Magna Carta: Law, Liberty, Legacy

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The funniest moment in the British Library’s wonderful Magna Carta: Law Liberty, Legacy exhibition [2] comes towards its end, in a recent cartoon by Stephen Collins (sadly not reproduced in the excellent catalogue, but available here [3]). We observe, Attenborough-style, a group of adolescents being filmed in a bleak urban playground. Instead of sex, drink, and drugs however, this group’s shameful pastime is their covert addiction to Magna Carta. Sucked into it at school, these ‘Mag-heads’ now gather at dusk to read the charter for the ‘massive rush of British values’ they get from it — democracy, tolerance, responsibility, that sort of thing. It’s a dangerous habit though — one can get too high off the Charter, and the cartoon ends with the camera abruptly cut off as one of the group overdoses and his friends try to stop him ‘magging out’. Would that it were so. The grimness of the contrast with most of Britain’s town centres on a Friday night adds obvious acid to Collins’s humour. If his is the funniest item in the exhibition it is arguably also the most disquieting.

Collins’s cartoon – along with some other contemporary ones – is of especial relevance to the exhibition’s purpose since it is determinedly not simply nor solely an exploration of what happened immediately around and on the 15th of June 1215. The exhibition is as much about Magna Carta’s 800 year reception as its immediate 13th-century matrix. So the route through the Charter’s history takes visitors through John’s reign, past the Charter’s multiple iterations (1216, 1217, the definitive 1225 version, and Edward I’s 1297 reissue) on to its use in self-defence by Thomas More (and Thomas Cromwell’s irritation at this), along to chapter 39’s deployment in the 1628 Petition of Right, parallel in the 1689 Bill of Rights and then over the Atlantic to a range of North American mutations and influences, including the extraordinary loans of Thomas Jefferson’s autograph and underlined copy of the 1776 Declaration of Independence as well as the State of Delaware’s copy of the 1790 United States Bill of Rights. The story is continued domestically with the Charter’s invocation in 18th- and 19th-century political struggles (press freedom, Chartism), as well as in a colonial context with the 1840 New Zealand Treaty of Waitangi, Ghandi’s use of it in South Africa, and Nelson Mandela’s at his 1964 trial at Rivonia for sabotage. It is only after this that – in an attractive and unmodern act of delayed gratification – the Library’s two copies of the original Charter are finally displayed in the last room. Now, the exhibition’s narrative goes, one can think about the Charter for what it was, what it became, and what – perhaps – it is. By no means then is this an exhibition only for medievalists. As 800 years of redeployments show, the Charter forced on John at Runnymede has proved nothing if not pliable.

For those interested in the medieval matrix of the Charter however there is of course a very great deal here. This is as one would expect given the exhibition’s curators (both distinguished medieval manuscript scholars) and the two principale medievalists involved from outside the Library, Nicholas Vincent and
David Carpenter, both central to the current AHRC-funded *Magna Carta Research Project* [4]. In-house, Julian Harrison’s important work co-editing the Melrose Chronicle is reflected by its inclusion on account of its early, trenchant, Latin verse account of what happened in 1215. Work done or being done for the AHRC project also invaluably informs much of the medieval part of the exhibition and catalogue. In the catalogue this includes Vincent’s sharp analytical narrative of the events leading to Runnymede, informed by important work he has done to document fully for the first time John’s *itinerary* [5] in the year before June 1215. In the exhibition it would include Vincent’s investigations into Continental parallels for the Charter – manifested in the inclusion of the 1212 Statute of Pamiers. Issued by the Earl of Leicester, Simon de Montfort, the Statute of Pamiers sets out his Occitan subjects’ rights. It is loaned by the French Archives Nationales, but new insights are also given into the Library’s permanent collection, including some prized possessions. Here recognition must go to Carpenter’s clever detective work on the sorely damaged Cotton Charter XIII 31A (sometimes called ‘Ci’). One of the Library’s two original 1215 Charters, it was, Carpenter has convincingly argued, Canterbury’s copy, and so perhaps also Archbishop Stephen Langton’s. His scholarly argument is set out fully in his brilliant Penguin Classics study of Magna Carta, but the wider relevant point is the support it adds to the argument that the Charter’s content was communicated through England principally via the bishops and their cathedrals. The exhibition’s theme of the Charter’s reception and communication can begin then with the moment of its issue and its original incarnations.

