

Lincoln Cathedral:
Magna Carta/USA Week Lecture
15 June 2005

The Principles of Magna Carta:

Under threat after 790 years of evolution?

By Sir Robert M. Worcester¹
Magna Carta Trustee

Today is the very anniversary of the sealing of the Magna Carta, that great charter which laid down the basis for English common law, now spread throughout the world. Magna Carta gave protection of law against despotism by kings and their cronies, which has been challenged by self-appointed and elective dictatorships over centuries, but (mostly) upheld by both public opinion and legal testing over centuries, and which survives even today, 790 years later.

I take much pride and not a little pleasure being asked to attend this magnificent Cathedral this evening to deliver the inaugural Magna Carta/USA Week lecture. I do so for many reasons. One, historic. A short history compared to 790 years of English history since the barons met with King John at Runnymede, only 48 in my case.

In 1957 I first visited the country of my ancestors, England. My first visit to any museum, gallery or library on that occasion was to the British Museum to gaze with awe at their copy of the Magna Carta, my reason for our visit.

When I decided to come here to live in January 1969, my first weekend here with my family, we made a pilgrimage to Runnymede to visit the site of the signing of the Magna Carta.

I am still an American, and take pride and not a little pleasure in still claiming citizenship of the country of my birth. But I also take pride and a great deal of pleasure in now being able to claim British, that is dual, citizenship here, and great pride and pleasure of just last week being invested by Her Majesty as a Knight Commander of the Most Excellent Order of the British Empire (KBE). And, both as Chairman of the Pilgrims, which has as its only object the "Furtherance of Anglo-American relations" I can think of no greater link between our two countries, my two countries, than the Magna Carta.

And as Co-Chairman of the British Committee of the Jamestown 2007 Quadricentennial celebration, I'm as excited as can be about your tentative plans to tour American with the Lincoln Magna Carta starting in 2007.

¹ © Professor Sir Robert Worcester, Chairman, MORI, 32 Old Queen St., London SW1 9HP, Tel. 0171-222-0232, Fax. 0171-227-0404, email: worc@mori.com, web site: www.mori.com

So with that personal preface, let me share with you the three themes of my remarks this evening:

1. The role of public opinion: ancient, medieval, and modern, in establishing the right of people to enjoy the recognition that they have rights, and that their views can and should be heard and respected by those in power over their lives.
2. What happened in 1215.
3. What's happening now: threats to our civil liberties and the enduring support our civil liberties receive from the courts (usually) and from the people (mostly).

Public Opinion

To some, public opinion is the synthesis of the views of all or a certain slice of society, to others, the balance and dispersion of opinion. Some have insisted the power of public opinion is essential to its understanding. The power of public opinion was acknowledged early on, and benevolent monarchs and despots alike feared the mob's revolt.

Historical background

Ancient times

Although the term public opinion was not used until the 18th century, phenomena that closely resembled public opinion seem to have occurred in many historical epochs. References to popular attitudes can be found in the histories of Babylon and Assyria. Stories abound of the caliph disguising himself to go out and mingle with the people to see what they were saying about his governance. The prophets of ancient Israel sometimes justified the policies of the government to the people and sometimes appealed to the people to oppose the government. In both cases they were concerned with swaying the opinion of the crowd.

In classical Greece it was observed by many that everything depended on the people, and the people were dependent on the word. Wealth, fame, and respect all could be given or taken away by persuading the populace. Plato (427-347 BC) denied the value of any general public opinion, believing instead in a society governed by philosopher kings whose wisdom far exceeded the knowledge and intellectual capabilities of the general population.

But Aristotle stated that "He who loses the support of the people is a king no longer". At the time however their conception of 'people' was limited to the elite citizens of the state (approximately one-third of the male adults who were free citizens), and excluded women and slaves, thus comprising an estimated five percent of the adult population.

Middle Ages

During the Middle Ages in Western Europe, the masses were encased in a rural, traditional society in which most activities and attitudes were dictated by a person's station in life; but

phenomena much like public opinion could be observed among the religious, intellectual, and political elite.

Religious disputations, the struggle between popes and the Holy Roman Empire, and the dynastic ambitions of princes all involved efforts to persuade, to create a following, and to line up the opinions of those who counted.

In 1191 the English bishop William of Ely was attacked by his political opponents for hiring troubadours to extol his merits in public places, so that “people spoke of him as though his equal did not exist on earth.” The propaganda battle between emperors and popes was waged largely through sermons, but handwritten literature also played a part.

Of course your Cathedral, Dean, was begun even before that, and pre-dates Magna Carta by two hundred years. I believe that William the Conqueror ordered the first cathedral to be built in Lincoln in 1072, and that twenty years later, in 1092 it was built by Bishop Remigius who, sadly, died just two days before it was to be consecrated.

To revert, briefly, to my own connection, if it weren't for the Bishop of Lincoln who in 1637 was defied by my ancestor, the Reverend William Worcester, then vicar of the church in Olney in Buckinghamshire who twice refused the instruction of his Bishop to allow his parishoners to play sport on Sunday as he considered it “unseemly”, and on the second refusal was dismissed from his post and two years later went to the Massachusettes Bay colony as the first Puritan minister in the town of Salisbury, Massachusettes, where he is buried today. So, I can blame the Bishop of your Catherdral for my funny way of speaking.

Of course the magnificent building that exists today was being constructed at the time of the Magna Carta, being finished by about 1280.

Lincoln Cathedral and its bishops have also had a leading role in the history of England. Most importantly is the Magna Carta, signed by the Bishop of Lincoln.

In a way, public opinion in England was formed by an accident of both birth and death. Previous uprisings of free-born Englishmen had occurred in the rebellions against Williams I and II and against Henry I, Stephan, Henery II and richard, but in each case on behalf of embmers of the royal family, fighting for control of the crown. But in 1215, there wasn't a royal present to lead the people's revolt. John's nephew, Arthur of Brittany, might have led, as he had in 1199 and 1202-3, but he'd been 'removed' as Danziger and Gillingham's facsinating book **1215**² puts it.

