

50th ANNIVERSARY DINNER FOR THE MAGNA CARTA TRUST

MIDDLE TEMPLE, 2 OCTOBER 2008

SPEECH BY THE RT HON BARONESS SCOTLAND QC

ATTORNEY GENERAL

I am delighted to have been asked to speak to you this evening. This is an event which marks a number of important themes. As we have heard, we celebrate a major anniversary – the 50th anniversary of the Magna Carta Trust, and we look forward to the 800th anniversary of the signing of Magna Carta itself in 2015. This gives us an opportunity to mark again the importance of respect for the rule of law, of which Magna Carta is a potent symbol and embodiment, and which is as important today as it was in the 13th century. It is also an opportunity to recognise the support and generosity of the American Bar Association and to celebrate the heritage and the values which we as British and American lawyers have in common.

Not all our citizens are as conscious of this heritage as they might be. We have a television quiz show (I understand) called *The Biggest Game in Town*. Recently a contestant on that show was asked: “What was signed to bring World War I to an end in 1918?” You can probably guess I’m about to tell you that the contestant gave the answer “Magna Carta”. So the 800th anniversary celebrations will have to include some awareness raising.

On the other hand, on another quiz show on BBC Radio Newcastle a contestant was asked: "How long did the six day war between Egypt and Israel last?". He gave the answer "Fourteen days".

[With true stories like that, it is hardly necessary to resort to jokes. But there is one famous joke about Magna Carta. A tourist visiting Runnymede is told this is the spot where the barons forced King John to sign Magna Carta. He asks when that happened, and is told "1215". He looks at his watch and says "Damn, missed it by half an hour!"

On the subject of history, it is a particular pleasure to be marking this event here in Middle Temple hall, where we celebrate our own anniversary this year – the 400th anniversary of the granting of our charter by King James I. As you will know there is a warm relationship between this Inn and the American Bar Association, whose generosity helped to rebuild this hall after it was damaged by enemy action. And upstairs we also have the great American Library.

Middle Temple's contribution to upholding the rule of law is as great today as it has ever been, having as we do an almost embarrassingly large representation of Middle Templars among the senior judiciary and other senior legal offices.

One important provision of Magna Carta provides that:

“We will appoint as justices, constables, sheriffs, or other officials, only men that know the law of the realm and are minded to keep it well”.

Apart from the fact that we would now have to read this provision as referring to “men *and women*”, we can see that the requirement for judges to be individuals who “know the law of the realm and are minded to keep it well” is amply exemplified by the many Middle Templars who hold high office, and many of whom I’m glad to see here this evening.

They include Sir Anthony Clarke, the Master of the Rolls, and I am very glad to play tribute to his particular contribution as Chairman of the Magna Carta Trust. They also include the outgoing senior Law Lord, Lord Bingham; our outgoing Lord Chief Justice and new senior Law Lord, Lord Philips; our new Lord Chief Justice, Lord Judge, whose swearing-in I was privileged to attend yesterday; and numerous other senior members of the judiciary. Perhaps I can immodestly point out that I am bencher of this Inn too.

For me as Attorney General there are many resonances between the principles of Magna Carta and my own responsibilities as guardian of the rule of law and the public interest. That office has a long history. Quite *how* long is a matter of debate, because like many British institutions the office of Attorney General evolved over time rather than emerging fully-formed at an identifiable moment of history. Versions of it existed as long ago as 1243, or 1315, or 1461, depending on what view you take. So on one account at least, I am almost as old as Magna Carta [and I sometimes feel it!].

When I took office as Attorney General I was required to swear an oath that I would:

“duly and truly minister The Queen’s matters and sue The Queen’s process after the course of the Law, and after my cunning ... I will duly in convenient time speed such matters as any person shall have to do in the Law against The Queen as I may lawfully do, without long delay, tracting or tarrying the Party of his lawful process in that that to me belongeth. And I will be attendant to The Queen’s matters when I shall be called thereto.”

Whatever the antiquity of the language, the essential principles of the oath are clear enough. It includes four explicit references to “the Law” or to acting lawfully. By undertaking that I would “truly counsel The Queen” and “duly and truly minister The Queen’s matters ... after the course of the Law”, and ensure that parties were not denied their “lawful process”, surely I was swearing to act in accordance with the law and uphold the rule of law. The obligation to “speed such matters ... without long, delay, tracting or tarrying” is also clear and as relevant today as it ever was.

These principles are of course famously reflected in Magna Carta where it provides:

“To no one will we sell, to no one deny or delay right or justice”.

More specifically still, Magna Carta makes it clear that no one is to be punished or deprived of his possessions “except by the lawful judgment of his equals or by the law of the land”. Numerous provisions of Magna Carta go further and provide for the return of property which had been unlawfully seized or the remission of fines unlawfully imposed.

As part of proposals to reform my historic office, we have proposed amending and modernising the wording of the Attorney General’s oath. But if we do that, it will be to make the obligation to support the rule of law even more, rather than less, explicit.

As I have said, these are principles which we in the UK share with our American colleagues. The ABA’s motto makes this clear – “Defending Liberty and Pursuing Justice”. They are principles which underlie our ties of the common law and our common democratic values.

It is worth remembering that those values were not achieved without a struggle. Magna Carta itself is of course the product of strife. Like most settlements reached in such circumstances, it contains elements of compromise, as well as numerous provisions designed to resolve local or topical issues which mean little to us today. For example it may be difficult for us to get worked up nowadays about “evil customs relating to warrens”, whatever they may have been. [And perhaps regrettably, it is not true that

Magna Carta contains a clause which says “no man is to be hanged twice for the same offence”.]

But Magna Carta lives on because it continues to be seen as an exemplar and a symbol of the principles of liberty and justice to which the ABA’s motto refers.

Sometimes defending liberty and pursuing justice can be unpopular or uncomfortable activities. As I know very well from my own role as Attorney General, it can sometimes mean giving advice which is unwelcome to your client. It can sometimes mean defending an unpopular cause. It can involve intervening in proceedings to protect, for example, charitable interests or the wider public interest, even where these do not necessarily coincide with the political interests of the government of the day. It can mean taking action to suppress media comment (never something which goes down well with the media themselves) where that is necessary to protect the administration of justice and ensure an accused person has a fair trial.

But however uncomfortable or unpopular such actions may be, we as lawyers, both British and American, understand that our first duty must be to the law and the rule of law. That is why it is so appropriate for us to be celebrating Magna Carta, and what it stands for, here in this Inn of Court this evening.

(Ends)