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The Magna Carta

...here is a law which is above the King and which even he must not break. This reaffirmation of a supreme law and its expression in a general charter is the great work of Magna Carta; and this alone justifies the respect in which men have held it.

--Winston Churchill, 1956

King John of England agreed, in 1215, to the demands of his barons and authorized that handwritten copies of Magna Carta be prepared on parchment, affixed with his seal, and publicly read throughout the realm. Thus he bound not only himself but his "heirs, for ever" to grant "to all freemen of our kingdom" the rights and liberties the great charter described. With Magna Carta, King John placed himself and England's future sovereigns and magistrates within the rule of law.

When Englishmen left their homeland to establish colonies in the New World, they brought with them charters guaranteeing that they and their heirs would "have and enjoy all liberties and immunities of free and natural subjects." Scant generations later, when these American colonists raised arms against their mother country, they were fighting not for new freedoms but to preserve liberties that dated to the 13th century.

When representatives of the young republic of the United States gathered to draft a constitution, they turned to the legal system they knew and admired--English common law as evolved from Magna Carta. The conceptual debt to the great charter is particularly obvious: the American Constitution is "the Supreme Law of the Land," just as the rights granted by Magna Carta were not to be arbitrarily canceled by subsequent English laws.

This heritage is most clearly apparent in our Bill of Rights. The fifth amendment guarantees

No person shall...be deprived of life, liberty, or property, without due process of law

Written 575 years earlier, Magna Carta declares

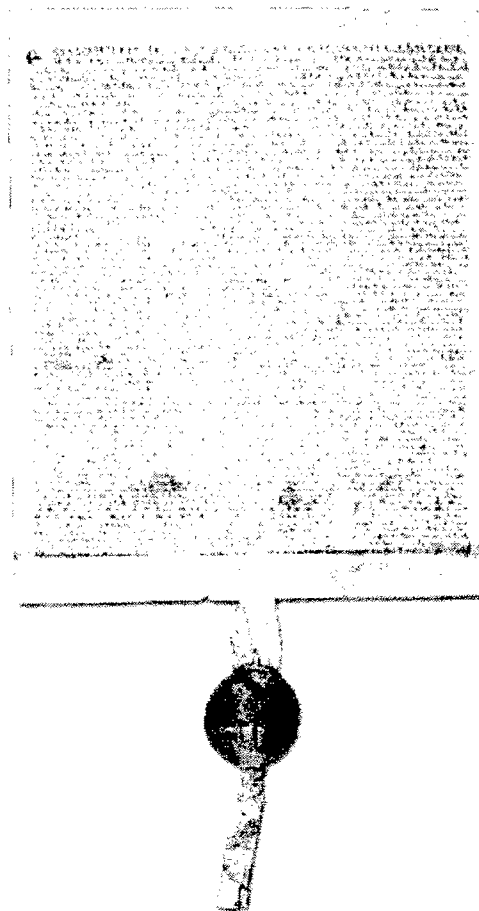
No freeman shall be taken, imprisoned,...or in any other way destroyed...except by the lawful judgment of his peers, or by the law of the land. To no one will we sell, to none will we deny or delay, right or justice.

In 1957 the American Bar Association acknowledged the debt American law and constitutionalism had to Magna Carta and English common law by erecting a monument at Runnymede. Yet, as close as Magna Carta and American concepts of liberty are, they remain distinct. Magna Carta is a charter of ancient liberties guaranteed by a king to his subjects; the Constitution of the United States is the establishment of a government by and for "We the People."

The Magna Carta confirmed by Edward I in 1297 is presented courtesy of David M. Rubenstein.

Returning to the National Archives March 2008

Magna Carta, 1297: Widely viewed as one of the most important legal documents in the history of democracy, Magna Carta returns to public display at the National Archives in March 2008. Presented courtesy of David M. Rubenstein.





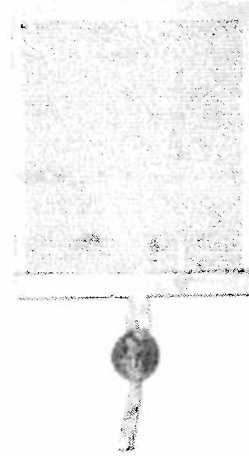
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Magna Carta and Its American Legacy

Before penning the Declaration of Independence--the first of the American Charters of Freedom--in 1776, the Founding Fathers searched for a historical precedent for asserting their rightful liberties from King George III and the English Parliament. They found it in a gathering that took place 561 years earlier on the plains of Runnymede, not far from where Windsor Castle stands today. There, on June 15, 1215, an assembly of barons confronted a despotic and cash-strapped King John and demanded that traditional rights be recognized, written down, confirmed with the royal seal, and sent to each of the counties to be read to all freemen. The result was Magna Carta--a momentous achievement for the English barons and, nearly six centuries later, an inspiration for angry American colonists.



