

Theme: Magna Carta

Justin Fisher

Why Magna Carta Still Matters

In this article **Justin Fisher** introduces the theme by discussing the importance of Magna Carta to the contemporary political landscape. He shows the impact of the ideas enshrined in 1215 on the development of representative democracy and the rule of law in the UK.

2015 marks the 800th anniversary of the sealing of Magna Carta. As we might expect, there are many events, national, local and international, planned to celebrate this important event. But while it's always useful to celebrate anniversaries to provide a focus for reflection in any particular area, the challenge for educators is to try and ensure that Magna Carta is not then put away and forgotten until the next anniversary. Rather, it is important that the impact of Magna Carta is regularly examined by students. There are plenty of reasons for this. Magna Carta is a cornerstone of the individual liberties that we enjoy. It presents an ongoing challenge to arbitrary rule. But over time, while not envisaged at the time of its drafting, Magna Carta has for many been seen not only as a foundation of liberty, but also one of democracy. And this broader notion of the wider significance of Magna Carta makes it relevant for students not only of history or indeed law, but also for those studying subjects like Citizenship. Magna Carta matters both for what it said in 1215, but perhaps more significantly now, for what it has come to symbolize.

Magna Carta as a Source of Liberty

The continuing importance of Magna Carta as a source of liberty is well established. One of the key provisions in the 1215 Charter was that imprisonment should not occur without due legal process. This also established the idea of trial by jury. Article 39 of the 1215 Charter states that: 'No free man shall be arrested or imprisoned...or exiled or in any way victimised...except by lawful judgment of his peers or by the law of the land.' This

effectively established the principle of the rule of law, protecting individuals from arbitrary punishment. Of course, that's not to say all men were therefore free – the feudal system of the time saw to that. But as with many aspects of Magna Carta, it's what this principle subsequently helped inspire that makes the Great Charter still relevant today. From this principle of the rule of law and equality before the law, comes the inspiration for declarations of human rights. Historically, we can point to the Bill of Rights of 1689 in Britain, the Declaration of the Rights of Man of 1789 in France, and the Bill of Rights in the United States in 1791. In the 20th century, there were many further examples. Most famous, of course, is the Universal Declaration of Human Rights adopted in 1948, and in 1951, Britain was the first signatory to the European Convention on Human Rights. And, while British parliamentarians, draughtsmen and judges have long taken account of the European Convention, it was finally incorporated into British law with the Human Rights Act of 1998. Magna Carta was not as broad in scope as any of these. But the key is that the ideas rooted in Magna Carta were an inspiration for them. So while many clauses of Magna Carta seem irrelevant now and indeed the vast majority are no longer on the statute book, it is not an exaggeration to suggest that Magna Carta forms the basis of the freedoms and liberties we now enjoy. Of course, abuses of these principles may still occur. Critics point to attempts in the early 2000s to extend the period of detention without trial as a response to heightened concerns over terrorism. But,

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Justin Fisher is Professor of Political Science at Brunel University. He is Director of the University's Magna Carta Institute and chairs the Academic Sub-Committee of the Magna Carta 800 Group.



citizens in Britain are, compared with many others, rarely subject to abuses of their human rights – a liberty first established through Magna Carta.

Magna Carta's Broader Relevance

Just as with the principles of liberty, the continuing importance of Magna Carta may also be found in its broader ideas as they have been reinterpreted over the centuries. From these, Magna Carta can also be seen as a foundation of accountability, of popular democracy, and even of the importance of engaged citizens. The fact that Magna Carta had precious little (if anything) to say about these things is to miss the point. Historians have shown that over time, different generations have reinterpreted Magna Carta's meaning to match the dominant ideas of their age. Democracy, for example, was not linked with liberty until at least the time of the civil war. Thinkers began to posit the idea that liberty under the rule of law may well depend on a wider involvement in the creation of that law. And for that to occur, institutions like Parliament would need to develop and include more citizens both as members and electors. Of course, that process took a great deal of time and indeed, we might argue that it is still developing, with live debates about the extension of the franchise to prisoners and those aged 16 and above. But the point here is that Magna Carta's meaning was reinterpreted, so that the contemporary relevance goes well beyond the original intention, not only in the embedding of human rights into our statute book, but also seeing liberty as a fundamental cornerstone and foundation for democracy.

