

The Nature and the Identity of the Constitution
during the Minority of Henry III (1216-1227)

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Abstract

This thesis investigates the nature of the thirteenth-century constitution by focusing on the minority of Henry III. It is argued that Henry's succession to the throne was a demonstration of the complicated interaction between hereditary right, designation, and election. It is argued that the distribution of power within the government was, for the most part, ill-defined and varied throughout the minority's course. It is also argued that there was a fundamental uncertainty about when the minority would end and what role Henry himself would play during the minority. Taken together, it is argued, these demonstrate that Henry's minority was more of a political settlement than a constitutional settlement. This does not mean that England had no constitution during the thirteenth century but merely that it was more sensitive to the political dynamics of the time than perhaps modern constitutions are and that, compared to modern constitutions, it was much less well defined and lacking a clear unified philosophy.

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1 Introduction

1.1 Introduction

Henry III's minority, which lasted for over a decade, is constitutionally significant. It placed immense strains on the thirteenth-century political system, which somehow needed to balance *legitimate* with *effective* government. Henry's accession may have guaranteed the former to some extent, but as he could not control the government, at least initially, it is difficult to see how he could have legitimized all of its operations. Furthermore, there was little that Henry could have done personally to ensure effective government either by managing the members of his government or through his own actions. His accession might have created a degree of stability in the long-term but, in the short-term, it threatened to paralyse the government and undermine the centralised English state.

The strains induced by Henry's minority were compounded by the lack of clear guiding constitutional principles and the fact that he inherited the throne when the country was in the throes of civil war. Therefore, not only was there the problem about how to structure the government, but there was also not much time to think about it. Moreover, the government was in dire financial straits and the institutions of central government were crumbling away; by the end of the war, only the chancery remained functional.¹ One wonders whether this was the time for constitutional niceties. Considering the situation, Hillen and Wiswall said that Henry's minority was a "crisis management response, rather than the articulation of any long-term constitutional principles".²

This thesis will argue that Hillen and Wiswall were correct in this respect: King John's untimely death did result in a crisis in government and that it is difficult to reconcile the solutions to the crisis with all that had gone before. Whilst the institutions such as the exchequer and the general eyre were reinstated,³ other strange features appeared, such as an immensely powerful papal legate and the office of *rector* given to William Marshal. Furthermore, the structure of

¹ David A Carpenter, *The Minority of Henry III* (University of California Press, 1990), 1–2, 52.

² Christian Hillen and Frank Wiswall, "The Minority of Henry III in the Context of Europe," in *The Royal Minorities of Medieval and Early Modern England*, ed. Charles Beem (Palgrave Macmillan, 2008), 17.

³ For the reinstatement of the general eyre, see: Carpenter, *The Minority of Henry III*, 96–103.

government was constantly reinvented without any real process; it always remained somewhat vague and reliant on the political tenability of its officers, which is best illustrated by Peter des Roches and Hubert de Burgh. This was not unique to Henry's minority as all of the English minorities after Henry also saw 'ad hoc innovations'.⁴

Before proceeding, it is important to consider whether it is sensible to look at the thirteenth century through the lens of constitutional history, which has fallen out of favour with many medieval historians.⁵ This is because of the field's association with the 'Whig' historians, such as Stubbs and Macaulay,⁶ who, in their writings, largely failed "to meet the past on its own terms and value it for its own sake."⁷ For some historians, ascribing a constitution to the medieval period is a case in point: medieval England had no constitution and, therefore, any investigation into the constitutional history of the period is meaningless.⁸ This view, however, conflates 'constitution' with 'modern constitution', which is the same mistake made by the Whig historians. The difference is that whereas the Whig historians found a constitution and believed it was the modern one, those who rejected constitutional history could not see a constitution in the modern sense and concluded that there was no constitution at all. Every functioning political community has a constitution of some description,⁹ although the extent to which this is regarded as fundamental and supreme varies across time and place. Fully-fledged constitutionalism in the strong legalistic sense of a sophisticated notion of the rule of law was certainly not prevalent in medieval England. However, there was clearly a weak form of constitutionalism, which is

⁴ Charles Beem, "Woe to Thee, O Land? The Introduction," in *The Royal Minorities of Medieval and Early Modern England*, ed. Charles Beem (Palgrave Macmillan, 2008), 3.

⁵ For a discussion of the place of constitutional history in late medieval historiography, see: Christine Carpenter, "Political and Constitutional History: Before and After McFarlane," in *The McFarlane Legacy: Studies in Late Medieval Politics and Society*, ed. RH Britnell and AJ Pollard (Alan Sutton Publishing Ltd, 1995), 175–206. See also: Christine Carpenter, *Locality and Polity: A Study of Warwickshire Landed Society 1401-99* (Cambridge University Press, 1992), 1–10; John Watts, *Henry VI and the Politics of Kingship* (Cambridge University Press, 1996), chap. 1–2.

⁶ For discussions of Whig history, see Herbert Butterfield, *The Whig Interpretation of History* (WW Norton and Company, 1965); JW Burrow, *A Liberal Descent: Victorian Historians and the English Past* (Cambridge University Press, 1981); Melinda Zook, "Early Whig Ideology, Ancient Constitutionalism, and the Reverend Samuel Johnson," *Journal of British Studies* 32, no. 2 (April 1993): 139–165. See also 5.1 in this thesis.

⁷ Carpenter, "Political and Constitutional History: Before and After McFarlane," 178.

⁸ See, for example, JC Holt's claim that England had no constitution in the twelfth century: JC Holt, *Magna Carta*, 2nd ed. (Cambridge University Press, 1992), 23.

⁹ Carpenter, *Locality and Polity: A Study of Warwickshire Landed Society 1401-99*, 5; Watts, *Henry VI and the Politics of Kingship*, 4.

demonstrated – amongst other things – by the veneration of the ‘laws of St Edward’, the use of the coronation charters (not least by King John’s adversaries¹⁰), and the place that Magna Carta quickly assumed in English politics. This weak constitutionalism was more akin to *political* rather than *legal constitutionalism*, meaning that it was enforced through political rather than legal discourse and, naturally, left many uncertainties.¹¹ Thus, whilst an overarching conceptual framework was absent and whilst contemporaries’ beliefs did not amount to a coherent, consistent, complete, and commonly understood set of rules that were independent of practical considerations, the commitment to preserving roughly a certain order and structure is tantamount to a kind of constitutionalism; meaning an adherence to certain principles of governmental organisation and operation. Even though they lacked the vocabulary to explicitly do so, by holding certain actions appropriate (such as claims to the throne, see Chapter 1), they were tacitly holding them constitutional; meaning concordant with the implicit principles of governmental organisation and operation.

Consequently, whilst Henry’s minority is probably better understood as a political rather than constitutional settlement, it nevertheless took place in a constitutional theatre where semi-permanent customs mixed with politics. The medieval English constitution, therefore, was constantly adapting and changing, and, in this respect, it is not incomparable to today’s changing constitution.¹²

1.2 Historical Background and Outline

1.2.1 First Barons’ War

Henry was the eldest son of King John, who spent his final year or so attempting to quell rebellion at home. A number of John’s barons had come out – for various reasons¹³ – in open rebellion in early 1215 and by the summer had

¹⁰ Janelle Greenberg, *The Radical Face of the Ancient Constitution: St Edward’s “Laws” in Early Modern Political Thought* (Cambridge University Press, 2001), 65.

¹¹ For discussions on political constitutionalism, see: JAG Griffith, “The Political Constitution,” *The Modern Law Review* 42, no. 1 (January 1979): 1–21; Graham Gee and Grégoire CN Webber, “What Is a Political Constitution?,” *Oxford Journal of Legal Studies* 30, no. 2 (April 14, 2010): 273–299, doi:10.1093/ojls/gqq013.

¹² See, for example, the works of Anthony King and Vernon Bogdanor, who argue that the ‘constitution is changing as we speak: Anthony King, *The British Constitution* (Oxford University Press, 2007); Vernon Bogdanor, *The New British Constitution* (Hart Publishing, 2009).

¹³ See: Carpenter, *The Minority of Henry III*, 6.

attained a position of sufficient strength to force John to the negotiating table. Out of these negotiations came the short-lived first issue of Magna Carta. Following its failure, the rebels invited the heir-apparent of France, Prince Louis, to claim the English throne. In May 1216, Louis landed unopposed at Thanet.¹⁴

For a short while, Louis was successful but then struggled to gain ground. His problems were compounded by his fruitless siege of Dover, rising tensions between the English and French components of his forces, the deaths of leading rebels such as Eustace de Vesci and Geoffrey de Mandeville, and the return of the earls of Salisbury and York, as well as the earl of Pembroke's son, to John's cause.¹⁵ Furthermore, whilst Louis had superior numbers, John's adherents were weightier "in power, influence, and sagacity".¹⁶ Nevertheless, it was undoubtedly true that Louis had a strong foothold and substantial native support.

Henry was only nine years old when, in October 1216, John unexpectedly and prematurely succumbed to a short, painful illness. Although Henry was clearly incapable of leading the country's administration or military, he was vested with the crown. In Carpenter's opinion, "[n]o king of England came to the throne in a more desperate situation than Henry III".¹⁷

1.2.2 Minority Government

The fact that a child acceded to the throne of a medieval kingdom would not surprise anyone today. Indeed, European history is brimming with examples of minor kings, such as the Holy Roman Emperor Otto III, Baldwin III of Jerusalem, Henry II of Sicily, Henry I of Castile, Richard II of England, Alexander III of Scotland, and, moving into the early modern period, Louis XIV of France. The idea that it was natural for a prince to succeed his father has no doubt been compounded by romanticised, politicised, and partisan versions of the past in both historical and fictional writing.

¹⁴ Holt, *Magna Carta*, chap. 6–7, 10.

¹⁵ Wilfred Lewis Warren, *King John* (Peregrine Books, 1966), 274; For more on the decline of Louis' support in England, see: Carpenter, *The Minority of Henry III*, 27–29.

¹⁶ Warren, *King John*, 250.

¹⁷ David A Carpenter, *The Struggle for Mastery – The Penguin History of Britain 1066 – 1271* (Penguin, 2004), 300.

However, in the context of thirteenth-century England, it was an incredibly radical move. In the first place, there had not been a child king in England for over two centuries, during which time much had changed: England had been conquered by the Danes and briefly formed part of a Scandinavian empire; then, after a short restoration of the West Saxon dynasty, England fell to the Normans and thus became part of a cross-Channel realm, which was to develop into the 'Angevin Empire' on the accession of Henry II in 1154. Even if the loyal magnates in 1216 were aware of the Anglo-Saxon precedents, which is doubtful, so much had altered in the intervening period that it is unlikely that they would have felt compelled to follow any such precedent.¹⁸ This will be discussed further in the first chapter, which relates to the law of succession.

There was also the small matter of who would run the country before Henry would be able to – not to mention bring the civil war to a successful conclusion and restore peace.¹⁹ If the magnates had been aware of the Anglo-Saxon precedents, there certainly would not have been detailed blueprints from the time regarding how the government was to be constructed; there was a lack of clear guiding constitutional principles.²⁰ In the event, they chose to create a position in the government, seemingly from nothing, for William Marshal, which disappeared on his death in 1219 with Henry still not of age. From the point of the Marshal's death, the government, by degrees, appears to have become increasingly concentrated in the hands of one man: Hubert de Burgh. The fact that this situation developed 'by degrees' is important, because it indicates that the government of the kingdom was constructed in response to political, rather than constitutional, dictates. The government during the period shall be discussed in the second chapter.

Henry's minority not only affected how the government of the kingdom was seen but also how the monarch was seen within that system. It could have been

¹⁸ Kate Norgate, *The Minority of Henry the Third* (Macmillan & Co. Ltd., 1912), 61; Hillen and Wiswall, "The Minority of Henry III in the Context of Europe," 17.

¹⁹ The maintenance of peace, along with the protection of the church, the preservation of good laws, and "equitable administration to all men", would almost certainly have been part of Henry's coronation oath, see: HG Richardson, "The English Coronation Oath," *Speculum* 24, no. 1 (January 1949): 44–45; Percy Ernst Schramm, *A History of the English Coronation* (Clarendon Press, 1937), 196.

²⁰ The young Anglo-Saxon kings of England are all mentioned in the Anglo-Saxon Chronicle, but there is little clarity as to their exact ages or to the impact of their youth on the workings of government: JA Giles, ed., *The Anglo-Saxon Chronicle*, 2nd ed. (G. Bell and Sons, Ltd., 1914), 78 (Eadwig), 78–84 (Eadgar), 84–85 (Edward the Martyr), 85ff (Æthelred II).

arguable before Henry ascended the throne that, because of the centrality of the monarch to the running of the kingdom, no child could be king. Henry's own minority, however, laid down a firm precedent for the later minorities, the last of which was Edward VI in the mid-sixteenth century. The impact of the minority on conceptions of the monarchy will be discussed in the final chapter.

There are three thematic chapters, each of which is an answer to a central question: the first chapter, on succession, asks 'how does a boy become king?'; the second chapter, on government and governance, asks 'how was the kingdom actually run?'; and the third chapter, focusing on Henry himself, asks 'what role did Henry play in all of this?'. Each chapter is arranged in a chronological fashion and, by structuring it in this way, it is possible to get an appreciation of what ideas were important at what times, and how those ideas changed as time passed.

There are two overarching questions that reach across this thesis as a whole:

1. How can we characterise governance during the period of Henry III's minority?; and
2. To what extent do these arrangements indicate the existence of a constitutional framework?

The first is a largely empirical question, which will be tackled through analysis of the primary and secondary sources relating to the period. The second question is analytical and shall be tackled with the aid of modern scholarship. The literature that I will use will be described in greater detail in the literature review below.

1.3 Literature Review

Despite having received reasonable attention from 'general' historians, Henry III's minority has received only very sparse and cursory attention from legal/constitutional historians. Most of the work on Henry III's minority has aimed to discover the facts of the period, rather than to undertake constitutional analysis and interpretation thereof. That is the gap that this thesis intends to address.

1.3.1 Modern Historical Writers on Henry III's Minority

The first significant works investigating Henry III's minority in its own right were GJ Turner's two papers entitled *The Minority of Henry III*, presented to the Royal Historical Society in 1904 and 1907 respectively.²¹ Turner was editor of a number of volumes for the Selden Society and had a legal background, being a barrister of Lincoln's Inn. In his first paper, he did include a section entitled "The Constitution and the Minority".²² However, it is a little under sixteen pages long (in which adequate treatment certainly cannot be achieved), focuses mainly on the early minority, and gets caught up in the particulars rather than considering the wider ramifications.

The most extensive historical attention given to Henry III's minority is to be found in the work of Kate Norgate (*The Minority of Henry the Third*, 1912) and David Carpenter (*The Minority of Henry III*, 1990), the latter of whom is the principal modern authority on the period. Farmer, in his review of Carpenter's book, said that it was, "[e]ssentially ... a chronological narrative confined to political and fiscal matters" and this equally applies to Norgate's book.²³ Being political narratives, both books inevitably consider constitutional questions. Norgate, for example, begins her second chapter with a discussion of the creation of William Marshal's position in the government, but like Turner before her does not go on to discuss how that affects our interpretations of the constitution.²⁴

Norgate wrote extensively on the period and her works include *England under the Angevin Kings* (1887), *John Lackland* (1902), and *Richard the Lionheart* (1924). Despite the fact that her works have largely been superseded by more modern scholarship (e.g. Powicke, Warren, and Carpenter), she remains an important authority.²⁵ It is perhaps interesting to note, however, a little about where she was coming from when she was writing her works. This can be gleaned from the fact that she had edited, along with his late wife, John Richard

²¹ GJ Turner, "The Minority of Henry III. Part I," *Transactions of the Royal Historical Society* 18 (1904): 245–295; GJ Turner, "The Minority of Henry III. Part II," *Transactions of the Royal Historical Society* 1 (1907): 205–262.

²² Turner, "The Minority of Henry III. Part I," 268–284.

²³ DL Farmer, "The Minority of Henry III (Review)," *Biography* 15, no. 4 (1992): 414–416.

²⁴ Norgate, *The Minority of Henry the Third*, 61–63.

²⁵ See: Warren, *King John*; FM Powicke, *King Henry III and the Lord Edward: The Community of the Realm in the Thirteenth Century* (Oxford University Press, 1966); Carpenter, *The Minority of Henry III*.

Green's *A Short History of the English People*,²⁶ Green was considered by JW Burrow to be "another obvious 'successor' to Macaulay's work, in its readability, its immense popularity, and in the way it made basic Whig notions vivid and appealing for a wide audience."²⁷ Norgate was part of a tail-end to nineteenth-century historical thought.

Sir Maurice Powicke's work should be mentioned at this point, as coming in between the work of Norgate and Carpenter; in particular, his *King Henry III and the Lord Edward* first published in 1947. This book covers the entirety of Henry III's reign and about one-tenth focuses on the period of the minority.²⁸ Powicke's reviewer, CR Cheney, directly compared the book to Stubb's chapters on Henry III and Edward I in his *Constitutional History*, but added that:

the comparison is unsatisfactory, for it takes no account of the last seventy years' work in medieval studies, which Sir Maurice has thoroughly absorbed, or of the author's entirely original, personal approach to his subject.²⁹

However, like his predecessors, Powicke did not go out on a limb to make an assessment of the impacts of the minority as a whole on the constitution. The closest he came, in truth, was a footnote on page forty-two, which referred to some pages of Pollock and Maitland's *History of English Law* published some sixty-seven years earlier – before, in fact, even Turner turned his hand to the matter. These pages form part of their discussion on "The King and the Crown" in the thirteenth century. It is as assiduously and carefully written as we would expect from Pollock and Maitland, but lacks the insight of modern scholarship and it achieves little more than saying that Henry became king because he was his father's son and that, because he was too young to rule, somebody else had to do so.³⁰ In fact, neither of these conclusions is quite correct, as there were other factors involved in the succession (see chapter 1) and it makes the assumption that there would be a regent *and* a council without considering the relationship, if any, between them.

²⁶ John Richard Green, *A Short History of the English People*, vols. 1-4 (eds. JR Green and K Norgate, Macmillan & Co., 1892-4)

²⁷ Burrow, *A Liberal Descent: Victorian Historians and the English Past*, 287.

²⁸ Powicke, *King Henry III and the Lord Edward*, 1–83.

²⁹ CR Cheney, "King Henry III and the Lord Edward: The Community of the Realm in the Thirteenth Century by FM Powicke (Review)," *The English Historical Review* 63, no. 246 (January 1948): 110.

³⁰ Frederick Pollock and Frederic William Maitland, *The History of English Law: Before the Time of Edward I*, vol. I, 2nd ed. (Cambridge University Press, 1899), 522.

Both Norgate and Powicke relied “almost exclusively on printed materials”.³¹ Carpenter, on the other hand, made extensive use of unprinted materials – particularly financial information. He went much further than previous accounts of the impact of Henry’s minority on the constitution, although the constitutional analysis largely remained incidental to the historical narrative. For Carpenter, the period “planted the Charters [i.e. Magna Carta and the Charter of the Forest] into English political life and it also engendered the belief that great councils, or as they were soon to be called, parliaments, should have a large say in deciding the personnel and policies of the king’s government”.³² Indeed, he saw the Paper Constitution 1244, the measures of 1258, and the Ordinances of 1311, or, as he called collectively called them, the “high watermark of medieval constitutional reform”, as being firmly rooted in the minority.³³ Thus, on the one hand, the minority saw the start of constitutional monarchy and, on the other, the conciliar and consensus-based nature of the minority government led, in stages, to parliamentary democracy. The implicit assumptions that the constitution changed and that it changed in response to political events are, in my view, correct; however, Carpenter idealizes the minority government somewhat, particularly in his belief that there was a general consensus that there *ought to be* a general consensus and that that consensus had special constitutional implications over and above the weightings of political power.

There have been a number of biographies written on influential persons in the minority period: William Marshal,³⁴ Peter des Roches,³⁵ Ranulf of Chester,³⁶ the late King John,³⁷ Savaric de Mauléon³⁸; including foreign influencers, such as Philip Augustus,³⁹ Blanche of Castile,⁴⁰ and Frederick II⁴¹. A significant absence is that of any extended scholarly work on the life of Hubert de Burgh who was

³¹ Carpenter, *The Minority of Henry III*, 4–5.

³² Carpenter, *The Minority of Henry III*, 402.

³³ Carpenter, *The Minority of Henry III*, 412.

³⁴ Sidney Painter, *William Marshal: Knight-Errant, Baron, and Regent of England* (John Hopkins Press, 1966); David Crouch, *William Marshal: Knighthood, War and Chivalry*, 2nd ed. (Pearson Education Ltd., 2002).

³⁵ Nicholas Vincent, *Peter Des Roches: An Alien in English Politics* (Cambridge University Press, 1996).

³⁶ James W Alexander, *Ranulf of Chester: A Relic of Conquest* (The University of Georgia Press, 1983).

³⁷ Kate Norgate, *John Lackland* (Macmillan & Co. Ltd., 1902); Warren, *King John*.

³⁸ HJ Chaytor, *Savaric de Mauléon, Baron and Troubadour* (Cambridge University Press, 1939).

³⁹ Jim Bradbury, *Philip Augustus King of France 1180-1223* (Longman, 1998).

⁴⁰ Régine Pernoud, *Blanche of Castile*, trans. Henry Noel (Collins, 1975).

⁴¹ David Abulafia, *Frederick II: A Medieval Emperor* (The Penguin Press, 1988).

Justiciar from 1215 to 1232 and, arguably, *de facto* (if not *de jure*) regent from 1221 to 1227. He does receive some attention in Powicke's work, and SHF Johnston and Carpenter have both written short essays on him, but he has not received attention on anything like the scale that des Roches received from Vincent.⁴² All of these works are important in their own right (although some have been eclipsed by more recent works, such as Painter's by Crouch's and Norgate's by Warren's) but they are all *biographies*, not constitutional dissertations.

By and large, Henry's minority has been a passing interest and the same is true of the royal minorities as a whole. There has only been one work published that takes the six royal minorities as its focus, which is a collection of essays in *The Royal Minorities of Medieval and Early Modern England*, edited by Charles Beem and published in 2008.⁴³ The first point to note is that each of the essays is essentially self-contained and thus cross-comparison between the minorities is minimal. The most comparative chapter is, in fact, the one on Henry III, which incorporates a discussion on the minorities of Louis IX (France), Henry VII (Germany), Ladislas III (Hungary), and James I (Aragon). Once again, however, the constitutional narrative is incidental to the historical narrative, which is not too surprising seeing that both authors, Christian Hillen and Frank Wiswall, are historians by training, not lawyers. Indeed, it appears that the only person with a legal background to have turned their attention specifically (as opposed to being part of a grander narrative, such as Pollock and Maitland's) to the minority of Henry III was Turner a century ago.

1.3.2 Thirteenth-Century Sources

It should be first noted that the best overview of the early thirteenth-century textual sources is to be found in Antonia Gransden's *Historical Writing in England*.⁴⁴

⁴² Powicke, *King Henry III and the Lord Edward*, 42–83; SHF Johnston, "The Lands of Hubert de Burgh," *The English Historical Review* 50, no. 199 (1935): 418–432; David A Carpenter, "The Fall of Hubert de Burgh," *Journal of British Studies* 19, no. 2 (1980): 1–17.

⁴³ Charles Beem, ed., *The Royal Minorities of Medieval and Early Modern England* (Palgrave Macmillan, 2008).

⁴⁴ Antonia Gransden, *Historical Writing in England, C. 550 to C. 1307* (Routledge & Kegan Paul Ltd., 1974), chap. 15–18.

Perhaps the most interesting source is the Anglo-Norman ‘romance history’ in the chivalric vein charting the life of William Marshal until his death in 1219. *L’Histoire de Guillaume le Marechal* or *The History of William Marshal* (hereafter simply the ‘*History*’) was translated into English and released in two volumes (plus an introductory volume) in the mid-2000s by the Anglo-Norman Text Society, but it is only the latter half of the second volume that is of interest to us.⁴⁵ The historical value of the *History* has been assessed by David Crouch in his biography of William Marshal and in the historical introduction to the *History*.⁴⁶ The *History* was designed to entertain and to commemorate the idealized memory of the Marshal; being written in the mid-1220s, it is an invaluable source but not wholly trustworthy, is protagonist-centric, and only covers the first two years or so of the minority.

The principal textual source for the minority of Henry III is to be found in the monastic chronicle, *Flores Historiarum*, attributed to Roger of Wendover, a monk at St Albans.⁴⁷ The chronicle was commenced sometime between 1204 and 1231, making it difficult to know just how current the information was when he was writing it, but his account of the period from 1202 until the end of the chronicle in 1234 appears original.⁴⁸ Throughout the work, there is a marked hostility “to king and pope”, which was developed further by Wendover’s ideological successor at St Albans, Matthew Paris.⁴⁹ Nevertheless, the St Albans chroniclers are well-informed, which was no doubt partially due to its excellent connections: Henry III stayed at St Albans at least nine times before 1259 and many other men, including Hubert de Burgh, Richard of Cornwall, and Peter des Roches, all had connections with St Albans.⁵⁰

There are a number of other monastic chronicles that are informative about this period: the ‘Barnwell’ chronicle (to 1225), the chronicle attributed to Ralph of

⁴⁵ AJ Holden, S Gregory, and David Crouch, eds., *History of William Marshal*, vol. 1 (Anglo-Norman Text Society, 2002); AJ Holden, S Gregory, and David Crouch, eds., *History of William Marshal*, vol. 2 (Anglo-Norman Text Society, 2004); AJ Holden, S Gregory, and David Crouch, eds., *History of William Marshal*, vol. 3 (Anglo-Norman Text Society, 2006).

⁴⁶ Crouch, *William Marshal: Knighthood, War and Chivalry*, Introduction; Holden, Gregory, and Crouch, *History of William Marshal*, 2006, 3:37–41; Cf. Gransden, *Historical Writing in England*, 345ff.

⁴⁷ Gransden, *Historical Writing in England*, 359–360.

⁴⁸ Gransden, *Historical Writing in England*, 359; Matthew Paris, *Matthæi Parisiensis, Monachi Sancti Albani, Chronica Majora*, ed. Henry Richards Luard, vol. 3 (Rolls Series, 1876), viii.

⁴⁹ Gransden, *Historical Writing in England*, 367–374; Paris, *Chronica Majora*.

⁵⁰ Gransden, *Historical Writing in England*, 360; Carpenter, *The Minority of Henry III*, 138; Paris, *Chronica Majora*, 3:xiii–xiv.

Coggeshall (to 1223), the Waverley chronicle (to 1291), and the Dunstable annals (to 1297). The author and the writing location of the Barnwell chronicle are unclear, but it appears to have been the work of an individual and is original between 1202 and its cessation in 1225.⁵¹ Ralph of Coggeshall's chronicle is probably original from 1187 to 1224 and is, during that period, the work of a single author.⁵² Unlike the Barnwell and Coggeshall chronicles, the Waverley chronicle had a number of different authors, who compiled annals more or less contemporaneously with events from 1219 to 1266.⁵³ The Waverley chronicle takes a distinctly anti-royalist view, although Gransden has questioned whether this was really a principled view or rather whether it was based on the lack of favour shown to the Cistercians by the crown, particularly under John.⁵⁴ Finally, the Dunstable annals, which were compiled by the prior until 1241, also provide a near-contemporary account of events.

Norgate identified a number of discrepancies and confused passages in the chronicles,⁵⁵ but did not make full use of the archival sources, such as the memoranda, pipe, and receipt rolls or private correspondence.⁵⁶ Extensive use of these, however, has been made by modern scholars such as Carpenter and Vincent and this thesis must be indebted to their work and critical knowledge of these sources. This additional evidence has not only extended our knowledge of the period but has also helped to establish a near-definitive chronology against which the chronicles can be tested. In broad terms, they pass this test but the details must always be treated cautiously. In the case of the *History*, this is because the information was second- or third-hand and the writer would have used creative licence to give the work dramatic effect; in the case of Wendover and his successor, Paris, they seemed to have had accounts relayed to them by the important political players, but it is doubtful that their testimonies would have been entirely accurate or objective. Thus, whilst we must approach their interpretations of events carefully, they remain important and valuable sources and, as far as the historical details go, along with the archival sources they are the best we have.

⁵¹ Gransden, *Historical Writing in England*, 339ff.

⁵² Gransden, *Historical Writing in England*, 323–324.

⁵³ Gransden, *Historical Writing in England*, 412.

⁵⁴ Gransden, *Historical Writing in England*, 414–416.

⁵⁵ See, for example, Norgate's criticism of Wendover's coverage of the events at the start of 1227: Norgate, *The Minority of Henry the Third*, 266.

⁵⁶ Carpenter, *The Minority of Henry III*, 5–6.

1.3.3 Central Medieval Legal Treatises

Two sources should be mentioned in this context, which are the treatises attributed to Ranulf de Glanvill and Henry de Bracton.

1.3.3.1 *Glanvill*

Ranulf de Glanvill's *Treatise on the Laws and Customs of the Kingdom of England* (*Tractatus de legibus et consuetudinibus regni Anglie*, commonly called the *Tractatus of Glanvill* or simply *Glanvill*) was the first work of its kind in England and is commonly attributed to the latter part of Henry II's reign. It was translated into English by John Beames in 1812 and, more recently, by GDG Hall in 1965.⁵⁷ *Glanvill's* focus was on private law with a little criminal law mixed in.⁵⁸ As there is little pertaining to public law in *Glanvill*, for the most part it is not of direct relevance to this thesis. However, it does become of interest if we were to agree with Pollock and Maitland's thesis that the king differed from his subjects not by virtue of holding *different kinds* of rights but, rather, *different degrees of the same rights*.⁵⁹ Such a comparison is considered in the chapter on minority.

1.3.3.2 *Bracton*

On the Laws and Customs of England (*De Legibus et Consuetudinibus Angliae*) was written sometime in the early-to-mid-thirteenth century. It is attributed to Henry de Bracton (hence why the work is often referred to as simply '*Bracton*'), but many believe that Bracton was not the original compiler; for example, Paul Brand has argued that the original compiler was, in fact, William Raleigh.⁶⁰ In any case, it was most certainly compiled by, or under the guidance of, at least one senior lawyer sometime in the first half of the thirteenth century.

At the start of the 2000s the Latin text from George Woodbine's edition and the authoritative translation by Samuel E Thorne into English were published online

⁵⁷ Ranulf De Glanvill, *A Translation of Ranulf de Glanville*, trans. John Beames (AJ Valpy, 1812); Ranulf De Glanvill, *The Treatise on the Laws and Customs of the Realm of England Commonly Called Glanvill*, trans. GDG Hall (Thomas Nelson and Sons Ltd, 1965). All quotes will be from GDG Hall's 1965 edition, but the place in Beames' 1812 edition will also be noted.

⁵⁸ Glanvill, *Tractatus*, 1965, xi.

⁵⁹ Pollock and Maitland, *The History of English Law: Before the Time of Edward I*, 1:512ff.

⁶⁰ Paul Brand, "The Age of Bracton," in *The History of English Law: Centenary Essays on 'Pollock and Maitland'*, ed. John Hudson, *Proceedings of the British Academy* 89 (1996), 78-9

by the Harvard Law School Library.⁶¹ *Bracton* is an invaluable source for medieval law and, from time to time, on more esoteric questions such as the nature of kingship.⁶² It does not, however, give any consideration to Henry III's minority in and of itself. However, this is not surprising as *Bracton's* focus, like *Glanvill's*, is private and criminal law and even his discussions on the nature of kingship are within the context of Bracton trying to understand how the king fits into the private law system.

The extent to which Glanvill and Bracton accurately reflect the thirteenth-century English legal system is debateable. Maitland noted Bracton's familiarity with Italian jurisprudence, especially Azo of Bologna. Indeed, he "borrowed maxims and some concrete rules" so that he could "fill up the gaps in our English system".⁶³ Furthermore, the English legal system was still in the process of being unified and made uniform. Thus, it is important to recognise that their works were informed opinions on the English legal system of the time, not definitive expressions of it.

1.3.4 Political Writers of the Period or Lack Thereof

There are no surviving contemporaneous or near-contemporaneous political tracts from Henry's minority. It is a shame that important writers who experienced the period, such as Robert Grosseteste (who was probably in his late thirties or early forties at the time) or Roger Bacon (who grew up in the minority), tended to focus on matters of theology and natural science. However, lack of political discourses is characteristic of the period up to the sixteenth century. In the words of Goldsworthy, until then there was "a lack of both clear theoretical thinking about constitutional fundamentals, and written records of what thinking there was."⁶⁴ It is true that there were some writers, such as Sir

⁶¹ Henry de Bracton, *De Legibus Et Consuetudinibus Angliæ (Bracton on the Laws and Customs of England)*, ed. George Woodbine, trans. Samuel E Thorne (Harvard Law School Library, 2003), <http://bracton.law.harvard.edu/>.

⁶² For a discussion on Bracton's thoughts on kingship, see: Fritz Schulz, "Bracton on Kingship," *The English Historical Review* 60, no. 237 (May 1945): 136–176. The closest that Glanvill comes to developing a theory of kingship is to be found in his dedicatory prologue to Henry II: Glanvill, *Tractatus*, 1965, 1–2.

⁶³ Frederic William Maitland and Francis C Montague, *A Sketch of English Legal History*, ed. James F Colby (GP Putnam's Sons, 1915), 44.

⁶⁴ Jeffrey Goldsworthy, *Parliamentary Sovereignty: Contemporary Debates, Parliamentary Sovereignty: Contemporary Debates* (Cambridge University Press, 2010), 22.

John Fortescue who wrote towards the end of the fifteenth century, but there were not many.

This makes the task of understanding the thirteenth-century constitution immeasurably harder for it is truly only through the eyes of the contemporaries that we can understand the constitutional arrangements of the time. Instead, we have to rely largely on inference and conjecture based on the actions of the contemporaries and the passing comments of the chroniclers. It is an unfortunate fact that thoughts and beliefs are lost much easier than fragments of pottery. But we must aspire to understand the world as they did if we are to understand the institutions that they created and sustained.

1.3.5 Political and Constitutional Historians of the Period

It has already been said that, whilst some historians have turned their attention to the period of Henry III's minority, it is a path much less well trodden by political and constitutional historians. For example, the late Sir James Holt's work abuts the minority but rarely talks of it and WL Warren in his book *The Governance of Norman and Angevin England* deals with Henry's minority in a little over two paragraphs.⁶⁵

John Maddicott's book, *The Origins of the English Parliament, 924-1327* published in 2010, does give some treatment of the minority and, like Carpenter, is keen to stress the conciliar nature of the government.⁶⁶ However, it is limited to tracing the development of Parliament, rather than considering the wider constitutional implications of royal minorities.

