Northern Qi (*Zhou shu*, 6.101; *Tongdian*, 7.147). Remember, this was just a regional state in the northeast, not a unified Chinese empire.

121 Pearce, *Yü-Wen Regime*, 474-480; Dien, Role of the Military.

122 See Li, State Religious Policy, 262-266, and Xie, *Zhonggu Fojiao sengguan zhidu*, 74-86.

123 See *Zhou shu*, 5.85 for a summary of the proscription edict, which also targeted the Taoists (incomparably less numerous but ideologically influential). At the end of 577, addressing protests from a former monastic leader, Wudi would give a matter-of-fact justification for his decision: he had briefly studied Buddhism and found it to be of no benefit, hence he abolished it (決知非益, 所以除之); conversely, since the abolition the labour load on the population had been lighter, whereas fiscal revenue and troops had been steadily increasing, enabling him to subdue the Qi in the east and tribal rebels in the west, all of which was indeed beneficial (事有益). See *Guang hongming ji* (T vol. 52 no. 2103), 154b9-10, c18-20. No trace here of the anti-Buddhist vitriol in the Northern Wei edicts during the first persecution: cf. Hurvitz (trans.), *Wei Shou*, 65-67.

124 See *Sui shu*, 24.680, noting with a touch of hyperbole that »after this half the Chinese became soldiers« 是後夏人半為兵矣. Cf. Pearce, *Yü-Wen Regime*, 668-671; Graff, *Medieval Chinese Warfare*, 110. Neither scholar makes the link with the proscription of Buddhism, and Graff in particular wonders »whether the relatively poor western realm would have been able to dispense entirely with the productive labor of more than 100,000 cultivators« (his estimate for the Zhou army) – a perplexity we can positively address.

125 In no manner of speaking – the Xianbei did wear boots.

the size of the Buddhist community in that rich and populous country.¹²⁶ An estimated three million monks, nuns, and their dependents were suddenly turned into soldiers and peasants; 40,000 monasteries with their lands, servants and gold changed hands overnight: from those emerging from a cloak to the long-nailed fists of the mandarins.¹²⁷

The Northern Zhou were now sole lords of a territory larger than the Northern Wei at their heyday, since it included Sichuan and even regions south of the Yangzi; it was only a matter of time before they could close in on the last monarchic straw man in Jiankang. Wudi, however, did not live to see this day, as he died in his prime in 578 (retribution for his evil deeds, the Buddhists immediately ruled). The dynasty itself survived him by no more than three years, for in 581 one of Wudi's generals, Yang Jian 楊堅, born and grown in a Buddhist nunnery, seized power and established the last of the northern regimes, the Sui 隋 (581-618). Even before he formally ascended the throne, one of his first acts was to restore Buddhism; then, in 589, Sui troops finally stormed south virtually unopposed, and China was one empire again.¹²⁸

Conclusion: Fearful symmetries, or the First Great Divergence postponed

I have now reached the margins of my canvas without, I fear, anything resembling a complete picture. Yet, like a pointillist painter, I hope to have at least thrown around enough dots that may blend into a meaningful image in the beholder's eye. My core hypothesis, after all, is simple: the confrontation, from the fourth to the sixth centuries, between a rapidly growing *saṃgha* and the alien regimes that ruled northern China may have helped the latter to consolidate their state formation, and eventually acquire enough control of territory and resources to victoriously launch themselves into the imperial endgame, the conquest of the south and a durable unification of 'All under Heaven'. In their unlikely attempt to cross over from predatory leagues of pastoralists to tributary empires, those regimes were soon caught in much the same quandary as their Chinese predecessors and competitors since the end of the Han: until they could bring the great local clans to heel, and enforce revenue collection across the length of their nominal realms, their claims to suzerain authority, however crowing, would sound persistently hollow. But as long as they failed to command ultimate suzerain authority, neither could these sedentarizing nomads dream of turning the skulking multitude of their subjects into obliging taxpayers.¹²⁹ The expansion of the Buddhist monastic

126 On the conquest of Qi, see Pearce, *Yü-Wen Regime*, 704-720. The extension of the proscription in the east is well documented in Buddhist sources, some of which are very close to the facts: see in particular *Lidai sanbao ji* (T vol. 49 no. 2034), 83a5 (on the size of the Northern Qi *saṃgha*), 94b23-28; and *Guang hongming ji* (T vol. 52 no. 2103), 153c23-27.

127 For these impressive figures, see the last two sources in the previous note. If they can be trusted, and they probably can, the monastic community, including the lay devotees and dependents attached to them, would thus have been close to 10% of the north China population at the time (for the latter, cf. Xiong, *Emperor Yang*, 250-252). The most thorough discussion of the Northern Zhou persecution of Buddhism to date is still Tsukamoto, Hoku Shū no haibutsu; good summaries in Ch'en, *Buddhism in China*, 184-194; He, *Buddhism in the Economic History of China*, 24-26; Li, *State Religious Policy*, 265-268.

128 On these events, see Tsukamoto, Hoku Shū no shūkyō haiki seisaku no hōkai; Wright, *Sui Dynasty*, 57-61, 110-114; Xiong, *Emperor Yang*, 15-17, 151-153.

129 Here I weave into Mark Elvin's apt sketch of the situation under the Tuoba Wei before the late-fifth-century reforms (*Pattern of the Chinese Past*, 47).

body may have wedged into this vicious circle by offering an initial alternative for dispossessed peasants and social misfits, trapped between the rock of serfdom (thinly disguised as retainership into the great clans) and the hard place of imperial taxation. To the brawny rulers of the north, this must have looked at first as an irresistibly soft target to smash and grab, especially when the vital cycle of raiding and loot-sharing had reached a dead end. But you cannot empty the same coffer twice: in time, allowing the clergy to grow rich again, whilst keeping a close eye on the monks' names and numbers in official registers, must have seemed an altogether better option to expand the territorial and fiscal reach of the state, all the more so as it could soar on wings of genuine devotion from court to commoners. And while monks may have been officially denied taxpayer status in the ›Equal Field‹ system, it certainly would have been easier for the imperial bailiff to reclaim land and revenue from the monasteries, as soon as his lords would see fit, rather than thumping in frustration at the unyielding gates of the manors. Spoliation, for that matter, was always an option, and it was decisively taken in the 570s, as the Northern Zhou found through it the resources to defeat their archenemies in the northeast and ready themselves for the long-awaited conquest of the south. The return of imperial unity was finally achieved in 589, but at the hands of a successor regime, the Sui 隋, established by a Northern Zhou general and Buddhist sympathizer. The Sui showed all the traits of the ›strong tributary empire‹, able to enforce taxation and household registration across the entire extension of its territory, order great public works, and mobilize huge armies. A census in 609 returned 8,907,546 households and 46,019,956 individuals, the highest tally since the Eastern Han.¹³⁰ A tightly regulated Buddhist community meanwhile reached new heights under state patronage, and it must, again, be significant that one of its most fervent supporters was also remembered as the architect of the Sui fiscal renaissance.¹³¹

As rulers of a unified empire, the Sui would last no more than three decades, but their inheritors, the Tang 唐 (618-907), would hold the scene for three centuries, and the new period of division that did follow their fall would quickly be ended by the advent of the Song in 960. It is this narrative that, as we have seen, has offered many scholars the glimpse of a China diverging from the West in Late Antiquity through the permanent recovery of an imperial statehood that the latter virtually lost forever. This would indeed be an apposite conclusion to these notes, if only I could endorse it. But I have suggested at the outset that even after the late sixth-century breakthrough, it would still take some time for ›China‹ to settle on its trademark cycle of long-term institutional stability; and while there is no space to consider the centuries up to the Song into any detail here, some final remarks may briefly broach problems that future research will hopefully address more thoroughly.

One of them is the lingering view of the Tang, a family name in world history books, as a single long and successful empire after the dark centuries of division, with the Sui as a mere prequel. Like so many other things about that dynasty, this view is a legacy of the Song period, but like so many others a distinctly questionable one. One should start observing, with the late Antonino Forte, that there were not one but two Tang dynasties: between the First

130 See *Sui shu*, 29.808 and *Tongdian*, 7.147. On the great recovery of taxation, population registration, and economic infrastructure under the first Sui emperor, see the valuable analysis in Xiong, *Emperor Yang*, 173-195.

131 This was Gao Jiong 高颎 (d. 607), Yang Jian's chief minister, who in the 580s established a new system of fiscal registration, ensuring the reversion of large numbers of vagrants and hidden retainers to the regular household registers; see *Tongdian*, 7.156 and Tang, *Clients and Bound Retainers*, 133-134. On Gao's close ties with the Buddhist community, notably his sponsorship of the powerful Three Stages sect, see Hubbard, *Absolute Delusion*, 195-197; and more generally Chen, *Monks and Monarchs*, on Sui patronage of Buddhism.

Tang (618-690) and the Second Tang (705-907) there was in fact a different dynasty, the Zhou 周 (690-705). This was established by a remarkable woman, Wu Zhao 武曩, who ruled in her own right as empress – decisively buttressed by Buddhist support – after a much longer tenure of power from behind the scenes.¹³² Apart from the political instability this fracture betrays,¹³³ our modern sensitivities (or presentist bias) should not distract us from the scandal that a female emperor meant to many of her contemporaries, and especially to those Song historians who successfully erased the memory of her dynasty.¹³⁴ Wu Zhao's case is there to suggest that in China, at the end of Late Antiquity, the imperial idea was a somewhat tentative business compared to the stiff template of later ages: how would we make room for the notion of a successfully reigning woman-pope in our historical view of the medieval papacy, for example?

But the Tang were precarious in far more compartments, and probably more significant, including the all-important area of taxation and household registration. The Sui may well have revived the glories of the Han tributary state when they could count nine million households in 609. Two or three decades later, however, their successors could not reach three million, and as late as 652, at a time when political consolidation should have been by all means achieved, the tally was still well under four million.¹³⁵ It is entirely plausible that, at this stage, the Tang elite could manage perfectly well by alternative means, including the taxation of commerce and good old rent-taking from imperial estates.¹³⁶ If so, however, it also means that the suzerain power of the dynasty across its territory was limited, as there were arguably fewer places where the taxman could go and make claims on behalf of the government. Only in the first half of the eighth century, notably during the long reign of Xuanzong 玄宗 (r. 712-756), would the registration capacity and demographic counts of the Tang reach back to the Sui records. But it would not last long: the rebellion of the Turco-Sogdian general An Lushan 安祿山 and his successors (755-763) shook the dynasty to the core, and left it limping ahead for the next one and a half centuries.¹³⁷ That household counts should have dropped spectacularly from nine million in 754 to 1.9 million in 760 is understandable, since at the latter date some of the most populous regions – Henan, Hebei, Shandong – were under the rebel dynasty of the Great Yan 燕 (756-763).¹³⁸ But even after the rebellion was quelled and a

132 Forte, *Political Propaganda*, xiv-xv. Of course, any China historian knows this, and yet we keep on referring to a single Tang dynasty, whilst – incoherently – we distinguish between the Former/Western and the Later/Eastern Han, separated by Wang Mang's 王莽 Xin 新 dynasty interregnum (AD 9-23).

133 Geopolitical as well, since Wu Zhao's power base was in Luoyang, whereas Tang emperors mostly ruled from Chang'an (Guanzhong).

134 See Guisso, *Wu Tse-t'ien*, 1-7.

135 For the first figure, see *Tongdian*, 7.148; *Cefu yuangui*, 486:11b1; *Xin Tang shu*, 51.1344; for the second, see *Tang huiyao*, 84.1550 (3.8m), and *Cefu yuangui*, 486:11b9 (3.85m). A lucid discussion of the demographic decline in the early Tang is in Pulleyblank, *Registration of Population*. Xiong (*Emperor Yang*, 193-194) briefly notes this problem and is willing to explain it as a real depopulation following »unnatural causes such as war, famine, and corvée [sic]«, but I cannot follow him on this point: apart from the lack of evidence for a loss of life on such a huge scale, it seems difficult to explain how the population could nearly double in the next five decades, as we are going to see.

136 Cf. Pulleyblank, *Registration of Population*, 293-295, and Twitchett, *Financial Administration*, 9-11.

137 On the An Lushan rebellion and its long-term repercussions see, among others, Graff, *Medieval Chinese Warfare*, 216-251, and Pulleyblank, *An Lu-Shan Rebellion*.

138 For the figure of 9,069,154 households in 754, see *Tang huiyao*, 84.1551, and *Zizhi tongjian*, 217.6929; the count of 1,931,345 households in 760 is in *Tang huiyao*, 84.1551; also in *Cefu yuangui*, 486:18b5, and *Xin Tang shu*, 52.1362, with slight variations.

sweeping fiscal reform was introduced in 780, the Tang state never recovered its full registration capacity, as tallies varied between 2.4 million households in 807 to 4.9 million in 845.¹³⁹

I have argued above that census records should not be used uncritically as a gauge of power, for the latter comes in different kinds that may or may not converge to shape an imperial formation: a strong state could dispense to significant degrees with the very exercise of taxation and household registration, thanks to direct landownership or extraordinary levies and requisitions (the Cao and Yuwen regimes in the third and sixth centuries), although this type regularly proved unable to produce enduring suzerainty over large territories; or it could survive by relying on unfortunate tributary pockets, presumably cross-subsidizing a larger apparatus of power (Shu Han, Wu), though in this case too not for long; or it could maximize its territory and indeed expand its registration reach, but not enough to secure a durable base of suzerain power for the centre over the periphery (as was the case of the Jin in the 280s). The long-lasting Tang, it would seem, managed to survive by switching across these different options, but we should resist viewing them as a strong tributary empire throughout, as they only looked like one during portions of their cycle.

Against this background, we must observe that the confrontation between Buddhism and the state continued across this period and until the latter half of the tenth century, climaxing in two more major persecutions: in 845 under the Tang emperor Wuzong 武宗 (r. 840-846), and in 955 under the short-lived regime of the Later Zhou 周 (951-960), which ruled over northern China in the period of fragmentation known as the Five Dynasties (907-960), and would successfully morph into no less than the great Song at its end.¹⁴⁰

At a closer look, there is a fearful symmetry between these two incidents and the first two proscriptions in the fifth and sixth centuries. In both cases, we have a violent and ideologically loaded persecution (446, 845), followed after about one century by a less venomous, economically driven suppression of the Buddhist community (574/7, 955). It is also noteworthy that, in the latter pair, both proscriptions of 574/7 and of 955 were launched by regional states in the north on the eve of decisive campaigns that would lead to the reunification of Chinese territory, respectively under the Sui and the Song, and, arguably, provided through confiscation an essential quota of the resources for those ventures.

However, there were no more large-scale proscriptions of Buddhism after the tenth century, as the ostensibly capricious oscillation between exemption and disenfranchisement, patronage and suppression was to find its long-term balance in a state grip on the clergy that would never slacken after the advent of the Song.¹⁴¹ The end of the confrontation with

139 The counts for 807 and 845 are respectively in *Tang huiyao*, 84.1551; *Zizhi tongjian*, 237.7647, and in *Tang huiyao*, 84.1552; *Xin Tang shu*, 52.1363. On the demographic changes in the Tang, and in particular after the An Lushan rebellion, see Tang, *San lun*, 246-255. The fiscal reform was the so-called double-tax system (*liangshui fa* 兩稅法), based on income ranking of households rather than allotted land, and involving two yearly collections, measured in cash, with the simultaneous abolition of all other taxes; see Twitchett, *Financial Administration*, 39-48.

140 On the anti-Buddhist persecution of 845, the largest in scope, see Reischauer, *Ennin's Travels in T'ang China*, 217-271; Ch'en, Economic Background; Ch'en, *Buddhism in China*, 226-233; Weinstein, *Buddhism under the T'ang*, 114-135. On the fourth and last suppression (in fact, a drastic downsizing and spoliation) in 955, see Makita, Go Shū Seshū no Bukkyō seisatsu, and the sketches in Gernet, *Buddhism in Chinese Society*, 22, and Worthy, *Founding of Sung China*, 32-33. Worthy offers an extremely detailed discussion of the Later Zhou transformation from regional regime to China-wide bureaucratic empire.

141 See Ch'en, *Buddhism in China*, 389-454 (with reservations, though, on his narrative of decline), and the brilliant He, *Buddhism in the Economic History of China*, 47-89.

Buddhism that had started under the Northern Wei, and whose fundamental terms had been defined back then, would thus give way to the consolidation of the unified bureaucratic empire as the enduring form of the Chinese polity until modernity: if nothing else, surely this is a ›great coincidence‹.¹⁴² Whether it also marked a fundamental divergence from the historical trajectory of the West is something that comparative historians may want to explore in greater depth from this particular entry point, but some preliminary counterfactual observations do seem relevant. That is, we have a very significant similarity between Eastern and Western Eurasia in Late Antiquity – as already noted, the fall of large tributary empires on both sides, followed by social, economic, and political fragmentation and the parallel rise of large religious bodies wedging their way into a collapsing metapolitical order. But while this rise had been firmly harnessed in China by the end of the first millennium, this would not be the case in the West: as a result, Song China and its successors would not be faced with the ›highly organized religious community‹ of Latin Christendom, or a ›Papal Revolution‹, or a gigantic ›proprietary church‹ standing in the way of their imperial statehood.¹⁴³

One would not leave this chain of adventurous remarks without sounding some ringing note of caution. More research is doubtlessly needed, including robust scrutiny of quantitative data and minute explorations of the historical contexts. And yet, haven't we already started to question the cliché of an eternal China, fated to stay imperial and one since antiquity? Perhaps no one put this view more forcefully than A. C. Graham, a master Sinologist like few, who once quipped that »[a]bout the time when the First Emperor was looking for the elixir of life China discovered the secret of the immortal empire, the unkillable social organism.«¹⁴⁴ The China we have known tells a different story, one where empire doth perish in the maelstrom of Late Antiquity, and bantam lords dance clumsily on its carcass, for centuries. Until along come monks and nomads, and look what happens!

142 The Song, to be sure, also suffered invasion from the north, loss of territory, and relocation to the south (Southern Song, 1127-1279). Unlike the Han and the Tang, however, the Song never controlled the far north and the northwest, whereas their economic and demographic powerhouse had already shifted to the south in the course of the eleventh century. Accordingly, the northern invasions in the twelfth century did not curtail the empire's resources of territory and population on a scale comparable to the position of the southern regimes in the period of division vis-à-vis the earlier Han unity.

143 See respectively Mitterauer, *Why Europe?*, 144-193; Berman, *Law and Revolution*, 85-119, 520-537; and Woods, *Proprietary Church*, for seminal discussions of the three concepts in inverted commas. A first, important exploration of what this meant in the long run for the diverging paths of development in China and the West can now be found in Davids, *Religion*.

144 Graham, *Disputers of the Tao*, 5. Yuri Pines has expanded on the idea twice, and at monograph-length: see his *Envisioning Eternal Empire*, and especially *Everlasting Empire*.

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The Political Significance of Gifts of Power in the Khmer and Mercian Kingdoms 793-926

Dominic Goodall and Andrew Wareham*

This paper compares four Latin charters and one recently discovered Sanskrit inscription recording various royal gifts of taxation to religious foundations in the contemporary Mercian and Khmer kingdoms in the early ninth and early tenth centuries. It draws upon philology and medieval history as its principal disciplines, and considers three models of gift-giving as a way of interpreting the data. Close textual investigation of these records is used to challenge narratives which suggest that such gifts of power weakened the power of rulers, and thus led to the breakup of states. It is equally possible to argue that these gifts of power enhanced the power of Mercian and Khmer kings. Moreover, other powerful factors, such as a cultural renaissance or environmental crisis, may be adduced to explain the context for the compilation of these documents, thereby opening up new perspectives for enquiry into the history of the Khmer and Mercian kingdoms in the early medieval period.

Keywords: Cambodia; charters; gifts; Hwicce; immunities; inscriptions; Khmer; Laos; Latin; Mercia; military; Śaivism; Sanskrit; taxation; Vat Phu

The comparison of the meanings of gift-giving in Buddhism and Christianity is to be valued as an important contribution to the historical debate on gift-exchange, which, as has been said before, when it explicitly makes use of anthropological models of gift-exchange, only refers to studies of gift-exchange in ›primitive‹, illiterate societies and seems erroneously unaware of the ongoing research on religious gift-giving in large-scale, literate traditions such as Buddhism and Hinduism.¹

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1 Bijsterveld, *Medieval Gift*, 143.

Since the early twentieth century, comparative studies of gift-giving and kingship have shown that in primitive and pre-modern societies, royal gifts of land and power given to religious foundations in return for money and other counter-gifts may have had less to do with purely economic history and more to do with concepts of mutual obligation and the politics of negotiation.² This approach has developed mainly from medievalists' engagement with anthropologists' studies of gift-giving in Africa, Asia and Polynesia in the colonial and post-colonial eras.³ This article takes a different approach, and is intended as a step in the direction suggested by Arnoud-Jan Bijsterveld (as stated in the epigraph to this article).

We may start by briefly outlining three models of gift-giving evident in the work of medieval historians:

1. gift-giving and commercial transactions often operated in tandem, and thus many transactions which were presented as gifts and counter-gifts were in fact sales;
2. gift-exchange was used for the forging of alliances and in strategies of unification, with a view to enhancing the political power and social prestige of donors, and hence should not be viewed as evidence of the decline of royal power; and
3. gifts need to be differentiated from inalienable possessions, which, after they have been granted retained something of the distinct identities of their original owners and hence served to enhance their authority and prestige to a greater degree than it served those of the recipients.

Historians of Anglo-Saxon England have tended to favour the first model,⁴ in contrast to historians of Francia, who have pointed to the importance of the second.⁵ The seminal work of Barbara Rosenwein has provided a clear exposition of the second model in showing that the ›generosity‹ of rulers in the Frankish world served both to proclaim royal power to their subjects and to give them access to local networks of power.⁶ Her argument directly challenged an older school of French historiography, which had argued, in Robert Latouche's words, that the privileges of immunity granted by kings were ›degrading concessions‹ which arose from the ›incapacity and dishonesty of royal agents who, as we know [...] were rogues. Never in our history has the conception of the state known so complete an eclipse.‹⁷ We intend to explore all three models by looking at gifts of power to religious institutions in the Mercian and Khmer kingdoms.

2 E.g. Gurevich, *Categories of Medieval Culture*, 185, 257-258; Reuter, *Property Transactions*, 181-183; Samson, *Economic Anthropology and the Vikings*. There is an extensive literature on gift-giving in other branches of study and it is worth drawing attention to such distinctions as that observed by sinologists between ›na‹ (present), used in the case of an exchange between courts of equal standing, and ›hsien‹ (to offer up) tribute (›kung‹) in a vertical relationship (Wright, *From War to Diplomatic Parity*, 216); I am grateful to Annabel Smith for discussion of this point.

3 We have found the following historical studies especially useful: Alghazi *et al.*, *Negotiating the Gift*; Davies and Fouracre, *Languages of the Gift*; Heitzman, *Gifts of Power*; Rosenwein, *Negotiating Space*.

4 Naismith, *Land Market*; below, nn. 40, 57-58.

5 E.g. Curta, *Merovingian and Carolingian Gift Giving*; Nelson, *Settings of the Gift*; Rosenwein, *Francia and Polynesia*, 362-366. It is important to note that there are differences between historians who use this model; for doubts on Rosenwein's model, see Curta, *Merovingian and Carolingian Gift Giving*, esp. 671 n. 3, 698.

6 Rosenwein, *Negotiating Space*, 14-18, 74-96, 135-177.

7 Latouche, *Birth of the Western Economy*, 129.

A further word about what we mean by inalienable possessions may be useful before we begin. In medieval worlds, inalienable possessions, such as monarchs' clothes, saints' relics and holy books, continued to enhance the authority of their original owners and makers while still transferring some sense of royalty and sacrality to the new holders or owners.⁸ But in addition to this type of inalienable possession, the anthropologist Annette Weiner in her seminal study also drew attention to treasures entirely excluded from gift-exchange that were integral to lineages' and institutions' identity and power: ›unlike the most famous inalienable Maori, Taonga or Samoan fine mats, the inalienable kula shells do not move back and forth between local lineage and political affairs [...] these possessions symbolize the inalienability of the group and, at the same time, a chief's growing reputation and immortality.‹⁹ Therefore, some gift-exchange can be used to draw attention to non-circulated goods, emphasising the separation of royalty from society and its over-arching authority over spiritual and secular affairs.¹⁰

In the following pages, Part I discusses the background and context of four charters in which Mercian kings transferred fiscal rights to monastic foundations in south-west Mercia; Part II sets out the data from recent advances in the discovery and interpretation of Sanskrit inscriptions in the Khmer kingdom; and Part III makes some general observations arising from our comparative approach.

I: Mercian kings and their religious foundations

The archive of the bishopric of Worcester provides the principle collection of charters for studying the political, social and cultural worlds of the Mercian polity, which dominated Anglo-Saxon England for much of the eighth and ninth centuries. Four charters dealing with fiscal grants to religious foundations in the south-western part of the Mercian kingdom were originally drawn up between 793 and 855, but at the beginning of the eleventh century these and many other Mercian royal charters were copied into the earliest Worcester and indeed earliest English cartulary, the *Liber Wigorniensis*.¹¹ These dates have been chosen for the concentration of fiscal charters, but this period is also one of note for other reasons, standing as it does between the aftermath of the Council of Nicaea (787), and the first reference to the English as an ethnic and political group in the vernacular (855).¹²

The *Liber Wigorniensis* fulfilled two purposes; first, it was a work of ecclesiastical history, and second, it helped the bishopric and community of Worcester to maintain rights to lands and dues during a period of severe political and economic stress.¹³ The fiscal charters it records were all issued on behalf of Mercian kings, but it is important to remember that these and other early ninth-century Mercian charters do not reflect the perspectives of the

8 Bijsterveld, *Medieval Gift*, 125; Curta, *Merovingian and Carolingian Gift Giving*, 694-695; Weiner, *Inalienable Possessions*, 33-36.

9 Weiner, *Inalienable Possessions*, esp. 133-148 (quote at p. 145).

10 Weiner, *Inalienable Possessions*, esp. 133-148; Quigley, *Introduction*, 3-6.

11 BL MS Cotton Tiberius A.xiii.

12 Gallagher, *Vernacular in Anglo-Saxon Charters*, at n. 138.

13 Wareham, *Redaction of Cartularies*; cf. Baxter, *Archbishop Wulfstan, 162-163, 172-175*; Tinti, *Sustaining Belief*, 85-92, 120-125.

Mercian royal court in the manner that West Saxon charters produced in the 840s do for the West Saxon royal house.¹⁴ Nonetheless, we should not necessarily assume that the charters reflect an ecclesiastical advance in which the bishopric sought to gain power and prestige at the expense of royal and secular power. We cannot fully understand the cultural milieu of the production of early ninth-century Mercian charters because so much information is missing.¹⁵ But by restricting our discussion to a select group of charters concerned with fiscal immunities over two generations, it may be possible to reach some conclusions about the political significance of these gifts of power.

The *Liber Wigorniensis* was concerned with the history of the bishopric of Worcester mainly within its regional hinterland of south-west Mercia, known as Hwicce. The name Hwicce, first mentioned c. 603 CE, perhaps referred to a people of British origin who lived in a chest- or ark-like landscape (a possible etymology of the kingdom's name) in the low-land area of the Severn and Avon valleys, bounded by the watersheds of the Cotswold, Lickey and Malvern hills (over 200 feet) and the woodlands of the Arden and Wyre forests.¹⁶ The land was well drained with naturally fertile soils lying close to the Avon, Severn and Teme rivers, and the economic resource of the salt wells at Droitwich (Worcs.) was one of the four marvels of Britain referred to in Nennius' early ninth-century *Historia Brittonum*.¹⁷ The region stood on the western fringe of the English cultural zone that comprised most of southern and eastern Britain, which in turn may have developed from even more ancient divisions between the eastern and southern regions and the northern and western regions of the island.¹⁸ Between c. 601 and c. 610 there reportedly took place a meeting between Augustine, archbishop of Canterbury, and a group of British bishops, perhaps on the borders of the kingdom in southern Gloucestershire.¹⁹ The location of this meeting ›under an oak tree‹ could provide further evidence for an important connection between Irish monasticism and British Christianity long before the authority of Canterbury and the Roman Catholic church was established among the Hwicce in the late seventh century.²⁰ The former Roman city of Gloucester, lying on the crossing over the river Severn of the road linking London with south Wales, was the strategic centre of the early kingdom, which may have stretched as far as Bath (Somerset) and included much of Herefordshire.²¹

The Hwiccian dynasty had English origins and kinship connections with the Bernician royal dynasty (in Northumbria), but its political ties of subordination were with the Mercian kings, whose power was focused around the central and north-east midlands of England.²²

14 Keynes, *West Saxon Charters*.

15 For an excellent survey and important conclusions, see Gallagher, *Vernacular in Anglo-Saxon Charters*.

16 Hooke, *Anglo-Saxon Landscape*, 3-21; Coates, *Name of the Hwicce*.

17 Hooke, *Droitwich Salt Industry*; Zaluckyj, *Mercia*, 110; Nennius, *Historia Brittonum*, ed. Morris, 40, 81.

18 Cox, *Church and Vale of Evesham*, 29-30; Reynolds, *Early Medieval Period*, 143-146.

19 Bede, *Ecclesiastical History* II.2, ed. McClure and Collins, 71-74; Cubitt, *Anglo-Saxon Church Councils*, 207-208.

20 Bede, *Ecclesiastical History* III.4, ed. McClure and Collins, 115 on the foundation of Columba (fl. 521-597) at Dear-march ›the field of oaks‹ leading to the establishment of many monasteries in Britain; for discussion of early Christianity in western England, see Sims-Williams, *Religion and Literature in Western England*, 73-86.

21 Clarke, *Economy*, 62; Yorke, *Kings and Kingdoms*, 13, 108-109.

22 For the view that smaller and medium sized kingdoms within Mercia were created as subsidiary states of the Mercian kings, see Zaluckyj, *Mercia*, 103.

The kingdom acted as a buffer state for the Mercians in dealing with the Welsh and West Saxon kingdoms, but the kings of the Hwicce were not recorded in histories and chronicles as great warrior kings.²³ Their prestige and authority was enhanced by their deference to the dignity and authority of the Mercian rulers, who also acted as patrons of the Hwiccian church, thereby creating a multi-centred and multi-layered network of political power within the kingdom.²⁴ By the late seventh century, the Hwiccian kingdom, shorn of its lands in Herefordshire, was assessed at 7,000 hides. The hide, a standard unit for measuring wealth in Anglo-Saxon England, resists precise definition in this period, but these figures make Hwicce a medium-sized Anglo-Saxon kingdom, stretching over Gloucestershire, Worcestershire and south-western Warwickshire.²⁵ Beneath the level of the kingdom there were a number of smaller territories (*regiones*), such as the *Woeogran*, which gave its name to Worcester, the *Usmere* connected to an ecclesiastical centre (or minster) at Kidderminster, and the *Wixan* associated with minsters at Inkberrow and Fladbury.²⁶ Between c. 778 and c. 800 the Hwiccian kings disappeared from the historical sources, with power being delegated by Mercian kings to ealdormen, but charters and other sources continued to refer to lands in Gloucestershire, Worcestershire and south-western Warwickshire as lying within the territory of the Hwicce well into the late Anglo-Saxon and Anglo-Norman periods.²⁷

Before turning to the four charters on which this section focuses, and which are concerned with the churches or minsters at Westbury, Hanbury, Bredon and Blockley, it is helpful to consider some of the possible patterns of gift-giving in transfers of land in the Hwiccian kingdom between the 690s and 840s, to give a sense of context. In 706 Æthelweard (fl. 693-c. 717), ruler of the Hwicce, with the consent of the Mercian king, granted 12 hides at Ombersley (Worcs.) to Evesham abbey, freeing the land from all public taxes and royal dues, though the king reserved his rights to pannage for the royal swine from an island in the river Severn.²⁸ There was no counter-gift of treasure or land, but Æthelweard did expect the monks of Evesham to pray for his soul and for that of Ecgwine, bishop of Worcester and abbot of Evesham.²⁹ This charter points to the significance of the alliance between secular and ecclesiastical power; the king did not insist upon the payment of the three common military burdens (of army service, fortress and bridge work) in the grant, because the charter pre-dated the emergence of these obligations in England.

23 On different forms of early medieval kingship, see James, *Origins of the Barbarian Kingdoms*, 43-46. Perhaps kings of the Hwicce were among the 30 sub-kings (*duces regii*) who fought on the Mercian side at the battle of the Winwæd in 655 (on the campaign and its administrative significance, see Yorke, *Kings and Kingdoms*, 105).

24 Brooks, *Formation of the Mercian Kingdom*, 59, 163-164; Chadwick, *Studies in Anglo-Saxon Institutions*, 281-282; Campbell, *Bede's Reges and Principes*, 91-92; Yorke, *Nunneries and Royal Houses*, 197-198 (in particular see the entry on Hanbury); eadem, *Kings and Kingdoms*, 105; cf. Bassett, *In Search of the Origins*, 6-20. For a useful comparison, see Schnepel, *Kings and Tribes in East India*, 200-201.

25 Bassett, *In Search of the Origins*, 6; Yorke, *Kings and Kingdoms*, 10-13; cf. Chadwick, *Studies on Anglo-Saxon Institutions*, 280-282.

26 Bassett, *In Search of the Origins*, 18-19; Hooke, *Anglo-Saxon Landscape*, 75-84. This region has provided some key evidence for the minster hypothesis, which suggests that monastic communities undertook pastoral duties in their hinterlands (*regiones*) until the ninth-century crisis and the emergence of the parochial system in the tenth and eleventh centuries (see Blair, *Church in Anglo-Saxon Society*, 291-367).

27 S 215 (B 540); Cox, *Church and Vale of Evesham*, 177; Hooke, *Anglo-Saxon Landscape*, 20.

28 S 54 (B 116) commented upon by Clarke, *Economy*, 62.

29 On Ecgwine's career, Cox, *Church and Vale of Evesham*, 4-35.

Between 704 and 709 Æthelheard and Æthelweard as joint rulers of the Hwicce granted five hides at Ington (Warwicks.) to Cuthswith in exchange for 600 shillings, and she gave the land to the nunnery at Inkberrow (Worcs.).³⁰ This charter demonstrated the wealth of Cuthswith in undertaking a property-buying transaction,³¹ but raises the question of whether 600 shillings was a fair price for her to pay for just five hides. Cuthswith was a kinswoman of an ealdorman who had served King Oshere (fl. 680-93), father of Æthelheard and Æthelweard, and joint ruler of the Hwicce with his brother Osric.³² When Æthelheard and Æthelweard granted land to Cuthswith they may have sought to establish a connection both with her family and with the *Wixan* via Inkberrow. The counter-gift may have symbolized mutual recognition between the rulers of the Hwicce and Cuthswith, in line with the second model of gift-giving.³³

For the early medieval period, it is difficult to separate the different aspects of price in terms of the costs of entering the market and meeting the conditions prevailing within it from the economic value and opportunities of the goods and lands transferred. In a charter dated to 849, which survives only as a copy in the *Liber Wigorniensis*, it was recorded that in the midst of the Viking onslaught, Berhtwulf, king of Mercia (840-c. 852), leased five hides at Cofton Hackett for five lives to a thegn named Ecgberht, who in return gave the king £60 in pure gold and silver.³⁴ Cofton Hackett lay on the northern boundary of the Hwiccian kingdom and perhaps comprised the core of a 20-hide estate.³⁵ Cofton Hackett was rich in woodland, and had a dairy farm and industrial buildings.³⁶ But paying £12 per hide for five lives, even with these assets, was probably a poor economic deal for Ecgbert, and perhaps his generous counter-gift was intended to act as a signpost of deference towards King Berhtwulf. In the preceding charter in the *Liber Wigorniensis* cartulary, also dated to 849, 20 hides, including the five hides at Cofton Hackett, had been leased by Ealhun, bishop of Worcester, to King Berhtwulf for five lives ›for our defence‹ and in order that ›the king be more firmly the friend of the bishop and his community.‹³⁷ Ecgberht was probably close to both Berhtwulf and Ealhun, and he may have wanted to achieve several objectives in purchasing the Cofton Hackett lease.³⁸ First, it enabled Ecgberht to show his friendship towards the king; second, it protected the interests of the bishopric in ensuring that a friend had an interest over part of the 20-hide holding leased to the king; and third, it may have helped the king to raise funds for the war against the Vikings. Ecgberht may have played an important role as an intermediary between King Berhtwulf and Bishop Ealhun, and the price for the lease of Cofton Hackett may have reflected the social and political nature of the transaction.

30 The charter is a seventeenth-century copy: S 1177 (B 122); S 53 (B 85) sets out her connections with their father Oshere in founding a nunnery. Sims-Williams, *Religion and Literature in Western England*, 191, provides helpful commentary.

31 Sims-Williams, *Religion and Literature in Western England*, 191-192; PASE Cuthswith 3.

32 Sims-Williams, *Religion and Literature in Western England*, 191-192; Zaluckyj, *Mercia*, 105.

33 Such an argument is strengthened by Cuthswith's connections with Carolingian Europe: see Sims-Williams, *Religion and Literature in Western England*, 191-197, 239.

34 S 199 (B 455). On hidage, see Tinti, *Sustaining Belief*, 95; Hooke, *Worcestershire Anglo-Saxon Charter Bounds*, 140.

35 Hooke, *Worcestershire Anglo-Saxon Charter Bounds*, 140-141.

36 Hooke, *Worcestershire Anglo-Saxon Charter Bounds*, 138, 141 drawing upon S 1272 (B 455).

37 S 1272 (B 455).

38 In PASE Ecgberht 15 is not linked to any persons of the same name, but it is notable that Ecgberht 16, a priest, witnessed S 1272.

Before concluding that these three charters provide evidence in favour of the second model of gift-giving, it is worth pausing to consider the text of the charter which leased the land to Ecgberht. It referred to ›this aforementioned land‹ (*hanc prenomiatum terram*), without specifying either its name or its hidage. It has been assumed that this refers back to Cofton Hackett on the grounds that the prose section of the preceding charter ended with an itinerary in the vernacular of the boundaries of Cofton Hackett.³⁹ But the ›aforementioned land‹ could refer to the whole block of 20 hides identified at the beginning of Bishop Ealhun's charter in favour of King Berhtwulf, rather than the land described in its vernacular boundary clause. Moreover, the charter in favour of Ecgberht also mentions an important counter-gift. The king freed the land from all secular burdens demanded by kings and ealdormen, but at the boundary of the estate a portion of »200« was to be rendered. It is unclear what this counter-gift was, but sixty pounds may well have been a fair price to pay for holding 20 hides for five lifetimes (i.e. for up to a century and half), in which the holder had the right to collect dues on his estate with some of these payable at the boundary to the king's agents, with the guarantee of the king's protection. Aquinas' famous dictum ›*tantum valet quantum vendi potest, sed communiter*‹ may well have applied to this exchange, as well to other similar market-based transactions involving land and treasure in ninth-century England.⁴⁰ But it is also possible that participants used these exchanges to signal varying levels of friendship and coolness both to audiences present at the time and to those who heard (or read about) these transactions at a later date, for purposes disconnected from economic opportunities. These three charters identify the range of choices in interpreting royal gifts of power, and raise possibilities in relation to the first and second models of interpreting gift-giving, but so far provide little evidence in support of the third model.

