



# An economic analysis of Magna Carta<sup>☆</sup>



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## ABSTRACT

This paper uses the economic approach to self-enforcing constitutions to analyze Magna Carta and uses Magna Carta to evaluate the economic approach to self-enforcing constitutions. We find that Magna Carta in its reissued, but not original, incarnation satisfied each of the conditions necessary for constitutional self-enforcement according to that approach and thus effectively constrained government. Our analysis illuminates Magna Carta's initial failure to constrain government, helps explain its ultimate success in doing so, and furnishes supportive evidence for the economic approach to self-enforcing constitutions.

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## 1. Introduction

England's Magna Carta established a foundation of constitutionally constrained government that remains standing 800 years later. According to the most popular explanation for this success, Magna Carta succeeded in constraining government because it coincided with a long period of English government by council (see, for instance, Maddicott, 2010). Between 1189 and 1199, under Richard I, who spent much of his reign abroad on crusade or in captivity, and then again after 1216, under Henry III, who did not reach the age of majority until 1227, England was ruled largely by the consent and consensus of nobles, clerics, and courtiers rather than by a king. By the time of Magna Carta (1215–1225), England therefore had significant experience under conciliar government, magnates were accustomed to participating regularly in the kingdom's governance, and citizens were ready to defend their right to do so.

There is, however, an important problem with this explanation for Magna Carta's success in constraining government: in its original incarnation, Magna Carta abysmally failed to do so. Only 90 days after the Charter of 1215 was solemnized, King John had brushed aside its limits on his authority and England descended again into civil war. It was not Magna Carta in general that succeeded in constraining government, but rather reissued Magna Carta, culminating in the Charter of 1225.

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This paper develops an alternative explanation for Magna Carta's (eventual) success in constraining government grounded in economic analysis. We use the economic approach to self-enforcing constitutions to analyze Magna Carta and use Magna Carta to evaluate the economic approach to self-enforcing constitutions. This approach highlights that in order to be enforced at all, constitutions must be self-enforcing, and considers the conditions under which this may be possible (see, for instance, Hardin, 1989; Ordeshook, 1992; Chen and Ordeshook, 1994; Weingast, 1995, 1997, 2004; de Figueiredo and Weingast, 2005; de Figueiredo et al., 2007; Leeson, 2011; Mittal and Weingast, 2013).

Although the economic approach to self-enforcing constitutions is not homogenous, it broadly suggests the necessity of satisfying three conditions to render a constitution self-enforcing and thus the governmental constraints it promises effective. To be self-enforcing, constitutions must: (1) publicly establish sufficiently clear limits on rulers' authority; (2) reflect mutually beneficial exchanges between rulers and the citizens who contract them; and (3) inclusively advance the interests of the citizenry's politically important groups. We elaborate the logic underlying these conditions and ask whether they were satisfied by Magna Carta.

Existing work in the literature on self-enforcing political institutions has analyzed such institutions in the context of, for example, England's Revolution Settlement, the Articles of Confederation, the United States Constitution, the Missouri Compromise, political arrangements in medieval Genoa, and those in contemporary China, Spain, and Russia (see, for instance, North and Weingast, 1989; Weingast, 1995, 1997, 2004; Greif, 1998; de Figueiredo and Weingast, 2005; de Figueiredo et al., 2007; Mittal and Weingast, 2013). No work, however, has used the economic approach to self-enforcing constitutions to analyze Magna Carta. Our paper contributes to this literature by doing so.

The results of our analysis suggest that in its original incarnation, Magna Carta failed to satisfy the conditions necessary for constitutional self-enforcement and thus effective governmental constraints, but that in its reissued form, Magna Carta satisfied each of them. Magna Carta is a complex document with many facets whose history reflects numerous political, economic, legal, religious, and social factors. We do not claim to offer a “complete” picture of Magna Carta or to address all its nuances, nor do we pretend to capture the panoply of forces that contributed to the durability of the governmental constraints Magna Carta established in England. Rather, we provide a single, hitherto neglected, window through which to view and understand Magna Carta’s success in this regard. The view through this window helps illuminate Magna Carta’s initial failure to constrain government, helps explain its ultimate success in doing so, and furnishes supportive evidence for the economic approach to self-enforcing constitutions.

## 2. The problem of ruler promises

Promises rulers make to their citizens to limit their authority are plagued by a simple but critical problem: enforcement. Such promises, which for our purposes may be styled as “contracts” between rulers and citizens, differ from contracts between private citizens in that they cannot be reliably enforced in the typical fashion of the latter—i.e., by a third party with final enforcement authority (Acemoglu, 2003). The reason for this is straightforward. Rulers, whose governments are the regular agency of such enforcement for contracts between private citizens, will not enforce contracts between themselves and citizens against themselves when it is in their interest to violate those contracts, which is precisely when enforcement is required. This ruler promise-enforcement problem threatens to render ruler promises to limit their authority non-binding and thus to prevent governmental constraints from being effective.

