

THE MAGNA CARTA AND ITS RELEVANCE TO PARLIAMENTS TODAY

By

Kamala M.G. Pillai

This article is dedicated to Tan Sri Pandikar Amin Mulia¹, the Speaker of the House of Representatives of Malaysia, Datuk Seri Dr. Ronald Kiandee², the Deputy Speaker of the House of Representatives of Malaysia, the late Datuk Seri Kamaruddin Mohamed Baria³ the first Director-General (DG) and to Datuk Awang Alik Jeman⁴, the current DG of the Parliament of Malaysia. All four of these men have treated and continue to treat all officers and staff of Parliament equally. For instance, the current DG, Datuk Awang Alik, is the first DG of the Parliament of Malaysia to grant permission to all officers and staff to return home early for the Hari Raya Celebrations. In addition, for the Deepavali Celebrations in 2016 and again this year, 2017, the DG allowed those who were celebrating the Festival of Lights to go home early at 12pm. These remarkable men applied and adhered to the concept established by the Magna Carta in June 1215 that everyone is equal in the eyes of the law. They have sincerely practised the principles enunciated in the Magna Carta that:

‘To no one will we sell, to no one deny or delay right or justice’

¹ Pandikar Amin bin Haji Mulia (Tan Sri Dato’ Seri Utama) is the current Speaker of the House of Representatives of Parliament Malaysia. He was appointed in 2008 as the eighth Speaker of the House of Representatives. A Barrister-at-Law from Lincoln’s Inn, he had previously served as the Speaker of the Sabah State Assembly from 1986 to 1988, has held the post of Minister in the Prime Minister’s Department (1999) and Minister of Agriculture and Fisheries for the State of Sabah (1996), Minister of Infrastructure Development of Sabah (1996) and Minister of Culture, Youth and Sports of Sabah (1994). He has also been a Member of the Sabah State Legislative Assembly from 1981 and Legal Adviser for the Sabah Forestry Department (1980).

² Dr. Ronald Kiandee (Datuk Seri) is the Deputy Speaker of the House of Representatives in the Parliament of Malaysia and the Honourable Member of Parliament for the constituency of Beluran in the State of Sabah. Dr. Ronald obtained his PhD in ‘Politics of Ethnicity in Sabah UMNO’ from University Sains Malaysia. He has a Master in Business Administration and a degree in Fisheries Science from University Putra Malaysia. Dr. Ronald has served as prosecutor for the Fisheries Department of Sabah. Dr. Ronald has held the post of Vice-Chairman of the Executive Committee of the Commonwealth Parliamentary Association (CPA), and Chair of the Asian Region, a post he held since 2013. Dr. Kiandee has also served as the President of the Asian Regional Council of the Global Parliamentarians on Habitat (GPH) and as the Vice-President of the Board of Directors for GPH (2011); and has been a Committee Member of IPU, Malaysia Branch, since 2009. He has been a Member of Parliament since 1999 and was appointed Deputy Speaker in 2008. He was appointed as the Head of the Humanitarian Delegation for the Refugees in 2017.

³ Datuk Seri Kamaruddin Mohamed Baria(the Late) was appointed as the first Director-General of the Parliament of Malaysia. Prior to that, he served as the first Secretary of the Human Rights Commission of Malaysia (SUHAKAM). He had also served in the UN In 2012 he was appointed as the Secretary of the Election Commission (EC).

⁴ Datuk Awang Alik is the first Sabahan to serve as the DG of Parliament Malaysia. He obtained his BSc (Hons) in Fisheries from University Pertanian Malaysia in 1993 and Masters in Administration from University Malaya in 2006. He had served as the Head Discipline Master in SMK Arshad before becoming a Fisheries Officer in Sabah. He joined the Administrative and Diplomatic Service and was posted to the Prime Minister’s Department and attached as the Press Officer to the Minister and was tasked with preparing the Speaking Notes and Speeches for the Minister. Between 2002-2004, he was attached to the Defence Ministry. In 2008, he became the Chief Private Secretary to the Speaker of the House of Representatives in the Parliament of Malaysia. He returned to the Defence Ministry in 2010. In 2013, he was posted back to Parliament as Deputy DG and in 2015, became the DG of Parliament Malaysia.

