Magna Carta: why celebrate?

The answer to my question depends on many things. I shall not ask or attempt to answer - why celebrate anything at all? But in this case it is worth asking what there has been celebrate, when, where and by whom? and what, if anything, there is to celebrate now. For Magna Carta 1215 is a date for all of us (or was until recently). Such documents make prosaic reading. This is the only one as far as I know to have attracted serious music - Kurt Weill's Ballad of Magna Carta composed for the CBS radio programme The Pursuit of Happiness in 1940. The coincidence of composer, topic, programme and date is a poignant reminder of the Charter's enduring fame.

The celebration of Magna Carta and of the events at Runnymede in June 1215 is a curious phenomenon. Yearly we commemorate the Armistice, but in my life-time Magna Carta 1215 and Simon de Montfort's parliament of 1265 have been the only major occasions of national celebration, (so far), marked in the case of Magna Carta, appropriately, by a service, attended by the Queen, in St. Paul's, where Sir Thomas's predecessor bore a version of the Charter before the assembled congregation, there to declaim its most celebrated and long lasting clause. It is characteristic of the Charter's history that he read from the wrong version. As Master of the Rolls, Lord Denning could command the resources of the Public Record Office, but not those of the British Museum where two of the original charters of 1215 lay to hand; he had to make do with a later reissue, surviving among the records of the Duchy of Lancaster. It may seem somewhat odd to you that Magna Carta is not a public record.

The charter's history is therefore something of a muddle; so let me try to clear the ground. Magna Carta 1215 was valid for only three months in the summer of 1215. Within that period it was never fully executed. It was annulled by bull of Pope Innocent III of 24 august 1215. Since then it has never enjoyed any legal force. In the civil war which followed the annulment, those who surrendered to King John had

to renounce the oath which they had taken to observe and execute its terms. King John died after little more than a year, on 19 October 1216. The charter was reissued, first in November 1216, as an interim version, then , in what was intended to be its final form, in 1217, when it was accompanied by a charter of the forest. It was reissued again with further additions in 1225, and it was this last version, confirmed with minor amendments by King Edward I in 1297, which was entered on the Statute Roll and became part of the law of the land as 25 Edward I.

So we have documents arranged in layers, each layer sharing much with the others, but each with its own characteristics. The 1215 Charter had many provisions aimed particularly against King John, most obviously the security clause which set up a court of 25 barons which was to deal with royal infringements, and also clauses concerned with assent to taxation and the summoning of the common counsel of the realm. All these were omitted in 1216 and subsequent versions. The 1216 Charter introduced a number of sensible minor amendments, but on the whole it was an enfeebled document intended to be temporary; it was rarely copied and has no importance in our story. The 1217 Charter was a different matter. Not so radical as 1215, it included entirely new provisions dealing with the sessions of the county courts, the alienation of land to the Church, conditional feoffments and the like, also a savings clause for existing rights of property. The accompanying charter of the Forest also promised wide ranging administrative reform. The 1225 charter made little change; it simply added that it had been conceded freely in return for a grant of taxation. This was the version confirmed in 1297.

The successive versions are easily distinguishable. The ones that matter are those of 1215 and 1217 in its original or subsequent revisions. It was the second, usually in its 1225 revision or in its statutory form as 25 Edward I that was the one best known to lawyers and statesman of the later middle ages and of Tudor and Stuart England: Fortescue, Lyttleton, Selden, Coke and Pym. This version also, through Coke's Second Institute, published in 1644, was the one best known in colonial America. And it is this version which, in this country, has been subjected to

successive waves of repeal and statutory revision so that only three of its clauses now remain on the Statute Book.

You may think that, for celebration, all that we have to do is to choose between an event and a document, in which case the event would win hands down. But it is not so simple. It should have been easy to keep the two main versions apart. It wasn't. The story begins with a revealing muddle, centred on the scriptorium of the abbey of St. Albans. Within 20 years of the event Roger Wendover copied into his chronicle a version of the charter of 1217 with peculiar additions all his own. He followed up with a Charter of the forest, this a more accurate copy. Then he attributed both to King John by the simple device of changing the name form King Henry to King John. Result: two spurious charters of King John. Next, his great successor, Matthew Paris, came along, armed with a correct version of the Charter of 1215. Instead of viewing the evidence as contradictory and requiring resolution (as we might, or I hope we might), he treated his new material, namely all those clauses of 1215 which had subsequently been omitted, as a gloss on Wendover' version and copied them into the margin of his text. The result was a horrible bastard version, appearing in a much copied and very influential chronicle, which queered the pitch and still continued to do so after it was printed by Archbishop Parker in 1572.