There is a potential solution to this enforcement problem: promises may be self-enforcing. Self-enforcing contracts do not require the threat of third-party intervention to be enforced. A large literature identifies a variety of mechanisms that may render contracts self-enforcing (see, for instance, Leeson, 2007a,b, 2008, 2009, 2013, 2014a,b; Leeson and Suarez, 2015).

Foremost among these mechanisms is the “discipline of continuous dealings.” If parties to a contract interact indefinitely, the threat of being punished by one’s counterparty via his refusal to interact with one in the future can induce a party who is contemplating breaking his promise to uphold his promise instead. Under this threat, breaking one’s promise today means foregoing the present discounted value of indefinite interactions with his counterparty in the future. Thus, if parties do not discount the future too steeply, upholding one’s promise may be more profitable than breaking it.

The discipline of continuous dealings works well for enforcing promises between private citizens (see, for instance, Stringham, 2015). However, it is largely ineffective for the purpose of enforcing promises made by rulers to their citizens. The logic underlying the mechanism described above assumes that both parties to a contract can freely exit relations with the other. If one party cannot do so, his counterparty need not fear the threat of being terminated from future interactions if he breaks his promise, since for the former, refusing future interactions is not an option.

In the context of promises made by private citizens to one another, the mutual free-exit assumption is usually satisfied. In the context of promises made by rulers to citizens, it usually is not. Most citizens cannot credibly threaten to terminate dealings with a promise-violating ruler, since international migration is costly, and historically, many citizens were not internationally mobile at all.

The discipline of continuous dealings’ inability to reliably enforce ruler promises is not unique. Nearly all other such mechanisms of self-enforcement identified in the literature suffer related problems (see, for instance, Leeson, 2014b). There is, however, an important exception: the threat of coordinated citizen rebellion. Although rulers typically wield more coercive power than any single citizen or group of citizens, collectively, citizens may wield more coercive power than rulers. Popular revolutions thus have the potential to depose unpopular rulers, such as those who break their promises to limit their authority. If citizens can credibly threaten to jointly revolt when their ruler breaks his promise, this threat may be sufficient to induce their ruler to uphold his promise instead.

The credibility of such a threat, however, faces a crucial obstacle: collective action. To see this clearly, consider a ruler that has promised his citizens to respect their property rights. For the moment, suppose that keeping his promise serves the ruler’s long-run interest by, for instance, incentivizing his citizens to be more productive, but that the ruler’s short-run interests are best served by violating his promise, for instance by expropriating his citizens’ wealth. If the ruler is impatient, he will be tempted to break his promise to his citizens.

If an insufficient number of groups of citizens rebel against the ruler when he breaks his promise, the ruler is likely to overcome them, quelling the revolt and punishing the rebels. Only if enough groups of citizens rebel together is victory over the ruler likely. The willingness of any given group of citizens to rebel thus hinges on each group’s expectation about how other groups of citizens will respond to the ruler breaking his promise. Unless a sufficient number of groups of citizens each expects the others to rebel if the ruler breaks his promise, no group rebels, and, with knowledge that the threat of coordinated citizen rebellion is not credible, an impatient ruler is led to do just that.

There is no inherent reason for groups of citizens to share such an expectation, and two important reasons they probably will not. Different groups of citizens are likely to have different understandings about which specific constraints on the ruler’s authority are implied by his promise to protect their property rights, and some citizens may not be aware of the ruler’s promise at all. If an insufficient number of groups of citizens share a common understanding about whether, in taking some particular action, the ruler has violated his promise, or are even aware of his promise, there can be no shared expectation among them that a sufficient number of such groups will rebel against the ruler in response to a potential breach of his promise.

Heterogeneity of citizen interests presents a related problem. Suppose citizens do in fact share a common understanding about which specific constraints on the ruler’s authority are implied by his promise to protect their property rights and that all citizens are aware of this promise. It may nevertheless be true that only some groups of citizens’ interests are advanced by those constraints, while the interests of others are not, or are even harmed by them. In this case, if the ruler breaks his promise, groups of citizens whose interests are not advanced by the constraints the ruler’s promise entails will be unwilling to rebel along with groups of citizens whose interests are advanced by them. This, too, prevents a shared expectation that a sufficient number of groups of citizens will rebel against the ruler if he fails to keep his word. Without such an expectation, coordinated, and thus potentially successful, rebellion is not possible, preventing the ruler’s promise from being self-enforcing.

The collective-action problem of coordinating citizen rebellion is not the only obstacle to rendering rulers’ promises to limit their authority self-enforcing. Above we assumed that a ruler’s promise to limit his authority is harmful to his interest in the short run, but beneficial to his interest in the long run. However, if even the long-run interest of the ruler is not served by his promise to limit his authority, it is unlikely that he will be willing to uphold his

promise even if the threat of coordinated citizen rebellion is credible and thus he expects probable deposition if he breaks his word. Such may be the case if, for example, a ruler's promise strips him of sufficient authority to render him under its terms a ruler in name only, or if it prevents him from being a ruler long enough to reap any long-term benefits from constraining his authority. Promises that restrict a ruler's authority too severely reduce his expected payoff of upholding them and retaining his position below that of breaking them and risking probable deposition.