Introduction

The four (4) men mentioned above, leave little doubt that they possess inimitable personality and perspective. Despite the fact that they have held control of the operation and administration of the Legislature in Malaysia, they have very successfully negotiated the rough bends and challenges they have encountered. They are four of the most crucial and formidable personalities in the Legislature of Malaysia. They are totally responsible for making the Parliament of Malaysia more liberal and precious than it has ever been. They have tirelessly weaved together, continuing their years of experience as administrators with uniqueness. Despite the power and permanence, they have held, they have been very humble, sincere, polite and courteous on all occasions and approachable and available at any time.

To quote Tunku Abdul Rahman, Malaysia's first Prime Minister: *The only key to that room at the top is a capacity for hard work and a spirit of service and concern for people that will come first and an interest in the work rather than in the monetary rewards.*⁵



Tan Sri Datuk Seri Panglima Pandikar Amin Mulia



Datuk Seri Dr. Ronald Kiandee

⁵ *Tunku's Recipe for Success: How to Get Things Done.* 1971.



Datuk Kamaruddin Mohammed Baria



Datuk Awang Alik Jeman

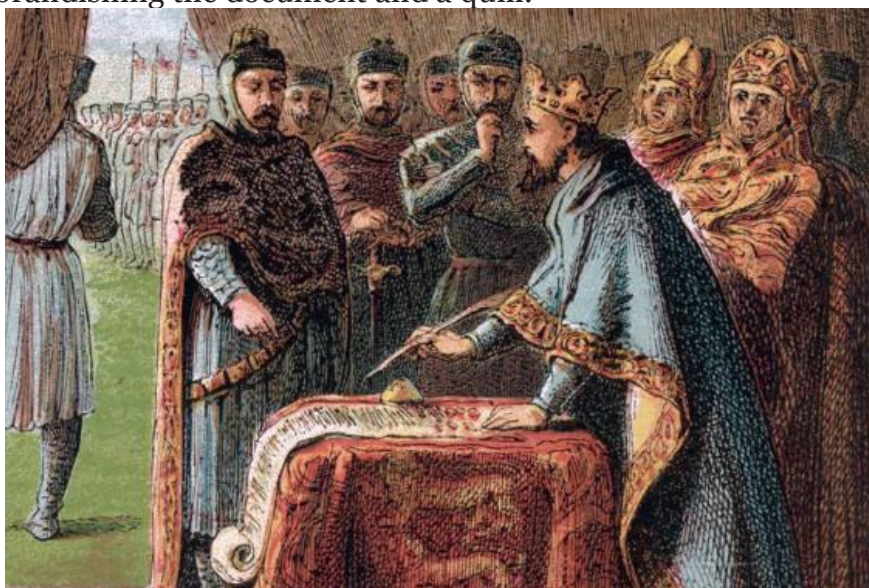
The Magna Carta

Two years ago, the year 2015, marked the 800th Anniversary of the *Magna Carta*. The *Magna Carta*, which means ‘*The Great Charter*’, is one of the most important documents in history as it established the principle that everyone is subject to the law, even the king, and guarantees the rights of individuals, the right to justice and the right to a fair trial.

In 1170, a bitter quarrel ensued between Henry and Thomas Becket, the Archbishop of Canterbury, which ended in the Archbishop’s murder by four knights in Canterbury

Cathedral. Henry faced a great rebellion in 1173-4 as well, when Henry's own wife and sons went to war against him. One of the best descriptions we have of this King was written in 1177 by Peter of Blois, a member of the clergy who served Henry and knew his royal master well. Peter describes Henry as a strong man, of medium build, with a 'broad chest and a boxers' arms' who loved to exercise by hunting. In his middle age, his red hair had turned grey. When provoked, Henry possessed a fierce temper that made his eyes 'flash like fire and flash in fury'. 'No one', wrote Peter of Blois, 'is more cunning in counsel, fierier in speech, more secure in the midst of dangers, more cautious in fortune, more constant in adversity'.

The *Magna Carta* was first authorised in June 1215 at Runnymede, on the River Thames, near Windsor. Paintings depicting the signing of the document often show King John brandishing the document and a quill.



