



**St George's Cathedral Evensong**

*The Significance of the Magna Carta*

by

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Tomorrow marks the 800<sup>th</sup> anniversary of the occasion upon which King John placed the royal seal on a document which later came to be known as Magna Carta, in a meadow called Runnymede between Windsor and Staines, a little outside London. While I am honoured by the opportunity which the Dean has kindly provided for me to give a short address on the significance of that event, I approach that opportunity with some trepidation. Earlier this year, Lord Jonathan Sumption, an eminent jurist and member of the Supreme Court of the United Kingdom, and who happens also to be a noted historian observed:

It is impossible to say anything new about Magna Carta, unless you say something mad. In fact, even if you say something mad, the likelihood is that it will have been said before, probably quite recently.<sup>1</sup>

The proper appreciation of any act or event requires an appreciation of the historical context in which that act or event occurred. In the case of Magna Carta, that historical context starts 150 years earlier, when the duke of Normandy, known to the French as Guillaume le Bâtard (or William the Bastard) and later to the English as William the Conqueror, successfully invaded England, thereby uniting the kingdom of England with the domains he controlled in France. His successors struggled to maintain that territorial realm, and in particular the French domains, through a series of wars with other French territories. It was in that context that King John came to the throne in 1199 following the death of his older brother Richard during a battle in France. Wars have to be paid for, and one of the enduring characteristics of King John's reign was his struggle to raise the revenue he needed to fund the battles he fought, often unsuccessfully, in France. In the absence of any system of national taxation, King John and his predecessors had taken advantage of the indefinite

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<sup>1</sup> Lord Jonathon Sumption, 'Magna Carta then and now', (Address to the Friends of the British Library, 9 March 2015) 1.

character of their feudal rights to extort money to fund the cost of warfare.<sup>2</sup>

Many myths have developed around Magna Carta. One of them is that the document was driven by a desire for fundamental constitutional reform, which is true in a sense,<sup>3</sup> but like many significant historical events, more fundamentally it was about money, and more particularly about restricting the King's power to raise taxes in order to fund foreign adventures. A group of rebellious barons who resented the level of the taxes levied by the King raised a force which seized London.<sup>4</sup> The King had no choice but to agree to their demands. Paradoxically, the document which has been heralded as the foundation stone of personal freedom was procured by physical duress and coercion.

There was also a very significant religious context to these dramatic events. King John had refused to accept the selection of Stephen Langton as Archbishop of Canterbury, and in 1208 the Pope issued an interdict prohibiting the provision of the sacraments or burial in consecrated ground in England, and in 1209, King John was excommunicated by the Pope. Eventually King John realised that he had enough enemies without including the Pope amongst them and in 1213 he accepted Langton as Archbishop of Canterbury, the interdict and excommunication were lifted, and in 1214, King John accepted the Pope as the ultimate feudal overlord of England.

In that context it is not surprising that Langton became one of the leading mediators in the barons' dispute with the King at Runnymede. (Indeed it is thought that Langton's actions ensured the survival of the Charter, as he apparently took the original document away for

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<sup>2</sup> Ibid, 7, 8.

<sup>3</sup> See for example, James Spigelman, 'Magna Carta in its medieval context' (Address at the Banco Court, Supreme Court of New South Wales, Sydney, 22 April 2015).

<sup>4</sup> Although the three principal chronicle sources for this event agree that there was collusion beforehand between barons and Londoners (N Vincent, 'Feature of the Month: May 2015 - The Rebel Seizure of London, 17 May 1215', The Magna Carta Project). One of the few clauses that remain part of English law preserves the ancient liberties and free customs of the City of London.

safe-keeping after the meeting at Runnymede.<sup>5</sup>) Nor is it any coincidence that the interests of the church were protected by being secured in the first and last clauses of the charter - as bookends if you like, the first clause recording:

FIRST, THAT WE HAVE GRANTED TO GOD, and by this present charter have confirmed for us and our heirs in perpetuity, that the English Church shall be free, and shall have its rights undiminished, and its liberties unimpaired.

And the document ends with a clause including that:

IT IS ACCORDINGLY OUR WISH AND COMMAND that the English Church shall be free.

More recent translators of the original Latin text of the Magna Carta have been tempted to translate the reference to the English church as a reference to the Church of England, but, of course, in 1215 the English church was a branch of the Roman church subject to the control of the Pope. The church which we know as the Church of England only came into existence some centuries later following yet another dispute between an English King and the then Pope.

It seems distinctly possible that these clauses may also have been directed to the protection of the property and finances of the church, but it is of the utmost significance that the first clause of Magna Carta came to be understood as a guarantee of religious freedom and a prohibition of government interference with the exercise of religion. This is one of only three clauses of the Magna Carta that remain part of the statute law of England. Its contemporary derivative in Australia is found in section 116 of the Commonwealth Constitution which entrenches the separation of church and state and guarantees freedom and tolerance for all religions.

