

### *The Name Magna Carta*

THE origin of the name *Magna Carta* as applied either to John's charter of liberties or to its revisions and reissues in the reign of Henry III is a subject that has not been extensively investigated.<sup>1</sup> Yet it can hardly be doubted that *Magna Carta* has owed something to its name. In the subtle psychology of human events the early possession of this simple but distinctive title perhaps helped to start the *carta libertatum* upon its unique career among the world's documents.

Dr. McKechnie notes with approval<sup>2</sup> the suggestion of Dr. George Neilson that 'perhaps the name *Magna Carta* arose from the distinction drawn in 1242 between Henry's "little charter" (*parva carta*) of 1237 and the earlier great charter, which certainly was not King John's, but Henry's charter of confirmation'.<sup>3</sup> Apparently Dr. Neilson has in mind the passage in Matthew Paris which records the famous debate of 1242.<sup>4</sup> But Dr. McKechnie points out that Matthew Paris used the term also in 1237: 'Praeterea sereno vultu et spontanea promisit voluntate libertates magnae cartae suis fidelibus regni sui ex tunc inviolabiliter observare.'<sup>5</sup> This seems rather to weaken the argument, for it is unlikely that the name *parva carta*, in contrast with which *magna carta* is supposed to have arisen, had so immediately become attached to the confirming document that it was in the author's mind when he was making a contemporary record

<sup>1</sup> Some twenty years ago Dr. Liebermann remarked of Henry I's coronation charter that 'it was called *Magna Carta* in the beginning of the thirteenth century, if not earlier' (*Transactions of the Royal Historical Society*, n.s., viii. 21). This very naturally has suggested the possibility that John's charter derived its name from its predecessor and prototype. And that this may have been a source of the term cannot be denied. But the earliest instance cited of the application of the term to the earlier document is from the rubric of the text of Henry's charter in the Glasgow Register (the form was *Magna Carta H. I. r. Anglie*), which was, Dr. Liebermann states, 'written about 1225' (*ibid.* p. 36). This, then, does not explain the earlier use of the term for the 1217 reissue of John's charter discussed in this paper.

<sup>2</sup> *Magna Carta* (2nd ed.), pp. 157-8.

<sup>3</sup> 'Magna Carta Reread', *Juridical Review* (1905), xvii. 128-44. Dr. Neilson's conclusion that the term was first applied to one of Henry's confirmations of John's charter, and for centuries continued to be so applied, is undoubtedly correct. And he remarks, 'Practically it did not matter greatly whose great charter was meant. Henry's regrants of 1216, 1217, and 1225 materially repeated the parent grant of John.' But he takes due cognizance of the endorsement of the *Articuli Baronum*, which he, in agreement with Blackstone (who speaks of it as being in a 'contemporary hand', *Law Tracts*, II. xxvi), assigns to the thirteenth century. The endorsing words are, *Articuli magne carte libertatum sub sigillo regis Johannis*. This shows, he says, 'that the term was attachable to John's charter as well'.

<sup>4</sup> 'Et praeterea concessit eis tunc quod omnes libertates contentae in magna carta ex tunc in antea plenius tenerentur per totum regnum suum, et inde fecit eis quandam parvam cartam, quam adhuc habent, in qua eadem continentur,' M. Paris, *Chron. mai.*, iv. 186.

<sup>5</sup> *Ibid.* iii. 382.

of the circumstances of its origin. But the term *magna carta* is in the *parva carta* itself :

Sciatis quod intuitu Dei et pro salute animae nostrae et animarum antecessorum et haeredum nostrorum, ad exaltationem Sanctae Ecclesiae et emendationem regni nostri, concessimus et hac carta nostra confirmavimus archiepiscopis, episcopis, abbatibus, prioribus, comitibus, baronibus, militibus, liberis hominibus, et omnibus de regno nostro Angliae omnes libertates et liberas consuetudines contentas in cartis nostris quas eisdem fidelibus nostris fieri fecimus cum minoris essemus aetatis, scilicet tam in magna carta nostra quam in carta nostra de foresta.<sup>6</sup>

Our authors both note the passage, but make no attempt to explain it in connexion with their theory. Here at least the term was not used in contrast with the idea of *parva carta*, and it is the earliest use of *magna carta* which either writer cites. Do not the words 'in our charters . . . that is to say both in our great charter and in our charter of the forest' suggest a different and an earlier contrast ?<sup>7</sup>

The forest articles appeared as a separate document on the occasion of the second revision of the charter of liberties, 6 November 1217. The following writ ordering their publication and observation in the counties was issued 22 February following. It is preserved in the Close Rolls, of which there are two for the year 1218.<sup>8</sup> These are now numbered 18 and 19 at the Public Record Office. This is the text of number 18 :

Rex Vicecomiti Eborac' salutem. Mittimus tibi cartas de libertatibus concessis omnibus de regno nostro tam de foresta quam aliis, mandantes quatinus eas legi facias publice in pleno Comitatu tuo, convocatis Baronibus, militibus, et omnibus libere tenentibus eiusdem Comitatus, qui ibidem iurent fidelitatem nostram: et tu diligenter attendens singula puncta cartarum ea per omnia facias iurari et observari, et id maxime quod in fine magne carte appositum est de castris adulterinis, que ab initio guerre constructa fuerint vel reedificata, diruendis omni occasione postposita fieri facias, secundum quod continetur in eadem carta, quia id per consilium domini Legati et fidelium nostrorum provisum fuit et in carta positum ad maximam utilitatem et tranquillitatem nostram et regni nostri. Quia vero etc. Teste Comite ut supra.