Given that no ruler would voluntarily choose to make promises that restrict his authority to this extent in the first place, it may seem peculiar to consider such a possibility an obstacle to rendering ruler promises self-enforcing. However, when citizens have overcome the collective-action problem of coordinated rebellion considered above, they wield significant, and often superior, coercive power, making citizen coercion, or "extortion," of rulers possible. Under citizen compulsion a ruler may be willing to make promises to limit his authority that do not serve even his long-term interest, if only to live to "rule another day" for the opportunity to clash with his rebelling citizens on terms relatively more favorable (though in absolute terms, still unfavorable) to his victory.

A final problem of rendering ruler promises self-enforcing relates to heterogeneous understandings about the particular limits on the ruler's authority his promise implies, not among citizens, but between citizens and ruler. If a ruler and his citizens differ in such understandings, the ruler may inadvertently break his word, or at least is likely to find himself at odds with his citizens regarding whether he has broken his word or not. If the ruler and his citizens can come to a common understanding of what the ruler's promise entails, this problem may be averted. If they cannot, however, the result will be warfare or the ruler simply following his will. Such may be the case if, for example, the interpretation citizens insist on yields the ruler a lower expected payoff than hazarding a coordinated citizen rebellion in the event that citizens have overcome the collective-action problem such rebellion confronts, or merely a lower expected payoff than following his will in the event they have not. In either case the ruler's promise will not be self-enforcing and thus will fail to constrain government.

### 3. The economic approach to self-enforcing constitutions

The economic approach to self-enforcing constitutions suggests the conditions that ruler promises to limit their authority must satisfy to be self-enforcing and thus to effectively constrain government (see, in particular, [Mittal and Weingast, 2013](#); see also, for instance, [de Figueiredo and Weingast, 2005](#); [de Figueiredo et al., 2007](#); [Weingast, 1995, 1997, 2004](#)). A "constitution" for our purposes refers to any agreement between political rulers and their citizens containing promises relating to, and with the purpose of circumscribing, the former's governance authority—i.e., establishing governmental constraints. The conditions the economic approach identifies as necessary for constitutional self-enforcement are threefold.

The first is the clear-and-public condition: to be self-enforcing, a constitution must publicly establish sufficiently clear limits on government's authority.<sup>1</sup> The clear-and-public condition ensures that rulers' constitutional violations are common knowledge among citizens. Self-enforcing constitutions generate such knowledge in two

ways. First, they identify specifically which relevant actions are or are not prohibited or permitted to rulers. When such promises are specific, it is less likely that different groups of citizens will have different understandings about when an enforcement response is or is not warranted, facilitating coordinated rebellion in the event of constitutional violation. Second, self-enforcing constitutions render the specific limits on ruler authority they prescribe parts of public agreements. The public status of self-enforcing constitutions permits the entire citizenry's awareness of the ruler's particular promises, again facilitating coordinated rebellion in the event of constitutional violation. Equally important, the clear-and-public condition ensures that rulers share citizens' understanding about which governmental behaviors qualify as constitutional violations and which do not. This prevents interpretive disagreements that may lead to ruler-citizen conflict, or otherwise lead rulers to violate their constitutional promises as understood by citizens.

The second condition necessary for constitutional self-enforcement is the mutual-benefits condition: to be self-enforcing, a constitution must reflect mutually beneficial exchanges between rulers and the citizens who contract them. The mutual-benefits condition ensures that both parties to constitutional agreement expect to benefit from that agreement's terms. When constitutions reflect mutually beneficial exchanges, the groups of citizens who contract them value what they receive from constitutional creation—specific governmental constraints—more than what they give up in exchange for those constraints—agreement to permit the ruler to retain his position so long as he does not violate their agreement. Likewise, rulers value what they receive from constitutional creation—the ability to retain their position provided that they do not violate the agreement—more than what they give up in exchange for that ability—specific types of authority. Such mutual benefits are crucial, since, if one or both parties does not believe it benefits on net from the agreement, the agreement cannot be self-enforcing. If the groups of citizens who contract the agreement do not believe it benefits them on net, the constitution need not prevent them from rebelling even when the ruler upholds it. And if the ruler does not believe the agreement benefits him on net, he may be willing to accept the risk of deposition rather than abide by the constitution.

The final condition necessary for constitutional self-enforcement is the inclusivity condition: to be self-enforcing, a constitution must inclusively advance the interests of the citizenry's politically important groups. The inclusivity condition ensures that it is in the interest of each of the groups of citizens whose participation in rebellion is required to potentially overcome the ruler to rebel when the ruler violates the constitution if they expect the other groups of such citizens to do so. When the groups of citizens who contract a constitution with the ruler include each of the groups of citizens whose participation is needed for potentially successful rebellion, the inclusivity condition is satisfied, *ipso facto*, when the mutual-benefits condition is satisfied. Since the mutual-benefits condition requires that the groups of citizens who forge constitutional agreement with the ruler benefit on net from that agreement, if those groups include all whose participation is required for potentially successful rebellion, it is in the interest of each of the those groups to participate in rebellion when the ruler violates the constitution provided that each expects the others to do so as well.