Painting of King John with a Quill

In 1215 King John agreed to the terms of the *Magna Carta* following the uprising of a group of rebel barons in England. The barons captured London in May 1215, which forced King John's hand and caused him to finally negotiate with the group, and the *Magna Carta* was created as a peace treaty between the King and the rebels. The whole document is written in Latin, and the original *Magna Carta* had 63 clauses. Today, only three of these remain on the statute books; one defends the liberties and rights of the English Church, another confirms the liberties and customs of London and other towns, and the third gives all English subjects the right to justice and a fair trial. The third emphatically states:

"No free man shall be seized or imprisoned, or stripped of his rights or possessions, or outlawed or exiled, or deprived of his standing in any other way, nor will we proceed with force against him, or send others to do so, except by the lawful judgement of his equals or by the law of the land. To no one will we sell, to no one deny or delay right or justice."

Subsequently, although King John agreed to the *Magna Carta* at first, he disliked it when its terms were forced upon him. He wrote to the Pope to get it annulled and the Pope, who agreed with King John despite the strain between the King and the Church

at the time annulled it. The Pope called the *Magna Carta* “illegal, unjust, harmful to royal rights and shameful to the English people”. He then declared the charter “null and void of all validity for ever”. A full-scale civil war then broke out between King John and his barons. It only ended after John's death from illness in 1216. A second version of the *Magna Carta* was issued by Henry III in 1225 and this was granted explicitly in return for a tax payment from the whole kingdom.

The *Magna Carta* was thus re-issued in 1216, 1217, 1225 and 1297. There is this not often narrated tale about Oliver Cromwell and his dislike for the *Magna Carta*. Cromwell was the Lord Protector of the Commonwealth of England, Scotland and Ireland from 1653, when the *Magna Carta* was cited in debate. When Oliver Cromwell subsequently died in 1658 of natural causes, he was buried in Westminster Abbey and lay there peacefully until the Royalists returned to power and had his body exhumed so that he could be posthumously beheaded. This was perhaps done to serve as a warning to others not to disrespect the *Magna Carta*.



This document, issued by Pope Innocent III on 24 August 1215, quashed the 1215 Magna Carta.

The Magna Carta is used by Legislators throughout the World

Over the past 802 years since the original Charter was issued in 1215, the *Magna Carta* has been invoked by politicians, lawyers and statesmen throughout the English-speaking world to add drama and gravitas to their own speeches and declarations.⁶ The document has since taken a life of its own, changing, developing and growing in stature. Whenever the clauses were found to be unworkable or amendments and additions were deemed necessary, lawyers and statesmen were ready to push the changes through and maintain the rule of law.

To Legislators all over the world, the *Magna Carta* serves as an icon of democracy. The German-born composer Kurt Weill (1900-50) based a cantata on it. Churchill was advised that a copy of the original charter might reinforce a shared political heritage and secure the support of the United States in World War II.

The British have never codified their Constitution because most people think that writing it down would not achieve very much. The *Magna Carta* may vie with the English language itself for the title of Britain's greatest gift to the world, but its place in the laws of England and Wales is largely symbolic. Yet it is a symbolism that crosses the political spectrum, inspiring fascists and communists, suffragists and environmentalists. Such confusion, iconoclasm, even, is understandable in a **nation that puts its trust in people rather than in paper.**⁷

There are strong influences from the *Magna Carta* in the American Bill of Rights, written in 1791. To this day there is a 1297 copy in the National Archives in Washington DC. Even more recently, the basic principles of the *Magna Carta* are seen very clearly in the Universal Declaration of Human Rights, penned in 1948 just after the Second World War.

