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The Great Charter

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The Great Charter

A look at the history and Texas legacy of the Magna Carta, which celebrates its 800th anniversary this year.

BY VINCENT R. JOHNSON

The document that became known as the English Magna Carta—the Great Charter of Liberties—was issued in the name of King John on small, unadorned sheets of parchment dated June 15 in the 17th year of his reign (1215). Decidedly modest in appearance, each original was hand drafted by a scrivener and written in tightly packed Latin script. The papers contained many abbreviations, but the authenticity of each was apparent from the wax royal seal attached to the parchment by a ribbon.

The originals, four of which still survive, were dispatched throughout England and read to crowds awaiting news related to the ongoing civil war that had temporarily been suspended. Those public proclamations dramatically announced the king's capitulation to a group of barons.

The nobles had been driven to rebellion by King John's abusive practices, including rapacious taxation, excessive fines, and manipulation of the court system. In the Magna Carta, the barons forced King John to pledge himself to a multitude of reforms. The charter even contained provisions whereby a committee of 25 barons could hold the king accountable for noncompliance.

Transplanted to the New World

The events of 1215 occurred long before England had colonies in America and more than half a millennium before those colonies declared their independence. However, the provisions of the Magna Carta were to shape American jurisprudence, particularly the law of Texas.

As the Texas Supreme Court has explained, “Colonists brought to America and then to Texas their belief in the historic rights guaranteed by Magna Carta.”¹ The Magna Carta was one of the documents relied upon by the drafters of the 1836 Constitution of the Republic of Texas.² It was also one of the sources for the Texas Bill of Rights.³ In the early 20th century, the Texas Supreme Court expansively opined, in text using the document’s alternative spelling, that “[a]ll grants of power are to be interpreted in the light of the maxims of Magna Charta and the Common Law as transmuted into the Bill of Rights.”⁴

Initial Failure and Second Chance

Things might well have turned out differently. As a peace treaty, the 1215 charter failed and its provisions were never meaningfully implemented. Within three months, the document was repudiated by King John and voided on grounds of duress by Pope Innocent III.

However, fate intervened. About 16 months after the charter was issued at Runnymede, King John died. The advisers to his nine-year-old successor then quickly embraced the previously scorned charter as a way to sue for peace with the still-warring barons.

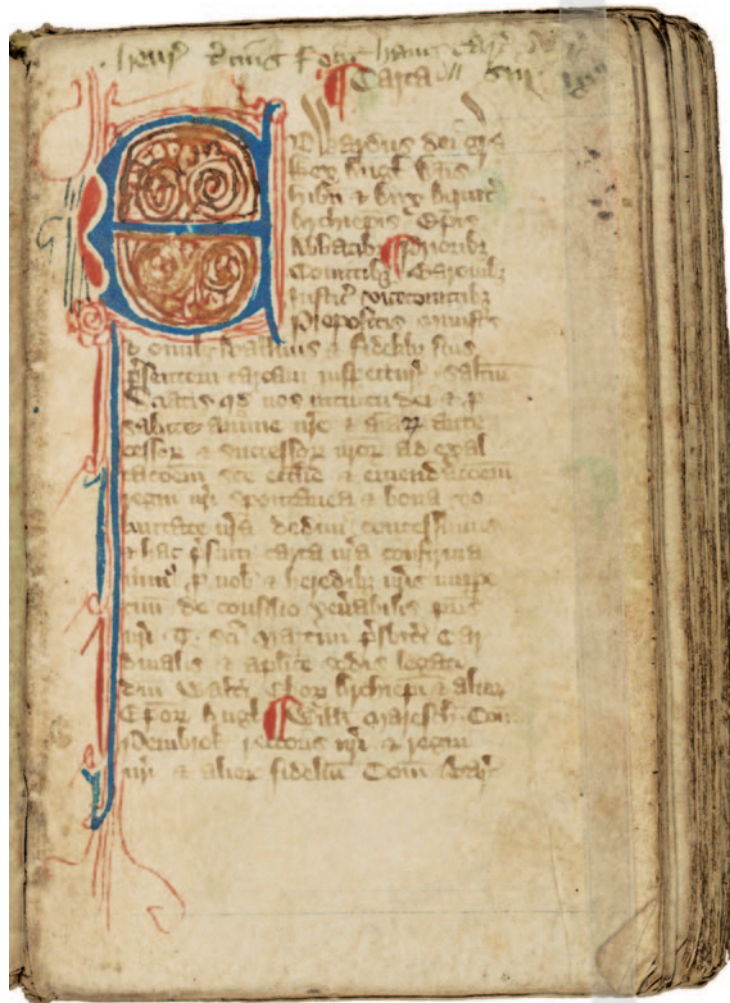
The charter was reissued on at least six other occasions during the next 85 years (1216, 1217, 1225, 1265, 1297, and 1300) in substantially different forms. Far from being an immutable icon, roughly one-third of the language in the original 1215 charter was jettisoned or changed.

