



The long transition from a natural state to a liberal economic order[☆]

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ABSTRACT

Magna Carta is often heralded as the foundation stone for the subsequent emergence of the rule of law in England. But what made it enforceable and ensured that its terms were adhered to by subsequent monarchs? This paper develops an institutional account of the emergence of the rule of law in medieval England that draws on the work of North, Wallis and Weingast (2009). I argue that the Magna Carta should be seen as just one episode in the long process of establishing a centralized but constrained state in England. Similar documents to Magna Carta were common throughout medieval Europe. It was the subsequent development of a consensus-based tax state that was of decisive importance for the later emergence of the rule of law in medieval and early modern England.

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Those two problems, mutually complementary, arise in the history of every nation, and in every age: the problem of *order*, or how to found a central government strong enough to suppress anarchy, and the problem of *freedom*, or how to set limits to an autocracy threatening to overshadow individual liberty
William Sharp McKechnie, *Magna Carta*, 4

1. Introduction

How do societies secure individual liberty and economic growth? The answer to this question is crucial to understanding what Deirdre McCloskey calls the ‘great enrichment’ that first occurred in Western Europe and North America around 1800, and subsequently spread to much, but not all, of the rest of the world (McCloskey, 2010). An important part of the answer to this question is the rule of law.¹ Rule by law, rather than rule by men, provides the stability and certainty that enables individuals to truck, barter and exchange their way to prosperity (Dicey, 1908, 198–199; Hayek, 1960). But, powerful as this answer undoubtedly is, it is also somewhat unsatisfying. It simply pushes the puzzle one step back, begging a further question: where does the rule of law come from, and what ensures that it is stable and long lasting? In the

Anglophone tradition for the past four hundred years, the origins of the rule of law have been traced back to Magna Carta.

However, as historians have long pointed out, the relationship between the Great Charter of 1215 and what modern scholars understand by rule of law is more complex and nuanced than is usually recognized (McKechnie, 1914; Holt, 1992). Magna Carta was a document of its time: the outcome of a civil war, and an attempt to make peace between the king and his barons. The barons who forced king John to set his seal to it were largely interested in protecting their own domains from the fiscal predation of the king and less interested in extending these privileges to other members of society. How then did this agreement eventually lead to the emergence of the rule of law for all? Magna Carta was not an exceptional document in the political environment of 13th century Europe. Similar agreements to Magna Carta were signed by rulers in Leon and Castile and in Hungary without giving rise to a stable or long-lasting system of rule of law. This poses a puzzle for those who attribute the origins of the rule of law in England to Magna Carta and addressing this puzzle requires an examination of the consequences of Magna Carta. This paper attempts this and in the process seeks an answer to the question: what accounts for the exceptional character of England’s subsequent political development?

To provide an answer to these questions, I develop an interpretation of Magna Carta from an institutional economics perspective or to be more specific, a perspective influenced by the framework proposed by North et al. (2009) and other recent work in new institutional economics (e.g. Greif and Laitin, 2004; Greif, 2006). Among the various aspects of Magna Carta studied by historians, I wish to focus on one of these: the transition between rule of law for an elite and rule of law for all.

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¹ For a classic statement see Hayek (1960); for a more recent quantitative assessment of the importance of the rule of law for economic development see Rodrik et al. (2004).

To begin with we need a workable definition of the rule of law. Lon Fuller and others suggest the rule of law requires (1) a concept of legal equality, that is, that all individuals from the ruler downwards are equally subject to the law; (2) laws should be prospective, open, and clear; (3) laws should be stable over time; (4) the making of laws should be open and guided by general rules; (4) the judiciary should be politically independent; (5) legal institutions such as courts should be accessible to all; (6) rules should be general and apply uniformly (Fuller, 1969). This is a procedural or thin interpretation of the rule of law.² However, for present purposes it is more useful to think about a broader concept of the rule of law (Hayek, 1960; Neumann, 1986; Ferández-Villaverde, 2016).³ This liberal rule of law entails a fundamental commitment to the protection of property rights, and this was how the concept was understood by scholars as such A.C. Dicey (1908). This vision of the rule of law emphasizes the importance of general rules. As Hayek (1960) argued, because general rules are predictable, they enable individuals to plan their lives around them. Adherence to general rules maximizes the scope for individual freedom and limits the arbitrary power of rulers.⁴ In assessing whether a society possesses rule of law, we can assess to what extent it is governed by general rules and to what proportion of the population do these rules apply.

Medieval England, while governed by laws, did not possess the rule of law. In the terminology of North, Wallis, and Weingast (henceforth NWW), 13th century England was a 'natural state'. The term natural state describes the ruling coalitions that constituted the vast majority of premodern polities in which violence organizing capabilities played the determining role in structuring the character of politics.

This argument utilizes the concept of equilibrium in order to better understand political and social institutions.⁵ From an institutional perspective, in order to be stable, formal rules and informal norms have to be consistent with the underlying economic and political structures of a society. That is, rules and laws have to be in line with the distribution of military, political or economic power. Any structure incompatible with these deep parameters will be transitory. For lasting institutional development to occur, the reforms of formal political institutions cannot be out of sync with economic developments or the realities of military or political power.⁶

Placed in this context, Magna Carta should be seen as the product of a conflict among members of the ruling elite of medieval England.⁷ Magna Carta was not a constitution—even if in later centuries it became interpreted as such. Nor did it establish the rule

² Joseph Raz extends the logic of such procedural definitions of the rule of law arguing that '[a] nondemocratic legal system based on the denial of human rights, on extensive poverty, on racial segregation, sexual inequalities, and religious persecution may, in principle, conform to the requirements of the rule of law' (Raz, 2009, 4).

³ Also see the discussion in Koyama and Johnson (2015). Raz's argument was developed as a critique of Hayek (1960). However, it largely misses the mark because it fails to address Hayek's most compelling arguments for the virtue of the liberal rule of law. A useful interpretation of the relationship between the rule of law and economics is Zywicki (2003).

⁴ Neumann (1986), a leftwing critic of classical liberal ideas, nonetheless acutely observed the congruence between general rules and the market economy, noting 'the general law in a competitive economic system has finally the function of rendering the exchange processes calculable and predictable' (Neumann, 1986, 223).

⁵ See Chapter 2 in Greif (2006) for a related discussion. In economics an equilibrium is used defined as formally defined as corresponding to a fixed point of set of equations. Our use of the concept here is more informal but appeals by analogy to the application of this idea to understanding the relationship between political institutions and economic outcomes.

⁶ Note that this framework is not the same as a Marxist or purely materialist framework as it allows for ideas and beliefs to affect these underlying structural parameters.

⁷ This was a conflict between members of what political scientists call the electorate (de Mesquita et al., 2003).

of law for all. But it did secure the rule of law for the political elite and restricted the ability of the king to use either feudal law or his discretionary authority for fiscal purposes, while at the same time confirming the expansion of royal authority in the enforcement of the common law. My argument is that Magna Carta marked the limitations of the particular set of institutional arrangements that governed England at the time and, after a period of conflict, laid the foundation for the emergence of a consensus-based tax state (a more mature natural state in NWW's terminology) later in the 13th century. As a result, Magna Carta marks a change in the direction of the institutional evolution of the nascent medieval English state.

The importance of Magna Carta for English political history (and therefore for the political history of the West) then lies in its role at the beginning of a long process of political development in medieval England that laid the foundations for constitutional government. This perspective indicates that constitutional moments like Magna Carta cannot be viewed in isolation. They are part of an ongoing process. Had political developments taken a different turn in subsequent centuries, Magna Carta might be as forgotten today as the Golden Bull of Hungary signed at approximately the same date. This essay argues that it was these historical and political developments—in particular, the conjunction of a strong, but constrained tax-state and a representative, national parliament after 1300—that enabled Magna Carta to be seen as a founding document for the rule of law and liberal democracy.

2. The political economy of medieval England in the lead-up to Magna Carta

The laws of England in middle ages were a mixture of customary laws, feudal laws, church laws, and the decisions of the royal courts (Helmholz, 2004). The Norman rulers of England had inherited an Anglo-Saxon legal system that was based on customary law. Most laws varied from place to place: written laws represented 'only a fraction of the laws men lived by' (Cam, 1962, 13). This legal system was enforced by institutions that had initially evolved gradually over time in order to resolve disputes effectively at a decentralized level in the absence of strong state power, although by the tenth century Anglo-Saxon kings had already begun to use these institutions in order to enforce royal justice.⁸ It was on top of this preexisting system that the Normans imposed the institutions of a feudal monarchy.