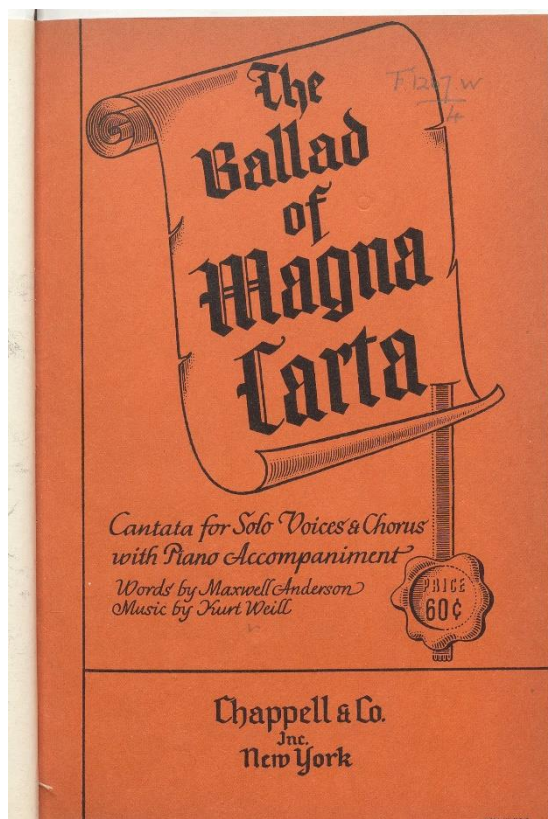
Nelson Mandela (1918-2013), speaking from the dock during the Rivonia trial of 1964, expressed his admiration for the *Magna Carta*.⁸ In 1974, the *Magna Carta* was cited by United States congressman Peter Rodino, who as Chairman of the House of the Judiciary Committee, oversaw the impeachment proceedings that were initiated against President Richard Nixon. Rodino described how the English barons had forced King John to agree to the wording of the *Magna Carta* 'at the point of a sword'. He used the great Charter to drive home the point that no one was above the law.⁹

⁶ Rod Green. *Magna Carta and All That – A Guide to the Magna Carta and life in England in 1215*. Andre Deutsch Ltd, London, 2015.

⁷ See more at: <http://www.bl.uk/magna-carta/articles/magna-carta-in-the-modern-age#sthash.VtNpq7aX.dpuf>

⁸ See more at: <http://www.bl.uk/magna-carta/articles/magna-carta-in-the-modern-age#sthash.CSqOhSb8.dpuf>

⁹ See more at: <http://www.bl.uk/magna-carta/articles/magna-carta-in-the-modern-age#sthash.p7Xp8Ohq.dpuf>



3

The Ballad Of Magna Carta

Words by
MAXWELL ANDERSON

(Cantata)

Music by
KURT WEILL

NARRATOR:
(Spoken)