Magna Carta was the result of the Angevin king's disastrous foreign policy and overzealous financial administration. John had suffered a staggering blow the previous year, having lost an important battle to King Philip II at Bouvines and with it all hope of regaining the French lands he had inherited. When the defeated John returned from the Continent, he attempted to rebuild his coffers by demanding scutage (a fee paid in lieu of military service) from the barons who had not joined his war with Philip. The barons in question, predominantly lords of northern estates, protested, condemning John's policies and insisting on a reconfirmation of Henry I's Coronation Oath (1100), which would, in theory, limit the king's ability to obtain funds. (As even Henry ignored the provisions of this charter, however, a reconfirmation would not necessarily guarantee fewer taxes.) But John refused to withdraw his demands, and by spring most baronial families began to take sides. The rebelling barons soon faltered before John's superior resources, but with the unexpected capture of London, they earned a substantial bargaining chip. John agreed to grant a charter.

The document conceded by John and set with his seal in 1215, however, was not what we know today as Magna Carta but rather a set of baronial stipulations, now lost, known as the "Articles of the barons." After John and his barons agreed on the final provisions and additional wording changes, they issued a formal version on June 19, and it is this document that came to be known as Magna Carta. Of great significance to future generations was a minor wording change, the replacement of the term "any baron" with "any freeman" in stipulating to whom the provisions applied. Over time, it would help justify the application of the Charter's provisions to a greater part of the population. While freemen were a minority in 13th-century England, the term would eventually include all English, just as "We the People" would come to apply to all Americans in this century.

While Magna Carta would one day become a basic document of the British Constitution, democracy and universal protection of ancient liberties were not among the barons' goals. The Charter was a feudal document and meant to protect the rights and property of the few powerful families that topped the rigidly structured feudal system. In fact, the majority of the population, the thousands of unfree laborers, are only mentioned once, in a clause concerning the use of court-set fines to punish minor offenses. Magna Carta's primary purpose was restorative: to force King John to recognize the supremacy of ancient liberties, to limit his ability to raise funds, and to reassert the principle of "due process." Only a final clause, which created an enforcement council of tenants-in-chief and clergymen, would have severely limited the king's power and introduced something new to English law: the principle of "majority rule." But majority rule was an idea whose time had not yet come; in September, at John's urging, Pope Innocent II annulled the "shameful and demeaning agreement, forced upon the king by violence and fear." The civil war that followed ended only with John's death in October 1216.

On indefinite loan from the Perot Foundation, a 1297 version of Magna Carta shares space with the Charters of Freedom in the National Archives Rotunda.

To gain support for the new monarch--John's 9-year-old son, Henry III--the young king's regents reissued the charter in 1217. Neither this version nor that issued by Henry when he assumed personal control of the throne in 1225 were exact duplicates of John's charter; both lacked some provisions, including that providing for the enforcement





council, found in the original. With the 1225 issuance, however, the evolution of the document ended. While English monarchs, including Henry, confirmed Magna Carta several times after this, each subsequent issue followed the form of this "final" version. With each confirmation, copies of the document were made and sent to the counties so that everyone would know their rights and obligations. Of these original issues of Magna Carta, 17 survive: 4 from the reign of John; 8 from that of Henry III; and 5 from Edward I, including the version now on display at the National Archives.

Although tradition and interpretation would one day make Magna Carta a document of great importance to both England and the American colonies, it originally granted concessions to few but the powerful baronial families. It did include concessions to the Church, merchants, townsmen, and the lower aristocracy for their aid in the rebellion, but the majority of the English population would remain without an active voice in government for another 700 years.

Despite its historical significance, however, Magna Carta may have remained legally inconsequential had it not been resurrected and reinterpreted by Sir Edward Coke in the early 17th century. Coke, Attorney General for Elizabeth, Chief Justice during the reign of James, and a leader in Parliament in opposition to Charles I, used Magna Carta as a weapon against the oppressive tactics of the Stuart kings. Coke argued that even kings must comply to common law. As he proclaimed to Parliament in 1628, "Magna Carta . . . will have no sovereign."



Lord Coke's view of the law was particularly relevant to the American experience for it was during this period that the charters for the colonies were written. Each included the guarantee that those sailing for the New World and their heirs would have "all the rights and immunities of free and natural subjects." As our forefathers developed legal codes for the colonies, many incorporated liberties guaranteed by Magna Carta and the 1689 English Bill of Rights directly into their own statutes. Although few colonists could afford legal training in England, they remained remarkably familiar with English common law. During one parliamentary debate in the late 18th century, Edmund Burke observed, "In no country, perhaps in the world, is law so general a study." Through Coke, whose four-volume *Institutes of the Laws of England* was widely read by American law students, young colonists such as John Adams, Thomas Jefferson, and James Madison learned of the spirit of the charter and the common law—or at least Coke's interpretation of them. Later, Jefferson would write to Madison of Coke: "a sounder whig never wrote, nor of profounder learning in the orthodox doctrines of the

British constitution, or in what were called English liberties." It is no wonder then that as the colonists prepared for war they would look to Coke and Magna Carta for justification.

