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INTRODUCTION
THE FAME OF MAGNA CARTA

Eight hundred years after it was first agreed beneath the oak trees of Runnymede, by the fertile green banks of the River Thames, Magna Carta is more famous than ever. This is strange. In its surviving forms – and there are four known original charters dating from June 1215 – Magna Carta is something of a muddle. It is a collection of promises extracted in bad faith from a reluctant king, most of which concern matters of arcane thirteenth-century legal principle. A few of these promises concern themselves with high ideals, but those are few and far between, vague and idealistic statements slipped between longer and more perplexing sentences describing the ‘customary fee’ that a baron ought to pay a king on the occasion of coming into an inheritance, or the protocols for dealing with debt to the Crown, or the regulation of fish-traps along the Thames and the Medway.

For the most part, Magna Carta is dry, technical, difficult to decipher and constitutionally obsolete. Those parts that are still frequently quoted – clauses about the right to justice before one’s peers, the freedom from being unlawfully imprisoned and the freedom of the Church – did not mean in 1215 what we often wish they would mean today. They are part of an agreement drawn up not to defend, in perpetuity, the interests of national citizens, but rather to pin down a king who had been greatly vexing a very small number of wealthy and violent barons. Magna Carta ought to be dead, defunct and only of interest to serious scholars of the thirteenth century.

Yet it is very much alive, one of the most hallowed documents in the world, revered from the Arctic Circle to the Antipodes, written into the constitutions of numerous countries, and admired as a foundation stone in the Western traditions of liberty, democracy and the rule of law. How did that happen?

This book tells the story of Magna Carta – its background, its birth, its almost instantaneous failure, its slow resurrection and its mutation into the thing it is today: a historical palimpsest onto which almost any dream can be written. It looks at Magna Carta’s place in the history of medieval England

and modern Britain. It describes briefly how the charter was exported to America and the wider world. It considers how Magna Carta is discussed in the popular media today, as we enter the ninth century of its existence. It also presents the text in its Latin form and, more accessibly, in English translation, so that readers can, as it were, go straight to the horse's mouth.

Mostly, though, this book seeks to explain the historical context from which Magna Carta emerged in the early thirteenth century, during the reign of King John. His rule was a litany of troubles, which included the loss of Normandy in 1204, a great argument with Pope Innocent III (in the course of which England's churches closed and John himself was excommunicated), vicious personal squabbles with barons whom the king had once called his friends, an utterly miserable invasion of France in 1214, and finally civil war in 1215–17, as a result of which Magna Carta was produced and John succumbed to fatal illness. I have told this story in detail, and have tried to describe how the policies John pursued built towards Magna Carta in 1215, and why his barons felt so compelled to shackle him as they did.

This book does not attempt to drastically rehabilitate John, who was satirized so deliciously in Sellar and Yeatman's *1066 and All That* as 'an awful king'. It does, however, aim to show that Magna Carta had far deeper roots than John's reign. While John's own, often appalling, behaviour was much to blame for the chaos that rained down upon him during his final years, he was not by any means the sole architect of his woes. This is a point recognized both by modern historians and by men who lived in the age of Magna Carta. The chronicler Ralph of Coggeshall, writing in the middle of the thirteenth century, observed that Magna Carta was not created simply to restrain John but also to end 'the evil customs which the father and brother of the king had created to the detriment of the Church and kingdom, along with those abuses which the king had added'.¹ Gerald of Wales, who was always inclined to anti-Plantagenet hysteria in his writing, agreed, calling John a 'tyrannous whelp,' but admitted that he had 'issued from the most bloody tyrants'.² This was typical Geraldic exaggeration; nevertheless, it nods us in

the direction of an important historical truth: we cannot simply view Magna Carta as a bill of protest and remedy aimed merely at the scandalous and unlucky John, but as a howl of historical complaint that was directed, at least on some level, against two generations of perceived abuse.

To begin this story, therefore, we must reach back sixty years before 1215, to the time of John's father, Henry II.

