Magna Carta: new perspectives

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Magna Carta: New Perspectives

Editors

Neil Renwick and Mark Bratton

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Cover photograph. King John of England signing Magna Carta on June 15, 1215, at Runnymede; coloured wood engraving, 19th century. Available at: John_Magna_Carta.jpg (277 × 411 pixels, file size: 40 KB, MIME type: image/jpeg. This work is in the public domain in the United States, and those countries with a copyright term of life of the author plus 100 years or less.

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MAGNA CARTA

Cotton MS. Augustus II. 106, one of only four surviving exemplifications of the 1215 text
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*David Carpenter.* David Carpenter is Professor of Medieval History at King’s College, London and a leading authority on Britain in the period between the Norman Conquest and the Fourteenth Century. A Co-investigator of the ‘Magna Carta Project’ funded by the Arts and Humanities Research Council, he is the author of *Magna Carta* in the Penguin Classics series, described as “a landmark in Magna Carta studies”. 
John McEldowney. John McEldowney is Professor of Law and Director of the School's new LLM in EU Law in the World Economy. He is one of the joint editors of the Journal of Law, Science and Policy and is an executive member of the Study of Parliament Group, and is editor of the Group’s Newsletter for the past ten years. He delivered the 10th Hugh Fitzpatrick Lecture on "Biography and Bibliography" at Kings Inns Dublin Ireland in 2004. In 2001 he was elected the New Zealand Law Foundation Distinguished Visiting Fellow. He has held visiting appointments in universities in Japan and France. In 2000, he was the World Bank visiting Fellow in the Supreme Court in Venezuela. In 2004, he was awarded a medal of honour from the University of Lille. He has acted as external examiner for a number of universities, including the Open University. Professor McEldowney has given evidence to a number of inquiries held by the House of Lords Select Committee on the Constitution specifically on the Draft European Constitution in 2002-3, Parliament and the Legislative Process in 2003/4 and on the use of the prerogative of war. He is currently working on a new book on Environmental law for Edward Elgar.

Svetoslav Nenov. Svetoslav Nenov recently completed his PhD, entitled "Bio-politics, Counter-terrorism and Law", at the University of Manchester. His MA in Sociology was previously gained at Lancaster University, where his primary focus was in the areas of globalisation and contemporary US foreign politics. His research interests lie equally in the fields of International Relations, Politics, Sociology and Law. More specifically, he is interested in bio-politics, contemporary politics of security, US and UK counter-terrorism, US domestic policy after 9/11, Foucauldian studies and post-modern social theory.

Darren R. Reid. Darren R. Reid is a historian of Native America, Early America, and Western Popular Culture. Much of his work focuses upon the nature of racial perceptions and ethnic ‘Otherness’. He has published numerous works on Native American and European American relations in the late colonial era and has several forthcoming works exploring the ways in which non-Indians have attempted to (re)construct Native American identity for their own benefit. Reid has published on the history of western popular culture and the performing arts. His work in this area explores the ways in which ideas and collective memories are formed and transmitted within and between cultures; this work frequently intersects his core research interests in Native and Early America.

Neil Renwick. Neil is Professor of Global Security at Coventry University, a Senior Associate Member of St. Antony’s College, Oxford and Member of the International Institute of Strategic Studies, London. He has lectured and researched on international affairs for 25 years in Australia and the UK and advised numerous organisations including the United Nations development Programme (UNDP). Neil convenes the Contemporary China Research Group and the Security Studies Group at Coventry. His primary research interest is in Human Security, i.e. the challenges faced by individuals and communities in overcoming fear and
want and the pursuit of emancipation, empowerment and dignity in their daily lives and fulfilment of their aspirations. He is a graduate of European Studies, but his primary focus today is upon the rise of ‘emerging economies’ or ‘rising Powers’ and the implications of change in the world of states.

Nicholas Sagovsky. Nicholas Sagovsky is an Anglican priest. He holds professorial posts in Theology at two ecumenical universities: Liverpool Hope and Roehampton. He has been Canon Theologian at Westminster Abbey, William Leech Professorial Research Fellow in Applied Christian Theology at Newcastle University and Dean of Clare College, Cambridge. Much of his work has focused on Anglican-Roman Catholic ecumenism; he has been a member of ARCIC (the Anglican-Roman Catholic International Commission) since 1992. He is a Vice-president of SPCK. Nicholas has been Chair of the West End Refugee Service (WERS) in Newcastle and a Trustee of the Frank Buttle Trust and is now a Board Member of CARA (the Council for Assisting Refugee Academics). He was a Commissioner on the Independent Asylum Commission (2008), the most comprehensive review of the UK Asylum System there has ever been, which produced more than 180 recommendations for change and improvement. He also participated in a recent (2011) independent Commission of Enquiry into the future provision of Legal Aid. He was co-founder of Article 26, a project to enable those who have sought asylum and been offered a place at a UK university to take up their place, now adopted as a Project of the Helena Kennedy Foundation. Nicholas is the author of a number of articles and books on social justice, the most recent being Christian Tradition and the Practice of Justice (SPCK, 2008).

Brett Sanders. Brett Sanders is Lecturer in History at Coventry University with a particular interest in the history of the environmental movement and green political thought. Research interests include the communing practices of eco-communities and low impact developments, alongside their role in influencing the discourse on sustainable living.

The authors would also like to extend there thanks to Professor Nigel Berkeley, Associate Dean for Research in the former Faculty of Business, Environment and Society, Coventry University for his support and Chairing of the Coventry Magna Carta Roundtable; to Neil Forbes, Professor of History at Coventry University, for acting as Respondent in the Coventry Roundtable; to the Dean of Coventry, The Very Reverend John Witcombe, for his support for the Coventry Cathedral Conference on Magna Carta and to the staff at St. Michael’s House, Coventry Cathedral for their great efforts in making the Conference a success.
Abstracts

Magna Carta in its first century: new discoveries and new perspectives
David Carpenter

This paper shows how the original Magna Carta in 1215 was very far from asserting universal rights. It was a hierarchical document in some ways designed to keep the lower orders in their place. On the other hand, it does assert a fundamental principle, namely that the ruler is subject to the law. It is not just a 'feudal' baronial document. The paper also reveals new discoveries that help explain how Magna Carta survived.

(Re)imagining Magna Carta: Myth and Metaphor in Gordon Brown's Rhetoric of Britishness
Judi Atkins

The 800th anniversary of Magna Carta is being celebrated amid growing concerns about the future of the Union. It also comes at a time of uncertainty about what it means to be British in an increasingly diverse society. Contemporary politicians have responded to these anxieties by articulating visions of Britishness, through which they seek to unite the citizenry around shared ideals and a common identity. Central to these efforts is rhetoric, which affords an invaluable means of promoting social cohesion. In particular, epideictic speech creates a sense of belonging by amplifying shared values, while the activation of cultural myths and symbols can reinforce feelings of national pride.

This paper explores the role of Magna Carta in Gordon Brown's case for the 'British Way'. It begins by considering his account of Britain's tradition of liberty that, through metaphor, is linked to a specifically social democratic conception of society. Next, the paper examines Brown's argument for Britain's 'greatness', which fuses his narrative of Magna Carta with Labour's belief that Britain should provide moral leadership to the world. In so doing, the paper demonstrates that Magna Carta acts as a 'founding myth', which in turn serves to ground these claims of British exceptionalism.

Magna Carta in the Context of Contemporary Constitutional Developments
John McEldowney

The celebration of eight hundred years since Magna Carta (1215) is appropriate to mark such an important historical event. Magna Carta served an important purpose of addressing the political and social problems of the time providing a mechanism for the King to continue in power albeit under accountability to the rule of law. Magna Carta provides historical prece
dent that has endured until the present day. The value of liberty and freedom ascribed to the Magna Carta continues to inspire generations and foster faith in civil and religious liberties as well as the law itself. In the debate about a modern British Bill of Rights does the Magna Carta provide lessons for today? As the newly elected Government embarks on its legislative programme for the coming five years the United Kingdom faces unprecedented constitutional change - an in/out referendum over membership of the EU and the potential for home rule through increased powers to Scotland and possibly Wales and Northern Ireland. In England, there is a trend in favour of decentralisation in the form of mega-city forms of devolution-City-deals and new city-regions with elected Mayors. The new devolution arrangements challenge the Union and represent a serious concern to the maintenance of our constitutional arrangements. England has the largest population of the other Union nations but the extent of devolution has raised the question of “English votes for English laws”. The “Barnett formula” used to finance the devolution arrangements gives rise to inequalities between the nations. The UK’s unwritten constitution is in a state of flux. There is potential for instability and an air of uncertainty as well as little direction to chart our constitutional future - this has a resonance with the period of Magna Carta where the future depended on finely balanced decisions, often with unforeseeable outcomes.

Magna Carta in Guantanamo Bay – From the Exception to the Rule
Svetoslav Nenov

The foundation of the detention camp in Guantanamo Bay in early 2002 has often been invoked as one of the blueprints for American legal exceptionalism after 9/11. This article will adjust these claims and will argue that the camp was a space created by observing all of the constrictions and constructions of the legal prerogative, while operationalising the margins of the law and the space at the border between the law and its absence. It will be shown how this construct was subsequently challenged by the US Judicial branch, through the invocation of the principle of habeas corpus, through reinterpretation of the scope and function of both domestic and international law, and through making legitimate legal challenges to the assumptions of the US Administration. The paper will conclude with an analysis of one of the key Supreme Court decisions in Guantanamo – Rasul vs Bush - which will show that the legacy of the Magna Carta still endures in the American legal system.

Magna Carta, Land Rights and Settlements
Brett Sanders

The veneration of Magna Carta as a beacon of liberty, the cornerstone of global ideas of law and justice defines its place in our collective memory. The importance of clauses 39 and 40 from which habeas corpus, prohibition of torture, trial by jury and the rule of law have been derived underscores our understanding and reverence of it. What is often forgotten or ignored is that the Magna Carta of 1215 was, at root, a peace treaty between a feudal king and
Common Ground No More: The Failure of the Magna Carta and Charter of the Forest in Colonial North America

Darren R. Reid

This paper examines the ways in which aboriginal American societies, through their own organic cultural evolution, came to reflect some of the core ideas articulated in the charters in 1215 in a way that English, and later British, tended to reject in the long term. Eastern Native American societies, at the point of contact with the English, understood ideas of common rights and usage in a way that surpassed that of the newly arrived colonists from across the Atlantic. Theirs were a set of societies, vastly varied but united by certain common ideas, that internalised and utilised concepts that were, in many ways, deeply familiar to the spirit of 1215. To be sure, English and, later, British colonists understood and took advantage of common rights and land use in North America, but their commitment to that idea was haphazard, ill-balanced, and, ultimately, subservient to the power and allure of private property. The common use of land and the right—the right—to a share in a commonwealth of resources and space were integral ideas articulated in the Magna Carta and Charter of the Forest but it was in Indian Country that a more perfect realisation of those ideas were to be found in the early modern era, not among the children of 1215. Indeed, the commitment to private property among English and British settlers was such that the commonwealth of the forest was often abandoned early or turned so that it actively undermined Native American society.

A World in Flux: Magna Carta in an Era of Global Change

Neil Renwick

This paper argues that the world of states is on the brink of a major systemic shift in global power and influence from the West to the East, most markedly to a rising China. This shift through the 21st century poses significant questions over the principles and values and political practices that will be most salient in a changing order, potentially bringing to the fore a different set of cultural values, historical experiences and political principles. Clearly, Magna Carta has not only endured, but has gained an iconic international status as the foundation.
for principles of liberty, freedom, law and justice. But how and why has this come about, after all, the 2015 Charter only lasted a few months, had little to do with the majority of people in England and was a precursor to a period of conflict and civil war? What exactly has this 'Charter of Liberties' done for us? What relevance has Magna Carta to our international relations today? This presentation addresses these questions. The argument being brought forward is that much of the principle attributed to Magna Carta had little or no basis in the politics of the time these "Concessions" were granted, but the Charter's longevity and status grew as it offered a narrative, a story, through which the politics of the changing social and economic order are played out over the following centuries. It is further argued that it remains highly salient today as a discourse, an instrument and reference to which global claims to justice, democracy, peace and reconciliation are still made. The study considers the relevance of Magna Carta in the context of international relations today, with particular relevance to East Asia, especially China. Western traditions of liberty and freedom, it is contended, are alien to many parts of Asia. The power of Magna Carta, the study argues, lies not in what it meant when it was first drafted, but rather in its ability to generate a 'story' about liberty with reference to which global claims to justice, peace, democracy and reconciliation can be made.
Magna Carta: New Perspectives

Foreword

Christopher Cocksworth, Bishop of Coventry

For some years, I was Chaplain of Royal Holloway, which one of the University of London’s colleges. Royal Holloway’s campus, though, actually lies in Surrey, on Egham Hill, the gentle slope east of the Thames that looks down upon the famous Runnymede where the Magna Carta was sealed. During university vacations, my family and I would attend St John’s Parish Church, Egham, walking each Sunday through doors above which are inscribed: ‘Anglicana Ecclesia Libera Sit.’ Magna Carta was part of the geography and history of local life; after all, we lived in the Borough of Runnymede. So I was delighted to renew my association with this symbol of British culture when I was sent to Coventry, to be bishop of the see once occupied by William, one of the ‘reverend Fathers’ who advised the King on the terms of the Charter and on the good sense of agreeing to it.

It was very fitting for the Diocese’s history that St Michael’s House, a place set aside by its Cathedral to foster conversations related to reconciliation, should host a day conference in the 800th Anniversary Year of the Magna Carta. It is very good to see the papers from that energetic and enlightening day made available in this form. They are published together with work presented at an International Studies and Social Science Research Roundtable held at Coventry University, an institution that works closely with the Cathedral in all sorts of imaginative ways, many of them associated with the themes of peace and reconciliation for which Coventry has become known across the world.

The wide-ranging papers in this collection differ in their assessment of the Magna Carta. It would be fair, though, to say that they are united in viewing the Charter as a significant symbol in British and world history, a symbol of justice, freedom and the rule of law. The power of symbols lies in their multivalence: their capacity to speak on several different levels and to evade precise and contained definition. The symbolic strength of the Magna Carta has been demonstrated over the centuries in the use that has been made of it by the people and movements described in the pages that follow, from Edward Coke in the seventeenth century to Gordon Brown in the twentieth, and from the compilation of the Constitution of the United States of America to the creation of the international institutions of the contemporary world. It has proved to be generative of new thinking, inspirational to new applications, and sufficiently principled and pliable to enable it to serve new historical situations. That generative capacity of the Magna Carta is very much in evidence among the writers of these papers as they seek to quarry meaning from the Charter, and all that it set in train, for a very different world from the one in which it was formed.

