



CHAPTER TWO

Two Charters

What are thou Freedom?

Thou are not, as imposters say,
A shadow soon to pass away,
A superstition, and a name
Echoing from the cave of Fame.

For the labourer thou art bread,
And a comely table spread.
From his daily labour come
To a neat and happy home.

Thou art clothes, and fire, and food

P. B. Shelley,

The Masque of Anarchy (1819)

For eight centuries Magna Carta has been venerated. “It was born with a grey Beard,” Samuel Johnson said. The Massachusetts Body of Liberties (1641), the Virginia Bill of Rights (1776), the Fifth and Fourteenth Amendments to the U.S. Constitution

quote its language.¹ The story of the political and legal rights is known. Indeed it is too well known, inasmuch as it is remembered largely as myth and as icon, as part of the foundation of Western civilization. In 1956 Winston Churchill published the first volume of his *History of the English-Speaking Peoples* in which he glorified Anglo-American “brotherhood,” “destiny,” and empire by reverent references to childhood memories of Magna Carta.²

Magna Carta puts an emergency brake on accelerating state despotism. The handle for the brake is chapter 39. The British human rights barrister Geoffrey Robertson writes, “The appearance of ‘rights’ as a set of popular propositions limiting the sovereign is usually traced to Magna Carta in 1215, although that document had nothing to do with the liberty of individual citizens: it was signed by a feudal king who was feuding with thug-gish barons, and was forced to accede to their demands.”³ There is no evidence that King John could write. Besides, we must ask *who* traces rights to Magna Carta? There is a conservative interpretation restricting it to the elite, and there is a popular interpretation that includes free people and commoners.

Robertson continues, Magna Carta “contained some felicitous phrases which gradually entered the common law and worked

1. On Magna Carta’s influence see Alan Harding, *A Social History of English Law* (Baltimore: Penguin Books, 1966), 55.

2. Winston Churchill, *The Birth of Britain*, vol. 1 of *A History of the English-Speaking Peoples* (New York: Dodd, Mead, 1956), vii, xvi.

3. Geoffrey Robertson, *Crimes Against Humanity: The Struggle for Global Justice* (New York: New Press, 1999), 2–3. See also Anne Pallister, *Magna Carta: The Heritage of Liberty* (Oxford: Clarendon Press, 1971).

their rhetorical magic down the centuries.” To call “the felicitous phrases” magic is to overlook the struggle in the streets and fields, the struggle in the prisons, the struggle in the slave ships, the struggle in the press, the struggle in parliament. The historian Simon Schama blithely waves a magic wand, “But for once, England didn’t want an Arthur. It had Magna Carta instead. And that, it was hoped, would be Excalibur enough.” Monty Python explains.

ARTHUR: I am your king.

WOMAN: I didn’t know we had a king. I didn’t vote for you.

ARTHUR: People don’t vote for king.

WOMAN: How did you become king?

ARTHUR: The Lady of the Lake. Her arms clad in the purest shimmering samite held aloft Excalibur from the bosom of the water signifying by divine authority that I, Arthur, was to carry Excalibur. That is why I am your king.

MAN: Listen. Strange women lying in ponds distributing swords is no basis for a system of government. Supreme executive power derives from a mandate from the masses, not from a farcical aquatic ceremony.

ARTHUR: Be quiet.

MAN: You can’t expect to wield supreme executive power just because some watery tart threw a sword at you.

ARTHUR: Shut up.⁴

In the middle of June 1215, on a meadow, Runnymede, along the river Thames the rebellious barons and King John promised

4. Simon Schama, *A History of Britain: At the Edge of the World* (New York: Hyperion, 2000), 65. John Cleese et al., *Monty Python and the Holy Grail* (1975).

on oath to be faithful to one another along the lines of the sixty-three chapters of Magna Carta. Behind the event lay powerful forces of pope and emperor, dynastic intrigues of France and England, wicked deeds of pogrom and bigotry in the name of God Almighty, the disintegrating effects of the money economy, and the multifaceted popular defense of the commons.

