

British Chamber of Commerce, Copenhagen

Professor Sir Jeffrey Jowell KCMG QC

Director

Bingham Centre for the Rule of Law

22 June 2015



About the Bingham Centre

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1. It is an enormous honour to speak here tonight. This is my first visit to Denmark, a country I have always longed to get to know. The fact that we are meeting in the wonderful surroundings of the Hotel d'Angleterre makes me feel particularly at home.
2. Last week we celebrated in England the 800th anniversary of the Magna Carta. The Queen, Prime Minister, leading judges and other dignitaries assembled at Runnymede Meadow, where the document was sealed on 15 June 1215. What a show it was! Which brings to mind the person who in my eyes was surely the greatest Dane, whom I have revered since a child – musician, poet and comedian Victor Borge. Sitting at a piano, he would satirise operas and other music. One of his set pieces began: "The show begins when the curtain rises". Adding quietly: "Otherwise you couldn't see a thing!".
3. Our Prime Minister David Cameron was interviewed a couple of years ago by an American talk show host who asked him: "What does Magna Carta mean"? And he claimed not to know. The interviewer should then have asked the question posed some years before by the British comedian, the late Tony Hancock: "Does Magna Carta mean nothing to you? Did she die in vain?"
4. What is the significance of the agreement made 800 years ago between a despotic, bankrupt King John (of whom nothing nice has ever been said or could have been said) and the great aristocrats of the land, the barons, desperate to protect their feudal rights which John had violated through taxes and expropriations and other measures designed to finance his various misadventures.
5. The document sealed by the King (not signed; there is great doubt whether King John could write) was originally called 'Articles of the Barons' - a kind of peace treaty. It is written in Latin on just one page, a feat in itself as it contains 63 chapters. You need a good magnifying glass and a perfect knowledge of Latin to comprehend it. It has been said that it is both over-rated and boring, dealing largely with obscure Mediaeval issues of no interest today.
6. I disagree with that view. To me the document presents a riveting account of a

struggle between a tyrant and those seeking to restrain his abuse of power. Its content reveals a familiar negotiating pattern in contemporary constitutional discourse. In essence, the barons were seeking to impose upon an undisciplined king a programme of austerity not unlike the present tussles between the European Union and Greece. And like so many modern constitutions, it sets out first and foremost what might be called “never again” provisions. Such as that there be no further taxation (called ‘scutage’) without general consent. That the King shall no longer expropriate lands, without consent. Or take wood for his castle, without consent. Judges in the future must be properly learned in the law (for which read ‘competent and not corrupt’). The Barons shall be fined only by their peers and only in proportion to the gravity of the offence (the first mention of the now familiar principle of proportionality).

7. While they were about it, the Barons sought to attend to some general matters, such as asserting free trade (the right of all merchants freely to travel except in times of war); the terms of repayment of loans after the death of the borrower, and even environment matters such as the removal of fish weirs on the Thames. Importantly, the Charter provided that there shall be standard measures for wine, ale, and corn – a great legacy this; the origin of ‘the English pint!’.
8. It is often claimed that women are not mentioned in the Charter. However, there are relevant passages which show some concern for their state - albeit not at a level which any modern feminist could applaud. At her husband’s death a woman may remain in ‘his’ house - but only for 40 days. The widow will not then be compelled to re-marry - but if she does, Royal consent is required. Of course no man could be imprisoned for murder on the evidence of a woman - except her husband (which you might think a rather tempting invitation to marital disloyalty).
9. The Charter’s great significance, of course, is that it was the first legally binding document to limit the power of the king over his subjects. In that sense it was a document of epic importance. In particular. chapters 39 and 40 even today quicken the blood, providing that:

39: *No free man shall be seized or imprisoned, or stripped of his rights or possessions, or outlawed or exiled, or deprived of his standing in any other way, nor will we proceed with force against him, or send others to do so, except by lawful judgment of his peers or by the law of the land.*

40: *To no one will we sell, to no one deny or delay right or justice*
10. I have the privilege to direct the Bingham Centre for the Rule of Law, founded just over four years ago in the British Institute for International and Comparative Law, in honour of the late Lord Bingham, one of England’s greatest judges. In 2010 Tom Bingham published a wonderfully accessible book called *The Rule of Law* in which, in chapter 2 he briefly discusses Magna

Carta. He calls the Charter *“an event that changed the constitutional landscape of this country and, over time, the world”*. *“There”*, he said, *“clearly recognizable, was the rule of law in embryo.”*