The ability of the Magna Carta to stimulate thought and practice in different contexts is remarkable. A personal example, if I may: the relationship between the freedom Magna Carta accords to the English Church from arbitrary interference from royal powers, and the right to freedom of religion and belief from oppression enshrined in Article 18 of the Universal Declaration of Human Rights, is one such point of linkage and development that I have found enlightening and encouraging in my own work. The difference between the privileges of the English Church in the thirteenth century and the need to protect the freedom of all peoples
of the world in the twenty-first century are vast. The theological principles, though, that lie behind the first clause of the Magna Carta, rooted as they are in an understanding of the will of God for the good of all and in a vision of human life fulfilled by mutual responsibility, provide a seedbed for the growth of freedom of religion and belief in the plural societies of the modern world.

Justice, freedom and the rule of law are key ingredients of a peaceable society, and their protection and promotion are intrinsic to common life. I hope that the papers gathered in this collection will encourage fresh thought on how these principles can be better embedded into the political, legal and cultural systems across the world. The Magna Carta has helped to shape life within nations and life between nations. Justice, freedom and the rule of law, though, are far from established in many places and even further from being enacted in the relationships between the nations of our world. Indeed, even where they are held high, they remain vulnerable to a fall. If the Magna Carta can generate new practices of common life that serve the deepest principles of human flourishing, then perhaps its legacy will live on for another 800 years.
Magna Carta: New Perspectives
Introduction: Magna Carta at 800 Years-New Perspectives

Neil Renwick and Mark Bratton

Introduction

This inaugural Occasional Paper presents a range of perspectives and ideas about the nature and current import of Magna Carta, sealed by King John in 1215. The Paper brings together a series of articles by early career researchers, eminent scholars of Magna Carta, leading scholars of law, politics and theology to offer an exciting eclectic mix of fresh ideas, insights and analysis. The Paper is based on two important twin research events held in June 2015 around the 800th anniversary of the sealing of Magna Carta, a Research Roundtable held at Coventry University organised by Neil Renwick and the Magna Carta Conference: The Allure of Magna Carta: Freedom, Democracy and Reconciliation held at St. Michael’s House, Coventry Cathedral, organised by Mark Bratton.

2015 can be regarded as quite a year. In the UK and around the world, it marked 800 years of the first ‘Magna Carta’. It has also seen a General Election that dramatically overturned the widespread predictions of an outcome too close to call and likely hung Parliament to see outright victory grasped by the Conservative Party, the Liberal Democrats effectively vanquished and the Labour Party descend into chaos. Hard on the heels of the genuinely ‘too-close-to-call’ 2014 Scottish Independence vote, the UK General Election also brought with it the “cold winds from the North” as one eminent and long-term parliamentary observer and scholar, Professor Peter Hennessy (Lord Hennessy of Nympsfield) aptly described it - the arrival en masse of 56 MPs from the Scottish National Party, transforming the political topography at Westminster. Internationally, wars, civil strife and terrorist acts continue to dominate the headlines. In New York, governments and the swath of development agencies and civil society organisations gathered to confirm the global community’s commitment to greater economic, social and political freedom for all through equitable and inclusive Sustainable Development Goals designed to end global poverty by 2030. The year has also seen another financial crisis, some say one carrying even greater potential damage to the global economy than that of 2008-only this time its origins lie, not in the United States, but in the economy widely expected to rule the world economy (and most likely the political world) in the 21st Century- China. The onset of Winter brought events carrying both pain and hope, each intimately associated with the principles associated with Magna Carta. The horror, fear and anguish of terrorism returned to the streets of Paris, stirring an emotive international response reaffirming the principles of liberté, égalité, and fraternité through the illumination of famous landmarks and buildings in the colours of the French tricolore. Just days before, the hope for these very same principles gained renewed strength from a resounding victory for the opposition New League for Democracy led by Aung San Suu Kyi, in Myanmar’s election.

The central research questions addressed by this Occasional Paper are these: As we mark the 800th anniversary of Magna Carta, why and how has it endured and come to estab-
lish itself as the leitmotif of democracy in our complex contemporary world? Can *Magna Carta* speak to us today, for example, with regard to political rhetoric or to protection of the endangered environment? Does does this accord, agreed centuries ago, help inform our present understanding of the UK’s political and Constitutional condition and challenges? Both within the UK and internationally, to *Magna Carta* is ascribed a ‘universal principle’ and inspirational spirit for those who have sought to right injustice from Britain’s Suffragettes to Nelson Mandela, but just how credible and salient is this claim today in a world where ‘universals’ are countered by a powerful combination of ‘cultural relativism’ and national ‘exceptionalism’? Internationally, did Magna Carta do more harm than good? As the international economic and political order stands on the cusp of a fundamental shift in power and influence, a move from a Western-centric world to one dominated by the East, what does this mean for the principles embedded in Magna Carta and the global importance attributed to them? Big questions, none with easy answers.

![View over Magna Carta Island towards Runnymede](image)

**Key Themes**
The principal themes of these essays are concerned with the three questions at the core of this *Occasional Paper*: What does Magna Carta represent? How and why has it endured? What relevance has it to our contemporary world?

*What does Magna Carta represent?* It is probably fair to say that the authors all agree with David Carpenter’s description of Magna Carta as a “hierarchical” document, designed to keep the lower orders in their place’. There is also agreement that the idea of Magna Carta at least has not only endured over the centuries, but strengthened across the generations and through successive constitutional and political changes within the UK and internationally.

*How and why Magna Carta has endured?* There is a sense, reading across all the essays, that the answer really lies in the interpretive flexibility of the provisions of Magna Carta itself and the conse-
quential ideational and discursive power it has acquired over the centuries. The very nature of the document itself offers an open-ness to inter-generational re-interpretation - its very ambiguity providing it with its strength (McEldowney) Magna Carta is recognised across the essays as a ‘foundational myth’, albeit one reified into the constitutional and political being of the UK (Carpenter, Atkins, Griffith-Jone, McEldowney, Reid, Renwick) and become a powerful leitmotif for British national identity and its claims that Magna Carta is Britain’s gift to the world (Atkins). In Renwick’s view, the process of transmission itself is key. Over the centuries, Magna Carta offered an instrument for those powerful classes involved in state-building, constructing, firstly, an England and, later, a Great Britain after their own image and economic, political and social interests, for example with respect to private property, taxation, representation and voting rights. However, following the law of unintended consequences, in so doing, these classes inadvertently provided a discourse that was to be commandeered by both middle class and labouring classes in pursuit of their own counter-veiling interests.

Cartoon captioned “Magna Carta” in Votes for Women, vol. iv, no. 151, 27 January 1911 (British Library Collection, public domain).

How relevant is Magna Carta to us today? For differing reasons, a number of the essays argue that this document has relevance today, either as a vital bulwark against the arbitrary abuse of power by rulers and primacy of ‘rule by law’ (Griffith Jones; McEldowney; Renwick), or as an important informative reference to historical parallels of constitutional and political flux (McEldowney), or as a powerful discourse either for the construction of national identity (Atkins), or as a continuing facet of the U.S. legal system (Nenov) or in the tensions between the rights of the commons and land rights on the one hand and private property on the other resonating still in societies such as Eastern Native American societies (Reid;
Sanders). Some author’s adopt a different position. Whilst acknowledging the continuing significance of Magna Carter, the essays by Reid and Sanders make the case for considering the Charter of the Forest rather than Magna Carta as the more important and relevant document.

For Darren R. Reid, the overwhelming of the rights to the commons included in Magna Carta by private property left Magna Carta a ‘failure’ in Colonial North America. In a similar perspective, Brett Sander’s cogent critique is that the Charter of the Forest was more significant in defining the rights of the commoner and that, in a world of climate change and threats to our environmental global commons, there is a strong argument in favour of reviving the Charter of the Forest.

Source: horseytalk.net/Hoofbeat
EXCLUSIVE RIGHTS OF WAY WATCH;
http://horseytalk.net/ROW/Runnymede.html
Magna Carta in its First Century:  
New Discoveries and New Perspectives

David Carpenter

2015 is the 800th anniversary of Magna Carta. It was on 15 June 1215 that King John, in the meadow of Runnymede beside the Thames between Windsor and Staines, authorised the writing out and sealing of the document which was to become known as Magna Carta. Runnymede remains an atmospheric place and it is not difficult to imagine the scene during those tense days in June 1215 when the Charter was being negotiated, the great pavilion of the king, like some circus top, towering over the smaller tents of barons and knights stretching out across the meadow. Today the great jets taking off from London Heathrow airport come up over Runnymede and then turn to fly down its whole length before vanishing into the distance. It is as though they are taking Magna Carta round the world, and the Charter has indeed become one of the most famous documents in world constitutional history.

Magna Carta is 3550 words long written in Latin, the English of the Latin Magna Carta being Great Charter. Much of the Charter, even in a modern translation, can seem remote and archaic. It abounds in terms like wainage, amercement, socage, and distraint. Some of its chapters seem of minor importance. One calls for the removal of fish weirs from the rivers Thames and Medway. Yet there are other chapters which still have a very clear contemporary relevance. Under chapter 12, the king is not to levy taxation without the common consent of the kingdom. Under chapter 39, he cannot arrest people or seize their property without judgement of their peers or by the law of the land. Under chapter 40, he is not to deny, delay or sell justice. In these ways, the Charter asserted a fundamental principle that of the rule of law. The king was beneath the law, the law the Charter itself was making. He could no longer treat his subjects in an arbitrary fashion. Chapters of Magna Carta are still on the Statute Book of the United Kingdom today. It still features in current political debate. The heading of a leader in the Guardian newspaper opposing the 90-day detention period for suspected terrorists was ‘Protecting Magna Carta’. This year chapter 40, promising that justice should not be sold, has been cited by those opposing the government’s changes to legal aid.

In 1215, there was nothing new in the ideas behind the Charter. They were centuries old and part of general European heritage. Strengthened in the twelfth century by the study of Roman and canon law, they can be found in legislation and constitutions promulgated in Spain, Hungary and the south of France. It was in England, however, that they led to the most radical and detailed restrictions on the ruler. That was because in England the ruler was uniquely demanding and intrusive, thanks to the pressures of maintaining a continental empire which stretched from Normandy to the Pyrenees. By the time of John’s accession in 1199, there was already outcry at the level of the king’s financial demands. They were to become far worse. After John had lost Normandy and Anjou to the king of France in 1204, he spent ten years in England amassing the cash needed to recover his empire, in the process
tripling his revenues. In 1214, the eventual campaign of recovery ended in total failure. John returned to England his money spent, his prestige in tatters. Next year his baronial enemies rebelled and forced him to concede Magna Carta. They had other grievances. Although paying lip service to the principles of custom and consent, John’s rule had been lawless. He took hostages at will, deprived barons of lands and castles without legal process, and demanded large sums of money to assuage his rancor and recover his good will. In a chivalrous age, which expected noble captives to be treated with courtesy, he was cruel. He murdered both his nephew Arthur and the most famous noble woman of the age, Matilda de Briouze. She and her eldest son were starved to death in the dungeons of Corfe castle. As a contemporary writer put it, John was ‘brimful of evil qualities’.

In 1215, John was, therefore, placed beneath the law; but the Magna Carta of 1215 was very far from giving equal treatment to all the king’s subjects. Socially it was a divided and divisive document, often reflecting the interests of a baronial elite a few hundred strong in a population of several millions. Indeed the Charter did not merely reflect social divisions. In places, it was designed to reinforce them. Having asserted that taxation required the common consent of the kingdom, the assembly giving that consent was to be attended primarily by earls, barons, bishops and abbots. There was no place for London and other towns, although the Londoners thought that there should be. There was no place for knights elected by and representing the counties. In other words, there was no equivalent of the House of Commons.

At least, in the chapter on taxation, the good and great of the realm could be seen as protecting the rest of the king’s subjects from arbitrary exactions. But the king’s subjects were far from sharing equally in the Charter’s benefits. Indeed, the unfree villeins, who made up perhaps half the population, did not formally share in those benefits at all. The liberties in the Charter were granted not to ‘all the men’ of the kingdom, but to ‘all the free men’. The most famous chapter of Magna Carta, one of those still on the Statute Book, reads

No free man is to be arrested, or imprisoned, or dispossessed, or outlawed, or exiled, or in any way destroyed, nor will we go against him, nor will we send against him, save by the lawful judgement of his peers or by the law of the land.

It is, therefore, only ‘freemen’ who are preserved from arbitrary arrest and dispossession. As far as Magna Carta was concerned, both king and lords remained perfectly free to dispossess their unfree tenants at will. The threat of doing so was a vital weapon for control of the peasant work force.

The next chapter, likewise still on the Statute Book, seemed more universal.

‘To no one will we deny, delay or sell right or justice’.
But this was less helpful to the unfree than it seemed. It was the law itself which laid down that villeins had no access to the king’s courts in any matter concerning their land and services. These were entirely for the lord to determine. As one law book put it, a villein when he wakes up in the morning, does not know what services he must perform for his lord by night. The one chapter in the Charter which specifically protected the unfree was less than it seemed. Under chapter 20 fines imposed on villeins were to match the offence and be assessed by local men. During the negotiations at Runnymede, this chapter was redrafted to make it clear that the fines in question were those imposed by the king. In other words, they did not apply to fines imposed by lords. Lords were protecting their villeins from the king so they could take all the more themselves.

Magna Carta attitude to women was more nuanced. An important chapter protected widows from being forced into re-marriage. Chapter 39 referred to the ‘free man’ but ‘man’ could be understood to mean ‘human being’. Indeed, the chapter probably owed something to the way John had ‘destroyed’ Matilda de Briouze. The Charter, however, also reflected the inequalities between men and women. It gives the names of thirty-four men. Three women are mentioned: John’s queen, and the sisters of King Alexander II of Scotland. Not one was named. This was but part and parcel of the limited role women played in public life. If a free woman secured judgement of peers under the terms of chapter 39, those peers would have been entirely male for women did not sit on juries. Chapter 39 also forgot about women altogether when it spoke of outlawry, for women were not outlawed they were ‘waived’, which meant left as a ‘waif’. This had the same effect. A waived woman could be killed on sight just like an outlawed man. But the distinction showed how subject women were to men. Women took no oath of allegiance to the king because in theory they were always under the protection of a man—father, husband, or lord. They were, therefore, never ‘in law’ and so could not be ‘outlawed’, hence they were ‘waived’ instead. The only chapter (54) of the Charter where the word ‘woman’ ‘femina’ appears was designed to put women on a lower plane than men when making accusations of homicide. The implication was that women could not be trusted.

