

Magna Carta

Background

From

<http://edsitement.neh.gov/lesson-plan/magna-carta-cornerstone-us-constitution#sect-background> (June 11, 2013)

At the death of his brother, Richard the Lionhearted, John assumed the throne of England, intent on exercising power to achieve his own selfish ends. To fund military campaigns in France, he extracted exorbitant fees from nobles, who, in turn, raised the rents imposed on their tenants. At the same time, John reduced the lords' customary powers over those tenants, restricting, for example, their power to hold court for those living on their feudal lands. He attempted to influence church elections and confiscated church properties, alienating the powerful ecclesiastical establishment and depriving the poor of the only source of relief available to paupers. He restricted trading privileges traditionally granted to London's merchants and increased their taxes, alienating this constituency as well.

King John's tyrannical practices extended to demanding sexual favors from the wives and daughters of his barons and to imposing brutal punishments on individuals who challenged his authority. His unbridled exercise of power, coupled with the fact that his administration was both corrupt and inefficient, ultimately led the feudal lords to challenge his authority. Rebellion against the king's rule surfaced in 1213, when England's nobles refused to support him in yet another war in France. The Archbishop of Canterbury, Stephen Langton, sided with them. As animosity mounted, the barons grew more determined to reclaim their rights and in early May 1215 renounced their allegiance to the king. Initially, John refused to meet with them, but he changed his mind when London's merchants opened the gates of the city to the nobles, demonstrating that they, too, were prepared to challenge the king's authoritarian rule. Threatened with a violent overthrow, John had little choice but to meet with the barons and agree to the terms they presented at Runnymede. The original draft was replaced four days later with a slightly amended version that extended rights to freemen (about 10% of the population at that time) as well as nobles. That official version, though sealed by the king, was annulled on August 24, 1215 by Pope Innocent II, who threatened the barons with excommunication if they attempted to enforce it.

The **Great Charter** agreed to by King John was part of a movement in both England and Western Europe to restrict the powers of the monarch and assert the rights of the politically influential, i.e. the nobles. The Magna Carta laid the foundation for government based on the rule of law in Great Britain. By the end of

the 13th century, England had a representative parliament and had come to recognize Magna Carta as a "higher law." The first step toward the growing importance of this document was taken by John's son and successor, Henry III. The new king's regents—Henry was only nine when he inherited the throne—re-issued the charter in 1216 and 1217 in an effort to win support for the young monarch. Henry himself issued it again in 1225 when he took personal control of the country. All three re-issues contained changes, including omission of the clauses in the original that had provided for enforcement of the agreement by a council of barons. The 1225 version is considered the final version.

Although English monarchs continued to abuse their powers, they also came to recognize the need for baronial support. Henry III instituted the practice of bringing his knights together to obtain approval for new taxes. This meeting, known as "parliamentum," had become customary by 1254. A decade later, membership had expanded to include representatives from cities and boroughs, and by the end of the century, members of the commons and inferior clergy were invited to participate. Despite the fact that groups within English society had gained a voice in financial decision making, powerful barons continued to protest against expensive foreign wars, the failure of the king to respect established laws and customs, and infringement of basic liberties. A turning point came in 1297 when **King Edward I**, known as the **English Justinian**, agreed to the Charter of Confirmation. This document established parliament as a truly representative body by requiring common consent to all tax measures, and it enhanced the importance of Magna Carta by declaring all judgments contrary to this document to be null and void. Recognition of Magna Carta as a higher law ultimately served as precedent for the assertion that the United States Constitution is the "supreme law of the land" and for judicial power to declare statutes unconstitutional.

Magna Carta took on greater significance in the 17th century as a result of the weight given to this charter by **Edward Coke** (pronounced "cook"), one of the leading legal scholars of that century. In 1610, in what is known as *Bonham's Case*, Coke reiterated the claim that the Great Charter represented a higher law. James Otis would cite *Bonham's Case* in his attack on the Stamp Act over 150 years later. **Thomas Paine** would cite the principle in *Common Sense*, as would leading colonists in their attacks on British rule.