Charters can easily take second place to the ›Anglo-Saxon Chronicle‹ in understanding Anglo-Saxon history. Under the year 829 the ›Anglo-Saxon Chronicle‹ recorded: ›And that year King Egberht [of Wessex] conquered the kingdom of the Mercians, and everything south of the Humber; and he was the eighth king who was *bretwalda*.⁴¹ The entry suggests that around 829 Mercian power was dealt a hard blow by which Wiglaf, king of Mercia (827-29 & 830-40) was driven from his throne, with this moment acting as a watershed in the struggle for power between Wessex and Mercia.⁴² The demise of the Hwiccian royal dynasty at the turn of the ninth century can be viewed as part of a prelude to the decline of Mercian royal power.⁴³ This is not the place to discuss the role of the *bretwalda*, the rise and fall of Mercia, or the prosopographical research on the heirs and successors of the Hwiccian royal dynasty,⁴⁴ but we should at least note in passing that the ›Anglo-Saxon Chronicle‹ was copied

39 www.esawyer.org.uk/charter/199.html; retrieved on 27 November 2017); Hooke, *Worcestershire Anglo-Saxon Charter Bounds*, 140; Tinti, *Sustaining Belief*, 95-96; the boundary clause is at BL MS Cotton Tiberius A. xiii, fol. 4r.

40 ›A thing is worth as much as it can be commonly sold for‹ cited in Roncaglia, *Wealth of Ideas*, 40. For markets in England between the ninth and eleventh centuries, see Faith, *Structure of the Market*, 697; Jones, *Transaction Costs*, 658; Naismith, *Payments for Land*, 294.

41 Trans. Whitelock, *English Historical Documents*, no. 1 at 186.

42 Higham and Ryan, *Anglo-Saxon World*, 241-242; Wormald, *Ninth Century*, 139; cf. Keynes, *England*, 40-41.

43 On the diminishing role of Hwiccian kings c. 778-90, Hooke, *Anglo-Saxon Landscape*, 19-20; Yorke, *Kings and Kingdoms*, 113; S 113 (B 223); S 126 (B 233).

44 On the *bretwaldas* and Mercian power, see Keynes, *England*, 39-41; for possible descendants of the Hwiccian kings, see PASE Uhtred 2, Uhtred 4 and Uhtred 6.

in its extant form around c. 890 at the court of Alfred, king of Wessex (870-99), and hence provides a narrative history of earlier centuries from a later, West Saxon and court-centred viewpoint.⁴⁵ The entry for 829 helps to provide a key insight into the history of Mercia in the early ninth century, but it should not be preferred over the evidence of ninth-century charters copied at Worcester cathedral and other religious institutions in the Anglo-Saxon period. It is to four of these charters that this article now turns.

Between 793 and 796 Offa, king of Mercia (757-796), transferred fiscal rights to the bishop of Worcester from lands attached to the minster at Westbury-on-Trym (Gloucs.), also referred to as Westminster, and so named either because it stood to the west of the nunnery at Bath or was located on the western edge of the Hwiccian kingdom.⁴⁶ In the charter, the bishop received freedom from great and small tributes relating to 60 hides at Westbury and 10 (or 20) hides in the adjoining estate of Henbury. These lands had allegedly been held by Offa's grandfather, and in return for the gift he received assistance with the salvation of his own soul, the souls of his parents, and of his son Ecgrith (d. 796). The charter was witnessed by members of Offa's family, the archbishop of Canterbury, the bishops of Worcester and Leicester, together with a *princeps*, eight ealdormen and four abbots, thus demonstrating the importance of the occasion. By this date one might have expected Offa to have reserved the three common military burdens, but he chose only to reserve from the Westbury estate a series of food renders, including ale, cheese, corn, oxen and sheep, which formed only a small fraction of the total yield from the estate.⁴⁷ The Westbury food renders broadly matched both the food renders owed to the king from 10 hides in the late seventh-century ›Laws of Ine‹ and a mid-ninth-century render from the minster at Kempsey (Worcs.) to Ealhhun, bishop of Worcester.⁴⁸ Perhaps the Westbury food renders were customary royal dues owed from a small section of the Westbury estate, whose payment served to demonstrate monastic acknowledgement of the authority of the donor.⁴⁹ The purpose of the gift may have been to signal deference by the bishop of Worcester and the Westbury community to Offa as their ruler and protector.

Another of Offa's charters, also issued between 793 and 796, was also concerned with the lands attached to Westbury. Offa granted his thegn Æthelmund 55 hides, which were freed from all great and small tributes, in return for the salvation of Offa's soul. But in this charter Offa reserved the three common military burdens: ›*expeditionibus causis et pontium structionum et arcium munimentum quod omni populo necesse est ab eo opera nullum excusatum esse*‹.⁵⁰ The grant was witnessed by the archbishop of Canterbury, eleven bishops and four abbots at the council of *Clofesho*.⁵¹ Three interpretations of these two charters issued at and around the time of the synod of *Clofesho* are possible. One option is to regard one of the documents as a forgery.⁵² A second is to assume that Offa changed his mind over whether to

45 Yorke, *Kings and Kingdoms*, 127-129.

46 S 146 (B 273). For comment on authority of the charter, below, appendix I. On the early history of the minster, Orme and Cannon, *Westbury-on-Trym*, 7-10.

47 Dyer, *Lords and Peasants*, 29.

48 Dyer, *Lords and Peasants*, 28-9; Sims-Williams, *Religion and Literature in Western England*, 137 n. 5; for further comment on food renders, Faith, *English Peasantry*, 157.

49 Cf. Dyer, *Lords and Peasants*, 30.

50 S 139 (B 274): ›responsibility for military service and the erecting of bridges and the fortifying of defences because it is necessary for all the people that none are to be excused from this labour.‹

51 Cubitt, *Anglo-Saxon Church Councils*, 274.

52 For further discussion and rejection of this view, see appendix I.

favour Æthelmund or Worcester; and a third, preferred here, is that the two grants were complementary. The charter in favour of Æthelmund not only had a narrower circle of beneficiaries to be mentioned in prayers, but also made no mention of the counter-gift of food renders and only granted freedoms from small and great tributes over 55 hides at Westbury. If these charters complemented each other, the bishop of Worcester had responsibility for providing Offa with annual food renders from a smaller portion of the estate, but it was Æthelmund's responsibility to ensure that the common military burdens were carried out from 55 hides. By the beginning of the eleventh century, these two charters provided materials on the early history of Westbury minster, at that point controlled by Worcester, and hence were copied into the Westbury element of the *Liber Wigorniensis*.⁵³ But in the 790s these charters may have helped Offa to reorder secular power and his relationship with the church, or at least the writer of the charter was able to present these events in this manner with a degree of plausibility. At a synod at *Clofesho* in 792, Offa agreed to reduce his rights to dues and services owed from Kentish royal minsters, following the earlier implementation of this policy within Mercia, in exchange for being able to enforce the common military burdens.⁵⁴ In the case of the grant to Westbury, this deal was perhaps accompanied by a separate transaction which signalled the deference of the bishop and monastic community to their royal patron and protector.

In 836, six years after Wiglaf had been restored to the Mercian throne, he granted the minster at Hanbury (Worcs.), in the northern part of the Hwiccian kingdom, freedom from entertaining and supporting the king, ealdormen and *fæstingmen* (agents who carried out a range of duties in the service of Mercian kings).⁵⁵ The community was also freed from great and small tributes that served to maintain a royal residence, perhaps at nearby Wychbold.⁵⁶ In exchange, Wiglaf received absolution from his sins, but he reserved two common military burdens of bridge- and fortress-work. In addition, Heahberht, bishop of Worcester, gave Wiglaf use for one lifetime of three estates from the resources of the bishopric, and further gifts were given to ealdormen, comprising 600 shillings in gold for Ealdorman Sigereð and 10 hides for one lifetime to Ealdorman Mucel. The grant was witnessed by the king, the queen, archbishop of Canterbury, 11 bishops from southern England, three abbots, ten ealdormen (including Sigereð and two ealdormen named Mucel) and twelve lay followers, with 39 witnesses in all. The events which it recorded were evidently of considerable public significance, and the charter was of signal importance to Patrick Wormald, who used it to argue that:

Mercian kings were not simply alienating their rights and those of their officials: they were selling them for land and treasure. It is a more constructive policy than it looks at first sight, but it could imply that Mercian kings were running short of land [...] the reason why so many Mercian royal charters are grants of privilege rather than land is that their landed resources were drying up, and there was little left with which to endow either the church or their secular followers.⁵⁷

53 BL MS Cotton Tiberius A.xiii, fos. 48-49.

54 Brooks, *Development of Military Obligations*, 42; Cubitt, *Anglo-Saxon Church Councils*, 110-113; Yorke, *Kings and Kingdoms*, 116-117.

55 S 190 (B 416; trans. Whitelock, *English Historical Documents*, no. 85). For identification of Hanbury as the beneficiary and the role of Bishop Heahberht, see McKinley, *Understanding the Earliest Bishops*, 96; cf. Bassett, *Landed Endowment*, 82-84.

56 Hooke, *Anglo-Saxon Landscape*, 91.

57 Wormald, *Ninth Century*, 139. The observation was also based upon analysis of S 207 (B 488) discussed below, n. 88.

The persuasiveness of Wormald's view that this charter documented a sale expressed in the language of gift-giving has been supported and commented upon over the last 25 years by a number of Anglo-Saxon and medieval economic historians, as well as by diplomatists.⁵⁸ This consensus is persuasive but it has perhaps prevented the charter being considered within the framework of the second and third models; and has led to an emphasis on 'episcopal greed and opportunism'.⁵⁹ There are in fact sound grounds for suggesting that the transaction fits the second and third models better, particularly if we give weight not only to the version copied into the *Liber Wigorniensis*, but also to the original single-sheet diploma, which fortuitously survives as well.



Fig. 1 and 2: British Library, Cotton Ms Augustus II 9, recto and verso

58 E.g. Bassett, *Landed Endowment*, 83-85; Campbell, *Sale of Land*, 237; Dyer, *Lords and Peasants*, 16; Higham and Ryan, *Anglo-Saxon World*, 240; Kelly, *Charters of Peterborough Abbey*, 210; Yorke, *Kings and Kingdoms*, 127. Since Wormald's work there has been much discussion of the political and military organization of Mercia. Bassett, *Divide and Rule?*, esp. 53-54, 84-85 argued for a developed military infrastructure which served as the prototype for the burghal hidage and underpinned the shiring of Mercia; cf. Molyneux, *Formation of the English Kingdom*.

59 Bassett, *Landed Endowment*, 85.

The copy of the text in the *Liber Wigorniensis* only recorded the grant of the fiscal immunities, omitting the witness list and the details of the counter-gifts.⁶⁰ This charter was appended to the end of the Worcestershire section of the cartulary on folio 21, with two-thirds of the verso left blank. The omission of the witness list and the counter-gifts reduced the value of the text in establishing Worcester's legal rights to Hanbury minster and its estates, but it presented a clearer narrative of an act of royal charity.⁶¹ The original single diploma measures 490 mm (width) by 190 mm (depth), with the grant taking up 120 mm and with the witness list, written in the same hand, also in Latin, using a further 45 mm.⁶² The witness list has a line-break after the name of the last ecclesiastic (Abbot Beornhelm), with a new line beginning with the signature of Ealdorman Mucel. A second hand made two additions: first, in the line-break space, after Abbot Beornhelm, we find added in Latin the assertion that »I Sigered, ealdorman, have confirmed this donation with the sign of Christ's cross«; and second, in the remaining 25 mm at the foot of the charter an endorsement was added in the vernacular which recorded that 30 hides had been given to King Wiglaf, that ten hides had been given to Ealdorman Mucel, and that after their deaths these lands were to revert to the bishopric of Worcester after one life.⁶³ The charter has eight fold-marks, and on the dorse in the middle of panel four there is a second endorsement, also written in the vernacular: this repeated the record of the gift of 10 hides to Ealdorman Mucel and the transfer of the other lands, without recording that King Wiglaf was the beneficiary or that any of these lands were to revert to Worcester. This endorsement also recorded that 600 shillings in gold had been given to Ealdorman Sigered.⁶⁴ Finally, in panel five on the dorse the words ›Wiglaf cinig‹ were written. It seems most likely that both endorsements were added at the same time as the writing of the main text of the charter, but the reference to King Wiglaf is probably a tenth-century addition.⁶⁵ Both endorsements are readily visible, and the separation of information about material counter-gifts, given in the vernacular, from that about non-material gifts in Latin, can be explained as being a result of a typical language choice for presenting different aspects of an exchange.⁶⁶

In order to delve further into the meaning of the original grant it is helpful to turn to the wider diplomatic and landscape context.

60 BL MS Cotton Tiberius A.xiii, fol. 21r-v.

61 For further discussion of fols 20v-21v, see Tinti, *Sustaining Belief*, 102; Wareham, *Redaction of Cartularies*, 206-207.

62 BL MS Augustus ii. 9.

63 For a hypothesis on the location of all lands recorded in the endorsements, see Bassett, *Landed endowment*, 87-89, 93-4.

64 For the suggestion that this was the purchase price of 600 oxen, see Bassett, *Landed endowment*, 83 n. 18.

65 Gallagher, *Vernacular in Anglo-Saxon Charters*, at nn. 85, 91.

66 This is necessarily a speculative point, for as pointed out in Gallagher, *Vernacular in Anglo-Saxon Charters*, at n. 93, no other ninth-century original single sheet includes such endorsements.



Fig. 3: View of Hanbury minster (photo: Elisabeth Wareham)

At Hanbury, field-walking and place-name evidence have shown that an Iron-Age hill-fort was occupied in the Roman period, and that a small British settlement continued to occupy the site in the early Anglo-Saxon period.⁶⁷ Hanbury minster was adjacent to three important centres of political and economic power, comprising the *regio* of the *Usmere*, the royal vill at Wychbold, and the salt-works at Droitwich.⁶⁸ In a charter dated between 657 and 674, Wulfhere, king of Mercia (659-75), granted Abbot Colmán 50 hides at Hanbury, with its meadows, woods and ›wells of salt‹ at Droitwich, demonstrating an important connection between the Mercian royal house and Hanbury minster.⁶⁹ In the view of Patrick Sims-Williams, Colmán's name suggests that he came from Ireland, but a connection with Bernicia and Lindisfarne is also plausible.⁷⁰ Between 757 and 774 Abbot Ceolfrith granted 20 hides at Hanbury from his paternal inheritance to the bishopric of Worcester, suggesting that it was at this stage that the see acquired an interest over the formally independent minster.⁷¹ Finally, it is worth looking at another of Wiglaf's charters dating from the period after his restoration. Between 829

67 Dyer, *Hanbury*, 16, 20; Sims-Williams, *Religion and Literature in Western England*, 107.

68 Hooke, *Anglo-Saxon Landscape*, 91.

69 S 1822; Sims-Williams, *Religion and Literature in Western England*, 106-107.

70 Sims-Williams, *Religion and Literature in Western England*, 107; Hooke, *Anglo-Saxon Landscape*, 11.

71 S 1411 (B 220); for discussion on authority, appendix I. My argument strengthens Steven Bassett's view that Worcester had acquired a substantial interest over Hanbury minster before the 840s (see *idem*, *Landed Endowment*, 81-87).

and 836 he recognised Sigeric as king of the East Saxons in a charter in which the bishop of London leased 10 hides in Hertfordshire for one lifetime to Sigeric *minister* in exchange for a cash payment of 4,000 silver coins.⁷² The transaction was perhaps intended to reconstitute the alliance between the royal houses of Mercia and the East Saxons, following the demise of the kings of Essex as semi-autonomous rulers during the reign of Offa.⁷³ Taken together, this wider evidence casts doubt on the view that the Hanbury charter demonstrated that Wiglaf sold his fiscal rights in order to reward ealdormen with lands and money (model one), and encourages us to consider whether the second or third models might be more helpful.

Hanbury minster was an important political and religious centre, and both the kings of Mercia and the bishops of Worcester had connections with it reaching back into the seventh and eighth centuries. In granting these concessions, Wiglaf may have been seeking to refresh this political alliance as part of a unification strategy to bring stability to his rule after his restoration, and the counter-gift of 600 shillings and gifts of land may have been intended as a way of recognizing the importance of this alliance. A hint of this is provided by the fact that in addition to using the *anno domini* date, the charter also recorded that this was the seventh year of Wiglaf's reign. There was no diplomatic need to add this second date, but its political significance is clear. By noting that 829 marked the beginning of a ›new‹ reign, Wiglaf may have aimed to remove from memory both his ejection from the Mercian throne and problems associated with his ›first‹ reign up to 829. The charter ended with Wiglaf's request that future generations should uphold his alms (*eleemonsa*), noticeably avoiding the language of the gift (*donatio*) used earlier in the charter to outline the nature of the fiscal freedoms. No indication was given of the extent of the lands which were to be freed under the terms of the grant. In the Domesday Book Hanbury and three other manors held by the bishop of Worcester in the same hundred, which were managed jointly, had an aggregate hidage of 36 hides.⁷⁴ Only one hide was in demesne on the manor of Hanbury, but the rent from the manor also included 105 measures of salt from Droitwich.⁷⁵ Alternatively, if late medieval and modern evidence can be used to reconstruct the original landed endowment of the minster, as set out by Steven Bassett, then 600 shillings may have been the tariff for exemption from around 50 hides.⁷⁶

In short, the Hanbury charter can be interpreted in other ways apart from pointing towards a public sale of fiscal rights of the Mercian monarchy in the age of the Vikings. No less plausible is that, following King Wiglaf's restoration, it may have been intended to proclaim his political power and to build up a network of power between ecclesiastical, royal and aristocratic interests. Given the reference to alms, there may also have been an intention to draw attention to an act of piety connected with other concerns (we shall discuss the issue of ›inalienable possessions‹ below).

72 S 1791; Yorke, *Kings and Kingdoms*, 51.

73 Yorke, *Kings and Kingdoms*, 51.

74 *Domesday Book Worcestershire*, 2. 76-80.

75 *Domesday Book Worcestershire*, 2.80.

76 Bassett, Landed endowment, 87-98.

Wiglaf's instruction that his donation should act as a marker for future generations was followed by subsequent Mercian kings; however, the opening year of the reign of Berhtwulf began with a high degree of tension between the new king and Bishop Heahberht of Worcester. A charter dated Easter (the 28th of March) 840 recorded that Bishop Heahberht had travelled to the Mercian court with his charters and privileges in order to receive a judgment, resulting in his recovery of five estates which had been unjustly seized from the bishopric through the actions or advice of hostile men.⁷⁷ As part of the peace, Bishop Heahberht promised (*predonare*) a gift (*donatio*) to the king and queen made up of a collection of items, including, for the king, four horses (*caballae*), a ring worth 30 mancuses, a skillfully crafted dish and two silver horns; and for the queen, two horses (*equi*), two goblets worth two pounds, and a cup.⁷⁸ In total the precious objects were worth just short of 300 shillings (i.e. 295 shillings), roughly in line with Cuthswith's gift to the Hwiccian kings a century and a half before.⁷⁹

The atonement in the Easter Day 840 charter contrasts with the charter that recorded the pious grant of King Berhtwulf at Tamworth on Christmas Day 841 in favour of Abbot Eadmund and the community at Bredon (Worcs.) in the central part of the Hwiccian kingdom.⁸⁰ There are debates over whether this charter is a copy of an authentic ninth-century charter or an early eleventh-century forgery; whether the original grant was in favour of Bredon or of Breedon-on-the-Hill in Leicestershire; and finally whether the Latin used in this charter and another charter (in favour of Breedon-on-the-Hill, and dated to 848) demonstrates the presence of ›advanced Latinity‹ in Mercia. It is most likely that the 841 charter is an authentic copy of an earlier ninth-century original intended to favour Bredon,⁸¹ and for the purposes of the present argument it matters little whether this charter (and the 848 charter in favour of Breedon-on-the-Hill) demonstrates the presence of ›advanced Latinity‹.

In the Hanbury charter the grant of fiscal liberties accounted for eight of the 30 lines in the printed text, with the remainder of the charter being divided between diplomatic protocol and spiritual matters. But in the Bredon charter only two of the 44 lines dealt with freeing the community from having to support royal agents (*fæstingmen*), with no mention of the common military burdens. The charter was concerned primarily with spiritual matters and the counter-gifts which Abbot Eanmund and his monastic family gave to King Berhtwulf and the Mercian people. There were similarly subtle differences between the organisation of the counter-gifts. In the Hanbury charter these had passed to Wiglaf and two ealdormen, but in the Bredon charter they passed to Berhtwulf and all the Mercian people. Berhtwulf received from Abbot Eanmund a great silver dish that was decorated at a great price and 120 mancuses (300 shillings) in pure gold. The mancus was derived from the Arabic gold dinar, and in 786 Offa had identified the mancus as the preferred form of payment for the annual tribute of Peter's Pence to Rome.⁸² The first extant coin of this value was produced by a moneyer of King Ceonwulf of Mercia (796-821), and the issue was ›a direct product of the king for

77 ›*se*‹ in ›*sicut se inimici homines docuerunt*‹ suggests the despoliation arose from the advice which the hostile men gave themselves, but ›*sibi*‹ may have been meant indicating that they instructed Berhtwulf, as suggested in Whitelock's translation. If ›*se*‹, perhaps following the death of Wiglaf there was a brief anti-monastic reaction.

78 S192 (B 430; trans. Whitelock, *English Historical Documents*, no. 86).

79 For a useful discussion of an episcopal gift to Offa, see Curta, *Merovingian and Carolingian Gift Giving*, 681.

80 S 193 (B 434).

81 Snook, *When Aldhelm Met the Vikings*, 118-121; King, *From Minster to Manor*, 84; Tinti, *Sustaining Belief*, 101.

82 Naismith, *Money and Power*, 113-114.

his own purposes.⁸³ Perhaps the symbolic value of the mancus lay both in its transnational dimension and its close connection to the personal affairs of the king, with counter-gifts in mancuses from prelates emphasizing the royalty of the recipients.

The most striking difference between the Hanbury and Bredon charters lay in the nature of the spiritual counter-gifts and the nature of the witnesses. The Bredon charter was witnessed by a small group of senior clergy, but no ealdormen witnessed it. The four bishops were headed by Cyneferth, bishop of Lichfield, and Bishop Heahberht witnessed third; and Eanmund was the first abbot to witness the charter. The spiritual counter-gift required the community to recite twelve iterations of 100 psalms (*psalteria*, i.e. the songs of David) and 120 masses for the souls of Berhtwulf, his dear friends and the Mercian people. This can be compared, first, to canon 10 of the Council of *Clofesho* in 814, which stipulated that on the death of each bishop 30 psalms were to be sung in every church in the diocese, and that each abbot and bishop was to offer at least 120 masses and 600 recitations of the psalter;⁸⁴ and second, to a contemporary West Saxon charter, dated to 854, which recorded the obligation of Glastonbury abbey to perform liturgical services for King Æthelwulf, bishops and ealdormen.⁸⁵ The community at Bredon gave a substantial undertaking and its prescriptive nature separates this charter from the other ninth-century fiscal charters, with Berhtwulf's gift of fiscal privileges described as *pietas*, echoing the description by Wiglaf of his gift as an act of *eleemonsa*.

The Bredon charter has been relatively neglected by historians in comparison to the Westbury and Hanbury charters, perhaps because of its theological content, but its evidence is important because it shows that there was at least an intention to uphold monastic traditions in a minster in the mid ninth century, independent of the activities of the bishopric of Worcester and the effects of the Viking invasions. A seventeenth-century copy of a charter of 847 recorded that Bishop Ealhhun of Worcester granted 12 hides belonging to Bredon together with 30 hides at Kelsey minster to the clergy of Worcester, who in turn leased these lands to him for two lifetimes.⁸⁶ This charter demonstrates the strong connections between Bredon and Worcester after the minster was favoured by Berhtwulf, and perhaps suggests that pressure was exerted in the late 840s on the community to accept the ecclesiastical leadership of the bishop. The hidage attached to Bredon minster between the late eighth and late eleventh centuries is the subject of complex discussion, but in Domesday Book 35 hides were attached to Bredon manor, with 10 hides kept under direct management (*demesne*).⁸⁷ If one wishes to consider this as a »true sale« at market-value, this would suggest a price of 300 shillings, which was half that received for granting fiscal privileges over a similar number of hides at Hanbury (calculated on the basis of Domesday Book).

In 855, Burgred, king of Mercia (852-74), released the minster at Blockley (Worcs.) in the eastern part of the Hwiccian kingdom from having to feed hawks and falcons in Mercia, from provisioning all huntsmen of the king and ealdormen (except those in the kingdom of the Hwicce), and from provisioning and lodging all men needed for expeditions into Wales and

83 Naismith, *Money and Power*, 114-115.

84 Cubitt, *Anglo-Saxon Church Councils*, 194.

85 S 303 (B 472).

86 Dugdale, *Monasticon Anglicanum* 1, 608.

87 Tinti, *Sustaining Belief*, 176-183; King, *From Minster to Manor; Domesday Book Worcestershire*, 2. 22.

›all mounted men of the English race and foreigners, whether of noble or English birth‹.⁸⁸ In return Burgred received absolution from his sins and 300 shillings in silver, as a counter-gift from Bishop Ealhhun. The grant was witnessed by five bishops and six ealdormen, three of whom had witnessed the Hanbury fiscal charter, including an ealdorman named Mucel.⁸⁹

One way of interpreting the links between the Hanbury, Bredon and Blockley fiscal charters is to assume that each reinforces the evidence of the other in pointing to a crisis in the need for cash and land, leading to the diminishment of the fiscal power base of the Mercian state. The Blockley charter provides no indication of the extent of the estate, but in *Domesday Book* the manor had 38 hides with 25.5 in demesne.⁹⁰ If model one applies to these fiscal charters, then between 840 and 855 perhaps 300 shillings was the natural price for purchasing exemption for around 36 hides from great and small tributes and dues needed to support *fæstingmen*, with the price being twice as much for the grant of privileges at Hanbury minster.

But in three of the four fiscal charters we have considered, it is striking that no hidage figures are mentioned. This does not mean that ecclesiastical beneficiaries were unaware of the economic benefits of taxation rights. James Campbell has suggested that the exercise of fiscal privileges was ›one of the principal means whereby land was made to produce cash or its equivalent‹ in the centuries before 900.⁹¹ But for the sale argument to stand, it would be more convincing if the charters dealing with fiscal privileges had provided hidage figures. It is plausible to argue that Burgred in ceding fiscal rights to Blockley minster was seeking to ensure that he should enjoy the same benefits of alliance with the bishopric of Worcester as both his father and King Wiglaf had done. Each of these mid ninth-century kings of Mercia released monastic communities in the Hwiccian kingdom from obligations to support the royal court soon after their accession or restoration, and in each case the king or an ealdorman (with kingly associations) received 300 or 600 shillings as a counter-gift, with these public transactions being witnessed by leading members of the secular and/or ecclesiastical elites. The coincidence both in terms of the cluster of texts and the similarity of the sums proffered by the church may point to a ›social tariff system‹ in which it was appropriate for kings to receive gifts of 300 (or 600) shillings, as counter-gifts for gifts of power, from bishops and abbots who ruled over religious foundations in the Hwiccian kingdom.⁹²

To summarise, the presence of a cluster of diplomas concerned with the transfer of royal fiscal rights to religious institutions in the Hwiccian kingdom in the early ninth century encourages the view that a common factor lay behind this data. In part this stemmed from the work of the monks of Worcester who designed, compiled and updated the *Liber Wigorniensis*, which preserves much (but not all) of our evidence. But the cluster can also be interpreted as reflecting an important development during the early ninth century. Following Patrick Wormald's lead, the fiscal charters have been viewed as documents of sale but, as we have seen, there are problems with accepting his view.

88 S 207 (B 488; trans. Whitelock, *English Historical Documents*, no. 91).

89 For his role in the Hanbury charter, above, nn. 56, 63.

90 *Domesday Book Worcestershire*, 2. 30.

91 Campbell, *Sale of land*, 243; see also Naismith, *Payments for Land*, 284.

92 On social tariff, see Gleba, *What is the Price*.

At this stage the second model – that gifts of immunities enhanced the power of royal rulers by expressing ›continuity, amity, and co-operation‹ – beckons.⁹³ To do full justice to this model it would be necessary to undertake a prosopographical enquiry, but for the present supporting evidence is poor in both the secondary literature and in PASE. Neither provides much material to suggest that these gifts of immunities linked Mercian kings to local networks of aristocratic donors and their kindred who were in turn connected to the local religious institutions.⁹⁴ Ealdormen Sigereð and Mucel and their allies cannot at present be specifically connected with Hanbury and Blockley minsters, nor is there any evidence to suggest that these ealdormen, their companions, and heirs had close connections with the bishopric of Worcester. The absence of any immediate evidence showing that these gifts established networks of power within these monastic communities and with groups of lay grantors, beneficiaries and their heirs is significant, given the richness of the Worcester archive covering the relationship between local networks of family, friends and followers with the bishops of Worcester during the late tenth century and the early eleventh century.⁹⁵ The second model is deceptively straightforward, but in fact this approach may be no more convincing than the first model.

Having tried out the other options, we are left with the third model, that of inalienable possessions. Theoretically kings, ealdormen, *fæstingmen*, messengers and envoys could have continued to carry out their duties after these fiscal privileges had been granted. But, in contrast to the fiscal privilege charter in favour of Breedon-on-the-Hill in Mercia in 848 in a Peterborough cartulary,⁹⁶ there is no evidence to suggest that within the Hwiccian kingdom the Mercian kings continued to expect the hospitality rights associated with these agents from the minsters at Bredon, Blockley, Hanbury and Westbury, as recorded in the *Liber Wigorniensis* and BL Cotton Ms Augustus II 9. Subsequent efforts to meet ordinary royal household expenditure depended upon the mobilization of new levers of fiscal power as opposed to the recovery of these rights within the Hwiccian kingdom.⁹⁷ Gifts of power ceded to the church in the kingdom of the Hwicce were evidently not the kind of inalienable possessions that are familiar to medievalists who discuss royal crowns, saints' relics, commemorative tapestries and suchlike, and hence the standard version of the third model would not, as it stands, provide a better fit for the data than the first and second models.

But Weiner's suggestion that gift-giving might serve to draw attention to more valuable non-circulated possessions might be relevant for understanding the fiscal charters. The counter-gifts which passed from Hwiccian bishops and abbots to kings of Mercia were perhaps symbolic gestures used to signal ecclesiastical recognition of royalty. Gifts of 300 or 600 shillings appear as the counter-gifts given by prelates from Abbess Cuthswith to Bishop Ealhun c. 704–855 to kings who ruled over the Hwiccian kingdom, in exchange for grants of land and power. Perhaps there was an expectation within the kingdom of the Hwicce that

93 Rosenwein, *Negotiating Space*, 84–85; see also above n. 6. For Rosenwein's comments on Anglo-Saxon England, Rosenwein, *Negotiating Space*, 191–195.

94 Such an enquiry would be best served by beginning with the data in PASE for Mucel 2, Mucel 3, Mucel 4, Mucel 5, Sigereð 4, Sigereð 5, and Sigereð 6, and with the charters drawn up in the 840s in favour of Breedon and/or Breedon.

95 King, St Oswald's tenants; Wareham, St Oswald's Family and Kin.

96 S 197 (B 454).

97 E.g. S 215 (B 540) discussed by Tinti, *Sustaining Belief*, 11; for a useful comparative discussion, see White, *Politics of Exchange*, 169–174.

an appropriate counter-gift to be proffered to rulers for the receipt of gifts of power and land was 300 shillings or 600 shillings. Three of the four gifts of power were made soon after the accession or restoration of a new king, and even Offa's grants to Westbury minster might be interpreted as part of the initiative to ensure the succession of his son Ecgfrith.⁹⁸

In this scenario, the non-circulated goods of the three common military burdens were more important than the dues and services ceded to religious foundations. Army service, fortress- and bridge-work were either not mentioned at all, or were specifically reserved to the Mercian kings. The fact that these obligations were a Mercian innovation emphasises the importance of the exclusion or omission of these fiscal gifts from these charters.⁹⁹ This was a right which the Mercians were unwilling to cede, thereby drawing attention to their role as war-leaders in the struggle against the Vikings and other enemies. Perhaps the use of corresponding sums of money as counter-gifts acted as a way of nodding before royalty.¹⁰⁰

Our concern has been with fiscal immunities covering the lands attached to monastic communities, but it is worth mentioning one urban charter dating from this period. In 857 King Burgred granted Bishop Ealhun commercial rights in London, comprising the right of a liberty to conduct trade in *Celomundhaga*, together with the right to use scales, weights and measures freely ›as is customary in the port‹.¹⁰¹ Earlier these rights had been purchased from Ceolmund the prefect in exchange for a counter-gift of 20 shillings, but the bishop gave the king 60 shillings. The increase in the level of the counter-gift may have arisen from the increasing value of these commercial rights in the mid-ninth century, with the property being referred to as a ›profitable little estate‹,¹⁰² but it is no less likely that this threefold increase in the counter-gift reflected the deference due to the Mercian king in contrast to that owed to a prefect.

If Weiner's variation of the third model on inalienable possessions provides a good fit for explaining the cluster of Hwiccian fiscal charters, there is no reason to suppose that they demonstrated either that the Mercian kings had run out of land and money in the ninth century, or that they needed to build up connections with powerful local aristocrats whose power was linked to religious institutions. Instead, through these gifts of power Mercian kings secured the recognition of their royal authority, and drew attention to the three common military burdens from whose obligations the recipients were conspicuously not relieved. These were inalienable royal possessions, and served to emphasize the military power and authority of ninth-century rulers and their successors. The charters in favour of Hanbury minster and its counterparts were copied and ordered within the *Liber Wigorniensis* to provide the bishopric of Worcester with a sound history and a firm legal claim to land and power, but the original context of the grants was far removed from those concerns. If historians want to argue that Mercian royal power was in decline in the early ninth century they are free to do so, but it cannot be said that sufficient conclusive evidence for such a view is to be found in gifts of power to religious foundations in south-west Mercia.

98 Kelly, Offa.

99 Brooks, Development of Military Obligations.

100 This view lends further credence to doubts over the Mercian ›dynastic reconstruction‹ model on the presence of a rivalry between the so-called Mercian ›B‹, ›C‹ and ›W‹ dynasties in the ninth century. For a well-judged critique of this view, see Keynes, Mercia and Wessex, 315-320.

101 S 208 (B 492; trans. Whitelock, *English Historical Documents*, no. 92).

102 On prosopographical research see Ceolmund 5 and Ceolmund 6 in PASE; Whitelock, *English Historical Documents*, 529.

*Part II: Khmer kings and their religious foundations*¹⁰³

The Khmer epigraphical record consists of about 1300 stone-cut inscriptions in Sanskrit (like Latin in Europe, this was the long dominant hierolect in large swathes of Asia), or in Khmer (the dominant local vernacular), or in a combination of both languages, and spans from the fifth to the thirteenth century. No texts in any language transmitted through manuscripts to the present day survive from Cambodia for the whole of this period. This means that, other than sporadic Chinese accounts,¹⁰⁴ those roughly 1300 inscriptions, and the ingenuity of archaeologists and art-historians who study the extraordinary buildings with which those inscriptions are associated, are all that we can call upon to tell us about Cambodian history for the entire period covered by this special issue.

I have referred to ›Cambodian‹ history, but this inscriptional corpus of the Khmers is spread well beyond the boundaries of modern Cambodia, for the so-called ›Khmer empire‹ at its tenth- to twelfth-century height extended westwards into areas that are now part of Thailand, reaching from the Mekong river delta in the south, in what is now Vietnam, up into what is now Laos in the north, and including therefore Vat Phu, the site of the discovery of the inscription under discussion here. At the heart of this ›empire‹, covering an area many times larger than that discussed above of south-western Mercia, is Cambodia's most famous site, the great concentration of ancient buildings now often known as Angkor, which is just north of Cambodia's seasonally swelling and shrinking lake, the Thonle Sap. Broadly speaking, the inscriptions and archaeological data of the fifth to the eighth centuries tend to be concentrated in the area around the Mekong river delta in the south, suggesting the economic centrality of foreign trade in that period, whereas from the ninth century onwards they tend to be concentrated inland, north of the great lake,¹⁰⁵ suggesting a shift to an economy in which agriculture had a larger importance. Vat Phu, up-river in Laos, however, has been an important sacred site from the early period onwards.¹⁰⁶

The Sanskrit portions of these inscriptions are metrical and typically lavish samples of erudite courtly poetry praising the Hindu pantheon and Khmer kings, before recording the installation of an image of a Hindu or Buddhist deity or, most commonly, of a *linga* – a phallic (or, for some, aniconic or abstract) physical substrate for the worship of the god Śiva. These Sanskrit texts are very often supplemented by portions of prose in Khmer which furnish down-to-earth details about the foundations. (Such a division of labour between hierolect and vernacular is similar to what we observed in the Mercian charters discussed above.¹⁰⁷) Old Khmer is not a particularly well-understood language and many of the inscrip-

103 Long confessions of incompetence can be tedious, but I must briefly state that I am not an economic historian and that this subject is outside my usual area, namely the textual-critical study of Sanskrit poetry and the history of the theology and ritual of the Śaiva religion. I have strayed here because of two factors: the influence of my brother-in-law and the serendipitous happenstance that an important unpublished tenth-century document about Cambodian taxes came into my hands, through my colleague and collaborator Claude Jacques, in 2013.

104 For which see Pelliot, Fou-nan (1903) and *Mémoires sur les coutumes* (1951).

105 This shift, along with the social and political changes that accompanied it, is a large theme in one of only two books known to me that attempt an economic history of ancient Cambodia, namely Michael Vickery's stimulating *Society, Economics, and Politics in Pre-Angkor Cambodia, the 7th-8th Centuries*. As the title indicates, it does not cover the period with which we deal here. The other book is Sahai's *Institutions politiques et l'organisation administrative du Cambodge ancien*.

106 The first century of scholarship on the extraordinary site of Vat Phu has been usefully gathered together in Lorillard's *Autour de Vat Phu*.

107 A lively book-length exploration of the rôles of Sanskrit is Pollock's *Language of the Gods in the World of Men*.

tions are damaged, but a certain repetitiveness in the material often helps one to interpret even tiny fragments. For many hundreds of passages of Khmer epigraphy are devoted to listing the gifts of wealth and property to named gods: cattle, lands, objects fashioned out of precious metals and slaves.¹⁰⁸

The epigraphical record is dense for the seventh century, has some empty patches in the eighth and ninth centuries, and is then very dense once again from the end of the ninth through the beginning of the thirteenth century, after which inscriptions of this type are no longer found and the Hindu-Buddhist civilisation that was characteristic of the Khmers disappeared entirely. Why? One way towards an answer might be some form of the general hypothesis that the granting of excessive religious immunities eventually weakened the state to the point at which it became vulnerable to incursions from the outside and collapsed. Precisely this interpretation has indeed been tentatively mooted by Víctor Lieberman:

One approach [to the problem of Angkor's decline] – which parallels Aung-Thwin's Pagan hypothesis but lacks his careful documentation – argues that over time politically indebted kings alienated excessive tax-exempt acreages to aristocratic supporters, who were able to pursue power through religious munificence in competition with the king himself. This in turn obliged the crown to attempt more lavish projects of its own, which ultimately exhausted the realm.¹⁰⁹

Yet it seems to me that there are hundreds of things that one would have to understand profoundly in order to be able to judge the merits of such a hypothesis. One would wish to know, for instance, about conceptions of property, land-use, slavery, and kingship. Did kingship here, for example, involve real centralized control of all resources of the territory of the kingdom, or was it a more theatrical show of hierarchical superiority shored up by religious notions and ritual? To illustrate this sort of conceptual difficulty without delving deep into the abundant theoretical lucubrations of historians of the ancient world about kingship, let us briefly turn to the fifth-century literary epic of Kālidāsa about a legendary dynasty of rulers descended from the sun, namely the *Raghuvamśa*.