King John's opposition took an alternative cause to champion, their own, or “a programme of reform”, seeking to air their grviences via a document of greviences and liberties on behalf of the rights of the whole Realm, what they referred to in the Magna Carta itself as ‘the community of the whole land’. This followed the lead of Henry I who had granted a charter ‘to allhis barons and faithful men’ promising to ‘abolish all the evil customs by which the kingdom of England has been unjustly oppressed’, sort of an election manifesto which once on the throne he ignored, leaving his ‘faithful men’, never mind his barons, to seeth for a century, but not forgotten. By signing the Magna Carta at Runnymede in 1215, King John effectively gave his country the first written constitution in European history.

² Danzinger, D. & Gillingham, J, **1215**, London: Hodder & Stoughton, 2003. p. 256.

From the end of the 13th century, the ranks of those who could be drawn into controversy regarding current affairs grew steadily. There was an increasing spread of education among the lay population. The invention of printing from movable type in the 15th century and the Protestant Reformation in the 16th increased still further the numbers of people able to form opinions on contemporary issues. Writing in 1836-40, de Tocqueville³ however observed “...as the men who live in democratic societies are not connected with one another by any tie, each of them must be convinced individually, while in aristocratic society it is enough to convince a few; the rest follow”.

Extensive attempts to create and influence public opinion were made during the Thirty Years' War (1618–48). A flood of propaganda tracts, many illustrated with woodcuts, emanated from both sides. Opinions were also swayed by means of speeches, sermons, and face-to-face discussions. Not surprisingly, both civil and religious authorities attempted to control the dissemination of unwelcome ideas by increasingly strict censorship. Pope Paul IV had the first Index of Prohibited Books drawn up in 1559. Charles IX of France decreed in 1563 that nothing could be printed without the special permission of the King.

More quietly, but more significantly, newspapers and news services were developing. Rudimentary private news services had been maintained by political authorities and wealthy merchants ever since classical times, but they were not available to the public. The first regularly printed newspapers appeared in c. 1600 and multiplied rapidly thereafter, although they were frequently bedevilled by censorship regulations. Regular postal services, started in France in 1464 and in the Austrian Empire in 1490, facilitated the spread of information enormously.

Modern times

The great news centres of early modern times were the financial exchanges. With the introduction of a paid civil service and the employment of paid soldiers in the place of vassals, princes found it necessary to borrow money. The bankers, in turn, had to know a great deal about the credit of the princes, the state of their political fortunes, and their reputations with their subjects. All kinds of political and economic information flowed to the money-lending centres at Antwerp, Lyon, and Nürnberg, and this information gave rise to generally held opinions in the banking community.

David Hume said in 1741 *"All government rests on public opinion"*.

Many early thinkers saw public opinion as a powerful force that rulers must learn how to control. Jean-Jacques Rousseau (1712-1778), the first major philosopher to use the term *l'opinion publique*, believed that all laws were based upon it but that this did not necessarily diminish the powers of government. Rousseau's argued that

"Whoever makes it his business to give laws to a people must know how to sway opinions and through them govern the passions of men." He also made the point... "We have seen that the legislative belongs, and can only belong, to the people. The initiative

³ de Tocqueville, A., **Democracy in America**, London: Knopf, 1945.

for issuing laws, however, comes from the prince. To discharge this office he needs a good vantage point from which to survey the climate of opinion, a matter with which the great legislator is secretly concerned. In this observational task he is helped by the activities of the censor. The prince must decide which convictions of the people are active enough to support legislation; law may be based only on prior agreement, on the sense of community that constitutes the actual foundation of the state. Just as an architect, before erecting a great edifice, observes and sounds out the ground to see if it can support the weight, the wise legislator does not begin by drawing up laws by which are good in themselves, but first investigates whether the people for whom they are intended is capable of bearing them."

Jacques Necker, minister of finance in the pre-Revolutionary France of the 1780s, popularized Rousseau's phrase *l'opinion publique*, using the term to refer to a growing dependence of the government's status on the opinion of its creditors. He instituted the publication of national accounts and argued that support from the French elite was necessary for success of the government's policies. To that end he advocated full publication of state activities, thus becoming not only minister for finance, but the first to propose systematic governmental public relations, the forerunner to today's government information service, the Number 10 press office, the White House spokesman, etc. "*Only fools, pure theorists, or apprentices fail to take public opinion into account,*" Necker observed in 1792.

A public opinion that extended beyond the middle classes and embraced the urban masses took shape during the French Revolution. Observers of the Revolution were mystified, and often terrified, by this new phenomenon of public opinion, which seemed able to sweep aside the entrenched institutions of the time: the monarchy, the church, and the feudal system.

The authors of the Federalist Papers⁴, Madison, Hamilton and Jay, were conscious of the power of public opinion, and sought to enlist public opinion in support of the adoption of the American Constitution by the 13 American colonies following its drafting in Philadelphia in 1787. In *The Federalist Papers* (Number 10) Madison spoke of collective will. "If it be true that all government rest on public opinion, it is no less true that the strength of opinion in each individual, and its practical influence on his conduct, depend much on the number which he holds to have entertained the same opinion. The reason of man, like man himself is timid and cautious, when left alone; and acquires firmness and confidence, in proportion to the number with which it is associated."

Following the adoption of the constitution in 1783, President Washington toured the country on horseback to assess the temper and disposition of the people toward the new government.

English statesman Edmund Burke's best known statement pertaining to the public will, often quoted by today's politicians in support of their independence of view is in his declaration on his election for Bristol in 1774: "*...his unbiased opinion, his mature judgement, his enlightened conscience, he ought not to sacrifice to you, to any man, or to any set to men living. These he does not derive from your pleasure, - no, not from the law and the Constitution. They are a trust from providence, for the abuse of which he is deeply answerable. Your representative owes you,*

⁴ Madison, J., Hamilton, A., and Jay, J., **The Federalist Papers**, New York, NAL Penguin, Inc., 1961.

not his industry only, but his judgement; and he betrays, instead of serving you, if he sacrifices it to your opinion.'

However, seldom recalled by these politicians is that in the following election his electors chose another to represent them in Parliament! Neither is it recalled that in 1780, after his defeat, he said that *'The people are the masters'* and he wrote that *'No man carries further than I do the policy of making government pleasing to the people. I would not only consult the interest of the people, but I would cheerfully gratify their humours.'*

My own Burke favourite was in his letter to Miss Mary Palmer, 19 January 1786, *"I never conformed myself to the humours of the people. I cannot say that opinion is indifferent to me; but I will take it, if I can, as my companion, never as my guide."*

Alexis de Tocqueville observed in 1836-1840 what is now termed a 'spiral of silence' in public opinion nearly two centuries ago in **Democracy in America**⁵: *"When an opinion has taken root among a democratic people and established itself in the minds of the bulk of the community, it afterwards persists by itself and is maintained without effort, because no one attacks it."*

William A. Mackinnon wrote the first book entitled **Public Opinion**⁶ in 1828. His view was that public opinion was *"that sentiment on any given subject which is entertained by the best informed, most intelligent, and most moral persons in the community"*.

