

IS MAGNA CARTA MORE HONOURED IN THE BREACH?

*They lumbered up to Runnymede;
And there they launched in solid line
The first attack on Right Divine —
The curt, uncompromising 'Sign!'
That settled John at Runnymede.*

The Reeds of Runnymede
Rudyard Kipling

In June 1215, King John met with rebel barons to grant a set of feudal, legal and administrative liberties. 800 years on the document signed is consistently cast as the foundational enshrinement of civil liberties in English law, guaranteeing the rights of the citizen against arbitrary actions of those in government.

However, some argue that Magna Carta is essentially obsolete now – and indeed was largely irrelevant to human rights issues from its conception. Faced with politicians lauding Magna Carta as underpinning 'British values' whilst doing little to impart confidence that the rights and freedoms they attribute to it remain protected, it is perhaps tempting to concede that the 'Great Charter' has become little more than a sound bite, to be wheeled out to appease the electorate much as John signed it to appease his barons.

This essay will submit that such a sceptical view of Magna Carta may well be the historically accurate stance. Despite this, criticisms of Magna Carta as a legislative document must not detract from our honouring the democratic concepts that the Charter has come to represent.

From a legislative perspective, Magna Carta has little direct impact nowadays. Only 3 of the original 63 clauses remain in force: these protect the freedom and supremacy of the Church of England (clause 1); 'old Liberties and Customs' of the City of London (clause 13); and, of course,

the illustrious *habeas corpus* accredited to clause 39. Clauses 1 and 13 are not overly pertinent to civil rights issues today and even present some difficulties - regarding same-sex marriage, for instance, the Church of England's official standpoint arguably contravenes certain liberties as the canonical law continues to ban such unions - implying that perhaps in civil rights terms, Magna Carta should not be honoured in the context of modern society. Clause 39 also has little bearing: it has not been directly relied upon in judgment since the early 1990s¹, and in those cases reference tended to be to the sentiment rather than any legislative power the clause held.

Contemporaneously, too, Magna Carta was more a lacklustre series of concessions than a 'Great Charter.' Pushed by largely self-interested barons keen to protect their status upon an entirely self-interested king who seemingly had no intentions of being bound by it (so much so that he had it annulled by the Pope a mere 10 weeks after the signing), the charter *prima facie* has little concern with civil liberties and far more with the wealthy and powerful protecting their wealth and power. The rights decreed were irrelevant to most people: it is argued that the term 'freeman' in clause 39 encompassed only around 6% of the population, 'libertas' in the monkish Latin of the middle ages referring to exclusive privilege. Further, despite unprecedented promulgation, the deed itself was written and circulated in Latin, a language that few barons could read or understand, let alone swathes of the largely illiterate population. Leaving aside socio-political arguments, the Charter brought in no substantial new provisions – only one contemporary account describes it as containing new law, all others presenting it as reiterating old laws and customs to ensure their observance. It is argued both that *habeas corpus* was already a recognised custom and that legislative enshrinement came about later with the Habeas Corpus Act 1679, rendering even the principle of lawful detention outside the remit of Magna Carta. In this light, Magna Carta appears quite impotent legislation, with little substantial value today.

¹ For instance, *ex p. Muboyayi* [1991] All ER 72; *ex p. Naghdi* [1990] 1 All ER 257

To view Magna Carta in such light, though, is to suspend it in a fabricated legislative vacuum. Magna Carta was celebrated by its contemporaries not only because of what it decreed but because of what it represented, '*The first attack on Right Divine*' that it has continued to represent ever since. Magna Carta has evolved to become in many ways its own 'Platonic form': an ideal, a symbol, rather than black-letter statute; an ideal that politicians and campaigners continue to allude to because of the power it carries. To the lawyer or the historian such evolution may seem to demonstrate some 'failure' on the part of the charter, but the Magna Carta symbol is not for lawyers or historians, it is for all people.

Human rights and civil liberties are more talked about now than ever before. Whilst we have come on leaps and bounds in recognising them, this progress is juxtaposed with a socio-political system that remains largely elitist and that in some sectors continues to systematically dismantle many hard-won rights. Now, more than ever, people must be aware of their inalienable rights and fundamental freedoms; now, more than ever, we must continue to uncompromisingly honour principles of democracy and equality. It is in this context that the story of Magna Carta is celebrated - and perhaps, with the legislative power of the statute itself long gone or largely irrelevant, it is only a story that we honour. As those in power continue to protect their own interests at great cost to others, and human rights violations continue both here in the UK and around the world, any promotion of people exercising their rights against those who wish to oppress them must be encouraged. Such oppression, of those with little power by those with much, is the foundation of every abuse of human rights around the world. Magna Carta is to be respected because in honouring its ideal, people honour a hopeful spirit of collective democracy and social justice; it is acknowledged that those in power must answer to those they represent, and so, 800 years on, *The whisper wakes, the shudder plays / Across the reeds at Runnymede.*