

Magna Carta at Nearly 800

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Nearly 800 years after King John signed the great charter at Runnymede, the Magna Carta remains one of the touchstones of modern democracy. This, despite the fact, that the majority of the document refers to grievances that are very specific to their place in feudal society. The original document has something of a random quality to it—clearly indicating the work of many hands working in haste. The Barons had good cause to fear and distrust John, a King whose mental health is certainly in question. He had starved a woman and her son to death, murdered his nephew, and hanged Welsh hostages (the charter has 2 clauses that deal with the proper treatment of the Welsh).

From its outset John's reign had been marked by discord both internally with his Barons and externally, most notably – though not exclusively – with Pope Innocent III and King Philip II Augustus of France. When John inherited the throne from his brother Richard the Lionheart in 1199, he inherited more than just England, he also gained substantial portions of France. When John came to the throne, he did not have the best claim – in front of him, under some interpretations, was his nephew Arthur of Brittany. John had his nephew, who was only 12 in 1199, imprisoned and eventually murdered in 1203. This shocked many of his Barons. In 1200, John decided to marry a French noblewoman (well, girl she was somewhere in the

neighborhood of 9 – 15 years old) without the permission of the French King. This gave King Philip the legal right to seize John's sizeable properties in France, prompting war – a war in which John performed very badly – earning him the nickname, Softsword. In 1209 John was excommunicated in the course of a power struggle with the Pope over the appointment of the Archbishop of Canterbury, eventually the Pope placed all of England under interdict in an attempt to bend John to his will. In order to get the Interdict lifted, John had to cede England to the pope and take it back as a fief, thus making him – and the rest of the English landowners – vassals of the Pope, a situation that his Barons saw as shameful.

John's incompetent and duplicitous dealing with these challenges outraged many of the barons, prompting them to launch a civil war in 1213. They chose as their leader Robert FitzWalter, who called himself "Marshal of the Host of God and the Holy Church," thus transforming this from a political fight to a religious war. The choice of FitzWalter illustrates the fact that the rebels were in the minority among the nobility of England, most chose to remain neutral. FitzWalter was an unsavory character who had a long history of violence and nursed a number of personal grudges against the King, not the most honorable of the English barons but the best that the rebels had. As the Barons got the better of John and seized control of London, it was clear to the beleaguered King that he needed to do a deal if he wanted to retain his throne. He and 25 of the rebels met at Runnymede Meadow on June 15, 1215 for a tough negotiation, that was ultimately sealed, not signed. The original charter was a list of demands made upon the King, a format that did not suit John at all. In order to try to pacify the King and bring a peaceful resolution, it was recast to sound like a generous royal proclamation. Even so, John was not enthusiastic and he delayed for four days before finally agreeing to the document. Though he acquiesced, John never intended to abide by the

terms of the charter – which he saw as a threat to his god-given right to rule; he simply wanted to regain control of his capital. The Magna Carta was nothing more than a stalling technique, a bargaining chip. Within three months of agreeing, John was embroiled in renewed conflict with the Barons, the First Baron's War, with the Barons seeking to replace him on the throne with Prince Louis of France [the future Louis VIII of France, son of Philip II Augustus]. John's violation of the Charter did not surprise the Barons, in clauses 52 and 61 they had foreseen and provided for such a happenstance. By the terms of the charter a committee of 25 barons would step in and exercise royal authority if John failed to fulfill the terms and that is exactly what they did. John gained some unexpected support in his violation of the document from the Pope. Innocent III saw the Magna Carta as a denial of divine right and his own right to rule over Europe (Innocent envisioned an Empire of Europe with himself at the helm) and he wasted no time in denouncing it and the Barons who had imposed it in strong terms.

With this support, the tide of the battle shifted and John had the upper hand, regaining control of most of England. By November 1215, London was within his grasp. But once again, John blew it: instead of striking at the heavily fortified capital, he harried the lands of the rebels, simply making them angry and giving Louis time to get an army together and land in England on May 22, 1216. John decided not to fight but withdrew instead, disgusting the Barons who had supported him and causing fully two-thirds of the English Barony to throw their support to Louis. John was pushed northward and was on the brink of losing it all. But he contracted dysentery and died. If John had not died on Oct. 18, 1216 leaving as his heir his nine-year old son Henry, the Magna Carta might well have been consigned to the large pile of "well that was a nice idea" of history. But the reign of a child King requires a regent and a regency is always a weak period – so to maintain

peace and hope to keep young Henry III on the throne, the regent accepted an amended Magna Carta in 1217 – it was at this point that it received the name Magna Carta. A further revision was accepted in 1225 and that version was widely circulated throughout the land. It was read aloud at county courts.

