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Edited by Robin Griffith-Jones and Mark Hill Qc

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PART I

Introduction

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1

The relevance and resonance of the Great Charter of 1215 for religions today

ROBIN GRIFFITH-JONES AND MARK HILL QC

There can rarely have been a period over the past eight centuries when the text of the various iterations of Magna Carta and their provenance have not been considered, discussed and evaluated both in their original form and in translation. Historians, ecclesiologists, lawyers and laymen have subjected them to systematic analysis, fostering discussion and debate with increasing levels of subtlety and nuance. This volume stands in a distinguished line of commentaries but takes the particular vantage point of the monolithic English Church as it existed in 1215 and the plural and diverse faith communities of today's more secular age. It does so in the context of changing concepts of civil society, but within the continuum of a citizenry living their lives in accordance with the tenets of their religious beliefs but also under the rule of law of the state. Being in the nature of a social contract, the covenantal features of Magna Carta can be seen as having avowedly religious origins.

From biblical covenant to royal charter

The King sealed the Charter of 1215 'from reverence for God and for the salvation of our soul and those of all our ancestors and heirs, for the honour of God and the exaltation of Holy Church and the reform of our realm'.¹ His advisers included two archbishops, seven bishops and Aymeric de Saint Maur, Master of the Temple. Archbishop Stephen Langton was resolute in the promotion of the Church's interests, most conspicuously in clause 1 itself:

¹ The text of the Great Charter of 1215 is set out in translation in the Appendix at pp 338–66 of this volume. For comparison purposes the wording of 1225 runs alongside.

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In the first place we have granted to God, and by this our present charter confirmed for us and our heirs forever that the English Church shall be free, and shall have her rights entire, and her liberties inviolate.²

This guarantee for the Church was made to God, and so was inviolable. It was made freely and by a promise made prior to the dispute between John and the barons, and so was conscionable. It was commended to the king's heirs, and so was designed to be irrevocable.

The grant of such liberty was not new.³ Henry I in clause 1 of his Coronation Charter of 1100 had undertaken: *sanctam Dei ecclesiam imprimis liberam facio*. Peter the Chanter's circle in Paris insisted no less on the liberty of the Church than on the reform of its own members. Peter had been Langton's teacher. Langton, as Archbishop of Canterbury, set out in 1207 his conception of the liberty of the Church, based upon his own reading of the career of Thomas Becket, hero of the Parisian schools and of Langton himself.⁴ The settlement in the summer of 1213 that opened the way for Langton's return to England confirmed that the English Church would be allowed its ancient liberties. Roger of Wendover claims that at St Paul's Cathedral in August 1213 Langton produced Henry I's Charter for the barons and emphasised the precedent that it offered them. When the barons understood its significance, 'they rejoiced with a great joy'.⁵ That Charter then prefaces the concessions made or to be made (in the first person singular) by John in the 'Unknown Charter'.⁶

What exactly were the character and extent of such freedom or freedoms, as intended and as achieved in these years, remains open to question. Professor Richard Helmholz has summarised their likely range: episcopal elections free from royal interference (realised more or less effectively as the king was less or more strong); special privileges for the clergy; and the consignment of some areas of life to the judgment of the

² The expression English Churches ('les yglises d'Engleterre') appears in the Norman-French version republished by J Holt, 'A vernacular-French text of Magna Carta, 1215', (1974) 89 *English Historical Review* 346–64.

³ We are indebted in this paragraph to N Vincent, 'Stephen Langton, Archbishop of Canterbury' in L-J Bataillon, N Bériou, G Dahan and R Quinto (eds), *Étienne Langton: prédicateur, bibliste, théologien* (Turnhout, 2010), pp 51–123, in particular pp 67–8, 89.

⁴ For a reflection on the tension between church and state at the time of Becket, see Chapter 2 of this volume: I Judge, 'Magna Carta', pp 19–27.

⁵ This is in itself a biblical response to good tidings: so the magi rejoiced at the sight of the star above the child in Bethlehem, Matthew 2:12. Roger of Wendover in Matthew Paris, *Chronica Majora*, ed H Luard (London, 1874), vol II, pp 552–4.

