

THE CONTINUING IMPORTANCE OF MAGNA CARTA

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Magna Carta, or as it is properly called the Great Charter of Liberty, was born on 15 June 1215 at Runnymede when King John – Bad King John as he is more commonly known – was persuaded to accede to a number of demands made by a powerful group of his Barons. It may well have been short lived as it was swiftly declared by Pope Innocent III, at John’s urging, to be null and void. It was, perhaps not unreasonably, said to have been procured through extortion.

It was however one of those rare pieces of legislation, if not perhaps unique, which was not simply revived but has been reaffirmed on numerous occasions in the centuries since John’s death. It was, for instance, reissued three times by John’s son, Henry III. It was entered on the Parliament Rolls by Edward I on 28 March 1297. It has retained its statutory force ever since, although its application has been severely curtailed by a number of amending statutes; only Chapters 1, 9 and 29 remain in force. Of those three sections Chapter 29, or chapters 39 and 40 as it was in the original 1215 version, is the one that resonates today as recent events in Parliament have shown. I refer of course to David Davis MP’s decision to stand down from Parliament and fight a by-election on the issue of 42 day detention. For him as for so many people here and around the world Magna Carta, and chapter 29 in particular, remains an enduring symbol of freedom; of the fundamental rights that lie at the very heart of our open and democratic societies as they have developed over the long centuries from Runnymede.

Chapter 29 stated originally that:

“No freeman is to be taken or imprisoned or disseised of his free tenement or of his liberties or free customs, or outlawed or exiled or in any way ruined, nor will we go against such a

man or send against him save by lawful judgment of his peers or by the law of the land. To no-one will we sell or deny or delay right or justice.”

This was amended in 1354 by Edward III to read as follows:

“... no man of what estate or condition that he be, shall be put out of land or tenement, nor taken, nor imprisoned, nor disinherited, nor put to death, without being brought in answer by due process of law.”

In these statements we can see the origins of the commitment to the right to fair trial and, perhaps without exaggeration, to our commitment to the rule of law. In placing his seal on Magna Carta John attested to the fact that he was not above the law. A point King Charles might have thought to remember when arraigned before the Parliament appointed High Court of Justice on 20 January 1649 for High Treason. It was a point not lost on the newly formed United States of America when it was given the force of law in the 5th and 14th Amendments to its Constitution. More recently its importance was no doubt recognised by those drafting the European Convention on Human Rights, where it finds itself articulated as Article 6. Its influence goes wider than this of course, and the principle it states finds expression in the constitutional framework of countries throughout the world. Its significance continues to resonate both here and abroad and will no doubt do so over the coming years as governments seek to strike the right and just balance between issues of security, individual rights, the rule of law and the principles of justice that lie at the foundation of society.

With this in mind I think the two questions posed in 1959 by the comedian Tony Hancock can be answered robustly. He, famously, asked his co-jurors in an episode of his half hour comedies entitled *Twelve Angry Men*, if Magna Carta meant nothing to them? Did she die in vain? The answer to the first question must clearly be no. She lies at the very heart not just of our democracy but of democracies throughout the world. The answer to the second question is that she did not die at all. Until chapter 29 is repealed we can say with confidence that she did not die, whether in vain or otherwise. Given its influence, and its centrality to the rule of law, I must very much doubt that any truly democratic society could even attempt to abrogate the principle to which it gives expression.