While such scholarly discoveries quietly underpin a good deal of the medieval section of the exhibition, there are also some exhibits which are simply, viscerally, pleasurable. Some may obtain that sensation from the striking but gruesome extracts from John’s tomb at Worcester, but more evocative for me is a five-part loan from Canterbury: the crozier, mitre, stole and also buskins and *slippers of Archbishop Hubert Walter* [6] (d. 1205). I cannot recall having seen these at Canterbury, but it is wonderful to see in this context the concrete creature comforts of a man who held the most important secular and ecclesiastical offices in England. It can be hard even standing in front of Walter’s attractive tomb in Canterbury Cathedral to imagine the man beyond the arch-official (Christopher Cheney managed it). The exhibition’s case of his vestments helps enormously, perhaps the slippers most of all. Beyond this there is the opportunity to look at a rather lovely set of fiscal material – the early 13th-century Wainfleet Hoard of coins, one of the Library’s copies of the *Dialogue of the Exchequer* (a rather sophisticated late 12th-century ‘audit manual’), as well as a fine collection of tally sticks from the National Archives. There is the papal diplomatic equivalent of Handel’s *Zadok the Priest*: the suitably elaborate and grand bull of 21st April 1213 placing England under papal overlordship. There is the instructive sequence, as noted, of the Charter’s iterations in 1216, 1217, 1225, and the 1297 reissue. (Only three chapters of the charter remain legally enforceable in Britain today, drawn from the final 1225 version. The exhibition has some very elegant graphics showing not only how the contents of the charter changed across its several issues, but also how its legal content fell away.) Putting together this set alone has required lending by the National Archives, Archives Nationales, and Bodleian. The loans secured for the exhibition – both medieval and modern in the case of the American material – will not sit under the same roof again for a very long time, if indeed ever.

It is too easy with such exhibitions to criticize absences or pulled punches (perhaps more could have been made of the Continental context beyond Angevin-Capetian antagonism; perhaps more of the 14th and 15th centuries). It is a pity though that the scholastic, intellectual side of the Charter’s matrix receives relatively little attention. Quite how far any specifically scholastic imput was needed for the barons to say what they said in the Charter has long been debated. Carpenter [7] himself and John W. Baldwin [8], who sadly died recently, have made the most recent helpful contributions. Either way this bears on the events before and after Runnymede since it is very clear that scholars and prelates were thinking hard about the limits of royal power in this period. One of them was Stephen Langton, Archbishop of Canterbury in 1215. Much of their scholastic thought took the form of commentaries on Biblical books – perhaps an unattractive genre to us today, though its manuscripts can be very beautiful. An important collection of Stephen Langton’s Biblical commentaries is held by the Library; another set is over the river at Lambeth Palace. Most are unpublished, although wonderful *history* [9] has been made from them. It would have been very instructive to have had some exhibits that encouraged visitors to think more about the responsive intellectual environment (at the
Returning to the exhibition’s theme of ‘legacy’ one may wonder whether Mandela’s Rivonia speech will be the last high political high-watermark of the Charter’s evocation. The penultimate rooms, focusing on the Charter’s modern British history, suggest a text and event that was losing as much of its political bite as it had of its legal standing. An engaging sequence of displays show some of the commercial, consumer uses to which it was put, but arguably also the drift into what might be called mere heritage. An early example is the bizarre 1821 card game ‘Magna Charta, or Knight Errantry’, an rather complicated game for teaching chivalry to ‘young persons’. A number of cards feature historical events, objects and people but comprise an odd historiographical canon. Alongside explicable choices such as ‘Domesday Book’, ‘feudal law’, ‘Robin Hood’, the game opts for ‘Druids’ Temple’, ‘Rollo’, ‘Peter the Hermit’, ‘The Inquisition’. A nice 1950s 439-piece jigsaw has John ‘signing’ the Charter though – as any fule kno – he sealed it (a seal press is depicted for safety’s sake). The Ladybird King John (1969) is rightly included. Its censoriousness and subjectivity is so open and frank today as to be positively attractive. It is worth sampling:

