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The Liberties of the Church and the City of London in Magna Carta

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This article identifies the liberties of the Church and the City of London which were intended to be protected by Magna Carta from 1215. The liberties intended were a recognition of a form of autonomy for the Church and the City and have no connection with the individual freedoms that are identified for protection by modern human rights instruments. The clauses in Magna Carta conferring that autonomy are among the very few that have not been repealed, but they have not been asserted for hundreds of years. While the idea of church autonomy has resonance with the ideas of subsidiarity and sphere-sovereignty developed in Catholic and Calvinist social teaching from the late nineteenth century, recent American jurisprudence suggests that religious autonomy may be the best way to defend religious liberty in the future. This article suggests that, just as English kings were persuaded to provide towns, colonial endeavours and eventually corporate free enterprise with limited autonomy for a fee, so charters conferring limited autonomy on religious communities may provide a philosophical and practical basis from which to defend religious liberty in the future, even if the assertion of individual religious liberty becomes politically incorrect.

Keywords: Magna Carta, liberty, autonomy, religious freedom

INTRODUCTION

The word 'liberties' appears ten times in the 1215 version of Magna Carta. Once it is specific to the Church and twice to the City of London. One of the references is specific to Welshmen, another to Alexander, the erstwhile King of Scotland, but all the other references are generic references to the liberties granted or acknowledged under the Charter as a whole. The references to the liberties of the Church and of the City of London have not been the subject of a great deal of commentary despite the 800th anniversary. My purpose in this article is to try to part-fill that lacuna in the literature. I therefore set out the relevant text of the 1215 version of the Charter in full.[1]

1 Note that, while the wording of the 1225 version varies slightly, the meaning so far as the Church and City of London are concerned is unchanged and that is true for the 1297 version as well. Though the versions of the Charter issued after 1215 removed reference to a baronial committee to oversee the king's compliance with the Charter, no dilution of the rights of the Church or the City of London are detectable, confirming that these liberties were well known and accepted.

Thereafter I identify the particular privileges of the Church and the City of London that seem to have been intended by those phrases and I explain what they meant in practice. In particular, I explain that the idea of religious freedom addressed in Magna Carta is quite different from the idea of individual religious freedom which is expressed in modern bills and charters of rights. The idea of religious freedom assumed in Magna Carta is more like the idea of religious autonomy said by some contemporary United States (US) commentators to have been confirmed by the establishment clause in the First Amendment to the US Constitution. I also explain the relative independence of the City of London, how it came about, why it was respected in practice and why the city grew. I then suggest that the idea of religious and urban autonomy in Magna Carta may be a progenitor of the twentieth-century idea of subsidiarity or sphere-sovereignty and I discuss whether those ideas together are durable enough to assist in defending modern religious institutions, and I note that the clauses that confirmed the ancient liberties of the Church and of the City of London as independent institutions have not been repealed.[2] That review dismisses the idea that the delegated but independent autonomy inherent in British charters enabled the existence of 'a state within a state'. But it does raise the question as to whether contemporary Western governments could be convinced, for a fee or otherwise, to charter semi-independent religious or political communities as some did between the tenth and nineteenth centuries.

I conclude that, even though the idea of religious freedom expressed in our most ancient British constitutional instruments has no relationship with the individual freedom celebrated in modern human rights instruments, the much older idea of religious autonomy stands ready to enable a new evolution of religious liberty in the twenty-first century. In particular, I suggest that, while individual religious rights may subside in the face of state insistence on homogeneity and majority rule, associational religious liberty seems ready to reassert itself as groups of religious believers assemble to protect themselves against contemporary attacks on their consciences.

THE TEXT

The 1215 version of Magna Carta[3] includes the following clauses:

2 Note that the four unrepealed clauses of Magna Carta to which Lord Irvine referred (see nn 3–4 below) are to the 1225/1297 version of the Charter, and the Church and London liberties are there set out in clauses 1 and 9 respectively.

3 In a December 2002 address delivered at Parliament in Canberra, Lord Irvine of Lairg, the former Lord Chancellor of Great Britain, observed that 'Magna Carta was re-issued four times, with various amendments, and is now thought to have been confirmed by Parliament on almost fifty further occasions', citing F Thompson, *Magna Carta: its role in the making of the English constitution 1300–1629*, (New York, 1972), ch 1.

1. FIRST, THAT WE HAVE GRANTED TO GOD, and by this present charter have confirmed for us and our heirs in perpetuity, that the English Church shall be free, and shall have its rights undiminished, and its liberties unimpaired, and ...
13. The City of London shall enjoy all its ancient liberties and free customs, both by land and by water. We also will and grant that all other cities, boroughs, towns, and ports shall enjoy all their liberties and free customs.

These are not the most well known clauses in the Charter.[4]

Liberties of the Church

The meaning of the first clause is clarified a little by the text that follows. It continues:

> That we wish this so to be observed, appears from the fact that of our own free will, before the outbreak of the present dispute between us and our barons, we granted and confirmed by charter the freedom of the Church's elections – a right reckoned to be of the greatest necessity and importance to it – and caused this to be confirmed by Pope Innocent III. This freedom we shall observe ourselves, and desire to be observed in good faith by our heirs in perpetuity.[5]

'The freedom of Church elections' is an oblique reference to a residue of the long-running dispute between the Church in Europe and various kings and emperors on that continent known as the Investiture Contest. The contest was about who had the ultimate authority to select those who would hold ecclesiastical offices in a kingdom. William the Conqueror had been in dispute with successive popes for twenty years before he sailed for England. He settled his personal dispute with Pope Alexander II with the help of Lanfranc, an Italian cleric ministering in Normandy,[6] whom he later appointed as his first

4 The first clause cited here, which concerned the liberties of the Church, is one of four (1, 9, 29 and 37) which remain on the English statute books (Irvine (see n 2), citing *Halsbury's Statutes*, vol X, part 1, (London, 2001), pp 14–17). Note again, that Irvine's references are to the clause numbers in the 1225 version.

5 King John renounced Magna Carta as soon as the immediate threat of baronial force had passed and, despite his ongoing argument with Pope Innocent III, the latter also renounced it as 'an affront to the Church's authority over the King and the papal territories of England and Ireland and released John from his oath to obey it': 'This day in history: August 24, 1215', *History Australia & New Zealand* <http://www.historychannel.com.au/classroom/day-in-history/771/pope-declares-magna-carta-invalid>, accessed 19 February 2016. According to this source, the Charter itself was created on 19 June 1215 and the Pope renounced it on 24 August 1215. Other sources say that the king's seal was affixed on 15 June 1215.

