

June 19, 2015

Why We Should Care About Magna Carta

By: Ian Holloway

I write this just as I'm returning to Canada from Runnymede, England. The Queen was there, as were the Duke of Edinburgh, the Princess Royal, and Prince William. The five of us — along with a thousand others from all over the world — were gathered to commemorate, and to celebrate, the 800th anniversary of the sealing of Magna Carta by King John on June 15, 1215.

So what's the big deal? Why is it that a document that, as a British civil servant once described it, is nothing more than an archaic piece of paper with no intrinsic value, should attract such attention?

After all, while bits of it continue to have the force of law, the majority of Magna Carta's provisions reflect little more than an incoherent jumble of individual grievances from King John's nobles. Moreover, John himself showed his disdain by renegeing on the deal a mere nine weeks later. And the Pope formally nullified it as soon as he became aware of its terms.

Oliver Cromwell — someone not normally known for his sense of humour — called it “Magna Farta.”

So why were a thousand of us assembled in an English country meadow this morning?

It's because Magna Carta has come to stand for much more than it actually was. Magna Carta the reality was simply one more tawdry nail in the coffin of the disastrous reign of the man who was perhaps the worst king in English history. Magna Carta the illusion is one of the most important events in the evolution of our constitutional system.

What gave Magna Carta its enduring life was not the events of 1215, but rather the constitutional tumult that beset England 400 years later, during the jockeying between the King, Parliament, and the courts for power in the aftermath of the end of the Tudors and the ascension to the English throne of the Scottish house of Stuart.

The Tudors — chiefly Henry VIII and Elizabeth I — had overseen a significant decentralization of state power. When the Scottish King James assumed the English throne and tried to assert absolute authority, the institutions of government pushed back. And the tool they chose to justify their resistance was Magna Carta.

The hero of the story — assuming that one likes our current vision of the rule of law — was the jurist Sir Edward Coke, who served as chief justice between 1606-16. During that time, he almost single-handedly brought Magna Carta back to life.

Magna Carta's language was feudal. Coke translated it for a post-feudal world. It was he who declared that Magna Carta "hath no fellow," and it was he who held conclusively that because of Magna Carta, the king himself was under the law. It was Coke who gave legal meaning to the hapless John's capitulation to the barons.

Coke rewrote history in a way that suited his political ends, and in so doing, he made Magna Carta seem relevant to a society that by now had developed a concept of constitutionalism.

Magna Carta is an icon. Few can fail to be stirred by clause 40, for example, which provided that: "To no one will we sell, to no one will we deny right or justice." Or by clause 39, which talked about judgment by one's equals.

But the fact is in the 300 years following John's reign, Magna Carta was not considered particularly important. Measured against its own text in its own time, Magna Carta was a failure. But what it became in the Stuart period was a tool; a tool to legitimize judicial review of royal action. And a very successful tool it proved to be.

In law as in comedy, timing is everything. And Coke's time on the bench had the good fortune to coincide with the beginning of British colonization of the New World. As the first colonists left England in search of greater freedom, and as they later nurtured a full slate of grievances against the Crown, Coke's formulation that the king was under the law proved to be a useful justification both for declaring independence and for enshrining a Bill of Rights a few years afterwards.

That's why Americans today revere Magna Carta more even than the English. Indeed, the monument to Magna Carta at Runnymede was actually paid for and dedicated by the American Bar Association.

Typically for Canada, our history with Magna Carta has been more subdued. Americans like to wear their iconography on their sleeves. We generally don't. But even unacknowledged, Magna Carta was — and is — an important tool in Canada, too. For without the tradition of judicial assertiveness it gave rise to in the United States, it is difficult to imagine that our own *Charter of Rights and Freedoms* would have taken on the life it has.

That's why we should be conscious of Magna Carta. When we adopted our own *Charter* in 1982, we enshrined Coke's picture of Magna Carta. How can we not make sure that we actually understand it?

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