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# The Magna Carta's Influence On The U.S. Bill of Rights

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## Preface

On June 15, 1215, King John and an assembly of barons met on the plains of Runnymede, near Windsor Castle, where the group demanded “that traditional rights be recognized, written down, confirmed with the royal seal, and sent to each of the counties to be read to all freemen.”<sup>1</sup> The signed and sealed document was the Magna Carta. The document was later modified but included “any freeman,” which translates to America’s “We the People” references.<sup>2</sup>

The importance of the Magna Carta, among a number of other writings, played a significant role in our Bill of

Rights.<sup>3</sup> On June 15, 2015, the 800th anniversary of the signing of the Magna Carta was celebrated. This article is intended to feature some of the history and comparisons between America’s Bill of Rights and the English Magna Carta, lest we forget the basic underpinnings that our founding fathers considered in developing the rights, privileges, and duties we as Americans continue to enjoy.

I will attempt to compile as much historical information and comparative analysis as possible; a number of writers have delved into different areas, but the analysis needs to be pulled together. I will venture into that “Abyss of histori-

cal analysis like a Juggernaut on a Quest for the Truth.” My hope is that you will celebrate this momentous occasion of 800 years post Magna Carta and reflect on our Constitution and its importance in our daily lives.

## Introduction: The Magna Carta’s Legacy to America

The significance of the Magna Carta on American separatist debate in the 1760s needs some historical placement to understand in context. As one writer noted, “Lord Denning described the Magna Carta as the greatest constitutional document of all times—the foun-



dation of the freedom of the individual against the arbitrary authority of the despot.<sup>4</sup> He properly points out that the "Great Charter" enacted concepts "such as the rule of law, due process, and the right to trial by jury."<sup>5</sup> Another writer opines that "the most common idea of the Magna Carta is that it formed the cradle for expression of notions of civil liberty and personal rights in relation to monarchies and other forms of government; including the maintenance practices that fostered commercial ventures."<sup>6</sup>

Yet another writer has emphasized that "the Magna Carta and insurance law have complementary histories.<sup>7</sup> The statute of frauds, suretyships, and domestic and international trade trace back to the Magna Carta.<sup>8</sup> The Magna Carta contained more than the first expressions of civil liberties that became the foundation of American ideals of freedom; it also included commercial elements that remain relevant to today's society more than 800 years later.<sup>9</sup>

It is important to note that the Magna Carta's historical significance had an interesting turn in its development. That is, its focus was "resurrected and reinterpreted by Sir Edward Coke in the early 17th century, who used the Magna Carta as a weapon against the oppressive tactics of the Stuart Kings; as he proclaimed to Parliament in 1628, 'Magna Carta ... will have no sovereign.'<sup>10</sup> This historical turn of events included not just the rediscovery but the reinterpretation of the Great Charter's "casting bright light on the rights and freedoms of all English people, which interpretation became deeply rooted in the rights of English people on both sides of the Atlantic."<sup>11</sup>

While there is little doubt among historians as to the importance of the Great Charter on America's Bill of Rights, and for this writer the single most influential source of rights identification, there is a context that needs disclosure, for a full understanding of sources upon which our founders relied. The next section will provide a brief historical summary of those sources.

## Key Documents in the History of U.S. Constitutional Government<sup>12</sup>

The writers for one American history project have compiled an excellent analysis of a series of key documents existing before the U.S. Bill of Rights were enacted in 1791.<sup>13</sup> Those documents include "the Magna Carta, the English Bill of Rights, the Mayflower Compact, the Declaration of Independence, The Articles of Confederation, the Iroquois Confederation, and ultimately, the U.S. Constitution".<sup>14</sup> What is unique in all 6 documents and the U.S. Constitution is that "Individual rights" are mentioned universally, with some noting greater specification than others; but the clearest version being written in the Declaration of Independence, to wit, "We hold these truths to be self-evident, that all men are created equal, that they are endowed by their Creator with certain unalienable Rights, that among these are Life, Liberty and the pursuit of Happiness."<sup>15</sup> Of course, our Bill of Rights (the first 10 Amendments to the Constitution) provides explicit rights recitations.

Another commentator has questioned how much of the Magna Carta made its way into our Bill of Rights.<sup>15</sup> His reply, "The answer is 9 of 26 provisions in the Bill of Rights can be traced back to the Magna Carta; that's about a third,

or 33 percent, and these provisions are heavily concerned with the right to petition and the due process of law."<sup>16</sup>

A review of our Bill of Rights, however, demonstrates that the "due process" concept coupled with the "natural rights" foundation discussed by the founders, conflated together, easily explain the direct connection and overwhelming importance of the Magna Carta on the U.S. Bill of Rights.<sup>17</sup> For example, "the Magna Carta continued to exert influence in the years after 1215, as noted in numerous documents and commentary."<sup>18</sup> "It gave rise to principles that support the foundation of our legal system today; more importantly, it shaped our belief in the rights and freedoms, guaranteed and protected by law, that influence every sector of our society."<sup>19</sup>