Mackinnon's 'requisites' for having meaningful public opinion were three: wealth (by which he meant property to be defended), sufficiently diffused to bring on a sizeable middle class; communication, so that information could be effectively dispersed; and moral principle, so that neither despotism nor dictatorship could overrule the will of the people.

American Civil War President Abraham Lincoln said that *"Public opinion is everything"* and went on to avow that he saw his role as the elected leader of the United States as finding out what his electorate wanted and within reason, giving it to them.

Public opinion and government

The British jurist and historian James Bryce maintained that if government was based on popular consent, this would give a nation great stability and strength. Bryce did not, however, believe that mass opinion could or should dominate details of policy, since in his view most people did not have the leisure or inclination to arrive at a position on every question. Rather, the masses would set the general tone for policy, their sentiments leading them to take a stand on the side of justice, honour, and peace.

Some, while acknowledging the power of public opinion, warned that it could be a dangerous force. De Tocqueville was concerned about the possible "tyranny of the majority" if government was in fact to be an expression of mass attitudes. Other writers have expressed concern, often in a more extreme form, about the dangers of allowing government policy to be overly influenced

⁵ de Tocqueville, A., **Democracy in America**, London: Knopf, 1945.

⁶ Mackinnon, W., **Mackinnon on Public Opinion**, London: Saunders and Otley, 1828.

by public opinion, which may well be uninformed, unthinking, and unstable. But whether public opinion is regarded as a constructive or a baneful force in a democracy, there are few politicians who are prepared to deny in public that government should be responsive to public opinion.

1215

What must it have been like, in 1215?

Or even before, in 1000, to set the scene?

Then it was really brutal and short, with little left to go on, but Lacey and Danzinger's book, **1000**, tells it like it was. But Danzinger & Gillingham's **1215**, which came out in 2003, has a great deal more to go on, such as this edifice with its records going way back and other great cathedrals, castles galore, even the one I'm lucky enough to live in, build like so many others in the wake of William but alas torn down by order of Henry II, reportedly nearly 1,000 castles build between 1066 and 1074 when Allington was torn down by order of the King. All that remains of that adulterine castle is one ruin of a wall, a massive fireplace and two dovecotes, reportedly the oldest in England. However, of ordinary buildings, because most were timber, little remains.

What we do know from 1215 is that improvements in spinning (the spinning wheel had been invented), weaving and dyeing meant people were much better, and more attractively dressed, horses were harnessed, leveraging the power of them, windmills were first erected, clocks appeared, and importantly, spectacles, which allowed those of us visually impaired to read and write, if we could, and communicate at longer distances than just within the village or town. The transport system improved, new ports were opened, and trade flourished in the market towns.

But as the population grew, estimated at four million then, 1/15th of today, the rich grew richer and life for the poor became harder. Nine tenths of the population lived in the countryside, most living and working on small farms, of between ten and thirty acres.

The ancient universities were founded, with all that promised and over centuries delivered. Both French and English, and in the clergy and among scholars Latin as well. Fiction, some which were long-passed-down troubadours' tales, were written down and in a primitive way published.

The rich lived very well, warm, clothed in wool and furs, in castles that were comparatively cool in the summer and warm in the winter, some even with running water and indoor facilities, nooks and crannies into which privies were concealed (and in which today at Allington we have even installed showers). Furniture became something more than rushes on stone floors, with beds on wood flooring in rooms above the ground-floor level, and even tile floors, back after 1,000 years since the Romans.

Waited on literally hand and foot, with dozens of servants and serfs, life within was good for the ruling class. Life without however was risky for both master and subject. War was continual, God was feared. The king was king, and not too kind or just at that. Disease was unconcerned

with rank or class, and the plagues of the day were as likely to strike the rich as the poor. And the poor were also ill fed, ill housed, and ill treated, lucky to get rushes to sleep on covering dirt floors.

For decades there had been no inflation, but early in King John's reign prices rose sharply. Doubling or even tripling in the first five years of the 13th century. This led to the development of a large army of accountants, bailiffs, receivers, clerks and the like, and there was even a school of business administration at Oxford!

He seemed to have a facility for losing battles, in office but not in power, we might say today. Losing the French lands, making the wrong treaties, betraying his partners in war, losing the vast fortune he'd acquired in just a decade or so, he was withdrawn to England without French allies, and had broken the bank. This led him to plunder his subjects to rebuild his exchequer.

And of course King John had a facility for making enemies, the Pope, other churchmen, barons and other gentry, yeomen and serfs. It was said that he'd offended everyone except his entourage, and even they were treated badly, seemingly just for the pleasure of the King. They may or may not have been mad, but they were determined to get even.

And that led up to 1215. In January of that momentous year, the barons were ready for rebellion, coming to the conference with King John armed, and ready for battle. Instead of placating them, he enforced his financial demands, and asked the Pope to condemn those who opposed him. Yet as indicated earlier, there was no easy alternative to the King, Arthur disappeared, no other Royal princes to rally round. The barons were in a pickle; so they devised a document in lieu of a person, a charter of liberties, which later became the Great Charter, Magna Carta.

They were following the leadership of a king themselves, as in 1100 Henry I had granted a charter on the occasion of his coronation, a Coronation Charter, over 100 years earlier, but still in the memory of men and king alike.

For six months, the barons and the King manoeuvred, involving the Pope and enlisting what allies they could. John even took the cross as a crusader to put himself in as Godly a position as he could, to defend his sovereignty while he, and they, prepared for civil war. They proposed to parlay with the King in May in Northampton, but he failed to show, so on 5th May they effectively declared war on the King by renouncing their fealty.

On the 7th May John granted Londoners a renewal of their traditional rights of liberty, but ten days later London embraced the rebel cause by opening its gates to the rebels. John's taxation of London's freemen had turned the City against him. John knew then he'd lost the bloodless, until then, civil war, and so sued for peace, and on 15th June, at Runnymede, signed the Charter, 790 years ago today.