As we assess the experience of the long twelfth century (culminating in 1215), what strikes us is the similarity of global debates with our own in the twenty-first century. In the summer of 2001 it was the call for reparations for the racist exploitation of Africa and the insistence at a mass gathering in Genoa that “another world is possible,” which preceded the “war on terror” so often compared to a modern crusade. Islam replaced Communism as the demonized Other in the ideology of the ruling class. The genesis of capitalist society has been pushed back to the Middle Ages, when communistic heretical movements and Islam were the main threats to church and king.⁵

The Crusades were military diversions from the social and economic conflicts within Europe. Pope Urban II made this clear in his Clermont speech in 1095 when he declared the *bellum sacrum*, or the First Crusade, saying “let those who have been robbers for a long time now become knights.” In the same speech he demonized the Arab and Turkish Muslims: they worship Satan, they torture, they’re filthy, they’re rapists, and, in one of the first racist and genocidal programs of European history, he called on the Christians “to destroy that vile race.” During the Crusades of the next century recruiters attempted to drum up

5. Silvia Federici, *Caliban and the Witch: Women, The Body, and Primitive Accumulation* (New York: Autonomedia, 2004).

support with visions of a land of milk and honey, and the realization on earth of a harmonious peaceable kingdom.⁶ It was a combination of utopian thinking and genocidal reality that would recur in European and American history.

The forces that caused the violence within Europe during the twelfth century—increased pauperization, intensification of expropriation of serfs, growth of towns, and the emergence of monetary and commercial relations—led, on the one hand, to competing claims of order between centralizing monarchies and the expanding papacy, and on the other hand, to a wide variety of movements from below deemed to be heretical. These movements have been likened to a proto-First International to stress their proletarian character. Cathars, Waldensians, followers of the French pantheist Amalric of Bena, the Fraticelli, the flagellants, the Brethren of the Free Spirit, and followers of Joachim of Fiore had a diverse theological and social program, but all were regarded as threatening by the feudal and church hierarchy. Joachim prophesized a new age, the age of the spirit, when church hierarchy would be unnecessary and when Christians would unite with infidels.

Prophets and messiahs preached the doctrine of having all things in common, which made sense to peasants who resolutely defended their customs and communal routine against the encroachments of feudal landlords and grasping clergy. The notion of having all things common was made plausible by the network of customary rights and practice on common lands, which

6. Norman Cohn, *The Pursuit of the Millennium: Revolutionary Millenarians and Mystical Anarchists of the Middle Ages*, rev. ed. (New York: Oxford University Press, 1970), 66–71.

already by the thirteenth century was both old and endangered. On the one hand the shortage of arable land led to *assarts* (arable clearings made by grubbing up the trees) in wastes and woodlands, and on the other hand, the intensified pressure in the face of rising prices by the lords on the impoverished peasantry threatened forms of commoning that were essential to smallholders in the thirteenth century.

If crusades against Islam were bids to control the commercial economy of the East, then crusades against heretics were means of terrorizing the landless population of the West. In 1208 the pope launched an exterminating crusade upon the heretics of Albi, in the south of France. Believing that the world around them was diabolical, they opposed procreation as an unkindness. The children of the Children's Crusade of 1212 were sold into slavery. Meanwhile in England, against John's will, the pope appointed Stephen Langton archbishop of Canterbury. In 1208 the pope placed King John under interdict and in the following year excommunicated him and his kingdom. The church bells were removed from the steeples, statues of the saints were laid on the ground. King John made up by surrendering his kingdom as a feudal fief to the pope.

In 1214 John's ambitions in France were dashed at the battle of Bouvines. He lost Normandy, the ancestral homeland of the ruling class of England since the Norman invasion of 1066. Philip of France now looked at England with acquisitive eyes. In February 1215 King John responded by making a vow to lead a crusade to the holy land to take it from the Muslim infidels. Becoming "a warrior of God," he enjoyed immunities protecting him from the barons. Raising money to recover Normandy and to join the crusade, King John oppressed the barons with *scutage*

(a tax paid by a knight in lieu of military service), by stealing forests, by taking children hostage for ransom (he slaughtered the twenty-eight sons of Welsh hostages), and by selling women. He made a regular traffic in the sale of wards, maids of fourteen and widows alike. In 1214 he sold his first wife, Isabella of Gloucester, to Geoffrey de Mandeville for the sum of 20,000 marks.⁷ These oppressions were the direct result of his plans to fight the infidels.

