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What Say the Reeds at Runnymede?

A poem commemorating the signing of Magna Carta
Rudyard Kipling (1865-1936)

At Runnymede, at Runnymede,
What say the reeds at Runnymede?
The lissom reeds that give and take,
That bend so far, but never break,
They keep the sleepy Thames awake
With tales of John at Runnymede.
At Runnymede, at Runnymede,
Oh, hear the reeds at Runnymede:
'You musn't sell, delay, deny,
A freeman's right or liberty.
It wakes the stubborn Englishry,
We saw 'em roused at Runnymede!

When through our ranks the Barons came,
With little thought of praise or blame,
But resolute to play the game,
They lumbered up to Runnymede;
And there they launched in solid line
The first attack on Right Divine,
The curt uncompromising "Sign!'
They settled John at Runnymede.

At Runnymede, at Runnymede,
Your rights were won at Runnymede!
No freeman shall be fined or bound,
Or dispossessed of freehold ground,
Except by lawful judgment found
And passed upon him by his peers.
Forget not, after all these years,
The Charter signed at Runnymede.'

And still when mob or Monarch lays
Too rude a hand on English ways,
The whisper wakes, the shudder plays,
Across the reeds at Runnymede.
And Thames, that knows the moods of kings,
And crowds and priests and suchlike things,
Rolls deep and dreadful as he brings
Their warning down from Runnymede!

Monty Python and the Magna Carta

Script by: Chris Donovan, Eric Olson, & Tom Rinaldi

Music Lyrics by: Mike McDonnel & Jay-Z

Introduction by: Nick Mizell

Characters

King John (John Cardillo)	Barron Obama (Abood Shebib)
Archbishop of Canterbury (Tara Dane)	Barron Simpson (Tom Rinaldi)
Executioner (Christyna Torrez)	Earl of Warren (Chris Donovan)
Minstrel (Mike McDonnell)	William earl of Salisbury (Jeff)
Baron Jay-Z (Eric Olson)	Extra Barons
Baroness Clinton (Michelle Hopkins)	

Act I: Introduction

[Directors Notes: The Barons, including the mediator, are on one side of the stage. This is the Barons' camp. The King has not yet arrived and the Barons are restless, looking impatient, and checking their "watches" about King John's tardiness.

The following introduction scrolls across a screen punctuated by scenes depicting King John, the empire he once reigned, the barons, and the confrontation at Runnymede:

> *More than 800 years ago, Richard the Lion-hearted of the House of Anjou ruled the Kingdom of England as a dominion of his cross-channel Angevin Empire.*

A valiant man, possessed of prodigious strength, he delighted in nothing so much as battle on behalf of the church.

But after gaining great renown in Palestine, he was felled by a crossbow.

And, hence, the kingdom of England fell into the hands of Richard's brother, John.

But John was an insufferable character and tyrannical ruler, and among his crimes was the murder in prison of the rightful claimant to his ancestral lands, his own nephew Arthur, the son of Geoffrey of Brittany.

Many of John's former allies turned and actively fought against him, his French competitors bested him, and the Angevin Empire lost nearly all of its holdings in France.

Using every despotic tool at his disposal, John amassed resources to invade France and regain what he had lost.

He forced his subjects to pay exorbitant taxes, confiscated estates, and plundered churches and seized their lands.

And opportunity came to John upon the destruction of the fleet of King Philip II of France.

But John's invasion failed, and his allies were defeated.

All the money that John could gather and all the power that he had used, brought nothing.

His allies were dead or captured, and the Kingdom of England was bankrupt.

Disgusted with John, the Barons of England are now in open revolt.

And here, on the plains of Runnymede, John now sues for peace and attempts to enlist the support of the Barons for yet another invasion of France…

When it concludes, trumpets sound announcing that King John is arriving. King John trots in as if he's on a horse followed by his trusty executioner and minstrel, the latter of whom is clapping to coconut halves together to make the sound of horse hooves galloping. Preferably the King, minstrel, and executioner travel from behind the audience to the stage via the middle of the audience. When he gets to the stage, the

King dismounts his pretend horse (The Barons look confused since there is no horse). The King's throne is set up on the other end of the stage, which is where he plops down. His minstrel and executioner are behind him.]

King John: Okay, Okay, I'm here. Why are we gathered in a meadow in the middle of nowhere, rather than defending my estates in France?

Warren: We are here my Lord because we are tired of your exorbitant taxes and ruthless treatment of those you ask to fight in your name!

King John: That's the facts of life in the Middle Ages! I'm your King by divine right of our Holy Father!

Baroness Clinton: Well, I didn't vote for you.

King John: You don't vote for kings, Baroness Hillary Clinton. What a silly idea.

Baroness Clinton: Well how'd you become King then?

King John: The Lady of the Lake, her arm clad in the purest shimmering samite held aloft my crown from the bosom of the water, signifying by divine providence that I, John, was to carry the crown. THAT is why I am your king.

Baroness Clinton: [Interrupting.] Listen, strange women lying in ponds distributing crowns is no basis for a system of government. Supreme executive power derives from a mandate from the masses, not from some farcical aquatic ceremony.

Baron Obama: Make no mistake. It's time for a change!

William: I echo Brother Obama's executive order. Something must change. Your Barons demand certain liberties if we are to fight for you in the future.

King John: This is treason and sacrilegious! Off with their Heads, Mr Executioner.

Executioner: But sire, there are more of them, than me?

Warren: If you refuse, we will no longer fight your war in France, and our armies will sack London!

King John: [Signing reluctantly] Very well. What are you proposing?

Baron Simpson: That we put our liberties in a contract that you agree to follow.

William: It will be the greatest charter that will define future generations!

King John: That seems a bit melodramatic, but I'll consider it. Who, prey tell, will act as the mediator in this so-called Magna Carter [said sarcastically and laughing with his minstrel and executioner].

Warren: The Archbishop of Canterbury. [Who steps forward from behind the other Barons]

King John: But she favors your demands!

Warren: Not only is she a Person of the Clothe, but she's also trained in the mystic arts of Neutrality and Alternative Dispute Resolution.

Archbishop of Canterbury: I can be neutral, my liege. It's what God would want.

King John: Okay, well let's start by doing introductions so that I know exactly who is rebelling against me. We already know Barroness Hillary Clinton is here because she's already trying to take my crown.

Oh, And Executioner, be sure to write their names and title down so that we can know who is losing their head; er, I mean… to keep a record of this most momentous occasion.

Executioner: (Grunts affirmatively).

Warren: I'm Earl of Warren, Supreme Templar and Chief Justice of the Land.

King John: Yea, regrettably, I already know you Mr. Goody-two-shoes. You're ideals will probably remain a thorn in my side for the next 800 years. Who else is here?

Barron Simpson: Barron O.J. Simpson, my liege.

King John: [To his Executioner] I thought we executed him Executioner? [Executioner shrugs]. Ok, who else?

Baron Obama: Presidential Baron Barrack Obama is here to make a change!

King John: I don't know this Baron. Are we sure that you're even a citizen of my realm?

William: He has papers, your honor, that show a long lineage here in England.

King John: Oh, Okay, as long has he has papers. And who, prey tell, are you sir?

William: I'm William the earl of Salisbury, sire. My brothers William earl of Winterfell and William earl of Arundel are on their way, but they said we can start without them.

King John: Wow, your parents really, really liked the name William, huh?

William: Yes sire, it's a family name.

King John: Alright, anyone else?

[Baron Jay-Z enters from outside to a sound clip of the song Magna Carta . . . Holy Grail]

King John: Um, who are you?

Baron Jay-Z: Yo yo yo, King, I'm the Baron Jay-Z, uhhhhhhhh. One day you're here, one day you're there, one day you care, you're so unfair. Sippin' from my cup til' it runneth over . . . Holy Grail . . . Magna Carta.

King John: I have no idea what you are talking about.

Baron Jay-Z: Uhhhhhh. Caught up in all these lights and cameras. We all just entertainas. You're so cold, you're so unfair. I'm like a mirror. If you're cool with me, I'm cool with you. What you see is what you reflect.

King John: What? Executioner, off with his head!

Warren: Not so fast, my King, please hear us out.

King John: [Sighing.] Very well, that looks like everyone. Shall we begin?

Warren: No, sire, wait. There are other knights who are appearing by FaceTime.

King John: By what?

Warren: FaceTime, my lord. It's something created by your sorcerers to allow people to communicate over long distances.

King John: [sarcastic] It's good to see that my sorcerers are inventing useful things, rather than weapons for my war. Well, get on with this sorcery, who do we have on FaceTime?

Knights of Ni: [using a YouTube clip of Monty Python] We are the Knights who say Ni!

King John: The who-ee?

Knights of Ni: The Knights who say Ni!

King John: I still do not understand who these Knights are. Maybe we're having sorcerer difficulties. Do they have lineage papers too?

William: [Reverently] Oh, yes my Lord. They are the most feared Knights in your land. They are also the keepers of the sacred words: Ni, Peng, and Nee-wom!

King John: [Sarcastically] Right, sure they are. Anyone else? [Barons shaking their head no.] Then can we get started? I have to go drink green beer at Paddy Murphy's in honor of St. Patrick of Ireland!

Minstrel: [sung to the tune of *Greensleeves*]:

Alas King John you have done us wrong
To treat us so undeservedly
So King we have a surprise for you
It's a durable juris colonoscopy!

King, King you are such a schmuck
To use our might without freeing us
King King now you're out of luck
Sign it now or encounter a royal fuss!

Eight hundred years from now you'll find
Magna Carta trumping your royal bum
Seeking freedom for all human kind
Sending despots to kingdom come!

Act II: Taxation & Women's Rights

King John: Hush minstrel! Did I say we needed to hear from the likes of you? Now, where were we?

Archbishop of Canterbury: I believe that we were about to resolve the matter of my fees.

King John: Fees! Why do I have to pay you when I don't even want to be here! This is clearly extortion.

Archbishop of Canterbury: All I require from you, King, is that you declare that the Church of England shall be free, and shall have its rights undiminished and its liberties unimpaired!

King John: That's it? Fine, fine. That seems reasonable enough. [Aside to Executioner.] It's not like I have to abide by *that* one anyway. [Both laughing.]

William: The first issue that the barons would like to address, my King, are your taxes.

Baron Jay-Z: Uhhhhhh. You'd take the clothes off my back and I'd let you. You'd steal the food right out my mouth and I'd watch you eat it. I still don't know why. Caught up in all these games. Skeet skeet scutage. Uhhhhhh.

Archbishop of Canterbury: Skeet skeet? Scutage? I don't understand these terms. Jay-Z, we won't make any progress if you keep speaking in riddles. Nobody understands you. And your sentences don't even rhyme.

King John: What kind of a baron are you anyway?

Baron Jay-Z: I'm baron' my soul. Like a mirror. Reflecting on the world.

King John: Does he have any papers proving his lineage?

William: Yes, my liege. He comes from a long line of royal bards such as Biggie Smalls and Puff Daddy, your two most *notorious* bards in all of the realm. You also tried to lock his wife up in a tower because she was a single lady.

King John: Yes, yes, I remember that one. He didn't put a ring on it.

Archbishop of Canterbury: Getting back on track…

William: I believe Brother Jay-Z is referring to the exorbitant taxes that my King has been demanding to allegedly fund his "war" in France. It is unfair!

King John: You speak of my scutage and aids? Indeed, if you don't want to provide me with men to fight my wars, you must provide me with money! How else am I to fight my wars?

Baron Obama: Money is not the only answer, but it makes a difference.

Barons [collectively]: Shhh.

William: Zip it Obama.

Baron Obama: I would cut taxes for my people – cut taxes – for 95 percent of all working families because, in an economy like this, the last thing we should need to do is raise taxes on the middle class.

King John: Clearly, you are out of your mind. I have the right to tax my people whenever and however I want!

Baron Obama: I'm all about the 99%. We are the 99%.

Baron Simpson: Obama, we are the 1% you dolt.

Baron Jay-Z: [Quite eloquently.] King, all we demand is that you obtain the common counsel of the kingdom and that you take our considerations into mind before demanding certain kinds of taxation. Taxation without representation is the signature of a tyrannical government. We need a system of checks and balances, my liege. No taxation without representation!

Knights of Nee: Nee nee nee!

Baron Obama: Forward to a bright future.

Archbishop of Canterbury: King, this seems fair and neutral. I believe the barons are simply requesting that you consult with them first before you decide to levy taxes against them, and that you take their considerations into mind instead of unilaterally imposing any sort of rules on them. They are simply asking for a balanced government, checked by the voice of its people.

King John: Fine, but only if the final charter says something obscure like taxes are not to be taken without "common counsel." That seems vague enough. Executioner, what do you think?

Executioner: [Grunts.]

King John: But how am I to fund my wars?

Archbishop of Canterbury: Perhaps you can get some of your money from elsewhere?

King John: Well, I could sell off all the unmarried women in my land to the highest bidder.

Baroness Clinton: Hold up, that brings us to our next talking point John. Women have rights too, you know.

King John: What nonsense is this that you speak of Hillary Clinton?

Baroness Clinton: We are not your property. You can't just auction us noblewomen off to the highest bidder if you are short of money. Also, you can't just take our inheritance, or compel us to marry if we don't want to, or take our husbands away from us when you want to hold court!

King John: [Laughing] Are you still complaining about last Christmas when you offered me 200 chickens so that your husband could spend the night with you instead of.. ahem. [Aside to Executioner not so quietly.] Wasn't Bill with that other lady anyway? What was her name? Monica something?

Executioner: [Shrugs.]

Minstrel: [Strums a tune.] *'Twas a cigar in an Oval room, but Bill was not inhaling…*

Baroness Clinton: Don't even start with me on that one.

Baron Simpson: Acquit! He did not have sexual relations with that woman.

Knights of Nee: Nee nee nee!

Baroness Clinton: We demand equality John.

King John: Absolutely not.

Baroness Clinton: You continually abuse your power by selling noblewomen off to the highest bidder simply to fund your wars! We shouldn't be forced to marry into a lower social class just because you need money. We demand that you stop forcing us to marry!

Archbishop of Canterbury: Perhaps we can compromise. Hillary, equality is a bit far-fetched. That will never happen in 800 years. King, would you at least be willing to stop treating noblewomen like your property and instead grant them the freedom to marry whomever and whenever they want?

King John: But, what about noblewomen who are prisoners from my wars, like the King of Scotland's sisters who have been confined to my castle for 6 years?

Executioner: I could execute them sire.

Baroness Clinton: No sire, you must not. They have rights too!

Archbishop of Canterbury: King, will you at least agree to stop forcing noblewomen to marry?

King John: Very well, BUT only if I can have the final say and withhold permission if I think the proposed marriage is unsuitable. [To Executioner.] You see what I did there? I will still have the last word! [Evil laughing.]

Archbishop of Canterbury: How do the barons vote?

Barons [collectively]: Aye.

Archbishop of Canterbury: And those appearing by FaceTime?

Knights of Nee: Nee nee nee.

King John: Wait, I think that was a "no" from the Knights of FaceTime.

Baroness Clinton: No, I'm pretty sure they said "yes." That's just how they say everything.

King John: Why can't they just speak English like the rest of us!

Archbishop of Canterbury: OK then, I think we have an accord on taxes and women rights. Let's move on.