Not content with losing all his French possessions, John now quarrelled with the Pope […] the King sat day after day biting his nails in silent fury. We are told this was a bad habit which he had acquired as a boy and never lost […] Magna Carta consists of sixty-three different clauses. Most of them have very little to do with us today […] We are so accustomed today to the honesty and fairness of British justice that it is difficult for us to realise what [Magna Carta] meant in England seven hundred and fifty years ago.

Vincent has remarked elsewhere on the youthful impression King John made on him. (My own strongest Ladybird medieval history memory relates somewhat frivolously to its Richard the Lion Heart, specifically the picture where Saladin impresses Richard with the scimitar that cuts through silk, in contrast to his own crashing broadsword.) Ladybirds have a lot to answer for.

It may be slightly pompous to wonder nevertheless whether jigsaws and Ladybird books were the principal residues of the Charter by this point. Certainly it is an interesting question what Magna Carta’s last high watermark was in its country of origin. The dimming of the Charter’s audible British resonance by the mid-20th century is weirdly articulated right in the middle of the country’s greatest military struggle against tyrannical state power, namely during the Second World War. Here extraordinary National Archives documents (now well-publicised in the media, here [10] or here [11]), document the thankfully unsuccessful Foreign Office plan in 1941 to give Lincoln Cathedral Chapter’s copy of the 1215 Charter to the USA in thanks for the Lend-Lease Act. These very revealing drafts are at least as striking for the patronising ‘Greek’ attitude of the British towards the ‘Roman’ USA’s supposed lack of culture and history, as they are for their authors’ coolness to the Charter itself. In contrast to the history-starved Americans, the Charter was for the British ‘something of no intrinsic value whatever: a bit of parchment, more than seven hundred years old, rather the worse for wear’.

That 20th-century mandarin view of the Charter’s import was very different from that of the 17th-century Parliamentarian general Thomas Fairfax when he viewed the Charter at the Tower – ‘This is what we have fought for, and by God’s help we must maintain’. As Justin Champion and Alexander Lock’s helpful catalogue essay shows, the post-medieval radicalisation of what was a relatively self-interested baronial document began under Charles I. Between these poles, a question then is what, if any, use or resonance has the Charter now? The British Library is laudably sponsoring a schools’ project on My Digital Rights [12], exploring our need for a modern equivalent of the Charter (although I do not understand why only our digital rights need protecting). Perhaps high watermarks for the Charter’s, or Charters’, political influence lie in the future. But is that feasible or desirable?

It might seem not. First, only three clauses remain legally binding of the final, 1225 Charter. Clause one establishes the freedom of the Church; nine the City of London’s liberties; and 29 safeguards due legal
process and prohibits the buying and selling of justice (compressing the famous chapters 39 and 40 of 1215). The Charter’s legal hold on our world seems objectively slender. Second, Magna Carta’s resonance in polemic has long been more striking than the logic of its application. Many of the appeals to Magna Carta have cited it ‘often no more than as a rhetorical talisman’, as Matthew Shaw argues in the catalogue’s essay on its American colonial afterlife. The vast majority of the post-17th century exhibition items support Lock and Champion’s judgement that by then the Charter had become little more than ‘a slogan calculated to stir patriotic emotions and mobilise public support’. As that resonance dims in modern culture, so too must the Charter’s appeal. Third, it could well be argued that 800 years have indeed gone by and our world is simply so different from the barons’ that whatever the Charter’s grip on legality or social memory our problems are simply too different from theirs.