Of all the poets of the Sanskritic thought-world, Kālidāsa is the most quoted and echoed in pre-modern inscriptions from Afghanistan in the West across to South Vietnam and the Indonesian archipelago in the East. And of all Kālidāsa's works, it appears to have been his *Raghuvamśa* that was most savoured, and within that epic it is probably the fourth chapter

that court-poets most imitated. The fourth chapter recounts an autumnal military campaign by the king Raghu to gain victory over all the kings around him in every direction right up to the ocean's shore. At the end of this Conquest of the Directions (*digvijaya*), it is clear, however, that no value is placed upon retaining centralised political control of the resources of the territories that have been, so to speak, ›conquered‹. Instead, all the wealth is returned as part of a grand ritual, and the rival kings, their status duly diminished, are allowed to return to their capital cities to resume their royal rôles.

108 ›Slavery‹ is an emotive term that can be applied to peoples of widely varying status: for a lively discussion of ›slaves‹ in ancient Cambodia, see Vickery, *Society, Economics, and Politics in Pre-Angkor Cambodia*, 225 ff.

109 Lieberman, *Strange Parallels* Vol. 1, 238.

Thus did the Conqueror vanquish all directions and then turn back, scattering the dust thrown up by his chariot upon the diadems, now bereft of their parasols, of rival kings. (88)

He [then] performed an ›All-Conquering‹ sacrifice, at whose conclusion the ritual donation is all one's wealth: indeed, like clouds, the great only take in order to give. (89) At the end of that sacrifice of many days, Raghu, with his ministers beside him, allowed the kings to depart, their grief in defeat assuaged by weighty gifts, to their various capitals, where they were longed for by long-separated wives. (90)¹¹⁰

The very numerous references in Indian inscriptions to multiple conquests, sometimes even by neighbouring kings of each other, have often caused puzzlement to epigraphers and have led to a tendency to underestimate the historical value of such records generally, lending support to the dubious but endlessly recycled claim that ›India had no sense of history‹. But in the light of Kālidāsa's idealising vision, it is clear that we should expect some ›conquests‹ to have been more like ›hit-and-run‹ raids than campaigns resulting in the expansion of the control of resources over a broader territory. I have picked out the concept of royal ›conquests‹ for brief comment, but this single example suggests that there may be several apparently obvious notions about kingship and property that in fact require re-examination before we blithely subscribe to the theory that reckless munificence to religious foundations bankrupted the Khmer empire and led to its demise.

As it happens, a significant piece of evidence that perhaps bears upon these questions came into my hands in 2013.¹¹¹ It is a document that seems to contain the only known list of what was to be paid by a Khmer administrative region in annual taxes in Angkorian times.

110 *iti jītvā dīśo jiṣṇur nyavartata rathodhatam/*
rajo viśramayan rājñāṃ chattraśūnyeṣu mauliṣu 88
sa viśvajitam ājahre kratuṃ sarvasvadakṣiṇam/
ādānaṃ hi visargāya satāṃ vārimucām iva 89
sattrānte sacivasakhaḥ puraskriyābhir gurvibhiḥ śamitaparājayavyalikān/
kākutsthaś ciravirahotsukāvarodhān rājanyān svapurānivr̥ttaye 'numene 90.

From the edition of Goodall and Isaacson, *Raghupañcikā of Vallabhadeva*. For a discussion of such poetry, see the different approach taken by Sinha in this special issue.

111 The accidental discovery of the four-sided stela (now inventoried by the EFEO as K. 1320) was reported in the *Vientiane Times* in January 2013 (www.vientianetimes.org.la/FreeContent_Ancient.htm, consulted on 15th January 2013; the page has since disappeared!), and the exceptional circumstances of its situation were quickly written up by Christine Hawixbrock (La stèle inscrite K. 1320). Beautifully legible photographs, taken by David Bazin, were passed to Claude Jacques, and we together studied the entire inscription over the course of many weekly sessions of the »séminaire CIK« (Seminar [related to the project] Corpus of Khmer Inscriptions) at the École pratiques des hautes études in Paris. This enabled us to polish an edition and translation that has appeared in the latest issue of *Aséanie* (Goodall and Jacques, Stèle inscrite d'Īśānavarman II à Vat Phu: K. 1320).

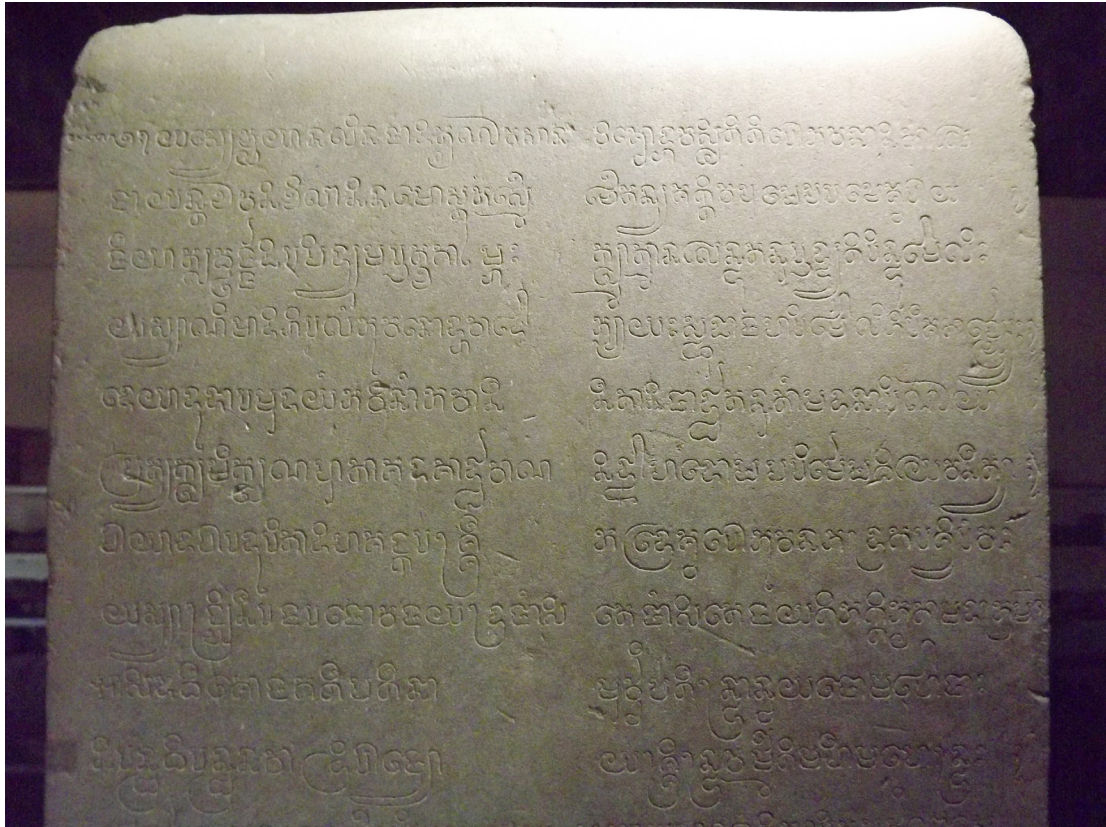


Fig. 4: The inscribed stela, K. 1320

The text, composed in Sanskrit and carved in Khmer letters typical of the tenth century in a fine calligraphic hand onto a four-sided sandstone stela, had clearly been buried for centuries, perhaps from shortly after the time of its creation, since that would account for its near perfect state of preservation. With the Mekong to one’s back, as one sets off to climb up to the shrine of Śiva perched on the side of a mountain with a peak that was for many centuries considered to have the shape of a *linga*, two eleventh- or twelfth-century building-ranges flank the approach at the base of the slope. The four-faced stela, dated to the beginning of the tenth century, was found upright but beneath the ground, with its summit at the level of the raised paving in the entrance to the building range to the right of the approach (the northern side). The two building-ranges have been referred to as ›palaces‹, but it now seems not impossible, in the light of the contents of the inscription that we are about to examine, that they should have been built partly to serve as warehouses for tribute that was offered to the temple.



Fig. 5: The approach to the temple of Śiva at Vat Phu. The four-faced stela K. 1320 was found at the entrance of the building range to the right. (photo: Dominic Goodall)

The epigraph consists of 96 Sanskrit stanzas and begins with invocations to Śiva and other gods (verses 1-4), followed by short eulogies of three Khmer sovereigns, recording in each case their years of accession, namely Indravarman I (verses 5-17, accession in 877), Yaśovarman I (verses 18-25, accession in 889) and Harṣavarman I (verses 26-33, accession in 910). After this, there is a longer eulogy, in florid and extremely erudite courtly Sanskrit, of the then reigning monarch, Īśānavarman II (verses 34-59, accession in 925). Since we know that this monarch died in 928 AD, we can thus pin down the date for the stela to within three years. Thereafter, almost the whole of the fourth and final side of this stela (verses 61-90) is devoted to a list of the annual taxes owed to the king by the town or administrative district then known as Liṅgapura (‘the city of the *linga*’), with explanations to the effect that these taxes are henceforth to be paid instead to the Śiva of Vat Phu, in other words to the temple. A grandiloquent exhortation to future kings to respect the terms of the edict concludes the text (verses 91-96). The one verse that I have omitted from the above summary is that in which there is the clearest statement about the transfer of the annual taxes to Śiva. The verse in question occurs just before the list (bottom of Face C, lines 39-40, verse 60):

In his [first] regnal year, this king of the Kambujas received tribute from vanquished kings; but, being himself vanquished by devotion, he bestowed upon the [God] Śiva in this place the taxes which are to be levied annually from Liṅgapura.¹¹² ...

These taxes are not expressed in terms of money, for the Khmers at that period, even though they had been in constant contact for centuries with India, appear not to have been using coinage as money.¹¹³ The only epigraph that might be supposed to contain a reference to coinage in the entire inscriptional corpus is a ninth-century record of which only a few disjointed fragments can be read.¹¹⁴ Instead, the taxes were to be paid in a variety of forms, which I have grouped into categories in the tables below.

<i>Precious Metals</i>		
<i>Gold</i>		
nuggets	600 pala	3.54 kg / 22.5 kg
red gold	15.5 pala	91.45 g / 581.25 g
<i>Silver</i>		
goblets weighing	8 kaṭṭikā	960 g / 6 kg

The silver and the so-called ›red‹ gold¹¹⁵ is to be given in the form of goblets and ornamental lotuses respectively, to be offered on annual visits by three classes of administrative official. The other gold, since it is in nuggets, must presumably be derived from local panning activities in the tributaries of the Mekong.

A tricky problem with this data is immediately apparent from the table: while we can know (from Sanskrit texts transmitted in India) how units of measure are related to one another proportionally, they clearly had no absolute value for every period and region. For Angkorian Cambodia, there is not only no consensus about what their absolute values were, but the estimates of those values are very widely discrepant. I have provided here the metric values calculated from the two most recent estimates known to me, those of Claude Jacques and Dominique Soutif,¹¹⁶ whose much lower estimate is based on the discovery of a bronze

112 K. 1320, stanza 60: *sa kamvujendro nijarājyaśāke jītān nṛpād dāyam upājahāra / jītas tu bhaktyātra hare ’nuvarṣalabhyaṃ karaṃ liṅgapurād vyatārīt.*

113 The only hitherto discovered ancient Khmer coin is a seventh-century gold one noticed by the archeologist Guillaume Épinal at an antique dealer’s in Phnom Penh, and reportedly picked up from the ground in Angkor Borei. It has been described and illuminatingly contextualized by Joe Cribb (Cribb, *First Coin of Ancient Khmer Kingdom*), who demonstrates, by comparison with contemporary Eastern Indian coinage, that it is indeed a coin (rather than just a medallion) but at the same time clarifies that it is unlikely to have been part of a widely used coinage.

114 The inscription in question is K. 492, published in *IC* vol. II, in which the otherwise unattested word *sarāṅgi* occurs twice, each time in a sentence rendered incomplete by damage. Coédès records there that he tentatively follows Louis Finot’s suggestion that one should understand *sarāṅgi* (which would in fact be unmetrical in one of the two instances), which he took to be the name of a coin. For the EFEO’s inventory numbers of Khmer inscriptions from K. 1 to K. 1005, which are used here and throughout this article, see the list published by Coédès (*IC* vol. 8).

115 We do not know what sort of gold is meant by ›red‹ gold. It is more fully characterised, several times, as having redness and six qualities (*rāgaṣaḍguṇa*).

116 See Goodall and Jacques, *Stèle inscrite d’Īśānavarman II, 449-450* and Soutif, *Organisation religieuse et profane du temple khmer, 132-153*.

vessel that is labelled with what might be intended to be a statement of its weight. Even when they are comprehensibly quantified, gauging the values of many of the other tradable items in the list is no easier.

<i>Animals and Animal Products</i>			
<i>Quadrupeds</i>			
boars	160	turtles	200
monitor lizards	200	elephants	10
<i>Birds</i>			
parakeets	100		
<i>Peacock parts</i>			
tail-feathers	12000	wing-feathers	400
neck-pouches (?)	20		
<i>Other animal parts</i>			
elephant tusks	20	rhinoceros horns	12
boar-skins	20		

We can have only vague ideas about what these animals and animal parts were worth to the citizens of Liṅgapura or to the King at the time.

The same may be said of the weapons and utensils listed.

<i>Weapons and Utensils</i>			
<i>Weapons</i>			
crossbows	5	crossbow arrows	100
bows	100	arrows	2000
cuirasses	100	Khmer axes (?)	40
<i>Utensils</i>			
parasols	200	brooms	300
gourds	218	bell-metal goblets	30
rattan poles	800		
<i>Clothing</i>			
Pairs of upper + lower body-cloths	2230		

The gift of these weapons to a temple might seem odd, and one might be tempted to infer that Vat Phu, in spite of being a site of spiritual centrality for Khmer rulers, was nonetheless sufficiently far from the centre of power to require its own protection force. But we must be cautious about leaping to such a conclusion, since the weapons may only feature here because they were tradable items,¹¹⁷ or because this is a wholly unmodified list of what had previously been due in tax to the king.

¹¹⁷ Hundreds of axes feature, for example, among the miscellaneous items used to purchase two paddy-fields in an almost exactly contemporary inscription, K. 159 (see IC 2, 111).

The following fragrant substances are more clearly tradable luxuries:

<i>Fragrant substances</i>		
<i>Oleo-resins</i>		
takka (pine-resin)	1300 kaṭṭī	156 kg / 975 kg
taruṣka (›Turkish‹ Styrax) in 4 forms:		
›Camphor‹	2 kaṭṭī	240 g / 1.5 kg
liquid form	3 prastha	3.75 l.
fragments	5 prastha	6.25 l.
Powder	2000 vaṅśa	?
<i>Other fragrant substances</i>		
nābheya (musk)	200 kaṭṭī	24 kg / 150 kg
Neem-tree-hearts (?)	2 khārī	160 l.
pracivala (vetiver)	10 khārī	8 hl.

These were presumably harvested, if not actually farmed, from the forest area around Liṅgapura. Arguably, they occupy a relatively large place in this list compared with farmed comestible produce.

<i>Foods</i>		
<i>Grains</i>		
Threshed rice	100 khārī	80 hl. (6 tonnes?)
Paddy	2000 khārī	1600 hl. (120 tonnes?)
Sesamum	21 khārī	16.80 hl. (1260 kg?)
Millet	21 khārī	16.80 hl.
māṣaka beans	16 khārī	12.60 hl.
Mung beans	105 khārī	84 hl. (6300 kg?)
<i>Spices</i>		
Ginger	20 kaṭṭī	2.4 kg / 15 kg
Turmeric	5 khārī	240 hl.
Long Pepper	5 kaṭṭī	6 kg / 37.5 kg
Medicinal Roots	Unlimited supply!	

Such farmed produce is rather more prominent in the only comparable lists we have, which are not tenth-century taxation edicts,¹¹⁸ but twelfth-century lists of produce that is required annually for the regular running of a couple of very large temples (known today as Ta Prohm and Preah Khan) in the Angkor area.¹¹⁹ This is perhaps natural given that Vat Phu was probably then, as today, surrounded largely by forested land.

Finally, we may note in passing that the slaves of the temple are excluded from royal corvées and the like.

The slaves of Śrī Bhadreśvara,¹²⁰ who push back darkness from this world, as well as those of its ashrams, should not be engaged to perform the works of the king, nor commanded to pay tributes by district governors or by others.¹²¹

This disposition is similar to what we find for two other late-ninth-century religious ›hospitals‹ (*ashrams*) in the same area, in today's Laos.¹²²

Other than our inability to assess the commercial value of, for instance, all the animals and animal parts, there are several other considerations that suggest that this list of tax demands is very different from a cash stipulation. If one imagines such taxes being offered annually and in kind to the king, the transportation must have been complicated and costly to arrange. It is true that a broad swathe of the Mekong sweeps majestically past the bottom of the *Liṅga*-shaped mountain at Vat Phu, but a considerable stretch of the river further south is not navigable. Thus even if boats were involved, other means of transport must have been needed for some parts of the journey. The use of wheeled vehicles seems unlikely in such a mountainous area at this time,¹²³ and our inscription suggests that the default option was to use elephants as draught animals:

118 There is perhaps one distant parallel, namely a very short eleventh-century list of annual taxes due from a single village that are transferred to a temple: 4 measures (*thlvan*) of rice; 1 measure (*mās*) of oil; 1 white parasol and 1 banner (K. 211 of 1037 AD, for which see *IC* 3, pp. 26–28). Sahai (*Institutions politiques*, 119) mentions this inscription as evidence that some taxes were paid annually and collectively.

119 These have been published, in each case with a French translation, by George Coëdès in articles entitled »La stèle du Ta-Prohm« (1908) and »La stèle du Prāḥ Khān d'Ankor« (1941).

120 Bhadreśvara is the consecration-name given to the *liṅga* in the temple in Vat Phu. Put in other words, it is a name used for Śiva when he resides in the principal substrate of worship in the temple there.

121 K. 1320, stanza 90: *ye kiṅkarā lokatamonudaś śrī-bhadreśvarasyāpi tadāśramāṇām / te rājakāryyeṣu na yojaniyā na dāpyadāyā viṣayādhipādyaiḥ*.

122 Cf. the foundation stelae for ashrams at Huei Thamo (K. 362), also in Laos, and Vat Phu (K. 1005, for which see the discussion of Estève and Soutif, *Yaśodharāśrama, marqueurs d'empire*, 342–343), both dated to 889 AD:

*deśādhyakṣādyanāyattās te syur āśramakiṅkarāḥ
paratantrāḥ kulapatau tāpase ceti śāsanam ||*

»Que les serviteurs de l'āśrama ne soient pas mis en réquisition par le gouverneur de la province et les autres fonctionnaires, et qu'ils soient (uniquement) aux ordres du chef de la communauté et des religieux. Tel est (notre) commandement.« (Bergaigne, *Notices et extraits des manuscrits de la Bibliothèque nationale*, 390). Cf. also the stela of Lolei (Siem Reap) K. 363 (889 AD), st. LXV:

*śrīndravarmmeśvarādināṃ devānāṃ sarvvakiṅkarāḥ
viśvambharādhirājena na niyojyās svakarmmaṇi //*

»[Whoever should in the future be] the supreme king of the earth should not employ for his own works any of the slaves of [the Śiva called] Indravarmeśvara or of the other gods.«

123 Barth, *Stèle de Vat Phou*, 240, interprets the word *yāna* in a seventh-century inscription at Vat Phu (K. 367, stanza 5) as a »char«, but Barth himself never saw the terrain. It seems more likely that the expression referred to palanquins or animals which one could mount.

If, in order to make possible the supplying of these gifts, the head of the [administrative region known as the] *viṣaya* has procured noble elephants using his own wealth, those [elephants] are not to be added to the god's possessions.¹²⁴

The difficulties involved in transporting them imply that offerings in kind presumably varied considerably in value depending on where they were geographically when they were offered. Almost all the items in our list seem clearly to have been harvested or gathered locally, from a mountainous forest abounding in animals and trees yielding perfumed resins. Would their value as precious trading-items not have been lower when they were stored in the warehouses of the temple on the side of the mountain from which they were gathered than when they had been delivered to the king in his capital, hundreds of miles distant by boat and elephant-ride? The gold nuggets panned from tributaries of the Mekong were perhaps the only locally gathered offerings whose local value may not have differed significantly from their value at the empire's centre. But it is probable nonetheless that even the items in precious metals were not of fixed monetary value. We have mentioned one consideration that suggests this: some of the gold in the list, as well as all of the silver, was not simply to be totted up with the other taxes, but was instead to be shaped into flowers and goblets and offered by particular visiting dignitaries when they paid visits of obeisance. Here, for example, in the middle of the list, is a verse that describes what should happen when a certain official, who might have been a sort of inspector, visits:

When an inspector from this country prostrates himself, a lotus in gold [of the type called] *rāgaṣadguṇa* of the weight of one *pala* [and] a cup of pure silver weighing one *kaṭṭikā* [are to be offered to Śiva].¹²⁵

Some extra quantities of some of the oleo-resins were also to be presented on such visits. Were these official visits to the Śiva of Vat Phu also part of the legacy transferred from the king? Did these officials, in other words, make such formal gift-giving visits to the king (perhaps on the occasions when they submitted the taxes, or instalments of them) before this edict was issued? Unfortunately the inscription gives us no clue. In any case, we can conclude from the foregoing paragraphs, firstly, that it seems unlikely that the items in this list would at any time have had a single market value throughout the Khmer empire; and secondly, since the offerings were not all simply handed over together or at some indifferent moment in the year, but had in some cases to be offered ceremonially by particular officials, it is probable that their value as offerings was not simply determined by some notional exchange value, but depended in part on the formal context in which they were given.

124 K. 1320, stanza 94: *upāyanam śakyam idam vidhātum mataṅgajendrā viṣayādhipena / yadi svavittais samupārjītās te devasvasamparkkam anāptavantah.*

125 K. 1320, stanza 87: *taddeśaje janādhyakṣe praṇate rāgaṣadguṇam / hemapadmamalam śubhrarajatāmatrakaṭṭikā.*

Clearly the temple of Śiva at Vat Phu was of singular importance in the religious geography of the Khmers. Numerous inscriptions from other temples across the Khmer-speaking world refer to gifts made to the Śiva of Vat Phu¹²⁶ and many temples adopted his distinctive theonym, Bhadreśvara.¹²⁷ Furthermore, inscriptions at several sites in distant parts of the Khmer empire record the practice of twinning the deity of a newly established temple with the Śiva of Vat Phu and declaring that the new temple's revenue will be shared with Śiva in Vat Phu. We may quote as an example a passage from an inscription at Vat Práh Ĕinkosēi (Siem Reap), K. 263 (post 968), Face C, 25-27:¹²⁸

The broad-famed Lord Bhaṭṭa Divākara – son-in-law of King Rājendravarman, the crest-jewel of all the princes of the earth, whose Victory straddles the worlds, and the brother-in-law of King Jayavarman [the fifth] – established three gods in Madhuvana and dedicated them to [the Śiva of Vat Phu, who is called] Bhadreśvara. (25)
[He] endowed [them] with golden palanquins and such like riches, [made them] gleam with diverse jewelled ornaments, and [made them] abound with land, silver, copper, gold, cattle, male and female slaves, buffalo, horses and elephants. (26)
Having decreed that their revenue was to be shared with Bhadreśvara, His Excellency Himself made an annual gift of six *khārikā* of unhusked rice as food for visitors. (27)

The earlier-mentioned gifts of land, slaves, wealth and precious objects that figure in distant inscriptions seemed readily understandable as indications of the importance of Vat Phu as a focus of devotion and therefore prestige. But what are we to make of these declarations of divinities sharing what is offered to them with the Śiva of Liṅgapura? No doubt for these too the high prestige of making offerings to the Śiva of Vat Phu must have been a motivating factor, but is there more to be seen? Here is Ian Lowman's illuminating explanation of this phenomenon.¹²⁹

126 Aside from K. 1320 (c. 926 AD), we may refer for instance to the following epigraphs: K. 728 (provenance unknown, eighth-century); K. 528 (Mebon, Siem Reap, 952), st. CCIII (*pace* Finot 1928); K. 806 (Pre Rup, Siem Reap, 961), st. CCLXXI; K. 720 (Vat Phu, 955-1006 AD); K. 485 (Phimānākās, post 1181), st. LXXXVII; K. 963 (Vat Phu, thirteenth-century).

127 See, e.g., Estève and Soutif, *Yaśodharāśrama*, *marqueurs d'empire*, 337.

128 *IC*, vol. 4, 125-126:

XXV. *jāmātā bhuvaneśvarasya sakalakṣoṇīndracūḍāmaner
llokākrāntajayaśriyaḥ pṛthuyasā rājendravarmanmābhidheḥ
devo bhaṭṭadivākaro madhuvane samsthāpya devatrayaṃ
syālaś śrījayavarmmadevanṛpater bhadreśvare kalpayat //
XXVI. suvarṇṇayānādīhanair upetaṃ vicitraratnābharanapradīptam
prabhūtabhūrājatātāmhrahemaḡodāsādāsīmahiṣāśvanāgam //
XXVII. bhadreśvareṇaiva vimīśrabhogaṅ kṛtvā(d)ideśa s(v)ayam eva devaḥ
ṣatkārikā bhojanatan(du)lānān tadāgatebhya(h) prativatsaran ta(t)*

Some other examples of this practice may be cited: Prasat Kok Cak K. 958 (947), st. XIX; Banteay Srei K. 842 (968), st. XXXVII; Provenance unknown K. *1171 (1024), st. II. This last inscription is still unpublished. Its text is known to me through the growing archive of electronic texts of the Cambodian corpus being compiled under Dominique Soutif (EFEO) for the project »Corpus des inscriptions khmères«, in which I collaborate.

129 From Ian Lowman's unpublished presentation entitled »Understanding Vat Phu: An Early Khmer Pilgrimage Site«, delivered at the workshop *Trans-border Archaeologies: Vat Phu and Angkor*, December 15, 2015.

Liṅgapura's administrative independence extended to its properties throughout the kingdom, which were likewise exempt from local and royal levies. In consequence, Khmer elites had a special incentive to join their possessions [...] – their temple foundations, personnel, lands, and production – with those of Liṅgapura. Elites from every corner of the kingdom scrambled to do this throughout the tenth century. Their small provincial temples were required to donate a certain portion of their production and personnel to Vat Phu, and in exchange they were promised independence from power-holders at the level of the *viṣaya* or administrative district. As more and more temples were ›joined‹ to Liṅgapura, we see the rise of an extensive network of subsidiary shrines in dependent relationship to Liṅgapura, the parent shrine at the top of [the] sacred hierarchy.

This prompts me to return to Victor Lieberman's words, cited above:¹³⁰

One approach [to the problem of Angkor's decline] – which parallels Aung-Thwin's Pagan hypothesis but lacks his careful documentation – argues that over time politically indebted kings alienated excessive tax-exempt acreages to aristocratic supporters, who were able to pursue power through religious munificence in competition with the king himself. This in turn obliged the crown to attempt more lavish projects of its own, which ultimately exhausted the realm.

When I quoted this before, however, I did not quote the concluding sentence of the paragraph:

But in the absence of external coordination, why should these internal processes have climaxed at roughly the same time in both Upper Burma and Angkor?

Lieberman goes on, quoting the recent work of archaeologists and palaeo-ecologists, to stress the likelihood that various man-made environmental changes (soil-erosion, soil-sterilisation, clogging of transport canals, land-shortage, sedimentation and animal waste that modified the ecology of the lake), as well as some environmental change produced by a climate shift that simultaneously affected both regions, might well be equally important factors. As Lieberman continues,

Pagan-Angkor synchronization therefore makes sense if we consider that: a) aided in some measure by improved climate, both civilizations entered a period of intense development in the tenth and eleventh centuries; b) reclamation in both areas continued through the thirteenth century; c) in both areas growing desiccation after c. 1280 aggravated resource constraints that three hundred years of rapid development had engendered. According to David Godley, »a major and striking change to the climatological regimes of the region«, namely a »general desiccation of Indochina«, began c. 1280 and continued to the late fifteenth or sixteenth century. This is not to claim that reserves of good cultivable land became exhausted at precisely the same time in both areas, merely that both experienced some combination of ecological and climatic stress.¹³¹

130 Lieberman, *Strange Parallels* Vol. 1, 238.

131 Lieberman, *Strange Parallels* Vol. 1, 239.

To conclude, the notion that a pressure, for the sake of status, to make prestigious benefactions to religious institutions eventually bankrupted the state and prepared for its collapse in the face of external incursions is extremely seductive (for we are all susceptible to the appeal of a clear narrative), and on the face of it might be thought to be strengthened by the discovery of the tenth-century stela on the taxation of Liṅgapura. But there are no doubt many other environmental factors that also played their rôles. Furthermore, when we contemplate the raw evidence, we are uncomfortably aware that there are simply too many gaps in our knowledge about what the documents mean and about all the historical and economic contexts, for which they give us such patchy information. Face-to-face with the stela, we realise that we have no notion of the extent of the taxed area and no other comparable tax document; no notion of the values of the units of measure employed; no notion of the relative value of most of the traded items; few notions of who was actually responsible for collecting and inspecting the taxes, either before or after their transfer from the crown to the god;¹³² no certain information about who actually received and administered the wealth on behalf of the god;¹³³ and no notion of whether the taxation scheme was adhered to, for the king appears to have ruled for no longer than three years and the stela may have been buried very soon after being carved.

Furthermore, other than that Vat Phu is mentioned in many grants from widely distant areas as receiving further endowments in the tenth century, we know rather little about what happened at Vat Phu in the century preceding or the century following the inscription.¹³⁴

132 Such details as we can glean from scattered inscriptions about such officials have been grouped into a chapter entitled ›Le régime fiscale‹ in Sahai's *Institutions politiques*, 113 ff.

133 A certain Subhadra, who took the initiation-name Mūrdhaśiva, is glorified in a twelfth-century Sanskrit poem inscribed on a stela at a temple a few kilometres away from Vat Phu at Ban That (K. 364), and that Subhadra is said to be the descendant of a sage (whose name is lost to damage) who installed the *liṅga* at Vat Phu. There seems, in other words, to have been a family who in the twelfth century claimed authority, by heredity, over the performance of worship in the Vat Phu temple, and therefore presumably also control over its resources. But did they really already enjoy such a rôle two centuries earlier?

134 There may however be an inscription with important information on Vat Phu from a site 200 km to the West (or WSW). For it has been ingeniously and plausibly suggested by Ian Lowman that an attempt was made in the eleventh century to claim that the Śiva of Vat Phu had shifted to the Śikhariśvara temple of Preah Vihear. In K. 380, lines 58ff, inscribed on the Eastern doorjamb in 960 śaka (1038 AD), relate that Sūryavarman I, by the power of his asceticism (*tapovīrya*) contrived that the god Bhadreśvara of Liṅgapura manifest himself and rule in the Śikhariśvara temple, and required that all those belonging to the āśramas (presumably the residential religious foundations attached to the Bhadreśvara of Liṅgapura) declare their loyalty or devotion (*bhakti*) to Śikhariśvara. Cœdès, who edited the inscription (*IC VI*, p. 256), does not take the Bhadreśvara of Liṅgapura to refer to Vat Phu, observing ›ces deux noms [scil. Bhadreśvara & Liṅgapura] ont été portés par plusieurs localités et sanctuaires distincts, ce qui rend fort malaisé de déterminer quel est le dieu particulier dont le culte fut restauré au Prāḥ Vihār par Sūryavarman Ier«. Lowman, however, does (Lowman, *Understanding Vat Phu*):

I do not think this means that Preah Vihear replaced Vat Phu or that Vat Phu ceased for a time to be an operating shrine. What it does suggest is that kings had the power to reorder the kingdom's sacred hierarchy (in this case making K. J. Śrī Śikhariśvara the kingdom's sacred centre) and to break up pre-existing tax-exempt networks, especially those which placed major constraints on royal revenue or which empowered the king's political rivals.

In fact for many ancient sites, we tend to have just one foundation inscription, which means that we do not clearly see a before and an after.¹³⁵ Having such temporally isolated data-points means that it is very difficult to judge whether the gradual enrichment of religious institutions such as temples and medieval ›hospitals‹, to the supposed detriment of the king and of court circles, was not in fact an enrichment of infrastructure that strengthened much of the rest of society, spreading literacy, shared cultural values and administrative technology. In other words, rather than a scenario in which reckless royal generosity brought the kingdom to its knees, the distinctive Hindu-Buddhist civilisation of ›Angkor‹ might rather have been a victim of its own success: for we could equally postulate that a period of frenetic growth brought about demographic pressure that in turn created a nexus of environmental problems that, when compounded by a thirteenth-century climate swing and pressures from neighbouring regions, caused the collapse of the old order.

As historians, we are of course inevitably affected in such judgments by the political situations in which we find ourselves. James Heitzman, whose book-title ›Gifts of Power‹ we have borrowed for this comparative paper, introduces his work with an illuminating sketch¹³⁶ of the conflicting twentieth-century historiographical models for the early medieval history of the Tamil-speaking South of India – showing that it has been variously seen as a region centralized under the despotic authority of a king; as a region under increasingly fragmented rule after the breakdown of the Mauryan empire because of the progressive alienation of rights and taxes through grants of land and immunities; and lastly as a patchwork of long autonomous sub-regions symbolically united in a ›ritual polity‹ under the figurehead of a king. As he winds down to a conclusion, he observes:¹³⁷

Although I have personally contributed to these debates, I must admit to an increasing disinterest in them, primarily because they have become historical oddities in their own right, embedded within the intellectual and political realities of twentieth-century south Asia.

In the end, this sort of riddle can probably never be solved. Some will choose to focus upon the vast magnificently decorated temples and the absurd grandeur of the royal eulogies, and they will set all this opulence against the paucity of evidence about how the rest of the population lived – other than evidence in the form of the interminable lists of male, female and child slaves inscribed on doorjambs and stelae – and such scholars will in consequence conjure up an image of megalomaniac kings who enslaved many of their countrymen to alien Hindu gods, erecting lavish temples that really served their own vanity, squabbling for

135 Vat Phu is in fact well documented compared to most other Khmer religious foundations, since we not only have numerous references to it in inscriptions from other sites, as mentioned above, but we also actually have a few other very early inscriptions, of the fifth and seventh centuries, from the site itself, but they are either unpublished or have little obvious bearing on finance or administration. One of the seventh-century inscriptions that I intend soon to publish, however, namely K. 1059, records that Jayavarman I appointed the son of a favourite of Bhavarman II as *liṅgapurasvāmi*, which I believe means ›Governor of Liṅgapura‹. It therefore informs us, I think, that the enjoyment of the revenue of the town was in the seventh century a benefice that the king could bestow upon a favourite. Proving that this is a likely interpretation, however, would require a demonstration of several pages, involving quoting both unpublished inscriptions (K. 1060, K. 1235) and a handful of published ones (K. 725, K. 9), a couple of which have, I believe, been misinterpreted (K. 604, K. 1150). Such a demonstration will have to be given elsewhere.

136 Heitzman, *Gifts of Power*, 11 ff.

137 Heitzman, *Gifts of Power*, 18.

succession with bloody military campaigns, until they finally depleted the wealth of their kingdom to the point of exhaustion. Others will prefer to focus instead upon the allusions to libraries, to provisions for education,¹³⁸ to the honours accorded to specialists of religious literature, philosophy, Sanskrit grammar and astronomy, to the settlements of obscure legal disputes, and they will point to the remarkably erudite and literary character of the texts that were composed for engraving. Such scholars will see instead a flourishing of high forms of art that could surely only have been possible in a context in which the considerable surplus wealth of the region was being used to benefit more than just a narrow aristocracy. No doubt the elusive truth is somewhere in between.

III: Concluding remarks

Over two decades have passed since Bijsterveld noted that there was scope to compare historical texts dealing with gift-giving in medieval Europe with their counterparts in Asia. In those two decades, there has been an exponential growth in global and comparative history, contrasting such diverse and distant phenomena as, for instance, the tenth-century feudal revolution in Europe and the transformation in China (where half a century of continuous warfare and fierce political struggles led to the remarkable rise of a new society reflected in the Song civilization and economy). But it remains the case that there have been relatively few attempts to make detailed text-based comparisons between western and eastern societies during the medieval epochs. Comparisons by historians have tended towards juxtaposing different regions within Europe or East Asia, often with an emphasis upon connections with states with comparable constitutions and societies with similar social orders.¹³⁹

Other than the inherent difficulty in mastering all the requisite languages for comparisons that reach further afield, many historiographical factors explain this state of affairs. To highlight just one, many models of commerce, exchange and gift-giving in a comparative framework start off from a European perspective, with the result that it is hard to avoid an intellectual argument which uses detailed knowledge of the organisation of western societies to illuminate eastern societies, and this can make it difficult to pay as much attention to key Asian primary sources as their western counterparts in making historical arguments.¹⁴⁰ This problem is compounded by the relative paucity of scholarship on certain areas of, for instance, South East Asian history.

Both among the Anglo-Saxons and among the Khmers, royal edicts that proclaim rich gifts and immunities to religious foundations often suggest to us at first blush a larger political or economic narrative, about, for instance, a weakening of the state in favour of religious institutions. But in both cases our sources are patchy and can only show us a tiny part of the picture. For the cases we have examined, we therefore feel a great deal less certain about such

138 The numerous so-called ›hospital‹-stelae, for instance, all issued in 889 by King Yaśovarman, provide plentiful allusions to provisions made for fostering learning (K. 12, K. 209, K. 368, K. 375, K. 386, K. 387, K. 395, K. 402, K. 435, K. 537, K. 602, K. 614, K. 667, K. 952, K. 955, K. 1115 and K. 1170). Also the digraphic ›hospital‹-stelae (K. 42, K. 45, K. 47, K. 57, K. 95, K. 101, K. 110, K. 223, K. 309, K. 323, K. 346, K. 362, K. 479, K. 1005, K. 1092, K. 1093, K. 1223; and, in Angkor, K. 279, K. 290, and K. 701).

139 For recent examples of comparative studies of states in England with their counterparts in western Europe during the ninth and tenth centuries, see Bassett, *Divide and Rule?*, 84-85; Molyneux, *Formation of the English Kingdom*.

140 For critiques of western-orientated perspectives, see, Carrier, *Maussian Occidentalism*; Kuper, *Invention of Primitive Society*, 3-112.

narratives, which one might have hoped to see confirmed (or else weakened) by our comparisons. What we think we can establish is that royal grants made to religious foundations in distant Asia do indeed furnish striking parallels to those in midland England, despite the obvious differences in these societies and indeed the precise nature of the grants. And we therefore ask ourselves: can it really be no more than coincidence that state-formation in far-flung parts of the world, so far distant that no direct mutual influence can be supposed, should pass through a phase of development characterized by the concentration of resources in centres of organized religion as a result of royal patronage?

We are thus to some degree attracted to Victor Lieberman's attempt to show how such *Strange Parallels* might be the result of parallel structures and parallel large-scale changes in climate and economy. Lieberman has suggested that in both Europe and Asia between the ninth and the seventeenth centuries, rulers and elites established their authority over regions of comparable scale with broadly similar social and economic conditions.¹⁴¹ His observations encouraged us to attempt to juxtapose Anglo-Saxon charters and Khmer inscriptions. So although we have no grand conclusions to draw (partly because our evidence in the individual cases we adduce is so sparse and its interpretation often uncertain), we feel that it is clear that the parallelism is real, that there may be shared political and social patterns that might one day emerge more clearly, and that further investigation of such parallels might eventually enable us better to account for them. Just as in textual-criticism, the dispassionate juxtaposition of many parallels can illuminate many a knotty passage of text, so too, the larger canvas of the history of religious immunities in one part of the world may receive light from a detailed and unbiased juxtaposition of those in others.