This system did not conform to the rule of law in the sense that we have outlined. There was no legal equality. Different laws applied to different individuals according to their status in society. There was a lack of certainty. This was partly due to the fact that there were many different levels of authority within feudal society so that legal authority was routinely contested.⁹ Finally, the enforcement of the law was highly variable. Law enforcement was in the hands of local officials or the victims themselves. From the perspective of modern historians, at least, the judgements of this legal system appear arbitrary.¹⁰

⁸ As Harold Berman writes: 'the basic law of the peoples of Europe from the sixth to the tenth century was not a body of rules imposed from on high but was rather an integral part of the common consciousness, the "common consciousness" of the community. The people themselves, in their public assemblies, legislated and judged; and when kings asserted their authority over law it was chiefly to guide the custom and the legal consciousness of the people, not to remake it' (Berman, 1983, 77).

⁹ This is exemplified by the laws of the forest. The scope of the royal forest was a matter of serious contention between the king and his subjects throughout this period.

¹⁰ In her study of the Lincolnshire Assize, Hanawalt (2010) observes that in the majority of cases the accused could not be brought to the court suggesting how easy it was to evade justice (120). One may suspect that we are in danger of applying anachronistic standards here. It was in part to compensate for the low probability

While all land in England belonged ultimately to the king, much of it was held as hereditary fiefs by barons who possessed their own military power and legal authority. What this meant was that each baron acknowledged fealty to the king and pledged his support in times of war, but was otherwise an independent ruler. Medieval society was functionally isomorphic at each social level. The same bonds underlying the allegiance of the barons to the king also enforced the loyalty of knights to the barons and the peasants to their feudal superiors. As one historian puts it: 'Kingship was an exalted lordship which had no superior under God; lordship was a kind of petty kingship' (Warren, 1987, 10).¹¹

How did Magna Carta fit into this system? The Great Charter of 1215 was an agreement between the king and his leading barons. To understand Magna Carta and its role in the political development of medieval England, therefore, we have to grasp the nature of the English monarchy in the early 13th century.

In the language of modern political science, the king and the barons together formed the ruling coalition of medieval England.¹² The authority of the king stemmed from two sources. First, he was the greatest landlord in the country. This mattered because the principle source of revenue for the monarchy was income from the royal domain. Second, the king was the feudal superior of the other lords in the country who all swore him fealty. He could apportion estates in the absence of a direct male heir and was endowed with a range of feudal prerogatives which included the right to hold court and enforce justice (Myers, 1982). These feudal prerogatives did not include the right to freely impose taxes on his subjects during times of peace. In theory, he was expected to 'live on his own,' that is, from the proceeds of the royal demesne.¹³

The king in his role as landlord and apex of the feudal hierarchy was expected to provide justice; that is, he was a judge and the highest secular authority in the land. But, importantly, he was not a legislator. Feudal law was derived from custom. And, while the Church preserved some, and was in the process of reviving much more, Roman law, the implications that Roman law entailed in terms of the transformation of royal authority had not yet been comprehended.

What became known as the common law stemmed from the royal attempts to standardize legal proceedings from the reign of Henry II (1154–1189) onwards. The emergence of the common law accompanied the consolidation of monarchical power.¹⁴ Henry II

introduced a system whereby itinerant royal judges travelled the country dispensing the king's justice.¹⁵

Legal historians such as Berman describes the policies of Henry II in revolutionary terms: the successful imposition of 'royal jurisdiction, and royal law, upon criminal and civil matters that had previously been under local and feudal jurisdiction and local and feudal law' (Berman, 1983, 445). This process of systematization and standardization made it possible for law books to be written for the first time since antiquity and for professional legal experts to emerge. By centralizing the legal system, Henry II established a new basis for royal power. Berman argues that one of the most important elements in this transformation was the shift from royal commands to royal writs and summons. Through this process, Henry centralized royal authority but he did so in a way that also set limits to this power; he 'greatly extended his jurisdiction as against that of both feudal and ecclesiastical courts; but the conditions of his assertion of royal jurisdiction were expressly stated and they would therefore serve as limitations' (Berman, 1983, 458). This was important for the future; however, these limitations were only explored in the reign of his sons.

2.1. The fiscal crisis before 1215

We can employ the concept of equilibrium to describe whether or not political institutions are congruent with the underlying parameters of society or economy. Feudalism had become fully developed in 9th and 10th centuries during a period of economic and economic collapse in western Europe (Wickham, 2005). While historians no longer think markets were absent in the early middle ages, as was once supposed, it is undeniable that the extent and scope of market activity was limited.¹⁶ Agriculture was the predominant source of income and there was little in the way of long-distance trade. In the absence of a monetary economy, there was no permanent system of taxation. The greatest early medieval landlord also commanded the largest income, the access to the most manpower, and possessed the most economic and military power.

After 1066, William Conqueror established a powerful feudal monarchy in England and took vast swathes of land into the royal domain. At this point, like two pieces of a jigsaw puzzle, the political structure fit economic realities—they were in equilibrium. So long as England remained an agrarian economy, the political institutions of feudal England were at one with the underlying economic realities.

Over the course of the next hundred years, William's successors were able to increase royal income and maintain or increase royal power. However, while this was occurring, parallel developments in the economic realm were undermining the basis of this equilibrium. Several developments were taking place that would mean that the political ambitions of the English kings would no longer be congruent with the existing feudal system.

The two most significant developments were the commercialization of the economy and intensified military competition principally with the kings of France.

First, economic power in England ceased to be solely based on possession of land. The reason for this had to do with the expansion of the European economy after 1100 as both population

of apprehending and convicting felonies that the punishment for many crimes had to be severe. And of course legal institutions that appear arbitrary from a modern perspective may have a basis in rational behavior (Posner, 1980; Leeson, 2012, 2013). Nevertheless, there is plenty of evidence that contemporaries were often unhappy at how far local standards of justice departed from commonly held norms of justice.

¹¹ Historians term such societies feudal. Feudalism has typically been understood in two ways: (1) as a description of type of society based on a manorial economy as in classical Marxist accounts (Anderson, 1974); (2) as form of legal organization based on the vassalage (Ganshof, 1951; Bloch, 1964). This latter view is no longer widely held as Reynolds (1994) has shown that the fief-vassal relationship was less ubiquitous than was previously thought. Nevertheless, the concept is a useful one.

¹² It is an anachronism to refer to an English state at this time—the term did not come into common usage until 16th century (Skinner, 2009). Talk of a nation is similarly inappropriate. The king and the barons spoke French rather than English as their first language, and governed lands in England as well as in Ireland, Wales, Normandy and other parts of what would become the kingdom of France.

¹³ The royal demesne was the which 'the king held *in dominio*, "in his own hands," land which was not held of the king by someone else' (Hoyt, 1950, 2).

¹⁴ One reason for this expansion was that the king used the court system in order to extract revenues. Yet in order to do this, his courts had to provide a service that was at least equal to the justice on offer in the seigneurial or church courts. Judging from the numbers of individuals who used the royal courts in the 13th century most historians' assessments have been favorable. No doubt, however, there was considerable rent-seeking.

¹⁵ The role played by these royal judges in the development of the common law is studied by Turner (1985). Initially merely royal officials, these judges gradually became professional, specialized, experts, a process that was central to the growing sense that England was a country ruled by law by the thirteenth century. They were 'special representatives of the king' and they 'were faced with dual and sometimes conflicting duties: to render justice impartially and, at the same time, to protect the king's interest'. Their 'duty to increase royal revenue' was a source of tension and aroused opposition (Turner, 1985, 271–273).

¹⁶ See McCormick (2001) for an authoritative modern assessment.