As the years passed, the alterations to the Great Charter’s text were forgotten, probably because they did not concern the provisions for which the Magna Carta has become famous. Thus, in the guise of a seeming monolith, the 1215 document embarked on its jurisprudential odyssey across the centuries.

The Magna Carta is held in high regard because the unknown drafters understood the importance of legal principles, fair procedures, proportional punishment, official accountability, and respect for human dignity. Though intensely focused on the issues of feudal England, the Great Charter set the high expectations that have inspired lawyers and reformers for 800 years.

Due Process, Habeas Corpus, and Trial by Jury

The most famous provision in the Magna Carta, Clause 39, declares an unquestionable commitment to the primacy of legal principles. It 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



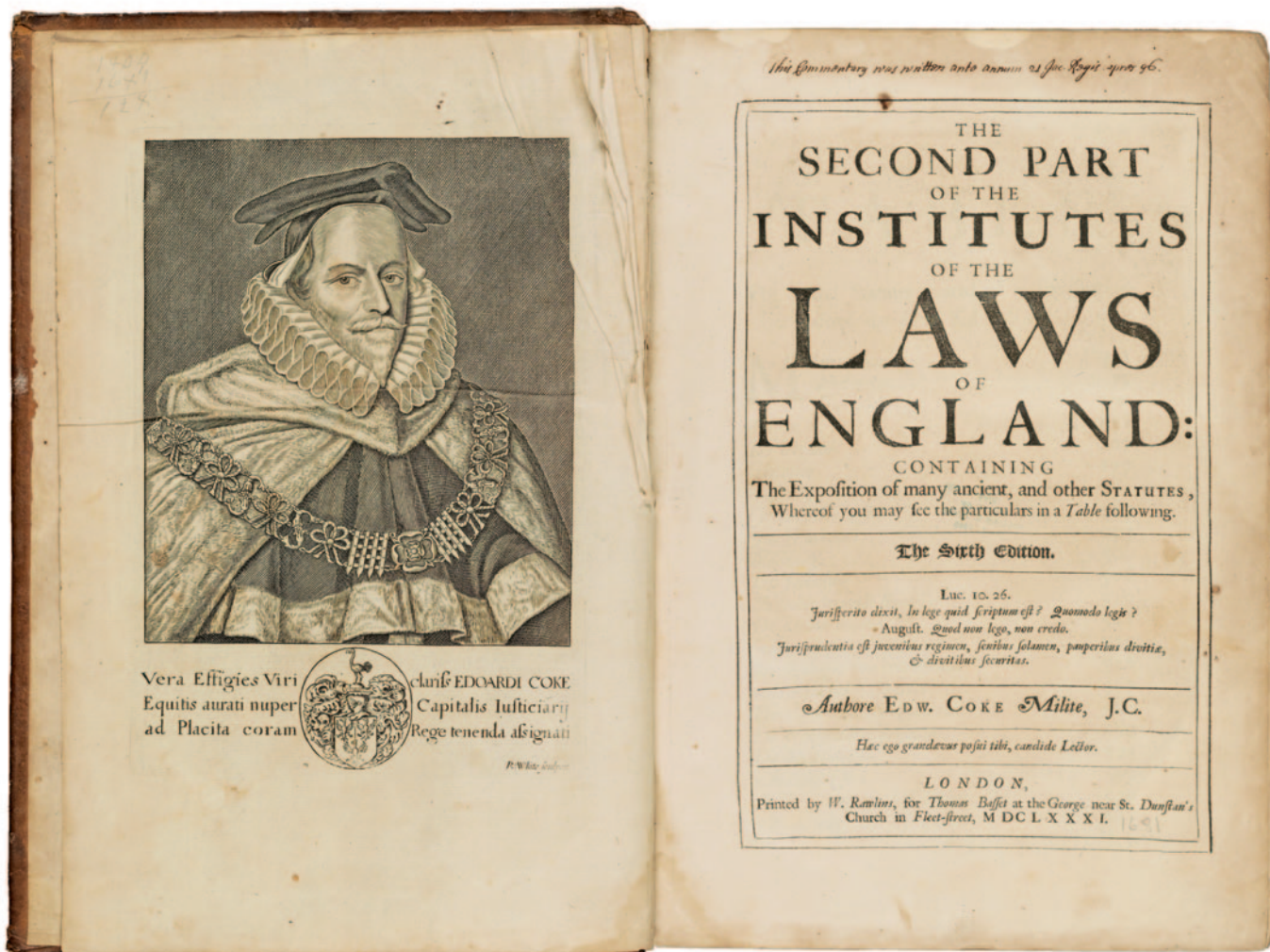
Above: Magna charta cum statutis angliae, England, 14th century. Among the Law Library’s rarest books, this small version of the Magna Carta is still in its original pigskin wrapper and features intricate colored pen work. PHOTOGRAPH COURTESY OF THE LAW LIBRARY, LIBRARY OF CONGRESS