It remains possible, however, and indeed is likely, that not all groups of citizens whose participation in rebellion is required for potential success will in fact be party to constitutional creation. When this is the case, to enable potentially successful rebellion in the event of ruler transgression, the constitution must contain provisions that advance the interests of such groups that are not party to its creation. If the constitution is not inclusive in this manner, the group or groups of citizens whose participation is required for

<sup>1</sup> Given the cost of (constitutional) contracting, which is increasing in efforts to render contractual terms clearer, perfectly clear limits on government's authority are not possible. Some degree of vagueness is therefore unavoidable, which is why we refer to "sufficiently clear" limits on government's authority—limits clear enough to create common knowledge among citizens, and among citizens and ruler, about when the ruler has broken or kept his promise.

potentially successful rebellion, but whose interests the constitution does not advance, cannot be relied on to rebel in conjunction with the groups of citizens whose interests the constitution does advance when the ruler violates the constitution. In contrast, if the constitution inclusively advances the interests of all groups of citizens whose participation is required for potentially successful rebellion, then all such groups of citizens will find it in their interest to rebel when the ruler violates the constitution provided that each expects the others to do so as well.

A constitution that satisfies the foregoing three conditions consists of ruler promises that overcome each of the problems of ruler-promise enforcement discussed above and thus may effectively constrain government: such a constitution is self-enforcing. A self-enforcing constitution serves the long-run interest of the ruler such that he would rather respect the limits on his authority it promises than risk deposition if citizens can credibly threaten to jointly rebel against him when he violates it. Equally critical, such a constitution coordinates citizen rebellion in the event that the ruler violates those limits, enabling them to credibly threaten joint rebellion, and thus to probabilistically depose the ruler. A self-enforcing constitution facilitates this coordination by (1) creating common knowledge among groups of citizens about when the ruler has violated the constitution, (2) rendering it in the interest of each group of citizens whose participation in rebellion is required for potential success to see the constitution enforced, and, through accomplishing both of the former, (3) creating a shared expectation among those groups that the others will rebel if the ruler violates the constitution, which in turn makes it rational for each such group to itself rebel in this event.

In a similar manner, a constitution that satisfies the foregoing three conditions creates common knowledge among groups of citizens about when the ruler complies with the constitution, and, when these conditions are satisfied, no group of citizens has an interest in deposing a ruler who does so. The ruler under a self-enforcing constitution consequently expects coordinated citizen rebellion and thus probable deposition if he violates the constitution, and expects no citizen rebellion and thus to retain his position if he upholds the constitution, leading him, as long as he wishes to retain his position, to respect the governmental constraints the constitution promises.

#### 4. Magna Carta: a self-enforcing constitution?

The sequence of events that directly precipitated Magna Carta are well known. Between 1199 and 1216, England was ruled by King John Lackland. Largely to finance two failed wars with France—one that resulted in England's loss of Normandy in 1204, and another that resulted in its loss of Flanders in 1214—John levied heavy taxes on his barons, who saw little value in the king's foreign expeditions and to which they had not consented. "Unjust" taxation was not the barons' only complaint against the king, however. They objected also to what they considered his abuse of the court system, legal punishments, property seizures, forest administration, and a host of other royal policies, each employed by John also to assist in raising royal revenues, which unduly deprived the barons of what they viewed as their ancient rights and liberties.

In 1215 the barons rebelled. They renounced fealty to the king and seized control of London, where they found ready urban allies in their grievances against John. The result of this revolt was a meeting at Runnymede where John was compelled to accept a charter—the original Magna Carta—promising to redress the barons' grievances and to limit his authority accordingly.

The Charter of 1215 contained 63 chapters that addressed these limits, ranging from the king's power to raise taxes and administer justice, to his power to compel the building of bridges and

forcibly remarry widows. Among them featured several "special" clauses, which, as we discuss below, in time would prove critically important to 1215 Charter's fate. Two such clauses required the king to restore to his citizens any property he had unjustly seized from them (Chapters 52 and 55). Another established a court of 25 barons to arbitrate disputes between the king and his subjects arising from the restoration of seized property, whose members were to be selected by the barons themselves, and, in an unprecedented move, empowered the baronial court to distrain the king's property in the event of his failure to uphold the Charter's terms (Chapter 61). In exchange for the 1215 Charter, the barons agreed to renew their pledges of homage and fealty to the king, lay down their arms, and return London to royal control.