VOICE *Moderato assai (broad)*

Piano *f pesante*

King John of

Eng-land was an old man in twelve hun-dred - fif-teen; He had reigned

mp

ing and un - just - ly And both the No - bles and the Com-mon-Peo-ple were en -

1 *Più mosso (Allegro moderato)*

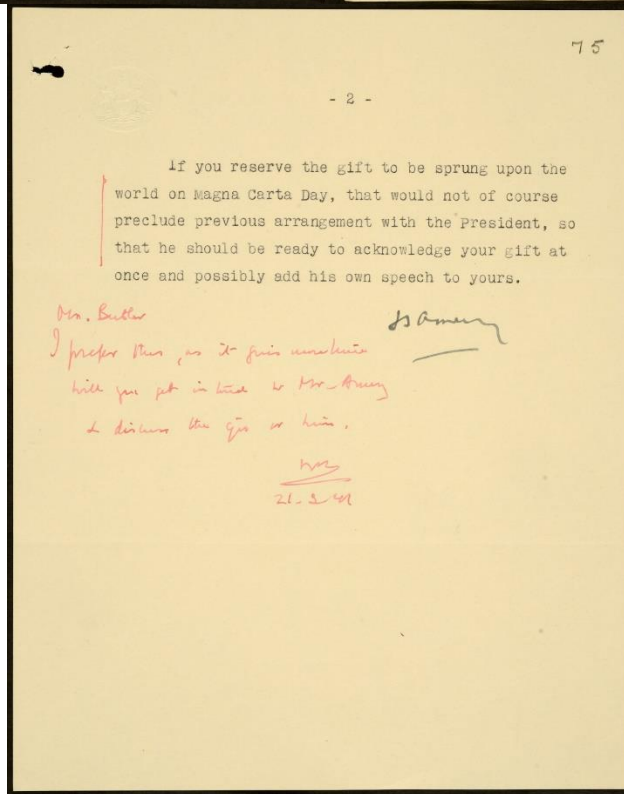
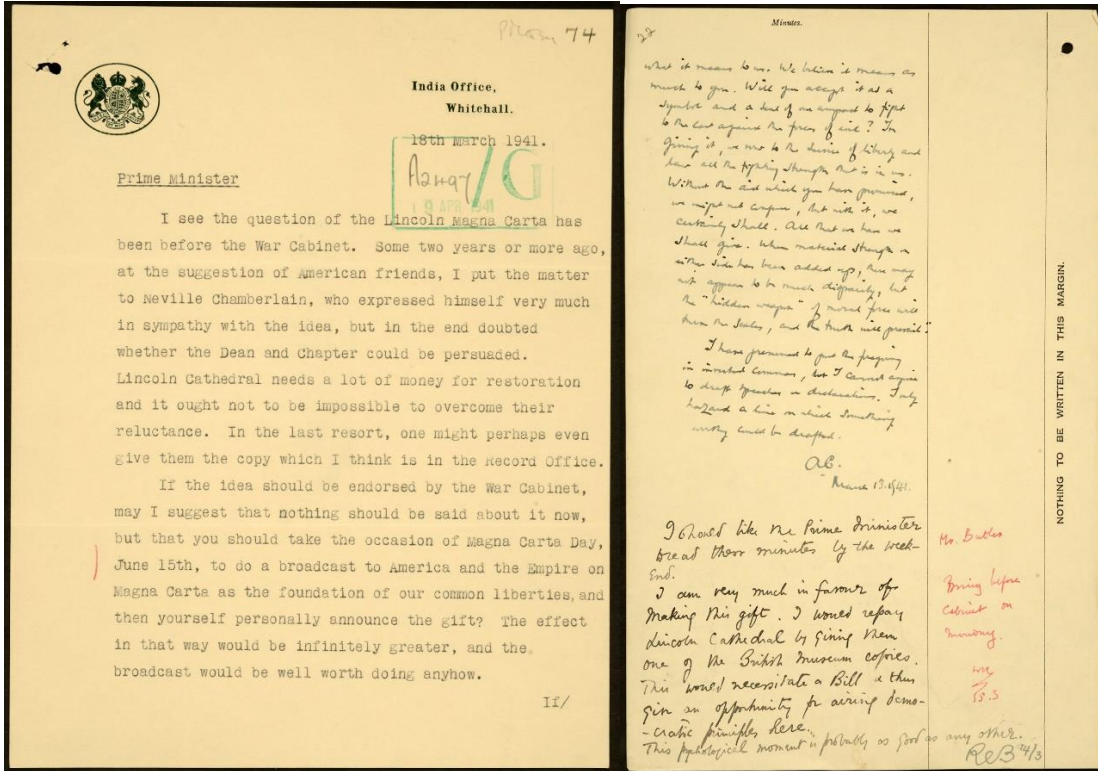
raged And des-per-ate dur-ing those last years of his life. He laid

MAXWELL ANDERSON

KURT WEILL

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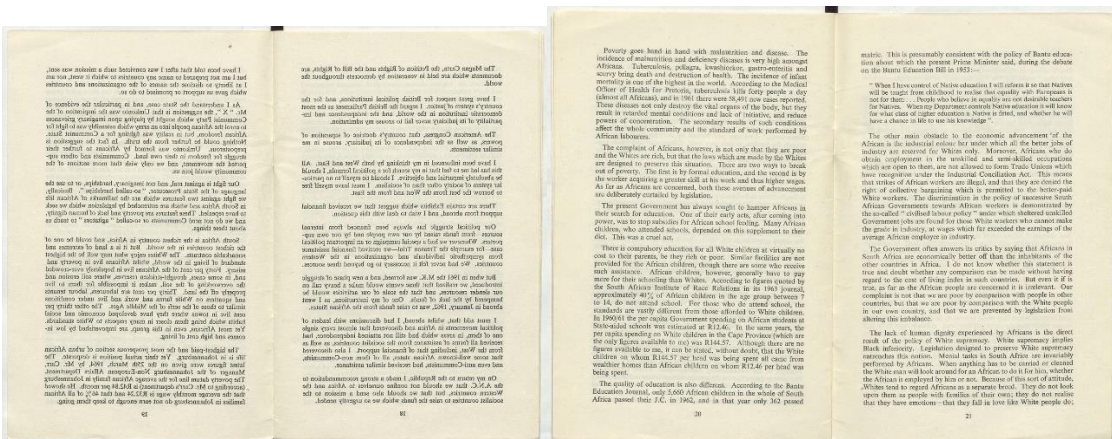
Composed by Kurt Weill and first performed in 1940, The Ballad portrays King John as a deeply unpopular monarch, abandoned by his supporters and compelled to agree to Magna Carta.



