

## A DRAFT OF MAGNA CARTA (1215)

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DESPITE the recent focus of research<sup>1</sup> upon the granting of Magna Carta in 1215, there is still no general agreement among scholars regarding the exact sequence of events in the 'meadow called Runnymede between Windsor and Staines' from 10 to 25 June, during which period we know that King John was at Staines and the barons at Windsor. Our evidence for this great crisis is vastly in excess of that for any earlier reign, for though the literary sources, the chronicles, are no better than those for the reigns of Henry II and Richard I, if as good, we have from the public records a considerable collection of dated documents preserved in the chancery enrolments from their commencement in 1199. But efforts (as ever) to reconcile the confused, though live, human evidence of the chroniclers with the exact chronology of the enrolments have so far failed either to fix exactly when the charter was drafted, or when exactly it was sealed. Moreover, while the conflict of views on these points<sup>2</sup> is not very great, wide differences of opinion still exist regarding four subsidiary, yet vital, documents associated with the grant of the charter. All these are undated, though one of them must have borne the king's great seal. The fortuitous and highly improbable discovery of an all but final draft of Magna Carta—it seems to me—makes it possible to fix more closely than has been possible before the exact course of events between 10 and 25 June. Accordingly, this paper is designed first to establish the authenticity and relevance of the new draft 'Magna Carta', and secondly to relate with greater precision the four subsidiary documents to the new evidence supplied by the draft charter. Briefly, these documents are: the Treaty made by King John with Robert Fitz Walter regarding London; a new document recently brought to light by Professor Cheney, setting out

<sup>1</sup> For bibliography see J. C. Holt, *Magna Carta* (C.U.P. 1965): to which should be added, as here relevant, C. R. Cheney, 'The Twenty Five Barons of Magna Carta' in the *Bulletin of the John Rylands Library*, vol. 50, Spring 1968, and V. H. Galbraith, 'Runnymede Revisited', *Proceedings of the American Philosophical Soc.*, vol. 110, No. 5, 1966.

<sup>2</sup> The problem hinges upon the date when the so-called Articles of the Barons, which set out these demands was sealed with the great seal.

the *summa militum* of each of the twenty-five barons appointed by the charter; and two protests made by Langton and the bishops criticizing the baronial attitude towards the actual execution of the charter.

In 1934 Mr. H. G. Richardson and Professor G. O. Sayles in a valuable paper<sup>1</sup> examined the early history of statute law in England. Among much other evidence they drew upon the neglected testimony of the early books of statutes, which survive by the score in our larger libraries. Most of these, however, as the writers point out,<sup>2</sup> come from a date after 1300, when the statute roll was a going concern; but there is in the Huntington Library in California a handsome little book of early statutes<sup>3</sup> which seems to have been compiled before 1290, and to have belonged to the famous Isabella de Fortibus (*ob.* 1293) or her legal agents. It begins (f. 1) with Magna Carta (1215), here called 'the Provisions of Ronnimeade, to wit, the charter of King John'.<sup>4</sup> Somewhat later (f. 17) it gives the text of Magna Carta (1225), described as 'The Great Charter of lord Henry, the King, son of King John regarding the common liberties'.<sup>5</sup> My purpose is to examine the Huntington copy of King John's charter of 1215, which has some striking variants from that of the standard chancery text, and which, it seems to me, cannot be explained away as mere scribal blunders. Improbable as it may appear, they suggest that this manuscript has preserved for us a superseded draft of Magna Carta, which immediately preceded the final version, later engrossed and circulated in many copies under the great seal of England. If so, this discovery should help to fix more precisely the sequence of events at Runnymede between 10 and 25 June 1215.

The Huntington copy is quite a good one, as copies go; yet with enough blunders to prove that the scribe was mechanically copying the text before him. He has, for example, omitted the names of four of the magnates by whose counsel the charter was issued. In clause 23 he writes 'vidua' for 'villa'; in clause 61, 'noluerint' for 'voluerint', while, here and there, he omits or intrudes a 'si' or a 'vel'. Still, in so long a text—it fills nearly seven folios—it is, by medieval standards, a reasonably good

<sup>1</sup> 'The Early Statutes', *Law Quarterly Review*, Apr. and Oct. 1934.

<sup>2</sup> *Op. cit.*, p. 17.

<sup>3</sup> Huntington Library MS. H.M. 25782.

<sup>4</sup> 'Provisiones de Ronnemeade scilicet, carta Johannis Regis.'