Now there was more to this than clerical muddle. Both these writers were among the severest critics of King John. Runnymede had occurred in their life-time. they knew that there had been a charter, a charter of liberties. And they had something to hand which seemed like it. What did one or two textual variants matter? They were not alone. The same view was probably taken throughout political society. In 1231 a jury of Oxfordshire knights, reporting to the royal justices, referred to provision first included in the version of 1217 as part of the'charter of Runnymede'. Very quickly, therefore, fact was overlain by myth. John had been a bad king; a remarkable event had taken place at Runnymede. It was to that that the surviving document, now on call in the county courts, treasured in their local repositories of cathedral and abbey, renewed, confirmed, but still at risk, was attached. Somehow to

contemporaries the circumstances of its birth gave the charter virility. They remembered Runnymede. And this was nurtured by contemporary and later writers. The St. Albans chroniclers, ever to the fore, sited some of the critical meetings prior to Runnymede at St. Albans itself, at St Pauls and at Bury St Edmunds. At all these and other places, so the stories went, oaths were sworn, precedents were brought forward, (especially the charter of King Henry I), and a special and exaggerated role was given to the archbishop, Stephen Langton. All this, accumulated within a generation of 1215, helped to turn a crisis into a drama. 'Magna Carta was made here'. No constitutional document ever had a better press.

Now if that were all, there would not be much to celebrate, and Runnymede would have become just another incident, important at the time, interesting to some perhaps, but of no lasting significance. So let us look at the document. In form Magna Carta was a grant of liberties or privileges, like any other in favour of churches, towns or individuals. (My wife' s first school had dates around the classroom wall; these included Bingley market charter 1212, Magna Carta 1215; not bad that; it posed a mature question to the young denizens of Bingley). But there was a difference, for already in 1215 Magna Carta included many administrative and legal provisions covering a wide range of topics - county administration, conduct of assizes, standardisation of weights and measures, and the like, and this was greatly enhanced in 1217 when further provisions were added. There is not doubt at all that thinking administrators decided to use the charter as a vehicle of legislation. This was quite deliberate. The additional material of 1217 was almost certainly derived from enquiries into local government launched under the terms of 1215. The result was that Magna Carta was at once a charter and in effect a statute.

This was a potent mixture. We can leave on one side how it could possibly be that a document was at one and the same time both a charter and a statute. That was something on which students in the Inns of Court cut their teeth in the fifteenth century. More important: it was a grant in perpetuity, just as in a conveyance to the church, or a charter for a town, or when in gift or sale a donor warranted his

transaction to the recipient. The concept of the perpetual grant was so widespread, so much a part of everyday transactions that Magna Carta slipped into the conventional language without any apparent hesitation on its authors' parts. Perpetuity, in any case, was essential both in 1215, 1217 and subsequently. The Charter was conceived in political crisis. There was to be no going back, and that was that. That was probably as far as men saw at the time. They were operating, remember, in the days before parliamentary legislation, in an age which knew how to declare law but was very uncertain when it came to making it. So they solved their own problems as best they could, but left an immense one for the future. The Charter embodied a conflation of purpose : liberties on the one hand, protostatute on the other. If there is any single reason why it has endured that is it: the hybrid had an almost organic quality.

For how was perpetuity to be achieved? Was the Charter to be left on the shelf tidily wrapped in its contemporary setting? Or did perpetuity mean what it said? How then could it be applied except by adjustment to circumstance? In a world accustomed to the glossing of biblical, patristic and canonical texts, there could be only one answer: Magna Carta also would be glossed. The first interpretatio of the Cahrter occurred within ten years of the definitive text, in 1234, this the work of the King and magnates responding to public concern over the sessions of the county courts. It was followed by a long progression of judicial and parliamentary interpretations reaching into the fourteenth and fifteenth centuries. The whole process was encouraged and indeed necessitated by the plain need for clarification and definition of some of the chapters.