Minstrel: [Sung to the tune of *I am Woman*]

They are women hear them roar
King John you were such a boor
'Til you agreed to ope the door
To equality!

Don't forget about the taxes
We were sharpening our axes
Now as this group relaxes
Nearly tax free!

So we have made some giant strides
Establishing our bona fides
You'll get no more free rides
Whoopee!

Act III: The Roots of Modern Justice.

King John: Again! Be quiet Minstrel! This isn't Monday Night jousting. We don't need your commentary on what just happened.

Barron Obama: King, make no mistake. It's time for change. It will not be easy. We are great together. There has to be shared sacrifice.

King John: Okay, Barron Obama. I "appreciate" that, but what is your demand?

Barron Obama: Let's be clear. Here's the deal. Let's Win the Future.

King John: Get on with it, sir? You're just using silly catch phrases.

Archbishop of Canterbury: Barron Obama, King John has a point. There can be no progress with this mediation if you don't actually say what you want.

Barron Obama: Yes, We Can. Change We Can Believe in.

King John: What? Okay let's move on. Besides, Barron Obama, I was advised you enjoy despotic rule.

Archbishop of Canterbury: I think it may best to move on to move this process forward.

Barron Obama: Net Neutrality

Barron Warren: I have a demand.

Archbishop of Canterbury: And what is your demand sir?

King John: Oh brother, not Earl Warren.

Barron Warren: All people, no matter where they are from, if they are accused of a crime in England should have a right to a trial by their peers. Further, those accused should receive publicly funded counsel no matter the charged crime. And when arrested for such crimes, they should have certain rights that should be explained to them.

King John: That's the craziest idea, I've ever heard. First, you want right for ALL people accused of a crime. Clearly, men, women, and slaves should be treated differently. Second, why in the world would the crown use public funds for the defense of a person charged with a crime? Everyone knows that if you are charged with a crime then you are guilty…right Executioner?

Executioner: Yes, my lord.

King John: Further, an arrested person has no rights. The only way to get a confession is to…..

Executioner: [Interrupting] Execute them, sir.

King John: Well that's true, but I was thinking you have to beat it out of them first.

Archbishop of Canterbury: Perhaps, we can come to some sort of compromise then without the need for a revolution.

Barron Simpson: Barron Warren is correct.

King John: Why do you say that? His ideas are radical. This idea will shackle the police.

Barron Simpson: King, my greatest advisor once told me that if the 'chainmail don't fit, you must acquit'.

King John: You are being almost as nonsensical as Baron Obama

Baron Obama: We are the 99%.

Baron Simpson: And on that note, my Gentlepersons, I must take leave from this mediation. Cornelius, please fetch my horse. It is the white bronco. I want to get home early to surprise my wife.

Archbishop of Canterbury: Farewell Baron Simpson. Ok, well it sounds like the Barons want a provision dealing with fair trials for those accused of crimes. King John, it sounds like you don't think all people deserve trials, you don't want to provide counsel, and you don't believe those arrested have rights. How about this?

What if we have a provision that states: No free man shall be seized or imprisoned, or stripped of his rights or possessions, or outlawed or exiled, or deprived of his standing in any way, nor will we proceed with force against him, or send others to do so, except by the lawful judgment of his equals?

King John: I can agree to that if you put at the end **"OR BY LAW OF THE LAND"** [Whispering to Executor] … You see what I did there, we're the law of the land. We'll be able to seize, imprison, and execute anyone we want.

Executor: [Stupid Laughing]

King John: [Evil Laughing]

[The Executor and King John Keep Laughing one after the other louder and louder]

Archbishop of Canterbury: You know we can hear you?

King John: [clears throat] What do the Barrons say?

Archbishop of Canterbury: How do the Barron's vote?

Barons [Collectively]: Aye

Archbishop of Canterbury: And those appearing by FaceTime?

Knights who Say Ni 1: We are no longer the Knights who say Ni.

Knights who Say Ni 2: Ni.

Other Knights of Ni: Shh…

Knights who Say Ni 1: We are now the Knights who say… "Ekki-ekki-ekki-ekki-PTANG. Zoom-Boing, z'nourwringmm."

King John: That's still not English.

Barron Obama: Forward.

King John: Executioner, Off with his head.

Minstrel: [Sung]

We'll pin your ears
With a jury of your peers, and
Thumb our nose at chancellor's smelly foot
'Twill be justice had by all
OJ won't take the fall
And Zimmerman will never get the boot

King John: Off with the Minstrel's head too!

Archbishop of Canterbury: Oh Brother.

Pope [Cardillo, Sr. from the audience]: Don't worry my son, this doesn't mean anything anyway. God's already annulled it!

Everyone Singing [to the tune of *Greensleeves*]:

King, King you are such a schmuck
To use our might without freeing us
King King now you're out of luck
Sign it now or encounter a royal fuss!

King John's Magna Carta (1215)

John, by the grace of God King of England, Lord of Ireland, Duke of Normandy and Aquitaine, and Count of Anjou, to his archbishops, bishops, abbots, earls, barons, justices, foresters, sheriffs, stewards, servants, and to all his officials and loyal subjects, greeting.

Know that before God, for the health of our soul and those of our ancestors and heirs, to the honour of God, the exaltation of the holy Church, and the better ordering of our kingdom, at the advice of our reverend fathers Stephen, archbishop of Canterbury, primate of all England, and cardinal of the holy Roman Church, Henry archbishop of Dublin, William bishop of London, Peter bishop of Winchester, Jocelin bishop of Bath and Glastonbury, Hugh bishop of Lincoln, Walter Bishop of Worcester, William bishop of Coventry, Benedict bishop of Rochester, Master Pandulf subdeacon and member of the papal household, Brother Aymeric master of the **Knights of the Temple** in England, William Marshal, earl of Pembroke, William earl of Salisbury, William earl of Warren, William earl of Arundel, Alan de Galloway constable of Scotland, Warin Fitz Gerald, Peter Fitz Herbert, Hubert de Burgh seneschal of Poitou, Hugh de Neville, Matthew Fitz Herbert, Thomas Basset, Alan Basset, Philip Daubeny, Robert de Roppeley, John Marshal, John Fitz Hugh, and other loyal subjects:

1. First, that we have granted to God, and by this present charter have confirmed for us and our heirs in perpetuity, that the English Church shall be free, and shall have its rights undiminished, and its liberties unimpaired. That we wish this so to be observed, appears from the fact that of our own free will, before the outbreak of the present dispute between us and our barons, we granted and confirmed by charter the freedom of the Church's elections - a right reckoned to be of the greatest necessity and importance to it - and caused this to be confirmed by Pope Innocent III. This freedom we shall observe ourselves, and desire to be observed in good faith by our heirs in perpetuity. We have also granted to all free men of our realm, for us and our heirs for ever, all the liberties written out below, to have and to keep for them and their heirs, of us and our heirs:

2. If any earl, baron, or other person that holds lands directly of the Crown, for military service, shall die, and at his death his heir shall be of full age and owe a `relief', the heir shall have his inheritance on payment of the ancient scale of `relief'. That is to say, the heir or heirs of an earl shall pay for the entire earl's barony, the heir or heirs of a knight 100s. at most for the entire knight's `fee', and any man that owes less shall pay less, in accordance with the ancient usage of `fees'

3. But if the heir of such a person is under age and a ward, when he comes of age he shall have his inheritance without `relief' or fine.

4. The guardian of the land of an heir who is under age shall take from it only reasonable revenues, customary dues, and feudal services. He shall do this without destruction or damage to men or property. If we have given the guardianship of the land to a sheriff, or to any person answerable to us for the revenues, and he commits destruction or damage, we will exact compensation from him, and the land shall be entrusted to two worthy and prudent men of the same `fee', who shall be answerable to us for the revenues, or to the person to whom we have assigned them. If we have given or sold to anyone the guardianship of such land, and he causes

destruction or damage, he shall lose the guardianship of it, and it shall be handed over to two worthy and prudent men of the same `fee', who shall be similarly answerable to us.

5. For so long as a guardian has guardianship of such land, he shall maintain the houses, parks, fish preserves, ponds, mills, and everything else pertaining to it, from the revenues of the land itself. When the heir comes of age, he shall restore the whole land to him, stocked with plough teams and such implements of husbandry as the season demands and the revenues from the land can reasonably bear.

6. Heirs may be given in marriage, but not to someone of lower social standing. Before a marriage takes place, it shall be' made known to the heir's next-of-kin.

7. At her husband's death, a widow may have her marriage portion and inheritance at once and without trouble. She shall pay nothing for her dower, marriage portion, or any inheritance that she and her husband held jointly on the day of his death. She may remain in her husband's house for forty days after his death, and within this period her dower shall be assigned to her.

8. No widow shall be compelled to marry, so long as she wishes to remain without a husband. But she must give security that she will not marry without royal consent, if she holds her lands of the Crown, or without the consent of whatever other lord she may hold them of.

9. Neither we nor our officials will seize any land or rent in payment of a debt, so long as the debtor has movable goods sufficient to discharge the debt. A debtor's sureties shall not be distrained upon so long as the debtor himself can discharge his debt. If, for lack of means, the debtor is unable to discharge his debt, his sureties shall be answerable for it. If they so desire, they may have the debtor's lands and rents until they have received satisfaction for the debt that they paid for him, unless the debtor can show that he has settled his obligations to them.

10. If anyone who has borrowed a sum of money from Jews dies before the debt has been repaid, his heir shall pay no interest on the debt for so long as he remains under age, irrespective of whom he holds his lands. If such a debt falls into the hands of the Crown, it will take nothing except the principal sum specified in the bond.

11. If a man dies owing money to Jews, his wife may have her dower and pay nothing towards the debt from it. If he leaves children that are under age, their needs may also be provided for on a scale appropriate to the size of his holding of lands. The debt is to be paid out of the residue, reserving the service due to his feudal lords. Debts owed to persons other than Jews are to be dealt with similarly.

12. No `scutage' or `aid' may be levied in our kingdom without its general consent, unless it is for the ransom of our person, to make our eldest son a knight, and (once) to marry our eldest daughter. For these purposes ouly a reasonable `aid' may be levied. `Aids' from the city of London are to be treated similarly.

13. The city of London shall enjoy all its ancient liberties and free customs, both by land and by water. We also will and grant that all other cities, boroughs, towns, and ports shall enjoy all their liberties and free customs.

14. To obtain the general consent of the realm for the assessment of an `aid' - except in the three cases specified above - or a `scutage', we will cause the archbishops, bishops, abbots, earls, and greater barons to be summoned individually by letter. To those who hold lands directly of us we will cause a general summons to be issued, through the sheriffs and other officials, to come together on a fixed day (of which at least forty days notice shall be given) and at a fixed place. In all letters of summons, the cause of the summons will be stated. When a summons has been issued, the business appointed for the day shall go forward in accordance with the resolution of those present, even if not all those who were summoned have appeared.

15. In future we will allow no one to levy an `aid' from his free men, except to ransom his person, to make his eldest son a knight, and (once) to marry his eldest daughter. For these purposes only a reasonable `aid' may be levied.

16. No man shall be forced to perform more service for a knight's `fee', or other free holding of land, than is due from it.

17. Ordinary lawsuits shall not follow the royal court around, but shall be held in a fixed place.

18. Inquests of *novel disseisin*, *mort d'ancestor*, and *darrein presentment* shall be taken only in their proper county court. We ourselves, or in our absence abroad our chief justice, will send two justices to each county four times a year, and these justices, with four knights of the county elected by the county itself, shall hold the assizes in the county court, on the day and in the place where the court meets.

19. If any assizes cannot be taken on the day of the county court, as many knights and freeholders shall afterwards remain behind, of those who have attended the court, as will suffice for the administration of justice, having regard to the volume of business to be done.

20. For a trivial offence, a free man shall be fined only in proportion to the degree of his offence, and for a serious offence correspondingly, but not so heavily as to deprive him of his livelihood. In the same way, a merchant shall be spared his merchandise, and a husbandman the implements of his husbandry, if they fall upon the mercy of a royal court. None of these fines shall be imposed except by the assessment on oath of reputable men of the neighbourhood.

21. Earls and barons shall not be amerced save through their peers, and only according to the measure of the offence.

22. No clerk shall be amerced for his lay tenement ecept according to the manner of the other persons aforesaid; and not according to the amount of his ecclesiastical benefice.

23. Neither a town nor a man shall be forced to make bridges over the rivers, with the exception of those who, from of old and of right ought to do it.

24. No sheriff, constable, coroners, or other bailiffs of ours shall hold the pleas of our crown.

25. All counties, hundreds, wapentakes, and trithings--our demesne manors being exccepted--shall continue according to the old farms, without any increase at all.

26. If any one holding from us a lay fee shall die, and our sheriff or bailiff can show our letters patent containing our summons for the debt which the dead man owed to us,--our sheriff or bailiff may be allowed to attach and enroll the chattels of the dead man to the value of that debt, through view of lawful men; in such way, however, that nothing shall be removed thence until the debt is paid which was plainly owed to us. And the residue shall be left to the executors that they may carry out the will of the dead man. And if nothing is owed to us by him, all the chattels shall go to the use prescribed by the deceased, saving their reasonable portions to his wife and children.

27. If any freeman shall have died intestate his chattels shall be distributed through the hands of his near relatives and friends, by view of the church; saving to any one the debts which the dead man owed him.

28. No constable or other bailiff of ours shall take the corn or other chattels of any one except he straightway give money for them, or can be allowed a respite in that regard by the will of the seller.

29. No constable shall force any knight to pay money for castleward if he be willing to perform that ward in person, or--he for a reasonable cause not being able to perform it himself--through another proper man. And if we shall have led or sent him on a military expedition, he shall be quit of ward according to the amount of time during which, through us, he shall have been in military service.

30. No sheriff nor bailiff of ours, nor any one else, shall take the horses or carts of any freeman for transport, unless by the will of that freeman.

31. Neither we nor our bailiffs shall take another's wood for castles or for other private uses, unless by the will of him to whom the wood belongs.

32. We shall not hold the lands of those convicted of felony longer than a year and a day; and then the lands shall be restored to the lords of the fiefs.

33. Henceforth all the weirs in the Thames and Medway, and throughout all England, save on the sea-coast, shall be done away with entirely.

34. Henceforth the writ which is called Praecipe shall not be to served on any one for any holding so as to cause a free man to lose his court.

35. There shall be one measure of wine throughout our whole realm, and one measure of ale and one measure of corn--namely, the London quart;--and one width of dyed and russet and hauberk

cloths--namely, two ells below the selvage. And with weights, moreover, it shall be as with measures.

36. Henceforth nothing shall be given or taken for a writ of inquest in a matter concerning life or limb; but it shall be conceded gratis, and shall not be denied.

37. If any one hold of us in fee-farm, or in socage, or in burkage, and hold land of another by military service, we shall not, by reason of that fee-farm, or socage, or burkage, have the wardship of his heir or of his land which is held in fee from another. Nor shall we have the wardship of that fee-farm, or socage, or burkage unless that fee-farm owe military service. We shall not, by reason of some petit-serjeanty which some one holds of us through the service of giving us knives or arrows or the like, have the wardship of his heir or of the land which he holds of another by military service.

38. No bailiff, on his own simple assertion, shall henceforth any one to his law, without producing faithful witnesses in evidence.