In the meantime, colonial charters issued throughout the 17th and 18th centuries as well as political treatises published by the Commonwealthmen—English libertarians whose radical views influenced the thinking of Enlightenment thinkers in America—reinforced the significance of Magna Carta. Not surprisingly, fundamental rights cited in the Great Charter—habeas corpus and due process of law—found their way into the Constitution and the Bill of Rights as well as virtually every state constitution.

Throughout American history, the rights associated with Magna Carta have been

regarded as among the most important guarantees of freedom and fairness. However, these rights have not always been applied equally. Discrimination based on racial and ethnic differences has, for example, resulted in unfair practices. Perceived threats to national security have been used to justify withholding certain rights or have influenced the enforcement of constitutional guarantees. Despite or, in some cases, because of these shortfalls, the fundamental principles have remained very much a part of the American experience, finding expression in judicial decisions, legislation, news reports and editorials, as well as in the thinking of informed individuals.

Excerpts from a translation of the Magna Carta

From <http://avalon.law.yale.edu/medieval/magframe.asp>

Preamble:

John, by the grace of God, king of England, lord of Ireland, duke of Normandy and Aquitaine, and count of Anjou, to the archbishop, bishops, abbots, earls, barons, justiciaries, foresters, sheriffs, stewards, servants, and to all his bailiffs and liege subjects, greetings. Know that, having regard to God and for the salvation of our soul, and those of all our ancestors and heirs, and unto the honor of God and the advancement of his holy Church and for the rectifying of our realm, we have granted as underwritten by advice of our venerable fathers, Stephen, archbishop of Canterbury, primate of all England and cardinal of the holy Roman Church, Henry, archbishop of Dublin, William of London, Peter of Winchester, Jocelyn of Bath and Glastonbury, Hugh of Lincoln, Walter of Worcester, William of Coventry, Benedict of Rochester, bishops; of Master Pandulf, subdeacon and member of the household of our lord the Pope, of brother Aymeric (master of the Knights of the Temple in England), and of the illustrious men William Marshal, earl of Pembroke, William, earl of Salisbury, William, earl of Warenne, William, earl of Arundel, Alan of Galloway (constable of Scotland), Waren Fitz Gerold, Peter Fitz Herbert, Hubert De Burgh (seneschal of Poitou), Hugh de Neville, Matthew Fitz Herbert, Thomas Basset, Alan Basset, Philip d'Aubigny, Robert of Roppesley, John Marshal, John Fitz Hugh, and others, our liegemen.

1. In the first place we have granted to God, and by this our present charter confirmed for us and our heirs forever that the English Church shall be free, and shall have her rights entire, and her liberties inviolate; and we will that it be thus observed; which is apparent from this that the freedom of elections, which is reckoned most important and very essential to the English Church, we, of our pure and unconstrained will, did grant, and did by our charter confirm and did obtain the ratification of the same from our lord, Pope Innocent III, before the quarrel arose between us and our barons: and this we will observe, and our will

is that it be observed in good faith by our heirs forever. We have also granted to all freemen of our kingdom, for us and our heirs forever, all the underwritten liberties, to be had and held by them and their heirs, of us and our heirs forever.

* * *

6. Heirs shall be married without disparagement, yet so that before the marriage takes place the nearest in blood to that heir shall have notice.

7. A widow, after the death of her husband, shall forthwith and without difficulty have her marriage portion and inheritance; nor shall she give anything for her dower, or for her marriage portion, or for the inheritance which her husband and she held on the day of the death of that husband; and she may remain in the house of her husband for forty days after his death, within which time her dower shall be assigned to her.

8. No widow shall be compelled to marry, so long as she prefers to live without a husband; provided always that she gives security not to marry without our consent, if she holds of us, or without the consent of the lord of whom she holds, if she holds of another.