<sup>5</sup> 'Magna Carta domini Henrici filii Regis Johannis de libertatibus communibus.'

job.<sup>1</sup> There are, however, at least six variants from the final text which strike me as significant,<sup>2</sup> and, at least, to require explanation. Magna Carta (1215), as is well known, adheres closely to the text of the Articles of the Barons, which are headed 'Ista sunt capitula que barones petunt et dominus rex concedit', and carried—uniquely in the whole of English diplomatic practice—the great seal of King John. So near is the correspondence as to leave no doubt that the Articles were the final product of weeks of hectic negotiations, and mark the moment at which the two parties were sufficiently close to agreement about the terms of the charter as to meet round the table and hammer out the remaining points of difference. Only two or three matters of substance remained to be settled when the largely agreed Articles were converted into the traditional form of a royal charter; and it would appear that several drafts were considered and amended before final agreement was reached 'in the meadow which is called Runnymede between Windsor and Staines' on 15 June 1215. This final draft charter, which may or may not have perished but cannot now be identified,<sup>3</sup> was the warrant to the chancery for the engrossment of the charter, and its wide circulation under the great seal. It is argued below that the significant variants between the Huntington manuscript and the chancery engrossment justify the inference that the Huntington copy preserves the text of the penultimate draft, debated on 15 June, and so amended as to form the chancery warrant for Magna Carta.

Taking the variants in order, and using Professor Holt's book,<sup>4</sup>

<sup>1</sup> There are other omissions: e.g. in clause 41 lines 3–6 from *ad emendum* to (l. 6) 'nos gwerrina' and then after 'et', 'si tales inveniuntur' (J. C. Holt, *Magna Carta*, p. 326). He also had trouble with the last three lines of clause 48, somewhat changing the order of words, and omitting 'per eosdem'; but the confusion here goes right back to the earliest originals. See McKechnie, *Magna Carta*, (1914), p. 166, n. 5.

<sup>2</sup> There may, of course, be other *original* variants which cannot now be spotted with certainty. It is also noteworthy that the Huntington MS. begins 'Johannes dei gratia Rex Anglie etc.' as a draft would, omitting the rest of the royal style, but adding 'prioribus' (as in M.C. 1217) after 'abbatibus' l. 2. Magna Carta (1225), f. 17 in the Huntington MS. has the royal style set out in full. In clause 62, l. 4 the Huntington MS. omits the words 'a Pascha' which may well be another significant variant. One further variant is discussed below p. 352.

<sup>3</sup> Cf. John C. Fox, 'The Originals of the Great Charter of 1215' in the *Eng. Hist. Review*, 1924.

<sup>4</sup> *Magna Carta* by J. C. Holt. Professor Holt prints the 'Articles of the Barons', pp. 304–12, and the charter itself with a translation, pp. 313–37.

the first and perhaps the most important occurs in clause 2, which deals with the vital question of reliefs.<sup>1</sup> This was one of the points left to be settled by the Articles, which state briefly: 'After the death of their predecessors, heirs of full age shall have their inheritance by the ancient relief (*antiquum relevium*) to be expressed in the charter (*exprimendum in carta*).'<sup>2</sup> Turning to Magna Carta we read:

The heir or heirs of full age shall have his inheritance by the ancient relief, *scilicet*, the heir or heirs of an earl for a whole barony by a hundred pounds: the heir or heirs of a baron for a whole barony by a hundred pounds: the heir or heirs of a knight for a whole knight's fee by a hundred shillings at most. . . .

On this clause Professor Holt acutely observes<sup>2</sup> 'the repetitive phrasing of cap. 2 suggests that they had originally intended to distinguish between the relief of an earl and of a baron'. It does, indeed, and the Huntington manuscript reads not £100 but 100 marks as the baron's relief. There were then two views which had still to be harmonized at Runnymede, the insurgents asserting that the baronial relief should only be two-thirds of an earl's. The Crown stuck out for £100 and, after much debate, by a last-minute alteration, won its point, so creating the clumsy repetitive wording of the final charter. Here surely we have the explanation of a difficulty which has long baffled commentators<sup>3</sup> on Magna Carta. The baron's relief was fixed at £100 in 1215, and remained at that figure in all reissues prior to 1297, when it was suddenly reduced to the 100 marks first claimed by the barons at Runnymede.

However, [writes Professor Holt] a tradition persisted throughout the thirteenth century that the baronial relief had been established at 100 m. in the original charter. It was incorporated in an addition to Bracton, and it was also given in versions of the 1217 charter which survived in manuscripts at St. Albans, Guisborough and in a collection of laws and annals compiled in London in the late thirteenth century which eventually formed part of the Black Book of Christ Church, Dublin.

To this we may now add the Huntington manuscript which repeats the 100 m. in its transcript of Magna Carta (1225). It can be taken as certain that Roger Wendover at St. Albans

<sup>1</sup> In Henry I's charter (1100), as in Magna Carta, the question of 'reliefs' took pride of place (clause 2). It was there laid down that earls, barons, and other tenants in chief were to take up their lands *justa et legitima relevatione*.

