

The Writs of Henry II

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THIS PAPER ORIGINATED in something between an invitation and a challenge 'to tell us about all those charters you've collected'. By some mysterious process it subsequently acquired a formidable title which you will all recognize — 'The Age of Glanvill', and it was in something like panic that I had it reduced to the present topic. But even that is too large, and I shall restrict myself to a small number of matters — first, the collection of *acta* which is now housed in the Faculty of History at Cambridge, the state of the archive, its management, and the prospects of completion. I shall then discuss some of the problems which the work has brought to mind, and I shall focus attention in the end on the writs of Henry II, particularly those which belong to the first years of his reign.

But we are here to celebrate the *History of English Law*, and it is well to begin with Maitland's chapter, 'The Age of Glanvill'. The wonder of it is that he could construct so intricate a fabric with so little material. Admittedly, this included all the larger building blocks — the Assizes of Henry II and Richard I, the texts of *Glanvill*, the *Dialogus de Scaccario*, and Magna Carta, with which he ends the chapter. But for filling the spaces in between these major items he had to make do with selections from Bigelow's *Placita Anglo-Normannica*¹ and Palgrave², and with documents and related narratives recorded in the chronicles of Abingdon, Battle, St. Albans and elsewhere, evidence which in these cliometric days we are inclined to classify as anecdotal. His insight did the rest, first and foremost perhaps his appreciation that justice was a commodity. 'Thus', he writes,

before the end of Henry's reign we must already begin to think of royal justice — and this is becoming by far the most important kind of justice — as consisting of many various commodities each of which is kept in a different

¹ M. M. Bigelow, *Placita Anglo-Normannica, Law Cases from William I to Richard I* (Boston, 1881).

² Francis Palgrave, *The Rise and Progress of the English Commonwealth* (London, 1832).

receptacle. Between these the would-be litigant must make his choice; he must choose an appropriate writ and with it an appropriate form of action. These wares are exposed for sale; perhaps some of them may already be had at fixed prices, for others a bargain must be struck. As yet the king is no mere vendor, he is a manufacturer and can make goods to order.³

And again in his concluding remarks on the Anstey case:

[The king] no doubt sold his aid; he would take gifts with both hands; he expected to be paid for his trouble. He sold justice, but it was a better article than was to be had elsewhere.⁴

These are remarkable passages, at once imaginative and down to earth. They stand in sharp contrast to the somewhat flat account given by Stubbs.⁵ They are a measure of the enormous advance which Maitland achieved. Stubbs's approach was institutional. Maitland, in contrast, got inside the litigant.

Now note what Maitland did not do. He did not pursue the specification of writs or the pedigree of particular writs. He could have done so. He had to hand the precedent of Bigelow, for the Introduction to *Placita Anglo-Normannica* (which had been in print for fourteen years when the *History of English Law* appeared), time and again takes such a line. Take Bigelow's comment on writs of Henry I — 'The next writ gives promise, though vaguely, of the writ of novel disseisin of Glanvill'⁶ ... 'Another writ to the same party points more directly to the writ of Glanvill'⁷ ... 'The next writ in order in the reign of Henry I, to which, however, no date is assigned, indicates a fluctuation, if the writ be later in time, receding to the unsettled state of the earlier writs referred to'⁸ — a deviant writ, that one, a throwback to the primordial Anglo-Norman form. Then — 'The promise of Glanvill, as above indicated, disappears again in the times of Stephen' ... and finally, almost safely harboured after its long voyage — 'The form of the later writ reappears more distinctly than ever at the beginning of the reign of Henry II'.⁹

Now Bigelow was not alone in following this line. Round's researches into the earliest fines led him in the same direction. He talked of the emergence of the 'true' final concord by 1175 from earlier inchoate forms and he was disposed to correlate the diplomatic to the dating.

³ Pollock and Maitland, i 151.

⁴ Ibid., 159.

⁵ Stubbs's comments also suffer from being fragmented. See *Constitutional History of England* (3 vols, Oxford, 1897), i 506–9, 522–3, 614–8, 638–67.

⁶ Bigelow, p. xxiv.

⁷ Ibid.

⁸ Ibid., pp. xxiv–v.

⁹ Ibid., p. xxv.

Dealing with an early fine of 1163, different in form from his first 'true' fine of 1175, he commented:

It may fairly be presumed that if, at the date of this fine, the fully developed form existed it would have been duly employed at Westminster on this occasion. We may therefore safely assert, at least, that it came into use between the dates of these two transactions.¹⁰

And since those early days the efforts of Bigelow and Round have developed into a major industry. In 1959 Professor van Caenegem rightly warned against a teleological approach in which historians 'tended to work against the stream of history and to focus on the classic period [*Glanvill* and *Bracton*] and to throw glances back for "early examples" of certain writs and certain institutions'.¹¹ Nevertheless, his *Royal Writs* is a monument, not to the error as he saw it, but to the basic method, ordered as his book is, writ by writ and action by action.