The most recent, all-encompassing works taking a critical look at the (UK)⁶⁷ constitution focus only on the events of the last half century. In particular, there are the works of Anthony King and Vernon Bogdanor, which give no

⁶⁵ JC Holt, *Magna Carta and Medieval Government* (Hambledon Press, 1985); Holt, *Magna Carta*; Wilfred Lewis Warren, *The Governance of Norman and Angevin England* (Edward Arnold, 1987).

⁶⁶ John Maddicott, *The Origins of the English Parliament, 924-1327* (Oxford University Press, 2010); Scott L Waugh, "The Origins of the English Parliament, 924–1327 by JR Maddicott (Review)," *The English Historical Review* 126, no. 520 (2011): 636; Bjoern Gebert, "Book Review: John Robert Maddicott, *The Origins of the English Parliament, 924-1327*," *The Medieval History Journal* 16, no. 1 (May 31, 2013): 636; Nigel Saul, "The Origins of the English Parliament, 924-1327 (Review)," *History Today*, 2011, 207–210, <http://www.historytoday.com/print/78141>.

⁶⁷ It is arguable whether or not the UK constitution is a continuation of the English constitution, which many people seem to tacitly believe.

consideration at all to the thirteenth century – let alone the minority of Henry III.⁶⁸ I do not believe that by studying the thirteenth-century constitution we can learn anything about the content of the modern constitution because it has changed so drastically over the course of the centuries. However, I do believe that it can tell us a lot about the nature of constitutions and especially about how they change – contrary to the belief of many who stand in long-cast shadows of the Whig historians.

⁶⁸ King, *The British Constitution*; Bogdanor, *The New British Constitution*.

2 Succession

2.1 Introduction

Superficially, Henry III's accession is in line with our expectations of a medieval succession: the eldest son (Henry) succeeded his late father (King John). However, this simplicity is illusory and although the crown passed *as if by primogeniture*, it will be argued, there were other factors at work.

We have evidence of minor kings in England as far back as eighth-century Northumbria, although, admittedly, the Northumbrian example (Osred I) is the only pre-unification example of which we know.⁶⁹ Post-unification Anglo-Saxon England saw a string of *young* kings (it is perhaps too strong to call them 'minor' kings), culminating with Æthelred II's accession in 978. England then underwent momentous changes: it was first conquered by the Danes in 1013 and 1016, becoming part of a Scandinavian empire and then by the Normans in 1066, becoming part of a cross-Channel empire that reached its greatest extent under Henry's grandfather, Henry II. Then, when England had not had a minor king for 238 years, Henry III was crowned in 1216. Considering how much time had passed and how much had changed, it seems doubtful that contemporaries would have known of, or paid any attention to the Anglo-Saxon examples. As Norgate said:

[T]hese cases were all too remote to furnish precedents for the guidance of the statesmen into whose hands the task of carrying on the government was thrown by the death of John.⁷⁰

2.1.1 Basing a Claim

There are a number of ways that a person can *claim* to be rightful monarch, which can be broadly separated into four categories: (1) entitlement, (2) appointment, (3) transfer, and (4) capture. These shall be briefly outlined.

2.1.1.1 Entitlement

Entitlement means that a person has fulfilled any sufficient criterion for a successful claim. Two kinds may be roughly distinguished: (a) *intrinsic entitlement*, which a

⁶⁹ Barbara Yorke, *Kings and Kingdoms of Early Anglo-Saxon England* (Routledge, 1990), 86–87.

⁷⁰ Norgate, *The Minority of Henry the Third*, 61.

person has by virtue of being themselves and includes things such as *hereditary right*; and (b) *acquired entitlement*, which a person has gained through being positioned in certain circumstances and includes, for example, hereditary right *jure uxoris*, i.e. a man might claim land in his wife's name. To give an example of the latter case, Prince Louis – who fought King John – claimed England, in part, through the fact that his wife was a granddaughter of Henry II.

2.1.1.2 Appointment

Appointment implies a unilateral choice stemming from a discretion held by a person or group. There are many forms of appointment, such as: (a) *designation*, which has overtones of arbitrariness; (b) *election*, which implies some sort of democratic process; and (c) *divine appointment*, which has a mystical character and would be deduced from supposed divine intervention, e.g. omens or miracles.

2.1.1.3 Transfer

Transfer implies in a very strong way that the thing in question *has been given* (not necessarily willingly) and encompasses things such as purchase and cession. The most famous examples of transfer are probably the Louisiana Purchase (1803) and the Alaska Purchase (1867).⁷¹

Transfer and appointment differ in that, in the former, the transferor is in possession of the thing in question whereas, in the latter, the appointer merely has some control over its destiny.

2.1.1.4 Capture

Capture does not imply that something has been given (as by appointment or transfer) but that it has been (often forcibly) *taken*. Under capture we find concepts such as conquest/annexation, adverse position, and occupation of *terra nullius*.

2.1.1.5 The Claims and the Minority

When discussing the succession to the throne, there is – in most cases – a classic trinity of *hereditary right*, *designation*, and *election* – and these are the claims that

⁷¹ The Louisiana Purchase was the purchase by the United States from France of the Louisiana territory, which nowadays encompasses some or all of 15 US states and 2 Canadian provinces. The Alaska Purchase was the purchase by the United States from Russia of present day Alaska.

will be discussed in this thesis. In the context of this thesis, transfer and capture have little relevance.

It should be noted that these bases are not necessarily mutually exclusive. For instance, nineteenth-century constitutional commentators often explained Anglo-Saxon kingship as ‘elective kingship limited by a hereditary principle’ through which “the king was chosen by the state assembly, but the choice was limited to those who possessed the indispensable prerequisite of noble blood”.⁷² Whether or not this was true of the early thirteenth century will be discussed in due course.

In this chapter, the legitimacy of Henry’s claim will be discussed with reference to these principles. It will be considered whether or not there could be said to be rules, which were identifiably ‘constitutional’ and determined the succession. It will also be considered whether or not Henry, as a minor, was barred from taking office.

2.2 The Road to Newark, October 1216

In October 1216, John was moving rapidly through northern East Anglia. He arrived at King’s Lynn on 9 October and moved to Wisbech on 11 October. The following day he moved again and, in an unfortunate turn of events, lost “all his carts, waggons, and baggage horses, together with his money, costly vessels, and everything which he had a particular regard for...” in the Wash.⁷³ That night, he arrived at Swineshead Abbey where, according to Wendover, John’s mind was so troubled by the loss that he “was seized by a violent fever and became ill”. His fever was then exacerbated by “his pernicious gluttony” – too many peaches and too much new cider.⁷⁴ According to some accounts, John had already fallen ill at Lynn, which Norgate described as “a violent attack of dysentery”, owing to his gourmandising.⁷⁵ A later tradition developed (seized upon by protestant Tudor playwright, John Bale⁷⁶) that John had been poisoned by the monks at Swineshead, because he had taken a

⁷² Hannis Taylor, *The Origin and Growth of the English Constitution* (Houghton, Mifflin and Company, 1899), I. 189; Cf. Felix Liebermann, *The National Assembly in the Anglo-Saxon Period* (Halle a.S. Max Niemeyer, 1913), 55–56.

⁷³ Roger of Wendover, *Flowers of History*, ed. JA Giles, vol. 2 (Henry G Bohn, 1864), 378.

⁷⁴ Wendover, *Flowers of History*, 2:378.

⁷⁵ Norgate, *John Lackland*, 281 esp. n. 4 where Norgate references Ralph of Coggeshall’s and Walter of Coventry’s (who was reproducing the Barnwell Chronicle for this period) accounts.

⁷⁶ Michael Evans, *The Death of Kings: Royal Deaths in Medieval England* (Hambledon Continuum, 2003), 9.

fancy for a prioress and ordered that she be brought to him.⁷⁷ Whatever the case, he was struggling when he left Swineshead on 14 October to make his way to Sleaford. It was at this time that he wrote a letter to the pope asking him to protect England and its young princes, seemingly already concerned that he might die.⁷⁸ John was to make one final journey, although he had to be carried part of the way, and by 16 October he was at Newark Castle.⁷⁹ There his condition worsened and on the night of 18 October, he died.

2.2.1 John's Testament

John's testament mentions that, at the time of writing, he was "hindered by great infirmity", which seems to indicate that it was made in his last few days; although, as there is no place-date clause, we cannot know this with certainty.⁸⁰

2.2.1.1 Persona of the Testament

John's testament was mostly written in the first person singular, as opposed to the first person plural (the 'royal 'we''), which "had been the standard diplomatic form since 1189 giving verbal expression to the developing concept that the king was acting for the collective community of the realm".⁸¹ Does this mean that John's testament was in the persona of John's *body natural*, i.e. a personal, not state document? Of the five testaments that still exist prior to John's, four of them employ the singular, indicating that this was the preferred form, although it largely depended "on the inclination of the clerk".⁸² Certainly, the opening words "I, John" (*ego Johannes*) have more impact in the first person – particularly when he goes on to provide for salvation of his soul (*pro salute anime mee*). It may also have to do with the haste in which the document was drawn up, for the scribe does slip into the

⁷⁷ See Ruth Wallerstein, "King John in Fact and Fiction" (University of Pennsylvania, 1917), 20 quoting from William of Guisborough (whom she refers to as Walter of Hemingburgh).

⁷⁸ Nicholas Vincent, ed., *The Letters and Charters of Cardinal Guala Bicchieri, Papal Legate in England, 1216-1218*, vol. lxxxiii (Canterbury and York Society, 1996), pt. 140b; Cf. Norgate, *John Lackland*, 283–284; Carpenter, *The Minority of Henry III*, 13; S. D. Church, "King John's Testament and the Last Days of His Reign," *The English Historical Review* CXXV, no. 514 (May 07, 2010): 519; and Jane E Sayers, *Papal Government and England during the Pontificate of Honorius III (1216-1227)* (Cambridge University Press, 1984), 166–167.

⁷⁹ Norgate, *John Lackland*, 282–283.

⁸⁰ Church, "King John's Testament and the Last Days of His Reign," esp. 518, 520ff.

⁸¹ Church, "King John's Testament and the Last Days of His Reign," 518.

⁸² Church, "King John's Testament and the Last Days of His Reign," 514.

plural at one point: "...and in making reward to those who have served us faithfully..." (*in remuneratione facienda illis qui fideliter nobis seruiuerunt*).

Judging by the contents of the testament and the fact that the opening words 'I, John' are immediately followed with John's titles ("king of England, lord of Ireland, duke of Normandy and Aquitaine, count of Anjou"), it would seem that John was speaking in the dual *persona* as both John, the man, and John, the king-lord-duke-count. Therefore, John's testament cannot be regarded as a purely personal document pertaining only to John's personal possessions and affairs as separate from the Crown.

2.2.1.2 John's Testament

In view of his illness, John only dictated a brief testament and largely left matters to the discretion of the *familiares* listed in the document. They were to do as they saw fit in distributing his goods, making his peace with the church, sending aid to the Holy Land, rewarding his loyal followers, giving to the poor and religious houses, and, most importantly, "providing support to my sons towards obtaining and defending their inheritance".⁸³ What John had in mind by this latter phrase is clear, if the contemporary accounts are to be believed.

According to Wendover, after confessing to the abbot of Croxton at Newark, John "appointed his eldest son Henry his heir, and made his kingdom swear allegiance to him; he also sent letters under his own seal to all the sheriffs and castellans of the kingdom, ordering them one and all to obey his said son".⁸⁴ In the original Latin, Wendover used the verb *constituere*, which Giles (above) translated as 'appointed'.⁸⁵ The verb may be translated in a number of ways, but Giles' translation captures the gist of the passage.⁸⁶ This is reinforced by the account found in the *History*, which describes John's plea to those at his deathbed that Henry be placed in William Marshal's care:

⁸³ Church, "King John's Testament and the Last Days of His Reign," 517.; "*sustentacione prestanda filiis meis pro hereditate sua perquirenda et defendenda*"

⁸⁴ Wendover, *Flowers of History*, 2:378.

⁸⁵ Roger of Wendover, *Flores Historiarum* (Sumptibus Societatis, 1861), 385.

⁸⁶ Possible translations include: put, set, place; constitute, appoint; decree, decide, determine; fix, establish; range; build; agree (upon); manage; dispose; intend; settle. See: CDN Costa and Mary Herberg, eds., "Constituo," *Langenscheidt's Universal Dictionary: Latin-English, English-Latin* (Hodder & Stoughton, 1966); "Constituo," *Oxford Reference*, 2012, <http://www.oxfordreference.com> [Accessed 3 December 2013].

“...for my son will never *govern* these lands of mine with the help of anyone but the Marshal.”⁸⁷

It seems clear that, using the scheme set out in 2.1.1, John was *designating* Henry as his heir. It should be noted that this was not the conclusion that Turner drew, who thought that John’s testament was “only concerned with the King’s property” and his executors were “given no special authority to govern the realm or take charge of his children”.⁸⁸ However, the weight of the circumstantial evidence would seem to be against him.

Was John’s designation the operating factor in Henry’s succession or was it unnecessary because Henry would succeed under hereditary right as the eldest son? It should be noted that, either way, the succession would be deemed to have been settled *before John’s death*, whether it was decided *after his death* shall be discussed in 2.3.

2.2.2 Designation and the Royal Prerogative

It is almost impossible to discuss English constitutional history without discussing the royal prerogative. In this case, was it John’s prerogative to designate his heir? John himself, arguably, ascended the throne through the prerogative exercised by Richard I on his deathbed. Roger of Hoveden described the scene:

When the king was now in despair of surviving, he devised to his brother John the kingdom of England and all his other territories, and ordered fealty to be done to the aforesaid John by those who were present, and commanded that his castles be delivered to him, and three-fourths of his treasure.⁸⁹

Looking to later history, it was arguably Elizabeth I’s refusal to exercise her prerogative and designate her heir that caused the nobles of the day so much anguish and, “[i]n the end, an incoherent sign made after she was incapable of speech was interpreted as consent, and the last barrier to James [I]’s succession

⁸⁷ Holden, Gregory, and Crouch, *History of William Marshal*, 2004, vol. 2, l. 15189–15190. [emp. added]

⁸⁸ Turner, “The Minority of Henry III. Part I,” 283.

⁸⁹ Roger of Hoveden, *The Annals of Roger de Hoveden Comprising the History of England and of Other Countries of Europe From AD 732 to 1201*, ed. Henry T Riley, vol. 2 (Henry G Bohn, 1853), 453.

was removed.”⁹⁰ However, to understand designation and the prerogative more fully, it is worth looking at the examples prior to Henry’s accession.

2.2.3 A Survey of Designation in the Eleventh and Twelfth Centuries

Following the death of Cnut (king of England, Denmark, and Norway) in 1035, it was widely considered that his successor would be Harthacnut. Harthacnut was not Cnut’s eldest son but, crucially, his eldest son *from his most recent marriage*. However, Harthacnut was in Denmark seeing to its defence against Magnus Olafsson of Norway and, after a time, his older half-brother, Harald Harefoot, became king in England. In 1036, a peace was agreed between Harthacnut and Magnus: each was to be the other’s heir should he die without issue. In effect, they designated one another. An interesting part of this agreement was the infusion with heredity, as the agreement made each to the other the “rightful heir as if he were his brother born.”⁹¹ Unlike King Stephen’s and Henry FitzEmpress’ later agreement, this seems to only have been metaphorical.

When Harefoot died in 1040, Harthacnut became king of England as well as of Denmark. On Harthacnut’s accession, Emma of Normandy (his mother) commissioned the *Econmium Emmae*. In many ways, this was a work of propaganda to reinforce hers and her son’s positions, and one claim made in it was that Harthacnut was rightful heir *because Cnut had designated him*.⁹²

When Harthacnut died childless in 1042, Magnus of Norway claimed both Denmark and England in pursuit of the 1036 agreement. Magnus captured Denmark and threatened to invade England – where Edward the Confessor had been crowned – but decided against it. If Harthacnut’s and Magnus’ agreement included only Denmark/Norway, then the agreement seems to have been effective. If the agreement also included England – as Magnus seemed to think that it did – then Harthacnut failed to designate Magnus as his heir. Harald Hardrada, Magnus’ uncle and successor believed that England had been included in the 1036 agreement and

⁹⁰ Christopher Brooke, *The Saxon and Norman Kings* (Fontana/Collins, 1976), 48.

⁹¹ Alison Finlay, ed., *Fagrskinna, a Catalogue of the Kings of Norway: A Translation with Introduction and Notes* (Koninklijke Brill NV, 2004), 170.

⁹² Pauline Stafford, *Queens, Concubines and Dowagers: The King’s Wife in the Early Middle Ages* (Leicester University Press, 1998), 4.

invaded in September 1066. His death at the battle of Stamford Bridge all but ended the Scandinavian claim.

Edward the Confessor's attempts to designate his successor are perhaps the most famous. It is said that in 1051 he promised the throne to his first-cousin-once-removed, William of Normandy, and that in 1064 his brother-in-law, the Anglo-Dane⁹³ Harold Godwinson, Earl of Wessex, promised to uphold William's claim.⁹⁴ Then, on his deathbed in January 1066, Edward 'commended' the kingdom to Harold for 'safeguard'.⁹⁵ This vague statement can be interpreted as either designating Harold as his heir or making Harold regent whilst William was fetched from Normandy. If it was the former, then it was initially successful as Harold became king; if the latter, then it was eventually successful as William defeated Harold at Hastings later that year.

Whether Edward was at liberty to change his mind is another question to be asked of this supposed royal prerogative. Beckerman has argued that in English testamentary custom, the *verba novissima* ('newest words') were deemed to "supersede previous donations of the same property."⁹⁶ In Normandy, on the other hand, "such a promise ... was binding and could not later be revoked legally."⁹⁷ There are doubts as to the truth of this⁹⁸ and, indeed, William does not seem to have denied that it was revocable – by Edward at least. The English magnates, on the other hand, who had promised to support William's claim were not at liberty to change their minds – least of all Harold Godwinson.⁹⁹ To believe that a king's promises are revocable but that his subjects' promises are irrevocable would certainly have suited William well.

It is worth noting that in Merovingian France, some childless kings had adopted their successors to invoke primogenital succession: Guntram adopted his nephew when

⁹³ Harold's mother, Gytha, was the daughter of Thorgil Sprakling, a Dane. Her brother, Ulf, married Estrid Svendsdatter, the sister of King Cnut. This meant that Cnut was brother to Harold's mother's sister-in-law.

⁹⁴ John S Beckerman, "Succession in Normandy, 1087, and in England, 1066: The Role of Testamentary Custom," *Speculum* 47, no. 2 (April 1972): 259.

⁹⁵ See: HEJ Cowdrey, "King Harold II and the Bayeux Tapestry: A Critical Introduction," in *King Harold II and the Bayeux Tapestry*, ed. Gale R Owen-Crocker (The Boydell Press, 2005), 7.

⁹⁶ Beckerman, "Succession in Normandy, 1087, and in England, 1066," 260.

⁹⁷ Beckerman, "Succession in Normandy, 1087, and in England, 1066," 258.

⁹⁸ EZ Tabuteau, "The Role of Law in the Succession to Normandy and England, 1087," *Haskins Society Journal* 3 (1991): 155, n. 63.

⁹⁹ George Garnett, *Conquered England: Kingship, Succession, and Tenure 1066-1166* (Oxford University Press, 2007), 171.

his natural children died and Sigebert III adopted the son of 'his Grimoald mayor' as his successor.¹⁰⁰ However, this idea never gained traction in England and it does not appear that the Confessor considered adopting anybody.

William I also attempted to designate his heir. There is evidence that William had originally planned to disinherit his eldest son, the rebellious Robert Curthose, even though he had previously designated him as early as 1063.¹⁰¹ In 1087, Robert was included in the succession, but he gained only the patrimony of Normandy and the acquisition of Maine; England went to the second son, William Rufus. Beckerman saw this as recognition of the inviolability of the earlier promise under Norman testamentary custom, whereas Patourel saw it as more of a compromise made under pressure from his deathbed attendees.¹⁰² Patourel's seems the more likely explanation as it squares better with the political reality.

After a brief war, Rufus and Curthose came to an agreement not dissimilar to that of 1036. This agreement definitely failed: Curthose was on crusade when Rufus died suddenly in a hunting 'accident' in 1100 and their younger brother, Henry Beauclerc, seized the throne. Henry I eventually captured Curthose at Tinchebrai and imprisoned him for the rest of his long life – during which time Henry controlled all of his father's lands. Whatever William I had originally envisaged, it is unlikely that it was this – although, younger brothers usurping their older brothers was not unheard of, as in the case of Alphonso VI, which occurred when Henry I was four years old.¹⁰³

Henry I's son, William Adelin, died tragically in 1120. When it seemed unlikely that Henry would have another son, he twice had his barons swear oaths of fealty to his daughter, Empress Matilda: at the Christmas court of 1126 and at the Council of London in 1128.¹⁰⁴ When he died in 1135, however, Henry was at war with Matilda. We are told that on his deathbed he had released his barons from their oaths and, according to John of Salisbury, had designated his nephew, Stephen of Blois, as his

¹⁰⁰ Didier Lett, "The Child in Christendom: Fifth – Thirteenth Centuries," in *Children in the Middle Ages: Fifth – Fifteenth Centuries*, ed. Danièle Alexandre-Bidon and Didier Lett, trans. Jody Gladding (The University of Notre Dame Press, 1999), 19.

¹⁰¹ John Le Patourel, "The Norman Succession, 996-1135," *The English Historical Review* 86, no. 339 (April 1971): 234.

¹⁰² Beckerman, "Succession in Normandy, 1087, and in England, 1066," 259; Le Patourel, "The Norman Succession, 996-1135," 234.

¹⁰³ Brooke, *The Saxon and Norman Kings*, 172–173.

¹⁰⁴ Henry of Huntingdon, *The History of the English People 1000-1154*, trans. Diana Greenway (Oxford University Press, 2002), 135, note 66; Gransden, *Historical Writing in England*, 146.

heir.¹⁰⁵ The truth of this is, in many ways, less important than the fact that it was used to bolster Stephen's claim.

Stephen spent the vast majority of his reign defending his crown. In 1152, he attempted to have his eldest son, Eustace, crowned as junior king but the ecclesiastical polity refused him.¹⁰⁶ Crowning one's heir during one's lifetime – or 'anticipatory association' – was often an effective way of ensuring one's successor. It was common in early Capetian France, although not so in England.¹⁰⁷ It was in the same year that Matilda's son, Henry FitzEmpress, married Eleanor of Aquitaine, vastly increasing his power on the Continent and reinforcing his control over Normandy. Consequently, many of the English barons reevaluated their allegiance to the House of Blois.¹⁰⁸ When Henry landed in England in 1153 – and Eustace having already died – Stephen came to terms with the twenty-year-old Henry in the Treaty of Winchester (1153). Accordingly, when Stephen died in 1154, Henry II ascended the throne not only as the grandson of Henry I, but also as the adopted son and heir designate of Stephen – even though Stephen did have another surviving son, William, who was a similar age to Henry.

Henry II's relations with his sons were complicated. The eldest, Henry the Young King, had been crowned as junior king in 1170 (the feat that Stephen had failed to achieve). The young Henry, however, predeceased his father and, when the elder Henry died in 1189, he refused to name Richard, his third son (the second to reach adulthood), as his heir on his deathbed. Indeed, there were rumours that he had considered making his youngest son, John Lackland, his heir.¹⁰⁹ In spite of this, it was Richard who was crowned.

When Richard embarked on his crusade in 1190, he refused to designate either John or his nephew, Arthur of Brittany. In his treaty with Tancred of Sicily, however, he named Arthur as his heir and appears to have notified England of this around Christmas.¹¹⁰ In spite of the earlier inclination toward Arthur, however, Richard

¹⁰⁵ See: Brooke, *The Saxon and Norman Kings*, 43–46.

¹⁰⁶ Huntingdon, *History of the English People*, 88.

¹⁰⁷ See: Andrew W Lewis, "Anticipatory Association of the Heir in Early Capetian France," *The American Historical Review* 83, no. 4 (October 1978): 906–927.

¹⁰⁸ Warren, *The Governance of Norman and Angevin England*, 90–91.

¹⁰⁹ Painter, *William Marshal*, 62.

¹¹⁰ Painter, *William Marshal*, 85.

named John his heir, as we have seen, on his deathbed in 1199. Interestingly, according to Carpenter:

John proclaimed in 1199 that he had succeeded by hereditary right, 'divine mercy', and 'the unanimous assent and favour of clergy and people,' thus precisely stressing the elective element later used against him.¹¹¹

The notable exception here is Richard's designation of him as his heir, which might indicate that – in John's view – he was the rightful heir of Richard, regardless of who Richard pretended to designate.

In the eleventh and twelfth centuries, designation was often attempted (or refused), though not always successfully. As a claim, therefore, it appears to have been tenable but not decisive.

2.2.4 John's Designation of Henry

Between Henry's birth in October 1207 and the onset of John's sickness in October 1216, John does not seem to have attempted to associate Henry with the throne in the way that Henry I, Stephen, and Henry II had attempted to do. He did not make a testament when he embarked to reclaim the lost continental possessions in 1214, as Philip Augustus of France had done in 1190 (even providing for a minority government)¹¹² or, indeed, as Henry III did in 1253 when he departed for Gascony¹¹³. Later practice had it that the heir apparent would be the Prince of Wales, but Wales was not made into a principality until the completion of its conquest by Edward I in 1283.¹¹⁴

One could see John as reckless for not acting sooner. Indeed, as Evans pointed out, John was twenty years his wife's senior and therefore "there was always a chance that John would not have an adult heir by the time he died".¹¹⁵ However, John may have learned from the examples of his father and Edward the Confessor: appointing one's heirs too early and creating expectations could cause trouble. Furthermore,

¹¹¹ Carpenter, *The Struggle for Mastery*, 294–296.

¹¹² Lewis, "Anticipatory Association of the Heir in Early Capetian France," 926–927.

¹¹³ Church, "King John's Testament and the Last Days of His Reign," 506.

¹¹⁴ RA Griffiths, "The Minority of Henry VI, King of England and of France," in *The Royal Minorities of Medieval and Early Modern England*, ed. C Beem (Palgrave Macmillan, 2008), 162. Henry V appointed his infant heir, Henry, as Prince of Wales in a codicil added to his will four days prior to his death.

¹¹⁵ Evans, *The Death of Kings*, 9.

whilst in some places co-rulers had been named very young,¹¹⁶ the English examples up to John's time show associations only being made later: Henry I's, Stephen's, and Henry II's offspring were all at least in their mid-teens when attempts were made, but Henry had only just turned nine. Finally, it seems that it was common in the twelfth century – and thus likely in the beginning part of the thirteenth century also – “for testaments to be made *in extremis*”, i.e. at the bitter end.¹¹⁷

It is interesting that John felt any need to designate Henry, which perhaps indicates the weakness of hereditary right or that it at least required reinforcement. Could his designation guarantee Henry the throne? From the above discussion, the answer would appear to be ‘probably not’, although it could create and strengthen his claim. As Warren said, designation was “influential but not decisive”.¹¹⁸ Perhaps the most poignant example of a failed designation comes from 1553 when Edward VI failed to designate his cousin, the Lady Jane Grey, who was imprisoned by Mary Tudor and subsequently executed.

Although it may not have been decisive, John's designation recognised the fundamentally political nature of the succession and he knew that his son stood a greater chance if he made sure that his supporters became Henry's supporters.

2.2.5 Hereditary Right

The succession may have been preordained simply by the fact that Henry was John's eldest legitimate surviving son. In many ways, this is the most tempting explanation and would confirm most people's assumptions about medieval succession and feudal patriarchy.

This opinion is certainly reinforced by the successive father-to-eldest-son successions from John/Henry III in 1216 to Edward III/Richard II in 1377.¹¹⁹ Indeed, primogeniture appears to have been so strong towards the end of the fourteenth

¹¹⁶ For example: Constantine VI, named co-emperor of the Byzantine Empire in 776 at the age of 5; Otto III was crowned King of the Germans on Christmas Day 983 at Aachen aged three, unknowingly after the death of his father; Ladislaus III of Hungary was crowned co-king in 1203 aged 2 or 3; Henry II of Sicily (later Henry VII of Germany) was crowned co-king at the age of 1 in 1212.

¹¹⁷ Holden, Gregory, and Crouch, *History of William Marshal*, 2006, 3:190.

¹¹⁸ Warren, *King John*, 64.

¹¹⁹ Richard was actually Edward III's grandson. Edward the Black Prince, Richard's father, had predeceased Edward III, although the crown passed through him as the eldest son who had had issue.

century that Richard II succeeded in precisely the circumstances that Arthur of Brittany had lost out to John. The strength of hereditary right was also demonstrated in the accession of Edward I, Henry III's son. Edward had taken the cross in June 1268 and sailed to the Holy Land in August 1270, accompanied by his younger brother, Edmund. Edmund, arguably Edward's greatest rival, had already returned to England when Henry died in November 1272.¹²⁰ In the past, absence from the kingdom on the death of the monarch had often been fatal for a claim: Harthacnut lost out to Harefoot; Curthose to Henry I; and Empress Matilda, William Count of Sully, and Theobald II Count of Champagne all lost out to Stephen of Blois (William and Theobald were Stephen's older brothers). Edward's throne remained safe, however, until his return in August 1273. For Hannis Taylor, this demonstrated "how the ancient doctrine of elective kingship was fast giving way to the new feudal notion of hereditary right".¹²¹

The events after Richard II are worth mentioning briefly in this context. Richard was childless when he was deposed in 1399 by his cousin, Henry Bolingbroke. Under strict primogeniture, Bolingbroke – who was descended from a younger cadet, John of Gaunt – would not have been next in line for the throne. Rather, it would have been Richard and Bolingbroke's first-cousin-once-removed, Edmund Mortimer, 5th Earl of March. Edmund, like father and grandmother during their lifetimes had been the heir presumptive of Richard, although he was only six when Richard was deposed. Interestingly, Bolingbroke apparently did try to argue his claim on an hereditary basis by pointing to the story that Edward I had been the younger brother of Edmund 'Crouchback', whose hereditary right had been set aside in view of his physical deformity. The story is almost certainly apocryphal,¹²² but Bolingbroke's use of it as a demonstration that cadet lines can take precedence shows that hereditary right was not as straightforward as many today assume. In fact, if Bolingbroke had wanted a better example, he should have turned to Æthelstan's accession in the 920s. As it was, Richard II's deposition and the accession of the younger cadet line under Henry IV – the House of Lancaster – was to have far-reaching consequences in English history, resulting in the War of the Roses.

¹²⁰ Michael Prestwich, *The Three Edwards: War and State in England 1272-1377* (Methuen, 1980), 8.

¹²¹ Taylor, *The Origin and Growth of the English Constitution*, 405.

¹²² Evans, *The Death of Kings*, 123.

When one looks at the period before Henry III's accession, rather than after it, the picture is dramatically different. When Richard I succeeded Henry II in 1189, the crown had not passed directly from father to eldest son for 172 years when Edmund II had succeeded Æthelred II in 1016. Accepting patrilineal primogeniture, John would not have been Richard I's rightful heir, just as Sweyn Forkbeard, Cnut, Harold Harefoot, Harthacnut, Edward the Confessor, Harold II, William I, William II, Henry I, Stephen, Henry II would not have been their immediate predecessors' rightful heirs. Hereditary right is starting to look weaker, but it was weaker still.

2.2.6 Avoided Minorities

Edmund Mortimer was ignored in 1399, though arguably he had the greater hereditary right (see above). Edmund is one of many minors who have been passed over in the succession. Looking at the early kings of England, we find Edmund I's two young sons losing out to their uncle, Eadred, in 946, although both eventually became king.¹²³ After the young Æthelred II came to the throne in 978, there were at least four occasions that a minor claimant was passed over before Henry III's accession, which will be discussed below.

2.2.6.1 Edmund Ætheling and Edward the Exile (1016)

Following Cnut's late father's successful conquest of England in 1013 and its subsequent return to the allegiance of Æthelred II, Cnut invaded England in 1016. Shortly after, Æthelred died and his son, Edmund II, was crowned. After a few months of fighting, Edmund II and Cnut came to an agreement whereby they would be 'brothers by adoption' and share power in the kingdom: Edmund would have Wessex and Cnut would have Mercia.¹²⁴

When Edmund died soon after the agreement, Cnut became king of all England, even though Edmund had left two sons: Edmund Ætheling, who was about a year old, and Edward the Exile, who was younger still. Hoveden said that Edmund had intended Cnut to be their "guardian and protector, until they should be of fit age to reign".¹²⁵ This was very optimistic and, as it happened, the young princes were

¹²³ Pauline Stafford, "The King's Wife in Wessex, 800-1066," *Past & Present* 91, no. 1 (1981): 18–19.

¹²⁴ Huntingdon, *History of the English People*, 15.

¹²⁵ Roger of Hoveden, *The Annals of Roger de Hoveden Comprising the History of England and of Other Countries of Europe From AD 732 to 1201*, 2:102.

rushed out of the kingdom, lucky to escape alive. However, theirs was the stronger claim as their dynasty – the House of Wessex – had ruled England since its inception, but there was neither the political will nor the strength to overthrow Cnut. Their uncle, Eadwig Ætheling – the last of Æthelred’s sons by his first marriage – was exiled in 1017 but returned shortly after only to be executed by Cnut. Their half-uncle, on the other hand, Edward (later ‘the Confessor’), had a very different life ahead of him.

2.2.6.2 Edgar the Ætheling (1066)

Edward the Exile and Edmund Ætheling had arguably still been more entitled to the throne than the Confessor in 1042 (they were all sons of Æthelred II but from two different marriages). However, they were far away in Hungary at the time. Around 1059, when it began to look as though the Confessor would not produce heirs, Edward the Exile was invited back to England. Although he died shortly after arriving, he was survived by his young son, Edgar the Ætheling.

Edgar was the half-grand-nephew of the Confessor, grandson of Edmund II, and great-grandson of Æthelred II. However, despite the fact that Eadwig, Edgar the Peaceful, and Edward the Martyr had all been crowned around a similar age, Edgar was passed over in January 1066 for Harold Godwinson. Edgar lacked close and powerful relatives (which all previous young kings had had) and, in any case, few were in a position to rival Harold Godwinson; he was not only the most powerful earl in the kingdom but he also was of full age and experienced – a man much more able to run the kingdom and repel the imminent invasions. Harold’s hereditary claims were much more tenuous, being only the brother-in-law of the Confessor and the nephew of Cnut’s sister, Estrith, but they appear to have been sufficient to place him close enough to the throne.

