***Magna Carta* and perceptions of the United Kingdom constitution**

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Hello everyone. I am delighted to be here.

The reason we are all in this room today, and that gatherings of this kind are taking place all around the world this year, is to mark an event that took place on June 15 – or thereabouts – eight hundred years ago.

To the west of London, in a meadow known as Runnymede lying between Windsor and Staines, John, King of England and ruler of a wider Angevin empire, reached a written accord with subjects who had risen up against his resented rule. Through this document, John committed to govern in a more acceptable way than he had up to this point, and acknowledged that as king he was subject to limitations. In time, the text came to be known as *Magna Carta*.

Since then, the text has acquired mythological quality both at home and abroad. It totals 63 chapters, though the numbering was added later. The most celebrated among them are numbers 39 and 40. They enjoy the reputation of being a basis for the rights of access to justice; and that there should be no punishment except by the law. As a whole the text is regarded as foundational to the principle of the rule of law – the notion that governors and governors alike are subject to the same set of rules.

*Magna Carta* is rightly regarded in the UK as one of our greatest exports. Perhaps its most impressive success has been its capacity to adapt continuously through different eras. It has figured in struggles and been advanced on behalf of causes that the original drafters could not have envisaged; sometimes in parts of the world they did not know existed. It was used in the English Revolution in the seventeenth century and in the American Revolution in the eighteenth. It provided inspiration for the United Nations Universal Declaration of Human Rights of 1948. Today, advocates of internet reform, including Tim Berners-Lee, inventor of the World Wide Web, call for an ‘online *Magna Carta*’.

But today, rather than distorting *Magna Carta* yet again to serve contemporary needs, I am going to deploy it differently. I am going to seek to recover the historical *Magna Carta*. In doing so, through reference to it and other documents that came before and after it, I will challenge some widely accepted views of the constitutional development of England and the UK.

***The ‘unwritten constitution’***

The first common understanding I will consider is the idea that the UK (and before that English) constitution is ‘unwritten’. Ours is one of the few constitutions internationally, alongside those of Israel and New Zealand, the key arrangements of which have not been set down in a document expressly labelled the constitution. A frequent interpretation of UK constitutional history is that it rests to an unusual extent upon implicit rules, not recorded in textual form. Other states – in Europe and beyond – may have felt an obligation to create written constitutions fixing basic rules about how government should operate, and its relationship with individual citizens. We, it is felt, have not had the same urge.

But though the lack of a full written constitution is significant, UK and English history is littered with documents seeking to set out core values and rules. *Magna Carta* is an exemplar of this tradition. But the habit of producing such texts was already long-established by 1215.

In fact, the very creation of English as a written language occurred precisely because of the desire to create one of these texts. Probably at the beginning of the seventh century, Ethelbert, king of one of the English Anglo-Saxon kingdoms, Kent, wanted to produce a law code as a monument to his own rule, and to have it written in the indigenous language. In doing so, Ethelbert instigated a precedent for producing these texts that later Anglo-Saxon monarchs, such as Alfred ‘the Great’ in the late ninth century, followed. The Normans carried on this tradition after the Conquest of 1066 – although they used Latin, not English.

In the period after *Magna Carta* in 1215, many further documents containing in them key principles of a constitutional nature appeared. They included:

The *New Ordinances* (1311); and

The *Petition of Right* (1628);

Then in 1653, during the English Revolution, Oliver Cromwell introduced a document called the ‘Instrument of Government’. It can lay a claim to being the first full written constitution in world history. However, with the restoration of the monarchy in 1660, all legal instruments from so-called ‘Interregnum’ era were expunged from the statute book – and, to a large extent, from the collective memory.

To return to our indicative list, we have:

The *Bill of Rights* (1689);

The Treaty and acts of Union between Scotland and England (1706-1707);

The *Act of Union* between Ireland and Great Britain (1800); and

The *Parliament Act 1911* (amended by the *Parliament Act 1949*).

Lately, there has been an intensification in the production of constitutional documents. Among them are Acts of Parliament, such as:

The *European Communities Act 1972*;

The devolution legislation from the late 1990s;

The *Constitutional Reform Act 2005*;

The *Equality Act 2010*; and

The *Fixed-term Parliaments Act 2011*.

There has also been a multiplication of official texts setting out constitutional ‘conventions’ – that rules that do not have full legal force, but can be crucial the operation of the political system. They have included:

The *Ministerial Code* (first publicly issued in 1992 as *Questions of Procedure for Ministers*); and

The *Cabinet Manua*l (2011).

Writing down constitutional arrangements, then, is *not* an alien practice to the UK, even if we lack a full written constitution.

## *The European perspective*

Another popular narrative of UK constitutional history is that it took place in some sense in isolation from the European mainland, and that by extension it remains exceptional – an important component of the Eurosceptic outlook of today. It is held that the UK and England before it were insulated from the constitutional concepts and political events of the continental landmass.

