Magna Carta in the United States
by Ralph Turner
Magna Carta influenced the American framers in significant ways. What does this mean for the U.S. Constitution and Bill of Rights?

Charter Rights: The Legacy of Magna Carta
by The Honourable Noël A. Kinsella
The American framers were not alone in their respect for Magna Carta. The "Great Charter" traces themes in the French Declaration of the Rights of Man and of the Citizen, the United Nations Universal Declaration of Human Rights, and the Canadian Charter of Rights and Freedoms.

Visual Representations of Magna Carta
by Anthony Musson
Images of Magna Carta, of both the document and events leading to its sealing, provide meaning to the history of the document and its legacy.
In 2015, the world will commemorate the 800th anniversary of Magna Carta. The barons who approached King John in the meadow at Runnymede in 1215 could not have known what symbol of freedom their actions would become. Yet, eight centuries later, we recognize Magna Carta as foundational to the rule of law.

This special issue of Insights explores the history and legacy of Magna Carta. To introduce the issue, ABA president William Hubbard explains why the American Bar Association has joined in the worldwide commemoration of this seminal and inspirational document.

Ralph Turner (University of Florida, emeritus) leads us through the fascinating history of Magna Carta and how it shaped the American Constitution. The Honourable Noël Kinsella (Speaker of the Canadian Senate) explores connections among Magna Carta, the Canadian Charter of Rights and Freedoms, and the Universal Declaration of Human Rights. Finally, Anthony Musson (University of Exeter) helps us to understand how the imagery of Magna Carta contributes to larger understandings of the document and the context in which it was written.

To help connect this rich content to your classroom, our Learning Gateways include engaging instructional strategies examining how the Federalists and Antifederalists appealed to Magna Carta in framing their arguments, and comparing images of the scene at Runnymede in 1215 capturing a moment in history. Teaching Legal Docs takes a close look at Magna Carta as a legal document, and Perspectives features a host of experts providing answers to the question, “Why is Magna Carta significant?” Stephen Wermiel (American University Washington College of Law) details references to Magna Carta in U.S. Supreme Court jurisprudence in Law Review. Rounding out the issue, in lieu of our usual profile, we curated a list of events and programs that offer you and your students opportunities to participate fully in this 800th commemoration.

Remember that the magazine doesn’t stop with these pages. Check out the rich roundup of resources online at www.insightsmagazine.org. The website offers teachers additional instructional supports, including ready-to-use handouts, articles, and opportunities for continued discussion. And be sure to vote on the Magna Carta poster and request your free teaching toolkit.

We continue to benefit from your feedback and ideas for the magazine, so keep them coming to our editor or me. Let us know about topics that you would like to see us tackle in future issues, and innovative classroom strategies that you have initiated to bring content alive for your students.

Enjoy the issue.

Mabel McKinney-Browning
Mabel.MckinneyBrowning@americanbar.org

Stay Connected!
Become a fan of the ABA Division for Public Education on Facebook and follow us on Twitter! Just click on the Facebook and Twitter icons at www.insightsmagazine.org.
Magna Carta 800:
Commemorating the Foundations of Liberty Under Law

On behalf of the American Bar Association, I am pleased to introduce this special Magna Carta edition of Insights on Law & Society.

The ABA has a deep respect for and a long-standing connection to Magna Carta. If you visit Runnymede, the field in England where King John placed his seal on Magna Carta in 1215, you will find a granite memorial erected by the ABA in 1957. Representatives of the ABA have returned to Runnymede for rededications of the memorial in 1971, 1985, 2000, and will again in June 2015, the 800th anniversary of the sealing of Magna Carta.

In its time, Magna Carta served the very practical purpose of staving off a rebellion by a group of barons who charged the king with arbitrarily denying them their rights. The language of this ancient document is not lofty. Much of the “Great Charter” deals with specific disputes and archaic legal technicalities that are not relevant in 21st Century America.

So what’s so important about Magna Carta that it would inspire the ABA to build a memorial on foreign soil and keep going back? And perhaps more to the point, why should educators and other readers of Insights care about this eight-century-old piece of parchment? The key lies in the seven words inscribed on the memorial: “Magna Carta: Symbol of Freedom Under Law.”

Over the centuries, Magna Carta has become the embodiment of an enduring bedrock rule-of-law principle that no one, not even a king, is above the law. Colonists took this belief with them to America, where it was heavy on their minds when they declared their independence from another English King in 1776. This new country was to have, as John Adams famously declared, “a government of laws, and not of men.”

One provision of Magna Carta above all others has become associated with some of the key rights enshrined in our nation’s cherished founding documents. Chapter 39 of Magna Carta provides: “No freeman shall be arrested or imprisoned or deprived of his freehold or outlawed or banished or in any way ruined, nor will we take or order action against him, except by the lawful judgment of his equals and according to the law of the land.” Contained in this simple statement are early seeds of our modern conceptions of due process rights, habeas corpus, and trial by jury. As Supreme Court Justice William J. Brennan Jr. observed in his address at the 1985 rededication of the Magna Carta memorial: “The first eight amendments to our Federal Constitution, our explicit Bill of Rights, owes its parentage to Magna Carta.”

Throughout this 800th anniversary year, the ABA will be holding public events and making available resources to enhance public understanding of the role of Magna Carta, including dedicating Law Day, May 1, 2015, to this important topic. (For more information about Law Day and this year’s theme, “Magna Carta: Symbol of Freedom Under Law,” please visit www.lawday.org.)

We hope that you enjoy this Magna Carta edition of Insights, and that its content will assist you in stimulating a conversation with your students about this “Great Charter of Liberty.”

Very truly yours,

William C. Hubbard
President, American Bar Association
In 1957, the American Bar Association dedicated a memorial at Runnymede “To Commemorate Magna Carta—Symbol of Freedom Under Law.” It was designed by Sir Edward Maufe, and consists of eight columns surrounding a rotunda. A granite pillar is in the center of the rotunda. Photos courtesy of the American Bar Association.
Magna Carta in the United States

2015 marks the 800th anniversary of Magna Carta, or the Great Charter.

Americans accord Magna Carta semireligious veneration, even greater reverence than do the British, citing it constantly in political speeches, judicial opinions, and newspaper opinion pieces as a symbol of the “rule of law” in the United States. If most of us know even a little of the Charter’s history, we know that somehow it is the source of our liberties that we enjoy today. For America’s founding fathers, Magna Carta symbolized the “rule of law,” the precept that a government is bound by the law in dealing with its people. This view was set forth first in the Declaration of Independence, then in the state constitutions of the former thirteen colonies, and in the Fifth and Fourteenth Amendments to the federal Constitution.

The origin of Magna Carta lies in the determination of rebel English barons in 1215 to impose limits on the power of King John, whom they viewed as cruel, greedy, and tyrannical as well as incompetent on the battlefield. His slights and financial extortions against individual barons caused many to feel that he had wrongfully withheld from them lands, castles, and privileges that were rightly theirs. The original June 1215 Charter consisted of 63 chapters in no particular order, drafted hastily to redress the complaints of the barons. Its aim was not to set forth constitutional or legal principles, but to supply specific solutions to specific issues. Yet a few chapters form the basis for precepts that still shape American law and government. Chief among them is Chapter 39, “No free man shall be taken or imprisoned, or dispossessed or outlawed or exiled or in any way ruined, nor will we go or send against him except by the lawful judgment of his peers or by the law of the land.”

Chapter 61 authorized a committee of 25 barons to enforce the Charter’s terms by renewing warfare against John, should he fail to remedy their grievances within 40 days. King John only grudgingly agreed to Magna Carta, regarding the enforcement clause as an unacceptable limit to his authority as a crowned and anointed monarch. Such a restraint on royal power was unheard of; indeed, it was the first recognition of the right of resistance to a ruler in the written public law of any country. John, however, hardly negotiated in good faith, and he had no intention of putting up with Magna Carta’s limits on his power. It was in force for less than three months. The rebel barons rightly suspected King John of duplicity, and both sides had been preparing for war throughout the summer of 1215, and began fighting soon after Magna Carta’s cancellation. By the time of John’s death in October 1216, the rebel and royalist armies had fought to a stalemate. Forces faithful to the late king continued the
fighting to defend the right of his heir, nine-year-old Henry III, to the English crown.

A quick re-issue of Magna Carta showed the willingness of those governing in the boy-king's name to compromise with rebels. To placate them, they issued another version of Magna Carta in young Henry's name in 1217, and a final definitive version followed in 1225. This Charter was enrolled as the first of England's statutes during Edward I's reign at the end of the thirteenth century, and through periodic confirmations throughout the thirteenth and fourteenth centuries, it stood as a protector against royal tyranny. Over time, Magna Carta became a kind of "fundamental law." A statute enacted in 1369 made clear that the Great Charter was the supreme law of the land, declaring, "If any Statute be made to the contrary, that shall be holden for none."

**Magna Carta and the American Colonies**

The barons' extortion of written promises from King John supplied a justification for the American colonists to take up arms against England in 1775. The lens through which the colonists visualized Magna Carta was its revival and reinterpretation by seventeenth-century opponents of the Stuart kings of England. For the English people resisting their despotic rule, Magna Carta became a symbol of fundamental law standing above enacted laws, a written contract between the governed and their governor. In North America, the settlers considered their colonies' charters setting forth fundamental law for their governance to be similar solemn contracts with the English king. The first charter of Virginia in 1606 stated that the settlers "shall have and enjoy all liberties, franchises and immunities..."
Timeline of Magna Carta History

1215
A group of English barons rebels against King John in the meadow at Runnymede, England, and persuades him to affix his seal to a document called the “Charter of Liberties.” The articles established a committee of 25 barons to oversee the king’s adherence to the document’s provisions. In all, there are 63 chapters. An unknown number of copies are sent to officials. Three months later, Pope Innocent III declares the document invalid.

1216
King John dies, and his 9-year-old son, Henry III, ascends to the throne of England. In order to avert a war between Henry’s supporters and usurper Prince Louis’s supporters, the Charter is resissued, sealed by a papal representative, Guala Bicchieri, and the king’s regent. It substantially revises the 1215 document. This Charter has 42 clauses instead of 63.

1217
Following the First Barons’ War and the Treaty of Lambeth, the Charter of Liberties (known in Latin as carta libertatum) is reissued. The 42 chapters are expanded to 47 chapters. During the same year, a fragment of the Charter of Liberties serves as the basis for a second charter, the Charter of the Forest.

1297
King Edward I reissues the 1225 version of Magna Carta. Constitutionally, this version is the most significant. It is still included today, in part, in English statutes.