While commentators who downplay the influential importance of the Magna Carta on our Bill of Rights point to other documents and writings, there seems to be a lack of acknowledgement of the catalyst role the Great Charter played over centuries, as individual rights, liberties, and freedoms became more acknowledged. For example, after the Magna Carta's sealing in 1215, the following tracings of English influenced rights documents were enacted:

- The English Petition of Rights, 1628;



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- The Massachusetts Body of Liberties, 1641;
- The Charter of Connecticut, 1662;
- The Charter of Rhode Island and Providence Plantations, 1663;
- The Fundamental Laws of West New Jersey, 1677;
- The Pennsylvania Frame of Government, 1681;
- The New York Privileges, 1691;
- Pennsylvania Charter of Privileges, 1701;
- U.S. Bill of Rights, 1791.<sup>20</sup>

While there is some debate about the sources of influence used by the U.S. framers in developing the American Bill of Rights, there can be no doubt that the colonial heritage with its emphasis on individual and natural rights, combined with the English tradition in the Magna Carta's due process recitations, juxtapose for a direct link between the two.<sup>21</sup>

The Magna Carta documented that "the people have a 'right' to expect 'reasonable conduct by the monarch secured by the principle of representation.'"<sup>22</sup> The body of works, bills, and laws noted above, all build on the Great Charter's due process and citizen rights emphasis, that served as a "root" source for those writings, leading to our Bill of Rights.<sup>23</sup> To support that thesis on the direct link analysis, some further context may be helpful.

When Samuel Adams began his quest for American independence, he was quick to point out "that changes to the Constitution, beginning with the Magna Carta, greatly enlarged the liberties of the people..."<sup>24</sup> Adams was an astute historian who reminded his followers of "the fundamentals of self-government, theories on natural rights and law, and the separation of powers."<sup>25</sup> He quoted the Magna Carta, William Blackstone's commentaries of the laws of England, Locke, Montesquieu, and David Hume, in support of his source of tradition for American rights and liberties.<sup>26</sup>

The Samuel Adams commentaries require us to mention, ever so briefly, the John Locke—Jean-Jacques Rousseau models, which affected American debate

on our constitutional precepts. Michael Coffman, Ph.D., in his historical analysis, reminds us that the Locke model argues for individual rights, property rights, and less central government control, with recognition of natural law.<sup>27</sup> Rousseau, on the other hand, saw man was to be molded by government, with social equality coming from government policy, for the greater community over the individual.<sup>28</sup> Dr. Coffman tells us, "In the Locke model, sovereignty lies with the individual with decreasing power up the levels of government until the federal government has the least power of all ... Jefferson called this the People's Law."<sup>29</sup> However, "In the Rousseau model, sovereignty lies in the federal government, decreasing down to individuals with the government granting to them and overseeing them; Jefferson called this the feudal-rule law, which leads to tyranny."<sup>30</sup> Dr. Coffman's teaching on the subject helps us better understand, notwithstanding the Bill of Rights and our Constitution, the ongoing political turmoil that exists in the U.S. today.

Remember, the federalist/antifederalist tension that existed in America in 1787 created a level of dialectics necessary to develop the Bill of Rights.<sup>31</sup> James Madison argued in "Federalist 10" for securing individual rights through a form of representation.<sup>32</sup> Madison, in "Federalist 51," reminded us that a separation of powers was critical, mandating checks and balances.<sup>33</sup> Alexander Hamilton, on the other hand, in "Federalist 84" referenced the differences between a monarchy and a republic, supporting a bill of rights.<sup>34</sup> Jefferson reminded us that "a bill of rights is what the people are entitled to against every government on earth, general or particular; and what no just government should refuse, or rest on inference."<sup>35</sup>

There is no doubt that "the Federalist Papers offer to us today, a guide to understanding the [f]ounders' core Constitutional principles, the theories behind their words as a foundation for smaller government, less federal power, and avoiding a monarchy, with individual rights and due process."<sup>36</sup> Madison in "Federalist 39" writes of the power from the people, not the elite.<sup>37</sup> This concept has its source in the Great

Charter. Hamilton, in "Federalist 28," messages that the people hold the power of the federal government, keeping it in check.<sup>38</sup> In "Federalist 45" and "Federalist 46," Madison talks about local control.<sup>39</sup> In "Federalist 85," Hamilton recounts individual rights protecting the people, to preserve liberty and property.<sup>40</sup> As one writer commented, "Beginning with the Magna Carta (Great Charter) in 1215, Britain had slowly and steadily limited the government's powers and expanded the rights of citizens ... by the seventeenth and eighteenth centuries, the British common law and political essays held citizens' rights transcended those of government, and this new model reached full bloom in the American colonies."<sup>41</sup>

The Magna Carta exacted great influence over the creation of our Bill of Rights, and its significance rests in its "legal and symbolic legacy."<sup>42</sup>

### **Concluding Commentary on the Importance of the 800th Anniversary of the Magna Carta to America's Bill of Rights**

The historical beginnings in 1215 of the Great Charter's creation, coupled with the developing political thought and essays over the next 500 years, provide us with a good view of how the concepts of individual rights, liberties, and privileges exist today. Due process and equality of persons, their respective lives and opportunities, become less clouded and in sharper focus with this understanding. While the Locke-Rousseau tug of war continues today as part of our nation's political turmoil, understanding these underpinnings should allow us to focus on the commonality our founders envisioned, protecting individual rights, avoiding government control over our lives (no feudalism allowed!), and allowing the individual to achieve and succeed in a free society, exercising those very rights.