What's Happening Now?

It is time then, to examine not what happened then, but what's happening now, the relevance of the Magna Carta in our lives, its applicability today. Why is this document thought to be the father of all constitutions, the basis of our civil liberties, the rights of free men, and now women, of legal tradition, the bedrock of our systems of democracy? And who are its guardians, our system of jurisprudence, of justice and of our parliamentary democracy. And are its principles under threat today?

It is clear that much of the issues of the 13th Century have no relevance to 21st Century British citizens, much less to Americans, not thought of in the 13th Century, nor to Canadians, South Africans, Australians, New Zealanders, Samoans, Japanese, or even French, Germans, Poles and other citizens of the European Union. We are no longer protective of our widows being compelled to marry (so far as I know), or kydells (i.e. fish weirs) being removed from the Medway, along side Allington Castle, or the banishment from the kingdom all foreign-born knights (I trust!), nor the imposition of responsibility removed for villages being compelled to make bridges.

I was interviewed recently on the BBC Radio 4 Today Programme about the topic tonight, the relevance today of the Magna Carta in the face of the threat of the removal of *habeas corpus*, the right to trial by jury by the Home Secretary, Charles Clarke, and the Secretary of State for Constitutional Affairs, Charlie Falconer, who were arguing that it was reasonable in the light that the imprisonment of a suspect would be reviewed by a judge within seven days of internment.

The interviewer, in that irritating way the BBC seems to think attracts listeners, sneeringly enquired of me how I could justify any importance to such an out of date, arcane, document. Inevitably I had little time to make my point before interruption again from her researcher's script, so I had one point only to make in my allotted 2.5 minutes. "No free man shall be taken or imprisoned..." it says (I said), and it doesn't say for seven days, for seven hours, for seven minutes, it says "No free man shall be taken or imprisoned". What I did not say was that only three have not been repealed by Acts of Parliament over the past 200 years!

What are the other rights we have under the Magna Carta that are relevant today, so long as a despotic or even misguided Prime Minister, under our system of government an elective dictator if upheld by a compliant Parliament and Cabinet, hasn't repealed them?

So, in the words of Monte Python's Life of Brian, what have the Romans ever done for us? ...except laws, justice, roads, water viaducts, military protection, peace, and the like.

So, what has Magna Carta done for us? Let me list a few still relevant today even if most are no longer enforceable:

1. In the first, general, point, the guarantee that the Great Charter's principles would apply "to all the free men of the realm to have and to hold to them and their heirs from us (the king) and our heirs (the Monarchy) in perpetuity" (and that means, as I read it, and as courts have for centuries, now).

2. A free Church
3. Responsibility of guardians of minors not to exploit their charge
4. Prevention of bailiffs from seizing land where chattels of the debtor are sufficient to repay the debt.
5. London's privileges extended to all other cities and towns.
6. A permanent venue for the court of common pleas
7. Reasonable penalties for small offences and not so harsh a penalty for a 'grave offence' that life cannot be maintained, and not except by the oath of honest men of the neighbourhood.
8. No one allowed to requisition horses or carts of any freeman.
9. Nor wood...for castle building or any other work.
10. Uniform weights and measures
11. Official's unsupported complaints required to be backed up with credible witnesses.
12. No one imprisoned except by the lawful judgement of his peers (trial by jury) or by the law of the land (get out clause)
13. Right of justice not delayed
14. Freedom of movement of foreigners in time of peace.
15. Right of foreign travel and safety of return.

And I don't count the removal of all foreign-born knights from England as among the rights relevant today!

What does public opinion say in the 21st Century about the relevance of the Magna Carta specifically and other rights generally that should be included in a modern-day Great Charter?

The State of the Nation poll carried out by ICM in 2000 for the Joseph Rowntree Reform Trust asked: "On this card is a list of rights that some people have said should be included in a Bill of Rights...tell me which, if any, you yourself think should be included in a Bill of Rights." They found:

- 94% Right of hospital treatment on the NHS within a reasonable time
- 93% Right to a fair trial before a jury
- 90% Right to know the reasons for government decisions affecting you
- 90% Right to privacy in your phone and mail communications
- 89% Right to know what information government departments hold about you
- 87% Right to join, or not to join, a trade union
- 86% Right of free assembly for peaceful meetings and demonstrations
- 86% Right to join a legal strike without losing your job
- 86% Right to practice your religion without state interference
- 83% Right to privacy when you send or receive emails at home
- 82% Right of British subjects to equal treatment on entering and leaving the UK
- 79% Right of the press to report on matters of public interest
- 76% Right of a woman to have an abortion
- 76% Right of those who are homeless to be housed
- 66% Right of a defendant to remain silent in court without prejudicing his case.

And asked to look through the list again, and to tell them which if any they think should be excluded from a Bill of Rights, only four of that long list had as many as 10% of the public for excluding them: 20% for excluding the right of a defendant to remain silent in court without prejudicing his case, 13% each for excluding the right of those who are homeless to be housed and the right of a woman to have an abortion, and 11% would exclude the right of the press to report on matters of public interest.

But as to the last one, 12% tell us that they would like to have the press banned from reporting anything about elections whatsoever during election times!

Rights Under Threat

To conclude, however, I am for one, worried about the tendency of governments, this government, their predecessors, local and county governments, regional governments below the British state, and certainly governments and unions, alliances and supranational bodies, to forget the rights taken back from the King in 1215.

