

In the air

The Great Charter

Ariel Wagner-Parker

While some European citizens are queuing up to vote for or against our prospective Constitution, others will be waiting their turn before a bullet-proof glass show-case in the Treasures Gallery of the British Library in London to pay homage to a 790-year-old, near-square sheet of parchment, with long closely-spaced lines of brown cursive script; a document that has become a shining beacon in the onward march of humanity, an enduring symbol of the sovereignty of the rule of law: Magna Carta.

To some, Magna Carta is the written Constitution Britain has never officially had. Yet it was originally conceived not as a founding text, but as a challenge to the king, a catalogue of demands drawn up by rebellious barons in response to many years of royal greed, incompetence and gross abuse of power. It was presented to King John as a peace treaty and he was forced to sign.

The rebellion of 1215 was unique: for the first time support had been rallied not for a rival king or other pretender to the throne, but for the principles contained in a charter.

The Charter of Liberties as it was first known was signed at Runnymede, a marshy meadow near Windsor, on 15 June 1215. After the reluctant king had affixed the royal seal to the document, it was translated from the original Latin into French and English and handwritten copies were made. Officials were dispatched throughout the kingdom with orders to read the Charter aloud to the king's subjects.

Even at the time, the Charter was seen as an important piece of legislation. It was updated and reissued after John's death in 1216 and again in 1217 – when it first became known as „Magna Carta“ (the big charter), being published at the same time as a shorter piece of legislation, the Forest Charter.

In 1225, it was reissued yet again and it is this version that entered the statute books. In 1265, it was decreed that the Charter should be proclaimed twice a year so that none should be ignorant of it.

There were even demands for copies of it to be affixed to church doors. And any king deemed to be riding roughshod over individual liberties was called upon to „confirm the Charter“ – as Edward I did in 1297. Magna Carta was becoming the iconic instrument of liberation and revolt we know today.

Fighters for justice and freedom throughout the centuries have invoked

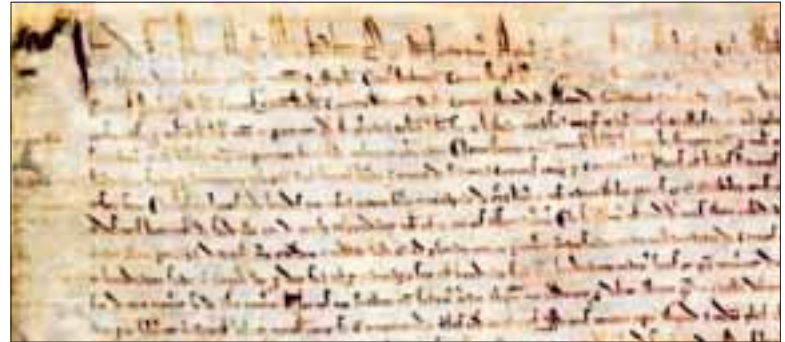


Photo: British Library

The opening lines of the Charter of Liberties

the Charter in support of their cause. In the 17th century, the great jurist Sir Edward Coke, when presenting the Petition of Right designed to set limits to Charles I's lust for power, declared: „Magna Carta is such a fellow, that he will have no sovereign“. And in the 19th century, the Chartists' campaign for a „People's Charter“ was a conscious echo of Runnymede.

Magna Carta contains 63 clauses, most of which remain unknown and unquoted. It is a badly drafted document, beginning and ending with a promise of freedom for the Church and jumping about in the middle between detailed provisions concerning inheritance, debt, fines, weights and measures, court organization, the duties of shire-reeves (sheriffs), restitution of hostages and forest law – although this last was a real source of bitterness – and grand statements of principle.

It is of course for the latter that Magna Carta is famous.

Clause 12, for instance, providing that no *scutage* (a tax paid in lieu of military service) or aid is to be levied in the realm except by the common counsel – a rudimentary statement of „no taxation without representation“ –, together with Clause 14, laying down the procedure for assembling the counsel, have been seen as paving the way for the modern parliament.

The most celebrated provisions of Magna Carta are doubtless Clauses 39 and 40. It is worth noting that they occur late in the document, suggesting that they were not considered the most vital issues at stake.

Clause 39 provides that „no free man shall be taken or imprisoned or disseised or outlawed or exiled or in any other way ruined, nor will we go or send against him, except by the lawful judgment of his peers or by the law of the land.“

This article is said to lay down the fundamental freedoms of „Habeas Corpus“ and trial by jury. Clause 40, according to which „to no one will we sell, to no one will we deny or delay, right or justice“, is considered to enshrine the rule of law.

Magna Carta is revered by Americans as the foundation stone of their modern

freedoms. The Pilgrim Fathers brought to the New World their knowledge of the Charter and handed it down from generation to generation.

During the American Revolution in the 1770s, John Adams declared that British colonial rule was „directly repugnant to the Great Charter itself“. The authors of the Declaration of Independence and the Constitution were inspired by Magna Carta. The famous Fifth Amendment („No person shall be deprived of life, liberty or property, without the due process of law“) was a virtual rewording of Clause 39, and the Sixth echoes Clause 40. Even today, American lawyers and politicians – some politicians anyway – do not hesitate to cite Magna Carta in support of their case.

If you visit Runnymede today, you will find two monuments. One of them is to John F. Kennedy, a gift from Britain to the United States. The other was erected in 1957 by the American Bar Association as a tribute to Magna Carta and representatives of the ABA visit it from time to time to pledge adherence to the Great Charter. In July 2000, they came „to celebrate Magna Carta, foundation of the rule of law for ages past and for the new millennium.“

The principles of Magna Carta are everywhere revered and everywhere breached.

Those American jurists must be horrified by American crimes in Guantánamo Bay and elsewhere and the passing of the „Patriot Act“, by which, in the name of his war on terror, their president has suspended the great principles of Habeas Corpus and the rule of law enshrined in Magna Carta.

Recent English legislation too has not hesitated to sacrifice these sacred principles to the „emergency of war“.

And our European Constitution, how does it compare with the high principles thrashed out at Runnymede? If it is finally ratified, will people be queuing up to study it in 800 years' time?

-> Sources: „1215: The Year of Magna Carta“ by Danny Danziger and John Gillingham; „Written in 1215. Needed today“, by Tristram Hunt in the Guardian.