The effect has been to create a vast phylogeny of writs necessarily subject to all the limitations which such an approach involves. Difficulties were apparent within a few years of the appearance of *Royal Writs*. In 1963 Doris Stenton contended that the writs which van Caenegem there saw as precedents for novel disseisin were in fact examples of the *justicies* and viscontiel writs.¹² So there have been difficulties of inter-specific definition. There are other problems. There are large assumptions in the supposition that there was some kind of logical development in the form and definition of writs over half a century or more, assumptions about the transmission of administrative practices now very difficult to determine, a transmission which in some way has to traverse the reign of Stephen.¹³ Then again it is obvious that the approach looks at the evidence vertically, over time, each stage of development resting on its predecessor. Lifting the writs from their immediate context, it steers us away from a lateral or panoramic view of all the evidence at a particular point in time, and this has some

¹⁰ J. H. Round, *Feudal England* (London, 1895), p. 515. Two years after the appearance of the *History of English Law* Round pursued the matter further in 'The earliest fines', *EHR*, 12 (1897), 293-302. See also F. W. Maitland, *Select Pleas of the Crown* (Selden Society, 1, 1888), pp. xxvii-xxviii. Both Maitland and Round commented on the need to collect and publish the early fines (Pollock and Maitland, ii 97n.; *EHR*, 12, 296). It has yet to be done. All fines earlier than 1216 discovered in pursuing the *acta* have been copied and await filing.

¹¹ R. C. van Caenegem, *Royal Writs in England from the Conquest to Glanvill*, (Selden Society, 77, 1959), p. 14.

¹² Doris M. Stenton, *English Justice between the Norman Conquest and the Great Charter* (Philadelphia, 1964), pp. 80-2.

¹³ Some of the continuities are apparent from T. A. M. Bishop, *Scriptores Regis* (Oxford, 1961).

importance when considering the terms of the Treaty of Winchester of 1153 and the circumstances of the accession of Henry II. Finally, it is concerned almost entirely with the supply of justice and says nothing at all about the demand for justice.

Now Maitland has none of this. He came closest to it, very briefly, in his discussion of final concords,¹⁴ but in examining forms of action, where above all one might expect him to resort to such an approach, he was remarkably cautious, expressing his caution in characteristically nuanced phrases:

We do indeed come upon writs which seem as it were to foretell the fixed formulas of a later age; we are sometimes inclined to say 'This is a writ of right, that a writ of debt, that a writ of trespass'; but we have little reason to suppose that the work of issuing writs had as yet become a matter of routine entrusted to subordinate officers whose duty was to copy from models. Perhaps no writ went out without the approval of the king himself or the express direction of his justiciar or chancellor, and probably every writ was a purchaseable favour.¹⁵

We can look for continuities with greater confidence now after the work of van Caenegem and Bishop, but Maitland's doubts help to explain why there is no resort to phylogenetic methods in the chapter on the 'Age of Glanvill'. There was also a more powerful reason. Maitland throughout was conscious that justice was a matter of both supply and demand [though he never put it so crudely]. The interplay of the two runs through the passages which have already been quoted and is revealed most clearly of all in his comment on the Anstey case:

Many comments might be made upon this story. It will not escape us that in these early years of Henry's reign royal justice is still very royal indeed. Though the king has left his justiciar in England, there is no one here who can issue what we might have supposed to be ordinary writs. A great change in this most important particular must soon have taken place. The judicial rolls of Richard I's reign were largely occupied by accounts of law-suits about very small pieces of ground between men of humble station, men who could not have laboured as Anstey laboured or spent money as he spent it.¹⁶

That may leave us with doubts and queries. Was there really no-one

¹⁴ 'After some tentative experiments a fixed form of putting compromises on parchment seems to have been evolved late in Henry II's reign...' (Pollock and Maitland, ii 96-7). Maitland was influenced here by Round.

¹⁵ F. W. Maitland, *Equity, also The Forms of Action at Common Law* (Cambridge, 1909), p. 315.

¹⁶ Pollock and Maitland, i 159. For a full account of the Anstey case see Patricia M. Barnes, 'The Anstey Case' in *A Medieval Miscellany for Doris Mary Stenton* (PRS, ns 36, 1962), pp. 1-24.

in England in Anstey's time to issue ordinary writs in the king's absence? Or was it that Richard of Anstey sought something special? Is the great change which Maitland imagined partly to be explained by the fact that the plea rolls are the first source to give us evidence of the legal actions of the humble? And in any case were litigants all that humble? These are legitimate doubts, not all of which can be resolved. But they are minor qualifications to the main point. Between 1154 and 1200 there was a vast increase in the demand for justice, and if we are to talk about the supply, we first have to understand the demand.

Now let me turn to the *acta*. The project was launched with two entirely new resources. The first was the photocopier, or, as it was the first known, the xerox machine. The arrival of this in universities and libraries in the late 1950s transformed the enormous labour of transcription which had dogged earlier scholars, Salter, Galbraith and Doris Stenton, all of whom attempted a collection of the acts and then sensibly turned away from it. Of these Salter made the most serious effort. His photographs descended to Galbraith, then to Pierre Chaplais, and they have been used in the present project. The difference between Salter's day and ours lies in this: of all the documents which are now on file not more than a dozen or so have been transcribed by hand; manual transcription is used only when camera or copier prove inadequate. In the last resort there is nothing quite like the human eye, but eye and hand are unacceptably slow for a task of this dimension.