39. No freeman shall be taken, or imprisoned, or disseized, or outlawed, or exiled, or in any way harmed--nor will we go upon or send upon him--save by the lawful judgment of his peers or by the law of the land.

40. To none will we sell, to none deny or delay, right or justice.

41. All merchants may safely and securely go out of England, and come into England, and delay and pass through England, as well by land as by water, for the purpose of buying and selling, free from all evil taxes, subject to the ancient and right customs--save in time of war, and if they are of the land at war against us. And if such be found in our land at the beginning of the war, they shall be held, without harm to their bodies and goods, until it shall be known to us or our chief justice how the merchants of our land are to be treated who shall, at that time, be found in the land at war against us. And if ours shall be safe there, the others shall be safe in our land.

42. Henceforth any person, saving fealty to us, may go out of our realm and return to it, safely and securely, by land and by water, except perhaps for a brief period in time of war, for the common good of the realm. But prisoners and outlaws are excepted according to the law of the realm; also people of a land at war against us, and the merchants, with regard to whom shall be done as we have said.

43. If any one hold from any escheat--as from the honour of Walingford, Nottingham, Boloin, Lancaster, or the other escheats which are in our hands and are baronies--and shall die, his heir shall not give another relief, nor shall he perform for us other service than he would perform for a baron if that barony were in the hand of a baron; and we shall hold it in the same way in which the baron has held it.

44. Persons dwelling without the forest shall not henceforth come before the forest justices, through common summonses, unless they are impleaded or are the sponsors of some person or persons attached for matters concerning the forest.

45. We will not make men justices, constables, sheriffs, or bailiffs unless they are such as know the law of the realm, and are minded to observe it rightly.

46. All barons who have founded abbeys for which they have charters of the king of England, or ancient right of tenure, shall have, as they ought to have, their custody when vacant.

47- A11 forests constituted as such in our time shall straightway be annulled; and the same shall be done for river banks made into places of defence by us in our time.

48. A11 evil customs concerning forests and warrens, and concerning foresters and warreners, sheriffs and their servants, river banks and their guardians, shall straightway be inquired into each county, through twelve sworn knights from that county, and shall be eradicated by them, entirely, so that they shall never be renewed, within forty days after the inquest has been made; in such manner that we shall first know about them, or our justice if we be not in England.

49. We shall straightway return all hostages and charters which were delivered to us by Englishmen as a surety for peace or faithful service.

50. We shall entirey remove from their bailwicks the relatives of Gerard de Athyes, so that they shall henceforth have no bailwick in England: Engelard de Cygnes, Andrew Peter and Gyon de Chanceles, Gyon de Cygnes, Geoffrey de Martin and his brothers, Philip Mark and his brothers, and Geoffrey his nephew, and the whole following of them.

51. And straightway after peace is restored we shall remove from the realm all the foreign soldiers, crossbowmen, servants, hirelings, who may have come with horses and arms to the harm of the realm.

52. If any one shall have been disseized by us, or removed, without a legal sentence of his peers, from his lands, castles, liberties or lawful right, we shall straightway restore them to him. And if a dispute shall arise concerning this matter it shall be settled according to the judgment of the twenty-five barons who are mentioned below as sureties for the peace. But with regard to all those things of which any one was, by king Henry our father or king Richard our brother, disseized or dispossessed without legal judgment of his peers, which we have in our hand or which others hold, and for which we ought to give a guarantee: We shall have respite until the common term for crusaders. Except with regard to those concerning which a plea was moved, or an inquest made by our order, before we took the cross. But when we return from our pilgrimage, or if, by chance, we desist from our pilgrimage, we shall straightway then show full justice regarding them.

53. We shall have the same respite, moreover, and in the same manner, in the matter of showing justice with regard to forests to be annulled and forests to remain, which Henry our father or Richard our brother constituted; and in the matter of wardships of lands which belong to the fee of another--wardships of which kind we have hitherto enjoyed by reason of the fee which some one held from us in military service;--and in the matter of abbeys founded in the fee of another than ourselves--in which the lord of the fee may say that he has jurisdiction. And when we

return, or if we desist from our pilgrimage, we shall straightway exhibit full justice to those complaining with regard to these matters.

54. No one shall be taken or imprisoned on account of the appeal of a woman concerning the death of another than her husband.

55. All fines imposed by us unjustly and contrary to the law of the land, and all amerciaments made unjustly and contrary to the law of the land, shall be altogether remitted, or it shall be done with regard to them according to the judgment of the twenty five barons mentioned below as sureties for the peace, or according to the judgment of the majority of them together with the aforesaid Stephen archbishop of Canterbury, if he can be present, and with others whom he may wish to associate with himself for this purpose. And if he can not be present, the affair shall nevertheless proceed without him; in such way that, if one or more of the said twenty five barons shall be concerned in a similar complaint, they shall be removed as to this particular decision, and, in their place, for this purpose alone, others shall be subtituted who shall be chosen and sworn by the remainder of those twenty five.

56. If we have disseized or dispossessed Welshmen of their lands or liberties or other things without legal judgment of their peers, in England or in Wales,--they shall straightway be restored to them. And if a dispute shall arise concerning this, then action shall be taken upon it in the March through judgment of their peers- -concerning English holdings according to the law of England, concerning Welsh holdings according to the law of Wales, concerning holdings in the March according to the law of the March. The Welsh shall do likewise with regard to us and our subjects.

57. But with regard to all those things of which any one of the Welsh by king Henry our father or king Richard our brother, disseized or dispossessed without legal judgment of his peers, which we have in our hand or which others hold, and for which we ought to give a guarantee: we shall have respite until the common term for crusaders. Except with regard to those concerning which a plea was moved, or an inquest made by our order, before we took the cross. But when we return from our pilgrimage, or if, by chance, we desist from our pilgrimage, we shall straightway then show full justice regarding them, according to the laws of Wales and the aforesaid districts.

58. We shall straightway return the son of Llewelin and all the Welsh hostages, and the charters delivered to us as surety for the peace.

59. We shall act towards Alexander king of the Scots regarding the restoration of his sisters, and his hostages, and his liberties and his lawful right, as we shall act towards our other barons of England; unless it ought to be otherwise according to the charters which we hold from William, his father, the former king of the Scots. And this shall be done through judgment of his peers in our court.

60. Moreover all the subjects of our realm, clergy as well as laity, shall, as far as pertains to them, observe, with regard to their vassals, all these aforesaid customs and liberties which we have decreed shall, as far as pertains to us, be observed in our realm with regard to our own.

61. Inasmuch as, for the sake of God, and for the bettering of our realm, and for the more ready healing of the discord which has arisen between us and our barons, we have made all these aforesaid concessions,--wishing them to enjoy for ever entire and firm stability, we make and grant to them the following security: that the baron, namely, may elect at their pleaure twenty five barons from the realm, who ought, with all their strength, to observe, maintain and cause to be observed, the peace and privileges which we have granted to them and confirmed by this our present charter. In such wise, namely, that if we, or our justice, or our bailiffs, or any one of our servants shall have transgressed against any one in any respect, or shall have broken one of the articles of peace or security, and our transgression shall have been shown to four barons of the aforesaid twenty five: those four barons shall come to us, or, if we are abroad, to our justice, showing to us our error; and they shall ask us to cause that error to be amended without delay. And if we do not amend that error, or, we being abroad, if our justice do not amend it within a term of forty days from the time when it was shown to us or, we being abroad, to our justice: the aforesaid four barons shall refer the matter to the remainder of the twenty five barons, and those twenty five barons, with the whole land in common, shall distrain and oppress us in every way in their power,--namely, by taking our castles, lands and possessions, and in every other way that they can, until amends shall have been made according to their judnnent. Saving the persons of ourselves, our queen and our children. And when amends shall have been made they shall be in accord with us as they had been previously. And whoever of the land wishes to do so, shall swear that in carrying out all the aforesaid measures he will obey the mandates of the aforesaid twenty five barons, and that, with them, he will oppress us to the extent of his power. And, to any one who wishes to do so, we publicly and freely give permission to swear; and we will never prevent any one from swearing. Moreover, all those in the land who shall be unwilling, themselves and of their own accord, to swear to the twenty five barons as to distraining and oppressing us with them: such ones we shall make to wear by our mandate, as has been said. And if any one of the twenty five barons shall die, or leave the country, or in any other way be prevented from carrying out the aforesaid measures,--the remainder of the aforesaid twenty five barons shall choose another in his place, according to their judgment, who shall be sworn in the same way as the others. Moreover, in all things entrusted to those twenty five barons to be carried out, if those twenty five shall be present and chance to disagree among themselves with regard to some matter, or if some of them, having been summoned, shall be unwilling or unable to be present: that which the majority of those present shall decide or decree shall be considered binding and valid, just as if all the twenty five had consented to it. And the aforesaid twenty five shall swear that they will faithfully observe all the foregoing, and will caue them be observed to the extent of their power. And we shall obtain nothing from any one, either through ourselves or through another, by which any of those concessions and liberties may be revoked or diminished. And if any such thing shall have been obtained, it shall be vain and invalid, and we shall never make use of it either through ourselves or through another.

62. And we have fully remitted to all, and pardoned, all the ill- will, anger and rancour which have arisen between us and our subjects, clergy and laity, from the time of the struggle. Moreover have fully remitted to all, clergy and laity, and--as far as pertains to us--have pardoned fully all the transgressions committed, on the occasion of that same struggle, from Easter of the sixteenth year of our reign until the re-establishment of peace. In witness of which, more-over, we have caused to be drawn up for them letters patent of lord Stephen, archbishop of Canterbury,

lord Henry, archbishop of Dubland the aforesaid bishops and master Pandulf, regarding that surety and the aforesaid concessions.

63. Wherefore we will and firmly decree that the English church shall be free, and that the subjects of our realm shall have and hold all the aforesaid liberties, rights and concessions, duly and in peace, freely and quietly, fully and entirely, for themselves and their heirs from us and our heirs, in all matters and in all places, forever, as has been said. Moreover it has been sworn, on our part as well as on the part of the barons, that all these above mentioned provisions shall observed with good faith and without evil intent. The witnesses being the above mentioned and many others. Given through our hand, in the plain called Runnymede between Windsor and Stanes, on the fifteenth day of June, in the seventeenth year of our reign.

Magna Carta; a Precedent For Recent Constitutional Change

15 June 2005, Runnymede

The Rt. Hon. The Lord Woolf, Lord Chief Justice of England and Wales

Introduction

790 years ago, John, the King of England was having a little local difficulty with his barons. His attempts to defend his extensive dominions across the Channel, including Normandy and a considerable proportion of western France, had been a disaster. This was despite the exorbitant demands that he had made of his subjects. The taxes he had imposed were extortionate. There had been ruthless reprisals against defectors. The administration of justice for which he was responsible could with generosity be described as capricious. Instead of depending on the traditional establishment for his advisers and confidants, John looked to "new men", who wielded immense power. Today no doubt the media would describe them as "John's cronies". In the world of politics, little changes.

John's barons became increasingly disaffected. They knew John needed their support for his further military adventures in

France. Not to lose an opportunity, in January 1215, the barons collectively decided upon industrial action. They insisted that, as a condition of their support, John execute a charter that recognised their liberties as a safeguard against further arbitrary behaviour on the part of the King.

In order to press home their cause, the barons took up arms against the King. In May 1215 they captured London. England was on the brink of being engulfed in civil war. Instead of allowing this to happen, both sides of the dispute behaved in an exemplary manner. If they had been litigants before our courts, they would have received my unqualified commendation for deciding to rely on Alternative Dispute Resolution, [or as lawyers say today ADR] as an alternative to battle to the death.

On the 10th of June 1215, they met at Runnymede and, in the meadow, compromised their differences and agreed terms which were outlined in the Articles of the Barons to which the King's great seal was attached on 15th June 1215. [Subsequently, the

Royal Chancery produced the formal document recording the settlement.] The immediate result was that the barons renewed their oath of allegiance and once more supported the King in his endeavours in France.

You can settle disputes but there is no guarantee the settlement will be honoured. In the past Pope Innocent III had his own disputes with John. John had refused to accept the Pope's candidate, Stephen Langton, as Archbishop of Canterbury when the previous archbishop died. Relations between the Pope and John broke down and John was for a time excommunicated by the Pope, However, John had by the time of the meeting with the Barons at Runnymede already settled his dispute with the Pope and had been rehabilitated. Langton had become Archbishop and had played a part in creating the Charter. However, no sooner was the Charter sealed than Innocent III, encouraged by John, intervened. He condemned the Charter as exacted by extortion and declared it was of no validity whatsoever.

John needed no more encouragement not to observe the Charter into which he had freely entered. John reneged on his commitments to surrender castles, borrowed money to hire foreign troops, and rallied his forces to subdue the nobles. Fortunately for us and for history John was prevented by ill health from pursuing his plans and his early death in October 1216 put an end to his double dealing. The Charter survived and this, for those times, was a remarkable outcome.

But this does not explain why we are gathered here today, precisely 790 years after [the document which in due course became known as] Magna Carta was sealed, or why we are due to reconvene annually over the next 9 years until 2015, the 800th Anniversary of what happened in Runnymede in June 1215.

The Two Explanations for the importance of the Charter

The Contents

In fact there are two better explanations for why we are here today. The first is that the *contents* of the charter fully justified its title, Magna Carta. It was by any standards a remarkable document for its time. The Charter goes far beyond what was needed to resolve the immediate dispute between John and his barons. While the Charter did address real, contemporary and practical problems of the time, it was not merely concerned with the immediate dispute. It was intended to govern the relations between successive kings and their most powerful subjects forever. Confirmation of its importance in mediaeval times is provided by the fact that 3 new editions were produced after John died by his son Henry III. Henry had ascended the throne at 9 years of age. He was in no position to renew the struggle with the barons and the first new edition was created in 1216, just a month after John's death. It was followed by further editions in 1217 and 1225.

Then, in the next reign, on 28th March 1297, Edward I, the "father of Parliament", signed letters patent containing the Charter which were entered on statute rolls so that, in so far as it has not been repealed, it binds the Crown even today[1]. Indeed, the first petition presented by the commons to the monarch at each new parliament is a request that the Great Charta be kept.

The long title of the 1297 edition reflects the status Magna Carta had already achieved by that date. The title reads: "the Great Charter of the Liberties of England, and the Liberties of the Forest; confirmed by King Edward, in the 25th year of his reign". The contents of the Charta justified that title.

The first article, perhaps in view of the history to which I have referred disingenuously proclaims:

> "We have granted to God and by this charter have confirmed for us and our heirs in perpetuity, that the English Church shall be free, and shall have its rights undiminished and its liberties unimpaired."

[1] *R (on the application of Bancoult) v S of S for the FCO* [2001] 2 WLR 1219 and *Chagos Islanders v AG* [2004] EWCA Civ 997.

It added that "we", that is John, before the present dispute confirmed the Church's elections and what is more caused it to be confirmed by Innocent III, and desired it to observed in good faith by his heirs in perpetuity.

John in the remainder of the Charter addresses "all free men of our Kingdom" and grants them "for us and our heirs forever, all the liberties written out below, to have and to keep for them and their heirs, of us and our heirs". So while the settlement was made with the barons, the class which it purported to protect was much wider. Not everyone, as this was still feudal England, but "all freemen", which is as broad a category as was conceivable at that time.