Edgar’s chance almost came when Harold II was defeated by William of Normandy at the Battle of Hastings on 14 October 1066. Beem drew a comparison between Edgar and Henry III:

when all the other adult male challengers to William ... were in their graves, young Edgar presented the only possible dynastic alternative to William, a scenario remarkably similar to that of 1216, when nine-year-old Henry III was hastily crowned John's successor.¹²⁶

Edgar was hastily *proclaimed* king by the surviving Anglo-Saxon nobles, but support for him dwindled as William worked his way towards London. The writer of the *Anglo-Saxon Chronicle* (D) said, with a hint of sadness, that William's victory was 'God's punishment [on the English] for their sins'¹²⁷ and that it was 'a great piece of folly that they had not [submitted] sooner, since God would not make things better, because of our sins'.¹²⁸ Thus, the chronicler had infused *divine appointment* with *right of conquest* (i.e. a form of capture, 2.1.1.4) to nullify Edgar's claims.

Edgar went into exile in 1068, but continued to play a role in English affairs (for instance, he was with Robert Curthose at Tinchebrai). His niece, Matilda of Scotland, married Henry I, reintroducing the Wessex line to the English throne.

2.2.6.3 Henry FitzEmpress (1135)

As will be remembered from the discussion on designation, there was no love lost between Henry I and his eldest daughter, Matilda, when he died, even though Henry had initially intended that she become England's first regnant queen. If it was the case that the English constitution did not allow for a regnant queen, then Henry's closest male heir was Matilda's son, Henry FitzEmpress who could have been crowned instead of his mother. However, Henry FitzEmpress was only two years old when his grandfather died and both his parents unpopular amongst the Anglo-Norman baronage.¹²⁹ Instead, it was Stephen of Blois, whose promptness and initiative triumphed. It is worth noting that Stephen was Henry I's nephew, although he did have older brothers: William, Count of Sully and Theobald II, Count of Champagne. Henry FitzEmpress did eventually become king, however, succeeding Stephen as Henry II.

2.2.6.4 Arthur of Brittany (1199)

¹²⁶ Beem, "Woe to Thee, O Land? The Introduction," 11.

¹²⁷ Gransden, *Historical Writing in England*, 93.

¹²⁸ Anglo-Saxon Chronicle (D), s.a. 1066, quoted in Gransden, *Historical Writing in England*, 93, n. 6 ("[i.e. to William]" added).

¹²⁹ Brooke, *The Saxon and Norman Kings*, 41.

Henry II had four sons who survived to adulthood. The eldest, Henry the Younger, predeceased him. The second eldest, Richard, became king in 1189. By the time of Richard's death in 1199, the third eldest, Geoffrey, had also died, although he had left a son: Arthur of Brittany. Henry II's youngest son was John. The question was: when Richard died, did the son and brother of a king (John) have a greater right than the child (Arthur) of an older sibling who was never king (Geoffrey)? In Norman and perhaps Germanic custom, John had the greater right, although *Glanvill* and *Bracton* appear to favour the nibling.¹³⁰

Constance of Brittany, Arthur's mother, moved to have Arthur proclaimed as Richard's heir and succeeded in Anjou, Maine, and Touraine.¹³¹ However, the English magnates (notably William Marshal¹³²) favoured John. After a tactical campaign and some political manoeuvring, in May 1200 John's position was so strong that Philip Augustus (as overlord of the Plantagenet continental dominions) accepted him as heir to Richard's continental lands.¹³³ A few years later, Arthur's claim was revived when, in July 1202, Philip put him forward as the lord of the Plantagenet continental lands (except Normandy), claiming that John had forfeited his right in the Lusignan affair. In less than a month, however, John had captured Arthur and his sister whilst they were besieging Eleanor of Aquitaine at Mirebeau.¹³⁴ Arthur disappeared sometime in 1203 and there are many theories about his fate.¹³⁵

2.2.7 Indeterminacy at John's Death

At the time of Henry's accession, hereditary right alone was insufficient to secure the throne. This is demonstrated by both the lack of any apparent hereditary rule regulating the succession and the fact that minor claimants had, on a number of occasions, been overlooked. Hereditary claims also had a tendency to become complicated, particularly when premature death, childlessness (or too many children), remarriage, and intra-family rivalry were involved; often, the debate was

¹³⁰ Glanvill, *Tractatus*, 1965, 78; Bracton, *De Legibus*, 2:189–90; See also: Painter, *William Marshal*, 120. Cf. Richard II's accession in 1377. 'Nibling' is a recent neologism, which means the child of one's sibling (i.e. one's niece or nephew).

¹³¹ Warren, *King John*, 65; Painter, *William Marshal*, 121.

¹³² Holden, Gregory, and Crouch, *History of William Marshal*, 2004, vol. 2, I. 11835–11908.

¹³³ Painter, *William Marshal*, 121; Warren, *King John*, 70.

¹³⁴ For the History's account of Arthur's capture, see: Holden, Gregory, and Crouch, *History of William Marshal*, 2004, vol. 2, I. 12059–12164.

¹³⁵ See: Warren, *King John*, 99.

not about who had *the* right, but the *greater* right, which was demonstrated by the accession of Henry's father, John. Thus, in spite of Æthelred II's precedent – if they had been aware of it – Henry's accession could not have been secure on hereditary grounds alone.

John was right, therefore, to designate Henry and to use what influence he had. However, John could not rule from beyond the grave and all he could have done when he closed his eyes for the last time was hope. Though his cause may have seemed hopeless, Henry was in a better position than many of the minor claimants who had been passed over: Louis' power in the kingdom was not as extensive as Cnut's had been when Edmund II died; Henry was in the kingdom, unlike either Henry FitzEmpress or Arthur of Brittany; Henry did lack a powerful mother – such as Ælfthryth, mother to Æthelred II, or Blanche of Castile, mother to Louis IX of France – but having a powerful mother could also be a setback, as shown in the case of Empress Matilda and Henry FitzEmpress. Most importantly, and quite unlike Edgar the Ætheling, Henry's father was established in the kingdom and had had a long time to build up personal ties of loyalty with the powerful magnates.

Patourel and Abulafia, talking of the Norman and Germanic succession respectively, recognised that the strength of a hereditary claim was contingent upon the influence of the departing monarch.¹³⁶ Whether they had done enough, however, was something that could only be assessed *after* they had departed the throne. Henry had a good claim, and John had done his best to strengthen it, but, as the survey of the centuries leading up to the thirteenth has demonstrated, it was far from unchallengeable. Even if Henry could show that he did have the greatest right, he would still need to translate that into a reality, which, given the civil war and his youth, was in the balance.

2.3 Interregnum, 19–28 October 1216

It shall now be considered how the succession was decided after John's death and why it was Henry, and no other, who became king.

2.3.1 Need for Urgency

¹³⁶ Le Patourel, "The Norman Succession, 996-1135," 241; Abulafia, *Frederick II: A Medieval Emperor*, 64.

England had been a papal fief since 1213 and Pope Innocent III had firmly taken John's side in the struggle. Innocent had forbidden Louis' invasion and consequently excommunicated him. The English Church supported John and, even though Louis held London, he did not have anybody who could crown him.

Nevertheless, it was important that if an alternative to Louis was to be crowned, they needed to be crowned quickly for two reasons: (a) the singularity of the royal office and (b) the difficulty of 'unkinging' a monarch for, as Shakespeare's Richard II put it

Not all the water in the rough rude sea,
Can wash the balm off from an anointed king."¹³⁷

The importance of 'winning the race' to be crowned had been demonstrated by Henry I, who left his brother's corpse lying in the New Forest to secure the treasury at Winchester before going on to London to be crowned by the nearest available bishop. It had also been demonstrated by Stephen, who likewise secured the treasury and went to London. It was perhaps Lady Jane Grey's failure to have herself crowned in 1553 that meant her cousin, Mary Tudor, could so easily unseat her.

There would always be the possibility that Louis would get himself crowned regardless and become an 'anti-king'. Such a situation had happened not long before in Germany with Otto of Brunswick and Philip of Swabia, crowned in July and September 1198 respectively. Indeed, twice in English history there had been two consecrated kings: (1) Henry II and Henry the Young King (who was only a junior king) in the twelfth century and (2) Henry VI and Edward IV in the fifteenth century. Empress Matilda came close to being crowned during Stephen's reign in the mid-twelfth century, but did not manage it. In all cases, the result was tension and they were by all accounts exceptional. For the most part, it appears to have been accepted that a challenger to the throne would have to unseat the incumbent before assuming the office themselves. After all, even challengers had an interest in preserving the integrity and potency of the monarch's office as, if they triumphed, they would want to exclude all others.

2.3.2 Events of the Interregnum

¹³⁷ William Shakespeare, *Richard II*, ed. Anthony B Dawson and Paul Yachnin (Oxford World's Classics, 2011), l. 3.2.54–55 (p. 208).

According to Wendover, John had requested burial at Worcester, although the Barnwell Chronicler said that he was buried in Worcester “not because he had chosen burial there, but because the place seemed safer at the time”.¹³⁸ The papal legate, Guala, and William Marshal both met the funeral train *en route* and attended the funeral.¹³⁹ Those present then went to Gloucester and summoned the other loyalist barons to them.

The appeal met with a quick response; a council was held, and all present unanimously agreed that they should send for little Henry.¹⁴⁰

Henry was then conveyed to Gloucester where the barons were “anxious that the coronation should take place without delay”.¹⁴¹ According to the *History*, an unknown speaker said “The sooner the better, / for upon my faith, there is no question, / of waiting; if we waited too long, / we might end up with nothing”; after all, as the author of the *History* said, “nobody knows what is round the corner”.¹⁴² As seen above (2.3.1), their concerns were legitimate. The absence of Ranulf, earl of Chester, however, caused some anxiety, as he was regarded as one of the most powerful loyalists. The unknown speaker in the *History* went on: Ranulf would be “pleased to see that it is already done, / for he knows that the need is pressing”.¹⁴³

The account in the *History* says that Ranulf did not arrive in time for the ceremony, although Alexander believed that he may well have made it.¹⁴⁴ In any case, the coronation took place on 28 October 1216.

2.3.3 Elective Kingship

A King of the English had never possessed a constitutional right to bequeath his kingdom like a private estate. The right of electing a king resided in the Witan alone, acting on behalf of the whole nation.¹⁴⁵

¹³⁸ Wendover, *Flowers of History*, 2:378; The Barnwell Chronicler was quoted in: Holden, Gregory, and Crouch, *History of William Marshal*, 2006, 3:164.

¹³⁹ Norgate, *The Minority of Henry the Third*, 2.

¹⁴⁰ Norgate, *The Minority of Henry the Third*, 2; Holden, Gregory, and Crouch, *History of William Marshal*, 2004, vol. 2, I. 15229–15254.

¹⁴¹ Norgate, *The Minority of Henry the Third*, 3.

¹⁴² Holden, Gregory, and Crouch, *History of William Marshal*, 2004, vol. 2, I. 15295–15298, 15290.

¹⁴³ Holden, Gregory, and Crouch, *History of William Marshal*, 2004, vol. 2, I. 15303–15304.

¹⁴⁴ Holden, Gregory, and Crouch, *History of William Marshal*, 2004, vol. 2, I. 15395–15396, 15473–15482; Alexander, *Ranulf of Chester*, 69.

¹⁴⁵ TP Taswell-Langmead, *English Constitutional History: From the Teutonic Conquest to the Present Time*, 2nd ed. (Stevens & Haynes, 1880), 47.

For a long time, the orthodox opinion was as above: heredity or designation (or perhaps rather 'nomination') entitled a person to candidature for the throne but, because kingship was essentially elective, the ultimate decision lay with the leading assembly of the kingdom. Certainly, the fact that a group of the leading magnates gathered at Gloucester and then discussed whether or not to bring Henry to them appears very much like they were deciding whether or not to elect Henry.

There are many problems with the concept of elective kingship, which shall be now discussed.

2.3.4 Form

The idea of elective kingship relies principally on interpretations of the Anglo-Saxon Witan, which is often said to have had the power to elect and depose kings.¹⁴⁶ There is some evidence to support this case. When Swein Forkbeard invaded in 1013, the 'Witan' set aside Æthelred II, but, when Swein died the following year, the 'Witan' invited Æthelred back from exile, even though Swein's army had chosen his son, Cnut. Take also Edward the Confessor's letter to Magnus of Norway following Harthacnut's death, which might be obliquely referring to the Witan when he says: "it was decided by all the leaders in England that I be given the title of king".¹⁴⁷

At its core, the Witan appears to have been an assembly of sorts. However, it is an elusive body that was constantly changing. The nature and development of the Anglo-Saxon assembly has been recently discussed by Roach (whose dedicated treatment of the Anglo-Saxon assembly is the first for over half a century) and Maddicott, both of whom were careful to place it in its proper context.¹⁴⁸ In particular, Maddicott was careful to distinguish the Anglo-Saxon institution from Parliament and, in the words of his reviewer, to emphasise "the place of contingency and happenstance" in the latter's creation.¹⁴⁹ Consequently, I shall therefore limit myself to two comments. *First*, the size and composition of the assembly varied, and there is no mention of quorum.¹⁵⁰ *Second*, the assembly is often thought as representing

¹⁴⁶ See, e.g.: Liebermann, *The National Assembly*, 54–58.

¹⁴⁷ Finlay, *Fagrskinna*, 174.

¹⁴⁸ Maddicott, *The Origins of the English Parliament, 924-1327*, chap. 1; Levi Roach, *Kingship and Consent in Anglo-Saxon England, 871-978* (Cambridge University Press, 2013).

¹⁴⁹ Waugh, "The Origins of the English Parliament, 924–1327 by JR Maddicott (Review)," 636.

¹⁵⁰ Liebermann, *The National Assembly*, 41; Roach, *Kingship and Consent in Anglo-Saxon England, 871-978*, 25.

the 'English people', but there is little evidence that it was in any way democratic. Instead, it was almost certainly aristocratic and its membership was determined by wealth and influence.¹⁵¹

Was the meeting at Gloucester an election? If the answer is 'yes', then it was a sham election. The attendees were not a representative group; only those barons known to be "on the King's side" and who "were not deterred from [attending] by the war" were invited.¹⁵² In many ways, this is equivalent to gerrymandering or electoral rigging. We do not know whether a vote was taken, but if there was it is doubtful that it was specified beforehand what proportion of the vote would be required to succeed or that it was done by secret ballot. Peer pressure almost certainly played a role. It does not seem that the votes were equal, as the concern over Ranulf of Chester's absence implies that he might have been able to exercise a veto. Perhaps one could say that there was restricted suffrage and a poor turnout, but the more one looks at it, the less legitimacy it appears to convey.

In fact, according to Carpenter, the loyalists could have held "an assembly at Northampton 'to elect' Henry king but since Louis also claimed to have been elected, this would merely place Henry on a par with his rival". Therefore, they decide to "plunge ahead" with the coronation.¹⁵³ It is better, therefore, to see the events at Gloucester as not being an election *per se*, which implies a guaranteed course of action following the announcement of the result, but, rather, a collection of *declarations of support*. It was a political settlement; one might go so far as to call it a gamble made in the vein of game theory. It did not make Henry an 'elected king', although the effect was similar; in the end, it appears to have been a triumph for strong-armed hereditary right (i.e. a hereditary claim forcibly enforced).

2.3.5 Scope of Choice

Even if we admit that there was some constitutional form, there were many occasions when any such 'election' seems to have been reduced to a rubber stamp – a confirmation, acknowledgement, or even submission. For example, as William of Normandy pressed towards London, the initial election of Edgar Ætheling was set

¹⁵¹ See: Liebermann, *The National Assembly*, 19.

¹⁵² Holden, Gregory, and Crouch, *History of William Marshal*, 2004, vol. 2, I. 15238, 15240.

¹⁵³ Carpenter, *The Minority of Henry III*, 13.

aside in favour of William. For Liebermann, as the time passed “the election sank into ceremonial form”, becoming secondary to other factors; being required to decide in contentious cases but otherwise not having a say.¹⁵⁴ If required to decide, there was always the question as to how much choice they had: could they choose their favourite, or did they have to decide between claims much as a court of law would? In either case, decisions almost certainly would have taken into account ‘policy reasons’. Indeed, there is evidence that the support of the magnates could be purchased – if not with money then with promises, e.g. the Coronation Charter of Henry I.

In truth, Henry was the only plausible candidate and this would be a good opportunity to demonstrate it by looking at the other ‘candidates’.

2.3.6 Louis

William Marshal and Peter des Roches had been sent by John to argue before Philip Augustus that the conflict was an internal affair and to ask him to prevent his son from becoming involved. Philip did not listen. On 25 April 1216, Guala, the papal legate, halted at Philip’s court *en route* from Rome to England, to command him to control his son.¹⁵⁵ Guala was met with a theatrical performance whereby one of Louis’ knights explained the basis of Louis’ claim: John had forfeited his kingship through his tyranny and had been “deposed by the barons of England”, leaving the throne vacant; the barons elected to fill this vacancy with Louis, who was chosen “by reason of his wife, whose mother, namely, the queen of Castile, was the only survivor of all the brothers and sisters of the said king of England”.¹⁵⁶ Thus, Louis claimed not only to be elected, but to be a rightful heir by (acquired) hereditary right. Guala remained unconvinced and sailed for England. Philip, meanwhile, sent envoys to Innocent III arguing his son’s case and, in May, Louis himself sailed to England.¹⁵⁷

Louis’ claims are tenuous and Holt went so far as to dismiss them as ‘concocted’.¹⁵⁸ He seems to set himself up as a candidate by being related to the House of Plantagenet through his wife, Blanche of Castile. Blanche was a granddaughter of

¹⁵⁴ Liebermann, *The National Assembly*, 56.

¹⁵⁵ Painter, *William Marshal*, 185.

¹⁵⁶ Wendover, *Flowers of History*, 2:362–363; Cf. Pernoud, *Blanche of Castile*, 78.

¹⁵⁷ Painter, *William Marshal*, 185.

¹⁵⁸ Holt, *Magna Carta*, 377.

Henry II through her mother, Eleanor of Castile. However, Eleanor had older sisters, who also had children and, furthermore, Blanche was not even the eldest daughter of Eleanor. There were a number of people with a much stronger claim than Blanche. The real reason for choosing Louis appears to have been strategic. According to Wendover, the rebels had chosen Louis because John was surrounded by people with continental lands, which were under the control of the French crown. The rebels hoped that John's attendees would choose their lands over their support of John and, thus, he would be "left destitute both at home and abroad".¹⁵⁹

Louis was certainly invited by the rebels, but whether they could validly elect Louis is as dubious as an election of Henry at Gloucester.

2.3.7 Other Possible Claimants

2.3.7.1 Geoffrey of Brittany's Children

First, there were the children of John's older brother, Geoffrey. Had Geoffrey's son, Arthur of Brittany, lived, he would have been the most obvious rival to Henry. However, his disappearance in 1203 ruled him out. He was survived by his sister, Eleanor, who had also been captured by John. Eleanor became, according to Carpenter, the "focus of flitting conspiracy and ambiguous intrigue" and five years later her gaoler, Peter de Maulay, was accused of plotting with Peter des Roches to carry her to the king of France.¹⁶⁰ Indeed, she still featured "towards the end of the century in romantic stories as 'the true heir to England' to whom, indeed, according to one tale, a conscience-stricken King Henry had briefly resigned his crown."¹⁶¹ However, she was never a serious candidate: she had been imprisoned for half her life, had little to call her own, and little support. Moreover, England had not had a regnant queen and, if she got married, then that might also cause difficulties. There may have also been questions about her ability to produce an heir, being in her thirties.¹⁶² Eleanor died, still imprisoned, in 1241.

2.3.7.2 John's Sisters' Children

¹⁵⁹ Wendover, *Flowers of History*, 2:358.

¹⁶⁰ Carpenter, *The Minority of Henry III*, 251; Vincent, *Peter Des Roches*, 201.

¹⁶¹ Carpenter, *The Minority of Henry III*, 251.

¹⁶² Although, this had not proved a problem for Eleanor of Aquitaine, who married Henry II aged thirty.

Then there were Henry's aunts, John's three sisters: Matilda, Duchess of Saxony; Eleanor, Queen of Castile; and Joan, Queen of Sicily. All three predeceased John and it is feasible that their children's claims could have been stronger had they lived. Their offspring shall be quickly noted.

Matilda's children included Henry V, Count Palatine of the Rhein and Otto IV, Holy Roman Emperor. If John had failed to have children, Henry V would have been heir-apparent. However, in 1216 he was around forty-three and his only son, Henry VI (who had been raised in John's court), had died in 1214, leaving the future of his dynasty insecure. Otto IV had been John's ally and was around forty-one at the time; he had no children and, following his defeat at Bouvines in 1214 (effectively sealing the fate of the Angevin continental territories), he was not a tenable choice. In any case, the time it would take to send for either of them, negotiate terms, and await their arrival with sufficient force would take too long.

Eleanor's eldest surviving son, Henry I of Castile, was only twelve at the time. It is interesting to note that when he died in June 1217, the crown of Castile passed to his eldest sister, Berengaria who, in turn, passed it to her son, Ferdinand III. Ferdinand was five years his cousin's senior, being seventeen in 1216. Being descended from the eldest daughter of Eleanor, Ferdinand was arguably much more entitled than his aunt, Blanche of Castile – Louis' wife.

Joan had married Raymond VI, Count of Toulouse. Their son, Raymond, was nineteen in 1216 but, as Toulouse had been captured the previous year by Simon de Montfort the elder in the Albigensian Crusade, he lacked the resources to pursue a claim to the English throne – not to mention that regaining Toulouse would have probably been his priority.

2.3.7.3 John's Uncles

Moving from John's legitimate siblings, we turn to his uncles, Geoffrey, Count of Nantes, and William FitzEmpress. However, these had both died without issue.

2.3.7.4 Return to the House of Blois

Stephen's eldest son, Eustace, predeceased him and his second son died five years after him without issue. Stephen's eldest granddaughter, Ida, Countess of Boulogne

had died in April 1216, but was succeeded by her daughter, Matilda II of Boulogne. His younger granddaughter, Matilda of Flanders had died in October 1210, leaving seven children; the eldest male child, Henry II of Brabant, was the same age as Henry III.

It seems doubtful that Stephen's descendants would have been welcomed – not only because of Stephen's reputation but also because they were firmly part of the French nobility. To support a French noble for the crown would undermine the symbolic resistance to the *French* Prince Louis. It should also be noted that Stephen's great-grandchildren's third cousin, Theobald VI of Blois, (who was descended from Stephen's older brother, Theobald) likely fought at the naval battle of Sandwich for Louis.¹⁶³

2.3.7.5 Henry II's and John's Illegitimate Children

Another option would have been to turn to one of Henry II's many illegitimate sons, the most notable of whom was William Longespée, earl of Salisbury. Although Longespée began and ended the war with the loyalists, at the time of John's death he was fighting for Louis, although seemingly not with designs on the throne himself.

John's first marriage to Isabella of Gloucester had produced no issue, but he had had a number of illegitimate children by various women before marrying his second wife, Isabella of Angoulême. Ralph Turner has identified nine illegitimate children in official royal records, alongside three others mentioned elsewhere:¹⁶⁴

- Joan, Lady of Wales, who had married Llywelyn the Great and, therefore, would not have been a popular choice;
- Richard FitzRoy (aka 'de Warenne' or 'of Chilham'¹⁶⁵), who had been one of John's captains and constable of Wallingford Castle in 1216. He participated

¹⁶³ Holden, Gregory, and Crouch, *History of William Marshal*, 2004, vol. 2, I. 17365–17376; This is corroborated in other places, but “no major chronicle aside from the History mentions him”: Holden, Gregory, and Crouch, *History of William Marshal*, 2006, 3:184.

¹⁶⁴ Ralph V Turner, “The Bastards of King John of England,” in *New College Conference on Medieval & Renaissance Studies*, 2012, <http://www.newcollegeconference.org/home>; Ralph V Turner, “Bastards of King John, Chart,” *Academia.edu*, accessed June 12, 2014, https://www.academia.edu/3100660/Bastards_of_King_John_Chart.

¹⁶⁵ See: Holden, Gregory, and Crouch, *History of William Marshal*, 2006, 3:183.

in the battle of Sandwich where, according to Wendover, he beheaded Eustace the Monk;¹⁶⁶

- Oliver FitzRoy, who later departed for Damietta in 1218, but did not return;
- Geoffrey FitzRoy (d. 1205, Poitou);
- John FitzRoy, who was a clerk in 1201 and died sometime after 1216;
- Henry FitzRoy (d. 1245);
- Osbert Gifford of whom we know nothing after 1216;
- Eudes FitzRoy, who accompanied Richard of Cornwall on crusade and died there in 1241;
- Maud (d.ca.1252), abbess at Barking Abbey
- Bartholomew, Isabel, and Philip.

Most of John's illegitimate children appear to have been alive in 1216 and we should not dismiss them lightly. After all, the first English king, Æthelstan, was an illegitimate child and ascended the West Saxon throne in spite of three surviving legitimate half-brothers. However, raising illegitimate children to the throne was fraught with difficulties, as the Carolingian monarchs Lothar II and Charles the Fat both discovered.¹⁶⁷

2.3.7.6 Henry III's Younger Brother

There was also Henry's seven-year-old younger brother, Richard. There is some precedent for supporting a younger son,¹⁶⁸ but there seems little reason why Richard's claim could have been stronger than Henry's, especially as it would have been difficult to predict which of them would make the better king.

2.3.8 Free Choice

The final possibility would have been to found a new dynasty. There were two key problems with this: (a) finding a suitable candidate and (b) deciding what to do with John's sons. The second is the most important. The state had not developed to such a point that it was separate from its officers. The Crown's lands were, ultimately, the Plantagenet family's lands. Choosing an alternative to Henry's sons would mean

¹⁶⁶ Holden, Gregory, and Crouch, *History of William Marshal*, 2004, vol. 2, I. 17268–17269; Wendover, *Flowers of History*, 2:400; Cf. Holden, Gregory, and Crouch, *History of William Marshal*, 2006, 3:185.

¹⁶⁷ Stafford, *Queens, Concubines and Dowagers*, 65–66.

¹⁶⁸ Stafford, *Queens, Concubines and Dowagers*, 156–166.

effectively disinheriting them – unless they were allowed to keep their lands, in which case they would become over-mighty subjects. If they were disinherited, there would always be the potential for a future civil war, launched by the young princes to reclaim their ancestral lands. If the magnates decided to *dispose* of the princes, then one might question whether they took the throne by right or by force. It is perhaps worth mentioning, though, that Henry and Richard had three sisters – Joan, Isabella, and Eleanor – who could have been married off to convey legitimacy on the new ruling house, similar to Henry I's marriage to Matilda of Scotland, which joined the Norman and West Saxon lines.¹⁶⁹

2.3.9 Intermediate Conclusions

Henry's claim, although not ideal owing to his youth, was the only viable alternative to Louis: all the others were too old and childless, too young, their claims too tenuous or politically unsustainable or simply too far away. The fact that there was no obvious contender to Henry and Louis is implicitly recognised in Griffiths' erroneous statement that Henry was John's only son, although he is correct in stating that there was 'no plausible or acceptable alternative' to him.¹⁷⁰

Moreover, John's followers had a strong interest in supporting his son, seeing as their livelihoods had theretofore relied upon the Plantagenets' generosity. In particular, John's foreign-born courtiers had a strong need for the Crown's patronage and protection.¹⁷¹ If Yorke is correct, this was not a new turn of affairs. She concluded that the enthronement of the Northumbrian child-king Osred represented "a desperate attempt to retain power by those whose fortunes were bound up with the continuing success of the house of Oswiu."¹⁷²

2.3.10 Papal Designation

There was one other who, arguably, could designate Henry as the heir: the pope. England was, at the time, a papal fief and, in theory, the pope was the overlord of all John's lands. Innocent III and Honorius III both threw their weight behind John and his children. It was Innocent III, for example, who issued the Bull releasing John from

¹⁶⁹ Matilda's great-grandfather was Edmund II of Ironside.

¹⁷⁰ Griffiths, "The Minority of Henry VI, King of England and of France," 164.

¹⁷¹ Vincent, *Peter Des Roches*, 32.

¹⁷² Yorke, *Kings and Kingdoms of Early Anglo-Saxon England*, 86–87.

Magna Carta, who had sent Guala as legate to England, and who had forbidden the clergy from supporting Louis. Honorius was quick to confirm Henry as king and to give Guala all the authority he needed to defend Henry's throne.

It is difficult to know whether Guala and Honorius III would have accepted another candidate for the throne, had the loyalists decided to choose somebody else. It is arguable that the Church possessed a right to veto potential claimants, as perhaps demonstrated by the Church's refusal to crown Stephen's son, Eustace. After all, if the coronation ceremony was "a public sign that the Church received the promise of the king", what was to prevent the Church refusing to accept a promise?¹⁷³

Furthermore, popes did not characteristically refrain from involving themselves in succession disputes across Europe, although rarely for altruistic reasons: William I secured papal blessing for his conquest of England, although Pope Alexander II seems to have been most interested in bringing the English church to heel;¹⁷⁴ in May 1179, Alexander III issued the papal bull *Manifestis Probatum* by which he created (or, at least, recognised) the independent Kingdom of Portugal;¹⁷⁵ in 1189, Innocent III supported the candidacy of Otto of Brunswick in Germany owing to his desire to break up the Hohenstaufen joint kingdom of Germany and Sicily; and in 1254 Alexander IV offered the throne of Sicily to Henry III's second son, Edmund, although this offer was rescinded in 1258 and Alexander's successors, Urban IV and Clement IV, both tried (eventually successfully) to confer it on Charles of Anjou.¹⁷⁶

The constitutionality of papal interference will be discussed at greater length in the next chapter. It should be noted, however, that the extent to which papal support was necessary or sufficient for Henry's accession is unclear. Papal support certainly complemented Henry's claim – be it his hereditary claim, his claim as heir-elect, or his claim as heir-designate of John – and it was clearly welcomed by the loyalists, who needed all the help they could get. Whether it fits in with an ancient constitution or fundamental laws, however, remains to be seen.

¹⁷³ Karl Frederick Morrison, *The Two Kingdoms: Ecclesiology in Carolingian Political Thought* (Princeton University Press, 1964), 189–190.

¹⁷⁴ Geoffrey Hindley, *The Crusades: Islam and Christianity in the Struggle for World Supremacy* (Constable & Robinson, 2003), 11.

¹⁷⁵ Pedro Paulo A. Funari, "Conquistadors, Plantations, and Quilombo: Latin America in Historical Archaeological Context," in *Historical Archaeology*, ed. Martin Hall and Stephen W Silliman (Blackwell Publishing, 2006), 216.

¹⁷⁶ Elizabeth M Hallam, *Capetian France 987-1328* (Longman Group UK Ltd., 1980), 221.

2.4 First Coronation, 28 October 1216, Gloucester

Regardless of by what right, Henry was crowned on 28 October 1216. Through the coronation ceremony, Henry was metamorphosed into a king. It shall now be examined what sort of form that metamorphosis took and whether Henry was capable of it within the established laws.

There are many things that we regard today as being central to the coronation of a new monarch, such as the venue being Westminster Abbey and the presiding ecclesiastic being the archbishop of Canterbury. Neither was available in October 1216: London was, at the time, held by Louis and the archbishop of Canterbury, Stephen Langton, had been in Rome since the Fourth Lateran Council of November 1215.¹⁷⁷ There is some precedent, however, which suggests that neither the Abbey nor the archbishop were necessary.

2.4.1 Venue

English coronations have not always taken place at Westminster Abbey. There is some evidence that Kingston-upon-Thames was a popular location for coronations. Æthelstan – before he was king of the English – was almost certainly crowned there in 924.¹⁷⁸ As Roach identified, for Æthelstan this was a sensible choice, as it lay on the borders of Wessex and Mercia, which Æthelstan was trying to unite. It also lay on the border of the Danelaw, “acknowledging the new axis of the realm, running along the Thames”.¹⁷⁹ It was as pragmatic as symbolic, however, for Æthelstan had few friends in West Saxon Winchester.¹⁸⁰

According to the twelfth-century chronicler Hoveden, Eadred (946) and Eadwig (955) were also crowned at Kingston, but these have no mention in the *Anglo-Saxon Chronicle* (ASC).¹⁸¹ The coronation of Æthelred II in 978, however, is mentioned in

¹⁷⁷ Catholic Encyclopaedia, *Stephen Langton* (WH Kent) [Online]. [Accessed 25 November 2013]. Available online: http://oce.catholic.com/index.php?title=Stephen_Langton

¹⁷⁸ EEC Gomme, ed., *The Anglo-Saxon Chronicle* (G. Bell and Sons, Ltd., 1909), 85; Giles, *The Anglo-Saxon Chronicle*, 72.

¹⁷⁹ Roach, *Kingship and Consent in Anglo-Saxon England, 871-978*, 57.

¹⁸⁰ Roach, *Kingship and Consent in Anglo-Saxon England, 871-978*, 57.

¹⁸¹ Roger of Hoveden, *The Annals of Roger de Hoveden Comprising the History of England and of Other Countries of Europe From AD 732 to 1201*, 2:66, 71; Gomme, *The Anglo-Saxon Chronicle*, 90–91, 92; Giles, *The Anglo-Saxon Chronicle*, 77, 78.

the ASC as having taken place at Kingston.¹⁸² The exception to this association with Kingston is Eadgar's coronation in 973, which took place at Bath.¹⁸³

Edmund II (1016) was 'chosen' at London, although it is unclear whether he was crowned there.¹⁸⁴ Edward the Confessor (1042), on the other hand, decided to return to the former West Saxon capital of Winchester for his coronation.¹⁸⁵ It was the Confessor's patronage of Westminster Abbey, however, that was part of the reason behind the shift towards London. According to Walker, Harold Godwinson's coronation was held on the same day and at the same location as the Confessor's funeral, Westminster Abbey, for the very practical reason that it saved lots of to-ing and fro-ing, as well as the symbolism connecting the new with the old king.¹⁸⁶ London was also growing as a political centre. According to Schramm, "If London recognized him [the new king], he could reasonably expect to carry the country with him".¹⁸⁷ Indeed, Brooke says that the citizens of London came to make "the startling claim that no king could be chosen without their consent".¹⁸⁸

William I was crowned at Westminster Abbey and, from that time onwards, the Abbey was the place of choice. For instance, Schramm stressed the fact that Henry Beauclerc, in 1100, made the long journey from Winchester to Westminster to be consecrated.¹⁸⁹ By the time Henry III came to the throne, there had been a century-and-a-half's tradition linking the coronation to the Abbey – but if one were to argue continuity from the Anglo-Saxon period then there was little reason why the coronation could not take place elsewhere, especially if it was politically sound. Gloucester was an unprecedented choice, but so was Westminster Abbey for Harold. Furthermore, Gloucester was still an important place, as illustrated by the fact that William I held one of his triannual crown-wearings there.¹⁹⁰

2.4.2 Archbishop of Canterbury

¹⁸² Gomme, *The Anglo-Saxon Chronicle*, 99; Giles, *The Anglo-Saxon Chronicle*, 85.

