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Abstract: Considers how and why Magna Carta, the great charter of liberty granted by King John in 1215 that placed the English king under the law, became a beacon of liberty in Great Britain and in the U.S. Effort of baronial reformers to revive the charter's provision for a committee of barons to supervise the king; Parallel movements in the 14th century designed to enforce Magna Carta's curbs on arbitrary royal authority; Role of Magna Carta in the controversy of King Henry VIII's reign during the 16th century.

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The Meaning of Magna Carta since 1215**Ralph V. Turner considers how and why Magna Carta became a beacon of liberty in Britain and, increasingly, in the United States.**

MOST STUDENTS OF ENGLISH history know that King John's barons forced him to grant Magna Carta, the great charter of liberties that placed the English king under the law. They know that this charter, agreed by John in 1215 at Runnymede meadow and confirmed in definitive form by Henry III in 1225, is a crucial document for England's history, likely the best known of all documents surviving from medieval England. Its attempt to impose the law's limitations on a ruler is summarised in Chapter 39:

No free man shall be taken or imprisoned, or dispossessed or outlawed or exiled or in any way ruined, nor will we go or send against him except by the lawful judgment of his peers or by the law of the land.

Less familiar is the role of Magna Carta in the centuries after 1225, when it was taken up periodically as the banner of discontented subjects rallying against their monarch, and their programmes for political reform included calls for its reconfirmation.

Following John's death in 1216, the Great Charter's fate was in doubt, with a nine-year-old boy as the new king Henry III. Yet the Charter took root and was quickly reissued, again in 1217, and in its definitive 1225 version. When in 1258 the great men of the kingdom had grown impatient with Henry's incompetent rule, baronial reformers sought to revive the 1215 Charter's provision for a committee of barons to supervise the king. Among their reform proposals was a demand that Henry 'faithfully keep and observe the charter of the liberties of England'. The rebellion failed, but the royalist victory in 1265 did not end

Magna Carta's prominent position in England's political life, for part of the peace settlement was the King's renewed promise to observe it.

In Edward I's reign (1272-1307), his subjects turned to the Charter as a focus for discontent over his burdensome financial exactions; and in 1297 with his Confirmation of the Charters (plural because the 1225 Charter of the Forest was also confirmed), he acknowledged that Magna Carta bound him. When dissatisfaction mounted once more in 1300, Parliament sought additional concessions from Edward, set forth in the Articles upon the Charters. A century after Runnymede, a precedent was set for parliaments to seek reconfirmation of the Charter and clarification of its meaning.

In the fourteenth century, two parallel movements were under way to enforce Magna Carta's curbs on arbitrary royal authority. One was a revival under Edward II (r.1307-27) and again under Richard II (r.1377-99) of baronial committees to supervise royal government, reminiscent of the mid-thirteenth-century reform movement. Another was Parliament's appearance as a permanent political institution, acting as the protector and interpreter of the Great Charter. With a representative assembly in place, it substituted for periodic baronial commissions as the favoured mechanism for subjecting the king to the law. Fourteenth-century parliaments sought royal confirmations of the Great Charter and drafted statutes reinforcing its promises. Often the first item of parliamentary business was a public reading and reaffirmation of the Charter, and as in the previous century, parliaments often exacted confirmation of it from the monarch, resulting in over forty reconfirmations by the early fifteenth century.

Magna Carta was seen as sacro-sanct, and statutes conflicting with it were ruled invalid; a statute enacted under Edward III in 1369 declared, 'If any Statute be made to the contrary, that shall be holden for none.' Other statutes re-interpreted and expanded the Charter's provisions. Noteworthy are measures enacted under Edward III (r. 1327-77), known to seventeenth-century critics of Stuart absolutism as the 'six statutes', which spelled out precisely the Charter's promise of what was coming to be called 'due process of law'. The third of these statutes is significant for expanding the numbers protected by Chapter 39, replacing 'no free man' with more inclusive language, 'no man, of whatever estate or condition he may be'; and promising that no one was to be dispossessed, imprisoned, or put to death without 'due process of law', the first use of that phrase in the statutes.