This attitude has deep cultural roots. Writing late in the sixteenth century, in *Richard II*, Shakespeare attributes to John of Gaunt a speech about England, the ‘other Eden, demi-paradise’. England is, Gaunt states, a ‘fortress built by Nature for herself/Against infection and the hand of war’. The ‘silver sea’ acts as ‘a wall/Or as a moat defensive to a house,/Against the envy of less happier lands’. Gaunt closes with the exaltation: ‘This blessed plot, this earth, this realm, this England.’

But others have seen the relationship with the rest of the continent differently.

Writing in 1624, John Donne exhorted that: ‘No man is an island, entire of itself; every man is a piece of the continent, a part of the main; if a clod be washed away by the sea, Europe is the less…any man’s death diminishes me, because I am involved in mankind’. In making this plea for solidarity among humanity Donne was reflecting on his own experience as a participant in the conflict that came to be known as the ‘Thirty Years War’, that had begun in 1618 as a confessional collision following the ‘defenestration of Prague’.

John Milton, the exulted poet and political pamphleteer who had been a supporter of and aide to Oliver Cromwell, also showed openness to wider continental influences. Writing in 1670, recalling the Civil War, Milton lamented that not all of those on his side had proved fully capable of the task that fell to them when they took power. He felt that observation of foreign practices might have helped. As Milton put it: ‘the sun, which we want, ripens wits as well as fruits; and as wine and oil are imported to us from abroad, so must ripe understanding and many civil virtues be…from foreign writings and examples of best ages; we shall else miscarry still and come short in the attempts of any great enterprise.’

A close consideration of *Magna Carta* also helps dispel notions of English or UK continental isolation. As I will discuss later, the text and its development were the product of foreign invasion, threatened and actual. In addition, the initial agreement of *Magna Carta* can be seen as part of a European synergy. Around this time, many monarchs across the continent, from the Iberian peninsular to Hungary, were producing texts binding them to respect certain principles and the privileges of their subjects. Perhaps the most celebrated such document, alongside *Magna Carta*, is that issued by Andrew II of Hungary in 1222, known as the ‘Golden Bull’.

It is therefore appropriate that *Magna Carta* was written in the common European language, Latin, and not English.

We should not regard John as an ‘English’ ruler anyway, since he was heir to a European empire stretching as far as south west France. His desperate efforts to maintain or regain these continental possessions, and the loss of support and credibility they entailed, helped provoke the uprising against him that in turn led to *Magna Carta*.

The European connection had an institutional-religious dimension to it. The Roman Catholic Church, then unchallenged in its spiritual authority across Western Europe and beyond, is crucial to an understanding of *Magna Carta*. Stephen Langton, Archbishop of Canterbury, was important to the brokering of the agreement between king and rebels in 1215; and the English church managed to insert into the text chapters that furthered the institutional interests of the clergy, including an opening passage intended to protect the church from royal interference forever. While Pope Innocent III, as we will see, cancelled *Magna Carta* not long after it was agreed, his successors came to be key upholders of the document in its reissued forms, and even issued excommunications to all violators of it. In this sense, the European Court of Human Rights, formed in 1959, a sometimes controversial outside body responsible for guaranteeing freedoms in the UK today, has an ancient precursor.

## *Constitutional continuity*

Another traditional account of the constitutional history of England and the UK is that it has involved steady, continuous development instead of turbulent episodes and dislocation.

On 4 June 1940, immediately after the British Expeditionary Force had evacuated from Dunkirk, Churchill delivered his ‘fight on the beaches’ speech in the House of Commons. He described the ‘long centuries of which we boast’ which had proved to be free from successful invasion. On 18 June, a fortnight later, France was seeking peace terms; and Churchill gave his ‘finest hour’ address in the House of Commons. He expressed the view that the outcome of the looming ‘Battle of Britain’ would decide the survival of ‘the long continuity of our institutions and our Empire’.

This depiction has intellectual roots in a school known as the ‘Whig theory of history’, according to which English (and then ‘British’) constitutional development was a progressive and smooth unfolding of principles of freedom – that were, furthermore, intrinsic in the English polity all along. The poet Alfred Tennyson encapsulated the Whig outlook in his poem *You Ask Me Why, Tho’ Ill At Ease*, published in 1842. Tennyson referred to:

‘the land that freemen till,/That sober-suited Freedom chose,/The land, where girt with friends or foes/Man may speak the thing he will,/A land of settled government,/A land of just and old renown,/Where Freedom broadens slowly down/From precedent to precedent.’

In the Whig narrative, *Magna Carta* often played a starring role. But on closer examination, the history of *Magna Carta* is hard to reconcile with the very theories it held to support. Far from a peaceful occurrence, it grew out of, and in reaction to, sustained turbulence. The immediate cause was a revolt against King John, led by some of the most senior magnates of his kingdom, but with a wider social basis than a mere palace coup. The barony at the head of the rebellion disliked the approach to government taken under the Angevin dynasty, that began with Henry II in 1154. Angevin practices included imposing ever-growing taxes, exploiting the legal system to serve narrow royal interests, and the expansion of the ‘forest’ (the name of land under the control of the monarch, rather than wooded areas specifically). John, a son of Henry II, had come to the throne, in succession to his brother Richard, in 1199. He maintained Angevin methods, but with his own particularly ruthless twist, squeezing his people for even more financial contributions and subjecting them to vicious harassment.

