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Imagining the Foundations of Law in Britain: Magna Carta in 2015

By *Martin A. Kayman**

Abstract

The 800th anniversary of Magna Carta offers a study in how the foundations of law have been visualized in the United Kingdom. The fact that the British sense of identity as a free nation has historically been based on its commitment to “unwritten” law means that it lacks a foundational text and has hence traditionally figured the law through a plurality of images without a core. The absence of a singular image on which to focus national identity became acute in the early twenty-first century as the multiplication of sources of legality and justice in a globalized and multicultural world put pressure on the United Kingdom’s sense of sovereignty. The tensions manifest in this crisis can be seen across a range of images produced for the anniversary, each bearing different values. Yet the rival narratives are able to coexist in the same commemorative space, their differences subsumed within Magna Carta’s status as a postmodern “icon,” the consecration of the reciprocal identification between the protection of liberty and the rule of law. The Article concludes by examining a court battle over land on the borders of the commemorative site, and at another commissioned artwork. Both, in their different ways, bring into view the boundaries and bonds imposed by the rule of law that the iconic image elides.

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Fig. 1. “Magna”: Diggers and others near Runnymede Eco-Village, reproduced with the permission of Diggers2012¹

“Forget not, after all these years,
The charter signed at Runnymede.”
— Rudyard Kipling, “The Reeds at Runnymede” (1912)

A. Envisaging the Unwritten Law

This Article uses the commemorations of the 800th anniversary of Magna Carta as a case study to investigate how the foundations of law are imagined and visualized in the United Kingdom (U.K.). The question is the more acute in that the commemorations took place at a time when the national consensus regarding the sovereignty of its law and confidence in a shared national identity were under strain from a multiplication of sources of legality and justice in a globalized and multicultural world. At the time of the commemorations in 2015, few anticipated that the crisis would manifest itself so dramatically in the outcome of the referendum on the U.K.’s membership of the European Union the following year.

One commonly thinks of legal foundations as documents: commandments, constitutions, declarations, conventions, or codes. As such, they are objects of textual hermeneutics for those professionally engaged with their application. Hence it was that the textual turn of the last part of the twentieth century laid the ground for law-and-literature to bring new critical

¹ *Magna*, RUNNYMEDE ECO-VILLAGE, <http://www.runnymede.community/photos/magna/> (last visited May 20, 2016).

protocols to bear on the way the law is read. That said, foundational documents also do their work, particularly for the population at large, in the way of something more like a mantra or a sacred object, and here, arguably, a literary approach would seem to have little to contribute. In these circumstances, texts become not documents to be interpreted but aural or visual images of what they represent, to be intoned, gazed upon, or, in a literal sense, admired in rituals of identification. Sound bites—"trial by a jury of one's peers," "habeas corpus," "an Englishman's home is his castle," "the right to bear arms"—become deployed as a sort of incantation as if each is, indeed, a self-evident truth of the nation's law that identifies one as a free individual. By the same token, the public exhibition of legal documents enables the text to be displayed in a form that gives it a quasi-devotional status. Such is the case, for example, with the Constitution of the United States. Housed in the National Archives in Washington DC, the original copy is, as Linda Colley observes, an object of "pilgrimage" for citizens for which nothing comparable exists in the U.K.² The lack is remarkable, given the image that Britain has of itself—and has projected across the globe—as a nation where unrivaled liberty is secured by a preeminent devotion to law.

The reason for the absence is, plainly, the decisive insistence, at least since the struggles of the Common Lawyers against the absolutist pretensions of the Stuart monarchs, on English law's grounding not in an originary text but in the unwritten law.³ The non-existence of a foundational document issued by a princely authority substantiates the superiority of an unwritten constitution by figuring "the rule of law" not as obedience to the sovereign's command, but as a spirit of justice that pervades national life and is safeguarded by an independent judiciary. Consequently, the Common Law does not have a singular image of itself ready to be displayed to the gaze of a devoted public. Indeed, to do so would compromise the sublime qualities that the law draws from the impossibility of reducing it to a foundational text or confining it within a particular visual image.⁴ Clearly, that does not mean that the law is literally invisible any more than it is literally unwritten. The spirit of English law, then, has historically presented itself through a plurality of verbal and visual images, without a core.

² LINDA COLLEY, *TAKING STOCK OF TAKING LIBERTIES* 9 (2008). Consider the neoclassical altar-like design of space in which the Constitution, Bill of Rights, and Declaration of Independence are displayed in Washington. —*Rotunda for the Charters of Freedom*, NATIONAL ARCHIVES MUSEUM, <http://www.archives.gov/museum/visit/rotunda.html> (last visited Mar. 11, 2017).

³ See also the chapter on Edward Coke in RICHARD HELGERSON, *FORMS OF NATIONHOOD: THE ELIZABETHAN WRITING OF ENGLAND* 63-104 (1992). Following the "Glorious Revolution" of 1688, the myth of the ancient unwritten constitution was canonically elaborated by William Blackstone in his epic *COMMENTARIES ON THE LAWS OF ENGLAND* (1779) (1765–69). This myth also informs the confrontations between Edmund Burke and Thomas Paine around the French Revolution, which Costas Douzinas associates with modern law's suspicion of visual images. Cf. Costas Douzinas, *Prosopon and Antiprosopon: Prolegomena for a Legal Iconography*, in *LAW AND THE IMAGE* 56 (Douzinas & Lynda Nead eds., 1999).

⁴ See Douzinas, *supra* note 3.

Peter Goodrich has argued that, during the period the myth of the unwritten law was first being consolidated, its foundational maxims were made visible through the serial combinations of discrete images and texts that characterized the “emblem” and “emblem book.”⁵ While the image catches the eye and the words explain the image, neither is subordinate or reducible to the other. Rather, they interact in a complex and complementary fashion to frustrate the seduction of the gaze by either of their surfaces. In sum, emblems provide a visual figuration of an invisible law. As Goodrich demonstrates, word and image work together on the page to direct the eye inward and upward, beyond both the written and the seen: “[T]he words lead to the image, and the image to the message that cannot be seen or stated.”⁶ The emblem thereby establishes what Goodrich terms a “visiocratic regime,” a mode of visual governance that, he maintains, continues to prevail today.⁷

In contrast, the argument in this Article starts from a strong sense of crisis in the regime of visual governance and, at the same time, of radical changes in the ecology of word and image. As Goodrich has argued consistently, the “visiocracy” he describes is decisively allied to the supremacy of the Anglican *nomos* and its theology of the Word and Image.⁸ Although much survives in a nation with an established Church whose bishops still sit in the legislature, the same supremacy cannot be assumed in postmodern Britain, with its jostling plurality of secular and post-secular *nomoi* of diverse origins that—as we shall see shortly—are perceived to have unsettled many of the assumptions of that regime. As confidence diminishes in the nation’s identification with a shared spirit of English law and constitutional arrangements, the resulting tensions have put the commitment to an unwritten constitution under pressure but have not led to a new fundamental law. On the other hand, I shall argue,

⁵ PETER GOODRICH, *LEGAL EMBLEMS AND THE ART OF LAW* (2013). For an analysis of legal images as powerful myths that “metastasize” the forces at work in periods of legal transition and transformation, see Desmond Manderson, *The Metastases of Myth*, 26 L. & CRITIQUE 207 (2015).

⁶ *Id.* at 252.

⁷ Peter Goodrich, *Visiocracy: On the Futures of the Fingerpost*, 39 CRITICAL INQUIRY 501 (2013).

⁸ PETER GOODRICH, *LANGUAGES OF LAW* 53 (1990) (“The legal tradition had its basis, its foundation, in a notion of tradition and of polity that was borrowed directly from the Anglican Church.”). Central to that foundation was the Church of England’s doctrine of the Eucharist as “a theory of the sign . . . and of interpretation.” *Id.* at 55. Similar theological configurations can be seen from Manderson’s analysis of images from the same period, particularly that of Blind Justice:

The figure of blind justice is a myth of modern law in just this sense. It takes the underlying cultural oppositions that had been central to the contested emergence of modern law for centuries—between law and justice, letter and spirit, particular and general, local and universal, spiritual and temporal—and finds a new accommodation, transforming these dichotomies from the underlying critique of modern law to the condition of its authority.

Manderson, *supra* note 5, at 216.

what they have done is to encourage the pursuit of a fundamental image on which to focus identification with the spirit of the British legal regime.

At the same time, if the theological and political semiotics of the visiocracy have changed, so too has the ecology of the print tradition in which the emblem flourished. Indeed, as an object of commemoration, Magna Carta particularly suited the increasing preeminence of visual over verbal artifacts in twenty-first century culture, not least in digital form. Historians appeared to relish correcting the common error that Rudyard Kipling himself makes in the poem quoted as an epigraph to this Article when he writes of the “signing” of the Charter, rather than its “sealing.” The authorizing act that took place at Runnymede in 1215—whose anniversary was celebrated at the event’s historic site in 2015—is the attachment of a pictorial image to the text, not a written signature, and this, arguably, is reflected in the importance given to visual images in the celebrations themselves and the role of the internet in the construction, management and dissemination of those images.

In particular, as we shall observe, in place of a new substantive legal text for the twenty-first century, a core was provided by transforming Magna Carta itself into a visual image. In his study of how legal images operate in times of socio-legal change, Desmond Manderson observes that “the movement from pre-modern to modern is marked by the transformation of the function of images from icons whose meaning is simply present, like an aura, to artworks whose meaning requires, and is therefore subject to, interpretation.”⁹ While, as Manderson’s article clearly indicates, the early modern image of which he speaks is modelled by Goodrich’s emblem, we shall see that Magna Carta has been presented to our sight as a postmodern “icon.”

The meaning of a foundational image is hence related to the sort of image it is. What, then, is a postmodern icon of law? As we interrogate Magna Carta as a self-styled “icon,” I shall argue that, lacking concrete substance at its core, the foundational image can do no more than engender a proliferation of images that refer back to itself. Indeed, the analysis of two commemorative artworks will show that such “images of an icon” may express politically incompatible narratives of law. And yet, notwithstanding conflicts of substance, the core image of Magna Carta itself unites the various images it generates to promote and reinforce a shared faith in a fundamental principle: the rule of law as the guarantee of liberty. In sum, what the vacuous heart of the “icon” embodies is the unproblematic doctrine that liberty is what “the rule of law” provides, and it is what only “the rule of law” can provide. Rather than an expression of transition or triumph, like the early modern emblems analyzed by Manderson and Goodrich, the more the core relies on a text transformed into an image of

⁹ Manderson, *supra* note 5, at 218.

itself, the more effectively Magna Carta translates into a visual register the contemporary regime in which “law is increasingly law because it calls itself law.”¹⁰

With the assistance of a court case set on the edge of Runnymede and adopting its metaphor from Cornelia Parker’s commemorative work, *Magna Carta (An Embroidery)*, the Article will conclude by suggesting that when the apparent seamlessness of law and liberty made visible in the image of Magna Carta is unpicked, what we then glimpse are the brittle institutional bonds and boundaries of the rule of law otherwise concealed beneath the ideological identification with the defense of liberty embellished by the other commemorative images.