It is easy, therefore, to dismiss Magna Carta as a ‘feudal’ document, in which selfish baronial men looked after their own interests at the expense of the great bulk of the population. Such a view has been powerfully argued this year. Yet is misleading. Magna Carta had a much broader appeal. Chapter 1 protected the freedom of the church. Chapters 12 and 13 protected the liberties of London and other towns. Chapters 18 and 48 gave an important role to knights, elected in the county courts, in administering justice and reforming local government. The chapters facilitating litigation under the procedures of the common law fitted all free men (so around half the population). Indeed these chapters actually cut across the interests of great barons since they undermined the jurisdictions of their own courts. The numerous chapters repressing the malpractices of the king’s local agents—his sheriffs, castellans and bailiffs—had considerable benefits even for the unfree. Magna Carta thus responded to the grievances of wide sections of society. Had it not done so it would never have survived.
In 1215 itself, any survival appeared problematic. Within a few months of its promulgation, the Charter seemed a failure without a future. John had got the pope to quash it. The barons had likewise abandoned it. They deposed John and elected another king in his place, none other than Prince Louis, the eldest son of the king of France. Louis had no brief for the Charter, and on his arrival in England in May 1216, said nothing about it. Magna Carta only survived because of John's death in October 1216. The minority government of his son, the nine-year-old Henry III, in a desperate situation with Louis controlling over half the country, decided on a complete change of course. They accepted what John had rejected and Louis was ignoring. In November 1216, they issued, in the young king's name, a new version of Magna Carta. Having won the war, in part because of this concession, they issued a second version of the Charter in November 1217 as part of the peace settlement. Then, in 1225, in order to secure a great tax, Henry III issued what became the final and definitive Magna Carta. It is chapters of Henry III's Charter of 1225, not John's of 1215, which remain on the Statute Book today. Indeed, in the thirteenth century it was Henry's Charter of 1225 which was called 'Magna Carta'. John's Charter of 1215 was more often called just 'the Charter of Runnymede'. The name 'Magna Carta' itself had only appeared in 1218 to distinguish the 'Great Charter' from the physically smaller Charter dealing with the royal forest which Henry III issued alongside it. It was not till the seventeenth century that John's Charter recovered its place centre stage and became called Magna Carta.

It is sometimes said that in its first century Magna Carta was little more than 'guff'. It asserted high principles but had little practical effect. Recent research shows this view to be wrong. In the first place, the Charter was far more than just a vague symbol of good government. Its detail was immensely well known. This had started in 1215 itself. It used to be thought that in 1215 originals of Magna Carta were sent to the sheriffs in charge of the counties, so there was one for every county. In fact, evidence is building up to show that the Charters were sent not to the sheriffs but to the bishops and their cathedrals. Two of the four surviving originals have been at cathedrals – Lincoln and Salisbury – throughout their life. An exciting discovery (made by myself!) has shown that another of the originals (one of the two now in the British Library) was once at Canterbury cathedral where it almost certainly went in 1215. In the great British Library Magna Carta exhibition, it was described as the ‘Canterbury Magna Carta’. Although, alas, all trace of it is lost, there would thus have been an original Magna Carta at Coventry cathedral. At the start of Magna Carta, John listed William (of Cornhill), the bishop of Coventry as one of his counselors so at least Coventry does appear in the Charter. For John's opponents the bishops and their cathedrals were far safer depositories of the Charter than the sheriffs and their castles. After all the sheriffs were the very people under attack in the Charter. Had Magna Carta been sent to them it would soon have disappeared into their castle furnaces! The bishops on the other hand, with the first chapter of the Charter protecting the liberties of the church, had every reason to preserve and proclaim it.

The originals at the cathedrals were not the only source for knowledge of the 1215 Charter. New research has also shown that numerous unofficial copies were circulated round
the country. Many of these were not of the final authorized text and derived instead from
drafts produced during the negotiations at Runnymede. This spreading knowledge on the
Charter helps explain its survival. From the start, it was digging deep roots into the hearts and
minds of the political community. That was why the minority government of Henry III took
the crucial decision to revive it. Copies of the 1215 Charter continued to be made through-
out the thirteenth century. Equally copied were the Charters of 1217 and 1225. Such copies
are found in chronicles, cartularies, and legal collections made by lawyers. The chapters were
often numbered, described and analysed, with the differences between the different versions
being pointed out.

By the end of the century, Magna Carta in its various forms was known from top to
top of society. In 1300, it was proclaimed in English, the language of the general run of
the population. Around the same time, it was appealed to by the peasants of Bocking, later a
centre of the peasants’ revolt. The Charter had also effected a profound change in the work-
ings of monarchy. Stopping up many arbitrary sources of revenue, and insisting that the gen-
eral taxation required common consent, it had helped create the tax based parliamentary
state. It was a real watershed between lawless and lawful rule. It had established the base
from which it would later go round the world.
(Re)imagining Magna Carta: Myth and Metaphor in Gordon Brown’s Rhetoric of Britishness

Judi Atkins

The 800th anniversary of Magna Carta is being celebrated amid growing concerns about the future of the Union. It also comes at a time of uncertainty about what it means to be British in an increasingly diverse society. Contemporary politicians have responded to these anxieties by articulating visions of Britishness, through which they seek to unite the citizenry around shared ideals and a common identity. This paper explores the role of Magna Carta in Gordon Brown’s case for the ‘British Way’. It begins by considering his account of Britain’s tradition of liberty which, through metaphor, is linked to a specifically social democratic conception of society. Next, the paper examines Brown’s argument for Britain’s ‘greatness’, which fuses his narrative of Magna Carta with Labour’s belief that Britain should provide moral leadership to the world. It then offers a brief evaluation of Brown’s argument and, by way of a conclusion, demonstrates that Magna Carta acts as a ‘founding myth’ that serves to ground claims of British exceptionalism.

Rhetoric, myth and community

According to Aristotle, epideictic (or ceremonial) rhetoric is concerned with praise or blame (2004, 1358b). It features heavily in set-piece political occasions, such as the leader’s party conference speech in the UK and the State of the Union address in the USA, where it may be used to amplify shared values and identity, thereby creating a sense of belonging in an audience and uniting them in the pursuit of a common goal. A typical example appears in Barack Obama’s speech to the Democratic National Convention in 2004, where he told his audience that: ‘We are one people, all of us pledging allegiance to the stars and stripes, all of us defending the United States of America’. By using the pronouns ‘we’ and ‘us’, Obama sought to achieve communion with his audience, while the appeal to shared cultural symbols reinforced identification with the national political community.

Reinhold Niebuhr contends that each nation develops a ‘social myth’, through which it ‘defends itself and justifies its interests’ while undermining the moral credibility of its enemies. To this end, historical events are framed in a way that portrays the nation in a favourable light, thereby constructing a collective self-image that underpins claims to national superiority on the world stage (1967, p. 40). These myths also contribute to a shared sense of belonging among the citizenry. In Michael C. McGee’s words, ‘So long as “the people” believe basic myths, there is unity and collective identity’ (1975, p. 245). It is important to recognise that several competing myths will be present within a society, on the ground that each generation of ‘the people’ will have its own system of myths. Consequently, any new myth will be in competition not only with ‘objective’ reality but with the already-existing myths that seek to interpret this reality (McGee, 1975, pp. 245-46).
Myths and cultural symbols play a central role in epideictic speeches about the nation and national identity. More specifically, they form part of an argument, where they support—and indeed are supported by—appeals to the character of the speaker (ethos), the emotions of an audience (pathos) and factual evidence (logos). Also important is metaphor, through which political actors may incite an emotional response in hearers and activate political myths. Jonathan Charteris-Black explains that ideology ‘appeals through consciously formed sets of beliefs, attitudes and values while myth appeals to our emotions… through unconsciously formed sets of beliefs, attitudes and values’ (2005, p. 13, emphasis in original). The role of metaphor is to mediate between these cognitive and emotional modes of persuasion, and thus to generate a moral viewpoint on life. In addition, it can help a social group to use a particular belief system to create the meanings through which it can justify its own existence to itself, and so promote cohesion. I now explore Gordon Brown’s use of these techniques in elaborating his account of the ‘British Way’.

**Magna Carta and the ‘British Way’**

According to Gordon Brown, the core values of the British Way are liberty, fairness and responsibility (2006). He identifies liberty as a ‘founding value of our country’ and argues that it runs throughout British history like a ‘golden thread’ – from the sealing of Magna Carta in 1215 to the passage of the Bill of Rights in 1689, then to the Reform Acts of the 19th and 20th centuries that extended the franchise far beyond the landowning elite and, more recently, to ‘the idea of government accountable to the people, evolving into the exciting idea of empowering citizens to control their own lives’ (2007a; 2007b). Using logos, Brown advances a Whig account of history, which is founded on an assumption of evolutionary progress. More specifically, he identifies Magna Carta as the moment when ‘arbitrary power was fully challenged’ (2007b), as the starting point for the gradual devolution of power from the state to the people. It is worth noting that Brown presents his government’s commitment to individual empowerment as the latest stage in this process, and so seeks to legitimise Labour’s proposals for constitutional reform as the direct descendants of Magna Carta.

Gordon Brown conveys the importance of Magna Carta through textile metaphors. Thus, the Great Charter is depicted as the knot that anchors this unbroken ‘golden thread’ of liberty, the durability of which is conveyed through the conceptual metaphor METAL IS STRONG. Additionally, the textile metaphor evokes the collectivist notion of the ‘social fabric’, the idea that human beings are interdependent. These themes recur in Brown’s rhetoric of Britishness, and indeed he employs another
textile metaphor to describe the values of the British Way as ‘not only the ties that bind us, but also give us patriotic purpose as a nation and a sense of direction and destiny’ (2006). At one level, it seems Brown is primarily addressing his immediate audience – the Fabian New Year Conference – on the ground that the interdependence he praises is a core tenet of social democratic ideology. However, his acclaim for ‘shared civic values’ (2006) gives his words wider appeal and is intended to create a sense of communion among his listeners. This effect is amplified by the pronoun ‘us’, which links members of the audience both to Brown and to each other while uniting them in a shared future. Hence, Magna Carta is mythologised as the foundation of liberty, a value which, on Brown’s view, lies at the very heart of the British people’s collective identity.

In a bid to inspire feelings of national pride in his audience, Brown links the Great Charter to the myth of British exceptionalism:

But first with the Magna Carta and then through Milton and Locke to more recent writers as diverse as Orwell and Churchill, philosophers and politicians have extolled the virtues of a Britain that, in the words of the American revolutionary Patrick Henry, ‘made liberty the foundation of everything’, and ‘became a great, mighty and splendid nation because liberty is its direct end and foundation’ (2007a).

Here, Brown cultivates an ethos of erudition by ‘indicating [his] familiarity with a specific canon of reference points’, which in turn reinforces his identification with the (imagined) national community. Moreover, by showing that he is ‘part of, and able to show fidelity to, a larger cultural tradition’ (Atkins and Finlayson, 2014, p. 8), Brown is perhaps seeking to demonstrate his fitness to speak on behalf of ‘the British people’, and so to act as their representative.

Although Brown positions himself as the latest in a long line of politicians to praise British values, he goes beyond this by asserting that ‘Even before America made it its own, I think Britain can lay claim to the idea of liberty’ (2006; see also Brown, 2007b). Similarly, he spoke of the British tradition of liberty as ‘what one writer has called our “gift to the world”’ (2007a). As an aside, the writer Brown refers to here is Alfred Milner, the British colonial administrator, who ‘strongly believed that English people belonged to a superior race, and that this justified Britain’s imperial policy towards Africa, Asia and Middle East’ (Rocha, 2010, p. 48). With this in mind, it is not surprising that Brown did not mention Milner by name. Returning now to Brown’s assertions concerning the origin of liberty, his claims tap into the deeply held belief that Britain is an exceptional – perhaps even providential – nation (Marquand, 2007, p. 16). This myth of Britain’s inherent superiority masks the uncomfortable reality that its global influence has declined steadily since 1945, and it is noteworthy that Brown harks back to past glories – as opposed to present day achievements – in his efforts to sustain it. Indeed, Brown invokes this notion of uniqueness to establish communion with his audience, telling them that ‘Now is the time to reaffirm our distinctive British story of liberty – to show it is as rich, powerful and relevant to the life of the nation today as ever’ (2007b).
Despite this diminishing international prestige, the Labour Party has maintained a belief in Britain's capacity to provide moral leadership to the world (Vickers, 2004). Brown links this commitment to Magna Carta and the British tradition of liberty, on which basis ‘Britain led the way in the battle for freedom from hierarchical rule, for human rights and for the rule of law’ in the 17th century. Moreover, he continues, in 1941:
Churchill and Roosevelt together drew up the Atlantic Charter, and by beginning the system of international law based on the fundamental rights of all human beings, Britain led the way in asserting the inviolability of individual rights, irrespective of race or nationality, and made the freedoms so dear to Britain the cornerstone of a new international order (2007a).

The narrative of moral leadership and the myth of British exceptionalism are mutually reinforcing causes for national pride. Such positive portrayals of the nation and of its role in key historical events strengthen feelings of collective identity, an effect that is reinforced through the use of personification. This rhetorical technique is founded on the conceptual metaphor THE NATION IS A PERSON which, as Charteris-Black explains, ‘permits the actions of nations to be represented as if they were either the actions of heroes or villains’ (2005, p. 43). In the above extract, Brown personifies Britain by representing it as a trailblazer, a crusader (for want of a better word) in what he terms the ‘battle’ for liberty and fundamental rights. He thus activates the heroic myth of BRITAIN IS A HERO (Charteris-Black, 2005, p. 42), in which Britain is described as a heroic leader who is willing to fight for the values they believe in.

Evaluating the ‘British Way’
Although Brown describes the NHS as ‘like the monarchy, the army, the BBC – one of the great British institutions’ (2006), his account of Britishness is primarily based on values. After all, he claims, these ‘enduring ideals shape our view of ourselves and our communities’, and in turn ‘influence the way our institutions evolve’ (2006). However, in marginalising institutions, as well as our shared interests and shared experience, Brown’s account of Britishness is rendered strangely abstract (Hazell, 2007, p. 105). As Catherine McGlynn and Andrew Mycock explain, ‘Institutions continue to be of huge importance when it comes to shaping and expressing national pride or identity. Older ties and modes of Britishness are yet to be transcended while new programmes of inculcation merely sidestep the ways in which loyalty and belonging continue to be reproduced’ (2010, p. 225).

In other words, the continuity afforded by appeals to existing institutions is vital for maintaining identification even as a new social myth is being developed. That Brown’s efforts to reimagine Britishness for the 21st century were unsuccessful is partly attributable to his failure to incorporate sufficient appeals to these important cultural symbols.

A more serious difficulty is Brown’s use of England as a ‘part’ that stands for the ‘whole’ of Britain. From the perspective of rhetorical analysis, it functions like a synecdoche – literally, ‘understanding one thing with another’ (Lanham, 1991, p. 148) – though not on a terminological level. This technique is clearly evident in Brown’s narrative of ‘British’ history,
in which all of the events linked by the ‘golden thread’ of liberty are – without exception – examples from English history (Lee, 2006, pp. 375-76; see also Bryant, 2010, p. 256). Indeed, writes Bernard Crick, events such as the Battle of Bannockburn and the Declaration of Arbroath, which are as vital to Scottish mythology as Magna Carta is to that of England, do not warrant a mention (2007, p. 152). While this may constitute an acknowledgement that ‘Englishness is the dominant strain within Britain’ (Hayton, English and Kenny, 2007, p. 126), the exclusion of Scotland and Wales reduces the possibilities for identification with Brown’s version of Britishness and so limits its appeal. Furthermore, in Gerry Hassan’s words, ‘England in Brown’s Britain seems forever silenced and forbidden to speak in its own collective national voice, yet is co-opted and claimed for the greater British story’ (2007, p. 94).