<sup>2</sup> Holt, *op. cit.*, p. 211.

<sup>3</sup> See I. J. Sanders, *Feudal Military Service in England* (O.U.P. 1956), Appendix I, pp. 98-107.

writing within fifteen years or so of 1215, was using a discarded draft of Magna Carta, probably an earlier draft than that represented in the Huntington manuscript since his chronicle includes an extra provision in the security clause (no. 62) of Magna Carta (1215) regarding the castellans of Northampton, Kenilworth, Nottingham, and Scarborough<sup>1</sup> which had already disappeared from the Huntington version, and is, in fact, otherwise unknown to history.

The second significant variant in the Huntington manuscript occurs in clause 55 which reads:

All fines<sup>2</sup> which have been made with us for dowries (*dotibus*), marriages, and amercements and other things unjustly and against the law of the land shall be completely remitted. . .

On turning to the Articles we find that the wording of this clause is identical with that of our manuscript; but was later redrafted to read in Magna Carta:

All fines which unjustly and against the law of the land have been made with us, and all amercements made unjustly and against the law of the land shall be completely remitted.

Thus Magna Carta deliberately omits the reference to dowries made in the two other texts, and so presumably in an earlier discarded draft of the charter. No doubt there was a reason for this redrafting which the lawyers may be able to account for. Some significance, too, must attach to the fact that this clause, which is no. 55 in Magna Carta, is placed much earlier in the Huntington manuscript where, more logically, it follows no. 45. For some reason it was demoted in the final draft.

The third significant variant occurs in clause 61, the most elaborate, and for the king, the most humbling in the whole charter, since it provides for the appointment of twenty-five barons to supervise its execution, and, if necessary, to make war<sup>3</sup> upon him. The charter reads:

<sup>1</sup> *Flores Historiarum*, ed. H. O. Coxe (London, 1841), vol. iii, p. 317.

<sup>2</sup> Fol. 4<sup>v</sup>. 'Omnes fines qui facti sunt nobiscum pro dotibus maritagiis hereditatibus et amerciamentis et aliis injuste et contra legem terre omnino condonentur.' The legal difficulties surrounding dower are discussed by Mr. Derek Hall in his edition of Glanville (Nelson Medieval Texts), pp. xxiii, xxiv. Clauses 7 and 11 of Magna Carta deal with dower.

<sup>3</sup> Plucknett, *Legislation of Edward I* (O.U.P. 1949), p. 75, denies that the charter 'legalized rebellion'. The law supposes that the barons would merely employ 'distress': and compare Mr. Bumble's comment thereon. The appointment of the twenty-five, if it did not legalize, certainly licensed civil war.

And<sup>1</sup> we publicly and freely permit (*damus licenciam*) anyone who wishes to take the oath [to the twenty-five]. . .

The Huntington manuscript substitutes for the present tense, *damus*, the future, *dabimus*. And that this is no mere copyist's error is shown by the fourth variant in clause 62, which in Magna Carta reads:

And<sup>2</sup> further we have caused to be made for them [i.e. the twenty-five barons] letters testimonial patent of lord Stephen Langton archbishop of Canterbury, lord Henry, archbishop of Dublin, and the aforesaid bishops, and of Master Pandulf regarding the security and the aforesaid concessions. . . .

In this instance the Huntington manuscript again substitutes the future tense for the perfect, that is to say *faciemus habere* for the *fecimus fieri litteras testimoniales* of the final charter. Further, it omits the name of Henry, archbishop of Dublin, which again is shown to be no mere scribal error, since the name is also omitted in the Articles of the Barons.

Now, this variant is of peculiar significance because it deals with a matter on which the text of Magna Carta radically departs from the general terms agreed in the Articles.

The last sentences of the Articles [writes Professor Holt]<sup>3</sup> laid down that John was to provide charters of security from the archbishop, the bishops and Master Pandulf guaranteeing that he would not attempt to seek anything *from the Pope* which might revoke or detract from the agreement, and that any such papal response should be held null and void. In short the leading churchmen were required to deny the right of appeal to the Curia in a matter which had already been referred to it, and which came within the spiritual sphere since it involved the performance of the most solemn oaths. It was all the more difficult to deny such an appeal since King John was now the Pope's vassal. Hence they rejected this demand. All they would provide in the charter were letters testimonial which simply attested the terms of the agreement. On this point they were not at one with the rebel barons.