During his long, and very troubled reign, Henry swore to uphold the Magna Carta six more times before his death in 1272. Magna Carta steadily became the foundation of English law and the rights of Englishmen. In 1265 it was determined that the Magna Carta would be read aloud twice a year so that no Englishman could ever say that he did not know what it contained. Following the death of Henry III, the great charter was confirmed 37 times by subsequent rulers, the last in 1461 by the saintly, but mad, Henry VI. Every book of statutes that was compiled always had the Magna Carta as its initial entry. Though comprised of 63 clauses – all of which must have been terribly important to the Barons holding John's nose to the grindstone – it is clauses 39 and 40 that have come down as the most important: "No free man shall be taken or imprisoned or disseised (dispossessed) or outlawed or exiled or in any way ruined, nor will we go or send against him, except by the lawful judgment of his peers or by the law of the land. To no one will we sell, to no one will we deny or delay right or justice." In other words, due process of law – something that is at the center of the American system as well. Despite the importance that this document would later take on, both in the UK and the US, it is important to remember that it was in no way a clarion call for the rights of all people at the time that it was written. It had absolutely no impact whatsoever on the lives of 99% (or more of the people). It was a peace treaty between the King and the group of Barons, much of it is taken up with things that seem very trivial, eg. the removal of fish weirs from the Thames and regulating the measure of wine throughout the country.

There are things missing from the document that we would expect to be there if it were intended to be a universal statement of rights. For example: there is no clear definition of citizenry, of who it is concerned with. Generally definitions of citizenship are based on 2 principals: blood lineage and place of birth, and – especially for the US – consent between an individual and the state. The document makes vague reference to descent/bloodlines ("heirs in perpetuity"), consent ("freely and out of our good will have given and granted to the archbishops, bishops, abbots, priors, earls, barons, and all of our realm these liberties") and place ("realm"), but it contains essentially no specifics about what exactly a freeman was and how he might be identified under the law. It took later commentators to create the definition of citizenship and then to extend the protections of the Magna Carta to those citizens. In other words, it was what later generations made of the document that brought us to this conversation today. As the Charter was reissued over the years, new understandings emerged. In 1354, Parliament decreed that the clause about "no free man" which actually served to exclude the vast majority of the population from its protections, included far more people, and the language was shifted to "No man of whatever estate or condition." A statute passed in 1369 stated that no law was valid if it conflicted with Magna Carta.

Four hundred years after the signing of Magna Carta, England had developed a vibrant collection of judicial decisions collectively known as common law, essentially law by precedent. But the precedent of the limitation of royal power found in MC was not something that rulers wanted to emphasize. Interestingly, in his 1594 play "King John," Shakespeare makes no mention of Magna Carta. This is not particularly surprising given the political situation of the time – Elizabeth had been solidly on the throne for nearly 40 years and Englishmen were content to give her a fairly free hand in exchange for the stability that she brought. Parliament too, tended to allow

the Tudors a free hand and so there was no talk of the limitations in Magna Carta. In 1603, James I, the first Stuart King of England and a believer in divine right, came to the throne. In his writings (though in his actions he showed a willingness to work with limitations) he portrayed the unfettered power of monarchy. This troubled many Englishmen and interest in the Magna Carta began to increase. The man who led this charge was the great jurist, Edward Coke. Coke published an 11-volume edition of important decisions in English common law giving high ratings to the "Law of the Land" and "due process of law" both of which he attributed to Magna Carta. Coke held the Magna Carta in high esteem, describing it as "such a fine fellow that he will have no sovereign."

Soon, the charter was seen once again as a guarantee of the rights of all Englishmen; Coke described it as "the foundation of all the fundamental laws of the realm," holding to the romanticized view that it represented the liberties of English people that had existed since time immemorial. Coke's vision of the Magna Carta and its place in the common law crossed the Atlantic with English lawyers as they came to America in the 17th C. English precedents became American precedents and the American Founding Fathers were cognizant of the Magna Carta when they wrote the Declaration of Independence and the Constitution. Both the 1776 Maryland Constitution and the 1780 Massachusetts Constitution contain the words "Law of the land," and Magna Carta is cited by Alexander Hamilton in the Federalist Papers: "It has been several times truly remarked that bills of rights are, in their origin, stipulations between kings and their subjects, abridgements of prerogative in favor of privilege, reservations of rights not surrendered to the prince. Such was Magna Charta (spelled with the h), obtained by the barons, sword in hand, from King John." Of course, "due process of law" is the basis of the 5th Amendment "No person shall be ... deprived of life, liberty, or property,

without due process of law..." It came into the Constitution once again in 1868 with the passage of the 14th Amendment: "No state shall deprive any person of life, liberty, or property without due process of law." It was referred to as the "Great Charter of liberty." On both sides of the Atlantic, the spirit of MC was invoked: in 1770 the great British statesman William Pitt the Elder referred to it as "the Bible of the English constitution." In his 1941 Inaugural Address, FDR stated, "The democratic aspiration is no mere recent phase in human history. . . It was written in Magna Carta."