The second resource was quite accidental. It is quite impossible for a University teacher to undertake the task alone; it requires an office and an assistant. Few now will remember 'the March windfall', the occasion when the University Grants Committee found that it was approaching the end of the Quinquennium of 1967-72 underspent, with vast sums still in hand. Panic ensued — pleasurable panic, it must be said; it is the only occasion when I can recall being asked whether I could possibly *increase* my bid for new appointments. Out of this flash flood of funds the University of Reading was able to provide money — £1000 a year, no less! — for a part-time assistantship for which I had originally submitted a somewhat hopeless bid. So the work started unexpectedly. Since then it has gone steadily forward, supported regularly by the British Academy and from time to time by the Leverhulme Trust and other sources. It was housed in the University of Reading up to 1978, and since then in the Faculty of History at Cambridge. It is not very impressive visually — a very small room, three filing cabinets, eight card index boxes, and a research assistant sur-

rounded by works of reference and copies of documents in process. It began before the personal computer came on the scene. Of that more in a moment.

The operation has a two-fold purpose: first to provide a collection of source material, an archive, ultimately open to all scholars, of the acts of Henry II, Richard I, Eleanor of Aquitaine, John count of Mortain, and other members of the family, to fill the gap, in short, between the existing *Regesta Regum Anglo-Normannorum* and the first surviving chancery enrolments of 1199–1201; and secondly, to prepare the acts for publication, starting, for obvious reasons, with the acts of Henry II. To this end a database was planned a year or so ago. It is restricted to Henry II and will remain so confined until the work on Henry is completed. So far it has advanced to a skeletal structure for all the writs; that is to say it does not yet include texts. Hence I can talk with greater assurance about writs than charters; hence also my unreadiness to engage in serious questions of diplomatic.

So the work began in October 1972. Twenty years on (for there have been occasional interludes) we have nearly 4000 documents on file, most of them in multiple copies — original, *inseximus*, cartulary, transcript, and print. I say ‘we’. In the beginning I had the staunch support of Barbara Dodwell, and, in all, five research assistants have played their part. It is a co-operative work, and it can be done in no other way. So ‘we’ means a team, which has lost old, and taken on new, members from time to time.

Despite the compression into three filing cabinets, there is an awesome impression of bulk; *in toto*, taking into account all the copies, the archive probably comprises somewhere between 20 and 30,000 documents; we have never counted accurately because we could see no point in doing so. On the other hand the number of distinct *acta* is important. Several estimates have hitherto been made of the total surviving royal acts of the monarchs of the twelfth century. The most frequently quoted is that of Bishop who guessed at ‘about 5000’ acts for the period between 1100 and 1189.¹⁷ This is an underestimate. In rough arithmetic, based on the volumes of the *Regesta*, Henry I accounts for just under 1500, Stephen and Matilda for just under 1000, leaving 2500 for Henry II. In fact our holdings for Henry II are already approaching 2500, with more to come. My guess is that the total for him will end at about 3000. This is a healthy increase on Bishop. Even so, his guess was a good one in his circumstances. Barbara Dodwell and I began by estimating that Henry II and Richard I together would

¹⁷ *Scriptores Regis*, p. 32. Bishop’s figure includes both English and continental *acta*.

yield 10,000 plus: we were wrong, and I am very glad that we were wrong and Bishop more nearly right.¹⁸

The collection includes some rich finds: some twenty original documents of Henry II not known to Bishop,¹⁹ fifty acts of Henry II from continental repositories which were unknown to Delisle and Berger, and perhaps 200 acts of Richard, both as king and count of Poitou, and of Eleanor of Aquitaine not known to modern scholarship. Most remarkable of all has been the discovery of a mammoth edition of some 500 folios of the acts of Richard, both as count and king, complete with itineraries and indices, the forgotten life-work of Achille Déville. This survives only in manuscript in the Bibliothèque Nationale.²⁰ It has been by-passed by all modern scholars, both editors and biographers. Landon has one reference to it but clearly did not inspect it. It contains some 150 documents not in his *Itinerary of Richard I*.²¹ Practically all this continental work has been done by Dr Nicholas Vincent. He has demonstrated what was already obvious: Landon's work on Richard I is hopelessly inadequate. More unnerving, he has shown that some of Delisle's texts of acts of Henry II are unsatisfactory. So also are parts of his apparatus. So ground hitherto regarded as firm is shifting alarmingly. We once thought that Delisle did not need reworking. Now we know that he does.²²

The task will never be complete. Short cuts will be necessary. Not all the endless antiquarian collections in the Bibliothèque Nationale can be examined. At the Public Record Office it is unlikely that we shall be able to work systematically through the class of Ancient Petitions or the exchequer Memoranda Rolls; and only the insanely fanatic would pursue Henry II and Richard I through the unprinted records of the courts of King's Bench and Common Pleas. So lines have to be drawn. But, even so, something can be said of the state of the archive. First, work on continental repositories is almost concluded and the holdings of material referring to the continental possessions of the Angevins is more than 95 per cent complete. Britain is not so

¹⁸ Van Caenegem reports rather different totals for Bishop (*Royal Writs*, p. 4 and n.), but he relied on Bishop's thesis, where Bishop went for a higher figure of c. 750 originals and 5000–6000 copies for the period 1100–1189. Curiously these are closer to the truth. It is not clear why Bishop reduced them in *Scriptores*.

