

A BRIEF FORAY INTO THE BRITISH PEOPLE FREEDOMS FUNDAMENTALS: MAGNA CHARTER

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Abstract: Marking the beginning of a new stage in the evolution of the society, an evolution of mentalities, of the political power of social classes, a turning point in the transition from feudalism to modern world, in a moment when modernism was at centuries distance, Magna Carta is a document of an astounding modernity, a document that foresees, announces the importance of what human rights will be centuries later. Our objective is to take a closer look on this crucial document for the European civilisation from the point of view of the human rights it foresees, at a many centuries distance from the modern world. Equally, to briefly analyze the beginning of the law terminology.

Keywords: nobility, Runnymede, English Parliament, evolution, terminology, language

Introduction. The Document and Its Legacy

Magna Carta is a key document for European history and civilization. It marks the beginning of a new stage in the evolution of the society, an evolution of mentalities, of the political power of social classes, a turning point in the transition from feudalism to modern world, in a moment when modernism was at centuries distance. "The Magna Carta is on of the most famous and most important documents ever written"(online source¹). For the period in which it was conceived, Magna Carta is a document of an astounding modernity, a document that foresees, announces the importance of what human rights will be centuries later.

„Written in Latin, the Magna Carta (or Great Charter) was effectively the first written constitution in European history. Of its 63 clauses, many concerned the various property rights of barons and other powerful citizens, suggesting the limited intentions of the framers. The benefits of the charter were for centuries reserved for only the elite classes, while the majority of English citizens still lacked a voice in government. In the 17th century, however, two defining acts of English legislation—the Petition of Right (1628) and the Habeas Corpus Act (1679)—referred to Clause 39, which states that “no free man shall be...imprisoned or disseised [dispossessed]... except by the lawful judgment of his peers or by the law of the land.” Clause 40 (“To no one will we sell, to no one will we deny or delay right or justice”) also had dramatic implications for future legal systems in Britain and America” (online source²)

At the beginning of the 13th century, England is ruled by a king whose mistakes start to be mirrored in military losses as well as territorial losses and the Royal Treasury finds itself with burdensome debts of war which trigger the imposition of new taxes and unprecedented increase of the existing ones.

The English nobility reached the verge of their patience and the tension between the nobles and the King John, (nicknamed because of the territorial losses of his time, Lackland

¹ <http://www.customessayemeister.com/customessays/History:%20European/3942.htm>

² <http://www.history.com/topics/british-history/magna-carta>

(Without Land), reached a peak when, in the wake of the dispute with regard to the election of the new Archbishop of Canterbury, part of the English territory is declared a papal possession. King John is forced to pay for it as a feudal possession, the English ownership being accepted in return for an annual amount paid to the Pope in Rome.

The uprising breaks out in April 1215, the forces representing the noble families of England occupying London on June 10. The King is obliged to accept a compromise, signing on 15 June 1215, on the plain of Runnymede, the so called "articles of the barons", also known in history as the "Magna Carta Libertatum," Great Charter of freedoms, substantially amended in 1225, under the reign of Henry III.

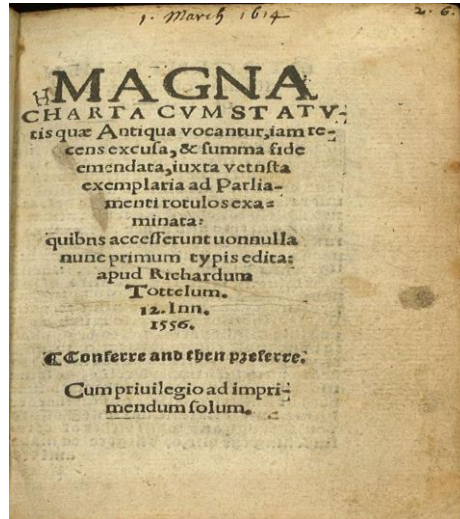
Magna Carta between political document and sources of power

The Magna Carta (the abbreviated name of the famous regulatory document) means the document which lay the foundations for modern constitutional political systems of Europe. Its emergence marked the following switches: for the first time in history a monarch's power is limited by a regulatory legal document, accepted and signed by the monarch; The Grand Council, established through deliberative discussions, according to the Magna Carta, can be considered an incipient English Parliament and the first European legislative institution. The Act of Justice is no longer considered the prerogative of the Royal institution, the Court including jurors from now on and the freedoms of the people guaranteed by the Charter. Although originally intended as a document stating freedom from Royal power, the Magna Carta has come to be reinterpreted in the 17th century, contributing to the formulation of political enlightenment principles.