From this perspective of Magna Carta’s modern uses and abuses, Joshua Rozenberg’s catalogue essay is the most interesting. Rozenberg, the BBC’s former legal affair’s correspondent and an intelligent presenter of its ‘Law in Action’ programme, offers a thoughtful account. He suggests that some users have seen Magna Carta as a ‘magic charter’ – capable of legally effecting whatever they wish it to. By way of inoculation against such delusion Rozenberg offers a detailed reading of clause 29’s protections for due process, asking how a modern judge might parse it. Rozenberg’s overall reading is that so far as the actual protections of 1225 go it is only borderline European countries such as Ukraine that have much to learn from applying the Charter.

One could however press that reading further into a more useful discomfort zone than was perhaps felt appropriate in an exhibition and catalogue of this sort. In so doing the prospectus for the Charters’ modern ‘relevance’ may become more real, more demanding, and more problematic than Rozenberg perhaps allows. He notes that untrained litigants-in-person tend ‘to invest Magna Carta with more weight than it can carry’. That being so there will presumably be a proportionate increase in (fruitless) attempts to invoke the Charter if legal aid cuts lead as expected to much higher levels of litigants-in-person in British courts. The anniversary celebrations of 1215 may indeed increase this likelihood in so far as they increase awareness of the Charter. One could also return to those extant 1225 clauses. It might be thought merely polemical to ask in 2015 how far the ‘liberties and customs’ of the City of London should be preserved as clause nine requires if there is a sense that this is at the expense of other parts of the British body politic. On the other hand, that polemical bite might be taken as the point. It would be in quite the tradition of the Melrose Chronicle’s take on the extraordinary moment that occurred in 1215:

A new state of things began in England; such a strange affair as had never before been heard; for the body wished to rule the head, and the people desired to be masters over the king.

The difficulties clause one presents are more straightforward. It establishes the Church of England’s freedom, and ‘that it should have all of its laws complete and its liberties unharmed’. Yet the conflicts between Anglican law and practice and non-Christian beliefs and equality legislation can lead to conflicts over issues as diverse and important as adoption, assisted dying, employment, marriage, sexual discrimination, and the provision of retail services no matter who the customer. Some of these have been debated very recently in relation to the Equality Act 2010 [13]. As for clause 29, it does not seem clear that it is needed only in eastern badlands, safely distant from old Europe. In December 2014 the US Senate’s Select Committee on Intelligence’s Committee Study of the Central Intelligence Agency’s Detention and Interrogation Program [14] raised questions about British involvement in extraordinary renditions and torture, including that of Binyam Mohamed, a British citizen. Such issues, even if extreme – precisely because extreme – seem to go to the heart of any resonance the Charter has today. In these contexts clause 29 unfortunately does not seem otiose:

No freeman shall be taken or imprisoned, or be disseised of his freehold, or liberties, or free customs, or be outlawed, or exiled, or any other wise destroyed; nor will we not pass upon him,
nor condemn him, but by lawful judgment of his peers, or by the law of the land. We will sell to no man, we will not deny or defer to any man either right or justice.

The 1225 Charter may well be legally unenforceable in any straightforward way, but it still gives serious pause for serious thought.

The point is not then that the 1225 version of Magna Carta version has itself advice ‘it’ can give us about how to resolve the problems in a pluralistic society of reconciling conflicting values and beliefs; nor that ‘it’ can instruct us in resolving the opposing counterweights of freedom from terrorist attack and freedom from the intrusions and constraints that entails. Nevertheless, it may still be useful to think *with* Magna Carta in these respects. One could go on to argue that it is precisely in the Charters’ distance from us that constructive ‘misreadings’ might be created, far from any mistaken spirit of constitutional originalism. They were after all, as I say, pretty self-interested elite documents. Or take Clause 29 of 1225. It prohibits legal judgement except ‘by the law of the land’. But, as Carpenter rightly said to me, it was very much harder for the 13th-century crown to alter that law of the land than it is for the state today. In their distance from us the Charters could still act as a means of provoking thought about what sorts of protections from our state we want of our state. Following Stephen Collins, what is the ‘massive rush of British values’ that reflection on the Charters could lead to?

