MAGNA CARTA

A primer

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ACKNOWLEDGEMENTS

This publication was made possible through the support of a grant from the John Templeton Foundation. The opinions expressed in this publication are those of the author and do not necessarily reflect the views of the John Templeton Foundation.

Published in the UK by ASI (Research) Ltd.

Printed in England

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1. The meaning of the Magna Carta

It is one of those stories that bring English kings alive to schoolchildren – like Cnut ordering the sea to retreat, Alfred burning the cakes or Harold getting an arrow in the eye – and probably just as fanciful or misleading. It is a romantic story of Bad King John on an island in the River Thames, canopy above him and quill pen in hand, being forced by the assembled barons to sign Magna Carta – the 'Great Charter' of rights and liberties, on which Western constitutions, the rule of law, justice, democracy and freedom still rest.

The reality is different. There certainly was such a grand meeting between the despised King John (1166-1216) and his barons on the island of Runnymede in June 1215. But there was no quill pen (kings at that time would affix their seal, not their signature, to documents). In fact, there was probably not even a physical charter to be sealed – just hurried drafts, produced by scribes, on what was being negotiated and agreed. Nor did the charter that eventually emerged, with clauses on subjects such as fish weirs, widows' inheritances and forests, look much like a conscious design for a constitution. Applying only to the elite, it was certainly no blueprint for democracy. And

within weeks, John had got the Pope, his feudal superior, to annul the whole thing anyway.

Yet despite all that, Magna Carta and what it stands for still runs deep in the Western consciousness. It has almost totemic status as the guarantee of our rights and freedoms, and of just government, restrained by the rule of law.

OPPOSING INTERPRETATIONS

So what then is the *real* story and significance of Magna Carta? Historians and constitutionalists line up on opposing sides of this question.

THE FUNDAMENTAL VIEW

One group takes the familiar view that Magna Carta is indeed the foundation of all of our rights and liberties today. To them, it is the first written constitutional document to set out the limits to government authority and to bring government power under the rule of law. Even if King John did immediately repudiate it, the Charter nevertheless served as the model for subsequent charters that were better respected. It was cited to justify the overthrow of the autocratic monarch Charles I (1600-1649) and to legitimise the 'Glorious Revolution' that replaced James II (1633-1701) with a new succession of monarchs who were constitutionally bound by a Bill of Rights (1689) and other conditions set down by Parliament. In 1776 the American revolutionaries, too, appealed to Magna Carta to defend their rebellion against the insensitive government of George III (1738-1820), and the American Constitution itself quotes directly from the Charter, as do a number of State constitutions.

Under this view, Magna Carta well deserves its totemic status. It encapsulates and represents principles that are fundamental to constitutional government. First, it represents the *Rule of Law* – that everyone, including those in authority, are bound by what it calls the 'Law of the Land' – not the King's Law, nor even God's Law, but the *common law* that has evolved naturally as a useful means of resolving conflicts and regulating the actions of individuals. Second, it represents *Liberty* – the rights of free speech and assembly, of property, and the freedom to trade. Third, it represents *Justice* – equal justice that cannot be bought or sold, and which is dispensed according to the due process of agreed, known and accepted rules. But perhaps most of all it represents *Limited Government*, stripped of its arbitrary powers, constrained by the law, and subject to a fundamental constitutional *contract* with the people.

THE 'FANCIFUL VIEW'

The second group see Magna Carta as of purely antiquarian interest – a failed mediaeval peace treaty that was rightly forgotten for centuries, before being revived and cited by political activists in both England and America solely in order to give false legitimacy to their revolutionary ambitions.

This group point out that the Charter reads much less like a constitutional milestone than a list of trade union demands from the barons, full of talk about rents and taxes, the inheritance of baronial estates, special courts for the aristocracy, restoring castles to their owners, and so on. Most of its provisions were soon made redundant by economic and social change.

But in fact the Charter had no legality anyway. John agreed to it under duress, in order to head off the barons' dispute with him, accepting terms that under feudal law only the Pope could agree, and never

intending to respect it. Nor was it even unique: from 1225 onwards there were many such charters, each having greater legitimacy because they were agreed voluntarily.

As to the Charter's totemic status as a statement of liberties, the much-vaunted passages on the due process of law comprise just three short clauses out of 63. Even these apply only to "free men", who at the time were only a small minority group of privileged people including the barons, knights and free peasants. Meanwhile, the single clause that allows an errant monarch to be restrained was instantly ignored, soon dropped and long forgotten. Indeed, the 5,000-word Latin text of the Charter was not even translated fully into English until 1527, which shows how inconsequential it was.

A THIRD INTERPRETATION

There are, of course, many gradations of opinion between these two extreme caricatures. But there is something in both of them. Prior to the 1066 invasion of England by John's forebears, kingly power had already been limited by notional and imprecise 'contract' with those who were governed; though the 1215 Charter spelled out such a contract in writing and in detail. It was indeed agreed under duress and quickly abandoned; yet it provided the firm basis for many subsequent charters that had lasting legal effect. The Charter may have focused on the concerns of a mediaeval aristocracy; but its provisions came to protect the rights and freedoms of ordinary people too. Its totemic status might be less than fully deserved; yet it nevertheless is still celebrated as a powerful statement of rights and freedoms, and of constitutional and limited government.

However, neither of these views fully succeeds, because neither takes full account of what it is that unifies all 63 clauses of Magna Carta,

and what its framers were trying to achieve with the document. For the Charter was more than a mere peace treaty, more than a list of aristocrats' demands to which a few due-process rules were inexplicably added, and more than a set of constitutional principles.

PROPERTY RIGHTS

What unifies and motivates the whole text of Magna Carta is the ambition in the minds of its framers to reassert and enforce *stable and predictable property rights*. In Anglo-Saxon England, roughly from the departure of the Roman occupiers (around the 5th Century) to the arrival of the Normans in 1066, a secure system of property tenure had developed. The Normans largely replaced it with their own system of feudal tenancies, though the old idea was hard to repress completely.

Indeed, the feudal system began to devour itself. While the Norman barons and earls were near the top of this system, they too were mere tenants of the ultimate landowner, the king. It was not long before they began to find themselves exploited by a rapacious monarchy. Not only their physical property, but their lives and liberties, could fall victim to the king's capricious 'justice'.

The barons' demands that were set down in Magna Carta were an attempt to re-introduce greater certainty and security into people's rights and dealings over property – such that they could hold it, enjoy its fruits, transfer it and trade it under known rules that not even the king could flout or change arbitrarily. And that included people's rights of ownership over their own bodies too.

COHERENCE

Seen from this perspective, the Charter makes coherent sense. Its clauses may seem jumbled, but they are all to the point, all about the security of people's property, trade and person. They cover the taxes and obligations of land holders, rules on inheritance (including that of minors and widows), intestacy, the recovery of debts, fines, the powers of officials to seize private property, the restoration of lands taken into royal control, rules on the property of people convicted for felonies, and the return of hostages.

On trade, the Charter guarantees the right of merchants and others to move freely about on their business, and introduces standard weights and measures. Even the seemingly obscure clause banning fish-weirs in the Thames and Medway is about property and trade – specifically, about the right of London merchants to sail up- and down-river for commerce without being forced to pay exorbitant tolls by fish farmers.

But none of these property-focused provisions would count for anything without a reliable system of justice. Hence the clauses demanding due process in the legal system, banning the delay or sale of justice, the rules on testimony, the provision of courts and assizes and the elevation of the 'law of the land' above that imposed by any ruler or official. These clauses are not something tacked on thoughtlessly, but are integral to any predictable and functioning system of property rights.

THE LIVING CHARTER

Magna Carta, then, is better seen as a charter of *economic* rights rather than constitutional ones. And this is why it always was, and continues to be, a living *political* force, not some antiquarian relic that lay forgotten for centuries until anti-royalist activists dusted it off and used it to give false authority to their revolutionary ambitions.

Although many of the specific economic institutions that the Charter mentions were indeed soon outdated, its reassertion of the broader principle of secure property rights – and their protection through the common law, due process and limited government – had lasting traction. As the feudal system declined, these ideas became, once again, the hardening concrete on which the subsequent economic progress of England was founded. The rights that it upheld for a few "free men" were soon extended to all men and then to all men and women. The quaint practices it referred to became mere examples of its wider, deeper message.

Centuries later, the confidence and security that the Charter's principles gave to a growing band of merchant entrepreneurs would help make England the most dynamic trading and colonial power of its age. Despite its being overblown by some and dismissed by others, Magna Carta remains a living document that has shaped our economic and political history, and continues to inform our values.

2. The historical background

ORIGINS IN ANGLO SAXON ENGLAND

The intellectual roots of Magna Carta can be traced back to the ideas of property, justice and government of the Anglo-Saxon age, which was sadly extinguished at the Battle of Hastings.