¹⁹ J. C. Holt and Richard Mortimer, *Acta of Henry II and Richard I: hand-list of documents surviving in the original in repositories in the United Kingdom*, (List and Index Society, special series, 21, 1986), p. 1.

²⁰ Paris, BN, NAL, 1244.

²¹ L. Landon, *Itinerary of Richard I* (PRS, ns 17, 1937). The solitary reference is at p. 157, no. 225.

²² The above figures are based on Dr Nicholas Vincent's 'Angevin Acta in France: Final Report', October 1994.

far advanced. It is probable that 20 per cent of the English material still has to be collected. Now this necessarily affects the force of the conclusions and suggestions which I intend to advance. Those concerning the continental lands, even where negative, are for all practical purposes certain. Those concerning England depend on a balance of probabilities, though strong probabilities. More important perhaps, there are questions concerning dating, diplomatic and other matters which are not worth attempting to answer until the collection is complete. So on a number of interesting matters — I am thinking of the use of diplomatic evidence to determine dating — I shall not even try to be tentative. I shall simply say nothing at all.²³

On the most important conclusion of all I shall be very brief. It is simply this: there was no such thing as an Angevin Empire stretching in a homogenous *regimen* from the Cheviots to the Pyrenees. Some seven years ago I hazarded a guess that very few acts of Henry II would be found for the southern provinces of the Plantagenet lands.²⁴ This is now certain. There is an *acta* frontier following the southern border of the *comté* of Anjou. South of that Henry II acted in and for a number of obvious centres. Poitiers, Fontevrault, Bordeaux: these apart, very few acts, certainly less than 50 of the total collection of 2500, concern beneficiaries of any kind, monastery or church, town or tenants, throughout the vast reaches of Aquitaine. Here such acts as survive derive from Eleanor of Aquitaine and Richard count of Poitou. They chiefly comprise confirmations of earlier grants and alienations by the dukes of Aquitaine, along with letters of protection and privileges of toll. They reflect a somewhat different authority and a very different ducal function from Henry's in the north, not to mention his role as king of England. Eleanor sums the matter up. As queen of England, acting as regent in Henry's absence, she issued writs in no way different from those of her husband. As duchess of Aquitaine she issued charters and mandates little different from those of the dukes her predecessors. Administratively she was a split personality working within two quite distinct administrative matrices. The one does not seem to have affected the other to any great degree.

²³ Meanwhile, in addition to Bishop, see Pierre Chaplais, *English Royal Documents King John — Henry VI 1199–1461* (Oxford, 1971), which includes some invaluable comments on the twelfth century, and Norbert Friedrich, *Die Diplomatische und Rechtshistorische Entwicklung der Insularen Writs unter König Heinrich II von England (1154–1189) und ihr Verhältnis zu der Kontinentalen Urkunden*, (Inauguraldissertation, Ruhr-Universität, Bochum, 1977).

²⁴ J. C. Holt, 'The *acta* of Henry II and Richard I 1154–1199: the archive and its historical implications' in Peter Ruck, ed., *Fotografische Sammlungen mittelalterlicher Urkunden in Europa*, (Marburg, 1989), pp. 137–40.

I have dealt with the southern provinces in summary fashion because they are now in the hands of Dr Vincent from whom we can expect a major paper on the subject.

Yet I intend to deal with one matter here and now because it is part of a larger picture which includes all the Plantagenet lands. At the time of writing (April, 1995) we have collected 2452 acts of Henry II. Those familiar with the collection of Delisle and Berger of acts concerning France will recall that they total 768, in short 31 per cent of the total. But in fact they included many acts concerning Britain and the proportion of English acts is much higher than 69 per cent — it is probably nearer 80 per cent, if not more.²⁵ Now Alison Cawley made similar calculations for Richard I.²⁶ In his case, using figures based on Landon's collection, she showed that of 590 acts (including reseals), 433 (73 per cent) concern England, 117 (22 per cent) concern Normandy, 15 (2.5 per cent) concern Anjou, and 25 (4 per cent) Aquitaine. And even these figures underestimate English preponderance. They are dependent on the preservation of documents by beneficiaries and on the survival of beneficiaries' records. These were probably roughly constant factors throughout the Plantagenet realm. But they necessarily exclude documents, especially writs, which beneficiaries had no reason to preserve, and hence all the vast number of letters which were sealed close and circulated within the offices of government and increasingly from 1166 onwards in many civil actions in the English royal courts. Almost none of these survive. If we had a proportionate selection of them to hand the preponderance of England, and to a lesser extent Normandy, would be even greater, for the two Exchequers generated business and used written instruments out of all proportion to any other institutions elsewhere within the dominion. They also developed new forms of document which now survive only in the kingdom and the duchy; the final concord is an obvious example.