1225
King Henry III is called upon to reaffirm the Charter of 1217, now known as Magna Carta. This document has 37 clauses and is the first version of the Charter to be entered into English law.

1354
Under King Edward III, Magna Carta’s benefits are extended from “free [men]” to “[men], of whatever estate or condition he may be,” and the phrases “due process of law” for “lawful judgment of his peers or the law of the land” are introduced.

1423
Magna Carta is confirmed by King Henry VI following decades of successive generations petitioning the English throne to reaffirm the document.

1628
Sir Edward Coke, the first respected jurist to write seriously about Magna Carta, drafts the Petition of Right, which becomes, along with Magna Carta, part of the uncodified British Constitution.

... as if they had been abiding and born within this our realm of England.” Almost identical language appears in the charters of the other thirteen colonies, and several also contained clauses borrowed directly from Chapter 39 of Magna Carta. American colonists took seriously their right to all the liberties of their cousins across the Atlantic, and English law books circulating in the thirteen colonies familiarized them with these rights. As early as 1687, a book published in Philadelphia provided a text of Magna Carta. As the colonists moved toward their break with Britain, they increasingly turned to the Great Charter to bolster complaints against arbitrary acts of colonial governors, judges, and lesser officials. Indicative of the feeling for the Charter in Massachusetts is the design that it selected for its seal when it rejected colonial status and formed itself into a commonwealth. The seal depicted a militiaman with a sword in one hand and a copy of Magna Carta in the other.

With the thirteen colonies claiming their Magna Carta rights, and the British crown defending its prerogatives, it would take on new life, shaping the law and politics of a new nation, the United States of America. Eighteenth-century Americans regarded their relationship with King George III as contractual, just as seventeenth-century English lawyers had imagined an implicit contract between King John and his barons or between the Stuart kings and themselves. Rebellion was justified when the monarch violated the contract’s terms, trampling on their liberties. The list of George III’s injustices in the Declaration of Independence of July 1776 echoes provisions of Magna Carta. It declared that the king’s contract with the Americans was broken because he aimed at “the establishment of an absolute tyranny over these states.”

After the colonists won their independence and drafted state constitutions, the founders, mindful of seventeenth-century doctrine, accorded those constitutions a lofty position above enacted laws. Their notion of Magna Carta as “fundamental law,” standing above both king and Parliament and unalterable by statute, convinced them to view the new states’ written constitutions in a similar manner. Later in 1787, the framers drafted a federal Constitution as a new fundamental law for the new nation. As the states considered ratifying the federal Constitution, Magna Carta was a central piece of discussions. Missing from the new constitution was a bill of rights, echoing
chapter 39 of Magna Carta. Nine of the states had inserted such a guarantee of liberties into their constitutions. The absence of an enumeration of the people’s rights in the Constitution proved a powerful obstacle to its ratification, and in response, the first ten amendments to the document were adopted. Standing out among these amendments, ratified in 1791 as the Bill of Rights, is the Fifth Amendment. Its promise that no person shall be “deprived of life, liberty, or property without due process of law,” and the right “to be informed of the nature and cause of the accusation,” the right “to be confronted with the witnesses against him,” to call “witnesses in his favor,” and to have “counsel for his defense.”

**Magna Carta and American Law**

The United States Supreme Court first cited Magna Carta in an 1819 opinion, and its citations since then number over one hundred. In that decision, Justice Joseph Story, the new nation’s foremost legal scholar, wrote that Magna Carta represented “the good sense of mankind that individuals must be free from “from the arbitrary exercise of the powers of government.” Story later wrote in one of his volumes of legal commentaries that the Fifth Amendment’s guarantee of due process of law is “but an enlargement of the language of the Magna Carta.”

Eventually, Magna Carta’s promise of the rule of law would be broadened to include the concept of equality under the law. The Great Charter differed from earlier medieval charters of liberties by not restricting its remedies to the great men of the kingdom; the first chapter declared that King John made his grant “to all free men of our kingdom.” Several chapters referred to “free man” or “free men,” words that in 1215, defined not only barons and knights, but also smaller landholders who held their land “freely” without owing servile services to their lord. Free men had privileges denied to the serfs, or unfree peasants, who constituted over half England’s population in the early thirteenth century. Yet some provisions of the Charter applied to every person in the realm,
free and nonfree, most notably chapter 40's provision that justice would be sold to “no one.” In the mid-fourteenth century, a statute expanded the number of persons protected by chapter 39's guarantees, replacing the phrase “no free man” with more inclusive language, “no man, of whatever estate or condition he may be.”

In the early American republic, African slaves and free blacks constituted a large population denied equality under the law. Abolitionists turned to Magna Carta in their advocacy efforts, but their pamphlets and speeches were met with little success. One of their few victories came with the Amistad case, which, in 1841, centered on Africans who had seized control of a Spanish vessel carrying them to slavery in Cuba. Abolitionists supported the Africans’ suit for their freedom, and when the case reached the Supreme Court, John Quincy Adams defended the slaves. He argued that the Declaration of Independence, “that every man has a right to life and liberty, an inalienable right,” should decide the case, “I ask nothing more in behalf of these unfortunate men than this Declaration.” The Supreme Court decided that the Africans were entitled to their freedom under Spanish law, but later, in the 1857 Dred Scott decision, it denied American-born slaves any access to the federal courts. The Court ruled that African Americans, “whose ancestors were imported into this country and sold as slaves,” were not American citizens and enjoyed none
of the rights of citizens. Only after the Civil War would Magna Carta’s principle of equality under the law be extended to former slaves.

Three amendments to the Constitution were adopted in the Reconstruction era to ensure the former slaves their basic liberties. The Thirteenth Amendment, ratified by the states in 1865, barred slavery in the United States. Two additional amendments granted full citizenship to the newly freed slaves. The Fourteenth Amendment, adopted in 1868, declared them to be citizens of the United States and of the state in which they resided, and it forbade state governments from depriving “any person of life, liberty, or property without due process of law; nor deny to any person . . . the equal protection of the laws.” The Fifteenth Amendment in 1870 protected the new black citizens’ right to vote, providing that no citizen should be disfranchised “on account of race, color, or previous condition of servitude.”

Despite these post–Civil War constitutional amendments, the United States failed to live up to its promises of equality under the law for its black citizens. This failure marks perhaps the greatest stain on Americans’ fidelity to Magna Carta principles. By 1876, northerners had lost interest in the former slaves’ plight; and they no longer had the will to confront the South’s fierce resistance to full citizenship for the freedmen. The federal government stood aside when the southern states enacted “Jim Crow laws” to disfranchise and segregate their black inhabitants. Late nineteenth-century Supreme Court decisions sanctioned state statutes decreeing official racial discrimination. With the rise of big business in the “gilded age,” the Supreme Court would construe the Fourteenth Amendment’s “due process clause” in ways that diverted it from its ostensible aim of defending black citizens’ liberties. Ruling in 1886 that the term “persons” extended to “legal persons” or corporations as well as to “natural persons,” it turned the amendment into a protector of private property and corporate interests. It repeatedly struck down state governments’ regulations aimed at improving working conditions or protecting consumers.

**Twentieth-Century Return to Magna Carta**

Only in the 1930s, with the calamitous economic crisis of the Great Depression, did Supreme Court justices turn aside from economic dogmas that had reshaped the Fourteenth Amendment into a barrier to government regulation of business. During the New Deal era, in 1935, the Court moved into a new building with an inscription over its main entrance reading, “Equal Justice Under Law.” Its monumental bronze doors featured panels depicting great moments in the history of law; one of them pictures King John sealing Magna Carta. President Franklin D. Roosevelt saw the people’s right to life, liberty, and the pursuit of happiness endangered by the poverty, unemployment, and appalling economic inequality brought on by the Depression. His New Deal sought to protect rights of working people by curbing the concentration of economic power in giant corporations through governmental intervention and regulation. The Supreme Court found much of Roosevelt’s innovative New Deal economic legislation to be unconstitutional, but eventually public opinion and political pressures caused the justices to modify their antiregulatory stance. In the pivotal 1937 *Jones and Laughlin Steel Corporation* case, for example, the Court narrowly upheld the constitutionality of the Wagner Act. Known as the “Magna Carta of Labor,” this law protected workers’ rights to organize unions and to bargain collectively for wages.

By the mid-twentieth century, the due process clause of the Fourteenth Amendment was not so much an instrument for preserving property rights as once more a protector of personal liberties. A 1963 Supreme Court decision recognized that the Fourteenth Amendment allowed new applications of the writ of habeas corpus, previously seen only as a remedy for detention without charges or trial. It became clear that habeas corpus had broadened into a remedy for persons convicted and imprisoned by state courts who had complaints that their constitutional rights to “due process” or “equal protection of the laws” had been violated. A number of rulings by the Supreme Court shored up defendants’ rights, allowing them court-appointed counsel and racially representative juries, reinforcing their right to remain silent under police interrogation (the *Miranda* Rule), and imposing restrictions to prevent police from unlawfully obtaining evidence and coercing confessions.

The 1960s saw a revival of the Fourteenth Amendment’s original purpose of protecting African Americans’ rights against racially discriminatory state laws. This resulted in a vast extension of the federal judiciary’s oversight of “due process of law” and “equal protection of the laws,” expanding Magna Carta’s protection of personal liberties far beyond the imagination of the barons at Runnymede or America’s framers. Two
Federalist 84 (Federalist)

In the course of the foregoing review of the Constitution, I have taken notice of, and endeavored to answer most of the objections which have appeared against it. …

The most considerable of the remaining objections is that the plan of the convention contains no bill of rights. …

It has been several times truly remarked that bills of rights are, in their origin, stipulations between kings and their subjects, abridgements of prerogative in favor of privilege, reservations of rights not surrendered to the prince. Such was MAGNA CARTA, obtained by the barons, sword in hand, from King John. Such were the subsequent confirmations of that charter by succeeding princes. Such was the Petition of Right assented to by Charles I., in the beginning of his reign. Such, also, was the Declaration of Right presented by the Lords and Commons to the Prince of Orange in 1688, and afterwards thrown into the form of an act of parliament called the Bill of Rights. It is evident, therefore, that, according to their primitive signification, they have no application to constitutions professedly founded upon the power of the people, and executed by their immediate representatives and servants. Here, in strictness, the people surrender nothing; and as they retain every thing they have no need of particular reservations. “WE, THE PEOPLE of the United States, to secure the blessings of liberty to ourselves and our posterity, do ordain and establish this Constitution for the United States of America.” Here is a better recognition of popular rights, than volumes of those aphorisms which make the principal figure in several of our State bills of rights, and which would sound much better in a treatise of ethics than in a constitution of government. …

I go further, and affirm that bills of rights, in the sense and to the extent in which they are contended for, are not only unnecessary in the proposed Constitution, but would even be dangerous. They would contain various exceptions to powers not granted; and, on this very account, would afford a colorable pretext to claim more than were granted. For why declare that things shall not be done which there is no power to do? Why, for instance, should it be said that the liberty of the press shall not be restrained, when no power is given by which restrictions may be imposed?

