



RESONANCE OF MAGNA CARTA IN THE CONSTITUTIONS OF THE DEMOCRATIC STATES

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ABSTRACT

There are few human-scripted documents that have become as time-less and remained relevant throughout the course of human civilization as Magna Carta. Even in this modern era, the relevance and significance of this Great Charter remains unfazed. It still continues to be the point of reference of deliberations and musings of the parliamentarians across the world. Legislators still look up to it for reminding them of the intrinsic value of civil liberties and rule of law.

Magna Carta, undoubtedly, turned the course of human political history for good. It left an indelible mark on the constitutions of the various democracies. It has substantially influenced Bill of Rights, the Constitution of the USA, the French Declaration of the Rights of Man and of the Citizen, the British North America Act 1980, the Commonwealth of Australia Constitution Act, 1900 and the Universal Declaration of Human Rights.

The present paper delves into exploring the genesis of the Magna Carta and its enduring legacy. It examines the impact of Magna Carta in shaping the Constitutions of the world.

Keywords: rule of law, Magna Carta Libertatum Angliae, Runnymede, jury trial, US Constitution

INTRODUCTION

It has been eight hundred and six years since the most resilient and venerated charter in the human history, Magna Carta, was signed and yet its aura and relevance remains undiminished. The term Magna Carta means “Great Charter” in Latin. It is also called Magna Carta Libertatum or Great Charter of Freedoms. Its enduring legacy reflects in the timeless principles of fairness and justice that it laid down. It also tremendously contributed to the development of the concept of the written constitution.

The sequence of events that led to the Magna Carta is the marvelous manifestation of the classic struggle between freedom and power. In the turbulent times that it was drafted, it was hard to imagine that with passage of time it would serve as an icon of democracy to the legislators globally. At the time of its inception it was not meant to be a great charter of rights for all people, but it was designed by the barons to protect their rights against the king's power.

The Magna Carta controlled the power of the King for the first time in English history. It began the tradition of respect for the law, limits on government power, and a social contract where the government ruled with the consent of the people. It symbolizes a joint commitment by Monarchs, Parliamentarians and the Courts, to the rule of law. It was instrumental in promoting a culture of rule of law and giving birth to important legal doctrines. Bishop Stubbs, the great nineteenth century constitutional historian,



declared Magna Carta as the first great act of a united nation.¹

The Magna Carta has been praised by legal scholars as the ‘cornerstone of the rule of law’.² It played an indispensable role in the constitutional development by laying a firm foundation of an independent judiciary and the concept of a written constitution.

The tremendous influence that the Magna Carta has exerted over the constitutions of the modern democracies around the world reaffirms the constitutional significance of the charter. Its statement of the basic rights and liberties of people under the law has influenced the US Declaration of Independence (1776), the Australian Constitution (1900) and the Universal Declaration of Human Rights (1948). Both the British and the U.S. Bill of Rights drew much of their inspiration from the Magna Carta. It planted the seeds of important legal doctrines. The distinguished jurist, Lord Bingham rightly observed that, ‘The significance of Magna Carta lay not only in what it actually said but, perhaps to an even greater extent, in what later generations claimed and believed it had said.’³ Even though the Magna Carta was never intended to be a charter of human rights, it is seen by many as a document which makes a powerful statement about achieving liberty and freedom from tyranny by having a legal system based on the rule of law.⁴

THE BIRTH OF MAGNA CARTA

¹ 1 W. STUBBS, THE CONSTITUTIONAL HISTORY OF ENGLAND—IN ITS ORIGIN AND DEVELOPMENT, 571 and 583 (Clarendon Oxford 1883)

² Raja Balachandran, ‘Magna Carta: Medieval Curiosity or Cornerstone of the Rule of Law?’ 49 LAW SOCIETY

Magna Carta Libertatum Angliae, the Great Charter of English Liberties, was born in the tempestuous medieval England on the brink of civil war in 1215. King John was one of the most controversial monarchs of Britain. He followed the ruling principle of force or will. He had absolute power as a feudal monarch and committed several excesses in the exercise of his feudal rights. His unending expensive battles with France, forced King John to demand much higher and higher taxes from his people. The English barons refused to pay such exorbitant taxes. King John being a brutal dictator wanted the barons to give him money and troops to fight a long war with France. The barons had to tax their people heavily to pay for the war and force men from their estates to fight in the war. The barons were simmering with anger and discontentment against the cruel tyrant.