The Fifth Crusade set out in 1215; its principal ideological recruiter was Philip of Oxford. His general argument for “taking up the cross” is that crusading is an exalted vocation imitating Christ. His way of saying so is confused because he uses figures of speech that directly refer to the expropriations of European forest dwellers. “In the beautiful wood of paradise death was hidden under the mantle of life, so, on the contrary, in the deformed and horrible wood life was hidden under the mantle of death, just as life is concealed, in the case of the crusaders, under the mantle of a labor, which is like death.”⁸ Are the woods beautiful or horrible? Are the woods paradise or death? The answer depended on whether you were a baron or a commoner. Crusading was thus a murderous device to resolve a contradiction by bringing baron and commoner together in the cauldron of religious war.

Magna Carta was a document of Christian Europe—its first chapter concerned the freedom of the Christian Church from the

7. Frances Gies and Joseph Gies, *Women in the Middle Ages* (New York: Crowell, 1978), 28.

8. Reinhold Rörich, “Ordinacio de predicatione S. Crucis, in Anglia,” in *Quinti belli sacri scriptores* (Geneva, 1879); quoted in James M. Powell, *Anatomy of a Crusade, 1213–1221* (Philadelphia: University of Pennsylvania, 1986), 52.

secular authority of king. Events in the church and in England ran parallel. The pontificate of Innocent III (1198–1216) corresponded to the reign of John (1199–1216). King John agreed to a five-year truce with al-Adil in 1211, the great Saladin’s brother and his successor as sultan of Egypt. The pope meanwhile in 1215 opened the fourth Lateran Council, which established the church doctrine of transubstantiation, annual confession, and Easter communion, and which defined heresy. Jews were required to wear identifying badges. It is not a coincidence that the Lateran Council and Magna Carta occurred in the same year. The Lateran Council condemned Joachim of Fiore as a heretic in its second canon and prepared the groundwork of the ruthless Inquisition, a poisonous fungus whose deadly work in an underground, unseen mycelium has spawned racist results for centuries afterward.

In May 1215 the barons took London and withdrew their homage and fealty. In June King John and the barons faced each other in armed camps at Runnymede. The parchment charter of sixty-three chapters of liberties to the “freemen of England” was sealed, and homage renewed *viva voce*. The charter protected the interests of the church, the feudal aristocracy, the merchants, the Jews, *and* it acknowledged commoners. It assumed a commons. Here we pause in our story in order to summarize some of the leading chapters of the charter.

Its provisions revealed the oppression of women, the aspirations of the bourgeoisie, the mixture of greed and power in the tyranny, an independent ecology of the commons, and the famous chapter 39 from which habeas corpus, prohibition of torture, trial by jury, and the rule of law are derived. “No freeman shall be arrested or imprisoned or dispossessed or outlawed or exiled or any way victimized, neither will we attack him or send anyone to

attack him, except by the lawful judgment of his peers or by the law of the land.” The next chapter simply stated, “To no one will we sell, to no one will we refuse or delay right or justice.”

The value of the individual provisions in the eyes of the only contemporary chronicler (a minstrel attached to Robert of Béthune) put first those treating the disparagement of women and the loss of life or member for killing beasts in the forest.⁹

Chapters 7 and 8 said simply, “A widow shall have her marriage portion and inheritance forthwith and without difficulty after the death of her husband.” No widow shall be forced to marry so long as she wishes to live without a husband. We can truly say that “one of the first great stages in the emancipation of women is to be traced” to Magna Carta.¹⁰ These provisions arose from a grassroots women’s movement that contributed to the construction of alternative models of communal life.¹¹

Magna Carta acknowledged the interests of the urban bourgeoisie. The London commune was established in 1191, and its oath was sworn, unlike the oath of homage, among equals. John was the first king to give a charter to the City of London, with annual election for mayor. The eighteenth-century Scottish philosopher and historian David Hume says that during John’s reign

9. The minstrel Sarrazin’s *Histoire des ducs de Normandie et des rois d’Angleterre*, though composed in 1220, was not published until 1840. The four types of disparaged husbands were lunatics, villeins, cripples, and the impotent.

10. J. C. Holt, *Magna Carta*, 2nd ed. (Cambridge: Cambridge University Press, 1992), 46.

11. Federici, *Caliban and the Witch*, see chap. 1. See also Terisa E. Turner and Leigh S. Brownhill, eds., “Gender, Feminism and the Civil Commons,” *Canadian Journal of Development Studies* 22 (2001), a significant collection of articles.

