Magna Carta at 800:
Ten Key Questions Answered

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In 2015, we will mark the 800th anniversary of Magna Carta. For Americans, this iconic document is a formative element of our own legal and political heritage. In this column, Lessons on the Law offers an overview of the “Great Charter,” why it is significant, and what you and your students should know about it. It also highlights useful instructional and other resources you can use to teach about Magna Carta.

1. What is Magna Carta? Magna Carta, which is Latin for “Great Charter,” dates to medieval England in 1215, during the reign of King John. The 1215 issue, approximately 4,000 words, was written in Latin on a single piece of sheepskin parchment. The concessions granted by King John in writing in Magna Carta were unprecedented and of great historical significance. Unquestionably, the most frequently cited and influential part of the 1215 Magna Carta is chapter 39, which reads: “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 39’s granting of rights to “free men” represented about half of English society in 1215, so, even in its first issue, Magna Carta extended beyond privileges for the nobility.

2. How is Magna Carta connected to the “rule of law?” Magna Carta’s most powerful and significant symbolic expression is its association with the “rule of law.” What is meant by government under the rule of law is often characterized as “constitutionalism.” The corresponding core political value is that “no ruler is above the law” and that the ruler does not possess, even formally, unbridled or unconstrained power. Rule of law is often contrasted with arbitrary (literally, “willful”) rule—rule that is capricious, unprincipled, and inconstant—hence, tyrannical. Granting, if not guaranteeing, certain political and legal rights in writing is also characteristic of governance under the rule of law. We can see how Magna Carta, even in its 1215 first issue, would be associated in emerging form with these “rule of law” values and attributes. The meanings we invest in the “rule of law” are not fixed, but as they have been and will continue to be shaped by our evolving legal culture, Magna Carta will remain a potent icon of that constitutional tradition.

3. How did Magna Carta come about? What are its roots? Magna Carta first emerged from an early thirteenth-century political crisis, an open conflict between the English king and rebellious aristocrats, lay and clerical (e.g., barons and bishops). John, whose reign began in 1199, was the quintessential failed king, often described in later popular legend as “bad King John.” While there have been multiple Georges, Henrys, Edwards, and Elizabeths over the centuries on the British throne, there has been only one John. No other monarch has wished to be seen as following in his footsteps. What drove King John in the period leading up to Magna Carta was a desperate—and unsuccessful—effort to reclaim his Norman lands in France. At the Battle of Bouvines in 1214, John suffered a final disastrous defeat, which led to the rebellion that, in turn, resulted in the first Magna Carta. The 1215 document that became known as Magna Carta was the result of weeks, if not months, of negotiations. Its original purpose was to be, in effect, a peace treaty between the king and his noble subjects. But the negotiations between King John and the barons that were hammered out in 1215 were practically dead on arrival. Pope Innocent III, who King John had accepted as his overlord, annulled the charter within 10 weeks of its issuance. Civil war in England began in earnest. Only John’s sudden demise in October 1216 saved Magna Carta for posterity. The charter was reissued that year 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 royal charter was substantially revised and abbreviated from the original 1215 version.

4. Where is Runnymede? Why is it a significant place in the story of Magna Carta? Runnymede is located along the Thames River near Windsor Castle, about 20 miles from London. The last line of the 1215 Magna Carta references the place and time of the document’s production: “in the meadow that is called Runnymede between Windsor and Staines on the fifteenth day of June in the seventeenth
year of our reign.” “Windsor” signified King John’s monarchical authority—the site of the castle first constructed by William the Conqueror and still today the most venerable British royal residence. “Staines” was where the rebellious barons had assembled on the eve of the Runnymede meeting and it was on the main road to London. Hence, Runnymede represented neutral turf between parties in conflict. Today, the meadow is public land held by the National Trust.

5. What is an “original” Magna Carta? Where are originals?
As with other significant legal documents, there is no single original Magna Carta. What makes a Magna Carta document an “original?” The answer depends in part on what working definition of the term itself we accept. Prior to meeting at Runnymede, a “first draft” of Magna Carta was produced and sealed by the king to signify his royal assent. This is called the Articles of the Barons and is housed in the British Library. Magna Carta manuscripts were produced as a set of multiple originals, not as copies. These are referred to as “engrossments” or “exemplifications.” It is believed that each time Magna Carta was issued in the thirteenth century, about 40 engrossments were produced for distribution throughout the English counties. Each was produced—by hand—by the royal chancery office and officially sealed on behalf of the king. The products of this medieval English office were something like a cross between a presidential bill signing and a publication from the Government Printing Office.

