

IV. Magna Carta (800th Anniversary)

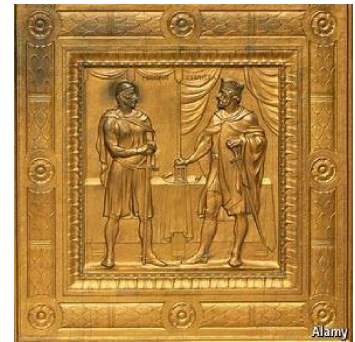
Several Americans attended the celebration of the 800th anniversary of the sealing of the Magna Carta in June of 2015. This section looks at the document and its importance to the U.S. Many who came over in the Great Migration had ancestors who were at the sealing. They carried over their respect for what the document entails. Hence, when the turmoil of 150 years later ensued, the Magna Carta was an inspiration.

A. 2015 Anniversary

On June 15, 2015 at Runnymede, England at a ceremony titled the Foundation of Liberty Event that included HM Queen Elizabeth, attendees celebrated the 800th anniversary of the finalizing of a document known as the Magna Carta or "Great Charter" that was to become one of the western world's most defining and influential forces for freedom and that ultimately established the rule of law in English society.

The original document was actually referred to as the Charter. The title Magna Carta did not come into use until 1217. The Magna Carta was, in effect, a peace treaty designed to govern the relationship between monarchs and their most powerful subjects.

The great bronze doors of the American Supreme Court are decorated with eight panels depicting seminal moments in legal history. One of the panels, in the lower right corner, depicts King John pressing his seal on the Great Charter (Magna Carta). Contrary to popular belief the Magna Carta was not signed. As the panel depicts, King John approved the document by putting his seal on the Charter at Runnymede on June 15, 1215. Both parties would surely have been astonished to know that a treaty between feudal antagonists, designed to avert civil war in the 13th century, would be celebrated 800 years later.



The survival and impact of the Magna Carta is even more remarkable in view of the fact the original Charter was only in effect for twelve weeks.

Prior to the negotiation of the Magna Carta many of the barons rebelled against King John's tyrannical rule and sought to force the King to resolve their grievances. John had spent most of his financial and political capital trying to hold on to his holdings in France. He alienated the ambitious and clever Pope Innocent III by refusing to accept the Pope's nominee, Stephen Langton as the new Archbishop of Canterbury. John's father, Henry II, was complicit in the execution of the prior Archbishop Thomas Becket following a dispute over how the Kingdom should be governed. Becket had become a very popular figure who overshadowed the King. John wanted to avoid this potential problem and control who would become Archbishop.

John's refusal to accept the Pope's decision coupled with disputes over money owed to the church resulted in the Pope placing an interdict on England and personally excommunicating King John. The clergy were not allowed to conduct Mass, dissidents were persecuted or fled, and powers near and far - France, Wales, Scotland and Rome conspired to overthrow the King John's oppressive regime.

Faced with an untenable dilemma John made a clever move. He sued for peace with the Pope. He accepted Innocent III's nominee for archbishop and humbly surrendered to the wishes of the Pope. England became a papal fiefdom. However, these agreements did not address the barons' grievances. The rebels continued to gain support and seized London. King John realized he had to make peace with the barons. Those peace terms were the Magna Carta.

The Magna Carta was sealed on June 15, 1215, but the barons were not satisfied with the terms agreed to by their negotiators, John made additional concessions and barons renewed their oath of allegiance to King John on June 19, 1215. On June 24th the distribution of the Magna Carta began. However, John who had no intention of complying with the agreement, asked the pope to annul it. On August 24th the Pope quashed or annulled the Magna Carta.

The barons were furious and again rebelled against John. The French were invited to intervene. The French king's eldest son Louis VIII had a claim to the English throne thought to be as strong as John's.

On May 22, 1216 the French invaded England, marched to London and proclaimed Louis as King of England. A civil war broke out and the barons were split, some loyal to John and others supporting Louis. The rebels and the French forces occupied more than half of England.