We owe this interpretation of the letters testimonial to Professor Cheney and Professor Holt. They are undoubtedly correct, and we shall not be far wrong in assuming that on this point there was more keen debate than on all the others. It is, I think, beyond question that the text of the Huntington manuscript records the original draft of the charter, before the king and his party secured this last-minute, face-saving, little victory.

<sup>1</sup> Holt, *Magna Carta*, p. 334.

<sup>2</sup> *Ibid.*, p. 336.

<sup>3</sup> *Ibid.*, p. 194.

For it still refers, as we have seen, to the letters testimonial as something to be made in the future: it omits the name of the archbishop of Dublin, which is also absent from the Articles: and, finally, as if for good measure—and this is our fifth significant variant—precisely follows the text of the Articles by retaining the pope's name, thus:

Et<sup>1</sup> nos nihil impetrabimus per nos nec per alium *a domino Papa* per quod aliqua istarum concessionum vel libertatum revocetur.

In Magna Carta the words *a domino Papa* were, most significantly, omitted to read:

Et nos nihil impetrabimus *ab aliquo*, per nos nec per alium per quod aliqua istarum concessionum et libertatum revocetur vel minuat.

A slight difference of wording but one which—at that moment—made all the difference. Even at the instant of surrender, the long arm of the papacy, exercised through Master Pandulf, saved the king from the final humiliation of forswearing his feudal suzerain, as well as the spiritual father of all his subjects. Sweet are the uses of diplomacy, and such are its triumphs: and it looks very much as though the saving of the king's pocket<sup>2</sup> by the £100 relief for a baron, and of his pride, by omitting the pope's name from the security clause were two final baronial concessions by which at long last they extorted Magna Carta from him.

The sixth significant variant in the Huntington manuscript occurs in the dating clause which in Magna Carta reads:

Given by our own hand in the meadow which is called Runnymede between Windsor and Staines on the fifteenth day of June in the seventeenth year of our reign.

while the Huntington manuscript says:

Given by our own hand at Windsor on the fifteenth day of June in the seventeenth year of our reign.

Now, recalling that the Huntington manuscript scribe describes his document as the 'Provisions of Runnymede, to wit, the charter of King John', and on f. 7<sup>v</sup> writes *Expliciunt Provisiones de Ronnemedede* his substitution of 'at Windsor' for 'in the meadow etc.' is clearly deliberate and presumably meaningful. At least

<sup>1</sup> Fol. 6<sup>v</sup>.

<sup>2</sup> This too may have been a matter of principle rather than just of cash. Professor Holt suggests that it was simply in recognition of the fact that there was no *tenurial* difference between earl and baron.

he knew what he was about, and there was no confusion in his mind. The draft from which his document descended we must then assume was prepared for discussion on 15 June, and presumably fixes the position arrived at between the parties on that morning. Amended, as set out above, it must have formed the warrant to the royal chancery for Magna Carta itself. We may therefore call it the penultimate draft of the charter, altered after discussion between the two sides 'in the meadow called Runnymede between Windsor and Staines on the fifteenth of June'. The chancery enrolments show that the king was at Windsor or Runnymede from 10 to 25 June, and chancery documents are dated at both places during this period. Indeed, it is probable that the chancery itself remained at Windsor the whole time; for the date on a chancery document, of course, is that of the warrant, whether written or oral, and therefore not necessarily or even usually that of the engrossment or the application of the seal. That any sealed engrossment of so elaborate a document as Magna Carta was available on the famous 15 June is highly improbable: indeed, virtually impossible. Nor must we forget that though the barons had at long length secured their coveted charter, they were still technically in rebellion; and we know for certain that firm peace (*firma pax*) was not made until four days later—the 19th—when the barons each renewed his homage to the king. We do not even know whether there were any engrossed and sealed copies of the charter on that day.

Before we consider the value of the Huntington draft charter for the total chronology of the fifteen days from 10 to 25 June, it remains to examine a seventh variant, which may or may not be significant. In clause 57 (Holt, p. 332) the Huntington manuscript omits the first seven lines, thus beginning with the words *cum autem redierimus* at the end of line 7. The omitted passage is identical with that in clause 52 (Holt, p. 330), beginning, line 5, *de omnibus autem illis de quibus aliquis [Walensium]*, and ending (line 12) *crucis nostre*, apart from the insertion of *Wallensium* in clause 57. At first sight, it looks as though the scribe thought the second passage (clause 57) was a mere repetition of that in clause 52. But it could be that an earlier draft of clause 57 had lacked these seven lines, which were later added *pro majori cautela*. In favour of this view is the fact, already mentioned, that in the Huntington manuscript what is clause 56 in Holt follows clause 54 (in Holt), while clause 55 in Holt, in the Huntington manuscript follows clause 48. The exact significance of this seventh variant, if any, is a matter for future expert appraisal. There is,

however, certainly some significance in the difference in order of clauses in the Huntington draft and the final charter, however one explains it; and it appears to be closely connected with clauses 25 and 37 of the Articles (Holt, pp. 309–10), which provide for further action of the twenty-five barons (not yet elected) and the bishops.