11. It is often said that, like Magna Carta, the rule of law is essentially vague, or indeed that it is particularly Western, or only suitable for the developed world. The Bingham Centre for the Rule of Law has found that not to be so. There is nothing vague, or exclusively Western about a principle which requires no person to be above the law; certain and accessible laws; laws equally enforced and without corruption; and where anyone can challenge the law or decisions made about their lives through a fair hearing before independent judges. These are universal aspirations, as we are finding through our work in different parts of the world.
12. One further aspect of the Magna Carta is significant for societies which have constitutions which are packed full of aspirations, rights and promises, few of which have any realistic hope of any practical enforcement. I refer to countries such as Belarus, where the constitutions are the most magnificent in the world and contain every aspiration known to man and women. Once the constitution has been written there is normally a party where, once the vodka is drunk, glasses are thrown over the shoulder. And so is the constitution, which is never seen or heard of again. In contrast, The Magna Carta, in Chap.61, has its own built in enforcement clause under which 25 barons could, if the King did not comply with its provisions, *“assail us in every possible way”*, including seizing *“our castles land and possessions”* (although, tolerantly, not *“our Queen or children”*). It then goes on to say that, *“having secured this redress”* (that is, the King having been *“assailed”* and had his land, castles and other possession seized), they (the barons) *“shall then resume their normal obedience to us”*. You can just imagine the negotiations on this clause, as follows:

[Barons: *“We shall be permitted to take all your possession”*.
King: *“But not my castles, or, to think of it, my Queen or children”*
Barons: *“We concede on Queen and children. But we insist on your castles”*
King: *“But then you must promise after that to resume your normal obedience”*].
13. Now the strangest thing about the fact that we are celebrating the events in 1215 is that the document sealed on June 15 was annulled by the Pope Innocent III just a few months later on the ground that it was a *“shameful and demeaning agreement, forced upon the king by violence and fear”*. The next year the King died during another of his wars and his boy son Henry III became king, immediately reaffirming the deal, which was only then referred to as Magna Carta - the Great Charter. It again fell into disuse at various times thereafter but was revived during times of political crisis: in 1253, 1267

and finally put on the statute book by Edward 1st in 1297.

14. So there will be many more opportunities this century to celebrate the different versions of Magna Carta, and hope you will join us with a standard English pint on the meadow at Runnymede (albeit that the beer will be warm and the meadow somewhat soggy).
15. Magna Carta's greatest champion was Sir Edward Coke who, as Chief Justice of England in the seventeenth century employed it, with varying success, against the Tudor and Stuart autocracies, calling it "the principal grounds of the fundamental laws of England". It was taken up in the 18th century by the great jurist Sir William Blackstone, who in turn inspired settlers heading for the new world. In 1765 the Massachusetts Assembly declared that new taxes were "against the Magna Carta and the natural rights of Englishmen". The first bill of rights, echoing Magna Carta, was adopted in Virginia on 12 June 1776 and then on 4th of July of that year the Declaration of Independence itself echoed Chap.39, of the Magna Carta in Articles 1 and 8, ending with the words that "*no man be deprived of his liberty except by the law of his land and the judgment of his peers*".

In the 20th century it went international. The UN's Universal Declaration of Human Rights was referred to by Mrs Eleanor Roosevelt, one of its principal draftspersons, as "a Magna Carta for all mankind".

16. Today in the UK only three clauses of the Magna Carta remain on the statute book: those guaranteeing the freedom of the church; the 'ancient liberties' of the City of London and the famous, Chap. 39, which, in its later incarnation, in Edward III's statute in 1354, lays down the idea of *due process of law* (a phrase which found its way into the fifth amendment of the US Constitution in 1791).
17. How is Magna Carta treated today? In the UK, in Denmark, and in many other countries the principles of limited government, rights and liberties and access to justice are enshrined in law and Magna Carta often serves as a rallying point against laws and practices that might offend the rule of law, such as when immigrants or suspected terrorists are detained without a trial or fair hearing. Or when legal assistance is unreasonably diminished. The Great Charter is still cited in our courtrooms and by judges in the courts of many countries (just this year in the supreme courts of both the UK and USA).
18. In preparing for this visit I recalled that some years ago I attended an exhibition in London which provided a photographic account about the way that the Danes responded, during World War II, to threats to members of their Jewish community who were threatened with deportation to the Nazi camps. Ordinary Danes hid them and smuggled them out in fishing vessels to other countries. It was a moving exhibition, relating moments of great humanity and courage. Last night, by some miracle, I found this catalogue for the exhibition. It was called *Resistance and Rescue* and took place in 1997. The catalogue

evokes the strong Danish democratic spirit and, amazingly contains a poem by Victor Borge himself. Entitled "Once Upon a Time", he writes:

"And lesson after lesson must be learned

That: Those who know no history

Are sentenced to repeat it"

19. For that same reason we have been seeking, this past week, to keep alive the history of the Magna Carta, and its significance.

20. It is notable that our common commitment to the rule of law is inspired by the principles set out in that damp meadow 800 years ago. Our systems of governance and accountability have developed since in different ways. But let us hope that the curtain never falls on the fundamental values they enshrine.