¹⁸³ Gomme, *The Anglo-Saxon Chronicle*, 95; Giles, *The Anglo-Saxon Chronicle*, 83; See also: Roach, *Kingship and Consent in Anglo-Saxon England, 871-978*, 62–63.

¹⁸⁴ Gomme, *The Anglo-Saxon Chronicle*, 125; Giles, *The Anglo-Saxon Chronicle*, 105.

¹⁸⁵ Schramm, *A History of the English Coronation*, 38.

¹⁸⁶ Ian W Walker, *Harold: The Last Anglo-Saxon King*, 2nd ed. (The History Press, 2010), 260; see also: Frank Barlow, *Edward the Confessor* (University of California Press, 1984), 254–255.

¹⁸⁷ Schramm, *A History of the English Coronation*, 38.

¹⁸⁸ Brooke, *The Saxon and Norman Kings*, 33.

¹⁸⁹ Schramm, *A History of the English Coronation*, 39–40.

¹⁹⁰ Schramm, *A History of the English Coronation*, 38.

William I was crowned by the archbishop of York,¹⁹¹ who according to the English sources also crowned Harold II (although, the Norman sources mention Stigand, archbishop of Canterbury).¹⁹² Henry I was crowned by the Bishop of London (as Archbishop Anselm was in exile).¹⁹³ None were considered any less a king because of it. The majority of Anglo-Saxon kings, however, appear to have been crowned by the archbishop of Canterbury, regardless of where they were crowned.

At the time, the archbishop of York was Walter de Gray and the bishop of London was William of Sainte-Mère-Eglise. I have been unable to locate either of them in October 1216 and neither is listed by Wendover as being present on the day before Henry's coronation.¹⁹⁴ Interestingly, neither is mentioned in John's testament.¹⁹⁵ The reason for this is unclear: Walter de Gray, for instance, was high in the estimations of both John and Henry III.¹⁹⁶ Instead, it was des Roches, bishop of Winchester or Guala who performed the task. The bishopric of Winchester is a prestigious one, and des Roches would have been the most senior English bishop present.

2.4.3 Proceedings

Prior to the ceremony, William Marshal knighted Henry. According to Wendover, Henry was accompanied "in solemn procession" to the church by the magnates. Once at the church, he publicly swore to protect and show reverence towards the Church and God, to "show strict justice to the people entrusted to his care" and to "abolish all bad laws and customs ... and observe those that were good, and cause them to be observed by all".¹⁹⁷ If Wendover's account is correct, it appears that Henry was made to swear the *tria praecepta* of the Anselm ordo, which is the form found in Bracton and was the 'definitive' form "for at least the greater part of the twelfth and thirteenth centuries."¹⁹⁸ Following the oath, Henry then did "homage to the holy church of Rome and to pope Innocent for the kingdoms of England and

¹⁹¹ Schramm, *A History of the English Coronation*, 27.

¹⁹² Cf. Walker, *Harold: The Last Anglo-Saxon King*, 260; Pauline Stafford, *Unification and Conquest: A Political and Social History of England in the Tenth and Eleventh Centuries* (Edward Arnold, 1989), 99.

¹⁹³ Brooke, *The Saxon and Norman Kings*, 170.

¹⁹⁴ Wendover, *Flowers of History*, 2:379.

¹⁹⁵ See Church, "King John's Testament and the Last Days of His Reign," 518.

¹⁹⁶ H Lowther Clarke, *Walter de Gray: Archbishop of York (1215-1255)* (Society for Promoting Christian Knowledge, 1922), see esp. 12 and 25.

¹⁹⁷ Wendover, *Flowers of History*, 2:379–380.

¹⁹⁸ Richardson, "The English Coronation Oath," 44–45; Schramm, *A History of the English Coronation*, 196.

Ireland” and promised to pay the annual thousand marks promised by John. It was only then that Henry was crowned; according to Wendover, it was Peter des Roches who was given the honour of crowning and anointing him. This concluded the ceremony. A banquet was held in the evening and the following day Henry “received the homage and fealty of all the bishops, earls, barons, and all others present, and they all promised faithful allegiance.”¹⁹⁹

That Henry might not have been able to understand the meaning and implications of the oaths that he gave and received does not appear to have been a barrier. It is possible to argue that this represented a ‘Crown’ that was deemed competent even if the person of monarch was not. However, this is artificial and the limitations afterwards imposed on Henry recognised that he was not fully competent. Instead, it is much more likely that Henry performed these acts because they were integral to the process of becoming king and were, therefore, done out of necessity.

2.5 Treaty of Lambeth, September 1217

Even though Henry was now king, his throne required defence. On 20 May, the Henricians took advantage of Louis’ divided forces by engaging the northern part within the walls of Lincoln and overwhelming them. Louis was then reliant on reinforcements sent by his wife, but the relief force was met by English ships and defeated off Sandwich on 24 August. The Henricians marched towards rebel-held London and Louis agreed to discuss terms “on condition that they would make suitable terms of peace, saving his honour, and without injury to his followers”.²⁰⁰

In mid-September an agreement was reached that imposed duties on both parties. Louis would henceforth abide by the church, leave England immediately and never ‘return with evil designs’, surrender those lands and castles captured during the war, and “would use his best endeavours to induce his father Philip to restore to the English king, Henry, all his rights in the transmarine provinces.”²⁰¹ The Henricians agreed to restore the situation *ante bellum*, to free prisoners without ransom, and

¹⁹⁹ Wendover, *Flowers of History*, 2:380.

²⁰⁰ Wendover, *Flowers of History*, 2:401.

²⁰¹ Wendover, *Flowers of History*, 2:402.

pay Louis £5000.²⁰² Though Louis renounced his claim to the throne, it is interesting that he was not made to declare that Henry had had the better claim.

2.6 Concluding Remarks

We are used to the idea of a strict line of succession controlled by Parliament. We know how many of the incumbent's kin must die, become ineligible, or abdicate before a certain individual can succeed to the throne – provided, of course, that Parliament does not alter the rules concerning the line of succession, as it did in 2013.²⁰³ However, stable and orderly succession is a luxury of modern times. Today, the monarch's role is largely ceremonial and their personal qualities do little to hinder or improve effective governance. In the medieval period, the monarch was not only a functional part of government, they were the centrepiece: the *dux bellorum*, fountain of justice, and heart of administration. Modern monarchs reign, medieval monarchs also ruled and, as long as they did, the succession was, in Brooke's words, "a profoundly serious matter: too serious to be subjected to simple rules".²⁰⁴

The modern law of succession dates from the eighteenth century.²⁰⁵ Brooke's description of succession before that point appears to be the right one:

There were, indeed, no precise rules; but the succession to the thrones of Anglo-Saxon kingdoms and the English kingdom was hedged round with a series of conventions, customs and assumptions; and out of the dialectic between these conventions each succession was settled – sometimes peacefully, sometimes with violence.²⁰⁶

In an attempt to legitimise themselves, claimants would try to show that they had excellent credentials and the support of some group, but ultimately their authority would rest on the influence that they could wield. The case of minor monarchs is an interesting one because they were largely unable to press their claim themselves. It is also interesting because minor kings, considering the centrality of the monarch, could not provide effective government. What they might be able to provide, however, was a degree of stability. In Henry's case, his youth was politically

²⁰² Wendover, *Flowers of History*, 2:402–403.

²⁰³ Succession to the Crown Act 2013, c. 20, which was passed following the Perth Agreement 2011

²⁰⁴ Brooke, *The Saxon and Norman Kings*, 49.

²⁰⁵ Brooke, *The Saxon and Norman Kings*, 49; Goldsworthy, *Parliamentary Sovereignty: Contemporary Debates*, 26.

²⁰⁶ Brooke, *The Saxon and Norman Kings*, 24.

fortuitous, as he could play the card of innocence, which he exploited in an open letter:

We hear that a quarrel arose between our father and certain nobles of our kingdom, whether with justification or not we do not know. We wish to remove it for ever since it has nothing to do with us.²⁰⁷

This idea was reflected in the writers of the period, all of whom “regarded the accession of Henry III as the beginning of a new era”, perhaps more so than after most coronations.²⁰⁸ Henry’s youth may also have been an opportune moment for the barons to stamp their mark on the practice of statecraft and to reverse the Plantagenet tendency toward absolutism. Alternatively, it might simply have been a way of saving face for those too proud to submit to Louis – even if Louis was prepared to offer lucrative rewards, as he did to Hubert de Burgh.²⁰⁹

After considering the various elements of Henry’s accession and that of his predecessors, it becomes clearer that Henry’s accession was a political settlement. This settlement did play out in a constitutional theatre, however, with various competing ideas about what should be the case – ideas that varied with time, place, and person. Within that theatre, Henry had a good claim, but ultimately it had to be made good by his supporters.

²⁰⁷ Quoted in Carpenter, *The Minority of Henry III*, 22.

²⁰⁸ Gransden, *Historical Writing in England*, 322.

²⁰⁹ Wendover, *Flowers of History*, 2:381.

3 Government and Governance

3.1 Introduction

Allowing a child to come to the throne – especially one as young as Henry – raised a host of problems, especially: (a) how was the kingdom to be governed whilst Henry was (deemed) unable and (b) when would Henry be (deemed) able? The first of these questions shall be discussed in this chapter; the second in the next.

The question about who was to govern the kingdom and how they were to do it was a very serious one – particularly in light of the dire situation in which the Henricians found themselves. One must applaud the loyalists, for Henry survived the civil war and his minority. Furthermore, Henry's minority, unlike the German minorities, did not result in the diminution of royal power, which Abulafia thought was a major factor in the development of strong regional princes.²¹⁰ England survived as a unitary state. However, their approach to the minority was unorthodox and inconsistent throughout its course; two things that do not square well with ideas of constitutionalism. Furthermore, whilst Henry's minority laid the way for future minorities (such as his grandson, Edward III, and his great-great-grandson, Richard II), the exact arrangements of Henry's minority do not appear to be later repeated.

3.2 The Will of King John

As he lay dying, King John attempted to designate Henry as his heir (2.2) even though it would doubtless have been clear to him that it would be some time before Henry could rule. It would seem logical, therefore, for John to have made some provision for the running of the kingdom during Henry's minority but, according to Turner,

On the death of John there were no detailed instructions to guide the magnates; they had instead a poor substitute, the vague and evidently hastily prepared will of the dead King.²¹¹

²¹⁰ Abulafia, *Frederick II: A Medieval Emperor*, 64.

²¹¹ Turner, "The Minority of Henry III. Part I," 282.

Despite lacking in substance, John's testament is our best direct record of his wishes. It has already been touched upon in the previous chapter (2.2.1), but shall be considered in more depth here.

3.2.1 Error in the *Foedera* Text

The text of John's testament found in Rymer's *Foedera* is the basis of most modern commentary on the subject.²¹² However, Church recently identified an omission in the *Foedera* text.²¹³ The two missing words, *testamentum meum* ('my testament'), are seemingly innocuous but dramatically alter the tone. Warren's translation, which was based on the *Foedera* text, is as follows:

...I commit the ordering and execution of my will to the fidelity and discretion of my faithful men whose names are written below, without whose counsel, were they at hand, I would not, even in health, ordain anything...²¹⁴

Compare this with the Latin in the original testament, as transcribed by Church, and Church's translation in which the reinstated words are emboldened:

...ordinationem et dispositionem
testamenti mei fidei et
dispositioni legitime committo
fidelium meorum subscriptorum,
sine quorum consilio, etiam in
bono statu constitutus
nullatenus in presentia eorum
testamentum **meum**
ordinarem...²¹⁵

...[I] commit the arbitration and
administration of my testament to
the trust and to the legitimate
administration of my faithful men
whose names are written below,
without whose counsel, even in
good health, I would have by no
means arranged **my testament** in
their presence...²¹⁶

Warren's translation is humbling and from a constitutional viewpoint indicates that John relied on his *fideles* to such an extent that he could "arrange nothing of importance without the counsel of the men who are listed at the foot of the document".²¹⁷ In effect, it implies conciliar government. However, the true meaning,

²¹² Thomas Rymer, *Foedera, Conventiones, Litterae et Cujuscunq[ue] Generis Acta Publica Inter Reges Angliae et Alios Quosuis*, ed. Adamo Clarke and Frederick Holbrooke, vol. 1 (London, 1816), 144; Thomas Duffus Hardy, *Syllabus (in English) of the Documents Relating to England and Other Kingdoms Contained in the Collection Known as "Rymer's Foedera."*, vol. 1 (Longmans, Green and Co., 1869), 22.

²¹³ Church, "King John's Testament and the Last Days of His Reign," 507.

²¹⁴ Warren, *King John*, 275–276.

²¹⁵ Church, "King John's Testament and the Last Days of His Reign," 12.

²¹⁶ Church, "King John's Testament and the Last Days of His Reign," 12–13.

²¹⁷ Church, "King John's Testament and the Last Days of His Reign," 518.

when we take into account the omitted words, is much more mundane and only means that John, in view of his illness, needed help to organise and execute his last wishes.

3.2.2 'Arbiters' of John's Testament

Church has suggested that the thirteen men named as arbiters²¹⁸ in John's testament were intended to form Henry's minority government.²¹⁹ However, there is no evidence that they ever acted consciously together as such.²²⁰ This might mean that John had never intended them to form a minority council, which is reinforced by the startling omissions of Hubert de Burgh and Richard Marsh, the chancellor.²²¹ Indeed, there is some evidence that John had something, or rather, somebody, more specific in mind.

3.2.3 Evidence in the *History*

In an "affecting scene" in the *History*, John entreated those by his deathbed to beg the Marshal to forgive John for all the 'wrongs' and 'many tribulations and troubles' that he had caused him.²²² John then praised the Marshal's loyalty and asked those present "to see that he takes charge of my son / and always keeps him under his care, / for my son will never govern these lands of mine with the help of anyone but the Marshal".²²³

It is unclear, however, whether the Marshal was to be merely Henry's guardian and aide, or whether John envisioned the Marshal as a regent. It is distinctly possible that John had not envisioned the Marshal as either. Crouch has argued that, in all likelihood, the "king's departing words on the Marshal formed part of a longer deathbed confession" and that the author of the *History*, on account of William's

²¹⁸ Church opted for 'arbiters' in his translation, rather than 'executors', because the Latin *ordinatores* was used, as opposed to *executores*: Church, "King John's Testament and the Last Days of His Reign," 515.

²¹⁹ Church, "King John's Testament and the Last Days of His Reign," 519 and 525. The thirteen were: Guala, papal legate; Peter des Roches, bishop of Winchester; Richard Poer, bishop of Chichester; Silvester, bishop of Worcester; Aimery de St-Maur, master of the Temple; William Marshal, earl of Pembroke; Ranulf, earl of Chester; William de Ferrers, earl of Derby; William Brewer; Walter de Lacy; John of Monmouth; Savaric de Mauléon; and Falkes de Bréauté. See Church, "King John's Testament and the Last Days of His Reign," 518.

²²⁰ Church, "King John's Testament and the Last Days of His Reign," 525ff.

²²¹ Church, "King John's Testament and the Last Days of His Reign," 527.

²²² The initial words are Crouch's: Crouch, *William Marshal: Knighthood, War and Chivalry*, I. 123; Holden, Gregory, and Crouch, *History of William Marshal*, 2004, vol. 2, I. 15167–15191.

²²³ Holden, Gregory, and Crouch, *History of William Marshal*, 2004, vol. 2, I. 15187–15190.

appointment, was probably “extrapolating what happened later at Gloucester”.²²⁴ When one looks at the testament, there is little sign that William Marshal was to be given preference. His name does appear in a prominent position in the list of John’s arbiters, being the first of the secular lords, but there is nothing to indicate that this is due to anything other than his seniority in age, experience, and wealth – making him a natural candidate for the regency but nothing more.

Therefore, whether John had envisaged a select minority council ruling England, an individual regent or, indeed, whether he had given much thought to it at all, is unclear. In any case, what John might have intended may be academic for, as Painter said: “there is no evidence that their late master’s wish carried any weight with the leaders of the loyal party”.²²⁵

3.3 England as a Papal Fief

On 15 October 1216, John, fearing the worst, sent a letter to the pope commending “his kingdom and his heirs to the protection of the pope”.²²⁶ In fact, as overlord of England, Honorius III “automatically became the guardian of the late king’s children.”²²⁷

Honorius does not seem to have shied from using his power for “[a]s soon as he heard of John’s death, he conceded to Guala full power without appeal to do what he thought expedient for the king and the kingdom. The loyalist magnates were ordered to submit to him ‘humbly and devotedly’.”²²⁸ Henry himself did homage to the Holy See at his coronation and, four days later, entrenched papal protection still further by taking the cross “not with any intention of going on crusade but, as a Peterborough chronicle put it, ‘for the greater protection of himself and his kingdom’.”²²⁹

²²⁴ Crouch, *William Marshal: Knighthood, War and Chivalry*, 124.

²²⁵ Painter, *William Marshal*, 193.

²²⁶ Church, “King John’s Testament and the Last Days of His Reign,” 519; Vincent, *Letters of Guala*, vol. lxxxiii, n. 140b.

²²⁷ Church, “King John’s Testament and the Last Days of His Reign,” 527; Vincent, *Letters of Guala*, vol. lxxxiii, n. 140b; See also: Norgate, *John Lackland*, 283–284; and Carpenter, *The Minority of Henry III*, 13.

²²⁸ Carpenter, *The Minority of Henry III*, 13, see esp. n. 5.

²²⁹ Carpenter, *The Minority of Henry III*, 13, n. 4.: *Chron. Maj.*, 2; *Chron. Petroburgense*, 7; *Guisborough*, 158; see Lloyd, ‘Political Crusades in England’, 113-14; Lloyd, *The Crusade*, 208-9; Tyerman, *The Crusades*, 137.

In April 1217, Honorius wrote again to Guala bestowing “wide powers”, aimed at throwing the Church’s financial resources behind Henry, as well as asking Guala to find a bride for Henry and to ensure the execution of John’s testament. Honorius also wrote to Philip Augustus “in a friendly spirit” asking him to recall his son from England “lest it should be recorded that he was striving to disinherit one of the coheirs of the kingdom of Christ”. We then have a letter from November 1217, which Turner believed must have come from the Marshal, which, amongst other things, expressed Henry’s “gratitude for the Pope’s assistance in raising him to the throne”. If nothing else, we must agree with Turner’s conclusion that “[t]hese services of the Papacy made a deep impression on the mind of the young king”.²³⁰

It is possible, therefore, that John intended the pope to govern England through Guala, the legate. Furthermore, it is clear that both Honorius himself and the loyal English magnates were keen that Rome be involved. From the English magnates’ viewpoint, it makes a great deal of sense, for the Pope wielded not only spiritual sanctions but also prestige and influence; the pope could even mobilise armies, as demonstrated in the crusades both in the Middle East and nearer to home, e.g. the Albigensian Crusade in southern France that had been proclaimed by Innocent III in 1208 and was still ongoing in 1216.²³¹ It should also be remembered that the churchmen in England wielded a huge amount of power and ensuring their cooperation with the government was important.

However, John’s surrender of the kingdom to the pope on 15 May 1213 and reception of it back as a papal fief,²³² re-confirmed in his letter of 15 October 1216, represents a massive transfer of sovereignty.

3.3.1 Transfers of Sovereignty

From the foundation of the English Church by Augustine in 597 to the Henrician Reformation in the 1530s, the Anglo-Saxon kingdoms and, later, England were part of western Christendom under the Roman Church.²³³ Throughout this time, it appears to have been generally recognised by both secular and ecclesiastical writers

²³⁰ Turner, “The Minority of Henry III. Part I,” 256–257.

²³¹ See Hindley, *Crusades*, 170–176.

²³² Carpenter, *The Struggle for Mastery*, 286.

²³³ Charles L Wells, “The Papacy in the English Church,” *The Sewanee Review* 30, no. 2 (April 1922): 154.

that kings and popes had different jurisdictions.²³⁴ For example, the author of *Bracton* said:

[J]ust as the lord pope has ordinary jurisdiction over all in spiritual matters, so the king has ordinary jurisdiction in his kingdom in temporal matters. They have neither equals nor superiors.²³⁵

There seems to have been little disagreement about the first sentence from *Bracton*, at least in theory.²³⁶ However, there were immense difficulties in drawing a sharply defined line between the spiritual and secular spheres or *ordines*²³⁷ – particularly when one begins to take into account the eternal, natural, and divine laws that were believed to regulate human conduct above and beyond human law.²³⁸

The second sentence is far more problematic. Popes Gelasius I (492-496), Gregory VII (1073-1085), Innocent III (1198-1216), and Innocent IV (1243-1254), in particular, strove to establish a doctrine of papal supremacy.²³⁹ Perhaps the most radical formulation was by Alanus,²⁴⁰ a clerk of Innocent III, who thought that “there was no limitation in principle on papal action in temporal affairs, though there might be for reasons of expediency.”²⁴¹ Innocent III himself was keen to show that papal authority was the greater:

[God] instituted two great dignities, a greater one to preside over souls as if over day, and a lesser one to preside over bodies as if over night. These are the pontifical authority and the royal power. Now just as the moon derives its light from the sun and is indeed lower than it in quantity and quality, in position and power, so too the royal authority derives the splendour of its dignity from the pontifical authority.²⁴²

²³⁴ Cf. Mark 12:17 – “And Jesus answering said unto them, Render to Caesar the things that are Caesar’s, and to God the things that are God’s.” (King James version)

²³⁵ Bracton, *De Legibus*, 281.

²³⁶ Wells, “The Papacy in the English Church,” 154.

²³⁷ See Morrison’s discussion on the difficulties with the dualistic position of the ninth-century Frankish clergy: Morrison, *The Two Kingdoms*, 66–67, 116–177.

²³⁸ This classic distinction was drawn, for example, by Aquinas in the latter part of the thirteenth century, see: Thomas Aquinas, *Treatise on Law (Summa Theologica, Questions 90-97)*, ed. Stanley Parry (Gatesway/Henry Regnery Co., 1988), 11–29.

²³⁹ See: JA Watt, “The Theory of Papal Monarchy in the Thirteenth Century: The Contribution of the Canonists,” *Traditio* 20 (1964): 179–317.

²⁴⁰ A clerk of Innocent III, possibly Alanus Anglicus who was an Englishman teaching canon law at Bologna: HCG Matthew, Brian Harrison, and Lawrence Goldman, eds., “Alanus Anglicanus,” *Oxford Dictionary of National Biography* (Oxford University Press, 2004), doi:<http://dx.doi.org/10.1093/ref:odnb/53478>.

²⁴¹ Watt, “Theory of Papal Monarchy in the Thirteenth Century,” 227.

²⁴² Quoted in: Abulafia, *Frederick II: A Medieval Emperor*, 94.

The Holy Roman Emperor and the various kings countered these moves, resulting in, for example, the controversies over the investitures (although most canonists seem to have been of the opinion that the king did have some role to play²⁴³) and ‘criminous clerks’. However, “no English king or parliament before the days of Henry VIII had any intention of disputing the pope’s authority in that wide sphere of human concerns which every one except a few heretics agreed to call spiritual.”²⁴⁴ In terms of rebuttal, one might point to the ‘great’ Statute of Praemunire (1393),²⁴⁵ which became a potent weapon for Henry VIII against the Roman Catholic Church. According to Maitland, whether the statute’s framers foresaw such a use is a “moot point”,²⁴⁶ but it seems clear that its original scope was limited to protecting the Crown’s interests against the Church and it was only by a kind of mission creep that it came to assume a radical anti-ecclesiastical, anti-papal flavour.²⁴⁷

Most importantly, perhaps, was the fact that the papal court, “upholding the universal jurisdiction of the Roman see” offered itself as both a “general court of first instance and as a supreme court of appeal for every Christian,”²⁴⁸ which was an idea developed further by Innocent III.²⁴⁹ Early on, theories of dualism amongst the canonists morphed into monism, for their theories “implied a single society of all Christians, over the constitution of which one ruler enjoyed *plenitudo potestas*. This power was held, it was beginning to be argued [in arguments derivative of the Gelatian tradition], by him who was *vicarus Christi*.”²⁵⁰

Therefore, throughout the medieval period there was an immensely powerful supranational legal order stretching across western Christendom, which van Caenegem went so far as to call a ‘quasi-state’.²⁵¹ Constitutionally, this is incredibly important for it implies that none of the Christian lands were completely sovereign –

²⁴³ See: Jörg Peltzer, “The Angevin Kings and Canon Law: Episcopal Elections and the Loss of Normandy,” in *Anglo-Norman Studies XXVI – Proceedings of the Battle Conference 2004*, ed. John Gillingham (The Boydell Press, 2005), 169–184.

²⁴⁴ WT Waugh, “The Great Statute of Praemunire,” *The English Historical Review* 37, no. 146 (April 1922): 176; See also: William Holdsworth, *A History of English Law*, ed. AL Goodhart and HG Hanbury, vol. 1, 7th ed. (Methuen & Co., 1971), 585–587.

²⁴⁵ 16 Richard II, c. 5

²⁴⁶ Frederic William Maitland, *Roman Canon Law in the Church of England* (Burt Franklin, 1968), 70.

²⁴⁷ RH Helmholz, *Roman Canon Law in Reformation England* (Cambridge University Press, 1994), 25–27; See also: Waugh, “The Great Statute of Praemunire,” 196–197.

²⁴⁸ Watt, “Theory of Papal Monarchy in the Thirteenth Century,” 203.

²⁴⁹ Watt, “Theory of Papal Monarchy in the Thirteenth Century,” 219.

²⁵⁰ Watt, “Theory of Papal Monarchy in the Thirteenth Century,” 206, the insertion is mine.

²⁵¹ RC van Caenegem, *European Law in the Past and the Future: Unity and Diversity over Two Millennia* (Cambridge University Press, 2002), 15.

least of all the Holy Roman Empire.²⁵² Indeed, the importance of the role of the Church in medieval society can be seen in Magna Carta, in which protection afforded to the rights and privileges of the church took pole position.

The impact of John's surrender of England to the pope, therefore, starts to look less significant, except in that, in the short term, it placed the Church's full weight behind John and his son.²⁵³ The thousand marks did continue to be paid regularly until the Second Barons' War. Thereafter, it was paid increasingly sporadically and in 1366 Parliament declared John's surrender invalid and non-binding, ending the payment once and for all.²⁵⁴ Interestingly, this was not the first time that John's surrender had been argued to be invalid: Philip Augustus and Louis of France had argued that England had not been John's to give away.²⁵⁵

It is perhaps the case, therefore, that regardless of John's actions in 1213, the pope could easily have argued his authority to intercede on Henry's behalf – particularly in default of a secular authority that could. It was not uncommon for the pope to send legates, and therefore Guala's presence should not seem too surprising. Whatever the case, it is clear that ultimate power, and the legitimate foundation of the minority government, might not have come from within the kingdom (and, thus, from its constitution) but, rather, from Rome – indeed, Beem has said that papal power was at its 'apex' during Henry's minority.²⁵⁶

3.4 Appointment of William Marshal, 29 October 1216

Henry III was crowned at Gloucester on 28 October 1216. The following day, the magnates gathered to discuss their next move.²⁵⁷

The magnates appear to have been under the impression that the question of who would govern the kingdom was not yet settled, for they set about settling it. In their deliberations, they appear to have only considered creating one position, which

²⁵² Watt, "Theory of Papal Monarchy in the Thirteenth Century," 212–213.

²⁵³ Sayers, *Papal Government and England (1216-1227)*, 165–171.

²⁵⁴ Sayers, *Papal Government and England (1216-1227)*, 164–165; William Stubbs, *The Constitutional History of England: In Its Origin and Development*, vol. 2, Library Ed (Clarendon Press, 1880), 451.

²⁵⁵ Wendover, *Flowers of History*, 2:361–363; See also: Warren, *King John*, 272.

²⁵⁶ Charles Beem, "Woe to Thee, O Land? Some Final Thoughts," in *The Royal Minorities of Medieval and Early Modern England*, ed. C Beem (Palgrave Macmillan, 2008), 251.

²⁵⁷ To follow these events in the History of William Marshal, see: Holden, Gregory, and Crouch, *History of William Marshal*, 2004, vol. 2, I. 15373–15560.

would be the leader of the government. As Painter remarked, their options were limited as to who this could be and Alan Basset, who was present at the assembly, declared that the choice was really only between William Marshal, earl of Pembroke, and Ranulf, earl of Chester.²⁵⁸

William Marshal was a younger son of a minor baron and had made his way in the world from a landless knight to a major landholder through service to the Plantagenet royal family. In 1216, William held substantial lands in the Welsh Marches and Ireland and, though he was past his physical prime (being in his early- to mid-seventies), he was well-respected, experienced, and well resourced. Ranulf, earl of Chester, was in his mid-forties and, although his “material resources within England were greater than William Marshal’s,”²⁵⁹ Ranulf appears to have deferred to the Marshal. Having canvassed the opinion of the magnates, a few of the senior men withdrew to prevail upon the Marshal to accept.

It took some persuasion before William accepted and was eventually only persuaded by Guala’s offer of “the pardon and remission of his sins”.²⁶⁰ It is impossible to know whether this offer was just ‘too tempting to be refused’, as Painter described it,²⁶¹ or whether Guala ‘required’ William to take the role, as Norgate describes it.²⁶² Perhaps the fact that Guala did not command him outright to accept indicates that William had some choice. In any case, he seems to have been delighted with the opportunity to pave his way to heaven if not, as John Marshal and Ralph Musard suggested, by the honour to be gained and the ability to ‘enrich all his friends’.²⁶³

The Marshal’s appointment presents a number of difficulties. It was certainly a practical solution, but was it a constitutional one? There are five key questions that need to be answered:

- (i) What was the title of his office?
- (ii) What were the number and scope of his powers?
- (iii) What was the source of his powers?

²⁵⁸ Painter, *William Marshal*, 193; Holden, Gregory, and Crouch, *History of William Marshal*, 2004, vol. 2, l. 15496–15504.

²⁵⁹ Carpenter, *The Minority of Henry III*, 16.

²⁶⁰ Norgate, *The Minority of Henry the Third*, 7.

²⁶¹ Painter, *William Marshal*, 196.

²⁶² Norgate, *The Minority of Henry the Third*, 7.

²⁶³ See: Painter, *William Marshal*, 195.

- (iv) What was the longevity and vitality of his powers?
- (v) What was his relation to the other senior officials?

In essence, we are looking to discover whether the Marshal's powers were *predetermined*, which shall be considered in the following discussion.

3.4.1 William Marshal's Position

In modern texts, William is universally referred to as 'regent'.²⁶⁴ However, this word was not used by contemporaries. For the first couple of weeks, and at least on four occasions,²⁶⁵ William was styled 'justiciar'.²⁶⁶ Whether this formulation was William's doing or that of the chancery clerks is unknowable. There was much to recommend this title, however, as from the reign of Henry II the justiciar had increasingly come to represent the king's *alter ego*²⁶⁷ and had acted as regent during the English kings' frequent absences.²⁶⁸ Indeed, as recently as 1214, Peter des Roches – then justiciar – had acted as regent during John's absence in Poitou.²⁶⁹ However, by mid-November William had ceased being ascribed this title; no doubt largely in part to the arrival of Hubert de Burgh at Bristol, who "had presumably reminded his colleagues that this title was already used by himself."²⁷⁰

Hubert had held the justiciarship since replacing des Roches around the time of Magna Carta, June 1215.²⁷¹ Hubert had been absent from the assembly at Gloucester because he had been seeing to the defence of Dover. It does not appear to be the case that Hubert's loyalty was in doubt and, indeed, his staunch loyalty was demonstrated when, as Wendover tells us, he refused to surrender Dover to Louis following John's death.²⁷² There were precedents of a double justiciarship in the

²⁶⁴ See, e.g.: Painter, *William Marshal*, in the title: "Regent of England"; Carpenter, *The Minority of Henry III*, e.g. at 27; Norgate, *The Minority of Henry the Third*, e.g. 61, 70; Crouch, *William Marshal: Knighthood, War and Chivalry*, e.g. at 27.

²⁶⁵ Powicke and Turner state at least four documents, whereas Norgate states at least six: Cf. Powicke, *King Henry III and the Lord Edward*, 7; Turner, "The Minority of Henry III. Part I," 246; Norgate, *The Minority of Henry the Third*, 70.

²⁶⁶ Norgate, *The Minority of Henry the Third*, 70; Crouch, *William Marshal: Knighthood, War and Chivalry*, 127; Powicke, *King Henry III and the Lord Edward*, 7.

²⁶⁷ Francis West, *The Justiciarship in England 1066-1232* (Cambridge University Press, 1966), 1.

²⁶⁸ See: West, *The Justiciarship in England 1066-1232*, chap. 2–3.

²⁶⁹ Vincent, *Peter Des Roches*, 9.

²⁷⁰ Powicke, *King Henry III and the Lord Edward*, 7.

²⁷¹ Cf. Vincent, *Peter Des Roches*, 119; and Norgate, *The Minority of Henry the Third*, 119.

²⁷² Wendover, *Flowers of History*, 2:381; See also: Powicke, *King Henry III and the Lord Edward*, 7 at note 1; Turner, "The Minority of Henry III. Part I," 261.

reigns of Henry II and Richard I: Robert of Leicester and Richard de Luci in 1159,²⁷³ and Hugh de Puiset of Durham and William de Mandeville in September 1189²⁷⁴. The first of these seems to have lasted for around nine years, ending on Luci's death in April 1168.²⁷⁵ The latter lasted only for a few months, ending with Mandeville's death in November 1189.²⁷⁶ On the whole, however, the justiciarship was held by a single individual.

There is also arguably a case that William was barred from the justiciarship. As Norgate noted, the justiciar was appointed by the king "by letters patent, to be held during the King's pleasure, was not vacated by the King's death, but belonged of right to the grantee until he was superseded by means of a new appointment."²⁷⁷ As discussed earlier, it is possible that John had envisioned William in the leading role, but there is no suggestion that John formally appointed William justiciar, thus demoting Hubert. Therefore, as John had not removed Hubert and as Henry was too young to do so, Hubert's justiciarship appears to have been secure for as long as Henry was a minor. Furthermore, whilst Hubert was not a major landholder, he was an able castellan (shown both on the Continent and at Dover) and it was important not to alienate him. Thus, by distinguishing William's role from the justiciarship, Hubert could, to a certain extent, be appeased. If William was not justiciar, however, then what was he?

From mid-November 1216,²⁷⁸ William styled himself *rector noster et regni nostri*,²⁷⁹ which was a title created for him and disappeared when he vacated it in April 1219. This title has been translated variously as 'our guardian and the guardian of our kingdom; our keeper and keeper of the kingdom',²⁸⁰ and 'governor of ourself and our realm; governor of the king and of the kingdom'²⁸¹. The word that was variously

²⁷³ West, *The Justiciarship in England 1066-1232*, 35.