The liberties are then listed. As you expect in view of the background to the Charter, pride of place is given to restrictions on the King's ability to abuse his position by extracting extortionate taxes.

Some of the taxes have exotic mediaeval names, such as "scutage", which was the obligation to provide money in lieu of men to fight for the King, and "aids", which was an exceptional tax to meet an exceptional need which John had regularly demanded as a matter of course.

What was perhaps most surprising was the protection of heirs, especially those under age. While under age, heirs became the King's wards and their estates came under the King's control. John treated them as his own. They were to have their inheritance "without relief or fine" when they came of age and should receive their land properly maintained and stocked (chapters 3, 4 & 5).

The mediaeval attitude to women is not that of which the founders of this great College, initially devoted to the education of women, would have approved. However, again, the Charter language is remarkably liberal in relation, for example, to widows – the practice had been to treat them as in the

King'custody so that their lands would also come under the King's control. If the King was short of money he would auction widows off to the highest bidders. In the case of one widow, Henry II had consigned her to the tower, no doubt because her lands were so considerable. Another noble lady who had already been widowed and married 3 times was prepared to pay the King's demand of £3000 to escape being married a fourth time. In contrast with this treatment, the Charter provided that widows were to have their "marriage portion and inheritance at once and without trouble" (chapter 7) and that no widow was to be compelled to marry "as long as she wishes to remain without a husband" (chapter 8).

Even if a widow did want to marry, the marriage could be a lonely one as has been recorded by the present Master of the Rolls (MR) in a previous speech. King John expected his court to dance attendance upon him unencumbered by their wives. One wife, apparently frustrated by this practice, offered John

200 chickens to enable her husband to spend one night at Christmas with her.

John accepted. I share the MR's hope that this was a worthwhile investment.

There is a provision contained in chapter 11 restricting the recovery of debts by Jews out of the estate of a debtor which certainly sounds racially discriminatory, but the sting of the provision is drawn by the concluding words of the chapter which provide, and I quote, "Debts owed to persons other than Jews are to be dealt with similarly".

Other provisions that were to benefit the public were those that establish standard measures and weights throughout the Kingdom (c35) [surely the first example of consumer protection] and that the city of London and other cities, boroughs, towns and ports were to enjoy all their liberties and free customs. In addition, with certain exceptions, there was a

general right to leave and return to the kingdom "unharmed and without fear" (c42) [perhaps the source of holidaying abroad].

The provisions I have already cited, you may agree with me, are remarkable for a document negotiated 790 years ago, but they diminish into insignificance when compared to those chapters dealing with the individual's rights to justice. Here I will let the articles speak for themselves. I use their original chapter numbers:

> 20. For a trivial offence, a free man shall be fined only in proportion to the degree of his offence, and for a serious offence correspondingly, but not so heavily as to deprive him of his livelihood.
>
> 38. In future no official shall place a man on trial upon his own unsupported statement, without producing credible witness to the truth of it.
>
> 39. No free man shall be seized or imprisoned, or stripped of his rights or possessions, or outlawed or exiled, or deprived of his standing in any other way, nor will we proceed with force against him, or send other to do so, except by the lawful judgement of his equals or by the law of the land.

40. To no one will we sell, to no one deny or delay right or justice.

45. We will appoint as justices, constable, sheriffs, or other officials, only men that know the law of the realm and are minded to keep it well.

These are the chapters at the heart of Magna Carta. They set out the sense rather than the actual words of the original Latin but by themselves they justify treating Magna Carta as a document of outstanding importance. They contain many of the core features of a society that today adheres to the rule of law.

They explain why Magna Carta captured the imagination of Rudyard Kipling and why Lord Denning, perhaps the judge who more than any other placed a premium on personal liberty, loved at the slightest excuse to recite from Kipling's homage to Magna Carta. Although I cannot hope to emulate Lord Denning's delivery, let me jog your memory by citing part of "Runnymede". It describes so accurately the place of Runnymede in this country's history.

[At Runnymede, at Runnymede,
What say the reeds at Runnymede?
The lissom reeds that give and take,
That bend so far, but never break,
They keep the sleepy Thames awake
With tales of John at Runnymede.]

At Runnymede, at Runnymede,
Oh, hear the reeds at Runnymede:
'You musn't sell, delay, deny,
A freeman's right or liberty.
It wakes the stubborn Englishry,
We saw 'em roused at Runnymede!

When through our ranks the Barons came,
With little thought of praise or blame,
But resolute to play the game,
They lumbered up to Runnymede;
And there they launched in solid line
The first attack on Right Divine,
The curt uncompromising "Sign!"
They settled John at Runnymede.

At Runnymede, at Runnymede,
Your rights were won at Runnymede!
No freeman shall be fined or bound,
Or dispossessed of freehold ground,
Except by lawful judgment found
And passed upon him by his peers.
Forget not, after all these years,
The Charter signed at Runnymede.'

And still when mob or Monarch lays
Too rude a hand on English ways,
The whisper wakes, the shudder plays,
Across the reeds at Runnymede.
And Thames, that knows the moods of kings,
And crowds and priests and suchlike things,
Rolls deep and dreadful as he brings
Their warning down from Runnymede![2]

The Influence of Magna Carta

The second reason why Magna Carta is so important is because of the *influence* that it has had, not only in this country, but around the globe, in establishing the constitutional principles

[2] Rudyard Kipling (1865-1936)

that today are generally accepted as governing any society committed to the rule of law. It is a constitutional instrument for which there was no precedent. Neither the Barons nor the King, needed to reach such a wide ranging and long term agreement. Yet, they created a Charter that placed limits on the sovereign power of the King.

However, the full significance of Magna Carta could not have been recognised by its authors. For the Barons it was no more than an acknowledgement of their immediate grievances. For the King it was a useful short term expedient to buy time. It provided practical remedies for actual wrongs. It was not based on any lofty ideals or philosophical theory and at least until after the last war it took its place with other events in the development of what Lord Bingham has described as our unentrenched constitution.[3]

[3] The Ditchley Foundation Lecture, Lord Bingham 2003

For a time Magna Carta disappeared off the horizon, only to be resurrected at the time of a different conflict. This time the dispute was between King James I, and subsequently Charles I, and Parliament. Sir Edward Coke, in turn Attorney General, Chief Justice of the Common Pleas and Lord Chief Justice claimed effectively, but inaccurately, that Magna Carta recorded the liberties and freedoms enjoyed since time immemorial by the people of England. It was therefore an antidote to the Stuarts' claims to unbridled power based on the divine rights of Kings. Coke's approach to Magna Carta was dramatically in contrast to that of Oliver Cromwell.

Once he became Protector he was contemptuous of Magna Carta to redress grievances. For Cromwell it was not Magna Carta but "Magna Farta"[4]. Such a boorish dismissal of Magna Carta was even more unjustified than Coke's claims for it.

[4] Lord Phillips MR; Magna Carta

Fortunately historians redressed the balance. Though the Charter still has not had the recognition that, in my view, it should have, as the first of a series of instruments that now are recognised as having a special constitutional status. They include the Habeas Corpus Act, the Petition of Right of 1627, (largely the work of Coke and very much influenced by Magna Carta), the Bill of Rights confirmed by the Crown and Recognition Act 1689 and the Act of Settlement 1700. The long title to the Act of Settlement makes clear its links with Magna Carta since it states that it is an Act for the <u>further</u> limitations of the Crown and securing the rights and liberties of the subject. Importantly it secured the independence of the judiciary. Previously the judiciary had been dependent on the goodwill of the monarch for remaining in office.

It is, however, Magna Carta that has played the most critical role in developing our form of democratic government subject to the rule of law.

Magna Carta has also had a huge influence on the constitutional developments of those countries that have conventional written entrenched constitutions. One of the earliest of these constitutions and the model for a great many that followed was the Constitution of the United States.

The links between the United States' Constitution and in particular their Bill of Rights and Magna Carta is widely acknowledged. This connection explains the response of Americans to the Lincoln Cathedral's copy of the Magna Carta being transported to the United States Library of Congress for safe-keeping in 1939. No less than 14 million people queued to see it for themselves. When at the end of the war it was returned to this country, the Minister receiving it on behalf of the Crown referred to its lineage which he regarded as being "without equal in human history". He also considered with justification that the preamble to the United Nation's Charter was the most recent of Magna Carta's "authentic offspring".

Magna Carta's influence has also spread throughout the Commonwealth. Attention was drawn to this by Lord Irvine of Lairg when, as Lord Chancellor, he visited Australia and gave his authoritative lecture on "the Legacy of Magna Carta: a joint commitment to the rule of law".

As he stated: "In many respects, the Magna Carta has transcended the distinction between law and politics and its legacy represents a joint commitment by Monarchs, Parliamentarians and the Courts to the rule of law[5]. [For Lord Irvine, Magna Carta is not a distant constitutional echo. He considered that "its spirit resonates in modern law.]

That Lord Irvine should be giving a lecture on Magna Carta, on the other side of the globe in Australia was far from surprising. Magna Carta has been accepted in many of the Australian jurisdictions by statute (in some it is still almost entirely in force notwithstanding the repeals in this country).

[5] LQR [2003] 119 (APR) 227/245.

It is part of Australian Common Law and was described by Isaac J as "the groundwork of all our constitutions"[6]. Undoubtedly, as Laws LJ has pointed out, the "enduring significance" of Magna Carta is that it was a "proclamation of the rule of law" and "in this guise, it followed the English flag even to the Chagos Archipelago"[7].

India's very distinguished Supreme Court has the task of upholding the rule of law in the largest democracy in the world. It is no surprise to find that Court deciding that the right for a citizen to have a passport is based on Magna Carta[8].

The principles enshrined in Magna Carta have also, from time to time, surfaced in different parts of the world that have never been part of the British Empire or a common law legal system. The principles are universal. Thomas Payne's *Rights of Man*

[6] *Ex-parte Walsh Johnson* (1925) 27 CLR 36 at p.79
[7] (2001) QB 1067 (Bancoult's case)
[8] *Sawhney v Assistant Passport Officer, Government of India* (1967) Times 15 April.

took them to the different legal systems on the continent. They played their part in the French Revolution of 1789.

After the last war, the world had learnt the painful lesson, that John and the Barons' method of settling a little local difficulty had advantages over resorting to warfare. The world decided to do better in future and the result was that, in addition to playing a role in establishing the principles set out in the United Nation's Charter, the provisions of Magna Carta were highly influential when it came to drawing up the European Convention of Human Rights. It is easy to draw a parallel between the broad rights of that Convention and the broad statements contained in Magna Carta. As this country played its part in drawing up that convention, it is not surprising that a number of the articles of that Convention have a distinct Magna Carta resonance.

Surprisingly, however, the importance of Magna Carta has never had the recognition by the public at large in this country that it deserves.

Magna Carta and the Act of Settlement have been at least as important in protecting the public of this country's liberties as great battles such as that of Trafalgar, whose tri-centenary we will celebrate later this year. Rightly, there will be great reviews of the fleet and fireworks to mark the tri-centenary. By way of contrast, the tri-centenary of the Act of Settlement went unnoticed here as far I am aware, but in Canada, there was a great conference at which the event was celebrated with judges attending from all round the world.

Surely the time has come to rectify this position. I have mentioned Royal Holloway. There is, however, a co-host of these lectures. It is the Magna Carta Trust, established in 1957 with a most distinguished membership. Its Chairmen, commencing with Lord Evershed, have been the Master of the Rolls for the time being.

The then Prime Minister Sir Anthony Eden wrote a letter marking the inaugural meeting of the Trust in these terms:

> The 15 June 1215 is rightly regarded as one of the most notable days in the history of the world. Those who were at Runnymede that day could not know the consequences that were to flow from their proceedings. The granting of Magna Carta marked the road to individual freedom, to parliamentary democracy and to the supremacy of the law. The principles of Magna Carta, developed over the centuries by the Common Law, are the heritage now, not only of those who live in these Islands, but in countless millions of all races and creeds throughout the world.

At least Runnymede is in safe custody in the hands of the National Trust. But, that said, the identification of the actual site of the historic events in 1215 depends not on an English initiative, but on the initiative of the American Bar Association, supported by the Trust and the Pilgrim Trust, who on land leased by what is now the Runnymede Borough Council erected a monument in 1957 to commemorate and dedicate themselves to the principles of Magna Carta.

In 2000 the American Bar Association held a rededication ceremony at which Justice Sandra Day O'Connor spoke.

Visits have been made to the site by Presidents of India and Hungary. The president of Hungary came to the site to mark its importance to the emerging democracies of Eastern Europe.

Many thousands of members of the public visit the site each year, but they leave with no information of the significance of Magna Carta. No national or heritage money is made available to the Magna Carta Trust but it strives to do its best with the resources that are available to it. There is an undoubted need for a visitors centre at the site. The treatment of Runnymede demonstrates an unfortunate tendency of this country to be unduly complacent about the freedoms of which Magna Carta is a symbol. We cannot afford to take our freedoms for granted. The same complacency also contributed to the delay in making the European Convention, even though it is based on Magna Carta principles, part of our domestic law.

This had at least two disadvantages. Firstly, before October 2000 citizens, in order to obtain the benefits of the ECHR, had to go to Strasbourg; not a happy situation for the nation that had made such a significant contribution to establishing the importance of the rule of law. Secondly, until the ECHR became part of our domestic law, our judiciary were not able to make the contribution they would have made otherwise, by their judgments, to the development of the European jurisprudence relating to human rights.

Today the courts recognise specially protected rights. They are the very same rights that Magna Carta protected. They are the rights which, in this country, whilst they do not override the sovereignty of Parliament, control and constrain how that sovereignty is exercised.

Now the courts have an additional role. They are under a duty both to ensure that legislation is interpreted, whenever possible,

in accord with the European Convention and to ensure that public bodies do not contravene the Convention.

This increased responsibility of the courts enhances the importance of access to the courts for the protection of the human rights. Those rights would be illusory if members of the public who considered their rights had been infringed could not seek the appropriate protection from the courts. This is but one example in a contemporary setting of the relevance of Magna Carta principles.

When the public seek their protection, the courts have to be seen to be wholly free of the influence of the executive. There is a need for independent judges who treat all who come before them in the same manner. Again, these are among the constitutional necessities that Magna Carta recognised.

That our judges would demonstrate such independence had been taken for granted but two events were to draw attention to the need for constant vigilance.

The first warning came with the decision of the Prime Minister, announced in a press release in June 2003, to abolish the Office of the Lord Chancellor which was then occupied by Lord Irvine of Lairg.

What was apparently not appreciated at the time is that, while one individual as Lord Chancellor could, for historic reasons, exercise all the responsibilities of Lord Chancellor, a Secretary of State could not. In particular, the judiciary considered it wholly inconsistent with their independence for a Secretary of State to exercise the Lord Chancellor's traditional role as head of the judiciary.

It is now my personal view that even if this announcement had not been made, the conflict between the Lord Chancellor's

different roles would inevitably have made changes necessary. However, this announcement accelerated the process. Fortunately, it was recognised both by the government and by the judiciary that the respective responsibilities of the relevant minister and the judiciary had to be re-defined. The time had come when responsibilities previously performed by the Lord Chancellor had to be performed by a body or an individual who was clearly seen to be independent from the executive. There needed to be greater clarity as to the separate roles of the government and the judges. While up until that time, the separation of powers had not been a part of the English constitutional scene, at least in relation to the judiciary, the role of both the executive and the legislature now had to be seen to be separate from that of the judiciary.