ENGLAND'S UNIQUENESS

In *How We Invented Freedom And Why It Matters*, Daniel Hannan points to the importance of the fact that England, unlike other European countries, is cut off by the sea from its potential enemies. That has given it, for much of its history, an enviable political and social stability.

But equally, it was perhaps this that induced the Anglo-Saxons to cross the sea and escape the dark-age violence of their native Germany. In England, they displaced or intermingled with the ancient Britons, particularly in the southeast. And with them, they brought the values of their small forest settlements: values including

personal property rights, collective decision-making, and ancient law that bound everyone, including the mighty.

Of course, England was not always at peace. There were a few invasions – by the Romans and by the Anglo-Saxons themselves, then by the Vikings and the Normans – but these were rare. So England, for most of the time, had no need of a standing army – a weapon that can be used by those in authority, not just for to defend the country against outsiders, but for repression at home too. When rulers are denied this weapon, very different attitudes to governance evolve.

PREDICTABLE GOVERNMENT

In the Anglo-Saxon period, this produced a series of governments that relied, for their authority and existence, more on the consent of the people than on any coercive power over them: secure government that, denied the force of a permanent military, was familiar and at ease with settling disputes in the courts rather than through arms.

This made government decisions more predictable and less capricious. Things were decided according to laws, not on the whim of monarchs. This predictability made economic life more secure too, and contributed to the development of an extensive and reliable system of property tenure in England. The memory of that system would still echo, centuries later, in the terms that the barons put to King John at Runnymede.

ORIGIN OF COMMON LAW

The main threat to Anglo-Saxon stability was the Viking invaders, who began raiding in 793, and went on to settle in much of northern and eastern England, along with parts of Scotland and Ireland. Despite their greater territorial ambitions, King Alfred (849-899)

– he of the cakes – pushed them back to this area, with its capital in York (*Jorvik*) and its own culture, language and government. The area and its system became known as the *Danelaw*.

It could have been an unstable partition. Yet the sea that spared England from all but a few invasions also cuts off any long-term invaders from their roots; before long, they became largely integrated. Both the English and the Danes soon saw the merits of coexistence, collaboration and trade. Language, then ideas and cultures started to merge. Simple, mutually acceptable laws had to be worked out. But the Danes too were independent people; and with no feudal aristocracy to lay down the law for them, there emerged a *common* law, the 'law of the land', rather than a law of princes.

Four principles distinguish this form of law from most continental systems. First (and economically very beneficial) are *strong property rights*: people are allowed to own property and dispose of it as they please, not as the state dictates. Second, because the common law stemmed entirely from the need to reach mutual accommodations between free people, it was *case driven* and *bottom up*. It permitted any action that was not specifically outlawed on the basis of past disputes about it. That again was quite different from continental law, handed down by elites, where any action first needed the permission of a jealous authority. Third, the law was a *matter for everyone*, not just elites and officials; indeed, the law officers themselves were accountable to the people, not the other way round. Fourth, this law was *public, not monarchical*: it was decided by the people. And such decision-making required a national forum to debate it – something that still exists today, in the shape of Parliament.

CONTRACTUAL GOVERNMENT

Indeed, the same principles that shaped the common law came to shape governance too. Anglo-Saxon kings were not above the law. They ruled through councils of their people – not exactly the democratic parliaments we have today, but the meetings of 'wise men', (*witan*), from which those parliaments ultimately stem.

Formalised as the *Witan*, these bodies assumed increasing authority over the conduct, and even the selection, of monarchs. When King Æthelred the Unready (c.968-1016) – the nickname means 'ill advised' – failed to stop Danish incursions into southern England by vainly offering them *Dane-geld*, he was driven into exile. The Witan invited him to return, on condition that he reinstated old laws and curbed taxes. Two years later, it offered the English throne to the Danish King Cnut (c.985-1035) on similar terms, a contract sealed in writing. When Cnut died, the Witan met again to determine the succession. Even the mighty Edward the Confessor (c.1004-1066) had to swear a coronation oath in which he agreed to uphold the ancient laws.

When presidents are sworn in and monarchs take their coronation oaths today, they are engaging in a process that goes back to these times. This was the origin of contractual government. The power of rulers was limited: they could not command others on a whim. But nor was the limit on them merely the whim of some other powerful group. The limit was the known and ancient 'law of the land' that had evolved and proved its worth over the centuries.

SETBACK AND REVIVAL

MILITARY OCCUPATION

All this ended in 1066, with the disputed succession to Edward the Confessor that induced the ruthless William, Duke of Normandy (1028-1087), to invade England, where he defeated his rival claimant Harold Godwinson (1022-1066) at Hastings and seized the throne.

Suddenly, the whole country found itself under the crushing occupation of a French-speaking Norman elite. Within forty years of the invasion, the new military rulers had built around 1,000 castles – not to secure England against further potential invaders, for there were none, but to subdue the English population.

These events were a calamity, not just for the ruling aristocracy of England, but for the common law and contractual government too. The invaders had very different ideas on how law and government should operate. Theirs was a feudal system, in which the land was owned by the king, and let out to the warrior nobility in return for fealty and service. They in turn would demand the same homage from others. At the bottom, comprising by far the majority of the population, were serfs, agricultural peasant workers bonded to and forced to serve their manorial lord. This would be England's new social, political and economic order for the next three centuries.

William, therefore, saw England as his to do with as he chose. He set about compiling a complete register of his new possessions with his usual military precision, right down to each hide of land and each ox, cow or pig – a register known as the *Domesday Book*. It was not just a record but a manual for the total economic control of England.

William divided almost the whole country between an oligarchy of two hundred French-born nobles, his most loyal and powerful supporters. This was an uncompromising, top-down, authoritarian government, distanced from the people it ruled by language and regarding itself as a race apart. The king's power, and his dispensation of justice, was absolute, not a matter of discussion. The nobles' power was subject only to that of the king. The old Anglo-Saxon notions of 'the law of the land', of property rights, of fairness, of freedom of movement and of equality under the law, were swept away.

LINGERING INSTITUTIONS

Yet the old ways were not lost entirely. Any successful invaders, inevitably being in the minority, must to some extent work through existing institutions and with the existing officialdom. So the division of land into shires, hundreds and (in the former Danelaw) wapentakes remained, while the tax collection system and the minor officials changed little. But invaders exert their control from the top. So there was no role for anything like the Witan; the new king's council was there to magnify his power and protect his (and their) interests, not to represent the people at large.

But like the Danes before them, these invaders once again found themselves cut off from their homeland by the sea. They began to integrate and intermarry with the English locals. In just a few generations, their English-born heirs began to identify more with the land they were born into than a Normandy they hardly knew.

And they came to identify more with the common people of England among whom they lived than they did with their kings. With lands in France to protect, the Norman kings' time was divided; Richard I (1157-1199) for example, despite his romantic 'Lion heart' reputation, spent less than a year of his ten-year reign in England. His

successor John surrounded himself with acolytes from southern France, whose way of speaking and abrasive manner alienated them from both the commoners and the Norman aristocracy. And when John's catastrophic loss of nearly all his French possessions, including Normandy, cut the ruling class off completely from their ancestral roots, their unrest turned to rebellion.

THE BARONS' REVOLT

As absolutist monarchs, the Norman kings had an important role in dispensing justice. The need to retain the loyalty of their supporters might restrain them to a degree, but by and large the law was what the monarch decided it was. However, the ability to make law is also the ability to expand one's power and to create laws designed to expropriate others, all backed up officially by the force of arms. And John, in need of large amounts of money to retake his French lands, was adroit at using the *king's justice* for precisely that.

But the barons' integration into the English community, plus the memory of past rights, and the continued existence of Anglo-Saxon institutions in some form or other, buttressed their resolve to resist John's rule. After a string of frustrations, by 1215 the barons were demanding that the imperious monarch should restore the ancient rights and liberties, at least for themselves if not for the common people. They cited the Coronation Charter of Henry I (1068-1135) a century before, demanding limits on the King's power to tax and to judge on a range of issues, including inheritances, marriage rights and the property of aristocratic widows and orphans.

At a meeting in London, John refused to comply with the barons' demands, and appealed to Rome for the support of the Pope. That came, but too late. By then, the King and the barons were on the road that would lead, inevitably, to Runnymede.

3. The road to Runnymede

THE ASSERTION OF KINGLY POWER

The school history image of 'Bad King John' is not so wide of the mark. He was sly, duplicitous, unreliable and untrustworthy, even to his friends. He was even rumoured to have killed his own nephew. He was steeped in an aristocratic, authoritarian culture. He reasserted feudal rights that, by common consent, had steadily faded away in England, losing the support of his own aristocracy in the process.

He was also venal, focused on the need to bring in the vast tax revenues that were needed to recapture his lost territories in France. Determined to get them back, John had further alienated the aristocracy by at least doubling, and perhaps trebling, their taxes. The revenue was all spent, but John's campaigns in France were a rout. By 1206, he had lost lands in Normandy, Anjou and Maine, with no realistic hope of recovering them.