⁶ J Holt, *Magna Carta* (2nd edn, Cambridge, 1992), pp 418–28.

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Church.⁷ But at stake here was more than the self-interest of the Church and its leaders. Langton had been perhaps the most prestigious of all lecturers on the Old Testament in Paris. Professor John Baldwin has shown in a series of articles how important to Langton were the story and covenant of Deuteronomy.⁸ Informing and animating the Charter itself was Langton's desire to create a biblical, covenantal kingship in England.⁹

Rabbi Lord Sacks, a tireless advocate in our own day of the covenantal character of society, takes up Baldwin's argument in his contribution to this book.¹⁰ At the selection of Saul as king, 'Samuel declared to the people the law of the kingdom and wrote it in a book and deposited it in the presence of the Lord.'¹¹ The law, argued Langton, was written down to prevent the king from demanding more power than had been agreed. Deuteronomy 17:18–20 prescribes the duties of the king:

After he has sat down on the throne of his kingdom he will write out for himself the Deuteronomy of this law in a book, taking an exemplar from the priests of the levitical tribe; and he will have it with him and will read it all the days of his life so that he might learn to fear the Lord his God and observe his words and ceremonies which are written in the law and so that his heart may not be raised into pride over his brothers nor veer to the right or to the left.

⁷ R Helmholz, *The Oxford History of the Laws of England*, vol I (Oxford, 2004), pp 55–6. The freedom of elections, the next subject of Magna Carta's clause 1, had been granted in a charter issued from the Temple in London on 21 November 1214 and reissued, again from the Temple, on 15 January 1215.

⁸ J Baldwin, 'Master Stephen Langton, future Archbishop of Canterbury: the Paris Schools and Magna Carta', (2008) 123 *English Historical Review* 811–46. In the present volume he extends this argument to embrace the biblical conception of due process. See Chapter 3: J Baldwin, 'Due process in Magna Carta: its sources in English law, canon law and Stephen Langton', pp 31–52.

⁹ Any summary of the Security Clause must make clear how the king's conformity to the Charter was to be ensured. The barons were to choose twenty-five of their number to maintain the liberties granted by the king. Upon a supposed infringement that the king or his justiciary did not redress, these Surety Barons would meet to confer. In the event of disagreement, those present would vote and the majority view would be binding. If the offence was not redressed, the twenty-five with the commune of all the land were to seize the king's own castles, lands and possessions. But would they have the forces to do so? They could call upon the help of all those who had taken an oath to obey the twenty-five in such a case; and all those who were unwilling to take such an oath would (as a curiously angular sentence adds) be forced to do so. The twenty-five wanted might as well as right on their side.

¹⁰ Chapter 17 of this volume: J Sacks, 'The Great Covenant of Liberties: biblical principles and Magna Carta', pp 301–13.

¹¹ 1 Samuel 10:25. All translations are from the Vulgate.

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Under King Josiah the book of the law was rediscovered in the Temple in Jerusalem. The king read it and was warned by the prophetess Huldah of the destruction threatening his kingdom. He pledged loyalty to the book of the law, and secured a similar pledge from all his subjects.¹² Langton in his commentary on Chronicles drew attention to Josiah (*Iosias fecit sibi legi totum Deuteronomium*) who tore his garments on reading the book of the law. Langton contrasted him with modern princes who only rarely heard the word of God preached.¹³ The archbishop surely had Josiah's drama in mind, when he produced the Coronation Charter of Henry I in St Paul's Cathedral in August 1213.¹⁴