Appendix: authority of two Anglo-Saxon charters

Hanbury: The charter which recorded Abbot Ceolfrith's grant of 20 hides, c. 757x774, to the bishop of Worcester was viewed by Finberg as referring to Henbury (Gloucs.), but as Orme has shown, there are reasons for doubting this view.¹⁴² First, the place-name *Heanburg* can as plausibly be rendered as Hanbury; second, the charter was copied into the Worcestershire element of the *Liber Wigorniensis*; and third, the second place mentioned in the grant, Ismere, is to be identified with Sture at Kidderminster, also in north-west Worcestershire and the site of an important early minster.

Westbury: Wormald argued that the charter which recorded Offa's grant of 60 hides at Westbury to the bishopric of Worcester c. 793x796 was a Worcester forgery, drawn up in the context of a subsequent dispute between the kin of Æthelmund and the bishopric of Worcester on the one hand and Berkeley minster on the other hand over the control of the lands and minster at Westbury in the first quarter of the ninth century. The forgery designed to give Worcester an unimpeachable claim that was recognized at the council of *Clofesho* in 826, with the result that Offa's charter c. 793x796 in favour of Æthelmund, granting him 55 hides at Westbury, should be regarded as the authentic text for understanding events in those years.¹⁴³ The case for viewing the charter in favour of Worcester as a forgery rests, first, on the fact that it omits Hygeberht, the newly appointed archbishop of Lichfield, from the witness list in contrast to his inclusion in the witness list in the charter in favour of Æthelmund;

141 Lieberman, *Strange Parallels*, Vol. 2, 1-122.

142 S 1411 (B 220); Orme and Canon, *Westbury-on-Trym*, 5.

143 Wormald, *How Do we Know*, 20-22; S 146 (B 272); S 1433 B 379); S 139 (B 274).

and second, that the Canterbury scriptorium in the early ninth century was forging charters to establish their control over the Kentish minsters, so it is at least not inconceivable, and is perhaps not unlikely, that Worcester pursued the same objectives by the same means.¹⁴⁴ But there are reasons for doubting this view. First, both charters were copied into the *Liber Wigorniensis* and hence were regarded as informative and valued texts from a historical perspective by Worcester; second, if the charter in favour of Worcester was forged in the early ninth century, it needs to be assumed that it was plausible at that moment to concoct a charter which pointed to tension between Æthelmund and Worcester, when both a charter of 770 and the settlement of a dispute in 824 indicate continuing friendship between Æthelmund and his kin with the bishop and monastic community of Worcester.¹⁴⁵ The parallel with the activities of the Canterbury scriptorium seems attractive, but on closer inspection requires further consideration. Offa and his successor Ceonwulf made a consistent, continuous and concerted effort to exercise control over the royal minsters founded by the Kentish royal house bringing the Mercian kings into conflict with successive archbishops of Canterbury during the late eighth and early ninth centuries,¹⁴⁶ but with the possible exception of Ceonwulf's relationship with Winchcombe minster (Gloucs.) there is little evidence to suggest a parallel policy within the Hwiccian kingdom.¹⁴⁷

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Abbreviations

B: *Cartularium Saxonicum: Collection of Charters Relating to Anglo-Saxon History*, vols. 1-2, ed. Walter de Gray Birch (London, 1885-1887).

BL: British Library.

IC: (vols. 1-8). See George Cœdès, *Inscriptions du Cambodge*.

PASE: *Prosopography of Anglo-Saxon England*. Retrieved on 27 November 2017: <http://www.pase.ac.uk>.

S: *Electronic Sawyer*. Retrieved on 27 November 2017: <http://www.esawyer.org.uk/about/index.html>.

144 Wormald, *How Do we Know*, 22.

145 S 59 (B 203); S 1433 (B 379).

146 Brooks, *Early History*, 129-154.

147 Bassett, *Probable Mercian Royal Mausoleum*; idem, *Search of the Origins*, 8; cf. Levison, *England and the Continent*, 249-259.

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Conversion, Exemption, and Manipulation: Social Benefits and Conversion to Islam in Late Antiquity and the Middle Ages

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The choice of individuals and groups to embrace Islam in the first few centuries after its emergence is rightfully considered an act that was charged with spiritual meaning. At the same time, however, the act also brought with it dramatic implications for the configuration of communities whose social and political structures were dictated by theological ideologies, scriptural traditions and memories of primordial pasts. In this essay, I wish to focus on the social aspects of conversion to Islam, particularly on how shifts in confessional affiliation were prompted by social concerns. Once they entered into the Islamic fold, the new converts were able to enjoy a variety of benefits and exemptions from burdens that had been imposed on them as non-Muslims. Yet conversion to Islam did not only offer exemption from taxes or liberation from slavery. In the final part of this essay, I attempt to show that conversion to Islam, or even its mere prospect, could be used for obtaining various favours in the course of negotiations for social improvement. An ecclesiastical authorization to divorce without legal justification, the release of a Jewish widow from her levirate bonds, and the evasion of penal sanctions are examples of some of the exemptions that were sought out or issued in response to conversion to Islam. In the period under discussion, in the context of a social setting that was founded on confessional affiliation, conversion to Islam signalled a social opportunity that was at times manipulated by individuals for the sake of improving their personal status.

Keywords: Islam; ahl a-dhimma; conversion; jizya, slavery; mawlā; marriage; law; Jews; Christians

For members of the non-Muslim communities who fell under Islamic rule from the seventh century CE, conversion to Islam offered an improvement of legal status, economic benefits, and a new communal solidarity.¹ Even the mere prospect of conversion to Islam could be advantageous if properly negotiated, or manipulated. This paper focuses on the various exemptions and benefits that could have been obtained by conversion to Islam during the early and formative centuries of Islamic rule by considering literary testimonies from diverse chronological, geographical, and communal provenances. The first two parts of the following discussion summarize some of the cases better known to modern scholarship about con-

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1 I concede that conversion to Islam may mean different things and was achieved in different ways; for a recent discussion on the conceptual problems stemming from incautious usage of conversion as an act denoting a shift in spiritual alliances, see Szpiech, *Conversion and Narrative*, 9-27.

version and exemption in relation to taxation and slavery. The third part seeks to highlight moments in which the act of conversion to Islam – or in most cases, the mere prospect of conversion – was utilized as a means of gaining benefits and exemptions. The cases presented indicate that these social gains were often obtained in a manner that did not conform to contemporary legal principles.

Confessional communities as social systems

Shortly after his arrival in the Arabian town of Yathrib in 622, Muhammad signed an agreement, a pact, or a constitution with the town's local inhabitants, known in modern scholarship as the Constitution of Medina.² The document that was issued by the Prophet and accepted by his followers lists a series of clauses that were to constitute the normative principles of the new Community of Believers (*Umma*). These outlined the ideological boundaries between those within and outside of the Community, a series of rudimentary rules that were to be incumbent upon its members, and points of social solidarity among them. The validity and fulfilment of the document is guaranteed by divine power and its human agent: »Whatever matters you disagree on should be referred to God and to Muhammad [that is, for resolution].«³

The Constitution of Medina was innovative in the sense that it assembled the first Muslims around social principles that stemmed from their new spiritual convictions. The kinship and blood allegiances that constituted the foundations of Arabian tribal solidarities were to be gradually replaced by the belief in Allah and an acknowledgment of His Messenger. Accordingly, a simple utterance of faith that there is no God but Allah and that Muhammad is His Messenger would indicate a powerful moment in which the individual not only committed himself or herself to a new God, but also forged a social alliance with his or her new confessional associates.⁴

While the emergence of a Community of Believers was likely to have signalled nothing less than a revolution in the meaning of communal membership for the pagan-worshipping tribes of Arabia, we should anticipate that some of their Jewish and Christian neighbours would have reacted to the concept of a monotheistic community with indifference, if not scorn.⁵ For centuries prior to Muhammad's prophetic career, Christian and Jews throughout the Near East and beyond were accustomed to abiding by social rules and norms that were dictated by their confessional affiliation. For, as Peter Brown taught us not so long ago, in the »new culture« of Late Antiquity »a man was defined by his religion alone.«⁶ Much of that man's daily routines – his choice of spouse, the manner in which he raised his children, his diet,

2 Two versions are extant. The first in Muhammad's biography, the *sīra* by Ibn Ishāq (d. c. 767-768) which was redacted by Ibn Hishām (d. c. 833-834); the second in Abū 'Ubayd's (d. 838-839) legal treatise, *Kitāb al-amwāl*. About the document, see Lecker, »Constitution of Medina«.

3 Translation based on the text preserved by Ibn Hishām in Donner, *Muhammad and the Believers*, 230.

4 The term »confessional«, rather than »religious« has been given preference throughout the following discussion, since religion does not adequately represent the communal distinctions of Judaism in Islam, as opposed to Christianity. See Asad, *Genealogies of Religion*, 27-54; and recently, Becker, *Martyrdom, Religious Difference, and »Fear«*, 301-304.

5 On the cultic composition of the Arabian Peninsula prior to Islam, see Hoyland, *Arabia and the Arabs*, ch. 6.

6 Brown, *World of Late Antiquity*, 186.

his moments of rest and labour, and above all, his willingness to obey his communal leaders – were all motivated by the contents of divine messages that were codified in sacred texts. As a consequence, spiritual allegiances bore social consequences, as did the breakup of these allegiances and the formation of new ones.

The social implications of conversion to Islam

It is within the social context of confessional communities that commitments among community members, and between members and their communities, could be broken by a shift in confessional alliance, that is to say, by conversion. This was not an act to be taken lightly from the perspectives of both the convert and their original community. For the latter it meant far more than a loss of one of its members; it marked a terrible violation of the contract between man and God and thus constituted a supreme act of offense. Accordingly, believers, including family members, were exhorted to sever all ties with the apostate, and reject his company, their offering, and their legal standing.⁷ At the same time, while a person's decision to embrace a new confession and renounce their old one may have been fraught with serious spiritual connotations, there would also be crucial social implications vis-à-vis both their former and new confessional community.

The history of Islam in Late Antiquity and the Middle Ages is, to a large extent, a process of changes that were instigated by the choice of individuals and groups to join the Muslim ranks.⁸ It is a process that has attracted the interest of modern scholars who have been primarily preoccupied with questions as to when conversions to Islam took place, how many people converted in a given period, and why they chose to do so.⁹ Early in the twentieth century, scholars such as C. H. Becker considered conversion to Islam to have been principally motivated by economic considerations.¹⁰ This understanding was later revised, following Daniel Dennett's study on the poll tax (*jizya*) in the 1950s.¹¹ Dennett convincingly showed that discriminatory taxes on non-Muslims were neither imposed consistently, nor uniformly conceived from the onset of Islamic rule. Thus, while acknowledging the role of economic growth in confessional change, Marshall Hodgson pointed to the great social advantages that were to be gained by conversion to Islam, underscoring the social mobility that went hand in hand with the new affiliation.¹² In general, historians have come to the understanding that the phenomenon of conversion to Islam cannot be treated from a singular perspective.¹³

However, the nature of the process of conversion itself has remained less clear. In particular, modern scholars have paid little if any attention to questions pertaining to the daily dilemmas and social implications that were prompted by conversion to Islam: the duration of the act itself (whether the individual converted immediately or over an extended period of

7 See Simonsohn, »Halting between Two Opinions«; idem, Communal Membership Despite Religious Exogamy.

8 See Tannous, *Syria Between Byzantium and Islam*.

9 For a summary of this scholarship, see Morony, *Age of Conversions*.

10 Becker, *Islamstudien*, vol. 1, 153-155.

11 Dennett, *Conversion and the Poll Tax*, esp. 32-33, 48, 87.

12 Hodgson, *Venture of Islam*, vol. 1, 301, 304-305.

13 For up-to-date studies, see Hoyland, *Seeing Islam*, 336-342; El-Leithy, *Coptic Culture*, vol. 1, 3-5, 35-44; Papaconstantinou, *Between Umma and Dhimma*, 151; Foss, *Egypt under Mu'awiya*, 13; Bulliet, *Cotton, Climate, and Camels*; Humphreys, *Christian Communities*, 54-55; Wasserstein, *Conversion*; Simonsohn, *Conversion to Islam*.

time); the reaction of the convert's former and new confessional associates; and the impact of the act on the convert's social commitments. Only recently has research into conversion reflected a shift in concerns, and accordingly produced studies which show greater sensitivity to the different meanings of early conversion to Islam, thus yielding nuanced observations as to the nature of the process leading to it.¹⁴ One central trend these studies mention is the act of conversion to Islam followed by reversion, that is, a change of heart and a return to the original creed.¹⁵

This trend reflects not only the progressive nature of conversion to Islam, but also its often opportunistic nature. Conversion to Islam occasioned a series of potential social and material benefits such as – depending on the convert's circumstances – avoiding the payment of the poll-tax, securing state employment, emancipation from slavery or from a state of war imprisonment, receiving an inheritance, and even marriage. An acknowledgment of the intimacy between spiritual sentiments and the social benefits that were entailed by confessional change matches Richard Bulliet's postulation that conversion to Islam in the early Islamic period was more a matter of social behaviour than of belief.¹⁶ According to Bulliet, the convert would acquire social membership in a new confessional community that was to provide a variety of substitutes for the social benefits they had received in their former community.

In a way, this pragmatic approach to conversion is very far from new. In Baghdad, some 250 years after the tribes from Arabia began a campaign that would bring the entire Near East under Islamic domination, the East Syrian scholar and physician Ḥunayn ibn Ishāq (d. 873) formulated an apologetic response to Ibn al-Munajjim's (d. 888) *Burhān* (Proof), in which he noted compulsion, discomfort and misfortune among the six reasons as to why people tend towards falseness, that is false belief.¹⁷ A few centuries later the Baghdadi Jewish oculist and philosopher Ibn Kammūna (d. 1284-5) described in his polemical treatise *Tanqīḥ al-abḥāth li-l-milal al-thalāth* (An Examination into the Inquiries of the Three Faiths) the different motivations behind conversion to Islam. According to Ibn Kammūna, these motivations had nothing to do with conviction, but rather, were all of a material or pragmatic nature: »[T]o this day we never see anyone converting to Islam unless in terror, or in quest of power, or to avoid heavy taxation, or to escape humiliation, or if taken prisoner, or because of infatuation with a Muslim woman, or for some similar reason.«¹⁸ While we should not underestimate the polemical incentives of both Ḥunayn and Ibn Kammūna, their depictions of conversion to Islam as a means for attaining relief from hardship and exemption from burdensome duties find ample support in our sources.

14 See El-Leithy, *Coptic Culture*; Tannous, *Syria between Byzantium and Islam*, esp. ch. 11; Sahner, *Christian Martyrs*, esp. ch. 2.

15 Simonsohn, »Halting Between Two Opinions«.

16 Bulliet, *Conversion to Islam*, 34, 36. See also Salaymeh, *Taxing Citizens*, 334, where the author objects to the notion that belief was »the starting point for understanding Muslim identity«, and 342, where she argues that most early Muslims perceived their Islam as an expression of a »socio-political membership«.

17 *Une correspondance islamo-chrétienne*, ed./trans. Samir and Nwyia, 690-693.

18 Ibn Kammūna, *Examination of the Three Faiths*, trans. Perlmann, 149.

Conversion and exemption: the poll-tax

According to Muslim law, the *jizya* or poll-tax was to be levied on non-Muslims of *dhimmī*, i.e. protected status.¹⁹ Its nature in the first few centuries of Islamic rule has been a cause of much scholarly discussion and debate. This is due to the fact that our information about it derives primarily from sources written in the Abbasid era of the later eighth and ninth centuries CE; the fact that initially it was not uniform throughout Islamic dominated lands; and that it did not replace earlier systems of taxation, which themselves appear to have been diverse and are poorly understood.²⁰ Modern scholars had initially identified the momentous stage of mass conversions to Islam as taking place relatively shortly after the Muslim conquest, that is, about a century later, in response to the burdensome poll-tax.²¹ These estimates were later revisited, and accordingly the period of this tipping-point has been gradually pushed forward. Be that as it may, the economic hardships that were caused by taxation are still considered a significant motive for conversion to Islam. And, indeed, in principle, conversion to Islam did mean exemption from the poll-tax. Yet given the unclear image we possess of the early Islamic taxation system, together with indications that at least in the seventh and first half of the eighth centuries such an exemption was not always granted, drawing a direct line between conversion and tax exemption appears to be overly simplistic.

Early collections of the poll-tax on non-Muslims are certainly well attested in seventh-century sources.²² These sources often refer to the close link between taxation and conversion. Thus, for example, in a letter written in the mid-seventh century by the East Syrian Catholicos Išō'yahb III (r. 649-659) to Simeon the Metropolitan of Rev Ardashir, the Catholicos laments the fact that members of Simeon's congregation »became captivated by the love of half of their property,« and hence »the She'ol of apostasy has suddenly swallowed them ...«²³ Išō'yahb expressed his astonishment, since »the Arabs did not force them to abandon their faith but only told them to abandon half of their possessions and to hold on to their faith.« Yet those Christians chose to »abandon their faith ... and held on to half of their possessions ...«.²⁴

19 See Fattal, *Le statut légal des non-musulmans*, 264-291.

20 See Cahen *et al.*, *Djizya*,; On the use of *jizya* in the early period, see Dennett, *Conversion and the Poll Tax*, 12-13; Løkkegaard, *Islamic Taxation in the Classic Period*, 131-132; Morimoto, *Fiscal Administration of Egypt*, 53-62; Sijpesteijn, *Shaping a Muslim State*, 177. cf. the ambiguity of Greek and Arabic taxation terms in Papaconstantinou, *Administering the Early Islamic Empire*, 63.

21 E.g. von Kremer, *Culturgeschichte des Orients*, vol. 1, 172.

22 See Crone, *Slaves on Horses*, 215, n. 107; Hoyland, *Seeing Islam*, 194 (according to Hoyland canon 19 of the East Syrian synod of 676 is the earliest literary reference to the Islamic poll-tax); *ibid.*, n. 73; Robinson, *Neck-Sealing in Early Islam*.

23 Penn, *When Christians First Met Muslims*, 35.

24 Penn, *When Christians First Met Muslims*, 36.

Around the same time the narrative of the treatise known as *The Apocalypse of Pseudo-Methodius* provides further allusion to the link between material hardships and apostasy.²⁵ The »Sons of Ishmael«, as they arrive from the South, will seize:

... the merchants' commerce, the farmers' work, the wealthy's inheritance, the holy ones' gifts of gold, silver, bronze, and iron, clothing, all their glorious vessels, adornment, food, confections, and everything desirable and luxurious ... They will become so arrogant in their rage and boasting that they will demand tribute from the dead lying in the dust. They will take the poll-tax from the orphans, widows, and holy men.²⁶

In consequence to these chastisements and many others, »[Only] a few of the many who are Christians will remain [Christians] ... Many who were Sons of the Church will deny the Christians' true faith, the holy cross, and the glorious mysteries. Without compulsion, lashing, or blows, they will deny Christ and make themselves the equivalent of the unbelievers.«²⁷

Historiographic accounts from the early Abbasid period (i.e. post 750) suggest that by the time of the caliph 'Umar ibn 'Abd al-'Azīz (r. 717-720), the formula of conversion in return of exemption was complete. These accounts either quote or refer to Caliph 'Umar's fiscal rescript to his governors, in which he gave the following instruction:

Wherefore, whosoever accepts Islam, whether Christian or Jew or Magian, of those who are now subject to the *jizya* and who joins himself to the body of the Muslims in their abode (*dār*), and who forsakes his abode wherein he was before, he shall enjoy all the privileges of the Muslims ...²⁸

This rescript is recorded in 'Umar's biography (*sīra*), which was written about a century later by the Egyptian historian 'Abdallāh ibn 'Abd al-Ḥakam (d. 829) and made available by his son Muḥammad (d. 882).

Recent scholarship, specifically that of Luke Yarbrough, has however expressed substantial reservations regarding the reliability of 'Umar's biography. Yarbrough argues that the policy attributed to 'Umar II should be read in the context of an Abbasid endeavour to cast the literary figure of the Umayyad caliph into a plot that was to serve Abbasid concerns.²⁹ Admittedly, Yarbrough's focus is on those parts of 'Umar's biography that mention a rescript concerning the employment of non-Muslims in the Islamic administration, so the fiscal rescript could still be authentic. The decree finds further support in non-Muslim accounts, among them *The History of the Patriarchs of the Coptic Church of Alexandria*, where 'Umar is depicted as having ordered that »the poll-tax should be taken from all men who would not

25 Believed to have been composed in North Mesopotamia by a Chalcedonian or a Miaphysite author around 690; see Hoyland, *Seeing Islam*, 264; cf. for an earlier dating of the text, Shoemaker, »The Reign of God Has Come«, 543, n. 83.

26 Penn, *When Christians First Met Muslims*, 120. A Greek translation was made shortly after the Syriac original; see Pseudo-Methodius, *Apocalypse*, ed./trans. Garstad.

27 Penn, *When Christians First Met Muslims*, 122.

28 Ibn 'Abd al-Ḥakam, *Sīrat 'Umar*, ed. 'Abīd, 84; English trans. Gibb, *Fiscal Rescript of 'Umar*, 3.

29 Yarbrough, *Did 'Umar b. 'Abd al-'Aziz Issue an Edict*, 198. See also Hawting, *First Dynasty*, 78.

become Muslims.«³⁰ Yet it seems that even after 'Umar's alleged rescript, irregularities persisted. According to Petra Sijpesteijn, Muslim officials who suspected the sincerity of recent converts, namely that they had converted only to free themselves from the poll-tax, forced these converts to continue paying the tax.³¹

The policy appears to have taken a much clearer and more consistent form under early Abbasid rule. Completed in the second half of the eighth century, in a monastery in northern Mesopotamia, the Syriac *Chronicle of Zuqnin* reports the heavy burden caused by the poll-tax around the year 770. Its author further notes that »[d]uring the [early] Arab rule the tribute did not weigh so heavily upon the Christians that it went beyond their endurance,« yet now »evils of harsh extortions suddenly broke out against them ... [thus] the door to paganism opened for them.«³² This link between the burden of the poll-tax and conversion to Islam received growing attention from Muslim and non-Muslim historians who wrote during and about the Abbasid period.³³ Once again, The *History of the Patriarchs of the Coptic Church of Alexandria* reports that the first Abbasid caliph, al-Saffāḥ (r. 749-754) ordered a sweeping exemption of converts to Islam from the poll-tax.³⁴ And according to the *Continuatio of the Samaritan Chronicle* of Abū al-Faṭḥ (composed c. 1356), during the time of caliph al-Mutawakkil (r. 847-861) the poll-tax was a cause of mass conversion.³⁵

Indeed, the Umayyad caliphs of the seventh and early eighth centuries would have found it difficult to cope with declines in income that were likely to have resulted from exempting former non-Muslims from the poll-tax.³⁶ In the early Abbasid period, however, taxation assumed importance, not only as a source of state income, but also as a means of confessional differentiation.³⁷ Late eighth-century efforts of Muslim jurists to formulate principles regulating Muslim/non-Muslim relations coincided with and often completed those pertaining to taxation. Thus, early versions of the Pact of 'Umar not only showed up around this time, but were integrated in legal treatises such as Abū Yūsuf's (d. 798) *Kitāb al-kharāj* (The Book of Taxation).

30 *History of the Patriarchs*, ed./trans. Evetts, 72. Similar accounts, all stemming, according to Robert Hoyland (*Seeing Islam*, Excurses C), from the *Syriac Common Sources*, i.e. the chronicle of Theophilus of Edessa (d. 775) are found in, Theophanes Confessor, *Chronicle*, trans. Mango and Scott 399; Agapius of Manbij, *Kitāb al-'unwān*, 502-503; Michael the Syrian, *Chronicle* 2, ed./trans. Chabot, 11.XIX, 456/488-489.

31 Sijpesteijn, *Shaping a Muslim State*, 193. See also Simonsen, *Studies in the Genesis*, 141-150; Hoyland, *Seeing Islam*, 340.

32 *Chronicle of Zuqnin*, 321.

33 Lev, *Coptic Rebellions*, 327.

34 *History of the Patriarchs*, ed./trans. Evetts, 443.

35 Levy-Rubin, *New Evidence*, 269.

36 Crone, *Slaves on Horses*, 52; Hawting, *First Dynasty of Islam*, 79; Sijpesteijn, *Shaping a Muslim State*, 183; Crone, *Nativist Prophets*, 13.

37 A clear link between taxation and religious hierarchy is made in the different interpretations of Qur'ān 9:29, referring to the payment of the poll-tax by non-Muslims in a state of *ṣaghār* (humility), see Cahen, *Coran IX-29*; Kister, « 'An Yadin »; Bravmann, *Ancient Arab Background*; Rubin, *Quran and tafsir*; see also the summary of these opinions in Cohen, *Under Crescent and Cross*, 224, n. 26; Ibn Warraq, *What the Koran Really Says*, 343-386.

Questions of systemization and consistency aside, it seems safe to assert that for many, the poll-tax, both in its early and later manifestations, would have constituted a sufficient impetus for conversion to Islam. As judiciously observed by S.D. Goitein, given the large scale »of poverty and privation experienced by the masses« of medieval Near Eastern societies, »the payment of the poll-tax constituted item number one in the budget of families with modest income ...«³⁸ Under these circumstances, embracing Islam posed an appealing and viable alternative.³⁹

Conversion and exemption: slavery

A common understanding in modern scholarship is that many among the early converts to Islam were motivated by aspirations for social mobility, in particular, in order to escape slavery and captive status.⁴⁰ The oft-recounted stories about Rayḥāna bint Shamʿūn and Ṣafīyya bint Ḥuyayy exemplify the opportunities afforded by conversion to Islam. Both were Jewish captives who converted to Islam and were subsequently manumitted and married to the Prophet.⁴¹ Echoes of this dynamic are attested too in a question posed to the Byzantine Orthodox abbot of St. Catherine monastery, Anastasius of Sinai (d. c. 700), concerning »women who go astray while they are also slaves in captivity.«⁴² It is under such circumstances that marriage with Muslims and conversion to Islam constituted a useful means of manumission for slave girls.⁴³

It should be noted that in principle, according to Islamic law, the only two types of recognized slavery are by birth or consequent to captivity, thus rendering conversion to Islam immaterial to non-Muslim slaves.⁴⁴ At the same time, a *dhimmī* may not own a Muslim slave and if he does he should strive to sell that slave, give him away to a Muslim owner, or release him.⁴⁵ We should, therefore, wonder whether among those who chose to join the Muslim ranks there were slaves who were motivated by the hope of manumission. Here, again, as in the case of the poll-tax, the evidence is not clear and unanimous. The question is further complicated by the fact that during the Umayyad period the conversion of a non-Arab to Islam entailed the acquisition of the status of a client (or *mawlā*) – a legal practice which rendered the new Muslim a dependent of an old Muslim, most likely of Arabian descent, through a bond of rights and obligations.⁴⁶ While the convert *mawlā* would now enjoy equal rights to

38 Goitein, *Evidence on the Muslim Poll Tax*, 279.

39 Cf. Wasserstein, *Conversion*, 203: »the economic weight of the tax ... seems rarely to have been so high as to encourage conversion as a way out of paying it.«

40 Bulliet, *Conversion to Islam*, 41; Fiey, *Conversions à l'islam*, 13.

41 Ibn Sa'd, *Kitāb al-ṭabaqāt* 10, ed. ʿUmar, 116, 125; al-Wāqidī, *al-Maghāzī* 2, 520; discussed in Stern, *First Women Converts*, 297; Spectorsky, *Women of the People of the Book*, 272; Friedmann, *Tolerance and Coercion in Islam*, 183-184.

42 Anastasios of Sinai, *Questions and Answers*, 191 (question 76); on this collection, see Haldon, *Works of Anastasius*.

43 See Lecker, *Jewish Reaction*, 179-180.

44 Brunschvig, *ʿAbd*.

45 Fattal, *Le statut légal des non-musulmans*, 149.

46 Wensinck and Crone, *Mawlā*; Crone, *Roman, Provincial and Islamic Law*, 36; cf. cases in which non-Muslim slaves attained *mawlā* status without converting to Islam, in Crone, *Slaves on Horses*, 237, n. 358; Onimus, *Les mawālī en Égypte*, 84.

other Muslims, he would remain socially inferior to them, given his dependence on his patron.⁴⁷ According to Richard Bulliet, this state of affairs did not necessarily take away from the motivation of those who were socially inferior to begin with, e.g. »prisoners of war, who might thereby escape slavery, and people of very low social status who had no social status to lose.«⁴⁸ His point gains support from Patricia Crone's view, according to which slaves who converted to Islam would often gain manumission.⁴⁹

Precedents from the time of the Prophet may have facilitated instances of manumission of non-Muslim slaves who had converted to Islam. Elizabeth Urban has analysed the conversion story of Abū Bakra, who was manumitted along with others by Muhammad during the siege of al-Ṭā'if in 630.⁵⁰ Urban argues that the case of Abū Bakra exemplifies an instance in which a non-Muslim slave not only attained manumission following his conversion to Islam, but also did not become a *mawlā*⁵¹. Instead, Abū Bakra was considered a *ṭaliq allāh* – a freedman whose »freedom was inextricable from his conversion to Islam.«⁵² Urban ties this concept to the use of the term *ṭaliq allāh* in a panegyric written by an Abbasid poet which was dedicated to the caliph al-Mahdī (r. 775-785).⁵³ In the poem, the caliph is the manumitter of »the one set loose by God«, thus rendering the Community of Believers responsible for the social welfare of the former slave, rather than the latter becoming the *mawlā* of a patron. It is, then, the slave's conversion to Islam, Urban concludes, which endows him with complete manumission.⁵⁴

Urban suggests that this type of manumission, issued in exchange for conversion, gradually disappeared in the post-conquest period.⁵⁵ Moreover, the idea that manumission was attained when conversion was channelled through *walā'* (clienthood), has been met with reservation. According to an alternative understanding, the institution of the *walā'* did not so much lead slaves into Muslim society, as it changed their legal status, keeping their enslavement in place.⁵⁶ The example of the martyr George the Black (d. c. 660s) is a case in point. The figure of George appears in the *Narrationes* of the aforementioned Abbot Anastasius of Sinai. Born Christian and taken captive by a Muslim from Damascus during the time of the conquests in the 640s, George converted to Islam as a child, yet appears to have remained in servitude before reverting to Christianity and eventually being executed.⁵⁷

47 Savant, *New Muslims of Post-Conquest Iran*, 68; on aspects on non-Arab converts' social inferiority, see Crone, *Nativist Prophets*, 9.

48 Bulliet, *Conversion to Islam*, 52.

49 Crone, *Nativist Prophets*, 8.

50 Urban, *Early Islamic Mawālī*, ch. 2. Versions of the account show in Ibn Sa'd, *Kitāb al-ṭabaqāt*, 9, ed. 'Umar, 15; Ibn 'Asākir, *Ta'riḫ madīnat Dimashq* 62, ed. Gharāma al-'Amrawī, 212-213; Ibn Qayyim. *Zād al-ma'ād* 3, ed. 'Abd al-Ra'ūf Sa'd, 366.

51 Urban, *Early Islamic Mawālī*, 46.

52 Urban, *Early Islamic Mawālī*, 54.

53 Urban, *Early Islamic Mawālī*, 55. The poem is attributed to the court poet Marwān b. Abi Ḥafṣa (d. 797); see Marwān b. Abi Ḥafṣa, *Shi'r*, ed. 'Aṭwān, 95.

54 Urban, *Early Islamic Mawālī*, 56

55 Urban, *Early Islamic Mawālī*, 47.

56 Hallaq, *Use and Abuse*, 83. See also Lewis, *Race and Slavery in the Middle East*, 9.

57 Binggeli, *Anastase le Sinaïte*, 252, 567. For discussion, see Flusin, *Démons et Sarrasins*, 387ff; Hoyland, *Seeing Islam*, 100, 351-352; Tannous, *Syria Between Byzantium and Islam*, 448-449; Papaconstantinou, *Saints and Saracens*, 326; Sahner, *Christian Martyrs*, 86-87.

The case of George the Black should also be noted in relation to the question of captivity. As noted above, slavery went hand in hand with captivity and accordingly, it has been argued that a great many non-Muslims who were taken in captivity during the early Muslim campaigns became slaves, later converted to Islam, and were finally manumitted.⁵⁸ The considerable quantity and social significance of non-Muslim captives among Muslims is reflected in early and medieval Islamic historiographic accounts and legal deliberations.⁵⁹ The latter suggest that Muslim jurists were particularly preoccupied with the question as to whether captives were to be put to death, used to ransom Muslim captives, or given their freedom.⁶⁰ And while most authorities appear to have been in favour of the conversion of polytheist captives, attitudes towards monotheists appear to have been ambivalent. While some advocated for their forced conversion, including some who maintained that their conversion prevented execution, but rendered them slaves, others, like the Qur'ān's commentator Mujāhid ibn Jabr (d. 718-722),⁶¹ opted for a formula according to which conversion entailed freedom.⁶²

Another means of manumission from slavery following captivity was to embrace Islam and join its military. The case of Persian soldiers who were taken captive in the battle of Qādisiyya in 636, converted to Islam, and joined the Muslim army, offers a glimpse into a dynamic in which integration within the ranks of Muslim combatants promised social freedom.⁶³ The scale of the phenomenon is difficult to measure. What seems safe to surmise is that in certain instances conversion to Islam meant a release from the slave status of non-Muslim prisoners of war. Thus, among the biographies studied by Bulliet we find one about Muḥammad ibn 'Iṣām ibn Yazīd ibn 'Ajlān from Isfahan, whose grandfather had been taken captive by the Muslims following the battle led by Abū Mūsā al-Ash'arī (d. 666) against the Daylams in c. 640. Once converted to Islam and consequently settled among the Muslims of Kufa, it appears the grandfather enjoyed full manumission, as years later he returned to his homeland and to his estate.⁶⁴

In the medieval eastern Mediterranean, the presence of slaves is well-attested, especially as soldiers and domestic servants.⁶⁵ While slaves known as *mamlūks* were brought up as Muslims in order to become loyal combatants in the service of Muslim rulers, domestic slaves could be found converting to Islam in order to be liberated from their non-Muslim masters, or even to gain full manumission.⁶⁶ A legal opinion of the Baghdadi legal scholar Aḥmad ibn Ḥanbal (d. 855) illustrates this latter scenario.⁶⁷ Ibn Ḥanbal was asked by his son about the fate of a slave whose Christian master had stipulated in his will that he should serve

58 Crone, *Slaves on Horses*, 50; idem, *Early Islamic World*, 314; idem, *Nativist Prophets*, 7-11.

59 See Crone, *Nativist Prophets*, 8-9; Friedmann, *Tolerance and Coercion in Islam*, 115-120.

60 Friedmann, *Tolerance and Coercion in Islam*, 118.

61 See Rippin, *Mudjāhid b. Djabr al-Makkī*.

62 For summary, see Friedmann, *Tolerance and Coercion in Islam*, 118-119.

63 Morony, *Effects of the Muslim Conquest*, 50-51; al-Qāḍī, *Non-Muslims in the Muslim Conquest Army*, 94-95.

64 Bulliet, *Conversion Stories in Early Islam*, 126.

65 See Lewis, *Race and Slavery in the Middle East*, ch. 9; Goitein, *Mediterranean Society*, vol. 1, 130-147; Perry, *Historicizing Slavery*.

66 Perry, *Daily Life of Slaves*, 181.

67 Ibn Ḥanbal's opinions were assembled in the *Kitāb al-jāmi' al-kabīr* of the Baghdadi scholar Abū Bakr al-Khallāl (d. 923). See Laoust, *al-Khallāl*.

the church for five years (after his, the master's, death) and then be set free. The man died and the slave served the church for a year, but then converted to Islam. In reply, Ibn Ḥanbal ruled that the slave was free and should be paid a wage for the remainder of his four-year service.⁶⁸ Nonetheless, the sporadic nature of the evidence, augmented by the absence of an explicit injunction to manumit slaves upon conversion to Islam, should not be left unnoted. As a result, we can suppose that it was only under certain circumstances that non-Muslims could resort to conversion to Islam in order to be exempted from slavery.

Conversion and exemption: manipulation

By embracing the faith of their Muslim overlords, non-Muslims were not only submitting to a new set of theological and legal principles, acknowledging the spiritual leadership of an *imām*, and committing to a series of rituals and practices, they were also signing up for a new communal membership. As we have seen, the latter entailed a set of duties and rights, or benefits. These benefits could include exemptions from material burdens, most notably the payment of the poll-tax and slavery. Yet the prospect of conversion to Islam, or the threat of it, if properly manipulated, could in itself provide means for attaining exemptions. Our records show that during the early and medieval Islamic periods people sought exemptions from a variety of mundane obligations and were able to do so in the context of conversion to Islam. These exemptions included manumission from slavery, evasion of penal sanctions, special permission to divorce, and the release from levirate bonds – all sought or acquired by means of the threat of conversion to Islam.

Particularly revealing sources in this respect is a *responsum* (a legal opinion) that echoes some of the principles outlined above regarding slavery and conversion.⁶⁹ It was issued by one of the three supreme Rabbanite legal authorities of the time, the Babylonian Ga'on Rav Naṭronai bar Hilai (fl. 853-61), who was head of the rabbinic academy of Sura in Baghdad. From the *responsum* we learn that a certain Jewish slave threatened to convert, presumably to Islam, unless his master manumitted his son.⁷⁰ The threat to convert was likely to have weighed significantly in the master's decision to free the boy, knowing that otherwise he would be forced to sell the slave to a Muslim owner.⁷¹

We may anticipate that the famous gaonic enactment (a legal ruling) of a rebellious wife (*isha moredet*), allegedly, c. 650-651, stipulating immediate divorce to recalcitrant wives, was issued with a similar motivation in its background, namely, attaining a social benefit. According to this early enactment, a woman who was considered rebellious (*moredet*) should be divorced without delay.⁷² This was an innovation, since according to earlier rabbinic principles (Babylonian Talmud, tractate Ketubot 64a), under such circumstances, divorce would

68 Al-Khallāl, *Ahl al-milal* 2, ed. Ḥamad b. Sulṭān, 428 (no. 992); see also 429 (no. 993).

69 The two other supreme authorities were the Ga'on of the Babylonian academy of Pumbedita and the Ga'on of the Palestinian academy. See Simonsohn, *Common Justice*, ch. 4.

70 Naṭronai Ga'on, *Responsa of Rav Naṭronai*, ed. Brody, 530-533, nos. 359-360. I wish to thank Moshe Yagur for drawing my attention to this *responsum*.