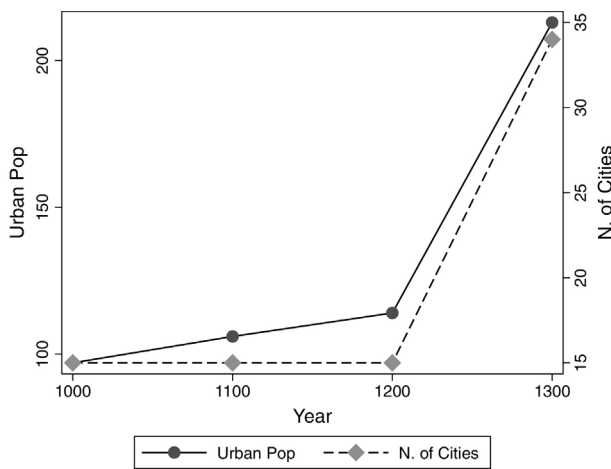


Fig. 1. Urban population growth 1000–1300. Urban population refers to the number of people living in cities with greater than 2000 inhabitants (and is measured in thousands). Number of cities refers to the number of cities with greater than 2000 inhabitants.

Source: [Bairoch \(1988\)](#).

urbanization, and the volume of trade grew at a rate that was rapid for a preindustrial economy.¹⁷ Massechaele notes that nearly a third of all new towns founded in the middle ages were established between 1180 and 1230 ([Masschaele, 2010, 156](#)). [Fig. 1](#) shows the increase in the number of individuals living in cities with more than 2000 people between 1000 and 1300. [Fig. 2](#) depicts the number of new markets founded between 1100 and 1350 in England by county. It shows the rise of a commercial economy in the eastern part of the country with strong trading links to the cloth industry in Flanders and the sea ports of northern Germany.

The main source of revenue for English kings was the land rent they collected from the royal demesne. This was farmed out to local officials at rates that were fixed in nominal value and, as this was a period of considerable inflation, their value was declining in real terms. In contrast, the growing incomes of merchants and the urban economy went largely untaxed. The net result was a political system that had evolved to govern a rural and largely unmonetized society and which struggled to adapt to a growing economy. As the economy boomed, the *relative* income of the king was in decline.

The second factor was the intensification of military competition. Though the Angevin kings were among the most powerful rulers in Europe during the late twelfth and early thirteenth century, from the 1180s onwards they faced increasingly fierce competition from Philip II of France (r. 1179–1223) who was able to create an alliance of feudal lords in France willing to recognize his suzerainty. The costs of military competition began to increase in this period. Henry II and his sons hired specialized mercenaries for their long campaigns and sieges. These soldiers did not owe the king feudal dues; instead, they required payment in cash. And this cash price was going up. While Henry II paid his mercenary

¹⁷ See [Britnell \(1981, 1993, 2009\)](#), [Britnell and Campbell \(1995\)](#), [Masschaele \(1997, 2010\)](#), [Langdon and Masschaele \(2006\)](#). For example, Richard Southern goes so far as to suggest 'that moment of self generating expansion, for which economists now look so anxiously in underdeveloped countries, came to Western Europe in the late eleventh century' ([Southern, 1970, 34](#)). Others would not be so bold, but a consensus of historians and economists concur in the general sentiment describing it as 'a period of growth on all fronts'. Estimates suggest that the population of Europe increased from around 40 million in 1000 to between 80 and 100 million in 1300.

N. of Markets Founded: 1100 and 1350

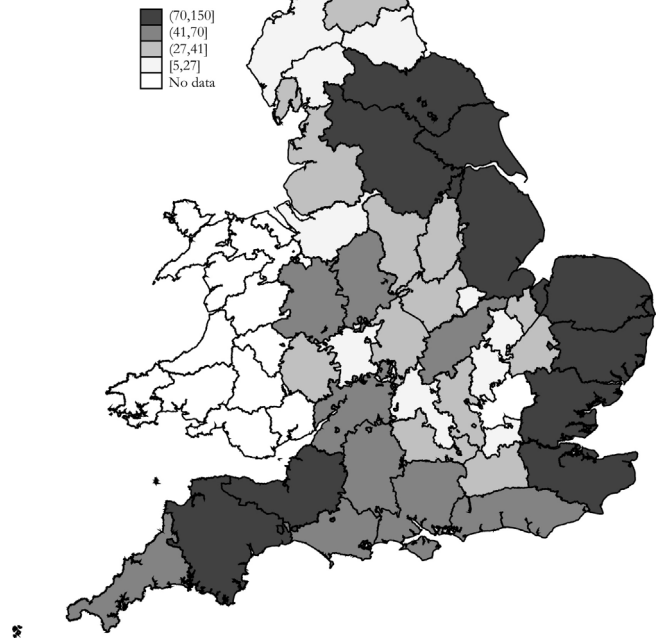


Fig. 2. The establishment of markets 1000–1349. This map depicts the number of new markets established by county.

Source: [Britnell \(2009\)](#).

men-at-arms 8 pence a day; John had to pay 2 shillings or 3 times as much.¹⁸

To meet the costs of war, Richard I (r. 1189–1199) imposed nationwide taxes on movables but these had to be justified in terms of a specific cause such as the Saladin Tithe of 1188, raised to fund Richard's crusade or the taxes imposed to pay for his ransom in 1194. Richard also sought money through a range of other devices: as Harris observed '[t]he extraction of their wealth through fines, *conventiones*, *oblata*, forfeitures, the exploitation of vacant churches, and sheer seizure conformed more effectively with the King's political opportunities than the attempt to impose a widespread public tax' ([Harris, 1975, 6](#)). Richard's policies placed tremendous demands on royal finances. But, before they provoked a backlash, he died fighting in France leaving his younger brother John (r. 1199–1216) responsible for defending far-flung territories in France in addition to managing restless barons in England. The crisis that John faced in 1215 followed from this as it was directly brought about by his failure to contain Philip and the loss of Normandy and from the financial exigencies that his attempts to do so entailed.

2.2. 13th century England as a natural state

Social order requires violence to be constrained. Different forms of social order constrain violence in different ways. One way to hold violence in check is to bribe those individuals who have the power to disrupt the peace. For NWW natural states are polities that solve the problem of violence this way, i.e., through the creation of economic rents which provide incentives for members of the political elite to support the existing political configuration.

¹⁸ It may be useful to clarify the monetary system used in medieval England. A pound sterling was made up of 20 shillings (s) or 240 pence (d). A mark was 13s and 4d or two-thirds the value of a pound.

Economic rents are returns above opportunity cost. Such rents are often generated by restrictions on economic activity which limit entry and prevent returns being bid down to the value of the next best use of the resource in question. What NWW mean when they argue that rents hold a natural state together is that they bind individuals with the capacity to use violence to existing distribution of political authority. They it make in their interest to adhere to the existing political order rather than challenging it by resorting to force.

Political elites within natural states restrict entry to generate the monopoly rents which are distributed to those with sufficient coercive power to disrupt the existing power structure. As such, natural states cannot provide rule of law to all precisely because they rely on treating individuals differently in order to maintain political order. Instead of general rules, natural states rely on personal enforcement and on identity rules to govern. This reliance on identity rules meant that individuals received different treatment depending on their religion, social class, place of birth or residency.

An exemplary example of how natural states function was the regulation of moneylending in medieval England: by prohibiting Christian usury and licensing Jewish moneylending the king enforced an artificial monopoly in order to generate rents (Koyama, 2010a,b). The Jews were feudal dependents of the King and therefore, unlike the rest of the population, could be taxed at his discretion through a feudal levy known as a *tallage*. The special taxation of Jews was made possible by the absence of general laws applicable to all.

Differences in organizational scope and capacities between natural states can be discerned. NWW differentiate between fragile, basic, and mature natural states:

'In a *fragile natural state*, the state can barely sustained itself in the face of internal and external violence . . . commitments within the dominant coalition are fluid and unstable, often shifting rapidly, and dependent on the individual identity and personality of the coalition members. The coalition is fragile in the sense that small changes in the situation of the coalition members—changes in relative prices, any number of shocks from climate, neighboring people, disease, and so on—can upset the coalition' (North et al., 2009, 42).

Based on this classification, NWW argue that by the early 13th century England had transitioned from being a fragile natural state to a basic natural state (North et al., 2009, 83).¹⁹

Nevertheless, the Anglo-Norman monarchy remained vulnerable to outbreaks of violence and disorder. As we have noted, John inherited a restive barony and large-scale conflict in France. He alienated his Norman barons when he had his nephew Arthur of Brittany killed and his position deteriorated further when in 1204 he lost Normandy to Philip II of France. In response, he exploited the usual range of avenues available to a feudal ruler: wardships were exploited to generate revenue and heiresses sold in the marriage market for profit. Feudal rights such as these, traditionally used by rulers to cement alliances within the ruling coalition, were exploited by John on an hitherto unprecedented scale for short-term profit.²⁰ His position at the height of the justice system, enabled John to exploit his suzerainty over the royal courts, which had developed in his father's reign, to sell justice. He utilized to the full, his rights to tax Jewish moneylending, raising a number of extremely substantial tallages on England's Jewish community (see Koyama, 2010b).

