



MASTER OF
THE ROLLS

The Right Hon. Lord Dyson, Master of the Rolls

Speech at Magna Carta, Religion and The Rule of Law

Temple, London,

Saturday 7 June 2014

It gives me great pleasure to make a few observations to bring this remarkable day's events to a close. As Master of the Rolls, I am Chairman of the Magna Carta Trust, a body which, with the support of the then Prime minister, Sir Anthony Eden, was established in 1956 by a number of institutions as successor to the Magna Carta Society. Its objects were and are the perpetuation of the principles of Magna Carta; the preservation for reverent public use of sites associated with Magna Carta; and the commemoration triennially, and on such special occasions as shall be determined by the Trust, of the grant of Magna Carta as the source of the constitutional liberties of all English-speaking peoples, and a common bond of peace between them.

As a nation, we love commemorations and we are rather good at them. We celebrate them with efficiency and, where appropriate, panache and even pomp. We love commemorating historical events, whether they are momentous or of a rather more specialist and limited interest.

On any view, the sealing of the Magna Carta in 1215 was a momentous historical event which changed the history of this country and has affected the lives of millions of people across the world. You have heard a good deal about this from our speakers during the course of this splendid day. It was inevitable that the Magna Carta Trust would wish to commemorate the 800th anniversary of the sealing of the Magna Carta. And many others are joining in both here and abroad. There will, for example, be major celebrations next year in the US. Today's event has been a tasty hors d'oeuvre for the feast that is to come next year.

Why has Magna Carta generated such excitement? Many of its 63 clauses are rather technical and of no relevance to us today and have had little, if any, impact on succeeding generations, although they are no doubt of great interest to the medieval historian.

But a few of the clauses are gems whose influence has been incalculable. As you all know, it enshrined the rule of law in English society. It limited the power of authoritarian rule. The king was to be subject to the law. It defined limits on taxation. For centuries, it has influenced constitutional thinking worldwide. The US included many of its ideas in the 1791 Bill of Rights. In 1870, Bishop William Stubbs asserted “the whole of the constitutional history of England is a commentary on this Charter”. In 1965, Lord Denning, then Master of the Rolls, described Magna Carta as “the greatest constitutional document of all times—the foundation of the freedom of the individual against the arbitrary authority of the despot”. In 1948, Mrs Eleanor Roosevelt when speaking to the UN General Assembly about the UN Declaration of Human Rights, said: “we stand today at the threshold of a great event both in the life of the United nations and in the life of mankind. This declaration may well become the international Magna Carta for all men everywhere”.

The focus of today’s event has been on Magna Carta and religion. King John sealed Magna Carta “from reverence for God and for the salvation of our soul and those of our ancestors and heirs, for the honour of God and the exaltation of Holy Church and the reform of our realm”. His advisers included two archbishops and seven bishops (and the Master of the Temple).

Stephen Langton, Archbishop of Canterbury, had returned to England in 1213 after eight years of exile. He had spent his time in Paris lecturing in theology, and in particular on the Old Testament. He had developed four principles for the constitution of a nation governed justly under God: (i) for protection against wicked kings in Israel, God had ordered the written codification of laws; (ii) in honour of God, the people have the right to resist a wicked king if he commands a mortal sin; (iii) the people have a particular right to resist a king who renders a decision without the judgment of his court; and (iv) the Archbishop, because of his particular dignity, has the duty to act in the name of all the faithful, both clergy and laity.

Within weeks of his return, Langton made John swear at Winchester to abolish evil laws, establish good laws and judge all his subjects by the just sentences of his courts. Days later, he warned the king that to act against anyone without judgment of his court would violate the Winchester oath.