##### 4.1. The Charter of 1215

The Magna Carta of 1215 was a failure. Almost immediately the governmental constraints it promised proved ineffective. Just three months after Runnymede, the barons were accusing John of violating his promises under the new agreement, and the king and his subjects had resumed war.<sup>2</sup>

The economic approach to self-enforcing constitutions suggests that this failure reflected the 1215 Charter's failure to satisfy at least one of the three conditions necessary for constitutional self-enforcement. An examination of that Charter's features supports this suggestion. Although the 1215 Charter satisfied the inclusivity condition, it failed to satisfy both the clear-and-public and mutual-benefits conditions.

Magna Carta—from its first incarnation to its last—protected the rights and liberties of a remarkably inclusive segment of England's medieval citizenry. This degree of inclusivity stands in contrast to a charter that could have protected the rights and liberties of only a small segment of the citizenry, for instance nobles alone, which [Holt \(1992\)](#), for example, suggests was the case among charters granted by medieval kings to their subjects in many places in continental Europe.

"This comprehensive quality of Magna Carta was revealed in many different ways" ([Holt, 1992:276](#)). For instance, while contracted chiefly by England's barons, the limits on royal authority the Charter of 1215 promised advanced the interests of each of England's politically important citizen groups—those whose participation in rebellion, should it come to that, would facilitate rebellious success: the barons, the clergy, the knights, and the towns. Chapter 21 of the Charter, for example, promised that "Earls and barons shall be fined only by their equals, and in proportion to the gravity of their offence," benefiting barons. Chapter 1 promised "that the English Church shall be free, and shall have its rights undiminished, and its liberties unimpaired," benefiting clergy. Chapter 2 promised to limit the maximum "inheritance tax" (feudal relief) owed by a knight's heir to the king upon a knight's death, benefiting knights. And Chapter 13 promised that "The city of London shall

<sup>2</sup> The original incarnation of Magna Carta was not the only early 13th-century English royal charter that failed to be self-enforcing. In 1201 John confirmed a charter (originally created by Henry I) granting England's small but economically important Jewish community rights and liberties, including the right to hold land of the king, to own moveable property, and the liberty to inhabit and move freely about the kingdom: the so-called "Charter of the Jews of England." However, in 1290 Edward I broke this charter's promise and expelled the Jews from England. The economic approach to self-enforcing constitutions suggests the reason why the Jewish charter was not self-enforcing: it did not satisfy the inclusivity condition, benefiting only one small group of citizens—England's Jews. Edward I was therefore not only able to break the promises the Charter contained, he was in fact asked to do so by baronial interests in exchange for the latter's consent to a new royal tax (peculiarly testifying to the reissued Magna Carta's successful self-enforcement, which we discuss below). See, for instance, [Prestwich \(1997\)](#).



enjoy all its ancient liberties and free customs, both by land and by water,” benefiting towns.

Still more inclusively, Magna Carta explicitly promised to protect and advance the interests of, as Chapter 1 of the 1215 Charter put it, “all free men of our kingdom.” And many of the Charter’s provisions stood to benefit this broad class of citizens rather than any one group of citizens in particular. Chapter 9, for instance, promised to limit the king’s power to seize land in payment for monies owed him. Chapter 20 promised to limit the king’s power to fine free men. Chapter 28 promised to limit the king’s power to take citizens’ moveable goods without compensation. Chapter 36 promised to limit the king’s power to charge for writs of inquisition of life or limbs. Chapter 38 promised to limit the king’s power to try persons solely on the unsupported word of a royal official. And Chapter 39 promised to limit the king’s power to imprison or seize the property of free men without due process.

Some provisions in the 1215 Charter went further yet in advancing the interests of a broad base of England’s citizenry. Chapter 20, for example, promised limits on the king’s power to fine villeins, and chapter 60 encouraged “all men of our kingdom, whether clergy or laymen,” to respect all Charter-promised protections and liberties “in their relations with their own men.” As Holt (1992:278) points out, “Magna Carta then assumed legal parity among all free men to an exceptional degree. . . . The documents of 1215 assumed that the liberties at issue were to be held by a community, not by a series of individuals of this or that status, but by the realm.”

As evidenced by the success of the revolt against John in 1215 that led to the Charter of the same year, the collective-action difficulties of coordinating citizen rebellion had, at least at this point in time, been overcome by the rebels and thus did not present an obstacle to overwhelming the king.<sup>3</sup> The revolting barons calculated correctly in 1215 that their joint rebellion would, perhaps with support from townsmen in London, be sufficient to corner John. At the same time, the extensive inclusivity of the 1215 Charter suggests that the barons were keenly aware that the potential success of future citizen rebellions, should the king fail to uphold the Charter, hinged on incentivizing the response of a larger number of citizen groups. This awareness is also suggested by, for example, Chapter 61 of the Charter, which promises “public and free permission” to “Any man who so desires” to “take an oath to obey the commands of the twenty-five barons for the achievement of these ends, and to join with them in assailing [the king if he does not comply with the Charter] to the utmost of his power.”