Without today's rule of law to restrain them, John and his officers became ruthless tax farmers. Taxes were not only extortionate, but unpredictable, with arbitrary dispossession a fact of life. The law was

the King's law; its authority was his authority. Even to initiate a civil action required his permission

PREVIOUS ATTEMPTS

The scale of John's arbitrary rule may have set records, but the phenomenon itself was well known among the Norman kings. William the Conqueror's successor, William Rufus (c.1056-1100) was also an over-zealous tax collector, quite willing to abuse his authority – selling Church positions, for example – to raise revenue. It was one reason why his successor, Henry I, facing widespread discontent, was obliged to issue his Coronation Charter, also known as the Charter of Liberties (1100), binding his treatment of the nobles, the Church and the Anglo-Saxon population generally under established laws.

The common law was strengthened in the reign of Henry II (1133-1189), though the intention was more to give security to the landowning aristocracy more than to advance some enduring principle. More precise rules on property ownership were introduced, and new assizes to judge on them. Juries became more relied on, and grand juries (still used in the US) would identify wrongdoers who should be tried. It was a foundation of our system today, with its due process and presumption of innocence; but at the time it was simply an extension of royal power, boosting the king's role as the ultimate protector of the people.

John, true to form, would argue that such due process did not apply to a king. The law was his law; he could not be subject to its rules.

THE IMPORTANCE OF THE CHURCH

The Church in mediaeval England was another power unto itself, and as such always a potential threat to the authority of the king. So John found himself clashing with it, as Henry II and other monarchs had done before him.

The dispute started when the clerics were deeply divided about who should succeed as Archbishop of Canterbury, the head of the English Church. John had his own favourite but the Pope, Innocent III (1161-1216), stepped in to appoint Steven Langton (1150-1228) as Archbishop instead. Langton was the foremost churchman in England and a distinguished biblical scholar – he devised the order of books in the Bible that we still use today – and Innocent had known him when they were both studying in Paris. But he was also a critic of absolute earthly power. Not surprisingly, John was deeply discontented by this appointment.

The quarrel came to a head in 1207 when John dismissed the Canterbury clerics. In response, the Pope placed all England under an interdict, meaning that no religious rites could be performed: no mass, and not even christenings, weddings or funerals. In response, John seized the lands of those ecclesiastical foundations that did not support him. In 1209 the Pope excommunicated the King; whereupon John squeezed further in order to extract even more revenue from Church property.

But John's hold on power was becoming tenuous. Internationally, there were rumours that the Pope would depose him. The French king, Philip II (1165-1223), posed a threat. And at home, the northern barons were in revolt.

At last, in 1212 the Pope called on King Philip to depose John – who promptly backed down. In 1213 he accepted Langton as Archbishop, agreed to pay compensation to the Church and even placed his kingdom under the feudal protection of the Pope. England was now a papal fief, leased from the Holy See. Langton took up his position as Archbishop, and gave John full absolution.

THE POWER OF THE BARONS

The other power in England was the aristocracy: the barons. They were powerful warlords, commanding large estates and able to extract service, including military service, from their tenants. In the distant north of England in particular, their discontent was fuelled by John's autocratic manner, his high and arbitrary taxes, his rapacious officers, his abuse of ancient rights, his foreign favourites, his feud with the Church, his apparent weakness and the consequent military threat from across the Channel. By 1212, John was facing a plot to depose him and put Simon de Montfort (c.1175-1218) on the throne.

But John's peace with and allegiance to the Pope gave him a powerful ally and protector: that was how the feudal system worked. The revolt was defeated, its leaders expelled, and John returned to his driving ambition: to recapture his territories in France. He launched his French campaign in February 1214, but by October he was back again, defeated, humiliated and bankrupt. His aggressive taxes on the aristocracy had bought nothing.

A number of barons met in Bury St Edmunds in November, and swore an oath to bring the King to heel by forcing him to abide by Henry I's Coronation Charter, also known as the *Charter of Liberties*. Two months later, John held a council in London to discuss potential reforms, and proposed that his officers should meet the rebels in

Oxford that spring. Duplicitously, however, he sent to the Pope for letters to support his own side in the dispute. As John was now the head of a papal fief, the Pope duly obliged, but by the time the letters arrived, it was too late. The northern rebels renounced their allegiance and, led by Robert FitzWalter (d.1235), marched on London.

Londoners distrusted John. They had suffered more than most from his wars and arbitrary taxes. He had encouraged fish weirs on the Thames, which restricted trade up the river, with fish farmers demanding tolls to let river traffic pass. (The importance of this river trade is why fish weirs would be specifically mentioned in Magna Carta.) So London was open to the barons.

The barons' seizure of London in May 1215 may have been easy, but London itself was crucial to John. He could not fulfil his dream of retaking Normandy without London to provide the necessary support. He would have to come to terms: otherwise, the prospect was for all-out civil war.

THE BARONS' DEMANDS

The barons had clear ideas of what terms they wanted. Their initial list of demands is recorded in the 'Unknown Charter', discovered in Paris only in 1863. It starts with the *Charter of Liberties*, with its clauses preventing the King from selling Church property or intervening for profit in inheritances. But it adds more clauses, such as limits on taxes and the demand that John will not arrest people without due process, nor sell justice, nor act unjustly. The 'law of the land' was being reasserted.

The second draft of the barons' demands is known as the *Articles of the Barons*, which (curiously) the King sealed on 10 June 1215. It was

the schedule of terms to be refined and agreed five days later, at Runnymede. By now those terms reflected the interests of the barons' London allies too: referring not just to the rights of the aristocracy but of 'all free men'.

Runnymede, a water meadow alongside the Thames, was already a traditional meeting place. It was midway between the King's castle at Windsor and the rebels' base at Staines. And here (or possibly on a small island a little further north) on 15 June 1215, the opponents met, each anxious to prevent a damaging civil war. As well as the King and his court, came hundreds of barons, each with a retinue of perhaps twenty or thirty people, plus bishops, judges, scribes, and no doubt ostlers, cooks and many more. There were perhaps 2,000 people in this impressive encampment. For the King, it must have been an intimidating and humiliating experience.

Earlier charters, articles and proclamations were no doubt produced in order to emphasise to the duplicitous King the importance that his opponents attached to the event, and the sanctity of what would be decided. But the actual Magna Carta text was probably still a work in progress on that day, to be finished off later by the lawyers and the scribes.

The document of 4,000 Latin words, squeezed onto a single skin of vellum, that did eventually emerge was given the publicity that the barons, if not the King, would have wanted of it. Thirteen copies were made – this was no cheap or easy process – and circulated, through the bishops, across the county. Four of them remain in existence. Two are held in the British Library and one in Salisbury Cathedral. The other is in Lincoln Cathedral: an interesting circle of events since Lincolnshire is where Stephen Langton, whose appointment sparked the events that led to the document, was born.

4. Magna Carta's provisions

SECURE PROPERTY, NOT PERFECT GOVERNANCE

The overwhelming bulk of the text of Magna Carta is a blunt demand that the sovereign and officials of the state can no longer expropriate people at will. It calls a halt to the various arbitrary and excessive fines, taxes, feudal services, thefts, bribes, charges for justice, confiscations of property and denial of liberty that kings and officials regarded as simply their prerogative. Some of these practices, it bans outright; some it merely regulates and makes less arbitrary; others it permits only if they are supported by the consent of owners, or by the "general consent of the kingdom". These are the ancient Anglo-Saxon ideas of fairness, rekindled.

But property rights are hollow unless backed up by a system of justice to enforce them and to resolve disputes. So most of the rest of the Charter deals with how the court system will be organised, the rules of evidence that will apply, who should judge cases, and the conditions under which people can be arrested, held and brought to trial.

Even so, a justice system must do more than enforce property rights between individuals, such as trade, weights and measures, the ownership and control of land and its revenues, and questions of inheritance and family law, all of which are mentioned in the Charter. The rules under which property is held, enjoyed, traded or inherited must be known and secure too. If the rules can be changed at the whim of an authority, people cannot make plans and investments without fear that the fruit of their effort will be stolen by the rule-makers. Such uncertainty would make economic improvement impossible.

To guarantee that security, therefore, the laws must also apply to those in authority, even the monarch and state officials, who may previously have thought that law was theirs to make. It is for this reason that the Charter lays such stress on limiting official power, ending arbitrary decision-making, and upholding the 'law of the land'. It was not driven by some concept of a perfect system of government, but by the mundane desire to secure the rights of people who hold and inherit property and who trade goods and create wealth. It was designed only as a peace treaty drawn up by one side to rein in the other, not as a blueprint for constitutional government that protected everyone's interests.

THE REASSERTION OF PROPERTY RIGHTS

The barons' demands, therefore, focused on matters such as the ownership and control of land, secure tenure, tax and laws about marriage and inheritance. Indeed, nearly two-thirds of its 63 clauses deal directly with **property rights, trade, taxation and compensation** for previous unjust seizures of property. Even the opening clause (1), guaranteeing the **freedom of the Church**, is actually about the Church being able to control its own property and prevent the king raiding its revenues. (It is estimated that at one point, around

one-seventh of Church revenue was being taken by King John.) And another clause (46) grants the same rights of ownership to **nobles who have founded abbeys**.