Now this broad count bypasses the functions of the seneschal and other officers of the count/duke in the southern provinces. Beginning with Powicke, English scholars have revelled in the evidence which points to a centralized system of control operated by seneschals exercising vice-regal jurisdiction.²⁷ And to be sure, in Anjou for example,

²⁵ Delisle and Berger included documents of all kinds. My calculations at this point are approximate because so far only the writs have been entered on the database.

²⁶ Alison Cawley, 'The King and his Vassals: a study of the chancery of Richard I', BA dissertation, University of Cambridge, 1982.

²⁷ *The Loss of Normandy* (Manchester, 1961), especially pp. 18–35. See also John Le Patourel, 'The Plantagenet Dominions', *History*, (1965), 289–308, reprinted in John Le Patourel, *Feudal Empires* (London, 1984); W. L. Warren, *Henry II* (London, 1973), especially pp. 561–2; and John Gillingham, *The Angevin Empire* (London, 1984), pp. 54–9.

we find the seneschal exercising judgment with the prévôt and other witnesses in a civil action in a court of Anjou, *curia Andegavensis*, which is also described as a *curia regis*.²⁸ I do not intend to get tangled in this well established approach. We badly need a comparative study of the activity of these officials which assembles all the documents in full. We have not attempted to embody such material in the *acta* (enough is enough!) except where it includes a specific mention of direct royal authorization. In any case my concern is not with provincial processes, whether centralized or local, but with the frequency to which recourse was made to them.

On this surviving writs shed a harsh light. However we cast the figures English documents and English interests are massively predominant. From this point on I am dealing not with the total collection but with the writs; I have no reason to believe that they are not representative of the whole. Of the total of 887 writs at present on file 719 (81 per cent) concern England, 131 (15 per cent) concern Normandy, and 32 (4 per cent) the rest of France (including Clairvaux). Of the 602 writs issued in England 570 (95 per cent) concern England, 20 (3.5 per cent) concern Normandy, and 10 (2 per cent) concern the rest of France. Of the 180 writs issued in Normandy, 69 (38 per cent) concern England, 100 (56 per cent) concern Normandy, and 9 (5 per cent) the rest of France. Of the 34 writs issued in Anjou and provinces west and south 19 (56 per cent) concern England, 3 (9 per cent) concern Normandy, and 12 (35 per cent) concern the rest of France.²⁹ Alison Cawley provides equally startling figures for Richard I, totalling all the *acta* from Landon. She showed that in every year of his reign, except 1190, wherever Richard was, Normandy, Anjou, Aquitaine, Germany or the Holy Land, English acts exceeded, or in one year matched, *all* the rest.³⁰ I leave the defenders of the 'Angevin Empire' to embody this evidence in their arguments. A repair job may be possible. It could be that in the case of Aquitaine the void is filled by the acts of Eleanor and Richard as count of Poitou. That must await on Dr Vincent. But such a saving operation would not apply to Anjou where there is a similar void; perhaps there the void is filled by acts of the seneschals. But even if all this rejigging fell nicely into place we should end not so much with a building restored as with a series of semidetached and detached

²⁸ Jacques Boussard, *Le Comté d'Anjou sous Henri Plantagenet et ses Fils*, Bibliothèque de L'École des Hautes Études, fasc. 261 (1938), pp. 178-9. This is one of several possible interpretations of a somewhat enigmatic record.

²⁹ The reader will note a reduced overall total at this point. It occurs chiefly because some documents cannot be given a secure place-date.

³⁰ In 1190 England was preponderant everywhere except in Anjou where the largest number of acts was directed to Normandy.

properties, their owners and managers each jealous of his enclave. For our present purposes it is apparent that in the case of both Henry and Richard, the figures are only marginally affected by the king's itinerary. Under Henry Norman acts predominated in Normandy; elsewhere the predominance of England comes through strong and clear. And it is worth noting that this seems to contravene the evidence from England itself, where it becomes apparent, as the information becomes more and more detailed, that local men and institutions came in to seek privileges and judgment from the king as he moved about the country, so that the record of these dealings, the Fine roll, reflects the itinerary.

Now every writ or charter has to be triggered by something. They do not spring in the total chronological disorder in which they survive from the royal mind or from impenetrable bureaucracy. In almost every case they are responses to requests — petitions from the beneficiary. This is the only possible explanation of the haphazard order in which they appear.³¹ It is also very probable, though less subject to systematic proof, that they were handed over to the petitioner — the beneficiary or his agent — and taken by him to whatever authority was addressed or seemed most appropriate.³² We have to imagine an almost infinite multiplicity of cases like Richard of Anstey, a traffic of monks, clerks, knights, stewards, all seeking this or that privilege or protection or support.

It is probable that the system was much less cumbersome than it seemed to Maitland in the light of the Anstey case. At its best communication was rapid and efficient. Consider the following example. On 17 April 1199 at Harcourt in Anjou John as lord of England issued a writ in favour of the canons of Wells — an original document, one of the most valued in the whole collection.³³ On 29 April at Westminster Geoffrey fitz Peter, King Richard's justiciar, issued a writ executing John's writ *de ultra mare*. That is an interval of 12 days, exactly the same as the maximum time allowed by today's Parcel Force for packages within the United Kingdom. The matter was entirely

³¹ I have dealt with this in greater detail in 'The end of the Anglo-Norman realm', *PBA*, 61 (1975), 3-45, and in 'Ricardus Rex Anglorum et Dux Normannorum', *Accademia Nazionale dei Lincei*, 253 (1981), 17-33, reprinted in J. C. Holt, *Magna Carta and Medieval Government* (London, 1985). See pp. 30-2, 70-3.