Thus “The barons did not talk of free men” in Magna Carta “out of loftiness of purpose, or make concessions to knights and burgesses out of generosity. They did so because the political situation required it” (Holt, 1992:295). By including provisions in the 1215 Charter that advanced the interests of England’s politically important citizen groups, each of which in consequence stood to benefit from the Charter’s enforcement, on this dimension at least, the barons at Runnymede maximized the potential success of future citizen rebellions against the king should he fail to comply with the Charter, and thus the credibility of the threat of coordinated rebellion as a means of enforcing Magna Carta.

Despite inclusively advancing the interests of England’s most important groups of citizens, the Charter of 1215 failed to satisfy the other two conditions necessary for a self-enforcing constitution: that Charter neither publicly established sufficiently clear limits on

royal authority, nor did it reflect a mutually beneficial exchange between the king and its baronial contractors.

Although many of the governmental constraints the 1215 Charter promised were sufficiently precise and detailed, other important provisions were ambiguous and uncertain. Particularly problematic in this regard were the clauses promising to limit the king’s power over the forest—a long-standing point of contention between the king and the barons—and those relating to royal restitution of unjustly seized property. Chapter 48 of the 1215 Charter, for example, promised investigation and abolition of “All evil customs” of royal administration of forests, but, critically, failed to define which specific administration practices were “evil.” More seriously still, Chapters 52 and 55 of the 1215 Charter, which promised the restoration of property and money “unjustly” seized by the king, failed to define what specific features might render property and monies previously seized “unjust,” referring that question instead to the Charter-created court of 25 barons, which, as we consider below, led to its own problems.

These important ambiguities in the 1215 Charter left much room—too much room—for conflicting interpretations. While, among themselves, the barons may have shared an understanding about what the 1215 Charter’s ambiguous provisions promised, this understanding was most definitely not shared by the king. Such provisions’ opacity permitted the barons to maintain that John had not fulfilled his promises per Magna Carta, in particular the return of unjustly seized property, and permitted John to maintain that the rebels had not fulfilled theirs, in particular the payment of baronial monies due him now that the barons were again his lieges. In large part “The Charter failed to produce lasting peace in 1215 just because” of the ambiguous provisions’ “looseness of phrasing,” which “hid a real and irreconcilable difference of interpretation” (Holt, 1992:7). Thus instead of creating peace, the Charter contributed to the renewal of civil war.

Though not as important as the 1215 Charter’s lack of clarity at crucial junctures, the publicity of this Charter was also impaired. While the intent was for the Charter to be publicized throughout the kingdom by having copies sent to and publicly read in each of England’s counties, distribution problems prevented the Charter from reaching more than a handful of communities. As a result, “accurate knowledge of the [1215] Charter itself” was “rare,” and most Englishmen “knew very little of [its] contents” (Holt, 1992:355).

Nor did the Charter of 1215 reflect a mutually beneficial exchange between the king and the barons who contracted it. The agreement forged at Runnymede reflected an exchange—the former receiving the barons’ renewed homage and the return of London to royal control in return for limits on his authority, and the latter receiving limits on the former’s authority in return for renewing homage to the king and surrendering London to him—but it was not mutually beneficial. The reason for this simple enough: the terms of trade the 1215 Charter reflected were negotiated under baronial coercion, which was then holding John’s capital hostage. Indeed, when Pope Innocent III annulled the Charter of 1215, he did so citing this very reason.

The result was a Charter that stood to benefit barons and other English citizens substantially, but whose only benefit for the king was immediate reprieve from baronial coercion. This is perhaps most apparent in Chapter 61 of the 1215 Charter, which, as discussed above, created a court of 25 barons—selected by the rebelling barons themselves—empowered to distrain the king’s property should the court find him in violation of the Charter. This clause, which effectively gave the barons final authority over the king, is not one any medieval king seeking to remain as much in anything but name would agree to voluntarily. Given this situation, “it was easy enough for John. . . . to regard the Charter as an. . . act of extortion,” which is precisely what he did (Holt,

<sup>3</sup> The Charter of Liberties, granted by Henry I in 1100, may have assisted in facilitating this coordination. The governmental constraints this Charter promised, while it seems not enforced, appear to have furnished John’s rebelling barons with some foundation for a shared understanding of their “ancient rights and liberties” and thus perhaps for a shared expectation of joint rebellion given the behavior of John’s government.

1992:236). The Charter of 1215, extracted from John under baronial compulsion, led to an agreement whose terms were so unfavorable to the king that he was willing to risk renewed rebellion and thus deposition rather than upholding the Charter under the barons' terms. It is therefore hardly surprising that, following the meeting at Runnymede, as soon as John felt strong enough, he began resisting and then refusing to comply with the Charter.

#### 4.2. *The Charters of 1216, 1217, and 1225*

In 1216 King John died, leaving the kingdom and its ongoing rebellion to his nine-year-old son, Henry III, whose guardianship was entrusted to William Marshal, a prominent English knight.<sup>4</sup> In an attempt at conciliation, later that year, Henry, still a child, reissued Magna Carta under the seals of Marshal and Guala Bicchieri, the papal legate to England, but in a form that purged the Charter of several of its critically problematic provisions. Chief among these was Chapter 61, which established the baronial court of 25, and Chapters 52 and 55, which required the restoration of property unjustly seized by John. Further efforts were now also undertaken to publicize the new Magna Carta. "Instructions were issued on the occasion of" the 1216 Charter's reissue, and on its subsequent reissues discussed below, "that the Charters should be read in full county court" (Holt, 1992:400).

