



MASTER OF
THE ROLLS

LORD NEUBERGER OF ABBOTSBURY, MASTER OF THE ROLLS I

INNER TEMPLE – MAGNA CARTA DINNER

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1. 796 years ago tomorrow a reluctant, but resigned, and most definitely scheming King John was brought to Runnymede to put his seal to the Great Charter of Liberty – Magna Carta. John might have acceded to the Barons' demands; he plainly had no intention of sticking to the bargain. Once at a safe distance from Runnymede he was urging Pope Innocent III to declare it void. The Pope agreed to John's request, and on 24 August 1215, a mere ten weeks after its sealing, the Magna Carta was declared null and void by a Papal Bull¹.
 2. And there its place in history may well have stopped. But, fifteen months later, after first facing a Baronial war, and then losing the royal treasury in the Wash, John fell victim to a bad dose of dysentery. And on 18 October 1216 he died, to be succeeded by his son, the more devout, less intelligent, longer lasting, but equally ineffective Henry III. The redoubtable Earl Marshal, the new young King's regent, rescued Magna Carta from its threatened obscurity, revising and reissuing it twice. When he came of age, Henry III also reissued it, as did his son, Edward I, when he became King in 1297. And it is Edward I's version which remains on the statute books to this day.

¹ I should express my thanks to John Sorabji for all his help in the preparation of this lecture.

3. This evening, we are here to remember the birth of the Magna Carta, in the Inner Temple, one of the principal historic homes of the common law, and in the City of London, that even longer established entity, and we have celebrated the event with a beautiful and moving evensong. So it seems appropriate to say a few words about the religious implications, the legal implications, and the City implications of the Great Charter. Now, even though the Magna Carta remains part of our law, not all of it is in force, thanks to our Victorian ancestors, who, in a fit of unromantic practicality, repealed the vast majority of its provisions in the painfully prosaic Statute Law Revision Act of 1863. There are three provisions which, even after a couple of later repeals, are left untouched: chapters 1, 9 and 29. Chapter 1 well encapsulates the Charter's ecclesiastical significance. It states that

"... the English church shall be free, and shall have its rights undiminished and its liberties unimpaired: and we wish it thus observed, which is evident from the fact that of our own free and spontaneous will, before the discord between us and our barons began, we conceded and confirmed, by our charter, freedom of elections, which is reputed of the greatest necessity and importance to the English church."

4. Now there is some debate as to the extent to which the Charter had been composed by Stephen Langton, the Archbishop of Canterbury. Recent research by David Carpenter confirms that, while his views were undoubtedly very influential on the drafting of the Great Charter, he may not have been involved in drafting most of its clauses. However, there can be little doubt but that he was the moving force behind chapter 1, which he probably was largely responsible for drafting.
5. No doubt Stephen Langton would have been very pleased to have seen that chapter included. However, it has been suggested that he would have felt profound and devout horror and disbelief, if, as a good Roman Catholic, who had enlisted the Pope's support against John, he had been told that, little more than 300 years later, the English Church would no longer be part of the Roman Catholic confession. But I wonder. As David

Carpenter says, chapter 1 records a “desire to set the church free”. And Langton was keen to reduce the powers of the Pope over the English church, securing the removal from England of the papal legate, Pandulph, in 1221 five years after John’s death, and securing other rights for the English church from Innocent III’s successor, Honorius III. So maybe in chapter 1 of the Magna Carta, we can detect the first little breeze which in 300 years grew into Henry VIII’s storm out of which developed the independent Church of England.

6. Apart from having had his way in a number of respects over two Kings and two Popes, Langton spent 25 years teaching at the University of Paris – a great European – and wrote many books. He is also credited with having divided the books of the Bible up into their present chapters and to have composed the famous medieval sequence, Veni, Sanctus Spiritus. So Langton was a pretty formidable character – I see him as something of a 12th century Sir Robert Worcester, the deputy chair and effective chief executive of the Magna Carta Trust.
7. But, for present purposes, as I have said, even if Langton did not actually write much of the Magna Carta, he was its moving spirit. He had railed against “the avarice...of modern kings, who collect treasure not in order that they may sustain necessity but to satiate their cupidity”.
8. And, as we have all very recently been reminded, Archbishops of Canterbury have a habit of getting involved in such issues on behalf of what they see as the unfairly oppressed people. In 1215, Langton may have agreed with the sentiment expressed by his successor nearly 800 years later in this week’s New Statesman that “the tectonic plates of British ... politics are shifting”, although I doubt that he would have known much about tectonic plates or the New Statesman, both of which came first only came to anyone’s attention in the 20th century.