²⁷⁴ West, *The Justiciarship in England 1066-1232*, 65.

²⁷⁵ West, *The Justiciarship in England 1066-1232*, 44.

²⁷⁶ West, *The Justiciarship in England 1066-1232*, 67.

²⁷⁷ Norgate, *The Minority of Henry the Third*, 70.

²⁷⁸ Norgate, *The Minority of Henry the Third*, 71 at n. 2; Cf. Powicke, *King Henry III and the Lord Edward*, 7; and Crouch, *William Marshal: Knighthood, War and Chivalry*, 127; Norgate says that the title appears on the Rolls for the first time on 19 November, although Powicke and Crouch note that it had been used on the reissue of Magna Carta on 12 November.

²⁷⁹ Powicke, *King Henry III and the Lord Edward*, 7; David A Carpenter, *The Reign of Henry III* (The Hambledon Press, 1996), 22. Norgate reported the phrase as being *rector nostri et regni nostri*. Norgate, *The Minority of Henry the Third*, 70.

²⁸⁰ Crouch, *William Marshal: Knighthood, War and Chivalry*, 127.

²⁸¹ Norgate, *The Minority of Henry the Third*, 14, 71.

translated as ‘guardian’, ‘keeper’, and ‘governor’ was *rector*, which may also be translated as: ‘controller’, ‘director’, ‘steersman’,²⁸² ‘guide’, ‘leader’, ‘ruler’, ‘preceptor’²⁸³. One might have easily, however, translated it as curator, custodian, steward, viceroy²⁸⁴, gerent/vicegerent, or prefect. Although the English derivative is clearly visible in the Latin, there does not appear to have been any indication that *rector* held any religious significance in the context of William’s role.

From the proliferation of possible translations, it is possible to gain a general sense about William’s role, but it does not help us to understand it precisely. Therefore, it may be illuminating to consider analogous precedents.

3.4.1.1 Prior Regents

As far back as the Anglo-Saxon kingdom of Northumbria we have evidence of a regent-like role being played by Berhtred in Osred’s minority. He was described by Stephanus as “*secundus a rege princeps* (second in rank to the king)”, but whose position as a ‘royal deputy’ was normally referred to in eighth-century Northumbrian chronicles as *patricius*.²⁸⁵ However, it seems unlikely that the thirteenth-century magnates would have been well-acquainted with eighth-century Northumbria.

William I had often left the care of Normandy in the hands of his queen, Matilda, but there is no evidence that this was the case for England.²⁸⁶ Rather, it was Lanfranc, archbishop of Canterbury who called the shots in England during William’s absences. In some Norman sources, Lanfranc was described as *princeps et custos Angliae* [ruler and custodian of England], although this does not seem to have been a formal title used by him.²⁸⁷

Henry I often left his wife, Matilda, with the mantle of government when he was absent.²⁸⁸ However, with his brother imprisoned on his orders, his eldest daughter’s marriage in 1114 to the Holy Roman Emperor, his wife’s death in 1118, and his son’s

²⁸² CDN Costa and Mary Herberg, eds., *Langenscheidt’s Universal Dictionary: Latin-English, English-Latin* (Langenscheidt/Hodder and Stoughton, 1966), 192 “rector.”

²⁸³ James Morwood, ed., *Pocket Oxford Latin Dictionary*, 3rd ed. (Oxford University Press, 2005), “rector, oris.”

²⁸⁴ Although Norgate dismisses this translation: Norgate, *The Minority of Henry the Third*, 71.

²⁸⁵ Yorke, *Kings and Kingdoms of Early Anglo-Saxon England*, 92.

²⁸⁶ West, *The Justiciarship in England 1066-1232*, 3.

²⁸⁷ West, *The Justiciarship in England 1066-1232*, 6.

²⁸⁸ West, *The Justiciarship in England 1066-1232*, 14.

death in 1120, Henry had no close relatives onto whom he could devolve power when he went abroad in 1123. Therefore, Henry left the care of the country in the hands of Roger, bishop of Salisbury who appears to have been called either *procurator* or *provisor*.²⁸⁹ Again, Roger does not appear to have occupied a special office; during this period he did not attest charters in his own name or the name of an office but, rather, *per breve regis* ('by writ of the king').²⁹⁰

Stephen and Henry II both employed their wives as regents, and the latter also his second son.²⁹¹ When Eleanor of Aquitaine and Henry the Young King (Henry II's wife and son) rebelled, however, Henry II turned to Richard de Luci, the justiciar, and, from 1173, "Richard took place of the royal regents as the king's *alter ego*."²⁹² In truth, Warren was correct when he said that

There was no consistency in the methods employed: sometimes members of the royal family were appointed as regents, sometimes a group of trusted counsellors, sometimes one.²⁹³

Even if the magnates of 1216 had been aware of these previous informal usages in these analogous situations, which is unlikely, the Marshal did not derive his authority from the king's appointment or from his inherent status as a member of the royal house. The novelty of his title, in many ways, represented the novelty of his position. We are little closer, however, to understanding what position the Marshal truly occupied or how different in content it was to the justiciarship. There is little evidence that the Marshal's powers were explicitly decided in the Autumn 1216; rather, most of his powers appear to have been implicit and granted on trust, seemingly for a time unspecified.

3.4.1.2 Guardianship

Whatever role William played, it was professed in his title that he played it towards both the kingdom *and* the king. According to the *History*, William devolved the

²⁸⁹ West, *The Justiciarship in England 1066-1232*, 18.

²⁹⁰ West, *The Justiciarship in England 1066-1232*, 19.

²⁹¹ West, *The Justiciarship in England 1066-1232*, 20 and 31.

²⁹² West, *The Justiciarship in England 1066-1232*, 45.

²⁹³ Warren, *The Governance of Norman and Angevin England*, 80.

guardianship of the king to des Roches with Guala's blessing, although des Roches was later to dispute this.²⁹⁴

3.4.2 Source of the Marshal's Powers

There appears to be four main contenders for the source of William's powers. *First*, there is Henry himself; however, there is no evidence that Henry played any part in the Marshal's selection, though he may have legitimised it by his ongoing acceptance.

Second, there is the late King John. If the *History's* version of events is correct, then there is a strong case for this and Carpenter found this convincing.²⁹⁵ However, seeing as the *History* itself admits that Ranulf, earl of Chester might contend for the regency, the *History* also provides a strong counterargument.²⁹⁶

Third, there is Guala, the papal legate, acting under the authority of the Pope. According to Painter, Honorius did not in fact see the Marshal as much more than "the most prominent layman of the realm" and left it to Guala's discretion as to how much he would involve the Marshal.²⁹⁷ This view may be supported by a symbolic transfer recorded in the *History* from Guala to the Marshal following the Marshal's appointment:

Thereupon, as was his duty, the legate handed everything over,
and the worthy Marshal took into his care
both the King and the realm.²⁹⁸

What was handed over exactly is unclear but, more interestingly, there are the words "as was his duty" – was this his duty because it was commanded by the pope or because he was bound to comply with the magnates' appointment of the Marshal? In any case, Guala and Honorius III appear to have exercised continuing control over the nature of the office. For example, according to the *History*, the Marshal asked the lords as to whom should be entrusted with the king's person, but Guala intervened

²⁹⁴ Holden, Gregory, and Crouch, *History of William Marshal*, 2004, vol. 2, I. 15579–15610, 17949–18118; Carpenter, *The Minority of Henry III*, 53.

²⁹⁵ Carpenter, *The Minority of Henry III*, 16.

²⁹⁶ Crouch, *William Marshal: Knighthood, War and Chivalry*, 124.

²⁹⁷ Painter, *William Marshal*, 257–258.

²⁹⁸ Holden, Gregory, and Crouch, *History of William Marshal*, 2004, vol. 2, I. 15558–15561.

and said that the choice was the Marshal's.²⁹⁹ We might infer from this that Guala had made special appointments part of the remit of the Marshal's office, although this appears to conflict with Ralph de Neville's appointment as keeper of the seal in 1218 and, indeed, with de Roches' later refusal to accept that the Marshal had had a role in appointing him. A more concrete example of control over the Marshal's office can be found in mid-1217 when it appears as though "Ranulf or his supporters petitioned Guala, the legate, for the earl to be accepted as *coadjutor* to the Marshal on the grounds of the Marshal's advanced age".³⁰⁰ Honorius rejected the request, however, for he seemed concerned not only about the dangers of divided authority but also about offending the Marshal.³⁰¹ Thus, Honorius appears to have reserved ultimate decisions regarding appointments to himself.

Lastly, there is 'common counsel'. Such a view is supported by the Barnwell chronicler who reported that the Marshal, Guala, and des Roches were jointly "entrusted with the king and the kingdom 'by the common counsel' of the magnates."³⁰² It seems clear that all three men had their roles deliberated at Gloucester, either directly or indirectly. However, if we accept the *History's* narrative that Guala acted on papal authority, that the magnates *nominated* the Marshal but Guala *appointed* him, and that the Marshal used his new powers to appoint des Roches, then the Barnwell account appears to fall into a *non sequitur*, i.e. he assumes that the fact that the events took place in the presence of the magnates meant that they were more than mere spectators. In Turner's view, the Barnwell view was closer to the truth: the magnates 'appointed' the Marshal and Guala 'approved' it.³⁰³

The Barnwell account is problematic in its use of 'common counsel'. The assembly at Gloucester was not representative (2.3.4) and, moreover, it is unclear whether the magnates' consent was sufficient for the Marshal's appointment, merely necessary, or neither. Although, it would later be argued that the magnates' consent was both necessary and sufficient for government appointments; for example, Ralph de Neville was granted the king's seal at the Great Council of November 1218 and later

²⁹⁹ Holden, Gregory, and Crouch, *History of William Marshal*, 2004, 2:15581–15610.

³⁰⁰ Holden, Gregory, and Crouch, *History of William Marshal*, 2006, 3:165.

³⁰¹ Alexander, *Ranulf of Chester*, 76–77.

³⁰² Crouch, *William Marshal: Knighthood, War and Chivalry*, 124; Carpenter, *The Minority of Henry III*, 17.

³⁰³ Turner, "The Minority of Henry III. Part I," 270.

argued that “since he had been appointed by a great council, only a great council could dismiss him.”³⁰⁴

In truth, everybody probably had their own view on what happened that day, as was later attested by the disagreement as to who had made des Roches guardian. If it was possible to objectively say that one party had the casting vote in the arrangements, it is difficult to say now who that was. In the end, it is probably better to see the Marshal’s appointment not as having been made according to certain rules but as representing a political compromise that was not necessarily reached in a democratic fashion.

3.4.3 Isabella of Angoulême, Queen Mother

Isabella of Angoulême, Henry’s mother, deserves special attention. John had married the prepubescent Isabella on 24 August 1200 in an effort to strengthen his position on the continent and she would have been in her late twenties when he died.³⁰⁵ Following Henry’s coronation, Pernoud said, Isabella was “politely but firmly” asked to leave by the English barons and that she complied because “she realized how unpopular she was”.³⁰⁶

It is certainly striking how little a role Isabella played in the minority government, especially considering that Anglo-Norman queen-consorts and queen-mothers had acted as regents in the past: e.g., Matilda of Flanders, Matilda of Scotland, Matilda of Boulogne, and Eleanor of Aquitaine.³⁰⁷ Certainly, there had been many powerful queen-mothers in English history; in particular, Eadgifu of Kent (c.903–c.966), Ælfthryth (c.945–c.1001), and Emma of Normandy (c.985–1052).³⁰⁸ One must also not forget Empress Matilda (1102–1167) and the later example of Isabella of France (1295–1358).³⁰⁹ This was as true on the Continent as in England; most notably, Brunhilda of Austrasia (c.543–612, Austrasia and Burgundy), Irene of Athens (c.752–

³⁰⁴ Carpenter, *The Minority of Henry III*, 94–95.

³⁰⁵ HG Richardson, “The Marriage and Coronation of Isabelle of Angoulême,” *The English Historical Review* 61, no. 241 (September 1946): 304, 298.

³⁰⁶ Pernoud, *Blanche of Castile*, 99.

³⁰⁷ West, *The Justiciarship in England 1066-1232*, 3, 14, 25, 31.

³⁰⁸ Stafford, *Queens, Concubines and Dowagers*, chap. 6. Eadgifu of Kent was mother of Edmund I and Eadred. Ælfthryth was mother of Æthelred II and step-mother of Edward the Martyr. Emma of Normandy was mother of Edward the Confessor and Harthacnut, and step-mother of Edmund II, Sweyn Knutsson, and Harald Harefoot

³⁰⁹ Empress Matilda was Henry II’s mother; Isabella of France was Edward III’s mother and extremely influential in his early reign.

803, Byzantine Empire), Empress Theophanu (c.955–991, Holy Roman Empire), and Isabella's contemporary Blanche of Castile (1188–1252, France). Indeed, many queens reached "the height of their careers not as wives of royal husbands but as mothers and regents for young royal sons."³¹⁰ Blanche, for example, effectively ruled France from her husband's death in 1226 to her own death in 1252.³¹¹

In many ways, mothers made 'natural guardians' as they rarely had designs on the thrones for themselves.³¹² Isabella, then, could reasonably have been expected to act in Henry's interests, whose interests were in many respects also her own. Whether she could have occupied a formal role in the government, however, is much less certain and Stafford warns us away from "searching for too great a constitutional precision in distinguishing such regency from the engrossing roles played by mothers such as Eadgifu..."³¹³ It is arguable that Isabella would not have needed an office, as queen-mothers had a natural authority and, indeed, it is arguable that the office of regent developed precisely for those who did not have an inherent, natural authority. In any case, there seemed little to prevent Isabella from occupying a leading role in the government.

In truth, Isabella's problem was not constitutional impropriety but her political position. She was relatively young and inexperienced in government, had no land in England, and had no family in England (other than her young children), which would have given her a firm base of support.³¹⁴ It would be wrong, however, to dismiss her in the way that Pernoud did. Although some preparations for her departure for the Continent were being made in July 1217, she appears from the *History of the Dukes of Normandy* to have been involved in the negotiations with Louis to end the war.³¹⁵ Furthermore, once she had returned to the remaining continental Plantagenet lands in 1218, she wrote to the English government numerous times demanding money

³¹⁰ Stafford, *Queens, Concubines and Dowagers*, 146.

³¹¹ Pernoud, *Blanche of Castile*, see esp. 255.

³¹² Stafford, *Queens, Concubines and Dowagers*, 154. Cf. Irene of Athens who saw Constantine VI, Byzantine Emperor, through his minority but, when he proved to quarrelsome, her supporters captured and blinded by her supporters, dying shortly after, leaving the way clear for Irene to become empress-regnant.

³¹³ Stafford, *Queens, Concubines and Dowagers*, 151.

³¹⁴ Carpenter, *The Struggle for Mastery*, I. 303–304, 270.

³¹⁵ Carpenter, *The Minority of Henry III*, 47; Turner, "The Minority of Henry III. Part I," 269; Carpenter, *The Struggle for Mastery*, 304.

and aid to protect Henry's interests there against the French king³¹⁶ and, according to Norgate, had taken Angoulême's "government into her own hands"³¹⁷. Indeed, even her marriage in 1220 to Hugh de Lusignan was supposedly undertaken, on her part, for Henry's benefit.³¹⁸ This does not mean that she did not want to play a larger role, however, and was denied it. Carpenter argued that she was "[f]iery and ambitious, she almost certainly aspired to a regency role like that soon to be played in France by Blanche of Castile, the mother of Louis IX".³¹⁹ This is not provable either way but we can say with certainty that she had little authority in England between leaving England in 1217 and her death in 1246.

It is also important to contextualise the period in a time when regencies dominated by queen-mothers was becoming less common, which Stafford associated with the "triumph of the idea of primogeniture" and increasing reliance on, and desire of the nobility to dominate, royal patronage.³²⁰ Indeed, in all the post-Conquest English royal minorities, there was only one instance where there was a dominant queen-mother, Isabella of France, which was no doubt in part owing to her role in Edward II's deposition.

3.4.4 Intermediate Conclusions

John appears to have been intent on his line continuing but appears to have left it to the discretion of his followers as to how this was to be achieved. In lieu of a clear and readily accessible precedent – not that they cared to look – they set about appointing a leader and, in all likelihood, proceeded on the basis of crossing bridges when they came upon them. The fact that they had to invent a title for the Marshal seems to demonstrate the novelty of his position and, whilst sounding like a descriptive title, it left much open to interpretation. What powers William would exercise do not seem to have been predetermined and his actions were no doubt delimited more by political expediency than constitutional propriety.

As it has been seen, the source of William's powers was unclear. Likewise, the length of his office appears to have been left undetermined. It was likely assumed

³¹⁶ See: Carpenter, *The Minority of Henry III*, 153, 155.

³¹⁷ Norgate, *The Minority of Henry the Third*, 134.

³¹⁸ Carpenter, *The Minority of Henry III*, 193.

³¹⁹ Carpenter, *The Struggle for Mastery*, 304.

³²⁰ Stafford, *Queens, Concubines and Dowagers*, 194.

that he would fulfil it until the end of the war, the end of the minority, his retirement, or his death (whichever came first). Who would have the power to decide which of these times it would be or, indeed, if it should be another time, was left unclear. In truth, William probably only held power for as long as he remained politically tenable. This would have, in part, been contingent on Henry's development but, more fundamentally, it would have been contingent on which party – or parties – had the most influence at any given time. How things actually turned out is discussed below (see 3.5.2.1).

3.5 William Marshal's Government, 29 October 1216 – 7 April 1219

3.5.1 Ending the War

The most important objectives for Henry's minority government were to defeat Louis and to restore royal power, particularly the treasury.³²¹ One of the earliest and most symbolic steps that Henry's government took was to reissue Magna Carta in November 1216 – albeit a slightly watered down version.³²² Nevertheless, had it not been for this, it is quite possible that Magna Carta would have not assumed the position that it has in English legal history for, until that point, it was a failed compromise agreement between John and his barons.³²³ For our purposes, the most salient point is not the constitutional significance of the Charter in itself but, rather, the fact that it was issued by a minority government.

The Charter was issued under the seals of William and Guala.³²⁴ For the Church, Guala's authorisation was a 'momentous volte-face,'³²⁵ following Innocent III's condemnation of it the year before. Norgate argued that the magnates had acted reasonably in that they had excluded the clauses from Magna Carta "such as a provisional government, under existing circumstances, could not safely deal with."³²⁶ Amongst the excluded clauses, for instance, was the 'most startling and revolutionary change': the security clause.³²⁷ However, even if it is true that some of the most controversial clauses "which had impinged most closely on the rights and

³²¹ Carpenter, *The Minority of Henry III*, 50.

³²² Holt, *Magna Carta*, 378–382.

³²³ Holt, *Magna Carta*, 1, 361–377.

³²⁴ Carpenter, *The Minority of Henry III*, 63; Norgate, *The Minority of Henry the Third*, 14.

³²⁵ These words are Carpenter's: Carpenter, *The Struggle for Mastery*, 301.

³²⁶ Norgate, *The Minority of Henry the Third*, 14.

³²⁷ These are Warren's words: Warren, *King John*, 259.

revenues of the crown” were removed,³²⁸ the very issuance of it alone represented a massive incursion on royal power taken at a time when the king was unable to oppose it. It also flew in the face of the undertaking by William and the other magnates not to make any grants in perpetuity so as to protect the king’s rights.³²⁹

Magna Carta was not an enunciation of the ‘true principles’ of the English Constitution and, therefore, one cannot defend the magnates’ decision by saying that they were merely affirming what was already the case.³³⁰ As important as the Charter was to become, it is difficult to reconcile their actions with their responsibility to protect the rights and lands of the king and, even though Magna Carta (1216) did not bind Henry legally (as he was a minor),³³¹ it bound him politically. But for the Henricians, it was the political side that was most important: it was their opening gambit in attempting to differentiate Henry’s reign from John’s. Indeed, for those professing the failure of Magna Carta as the reason why they were warring against the king, its reissue “left no valid excuse for the continuance of a refusal to recognize the native sovereign”.³³²

Magna Carta (1216) made little difference. Louis’ supporters “took oaths to accept no heir of King John as king” and the English magnates in Louis’ party – whom the Charter was intended bring back over – appear to have been the ones to dissuade Louis from making peace in January 1217.³³³ This says a lot about the Charter and the basis of the war. The war was not a constitutional struggle between a liberty-loving baronage and an oppressive crown; it was driven by personal grievances and interests,³³⁴ aggravated by private struggles “waged by individuals over castles, lands and rights.”³³⁵

There was little change in the overall situation during the winter of 1216-17. Around the 27 February Louis sailed to France and returned around 22 April.³³⁶ In May, Louis divided his army, with Louis himself besieging Dover and the other part of his

³²⁸ Carpenter, *The Minority of Henry III*, 24.

³²⁹ Carpenter, *The Minority of Henry III*, 18.

³³⁰ Holt, *Magna Carta*, 297ff.

³³¹ Painter, *William Marshal*, 234.

³³² Norgate, *The Minority of Henry the Third*, 15.

³³³ The words are Carpenter’s: Carpenter, *The Minority of Henry III*, 35; See also: Norgate, *The Minority of Henry the Third*, 19.

³³⁴ See: Warren, *King John*, 249.

³³⁵ Carpenter, *The Minority of Henry III*, 35.

³³⁶ Holden, Gregory, and Crouch, *History of William Marshal*, 2006, 3:169.

force heading north. The Marshal rallied the Henricians at Lincoln where Louis' second army was to be found and offered battle. Louis' forces refused to fight a pitched battle and stayed behind the town walls, but after gaining entry to the town, the Henricians achieved an emphatic victory; the news reached Louis on 25 May.³³⁷ Over the following summer months, a number of the rebels started to come back into the fold.³³⁸ On 24 August, a fleet commanded by Hubert de Burgh met the French relief force off the coast near Sandwich and achieved another resounding victory. Four days later, negotiations opened and continued throughout the first weeks of September. On 23 September 1217, Louis sailed back to France – never to return to England.

3.5.2 Nineteen Months under the Marshal

Although the war was over, the work of repairing the wounds was only just begun. Royal power in the localities had suffered tremendously during the war, and with “internal divisions and the paucity of its resources,” recovering royal power was going to be an uphill struggle.³³⁹ These problems were compounded by the fact that many of the officials felt that they could not be removed from office until Henry came of age³⁴⁰ and that, by being barred from making permanent alienations, the minority government had little to use to reward loyal followers. Furthermore, even though the struggle with the dauphin of France was over and Alexander of Scotland relaxed his pressure on the northern border, Llywelyn in Wales continued hostilities.³⁴¹

In November 1217, Magna Carta was again reissued. This time, however, it was accompanied by another charter: the Charter of the Forest. This charter is less well known than its larger brother but it is as constitutionally significant. It reinforced the idea that the Crown could be limited in its actions and was especially potent because the forests had traditionally been a large source of revenue. As Carpenter rightly says, “[t]hanks to the Charter of the Forest, the restrictions imposed on kingship in 1217 were far greater than two years before.”³⁴²

³³⁷ Carpenter, *The Minority of Henry III*, 41.

³³⁸ Carpenter, *The Minority of Henry III*, 42.

³³⁹ Carpenter, *The Minority of Henry III*, 50 and 53 respectively.

³⁴⁰ Carpenter, *The Minority of Henry III*, 54.

³⁴¹ Carpenter, *The Minority of Henry III*, 69.

³⁴² Carpenter, *The Minority of Henry III*, 63.

At the start of September 1218, Honorius accepted Guala's resignation as legate, who was replaced by Pandulf.³⁴³ Norgate theorised that the knowledge of Guala's imminent departure and the toll of the previous two years on the Marshal were what prompted the momentous action at the Great Council of November 1218 to make Henry his own seal:³⁴⁴

Henceforth all royal letters were authenticated by Henry III's seal, which showed him, in the customary fashion, enthroned on one side and on horse-back in full armour on the other, in both cases a fully grown man.³⁴⁵

Despite being depicted as an adult, there was no question that Henry would now be controlling the government. Though Henry's seal was appended to royal letters, "they were still attested by the regent or the bishop of Winchester..."³⁴⁶ The seal was given into the keeping of Ralph de Neville by the council, who would maintain control over it for two decades.³⁴⁷ The first letter patent to which Henry's seal was appended forbade any grants in perpetuity being made whilst the king was still a minor, which is one of the most significant features of the minority and will be discussed in due course.³⁴⁸

3.5.2.1 William Marshal's Retirement

The creation of the new seal may well have been the prelude to the retirement of the office of *rector*. After Guala's departure, the regent continued to attest letters but they were increasingly attested and authorised by des Roches and de Burgh.³⁴⁹ Around the beginning of February 1219 the Marshal fell ill³⁵⁰ and by March it became apparent that he was dying. By the end of March the Marshal was to be found at Caversham and at the start of April he called a council to his bedside.³⁵¹

According to the *History*, the Marshal said to Henry that it was necessary "if it please you, that arrangements be made / to have the barons elect someone / to protect

³⁴³ Carpenter, *The Minority of Henry III*, 93 and 103; Holden, Gregory, and Crouch, *History of William Marshal*, 2006, 3:189.

³⁴⁴ Norgate, *The Minority of Henry the Third*, 102.

³⁴⁵ Carpenter, *The Minority of Henry III*, 94.

³⁴⁶ Carpenter, *The Minority of Henry III*, 94.

³⁴⁷ Carpenter, *The Minority of Henry III*, 94.

³⁴⁸ Carpenter, *The Minority of Henry III*, 95; Hillen and Wiswall, "The Minority of Henry III in the Context of Europe," 24.

³⁴⁹ Carpenter, *The Minority of Henry III*, 103–104.

³⁵⁰ Carpenter, *The Minority of Henry III*, 104.

³⁵¹ Crouch, *William Marshal: Knighthood, War and Chivalry*, 139; Painter, *William Marshal*, 277.

yourself and the realm”.³⁵² We cannot rely too heavily on the exact wording of the *History*, but it is interesting that the Marshal apparently offered that his replacement be appointed *if it pleases Henry*. What is more interesting, however, is the apparent intent that there would be a direct successor to the Marshal. It is also interesting that the Marshal is said to have envisioned an election. However, a few lines later – and after des Roches had protested that he was Henry’s guardian – the Marshal bad the legate to return tomorrow and said that

In the meantime I shall confer with my son
and my men, and decide
who shall take charge of things.
May God ensure that our counsel is wise!³⁵³

The following day the Marshal delivered his decision. He had reasoned that there was no land so divided in opinion as England and, therefore, he had decided to give Henry “to the care of God, the pope, / and the papal legate. Let the legate be his guardian / in their name” and went on to defend his decision “if the land is not protected / by the pope at this juncture, / ... [then] I do not know who could protect it”.³⁵⁴ It should be noted that the Marshal’s opponent in October 1216, Ranulf of Chester, was away on crusade. Thus, after a relatively minor disagreement with des Roches, the Marshal’s role disappeared in a unilateral decision. The Marshal appeared to be of the opinion that an election would be too divisive and perhaps feared the influence of des Roches. In any case, there is a distinct demonstration of a lack of commitment to democratic values and conciliar government.

Following his decision, the Marshal commanded his son to hand over Henry to the legate in front of the magnates, which he duly did and despite des Roches’ efforts to prevent it.³⁵⁵ In Painter’s view, this gained from the barons “at least their tacit consent”.³⁵⁶ However, consent may not have had anything to do with it. Rather, it was a public demonstration of the Marshal’s decision. For Painter, the Marshal acted within his rights: “William had no possible legal right to appoint his successor, but he

³⁵² Holden, Gregory, and Crouch, *History of William Marshal*, 2004, vol. 2, l. 17987–17988.

³⁵³ Holden, Gregory, and Crouch, *History of William Marshal*, 2004, vol. 2, l. 18025–18028.

³⁵⁴ Holden, Gregory, and Crouch, *History of William Marshal*, 2004, vol. 2, l. 18050–18060.

³⁵⁵ Holden, Gregory, and Crouch, *History of William Marshal*, 2004, vol. 2, l. 18091–18114.

³⁵⁶ Painter, *William Marshal*, 279.

could surrender his charge into the hands of the overlord of England”.³⁵⁷ Considering that the Marshal’s role had no precedent, it was arguable that it could have been within his remit. The idea of ‘surrender’, however, is merely a matter of construction and it could easily be said that the Marshal gave Henry to the legate *thereby excluding all others* and, therefore, effectively appointing him. Turner was certainly of the opinion that the operating factor was the Marshal’s choice: “So Pandulph succeeded the earl Marshal as regent, not by virtue of his appointment as legate, but in pursuance of the wishes of the earl, which the magnates of England ratified.”³⁵⁸ Ultimately, it was a political decision made not according to any form but, rather, by a man concerned that an election might result in power being held by somebody of whom he did not approve.

Henry was still only eleven and, in terms of his ability to rule, little had changed since 1216. It is significant, therefore, that the Marshal’s position was allowed to lapse in a situation analogous – at least in terms of the king’s ability – to that in which it was created. It was left unclear when the position would exist in the future, if it were to exist at all. Despite the Marshal’s disapproval, there is no reason why the legate could not have called an ‘election’, much as he did in 1216. It is perhaps arguable that the position of *rector* had been created in a state of emergency and now it would lapse as the state of emergency had passed; in the words of Norgate:

There was now no invader to expel, no rebellion to subdue, no need for a warrior-regent: and there was also no man among the baronage clearly marked out for the regent’s office as the Marshal had been by his personal qualities and by the universal estimation of his fellow barons.³⁵⁹

However, there is not much indication that the *rector*’s creation was anything to do with the war, which was demonstrated by its continued existence after the war was over. Instead, it was primarily created to deal with the minority, which was far from over.

That said, the need for a special office was certainly less apparent than before. For instance, the king now had his own seal and, although there were still troubles in

³⁵⁷ Painter, *William Marshal*, 279.

³⁵⁸ Turner, “The Minority of Henry III. Part I,” 293–294.

³⁵⁹ Norgate, *The Minority of Henry the Third*, 112.

Wales and royal authority was still not fully restored,³⁶⁰ the situation was less dire than when a foreign prince occupied half the country. Thus, for a time at least, the government could be a little less autocratic and some political deadlock could be tolerated. Perhaps the Marshal lacked foresight here, however, because by failing to support a strong successor, he laid the way for infighting, which – after a respectable period of cooperation – led eventually to the concentration of powers once again in an individual.

William Marshal died on 14 May 1219. The office of *rector* would later be discussed in 1422 when Henry VI came to the throne but never recreated.³⁶¹ According to Hillen and Wiswall, “no other single person would serve either in Henry III’s minority or in later ones, as regent for a minor king in England.”³⁶² Whether this is true is discussed below (3.9).

3.6 Government between April 1219 and Autumn 1221

Norgate entitled the chapter dealing with this period ‘The Legation of Pandulf’.³⁶³ In it, she described Pandulf as the ‘Legate-regent’³⁶⁴ whose powers were theoretically “more absolute, for the powers which had appertained respectively to the Marshal and to Gualo were united in his person; he was at once the elected regent of the realm and the representative of its overlord.”³⁶⁵ Though Pandulf attested few letters and appeared to play a minimal role in the day-to-day activities of the government, Norgate was clear about his supremacy. He shared the day-to-day functions of the office that had been the Marshal’s with two men: Hubert, as justiciar and in accordance with “long-established constitutional tradition”, became the effective second-in-command;³⁶⁶ and Peter, the bishop of Winchester, who assumed a natural position of authority as the king’s tutor,³⁶⁷ although he “had no official title and no specific functions in the civil administration.”³⁶⁸

³⁶⁰ Carpenter, *The Minority of Henry III*, 109.

³⁶¹ Hillen and Wiswall, “The Minority of Henry III in the Context of Europe,” 26.

³⁶² Hillen and Wiswall, “The Minority of Henry III in the Context of Europe,” 26.

³⁶³ Norgate, *The Minority of Henry the Third*, chap. 3.

³⁶⁴ Norgate, *The Minority of Henry the Third*, 116.

³⁶⁵ Norgate, *The Minority of Henry the Third*, 112–113.

³⁶⁶ Norgate, *The Minority of Henry the Third*, 116.

³⁶⁷ Norgate, *The Minority of Henry the Third*, 120.

³⁶⁸ Norgate, *The Minority of Henry the Third*, 117.

Carpenter, on the other hand, entitles the chapters in his book, *The Minority of Henry III*, as “The Triumvirate, 1219-20: The Verge of Anarchy” and “The Triumvirate, 1220-21: Success.”³⁶⁹ For Carpenter, the government of this period was a ‘triumvirate’ of de Burgh (justiciar), des Roches (bishop of Winchester), and Pandulf (legate). This arrangement did not form immediately upon the Marshal’s resignation but was:

fashioned ... out in the open by great councils at Reading, Oxford and Gloucester. Here again, therefore, great councils exercised a decisive role in appointing the king’s chief ministers.

Though Pandulf was recognised by Henry himself later in his reign as having been the ‘first counsellor and chief of all the kingdom of England ... by common consent and provision of all the kingdom’, Carpenter is also clear that Pandulf had little role in the day-to-day governance, although that is not to say that he was inactive.³⁷⁰ On 17 April a council was convened at Oxford, where the justiciar “was given charge of the attestation of royal letters, thus replacing the bishop of Winchester.”³⁷¹

Hubert and Peter initiated a brief tussle attempting to restrict Pandulf’s access to the treasury and, for a period between 6-18 May, Hubert did not attest any letters.³⁷² This was only resolved at a council in June at Gloucester, with the seal being restored to Hubert and, according to Carpenter “from now onwards the chief responsibility for day-to-day government was his.”³⁷³ Letters pertaining to the royal household, however, were to remain in Peter’s jurisdiction,³⁷⁴ but, in Carpenter’s eyes at least, Peter had been demoted.³⁷⁵ Despite the fact that Hubert was now definitively above Peter, he was still below Pandulf “whose claim to be in ultimate control of the king and kingdom was accepted;”³⁷⁶ that said, Pandulf was not always obeyed.³⁷⁷

Norgate’s and Carpenter’s descriptions of the government are generally similar. Carpenter goes to greater lengths, however, to stress the collaborative elements

³⁶⁹ Carpenter, *The Minority of Henry III*, chap. 4 and 5.

³⁷⁰ Carpenter, *The Minority of Henry III*, 128.

³⁷¹ Carpenter, *The Minority of Henry III*, 129.

³⁷² Carpenter, *The Minority of Henry III*, 131.

³⁷³ Carpenter, *The Minority of Henry III*, 131.

³⁷⁴ Hillen and Wiswall, “The Minority of Henry III in the Context of Europe,” 28.

³⁷⁵ Carpenter, *The Minority of Henry III*, 133.

³⁷⁶ Carpenter, *The Minority of Henry III*, 133.

