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Pope Innocent III and the Annulment of Magna Carta

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Historians have offered a variety of explanations for Pope Innocent III's release of King John from the promise that he made to observe the clauses of Magna Carta. None has won general acceptance. This article proposes an alternative by examining the tenets of the canon law as it was understood in 1215. That examination shows that the law of oaths (De iureiurando) played a central role in canonistic thought of the time. It contained the juristic resources that made it possible for Innocent to release John from the oath that he had taken at Runnymeade.

The year 2015 has come and gone. The outpouring of books and articles published to celebrate the eight-hundredth anniversary of Magna Carta might seem to have exhausted the topic. In fact, however, uncertainties remain. One among them calls for a fuller understanding of the annulment of the Great Charter by Pope Innocent III. It is certain that the pope acted quickly and decisively. However, the sources of his authority and reasons for his action are not so clear. They have given rise to scholarly disagreement. What justification existed for the pope's decision to invalidate a solemn agreement made between a king and his barons? This article suggests a possible answer to this question by examining the canon law in effect at the time. Somewhat surprisingly, given the vitality and importance of the canon law at the papal court of Innocent III, no historian seems yet to have done this.

The events surrounding Innocent's actions are not in doubt. King John agreed to the Great Charter's terms on 15 June 1215, taking an oath to

The following abbreviations are used in references to the canon and Roman laws: Cod. 1.1.1 = *Codex Justiniani*, Lib. 1, tit. 1, lex 1; Comp. I–V. 1.1.1 = *Compilationes antiquae I–V*, lib. I, tit. 1, cap. 1; Dig. 1.1.1 = *Digestum Justiniani*, Lib. 1, tit. 1, lex 1; Dist. 1 c. 1 = *Decretum Gratiani*, distinctio 1, can. 1; C. 1 q. 1 c. 1 = *Decretum Gratiani*, causa 1, quaestio 1, can. 1; X 1.1.1 = *Decretales Gregorii IX*, Lib. 1, tit. 1, cap. 1; *Gl. ord.* = *Glossa ordinaria* (marginal commentary on texts); Sext 1.1.1 = *Liber Sextus*, lib. 1, tit. 1, cap. 1

observe them. However, things quickly went sour. Not only did he fail to fulfil the agreement that he had made, but almost the first step that he took in response was to seek its invalidation. Perhaps even before the June date, but at least quickly thereafter, John dispatched emissaries to appear before Pope Innocent III in Rome with instructions to seek his release from the oath that he had sworn. On 24 August of the same year – only two months and a few days after the events at Runnymeade – the pope obliged by issuing a bull known from its incipit as *Etsi karissimus*. It absolved John from observing the oath that he had taken, declaring the provisions contained in Magna Carta null and void.[1]

By what authority did Pope Innocent act to annul the English charter? The terms of the papal document itself do not themselves provide a clear justification. It contained no clear statement of the source of the papal authority to take the action that he did. Such statements, in the form of biblical parallels, prior canon law texts, analogies from nature, or relevant historical precedents, were incorporated into many of the important and controversial papal decrees of the time. Some of them were later placed within the Gregorian Decretals and became famous as vital parts of the medieval Church's legal system.[2] This particular decree, however, did not follow their lead. It cited only two ambiguous texts from the Old Testament, one from words spoken to the Prophet Jeremiah (Jeremiah i.10), the other from Isaiah (Isaiah lviii.6). There was nothing more. It was otherwise silent about the source of the authority for Pope Innocent III's action. This absence seems strange. At least in important matters, the papal chancery and the popes themselves seldom acted without legal warrant, and they usually incorporated references to such texts in them.[3] Any such statement was lacking in *Etsi karissimus*.

Its silence on this point of constitutional law did not mean, however, that it contained no reasons for granting King John's petition. In fact, the reverse is true. It recited quite a few reasons. Papal letters were often

[1] The text is given in *Chartes des libertés anglaises (1100–1305)*, ed. Charles Bémont, Paris 1892, 41–4, and *Selected letters of Pope Innocent III concerning England (1198–1216)*, ed. C. R. Cheney and W. H. Semple, London 1953, no. 82 at pp. 212–16. For an English translation see D. Magraw, A. Martinez and R. Brownell (eds), *Magna Carta and the rule of law*, New York 2014, 401–3.

[2] See, for example, X 1.6.34 (*Venerabilem*); X 2.1.13 (*Novit ille*); X 4.17.13 (*Per venerabilem*).