By the mid-fifteenth century, Magna Carta slipped into the shadows of high politics where it remained until the seventeenth century, and the custom of periodic royal confirmations ended early in Henry VI's reign. The reigns of the Yorkist and Tudor monarchs saw strong reassertions of royal sovereignty, and although people never entirely forgot Magna Carta, they no longer rallied around it. The Charter's ties to the common law ensured its importance, however, for the land-holding classes looked to it as a key protector of their property. Thousands took part in common law procedures, notably trial by jury, and these inculcated the Charter's principle of due process of law and the plea rolls and the year books give evidence for litigants' citations of it. In law books studied by the emerging legal profession, Magna Carta was the first of the statutes; and by the late-fifteenth century, collections of statutes beginning with it were among the earliest books to be printed in England. Appeals to specific provisions appear frequently in late medieval plea rolls, proving wide familiarity with the Great Charter, with lawyers and litigants sometimes twisting its technical provisions for frivolous purposes. Yet by the end of the Middle Ages, it was cited less frequently because statutes spelling out its principles afforded added

protection against an arbitrary king, binding him to act 'according to law' or by 'due process' or 'process of the law'.

Magna Carta played little part in the great controversy of Henry VIII's reign (1509-47), his break with the papacy; and he often violated his subjects' rights in enforcing conformity to his new Church. Only occasionally did his victims, imprisoned without indictment or bail, claim 'the liberty of an Englishman', as guaranteed them by the Charter. A few prominent Catholics claimed protection under its first chapter promising freedom for the English Church, but most turned to the theology of universal papal authority for arguments against Henry's supremacy over the Church of England. By the late Tudor period, though, radical Protestants such as the Puritans presented a greater threat to royal supremacy over the Church of England than did Catholics. They sought the Charter's protection against persecution by Elizabeth I's new ecclesiastical tribunal, the Court of High Commission. The High Commission, armed with Roman and canon law procedures, forced dissidents to incriminate themselves, a practice that alarmed common lawyers prejudiced against Roman law. Since many legal professionals were also Puritans, they made common cause with Protestant militants.

Magna Carta took a central role in the seventeenth-century conflict between king and Parliament, as common lawyers and parliamentarians turned to a mythical 'ancient constitution' as a defense against Stuart kings' assertion of the royal prerogative. Historians, common lawyers and Members of Parliament searched medieval manuscripts of early law codes and forgotten royal charters for ammunition against James I and Charles I. They treasured the Charter as a key element of England's 'ancient constitution', a body of laws and customs supposedly surviving from pre-Roman Britain that imposed limits on the king's power over his subjects.

The champion of the doctrine of the ancient constitution and the revival of Magna Carta was Sir Edward Coke (d. 1634). Coke conceived of the English constitution as a chain of royal confirmations of English law, stretching back to the age of Edward the Confessor and beyond. Because he viewed the Great Charter as a reaffirmation of liberties enjoyed by the English people from time immemorial and still binding because of its many confirmations over the centuries, he urged Parliament to demand a royal reconfirmation, Coke and his companions opposing the early Stuarts construed the Charter anachronistically and uncritically. They were convinced that its clauses reaffirmed such longstanding rights of the English people as trial by jury and the right of habeas corpus, thought to be derived from law-codes and royal charters predating John's grant.

The civil wars of 1642-48, kindled by Coke's revival of the Great Charter, had more extreme consequences than the 1215-16 rebellion, as it resulted in military dictatorship, the King's execution and a decade of experiments in government. But the Glorious Revolution of 1688-89, culminating in the deposition of James II and establishment of Parliament's supremacy, seemed a repetition of the baronial rebellion against King John. The settlement following William and Mary's accession included a Declaration of Rights, enacted by Parliament as a new Magna Carta.

Sir Edward Coke's portrayal of England's past was now fashioned into the 'Whig interpretation' of history, with a triumphalist view of liberty's ceaseless advance. Whig writers ranked the 1688-89 Revolution alongside King John's 1215 concessions, convinced that it reconfirmed an ancient compact between king and people, restoring fundamental law and limited monarchy. Debate late in Charles II's reign over excluding his brother, the future James II, from the succession had led royalist propagandists to challenge Coke's

myth of the ancient constitution. Tories turned to the royalist historians' rediscovery of the 'feudal law' and Norman ties of lordship and vassalage that had made the barons dependents of the king, holding their lands in return for services to him. Royalist writers tended to dismiss Magna Carta as a feudal document with little long-term relevance, and in fact royalist historians such as Robert Brady (d.1700) painted a more accurate picture of the medieval past than Coke. Nonetheless, the Whig interpretation triumphed in the eighteenth century. Its victory was symbolised by Brady's replacement as Keeper of Records at the Tower of London, curator of the kingdom's historical records, by William Petyt, a historian supporting Coke's ancient constitution.