9. Whatever may have been his views about the poor, there was no doubt about Langton's commitment to the rule of law. As his biographer, J W Baldwin, said in his work on Langton, 'the absence of the judicial process became his principle justification for political resistance.' Which brings us to the second and most famous of the three surviving chapters of the Charter, chapter 29:

"No freeman is to be taken or imprisoned or disseised of his free tenement or of his liberties or free customs, or outlawed or exiled or in any way ruined, nor will we go against such a man or send against him save by lawful judgment of his peers or by the law of the land. To no-one will we sell or deny or delay right or justice."

10. Stephen Langton was one of the three great men involved with the sealing of the Magna Carta. The other two were Earl Marshal and Hubert de Burgh. On the death of John, Henry III was only nine years old, and they were appointed joint regents. The country was in turmoil because the barons and John had been at war after the revocation of the Magna Carta, and the French army had invaded England. Marshall (who is appropriately for our celebration today buried in Temple Church) saved the day by reissuing the Magna Carta, thereby regaining significant popularity for the monarchy, causing the English army to re-form and drive the French invaders out. He was a great warrior and commanded an army which defeated the French at Lincoln – the famous "Faire of Lincoln" – described as one of three crucial English battles in the past millennium – the other two being Hastings and the Battle of Britain.

11. 14. Marshall died shortly after that, leaving de Burgh as the sole regent. He was described as the Chief Justiciar, which meant that he was like the Prime Minister and Lord Chief Justice rolled into one. He also was a pretty successful general defeating a French army at Dover. Like Marshall, he reissued the Magna Carta, or got Henry to do so, and thereby achieved popular support for the Government. So, even a few years after it first seeing the light of day, Magna Carta had become a popular symbol of freedom.

And I have no doubt whatever that it was chapter 29 which above all other provisions made the Great Charter so popular.

12. We perhaps can properly understand its global significance if we turn to the 1354 version, an even later revision. In 1354 Edward III, John's great great grandson, got in on the act and reaffirmed Magna Carta. His version had chapter 29 in this terms,

"... no man of what estate or condition that he be, shall be put out of land or tenement, nor taken, nor imprisoned, nor disinherited, nor put to death, without being brought in answer by due process of law."²

13. Due process of law is of course shorthand for the 'lawful judgment of his peers or by the law of the land. To no-one will we sell or deny or delay right or justice.' As Chief Justice Coke, a former Treasurer of this Inn and the great early 17th century common lawyer, put it, was a declaratory statement of the Common law³.

14. Due process, was one of very few common law principles which was elevated into a constitutional right in the Constitution of the United States, through the 5th and 14th amendments to the Constitution. As with many things James Madison, forefather of the US Constitution and the original draftsman of the Bill of Rights, was responsible for transforming a principle articulated in a document sealed in a field in Surrey some 550 years earlier into a fundamental aspect of American political and legal life. And what is true of America is as true of the countries of the Commonwealth, and all liberal democracies, as is so well recorded in the Evensong programme this evening.

15. It is not just something of historical significance. As Chief Justice Coke, a former Treasurer of this Inn put it, Magna Carta established that the '*Common lawes of the*

² 28 Edw. 3, c. 3.

³ Coke, *Institutes of the Law*, Vol. II at 50: "*Wherein it is to be observed, that this Chapter is but declaratory of the old law of England.*"

Realme should by no meanes be delayed for the law is the surest sanctuary, that a man can take, and the strongest fortresse to protect the weakest of all⁴. It is therefore a powerful symbol that no power in the State is, or should be, above the law.

16. And talking of this Inn, the third of the three surviving chapters guarantees all the ancient liberties and customs of the City of London, where we are this evening. Despite the dramatic reduction in the international power of this country over the past century, London still remains the, or at least one of the two, premier financial centres of the world. The resulting international prestige and the economic benefit which this country enjoys is self-evident, and can therefore fairly be traced back to chapter 9 of the Magna Carta.

17. Well, my Lords, Ladies and gentlemen, the Magna Carta, even reduced to three provisions, has it all: God Mammon and the rule of law. What more could you want?

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⁴ Coke, *ibid*, at 55.