[3] This article takes no position on the disputed question of whether Innocent had himself undertaken a study of the canon law; on this question see Kenneth Pennington, 'The legal education of Pope Innocent III', *Bulletin of Medieval Canon Law* iv (1974), 70–7; John Moore, 'Lotario dei Conti di Segni (Pope Innocent III) in the 1180s', *Archivum historiae pontificiae* xix (1991), 255–8; and Richard Kay, 'Innocent III as canonist and theologian', in John C. Moore (ed.), *Pope Innocent III and his world*, Aldershot 1999, 35–49.

prepared on the basis of the petitions submitted,[4] and it looks as if King John's men had conjured up every conceivable objection to the charter that they could imagine, hoping that one or more of them might do the trick.[5] If so, it succeeded. All the possible objections that could have been made seem to have been included in the papal decree. The terms of Magna Carta were, it was said, contrary to John's royal dignity and honour; they brought the Apostolic See into contempt; they impeded the success of the Crusades; they amounted to allowing the barons to act as judges in their own cause; they were a product of unlawful force and fear; they contradicted John's own coronation oath; they had not been made with the consent of John's feudal overlord, the pope; they were the result of a league and conspiracy; they showed that the barons had violated their own oaths of fealty; and their contents were 'not only base and shameful but also illegal and unjust'. It all seems quite confusing. No one of them was accorded pride of place in the document itself. What should one make of the myriad of reasons invoked in the papal decree? And what justification existed for papal intervention in an agreement between a secular ruler and his magnates? *Etsi karissimus* was meant to have legal effect and to rest upon a legal foundation. That much appears certain. But it lacks the clarity of statement one expects in a document meant to state and apply principles of law.

Possible explanations

The task of explaining the legal basis for Innocent III's action has led historians in different directions. Probably the most common response has been to ignore the legal question, and there are certainly plausible justifications for doing so.[6] No principle of historical interpretation is violated by

[4] *Selected letters*, introduction at p. xxiv; Anne Duggan, 'Master of the Decretals: a reassessment of Alexander III's contribution to canon law', in Peter Clarke and Anne Duggan (eds), *Pope Alexander III (1159–81): the art of survival*, Farnham–Burlington, VT 2012, 365–417 at pp. 370–1.

[5] This was not then impossible. See James Brundage, 'The managerial revolution in the English Church', in Janet Loengard (ed.), *Magna Carta and the England of King John*, Woodbridge 2010, 83–98.

[6] Magraw, Martinez and Brownell, *Magna Carta and the rule of law*, 55; Daniel Baumann, *Stephen Langton: Erzbishof von Canterbury im England der Magna Carta (1207–1228)*, Leiden–Boston, MA 2009, 149–89; Katherine Fischer Drew, *Magna Carta*, Westport, CT 2004, 49; Natalie Fryde, *Why Magna Carta: Angevin England revisited*, Münster 2001, 24; Robert Bartlett, *England under the Norman and Angevin kings*, Oxford 2000, 180–1; W. L. Warren, *King John*, London 1961, 245–6; John Hudson, *Oxford history of the laws of England*, I: *871–1216*, Oxford 2012, 852–3: Faith Thompson, *The first century of Magna Carta: why it persisted as a document* (1925), Minneapolis, MN 1967, 4.

concluding that the papal action was simply a prudent step on his part, given in exchange for John's earlier submission to the apostolic see together with his promise to restore the English Church's property and to recognise the authority of the Roman pontiff.[7]

Historians who have looked further into the possible reasons for Innocent's action in 1215 have reached more than one conclusion. King John's status as a crusader has sometimes been suggested as a possible explanation.[8] Crusaders were entitled to the privilege of having their rights and property protected during their absence.[9] This 'respite' was mentioned in clause 53 of the Charter and in the papal decree itself. It could have been used to justify the papal intervention. Other historians, however, have found more persuasive an explanation taken from feudal law.[10] John had surrendered his kingdom to the Roman pontiff on 15 May 1213, receiving it back as a vassal under the protection of the apostolic see.[11] Hence, it is possible that Innocent was acting as a feudal lord in annulling the Great Charter, undoing an action that could not validly be made without his consent.[12] Like the first, this explanation is not without support in *Etsi karissimus* itself.[13]

Today, however, these conclusions have largely been displaced by an explanation that depends on the nature of John's agreement to observe the charter's terms.[14] It was coerced. The king had acted under duress. Therefore, it seems, he was entitled to secure a release from what he had promised. Again, there is some support for this explanation in *Etsi*

[7] For example, D. A. Carpenter, 'The Plantagenet kings', in David Abulafia (ed.), *New Cambridge medieval history*, V: c. *1190*–c. *1300*, Cambridge 1999, 314–57 at p. 327.

