

SCHC 382G

MAGNA CARTA

By Joel W. Collins, Jr.

Magna Carta, Latin for “Great Charter”, was the product of years of bitter confrontation and struggle among English King John, Pope Innocent III, the Archbishop of Canterbury Stephen Langton and 25 English Barons. This confrontation culminated in the historic pact agreed to on June 15, 1215 and sealed by King John at Runnymede, England. Magna Carta reshaped the relationship between the state and its citizens. It has been called the “Turning point in English history” and the “Bulwark of our liberties”. It is the bedrock of the concepts of freedom, justice and the rule of law. It is the cornerstone of the unwritten British Constitution. Magna Carta became the foundation of constitutions of various countries around the world, especially the Constitution of the United States of America in 1787.

Magna Carta can be described variously or collectively as a pact, a contract, a peace treaty, a law, an answer to petitions and a concession or declaration of rights. It was a renewal of pledges of fealty and homage by the Barons in exchange for guarantees by the King of rights and liberties of free men. Peasants also known as churls or serfs did not come within the scope of Magna Carta at the time. The meaning of the term “freemen” used in Magna Carta broadened over time.

King John was the son of King Henry and his famous wife, Eleanor of Aquitaine. He was the younger brother of popular and famous King Richard the Lionheart. When Richard died in 1199, John became not only the King of England, but also the Lord of Ireland, the Duke of Normandy and Aquitaine and the Count of Anjou. King John was engaged in a costly war in

France which required huge tax revenue to support. His main rival for the throne was his nephew, Arthur, who was supported by the King of France. One of the worst things John did was to arrange the arrest, imprisonment and death of Arthur. Some say Arthur was castrated on King John's order and died from the shock and trauma of the procedure. Others believe King John personally killed Arthur.

King John offended his Barons in multiple ways. He arbitrarily raised their taxes without their consent. He took property without compensation. By 1211 his tax revenue was six times as much as it was the first year of his reign. He abused his royal power by doing such things as refusing to allow widows of Barons to remarry. Sometimes he dictated to them who they must marry. He demanded sexual favors from the wives and the daughters of the Barons. He was known to take hostages and kill them instead of releasing them, even when a ransom was paid. He took prisoners and starved them to death. He withheld titles from those who had lawfully inherited them and demanded payments before those titles would be recognized. He refused to honor, and in fact flaunted, other well established conventions and traditions of royal society in that era. When asked if it was fair for him to be referred to as "Bad King John", Sir Robert Worcester, Chair of the Magna Carta Trust 800th Anniversary Committee, responded, "No, he was much worse than that".

These 25 Barons held inherited titles and estates. They were part of the feudal system which for centuries was the structure of society. Barons owed allegiance and fealty to the King, and the tenants who worked the land of the Barons owed the same allegiance and fealty to the Barons. Interestingly, only one of the 25 Barons in 1215 was of Anglo-Saxon lineage. The others were of French/Norman ancestry. The Anglo-Saxon land owning nobles had their land confiscated by William the Conqueror and his son William Rufus following the Norman

Conquest in 1066. Much of the property of the Anglo-Saxon ruling class became the “spoils of war”.

One Baron who had previously supported King John, Robert Fitzwalter, came to be the leading Baron in opposition. After Fitzwalter sided against him, King John stripped him from ownership title to some of the land Fitzwalter had inherited. Soon after this occurred, Fitzwalter and some other Barons started plotting against the King.

When the Barons first met on August 4, 1213 in St. Albans, a small city near London, named for the first English martyr, they considered regicide. At or shortly after this meeting, the Barons selected Robert Fitzwalter as their leader. The moral leader and advisor of the Barons was the recently appointed Archbishop of Canterbury, Stephen Langton. Langton was born in Lincolnshire and taught theology in Paris. The French King approved of him. This explains why King John of England did not, at least at first, agree to his appointment as Archbishop of Canterbury. Pope Innocent III appointed Langton to serve as the Archbishop in 1206. This was the highest religious office in England. It should be remembered that it was not until the reign of King Henry VIII in the 16th Century that the Anglican Church or Church of England was established.