COMPENSATION

Several clauses **compensate** people whose property has been confiscated "without the lawful judgment of his equals". This included those who lived on and worked land that the king had annexed by calling it royal forest, even though it might well have been open, treeless farmland (52, 53, 56). Indeed, this **land annexation is overturned** and such lands "disafforested" (47) – that is, taken out of their 'royal forest' status. And since a different royal law applied in 'forest' areas, various arbitrary injustices could be done by the king's officials; so another clause launches an investigation against the actions of **forest officers** (48). More generally, the Charter specifies how to establish procedures by which allegedly unjust fines could be challenged (55).

INHERITANCE

There are nine clauses dealing with **inheritance**, safeguarding the inheritance of **minors** (3, 4, 5, 10, 37) the property rights of **widows** (7, 11) and what amounts to the same, the **marriage rights** through which the property of heirs and widows might be distributed (6, 8). Another important clause deals with the rights of next of kin in cases of **intestacy** (27).

EXPROPRIATION

Six clauses deal with limiting the power of the authorities to **seize property**. Two clauses deal with the **property rights of felons and debtors** (26, 32). Three demand that **officials cannot take goods** without "immediate payment" or "consent" (28, 30, 31). Specific

examples are given, such as "No constable or other royal official shall take corn or other movable goods from any man without immediate payment," and "No sheriff, royal official or other person shall take horses or carts" and "no royal official will take wood for our castle… without the consent of the owner." A further clause protects land holdings by providing that **officials may not seize land from debtors**, "so long as the debtor has moveable goods sufficient to discharge the debt" (9).

TAXATION

Eight clauses deal with feudal duties that today we would call **taxation**. One prevents cities and individuals being forced to build bridges, another bans feudal, a form of double taxation, and a third limits duties paid on inheritances (29, 23, 2). Another five demand the "general consent of the realm" to feudal taxes and limit them to reasonable levels (12, 14, 15, 16, 25, 43). No taxation, therefore, without consent.

FREE TRADE

Further provisions address **trade issues**. Two grant **free movement** "unharmed and without fear" to merchants and the public (41, 42,), and another restores the free **trading rights of London**, described as the city's "ancient liberties and free customs, both by land and by water" (13). The famous "all fish-weirs shall be removed" clause guarantees the freedom and security of the river trade that was essential to London – whose citizens had of course sided with the barons (33). Clause 35 further promotes trade and commerce by standardizing **weights and measures** for "wine, ale and corn" (35) using standard London measures.

THE JUSTICE SYSTEM

The Charter lays down various rules to limit the king's power to extort money from his subjects by simply making up new laws and taxes, or reinterpreting existing provisions. It insists that the "law of the land" will bind the actions, not just of the barons, but of the bishops, the king's officers and even the king himself. No longer should the administration be above the law, or able to make the law at its own discretion. Nor, indeed, be able to *enforce* the law at its own discretion.

ADMINISTRATION OF JUSTICE

Thus, seven clauses deal with how the **courts are run**. They provide that the **courts should be easily accessible**, rather than judges and plaintiffs having to follow the king around (17). It also addresses the **jurisdictions** of different courts: directing that minor cases should be heard by conveniently local courts; but that major cases should be heard nationally, so ensuring that there was a single system of justice and punishment for major crimes (18, 24, 44). Additionally, it acts against people being denied a **fair trial** because of inadequate court facilities or biased court officials, directing that the courts **are sufficiently staffed** (19, 57), and that court officials and judges should be **impartial** – specifically, "men that know the law of the realm and are minded to keep it well" (45).

DUE PROCESS

Nine clauses seek to ensure that what these courts actually do is to deliver fair justice, by safeguarding the **due process of law**. One rules out **over-harsh and arbitrary punishments**, stating that a person's punishment should be "in proportion to the degree of his offence" and should not deprive someone of their means of livelihood

(20). Two provide for the aristocracy and the clergy to be **judged by their peers** (21, 22). This was not quite the principle of trial by jury that we have today, but it was a step in that direction. Two further clauses ensure that officials cannot deny people their day in court by demanding payments (a common abuse at the time), and that full inquiries are made in serious cases (34, 36).

The Charter also specifies what counts as permissible evidence in court cases. One clause counters the (then common) evil of **forced confessions**, demanding that "credible witnesses" must be produced to back up a person's "own unsupported statement" (38). In murder cases, **accusations by women** are disallowed – the worry, in those days, being that they could be easily intimidated (54) into perjury by those seeking control of the property of the accused.

One particularly important clause guarantees that **the right to justice cannot be sold, denied or delayed** by the authorities, which at the time they regarded as a legitimate way to raise revenue, but which denied justice to those who could not afford to pay (40). Another equally important clause, reflecting the principles of *habeas corpus* and *due process*, states that nobody can be arrested, held, punished or dispossessed (or in the words of the Charter, "taken or imprisoned, or be disseized of his freehold, or liberties, or free customs, or be outlawed, or exiled, or any other wise destroyed"), "except by the **lawful judgment of his equals** or by the **law of the land**" (39). Some people imagine that *habeas corpus* originated in the Charter, but in fact it had roots in documents issued in the time of Henry II that forbade vexatious arrest; though the procedure was not fully codified in English law until the seventeenth century. Similarly, *trial by jury* was not entirely new, though the Charter sought to put it into more general and systematic use.

GOVERNMENT UNDER THE LAW

Three clauses in the Charter stress its **contractual status**. Of these, two state its **general aims**: "keep all these liberties, rights, and concessions, well and peaceably" (63), "Let all men of our kingdom… observe them similarly" (60).

But how to **enforce this contract** and ensure that kings, who saw the law as theirs to make, should be bound by laws that are known, certain and arrived at by "the consent of the realm"? The Charter's answer is its famous "security" clause (61), which establishes a council of 25 barons to police its provisions. The clause requires the king to force his officers (and oddly, himself) to obey the Charter; but the unwritten implication is that if the king violates the Charter, the barons would be within their rights to use force on him and his government, and bring him to trial under the normal "law of the land" by which debts were collected and malefactors were obliged to answer in court.

It was a revolutionary idea, and one that John could never genuinely agree to. It did not succeed; and yet it declared the principle of accountability that we still regard as central to good governance today.

OTHER PROVISIONS

The Charter of course remains an attempt – in the event a failed attempt – to stave off war and restore the previously existing state of affairs. Thus five clauses deal with the barons' concerns regarding **military affairs** and **restorations** – such as returning hostages (49, 58, 59) and expelling opponents (50, 51).

Another one makes this more general, drawing a line under **past disputes**, putting into John's mouth the words: "We have remitted and pardoned fully to all men any ill-will, hurt, or grudges that have arisen"(62). This, like much of the rest of the barons' drafting, would prove over-optimistic; but then they were trying to deal with a particularly duplicitous king.

5. The Charter's immediate effects

A DOOMED ATTEMPT AT PEACE

At first sight, what happened in the weeks and months after Runnymede might support the view that the supposedly 'Great' Charter was of little or no consequence.

CONFLICTING VIEWS ON THE CHARTER

As a peace treaty it was an outright failure: active military hostilities soon resumed. As a constitutional agreement, it was doomed: John probably never believed that his royal authority could be curbed by anyone, or that the Charter could and would be enforced. And within days, he was petitioning Rome to have it annulled. After all, John's realm was a fiefdom under the Holy See: how could he legally agree terms that would limit the power of his overlord, the Pope?

But the barons and their allies were determined to enforce the Charter, and enforce it zealously. The 25 barons they elected to impose the 'security' clause were all members of the hard-line opposition to the King, and were revelling at having brought John to heel.

Just a few days after Runnymede, they met again with John in Oxford, where they treated him with contempt and extracted even more concessions, including control over local government.

PAPAL ANNULMENT

It was probably during this meeting that John, duplicitous as ever, petitioned Rome to have the Charter annulled. The Pope wasted little time in overturning the Charter as an infringement of his authority and having been agreed only under duress. It was for him, not the barons, to decide what powers his royal steward in England should have.

Langton and the bishops tried to mediate, but John's determination not to honour the Charter, nor any past agreements for that matter, now drove the Archbishop firmly into the rebel camp. He refused to excommunicate the barons, as the Pope demanded, and for that he was removed from his Church duties and spent the next three years in exile.

RENEWAL OF HOSTILITIES

Hostilities now moved up a gear. The barons, exerting the authority they believed the Charter gave them, decided that John had to be removed. But they needed support, and a new king to replace him; so they offered the throne to Prince Louis of France, who duly crossed the Channel with 7,000 French troops to back him up.