[8] For example, Simon Lee, 'The cardinal rule of religion and the rule of law: a musing on Magna Carta', in Robin Griffith-Jones and Mark Hill (eds), *Magna Carta, religion and the rule of law*, Cambridge 2015, 314–18.

[9] X 2.29.1 (Comp. II. 2.20.1); X 1.19.10 (Comp. I. 1.29.5). For fuller discussion of the privilege see James Brundage, *Medieval canon law and the crusader*, Madison, WI 1969, 159–90.

[10] Authors who have laid stress upon the feudal tie in explaining the pope's right to annul Magna Carta include William McKechnie, *Magna Carta: a commentary on the Great Charter of King John*, 2nd edn, Glasgow 1914, 46; William Swindler, *Magna Carta: legend and legacy*, Indianapolis, IN 1965, 100–1; and Anthony Arlidge and Igor Judge, *Magna Carta uncovered*, Oxford–Portland, OR 2014, 32–3.

[11] See the account, with full citation of sources, in C. R. Cheney, *Pope Innocent III and England*, Stuttgart 1976, 332–7.

[12] For example, Kate Norgate asserts that chapter 61 in Magna Carta 'was itself in feudal law null and void from the beginning': *John Lackland*, London 1902, 245–6.

[13] It asserted that judgement in the dispute belonged to the pope 'by reason of our lordship'.

[14] The principal article that successfully attacked the 'feudal' explanation was G. B. Adams, 'Innocent III and the Great Charter', in H. E. Malden (ed.), *Magna Carta commemoration essays*, London 1917, 26–45.

karissimus itself; it also finds partial support in contemporary chronicles;[15] it accords with some of what appears in the chapter of the Decretals dealing with the effects of force or fear;[16] and it fits with both common sense and the tenets of modern law.[17] The charter was therefore voidable, the argument runs, because King John had been left with little choice in agreeing to its terms. That this was the principal justification for the pope's action was the considered conclusion of the late Sir James Holt, the foremost modern authority on Magna Carta.[18] Other historians have concurred in his view.[19]

Finally, there is an alternate understanding of the papal actions suggested some years ago by Christopher Cheney. He concluded that the pope acted without any particular legal principle in mind. Modern attempts to explain or isolate a legal justification for his action, Cheney wrote, would probably have 'surprised and annoyed the pope'.[20] In his view, Innocent had acted pragmatically to set right a quarrel that had led to unhappy results. If any legal justification were required, it was not to be found within the texts of the law. The justification for the pope's action, Cheney concluded, was rather that 'all power had been given to him by God'. It was a claim 'of staggering simplicity'.[21]

The canon law and Etsi karissimus

The possibility raised in this article is that a fuller consideration of the contemporary canon law offers a profitable approach to the question. The papal chancery and the popes themselves rarely acted without legal warrant. To suppose that they did so in this instance, while possible, seems unlikely. And in fact there was ample support in the canon law on

[15] See 'Annales de Dunstaplia, s.d. 1214', in *Annales monastici*, iii, ed. Henry R. Luard (Rolls Series xxxvi, 1866), 43. The Charter as 'quasi per coactionem et metum a rege extortam'.

[16] X 1.40.1–7.

[17] See *Anson's law of contract 18th edn*, ed. J. Beatson, Oxford 2002, 276–82.

[18] J. C. Holt, *Magna Carta*, 3rd edn, Cambridge 2015, 228.

[19] Dan Jones, *Magna Carta: The making and legacy of the Great Charter*, London 2015, 93; David Carpenter, *Magna Carta*, London 2015, 400; Ralph V. Turner, *Magna Carta through the ages*, Harlow 2003, 77–9; Christopher Harper–Bill, 'John and the Church of Rome', in S. D. Church (ed.), *King John: new interpretations*, Woodbridge 1999, 289–315 at p. 312; S. E. Thorne, 'What Magna Carta was', in *The Great Charter: four essays on Magna Carta*, New York 1965, 1–17 at p. 16; Thompson, *First century of Magna Carta*, 6; H. G. Richardson and G. O. Sayles, *The governance of mediaeval England from the Conquest to Magna Carta*, Edinburgh 1963, 392.

[20] Cheney, *Innocent III and England*, 382.