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<sup>5</sup> The British Library, 'Magna Carta: people and society' (11 June 2015) at <http://www.bl.uk/magna-carta/articles/magna-carta-people-and-society#>

Perhaps it is a sign of the contemporary prominence of lawyers in our society, but in this centenary year it seems to me that rather too much emphasis has been placed upon the significance of Magna Carta to the development of the law, and not enough emphasis placed upon the significance of the guarantee of religious freedom from interference by government contained at the beginning and the end of the document, no doubt upon the insistence of the Archbishop of Canterbury.

### **More Myths**

I have already mentioned one myth which has grown up around the document. Let me debunk a few others. The document did not become known as the Great Charter during the latter part of the 13<sup>th</sup> century because of its profound constitutional significance, but simply because of its physical size and in order to distinguish it from a document which was smaller in size whereby the King granted rights to use the natural forests in the Kingdom.

Nor is it possible to trace any direct connection between Magna Carta and the principles of parliamentary democracy.<sup>6</sup> No organ of government resembling a representative parliament can be seen any earlier than the last half of the 13<sup>th</sup> century, many decades after Magna Carta.

I am afraid the disillusionment continues. From the perspective of lawyers, the two most famous clauses in the document are clauses 39 and 40 which provide:

39. No free man shall be seized or imprisoned, or stripped of his rights or possessions, or outlawed or exiled, or deprived of his standing in any way, nor will we proceed with force against

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<sup>6</sup> While by no means embodying parliamentary democracy, it is the case however that the Magna Carta and what was known as the Forest Charter did, amongst other things affirm the obligation of the King to consult on important issues and restrict the King's feudal powers, subjecting him to law and custom (Note 3 above) .

him, or send others to do so, except by the lawful judgement of his equals or by the law of the land.

40. To no-one will we sell, to no-one deny or delay right or justice.

Subsequent readers have been inclined to construe clause 39 as a guarantee of trial by jury, and clause 40 as a guarantee of access to justice, no doubt encouraged by the attraction of those concepts. Unfortunately, neither is true. In 1215 no thought had been given to trial by jury in criminal matters. At that time, criminal matters were tried by battle or by ordeal - often the grasping of hot metal. Trial by jury was still many decades away, although coincidentally its origins lie in a decision of the Lateran Council in Rome, also in 1215, to prohibit any priest being involved in trial by ordeal.<sup>7</sup> And clause 40 was not inserted as a universal guarantee of access to justice, but in order to address the notorious corruption of the King's personal court. In order to raise revenue, the King was in the habit of selling access to his court, as well as verdicts, which he delivered personally, to the highest bidder, or in some cases delaying cases indefinitely in return for a payment.

### **What is all the fuss about?**

So now that I have poured cold water on some of the myths often associated with Magna Carta, what is all the fuss about? Why have so many words been spoken and written in celebration of a document that was the product of a very unusual time in English history, a document that was procured by physical duress and coercion, and which was annulled by the Pope at the request of King John 10 weeks after he sealed it? Magna Carta is one of those texts capable of meaning all things to all people, but for me, there are two matters of profound significance which did emerge from the document and which were

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<sup>7</sup> Note 3 above, 40.

retained when it was affirmed by successive monarchs following the death of King John.

First, although there had been a long established practice of royal promises of good governance in the form of a Coronation oath, it was the first occasion upon which there was a pact or treaty between the monarch and at least some citizens as to the terms upon which the monarch would rule. It was an agreement between the governor and (some of) the governed as to the terms upon which government would occur. It was also a formal acknowledgment by the monarch that his power was not absolute or unfettered. Since 1215, the arrangements which prevent any single organ of government from having absolute or uncontrolled power have become more sophisticated and complex, but they remain as vital to our liberties and freedoms as they were to the barons who risked their lives by baling up the King at Runnymede.

Second, there are various clauses in the document which, read together, required courts to be held regularly throughout England, conducted by people who knew and intended to apply the law. In those provisions we see for the first time the framework for a system of courts administered by trained lawyers acting independently of the government of the day and not under its control. That was the framework which enabled the English common law to be nurtured and to flourish, developing iteratively and progressively over the next six centuries before it was transported to Australia where it has been modified by the Australian judicature to suit Australian conditions.

So, even after putting aside the myths, in this ancient and venerated document we find the formal origins of government by agreement between the governor and the governed, the acknowledgement of the limited power residing in any one organ of government, and the framework for the development of the rule of law which is such a vital component of our liberal democracy. Those are things that are well and truly worthy of commemoration and celebration.