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Magna Carta and the significance of the Freedom of the Church today

Professor Julian Rivers (2015)

Magna Carta starts and finishes with a grand flourish: a promise that 'the English church shall be free, and shall have its rights undiminished and its liberties unimpaired'. Whatever that meant at the time – or was variously taken to mean by successive generations of lawyers and churchmen – historians agree that it had precious little to do with what we now understand as religious liberty.¹ In the words of article 18 of that great charter of modernity, the Universal Declaration of Human Rights, religious liberty is the freedom, 'either alone or in community with others, and in public or private, to manifest religion or belief in teaching, practice, worship and observance'. Yet Magna Carta has always been as much an enduring cultural symbol as a working legal text, and this clause about the freedom of the English church is more symbolic than most, so it is not inappropriate to reflect on whether the freedom of the Church has any significance for us today.

We might try to tackle that question first by teasing out the ideological impact of Christianity on our political traditions. And notwithstanding the cautions of historians, there is some causal relationship between the Magna Carta of history and the enjoyment of liberty under law today. In his magisterial work, *Law and Revolution*, the legal historian Harold Berman argued that Western political culture is characterised by a succession of revolutions.² The first, and greatest, was the Gregorian Reform of the 11th century. This established the Christian church as a legal system standing in perpetual tension with royal and other subordinate secular authorities. Into that story we can place the martyrdom of Thomas à Becket, privilege of clergy, the free appointment of bishops ... and Magna Carta.

In more general terms, the atheist French philosopher, Luc Ferry, points to Christianity's humanism: its insistence on the equal dignity and worth of every human person, and its validation of the material and the concrete, the this-worldly, through the doctrine of the resurrection.³ The German sociologist Jürgen Habermas agrees that our modern egalitarian universalism has its origins in Jewish and Christian ethical monotheism.⁴ The political theologian Oliver O'Donovan has argued that the legacy of Christendom is the generation of liberal society, characterised by freedom to seek the good, mercy in judgement, natural equal right and openness to speech.⁵ Rodney Stark writes of four historic 'victories' in Christian theology: of faith in progress, technical and organizational creativity, political freedom and the application of reason to commerce.⁶

Such stories of the origins of our cultural values are illuminating, but they are not in themselves normative. To what extent is the cause of liberty under law still bound up in the freedom of the Church? I suggest that we should look not so much at Christianity as a source of human rights values, but at the Christian church as a stimulus – a provocation, even – to

the generation of a free society.⁷ At least four features of the Church are relevant to this: value, relationality, order and authority.

Value. In its idea of God, the Christian Church stands for the objective existence and unity of value. There really are such things as truth, goodness and beauty, and the pursuit of these values is supremely worthwhile as a human calling and participation in the life of God.

Relationality. In its idea of a triune God, the Christian Church stands for the importance of human beings in relationship, of communities of belief and practice. Our human calling is to pursue truth, goodness and beauty in conscious mutual interdependence on each other, in short, to pursue them in love.

Order. In its idea of a God who creates and sustains the universe, the Christian Church stands for the ordered pursuit of human values in community. There is a type of law here, which stands in contrast to the law of the state or the imperatives of the market. One might also add that in the history of the Christian church we find replicated exactly those tensions and resolutions between top-down organisation and bottom-up legitimation characteristic of all well-ordered societies, from modern states and multinationals, to universities and sports clubs.

Authority. In its idea of a God who calls each person into obedience to himself, the Christian church stands for the existence of a higher claim than the pressures of self-indulgence, the iron grip of profit maximisation or any reasons of state. Civil liberty comes into being because individual men and women are willing to challenge the powers of their day, to be quiet revolutionaries. That will not happen without a foundation on which they can stand.

Value, relationality, order and authority. Of course, these features are not the sole preserve of the Christian Church. We find them reflected in many other religious and philosophical traditions and expressed in a superabundance of civil society organisations. Our universities, our professions, and many of our charities share that significance. What I have called here 'the freedom of the Church' is rightly enjoyed by all forms of human interaction which share its character. For the cause of a free society depends on the autonomous flourishing of a plurality of institutions which embody the ordered collective pursuit of fundamental human values.⁸ And we should not be surprised if in each generation there are different and difficult tensions between these multiple institutions, as they come into conflict with each other, as well as with the two great authorities of our time: the state and the market. That process of social contestation and renegotiation is the precondition and hallmark of a free society.

It has often been said that the Church has many critics (and in many cases justified critics) but that it has no rivals. I would suggest that this is true when it comes to the creation and sustenance of a free society as well. In the breadth of its concern for all aspects of human flourishing, in the depth of its commitment to human community, in the self-governing nature of its organisation, and in the strength of the authority it claims to bear witness to, it is unsurpassed as a social phenomenon. The extent of its freedom in any society is a measure of the freedom of that society as a whole. That is the political significance of the Church even today.

Section 13 of the Human Rights Act 1998 states that 'If a court's determination of any question arising under this Act might affect the exercise by a religious organisation (itself or its members collectively) of the Convention right to freedom of thought, conscience and

religion, it must have particular regard to the importance of that right.’ Like the opening clause of Magna Carta this is rather vague and general; like Magna Carta it has so far proved to be of more symbolic than practical value. But our legislatures and our courts are increasingly struggling with difficult questions of the boundaries between religious liberty and secular law. Like Magna Carta, this section reminds them and us of the importance of the freedom of the Church to the cause of civil liberty, even today. One can only hope that, whatever the fate of the Act as a whole, the principle it expresses enjoys an equally long life.

Prof. Julian Rivers studied law at Cambridge and Göttingen Universities before becoming a lecturer at Bristol University in 1993. His research interests lie mainly in the area of legal and constitutional theory, with a particular interest in the legal regulation of religions. He was appointed Professor of Jurisprudence in 2007.⁹

¹ See the many helpful essays in Robin Griffith-Jones and Mark Hill QC (eds.), *Magna Carta, Religion and the Rule of Law* (Cambridge UP, 2015).

² Harold J. Berman, *Law and Revolution*, 2 vols. (Harvard UP, 1990 and 2006).

³ Luc Ferry, *A Brief History of Thought: a philosophical guide to living* (Harper, 2011).

⁴ Jürgen Habermas, transcribed in *Time of Transitions* (Polity Press, 2006).

⁵ Oliver O’Donovan, *The Desire of the Nations* (Cambridge UP, 1996).

⁶ Rodney Stark, *The Victory of Reason* (Random House, 2005).

⁷ For a fuller statement of this argument, see Julian Rivers, ‘Liberal Constitutionalism and Christian Political Thought’ in P. Beaumont (ed.), *Christian Perspectives on the Limits of Law* (Paternoster, 2002).

⁸ For a recent restatement of the tradition of liberal pluralism alluded to here, see Victor Muñoz-Fraticelli, *The Structure of Pluralism* (Oxford UP, 2014).