During the reign of King John, the Catholic Church owned approximately 25% of the land in England from which it derived substantial income. It is estimated that the Church’s income at the time was nearly four times that of the King. This explains why the King would have great interest in who was appointed by the Pope to serve as Archbishop of Canterbury. Upon the death of the previous Archbishop in 1205, it was expected that, under church law and custom, the clergy of England would choose their own successor who would then be approved by the Pope. That convention also presupposed the clergy would select someone favored by the

King. This convention did not hold. Because they could not agree, the Pope eventually selected Stephen Langton. King John's refusal to accept Langton led to the decision by Pope Innocent III to place England under an Interdict. This served to excommunicate King John and deny him and his subjects the right to all religious rituals and sacraments. During the Interdict there were no religious services of any kind in England. This meant no baptisms, no weddings, no funerals and no worship services. In response to this, King John seized the estates of those who opposed him including the church. This allowed King John to receive the income including rents paid on the church's real estate. Because of this financial benefit, King John was not altogether eager to resolve this standoff. These highly confrontational positions were among the issues resolved by Magna Carta.

At a meeting in the town of Bury St. Edmunds in 1214, the Barons refused King John's demand that they pay a scutage, i.e. money given in lieu of personal military service. This was a huge affront to the King.

During his discussions with the Barons and representatives of the King, Stephen Langton cited stories from the Bible where kings and rulers checked their own power or discretion. He used as precedent and a source of moral authority the Coronation Charter of King Henry I, the youngest son of William the Conqueror, in the year 1100. This Coronation Charter, issued 115 years before Magna Carta, was the first written concession of rights to his subjects by an English King. Up to that time the accepted belief was that kings ruled by "Divine Right". Kings were regarded as God's chosen leaders here on earth. Henry's Coronation Charter voluntarily limited his power. He agreed not to impose inheritance taxes. He also pledged that widows of Barons would be able to marry or not as they wished. History showed that Henry did not always keep his promises. He sometimes exacted a price before a widow of a Baron could remarry. Despite

these violations, King Henry's Coronation Charter provided Archbishop Langton with a historical basis to challenge King John. It may be said that Langton's brave stand gave rise to the famous phrase "a government of laws and not of men". Stephen Langton is regarded by some historians as the hero of Magna Carta.

Among the notable provisions of King Henry I's Coronation Charter were the clauses where he stated "I restore to you the law." It stated "I will neither sell nor put to farm nor on the death of Archbishop or Bishop or Abbott will I take anything from the Church's demesne" (meaning free ownership of land). It also pledged "If any of my Barons or other men should wish to give his daughter, sister, niece or kinswoman in marriage, I will neither take anything from him for this permission, and if, on the death of her husband, the wife is left without children, she shall have her dowry and right of marriage, and I will not give her to a husband unless according to her will." Most importantly, Henry pledged in his Charter, "If any of my Barons or men commit a crime, he shall make amends according to the extent of the crime as he would have done before the time of my father." This was essentially a written concession of the right to due process of law.

If they were forced to kill King John, the Barons considered inviting King Philip of France to assume the English Crown. At the time it was unthinkable not to have a duly crowned King with royal blood. Fortunately for us all, the controversies were resolved peaceably, at least peaceably by the standards of the day. A representative of the King, his Justicar, attended the meeting at St. Albans and also later meetings where further negotiations were held. At the meetings the King's Justicar negotiated by offering compensation for some of King John's past abuses and violations of customs. These offers were not accepted.

King John's first child Henry was only 8 years old in 1215. King John had married Henry's mother, Isabella, in August 1200 when she was perhaps as young as 12. Had there been an heir of sufficient age, the Barons may have struck a deal with him to depose his father. If this had happened there would have been no need for Magna Carta. By the summer of 1215 the Barons had rallied substantially more soldiers than had the King. King John had suffered a stunning defeat at the Battle of Bouvines in northern France on July 26, 1214, despite having a larger military force. This defeat cost him all of his French territories. It was after this battle that King John received one of his pejorative nicknames, "Softsword". Rather than being defeated again and perhaps killed or losing his throne, King John, recognizing his huge disadvantage, reluctantly agreed to the demands of the Barons.