I am worried about:

- Westminster proposing universal ID cards, not ID cards per se, but what an irresponsible government could, and perhaps would, do with them, and what protection we would have
- Brussels telling me I can only work 48 hours a week
- America telling Americans abroad they must pay income tax, but not vote, as was the case from 1912 when income tax was introduced until January 1977 when President Ford signed the Overseas Citizens' Voting Rights Act into law
- Local governments installing unwelcome and unnecessary chicanery (as I call it) without consultation or consideration to 'calm' traffic which instead infuriates this driver
- Manufacturers of torches putting labels on their products saying that the bulb in the torch should be changed only by a qualified electrician
- Lawyers generally, and specifically those working on contingent fees
- Doctors who are afraid to help in emergencies for fear of being sued
- Nurses cautious about moving patients on trolleys (union rules) or even in bed (health & safety)
- Gardeners who are not allowed to use chain saws for simple tasks, or use spray equipment at all, not just with a dangerous chemical, because of not having the correct certificate
- Teachers who are either afraid themselves or are warned by the teaching unions against taking children on school trips for fear of accidents for which they would be sued
- Head teachers who feel they must ban having cotton wool in their first aid kits in the school for fear that the wool might get caught in the skinned knee
- Governments generally, in the absence of a written constitution
- The judiciary, which in this country has no written constitution to be guardian of
- Political parties, who say one thing in opposition, and do another in government (the then shadow home secretary, Roy Hattersley, promised that a Freedom of Information Act

would be introduced on the first day of a Labour Government, which then took seven years to enact a very watered-down Act

- The police, kept by the courts and the system from defending our persons and property by enforcement of lawbreakers' civil rights
- Homeowners kept from being allowed to defend their property for fear of becoming the victim of the court as well as the thief.
- Parliament telling me I can't be critical at a private dinner party about the Americans forcing my 70+ English wife, all 5'4" of her to take off her shoes to examine them for bombs while allowing three apparently Muslim young men through without a search. Indeed, if this legislation passes who could risk making Life of Brian?
- Charlie Falconer proposing to remove the right of trial by jury in fraud cases
- Charles Clarke telling me that information on the ID card is safe in his hands.
- And above all, the "nanny state" in which we must live.

And not getting enough sleep from all these things I'm worried about!

I leave this question with you: how do we take control over our lives?

Thank you.

Bibliography

Classic treatments of public opinion include WILLIAM ALEXANDER MACKINNON, F.R.S., *Mackinnon on Public Opinion: On the Rise, Progress and Present State of Public Opinion in Great Britain, and Other Parts of the World* (1828); JAMES BRYCE, *The American Commonwealth*, vol. 2 (1888); WALTER LIPPMANN, *Public Opinion* (1922, reprinted 1991); and SLAVKO SPLICHAL, *Public Opinion.: Developments and Controversies in the Twentieth Century* (1999).

The principal work on the Magna Carta is GEOFFREY HINDLEY, *The Book of Magna Carta*, Constable (1990), and widely written about by many authors (see Hindley select bibliography) and the most recent excellent popular work of DANNY DANZIGER & JOHN GILLINGHAM, *1215*, Hodder and Stoughton (2003).

SIR ROBERT WORCESTER, KBE DL

Sir Robert Worcester is Founder and Chairman of MORI (Market & Opinion Research International), London. In 2005 he was appointed by Her Majesty the Queen a Knight Commander of the Most Excellent Order of the British Empire (KBE) in recognition of the “outstanding services rendered to political, social and economic research and for contribution to government policy and programmes”.

Sir Robert is a Governor of the London School of Economics and Political Science (LSE), a Governor of the University of Kent and is Honorary Professor in the Department of Politics and International Relations at the University of Kent and in the Department of Politics and International Studies at Warwick University. He has previously been a Visiting Professor of Government at LSE, Visiting Professor in the Graduate Centre for Journalism at City University, London, and Visiting Professor in the Department of Marketing at the University of Strathclyde, Glasgow. He holds four honorary degrees: Doctor of Science (University of Buckingham), Doctor of Letters (University of Bradford), Doctor of the University (Middlesex University) and Doctor of Laws (University of Greenwich). He is a Past-President of the World Association for Public Opinion Research (WAPOR).

He is Co-Chairman of the British Committee of Jamestown 2007 Quadrennial Celebration of the first English-speaking settlement in the new world, is Chairman of the Pilgrims Society, a Governor of the English-Speaking Union, and a Trustee of the Magna Carta Trust. He is a Freeman of the City of London, a Governor of the Ditchley Foundation, and was a Member of the Fulbright Commission.

Sir Robert is a Deputy Lieutenant of the County of Kent and a Kent County Council appointed Kent Ambassador. He is a Non-Executive Director of Kent Messenger Group and also Maidstone Radio, CTR 105.4 fm, and a Non-Executive Director of the Medway Maritime Hospital NHS Trust until 2004, and is on the Board of Locate in Kent. He is a Member of the Advisory Councils of the National Consumer Council, and Forum for the Future.

He is President of ENCAMS (Keep Britain Tidy), a Vice President of Royal Society for Nature Conservation/Wildlife Trusts, of the United Nations Association and of the European Atlantic Group. Sir Robert is a Trustee of WWT (Wildfowl and Wetlands Trust) and a former Trustee of WWF (Worldwide Fund for Nature).

He is author/co-author, co-editor and editor of more than a dozen books and many articles in newspapers, magazines and in professional journals including recently in the *Financial Times*, *Observer* and *London Evening Standard*. His most recent book, with Roger Mortimore, is ‘Explaining Labour’s Second Landslide’ (Politico’s, 2001). His clubs are the Reform Club and the Beefsteak. He is married, with two sons.

worc@mori.com

Tel: 0207 - 347-3000

Fax: 0207 – 347- 3018

15 June 2005

Magna Carta and other old laws

Old laws

Many people believe that English law starts with Magna Carta. In fact, in the form that it has today Magna Carta dates only from 1297, and there are several extant laws earlier than that:

1267 Statute of Merton	52 Hen. 3 c.1	Distress Act
	52 Hen. 3 c.4	on Distress
	52 Hen. 3 c.15	on Distress
	52 Hen. 3 c.23	on Waste
1275 First Statute of Westminster	3 Edw. 1 c.5	on Freedom of Election
	3 Edw. 1 c.50	on Saving for the Crown
1285 Second Statute of Westminster	13 Edw. 1 c.1	on Estates tail <i>partially repealed in 1887</i>
	13 Edw. 1 c.46	on Commons <i>partially amended and repealed</i>
1290 First Statute of Quia emptores territoris	18 Edw. 1 cc.1-3	on Restraint of subinfeudation <i>partially repealed in 1960</i>

Magna Carta

Magna Carta, or the Great Charter, is in the official Chronological Index to the Statutes as the various statutes of 25 Edw. 1 (1297), though Ruffhead (the other primary source of old laws) would have it as 9 Hen. 3 (1224). Many people believe that it remains the basis of all English law, but they may well be surprised to find that very little of it has remained; nearly all has been repealed over the last 200 years.