The war did not last long. In October 1216, John died from dysentery (or as his enemies would claim, from 'a surfeit of lampreys'). His son Henry III was a minor, aged only nine, so the assembly of barons took over of the affairs of state, and appointed William Marshall as regent. Marshall was a generally respected nobleman who did not

take up arms against the King, yet never identified with John's policies. Langton later described him as "the best knight that ever lived."

John's death defused the barons' personal grudges against him. Though some remained wary of any son of King John, many were won over by Marshall into accepting him. After all, Louis (with his French army) was now as much of a threat as an ally. Louis and the barons who remained loyal to him were routed in 1217, and the Prince relinquished his claims in England and returned home.

FURTHER CHARTERS

Marshall reissued the Charter in 1217, stripping out the 'security' clause as troublesome, unworkable, and a blockage to future relations with Rome. And another charter, the Charter of the Forest, was issued at the same time.

The Charter of the Forest was much more significant that we might imagine such a thing today. John had brought vast areas of land under his direct control by the simple expedient of designating them as 'forest'. By the end of his reign, this royal 'forest' covered perhaps a quarter of the land area of England, not just woodland but fields that ordinary people were working. These fields and woodlands were vital to people for fuel, building materials, pasture and grazing, but those who worked them had no rights of ownership to safeguard them. What laws applied in these areas was therefore a matter of vital importance.

The Charter of the Forest provided rights, privileges and protections for such people. It supported Magna Carta in rolling back the designation of 'forest'. It removed the death penalty for killing deer. But most significantly, it provided that people could create fishponds, dig

ditches, build mills and do everything else they needed for their living, provided only that they did not cause harm to their neighbours in the process. This was a reversal, from continental law back to Anglo-Saxon legal principles. Instead of having to ask permission for every action, people could instead take the initiative, and the law would step in only if others were harmed or threatened.

REVISION AND REASSERTION

The young Henry III was certainly no democrat, though he turned out to be a much more acceptable ruler to most of the barons. But he shared his father's ambition to reclaim the French territories, and needed money for the enterprise. The old confrontations opened up, and needed to be resolved.

So in 1225, in return for a great tax, Henry agreed to issue a new version of Magna Carta. It was less radical than the original, yet still limited royal power and protected the barons' property rights. And even though Henry agreed it under the pressure of circumstances, he nevertheless agreed it voluntarily, giving it far more legitimacy than the 1215 Charter that had been forced out of John.

Continuing confrontations over money gave rise to what would grow into the modern democratic Parliament. In 1254, needing funds for his French wars, Henry called a meeting of representatives of the shires. But the wars were an expensive failure, as John's had been, and by 1258 Henry's rule was deeply unpopular.

The barons fomented a revolt, led by Simon de Montfort, who had married Henry's sister but had fallen out with him over surety for a debt. During the hostilities, Henry was captured at the Battle of Lewes. In January 1265, de Montfort called his own elected assembly,

which today is credited as being the first real appearance of a representative Parliament in England. But the road from there to the modern principles of limited, accountable and representative government would be a long one.

6. The Charter's long-term effects

A LASTING LEGAL TEXT

After Runnymede, copies of Magna Carta were circulated throughout the country, lodged in the cathedrals and proclaimed in the courts. For a century afterwards, the Charter was cited in court cases and constitutional disputes, and in legal treatises on the rights of individuals. Although the Charter focused on the rights of the small minority of people who were 'free men', even peasants would appeal in court to the principles of Magna Carta.

Each subsequent king confirmed the 1225 Charter that was largely based on the 1215 original. Edward I, needing assent for taxes like his forebears, reissued a 'confirmation of charters' in 1297. Reconfirmed again in 1300, Magna Carta and the Charter of the Forest were read out four times a year in the county courts, and committees would meet to hear complaints about supposed violations.

Yet with the barons' war with John over, and as society and commerce changed, many of the specific clauses in the 1215 Charter lost their relevance: by 1350, about half of them were redundant. But

the key principle that the government must operate under the law became the Charter's almost accidental success. Cases were brought against sheriffs and other officers who were thought to have overstepped their powers.

Six statutes of Edward III clarified the charters' provisions, which were expanded from covering the minority group of 'free men' to applying to everyone. A statute of 1354 replaced 'free man' with 'man of whatever estate or condition he may be' and introduced the phrase 'due process of law' in place of 'lawful judgment'. Another in 1369 declared the charters' constitutional force, and one more in 1386 declared that any law or judgement contradicting them "shall be undone, and holden for nought".

THE RISE OF THE RULE OF LAW

The original 1215 Charter might well have been largely overlaid by this flurry of later charters and statutes. But that is not to say that it was insignificant – a mere list of the barons' demands, agreed under duress, quickly annulled, were never effectively enforced, and soon made largely irrelevant by economic change. On the contrary, it was the starting foundation for all the other laws and charters that came out of it.

True, the core principles of limited government and due process of law were stated very briefly in the original; but they are far more important than those brief mentions suggest. In fact, these principles are implied throughout by the whole text: they are an essential backing of the property rights that most of the Charter's clauses address. Magna Carta's framers did not intend to draw up an English constitution for limited government, and nor did they. But that is what the Charter ultimately led to. Throughout the middle ages, Magna Carta

was quoted as a defence against the absolutism of monarchs. Its success might have been accidental, but that does not diminish it.

Another principle that again was only briefly stated in the 1215 Charter was that taxation should be based on the general consent of the nation. Once more, even though the Charter made no mention of democracy, that idea led directly to the creation of elected parliaments. Barons would assemble to decide what taxes and expenditures they were prepared to agree to; and kings would mostly have to agree to those limits, and where necessary, to concede their powers.

In other words, what used to be the king's law was becoming the common law. What used to be a council designed to magnify the power of the king was becoming a *parliament*.

CONTINUING RELEVANCE

Magna Carta, with its elaboration of property rights and its direct and implied rights of justice and limits on power, remained a central concept in the century that followed Runnymede. It was endorsed and elaborated perhaps more than two dozen times between 1215 and 1423, when Henry IV again reconfirmed it.

In the middle of that century, however, monarchs started to reassert their power, and Magna Carta's special status started to slip. The dynastic struggles that were the Wars of the Roses (1455-1487) made the nobility keener on having the backing of royal power than on limiting it. But the Charter was not forgotten: it was first printed in 1508, translated into English in abridged form in 1527 and then translated in full in 1534. By the end of that century, with settled government restored, attention turned again to the law and its origins, and legal

tomes would credit Magna Carta as the foundation of England's law and constitution.

THE WHIG REVIVAL

Yet it was in the early 1600s that the modern idea of Magna Carta, seen as a constitutional document, really began, thanks in large measure to the leading jurist and parliamentarian Sir Edward Coke (1552-1634). Coke was critical of the Stuart kings, who were steeped in the continental-style, French-influenced legal tradition of their native Scotland, rather than the Anglo-Saxon common law tradition of England – as their absolutist tendencies revealed. He believed that the law, and not monarchs, should be supreme, and that kings could not set themselves up as the standard of justice and legality.

Coke turned to the 1225 version of Magna Carta to back up this principle and to restrain Charles I (1600-1649), who recognised no law above the king.

Coke's interpretation of the Charter might well have been anachronistic and selective, and critics dismiss it as the 'Whig interpretation' of history, in which the Charter is raised from the dead in order to justify the political ambitions of reformers. Yet Coke and his revival of the Charter were profoundly influential. Magna Carta became widely cited by critics of the King as evidence that kings were subject to the common law and that their actions required the general consent of the people.

This revived interest in the Charter would shape some revolutionary changes. It was instrumental in the overthrow and trial of Charles I, and in the Glorious Revolution that replaced the Stuart dynasty

with sovereigns chosen by Parliament and subject to contracts with Parliament and the people.

Half a century later, the Charter's central status was further secured by the 1759 commentary on Magna Carta and the Charter of the Forest by the influential jurist William Blackstone (1723-1780), whose *Commentaries on the Laws of England* shaped the way that the common law was thought about for decades afterwards, and is still cited today. The work of Blackstone and Coke kept Magna Carta alive, not just in England but in the minds of the American colonists: indeed, Coke drafted constitutions for some colonies, and the Charter is cited in others. And the Charter was used by the American revolutionaries to justify their throwing off the monarchy, on the grounds that George III (1738-1820) had broken the fundamental contract between government and themselves.

7. The constitutional contract

REVOLUTION IN BRITAIN

The Stuart monarchs' problems were very similar to those of King John four centuries before. Being Scots, they did not come from the common law legal tradition that was peculiar to England, and to which their subjects adhered. They did not share the English idea that nobody, including monarchs, should be above the law. The language of the Scottish court had been French, and the Stuarts were much influenced by continental legal principles and ideas, including the notion of the absolute supremacy of kings. Like John, they needed large amounts of money to sustain their extravagances and their wars, but that required the consent of Parliament.