**Conclusion: Magna Carta as a ‘founding myth’**

According to Lothar Probst, founding myths have a capacity to ‘create a common … identity, to give meaning to the past and the future of a polity and to promise temporal continuity instead of the contingency of human existence and life’. Consequently, they possess considerable symbolic power, which in turn shapes the consciousness and collective memory of the citizenry (2003, p. 46). The above analysis reveals that Magna Carta acts as a ‘founding myth’ in Brown’s rhetoric, where it is portrayed as a pivotal moment when limits were first imposed on arbitrary power, and thus as the source of an unbroken ‘golden thread’ of liberty. This in turn lends support to the myth of British exceptionalism, the idea that Britain is unique among nations, and to the Labour Party’s belief that Britain could act as a global moral leader. After all, Britain gave liberty to the world and, moreover, has long been at the forefront of struggles for human rights and the rule of law (2007a).

It is important to highlight that founding myths contain elements of both fact and fiction. Despite the far-reaching legacy claimed for it, Magna Carta was ‘annulled by the pope within three months, on the grounds that it was enacted under duress’ (Norman, 2015, p. 25). It also makes no mention of democracy, and in fact was a peace treaty between King John and the English nobility; its impact on ordinary people was therefore negligible (Magna Carta 800th, 2011). Nevertheless, the myths that have built up around Magna Carta and our temporal distance from 1215 mean that the Charter can be imagined in a variety of ways, and its complexities and ambivalence can easily be ignored. This versatility means that Magna Carta can be invoked to support a range of political arguments and claims not only about Britishness, but also about liberty, human rights, equality and mutual respect (see, for instance, Cameron, 2014). The myth of Magna Carta therefore has considerable rhetorical utility, while its symbolic power guarantees it an important role in debates over Britishness for many years to come.

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Sermon on Magna Carta: Coventry Cathedral, 23 June, 2015

Nicholas Sagovsky

Psalm 27; Readings: Deut 16: 18-20; Rev 15: 2-4

The Magna Carta, which was sealed eight hundred years ago at Runnymede on June 15, 1215, begins, like the programme of a play, with thanks to all who played a part in preparing it. Those listed as giving counsel include ‘our venerable fathers Stephen, Archbishop of Canterbury, primate of all England and cardinal of the Holy Roman Church’, plus eight other bishops, including William, Bishop of Coventry. There is considerable debate about who drafted what, but general agreement that one key drafter was Stephen Langton, Archbishop of Canterbury, the foremost biblical commentator of his time. The Great Charter, which was nothing less than a solemn peace agreement between King John and the Lords of England, was drafted in the light of a shared theological understanding of the relationship between the king and the people of Ancient Israel, the king and the people of England. This was just the sort of theology to which the psalm we heard sung this evening, and both our lessons, allude.

Psalm 27 is a prayer for the king to reign in a good and godly way, which means to rule justly, and for the practice of justice to be passed on to the king’s son: ‘Give the king thy judgements, O God; and thy righteousness [or justice] unto the king’s son.’ ‘Then’, we are told, ‘shall he judge the people according unto right; and defend the poor.’ Clause 40 of the original Magna Carta proclaims, ‘To no one shall we sell, to no one shall we deny or delay right or justice’. In Deuteronomy 16, as we heard in the first lesson, Moses proclaims, ‘You shall appoint judges and officials through your tribes, in all your towns that the Lord is giving you, and they shall render just decisions for the people’. John proclaims in Magna Carta, ‘We shall not make justices, constables, sheriffs or bailiffs who do not know the law of the realm and wish to observe it well’ [43]. The passage from Deuteronomy goes on, ‘You must not distort justice; you must not show partiality; and you must not accept bribes, for a bribe blinds the eyes of the wise and subverts the cause of those who are in the right. Justice, and only justice, you shall pursue.’ Again, Magna Carta says bluntly, ‘To no one shall we sell, to no one shall we deny or delay … justice’

The duty of the judge in Ancient Israel was to ‘give just judgements’ and ‘just judgements’ came ultimately from God. Some of these ‘just judgements’ were exemplified in the Law given to Moses and some depended on the exercise of practical wisdom in the spirit of
the Law. When Israel became a monarchy, supreme judicial authority lay with the king. The great exemplar of kingly wisdom was Solomon. His wisdom was seen as an earthly reflection of God’s heavenly wisdom, which is praised in the song from Revelation, as we heard in our second reading:

Just and true are your ways,  
King of the nations. …
All nations will come  
And worship before you,  
For your judgements have been revealed.’

For the Israelites, having a king specially anointed for God’s service was a kind of ‘second best’. It was a concession granted because they thought they lacked something which the other nations had, and because it was so difficult to remain true to the Covenant given by God to Moses at the time of their wilderness wanderings. It was the Covenant, sealed at Sinai that was constitutive of their identity, not the later monarchy, which soon proved dysfunctional and divisive. The Hebrew Scriptures are ambivalent in their attitude to kingship; they are unequivocal in their affirmation of the Covenant and the Law, given to the people by God.

The drafters of Magna Carta would have been thoroughly familiar with the example of Saul, the first king of a united Israel, chosen and anointed by the prophet Samuel. Saul began well, but then turned to evil. In the Book of Samuel, we hear how Saul visited the medium at Endor, who called up the prophet Samuel, the very prophet who had anointed Saul king, from the dead. Samuel told Saul,

The Lord has torn the kingdom out of your hand, and given it to your neighbour David. Because you did not obey the voice of the Lord … therefore the Lord has done this thing to you today(1 Sam 28:17-18).

Shortly afterwards, Saul and his son Jonathan died in battle, to be replaced by David, the father of Solomon. For the drafters of Magna Carta, this was a prime, biblical example of an anointed king who had been rejected by God and overthrown. It was not, then, impossible that the same thing might happen to John. Just as the monarch in Ancient Israel did not have an unfettered right to rule as he pleased, but was always answerable to God, so the monarch in England did not have an unfettered right to do what he pleased. He and his successors were accountable to the law of God, to God’s justice. In Magna Carta, John was forced to spell out, for the benefit of his whole realm, what, from now on, that would mean.

Much in Magna Carta is no longer directly relevant to our concerns. And much has changed. Most of Magna Carta no longer applies in British law. However, we don’t have to
look very far to see the contemporary relevance in of four key clauses that have never been repealed.

At the outset, Magna Carta asserts that ‘the English Church is to be free and have its rights in whole and its liberties unimpaired’ [1]. Put differently, we might say that the political authorities are not to implement laws which constrain the right of the church to be faithful to God’s law. One example today where this is relevant is in the matter of gay marriage. The Church of England has made it clear that it is not opposed to civil partnerships, but it cannot in conscience conduct gay weddings. In legislating through secular law for gay weddings, the government explicitly recognised that the church was to be exempted from legislation, such as equalities legislation, which might otherwise compel it to provide in its own canon law for gay weddings. In this respect, the English Church is still free carefully to make up its own mind on this controversial issue – which it is now actively seeking to do.

The Magna Carta goes on to assert that ‘The City of London is to have all its ancient liberties and free customs both by land and water. Furthermore, we will and grant that all other cities, boroughs, towns and ports will have all their liberties and free customs.’ Over time, the financial freedoms of cities round the country, including London, have been completely eroded. Central government took to itself a monopoly on taxation. In seeking to hand back powers over local budgets and, in some cases, tax-raising, the government consistently talks of devolution. What this clause of Magna Carta suggests is that talk of devolution is incorrect. The restoration of local tax-raising powers is the restoration of powers – liberties – that lie within local communities. Today, we call this subsidiarity and we see it as theologically rooted in the God-given nature of local, human communities.

Then there are the two most famous clauses of Magna Carta. First, that ‘No free man will be taken or imprisoned or disseised [disinherited] or outlawed or exiled or in any way ruined, nor shall we go or send against him, save by the lawful judgement of his peers and by the law of the land.’ [39] Given the nature of contemporary terror threats, ‘the law of the land’ is changing and the defence of liberty and open justice is getting harder. In the troubled situation of Northern Ireland during the 1970s trial by jury was suspended because of the fear that jurors would be intimidated. Trial by jury becomes harder and harder to sustain when the evidence – as in complex fraud cases – is highly technical and a trial may last for many months. The international scope of money-laundering makes the seizure of the proceeds of crime under the rule of law extremely difficult to achieve. Maintaining the standard of justice set by Magna Carta is becoming more not less relevant.

Clause 40 of Magna Carta shines like a beacon in dark times: ‘To no one shall we sell, to no one shall we deny or delay right or justice.’ The Justice Secretary is giving a speech today on the gold plated service the British courts offer rich foreign litigants but the way they fail victims of crime and others who need their help at home. The impact of recent cuts in legal aid, particularly in civil cases, is becoming ever clearer. So many law centres and welfare advice centres have closed or reduced their hours. Where I myself see the impact of cuts most clearly is in access to justice for people who seek asylum. Access to competent lawyers is extremely patchy and, for some cases, non-existent. Apart from those charities which provide
superb pro bono legal support to a few, the quality of legal representation is directly related to what people, many of whom are destitute, can pay. A substantial number of asylum seekers appear in court with no representation at all. The same is now true in the family courts, where what is at stake is the best interests of a child. Legal aid is not available for challenging benefit sanctions, which can easily escalate into rent arrears and eviction. Those with mental health problems are particularly vulnerable to justice denied. Asylum seekers may wait years for decisions on their cases – years in which, amongst other deprivations, they are denied access to student finance so they cannot go to university. This is justice delayed – and justice delayed is justice denied.

It is well-known that the agreement based on Magna Carta lasted only ten weeks. It was in effect torn up, but John died just over a year later, to be succeeded by his son Henry III, who was aged only nine. An edited version of Magna Carta was reissued. It became the prospectus for his reign. In 1225, it was again reissued in amended form. Repeatedly, ‘the king’s son’ promised to rule by the standards of justice which had been hammered out in conflict between his father and the Lords of England. Magna Carta became, over eight hundred years, a living standard for the monarch, for parliament and for the judiciary.

‘Does Magna Carta mean nothing to you? Did she die in vain?, asked the comedian Tony Hancock. The correct answer, for which, after eight hundred years, we give thanks is ‘no’ – because Magna Carta didn’t die and Magna Carta still has a great deal to teach us today.
Magna Carta in the Context of Contemporary Constitutional Developments

John McEldowney

Introduction- Magna Carta in a contemporary setting
The celebration of eight hundred years since Magna Carta (1215) is appropriate to mark such an important historical event. Magna Carta served an important purpose of addressing the political and social problems of the time providing a mechanism for the King to continue in power albeit under accountability to the rule of law. Magna Carta provides historical precedent that has endured until the present day. The value of liberty and freedom ascribed to the Magna Carta continues to inspire generations and foster faith in civil and religious liberties as well as the law itself. In the debate about a modern British Bill of Rights does the Magna Carta provide lessons for today? As the newly elected Government embarks on its legislative programme for the coming five years the United Kingdom faces unprecedented constitutional change- an in/out referendum over membership of the EU and the potential for home rule through increased powers to Scotland and possibly Wales and Northern Ireland. In England there is a trend in favour of decentralisation in the form of mega-city forms of devolution-City-deals and new city-regions with elected Mayors. The new devolution arrangements challenge the Union and represent a serious concern to the maintenance of our constitutional arrangements. England has the largest population of the other Union nations but the extent of devolution has raised the question of “English votes for English laws”. The “Barnett formula” used to finance the devolution arrangements gives rise to inequalities between the nations. The UK’s unwritten constitution is in a state of flux. There is potential for instability and an air of uncertainty as well as little direction to chart our constitutional future- this has a resonance with the period of Magna Carta where the future depended on finely balanced decisions, often with unforeseeable outcomes.

The Magna Carta Legacy
The celebration of eight hundred years since Magna Carta (1215) is an apt way to mark the passing of an important historical event. Magna Carta is today regarded as a transformative document in legal history and a significant landmark in English constitutional history. Modern attribution to the values of Magna Carta such as freedom and liberty owe much to the influence of Sir Edward Coke, a seventeenth century Lawyer and Chief Justice during James I’s reign, than to the actual text of the Magna Carta itself. The popularity of interpreting the Carta proved inspirational. It helped to create enduring myths about the Constitution that have become so embedded in tradition that they are widely accepted as historically accurate. It is clear that Magna Carta served an important purpose of addressing the political and social problems of the time through an appeal to historical precedent and this rationale contin-
ues to be an enduring feature of the largely unwritten British Constitution, even to the present day. The value of liberty and freedom ascribed to the Magna Carta continues to inspire generations and foster faith in civil and religious liberties as well as the law itself. Legal descriptions of what Magna Carta have varied from “The Bible of the English Constitution” (Lord Chatham), “The “keystone of English liberty” (Hallam) “the consequences of its principles were but slowly and gradually evolved as circumstances required during the five succeeding centuries” (Sir James McIntosh). Taswell LangMead’s English Constitutional History makes clear that there are three great political documents in the nature of fundamental compacts between the Crown and the Nation, standout as prominent landmarks in English Constitutional history “Magna Carta, the Petition of Right and the Bill of Rights” constitute the basic fundamentals of the Constitution.

Sir Edward Coke

"Magna Carta . . . will have no sovereign.” Speech to Parliament1628

Many reforms and ideas in the 17th and 18th centuries attributed to the Magna Carta restraints on lawful government and much of this interpretation came from Sir Edward Coke’s writing and his influence from James I’s time as Lord Chief Justice. The passage of the Bill of Rights 1688-9 drew inspiration from the Magna Carta.

Perhaps the most significant reason for the Magna Carta’s influence is due to the deference shown to it in the United States. In 1939 the Lincoln Cathedral copy was transported to the United States Library of Congress and over 14 million people queued up to see the great document. In practical effect, however, much of the Magna Carta was repealed in one way or another by statutes in the 19th century. This was not out of disrespect but as a result of legal consolidation. This did not dim the impact of the Charter on the psychology of reform. Electoral reform was arguably supported by the Charter.
One of the most important, but often overlooked parts of the Magna Carta is chapter 1 relating to the assertion that the English Church should be free. Magna Carta is rarely cited in decided cases (an estimated 175) but in Sharpe v The Bishop of Worcester [2015] EWCA Civ 399 Lord Justice Arden discussed the role of Magna Carta. The case concerned the employment rights or otherwise of the Rector of the parish of Tem Valley South in the diocese of Worcester. Reverend Sharpe claimed that he was unfairly dismissed and argued he was a protected person in terms of being a “whistle blower”. His appeal was dismissed by the Employment Tribunal that held he was not a worker within the meaning of the employment legislation and as there was no contract of employment in place he could not pass the threshold of being able to bring a claim. The Bishop was successful at the ET but lost on appeal to the Employment Appeal Tribunal. The Court of Appeal upheld the ET finding on fact that there was no contract of employment. In discussing Magna Carta, it was clear that freedom had to be defined within the context of the times and prevailing practices especially the use of patronage. Clause 18 of the 1215 version made clear that the exercise of patronage was long regarded as a part of English law and from medieval times it became a right of property. The Court of Appeal concluded that there was no employment contract between the Reverend Sharpe and the Bishop and that the Employment Appeal Tribunal was in error in its criticism of the ET - a decision the Court of Appeal upheld.