During WWII, a British memorandum proposed gifting the 1215 Lincoln copy of Magna Carta to the United States. The government believed this could strengthen Anglo-American relations and thus support the war effort.¹⁰

¹⁰ See more at: <http://www.bl.uk/magna-carta/articles/magna-carta-in-the-modern-age#sthash.uKO1DpLN.dpuf>

The Magna Carta and its Relevance to Parliaments Today



that they want to be with their wives and children like White people want to be with theirs; that they want to earn enough money to support their families properly, to feed and clothe them and send them to school. And what "house-boy" or "garden-boy" or labourer can ever hope to do this?

Pass Laws, which to the Africans are among the most hated bits of legislation in South Africa, render any African liable to police surveillance at any time. I doubt whether there is a single African male in South Africa who has not at some stage had a brush with the police over his pass. Hundreds and thousands of Africans are thrown into jail each year under pass laws. Even worse than this is the fact that pass laws keep husband and wife apart and lead to the breakdown of family life.

Poverty and the breakdown of family life have secondary effects. Children wander about the streets of the Townships because they have no schools to go to, or no money to enable them to go to school, or no parents at home to see that they go to school, because both parents (if there be two) have to work to keep the family alive. This leads to a breakdown in moral standards, to an alarming rise in illegitimacy and to growing violence which erupts, not only politically, but everywhere. Life in the townships is dangerous. There is not a day that goes by without somebody being stabbed or assaulted. And violence is carried out of the townships in the White living areas. People are afraid to walk alone in the streets after dark. Housebreaking and robberies are increasing, despite the fact that the death sentence can now be imposed for such offences. Death sentences cannot cure the festering sore.

Africans want to be paid a living wage. Africans want to perform work which they are capable of doing, and not work which the Government declares them to be capable of. Africans want to be allowed to live where they obtain work, and not be evicted out of an area because they were not born there. Africans want to be allowed to own land in places where they work, and not to be obliged to live in rented houses which they can never call their own. Africans want to be part of the general population, and not confined to living in their own ghettos. African men want to have their wives and children to live with them where they work, and not be forced into an unnatural existence in men's hostels. African women want to be with their men folk and not be left permanently widowed in the reserves. Africans want to be allowed out after 11 o'clock at night and not to be confined to their rooms like little children. Africans want to be allowed to travel in their own country and to seek work where they want to and not where the Labour Bureau tells them to. Africans want a just share in the whole of South Africa; they want security and a stake in society.

Poverty goes hand in hand with malnutrition and disease. The incidence of malnutrition and deficiency diseases is very high amongst Africans. Tuberculosis, cholera, leishmaniasis, pneumonia and scrofula being death and extension of health. The incidence of infant mortality is one of the highest in the world. According to the Medical Officer of Health for Pretoria, tuberculosis kills forty people a day amongst all Africans, and in 1961 there were 26,491 new cases reported. These diseases not only destroy the vital organs of the body, but they render the individual unproductive and lack of initiative, and reduce powers of recuperation. The secondary results of such conditions affect the whole community and the standard of work performed by African labourers.

The complaint of Africans, however, is not only that they are poor and the Whites are rich, but that the laws which are made by the Whites are designed to preserve the situation. There are two ways to break out of poverty. The first is by formal education, and the second is by the worker acquiring a more skill at his work and thus higher wages. As far as Africans are concerned, both these sources of advancement are deliberately curtailed by legislation.

The present Government has always sought to hamper Africans in their search for education. One of their early acts, after coming into power, was to stop subsidies for African school fees. Many African children, who studied abroad, fell dependent on this stipend to their diet. This was a cruel act.

There is compulsory education for all White children of equal age to that of their parents, be they rich or poor. Similar facilities are not provided for the African children, though there are some who receive such facilities.