¹⁹ North et al. (2009, 77–109) provide a detailed analysis of the evolution of property rights in land in medieval and early modern England but they do not focus on the rule of law per se, which is the focus of this essay.

²⁰ This corresponds to what economists label rent-extraction (McChesney, 1987).

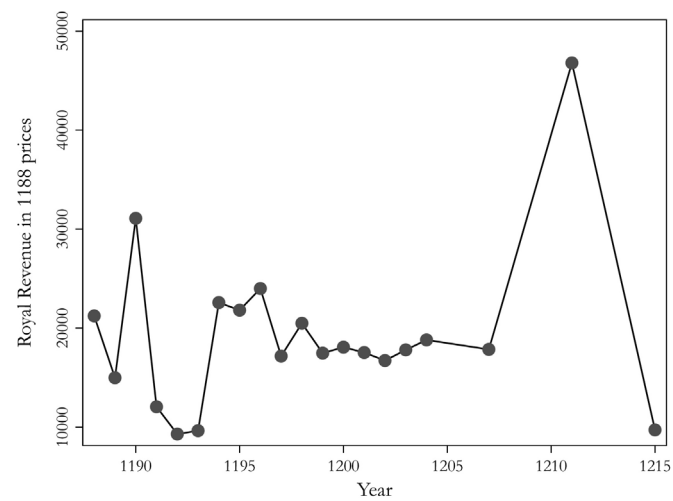


Fig. 3. Royal revenue in reigns of Richard I (1189–1199) and John (1199–1216) Deflated by the 1188 price level.

Source: Barratt (1996, 2001).

In none of these respects was John especially unusual; neither a particularly strong or revolutionary king, he was following a precedent laid down by his father and brother.²¹ Fig. 3 depicts the rise of royal revenue during the reigns of Richard I and John using data provided by Barratt (1996, 2001). John's nominal tax take was considerably higher than that of his brother; but these were years of inflation so that it was only in 1211 that he imposed notably higher taxes in real terms than had his predecessor.

Natural states rely on personal relationships and John's inability to hold together his ruling coalition paved the road to Magna Carta. This was the proximate cause of the crisis that came to a head in 1215. As Carpenter puts it 'John's regime collapsed because it had too narrow a base. Its enemies among barons and knights had come to far outnumber its friends' (Carpenter, 2015, 234). He abused the existing fiscal system in such a way that alienated those powerful members of his own ruling coalition who had the ability to topple him from power. The size and scale of his demands highlighted the increasingly arbitrary aspects of Angevin kingship. As Holt observes:

'In one aspect he was doing nothing more than grant privileges to exercise justice, take reliefs for the succession to estates, arrange marriages; doing all those things which were attributes of feudal lordship. Yet, in another, he was financing war, enforcing obedience by the brazen exercise of power, disciplining his subjects by the threat of fact of imprisonment, by the extraction of hostages, the surrender of castles and the pledging of land, by financial pressures which subjected a man to burdens near or beyond his powers of repayment and threatened his estate and patrimony' (Holt, 1992, 196).

John's desperate actions provoked rebellion against him. Defeat by the French king at the Battle of Bouvines in 1214, confirmed the loss of Normandy and the ultimate failure of John's policies. This emboldened barons in the north and east to openly oppose John. The greatest barons had the military power to oppose the king if they act in combination. They demanded he respect limits to the arbitrary nature of his rule—a demand framed in terms of a Charter of Liberties dating to the reign of Henry I (r. 1100–1135). Each

²¹ For example, the Exchequer of the Jewry was founded in Richard's reign in order to systematically tax Jewish moneylending. However, the scale of John's exactions exceeded those of all his predecessors.

side raised an army, but full-scale battle was a risky proposition and both parties preferred to negotiate a settlement. They did so at Runnymede on 10 June 2015 and Magna Carta is the document that resulted from these negotiations.

3. Magna Carta and the beginning of the transition to the rule of law for elites

Historians have noted that Magna Carta was not intended as a constitution. Rather, it was 'a statement of principles about the organization of a feudal state' (Holt, 1992, 75), a 'reasonable critique' of Angevin government (Warren, 1987, 165), or even 'a strategic gambit by King John to placate restless elites' (Menaldo and Williams, 2015, 187).

However, for all the caveats that we might hedge around the actual intentions of its authors, Magna Carta does mark a watershed in constitutional history because it states several principles that would decisively shape later developments. Magna Carta established the notion that the king was subject to law. If it did not introduce the idea of trial by one's peers, it gave it new emphasis and importance (at least for members of the political elite). And it clearly stated that everyone in society should have access to the law and the legal system.

We can examine these ideas in turn. The first and most important idea articulated in Magna Carta was that the King was bound by the law. This became accepted at a theoretical level by all subsequent English kings. In practice, of course, medieval kings such as Edward I frequently pushed the limits what was possible and had few qualms about using their coercive powers to manipulate the law in their favor. But medieval English kings never claimed the authority Roman Emperors had asserted about their ability to create or define law; and Magna Carta played a role in establishing this precedence.²² It would place an ideological barrier in the path of creating a myth of royal absolutism in subsequent centuries.

What about equality before the law? Article 39 reads:

"No free man shall be seized or imprisoned, or stripped of his rights or possessions, or outlawed or exiled, or deprived of his standing in any other way, nor will we proceed with force against him, or send others to do so, except by the lawful judgement of his equals or by the law of land".

The barons who wrote Magna Carta did not envision a society characterized by full equality before the law. And the implications of these words only bore fruits in later centuries. The reference to free men excluded the majority of the population who were still serfs.²³ In this respect Magna Carta remained wedded to ancient and medieval thought in which the fundamental legal distinction was between free and unfree individuals; a distinction that embedded legal inequality (Kim, 2000). Again, the language of free men was pregnant with implications that would only be developed in subsequent centuries.

In fact, both at the time and subsequently, it was unclear what limitations Article 39 placed on the power of the king. Did it prevent

arbitrary arrest by order of the king? The answer is ambiguous. Neumann asks: 'what is meant here by "law of the land"? If "law" means the order of the king for imprisonment, then the freedom guaranteed by the Magna Carta is non-existent' (Neumann, 1986, 46). Kings throughout the medieval and Tudor period routinely ordered the imprisonment of individuals without trial.²⁴ It was only in the reign of Charles I that this was challenged and Article 39 interpreted to mean due process of the law and to exclude a simple order of the king. In this respect, again, the importance of these words would be realized only once England had transitioned to a different social, economic, and political equilibrium.

Finally, there was the idea that all should have access to the legal system. Article 40 of Magna Carta denies the ability of the King to 'sell . . . deny or delay, right or justice'. Note that despite its subsequent reputation as placing limits on royal power, here Magna Carta endorses the growth of royal courts in the previous half-century.

The common law was the royal law; it involved the systemization of local customary laws.²⁵ It represented the centralization of a legal system that had previously been divided into the laws of Wessex, Mercia and Daneland (Berman 1983, 406). Magna Carta did not object or seek to curtail this development—it did not oppose the centralization of royal authority—rather it aimed at limiting the abuses of the system that had taken place during the reign of King John who stood accused of selling justice for his own benefit and using the judicial system to reward his friends at the expense of his opponents. John 'had sacrificed his reputation as a righteous judge without any commensurate political benefit' (Carpenter, 2015, 223). His successors like Edward I would use their reputation for just rule in order to buttress their rule. The growth of the royal courts led to a process of legal centralization as important cases came to be referred to the highest possible level and only comparatively minor cases or those requiring specialized knowledge remained the provenience of the manorial, church and merchant courts.²⁶ This is important because it distinguishes Magna Carta and the subsequent development of the English parliament as a national body, from the many regional *cortes* and *parliaments* that developed on the continent.