[21] Ibid. 386. For a similar understanding of Innocent III's motivation see Eamon Duffy, *Ten popes who shook the world*, New Haven, CT–London 2011, 71–9, and Natalie Fryde, 'Innocent III, England and the modernization of European international politics', in Andrea Sommerlechner (ed.), *Innocenzo III: urbs et orbis*, Rome 2003, ii. 971–84.

the subject available to them. It is true that some of the law to which they would have turned was law that to modern lawyers and historians may be difficult to understand. Much of it sounds strange to modern ears, even to the ears of lawyers. That obstacle should not, however, stand in the way of a consideration of its possible role in the history of Magna Carta. What follows is such a consideration. It takes up both the question of the legal justification found in the contemporary canon law for papal action and the reasons that the canon law furnished for its exercise in John's favour.

The centrality of the oath

The clearest justification available in the canon law for Innocent's intervention in the controversy surrounding the events at Runnymeade was the fact that King John had taken an oath to observe the charter's terms. An oath was then considered to stand as 'a solemn appeal to God in witness of the binding character of a promise or undertaking'.[22] It consisted of what was classed as a promissory oath. It was one that imparted a religious character to what otherwise would have been a simple promise of future conduct. The oath changed materially the ways in which medieval lawyers, at least medieval canon lawyers, thought about the nature of such an obligation.[23] It raised the promise above the level of an ordinary undertaking to perform a specific act, and one of the consequences of this elevation was to justify ecclesiastical intervention in disputes over obligations that had been affirmed by an oath.[24] Oaths involved religion.

This attitude is admittedly hard to accept today as a working principle of law. Oaths play a much smaller role in modern lives and modern law than they did in those of our ancestors. We have retained the crime of perjury, of course. It means deliberately making material false statements while under oath. It is a reminder of the law's past, preserved because it serves some modern purposes. However, we do not accord any special status to a contractual promise that is accompanied by an oath, even a solemn oath. Invocation of God's name today may be a sign of the seriousness with

[22] Taken from the *Oxford English dictionary*, 2nd edn, Oxford 1989, x. 631.

[23] See, for example, Thomas Aquinas, *Summa theologiae*, 2a2ae, qu. 89, art. 4, Blackfriars edn, New York–London 1964, 212–13. Aquinas states that an oath necessarily constitutes a religious and worshipful act.

[24] Recent years have witnessed what might be called a mini-revival of interest in the oath, particularly in German scholarship. See, for example, Irina Maria Kreusch, *Der Eid zwischen Schwurverbot Jesu und kirchlichem Recht*, Berlin 2005; Stefan Esders and Thomas Scharff (eds), *Eid und Wahrheitssuche: Studien zu rechtlichen Befragunspraktiken im Mittelalter und frühe Neuzeit*, Frankfurt 1999; Paolo Prodi, *Il sacramento del potere: il giuramento politico nella storia costituzionale dell'Occidente*, Bologna 1992; and Jonathan Gray, *Oaths and the English Reformation*, Cambridge 2012.

which a promise is being made, but it adds no legal force to the promise itself. The widespread use of oaths for many purposes during the Middle Ages is sometimes now regarded as a 'relic of barbarism'.[25] For understanding the situation in 1215, however, we should recognise that such a dismissive attitude towards the force of oaths was quite unthinkable. Then, to violate an oath risked incurring God's wrath.[26]

The consequences that followed from the existence of John's oath were apparent in the relevant canon law in 1215. An oath was considered to stand as 'a solemn appeal to God in witness of the binding character of a promise or undertaking'.[27] Gratian had devoted a long *causa* to exploring the subject of oaths.[28] Following St Augustine, he read the Scriptures to declare that the sin being condemned by Christ's words (Matthew v. 34–7) arose not out of the act of swearing an oath, but rather from the abusive use of an oath – which is false swearing or perjury.[29] The special character of oaths had also been recognised and given special legal effect in Roman law – an oath sworn 'by your salvation' was by itself a legitimate source of legal obligation.[30] Once added to a simple promise, no other source of duty on the part of the promisor was needed. A decretal letter of Pope Alexander III took this same position.[31] Violation of a sworn promise would imperil a man's soul, and the Church itself must not condone such a practice. It should instead act affirmatively to uphold the bond created by an oath.

Looking at the matters involving challenges to the validity of oaths that were brought before the apostolic see and were answered by papal letters that were later incorporated into the *Liber extra* shows that it was the oath, rather than the nature of the underlying obligation, that was most often used to justify papal intervention in cases involving varied sorts of obligation. Most of these disputes about the force of oaths do seem to have arisen from ecclesiastical sources, but by no means all. There were papal decretals dealing with disputes about contracts between laymen that had been attacked as usurious,[32] matters involving ordinary loans or annual pensions,[33] royal oaths not to debase the currency,[34] disputes over the spoils of war,[35] settlements of contested litigation,[36] and even

[25] So described in Henry C. Lea, *Superstition and force*, 2nd edn revised, New York 1870, repr. 1971, 73.