9. Neither we nor our bailiffs will seize any land or rent for any debt, as long as the chattels of the debtor are sufficient to repay the debt; nor shall the sureties of the debtor be distrained so long as the principal debtor is able to satisfy the debt; and if the principal debtor shall fail to pay the debt, having nothing wherewith to pay it, then the sureties shall answer for the debt; and let them have the lands and rents of the debtor, if they desire them, until they are indemnified for the debt which they have paid for him, unless the principal debtor can show proof that he is discharged thereof as against the said sureties.

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17. Common pleas shall not follow our court, but shall be held in some fixed place.

18. Inquests of novel disseisin, of mort d'ancestor, and of darrein presentment shall not be held elsewhere than in their own county courts, and that in manner following; We, or, if we should be out of the realm, our chief justiciar, will send two justiciaries through every county four times a year, who shall alone with four knights of the county chosen by the county, hold the said assizes in the county court, on the day and in the place of meeting of that court.

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20. A freeman shall not be amerced for a slight offense, except in

accordance with the degree of the offense; and for a grave offense he shall be amerced in accordance with the gravity of the offense, yet saving always his "contentment"; and a merchant in the same way, saving his "merchandise"; and a villein shall be amerced in the same way, saving his "wainage" if they have fallen into our mercy: and none of the aforesaid amercements shall be imposed except by the oath of honest men of the neighborhood.

21. Earls and barons shall not be amerced except through their peers, and only in accordance with the degree of the offense.

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28. No constable or other bailiff of ours shall take corn or other provisions from anyone without immediately tendering money therefor, unless he can have postponement thereof by permission of the seller.

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30. No sheriff or bailiff of ours, or other person, shall take the horses or carts of any freeman for transport duty, against the will of the said freeman.

31. Neither we nor our bailiffs shall take, for our castles or for any other work of ours, wood which is not ours, against the will of the owner of that wood.

32. We will not retain beyond one year and one day, the lands those who have been convicted of felony, and the lands shall thereafter be handed over to the lords of the fiefs.

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38. No bailiff for the future shall, upon his own unsupported complaint, put anyone to his "law", without credible witnesses brought for this purposes.

39. No freemen shall be taken or imprisoned or disseised or exiled or in any way destroyed, nor will we go upon him nor send upon him, except by the lawful judgment of his peers or by the law of the land.

40. To no one will we sell, to no one will we refuse or delay, right or justice.

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45. We will appoint as justices, constables, sheriffs, or bailiffs only such as know the law of the realm and mean to observe it well.

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61. Since, moreover, for God and the amendment of our kingdom and for the better allaying of the quarrel that has arisen between us and our barons, we have granted all these concessions, desirous that they should enjoy them in complete and firm endurance forever, we give and grant to them the underwritten security, namely, that the barons choose five and twenty barons of the kingdom, whomsoever they will, who shall be bound with all their might, to observe and hold, and cause to be observed, the peace and liberties we have granted and confirmed to them by this our present Charter, so that if we, or our justiciar, or our bailiffs or any one of our officers, shall in anything be at fault towards anyone, or shall have broken any one of the articles of this peace or of this security, and the offense be notified to four barons of the foresaid five and twenty, the said four barons shall repair to us (or our justiciar, if we are out of the realm) and, laying the transgression before us, petition to have that transgression redressed without delay. And if we shall not have corrected the transgression (or, in the event of our being out of the realm, if our justiciar shall not have corrected it) within forty days, reckoning from the time it has been intimated to us (or to our justiciar, if we should be out of the realm), the four barons aforesaid shall refer that matter to the rest of the five and twenty barons, and those five and twenty barons shall, together with the community of the whole realm, distrain and distress us in all possible ways, namely, by seizing our castles, lands, possessions, and in any other way they can, until redress has been obtained as they deem fit, saving harmless our own person, and the persons of our queen and children; and when redress has been obtained, they shall resume their old relations towards us. And let whoever in the country desires it, swear to obey the orders of the said five and twenty barons for the execution of all the aforesaid matters, and along with them, to molest us to the utmost of his power; and we publicly and freely grant leave to everyone who wishes to swear, and we shall never forbid anyone to swear. All those, moreover, in the land who of themselves and of their own accord are unwilling to swear to the twenty five to help them in constraining and molesting us, we shall by our command compel the same to swear to the effect foresaid. And if any one of the five and twenty barons shall have died or departed from the land, or be incapacitated in any other manner which would prevent the foresaid provisions being carried out, those of the said twenty five barons who are left shall choose another in his place according to their own judgment, and he shall be sworn in the same way as the others. Further, in all matters, the execution of which is entrusted, to these twenty five barons, if perchance these twenty five are present and disagree about anything, or if some of them, after being summoned, are unwilling or unable to be present, that which the majority of those present ordain or command shall be held as fixed and established, exactly as if the whole twenty five had concurred in this; and the said twenty five shall swear that they will faithfully observe all that is aforesaid, and cause it to be observed with all their might. And we shall procure nothing from anyone, directly or indirectly,