Here is Magna Carta as it applies today:

EDWARD by the grace of God, King of England, Lord of Ireland, and Duke of Guyan, to all Archbishops, Bishops, etc. We have seen the Great Charter of the Lord HENRY, sometimes King of England, our father, of the Liberties of England, in these words: Henry by the grace of God, King of England, Lord of Ireland, Duke of Normandy and Guyan, and Earl of Anjou, to all Archbishops, Bishops, Abbots, Priors, Earls, Barons, Sheriffs, Provosts, Officers, and to all Bailiffs and other our faithful Subjects, which shall see this present Charter, Greeting: Know Ye, that We, unto the honour of Almighty God, and for the salvation of the souls of our Progenitors and Successors [Kings of England] to the advancement of Holy Church and amendment of our Realm, of our meer and free will, have given and granted to all Archbishops, Bishops, Abbots, Priors, Earls, Barons, and to all [Freemen] of this our Realm, these Liberties following, to be kept in our Kingdom of England for ever.

(1) First, We have granted to God, and by this our present Charter have confirmed, for Us and

our Heirs for ever, that the Church of England shall be free, and shall have all her whole Rights and Liberties inviolable. We have granted also, and given to all the Freemen of our Realm, for Us and our Heirs for ever, these liberties under-written, to have and to hold to them and their Heirs, of Us and our Heirs for ever.

(9) The City of London shall have all the old Liberties and Customs [which it hath been used to have]. Moreover We will and grant, that all other Cities, Boroughs, Towns, and the Barons of the Five Ports, and all other Ports, shall have all their Liberties and free Customs.

(29) No Freeman shall be taken or imprisoned, or be disseised of his Freehold, or Liberties, or free Customs, or be outlawed, or exiled, or any other wise destroyed; nor will We not pass upon him, nor [condemn him,] but by lawful judgment of his Peers, or by the Law of the Land. We will sell to no man, we will not deny or defer to any man either Justice or Right.

Reserving to all Archbishops, Bishops, Abbots, Priors, Templars, Hospitallers, Earls, Barons, and all Persons, as well Spiritual as Temporal, all their [free Liberties] and free Customs, which they have had in time passed. And all these Customs and Liberties aforesaid, which We have granted to be holden within this our Realm, [as much as appertaineth to Us and our Heirs, we shall observe; and] all men of this our Realm, as well Spiritual as Temporal, [as much as in them is, shall observe the same against all Persons, in like wise.] And for this our Gift and Grant of these Liberties, and of other contained in our Charter of Liberties of our Forest, the Archbishops, Bishops, Abbots, Priors, Earls, Barons, Knights, Freeholders, and other our Subjects, have given unto Us the Fifteenth Part of all their Moveables. And We have granted unto them on the other part, that neither We nor our Heirs shall procure or do any thing whereby the Liberties in this Charter contained shall be infringed or broken. And if any thing be procured by any person contrary to the premises, it shall be had of no force nor effect. These being Witnesses; Lord [Battel] Archbishop of Canterbury, E. Bishop of London, J. Bishop of Bathe, P. of Winchester, H. of Lincoln, R. of Salisbury, W. of Rochester, W. of Worcester, J. of Ely, H. of Hereford, R. of Chichester, W. of Exeter, Bishops; the Abbot of St. Edmunds, the Abbot of St. Albans, the Abbot of Bello, the Abbot of St. Augustines in Canterbury, the Abbot of Evesham, the Abbot of Westminster, the Abbot of Bourgh St. Peter, the Abbot of Reading, the Abbot of Abindon, the Abbot of Malmsbury, the Abbot of Winchcomb, the Abbot of Hyde, the Abbot of Certefey, the Abbot of Sherburn, the Abbot of Cerne, the Abbot of Abbotebir, the Abbot of Middleton, the Abbot of Seleby, the Abbot of Cirencester; H. de Burgh Justice, H. Earl of Chester and Lincoln, W. Earl of Salisbury, W. Earl of Warren, G. de Clare Earl of Gloucester and Hereford, W. de Ferrars Earl of Derby, W. de Mandeville Earl of Essex, H. de Bygod Earl of Norfolk, W. Earl of Albermarle, H. Earl of Hereford, J. Constable of Chester, R. de Ros, R. Fitzwalter, R. de Vyponte, W. de Bruer, R. de Muntefichet, P. Fitzherbert, W. de Aubenie, F. Grefly, F. de Breus, J. de Monemue, J. Fitzallen, H. de Mortimer, W. de Beauchamp, W. de St. John, P. de Mauly, Brian de Lisle, Thomas de Multon, R. de Argenteyn, G. de Nevil, W. de Mauduit, J. de Balun, and others.

We, Ratifying and approving these Gifts and Grants aforesaid, confirm and make strong all the same for Us and our Heirs perpetually, and by the Tenor of these Presents do renew the same: Willing and granting for Us and our Heirs, that [this Charter and] all and singular his Articles for ever shall be stedfastly, firmly, and inviolably observed; [and if] any Article in the same Charter contained yet hitherto peradventure hath not been kept [We will and by authority royal command

from henceforth firmly they be observed].

Of the 37 Articles, "to be kept in our Kingdom of England forever", exactly **three** are still in force. The rest have been repealed over the years. So what happened to them? Let's see:

Repealed by the Statute Law Revision Act 1863 (c.125) and Statute Law (Ireland) Revision Act 1872 (c.98).

(2) If any of our Earls or Barons, or any other, which holdeth of Us in chief by Knights service, shall die and at the time of his death his heir be of full age, and oweth us Relief, he shall have his inheritance by the old Relief; that is to say, the heir or heirs of an Earl, for a whole Earldom, by one hundred pound; the heir or heirs of a Baron, for an whole Barony, by one hundred marks; the heir or heirs of a Knight, for one whole Knights fee, one hundred shillings at the most; and he that hath less, shall give less, according to the custom of the fees.

(3) But if the Heir of any such be within age, his Lord shall not have the ward of him, nor of his land, before that he hath taken him homage. And after that such an heir hath been in ward (when he is come of full age) that is to say, to the age of one and twenty years, he shall have his inheritance without Relief, and without Fine; so that if such an heir, being within age, be made Knight, yet nevertheless his land shall remain in the keeping of his Lord unto the term aforesaid.

