

MAGNA CARTA (1215) AND THE *CHARTE AUX NORMANDS* (1315): SOME ANGLO-NORMAN CONNECTIONS AND CORRESPONDENCES

Nicholas Vincent

1 The present year marks the 800th anniversary of Magna Carta, with celebrations held across the English speaking world.¹ There is a major British Library exhibition, a major government-sponsored research project <<http://magnacarta.cmp.uea.ac.uk>> and certainly as much rejoicing in Washington or Canberra as there will be in London or, on 15 June 2015, at Runnymede itself. Much less feted is the second of this year's great legal anniversaries. Yet 19 March 2015 marked the 700th anniversary of a document that, in the history of the Channel Islands, ranks second only to Magna Carta in terms of its longer-term significance. It was Louis X's *Charte aux normands*, issued in March 1315, more or less exactly a century after Runnymede, that confirmed the special privileges of the men of Normandy, confirming their right

¹ What follows is an anniversary piece, written to commission, under considerable time pressures, and therefore without proper footnotes. The author intends to publish a much fuller and more detailed version in due course. In the meantime, for the texts of Magna Carta 1215, 1216 and 1225, readers are referred to JC Holt, *Magna Carta*, 2nd ed. (Cambridge 1992), with a third edition imminent, edited by J Hudson and G Garnett (Cambridge 2015). The text of the *Très ancien coutumier* is to be found in a (highly idiosyncratic) edition by E-J Tardif, *Coutumiers de Normandie . . . premier partie: Le Très Ancien Coutumier de Normandie* (Rouen 1881). The Norman rewriting of the 1225 Magna Carta, first published by N Brussel, *Nouvel examen de l'usage général des fiefs en France*, 2 vols. (Paris 1727, reprinted 1750), ii, appendix i–vii, was considered, albeit without full understanding of its ramifications, by JH Round, 'Note on Magna Carta', *English Historical Review*, ix (1894), 541. Various of the themes considered below chime with the approach of J Hilaire, *La construction de l'État de droit dans les archives judiciaires de la Cour de France au XIIIe siècle* (Paris 2011). The *Charte aux normands* is considered by A Floquet, 'La Charte aux normands', *Bibliothèque de l'École des Chartes*, iv (1843), 42–61, but from a highly anachronistic standpoint. In March 2015, it formed the subject of a conference held in Caen, whose proceedings will in due course throw much new light upon its ancestry and significance.

to be judged according to their own customs, and their liberty from arbitrary taxation imposed by the kings of France.

2 Both Magna Carta and the *Charte aux normands* are settlements in which taxation, and the threat of its increase, played a central role. In 1215, the barons of England feared that King John would continue his excessive demands for taxation, not least to pay for yet another continental campaign, the third in less than a decade, intended to win back the prestige that John had forfeited by his loss of Normandy in 1204. In much the same way, in 1315, the barons of Normandy feared that Louis X would continue the policies of his father and bleed the realm of France by paying for yet further doomed expeditions to Flanders, since 1302 and the Battle of Courtrai, to a large extent independent of French royal rule. The *Charte aux normands* was a direct bribe offered to the Normans in return for their continued adherence to the Capetian tax regime. The link between taxation and the discussions at Runnymede were less direct. Nonetheless, clause 14 of the 1215 Magna Carta laid down restrictions upon the King's right to tax his subjects arbitrarily and in particular demanded that no new taxes be imposed without the consent of properly assembled "counsel" intended to represent the wider interests of the community. This, in due course, supplied a blueprint for the meetings of the King's counsellors subsequently known as "Parliament". It also suggested to those who came after – to the barons of England as to their English-speaking successors across the globe – that tax and consent were indissolubly linked. As the American colonists of the 1760s were to put it, there should be "No taxation without representation". In 1225, when Magna Carta was reissued in its definitive form by King Henry III, King John's son, and again in 1297 and 1300 when it was for the last time reissued as a single sheet charter of liberties by King John's grandson, King Edward I, the continued survival of Magna Carta was specifically tied to votes of subsidy by the King's subjects. Magna Carta, like the *Charte aux normands*, had become indelibly linked to the issue of public finance.