This narrative neglects Langton's relentless search for the Church's own advantage;¹⁵ but even with that nuance introduced, the story could fuel in today's churches a well-deserved pride in the Church's past. Larry Siedentop has recently made the strongest of claims for the wider role of the Church in the search for its own liberty.¹⁶ The Gregorian Church-reformers of the eleventh and twelfth centuries were seeking the Church's autonomy from a weakening empire. This would be the essential counterpart of that equal Christian liberty of individuals which had been conceived and expounded by the Church fathers, in stark contrast to the inexorable hierarchies in the pagan world of creation, nature and society. Such equal liberty, Siedentop argues, directly gave rise to the notion of equal subjection under law. In this perspective Magna Carta is one element in a vast progression of Christian thought and life throughout Europe. As Professor Margaret McGlynn suggests in Chapter 4, it becomes ever less exceptional, and ever more important.¹⁷

No exaggerated claim, then, needs to be made, that Archbishop Langton was the first to make such connections or was alone, in the crisis of 1214–15, in deepening them. On the contrary, Lord Judge reminds us forcefully in Chapter 2 that life in the thirteenth century was fundamentally informed by Christian convictions, hopes and

¹² 2 Kings 22; 2 Chronicles 34. ¹³ Vincent, 'Stephen Langton', pp 74–5.

¹⁴ Roger of Wendover's account is defended (against, for example, Holt) by J Baldwin, at pp 49–50 below.

¹⁵ Professor David Carpenter has challenged Baldwin's appraisal of Archbishop Langton's role, principles and character: D Carpenter, 'Archbishop Langton and Magna Carta: his contribution, his doubts and his hypocrisy', (2011) 126 *English Historical Review* 1041–65.

¹⁶ L Siedentop, *Inventing the Individual* (London, 2014). Such a plea is reinforced by Professor Simon Lee in Chapter 18 of this volume: S Lee, 'The cardinal rule of religion and the rule of law: a musing on Magna Carta', pp 314–33.

¹⁷ M McGlynn, 'From Charter to common law: the rights and liberties of the pre-Reformation Church', pp 53–69.

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fears.¹⁸ Principles of polity, justice and due process had for centuries been drawn from scripture and reiterated by churchmen with all the political and supra-mundane authority at their command. The theme takes us beyond churchmen themselves. The barons who confronted King John in the Temple in January 1215 declared, if Walter of Coventry is to be trusted, that they were putting themselves in opposition to him ‘as a wall for the house of the Lord’ and were standing for the liberty of the Church and the realm.¹⁹ They were recalling Ezekiel’s false prophets who cried ‘Peace’ when there was no peace, who put up no wall for the house of Israel nor stood in battle on the day of the Lord.²⁰ Robert fitz Walter, a leader of the baronial opposition to John, hereditary castellan of the City of London and one of the Charter’s Surety Barons, was by May 1215 styling himself Marshal of the Army of God and Holy Church. The barons needed – and inextricably from all their other motives surely believed – their cause to be God’s cause. Confederation round the demand for a charter – an impersonal, bloodless focus of loyalty – may itself have drawn strength from the loyalties to ideas and ideals which informed the Crusades.²¹ Langton’s was just one voice within an exceptionally anti-monarchical tradition emergent in the theology and politics of Christian Europe.²² Our claim for Langton can be proportionate and qualified, and can still be a source of pride and inspiration for those leading – and living in – today’s faith communities.²³

As for inspiration, such recollection remains inert until Langton’s role in an age of Christian monarchies starts to make a difference to religion’s

¹⁸ I Judge, ‘Magna Carta’, pp 19–27.

¹⁹ Walter of Coventry, *Memoriale fratris Walteri de Coventria*, vol II, ed W Stubbs (Rolls Series, London, 1872–3), p 2018. For this meeting, see now N Vincent at magna carta.cmp.uea.ac.uk/read/itinerary/Assembly_at_the_New_Temple (accessed 16 March 2015).

²⁰ Ezekiel 13:5.

²¹ The claims made for Magna Carta itself should be kept within reasonable bounds. In Chapter 5 of this volume, Professor Richard Helmholz introduces us to contemporary charters in Continental Europe that were making similar demands of the sovereign: R Helmholz, ‘Magna Carta and the law of nations’, pp 70–80.

²² On the anti-monarchical strand in the thought of Peter and his followers, see P Buc, *L’ambiguïté du livre: prince, pouvoir, et peuple dans les commentaires de la Bible au Moyen Âge* (Paris, 1994).