Left: The Lincoln Cathedral Magna Carta. One of four existing exemplifications of the 1215 Magna Carta, which were given “Memory of the World” status by UNESCO for their singular world historical significance. PHOTOGRAPH COURTESY OF LINCOLN CATHEDRAL

against him, or send others to do so, except by the lawful judgment of his equals or by the law of the land.”⁵

Clause 39 is widely recognized as embodying the English concept of due process and its American progeny. The phrase “due course of law” in the Texas Constitution “can be traced to the Magna Carta.”⁶ As early as 1847, the Texas Supreme Court referred to the Magna Carta in interpreting the phrase “due course of the law of the land.”⁷ A century ago, on the charter’s 700th anniversary, an opinion of the same court extensively considered how the American idea of due process evolved from the Magna Carta.⁸

The Magna Carta says nothing about the writ of habeas corpus and little about criminal procedure. However, it has long been maintained that the rights to legally challenge unlawful detention and unfair criminal procedures are implicit in the charter’s guarantee that a person accused of crime is protected from adverse consequences except in accordance with the law of the land. The Texas



The Second Part of Sir Edward Coke's Institutes contains his famous interpretation of the Magna Carta, which placed the charter squarely in the center of English constitutional law. Lawyers in colonial America uniformly learned the law from Coke. Thomas Jefferson had his own set of the Institutes. London, 1681. PHOTOGRAPH COURTESY OF THE JEFFERSON COLLECTION, LIBRARY OF CONGRESS

Court of Criminal Appeals has noted that “[a]lthough the origin of the Great Writ has not yet been firmly established, most historians believe that it comes to us through the principles set out in” the Magna Carta.⁹

Clause 39 greatly advanced the idea that trials should be based on relevant evidence weighed by juries. Thus, the 5th Circuit has explained that “[t]he concept of trial by jury devolved to us from King John’s grant of certain liberties to his nobles in the Great Charter of 1215.”¹⁰ Until the Magna Carta, disputes were often resolved by such dubious procedures as ordeal by hot iron or trial by battle.

It has been said that “the drafters of the Texas Declaration of Independence of March 2, 1836, which included experienced lawyers such as Sam Houston, demonstrated a keen awareness of the historical significance of both the Magna Carta and the right to a jury trial when they alleged that the Mexican government ‘failed and refused to secure, on a firm basis, the right of trial by jury’”¹¹ The 9th Court of Appeals in Beaumont has opined that courts of appeals should exercise restraint in overturning a jury’s work, noting that the Magna Carta “forced King John to give rights to juries, not appellate courts.”¹²

Judicial Ethics, Open Courts, and Proportional Punishment

Clause 40 is the shortest and most eloquent provision in the charter. In language that still glows with rectitude, it states simply: “To no one will we sell, to no one deny or delay right or justice.”