³⁷⁷ Carpenter, *The Minority of Henry III*, 134.

and, for him, the ‘triumvirate’ – just like the Marshal’s government – could govern only with the magnates’ consent.³⁷⁸ In Carpenter’s work, power is much more clearly ‘ascending’, i.e. flowing from the magnates-in-council upwards to the office holders. So, for example, Hubert did not assume his place in the government by virtue of being justiciar but because “[t]he magnates trusted Hubert to provide a form of amenable, modern government; they did not trust Peter to do so.”³⁷⁹ For Norgate, on the other hand, power appears more to descend from the ‘legate-regent’ to the magnates.

In political terms, Carpenter’s seems the most realistic – but which is the constitutional answer? This, of course, depends largely on from where Pandulf derived his office. Whilst Guala had clearly only derived his from the pope (whose authority in England had been augmented by John’s surrender in 1213), Pandulf had been appointed by the Marshal and the subsequent confirmation of the magnates, and also the pope. Which was the operating factor? Did the magnates’ involvement change the aspect of his authority – now jointly derived from the pope and the magnates? Whatever conclusion one reaches, it is constitutionally difficult. On the one hand, it would mean that sovereignty lay with the pope and, on the other, it would be tantamount to saying that whatever the relevant people decide is constitutional, is constitutional; the latter being reminiscent of Griffith’s assertion that:

Everything that happens is constitutional. And if nothing happened that would be constitutional also.³⁸⁰

Certainly, the changing sands of government with the political winds do seem to start to indicate that there were not fundamental principles that needed to be adhered to and that, rather, the government was determined by the quality of the people available, their political tenability, and the encompassing circumstances. Indeed, things were to change once again with two important events in 1221: Pandulf’s resignation and the king’s fourteenth birthday.

3.6.1 Pandulf’s Resignation, 26 July 1221

³⁷⁸ Carpenter, *The Minority of Henry III*, 134.

³⁷⁹ Carpenter, *The Minority of Henry III*, 135.

³⁸⁰ Griffith, “The Political Constitution,” 19.

In October 1220, Stephen Langton, archbishop of Canterbury – who had only arrived back in England in 1218 – set out again for the Continent. His destination was the papal court where he aimed to “secure the recall of Pandulf, whose position as legate inevitably reflected on his own authority as archbishop,” as well as to gain the Pope’s permission for the return of his brother, Simon, to England.³⁸¹ In July 1221, Stephen returned from the papal court:

His return spelt the end of Pandulf’s legation. No doubt pointing to the increasing strength of the king’s government, and the impossibility of his own position during a legation, Langton persuaded the pope both to withdraw his legate and put no one in his place. At Westminster, therefore, on 26 July, in the presence of the bishops of Salisbury, Winchester and London, Pandulf resigned his office.³⁸²

With Pandulf’s resignation, Stephen became the uncontested primate in England. However, he did not assume the prestigious and privileged position that Pandulf had held – nor does it appear that he aspired to do so.³⁸³ Instead, it was to be the man who should have arguably become regent in the first place – Hubert;³⁸⁴ as will be seen shortly, Peter was to find himself demoted and Ranulf of Chester (though returned from crusade) does not appear to have contested the regency. Pandulf remained in England for a few months more, departing in October.³⁸⁵

Pandulf’s vacation of the legateship is an appropriate time to quickly appraise the influence of the two legates. In both Powicke’s and Carpenter’s views, the legates had served the kingdom well. Powicke summarised their influence in the following way:

The legates encouraged those who desired to see order and unity, and did their best to maintain peace. They took the lead in times of crisis, negotiated with neighbouring princes ... In all that they did, they acted as responsible agents of the pope, with whom they were in frequent communication.³⁸⁶

Carpenter stressed the ‘immense’ role that Pandulf had played following the Marshal’s resignation:

³⁸¹ Carpenter, *The Minority of Henry III*, 228.

³⁸² Carpenter, *The Minority of Henry III*, 254.

³⁸³ Carpenter, *The Minority of Henry III*, 263.

³⁸⁴ Turner, “The Minority of Henry III. Part I,” 295.

³⁸⁵ Carpenter, *The Minority of Henry III*, 266.

³⁸⁶ Powicke, *King Henry III and the Lord Edward*, 46.

He had stiffened and energized the government, come to its rescue with frequent loans and kept before its eyes the ultimate objective: the resumption of the king's castles, demesnes and possessions.³⁸⁷

Their efforts appear to have been appreciated by the magnates, as Powicke noted.³⁸⁸ Their withdrawal, however, represented a shift in authority with papal authority once again becoming more remote. Even though the legates largely left the administration of the kingdom to the magnates and officials, their ongoing presence legitimised the government's actions. After their removal, the sustained input of papal authority disappeared, leaving a gap that could be filled with other sources of authority. From that point forward, the idea that the arrangements made were made under the jurisdiction of the pope became increasingly less sustainable and a subtle shift of sovereignty back from the Roman See occurred – though by no means a complete shift.

3.6.2 Henry's Fourteenth Birthday, 1 October 1221

The impact of the king's entry into his fourteenth year will receive greater attention in the next chapter and shall only be touched upon lightly here.

The transition from thirteen to fourteen – from boyhood to adolescence – appears to have resulted in the degradation of the status of his governor, Peter des Roches; seemingly realised through a joint effort of Hubert and Pandulf, who had received permission from the pope the previous year to replace Peter.³⁸⁹ Peter's removal as the king's governor may have well occurred, in practice at least, sometime earlier; this is reinforced by his absence on pilgrimage between April 1220 and July 1221, and his lack of activity with regard to the king and his household.³⁹⁰ In September 1221, Peter took the cross, which "suggests that he knew that his guardianship was coming to an end,"³⁹¹ although by December the crusade was postponed indefinitely.³⁹²

3.7 Hubert de Burgh's Ascendancy, Autumn 1221 – January 1227

³⁸⁷ Carpenter, *The Minority of Henry III*, 254.

³⁸⁸ Powicke, *King Henry III and the Lord Edward*, 46.

³⁸⁹ Carpenter, *The Minority of Henry III*, 243.

³⁹⁰ Carpenter, *The Minority of Henry III*, 239.

³⁹¹ Carpenter, *The Minority of Henry III*, 258.

³⁹² Carpenter, *The Minority of Henry III*, 270.

3.7.1 Events of 1221-1227

For a moment in October 1221, it looked as though the fourteen-year-old Henry might take on a much greater role in government but the Pope, on the advice of the magnates, decided not to make any change.³⁹³ In June 1222, the resumption of the royal demesne was finally achieved under the guidance of Hubert and he could also list the reassertion of his control over the exchequer under his 'considerable' achievements since Pandulf stepped down.³⁹⁴ However, the resumption of the castles and sheriffdoms was trickier, in large part due to the arguments by the officers that they had been appointed by John and could not be removed until Henry's majority.³⁹⁵

The year 1223 was a busy one, for it saw the "threatened invasion of Ireland by Hugh de Lacy, the death of the king of France and the conquest of south Wales by the earl of Pembroke."³⁹⁶ It also saw some changes to Henry's status. In April 1223, Honorius wrote to Hubert, Peter, and William Brewer that they should surrender the lands and castles that they held of Henry, and also to Ralph de Neville, commanding him to only use the seal under the king's direction. As Carpenter noted, this was not a declaration that Henry was no longer a minor but that he was mature enough to be "deemed able to control the government of the kingdom."³⁹⁷ It thus indicated that Henry might come to his powers in a piecemeal fashion. The impetus for these letters of the pope is the matter of some debate.³⁹⁸ These letters were to have little effect, however, for the Earl of Pembroke's campaign against Llywelyn in Wales and the death of Philip Augustus in July led to them being set aside in practice.³⁹⁹

In November, there was a period of unrest as Hubert sought refuge from the earls of Chester and Gloucester, and the Count of Aumale – claiming that there was "a plot to seize and imprison him."⁴⁰⁰ However, with the intervention of Stephen Langton, the dispute did not descend into civil war. On 6 December 1223 it was agreed that the negotiations would be suspended and resumed on 20 January. On 10

³⁹³ Carpenter, *The Minority of Henry III*, 268.

³⁹⁴ Carpenter, *The Minority of Henry III*, 279–280, 299.

³⁹⁵ Carpenter, *The Minority of Henry III*, 289.

³⁹⁶ Carpenter, *The Minority of Henry III*, 301.

³⁹⁷ Carpenter, *The Minority of Henry III*, 302.

³⁹⁸ See: Carpenter, *The Minority of Henry III*, 302–304.

³⁹⁹ Carpenter, *The Minority of Henry III*, 307 and 310.

⁴⁰⁰ Carpenter, *The Minority of Henry III*, 318.

December, Stephen “joined with Hubert to give the king control over his seal ... After 10 December 1223 all letters under the great seal were attested, at least in normal circumstances, by the king rather than by his justiciar.”⁴⁰¹

In terms of the king’s status, however, this was still little more than a halfway house. Henry still could not make any permanent alienations. That said, the seal did now follow Henry;⁴⁰² Henry was now the centre of the government – although, Hubert remained close by.

The principal events of 1224 were Louis’ virtually unopposed conquest of Poitou and the downfall of Falkes de Bréauté, which brought with it an estrangement of the likes of Ranulf of Chester and des Roches from the government. In 1225, a tax of a fifteenth on movable property raised enough for the recovery of Gascony and the final version of Magna Carta was issued – from 1225 onwards, Magna Carta would no longer be amended but merely confirmed, e.g. by Henry III in 1237 and 1253, and Edward I in 1297⁴⁰³.

3.7.2 Justiciarship and Regency

Ranulf, earl of Chester, had left England to go on crusade in June 1218 and returned to England in the summer of 1220, over a year after the Marshal’s death.⁴⁰⁴ However, between 1220 and his death in 1232, despite his ‘well-known hostility toward Hubert’,⁴⁰⁵ he does not appear to have directly contended for the senior role in government. With Peter having been subdued, no papal legate, and Archbishop Stephen Langton happy to fill a more demure role, Hubert emerged as the principal figure in Henry’s government – and was to remain so throughout the minority and until his eventual fall in 1232.⁴⁰⁶

Regency is a word often applied in three different contexts, where the monarch is: (1) abroad/incommunicado or (2) incompetent because they are (a) *non compos mentis* or (b) too young. Essentially, the monarch is incapable of practically undertaking the day-to-day functions of their role. These three scenarios are often

⁴⁰¹ Carpenter, *The Minority of Henry III*, 321.

⁴⁰² Carpenter, *The Minority of Henry III*, 322.

⁴⁰³ Carpenter, *The Minority of Henry III*, 383.

⁴⁰⁴ Alexander, *Ranulf of Chester*, 77, 80.

⁴⁰⁵ Alexander, *Ranulf of Chester*, 83.

⁴⁰⁶ For a description of Hubert’s fall, see: Carpenter, “The Fall of Hubert de Burgh.”

taken as equivalent and it is assumed that the structure of government would be the same. If this had been the case, however, the Hubert should surely have become regent in October 1216 as his predecessors in the role of justiciar had been 'regents' whilst the king had been abroad in earlier times. However, until 1221 (almost four years after the death of John), there was always an authority in England considered to be above Hubert.

It is possible, therefore, that the English magnates did not consider eventualities (1) and (2) as equivalent (perhaps not even 2(a) and 2(b), although they would have had little cause to consider this distinction). There is something to this as, even if the king were far away, there could still be recourse to him – if not immediately then certainly sooner than the eleven years between Henry's accession and his majority. For example, when Richard I left on crusade, William Longchamp was left in charge. However, Longchamp proved to be unpopular and, consequently, was removed on Richard's orders in favour of Walter de Coutances, archbishop of Rouen.⁴⁰⁷ The king could always issue a 'writ of the king from oversea' and any actions taken in his absence were *pro tempore*, i.e. until the return of the king.⁴⁰⁸ Indeed, Warren stressed that just because the king was abroad, it did not mean that they were 'out of touch' as "[e]fficient cross-channel courier services were established".⁴⁰⁹

It is likewise possible that the magnates did not see the justiciars of the past as having exercised the powers of a regent by right of their office but by appointment of the king; it was just that this appointment tended to fall on the senior administrator. Certainly, earlier regents, such as Roger, bishop of Salisbury and Robert de Beaumont, earl of Leicester had had no defined office but, rather, used their personal authority in much the same way that queen-consorts and queen-mothers did.⁴¹⁰ Hubert did not possess the wherewithal to use his personal authority alone and, therefore, had to lean on his office. Consequently, both the Marshal's and de Burgh's positions seem to indicate a movement away from personal authority towards official authority, i.e. that they should be obeyed not because they were the Marshal or de Burgh *per se* but, rather, because they were *rector* and *justiciar*. That said, the fact that neither office long outlived the Marshal or de Burgh does indicate

⁴⁰⁷ Carpenter, *The Struggle for Mastery*, 252.

⁴⁰⁸ Warren, *The Governance of Norman and Angevin England*, 128.

⁴⁰⁹ Warren, *The Governance of Norman and Angevin England*, 80.

⁴¹⁰ Warren, *The Governance of Norman and Angevin England*, 80–81, 101–102.

that, at this juncture, there was a rather weaker conception of 'office' than there is today.

3.7.3 King's Council

Baldwin attributed Henry III's minority to being one of the key factors in the formation of the 'king's council':⁴¹¹

The council of the period of Henry III's minority was more than a temporary board of regency. Apart from the king's incompetence, the council filled a need in relations with each of the courts and organs of government as a board of supervision and appeal. [...]. That it did not fall into abeyance at the close of the minority, enough illustrations later than 1227 have been given to show.⁴¹²

For Baldwin, the minority provided an opportunity that was snapped up and, for Carpenter, the practical need for the senior members of government to secure the 'common consent from great councils' was the thing that "gives the minority much of its constitutional importance".⁴¹³

There is still the perennial problem, however, of defining the 'King's Council' and the danger of attributing to it an overly institutionalised form. There are many similarities, in fact, to the treatment of the Anglo-Saxon witan, which, the renowned Anglo-Saxon scholar Sir Frank Stenton referred to as the 'King's councils'.⁴¹⁴ There does also appear to have been some disagreement during Henry's minority as to what body could legitimately make decisions; in August 1220 Robert de Vieuxpont pointed out to Hubert that an order that had been made by himself and the 'council' had in fact "emanated from a certain part of the king's council, without common counsel and assent of the magnates of England who are held to be and are of the chief council of the king."⁴¹⁵ Whether this really elucidated a constitutional principle is, however, less certain; Vieuxpont – and also the earl of Salisbury in this case – may have simply felt excluded from a matter in which they clearly felt they should have a hand.

⁴¹¹ James F Baldwin, "The Beginnings of the King's Council," *Transactions of the Royal Historical Society* 19 (1905): 27.

⁴¹² Baldwin, "The Beginnings of the King's Council," 56.

⁴¹³ Carpenter, *The Minority of Henry III*, 55.

⁴¹⁴ Roach, *Kingship and Consent in Anglo-Saxon England, 871-978*, 3.

⁴¹⁵ Robert de Vieuxpont to Pandulf. Quoted in: Carpenter, *The Minority of Henry III*, 209.

Certainly, the major political players expected to be involved in the major political decisions, but whether this was really a development of the minority is debateable. For instance, we find in Gervase of Canterbury's *Gesta Regum* (which at this point may have been written by his continuator) that in 1204 the "preparations for the defence of England against the French invasion were made 'with the assent of the king and of all the magnates'" and in 1205 "all the magnates being assembled at Oxford, King [John] was compelled to swear that he would preserve unharmed the laws of the realm of England with their counsel".⁴¹⁶ For Gransden, Gervase's ideas were ahead of his time, which may well be the case. It should also be noted that Gervase was highly critical of John and, therefore, it is not surprising that he might want to stress any event that might make John more accountable.⁴¹⁷

It is arguable that, during Henry's minority, the magnates' increased involvement gave rise to an expectation that they would continue to be involved, but whether this gave them a *right* to be involved is another matter. Even Carpenter admits that "[t]he council was not a formal body" in the sense of having a fixed constitution.⁴¹⁸ Clause 14 of Magna Carta had set out a process for convening an assembly, but its only purpose was to give effect to Clause 12, i.e. to grant extraordinary taxation.⁴¹⁹ Both clauses were omitted from the reissues, however, and, although they went on to enjoy some life outside of the reissues, they could not claim to establish a body with wide-ranging consultative and deliberative functions.⁴²⁰ As Gwilym Dodd has argued, whilst medieval minority governments did display a remarkable amount of cooperation, they were not "a real substitute for the royal prerogative."⁴²¹ Even in later minorities, it was the monarch who ruled, even if that was done on their behalf.⁴²²

3.8 End of the Minority, 1227

⁴¹⁶ Gransden, *Historical Writing in England*, 258.

⁴¹⁷ Gransden, *Historical Writing in England*, 258.

⁴¹⁸ Carpenter, *The Minority of Henry III*, 54.

⁴¹⁹ William Sharp McKechnie, *Magna Carta: A Commentary on the Great Charter of King John with an Historical Introduction* (James Maclehose and Sons, 1914), 253; Carpenter, *The Minority of Henry III*, 54–55; Holt, *Magna Carta*, 455.

⁴²⁰ McKechnie, *Magna Carta*, 255.

⁴²¹ Gwilym Dodd, "Richard II and the Fiction of Majority Rule," in *The Royal Minorities of Medieval and Early Modern England*, ed. C Beem (Palgrave Macmillan, 2008), 113.

⁴²² Dodd, "Richard II and the Fiction of Majority Rule," 117.

Louis VIII of France – the Louis who had invaded in 1216 – died in November 1226, leaving a minor heir, Louis IX. For England, this presented a supreme opportunity to recover the lands that had been lost under John and could have been a significant factor in Henry’s declaration in January 1227 that, henceforth, he would control the government.⁴²³ As Carpenter noted, there was no other major event at the time that would have triggered the change; Henry would not be twenty-one until October 1228 and there had been no letter from the Pope.⁴²⁴

Hubert de Burgh remained part of Henry’s government until Henry removed him in 1232. It is perhaps interesting that Matthew Paris would state on this event that Hubert was removed “although it is said he held his office by royal charter in perpetuity”.⁴²⁵

3.9 How many Regents?

One thing remains to be considered and that is Hillen and Wiswall’s claim that no person, other than the Marshal, would serve as sole regent for a minor king in England.⁴²⁶ It is, in fact, arguable that there were two other regents upon whose shoulders the government rested during Henry’s minority:⁴²⁷ Pandulf and Hubert. Norgate, as it has been seen, described Pandulf as the ‘legate-regent’ and Painter’s description of William Marshal as “except for some few limitations largely self imposed, king of England”⁴²⁸ echoes the Waverly annalist’s description of Hubert as lacking “nothing of royal power save the dignity of a royal diadem.”⁴²⁹ Neither William Marshal, Pandulf, or Hubert were ever called regent; during the minority, Hubert’s and Pandulf’s offices were augmented to include the duties of a regent but, as William had no office, one needed to be created for him. Therefore, it is difficult to deny Hubert and Pandulf theoretical status as regents, although Hubert has a much stronger claim than Pandulf.

⁴²³ Cf. Hillen and Wiswall, “The Minority of Henry III in the Context of Europe,” 40; and Carpenter, *The Minority of Henry III*, 389.

⁴²⁴ Carpenter, *The Minority of Henry III*, 389.

⁴²⁵ Quoted in: Gransden, *Historical Writing in England*, 369.

⁴²⁶ See: Hillen and Wiswall, “The Minority of Henry III in the Context of Europe,” 26.

⁴²⁷ For the origin of this phrase, “the government shall be upon his shoulder”, see Isaiah 9:6

⁴²⁸ Painter, *William Marshal*, 267.

⁴²⁹ HR Luard, ed., *Annales Monastici*, vol. 2, Rolls Series (London, 1865), 311; Quoted in: Carpenter, “The Fall of Hubert de Burgh,” 1.

4 Minority

4.1 Introduction

The final question that needs to be answered is at what point Henry III would exercise the full powers of kingship. It was obviously impractical for him to do so upon his accession, owing to his tender age and the extremity of the situation. Therefore, his powers had to remain in abeyance, but which ones and for how long? It shall be argued that the answers to these questions were determined by Henry's ability and the political situation; both of which lack constitutional clarity. Furthermore, making it contingent on ability begs the questions of: (a) what if Henry never showed an ability to rule? – he was, after all, accused on a number of occasions of being 'simple'⁴³⁰; (b) if kingship is contingent on ability, then might an adult king have their powers reduced in view of their ability, or lack thereof?; (c) who was to decide whether or not Henry was able?; and (d) once Henry was declared able, was there a residual right to declare him unable again?⁴³¹

4.2 Henry's Early Childhood

We know little of Henry's earlier years. He was born on 1 October 1207 at Winchester and around 1211/1212 he appears to have been entrusted to the care of Peter des Roches, bishop of Winchester, in whose care he would remain until 1221.⁴³² Henry had four younger siblings, all of whom were also entrusted to des Roches and his satellites, although none appear to have been raised together.⁴³³ Considering that it was common for medieval children to be raised away from home, this is not too surprising.⁴³⁴

4.2.1 Education

⁴³⁰ Carpenter, *The Minority of Henry III*, 409.

⁴³¹ Cf. section 4 of the 25th Amendment to the US Constitution, which provides that the vice-president shall discharge the duties of the office of president when the president "is unable to discharge the powers and duties of his office". This is, seemingly, a republican version of regency.

⁴³² Vincent, *Peter Des Roches*, 10, 70–71.

⁴³³ Vincent, *Peter Des Roches*, 153–154.

⁴³⁴ Nicholas Orme, *From Childhood to Chivalry: The Education of the English Kings and Aristocracy 1066-1530* (Methuen, 1984), 44–48.

Like most other royal and noble children, there were probably many people involved in his education.⁴³⁵ We know that Richard, Henry's younger brother, had a tutor in Robert of Acaster.⁴³⁶ It is possible that Master Henry of Avranches, a continental poet, was Henry and Richard's tutor for a time, as Russell and Heironimus have suggested. Avranches certainly was closely associated with Peter des Roches, who was "one of his greatest patrons", and left England around the same time as des Roches in 1227.⁴³⁷ The only direct evidence of a connection between Avranches and the young royal princes, however, is a lengthy metrical grammar that he dedicated to them.⁴³⁸ For Carpenter, this grammar was a piece of showmanship by Avranches, designed "more to impress the court than to educate his pupil"⁴³⁹ and, for Vincent, "it was not the sort of work to have been of any practical use as a textbook".⁴⁴⁰

Even if Avranches was not involved in Henry's education, somebody probably taught Henry to read. Steane thought literacy a likely part of a king's education from the thirteenth century onwards but Orme, who is a greater authority, went even further and said that "[t]here seems no doubt that all the English kings from 1100 (except perhaps for Stephen) were able to read".⁴⁴¹ Henry I and Henry II both learned to read.⁴⁴² Henry's father, King John, carried with him "a small library" and in 1205 he asked Reginald of Cornhill to send to him "two tuns of wine and 'a history of England in French'".⁴⁴³ Henry's son, Edward I, was almost certainly literate, as was Henry's wife, Eleanor of Provence.⁴⁴⁴ Although, it appears that John struggled at Latin.⁴⁴⁵

Philip de Aubigné, a Leicestershire knight, almost certainly worked with Henry, particularly during Henry's long visits to Wallingford Castle. But it is unlikely that Aubigné delivered academic or moral instruction.⁴⁴⁶ Rather, he was Henry's tutor-in-arms, teaching Henry the 'three pillars of military education': horsemanship,

⁴³⁵ Orme, *From Childhood to Chivalry*, x.

⁴³⁶ Vincent, *Peter Des Roches*, 154.

⁴³⁷ Josiah Cox Russell and John Paul Heironimus, *The Shorter Latin Poems of Master Henry of Avranches Relating to England* (The Medieval Academy of America, 1935), 19, 123.

⁴³⁸ Russell and Heironimus, *Shorter Latin Poems of Master Henry of Avranches*, 19, 123.

⁴³⁹ Carpenter, *The Minority of Henry III*, 241.

⁴⁴⁰ Vincent, *Peter Des Roches*, 154.

⁴⁴¹ John Steane, *The Archaeology of the Medieval English Monarchy* (Routledge, 1993), 198; Orme, *From Childhood to Chivalry*, 143.

⁴⁴² Orme, *From Childhood to Chivalry*, 20, 143, 148.

⁴⁴³ Warren, *King John*, 175.

⁴⁴⁴ Susan H Cavanaugh, "Royal Books: King John to Richard II," *Library* s6–X, no. 4 (1988): 305–308.

⁴⁴⁵ Orme, *From Childhood to Chivalry*, 149.

⁴⁴⁶ Vincent, *Peter Des Roches*, 155; Holden, Gregory, and Crouch, *History of William Marshal*, 2006, 3:165.

huntsmanship, and swordsmanship.⁴⁴⁷ This sort of training would probably have begun when Henry was seven or eight years old.⁴⁴⁸ He may have also taught Henry etiquette, as well as other things such as dancing and singing.⁴⁴⁹

The *History* mentions that when Henry met William Marshal on his way to Gloucester to be crowned, he had with him Ralph de Saint-Sanson “who had been his governor and guardian, / and still was, / for he carried him in his arms”.⁴⁵⁰ Unfortunately, we know little about Ralph or his role, although it seems to have ended around this time. He appears only once in the *History*, although he crops up a number of times in the Patent Rolls; e.g., in 1223 he was given safe conduct as king’s envoy and in 1230 he received letters of protection whilst travelling abroad with Henry.⁴⁵¹

4.3 Interregnum, 19-28 October 1216

We do not know when Henry was informed of John’s death, but he certainly did not make the journey from Devizes to his father’s funeral and entombment behind the shrines of St Wulfstan and St Oswald at Worcester.⁴⁵² Whether it was thought that Worcester was too far, the journey too perilous, or the political situation still too undecided is unclear.

After the loyalists had convened at Gloucester and agreed to back Henry, Thomas de Sandford was sent to escort Henry to them. Henry then made his way with a “great company of armed men” to Gloucester.⁴⁵³ William Marshal met Henry halfway, around Malmesbury, although his motive for doing so is unclear.⁴⁵⁴ He may have felt that Henry’s security would be greater if he was accompanying him; he may have wanted to prepare Henry for what was to come; he may have even wanted to gauge whether Henry would be suitable. It may, however, have been merely courtesy; similar to the ritual of *adventus*, a part of which was the *occursus* or ‘meeting’. This was where the host travelled to meet the guest not only as “accompaniment along

⁴⁴⁷ See: Lett, “The Child in Christendom: Fifth – Thirteenth Centuries,” 43.

⁴⁴⁸ Steane, *The Archaeology of the Medieval English Monarchy*, 150.

⁴⁴⁹ Orme, *From Childhood to Chivalry*, 20.

⁴⁵⁰ Holden, Gregory, and Crouch, *History of William Marshal*, 2004, vol. 2, I. 15261–15264.

⁴⁵¹ *Patent Rolls of the Reign of Henry III Preserved in the Public Record Office*, vol. 1 (Mackie & Co Ltd., 1901), 388; *Patent Rolls of the Reign of Henry III Preserved in the Public Record Office*, vol. 2 (Mackie & Co Ltd., 1903), 360.

⁴⁵² See: Powicke, *King Henry III and the Lord Edward*, 1.

⁴⁵³ Holden, Gregory, and Crouch, *History of William Marshal*, 2004, vol. 2, I. 15258–15259.

⁴⁵⁴ To read the *History*’s account of their meeting, see: Holden, Gregory, and Crouch, *History of William Marshal*, 2004, vol. 2, I. 15255–15286.

the last stretch of the journey” but also as an act of etiquette “respecting the guests’ higher standing by making it appear as if the hosts had come to the guests, rather than vice-versa.”⁴⁵⁵

Henry’s and the Marshal’s meeting is reported in the *History*. Upon meeting the Marshal, Henry is reported to have said “I wish to tell you truly, / that I give myself to God and yourself, / so that in God’s name you may take charge of me. / And may our true God, the protector of all that is good, / grant that you so manage our affairs, / that you may take good care of them.”⁴⁵⁶ Despite the symbolic deference of the Marshal’s journeying out to meet Henry, it is perhaps Henry’s apparent humbling deference to the Marshal that is the most powerful.

Henry’s coronation date was set for 28 October and hasty preparations were made. Whether Henry understood all that was going on, or the ramifications of the oaths that he took, is difficult to tell.

4.4 William Marshal’s Government, 29 October 1216 – 7 April 1219

The government was entrusted to William Marshal’s leadership (3.4). He decided that it would be both dangerous and a hindrance for Henry to follow him about the country and so, according to the *History*, entrusted him to the care of Peter des Roches.⁴⁵⁷ If there were to be a period of practical apprenticeship or if the king were to be present at all major decisions, it was clear that it would not start immediately. Instead, Henry would be kept in the South West where there was “little or no opposition ... and no sustained attack to fear from the Welsh princes”.⁴⁵⁸ Henry’s mother, Isabella, was given “lodgings in the castle at Exeter” and his brother, Richard, was kept at Corfe.⁴⁵⁹

4.4.1 The Duration of the Minority

In every society a person’s status depends to some extent on his age. In western countries people have to reach a specified age before they can marry, before they can vote, before

⁴⁵⁵ Roach, *Kingship and Consent in Anglo-Saxon England, 871-978*, 177.

⁴⁵⁶ Holden, Gregory, and Crouch, *History of William Marshal*, 2004, vol. 2, l. 15267–15274.

⁴⁵⁷ Holden, Gregory, and Crouch, *History of William Marshal*, 2004, vol. 2, l. 15581–15610.

⁴⁵⁸ Powicke, *King Henry III and the Lord Edward*, 1.

⁴⁵⁹ Powicke, *King Henry III and the Lord Edward*, 1–2.

they can legally contract debts; the qualifying age may be different for different activities and is different in different countries.⁴⁶⁰

Henry's youth does not appear to have barred him from becoming king, but it certainly restricted what he could do. Henry would be restricted for so long as his status remained unchanged. When and under what conditions his graduation would occur, however, seems to have been uncertain. Would it, for instance, rest solely on the attainment of certain age or would it be decided by some other criteria, such as physical or mental development? Moreover, if it occurred at a particular age, would that be the same age as the age of majority?

The magnates were painfully aware that if they were to reinstate Plantagenet hegemony, it was vital not to permanently alienate the Crown's assets. Such an inability to delay gratification and the consequent dispersion of the royal demesne must, for example, have been a significant factor on the weakening of the eighth-century Northumbrian monarchy.⁴⁶¹ Furthermore, the magnates would have wanted to avoid allegations (true or otherwise) of mismanagement of the Crown's resources, especially the career courtiers whose positions relied on faithful service to the Crown. This had been the allegation levelled by Bede against Behrtred and Berhtfrith, who were influential in Osred's government, and these circumstances may have played a part in Osred's assassination.⁴⁶²

Therefore, the magnates imposed upon themselves the restrictions that applied to other wardships at the time. As *Glanvill* put it: "Guardians must restore inheritances to heirs in good condition and free of debts, in proportion to the duration of the wardship and the size of the inheritance."⁴⁶³ Not only must it be in 'good condition', however, but the magnates were also barred from alienating "any part of the inheritance permanently" or, as *Bracton* put it, "they may alienate nothing of the inheritance so that it is permanently lost".⁴⁶⁴ Such a sentiment can be found in the modern law of trusts, which, for example, requires that trustees not take undue risks

⁴⁶⁰ Lucy Mair, *Primitive Government* (Penguin Books, 1967), 78.

⁴⁶¹ See: Yorke, *Kings and Kingdoms of Early Anglo-Saxon England*, 86–88, 164.

⁴⁶² Yorke, *Kings and Kingdoms of Early Anglo-Saxon England*, 92.

⁴⁶³ Glanvill, *Tractatus*, 1965, 83; Glanvill, *Tractatus*, 1812, 172.

⁴⁶⁴ Glanvill, *Tractatus*, 1965, 82; Glanvill, *Tractatus*, 1812, 170; Bracton, *De Legibus*, 252.

when investing the trust's funds so that the fund may be preserved.⁴⁶⁵ These restrictions were later confirmed when Henry was given his own seal in 1218 (3.5.2).

This disability, however, made things difficult for the magnates, especially considering the dire financial and political situation; after all, grants of land were valuable items of patronage and could be used to win allies and secure funds. Indeed, following Henry's coronation the Marshal sent out letters to the magnates "promising them possessions and many presents besides, on condition of their faithfully adhering to the said king".⁴⁶⁶ But, unable to use permanent grants, the loyalists settled on temporary grants.⁴⁶⁷ The first that was enrolled was issued on 30 October 1216, which granted two castles to William de Ferrers, earl of Derby, until Henry's fourteenth birthday.⁴⁶⁸ This was the first of many such grants.⁴⁶⁹ It became clear that Henry's coming of age would be of great import: Peter de Maulay claimed in 1225 that he had made an oath to John not to surrender his castles until Henry was of 'legitimate age' and it is possible that Ranulf of Chester made a similar promise.⁴⁷⁰ Would this occur at fourteen, as it initially seemed set to?

4.4.1.1 Fourteen?

Fourteen had a lot to recommend itself as a point of transition. In Roman law, it marked the transition from *pueritia* [childhood] to *adolescentia* [adolescence],⁴⁷¹ from the status of *impubes* to *pubes*.⁴⁷² Although this was originally merely a conventional age and could be delayed for a number of years "where for some reason or other it was thought desirable to allow a comfortable margin",⁴⁷³ it later became a fixed threshold marking the end of *tutela*, i.e. it was the age when the *tutor* (guardian) lost their powers over their *pupillus*.⁴⁷⁴ According to Rawson, those whose *paterfamilias*

⁴⁶⁵ *Re Whiteley* (1886) 33 Ch D 347 at 355, CA per Lindley LJ; *Learoyd v Whiteley* (1887) 12 App Cas 727 at 733 per Lord Watson. Cf. Lord Nicholls of Birkenhead, "Trustees and Their Broader Community: Where Duty, Morality and Ethics Converge," *Trust Law International* 9, no. 3 (1995): esp. at 76.

⁴⁶⁶ Wendover, *Flowers of History*, 2:380.

⁴⁶⁷ In some cases, the magnates attempted to avoid the need for a grant. For example, Ranulf of Chester secured the third penny and, consequently, the county of Lincoln "by pretending that the earl was merely securing the inheritance of his father". See: Carpenter, *The Minority of Henry III*, 40.

⁴⁶⁸ Carpenter, *The Minority of Henry III*, 17.

⁴⁶⁹ Norgate, *The Minority of Henry the Third*, 73.

⁴⁷⁰ Carpenter, *The Minority of Henry III*, 123.

⁴⁷¹ Carpenter, *The Minority of Henry III*, 240.

⁴⁷² Fritz Schulz, *Classical Roman Law* (Oxford University Press, 1954), 164–165.