We need to be mindful of the conceptual principles that history has revealed to us; 800 years is a very big deal in the context of our representative republic. The great debates between the rights of citizens, media, politicians, educators, environmentalists, and oth-



ers, will continue, based on our Constitution and our Bill of Rights. As John Adams wrote in 1779, we are "a government of laws, not of men."<sup>43</sup>

The U.S. Constitution and the Bill of Rights, like the Magna Carta, protect "our 'bulwark' of guarantees that have stood the test of time, and for America, protected the individual freedoms of all citizens against arbitrary and capricious rule."<sup>44</sup>

We salute the 800th anniversary of the Magna Carta on June 15, 2015 with a clear understanding of the importance the Great Charter plays in our daily lives.



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1. *Magna Carta and Its American Legacy*, National Archives and Records Administration, Featured Documents, [www.archives.gov/exhibits/featured\\_documents/magna\\_carta/legacy.html](http://www.archives.gov/exhibits/featured_documents/magna_carta/legacy.html)

2. It should be noted that historians believe the June 15, 1215 document later called the "Articles of Barons", with wording changes, was formalized on June 19, 1215 and which is what many refer to as Magna Carta. The significant change was replacing "any baron" with "any freeman", regarding the document's application. For our purposes, the June 15, 1215 date will be used for historical accuracy. *Id.*

3. *Id.*

4. Randy J. Aliment, *Magna Carta's Legacy Spans the Centuries*, *TortSource*, Vol. 17, No. 2, p. 1 (Winter 2015).

5. *Id.*

6. David C. Olson, *Magna Carta Viewed as Embodiment of Commerce*, *TortSource*, Vol. 17, No. 2, p. 1 (Winter 2015).

7. Larry P. Schiffer, *TIPS Goes to London*, *TortSource*, Vol. 17, No. 2, p. 3 (Winter 2015).

8. Olsen, *supra*, p. 6.

9. *Id.*

10. *Magna Carta and its American Legacy, supra*, p. 2.

11. Aliment, *supra*, p. 4.

12. TeachingAmericanHistory.org, Objective 4, Table 1-1: "A Comparison of Key Documents in the History of Constitutional Government".

13. *Id.*

14. *Id.*

15. *Id.*

16. Gordon Lloyd, *The Magna Carta and the Bill of Rights*, TeachingAmericanHistory.org (2006-2015).

17. Aliment, *supra*, p. 4.

18. *Id.*

19. *Id.*

20. Gordon Lloyd, *The English and Colonial Roots of the U.S. Bill of Rights*, TeachingAmericanHistory.org.

21. *Id.*; Lloyd, *supra*, *The Magna Carta and the Bill of Rights*.

22. Lloyd, *supra*, *The English and Colonial Roots of the U.S. Bill of Rights*, p. 2.

23. *Id.*

24. Mark Puls, *Samuel Adams: Father of the American Revolution*, pp. 136-137 (ed. 2006).

25. *Id.*, p. 115.

26. *Id.*

27. Michael Coffman, Ph.D. *Rescuing a Broken America: Why America is Deeply Divided and How to Heal It Constitutionally*, pp. 12-13 (ed. 2010).

28. *Id.*

29. *Id.*, p. 13.

30. *Id.*

31. Gordon Lloyd, *Federalist and Antifederalist Debate over the Bill of Rights*, TeachingAmericanHistory.org.

32. *Id.* See also Kessler & Rossiter, *The Federalist Papers*, p. 5 (ed. 2003).

33. *Id.*; Kessler, *supra*, pp. 14-15.

34. *Id.*; Kessler, *supra*, p. 24.

35. Lloyd, *supra*, *Federalist and Antifederalist Debate over the Bill of Rights*, p. 2, quoting the Madison-Jefferson exchanges on ratification and the Bill of Rights, part I.

36. Glenn Beck, *The Original Argument: The Federalists' Case for the Constitution, Adapted for the 21st Century*, p. xxvii (ed. 2011).

37. *Id.*, p. 172.

38. *Id.*, p. 242.

39. *Id.*, pp. 250, 258. 40. *Id.*, pp. 36-38.

41. Newt Gingrich, *A Nation Like No Other: Why American Exceptionalism Matters*, pp. 24-25 (ed. 2011).

42. Aliment, *supra*, p. 4.

43. *Magna Carta and the American Legacy, supra*, p. 3.

44. *Id.* A Maine writer whose recent article on the Judiciary caused me to read again the Federalist Papers 78 to 83, written by Hamilton is Peter Bennett, Esq., who wrote "The Imperative to Fight for the American Judiciary, *The Brief*, pp. 61-64 (Winter 2015). Mr. Bennett's article reminds us of not only the importance of the Judiciary, but the critical role our separation of powers plays in our constitutional republic.

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