In the early 13th century, when judicial bribes were common, this principled statement was revolutionary. It anticipated the development of the rule of judicial ethics, recognized today in Texas and other states, holding that judges may not receive gifts or other things of value from persons likely to come before them.

Because Clause 40 allowed access to the courts for redress, it is regarded as the inspiration for the “open courts” guarantee found in the Texas Constitution.¹³ “Many states have similar provisions in their constitutions ... [and it] is generally acknowledged, in accordance with the Texas Supreme Court’s conclusion, that open court clauses have their roots in Article 40 of the Magna Carta”¹⁴ It has been said that “[a]mong those principles traceable to Magna Carta, only the due process guarantee itself has had a greater impact on American Constitutional law.”¹⁵

The Great Charter spoke generously about the need for proportionality in punishment. Clause 20 states: “For a trivial offence, a free man shall be fined only in proportion to the degree of his offence, and for a serious offence correspondingly, but not so heavily as to deprive him of his livelihood. In the same way, a merchant shall be spared his merchandise, and a villein [a feudal tenant] the implements of his husbandry. ...” This provision reflects a humane desire to allow persons to provide for their own subsistence. “[P]arallels have ... been drawn between the livelihood-protection provisions of the Magna Carta and state homestead laws,”¹⁶ such as the one in Texas. In addition, according to the Texas Supreme Court, the language in the Texas Constitution prohibiting “excessive fines ... [and] cruel or unusual punishment” is said to have its “origin” in the Magna Carta.¹⁷

Ethics in Government and Protection of the Vulnerable

Three provisions in the Magna Carta prohibited royal officials from taking corn or other movable goods without immediate payment, or taking horses, carts, or wood without the consent of the owner. These clauses presaged the development of a broader, fundamental principle of modern governmental ethics jurisprudence. That principle, which is part of the ethics codes of Texas cities like San Antonio¹⁸ and Dallas,¹⁹ holds that a government official or employee may not use official power for personal economic benefit.

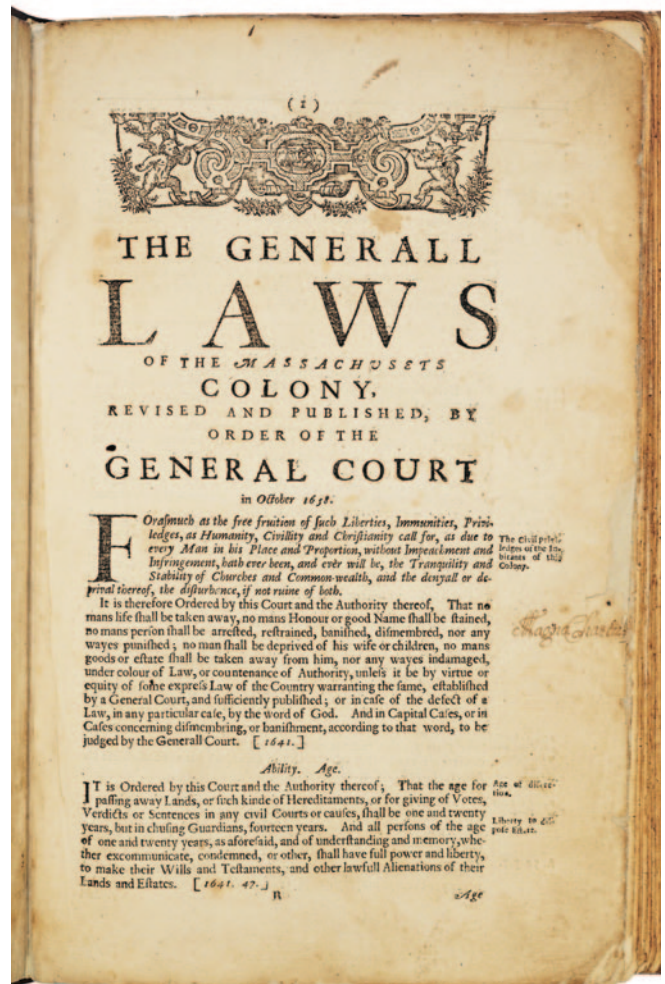
The Magna Carta contained a number of provisions that advanced interests of widows, surviving children, heirs, wards, hostages, and debtors. Some of the provisions are striking. For example, in feudal England, a widow could be forced to remarry or deprived of her inheritance. In opposition to those practices, Clause 8 states with certainty, “No widow shall be compelled to marry, so long as she wishes to remain without a husband,” and Clause 7 provides, “At her husband’s death, a widow may have her marriage portion and inheritance at once and without trouble.”