Owing to the several expensive, unsuccessful wars, brutal taxation, the barons revolted against King John. The immediate cause of the Barons' rebellion was the decisive defeat of King John's army in battle against the King of France at Bouvines in 1214. Consequently, the rebel barons renounced their oaths of allegiance to the king by 1215. They captured the city of London and forced John to negotiate a charter of liberties in a meadow at Runnymede in the Thames Valley (Berkshire, England). The rebels presented John with their ‘Articles of the Barons’, which became the basis for the Magna Carta. Magna Carta was created as a peace treaty between the King and the rebels. They agreed

JOURNAL (2011).

³ TOM BINGHAM, “THE RULE OF LAW”, (Oxford, 2010).

⁴ Magna Carta Legacy, <http://www.magnacartalegacy.org/humanrights.html>, (last visited June 16, 2021).



on a guarantee of due process of law, limits on royal exactions, the people's right to use the common lands, and a council of the barons to ensure that the king fulfilled his promises. Most of the document mentioned the rights of the barons under the feudal system.

However, soon after the dispersal of the barons after signing it, King John withdrew his consent from clause 61 of Magna Carta, which created a committee of twenty-five barons to overrule the will of the King if he contravened any of the provisions of the charter. The Charter was annulled by Pope Innocent III that very same year.

After the death of King John, his 9 year old son, Henry III, was coronated on 28 October 1216 and Magna Carta was reissued by William Marshal. He again reissued the charter next year. This was in deference of the request by the King's advisors and supporters, out of acknowledgment that the continued legitimacy of government depended on the observance of certain principles of good administration, respect for the liberties of the subject, and adherence to the law. When the young King reached his majority, the fourth version of Magna Carta was promulgated in 1225, this time in his own name Henry III. King Henry III's son, King Edward I re-issued the Magna Carta again in 1297 and it became part of England's statute law. The Magna Carta was thus re-issued in 1216, 1217, 1225 and 1297.

Edward I ordered an Inspeximus edition of the Magna Carta to be reissued in 1297. It was called Inspeximus because it inspected and approved the document signed by the previous king. In this edition, King Edward declared that the Magna Carta would from

then on be a part of common law and that any court judgment that went against it, would be void and illegal.

Although the Charter applied to elite, gradually the concept was broadened to include all Englishmen in the Bill of Rights in 1689 and eventually all citizens. Magna Carta was further strengthened in 1628 by the Petition of Rights which asserted the rights of citizens to be free from unrepresentative taxation and arbitrary imprisonment. The Bill of Rights of 1689 formed the platform for Parliamentary superiority over the crown and gave documentary authority for the rule of law in England.

For about a century after it was initially signed, the king and the nobles fought over the provisions of the Magna Carta, and it was periodically revised, altered, enriched and updated. The credit for revival of interest in Magna Carta goes to the distinguished jurists, Edward Coke and William Blackstone. Sir Coke rescued Magna Carta from the relics of the past and upheld the Magna Carta as a manifestation of the freedoms enjoyed by all which had to be respected by the King, and that the King is not an absolute monarch, but also was subject to the law. Sir Coke also helped in drafting the charters for the first American colonies of England and thereby Magna Carta became integral part of the constitutional foundation of British colonies and settlements.

PROVISIONS AND ENDURING INFLUENCE

The Magna Carta was created as a peace treaty between the King and the rebels. The whole document of Magna Carta is written in Latin. There were 63 clauses in the original Magna Carta. Most of the clauses of Magna



Carta deal with the regulatory mechanism of feudal customs and the procedure of justice dispensation system.

There are four clauses in Magna Carta that have remained timeless even in the modern era. They are clause 1, clause 13, clause 39 and clause 40.