³² Bishop, pp. 2-3, referring to *Reg. Ant. Linc.*, i no. 57 — 'H. rex Anglorum Osberti vicecomiti salutem. Precipio tibi ut permittas ita habere huic Roberto de Grainvilla prebendam suam de Lincolnia ...' where 'huic' is the indicative word. This is a rare documentary example; there are many others in chronicle narratives. See, for example, *CMA* ii 226.

³³ Dean and Chapter of Wells, charter 14. The writ was issued before John had even been acclaimed as duke of Normandy. Nevertheless he adopted the style of lord of England, Normandy, Anjou and Aquitaine. He was moving fast: Richard died on 6 April; John was acclaimed as duke of Normandy on the 26th.

routine, confirming earlier grants and confirmations from Richard and John of the manor, hundred, and church of North Curry. The documents reveal what happened. John's writ was addressed to the knights and free tenants of the hundred of North Curry. But it was not sent or taken directly to them. Someone else took it instead to Geoffrey fitz Peter who then issued his writ. Then the same agent or another bore the two writs off to Wells where they remain lodged in the diocesan archives. The procedure was an informed one for it was designed to circumvent the fact that John was not yet king of England, and there can be little doubt as to who the agent was. Simon archdeacon of Wells was a clerk to the chamber of Richard Lionheart and he served in the same role in the early years of John. The most likely explanation of this expedited writ is that Simon himself obtained it in Anjou and may even have taken it himself to London along with other official business. At all events it almost certainly went from Harcourt to Westminster in what we would now call the official bag, and this at a time when John and his agents had very pressing business to do with the succession. There was a skilled and influential operator at work here. The private litigant and petitioner would be unlikely to match such speed. Nevertheless this evidence is concrete, the dates of both time and place are beyond challenge, and the case is well worth bearing in mind as a contrast to the extended itinerary of Richard of Anstey.

If now we accept the premise — no petition, no writ (and indeed no charter), the import of the evidence is quite clear. More English men and more English institutions were ready to seek out the king in his continental lands than were his continental vassals in England and even in their homelands. The figures preclude any easy explanation that kings were more powerful than dukes (although of course they were), or that there was less documentation and less surviving documentation in the southern provinces of the dominion. There is nothing to suggest that feudal and royal warranty was as yet in competition with the public notary and the practical application of Roman Law. The alternative argument of Professor van Caenegem, that the enclave of Common Law in England and Normandy survived because it antedated the spread of Roman Law may shed light on the general European scene.³⁴ But it cannot explain the confinement of the Common Law to England and Normandy within the Plantagenet lands. In 1154 general resort to the public notary in southern France lay perhaps a century or more into the future. It is simply that south of Normandy and even more south of Anjou, demand faded, demand for royal

³⁴ R. C. van Caenegem, *The Birth of the English Common Law* (Cambridge, 1973), pp. 85–92.

confirmation, royal warranty, royal jurisdiction. It is demand itself which varies as we traverse the provinces of the Plantagenet realm. The whole system as it is reflected in the surviving charters and writs was demand-led.

It is necessary now to deal with a possible reservation. It is this: it could be that the picture is distorted in some way by its entire dependence on the beneficiary. Every writ which we have on file was preserved by the immediate beneficiary or by a secondary beneficiary to whose archive it was transferred. It would be possible to argue that the preponderance of England reflects a special need to preserve documents as protective instruments in litigation — litigation necessarily determined by the structure and procedure of the courts, and this would bring us back in full circle to the supply-side and to the unique features of the Common Law. There is some truth in this: if demand created supply, supply shaped demand. But whether it affects the preservation of the documents is another matter. If a document is not going to be of much use in litigation it is unlikely that it will be obtained and then not preserved; it is more likely that it will not be sought in the first place. But there is a more telling argument than this simple one of common sense. The figures for both Henry II and Richard I depend, as we have seen, on preservation by beneficiaries. With King John it is a different matter, for the Chancery enrolments allow us to examine documents at the point of issue; preservation by beneficiaries is thereby made irrelevant.