Here *magna carta* is plainly used in contrast to the forest charter. Sir Thomas Duffus Hardy in editing these rolls for the Record Commissioners believed this roll to be the duplicate or copy of

<sup>6</sup> Stubbs, *Select Charters* (8th ed.), p. 365.

<sup>7</sup> Wykes's chronicle, under date 1225, refers to the final revision in that year thus: 'et rex concessit eis et confirmavit magnam chartam de libertatibus, quas pater suus rex Iohannes dudum concesserat.' (*Annales Monastici*, iv. 66). It is likely, however, that this part of the chronicle was written a good deal later.

<sup>8</sup> These duplicate Close Rolls appear for the last four years of John's reign and the first ten of Henry III's.

the roll now numbered 19. These duplicates he regarded not as 'authenticated counterparts, but merely as copies of the original rolls, made up at a period, though perhaps but a few years, subsequently to that which must be assigned to the originals'.<sup>9</sup> Yet, accepting this statement fully, it surely must be concluded that here was a use of *magna carta* very much earlier than 1237, by which date every reason for making a duplicate of the 1218 roll must have passed. Moreover, it is to be remembered that the whole practice of making duplicates of the Close Rolls ended with the roll for 1226-7.

We turn, then, to the roll numbered 19, the one printed by Hardy as the original.<sup>10</sup> Here the part of the letter important for the present purpose was first written thus :

. . . et tu diligenter attendens singula puncta cartarum ea per omnia facias observari, et id maxime quod in fine appositum est de castris adulterinis, que ab initio guerre constructa fuerint vel reedificata, diruendis omni occasione postposita fieri facias, secundum quod continetur in maiori carta, . . .

Then in what appears to be the same hand and with the same ink the following changes were made. Above the line and to be read between the words *facias* and *observari*, *iurari* was written ; above the line and to be read between *fine* and *appositum*, *magne carte* was written ; a line was drawn through *maiori* and *eadem* was written above it.<sup>11</sup> These changes made the passage identical with what appeared in roll 18. It is not difficult to understand what happened. After November 1217 it was necessary to speak of *the charters* instead of *the charter*. Language forms must be revised or ambiguities would result. An ambiguity did result in this very writ. The scribe first wrote, 'and that especially which was placed at the end concerning adulterine castles'. But at the end of which ? He seems to have felt this ambiguity, for he presently added the clause, 'as it is contained in the greater charter'. The contrast was forced upon him, and perhaps when the scribe wrote that comparative adjective *maiori* the world-famous term had its birth. Then came the revision, probably by the same hand. The ambiguity was removed by writing in *magne carte*, making the sentence read, 'and that especially which was placed at the end of the great charter'. This made *maiori* unnecessary in the later clause, so that word was struck out and *eadem* substituted.

<sup>9</sup> *Rot. Litt. Claus.* i, p. 1.

<sup>10</sup> *Rot. Litt. Claus.* i. 377. Dr. McKechnie refers to this writ as ordering the publication and enforcement of the charters, but makes no reference to its language (*op. cit.*, p. 151).

<sup>11</sup> As this was printed by Hardy, the words written above the line appear between points, and *maiori* appears with the line of erasure drawn through it.

That there may have been several independent sources of the term, involving more than one root idea, cannot be denied. But that it existed long before the *parva carta* of 1237 seems proved; and in the writ of February 1218 one very natural evolution of the term can be seen actually in process. It is not likely that it was used earlier. The new forest charter was much smaller than the parent document from which it was an offshoot. But the difference was more than quantitative; the document which dealt with many rights and customs of quite different sorts and common to very many people—the charter of common liberties as it was sometimes called—would naturally be looked upon as much more important. To call it the great charter by way of contrast was to apply to it a name obvious, apt, and convenient.

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### A New 'Fioretto' of St. Francis

M. PAUL SABATIER has placed at my disposal the following extract, which has not hitherto been printed. He found it some two years ago in MS. 9068 of the Royal Library at Munich. This volume is made up of two parts, both Franciscan and both of the fourteenth century. The first part contains most of the writings of St. Francis, the letters of St. Bonaventura, *Declarationes Regulae*, and writings of Friar David (of Augsburg). The second part begins on fo. 349 a with the preface 'Fac secundum exemplar' and the compilation of Avignon.<sup>1</sup> This part closely resembles the beginning of the Liegnitz MS. (capp. 1–69), described in *Opusculum de Critique hist.* i. 37–44, but ends abruptly on fo. 392 a with the words 'ab ore fr. Ugolini viri fidedigni'.<sup>2</sup> The extract given below occurs on fo. 358 b, between the chapters numbered 16 and 17 in the Liegnitz MS., which correspond respectively to capp. 26 and 28 of the *Speculum Perfectionis* ('Qualiter revelatum fuit sibi a Domino ut vocarentur fratres Minores et annuntiarent pacem et salutem', and 'Qualiter condescendit fratri infirmo comedendo uvas cum eo'). The story of St. Francis and Bernard affords a fresh illustration of the courtesy which St. Francis commended as 'one of the qualities of God himself'.<sup>3</sup>

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Munich MS. 9068 fo. 358 verso.

Quodam tempore circa principium ordinis b. F. cum venerabili patre Bernhardo eiusdem ordinis primogenito pro petenda elemosina quamdam civitatem ingressus iuxta lapidem quemdam uterque consedit fatigatus.

<sup>1</sup> Cf. *Spec. Perf.*, ed. Sabatier, p. clvii, *Actus B. Francisci*, ed. Sabatier, p. xviii, *Opusculum de Critique historique*, i. 71.

<sup>2</sup> *Actus*, cap. 9, Liegnitz MS. cap. 69.

<sup>3</sup> *Fioretti*, cap. 37.