4. The long transition to the rule of law and economic development

Having established the context of Magna Carta, a natural next question is what made Magna Carta a lasting part of the political economy of medieval England? In other words, what ensured that it was self-enforcing? As numerous existing accounts tell the story of how Magna Carta came to play a crucial role in the political debates of the 17th century (see, for instance Pallister, 1971), here I wish to focus less on the intellectual legacy of Magna Carta than on the implications it bore for the development of political and economic institutions in England.

As I have noted, the ideas behind Magna Carta were not unique to England, but common in 13th century Europe, the product of a

²² Edward's recent biographer Marc Morris illustrates this with the following anecdote: 'The king's own attitude is well illustrated by a private letter he sent to the chancellor in 1304 concerning a royal ward called Thomas Bardolf. This young man had given by offense by refusing to go through with a marriage that Edward had arranged for him, and the chancellor was therefore instructed 'to be as stiff and harsh towards Thomas in this business as can be, without offending the law' . . . What is . . . striking in this instance, is that, even as he instructed his chancellor to be partial, Edward reminded him to stay within the limits of what was legal' (Morris, 2008, 367).

²³ Similarly Chapter 20, which protects peasants and others from amercement (fines) imposed by the king, did not protect peasants from fines imposed by their lords (Carpenter, 2015, 354).

²⁴ See Barker (1995) who notes '[b]ut where the arrest was ordered on high by the king's council, or by a justice of the peace, or some other authority closely associated with governmental power, the efficacy of a common-law action which required the cooperation of the sheriff was limited' (Barker, 1995, 194–195).

²⁵ As Berman put it: it was the 'historical expansion of royal jurisdiction in the reign of Henry II that marks the origin of the English common law' (Berman, 1983, 456). See Barker who writes: "The common law, a body of law common to the whole of England as opposed to variable local custom was necessarily a product of centralization" (Barker, 1995, 181). Arthur Hogue observed that "[t]he exceptional strength of Angevin monarchy was essential for the development of a body of common law for the entire realm" (Hogue, 1966, 33)

²⁶ See Barker (1995, 181).

Table 1
Selected constitutional moments in 13th century England.

Year	Event	Description
1215	Magna Carta	Charter is issued at Runnymede by barons and King John
1216		Reissuing of the Magna Carta minus clause 61 (the security clause)
1225		Confirmation of Magna Carta by Henry III
1258	The Provisions of Oxford	Conditions imposed by barons on the king that placed government in hands of 24 barons and a 15 member Privy Council
1259	The Provisions of Westminster	Legislation that confirmed the Provisions of Oxford
1266	The Dictum of Kenilworth	Treaty imposed at the defeat of baronial rebels. Annulled the Provisions of Westminster
1267	The Statute of Marlborough	Statute that preserved legal reforms of Provisions of Oxford while annulling limits on monarchy
1275	The Statue of Westminster	Codification of English laws. Confirmed the role of Parliament in Edward I's monarchy
1297	Confirmation of the Charters	Magna Carta reissued as part of the <i>Confirmatio Cartarum</i> (Confirmation of Charters) in return for Parliamentary taxation

shared culture and atmosphere as well as similar economic and political conditions. For example, the idea that military tenants should not lose their land except through trial by their peers or the laws of than land was expressed in documents such as the Treaty of Constance in Italy and the Golden Bull in Hungary and other similar documents were signed in Leon, Castile, and Aragon (Holt, 1992, 76–77). In fact, many of these documents went further than Magna Carta: binding their king's ability to make war without calling a council of the nobility and bishops as in Leon in 1188 or in prohibiting any future amendments to the limitations on the monarchy as was acceded to by Andrew II of Hungary in 1222.²⁷ This raises the question: why did the transition to the rule of law, gradual and haphazard though it was, take place in England and not elsewhere?

Table 1 lists some the most important constitutional developments in the decades that followed Magna Carta. During this period Magna Carta became part of the political discourse of the realm in the 13th century. It was reissued in 1225, confirmed in 1237, 1253, 1265 and by Edward I in 1297 and 1300 and on each occasion it was read aloud across the country (Carpenter, 2015, 430–431). But Magna Carta was not a constitution. And it soon became out of date on many of the most pressing matters of disagreement between the crown, the barons, and the rest of the political realm. Magna Carta did not limit the king's choice of advisors, nor did it establish regular councils or parliaments and, while it restricted his ability to exploit the fiscal system for profit, it did not wholly prevent this, particularly with regards to the exploitation of Jewish moneylending, a subject on which Magna Carta notably *failed* to tie the hands of the king.

Complaints on these issues and others during the reign of John's successor Henry III produced a further constitutional crisis and the Second Baron's War (1264–1267). Though the baronial party was defeated, it was the outcome of this conflict that eventually consolidated the role of Parliament, an unknown institution at the time

²⁷ Indeed, the Magna Carta of 1215 placed stronger restrictions on the monarchy in the form of the security clause (see, for a discussion Rajagopalan, 2016).

of Magna Carta. It was this second constitutional crisis that laid the foundation for the parliamentary monarchy of the late middle ages. And it was in Parliament that later generations found an institution strong enough to bind the king.

To illustrate we can consider the role that Jewish moneylending played in the lead-up to this second crisis. Magna Carta contained two provisions (Chapters 10 and 11) that sought to limit some of the aspects of the activities of the Exchequer of the Jewry. And Stow observes that 'at least one cause of the great rebellion in 1215 ... [had been] resentment against royal manipulations worked through Jewish lending' (Stow, 1992, 112). But Magna Carta did not end the practice of royal exploitation of Jewish moneylending, nor did it prevent the sale for Jewish debts among members of the ruling coalition. In fact, because Magna Carta closed off other avenues for raising revenue such as the sale of wardships, it made Henry III *more* reliant on the profits of Jewish moneylending than his predecessors had been.

The secondary market for Jewish debt was a source of deep unpopularity among the knights and barons (Elman, 1939; Fussler, 1975; Mundill, 1998). The reason for this was simple. Most debts were secured on land. But Jews were prohibited from owning most land (as they were outside of the feudal system). Therefore they sold the rights to the land to secondary investors. As the Jews were subject to royal authority alone, court insiders including the Queen and her relatives were best positioned to buy these debts and thereby add to their already extensive landholdings. These members of the ruling coalition stood to benefit if the debtors of the Jews went into default.

This issue came to a head in the 1250s after a series of high tallages were imposed on the Jewish community. In general financial markets function by spreading risk but when the king imposed high tallages on the entire Jewish community, this impaired the ability of the community to smooth risk and hence undermined the foundations upon which they were able to extend credit. Stacey notes that the 'savage financial exploitation forced Jews into a variety of expedients to raise cash' including calling loans in early (Stacey, 1997, 93). Lenders, who in normal circumstances would have accepted deferred repayment, could not do so because that had to raise money for the king. This short-sighted policy damaged the ability of the Jewish community to meet the financial demands of the king and marked the 'start of a catastrophic decline in Jewish wealth' (Mundill, 1998, 77).²⁸

The crisis brought about by his ruthless treatment of England's Jewish community was just one example of Henry III's mismanagement of the realm. His inability to govern his barons, inappropriate foreign policy, the lavish patronage he extended to his relatives and in-laws from the continent, as well as his ruthless taxation of England's Jewish community provoked a further baronial revolt led by Simon de Montfort. De Montfort went much further than the barons at Runnymede had: first he issued the Provisions of Oxford which sought to impose on the king a council of advisers, then when Henry III rejected the Provisions, he imprisoned the king and sought to govern himself. Not coincidentally, this second baronial rebellion saw the expropriation of numerous Jewish communities and the destruction of their loan books. De Montfort made a point of canceling debts owed to Jewish lenders (Maddicott, 1994).

²⁸ Those close to the court like Richard of Cornwall, the king's brother, seized the collateral of a large number of lesser landowners who had borrowed against the value of their land. See Cross (1975) for an account of how Sir Geoffrey de Langley obtained estates in Wiltshire and Derbyshire as their owners went into debt to Jewish moneylenders in the 1250s. A further source of grievance was that like his father John, Henry used Jewish moneylending as a means of patronage, forgiving the debts of his friends and supporters while using the debts of others 'as a way of controlling potentially troublesome individuals' (Huscroft, 2006, 27).