So, how many original Magna Carta engrossments still exist? The short answer is 17. Of these, four are from the year of first issue, 1215, one from 1216, and four more each from 1217, 1225, and 1297. It is the 1225 Magna Carta—not 1215—that was incorporated into the English statute books, beginning in 1297. Today, only two Magna Cartas are outside England, both dating from Edward I’s issuance in 1297. These two are in Canberra, Australia, and Washington, D.C.—the latter was purchased by David Rubenstein for $21.3 million in 2007 and is on loan for public display at the National Archives. After 1300, Magna Carta was never again issued—physically produced and disseminated—but simply “confirmed.”
6. How is Magna Carta organized? What are its “chapters?”
In its original Latin issues, Magna Carta was not numbered or explicitly organized. The eighteenth-century English jurist William Blackstone compared the issues of 1215 and 1225 and basically developed the naming convention for the provisions of Magna Carta that we use today. Rather than referring to clauses or paragraphs, each of the short sections is commonly called a “chapter.” The 1215 Magna Carta has 63 chapters and the shorter 1225 version, just 37. Chapters that appear in both issues are numbered differently. For instance, chapter 39 in the 1215 issue is chapter 29 in the 1225.

7. What role did Magna Carta play for the American founders?
Appeals to, and textual citations of, Magna Carta have been an important part of the American constitutional tradition since the colonial period. That is because “Magna Carta” came to be seen as a foundational element of British—and hence American colonial—constitutional governance and its associated common-law tradition. From the Virginia Charter and the Mayflower Compact on to other colonial charters and early state constitutions, pre-revolutionary Americans sought to ground their basic political rights as British subjects in written agreements. Magna Carta so imagined could represent the original written constitutional model. For American colonists who began to resist British parliamentary authority in the 1760s, “Magna Carta” had a powerful appeal in defense of “British” liberties. A prime example was found in James Otis’s 1761 legal challenge to writs of assistance, authorizing general search warrants without specific cause. By 1775, the commonwealth of Massachusetts, in the spirit of resistance and rebellion to British authority, would temporarily remake its colonial seal. The new seal, which lasted only until 1780, depicted a man holding a sword in one hand and “Magna Charta” in the other. However, as resistance actively turned to declaring independence—and, subsequently, to drafting new constitutions for a new nation legitimated on the basis of popular sovereignty (“We the People”—a fundamental shift in American political discourse occurred. Magna Carta lost its immediate broad appeal as a constitutional model in revolutionary America. For instance, Thomas Paine in Common Sense and Alexander Hamilton in Federalist 84 invoke Magna Carta, but as an anachronistic model to be replaced, not emulated.

8. How has Magna Carta been referenced by the U.S. Supreme Court?
Magna Carta has been cited in over 170 U.S. Supreme Court opinions, according to American University law professor Stephen Wermiel, who analyzed 224 years of U.S. Reports of Supreme Court decisions. Of these 170 cases, 28% concerned due process of law; 13%, trial by jury; 8% concern how Magna Carta influenced American constitutionalism; 6% each treat antitrust matters and habeas corpus; 5% concern other civil rights and liberties; and 4% each treat cruel and unusual punishment and excessive fines.

9. What are misconceptions about Magna Carta?
Reflected in the rear-view mirror 800 years forward, Magna Carta is often seen as if it were already “fully grown” at its birth. Some 800 years of historical development, textual interpretation, and myth making are simply condensed into a story of origins: Magna Carta at Runnymede on June 15, 1215. “Magna Carta” is both text and symbol and, as such, cannot be limited to the place and time of its historical origin.
Perhaps the most often stated specific misconception—indeed, outright inaccuracy—is that King John “signed” Magna Carta at Runnymede in 1215. Magna Carta was sealed and not signed. Yet, this (mis)conception of Magna Carta as signed is actually an interest-
ing and important part of its history—that aspect that concerns how and why it has been symbolically represented in images and in text. To suggest, however inaccurately, that Magna Carta was signed in 1215 imagines it as a foundational document of national governance, legitimated in an act of defiance, assent, or negotiation. We may think of our own American founding documents, the Declaration of Independence and the U.S. Constitution, which would not be what they are were they not “signed.” In short, it is important to understand that “Magna Carta” represents far more than one historical event from 800 years ago. It also signifies Magna Carta as written document, whose medieval text has been interpreted and vested with meanings its authors could never have intended, such as connecting “law of the land” (legem terrae in Latin) to the later concept of due process of law or integrating “habeas corpus,” which has a separate intellectual history, with Magna Carta itself. Moreover, it is Magna Carta as symbol and icon that has been the expression of much of its power and significance through eight centuries.

10. What “short” story should you tell your students about Magna Carta?
The story of Magna Carta begins at Runnymede in England in 1215, but it does not end there. It is a story that runs 800 years forward and is still unfolding. It is the story of our rule of law tradition and of how our American system of government is derived from our English legal heritage. In 2015, we should commemorate not only Magna Carta in 1215, but Magna Carta since 1215.

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