The Magna Carta, like the Domesday Book, is considered one of the most important documents to have been written during the Middle Ages, and it has since had a great impact on English law and the society. The Magna Carta was a series of written promises between the king and his subjects that as the ruler of the country he would govern England and preside over its people according to the customs set out by feudal law (Simon Newman, *Magna Carta*, online source³)

Magna Carta has as its main topic the struggle for political power and economic benefits, between two factions: the King along with his supporters, and a coalition of the Peerage. The confrontation between the barons and the King's partisans Coalition resulted in the victory of the former, which were saved, by force of arms, of a total bankruptcy and loss of political influence. The 63 articles of the document reflects a society plagued by abuses of the Royal Court and the endless economic and military bonds of vassals against seniors, inference on the hierarchical ladder up to the King.

³ <http://www.thefinertimes.com/Middle-Ages/magna-carta.html>



Online source: <http://www.socialstudiesforkids.com/articles/worldhistory/magnacarta.htm>

Magna Carta reflects the centralizing tendencies of the antagonism coming from royalty, both economically and politically, and aspirations of the nobles to preserve intact the sources of power, that is their feudal domains. In order to reduce the power of the Royal institution, the victorious barons, introduced the special clause according to which the monarch loses the right to establish new taxes and has the obligation to ask in any circumstance *the auxilium* (material and financial) from his subjects.

Article 12 provides for only three situations in which the King has the right to demand money without consulting the Council: the redemption of his own person, in case of capture; the eldest son's entry into the ranks of Knights, and the marriage of the eldest of his daughters. The King can ask for a "reasonable sum in these situations.

Article 61 is the most important, from the point of view of limiting the Royal power, because it provides for the establishment of a Council of 25 members elected from the ranks of the barons, to supervise the correct application of the provisions of the Magna Carta and intervene in case of infringements thereof. Where a breach of the provisions of the Convention was brought to the attention of four of the 25 Council members, they were entitled to request a repair of the King, and if it does not come within 40 days, the whole Council is convened, which could put into practice the repressive measures of the King,"with the help of the whole community of the country". Among the repressive measures was the seizure of Royal possessions and deprivation of the right to exercise authority.

All British subjects receive free right to swear allegiance to the Council, in its attempt to achieve their goals. Basically, these clauses legalize what can be called today a campaign of civil disobedience, by moving the source of legitimization of political power from the King to the Council.

The most important feature of the political system proposed by Magna Carta lies in its redefinition of the legitimacy of Royal power by introducing a deliberative institution and control of the King. After the compromise on the Runnymede plain, the King enters in a contractual relation with the Council, thus announcing the contractualist theories that modern concepts of State are based on, even though Magna Carta refers only to a contract between the King and nobles.

The establishment of new taxes and regulation of existing competencies are decided only by official meetings of nobles and clergy, which are to be convened periodically, in accordance with *article 14*. We note the emergence of deliberative bodies, two of which will evolve over decades in the two chambers of the English Parliament.

Thus, one of the prerequisites for the uprising of the nobles was the fact that the right to a fair trial not only was not provided, but it was almost entirely neglected, so “Magna Carta redefines the legal foundations of justice” (Barbu-Chirimbu, Chirimbu, 2014:34)

Article 17 provides for court processes a different location of the Royal Court, separate from the power of the monarch. The procedure for holding meetings of judgment is also modified. Two judges were to be sent in every county four times a year, along with four Knights elected by the County, they were going to carry out processes with participation of local jurors. Through these new rules, the institutionalization of Justice is done for the first time in Europe.

In accordance with *articles 38 and 39*, no English subject will be summoned to court by a journal without being brought to trial in support of the allegations made, and his physical and moral integrity, in addition to legal punishment, is guaranteed.

Article 23 prohibits any Royal servant to exert power in the legal sphere, the latter being reserved to the judges.

Finally, *article 40* provides that no English subject may not denied access to justice.

