

The Relevance of the Magna Carta in the 21st Century

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There are many myths which surround the Magna Carta. That it was only a fight between the barons and the King. It certainly was, but not only that. That it was signed at Runnymede. It wasn't, it was sealed. That it wasn't the beginning of parliamentary democracy. Well, perhaps not, technically.

It was the beginning of the spread of real democracy, not on the Athenian model. For Magna Carta is the overturning for the first time of 'divine rule' (King John, and somewhat later, King George III's power over the American colonials), the beginning of representative democracy, and as the Lord Chief Justice of the United Kingdom recently quoted²: "*Nullum scutagium vel auxilium ponatur in regno nostro, nisi per commune consilium regni nostril*", which roughly translated into English means 'No taxation without representation'.

Now where have I heard that phrase before...?

It was an idea that's time had come. It was followed just eight years later, in the 'Golden Bull' in Hungary. England's greatest export, it is now embodied in the Rule of Law in over 100 countries.

And it was the foundation of human rights.

It is time then, to examine what happened then, and now, what's happening now, the relevance of the Magna Carta in our lives, its applicability today.

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² The Lord Judge, *1215 and All That*, Irish Legal History Society Lecture, Belfast, Northern Ireland, 26 March 2012

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 the rule of law, jurisprudence, of justice.

There are academic purists and their readers who believe that there are only three clauses in the 1215 Great Charter in law in this country today. What nonsense.

It certainly is clear that many of the issues of the 13th Century have no relevance even to 21st Century to 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 today's European Union.

We are no longer protective of our widows being compelled to marry not because we don't, but because it is no longer even thinkable, or kydells (i.e. fish weirs) being removed from the Thames and the Medway, or the banishment from the kingdom of all foreign-born knights (I am happy to say), nor the imposition of responsibility removed for villages being compelled to make bridges. All these things were guaranteed by the Magna Carta to all Englishmen and women after 1215.

The Magna Carta faced the threat a few years ago of the removal of *habeas corpus*, the right to trial by jury, by the then Home Secretary, Charles Clarke, and then Secretary of State for Constitutional Affairs, (now Lord) 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, at a time when their Labour Government was proposing to be able to hold a suspect for 92 days, 92 days, without charging him – or her – with a crime. Do you recall the phrase *Justice delayed is justice denied*? You will find it in Clause 40 of the Magna Carta.

And today in America, the debate of retention of uncharged suspect, guilty no doubt, but still 'innocent until **proven** guilty', still incarcerated **years** after detention.

What are the other rights we have under the Magna Carta that are relevant today, so long as a despotic or even misguided President and Congress or Prime Minister and Cabinet, under our systems of a Rule of Law doesn't take them away from us?

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.

What has Magna Carta done for us? Let me list a few still relevant today:

1. In the first place, 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" That means, as I read it, and as courts have for centuries, now, us, you and me.
2. A free Church. This is now the case in over 100 countries throughout the world.

3. Responsibility of guardians of minors not to exploit their charge. They'd lock you up now for that.
4. Prevention of bailiffs from seizing land where chattels of the debtor are sufficient to repay the debt. Not on now.
5. London's privileges extended to all other cities and towns. All mayors and councils are elected these days.
6. A permanent venue for the court of common pleas. We know where our courts are sitting; then, it was wherever the King chose it to be.
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. Trial by jury. Article 39
8. No one allowed requisitioning the horses or carts of any freeman. They were then.
9. Nor wood...for castle building or any other work. Not much call for it now, for castles anyway.
10. Uniform weights and measures. A pint's a pint for all that. Jonathan Neame told me that the pint became "official" in 1215.
11. Official's unsupported complaints required to be backed up with credible witnesses. Most of the time they are, sooner or later, as in the case of Andrew Mitchell.
12. No one imprisoned except by the lawful judgment of his peers (trial by jury) or by the law of the land (get out clause) then and now.
13. Right of justice not delayed. Well, most of the time.
14. Freedom of movement of foreigners in time of peace. Except at immigration counters and visas refused or delayed.
15. Right of foreign travel and safety of return.
16. And bit by bit, universal suffrage with women the last to gain the right to vote. Not entirely. When I arrived in this country I found that as an American abroad, I still had to pay taxes to the IRS, but had lost the right to vote.