Indeed, as these ideas developed, they began to reveal a central tension in the idea of liberal democracy. Magna Carta was fundamentally about the law being preminent, and in the context of arbitrary rule by a monarch, that made good sense. But as the sovereignty of the elected Parliament developed after 1688, then the question of



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the balance of power inevitably arose. Should a sovereign parliament be free to repeal laws reflecting the will of the people, or should it be constrained by the law. In other words, was popular sovereignty through Parliament a better guarantor of liberties? From the nineteenth century onwards, it became clear in Britain that this emphasis was shifting to Parliament, with many provisions of Magna Carta deleted from the statute book as they were considered obsolete. And the British were often seemingly comfortable with the principles of democratic sovereignty, seeing them as more flexible in dealing with emergencies, such as uprisings or wars, while the general principles of personal liberty were seen as being maintained. If the will of the

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people demanded restrictions on dangerous groups or individuals, then that was surely preferable to the rigidity of an unbending law?

Yet, of course, even democratically elected governments drawing on the will of the people can be tyrannical, or at least be perceived as a threat to individual liberties. In Britain, this perception started to grow in the mid-1960s, particularly with concerns that Parliament was increasingly unable to control the executive. But this tension between democracy and liberty is heightened with the increasing involvement of the judiciary. Advocates of Parliamentary sovereignty argue that the principle of liberty being above democracy politicises unelected judges. Can it be right, they argue, that the will of the people exercised through a democratically elected parliament can be struck down by an unelected judge? Such questions become even more pertinent as definitions of human rights become increasingly broad, since inevitably, those declarations may be flavoured by the political fashions of the day. The European Convention on Human Rights, for example, alongside relatively uncontroversial human rights such as that to life and the prohibition of torture, also includes the right to marriage (though not to same sex marriage). Not only does breadth throw up some curious notions of human rights, it is also more likely to lead to clashes between individuals and groups, both claiming rights. On the one hand, for example, the ECHR guarantees the freedom of religion manifested through observance and practice, subject to certain restrictions in accordance with the law. On the other hand, the Convention prohibits discrimination. And in recent years, the British Supreme Court has had to adjudicate precisely on such a clash, where a practising Christian couple refused to allow a gay couple to stay in their bed and breakfast accommodation. Both parties claimed that their human rights were threatened. Of course, the vast majority of religious observance does not impinge upon anyone else's rights, but this example illustrates how

liberties themselves can be in conflict with each other.

And even supposedly uncontroversial human rights may also prove to be controversial. The ECHR prohibits the death penalty except in relation to war. Yet, the will of the people, if we take public opinion polls as our guide, has consistently supported restoration in Britain. Interestingly, the issue periodically re-surfaces in Parliament, but MPs have proved to be effective guarantors of rights through consistently voting down attempts to reintroduce the death penalty.

Debates about liberty and the sovereignty of the democratically elected parliament have been brought into sharp relief over the last forty or so years in respect of governments' attempts to deal with the increased threats of terrorism. And indeed, both major parties have had cause to seek to assert parliamentary sovereignty. While in power, the last Labour government found itself in conflict over the detention of terror subjects and matters like immigration. Equally, at the last election, the Conservatives pledged to repeal the Human Rights Act and replace it with a 'more flexible' British Bill of Rights. More recently, some in the Conservative Party have called for the withdrawal of Britain from the ECHR altogether, when faced with difficulties over the extradition of foreign criminals.

So, Magna Carta continues to be of great relevance to us all. It is the foundation of liberty, but also for many, ultimately of democracy. But, as we have seen, democracy may bring with it challenges to liberties through reflecting the will of the people. All of these issues are live and ongoing and provide rich areas for debate amongst students and teachers. Magna Carta is well worth celebrating. But perhaps the best tribute we can pay as educators is to ensure that students value their liberties, but also question them, both in terms of whether they go far enough, or whether the will of the people should be pre-eminent. 2015 will be a splendid anniversary, but let's ensure we're still discussing the wider lessons of Magna Carta in the future.

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