whereby any part of these concessions and liberties might be revoked or diminished; and if any such things has been procured, let it be void and null, and we shall never use it personally or by another.

62. And all the will, hatreds, and bitterness that have arisen between us and our men, clergy and lay, from the date of the quarrel, we have completely remitted and pardoned to everyone. Moreover, all trespasses occasioned by the said quarrel, from Easter in the sixteenth year of our reign till the restoration of peace, we have fully remitted to all, both clergy and laymen, and completely forgiven, as far as pertains to us. And on this head, we have caused to be made for them letters testimonial patent of the lord Stephen, archbishop of Canterbury, of the lord Henry, archbishop of Dublin, of the bishops aforesaid, and of Master Pandulf as touching this security and the concessions aforesaid.

63. Wherefore we will and firmly order that the English Church be free, and that the men in our kingdom have and hold all the aforesaid liberties, rights, and concessions, well and peaceably, freely and quietly, fully and wholly, for themselves and their heirs, of us and our heirs, in all respects and in all places forever, as is aforesaid. An oath, moreover, has been taken, as well on our part as on the part of the barons, that all these conditions aforesaid shall be kept in good faith and without evil intent. Given under our hand - the above named and many others being witnesses - in the meadow which is called Runnymede, between Windsor and Staines, on the fifteenth day of June, in the seventeenth year of our reign.

Definitions

Amerce - To impose a fine. Also to punish by fine or penalty.

Assize - A court, usually but not always, consisting of twelve men, summoned together to try a disputed case. They performed the functions of jury, except the verdict was rendered from their own investigation and knowledge and not from upon evidence adduced.

Burage - One of three species of free socage holdings. A tenure where houses and lands formerly the site of houses in an ancient borough are held of some lord by a certain rent.

Chattel - Personal property as opposed to real property. A personal object which can be transported.

Darrein Presentment - Writ of Assize when a man or his ancestors under whom he claimed presented a clerk to a benefice, who was instituted, and afterwards,

upon the next avoidance, a stranger presented a clerk and thereby disturbed the real patron.

Distrain - The act of taking as a pledge another's property to be used as an assurance of performance of an obligation. Also a remedy to ensure a court appearance or payment of fees etc.

Disseise - To dispossess or to deprive.

Escheat - Right of the lord of a fee to re-enter upon the same when it became vacant by the extinction of the blood of the tenant.

Intestate - To die without a will.

Mort d'Ancestor - Real action to recover a person's lands of which he had been deprived on the death of his ancestor by the abatement or intrusion of a stranger.

Novel Disseisin - Writ of Assize for the recovery of lands and tenements.

Praecipe - An original writ drawn up in the alternative commanding the defendant to do the thing required.

Scutage - Tax or contribution raised by someone holding lands by knight's service used to furnish the King's army.

Socage - A species of Tenure where the tenant held lands in consideration of certain inferior services of husbandry by him to the lord of the fee.