The story of Magna Carta is not complete without an understanding of the vital role of Sir William Marshal. Sir William Marshal was the most famous and admired knight of his time. He was a large, strong man who always won jousting tournaments and was a hero in battle. King John's father, King Henry II, made Marshal an instant multi-millionaire by giving him the hand of Isabel de Clare, heiress to enormous estates in Normandy, England, Wales and Ireland. Kings had for centuries used such patronage to wield power and control and to garner loyalty.

When sides were being chosen years later in the run up to Magna Carta, Marshal, despite his awareness of King John's abuses, flaws and weaknesses, stayed true to his vows of loyalty. We are fortunate he did so because his credible counsel contributed to King John's acquiescence to the demands of the barons.

The meeting from June 15-19, 1215 was at Runnymede, a meadow on the bank of the river Thames west of London. This location was approximately halfway between the military camp of the Barons and the camp of King John at Windsor Castle. The document consisting of

about 3500 words written in abbreviated Medieval Latin was agreed to by both sides. No one signed Magna Carta. King John and the Barons swore their oaths promising to abide by its terms. In those days oaths were sacrosanct.

Following this momentous meeting of the minds, scribes were enlisted to prepare on pieces of vellum (lamb hide) of various sizes, duplicate originals of Magna Carta. Using gall based ink, forty copies were hand written by scribes using quills made from flight feathers of a goose or swan. Gall based ink is made from a liquid drawn from a protective gall or “pimple” formed on the trunk of an oak tree after it has been stung by a wasp to lay its eggs. Soot was added to give it color. These copies were sent to the Bishops, the Sheriffs, the forest keepers and others who had a stake in the controversies. Of these forty copies, only four now remain. Two are in the British Library in London. The other two are at Lincoln Cathedral and Salisbury Cathedral. One of those in London still has the great seal of King John attached to it. It is generally accepted that one of these two originally belonged to the town of Canterbury. All forty copies were sealed by the King’s beeswax seal colored green by the addition of verdigris, the oxidation scraped from the surface of copper or brass formed by exposure to the weather. This great seal provided official proof of what the King had agreed to. The King’s seal was suspended by two cords attached at the bottom of the official copies of Magna Carta. This seal served as unquestioned validation of the legitimacy of the Charter.

The sixty-three clauses in Magna Carta protected the Barons from arbitrary and abusive royal power. They protected the rights of widows, property rights and protection against abusive taxes by requiring “reasonable” levied taxes by mutual consent. Clauses 12 and 14 requiring “common counsel of the realm” laid the groundwork for a Parliament which came 50 years later. Magna Carta re-established traditional forest and fishing rights. It guaranteed the independence

and freedom of the Church from royal control or abuse. It acknowledged the freedom of the city of London, then the largest in England, inhabited by nearly 150,000 people. It regularized standards of weights and measures, including the English pint, thus providing a remedy for what would be regarded today as unfair trade practices.

Clauses 38, 39 and 40 of Magna Carta, the so called “Golden Passages”, are accepted as the forerunners of the concept of “a government of laws and not of men”.

The right of Habeas Corpus as well as other concepts of the American legal system can be traced to Magna Carta. The Fifth Amendment to the United States Constitution guarantees the right against self-incrimination. It finds its roots in Magna Carta. Clause 38 states: “Henceforth no bailiff shall upon his own unsupported accusation put any man to trial without producing credible witnesses to the truth of the accusation”.

Clause 39 states: “No free man shall be taken, imprisoned, disseised, outlawed, banished, or in any way destroyed, nor will We proceed against or prosecute him, except by the lawful judgment of his peers and by the law of the land”. This clause has been described by Constitutional law Professor A. E. Dick Howard of the University of Virginia as “the seed which was to come on full flower in the Enlightenment”.

Clause 40 states: “To no one will We sell, to none will We deny or delay, right or justice”. (King John referred to himself with the royal “We”.)

Magna Carta is a source of the American Constitutional right of trial by jury, in both criminal and civil cases, guaranteed by the Sixth and Seventh Amendments to the United States Constitution.