6 The Catholic Encyclopedia records that Pope Alexander II had been Lanfranc's former student at Bec in Normandy in France: 'Pope Alexander II', *Catholic Encyclopedia* <http://www.newadvent.org/cathen/01286a.htm>, accessed 19 February 2016. His chancellor, Hildebrand, who became Pope Gregory VII, succeeded him in 1073.

Archbishop of Canterbury.[7] The settlement of William's dispute with Pope Alexander II saw him invested with 'a banner to crusade under' when he invaded England, but William was never required to formally submit to Pope Gregory VII's later demand that William 'swear fealty to him' even though 'William had sought a pope's permission to invade England'.[8]

The independence of the English Church asserted by William with Lanfranc's support did not endure. Pope Gregory VII deposed the European Emperor Henry IV in 1080 and with his successors gradually also asserted the 'independence of the clergy from secular control' in England.[9] However, the Church independence in England referred to in Magna Carta was not really complete until the reign of William's great-grandson Henry II. The dispute came to a head when four of Henry's knights went to Canterbury in 1170 to 'rid him of that turbulent priest'. After Archbishop Thomas Becket's death, Henry was only able to avert the excommunication of England by the personal public penance of 'walking barefoot to Canterbury'[10] and by his submission in 1172 'to a papal legate on the heights of Avranches ... [where] before its cathedral [he] publicly renounced those portions of his 1164 Constitutions of Clarendon which had been deemed "offensive"'[11] by the Pope.

There are direct and oblique references to Church privileges in six of the later clauses in the 1215 version of Magna Carta, but none of those suggest any specific local abuse beyond dabbling in Church appointments and King John's having taken more tax or land than Edward the Confessor (r 1042–66) had done in the early eleventh century.[12] There is no reference anywhere in the document or elsewhere which suggests that John had interfered with religious confession

7 T Plucknett, *A Concise History of the Common Law*, fifth edition (London, 1956), p 11.

8 'William conquered England and its church', *Christianity.com*, <http://www.christianity.com/church/church-history/timeline/901-1200/william-conquered-england-and-its-church-11629787.html>, accessed 19 February 2016.

9 H Berman, *Law and Revolution* (Cambridge MA, 1983), pp 87 (quotation), 522.

10 Ibid, p 256.

11 Ibid. J Baker, 'Magna Carta and personal liberty' in R Griffith-Jones and M Hill (eds), *Magna Carta, Religion and the Rule of Law* (Cambridge, 2015), pp 81–108 at p 86, considers that the references to the liberties of the Church in the first chapter of Magna Carta would have been understood by all those who learned their law in the Inns of Court as confirming 'the freedom of the clergy from capital punishment for murder and felony'.

12 R Helmholz, 'Magna Carta and the law of nations', in Griffith-Jones and Hill, *Magna Carta*, pp 70–80 at p 78, says that Magna Carta 'established and fortified special privileges of Church and Clergy' in Chapters 14, 22, 27, 55, 60 and 61. Chapter 14 provided that the king had to give the high clergy (archbishops, bishops and abbots) an individual summons if he wanted to claim scutage (tax) from them. Chapter 22 provided that fines levied on ecclesiastical clerks would ignore their ecclesiastical income (benefices). Church jurisdiction in estate distribution was acknowledged in Chapter 27, and the Archbishop of Canterbury, Stephen Langton, was included in the committee of barons who would review cases where it was alleged that King John had previously taken fines unjustly (to determine whether they should be remitted) in Chapter 55 and to recover them by distraint if necessary in Chapter 61. Chapter 60 appropriately held that all the free men of the kingdom (including the clergy) would reciprocally observe the same principles in their dealings with others.

privilege, sanctuary or the practices which later became well known as 'benefit of clergy'.[13]

Sealed religious confession was well established in England by about the eleventh century,[14] even though it was not made binding upon the whole of the Church until the Fourth Lateran Council, which gathered at Rome's Lateran Palace on 11 November 1215, five months after the first version of Magna Carta had been signed by King John.[15] Abuses of both religious confession privilege and sanctuary were addressed in the Statute *Articuli Cleri* of 1315 exactly a century later, but neither privilege seems to have been making waves during the reign of King John.

Magna Carta was not the first English charter in which the liberties of the Church were asserted and confirmed. When Henry I (the fourth son of William the Conqueror) took the throne in 1100, he had issued a charter which confirmed the law as it had stood in the time of Edward the Confessor and which confirmed the proprietary autonomy of the Church in these words:

> because the kingdom had been oppressed by unjust exactions, I, through fear of God and the love which I have toward you all, in the first place make the holy church of God free, so that I will neither sell nor put to farm, nor on the death of archbishop or bishop or abbot will I take anything from the church's demesne or from its men until the successor shall enter it. And I take away all the bad customs by which the kingdom of England was unjustly oppressed.[16]

Although William the Conqueror had been able to make ecclesiastical appointments through the assistance of Lanfranc while Alexander II was pope, the political strength of subsequent popes saw the Church establish control of its appointments and property by the end of the twelfth century. At Runnymede in 1215, what the Church required was confirmation that King John's new intrusions into its affairs – including its exile of some of its leaders – should stop. The Church looked back to promises that had been made by John's predecessors as its authority for the principle that it was supposed to be free from such contests with the king. John therefore promised that there would be no future interference with the Church's internal election procedures, no exile of its leadership

13 See, for example, 'What is benefit of clergy?', *The Law Dictionary*, <http://thelawdictionary.org/benefit-of-clergy/>, accessed 19 February 2016.

14 A Thompson, *Religious Confession Privilege at Common Law* (Leiden, 2011), pp 64–65.

15 See n 1 for detail about the various versions of the Great Charter. The original 1215 version of the Great Charter was declared null and void and thus revoked within three months after it was issued in June 1215. There was therefore no version of the Great Charter operative in England when the Fourth Lateran Council convened in Rome.

16 See <http://www.nhinet.org/ccs/docs/char-lib.htm> (accessed 19 February 2016), clause 1.

and no taking of Church property in the absence of its leaders.[17] Just as Henry I had provided the Church with written assurances in 1100 that its property would be sacrosanct, so the Church sought written assurance from John that its autonomy would be respected. In 1100, Henry I had referred to Edward the Confessor's respectful relationship with the Church before his father (the Conqueror)'s arrival as the precedent when it came to an acceptable relationship between king and Church. King John was therefore probably referring to the same standard, but his commitment in Magna Carta does not seem clear. That perception may, however, be the result of our misunderstanding, since church political power of that order is foreign to us.