The need for this separation had already been made clear by the European Court of Human Rights. Prior to the announcement, the European Court had by its decision in relation to the Bailiff

of Guernsey, given warning that the Lord Chancellor's different roles might be in conflict with the European Convention.[9]

The judiciary were obviously the most directly affected by the proposed changes. There is a massive amount of legislation giving tasks to the Lord Chancellor as head of the judiciary which would be more appropriately dealt with by a new head of the judiciary once the Lord Chancellor was disqualified from performing that role. There were other responsibilities which could appropriately be shared by the new Minister and the new head of the judiciary and there were yet other responsibilities which should be performed by someone independent of both the Executive and the judiciary.

To deal with this novel situation, a novel negotiation took place between the Executive, led by the Lord Chancellor and the judiciary which I led as Chief Justice.

[9] *McGonnell v United Kingdom* (2000) 30 EHRR 289.

The setting for the negotiation was not exactly a riverside meadow, but the objective as in the case of Magna Carta was to reach a consensus for the future as to how these differing responsibilities should be performed. I hope you detect an echo with the process that took place on Runnymede 790 years ago. The parallel is, of course, not exact. To begin with, the process took far longer. In addition, both the King and the nobles produced that remarkable document notwithstanding that they were motivated by their own self interest. I hope you will accept, that from the start both the judiciary and the Lord Chancellor were acting solely in the long term constitutional interests of the country. We were seeking to identify the proper boundaries between the roles of the executive and the judiciary and Parliament.

It was remarkable that as a result of these negotiations a consensual document was agreed which defines the respective roles of the parties and came to be known as the Concordat. Even more remarkably, the Concordat was universally

acceptable to the judiciary, the executive and the different political parties in Parliament.

There were differences of opinion between the different parties as to whether the office of Lord Chancellor should be abolished and as to whether, if the office was not abolished, which of his other roles should be affected. There were also the disputes as to whether, in future, the Lord Chancellor had to be a lawyer and a member of the House of Lords, but these disputes did not conflict with the terms of the Concordat.

The same is true of the issue as to whether the House of Lords should remain the final court of appeal for the whole of the United Kingdom or whether there should be a new Supreme Court. Here, there was hotly contested debate in Parliament but, miraculously, before the recent election, the Constitutional Reform Act was passed giving effect to the Concordat and Parliament's decision on the contested issues.

This required great Parliamentary statesmanship on all sides. The Act now protects the judiciary by making clear their and the executive's responsibilities. It is a new constitutional settlement giving effect to the rule of law. This is a further step in the process commenced 790 years ago.

The other development to which I referred was also of great importance. Dealing with a flood of asylum seekers was creating problems for the government. The process for determining claims for asylum and removing those whose claims failed was not effective. The system had too many tiers of appeal. The process was so protracted that by the time it had finished, the unsuccessful applicant could say that there had been a sufficient change of circumstances to justify the process being restarted. Many attempts were made to modify the system to make it more efficient with limited success.

The government, therefore, decided that a much more radical change was needed. They opted for a single tier with no right of

access to the courts. They drafted legislation which it was intended would exclude the courts in their entirety. Over the years, since the last war, attempts have been made to do this in a number of contexts but they have always failed. The courts are not prepared to accept that Parliament intends to exclude their residual jurisdiction to prevent the individual being treated unlawfully contrary to Magna Carta. However, the proposed clause was intended to make it impossible for the courts to say that, if the legislation was passed, it was not the intention of Parliament to remove any residual jurisdiction of the courts, however great the injustice that might result.

Fortunately, before the clause was debated in the Lords, the government was persuaded to think again. The fact that they did so avoided the risk of a confrontation between the courts, the government and Parliament. It is my belief that, for the future, the recognition by the government of the need to take account of the requirements of the rule of law enshrined in Magna Carta is more significant than the misguided attempt to exclude access to

the courts in the search for an expedient way of handling a difficult situation.

Increased recognition of the rule of law is also apparent in the strident argument which has taken place over the invasion in Iraq. What are the requirements of international law in relation to the invasion are, like most other areas of the international law, highly debateable at least at the fringes. However, it is commendable that the argument is to whether the invasion was lawful or unlawful. The argument is focussing upon the legality of what was done. It is not as might have been the case in the past on what is in the strategic interests of this country. In other words, the issue is "has the government acted in accordance with the rule of law?"

The same is true over the dispute as to the legal status of the detainees both at Guantanamo Bay and Belmarsh Prison, which rightly have concerned the Supreme Court of the United States and the Appellate Committee of the House of Lords.

The final illustration of the importance today of the rule of law and consequently its source, Magna Carta, is their impact upon the global economy. It is now accepted that the improvements in the standard of living are adversely affected by the absence of an established legal system which can ensure observance of the rule of law. There can be extreme reluctance to invest in a jurisdiction if there is a lack of confidence that disputes will be impartially resolved by an independent court system which is free from corruption and capable of upholding the rule of law. For the same reason, the European Union has insisted that the legal institutions of the countries applying for membership of the Union should be of acceptable standards before entry.

Conclusion

What I have said enables me to bring to a conclusion the first of the ten lectures on the relevance of Magna Carta today.

Last year, all around the world in both the civil and common law jurisdictions, including this country, celebrations were held

to mark the bi-centenary of the *Code Civile*. The *Code Civile* is the procedural code which has served civil jurisdictions so well for 200 years. In the common law world, there is nothing comparable to the *Code Civile*. Even if there had been, it is doubtful whether we would have celebrated it in the same way as France did. The French rightly saw the *Code Civile* as part of France's contribution to the legal systems of the world.

Hitherto, we have not sufficiently promoted the contribution of this country to the establishment of a world governed by the rule of law. The common law has spread and provided a contribution to justice, day in and day out, to about one third of the population of the world. It has influenced other systems of justice. There is no code to which we can draw attention.

However, Magna Carta is a symbol for the values of the common law. Magna Carta is also remarkable because it is such a historic statement of the fundamental principles of the rule of law.

The solution to a little local difficulty 790 years ago has become more important today than it has ever been. It is important that its 8th centenary should be celebrated in a manner that is worthy of what was achieved in Runnymede on the 15th June 1215. While I do not congratulate the Trust and Royal Holloway on their choice of the first speaker, I do commend their efforts to ensure the 8th Centenary will mark the important contributions of this country to establishing the rule of law which I have attempted to identify.

Magna Carta should inspire lawyers to rise above partisanship, solve problems, chief justice says

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BY TERRY CARTER

U.S. Supreme Court Chief Justice John Roberts, speaking to the ABA House of Delegates, delivered some choice humor, an informative lecture on the history of Magna Carta and a call for lawyers to advance the historic document's ideal for the rule of law and particularly for independent courts.

Roberts' address Monday launched the association's year-long, 800th-anniversary commemoration of Magna Carta, which will culminate in June 2015 with a ceremony at Runnymede in England, where the document was sealed by King John of England in 1215. The king agreed to the supremacy of law in limiting his powers over land-owning barons, in effect planting the seed for the rule of law.

At the outset of his speech, Roberts said that a few months ago a tourist guide at Runnymede asked his group for questions. One asked when the document was signed. The tour guide said 1215. And the tourist turned to his wife and said, "See, I told you we shouldn't have stopped for lunch. We just missed it."

Chief Justice John Roberts addresses the House of Delegates. Photo by Kathy Anderson.

There were plenty of laughs, but they grew to a roar when Roberts delivered this flourish: "If you don't like that, you try coming up with a Magna Carta joke."

Roberts' speech included an expansive lecture on Magna Carta's history, noting first that he got the information from an article in the June 1957 issue of the ABA Journal. That year the association erected a monument at Runnymede honoring the document, and it is being refurbished, with completion expected for rededication ceremonies next June.

On Friday at this ABA annual meeting, the association unveiled a traveling exhibit curated by the Law Library of Congress, "Magna Carta: Enduring Legacy 1215-2015." It will move to various cities around the country, as well as at the ABA London Sessions next June in England. In November, the Library of Congress will host one of the four remaining 1215 manuscripts.

The chief justice, in a heavily detailed presentation chocked with names, dates and events over the centuries, outlined how Magna Carta initially and going forward was invoked to foster government unity in times of crisis. Roberts also discussed how Magna Carta contributed to the rise in representative government, beginning with concerns over taxation and later encompassing other issues of public concern; and how writings about the document by Sir Edward Coke, the great English jurist of the 15th and 16th centuries, had an impact on the founders of our country.

Roberts touched on parts of Magna Carta to highlight direct lines to some of our most fundamental principles, such as being tried by a jury of peers; the concept of "the law of the land"; and how criminal penalties should match the severity of the offense.

Moving on to more recent times, Roberts noted: "We live in an era in which sharp partisan divides within our political branches have shaken public faith in government across the board."

The judiciary can help remedy that with its own work by exercising independent judgment, making sound decisions, and carefully explaining their reasoning, he said. He added that the judiciary also relies on the bar's skill and professionalism to help.

Lawyers have often participated in partisan disputes throughout the nation's history, he said, "to great beneficial effect."

"But lawyers fulfill their professional calling to the fullest extent when they rise above particular partisan debates and participate as problem solvers," the chief justice said, whether through the ABA's committees, pro bono service, through public service or helping the public understand issues.

We have given Magna Carta's core concepts concrete meaning and new meaning in our constitutional framework, Roberts said, and independent courts have ensured accountability to the law such that no person, no matter how high, is above the law.

"I encourage all of you as officers of the court to set your sights on the far horizon and ensure that our legal profession continues to advance that ideal," Roberts said.

Updated at 1:54 p.m. to add video and on Aug. 17 to correct a grammar error.

Magna Carta should inspire lawyers to rise above partisanship, solve problems, chief justice says

I am very pleased that the American Bar Association has invited me to speak on the occasion of the commencement of its year-long celebration of the significance of Magna Carta's eighth centennial. From now until next August, the Association will celebrate the meaning and significance of Magna Carta, both in the United States and in England. The ABA will literally build on the past by restoring and re-dedicating a monument it built in 1957 at Runnymede, England where King John sealed the great charter. I and other members of the judiciary will be following those events closely and we appreciate your association's commitment to increase public awareness of Magna Carta. Do not underestimate the extent of that challenge.

A few months ago, a group of tourists were visiting Runnymede. The tour guide asked if there were any questions. One fellow raised his hand and asked, "when was Magna Carta signed?" "1215" answered the tour guide. The fellow turned to his wife and said, "see, I told you we shouldn't have stopped for lunch. We just missed it." If you don't like that, you try coming up with a Magna Carta joke.

This year marks a number of other significant anniversaries. 50 years ago, Congress passed the Civil Rights Act. 70 years ago, allied forces stormed Normandy to restore liberty to Europe. 200 years ago, a very prominent lawyer and Supreme Court advocate Francis Scott Key witnessing the battle of Fort McHenry, penned "The Star Spangled Banner." And of course 225 years ago, our Constitution first took effect. Each of these anniversaries commemorates remarkable individuals pursuing lofty objectives beyond their own interests.

In the case of Magna Carta, we commemorate something quite different. Historians have debated for centuries the significance of the events at Runnymede but one thing seems clear: the

individuals who met there were pursuing their own narrow interests rather than a heroic cause beyond themselves.

Now the basic story, which began long before the events at Runnymede has of course been recounted by others, including Louis Altenburg. Altenburg was a moving force behind the ABA's monument that was erected at Runnymede and he wrote a very good account of the pertinent events in the 1957 June issue of the ABA Journal. Now for those of you whose collection of back issues don't go back that far, I will give a very brief overview of the history.

Everything in England seems to begin with William the Conqueror who was of course, William the Wily Administrator as well. After defeating King Harold, William put in place his own futile bureaucracy, rewarding trusted supporters with fiefdoms in exchange for their loyalty and for providing men and money to support his kingdom. Now, as power passed through several generations through strong leaders such as Henry II and Richard the Lion Heart, to weaker ones such as King John, the barons grew increasingly restless with respect to the heavy taxes and other royal demands. When the Archbishop of Canterbury died in 1205, King John insisted on choosing his successor, which put him at odds with Pope Innocent III. That battle of wills not only resulted in John's ex-communication but also caused collateral damage to the barons and the English church. In the ensuing years, John taxed the barons and seized church property to gain leverage in his dispute with the pope. Now, later on, when John finally reached an agreement with the Holy See and accepted the pope's appointment of Stephen Langton as Archbishop, he further alienated the variance by keeping those unpopular policies in place. It reached a crisis point when the barons refused to support John's preparations for war with France. Neither the Archbishop nor the barons were duped by King John's pledge to conduct a crusade on behalf of the church. Now when Langton and the barons united in opposition to John

and the barons marched on London, John had no choice but to hear their demands. The barons spelled out those demands in a statement that recited what they took to be their rights under the feudal system and customs.

In June of 1215, at Runnymede, King John attached his seal to that statement now known as Magna Carta. The barons in turn, pledged their fealty to the king. That event is depicted in the Supreme Court on the frieze that runs across the top of our courtroom. The next time you're in Washington, you can pick it out. It's on the left side toward the back. And you will see that the sculptor has done a very good job of capturing an unhappy expression on King John's face.

Now at bottom, Magna Carta resolved a feudal quarrel through a practical compromise. The barons took what they could get and the king kept what he could keep. The Magna Carta of 1215 spoke to the protagonists' narrow interests and so is a product of its era. After first announcing the freedom of the church, the document recites feudal and customary rights respecting things like estates, inheritances, marriage, property, debts and so on. Now some of those provisions suggest important social and economic changes. For example, what we now number as Chapter Eight, providing that "no widow shall be compelled to marry, so long as she has a mind to live without a husband." Other provisions reflect the prejudices of the time such as those that single out Jews for discriminatory treatment. But when we talk about Magna Carta today, we are not celebrating antiquated relics of a time long past. Instead, we are referring to a small collection of provisions that express kernels of transcendent significance. Although the barons were preserving their own interests, they nevertheless tried to bolster their cause with statements of principle that spoke to broader issues of governance such as due process, separation of powers, freedom from arbitrary action, and the elements of a fair trial. Most famous of course, is Chapter 39, which provides that no free man shall be taken or imprisoned or

disseized of any freehold or liberties except by the legal judgment of his peers or by the law of the land. The provision is instantly recognizable as the seed for our modern concept of due process. Likewise, Chapters 12 and 14, which require consent of a council before taxes may be imposed, contain the hint of the principle of separation of powers. Those provisions distributed power among classes of persons, the barons and the king rather than among components of government. But they nevertheless speak to the dangers of concentrated authority. Chapter 23, which forbids the king from ordering towns or free men from constructing bridges across rivers may seem quaint but it touches on the principles that the government may not impose burdens arbitrarily on a few. And chapter 20's provisions providing that "criminal penalties must be assessed by local judgment and be proportional to the crime", contain rudiments of our own eighth amendment protections.

Now the Magna Carta of 1215 of course, contains only suggestions of what we now regard as fundamental freedoms. But perhaps reflecting Archbishop Langton's learning and desire to give dignity to the barons' cause, some of Magna Carta's language speaks beyond its times. Those times however, quickly reasserted themselves and the Magna Carta of 1215 was effectively anulled a few months after it was sealed by Pope Innocent III. He came to the aid of the beleaguered king who had, after all, promised to take up the crusader's cross.