Early eighteenth-century Tories, languishing without power under the first two Georges, replaced their faith in unrestrained royal power with defense of the ancient constitution, charging the Whig majority with undermining historic English liberties. Tory support for the ancient constitution drove Whig defenders of their parliamentary leader, Sir Robert Walpole, to stress the superiority of the post-1688 constitution, and to question Magna Carta's relevance. One Whig writer, repeating earlier royalist arguments, now maintained that the barons alone had gained from the Charter. After George III's accession in 1760, American colonists and their English sympathizers began to question parliamentary sovereignty, and radical political movements challenged complacency about the glories of the English constitution. Opponents of Parliament's monopoly on power denounced its political machinations, graft and corruption. The reformers were a diverse group ranging from radicals inspired by the rationalism of the Enlightenment to religious dissenters looking back to a golden age of Oliver Cromwell and the Puritan parliaments.

With radical journalists stirring up public opinion against Parliament, freedom of the press came under attack. One radical writer, Arthur Beardmore, arrested for seditious libel in 1762, showed an eye for publicity, arranging to be arrested while teaching Magna Carta to his young son. He became a popular hero, and a print picturing him showing the Charter to the boy circulated widely. Another radical, John Wilkes (d. 1797), imprisoned in the Tower in 1763 for seditious libel, transformed his prosecution into a campaign for the people's rights against oppression, invoking Magna Carta, 'that glorious inheritance, that distinguishing characteristic of the Englishmen'. The radical movement proved short-lived, however. After 1789, radical sympathy for the French revolutionaries alienated moderates, and the government took such harsh measures against them that reaction and repression soon became the rule in Britain. A satirical article in a radical newspaper noted that the Habeas Corpus Act (1679) was descended from 'two notorious traitors of old times, called Magna Carta and the Bill of Rights', and declared that the Charter was 'so very old and infirm that he seldom stirs abroad, and when he does he is sure to be insulted, and is very glad to get back to his lodgings again'.

Although hostility kindled by the French Revolution stalled any innovation, agitation for wider representation in the Commons revived after 1815. Nineteenth-century popular movements for parliamentary reform such as Chartism turned to Magna Carta for support. Other tendencies, however, undermined reverence for the Charter and England's medieval constitutional legacy, especially Bentham's radical Utilitarian philosophy. Its rational and pragmatic outlook led lawyers and judges to cease to venerate the common law simply because of its antiquity and to view it as a stumbling block to progress. Advocates of legal reform understood that revising the common law was impossible without first reforming the House of Commons, and once this was achieved in 1832, Utilitarians could turn to reform of English law. To them, the triumph of Parliament at the end of the seventeenth century meant the Great Charter had lost its special place as fundamental law standing

above statute law; the nation's legislative assembly had replaced it, however inadequately, as the protector of the people's liberties.

By the mid-nineteenth century both politicians and the lawyers favoured reorganization of the law, and striking obsolete legislation from the statute books began in earnest with the first Statute Laws Revision Act of 1856. Two more acts followed in 1861 and 1863, repealing hundreds of old laws; these acts and subsequent legislation abrogated much of Magna Carta. Some in the Commons sought assurances that no statutes considered 'stones in the edifice of the constitution' would be abolished, and one MP offered an amendment to preserve Magna Carta and other constitutional landmarks, but this failed. The ease with which abrogation of clauses of the Charter was achieved is surprising, a striking display of parliamentary sovereignty. During Commons debates, the Solicitor-General dismissed the Great Charter's significance, reminding members that 'as signed by King John' it was not a statute and could be consulted only in ancient manuscripts. Stricken from the statute books by the 1863 legislation were seventeen of the 1225 Charter's chapters, many of them 'feudal' clauses that had lost their practical effect two centuries earlier when tenures by knight-service were abolished. By the 1880s, many Britons felt that further pruning of the laws was needed, and still more chapters of the Charter were repealed.