This put some limit on the Stuarts' absolutism, though at first it was hard for Parliament to stand up to this new and self-confident royalty. There were bitter disputes, particularly over the execution of the Thirty Years' War that was going on in Europe. The impasse drove

Charles to impose customs duties and raise forced loans without the agreement of Parliament, to imprison without trial those who would not pay, to impose martial law on civilians and to billet troops in the homes of private citizens. The House of Commons responded by restating the authority of Magna Carta and the principle of habeas corpus, but Charles refused to reconfirm either. Parliament in turn produced the 1628 Petition of Right – drafted by Edward Coke and citing Magna Carta – which eventually the King, in need of Parliamentary backing for the war, had little option but to agree.

ABSOLUTISM AND CRISIS

But this did not heal the rift. Within a year, disputes between them resurfaced, and Charles suspended Parliament, ruling without it for the next eleven years. With no Parliament to agree new taxes, Charles was forced to resurrect feudal levies such as 'ship money', the sale of monopolies, imposing fines for breaches of long-forgotten laws, and reclaiming lands previously gifted to the nobility. Absolutist monarchy, it seemed, was back.

Eventually, political unrest forced Charles to reconvene Parliament, but by now the divisions – financial, political and religious – between the two had become brittle. Charles's failed attempt to enter the House of Commons and arrest five of its members was the last straw. The ancient constitutional contract had been shattered; under its terms, the King would have to be removed from power.

After a bloody civil war, Charles was captured, put on trial, and executed for his misdeeds. But the resort to violence was self-defeating. Oliver Cromwell, the military and political leader now in charge as 'Lord Protector', proved little less tyrannical, dissolving Parliament and dismissing Magna Carta as 'Magna Farta'.

Nor was the eventual restoration of the monarchy after Cromwell much happier. Tensions continued between Parliament and Charles II (1630-1685) and his successor James II (1633-1701). When James renounced the established religion and converted to Catholicism, he was deposed and fled.

A NEW CONTRACT

Parliament now intervened, just as the Witan had done in Anglo-Saxon times. In a bloodless coup known as the Glorious Revolution, they invited William, Prince of Orange (1650-1702) and his wife, James II's daughter Mary (1662-1694) to be joint sovereigns. But to do so, they had to agree to a new constitutional contract, the 1689 Bill of Rights.

The Bill of Rights was rooted in Magna Carta, particularly the parts of it that limited the power of the sovereign. It laid down these limits, set out the powers of Parliament, demanded that parliaments should be called regularly, set out individual rights such as the right to bear arms within the rule of law and banned cruel and unusual punishments. The Bill of Rights was close to being a constitution; and it is still regarded as one of the core documents of the British constitution, together with Magna Carta, the 1679 Habeas Corpus Act and the twentieth-century Parliament Acts.

The English philosopher John Locke (1632-1704) famously gave intellectual justification to these developments in his *Treatises of Civil Government*, which scorned the 'divine right' of kings and reasserted that legitimate government was based on a contract with the people, not "force and violence". He argued that people have *natural rights* and the reason they form governments is to protect those rights in peace. Government, therefore, derives its legitimacy from the

governed; if it fails to protect their rights, they are justified in overthrowing it.

THE AMERICAN REVOLUTION

Locke's ideas strongly influenced the American Revolution and American constitutional thinkers such as Thomas Jefferson (1743–1826). Britain came to focus more on building parliamentary authority, but for the American colonists, the ideas of fundamental rights and the rule of law, rooted in Magna Carta, resonated more strongly.

Magna Carta went back a long way in the minds of the colonists. William Coke in 1606 assured them that they would have the same ancient liberties and immunities as those born in England. William Penn (1644-1718), the founder of Pennsylvania, published a printed version of the Charter in 1687. "In other nations," he wrote, "the mere will of the Prince is Law, his word takes off any man's head, imposeth taxes, or seizes any man's estate…. In England, each man has a fixed Fundamental Right born with him, as to freedom of his person and property in his estate…." The Charter informed seventeen American state constitutions, and features on the state seal of Massachusetts.

DISCONTENT WITH BRITAIN

By the mid-1700s, however, the Americans were growing increasingly discontented at the way Britain was restricting trade, keeping America to itself as a cheap source of supplies, and forbidding American exports to other nations. But just as with King John, it was taxation that finally precipitated the crisis. The 1765 Stamp Act imposed a direct tax on the colonies, requiring that legal documents, newspapers and many other printed materials should be printed on

London-made paper bearing a revenue stamp. And the tax had to be paid in British, not American, currency.

It was seen as taxation without consent, and therefore in breach of Magna Carta. The motto: "No taxation without representation" came directly from the Charter: "No scutage or aid is to be levied in our realm except by the common counsel of our realm." The Americans regarded themselves as British, and therefore protected by the same constitutional safeguards, and properly able to enjoy the same rights, as those who lived in Britain itself. The 1774 Continental Congress declared that: "The respective colonies are entitled to the common law of England, and more especially to the great and inestimable privilege of being tried by their peers…"

THE APPEAL TO THE PAST

The revolutionaries did not see themselves as radicals, but as patriots and conservatives, determined to reinstate old rights, going back to 1215, that had been snatched away by a distant and tyrannical government. They maintained that the constitutional contract had been broken, and declared their independence from Britain's unjust government.

This Declaration of Independence, using the language of Magna Carta injected by Jefferson, reasserted the ancient and traditional rights of a free people, and the principle of representative government that grew out of the Charter. It was mentioned again at many points in the 1787 Convention where the Constitution of the new nation was shaped. It was adopted wholesale in the constitutions of seventeen of the new US states.

Indeed, the Charter informs the United States Constitution itself. Just like the 1215 Charter, the Constitution institutes a system of

weights and measures. The US Bill of Rights that amended the Constitution was modelled on the English Bill of Rights, which specifically refers to Magna Carta: the "due process" clause is an almost exact copy of the original 1215 "lawful judgment" wording. Where the original instituted a council of barons to uphold it, the Constitution creates a Supreme Court; but on the doors of that Supreme Court's 1935 building in Washington are depicted Magna Carta and William Coke, and the Charter itself has been cited many hundreds of times in its rulings. Congress keeps a copy of the document, in gold. The 1215 Charter, it seems, maintains its binding power over governments even today.

8. Magna Carta today

THE SHRIVELLING CHARTER

The Whig view of Magna Carta's continuing importance remained dominant until late Victorian times. But by then large parts of it had been repealed or rolled into other legislation. The 1828 Offences Against the Person Act repealed one of the Charter's clauses for the first time, and Victorian laws ended the old feudal clauses and overhauled many others.

The alternative view, that Magna Carta was something of very little importance, therefore began to grow. Historians began to treat the whole Magna Carta as something of a myth, and its much-championed clauses on due process of law and limited government as purely totemic. Their arguments – that it was just a failed peace treaty, a piece of special pleading by the nobility, signed under duress, almost instantly annulled, quickly overtaken by other measures and generally forgotten until Coke and others needed an excuse to overturn the government – became more frequent.

Even the 1930 spoof history book *1066 and all That* poked fun at what it called "Magna Charta" as having been "invented by the Barons on a desert island in the Thames called Ganymede" and ensuring freedom for all "except the Common People", thus making it a "*Good Thing*" for everyone ("except the Common People").

By the 1960s, when other reforms ended minor provisions such as the fish weirs clause, most of Magna Carta had been overtaken by later legislation. Only three of its provisions, on the freedom of the Church (1), the privileges of the City of London (13) and the right to jury trial (39 and 40) still remain unchanged.

CONTINUING RELEVANCE

Yet none of this undermines the importance of the Charter. The repeal of redundant feudal clauses is no loss. Much of the rest still exists, perhaps not in its original wording, but in subsequent legislation that it shaped. And the clauses that are left intact are of enormous significance, particularly the due process clauses: "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 or by the law of the land." And "To no one will we sell, to no one deny or delay right or justice."

It is true that many of the rights, freedoms and institutions that underpin a free society are not mentioned in the Charter. But many of them are there in embryonic form, or have built on the Charter's principles. *Habeas corpus*, for example, has its roots in the due process clauses. The Charter may not directly mention the American revolutionary refrain of "No taxation without representation", but it does prohibit some taxation without the "consent of the realm". While

the Charter made no mention of democracy, the need for monarchs to seek that consent led directly to the formation of Parliament. And even through the Charter applied only to the minority of 'free men', it was not long before it was taken as guaranteeing the rights of all men and women.

THE CONSTITUTIONAL FOUNDATION

Today, writers of constitutions look back to Magna Carta and its key principle of placing the sovereign under the rule of law – the principle that those in authority have to abide by the law like everyone else, and cannot bend justice to their own convenience. As William Blackstone put it: "The common law depends not upon the arbitrary will of any judge; but is permanent, fixed and unchangeable, unless by the authority of Parliament."

The problem for any state is not how to choose its leaders, but how to restrain them once they are in a position of authority. That very problem eight centuries ago led to the first written attempt at constitutional limitations on official power. Its framers were not really intending to write a constitution, but to protect their property against legalized theft. They did not get it right first time. Yet as the former Master of the Rolls, Lord Denning (1899-1999) described it: "Magna Carta is the greatest constitutional document of all times – the foundation of the freedom of the individual against the arbitrary authority of the despot."