For the causes, tactics and consequences of this I shall turn to the most famous of all the Charter's clauses, 39 of 1215, 29 of 1217/1225 (and from this point on I shall refer to the chapters under their 1225 numbering, except of course for those unique to 1215). So, to summarise cap. 29, this laid down that no free man was to suffer in person or property from action by the king except by lawful judgement of his peers of by the law of the land - per legale judicium parium suorum vel per legem terrae. These famous words went through the following progression:

1. By the middle of the 14th century lawful judgement of peers became trial by peers. Here Magna Carta had originally done no more than assert a principle of procedure - judgement of peers -which was a commonplace of feudal jurisdiction as it was practised in western Europe in the thirteenth century. This came to be refined into the precise form of trial by peers after the experience of the internecine aristocratic strife of the reign of Edward II. It was a natural and logical progression. Arguably it lay within the intent of 1215.

2. A much more complicated story: the judicium parium and lex terrae of 1215 came to include trial by jury. Magna Carta does nothing to elucidate per legem terrae: it is not concerned with the detail of process. But by the 14th century criminal process had come to rely on trial by jury; it had become part of lex terrae; this a result of an accretion of procedures which had scarcely begun in 1215.

Other changes were more deliberate. They were the consequence of parliamentary measures passed between 1331 and 1368, which became famous as the Six Statutes and have been associated with Magna Carta ever since. They came to constitute an essential gloss inseparable from the original (even defeating the efforts of the Law Commission in 1969).

3. These statutes converted lex terrae into due process of law, which meant procedure by original writ or indicting jury. In the words of the statutes of 1352 no-one was to be 'taken by petition or suggestion made to our lord the King or to his council, unless it be by indictment of good and lawful people of the same neighbourhood where the deeds be done, in due manner, or by process made by writ original at the common law". The intent and effect was to make lex terrae and the common law coterminous and to exclude all other jurisdictions, Exchequer, Seneschalsea, Marshalsea, and, the specific object of the legislation at the time, Chancery. So due process, note, came in, not as a defence of the accused, but as a defensive fence around the common law and the preserve of the common law courts. Or , if you like, the two were equated.

4. Two further changes are apparent:

a. the general phrases of 1215 - 'no free man shall be taken or imprisoned or dissesised or outlawed or exiled or in any way ruined' were also glossed - in 1352 'no man shall be imprisoned, nor put out of his freehold, nor of his liberties or free customs' . Freehold, liberties, free customs - the beginning of the road which ended with free disposition of property without governmental interference. And finally and most striking of all

b. the 'no free man' of 1215 became first of all 'no man' and then, in 1354, 'no man of whatsoever estate or condition he may be'. At first sight this looks like an outbreak of democratic liberalism. Not so. Parliament was rather closing loopholes. We all know that the privileges of 1215 were granted to free men, that is to a small proportion of the population. At that stage the term was almost generic embracing practically all those who were not in servile dependence. By 1350 this was no longer the case. The free man of 1215 was well on his way to becoming Chaucer's franklin, simply one element in an increasingly complex social hierarchy graded as bannerets, knights, squires, gentlemen, freemen and so on. So the Charter now had to be made clearly all embracing - 'no man of whatsoever estate or condition he may be' - all the more to preclude any chance that a particular status might slip out of the common law and be left in the sphere of operations of other courts. That was the purpose. The Charter was not being redefined in order to give the unfree access to the courts. It was left to Sir Edward Coke later to claim that it embraced the villeins, except in actions against their lord.

Cap. 29, therefore, provided a base for continuous growth. I have entered into detail largely to demonstrate that growth was well advanced by the middle of the 14th century. It continued through all the struggles of the 17th century, through the Petition of Rights, the Bill of Rights, and across the waters to the charters and bills of rights and declarations of the colonies and newly independent states and then on to the 5th and 14th amendments of the United States constitution. Cap. 29 is still the first of our Statutes in Force concerning Rights of the Subject. It is still buttressed by three of the Six Statutes (1351, 1354, 1368), despite the efforts of the Law

Commission to repeal them in 1969. And note that it touches something very concrete - due process, something which happens on the ground: not rights, not liberties, but something very practical, which comes into play every time an issue is tried. I was about to add'or should do', but I will come to that in a moment. By the side of this the two other surviving chapters which confirm the liberties of the English church and of London and other towns and cities, are mere antique trappings, doing nothing and hurting no-one. I can find no reason for their survival except that their repeal might seem hurtful to antiquity and dignity. Or perhaps the Law Commission hesitated to take on the City and the Bench of bishops. Or perhaps we should apply to both the words of the Herbert Commission on Local Government of 1963 - 'Logic has its limits, and the position of the City of London lies outside them'.