What light, then, does the Huntington draft throw upon the tangled chronology of the fifteen days from 10 to 25 June, during which the king is known to have been continuously at Windsor and Runnymede? The answer is not in doubt. It gives firm, and as I think, decisive support to Professor Holt's view<sup>1</sup> that the the Articles of the Barons were sealed on or about 10 June, and so enabled the two sides to get down to the problem of drafting the final charter. The Articles were, in fact, the nearest thing to that 'original' Magna Carta so long and vainly sought for by some earlier historians;<sup>2</sup> for they preserve in nearly final drafting the majority of those clauses, which survived a civil war and a minority, to reappear in the charter of 1225, the Magna Carta of later history. But the Articles were not the warrant for the 1215 charter, and their true function—that of bringing the two sides round a table—is borne out both by the fact that they were undated and that they were finally preserved, not among the public records, but by Stephen Langton, the mediator, in the archiepiscopal archives. If, then, this date is correct, it follows that the charter was being drafted little, if any, later than 10 June; for we have evidence of at least two successive drafts, and there may well have been others.

It would, however, be a great mistake to suppose that once the charter was agreed and drafted, all was over bar the shouting. Far from it: during the following three days, 16 to 18 June, that preceded the firm peace (*firma pax*) of 19 June, great, though lessening, tensions remained between the two sides. Somehow, they had still to pass from a state of war to peace. The charter, though drafted, was not yet operative. It had still to be engrossed

<sup>1</sup> *Magna Carta*, p. 305. There were long negotiations regarding the security clause, as set out in the Articles. Substantive changes were made and two or more drafts produced before final agreement was reached. I am deeply grateful both to Professor Holt and to Professor Cheney for much help, as well as kindly criticism of this paper.

<sup>2</sup> e.g. A. J. Collins, 'The Documents of the Great Charter', *Proceedings of the British Academy*, vol. 34, p. 237. See V. H. Galbraith, 'Runnymede Revisited', *Proceedings of the American Philosophical Society*, vol. 10, no. 5, 1966, p. 312.

in multiple exemplars, and probably remained unsealed<sup>1</sup> until the baronial *diffidatio* had been erased by the renewal of their homage on the 19th. Urgent problems remained. The twenty-five barons had still—we may suppose—to be elected:<sup>2</sup> and the barons' occupation of London since 17 May to be formally acknowledged and approved by the king. For London was their *receptaculum* or stronghold and had to be held at all costs. The weeks to come which could only be heartbreaking for the king, would also be a tricky period for the barons, who, when and if homage was renewed, must still hold together until the king had carried out his Magna Carta promises. A curious little 'slip-up' by a chancery clerk suggests that the crucial day was 18 June. On that day, it would appear that agreement was reached for the renewal by the barons of their individual homages on the following day, the 19th. This act would end the *tempus guerraee*, and a number of urgent royal writs were prepared on 18 June for dispatch after the ceremony. One of these, which states that firm peace was made with the barons, and their homages renewed on 19 June, was understandably but erroneously dated 18 June<sup>3</sup>—which was, in effect, to say firm peace was made tomorrow! Other writs bearing the correct date (19 June) follow it on the Patent Roll<sup>4</sup> to remind us that 18 June, Thursday, was a day of anxious preparation. To this day, the 18th, I have no hesitation in attributing perhaps the most baffling of all Magna Carta documents. It is a two-piece indenture, one-half of which actually survives among the public records, recording a *conventio* or Treaty<sup>5</sup> between King John and Robert Fitz Walter, 'Marshal of the Army of God and of Holy Church in England', together with others, some of whom are named. The barons shall hold London, it says, until 15 August; oaths, as set out in the charter,

<sup>1</sup> Cf. Ralph of Coggeshall in *Chronicon Anglicanum* (Rolls Series), p. 172.

<sup>2</sup> There is no contemporary official record of the election of the twenty-five barons: nor even a list of their names, which are preserved only in later texts.

<sup>3</sup> *Rotuli Litterarum Patentium* (1835), p. 143, col. 2. The letter was addressed to Stephen Harengod.