Ancient liberties of the City of London

The City of London's charterial history is of similar vintage. William the Conqueror had issued the City of London with its first charter in 1066, the year of his conquest. But, even though there is no record of an earlier charter, the City of London had already established its identity and autonomy. The towns and cities that remained in Europe before the eleventh century had been administrative centres left over from Roman times.[18] Many of those administrative centres did not survive. But the revival of commerce and the needs of the merchant classes spawned new centres which took advantage of unhappy groups in the countryside looking for the opportunity to 'climb from one [social] class to another'.[19] London survived as a 'trading settlement' with fortified commercial quarters.[20] Other cities in Europe that operated similarly included Naples, Salerno, Bari, Syracuse, Palermo, Venice, Durazzo, Cologne and Milan.

The change and growth in London was typical and was the result of a combination of economic, social, political, religious and legal factors. Surplus artisans and craftsmen congregated in the developing towns to provide services to the merchants. The merchants traded with farmers for surplus food and raw materials, which resulted from the 'rapid increase in agricultural productivity in the

17 King John had achieved an 'open breach with the Church' after 1205, when he again interfered in ecclesiastical appointments and 'secure[d the bishopric of] Winchester for his henchman Peter de Roches'. The Pope's resistance to similar efforts when a new archbishop was required at Canterbury, King John's exile of the Pope's appointee, Stephen Langton, in 1208 and the Pope's consequential interdict on England, which excluded the laity from the sacraments, was not ended until King John 'knelt before the Pope's representatives … offered a perpetual annual tribute of 1,000 marks' and enabled the return of Archbishop Langton and other exiled clergy to England (N Vincent, *Magna Carta: a very short introduction* (Oxford, 2012), pp 47–51).

18 Berman, *Law and Revolution*, p 357. Berman observes that, while the cities of ancient Greece 'had been self-contained, independent city-states', the Roman Empire's 'thousands of cities … had served chiefly as centers for administrative control … and had been governed by imperial officers'.

19 Ibid, pp 357, 360 (quotation). Berman observes that most of the Roman cities were gone by the ninth century but some survived, particularly in southern Italy, because of Byzantine and Arab commercial influence.

20 Ibid, pp 357–358.

eleventh century'.[21] Serfs, free peasants and apprentices who had become masters and successful craftsmen in their own right followed the yellow brick road to class mobility and fortune. Emperors, kings, dukes and lesser (seigniorial) rulers, as well as popes and bishops, improved their military position by chartering towns which then attracted immigrants from the countryside. Not all of the feudal lords were excited to lose their peasants, but they did not have the power to reclaim their lost tenants before they were protected by the cities and part of its fabric.

To avoid the risk that the cities and their inhabitants might become a law unto themselves, those chartering the new cities required promises of obedience to law in those documents. Control was problematic because these newly independent townsfolk had also obtained and were keen to exercise 'the right and duty to bear arms' in defence of their new homes. While this city-based military service was voluntary in the sense that it was not paid and was extended in the cities to include the peasants, it was made obligatory as part of the set of covenantal obligations which all new arrivals in the towns had to accept before they were secure in their new places of residence.[22]

Harold Berman explains the religious and legal contribution to the rise and independence of the new European towns and cities in the eleventh and twelfth centuries, including London, writing that they

> were religious associations in the sense that each was held together by religious values and rituals, including religious oaths. Many of them were sworn communes (*conjurations*, 'conspiracies'), and of these a considerable number had been founded by insurrectionary organizations. Those that were formed by merchants were often governed by a merchant guild, which was itself a religious association, dedicated to charitable and other religious works as well as to the regulation of business activities. Those that were established by imperial, royal, ducal, or episcopal (or other ecclesiastical) initiative were also conceived as brotherhoods and were held together by oaths.
>
> To stress the religious character of the cities and towns is not to say that they were ecclesiastical associations. They were wholly separate from the Church, and in that sense were the first secular states of Europe. Nevertheless, they derived much of their spirit and character from the Church. Indeed it would have been astonishing if it had been otherwise, since they emerged during the era of the Papal Revolution.[23]

21 Ibid, p 359.
22 Ibid, p 360. Peasants 'had no such right military right or duty' in the countryside, although they could be called upon in special circumstances. Knights, conversely, had to be paid.
23 Ibid, p 362.

The new eleventh- and twelfth-century towns and cities were also legal associations, since they were either formed or legitimised by their new charters. Though London, as a leftover Roman administrative centre, had not been founded by charter in the same way as some of the new European towns, William's charter for the city did confirm 'the "basic liberties" of [her] citizens ... including substantial rights of self-government'.[24] In this respect, London and the new European towns stood in contrast with the developing cities of the Middle East. The Islamic cities lacked corporate unity, were never sworn communes, religious guilds or brotherhoods and were never incorporated or given charters setting out the rights and liberties of the residents.[25]

The charters of Christian towns and cities were read aloud regularly and the people who came to live in them became subject to covenant to adhere to their charters.[26] These commitments had more in common with the feudal contract of vassalage than any modern sense of a bargained exchange. Still, when a peasant or a craftsman came to reside in a town or city, he obtained a new status and became subject to the small patrician group that ruled the place. The relationship was covenantal and almost sacramental. To breach one's covenants and renounce one's civic obligations would be to declare oneself an outlaw and beyond the protection of the local city authorities, exposed once again perhaps to one's former and unhappy feudal lord.