Essentially, therefore, cap. 29 is what there is to celebrate: not so much an event: not even a single document: more an accumulation, a growth of which the event and document are the root. Lawyers are happy with that. Historians afflicted with a bad dose of positivism talk of misinterpretation, falsity and error. I intend to let that dog lie. However, I did stir another one which is never really asleep. I said that due process came into play every time an issue is tried - or should do. By that I meant not 'ought to do so', but 'will do so except in abnormal circumstances'. Circumstances are not always normal. Suspensions of habeas corpus at times in the eighteenth and nineteenth centuries in the face of unrest real or imagined, were in effect suspensions of cap. 29. It was overridden by security measures in World War I and again in World War II. It has been held in partial suspense in Ireland subsequently. Lord Justice Scrutton summed all this up in 1918 when he said "a war could not be carried out according to the principles of Magna Carta'. There has also been a less deliberate, more complex circumvention, in effect, I think, rather than intention, in the increase in executive power which has arisen from delegated legislation. Outside Parliament this can only be controlled by judicial review or some similar procedure. These are still matters for debate, cases are pending; I have little expertise and even less responsibility in them; and the Tower is just down the road. I

raise them in order to avoid any sense of romantic eulogy in my main theme. Perhaps also to make just one point. judgements have been reversed on appeal. Ministerial powers and actions have been called in question. I do not think that this would have occurred so easily in some other European countries, where there is no cap.29 and all that flowed from it, and where there is a much sharper division between public and private law.

Now how has it come about that something so fundamental can be overridden or suspended? Let me go back to our main problem: the fusion of charter and statute. As it went through its various versions between 1215 and 1225 the Charter was ever more obviously a grant of liberties on the one hand; a piece of legislation on the other. But how could a legislative instrument have perpetual force? Were statutes repugnant to Magna Carta to be treated ipso facto null and void? Magna Carta could certainly be glossed (as we have seen the first interpretatio was agreed as early as 1234) but could it be amended or revoked? Not, for sure by the King, for his hands were tied by a perpetual grant in the name of him and his heirs for all time. But what about Parliament, which was taking shape as an institution we would recognise in the 150 years or so following Magna Carta, and forever extending its power and authority? Were parliamentary actions restricted by Magna Carta, or did parliament enjoy free rein? In short was Magna Carta special - a fundamental irrepealable statute?

The problem was tackled at a very early date, 1285-90, in a book we know as the Mirror of Justices. It was the work of a Londoner, possibly of the city's Chamberlain, Andrew Horne. Whether Andrew or not, the author was a man of some confidence. Among other things he tackled MAgna Carta. He went in for brave interpretations of the major clauses; thought he could improve on seven further clauses; and found that nine clauses had been violated either by the king and his officials or by the tenor of later statutes. It is not a highly respected work, but the author had least pointed to the problem. Now there is no time to enter upon all the debates which took place on this in the course of the 17th century. It is too complicated a matter, and the antagonists too proximate in their arguments. The

essential truth is that there could be no firm declaration of Parliament's power to amend what was regarded as a fundamental statute until Parliament's sovereignty was itself secure. By then other ideas had joined the antiquarian stream of political thinking, not least John Locke's Second Treatise of Civil Government replete with its doctrines ofnatural law, natural rights and the fiduciary basis of government; and much else had happened - the revolution of 1688, the Bill of Rights, the Act of Settlement of 1701. The consequences were summarised by Blackstone sixty years later. 'Parliament", Blackstone declared, "can regulate or new model the succession to the crown....It can alter the established religion of the land... It can change and create afresh even the constitution of the king dom and of parliaments themselves. It can, in short, do everything that is not naturally impossible'. A very powerful statement of parliamentary sovereignty; but Blackstone was not quite as single minded as this seems to imply. There were individual rights, he wrote, which in reason and in practice, if not in law, were beyond the powers of parliament - personal security, personal liberty and private property, and these were recognised by long-standing statute originating in magna Carta. Coke still lay hidden behind Blackstone's more modern certainties. Nevertheless, Blackstone stood at and marked a parting of the ways. The Commentary , with its doctrine of parliamentary sovereignty which I have quoted, was published in 1765. That was the year of the Stamp Act, the cause of open and organised opposition to the rule of the English crown and the authority of the English parliament in the American colonies. From now on Magna Carta would have a very different history each side of the Atlantic. In England the pruning shears; in America the hot house.

