

## MAGNA CARTA

### Background Essay

From its inauspicious beginning, the Magna Carta (Latin for “Great Charter”) has taken on almost mythical significance. It is viewed as the foundation of the rule of law and as a source of inspiration throughout the world. June 15, 2015 marks the 800<sup>th</sup> anniversary of the Magna Carta, yet the document—and the ideas that grew from it—is perhaps even more important today. Nearly every country in which government is founded on the consent of the governed rather than dictatorial rule by the arbitrary will of a single person or a small group can trace its heritage to this single document. How did a medieval charter that was in effect legally for only 10 weeks become such a powerful symbol?

When the Magna Carta was written in 1215, England was governed by a feudal system. The will of the king was the ultimate law on all issues. In fact, the monarch’s ability to rule was based on the “divine right of kings”—the belief that the monarch was the ordained representative of God on Earth. The nobility (barons) owed loyalty to the king because they held their land at the king’s pleasure. Their obligation to the king included paying taxes, called “aids” or “scutage,” and providing knights to fight the king’s wars. In turn, the barons provided land and safety to their vassals (feudal tenants) and, thus, controlled the lives of ordinary people. The poorest people (serfs) had virtually no rights at all.

The sealing of Magna Carta marked a profound change in this feudal social and political order. Its sweeping content and broad reach included several new limitations on the powers of a ruling king and included the recognition that all free men had some rights that could not be abridged except by course of law.

Perhaps, the most important article was what became Chapter 39, which prevented the King from proceeding against any “freeman” of their realm except by “lawful judgment of his peers and the law of the land.” These few words eventually formed the basis of the promise of “due process of law” guaranteed to all American citizens under the Fifth and Fourteenth Amendments to the United States Constitution. It also provided the basis for the right to trial by jury. Chapter 39 formed the basis for the development of the rule of law upon which every democratic government is based today.

Magna Carta was, in essence, a peace treaty, agreed to by King John (1167 – 1216) in response to the demands of his rebellious barons. The barons resented the king for his constant efforts to raise taxes and force them to send knights or money for military ventures. Some saw King John as an illegitimate ruler, having secured his throne by murdering his nephew, Arthur of Brittany, following the death of Richard I. The barons resented the King’s efforts to increase royal control over everything from courts to the transfer of property and estates, and even the marriage of the barons’ daughters or widows. Particularly aggravating to the barons and their vassals was the King’s seemingly insatiable appetite for forest land. Historically, hunting and fishing was prohibited in the royal forests—ostensibly to protect the herd for the King’s sport. Trespassing in the royal forests was an offense against the King, and poaching resulted in serious fines, known as “amerancements,” or worse. Many barons and vassals derived their living from the forests, and every acre claimed by the king resulted in very real deprivation. (The dispute over control of the forests formed the basis of the legend of Robin Hood.)

For his part, John regarded the barons’ complaints as a treasonous assault on the King and his sovereignty. Some of the barons had conspired to kill him. Many barons had refused to send King John the men or financial support he needed to carry out

military campaigns. In fact, some northern barons had offered the throne of England to the son of the King of France in exchange for French help in deposing John.

Because of his increasingly strained treasury, his power struggles with Pope Innocent III, and military losses, King John was vulnerable. When the barons declared that they would renounce their feudal loyalty to John unless he agreed to a list of specific demands, he was forced to accept terms at Runnymede, outside of London. Just 10 weeks later, the Pope annulled Magna Carta. After John died, his son, Henry III, reissued a revised charter in 1225. Over the years, Magna Carta has been reissued many times. It eventually led to the establishment of English common law and the creation of the English parliament. Although only three clauses from the original Charter remain law in England, Chapter 39—due process of law—is notably one of them.

The notion of representative government and a guarantee of individual rights, further influenced by the writings of Edward Coke and John Locke in the 17<sup>th</sup> century, had a considerable impact on the development of American democracy.

Coke made the case against the theory of “divine right,” and both Coke and Locke argued in favor of trial by jury and limited government that ruled with the consent of the governed.

The earliest English settlers brought these ideas with them across the Atlantic and formed the foundation of written colonial charters in Virginia, Massachusetts, and Pennsylvania. The cry of “no taxation without representation”—which was based on Chapter 12 of Magna Carta—helped spur on the American Revolution. In 1774, Thomas Jefferson, echoing Magna Carta, wrote that Parliament had taken away “rights which God and the laws have given equally and independently to all.” President Obama in a 2011 speech to the British Parliament said, “Our system of justice, customs, and values stemmed from our British forefathers....Our

relationship is special because of the values and beliefs that have united our people throughout the ages. Centuries ago when kings, emperors, and warlords reigned over much of the world, it was the English who first spelled out the rights and liberties of man in Magna Carta.”

It is ironic, perhaps, that the basis for our modern democracy—proclaimed by the Declaration of Independence, the U.S. Constitution, and the Bill of Rights—had its origins in a treaty between a tyrannical king and his aristocratic subjects. Yet to understand how our country was formed, it is essential to learn the story of what happened on that summer day in an English meadow eight centuries ago. Today, the scene of that historic moment is marked by (among other memorials) an oak tree planted in 1987 with soil from Jamestown, Virginia, the first permanent English settlement in the New World. The dedication plaque reads, “[this tree] stands in acknowledgement that the ideals of liberty and justice embodied in the Constitution trace their lineage through institutions of English law to the Magna Carta...”