William's 1066 charter to the City of London is very short. Like the Coronation Charter given to England by his fourth son, Henry I, 34 years later, it identifies the laws and practices of Edward the Confessor as the gold standard. It says:

> William the King friendly salutes William the Bishop, and Godfrey the portreve,[27] and all the burgesses within London, both French and English. And I declare, that I grant you to be all law-worthy, as you were in the days of King Edward; and I grant that every child shall be his father's heir, after his father's days; and I will not suffer any person to do you wrong. God keep you.[28]

The City of London claims that it is 'the oldest continuous municipal democracy in the world' and traces its 'ancient rights and privileges' to the time of Edward

24 Ibid.
25 Ibid, pp 362–363.
26 Ibid, p 393.
27 The name for the office which preceded that of mayor and eventually lord mayor. See G McBain, 'Liberties and customs of London: are there any left?', (2013) 1:2 *International Law Research* 32–95 at 35, <http://www.ccsenet.org/journal/index.php/ilr/article/download/28685/17142>, accessed 19 February 2016.
28 See 'The Conqueror's charter', <http://www.elfinspell.com/PrimarySource1066.html>, accessed 19 February 2016. McBain, 'Liberties and customs of London', p 36, says that the consequence of this charter was 'that all the citizens of London were freemen' and were assured that their legal rights in the courts were preserved according to law existing before the Conquest.

the Confessor as acknowledged in the words of William's Charter.[29] The City's website also infers that the reason for William's acknowledgement of London's rights was tied up in the fact that the City of London 'was the major source of financial loans to monarchs, who sought funds to support their policies at home and abroad' from 'medieval to Stuart times'.[30]

Financial practicality probably also explains why London and Winchester were exempted from William's Domesday Book tax survey in 1086.[31] William had made a collective agreement with London and was happy with the taxation arrangements that flowed. The nature of those arrangements is not set out in the text of the 1066 Charter, but their existence is obvious in Henry I's expanded version of the Charter in 1129.[32] Berman says that 'the rights of London citizens and of London as a city expanded dramatically' in the two generations after 1066: 'the two ruling "reeves" (sheriffs), previously appointed by the king, were elected from among the citizens, and this right of election was granted in perpetuity by' Henry's 1129 version. 'The city exercised its jurisdiction through a folkmoot of the entire citizenry meeting three times a year and through a smaller court called a husting.'[33] But in his new version of the Charter, Henry I also agreed to reduce the annual tax from £500 to £300. While the city's 24 aldermen managed the city's affairs independently, Henry's version makes it clear that they did so under the auspices of the king as the source of and the authority behind their Charter. That is, they ruled the City with the king's blessing, 'by the law of the lord king which belongs to them in the city of London, saving the liberty of the city'.[34] Though the king's law applied in the City of London, the 1129 Charter confirms that, by that date, the citizens could choose their own judges, and that those judges alone and none others outside the city would determine cases involving London citizens.[35]

Though there are suggestions that King Stephen (r 1134–1155) revoked the earlier City of London Charters, that possibility is immaterial when interpreting the meaning of Magna Carta, since King John had reissued the Charter on 5 July 1199 and had confirmed the annual payment to him at £300.[36]

29 'History of the government of the City of London', *City of London*, <http://www.cityoflondon.gov.uk/about-the-city/about-us/Pages/history-of-the-government-of-the-city-of-london.aspx>, accessed 19 February 2016.
30 Ibid. See also McBain, 'Liberties and customs', p 32.
31 Berman, *Law and Revolution*, p 381, n 10.
32 McBain says this charter was issued by Henry I in 1132.
33 Berman, *Law and Revolution*, pp 381–382.
34 Ibid, p 382, quoting from the text of the 1129 Charter.
35 Ibid.
36 McBain 'Liberties and customs', p 38. See also Berman, *Law and Revolution*, p 383.

Religious freedom in Magna Carta?

The religious freedom that was promised by King John and those who subsequently reissued Magna Carta was what we might now describe as 'religious autonomy'. While Magna Carta is often vaunted as 'an original charter of human rights', save perhaps for the highest nobles, Englishmen and other Europeans in the thirteenth century did not conceive of individual rights in any sense that moderns would recognise. Indeed, the suggestion that, in 1215, Magna Carta introduced a modern 'freedom of conscience' or confirmed it is grossly anachronistic.[37] To suggest that it was acceptable for anyone who qualified as a 'free man' under Magna Carta to go and worship in some other non-kosher way would have been to endorse heresy, which was a crime as grievous as treason against the person of the king.[38] Jews and Moslems were not so much exempt as irrelevant.[39] They did not count as 'free men' to merit legal recognition at all, though they were very much recognised in commercial practice.[40]

To the extent that thirteenth-century Englishmen had modern rights at all, they enjoyed their rights in communities and classes. Their rights were the product of shared responsibility and the collective discharge of communal obligations. Because the Church and the City of London were collectively strong enough to withstand the prerogative demands of the king, they could bargain with him on terms approaching equality. But individually no Church officer, no matter how high, nor any baron or city official would dare to resist a request or personal demand from the king. Their strength lay in their covenant

37 Baker, 'Magna Carta and personal liberty', pp 81 and 86. R Griffith-Jones and M Hill, 'The relevance and resonance of the Great Charter' in Griffith Jones and Hill, *Magna Carta*, pp 3–18 at p 11, make a similar point: 'the most glaring omission was freedom of religion, the freedom to believe what one believed. That was permitted only to Jews and infidels. Magna Carta, at the very beginning, confirmed the liberties of the Church, and those included its jurisdiction; and the Church, at the time at least, was not tolerant of independent thought by Christians. Quite what the Church meant by belief is difficult now to grasp, but it did not include an unbound exercise of sincere intellectual judgment; that was forbidden on pain of death.'

38 See J Kilcullen, 'The medieval concept of heresy', <http://www.mq.edu.au/about_us/faculties_and_departments/faculty_of_arts/mhpir/staff/staff-politics_and_international_relations/john_kilcullen/the_medieval_concept_of_heresy/>, accessed 19 February 2016, where Thomas Aquinas (1225–1274) is cited as the authority for the death penalty for heretics, since corrupting faith is worse than many other crimes which merit the death penalty.