First England: Blackstone felt, I think, that parliament could repeal Magna carta but wouldn't. Within a dozen years the young Jeremy Bentham was arguing that parliament could, should, and would. Magna Carta and other ancient statutes were nothing other than cumbersome baggage, long past their usefulness. He denounced lex terrae as 'an imaginary law which spreads uncertainty over the whole" (Fragment on Government, 1776). With time, he matured into a more tolerant view as

convenience required. There was even a ring of Fortescue in his claim in 1830 that 'the Charter was the stock, root or foundation of all those liberties whereby the condition of the subjects of this realm stands distinguished to its advantage from that of the subjects of other monarchies. But in general the utilitarian message which he announced and Austen later re-emphasised, provided a bleak outlook. Cap. 29 survived the onslaught only because it was supposed still to be useful. Almost all the other clauses of the Charter were repealed by parliamentary measure beginning with the Statute Law Revision Act of 1862 and continuing to the Statute Law Repeal Act of 1969.

Against this only a few small, but influential, groups sustained the older view of Magna Carta as irrepealable fundamental law: radicals arguing for freedom of speech, in particular freedom to comment on and criticise parliament itself; the early parliamentary reformers seeking a less corrupt and more representative house of commons; the pretended revolutionaries of the 1790s proposing a convention following the ominous model provided by France in 1793. In one way or another members of all these groups turned to the charter as protection against arrest on order of the House of Commons for offences against parliamentary privilege or against some other summary form of arrest. Their activities leave us with some quaint scenes: Arthur Beardmore arrested in 1762 for a scandalous attack on the Princess Dowager, just so happening to be taken as he was reading cap. 29 of Magna Carta to his young son - justly remembered thereafter as Magna Carta Beardmore; John Wilkes pretending in the Middlesex election of 1768 to be acting in defence of Magna Carta; and still forty years later Francis Burdett, suffering imprisonment for his attack upon commons' privileges, arrested like Beardmore, as he was reading Magna Carta in biblical fashion to his young son. All these incidents and others were vigorously illustrated in the frontispieces to the pamphlets of the day: Magna Carta as icon: and as such the charter became embedded in radical thinking - hence in the 1840s the new Charter of the Chartist movement - this time a people's Charter. And there have been other charters since!

Now it was with this kind of radical exploitation of the Charter that the thinking of the American colonists was most closely allied, and from which indeed it often gained political support. Radicals and colonists were at one in defying parliament, although for different reasons; and radicals and colonists were at one in using ancient statute as one of the bedrock defences of their position. But initially there was nothing unusual in the American attachment to Magna Carta. The new colonists had to arrange their affairs somehow or other, and they did it by introducing the liberties of England, as they put it, by which they meant the common law. There was nothing surprising in this. Spaniards and Frenchmen, in the areas which they occupied, introduced respectively Spanish custom, usually the law of Castille or Aragon, and French law, that is the custom of Paris. In the English colonies this process was confirmed by codes, or bills of right, or charters. These came to be tested and strengthened in conflicts between the representative institutions of the colonists and the colonial governors. Magna Carta was securely embedded in this process. The dependence on magna Carta is often exact. To take an example at random, the Charter of Liberties and Privileges of New York, 1683, enacted by Governor and council, restated cap. 29, and the due process statute of 1354 almost verbatim, along with cap. 14, which restricted monetary penalties. ;So the Charter was carried with the common law through the legal and constitutional structure of the Colonies. Behind this process there stood a very literate political community, probably more interested and alert than that in England. A survey of over a 100 private libraries in colonial Virginia reveals that Coke's Institutes was included in the vast majority of them. A smaller survey but one looking at all the colonies shows that the Institutes appears in 27 out of 47 private collections. So the Second Institute, with its commentary on Magna Carta, by far the most influential reading of the Charter as fundamental ancient law, was widely available. Any thinking lawyer or politician would have it on his shelves. There was also a more explosive element, namely, an authentic version of the Charter of 1215. Explosive in the American context because 1215, unlike 1217 , contained clauses on the restriction of taxation to taxation by