4.1. The emergence of a parliamentary tax state under Edward I and Edward III

De Montford was defeated by Henry's eldest son, Edward (r. 1272–1307) who took effective charge of government following the revolt. The term of initial peace were harsh but the subsequent Dictum of Kenilworth and Statute of Westminster acknowledged those baronial demands that did not touch on the direct authority of the king, and while the Provisions of Oxford were repealed, Magna Carta was reconfirmed as was a commitment to uphold royal justice.

Edward sought to rule with the support of the barons and country. The key institution that allowed him to do this was Parliament. The term 'parliament' had emerged in Henry III's reign to describe meetings between the king and the leading barons; its use was first recorded in 1242 and it came into common use during the period of baronial supremacy between 1258 and 1265 (Treharne, 1970, 73). Its initial role was largely judicial: it was used to hear a variety of legal cases but it soon became important in fiscal matters as well.

It was Edward who sought to use Parliament as an instrument of government and during his reign, Parliament came to be seen as representative of the larger community of the realm. Again, we can look more deeply into this process by examining the role played by Jewish moneylending. Soon after becoming king, Edward sought to end Jewish moneylending altogether in return for a new tax based on the wool export as part of The Statute of Westminster of 1275.

The Statute of Westminster saw the establishment of a nationwide excise tax based on a marketable commodity: wool (Gras, 1912). This was a new kind of tax: it was general, with no exemptions, and it was granted by Parliament (Gras (1918, 63). It gave the king the ability to tax the growing commercial economy and became a standardized feature of the nascent English tax state:

'The consolidated customs and subsidies were the result of effort spread over a period of seventy-five years, from 1275 to 1350. They were achieved partly because they were established gradually; partly because of a large measure of cooperation with merchants and Parliament; and partly because of the pressing needs of the state brought about by the foreign wars of aggression which England was waging. This new customs system was absolutely unprecedented, so far as I can discover, in that there was no exemption for individuals or towns' (Gras, 1918, 88).

An important feature of this tax was that its collection required the support of the towns as it was officials based in towns such as London, Norwich and Bristol who had to assess and collect this tax. As a result, it required the support of the towns as well as the barons. The significance of this was that it became standard during the reign of Edward I for representatives of the largest towns to attend parliament.²⁹ At the same time as it granted new powers of taxation, the Statute of Westminster saw Edward affirm his responsibility for the provision of justice in the realm and prohibited all new Jewish lending. This was an important constitutional moment: as I have detailed elsewhere, it also eventually led the expulsion of the Jews from England (Koyama, 2010b) and it inaugurated the role of parliament in granting royal taxes (see Harriss, 1975).

Wool taxes provided the backbone of the monarchy's finances until the 17th century. They represent a point of transition to a new political-economic equilibrium. For this reason, the wool export became 'the most important business from the point of view of the

²⁹ The representatives of the cities had 'power of attorney'. They could legally bind those they represented (see Cam, 1970).

developing constitution' (Lovell, 1962, 157). The establishment of a permanent system of national taxation in place of the old system of ad hoc feudal levies mark England's transition from what NWW label a fragile natural state towards being a basic natural state.

5. Parliament and the rule of law

Having established the role played by Magna Carta in the evolution of England's medieval political institutions, we are now in a position to reflect more generally on how this system led to the eventual emergence of a state characterized by the rule of law. The crucial role played by Parliament in constraining the monarchy in the 17th century is well-known, but Parliament as it emerged from the constitutional crises of the 13th century was also vital in providing a national (and hence centralized) forum for the resolution of political conflict. In this historical account both *capacity* and *constraints* deserve emphasis.

In an important work of historical sociology, Ertman (1997) distinguishes between four types of premodern European polity. On the one hand, there were those polities in which rulers were able to claim 'absolutist' powers such as the right to raise taxes without consultation such as France and Spain. In reality, as we will note, even in these countries the power of the monarchy remained checked and often fairly weak. On the other hand, there were those constitutional regimes where rulers lacked this power and required some measure of consent as embodied in an explicit or implicit constitution such as England and the Dutch Republic.

Within this conventional dichotomy, Ertman makes a further distinction: he separates patrimonial absolutist states such as France and Spain from bureaucratic absolutist states as emerged in Germany and he distinguishes between constitutional and patrimonial states like Poland and Hungary from constitutional bureaucratic states, a category in which he puts early modern England.

It was in this latter category of state that the rule of law emerged; it did not emerge in constitutional patrimonial states like Poland or Hungary. Magna Carta plays a crucial role in the story of the rule of law but it does so precisely because England did not become dominated by baronial rule just as it did not fall entirely under the authority of the king. In accounting for why constitutionalism in England did not descend into constitutional patrimonialism, Ertman views Parliament as crucial barrier to official-selling. Parliament ensured that

'patrimonial practices like proprietary officeholding and tax farming came under intense criticism. The resulting struggle between royal officials and England's national representative assembly over the character of the growing administration and financial infrastructure continued intermittently for over three and a half centuries' (Ertman, 1997, 30).

Regular meetings of parliament became common in Edward I's reign, but it was the reign of Edward III (1327–1377) that confirmed the importance of the role of Parliament. Frequent warfare gave it effective control over taxation. During the 14th century Parliament became a permanent national institution in which representatives of both the lords and the commons sat, seen as embodying the political interests of the realm. While Magna Carta articulated the idea of subjecting the king to the law, the rise of a powerful institution such as Parliament made this idea part of a self-enforcing institutional equilibrium (Fig. 4 depicts the increase in parliamentary activity and taxation in late medieval and early modern England).

What was the source of Parliament's strength and resilience in England? It is important to recognize that the strength of Parliament stemmed initially from the relative power of the English

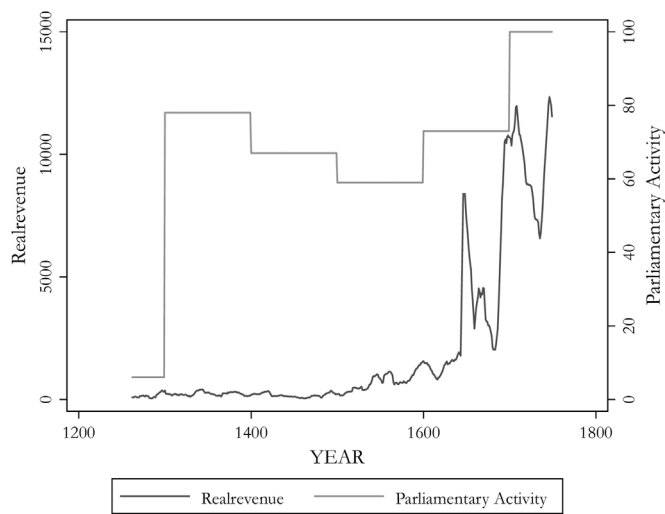


Fig. 4. English tax revenues and parliamentary activity by century. Sources: Zanden et al. (2012) and the European State Finance Database (O'Brien and Hunt, 1999).

monarchy.³⁰ Parliament was an instrument of governance. In the premodern period, the tyranny of geography and distance in a world of slow-moving information imposed tremendous limits on government. Medieval kings were, for this reason, itinerant rulers, moving around their kingdoms in order to rule through their own personal authority. The ability of an English king to summon representatives of the church, nobility, and towns in parliament was a method through which impersonal rule of a large territory became possible.

This argument has been made most recently by Boucoyannis (2015) who notes it was this nascent strength that also explains the permanency and power of Parliament. Opposing what she terms the bargaining theory of parliamentary representation whereby weak rulers are forced to concede representative institutions like parliaments in order to obtain financial support from either the nobility or the bourgeois, Boucoyannis develops an account of the rise of parliaments that is rooted in the pre-existing capacity of the English monarchy.³¹ She provides strong evidence that it was the power of the English monarch to compel attendance in parliament that ensured that it was a representative body.³² Sitting in Parliament was an onerous responsibility and one that the nobility of many European countries evaded. It was the precocious power of the English monarchy that enabled them to compel the attendance of the nobles in Parliament in the thirteenth century. Nation-wide representative institutions, therefore, were a product of nascent state strength rather than of state weakness.

Several aspects of this argument require elaboration. First, the authority of the Edward I and hence his ability to compel attendance at Parliament rested in part on his ability to provide justice and thus

³⁰ Glaeser and Shleifer (2002) suggest that the strength of the English monarchy can also account for English common law's adherence to jury system as this was seen as a check on royal power whereas in France, royal judges were accepted because there was a greater concern that feudal lords might manipulate the law in their favor.