[26] For example, C. 22 q. 5 c. 3, approving application of penalties for swearing falsely even under compulsion, because the oath taker 'plus corpus quam animam dilexit'.

[27] Taken from the *Oxford English dictionary*, 2nd edn, x. 631.

[28] C. 22 q. 1.

[29] d.p. C. 11 q. 1 c. 16.

[30] Dig. 12.2.5.2.

[31] X 2.24.8 (Comp. I. 2.17.4).

[32] X 2.24.1, 6, 30 (Comp. II. 2.16.4; Comp. I. 2.17.2; Comp. IV. 2.9.3).

[33] X 2.24.7, 11 (Comp. I. 2.17.3; Comp. II. 2.16.2).

[34] X 2.24.18 (Comp. III. 2.15.4).

[35] X 2.24.29 (Comp. IV. 2.19.2).

[36] X 2.24.16, 23 (Comp. III. 2.15.1; Comp. III. 2.12.9).

cases in which no exact subject at all was specified.[37] A tie to Church or clergy was involved in many of them, but such a tie was not what mattered for jurisdictional purposes.[38] The oath was.[39] As in *Etsi karissimus* itself, these decretals involving obligations were understood to have been brought before the courts of the Church because of the peril to a person's soul incurred in violating an oath.

In England, this understanding of the importance of a sworn promise would eventually give rise to the exercise of ecclesiastical jurisdiction over all contracts entered into with a pledge of faith. Most of the cases that came before the courts of the Church, at least during the fifteenth century, turn out to have involved simple promises to pay money or deliver goods to which promisors had added a pledge of faith.[40] However the English canonist William Lyndwood (d. 1446) would justify their presence in the spiritual forum, saying that it was 'consistent with reason, because perjury directly concerns irreverence towards God, a thing that is contrary to the Christian religion'.[41] This was traditional learning. The medieval Church never made a claim to exclusive ecclesiastical jurisdiction over oaths. It was a textbook example of what was called jurisdictional 'accumulation'. Both lay and spiritual courts properly exercised jurisdiction over disputes involving oaths. Pope Boniface VIII did later extend the reasoning that lay behind the canonical understanding of oaths by requiring secular judges to follow the canon law in judging them. Lay judges were to do so by compelling oaths to be observed in cases that came before their own courts, just as happened in the ecclesiastical forum.[42] That command came years after the events at Runnymeade, of course, but it was merely an attempt to enlarge the consequences of what had been the traditional common learning in the canon law. It was an extension of an old principle. *Etsi karissimus* stated several factors that might have justified papal intervention in a dispute about customary law in England, but the most salient at the time was based on a contemporary religious principle. An oath was involved.

[37] X 2.24.3, 8, 15 (Comp. I. 2.17.10; Comp. I. 2.17.4).

[38] See *gl. ord.* ad X 2.24.2, s.v. *pervenit*. See also *gl. ord.* ad C. 15 q. 6 c. 2, s.v. *fidelitatis*.

[39] *Gl. ord.* ad X 2.24.7, s.v. *ad restituendum*.

[40] The evidence on this point is given in R. H. Helmholz, 'Assumpsit and fidei laesio', *Law Quarterly Review* XC (1976), 406–32.

[41] 'Et est ratio, quia perjurium directe concernit Dei irreverentiam, quae proprie est religioni Christianae contraria': William Lyndwood, *Provinciale (seu Constitutiones Angliae)*, Oxford 169, 315. See also *gl. ord.* ad. C. 22 q. 2 c. 17, s.v. *distantiam*: 'plus operatur sacramentum quam simplex promissio'.

[42] Sext 2.11.2.