consent. The introduction of the Charter of 1215 into America was largely the work of William Penn. He had an exact copy of one of the original charters in the Cottonian Library, one certified by the officials of the Library, and he published it in facsimile with text and commentary along with 25 Edward I and other documents from the 1290s in Philadelphia in 1687, this in a work which rapidly became well known Excellent Priviledge of Liberty and Property. It was these crucial clauses of the 1215 Charter which underpinned American resistance to the Stamp Act in 1765 - no taxation without representation.

Magna Carta and ancient laws and liberties were not of course the only component in American thinking. Locke's Second Treatise of Civil Government, the continental enlightenment of the 18 th century, were compounded with the tradition of ancient fundamental law into the thinking of the Declaration of Rights, the State and Federal Constitutions, and the 5th and 14th amendments. The results are still with us. At a recent symposium concerned with the rule of law held in New Orleans, I was astounded to hear from a distinguished attorney of the state court of Louisiana - 'abortion is a constitutional issue' - and he meant both a state and a federal constitutional issue. I was also struck by the concern which he and his fellow lawyers showed at the manner in which minority pressure groups of various kinds, all tried to hitch their wagons to the constitution. That is a consequence of Jefferson and the founding fathers: rights graven in the Constitution are well nigh indelible. Bentham has at least saved us from that. But at his own costs. In the USA there is a lawyer for every 200 head of the population. In this company I hesitate to speculate whether that is too few or too many. I merely want to point out that if Jefferson landed the United States public with lawyers, Bentham landed us with social workers. Either way we have to cope with the question of abortion.

It occurs to me that I have strayed far. Magna Carta has that effect. But I want to end not so much with the document as with the event, even more with the men behind the event. Magna Carta did not just happen. Men designed it and worked for it; their ambitions were large and their achievement matched them.

England in the twelfth century, like America in the 17th, was colonial, a French colony moving, not immediately towards independence of its continental ties, but towards a character all its own. For a conquering royal line and a new nobility in charge of the land, much had to be defined or restated: tenures and the terms of tenure; law which determined disputes about tenures and imposed discipline on the subject population, more broadly, social relationships and political authority and how it was exercised. In the process the common law was established - a unique creation of a colonial society; so also the Exchequer, not quite unique but unusual in its control of local government; so also a settled, if quarrelsome pattern of relations between king and clergy. Now in 1215 England was emerging from this colonial melting pot. Magna Carta marked the end of the colonial period in English history. The men responsible for it had a grasp of detail; hence much of it makes somewhat boring reading for the general public. But they also thought large. From a world in which churches and towns with their clear institutional structure might and did hold liberties, they now created one in which liberties were granted to all freemen of the realm. That was a large leap into the unknown. They had examples before them of churches, towns, even counties, with their shire courts seeking and defending each their liberties, but what about the realm as a whole? They were men of their time. Their answer, first, was to think of the realm as a city commune, the commune of the whole realm, and require all its members, commune like, to swear an oath to accept the terms of settlement agreed at Runnymede. Hence the picture of the charter carried round from town to town and vill to vill for all to swear. The second answer was to provide some form of security, and this was entirely feudal in background - a court of 25 barons who were to exercise distraint on the king's property if he refused to redress infringements of the charter. The oaths were taken, and in the short interval before the outbreak of open warfare in the autumn of 1215 the court of 25 tried to respond to the requirements placed upon it. It all looks pretty primitive, and it was; but it was inventive, the best perhaps that could be done at the time. And from it there came rich fruit. The commune of the realm became the community of the realm, and the

community of the realm came to be represented in parliament. That was 50 years on in 1215, and would not have happened as it did but for 1215.