39 Griffith-Jones and Hill, 'Relevance and resonance'.

40 Although William the Conqueror valued 'his Jews' when he brought them with him from Normandy in 1066, he and later kings treated them like chattels and could 'mortgage them'. Twelfth- and thirteenth-century English mortgages followed Jewish forms (J Rabinowitz, 'The story of the mortgage retold', (1945) 94 *University of Pennsylvania Law Review* 94–109); since Jews could not own property, when land was eventually forfeit in consequence of an unpaid mortgage (the processes for such forfeiture were drawn out and complicated), it was forfeit to the king, who was thus joined at the hip with his Jews and had an incentive to protect them. This generalised understanding goes some way towards explaining 'the anti-Semitic chapters' in Magna Carta (Chapters 9, 10 and 11 of the original 1215 version) which were an important part of what the barons did insist on extracting from the king, and which the ancient Church did not appear interested in moderating.

solidarity and they knew it.[41] Their opportunity to bargain with the king was the fruit of an idea in the mind of the monk named Hildebrand who became Pope Gregory VII as Pope Alexander II's successor. Berman writes that Hildebrand's 'new religious and legal concepts and institutions and practices' enabled urbanisation and that they represent the watershed from which the whole Western legal tradition has flowed. In time these ideas, institutions and charters would generate demands for 'rational and objective judicial procedures, equality of rights, participation in lawmaking, representative government and statehood itself'.[42]

Though Magna Carta is popularly represented as an extraction wrought by noble intimidation tactics, a more complete understanding of the context recognises that the barons, the Church and the City of London institutionally made an informal religious covenant that they would stand collectively and hold this unruly, turbulent and meddlesome king accountable to grand principles already well founded in custom. Magna Carta was new in England because of the number of classes it drew together onto the face of one document. That was also a reason why it was later considered the 'Great' Charter, though that label at the time merely distinguished it from the smaller Forest Charter, which was issued alongside the 1217 and 1225 versions of Magna Carta.[43] But it was no novelty. Concords, treaties and charters had been used to resolve similar and larger differences, normally seated in religious discord, on the European continent for more than a hundred years.[44] Thus William I was well familiar with the concept as an expedient way to manage large towns and cities when he came to England in 1066. That is why he set out the heads of his agreement with the aldermen of the established City of London in documentary form in that first year.

41 Griffith-Jones and Hill, 'Relevance and resonance', pp 5–7, discuss the extent to which Magna Carta was the realisation of Archbishop Stephen Langton's vision of 'a biblical, covenantal kingship in England' and how he had invited the barons to St Paul's Cathedral and produced the Coronation Charter of Henry I in August 1213.

42 Berman, *Law and Revolution*, p 363. Although these concepts were new in England in the twelfth century, they have more ancient origins in the Judaeo-Christian tradition. Samuel appointed Saul as the first Israelite King (1 Samuel 10 and 11) and then rejected him when he usurped Samuel's function in administering religious ordinances (1 Samuel 15:26), but there was no prophet or seer with equivalent authority after Samuel to reject David when he did likewise.

43 Vincent, *Magna Carta*, pp 84, 86.

44 Berman, *Law and Revolution*, p 87, states that 'In 1075, after some twenty-five years of agitation and propaganda by the papal party, Pope Gregory VII declared the political and legal supremacy of the papacy over the entire church and the independence of the clergy from secular control. Gregory also asserted the ultimate supremacy of the pope in secular matters, including the authority to depose emperors and kings. The emperor – Henry IV of Saxony – responded with military action. Civil war between the papal and imperial parties raged sporadically through Europe until 1122, when a final compromise was reached by a concordat signed in the German city of Worms. In England and Normandy, the Concordat of Bec in 1107 had provided a temporary respite, but the matter was not finally resolved there until the martyrdom of Archbishop Thomas Becket in 1170.'

Hildebrand's autonomy idea took root in England and spawned our modern political institutions and power-sharing ideas. It is not my purpose to tease out the length and breadth of that complex or the expanse of its legacy and influence, but merely to observe that it was seated in the simple idea of Church autonomy – the proposition that Church and State lived best together when they were autonomous, respected the integrity of the other and negotiated on terms of relative equality when they had differences.

These ideas remain controversial. They were fought about as the Investiture Contest of the twelfth century and they are now fought about as the culture wars of the twenty-first century. John Rawls and Martha Nussbaum agree that the enduring tension between church and state can only be resolved if it is accepted as a 'fixed star' in Western jurisprudence that the state does not impose 'orthodoxy' in matters of religion.[45] Nussbaum suggests that humans are forgetful and that we need to relearn this solution in every generation because it is not self-evident.[46]

SUBSIDIARITY, SPHERE-SOVEREIGNTY AND THE IDEA OF AUTONOMY

Another indication that the fine detail as to how church and state are most wisely separated is not self-evident can be seen in the evolution of the doctrines of subsidiarity and sphere-sovereignty in the nineteenth century.[47] It is beyond the scope of this article to set out all the nuances of those doctrines or how they have most recently developed, but I will identify them sufficiently to show that they may be regarded as the restatement of an underlying autonomy idea that was well established in the eleventh century.

A connection between the idea of religious and urban autonomy and the ideas of subsidiarity and sphere-sovereignty will not be obvious to readers who are only familiar with these latter ideas from Catholic and Calvinist social teaching, beginning with the papal encyclical *Rerum Novarum* in 1891. Nicholas Aroney has, however, shown that the threads of meaning drawn together by Popes Leo XIII, Pius XI and John Paul II, in 1891, 1931 and 1991 respectively, have

45 J Rawls, *A Theory of Justice* (Cambridge, MA, 1971), p 181; M Nussbaum, *Liberty of Conscience* (New York, 2008), pp 3–4 and 213. Both refer to the judgment of Justice Robert Jackson in *West Virginia Board of Education v Barnette* 319 US 624 (1942) at 638.

46 Nussbaum, *Liberty of Conscience*, pp 359–360.

47 Since the purpose of this section is to suggest that there is a connection between these recent social ideas and the ideas of autonomy already traced, differentiating between subsidiarity and sphere-sovereignty is beyond the scope of this article. However, it is appropriate to observe that they are related ideas that have grown in parallel with sphere-sovereignty, coming from a Calvinist–Dutch background in the early twentieth century.

distant roots in Aristotle and Aquinas.[48] The same threads were also explored by de Tocqueville when he wrote *Democracy in America* in 1835.[49]

De Tocqueville noted that centralised power 'accustoms men to set their own will habitually and completely aside', and that the removal of any sense of individual responsibility for the welfare of the village enabled the individual to 'fold his arms and wait till the whole nation comes to his aid'.[50] He also said that when a nation has reached the point where individuals

> oscillate . . . between servitude and licence, [fear of central bureaucrats and expectation of benefit from their largesse], that nation must either change its customs and its laws, or perish; for the source of public virtues is dried up; and though it may contain subjects, it has not citizens.[51]

Undoubtedly similar insights into human character motivated the Conqueror in his 'settlement' with the City of London in 1066, but they do not explain the 'freedom of the Church' which was also recognised in Magna Carta. That concession of autonomy to the Church reads more like a species of mediaeval détente, as the powers that were saw that they must accommodate one another to avoid unending destructive conflict.