On October 18, 1216, John died of dysentery and his son was crowned King Henry III. Since Henry was only 9 years old William Marshal, one of the surety barons who remained loyal to England, was declared Regent and issued a revised version of the Magna Carta on November 12, 1216 in an effort to get the rebel barons to unite behind Henry.

The rebels refused, and on May 20, 1217, William Marshal led a decisive victory over the rebels and French forces in the Battle of Lincoln. While attempting to negotiate a peace treaty, Louis received word the French were sending reinforcements and supplies by ship. However, the French re-supply effort was defeated in a naval battle at Dover by Hubert de Burgh and what remained of their ships were forced to retreat to France. Louis signed a peace treaty and gave up his claim to the English throne England had been saved and William Marshal saved the Magna Carta.

On November 6, 1217 William Marshal issued a further revised Magna Carta and the remaining rebel barons united behind King Henry III. On Feb. 11, 1225, King Henry III issued a third revision of the Magna Carta in return for the right of taxation and that Charter became the definitive Charter.

In June of 1215 there was not much reason, at the time, to suspect the Great Charter would make history. It was not a revolutionary idea for the king to issue a charter promising to play by certain rules. Many such attempts had been made in the past. In 1100, 1135 and again in 1154 kings had been obliged to promise that they would rule well. The Coronation Charter or Charter of Liberties by Henry I and Charters of Edward and Henry II contained promises of good governance. However, in each case the sovereigns sooner or later wriggled their way out of such promises. 1215, King John did his best to wriggle out of the promises of the Magna Carta. He was prevented from doing so when the barons rebelled. The Charter served as a sanction for their rebellion.

There was not much in the document to interest people beyond the time and place in which it was born. King John had been swindling the barons through abuse of his royal rights, so the bulk of it concerns such matters as the tax they had to pay the king in lieu of sending knights to fight for him

(scutage), and the king's rights over the barons' heirs and widows, plus practical issues of great import in medieval times but of limited interest to subsequent generations.

The reach of the Magna Carta was limited, but what began as a small check on the arbitrary power of King John eventually became a key point in the long development of the protection of rights against arbitrary executive power.

The Magna Carta of 1217 paragraph 32 stated:

"No free man will be taken or imprisoned or dispossessed, of his free tenement, or liberties, or customs, or be outlawed or exiled or in any way destroyed, nor will we condemn him, nor will we commit him to prison, excepting the legal judgment of his peers or by the law of the land."

It represented the first effective attempt to bind an English sovereign in obedience to the law.

A second reason for the veneration of the Magna Carta lies in the text itself. Buried amidst the feudal jargon are phrases that still resound. Those who created the Charter were experts in the terminology of law, and could sum up complicated ideas in simple but definitive terms. Clause 33 stated, "To none shall we sell, to no one shall we deny or delay right of justice."

From these two clauses stretches the path to not only rule by law, but to the prohibition of arbitrary arrest, the accountability of the State to its subjects, the obligation of government to strive for the public good, even the specific right to trial by jury of one's peers.

It is these two clauses that earned the Magna Carta its place on the United States Supreme Court door.

Another reason for the Magna Carta's survival was Sir Edward Coke, a 17th-century lawyer. The Magna Carta had largely disappeared from view for four centuries, but in the run-up to the English civil war it proved useful to the Stuarts' opponents, who were keen to portray themselves as traditionalists rather than revolutionaries. In a brilliant piece of early spin, they dreamed up the "Norman Yoke" - the idea that William the Conqueror had destroyed a Saxon Eden which first the barons, and now they, were trying to revive. "The Charter of our liberties, called Magna Carta...was but a renovation and restitution of the ancient laws of this kingdom," as Sir Harbottle Grimston put it.

Coke was the leader of the pack of parliamentary lawyers. He was James I's chief justice before he turned against the monarchy. Magna Carta was one of his principal tools. Some of his claims about it that it had been ratified by an ancient parliament, for instance - were nonsense. But he successfully argued that the crucial chapters established the precedent of limits to monarchical power: He used Magna Carta as the basis of the Petition of Right, the proto-constitution that Parliament forced Charles I to sign.