The relevance of coercion

Despite the strength of any obligation buttressed by a solemn oath, there was a question of law for the pope to decide when John's representatives appeared before him. Not all oaths were enforceable under the canon law as it stood in 1215. A promise to marry made by words of future consent, for example, was not enforceable in the ecclesiastical forum, even if the couple's agreement had been accompanied with an oath. Innocent III himself had so held.[43] He had directed that the man and woman involved were to be entreated, using every available argument, to fulfil the agreement that they had affirmed with their solemn oaths. If they could not be brought to agreement, however, their refusal was to be tolerated 'lest something worse might occur'.[44]

More famously, even if a couple's marriage had been contracted by words of present consent which had included an oath, it would not be treated as indissoluble if one of the parties had acted under compulsion strong enough to have moved a 'constant man or woman'.[45] The same rule was applied to the taking of monastic vows,[46] and even renunciation of a benefit accompanied by an oath could sometimes be undone if the holder had acted under compulsion.[47] Most promising for King John, it must have seemed, was a decretal from Alexander III that had allowed a cleric to reclaim the benefice he had surrendered under a creditable threat of the loss of his entire patrimony.[48] Something like an equivalent threat had hung over King John at Runnymeade, and the parallel would not have been lost on either his lawyers or those at the papal court.

The difficulty was that the last decretal made no mention to show that the cleric involved had taken an oath, and the *glossa ordinaria* to the decretal in the *Liber extra* pointed this out at length.[49] An oath, had it been present in the case, might well have compelled a different result. In fact, the eighth chapter of this same title held that if a cleric, impelled *gravissimo metu*, swore an oath to renounce his benefice and not to seek its restitution

[43] X 4.1.2 (Comp. I. 4.1.11).

[44] Ibid. 'ne forte deterius inde contingat'. This apparent substance of this decision was contradicted by a later decision by Alexander III (X 4.1.10), but the former became the *communis opinio* among the canonists.

[45] X 4.1.13–15. See J. Sangmeister, *Force and fear as precluding matrimonial consent: a historical synopsis and commentary*, Washington, DC 1932, 56–64.

[46] See Anne Jacobson Schutte, *By force and fear: taking and breaking monastic vows in early modern Europe*, Ithaca, NY 2011.

[47] X 1.40.4 (Comp. III. 1.23.1).

[48] X 1.40.2 (Comp. I. 1.30.2).

[49] *Gl. ord.* ad idem, s.v. *coactus*; it surveyed the various understandings and possibilities to be found within the text.

in the future, he would be required to observe what he had sworn.[50] This might not be so, the decretal said, if fulfilling the oath would 'tend to the ruin of his eternal soul', but since the benefice was the cleric's to renounce or retain, that danger did not exist. The oath would prevail, despite the fact that it had been taken under duress. And if the Roman pontiff did possess the power to free him from the oath that he had taken, the decretal continued, Pope Gregory declined to exercise it because that would make him complicit with perjury. In other words, the canons on this subject seemed to stand against John's case because of the oath. There was some authority pointing the other way,[51] but the *communis opinio* among contemporary canonists was that the oath prevailed. It must be fulfilled even if it had been entered into under compulsion.[52]

Complexity hung over the medieval canon law on this subject. Beyond the area of marriage and monastic vows, it was not certain exactly what effect compulsion had on an oath. A particularly telling example was presented by usurious contracts entered into with an oath. It was raised in the first and sixth chapters of the Decretal's title *De iureiurando*. Ordinarily debtors were neither required nor permitted to pay usurious rates of interest, even if they had entered into an agreement to do so. Usury was unlawful under the canon law. It was contrary to natural law principles, and to enforce such a contract would be to condone an unlawful agreement. This was established. Suppose, however, the debtor had sworn an oath to pay the usurious sum and not to seek restitution. In that situation, the *communis opinio* among the canonists was that the debtor would be compelled to fulfill his oath.[53] The oath in effect trumped the prohibition against usury. It was an awkward solution, however, since the creditor could not retain the amount paid without becoming *particeps criminis*. The *glossa ordinaria* to another decretal itself remarked on the incongruity inherent in the situation.[54] The jurists concluded that a later action might be brought to compel the creditor to repay the usurious interest. It was an ungainly solution at best. The most that could be said in the canon law's favour, I think, is

[50] *Gl. ord.* ad X 2.24 8, s.v. *proprium iuramentum*: '[C]ommunior est opinio et verior quod iuramentum metu extortum [est] obligatiorium quia voluntarium', also citing C. 15 q. 1 c. 1 in support.

[51] For example, X 2.24.16, but it was understood to hold only that if the oath taker did not fulfill an oath taken under duress, he would be less severely punished for perjury than he would have been if he had taken it willingly.

[52] Another example is found at X 1.40.3, where a cleric had renounced his election because of the fear induced by lay threats against him. His renunciation was treated as invalid 'unless it had been confirmed by the interposition of an oath'.

[53] X 2.24.6: 'Si vero de ipsarum solutione iuraverunt cogendi sunt domino reddere iuramentum.'