Now in retrospect, the story of the emergence and demise of the 1215 document is the usual tale of political opportunism, selfish interests, and hubris brought to a close in this case by King John's unceremonious death of dysentery in 1216. And yet we mark the anniversary and indeed celebrate it for a year. I think we do so for the same reason that we often memorialize the groundbreaking of a major public building or monument. Whether King John and the barons knew it or not, the events of 800 years ago marked the commencement of a major undertaking in

human history. We mark the 800th anniversary of Magna Carta because it laid the foundation for the ascent of liberty. We celebrate not so much what happened eight centuries ago, as what has transpired since that time. That progress, in no sense universal and in no sense irreversible, has been aided in significant part by the members of our profession, who recognize the enduring principles embedded in Magna Carta and build out from that foundation.

A few years ago, a theatre group became famous for its ability to perform the complete works of William Shakespeare in 60 minutes. That required some abridgment. For example, the troops' treatment of Hamlet basically amounted to: Danish king is murdered, prince feigns insanity, everybody dies. Given the time constraints, my description of Magna Carta's significance will also omit the dramatic details. Instead, I will simply point out three ways Magna Carta has been invoked to sustain the progress of free societies and remains relevant today.

First, Magna Carta, especially in its early years was invoked to foster government unity in times of crisis. When the nine-year-old Henry III succeeded John, his guardians promptly re-issued Magna Carta in a shortened version to consolidate the support of the barons. When Henry III reached majority in 1225, he re-issued it again to galvanize the support of the barons for yet another war with France. Edward I likewise, re-confirmed Magna Carta in 1297 in significant measure to get the barons solidly on his side in his effort to conquer the Scots.

Now, before Magna Carta, English kings maintained loyalty through feudal fear and favor. They did so afterward as well. But after the meeting at Runnymede, a new element was added to the equation. King John's successors could invoke Magna Carta as a means of bolstering allegiances. And when they reconfirmed the charter for their short-term purposes, they

were, whether they liked it or not embedding the rule of law as a unifying force in English society. The responsibility to support the king carried with it rights the king must respect.

Second, Magna Carta contributed to the rise of representative government. The English kings met with councils of barons before King John's meeting at Runnymede. But Magna Carta signified an enlarged role for the meetings of the barons in council. That role originally focused on issues of taxation but gradually extended to other issues of public concern. During the reigns of Henry III and Edward I, those councils coalesced into parliament in which knights and burgesses, as well as bishops and barons participated in the deliberations. During the Tudor Era, when the royalty and parliament found common ground, Magna Carta's influence became less visible, at least as a matter of public law. But Magna Carta once again came to the fore with the Stewart Monarchs and their claims of royal prerogatives. When James I and Charles I imposed taxes without the approval of parliament, the members sought to revive what Benjamin Rudyard called, "the good old decrepit law of Magna Carta." Sir Edward Cook gave Magna Carta what many historians consider an overly expansive gloss to justify parliament's opposition to the royal claims. He characterized Magna Carta as stating the inviolable rights of all English subjects. His rhetoric reached its zenith in the debates on the petition of right in which he declared "Magna Carta is such a fellow, he will have no sovereign." Now that's surely an exaggeration of the events at Runnymede. In practical effect, Cook promoted Magna Carta as marking modern constitutional limitations on the power of the king. His advocacy ultimately laid the groundwork for other cornerstones of English liberty, such as the Habeas Corpus Act and the English Bill of Rights. So in that sense, Magna Carta, as re-imagined by Cook steered history down the path towards constitutional democracy.

Indeed, Magna Carta became a banner for rallying opposition to British rule. Massachusetts' first state seal, engraved by Paul Revere and set in stained glass here in the State House, depicts a militia man with a sword in his right hand and a copy of Magna Carta in his left. There is no small irony in the fact that Magna Carta, a document that Cook viewed as the definitive statement of the rights of Englishmen, would become a cornerstone in our own quest for freedom from British rule.

Now, from our perspective today, 800 years later, we can see that Magna Carta originally resolved a feudal squabble between a venal king and selfish barons. Eyes fixed on their own interests. But Magna Carta became a crucial building block in developing the notion of a government bound by the rule of law. A political structure in which defined limits on the exercise of power allow even those without power to assert rights and demand justice.

What Professor Dick Howard described as "the road from Runnymede", has been neither straight nor smooth. Nor has it reached a final destination. But what is important is that Magna Carta's core principles of justice remain relevant today and worth defending. When the ABA rededicates its monument to Magna Carta next June, it will symbolically renew its own commitment to that defense. Magna Carta's history teaches that no generation is spared its challenges. We live in an era in which sharp partisan divides within our political branches have shaken public faith in government across the board. We on the bench can bolster public confidence by exercising independent judgment to reach sound decisions carefully explained to the best of our abilities. We rely on the Bar's skill, professionalism, and hard work to help us carry out that function. I hoped that was the case when I was practicing law and now, on the other side of the bench, I know it to be true.

But we in the judiciary must also look to the Bar for broader assistance in maintaining the public's confidence in the integrity of our legal system. Lawyers have often participated in partisan political disputes throughout our history to great beneficial effect. But lawyers fulfill their professional calling to its fullest extent when they rise above particular partisan debates and participate as problem solvers, whether through the ABA's committees, through pro bono work, through public service, or simply by helping the public understand the nature of the role that courts play in civil life. A role distinct from that of the political branches.

An 800-year commemoration invites us to take a long view. Our American experiment has not reached 1/3 of the age of Magna Carta but we have given Magna Carta's core concepts concrete meaning in a new constitutional framework. Independent courts have ensured accountability to the law, fulfilling Magna Carta's ideal that no person, no matter how high, is above the law. I encourage you all, as officers of the courts, to set your sights on a far horizon and ensure that our legal profession continues to advance that ideal. Thank you again for inviting me here today and thank you for your continued service to the legal community. Thanks very much.

Bryan Garner offers a Magna Carta style guide

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BY BRYAN A. GARNER

Photo of Bryan Garner by Terri Glanger.

The Library of Congress has staged a magnificent exhibit on Magna Carta and its history. It is, after all, the 800th anniversary of the Great Charter of 1215. To commemorate the event, Justice Randy J. Holland of the Delaware Supreme Court has edited a book to accompany the exhibit: *Magna Carta: Muse and Mentor*, for which Chief Justice John G. Roberts Jr. has written a foreword. When Justice Holland asked me to contribute one of the 15 essays in the book, I decided to take a lexicographic look at the phrase. There are many curiosities about both the phrase *Magna Carta* and the document it denotes. Very little about Magna Carta is simple or straightforward.

WHAT IS THE PREDOMINANT SPELLING?

Originally, the predominant form was *Magna Charta*, which long held sway. At its height, *Magna Charta* was nearly 10 times as common as *Magna Carta*. But the two spellings had a significant reversal of fortune in the late 20th century.

In 1926, when H.W. Fowler wrote the first edition of his *A Dictionary of Modern English Usage*, he said: "*Magna C(h)arta*. Authority seems to be for spelling *charta* and pronouncing /kar´ta/, which is hard on the plain man. But outside of histories and lecture rooms the spelling and pronunciation *charta* will take a great deal of killing yet." In his 1965 revision of that book, Sir Ernest Gowers introduced an excellent update: "In a bill introduced in 1946 authorizing the trustees of the British Museum to lend a copy to the Library of Congress, *Charta* was the spelling used. But when the bill reached committee stage in the House of Lords, the lord chancellor (Lord Jowitt) moved to substitute *Carta* and produced conclusive evidence that that was traditionally the correct spelling. The amendment was carried without a division, so *Carta* has now unimpeachable authority."

Though *Charta* vastly predominated before the mid-20th century, it now seems archaic. What an astonishingly swift reversal of linguistic fortune.

WHAT DID WILLIAM SHAKESPEARE AND SAMUEL JOHNSON HAVE TO SAY ABOUT MAGNA CARTA?

Nothing. Absolutely nothing. The various Shakespeare concordances have no listing of *Magna Carta*. Somehow Shakespeare's play *King John* (1596) deals with baronial rebellion all the way through John's death without a whisper about Magna Carta. As the variorum edition notes, the play contains "not the faintest allusion ... to the constitutional struggle which ended in the grant of the Great Charter," adding: "Startling as it sounds to modern ears, it is almost certain that Shakespeare had small knowledge of that document, and a very inadequate sense of its importance." This despite the playwright's extensive legal knowledge. Perhaps this paradox can be explained partly by the low ebb that Magna Carta had reached in the 15th and 16th centuries. Or the omission may have resulted from Shakespeare's dramaturgical strategy, although some have suggested that *King John* is more subject to criticism by lawyers than any other play for precisely this reason. One historian of the English Renaissance doubts that Shakespeare had even heard of Magna Carta.

As for Samuel Johnson, his 1755 *A Dictionary of the English Language* has no entry for the phrase. Nor is there any reference to it in the entry for *charter*, although Johnson does say this: "*Charters* are divided into charters of the king, and charters of private persons." Not until the Rev. H.J. Todd's revision of 1818, more than 30 years after Johnson's death, did an entry appear in an edition of Johnson's dictionary. It read in full: "*Magna Charta*. n. s. [Latin.] The great charter of liberties granted to the people of England in the ninth year of Henry III, and confirmed by Edward I."

Did Johnson discuss Magna Carta in any of the copious conversations recorded by his biographer James Boswell? Apparently not. No reference appears even in his voluminous letters.

WHICH LEXICOGRAPHER MOST VIVIDLY DEPICTED THE SCENE AT WHICH MAGNA CARTA TOOK EFFECT?

Giles Jacob in 1729, but the description wasn't of King John at Runnymede; it was of Henry III late in life. It was the reaffirmation of Magna Carta in the 37th year of Henry III's reign—a down-the-line reissue of the charter. The scene took place at "Westminster Hall. And in the presence of the nobility and bishops, with lighted candles in their hands, Magna Charta was read—the king all that while laying his hand on his breast, and at last solemnly swearing faithfully and inviolably to observe all the things therein contained, as he was a man, a Christian, a soldier and a king. Then the bishops extinguished the candles and threw them on the ground; and everyone said, 'Thus let him be extinguished, and slink in hell, who violates this charter.' "

This article originally appeared in the January 2015 issue of the ABA Journal with this headline: "A Magna Carta Style Guide: From Charta to Carta and which king should get credit for the Great Charter."

Bryan A. Garner (@bryanagarner), president of LawProse Inc., has been the editor-in-chief of Black's Law Dictionary since the mid-1990s. He is the author of more than 20 books on legal writing, advocacy, jurisprudence, and English grammar and usage, as well as a translation into plain English of the rules of golf.

Talking Points

The story of Magna Carta begins at Runnymede in England in 1215, but it does not end there. It is a story that runs eight hundred years forward and is still unfolding. It is the story of our rule of law tradition and of how our American system of government is derived from our English legal heritage.

- The document that became known as Magna Carta was first issued in June 1215. It resulted from negotiations, culminating in a meeting at Runnymede, between King John and rebellious English aristocrats on the brink of civil war.
- The 1215 charter was handwritten in Latin on a single piece of sheepskin parchment approximately 18 inches square—about the same surface area as a 27" computer monitor or TV screen. Its text runs less than 4,000 words—somewhat shorter than that of the original 1787 U.S. Constitution.
- The last line of the 1215 charter refers to a specific place and time of its issue: "in the meadow that is called Runnymede between Windsor and Staines on the fifteenth day of June in the seventeenth year of our [King John's] reign." Runnymede represented neutral turf between parties in conflict.
- The most persistent misconception about Magna Carta is that King John "signed" the document at Runnymede in 1215. Rather, to signify his assent and granting of the charter to his subjects, the king's seal was affixed, after the Runnymede meeting, to more than 40 documents produced by his royal chancery or writing office. They were then distributed to counties throughout the realm of England.
- A would-be peace treaty between the king and the rebellious nobles, the 1215 charter did not survive its year of issue. Pope Innocent III annulled the charter within 10 weeks of its issuance. In the midst of virtual civil war, King John suddenly died in October 1216. The charter was then reissued on behalf of the new king, John's nine-year-old son, Henry III. This Magna Carta was substantially revised and shortened to about 2,500 words. A second reissue was made in 1217 and a third in 1225. The 1225 issue was the version incorporated into English law in 1297.
- "Magna Carta" means "Great Charter" in Latin. After it was first revised in 1216, a separate charter of the forests, spun off and expanded from the 1215 document, was issued. To differentiate the first charter from the second, the former became known, in 1218, as Magna Carta Libertatum (Great Charter of Liberties) or, simply, Magna Carta.
- There are multiple Magna Carta manuscripts that can claim to be "originals." Why this is so is a matter of historical circumstance, tradition, and scholarly conventions. In addition to the four 1215 first issues, there survive one from 1216 and four more each from 1217, 1225, and 1297. Just two of these seventeen are outside England, both dating to 1297. They are in the national capitals of Australia (Canberra) and the United States—the latter is publicly displayed at the National Archives in Washington, D.C.
- After 1300, Magna Carta was not reissued—physically produced and disseminated across the realm—but simply "confirmed." English kings confirmed Magna Carta dozens of times in the centuries following the thirteenth, corroborating its status as an exemplary written charter of good governance and recognition of the lawful liberties of English subjects.

800 Magna Carta

SYMBOL OF FREEDOM UNDER LAW

LAW DAY 2015

- In the seventeenth century, English jurist Edward Coke interpreted Magna Carta to be part of an "ancient Constitution" that preserved the rights of English subjects, protected by a representative parliament, against the claims of absolutist monarchs. By the eighteenth century, the uncodified British Constitution was seen as including not only key texts from the prior century (1628 Petition of Right, authored by Coke; Habeas Corpus Act 1679; 1689 English Bill of Rights), but also Magna Carta itself—invoked to trace back the deep roots of British constitutionalism.

- The eighteenth-century English jurist William Blackstone developed a numbering convention for Magna Carta, which we follow today. By tradition, the various short sections are commonly called "chapters." The 1215 Magna Carta has 63 chapters and the shorter 1225, just 37. The famous, oft-cited clause that begins "No free man shall be seized or imprisoned," which appears in all issues, is numbered chapter 39 in the 1215 Magna Carta and 29 in the abbreviated 1225 issue.

- The 1215 issue of Magna Carta from Lincoln Cathedral became the first charter to travel outside the United Kingdom in 1939, when it came to the United States for display at the New York World's Fair and then remained in Washington, D.C., for safekeeping throughout World War II.

- Magna Carta has been cited in over 170 U.S. Supreme Court opinions, according to American University law professor Stephen Wermiel, who analyzed 224 years of U.S. Reports of Supreme Court decisions. Of these 170 cases, 28% concern due process of law; 13%, trial by jury; 8% concern how Magna Carta influenced American constitutionalism; 6% each treat antitrust matters and habeas corpus; 5% concern other civil rights and liberties; and 4% each treat cruel and unusual punishment and excessive fines.

- Unlike no other historical document, Magna Carta symbolizes our deep-rooted tradition of constitutional governance and its associated "rule of law" values. These are commonly understood to mean that "no ruler is above the law" and, often, the granting of political and legal rights in writing. Rule of law is often contrasted with rule that is capricious, unprincipled, and inconstant.