Clause 1: *“FIRST, THAT WE HAVE GRANTED TO GOD, and by this present charter have confirmed for us and our heirs in perpetuity, that the English Church shall be free, and shall have its rights undiminished, and its liberties unimpaired. That we wish this so to be observed, appears from the fact that of our own free will, before the outbreak of the present dispute between us and our barons, we granted and confirmed by charter the freedom of the Church's elections - a right reckoned to be of the greatest necessity and importance to it - and caused this to be confirmed by Pope Innocent III. This freedom we shall observe ourselves, and desire to be observed in good faith by our heirs in perpetuity.”*⁵

The first clause was incorporated to prevent the king from interfering in the matters of the English Church. It empowered Church to elect its own leaders, rather than have them chosen by the king. This clause ensured the freedom of the English Church.

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

*ports shall enjoy all their liberties and free customs.”*⁶

The above clause defended and preserved the rights that had been granted to London and other cities and towns so that they were safeguarded from the corruption of King John. It included the right granted to the city of London to choose its own mayor.

Clause 39: *“No free man shall be seized or imprisoned, or stripped of his rights or possessions, or outlawed or exiled, or deprived of his standing in any 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.”*⁷

This clause laid down the foundation of the doctrine of rule of law. It propagated the fundamental legal principle that the people could only be judged according to the law, and that even the king himself had to follow the law. It introduced the concept of jury trial by emphasizing that a person must be adjudicated upon by his peers and not by the king or his men. The last phrase of this clause “by the law of the land,” set the standard for due process of law.

Clause 40: *“To no one will we sell, to no one deny or delay right or justice.”*⁸

Owing to the dishonest and corrupt practices of King John and the frequent demand of bribes by King John from his subjects, the rights of people were brutally suppressed. The clause 40 of Magna Carta aimed at upholding and protecting the rights of people.

⁵ SALISBURY CATHEDRAL, <https://www.salisburycathedral.org.uk/magna-carta-collections-what-magna-carta/key-clauses-magna-carta> (last visited June 18, 2021).

⁶ Id.

⁷ Id.

⁸ Id.



These above provisions of the Magna Carta still remain valid and contain some of the most important rules in the history of English law. Clauses 39 and 40 are of enduring importance. They are two most-cited clauses of Magna Carta for defenders of liberty and the rule of law. Sir Edward Coke described these provisions of clause 39 and 40 as “pure gold”. Lord Bingham, the learned judge of the UK’s highest court, said that these words still “have the power to make the blood race”. When put together, these provisions form the beginning of the right to freedom from arbitrary detention and the right to a fair trial. These important provisions contributed substantially to the growth and development of the human rights law globally under which the State must respect and protect the rights and liberties of people within their jurisdiction. Indeed it is from the clause 39 that the principles of the rule of law, habeas corpus, prohibition of torture and trial by jury are derived.

There are other clauses that are no longer part of English Law today but were a very significant part of Magna Carta.

- One of the first biggest milestones in the emancipation of women can be traced to the clause 7 and clause 8 of the Magna Carta. It stated that a widow cannot be forced to marry and give up her property.
- Clause 12 forbade the king from demanding new taxes without obtaining the approval of the key people in his kingdom. This eventually gave birth to the idea of parliament, (formally established in England 50 years later).
- Clause 28 attempted to put a stop to the robberies of petty tyrants.

- Clauses 47 and 48 refer to the common rights of the forest.
- Under clause 61, barons were given the right to form a committee of 25 barons to monitor the king and penalise him if he failed to honour his agreement to them and to the freemen of his kingdom. However, it failed to reach the English statute.

Timeless principles that have been laid down by the Magna Carta are:

- *Rights of individuals* - This stems from chapters 39 and 40 of the original Charter. These chapters represent the rights of individual to life, liberty and property which cannot be capriciously violated by the rulers, but only in accordance with the law.
- *Rule of Law* - The most important principal that the entire charter is infused with is that the King and his officials are as much subject to the laws of the land as are his subjects. Chapter 29 also embodies the individual’s right to access justice, before an honest decision-maker who will adjudicate according to law and not by the size of the bribe, which is the first requirement of any ‘impartial tribunal’.⁹ Further, by chapter 60 of the original Charter, the promises made by the King to the barons were to be cascaded down through the feudal ranks.¹⁰
- *Consent of the governed* - The King promised not to violate the rights of free men except by the lawful judgment of their peers or the law of the land. In the medieval times, the law of the land was ancient custom and practice, which developed into the common law, and perhaps the decrees of the King.
- *No taxation without representation* - In the original Magna Carta, the King had also promised not to levy taxes without consent except in a very limited number of customary

⁹ MAGNA CARTA TRUST, <https://magnacarta800th.com/tag/europe/> (last visited June 18, 2021).