(4) The keeper of the land of such an heir, being within age, shall not take of the lands of the heir, but reasonable issues, reasonable customs, and reasonable services, and that without destruction and waste of his men and goods. And if we commit the custody of any such land to the Sheriff, or to any other, which is answerable unto us for the issues of the same land, and he make destruction or waste of those things that he hath in custody, we will take of him amends and recompence therefore, and the land shall be committed to two lawful and discreet men of that fee, which shall answer unto us for the issues of the same land, or unto him whom we will assign. And if we give or sell to any man the custody of any such land, and he therein do make destruction or waste, he shall lose the same custody; and it shall be assigned to two lawful and discreet men of that fee, which also in like manner shall be answerable to us, as afore is said.

(5) The keeper, so long as he hath the custody of the land of such an heir, shall keep up the houses, parks, warrens,

	<p>ponds, mills, and other things pertaining to the same land, with the issues of the said land; and he shall deliver to the Heir, when he cometh to his full age, all his land stored with ploughs, and all other things, at the least as he received it. All these things shall be observed in the custodies of the Archbishopricks, Bishopricks, Abbeys, Priories, Churches, and Dignities vacant, which appertain to us; except this, that such custody shall not be sold.</p>
	<p>(6) Heirs shall be married without Disparagement.</p>
<p>Repealed by the Administrations of Estates Act (1925) (c.23), Administration of Estates Act (Northern Ireland) 1955 (c.24), and Statute Law (Repeals) Act 1969 (c.52).</p>	<p>(7) A Widow, after the death of her husband, incontinent, and without any Difficulty, shall have her marriage and her inheritance, and shall give nothing for her dower, her marriage, or her inheritance, which her husband and she held the day of the death of her husband, and she shall tarry in the chief house of her husband by forty days after the death of her husband, within which days her dower shall be assigned her (if it were not assigned her before) or that the house be a castle; and if she depart from the castle, then a competent house shall be forthwith provided for her, in the which she may honestly dwell, until her dower be to her assigned, as it is aforesaid; and she shall have in the meantime her reasonable estovers of the common; and for her do wer shall be assigned unto her the third part of all the lands of her husband, which were his during coverture, except she were endowed of less at the Church-door. No widow shall be distrained to marry herself: nevertheless she shall find surety, that she shall not marry without our licence and assent (if she hold of us) nor without the assent of the Lord, if she hold of another.</p>
<p>Repealed by the Statute Law (Repeals) Act 1969 (c.52).</p>	<p>(8) We or our Bailiffs shall not seize any land or rent for any debt, as long as the present Goods and Chattels of the debtor do suffice to pay the debt, and the debtor himself be ready to satisfy therefore. Neither shall the pledges of the debtor be dist rained, as long as the principal debtor is sufficient for the payment of the debt. And if the principal debtor fail in the payment of the debt, having nothing wherewith to pay, or will not pay where he is able, the pledges shall answer for the debt. And if they will, they shall have the lands and rents of the debtor, until they be sathised of that which they before paid for him, except that the debtor can show himself to be acquitted against the said sureties.</p>

Repealed by the Statute Law Revision Act 1948 (c.62).	(10) No man shall be distrained to do more service for a Knights fee, nor any freehold, than therefore is due.
Repealed by the Civil Procedure Acts Repeal Act 1879 (c.59).	(11) Common Pleas shall not follow our Court, but shall be holden in some place certain.
	(12) Assises of novel disseisin, and of Mortdancestor, shall not be taken but in the shires, and after this manner: If we be out of this Realm, our chief Justicer shall send our Justicers through every County once in the Year, which, with the Knights of the shires, shall take the said Assises in those counties; and those things that at the coming of our foresaid Justicers, being sent to take those Assises in the counties, cannot be determined, shall be ended by them in some other place in their circuit; and those things, which for difficulty of some articles cannot be determined by them, shall be referred to our Justicers of the Bench, and there shall be ended.
Repealed by the Statute Law Revision Act 1863 (c.125) and Statute Law (Ireland) Revision Act 1872 (c.98).	(13) Assises of Darrein Presentment shall be alway taken before our Justices of the Bench, and there shall be determined.
Repealed by the Criminal Law Act 1967 (c.58) and Criminal Law Act (Northern Ireland) 1967 (c.18).	(14) A Freeman shall not be amerced for a small fault, but after the manner of the fault; and for a great fault after the greatness thereof, saving to him his contenment; and a Merchant likewise, saving to him his Merchandise; and any other's villain than ours shall be likewise amerced, saving his wainage, if he falls into our mercy. And none of the said amerciaments shall be assessed, but by the oath of honest and lawful men of the vicinage. Earls and Barons shall not be amerced but by their Peers, and after the manner of their offence. No man of the Church shall be amerced after the quantity of his spiritual Benefice, but after his Lay-tenement, and after the quantity of his offence.
Repealed by the Statute Law (Repeals) Act 1969 (c.52).	(15) No Town or Freeman shall be distrained to make Bridges nor Banks, but such as of old time and of right have been accustomed to make them in the time of King Henry our Grandfather.
	(16) No Banks shall be defended from henceforth, but such as were in defence in the time of King Henry our Grandfather, by the same places, and the same bounds, as

	they were wont to be in his time.
Repealed by the Statute Law Revision Act 1892 (c.19).	(17) No Sheriff, Constable, Escheator, Coroner, nor any other our Bailiffs, shall hold Pleas of our Crown.
Repealed by the Crown Proceedings Act 1947 (c.44).	(18) If any that holdeth of us Lay-fee do die, and our Sheriff or Bailiff do show our Letters Patents of our summon for Debt, which the dead man did owe to us; it shall be lawful to our Sheriff or Bailiff to attach or inroll all the goods and chattels of the dead, being found in the said fee, to the Value of the same Debt, by the sight and testimony of lawful men, so that nothing thereof shall be taken away, until we be clearly paid off the debt; and the residue shall remain to the Executors to perform the testament of the dead; and if nothing be owing unto us, all the chattels shall go to the use of the dead (saving to his wife and children their reasonable parts).
Repealed by the Statute Law Revision Act 1863 (c.125) and Statute Law (Ireland) Revision Act 1872 (c.98).	(19) No Constable, nor his Bailiff, shall take corn or other chattels of any man, if the man be not of the Town where the Castle is, but he shall forthwith pay for the same, unless that the will of the seller was to respite the payment; and if he be of the same Town, the price shall be paid unto him within forty days.
	(20) No Constable shall distrain any Knight to give money for keeping of his Castle, if he himself will do it in his proper person, or cause it to be done by another sufficient man, if he may not do it himself for a reasonable cause. And if we lead or send him to an army, he shall be free from Castle-ward for the time that he shall be with us in fee in our host, for the which he hath done service in our wars.
	(21) No Sheriff nor Bailiff of ours, or any other, shall take the Horses or Carts of any man to make carriage, except he pay the old price limited, that is to say, for carriage with two horse, x.d. a day; for three horse, xiv.d. a day. No demesne Cart of any Spiritual person or Knight, or any Lord, shall be taken by our Bailiffs; nor we, nor our Bailiffs, nor any other, shall take any man's wood for our Castles, or other our necessities to be done, but by the licence of him whose wood it shall be.
Repealed by the Statute Law Revision Act 1894 (c.56).	(22) We will not hold the Lands of them that be convict of Felony but one year and one day, and then those Lands