Timeline of Magna Carta History

1215

A group of English barons rebels against King John in the meadow at Runnymede, England, and persuades him to affix his seal to a document called the "Charter of Liberties." The articles established a committee of 25 barons to oversee the king's adherence to the document's provisions. In all, there are 63 chapters. An unknown number of copies are sent to officials. Three months later, Pope Innocent III declares the document invalid.

1216

King John dies, and his 9-year-old son, Henry III, ascends to the throne of England. In order to avert a war between Henry's supporters and usurper Prince Louis's supporters, the charter is reissued, sealed by a papal representative, Guala Bicchieri, and the king's regent. It substantially revises the 1215 document. This charter has 42 chapters instead of 63.

1217

Following the First Barons' War and the Treaty of Lamberth, the Charter of Liberties (known in Latin as *carta libertatum*) is reissued. The 42 chapters are expanded to 47 chapters. During the same year, a fragment of the Charter of Liberties serves as the basis for a second charter, the Charter of the Forest.

1225

King Henry III is called upon to reaffirm the Charter of 1217, now known as *Magna Carta*. This document has 37 chapters and is the first version of the charter to be entered into English law.

1297

King Edward I reissues the 1225 version of Magna Carta. Constitutionally, this version is the most significant. It is still included today, in part, in English statutes.

1354

Under King Edward III, Magna Carta's benefits are extended from "free [men]" to "[men], of whatever estate or condition he may be," and the phrases "due process of law" for "lawful judgment of his peers or the law of the land" are introduced.

1423

Magna Carta is confirmed by King Henry VI following decades of successive generations petitioning the English throne to reaffirm the document.

1628

Sir Edward Coke, the first respected jurist to write seriously about Magna Carta, drafts the Petition of Right, which becomes, along with Magna Carta, part of the uncodified British Constitution.

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1687
William Penn publishes *The Excellent Privilege of Liberty and Property: being the birth-right of the free-born subjects of England*, which contained the first copy of Magna Carta printed in the American colonies.

1759
Sir William Blackstone creates a numbering system that is applied to the clauses of Magna Carta, which is still used today.

1791
Thomas Paine, in his book, *Rights of Man*, argues that Magna Carta does not guarantee rights because it was not a properly ratified written constitution.

1816
John Whittaker, an English bookbinder, produces a deluxe gold-blocked edition of Magna Carta in celebration of its 600th anniversary (one year later).

1829
Chapter 26 of Magna Carta becomes the first chapter to be repealed under English law.

1939
An original Magna Carta travels to the United States for the first time as part of the New York World's Fair.

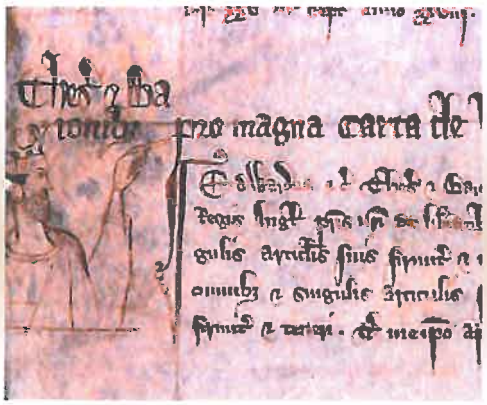
1941
Magna Carta is secured at Fort Knox, in Kentucky, along with the U.S. Declaration of Independence and Constitution, for most of World War II.

1965
United States Postal Service issues stamps in honor of the 750th anniversary of Magna Carta.

1969
Chapters 1, 9, and 29 are the only three of the 1225 issue chapters from Magna Carta that have not been repealed under subsequent statutes of English law.

2007
The only surviving 1297 copy of Magna Carta in private hands is sold for $21.3 million to American David Rubenstein at auction. It becomes part of a permanent exhibit at the National Archives and Records Administration in Washington, D.C.

2015
The world commemorates Magna Carta's 800th anniversary with special exhibits, programs, and events.



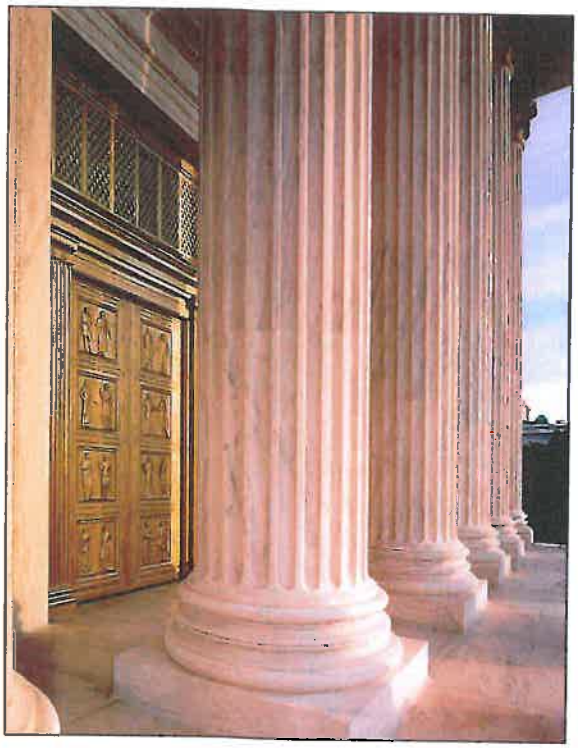
The Bronze Doors

INFORMATION SHEET

"Out of all of our monumental projects, spread over two lifetimes, the Supreme Court doors are the only work that we ever signed - that's how important they were."

- JOHN DONNELLY, JR., *Sculptor*

In designing the Supreme Court Building, architect Cass Gilbert (1867–1934) utilized a classically inspired entrance procession leading to the Courtroom. Key elements in this sequence are the bronze doors, centered behind the massive columns of the front portico. Signifying the importance of the proceedings that occur within, the oversized doors measure 17 feet high, 9 ½ feet wide and weigh about 13 tons. The doors were designed by Gilbert and John Donnelly, Sr. (1867–1947) and sculpted by his son, John Donnelly, Jr. (1903–1970). Cast by The General Bronze Corporation of Long Island City, New York, they were shipped to Washington and installed in early 1935.



The Bronze Doors, c. 1993

Each door is comprised of four bas-reliefs which illustrate significant events in the evolution of justice in the Western tradition. Arranged chronologically, the thematic sequence begins on the lower left panel and moves up to the top of that door. It continues with the bottom right panel and concludes with the upper right corner. The events depicted are:

1. SHIELD OF ACHILLES

Two men debate a point of law, with the winner to receive the two gold coins on the pedestal. This scene is described in the *Iliad* as part of the decoration on the Shield of Achilles forged by Vulcan. It is recreated here by the Donnellys who described it as "the most famous representation of primitive law."

2. PRAETOR'S EDICT

A Roman *praetor* (magistrate) publishes his edict proclaiming the validity of judge-made or "common" law. A soldier, perhaps representing the power of government to enforce the common law, stands by.

3. JULIAN AND SCHOLAR

Julian, one of the most prominent law teachers in Ancient Rome, instructs a pupil. According to the Donnellys, this represents "the development of law by scholar and advocate."

4. JUSTINIAN CODE
This panel depicts the publishing of the *Corpus Juris* by order of the Roman (Byzantine) Emperor Justinian in the sixth century AD. This is considered to be the first codification of Roman law.

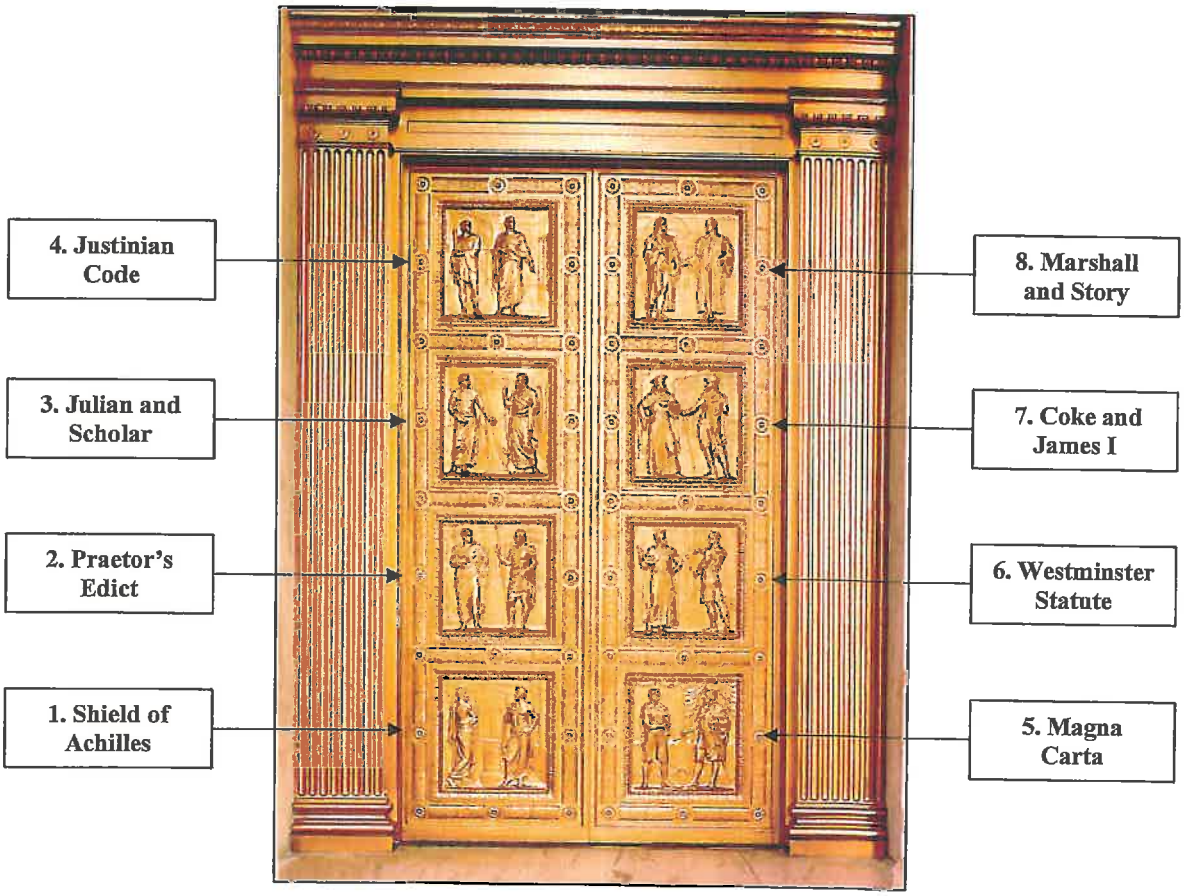
5. MAGNA CARTA
King John of England is coerced by the Barons to place his seal upon the Magna Carta in 1215.

6. WESTMINSTER STATUTE
King Edward I watches as his chancellor (secretary) publishes the Statute of Westminster in 1275. The Donnellys' description states "The greatest single legal reform in our history."

7. COKE AND JAMES I
England's Lord Chief Justice Coke bars King James I from the "King's Court," making the court, by law, independent of the executive branch of government.

8. MARSHALL AND STORY
The Donnellys describe this event as Chief Justice John Marshall and Associate Justice Joseph Story discussing the 1803 *Marbury* v. *Madison* opinion in front of the U.S. Capitol. It should be noted that Justice Story did not join the Court until 1811, eight years after this historic decision was handed down.

To view the doors in unison *(as seen below)*, visitors must arrive during non-business hours because these sculpted doors are rolled into pockets in the wall each weekday morning when the main entrance to the Supreme Court opens.



The Economist

The Magna Carta at 800

The uses of history

How did a failed treaty between medieval combatants come to be seen as the foundation of liberty in the Anglo-Saxon world?

Dec 20th 2014 | From the print edition

THE great bronze doors of America's Supreme Court are decorated with eight panels depicting seminal moments in legal history. One of them shows a cross-looking King John in a face-off with a determined baron who is leaning threateningly on his sword (right). Between them is a document onto which the king is pressing his seal.

The relief is a fair representation of the making of Magna Carta. King John was indeed angry, and the barons threatening. But 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 and an ocean away from the moment immortalised on those doors.

It happened on June 15th 1215, in a field at Staines, now a less than lovely suburb west of London. The deal that was done there was yet another stage in a long tussle for power between feudal strong-men and their overlord. John had spent most of his financial and political capital trying and failing to hold on to bits of France. He had alienated the clever, ambitious Pope Innocent III by refusing to accept the pope's nominee for Archbishop of Canterbury. He expelled the monks from Canterbury and the pope excommunicated him.

He had alienated the barons, too, by fleecing them and, when they resisted, did much to deserve the bad press Shakespeare subsequently gave him. When one baron, William de Braose, failed to cough up and fled to France, John took his wife and son hostage, locked

them up in Corfe castle and left them there. According to a contemporary chronicler, when their corpses were eventually removed, the woman was discovered to have been chewing on her son's cheek.

England thus became a rogue nation. The clergy were not allowed to celebrate mass. Dissidents were persecuted or fled. Big powers near and far—France, Wales, Scotland, Rome—conspired to overthrow the oppressive regime.

Faced with the threat of invasion, John made a clever move: he sued for peace with the pope. He accepted Innocent III's nominee for archbishop and, in a scene of exquisite triumph for the pope and humiliation for the king, John knelt before the papal nuncio in St Paul's Cathedral as the instrument of his surrender was read out before assembled barons and clergy. That did not, however, answer the barons' grievances. The rebels gained ground and soon took London. John realised that he had to make terms with them: those terms were Magna Carta.

There was not much reason, at the time, to suspect that the document would make history. It was not a revolutionary idea for the king to issue a charter promising to play by certain rules. Henry I, William the Conqueror's son, had published the Charter of Liberties when he came to the throne in 1100, to persuade the barons that he would behave more reasonably than his horrible brother William Rufus had done.

Moreover, Magna Carta was a failure. It had an enforcement clause that no self-respecting monarch would have stuck to—establishing a council of 25 barons with the right to seize all the king's possessions if he broke any of the other clauses—and John evidently had no intention of doing so. A month after it was sealed, he wrote to his new friend the pope to ask for its annulment. The tactical humiliation in St Paul's Cathedral paid off, and the pope promptly obliged.

Nor was there much in the document to interest people beyond the time and place in which it was born. 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, 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, such as the dismantling of fish-weirs on the Thames.

A pretext for regicide

Buried beneath the "scutage", "novel disseisin" and "darrein presentment" there were, however, some grander notions, which many historians attribute to the new Archbishop of

Canterbury, Stephen Langton, a theologian trained in Paris who later sided with the barons and was sacked by the pope. Certainly, there is evidence of a sharp intelligence at work, using a propitious moment to delineate more broadly the relations between a sovereign and his subjects. Scutage—a tax to pay for war—was to be levied only with "the general consent of the realm". And chapter 39 in the original (29 in later versions) asserts that "no free man shall be seized or imprisoned, or stripped of his rights or possessions, or outlawed or exiled, or deprived of his standing in any other way, nor will we proceed with force against him, or send others to do so, except by the lawful judgment of his equals or by the law of the land." That prohibition earned Magna Carta its place on the Supreme Court door.