African children, however, generally have to pay more for their schooling than Whites. According to figures quoted by the South African Institute of Race Relations in its 1963 journal, approximately 40% of African children in the age group between 7 and 14, do not attend school. For those who do attend school, the fee is 100% of the per capita Government expenditure on African children as compared to 22.6% for White children. In the same year, the per capita Government expenditure on African children was 10% of the per capita expenditure on White children in the Cape Province (which are figures available to me, it can be noted, without doubt, that the White children in whom Bantu Education has been invested are not necessarily wealthier than African children on whom R12.46 per head was being spent.

The quality of education is also different. According to the Bantu Education Journal, only 2,666 African children in the whole of South Africa passed their I.C. in 1962, as against that year only 362 passed their I.C. in 1962, as against that year only 362 passed their I.C. in 1962.

What I have meant of the present situation is that the fact that the Government is not doing its duty to the African people is not the only reason why the African people are poor. The Government is not doing its duty to the African people, but the fact that the Government is not doing its duty to the African people is not the only reason why the African people are poor. The Government is not doing its duty to the African people, but the fact that the Government is not doing its duty to the African people is not the only reason why the African people are poor.

Nelson Mandela, put on trial for his life in 1964, declared from the dock his admiration for Western Democracy, stating that the Magna Carta, the Petition of Rights and the Bill of Rights were 'held in veneration by democrats' worldwide. ¹¹

The four surviving original manuscripts of the *Magna Carta* went on display together in the House of Lords in 2015 to mark the 800th anniversary of the Charter. The manuscripts - two held by the British Library and one each by Lincoln and Salisbury Cathedrals, were on show for just one day in the Palace of Westminster as part of a programme of events commemorating the sealing of the *Magna Carta* at Runnymede on 15 June 1215.

¹¹ See more at: <http://www.bl.uk/magna-carta/articles/magna-carta-in-the-modern-age#sthash.IhkgO30X.dpuf>



The four original surviving copies of the Magna Carta were brought together for the first time, as they were prepared for display at the British Library in Central London, as part of its 800th anniversary.

Emergence of the Magna Carta Ideals

The *Magna Carta* ideals have emerged strongly. The *Magna Carta* provided the active ingredient and fired the imagination of the charismatic Simon de Montfort and the first ever Parliament in 1265. The conclusion of the English Civil War, found the spirit of *Magna Carta* evoked during the Putney Debates of 1647. With the Restoration of Charles II, the *Magna Carta* helped to codify the ancient writ of *habeas corpus* passed by Parliament in 1679. The link between a writ of *habeas corpus* ('have the body') and the *Magna Carta* commands someone holding a prisoner to bring that person before the court and justify imprisonment.

The main features of the *Magna Carta*, which are the ideas of freedom, representation and the rule of law, spread via France to the rebellious colonies of the New World. Thomas Jefferson paid tribute to the Levellers of the Putney Debates as an inspiration for the revolution, but used the breaches of the *Magna Carta*, as justification for creating a brand-new country in 1776.

Elsewhere, the liberties of England have been exported in a variety of ways. Those Englishmen who settled beyond the seas took with them the laws and liberties of England in so far as they were applicable to the conditions of the new country. Thus, almost the whole of the United States, all provinces of Canada except Quebec and Australia, and New Zealand, India, Burma, Pakistan, Sri Lanka, Malaysia the four

British Colonies on the West Coast of Africa, English ideas of ‘justice, equity and good conscience’ were applied to fill gaps in the laws.¹²

In 1948, the world, when confronted with the smouldering evidence of what happens when freedom, democracy and the rule of law are swept aside by force, adopted the Universal Declaration of Human Rights. The European Convention of Human Rights echoes the *Magna Carta* in Article 6 and now, millions of people in a post-cold war Europe have inherited the legacy of the events of 15 June, 1215.

Till today, the *Magna Carta* is often evoked and cited whenever basic freedoms come under threat. David Davis MP, stood down from the UK Parliament in order to fight a by-election on the issue of 42-day detention in 2008, the *Magna Carta* providing the *casus belli*. He won the argument and once again, the *Magna Carta* carried the day.