¹⁰ Id.



circumstances. The protection against taxation without representation comes from clause 12 of Magna Carta.

Thus, Magna Carta happens to be one of the most important legal documents in the development of modern democracy. It established the rights of widows who owned property to choose not to remarry and laid down the principles of due process and equality before the law. It also contained provisions forbidding bribery and official misconduct. It gave rights to all the free citizens to own and inherit property and to be protected from excessive taxes. Undoubtedly, it established a tradition of civil rights in Britain that exists even today. Such was the constitutional significance of the Magna Carta that it led to the Bill of Rights in 1689 which codified the civil and political rights of all men and women. It granted freedom from taxation, freedom to petition, freedom to elect without interference, freedom of speech, freedom from brutal and extraordinary punishments and the right to a fair trial. It also hugely influenced the European Convention for the Protection of Human Rights and Fundamental Freedoms.

THE INDELIBLE IMPACT OF MAGNA CARTA ON THE WORLD CONSTITUTIONS

US Constitution

The US Declaration of Independence and the Constitution of the USA owe much to their common ancestor, the Magna Carta. For the forefathers of the US freedom struggles, Benjamin Franklin and Thomas Jefferson, Magna Carta was a compelling symbol of

liberty and the natural rights of man against an oppressive or unjust government. This level of veneration for Magna Carta among the Founding Fathers stemmed from their conviction that the great charter was an ancient pact safeguarding individual liberty and not from the original text of the document.

The skepticism of American people in concentration of political power manifested in the reassertion of their rights against an oppressive ruler. The language of the Magna Carta has in fact been quoted in the Massachusetts Body of Liberties (1641), the Virginia Bill of Rights (1776), the Fifth and Fourteenth Amendments to the U.S. Constitution. Magna Carta's legacy is most clearly reflected in the Bill of Rights that comprised the first ten amendments to the US Constitution. 9 out of 26 provisions in the Bill of Rights can be traced back to Magna Carta and these provisions are heavily concerned with the right to petition and the due process of law. In particular, amendments five through seven set ground rules for a speedy and fair jury trial, and the Eighth Amendment prohibits excessive bail and fines. This last prohibition can be traced back to the twentieth clause of Magna Carta.

Article VI reflects clause 29 of Magna Carta by requiring, among other matters, that in all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury.¹¹ Article VIII reflects clause 14 of Magna Carta and the Habeas Corpus Act in providing that "excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted".¹² Article III, Section 2 guarantees a jury trial in all criminal trials (except

¹¹ US Const. art. 6.

¹² Ibid.



impeachment).¹³ Various broader American constitutional principles have their roots in an eighteenth-century understanding of Magna Carta, such as the theory of representative government, the idea of a supreme law, and judicial review.

Canada

In Canada, Magna Carta helped to shape the federal Bill of Rights in 1960 and the Canadian Charter of Rights and Freedoms, which forms the first part of the 1982 Constitution Act. Canadians came to view the Magna Carta as a foundation document for their system of parliamentary democracy and common law modelled on British political and legal institutions: the beginning of “the rule of law” tradition where everyone, even the monarch, became subject to the laws of the land.¹⁴ The Constitution Act, passed on July 1, 1867 (known as the British North America Act before 1982), absorbed the legislative documents that shaped the development of the British government, including Magna Carta, the Petition of Right, the Bill of Rights, and the 1701 Act of Settlement, which governed succession to the throne until the 2013 succession reforms, as unwritten “conventions of the constitution.” Within this framework, Canadians came to regard Magna Carta as the earliest legislative document that shapes modern Canadian politics and law.¹⁵

The fundamental common law rights and principles that Magna Carta influenced have been incorporated into Canadian Charter of