3 If tax was central to both Magna Carta and the *Charte aux normands*, then so was the issue of sovereignty and the rule of law. Magna Carta is sometimes celebrated as though it introduced "democracy". By many who have never actually read the document, the Runnymede charter is supposed in some way or other to protect the rights of majority voting, of trial by jury, of the presumption of innocence, of Habeas Corpus, and of who knows how many other shibboleths central to the English and subsequently the Anglo-American legal tradition. In reality, none of these institutions, not even Habeas Corpus, and certainly not trial by jury, finds a place in the charter. Clause 39 of the 1215 Magna Carta, it is true, demands that "No free man is to be arrested, or imprisoned, or disseised, or

outlawed, or exiled, or in any other way ruined, nor will we go against him or send against him, except by the lawful judgment of his peers or by the law of the land". This nonetheless leaves both "the law of the land" and judgement "by peers" entirely undefined. Magna Carta was a peace treaty agreed between a failed tyrant (King John) and a small caucus of that tyrant's discontented barons. To all of the parties gathered at Runnymede, "democracy" would have been an entirely repugnant idea. Even the "liberty" that Magna Carta upholds has surprisingly little to do with the "freedom" that is supposed to lie at the heart of the Anglo-American legal tradition or that finds expression in the American Declaration of Independence with its vaunting of the inalienable human rights to "Law, Liberty and the Pursuit of Happiness". Magna Carta, by contrast, refers to "liberties" in the plural rather than to "freedom" in the singular. These "liberties" of 1215, like the "liberty" of King John's archbishop of Canterbury, or his earls of Essex or Gloucester, were in effect rights and customs associated with property ownership, guaranteed by possession and long usage. In other words, they more closely resembled the vested interests of today's corporate Leviathans than they did the "rights of man" championed by liberals and modern libertarians.

4 It is not as a guarantee of democracy that Magna Carta deserves remembrance, but as a settlement that embodied the rule of law. In 1215, and in many cases for all the "wrong" reasons, the barons of England obliged their king to admit that his actions could be judged under law. The king, in other words, was no longer entitled to act in an entirely capricious or arbitrary way. If he acted against law or custom, his actions were deemed illegal, and his subjects were absolved of any obligation to obey his illegal or tyrannical commands. Magna Carta, in its sixty or so clauses, sets out to establish precisely what was customary and what was not. This did little to put an end to tyranny. Kings of England, throughout the Middle Ages and beyond, continued to act in their own, rather than the public interest, to make war, to rig trials, to ruin their opponents, and in general to misbehave. From 1215, nonetheless, sprang the idea that such misbehaviour, however unavoidable in necessity or practice, ran contrary to the rule of law. The King was now truly king only if he ruled well and in accordance with the public interest. The sovereign authority of the state was placed under a degree of restraint crucial to the future development of ideas of the state's competence and purpose. Little of this was entirely new. Roman and canon law had long encompassed ideas of public interest, judicial restraint, and *res publica*. The emperors of twelfth-century Germany, the kings of Sicily or France, the counts of Toulouse or Barcelona, had already, in many cases long before 1215, promised to rule for the public good and in accordance with a pre-established idea of what was or was not lawful. Nonetheless, as a highly dramatic

instance of such promises, forced upon a king under the threat of rebellion and ultimately of expulsion from his throne, Magna Carta lived on as a model to later kings. Thereafter, in thirteenth-century Sicily, Spain, France and Germany, we find charters granted by kings placing kingship itself under the rule of law. It was upon precisely this model that the *Charte aux normands* was framed: as a promise to rule well and in the public interest, placing the King's subjects under a particular tradition of laws, in this instance the "Custom of the land", unalterable at the sovereign's whim or without popular assent, and not subject to appeal to the King or his Parlement in Paris.

5 And here we approach one final, but nonetheless highly significant way in which the Magna Carta of King John and the *Charte aux normands* of Louis X derived from a common legal culture, offering common solutions to common problems still of significance today. The *Charte aux normands*, it is generally agreed, confirmed the peculiar customs of Normandy. In the longer term, this has allowed those who live under such customs (the Normans of Capetian France, or the Channel Islanders of the twenty-first century) to claim exemption from various aspects of statute law, either French or British, that might otherwise be deemed enforceable upon them. Herein, as I shall now attempt to demonstrate, lies a delicious irony.