Brutus 2 (Antifederalist)

When a building is to be erected which is intended to stand for ages, the foundation should be firmly laid. The constitution proposed to your acceptance, is designed not for yourselves alone, but for generations yet unborn. The principles, therefore, upon which the social compact is founded, ought to have been clearly and precisely stated, and the most express and full declaration of rights to have been made—But on this subject there is almost an entire silence. …

Those who have governed, have been found in all ages ever active to enlarge their powers and abridge the public liberty. This has induced the people in all countries, where any sense of freedom remained, to fix barriers against the encroachments of their rulers. The country from which we have derived our origin, is an eminent example of this. Their magna charta and bill of rights have long been the boast, as well as the security, of that nation. I need say no more, I presume, to an American, than, that this principle is a fundamental one, in all the constitutions of our own states; there is not one of them but what is either founded on a declaration or bill of rights, or has certain express reservation of rights interwoven in the body of them. …

It has been said, in answer to this objection, that such declaration[s] of rights, however requisite they might be in the constitutions of the states, are not necessary in the general constitution, because, “in the former case, every thing which is not reserved is given, but in the latter the reverse of the proposition prevails, and every thing which is not given is reserved.” It requires but little attention to discover, that this mode of reasoning is rather specious than solid. The powers, rights, and authority, granted to the general government by this constitution, are as complete, with respect to every object to which they extend, as that of any state government—it reaches to every thing which concerns human happiness—Life, liberty, and property, are under its control. There is the same reason, therefore, that the exercise of power, in this case, should be restrained within proper limits, as in that of the state governments. …
high points were the Civil Rights Act of 1964, which opened public accommodations to all persons regardless of race or color, and the 1965 Voting Rights Act, which abolished literacy tests and similar subterfuges used by southern voter registrars to prevent blacks from registering to vote.

Magna Carta Today

After the terrorist attacks of September 11, 2001, aroused widespread fury and frenzy, Magna Carta’s great message again needed restating. Fear of further terrorist attacks stampeded the federal government into declaring “a war on terror,” and civil liberties were ignored. Suspicious persons were detained indefinitely without charges, denied their right of habeas corpus, and even denied basic human rights while incarcerated. Yet federal judges stood ready to challenge these extra-legal measures, and from 2004 to 2008, they invalidated presidential executive orders and congressional enactments. In 2008, a Supreme Court decision, Boumediene v. Bush, affirmed that the right to know the reason for one’s confinement is fundamental to the rule of law even in wartime. The justices made clear the connection between Magna Carta and the right of habeas corpus, stating that the history of English law shows how “gradually the writ of habeas corpus became the means by which the promise of Magna Carta was fulfilled.”

Magna Carta on the eve of its 800th anniversary remains an enduring symbol of freedom. Emblematic of its importance for Americans is the “Records of Rights” exhibit at the National Archives in Washington, D.C. Its centerpiece is the only copy of Magna Carta permanently held in this country, a 1297 reissue, considered the first of England’s statutes. The exhibit presents it as the precursor to the freedoms promised in other documents on display: the Declaration of Independence, the United States Constitution, and the Bill of Rights.

Discussion Questions

1. Do you agree with the author that Americans hold Magna Carta in “semi-religious veneration”? If so, why? If not, why not? Why do you think Americans might have greater “reverence” for Magna Carta than the British?

2. Who were “free men” referenced in Magna Carta? How has Magna Carta been interpreted to expand personal rights?

3. How is chapter 39 of the 1215 issue of Magna Carta related to the Fifth and Sixth Amendments to the U.S. Constitution? Is their language the same or similar? Their concepts? Values?

4. Why do you think the Wagner Act was known as the “Magna Carta of Labor”? What does terming it metaphorically a “Magna Carta” signify?

5. Why was Magna Carta a symbol of the rule of law for the American founders? Does it still play that role for us today? Why or why not?

Suggested Resources

• Danny Danziger and John Gillingham, 1215: The Year of Magna Carta, Touchstone, 2005.


On June 23, 2010, in the middle of a session of the Senate of Canada, an earthquake measuring 5.0 on the Richter scale struck the capital city of Ottawa. As the chamber shook, the senators quickly left the Parliament building and gathered anxiously on the East lawn on Parliament Hill. The sitting, needless to say, was suspended under these alarming circumstances, but the gathered group of senators still had to discuss and agree upon the appropriate procedure for adjournment and recall. This concern for proper procedure, set against the outdoor backdrop of a summertime field and with tensions running high, prompted some to remark upon the scene’s resemblance to a certain historical event, involving a king, his barons, a scrap of sheepskin parchment, and an idea about basic rights that changed the world.

The American Declaration of Independence and the United States Constitution, the French Declaration of the Rights of Man and of the Citizen, the United Nations Universal Declaration of Human Rights, the Canadian Charter of Rights and Freedoms—all of these important legal instruments, and others like them, inspire citizens of many countries with their promises that all people should share in the same fundamental rights, which should in turn be protected by the rule of law. In the thirteenth century, an early articulation of this concept was written out in Latin and became known as Magna Carta (the “Great Charter”). The idea that no person is above the law, and that the law itself should be based on rules that apply to all rather than the arbitrary decree of a despotic ruler, took hold in the kingdom of England and was eventually brought to North America where it became firmly entrenched in the constitutions of the United States and Canada. These three countries, among many others, share the 800-year-old legacy arising from a peace agreement between a distrusted king and his rebellious barons that has become a symbol for justice and the protection of basic rights around the world.

History of Magna Carta

In medieval England, the king held almost absolute power and was at the top of a feudal society, while the serfs had virtually no power and were at the bottom. In between these extremes were the nobility, the Church, and the “free men” who were not tied to the land as serfs. These latter groups had expectations about their traditional privileges and rights, and King John was an unpopular monarch who was failing to show deference to them. Many of England’s barons thought him untrustworthy, having witnessed his capricious and often vindictive sense of justice. His military campaigns to hold on to his land possessions in France were expensive failures. When he sought to impose yet another heavy tax to continue them, many barons revolted. When they gained the upper hand in the conflict, King John was forced to seek conciliation and negotiate. The barons proposed a legal charter that set out 63 “liberties, rights, and concessions” that were to be “granted” by the king. The king placed his seal upon this document on June 15, 1215.

Magna Carta is filled with rules for a medieval society, covering topics such as marriage, inheritance, custody, and wardship that were designed to limit the king’s self-interested interference in such matters. It addressed rent payments, the use of forests, and the freedom of movement of merchants. It
ensured the “ancient liberties and free customs” of the City of London and the freedom of the English Church. It also included provisions to secure peace and sought to create a council of barons who would ensure that the terms of Magna Carta were kept.

Respect for the law stands as one of Magna Carta’s enduring ideals. While the barons may have been motivated by their desire to decrease the king’s power in order to increase their own, Magna Carta was intended to reform England’s justice system and extend rights beyond just self-interest. The passage that has most resonated through the years is Chapter 39, which states that “no freeman shall be arrested, imprisoned or exiled or in any way brought to ruin without “the lawful judgment of his peers or by the law of the land.” The Supreme Court of Canada has referred to this as the “ancient and venerable principle that no person shall lose his or her liberty without due process according to the law” (United States of America v. Ferras; United States of America v. Latty, [2006] S.C.J. No. 33).

The phrase “lawful judgment of his peers” has come to mean trial by jury and the “law of the land” to mean the “rule of law” and “due process.” Chapter 39 came to be associated with habeas corpus and the principle that any person under arrest must be brought before a judge or into court to determine the legality of his or her detention. Where there is a lack of cause or evidence to make a case, the arrested person should be freed. Chapter 40 sought to ensure that the king would provide justice for everyone and cease the practice of charging high sums for certain legal writs that only the rich could afford. It stated: “To no one will we sell, to no one will we refuse or delay, right or justice.” In other chapters, judges were also to visit the shires of England four times a year and the court of common pleas was to be held in a fixed place, rather than traveling with the king. This established a tradition of continuity and stability with respect to judicial bodies and access to justice, which evolved over centuries into the court systems we have today in many countries, including Canada and the United States.

Although copies of Magna Carta were sent around the kingdom to spread the word that the king had recognized that his authority was subject to the law, the Great Charter failed to bring about the peace the barons desired. King John had no intention of letting his power be restricted and monitored by a council of barons, and he claimed that he had only agreed to it under duress. Magna Carta was a threat to established power, including the papacy that conferred legitimacy on the king’s rule. It was quickly nullified by Pope Innocent III, who thought it was a “shameful and demeaning agreement, forced upon the king by violence and fear.” However, after King John died, Magna Carta was reissued by his successor and again with revisions over the years by subsequent monarchs. Its ideals had taken hold in the minds of the English. They would be further articulated by later generations, including the drafters of England’s Bill of Rights in 1689, and eventually carried across the ocean to inspire the constitutions of the United States and Canada. Today, these ideals resonate throughout the world. The United Nations Universal Declaration of Human Rights boldly echoes the Magna Carta in stating that: “Whereas it is essential, if man is not to be compelled to have recourse, as a last resort, to rebellion against tyranny and oppression, that human rights should be protected by the rule of law.”

The Canadian Charter of Rights and Freedoms

Similar to the United States, rights and freedoms are guaranteed in Canada’s Constitution; more specifically, in the Canadian Charter of Rights and Freedoms. Canada’s Charter sets out fundamental freedoms, including freedom of expression and freedom of religion; democratic rights, such as the right to vote; and equality rights that guarantee that every individual is equal before the law. The rights contained in the Charter are not absolute and may be balanced with other rights or broader public interests. Any limits placed on them must however be “reasonable,” “prescribed by law,” and “demonstrably justified in a free and democratic society.”

There is, however, a “notwithstanding clause” that may be used by a legislature as an override (though this has only been used in a few exceptional cases).

Like Magna Carta, Canada’s Charter is also a product of its time. It includes special rights that serve as a window on Canadian culture in 1982, the year it was adopted. The Charter was the result of a negotiation process that was at times concerned as much with the sharing of political power and how the prescribed rights would place limits on Canadian...
legislatures. There are sections that concern equalization payments between Canadian provinces, guarantees for Aboriginal people’s rights, and special rights for Canada’s two official languages, French and English. Rights to property and to bear arms are not included, indicating that these were not as important to Canadians in the way that they were to Americans when their constitution was drafted.