By the 1760s the colonists had come to believe that in America they were creating a place that adopted the best of the English system but adapted it to new circumstances; a place where a person could rise by merit, not birth; a place where men could voice their opinions and actively share in self-government. But these beliefs were soon tested. Following the costly Seven Years' War, Great Britain was burdened with substantial debts and the continuing expense of keeping troops on American soil. Parliament thought the colonies should finance much of their own defense and levied the first direct tax, the Stamp Act, in 1765. As a result, virtually every document—newspapers, licenses, insurance policies, legal writs, even playing cards—would have to carry a stamp showing that required taxes had been paid. The colonists rebelled against such control over their daily affairs. Their own elected legislative bodies had not been asked to consent to the Stamp Act. The colonists argued that without either this local consent or direct representation in Parliament, the act was "taxation without representation." They also objected to the law's provision that those who disobeyed could be tried in admiralty courts without a jury of their peers. Coke's influence on Americans showed clearly when the Massachusetts Assembly reacted by declaring the Stamp Act "against the Magna Carta and the natural rights of Englishmen, and therefore, according to Lord Coke, null and void."

But regardless of whether the charter forbade taxation without representation or if this was merely implied by the "spirit," the colonists used this "misinterpretation" to condemn the Stamp Act. To defend their objections, they turned to a 1609 or 1610 defense argument used by Coke: superiority of the common law over acts of





Parliament. Coke claimed "When an act of parliament is against common right or reason, or repugnant, or impossible to be performed, the common law will control it and adjudge such an act void. Because the Stamp Act seemed to tread on the concept of consensual taxation, the colonists believed it, "according to Lord Coke," invalid.

The colonists were enraged. Benjamin Franklin and others in England eloquently argued the American case, and Parliament quickly rescinded the bill. But the damage was done; the political climate was changing. As John Adams later wrote to Thomas Jefferson, "The Revolution was in the minds of the people, and this was effected, from 1760 to 1775, in the course of 15 years before a drop of blood was shed at Lexington."

Relations between Great Britain and the colonies continued to deteriorate. The more Parliament tried to raise revenue and suppress the growing unrest, the more the colonists demanded the charter rights they had brought with them a century and a half earlier. At the height of the Stamp Act crisis, William Pitt proclaimed in Parliament, "The Americans are the sons not the bastards of England." Parliament and the Crown, however, appeared to believe otherwise. But the Americans would have their rights, and they would fight for them. The seal adopted by Massachusetts on the eve of the Revolution summed up the mood—a militiaman with sword in one hand and Magna Carta in the other.

Armed resistance broke out in April 1775. Fifteen months later, the final break was made with the immortal words of the Declaration of Independence: "We hold these truths to be self-evident, that all Men are created equal, that they are endowed by their Creator with certain unalienable Rights, that among these are Life, Liberty and the Pursuit of Happiness." Although the colonies had finally and irrevocably articulated their goal, Independence did not come swiftly. Not until the surrender of British forces at Yorktown in 1781 was the military struggle won. The constitutional battle, however, was just beginning.

In the war's aftermath, many Americans recognized that the rather loose confederation of states would have to be strengthened if the new nation were to survive. James Madison expressed these concerns in a call for a convention at Philadelphia in 1787 to revise the Articles of Confederation: "The good people of America are to decide the solemn question, whether they will by wise and magnanimous efforts reap the just fruits of that Independence which they so gloriously acquired . . . or whether by giving way to unmanly jealousies and prejudices, or to partial and transitory interests, they will renounce the auspicious blessings prepared for them by the Revolution." The representatives of the states listened to Madison and drew heavily from his ideas. Instead of revising the Articles, they created a new form of government, embodied in the Constitution of the United States. Authority emanated directly from the people, not from any governmental body. And the Constitution would be "the supreme Law of the Land"—just as Magna Carta had been deemed superior to other statutes.

In 1215, when King John confirmed Magna Carta with his seal, he was acknowledging the now firmly embedded concept that no man—not even the king—is above the law. That was a milestone in constitutional thought for the 13th century and for centuries to come. In 1779 John Adams expressed it this way: "A government of laws, and not of men." Further, the charter established important individual rights that have a direct legacy in the American Bill of Rights. And during the United States' history, these rights have been expanded. The U.S. Constitution is not a static document. Like Magna Carta, it has been interpreted and reinterpreted throughout the years. This has allowed the Constitution to become the longest-lasting constitution in the world and a model for those penned by other nations. Through judicial review and amendment, it has evolved so that today Americans—regardless of gender, race, or creed—can enjoy the liberties and protection it guarantees. Just as Magna Carta stood as a bulwark against tyranny in England, the U.S. Constitution and Bill of Rights today serve similar roles, protecting the individual freedoms of all Americans against arbitrary and capricious rule.

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Image Top Right:

On indefinite loan from the Perot Foundation, a 1297 version of Magna Carta shares space with the Charters of Freedom in the National Archives Rotunda.

Image Middle Left:

Sir Edward Coke's reinterpretation of Magna Carta provided an argument for universal liberty in England and gave American colonists a basis for their condemnation of British colonial policies. (Library of Congress)