6 The customs of Normandy, passed down from Rollo, the Vikings and the most ancient of times, were first set out in writing in a collection known as the *Très ancien coutumier*. This survives in manuscripts only from the late thirteenth century, but is generally agreed to reflect Norman legal traditions stretching back well before King John's loss of Normandy in 1204. In turn, from the *Très ancien coutumier* developed those subsequent attempts at the codification of Norman law: the so-called *Grand coutumier* of the mid-thirteenth century, and the efforts to assemble and record the laws and customs of Jersey or Guernsey. To date, it has been assumed that these laws survived Normandy's regime change of 1204 – from rule by the Norman or Plantagenet kings of England to rule by the Capetian, Valois or subsequently Bourbon kings of France – more or less unaltered and unscathed. The *Très ancien coutumier*, in this reading, is equivalent to Normandy's Deuteronomy: a foundational record of the customs of Normandy from before 1204 and hence from before the period during which Norman custom was diluted by the effects of French royal statute or, much later, the Code Civil. Here, I would suggest, the historians of Normandy or the Channel Islands have allowed themselves a roseate and misleading view of their own legal past now badly in need of correction.

7 Historians have long recognized that, unlike the laws and customs of Normandy, Anglo-Saxon law can claim no unbroken record of

endurance across the great watershed of 1066. The laws of the Anglo-Saxons, as received in England, were fundamentally rewritten after the Conquest of 1066 in order to accommodate the needs of those now living under Norman rule. The period after 1066, and particular after the 1120s, was one of intense legal reinvention, reimagining and, in many instances, of deliberate falsification. It was from this process that codes of law emerged such as the *Leges Edwardi Confessoris* (The Laws of Edward the Confessor) or the *Instituta Cnuti* (The Institutes of King Cnut), not as accurate reports of laws enforced before 1066 but as a mixture of real record and wishful thinking, encouraged by conquest, as to what such laws might once have been.

8 The *Très ancien coutumier*, I suggest, is just such an act of re-imagining, inspired by the French conquest of Normandy in 1204 and the subsequent need of the Norman people and their professional lawyers to protect themselves against encroachment by the law-making and tax-gathering powers of the Capetian kings now ruling Normandy from Paris. The proof of this comes first from the fact that the same group of manuscripts in which the ancient laws of Normandy are preserved also includes copies of the English Magna Carta, and secondly from the fact many of the individual clauses of Magna Carta are reflected in the *Très ancien coutumier*. Far from this revealing Norman influence over Magna Carta, it in fact suggests that Norman law was influenced by Magna Carta. In this interpretation, the *Très ancien coutumier* is itself revealed as a hybrid of ancient traditions now intermixed with the most recent and most respected of English statutes.

9 The proofs here require longer and more detailed delineation than is possible in this present summary. Here we must content ourselves with the broader outlines. In several Norman legal collections of the 1290s or slightly later, we find versions of Magna Carta, in the form originally confirmed to England by King Henry III in 1225, here deliberately rephrased as if granted to the Normans by King Henry II of England in the 1170s or 1180s. This confection was first published by Nicolas Brussel in 1727 and has long since been identified and puzzled over. What seems not previously to have been noticed is that a wide variety of concepts borrowed from the 1225 Magna Carta were then embedded in the *Très ancien coutumier*, circulating in the same basic collection of manuscripts as this “Norman Magna Carta”.

10 Experts have previously noted certain similarities between the text of the English Magna Carta and the Norman *Très ancien coutumier*. They have nonetheless worked here from the assumption that the *Très ancien coutumier* is in essence a twelfth or early thirteenth-century text reflecting the state of Norman law before the conquest of 1204, “composed” a decade or more before the English Magna Carta was

ever thought of. To this extent, influence has been assumed to have flowed from Normandy into England, and from the *Très ancien coutumier* (or TAC) into the making of Magna Carta (or MC). Sir James Holt, for example, the greatest of the modern authorities, noted the correspondence between TAC chapter 26 on judgment of “par per parem” and Magna Carta (MC 1215 c.39, MC 1225 c.29) on lawful judgment by peers. He also noted similar correspondence between TAC ch.11 and Magna Carta, conferring wardship on the ward’s overlord rather than upon his family (MC 1225 c.3), and between TAC ch.48 on the aids allowed at the knighting of an eldest son or marriage of an eldest daughter and those permitted by Magna Carta 1215 (cc.12 and 15, dropped from MC 1225). In each of these cases, Holt assumed that Norman custom might have influenced the terms that Magna Carta eventually conferred.