9. The continuing legacy

Magna Carta has a particular resonance in Anglophone countries, such as the United States, Canada, Australia and New Zealand, to which England exported its common law. The fact that the principle of common law remains strong in these countries is no mere historical accident. Nor is it an accident that these countries are some of the world's richest and most free.

The common law – Magna Carta's "law of the land"– continues to flourish in these countries because it promotes both freedom and prosperity. It is better than top-down continental law systems at protecting the property and person of individuals against the power of the state. It is law shaped by individual citizens themselves, not law handed down by authorities, who may use the law for their own advantage. Since it leaves individuals free to do as they choose (provided that others are not harmed), they can act more entrepreneurially, not having to get the permission of an authority for every initiative. By safeguarding the property of individuals, it enables people to invest with confidence and make long-term plans. So too does the fact that individuals' freedom is protected by the due process of the judicial system and the rule of law that curbs the arbitrary use of

official power. These principles, the core of the barons' demands in Magna Carta, are essential foundations for economic prosperity.

DEEPER CULTURAL LEGACIES

The property rights that Magna Carta bequeathed to the English-speaking peoples – and to others who adopted them – therefore made possible the open, mobile, market-oriented societies that dominate the world economy today. By enabling people to trade freely and protecting people's land and other capital, they unleashed an entrepreneurial merchant class, made possible the industrial revolution of the eighteenth century and inspired the free trade era of the nineteenth century. They still contribute to economic growth even now.

LITERACY

The right to control property and accumulate capital, enshrined in Magna Carta, was important in another, more subtle way. It allowed people in England to create and build their own businesses, rather than to be mere vassals or employees of others. But to run a business you need to communicate with suppliers and customers, and keep records of your income and outgoings – which is much easier to do if you are literate. The property rights that enabled the English to become what Napoléon Bonaparte (1769-1821) scorned as "a nation of shopkeepers" also turned them into a nation of readers and writers.

The effect was particularly pronounced in the case of female literacy. When the (male) merchant owners of trading companies were away from home – which could be weeks or months at a time, given the duration of sea and land journeys – it would be their wives who had to keep the business running. So there was a financial premium

in women being literate. Even today, the rate of female literacy is a powerful indicator of economic prosperity.

INHERITANCE

Another subtle but profound consequence of Magna Carta has been the way that land and capital have been transferred, and the results of this in terms of economic efficiency and entrepreneurship.

Continental-style legal systems often dictate how property can be inherited, dividing it between relatives according to detailed formulae. In places, this tradition has led to land holdings becoming more and more sub-divided, with large numbers of people then trying to work small, inefficient farms. Under common law, by contrast, property owners are free to dispose of their property as they choose, and to determine who should inherit it. The tradition in England for many centuries was therefore that property owners gave their land to their oldest sons – a system known as primogeniture. Agricultural land holdings therefore remained at a viable size, efficiency was encouraged, and productivity outpaced that of other countries.

There were deeper social consequences too. Younger children, knowing that they would not inherit, had to go out and seek a job, rather than simply waiting until land came to them. This promoted much greater social mobility, and encouraged the entrepreneurialism of people who had nothing to lose. The English-speaking countries are still some of the world's most socially mobile.

THE CHALLENGE OF THE PRESENT

When the Judiciary Committee of the US House of Representatives on Saturday 27 July 1974 approved an Article of Impeachment charging President Richard Nixon with obstructing justice, it was not doing something new or radical. It was executing a procedure that goes back to the constitutional settlement of Anglo-Saxon England, and was restated in 1215 by Magna Carta. It was invoking the established and tested principle that no ruler should be above the law of the land, and that rulers who flout the law break a contract with the governed and should be removed from office.

Indeed, the prosecutors specifically referred to the Charter as they made their case for impeachment. Nor was that anything new. Magna Carta had been called on many times in the Middle Ages to restrain the excesses of monarchs and guarantee the rights and property of ordinary citizens. It was cited again at the trial of Charles I and when his son James II was deposed. It was woven into the new constitutional contract agreed by James's successors William and Mary. And the revolutionaries of 1776 quoted its language as they rebelled against the government of George III on the grounds that it had contravened the Charter by imposing taxes and arbitrary costs without consent, obstructing justice, denying trial by jury, restricting trade and much else.

The same principles continue to be cited in our own times. Cases have been brought against the US Administration over the rendition of suspected terrorists to other, less inhibited governments, and over detention without trial in the US base at Guantanamo Bay. The Supreme Court ruled detention without trial unconstitutional (though other courts ruled that in war, including the 'war on terror', such rules do not apply). In Britain too, in 2008 the MP David Davis (b.1948) resigned his seat in protest at plans for six-weeks' detention

of terrorism suspects without charge – arguing that this contravened Magna Carta and the principle of *habeas corpus* that grew out of it. And the government elected in 2015 set about writing a new Bill of Rights.

TERRORISM VERSUS LIMITED GOVERNMENT

There are perhaps two major challenges to the authority of Magna Carta today. First is the threat of terrorism, which has thrown up an urgent but almost impossible question: How should a society founded on the rule of law deal with people who would use the rights and freedoms it bestows precisely in order to destroy that society and replace the rule of law with absolutist authority?

Our rulers answer that we are indeed engaged in a form of war, one that threatens our lives and freedoms, and that normal rules no longer apply. They are reluctant to suspend citizens' freedoms entirely – settling for measures such as Britain's six-weeks' detention, and limiting them to specific cases, rather than granting themselves a general warrant to detain anyone, and detain them indefinitely. The principles of Magna Carta still have to be deferred too, even in dire situations. But equally that same government has granted itself sweeping powers of arrest, expropriation and detention that can, and have been, abused.

EXAMPLES

In 1971, during the Troubles in Northern Ireland, and facing civil unrest and paramilitary violence, the government used a Special Powers Act to intern people without trial. Two years later, fearing possible intimidation of juries, it also suspended trial by jury for

certain offences, introducing 'Diplock' courts, comprising a single judge. This system, slightly amended, is still in use and was used in 2012 in a trial over a gun attack on an army base.

Anti-terrorism powers have been stretched in remarkable ways. In 2005, an individual was briefly arrested under anti-terror legislation for heckling a Home Secretary at a party conference; another was arrested for walking along a dockside cycle path and two others for holding a silent anti-war vigil at London's Cenotaph. At the time of Iceland's financial crash, Prime Minister Gordon Brown used anti-terrorist measures to freeze its citizens' bank accounts in London. And people have been held for months and years under house arrests because to put them on trial would risk exposing the methods by which evidence has been collected.

Nor does the challenge to Magna Carta end there. New threats to our security arise all the time, prompting the authorities to extend their powers yet further – often with not just the compliance but the active support of the public. Though the Charter guarantees people free movement, that did not stop the British government imposing restrictions on citizens travelling to the war zone in Syria, prosecuting those who joined the conflict, and threatening to arrest anyone returning from Syria who could not provide an acceptable reason for their visit.

FREEDOM OR SECURITY

This all poses more, fundamental questions. Have we become too complacent about the durability of our traditional rights and liberties? Are we too willing to rely on the good intent of our authorities, and grant them too many, too general powers over us – powers that can be turned against us? Are we sacrificing the protection of our traditional rights and freedoms for our temporary security – and is that

a sacrifice we have really thought about and should feel safe with? Indeed, have terrorists managed to rob us of the basic liberties on which our economic and political systems are based?

THE OVERCONFIDENCE OF DEMOCRATS

The second threat to the authority and protection of Magna Carta comes, ironically, from the democratic assemblies that are supposed to limit executive power. So deep is our distrust of absolutist governments that we have created and put our faith in democratic ones. But in many countries, these democratic assemblies do more than restrain the executive. In some, like the United Kingdom, they have themselves become the executive; in others, like the United States, they are often deeply in league with the executive.

Thus, mediaeval parliaments in England had no real power to restrain the monarch, other than outright rebellion. But that has been completely reversed: the monarch in the United Kingdom today has no real power to restrain Parliament. It is true that MPs face the restraint of having to win elections; but elections are few and far between, and most MPs have the lifetime luxury of a large majority. Why should we be surprised if they behave like a law unto themselves?

In the United States too, it is not uncommon for the President to come from the same party as those that dominate both House and Senate. The US Constitution does of course contain some checks and balances that might restrain this axis, notably the Supreme Court. But the Court can rule only when it is confronted with an individual case. Such cases may take years to reach the Supreme Court, and may not sharply reflect a general principle. As a balance on legislative and executive power, the Supreme Court seems far from perfect.