Pope Innocent III had clashed with King John before 1215, but later reconciled and supported King John. After reluctantly agreeing to Magna Carta, King John sent his emissary to Rome and asked the Pope to issue a “Papal Bull” annulling Magna Carta. Pope Innocent III agreed and did so on August 23, 1215, only about six weeks after Magna Carta had been sealed. The Pope then proceeded to excommunicate all the Barons. This caused a Civil War between the King and the Barons. Approximately a year later, both King John and Pope Innocent III were dead. Pope Innocent III is remembered for another important decree. He further advanced the right to trial by jury by abolishing the bizarre practices of “trial by ordeal”. When a new king and pope were installed, Magna Carta was reinstated as well. A newly revised version of Magna Carta was issued in 1217 under the seal of William Marshal, then serving as Regent of England and guardian of young King Henry III.

Another amended version of Magna Carta was issued by Henry III in 1225. This version of Magna Carta was adopted and confirmed by later English Kings and finally codified in the year 1525, three hundred and ten years after the original Magna Carta.

In the following centuries, some of the clauses of Magna Carta were repealed or became irrelevant. The provisions concerning the freedom of the church, the freedom of the City of London, the right to due process of law and trial by jury remain in force today. Not until English barristers in the 17th and 18th centuries cited it with authority and not until English judges issued rulings citing it as binding precedent did Magna Carta achieve its rightful place in British and American law. Part of the power or mystique of Magna Carta is the romantic halo which has gathered around it over the centuries. Magna Carta continues to be a powerful precedent and source of legal and moral authority for the rights of people, protecting them from abuse and unfair treatment by their government. In his seminal four volume work, A History of the English

Speaking Peoples, Sir Winston Churchill wrote, “The English speaking world owe far more to the vices of John than to the labours of virtuous sovereigns...”

The American court system today is based upon the judicial system developed over many centuries in England. Indeed, while the 13 original American states were British colonies, they had legal and judicial systems essentially identical to those which existed in England. The current civil court system in most states, including South Carolina, is known as the “Court of Common Pleas”. Magna Carta contains Clause 17 which states: “Common pleas shall not follow our common court but shall be held in some fixed place”. In other words, King John agreed he would not convene court in whatever distant place he may wander, but instead would establish courts in fixed places so that disputes could be resolved in his absence. This turned out to be Westminster. Civil remedies and fines referred to as “ameracements” could not be imposed under clause 20 of Magna Carta “except by the sworn evidence of worthy men of the neighborhood”. This is another concession to the right of due process of law.

Before the end of the middle ages, Magna Carta was confirmed 38 times by various English monarchs. In 1297 King Edward I placed it in the statute book where it remains. Any statute which contradicts it is considered null and void. It is the Supreme Law of the Land in the United Kingdom. A successful legal challenge to a British law was made in South Carolina based on Magna Carta. In the case of Jordan v Law, a South Carolina British colonial court ruled that the suspension of court proceedings because of non-compliance with the despised Stamp Act passed by Parliament, violated the rights guaranteed by Clause 40 of Magna Carta. That clause reads, “To no one will we.....deny or delay right or justice”.

Following World War II, the civilized nations of the world adopted the Universal Declaration of Human Rights which pledged the protection of basic human rights, due process

and the rule of law. One of the greatest promoters of this historic Declaration was Eleanor Roosevelt, the widow of President Franklin D. Roosevelt. The hopeful Declaration of Human Rights is a continuation of the precepts of Magna Carta.

We are the inheritors of these great freedoms and rights. As described by Sir Winston Churchill, “Here is a law which is above the King and which even he must not break”. The United States Constitution is an endorsement and continuation of the guarantee of personal freedoms, due process, and justice which were the hallmarks of Magna Carta.

In October 1216, King John, his power substantially reduced, died of dysentery. One historian described the cause of death as “a surfeit of peaches and new cider”. While he never garnered the fame of his older brother, he is today remembered as the king who, however reluctantly, peacefully surrendered royal power and swore to uphold written guarantees of the rights of free men.

British Prime Minister David Cameron on June 16, 2014 described Magna Carta as “Britain’s greatest export”. On June 15, 2015, representatives from all over the free world will gather in Runnymede to mark the 800th anniversary of Magna Carta. It will be the celebration of our lifetimes.