

Record: 1

Title: Magna Carta Comes to America.

Subject(s): CHARTERS; UNITED States. National Archives & Records Administration; FEUDAL law; BAIL; UNITED States. Constitution; UNITED States. Constitution. 1st-10th Amendments

Geographic Terms: UNITED States Report Available

Author(s): Howard, A. E. Dick

Source: American Heritage , Spring/Summer2008, Vol. 58 Issue 4, p34

Document Type: Article

Abstract: The article reports on the possession of one of the copies of Magna Carta, a 13th-century document, by the U.S. National Archives and Records Administration in March 2008, and discusses the role of Magna Carta in American constitutionalism. It states that many of Magna Carta's provisions dealt entirely with feudal relationships, and anticipated many of the provisions of the U.S. Constitution and Bill of Rights, including the right of petition and a ban on excessive bail and fines.

Accession Number: 32708869

ISSN: 0002-8738

Lexile: 1300

Database: History Reference Center

Magna Carta Comes to America

The Founding Fathers' belief in the "law of the land" derived from a 13th-century document recently donated to the National Archives

"KING JOHN WAS NOT A GOOD man," wrote A. A. Milne in his children's classic, *Now We Are Six*. This feckless 13th-century king so badly mismanaged his kingdom that powerful English barons confronted him in June 1215 at Runnymede, a large meadow in the Thames Valley. In tense negotiations, the angry barons outlined their requirements for certain fundamental rights, writing down their demands in a 2,500-word document in medieval Latin on a single sheet of parchment. To avoid civil war, the king affixed his seal to the document, thus binding him and all his heirs to granting his subjects the rights and liberties described therein. Copies were made to be circulated throughout the kingdom. This charter, which later generations would refer to as Magna Carta, became a great milestone in constitutional democracy and one of the foundations of British common law.

In March, the National Archives of the United States obtained one of only the few existing copies of Magna Carta (this copy dates from 1297, when the document was reissued), and will display it along with America's great documents. What could the archivists possibly have in mind when inviting visitors to view this relic of English history before moving on to ponder the great founding documents of the American republic? The answer is both simple and complex: the story of American constitutionalism — the ideas and process that gave us the Declaration of Independence, the Constitution, the Bill of Rights, the Emancipation Proclamation, the Reconstruction amendments, and perhaps others — is not complete without understanding what happened at Runnymede so long ago. In this remarkable document lie many of the tenets that would evolve into bulwarks of modern American democracy.

The drafters of Magna Carta were not graybeards sitting around debating grand philosophical notions about protecting the rights of the common man. Many of Magna Carta's provisions dealt entirely with feudal relationships, such as limitations on the extent to which the king could call on the barons to underwrite knighting the king's eldest son or financing the marriage settlement of the king's eldest daughter. The barons were seeking to protect their interests against a king who had pushed his claims of power too far. King John had waged an expensive and doomed war in France, quarreled frequently with the pope, and ridden the barons hard with harsh levies. First and foremost, Magna Carta arose as a peace treaty between the two parties. Yet even so, Magna Carta foreshadows modern constitutional guarantees. Several chapters, for instance, regulate abuses by royal officials in the requisitioning of horses, wood, and crops. (This anticipated the Fifth Amendment to the U.S. Constitution, which forbids the government from confiscating private property for public purposes without just compensation.) Other provisions pay particular attention to courts, making justice more convenient and accessible, hallmarks of Anglo-American justice many centuries later.

Magna Carta is, of course, one of the cornerstones of liberty in England. In the 17th-century struggles between Parliament and the Stuart kings, Sir Edward Coke insisted that the subjects' liberties were not acts of grace on the king's part, but matters of right. "Magna Carta," Coke declared, "is such a Fellow, that he will have no Sovereign." Ultimately, the Stuarts' efforts to undermine constitutional government brought a bloodless revolution in 1688, leading to the accession to the throne of William and Mary and the enactment of the English Bill of Rights. That document's provisions anticipate many of the provisions of the U.S. Constitution and Bill of Rights, including the right of petition, free debate in Parliament, and a ban on excessive bail and fines and on cruel or unusual punishment.