[54] Compare *gl. ord.* ad idem, s.v. *cogi non debet*: 'iuramentum super hoc factum est servandum' with *gl. ord.* ad idem, s.v. *cogendi sunt*: 'Sed videtur quod non sunt cogendi nam debitor habet actionem ad repetendum usuras.'

that it was true to the principle that the *salus animarum* was the canon law's ultimate touchstone.

The canon law on this point also resembled the law applied in cases of forced baptism. It is an instructive parallel. The medieval canon law held that no one was to be brought to the baptismal font by force. The institution founded by Jesus should be composed of willing disciples. However, there was no doubt that in reality the sacrament was sometimes forced upon men and women who did not wish to be baptised,[55] and when this happened the result depended on whether absolute or conditional force had been used. If the person baptised had been offered a choice – say loss of his property or even his life – and chosen baptism instead, the sacrament bound him. He could not lawfully abjure the Christian faith. If, however, he had been offered no choice at all – say by being tied up or baptised while asleep – then his baptism was invalid.[56] This solution was more than an application of the Roman law's maxim that 'forced consent is still consent'.[57] It was the product of the canonists' desire for an objective approach to law and an affirmation that baptism was a human good, the ultimate human good. However unpalatable it looks today, this objective view was the commonly accepted doctrine, and the enforcement of oaths bore a close resemblance to it. Fulfilling a solemn oath might not be as obvious a human good as baptism was, but fulfilling an oath made to God came close.

Thus, when they appeared at the papal court, King John's representatives had a real obstacle to overcome. John had sworn an oath to observe the clauses of Magna Carta, and it was far from obvious that the texts of the canon law would justify freeing him from the obligation imposed by that oath. This was not a contract of marriage. It was not a monastic vow. Coercion mattered in determining the effect of some oaths, but coercion alone was not enough to invalidate an oath. To prevail under the canon law of the time, there had to be more than the sort of coercion that John's representatives would have been able to demonstrate. At most, the threat that he faced had been the loss of a temporal advantage, and even that loss would have been far from certain. This meant that his oath would likely prevail under the canon law, even if he had acted under compulsion.

[55] See Marina Caffiero, *Forced baptisms: history of Jews, Christians and converts in papal Rome*, trans. Lydia Cochrane, Berkeley–Los Angeles 2012.

[56] See Ian Levy, 'Liberty of conscience and freedom of religion in the medieval canonists', in Timothy Shah and Allen Hertzke (eds), *Christianity and freedom: historical perspectives*, Cambridge 2016, 150–4.

[57] Dig. 4.2.21.5.

The oath as a vinculum iniquitatis

This was not the end of the matter, however. The canon law of oaths was far from a rigid series of commands, and it offered several possibilities to King John's representatives. One of them arose out of the law on successive oaths. This was raised most directly in a case found in the Decretals which had been dealt with by Innocent III himself.[58] A bishop-elect had sworn to maintain the rights of his see as part of his consecration, then later sworn not to seek restitution of those rights after having been induced to surrender some of them. Logically, he could not have fulfilled both oaths if they had been contradictory. The canonists concluded that ordinarily he must fulfil the first,[59] and this principle might have applied to John's situation. He had first sworn an oath at his coronation and later another oath at Runnymeade. The two might be said to have been contradictory, so that only the first would bind him. On the other hand, another decretal stated that this strict rule would not apply if the second oath were an improvement on the first.[60] If a man swore to give £100 to charity, it would not count as a violation of that oath if he later were to give a painting worth £200. The second legitimately displaced the first. Much used in the commutation of crusading vows, this rule left some obvious room for uncertainty. It might be of relevance to King John's situation. Were the two oaths that he had sworn complementary or contradictory and which should prevail? Under the canon law, the answer was not obvious.

The more promising path, and the one King John's representatives seem to have chosen, was to characterise the oath that he had taken at Runnymeade as itself unlawful. It was a *vinculum iniquitatis*, a 'chain of iniquity'. Despite the binding legal force accorded to oaths by the canon law, it would have made little sense to apply the rule without taking account of the result of their enforcement. Most clearly was this true in dealing with oaths to commit an evil act. The biblical example, incorporated both into Gratian's *Decretum* and the fifth book of the Decretals, was that raised by the death of John the Baptist (Matt. xiv.1–12).[61] King Herod had sworn to give the dancing girl who had pleased him whatever she desired. Under the urging of her mother, she chose to have John's head delivered to her on a platter, and Herod 'for the oath's sake' regretfully complied. For the canon law to have approved of this outcome would

[58] X 2.24.27 (Comp. III. 1.1.3).