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ENGLAND REORDERED

1154–1189

King John's father, Henry II, was a man who made an impression. It is true that physically he was not much to look at: a little more than middling height, solidly built, with bowed legs and grey eyes that were said to flash when he grew angry. The force of his character, however, made him unforgettable. Henry possessed near-boundless energy. 'Perpetually wakeful and at work,' wrote the courtier and chronicler Walter Map; but this scarcely did justice to his sheer will and determination.¹ By the time Henry Plantagenet was crowned King of England on 19 December 1154, aged twenty-one, he had already laid claim to the titles of Duke of Normandy, Duke of Aquitaine – by virtue of marriage in 1152 to Eleanor of Aquitaine – and Count of Anjou.* During his reign he would take effective command of Brittany and assert his right to the lordship of Ireland. His power therefore stretched from the borders of Scotland to the Pyrenees, and they encompassed virtually the entire western seaboard of greater France. Indeed, Henry's political tentacles stretched even further afield than that, for he had interests and alliances from Saxony to Sicily, and from Castile to the Holy Land. Few European monarchs since Charlemagne had exercised control over such vast territories, and few medieval kings would rule with such political agility, ruthlessness and skill.

Henry's physical stamina allowed him to spend almost his whole life moving about his lands, 'tolerant of the discomforts of dust and mud ... travelling in unbearably long stages', and enjoying, according to Walter Map, the fact that his physical exertions prevented him from getting fat.² He astonished his rival rulers with the ability to pop up where they least expected him, and he both charmed and scared those who worked for him, by dint of his tendency to slip in an instant from bluff good humour to foaming rage. During one infamous tantrum, Henry thrashed about on the floor of his

* It was by virtue of possession of the County of Anjou that the continental holdings of Henry II and his sons Richard I and John are sometimes referred to as the Angevin Empire.

OPPOSITE

A miniature from 'Claudius D. II', a legal treatise in the Cotton collection of medieval manuscripts now housed in the British Library. It shows Henry II remonstrating with Thomas Becket, while knights ominously finger their swords. Henry established a Plantagenet empire around the English Crown, and developed an intense and efficient system of government to rule it. But, as did John later on, he fell into dispute with the English Church, represented here by Becket. In 1215 Magna Carta would be as much an attempt to rein back Henry's legacy of royal power as it was an attempt to curtail John's more recent abuses.

chamber, gnawing at the straw from his mattress. But it was Henry's born talent for politics and government that most struck those who met him. Writing after the king's death, the Yorkshire chronicler William of Newburgh opined that the king 'seemed to possess notable wisdom, stability, and a passion for justice,' and that even from 'his earliest days' Henry 'conveyed the impression of a great ruler'.³

Henry inherited the English crown in a political deal to end a civil war that had raged for nineteen years. Contemporaries called the war the 'Shipwreck'. Historians now refer to it as the 'Anarchy'. Either way, it was a struggle waged between two grandchildren of William the Conqueror – Henry's mother, Matilda, and her cousin, King Stephen, both of whom claimed to be the legitimate heir of Henry I (r. 1100–35).*

Neither contender for the throne could summon enough military or political support to enforce their claim, and as a result England was torn for a generation between two hostile factions. Royal authority across the realm collapsed, and the horrors of civil war descended: arson, torture, bloodshed, murder, robbery, laying waste the land, starvation, economic turmoil and a widespread failure of justice. 'Every man began to rob his neighbour,' wrote the author of the Anglo-Saxon Chronicle. 'It was said openly that Christ and his saints were asleep.'⁴ The Treaty of Winchester (1153) brought an end to the conflict by naming Henry as Stephen's royal heir. When Stephen died the following year and Henry took power, his first duty was to restore firm royal rule to a land that had not known effective governance for a generation.

There were three basic, determining conditions to Henry II's rule in England. The first was his urgent need to impose order after the Anarchy. The second was his need to create a political system that would allow him to

* Matilda was Henry I's only legitimate daughter, and she used the title 'Empress' following her marriage to Henry V, King of Germany and Holy Roman Emperor (d.1125). Stephen's mother was Henry I's sister Adela of Blois. Stephen and Matilda were therefore first cousins.

Henricus natus matildis regna tenebat.
Sub q̄ faciat Thomas inuicione caedebat.



Henricus scotus genuit.