In a British election year where little seems certain beyond the likelihood that no political party will emerge creditably from the proceedings it is particularly striking to reflect on the most potent and assertive part of the 1215 version of Magna Carta which was also the first to die: the ‘security clause’ of chapter 61. As an assertion of a franchise’s determined circumscription of its political head, chapter 61 takes some beating. I quote a portion from Carpenter’s recent translation:

> Since, moreover, for God and for the reform of our kingdom and for the better quieting of the discord arisen between us and our barons […] we make and grant them the below written security: namely that the barons shall choose twenty-five barons of the kingdom, whom they wish, who should with all their strength, observe, keep and cause to be observed, the peace and liberties which we have granted to them, and have confirmed by our present charter, so namely that if we [or any of our officers] offends against anyone in any way, or transgresses any of the articles of peace or security, and the offence is shown to four barons of the aforesaid twenty-five barons, these four barons shall go to us […] putting before us the transgression; they shall seek that we cause that transgression to be redressed without delay. And if we do not redress it […] within the time of forty days to be counted from the time when it is shown to us […] the aforesaid four barons are to refer the cause to the rest of those twenty-five barons, and those twenty-five barons, with the commune of the land shall distrain and distress us in all ways they can, namely by the taking of castles, lands, possessions, and in other ways as they shall be able, until it is redressed, according to their judgement, saving our person and those of our queen and our children. And when it is redressed, they shall obey us as they did before.

That is, if the King does not conform himself to the Charter the barons are licensed to hold him to account by making legal war on him. Their only restriction in so doing is a prohibition against harming the person of the King and his immediate family. The former Lord Chief Justice Tom Bingham said in his 2010 book *The Rule of Law* that 1215’s chapters on due process and free justice still ‘have the power to make the blood race’. How much moe then, can the security clause this?

When juxtaposed next to sterile contemporary posturing over which party political leaders will appear next to others on televised election debates, such stuff seems bracingly, actually, political. The sober *Financial Times* has recently been running a depressing series of articles on Britain’s ‘Disunited Kingdom’. In one [15] Philip Stephens has commented that Britain has ‘a political system and set of constitutional rules that have been left stranded by modernity’. That, he says, is in stark contrast to the story the British like to tell
themselves about Magna Carta’s ongoing contribution to the rule of law and democracy in general. It might be instructive if, alongside the schoolchildren asked to design a new Magna Carta, the political parties were obliged to set out in no more than 63 pithy clauses what their contemporary charters might contain, and by what security clauses they would propose self-constraint. After all, the Charters fit into a long tradition of formal coronation concessions that were, as John Maddicott has argued, ‘something like election programmes’.

It can then be hoped that this exhibition, and 2015’s commemorations more generally, may make modern “Mag-heads” of us all. This collaborative work is already helping us to understand afresh what happened around and after the 15th of June 1215. But it might also help us to question what sorts of liberties we now wish to articulate to defend ourselves from the state and its satellites. The frames and forms of those modern liberties John, Langton, and the barons of the Charter could never have envisaged. Yet, as this exhibition shows, Magna Carta’s history is as much about its post-medieval reception as the 13th-century events themselves. There could still be modern life in that history. It is an attractive image in medieval scholastic thought that one needs to chew on the words of Scripture with the teeth of understanding in order to release their meaning. The curators, contributors and lenders to this excellent exhibition and catalogue have provided a very great deal of nutritious food for thought. Chewing on it may yet lead to further valuable definitions of "Magging" out. Bill of Rights anyone?

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