A few provisions of Magna Carta remained on the statute books into the twentieth century. In 1965, Parliament created the Law Commission for statute revision, and the commissioners recommended repeal of laws that 'cannot be shown to perform a useful function'. They proposed a bill repealing over 200 laws, including eight chapters of the Great Charter that they found to be 'of no practical significance today, being either obsolete or superseded by the modern law on the subject'. Legislation that followed in 1970 left only four chapters of Magna Carta intact: chapters 1, 13 and 39 of King John's Charter, and 37 of the 1225 version. The first Chapter promised freedom for the English Church, and Chapter 13 (9 in the 1225 version), guaranteed the City of London its ancient liberties and free customs. Chapter 39 (29 in the 1225 Charter) was the key provision in Magna Carta, curbing the crown's power to pursue individuals beyond the law. Chapter 37, found only in the 1225 Charter, contained a clause important for the perpetuity of Magna Carta's liberties, 'and if anything contrary to this [charter] is procured from anyone, it shall avail nothing and be held for nought'.

Despite this legislative assault on Magna Carta, the Whig historical interpretation of its place in British history had become orthodoxy, the semi-official presentation by the Victorian era. For Whig historians, the 1215 baronial rebellion marked a major step in England's long march toward limited monarchy and parliamentary supremacy; and the Glorious Revolution of 1688-89 marked further advance toward the orderly growth of parliamentary democracy, religious toleration and bourgeois values. This interpretation fostered the 'idea of progress', presenting history as modernization, slow but steady evolution toward higher civilization. It also generated enormous pride among nineteenth-century Britons, convincing them of their island-kingdom's destiny to be a model for other nations seeking freedom and unity as well as justification for their rule over a colonial empire. By the mid-nineteenth century, a rising scientific and materialist worldview brought with it new notions of the nature of history that challenged this mythic version of the past and heralded drastic changes in the nature of history. The later Victorian age was a time when 'a truly historical consciousness' developed, and the discipline of history fell into the hands of professionals and specialists, many of whom were 'debunkers' of hallowed historical myths.

The Charter's importance was seen differently across the Atlantic. As the Great Charter's relevance receded in eighteenth- and nineteenth-century England, it remained fundamental for the new nation growing in North America. Today, Magna Carta seems to enjoy greater prestige in the United States than in the United Kingdom. Indicative of this is the monument at Runnymede erected in 1957 by the American Bar Association to commemorate the Charter. Edward Coke and other opponents of the Stuarts had resuscitated it at the very moment that the first English settlements were being founded in the Americas, and the settlers in the thirteen colonies had held themselves to be fully English, possessing all rights guaranteed to their compatriots at home by the Great Charter and the common law. The charter of each colony, beginning with James I's charter for the Virginia Company in 1606, included protection for colonists' rights as free English subjects. The colonists held Magna Carta to be fundamental law, standing above both king and Parliament and unalterable by statute. Americans' dedication to fundamental law increased in the years after 1688, an age when British political thinkers were discarding it in favour of parliamentary sovereignty. Their commitment to such higher law as Magna Carta fortified their inclination toward written constitutions.

The 1225 version of the Great Charter was published in Philadelphia as early as 1687, part of a tract authored by William Penn, founder of the Quaker colony. Sir Edward Coke's interpretation of the Charter influenced these Americans. Subscribing to Coke's anachronistic views, they held it to be the guarantor of their ancient English liberties, including rights to trial by jury and the writ of habeas corpus. They saw the seventeenth-century struggle against the Stuart kings as part of their own history, and they accepted the Great Charter as part of the ancient constitution, providing them with the same protections enjoyed by their cousins in the mother country. In the decade before the outbreak of the American Revolution in 1775, colonial lawyers and pamphleteers turned to Magna Carta for support against the government across the Atlantic. The first Continental Congress adopted a resolution in October 1774 claiming that the colonists were doing 'as Englishmen their ancestors in like cases have usually done, for asserting and vindicating their rights and liberties'. In 1775, Massachusetts adopted as its state seal an image of an American patriot holding a sword in one hand and Magna Carta in the other.