[59] See *gl. ord.* ad X 2.24.16 (Comp. III. 2.25.1) s.v. *veniens*: 'Item iuramentum contrarium alio iuramento licite facto servandum non est.' But see X 2.24.11 (Comp. II. 2.16.2), in which it was held that the second prevailed because it was supported by the decrees of one of the Lateran Councils.

[60] X 2.24.3.

[61] C. 22 q. 1 c. 8; X 5.12.4 (Comp. I. 5.10.6).

have been a monstrous misuse of logic, and in fact the medieval canonists devoted considerable attention to tracing a path of reasoning leading beyond that famous example. The path that they laid out offered relief from other kinds of iniquitous oaths. Many questions involving oaths challenged under the principle were derived from this biblical example.

Gratian had devoted a *quaestio* in causa 22 to establishing this as a canonical principle.[62] Admitting the special force an oath added to any promise, his selection from among the ancient canons of the Church nevertheless showed that as a general rule 'it was more tolerable not to fulfill an oath than it was to do evil'.[63] Both alternatives might be wrongs, but perjury might be the lesser of the two, and if so the oath should not prevail. The medieval gloss to this *quaestio* offered a surprisingly broad reading of this principle; it might extend even to permitting an inquiry into the circumstances in which an oath had been sworn – one taken by someone who was drunk or one motivated by 'the clamour of the people' might not bind if the result of fulfilling the oath would cause harm.[64]

Several papal decretals found in the *Liber extra* also dealt with implementation of this rule. A man had taken an oath never to speak with his father, mother, sisters and brothers, nor ever to come to their aid. The response of Pope Urban III stated that although the man was to be subjected to penitential discipline for swearing such an oath, he was to be absolved from fulfilling it.[65] Carrying out such a wicked promise would have been contrary to reason. This was one example of what it meant to be a chain of iniquity.[66] Another was the oath of a married couple who had decided to live separately and sworn an oath never to seek restitution of conjugal rights.[67] That was an iniquitous oath under the canon law as it then stood, one not to be upheld. Similarly, an oath that, if fulfilled, would harm the Church and violate its laws might be regarded as an invitation to iniquity. A decretal of Innocent III held one such oath invalid for that reason.[68]

The canon law of oaths as it appeared in 1215 cannot be described as a model of clarity. The term 'chain of iniquity' did not define itself, and the papal decretals then in existence did not make the attempt. They merely furnished examples of what the term meant, suggesting that others might also exist, but not providing either a full list or an exact definition of the term. It would also take the skill of many jurists to bring the texts into harmony. The texts contained apparent contradictions, and the canonists struggled to resolve them. One thing, however, is as clear today as it was then. Many varied kinds of iniquity might exist in human life, and if

[62] C.22 q. 4. cc. 1–23.
[63] C. 22 q. 4 c. 8.
[64] *Gl. ord.* ad idem, s.v. *quod ebrius* and *saltantium.*
[65] X 2.24.12 §1 (Comp. I. 2.17.11).
[66] *Gl. ord.* ad idem, s.v. *absolvendi.*
[67] X 2.24.24.
[68] X 2.24.27 (Comp. III. 1.1.3).

John's oath at Runnymeade could be fitted within one or more of them, that oath would not be enforceable under the laws of the Church.

This possibility provides, I think, the most likely explanation of the contents of *Etsi karissimus*. The papal decision purposefully mentioned the several reasons it did for granting John's request in order to show that the clauses of the Great Charter amounted to a chain of iniquity – as many reasons as possible. In fact, it named so many as to be confusing to modern readers. Duress was one of them, but it was only one of several, and it was not the most important of them. Taken all together, however, the reasons mentioned in the papal document were intended to show that several iniquities had been present in the oath that John had sworn at Runnymeade. Together they would be sufficient, it must have seemed, to convince any fair minded observer. In different ways, the Charter 'institutionalized rebellion and imposed limitations upon a sovereign's God-given authority'.[69]

Of course, it would be naïve to suggest that Pope Innocent III had no other motives for coming to John's aid than those provided by legal argument. Political reasons or political theory may have played a part. However, even the strongest of medieval popes did not act without a semblance of law on their side, and in 1215 the canon law of oaths offered Pope Innocent the support that John's petition for relief required. The prolix language of *Etsi karissimus* was meant to show that the oath that King John had sworn amounted to a chain of iniquity. The many reasons it listed were the links.

[69] My understanding accords most closely with the reading of these events given by Nicholas Vincent in *Magna Carta: origins and legacy*, Oxford 2015, 71–2.