The Magna Carta was a product of its times and in no sense guaranteed everyone equal treatment. However, it protected a much wider array of persons and entities than just free men and aristocrats. It recognized the freedom of the church, the rights of merchants and others to travel, the liberties and customs of cities, and even the interests of mercenaries.

The Magna Carta made an important contribution to the law of Texas. That legacy is part of what makes the Great Charter’s 2015 octocentennial a grand occasion that deserves to be internationally celebrated. **TBJ**

Notes

1. *LeCroy v. Hanlon*, 713 S.W.2d 335, 339 (Tex. 1986).
2. Jadd F. Masso, *Mind the Gap: Expansion of Texas Governmental Immunity Between Takings and Tort*, 36 St. Mary’s L.J. 265, 272 (2005).
3. Arvel (Rod) Ponton III, *Sources of Liberty in the Texas Bill of Rights*, 20 St. Mary’s L.J. 93, 119 (1988).
4. *Spann v. City of Dallas*, 235 S.W.2d 513, 515 (Tex. 1921).
5. The numbering and quotations are from the translation of the 1215 charter that is available on the British Library website.
6. Cristen Feldman, *A State Constitutional Remedy to the Sale of Justice in Texas Courts*,



The Generall Laws of the Massachusetts Colony, Revised and Published, by Order of the General Court, in October 1658. The earliest charters and codes of law created by colonists in British America incorporated the guarantees set down in the famous Chapter 39 of the Magna Carta: trial by jury, freedom from unlawful seizure of property, freedom from unlawful imprisonment, and a guarantee of the rule of law.

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- 41 S. Tex. L. Rev. 1415, 1418 (2000).
7. *Janes v. Reynolds' Adm'rs*, 2 Tex. 250, 251 (1847).
8. *Mabee v. McDonald*, 175 S.W. 676, 679 (Tex. 1915).
9. *Ex parte Banks*, 769 S.W.2d 539, 550 (Tex. Crim. App. 1989).
10. *Rabinowitz v. U.S.*, 366 F.2d 34, 44 (1966).
11. James L. “Larry” Wright & M. Matthew Williams, *Remember the Alamo: The Seventh Amendment of the United States Constitution, the Doctrine of Incorporation, and State Caps on Jury Awards*, 45 S. Tex. L. Rev. 449, 542 n.276 (2004).
12. *Goolsbee v. State*, 927 S.W.2d 198, 201 (Tex. App.—Beaumont 1996).
13. *Weiner v. Wasson*, 900 S.W.2d 316, 322 (Tex. 1995); *Lucas v. United States*, 757 S.W.2d 687, 690 (Tex. 1988); *LeCroy v. Hanlon*, 713 S.W.2d 335, 339 (Tex. 1986).
14. Nora O’Callaghan, *When Atlas Shrugs: May the State Wash Its Hands of Those in Need of Life-Sustaining Medical Treatment?*, 18 Health Matrix 291, 301 (2008).
15. *Lucas v. United States*, 757 S.W.2d 687, 715 (Tex. 1988) (Phillips, C.J., dissenting).
16. Nicholas M. McLean, *Livelihood, Ability to Pay, and the Original Meaning of the Excessive Fines Clause*, 40 Hastings Const. L.Q. 833, 901 n.227 (2013).
17. *Sax v. Votteler*, 648 S.W.2d 661, 664 (Tex. 1983).
18. City of San Antonio Ethics Code § 2-43(a) (2014).
19. City of Dallas Code of Ethics § 12A-3(a) (2014).



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