B. From a New Bill of Rights to Magna Carta

The lack of a foundational text came strongly into view in the early years of the millennium in the context of a perceived threat to the identity of the U.K. as a nation united by a distinctive spirit of liberty under law. While views on the predominant sources of the threat and the degree and nature of constitutional reform required differed across the parties, there was widespread agreement that a new foundational document had a major part to play. Many tensions were identified, each in its way reflecting a multiplication of jurisdictions and normative cultures crossing an increasingly multicultural national space and a globalized world. At the time, these included a perceived threat to unified national sovereignty from European law,¹¹ as well as from the growing impact of the 1998 devolutionary settlements for Scotland, Wales and North Ireland.¹² In addition, according to the Labour Government’s Green Paper on *The Governance of Britain*, the crisis reflected a growing diversity of identities resulting from immigration and settlement, along with a noticeable disengagement from conventional politics by young people, many of them the offspring of earlier generations of immigrants.¹³ The latter had become a particular concern following the attacks on New York in September 2001 and on London in July 2005, as attention turned to the challenge to national loyalty allegedly resulting from the religious allegiances of young

¹⁰ Costas Douzinas, *A Short History of the British Critical Legal Conference or, the Responsibility of the Critic*, 25 L. & CRITIQUE 187, 194 (2014).

¹¹ See Treaty of Lisbon Amending the Treaty on European Union and the Treaty Establishing the European Community, Dec. 13, 2007, 2007 O.J. (C 306) 1 [hereinafter Treaty of Lisbon].

¹² See THE SECRETARY OF STATE FOR JUSTICE, *THE GOVERNANCE OF BRITAIN* (2007), https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/228834/7170.pdf; UK PARLIAMENT JOINT COMMITTEE ON HUMAN RIGHTS, *A BILL OF RIGHTS FOR THE UK?* (2008), <http://www.publications.parliament.uk/pa/it200708/jtselect/jtrights/165/165i.pdf>; David Cameron, *Balancing Freedom and Security*, THE GUARDIAN (June 26, 2006), <http://www.theguardian.com/politics/2006/jun/26/conservatives.constitution>. For a more complete account of these debates, see Martin A. Kayman, *The Bill of Rights: “Icons” of Liberty and Law in the Early Twenty-First Century*, 5 LAW AND HUMANITIES 323 (2011).

¹³ THE SECRETARY OF STATE FOR JUSTICE, *supra* note 12, at 40.

Muslims. The government's repeated attempts to combat terrorism by increasing the periods of time during which suspects could be detained without charge were, on the one hand, seen as undermining belief in the role of law as protecting the individual from the state. On the other hand, the rulings of the courts overturning these regulations and parallel measures regarding deportees and asylum seekers were interpreted as a threat from foreign-derived human rights law to the defense of the nation.

Colley's observation quoted above about the absence of a written document arose, then, in the context of a campaign aimed at resolving issues of common identity in the constitution of a multicultural nation.¹⁴ Although *The Governance of Britain* paper did not go as far as proposing a written constitution, it did give a central role to a foundational document in which national identity would be described as a bundle of individual legally enforceable rights and obligations. Although Magna Carta was referred to in these debates, it was clearly felt that a document that revisited "the birth of the modern British Constitution" would be more suitable: The Bill of Rights of 1689.¹⁵ According to the Government, a new "Bill of Rights and Duties" would furnish a "British statement of values" that encompassed "the ideals and principles that bind us together as a nation."¹⁶ By offering people "a clear definition of citizenship," the Bill would promote "a better sense of their British identity in a globalised [*sic*] world."¹⁷ The proposal was broadly endorsed by the other parties in similar terms. However, for the Conservatives, its main contribution would be to "restore British parliamentary supremacy as against law made elsewhere."¹⁸ A modern British Bill of Rights would, in sum, replace the foreign-inspired Human Rights Act with "a new solution that protects liberties in this country that is homegrown and sensitive to Britain's legal inheritance."¹⁹ Although the vision of national identity and the substance of its core values were quite different for each of the major parties, they were all nonetheless in agreement that a document that made these values visible would help resolve the tensions between multiple jurisdictions, *nomoi*, and identities, and thereby contribute to a renewed national coherence.

¹⁴ See COLLEY, *supra* note 2 (noting that the UK does not have any document comparable to the Constitution on display in Washington, DC). An organization entitled Charter 88 had campaigned for a written constitution since 2005. Cf. Linda Colley, *Writing Constitutions into British History*, BRISTOL UNIVERSITY CENTENARY LECTURE (July 21, 2009), <http://www.bristol.ac.uk/centenary/listen/lectures/colley.html> (audio recording). For further context, see also *infra* note 43.

¹⁵ See THE SECRETARY OF STATE FOR JUSTICE, *supra* note 12. The original Bill of Rights was a key part of the constitutional settlement known as the "Glorious Revolution" that ended the contest between monarch and parliament under the Stuarts and assured the Protestant succession in Britain.

¹⁶ *Id.* at 58.

¹⁷ *Id.* at 54.

¹⁸ Cameron, *supra* note 12.

¹⁹ *Id.*

The devil, as it turned out, was in the political substance of the legal rights and duties of citizens, the specific powers and limits of the state, and relations between “British” and European or “human” rights. By the 2015 election, the Labour Party had effectively abandoned the project in favor of a broad “Constitutional Convention.” The Conservatives, meanwhile, have repeatedly postponed acting on their longstanding commitment to replace the Human Rights Act. While the Queen’s Speech opening the 2016 Parliamentary session promised, as it had the year before, that “[p]roposals will be brought forward for a British Bill of Rights,” the most recent published proposal no longer pretended to offer any substantive changes to the rights enshrined in the Human Rights Act.²⁰ Rather, it envisaged re-importing the European Convention into primary legislation in order to strip out the interpretative glosses of European case law.

The fact is that the constraints of the internationalization of law mean that the U.K. can no longer imagine a national Bill of Rights that is in any substantial sense different from the European Convention without a radical dissolution of its ties to Europe. A new foundational law based on rights would therefore not be able to provide the clear image of liberty under law that its multicultural citizens could identify as distinctively British. But it was not as if the issues had become any less urgent—as demonstrated by the moral panic over the radicalization of Muslim youth consistently expressed by the government’s “Prevent” campaign in terms of allegiance to “British values” (from 2011), procedures for “English votes for English laws” (adopted in 2015), and the expansion of the security state proposed in the Counter-Terrorism and Security Act (2015) and a promised Counter-Extremism Bill (2016).²¹ In addition, constitutional pressures have led to an unprecedented series of referenda on different aspects of governance: proportional representation (2011), reform of the House of Lords (2012), Scottish independence (2014), and membership of the European Union (announced in 2013 and enacted in 2016). Although each event up to 2014 produced a clear outcome, none had effectively resolved the issue it was designed to address.²² The concerns that had given rise to proposals for a British Bill of Rights remained

²⁰ CONSERVATIVE PARTY CENTRAL OFFICE, PROTECTING HUMAN RIGHTS IN THE UK (2014), https://www.conservatives.com/~media/Files/Downloadable%20Files/HUMAN_RIGHTS.pdf.

²¹ “Prevent” was the name given to a key element in the Government’s strategy from 2010 for combating terrorism and extremism. The latter term was defined in 2011 as “vocal or active opposition to *fundamental British values*.” H.M. GOVERNMENT, REVISED PREVENT DUTY GUIDANCE: FOR ENGLAND AND WALES 2 (2015), https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/445977/3799_Revised_Prevent_Duty_Guidance_England_Wales_V2-Interactive.pdf (emphasis added). Further promised legislation has been hampered by difficulties in defining these values in a culturally inclusive and legally robust manner.

²² The indeterminate implications of the outcome of the referendum on E.U. membership held on June 23, 2016 was reflected in the phrase “Brexit means Brexit.” The slogan was first used by Theresa May at the launch of her successful campaign to succeed David Cameron as Prime Minister following his resignation. Jessica Elgot & Rowena Mason, *Theresa May launches Tory leadership bid with pledge to unite country*, THE GUARDIAN, June 20, 2016, <https://www.theguardian.com/politics/2016/jun/30/theresa-may-launches-tory-leadership-bid-with-pledge-to-unite-country>. It was much repeated in subsequent months by supporters of the “Leave” vote as the answer to any

acute when, in 2015, the commemorations of the 800th anniversary of Magna Carta offered an alternative opportunity to create a unifying foundational image of law in Britain without needing to produce an agreed substantive text.²³

From a British point of view, nothing is more British than Magna Carta. The popularity of the opaquely titled document written in an ancient language is positively assisted by the fact that its legal content is so archaic and, at best, only vaguely recalled. A massive gap exists between the context and meaning of its concrete legal provisions in the thirteenth century and today.²⁴ What nonetheless survives is a national attachment that can be heard reverberating in the call for justice in an episode of the popular British television comedy, *Hancock's Half Hour*, devoted to a parody of Sidney Lumet's Oscar-nominated courtroom drama, *12 Angry Men*: "Does Magna Carta mean nothing to you?" cries Tony Hancock to his fellow jurors, "Did she die in vain?"²⁵

Undoubtedly Magna Carta has affective meaning, but what does it mean in intellectual terms? The question famously arose when David Letterman, host of CBS's *The Late Show* in the United States, asked David Cameron the straightforward question: "Latin for what? Big

questioning of the meaning of the electoral act. The tautological explanation of one opaque but emotive neologism by reference to itself is consistent with the argument elaborated below regarding the way in which the self-referential character of the postmodern icon obscures the absence of a core of substantive meaning.

²³ For a "rhetorical analysis" of the exploitation of Magna Carta as a "founding myth" for Britishness by the leaders of both major parties, see Judi Atkins, *(Re)imagining Magna Carta*, PARLIAMENTARY AFFAIRS (2015), <http://pa.oxfordjournals.org.abc.cardiff.ac.uk/content/early/2015/11/30/pa.gsv057.full.pdf+html>.

²⁴ Magna Carta was as much a peace treaty as a foundational legal text. The original Charter commemorated in 2015 followed an uprising of the Barons against King John in 1214 and resulted from negotiations brokered by the Archbishop of Canterbury at Runnymede in June 1215. The provisions in the sixty-three clauses of the original Latin text included regulations relating to freedom of navigation of rivers, the standardization of weights and measures, taxation, the rights of heirs and widows, the administration of the law, reparations to the Welsh, relief from the payment of debts to Jews, and limits on access to the law for women. Only four clauses now remain on the statute book. Two guarantee the ancient liberties of the Church, the City of London and some other towns, and the other two have been amalgamated into the commitment to "the rule of law" discussed below. When people refer to "Magna Carta" with any precision at all, they are referring to the latter clauses. Some thirteen copies were made of the foundational text of Magna Carta, of which four survive. But the original document celebrated in June 2015 was in fact repudiated a few months after the sealing by the King, who was supported by the Pope. Following King John's death, a new version, accompanied by a "Charter of the Forest," was issued in the name of the infant King Henry III. It was only in 1225, now in his majority, that Henry promulgated—for the first time of the sovereign's own will—definitive new versions of both charters, which were finally placed on the statute book by Edward I in 1297.

²⁵ Ray Galton and Allan Simpson, *Twelve Angry Men*, HANCOCK'S HALF HOUR, series 5, episode 4 (BBC TV. Oct. 16, 1959), available at <https://www.youtube.com/watch?v=NqFseRBPY9M>. Sidney Lumet's *12 Angry Men*, produced by and starring Henry Fonda, was distributed by United Artists in 1957.