³¹ This framework Boucoyannis (2015) associates with Bates and Donald Lien (1985) and Levi (1988).

³² Boucoyannis (2015) develops her compellence theory of parliamentary representation in diametric opposition to the bargaining theory of representation. However, it is not clear that such a stark dichotomy is useful: compulsory attendance may have strengthened the king's ability to commit to particular policies thereby expanding the set of possible bargains. Hence the bargaining theory and the compellence theory should be viewed as complements.

on the emergence of royal courts enforcing a common law in the reign of his grandfather Henry II.

Second, the national character of the English parliament deserves particular emphasis. The Parlement of Paris was in origin a similar body to the English parliament and it covered the entirety of the kingdom of France as it was then constituted. However, during and after the Hundred Years War, the French king devolved authority to regional parlements such as the parlements of Toulouse, Rouen, Guyenne and Gascony, Burgundy, and Provence. These parlements came to represent local rather than national interests and as such precluded the development of an institution strong enough to constraint the French monarch. Similarly, the cortes of Leon and Aragon were only able to provide local resistance against the Spanish monarchies after the unification of the crowns of Aragon and Castile in 1469.

Third, this development was aided by England's almost unique status in medieval Europe as a comparatively linguistically and culturally centralized and geographical compact polity (see Heckscher 1955; Johnson and Koyama, 2014a). France, in contrast, was linguistically fragmented into Flemish, Breton, Occitan, in addition to a range of French dialects. Moreover, the kings of France continued to treat their kingdom as their family property allowing royal lands to form semi-independent appendages such as Burgundy.³³ Legal fragmentation was a problem for late medieval and early modern France and though there was legal centralization during the 17th century, this was only fully resolved after the Revolution (Rosenthal, 1992; Johnson and Koyama, 2014b). The union of crowns between Castile and Aragon did not produce a unified economy or unified political institutions and the lands of the rulers of Spain remained fragmented and divided throughout the early modern period (Grafe, 2012).

Finally, many institutional accounts of comparative political development emphasize path dependency (e.g. North, 1990). However, to be useful this concept needs to be carefully applied. England's gradual development towards the rule of law was certainly not determined by Magna Carta, nor even by the rise of Parliament during the 13th century. Nonetheless, it is important to draw attention to these medieval foundations of Parliamentary authority when seeking an explanation for why Parliament was successfully able to constrain the power of the king in the 17th century.

It was, in part, because it could claim to be a national body, that Parliament survived the establishment of a more powerful monarchy during the Tudor period and indeed successfully increased its importance both as a legislative body and as a source of ideological legitimation as the authority of the church declined. It was, as a result of these developments, in addition to parallel changes in the underlying structure of the economy, that in the 17th century parliament grew strong enough to oppose the monarch directly when Charles I sought to establish an absolutist form of government in the country.³⁴

Taken together these developments made possible the emergence of the rule of law. But it is easy to imagine alternative paths of institutional development. While England was comparatively political stable over this period, other parts of Europe were less fortunate. And when England did descended into civil wars as in the 1320s or the 1450s, it became lawless. Furthermore, England was relatively free from the threat of external invasion—unlike Hungary which barely survived near annihilation by the Mongols in the 13th century and was conquered by the Ottoman Turks in the

³³ Royal territory only ceased to be alienable in the sixteenth century.

³⁴ The increased importance of parliament as a source of ideological legitimacy is developed in Greif and Rubin (2015). The economic changes that increased the relevance of parliament as an institution are studied by Brenner (1993).

16th century. These fortunate facts should not be forgotten in accounting for England's comparative success in developing institutions capable of constraining arbitrary power.

6. Concluding comments

This essay has sketched out the role played by Magna Carta in England's long transition from being a fragile natural state to being governed by the rule of law. As has been widely recognized, Magna Carta played a crucial ideological role in cementing the notion that the king was subject to law. This paper argues that this was a necessary, but not a sufficient, condition for the eventual emergence of the rule of law in England. What has been less well recognized, and what I have sought to bring to the fore here, is the extent to which the baronial consensus represented by Magna Carta acknowledged and accepted the centralization of the legal system that had taken place during the reign of Henry II. This centralized legal system in conjunction with the authority of the English monarchy, and the emergence of a nationwide, representative, parliament made the growth of the rule of law part of a self-enforcing equilibrium in late medieval England. The resulting equilibrium proved sufficiently robust, capable of withstanding attempts to establish absolutism during the Tudor and Stuart periods, that we can look back to it as a turning point in the history of liberalism.

The path to towards the rule of law in England was by no means set following Magna Carta: many subsequent events mattered and many contingencies could have knocked this development off course. But this, as this essay has demonstrated, is no reason to ignore the seminal role that Magna Carta played in the gradual transition towards a rule of law state in England. Institutional developments in early thirteenth century England played a crucial role in the long transition to a liberal economic order in western Europe.

References

- Anderson, P., 1974. *Passages from Antiquity to Feudalism*. Verso, London.
- Bairoch, P., 1988. *Cities and Economic Development, from the Dawn of History to the Present*. University of Chicago Press, Chicago (translated by Christopher Braider).
- Barker, J., 1995. Personal liberty under the common law of England, 1200–1600. In: Davis, R.W. (Ed.), *The Origins of Modern Freedom in the West*. Stanford University Press, Stanford, pp. 178–202.
- Barratt, N., 1996. The revenue of king John. *Engl. Hist. Rev.* 111 (443), 835–855.
- Barratt, N., 2001. The English revenue of Richard I. *Engl. Hist. Rev.* 116 (467), 635–656.
- Bates, R.H., Donald Lien, D.-H., 1985. A note on taxation, development, and representative government. *Polit. Soc.* 14 (1), 53–70, URL <http://pas.sagepub.com>.
- Berman, H.J., 1983. *Law and Revolution, the Formation of the Western Legal Tradition*. Harvard University Press, Cambridge, Massachusetts.
- Bloch, M., 1964. *Feudal Society*, vol. 2. University of Chicago Press, Chicago (translated by L.A. Mayon).
- Boucoyannis, D., 2015. No taxation of elites, no representation: state capacity and the origins of representation. *Polit. Soc.* 4 (3), 303–332.
- Brenner, R., 1993. *Merchants and Revolution*. Princeton University Press, Princeton, New Jersey.
- Britnell, R., 2009. *Markets, Trade and Economic Development in England and Europe, 1050–1550*. Ashgate, Farnham, Surrey.
- Britnell, R.H., 1981. The proliferation of markets in England, 1200–1349. *Econ. Hist. Rev.* 34 (2), 209–221.
- Britnell, R.H., 1993. *The Commercialisation of English Society 1000–1500*. Cambridge University Press, Cambridge.
- Britnell, R.H., Campbell, B.M. (Eds.), 1995. *A Commercialising Economy, England 1086 to c. 1300*. Manchester University Press, Manchester.
- Cam, H., 1962. *Law-finders and Law-makers in Medieval England*. Merlin Press, London.
- Cam, H., 1970. The theory and practice of representative in medieval England. In: Fryde, E., Miller, E. (Eds.), *Historical Studies of the English Parliament*. Cambridge University Press, Cambridge, pp. 263–279.
- Carpenter, D., 2015. *Magna Carta*. Penguin, London.
- Cross, P.R., 1975. Sir Geoffrey de Langley and the crisis of the knightly class in thirteenth century England. *Past Present* 68, 3–37.
- de Mesquita, B.B., Morrow, J.D., Siverson, R.M., Smith, A., 2003. *The Logic of Political Survival*. MIT Press, Cambridge, MA.