⁴⁷³ Jane F Gardner, *Family and Familia in Roman Law and Life* (Clarendon Press, 1998), 147.

⁴⁷⁴ Schulz, *Classical Roman Law*, 164–165.

had died would not have had “full financial autonomy until the age of twenty-five”⁴⁷⁵ and, certainly, special protection does seem to be accorded to those under this age.⁴⁷⁶

In terms of precedent, Eadwig (r.955-959) had been crowned around the age of fourteen and, according to Stafford, was certainly no older than fifteen.⁴⁷⁷ How much power Eadwig exercised himself, however, is unclear. Beem believed that Eadwig’s reign was dominated by a regency council, but Stafford in *Unification and Conquest* does not mention this and, in fact, her discussion of his brief reign indicates that people at the time (although this may be propaganda) held Eadwig accountable for the failings of government as though it had been in his control.⁴⁷⁸ Otto III, Holy Roman Emperor (r.996-1002) was fourteen when his regent and grandmother, Empress Adelheid, died in 994 and he took the reins. That the English magnates were aware of Eadwig’s and Otto III’s precedents is unlikely. However, they would almost certainly have been aware of Philip Augustus of France (r.1179-1223), who had been crowned junior king at fourteen and had “exercised the functions of royalty from that time forth”,⁴⁷⁹ and of Frederick I of Sicily (later Frederick II, Holy Roman Emperor) who had been declared of age in 1208. Indeed, Vincent has hypothesised that the ‘Sicilian precedent’ may have been a deciding factor in Henry’s minority.⁴⁸⁰ Following Philip Augustus’ example, kings of France attained their majority at fourteen.⁴⁸¹

As is the case today, adolescence in the medieval world carried with it negative connotations:

He had an unstable disposition, was undisciplined, careless, sensual, had no taste for effort, and delighted in pleasure. In narrative texts, he is often presented as a person inclined toward excess, with a tendency for overreacting and blasphemous speech.⁴⁸²

⁴⁷⁵ Beryl Rawson, “Adult-Child Relationships in Roman Society,” in *Marriage, Divorce, and Children in Ancient Rome*, ed. Beryl Rawson (Oxford University Press, 1992), 28.

⁴⁷⁶ Schulz, *Classical Roman Law*, 190–197.

⁴⁷⁷ Stafford, *Unification and Conquest*, 47.

⁴⁷⁸ Beem, “Woe to Thee, O Land? The Introduction,” 10; Stafford, *Unification and Conquest*, 45–50.

⁴⁷⁹ Norgate, *The Minority of Henry the Third*, 73.

⁴⁸⁰ Vincent, *Peter Des Roches*, 208; Cf. Carpenter, *The Minority of Henry III*, 123.

⁴⁸¹ Norgate, *The Minority of Henry the Third*, 73.

⁴⁸² Lett, “The Child in Christendom: Fifth – Thirteenth Centuries,” 23.

Eadwig was portrayed in the *Life of Dunstan* in the following way: “Young, foolish, dominated by bad counsel, easily led astray by the lusts of the flesh, he was an exiler of saints, morally deficient and politically incompetent.”⁴⁸³ William Marshal himself had developed a reputation during his teenage years “for drinking, eating, and sleeping, but for little else.”⁴⁸⁴ It is not unthinkable that the magnates may have preferred a later age than fourteen. Indeed, had they turned to canon law, it is possible that they could have delayed Henry’s majority until twenty-five.⁴⁸⁵ An extreme attempt to delay a prince’s majority was made in France half a century later: Following the death of Louis IX’s and Queen Margaret’s eldest son, their second son, Philip, became heir to the throne. However, Margaret did not think much of Philip and so, in the spring of 1263, she

made Prince Philip swear on the Bible that until the age of thirty he would remain in her ‘bail’, which is to say in her custody, under her surveillance; and would heed no one’s advice against her wishes.

But Philip’s misgivings had grown as he realized that his mother meant to keep him in a state of artificial minority until he was thirty.⁴⁸⁶

Louis was horrified when he heard and Pope Urban IV eventually released Philip from his vow.⁴⁸⁷

4.4.1.2 Twenty-One?

Although partly favoured in Roman law and in France, fourteen as an age of transition does not seem to have had much of a home in English law. Under English law, the age of majority depended upon the kind of property held by one’s father. Both *Glanvill* and *Bracton* are in agreement as to the several ages of majority, although *Bracton* goes into greater detail – particularly regarding female heirs.⁴⁸⁸ Heirs to military fees come of age at twenty-one, heirs to sokemen at fifteen, and an heir to a burgess when he can “count money carefully, measure cloth and generally

⁴⁸³ Quoted in: Stafford, *Unification and Conquest*, 47.

⁴⁸⁴ Painter, *William Marshal*, 18.

⁴⁸⁵ Carpenter, *The Minority of Henry III*, 123.

⁴⁸⁶ Pernoud, *Blanche of Castile*, 295.

⁴⁸⁷ Pernoud, *Blanche of Castile*, 295–296.

⁴⁸⁸ Glanvill, *Tractatus*, 1965, 82; Glanvill, *Tractatus*, 1812, 170; Bracton, *De Legibus*, 250–251.

do his father's business".⁴⁸⁹ This creates a number of problems, not least because fourteen does not appear.

Was Henry – as the son of a king and king himself – analogous to any of these categories? Carpenter says that the 'general consensus' at the time was that Henry would assume the full powers of king at the age of twenty-one, presumably also when he attained his majority. This would have meant that he was seen as analogous to the son of a knight. Were heirs to military fees on a par with kings and princes? How the magnates chose to treat Henry – as compared to their own children – was symbolically very important: was the king merely *primus inter pares* (first among equals) and subject to the same laws as everyone else, or was the king qualitatively different? If the former, does it mean that Pollock and Maitland's thesis was right that monarchs did not differ in *kind* but in *degree* from their subjects (1.4.3.1)?⁴⁹⁰

In one very important way Henry did receive different treatment from the sons of knights and the magnates: he was knighted on the same day as his coronation at the age of nine. Boulton has shown that it was not unusual for members of the royal house or "*virii regales*" to be knighted at a younger age than their lower-born peers. Between 1066 and 1154, by Boulton's calculations, the average age for a member of the royal house to be knighted was around 17.3 years, whereas the average age for those of lower birth was 21.5-22.5 years.⁴⁹¹ In the period 1154-1272, the average age for the *virii regales* was a little higher: according to Boulton's calculations, the average age was 18.5-20.0, the former figure excluding Peter de Savoie who was dubbed, exceptionally, at 38. Boulton did however make a startling omission: Henry III. Boulton does include Henry's younger brother, Richard of Cornwall, and there is, in fact, a gap in Boulton's table where Henry III should sit. If we include Henry III, therefore, then the average ages, without and with de Savoie respectively, fall to

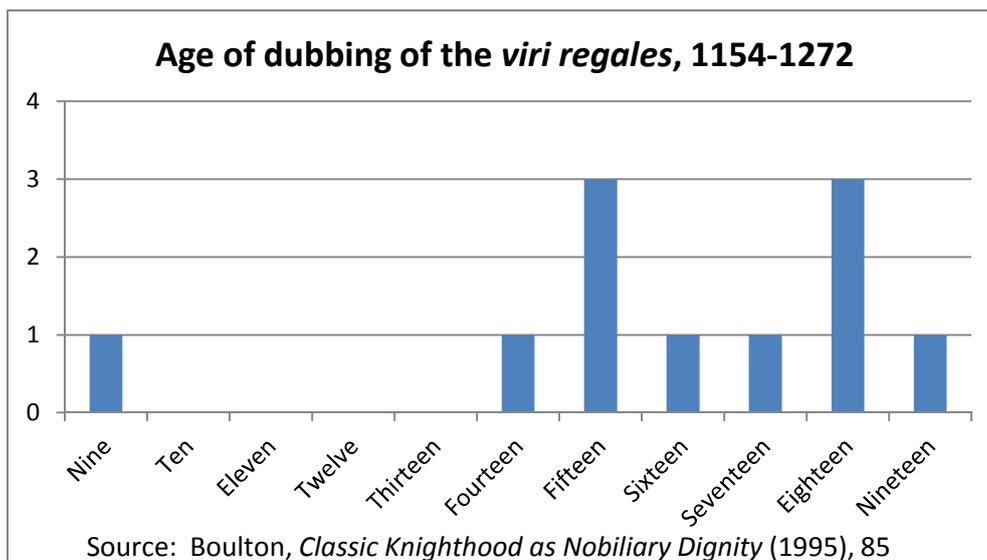
⁴⁸⁹ Glanvill, *Tractatus*, 1965, 82; Glanvill, *Tractatus*, 1812, 170.

⁴⁹⁰ Pollock and Maitland, *The History of English Law: Before the Time of Edward I*, I:512ff.

⁴⁹¹ D'A.J.D. Boulton, "Classic Knighthood as Nobiliary Dignity: The Knighting of Counts and Kings' Sons in England, 1066-1272," in *Medieval Knighthood V: Papers from the Sixth Strawberry Hill Conference 1994*, ed. Stephen Church and Ruth Harvey (The Boydell Press, 1995), 74–75.

17.9-18.9. This is in comparison to an average age amongst the baronage of around 20.5-21.6.⁴⁹²

The ages at which the known cases of the *viri regales* achieved their military majority is shown in the chart below. As can be seen, there is a significant disparity in ages. If we were to set aside Henry's dubbing, then we might conclude that fourteen was a necessary, though not sufficient age. However, Henry's example undermines any such thesis.



Boulton argued that age and skill were incidental to knighthood for the upper echelons of society; rather, age of dubbing would be contingent upon potential to inherit. Cadets, on the whole, could be knighted at any time that was deemed suitable. Elder children, who stood to inherit their parents' dignities and estates, however, would be knighted simultaneously, or shortly after, being invested with 'dignity or domain'.⁴⁹³ Thus, one's age of military majority (i.e. age of dubbing) could be different from one's age of majority – particularly as time progressed and knighthood ceased being a professional class but rather a mark of social status.

As Henry clearly came into property on his father's death, it could well be this fact that triggered his dubbing. This might explain, for instance, why Henry the Young King, Henry III's uncle, had not been knighted in 1170, for he inherited nothing. If this

⁴⁹² Boulton, "Classic Knighthood as Nobiliary Dignity: The Knighting of Counts and Kings' Sons in England, 1066-1272," 86.

⁴⁹³ Boulton, "Classic Knighthood as Nobiliary Dignity: The Knighting of Counts and Kings' Sons in England, 1066-1272," 87.

is the case, then knighthood was not a prerequisite for *kingship* but it was a prerequisite *to inherit a kingdom*. Such a theory would also explain why the twelve-year-old Louis IX of France was knighted *en route* to his coronation at Rheims in December 1226.⁴⁹⁴ Painter, however, has suggested that there may have been a (misjudged) *political* motive behind Henry II delaying Henry the Younger's military majority: he would be "unlikely to be troublesome politically" if he was not a fully-fledged knight.⁴⁹⁵

Investiture, as Boulton recognised, was not the only trigger. Knighthood was also a precondition to bear and use arms, and it could be bestowed for this purpose: Henry the Younger had been knighted with the blessings of his father-in-law, Louis VII of France, around the age of eighteen in 1173 so that he could wage war against his father;⁴⁹⁶ John Lackland had been knighted in 1185, aged nineteen, in anticipation of an expedition to Ireland;⁴⁹⁷ Arthur of Brittany had been knighted in 1202 when Philip Augustus "erected him as John's successor in all his fiefs save Normandy" and it was reasonably certain that Arthur may have to fight John;⁴⁹⁸ and Richard of Cornwall was knighted aged sixteen in 1225 in preparation for his expedition to Gascony.⁴⁹⁹ This was not necessarily just the case for the high nobility, as William Marshal may also have been 'prematurely' knighted in 1166 due to "the nature of the military emergency" in which William de Tancarville, William's master, found himself.⁵⁰⁰ Although, early knighting was clearly much more prevalent for the high born.⁵⁰¹

In many cultures, the right to bear arms had accompanied a general rite of passage into adulthood, which brought with it certain socio-political rights such as liberation from paternal power and acceptance into the public life of the community.⁵⁰² If this had been the case in England, therefore, then Henry – at nine years old – would have to have been considered an adult. However, it appears that the age of majority

⁴⁹⁴ Hillen and Wiswall, "The Minority of Henry III in the Context of Europe," 41.

⁴⁹⁵ Painter, *William Marshal*, 33.

⁴⁹⁶ Painter, *William Marshal*, 34–35.

⁴⁹⁷ Warren, *King John*, 50.

⁴⁹⁸ Warren, *King John*, 59.

⁴⁹⁹ Carpenter, *The Minority of Henry III*, 376.

⁵⁰⁰ Crouch, *William Marshal: Knighthood, War and Chivalry*, 33.

⁵⁰¹ Boulton, "Classic Knighthood as Nobiliary Dignity: The Knighting of Counts and Kings' Sons in England, 1066-1272," 85.

⁵⁰² See: Michael Mitterauer, *A History of Youth*, trans. Graeme Dunphy (Blackwell Publishing, 1992), 51.

and the age of military majority were separable. This is attested in Clause 3 of Magna Carta (1216), which states the age of majority as twenty-one and provides that it could not be attained earlier by being knighted.⁵⁰³

Consequently, it seems that knighthood may not have been a prerequisite for kingship but as Henry inherited his father's lands and titles, and as Henry became the figurehead for a military campaign, his knighting appears to have been only natural. However, even though Henry was knighted well in advance of his peers, therefore, this did not necessarily derogate from the general age of majority of twenty-one. In this respect, it remained tenable that Henry was analogous to his contemporaries and, indeed, half a century later Alexander III of Scotland attained his majority at the age of twenty in 1261. If this was the case, then Henry's fourteenth birthday can be recast merely as a point of review, not as a marker of radical transition. By that time, although Henry may still not have been able to give permanent grants, he might at least be able to express an opinion on them.

4.4.1.3 Counter-Precedents

Otto III, Philip Augustus, and Frederick I of Sicily would have been the most readily available and applicable precedents. In each case, political motives can be found for their comings-of-age.

When Otto III took charge in September 994, it was not on the event of his birthday but on the event of the death of his grandmother, Empress Adelheid.

It seems that Philip Augustus' father, Louis VII, had been reluctant to crown his son during his lifetime. However, in 1179 Louis became seriously ill and he sought to install his son as king, which happened in November, "not in order to demonstrate his rights, but because it was necessary for him to govern."⁵⁰⁴ There are three things that need to be borne in mind: (1) that Louis was still alive for the greater part of Philip's first year, i.e. until Philip was fifteen; (2) the menacing presence of Henry II of England and his sons; and (3) the rift between Philip, his mother, and his maternal uncles over Philip's marriage to Isabella of Hainault in April 1180. Philip's

⁵⁰³ McKechnie, *Magna Carta*, 203–205, 499; Painter, *William Marshal*, 202.

⁵⁰⁴ Bradbury, *Philip Augustus King of France 1180-1223*, 40.

ascendancy was a reaction to a political situation in which Philip needed to seize the initiative if he was to stop his kingship and his kingdom from being undermined.

Frederick I of Sicily, like Henry III, had been a papal ward. This had been an arrangement made by Constance, Frederick's mother, shortly before her death and one which Abulafia has said "made considerable sense, given the emergency".⁵⁰⁵ The lack of a strong preserving authority had meant that "factionalism in the kingdom [had] encouraged those in power to use royal assets as a means to gain military and political support."⁵⁰⁶ Pope Innocent III lacked authority in the kingdom until he made some headway in 1208 and, no doubt, he wanted to capitalize on it by declaring the impatient young Frederick of age at the end of the year when the king turned fourteen, and proceeded to arrange his marriage. With Frederick of full age, there was the hope that the royal finances and control over Sicily could be restored. It may be that Frederick was genuinely declared of age because he was fourteen, but considering Innocent's troubles with the nobles, he probably wanted to emancipate Frederick from their grip and then exercise his own authority over Frederick as his suzerain lord sooner rather than later. Perhaps it is significant that Frederick's own son, Henry VII, remained a minor until he was eighteen, and then only started his personal rule because of the abrupt departure of Louis, duke of Bavaria, from his court towards the end of 1228.⁵⁰⁷

Fourteen was not the only age at which medieval kings were declared of age. The Austrasian kings Childebert II (575-595) and Theudebert II (595-612) both attained their majorities at fifteen, according to Stafford's reckoning.⁵⁰⁸ The Byzantine emperor Constantine VI (776-797) appears to have attained his majority in 790, aged nineteen, when he ejected his mother, Irene of Athens, from his court.⁵⁰⁹

For the great majority of early medieval kings and princes, we have little evidence of when they achieved their majorities. The waters are further muddied by the early deaths of many minor kings, such as Sigeburt II of Austrasia (d.613, ca. eleven), Osred I of Northumbria (d.716, ca. sixteen), Edward the Martyr (d.978, ca. sixteen),

⁵⁰⁵ Abulafia, *Frederick II: A Medieval Emperor*, 93.

⁵⁰⁶ Abulafia, *Frederick II: A Medieval Emperor*, 103.

⁵⁰⁷ Hillen and Wiswall, "The Minority of Henry III in the Context of Europe," 45.

⁵⁰⁸ Stafford, *Queens, Concubines and Dowagers*, 146–147. It is possible that Theudebert II may have been fourteen, however, and nine (not ten, as Stafford states) when he ascended to the throne.

⁵⁰⁹ Kriszta Kotsis, "Defining Female Authority in Eighth-Century Byzantium: The Numismatic Images of the Empress Irene (797–802)," *Journal of Late Antiquity* 5, no. 1 (2012): 186.

Ladislaus III of Hungary (d.1205, aged five), Edward V (d. 1483, aged twelve), and Edward VI (d.1553, aged fifteen). It is difficult to know when any of these kings would have become fully-fledged monarchs owing to the fact that they did not survive long enough for it to become clear.

A further complication is that, in many cases, there does not appear to have been a singular moment of transition or, if there was, it was not a dramatic constitutional moment. The most important example of this is Henry III's contemporary, Louis IX of France. As Jean Richard noted, the "contemporary historians failed to record the moment when he attained his majority."⁵¹⁰ Richard was certain that there must have been an age of majority (which would have been around twenty),⁵¹¹ but that this was overshadowed in constitutional terms by the continuing dominance of Louis' mother, Blanche of Castile.⁵¹² For Hillen and Wiswall, it was only with his marriage to Margaret of Provence (1234) when the 'first phase' of his minority ended but only with Blanche of Castile's death (1252) that "Louis's minority government really [came to an] end".⁵¹³

4.4.1.4 A Discretionary Age of Majority?

Both *Glanvill* and *Bracton* indicate that the attainment of an arbitrary age was not the only way that a medieval person might attain their majority, which was perhaps a reflection of the difficulty in tracking people's ages. As noted above, sons of burgesses would come of age when they could handle business affairs. *Bracton* is clear: "Thus it is not defined in terms of time but by sense and maturity."⁵¹⁴ Adulthood was competency-based and could vary between individuals. A similar thing applied to daughters of sokemen and burgesses, who would attain their majority when they were "capable of carrying out the tasks required of a woman of [their] station."⁵¹⁵ For at least daughters of sokemen, however, their majority could not practically be obtained "before her fourteenth or fifteenth year since such things require discretion and understanding" – putting them, essentially, on a par with male

⁵¹⁰ Jean Richard, *Saint Louis: Crusader King of France*, ed. Simon Lloyd, trans. Jean Birrell (Cambridge University Press, 1992), 65.

⁵¹¹ Richard, *Saint Louis: Crusader King of France*, 1, 10, 19.

⁵¹² Richard, *Saint Louis: Crusader King of France*, 65.

⁵¹³ Hillen and Wiswall, "The Minority of Henry III in the Context of Europe," 43.

⁵¹⁴ Bracton, *De Legibus*, 250.

⁵¹⁵ Kim M Phillips, *Medieval Maidens: Young Women and Gender in England, 1270-1540* (Manchester University Press, 2003), 32; Bracton, *De Legibus*, 250–251.

heirs in socage.⁵¹⁶ *Bracton* goes on to explain that the rules stating that sons of sokemen come of age at fifteen because socage “demands strength, as well as discretion and understanding”, and that the age of majority for heirs to military tenure was twenty-one because it requires “greater strength, and greater understanding and discretion, that the heir in military service be of sufficient vigour to bear the arms appropriate to his military duty.”⁵¹⁷

The first implication of basing majority upon competency is that it could mean that the age of majority for a king should be *higher* than twenty-one. After all, surely the strength and understanding required of a king were greater than any other in his land. If drawing from the Roman law tradition, there would have been some precedent for delaying Henry’s majority until he reached twenty-five.⁵¹⁸ However, this would have meant prolonging an already long minority, resulting in a greater period of uncertainty. A minority government, after all, appears to have been limited to temporary and provisional actions, and its authority was less than that of a fully-fledged king. Henry’s minority is a testament to the struggles of a minority government: it struggled with the resumption of king’s demesnes, sheriffdoms, and castles;⁵¹⁹ and it struggled to maintain order, as illustrated by the ‘Christmas crisis’ of 1221, Hubert de Burgh’s brief flight to Gloucester in November 1223, and the fall of Falkes de Bréauté in 1224.⁵²⁰

Alternatively, it is arguable that the king should come of age *sooner* than his fellows, as he is deemed a constitutionally special case. This is particularly the case if kingship is seen as being theocratic and the king himself as *minister Dei* or *vicarius Dei in terris* as *Bracton* called the king on a number of occasions.⁵²¹ The supposed close affinity with God could imbue the king with a superhuman aura, although this does not appear to have been an image that Henry inspired amongst his contemporaries: he does not appear to have been precocious and later developed a reputation as *rex simplex* – a simple king. Consequently, there would have been a lack of motivation and justification for declaring resolutely that Henry would come of

⁵¹⁶ Bracton, *De Legibus*, 250–251.

⁵¹⁷ Bracton, *De Legibus*, 251.

⁵¹⁸ Carpenter, *The Minority of Henry III*, 123.

⁵¹⁹ Carpenter, *The Minority of Henry III*, 126.

⁵²⁰ Carpenter, *The Minority of Henry III*, 229–234, 318–319, 341–342 The phrase “Christmas crisis” is Carpenter’s and may be found at 319 and 397.

⁵²¹ See: Schulz, “Bracton on Kingship,” 147–149.

age early. However, the magnates probably also wanted to avoid closing doors unnecessarily – it could turn out to be appropriate to declare Henry of age early. Therefore, a certain degree of vagueness about Henry's age of majority – made possible by a lack of strong precedent – meant that Henry might be given power when both he and the kingdom were adjudged ready. Who was to be the judge of that, however, was uncertain and would, like Henry's majority, be decided by political circumstances rather than constitutional rules.

Whatever the case, the link between ability and maturity on the one hand and legal thresholds cannot be ignored. Even though all age-delimited thresholds are largely arbitrary, that does not mean that they are completely so. They recognise that people develop as they age and attempt to draw a general line between those who are (deemed to be) able and those who are not. The reasons for doing so are obvious: it creates certainty and, therefore, stability; is administratively simpler; and attempts to achieve horizontal fairness. However, it remains a very rough, blunt tool – often used not following empirical investigation but guesswork and prejudice. Furthermore, no age threshold can be set in stone, as general abilities might vary from time to time, especially when one introduces an education system.

When one takes into consideration that it is axiomatic that different people are different, it is easy to see how the magnates may have been inclined to look behind the threshold to the reasons that it was first implemented and to use that as a basis for Henry's change in status, not the threshold itself. There would be many benefits to such an approach, not least that Henry would assume only so much responsibility as he could handle. It would reduce the potential for making bad decisions, which in turn would preserve Henry's dignity and the dignity of the Crown.

The implications, however, of overtly connecting ability with right-to-rule are seismic. It implies that competency is a prerequisite for kingship and it follows that only competent monarchs are allowed to rule. The consequence being, of course, that a monarch who has become incompetent could have their powers removed from them. Indeed, this is attested by Henry VI (1421-71) and George III (1728-1820), both of whom were relieved of their kingships – for a time at least – as a result of their mental health problems. More radically, it could provide the basis for the depositions of Edward II (1284-1327) and Richard II (1367-1400); after all, if the monarch is

chronically incompetent, it seems unwise to maintain them – although, it is a fine line between an inability to make decisions and an inability to make *wise* decisions. Is this evidence, therefore, of a provision implicit in the constitution equivalent to §4 of the 25th Amendment to the US Constitution, which provides the explicit mechanism for the replacement of the president where he “is unable to discharge the powers and duties of his office”? The case is arguable but not convincing. Furthermore, whilst it does seem the logical conclusion for a constitution ready to accept a minor king but not allow him kingly powers, there is no evidence that the minorities provided the direct grounds for the regencies under Henry VI and George III, and the depositions of Edward II and Richard II.

The final matter to discuss is that it seems to have been generally assumed that the change in status would be wholesale, i.e. that Henry would go from having no competences to all. It is of course possible, however, that the magnates envisaged a much more graduated process where, even though Henry was basically competent, some competencies would require greater experience. This is the basis, for example, of the American system of ages of candidacy, which range from twenty-five for senators to thirty-five for presidents and vice-presidents.⁵²²

It is clear that access to institutional competencies could be affected by personal abilities. The magnates were not going to let Henry rule from the first day of his reign. There were some early indications that Henry would accede wholesale to his powers at the age of fourteen; Powicke even suggests that his thirteenth birthday was briefly considered, but these times came and went.⁵²³ From then, the signs pointed to his late-teens/early-twenties and, most likely, was the age of twenty-one.

4.5 Second Coronation, 17 May 1220

Henry had the weight of the greater baronage and the pope behind him, but he himself had little personal authority. In August 1219, matters got out of hand at Tickhill in Yorkshire, where the constable refused to yield. On 29 August, Pandulf sent a letter to de Burgh and des Roches saying that “[t]he constable and men of Tickhill were daily committing worse iniquities ‘and by way of derision they call the

⁵²² US Constitution, Article I, ss. 1-3

⁵²³ Powicke, *King Henry III and the Lord Edward*, 43.

king not a king but a boy”.⁵²⁴ There had also been difficulties at Mitford in Northumberland, where Carpenter believes that Henry may have attended in person. Philip of Oldcoates agreed, before the minority government, to surrender Mitford, but by October had reneged on his promise.⁵²⁵ It is unclear what impact Henry’s personal presence would have had and whether it had been sufficient to secure Oldcoates’ submission, but it is clear that – in any case – Henry’s authority (both personally and as expressed through his government) was not enough to keep Oldcoates subdued.

For Carpenter, it was these struggles at Tickhill and Mitford that prompted the government “to send Robert, *quondam* abbot of Thorney, to the papal court” in order to gain permission from Honorius for a second coronation.⁵²⁶ It would be fair to add that, had Tickhill and Mitford been completely isolated incidents, the impetus for a second coronation would not have been so great; defiance at Tickhill and Mitford had been the most flagrant, but they were symptomatic of a wider problem. As well as amending any irregularities in Henry’s first coronation, his second would reassert royal authority.⁵²⁷ It would also, as Carpenter remarked, ingratiate the government with the Church and, in particular, would “please [Westminster] abbey and the archbishop [of Canterbury]”.⁵²⁸ After all, it does appear that the abbot of Westminster had taken offence at the coronation being held at Gloucester, which Guala had to assure him had only been done out of necessity.⁵²⁹

Henry was not the only king of England to have been crowned twice. Eadgar was possibly crowned twice – perhaps first in 961, although there is not much evidence to support this, and then later in 973 at Bath. In 1194, after his release from captivity, Richard I renewed his coronation oaths at Winchester – an account of which can be found in Gervase of Canterbury.⁵³⁰

In early April 1220, papal letters arrived in England authorising a second coronation because Henry’s first coronation, in Honorius’ words, “on account of the disturbed condition of his realm, had been performed less solemnly than was right and fitting,

⁵²⁴ Carpenter, *The Minority of Henry III*, 160.

⁵²⁵ Carpenter, *The Minority of Henry III*, 162.

⁵²⁶ Carpenter, *The Minority of Henry III*, 162.

⁵²⁷ Cf. Carpenter, *The Minority of Henry III*, 162; Schramm, *A History of the English Coronation*, 39.

⁵²⁸ Carpenter, *The Minority of Henry III*, 162.

⁵²⁹ Powicke, *King Henry III and the Lord Edward*, 4 at footnote 1.

⁵³⁰ Gransden, *Historical Writing in England*, 258–259.

and in another place than that which the usage of the kingdom required.”⁵³¹ In permitting a second coronation, Honorius almost implies that the people of Tickhill had a point: Henry had indeed not been king since October 1216 because his first coronation had not been validly performed. In truth, there is an element of indeterminacy about Henry’s coronation at Gloucester, which was probably sufficient but remained open to challenge. It was time to tie up any loose ends that might have unravelled Henry’s kingship.

It was decided that Henry’s coronation would be held to coincide with Pentecost, which in 1220 fell on Sunday 17 May. Boulton noted that, during what he calls the “pre-classic” phase of knighthood (ca. 1066-1154), the feast of Pentecost was often used as the setting for dubbings and that it “would come to be the principal feast associated with the cult of chivalry in most courts, both real and fictional”.⁵³² Why this association developed is anyone’s guess, though Boulton has suggested that it might have been partly for functional reasons, for “it occurred at a time of year when tournaments and other outdoor festivities could be held in some comfort”.⁵³³

Edgar was crowned at Bath in 973 on Pentecost, but whether the thirteenth-century magnates would have been aware of this is unlikely.⁵³⁴ However, neither 17 May or Pentecost had any special significance for Henry himself. Norgate remarked that it is somewhat surprising that they should not have waited the seventeen months until Henry’s fourteenth birthday, which could have accompanied a change in status. However, as Harold Wilson quipped, ‘a week is a long time in politics’ – seventeen months was just too far away for convenience and, perhaps, the true motivation for the coronation is demonstrated not during the ceremony but the day after. The annals of Dunstable describe the scene:

the barons who were present swore that they would resign their castles and wardenships at the will of the King, and would render at the Exchequer a faithful account of their fermes; and also that if any rebel should resist the King, and should not make satisfaction within

⁵³¹ Quoted in: Norgate, *The Minority of Henry the Third*, 129.

⁵³² Boulton, “Classic Knighthood as Nobiliary Dignity: The Knighting of Counts and Kings’ Sons in England, 1066-1272,” 79.

⁵³³ Boulton, “Classic Knighthood as Nobiliary Dignity: The Knighting of Counts and Kings’ Sons in England, 1066-1272,” 79.

⁵³⁴ Gomme, *The Anglo-Saxon Chronicle*, 95; Giles, *The Anglo-Saxon Chronicle*, 83.

forty days after being excommunicated by the Legate, they would make war upon him at the King's bidding, that a rebel might be disinherited without the option of a fine.⁵³⁵

The coronation was an act of showmanship and demonstration, which the government used as a platform from which to reinstate royal power. Carpenter has calculated that “[a]t least £760 were spent on the ceremony and celebrations, thus exhausting a good proportion of the revenues from the exchequer’s Easter term”.⁵³⁶ The coronation was accompanied by a flurry of letters from Honorius, which outlined a broader scheme of reform: “the king’s castles, manors, vills and other demesnes were to be restored to him; full satisfaction was to be given for the issues received from them since the war; and henceforth no one, however faithful, was to hold more than two royal castles.”⁵³⁷ The effort appears to have been worthwhile, for it represented a ‘turning point’ in the Crown’s fortune.⁵³⁸

Despite the fact that Henry’s kingship and resources appear to have been secured, little changed for Henry himself. It is possible that the coronation had even been held when it had precisely to avoid any thought that Henry would now occupy a more active role in the government. All in all, Henry’s second coronation was a brilliant piece of political propoganda, but the glimmer of solid constitutionality appears to disappear, at least in terms of the ‘who’ and the ‘where’ of the coronation.

4.5.1.1 Magna Carta and the Coronation Charters

Magna Carta (1215), attested by John, only lasted for a few months.⁵³⁹ Having been vigorously opposed by Innocent III, the Church performed a magnificent *volte-face* when the Papal Legate, Guala, supported the reissue of Magna Carta – albeit somewhat emasculated – on 12 November 1216; less than a month after Henry’s first coronation.⁵⁴⁰

Monarchs often issued a charter around the time of their coronation; in part, as a manifesto but also as a bribe to win support and cement their claim. Henry I had issued a charter for his coronation to secure the ‘goodwill of his electors’ and,

⁵³⁵ Quoted in: Norgate, *The Minority of Henry the Third*, 146.

⁵³⁶ Carpenter, *The Minority of Henry III*, 188.

⁵³⁷ Carpenter, *The Minority of Henry III*, 190.

⁵³⁸ Carpenter, *The Minority of Henry III*, 188–189.

⁵³⁹ Theodore FT Plucknett, *A Concise History of the Common Law*, 2nd ed. (The Lawyers Co-Operative Publishing Co., 1936), 23; Holt, *Magna Carta*, chap. 10.

⁵⁴⁰ Carpenter, *The Minority of Henry III*, 22.

likewise, so did Stephen – twice.⁵⁴¹ It was Empress Matilda’s failure to do so which meant that she did not become the first regnant queen of all England. By Henry II’s time, the coronation charter was becoming something of a tradition and he too issued a charter.⁵⁴² Henry the Young King, Richard, and John broke this apparent tradition and did not issue charters.⁵⁴³ Magna Carta (1216), issued on behalf of Henry III, however, could be seen as a return to the earlier tradition. It is interesting, therefore, that although Magna Carta had been reissued by Henry (in 1217) and was to be reissued again (in 1225), his second coronation was not an occasion for it. In later times, the confirmation of Magna Carta tended to fall within the middle of a reign,⁵⁴⁴ and it was perhaps a coincidence that that Magna Carta (1216) fell around his first coronation.

Alternatively, it might reveal something as to the circumstances of the second coronation, which was designed to enhance royal power through a show of strength. It was not, in any way, a negotiation: it was a demand to be respected and, therefore, did not require a concession.

4.6 Henry’s Fourteenth Birthday

Henry turned fourteen on 01 October 1221, putting to the test the early indications that that was when Henry would take over the reins of government. It seems that Henry’s role in the kingdom had been growing: even though he still spent long periods of time apart from the government, he had held his own court at places such as Wallingford and Havering, where “a stream of letters and visitors” sought him out to deal with people’s “demands and requests”, treating him as “an independent force, separate from Hubert, Pandulf and Peter”.⁵⁴⁵ Moreover, he had “communicated his will to the government, or sought its advice, in letters of his own authenticated by the seal of his steward, William de Cantilupe.”⁵⁴⁶ But was his growing political competence enough?

⁵⁴¹ Schramm, *A History of the English Coronation*, 186–187, 191.

⁵⁴² Schramm, *A History of the English Coronation*, 193.

⁵⁴³ Schramm, *A History of the English Coronation*, 194–195.