<sup>4</sup> Holt, *Magna Carta*, p. 163. Other letters patent of 19 June order the sheriffs to see that all take the oaths to the twenty-five barons as provided in the charter, and to elect juries of twelve men regarding bad forest customs (*ibid.*, p. 345). As late as 23 July there are letters patent to the barons of Yorkshire which refer to the Treaty with Robert Fitz Walter and to the Harengod letter (*ibid.*, p. 347). Professor Cheney follows Mr. Richardson in dating the Treaty *c.* 17–23 July. See C. R. Cheney, 'The Twenty Five Barons of Magna Carta', in the *Bulletin of the John Rylands Library*, vol. 50, Spring 1968.

<sup>5</sup> Holt, *op. cit.*, p. 342.

are to be taken throughout England to obey the twenty-five barons. Royal writs regarding the appointment of twelve knights to deal with evil forest customs are also mentioned. If the king has not done his part by 15 August then the barons shall continue to hold the city of London, and the archbishop to hold the Tower until all has been performed. Meanwhile both sides are to recover the castles and lands they held at the beginning of the war between king and barons. In this document the two sides get down to the brass tacks of hard bargaining. The king legalizes—at last—the baronial occupation of London since 17 May, yet puts a term to it. He also affords practical assent to the vital functions of the twenty-five, and in somewhat guarded terms sketches out the way both sides, it is hoped, are to behave—after the termination of the war on the following day by the renewal of homage. Most significantly it was undated, since it was at once the final humiliation of the king, and, from his point of view, the last act of the revolutionary Army of God. Officially, the rebels of 18 June would become once again the king's liegemen on the 19th, but on their own terms. Nor, of course, could the barons afford to disband the Army, and Wendover<sup>1</sup> preserves the text of a letter from Robert Fitz Walter, Marshal of the Army of God and Holy Church, to William de Albin of Belvoir, less than three weeks later extending a tournament that had been held at Stamford on 6 July to Staines a week later (13 July). The motive for doing so was to foil a suspected attack on London. As late as September, the letters of the papal commissioners excommunicating the rebel barons specifically refer to Robert Fitz Walter who 'calls himself Marshal of the Army of God'.<sup>2</sup>

This analysis of events between 10 and 25 June reveals a most extraordinary state of affairs in England from 19 June onwards. The king, the Church, and even the papacy, through the legate, were momentarily at the mercy of the exasperated but triumphant baronage, who had first extorted the charter, and then enforced a *quasi pax*, a bogus peace. From this moment, the royalists must have hoped for a 'come-back' in the future. But for the moment they were powerless, and the chancery enrolments bear witness to the energy and speed with which the king ordered the restitution of lands and castles, etc., throughout England. Meanwhile the baronage, though they had formally returned to their obedience, not only retained their revolutionary Army of God

<sup>1</sup> *Chronica Majora* (Rolls Series), vol. ii, pp. 614–15.

<sup>2</sup> F. M. Powicke, *Eng. Hist. Review*, 1929, p. 92.

and Holy Church, and their control of London, but had even gained added strength from the new and all-powerful committee of twenty-five barons provided for in the charter. We have, naturally, no official information as to when exactly they were chosen, but it can hardly have been later than 19 June, when the chancery was sending out writs to make possible the swearing of obedience to them throughout the country. Their names, as we have seen, were known to Wendover and Matthew Paris, but since this was not the king's business, the chancery is silent on the matter. We seem to lack the source of Wendover and Paris for these names. Or rather, we did until quite recently Professor Cheney printed an astonishing document which has hitherto escaped the notice of all inquirers, with the single, characteristic exception of Bishop Stubbs.<sup>1</sup> It is a list or rather a muster roll of the executors of Magna Carta, that is to say, of the twenty-five barons, and beside each name is set the *summa militum* or number of knights bound to serve, if the king does not fulfil his promises and it becomes necessary to revolt against him. The mayor of London—one of the twenty-five—is absent from the list, but a note is added that the mayor shall hand over the city of London to the barons if war breaks out. In that event, the whole force, of nearly 1,100 knights and the Community of all England, must rise against the king. This Lambeth memorandum is undated, but can be little if any later than 19 June,<sup>2</sup> if, as seems likely, it was intended to bridge the transition from the Army of God—then officially defunct—to the new regime which had formally in the charter transferred authority to the twenty-five barons. It is, in short, the hitherto missing document, and in all probability a late copy of the original source from which Wendover and Matthew Paris got the names of the twenty-five. It completes the picture of the fantastic set-up in

<sup>1</sup> William of Malmesbury, *Gesta Regum* (Rolls Series), vol. 1, pp. lxxxviii sq. The memorandum comes from a Lambeth MS. of the late thirteenth century. See Cheney, *Bulletin of the John Rylands Library*, Spring 1968.