Consider now the Charter roll for 1 John. That it was a Charter roll rather than a roll of letters patent does not matter for the present purpose; in fact it contains both charters and letters patent, though not many of the latter. It runs from May 1199 to May 1200. For nine months of the year, from July 1199 to February 1200, John was on the continent, mainly in Normandy and for a short period further south at Chinon, Poitiers and Niort. Hence his itinerary had a continental focus; it might well have been his father's. For the present purposes it is a peculiar year. Anjou was out of the count; under the seneschal, William des Roches, the Angevins had received Arthur of Brittany as Richard's successor. By contrast, the crisis in the succession generated more than normal business in Poitou and areas further south where John was hastily mending fences and securing loyalty and support. Ireland comes into the picture too — an element wholly absent at the accession of Henry II. But all these are very minor impediments in the way of a comparison. Of the total of 493 acts recorded on the roll, 347 (70 per cent) concern England, 65 (13 per cent) concern Normandy, and 53 (11 per cent) concern the rest of France. Wales and Ireland account

for 28 (6 per cent). These are remarkable figures given that, from the brief visit to England for his coronation onwards, John's major concern was for the security of his continental possessions and the defeat of Arthur. The figures are equally decisive when related to the itinerary. Of the total of 205 acts issued in England all but 4 concern the British Isles; the total for Ireland and Wales (10) exceeds the total for the continent (4). Of the 276 documents issued in Normandy 156 (57 per cent) concern England, 62 (22 per cent) concern Normandy, and 44 (16 per cent) concern the rest of France. In Normandy John still found time for 14 acts (5 per cent) for Wales and Ireland. Finally, during John's brief visits to Chinon, Niort and Poitiers, 12 documents were issued of which 7 concerned the southern provinces. All in all, these figures, figures of issue remember, provide overwhelming confirmation of the calculations for Henry II and Richard. The somewhat higher figure (16 per cent) for documents for the southern provinces issued in Normandy is to be explained by the fact that many of these acts were at John's initiative. They were a response to the crisis caused by Arthur. That apart (and it is not a large divergence), the distribution of the acts of John as preserved in this chancery enrolment, is no different from the distribution of the writs of Henry II, as preserved by beneficiaries. We have to conclude that the geographic distribution of Henry's writs is accurately reflected in those which survive.

In another matter, however, this is very far from the case. I turn now to the social distribution of the writs. It is common ground that the church preserved its archives better than the layman. It is nevertheless surprising how dramatically this is revealed in the general social balance of the *acta*. Of the 887 writs, 653 were issued for monastic institutions (including the military orders and hospitals), 131 for cathedral churches, 64 for individuals, most, but not all, laymen, 21 for towns, and 18 of a miscellaneous nature. In short 88 per cent for the church, and fewer than 7 per cent for the laity. If all acts, charters as well as writs, are taken into account, it makes little difference — still less than 10 per cent for the laity. It is an emphatic difference, and it is given even greater emphasis by the charter roll of 1 John. Of the 493 documents there preserved 121 were for monastic institutions, 32 for cathedral churches, 270 for individuals, 33 for towns and 36 miscellanea. In short, 33 per cent for the church, 59 per cent for the laity — compared with Henry II, twice as many charters and writs for individuals than for monasteries, 8 times as many than for cathedral churches. Now admittedly in 1199–1200 King John was buying political support variously and lavishly. Even so, it is impossible to compare the

record for Henry's reign with that for John's first year without concluding that in Henry's case a vast number of acts in favour of the laity have been lost, and a far higher proportion, perhaps 80 per cent of the total issued, than anyone has imagined hitherto. By contrast it is very likely that a really good ecclesiastical archive, Lincoln or Durham, for example, preserves most if not all the acts issued in its church's favour. The result is that the *acta* have a very strong ecclesiastical bias, accentuated by the fact that lay documents are often preserved because they became of interest to the church; ecclesiastical cartularies are one of the main sources for them.

I turn finally to the chronology of the writs. For the purposes of the database they have been divided into three chronological blocks. The divisions occur at 1162, where the termination of Thomas Becket's chancellorship provides a precise *terminus ante quem*, and at 1172/3 determined by the introduction of the *die gratia* formula with all its well known difficulties.³⁵ Other, more precise methods have been used for individual documents and much remains to be done, but within the database even a precisely dated document has to be categorized; we cannot work with a clutter of individual dates. Allowing for this rough and ready method the preliminary calculations are not without interest. Of our 887 writs 58 cannot be categorized; these consist of summaries or 'mentions' to which no date can be attached other than 1154-89. Of the remaining 829, 662 (80 per cent) belong to the period before 1172/3 and perhaps as many as 450 (54 per cent) to the period before 1162. Within that the proportion of early (pre-1162) writs issued for monasteries and cathedral churches is somewhat higher — 61 per cent. The database does not yet extend to charters, but I expect them to yield closely similar results for ecclesiastical beneficiaries. The total of writs for individuals is too small to yield significant results, but the total of all documents for individuals is interesting. Out of 256 the same proportion was issued after 1172/3 as before 1162, c. 95 documents (37 per cent) in each case. The burst of activity after 1172/3 was probably a result of the rebellion of 1173/4, but it is a very minor blip in the figures compared with the very large numbers of writs issued to ecclesiastical beneficiaries in the early years of the reign and especially prior to 1162. In the years immediately following the accession there was a wide and vigorous market in which the king was displaying his wares and selling them with enthusiasm. The Church bought greedily. Whether the laity were equally pressing we shall never know, but my

³⁵ R. L. Poole, 'The dates of Henry II's charters', in his *Studies in Chronology and History*, (Oxford, 1934), pp. 302-7, reprinted from *EHR*, 23 (1908).

guess is probably not. There were very few requirements of the church which as yet Henry was not prepared to meet. After a civil war laymen were a different matter. The Church had standard demands: each lay petition was *sui generis*.

