THE *REAL* ROBIN HOODS

The legend of Robin Hood may have been inspired by real life outlaws. **Hugh Doherty** looks at the judicial process of outlawry in medieval England and at what it meant to be declared beyond the protection of the law

Men of the forest: this stained glass window at Canterbury Cathedral shows a forester being shot with an arrow by poachers

ALAMY

In January 1213 Robert fitz Walter, Lord of Dunmow in Essex and Baynard's Castle in London, was outlawed in the shire court of Essex. So, too, were nine of his men and accomplices, including a canon of St Paul's Cathedral, Gervase of Howbridge.

We know this because an inquest into the outlawry was ordered by King John in the summer of 1213 and the return was copied on to the close roll (a record of the king's correspondence). The return recites the king's writ ordering the shire court to summon Robert fitz Walter to answer charges of plotting the king's death and betrayal. It also names the knights who delivered the judgement of outlawry and the names of those great men present in the court – the Earl of Essex, two other earls, and three of the king's leading officials – when judgement was delivered.

The precise context for these charges was a plot by Robert fitz Walter and other great men to betray and possibly kill King John during his planned Welsh campaign in August 1212. Robert's one known accomplice, Eustace de Vescy, Lord of Alnwick, was likewise outlawed, together with one of his clerks, John of Ferriby, presumably in the shire courts of Yorkshire and Northumberland where his estates were situated. Both Robert fitz Walter and Eustace de Vescy, with their followers and households, fled the realm – Robert to France and Eustace to Scotland. And so these two great men and their followers were made into outlaws.

The medieval outlaw is a familiar figure in the modern imagination. This owes much, of course, to the continuing popularity of the legend of Robin Hood. We tend to imagine Robin and outlaws in general as fugitives because they defied the king's officials and operated outside the law in the great forests of the kingdom. What we forget is that there was an established process behind the creation of outlaws. On the whole, men did not choose to become outlaws: they were made outlaws.

The king's government used outlawry to enforce the exile of individuals found guilty of robbery, theft, or murder

The seal matrix of Robert fitz Walter, who was outlawed in 1213, charged with plotting King John's death

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The established tellings of the Robin Hood legend from the 16th century to the present, in ballads, novels, and films, have dated his adventures to 1193-94, when King Richard I was a captive in Germany and his youngest brother, the future King John, was plotting rebellion. While the choice of setting has no historical basis, it is nevertheless correct that the process of outlawry, the means by which men were made into outlaws, was a tool energetically and sometimes ruthlessly deployed by the Angevin kings of the English – Henry II (1154-89), Richard I (1189-99) and John (1199-1216).