<sup>2</sup> Professor Cheney prefers a date 'between mid June and mid July 1215'. He is worried—unnecessarily in my view—by the fact that the Treaty with Robert Fitz Walter says the barons shall hold London, while in the Lambeth memorandum the mayor is still in control. The explanation is that, in the king's eyes, the barons had seized London from its lawful governor, the mayor, while the barons were careful to respect the mayor's position, regarding him as an ally. The document was, no doubt, widely circulated among the barons, and would I think have borne a date if it had first appeared in the third week of July. Formally speaking, king and barons are still at peace with one another.

England from 19 June onwards—of a baronage still armed to the teeth, while their nominal sovereign, the king, is constrained by *force majeure* to enforce their will. It sets out the new organization of the barons for the period from 19 June to 15 August.

Misled by the frequent references in the public records to the 'firm peace' (*firma pax*) of 19 June between king and barons, historians postulate a brief period of euphoria or optimism following the renewal of homage, during which both parties tried to make it work. But this is an illusion, born of failure to appreciate the simple, logical policy of the Holy See from the moment in 1213 when King John accepted Cardinal Langton as archbishop, guaranteed freedom to the Church of England, and subjected himself and his kingdom to papal suzerainty. In this thoroughgoing reversal of policy, freedom for the Church meant only freedom to obey the pope's commands, while the vassalage involved an annual payment of 1,000 marks in perpetuity. Henceforth the papacy was at pains to reconcile king and barons in their domestic quarrel, and in the early months of 1215 set forth a *triplex forma pacis* designed to this end. We know now that it failed: was quickly followed by a formal *diffidatio* by the barons, who in a brief civil war extorted Magna Carta by sheer, brute force. So defenceless was the royalist party that both the papal legate Pandulf and Cardinal Langton had—willy-nilly—to add their names to Magna Carta. Meanwhile, on the very day of John's treaty with the insurgent barons, the pope was dispatching a letter<sup>1</sup> to the whole body of the English baronage recalling them to their obedience and on 7 July in another bull (*Mirari cogimur*)<sup>2</sup> denounced them as men 'trying to depose a king, who it was particularly hoped would succour the Holy Land'; and in addition criticized the behaviour of the English bishops. To the pope, then, busy with vast schemes involving the whole of Christendom, the English trouble was no more than a fleabite or momentary irritant, and in the then climate of educated opinion and catholic belief, he was in the right and sooner or later was bound to triumph, and Magna Carta to disappear. But for the moment the king and the Church had to go through the motions of compliance and co-operation, though, even so, John had an eye on the future in licensing the baronial grip on London *before* the renewal of homage. Two other forward-looking documents, undated but enrolled by the chancery, seem to

<sup>1</sup> C. R. and Mary G. Cheney, *Letters of Pope Innocent III* (Clarendon Press, 1967), Appendix no. 1013.

<sup>2</sup> *Ibid.*, p. 169, n. 1016: printed *Eng. Hist. Review*, 1929, pp. 87 sqq.

belong to the very early days after 19 June. Both are protests made by Langton and the bishops. One<sup>1</sup> of them, to which Pandulf prudently added his name, sets out the refusal of the barons to record on paper their oaths and homage of 19 June; while the other<sup>2</sup> refers to a difference of opinion between the parties regarding the forest clauses of Magna Carta. These, with the Treaty were shots in the royal locker ready for use when the moment came: and, as we have seen, even at the moment of humiliation, John had secured the omission of any actual mention of the pope in his undertaking not to attempt to have the charter annulled, for that was exactly what he and everyone else knew was bound to happen.

Such are the inferences to be drawn from the Huntington manuscript, and, it should be recalled, that the lasting influence of discarded drafts of Magna Carta was first pointed out by Professor Rothwell in his edition of Walter of Guisborough's chronicle.<sup>3</sup> More recently, Professor Holt has examined in detail their significance at St. Albans in the works of Roger Wendover and Matthew Paris.<sup>4</sup> The Huntington manuscript carries this line of thought further and accounts reasonably and credibly for the errors and confusions of both monastic chroniclers and medieval lawyers so soon after the event. The charter was a huge document of which many exemplars, all sealed, were urgently required for distribution over the whole country, and its text was certainly not available until after 19 June. The clerical servants of both barons and interested religious houses

<sup>1</sup> Holt, *Magna Carta*, p. 348, no. 13.