Map?”²⁶ The Prime Minister explained that “[t]he big moment of the Magna Carta was basically people saying to the king that, you know, other people have to have rights it is very important that you respect.” The exchange came after a series of similarly disingenuous questions from Letterman about “the days of colonization,” the incomprehensible relations between the devolved nations of the United Kingdom, and the authorship of “Rule Britannia.” In short, Magna Carta appeared, like the Bill of Rights, on the same fraught terrain of rights in the context of the nation’s post-devolutionary identity and post-imperial place in world history. Unsatisfied by Cameron’s anachronistic language and chaotic syntax, Letterman pressed gently for a more philological account: “and the literal translation is what?” he asked; “You have ‘Magna’ . . . ?” Given his education, the Prime Minister’s inability to respond must have had the character of a parataxis.

By the time of the commemorations in 2015, Cameron had worked out a more elaborate response. His statements placed the ancient document in the very space that the proposal for a new British Bill of Rights had failed to fill and made it central to the resolution of the tensions between “British” and “human” rights as well as between the imperial past and Britain’s present position in the globalized world.²⁷ Notably, Magna Carta shifted focus from rights discourse to the rule of law and due process themselves: “The limits of executive power, guaranteed access to justice, the belief that there should be something called the rule of law, that there shouldn’t be imprisonment without trial, Magna Carta introduced the idea that we should write these things down and live by them.” Speaking *in loco*, the Prime Minister began by drawing attention to Runnymede itself and hence the organic nativeness of liberty in England: “We talk about the ‘law of the land’ and this is the very land where that law—and the rights that flow from it—took root.” Though rooted in its place and time, Magna Carta was from its origin “a document that would change the world.” Like the pageant reenacting the event at the commemorations held in 1934, the speech brings the image of the barons repeatedly to mind.²⁸ “Did those barons know,” Cameron invited the audience to “wonder,” “how its clauses would echo through the ages?”²⁹ As we follow its echo, the flow of empire transformed into a stream of liberty. We travel through America, India, and South Africa, and beyond: Magna Carta survives still as an image of “what others are crying out for, hoping for, praying for.” But, the Prime Minister pointed out, “here in Britain, ironically, the place where those ideas were first set out, the good name of ‘human

²⁶ David Letterman, *The Late Show* (CBS television broadcast Sept. 26, 2012), available at <https://www.youtube.com/watch?v=Z0wWriPToSQ>.

²⁷ David Cameron, *Magna Carta 800th Anniversary: PM’s speech*, GOV.UK (June 15, 2015), <https://www.gov.uk/government/speeches/magna-carta-800th-anniversary-pms-speech>.

²⁸ A Pathé newsreel of the event is available at <http://www.britishpathe.com/video/historical-pageant/query/Carta>. See also a contemporary newspaper report, *Runnymede: Its Magnificent Pageant*, SYDNEY MORNING HERALD (Sept. 9, 1934), <http://nla.gov.au/nla.news-page1142817>.

²⁹ Cameron, *supra* note 27.

rights' has sometimes become distorted and devalued." Again, Britain stands ready to correct the distortion of the true meaning of liberty through the superiority of its law: "It falls to us in this generation to restore the reputation of those rights—and their critical underpinning of our legal system. It is our duty to safeguard the legacy, the idea, the momentous achievement of those barons."

The medium for this vision could hardly have been more traditional or more contingent: Spoken words solemnly proclaimed at a commemorative occasion. Put another way, it was the product of a political performance, and what it presented was a verbal image, not a doctrine: Magna Carta was the foundation of justice and liberty through the rule of law and legal procedures based on the English common law tradition. Although ephemeral, the speech was part of a vast number of events organized throughout the country during the anniversary year, many of which left more permanent traces, including the artworks we will be analyzing in due course. To be sure, it was not the only narrative available at Runnymede in 2015. To the left of the main stage can be seen a concrete image that predates the one conjured by the Prime Minister's performance by over half a century.³⁰

The Magna Carta Memorial at Runnymede was designed by Edward Maufe, a respected English architect specializing in religious buildings (notably the Guilford Cathedral nearby) and war memorials (including one to the Air Force at the same site). Erected in 1957, the Memorial was granted Grade II listing by Historic England in December 2015 as "the only specifically designed structure to commemorate the signing [*sic*] of the Magna Carta."³¹ The temple-like building consists of a neoclassical circular colonnade surrounding a two-meter high cylinder of English granite bearing the words "Magna Carta Symbol of Freedom under Law." The pillar also bears an American lone star and lettering around the inside of the cupola records that the Memorial was sponsored by the American Bar Association (ABA). The monument thus reminds us that Magna Carta has, arguably, been at least as central to American identity as it has to British identity. Certainly, the American presence has always been in the background at Runnymede, whose quintessentially English soil was itself acquired for the nation with American money in 1929.³² The Memorial was rededicated on June 15, 2015 shortly after Cameron's speech in a ceremony patronized by the Princess Royal, the Attorney General of the United States, and the President of the ABA. In other

³⁰ The structure is visible in the background of the photograph featuring the Runnymede Eco-village Diggers above in Figure 1.

³¹ *Magna Carta Monument*, HISTORIC ENGLAND (Dec. 18, 2016), <http://www.historicengland.org.uk/listing/the-list/list-entry/1430723>.

³² The land was acquired and gifted to the National Trust in 1929 by the American widow of Urban Hanlan Broughton, a British-born engineer who had made his fortune in the USA before returning to the UK and becoming a Conservative MP. For details, see Nicholas Vincent & Steven Franklin, *Runnymede and the Commemoration of Magna Carta (1923–2015)*, THE MAGNA CARTA PROJECT (July 2015), http://magnacarta.cmp.uea.ac.uk/read/feature_of_the_month/Jul_2015.

words, the rule of law memorialized at Runnymede is not only that of the Prime Minister's resolutely English narrative, but equally that curated by the professional corporation of U.S. lawyers. The Memorial's republican neoclassicism rubs against the usual gothic associations of the feudal event as the written constitution contrasts with the unwritten. Nonetheless, I would argue, the two images are able to coexist pacifically in the space of Runnymede because the treatment of the document as an image—in the mind's eye or as a structure—subordinates the actual properties of the law in question to the label inscribed by the American Bar on English stone in an English meadow purchased with American money: "Freedom under Law." Magna Carta can serve as an image of both a law based on the written U.S. constitution and on the unwritten British constitution since ultimately what is envisioned by the image is simply the grounding of liberty in law and of law in the defense of freedom, regardless of its specific provisions and administration.

C. An Icon of Liberty



Fig. 2. Screenshot from the website *Magna Carta: Icon of Liberty*, reproduced with the permission of the American Bar Association.³³

³³ American Bar Association, *Homepage*, MAGNA CARTA: ICON OF LIBERTY, <http://iconofliberty.com> (last visited May 20, 2016). The site was created by the American Bar Association Division for Public Education through a grant from the Magna Carta Trust as a legacy project to commemorate the 800th anniversary of Magna Carta.

This image of Magna Carta was both fleshed out and given a global dimension by the website launched by the ABA as part of its contributions to the commemorations. Through digitization, the image is deracinated from Runnymede and relocated within a multiplication of images across virtual space. Magna Carta's "original time and place" is invoked only to establish the site's principal theme: that the Charter has "transcended" its origins "to become one of the world's most recognized and enduring symbols of liberty under law."³⁴ The images and their labels establish a set of visual and verbal associations between Magna Carta, global freedom, and—less immediately apparent—the American constitution. The title of the opening page—"The Great Charter of Liberty"—looks like the simple translation into plain English that Letterman had sought from the British Prime Minister;³⁵ the phrase links it, for some viewers at least, with the three "Charters of Freedom," as the American Declaration of Independence, the Constitution, and the Bill of Rights are known in the U.S. Furthermore, as we can discover elsewhere on the site, the banner spelling out "Magna Charta" in the background is taken from a 1768 painting by Christian Remnick portraying a "Perspective View of the Blockade of Boston Harbor."³⁶ Beneath this, "Magna Carta's global presence" is introduced by the sub-heading "An International Symbol," which in turn is topped by a small, stylized image of the globe. This image of the world displays not the conventional design centered on the Atlantic used in most parts of the world but the outlines of North and mainland Central America customarily employed in the U.S. The global reach of the subtly Americanized charter is then pursued elsewhere on the site through a "gallery" of visual allusions in a variety of media and international locations that, on examination, prove to be drawn exclusively from the white Anglophone world.³⁷ None of this rhetoric is surprising, and I quote it in part to qualify Cameron's British narrative and to demonstrate

³⁴ *Id.*

³⁵ See Letterman, *supra* note 26 and accompanying text (recounting the interview between David Letterman and David Cameron about Magna Carta).

³⁶ American Bar Association, *Protest Art Invokes Magna Carta*, MAGNA CARTA: ICON OF LIBERTY, <http://iconofliberty.com/gallery/perspective-view-of-the-blockade-of-boston-harbor-by-christian-remnick-1768/?link=main-gallery> (last visited May 20, 2016). From a global point of view, at the time when negotiations were underway regarding the Transatlantic Trade and Investment Partnership, perhaps the most important measure of the Magna Carta was indeed the safeguards against unlawful taxation invoked in modern times by the Boston revolt.

³⁷ American Bar Association, *Images of an Icon*, MAGNA CARTA: ICON OF LIBERTY, <http://iconofliberty.com/main-gallery/> (last visited May 20, 2016). Images depicted include the door and frieze of the US Supreme Court and the constitutions of American States, along with "Magna Carta Shares Space at Fort Knox" and, auspiciously, "Magna Carta makes a splash at 1939 Worlds Fair" (<http://iconofliberty.com/icon/manuscript/>). The images selected in the area of popular culture are, with the exception of the British folk band "Magna Carta" and a link to a TED talk by Tim Berners-Lee, entirely American (<http://iconofliberty.com/icon/culture/>), as are the two exhibitions included in the section "Exhibits" (<http://iconofliberty.com/icon/exhibits/>). Under "Display" we find images referring to Magna Carta in stained glass windows in Boston, Mass., Philadelphia, and Worcester Cathedral; the pulpit of the National Cathedral, Washington DC; the frieze of the British Supreme Court; the façade of the Supreme Court of Colorado, and murals from Indiana, Ohio and Wisconsin; a replica of Magna Carta itself at the US Capitol, and monuments from Australia, Canada, and South Africa (<http://iconofliberty.com/icon/display/>).

how the Charter is able to subsume as well as convey different national claims to its ownership as it universalizes its Anglo-Saxon vision of law and liberty. What is really interesting about the website is the title given it by the ABA: “Magna Carta: Icon of Liberty.”³⁸

The digital image of Magna Carta brings us then to the question raised in the introduction about the type of image that the Charter presents in 2015. If, as Goodrich has shown, the emblem was central to the visualization of the bases of law in the seventeenth century, I want now to examine how the notion of the icon can help us understand the way legal foundations are imagined in the twenty-first century.

The “icon” has certainly long played an important role in thinking about law and the image.³⁹ Further, the term had been applied in connection with the Charter in the years before its promotion by the ABA website in two different contexts. Recalling Manderson’s reference to the early modern transition from images as icons “whose meaning is simply present, like an aura” to visual objects that require interpretation,⁴⁰ the return of the language of the icon today clearly cannot imply a simple return to its original ontology without a return to the theology that supported that sense of presence. Indeed, the way the term is deployed on this website alerts us to the fact that if Magna Carta is an icon, it is an icon of a particular sort. This icon is apparently of a kind that can fit into the syntax used in the title given to the internationally-sourced gallery of reproductions of the Charter, of memorials, and of representations of the scene at Runnymede: “Images of an Icon.”⁴¹ Because an icon is itself an image, the self-reference here is key. For citizens of the U.S., the multiplicity of images of the icon takes one beyond the “Charter of Liberty” itself towards the set of “Charters of Freedom,” the true scriptures at the U.S. core of “freedom under law”—the foundational laws of the state. In contrast, as I pointed out at the opening of this Article, from the British point of view there is no ultimate legal scripture of this sort to which the icon directs our reverence. The unwritten law becomes visible in a multiplicity of images without a core. If, following the failure to produce a new legal document on which to refocus national identity in post-imperial Britain, Magna Carta was able to offer a foundational core for a plurality of images, it is because the core is, in effect, empty. It images not a living law, but only itself as a symbol: an image of the foundation of liberty in the rule of law as such.