Where Canada’s Charter most reflects the legacy of Chapters 39 and 40 of Magna Carta is in its statement of “Legal Rights.” These provisions state that “everyone” has the “right not to be arbitrarily detained or imprisoned,” and when arrested or detained “to have the validity of the detention determined by habeas corpus and to be released if the detention is not lawful.” The right to a trial by jury is also included, but only where the maximum punishment is five or more years. The “right to life, liberty and security of the person” is qualified by adding that a person shall not be deprived of this right except in accordance with “the principles of fundamental justice.” This is similar to the Fifth and Fourteenth Amendments of the U.S. Constitution, which provide that no person shall be deprived of “life, liberty, or property, without due process of law.”

As Magna Carta sought to create a council of barons to ensure that the King respected the law, so in Canada and the United States, the judges of the Supreme Courts are tasked with the role of being the ultimate arbiters of government constitutional compliance. Canada’s principles of fundamental justice have been gradually articulated over the years by judges in their decisions. The Supreme Court of Canada has broadly referred to these principles as being “found in the basic tenets of the legal system” (Reference re Section 94(2) of the Motor Vehicle Act, [1985] 2 S.C.R. 486). Though judges, politicians, and legal experts have not always agreed on how to define these principles, they are understood to hold legislators to certain standards that must be met when passing laws.

The principles that have been articulated to date include that a law should not be too vague, arbitrary, or overly broad, and its effects should not be grossly disproportionate to the state’s objective in passing it. A recent Supreme Court of Canada decision, Canada (Attorney General) v. Bedford, [2013] 3 S.C.R. 1101, involved a challenge to Canada’s prostitution laws wherein it was successfully argued that these deprived prostitutes of their rights to security of the person in a manner that is not in accordance with the principles of fundamental justice. While prostitution itself is not illegal in Canada, Canada’s Criminal Code prohibits some of the activities associated with it, such as living off the avails of prostitution, running a bawdy house and communicating in public for the purposes of prostitution. The court found that these Criminal Code provisions infringed the
rights of prostitutes by preventing them from taking measures to increase their safety, whether by screening potential clients or hiring bodyguards and drivers who could help them.

The Court found that the effects of the Criminal Code provisions in question were not sufficiently connected to their objective of preventing the exploitation of prostitutes. They were overbroad and arbitrary because they failed to distinguish between a pimp and a person hired to protect the prostitute. Their effect was in fact to make conditions less safe for prostitutes. The Court’s decision was to give the government a year to pass new laws. The Court added that this “does not mean that Parliament is precluded from imposing limits on where and how prostitution may be conducted, as long as it does so in a way that does not infringe the constitutional rights of prostitutes.”

In another recent example, Canada (Citizenship and Immigration) v. Harkat, 2014 SCC 37, the Supreme Court of Canada heard an appeal by Mohamed Harkat, a noncitizen who was alleged to have come to Canada for the purpose of engaging in terrorism. Since September 11, 2001, Canada has passed antiterrorism measures and developed a security certificate scheme under its immigration laws whereby someone suspected of terrorism could be detained indefinitely without being permitted to see evidence against him that could harm national security. In a previous case that also involved Harkat, Charkaoui v. Canada (Citizenship and Immigration), [2007] 1 S.C.R. 350, an earlier version of the security certificate was found to be unconstitutional. The Supreme Court held that further to the principles of fundamental justice, an accused person must be provided with a fair process, including the right to “be informed of the case against him or her, and be permitted to respond to that case” and the right to have a decision made by the judge on the facts and the law. These security certificate cases engage the same basic legal principles as Chapter 39 of Magna Carta and habeas corpus.

Harkat was first arrested under the old scheme and then again under a new scheme that granted a judge the discretion to fashion a fair process and to create “special advocates.” These are pre-approved persons whose role in security certificate proceedings is to review the government’s secret evidence and protect the interests of the named person. In May 2014, the Supreme Court determined that the revised law did not violate Harkat’s right to know and meet the case against him. It added that the law was “an imperfect substitute for full disclosure in an open court,” but that the discretion conferred on judges to ensure a fair process and the special advocates ensured the law was constitutional. The Court found that the decision to declare Harkat inadmissible to Canada was reasonable.

In both of these decisions, the Supreme Court’s analysis focused on upholding both the rule of law and the basic legal rights of Canadians. They are examples of how these fundamental ideas continue to be explored and defined to meet contemporary challenges. As such, they exist as part of a tradition that can be traced back to those discussions at Runnymede in England when the barons delivered to King John a charter that wrote out the legal principles they expected him to endorse. This tradition continued to develop and has inspired the drafting of constitutions and human rights treaties around the world. It was considered to be strong enough that in 1982, the drafters of Canada’s Charter had only to make reference to “the principles of fundamental justice,” as if these were sufficiently understood already. And yet, as new threats to public safety emerge and as our society grapples with how to recognize the rights of traditionally marginalized groups, the law of the land and the scope of human rights continue to be debated and further redefined. IN
What Is an “Original” Magna Carta?

The editors of a recent collection of articles on Magna Carta assert “it is difficult to think of a legal document that exceeds it in historical importance and breadth of legacy.” This article will focus on Magna Carta as a legal document. In so doing, it will also examine its surviving material forms as rare, if not priceless, manuscripts and consider the question of what makes these manuscripts “original” Magna Cartas. As will be apparent, there are multiple Magna Carta manuscripts that can claim to be “originals.” Why this is so is a matter of historical circumstance, tradition, and scholarly conventions.

First Issue

The first issue of Magna Carta dates to June 1215. It resulted from negotiations between the monarch and rebellious English aristocrats on the brink of civil war. The document that became known as Magna Carta was issued under the royal seal. Employing the first-person plural “royal we” of King John, its last line begins, “Given by our hand” and ends by referring to a specific place and time of its issue: “in the meadow that ends by referring to a specific place and time of its issue: “in the meadow that is called Runnymede between Windsor and Staines on the fifteenth day of June in the seventeenth year of our reign.”

It seems there was no single original Magna Carta document produced at Runnymede on June 15. If there ever were one, not only does it no longer exist, but there is no historical record of it ever having existed. June 15 is the specific date referenced in the 1215 manuscript to its issuance. It represents the date when the meeting between the parties at Runnymede occurred, rather than when the document itself—in multiples, scholars estimate from 14 to 40 copies—was first produced and sealed. It was subsequently backdated to memorialize the event and date of agreement, a common practice with medieval charters. Magna Carta scholar Nicholas Vincent has defined such charters as “any letter or proclamation, generally written on a single sheet of parchment, awarding rights or property.”

The 1215 Charter was handwritten in Latin on a single piece of sheepskin parchment approximately 18 inches square—about the same surface area as a 27” computer monitor or TV screen. Its text runs to less than 4,000 words—somewhat shorter than that of the original 1787 U.S. Constitution.

Scholars believe that multiples of the 1215 Magna Carta—as of subsequent reissues—were produced and disseminated across the realm. Only four of these first issues, however, survive. Two are in the British Library and one each in Salisbury and Lincoln. Of these, only one, a “Cotton” charter from the British Library, still has its original beeswax seal affixed to the manuscript. However, it was badly damaged in a 1731 fire. The Lincoln Magna Carta was the first Charter to travel outside the United Kingdom, when it came to the United States in 1939 for display at the New York World’s Fair and then remained in Washington, D.C. and Fort Knox for safekeeping throughout World War II.

Reissues

Representing a would-be peace treaty between the king and rebellious nobles, the 1215 Charter did not survive its year of issue. Pope Innocent III, who King John had accepted as his feudal overlord, annulled the charter within 10 weeks of its issue. In the midst of virtual civil war, the king suddenly died in October 1216. The charter was reissued the following month and sealed by the Pope’s legate and royal regents acting on behalf of the new king, John’s nine-year-old son, Henry III. This Magna Carta was shortened to about 2,500 words and revised from the 1215 issue. Based on the revised 1216 Charter, a second reissue was made in 1217 and a third in 1225, when Henry III reached the age of maturity. The 1225 issue was the version incorporated into English law in 1297, when Henry III’s son Edward I became king and again reissued Magna Carta.

An “issue” or “reissue” of Magna Carta has an accepted meaning. It signifies that the manuscripts were produced in multiple originals by the English royal chancery, or writing office, officially sealed on behalf of the king, and then physically distributed to counties throughout the kingdom. To differentiate them from mere “copies,” original Magna Cartas are also properly termed “exemplifications” or “engrossments.” An “exemplification” signifies an officially sealed document to which witnesses attest. An “engrossment” refers to a manuscript written in large (“engrossed”) or ornamental characters. Accordingly, Magna Carta originals are both exemplifications and engrossments.

In addition to the four originals of the 1215 first issues, one original from 1216 and four more each from 1217, 1225, and 1297 survive. Although Magna Carta was also reissued in other years...
during the thirteenth century, no originals survive from those reissues. Just two of the extant 17 are today preserved outside England, both dating from Edward I’s issue of 1297. They are in the national capitals of Australia (Canberra) and the United States—the latter is publicly displayed at the National Archives in Washington, D.C.

All of these 17 original Magna Cartas were issued in the thirteenth century—the 1200s. In addition to these 17, however, there are also 6 dating from 1300. In 2011, a manuscript from Faversham, England, previously thought to be a copy, was authenticated as an original 1300 Magna Carta exemplification, joining five other known issues from that year, all of which are in the United Kingdom. This Faversham Magna Carta has been valued at $20 million. After 1300, Magna Carta was never again reissued—written by scribes working in the royal chancery office, affixed with the king's seal, and then physically disseminated throughout England. Instead, it was simply “confirmed.” English kings confirmed Magna Carta dozens of times in the centuries following the thirteenth, corroborating its status as an exemplary written Charter of good governance and recognition of the lawful liberties of English subjects.

Magna Carta exemplifications consist principally of tightly written Latin text without much illustration. None formally organize its parts. In comparing the issues of 1215 and 1225, the eighteenth-century English jurist William Blackstone developed a numbering convention, which we follow today. Similar divisions were used even by medieval lawyers, but the numbering was not effectively standardized until Blackstone. By tradition, the various short sections are commonly called “chapters.” The 1215 Magna Carta has 63 chapters and the shorter 1225, just 37. The famous, oft-cited clause that begins “No free man shall be taken or imprisoned,” which appears in all issues, is numbered chapter 39 in the 1215 Magna Carta and 29 in the abbreviated 1225 issue.

