

Eight Hundred Years of Forgetting: The Magna Carta

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Global Research, June 17, 2015

Region: [Europe](#)

Theme: [History](#), [Law and Justice](#), [Police State & Civil Rights](#)

“Governments and the illiberal cherish Magna Carta not despite its lack of legal significance, but because of it.”

David Allen Green, *Foreign Policy*, Jun 15, 2015.

Idolatry is the natural consequence of abuse and disregard. Forget something, and revere it. Edification entails that no regard need be had to substance. When human rights conventions make it into the political argot, cited by the very individuals who are controlled by them, we know that a degree of amnesia and calculation has set in. They are the last ones who are interested in what those documents enshrine.

Magna Carta has suffered more than most. A long suffering dowager of the human rights revolution, it has been subjected to dismissal, qualification and sanctification. Could the document, an expression of baronial disgruntlement over royal taxation, be anything other than a creation of opportunists? Unscrupulous aristocrats battling King John within a feudal system that was gasping for air set the scene for future confrontations.

The assault on the Magna Carta commenced immediately after its signing in 1215. King John rushed the inconvenient matter off to the Vatican, and got what he wanted: a decree of nullity from Pope Innocent III distinctly troubled by the turn of events. But the document stubbornly clung on in various versions - 1216, 1217 and 1225. In 1297, King Edward acknowledged its legal value, albeit in heavily revised form, by placing it on the statute books. It became the weapon of choice for jurists keen to attack such concepts as divine rule.

To this day, the provision about having no freeman “taken or imprisoned, or be disseised of his Freehold, or Liberties, or free Customs, or be outlawed, or exiled, or any other wise destroyed; nor will we not pass upon him, nor condemn him, but by lawful judgment of his Peers, or by the Law of the Land” remain distinct. But as has been pointed out, its form, its legality, is essentially worthless to the modern litigant.[1] All this, despite the statement in Halsbury’s Laws of England claiming that, “Magna Carta is as binding upon the Crown today as it was the day it was sealed at Runnymede.”

The tussle between executive power bound and held accountable, and the various clauses of protection, has persisted for centuries. The Magna Carta has become a totemic alibi easily discarded when cited in legal challenges. Judges make reference to it in a passing, even as they prefer more contemporary statutes and conventions.

The Occupy Movement attempted to capitalise on its historical value without success when challenging their eviction from St. Paul's Cathedral in London. In the case of *Mayor Commonalty and Citizens of London v Samede & Others* [2012] EWCA Civ 160, the court could barely contain its scorn. The challenge made by the applicant that he was a "Magna Carta heir" was "a concept unknown to the law." [2]

It was noted by the Master of the Rolls that the surviving document was a fairly skimpy one for the contemporary reader - at least in terms of relevance, only three provisions survived. "Chapter 29, with its requirement that the state proceeds according to the law, and its prohibition on the selling or delaying of justice, is seen by many as the historical foundation for the rule of law in England, but it has no bearing on the arguments on this case." The others - and here, a chuckle could barely be concealed - concerned the rights of the Church and the City of London.

On Monday, another effort positively brimming with authoritarian contempt was shown. Police attempted to shut down a touted "festival for democracy" at an eco-village near the site holding official commemorations for the signing of the document. Irony was also in full supply, with the Queen in attendance to celebrate the signing of the document.

As Runnymede resident Peter Phoenix explained, "There has been a bonfire of the liberties in the past 10 years. We have seen the removal of so many of our rights to gather, our rights to protest, our rights of free speech and the right to a fair trial." [3]

The commemorative gush filling the political spectrum was not unanticipated.

UK Prime Minister David Cameron, to take a very conspicuous example, raves against the foundational document of European human rights while claiming Britain can do something better. After all, the Magna Carta was proclaimed at Runnymede, which for Cameron provides the perfect blood and soil argument for British exceptionalism.

Why do people set such store by Magna Carta? Because they look to history. They see how the great charter shaped the world, for the best part of a millennium, helping to promote arguments for justice and for freedom." [4] Treating human rights like reputational agents, Cameron would argue that it fell to "us in this generation to restore the reputation of those rights... It is our duty to safeguard the legacy, the idea, the momentous achievement of those barons.

States where executive power has transformed into forms of absolute rule (unwarranted surveillance; the attack on habeas corpus) continue to proclaim the value of the Magna Carta. Keeping people in indefinite detention can still be deemed appropriate policy even by states that value the concept of habeas corpus. The language of rights remains, as ever, the imperative of opportunists, the policy of scoundrels. The Magna Carta, to that end, remains the most generous excuse to that end.

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Notes:

[1] <https://foreignpolicy.com/2015/06/15/the-destructive-myth-of-the-magna-carta-800th-->

[anniversary/](#)

[2] <http://www.bailii.org/ew/cases/EWCA/Civ/2012/160.html>

[3] <http://www.aljazeera.com/indepth/features/2015/06/magna-carta-challenging-800--years-liberty-150615071159752.html>

[4] <http://www.bbc.com/news/uk-33126723>

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