11 In reality, the correspondences between the TAC and Magna Carta can be extended far beyond the point reached by Holt. Thus on widows and dower, both TAC (ch.3) and MC (MC 1225 c.7) include special provisions to prevent widows being left to defend or dwell in a late husband’s castle (TAC “turrem vel castellum”, MC “castrum”). Both TAC (ch.3) and MC (1225 c.7) define dower as a third part of a late husband’s property. TAC (ch.8) forbids the division of baronies, fees “of the spear” or “serjeanties” held from the duke. It also includes lengthy provisions (ch.57) intended to protect gifts in alms and to ensure that such gifts neither deprived a lord of due services nor opened the way to abuse by laymen seeking to evade service. Very similar warnings and provisions are to be found in MC (MC 1225 cc.32, 36). TAC contains a provision (ch.11.4) allowing that a ward might not marry without the consent of his or her lord, provided only that such marriage should be made by the lord “acting in good faith” (“fideliter”). This is not far removed from the insistence in MC (1225 c.7) that heirs be married “absque dispargatione”, with TAC and MC both recognizing not only the right for a lord to the marriage of his heirs, but the heir’s expectation of being married with honour.

12 TAC’s prohibition (ch.22) against seizures without “judicial order” (“Nullus ausus sit aliquem de aliqua re devestire nisi ordine iudiciario”) mirrors MC’s (1225 c.29) prohibition of procedures undertaken without “judgment” (“iudicium”). In the same way, TAC’s (ch.23) reservation of the patronage of churches to the lord of the fee is to be found in MC’s (1225 c.33) preservation of patronal rights over abbeys. TAC’s provisions (ch.40) against unsupported testimony from ducal officials is reminiscent of MC’s prohibitions (1225 c.28) against trials held on the unsupported testimony of bailiffs. The pleas of the duke in TAC (ch.53, “placita ensis”, or “placita que pertinent ad ducem”) are not dissimilar from the “pleas of the crown” (“placita coronae”) of MC (1225 cl.17), and in both TAC (ch.55) and MC

(1225 cc.11, 12, 17) special measures are devoted to ensuring that justice is delivered regularly, locally and free from intimidation by ducal or royal officers. TAC (ch.59) protects the pleas and hence the courts of local lords, just as MC (1225 c.24) seeks to protect such pleas and courts. On reliefs, TAC (ch.47) equates those of a “comes” and a “baro”, as does MC (1225 c.2). In this context, TAC refers to the “custom of the land” (ch.47, “mos patriae”) just as elsewhere MC cites the “law of the land” (1225 c.29, “lex terrae”). Although the relief payable in Normandy is subsequently defined (TAC ch.84, in the second part of TAC, generally agreed to be later and distinct) as 100 livres for a barony but 15 livres for a knight’s fee, set against the 100 livres versus 5 livres of MC (1225 c.2, reflecting what is generally recognized as having been the far lower value of the English compared with the Norman knight’s fee), the principle remained the same: there should be uniform reliefs payable at fixed rates either by barons or by knights.

13 TAC (ch.56) insists that there be fixed distinctions between the amercements (“misericordia”) charged against those properly convicted of offences, in which “comites” and “barones” were to be charged at five times the rate expected from “milites”, with “milites” paying fines greatly in excess of those charged against “rustici” or others “de populo”, all of this being done according to the assessment of lawful local knights acting on oath (“milites legaliores patriae . . . sacramento”). In just this same way, MC (1225 c.14) is insistent that men be amerced according to the extent of their offence and that their amercements (“misericordia”) be imposed by the oath of local and lawful men (“per sacramentum proborum et legalium hominum de visneto”). Indeed, the insistence in MC (1225 c.14) that “comites” and “barones” be amerced only by their “peers” (“non amercientur nisi per pares suos”) returns us to our starting point, and to TAC’s (ch.26) insistence that “par per parem iudicari debet”.

14 Now what do we make of all this? Since both the *Très ancien coutumier* and Magna Carta emerged from the “feudal” communities of the Norman or Anglo-Norman realms, it is perhaps hardly surprising that there should be correspondence between the laws that both of those communities sought to devise and to apply. In so far as historians have previously pondered the relationship between Magna Carta and the *Très ancien coutumier* (and here, I should perhaps emphasize that very few of the correspondences which I outline above have ever before been specifically noted), they have assumed that influence flowed from Normandy into England, and hence that the provisions of the *Très ancien coutumier* represent, in embryo, principles later applied to the drafting of the English Magna Carta.