Making Magna Carta into this sort of icon depends, in the first place, therefore, on the treatment of the written document not as an eventually problematic discursive text but as

³⁸ American Bar Association, *supra* note 33.

³⁹ See Douzinas, *supra* note 3. Goodrich himself draws a parallel between his notion of “visiocracy” and Marie-José Mondzain’s influential theory of “iconocracy.” See GOODRICH, *supra* note 5, at 16 n.16; Marie-José Mondzain, *Can Images Kill?*, 36 CRITICAL INQUIRY 20 (2009).

⁴⁰ Manderson, *supra* note 5.

⁴¹ American Bar Association, *supra* note 37.

a visual image of what it represents made of itself. It is, in this sense, an “auto-icon,” to use Jeremy Bentham’s term for his effigy of and to himself.⁴² The transformation from verbal to visual artifact draws away from the philological and juridical content of the text towards its abstract value as a symbol of what it is held to mean in the context in which it is made visible. Magna Carta had already been referred to in this way as an “icon of liberty” in the context of an exhibition curated by Linda Colley at the time of the debates in Britain over national identity and law reviewed above. Commissioned by the British Library, Colley had assembled a collection of documents and images into a historical narrative of the struggle for and on behalf of political freedom in Britain under the eloquent title *Taking Liberties*.⁴³ Integrated into a gallery exhibition, the historic documents were displayed to the public gaze alongside engravings, posters, and banners like artworks or objects in traditional exhibitions. Shaped by their arrangement and labeling, the meaning of the exhibits lay not so much in their content but, like many art historical displays, in what they stood for in a cultural narrative and the contemporary debate. In that sense, according to the website that accompanied and prolongs the life of the exhibition, the “Star items” from the display which the site reproduces in digital form constitute “40 key icons of liberty and progress, from Magna Carta to the Declaration of Human Rights.”⁴⁴

Along with its character as a signifier of a presence, the term “icon” customarily implies a quality of attention or attitude expected from the viewer. The text being displayed in the Library’s exhibition as an image of what it represents is iconic in the sense that it brings with it an aura as an authentic relic of a historical moment. That was the moment, as the Prime Minister sought to bring to our minds’ eye at Runnymede, when the foundational principle of the rule of law was, to use his words, “written down” to be “lived by”—incarnated, in a sense.⁴⁵ The ceremonious presentation of the Charter in a privileged space like the British Library exhibition gallery exploits the aura of an original, rarely seen document that, while unreadable to the common spectator and still incomprehensible when transcribed, is of decisive significance to their identity. In this case, though, the relic is not unique; it is an

⁴² In the context of his campaign in favor of the 1832 Anatomy Act, Bentham proposed that utility would be further maximized through a system of post-mortem dissection if the remains were used to allow everyone to have a memorial to themselves constructed out of their own skeleton, dressed in their own clothes, and surmounted by their preserved head. See JEREMY BENTHAM, *BENTHAM’S AUTO-ICON AND RELATED WRITINGS* (James E. Crimmins ed., 2002); Martin Kayman, *A Memorial for Jeremy Bentham: Memory, Fiction, and Writing the Law*, 15 L. & CRITIQUE 207 (2004). Bentham’s own “auto-icon” can be seen in a corridor of University College London. *UCL Culture*, University College London, <https://www.ucl.ac.uk/museums/jeremy-bentham> (last visited May 20, 2016).

⁴³ The exhibition took place from October 31, 2008 to March 1, 2009. See MICHAEL ASHLEY, *TAKING LIBERTIES* (2008); Colley, *supra* note 2; Kayman, *supra* note 12 notes the contrasts between this exhibition and the 1988 commemorations of the 300th anniversary of the Glorious Revolution and the “Bill of Rights.”

⁴⁴ British Library, *Online Exhibits: Star Items*, *TAKING LIBERTIES*, <http://www.bl.uk/onlinegallery/takingliberties/staritems.html> (last visited May 20, 2016).

⁴⁵ Cameron, *supra* note 27.

image of an absent core. Along with the phrase “images of an icon” goes another: “[A]n original copy.” The parchment on display in the 2008 exhibition is one of four surviving transcriptions: An image of an image. In 2015, the aura of the textual images of Magna Carta was further intensified when, with the support of the “global law firm Linklaters,”⁴⁶ the four surviving copies of the original 2015 charter were brought together, for the first time, to be viewed at the British Library over three days by scholars and by the magical number of 1,215 members of the public, selected by ballot.⁴⁷

Making a digital copy of Magna Carta available online and styling it an icon expands its global iterability while also bringing with it, I would suggest, the expectation of reverence the auratic presence of the “original copy” had in the “live” exhibition. *Taking Liberties* was the second of the Library’s shows whose existence was prolonged and expanded through an online presence. The previous year, an exhibition on the foundations of the major religions, entitled *Sacred*, was accompanied by a website featuring a selection of images from a range of “Sacred Texts.”⁴⁸ Although, no doubt, the employment of the term “icon” in 2008 owed nothing directly to the previous exhibition, the religious association was certainly present in a third description of Magna Carta as an “Icon of Liberty” twenty years previously. *Magna Carta: Icon of Liberty* was the title given to a booklet produced for the touring display of the Lincoln Cathedral’s original copy of the Charter at the commemorations of the bicentennial anniversary of the United States Constitution in 1987 and at the World Expo in Australia the following year.⁴⁹ In the introduction, John S. Nurser recalls his response to assuming responsibility for the parchment upon his appointment as the Canon Chancellor of Lincoln in the following terms:

Class ‘A’ mythic objects in world history are very few: it was as if I was being asked to take over the guardianship of the two stone tables Moses had brought down from Mount Sinai, or the crown of the Emperor Charlemagne, or the axe that had cut off King Charles’s head.⁵⁰

While the Canon locates Magna Carta in a fascinating list of world-mythic objects of law, sovereignty, and liberty, the editor of the booklet and sub-dean of the Cathedral, the Reverend Rex Davis, felt that the use of “icon” in this context was unfamiliar enough to require an explanation. Writing, as it were, canonically himself, Davis explains that an icon

⁴⁶ British Library, *Making History*, BRITISH LIBRARY (Feb. 2, 2015), <http://www.bl.uk/press-releases/2015/february/four-original-surviving-magna-carta-manuscripts-are-brought-together-for-the-first-time>.

⁴⁷ *Id.*

⁴⁸ British Library, *Explore the World’s Sacred Texts*, BRITISH LIBRARY, <http://www.bl.uk/onlinegallery/sacredtexts/> (last visited May 20, 2016).

⁴⁹ MAGNA CARTA: ICON OF LIBERTY (Rex Davis ed., 1988).

⁵⁰ John S. Nurser, *Introduction*, MAGNA CARTA 12.

is a “likeness . . . [that] could be a visible way of explaining the invisible truths of religion.”⁵¹ In this way, he concludes, “it is not altogether a mistake to see the frail ageing document preserved so long at Lincoln Cathedral to be an . . . Icon of Liberty.”⁵²

Here, then, one might think, we find evidence of the survival of the “visial line” of Anglican theology described by Goodrich,⁵³ but Davis’s hesitation (“it is not altogether a mistake”) alerts us to the problem behind the confident title adopted by the booklet. The effectiveness of the religious icon relies on faith in the institution and its doctrine and on the subject’s identification with a community of believers.⁵⁴ In contrast to the reverence that is found towards the Constitution in the U.S., the problem that a foundational document is supposed to resolve in Britain, as I argued above, is precisely the collapse of a shared faith in the traditional “*nomos* and narrative” of national law.⁵⁵ So, between the references to an “icon of liberty” by the Canons of Lincoln Cathedral in 1998 and the lawyers of the ABA in 2015, via the British Library’s “Star items” of 2008, what allows Magna Carta to do its work promoting reverence for the rule of law without regard to agreement concerning the concrete content, structure, and administration of that law is the way in which it sits indeterminately within two senses of the icon: The digitized image of the text on the one hand and the venerated religious image on the other.

In truth, then, as should be apparent from the above, “icon” isn’t exactly the right term to describe the Charter. I have commented on the gap in substance between Magna Carta as thirteenth-century law and its invocation in the current context. But from a formal point of view too, reproduced through multiple copies and historical iterations as it crosses languages and media from Latin manuscript parchment to visual exhibit, via diverse print formats to digital form, it isn’t clear what type of signifier the Charter actually is and what therefore it can be said to mean besides a general faith in the rule of law as the source of liberty. As we shall see below in the case of the Runnymede Diggers, the one thing that with certainty the commemorations were not celebrating is an original, still active, legal text, like the American Constitution. But it is harder to say with equal accuracy what Magna Carta actually is.

⁵¹ DAVIS, *Epilogue*, MAGNA CARTA 54.

⁵² *Id.*

⁵³ Peter Goodrich, *The Visial Line: On the Prehistory of Law and Film*, 14 PARALLAX 55 (2008). See GOODRICH, *supra* note 8.

⁵⁴ See Martin A. Kayman, *Iconic Violence: Belief, Law and the Visual*, 31 TEXTUAL PRACTICE 1 (2016), <http://dx.doi.org/10.1080/0950236X.2016.1249710>. The exhibition itself took place against the background of a conflict over the management of the cathedral—an episode itself illustrative of a crisis in the Anglican establishment. Cf. Andrew Brown, *Blue Murder in the Cathedral*, INDEPENDENT, Oct. 14, 1994.

⁵⁵ See Robert M. Cover, *Foreword: Nomos and Narrative*, 97 HARVARD L. R. 4, 17–18 (1983).

Indeed, as people seek to characterize Magna Carta, terms proliferate like the visual images themselves. Taking just one document, the introduction to the catalogue produced for the British Library's 2015 exhibition entitled *Magna Carta: Law, Liberty, Legacy* refers to Magna Carta as a "myth and totem rather than . . . [a] historic reality."⁵⁶ "[F]or all its fame," Nicholas Vincent continues, "Magna Carta remains a document more mythologized than read."⁵⁷ As the theme is taken up by other contributors, the terms describing what kind of text is being commemorated simply multiply. Thus, Alexander Lock and Justin Champion see the "potency" of the document in the eighteenth and nineteenth centuries not in terms of its provisions but precisely its deployment "as a visual invocation of liberty."⁵⁸ They observe that "Magna Carta was rarely read and barely understood by those who used it. It had become little more than a heroic symbol of English liberty" whose value lay not in the words it contained but in "its iconic significance."⁵⁹ By the nineteenth century, "Magna Carta had become a slogan calculated to stir patriotic emotions and mobilize public support."⁶⁰ Moreover, free from the constraints of textual detail, its indeterminate status has been accompanied by the plasticity of the political position it could be made to stand for. As Vincent puts it, it has been used "as a symbol of the rights of the oppressed to resist their oppressors. Meanwhile, with no less enthusiasm, it has been embraced by conservatives who lay claim to it as proof of a stable and unchanging legal consensus."⁶¹ Finally, then, Joshua Rozenberg opens his contribution on "Magna Carta in the Modern Age" by proclaiming the Charter simply "a world-class brand."⁶² Pursuing the analogy, Rozenberg points out that the Charter does not actually mention any of the things it "stands for" today; like Coca Cola and Apple, he says, "Magna Carta is . . . iconic: regardless of what it says on the parchment, it enjoys instant recognition as the most important legal document in the common law world."⁶³

In sum, Magna Carta's "iconic" potency derives from the fact that, as a document transformed into a visual image of itself, it does not mean what it mentions and can be effective "regardless," to use Rozenberg's word, of "what it says." Commemorating Magna

⁵⁶ Nicholas Vincent, *Introduction*, *MAGNA CARTA: LAW, LIBERTY, LEGACY* 14–15 (Claire Breay & Julian Harrison eds., 2015).