<sup>2</sup> *Ibid.*, p. 348, no. 14. Professor Cheney, following Mr. Richardson would date the document as late as the second half of July, since it is enrolled on the dorse of a membrane containing documents of mid July. After a careful inspection of the roll itself, I do not find this argument convincing, for with it, in the same hand, and that very different from the *recto*, is enrolled the Treaty of 18 June, which was preserved in the Treasury—the proper place for it—and is today exhibited in the P.R.O. Museum. It is a reasonable inference that both were enrolled, for the convenience of the chancery clerks, when things had begun to go wrong in July. It is, however, worth noting that it mentions a period of forty days, after the taking of certain inquisitions, for the necessary action in pursuance to be taken, a date in conformity with 15 August mentioned in the Treaty. See C. R. Cheney, 'The Twenty Five Barons of Magna Carta', *Bulletin of the John Rylands Library*, vol. 50, Spring 1968.

<sup>3</sup> *R. Hist. Soc.* 1957, p. 168, n. 3.

<sup>4</sup> 'The St. Albans Chroniclers and Magna Carta', *Trans. R. Hist. Soc.*, 1964, pp. 67–88; also Professor Cheney in 'The Eve of Magna Carta', *Bulletin of the John Rylands Library*, vol. 38, no. 2, Mar. 1956, p. 333.

were hard put to it to follow the complicated negotiations of these fifteen days, the real truth of which was known only to the participants. The surviving evidence proves that they were ready to beg, borrow, or steal the various discarded drafts, thus—like the modern newspaper correspondent—getting it all a little wrong. What else could they do? The charter itself, too, is diplomatically speaking something of a freak, since it sought to perform the double function of a treaty<sup>1</sup> between warring factions and a free grant in perpetuity of liberties made to the king's subjects. And even so it misrepresented the situation, which was basically an abnegation of sovereignty. Accordingly, it opens—most irregularly—with a long list of great names by whose counsel the king has granted 'these liberties', and closes by citing them collectively together with 'many others' as witnesses. Clause 61, too, though it tries to couch the appointment of the baronial committee in the legal terms of procedure on 'distress', really set up a virtually sovereign body, and, but for a last minute alteration, would have forced the king to forswear the pope, his legal suzerain. Finally, the charter was 'given by the hand' of the king himself instead of the chancellor or other chancery official—a very rare, though not unprecedented formula. All this was not lost on Roger Wendover who was, quite obviously, very puzzled by it; and it is no wonder that the Huntington compiler, familiar with the events of 1258–65, described his document as 'the provisions of Runnymede'.

The most significant alteration made in the Huntington draft of Magna Carta on 15 June 1215, was undoubtedly the eleventh-hour omission of any reference to the pope in the king's undertaking not to attempt to evade his promised reforms. English historians, ever since the seventeenth century, have tended to observe John's submission of himself and his kingdom to the pope in 1213, and its consequences, through post-medieval spectacles. Even today the standard narratives underrate at

<sup>1</sup> In the Articles of the Barons, of which the original survives, a space is left between the grant of liberties and the security clause, appointing the barons (no. 61), which suggests (as Professor Cheney has pointed out) that it was originally intended to issue two documents—a true charter of liberties and a treaty. This suggestion is made more probable by the dating of the Treaty between the king and Robert Fitz Walter on 18 June. The first intention may well have been to include the appointment of the twenty-five in that Treaty. But if so, it was found impossible to reconcile such a procedure with the renewal of homage on 19 June, for this act automatically terminated (though only officially) the revolutionary organization of the 'Army of God and of Holy Church in England'.

every point the immense, controlling influence of the Holy See throughout the years that immediately followed that master-stroke of policy. From that moment the final outcome of events was inexorably directed, step by step, from Rome. The final charter of 1225—the Magna Carta of later history—was basically the statesmanlike compromise adopted by the papal legate and William the Marshal in the reissues of 1216 and 1217, which in turn owed much to the sincere and earnest attempt of Innocent III to reconcile the conflicting interests of the two parties in the early months of 1215. The young king Henry III, full of gratitude to the Holy See which alone had preserved his throne for him, was so trusted by the papacy that the legate was withdrawn in 1221. Four years later Magna Carta was reissued, and this time *spontanea et bona voluntate nostri* in return for a money grant from the barons. The king again undertook, in the same words as in 1215, not to seek to go back on his promises. Nor did he; for he was now merely following papal precedent, and the charter survived all the secular troubles of his very troubled reign. Without papal support it is unlikely that he would have kept his throne, and Magna Carta might have foundered in civil war and the triumph of Edward I. He, unlike his father, so disapproved of it that it was confirmed, for the first time in his reign, as late as 1297 and then only under duress.

In the early thirteenth century, 'the Papacy,' wrote A. L. Smith<sup>1</sup> long ago, 'taking it all in all, was the greatest potentiality for good that existed at the time, or that perhaps has ever existed'; and to the papacy we owe the long-term survival of all that it was then possible to salvage of Magna Carta (1215).

<sup>1</sup> *Church and State in the Middle Ages* (Oxford, 1913), p. 6.