### Paradigmatic Legal Document

Magna Carta is arguably the paradigmatic legal document in the Anglo-American tradition. When it was incorporated into English law after 1225, it literally became a part of statute books and readily assumed what would become its traditional “first” position, which it would retain in English law books published through the centuries. In that sense, it became the “Genesis” of Anglo-American law. Inscribed in our history, Magna Carta exemplifies the legal document as interpretable text—law as fundamentally written.

---

**Surviving Magna Carta Originals Around the World**

<table>
<thead>
<tr>
<th>Year of Issue</th>
<th>Number of Copies</th>
<th>Location*</th>
</tr>
</thead>
</table>
| 1215          | 4                | British Library (2 copies)  
Lincoln Cathedral  
Salisbury Cathedral |
| 1216          | 1                | Durham Cathedral |
| 1217          | 4                | Oxford University Bodleian Library (3 copies)  
Hereford Cathedral |
| 1225          | 4                | British Library  
Durham Cathedral  
Oxford University Bodleian Library  
The National Archives (TNA) |
| 1297          | 4                | London Metropolitan Archives  
National Archives and Records Administration, Washington, D.C., United States  
Parliament House, Canberra, Australia  
The National Archives (TNA) |
| 1300          | 6                | Durham Cathedral  
Faversham Alexander Centre  
London Metropolitan Archives  
Oxford University Bodleian Library  
Oxford University Oriel College  
Westminster Abbey |

*Location in the United Kingdom unless otherwise noted.

---

King John’s “Charter of Liberties,” known today as Magna Carta (or in English, the Great Charter), enjoys a reputation not confined to its country of origin, the United Kingdom, nor its historical chronology, the early thirteenth century, but is recognized throughout the world as a document of immense legal and constitutional significance. Continually looked to symbolically for guarantees of executive conduct and fairness and due process in judicial matters, it is the contents of Magna Carta, the text and its particular clauses, that have been the primary fascination for generations of politicians, lawyers, and of course historians. Until the exhibitions coinciding with the 800th anniversary, comparatively few, though, will have probably viewed the thirteenth century originals or examined other copies surviving in legal manuscripts, or even considered that the Great Charter can be studied as much for its visual cues as for its textual ones.

The Original Documents

The four surviving copies of the original version, the Great Charter of 1215, two of which are on display in the British Library, the other two of which reside in the Cathedrals of Lincoln and Salisbury, are testimony to its name and dimensions. Indeed, they show how impressive Magna Carta is in terms of its overall size and length. The text itself, running to 3,500 words and 62 separate clauses, is contained on a single sheet, with the copies measuring 17 to 20 inches in length [43.2 to 50.8 cm] and between 13 and 17 inches in width [33 to 43.2 cm].

Looking in more detail at its appearance, it is written on an expensive, but durable form of material known as parchment (made from sheepskin) rather than paper, and is not in English, but Latin, the prime language of religion, government, and the law in the Middle Ages. The script, in a hand typical of an early thirteenth-century chancery clerk, is extremely legible even though on closer inspection some of the Latin words are abbreviated in order to save space. After a first line with slightly augmented capitals (for King John’s titles) the preamble and itemized clauses continue in a neatly ordered, if tightly spaced, format.

Magna Carta differs visually and (since it was intended to be read aloud) aurally from other charters not only because of its substantive content, but
because there is no list of witnesses. The names of illustrious and highly respected persons were typically appended as witnesses at the end of royal charters by way of endorsing the grant. Unusually, the Great Charter is prefaced with a list of “advisors” (11 prelates and 16 magnates) by whose counsel the liberties listed in it were granted. Arguably they may have provided the same legitimacy to the king and advertises the king’s intention to govern in future not with reference solely to a few close courtiers, but by the counsel of his greater subjects. However, in case the king reneged on his promises, under the terms of chapter 61, the undertakings made in the Great Charter were to be enforced by a committee of 25 barons. Their election was regarded as a future event, so they are not actually named in the Charter, but their identities were recorded by the St. Alban’s Abbey chronicler, Matthew Paris, and comprised military leaders and powerful landowners who were particularly vociferous opponents of the royal regime. Their coats of arms, colorful heraldic devices originally differentiating knights on the battlefield while also providing an elaborate code displaying their pedigree and lineage, are emblazoned on the Magna Carta memorial. The Magna Carta “advisors,” though, 

Anthony Musson is a professor of legal history at the University of Exeter and a barrister of the Middle Temple. Anthony has published extensively in the field of medieval legal history, legal culture, and legal iconography.
have a continuing symbolic constitutional role into the twenty-first century. Life-like bronze-caste statues of 16 of the barons and two of the prelates were placed around the reconstructed Lords’ Chamber in the Palace of Westminster in 1847, and these figures, which have witnessed trials of peers held in the House of Lords, also watch over the setting out of the government’s legislative program contained in the Queen’s speech (delivered at the State Opening of Parliament) and supervise the passing of legislation there. The conscious inclusion of representatives from 1215 in the statuary of the U.K. legislature has provided a tangible link with legal and constitutional tradition.

Magna Carta was formally attested by King John’s Great Seal, a tangible sign of royal will reserved for the king’s most solemn decrees and grants and which accorded them weight, both physically and symbolically. Unfortunately only one of the surviving copies still has the seal attached and the wax impression has crumpled almost
beyond recognition, but we know what it was like from other examples. Double-sided, it depicts on the reverse the king on horseback wielding a sword, while on the obverse it shows the monarch seated on a bench-like throne, again with sword in hand. The iconography encapsulates a maxim from Roman law, “clothed with arms: armed with laws,” reflecting the expectation also explicit in the king’s Coronation Oath that the rule of law would not be allowed to prevail over armed conflict and that the king himself would (through the use of force if necessary) strive to maintain peace and uphold justice. The affixed Great Seal, therefore, not only underlines the importance of the Great Charter as a document and provides the necessary enacting power, but also reflects in visual terms the king’s personal responsibilities as a ruler.

It is not surprising then that the sealing of Magna Carta has been used subsequently as visual shorthand for the historical event, and its attendant symbolism, and as a cautionary image to those exercising political and legal authority. For example, a stained glass window (designed by Alexander Gibbs in 1868) depicting the scene stands in the Mansion House, the official residence of the Lord Mayor of London, perhaps memorializing confirmation of the liberties of the city (as enshrined in the Great Charter) as well as acknowledging the importance of observation of the rule of law. Similarly, a frieze of it over the main entrance of the “art nouveau Gothic” Middlesex Guildhall (1913), previously a crown court, now home to the United Kingdom Supreme Court, which stands in Parliament Square overlooking the Houses of Parliament, provides a warning and example to all politicians and judges of due process for citizens and litigants. The potency of this image is not confined to the U.K. King John sealing Magna Carta under the watchful eye of an armed knight is featured in one of the panels of the bronze doors of the U.S. Supreme Court in Washington (installed in 1935), which contain scenes of significant historical figures or pertinent events in the evolution of the rule of law. Some of the nineteenth-century representations, including engravings by A. W. Warren (1830s), James Doyle (1864), and John Leech (1872) erroneously or anachronistically show King John signing the document with a quill pen. This notion of giving effect to a document by putting a signature to it was visually translated from the bygone era of affixing seals, but has influenced even modern-day understanding of the event (including in David Letterman’s questions on the signing of Magna Carta to British Prime Minister, David Cameron in 2012). It has also spawned the jocular question, “Where was Magna Carta signed?” to which the correct response is not the historically accurate “Runnymede,” but the wittier observation “At the bottom!”

Illuminated Legal Manuscripts

None of the surviving single-sheet (large) copies of Magna Carta are illuminated or even slightly decorated, unlike royal charters issued to individuals or corporations (civic or ecclesiastical) in the fourteenth and fifteenth centuries, which normally have a large illuminated initial letter containing an image of the king presenting the document to the beneficiary, often with elaborate iconography and marginal decoration. Illuminated versions of Magna Carta are nevertheless found bound with other legal texts in manuscript books of statutes dating from the late thirteenth century through to the fourteenth and fifteenth centuries, and provide an opportunity to examine perceptions of the Charter through a different lens. Each scene, a cocktail of the artist’s (and commissioning patron’s) imagination, perceptions, historical sensitivity, factual knowledge, aspirations, and ideals, offers an interpretation or contextualization of contemporary constitutional discourse in visual format. Owners of these books ranged from lawyers and administrators, to ecclesiastical and lay landowners, civic corporations, and merchants. The majority of the Magna Carta miniatures are not very elaborate and simply portray the sole figure of a king enclosed within the initial letter. The king should be viewed here in conjunction with the written text to which he is normally looking or pointing (either with a raised index finger or a sword). His gesture not only serves as a directional device for the reader, but can be regarded as underlining the text’s importance and endorsing its authority.

The Great Charter itself is depicted in some of the scenes, either as a parchment document affixed with a green seal or in the form of a book with a green cover. As was common in medieval art, representation of the sealed document provides visual shorthand for its recitation or proclamation (which usually accompanied presentation of charters and, as mentioned above, had its basis in historical reality, as by royal decree Magna Carta was regularly proclaimed in the shires not just in Latin, but in both French and English). In some scenes the Great Charter is demonstrably being presented to (or handed over by) the king or raised aloft by an archbishop in ceremonial fashion, with judges, lords, and other courtiers in attendance. Visual and aural elements thus combine with the written text to accord significance and legitimacy to it as well as bearing witness to the presentation event through a pseudo-historical reenactment scenario. The images, therefore, underline Magna Carta (and the statute book in which it is contained) both as a physical entity and as having a continuing psychological and legal impact.

The monarch’s constitutional position and his royal obligations are highlighted in a number of these statute book miniatures. At least one particular book had the opportunity to influence future constitutional affairs. The book in question (now MS 12 in the Harvard
The Faces of King John

Images of the scene at the June 15, 1215, sealing of Magna Carta at Runnymede depict King John in a variety of ways, with each providing clues to the artist and the history that they are sharing. This image analysis activity asks students to compare depictions of King John at Runnymede, and discuss what the similarities and differences might mean.

Students analyze Images 1 and 2 using the following discussion questions. Ask students to discuss what they see in each image and then compare the two.

**Discussion Questions**

1. What is happening in Image 1? Image 2? What do you notice most in the picture?
2. Who is shown in each image? How are they dressed? Are they holding weapons? What does their social status or function appear to be?
3. What is the setting in each image? What is in the background? Foreground?
4. How are the faces in Image 1 similar or different to the faces depicted in Image 2? What feelings do you think King John is expressing in each image?
5. How is the document on the table, Magna Carta, similar or different in each image?
6. What tone does each image create, based on colors, faces, and other elements?
7. What story about the sealing of Magna Carta do you think each image tells?
8. What do you think the intent of the artist was for Image 1? Image 2? Where do you think these images appeared?

