

Magna Carta (Oxford Law Symposium)

I'm going to talk about Magna Carta and to talk about it specifically and solely in the context of the middle ages. There was a very great difference between what Magna Carta was and what it became. It goes without saying that in origin the Charter had nothing to do with fundamental human rights or democratic principles or any other such twenty-first century notions. It had everything to do with medieval English kingship and with the imposition of rules on that kingship. From this specific and local beginning, this acorn (if a rather large acorn), grew the mighty oak in whose shade modern claims to basic freedoms and dignities survive and flourish. But this process was to a surprising degree accidental. After 1215 the Charter might easily have failed to survive. That it did survive, to become what it became, was due to a series of chance events which contemporaries might have regarded as providential but which historians have to explain.

I've said that the Charter had everything to do with medieval English kingship. Here we straightaway come up against two central and related questions: what was a medieval king supposed to do? And were there any rules telling him what he must do? The answer to the second question is that there were no rules – or rather that there were rules but that they were merely moral ones, lacking in legal or political force. The basic moral restraints on kingship were set out in the king's coronation oath, which every English king had sworn at his coronation since the tenth century and which King John swore at his coronation in 1199. By the terms of his oath the king was bound to do three things: to protect the church; to do justice to the people; and to suppress evil laws and customs – in other words, to uphold the law. This was the traditional ground on which medieval English kingship stood. But as well as moral rules kingship was also governed by informal expectations. Kings were expected to follow certain conventions. They were expected to distribute patronage to the deserving; to reward good service; to provide effective military leadership and win battles; to consult their nobles on important matters, like making war; and to govern lightly, which largely meant taxing lightly. But all these were simply assumptions – they couldn't be turned into a written code. The problem facing any group of opposition magnates was that both moral rules and expectations were imprecise and in any case unenforceable. Between 1066 and 1215 there were no constitutional restraints on kingship – nothing like a parliament or an independent judiciary. There were assemblies, but they were royal assemblies, convened and headed by the king; and there were judges and courts, but they were the king's judges and courts. In practice the only check on an unacceptable king was rebellion – and the consequences of an

unsuccessful rebellion, disinheritance, disgrace and loss of family lands and honour, were such as to discourage most potential rebels. Nevertheless every king in this period faced rebellion, and King John more than most.

This brings us on to John. Magna Carta was essentially a commentary on John's reign and John was in sense both its author and its victim. We've got a contemporary verdict on John from a man who knew him well. 'John', he says, 'was a very bad man, more cruel than all others. He lusted after beautiful women and because of this he shamed the high men of the land, for which reason he was greatly hated. Whenever he could, he told lies rather than the truth. He set his barons against one another whenever he could; he was very happy when he saw hate between them. He hated and was jealous of all honourable men; it greatly displeased him when he saw anyone acting well. He was brim-full of evil qualities.' But more to the point than John's lusting after beautiful women were his political vices. John had a bad reputation for treachery before he came to the throne. In the 1190s he'd betrayed his brother Richard I, 'the Lion Heart', tried to seize his throne, and sided with Richard's French enemies against him. But John's real political failures lay in the ten years after 1204. In 1204 John had lost Normandy, the ancestral possession of the English kings, to the French. He spent the next ten years planning and campaigning to regain it, and also campaigning against the Scots, the Welsh and the Irish. All this put intolerable pressures on John's finances. He raised huge sums of money through taxation and through the courts. The weight of this fell on everyone, but especially on John's magnates and on the knights, the English country gentry – and it was these groups which took action in 1215. Magna Carta was the direct product of the loss of Normandy and of the pressures brought to bear on English aristocratic society in order to regain it; but it was also a verdict on John's whole style of government.

I'll give just a couple of examples to show how John worked. The first is this. When a baron died the king was entitled to take what was called a relief, a cash sum, from the dead man's heir in order to allow him to succeed to the estate. The relief was essentially an inheritance tax, a sort of death duty. The problem was that reliefs were set at the king's will – there was no fixed scale of charges. Twelfth-century lawyers and civil servants said that reliefs should be 'reasonable' – but what did 'reasonable' mean? John cleverly exploited the vagueness of this prerogative to a completely unprecedented degree, charging men thousands of pounds for their relatives' estates. In 1207, for example, Nicholas de Stuteville was charged more than £6000 for his brother's lands – a sum he had no chance of raising. John's interests here didn't lie just in raising money. His object was to drive barons into debt in

order to make them dependent on his good will (often in short supply). So what looks like a device to raise revenue was also a means to political control.

My second example is about justice. We've seen that the king's coronation oath bound him to do justice, but under John this obligation became twisted and exploited as a means to reinforcing royal power. Small men, peasants and so on, did receive impartial justice, big men were often denied it. Huge arbitrary amercements – what we would call fines – were imposed for minor offences; men might be charged for access to the courts; and charged again for a favourable verdict; enemies of the king might be denied access. In 1207 a northern baron, Gerard de Furnival offered the king £1000 'for having the king's goodwill' and for the dismissal of his opponent's case. John himself sometimes sat in the courts and gave judgement. As far as the nobility were concerned, justice had become an aspect of royal patronage, to be denied, conceded or charged for as the king saw fit.