71 Mann, *Responsa of the Babylonian Geonim*, 147.

72 The term ›rebellious wife‹ (*isha moredet*) refers to a woman who refuses to have intercourse with her husband or, alternatively, a woman who refuses to perform domestic labour. The refusal can legally be seen as a sign of a woman's wish to obtain a bill of divorce.

be postponed for twelve months so that the couple could reach reconciliation. The enactment is reported in the famous *Epistle* and a legal *responsum* that were written by the head of the Babylonian academy of Pumbedita in Baghdad, Rav Sherira Ga'on (fl. 968-1006), and a legal *responsum* attributed to Rav Naṭronai. In his *responsum* Sherira notes that prior to the time of this enactment, Jewish women who sought immediate divorce, following their pronouncement as rebellious, »would attach themselves to the Gentiles,«⁷³ and would thus be granted an immediate divorce. The historical reality to which Sherira referred has been understood in modern scholarship as instances in which Jewish women would turn to Islamic courts in order to obtain an immediate divorce.⁷⁴ Here we should recall that the enactment was issued at a very early moment in Islamic history. This was a time when Muslim armies were still in motion, and when Muslim governments were wrestling with questions of legitimacy and stability, and while an Islamic legal apparatus was very much in its infancy.⁷⁵ The scenario in which Muslim judges would issue bills of divorce for Jewish women in the region where the enactment was promulgated, namely Mesopotamia, seems quite unlikely at this historical moment, all the more so since bills of this type had no validity in Jewish legal eyes.

Modern interpretations tend to dismiss Rav Naṭronai's reference to the enactment, indicating its background in the inclination of rebellious wives to engage in *tarbut ra'a* (literally, »bad ways«).⁷⁶ In a recent study, Simcha Gross has revisited both the dating of the enactment to the 650s and its context.⁷⁷ Gross argues that former assessments of the enactment cannot be supported by any other than Sherira's account and it should in fact be seen as a product of either an earlier or much later time. Gross also challenges the interpretation of Sherira's comment that Jewish women »attached themselves to the Gentiles« as reference to an appeal to Muslims, by referring to Naṭronai's remark. According to Gross the expression *tarbut ra'a* should be understood as licentious behaviour, based on its earlier rabbinic attestations. Yet it can be equally argued that by time of Naṭronai (i.e. the ninth century), *tarbut ra'a* was understood as apostasy, given its attestation in this context in references shortly after Naṭronai's time.⁷⁸ It therefore seems reasonable to argue that whether prior to the beginning of the Muslim conquest or centuries after it, the enactment was motivated by the fact that Jewish women would convert in order to attain immediate divorce from their Jewish husbands.⁷⁹

73 Lewin, *Otsar*, Ketubot, 191-192 (no. 478).

74 Mann, Responsa of the Babylonian Geonim, 122; Libson, *Jewish and Islamic Law*, 111.

75 Schacht, *Introduction to Islamic Law*, ch. 4; Hallaq, *Introduction to Islamic Law*, 39-42.

76 Lewin, *Otsar*, Ketubot, 189 (no. 471); see Brody, Were the Geo'im Legislators? 290; idem, *Geonim of Babylonia*, 62.

77 Gross, When the Jews Greeted Ali, 135-142.

78 In an eleventh-century letter sent Nahray ben Nissim, discussed below: Bodl MS Heb c 13 20, ed. and Hebrew trans. in Gil, *Kingdom of Ishmael*, vol. 4, 237-240 (doc. 673); I wish to thank Avraham Yoskovitch for drawing my attention to this document; and in a *responsum* from Sherira Ga'on: Lewin, *Otsar*, Shabbat, 130 (no. 398).

79 On early Islamic legal principles concerning marriage between Muslims and non-Muslims, see Fattal, *Le statut légal des non-musulmans*, 129-136; Friedmann, *Tolerance and Coercion in Islam*, ch. 5; Tsafirir, Attitude of Sunnī Islam, 328-332.

It is with this background in mind that I propose to understand the above gaonic enactment, as responding to a tactic employed by Jewish women converting, or merely threatening to convert, in order to receive an immediate divorce in Jewish courts. Further indication of conversion as a means of annulling matrimonial commitments, this time in a Christian context, is attested in a regulation included in the legal code of the late eighth/early ninth-century East Syrian Catholicos Timothy I (r. 720-823) which he compiled in Baghdad. The regulation permits a man to divorce his wife, with no legal grounds, but merely in response to his threat to apostatize if he is not allowed to divorce his wife.⁸⁰ Leaders of the Eastern Churches were continuously exhorting Christian women against marrying non-Christians, often indicating that intermarriage will eventuate in conversion to Islam. We can thus infer that a Christian man's threat to apostatize could have been deemed sufficient reason to issue a (legally unfounded) authorisation to divorce.⁸¹

Related to the question of matrimonial bonds and the threat of conversion is also a recorded attempt to compromise the principles of the legal arrangement known in Jewish rabbinic law as levirate marriage (*yibbum*). The case is recorded in a letter, found in the Cairo Geniza, that was written by a Jewish judge in Alexandria to Nahray ben Nissim (d. 1098) in Fustāṭ around 1050.⁸² It mentions a young Jewish widow who insisted that she be given in marriage to one of the single younger brothers of her deceased husband, rather than to one of his married brothers. In response to the court's attempt to impose on her marriage to a married brother, the woman threatened that she would fall into »evil ways« (*tarbut ra'a*), in other words apostatising. The court eventually decided to release the woman from her levirate bonds.⁸³

The prospect of conversion to Islam was not necessarily expressed in the form of threats, but could merely be insinuated in order to prompt favourable actions and desired results. In another letter found in the Geniza that was sent from Alexandria to Nahray ben Nissim in Fustāṭ, shortly after 1094, a Maghribi Jew by the name of Benaya ben Mūsā complained to the communal leader about the harsh misconduct of the local Alexandrian Jews towards their Maghribi peers.⁸⁴ Benaya refers to an incident in which there was a demand for the payment of taxes from the Muslim authorities, but rather than paying it through the collective fund of the local community, the Maghribis chose to pay their dues directly to the authorities. This was a cause of great strife between the local Alexandrian Jews and the Maghribi Jews. Consequently, the writer suffered various allegations and slanders, whereby his property was confiscated and the same fine was determined against him more than once. Benaya notes that he was on the verge of dying owing to the extent of the animosity against him, and that

80 Sachau, *Syrische Rechtsbücher*, vol. 2, 88-89 (reg. 43). On Timothy's law book in the context of the development of East Syrian civil jurisprudence under Islamic rule, see Simonsohn, Introduction and Formalization of Civil Law.

81 An explicit permission to divorce in the context of apostasy finds no precedence prior to early ninth-century East Syrian legislation. See Weitz, *Syriac Christians*, 213. On the phenomenon of religious exogamy and its treatment in East and West Syrian legal sources, see Simonsohn, Communal Membership Despite Religious Exogamy.

82 Bodl MS Heb c 13 20, ed. and Hebrew trans. in Gil, *Kingdom of Ishmael*, vol. 4, 237-240 (doc. 673); English trans. and discussion in Zinger, *Women, Gender and Law*, 48. On Nahray b. Nissim, see Ackerman-Lieberman, Nahray Ben Nissim. I wish to thank Avraham Yoskovitch for drawing my attention to this document.

83 The expression *latset le-tarbut ra'a* is also attested in the abovementioned *responsum* of Naṭronai Ga'on; see n. 75. On the relaxation of levirate bonds in the context of conversion to Islam, see Simonsohn, Legal and Social Bonds.

84 TS 13 J 23.3, ed. and Hebrew trans. Frenkel, *Compassionate and the Benevolent*, 545-551 (doc. 75).

he almost converted to Islam so that the blame for his action would be placed on the head of his adversaries. He therefore pleaded for the intervention of Nahray in his favour. The case mentioned in the letter is clearly of an internal communal nature. The writer suffered various misdemeanours from members of his community and at some point considered apostatizing as a way out of his difficult state. While the writer indicates that conversion out of Judaism would serve to divert allegations towards those who had harmed him, we should take into consideration the potential effect such a prospect would have on the communal leader to whom this letter was addressed. Put differently, the prospect of conversion could have been manipulated in order to induce Nahray to act in favour of the writer and relieve him of his suffering.

Whether this tactic worked or not we do not know, but further testimony of the utility of the prospect of conversion in reducing or even removing communal sanctions can be found in another Geniza letter, written in the first half of the twelfth century. This letter, written by the judge of the Alexandrian Jewish community to the head of the Jews and the Palestinian academy in Fustāṭ, Matsliah ben Shlomo ha-Kohen (held office, 1127-1139), concerns a Jew against whom a ban had been decreed in four different towns in Spain. The Jew therefore immigrated to Alexandria, where his family members demanded that the local judge implement the ban against him. Yet the judge, having been told that the man threatened to convert to Islam should he be excommunicated, turned to Matsliah to implement the punitive measure.⁸⁵ In this case, the man's threat to convert should also be seen within the broader context of responses to unfavourable judicial decisions. Typifying them as »uncouth country people«, Goitein noted that these people would threaten to convert to Islam when met by unfavourable decisions from the Jewish court.⁸⁶ As another example, he referred to what appears to be a court record, dated 1094 that mentions three brothers who insulted the judge and threatened to convert to Islam in response to a complaint of the Egyptian Jewish community of Malij.⁸⁷

A legal opinion attributed to Ibn Ḥanbal, in the ninth-century, suggests that non-Muslims who committed serious crimes hoped to gain legal favours from Muslim authorities. Ibn Ḥanbal was asked what the ruling should be concerning a Muslim man who committed a crime, such as adultery or theft, then apostatized, and eventually reverted to Islam. In reply, Ibn Ḥanbal ruled that he should be penalized for the crimes he had committed.⁸⁸ The question was likely inspired by an assumption that by re-embracing the Islamic faith a man could hope to escape penalty.⁸⁹ It thus indicates once again how conversion could be used – or at least thought to be used – strategically to extract social benefits.

85 TS 10 J 10.3 ed. and Hebrew trans. Frenkel, *Compassionate and the Benevolent*, 457-459 (doc. 49).

86 Goitein, *Mediterranean Society*, vol. 2, 302.

87 Goitein, *Mediterranean Society*, vol. 2, 592, n. 13.

88 Al-Khallāl, *Ahl al-mīlāl* 2, ed. Ḥamad b. Sulṭān, 513 (no. 1288).

89 The potential exemption from punishment for a criminal offence that was committed by a non-Muslim who converted to Islam appears to have been known in Islamic legal discourse. See the traditions (*aḥādīth*) quoted in Ibn Qayyim, *Aḥkām* 1, ed. 'Abd a-Ra'ūf Sa'd, 332; discussed in El-Leithy, *Coptic Culture and Conversion*, 38, n. 10.

Conclusion

The emergence of an Islamic polity in the Arabian Peninsula which would come to dominate vast parts of the Near East and the Mediterranean Basin by the second half of the seventh century did not introduce radical social changes. Instead, in insisting on a close correlation between theological and social fidelities, the Islamic theocracy was not very different from those it had replaced. It is in this context that spiritual gestures took on social meanings and social commitments were sealed with a spiritual stamp. Thus, just as spiritual transgressions were to be met with social sanctions, so could proper belief hold social privileges. In this essay I have attempted to provide snapshots of instances in which conversion to Islam afforded various exemptions from the material and social burdens that were required by adherence to a non-Islamic faith. Despite the lack of consistent conclusive evidence, there appears to be ample ground to argue that under different circumstances, in the first two centuries of Islamic rule, and to a greater extent later on, conversion to Islam was often motivated by material concerns. And while some non-Muslims were evidently prepared to compromise their beliefs, there are also indications that non-Muslim communal leaders were willing to compromise their laws and regulations in order to prevent conversion to Islam. Thus, in addition to focusing on the act of conversion to Islam as a means of acquiring social benefits, I believe that an equally significant observation would be to note the *potential* of this act as a means of negotiating social benefits.

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Geniza documents

Bodl MS Heb c 13 20 = Bodleian Library, Oxford, MS Heb c 13 20.

TS 10 J 10.3 = Taylor-Schechter Genizah Collection, Cambridge University Library, 10 J 10.3.

TS 13 J 23.3= Taylor-Schechter Genizah Collection, Cambridge University Library, 10 J 23.3.

Religious exemption, justice, and territories around the year 1000: the forgeries of Worms

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While immunities were perhaps the most important form of religious exemption in the medieval West throughout the Middle Ages, they have not been studied extensively for the period around the turn of the millennium. This paper treats immunities from the perspective of the institutions that received them, drawing on the example of the bishops of Worms in southwestern Germany. Two questions are asked: 1) What did institutions expect from receiving immunities? 2) Can we tell if they had consequences in practice? The unique sources from Worms – a dossier of forged or interpolated royal charters created by Bishop Hildibald of Worms (978-998), and numerous documents connected to his successor Burchard (1000-1025) – make it possible to study these questions in depth. Hildibald's charters were one important starting point in the redrawing of regional power structures in favour of the church of Worms and thus its developing territorial lordship. In part, they expanded property and immunity rights, but Hildibald's forgeries were mostly concerned with specifying and defining the terms of immunity that his church already possessed in face of regional competition by the monastery of Lorsch and by the Salian dukes and counts. This suggests that practical advantages in terms of income and power were what made immunities interesting for a church. Hildibald's successor Burchard used his close ties to Emperor Henry II to achieve a large degree of independence from these regional political powers, relying in part on Hildibald's forged charters. As a result of this, the counts' powers in and around Worms were all but abolished, and judicial matters lay in the hand of the bishop. These changes in the regional power structure were accompanied by outbreaks of violence, which were countered by the emperor's intervention and the promulgation of new laws by the bishop.

Keywords: immunities; Worms; justice; Burchard of Worms; Hildibald of Worms; charters; forgeries

Introduction

In spite of centuries of legal history and decades of cultural history, and in spite of numerous studies on the subject, historians are still troubled by the judicial privileges held by religious communities in the Latin West that are generally known as ›immunities‹;¹ it still remains a challenge to understand in which way immunities and political entities – such as realms, principalities or states – coexisted. How did the dialectic between a (supposed) normal political order and the spaces exempt from it – but at the same dependent on a ruler who was the head of the very political entity from which the immunity granted exemption – function?

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1 Rosenwein, *Negotiating Space*; Murray, Immunity, Nobility and the Edict of Paris; Bachrach, Immunities as Tools; see for a recent survey starting from Rosenwein's work Bühner-Thierry and Jégou, Construction des pouvoirs.

Our problems are in part due to our modern preoccupation with *the* nation-state as the sole important form of political order, symbolized to no small degree by a monopoly on violence and an all-encompassing exercise of justice. Both are of course largely theoretical ideas, but they are nevertheless hard to square with the concept of exempt spaces within political entities. While recent developments may seem to indicate a resurgence of the nation state in Europe and elsewhere – they certainly indicate a resurgence of nationalism – there are signs that nation states in their nineteenth- and twentieth-century form have lost their inevitability: The ever increasing number across the world of failed states or of states with weak statehood is a very clear indicator that political entities may take on other forms than a nation state or its medieval precursors.

None of this is, of course, very surprising to researchers studying premodern or non-western societies who have known all along that there are more types of political order than states in their nineteenth- and twentieth-century incarnation. Still, medievalists have for the most part tended to see immunities in respect to a central power, usually embodied in kings. Was the granting of immunities a sign of weak central power, or was it conversely a sign of active and energetic royal power? Did kings unwittingly or negligently weaken their own political institutions by conferring them, or did they strengthen them by creating or supporting special, sacred places (or by securing military support by the privileged institutions)? These questions have been with us for a long time, and been discussed by generations of scholars, and they will remain important in the future.²

On the following pages, however, I am going to look at immunities not from the perspective of those who received them, nor those who dispensed them. This leads to two questions: What did institutions expect to gain from receiving immunities? And: can we tell whether they had consequences in practice?

The first question seems deceptively easy to answer. To begin, Barbara Rosenwein and others have convincingly demonstrated that receiving an immunity marked out the holder as special, and, when applied to a church as was most often the case, it was thus marked as a holy and privileged place. The second, more traditional line of reasoning is of an overtly practical nature: Excluding public judges and other officials from the spaces and people owned by a church meant more income from dues of a different nature that were then redirected toward the institution and control of jurisdiction over them, which could be a step in the creation of a territorial ecclesiastical principality. I believe that both of these reasons mattered.

Answering the first question – what churches expected or hoped to gain from immunities – may be best studied by looking at examples in which representatives of an institution took it into their own hands to create or expand an immunity, by resorting to forgery or interpolation. As for answering the second question regarding the consequences of immunities in practice, that requires a special kind of evidence concerning the application of the rights gained in those privileges. One of the churches for which we have both types of evidence is the episcopal church of Worms located on the River Rhine about 50 km south of Mainz, and which will therefore form the basis of what follows.

2 The idea presented by Barbara Rosenwein, Alexander Murray and others that granting immunities may have positive effects on royal power is not as new as one might think: Already in 1928 the second edition of Heinrich Brunner's *Deutsche Rechtsgeschichte* argued that immunities were granted from a position of strength and did not weaken the Carolingian political order (400).

The church of Worms around the millennium

In regard to the themes of this special issue and also in respect to law, its application and the development of an ecclesiastical lordship, Worms is an extremely interesting case because of several unique sets of documents transmitted from there. Some of these were written by or are at least connected to its best known and most brilliant bishop, Burchard (1000-1025).³ Burchard is best known for his *Decretum*, a collection of canon law consisting of twenty volumes that became authoritative for at least a century before it was superseded by Gratian's *Decretum*.⁴ However, Burchard is also credited with strengthening the position of his church in its diocese and its see, which, according to the *Vita Burchardi*, written shortly after his death in about 1030, had been nearly destroyed and deserted because of conflicts between the church of Worms and Duke Otto, whose grandson Conrad would eventually become king in 1024.⁵ This conflict was solved with the aid of Emperor Henry II (1002-1024), who owed his election in part to Bishop Burchard, as was a major dispute with the nearby abbey of Lorsch.⁶ It was in the context of these conflicts that Burchard issued his second, much shorter legal text, the so-called *Lex familiae Wormatiensis ecclesiae*, well-known because it is the earliest example of a law (*lex*) issued for the familia of a church, that is, the dependants of the church of Worms.⁷ The text is also important to urban historians such as Knut Schulz, because it contains some of the earliest clauses specifically directed at the inhabitants of an episcopal city, regardless of their legal status, thus foreshadowing the emergence of citizens as a legally distinct group.⁸

Without belittling Burchard's accomplishments, the focus of this article is however on one of Burchard's predecessors, Bishop Hildibald (978-998), who in many ways laid the foundation for Burchard's success. Hildibald died in 998, that is two years before Burchard's election, and there were no fewer than three bishops in between, among them Burchard's older brother Franco (998-999), but none of them lived long enough to have an impact.⁹

Bishop Hildibald's efforts as documented in charters – some authentic, many forged – show that immunities were a central concern to him. In creating or procuring these documents for the church of Worms, Hildibald put to use his ties to the courts of Emperor Otto II, Empress Theophanu and Otto III, and also profited from his intimate knowledge of the emperors' administration: indeed, Hildibald himself was the head of the imperial administration: he was named chancellor in 977 and continued to act as chancellor after he had been elected as bishop of Worms.¹⁰ Hildibald was therefore uniquely placed to obtain (or create) privileges for himself and for his church, with or without the king's approval.

3 See on Burchard Austin, *Shaping Church Law*, and the contributions in Hartmann, *Bischof Burchard von Worms*. For the history of Worms in this period, see Kohl and Felten, *Worms; Bönnen, Blütezeit des hohen Mittelalters; Zotz, Bischöfliche Herrschaft*.

4 See Duggan, in this special issue.

5 See on Burchard's *Vita* Haarländer, *Vita Burchardi*, and Bachrach, *Histories of a Medieval German City*, 29-60 for a useful English translation and commentary. On the history of the Salian family, cf. Weinfurter, *Jahrhundert der Salier*.

6 See below, p. 225-226.

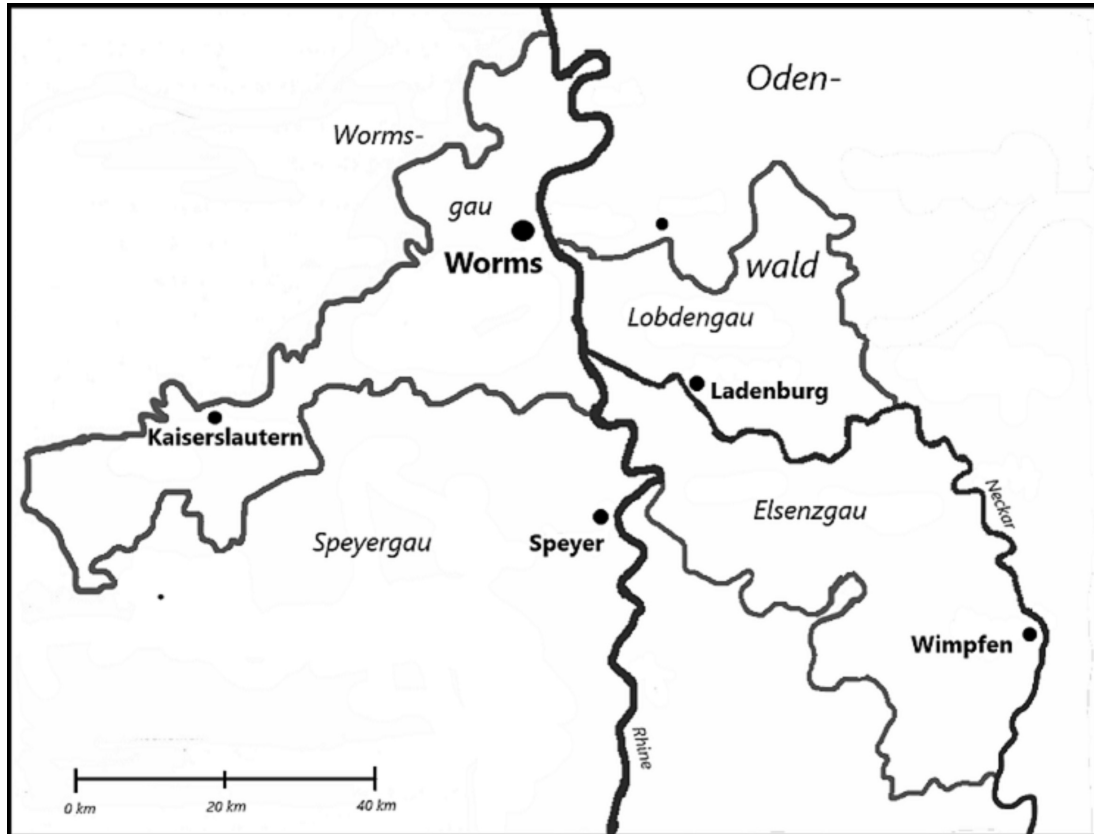
7 Burchard of Worms, *Lex familiae Wormatiensis ecclesiae*, ed. Weiland, 640-644.

8 Schulz, *Denn sie lieben die Freiheit so sehr*; idem, *Wormser Hofrecht*.

9 Kohl and Felten, *Worms*, 126.

10 Hildibald was the first chancellor to retain his office at the court after he became a bishop.

Before moving on to examine Hildibald's charters, it is necessary to outline the problems that the episcopal church of Worms faced around the turn of the millennium. The first problem was its small size, which limited the resources available to its bishops. The medieval diocese of Worms consisted of little more than a sickle-shaped area around Worms around the lower Neckar River and the Kaiserslautern Basin west of the Rhine up to Landstuhl (*Fig. 1*). This makes it one of the smallest bishoprics in the German part of the Ottonian Empire.



On top of this, there were no important monasteries or chapters within the boundaries of the diocese – this in contrast to all of the neighbouring dioceses, which were home to important institutions such as Hornbach (diocese of Metz), Weißenburg and Klingenmünster (Speyer), Mosbach, Amorbach and Fulda (Würzburg) and, above all, Lorsch, in the archdiocese of Mainz, situated just across the Rhine only a few kilometres east of Worms.

The second problem Worms faced related to competition: other political and ecclesiastical influences were strong in Worms. The monastery of Lorsch owned important assets in the city and the diocese of Worms, and in the early eleventh century tensions between the monastery and the episcopal church ran so high that Emperor Henry II was forced to intervene in 1012 to restore peace.¹¹ Even more important was the presence of a dominant lay power within the city walls; this was quite unusual in the eastern kingdom, in contrast to western Francia, where powerful dukes and counts controlled most cities. In Worms, however, the

11 See below. p. 226

counts and dukes from the future royal family known to historians as the Salians owned a castle – possibly a successor to Charlemagne’s palace. Since probably the late ninth century, this family had held an increasing number of counties in the Rhein-Main-Neckar area, first in Worms, then also in Speyer and in the Nahegau.¹² Konrad the Red, who died in the battle of the Lechfeld in 955, and his son, Otto of Worms, were named dukes of Lotharingia and Carinthia respectively, although both eventually lost their duchies – though in Otto’s case the loss was compensated in part by property taken from the monastery of Weißenburg and the episcopal church of Worms.¹³ This was certainly one of the reasons for the tension between the bishops and the Salians. One of Duke Otto’s sons was Brun, later Pope Gregory V; Otto’s grandson Konrad was elected king in 1024. In short, this was one of the most high-ranking and powerful families in the empire, and its home and most important power base was Worms.

Creating, delineating and specifying immunity: Bishop Hildibald’s forgeries

It is in the face of this background of local competition for power and resources that we must understand Bishop Hildibald’s forgeries. Far-reaching rights of immunity for his church were a way of taking on both the monastery of Lorsch – which itself had enjoyed royal protection and immunity rights since Charlemagne – and the Salian dukes, whose power was based on public rights stemming from the counties they held, and from which immunities granted exemption. Alongside this, property rights and public dues themselves were further fields of contention that Hildibald treated in his forgeries.

What were the specific rights that Hildibald – working together with an anonymous notary known as HB – tried to obtain for his church through forging documents? Johann Lechner, who first studied these charters extensively,¹⁴ identified three regional groups. One concerned the city of Worms; the second one the regions of the Lobdengau and the Odenwald; and the third the area around Wimpfen at the southwestern end of the diocese; but in fact all of these concerns are intertwined in the forged charters (*Fig. 1*).¹⁵

The starting point is a forged charter attributed to the long-dead Frankish king Dagobert I, and dated to 628.¹⁶ It contains a grant to Worms of all royal property and most royal rights except *comitatu* and *stipe* – that is high justice and certain dues – in the Lobdengau, and forest rights in the part of the Odenwald, a mountain range east of the Rhine that belonged to the Lobdengau, that is, exactly in those areas in which Lorsch also held extensive rights. The donation supposedly made by King Dagobert also included a palace in Ladenburg, which probably never existed, but of course supported the notion that everything important in Ladenburg, the centre of the Lobdengau, and the entire Lobdengau itself rightfully belonged to

12 Other counts mentioned here since the mid-tenth century are assumed to have been subordinated to the Salian dukes and counts (Zotz, *Adelsherrschaften am Mittelrhein um 1000*, 354).

13 Zotz, *Adelsherrschaften am Mittelrhein um 1000*, 361-362.

14 Lechner, *Die älteren Königsurkunden*, 364-401.

15 The charters forged or interpolated by Hildibald are: *Die Urkunden der Merowinger 1*, 30, ed. Kölzer, 81-84; *Die Urkunden Pippins* 20, ed. Mühlbacher, 28-29; *Die Urkunden Karl des Großen* 257, ed. Mühlbacher, 371-372; *Die Urkunden Ludwigs des Frommen* 25 and 282, ed. Kölzer, 65-68 and 702-704; *Die Urkunden Ludwigs des Deutschen* 74a, 74b, 179 ed. Kehr, 105-108, 257-258; *Die Urkunden Arnolfs* 166 and 192 ed. Kehr, 253-254 and 296-298; *Die Urkunden Ottos I.* 392, ed. Sickel, 533-535; *Die Urkunden Ottos II.* 46, ed. Sickel, 55-56.

16 *Die Urkunden der Merowinger 1*, 30, ed. Kölzer, 81-84.

the bishop of Worms. Hildibald's forgery even goes beyond that. In falsely claiming that the Lobdengau extended all the way east to the River Itter, the forger expanded the Lobdengau by several miles and thus added to the rights of the church of Worms.¹⁷ King Dagobert's charter also contains an immunity clause for all property belonging to the church of Worms, but also to all villas, properties and monasteries belonging to the city (*civitas*).¹⁸

Forged charters attributed to the kings and emperors Pippin, Charlemagne, Louis the Pious and Louis the German, Arnulf, and Otto I confirmed and expanded these rights, adding donations, and expanding the immunity by denying the count's rights in all matters that concerned the *familia* of Worms – which had been explicitly reserved in the Dagobert charter. They also include reasons for – supposedly – renewing the privileges: alleged attempts by agents of the fisc to reclaim rights in the Lobdengau in the case of Charlemagne and Louis the German, and – quite truthfully – a conflict with Lorsch in the charter issued in the name of Otto I.¹⁹ This charter is one of only two among those forged under Hildibald to be preserved in its original form.²⁰ The direct use of phrases drawn from authentic charters show that the charters are somewhere in between interpolations and outright forgeries. Bishop Hildibald and his notary HB were very well informed: they named the correct abbots and bishops for the time a grant was supposedly issued (although Bishop Amandus who is mentioned in the Dagobert charter is not known otherwise), and seem to have known other historical circumstances quite well.

Which other rights did Hildibald's forgeries claim? Toll-taking from the *familia* of the church of Worms was banned, first in an interpolated charter of Pippin.²¹ In another interpolation, Hildibald expanded an early- to mid-tenth century forgery supposedly issued by Emperors Louis the Pious and Lothar giving the tolls of the merchants, craftsmen and Frisians

17 Huffs Schmid, Ostgrenze des Lobdengaus im Odenwalde. See on Ladenburg and Worms Bönnen, Bistum und das Hochstift Worms, 17-19; Bönnen, Bistum und das Hochstift Worms. The monastery of Lorsch did not accept the extension of the Lobdengau, and countered Worms's claim in kind with a hugely inflated border description of the *marca* of Heppenheim (on the foot of the Odenwald), which had been given to Lorsch by Charlemagne (*Codex Laureshamensis* 1, 6a, ed. Glöckner, 282-278).

18 Interestingly the scribe of a cartulary in the twelfth-century cartulary in which most of the royal charters from Worms are preserved changed *emunitas* to *communitas*, which makes no sense, but which might perhaps be a clumsy attempt at addressing a more pressing concern of his time: the commune of Worms, which threatened the bishop's position in his own town (see for Worms in the twelfth century Bönnen, Blütezeit des hohen Mittelalters, and Zotz, Bischöfliche Herrschaft).

19 *Die Urkunden Karls des Großen* 257, ed. Mühlbacher, 371-372; *Die Urkunden Ludwigs des Deutschen* 74ab, ed. Kehr, 105-108; *Die Urkunden Ottos I.* 392, ed. Sickel, 533-535.

20 The other is *Die Urkunden Ottos II.* 46, ed. Sickel, 55-56.

21 *Die Urkunden Pippins* 20, ed. Mühlbacher, 28-29.

travelling to market in Worms to the episcopal church. Hildibald expanded this ruling with an interpolation to include the pre-urban settlements of Wimpfen and Ladenburg.²² Eventually, through a forged charter of King Louis the German, Hildibald also claimed the mint and the *modium regis*, a grain tax owed by the inhabitants of the city for his church.²³

In regard to Wimpfen and the small collegiate church there that formed the nucleus of the Worms property in the Wimpfen area, and which make up the third important topic of the forgeries, it is interesting to note that the forger's issue here was not ownership, which was important in the forgeries about Ladenburg. Wimpfen apparently belonged securely to the church of Worms. Here, Hildibald was instead concerned with the comital rights, which were directly or indirectly held by the Salian Otto of Worms, the bishop's rival.²⁴ A charter supposedly issued by King Louis the German therefore includes the king's concession under the protection of immunity that no king, count or public judge should dare to hear cases, force serfs or freemen of that church to attend a court, or do anything unpleasant in the property and places that belonged to Wimpfen.²⁵ This immunity pertained to an entire district that is carefully delineated following the run of rivers and streams, even mentioning specific trees. Outside of this area, the immunity was to be valid for all places where the church of Wimpfen had property, even if it was no more than two or three hides in a village, even outside the diocese of Worms.

This is quite far-reaching. Not only does this charter attempt to remove about a quarter of the Elsenzgau from the count's power in the delineated territory, a strip of land of about ten by twenty kilometres, but also in several places outside of this area. This is much more than any Carolingian king would genuinely have granted to a church, and it shows how keen Hildibald was to curb the Salians' power. It also reflects the trend of Hildibald's own time, in which it had become common to grant immunities that extended beyond the property of the churches (so called ›ban immunities‹).²⁶ However, these were usually restricted to the episcopal cities, as Hildibald and HB, involved in the inner workings of the Ottonian chancellery, knew very well.

22 *Die Urkunden Ludwigs des Frommen* 282, ed. Kölzer, 702-704.

23 *Die Urkunden Ludwigs des Deutschen* 74a, ed. Kehr, 105-108. The rulings about tolls contained in the charters of Louis the German, Louis the Pious and Pippin are reiterated in *Die Urkunden Arnolfs* 166, ed. Kehr, 253-254 (one of Hildibald's forgeries), and possibly authentic *Die Urkunden Ottos I.* 84, ed. Sickel, 165. Lechner, *Die älteren Königsurkunden* (esp. 531, 547) remains vague on the topic of the authenticity of the latter charter (which is presented as authentic in the MGH edition, although it only exists in a copy by Hildibald's scribe HB); it does not include the interpolation added by Hildibald in Louis the Pious' authentic charter (*Die Urkunden Ludwigs des Frommen* 282, ed. Kölzer, 702-704) about the tolls in Ladenburg and Wimpfen. This does not mean, however, that Otto's charter 84 from 947, is necessarily authentic, since it could have been created by Hildibald and HB before they interpolated Louis' charter. In reality, the church of Worms did not receive all the tolls in the city until 979 (*Die Urkunden Ottos II.* 199, ed. Sickel, 225-226, renewed by Otto III in *Die Urkunden Ottos III.*, 12, ed. Sickel, 408-409), when Otto II granted the church of Worms the missing third of the tolls which up to then had been held by the Salian Otto, but pertained to the fisc (Zotz, *Adelsherrschaften am Mittelrhein um 1000*, 349-350). The authentic charters do not mention Wimpfen and Ladenburg.

24 Bönner, Bistum und das Hochstift Worms, 18-19.

25 (...) *sub integra emunitatis tuitione donavimus atque concessimus, ut nullus noster aut successorum nostrorum comes aut aliquis publicus iudex in rebus aut locis ad Winphinam aspicientibus, que certis nominibus et signis subnotantur, nec ad causas audiendo nec homines ipsius ecclesie tam ingenuos quam et servientes distringendo placitum vel aliquod incommodum audeat facere* (*Die Urkunden Ludwigs des Deutschen* 179, ed. Kehr, 257-258; repeated in *Die Urkunden Arnolfs* 192, ed. Kehr, 296-298).

26 Stengel, *Diplomatik der deutschen Immunitätsprivilegien*, 589-594, see for example *Die Urkunden Ottos II.* 267, ed. Sickel, 310-311 for Strasbourg; *Die Urkunden Ottos I.* 379, ed. Sickel, 520-521, for Speyer.

Taken together, what were the results of these forgeries created by the king's chancellor Hildibald and his scribe HB? Hildibald's forgeries concerning immunities went beyond what was normal in the context of the late tenth century, especially in the case of the Elsenzgau, but not by very much. Lechner summarized the results of Hildibald's forgeries as follows: »In short: the rights of the fisc and the power of the count end where the property of Worms begins.«²⁷ This is exactly what the forgeries tell us, in a strict legal sense. This is, however, what a full tenth-century immunity was all about in any case, and the church of Worms had received such an immunity from Emperor Otto I in 965, still preserved in the original today.²⁸ It contains a very general immunity clause prohibiting any action by public or other judges and the collections of dues by royal agents in the possession of the church of Worms and those of Wimpfen and Ladenburg. Otto's charter was itself based on a forgery, a diploma supposedly granted to the church of Worms by Louis the Pious in 814, possibly created in preparation for procuring a new charter from Otto I by one of Hildibald's predecessors.²⁹ As a consequence, the church of Worms enjoyed a far reaching immunity over its property – including high justice and a control of all dues collected – before Hildibald came into office in 978. The terms of this authentic immunity charter conform exactly to Lechner's statement about Hildibald's forgeries.

So why did Hildibald create all these elaborate forgeries? A first answer to this question is that Hildibald's forgeries attempted to do more than exclude the count and the collection of fiscal dues from the property of the church of Worms: its property was increased in the Lobdengau as well as in the city of Worms, and the reach of its immunity was extended beyond the property of the church of Worms in the Elsenzgau – the latter, including immunity rights over entire villages in which Worms had property, even if it was no more than one or two *mansi*, is in fact the only truly unusual clause contained in the forgeries.³⁰

However, most of the other clauses in the forgeries did little more than specify and support the rulings contained in authentic charters. The fact that Bishop Hildibald thought it necessary to specify the clauses of immunity – by defining borders in the Odenwald and the Elsenzgau, by specifying tolls and by giving the rulings historical depth by projecting them back into the past – shows that general immunity clauses as they were used in Otto I's authentic privilege were not sufficient. Although this privilege in theory prohibited all infringements on the property of Worms by the Salian Duke Otto and his followers, who held most of the comital rights in the diocese, Hildibald thought it necessary to provide very specific boundaries to the count's powers. On the whole what seems to have mattered were explications and support (and some expansion) of the very general immunity granted in authentic charters. All of this is especially evident in the descriptions of specific borders of property

27 »Kurz: Das Recht des Fiskus und die Gewalt des Grafen hört dort auf, wo Wormser Besitz anfängt« (Lechner, *Die ältesten Königsurkunden*, 384).

28 *Die Urkunden Ottos I*, 310, ed. Sickel, 424-425. It is a little hard to tell what the terms of the immunity of the church of Worms were before that, since the other immunity charters dating before this were either interpolated or forged. The possibly authentic charter *Die Urkunden Ottos I*, 84, ed. Sickel, 165, is described as a »ban immunity« by Stengel, *Diplomatik der deutschen Immunitätsprivilegien* (index), but it does not use the word *emunitas* and only refers to the royal tolls within the city of Worms which were given to the church of Worms (*Die Urkunden Pippins* 20, ed. Mühlbacher, 28-29).

29 *Die Urkunden Ludwigs des Frommen* 25, ed. Kölzer, 65-68. This document was long taken to be authentic, but is now seen as a forgery produced at some point before Otto's charter.

30 (*Die Urkunden Ludwigs des Deutschen* 179, ed. Kehr, 257-258; *Die Urkunden Arnolfs* 192, ed. Kehr, 296-298).

and immunity in the Odenwald and the Elsenzgau.³¹ It also indicates that the sacral dimension of immunities, marking out a church and its space as special and holy, was not at the centre of Hildibald's mind when he created his forgeries. The emphasis on spelling out the implications of the immunity so evident in Hildibald's forgeries shows that the chancellor-bishop's interests focused on the practical side of immunities: on dues and tolls, on the administration of justice and the exclusion of public officials, especially of counts.

Consequences of immunity

This leads directly into my second question about the practical consequences of immunities. Or, to put it differently: Were Hildibald's forgeries successful? For assessing this, we have to take a close look at the period of Hildibald's successor, Bishop Burchard of Worms, since there is no evidence for Hildibald's own period. Burchard's tenure, beginning exactly at the turn of the millennium, was marked by fundamental changes in the political order in and around Worms which were accompanied by violence and unrest.