This passage did not establish the right to trial by jury, for juries were already used extensively; nor is it clear what "the law of the land" meant, since there were no statutes, only customs. The language is not original—a similar phrase appeared in the Edict of Conrad II, the Holy Roman Emperor, in 1037, and another in the second Treaty of Constance between the Emperor Barbarossa and the Lombard League in 1183. But on the European mainland the phrase disappeared into the murk of the Middle Ages, whereas in the Anglo-Saxon world it survived, to be revived and revered by subsequent generations. Why?

John "surfeited himself with peaches and drinking new cider, which greatly increased and aggravated the fever"

Bridgeman

One reason may have been a batch of cider newly brewed by monks at Swineshead Abbey in Lincolnshire. After John reneged on the charter, Louis, son of the king of France, came to England at the barons' invitation to take the throne. John marched towards the north, where the estates of many of the rebel barons lay. On the way, he lost his treasure crossing the Wash. The "grief of mind" this caused made him ill, according to Roger of Wendover, a contemporary chronicler; the king then "surfeited himself with peaches and drinking new cider, which greatly increased and aggravated the fever." Shakespeare reckons the monks poisoned him. Either way, he died a week later.

John's son Henry was nine, so one of the barons who had remained loyal to the throne, William Marshal, became regent. Unlike his newly deceased liege, he was a remarkable

soldier and statesman. Already pushing 70, he led the royal troops into battle against the French at Lincoln, and defeated them. He then reissued the Charter, largely in its original form, turning a document designed to weaken the king into the monarchy's most powerful weapon. The rebels no longer had a cause, and the rebellion died. When Henry III reissued the Charter once again on his coming of age in 1225, most of the witnesses to it were former rebels.

William Marshal: the man who saved Magna Carta

The second reason for the treaty's survival was Sir Edward Coke, a 17th-century lawyer. The charter 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 terrifying 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.

Leader of the pack of parliamentary lawyers was Coke, 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—are nonsense. But he successfully argued that the crucial chapter 39/29 established the precedent of limits to monarchical power: "Upon this chapter, as out of a roote, many fruitful branches of the Law of England have sprung". He used Magna Carta as the basis of the Petition of Right, the proto-constitution that Parliament forced Charles I to sign.

Decapitation and a further, more peaceful, revolution tamed the English monarchy; once Parliament was top dog, its members lost interest in constitutions. Except among radicals, who waved it despairingly through the 18th and 19th centuries, 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 shaped them. Coke wrote the first Virginia charter,

guaranteeing the settlers' rights as free English subjects; William Penn, founder of Pennsylvania, first published Magna Carta in America. 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.

The spirit of Coke strode through the incipient nation. Lawyers were over-represented among America's Founding Fathers, and as students they were made to read him. 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 recognised the importance of his 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—he of the legendary Ride—engraved a replacement 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 ground that the colonists were doing "as Englishmen, their ancestors in like cases have usually done, for asserting and vindicating their rights and liberties". And the echoes of that crucial chapter are clearly audible in the American Bill of Rights.

Home of the free

These days Magna Carta seems to belong to the Americans more than it does to the British. The memorial to it in a soggy Thames-side meadow was put up by the American Bar Association. American jurists still refer to it in legal cases: a federal district court judge ruled against delaying Paula Jones's sexual-harassment suit against Bill Clinton, then America's president, on the ground that "our form of government...asserts as did the English in Magna Carta and the Petition of Right, that even the sovereign is subject to God and the law". When David Letterman, a chat-show host, quizzed David Cameron about it, Britain's prime minister was unable to tell him what the words "Magna Carta" meant. In August 2014 the 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." The contrast with the English, who

produced a document that inspired 800 years of idealism but failed to follow up with a modern constitution, was implied rather than stated.

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. A failure at its conception, it has shaped the course of human history at two of its most significant turning points. Designed to uphold feudal rights, it has been used by radicals to portray themselves as conservatives, the better to overturn the status quo. And, ultimately, a paradox lies at its heart: it speaks to the urge, felt most strongly in the Anglo-Saxon world, to justify the present by calling up the past—to change everything while pretending that everything remains the same.

From the print edition: Christmas Specials

Browning-Ferris Industries of Vermont, Inc. v. Kelco Disposal, Inc.
492 U.S. 257, 271-272, 289 (1989)

... the compact signed at Runnymede was aimed at putting limits on the power of the King, on the "tyrannical extortions, under the name of amercements, with which John had oppressed his people," T. Taswell–Langmead, English Constitutional History 83 (T. Plucknett 10th ed. 1946), whether that power be exercised for purposes of oppressing political opponents, for raising revenue in unfair ways, or for any other improper use.

* * *

After Magna Carta, the amount of an amercement was initially set by the court. A group of the amerced party's peers would then be assembled to reduce the amercement in accordance with the party's ability to pay.

Solem v. Helm
463 U.S. 277, 284-285 (1983)

The Eighth Amendment declares: "Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted." The final clause prohibits not only barbaric punishments, but also sentences that are disproportionate to the crime committed.

The principle that a punishment should be proportionate to the crime is deeply rooted and frequently repeated in common-law jurisprudence. In 1215 three chapters of Magna Carta were devoted to the rule that "amercements" may not be excessive. And the principle was repeated and extended in the First Statute of Westminster, 3 Edw. I, ch. 6 (1275). These were not hollow guarantees, for the royal courts relied on them to invalidate disproportionate punishments. See, e.g., Le Gras v. Bailiff of Bishop of Winchester, Y.B.Mich. 10 Edw. II, pl. 4 (C.P. 1316), reprinted in 52 Selden Society 3 (1934).

FN 8: An amercement was similar to a modern-day fine. It was the most common criminal sanction in 13th century England. See 2 F. Pollock & F. Maitland, The History of English Law 513-515 (2d ed. 1909).

FN 9: Chapter 20 declared that "[a] freeman shall not be amerced for a small fault, but after the manner of the fault; and for a great crime according to the heinousness of it." See 1 S.D.Codified Laws, p. 4 (1978) (translation of Magna Carta). According to Maitland, "there was no clause in Magna Carta more grateful to the mass of the people ...." F. Maitland, Pleas of the Crown for the County of Gloucester xxxiv (1884). Chapter 21 granted the same rights to the nobility, and chapter 22 granted the same rights to the clergy.

Duncan v. State of La.
391 U.S. 145, 151 (1968)

The history of trial by jury in criminal cases has been frequently told. It is sufficient for present purposes to say that by the time our Constitution was written, jury trial in criminal cases had been in existence in England for several centuries and carried impressive credentials traced by many to Magna Carta.

U.S. v. Booker
543 U.S. 220, 238-239 (2005)

The Framers of the Constitution understood the threat of "judicial despotism" that could arise from "arbitrary punishments upon arbitrary convictions" without the benefit of a jury in criminal cases. The Federalist No. 83, p. 499 (C. Rossiter ed.1961) (A. Hamilton). The Founders presumably carried this concern from England, in which the right to a jury trial had been enshrined since the Magna Carta.

Klopfer v. State of N.C.
386 U.S. 213, 223 (1967)

We hold here that the right to a speedy trial is as fundamental as any of the rights secured by the Sixth Amendment. That right has its roots at the very foundation of our English law heritage. Its first articulation in modern jurisprudence appears to have been made in Magna Carta (1215), wherein it was written, 'We will sell to no man, we will not deny or ***defer*** to any man either justice or right' ....

(emphasis added)

Hosanna-Tabor Evangelical Lutheran Church and School v. E.E.O.C.
132 S.Ct. 694, 702 (2012)

The First Amendment provides, in part, that "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof." We have said that these two Clauses "often exert conflicting pressures," Cutter v. Wilkinson, 544 U.S. 709, 719, 125 S.Ct. 2113, 161 L.Ed.2d 1020 (2005), and that there can be "internal tension ... between the Establishment Clause and the Free Exercise Clause," Tilton v. Richardson, 403 U.S. 672, 677, 91 S.Ct. 2091, 29 L.Ed.2d 790 (1971) (plurality opinion). Not so here. Both Religion Clauses bar the government from interfering with the decision of a religious group to fire one of its ministers.

Controversy between church and state over religious offices is hardly new. In 1215, the issue was addressed in the very first clause of Magna Carta. There, King John agreed that "the English church shall be free, and shall have its rights undiminished and its liberties unimpaired." The King in particular accepted the "freedom of elections," a right "thought to be of the greatest necessity and importance to the English church." J. Holt, Magna Carta App. IV, p. 317, cl. 1 (1965).

Borough of Duryea, Pa. v. Guarnieri
131 S.Ct. 2488, 2498-2499 (2011)

The proper scope and application of the Petition Clause likewise cannot be determined merely by tallying up petitions to the colonial legislatures. Some effort must be made to identify the historic and fundamental principles that led to the enumeration of the right to petition in the First Amendment, among other rights fundamental to liberty.

Petitions to the government assume an added dimension when they seek to advance political, social, or other ideas of interest to the community as a whole. Petition, as a word, a concept, and an essential safeguard of freedom, is of ancient significance in the English law and the Anglo–American legal tradition. See, e.g., 1 W. Blackstone, Commentaries *143. The right to petition applied to petitions from nobles to the King, from Parliament to the King, and from the people to the Parliament, and it concerned both discrete, personal injuries and great matters of state.

The right to petition traces its origins to Magna Carta, which confirmed the right of barons to petition the King. W. McKechnie, Magna Carta: A Commentary on the Great Charter of King John 467 (rev.2d ed.1958). The Magna Carta itself was King John's answer to a petition from the barons. Id., at 30–38. Later, the Petition of Right of 1628 drew upon centuries of tradition and Magna Carta as a model for the Parliament to issue a plea, or even a demand, that the Crown refrain from certain actions. 3 Car. 1, ch. 1 (1627).

State of La. ex rel. Francis v. Resweber
329 U.S. 459, 467 (1947)

Mr. Justice FRANKFURTER, concurring.

The safeguards of "due process of law" and "the equal protection of the laws" summarize the meaning of the struggle for freedom of English-speaking peoples. They run back to Magna Carta but contemplate no less advances in the conceptions of justice and freedom by a progressive society.

Daniels v. Williams
474 U.S. 327, 330 (1986)

... history reflects the traditional and common-sense notion that the Due Process Clause, like its forebear in the Magna Carta, see Corwin, The Doctrine of Due Process of Law Before the Civil War, 24 Harv.L.Rev. 366, 368 (1911), was " 'intended to secure the individual from the arbitrary exercise of the powers of government,'

Ingraham v. Wright
430 U.S. 651, 672-673 (1977)

The Due Process Clause of the Fifth Amendment, later incorporated into the Fourteenth, was intended to give Americans at least the protection against governmental power that they had enjoyed as Englishmen against the power of the Crown. The liberty preserved from deprivation without due process included the right "generally to enjoy those privileges long recognized at common law as essential to the orderly pursuit of happiness by free men." Meyer v. Nebraska, 262 U.S. 390, 399, 43 S.Ct. 625, 626, 67 L.Ed. 1042 (1923); see Dent v. West Virginia, 129 U.S. 114, 123-124, 9 S.Ct. 231, 233-234, 32 L.Ed. 623 (1889). Among the historic liberties so protected was a right to be free from and to obtain judicial relief, for unjustified intrusions on personal security.

FN 41: See 1 W. Blackstone, Commentaries at 134. Under the 39th Article of the Magna Carta, an individual could not be deprived of this right of personal security "except by the legal judgment of his peers or by the law of the land." Perry & Cooper, supra, n. 33, at 17. By subsequent enactments of Parliament during the time of Edward III, the right was protected from deprivation except "by due process of law." See Shattuck, The True Meaning of the Term "Liberty," 4 Harv.L.Rev. 365, 372-373 (1891).

While the contours of this historic liberty interest in the context of our federal system of government have not been defined precisely, they always have been thought to encompass freedom from bodily restraint and punishment. See Rochin v. California, 342 U.S. 165, 72 S.Ct. 205, 96 L.Ed. 183 (1952). It is fundamental that the state cannot hold and physically punish an individual except in accordance with due process of law.

Department of Transp. v. Association of American Railroads
--- S. Ct. ---, 2015 WL 998536 (March 9, 2015)

KENNEDY, J., delivered the opinion of the Court, in which ROBERTS, C.J., and SCALIA, GINSBURG, BREYER, ALITO, SOTOMAYOR, and KAGAN, JJ., joined. ALITO, J., filed a concurring opinion. THOMAS, J., filed an opinion concurring in the judgment.

Justice THOMAS, concurring in the judgment.

The idea that the Executive may not formulate generally applicable rules of private conduct emerged even before the theory of the separation of powers on which our Constitution was founded.

* * *

This is not to say that the Crown did not endeavor to exercise the power to make rules governing private conduct. King James I made a famous attempt, see Perez, post, at 14 (opinion of THOMAS, J.), prompting the influential jurist Chief Justice Edward Coke to write that the King could not "change any part of the common law, nor create any offence by his proclamation, which was not an offence before, without Parliament." Case of Proclamations, 12 Co. Rep. 74, 75, 77 Eng. Rep. 1352, 1353 (K.B.1611). Coke associated this principle with Chapter 39 of the Magna Carta, which he understood to guarantee that no subject would be deprived of a private right—that is, a right of life, liberty, or property—except in accordance with "the law of the land," which consisted only of statutory and common law. Chapman & McConnell, Due Process as Separation of Powers, 121 Yale L.J. 1672, 1688 (2012). When the King attempted to fashion rules of private conduct unilaterally, as he did in the Case of Proclamations, the resulting enforcement action could not be said to accord with "the law of the land."

FN 1: Chapter 39 of the 1215 Magna Carta declared that "[n]o 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." A. Howard, Magna Carta: Text and Commentary 43 (1964).

Boumediene v. Bush
553 U.S. 723, 739-741 (2008)

The Framers viewed freedom from unlawful restraint as a fundamental precept of liberty, and they understood the writ of habeas corpus as a vital instrument to secure that freedom. Experience taught, however, that the common-law writ all too often had been insufficient to guard against the abuse of monarchial power. That history counseled the necessity for specific language in the Constitution to secure the writ and ensure its place in our legal system.

Magna Carta decreed that no man would be imprisoned contrary to the law of the land. Art. 39, in Sources of Our Liberties 17 (R. Perry & J. Cooper eds. 1959) ("No free man shall be taken or imprisoned or dispossessed, or outlawed, or banished, or in any way destroyed, nor will we go upon him, nor send upon him, except by the legal judgment of his peers or by the law of the land"). Important as the principle was, the Barons at Runnymede prescribed no specific legal process to enforce it. Holdsworth tells us, however, that gradually the writ of habeas corpus became the means by which the promise of Magna Carta was fulfilled. 9 W. Holdsworth, A History of English Law 112 (1926) (hereinafter Holdsworth).

* * *

Even so, from an early date it was understood that the King, too, was subject to the law. As the writers said of Magna Carta, "it means this, that the king is and shall be below the law." 1 F. Pollock & F. Maitland, History of English Law 173 (2d ed.1909); see also 2 Bracton On the Laws and Customs of England 33 (S. Thorne transl. 1968) ("The king must not be under man but under God and under the law, because law makes the king"). And, by the 1600's, the writ was deemed less an instrument of the King's power and more a restraint upon it. See Collings, Habeas Corpus for Convicts—Constitutional Right or Legislative Grace, 40 Calif. L.Rev. 335, 336 (1952) (noting that by this point the writ was "the appropriate process for checking illegal imprisonment by public officials").