15 My own inclination is to suppose that influence flowed in precisely the opposite direction. The proof is technical and, once again, can be sketched here only in outline. It turns upon a combination of facts. First, we have the undoubted survival of the doctored or rewritten 1225 Magna Carta in the same group of Norman legal manuscripts in which other “Norman” law was preserved from the 1290s onwards. No such knowledge of Norman law can be assumed in England either in 1215 or at later periods, when the text of Magna Carta was renegotiated. Secondly, we have the fact that specific provisions, both over the avoidance of service and over widows, point to influence by Magna Carta over the *Très ancien coutumier*, rather than vice versa. To cite merely the instance of widows, clause 7 of the 1225 Magna Carta, protecting widows against the possibility that their late husband’s chief dwelling might be a castle (“et maneat in capitali mesagio ipsius mariti . . . nisi domus illa sit castrum”), is a provision not to be found in the settlement negotiated at Runnymede in 1215. It was first introduced a year later, in the reissue of Magna Carta in 1216, thereafter surviving into the 1225 and all subsequent reissues. It has generally been assumed to reflect the wartime situation in which, by 1216, England was placed. It has not previously been suggested that Magna Carta 1225 c.7 reflects any sudden intrusion or influence by Norman law not apparently felt in the 1215 Magna Carta or indeed in the Articles of the Barons (c.4) from which the Runnymede charter was drafted. Indeed, we are surely entitled to question why and in what circumstances so remarkable an intrusion of Norman law could suddenly have arisen in 1216, a year after the initial negotiation of the Magna Carta. Nor is the custom here claimed by the *Très ancien coutumier* necessarily the custom of twelfth-century Normandy. Before 1200, on the contrary, castles do indeed appear to have been granted as dower to Norman widows. Despite these anomalies, Magna Carta’s distinction between a widow’s house and a castle is to be found in TAC (ch.3, “si vero aliud masnagium datum fuerit vidue in dotem, illud habebit, preter turrem vel castellum”). In other words, the *Très ancien coutumier* appears here to report something in contradiction of twelfth-century Norman custom yet in full accordance with Magna Carta as transmitted since 1216, not least through the version of Magna Carta that, by the 1290s, had found its way to Normandy.

16 Now where does this leave us? It suggests, first and foremost, that the *Très ancien coutumier* is not the unadulterated record of twelfth-century Norman law that it is sometimes supposed to be. On the contrary, it needs to be viewed as a collection of the later thirteenth century, rewritten to reflect current concerns and influences, including the influence of Magna Carta 1225, itself a text that Norman lawyers did their best to appropriate to Norman needs. Secondly, it suggests

that the ancient “customs” and “liberties” of the Normans, confirmed by Louis X in his *Charte aux normands* of 1315 were themselves the product of rewriting and wishful thinking, devised from 1204 onwards as Norman lawyers and landowners sought to come to terms with the new realities of Capetian rule. These debates grew fiercer still in the 1290s, at precisely the time that Magna Carta was first added to the Norman law collections, and at much the same time that the *Très ancien coutumier* is first reported. The *Charte aux normands*, whose 700th anniversary celebrations fall this year, was itself the product of just such debates, and the accommodations and thought processes that underlay the *Charte* could in turn be traced back to those thirteenth-century legal collections in which we find both the *Très ancien coutumier* and the 1225 Magna Carta rewritten as if for a Norman audience.

17 Finally, and perhaps most paradoxically, there are implications here for the laws of the Channel Islands. The claims of modern Jersey or Guernsey to operate under the customs or the laws of Normandy, themselves confirmed in 1315 and set out in such codifications of the thirteenth century as the *Très ancien coutumier*, themselves derive from the determination to set Jersey and Guernsey apart from the statute-law traditions governed by the Westminster Parliament, with Magna Carta as in many ways the very oldest and the very greatest of English statutory acts. Yet, as we have seen, the *Charte aux normands* of 1315 itself, in effect, confirmed to the Normans a tradition of law and custom that by this time was already heavily influenced by Magna Carta, the greatest and most venerable of statutory provisions.

18 In this, the 800th anniversary year of Magna Carta and the 700th of the *Charte aux normands*, such ironies deserve our special remembrance.

Professor Nicholas Vincent, FBA is Professor of Medieval History at the University of East Anglia and Director of the Arts and Humanities Research Council “Magna Carta Project” <<http://magnacarta.cmp.uea.ac.uk/>>.