B. Magna Carta and New England

After the monarchy was tamed and Parliament gained control, the Magna Carta went out of fashion in England. But it found new life in America.

The first colonies were established just at the time that Coke had turned to needling James I, and the spirit of that argument influenced them. Coke wrote the first Virginia charter, guaranteeing the settlers' rights as free English subjects. The influence of the Magna Carta was apparent in 1641 when the first two sections of the "Body of Liberties," the first legislation passed by the Massachusetts colony, cited two clauses from the Magna Carta, William Penn, founder of Pennsylvania, first published Magna Carta in America to enlighten residents of Pennsylvania. The title of his book - "The Excellent Privilege of Liberty and Property Being the Birth-Right of the Free-born Subjects of England" - made his point pretty clearly.

Lawyers were well-represented among America's Founding Fathers, and as students they were forced to read Coke's writings. They did not always find his prose inspiring - the young Thomas Jefferson wrote, "I do wish the devil had old Coke for I am sure I was never so tired of an old dull scoundrel in all my life" - but they recognized the importance of Coke's vision to their cause. A more mature Jefferson was to write later to James Madison that "a sounder Whig never wrote...nor of profounder learning...in what were called English liberties."

The rebellious colonists quoted Magna Carta against the British Parliament just as the 17th-century parliamentarians had quoted it against the king. The Massachusetts Assembly, protesting against taxation without representation, said that the Stamp Act was "against the Magna Carta and the natural rights of Englishmen and therefore according to Lord Coke null and void". When rebellious Massachusetts needed a new state seal, because the royal governor held the existing one, Paul Revere engraved a replacement seal depicting a militiaman with a sword in one hand and Magna Carta in the other.

The first Continental Congress in 1774 justified its rebellion on the grounds that the colonists were doing "as Englishmen, what their ancestors in like cases had usually done, in asserting and vindicating their rights and liberties". The Magna Carta directly influenced the American Colonists' efforts to resist what they considered unfairly imposed British law as well as the American founding fathers in crafting the Declaration of Independence and the Bill of Rights Amendments to the Constitution of the United States of America. Twelve clauses from the Magna Carta influenced the American Bill of Rights

Today the Magna Carta seems to belong to the Americans more than it does to the British. A memorial to the Magna Carta was established at Runnymede by the American Bar Association. American jurists still refer to it in legal cases. In August 2014 the U. S. Supreme Court Chief Justice, John Roberts, said that "our American experiment has not reached a third of the age of Magna Carta, but we have given Magna Carta's core concepts concrete meaning...in our constitutional framework." When David Letterman, asked Britain Prime Minister David Cameron about the Magna Carta he was unable to tell him what the words "Magna Carta" meant.

This is only one of the many contradictions embedded in this revered piece of sheepskin inscribed with oak gall and sealed with beeswax and resin.

Although a failure at its inception, the Magna Carta survived because it asserted one fundamental and treasured principle, *the rule of law*. It also, in its individual chapters addressed real grievances and offered in some cases what seemed to be effective solutions. The Charter was not of equal benefit to all sections of society, but in the end the principle of the rule of law shielded everybody.

The question is why are we celebrating the 1215 Magna Carta rather than the 1217 or 1225 Magna Charta. Although there were important differences, the spirit, detail and much of the phraseology of the Charters of 1217 and 1225 replicates the Charter of 1215. Without the 1215 original Magna Carta, there would have been no 1225 Charter.

Notes:

Jonathan B. Gardner has a special interest in studies related to the Magna Carta and its relation to U. S. and world history. His grandfather, Waldo D. Gardner, was first cousin of Frank A. Gardner, M.D., who was a New England author and editor of The Massachusetts Magazine. Jonathan is an Advisory Consultant to the Board of the Thomas Gardner Society, Inc. (TGS, Inc. - thomasgardnersociety.org).