²³ 15 June 1215 was the Monday immediately after Trinity Sunday. Was this an auspicious week for the resolution of the state’s divided parts into a single whole? We are grateful to Professor Nicholas Vincent for pointing out that the opening reading for Mass on Trinity Sunday was Revelation 4:1–11: the vision of twenty-four elders seated round the throne of God, a distinctive precedent, perhaps, to the constitution of the twenty-five Surety Barons.

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role in the secular democracies of the present day. In this book, we trace the history and influence of Magna Carta in the religious thought and life of the intervening centuries. Through these interwoven stories of the Charter's evolving interpretation and deployment, these chapters provide in themselves much food for thought. They constitute the ingredients, prepared and seasoned, for the next stage in the challenge that confronts today's churches, namely the role which religion and its leaders might fruitfully play in our own time.

In the twenty-first century, faith communities and their leaders are expected to follow Langton's example in the promotion of civil harmony, cohesion and goodwill.²⁴ But the law does not acknowledge any doctrinal text from any religion to be the basis of this polity. We value and invoke the enduring principles of Magna Carta – no taxation without representation, due process, fair trial, and effective restraint upon the executive – without reference to divine law. Historians may point to the influence of Judaeo-Christian teaching (asserting equality and dignity before God) on modern human rights principles (asserting equality and dignity before the law); but that provenance carries no weight in law or in litigation.²⁵ Ours is a mobile and deracinated generation. The custodians of ancient traditions and principles that have for centuries undergirded our polity do not now earn respect or attention through that wardship alone. The conservatism natural to religious institutions and their functioning can more readily win the derision or anger of an age that readily sees in such institutions a recalcitrant, unregulated home of prejudice and malpractice.

In 2012 the Prime Minister, David Cameron, embarrassed himself on an American talk show by being unable to translate the term 'Magna Carta'.²⁶ By April 2014 he was calling for Magna Carta to be taught in every school. He particularly wanted children in Muslim faith schools to be taught expressly about Magna Carta and the place of its intrinsic values at the core of modern Britishness.²⁷ He was responding to reports that Muslim children in some schools are the object of moves – or even of a co-ordinated 'Trojan Horse' conspiracy – by Islamic fundamentalists

²⁴ As Professor Norman Doe illustrates in his empirical study of the internal laws and regulations of various Christian denominations. See Chapter 13 of this volume: N Doe, 'The still small voice of Magna Carta in Christian law today', pp 229–47.

²⁵ See, in particular, Chapter 15 of this volume: R Singh, 'The development of human rights thought from Magna Carta to the Universal Declaration of Human Rights', pp 267–80.

²⁶ www.bbc.com/news/uk-19739066, 27 September 2012 (accessed 31 May 2014).

²⁷ www.gov.uk/government/news/british-values-article-by-david-cameron (accessed 11 July 2014).

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to indoctrinate and isolate these children through their schooling. It was surely no coincidence that in the same month, just before Easter 2014, the Prime Minister was reaffirming the centrality of Christianity to Britishness in a church newspaper.²⁸ Within days of the Prime Minister's article, Lord Williams, until 2013 the Archbishop of Canterbury, was invited to respond in an interview for the *Sunday Telegraph*. Lord Williams spoke judiciously and with characteristic care of post-Christian Britain, in which the cultural memory and presence is still 'quite strongly Christian'.²⁹ Here in microcosm is the dichotomy from which we cannot escape. The Charter is a convoluted, practical document of the distant, specifically Christian past; it is also part of our febrile, contested present. It is an icon of the benefits inherited from that past by all citizens in the multinational, multicultural, inter-religious common-law world; but readily becomes a slogan of partisan national politics.

In the modern 'Post-Christian' age, Magna Carta challenges today's faith communities to examine the influence which the principles enunciated in Magna Carta continue to exercise on the state's approach to religion, and the active participation to which religions are still called in our civil society and in the protection of its liberal democracy.