**Images**

- **Image 1:** “King John Signing Magna Carta,” by James Edmund William Doyle in Chronicle of England, 1864.
- **Image 2:** “Magna Carta being signed by King John, 1215,” by John Leech, 1872.

Download both images for classroom use. Visit us at www.insightsmagazine.org.
Law Library) is believed to have been a present from Philippa of Hainault to Prince Edward (the future Edward III) on the occasion of their betrothal in 1326. The initial “E” of Edward I’s confirmation of Magna Carta in this volume comprises a double scene (one above the middle bar of the letter and one below it): the upper picture, a king seated on a throne, holding a book in his left hand, supported by archbishops and laymen, may represent the original issuing of Magna Carta under John; the lower picture is similar in composition, but presumably depicts its reissue under Edward I, itself the outcome of another bout of constitutional debate. The image cannot have been formulated without regard to recent political events and was given greater clarity of meaning by Edward II’s deposition in 1327. It would, therefore, have held particular significance not just for contemporaries who had lived through the constitutional upheaval, but for the new king himself, whose very position as monarch lay in the hands of the archbishops, magnates, and judges portrayed alongside the king.

Analyzing Place: Runnymede

It is to the visual features of its place of birth and first attestation we must finally turn. Until its reissue in 1217 in tandem with the Forest Charter (whereupon it became distinguished as the Great Charter), Magna Carta was referred to by its geographical location as the “Charters of Runnymede.” While this was familiar practice in royal government, analogous to the nomenclature for statutes or other royal promulgations, it gave prominence, albeit briefly, to this particular spot on the banks of the River Thames in Surrey. In the context of the events of 1215, Runnymede provided a meeting point, an open space between the king’s residence at Windsor and the barons’ camp at Staines that effectively formed neutral territory. Today, the historic Runnymede site is owned by the National Trust and with nearby Cooper’s Hill comprises 300 acres of protected land, the tranquility of which is captured in a late nineteenth century painting by Robert Gallon. It is here that the American Bar Association placed a Magna Carta memorial in the form of a “classical” temple or rotunda (designed by Sir Edward Maufe), providing a focal point for reflection on the hard-fought constitutional battles of the past, the international human rights struggles of the present, and the timeless values of liberty and justice the Great Charter espouses.

It is not entirely certain precisely where “in the meadow that is called Runnymede” discussions between the two parties took place or where Magna Carta was actually drawn up and sealed, though one medieval chronicler refers to “a certain island,” which perhaps corresponds to an area just across the river (colloquially known as Magna Carta Island) where the ruins of Ankerwycke priory lie and a 2,000-year-old yew tree still stands. The scene Ankerwycke Priory from Runnymede was captured in a sketch of 1811 by landscape artist, J. M. W. Turner. Turner clearly showed a special interest in the site, revisiting the view several times in his artwork and attesting to its significance in his own poetic verses: “Thus native bravery Liberty decreed/Received the stimulus act from Runny mead.” The twelfth-century Benedictine priory would have been a suitable place for oath-taking and solemnization of the Charter, while the iconic ancient tree, a witness to the original momentous event, also adds resonance as traditionally (like oak trees) yews were a place where open-air gatherings and judicial sessions were held.

The text of Magna Carta, at least its key provisions, has endured throughout the centuries and traveled in essence to all parts of the world. Yet as illuminated manuscript miniatures, paintings, sculptures, and other media testify, the legacy of the Great Charter has not solely been in the province of the written word: its symbolic value and underlying message have been underpinned both by its physical reality and its place within the less tangible visual realm. Study of Magna Carta itself, therefore, together with visual representations of its attestation, presentation, and proclamation, converge to offer an understanding of its cultural significance then and now. These images have also demonstrated the power to influence people’s perceptions of history and reveal differing attitudes towards royal/state power and the law.

Discussion Questions

1. What might we learn from looking at Magna Carta’s original documents? What do the documents’ sizes, parchment materials, and use of Latin tell us about Magna Carta?
2. Why do you think the sealing of Magna Carta was significant?
3. What is the significance of the Ankerwycke yew tree?
4. Do the images related to Magna Carta help us to understand its prominence in history?

Suggested Resources

During 2014, we have marked a number of significant anniversaries. Fifty years ago Congress passed the Civil Rights Act. Seventy years ago allied forces stormed Normandy to restore liberty to Europe. Two hundred years ago a very prominent lawyer and Supreme Court advocate, Francis Scott Key, witnessing the Battle of Fort McHenry, penned the Star-Spangled Banner. And of course, 225 years ago our Constitution first took effect. Each of these anniversaries commemorates remarkable individuals pursuing lofty objectives beyond their own interests. In the case of Magna Carta, however, we commemorate something quite different. In 2015, we will celebrate not so much what happened eight centuries ago, as what has transpired since that time.

In considering Magna Carta’s significance, I will point out three ways in which Magna Carta has been invoked over time to sustain the progress of free societies, and explain why it remains relevant today.

First, Magna Carta, especially in its early years, was invoked to foster government unity in times of crisis. When 9-year-old Henry III succeeded King John, his guardians promptly reissued Magna Carta to consolidate support of the barons. When Henry III reached majority in 1225, he reissued it again. Before Magna Carta, English kings maintained loyalty through fear and favor. They did so afterward as well. But after the meeting at Runnymede, a new element was added to the equation: King John’s successors could invoke Magna Carta as a means of bolstering allegiances. And when they reconfirmed the charter, they were, whether they liked it or not, embedding the rule of law as a unifying force in English society.

Second, Magna Carta contributed to the rise of representative government. English kings met with barons before King John’s meeting at Runnymede. But Magna Carta signified an enlarged role for the meetings of the barons in counsel. During the reigns of Henry III and Edward I, those counsels coalesced into Parliament, in which knights and burgesses as well as bishops and barons participated in the deliberations.

Magna Carta had a third effect that has special resonance in our own country: It kindled America’s own Declaration of Independence. The American colonists embraced Magna Carta as a charter of rights that followed the English flag to the new world. It strongly influenced William Penn’s vision of good government. John Rutledge, the Supreme Court’s second chief justice who served only for a few months, called the principles embedded in Magna Carta the foundations of our law. The Massachusetts Assembly declared that the Stamp Act was illegal because it was against the Magna Carta and the natural rights of Englishmen and, therefore, null and void. John Adams likewise asserted that Britain’s restrictions on the jurisdiction of the colonial courts violated the Great Charter.

From our perspective today, 800 years later, we can see that Magna Carta originally resolved a futile squabble between a venal king and selfish barons, with eyes fixed on their own interests. But an 800-year commemoration invites us to take a long view, and we know Magna Carta became a crucial building block in developing the notion of a government bound by the rule of law. What Professor Dick Howard described as “the road from Runnymede” has been neither straight nor smooth, nor has it reached a final destination. But what is important is that Magna Carta’s core principles of justice remain relevant today and worth defending.

John Roberts is Chief Justice of the United States. These comments were adapted from a speech delivered to the American Bar Association House of Delegates at the American Bar Association Annual Meeting, August 11, 2014, in Boston.
Transcending Its Times

by Carolyn Harris

Magnas Carta is the earliest example of a King of England accepting limits on his power imposed by his subjects. Previous English kings, such as John's great-grandfather, Henry I, had issued coronation charters explaining how they intended to rule, but these kinds of provisions were not presented to a monarch by his barons until 1215.

Neither John nor his subjects anticipated a lasting significance for Magna Carta beyond the political circumstances of their times, but successive generations found new meaning in the Great Charter. John’s son-in-law, Simon de Montfort, 6th Earl of Leicester was inspired by Magna Carta to draft the 1258 Provisions of Oxford, which called for Parliament to meet three times per year and impose checks and balances on the king's power. Henry VIII’s Chancellor, Sir Thomas More, attempted to challenge the king’s supremacy as Head of the Church of England by invoking Magna Carta’s promise of freedom for the English Church.

Magna Carta assumed its modern significance in the seventeenth century when renowned jurist, Sir Edward Coke, argued that the Charter ensured that not even the king was above the law. Since Coke’s Institutes of the Lawes of England became the standard legal text throughout the English speaking world, his views on Magna Carta influenced the political development of the thirteen colonies and the Declaration of Independence in the United States of America.

Today, Magna Carta is celebrated for setting key legal precedents. The Charter codified the right to due process, trial by jury, and freedom from arbitrary penalties. As one of the seminal documents in Western history, Magna Carta has had a profound effect on popular culture. King John, his discontented barons, and the Great Charter remain well-known even as other aspects of English medieval history have faded into comparative obscurity. Magna Carta continues to transcend its times.

Dr. Carolyn Harris teaches history at the University of Toronto, School of Continuing Studies and contributes articles to Magna Carta 2015 Canada.

Magna Carta Is Worth Studying

by Kent Worcester

The Great Charter was the product of a very different world from our own. It was drafted by noblemen and Church leaders who would have been puzzled by the suggestion that their Latinate legal document pointed the way to contemporary conceptions of freedom, equality, and democracy. However, in attempting to limit and constrain the power of the monarchy, and to assert the central role of the law in guiding the affairs of the state, the architects of Magna Carta helped establish certain principles that continue to inspire movements for constitutional law, due process, and human rights across the globe.

Strictly speaking, the Anglo-American legal tradition begins not with Magna Carta but with the Kentish laws of the seventh century, most notably the Old English legal code prepared by the court of King Aethelbert of Kent around 602 AD. Indeed, nearly 150 law codes and edicts were issued in England between the early seventh century and June 15, 1215, when Magna Carta was sealed on the banks of the Thames by representatives of the Crown. The Charter of Liberties, proclaimed by Henry I in 1100, represents a particularly noteworthy example of this literature. But Magna Carta is not only the most famous of these formative legal texts but also the most ambitious, and the most sweeping, and almost certainly the most profound from a theoretical standpoint. Magna Carta is worth studying, therefore, not only as a source of many of our core ideas about criminal justice, but also
as a window onto a radically different epoch, one in which political and legal conflict centered around questions of ancient customs, access to forests and rivers, and inherited privileges.

We all know Magna Carta’s more famous clauses. Perhaps none is more significant than Chapter 39, which guarantees that no free man shall be imprisoned or prosecuted “except by the lawful judgment of his peers and by the law of the land.” Here is an ancient expression of modern ideals! It directly informs the Supremacy Clause (Article VI) of the Constitution, and we can find its historical residue in the Suspension Clause (Article I, Section 10) and the Trial by Jury Clause (Article III, Section 2).