- Dacey, A., 1908. *Introduction to the Study of the Law of the Constitution*. MacMillan and Co. Limited, London.
- Elman, P., 1939. Jewish trade in thirteenth century England. *Hist. Jud.* 1, 91–104.
- Ertman, T., 1997. *Birth of Leviathan*. Cambridge University Press, Cambridge.
- Ferández-Villaverde, J., 2016. Magna Carta, the Rule of Law, and the Limits of Government. *International Review of Law and Economics* (forthcoming).
- Fuller, L.L., 1969. *The Morality of Law*. Yale University Press, New Haven.
- Fuss, A.M., 1975. Inter-Jewish loans in pre-expulsion England. *Jew. Q. Rev.* 65, 229–245.
- Ganshof, F., 1951. *Feudalism*. Longman, London (translated by Philip Grierson).
- Glaeser, E.L., Shleifer, A., 2002 November. Legal origins. *Q. J. Econ.* 117 (4), 1193–1229.
- Grafe, R., 2012. *Distant Tyranny: Markets, Power, and Backwardness in Spain, 1650–1800*. Princeton Economic History of the Western World. Princeton University Press.
- Gras, N.S., 1918. *The Early English Customs System*. Harvard University Press, Cambridge MA.
- Gras, N.S.B., 1912. The origin of the national customs-revenue of England. *Q. J. Econ.* 27 (1), 107–149.
- Greif, A., 2006. *Institutions and the Path to the Modern Economy*. Cambridge University Press, Cambridge, UK.
- Greif, A., Laitin, D.D., 2004. A theory of endogenous institutional change. *Am. Polit. Sci. Rev.* 98 (4), 633–652.
- Greif, A., Rubin, J., 2015. The Institutional Basis of Political Legitimacy: The Reformation and the Origin of the Modern Economy in England. Memo.
- Hanawalt, B., 2010. Justice without judgement: criminal prosecution before Magna Carta. In: Loengard, J.S. (Ed.), *Magna Carta and the England of King John*. The Boydell Press, Woodbridge, pp. 120–133.
- Harriss, G.L., 1975. *King, Parliament and Public Finance in Medieval England to 1369*. Clarendon Press, Oxford.
- Hayek, F., 1960. *The Constitution of Liberty*. Routledge, London.
- Heckscher, E.F., 1955. *Mercantilism*, vol. I. George Allen & Unwin Ltd., London (translated by E.F. Soderlund).
- Helmholz, R., 2004. *The Oxford History of the Laws of England*. Oxford University Press, Oxford.
- Hogue, A.R., 1966. *Origins of the Common Law*. Indiana University Press, Indianapolis.
- Holt, J., 1992. *Magna Carta*. Cambridge University Press, Cambridge.
- Hoyt, R.S., 1950. *The Royal Demesne in English Constitutional History: 1066–1272*. Cornell University Press, Ithaca, New York.
- Huscroft, R., 2006. *Expulsion, England's Jewish Solution*. Tempus Publishing Limited, Stroud, Gloucestershire.
- Johnson, N.D., Koyama, M., 2014a. Tax farming and the origins of state capacity in England and France. *Explor. Econ. Hist.* 51 (1), 1–20.
- Johnson, N.D., Koyama, M., 2014b. Taxes, lawyers, and the decline of witchcraft trials in France. *J. Law Econ.* 57 (February).
- Kim, K., 2000. *Aliens in Medieval Law: The Origins of Modern Citizenship*. Cambridge University Press, Cambridge.
- Koyama, M., 2010a. Evading the 'taint of usury': the usury prohibition as a barrier to entry. *Explor. Econ. Hist.* 47 (4), 420–442.
- Koyama, M., 2010 December. The political economy of expulsion: the regulation of Jewish moneylending in medieval England. *Const. Polit. Econ.* 21 (4), 374–406.
- Koyama, M., Johnson, B., 2015. Monetary stability and the rule of law. *J. Finan. Stab.* 17 (C), 46–58.
- Langdon, J., Masschaele, J., 2006. Commercial activity and population growth in medieval England. *Past Present* 190 (1), 35–81.
- Leeson, P.T., 2012. Ordeals. *J. Law Econ.* 55 (3), 691–714.
- Leeson, P.T., 2013. Vermin trials. *J. Law Econ.* 56 (3), 811–836.
- Levi, M., 1988. *Of Rule and Revenue*. University of California Press, London.
- Lovell, C.R., 1962. *English Constitutional and Legal History*. Oxford University Press, New York.
- Maddicott, J.R., 1994. *Simon De Montfort*. Cambridge University Press, Cambridge.
- Masschaele, J., 1997. *Peasants, Merchants, and Markets*. MacMillan, London.
- Masschaele, J., 2010. The English Economy in the Age of Magna Carta. In: Loengard, J.S. (Ed.), *Magna Carta and the England of King John*. The Boydell Press, Woodbridge, pp. 151–168.
- McChesney, F.S., 1987. Rent extraction and rent creation in the economic theory of regulation. *J. Legal Stud.* 16 (1), 101–118.
- McCloskey, D.N., 2010. *Bourgeois Dignity: Why Economics Can't Explain the Modern World*. University of Chicago Press, Chicago.
- McCormick, M., 2001. *Origins of the European Economy*. Cambridge University Press, Cambridge.
- McKechnie, W.S., 1914. *Magna Carta, a Commentary on the Great Charter of King John*. James Maclehose and Sons, Glasgow.
- Menaldo, V., Williams, N.W., 2015. Judicial supremacy: explaining false starts and surprising successes. In: Hazell, R., Melton, J. (Eds.), *Magna Carta and its Modern Legacy*. Cambridge University Press, pp. 169–193.
- Morris, M., 2008. *A Great and Terrible King, Edward I and the Forging of Britain*. Hutchinson, London.
- Mundill, R.R., 1998. *England's Jewish Solution: Experiment and Expulsion, 1262–1290*. CUP, Cambridge.
- Myers, H.A., 1982. *Medieval Kingship*. Nelson Hall, Chicago.
- Neumann, F., 1986. *The Rule of Law*. Berg Publishers, Lemington Spa.
- North, D.C., 1990. *Institutions, Institutional Change, and Economic Performance*. Cambridge UP, Cambridge, UK.

- North, D.C., Wallis, J.J., Weingast, B.R., 2009. *Violence and Social Orders: A Conceptual Framework for Interpreting Recorded Human History*. Cambridge University Press, Cambridge.
- O'Brien, P.K., Hunt, P.A., 1999. England, 1485–1815. In: Bonney, R. (Ed.), *The Rise of the Fiscal State in Europe c. 1200–1815*. Oxford University Press, Oxford, pp. 53–101.
- Pallister, A., 1971. *Magna Carta: The Heritage of Liberty*. Clarendon Press, Oxford.
- Posner, R.A., 1980. A theory of primitive society, with special reference to law. *J. Law Econ.* 23, 1–53.
- Rajagopalan, S., 2016. *Magna Carta Revisited: Parchment, Guns, and Constitutional Order*. *Int. Rev. Law Econ.* 47, 53–59.
- Raz, J., 2009. *The Authority of Law: Essays on Law and Morality*. Oxford University Press, Oxford.
- Reynolds, S., 1994. *Fiefs and Vassals*. Oxford University Press, Oxford.
- Rodrik, D., Subramanian, A., Trebbi, F., 2004 06. Institutions rule: the primacy of institutions over geography and integration in economic development. *J. Econ. Growth* 9 (2), 131–165.
- Rosenthal, J.-L., 1992. *The Fruits of Revolution*. Cambridge University Press, Cambridge.
- Skinner, Q., 2009. A genealogy of the modern state. *Proc. Br. Acad.* 162, 325–370.
- Southern, R., 1970. *Western Society and the Church in the Middle Ages*. Penguin, New York.
- Stacey, R.C., 1997. Parliamentary negotiation and the expulsion of the Jews from England. *Thirteenth. Century Engl.* VI, 77–103.
- Stow, K.R., 1992. *Alienated Minority, the Jews of Medieval Latin Europe*. Harvard University Press, Cambridge, MA.
- Treharne, R., 1970. The nature of parliament in the reign of Henry III. In: Fryde, E., Miller, E. (Eds.), *Historical Studies of the English Parliament*. Cambridge University Press, Cambridge, pp. 70–90.
- Turner, R.V., 1985. *The English Judiciary in the Age of Glanvill and Bracton, c. 1176–1239*. Cambridge University Press, Cambridge.
- Warren, W.L., 1987. *The Governance of Norman and Angevin England, 1086–1272*. Edward Arnold, London.
- Wickham, C., 2005. *Framing the Middle Ages*. Oxford University Press, Oxford.
- Zanden, J.L.V., Buringh, E., Bosker, M., 2012. The rise and decline of European parliaments, 1188–1789. *Econ. Hist. Rev.* 65 (3), 835–861.
- Zywicki, T.J., 2003. The rule of law, freedom, and prosperity. *Supreme Court Econ. Rev.* 10, 1–26.