Langton was relentless in the promotion of the interests of the Church. The most conspicuous fruits of this endeavour are to be found in clause 1 of Magna Carta itself. It is worth reminding ourselves of what it says:

In the first place we have conceded to God, and by this our present charter confirmed for us and our heirs for ever that the English church shall be free, and shall have her rights entire, and her liberties inviolate; and we wish that it be thus observed. This is apparent from the fact that we, of our pure and unconstrained will, did grant the freedom of elections, which is reckoned most important and very

essential to the English church, and did by our charter confirm and did obtain the ratification of the same from our lord, Pope Innocent III., before the quarrel arose between us and our barons. This freedom we will observe, and our will is that it be observed in good faith by our heirs for ever.

We have also granted to all freemen of our kingdom, for us and our heirs for ever, all the underwritten liberties, to be had and held by them and their heirs, of us and our heirs for ever.

Like so much else in the document, the principles that it establishes are imprecise. What exactly were the “rights” and “liberties” of the English Church guaranteed by this clause? A similar point can be made about clause 39, which is one of the most famous clauses: “no free man will be taken or imprisoned or disseised or outlawed or exiled or in any way ruined, nor shall we go or send against him, save by the lawful judgment of his peers and by the law of the land”. Who were the “peers” whose judgment alone could lead to the outlawry of free men? What constituted “lawful judgment”. Above all, given that there was no written code of laws that applied throughout England or that was officially recognised as royal law, how was anyone to determine whether a judgment had been delivered in accordance with “the law of the land”? Lawyers would have a field day with these vague clauses.

But to return to clause 1, it is not clear what freedoms of the English Church were intended to be guaranteed, but they seem to have included: (i) episcopal elections being free from royal interference; (ii) respect for special privileges for the clergy; and (iii) leaving certain areas of life to the judgment of the Church.

The relationship between religion and the law has been the subject of discussion earlier today. It is now recognised to be a complex subject, involving balancing the interests of different religious faiths and the rights of those who have no faith at all. I am not sure that today’s human rights-based respect for equality of religions derives much from Magna Carta. The Jews did not fare too well under Magna Carta. To a modern audience, clauses 10 and 11 might be read as evidence of medieval anti-semitism.

It took English law some time to accept that different religious philosophies should be tolerated without arbitrary discrimination. In 1739, Elias de Pas made a will by which he left £1200 for the purpose of teaching Jewish children about their religion. Lord Hardwicke, the Lord Chancellor, held in 1754 that because the purpose of Mr de Pas' bequest was to promote a religion other than Christianity, the Attorney-General should identify a different purpose for which Mr de Pas' money should best be used. The Attorney-General decided that the most appropriate use of the funds was to support a preacher to instruct children about Christianity. Applying that authority, and many others like it, Lord Eldon, the Lord Chancellor, stated in 1819 that it was

"the duty of every judge presiding in an English Court of Justice, when he is told that there is no difference between worshipping the Supreme Being in chapel, church or synagogue, to recollect that Christianity is part of the law of England".¹

It is a long journey from Mr de Pas and Lord Eldon to the Human Rights Act 1998, which incorporated into our law Article 9 of the European Convention on Human Rights which guarantees the right to freedom of thought, conscience and religion.²

It seems to me that the equality of all religions under the state's secular law is the best guarantee in a secular society of equal freedom for each religion and its adherents. Faith leaders no longer have the power that they once had. But they continue to have a very important role in promoting such equality of freedom as a fundamental and indispensable social good.

The convenors of this conference hope that the conference and the book will help all UK's faith communities to become the conciliatory peace-making heirs of Stephen Langton although they do not enjoy the pervasive power of religion which he could take for granted.

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¹ In Re Bedford Charity (1819) 2 Swans 471, 527, 36 ER 696, 712.

² See McFarlane v Relate Avon Limited (2010) 29 BHRC 249, Laws LJ (in the Court of Appeal) refused the applicant leave to appeal against the decision of the Employment Appeal Tribunal that he was not the victim of unfair dismissal or religious discrimination. His employer dismissed him as a relationship counsellor by reason of his refusal, in accordance with his Christian beliefs, to counsel same-sex couples on sexual matters. Laws LJ stated, at p.257, paragraph 22, that "The precepts of any one religion, and belief system, cannot, by force of their religious origins, sound any louder in the general law than the precepts of any other".