⁵⁴⁴ Schramm, *A History of the English Coronation*, 203.

⁵⁴⁵ Carpenter, *The Minority of Henry III*, 241, 241, 242.

⁵⁴⁶ Carpenter, *The Minority of Henry III*, 241.

Since the Marshal's death in April 1219, relations between de Burgh and des Roches had soured to the point that Carpenter believed that they were 'bitter rivals' by early 1221.⁵⁴⁷ It was perhaps this rivalry that had prompted des Roches to go on pilgrimage to Spain between mid-April and mid- to late-June 1221 or, perhaps, as Vincent has suggested, because he had thoughts of going on crusade and designs on the archbishopric of Damietta.⁵⁴⁸ His absence, however, itself piqued suspicions: on 30 May 1221, des Roches and his associates, Peter de Maulay and Engelard de Cigogné, were accused of treason.⁵⁴⁹ These accusations were quickly dropped, but from the time of his return, des Roches seems to have lost control over Henry's household and "continued to look to the crusade as an honourable means of escape".⁵⁵⁰ He took the crusader's vows on 19 September, probably unaware that the Christian forces in Egypt had already effectively lost.⁵⁵¹

For Carpenter, des Roches' return to England had not just marked his loss of control over Henry's household, but over Henry himself, for he "ceased to be the king's guardian".⁵⁵² It may in fact be the case the des Roches had lost control of Henry as early as January 1221.⁵⁵³ Carpenter casts into doubt whether this relief of both tutorship and guardianship simultaneously was inevitable:

His control of the king could easily have continued after October 1221 but the king's fourteenth birthday certainly provided his enemies with powerful arguments with which to attack his position.⁵⁵⁴

Norgate described this event in the following terms: "Henry's school-days were over, but not his minority."⁵⁵⁵ In the eyes of Honorius, however, Henry's education was far from over.⁵⁵⁶ The English magnates, too, seemed to have been in agreement on this point as, following a meeting at Westminster in October 1221, Henry wrote to Honorius "asking him 'not to change the state of our land' until envoys had informed

⁵⁴⁷ Carpenter, *The Minority of Henry III*, 239.

⁵⁴⁸ Vincent, *Peter Des Roches*, 200.

⁵⁴⁹ Vincent, *Peter Des Roches*, 201; Carpenter, *The Minority of Henry III*, 250–251.

⁵⁵⁰ Vincent, *Peter Des Roches*, 206.

⁵⁵¹ Vincent, *Peter Des Roches*, 205–206; Hindley, *Crusades*, 187–188.

⁵⁵² Carpenter, *The Minority of Henry III*, 239.

⁵⁵³ Carpenter, *The Minority of Henry III*, 257.

⁵⁵⁴ Carpenter, *The Minority of Henry III*, 240.

⁵⁵⁵ Norgate, *The Minority of Henry the Third*, 180–181.

⁵⁵⁶ Carpenter, *The Minority of Henry III*, 258.

him of its 'state and of our doings'.⁵⁵⁷ Carpenter rightly recognised that this clearly put the power to elevate the king's status with the pope (regardless of the king's age), but that the initiative lay within England; where exactly it lay, however, still remained unclear. If Carpenter is correct and that Henry's letter followed from discussions by the baronage in October at Westminster, then it seems that the initiative lay with the English magnates-in-council. However, one could quite read in that Henry himself could inform the pope of progression in the 'state and his doings' or even certain members of the government, such as de Burgh. Henry's majority still remained highly political and was potentially open to exploitation.

What the age of fourteen signified is unclear, but it certainly was not sufficient to give Henry control of the English government. It is arguable that his attainment of fourteen was *necessary*, and that he could not have taken control of the government any earlier, but this is a difficult hypothesis to test as it may have simply been the case that fourteen, in the wider context, had no more significance than thirteen or fifteen. Although it was perhaps a little clearer that the ultimate decision would rest with the pope, the exact circumstances under which Henry would take power and on whose initiative remained chronically unclear. For the time being, Henry's position remained unchanged; de Burgh's, on the other hand, became greatly enhanced.

4.7 Events of 1223

4.7.1 Council of Westminster, January 1223

Following spending Christmas 1222 at Oxford, Henry moved to London where he held conference with the barons.⁵⁵⁸ One of the issues raised, was whether the king would confirm "the rights and free customs, to obtain which the war had been entered on against his father".⁵⁵⁹ Stephen Langton, archbishop of Canterbury, argued that Henry could not refuse to do so since, at the end of the war, "he and all the nobles of the kingdom with him swore to observe all the aforesaid liberties, and

⁵⁵⁷ Carpenter, *The Minority of Henry III*, 268.

⁵⁵⁸ The placement of these events in 1223 comes from Roger of Wendover. Norgate argued that he had, in fact, been mistaken and that they had actually taken place in 1224. Carpenter, in a long footnote, however, reasoned persuasively that Wendover, though mistaken at other times, had correctly placed these events in 1223. Cf. Wendover, *Flowers of History*, 2:443; Norgate, *The Minority of Henry the Third*, 214–216; Carpenter, *The Minority of Henry III*, 297.

⁵⁵⁹ Wendover, *Flowers of History*, 2:443.

to cause them to be observed by all”.⁵⁶⁰ Henry was, at this time, fifteen years old and it is perhaps interesting that such a request should be made of him, considering that he still could not validly grant Magna Carta. Was it perhaps a call for a manifesto, a promise that Henry would observe Magna Carta and the other customary rights and liberties when he was eventually to come to power? Or, rather, were the magnates seizing on Henry’s growing competence by tying the government to his promises, using the king as leverage on the likes of Hubert? Or perhaps was it, as Norgate suggested, that they were angling for a revision of Magna Carta?⁵⁶¹

In the event, according to the *History*, it was not Henry who replied but William Brewer: “The liberties which you demand, since they were extorted by force, ought not by right to be observed”. Passions began to rise and Langton retorted: “William, if you loved the king you would not disturb the peace of the kingdom”. It was at this point that Henry intervened: “We have sworn to observe all these liberties, and what we have sworn we are bound to abide by”.⁵⁶² In the *History’s* portrayal of events, which seem plausible, Langton appears to be on the verge of blackmailing Henry by threatening that civil war might again break-out if he did not make a confirmation. Whether Henry’s subsequent confirmation was because he was a man of his word (as he tried to make out), because he shrewdly sensed the mood of the room, or because he simply wanted to avoid conflict is difficult to tell. Alternatively, it may have been naivety, as Norgate has argued.⁵⁶³

Henry immediately ordered an inquisition into the liberties that had existed in the time of his grandfather, which was to report to him at London by the fifteenth day after Easter.⁵⁶⁴ These appear to be the actions of a king acting independently. However, this confirmation could not have been legally binding, but perhaps that was not its intention: to be politically binding was sufficient. The very fact alone, however, that it was to be binding – in any form – was significant for it limited the king’s sovereignty. It was not quite tantamount to a constitutional settlement because it hinged on the fact that Henry had *promised* the liberties and not that the liberties

⁵⁶⁰ Wendover, *Flowers of History*, 2:443.

⁵⁶¹ Norgate, *The Minority of Henry the Third*, 215.

⁵⁶² Wendover, *Flowers of History*, 2:443.

⁵⁶³ Norgate, *The Minority of Henry the Third*, 215.

⁵⁶⁴ Wendover, *Flowers of History*, 2:443.

existed *regardless of what the king thought*, but it was clear that there was a strong vein of opinion that Henry would have to operate within certain bounds.

It seems that, when Langton and others had requested the king to confirm the nation's liberties, they had not intended that things be restored to the times of Henry II. He consequently ordered that no action be taken on the findings of the inquiry and announced that "it was not our intention to raise or have observed evil customs in our kingdom".⁵⁶⁵ Had Henry's and Hubert's position been stronger, this inquest could have provided the basis for the strengthening of royal power by reviving the practices of his grandfather, but there had almost certainly been concerns that such an inquest could have been an attempt to obviate the Charters and any local progress.

4.7.2 Papal Letters, April 1223

In mid-April, the Pope sent letters, which would have arrived in mid-May, to the political players in England, at the head of which were Hubert, Peter, and William Brewer. Carpenter tells us of these letters:

The pope rejoiced to learn that what the king lacked in years, he made up for in prudence and discretion. Consequently, the three ministers were ordered to 'deliver to him the free and undisturbed disposition of his kingdom, and to resign to him, without any difficulty, the lands and castles which you hold as custodies, and to procure the resignation by others who hold in lands and castles in similar fashion'. Another letter was sent to Ralph de Neville in his capacity as keeper of the seal. Having explained about the order to the three ministers, Neville was enjoined 'now to use [the seal] at the pleasure [of the king], and in respect of it to be submissive and obey only him, causing no letters henceforth to be sealed with the king's seal save at his will'. There was also a letter to the earls and barons of England. They too were informed of the letter to the three ministers and then told to be intendant henceforth on the king and to assist him against opposition, or else 'you can fear, not without cause, a sentence of excommunication'.

Honorius did not declare Henry of age. What he did do, however, was to proclaim that the maturity of the king's understanding made up for his immaturity in years. He was thus deemed able to control the government of the kingdom. The castles were to be surrendered and the seal to be used at his will. The way was thus cleared for the whole structure of local and central government to be remodelled.⁵⁶⁶

⁵⁶⁵ Carpenter, *The Minority of Henry III*, 298.

⁵⁶⁶ Carpenter, *The Minority of Henry III*, 301–302.

This was a momentous development, especially bearing in mind that the king was still only fifteen. It also showed clearly that there had been discretion in declaring the king of age and that that discretion was held by the pope. However, the letters were clearly a reaction, demonstrated by the pope's statement that he "rejoiced to learn" – somebody had evidently written to him.

It seems that, since November 1222, Henry had accompanied Hubert wherever he went. We could be inclined to read this as Hubert not trusting Henry to be by himself anymore, but this does not seem the likely explanation. For example, Hubert appeared to encourage Henry to "dispense gifts of wine, game and timber" from August 1222.⁵⁶⁷ It seems more likely that Hubert had thought it time to immerse Henry in the actions of government. Could Hubert, therefore, have judged that Henry was in fact ready to take on the control of the government and had therefore applied to the pope for Henry's liberation from his minority? This seems highly unlikely, especially since Hubert himself denied in 1239 that it had been him.⁵⁶⁸

Carpenter has compared Henry's coming-of-age to a bomb, which, if detonated skilfully, could be used to the detriment of one's enemies.⁵⁶⁹ Powicke concluded that the April letters had originated with representations not from Hubert or 'his rivals', but rather "from Langton and his colleagues".⁵⁷⁰ Carpenter has skilfully argued, however, that Hubert was truthful when he pointed his finger in 1239 at Peter des Roches.⁵⁷¹ Des Roches, he claimed, sought "more to harm [Hubert] than to benefit him"; des Roches had sought to explode the bomb.⁵⁷²

However, the bomb was a dud as the political situation that unfolded over the next few months was not conducive to Henry's assumption of power. There were two main events that prevented the letters' implementation: there was trouble in the Welsh Marches, where the earl of Pembroke was advancing on Llywelyn and then, in late July, the news reached England of the death of Philip Augustus. This could be a momentous occasion, when the losses of John's reign could be undone, and letters were sent to Normandy inviting them back into the fold – holding Louis to his

⁵⁶⁷ Carpenter, *The Minority of Henry III*, 305.

⁵⁶⁸ Carpenter, *The Minority of Henry III*, 303.

⁵⁶⁹ Carpenter, *The Minority of Henry III*, 289.

⁵⁷⁰ Powicke, *King Henry III and the Lord Edward*, 57.

⁵⁷¹ Carpenter, *The Minority of Henry III*, 303–304; This was also the explanation that Vincent found most convincing: Vincent, *Peter Des Roches*, 208.

⁵⁷² Carpenter, *The Minority of Henry III*, 304.

promise in September 1217 to hand back Normandy.⁵⁷³ Whatever optimism there might have been of the return of Normandy, however, had evaporated by late August and Louis VIII had even threatened to invade England if Henry did not desist in his designs.⁵⁷⁴

In August, the government decided to ask Honorius to withdraw his April letters. In November, Honorius replied that he was “most reluctant” to withdraw his letters and “merely forbade action on them without the king’s consent”.⁵⁷⁵ It is significant that Honorius put the executive decision in Henry’s hands, but Henry still did not possess anything approaching complete control and was still limited to temporary grants.

4.7.3 Henry Given Control of the Seal, 8/10 December 1223

For a time, it appeared as though the country might once again descend into civil war. This was, however, avoided and a truce reached on 6 December with Langton playing the role of mediator. Over the next four days, a great change took place.

On 8 December, the bishop of London was given the keeping of Colchester castle. This document was not signed, as had been the case heretofore, “Witness Hubert de Burgh, my Justiciar” but *per ipsum dominum regem* [‘on the motion of the Lord King himself’].⁵⁷⁶ On 10 December, a further change took place. From this date forward, the formula *teste me ipso* [witnessed by myself] appears in the royal letters, “instead of the authentication by one or more of his most responsible counsellors”.⁵⁷⁷ Henry had been given control of his seal and, from that point onwards, the seal followed him, with Ralph de Neville, the keeper of the seal, “in law if not in fact, immediately subject to the royal will”.⁵⁷⁸

Norgate has called this a “partial coming of age (if such a phrase may be allowed)”.⁵⁷⁹ The ban on the use of the seal to make permanent grants still remained effective and, in reality, the government continued to be dominated by de Burgh. Exactly how much influence Henry wielded is difficult to tell, but, for Carpenter,

⁵⁷³ Carpenter, *The Minority of Henry III*, 309.

⁵⁷⁴ Carpenter, *The Minority of Henry III*, 311.

⁵⁷⁵ Carpenter, *The Minority of Henry III*, 310.

⁵⁷⁶ Norgate, *The Minority of Henry the Third*, 207; Powicke, *King Henry III and the Lord Edward*, 59.

⁵⁷⁷ Powicke, *King Henry III and the Lord Edward*, 59.

⁵⁷⁸ Powicke, *King Henry III and the Lord Edward*, 59; See also: Carpenter, *The Minority of Henry III*, 322.

⁵⁷⁹ Norgate, *The Minority of Henry the Third*, 208.

Henry now “took ultimate responsibility for the issuing of royal letters and for the decisions which they implemented”.⁵⁸⁰ Henry was now in control of government policy, although Hubert probably possessed the guiding hand.

The basis for this change was the papal letters of April, although those letters had envisaged an immediate transferral. Even if it was commonly agreed that the Pope had the power to declare changes in Henry’s status, the English magnates seemed to have reserved the right to decide upon the timing and mode of their implementation. Considering that the pope was a month’s journey away (two months including the return journey) and the fact that he was perpetually out-of-touch with current affairs in England, it seems to some extent reasonable that the English magnates ‘on the ground’ should possess the final word. However, the pope, at least, had not viewed his letters as giving *permission*; he had *commanded*. Indeed, the fact that the ban on permanent grants remained in force made Henry’s powers much less potent than seemingly the pope had declared.

It is slightly suspicious that the (partial) enactment of the letters coincided with des Roches’ withdrawal from the government, attesting his last letter for nine years on 8 December. A number of des Roches’ followers also seem to have left the court.⁵⁸¹ It certainly appears to have happened at a good time for de Burgh and Henry’s maturity does not seem to have been the only consideration in all of this.

4.8 Events of 1224-1226

In 1224, there was trouble both home and abroad for the minority government. Louis VIII encroached on Henry’s lands on the Continent, overrunning Poitou in the summer, and William de Bréauté’s seizure of Henry of Braybrook, a royal justice, resulted in an eight-week siege of Bedford castle. The siege ended with the hanging of the entire garrison on Henry’s orders, but in agreement with Hubert de Burgh and Archbishop Stephen Langton. The siege brought to an end Falkes de Bréauté’s influence in England and he died two years later in exile.⁵⁸² Thus, Henry’s government won a great victory at home, but suffered a terrible defeat in Poitou. Carpenter marked the irony of this, saying that “Poitou was lost at the very moment

⁵⁸⁰ Carpenter, *The Minority of Henry III*, 322.

⁵⁸¹ Carpenter, *The Minority of Henry III*, 322.

⁵⁸² Carpenter, *The Minority of Henry III*, 360–366.

when the English government, in terms of financial resources, was better equipped to defend it than at any time since the war”.⁵⁸³ Henry’s revenues, however, were still no match for Louis VIII’s, such that it “was with easy confidence that Louis ridiculed Henry III, at the end of 1224, as ‘a boy and a pauper’”.⁵⁸⁴ Louis’ taunt has to be taken at more than just face value, but it is clear that Henry, though his status in England was growing, still lacked respect on the international stage.

Gascony remained under English control and in 1225 an expedition was sent, headed by Richard of Cornwall to secure it. They achieved this and, in fact, Gascony remained under the English crown until 1453.⁵⁸⁵ This expedition, however, was expensive and Henry requested a tax of a fifteenth on all moveable goods; the magnates agreed to the tax, in return for the confirmation of Magna Carta.

Magna Carta (1225) was, in many ways, the final version. The main change that was made was that Henry now granted the charter “of his own ‘spontaneous and free will’ rather than, as in 1217, on the advice of his bishops, earls and barons.”⁵⁸⁶ Unlike January 1223, this confirmation was in writing but the ban on grants in perpetuity was *still* in force. It would not be, in fact, until Henry’s request for a thirtieth in January 1237 that he would confirm it for the first time with full validity as an adult.⁵⁸⁷ Until then, it would have been possible for Henry to argue that he was not bound to observe the Charter and, indeed, there had been rumours that Henry had applied to the pope for its revocation (a rumour that Henry staunchly denied). His 1237 confirmation was merely an oral confirmation, but this appears to have been sufficient. Henry re-confirmed the Charter twice more during his lifetime: 1253 and 1265. Edward I stalled in confirming the Charter, but with his confirmation in 1297 (twenty-five years into his reign), arising from a political crisis and in return for a tax, Magna Carta’s place in English history appears to have been sealed.

4.9 End of the Ban on Permanent Alienations, January 1227

⁵⁸³ Carpenter, *The Minority of Henry III*, 372.

⁵⁸⁴ Carpenter, *The Minority of Henry III*, 372.

⁵⁸⁵ Gascony was not the last of the English lands in France. Calais was under (titular) English control until January 1558.

⁵⁸⁶ Carpenter, *The Minority of Henry III*, 382.

⁵⁸⁷ Carpenter, *The Minority of Henry III*, 404.

In early November 1226, Louis VIII of France died suddenly, leaving the twelve-year-old Louis IX as his heir. This was a turn of events to be capitalised upon and, no doubt, played a leading role in Henry's letters of 21 January 1227:⁵⁸⁸

Be it known to you that by the common counsel of the Archbishop of Canterbury, the bishops, abbots, earls, barons, and other our magnates and faithful men, we recently at Oxford provided that henceforth we will cause charters and confirmations to be made under our seal. And we therefore bid you without delay publicly proclaim and make known to all persons in your bailiwick who have, or claim to have, lands or tenements or liberties by grant or concession and confirmation of our ancestors the Kings of England, or by our precept, that they come to us without fail before the beginning of this approaching Lent of the eleventh year of our reign, to shew us by what warrant they have, or claim to have, those lands or tenements or liberties, as they desire to keep or to recover them. You are also to make known to all persons in your bailiwick, and cause to be publicly proclaimed, that whosoever shall desire to obtain at any time our charter or confirmation of lands, tenements, markets, liberties, or anything whatsoever, let them come to us before the same term, to ask for our charter or confirmation thereof.⁵⁸⁹

This was, at heart, a revenue-raising exercise, as confirmations and issuances of charters etc. could be charged for, and would thus fill the royal 'war-chest'.⁵⁹⁰ However, it also removed the final restriction on Henry's kingship: he could now make permanent grants. For Powicke, Henry had now "declared himself to be of full age".⁵⁹¹ Henry was at this time was nineteen-and-a-quarter years old, still one-and-three-quarter years shy of twenty-one. Had he come of age?

Norgate was a little more reserved than Powicke, saying that, from this point forward, Henry "must indeed be accounted as of full age"; note that she hedged it with 'accounted as'.⁵⁹² Carpenter was more reserved still, saying that Henry's letters of January 1227 had not been "accompanied by a declaration that the king had reached his majority".⁵⁹³ If Wendover is to be believed, Henry had possibly made an *oral* declaration in February 1227 at a council held in Oxford, whereby he "declared himself of legitimate age to be released from wardship, and to take the chief

⁵⁸⁸ Cf. Philip Augustus' death in 1223, see 4.7

⁵⁸⁹ Quoted in: Norgate, *The Minority of Henry the Third*, 265–266.

⁵⁹⁰ Norgate, *The Minority of Henry the Third*, 267.

⁵⁹¹ Powicke, *King Henry III and the Lord Edward*, 70.

⁵⁹² Norgate, *The Minority of Henry the Third*, 268.

⁵⁹³ Carpenter, *The Minority of Henry III*, 389.

management of the kingly duties”.⁵⁹⁴ However, we have only Wendover’s word for this and Norgate was damningly sceptical of his account of events: “this writer’s account of that action, and of its accompanying circumstances, is too full of demonstrable confusions and inaccuracies to be worthy of confidence in any particular”.⁵⁹⁵

There does not appear to have been any recent papal involvement and Norgate even doubted that Honorius would have heard of Henry’s graduation as he died on 18 March.⁵⁹⁶ For Carpenter, this was a key point: “No letter was obtained from the pope to that effect, whatever Henry later believed.”⁵⁹⁷ It is possible that – and this is the line that Norgate adopted – the move was made within the scope of the April 1223 letters and Honorius’ letters later that year, which were “wide enough to cover the proceedings of January, 1227, without any need of further ratification from Rome”.⁵⁹⁸ This is rather problematic, however, in view of the fact that it took almost four years for them to be fully acted upon – a time scale that surely would have required re-confirmation from the pope, especially considering that the pope had not authorized such a long delay. Indeed, the exact impetus for the letters is unclear. Wendover attached the malicious intent of de Burgh to their genesis, who benefitted from Henry’s emancipation, being made earl of Kent and received Haughley, Rayleigh, Montgomery, Cardigan, and Carmarthan.⁵⁹⁹ As Norgate said, this “may very likely” be the case, but “we need not accept for truth the insinuation which Hubert’s enemies seem to have induced Henry to believe at a later time”.⁶⁰⁰ For perhaps one of the most important moments of Henry’s reign, we know surprisingly little.

As we have seen, there were a number of possibilities as to how Henry could come of age. However, there does not seem to have been much consideration that Henry could declare himself of age, despite Honorius’ letter in November 1223 (4.7.2). If Henry had really been able to declare himself of age since 1223 (when he was sixteen), why had he not done so? The answer was probably that it would not have

⁵⁹⁴ Wendover, *Flowers of History*, 2:485–486.

⁵⁹⁵ Norgate, *The Minority of Henry the Third*, 266.

⁵⁹⁶ Norgate, *The Minority of Henry the Third*, 268.

⁵⁹⁷ Carpenter, *The Minority of Henry III*, 389.

⁵⁹⁸ Norgate, *The Minority of Henry the Third*, 268.

⁵⁹⁹ Wendover, *Flowers of History*, 2:486; Carpenter, *The Minority of Henry III*, 389.

⁶⁰⁰ Norgate, *The Minority of Henry the Third*, 267.

been so easy to take a competent sixteen-year-old seriously as a competent nineteen-year-old. By then it would have been difficult to argue that Henry was incapable; he might not be able to make the wisest choices, but he certainly was able to make reasoned choices.

It is worth mentioning that Henry was not the only king to declare himself of age in English history. Richard II, on 3 May 1389, aged twenty-three, declared himself of age before his council. Richard was fed up with a minority that he felt had been artificially prolonged with, in the words of Stubbs, “restraints which would be intolerable to the meanest of his subjects”.⁶⁰¹ It is doubtful whether Henry’s declaration played any role in Richard’s. Rather, as Dodd suggested, it was probably “influenced by events across the channel, where six months previously the young Charles VI had staged a similar coup against his own overbearing uncles, asserting his right as a king of almost twenty years old to take control of affairs himself.”⁶⁰² When we look later still, we find that, in December 1547, the duke of Somerset’s term of office was changed from “from Edward [VI]’s achievement of majority at eighteen to the king’s pleasure, which acknowledged the possibility that Edward might achieve his majority prior to his eighteenth birthday.”⁶⁰³ Edward, of course, did not live long enough for such an event to play out, although it is worth noting that he did not come of age at fourteen.

January 1227 is the point at which Henry is considered to have started his personal reign. However, Hubert remained close until his fall in 1232 and the brief resurgence of Peter des Roches. In 1234, Peter himself fell and, according to Beem, this was the “first time since his accession and now aged twenty-seven, Henry III, was free to wield undisputed sovereignty”, although, he added, “he continued to be dominated for many years by his chosen advisors”.⁶⁰⁴ Towards the latter part of his reign, his government became distinctly unpopular and Carpenter went so far as to say that “[t]he most fundamental developments during his rule, the emergence of parliament,

⁶⁰¹ Stubbs, *Constitutional History*, 2:525.

⁶⁰² Dodd, “Richard II and the Fiction of Majority Rule,” 108.

⁶⁰³ Charles Beem, “‘Have Not Wee a Noble Kynge?’ The Minority of Edward VI,” in *The Royal Minorities of Medieval and Early Modern England*, ed. Charles Beem (Palgrave Macmillan, 2008), 229.

⁶⁰⁴ Guy I Seidman, “The Origins of Accountability: Everything I Know about the Sovereign’s Immunity, I Learned from King Henry III,” *St Louis University Law Journal* 49, no. 2 (2005): 19, <http://ssrn.com/abstract=592053>.

the widening of the political community and the growing sense of xenophobic national identity were shaped by opposition to royal politics.”⁶⁰⁵ This opposition to Henry’s politics led to the Second Barons’ War in the 1260s.

4.10 Concluding Remarks

From a constitutional viewpoint, the arrangements regarding Henry’s coming-of-age are distinctly unsatisfactory. Despite early indications that fourteen was the point of transition, there was little effort to publicise Henry’s age of majority in advance. Consequently, Henry’s majority appears to have been discretionary. Whether this discretion was contingent on Henry’s ability or the political environment – and who was to exercise it – was left unclear.

For a long time, it appeared that the discretion was the pope’s, even though he was perpetually out of touch with events in England. However, when the pope finally did act in 1223, the government under de Burgh decided to interpret it as they saw fit. Considering the political turmoil of that year, they may have done so in the interests of effective government. In the end, it appears to have been Henry who took the initiative, leaving open the question about under exactly what authority he did so. We should be suspicious, however, of the timing, which seems to have been tied with foreign policy: Louis VIII of France’s death and the accession of his young son, Louis IX, was an opportunity not to be missed. Henry’s assumption of regal power was fundamentally a political event, determined not by well-defined rules but by those who were there and their responses to the environment.

⁶⁰⁵ Carpenter, *The Struggle for Mastery*, 338.

5 Conclusion

5.1 The Stubbornness of Ancient Constitutionalism

The continuity or discontinuity of the English constitution has long been hotly debated. Arguments in favour of continuity are usually associated with anti-reform movements and conservatism, i.e. established practice should be adhered to or *preserved*. When continuity is combined with precedence, however, it also becomes a powerful argument in favour of reform, although it is cast as *restoration* or *reinstatement of a status quo ante*, rather than innovation. Preservation and restoration are the central tenets of ancient constitutionalism, whose basic argument is that the modern constitution is, and ought to be, the same as the constitution of yore.

Ancient constitutionalism flourished in the late medieval and early modern period where it was used in the cases for absolutist monarchy, limited monarchy, and republicanism.⁶⁰⁶ The epitome of early modern ancient constitutionalism is to be found in the writings of Sir Edward Coke.⁶⁰⁷ In his preface to the third part of his *Reports*, for example, he traced an elaborate journey of the ‘Common Lawe’ – the bedrock of the English constitution – from the Trojans and ancient Britons to his day, believing that the “lawes of England are of much greater antiquity than they are reported to be, & than any the Constitutions or Lawes imperiall of Roman Emperors”.⁶⁰⁸

Most of Coke’s claims have been discredited owing to historical inaccuracy, but ancient constitutionalism prospered. It found its most sophisticated expression in the writings of the Whig historians, notably Stubbs and Macaulay.⁶⁰⁹ For them, the English constitution’s source was not in Britain, but in the ancient forests of

⁶⁰⁶ See Greenberg’s discussion of the development of the ‘radical’ ancient constitution from the Norman Conquest to its use in defence of republicanism and the deposition of Charles I: Greenberg, *The Radical Face of the Ancient Constitution*, passim.

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⁶⁰⁸ Sir Edward Coke, *The Selected Writings and Speeches of Sir Edward Coke*, ed. Steve Sheppard, vol. 1 (Liberty Fund, 2003), 66, <http://oll.libertyfund.org/titles/1884>.

⁶⁰⁹ For the classic study of the Whig interpretation of history, see: Butterfield, *The Whig Interpretation of History*; and see also: Burrow, *A Liberal Descent: Victorian Historians and the English Past*.

Germany.⁶¹⁰ Since its heyday in the nineteenth-century, Whig historicism has waned, particularly following the historiographical trend towards modernism and postmodernism. However, the underlying constitutional patriotism and English exceptionalism of ancient constitutionalism persist and, for many, are core parts of national identity.⁶¹¹

Discontinuity has, too, long been argued. For example, John Hayward, Coke's contemporary, argued that the Anglo-Saxon system of government had no bearing on the constitution of his time as it had been irreparably disrupted by the Conquest.⁶¹² In modern academic circles, discontinuity is the mode. For example, King and Bogdanor have argued that the constitution is changing as we speak; as a result of membership of the European Union, House of Lords' reform, devolution, and the Human Rights Act 1998 etc.⁶¹³ Bogdanor even went so far as to say that "the constitution so brilliantly analysed by Bagehot and Dicey *no longer exists*".⁶¹⁴ This begs the question as to whether the constitution that Bagehot and Dicey described in the nineteenth century was the same as the thirteenth-century constitution. One writer who almost certainly would have said that it was not was the medieval historian Sir James Holt who stated boldly that "Twelfth-century England had no constitution";⁶¹⁵ presumably, if there was none at the end of the twelfth century, there would still have been none at the start of the thirteenth.

5.2 The Constitution during Henry III's Minority

In the first chapter, it was shown that there was no single, overriding principle governing the succession: there were many ways that a person could claim to be the legitimate and rightful heir. However, only certain kinds of claims would have been

⁶¹⁰ See MacDoughall's work, which discusses the rise and fall of Anglo-Saxonism: Hugh A MacDoughall, *Racial Myth in English History: Trojans, Teutons, and Anglo-Saxons* (Harvest House Ltd., 1982).

⁶¹¹ Such ideas are most fervently espoused by far-right political groups such as the English Defence League, English Democrats, British National Party, and Britain First. There is also a dedicated British Constitution Group, founded in 2009, which operates in a similar vein. In a more moderate form, however, these views are clearly prevalent, especially amongst those who are conservatively-minded.

⁶¹² Greenberg, *The Radical Face of the Ancient Constitution*, 124.

⁶¹³ King, *The British Constitution*; Bogdanor, *The New British Constitution*.

⁶¹⁴ Bogdanor, *The New British Constitution*, xiii. [emphasis added]

⁶¹⁵ Holt, *Magna Carta*, 23.

thought acceptable. For instance, unlike in Swift's Lilliput, the English succession was not decided on the basis of the end at which one cracked one's egg.⁶¹⁶

In the second chapter, it was shown that the leadership of the kingdom was initially invested in William Marshal, whose position was unprecedented. Following his death, power shifted by degrees into the hands of Hubert de Burgh. However unprecedented, it is clear that they did not seek to overhaul the English political system. Rather, they attempted to accommodate Henry's minority within it by creating temporary coping mechanisms.

There was an element of conciliar government, but there was nothing constitutional about it. Not only were there many clamouring to be involved (especially Peter des Roches and his satellites) but there would also have been a desire to avoid another civil war. Consequently, it might be better to describe the government as *conciliatory* rather than *conciliar*. Furthermore, had Henry, in his personal reign, been able to retake the former Plantagenet continental territories or install his second son as King of Sicily, there may have been no suggestion that the minority played a part in later developments towards conciliar government. As it was, Henry is remembered as a weak king.

In the final chapter, it was argued that the lack of clarity about when Henry would come of age was distinctly unsatisfactory. This is at odds with the foundational aim of constitutions to create certainty about the distribution of power.

Thirteenth-century people had certain ideas and assumptions about the ways that things ought to be done; this was their constitution. Unlike today's well-defined constitutional arrangements, the thirteenth-century constitution was a loose collection of customs that were passed along haphazardly. This often created competing understandings, as demonstrated by the laws of succession, but the fact that there were *understandings* is important.

I would suggest that a good way to think of the medieval constitutions is as 'ballpark constitutions': spacious with lots of ideas kicking about inside. The 'ballpark' is a constitutional theatre, populated with ideas that we today regard as pertaining to constitutional matters. The key difference to modern constitutions is how conflicts

⁶¹⁶ Jonathan Swift, *Gulliver's Travels* (Wordsworth Editions Limited, 2001)[first published 1726], pt. 1.

were resolved. In the present day, uncertainties are resolved through a defined process, e.g. adjudication in a constitutional court, deliberation in the legislature, or even seeking the mandate of the electorate. In the medieval period, however, uncertainties were settled more often through extra-legal means, with any equilibrium lasting only so long as the political balance did not tip. There is a sense in which this is fundamentally true of all constitutions, but medieval political systems were much more sensitive to changes in the political environment. Furthermore, there was a lack of abstract constitutional thought,⁶¹⁷ which meant that the constitutional vocabulary was lacking even if they had wanted to take a more legalistic approach. It is for these reasons that it is often easier to discuss medieval political developments in terms of politics rather than law.

To sum up, there was a constitution, but it was not a modern constitution. Instead, it was a loose collection of ideas, the arrangement of which being a function of the political environment. It is for this reason that Henry's minority is best described as a political, rather than constitutional, settlement and, as the political environment changed during Henry's minority, the political settlement changed. There was much left unclear in this settlement, not least for how long it was to last and, ultimately, it appears to have been a further change in the political environment that signalled its end (4.9).

Henry's minority presents a discontinuity from what preceded it and it is clear that there was scope for the constitution to change. Consequently, it is perhaps better to refer to the thirteenth-century constitution as "an" English constitution – rather than "the" constitution – just as there had been many other English constitutions since England's unification in the tenth century. Henry's minority, therefore, appears to be a nail in the coffin of ancient constitutionalism: the constitution has always changed – and always will.

⁶¹⁷ Goldsworthy, *Parliamentary Sovereignty: Contemporary Debates*, 22; See also Morrison's discussion of Frankish thought in the early middle ages: Morrison, *The Two Kingdoms*, 11.

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