The changes to the political order were due to Burchard's close collaboration with King Henry II (1002-1024). The bishop had been a strong supporter of Henry's election and an ally in the king's successful attempt to found a new diocese in Bamberg, which is why he received several grants from the king.³² Already in 1002, the Salians gave up their castle in Worms in return for generous compensation given by the king. Burchard immediately had the castle destroyed and built a collegiate church there.³³ In 1011, Burchard received the counties of Lobdengau and its eastern neighbour, the county of Wingartheiba, from the king. Interestingly, we find no allusions to Hildibald's forgeries in the charters documenting these acts.³⁴ This only started in 1012, when the conflict between Worms and Lorsch about forest rights in the Odenwald flared up again, after Henry had given a forest in the Odenwald to the monastery of Lorsch in May 1012, which overlapped the region that Hildibald had claimed as part of the property of Worms.³⁵ In August of 1012, the king ruled largely in favour of Worms, and the charter issued by the king quoted long passages from at least one of Hildibald's forgeries.³⁶

31 *Ibid.* and *Die Urkunden der Merowinger 1*, 30, ed. Kölzer, 81-84.

32 The bishop was the recipient of the king's earliest transmitted charter and several others: *Die Urkunden Heinrichs II.* 1, 11, 20, 21, 92, 128, 176, 226, 227, 247, 319, 393, 501 (for the cathedral chapter) ed. Bresslau and Bloch, 1-2, 13, 23-24, 24-25, 115-116, 154-155, 210, 262, 263, 284-285, 399-400, 505-506, 639-641.

33 *Die Urkunden Heinrichs II.* 20, ed. Bresslau and Bloch, 23-24.

34 Paradoxically, receiving counties and immunities – which meant exemption from public justice and dues exercised and collected mostly by counts – were functionally equivalent, because comital rights and powers ended up in the hands of the bishops either way. Reuter, »Imperial Church System«, 362, and Hoffmann, *Grafschaften in Bischofshand*, 376, point out that most counties that were given to bishops were administered by lay noblemen who held their office from the bishops. This further supports the notion of similarities, since legal matters within the immunities were also handled by noblemen acting as advocates there. See on the counties given to Worms Hoffmann, *Grafschaften in Bischofshand*, 449-451.

35 Huffs Schmid, *Ostgrenze des Lobdengaues im Odenwalde*.

36 *Die Urkunden Heinrichs II.* 247, ed. Bresslau and Bloch, 284-285; see Bresslau, *Erläuterungen zu den Diplomen Heinrichs II.*, 184-186.

The second use of Hildibald's forgeries occurred two years later, and here the immunity of the church of Worms was in play. In 1014, Bishop Burchard complained to the king that certain counts were routinely taking 60 *solidi* from members of the Worms *familia* who had been found guilty of wrongdoings of any kind.³⁷ This was indeed a breach of the rulings of immunity of the church of Worms, both authentic and forged, since a secular judge was imposing fines on those who belonged to the church of Worms. The charter in which Emperor Henry II ruled that this practice was illegal includes phrases clearly taken from Hildibald's forgeries. Apparently, those forgeries were now accepted as a reasonable basis for new privileges granted by the king.³⁸ No specific count is mentioned, but it seems reasonable that the Salian Konrad, grandson of Duke Otto and future King Konrad II, and the sub-counts he appointed, were meant here.³⁹ Since the counties of the Lobdengau and its eastern neighbour, the Wingartheiba, were now held by Bishop Burchard himself, he probably was not concerned with abuses there, but with events in and around Worms in the counties that were held by Konrad's family. Perhaps the succession of the young Konrad had created an opportunity for Bishop Burchard to curb the Salians' ambitions.

Returning to the question as to how far Bishop Hildibald's forgeries and interpolations were successful, we may conclude that with regard to immunities their success was ambiguous: the immunity was routinely ignored in spite of them, but his forgeries also offered the wording and the ruling – one could say the semantic resources – to counter these breaches and to create new legal documents.

We learn more about the administration of justice in Worms and the territories of its episcopal church during the period of unrest after 1014 from two documents that were created toward the end of Henry's reign in the early 1020s: the king's intervention in the ongoing conflict between Worms and Lorsch, and Burchard's *Lex familiae Wormatiensis ecclesiae*; quite probably both documents were related. In 1022, the king issued a charter ordering the advocates of both Worms and Lorsch to punish all members of their respective *familiae* for attacking members of the other *familia* – the charter mentions innumerable killings. The king imposed harsh penalties, including branding and beatings for offenders; the advocates, the bishop of Worms and the abbot of Lorsch, were threatened with high fines should they ignore the king's ruling.⁴⁰

Apparently, killings were not restricted to members of the other *familia*, but also happened within the *familia* of Worms. This is at least what the *Lex Wormatiensis familiae* tells us, written by Burchard and issued probably in the same period. In it, Burchard mentions that there had been 35 homicides among the men of the church of Worms in one year.⁴¹ While including harsh punishments similar to those in the king's decree from 1022, many of the *Lex's* 32 chapters also treat questions of inheritance and marriage, not of violence, showing that Burchard's aims went further than merely an ad-hoc means of curbing violence during a crisis – as was to be expected from someone who had recently created an authoritative

37 *Die Urkunden Heinrichs II.* 319, ed. Bresslau and Bloch, 399–400. It contains phrases from Hildibald's forgeries or interpolations attributed to Pippin (20), Louis the German (74b) and Otto I (392).

38 The charter was probably written by a cleric from Worms.

39 Zotz, *Adelsherrschaften am Mittelrhein um 1000*, 353–354.

40 *Die Urkunden Heinrichs II.*, 501, ed. Bresslau and Bloch, 639–641.

41 *Lex familiae Wormatiensis ecclesiae*, c.30, ed. Weiland 644. The last comprehensive study of the text is Schulz, *Wormser Hofrecht*; see also Austin, *Vengeance and Law*, Jégou, *L'évêque, juge de paix*, 360–362.

twenty-volume collection of canon law. Here was someone aiming at really taking the legal matters of his *familia* into his hands. And, Burchard was doing even more than that: at least three of the chapters addressed all the citizens of Worms – regardless of their legal status.⁴² The extension of the immunity over the entire city and all the people living in it is reflected by these clauses.⁴³

Burchard's actions and Henry's charters clearly show that immunities were not just about gaining additional income by taking over what was owed to fisc and its agents and/or the counts. Orderly legal procedures, and the administration of justice mattered, too, otherwise Burchard would not have created new laws.

The evidence also shows, however, that the situation around Worms in the first quarter of the eleventh century was unstable. We do not know the exact causes of this. Was it the ongoing, unresolved conflicts between the episcopal church, Lorsch and the Salian Duke Konrad that caused the troubles? Or was the alteration of the balance of power – brought on by Henry II's actions in the region in favour of his allies Bishop Burchard and the monastery of Lorsch – their most important cause? Probably both factors were important. They were, of course, interconnected in several ways, but I would like to stress the second reason more than has been done in research up to now. The changes in the regional power structure happened because both Bishop Hildibald and his successor Burchard were well placed to receive favours from the kings and emperors, who in return relied on their support. And it is remarkable that we find the most evidence of violence after the Salians had been all but removed from their power in and around Worms and after the king had ruled in favour of Worms in the conflict with Lorsch about forest rights in the Odenwald, directly quoting one of Hildibald's forgeries. Other counties had even entirely passed into the hand of the bishop.

To summarise, most of the goals that Hildibald had set for his church in the charters he created – territorial expansion, independence vis-à-vis the counts, more income from public dues – were achieved by Bishop Burchard. But they came at a price, at least in the immediate aftermath of the changes: unrest, instability and violence in the areas now controlled by the bishop to a larger degree than ever before – mostly by way of immunities.

Conclusion

This brings me to a short conclusion. At the beginning of this article, I asked two questions: What did institutions expect from receiving immunities? And: can we tell whether they had consequences in practice? Regarding the first question, Bishop Hildibald of Worms wanted to achieve several things through his forgeries, and all of them – not surprisingly – aimed at strengthening his episcopal church in its regional context. Immunity was one of the tools that could be applied to gain an advantage for one's own institution. And it was a powerful tool, too: Hildibald's charters about immunities were one important starting point in the re-drawing of regional power structures in favour of the church of Worms in the early eleventh century during the tenure of Bishop Burchard. In this context it is quite remarkable that, as mentioned above, one of the main aims of Hildibald's forgeries was the specification of the terms of immunity, especially its borders – something that fits well with attempting to create a territorial lordship.

42 *Lex familiae Wormatiensis ecclesiae*, c.26-28, ed. Weiland, 643.

43 It is interesting to note that Burchard might have invited Jews to settle in his city at this time, another group over which bishops usually exercised authority in the eleventh century (Haverkamp, *Jews in the Medieval German Kingdom*, 14-15).

Hildibald was also concerned with income from public dues of different kinds and of course with landholdings. But it is important to keep in mind that several of his charters did not simply try to expand the rights of his church – although this also happened, as for example in Wimpfen – but attempted to delineate or specify the very general rulings contained in grants of authentic immunities. This clearly shows that from the perspective of the church receiving an immunity, marking it out as a special, holy place, while certainly important, was not the only objective.

As for the second question about the practical consequences of immunity, it is hard to measure the immediate success of Hildibald's forgeries, since we do not have any other sources that tell us if and how the rulings found in the forged charters were put into practice. Of course, creating documents was not enough to change the world – this also required political opportunity. That opportunity presented itself with the close ties between Emperor Henry II and Bishop Burchard only a few years after Hildibald's death; and Bishop Burchard used his political standing and acumen to achieve a large degree of independence from the regional political powers, thus reaching most of the goals that Hildibald had also tried to achieve on parchment a few years earlier. Here, it becomes clear that immunities mattered and had consequences on the ground. The counts' powers were severely limited in and around Worms, and judicial matters lay in the hand of the bishop and his advocates (about whom we know very little).

The power of immunity is also demonstrated by the fact that its application in practice after the expulsion of the counts was probably a major factor in the wave of violence that afflicted Worms in the second half of Burchard's episcopate in the early eleventh century. Of course we might assume that the reports of violence are exaggerated, but in any case there seem to have been problems in the administration of justice, and Burchard obviously felt it necessary to create new legal rulings.

This also shows that it was not only exactions of judicial fees or the dues that mattered, but that more was in play: the administration of justice and the power that came with it. One probably should not generalize too much from Burchard's example, because he was by all standards an exceptional figure. But in the light of the evidence presented here, it seems quite likely that the exercise of justice – and the power that came with it – was a central issue for churches striving for immunities, counties and other rights in the Latin West around the year 1000.

One final point: This paper has avoided taking a royal perspective on granting immunities, but the results presented here have obvious implications for this field too. When Henry II (and his predecessors) granted far-reaching immunities to the church of Worms or accepted those that were presented to him, they were exercising royal power. The dispensation and control of immunities was a powerful means that allowed kings to profoundly change local power structures.

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The Exemption that Proves the Rule: Autonomy and Authority between Alcuin, Theodulf and Charlemagne (802)

Rutger Kramer*

When the two Carolingian intellectuals Alcuin of Tours and Theodulf of Orleans engaged in a dispute over the fate of a criminal who had sought asylum in the church of Saint Martin in Tours, their conflict quickly turned into a heated political debate that reached the highest level of the Frankish Empire. As evidenced by the letters written during this altercation, this seemingly simple matter of church asylum brought up intractable questions of who should arbitrate on matters such as these, what it would mean if bishops interfered in church matters outside their own diocese, and how this matter affected the essential unity of the Carolingian church. From appeals to personal responsibility to the institutionalisation of the Empire, the debate between Alcuin, Theodulf and Charlemagne was ultimately about everybody's place in the greater scheme of things, and the question of who should play by the rules, and who would be exempt.

Keywords: Carolingian empire; Charlemagne; Alcuin; Theodulf of Orléans; church asylum; conflict resolution; letters; politics and religion; imperium; ecclesia.

In the year 802, a conflict erupted between Alcuin, abbot of the community around the church of Saint Martin in Tours (735-804; r. 796-804), and Theodulf, bishop of the nearby city of Orléans (750-821; r. 791-818).¹ The catalyst was a refugee cleric from Orléans. Convicted by an episcopal court for an otherwise unknown crime, he had escaped from his prison and fled to the basilica of Saint Martin, where he claimed sanctuary and requested an audience with the emperor to plead his case. Following a first abortive attempt to apprehend the fugitive by peaceful means, Theodulf, who had convicted him in the first place, undertook to extract him by sending a band of armed men from his retinue. Although these men were supported by Theodulf's colleague, the otherwise curiously absent Bishop Joseph of Tours, their attempts to get their hands on the cleric were thwarted when the local clergy would not allow these soldiers to go beyond the chancel railings.² They took a stand against what they

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1 Both men have been the subject of numerous studies. For a biographical overview of Alcuin's activities in Francia, see Bullough, *Alcuin*, 336-470. On Theodulf, see Tignolet, *Exsul et exsul erat*, 321-400; Depreux, *Prosopographie*, 383-385.

2 A bishop Joseph features in the *Formulae Bituricensis* c. 14, ed. Zeumer, 174, overseeing a similar case of appeal to the imperial court. This case does not involve a crime, however, but rather a conflict over a woman's inheritance exacerbated by interference by *missi*. The identification of this Joseph as the bishop of Tours is made by the editor, however, and does not necessarily follow from the text itself.

perceived to be a slight against the saint, and as the situation escalated it ultimately ended in a riot when the local populace rose against the men from Orléans. In an ironic twist of fate, Alcuin subsequently had to protect the intruders against the *vulgus indoctum* of Tours.³ As the dust settled, Theodulf and Alcuin entered an impasse, which they tried to break by appealing to the imperial court.

Given that both prelates were leading courtiers in the entourage of Charlemagne, the ensuing debate quickly reached the highest echelons of the Carolingian hierarchy.⁴ In the course of the argument, a multitude of issues was touched upon, ranging from church asylum and secular jurisprudence to monastic identity, episcopal authority and imperial power. It also was a matter of principle, and a competition for authority. To the newly elected archbishop Theodulf, a relative newcomer from the South, Alcuin's interference interfered with his idea of justice being served.⁵ Alcuin, the ageing Northumbrian deacon who had left the palace in Aachen when he was made abbot of the community of Saint Martin in Tours, found himself confronted with a fellow courtier over the cleric's actions, and had to manoeuvre between his lingering duty to the Frankish realm and his responsibilities to the shrine of Saint Martin.⁶ Finally, Charlemagne, who had only recently been made emperor, had to arbitrate between two courtiers, both of whom had been instrumental in formulating the ideals keeping together the *ecclesia*, the community of Christians living within the Frankish Empire.⁷ What started out as a seemingly straightforward case of a fugitive criminal thereby turned into a conflict that could, through its public escalation and the high profile of those involved, pose a threat to the harmony within the Frankish court and church, with the shrine of Saint Martin as its primary battleground. In that sense, the cleric's choice to flee to Tours may not have been wholly coincidental: as already established in the works of Gregory of Tours, the relics of Saint Martin had a long reputation of providing aid to fugitives in their time of need. It was a reputation that had persisted until the ninth century.⁸

Four letters written by Alcuin, as well as one response in the name of Charlemagne, present a detailed account of this peculiar case.⁹ Between them, these letters offer a snapshot of the inner workings of the Carolingian state, presenting an idealistic scenario in which everybody shared responsibility for the well-being of the *ecclesia*. Alcuin's testimony gives us the perspective of an actor who had, over the preceding decades, played a vital role in the development of that state and the imperial ideologies upon which it rested.¹⁰ Consequently, he felt he had to live up to his reputation and his pastoral obligations, not only to the fugitive

3 Alcuin, *Epistola* 249, ed. Dümmler, 403. See Nelson, Charlemagne and the Bishops, 356.

4 Bullough, Charlemagne's »Men of God«, 136-142; Tigolet, *Élites et la mobilité*.

5 On Theodulf's background, see Freeman, Theodulf of Orléans, and Riché, *Refugiés wisigoths*, 179; but cf. Brunner, *Oppositionelle Gruppen*, 75, and Tigolet, *Exsul et exsul erat*, 240-245.

6 On Alcuin's Anglo-Saxon identity in Francia, see Garrison, *The English and the Irish*; Dohmen, *Wanderers between Two Worlds*, 93-95 (77-97); Story, *Carolingian Connections*, 4-10 and 257-260.

7 See De Jong, *Charlemagne's Church*, 125-129.

8 Meens, *Sanctity of the Basilica of St Martin*, esp. 280-281 and 286-287.

9 Alcuin, *Epistolae* 245, 246, 248 and 249, ed. Dümmler. Charlemagne's response is listed in the *MGH* as *Epistola* 247. The available translations of these letters are listed in the references below.

10 Alberi, *Evolution of Alcuin's Concept*.

cleric and the community of Saint Martin, but also to Charlemagne himself.¹¹ For Charlemagne, the stakes were equally high. Once he became involved, he had to take a stand in order to control the (unintended) consequences this affair might have. As much as he may have resented it, the people and places implicated all but forced his hand in the matter.¹² In any case, there is every reason to assume that the extant letter in his name gives us a rare impression of Charlemagne's voice, going beyond his political *persona*.¹³ Theodulf, finally, does not have a voice in this matter, but his presence is palpable and his arguments shine through in the correspondence we do have. His was a bishop's perspective, although his position outside the archdiocese of Tours may have made him more acutely aware of the way his own pastoral agenda intersected with the various layers of authority involved in this matter.¹⁴

The issues raised by this affair have been analysed from a variety of angles. Samuel W. Collins and Miriam Czock, for example, studied the conflict so as to gauge the ideas concerning sacred space and church architecture that underpin the arguments.¹⁵ Rob Meens has looked at the way the conflict demonstrates the extent to which spiritual penance and secular punishment overlapped, and what that meant for the political self-understanding of the players involved.¹⁶ Hélène Noizet has shown how the affair left an imprint on several capitularies that followed in its wake, presumably in order to prevent future escalations in similar cases.¹⁷ More generally, the affair provides an immediate if idiosyncratic view of ongoing debates on the role of sacred spaces, church asylum, and the autonomy of religious communities within the Carolingian empire.¹⁸ The remainder of this article focuses on the intersection between these issues, gratefully relying on the analyses by Noizet and Meens in their respective articles, and building upon their observations. First, based on Alcuin's letters, it will address how existing systems and traditions could be adapted to suit the needs of those in power, and who was subsequently allowed to make any changes deemed necessary. In this part it will be argued that requesting an exemption from secular justice was done using more than legal arguments, but that it involved admonition, moral exhortation, and a fair amount of theological reasoning. Moving on to Charlemagne's response, the article will then show how the circumstances and personalities involved in the correspondence about the curious case of the captured cleric shows how the request for exemption turned into complex negotiations about justice, authority, and the nature of imperial rule. In the end, Alcuin's exhortation to make this an exception to the existing rules ended up being a debate about who was allowed to bend and break the rules in the first place, and under which circumstances exemptions would be granted, or clemency denied.

11 Although his stellar reputation seems to mostly be visible in posthumous sources, his prominence was apparent already during his lifetime, for instance when looking at his extended network of correspondents: Garrison, *Correspondants d'Alcuin*; Bullough, *Alcuin*, 17-24.

12 Davis, *Charlemagne's Practice of Empire*, 47-89, esp. 78.

13 Nelson, *Voice of Charlemagne*, although she does not mention this affair specifically.

14 Nelson, *Libera vox of Theodulf of Orléans*, 289-293.

15 Collins, *Carolingian Debate over Sacred Space*, 1-5 and 91-120; Czock, *Gottes Haus*, 292-293.

16 Meens, *Sanctuary, Penance and Dispute Settlement*. On pp. 277-278 and nn. 1-2, Meens also provides a concise overview of the manuscript transmission of these letters, based largely on Bullough, *Alcuin*, 43-103.

17 Noizet, *Alcuin contre Théodulpe*.

18 See also an earlier analysis of the sources by Wallach, *Alcuin and Charlemagne*, 99-140.

The timing of the conflict was important. Just over a year earlier, the Carolingian elite had undergone an ideological sea change as Charlemagne's *de facto* position of power was confirmed when Pope Leo III crowned him the Emperor of Western Christendom on Christmas Day of the year 800. While it remains challenging to gauge the immediate political repercussions of this event, it did remind everyone of the responsibilities attached to the *imperium* and the *ecclesia*; even though the historiographical record presents 802 as a relatively quiet year by Carolingian standards, it is clear that the wheels remained in constant motion regardless.¹⁹ Ongoing negotiations with the Byzantine Empire, as well as the arrival of an elephant from the court of Harun Al-Rashid, reminded the elite at court of the scale at which the realm was operating.²⁰ However, rulers could not afford to look outward and upward only: they had their subjects to think of as well. Because the Christian Empire imagined by the Carolingians was one where power was pastoral as well as political, it was also responsible for the internal spiritual well-being of its subjects.²¹ This definitely applied to the ruler who stood at the head of it all, with his prelates gathered around him to provide the support necessary to bear the burden of *correctio*.²² Orléans and Tours, both encompassing a multitude of religious communities and institutions, represented many different aspects of the religious foundations that supported the Carolingian realm, ranging from producing revised Bible codices to reflecting on the pastoral duties and the ›power of prayer‹ wielded by monks, canons and clergy.²³ At a personal level too, Alcuin and Theodulf were active voices in the ongoing *correctio*-movement sponsored by Charlemagne, which, when approached from the point-of-view of the court, aimed at diffusing an understanding of what it meant to be a good Christian in a good Christian empire.²⁴ From poetry about the difficulty of being an impartial judge in the realm, to broad ideas about whether or not the *imperium Christianum* was attainable, these two intellectuals were part and parcel of an elite culture in which advice and admonitions to the ruler were welcomed and even encouraged.²⁵ While the actual conflict was thus fairly focused and limited to a single case of exemption from the law, this attitude towards religious reforms and the role played by the state in their propagation forms the background to the debate about the fugitive cleric.²⁶

19 Reimitz, *History, Frankish Identity*, 353-360; Davis, *Charlemagne's Practice of Empire*, 348-355; for an overview of modern scholarship on the rise (and fall) of the Carolingian empire, see De Jong, *Empire. On the meaning(s) of imperium*, see Van Espelo, *Testimony of Carolingian Rule*.

20 On the significance of this elephant, see Hack, *Abul-Abaz*.

21 Brown, *Introduction*, 17-22; but cf. Nelson, *Revisiting the Carolingian Renaissance*, esp. 331-333.

22 The term *correctio* instead of ›reform‹ was already proposed in 1964 by Schramm, *Karl der Grosse*, 340-342; however, see also Reuter, ›Kirchenreform‹ und ›Kirchenpolitik‹, 40-42; and Barrow, *Ideas and Applications of Reform*.

23 Ganz, *Carolingian Bibles*, 330-334; Lobrichon, *Bibles alcuiniennes*, 214-218; McKitterick, *Carolingian Bible Production. Kottje, Einheit und Vielfalt*, 325-328; Barrow, *Clergy in the Medieval World*, 310-343; De Jong, *Carolingian Monasticism*, 651. On the religious landscape in Tours in the early Middle Ages, see Piétri, *Tours*; and Wood, *Topographies of Holy Power*, 139-141 (including a helpful map of the city).

24 Kramer, *Great Expectations*, 75-77.

25 For example, Theodulf's so-called *Versus contra iudices*, ed. Dümmler, 493-517, in which he reflects on the nature of authority as well: Godman, *Poets and Emperors*, 70-74; Noble, *Monastic Ideal*; De Jong, *From Scolastici to Sciolii*. On the culmination of this mode of communication during the early years of Louis the Pious' imperial reign, see De Jong, *Penitential State*, 112-147.

26 De Jong, *State of the Church*, esp. 243-245; Close, *Uniformiser la foi*, 305-308; Nelson, *Charlemagne and Empire*, 232.

Exceptional circumstances

Alcuin's initial argument was that the defendant ought to have had the right to appeal directly to the emperor or his court. Ironically, the way he frames this reflects an awareness of the emperor's reliance on his entourage, as his first letter was addressed to two former pupils who had made it to the palace in Aachen. They were Fredegisus, who would go on to be Alcuin's successor as abbot of Saint Martin as well as archchancellor at the palace, and Witto, who probably was *magister* of the palace school at the time.²⁷ The bond between them was still strong, as may be shown by the fact that Alcuin addressed them by their nicknames Nathanael and Candidus. These were names he had bestowed to express his esteem for them, but which also clearly reminded them of their erstwhile student-master relationship.²⁸ Nevertheless, he now petitioned them to intercede with the emperor on his behalf, seeing as they »had chosen, through their manners and religious way of life, to please God and my lord David [i.e. Charlemagne]«. ²⁹ Ideologically charged though Alcuin's interpretation of rulership might be, he acknowledged that the people around the emperor formed an important conduit of his authority.³⁰ Turning to his two pupils might even remind Charlemagne of the positive effect Alcuin had had on the court: Fredegisus and Witto were now part of a court community that was aware of how sharing responsibilities was one of the fundamental principles of the Carolingian *ecclesia*.³¹ This might also be why Alcuin sent an almost identical letter to an otherwise unknown bishop, requesting that he intercede too. Between them, these two letters not only serve as a reminder that Alcuin's network continued to extend to the palace in Aachen, but also show how vital proximity to the throne was when it came to resolving the tension created by a case such as the one in Tours. Although the main players were part of the extended court, the fact that this case challenged the authority of both an abbot and a bishop meant that the emperor should be directly involved. It would take a balanced combination of personal, ecclesiastical and imperial interests to work this out.³²

Alcuin's arguments revolved around the notion that the emperor's responsibilities and his convictions about Christian rulership, outweighed his obligations to a secular state. He started his case by appealing to the emperor's sense of mercy, quoting James 2.13 to argue that being merciful is superior to being righteous.³³ After all, he continued, laws and the *ecclesia* were there to give people the means to achieve salvation, so that in the end God could judge people according to their virtues and transgressions. Alcuin presents a plethora of Biblical and legal texts to support this essential point, even though Noizet has pointed out that Alcuin had selectively quoted some of the canonical quotations in order to make a stronger argument; had he left them unchanged, he would have proven himself wrong because they

27 On Nathanael/Fredegisus, see Depreux, *Prosopographie*, 199-203; on Witto/Candidus, see Löwe, *Geschichte Wizos*.

28 On these, and other, nicknames at court, see Garrison, *Social World of Alcuin*, 61-62. On the bonds between masters and their pupils, see, among many others, Contreni, *Pursuit of Knowledge*.

29 Alcuin, *Epistola* 245, ed. Dümmler, 393.

30 Depreux, *Hiérarchie et ordre*.

31 In *Epistola* 257, ed. Dümmler, 414-46, also written in 802, Alcuin self-consciously reminds Charlemagne that his and his peers' involvement in matters of faith (referring specifically to the council of 802 also mentioned in the *Annals of Lorsch*) has improved the state of the church and the empire; Springsfeld, *Alkuins Einfluss*, 20-27.

32 Czock, *Gottes Haus*, 291-293.

33 Alcuin, *Epistola* 245, ed. Dümmler, 394. The biblical quotation also implies a warning against judging too harshly, should mercy not be an option.

contained caveats covering just these situations.³⁴ Be that as it may, *miser cordia* is the theme *par excellence*, as Alcuin flits through quotations – mostly from the Gospels of Matthew and Luke – to promote the idea that sinfulness was no reason to treat anybody badly. »You do ill, therefore, to pass judgement prematurely«, he writes, quoting I Corinthians 4.5, and reminding his audience that »If sinners are not to enter church, perhaps no priest will be found to say Mass or sing the responses, except one who has just been baptised«. ³⁵

This is followed by a series of quotations with an eschatological undertone, in response to Theodulf's characterisation of the fugitive as a ›devil‹. This is, according to Alcuin, a dangerous presumption, as it will only be made clear in the afterlife who may partake in the Kingdom of Heaven. Quoting one of Gregory the Great's Homelies on the Gospel, he calls Theodulf to order:

There are two things we must consider carefully. Which things? ›Many are called, but few are chosen‹ [Matthew 20.16]: the first is that no one should be presumptuous about himself, because, even though he has already been called to the faith, he does not know whether he may be considered worthy of the eternal kingdom. The second thing is that no one should presume to despair of a neighbour, even if he sees him steeped in vice; he does not know the riches of divine mercy. ³⁶

Lenience is the spice of life, Alcuin argues, because only in death may humans find true justice and forgiveness.³⁷ It is therefore important to remain pragmatic about what one can and cannot accomplish, and to always be open to compromise: »Zeal is indeed good, as long as it is mitigated by a gentle spirit«, he writes.³⁸ The Biblical part of this letter ends when Alcuin, emphasises once again that »much is destroyed by discipline or mercy if one is kept without the other«, adding a verse from Psalm 22.4 (The Lord is My Shepherd), that »your rod and your staff are my comfort«. ³⁹ Addressed to the emperor and his court, it was a clear reminder that the ruler carried both the carrot *and* the stick, but that this did not mean he was free to do as he pleased. He had his own soul to consider too: his royal displeasure should be reserved for those who had transgressed earthly law; sinfulness was a sad fact of life, but one which would be resolved in the afterlife. Charlemagne's zeal should therefore not lead to immoderate anger. Neither, however, should his piety cause him to be too compliant.⁴⁰

This personal appeal segues into the final part of the letter, which consists mostly of more impersonal legal texts. Alcuin shows his shrewd political instincts, as he combines his particular way of thinking about individual sinfulness with legal observations about various aspects of church asylum, the criteria for being eligible, and the rights of refugees. These statements, ten in total, have been culled mainly from the early sixth-century Breviary of Ala-

34 Noizet, *Alcuin contre Théodulphe*, 118-119.

35 Alcuin, *Epistola* 245, ed. Dümmler, 394. The passage actually quotes Luke 6.37 and Matthew 9.13.

36 Gregory the Great, *Homelie in evangelia* 19, c. 6, ed. Étaix, 159; the translation is quoted and commented upon in Baun, *Gregory's Eschatology*, 170.

37 Cf. Brown, *Decline of the Empire of God*, 57-59.

38 Alcuin, *Epistola* 245, ed. Dümmler, 395. For a (slightly later) view on the importance of *zelus*, see Choy, *Intercessory Prayer*, 153-154.

39 Alcuin, *Epistola* 245, ed. Dümmler, 395.

40 See also Althoff, *Ira Regis*, and Depreux, *Pietas*.

ric and from three Merovingian councils held in Orléans (in 511, 541 and 549).⁴¹ The selection of these particular sources served a twofold purpose. Firstly, it was an additional attack on Theodulf's competence as a judge, highlighting the essential supremacy of collective conciliar decisions over the judgement of a single individual.

Oh high priest (*pontifex*) of Orléans, who would dare to go against the synod of Orléans, where, as we read, 72 bishops (*episcopi*) were present,

he writes, in a passive-aggressive reminder to Charlemagne of all the arguments his rival chose not to make.⁴² Secondly, and arguably more importantly, Alcuin aimed to show that the laws concerning church asylum were venerable indeed, and had been part of an *imperium* that had, since its inception, combined Frankish and Roman political traditions. By citing the councils of Orléans, he was invoking the earliest instances where the vocabulary used reflected an overlap between secular/imperial interests and matters of the church.⁴³ By citing the Roman laws contained in the Breviary of Alaric, he demonstrated that these were no arcane rules from a bygone era, but legislation that still applied to their own world.⁴⁴ Whether consciously or unconsciously, Alcuin here demonstrates how the rules for church asylum were a perfect amalgamation of the Roman, Christian and barbarian traditions that shaped the early medieval church.⁴⁵

Alcuin emphasised the point with reference to two narrative sources. The first of these occurs between the councils and the Breviary, and stems from the enigmatic *Vita Beati Silvestri* or *Actus Silvestri*, a fifth- or sixth-century retelling of the life of Pope Sylvester, with a special emphasis on his relation to the emperor Constantine.⁴⁶ In it, »we read«, according to Alcuin,

that after he was baptised, he instituted a law on the fourth [fifth] day to the effect that, in whatever place a church was built, it would gain such excellence (*virtus*) through its consecration that any criminal who fled to it would be guarded from the danger posed by whatever judge was present.⁴⁷

This is an interesting quotation: in its original context, it occurs in the middle of a series of new laws promulgated by Constantine in the week following his baptism, all of which have to do with establishing Christianity in a world that was still seen as being hostile to Chris-

41 On these three councils and their role in the development of ideas about church asylum, see Siems, *Asyl in der Kirche?*, esp. pp. 272-275. On the reception of the Breviary of Alaric, see McKitterick, *Carolingians and the Written Word*, 44-47; but also Boucaud, *Indices et sources*.

42 Alcuin, *Epistola* 245, ed. Dümmler, 395. As the editor notes, there were only 32 bishops actually present (that we know of).

43 Halfond, *Archaeology of Frankish Church Councils*, 9

44 See Wood, *Problem of Late Merovingian Culture*, 201; Ganivet, »Épitome de Lyon«, 287, n. 30.

45 Hen, *Roman Barbarians*, 177-180; Pohl, *Christian and Barbarian Identities*.

46 To get an idea of Alcuin's use of the text, I have only been able to consult the (admittedly problematic) edition by Mombricitus, *Sanctuarium*, 508-531; on the inception and reception of the *Vita beati Silvestri*, see Pohlkamp, *Textfassungen*, esp. 132-138.

47 Alcuin, *Epistola* 245, ed. Dümmler, 396. Cf. *Vita beati Silvestri*, ed. Mombricitus, 513: in the original, this happens on the fifth day; the fourth day is devoted to a new rule placing bishops above secular law: Pohlkamp, *Kaiser Konstantin*, 376-380.

tianity. This explains the focus on church asylum to some extent, but also on the supremacy of the papacy over all the bishops (*sacerdotes*) in the Roman world »just like the emperor is the head of the judges«. ⁴⁸ Spurious though it might be, it was a text that was seen to provide the kind of precedent for which Alcuin was aiming. The fugitive cleric should be safe inside the church of Saint Martin, and if Charlemagne took the legacy of Constantine seriously, he should do his best to emulate the example set by his illustrious predecessor by at least protecting the sanctity of his churches. ⁴⁹ This last point is driven home in Alcuin's final quotation, lifted directly from Orosius' *Historiae adversum paganos*, in which the audience is reminded that even Alaric I during the sack of Rome (410) did not harm the churches or the people hiding inside them. ⁵⁰

If Charlemagne should »deem the testimony of the law and the canons to be of minor authority«, maybe the word of God himself might convince him. ⁵¹ Alcuin argued that Fredegisus and Witto should remind Charlemagne how the *honor* of his church and his Empire was at stake. The right of asylum did not make somebody innocent, but it should at least give him a chance to defend himself before the highest court of appeal. This was, after all, why God had ordered the Chosen People to »set apart three cities« in the Promised Land, the so-called Cities of Refuge, where those accused of bloodshed »would find sanctuary«. ⁵² Following his appeal to *miser cordia* and his explanation of church asylum, Alcuin concluded by admonishing Charlemagne to be a just ruler, who had no other choice but to do what was

pleasing to the Lord God Jesus Christ and his saints, and that the reward of perpetual and eternal bliss will befall him, and his sons will be blessed for all time. ⁵³

Because, after all, it was

Jesus Christ, who, having graced him with wisdom, has honoured him above all other kings and emperors, and who has elevated his power.

The implication was clear: this was a power that could just as easily be taken away. ⁵⁴

The dossier that Alcuin sent to Witto and Fredegisus to help them present the case to Charlemagne finished with the question whether it was equitable that somebody who appealed to the emperor would be granted a hearing or not. Romans and pagans would allow for

48 See also Levison, *Kirchenrechtliches*, 506-509 (the relevant passage is quoted in full on page 507). It is unclear if Alcuin also meant to invoke a remark about Sylvester's decree in the *Liber Pontificalis*, c. 34, ed. Duchesne, 171, that »no cleric should enter a court for any case nor should he plead a cause before a robed judge except in church.« His focus here seems to lie on Constantine rather than the pope. See also Duchesne, p. 190, n. 23.

49 Kramer, *Adopt, Adapt and Improve*, 38-43; Raaijmakers and Van Renswoude, *Ruler as Referee*, 60-68.

50 Alcuin, *Epistola* 245, ed. Dümmler, 397. A generation later, bishop Frechulf of Lisieux connected the two Alarics in his *Historiae*, II.5, 22, ed. Allen, 717-718, by pointing out that it was Alaric I who sacked Rome, and Alaric II who compiled the *Breviarium* just before his kingdom was taken over by the Franks: Ward, *Universal Past*, 264-266.

51 Alcuin, *Epistola* 245, ed. Dümmler, 397.

52 Deuteronomy 19.1-13; see Barmash, *Homicide in the Biblical World*, 71-93.

53 Alcuin, *Epistola* 245, ed. Dümmler, at 397.

54 Alcuin, *Epistola* 245, ed. Dümmler, at 397-398.

this; why then was the »blessed Martin, a true confessor of God, venerated less in the empire than the false idol Aesculapius had had power over the pagans?«. ⁵⁵ Charlemagne should not stand for such injustice. Surely, he could see that these exceptional circumstances required a special exemption so that the actions of his brethren and the citizens of Tours would be justified, and the fugitive would get his case heard. ⁵⁶

In a second letter, Alcuin presents a very similar argument to another friend, who is a bishop. Their relation does not appear to be one of teacher and student, as this correspondent is given a lot more discretionary power on how to argue the case on Alcuin's behalf. Whereas Witto and Fredegisus are instructed to prostrate themselves and ask specific questions, Alcuin simply asked this recipient to consider whether or not the situation is just, adding that even though »this criminal certainly perpetrated many sins and very wicked misdeeds«, he had also confessed to them even before being put in chains. ⁵⁷ Comparable to Alcuin's argument-by-proxy to Charlemagne, his appeal here revolves around penance and forgiveness, albeit along more overtly pastoral lines. Instead of Psalm 22, Alcuin for example refers to Ezekiel 33.11-12, implicitly invoking the image of the »watchmen of the house of Israel« that would become so popular among the Carolingian episcopacy, and emphasising their pastoral duties to allow converted sinners back into the flock. ⁵⁸ In addition to the examples from the *Actus Silvestri* and Orosius, he expands upon his observations about the Cities of Refuge in Deuteronomy, to which he only obliquely alluded in the first letter.

This is an interesting juxtaposition of images. If the interpretation of this passage from Deuteronomy by Alcuin's pupil Hrabanus Maurus holds any indication as to his teacher's inclinations, it seems that Alcuin invoked these cities as more than mere precursors of the type of asylum he is advocating. ⁵⁹ Following Hrabanus' *Enarrationes super Deuteronomium*, the function of these cities was to create order within the kingdom while simultaneously providing a breathing space when resolving conflicts. An excess of reproof (*increpatio*) would only lead from bad to worse, Hrabanus argues, whereas such places of refuge would instead create the option for the sinner to truly undergo penance. Those who did not commit crimes out of malice but out of ignorance or carelessness »would have these cities of refuge, that is, the catholic church, where he might remain while going through the narrow door of penance«. Hrabanus concluded that if he (or she) henceforth pursued good works and put their trust in the »highest of the priests, namely, the Redeemer«, they could still be saved for all eternity. ⁶⁰

Alcuin used this passage to remind his audience that he was divinely charged to care for this particular refugee; he even boldly added that »these are God's words, not someone else's«. ⁶¹ But he cast his net wider than that. Hrabanus' commentary on the Pentateuch, of which the *Enarrationes super Deuteronomium* were a part, had been written at the behest of bishop Frechulf of Lisieux, and, as such, a pastoral subtext shines through his explanation

55 Alcuin, *Epistola* 245, ed. Dümmler, at 397. Edelstein, *Asclepius*, vol. II, 134, draws attention to the idea that the term used by Alcuin, *Scolapius Falsator*, could refer to a »false Christ« (or even Antichrist), and not merely to an idol.