Magna Carta, religion and the rule of law

A contemporary understanding of Magna Carta, religion and the rule of law is impossible unless first it is viewed through the prism of history. Chapter 2, by Lord Judge, until recently Lord Chief Justice of England and Wales, sets the Charter firmly in its historic context and evocatively recreates in a lively narrative the events in the Temple and at

²⁸ 'I believe we should be more confident about our status as a Christian country, more ambitious about expanding the role of faith-based organisations, and, frankly, more evangelical about a faith that compels us to get out there and make a difference to people's lives', *Church Times*, 17 April 2014, www.churchtimes.co.uk/articles/2014/17-april/comment/opinion/my-faith-in-the-church-of-england (accessed 21 August 2014). In response: 'David Cameron fosters division by calling Britain a Christian Society', *Daily Telegraph*, 20 April 2014, www.telegraph.co.uk/comment/letters/10777417/David-Cameron-fosters-division-by-calling-Britain-a-Christian-country.html (accessed 31 May 2014). Professor Maleiha Malik explores how this rallying cry of Britishness might serve to foment ill-informed prejudice against minority religions and subvert the high-minded ideals of Magna Carta as it has been understood over the centuries: see Chapter 14 of this volume: M Malik, 'Magna Carta, rule of law and religious diversity', pp 248–63.

²⁹ www.telegraph.co.uk/news/religion/10789740/Rowan-Williams-I-didnt-really-want-to-be-Archbishop.htm (accessed 21 August 2014). Lord Williams was using 'quite' in the English sense to qualify – and not in the American sense to strengthen – his claim.

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Runnymede.³⁰ Following this introductory overview, the first extended section of this volume explores in greater detail the political, constitutional, religious and societal backdrop to the Charter's genesis, execution and immediate impact. The contribution of the drafters of the Great Charter, and of Stephen Langton in particular, is examined in Chapter 3 by Professor John Baldwin, along with the influences which came to shape the content, tone and language of Magna Carta.³¹

In Chapter 3, Professor Margaret McGlynn's concern is not so much the creation of Magna Carta, but its survival and transmission – both as a document and as a concept – where the role of the Church was crucial.³² Clause 1 of the Great Charter may have been something of an afterthought, but it resoundingly endorsed the rights and freedoms of the Church, and accordingly the engagement with it by clerics was not surprising. Despite the Church's vested interest, however, the interpretation of the Charter was handed over to common lawyers, and the rights and liberties of the Church in the period leading up to the Reformation remained in practice to be worked out in both politics and law. But it was not a uniquely English problem, nor yet a uniquely English solution. The *tour d'horizon* of European legal systems offered by Professor Richard Helmholz in Chapter 5 examines the seemingly harmonious sources of natural law, the law of nations, municipal law and (at least among the canonists) divine law and explores Magna Carta's place within this wider transnational context, comparing how contemporary expressions of fundamental law elsewhere in Europe resonate with the provisions of England's Great Charter.³³

Professor Sir John Baker QC then sets out how Magna Carta came to be revered throughout medieval times as a charter of liberties.³⁴ Paradoxically, much of the Charter was obsolete by the fifteenth century and the wording of the celebrated chapters 39–40 (chapter 29 in the final formulation of 1225)³⁵ was so puzzling and controversial that it was unclear whether it had any legal effect at all, whether by way of constitutional

³⁰ Chapter 2 of this volume: I Judge, 'Magna Carta', pp 19–27.

³¹ Chapter 3 of this volume: J Baldwin, 'Due process in Magna Carta: its sources in English law, canon law and Stephen Langton', pp 31–52.

³² Chapter 4 of this volume: M McGlynn, 'From Charter to common law: the rights and liberties of the pre-Reformation Church', pp 53–69.

³³ Chapter 5 of this volume: R Helmholz, 'Magna Carta and the law of nations', pp 70–80.

³⁴ See Chapter 6 of this volume: J Baker, 'Magna Carta and personal liberty', pp 81–108.

³⁵ The texts of the 1215 and 1225 Charters are set out alongside one another in the Appendix for ease of comparison, pp 338–70.