There was another similar achievement. Their proposed solution was a royal charter, gaining its strength from the fact that in theory at least it was freely given. Later generations saw a weakness in that position namely that law might originate 'ever in the King's command'. Already in 1215 the answer lay to hand; the charter could be seen, not as creating, but simply as declaring law; a confirmation of ancient customs and procedures. That was partly factual - many of the chapters of the Charter do nothing more than confirm existing practice - and partly fictional - for there were tales of ancient English freedoms which the Conqueror had destroyed and tendentious rewritings of the laws of Edward the Confessor embodying the political concerns of a later age. But it was a powerful line of thought and argument, one on which Coke and the common lawyers still relied in theseventeenth century. It was skilfully exploited by King ohn's opponents. In our jargon they gained the high moral ground: John was guilty of unlawful and tyrannous innovation; they were the defenders of the good old ways. It all required administrative experience and grip, political skill, and courage of a high order, for king John was punitive by instinct and murderous when he saw the need. So if we are to celebrate the document we ought also to commemorate the men responsible.

Who were they? We can only guess. First of all perhaps, two, maybe three clergy. Gervase of Howbridge, canon and later chancellor of St. Paul's; Elyas of Dereham, steward of the archbishop, Stephen Langton and later canon of Salisbury where he played a great part in the construction of the new cathedral; possibly John parson, of Ferriby up on the Humber estuary. Not, I think the Archbishop, Stephen Langton; though a liberal man, his bent hitherto had been academic; he showed himself to be a political force, but one moving wretchedly between the contending parties, seeking compromise. Then, among laymen, Robert fitz Walter, lord of Dunmow and Baynard Castle, banneret of the city of London and commander of the city levies, soon in the rebellion to be dubbed Marshal of the Army of God and Holy

church, and Eustace de Vescy, lord of Alnwick and Malton. The involvement of these men in the preliminaries and rebellion against King John is a matter of historical record. The interest lies in stitching them together. Robert and Eustace plotted treason against the King in 1212. Gervase of Howbridge was also involved; Elyas of Dereham and John of Ferriby together helped in Eustacede Vesci's restoration in 1213. In January 1215 John of Ferriby was one of the two clerks sent to the papal curia on the barons' behalf. Great trust was placed in him. In July Elyas of Dereham was the man to whom most of the copies to Magna Carta were entrusted for despatch to the shires. Great trust was also placed in him.

So much for fact. How did they set to work? Here we have to guess a little. But it seems fairly certain that they first searched for precedent. In the winter of 1214-5 scribes were set to work to copy out the coronation charters of previous English kings. They had to hand a version of the charter of Henry I, an original of the charter of King Stephen issued in 1135, and a charter of Henry II which happens to be only the second known surviving version. It is as though someone wanted to try these charters on for size. Then even more remarkably, the scribes went on to provide an exact translation of these documents in Anglo-Norman - a task done for those who had a readier understanding of the every-day speech of the aristrocracy, yet demanded something more precise than a rough, off the cuff rendering of the Latin of the originals. So laymen as well as clergy were to use it. The work survives in a dignified manuscript, a bifolium, carefully written in a formal business hand which would not have disgraced the royal chancery. It was probably purloined by the antiquary Peter le Neve from the Rolls chapel. At all events it takes us into the preparatory committee work, and it is the only piece of evidence we have which does so. It is very unlikely that these three documents could have been assembled any where but in the capital. This points to Gervase of Howbridge and Robert fitz Walter who we know was at the Temple on 22 November 1214. Next, this version of the charter of Henry I was almost certainly derived from Lambeth - the base of Elyas of Dereham. So there is something to link the document with the men. They soon reached a

decision. The Charter of Henry I was the one to go for. That decision taken, the committee work was done for he present. When the baronial party met the King in unsuccessful negotiations at the Temple in January 1215 an oath was taken to fight for Henry's Charter. The next stage, sometime in the spring was to add additional terms to it and the next, in June, the final summary of baronial demands in the document we know as the Articles of the Barons and then the charter itself. By then a baron of the Exchequer had joined the group, probably also a leading justice of the King's court, certainly the Mayor of London Serlo the Mercer, and a party in the city who admitted the armed barons within the walls at the beginning of May.

Much of that is factual. The document containing the three earlier charters is there for all to see. The reconstruction which I have given you involves a little informed guesswork. At all events the inner group responsible for this document had worked well. The element of guesswork I hope you will excuse. I thought that in the closing minutes of this lecture you might like a visit behind the scenes. I have not taken you very far either in the imagination or geographically. The rebellion of 1215 was widespread, with the North and East Anglia to the fore, but all the planning which I have described, the planning of which we can be reasonably certain, took place within a mile, perhaps a few hundred yards, of where we are now assembled.

James Holt

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