After the United States won independence, the federal Constitution became the new nation's fundamental law. The Founding Fathers, faithful to seventeenth-century doctrine placing the Great Charter above statute law, accorded the Constitution a similar lofty position as fundamental law that can be overcome only by a Supreme Court ruling or a constitutional amendment, invulnerable to acts of Congress. By the eighteenth century, with Britons sure of Parliament's superior place in the government and ideas of fundamental law fading, the British constitution consisted of a series of statutes that parliamentary majorities could abolish or alter, so long as they were supported by public opinion. As the states considered ratifying the federal Constitution, anti-federalists objected to its lack of an enumeration of citizens' rights, such as Magna Carta or the 1689 Bill of Rights; and to win ratification by the states, the first ten amendments to the federal Constitution were adopted. Among the amendments, ratified in 1791 as the Bill of Rights, was an article promising that no person shall be 'deprived of life, liberty, or property without due process of law', paraphrasing the Charter's thirty-ninth chapter.

Americans today accord Magna Carta semi-religious veneration, citing it constantly in political debates, judicial opinions and newspaper editorials. The United States Supreme Court first cited the Charter in an 1819 opinion, and American jurists still cannot resist citing it in their decisions. Supreme Court citations of the Charter now number over a hundred. A federal district judge even cited it in Paula Jones' sexual harassment suit in

1994 against President Clinton. She ruled against delaying the suit during the President's term of office, stating:

It is contrary to our form of government, which asserts as did the English in the Magna Carta and the Petition of Right, that even the sovereign is subject to God and the law.

Whatever the hyperbole and distortions of history, jurists' references to the Charter indicate its lasting place as a symbol of limited government in American legal and political thought.

READER OFFER

Magna Carta by Ralph Turner, published by Longman History, is available to History Today readers at the exclusive price of £16, usually priced £19.99, by phoning 01279 623928, quoting reference HTMC.

FOR FURTHER READING

Herbert Butterfield, *The Whig Interpretation of History* (W.W. Norton, 1965), reprint of 1931 edn. J.C. Holt, *Magna Carta and Medieval Government* (Hambledon, 1985); J.C. Holt, *Magna Carta*, 2nd edn. (Cambridge University Press, 1992); A.E. Dick Howard, *The Road from Runnymede: Magna Carta and Constitutionalism in America* (University of Virginia Press 1968); Anne Pallister, *Magna Carta, the Heritage of Liberty* (Oxford University Press, 1971); Faith Thompson, *The First Century of Magna Carta: why it Persisted as a Document* (University of Minnesota Press, 1925); Faith Thompson, *Magna Carta: its Role in the Making of the English Constitution, 1300-1629* (University of Minnesota Press, 1948); Ralph V. Turner, *King John* (Longman, 1994).

PHOTO (COLOR): It is likely that no single document was actually sealed at Runnymede on June 19th, 1215, and of the thirteen copies of the Charter that were created later that month, just four survive. Background: detail is from the copy in the British Library. Inset: John's seal.

PHOTO (COLOR): King John out hunting.

PHOTO (COLOR): The Court of Common Pleas in the 15th century. This court was made distinct from the King's Court under Chapter 17 of Magna Carta; it survived until 1873.

PHOTO (BLACK & WHITE): This Restoration satire shows the Commonwealth devouring the traditional institutions and liberties of the English, with Magna Carta prominent among them.

PHOTO (COLOR): Sir Edward Coke (1552-1634), promoter of the Common Law, and of Magna Carta as the guarantor of traditional freedoms, against Stuart despotism.

PHOTO (BLACK & WHITE): The 18th-century radical lawyer Arthur Beardmore teaches his son Magna Carta (1764).

PHOTO (COLOR): Magna Carta guaranteed the rights and liberties of London. This box 'containing' the freedom of London was presented to a freeman of the City in 1812.

PHOTO (BLACK & WHITE): 'See your Magna Carta and your Bill of Rights Sawed in Pieces': a cartoon supporting John Wilkes in 1763.

PHOTO (COLOR): 'The emblem of America', 1818, evokes Britannia and stresses a notion of liberty that was consciously derived from an idea of Magna Carta.

PHOTO (COLOR): The signing of Magna Carta as high drama: a rendition in the Houses of Parliament, by Charles Sims (1873-1928). It is one of a series of eight depicting key moments in the building of Britain, from King Alfred to the Union of Scotland and England.

PHOTO (COLOR): Runnymede today. The memorial was built by the American Bar Association; and a nearby memorial to John F. Kennedy quotes words from his inaugural address that evoke the spirit of Magna Carta.

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