Henri
cū Regem

rule his kingdom efficiently while he travelled across the rest of his territories fighting his enemies, chief among them being Louis VII, King of France. The third was a constant need to raise money. Henry approached these problems with a natural instinct for strong, centralized government and a knack for financially squeezing his subjects – particularly those in England, the richest part of his empire. In doing so, he put his personal stamp on the style and substance of all royal government in a way that would come to define the sixty years before Magna Carta.

Henry loved control. Although in England, as in the rest of his lands, he was happy to delegate the business of government to trusted advisers, he made it very clear from the beginning that power stemmed ultimately – and only – from the king. At his coronation he imitated his Norman predecessors by issuing a charter that promised to protect ‘all the concessions and grants and liberties and free customs’ granted to the Church and the great men of the kingdom by Henry I, and likewise to abolish all the ‘evil customs’ that had sprung up in the realm. But this was the last such concession that he would make. Although Henry II made a great effort to rally to his side as many of the great men of England as he could, he was also prepared to break the power of the handful of English barons who dared to defy him, while leaving the rest in no doubt to whom they owed their positions of wealth and prestige. He razed castles that had been built during the civil war and expelled foreign mercenaries. He reissued the coinage and imposed heavy penalties on those who forged or clipped his coins.* He cancelled all grants of land and office that had been made under Stephen; those he saw fit to regrant were given back explicitly under his own authority. He refused to relinquish command of any territory or property where it might result in his

* Regulating and stabilizing the money supply was both a mark of kingly authority and a means of combatting financial fraud. Coin clipping was seen as an especially pernicious activity: by shaving off the edges of coins, clippers could harvest the silver and mint their own, fake, coins.

own power being diminished, and he took great pains to punish anyone who opposed him. And most importantly for the long-term history of England, Henry oversaw a legal and administrative revolution that allowed his authority to be felt in the realm even when he was absent – as he would be for around two-thirds of his thirty-five-year reign.

‘Wealth is obviously necessary not only in wartime but also in peacetime,’ wrote Richard FitzNigel, royal treasurer and Bishop of London, in a practical guidebook to royal finance known as ‘The Dialogue of the Exchequer’. FitzNigel (also known as FitzNeal) completed his book in the late 1180s, around the time that Henry II died, and his words reflect a lifetime in service to a king whose need for money was always pressing. Under Henry’s rule, the Exchequer became the most important institution of royal government, for it was there that royal revenues were accounted, on a large table, ten feet by five feet, which was covered with a cloth resembling a chessboard, and it was through the Exchequer that the king could levy heavy financial penalties on those subjects who displeased him. It received fines imposed by the king’s judges and it handled bribes paid by landholders who sought royal favour in disputes with their neighbours. Feudal dues – customary payments made by aristocrats for the king’s permission to marry or inherit – came across the chequered cloth-covered table, and so did taxes such as ‘scutage’, also known as ‘shield-money’, a payment made by barons to avoid sending their loyal knights to fight in royal armies (and which, in theory, might then be used to buy mercenaries).*

During the civil war, the Exchequer had lost its teeth: sheriffs – key royal officials in the shires of England – had stopped rendering their accounts before it, and the barons of England had avoided paying their feudal

* ‘Feudalism’ has been a much-debated term, but its essence in this period is a hierarchical ordering of society in which a system of obligations (notably military, but also financial) existed in return for the possession of land, property and other rights. At the top of the hierarchy was, of course, the Crown, from which leading men held land as ‘tenants-in-chief’.

dues. But this decline was dramatically reversed under Henry. FitzNigel's handbook shows us just what a wide array of business came before Henry's Exchequer. Its officials counted and sorted silver coins, audited sheriffs' accounts for revenues raised in the shires, received scutage and fines paid by communities for murders committed (where there was no culprit discovered), as well as taking in fines paid for abuses committed in royal forest land. They took receipt of falcons and hawks given as gifts to the king and they handled 'queen's gold' – a tax of 1 mark of gold for every 100 marks of silver owed to the king.*