Rights and Freedoms. The section 7 of the Charter regarding the due process of law reflects clause 39 of Magna Carta.¹⁶ The right to timely and fair justice along with trial by jury echoes in section 11 of the Canadian Charter which guarantees the right “to be informed without unreasonable delay of the specific offence,” the right “to be tried within a reasonable time,” the right to a fair hearing, and the right to a jury for serious offences”.¹⁷

The Canadian Supreme Court in *Calder v. Attorney-General of British Columbia* held - “Magna Carta has always been considered to be the law throughout the Empire. It was a law which followed the flag as England assumed jurisdiction over newly-discovered or acquired lands or territories.”¹⁸

Australia

The heritage of Magna Carta has also been inherited by Australia through the common law. It can be seen to resonate most clearly through the fundamental common law doctrine of legality and the right of access to justice. Magna Carta was given concrete legal effect in Australian jurisdictions in a complex way. Jurisdictions with Imperial Acts (the Australian Capital Territory, New South Wales, Queensland and Victoria) all chose to borrow provisions from Magna Carta. This was not, primarily, for its potentially salutary legal effects, but rather to recognise Magna Carta’s pivotal role in the constitutional legacy that these jurisdictions had inherited.¹⁹ On the other hand, in the

¹³ Ibid.

¹⁴ CAROLYN HARRIS, *MAGNA CARTA AND ITS GIFTS TO CANADA: DEMOCRACY, LAW AND HUMAN RIGHTS* (Dundurn, Toronto 2015).

¹⁵ *Supra* note 10

¹⁶ *CANADIAN CHARTER OF RIGHTS AND FREEDOMS*, §7, 1982 (Canada).

¹⁷ Id.

¹⁸ (1973) 34 DLR (3d.) 145, 203

¹⁹ A.C. Castles, ‘*Australian Meditations on Magna Carta*’, 63 *AUSTRALIAN LAW JOURNAL* (1989).



Northern Territory, South Australia, Tasmania and Western Australia, Magna Carta was received by Imperial law reception statutes.²⁰ These jurisdictions find themselves in the surprising position of having almost all the provisions of Magna Carta theoretically still in force. The legacy of Magna Carta has manifested in Australia through the fundamental common law doctrine of legality and the right of access to justice. Isaacs J, speaking in the High Court of Australia in 1925, was speaking truly when he proclaimed Magna Carta to be ‘the groundwork of all our Constitutions’.²¹

Heydon J in *Momcilovic v The Queen* listed a number of fundamental rights and freedoms which he purported can be traced back to the Magna Carta; such as procedural fairness, the right of access to the courts, the right to a fair trial, open justice, freedom of speech, the liberty of the individual and freedom from arbitrary arrest.²² The Magna Carta’s proclamation of a right of access to justice has also been the subject of a number of Australian cases; most notably, *Jago v District Court (NSW)*.²³

Thus, Magna Carta has made a long journey through time, from Petition of Right, the Habeas Corpus Act, the Bill of Rights, to Declaration of Independence of the USA, the British North America Act, 1867, Constitution Act, 1982 of Canada, the Commonwealth of Australia Constitution Act, 1900 and the modern human rights instruments, spreading over the globe by

virtue of its enduring legacy, inspiring and shaping the cardinal doctrines of freedom and human rights. The ideas of freedom and justice laid out by it have become integral and inseparable part of the civilized and democratic societies across the world. The ideas of humanitarianism and freedom that have been inspired by it have far exceeded its original purpose or substance.²⁴ However, much the majority of its original clauses may have been amended, repealed and ultimately discarded, the ideals it has come to stand for – individual rights, the curbing of authoritarian power and the right to equality before the law – are as important globally today as they were in medieval England.²⁵

²⁰ David Clark, *The Icon of Liberty: the Status and Role of Magna Carta in Australian and New Zealand Law*

24 MELBOURNE UNIVERSITY LAW REVIEW, (2000).

²¹ Ex parte Walsh and Johnson 37 CLR 36, 79 (1925).

²² 245 CLR 1, 177 (2011)

²³ 168 CLR 23(1989).

²⁴ PETER HARRINGTON, <https://www.peterharrington.co.uk/blog/magna-carta-evolution-emblem/> (last visited June 11, 2021).

²⁵ Id.