By the beginning of the XIII Century the people of England, having been conquered by a foreign aristocracy who had despised their language and lack of culture, were becoming more

conscious of England to **their** country, rather than Kent, Mercia, and the other peoples sharing the island which contained them.

2015 is the 800th anniversary of the **sealing** (not signing, as in the 19th Century woodcuts) of the Magna Carta.

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 solidly upheld by both public opinion and legal testing over centuries, and which survives even today, 798 years later.

I take much pride and not a little pleasure being asked to attend as your speaker this evening to deliver this lecture. I do so for many reasons. One is historic. When 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 a two of the 1215 versions of the Magna Carta. When I decided to come to London to live in January 1969, on our first weekend with my family we made a pilgrimage to Runnymede to visit the site of the confrontation between the Barons (and Bishops) and the King. Imagine my surprise when as chairman of the Pilgrims Society I found myself a member of the Magna Carta Trust two decades later.

Last year I was at a conference at Dichley Park in Oxfordshire, and joining my table were the German Ambassador and a former Canadian High Commissioner. As they joined the table I told them that I'd taken on the 800th Chairmanship, and I asked them the salience of Magna Carta in their countries, thinking I knew what they each would say. To my surprise, it was the German Ambassador who was the first to speak up, saying 'Everyone in Germany knows the Magna Carta, it's the foundation of democracy, and it's in the schools' syllabus...''.

The Japanese Ambassador and his wife were with us for the weekend a few months later, and I asked them the same question, and got the same answer. I then twigged; the occupation post WW II and the indoctrination of democracy into their countries, Germany and Japan.

What led up to 1215?

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!

John 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 angry, but they were determined to get even.

The Northern barons were up in arms, literally, somewhat earlier, but it was in August 1213, in St. Alban's Abbey, that the barons first met to debate their choices which came down fundamentally to regicide vs. demands of a return to the rights promised as early as 1100 in the coronation oath of Henry I. Their demands were summarily rejected.

For two years there were battles, sieges, and stand offs. The barons met again in Bury St Edmunds in 1214. And that led up to 1215, their first collective meeting with the King, in the City of London.

By January of that momentous year, the barons were ready for rebellion, coming to the conference in London 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. The Barons had no easy alternative to King John, Arthur had 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. And his Coronation Charter followed on from the early 7th Century and the first code of English laws, by the remarkable King Aethelbert of Kent and subsequent Kings of Kent, recorded in a remarkable 12th Century book, the *Textus Roffensis*.

For five 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 thinking that would guarantee his seat of power and treasure, but ten days later London embraced the rebel cause by opening its gates to the rebels one Sunday morning. John's taxation of London's freemen had turned the City against him. John knew then he'd lost the civil war, and so sued for peace.

The original Great Charter was agreed (sealed, not signed) by King John on 15th June 1215 when he acceded to barons' and bishops' demands to limit his powers.

Nearly five hundred years later Magna Carta was central to the mainly Englishmen who drafted both the American Declaration of Independence and the Constitution of the United States. The newly-independent United States included many of its concepts in the 1791 Bill of Rights.

In 1870 Bishop William Stubbs asserted "*the whole of the constitutional history of England is a commentary on this Charter.*"

In 1965 Lord Denning, the most celebrated English judge of the 20th Century, described Magna Carta as *"the greatest constitutional document of all times – the foundation of the freedom of the individual against the arbitrary authority of the despot."*

It has been described as 'England's greatest export'.

Another lasting legacy is seen in the UN Declaration of Human Rights adopted in 1948. Speaking at the UN General Assembly as she submitted the UN Declaration, Mrs. Eleanor Roosevelt argued that *"we stand today at the threshold of a great event both in the life of the United Nations and in the life of mankind. This declaration may well become the international Magna Carta for all men everywhere"*.