The Exchequer was a huge and complex government department. Yet it is clear that Henry regarded it as not only a financial institution, but also as a political tool. The Marshal of the Exchequer had the power to arrest those who came before it insolvent. Powerful subjects could be ruined without taking up arms against them, simply by calling in large debts they owed to the Crown. Equally, the king could reward men who were in his favour by reducing, rescheduling or cancelling their debts. Very few barons paid everything they owed the Exchequer. Indeed, some of the king's close associates – such as Robert, Earl of Leicester and Reginald, Earl of Cornwall – paid nothing at all on their debts.⁵ Despite these selective exemptions, however, Henry's general insistence on tight financial governance bore fruit. Early in his reign, about £13,000 a year crossed the Exchequer table. By the 1180s the flow of money stood at £22,000 – testament not only to rising revenue, necessary to help the king defend his vast lands, but also to a king exerting a much tighter royal grip, even *in absentia*, on the great men of his realm.⁶

Having reformed royal finance, Henry set about changing the way that royal justice worked. Starting in 1163–6, sweeping reforms affected

* A mark – which was a unit of calculation rather than physical coinage – was held to be worth 13 shillings and 4 pence, and therefore two-thirds of £1.

the way that the king's subjects interacted with royal law.' The Assize of Clarendon – a legal Act of 1166 – commanded that all crimes in England were to be investigated by the Crown, regardless of any local jurisdictions held by the great lords of the realm. The investigating was done not by potentially corruptible sheriffs and local officials, but by a high-powered commission of royal judges who travelled on a circuit known as the General Eyre, and who investigated cases with juries of twelve local men rather than committing defendants to judgment by ordeal of fire or by 'compurgation', as had been the case in the past.[†] Most importantly the assize meant that all murder, robbery and theft now came under royal jurisdiction; ten years later the Assize of Northampton added arson, forgery and counterfeiting to this list.

It was not only the scope of criminal law that expanded under Henry. There was also a revolution in the way that civil law in England operated. Land disputes were the source of a huge volume of litigation during the Middle Ages, and Henry made the process by which the Crown could intervene in cases smoother, easier and more profitable. Since before the Norman Conquest it had been possible to apply for royal justice by seeking a 'writ' from the government department known as Chancery. A writ was a short chit, which could initiate legal action in royal courts or command a royal sheriff to carry out some form of action to remedy a wrong. These were generally *ad hoc*, non-standard official devices. Henry made a series of standardized writs available, most importantly the writs of 'novel disseizin', 'mort

* The chief point to remember regarding lawmaking at this time is that it was the era before Parliament and before statutes; laws were made by kings and their counsellors; other laws and customs existed at local levels, while the Church stiffly maintained its aloofness from secular laws, seeing its own ecclesiastical law as answerable to the pope – a cause of tensions that exploded in Henry II's conflict with Thomas Becket.

† Under the system of compurgation, a defendant who could find sufficient neighbours to swear to his innocence would walk free. The Assize of Clarendon abolished this.

Il Flammbo de Binsation de fin^a ad.
Cantù

Il Flammbo de Binsation de fin^a ad.
Cantù

Il Flammbo de Binsation de fin^a ad.
Cantù

Il Flammbo de Binsation de fin^a ad.
Cantù

Il Flammbo de Binsation de fin^a ad.
Cantù

d'ancestor' and the writ of right: respectively these protected landholders from having their land illegally seized by lords or third parties, asserted the right to inherit land, and instructed a sheriff to 'do right' by the holder of the writ. They were simple, formulaic and straightforward to obtain, whether or not the king was in the country. The reach of the Crown thus began to extend deep down into English society, as the royal law became more available, desirable and widely used than ever before. Moreover, writs cost money, and their increasing popularity brought the Crown a handsome profit from litigants' fees and fines. Best of all, none of this required Henry's personal presence. A money-making bureaucratic machine was born.

Not everyone, however, was happy, and just as we can trace to Henry II's reign the origins of the royal system against which Magna Carta was aimed, so we can trace the first rumblings of dissatisfaction and protest to which Magna Carta responded.