We teach Magna Carta’s famous chapters with good reason. Introducing students to an eight-hundred-year-old document usually demands we bow to contemporary relevance. Well, trial by jury and habeas corpus are supremely relevant in an age of chilling calls for indefinite detention, torture, and targeted assassinations. Against the cry of “present necessity,” Magna Carta is a reminder that bulwarks of liberty have deep roots.

Useful this may be, but it distorts Magna Carta’s real historical meaning. The barons who confronted King John were not populists and certainly not philosophers, and jury trials and habeas corpus meant very different things in their medieval context.

The chapters in Magna Carta—even the famous chapters—were about specific grievances, not abstract principles. Nothing drives this point home more than Chapter 33’s order to take down the fish weirs from the Thames River. Redirecting the fish created local problems, specific issues. To understand this is to get past the delusional mythology of “ancient and eternal rights” and instead think about how rights are understood by the peoples of the past. Perhaps more importantly, we can understand that no rights are ever established without conflict, and that rights cannot be guaranteed unless there is some means of enforcing them against brute power.

So by all means teach Chapter 39. But really, it’s all about the fish weirs.

H. Robert Baker is a professor of history at Georgia State University. He is the author of several publications, including, most recently, Prigg v. Pennsylvania: Slavery, the Supreme Court, and the Ambivalent Constitution.

Etching Borders in Land and Time: Magna Carta and the Definition of “We the People”

Much like in the United States, generations of refinement and jurisprudential interpretation have contributed to the common law tradition of which Magna Carta is an integral part.

Among the questions about Magna Carta that the document itself does not fully answer is the question of who enjoys the rights it lays out. The document states “free men,” but questions about who that included remained.

The question was only authoritatively answered centuries later, after the union of the Scottish and English crowns of 1603. Like many disputes, the court case that settled the question of who would be a British subject revolved around the right to inherit and own property. Property ownership has long been one of the hallmarks of citizenship. To be “in the allegiance” of the king meant enjoying protection of one’s property and owing duties of allegiance to the king. Edward
Eight hundred years ago in a meadow called Runnymede, on the banks of the Thames west of London, an army of defiant barons forced King John to endorse a written enumeration of articles confirming their anti-Semitic references and outright sexist provisions. But it was the first time that any government had issued a document guaranteeing certain immutable rights of the governed. And that was seismic.

Ripples from this massive wave would later cross the Atlantic and inspire the formation of the constitutional republic we cherish today in America. Chapter 39 of Magna Carta set forth an essential principle that was directly borrowed by our founders and enshrined into our Bill of Rights—the Rule of Law. This hallmark of our government ensures that one’s life, liberty, or property cannot be deprived without the due process of the law. America continues to enjoy the blessings of this rich legacy.

Magna Carta was for England, and later for people around the world, what President Lyndon Johnson said Lexington and Concord were for the American Revolution and Selma was for the American civil rights movement—a turning point—where “history and fate meet at a single time, in a single place to shape a turning point in man’s unending search for freedom.”

By no means was this a perfect document. Although it spoke of rights, it favored the property interests of rich barons who suffered under the king’s oppressive takings and taxes, and not the poor who suffered under a harsh feudal system. Also, it was tainted with ancient liberties and rights. The document, along with later amendments and additions, would come to be known as Magna Carta (the Great Charter).

By no means was this a perfect document. Although it spoke of rights, it favored the property interests of rich barons who suffered under the king’s oppressive takings and taxes, and not the poor who suffered under a harsh feudal system. Also, it was tainted with ancient liberties and rights. The document, along with later amendments and additions, would come to be known as Magna Carta (the Great Charter).

Elizabeth Cohen is currently a visiting scholar at the Russell Sage Foundation. She is a political science professor at the Maxwell School of Citizenship and Public Affairs at Syracuse University, and studies how factors such as time relate to the legal status of citizenship.

Roger Gregory is a federal judge on the U.S. Court of Appeals for the Fourth Circuit. He is active in civic and law-related education efforts in Virginia and with the American Bar Association.
Magna Carta has influenced conceptions of rights and power in the United States and elsewhere and has shaped the evolution of the common law. But what influence has Magna Carta had on the jurisprudence of the Supreme Court? The U.S. Reports of the Supreme Court’s decisions refer to Magna Carta in more than 170 cases. There is a common theme that spans two centuries: the role of Magna Carta is largely symbolic. For the Court, Magna Carta is venerable historical evidence invoked to establish the pedigree of a claim that a particular right exists or to determine what that right means. As justices have made clear in speeches and decisions, however, Magna Carta is not and cannot be positive law in the Supreme Court, since it far predates the writing of the U.S. Constitution, which created the Supreme Court.

The first reference to Magna Carta in the U.S. Reports appears to be in the summary of oral arguments by the very first Supreme Court reporter of decisions, Alexander J. Dallas. In the official report of State of Georgia v. Brailsford, Dallas wrote in 1794 that lawyers for the defendant, Brailsford, a British citizen who lived in Great Britain, referred to Magna Carta in their argument in a string of authorities.

The first reference to Magna Carta in a justice’s opinion appears to be by Justice Joseph Story in a dissenting opinion from the majority ruling of Chief Justice John Marshall in 1814 in the case of Brown v. United States. The case from a Massachusetts court was a lawsuit over the ownership of timber. Armitz Brown, a U.S. citizen, claimed the timber was rightfully his, but the federal government, in the midst of war against England, claimed to own it as forfeited enemy property. Chief Justice Marshall ruled that Congress had not authorized the seizure of enemy property so the property belonged to Brown. Justice Story had written the opinion for the circuit court of Massachusetts and cited Magna Carta several times there. In his Supreme Court dissent, he repeated his own words from the circuit court, reiterating his references to Magna Carta.

At the other end of the span of centuries, the Supreme Court most recently resorted twice in 2012 to Magna Carta. In Hosanna-Tabor Evangelical Lutheran Church v. Equal Employment Opportunity Commission, Chief Justice John Roberts concluded that the church autonomy guaranteed by the religion clauses of the First Amendment precludes a minister from suing her church for employment discrimination. Setting the historical context for the issues raised by the case, Roberts wrote in January 2012:

Controversy between church and state over religious offices is hardly new. In 1215, the issue was addressed in the very first clause of Magna Carta. There King John agreed that “the English church shall be free, and shall have its rights undiminished and its liberties unimpaired.” The King in particular accepted the “freedom of elections,” a right “thought to be of the greatest necessity and importance to the English church.”

In Southern Union Co. v. United States, Justice Stephen Breyer referred to Magna Carta in a June 2012 dissenting opinion that was joined by Justices Anthony Kennedy and Samuel Alito. The court’s majority, in an opinion by Justice Sonia Sotomayor, ruled that the Sixth Amendment requires that juries, not judges, determine any relevant facts that increase the amount of a criminal fine. Justice Breyer argued that enhanced criminal fines, unlike sentences of imprisonment, could be based on factual determinations by judges. Breyer noted that any limitations on the power of judges in imposing fines were historically included in Magna Carta.

As a final preliminary matter before examining the ways Magna Carta has been used, it is instructive to examine the frequency of references in different periods and by different justices. An informal examination of references to Magna Carta produced the following statistics:
The spread of usage in the twentieth century tends to support the idea that Magna Carta was used most often in a period in which the Supreme Court was taking an expansive view of civil rights and liberties. Prior to 1950, there were twenty-four references to Magna Carta in the twentieth century. There were eight more references between 1950 and 1959. But from 1960 to the end of the twentieth century, Supreme Court justices referred to Magna Carta seventy-one times, more than in the entire nineteenth century.

Roughly half of the references to Magna Carta have been in majority opinions. For the other half, about three-quarters of the references have been in dissenting opinions and about one quarter in concurring opinions. The most frequent users of Magna Carta have been justices of relatively recent vintage. Here are the most frequent users of Magna Carta among Supreme Court Justices:

- John Paul Stevens (1975–2010) 16 cases;
- Hugo Black (1937–1971) 14 cases;
- John M. Harlan (1877–1911) 11 cases;

Although these leaders in usage of Magna Carta are largely progressive justices, resort to Magna Carta does not seem to be purely ideological. Justice Felix Frankfurter, who took a narrow view of the Court’s role, referred to Magna Carta in six cases; Justice Antonin Scalia, who says the Constitution must be read according to its language and the intent of its authors, referred to Magna Carta in seven cases.

Parsing the frequency and statistical analysis of Supreme Court references to Magna Carta does not capture the true sense of how justices use the importance of the document. Only examination of specific cases can illuminate that picture with sufficient detail and depth.

There are a number of instances in which justices used Magna Carta to establish benchmark perceptions of the origins of and importance of rights. For example, Justice Henry Baldwin wrote in an 1837 opinion,1 “From the beginning of the revolution, the people of the colonies clung to magna charta, and their charters from the crown; their violation was a continued subject of complaint.”

More than a century later, Justice Hugo Black had another, similar take on the fundamental influence of Magna Carta to promote fairness in the judiciary, especially the criminal justice system. Writing in 1956 in Griffin v. Illinois, Black wrote:

> Providing equal justice for poor and rich, weak and powerful alike is an age-old problem. People have never ceased to hope and strive to move closer to that goal. This hope, at least in part, brought about in 1215 the royal concessions of Magna Charta: “To no one will we sell, to no one will we refuse, or delay, right or justice. . . . No free man shall be taken or imprisoned, or disseised, or outlawed, or exiled, or anywise destroyed; nor shall we go upon him nor send upon him, but by the lawful judgment of his peers or by the law of the land.” These pledges were unquestionably steps toward a fairer and more nearly equal application of criminal justice. In this tradition, our own constitutional guaranties of due process and equal protection both call for procedures in criminal trials which allow no invidious discriminations between persons and different groups of persons. . . .

Reference to Magna Carta to define and bolster the meaning of due process is far and away the most frequent usage among Supreme Court justices and arises in about 28% of the references. Trial by jury cases represent 13% of the total; cases generally evaluating the influence of Magna Carta on the Constitution account for 8%; those raising antitrust issues, and those raising habeas corpus issues each totaled about 6%; other civil rights and liberties were about 5% of the total; and cruel and unusual punishment and excessive fines each represented about 4%.