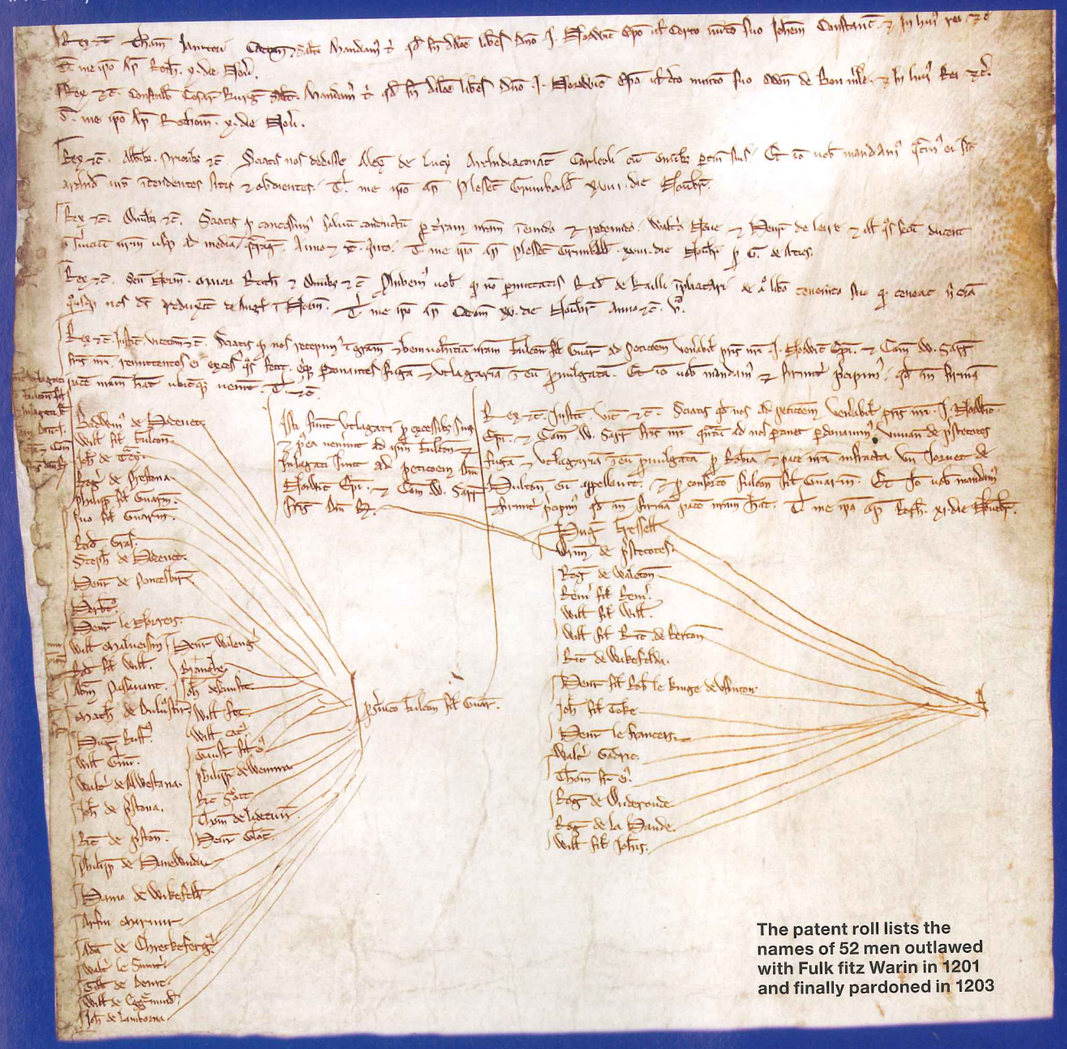
By the time Henry of Anjou had succeeded as king of the English in 1154, the business of making outlaws had occupied the shire courts of his kingdom since at least the days of King Æthelred II. In the 1160s and 1170s, Henry II and his leading men engaged in important, if highly experimental, campaigns of legislative reform.

The best witnesses to this reform are the texts known as the Assizes of Clarendon (1166) and Northampton (1176), memoranda drafted for the use of the king's officials and perhaps even intended for publication in the shire courts. In both assizes the king's government used the process of outlawry to enforce the exile of individuals found guilty or suspected of robbery, theft, or murder. Such individuals were now compelled to leave the kingdom in either eight days (Assize of Clarendon) or 40 days (Assize of Northampton). If they returned, they were to be taken as outlaws. This meant, in effect, immediate execution.

The assizes deployed the full bureaucratic power of Angevin government. The Assize of Northampton, for instance, required the justices to report the names of those who had

The outlawry of Fulk fitz Warin

An early 13th-century document records the verdict on a baron and his followers



The patent roll lists the names of 52 men outlawed with Fulk fitz Warin in 1201 and finally pardoned in 1203

Fulk fitz Warin, a Shropshire baron, was outlawed by King John prior to April 1201 and he was finally pardoned in November 1203.

The cause of his outlawry was very likely prompted by his failure to secure the castle of Whittington in Shropshire and may have been precipitated by an act of violence against the other (briefly successful) claimant, Maurice of Powys.

The adventures of Fulk and his men during their outlawry are narrated in great detail by the 14th-century prose romance, *Fouke le fitz Waryn*, which seems to have drawn upon a late 13th-century verse epic. These adventures combine historically verifiable points of detail (names of individuals, topographical information) with exploits of a more literary and fanciful nature (the defeat of a giant, the rescue of seven beautiful 'damoiseles', the abduction of King John).

It is possible, however, to follow Fulk fitz Warin's career as an outlaw through other evidence. Annals composed at the Cistercian abbey of Stanley in Wiltshire reveal, for instance, that Fulk and many of his men occupied the abbey for 14 days in July 1202.

The author of the annals makes it clear that Fulk and his men left the community in peace, but presumably not before helping themselves to the stores, livestock, and wine of the monks. Some of Fulk's men clearly got up to other mischief: a lawsuit in 1203 recorded that one of his band, Gilbert of Dover, was charged with forcibly taking hunting hounds from a Shropshire knight.

Yet perhaps the most important evidence for his period as an outlaw is found in the patent roll, which carefully lists the names of 52 men outlawed and subsequently pardoned with Fulk. The list offers a remarkable and detailed insight into his following. Among those entered in the list were his brothers, local knights, men whose surnames suggest they hailed from as far afield as Yorkshire, Lancashire and Ulster, and even that taker of hounds, Gilbert of Dover.