Now on to Magna Carta itself. As John's government became more exploitative, so it became more detested; and in the few years before 1215 opposition became open. In 1212 there were rumours of a plot to kill him and bring in a replacement. In 1214 John's continental allies were defeated by the French at the great battle of Bouvines in Flanders. This defeat showed that ten years of effort for the recovery of Normandy had been wasted. The magnates now began to demand reforms. In May 1215 they moved formally into rebellion, rejecting John's lordship, and in the same month they occupied London, a crucial blow to John's government. In the next month, June, they forced John to come to terms at Runnymede – and we all know what was the result.

Magna Carta is a very long text and many books have been written to analyse it. Here I just want to make four brief points about its contents and general importance. First, the Charter was in origin a peace treaty. It was designed to end a rebellion on terms acceptable to both sides. It was not intended to provide a set of constitutional principles for future ages. I'll try to show in a moment how its immediate purpose was gradually changed.

Second, the Charter's most important effect was to take the arbitrariness out of royal government and to reduce the scope for the king's will to operate in politics. It did this chiefly by defining terms and powers. Take the two issues which I've just been talking about, reliefs and justice. The charter laid down that a baron's relief should be £100 and a knight's relief £5. So here was precision and definition and a figure which could be appealed to in the courts: a much more sturdy safeguard than the mere statement that reliefs should be

‘reasonable’ The king’s exploitation of justice resulted in one of the Charter’s most famous clauses – Clause 40, still on the statute book today: ‘To no one will we sell, to no one will we deny or delay, right or justice’. This was the riposte, the response, to John’s use of justice to raise money and to control his great men. What we can see here is both the creation of new law and the placing of the king under that law. In the long term, and applied to authority in general, that was probably the Charter’s most important consequence.

Thirdly, the Charter was presented as a grant by John ‘to all the free men of our kingdom’. The crucial words here are ‘free men’. This was both an expansive phrase and a limiting one. ‘Free men’ certainly included a very large slice of the population besides the baronage – though they were the chief beneficiaries. But it excluded the unfree, the villeins, the manorial serfs, who in some parts of the country made up about 60 per cent of the population. The Charter left them, as before, virtually rightless. And what about free women? It’s true that ‘free man’ was almost certainly intended to cover women: the Latin word ‘homo’ means not just ‘man’ but also ‘human being’. That said, the specific concessions to women in the Charter were quite small. Probably the most important came in Clause 8, which forbade the remarriage of widows against their will – an allusion to the sale of wealthy widows which had been one of King John’s other little tricks.

Finally, what about the Charter’s enforcement? Here the opposition barons took a revolutionary step. They set up a committee of 25 barons both to supervise the Charter’s enforcement, to seize the king’s lands and castles if he went against the Charter, and to hear complaints if the king offended ‘anyone in anything’. In effect this elevated the 25 over the king: it transferred sovereignty from the crown to the rebels. This intolerably radical step, from the king’s point of view, was one of the factors which led to the renewal of the civil war almost immediately the Charter had been signed.

How then did this document, frail in the circumstances of its making, survive to become a cornerstone of English liberties? The answer is: ‘largely by a series of accidents’. In the aftermath of Runnymede it looked as if the Charter would fail. John rejected the Charter with weeks, asked the pope to quash it, which the pope obligingly did, and then went to war again with the rebels. But in the middle of that war, in November 1216, John died, leaving as his heir a nine-year-old boy Henry, crowned almost immediately as Henry III. John’s early death and the succession of his son as a minor were the two crucial events which preserved the Charter for posterity. Henry’s friends and supporters were the few loyalist barons who had

supported his father, led by the great William Marshal, earl of Pembroke. The crown's supporters wanted a settlement and were prepared to compromise to get one and to bring the rebels back on board. One way of doing this was to confirm Magna Carta, and this was done twice, at the time of Henry's coronation in 1216 and again in 1217. It was confirmed for a third time in 1225, in what proved to be its definitive version. During the minority three other factors worked to ensure the Charter's permanence. First it was very widely published – written out in multiple copies, translated from Latin into the French vernacular of polite society, and sent down to the counties for publication in county courts and for preservation in cathedrals and monasteries. This ensured that its terms were widely known. What had been a set of peace terms between a king and a rebel army became something like a national text. Secondly, it was widely enforced through the courts. Lawyers came to have it at their fingertips and appeals were made to its clauses. Reliefs for example were taken at £100, just as the Charter had decreed. Finally, the third confirmation of 1225 was granted by the king in return for a tax granted in a magnate assembly. Magna Carta had opened up a process of bargaining over taxation, soon to be parliamentary bargaining. The Charter could now be regarded as having been paid for by taxation – and the effect of this was to confirm its increasingly rock-like position in the English constitution.

The result of all this was that when Henry III came of age in 1227 there was no possibility of the Charter being overthrown or disappearing. It had become something like the fundamental law of the constitution. In Henry's reign it was confirmed and reissued on a number of occasions and it came to be seen in two ways – as a set of practical restrictions on royal power, to be enforced through the courts, and as a sort of totem pole, a symbol of good government which was much more than the sum of its parts. This was how Magna Carta set off on its long journey into the future.

What I would say in conclusion is this. Magna Carta's achievement was to provide English kingship with a set of rules. It turned restraints which before 1215 had merely been moral precepts into laws enforceable in the courts. Behind this progression lay, firstly, the misrule of King John, and, secondly, his early death and the minority of his son, which allowed the Charter to become established in stable conditions and in a situation where royal authority was temporarily in abeyance. If King John had lived none of this might have happened and the Charter might have been swept away. Such is the role of chance in history.

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