The 800th anniversary of Magna Carta is an occasion to deepen understanding of the crucial role it has played in our development. It is a time to commemorate the individual rights we enjoy today. It is an opportunity to strengthen human rights around the world.

The Magna Carta Trust's 800th Anniversary Commemoration Committee's 'Aspirations'

The Magna Carta Trust's 800th Anniversary Commemoration Committee which I chair is charged by the Magna Carta Trust to co-ordinate commemoration activities, raise the profile of the anniversary and deliver a number of key national and international aspirations. These and much else of the history and planning is at www.magnacarta800th.com.

Our prime ambition was to recruit the Queen as the Patron of the Magna Carta Trust, which she readily agreed, including her intention to be at Runnymede on the morning of 15th of June 2015 for the 800th anniversary Commemoration.

The British Government is about to announce its plans to hold a Global Legal Forum in February 2015 with its theme the Magna Carta over two thousand judges and lawyers are expected from over 100+ countries (to be announced next week).

It will be the biggest exhibition the British Library has ever held, where their own 1215 versions, two of the four extant, will be on display along with the Charter of the Forest and the King's Writ. Other exhibitions include both the British National Archives and the London Guildhall and at the American National Archives in Washington, and at the Library of Congress and in Boston, Los Angeles, in Houston and in New York and in Canberra in Australia. all of which will have on display one other of the four 'originals'.

All the Magna Carta towns are organising their commemoration, with Salisbury and Lincoln, Durham and Oxford, London, Hereford Cathedral all having original copies from 1215 to 1297 on display.

There will be evensongs and congregations at Cathedrals, books and plays ("***The Great Charter***"), a "LiberTea" day throughout the world, "LiberTrees" we hope to be planted in every school in Britain, and essay, poetry and debating society competitions. The British Council is organising commemorations and contests in over 100 countries.

The American Bar Association, International Bar Association, and the Bar Council and the Law Society here have all set up their own Magna Carta 800th Committees and are planning observations of the Anniversary, sponsoring moot courts. Rule of Law days at their well attended conferences; academic symposiums are planned in British, America, France, Poland and in the Caribbean with speakers commemorating Magna Carta from many countries, sharing their commitment to its principles.

We hope to see Parliament as it was fifty years ago in all its splendour assembled next year with the Speaker and Lord Speaker, MPs and Peers, Supreme Court Justices and Ambassadors and High Commissioners, Archbishops of Canterbury and York, meeting with the senior members of the American Congress and Senate assembled in the 1,000 year old Palace of Westminster's Westminster Hall to handover the Lincoln 1215 Magna Carta to the Library of Congress in the Autumn of 2014, to be displayed in the Rotunda of the Congress of the United States while the Lincoln Cathedral and Castle's forecourt is undergoing a £20 million renovation, restoration and building a new facility there to house safely and display widely their 1215 copy.

We already have a Magna Carta commemorative coin planned for circulation by the Royal Mint. A set of Magna Carta stamps is another 'aspiration' under consideration.

Schools – Education is the primary "legacy". But the British Library, the British Council, Salisbury and others are all preparing teaching aids/study guides and the like. The Department of Education has consulted with our academic experts and whereas the initial plans for the revisions to start in the 2014 school year had the Magna Carta as part of the timeline for very young pupils Magna Carta has now been moved up a year and also included for the early teens. The former to be included in the timeline and the latter the "meaning" of the principles of Magna Carta. A facsimile on parchment of the Magna Carta on the one side and bullet point explanation of its principal causes on the other. The Home Office is encouraging counties to give the same quality facsimile of the Magna Carta to all new immigrants during 2015 and some counties are planning to give it to parents of new babies born in that year. The British Council is encouraging these materials, including DVDs and other teaching materials, in their worldwide programme "Teaching English" and it's also included for the million plus people living in Britain where English is not their first language.

I can hardly wait. I'd like people everywhere to join in the celebration. We wouldn't be here tonight, enjoying the liberties we do, if the Magna Carta hadn't led the way.

Thank you.