NATIONAL ARCHIVES

been outlawed to the king's exchequer in Westminster. The same lists were then to be forwarded to the king himself.

Hundreds of outlaws

A remarkable and terrible measure of the implementation of this legislation is found on the pipe roll for 1175-76, where each shire entry is followed by long lists of those who had perished in the ordeal of water or who had fled as outlaws. Unfortunately, the pipe roll entries do not specify who had drowned or who had fled, but even so the length of these lists remains impressive. More than 500 men (as well as one woman) were either drowned in the ordeal or were outlawed. Also recorded against each name was the value of his (or her) chattels. Collectively these sums represented a not insignificant source of revenue, totalling over £270. There was clearly profit in the making of outlaws on this sort of scale.

The king's right to outlaw men was matched by his right to reverse sentences of outlawry. The legal handbook known as Glanville, composed by and on behalf of Henry II's justices in the 1180s, refers to those tenants "outlawed by the law of the land and duly restored by the king's favour".

A revealing instance of this right in action comes from a Cornish lawsuit in 1201. The lawsuit concerned the misfortunes of one Reinward of Hendra, who lived in the 1160s and 1170s. Reinward went out of the shire for his "evil deeds" and was subsequently outlawed "by the assize of the kingdom". But sometime prior to 1175, Reginald, Earl of Cornwall, "pardoned his outlawry and gave him peace". Earl Reginald could do this, it was explained, because he "had the county of Cornwall and all things which belong to the lord king".

Reinward, however, seems to have pushed his luck too far: he was outlawed a second time, and it was as an outlaw that his enemies – presumably his enemies in Cornwall – caught up with him and killed him. Reinward would have done better to have heeded Henry II's command and crossed the sea.

Men were outlawed for treason, and this made it a powerful tool for the coercion, punishment and removal of the king's enemies. The records reveal that, in 1176, Gilbert fitz Waltheof – the king's reeve of West Derby in Lancashire and a supporter of Hugh, Earl of Chester during the rebellion of 1173-74 – offered the king £400 to have his outlawry pardoned. The political nature of the process under King John is also clear from the fortunes of Robert fitz Walter and Eustace de Vescy. Outlawed in dramatic circumstances in January 1213, both men and their

A 16th-century woodcut of Robin Hood, the outlaw of popular legend

BRIDGEMAN

Magna Carta addressed the operation of outlawry... no free man was to be outlawed or ruined "except by lawful judgement of his peers"

households were pardoned as part of the king's settlement with Pope Innocent III less than five months later.

Clause 39 of Magna Carta, perhaps the most famous of the charter's clauses, directly addressed the operation of outlawry as well as that of other punishments: no free man was to be imprisoned, dispossessed of his property and exiled, outlawed or ruined "except by the lawful judgement of his peers or by the law of the land". There can be little doubt that the outlawry of Robert fitz Walter and Eustace de Vescy had followed established process in January 1213: the return on the close roll is explicit in declaring that Robert and his men had been outlawed according to the custom of the shire court of Essex.

Yet we may suspect, just as the drafters of Magna Carta suspected, that a veneer of process often concealed political pressures. The fact that the judgement of the shire court was declared in the presence of the Earl of Essex (who was also the king's justiciar), and a number of the king's leading officials suggests that John maintained a close control over proceedings. In the presence of these representatives, few knights of this or any shire will have been either willing or able to refuse the king's demands to summon and outlaw his enemies.

The inquest into the outlawry of Robert fitz Walter and Eustace de Vescy may have been an attempt to confirm the presence of due process when they were made outlaws – process, of course, which the king reversed by pardoning both men in May 1213.

Both Robert and Eustace were to play important roles of leadership in the insurrection against King John and in the subsequent war of 1215–17. Eustace was killed by a crossbow bolt at Barnard Castle in August 1216; Robert fitz Walter was captured during the battle in the streets of Lincoln the following May.

Both men, moreover, had played an important role in the drafting of the charter – so, too, had members of their ecclesiastical networks, including their fellow outlaws in 1212, Gervase of Howbridge and John of Ferriby. All four of these men would have had good reason to seek to challenge the king's abuse of outlawry.

In this sense, clause 39 of Magna Carta may have been inspired, if only in part, by the outlawry declared in the shire courts of Essex, Yorkshire, and Northumberland in January 1213. H

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BOOK

▶ **Two Medieval Outlaws: Eustace the Monk and Fouke fitz Waryn** by Glynn Burgess, ed (Boydell & Brewer, 2009)