The rebels rejected the 1216 concession. However, in 1217, facing likely defeat by royal forces, they agreed to a slightly modified version of the 1216 Charter, offered again under seals of Marshal and the papal legate, ending the civil war. Crucially, like the 1216 issue, the 1217 Charter did not contain the problematic clauses of 1215 relating to the court of 25 barons and the restoration of property unjustly seized by Henry's father. In addition, the 1217 Charter, or rather a supplementary document created to accompany it—the so-called "Charter of the Forest"—imperfectly, but acceptably, resolved the other significant ambiguities of the 1215 version: those relating to the king's regulation of the forest. This supplementary Charter "carried the regulation of the forest law far beyond anything considered or even suggested in any of the earlier documents" (Holt, 1992:385).

Eight years later in 1225, Magna Carta was reissued a final time, and under importantly different circumstances that reflected not baronial demands amidst civil war, but a kingly request amidst domestic peace. In 1224 Louis VIII invaded England's remaining lands in France, and Henry required an army to defend them. To fund this army, Henry turned to his barons, who agreed to finance the defense if Henry would reissue Magna Carta and the Charter of the Forest under the royal seal, which Henry, now old enough to do so, did "spontaneously and of [his] own free will," as the 1225 Charter was careful to note. After 1225, Magna Carta was reconfirmed by several English kings through the reign of Edward I, but in unaltered form.

Magna Carta's reissues, culminating in the Charter of 1225, resolved the deficiencies of the 1215 Charter that prevented it from satisfying two of the three the conditions necessary for constitu-

tional self-enforcement: the clear-and-public and mutual-benefits conditions. Like the 1215 Charter, Magna Carta's reissues inclusively advanced the interests of England's politically important citizen groups. The 1225 Charter, for instance, reiterated that it was a grant to "the archbishops, bishops, abbots, priors, earls, barons, and all of our kingdom." However, unlike the 1215 charter, Magna Carta's reissues publicly established sufficiently clear limits on royal authority and reflected a mutually beneficial exchange between the king and his subjects.

"In each case" of the Charter's evolution between 1216 and 1225, "there was a marked trend towards legal precision, towards noting exceptions, plugging holes, and covering foreseeable eventualities" (Holt, 1992:289). Most critically, Magna Carta's reissues jettisoned the troublesome retrospective property restitution clauses of the 1215 issue and resolved the ambiguous clauses regulating forest administration through the Charter of the Forest, which were largely responsible for the interpretive conflicts between the king and barons. Additionally, "every step was taken to make sure that the texts were known" (Holt, 1992:401). Thus Magna Carta's reissues were effectively publicized throughout the realm.

Equally important, unlike the Charter of 1215, which had been extracted from John coercively and provided for a court of 25 barons empowered to distrain the king, rendering it of negative value to him, the Charter of 1225 was initiated and entered freely by Henry and did away with the baronial court so detrimental to the king's interest, reflecting a mutually beneficial exchange. The result was a self-enforcing Magna Carta—one that satisfied not only the inclusivity condition, but also the clear-and-public and mutual-benefits conditions—and thus a Magna Carta capable of effectively constraining government.

## 5. Conclusion

Our economic analysis of Magna Carta leads to several conclusions. First, the economic approach to self-enforcing constitutions helps explain Magna Carta's initial failure to constrain government. Although the Charter of 1215 satisfied the inclusivity condition necessary for constitutional self-enforcement and thus effective governmental constraints, that Charter failed to satisfy the two other conditions necessary for as much: the clear-and-public condition and the mutual-benefits condition. The ambiguity of important clauses of the 1215 Charter led almost immediately to conflicting royal and baronial interpretations of the 1215 agreement, which ultimately contributed to the resumption of civil war. Moreover, the fact that the 1215 Charter was extorted from John by its contracting barons led to a Charter with negative value to the king, giving him little reason to respect the limits on his authority the agreement promised and leading him to violate those promises instead.

Second, and equally important, the economic approach to self-enforcing constitutions helps explain Magna Carta's ultimate success in constraining government. The reissued Charters of 1216, 1217, and finally 1225 incrementally addressed the deficiencies of the original Charter by clarifying or jettisoning the interpretively problematic clauses of the original version, as well as purging those parts most damaging to the king's interest, while retaining the original Charter's inclusivity. The final reissue of Magna Carta, which was voluntarily contracted by the king, thus satisfied all three conditions necessary for constitutional self-enforcement, enabling it to effectively constrain government.

