

## **Speech by Chief Justice of Pennsylvania Thomas G. Saylor to the Pennsylvania Bar Association, April 12, 2015**

Since this year marks the 800th anniversary of Magna Carta, an event which is being celebrated by both the American and Pennsylvania Bar Associations, I thought that I would say a few words about Magna Carta and the American founding.

Magna Carta has had several iterations. It was first drafted in 1215 at Runnymede, England, to establish peace between King John and various rebel barons who had captured London, and was designed to address the barons' specific grievances and make the King subject to the law.

After its Papal annulment, a civil war, and King John's death, much of the text was deleted or revised within 10 years so that the 1225 version became the definitive form.

Magna Carta was re-issued several times and ultimately confirmed as part of England's statute law in 1297.

The idea of Magna Carta as a "people's rights" charter was promoted by Sir Edward Coke, arguing against the divine right of kings advocated by the Stuart monarchs.

Although it has remained a foundation of English national identity, and became an inspiration for important legal documents to follow, most of the 1297 Magna Carta was repealed in the 19th and 20th Centuries. Regardless, its earlier repeal and reissue on multiple occasions ultimately encouraged a belief in the notion of central rights and liberties above the authority of any particular monarch.<sup>1</sup>

In present culture, Magna Carta is often invoked more for its name than content; however, several of the original clauses are still in force as part of the British

constitution, most centrally clauses 39 and 40 of the 1215 charter. The first guarantees that no free man shall be deemed culpable or have his liberties or freehold taken “but by lawful judgment of his Peers or by the Law of the land.” This provision is recognizable as the seed of the concept of due process embodied in our Constitution as well as the principle that the accused should not be held indefinitely without trial (habeas corpus), the right to trial by a jury of one’s peers, and the presumption of innocence pending conviction.

The second surviving clause provides that justice shall not be sold, denied or deferred, and is enshrined in the open courts clause of the Declaration of Rights contained in Pennsylvania’s Constitution of 1776 and set out in Article I, §11 of our present constitution.

America has been said to have inherited its ideals of liberty from Magna Carta, as reflected in other pre-revolutionary charters of the new colonies, and as the colonists’ ties with Britain ran deep, when their rights were threatened it was natural to appeal to the concept of fundamental rights and the charters that upheld them. When Benjamin Franklin was summoned by Parliament to justify his opposition to the Stamp Act, for example, he replied that the colonists could not “be taxed but by their common consent,” a freedom which was based on their rights “as Englishmen . . . as declared by Magna Carta.” And in 1774 the colonists issued a Declaration of Rights and Grievances reasserting their rights as “Englishmen” including a right to trial by jury, which was curtailed in the admiralty courts where violations of the Stamp Act were tried.<sup>2</sup>

Finally, in July 1776 the Continental Congress agreed on the Declaration of Independence. The colonists believed that King George III had broken English Common law that should have applied to all persons living in the colonies. Hence the

Declaration incorporated Magna Carta concepts such as the supremacy of inherent or fundamental rights and liberties above the monarch or legislative bodies.

When the Articles of Confederation, our country's original governing document, proved insufficient to their purpose, and delegates gathered in Philadelphia to draft a new national charter, the central premise was that the new constitution would emanate directly from the people, not a governmental body, and that the constitution would be the supreme law of the land.<sup>3</sup> With memories still fresh of arbitrary exercises of power by British military commanders and governors, access to habeas corpus was enshrined in Article I, Section 9.

As to the Bill of Rights, adopted in 1789, one writer notes that, "just as Magna Carta was seen as an agreement which held the arbitrary exercise of power by a king in check, many felt that the constitution required statements limiting the power of the federal state. A series of amendments, later known as the Bill of Rights . . . include[ed] trial by jury, due process of law, and freedom from cruel and unusual punishments, all rights due to citizens of the new nation, believed to have been codified at Runnymede in 1215."<sup>4</sup>

Thus, Magna Carta's influence can be seen in all of our founding documents which have achieved their constitutional status through the acceptance of the American people.

Last August, Chief Justice Roberts, speaking to the American Bar Association on the occasion of the commencement of its year-long celebration of Magna Carta's 8th centennial, closed with this thought:

An 800-year commemoration invites us to take a long view.  
Our American experiment has not reached one-third of the

age of Magna Carta, but we have given Magna Carta's core concepts concrete meaning in a new constitutional framework. Independent courts have ensured accountability to the law fulfilling Magna Carta's ideal that no person, no matter how high, is above the law. I encourage all of you as officers of the Court to set your sights on a far horizon and ensure that our legal profession continues to advance that ideal.

<sup>1</sup> See Nicholas Vincent, *Consequences of Magna Carta* (British Library), available at [www.bl.uk/magna-carta/articles/consequences-of-magna-carta](http://www.bl.uk/magna-carta/articles/consequences-of-magna-carta)

<sup>2</sup> See Matthew Shaw, *Early America and Magna Carta* (British Library), available at [www.bl.uk/magna-carta/articles/early-america-and-magna-carta](http://www.bl.uk/magna-carta/articles/early-america-and-magna-carta)

<sup>3</sup> See U.S. National Archives & Records Administration, *Magna Carta & Its American Legacy*, available at [www.archives.gov/exhibits/featured-documents/magna-carta/legacy.html](http://www.archives.gov/exhibits/featured-documents/magna-carta/legacy.html)

<sup>4</sup> Shaw, *supra* note 2.