At a closer look, we see in the text of Magna Carta an approximate formulation of essential concepts in modern justice, such as the presumption of innocence or the Division of the judiciary from the Executive and legislative. Firstly the fact that the meetings were to be held in different frame than the Royal Court, the residence of the King, then, no involvement in the work of judges, King demonstrates a fundamental change of the perspective of Justice and its role in society.

Of course, we cannot talk about a real separation of powers for that time, but the fact that such a compromise was worked out and implemented, being, in fact, the foundations of modern justice, could not remain without sequels in the following centuries.

The freedom of the English church, introduced by Article 1 of the document, is historically and politically, the most important of liberties established by Magna Carta. The most important institution of the medieval society was formally removed from under the Royal authority, and be given the right to govern by itself, the focus being on the non-interference in the election from the State institutions within the Church. As in the case of the Great Council, we can talk about an antecedent of the modern principle of separation of Church and State.

In addition to the rights which relate exclusively to the feudal era realities, it is worth mentioning the clause prohibiting the Crown to charge from a vassal, an amount greater than that to which it is due. For that era, it was a clause to protect property in the face of abuse to the authorities. The same clause was extended also in the case of relations between nobles.

Article 38 allows the rational use of force for the protection of personal property. The right to the property and its protection is therefore guaranteed by Magna Carta.

The Language of Magna Carta. Some Terminological Aspects.

The Magna Carta was a first attempt to separate the powers of the legislative body, the legislative body and the executive body.

One of the most important and still used phrases that occur in the Magna Carta (here in a translation into English) is "due process of law". It originated in a 1354 translation from Latin and it represents the first instance in history when the government – king John in this case – was openly declared to be "under the law", that is to be, as all the other people inhabiting England, supposed to obey the law and not only embody the law. In other words, the king was no longer empowered to modify the fundamental expression, the core meaning of legislation.

It is important to add, at this point of the paper, that Magna Carta was preceded by other documents expressing more or less, in an incipient phase, the same ideas. The Charter of Liberties (also called the Coronation Charter) of 1100 is a document by which King Henry I of England limited his own powers over church representatives and nobility.

The language of Magna Carta is deliberate and precise. For the first time in history, it is the liberties, not the customs that are predominant. The word *consuetudo* is used in the Charter to describe the jurisdictional, legal and financial relationships between lord and vassal. While the *consuetudines* of 1164 were associated with *dignitates*, those of 1215 were associated with *libertates*.

„We have to puzzle out what it means and meant. More important, our materials are the work of men who were themselves puzzling it out, using it to fit context and circumstance, to convey intentions and impressions, to define, to stake out claims, to defeat and counter arguments. Language enhanced disputes; one man's **auxilium** was another's **tallagium**. Above all language was malleable. It demanded interpretation and reinterpretation. It allowed misinterpretation. It lasted. It is this world that we enter with Magna Carta" (Ellis Sandoz, *The Roots of Liberty: Magna Carta, Ancient Constitution, and the Anglo-American Tradition of Rule of Law*, 1993, online source⁴)

By 1225, Magna Carta represented two important conceptual elements in the field of legislation. First, it was a grant of liberties and secondly, it was a legislative act. On the one hand, people and communities could appeal to it against abusive acts of government and on the other hand it expressed governmental procedures and established legislation that courts of law were supposed to follow and enforce.

Echoes and effects of Magna Carta

During the centuries that followed the signing of the document from Runnymede, Magna Carta has gone through periods in which it was awarded the minimum importance, and many of its provisions ignored. During the reign of Henry VIII, it begins to be used again in jurisprudence, but the real "rediscovery" of the document takes place during the Elizabethan era in the second half of the 16th century, when attempting to demonstrate the ancient origins of the English Parliament and alleged Roman origin, in order to legitimize the English rising State as one of the most advanced in Europe.

⁴ <http://oll.libertyfund.org/titles/2180>

The lawyer of the early English 17th-century Edward Coke interpreted Magna Carta from a new perspective, arguing that its provisions should apply to all subjects of the Kingdom, and not just nobles. This was the beginning of a new period for the effective implementation of the provisions of the Charter, which shall remain in force until the 19th century, when many of them were abolished leaving in force today only clauses 1, 29 and 38, in England and Wales.