The market was defined by English circumstances. The proportion of the total number of writs issued for Normandy which belong to this early period up to 1162 is lower — 33 per cent, and a considerable number of these concern properties in England. The figures for the rest of France are too small to be used. There is an easy enough explanation of this distribution. Henry had succeeded to Normandy in 1150, to Anjou in 1151 and to Aquitaine *iure uxoris* on his marriage to Eleanor in 1152. In all these provinces the succession was over and done with. Moreover, of all these areas, only Normandy had undergone anything like the crisis which England had suffered during the Anarchy, and in Normandy it had largely come to an end with the submission to Geoffrey of Anjou in 1145. The year 1154, therefore, was not a great dividing line on the continent, except in the settlement of a number of claims and counter-claims in Normandy. Elsewhere there are enough general charters of confirmation to suggest that the approval of a crowned king was worth having. But that is all.

In England, in contrast, title itself was in question. The Treaty of Winchester of 1153 put all lands and rights acquired during Stephen's reign in doubt. Nearly 120 monasteries had been founded during the reign. We have charters of confirmation and supporting writs for nearly all of them. Quite apart from that, church after church, great cathedral, ancient monastery or minster, queued up to obtain confirmation of real or alleged rights and privileges. Henry quickly found, or was provided with, a standard formula for such grants — tenure as in the time of king Henry I.³⁶ By 1162 the Church comprised enclosures great and small, all fenced in with charters and writs provided by the brave new king. All parties benefited — the Church immediately, but the king also because the more he confirmed the greater his presence grew, for every charter and writ brought attendant actions into the king's court.³⁷ all parties, that is, except for the church's tenants who had to defend their real or alleged hereditary right — at Abingdon, St. Albans, Battle, and of course ultimately at Canterbury against Becket, who as

³⁶ J. C. Holt, 'The Treaty of Winchester' in Edmund King, ed., *The Anarchy of Stephen's Reign* (Oxford, 1994), pp. 291–316, esp. 297, 312–15. See also the comments in R. R. Darlington, ed., *The Cartulary of Worcester Cathedral Priory* (PRS, ns 38, 1968), p. xxiii.

³⁷ For the specific instance of Kirkstall see Holt 'Treaty of Winchester', pp. 314–5.

Chancellor had managed the settlement in the first place.³⁸ There is some irony in that this holy alliance of king and Church collapsed in mutually inflicted injuries in 1164. But before that happened the interlocking effect of the Treaty of Winchester and the immediate demand for protection and confirmation which followed from it had enhanced the function of the written word by renewing and extending the documentary basis on which property and rights were held and defended. And written instruments bred yet more written instruments.

In this paper many problems have been left by the wayside. It is plain that after Henry himself, the architects of the settlement of 1154-62 were Becket and Richard de Lucy, first and foremost, then Robert de Beaumont, earl of Leicester, and Geoffrey de Mandeville, earl of Essex, and a number of *curiales*. Witness-lists will allow us in time to say more about this inner group in government. Then again there is little indication of payment by beneficiaries, and nothing about accounting procedures, except for the charge later levied against Becket that he had misappropriated funds which he had received as Chancellor. And if we have found yet more writs, the bulk of them warns us that many of them play little part in the emergence of the Common Law — writs of protection, for example, and of freedom from toll. These, like the purely legal writs, were being reduced to common form. And we may wonder whether many writs which seem to spring from or lead on to judicial proceedings — writs *ne vexes*, for example — were anything more than precautionary defences against a rainy day. We have nicely detailed stories of such litigation, at Abingdon, Battle and St. Albans, in particular, but we have no indication of its overall bulk. And again, in what ways, if any, did the flood of documentation after 1154 contribute to the establishment of the rule embodied in *nemo tenetur*? Over the years we have had much speculation on these and other matters. In time the *acta* may take us a little further towards firmer solutions. My task has been more mundane. Rather than speculate, I have tried to describe the political and social geography of one portion of the acts, the writs. It has not been

³⁸For Abingdon see *CMA*, ii 183-90, concerning Marcham and elsewhere. For St. Albans see *Gesta Abbatum Monasterii S. Albani*, ed. H. T. Riley (3 vols, London, 1867-9), i 159-66, 166-74, concerning the wood of Northawe and the priory of Walsingham. For Battle see *The Chronicle of Battle Abbey*, ed. Eleanor Searle, (Oxford, 1980), pp. 212-18, concerning Barnhorn, and for comment J. C. Holt, 'More battle forgeries', in M. W. Barber, P. McNulty, P. Noble, eds, *East Anglian and other studies present to Barbara Dodwell, Reading Medieval Studies*, 11 (1984), 75-86. For Canterbury see Mary Cheney, 'The litigation between John Marshal and Archbishop Thomas Becket in 1164' in J. A. Guy and H. G. Beale, eds, *Law and Social Change in British History* (London, 1984), pp. 9-26.

attempted before. That is my excuse for presenting it to you in a preliminary form. A more cogent reason is that it will come to be the foundation on which speculation must henceforth be based.

Abbreviations

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

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