⁵⁷ *Id.*

⁵⁸ Alexander Lock & Justin Champion, *Radicalism and Reform*, *MAGNA CARTA: LAW, LIBERTY, LEGACY* 160, 163 (Claire Breay & Julian Harrison eds., 2015).

⁵⁹ *Id.* at 161.

⁶⁰ *Id.*

⁶¹ Vincent, *supra* note 56, at 15.

⁶² Joshua Rozenberg, *Magna Carta in the Modern Age*, *MAGNA CARTA* 210.

⁶³ *Id.*

Carta, what words mean (including “iconic”) is not as important as what they can be made to signify in visual configurations of themselves. It is ultimately in this sense, then, that we should understand the tautological reference on the ABA website to “images of an icon”: the proliferating generation of images that refer not outwards but back to the image of a legal relic as “an icon of Liberty.”

D. Images of an Icon

So far we have observed this phenomenon at a meta-level: the different but complementary presentations of the Magna Carta as an image of British or U.S. identity and global ambition. Let us turn now to the two “images of the icon” ceremoniously inaugurated in 2015 as permanent registers to the legacy of Runnymede: Hew Locke’s sculpture entitled *The Jurors* and James Butler’s statue of Queen Elizabeth II. The artworks, we will find, take us back to the heart of the tensions in British identity and its narrative of law that we discussed above as they illustrate how the images of Magna Carta were able to both present and accommodate those tensions within the national context.

With the exception of the figure of Lady Justice herself, sculptures have not generally received the same attention from critical lawyers as two-dimensional visualizations of law.⁶⁴ Nonetheless, it is to be recalled that the first written Senate decrees in fourth- and fifth-century Athens were originally published on stone stelai, often accompanied by visual images. Statute and statue share a common root in standing something up, establishing something. Both set a body in place that creates and configures social space, directing the relations of the bodies of citizens to the norms and narratives stood up in their midst and to other citizens moving within that shared space.⁶⁵ In the dispersed economy of legal images in Britain, public sculptures have traditionally played a role within the civic landscape as, to adopt the term used by eighteenth-century jurists for the documentary records of the “unwritten” law, “monuments” to the spirit of the common law.⁶⁶ Consider, for example, the proliferation of nineteenth-century neo-classical statuary to national military and civic virtues that adorn most British cities. Although such monuments to a largely masculine, white, and Anglican imperial culture became anathema to modernist artists for much of the twentieth century, the period we have been concerned with here has seen a revival in both public art and in representations of the human body in Britain, often with deliberate political

⁶⁴ For a comprehensive study of Lady Justice, see Dennis E. Curtis & Judith Resnik, *Images of Justice*, 96 YALE L. J. 1727 (1987).

⁶⁵ See Martin A. Kayman, *The Law and the Statuesque*, 24 L. & CRITIQUE 1 (2013).

⁶⁶ See MATTHEW HALE, *THE HISTORY OF THE COMMON LAW OF ENGLAND: WRITTEN BY A LEARNED HAND* 23 (1713) and BLACKSTONE, *supra* note 3, at III. 379. For further discussion of sculpture and law, see Kayman, *supra* note 65 and Kayman, *The Bill of Rights*, *supra* note 12.

intent and effect.⁶⁷ The works installed at Runnymede, as we shall see, offer the spectator quite opposed visions of Magna Carta that map directly onto the tensions we noted earlier.

Nonetheless, I shall argue, as both monuments to and images of the icon that co-exist in the same commemorative space, their political differences are subsumed under—and thereby arguably reinforce—the idea of the rule of law as the foundation of liberty and its identification with the nation. We will conclude by analyzing a case involving Runnymede itself and viewing a third commemorative artwork that disturbs this accommodation by bringing into sight the bodies of individuals and communities directly engaged at present in or by the rule of law in Britain.

Commissioned by Surrey County Council and unveiled by the Duke of Cambridge just before Cameron's speech, the official monument, Hew Locke's *The Jurors*, has a complex relation to the tradition of public statuary. Locke is a British artist of mixed-race origin, brought up in Guyana. He works in a range of media and on a variety of public topics, including treatments of royal portraits and coats of arms. Here, rather than providing us in a traditional way with human figures to literally look up to, Locke has cast "12 bronze chairs, each decorated with images and symbols relating to past and ongoing struggles for freedom, rule of law and equal rights."⁶⁸ The two faces of each backrest carry a sharply detailed pictorial image in relief, marked by hand-made scratches and embellished with keys, flowers and other symbols. The designs depict buildings, ships, small objects, and lettering in various languages and scripts, and historic portraits drawn from existing graphic images, mainly of notable but not widely-known women. Together, the images draw on episodes from across history and around the world to allude to the struggle for the rights of women, gays, children, the disabled, and indigenous peoples; for freedom of speech, in public, and on the internet; against the slave trade, apartheid, the traffic in refugees; the risk of ecological disaster, secret police, political imprisonment, and extra-judicial abductions. One celebrates the emancipation of the serfs. The designs also include images of justice from China and Ancient Egypt, the Golden Mean, and the clause from Magna Carta that, Locke tells us in a video on the site, inspired the work.⁶⁹ To assist them in understanding the images, spectators are provided with a leaflet containing short explanations. Again the work is supported by a website reproducing each

⁶⁷ In relation to public art, see both IGOR TORONYI-LALIC, *WHAT'S THAT THING?: A REPORT ON PUBLIC ART* (2012), and the official designation of forty-one new listed works by the body responsible for England's historic environment, Historic England, in January 2016, of which nearly half involve the human figure, *Post-War Public Art Listed*, HISTORIC ENGLAND (Jan. 22, 2016), <https://historicengland.org.uk/news-and-features/news/Post-War-Public-Art-Listed>. For an account of the cultural politics associated with return of the human body in contemporary British sculpture, see Martin A. Kayman, *Bodies of Law and Sculptural Bodies*, 24 *TEXTUAL PRAC.* 799 (2010).

⁶⁸ Hew Locke, *The Jurors*, (Surrey County Council and National Trust ed., 2015) [a broadsheet guide to the artwork] <http://artatrunnymede.com>.

⁶⁹ *Id.* at <http://artatrunnymede.com/introductory-video/>.

component with further narrative detail, as well as videos explaining the intention behind the work and the story of its making.⁷⁰

Locke maintains that “The Jurors is not a memorial” but an invitation to on-site discussion.⁷¹ The chairs are arranged not in the passive position of onlookers familiar from courtroom proceedings, but in an oblong, as they might be in the jury room—or a seminar room perhaps. As chairs rather than pedestals, the space they create is not occupied by bodies to be admired as one walks round them but by the spectators themselves, on the same level with the images.⁷² We are invited to respect and engage with the images and each other like a jury of equals. In short, Locke’s work embodies the sort of democratic multicultural rights culture that troubled the early twenty-first-century debates around national identity, security and sovereignty. The images present a comprehensive, not to say encyclopedic, corpus of international moments of oppression and liberation and of noble ideals and protagonists of justice drawn from a broad range of human history for us to sit together among. The work is both site-specific and global. Constructed of noble material suitable to the international causes it, pace Locke, undoubtedly memorializes, it is anchored both physically and institutionally to the site of Magna Carta.⁷³ At the same time, access to its imagery and narratives is amplified through the website.

Although one may find the work aesthetically unadventurous, as a piece of public art it has many virtues. Yet, given its purpose in commemorating Magna Carta, a number of questions arise regarding its relationship to jury trial, the association of jury trial with the Charter, and with liberty. In the first place, the space created by *The Jurors* is hardly that of a trial. What is actually at issue for those who sit in the jury seats, other than their capacity to recognize the references and symbols? The model of discussion proposed by the roll of good causes, victims of oppression, champions of liberty and unexceptionable principles of justice is likely to resemble more the didactic engagement of a school classroom than the eventually “angry” debates over evidence portrayed in their different registers by Lumet’s dramatic and Hancock’s parodic performances of the jury room.⁷⁴ Furthermore, only three of the images

⁷⁰ The website also offers a film of the dedication showing a group of predominantly young people of various racial origins—of the sort identified in 2007 as alienated from the political process—and some with disabilities perform a reading of Owen Sheers’s poem, “Or In Any Other Way,” in which much of the material alluded to in the sculpture is put into the meter of Wilde’s “The Ballad of Reading Gaol.” *Id.* at <http://artatrunnymede.com/dedication/>.

⁷¹ Locke, *supra* note 69.

⁷² Compare Anthony Gormley’s *One and Other*, which occupied the vacant Fourth Plinth at Trafalgar Square for 100 days in 2009 with a series of 2,400 volunteers. ANTHONY GORMLEY, *ONE AND OTHER* (2010). Daniel Berset’s *Broken Chair* (1997), a monumental wooden sculpture with a broken leg, sponsored by Handicap International for the Palace of Nations, Geneva, offers a contrasting, and arguably more disturbing, use of the chair.

⁷³ The chairs are built on an underground frame and their arrangement cannot be reconfigured.

⁷⁴ *Supra* note 25.

actually relate directly to courtroom trials, and, in each case, the evidence regarding the role of juries in assuring a just outcome is decidedly mixed. If it is true that Nelson Mandela was condemned to Robben Island without the benefit of a jury, that was certainly not the case with Oscar Wilde's imprisonment in Reading Gaol.⁷⁵ In the 1783 trials concerning the death of 133 African slaves thrown off the *Zong* by its crew, it was the jury who approved the owners' claim for compensation for the loss of "cargo," and the Lord Chief Justice who ordered the case to retrial.⁷⁶ Neither the images nor supporting texts convey anything of the problematic issues here. Meanwhile, the title, disposition, site and occasion of the work all associate the idea of jury trial with the rule of law in the struggle for freedom.



Fig. 3. Photograph by Max McClure of a chair from Hew Locke's *The Jurors*, reproduced courtesy of Situations⁷⁷

⁷⁵ Following the failure of Oscar Wilde's libel case against the Marquis of Queensbury in 1895, Wilde was tried for the crimes of sodomy and gross indecency. The jury in the first trial in 1895 was unable to come to a verdict; at his retrial, however, Wilde was found guilty and sentenced to two years' hard labor. See H. MONTGOMERY HYDE, *THE TRIALS OF OSCAR WILDE* 222 (1962).