Magna Carta may not produce an outcome that is always satisfactory to the view that the law should protect the underdog. It does however raise issues about the values and principles that underpin our constitutional settlement. Recognising patronage according to law over arbitrary and unbridled power is an important decision of the Court of Appeal.

The judicial interpretation of legislation has been fast developing field especially in terms of defining the terms of recognising the sovereignty of Parliament but also recognising that there may be a number of “constitutional statutes” that should be accorded special significance. What is a “constitutional statute” and what significance might be accorded to such a statute? Lady Hale explained in the HS2 decision that in the absence of a written constitution, the UK had a number of “constitutional instruments”.

They include Magna Carta, the Petition of Rights 1628, the Bill of Rights and (In Scotland, the Claim of Rights Act 1689, the Act of Settlement 1701 and the Act of Union 1707. The European Communities Act 1972, the Human Rights Act 1998 and the Constitutional Reform Act 2005 may now be added to this list. It is likely that the various devolution statutes may occupy special status in terms of Constitutional fundamentals – especially as the Scotland Bill 2015/16 may make devolution permanent. Such constitutional statutes, it is suggested create “principles as fundamental to the rule of law” that equates with some form of status that should be respected by the courts. It is unclear as to how such fundamental principles will shape judicial discretion in the coming year. European law has been particular-
ly influential, particularly the role of the courts after the Factortame decision that requires the courts to give effect to EU law, even when it is incompatible with an Act of the UK Parliament. In R( Jackson) v Attorney General while upholding the Hunting Act 2004 as being properly enacted under the Parliament Act 1911 as amended by the Parliament Act 1949, the House of Lords raised the question of whether “the absolute nature” of Parliamentary sovereignty might be out of place in the modern United Kingdom. The comments were obiter dicta but gave rise to the suggestion that the courts might refuse to apply an Act of Parliament that was in breach of fundamental constitutional principles. These observations were linked to the procedures and processes adopted under the Parliament Acts but this is indicative of the status given to the rule of law as fundamental to democratic government In Thoburn v Sunderland City Council Laws L.J., suggested that the European Communities Act 1972 was a “constitutional statute”, thus elevating its status to protection by the courts if there was any attempt at repeal or amendment. Statutes which have the potential to affect the legal relationship between the citizen and the state or enlarge or diminish the scope of fundamental constitutional rights can only be amended or repealed by unambiguous words. The courts have to balance the interests of democratically elected government accountable to Parliament and the fundamentals of the unwritten constitution. This does not guarantee that the values and moral principles will always be observed. The HS2 case endorsed the approach in Thorburn and reaffirmed the role of the UK courts in interpreting constitutional principles. Paul Craig usefully categorises the approach as a form of “statutory construction”. Accommodating different national law, EU law and approaches to human rights leaves Parliament to clearly and unambiguously state how any conflict over the interpretation of national law might be resolved. Dawn Oliver offers the suggestion that what is required is some form of comity between institutions and workability—“pragmatic principles established over centuries that the courts will refrain from questioning the legal validity of Acts passed by the UK Parliament and that Members of the two Houses will respect the courts and their decisions and will not undermine them and the rule of law.” The House of Lords Constitution Committee has suggested that a Bill should be provided with a written statement why it may be of constitutional significance and the justification for its introduction. This would provide clarity in how such statutes should be interpreted.

Conclusions

Magna Carta remains an important inspiration as to how legal authority and legal powers are understood. Its economic use of language and the preservation of a number of copies in different parts of the country provide an important historical legacy on which to base legal precedent but also as a reminder of continuity with the past. The text is much revered as the scribes provided an attractive and appealing text and it ancient history provides a reverence to the past. Magna Carta was suitably ambiguous to lend itself to different interpretations by those that chose to read it. It has few rivals and despite the long history of Kingly power in England there is no formal written constitution. In the current context of change and constitutional uncertainty, Magna Carta gives a note of authenticity to legal proceedings and the
acceptance of the common law. There are few examples that testify to the perilous state of
governance in England and the survival of the monarchy itself is due in no small measure to
its existence. The history of Magna Carta also provides a reminder of how ecclesiastical his-
tory is intertwined with the state. The rule of law, an established Church, royal power and
parliamentary democracy can all claim their existence through the Magna Carta – even if the
interpretation may have stretched through the 800 years of its history. Predicting the constitu-
tional future of the United Kingdom is likely to be difficult.

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Magna Carta, Land Rights and the Natural World

Brett Sanders

Introduction
The Magna Carta has been venerated as the beginning of western civilisation eschewing the principle of habeas corpus, prohibition of torture, trial by jury and the rule of law with its language mirrored in The Massachusetts Body of Liberties (1641), the Virginia Bill of Rights (1776), the fourteenth and fifteenth amendment to the US Constitution (Linebaugh 2008: 21) and by many others across the western world. In reality the document signed by King John and the barons was a treaty securing the interests of the church, feudal aristocracy, merchants, Jews, as well as acknowledging the commoners (Linebaugh 2008: 28). In short, it was less a document of individual liberties than to repeal the power of the crown to raise revenues from his richer subjects - the landed - for foreign adventures: the crusades of Richard I being a prime example. In fact, the 39th clause of the Charter of Liberties, the clause from which we derive our concept of liberty states the following:

“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” (British Library, nd)

This article, clearly, referred to free men only – free men in 1215 represented a tiny proportion of the population. The majority were unfree serfs; the majority of the Great Charter was of little relevance to them. In addition, it was annulled in a few short weeks by Pope Innocent III. The 1215 document was then not, as we memorialise it, the genesis of liberty for the majority of the population in the thirteenth century but a myth created in posterity as a stepping stone to progress and a building block of our identity and values. What is less known about the Magna Carta is that it addressed the issue of privatisation, in particular of the forests, and the right of common people to develop a subsistence standard of living from it. Following the baron wars of 1215-1217 the Magna Carta was reissued under the reign of Henry III with a second charter, the Charter of Forest, in which the clauses relating to the forest were developed. It is this document that defined the liberty of the commoner in relationship to the land for the next four hundred years; it was not until the seventeenth century that the fortunes of the two charters were exchanged.

Context
The arrival of William the Conqueror and his subsequent victory in the Battle of Hastings in 1066 and over the Anglo-Saxon King Harold II heralded the Norman Conquest of Britain. It also resulted in a profound impact on land ownership, rights and the relationship with the
natural environment for William’s new subjects. Indeed, William and his descendants to King John afforested large tracts of land, bringing it under the control of the monarchy – afforesting, in this context, meant bringing under royal control. In fact, the afforestation of land meant that by 1215, the year of the Magna Carta, some one third of Britain was considered a forest – indeed there were 143 of them, compared to twenty five recorded in the Domesday Book of 1087 (Linebaugh 2008: 34, Cowell 2011). At this point a definition of the word forest in the thirteenth century is required; the “word 'forest' in medieval times didn't have today's meaning of a 'densely wooded area'; it referred essentially to a managed hunting ground, often rich in deer, which could be heath, moor or grassland, and even fields, villages or towns within the area” (Bl nd). In other words, the Norman Conquest of Britain resulted in a monopolisation of land for the monarchy, establishing complete control over the management and distribution of resources therein – this included both woodland, pasture and populated villages. In particular, as part of an ecological exchange resulting from the Norman invasion, red deer and boar – the favoured target of the new monarchy’s hunting - were introduced to British forests and formed the mainstay of the law of the forest which denied forest dwellers the pre-Norman rights of the commons. Forest law curtailed the right of the commoner and instead dictated the protection of venison and vert - the plants that sheltered and fed the animals that were hunted.

The significance of the forest in the thirteenth century cannot be underestimated, it was the contemporary hydrocarbon resource, analogous yet more important to contemporaries than coal and petroleum of subsequent centuries and societies. The forest was the source of subsistence for commoners in Britain; a place to forage, a place of agistment (a medieval term to graze livestock), a place to estover (a medieval term to collect firewood) or turbay (a medieval term for the cutting of turf for fuel). Wood was also the material to construct dwellings, the handles for tools, fences for protection, and, of course, for the benches of worship (Linebaugh 2008: 33). The forest issue of the thirteenth century speaks then of the continuing debate between the privatisation of land and its ownership in common, and to the access and distribution of resources.

Charter of the Forest

Within this context, the barons in 1215 aimed to reverse the extension of the forests and forest law and to reaffirm their liberties and property freedoms enjoyed under common law. In this regard, clause 48 of the Magna Carta called for an enquiry into;

‘all evil customs connected to forests and warrens, sheriffs and their officials, river-banks and their wardens shall immediately be inquired in to each county by twelve
sworn knights of the same county and within forty days of completion of the inquiry shall be utterly abolished by them as never to be restored’ (British Library, nd).

The objective was toward the repeal of forest law and a return of the commoner’s right to the forest. This theme took on much greater precedent following the annulment of the initial charter and the baron wars of 1215-1217, after which the Magna Carta was reissued under the reign of Henry III with a second charter, the lesser known, and often forgotten, Charter of the Forest signed on 11 September 1217. The Charter of the Forest is defined by its provisions of freedoms and liberties for those living in a forested space – remember the definition of forest remains important here. It returned the relationship between people and their environment back to the customary basis that existed prior to the Norman Conquest. In its first clause, the new charter returned the right of “pasture and other things in that forest to those who were accustomed to have them previously” (St John's College Research Centre, nd). Further, in clause three, that “all woods made forest by king Richard our uncle, or by king John our father, up to the time of our first coronation shall be immediately disafforested” (St John's College Research Centre, nd). The entitlements of the commoner to the forest were developed still further in clauses nine and ten which recognised the right to “agist his wood in the forest as he wishes and have his pannage” (St John's College Research Centre, nd) and that “no one shall henceforth lose life or limb because of our venison, but if anyone has been arrested and convicted of taking venison he shall be fined heavily if he has the means; and if he has not the means, he shall lie in our prison for a year and a day” (St John's College Research Centre, nd). It thus went far beyond the Charter of Liberties in defining the liberties of the majority of the population. It guaranteed the right of access of common people to their key hydrocarbon resource – wood – to develop a life of subsistence for the next four hundred years and reversed the harshest aspects of the forest law introduced by William and his descendants.

Why has its message been lost?

We must then ask why the Charter of the Forest has been largely forgotten given that the Great Charter is memorialised as a key component in the construction of our national identity in Britain, and across the western world. We are, certainly in the western world, wedded to the idea of private property and it is the pursuit of private property that accounts for the loss of the Charter of the Forest from our collective memory. The principle of commoning, that sharing of resources for a sustainable, subsistence existence was lost with the onset of commodity production and the growth and development of capitalism and private property, in particular from the seventeenth century around the time of the English revolution, the emergence of enclosure and, later, in the development of the American nation (Linebaugh 2008). In fact in Britain, as the subsistence lifestyle was replaced by the cry for progress, increased productivity and profit, “overall, between 1604 and 1914 over 5,200 enclosure Bills were enacted by Parliament which related to just over a fifth of the total area of England, amounting to some 6.8 million acres” (Parliament, nd). Furthermore, it is when the Magna Carta is deco-
rated in ideological dress that we are able to uncover the loss of the second charter. In rebelling against the British monarch, the American revolutionaries invoked the Magna Carta as their guiding star of liberty. In their severance from the British crown, John Locke’s trinity of life, liberty and property outlined in Chapter Four of his The Second Treatise of Civil Government of 1690 was enshrined with a mild twist of words by Thomas Jefferson to ‘life, liberty and the pursuit of happiness’ in the second paragraph of the Declaration of Independence of 1776. This defines the American Dream and, ultimately, runs contrary to the ideas of the Charter of the Forest. Evidently, the Charter of the Forest did not follow the Magna Carta across the Atlantic because it ran counter to the ideas of developing private property from the aboriginal population; a prime example being the Shawnee and Cherokee in the Trans-Appalachian West (Reid 2009: 18-20). In short, as Magna Carta’s star shines, the Charter of the Forest’s fades.

This is not to say, however, that the Charter of the Forest should be condemned to the annals of history. Rather than interpreting the Charter of the Forest as Linebaugh (2008) does as a radical proto-socialist text, or suggesting it as a blueprint for a socialist or green utopia in the twenty-first century its revival could be a base to inspire, in the same way that the Great Charter continues to inspire our concept of liberty, a platform to consider the environmental question in a way that empowers the conversation towards a fairer economic base and a more sustainable relationship with the natural world. In fact, this was a central theme in the emergence of the modern environmental movement in the 1960s, and continues dominate the discourse on global environmental governance and sustainable development.

In the post 1945 era, the ravages of total war and the increasingly recognised impact of industrial production and consumption resulted in growing concerns about humanity’s impact on the natural environment. A key turning point came with NASA’s space programme. In 1966, the Earth was likened by Kenneth Boulding to a spaceship orbiting the sun with only its rays coming in and out of our atmosphere;

“the closed economy of the future might similarly be called the "spaceman" economy, in which the earth has become a single spaceship, without unlimited reservoirs of anything, either for extraction or for pollution, and in which, therefore, man must find his place in a cyclical ecological system which is capable of continuous reproduction of material form even though it cannot escape having inputs of energy” (Boulding 1966: 10).

These spaceship analogies were being made at a time of growing concerns about humanity’s lust for industrial progress, consumption, population growth and pollution, growing inequalities and environmental degradation. Furthermore, the Earth-rise image beamed back to earth from Apollo 8 on Christmas Eve 1968 symbolised that the concept of the frontier had been exhausted; humanity had reached and settled in almost in every environment on earth and exploration was now extra-terrestrial. The conclusive realisation that earth was round, finite in size and resources, resulted in a dawning realisation that the access, distribu-
tion and exploitation of these resources was of paramount importance. The picture of a grey, lifeless moon in the foreground and the blue marble earth in the background instantly fuelling the environmental movement that had emerged during a time of mass participatory protests for civil rights, protests against nuclear weapons and the Vietnam War and the ecological warfare which that conflict entailed.

From this emerged a growing debate about the global environment - the air that we breathe, the water we drink, the soils and oceans from which we derive our food - the commons in a globalised, information age. Within this context a number of scholars which McCormick (1989) called the ‘Prophets of Doom’ published, between 1968-1972, a series of doomsday prophesies. Paul Ehrlich famously published the Population Bomb, in which he predicted, in neo-Malthusian terms, that in the “1970s and 1980s hundreds of millions of people will starve to death” (1968: xi). Perhaps more relevant, however, Barry Commoner in the Closing Circle (1971) and Garrett Hardin in his famous article The Tragedy of the Commons (1968), wrote about the impact of global inequalities. In particular, the access to natural resources, their development and the resulting pollution and environmental degradation that fell unevenly on the global poor. These discussions affected the fledgling debates within the international framework of the UN, institutionalised at the 1972 United Nations Conference on the Human Environment in Stockholm. At Stockholm, the impact of the few’s unequal share and use of resources, perhaps analogous to the medieval crown’s monopolisation of land for hunting and foreign adventure, became part of the global conversation on environment, poverty and sustainability. Indeed the impact of the global north’s development and its impact on the commons shared with the developing south represented a fundamental point of tension in Stockholm and the inability to reach, in 1972, any binding agreements. The discourse on sustainable development that emerged via mile stone reports such as the Brundtland Report of 1987 and ventilated at Earth Summits beginning in Rio de Janeiro in 1992 and again, most recently, in Rio de Janeiro in 2012 at Rio+20 may well develop further by a reading of the forgotten Charter of the Forest.