Edward Coke is one of the artisans of the Petition of rights, made in 1628 and addressed to King Charles I, a petition which refers to the violations of several articles of the Magna Carta, from imposing taxes without the Parliament's consent to the violation of the right to property and unfair arrests.

During the civil war, the Parliament used Clause 61, as a source of legitimation and claim the power in the struggle with the royalists. After the proclamation of the Republic, a new deterioration of the original message occurred, the freedoms and rights being reported to the State institutions in general, and not to the King.

The Formulation in 1765 by William Blackstone of the doctrine of parliamentary sovereignty, justified by the necessity that not only one of the centers of power shall hold absolute supremacy, started the debate on Parliament's right to limit or cancel the provisions of Magna Carta. Blackstone stated, however, felt that the Parliament cannot override the rights and freedoms declared in 1215 on the Runnymede plain.

In 1828, one of the articles of the document is abolished, leading to the formation of a protest movement called *cartism*, which demanded in an exaggerated way the freedoms and rights laid down in the Magna Carta.

After the political reform in 1832, this exaggeration determines many thinkers to no longer give the Magna Carta the same importance as in the previous centuries. Magna Carta, gradually loses its role as a symbol of democracy, after a significant influence upon — the Declaration of rights adopted by the United States, as well as on the American Constitution of 1787, in particular as regards the rights of habeas corpus (inviolability of the person).

Conclusion

Magna Carta, the political compromise reached between England's King John I and his vassals, noblemen, has a particular significance for the evolution of the English political thought and English and American constitutional system because it introduces, for the first time in history, the fundamental principles of the functioning of the rule of law, the rights of de habeas corpus, inviolability of the person and guaranteed access to a trial court. From the political point of view, the King's power is limited; a Council of nobles being set up, with the prerogative to raise his subjects swears allegiance against the monarch, if he or she violates the provisions of the Charter, the legitimacy of power moved from the Royal Institution for the Council. This, together with the nobility convened meeting regularly to establish new taxes, is the English Parliament germs.



Online source:

http://www.bbc.co.uk/schools/primaryhistory/british_history/magna_carta/

How they have been interpreted over the centuries following the rights and freedoms set out in Magna Carta had an important influence upon the political transformations in the 17th century England, which culminated with the proclamation of the constitutional monarchy. The U.S. Constitution, as well as those of the States, will bear the imprint of Magna Carta.

From this point of view, in a first phase, we drew the attention of a solemn procedure of ordalistic origin, the oath, generated by the Magna Carta and that will acquire constitutional meanings for the purposes of ratification or sanction of pacts or conventions concluded between sovereign and "country" which were granted rights and political power. If we accept that "country" is a concept that has been developed progressively and that representation was secured in the Middle Ages, then we can affirm that this sort of Convention thus imposed by the representative body and signed under oath by the sovereign guarantees democratic legitimacy. To understand the principle of representation in the middle ages in England it is necessary to show that grouping on the basis of common interests of the Knights and townspeople has facilitated the formation of a Parliament composed of an upper and a lower Chamber: This explains why England never was found, as was France in the 18th century, divided into two classes of people. In the 14th century in England begins an interesting intertwining the classes, while in France raises a barrier between the nobility and the rest of the country.

Secondly, as regards the content of conventions between sovereign and 'country', it must be understood in logic of vassal- senior relationship. The King must comply with the regulations of the law. If the sovereign violates these regulations he or she ceases to be loyal to his or her duty and the subjects have a right to rebel.

Two major consequences, we believe that there are here: while signing The Charter in 1215 by King John's barons every king must swear several times during his reign to respect this text.

This type of approach explains, in our opinion, why for further development of English constitutional law, "the most important provision of the Charter is contained in art. 14, according to which it was set up the Grand Council of the Kingdom, the body made up of archbishops, bishops, counts and barons. This Council, then enlarged in 1265 with

representatives from cities and Knights from counties, was part of the organization that was formed by the Parliament with the two chambers (House of Commons and House of Lords), becomes, since 1295, a permanent institution.

In closing, we would just like to conclude that the Magna Carta has greatly affected history, government and society throughout the world and also agree with Caroline Eele (2011:39) „Magna Carta is perceived to be significant in the twenty-first century because of continuing fears about threats to people’s liberties”.

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