As Parliament struggled to curb royal pretensions in the 17th century, colonies were being planted in North America, each directed by written charter. The Virginia Company Charter of 1606 focuses above all on the disbursement of the profits that the grantees hoped to derive in the New World. The charter specifies that the king is to receive one-fifth of the gold and silver found in Virginia. Other provisions call for a governing council empowered to facilitate trade, provide for the colony's defense, and levy tariffs.

One provision of the Virginia charter provides a direct link between Magna Carta and modern constitutionalism by guaranteeing colonists "all liberties, franchises, and immunities" to the same extent "as if they had been abiding and born" in England. In other words, the colonists did not leave their rights behind, but brought them to the New World. The charters for Massachusetts Bay, Maryland, Connecticut, and other colonies contained similar language, ensuring that the notion of common liberties would be one of the founding principles of the American colonies.

In the 18th century, American discontent with British policies found voice in an outpouring of pamphlets, tracts, and resolutions. Americans based their claim of rights squarely on Magna Carta and on English rights as transmitted to these shores by the colonial charters. In their petition to the king in 1765, the Stamp Act Congress declared that the rights they invoked were "confirmed by the Great Charter of English Liberty." In 1774 the Continental Congress traced Americans' rights to the colonial charters: "That our ancestors, who first settled these colonies were ... entitled to all the rights, liberties, and immunities of free and natural-born subjects" of England, descending into posterity. Among other rights, the colonists claimed the consent to taxation.

What, then, is the place of Magna Carta in American constitutionalism? Chapter 39 particularly resonates today with its declaration that no one shall be proceeded against or prosecuted except by "the law of the land," a clear articulation of the principle of the rule of law — the belief that all who govern are subject to the law. Moreover, in Magna Carta's "law of the land" is found the early origins of the concept of "due process of law." Thus the Fifth and Fourteenth Amendments to the U.S. Constitution refer to the "law of the land" when they declare that no person shall be deprived of "life, liberty, or property, without due process of law." No concept in American constitutional law has seen such remarkable evolution and adaptation as has that of due process of law. Not only has it been held to require fairness in criminal trials, but also to place substantive limits on the powers of government, for example, in modern Supreme Court cases recognizing a right of personal privacy or autonomy.

Magna Carta also placed America on the road to having a written constitution. England's "liberty" documents, beginning with Magna Carta, set a precedent for the writing of colonial charters that, in turn, became critical steps for the modern-day tradition of using written constitutions as the basis for government. Magna Carta was also instrumental in spurring the Anglo-American tradition of organic development and growth of constitutional principles. In a profound sense, American constitutionalism has taken on the evolving nature of common law itself, as the history of the Constitution's due process clauses makes clear.

Magna Carta stirred the notion of a constitution as superior even to legislative acts. A statute of Edward III in 1368 declared that, if any statute be contrary to Magna Carta, "it shall be holden for none." In that language, the idea emerged of Magna Carta as a super-statute — the norm against which other laws were to be measured. In time, the understanding of unconstitutionality was refined and distilled to produce the language of the U.S. Constitution's supremacy clause: the Constitution and all laws "made in pursuance thereof" shall be the "supreme Law of the Land."

American history provides important "constitutional moments." All of them owe a debt to Magna Carta. That is why visitors to the National Archives should pause before Magna Carta, drink in its meaning, and only then proceed to view America's founding documents.

PHOTO (COLOR): King John of England, portrayed deer hunting above on a tapestry, placed his royal seal, top left, onto Magna Carta only as a stopgap measure to soothe his angry barons.

PHOTO (COLOR)

~~~~~

By A. E. Dick Howard

---

Copyright of American Heritage is the property of AHMC Inc. and its content may not be copied or emailed to multiple sites or posted to a listserv without the copyright holder's express written permission. However, users may print, download, or email articles for individual use.