Conclusion

It is without doubt that the Magna Carta is and will continue to be remembered as the foundation of liberty in the same way as it will continue to be forgotten that the significance we attribute to clauses 39 and 40 in posterity would have been lost on its authors in 1215. As Churchill was to write in his history of the English speaking peoples, “in future ages it was to be used as the foundation of principles and systems of government of which neither King John nor his nobles dreamed” (Churchill 1957: 156). However, that is not necessarily a bad thing – we require in the construction of our histories and identities symbols, events and figureheads. The Magna Carta provides us with one of the key symbols of our civilisation - the genesis of our liberties. But now that our political and legal freedoms have been enshrined in law - certainly in the west - perhaps it is time to revive the Charter of the Forest. For, if the first charter of the Magna Carta dealt with political and juridical rights and the second, the Charter of the Forests, dealt with economic survival, the memorialisation of both charters
could inspire the capacity of commoners – a global population – to political freedoms and a more equal distribution of the natural ecology of our planet.

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Magna Carta in Guantanamo Bay – From the Exception to the Rule

Svetoslav Nenov

Introduction
The foundation and the operationalisation of the detention camp in Guantanamo Bay in early 2002 has often been invoked as one of the blue-prints for American legal exceptionalism after 9/11. In addition, there have been numerous academic and non-academic articles comparing it to a legal “black-hole” that disregards and ignores the function of both domestic and international law. In my research, however, I suggest an alternative reading. I propose that, even though even though Guantanamo Bay was constructed by the US administration as an extra-legal space of exception that was meant to become a permanent addition to the topology of power of the US, it was subsequently challenged and transformed into a legal object through a number of interventions by the Judicial branch of the US government. I further make the argument that Guantanamo was never an illegal space to begin with; rather, at its inception, it was a very carefully designed a-legal space that was developed with explicit reference through the law. It was constructed as such by the US Executive and Legislative branches through the clever use of niches (empty spaces) in the existing legal framework, through novel interpretations of existing legal constructs and, finally, through the introduction of novel legislature. This construct was subsequently challenged by the US Judicial branch, through the invocation of the principle of habeas corpus, through reinterpretation of the scope and function of both domestic and international law, and through making legitimate legal challenges to the assumptions of the US administration. This short article will consider one of these loopholes and will illustrate how habeas corpus – one of the key provisions of the Magna Carta - has been pertinent in the unravelling of the exceptional space that was created in Guantanamo Bay1.

Guantanamo Bay and the writ of Habeas Corpus
Habeas Corpus is arguably one of the most ancient writs in the Western legal tradition. Its literal translation from Latin is “to have the body/you shall have the body” and it was initially used as an interlocution that served the purpose of ensuring that the “defendant to an action” is physically brought before a court in order to be tried by a jury; that is, habeas corpus was meant to “ensure the physical presence of a person in court on a certain day” (Atrill et al, 2011: 2). Eventually, the mirror function of the writ - that of scrutinising the validity and legality of one’s detention – became the predominant reason for its usage. It became the writ used to carry into an effect one of the key provisions of Magna Carta: “No free man shall be

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1 The article assumes prior knowledge of the detention camp at Guantanamo Bay, as well as of the functioning of the US legal system.
seized or imprisoned, or stripped of his rights or possessions … except by the lawful judgement of his equals or by the law of the land” (The House of Anjou, Magna Carta: 39).

The reverence that people had for habeas corpus in England was brought to America by the colonists “and claimed as among the immemorial rights descended to them from their ancestors” (Bailey, 1913: 2). As a result it found a prominent place in the US Constitution – Clause 2 of Section 9 of the Constitution, also known as the Suspension Clause, states that “The Privilege of the Writ of Habeas Corpus shall not be suspended, unless when in Cases of Rebellion or Invasion the public Safety may require it” (US Constitution). In addition, it is represented in the US Code - 28 U.S. Code § 2241 The Power to Grant Writ – which makes it one of the few writs to be part of both the statutory and the constitutional legal frameworks.

That is precisely the reason why recourse to the writ was so well suited to counteract the exceptional measures that were instituted in Guantanamo Bay. It was, in effect, the only writ that could ensure that the constitutional and/or statutory law could apply to the detainees and the only writ that could bring them into a zone of legal distinction. Hence, the US administration needed to deny to the detainees recourse to the writ, if it were to retain singular control over them, and this needed to be justified on legal grounds.

On December 28, 2001, in a memorandum addressed to William Haynes, the general counsel for the department of defence at the time, the office of the Deputy Assistant Attorney General provided such justification. This document aimed at answering the question “whether a federal district court would properly have jurisdiction to entertain a
petition for a writ of habeas corpus filed on behalf of an alien detained at the US naval base at Guantanamo Bay”, given that the base is technically outside of US sovereignty (Yoo, 2001: 1). The memorandum decided that there was legal basis for “denying jurisdiction to entertain a habeas petition filed by an alien held at [Guantanamo]” (ibid.) and that this basis rested on a precedential case from the Second World War – Johnson v. Eisentrager, 339 US 763 (1950).

In it, “twenty-one Germans captured in China, convicted of war crimes there by a military tribunal, and imprisoned in Germany under American authority, petitioned for habeas relief in the District Court for the District of Columbia” (Thai, 2006: 513-4). They were charged for the war crime of refusing to cease their hostile operations against the US after Germany’s surrender, with their offensive operations chiefly involving reconnaissance that was relayed to Japan, before its respective surrender. Since they were captured and tried in China, and were later transferred to a prison in Germany, they never set foot on US soil, and as a result the court decreed that it lacks jurisdiction to entertain their habeas corpus petitions. This was based on the court’s decision that “aliens detained outside of the US had no entitlement to constitutional rights and therefore no constitutional habeas corpus entitlements” (Londras, 2008: 40). The court also added, without any clarification: “[n]or does anything in our statutes’ entitle petitioners to habeas review” (Thai, 2006: 514). As a result, the habeas writ was refused to the Eisentrager detainees both on constitutional and on statutory grounds. Since the lease document for GBay explicitly stated that the US is not sovereign over the Bay, it was assumed by the Administration that the detainees would not be able to file petitions for the writ of habeas corpus.

The ties that bind – Rasul v. Bush

I am now going to turn to the first publicised case to come out of Guantanamo Bay, which also happens to be the most significant one in rights-establishing terms, as it set the tone for the confrontation between the legal branch and the executive branch over the legal status of the detainees; the case in question is Rasul vs Bush 124 S.Ct. 2686 (2004). The primary petitioners in Rasul were two UK citizens and two Australian citizens, who filed a petition for a writ of habeas corpus to the US District Court for the District of Columbia, “requesting the court to order their release from unlawful custody.” (Sloss, 2004: 789). The District Court determined that it lacked jurisdiction over any habeas corpus claims of the petitioners, and itcked up this decision with Eisentrager: “in Rasul, the district court construed Eisentrager to mean that ‘writs of habeas corpus are not available to aliens held outside the sovereign territory of the US’” (ibid.). The district court further rejected the claim of the petitioners that “the US has a de facto sovereignty over the military base,” as it stated that GBay “is not part of the sovereign territory of the US” (Rasul, supra note 5: 69). As a result, it was claimed that Rasul could not be meaningfully distinguished from Eisentrager.

It certainly seemed that this would be the ruling when Rasul vs Bush was taken to the Supreme Court for a final consideration. It took the ingenuity and the boldness of one man – Justice Paul Stevens - to come up with a way to challenge and reverse this decision in a man-
ner that was both legally binding and authoritative. He achieved that through the invocation of a common law case which stood at the roots of Eisentrager, maintaining its validity.

The case in question was Ahrens v. Clark, 335 US, a case that was decided in 1948, two months before Eisentrager was taken to the court. The petitioners in Ahrens were a hundred-and-twenty German citizens, who were detained in the beginning of World War II and held at Ellis Island, New York. They addressed the District Court for the District of Columbia with a request for the writ of habeas corpus, on the grounds that they were being held illegally, in violation of the Alien Enemy Act of 1798 (Thai, 2006). The judges in Ahrens were less concerned with the actual request than with the question of the scope of jurisdictional power that the Columbian District Court possessed in that particular case. As a result of this concern, the majority of the Court voted to dismiss the case for lack of jurisdiction because “the detainees were not confined in the judicial district in which they filed their petitions” (Thai 2006: 506). The court’s final statement read as follows: “the presence within the territorial jurisdiction of the District Court of the person detained is prerequisite to filing a petition for a writ of habeas corpus” (Ahrens, 335: 189). This was, in fact, an interpretation of the statutory law contained in the US Code which was already discussed. Section 2241 of code established the statutory law on the matter by granting all courts the power to issue writs of habeas corpus within their respective jurisdictions. What it did not do, however, was to clarify what “within their respective jurisdictions” meant. Ahrens interpreted it to mean that the power of the courts to issue writs should be limited to petitioners restrained within the geographic territories of these courts.

When Eisentrager commenced, the resolution of the Ahrens case was still very current in the judicial sphere, and Eisentrager was implicitly reliant on it. It is easy to see how this decision was in fact based on the recently concluded Ahrens case, which interpreted the statutory phrase “within their respective jurisdictions” to “require the physical presence of the prisoner within the district [where the court is located]” (Thai, 2006:524). Since Ahrens de facto constituted the common law at the time, the courts in Eisentrager were bound by its decision and could not consider offering statutory habeas corpus to the German detainees, as they were completely out of the territorial jurisdiction of any US courts.

What Justice Stevens knew however, that was not known to his colleagues, was that in 1973, the Supreme Court “revisited the question of how best to interpret the statutory phrase ‘within their respective jurisdictions’” (Sloss, 2004: 791) in an obscure domestic criminal case - Braden v. 30th Judicial Circuit Court of Kentucky 410 US. The petitioner pursuant in that case was charged for a crime perpetrated in Kentucky and was held in a prison in Alabama; nevertheless, he filed a petition for a writ of habeas corpus in the District Court for the Western District of Kentucky, as the officials who issued the primary charges against him resided in that state. This time the Supreme Court decided that the writ of habeas corpus could be issued; it interpreted the phrase “within their respective jurisdictions” to “require [] nothing more than that the court issuing the writ have jurisdiction over the custodian through proper service of process” (Thai, 2006: 514). It further held that, regarding Ahrens, the Court could “no longer view that decision as establishing an inflexible jurisdictional rule” (Braden, 410
US: 499-500). As a result Braden “rendered Ahrens inapposite” and established as the law of
the land the view which was expressed in the dissent of Ahrens, namely that “the jailor must
be within the territorial jurisdiction of the relevant court” (Londras, 2008: 42).
It is now time to return to our primary object of interest – Rasul vs Bush. Just as the Chief
Judge of Court, Mr. Gibbons was about to reach the conclusion that the Court had reviewed
and denied the merits of the habeas petition, Justice Stevens intervened with the following
response:

“Well, there is another problem [with Eisentrager]… that case was decided when
Ahrens against Clark was the statement of the law, so there is no statutory basis for
jurisdiction there, and the issue is whether the Constitution by itself provided jurisdic-
tion. And of course, all that’s changed now.” (Stevens, quoted in Pohlman, 2008: 170)

With the background knowledge presented over the last few pages it is easy to see
what he meant and how he made the connections between the cases – Ahrens was the com-
mon law case that precluded Eisentrager from granting statutory habeas corpus to the Ger-
man petitioners; Eisentrager, in turn, established the common law which precluded the court
in Rasul from granting any habeas corpus rights to the Guantanamo Bay petitioners. Howev-
er, the decision made in Braden nullified the validity of the Ahrens resolution and “superced-
ed its statutory position with that of the Ahrens dissent” (Thai, 2006: 522). As a result, Ahrens
no longer provided legal backing for Eisentrager’s statement that “[nothing] in our statutes’
etitle[s] petitioners to habeas review” (Thai, 2006: 514). Finally, that meant that Eisen-
trager’s common law standing could only prevent the court in Rasul from issuing constitu-
tional writs of habeas corpus, but had no effect on the petitioners’ right to request writs of
habeas corpus on the statutory basis of Section 2241 of the US Code.

Justice Stevens’ speech was a resounding success and he managed to secure the votes
of four of his colleagues, which meant that he commanded the majority of the court. As a
result of the decision, Rasul and four other petitioners were released from Guantanamo Bay
in March 2004 without charges, the first of many to come.

In Rasul vs Bush the habeas corpus statute was used productively by the judicial branch
of the US government, in order to re-subjectify Rasul and, as a result, reproduce his status as a
subject of right. It should be made clear, however, that the most important function of the
writ is not the guarantee of liberty that is inscribed in its role as a rights-enforcing principle
but the fact that it necessitates the inclusion of detained people within the domain of the law.
The case also makes clear that the Magna Carta, as a document, is still very much alive in
Western legal tradition.
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Common Ground No More: The Failure of the Magna Carta and Charter of the Forest in Colonial North America

Darren R. Reid

On a sunny English afternoon in June, 2015 in the English county of Surrey, David Cameron declared to an audience, thoroughly in the mood to celebrate the country’s contribution to democracy and fairness, that the Magna Carta, the vaguely understood stuff of legend and the occasional school lesson, had ‘changed the world’. Such an idea is, naturally, an evocative one that places England at the heart of the modern world, a declaration of principle that, it seems, is simultaneously time tested and weighted in the realities of the present day. Who, after all, cannot hear the document’s famous declaration that ‘No free man shall be seized or imprisoned, or stripped of his rights or possessions, or outlawed or exiled…except by the lawful judgment of his equals or by the law of the land' and not be moved to think about the foundation of the modern British legal system? But in spite of the way in which such statements echo with the hint of modernity in the present, Cameron was not talking about a document which occupies some contiguous, unassailable place in the broader English consciousness – whatever the document’s actual historic importance, it sits at the periphery of the English cognisance.