Following World War II when the United Nations adopted a Universal Declaration of Human Rights, Eleanor Roosevelt, one of the primary shapers of that document state that she hoped that it would be "an international Magna Carta." After the assassination of John F. Kennedy, the House of Commons passed the John F. Kennedy Memorial Act, which deeded an acre of land at Runnymede to the people of the US as a gift from the people of the UK. On that land, the American Bar Association has installed a monument to MC with the inscription: "To celebrate Magna Carta, foundation of the rule of law for ages past and for the new millennium." The American Bar Association more recently has published a book Magna Carta and the Rule of Law. The Magna Carta has become a cornerstone of American freedoms – it is not unusual for commentators to trace our liberties to that document. One of our primary rights, one that many scholars trace back to Magna Carta is habeas corpus, often linked to the concept of due process. Habeas Corpus, literally "have the body" compels the state to produce the accused for trial. In recent court cases (eg. Boumediene v. Bush, 2008) the history of habeas corpus has been explicitly traced back to the Magna Carta; in 2008 the Supreme Court stated that the Magna Carta "decreed that no man would be imprisoned contrary to the law of the land." It is considered so fundamental to our justice system that habeas corpus has been held to supersede statutory law. This,

and due process, have been particularly contentious issues in our recent war on terror. The High Court of Australia, in September of this year issued a decision concerning the rights of asylum-seekers was grounded in the habeas corpus language of the MC. That same month Senator Paolo Aquino in the Philippines reintroduced the "Magna Carta of the Poor Act" that seeks to ensure the five basic rights of every Filipino: the right to food, employment, education, shelter, and basic health care. When thinkers talk about creating a more peaceful world in which basic human rights are respected, it is not unusual for them to describe the document needed with the short hand, Magna Carta, with the belief that everyone will know what that means – due process under the law. Recently, the man credited with creating the World Wide Web, Sir Tim Berners-Lee stated that the "world needs an 'internet Magna Carta.' . . . There have been lots of times that it [the freedom of the web] has been abused, so now the Magna Carta is about saying. . . I want a web where I'm not spied on, where there's no censorship." The Magna Carta has become to be seen almost as an religious icon and as a founding document in America.

In 2007, Ross Perot sold a 1297 version to David Rubenstein, co-founder of the private-equity firm the Carlyle Group for \$21.3 million. Rubenstein practices what he calls patriotic philanthropy; in addition to the MC, he owns an Emancipation Proclamation, and a Declaration of Independence. His copy is currently on display at the National Archives in Washington DC. As we approach the 800th anniversary of the signing at Runnymede, there are a variety of commemorations planned that speak to the continued importance of the Magna Carta. In 1215, at Runnymede, multiple copies of the document were created, of which 4 survive each by a different scribe but exactly alike in wording, and stamped with King John's seal. It was written in Latin, not surprising. They were written on single sheets of parchment and run to about

4,000 words. They would have been sent to various recipients, we don't know how many copies were originally made. The four surviving copies are at Salisbury and Lincoln Cathedrals, and 2 others are in the British Library Collection in London. One of the British Library's copies was damaged in fire in 1731. All four of the 1215 copies will be displayed side-by-side at the British Library on Feb. 3, 2015 and only 1,215 people (chosen by free ballot) will have the opportunity to see them. As part of this, renewed investigations of the copy that was damaged in 1731. Using ultraviolet light, scientists were able to recover parts of the text that had been made unreadable by the fire. After the British Library exhibition, the Lincoln and Salisbury copies will return home to star in their own exhibitions. Salisbury Cathedral was awarded a major grant to set up a new permanent exhibition for its copy that includes interactive kiosks and a film. The Anniversary has caused people to reflect on the meaning of the MC. The Dean of Salisbury Cathedral, the Very Reverend June Osborne, stated recently, "As we reflect on the sealing of this milestone in human rights, we hope to help people to engage on a personal level with the values it represents and its lasting legacy of equality and justice." It has caused some in the UK to use it as a touchstone in the call for a written constitution.

So perhaps the best way to commemorate the 800th anniversary of Magna Carta is to take some time to reflect: to reflect on the meaning of the rights that the document has come to stand for, and also to reflect on how the most important documents in human history, those that stand the test of time, are those whose meanings can shift and adapt to changing needs. If the Magna Carta had remained a static document that was only permitted to mean what its framers had intended it would do little more than regulate fish weirs in the Thames.