Reading Extract 1

Extract from "Q&A: the legal significance of Magna Carta"

Owen Bowcott in The Guardian newspaper (June 2015)

"Magna Carta was a product of its time. The medieval knights and lords who gathered in June 1215 assembled a long list of grievances to present to the king. Some, however, resonate to this day, such as the declaration in clause 40 that: "To no one will we sell, to no one deny or delay justice." Others suggest complaints more specific to the 13th century, such as clause 33, which demands the removal of all fish weirs on the Thames and throughout England; and clause six, which prevents heirs being given in marriage "to someone of lower social standing".

Four clauses are commonly agreed to remain in law: clause one guaranteeing that the "English church" shall be "free and shall have its rights undiminished"; clause 13 permitting the City of London to "enjoy all its liberties and ancient customs"; and clauses 39 and 40, which are jointly seen as embodying what have become the rights of habeas corpus – banning arbitrary detention – and trial by jury.

The former lord chief Justice Lord Judge has noted that the word "parliament" does not appear in the document. Nor can the word "democracy" be found and "Magna Carta" is not even in the text.

Those absences do not deter enthusiasts. Lady Justice Arden, an appeal court judge, said its significance was not so much as a piece of parchment but as a "defining moment in English constitutional history". Its spirit and clauses had been absorbed into common law so that Magna Carta "has remained alive in our national consciousness", she said.

That both the king, and by extension the government, must behave in accordance with the law is one of the constitutional principles that emerges from Magna Carta. Lord Sumption, a medieval historian and supreme court justice, has argued that the principle was "generally accepted for at least a century before 1215" and the dispute was "about what the law was".

Lady Hale, the deputy president of the supreme court, acknowledges that "historians tend not to be so excited" because they see it as "not so very different from the charters of other kings, and that much of its contents were simply reaffirming generally understood principles of feudal law". She adds, however, that Magna Carta confirmed "the idea that government as well as the governed is bound by the law".

Clause 14 of the charter required the king to "obtain the common counsel of the kingdom for the assessment of aid". In effect, it established that those forced to pay taxes should have a voice in deciding what they should be used for. "It was disregarding that principle that lost us the American colonies getting on for six centuries later," Hale said."

Reading Extract 2

Extract from "Magna Carta: A Primer"

Dr. Eamonn Butler

The Fundamental View

One group [of historians and constitutionalists] takes the familiar view that Magna Carta is indeed the foundation of all of our rights and liberties today. To them, it is the first written constitutional document to set out the limits to government authority and to bring government power under the rule of law. Even if King John did immediately repudiate it, the Charter nevertheless served as the model for subsequent charters that were better respected. It was cited to justify the overthrow of the autocratic monarch Charles I (1600-1649) and to legitimise the 'Glorious Revolution' that replaced James II (1633-1701) with a new succession of monarchs who were constitutionally bound by a Bill of Rights (1689) and other conditions set down by Parliament. In 1776 the American revolutionaries, too, appealed to Magna Carta to defend their rebellion against the insensitive government of George III (17381820), and the American Constitution itself quotes directly from the Charter, as do a number of State constitutions.

Under this view, Magna Carta well deserves its totemic status. It encapsulates and represents principles that are fundamental to constitutional government. First, it represents the Rule of Law – that everyone, including those in authority, are bound by what it calls the 'Law of the Land' – not the King's Law, nor even God's Law, but the common law that has evolved naturally as a useful means of resolving conflicts and regulating the actions of individuals. Second, it represents Liberty – the rights of free speech and assembly, of property, and the freedom to trade. Third, it represents Justice – equal justice that cannot be bought or sold, and which is dispensed according to the due process of agreed, known and accepted rules. But perhaps most of all it represents Limited Government, stripped of its arbitrary powers, constrained by the law, and subject to a fundamental constitutional contract with the people.

The 'Fanciful View'

The second group see Magna Carta as of purely antiquarian interest – a failed mediaeval peace treaty that was rightly forgotten for centuries, before being revived and cited by political activists in both England and America solely in order to give false legitimacy to their revolutionary ambitions.

This group point out that the Charter reads much less like a constitutional milestone than a list of trade union demands from the barons, full of talk about rents and taxes, the inheritance of baronial estates, special courts for the aristocracy, restoring castles to their owners, and so on...

Reading Extract 2 [continued]

Extract from "Magna Carta: A Primer"

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Most of its provisions were soon made redundant by economic and social change.

But in fact the Charter had no legality anyway. John agreed to it under duress, in order to head off the barons' dispute with him, accepting terms that under feudal law only the Pope could agree, and never intending to respect it. Nor was it even unique: from 1225 onwards there were many such charters, each having greater legitimacy because they were agreed voluntarily.

As to the Charter's totemic status as a statement of liberties, the much-vaunted passages on the due process of law comprise just three short clauses out of 63. Even these apply only to "free men", who at the time were only a small minority group of privileged people including the barons, knights and free peasants. Meanwhile, the single clause that allows an errant monarch to be restrained was instantly ignored, soon dropped and long forgotten. Indeed, the 5,000-word Latin text of the Charter was not even translated fully into English until 1527, which shows how inconsequential it was.

A Third Interpretation

There are, of course, many gradations of opinion between these two extreme caricatures. But there is something in both of them. Prior to the 1066 invasion of England by John's forebears, kingly power had already been limited by notional and imprecise 'contract' with those who were governed; though the 1215 Charter spelled out such a contract in writing and in detail. It was indeed agreed under duress and quickly abandoned; yet it provided the firm basis for many subsequent charters that had lasting legal effect. The Charter may have focused on the concerns of a mediaeval aristocracy; but its provisions came to protect the rights and freedoms of ordinary people too. Its totemic status might be less than fully deserved; yet it nevertheless is still celebrated as a powerful statement of rights and freedoms, and of constitutional and limited government.

However, neither of these views fully succeeds, because neither takes full account of what it is that unifies all 63 clauses of Magna Carta, and what its framers were trying to achieve with the document. For the Charter was more than a mere peace treaty, more than a list of aristocrats' demands to which a few due-process rules were inexplicably added, and more than a set of constitutional principles.

Question: *How important was Magna Carta in the development of the British Constitution?*

Reading Extract 3

Extract from "Magna Carta: A Primer"

Dr. Eamonn Butler

"In 1971, during the Troubles in Northern Ireland, and facing civil unrest and paramilitary violence, the government used a Special Powers Act to intern people without trial. Two years later, fearing possible intimidation of juries, it also suspended trial by jury for certain offences, introducing 'Diplock' courts, comprising a single judge. This system, slightly amended, is still in use.

Anti-terrorism powers have been stretched in remarkable ways. In 2005, an individual was briefly arrested under anti-terror legislation for heckling a Home Secretary at a party conference; another was arrested for walking along a dockside cycle path and two others for holding a silent anti-war vigil at London's Cenotaph. At the time of Iceland's financial crash, Prime Minister Gordon Brown used antiterrorist measures to freeze its citizens' bank accounts in London. And people have been held for months and years under house arrests because to put them on trial would risk exposing the methods by which evidence has been collected."