That is not to say that the Magna Carta was not important, or that it is necessarily deserving of its comparative obscurity. It is, however, important to acknowledge the relative invisibility of the document because it is the betrayal, wilful or unconscious, of the principles of the Magna Carta and its sister document, the Charter of the Forest (1217), which give them their significance on a broader global-historic stage. Politicians may be keen to emphasise the principled power of the Magna Carta; but when thinking about England’s and, later, Britain’s larger role in shaping the modern world (particularly in the Americas), it is the lack of power vested in those documents, the abandonment of some of their core underlying ideas, that is key to understanding their uneven impact. The commons – a shared space which could be claimed by no one individual or entity – was acknowledged in the Magna Carta and then specifically defended in its successor documents. But, in spite of renewed interest shown in the Magna Carta in the 16th and 17th centuries, the era when England’s trans-Atlantic ambitions began to be realised, such foundational ideas were disregarded wholesale or warped beyond recognition when applied to the Americas’ indigenous population. Here, as Englishmen and women tried to recreate or improve upon the land of their birth, they were blinded to (or ignorant of) the potential applicability of the 1215 and 1217 charters and the doctrine of the commons. A philosophy of the commons rooted in those charters could have provided English settlers with a shared intellectual ground which might have facilitated a more accommodating imperial mission. The desire to acquire and protect private property, however, overpowered interest in a commonly-held wilderness.
The drive by modern politicians to paint the Magna Carta as a progressive, transformative document which changed the world is a deeply problematic and, frankly, troubling thought-experiment which implies moral superiority and benign imperialism. It certainly does not acknowledge the failure of the doctrine of the commons in the colonies, nor the disastrous impact that would have upon dozens of aboriginal peoples. Quite naturally, a study of America’s aboriginal population quickly reveals them to be something far greater than Albion’s intellectual or cultural seed. Eastern Native American societies invested in ideas of common rights and usage in a way that surpassed that of England’s colonial vanguard. Theirs were a set of societies which internalised and utilised concepts that were, in many ways, deeply familiar to the spirit of 1215 and 1217. To be sure, English and, later, British colonists understood and took advantage of common rights and land use in North America (when doing so advanced their own interests), but their commitment to that idea was haphazard, ill-balanced, and, ultimately, subservient to the power and allure of (white) private property. The common use of land and the right to a share in a commonwealth of resources and space were important to the Magna Carta generation but it was in Indian Country that a more perfect realisation of those ideas was to be found in the early modern era, not among the children of 1215. The Charters of 1215 and 1217 hint at a common ground, literally and figuratively, in North America; a path not taken or early abandoned as Anglo America invested –philosophically and economically– increasingly in the privatisation of space and the steady of erosion of a true commons.

In 1905, the U.S. Supreme Court heard the case, the United States v. Winans in which the Yakamas in Washington State were being prevented from accessing traditional fishing locations due to the emergence of a privately owned industrial fishing operation. Thanks to the terms of the treaty signed with the Yakamas in 1855, the tribe theoretically retained the right to continue fishing in all the ‘accustomed places’, regardless of the rapid and ruthless move away from communal, aboriginal control of the land to the modern model of private land ownership. Unusually, the U.S. Supreme Court sided with the Yakamas on this occasion, upholding treaty rights which were so often dismissed or ignored when the need presented itself. Rarely is the history of treaties between aboriginal and European Americans a happy one. In the grand scheme of that larger tragedy, the court’s decision to side with the Yakamas, to place communal or common rights above those of private property holders, was but a small victory – but in a broader historic context, it becomes an important one. That the rights of the commons were to be respected was no small matter.

Much has been said –and much is often assumed– about Native America’s complex relationship with property. Indeed, the sale of Manhattan Island for sixty guilders to the Dutch in 1626 has been held up as an example of that peoples’ alleged inability to understand the nuances of property ownership versus the guile and wit of the new European population who, in a few short centuries, would come to dominate the entire continent. Quite naturally, such an understanding of those events is, at best, a gross over simplification and, at worst, a passive-aggressive attack on the victims of imperialism built principally upon a foundation of ignorance. Whilst it is true that a group of Native Americans did indeed sell their
rights to Manhattan to the Dutch for a sum that seems now to be trifling, the sale should not be viewed strictly in European-American terms. First, the Indians who engaged in that trade had little meaningful control over the island; the Dutch gave sixty guilders worth of goods to a Native American group in exchange for Manhattan – but not a group who actually controlled the island. For their part, the Canarsee, the recipients of the sixty guilders, gained much whilst losing little, a grand trade from their perspective. To complicate matters further, the European-American concept of theoretically infinite, trans-generational land ownership clashed with Native American beliefs and cultural systems. Control of land was one thing (one could not simply move into another’s wigwam and expect no consequences), but perpetual ownership as understood by the English was socially antithetical. Centuries of cultural evolution and change (not to mention hundreds of miles) may have separated the Canarasee from the Yakamas but there was, nevertheless, a certain continuity of thought which linked the two disparate groups and which pushed back against dominant European-American ideas of private land ownership and control.

Figure 1: The Independent, among others, was keen to remind readers that David Cameron’s knowledge of the Magna Carta appeared to be considerably more limited prior to the document’s 800th anniversary.

The shared understanding which linked those tribes was, however, compatible with at least one important English legal tradition which hints at the intercultural road not taken. Issued under Henry III in 1217, the Charter of the Forest built upon the Magna Carta, the
document with which it would be joined in 1297. It specifically articulated and protected the access of freemen to the woodlands and the resources they contained, including the right to extract wood and the right to turn pigs out to forage. In spite of this intellectual common ground, however, the evolving Anglo-American interest in private property (facilitated by an apparent abundance of land) overpowered their interest in maintaining a meaningful common. Conversely, private property among eastern Native American peoples evolved in only a limited fashion over the course of the colonial period. These competing worldviews clashed often in the many economic transactions in which Native Americans and English colonists frequently engaged, but the Indians continued to view the land as, essentially, communal. The Algonquin and Iroquoian peoples who met and interacted with the English in the seventeenth century demonstrated quickly that they understood market forces and worked actively to ensure that they received the maximum value they could extract from trades. Indian cultures adapted to deal with profit-minded Europeans. But they did not abandon the commons.

Goods were traded and aboriginal economies, for want of a better expression, were re-orientated around that exchange but pre-existing cultural patterns and assumptions remained which placed an emphasis upon the communal experience. Tools purchased by one which were not being utilised in a given moment were fair game for the rest of the tribe, should they be required. Whilst European society had normalised the idea that private property was just that—private—the ability of a property owner in Indian Country to actively deny the use of a tool or resource not otherwise being utilised was limited. Private property was not entirely private in Indian Country. Goods and resources could indeed be hoarded and exploited but the outright denial of some essential good or resource was taboo. Moreover, power in Indian Country was built less upon the acquisition of property than it was upon the ability to give property away without any recompense. Chiefs and influential leaders were often notably poorer than those who followed them; acquiring and then quickly redistributing property was a common practice. Ownership could be fluid, changing to adapt as circumstances demanded or required. Events such as the Irish Potato Famine, wherein starvation could decimate a food-rich European country, were all but unimaginable in Indian Country. Starvation was possible, of course, but typically it was as a consequence of an actual shortage of food.

Though diminishing, the legacy of the Charters of 1215 and 1217 lingered in colonial America as the English selectively applied a commons doctrine to the wilderness. In New England, the wilderness served as an invaluable common ground for English colonists who routinely turned their pigs and hogs out into the forest to forage and fatten themselves prior to the slaughter. The result, as Virginia DeJohn Anderson has shown, was the rapid coming of a type of semi-feral breed of hog whose domination of the shared wilderness wreaked havoc upon the region’s Indian population. Wild English pigs had less respect for Indian property than their owners and routinely ravaged Native American gardens and farms, demolishing crops and homes in the process. To be sure, the practice of turning hogs loose in the forest speaks of the on-going power of the common land usage that was so important to the Char-
The wilderness in North America was seen as a type of shared agricultural space, free for all to use, ready for exploitation by the group, the whole, and the individual simultaneously. However, it was a highly selective application of the common land doctrine which seemed to ignore the implicit and explicit instruction in the Charter of the Forest that common usage was possible ‘on condition that it does not harm any neighbour’. The English may have been willing to hold some of the wilderness in common, but they were less inclined to hold it evenly.

If English use of the forest disrupted the livelihood of the Indians, such an outcome was generally accepted by the colonists – the English left it to their Indian neighbours to adapt, which they did. English and European-style fences appeared where before none had stood and a complex process of negotiations and accommodation was ongoing throughout the colonial period as newcomers and Native Americans attempted to reach some meaningful and manageable compromise. As the common wealth of the forest broke down in the face of ever-increasing English (and later British) domination and exploitation, so too did peace in the backcountry and, ultimately, the ability of aboriginal peoples to hold on to their existing lands. In the mid-1670s, for instance, wild English hogs, rampaging through the commons, or forest, destroyed Indian crops, escalating tensions which boiled over into a devastating war between the Wampanoag and the English. The resultant conflict, King Philip’s War, was not solely about wild pigs but the unwillingness of the English to respect Indian use of the forest, to respect that space as a true type of commons, played a significant role in the outbreak of that conflict. The proximity of Anglo Americans and Native Americans placed an emphasis upon how those groups conceptualised the spaces which they necessarily shared and though accommodation and peaceful interactions were often possible, and almost always desirable, the consistent erosion of common forests, and uneven attitudes towards how such spaces should be shared, placed increasing pressure on Anglo American and Native American relations. The Indians understood the wilderness to be a space that was communal. The English, too, projected a similar attitude over the wilderness but they prioritised their own use of that space, demanding accommodation in the form of transformation and, ultimately, could conceive for the wilderness a privatised, commodified, and hereditary future. In Indian Country, the common nature of the forest was infinite; in Anglo America it was growing increasingly finite in nature.

The American wilderness had long-held English beliefs in the common ground projected onto it. The Charters of 1215 and 1217 were, in that sense, alive and well in colonial North America, but the eventual transformation of that space into privately held lands was a spectre that loomed large; indeed, it was a goal to be pursued with intent that far outweighed holding lands as intra or inter-cultural commons. Land, and thus the privatisation of the common ground, was extremely valuable to the English. In the South, the growth of the English population led to the rapid privatisation of land and the expansion of English influence and domination over increasing portions of Indian Country. Bacon’s Rebellion, in which poor, disaffected members of the lower classes in Virginia rebelled in 1676 was, in part, driven by the lack private land available to former indentured servants. Land could be held
for the common good but only so long as the common good served individual ambition. The Charters of 1215 and 1217 underlined the importance of commonly held land but the vast nature of North America kindled the dream of widespread privatisation. On a continent in which every Englishman could conceivably become a landowner, what good were the commons?

That is not to say that by the end of the seventeenth century that English and, after 1707, British colonists did not value common grounds. Long hunters like Daniel Boone in the eighteenth century relied upon the existence of vast spaces that were practically held in common. But even those individuals had their eyes firmly fixated upon a future when the commons and, if you like, a democratically held wilderness could be parcelled up and sold off in private lots. For a brief moment, Boone was one of the wealthiest landowners south of the Ohio River until his own inability to file legally binding land claims saw him swamped in lawsuits that destroyed his fleeting fortune. By the time the now-legendary woodsman reached his twilight years, he was openly lamenting the fall of the Indians who had been forced from their lands by the privatising process he had helped to lead. The doctrine of the common woodland, so important to the Magna Carta generation, ultimately failed in Anglo North America.

Returning again to 1905, and the U.S. Supreme Court’s decision to side with the Yakamas, it is difficult not to observe a type of historic irony in the evolution of Native American and European-American relations. Both peoples held ideas about common ownership that seemed, at different points, to mirror and predict those of the other but, in spite of this theoretical middle ground, the increasing importance of privatisation—or the failure of the spirit of 1215 and 1217 in North America—led to an increasing divergence between English (and later British) settlers and the country’s aboriginal population. By the twentieth century it was America’s First Nations who were left to fight for a set of core values so important to the Magna Carta generation. That is not to say that the Charters of 1215 and 1217 have not played a role in the evolution of English, British, and global history, but it does suggest that perhaps it was the failure of the English and British to live up to their principles and potential, rather than the documents themselves, which had the greatest role in shaping the modern era.

References

3. For examples see Matt Dathan ‘David Cameron Champions Magna Carta but in 2012 he Didn't Know What it Meant when he Appeared on David Letterman's Late Show’ The In-

4. For a more thorough discussion on the ways in which modern politicians have attempted to create a place for the Magna Carta in the broader British consciousness, see Judi Atkins’ paper in this collection.


6. For the early-modern revival of the Magna Carta see Ralph V. Turner Magna Carta (London: Routledge, 2003), pp. 145-181. For a deeper discussion on the importance of protecting the commons during King John’s reign see Brett Sanders’ paper in this collection.

7. David Hackett Fischer’s Albion’s Seed famously argued that North America’s varied peoples were effectively turned into the intellectual and cultural decedents of the British Isles. This volume has, understandably, been the recipient of some significant criticism. Considering the broad nature of the statements made by British politicians keen to celebrate the Magna Carta’s alleged importance, the debate surrounding Fischer’s provocative work becomes an important touchstone. This is the case not only because of the excellent critiques of Fischer’s underlying thesis generated by that discussion, but because the intellectual kinship between Cameron’s position and Fischer’s demonstrate the substantial disconnect between academic discussions and the popular interpretation of Britain’s role on the global-historic stage. Put simply, Cameron and Fischer share a common intellectual core and Cameron’s blithe commentary on the role of the Magna Carta should be seen in the broader context provided, at least in part, by the criticisms directed at Fischer’s work. See David Hackett Fisher Albion’s Seed: Four British Folkways in North America (Oxford: Oxford University Press, 1989) and Ned C. Landsman ‘Border Cultures, the Backcountry, and “North British” Emigration to America’ William and Mary Quarterly, Vol. 48 (1991): 253-259.

8. For the importance of common land usage in the Magna Carta see Peter Linebaugh The Magna Carta Manifesto: Liberties and Commons for All (Berkely: University of California Press, 2008)


10. Vine Deloria, Junior and David E. Wilkins Tribes, Treaties, and Constitutional Tribulations (Austin: University of Texas Press, 1999)

14. Claudio Saunt’s case study of the transformation of Creek culture to include a Europeanised understanding of private property – but shows that that change occurred primarily after the American Revolution. See Claudio Saunt A New Order of Things: Property, Power, and the Transformation of Creek Indians, 1733-1816 (Cambridge: Cambridge University Press, 1999), pp. 11-64.
23. For a study which explores the efforts made by Anglo-Americans to achieve that result, see Stephen Aron How the West was Lost: The Transformation of Kentucky from Daniel Boone to Henry Clay (Baltimore: John Hopkins University Press, 1999).
A World in Flux: Magna Carta in a Changing 21st Century World Order

Neil Renwick

Introduction

As we contemplate the nature and relevance of Magna Carta 800 years after it received the imprint of King John’s Seal, the world of states is on the cusp of one of its periodic transformational shifts in power and influence. The shift is from a world dominated by the Western Powers, especially the United States, to a states’ system wherein the pre-eminent Power is to be found in East Asia, namely China, and to a lesser extent in the so-called ‘emerging economies’ or ‘rising Powers’ such as India, Brazil, South Africa. How long the process of transition takes is unclear, although China’s rise is evident enough already as the world’s second-largest economy with an emerging global political presence. The so-called ‘Great Fall of China’ - the major global stock market fall in August 2015, triggered by a successive devaluation of the Chinese currency by its Central Bank and global uncertainty over China’s economic growth, is an indicator of China’s pivotal global significance. As commentators noted, somewhat dryly, ‘It used to be said that when America catches cold, the rest of the world sneezes. Now just what shape and character the states’ system will become and what the implications will be for the way the global community operates and manages its affairs are, of course, the proverbial ‘$64,000 questions. In classic thought about such transformative moments in international, or more specifically, inter-state, relations, the new ‘top dog’ either supports the status quo, seeks reform within the existing system to better meet its own interests, or seeks to revolutionise from the outside by imposing its own system based solely on its own national interests, power and influence.