56 Davis, *Charlemagne's Practice of Empire*, 77-79.

57 Alcuin, *Epistola* 246, ed. Dümmler, 399.

58 De Jong, *Penitential State*, 114-118; On the Augustinian roots of this idea and its implications for early medieval understanding of power and authority, see Leyser, *Authority and Asceticism*, 26-32.

59 The relation between Alcuin and Hrabanus is expanded upon in Fleckenstein, *Über Hrabanus Maurus*, 205-210.

60 Hrabanus Maurus, *Enarrationes super Deuteronomium*, PL 108, 907B-909A.

61 Alcuin, *Epistola* 246, ed. Dümmler, 399.

of the meaning of these cities.⁶² Similarly, Alcuin also addresses a bishop – someone in a position of authority – and subtly tells him how to do his job. His responsibility is to ensure the salvation of his flock, not to uphold secular law at all costs. In that sense, it is notable that this letter starts with the remark that the cleric had only been able to flee »due to the negligence (*negligentia*) of his guard«. ⁶³ This amounted to an overt accusation of the person guarding the prison, of course. But it might just as easily be read as a subtle dig at those in charge of guarding his soul.

History has shown that asylum and refugee rights were ubiquitous, Alcuin concludes, even in pagan times.⁶⁴ It would be up to the Christian churches to continue and improve on this honour. This was an appeal clearly aimed at a senior member of the court, someone who might not accept (let alone need) guidance from Alcuin in the way his former students would. Nonetheless, the context of the letter does show how the aging abbot was protecting his interests, appealing not only to the emperor (in)directly, but also to other well-placed courtiers who would feel responsible both for the salvation of the fugitive and the soul of the emperor. Witto and Fredegisus were charged with presenting Alcuin's arguments, and they thus held the fugitive's life in their hands. The anonymous bishop was called upon to fulfil his task as »watchman«, watching over not only the fugitive, but also Theodulf and Charlemagne: they should be kept from making uninformed decisions. This affected the emperor's position as well. The relation between a ruler's agency and the prosperity of his subjects occupied the minds of the Carolingian elite to a large extent, and so it might be that Charlemagne, presiding over the situation, would be held personally accountable for what went on in his realm.⁶⁵ He was reminded that he should avoid the risk of becoming an unjust king who blindly applied laws and relied on testimonies instead of being available to his subjects.⁶⁶

Throughout Alcuin's arguments thus far, the presence of Saint Martin has been a recurring theme. While the refugee, Alcuin, and even Charlemagne were in the end but players on an ever-changing field, the saint's shrine should remain inviolate. The saint exemplified God's unchanging laws. It was up to the emperor to ensure that those laws were kept, even if that meant that secular law needed to be flaunted every now and again. The legacy of Pope Gregory the Great's pastoral guidance was palpable in Alcuin's approach to Christian rulership.⁶⁷ The goal was to win the hearts and minds of the believers, not to force beliefs upon them or cow them into submission.⁶⁸ According to Alcuin, this cleric needed a pastor, not a judge. He had shown himself willing to come back to the fold. It was up to Charlemagne to allow this to happen.

62 See Edwards, *Deuteronomy in the Ninth Century*, 101-102; Depreux, *Raban, l'abbé, l'archevêque*, 55. The letter of dedication is edited separately in the *MGH*, *Epistola* V, 399-400; the pastoral preoccupations of both author and recipient are visible most blatantly in the lengthy quotation from 1 Timothy 4.11-16 that finishes Hrabanus' letter.

63 Alcuin, *Epistola* 246, ed. Dümmler, 398.

64 Alcuin, *Epistola* 246, ed. Dümmler, 399.

65 See Meens, *Politics*, esp. 353-355.

66 Nelson, *Bad Kingship*, 12-13.

67 Leyser, *Authority and Asceticism*, 160-187; Judic, *Tradition de Grégoire le Grand*, 21-23. See also the remarks on *discretio* in the *Regula Benedicti*, which might be in the background of this argument as well: Melville, *World of Medieval Monasticism*, 29-31.

68 The most famous instance of this is Alcuin's admonitions, in *Epistolae* 110 and 111, to Charlemagne and his chamberlain Meginfrid, on the forced conversion of the recently conquered Saxons: see also Phelan, *Formation of Christian Europe*, 95 ff.; Dumont, *Alcuin et les missions*; Flierman, *Pagan, Pirate, Subject, Saint*, 198-203.

Proving the rule

Alcuin had done his best to construct a viable argument explaining his actions and those of his followers. Nevertheless, neither Theodulf nor Charlemagne was persuaded by his reasoning. Even though no letters on this affair by Theodulf are extant, part of the bishop's argument shines through in Charlemagne's correspondence.⁶⁹ The emperor's response to Alcuin reveals his pragmatic stance towards the everyday business of the *imperium Christianum*.⁷⁰ By and large, the counter-arguments are less preoccupied with pastoral duties and more concerned with the establishment and consolidation of imperial authority. According to Charlemagne, who may have been paraphrasing Theodulf's position here, a ruler's job was to appoint the best people for the job, and to delegate or even relinquish to them the responsibility of keeping the realm together. Thus, a bishop's judgment and subsequent explanation should suffice as the final word.⁷¹ Any attempt to subvert such judgments would not only taint the image of the prelate in question, but also throw the essential unity of the Church into disarray. After all, a bishop was appointed through the consensus of his colleagues, and with the *fiat* of the ruler; that should guarantee his credibility.⁷² Thus, without directly responding to Alcuin's grievances, the emperor implies that asking the question had been inappropriate in the first place. By going against a judgment that had been proclaimed in Charlemagne's name before this whole affair even started, Alcuin therefore made a mistake which touched upon many aspects of the Carolingian state. He had gone against the orders of one prelate, and in doing so, as Charlemagne saw it, also dishonoured the city of Tours, the episcopacy, and possibly even the harmonious relations that held together the empire itself.⁷³

To the extent that Charlemagne was open to the idea that his pastoral or imperial responsibilities for the Christian Empire meant that he could exempt himself from his own rules, it is interesting that he dismisses this suggestion with an outright *ad personam* attack to put Alcuin back in his place while simultaneously demonstrating what was at stake.⁷⁴ Alcuin's letter, according to the emperor,

was much more bitter and composed in anger than the one by Theodulf, and that the spice of *caritas* not strewn over his [Theodulf's] food, but rather it seems as if it defends a criminal by accusing a bishop.⁷⁵

69 In fact, no letters by Theodulf are extant. Stratmann, *Schriftlichkeit in der Verwaltung*, 97-99, attributes this to a *damnatio memoriae* following Theodulf's fall from grace in 818. On this affair, see, among many others, Noble, *Revolt of King Bernard*; Dahlhaus-Berg, *Nova antiquitas et antiqua novitas*, 17-19; Depreux, *Comte Matfrid d'Orléans*, 347-352; Godman, *Poets*, 243-246.

70 Davis, *Pattern for Power*, 245.

71 Charlemagne, *Epistola* 247, ed. Dümmler, 399-400. Charlemagne refers to a letter sent to Theodulf in this same paragraph.

72 Patzold, *Episcopus*, 179-180. For an in-depth study of the (ongoing) development of episcopal elections between self-regulation and secular authority, and the place of the Carolingian era in this development, see Thier, *Hierarchie und Autonomie*, esp. 201-342.

73 On the links between episcopal and royal authority in the early ninth century, see Guillot, *Exhortation*, esp. 101-102; Davis, *Pattern for Power*, 242-243.

74 This should not be taken to mean that Charlemagne ruled without any concept of ministerial discretion: Nelson, *Kingship and Empire*, 64-65: »The limitations of Carolingian political thought, its hesitations, inconsistencies and shortcomings of expression, are very obvious. Yet to deny the ninth century any idea of the state or of public office is to throw out the baby with the bathwater. Political thought is embodied not only in theories but in contemporaries' *ad hoc* responses to political problems and to perceived discrepancies between ideals and realities.«

75 Charlemagne, *Epistola* 247, ed. Dümmler, 400.

While Alcuin had done his best to temper the righteous anger felt by his adversaries, he apparently forgot that there was a time and a place for advice, invective and rebuke.⁷⁶ This was not it. If the abbot wanted this cleric's case to be heard, he should not try to accomplish this by publicly attacking the existing order.

From this follows the observation that the *infamis clericus* ought not to have entered the church in the first place, primarily on account of his status as a convicted criminal.⁷⁷ A comparison Alcuin had alluded to in his letter, between this situation and the incarceration of the apostle Paul, did not apply. The apostle could appeal to the emperor directly because he was a Roman, and he had been »accused but not yet convicted« by the »leaders of Judea«. Therefore, he could be judged by Caesar under a different set of rules.⁷⁸ In this case, however, this rule did not apply, because the cleric was part of the very system that Alcuin had invoked by referring to the Councils of Orléans and the Breviary of Alaric. In fact, Charlemagne continues, »it is quite bewildering why [Alcuin is] so intent on contradicting the authority of our decision«. In a pair of sentences dense with legal terminology, Charlemagne concludes that Alcuin seemed to choose the criminal over the emperor. Having allowing this man to enter Saint Martin's church, Alcuin's »love for discord« is now taking over »that place of charity«.⁷⁹

At this point, Charlemagne brings the argument back to what really matters to him: not the issue of the one errant cleric, but the unity of his *ecclesia* and the reputation of the church of Saint Martin in particular. Therein was contained an existential problem. The rules quoted by Alcuin existed only because a long line of Frankish rulers had acted as their safeguard. They existed as an ideal in a framework he and Theodulf had helped design. Alcuin's preoccupation with *misericordia* and salvation at an institutional level could only exist within the Carolingian *ecclesia*.⁸⁰ By asking his ruler to grant an exemption in this particular case, he appeared to be letting his idealism (and possibly his rivalry with Theodulf) stand in the way of justice and good governance, which, paradoxically, was at the centre of this conflict in the first place.⁸¹

That is the point where Charlemagne takes responsibility, albeit not in the way Alcuin expected. When the emperor expresses his concern about the *discordia* brought to the shrine, he seems acutely aware of the importance of the shrine as a *locus* for political conflict.

76 De Jong, *Admonitio and Criticism*, 320-327.

77 Charlemagne, *Epistola* 247, ed. Dümmler, 400.

78 Referring to the scene in Acts 25, Charlemagne reacts in *Epistola* 247, ed. Dümmler, 400: *...ad exemplum beati Pauli apostoli, qui, apud principes Iudaeae a gente sua accusatus, sed nondum iudicatus, caesarem appellavit....*

79 Charlemagne, *Epistola* 247, ed. Dümmler, 400: *Sed et valde miramur, quor vobis solis visum sit nostrae auctoritatis sanctioni et decreto contraeundum; cum liquido pateat, et ex consuetudine veteri et ex constitutione legum latorum decreta rata esse debere, nec cuiquam permissum illorum edicta vel statuta contemnere. Et in hoc satis mirare nequivimus, quod illius scelerati hominis precibus, quam nostrae auctoritatis iussionibus obtemperare maluistis, cum nunc clarissime liqueat cum eodem homine amorem discordiae ex inruptione caritatis de hoc loco veluti egredi.* The emphases on the legal terminology have been added by the author.

80 De Jong, *Sacrum palatium et ecclesia*, 1255-1258.

81 See McKitterick, *Perceptions of Justice*, 1102.

The twist is that the refugee was not an active party but rather a catalyst for something even greater; the description of the cleric as *infamis* indicates the public nature of his crimes, and hints at the scandal that affected those associated with him.⁸² It was Alcuin who is sowing discord. This provides the context for an oft-quoted remark about the nature of religious communities, namely the highly charged question if Alcuin even knew what kind of community he was running.⁸³

According to Charlemagne's closing remarks, Saint Martin of Tours had already been the subject of slander even before this whole affair »because sometimes you claim to be monks, sometimes canons, and sometimes neither«. ⁸⁴ Precisely this was the reason why Charlemagne had »invited him from a faraway province«, so that Alcuin might teach these monks a proper way of life and »rid [the community] of this bad reputation (*mala fama*)«. ⁸⁵ Charlemagne subverted Alcuin's arguments to the extent that he questioned his credibility as a leader of a community within the empire.⁸⁶ By the same token he showed how he lived up to Alcuin's ideal by interfering directly in the *correctio* of a monastery in such a way as to improve the general »state of the Church«. ⁸⁷ The current conflict had not caused any structural problems, but it had laid the community's identity crisis bare for all to see. As far as the emperor was concerned, that was a problem.

Charlemagne's remark about the community was more than a personal slight against Alcuin's leadership, though. It should be seen in the context of the link between good policy, *correctio*, and pleasing God that was central to the Carolingian mind-set at the time.⁸⁸ In the *Annals of Lorsch*, Charlemagne's activities to re-order his church properly are set in 802, in the wake of his imperial coronation.⁸⁹ The so-called *Capitulare Missorum Generale*, promulgated in that same year, shows how the line of thinking famously set out in the *Admonitio Generalis* of 789 still persisted.⁹⁰ In this capitulary, what the imperial representatives should be aware of as they pursued the ruler's interests in the realm is explained from a courtly point of view. Obliquely referring to a divine command from the Book of Deuteronomy, that

82 Cf. Wickham, *Topographies of Power*, 3-5. On *infamia*, see specifically Evans, *Notoriety*; the concept was intimately tied up with Visigothic law as well, which might even indicate Theodulf's involvement: *King, Law and Society*, 89-104.

83 Generally, see Felten, *Äbte und Laienäbte im Frankenreich*, 229-246;

84 Charlemagne, *Epistola* 247, ed. Dümmler, 400-401: *Aliquando enim monachos, ali quando canonicos, ali quando neutrum vos esse dicebatis, and later Vos autem, qui contemptores nostrae iussionis extitistis, sive canonici sive monachi vocamini ...*

85 Charlemagne, *Epistola* 247, ed. Dümmler, 400. On the risks attached to *mala fama*, see Firey, *Blushing before the Judge and Physician*, 196-197. She does note that *mala fama* only became an official part of legal procedure in the time of the Inquisition, but could already be cause for alarm in the Carolingian age. See also De Jong, *Penitential State*, 185-200 on how *mala fama* could even tarnish the reputation of the imperial court.

86 Alcuin's status as an »outsider« also left traces in the anonymous *Vita Alcuini*, ed. Arndt, c. 18, 193 where a monk from Tours is overheard complaining about Alcuin's compatriots visiting the abbot: Story, *Carolingian Connections*, 7. More generally, see Erhart, *Contentiones inter monachos*, 374-375.

87 For a later example of this ideal, see Kramer, *Teaching Emperors*, 318-322; Raaijmakers, *Making of the Monastic Community*, 246-249.

88 Kéry, *Kritik Karls des Großen*.

89 On the politics behind the *Annals of Lorsch*, see Collins, *Charlemagne's Imperial Coronation*, 64-69; Nelson, *Why Were There so Many Different Accounts?*, 8-9.

90 McKitterick, *Charlemagne*, 257; Davis, *Pattern for Power*, 235-236.

all men (...) are to live in an entirely just manner, with just judgment, and everybody is to be admonished to persist wholeheartedly in his way of life and calling (...) and all are to live in perfect charity and peace with one another,

the *missi* were used as a framing device to show how ideas of rulership continued to evolve without losing sight of the Bible as the ultimate foundation of Carolingian ethics.⁹¹ Without ever directly telling the subjects of the realm what to do, capitularies such as this one were an effective tool for spreading imperial ideas throughout the realm, while simultaneously reinforcing the central position of the court.⁹² If the emperor's responsibility was to perpetuate God's order, he would have to rely on his *missi* to properly represent his idealistic notions. At the same time, he had to ensure that the authority of his representatives would be respected; turning to the *Annals of Lorsch* again, we see how the emperor was aware of the fragility of justice and the people tasked with upholding it.⁹³ Theodulf, who himself had been a *missus* prior to 802, was no stranger to the idea that *missi*, judges and other members of the extended court were an extension of the ruler's authority, but, depending on their own vulnerability to temptation, could just as easily prove to be the weakest link themselves.⁹⁴

Apart from »charity and peace«, there were some additional ways to ensure the good conduct of the ruler's subjects. One of these was the renewal of the oath of loyalty. This had happened once before, in or around 789, when Charlemagne sent out his *missi* to have his subjects renew their oaths.⁹⁵ At the time he had given them the instruction that while »bishops and abbots, or counts and royal vassals as well as administrators, archdeacons and canons« needed to swear in the appropriate manner, the monastic profession would suffice for those who were attempting to live a monastic life according to the Rule of Benedict; their abbot would take the oath for his entire community.⁹⁶ The monastic *professio* required by the *Regula Benedicti* thus supplanted the oath of loyalty for the monks of the Frankish empire.⁹⁷ As the Carolingians promoted and institutionalised their version of monasticism, it would also enable rulers to command the loyalty of a powerful intellectual regional centre through the agency of just one person.⁹⁸ In Tours, Alcuin was supposed to be that person.

91 *Capitulare missorum generale*, c. 1, ed. Boretius 92. The reference to Deuteronomy is suggested in the translation by P.D. King, *Translated Sources*, 234. Innes, *What was Charlemagne's Government?*, 83-85.

92 Pössel, *Authors and Recipients*.

93 Fouracre, *Carolingian Justice*, 789-790.

94 Nelson, *Libera vox* of Theodulf of Orléans, 296-297. On ideas about the court as an extended network rather than a group of people confined to the walls of the palace, see Airlie, »For it is Written in the Law«, 225-227; Airlie, *Palace of Memory*, 3-8.

95 *Capitulare missorum*, ed. Boretius, 66-67. On the dating of this capitulary, see Becher, *Eid und Herrschaft*, 79-85. On the importance of the oath, see Airlie, »Semper fideles«?; Esders, *Treueidsleistung und Rechtsveränderung*; Phelan, *Formation of Christian Europe*, 31-42.

96 *Capitulare missorum*, c. 3, ed. Boretius, 67: *Clerici qui monachorum nomine non pleniter conversare videntur et ubi regula sancti Benedicti secundum ordinem tenent, ipsi in verbum tantum et in veritate promittant, de quibus specialiter abbates adducant domno nostro*.

97 Becher, *Eid und Herrschaft* 195-201, esp. 197. The *professio* itself is in *Regula Benedicti*, c. 58.17-20, and the responsibilities of the abbot are stipulated in cc. 2-3 and 64.

98 Shown for the Middle Rhine Valley by Innes, *State and Society*, 187-188.

However, in the context of 802 it suddenly became possible that his loyalty, and therefore that of the community, might be subverted. Given the renewal on the oath of loyalty advocated in that same year, and its renewed emphasis on the changes in the relationship between the ruler and his subjects following the imperial coronation two years prior, it thus became all the more important to consolidate the connections between the court, Alcuin and Theodulf, and their respective communities.⁹⁹ The network that connected Orléans to Tours and Aachen to Saint-Martin would be renegotiated, and it would be important for Charlemagne to ensure that he remained at the centre of it all, both through the renewal of the oath, and through his role in quelling this conflict.¹⁰⁰

Monastic integrity was about more than political loyalty. As the *Capitulare Missorum Generale* shows, Charlemagne and his heirs were serious about the function of monasteries within the *ecclesia*, and they took the regular life seriously as well.¹⁰¹ The 802 capitulary offers a rare quotation from the Book of Revelation to impress upon the audience the consequences of being only ›lukewarm‹ in their beliefs, or to engage with the world too much.¹⁰² The original quote refers to a reliance on worldly riches rather than faith.¹⁰³ Charlemagne and the people who helped him draft this capitulary cared as much about the public image of the monks as about their conduct, and emphasised the role of the bishop in keeping them in check.¹⁰⁴ Both their reputation and their salvation would be affected by their behaviour, after all.¹⁰⁵ This recurs not much later in the text, when the practice of sodomy in monasteries is deplored, not only because it was considered a sin, but also because it meant a breach of the rules within the community: it violated »that what is believed to be the source of the greatest hope of salvation for all Christians – namely, the life and chastity of monks«. ¹⁰⁶ In other words, *missi* were instructed to inspect the proper conduct of monks in order to avoid harming the belief of those relying on them. Such a concern was also visible

99 On the changing nature of the oath in 802, see Becher, *Eid und Herrschaft*, 201-212.

100 Geary, *Extra-Judicial Means*, 594.

101 *Capitulare missorum generale*, c. 17, 94-95. See Semmler, Karl der Große; Semmler, *Benediktinische Reform und kaiserliches Privileg*, esp. 790 and 803-804.

102 *Capitulare missorum generale*, c. 17, at 94: *Monachi autem ut firmiter ac fortiter secundum regula vivant, quia displicere Deo novimus quisquis in sua voluntate tepidus est, testante Iohanne in apocalypsin: Utinam calidus esse aut frigidus: sed quia tepidus es, incipiente evomere ex ore meo [Rev. 3:15-16]. Seculare sibi negotium nullatenus usurpent. Foris monasterio nequaquam progrediendi licentiam habeant, nisi maxima cogente necessitatem; quod tamen episcopus, in cuius diocese erunt, omnino praecuret, ne foris monasterio vagandi usum habeant. Sed si necessitas sit ad aliquam obhredientiam aliquis foris pergere, et hoc cum consilio et consensum episcopi fiat, et tales personae cum testimonium foris mittantur in quibus nulla sit suspitio mala vel a quibus nulla oppinio mala oriatur.*

103 Nogueira, *Hidden Identities*, 107.

104 From an imperial point-of-view, the two are rarely, if ever, separate: Kramer, *Teaching Emperors*.

105 King made the concern with reputation more explicit by translating *videtur* with »those who are seen to« – this may not have been intended as strongly in the Latin text. Van Rhijn, *Shepherds of the Lord*, 200-209, reflects on the importance of the reputation of clerics from the perspective of local priests (based on a case not dissimilar to the one discussed in this article).

106 *Capitulare missorum generale* c. 17, 93; trans. King, *Translated Sources*, 237. De Jong, *Imitatio morum*, 53-54 suggests that »this was a reaction against a very particular and local scandal, which nonetheless threatened to affect the whole of the realm.«

in the insistence that those visiting nunneries do so in the company of witnesses, that canons do not behave like the *sarabaitae* already vilified in the *Regula Benedicti*, or even that judges are to »judge justly in accordance with the written law, not at their discretion«. ¹⁰⁷ A recurring theme of these admonitions is the avoidance of *mala fama*, a bad reputation that would end up being destructive to authority.

High wind blows on high hills. Concerns similar to the ones in the *Capitulare Missorum Generale* were what prompted Charlemagne's remark about the reputation of the monks (or canons) of Saint-Martin, when he called Alcuin to order. Alcuin was not the only one whose authority was questioned because of his inability to guide the community entrusted to him. This was a threat hovering over everybody in a position where his or her behaviour affected the lives and afterlives of those under them, or of those living by their example. ¹⁰⁸ The court set itself up as the ultimate arbiter of this process. ¹⁰⁹ In that context, Alcuin's use of legal texts and Charlemagne's rebuttal not only reflected the ever-increasing role of the written word in the Carolingian world, but also provided another instance for the emperor to consolidate his authority. ¹¹⁰ It was from the court that laws were promulgated, »embodying the ability of a king to provide his demanding followers with what they wanted«. ¹¹¹ In this particular instance, however, during this give-and-take of influence and responsibilities, the conflict between Alcuin's wish for mercy and Charlemagne's desire for order seem to have reached an impasse that could only be resolved by executive decision.

Responding well

It would take another thirty years and some intense conflicts for the community of Saint Martin to figure out its place in the monastic landscape around Tours. ¹¹² This remained a sensitive issue. Ideally, monasteries were meant to bolster the spiritual foundations of the realm. In order to maximise their potential, they would theoretically have to remain as isolated as possible, uncorrupted by temptation, intellectual enclaves within the walls of the cloister. ¹¹³ As communities under the leadership of a bishop, canons, on the other hand, *would* ideally retain a link with the world, both through their possessions and their more overtly pastoral function. Whereas monks were theoretically exempt from becoming enmeshed in the real world, and had to live up to their function as exemplary Christians by virtue of their isolation, canons, priests and bishops *also* had to teach the people, bolstered by the good example set by their monastic peers, but also responsible for the interaction of monks with the outside. ¹¹⁴

107 *Capitulare missorum generale*, c. 26, 94: *Ut iudices secundum scriptam legem iust iudicent, non secundum arbitrium suum*; trans. King, *Translated Sources*, 239.

108 Steckel, *Kulturen des Lehrens*, 123-124.

109 Raaijmakers and Van Renswoude, *Ruler as Referee*, 52-53.

110 Rosamond McKitterick, *Carolingians and the Written Word*, 60-75.

111 Rio, *Charters, Law Codes and formulae*, 27.

112 De Jong, *Carolingian Monasticism*, 623; Semmler, *Iussit*, 98-99; see also Chupin, *Alcuin et Cormery*.

113 Beaudette, »In the World but Not of it«; Kramer, *Introduction*.

114 Kramer, *Sacred Foundations*.

In addition to these more ideological concerns, *both* types of communities were deeply ingrained within the socio-economic and cultural makeup of their regions.¹¹⁵ While their spiritual obligations were never entirely out of the picture, monasteries also provided focal points for social and agricultural stability, acted as administrative centres, and were involved in the upkeep of the realm in a material sense, for example by contributing to the ruler's army.¹¹⁶

Alcuin was one of the architects of the type of thinking that put monasteries in such a prominent place in the empire. Therefore, the example he set mattered. Moreover, the exact status of the church of Saint Martin suddenly became part of the question whether or not a criminal cleric, a *vulgus*, or a representative of the bishop ought to be allowed inside. In order to make an exception to the rules, it needed to be clear which rules applied in the first place. Paradoxically, Charlemagne had taken Alcuin's admonition about his pastoral power to heart. Only he did not use it to help the fugitive, but rather to rebuke his erstwhile advisor and to guide the community of Saint Martin through his increasingly well-ordered realm.

Alcuin was on the defensive now. He had already had to send one of his own clergy, who had been implicated in the outbreak of violence, to Salzburg until things died down and Theodulf had stopped ›raging‹ against the community.¹¹⁷ In the final letter in the dossier, the emphasis shifts from the fugitive cleric to the community. Appealing to Charlemagne's leniency for altogether more selfish reasons, he recalls the positive assessment they had been given by count Wido, *missus* of Charlemagne and ›incorruptible judge‹ (in stark contrast to the current *missus* Teotbert, who acted much more indiscriminately), and defended his own position as a teacher.¹¹⁸ Casting himself in the role of the tired old monk, Alcuin drives home the point that he had no love of *discordia*; he laments his old age and his powerlessness to prevent the situation. »I have never been in greater stress over the sinfulness of others« he writes, adding a bit further on that he may »have served my Lord Jesus Christ in vain all this time if his mercy and wisdom have so far deserted me that I have come to such wickedness in my old age«. ¹¹⁹ He had absolutely no inclination to be the eye of this particular storm, and, as he reminds Charlemagne, that was part of why he had been sent to Tours in the first place. »On your blessed advice«, he writes, »I have freed myself from the tumult of this world, as I dread the coming judgement«. ¹²⁰ At this point, he just wanted to be left alone.

Following these personal reflections, Alcuin turns the tables yet again and implies that if the model of episcopal delegation stands, Theodulf has no business accusing the community of Saint Martin of any wrongdoing. With two well-placed New Testament quotations, he states that the city of Tours already has a pastor »of high character and devoted to preaching«. He continues that »every shepherd should watch over his own flock«, and once more connects this to the final judgement of »the pastor of all«. ¹²¹ From this reassurance that

115 For one example of the way in which a monastic community would be embedded in its region, see Davies, *Small Worlds*.

116 Choy, *Intercessory Prayer*, 130-134; Wagner, *Zur Notitia de Servitio Monasteriorum*; Costambeys et al., *Carolingian World*, 117-130.

117 Alcuin, *Epistola* 248, ed. Dümmler, 401. An interesting interpretation of this letter is the proposal made in 1829 by Lorentz, *Alcuins Leben*, 254 – repeated by Wallach, *Alcuin and Charlemagne*, 101-106 – that this actually concerned the fugitive cleric himself, who was sent away in the hopes that Charlemagne would forget about the case.

118 Alcuin, *Epistola* 249, ed. Dümmler, 402.

119 Alcuin, *Epistola* 249, ed. Dümmler, 402.

120 Alcuin, *Epistola* 249, ed. Dümmler, 402.

121 Alcuin, *Epistola* 249, ed. Dümmler, 402, quoting Romans 14.4 and Luke 12.42.

there is nothing amiss with his community in general, Alcuin shifts to the circumstances that caused this altercation, making it abundantly clear that this was an incident and not a symptom of more endemic failings.¹²² Repeating his claim that the person charged with guarding the criminal should be punished just as heavily, he then cites the confusion caused by the large group of armed men who had come »from the city of Orléans to the city of Tours« in order to rectify the mistake. Not only had this sparked a rumour (*fama*) that they were there to breach the protection given by Saint Martin, but it had also caused general resentment because their arrival was seen as a sign of disrespect for the saint himself. Tapping into the links between civic identity and the reverence in which Martin was held, Alcuin argued that it was not, as Charlemagne had stated, the use of the shrine as a place of refuge that became a problem, but rather the fact that Theodulf's disrespect had raised the ire of »the poor drunken yokels« who then saw no other way out but to turn to violence.¹²³ While Alcuin's contempt for the »ignorant mob« is a theme throughout his letter on this affair, he softens the blow by emphasising the importance of Saint Martin for both the city and the empire. Archbishop Joseph may have underestimated this »in the simplicity of his heart« when he escorted the men from Orléans into the church: in his eagerness to work with the empire, he forgot the integrity of the local community around the relics, represented by Alcuin.¹²⁴ Alcuin and his community, of course, were free from any blame cast their way: his monks quelled the disturbance, and he himself treated the men from Orléans as guests in spite of their best efforts to misconstrue his kindness as yet another insult.

By now, it is unclear whether Alcuin is defending the fugitive, himself, or the community of Saint Martin. What is clear from his closing statement is that his appeal to Charlemagne's *miser cordia* has shifted from a moral obligation to a reminder of how this virtue was just as pragmatic as the emperor's (and Theodulf's) ideas about justice. Just as the purpose of penance was to unburden the soul, Alcuin states, quoting Psalm 129, so the purpose of »exalting mercy over justice« was to unburden the cumbersome »body politic« of which Charlemagne was the head. The emperor's favourite Old Testament example is invoked: »David, the ancestor of Christ, was praised for that greatness of his mercy and the justice of his judgements«. ¹²⁵ In a reference to Eutropius' *Breviarium ab urbe condita*, Alcuin brings up the example of the emperor Titus, who »said that nobody should leave an emperor's presence sad«, before reminding Charlemagne of his own past: he, too, had »pardoned the worst traitors against [his] authority«. ¹²⁶ Should he not do so in this case too? Most explicit, though, is Alcuin's admonition to Charlemagne to

122 Commenting on modern practices of cultural exemptions, Shorten, *Cultural Exemptions*, shows how pointing out the non-systemic nature of such an exemption may lead to a pragmatic compromise where neither party necessarily commits to a permanent solution that imposes new (and possibly unacceptable) burdens upon them.

123 Alcuin, *Epistola* 249, ed. Dümmler, 403. For an early expression of these links between Saint Martin and the city of Tours, see Pollmann, *Re-Appropriation and Disavowal*, 309-313.

124 Alcuin, *Epistola* 249, ed. Dümmler, 403.

125 Alcuin, *Epistola* 249, ed. Dümmler, 404; on this particular nickname, see Garrison, *Social World of Alcuin*, 62-65; Stone, *Beyond David and Solomon*; Fichtenau, *Byzanz und die Pfalz zu Aachen*, 29-31, offers one possible origin of this name by drawing attention to Charlemagne's religious activities around 794. This fits well with Alcuin's tone in this letter, where he admonishes the emperor to take his spiritual responsibilities.

126 Alcuin, *Epistola* 249, ed. Dümmler, 403-404. On Eutropius in the Carolingian era, see McKitterick, *History and Memory*, 42-43.

»show kindness to your servants in the love of almighty God and respect for Saint Martin, your intercessor, for he has always been honoured in the kingdom and by the kings of the Franks«. ¹²⁷

With a few strokes of his pen, Alcuin shifts the focus back on to the one thing that is unassailable: the importance of Saint Martin for the past, present and future of the realm.

Conclusion: exemptions and authorities

In a sermon on the life and virtues of Saint Martin, composed sometime in the late eighth or very early ninth century to be read on his feast day, Alcuin starts by reminding his »most beloved brothers« of Martin's reputation as somebody who has truly lived a »perfect life«. He was chosen by God, followed in the footsteps of the apostles, performed many miracles, and made sure that he always »practised what he preached«. ¹²⁸ While Martin's more spectacular miracles are expounded upon in Alcuin's abbreviation of Sulpicius Severus' *Vita Sancti Martini*, this sermon all but glosses over them, save for two stories lifted not from the *vita*, but from a letter on the saint that Sulpicius had written to his mother-in-law, Bassula. ¹²⁹ In the first of these stories, Martin is seen to restore the peace in the parish of Candes, which was suffering under *discordia* among the clerics. In the second, Martin orders a flock of seagulls to fly far away while they were busy emptying a river of its fish stock. Linking these two episodes are two verses from the New Testament (Matthew 5:9 and John 14:27, respectively) as well as a reference to a pseudo-Augustinian sermon, all of which revolve around the importance of keeping the peace both in one's heart and in the world at large. ¹³⁰ Through Martin's sanctity, he was able to command both birds and demons. The implication is that demons were at the heart of the *discordia* in Candes as well. Given the emphasis on unity and the subsequent digressions on the patience of the saint, his relation to the emperor Maximus, and his continued presence of in the city of Tours after his death in Candes, it is tempting to see this sermon in the context of the conflict of 802. ¹³¹ Should this indeed be the case, it might indicate an attempt by Alcuin to take back control of the situation within his own community and snatch victory from the jaws of (apparent) defeat: his juxtaposition of Matthew

127 Alcuin, *Epistola* 249, ed. Dümmler, 403.

128 Alcuin, *Sermo de Transitu Sancti Martini*, PL 101, 662C-664D, at 662D; a translation of this text appears in Veyrard-Cosme, *Oeuvre hagiographique*, xl-xlii.

129 Alcuin, *Scriptum de Vita Sancti Martini Turonensis*, PL 101, 657D-662C. On Sulpicius and Bassula, see McGuire, *Friendship and Community*, 72-77; König, *Bekehrungsmotive*, 193-194; Wieser, »Like a Safe Tower«, 12-15.

130 Alcuin, *Sermo de Transitu Sancti Martini*, PL 101, 663A; although the sermon in question appears not to have been composed by Augustine himself (see Machielsen, *Clavis Patristica Pseudoepigraphorum*, 141), the interpretation of especially John 14:27 is in accordance with other works by the Church Father, such as Augustine, *In Iohannis evangelium tractatus CXXIV*, 77.3, trans. Rettig, 101-105. The same two Biblical quotations, as well as the passage by pseudo-Augustine (*In pace vos dimisi, in pace vos inveniam*), appear in Hrabanus Maurus, *De ecclesiastica disciplina*, lib. 3, c. 5, PL 112, 1236D-1237A, dealing, unsurprisingly, with keeping the peace within a clerical community. On the context of this text and its connection to the rest of Hrabanus' oeuvre, see Phelan, *New Insights*, esp. 85-88.

131 Both texts by Alcuin appear to be in need of more in-depth studies; but see Phelan, *Formation of Christian Europe*, 8-11 and 31-33. Unfortunately, all extant manuscripts containing both the *Sermo de Transitu Sancti Martini* and the *Scriptum de Vita Sancti Martini* are from the tenth century or later; earlier manuscripts only contain the *Scriptum*, although the current consensus is that both texts were composed by Alcuin or someone close to him: Jullien and Perelman, *Clavis des auteurs latins*, 491 and 498-501.

5.9 («Blessed are the peace-makers») and an Augustinian reading of John 14:27 grants his saint and his community the moral high ground even if secular interests triumphed in this particular case. In the world of Carolingian high politics, participation in debates may be a goal unto itself.

As shown by Kriston Rennie in his contribution to this same issue, negotiations about exemptions or immunities had throughout the Middle Ages served to anchor the interdependent relations between the various power-brokers involved.¹³² Exemptions and immunities, in turn, were a paradoxical yet effective way of maintaining control over the state. The conflict of 802, while not about an exemption *per se*, was no exception. Participating in conflicts of authority had cultural as well as economic benefits for the communities, and helped embed their self-identification within a larger institutional framework.¹³³ Looking at negotiations such as the one analysed in this article thus allows us to expose the full complexity of the Carolingian government apparatus and the many ways in which secular, episcopal, abbatial and imperial interests fed off one another.¹³⁴

Given these stakes, it is almost fitting that we remain in the dark about the fate of the hapless cleric who catalysed this whole controversy. He was, after all, one of the few actors in this drama who remained entirely voiceless, and whose only function was to anchor the conflict of authority between Alcuin, Theodulf and Charlemagne to the community of Saint Martin. His decision to go there may not have been entirely accidental. Not only would he have latched on to a long and venerable tradition of this particular church acting as a haven for people who had landed in dire straits, he might also have taken Alcuin's reputation as a courtier and as Charlemagne's moral compass into account. If anyone could help him escape the combined wrath of an archbishop and an emperor, it would be the ageing deacon who had helped forge a Christian empire. Regardless of what prompted his decision, it leaves us with a fascinating series of letters that shed light on the mechanics and incidentals of conflict resolution within the Carolingian government.¹³⁵ In the process, it highlights several different notions of both rules and their exemptions. This remained a world where elites had to learn to cope with the discrepancies of their pastoral model and the practicalities of keeping the peace.¹³⁶

Alcuin's initial letters invoked an ideal in which the salvation of every individual was dependent upon the clemency of those wielding pastoral power. His request to Charlemagne was not for exemption, but for mercy after an admission of guilt. It was a reminder of his personal responsibilities, the »light yoke« of Christ that superseded whatever worldly tasks were laid out before them.¹³⁷ While not completely divorced from proper decorum or an awareness of the political realities of the time, it was an argument that relied heavily on

132 Rennie, *Monastic Exemption*; Rosenwein, *Negotiating Space*, 99-134.

133 For a modern perspective on this aspect of exemptions, see Shorten, *Cultural Exemptions*, 100-102 and 120-121.

134 Geuenich, *Kritische Anmerkungen*, 108-112. Bader, *Religions and States*, offers a (self-admittedly simplistic) view of various mechanisms to cope with the interdependence between »state« and »religion« in the modern era. The Carolingian World was no less complex, it seems.

135 Geary, *Extra-Judicial Means*, 600-601.

136 Kershaw, *Peaceful Kings*, 153-157.

137 Phelan, *Formation of Christian Europe*, 45-47

the moral authority of the author, as well as on his personal connection with the ruler he was addressing. Moreover, flaunting worldly laws in this particular case would be a demonstration of respect for the saint's power.¹³⁸ If timed correctly, this could be a boon to imperial authority. As Charlemagne's response shows, however, the ruler had different priorities.

The letter written in Charlemagne's name shows from the beginning that the rules were there for a reason, and so were the people responsible for their upkeep. The emperor's authority was built into an overarching system within which everybody was given the tools to achieve salvation as long as they followed the course set out by the court. Far from simply accepting the power of the written word, however, this did not simply preclude Charlemagne's imperial responsibilities. The letter shows that he took responsibility for the system as a whole so as to avoid having to be personally involved in every small matter. He took Saint Martin seriously. Charlemagne even came dangerously close to implying that he took the saint and his community more seriously than Alcuin did himself, but stops short of translating this into an exemption. In the world he was building, such exemptions should remain the exception, a way for him to retain a certain measure of personal agency if the situation called for it.¹³⁹ To embed this completely within the institutional framework of Carolingian justice would ultimately deny its efficacy when it was invoked.