Alongside an increasingly discontented domestic elite, John faced the possibility of a French invasion. This military threat weakened his position internally and enabled his subjects to force him to agree to series of demands designed to ensure he would modify his behaviour in future. His public commitment to do so took the form of *Magna Carta*. The agreement, for a short time, prevented the full outbreak of civil war. But its later development was as turbulent as its birth.

John had recently placed his kingdom in the vassalage of the Pope, Innocent III, as part of a bid to resolve a dispute between the monarch and Rome. Innocent III then obliged John by issuing a papal bull on 24 August 1215 – little more than two months after *Magna Carta* had been agreed – annulling it as a legal instrument.

The rebellion resumed; and a French invasion took place.

That *Magna Carta* was ever heard of again was more of a coincidence than an outcome of an irresistible march of history as portrayed by the Whigs. John died the following year and his nine-year-old son succeeded him, as Henry III. In an exceptionally precarious position, counsellors to the young monarch thought that a reissue of the agreement upon which John had reneged might send out a signal that the new monarch was different to his father, and encourage a rallying around the crown. Out of this political calculation, *Magna Carta*, which might well have been forgotten, survived. Over the coming decades and centuries *Magna Carta* was either reissued or reconfirmed many times, frequently when rulers found themselves in the kind of difficulties that had manifested themselves in 1215-1216. But only hindsight can make the persistence of the document, and principles we have come to associate with it, seem preordained.

*Magna Carta* is one among many constitutional texts that owe their existence to conflict and upheaval. Foreign invasion has been of pronounced importance to the history of the British Isles. In earlier periods, being surrounded by sea was not a protective barrier: mobilising forces on water could be more efficient than doing so on land. King Alfred issued his famous law code at a time when his kingdom was under sustained pressure from Viking assault; and some historians see it as a component in his impressive propaganda campaign intended to promote a sense of English identity at this difficult time.

Sometimes those who successfully invaded could themselves make important statements of constitutional principle. In the first half of the 1020s, another Viking, Cnut, after seizing the kingdom, wanted to put his new English subjects at ease about his intentions, and produced a document part of which contained commitments regarding how rulers should conduct themselves. The Cnut code is in fact, in this respect, a precursor to *Magna Carta*.

Invasions have often coupled with internal uprisings to drive the production of key constitutional documents. The ‘Glorious Revolution’ of 1688 – more violent than sometimes depicted – was just such a pincer-movement. It culminated with the arrival of a Dutch force under the leadership of William of Orange and the departure of James II. The new regime, which involved William and Mary ruling together, was subject to important limitations contained in the *Bill of Rights* of 1689. These events led on in turn to the early beginnings of the United Kingdom, initially a combination of Scotland and England (which already incorporated Wales). This union was brought about in 1706-7. A major motive was fear of Louis XIV and the threat he presented of continental hegemony. A century later, the union between Great Britain and Ireland took place at a time when Napoleon created similar fears.

Outcomes are not predetermined. Contingency has a part to play. Had John not died when he did, triggering in turn the reissue of *Magna Carta* by his son, it is not clear that anyone would now be marking the eight hundredth anniversary of the agreement he had reached the previous year. Things did not have to turn out the way they did. This observation holds for an assessment of constitutional history in general.

An exemplar of a constitutional path *not* taken came with the *Act of Settlement* of 1701. Before subsequent amendments, it would have prevented ministers from sitting in the House of Commons – from which most of them, including the Prime Minister and the Chancellor of the Exchequer, are today drawn. It also sought to preclude senior ministers meeting together and holding confidential discussions from which would emerge a collective view – in other words, had the Act remained in force as originally drafted, it would have prevented the development of Cabinet government, which remains a core feature of the contemporary UK constitution.

When we consider the development of ideas, it is not only that they manifest themselves differently in varied places, or that the triumph of one particular concept rather than another is unpredictable. An idea may establish itself, but the precise interpretation placed upon it can alter radically, and repeatedly, without a wide acceptance that it has done so.

Nowadays, an objection to the European Convention on Human Rights emanating from the UK is that the European Court of Human Rights in Strasbourg construes it in ways that those who drafted it did not envisage.

However, exactly the same point could be made about *Magna Carta*, except on an even grander scale. On numerous occasions through English, UK and world history, distortions of *Magna Carta* – whether conscious or otherwise – have been deployed in pursuit of a variety of causes. More often than not, I think, though the methodology may have been flawed from an historical perspective, the ends have been noble.

If *Magna Carta* has been of any use to the establishment of the rule of law and democracy, and I think it has, it has made – and could continue to make – a valuable contribution, through its very misuse.

Today I have utilised *Magna Carta* to question certain myths surrounding our constitution. But I close by concluding that myths can have their merits, not least the myth of *Magna Carta* itself.

Thank you.