**Due Process**

In the Court’s early years, well before ratification of the Fourteenth Amendment imposed the requirements of due process on the states, Justice William Johnson articulated a concept like due process—being free from arbitrary government action—found in the Maryland state constitution and based on Magna Carta. In Bank of Columbia v. Okely, Johnson wrote in 1819:

> As to the words from Magna Charta, incorporated into the constitution of Maryland, after volumes spoken and written with a view to their exposition, the good sense of mankind has at length settled down to this: that they were intended to secure the individual from the arbitrary exercise of the powers of government, unrestrained by the established principles of private rights and distributive justice.
Fast forward more than 170 years. In their joint, lead opinion on abortion rights in Planned Parenthood of Southeastern Pennsylvania v. Casey (1992), Justices Sandra Day O’Connor, Anthony Kennedy, and David Souter referred to Magna Carta to make the point that while due process applied in the form of the “law of the land” clause to limit “tyranny” by the executive branch, under the Constitution due process also protected against the actions of the legislative branch.

Trial by Jury and Right to a Speedy Trial

After due process, the right of trial by jury is one of the subjects on which justices turn to Magna Carta most often for historical support. A good example is the majority opinion of Justice Frank Murphy in 1942 in Glasser v. United States overturning a criminal conviction for one defendant while upholding the convictions of two others. Justice Murphy wrote:

Since it was first recognized in Magna Carta, trial by jury has been a prized shield against oppression, but while proclaiming trial by jury as “the glory of the English law”, Blackstone was careful to note that it was but a “privilege”. Our Constitution transforms that privilege into a right in criminal proceedings in a federal court.

The first Justice John Harlan wrestled with the question of what a right to trial by jury meant in 1898 in Thompson v. Utah. In particular the issue was whether trial by jury meant twelve jurors for a felony tried in Utah when it was still a territory and before it became a state. Justice Harlan analyzed the issue at some length, including a discussion of the meaning of Magna Carta:

Assuming, then, that the provisions of the constitution relating to trials for crimes and to criminal prosecutions apply to the territories of the United States, the next inquiry is whether the jury referred to in the original constitution and in the sixth amendment is a jury constituted, as it was at common law, of twelve persons, neither more nor less. . . . This question must be answered in the affirmative. When Magna Charta declared that no freeman should be deprived of life, etc., “but by the judgment of his peers or by the law of the land,” it referred to a trial by twelve jurors. Those who emigrated to this country from England brought with them this great privilege “as their birthright and inheritance, as a part of that admirable common law which had fenced around and interposed barriers on every side against the approaches of arbitrary power.”

In Duncan v. Louisiana in 1968, Justice Byron White writing for the majority and Justice Hugo Black concurring, both resorted to Magna Carta for support. White’s decision held that Louisiana had to provide jury trials for offenses like battery, which although it was classified as a misdemeanor, carried a possible sentence of two years in prison. Justice White wrote:

The history of trial by jury in criminal cases has been frequently told. It is sufficient for present purposes to say that by the time our Constitution was written, jury trial in criminal cases had been in existence in England for several centuries and carried impressive credentials traced by many to Magna Carta.

Along with the right to trial by jury, the Supreme Court referred to Magna Carta at some length to establish the pedigree of a right to a speedy trial. The most extended discussion of this right is by Chief Justice Earl Warren in 1967 in Klopfer v. North Carolina. Covering some of the same ground used to analyze the right to trial by jury, Warren wrote for a unanimous court:

We hold here that the right to a speedy trial is as fundamental as any of the rights secured by the Sixth Amendment. That right has its roots at the very foundation of our English law heritage. Its first articulation in modern jurisprudence appears to have been made in Magna Carta (1215), wherein it was written, “We will sell to no man, we will not deny or defer to any man either justice or right”; . . . but evidence of recognition of the right to speedy justice in even earlier times is found in the Assize of Clarendon (1166). . . .

Habeas Corpus

The right to habeas corpus does not appear directly in Magna Carta. But Supreme Court justices have referred to Magna Carta in cases involving habeas corpus as a way of connecting the dots between the expectation of fair and impartial trials and habeas corpus as the means of vindicating that expectation.

In Boumediene v. Bush (2008), Justice Anthony Kennedy used Magna Carta to help establish the historical importance of habeas corpus and, of greater significance to the development of the law, to demonstrate its application to restrain the actions of the crown or the executive. Justice Anthony Kennedy wrote:

Magna Carta decreed that no man would be imprisoned contrary to the law of the land. . . . Important as the principle was, the Barons
at Runnymede prescribed no specific legal process to enforce it. Holdsworth tells us, however, that gradually the writ of habeas corpus became the means by which the promise of Magna Carta was fulfilled. 9 W. Holdsworth, *A History of English Law* 112 (1926) (hereinafter Holdsworth).

**Distinguishing Magna Carta: Freedom of Speech**

There is one significant set of rights in which Supreme Court justices have made clear that Magna Carta does not provide the benchmark for constitutional development. When it comes to freedom of speech, the First Amendment and the Supreme Court have followed an entirely different path, according to the leading opinions.

In *Bridges v. California* (1941), Justice Hugo Black discussed the evolution of free speech as following an entirely different path from what developed under Magna Carta. Black said:

In any event it need not detain us, for to assume that English common law in this field became ours is to deny the generally accepted historical belief that “one of the objects of the Revolution was to get rid of the English common law on liberty of speech and of the press.”

Regarding freedom of speech, therefore, Magna Carta is not the iconic fountain of liberty it has become regarding other issues.

There is no question that Magna Carta has influenced decisions by the justices of the Supreme Court. The venerable text and rich history of Magna Carta do not have the force of law per se in Supreme Court jurisprudence, since the document predates the formation of the United States. But the principles articulated on a field in Runnymede in 1215 and reiterated and recast on numerous occasions thereafter clearly have played an important part in the evolution of thinking about rights and government authority of critical importance to Supreme Court justices and Supreme Court jurisprudence.

As the many cases and opinions make clear, it is hard to top the pedigrée of being able to trace a right back to Magna Carta or of attributing particular meaning to development at the time of Magna Carta. Perhaps this is not surprising in a judicial system that relies so heavily on precedent and that defines rights implicit in the Constitution based on history and tradition.

Resort to Magna Carta to define the dimensions of a right has the unique ability to transcend ideological differences among the justices. Reliance on Magna Carta to clarify our understanding of the Constitution and its origins has been used by liberal and conservative justices, alike.

After 800 years, the tradition of justices turning to Magna Carta remains strong, and Magna Carta will undoubtedly be resorted to by justices in the future as an iconic fountain of liberty.

Stephen Wermiel is a professor at American University’s Washington College of Law. A former journalist, his expertise is in the U.S. Supreme Court, having covered the court for the Wall Street Journal from 1979 until 1991.

1. Law Day: May 1, 2015

Magna Carta: Symbol of Freedom Under Law
www.lawday.org

Perhaps more than any other document in human history, Magna Carta has come to embody a simple but enduring truth: No one, no matter how powerful, is above the law. In the eight centuries that have elapsed since Magna Carta was sealed in 1215, it has taken root as an international symbol of the rule of law and as an inspiration for many basic rights Americans hold dear today, including due process, habeas corpus, trial by jury, and the right to travel. As we mark the 800th anniversary of Magna Carta, join us on Law Day, May 1, 2015, to commemorate this “Great Charter of Liberties,” and rededicate ourselves to advancing the principle of rule of law here and abroad.

2. Magna Carta Traveling Exhibit

www.ambar.org/mctravelingexhibit

The American Bar Association has joined with the Library of Congress and its Law Library to present a special traveling exhibit commemorating the 800th anniversary of the sealing of Magna Carta. Curated by the Library of Congress, the exhibit features 16 banners, 13 of which reflect spectacular images of Magna Carta and precious manuscripts, books, and other documents from the Library of Congress’s rare book collections. The exhibit also incorporates a video showing the Law Librarian and the exhibit curator handling selected materials depicted in the exhibit and explaining their significance. Insights readers may see where the exhibit is stopping, or request a visit from the exhibit in their school or community.

3. Essay Contests

The ABA is partnering with National History Day and Sons of the American Revolution to offer prizes for Magna Carta–related essays written as part of these organizations’ annual programs.

National History Day
http://www.nhd.org/SpecialPrizeinfo.htm

A $1,000 ABA prize will be presented to the outstanding entries in each of the junior and senior History Day divisions that incorporate Magna Carta as an important building block in the advancement of the rule of law and of individual rights in the United States against the arbitrary exercise of governmental power.

Sons of the American Revolution

The topic of the essay shall deal with an event, person, philosophy, or ideal associated with the American Revolution, the Declaration of Independence, or the framing of the United States Constitution. Contestants may also choose a topic that relates to Magna Carta and its influence on the Revolution or one or more of the Founding Fathers. First prize is $2,000 and a commemorative medal.

4. Video Contest: What’s So Great About the “Great Charter?”

www.ambar.org/abavideocompetition

Students in grades 9–12 or equivalent are invited to create a video of not more than 15 minutes celebrating the 800th anniversary of the sealing of Magna Carta. Participants should use their videos to answer the title question: “Magna Carta: What’s So Great About the ‘Great Charter’?” Entries must be received by January 15, 2015.

5. Coming in 2015:

Icon of Liberty Under Law
www.iconofliberty.org

Icon of Liberty Under Law will catalog representations—documents, murals, public architecture, public monuments, historical sites—related to Magna Carta. Video interviews with scholars and curators will complement images, while virtual tours and short essays will interpret the featured images and places. The site will also invite visitors to propose their own ideas and “blueprints” for imagined commemorative art and memorials that recognize Magna Carta’s contributions to our law, culture, and governance.
WHAT’S ONLINE?

Download Teaching Resources—
All of the handouts and other teaching materials referenced in this issue are available in this one location. Go get them!

Dive Deeper—
Find articles, exhibits, and podcasts related to Magna Carta. Discover something new, guaranteed.

Nominate “Profiles”
Know an innovator in the classroom? A dynamic expert in the field? Please let us know.

Connect
Link to the sites for the worldwide commemoration of Magna Carta’s 800th anniversary. You will want to celebrate!

We Need Your Vote: Magna Carta Posters and Teaching Toolkit
Vote on the Magna Carta poster that provides the most teaching opportunities for your classroom, and then request your free resource packet for teaching about Magna Carta. Votes must be in by December 31, 2014, but the resource packet will be available throughout 2015.
www.ambar.org/magnacartavote

Tell Us What You Think!
Propose topics for future issues, share your ideas for the classroom, or tell us your favorite feature of the magazine.

Stay Connected!
For instant updates, become a fan of the ABA Division for Public Education on Facebook and follow us on Twitter! Just click on the Facebook and Twitter icons at www.insightsmagazine.org.
Coming in the next issue

Law and the Workplace

What are your rights at work? How does law shape the American workplace? As the “Push for 15” movement gains steam, *Insights* explores the role that law has played, and is playing, in the modern job.