The Latin root of subsidiarity is *subsidio*, which literally means 'to help' or 'aid', but it is Catholic social teaching since 1891 that has provided the word 'subsidiarity' with its contemporary meaning. For example, in 1891 in his encyclical *Rerum Novarum*, Pope Leo XIII implied that, while the state was obliged to act against the secret combinations of men established for evil purposes, it had a greater obligation to encourage private associations focused on free enterprise and the common good.[52] Pope Pius XI fleshed out these ideas in his 1931 encyclical *Quadragesimo Anno*, which was subtitled 'On the restoration of the social order and perfecting it conformably to the precepts of the gospel'.[53] This second encyclical treating subsidiarity included this statement:

> it is gravely wrong to take from individuals what they can accomplish by their own initiative and industry and give it to the community, so also it is an injustice . . . and disturbance of right order to assign to a greater and higher association what lesser and subordinate organizations can

48 N Aroney, 'Subsidiarity in the writings of Aristotle and Aquinas' in M Evans and A Zimmerman (eds), *Global Perspectives on Subsidiarity* (Dordrecht, 2014), pp 9–28 at p 12.
49 A de Tocqueville, *Democracy in America*, trans F Bowen (New York, 1994).
50 Ibid, pp 86 and 92.
51 Ibid, p 93.
52 Aroney, 'Subsidiarity', p 12.
53 Ibid, p 32.

> do. For every social activity ought . . . to furnish help to the members of the body social, and never destroy and absorb them.
>
> The supreme authority of the State ought . . . to let subordinate groups handle matters of lesser importance, which would otherwise dissipate its efforts . . . the State will . . . do all things that belong to it alone . . . directing, watching, urging restraining . . . [T]hose in power should be sure that the more perfectly graduated order is kept among the various associations, in observance of the principle of 'subsidiarity function' [to enable] . . . the happier and more prosperous condition of the State.[54]

While it is doubtful that any English king considered that there was any moral turpitude in depriving a subject or institution of the opportunity to work or of the resulting work product if that deprivation served the public interest, all the kings had a self-interested understanding of the value of a productive economy.[55] King John and his successors acknowledged this much in Magna Carta when they agreed that they would not take or use property without compensation, and when they allowed the City of London to govern itself in return for an annual fee.[56] They neither wished to discourage industry or patriotism. But scholars in the US have observed a resurgence in the idea of the ancient freedom of the Church coming from another direction.

In the introduction to their recent book *The Rise of Corporate Liberty*, Schwartzman, Flanders and Robinson observe a transition in modern American understanding of religious liberty 'from individual liberty [back] to [the] freedom of the church' and 'from freedom of the church to corporate liberty' evolving as a response to the 1991 Supreme Court decision in *Employment Division v Smith*,[57] which had limited the exemption of individual religious practice in the face of generally applicable laws.[58] In the *Hosanna-Tabor* decision,[59] 'Chief Justice Roberts emphasized that the First Amendment gives "special solicitude to religious organizations"' and in *Hobby Lobby*,[60] Justice Alito suggested that corporations are 'reducible ultimately to the beliefs, values and interests of the people who compose them'.[61] For

54 Ibid, p 35, quoting *Quadragesimo Anno*, pp 79 and 80.
55 See above n 31 and supporting text.
56 See, for example, clauses 28, 30 and 31 of the 1215 original version.
57 I *Employment Division v Smith* 494 US 872 (1990).
58 M Schwartzman, C Flanders and Z Robinson, *The Rise of Corporate Liberty* (Oxford, 2016), pp xv and xvii.
59 *Hosanna Tabor Evangelical Lutheran School v EEOC* 565 US ___(2012).
60 *Burwell v Hobby Lobby* 573 US___(2014).
61 Schwartzman, Flanders and Robinson, *Rise of Corporate Liberty*, pp xvi and xviii. The beginning of a similar thread of jurisprudence may also be detected in a case in the Federal Court of Australia decided in 2014 (*Iliafi v The Church of Jesus Christ of Latter-day Saints Australia* [2014] FCAFC 14). In that case, the appellants had argued that they had 'a right to worship publicly in their native language' (para 81) and that the respondent church's decision 'to discontinue Samoan-speaking wards

these authors, however, the *Hobby Lobby* case 'has now become a symbol for something larger – about the role of corporations in constitutional law, about the role of religion in the United States, and about the confluence of the two' and the questions for religious liberty in the future will not be about individual religious liberty.[62] Rather, they will be about what government interests the 'courts find sufficiently powerful to limit the freedom of religious organizations' and how to 'strike the proper balance' between those interests and the interests of third parties which may be harmed by them.[63]

When that forward-looking discussion is read alongside the observation that the oldest version of religious freedom known in Western jurisprudence is institutional in nature, it is reasonable to suggest that religious liberty may be returning to where it began. If that is so, it is further reasonable to suggest that in the future religious liberty may be defended as the collective or the incorporated interest of groups of like-minded individuals associated together for religious or economic purpose. But the merger or confluence of religious freedom as an associational right with economic undertones has a well-established if forgotten jurisprudence of its own. In the final part of this article I will therefore note how the ancient idea of a charter with religious covenantal language contributed to England's colonial expansion and the ring-fencing of her minority religions. Again, it is beyond the scope of this article to set out all the nuances of the underlying legal doctrines or how they were developed, but I will provide examples to show that religious liberty and royal charters have been comfortable bedfellows for a very long time.

AUTONOMY UNDER OTHER CHARTERS

Before there was any concept of a commercial legal entity, groups of individuals could not associate together for any reason, including trade, without royal sanction.[64] Without commercial legitimacy, traders could not collect debts or enforce the promises that people had made when receiving goods for which they could not pay immediately. Since the crown was always interested in controlling the

... impaired' that right. The Court observed 'that the right to freedom of religion does not ... guarantee an individual's right to worship publicly in a particular language of importance to that individual' (para 85), and that the appellants' right to use their own language under A27 of the International Covenant on Civil and Political Rights was to be exercised consistently with other provisions in that Covenant. The appellant's interpretation of A27 would interfere with the respondent church's 'right to freedom of religion [under A18] that [wa]s being exercised by the Church on behalf of its adherents' (para 99).