Not only do modern legislatures have enormous power; they exercise it more broadly than ever. Democracy is almost certainly the best way to make collective decisions that cannot be made in any other way. But so much do we value the benefits of representative government that we have been too willing to let it expand beyond its essential purpose and into other areas where it poses a positive threat to liberty. Politicians naturally talk up the achievements of democracy and urge us that more and more of our decisions should be made democratically. What that means, however, is that more and more things are decided politically. Limited government becomes general populism, and the rights, freedoms and rule of law guaranteed by Magna Carta are supplanted.

DEMOCRACY VERSUS FREEDOM

Focused more on immediate problems rather than general principles, however, governments imagine that an electoral majority gives them the authority to intervene in the every activity of their citizens. They regulate trade and commerce, raise import tariffs and quotas to protect domestic industries, ban outright the trade in other goods and services, restrict migration and impose other controls that Magna Carta would not give them the power to do, all because they can claim a 'democratic mandate'.

Democracy, however, is by no means a perfect way to make decisions – which is why it should be limited to those choices that cannot be made by individuals. As the Public Choice School economists tell us, the electoral system does not always reflect what the public really wants (particularly when the interests of different groups clash), and politicians and officials have their own interests that distort both legislation and its enforcement. And where decisions can be made and enforced by a simple majority, the possibility of exploitation and

expropriation of minorities becomes a serious issue – just the sort of abuse of authority that Magna Carta was designed to curb.

EXPLOITATION AND BULLYING

The easiest way to exploit electoral minorities is of course through taxation – a form of expropriation that the Charter specifically addressed. But, armed with their majority 'mandate', politicians raise taxes well beyond rational levels and impose arbitrary taxes on televisions, cars, houses, capital, savings, transactions, firms, inheritance and much else. They also undermine property rights by restricting land use planning, and opening up planning decisions on the arbitrary decisions of non-elected officials.

The barons would have regarded such threats to their rights as a tyranny not much different than King John's. The serfs too: mediaeval serfs had to work perhaps a third of their time on behalf of their feudal lord, while the government of the UK today takes roughly half of the national income in taxation (and borrows more besides).

Democracy, or populism, has also expanded into lifestyle choices. The elected majorities tell us what is good for ourselves, and tax, regulate or ban things that they believe are not. Thus, various countries impose bans and controls on free speech, smoking, drugs, prostitution, sugary and salty foods, even intermarriage, pornography and private sexual practices.

CORRUPTION OF JUSTICE

Justice too, has been diluted by the fiat of elected assemblies, often with the justification of 'efficiency' or 'increasing conviction rates'. In some cases, the Charter's ban on self-incrimination no longer applies. And as anyone in the UK financial services sector will tell

you, people can be fined or removed from their livelihood on the evidence of a single officer of the state, or at least a single agency. In yet other cases, the right of silence and the burden of proof have been reversed such that people are assumed guilty if they refuse to answer police questions or if they cannot actually prove their own innocence.

Meanwhile, the US freezes the bank accounts of those charged with offences, such that they cannot afford to pay lawyers to defend themselves. Prosecutors charge people with very serious offences, under legislation (such as racketeering law) that was never designed for their circumstances, in the hope of inducing them to 'plea bargain' and plead guilty to a lesser charge – something not so far from the selling and denial of justice that is outlawed in Magna Carta. An Anglo-American treaty allows British citizens to be extradited to America without any *prima facie* evidence. And EU citizens can be extradited, quite automatically to other EU countries where they have committed no offence and where justice can be slow, partial, and disproportionate.

In 2008, the British administration even arrested a Member of Parliament, the very intention that had previously precipitated the English Civil War; but this time the parliamentary authorities themselves supinely accepted the fact. It seems that those who are supposed to protect us from the abuses of authority have, unfortunately, become part of that ruling establishment themselves.

PAPER AND PRINCIPLES

In his essay *Of the First Principles of Government*, the Scottish philosopher David Hume (1711-1776) made the case that it is public opinion that establishes the boundaries of our liberty, not some piece of paper (or perhaps, in the case of Magna Carta, some piece of vellum).

Much of the legal and constitutional system of the West is founded on principles that were ancient even before 1215, but which the Charter, in its original and later variations, articulated and reasserted. Yet that is no guarantee of our rights and freedoms, if we are prepared to allow those foundations to be eroded for reasons of convenience or a misplaced faith in the benevolence of democracy.

The message of Magna Carta is that all forms of government authority need to be limited, and independent justice secured, if our lives, liberty and property are to be safeguarded from arbitrary power. Written words are but a part of that protection; the rest must come from the hearts, minds and resolve of men and women who understand why those enduring principles are so important.

10. Key dates

1014 - 1042	Witan chooses monarchs: recalls Æthelred, appoints Cnut and Edward the Confessor
1066	Norman invasion of England replaces Anglo-Saxon common law with the feudal system
1207	The Pope appoints Stephen Langton as Archbishop of Canterbury, provoking bitter dispute with King John
1213	Following domestic unrest and the Pope's threat to depose him, King John capitulates and makes England a papal fief
1214	John returns from his campaign in France, defeated and bankrupt
1214	Barons meet in Bury St Edmunds and secretly agree the Charter of Liberties, swearing to make King John agree it
1215	Rebel barons take London and force King John to agree terms – Magna Carta – at Runnymede; thirteen copies are circulated through the kingdom
1215	During a meeting with the council of 25 barons, John asks the Pope to annul the Charter
1216	King John dies of dysentery; the bishops take charge of state affairs; William Marshal becomes guardian to the minor Henry III
1217	William Marshal reissues the Charter

1217	The Charter of the Forest is issued
1225	Henry III voluntarily agrees an updated version of the Charter, without the security clause
1265	Simon de Montfort calls what is regarded as the first representative English Parliament
1297	Edward I reissues the revised Charter
1354	A statute of Edward III extends the Charter's 'free man' clauses to include all men
1455 - 1487	The Wars of the Roses focus attention on royal power rather than on the rights of commoners
1508	First printing of Magna Carta
1527	First translation of Magna Carta into English in abridged form
1534	Full translation of Magna Carta in English
1606	Sir Edward Coke drafts the Virginia Charter, guaranteeing colonists the same "liberties, franchises and immunities" as people born in England
1628	Charles I reluctantly agrees the Petition of Right, drafted by Edward Coke, granting fundamental rights
1638	Maryland seeks to incorporate Magna Carta into the law of the province, but Charles I denies the request
1642	After Charles I attempts to arrest five MPs, England descends into civil war; Charles is ultimately defeated and captured
1649	Charles I put on trial and executed; Oliver Cromwell becomes Lord Protector but ignores what he calls 'Magna Farta'
1679	Habeas Corpus Act codifies limits on arrest and detention

1687	First American printing of the Charter by William Penn
1688	James II flees and is deposed
1688	The Glorious Revolution: Parliament invites William and Mary to become joint sovereigns, subject to them agreeing limits on their authority
1689	William and Mary assent to the Bill of Rights, which reiterates key provisions of Magna Carta, sets limits to royal power, asserts the rights of Parliament, prohibits disproportional punishment and upholds the rule of law
1689	John Locke publishes Two Treatises of Civil Government, which justifies the events of the Glorious Revolution by outlining the theory of natural rights and social contract
1759	William Blackstone publishes a scholarly assessment of the Charter of the Forest and Magna Carta, which he gives the numbering system still used today
1765	The Stamp Act, imposing a tax on printed materials, precipitates rebellion among the American colonists
1776	American colonists declare independence from Britain, citing ideas from Magna Carta and arguing that the government of George III has broken its constitutional contract with them
1787	A new Constitution of the United States is negotiated at Philadelphia; it draws heavily on the principles of Magna Carta
1791	The first ten amendments to the US Constitution, known as the Bill of Rights, reflects many of the principles of Magna Carta
1863	The Statute Law Revision Act repeals most clauses in Magna Carta as being out of date
1904	Edward Jenks publishes The Myth of Magna Carta, consolidating the view that the Charter's significance had been overrated by Whig politicians and lawyers; the Charter is further mocked by Sellar and Yeatman in *1066 And All That*.
1911	Parliament Act limits the authority of the hereditary peerage in the House of Lords

1939	First appearance of the Lincoln copy of Magna Carta in the United States; tens of thousands of people flock to view it; the copy is deposited in the Library of Congress for safety during the Second World War
1956	Leading British lawyer, Lord Denning, later Master of the Rolls, describes Magna Carta as "the greatest constitutional document of all times"
1957	The American Bar Association erect a monument at Runnymede to commemorate the creation of Magna Carta there in 1215
1969	Only three clauses of Magna Carta (1, 9 and 29) are left intact
2008	British Labour MP Tony Benn calls a law to allow detention of terrorist suspects for 42 days "the day Magna Carta was repealed"; Tory MP David Davis resigns over the issue
2012	Occupy London protestors attempt to use Magna Carta to resist their eviction from St Paul's Churchyard in London
2014	The Lincoln copy of Magna Carta returns to the Library of Congress for public exhibition as part of the 800th anniversary celebrations
2015	Four existing copies of Magna Carta are united, for the first time, at the British Library and in Parliament