⁷⁶ The *Zong* became calm on its journey to the Caribbean and according to the owners, with water running out and disease spreading, the crew had, "of necessity," thrown the slaves overboard in order to save the ship. Returning to Britain, the owners, the Gregson syndicate, claimed compensation for loss of cargo against their insurers. In the first trial, in 1783, the jury found against the underwriters on the grounds that the transported Africans were indeed a form of property, similar to a cargo of horses. On appeal, however, Lord Chief Justice Mansfield agreed with the insurers, who maintained, according to legal custom, that only when a slave is killed in the course of suppressing an insurrection was compensation due to the owners. Although a re-trial was ordered, the owners dropped their case. The affair played an important role in the growing campaign to outlaw the slave trade in Britain. Cf. JAMES WALVIN, *THE ZONG: A MASSACRE, THE LAW AND THE END OF SLAVERY* (2011).

⁷⁷ More images are available from the website dedicated to the artwork. See *The Jurors*, *supra* note 68.

The link between these struggles and Magna Carta itself is embedded in the work via a facsimile image of words taken from the original Latin text on a chair that faces an ancient image of Egyptian scales topped by the goddess of justice.⁷⁸ As we observed above,⁷⁹ only four clauses from the original Charter remain on the statute book, condensed into three: those regarding the freedoms of the Church and of the City of London, and the provisions amalgamated in 1225 into what, in the spirit of the above discussion, we may call the “iconic” words of clause 39:

No free man shall be seized or imprisoned or stripped of 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 judgment of his equals; or by the law of the land. To no one will we sell, to no one shall we deny or delay right or justice.⁸⁰

However, contrary to popular opinion and the implication of its inclusion in this work, Magna Carta does not necessarily mandate trial by jury, least of all in its modern sense. What was being referred to here was not the criminal trial but an obligation for the monarch to take advice from barons when adjudicating on matters of property. Besides the ability of landowners to influence the outcome of disputes over land, what Clause 39 mandates is that the executive must do things according to “the law,” which, of course, has the capacity to deny access to jury trial as and when it determines.

On the other hand, jury trial has traditionally been celebrated as a particularly British institution and sits at the heart of the myth of the common law as a protector of liberty. William Blackstone himself identified jury trial as no less than “the glory of the English law,”⁸¹ while proponents of its introduction for civil cases in early nineteenth-century Scotland described it as “The Dearest Birth Right of the People of England.”⁸² *The Jurors* hence promotes a visual association between its record of the multicultural, global struggle against injustice and the rule of law itself by identifying it with what the British regard as a fundamental national institution. Furthermore, as the cases cited above testify, trial by jury

⁷⁸ See Figure 3.

⁷⁹ *Supra* note 24.

⁸⁰ MAGNA CARTA, cl. 39 (1215).

⁸¹ BLACKSTONE, *supra* note 3, at III. 379.

⁸² JOHN W. CAIRNS & GRANT MCLEOD, *THE DEAREST BIRTH RIGHT OF THE PEOPLE OF ENGLAND: THE JURY IN THE HISTORY OF THE COMMON LAW* 1 (2002).

does not guarantee justice any more than civil systems that function largely without them are by that token necessarily less just in their outcomes.



Fig. 4. The inauguration of James Butler's statue to Queen Elizabeth II at Runnymede on June 14, 2015, reproduced by permission of Mirrorpix/Eleanor Davis.⁸³

As if to demonstrate the “iconic” value of Magna Carta, “regardless” of what it “mentions,” the image of the same clause is precisely what links *The Jurors* to the otherwise ideologically and aesthetically entirely different monument unveiled by the Speaker of the House of Commons on the eve of the formal anniversary ceremony: James Butler's four-meter-high statue of Queen Elizabeth II, based on the popular portraits made in 1954 and 1969 by Pietro Annigoni. Here the words from Clause 39 are in fact made clearly visible, engraved in English on a plaque of light-colored tiles that contrasts markedly with the darker flagstones on which it rests.⁸⁴ The plaque is positioned where the spectator would ideally stand to look up at the statue. Here Magna Carta does not face a mythical Lady Justice, but is looked over by the figure of the sovereign—reminding us, perhaps, of what Locke's work forgets: that “trial by jury” is in reality a trial by jurors and an administrator of Her Majesty's Justice. This statue is

⁸³ In addition to local dignitaries, the unveiling party included the local member of parliament for the area—and Foreign Secretary—the local member of the European Parliament, and the Speaker of the House of Commons. “Lined up for the Unveiling,” from *Magna Carta: “Fabulous” Statue of Queen Elizabeth II Unveiled*, GETSURREY (June 14, 2015, 2:42 PM), <http://www.getsurrey.co.uk/news/surrey-news/magna-carta-fabulous-statue-queen-9450484> (providing this and other images of the ceremony) [hereinafter *Magna Carta: “Fabulous” Statue of Queen Elizabeth II Unveiled*]

⁸⁴ See Figure 4, where the tiles are visible in the foreground.

an icon in the classical sense, the image of the ruler projecting their auratic presence throughout the empire.⁸⁵

Besides the fact that both are cast bronzes and both commemorate Magna Carta, the contrast could hardly be starker between Locke's chairs and this highly traditional statue. If *The Jurors* reflects the multicultural axis of the crisis of governance and identity we described in early twenty-first century in Britain, the *Queen Elizabeth II* project is unambiguously linked to the right's concern with state authority and national sovereignty. In addition, while Locke's artwork was supported by public money, Butler's work was made possible by private contributions via the Runnymede Magna Carta Legacy Trust. The statue itself had been launched in 2013 to commemorate the sixtieth anniversary of the current reign. The declared aim of the "Her Majesty's 60th Anniversary Statue" project was to promote cultural cohesion both in the UK and abroad through the sale of castings in various sizes to British municipalities and overseas governments.⁸⁶ The promoters, Peter Brown and Simon Puzey, are both associated with the New Culture Forum, an organization founded in 2006 by the spokesman on culture for the UK Independence Party (UKIP) to oppose what it portrayed as a left-wing cultural establishment.⁸⁷ The appeal for sponsors for the Runnymede monument was led by Daniel Hannah, a Conservative Eurosceptic MEP and leading member of the official 2016 referendum "Leave" campaign. Filmed in the meadows at Runnymede, Hannah commemorates Magna Carta as the moment when

people decided that there was something bigger than the government, something so powerful that it stood above the barons and the bishops and the king, something that you couldn't see or hear or touch or taste but that bound the monarch as surely as it bound his meanest subject—that something was the law.⁸⁸

Asserting that all other key elements of the rule of law around the world were "overwhelmingly developed in the language I am now talking," Hannah concluded his appeal by claiming that, even if British power were to wane, "as long as English is spoken, and as long as we recall what happened here, we will never be just another people."⁸⁹ Although it is difficult to conceive of two images of the same thing that were more opposed, both works

⁸⁵ For the icon in imperial Rome, see Douzinas, *supra* note 3, at 46–7.

⁸⁶ See *News*, HER MAJESTY'S 60TH ANNIVERSARY STATUTE (2013), <http://www.queenjubileestatue.co.uk/>.

⁸⁷ The Forum sponsored the critical account of public art by TORONYI-LALIC, *supra* note 67.

⁸⁸ View the appeal at <http://www.runnymedemagnacartalegacy.org.uk/about/>.

⁸⁹ *Id.*

occupy the same commemorative space and cite the same textual image of Magna Carta in celebration of liberty and the British rule of law.

The statue made by Butler is self-confessedly derivative and aesthetically unremarkable, except for the inclusion in its architecture of a set of four matching engraved texts. In addition to Clause 39 of Magna Carta, we can also see a timeline of British monarchs lining the pathway to the statue; a title plate on the plinth; and a fourth plaque in the same format listing a number of sponsors, to which the title plate explicitly directs the spectator.⁹⁰ The main funder was Sheikh Marei Mubarak Mahfouz bin Mahfouz, a philanthropist and member of a leading Saudi financial family.⁹¹ In addition, among the two members of Runnymede Council who established the Trust, various City of London financiers, former Conservative party treasurers and donors, and local corporations, one finds listed a company called Orchid Runnymede. This exotic mix of tropical flower and temperate meadow brings two other radically contrasting images of Magna Carta into the local frame, and radically alters the terms in which Magna Carta is associated with both “the rule of law” and the making of iconic images.

E. In the Background: Magna Carta’s Underside



Fig. 5. The Runnymede Eco-Village, reproduced by permission of Diggers 2012.⁹²

⁹⁰ *Magna Carta: “Fabulous” Statue of Queen Elizabeth II Unveiled*, *supra* note 83.

⁹¹ *Id.*

⁹² See RUNNYMEDE ECO-VILLAGE, <http://www.runnymede.community/> (last visited Mar. 11, 2017).

On the very day that the 800th anniversary was being commemorated, Guildhall County Court granted an eviction order on behalf of Orchid Runnymede against a group of activists connected to the Occupy movement, who in 2012—adopting the seventeenth-century “fundamentalist” title of Diggers—had established an eco-village in the woods a few hundred meters from the ABA monument and the new artworks.⁹³ The area had been home to a series of educational institutions before it was sold for development in 2007. In 2011, Orchid Runnymede was given planning permission for a mixture of student accommodation, care facilities for the elderly, and luxury homes. In 2015, the latter were being advertised by Art Estates as “Magna Carta Park.”⁹⁴

A week after the eviction order, the High Court granted a stay on the grounds that, without a complete transcript of the proceedings, it was not possible to determine whether the Diggers had received a full and fair hearing on June 15, 2015. It was important they did so, Justice Knowles acknowledged,

given the exceptional location and the history associated with [Runnymede & Coppers Hill Coppice], and the competing and directly differing interests—one seeking possession of ancient forest [for private development] the other side seeking to remain on a site occupied for three years [and to continue to subsist in common from the land].⁹⁵

Following hearings in early September 2015, however, the Court of Appeal dismissed the appeal and the bailiffs moved in.

In the context of this discussion, what makes the case “exceptional” is that it raised the question of whether the *nomos* of a group of individuals who had chosen to live “off-grid” was worthy of consideration within the rule of law.⁹⁶ The appellants argued that the court

⁹³ *Orchid Runnymede, Ltd. v. James Hampson & Persons Unknown* (2015); see *infra* note 96.

⁹⁴ An image of the planned development can be viewed at <http://www.artestates.co.uk/magna-carta-park/> (last visited Mar. 11, 2017).

⁹⁵ *Runnymede Eco-Village Get Stay of Execution in Eviction Proceedings so High Court can Consider Whether They were Given an Adequate Hearing in “Exceptional Case,”* OCCUPY DEMOCRACY (June 24, 2015), <https://occupydemo.wordpress.com/2015/06/24/runnymede-eco-village-get-stay-of-execution-in-eviction-proceedings-so-high-court-can-consider-whether-they-were-given-an-adequate-hearing-in-exceptional-case/>.