Finally, our analysis of Magna Carta furnishes supportive evidence for, and suggests the usefulness of, the economic approach to self-enforcing constitutions. The failed Magna Carta of 1215, which did not durably constrain government, did not satisfy two of the three conditions suggested as necessary for constitutional self-enforcement according to the economic approach to self-enforcing

<sup>4</sup> Given the common explanation for Magna Carta's success in constraining government grounded in England's experience with government by council, discussed above, one might wonder whether John's death and the entrusting of Henry III's guardianship, and thus the kingdom, to Marshal was the reason a self-enforcing charter was subsequently agreed to. The answer is no. If the reason reissued Magna Carta was enforced was that Marshal, a noble, had an interest in a charter that advanced nobles' interests against the king, one would expect a Magna Carta reissued under his guardianship to advance such interests further, or at least not to curtail them for the king's benefit. In fact, however, "Marshal's Magna Carta" did just the opposite. As we discuss below, reissued Magna Carta did away with the provisions found in the original Charter that most benefited nobles at the king's expense.

constitutions. In contrast, the successful Magna Carta of 1225, which did durably constrain government, satisfied all the conditions suggested as necessary for constitutional self-enforcement according to that approach. The evidence from Magna Carta, both in 1215 and its reissued forms, is therefore consistent with, and supportive of, the implications of the economic approach to self-enforcing constitutions.

## References

- Acemoglu, D., 2003. Why not a political coase theorem? Social conflict, commitment, and politics. *J. Comp. Econ.* 31, 620–652.
- Chen, Y., Ordeshook, P.C., 1994. Constitutional secession clauses. *Const. Polit. Econ.* 5, 45–60.
- de Figueiredo Jr., R.J.P., McFaul, M., Weingast, B.R., 2007. Constructing self-enforcing federalism in the early United States and modern Russia. *Publius* 37, 160–189.
- de Figueiredo Jr., R.J.P., Weingast, B.R., 2005. Self-enforcing federalism. *J. Law Econ. Organ.* 21, 103–135.
- Greif, A., 1998. Self-enforcing political systems and economic growth: Late Medieval Genoa. In: Bates, R.H., Greif, A., Levi, M., Rosenthal, J.-L., Weingast, B.R. (Eds.), *Analytic Narratives*. Princeton University Press, Princeton, pp. 23–63.
- Hardin, R., 1989. Why a constitution? In: Grofman, B., Donald, W. (Eds.), *The Federalist Papers and the New Institutionalism*. Agathon Press, New York, pp. 100–120.
- Holt, J.C., 1992. *Magna Carta*, 2nd ed. Cambridge University Press, Cambridge.
- Leeson, P.T., 2007a. *An-arrgh-chy*: the law and economics of pirate organization. *J. Polit. Econ.* 115, 1049–1094.
- Leeson, P.T., 2007b. Trading with bandits. *J. Law Econ.* 50, 303–321.
- Leeson, P.T., 2008. Social distance and self-enforcing exchange. *J. Legal Stud.* 37, 161–188.
- Leeson, P.T., 2009. The laws of lawlessness. *J. Legal Stud.* 38, 471–503.
- Leeson, P.T., 2011. Government, clubs, and constitutions. *J. Econ. Behav. Organ.* 80, 301–308.
- Leeson, P.T., 2013. Gypsy law. *Public Choice* 155, 273–292.
- Leeson, P.T., 2014a. God Damn: the law and economics of monastic malediction. *J. Law Econ. Organ.* 30, 193–216.
- Leeson, P.T., 2014b. *Anarchy Unbound: Why Self-Governance Works Better than You Think*. Cambridge University Press, Cambridge.
- Leeson, P.T., Suarez, P.A., 2015. Superstition and self-governance. *Adv. Aust. Econ.* 19, 57–66.
- Maddicott, J.R., 2010. *The Origins of the English Parliament, 924–1327*. Oxford University Press, New York.
- Mittal, S., Weingast, B.R., 2013. Self-enforcing constitutions: with an application to democratic stability in America's first century. *J. Law Econ. Organ.* 29, 278–302.
- North, D.C., Weingast, B.R., 1989. Constitutions and commitment: the evolution of institutional governing public choice in seventeenth-century England. *J. Econ. Hist.* 49, 803–832.
- Ordeshook, P.C., 1992. Constitutional stability. *Const. Polit. Econ.* 3, 137–175.
- Prestwich, M., 1997. *Edward I*. New Haven, Yale University Press.
- Stringham, E.P., 2015. *Private Governance: Creating Order in Economic and Social Life*. Oxford University Press, New York.
- Weingast, B.R., 1995. The economic role of political institutions: market-preserving federalism and economic development. *J. Law Econ. Organ.* 11, 1–31.
- Weingast, B.R., 1997. The political foundations of democracy and the rule of law. *Am. Polit. Sci. Rev.* 91, 245–263.
- Weingast, B.R., 2004. Constructing self-enforcing democracy in Spain. In: Morris, I.L., Oppenheimer, J.A., Soltan, K.E. (Eds.), *Politics from Anarchy to Democracy: Rational Choice in Political Science*. Stanford University Press, Stanford, pp. 161–195.