This essay is interested in the question of how relevant the values and principles attributed to Magna Carta are in this New World Order? In the seven decades since the end of the conflict in the European theatre of the Second World War, the World Order has been essentially grounded in Western traditions of political and economic values and the global power and influence of Western states, succinctly expressed in United States President Franklin D. Roosevelt’s 1941 State of the Union speech in which is espoused four ‘freedoms’ that should be experienced by people “everywhere in the world”: ‘Four Freedoms—freedom of speech, freedom of religion, freedom from fear, and freedom from want’. This has been reified into the international political, economic and legal institutional architecture and declaratory principles. This is most evident in the principles of the Charter of the United Nations, Universal Declaration of Human Rights, International Covenant on Civil and Political Rights and International Covenant on Economic, Social and Cultural Rights. If these are taken as already embedded in the very heart of
what we may loosely call the existing global management culture—the values, principles, beliefs, structures, processes, rules and regulations, will these survive and endure through transition, ‘reformed’ or indeed replaced?

Clearly, Magna Carta holds a special place in political life past and present, not only in England, but worldwide. But is this attribution entirely justified? After all, the original agreement excluded the majority of those living in the country, made little or even no reference to the great standards attributed to it, only two of its Chapters remain on the Parliamentary statute book and lasted only a few months before being dissolved by Pope Innocent III.

What has Magna Carta given to the world? Liberty, Freedom, Justice, Law, Rights? Certainly, all ideas that are at the very heart of contemporary political cultures and constitutions of the majority in the world of states and attributed to “The Charter of Liberties” agreed at Runnymede on 15 June, 1215.

"Enshrining such noble concepts as freedom under law, democracy and the importance of limited government, it was a pre-cursor to many of the freedoms and liberties that humanity rightly expects their governments to respect today."

Lord Neuberger Master of the Rolls, Chairman of the Magna Carta Trust, 2010

Sir Winston Churchill described it as “the foundation of principles and systems of government of which neither King John, nor his nobles, dreamed.” Winston Churchill: ‘We must never cease to proclaim in fearless tones the great principles of freedom and the rights of man which are the joint inheritance of the English-speaking world and which through Magna Carta, the Bill of Rights, the Habeas Corpus, trial by jury and the English common law find their most famous expression in the American Declaration of Independence’. Lord Denning: Magna Carta - ‘the greatest constitutional document of all times – the foundation of the freedom of the individual against the arbitrary authority of the despot’. Lord Bingham of Cornhill, a former Lord Chief Justice and the author of the seminal constitutional law work The Rule of Law, described the sealing of Magna Carta as ‘an event that changed the constitutional landscape in this country and, over time, the world’.

The 1225 version is touring four Canadian cities. November 6, 2014, through January 19, 2015, the Library of Congress hosted one of the four original 1215 exemplifications of Magna Carta and presented a major exhibition celebration of the 800th anniversary of the sealing of Magna Carta. The American Bar Association adopted the theme of Magna Carta for its Annual Law Day on May 1, 2015. The “Magna Carta 2015 Global Empowerment Through Rule of Law Forum,” sponsored by the Presidential Precinct and co-sponsored by the ABA and others, brought together a wide range of stakeholders from over 20 countries – including leaders from law, business, government, academia and civil society and will honour the pivotal importance of the Magna Carta in the rise of democracy, the rule of law, and self-governance. The guest of honour was His Royal Highness The Prince of Wales. On June 15,
a delegation of 800 American lawyers gathered at Runnymede for celebrations at the American Bar Association’s memorial erected in 1957. Global Law Summit February 2015: delegates from all over the world have been summoned to celebrate Britain as a bastion of the rule of law, when in reality the Government is denying justice to the poor by slashing legal aid and attempting to shield itself from scrutiny by restricting judicial review and pledging to repeal the Human Rights Act. The Justice Alliance held “alternative’ celebration of Magna Carta, Not the Global Law Summit including the rally outside”.

**Why Does Magna Carta endure?**

Magna Carta has become a worldwide political icon. How and why has the Charter not only endured but grown into a powerful influence over the centuries? Bringing together the ideas of two academics, Benedict Anderson and E.P. Thompson, helps us to understand how this process operated. Anderson’s insight is to explain how countries, such as England, are constituted as ‘imagined communities’, political entities consciously constructed, initially, by powerful socio-economic and political interests in defence of those interests and then, incrementally, by counter-hegemonic groups. Contrary to conventional wisdom of the past few centuries, we now tend to argue that ’Nations’ are not essentialised political identities; they are neither ‘natural’ nor primordial. They are not rooted in territory, blood, ethnicity or race. They are not ‘pure’, unbroken lineages of ‘peoples’. ‘National’ and national identities are, of course, convenient myths. They are carefully crafted stories that seek to define the collective ‘Self’ from the various collective ‘Others’. Inherently, these national narratives are constructions that use a panoply of emotive instruments - official histories, ‘national’ music, monuments, literature, reportage, art, architecture and modern media - to build ‘imagined communities’ around supposedly shared values, ‘traditions’ and national experiences and deep-rooted commonalities. Who builds these and why? The short answer is that these discursive artisans are the most powerful and influential holders of economic and political material wherewithal in a society, buttressed by a socio-cultural superstructure over which they command the primary instruments of representational power and influence. The European state-building projects through the 17th to the 21st Century have harnessed the power of ‘the nation’, drawing it inexorably into the ‘Nation-State’. Atkins’ essay in this present collection illustrates the manner in which Magna Carta and the liberties attributed to it have become a central theme of political rhetoric, a discursive instrument available to leaders to project a ‘distinctive’ ‘British’ identity. McEldowney’s analysis has shown us how this ‘theme’ has come to form a key facet of the British legal system and ethos. Significantly, his study also notes the importance of Sir Edward Coke in the 17th Century. Coke’s ‘resurrection’ of Magna Carta in order to pursue his political agenda is pivotal moment in the construction of Magna Carta as the ‘golden thread’ as Gordon Brown’s scriptwriter labels it and a ‘foundational myth’ presented as being at the heart of the imagined community that is Britain: the British way of life, ‘Britishness’ and as Britain’s ‘gift to the world’.

This takes us only so far in helping to answer our question. As noted in the Introduction to this collection, if Magna Carta offered an invaluable means by which those powerful
classes involved in state-building constructed a state after their own image and economic, political and social interests, in so doing, these classes inadvertently provided a discourse, a political narrative, that could be, and was, commandeered by the ‘middle classes’ and labouring classes in pursuit of their own counter-veiling interests as their class consciousness takes firmer hold in relation to each other. Here, drawing from Thompson adds substantively to our understanding.

“The relationship must always be embodied in real people and in a real context. Class happens when some men, as a result of common experiences (inherited or shared), feel and articulate the identity of their interests as between themselves, and as against other men whose interests are different from (and usually opposed to) theirs. The class experience is largely determined by the productive relations into which men are born – or enter involuntarily. Class-consciousness is the way in which these experiences are handled in cultural terms: embodied in traditions, value-systems, ideas, ideas, and institutional forms. … If we stop history at a given point, then there are no classes but simply a multitude of individuals with a multitude of experiences. But if we watch these men over an adequate period of social change, we observe patterns in their relationships, their ideas, and their institutions. Class is defined by men as they live their own history, and, as in the end, this is its only definition.”

This is evident within the British domestic context, but also internationally. Within Britain, the Great Reform Act 1832 may be considered to be the marker of the rise and incorporation of the political interests of Britain’s new industrial elite and wealth—the representation they needed to protect and advance their economic interests. The 1832 Act was celebrated as a victory of the principles of Magna Carta. Of course, as in 1215, the 1832 Act was not about achieving a universal suffrage, limited by provisions of land and property and, of course, gender. Overcoming all these exclusions would come with the passing of time and greater organisation of those challenging the status quo, many explicitly invoking Magna Carta...
ta. We have seen a dramatic representation featured above with regard to rights for women. But of course, the process of challenge is evident in the writings of John Wilkes in the 1760s, in the conviction of the Tolpuddle Martyrs, the Chartists and the early formations of the labour movement. The key aspect of the enduring relevance of Magna Carta as a powerful political narrative has been its very usurpation by the middle and working classes as they moved from being classes ‘in themselves’ into classes ‘for themselves’ driven by economic change.

Internationally, British representations of Britain’s ‘gift’ are received in different ways. Britain’s former Dominions and much of the Commonwealth carry the political, legal and cultural legacies of Magna Carta in their respective societies. The scale of the celebrations of its 800 years anniversary in these countries is testament to this. The importance laid upon Magna Carta by the United States is evident in the American Bar Association’s well-known commemorative monument at Runnymede.

History is replete with examples of actions belying lofty words. British, some my even prefer ‘English’, imperialism still casts a long shadow over the legitimacy of British claims to principle. Recent calls for a national apology for Britain’s involvement in the slave trade, for example, is one such example. More complicated perhaps, is the British Government’s approach to terrorism, whether this be in ‘The Troubles’ of Northern Ireland and flashpoint such as ‘Bloody Sunday’ or Internment in the infamous Maze Prison (also referred to as ‘The H Blocks’ or ‘Long Kesh’). Moreover, quite obviously, the Iraq War has generated further controversy, not only over its legality and morality, but over its unravelling of unintended effects, most notably the alleged U.K. involvement in Coalition rendition practices.

But the important point here is that imperialism carried the seeds of its own destruction. Ideas of liberty and freedom were carried alongside the martial culture of gunboat diplomacy and, eventually, overthrew it. Western books, political pamphlets, Missionary teachings helped implant ideas and principles that would find their way into those indigenous forces seeking to end imperialism and, in a number of cases also end the reign of their existing ruling class. In the 20th century this would reverberate through Africa and Asia. It would also come to a critical nexus in the long fight to end Apartheid, crystallised in the trial of Nelson Mandela.
son Mandela and his famous defence invoking the principles of Magna Carta.

But if the liberties ascribed to Magna Carta can be said to have become the basis of international standards and accepted norms of international society, benchmarks against which for example adherence to human rights are judged, then the universalism of this must be qualified in the face of claims of some states to ‘cultural relativism’ or to non-Western values and beliefs. In many East Asian societies for example, it is socio-cultural and economic rather than political rights that take precedence and indeed ‘duties’ and obligations primacy over ‘rights’. This ‘Asian Way’ or ‘Asian values’ is clearly stated, for example, in the 1993 Bangkok Declaration issued prior to the World Conference on Human Rights held in Vienna.

Is Magna Carta relevant today? David Cameron’s commemorative speech at Runnymede on the 15th of June 2015 recycled many of the existing ‘headline’ Principles attributed to Magna Carta as well as linking it to his Party’s antipathy to the European Convention of Human Rights. Does this make Magna Carta relevant to contemporary politics—in itself, no, not really. The interesting facet of this document and its historical evolution is that it provided a convenient and useful instrument in contests of power between political and economic elites and the mounting challenges to such rule by hitherto excluded populous as the complex processes of class consciousness took hold. The political deal struck between ruler and a small Baronial elite (the ‘freemen’ of England 800 years ago, had little to do with the majority of those in political, economic and social yoke to this elite). Over the intervening period, successive generations of ruling elites could evoke Magna Carta principles to incorporate the participatory claims of respective waves of new rich and propertied classes and, eventually, grudgingly, to the working classes. In reality, poverty and inequality stalk the political mythology of Magna Carta. Inequality Briefing suggests that most people perceive the distribution of wealth in the UK to be far more equal than it actually is. Yet the reality is that for more than three decades the gap between the richest and the rest has widened considerably- and is continuing to widen (Guardian, 8 October 2013). Land ownership in Britain is also telling, with 0.6% of the population owning 47% of the land and 99.4% owning the remaining 53% (Inequality Briefing #17, 7 February 2014).

However, the key aspect of the enduring relevance of Magna Carta as a powerful political narrative has been its very usurpation by the middle and working classes as they moved from being classes ‘in themselves’ to classes ‘for themselves’ driven by economic change. Just as the industrial ‘barons’ of England’s early 19th century industrial revolution sought political
recognition and control over the wealth and taxes their industry was creating, so too have ‘popular’ appeals for recognition, participation – from Tolpuddle Martyrs, Jarrow Marchers and suffragettes to trade unions and the Labour Party.

The British Prime Minister’s address repeats the claim that Magna Carta laid the foundations for international principles of political liberty and equality under the rule of law and that figures such as Nelson Mandela and Mahatma Gandhi subscribed to these principles (the short recording of Mandela’s court testimony forming part of the British Library’s special Magna Carta Exhibition). But this too is, in itself, an insufficient basis for accepting continued relevance and certainly for viewing the political hyperbole with reservation and scepticism.

However much is claimed for Magna Carta’s relevance to political liberties and rule of law, for peoples in many countries, it is not political rights that are paramount but rather economic rights and human security needs, the former considered a distracting luxury promoted by Western countries as ‘universal’ principles, when in reality they are deeply flawed and mired in ethnocentric fallacy. This is, of course, an over-simplistic portrait and actual circumstances are more complex and vary. Interesting issues are raised by the ‘Umbrella’ protests of Hong Kong as thousands went onto the streets to protect political due process and the rule of law.

**Conclusion**

Should Magna Carta be consigned to the ‘dustbin of history’ as an interesting, but archaic artefact to be remembered whenever anniversary dates come round? As with many of the contributors to this *Occasional Paper*, the answer is a firm ‘No’. But the reason for this is not the standard mythologised claims that it provided codified principles upon which many modern political and legal systems are founded and run today. Rather, this paper has argued that Magna Carta has endured and has continued relevance because it provided and provides a convenient instrument for both those seeking to protect their class interests and, inconveniently, for these conservative forces, also for counter-hegemonic classes in England and around the world. Magna Carta is a story, rich in symbolism and, yes, admittedly iconic across one particular political culture. But this story is also rich in political irony. In the construction of a ‘national’ story, a mythological ‘grand narrative’ of ‘England’ and ‘Englishness’ (one reaching back to the Arthurian legend and even beyond) designed to help neuter the forces of change threatening their economic and political class interests and to mask fundamental inequalities, a discursive instrument was created that had utility for those very forces seeking recognition.
and inclusion. A further reflection is necessary here. Despite English history’s periodic references to ‘revolution’, England has had a rather quiet, even subdued, ‘revolutionary’ experience. Was this by design? Has Magna Carta ‘the myth’, worked as intended—allowing evolutionary change through the steady incorporation into the fabric of England of groups elsewhere overturning Europe’s established order and critically allowing economic power to be retained? Is this, in reality, what Magna Carta has done for us?

References