⁹⁶ *Hampson v. Orchid Runnymede* (Sept. 11, 2015). See *Runnymede Eco-Village in Epic Court Battle—Sept 2015*, SQUASH (Sept. 9, 2015), <http://www.squashcampaign.org/2015/09/runnymede-eco-village-in-epic-court-battle-sept-2015/> (containing the arguments made by Peter Phoenix on behalf of the appellants against Orchid Runnymede Ltd., along with other documents).

had erred in summarily granting the order and treating them thereby as simple trespassers.⁹⁷ It had failed to consider whether they had a “seriously arguable defence” in terms of Article 8 of the European Convention on Human Rights (ECHR) on the right to privacy, family life, and home, as had recently been allowed in other situations.⁹⁸ Recognition would warrant a trial regarding the proportionality of a possession order on behalf of the owners relative to its impact on the rights of those in occupation. In their argument, the Diggers relied explicitly both on the ECHR and on Magna Carta itself. Confronted by Orchid’s corporate legal team and unable to obtain legal aid, they raised the issue of equal access to the law and asserted that the criminalization of squatters amounted to detention without trial. Additionally, they invoked the spirit of the Charter in relation to the values of commonality and ecology and the need to limit executive power and they claimed could be found in the document, not least in regard to its clauses relating to the forest. The argument they were making was not just for their personal rights but against the monetization of nature and the privatization of the commons—issues of broad political resonance at the time. They reinforced their case by drawing on the 1217 Charter of the Forest, which had been consistently paired with Magna Carta since the thirteenth century and co-published in the first reliable edition of both documents by William Blackstone in 1759.⁹⁹ The Forest Charter had only been repealed in 1971 when its surviving provisions were incorporated into new legislation. The two charters, the Diggers’ lawyer argued in Blackstonian vein, were “founding documents of our British so called unwritten constitution [which] cannot be dismissed as merely background material.”¹⁰⁰

The Appeal Court did not, however, feel that these sources supported a case that reached the standard of seriousness required to mandate a consideration of proportionality.¹⁰¹ In this way, the court avoided having to weigh the rights of the owner—an off-shore property developer seeking profits from the sale of luxury housing—against those of the effective occupiers—a group of indigent individuals and families who were pursuing an off-grid, self-sustaining, ecologically sound and essentially private existence. Crucially, the case reminds us that, after all, Magna Carta explicitly protects only “free men,” a powerfully open image of popular liberty, but historically a restrictive legal category long related to property ownership and increasingly to national citizenship. It is surely no surprise then that in this case the law’s image as the defender of private property prevailed over that of the ecological and communal spirit that the Diggers saw in the ECHR, Magna Carta, and the ancient

⁹⁷ *Id.*

⁹⁸ See JOHN LUBA et al., *Defending Possession Proceedings*, LEGAL ACTION GROUP 1, 1 (2011), http://www.lag.org.uk/media/41369/dpp_online_update.pdf.

⁹⁹ See PETER LINEBAUGH, *THE MAGNA CARTA MANIFESTO: LIBERTIES AND COMMONS FOR ALL* (2008).

¹⁰⁰ *Hampson*, *supra* note 96, at 7.19 (focusing on Phoenix’s argument).

¹⁰¹ *Id.*

constitution. Nonetheless, I would argue, precisely because their arguments were disregarded by the courts, the image of the eco-villagers a few meters away from the commemorative site, in an engagement with the law initiated on the very day of the solemnities, “cannot,” like the texts the Diggers relied on, “be dismissed as merely background material”¹⁰² to the celebrations of Magna Carta as an image of the rule of law. On the contrary, seeking to establish an alternative *nomos* on the literal boundary between the property owned by the National Trust and private property, they denounce the universality of that image and the “free men” it purports to defend.

The sculptural artworks, like the litigation, constitute bodily experiences that take place in specific times and spaces, eliciting concrete reactions and allegiances among their spectators. These experiences oblige the individual to take positions. However, as I have argued, in their commemorations, neither *The Jurors* nor *Queen Elizabeth II* position the viewer to question Magna Carta as a foundational image signifying the normative guarantee of liberty by law. Hinged by the same “iconic” textual image (the one in Latin, the other in English) their very disagreements put the foundational status of the Charter and of the English institutions of the rule of law beyond dispute. On the other hand, rather than making an image of and to Magna Carta and anchoring it in the soil of England like Locke and Butler, the eco-villagers stood on the Charter as living law and the forest at Runnymede as their actual home. As a result, their experience turns attention from visible images of law as the global defense of justice and liberty to images of the law grounded in the actual administration of legislative and jurisprudential texts and state violence by judicial institutions, courts, lawyers, police, and bailiffs as they manage conflicting interests and values.

Something similar can be seen with the last of our commemorative artworks, Cornelia Parker’s *Magna Carta (An Embroidery)*, commissioned by the Ruskin School of Art at Oxford in collaboration with the British Library. With a background in sculpture and performance, much of Parker’s work consists not so much in making images of things or ideas as of their translations from one form or state into another—what she herself refers to as “creating new histories for objects (by changing them through a physical process).”¹⁰³ Alongside material processes, the play between title and image has a crucial role in these translations and transformations. Thus, for example, what is perhaps her most famous work hitherto, *Cold Dark Matter: An Exploded View* (1991), consists of the pieces of a garden shed after it had been blown up with Semtex by the British Army School of Ammunition, reassembled and suspended in the gallery as if radiating out from a “Big Bang”; while, topically enough,

¹⁰² *Id.*

¹⁰³ IWONA BLAZWICK, CORNELIA PARKER 85 (2014).

Measuring Liberty with a Dollar (1998) consists of a skein of silver drawn into a wire the height of the Statue of Liberty.¹⁰⁴

Parker thus brings us back to the issue of the novel configurations of word and image in contemporary media raised in the first part of this Article. I drew attention at the time to the role played by digitization in the development of new regimes of the visual and verbal, and we have seen the contribution of digitized textual images in the construction of Magna Carta as an “icon of liberty.” For her commission, Parker took the entire Wikipedia article on Magna Carta as it stood on the date of the 799th anniversary and had a detailed and exact facsimile made on a 13-meter long piece of cloth in hand-stitched embroidery. Among the reasons for this choice was a recognition that corresponds to our starting point for the value of the Charter as icon: “we know [Magna Carta] stands for something important, but we don’t know exactly what.”¹⁰⁵ Furthermore, Parker observes, “if we want to find out about something, [Wikipedia] is the first place we go.”¹⁰⁶ Conceived as an image of a commentary rather than of the original text, *Magna Carta (An Embroidery)* contrasts with the other works we have considered. First, it remains true to the tradition of “unwritten law” exemplified by our reliance in determining the content of that law on works like Blackstone’s *Commentaries* and Edward Coke’s *Reports*.¹⁰⁷ Second, it foregrounds the fact that what is being imagined is not Magna Carta itself but what, through purportedly authoritative commentaries, it is held to be representative of. Parker gives this process a name in her title, and proceeds to literalize that name in the work itself: it is “the idea,” as she puts it, “of embroidering history.”¹⁰⁸ Parker associates this idea, and the constantly changing digital text of Wikipedia itself, with the historicity and manufacture of the image: the authority of the Magna Carta that is ideologically embroidered on Wikipedia is the result of an invisible and seamless collaboration of many apparently anonymous hands. The powerful impact of Parker’s embroidery, however, is that the contribution of human hands is foregrounded, and along with that its locatedness and historicity.¹⁰⁹

¹⁰⁴ *Id.* at 48–61, 126. Note that *Exploded View* was made at a time when the Provisional IRA was also using Semtex in a series of attacks on the British mainland.

¹⁰⁵ Cornelia Parker, *We All Make our Own Little Embellishments of the Truth: Cornelia Parker in Conversation with Tim Marlow*, in *MAGNA CARTA (AN EMBROIDERY)*, (Paul Bonaventura & Cornelia Parker eds., 2015). This un-paginated publication documents an exhibition of Parker’s artwork at the British Library from May 15 to July 24, 2015.

¹⁰⁶ *Id.*

¹⁰⁷ *Cf.* Coke, *supra* note 3; BLACKSTONE, *supra* note 3; THE REPORTS OF SIR EDWARD COKE KT. IN ENGLISH, COMPLETE IN THIRTEEN PARTS (George Wilson trans., 1727).

¹⁰⁸ Parker, *supra* note 105.

¹⁰⁹ When contrasted with the noble practices, materials, and subject-matter associated with the media employed by other artworks we have discussed, Parker’s choice of a practice traditionally regarded as a domestic decorative craft practiced mainly by women is of course not without significance.

Elsewhere, Parker has addressed what she describes as clichés, using the display of physical objects as material traces to question notions of, for example, “Freudian” and “Turneresque.” As she says, by using such elements, “I’m trying to trigger whatever the association is, but it’s not only about them. It’s about the underside, the inverse of what they represent.”¹¹⁰ This underside is quite literally made available here by mirrors situated beneath the cloth so that “you can look at the underside of the embroidery and view the way it is constructed; see the backstory, the history of the work.”¹¹¹ Thus, as the eco-villagers’ struggle with Orchid Runnymede provides a “background” image to the commemorations, Parker’s work gives us a view of the broken and knotted threads that make up the irregular “backstory” or “underside” of the construction of Magna Carta’s meaning.

The process of turning a polished textual image from the internet into an exact but visually dissonant copy in artisanal form thus becomes central to the artwork itself: It makes visible the narrative of its own manufacture. In viewing *Magna Carta (An Embroidery)*, we are not interested in what the digital text of the anonymous electronic encyclopedia tells us that Magna Carta means (in any case, it is already out of date in relation to the entry post-commemorations). Rather, what the tapestry manifests is the relationship between the textual image and the people who reproduce it with their hands. Listed in the exhibition and the published text, the latter are revealed to be actual agents and victims of the administration of the law, named. They include contemporary “barons”—or, as Parker points out, baronesses—like Sayeeda Warsi and Doreen Lawrence, along with a selection of largely liberal judges and barristers, legislators, journalists and writers.¹¹² In many cases, particular elements were distributed with deliberate purpose: Edward Snowden was charged with embroidering the word “liberty”; one of the falsely convicted Birmingham Six stitched “freeman”; Moazzam Begg was given “held without charge”; and the lawyer Clive Stafford Smith, who had visited Begg at Guantanamo, embroidered “law of the land” while he was visiting the detention camp.¹¹³ Some of the technically most complex passages were

¹¹⁰ Parker, *supra* note 105.

¹¹¹ *Id.*

¹¹² Jamaican-born Doreen Lawrence was made Baroness Lawrence of Clarendon in 2013 in recognition of her work as a community activist and a campaigner for police reform following the murder of her son in a racist attack in 1993. Sayeeda Warsi, the daughter of immigrants from Pakistan, was made a Conservative peer in 2007 to allow her to participate in the shadow government and, in 2010, became the first Muslim to serve as a member of the Cabinet.

¹¹³ Edward Snowden was responsible for a massive leak of secret documents from the US National Security Agency in 2013. The Birmingham Six were the victims of perhaps the most significant miscarriage of justice in the UK during the twentieth century. Imprisoned for life in 1975 for the 1974 bombing of a public house in which twenty-one people had been killed, the Birmingham Six were finally able, in 1995, to demonstrate that at their trial evidence had been falsified or suppressed. Moazzam Begg spent nearly three years in the Guantanamo Bay detention camp before being released in 2005; he successfully sued the British government for complicity in his detention and

stitched by members of the Embroiderers' Guild but a great deal of the work was executed by prisoners who had been taught needlework by a charity called Fine Cell Work.¹¹⁴ Magna Carta is not only about the protection of freemen; it is also about imprisoning them. As Parker points out, the inmates too "have all been subject to the rule of law."¹¹⁵ One of them, it appears, "was embroidering a section that included the words 'Habeas Corpus' and he left them out."¹¹⁶ Parker asked a former Lord Chief Justice to provide the missing words: "I love the idea that word omitted by a prisoner have been finished off by a judge."¹¹⁷ Prisoners and judges; normally it is the former who complete the latter's sentences.