62 Schwartzman, Flanders and Robinson, *Rise of Corporate Liberty*, p xiii.

63 Ibid, p xx.

64 P Griffiths, *A Licence to Trade: a history of the English chartered companies* (London and Tonbridge, 1974), p x.

economy, the issue of charters on terms including payment was a mutually beneficial exercise.[65] The export of wool to the Low Countries began well before the Norman Conquest. Statutes and charters were issued to protect foreign merchants and would exempt them from some local tolls in exchange for payment of higher customs dues than were imposed on English merchants.[66]

As a tool which provided the crown with a stream of revenue and a measure of control over the economy while also giving autonomy and profit opportunity to various collectives, the uses of charters proliferated. The new English colonies on the American continent were also authorised and controlled by royal charter. While it is not clear that the king was entirely aware of the non-conforming mission of the first inhabitants of New England, Charles I granted the New England Company a charter in March 1628 which provided the new settlement with the legitimacy that enabled their support of continued and increasing Puritan emigration.[67] That charter remained in force for 55 years, until Charles II revoked it in 1684. Because its terms did not follow the custom of requiring its board to sit in England, the New England company had a practical independence which enabled its board to follow Puritan covenant practices with very little royal oversight.[68] Virginia's charter was granted earlier, on 10 April 1606. Eight named individuals were authorised to create a colony, to spread the Christian gospel among the infidels and savages.[69]

The history of the Church of Jesus Christ of Latter-day Saints in North America also includes a famous charter. The Mormon people had been hounded from the State of New York to Ohio, to Missouri and then to Illinois. In Illinois they were initially received as refugees from religious persecution and allowed to develop a malaria-infested swamp town called Commerce on the banks of the Mississippi. But they were industrious and the town grew and was renamed Nauvoo. While the people of Illinois were still sympathetic and the town was prospering, the Latter-day Saints sought and obtained a charter from the legislature of Illinois that had City of London spiritual genealogy. It was intended to enable local independent city government and to protect the religious freedom of its citizens. William E Berrett has written that Nauvoo's charter

> provided for broad legislative power resting in a city council consisting of a mayor, four aldermen, and nine councilors elected by the qualified voters of the city.

65 Schwartzman, Flanders and Robinson, *Rise of Corporate Liberty*, p ix.
66 Griffiths, *Licence to Trade*, pp 5–6.
67 W MacDonald, *Documentary Source of American History 1606–1898* (New York, 1908), p 22.
68 Ibid.
69 See 'First charter of Virginia', available at <http://www.bartleby.com/43/5.html>, accessed 19 February 2016.

673 It provided for a municipal court, independent of any but the Supreme
674 Court of the State and the Federal Courts.
675 It provided for a city militia to be known as the Nauvoo Legion, to be
676 equipped by the State and officered by citizens of Nauvoo.[70]
677
678 Like the City of London, within its city limits, 'the city was independent of all
679 other agencies in the state. Only the repeal of the charter by the state legislature
680 could curtail these powers.' Though others disagree, Berrett continues that 'No
681 other municipality in America before or since has enjoyed such complete
682 control of its own affairs.'[71] The Nauvoo Charter protected its citizens from
683 the Missouri mobs, who still hounded the Latter-day Saints even though they
684 had departed at gunpoint in accordance with the extermination order of
685 Lieutenant-Governor Lilburn W Boggs in late 1838.[72] Under the Charter,
686 Nauvoo citizens could apply by writs of habeas corpus for independent review
687 of proceedings brought against their citizens in other jurisdictions, and this
688 power protected Joseph Smith from many attempts to extradite him back to
689 Missouri: though he had been released from one of their gaols when it
690 became obvious that there was insufficient evidence to convict him on any crim-
691 inal charge, it took many years for Missourian anti-Mormon hatred to abate.
692 Because of the generosity with which the Latter-day Saints were received by
693 the State of Illinois in Nauvoo, they renounced the isolation they had adopted
694 to survive in Missouri. The First Presidency of the Church in Nauvoo pro-
695 claimed that 'fellow citizens of every denomination' were welcome, as this
696 place was intended as a haven for people of good will from anywhere. One of
697 the first ordinances passed by the city council protected people of all faiths in
698 their undisturbed enjoyment of religious freedom, but another prohibited the
699 sale of hard liquor, effectively making Nauvoo an early prohibition town.[73]
700 Though Nauvoo experienced huge growth (though it never became as large as
701 Chicago, as some reports have suggested[74]), the Nauvoo experiment did not last.
702 As in Missouri, the growing size of Nauvoo threatened the previous political
703
704 70 W Berrett, *The Restored Church: a brief history of the growth and doctrines of the Church of Jesus Christ of*
705 *Latter-day Saints*, fifteenth edition (Salt Lake City, UT, 1973), p 158.
706 71 Ibid. However, Berrett appears to have been exaggerating just a little. J Walker, 'Invoking habeas
707 corpus in Missouri and Illinois' in G Madsen, J Walker and J Welch (eds), *Sustaining the Law:*
708 *Joseph Smith's legal encounters* (Provo, UT, 2014), pp 357–399 at pp 363 and 376, observes that two
709 of five other city charters granted by the State of Illinois included habeas corpus protections for
their citizens. See also J Kimball, 'Protecting Nauvoo by Illinois charter in 1840' in ibid, pp 297–
307 at p 302.
710 72 Berrett, *Restored Church*, p 141. The 'extermination order' (Missouri Executive Order 44) was not for-
711 mally revoked until 1976. See 'Extermination order rescinded', <https://www.lds.org/ensign/1976/
09/news-of-the-church/extermination-order-rescinded?lang=eng>, accessed 8 June 2016.
712 73 Berrett, *Restored Church*, p 159.
713 74 L Arrington and D Bitton, *The Mormon Experience: a history of the Latter-day Saints*, second edition
(Urbana, IL, 1972), p 69. In June 1844, the church historian Franklin D. Richards 'placed the popu-
714 lation at 14,000' (Berrett, *Restored Church*, p 160).

power of non-Latter-day Saints communities in Warsaw and Carthage. Those towns also resented the autonomy which the Nauvoo Charter provided to its citizens and particularly to the Mormon leader, Joseph Smith. After Smith's assassination on 27 June 1844, the Nauvoo Charter was revoked by the legislature on 29 January 1845 and soon thereafter, when it became clear that no peace was possible between the Latter-day Saints and other locals, the Church leaders negotiated a truce with their neighbours so that they could prepare for yet another exodus, this time to the Salt Lake Valley in what is now the State of Utah.[75]

WHAT FUTURE FOR CHARTERS AS INSTRUMENTS OF RELIGIOUS AUTONOMY AND FREEDOM?