Usage of the Magna Carta in the Legal Profession

The influence of the *Magna Carta* in the legal profession has been great in the US, Canada, Australia, New Zealand, South Africa, India, Pakistan and Sri Lanka. A perusal of the Westlaw UK database reveals that the courts of England and Wales have referred to the *Magna Carta* in around 160 reported judgments. The *Magna Carta* is still cited in the courts of the United Kingdom but, often as little more than a historical flourish. The often-quoted line: *Justice delayed is justice denied*, one of the oldest principles of English law, has been derived from the *Magna Carta*.

In 2011, Lady Justice Arden, in her judgment stated: ‘*The right to liberty of the person is a fundamental right*,’ she said. ‘*It has been so regarded since at least the time of the well-known provisions of clause 39 of Magna Carta, which in due course found its reflection in article 9 of the Universal Declaration of Human Rights and article 5 of the [European] Convention on Human Rights.*’

The highest court in the United States had to decide whether foreign prisoners detained by the United States at Guantánamo Bay, Cuba, could seek writs of habeas corpus that might lead to their release. Allowing their appeal in 2008, the court traced that powerful remedy back beyond the United States constitution of 1789 to what the judges regarded as its origin in clause 39 of Magna Carta. ‘Gradually, the writ of habeas corpus became the means by which the promise of Magna Carta was fulfilled,’ wrote Justice Kennedy for the majority. The Supreme Court invoked the Magna Carta when deciding whether foreign prisoners could be detained indefinitely in Guantanamo Bay, Cuba.

¹² Sir Ivor Jennings.



The Supreme Court judgement for Boumediene v Bush relating to the detention at Guantanamo Bay.

The Magna Carta viewed as a Constitutional Instrument

There is more to the *Magna Carta* than words and parchment. It is not just one of the oldest statutes in force. It is, as the United Kingdom Supreme Court noted in January 2014, a *constitutional instrument*, standing alongside the Petition of Right 1628, the Bill of Rights 1689, the Act of Settlement 1701 and the Act of Union 1707. It was arguable, said the court, that fundamental principles contained in such constitutional instruments were not abrogated by the European Communities Act, which requires courts in the United Kingdom to follow European law.

Lord Judge, a former Lord Chief Justice of England and Wales, summed it up well in 2014. Whatever we may find in the written text, the *Magna Carta* has come down to us through the centuries as the most important single document in the development of constitutional and legal freedom and adherence to the rule of law in the common law world, eventually followed in and hugely influencing the Universal Declaration of Human Rights and the European Convention for the Protection of Human Rights and Fundamental Freedoms.

Lord Bingham, another former chief justice, wrote in 2010, the few clauses of the 1215 the *Magna Carta* that remain law today ‘*have the power to make the blood race*’. Their words, he suggested, ‘*should be inscribed on the stationery of the Ministry of Justice and the Home Office in place of the rather vapid slogans which their letters now carry*’. Bingham, however, was too wise a judge to think he could enforce a medieval statute in modern times. ‘*The significance of Magna Carta,*’ he wrote, ‘*lay not only in what it actually said but, perhaps to an even greater extent, in what later generations*

claimed and believed it had said. Sometimes the myth is more important than the actuality.’ It is an 802-year-old myth of which we may all be proud. ¹³

To quote Tun Abdul Razak: *We will uphold Concepts of Parliamentary Democracy. We can take pride in our sincerity and our readiness to uphold the concepts of democracy and our determination to practice it.* ¹⁴

Further Reading:

D. A. Carpenter, *Magna Carta* (London, 2015)

D.A. Carpenter, ‘The Dating and Making of Magna Carta’, in his *The Reign of Henry III* (London, 1996), 1-16

J. C. Holt, *Magna Carta* (2nd edn., Cambridge, 1992)

J. S. Loengard (ed.), *Magna Carta and the England of King John* (Woodbridge, 2010)

N. C. Vincent, *Magna Carta: The Foundation of Freedom 1215-2015* (London, 2015)

N. C. Vincent, *Magna Carta: A Very Short Introduction* (Oxford, 2012)

12.12.2017

• ¹³ Joshua Rozenberg, is Britain’s best-known commentator on the law. After taking a law degree at Oxford he trained as a solicitor, qualifying in 1976. He holds honorary doctorates in law from the University of Hertfordshire, Nottingham Trent University, the University of Lincoln and the University of Law.

¹⁴ Tun Abdul Razak when he addressed the UMNO General assembly as its new president on 23 January 1971.