	shall be delivered to the Lords of the fee.
Repealed by the Statute Law (Repeals) Act 1969 (c.52).	(23) All Wears from henceforth shall be utterly put down by Thames and Medway, and through all England, but only by the Sea-coasts.
Repealed by the Statute Law Revision Act 1863 (c.125) and Statute Law (Ireland) Revision Act 1872 (c.98).	(24) The Writ that is called Praeceptum in capite shall be from henceforth granted to no person of any freehold, whereby any freeman may lose his Court.
Repealed by the Statute Law Revision Act 1948 (c.62).	(25) One measure of Wine shall be through our Realm, and one measure of Ale, and one measure of Corn, that is to say, the Quarter of London; and one breadth of dyed Cloth, Russets, and Haberjects, that is to say, two Yards within the lists. And it shall be of Weights as it is of Measures.
Repealed by 9 Geo 4 c.31 and 10 Geo 4 c.34.	(26) Nothing from henceforth shall be given for a Writ of Inquisition, nor taken of him that prayeth Inquisition of Life, or of Member, but it shall be granted freely, and not denied.
Repealed by the Statute Law Revision Act 1863 (c.125) and Statute Law (Ireland) Revision Act 1872 (c.98).	(27) If any do hold of us by Fee-ferm, or by Socage, or Burgage, and he holdeth Lands of another by Knights Service, we will not have the Custody of his Heir, nor of his Land, which is holden of the Fee of another, by reason of that Fee-ferm, Socage, or Burgage. Neither will we have the custody of such Fee-ferm, or Socage, or Burgage, except Knights Service be due unto us out of the same Fee-ferm. We will not have the custody of the Heir, or of any Land, by occasion of any Petit Serjeanty, that any man holdeth of us by Service to pay a Knife, an Arrow, or the like.
	(28) No Bailiff from henceforth shall put any man to his open Law, nor to an Oath, upon his own bare saying, without faithful Witnesses brought in for the same.
Repealed by the Statute Law (Repeals) Act 1969 (c.52).	(30) All Merchants (if they were not openly prohibited before) shall have their safe and sure Conduct to depart out of England, to come into England, to tarry in, and go through England, as well by Land as by Water, to buy and sell without any manner of evil Tolts, by the old and rightful Customs, except in Time of War. And if they be of a land making War against us, and such be found in our Realm at the beginning of the Wars, they shall be attached

	without harm of body or goods, until it be known unto us , or our Chief Justice, how our Merchants be intreated there in the land making War against us; and if our Merchants be well intreated there, theirs shall be likewise with us.
Repealed by the Statute Law Revision Act 1863 (c.125) and Statute Law (Ireland) Revision Act 1872 (c.98).	(31) If any man hold of any Eschete, as of the honour of Wallingford, Nottingham, Boloin, or of any other Eschetes which be in our hands, and are Baronies, and die, his Heir shall give none other Relief, nor do none other Service to us, than he should to the Baron, if it were in the Baron's hand. And we in the same wise shall hold it as the Baron held it; neither shall we have, by occasion of any such Barony or Eschete, any Eschete or keeping of any of our men, unless he that held the Barony or Eschete hold of us in chief.
Repealed by the Statute Law Revision Act 1887 (c.59).	(32) No Freeman from henceforth shall give or sell any more of his Land, but so that of the residue of the Lands the Lord of the Fee may have the Service due to him, which belongeth to the Fee.
Repealed by the Statute Law Revision Act 1863 (c.125) and Statute Law (Ireland) Revision Act 1872 (c.98).	(33) All Patrons of Abbies, which have the King's Charters of England of Advowson, or have old Tenure or Possession in the same, shall have the Custody of them when they fall void, as it hath been accustomed, and as it is afore declared.
	(34) No Man shall be taken or imprisoned upon the Appeal of a Woman for the Death of any other, than of her husband.
Repealed by the Sheriffs Act 1887 (c.55).	(35) No County Court from henceforth shall be holden, but from Month to Month; and where greater time hath been used, there shall be greater: Nor any Sheriff, or his Bailiff, shall keep his Turn in the Hundred but twice in the Year; and nowhere but in due place, and accustomed; that is to say, once after Easter, and again after the Feast of St. Michael. And the View of Frankpledge shall be likewise at the Feast of St. Michael without occasion; so that every man may have his Liberties which he had, or used to have, in the time of King HENRY our Grandfather, or which he hath purchased since: but the View of Frankpledge shall be so done, that our Peace may be kept; and that the Tything be wholly kept as it hath been accustomed; and that the Sheriff seek no Occasions, and that he be content with so much as the Sheriff was wont to have for his Viewmaking

	in the time of King HENRY our Grandfather.
<p>Repealed by the Statute Law Revision Act 1863 (c.125) and Statute Law (Ireland) Revision Act 1872 (c.98).</p>	<p>(36) It shall not be lawful from henceforth to any to give his Lands to any Religious House, and to take the same Land again to hold of the same House. Nor shall it be lawful to any House of Religion to take the Lands of any, and to lease the same to him of whom he received it. If any from henceforth give his Lands to any Religious House, and thereupon be convict, the Gift shall be utterly void, and the Land shall accrue to the Lord of the Fee.</p> <p>(37) Escuage from henceforth shall be taken like as it was wont to be in the time of King HENRY our Grandfather;</p>