The City of London's original charters saw aldermen, merchants, craftsmen and other service providers make covenants together about peace and protection that were sourced in mutual religious understanding. Although they were separate from the Church, they drew their understanding and values from the Church. In many eleventh- and twelfth-century European towns and cities, these covenant obligations were confirmed with oaths of loyalty and obedience to law. Covenant solidarity secured citizens against military and other action by other powers. In August 1213, Archbishop Stephen Langton envisioned 'a biblical, covenantal kingship in England' when he invited the barons to St Paul's Cathedral and unfolded the terms of Henry I's coronial charter of 1100 to them anew.[76] The New World citizens of Virginia and Boston also secured their safety and their religious freedom through the autonomy enabled by charters issued by English kings. The City of Nauvoo in nineteenth-century Illinois gained its autonomy and religious freedom through a charter issued by the State of Illinois.

Nowadays, when we speak of charters, we intend more aspirational documents. Formal legal protection is more often provided by statutes, but it was not always so. Magna Carta is the most famous example of an instrument which followed earlier precedents and was intended to confirm and secure autonomy for various groups against excessive government intervention in their affairs.

Most Western democracies now seek to protect values with bills of rights and constitutions. But charters have their place. Consider Australia, where there is no national bill of rights but where the State of Victoria and the Australian Capital Territory have passed bills of rights to remedy a perceived lacuna in

75 The Illinois legislature issued a statement of regret (Resolution 627) to the Church of Jesus Christ of Latter-day Saints in April 2004. See '160 years later, Illinois ready to offer Mormons an apology', *Chicago Tribune*, 7 April 2004, <http://articles.chicagotribune.com/2004-04-07/news/0404070268_1_mormons-armand-mauss-latter-day-saints>, accessed 19 February 2016.

76 Griffith-Jones and Hill, 'Relevance and Resonance', pp 5–7.

the protection of civil liberties.[77] The State of Victoria calls its bill *The Charter of Human Rights and Responsibilities Act 2006*. The South African Constitution also anticipates the issue of further charters to protect citizen rights and freedoms more fully, including religious freedom.[78]

Human rights instruments have proliferated around the world since the end of the Second World War, and the Universal Declaration of Human Rights set out aspirational standards intended to avoid further world wars. But, at the same time as countries have aspired to prevent war with Magna Carta-like written instruments, the world has been balkanising in consequence of imperial decolonisation and as groups of people within nations have sought autonomies different from those they inherited as their political birthright. Some countries resist any suggestion of such autonomy with violence.[79] Others find democratic solutions.[80] William the Conqueror's 1066 London Charter balanced his economic interests against the desires of the people of that city for limited autonomy. Later sovereigns have also used charters and charter-like agreements to balance economic and political interests in the interests of peaceful co-existence.

Magna Carta created an idea that arrived internationally when Eleanor Roosevelt described the Universal Declaration of Human Rights (UDHR) as 'the international Magna Carta for all mankind'.[81] But the idea of rights which the UDHR introduced and claimed for the world is also evolving as groups of people seek new forms of autonomy and self-determination. Examples of those new interests are identified when we consider current maps showing the twentieth-century nations and ask how the boundaries will be changed as the decades of the twenty-first century unfold. Will there be homelands for Palestinians, Armenians and Kurds? Will the European Union survive to be joined by more Eastern European nations and will the United Kingdom leave after its experiment of more than 40 years? Or will the European Union be fractured by debt? Just as Pope Gregory VII's revolution in the twelfth century spawned the idea of nation-states, so the insight that groups of people have collective rights that may be more important than the rights of the individuals who compose those groups seems set to transform the world again.

77 G Sawer, *Australian Federalism in the Courts* (Melbourne, 1967), p 208, called Australia 'the frozen continent' since it was so averse to constitutional change. More recently, G Williams, S Brennan and A Lynch, *Australian Constitutional Law and Theory* (Leichhardt, NSW, 2014), para 26.38, observed that 'Australia is now the only democratic country without a national Bill of Rights'.

78 Section 234 of the Constitution of the Republic of South Africa 1996 provides: 'In order to deepen the culture of democracy established by the Constitution, Parliament may adopt Charters of Rights consistent with this Constitution.'

79 For example, Chinese resistance to the religion of the Dalai Lama and Falun Gong suggest Chinese Communist Party concern with any organisational authority that could challenge the party's legitimacy, however benign.

80 For example, the secession referenda in Western Australia (1933), Quebec (1995) and Scotland (2014).

81 See 'A brief history of human rights', *United for Human Rights*, <http://www.humanrights.com/what-are-human-rights/brief-history/the-united-nations.html>, accessed 19 February 2016.

CONCLUSION

In this article I have observed that the idea of 'freedom of the Church' may be on the cusp of a resurrection. Renewed interest in freedom of the Church is not the primary product of the advocacy of religious liberty, though in the US it does respond to the narrowing of individual religious exemptions from state action following the Supreme Court's decision in *Employment Division v Smith*. Modern freedom of the Church is rather a manifestation of the idea that associational freedom is at least as important as individual freedom and may be even more important, since the rights of a group of human individuals must be more important than the individual rights of one member of the group. That larger idea of association freedom has not yet trickled down to inform religious liberty debates in democratic nations beyond the US. However, such trickle-down seems inevitable, as international interest in the idea of association freedom is manifest in post-colonial lobbying for homelands for various indigenous peoples and in the jockeying of countries that wish to join and leave the European Union.

This article suggests that, if associational freedom does gain a foothold as a tool in the hands of religious liberty advocates, there is a vast deposit of associational understanding waiting to be mined. That understanding includes the recognition that it was associational freedom that underlay the establishment and the success of both the City of London and the British Empire.

While Magna Carta was not the first Anglo-American charter, there are several senses in which it was the greatest. Certainly it was larger than the Forest Charter, following the subdivision of Magna Carta's clauses in 1217; and it was the largest English charter ever conceived in the sense that it drew together the king, the lords, the merchants, the townsfolk and free men generally. But its meaning as an icon and as an emblem of liberty continues to exceed its written terms. It is and has been larger than life since it was first reissued by the new king in 1217.

The suggestion of this article is that two of its four unrepealed clauses are ready and waiting to contribute another round of human freedom to the world. For Magna Carta's idea that the Church and the City of London were always entitled to associational freedom and autonomy despite the demands of King John as the state executive has timeless resonance. Those clauses confirm that successful states do not have to rule or control every aspect of human life and association.