In 1163, Henry attempted to browbeat his erstwhile friend, servant and boon companion Thomas Becket, whom he had appointed Archbishop of Canterbury, into allowing the Crown to place on trial and punish 'criminous clerks' – churchmen who had committed crimes. This was an age that still possessed a separate system of church law, and these proposals would have been a huge invasion of secular law into ecclesiastical jurisdiction. Becket's refusal to allow it prompted the famous breach between the two men, which ended with the archbishop's heinous murder before the altar of Canterbury Cathedral in 1170. His quarrel with Henry stemmed from a fundamental, unbridgable divergence: the archbishop viewed the king as a tyrant, who was riding roughshod over the law, while Henry saw only that he was exercising his royal prerogatives. When Becket went into exile from England, between 1164 and 1170, he wrote a series of angry and insulting letters to, and about, the king, including one to Henry's mother Matilda, in which he complained that '[Henry] is afflicting the churches of his realm beyond endurance and demanding from them unheard-of and unaccustomed things'. Cruel blows and bitter insults were being traded between English kings and the English

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A collection of tally sticks, which were used in accounting in the medieval English Exchequer. Each stick was split between the Exchequer and the other party, and the notches in both parts were supposed to align, showing the status of loans and payments. The king's Exchequer could ruin barons in a single day by calling in all the debts that were owed to the Crown, and John's exploitation of this power would earn him the hatred of many of his subjects. (In 1834, the fire that burnt down the Houses of Parliament began as a controlled bonfire of old tally sticks.)

Church long before King John's reign. This tension would come to underpin much of what emerged in Magna Carta.

As much as anything else, Henry II set the tone for early Plantagenet kingship – or so it would appear from the comfortable distance of his youngest son's reign. He set out a platform of aggressive, disciplined, rigorous kingship that was highly adept at milking cash from England and channeling it to the continent. He pushed the financial and judicial power of the Crown deep into the shires. He oversaw a dramatic reduction of the military power of the major barons, for as well as razing baronial castles following the Anarchy, Henry seized huge numbers of them following the rebellion known as the 'Great War' in 1173–4. In 1154 the Crown held something like 35 per cent of England's 350 castles; by the 1180s that figure had risen substantially, and by John's reign nearly half of England's castles were in royal hands.⁷

Henry also occasionally lived up to his ancestors' reputations for diabolical cruelty. Old family legend had it that the Angevins were descended from the devil, and there were Englishmen who saw something demonic in the character of the king. Writers hostile to Henry, such as Ralph Niger, accused him not only of demeaning the nobility of his greatest subjects, but also of being an irreligious tyrant and a slaving womanizer. Even William of Newburgh, who generally wrote kindly of Henry, recorded that in his day 'he was hateful to nearly everyone'.⁸ This may have been an exaggeration, but Henry was certainly capable of a ferocity that tested the limits even of a violent age. His worst malice was shown in his treatment of Becket's followers, hundreds of whom were stripped of their possessions, sent into exile or imprisoned in chains during Henry's quarrel with the archbishop. Clerics who attempted to proclaim the religious penalties imposed by Becket on the king could have their eyes put out, or feet or genitals hacked off in punishment. Even messengers were not safe: a young boy who passed the king vexing letters from the pope was tortured by having his eyes gouged and being forced to drink boiling water.⁹ And of course, the archbishop himself was cut down,

if not on Henry's orders then at least at his unwitting instigation. These deeds would not be forgotten by the generation that followed; indeed, the murderous cruelty of the old king seemed to be the prelude to the even worse behaviour of his sons.

Henry II died at the Plantagenet fortress of Chinon, in the Loire, during the hot summer of 1189. His later years had been made miserable by struggles with a new French king, Philip II 'Augustus', and wars with his impatient and rebellious children over their inheritances. His eldest adult son with Eleanor, Henry 'the Young King', predeceased him (as did their third son, Geoffrey), and so it was Richard 'the Lionheart' who was crowned King of England at Westminster Abbey on Sunday 3 September 1189. Richard would become one of the most celebrated kings in British history; he remains the only monarch to be commemorated with a statue outside the Houses of Parliament. This is ironic, for of all the kings who reigned after the Norman Conquest, Richard probably spent the least time – and took the least personal interest – in his English kingdom. His reign would see his father's reforms and policies pushed to greater extremes. It would also see the arrival on the political stage of Richard's controversial and deeply untrustworthy youngest brother, John 'Lackland', the man who would come to suffer the consequences of all his family's misdeeds.