I have argued that, in the early modern period, the emblem's articulation of word and picture presented an image of English unwritten law within the Anglican *nomos*. In contrast, I have shown that, in the commemorations of Magna Carta, the new configurations realized through digitization and the sculptural artworks have resulted in a series of images of a postmodern "icon" that, as an image of itself, means what it is made to stand for "regardless" of what it says. Against this background, what Parker's project uncovers is both the work of interpretation and the tensions and partialities elided by these configurations. Reproducing a virtual digital text-image of Magna Carta in analogical form, Parker envisages Magna Carta not as an "[image of] an icon of liberty" but as an artifact elaborated by a network of individuals sewn together not by the experience of national identity but by a legal institution in which they occupy different positions through, and in relation to, the rule of law and its words of justice and freedom. Some of them, members of the Houses of Parliament, are responsible for writing those laws, others, advocates and journalists, for embroidering them in legal argument and public opinion, while others—"stitched up" or not—live the sentences given them by the law and its agents.¹¹⁸

If, while offering competing or contrasting narratives, the commemorations of the 800th anniversary united to celebrate a foundational "icon of liberty" that referred to a "rule of law" with an empty core—a law that is law "because it calls itself law"—then *Magna Carta (An Embroidery)* unpicks the seamlessness of the relationship between law and liberty by having the ideological image re-sown by the agents who make and operate the law, with varyingly just outcomes, alongside others who, justly or not, have lost their liberty to the law. In sum, then, the image of the foundations of British law remains radically incomplete

abuse. Clive Stafford Smith is a British lawyer specializing in the defense of criminals facing the death sentence in the U.S. and has represented more than a hundred Guantanamo detainees, including Begg.

¹¹⁴ See FINE CELL WORK, <http://www.finecellwork.co.uk/> (last visited Mar. 16, 2017).

¹¹⁵ Parker, *supra* note 105.

¹¹⁶ *Id.*

¹¹⁷ *Id.*

¹¹⁸ In popular parlance in the UK, "stitched up" is the equivalent of "framed."

without ensuring that the institutions which in various ways bind citizens to its rule are part of the picture, and without keeping in view those, normally consigned to the background and underside of the visible law, whom it deprives of liberty or whose way of life it outlaws. There is a similar politics, it may be argued, regarding the visibility of the institutions and technologies that tend to render invisible the interpretative work performed by readers, spectators and programmers involved in translating between word and image and between analogue and digital.

F. Coda

The fragility of the foundational work done by the commemorative images of Magna Carta was revealed over the following year as the crisis in national identity returned with dramatic force. An unpredictable and unsettling referendum campaign culminated on 23 June 2016 in a narrow but significant majority in favor of leaving the European Union.¹¹⁹ Like with the elections for the American Presidency five months later, many analysts were swift to explain the surprising result in terms of voters who felt “left behind” by globalization and who had become invisible in the image of the nation as seen by the mainstream political parties and media.¹²⁰ Given that a central theme for the “Leave” campaign had been the restoration of “control” over the country’s law and its borders, one might have expected that victory would have reinforced those native traditions of English liberty in law celebrated, for example, by Cameron at Runnymede.¹²¹ In truth, however, it has re-exposed, with increased focus, the foundational crises that the coexistence of such images under the “icon of liberty” were intended to reconcile. No sooner did Cameron’s successor, Theresa May, prepare to initiate the process of withdrawal than a conflict arose between the government and the courts over the boundaries of executive action in relation to the unwritten constitution of parliamentary democracy.¹²²

¹¹⁹ THE ELECTORAL COMMISSION, EU REFERENDUM RESULTS, June 24, 2016, <http://www.electoralcommission.org.uk/find-information-by-subject/elections-and-referendums/past-elections-and-referendums/eu-referendum/electorate-and-count-information>.

¹²⁰ For a considered view on this narrative, see Matthew Goodwin and Oliver Heath, *A Tale of Two Countries: Brexit and the “Left Behind” Thesis*, LSE EUROPP (July 27, 2016), <http://bit.ly/2avjR9q> and Michael Jacobs and Mariana Mazzucato, *The Brexit-Trump Syndrome: It’s the Economics, Stupid*, LSE EUROPP (Nov. 21, 2016), <http://blogs.lse.ac.uk/politicsandpolicy/the-brexit-trump-syndrome/>.

¹²¹ *Briefing: Taking Back Control from Brussels*, WHY VOTE LEAVE, http://www.voteleavetakecontrol.org/briefing_control.html (last visited Mar. 11, 2017). Control over the country’s borders was likewise a central feature of Donald Trump’s campaign.

¹²² Similar constitutional issues arose in the U.S. when on February 9, 2017, the Ninth Federal District Appeals Court upheld the suspension ordered by two state courts of the President’s Executive Order banning the entry into the U.S. of individuals from a group of Muslim-majority countries. *State of Washington and State of Minnesota v. Trump*, No. 17-35105 (9th Cir. Feb. 9, 2017) (order granting Motion for Stay), <https://cdn.ca9.uscourts.gov/datastore/opinions/2017/02/09/17-35105.pdf>.

May maintained that the executive had power under the Royal Prerogative regarding treaties to initiate withdrawal proceedings.¹²³ But the Supreme Court upheld the decision of the High Court in November 2016 that, since withdrawal from the E.U. would affect citizens' rights in domestic law, the government had no such authority and the process could only be initiated by the Legislature.¹²⁴ The High Court judges who initially heard the case were accused in the press of seeking to frustrate the outcome of the referendum, and when the *Daily Mail* attacked them as "enemies of the people," Elizabeth Truss, the Lord Chancellor, was criticized for failing to defend the justices, as was her statutory obligation.¹²⁵ Similarly, parliamentarians, split within as well as between the major parties, were consistently warned by the government and their supporters not to "defy" the "will of the people," as decisively manifested in the referendum, by seeking to condition the terms under which withdrawal would be negotiated.¹²⁶

While likewise accusing U.S. judges who decided against him of political bias, President Trump employed similar language to denounce the press as "the enemy of the American People!"¹²⁷ As he later clarified, this was not an attack on the media in general but merely the purveyors of what he styled "fake news": "They dropped off the word 'fake.' And all of

¹²³ See *R (On the Application of Miller and Another) v. Secretary of State for Exiting the European Union* [2016] EWHC 2768, [2017] UKSC 6, [5]. For the fundamental nature of the constitutional issue, see BLACKSTONE *supra*, note 3.

¹²⁴ *Id.*

¹²⁵ James Slack, *Enemies of the People: Fury Over "Out of Touch" Judges Who Have "Declared War on Democracy" by Defying 17.4m Brexit Voters and Who Could Trigger Constitutional Crisis*, DAILYMAIL.COM (Nov. 3 2016, 7:38 PM), <http://www.dailymail.co.uk/news/article-3903436/Enemies-people-Fury-touch-judges-defied-17-4m-Brexit-voters-trigger-constitutional-crisis.html>. For the Lord Chancellor's position, see Jessica Elgot, *Liz Truss Rebuffs Criticism Over Newspaper Attacks on Brexit Judges*, THE GUARDIAN (Nov. 10, 2016, 8:08 AM), <https://www.theguardian.com/politics/2016/nov/10/liz-truss-rebuffs-criticism-over-newspaper-attacks-on-brexit-judges>.

¹²⁶ See Ashley Cowburn, *Brexit: Theresa May "to Challenge Parliament to Defy Will of the People" if Article 50 Case Lost at Supreme Court*, INDEPENDENT (Dec. 3, 2016, 9:06 AM) <http://www.independent.co.uk/news/uk/politics/brexit-theresa-may-parliament-article-50-supreme-court-defy-will-people-a7453446.html>.

¹²⁷ Donald J. Trump (@realDonaldTrump), TWITTER (Feb. 17, 2017, 1:48 PM), <https://twitter.com/realDonaldTrump>. While the United States Court of Appeals for the Ninth Circuit was hearing the government's appeal against the suspension of the President's Executive Order, Trump raised the suspicion that the judges might rule against him "maybe because of politics, maybe because of political views." *Remarks by President Trump at MCCA Winter Conference*, THE WHITE HOUSE OFFICE OF THE PRESS SECRETARY (Feb. 8, 2017, 9:18 AM), <https://www.whitehouse.gov/the-press-office/2017/02/08/remarks-president-trump-mcca-winter-conference>. See also Trump (@realDonaldTrump), TWITTER (Feb. 4, 2017, 5:12 AM) for the President's attack on the "so-called judge" who had ordered the original stay.

the sudden, the story became, the media is the enemy.”¹²⁸ In other words, in the sort of self-referential loop we observed in the “icon of liberty,” the press’s accusation against the President was itself evidence of the truth of his accusation against them. In the U.K. the Leave campaign had relied on a similar move, attributing warnings of the likely impact of withdrawal, be they issued by experts or by supporters of “Remain,” to an alleged “Project Fear”: the very fact that the projections pointed out the risks became evidence that they were not true.¹²⁹

The crisis in legal foundations—the images of Parliament and the judiciary not as the guarantors of democracy but as its elite enemies—has thus been accompanied by strategies that disparage and undermine the trustworthiness of traditional authorities, sources and genres of public discourse. In contrast, alternative digitally-enabled sources of news and information, exemplified by Breitbart, Twitter, Facebook, and the algorithms ranking links on Google, were regarded by many as decisive in both contests.¹³⁰ The campaigns and the subsequent conflicts gave currency to the notion that we had entered a “post-truth” age, promoting the adjective, according to the *Oxford English Dictionary*, to the 2016 “international word of the year.”¹³¹

The above events took place between the acceptance of this Article for publication and the conclusion of the production process. Against this background it is, it seems to me, a humbling paradox of postmodernity that it should have been not the critical left of the textual turn invoked in the opening paragraphs, whose posture and concerns have informed the Article, but precisely the authoritarian right who succeeded in subverting the traditional ecologies of justice and truth by revealing and exploiting the politics of interpretation and mediation from which, I have been arguing, images of the icon of liberty seek to divert the eye.

¹²⁸ Remarks by President Trump at the Conservative Political Action Conference, THE WHITE HOUSE OFFICE OF THE PRESS SECRETARY (Feb. 24, 2017, 10:23 AM), <https://www.whitehouse.gov/the-press-office/2017/02/24/remarks-president-trump-conservative-political-action-conference>.

¹²⁹ Boris Johnson, *Don’t be Taken in by Project Fear—Staying in the EU is the Risky Choice*, THE TELEGRAPH (Feb. 28, 2016, 5:27 PM), <http://www.telegraph.co.uk/opinion/2016/03/16/dont-be-taken-in-by-project-fear--staying-in-the-eu-is-the-risky/>. The phrase was borrowed from its use in the earlier referendum on Scottish independence.

¹³⁰ See Hannah Jane Parkinson, *Click and Elect: How Fake News Helped Donald Trump Win a Real Election*, THE GUARDIAN (Nov. 14, 2016, 11:27 PM), <https://www.theguardian.com/commentisfree/2016/nov/14/fake-news-donald-trump-election-alt-right-social-media-tech-companies>; see also BREITBART <http://www.breitbart.com/>; Olivia Solon and Sam Levin, *How Google’s Search Algorithm Spreads False Information with a Rightwing Bias*, THE GUARDIAN (Dec. 16, 2016, 6:00 AM), <https://www.theguardian.com/technology/2016/dec/16/google-autocomplete-rightwing-bias-algorithm-political-propaganda>.

¹³¹ See OXFORD U. PRESS, <https://en.oxforddictionaries.com/word-of-the-year/word-of-the-year-2016>.