

## **Magna Carta and the administrative state: Four historical moments**

The story of Magna Carta has been one of births, deaths and unlooked-for rebirths. This paper examines four historical moments in this cycle of lives, deaths and rebirths. Two of these are well remembered: its issue in 1215, and its reinterpretation by Coke in the 17th century. Two others are little cited in mainstream accounts of its history: the Merciless Parliament and its aftermath, and the period of Regency Radicalism in the 1810s. What explains the interludes when Magna Carta was summoned back into life? And what explains the long periods of quiescence in between these periods of life?

The answer to these questions, I argue, requires us to look beyond the Magna Carta of lawyers, to the multifarious forms and interpretations Magna Carta has taken on in its successive incarnations. It requires us, in particular, to focus on the contrast in successive receptions of Magna Carta between the Magna Carta of the dignified constitution and the Magna Carta of the efficient constitution; the Magna Carta of legal consciousness and the Magna Carta of legal doctrine; the charter of the subaltern and the charter of the republican elite; and the charter of inclusive liberties and of exclusive privileges. Underlying these themes, I suggest, were conflicting visions of the role, forms and purpose of the administrative state, and of the status and incidents of those who were subject to its authority.

The final triumph of the Magna Carta of legal doctrine and legal privilege in the 19<sup>th</sup> century led to its progressive repeal and disappearance as a fundamental statute in legal thought. I argue that this last, and seemingly final, death, has changed little. In every historical epoch, the significance of Magna Carta has lain not in the near-banal rules set out in the exclusive Magna Carta of legal doctrine, but in the inclusive Magna Carta of legal consciousness – and, in particular, in its conception of the state and its citizens, and of what constitutes government under law. Magna Carta's significance has never lain in the rights it actually protected, as much as in the legal-political language it gave to those who sought greater recognition by the administrative state. The seeming disappearance of this aspect of Magna Carta from legal discourse and legal memory, with little or nothing to replace it, represents a resounding triumph for its dark side and for the elite understanding of rule under law which it represents.

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