Although Alcuin and Charlemagne ended up on opposite sides of the debate, it is noteworthy that they both recognised that this was an exceptional case that required their attention. Church asylum remained a very particular and complicated case of exemption.¹⁴⁰ The right to seek shelter from worldly justice at an altar had roots that went back to the Old Testament, and which gave local churches a lot of influence in the resolution of conflicts and disputes. It also served as a reminder to rulers that mercy and justice were two sides of the same coin.¹⁴¹ For that reason alone, it was in the interests of both Alcuin and Theodulf to appeal to the one person in the realm who could conceivably grant or deny an exemption. The competition for authority and imperial favour was fought over the heads of the cleric, the people, and even the archbishop of Tours. By taking this course, both main players used it as a pretext to show their knowledge of the inner workings of the Carolingian Empire, and sway the ruler to their position.¹⁴² The dispute between Alcuin and Theodulf thus shows how conflicts involving such high-ranking courtiers would touch upon problems superseding their initial cause. The ensuing debate in turn demonstrates that such challenges were also taken seriously by the court, and that advice from courtiers was taken into consideration more often than not, even if the form in which it was presented was not always to the ruler's liking. It shows that a climate was fostered at the Carolingian court which allowed those in a position to do so to provide unsolicited advice to rulers.

138 See also Kramer and Wieser, *You Only Die Twice?*, 580-586.

139 Nelson, *Dispute Settlement*, 61-64, points out the importance of co-opting local interests into such cases of imperial arbitration.

140 Rosenwein, *Negotiating Space*, 37-40.

141 A mentality that persisted in later centuries as well: Clanchy, *Law and Love*.

142 This was part and parcel of life at the Carolingian court: see for example Tigolet, *Jeux poétiques*.

Charlemagne, ever the pragmatist, realised that he could easily prove his power by acquiescing to either Alcuin's or Theodulf's request. Instead, however, he seized the opportunity to address bigger issues and hammer out some lingering details concerning the status of monastic communities, episcopal authority, and the state of the *ecclesia* in general. In doing so, he showed how he too understood that his imperial authority was consolidated by the debate itself, and a willingness to remain informed as much by the debate as by its outcome.¹⁴³

Just as the debate was as much a competition for imperial recognition as it was about the integrative roles of each of the main players, the way Alcuin framed his request for exemption did not necessarily heighten his community's isolation from the overarching *ecclesia*. Far from it. Regardless of the eventual fate of the fugitive, the battle for Saint Martin himself and his position within Tours may have worked out in Alcuin's favour after all. It provided him with an opportunity to reaffirm and acknowledge Martin's saintly prowess at court, which in turn gave Charlemagne a chance to break the supposed autonomy of the community.¹⁴⁴ Their shared goal remained the same: the establishment of an *ecclesia* where everybody's mutual obligations would be clear to everybody else. In sticking out his neck for the fugitive, Alcuin showed he was willing to shoulder his responsibilities, even if he was aware that his request for immunity may have been futile from the very beginning. Charlemagne, for his part, may have been aware that in denying this particular exemption, he ultimately proved that his rule took everyone into account, regardless of whether or not each of them would like the outcome.

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143 For a modern perspective on similarly complex problems, see Quong, *Cultural Exemptions*, 66.

144 Esposito, *Terms of the Political*, 58-61.

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From Symbiosis to Separate Spheres? England, 1163

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This paper focuses on discussions of Christian kingship in 1163, a critical year in the relationship between King Henry II of England and Thomas Becket, archbishop of Canterbury. On the basis of the revised *Lives* of Anselm (by John of Salisbury) and Edward the Confessor (by Aelred of Rievaulx), it is clear that traditional views of a symbiotic relationship were still very much to the fore, even though the quarrel between king and archbishop was to lead ultimately to a clearer separation of secular and ecclesiastical jurisdictions.

Keywords: John of Salisbury; Thomas Becket; Henry II; Pope Alexander III; Council of Tours; Council of Westminster

In the idealized picture drawn by the English monk Eadmer (d. c. 1126) of relations between Archbishop Dunstan of Canterbury (d. 988) and King Edgar (d. 975) in the tenth century, Dunstan was the king's pre-eminent counsellor, guiding Christian society.¹ This was the starting point of Eadmer's *Historia novorum*, written around 1110, as the background – as he thought – to the quarrel between a later Canterbury archbishop (and Eadmer's friend), Anselm, and the Norman kings of post-Conquest England. The ideas of ›church and state‹ or ›church and society‹ would of course have been incomprehensible in the later tenth century. By the late twelfth century, however, as outlined by Christopher Cheney in *From Becket to Langton*, only individual archbishops and bishops were influential as royal counsellors or justices: there was now a line – admittedly fuzzy in places – between ecclesiastical and secular jurisdictions, and the pope's authority over the English church was much more immediate than it had been two centuries earlier.²

Understanding why and how dividing lines were coming to be drawn has been one of my recent preoccupations in tracing the history of power in English society between the late tenth and twelfth centuries. My interest lies not only in the changing ways power was exercised, but also in areas of friction and occasional conflict, as well as the compromises that were made between those with power – kings, lay lords, and churchmen. The origins of this paper lie then in a larger argument about the nature of English political society.³ Here the focus is on the year 1163, on the trouble brewing between King Henry II (d. 1189) and Archbishop Thomas Becket of Canterbury (d. 1170), and on one basic point: that even if in

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1 Eadmer, *Historia Novorum*, ed. Rule, 3.

2 Cheney, *From Becket to Langton*. See also Duggan, Clerical Exemption, in this special issue.

3 For a broader exposition, see Green, *Forging the Kingdom*.

the long term one might argue that the quarrel was to lead to a sharper distinction between secular and ecclesiastical jurisdictions and to a stage in the rise of a secular state in England and perhaps more widely in Europe, nonetheless, ideas that were circulated in that year about the king's role in Christian society still reflected notions of symbiosis rather than separate spheres.

The following discussion centres on two authors, John of Salisbury, who wrote the *Life of Anselm*, and Aelred of Rievaulx, author of the *Life of King Edward*. Both books were revisions of earlier texts, the former of Eadmer's *Life* and the latter of the life of King Edward by Osbert of Clare.⁴ The visions they presented were composed for particular ends, but they show what some believed were models of the behaviour of archbishops and kings.⁵

Becket and the Life of Anselm

The factors for change in the relationship between the kings of England and their archbishops between the late tenth and late twelfth centuries may be arranged under three headings. First was the eleventh-century reform movement which aimed to establish the priesthood as a separate and celibate order, free from worldly entanglements. Much attention had been given to the problem of lay investiture, leading to difficulties between Archbishop Anselm and King Henry I in the early twelfth century. Second, there was the growing influence of the papacy over the western church, and the concomitant rise of studies of church law with the search for clarification and precision. Third, there was the accession in England of King Henry II in 1154, following a period of contested rule. Henry, young and vigorous, was concerned to restore order, both in terms of suppressing violence and resolving disputes over land. He was also determined to recover lost lands and certain rights of the crown, especially those which were lucrative, and this was by no means an easy task.⁶ As part and parcel of these efforts he sought to rein in the excesses of officials, both his own, the sheriffs, and those of others, the archdeacons, baronial stewards and reeves.

This was the context in which Thomas Becket became the new Archbishop of Canterbury, the most powerful cleric in the English church. Becket must have seemed the ideal successor to Archbishop Theobald of Canterbury, who died in 1161 when the king was out of England. As chancellor, Becket was at the heart of the royal administration and knew well its challenges and constraints. He had been involved first hand in the administration of royal justice, and as archdeacon of Canterbury he had experience and knowledge of the archbishop's problems with the king, and potential jurisdictional conflicts. When he became archbishop of the most powerful see in England, he proved anything but a pliable tool. As archbishop, his initial concerns were: 1) to restore lost lands and rights to Canterbury; 2) to reassert the Canterbury primacy, not just over York but over the whole of the British Isles; 3) to see Archbishop Anselm's claim to sanctity recognised; and 4) to secure the grant of a papal legation.

Of these four, only the Canterbury primacy presented no problems to King Henry II, as it had long suited the Norman kings to back Canterbury.⁷ Indeed, the ramifications of the Canterbury primacy over Wales, Scotland and Ireland, strengthened Henry's claim to over-kingship and, more immediately, laid the ground for an invasion of Ireland, mooted as early

4 Eadmer, *Life of St Anselm*, ed. Southern; Osbert of Clare, *La vie de S. Edouard le Confesseur*, ed. Bloch.

5 For trends in hagiography in eleventh- and twelfth-century England, see Hayward, *Saints and Cults*.

6 Amt, *Accession of Henry II in England*; White, *Restoration and Reform*.

7 Flanagan, *Irish Society, Anglo-Norman Settlers, Angevin Kingship*, ch. 1.

as 1155.⁸ Henry would not have appreciated the efforts being made by bishops of St Davids and St Andrews to achieve archiepiscopal status for their sees, as this in effect buttressed claims to national churches and thus to independent nationhood. We may assume that the king had no objections when Archbishop Thomas went to the Council of Tours called by Pope Alexander III (d. 1181) in May 1163 hoping for a recognition of his primacy. Archbishop Roger of York, his senior in terms of date of consecration, argued however that he should take precedence, and in the end the archbishops were awarded parity. Thomas was accorded much respect but not papal recognition of Canterbury's primacy.⁹

Thomas had also however gone to Tours hoping for papal recognition of Anselm's sanctity, for this was an era when popes were taking charge of the process of canonization. Becket's advocacy of Anselm sprang from a mixture of motives. His veneration was sincere: he carried a copy of Anselm's *Prayers and Meditations* which he used in daily worship.¹⁰ He also however needed to establish his position at Canterbury. He was well aware that there had been opposition to his appointment amongst the monks as well as the episcopate, and there may have been reservations at Rome.¹¹ Anselm was not only a saintly figure and noted intellectual worthy of canonization, but the themes of Eadmer's *Life*, Anselm's reluctance to take up office, and his preparedness to suffer exile, perhaps struck a chord with the new archbishop.¹²

The task of repackaging Eadmer's *Life of Anselm* to obtain formal papal acknowledgement of the saint was delegated to John of Salisbury, then a member of the archbishop's household, with experience of the papal curia, and a noted Latinist.¹³ Only one manuscript of John's *Life* is known to survive, in Lambeth Palace, MS 159, a collection of texts relating to Christ Church Canterbury made in 1507 by a Canterbury monk. John's work evidently attracted little attention, by comparison with his *Life of Becket*, and indeed his other works.¹⁴ His *Life of Anselm* drew heavily on that by written a generation earlier by Eadmer.¹⁵ However, it is more than a simple abridgement. John described Anselm as *Beatus*, or *uir apostolicus*.¹⁶ He retold the episodes which show Anselm's ability to heal the sick and to come unscathed through fire and tempest, likening him at several points to other saints, including St Martin of Tours.¹⁷ He added one miracle, the healing of a disabled man named Elphege at St Anselm's tomb, and he noted Anselm's disdain for worldly wealth.¹⁸ This was a hagiographic brief focussed on Anselm's personal holiness and his scholarly distinction, so John did not have to go into

8 Robert of Torigny, *Chronicles of the Reigns of Stephen, Henry II and Richard I*, ed. Howlett, 4, 186.

9 Somerville, *Pope Alexander III; Materials for the History of Thomas Becket*, ed. Robertson, 3, 250-255.

10 *Materials for the History of Thomas Becket*, ed. Robertson, 3, 210-211.

11 Christensen, Curious Case of Becket's Pallium, 243-256.

12 Staunton, Eadmer's *Vita Anselmi*, 1-14.

13 For recent work on John see Grellard and Lachaud (eds.), *Companion to John of Salisbury*.

14 The most readily available edition cited here is John of Salisbury, *Vita Anselmi*, ed. Migne, cols. 1009a-1040c. At both the beginning and end of the *Life* John's authorship is made clear, London, Lambeth Palace MS 159 ff. 160v, 176r. For an English translation, see *Anselm and Becket*, ed. Pepin. A verse epitome made later in the twelfth century survives: Sheerin, Anonymous Verse Epitome.

15 Gameson, *Earliest Books of Canterbury Cathedral*, 242.

16 John of Salisbury, *Vita Anselmi*, ed. Migne, cols. 1009B, 1014A.

17 John of Salisbury, *Vita Anselmi*, ed. Migne, cols. 1012C, 1037B.

18 John of Salisbury, *Vita Anselmi*, ed. Migne, col. 1040A.

detail about his subject's travails with the Norman kings. He abbreviates Eadmer's account of Anselm's reluctance to take up the office of archbishop and his quiet determination to leave the country to go to Rome. He is very brief indeed on Anselm's refusal to accept bishops who had performed homage to Henry I, saying the events »would take too long to narrate«. ¹⁹

Where we see John's handiwork in particular is on two issues, the Canterbury primacy and royal tyranny. John reported that Pope Pascal II (d. 1118) had confirmed Canterbury's primacy of Britain and gave Anselm the privilege of being exempt from the commands of all papal legates. ²⁰ He further included Anselm's letter to Thomas, archbishop-elect of York, threatening to anathematize him if he did not make his profession to Canterbury. John related the story (not in Eadmer) of Anselm's remark that he would not dare appear before God until he had punished the archbishop of York. ²¹ Secondly, John's denunciation of William Rufus as a tyrant was not in Eadmer. ²² So we have a picture of a saintly, outspoken archbishop, whom Henry I urged to return from exile in 1100 despite his frank criticism of the king's predecessor, and on whose counsel all the affairs of the kingdom waited. Subsequently in England, king and archbishop convened a council at which the king promised not to practise investiture in the future.

In any event, the presentation of Anselm's revised life to the pope at Tours proved to be in vain. On the grounds that there were too many dossiers presented for discussion (including that of St Bernard), the pope referred the case back to England, and to a provincial council, which Becket of course never had the time or royal backing to call. ²³ It may be that the pope was partly motivated by a reluctance to annoy Henry II, for Anselm was of course a symbol of resistance to Norman kings: to William Rufus who had refused to allow him go to Rome, and to Henry I on the questions of investiture and homage. As a loyal servant of Rome prepared to suffer exile for his beliefs, Anselm was not someone of whom Henry II wished to be reminded, not least by John of Salisbury. John had already experienced the king's displeasure on a previous occasion. ²⁴ Yet John's – and we might surmise, Thomas's – Anselm was not in outright opposition to his kings: that there were problems was not glossed over, but as John emphasised, friendship and co-operation between the two was restored at Bec.

19 John of Salisbury, *Vita Anselmi*, ed. Migne, cols. 1031c-1031d.

20 John of Salisbury, *Vita Anselmi*, ed. Migne, cols. 1032a-1032b.

21 John of Salisbury, *Vita Anselmi*, ed. Migne, cols. 1034d-1035b; cf. Eadmer, *Historia novorum*, ed. Rule, 206.

22 John of Salisbury, *Vita Anselmi*, ed. Migne, col. 1030a; cf. col. 1021c: *parum justus aut pius: prodigus sui, appetens alieni, ferarum amantissimus, sed negligentissimus animarum, fautor militiae et malitiae, sed Ecclesiae et innocentiae vehementissimus oppugnator, voluptatis sectator acerimus: utpote in quo sine modo et mensura vigeabant pariter amor mundi et contemptus Dei*. See also the comment *qui vixerat bestialiter, bestialem invenerat exitum vitae*, col. 1030c.

23 Thomas Becket, *Correspondence*, ed. Duggan, I, no. 10. There are signs that the feast of Anselm's translation was put in hand at Canterbury, for a Christ Church Calendar pre-dating Becket's murder includes the translation on 7 April and the feast on 21 April: Southern, *St Anselm and his Biographer*, 339-340.

24 The Letters of John of Salisbury I, ed. Millor and Brooke, Appendix II, *The Great Disgrace*, 257-258. It seems that the cause of John's »disgrace« was related to a stay at Rome, and the terms on which Pope Adrian IV made a grant of Ireland to Henry II; Duggan, *John of Salisbury and Thomas Becket*, 429-430.

Becket and the relics of King Edward

When the archbishop returned from Tours in the summer of 1163, he had failed to achieve a recognition of the Canterbury primacy, the canonization of Anselm, or the status of papal legate.²⁵ He faced a king who had come back to England in January of that year after an absence of more than four years, determined to reassert his authority, renew a drive to restore order and to punish wrongdoing, to rein in venal officials (his own and other people's), and to make sure he was getting his revenues in full. His fundamental approach remained that of turning back the clock to his grandfather's day, whether this was to do with the scope of royal justice or relations with Rome. In Normandy his justices had been active, as they were in England in 1163.²⁶ He had also renewed the canons of the Council of Lillebonne of 1080. These had much to say about the scope of episcopal and archidiaconal jurisdiction, and had been confirmed by Henry I.²⁷

On the king's return there was a mass of lawsuits to be dealt with, some of which involved the archbishop. As well, several sheriffs were dismissed.²⁸ The king also had dynastic affairs to consider. In 1162 his heir, also named Henry, had returned to England with his guardian, the archbishop, and the plan was for the great men to pay homage to the heir.²⁹ At the Council of Woodstock in July 1163, the Welsh and Scottish princes paid homage, not just to the king but also to his son. Henry also floated a plan to levy an aid on land at the old danegeld rate of two shillings a hide, taking over an aid customarily paid to sheriffs.³⁰ Becket opposed him, on the grounds that those liable would not only have to pay this levy but also an aid to the sheriffs, and the plan was dropped. Underlying the king's plan was an effort to take an annual land tax without the widespread exemptions achieved by religious communities that had been founded in 1135 or later. The liability of the archbishop's land to geld, to military service, and to aid, was very substantial. Whether Becket's stance was personal or representative of wider opposition is unclear, but it aroused the king's anger at a time when black marks against the archbishop were adding up.

A council of lay and ecclesiastical magnates assembled at Westminster at the start of October 1163, and there were various items on the king's agenda. He was annoyed by the way archdeacons were bringing charges in church courts on a wide range of issues, including cases of moral backsliding, such as the burgess of Scarborough who had been charged with adultery.³¹ He was particularly angered about the leniency showed to clerks accused of

25 Thomas Becket, *Correspondence*, ed. Duggan, I, no. 71.

26 White, *Restoration and Reform*, 180-212.

27 Robert of Torigny, *Chronicles of the Reigns of Stephen, Henry II and Richard I*, ed. Howlett, 4, 212; for the canons, Orderic Vitalis, *Ecclesiastical History*, ed. Chibnall, 3, 26-34.

28 There were several flashpoints here. One was over Tonbridge, held by Earl Roger de Clare who refused homage for the castle, though this was technically situated on Canterbury land. Another was over Saltwood, confiscated by the king from the disgraced Henry of Essex, even though the castle and attached lands were held of the archbishop and not of the king. A third was over the archbishop's excommunication, without asking the king's permission, of William of Eynsford, a tenant-in-chief, in a dispute over presentation to a benefice. In general see Duggan, *Thomas Becket*, ch. 2. For the sheriffs, see Boorman, *Sheriffs of Henry II*.

29 Robert of Torigny, *Chronicles of the Reigns of Stephen, Henry II and Richard I*, ed. Howlett, 4, 216.

30 Roger of Pontigny, *Materials for the History of Thomas Becket*, ed. Robertson, 4, 22-25.

31 William FitzStephen, *Materials for the History of Thomas Becket*, ed. Robertson, 3, 44.

serious crimes, and requested that those who were convicted in the church courts should lose the protection of their clerical status and be handed over to the king's officers to prevent escape.³² Becket and his fellow bishops refused to accede. The king asked instead that each should promise to obey his customs, but Becket gave only qualified assent ›saving his order‹.

Becket's biographers tended to finish their account of the Council at this point: ›in this heated mood [Henry] left London without notice, with all his business unfinished, and lawsuits left hanging‹.³³ Of Becket's contemporary biographers, only William FitzStephen mentions the great ceremony which followed on 13 October, when King Edward's relics were translated.³⁴ The king and some of the greatest nobles carried the coffin through the cloisters in Westminster Abbey, in the presence of the archbishop, all but one of his suffragan bishops, and three Norman bishops.³⁵ Laurence, the abbot of Westminster, had asked his kinsman Aelred abbot of Rievaulx to compose a sermon for the event.³⁶ According to the sermon, which Aelred may have delivered in person, sexual purity and the gift of prophecy helped to establish Edward's saintly credentials. Edward had shaken off the yoke of captivity imposed by the Danes, he had bestowed wealth on the church, and he had a high reputation with the Franks and the Germans, who sought his friendship. Above all ›this Moses of ours‹ was a lawgiver, who brought peace and justice to his realms.

Abbot Aelred's views about Christian kingship, his relations with Henry II, and his involvement in the cult of King Edward, were well established by the time the translation ceremony took place in 1163. He had already outlined his ideas in a *Lament* for King David of the Scots written a decade earlier.³⁷ This lament prefaced a genealogy of the kings of the English, composed in 1153 shortly before Henry II's accession to the English throne, tracing his ancestry back through the maternal line to Adam, the cornerstone between the English and the Normans, fulfilling the prophecy of Edward the Confessor of the green tree, uniting the two races.³⁸ ›When‹, Aelred addressed Henry, ›you see the integrity of your ancestors, the virtue that shone out and the holiness that radiated from them, you will realize how natural it is to you to abound in riches, to excel in virtues, to be renowned in victories and, more than all this, to glow with Christian religion and the prerogative of righteousness.‹³⁹

32 *Summa Causae Inter Regem et Thomam, Materials for the History of Thomas Becket*, ed. Robertson, 4, 201-205.

33 *Summa Causae Inter Regem et Thomam, Materials for the History of Thomas Becket*, ed. Robertson, 4, 205.

34 William FitzStephen, *Materials for the History of Thomas Becket*, 3, 261. It is interesting to read from one source that the main purpose of the council was to reaffirm the primacy of Canterbury, *Summa Causae Inter Regem et Thomam, Materials for the History of Thomas Becket*, ed. Robertson 4, 201-205.

35 For a detailed description, see Richard of Cirencester, *Speculum Historiale de Gestis Regum Angliae*, ed. Mayor, 2, 326-327; for discussion see Barlow, *Edward the Confessor*, 325-327.

36 Peterborough annals, *Chronicon Angliae Petroburgense*, ed. Giles, 98 as cited by Jackson, *In translatione Sancti Edwardi Confessoris*, 46. Walter Daniel mentioned Aelred's *Life of King Edward*, composed at the request of his kinsman, Abbot Laurence: Walter Daniel, *Life of Ailred of Rievaulx*, ed. Powicke, 41-42. Aelred was an experienced hagiographer and his *Lament* and *Genealogy* had been markedly favourable towards Henry II, so doubtless Abbot Laurence would have had few misgivings about giving Aelred the commission.

37 As yet there is no modern edition of the *Lament*, see Aelred of Rievaulx, *Historical Works*, ed. and trans. Freeland and Dutton, 35, 45-70. For the genealogy, see *Historiae Anglicanae Scriptores X*, ed. Twysden, 347-370.

38 For a translation of the *Lament*, Aelred of Rievaulx, *Historical Works*, ed. and trans. Freeland and Dutton, 43-70.

39 Aelred of Rievaulx, *Historical Works*, ed. and trans. Freeland and Dutton, 71.

Soon after becoming abbot of Westminster in around 1158, Laurence had turned his attention to the project of securing papal authorisation for the canonization of King Edward, an earlier attempt by Osbert of Clare having failed. Having laid the groundwork carefully, Laurence succeeded in 1161. He asked his kinsman Aelred to compose a *Life* of Edward the Confessor, based on the earlier *Life* written by Osbert of Clare.⁴⁰ Aelred's text was addressed to King Henry, whose special renown was his descent from such a holy line of kings, and again referred to the prophecy of King Edward that he would form the union of the Normans and the English.⁴¹ The *Life* emphasized the king's holy way of life, his celibate marriage, ability to foresee the future, and the miracles he worked. The message was of the king's integral role in society, and of the author's hope for the renewal of prosperity after the disaster wrought by the Norman Conquest. Miracles were reported, five which had probably been in a version of Osbert of Clare's text, plus four more.⁴² Aelred may actually have composed his *Life* during a visit to the abbey early in 1163, though it was not until October that the translation ceremony took place.⁴³ It was to be Aelred's *Life* which was to prove most popular to later hagiographers, though evidently not with Henry II or his sons, none of whom seem to have had much affection for Westminster abbey or the Confessor's cult.⁴⁴

Conclusion

In the two almost contemporary texts considered in this article, John of Salisbury's *Life of Anselm* and Aelred's *Life of King Edward*, there are depictions on the one hand of ultimately cooperative relations between a saintly archbishop and the Norman kings, and on the other of an ideal holy king. Contrary to what is often assumed, the accession of Henry II, and then the appointment of his close friend as archbishop, opened up a new, possibly more harmonious, era in relations between king and archbishop. There was no inevitable progression in the quarrel between Becket and Henry from the relatively trivial and secular issues, such as sheriffs' aid, to the climacteric councils at Woodstock, Clarendon, and Northampton: there was no linear process of deteriorating relations and rapidly escalating quarrels.

In fact, the sequence of events was anything but linear. The juxtaposition of the Council of Westminster and the translation of King Edward, not mentioned by Becket's biographers, did not fit into such a sequence. Likewise, the dedication of the abbey church at Reading in April 1164 *after* the Council at Clarendon, showed the archbishop, despite his difficulties with the

40 *Life of Saint Edward*, ed. and trans. Freeland, 125-127; for recent discussions of this text, see Becquette, *Ælred of Rievaulx's Life of Saint Edward*; Yohe, *Ælred's Recrafting of the Life of Edward the Confessor*.

41 *Historiae Anglicanae Scriptores X*, ed. Twysden, 370-414; for a translation, see Aelred of Rievaulx, *Historical Works*, ed. and trans. Freeland and Dutton, 123-143.

42 Aelred added four stories from Edward's lifetime: Edward catching the thief who stole from his treasury; Harold and Tostig fighting as children; the miserable death of Earl Godwin, now the villain of the piece; and the ring which Edward gave to John the Baptist.

43 Aelred's presence at Westminster on 6 March 1163 was noted by Powicke: Walter Daniel, *Life of Ailred of Rievaulx*, ed. Powicke, xciii.

44 *Life of King Edward*, ed. Barlow, Appendix D for a brief history of the cult; Mason, Westminster Abbey, 213-214; Bozoky, Sanctity and Canonization.

king, presiding over a ceremony of great moment for the past and future of Henry's dynasty.⁴⁵ The abbey after all was home to the tombs of King Henry I, Queen Adeliza, and William, son of Henry II and Eleanor, as well as to a prized relic, the hand of St James.⁴⁶

In 1163, then, conventional ideas about the relationship between a king and his archbishop, and about the role of a Christian king, were still potent in the minds of contemporaries. However, Becket and Henry also saw themselves charged with protecting their predecessors' legacies. The means by which these legacies were to be defended, the context of international politics in which events were played out, as well as the methods employed, led to confrontation, death, and ultimately to an enduring clarification of jurisdictions.

45 Previt -Orton, *Annales Radingenses Posteriores*, 400; Robert of Torigny, *Chronicles of the Reigns of Stephen, Henry II and Richard I*, ed. Howlett, 4, 221.

46 For Henry at Reading in 1158 and April 1163, see Eyton, Court, *Itinerary and Household of Henry II*, 38, 61-62. For the relic see Leyser, Frederick Barbarossa. For the tomb of William, see Robert of Torigny, *Chronicles of the Reigns of Stephen, Henry II and Richard I*, ed. Howlett, 4, 189.

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Religious Exemption and Global History before 1300 – Closing Comments

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Global history has taken many different forms since the sub-field started to expand in the 1980s, but the global turn increasingly resonates across all different branches of history since, as Lynn Hunt explained, historians are all now »writing history in the global era«.¹ The defining feature of our global condition is inequality: 85.3% of the world's wealth is owned by just 8.6% of the world's population.² One question to which many practitioners of global history have therefore returned is how this unequal distribution of resources came about: specifically how and why wealth and power came to accumulate in the West slowly from the sixteenth century and sharply from the nineteenth. These questions form the basis of the ›Great Divergence‹ paradigm of global history.³ Scholars have challenged the narrative of cultural superiority proposed by Max Weber in the early twentieth century, and instead have looked to various factors including the environment,⁴ the ideology of colonialism,⁵ violence,⁶ culture and institutions,⁷ and the rise of the state.⁸ New Institutional Economics (NIE) played an important role in shaping some of these debates, contending that Eurasian divergence was caused by the development of institutions in the west.

This collection of essays offers important insights directly relevant to this debate, highlighting the similarities of the histories of institutions across pre-modern Eurasia, questioning the cultural boundedness of the categories we use to understand the distribution of power and resources within different societies (especially the state), and calling for methodological innovation for a more pluralist understanding of value regimes. It uses the case of religious exemption to challenge teleological narratives of the rise of the state and of secularisation by reminding us not only of the diversity of institutions across Eurasia but also of the symbiotic relationship between institutions, whose analysis calls for a more fluid and dynamic understanding of power. Ultimately, the process of exemption is presented here as a creative force.

1 Hunt, *Writing History in the Global Era*.

2 Solimano, *Global Capitalism in Disarray*, 52.

3 The ›Great Divergence‹ was popularised by Pomeranz's *Great Divergence*. The term was coined by Huntington in 1996, *Clash of Civilizations*.

4 For examples, McNeil, *Global Condition*, and Diamond, *Guns, Germs and Steel*.

5 Blaut, *Colonizer's Model of the World*.

6 Hoffman, *Why Did Europe Conquer the World*.

7 Mokyr, *Lever of Riches*. See also North, *Institutions, Institutional Change, and Economic Performance*.

8 Vries, *State, Economy, and the Great Divergence*.

In approaching religious exemption from the state c. 300-1300 in pre-modern Eurasia, the special issue differs from comparisons which tend to emphasise the divergence of institutional traditions.⁹ Under the stewardship of Charles West, the collection is self-consciously styled as a response to the model of pre-modern Eurasian history proposed by Victor Lieberman, that of *Strange Parallels*.¹⁰ While Lieberman contended that the long-term developments across Eurasia were driven by state formation,¹¹ the essays in this collection focus on the simultaneous processes of the construction of exemptions from these states. The strategy has proved productive on a number of fronts. Firstly, it suggests a new methodology for approaching the history of pre-modern Eurasia. Secondly, it challenges our received categories of power, and our assumptions of the impermeability of secular and religious forms of power. Thirdly, it prompts a more pluralistic understanding of value regimes. Fourthly, and to my mind perhaps most importantly, it signposts new pathways for understanding the historical origins of our current global condition of inequality.

The parameters of this collection were carefully calibrated to maximise the force of the analysis. Going beyond the East-West binary that has often dominated Eurasian histories, this collection questions received geographies and incorporates neglected regions. In addition to studies on Europe and China, four of the eleven case studies focus on South East Asia. Kanad Sinha's contribution (Chapter 3) highlights not only the importance of integrating studies of South East Asia into Eurasian histories, but of challenging all binaries. Sinha begins by questioning the »perceived dichotomy between the settled society (*grama*) and the forest (*aranya*) that has dominated early Indian history«. The negation of this binary in the first instance is evocative of the rejection of the cultural chauvinism typical of traditional Eurocentric thought which equated sedentary society with civilization and nomadic societies with the wilderness and barbarism.

The focus on the 300-1300 period is also welcome, since many existing studies of pre-modern Eurasia have concentrated upon the early modern period. Previous studies of Eurasia in this period have followed the world-systems theory approach which stresses connectivity over correlation.¹² The quest for correlations is not methodologically the same as comparative approaches, and only one of the essays explicitly constructs a comparative study (Dominic Goodall and Andrew Wareham, Chapter 9), while the rest of the contributions focus on discrete examples. Exploring such examples and emphasising correlation over connectivity is not necessarily limited to painting a pointillist picture of Eurasia, but rather offers the opportunity to highlight certain horizontal continuities. The idea of horizontal continuity has been developed to understand Eurasian history for the early modern period,¹³ but has not yet been explored in relation to the medieval.

9 For more on this also see Hudson and Ana Rodriguez, *Diverging Paths?*.

10 Lieberman, *Strange Parallels Vol. 1*, Lieberman, *Strange Parallels Vol. 2*. These volumes developed ideas from his earlier publications, Lieberman, *Beyond Binaries, Re-imagining Eurasia to c. 1830*, and Lieberman, *Burmese Administrative Cycles*.

11 For an overview of this critique see Sreenivasan, A South Asianist's Response to Lieberman's »Strange Parallels«.

12 This model began with Abu-Lughod, *Before European Hegemony*.

13 Fletcher, *Integrative History*.

Lieberman's model of parallels stretching across Eurasia has of course been heavily contested, especially by early modern histories who advocate connectivity. Most notably Sanjay Subrahmanyam has written that »contrary to what ›area studies‹ implicitly presumes, a good part of the dynamic in early modern history was provided by the interface between the local and regional (which we may term the ›micro‹-level) and the supra-regional, at times even global (what we may term the ›macro‹-level).«¹⁴ Subrahmanyam described the model of connected histories as ›orthogonal‹ to Lieberman's model of parallels.¹⁵ Subrahmanyam presents two key objections to Lieberman's model, arguing that it privileges an overly materialist conception of history, and that he adopts European categories which results in a Weberian teleological narrative of the rise of the state.

Both of these critiques are engaged with in this special issue. While Goodall and Wareham (Chapter 9) provide some support for Lieberman's materialistic thesis, the other contributors to this volume focus on the importance of religion and suggest a more complex relationship between the material and spiritual worlds. Ulrich Pagel compares the implications and practicalities of the renunciants of the ascetic branches of Hinduism and Buddhism in Ancient India and demonstrates how Buddhist ascetic monks tried to benefit from the fiscal exemptions extended to their Hindu Brahmin counterparts for their economic gain, for example, by moving raw cloth without having to paying customs duties. Buddhist monks are presented here as spiritual/economic double agents, consciously trying to manipulate the system of exemption to move mercantile goods while also being allowed to travel between sites of religious devotion. One wonders about the relationship between these value systems, and how Buddhist monks were perceived by their Hindu counterparts. As for the Weberian narrative, such teleologies are explicitly challenged by several of the contributions, which ask us to look at polities more pluralistically. Antonello Palumbo (Chapter 8) does this by questioning the word ›exemption‹ itself which, he argues, should be used »with some caution, for as soon as we refer by it to the state's withdrawal from demands imposed on some of its subjects, we are already assuming an absolute power of that state to impose and exact those demands.« Instead, Palumbo highlights the different movements and sediments of power in China. In Chapter 12, Thomas Kohl problematizes normative conceptions of the state within Europe, especially the way in which it is interpreted as »a monopoly on violence and an all-encompassing exercise of justice«. As Kohl summarises, »the ever increasing number across the world of failed states or of states with weak statehood is a very clear indicator that political entities may take on other forms than a nation state or its medieval precursors«. In Chapter 11 Rutger Kramer asks us to think not just about states but also power in a different way, surveying the ways in which religion created spaces of negotiation and how religious figures such as saints could be powerful arbitrators. Kramer presents a world in which »power was pastoral as well as political«, and where the institutional sites of monasteries could bolster »the spiritual foundations of the realm«.

14 Subrahmanyam, *Connected Histories*, 745.

15 Subrahmanyam, *Connected Histories*, 740.

The volume thereby deepens our understanding of the complexity and diversity of structures and forms of power. As Anne J. Duggan explains in Chapter 6, religious exemption from the state was not a single event but an eco-system of processes around which institutional and legal traditions ossified. Through Duggan's contribution we see the interplay of exemption and the history of Canon Law which contributes to the Western legal tradition. In Chapter 12 Kohl also surveys the judicial dimension of the immunities of clerical communities and considers the practical implications of this, indicating how landscapes of power may be more differentiated than previously presumed. This call for a more nuanced understanding of the distribution of power is echoed by Kriston Rennie, suggesting that »exemption means closeness to the centre, not distance from it«. Rennie argues that »from the origins of a western monastic tradition, exemption created an administrative, spiritual, and judicial bond between a monastery and its diocesan bishop.« The impression left is that of a polycentric network shaped by a more dynamic and elastic notion of power.

The volume reflects (but is not confined to) the social anthropological turn in global history. It not only interrogates our historic understanding of resource distribution but also the plurality of value systems around the world. Mario Poceski evokes a sense of this plurality as he observes that »the central monastic ideals, especially the emphasis on detachment and transcendence, were largely inimical to the pursuit of power and the accumulation of wealth«. Rennie (Chapter 5) indicated how the meaning of values could change as they moved across value regimes (to use Arjun Appadurai's term): »the commodity on offer (i.e., protection) served to re-define the exemption's central character and inherent use-value.« In a set of essays where religious exemption from the state ceases to seem exceptional, Sinha reminds us that entering these ascetic institutions (in this case the hermitage rather than the monastery) was itself a counter-cultural renunciation of the normative values of the society in question.

Together, this special issue uses analyses of one specific issue to call on us to restructure our thinking of premodern Eurasia and the making of the modern world. It negotiates an innovative critique of secularization narratives by, as Judith Green (Chapter 13) summarises, questioning the durability of the ›two spheres‹ model, of the distinctness of the spiritual and secular worlds. This is a key theme throughout the volume. R. I. Moore sets the agenda with his essay ›Treasures in Heaven‹, which reminds us of the entanglement of the spiritual and secular worlds, of the religious dimensions of economic transactions. In Chapter 4, Poceski highlights the need to »problematize the basic religious-secular dichotomy, especially the supposed opposition that pitted the church (here represented by Buddhism) against the secular state (represented by the various Chinese empires that rose and fell during the medieval period).« Significantly, Uriel Simonsohn's (Chapter 10) contribution transcends the institutional level in search of individual actors. The result is a picture of individual agents driven by competing but not mutually exclusive value systems capable of manipulating the institutional structures with which they interact. The insight we gain from this is that just as the model of secular and religious power carved into discrete units does not hold at the institutional level, nor does it at the level of the individual. This highlights the fluidity between the strictly socio-religious and the strictly economic. The impression from this glance at Eurasia in the Middle Ages is that reality was far more malleable than the neat models would suggest. Yet such a conclusion also warrants caution, since the malleable material of the Middle Ages has been shaped into the foundations of many visions of the world.

In the opening to this volume, R. I. Moore suggests that the ›universal‹ phenomena of exemption across Eurasia, what we might think of as an example of horizontal continuity, indicates that the systematisation of the nature and use of religious exemption between the tenth and the thirteenth centuries CE were central to transformations across Eurasia in that period – the threshold that Moore has elsewhere referred to as the ›Great Diversification‹.¹⁶ Moore also contends that the demise of the system of religious exemption from the state which occurred in Britain with the dissolution of the monasteries was also transformative since it unlocked vast amounts of wealth which fuelled the rise of the gentry in Britain. To depict this story Moore uses an example from Jane Austen, a strategy also recently deployed by Thomas Piketty in his monumental study of the historical causes and trajectory of global inequality.¹⁷ Moore links his analysis to debates on the Great Divergence, observing that »in the story of ›Why Europe?‹ among the civilizations of the world that made the breakthrough to industrialism, the formation of the modern state has been seen almost unanimously as a necessary condition of economic modernisation, and the removal of religious exemption as a necessary condition of the formation of the modern state«, and contends that consequently the complex story of exemption demands more attention, not least since it is still with us today. This suggests that the vertical continuities in processes of exception and exemption may contribute to our excavation of the historical processes of our current condition of global inequality.

16 Moore, *Medieval Europe in World History*.

17 Piketty, *Capital in the Twenty First Century*.

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