London Bridge was finished in stone. Magna Carta established the freedom of travel for merchants. Chapter 41 stated, “All merchants shall be able to go out of and return to England safely and securely and stay and travel throughout England, as well by land as by water.” It set weights and measures, the basis of the commodity form. Never far from Coke’s thoughts, as he wrote, were “those two great pronouns, *meum* and *tuum*,” possessive pronouns that referred to possessions. As a practical matter, possessions required measurement and thus depended on chapter 35: “Let there be one measure for wine throughout our kingdom, and one measure for ale, and one measure for corn, namely ‘the London quarter’; and one width for cloths whether dyed, russet or halberget, namely two ells within the selvedges. Let it be the same with weights and measures.” The provisions both fleeced and protected the Jews, who had been disarmed and then massacred at the coronation of Richard I, John’s elder brother and predecessor on the throne. As chapter 10 stipulated, “If one who has borrowed from the Jews any sum, great or small, die before that loan be repaid, the debt shall not bear interest while the heir is under age, of whomsoever he may hold; and if the debt fall into our hands, we will not take anything except the principal sum contained in the bond.”

Chapters 28, 30, and 31 put a stop to the robberies of petty tyrants. “No constable or other bailiff of ours shall take anyone’s corn or other chattels unless he pays on the spot in cash for them.” The etymology of the word *chattels* recapitulates the evolution of the commodity and in this case suggests the change from a pastoral to an agrarian economy. “No sheriff, or bailiff of ours, or anyone else shall take the horses or carts of any freeman for transport work save with the agreement of that freeman.” “Neither

we nor our bailiffs will take, for castle or other works of ours, timber which is not ours, except with the agreement of him whose timber it is.”

Other chapters have to be understood in terms of the energy ecology, which was based not on coal or oil but on wood. Chapter 47 said, “All forests that have been made forest in our time shall be immediately disafforested; and so be it done with riverbanks that have been made preserves by us in our time.” To *disafforest* meant to remove from royal jurisdiction; it did not mean to clear-cut timber or destroy the trees. Chapter 48 said, “All evil customs connected with forests and warrens, foresters and warreners, sheriffs and their officials, riverbanks and their wardens shall immediately be inquired into in each county by twelve sworn knights of the same county who are to be chosen by good men of the same county and within forty days of the completion of the inquiry shall be utterly abolished by them so as never to be restored.” It refers to the common rights of the *forest*. The physical forest was woodlands; the legal forest was a royal domain under forest law where the king kept deer. Both the word and the law came to England with William the Conqueror.

If noticed at all as part of Magna Carta, chapters 47 and 48 are often discarded as feudal relics, English peculiarities, or irrelevancies of the heritage industry. Yet if we see woodlands as a hydrocarbon energy reserve, we may be willing to give the subject more than a condescending dismissal. We need to adopt a “subsistence perspective.”¹² “In an age when the primeval

12. Maria Mies and Veronika Bennholdt-Thomsen, *The Subsistence Perspective: Beyond the Globalised Economy*, trans. Patrick Camiller, Maria Mies, and Gerd Wieh (New York: Zed, 1999).

instinct of foraging was nearer to the surface than it is today,” wrote Marc Bloch, the great scholar of the Middle Ages, “the forest had greater riches to offer than we perhaps appreciate. People naturally went there for wood, a far greater necessity of life than in this age of oil, petrol, and metal; wood was used for heating and lighting (in torches), for building material (roof slats, castle palisades), for footwear (sabots), for plough handles and various other implements, and as faggots for strengthening roadways.”¹³

“Grey, gnarled, low-browed, knock-kneed, bowed, bent, huge, strange, long-armed, deformed, hunchbacked, misshapen oakmen.” This is a personification of the massive trunks and small crowns of the ancient oaks of Staverton. The English oak remains where millennia of cattle, goat, and deer ate its more edible competitors. The grazing determines what species thrive. Old trees are the result not of the wildwood (of the Ice Age thirteen millennia earlier) but of wooded pasture. The wooded pasture is a human creation, through centuries of accumulated woodsmanship, whose attributes include the *coppice* (which grows again from the stump)—ash and elm provide indefinite succession of crops of poles (for making rakes, scythe handles, surplus used for stakes and firewood); the sucker (which grows again from the root system)—aspen, cherry forming a patch of genetically identical trees called a clone; and the *pollard*—these are cut six to fifteen feet above the ground, leaving a permanent

13. Marc Bloch, *French Rural History*, trans. Janet Sondheimer (Berkeley: University of California Press, 1966), 6.