

MAGNA CARTA TALISMAN OF LIBERTY

Barry Maley



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MAGNA CARTA

TALISMAN
OF
LIBERTY

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PREFACE

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The Magna Carta is the most famous legal document in the world.

But, contrary to popular myth and legend, the Magna Carta is not a charter of individual rights as we understand them today, nor is it the origin of trial by jury, of habeas corpus or the separation of powers. In its original form granted by King John in 1215 it was a renegotiation of the relationship between the King of England, the Church, the nobility and all free men of England - a setting down in writing of the grievances of the people and how they were to be prevented in the future.

This publication traces the history of the Magna Carta from its initial failure to its acceptance as a cornerstone of the rule of law, liberty and the placing of limits upon executive power. It describes how the Magna Carta has stood as a blueprint for legality, rather than violent revolution, and as a clear and certain statement about the development of the rule of law in the English legal tradition that Australia has inherited.

The enduring nature of the Magna Carta has created an ideal that has bound thoughts about liberty, rule of law and democracy together in a way which all people can understand. The story of Magna Carta calls on us to think about the relationship between ourselves as

citizens and our rulers, and challenges those in positions of power to act within the law.

While historians, lawyers and litigants may never agree about the legal and cultural significance of the document, agreement about the details has never been required. It is the ideal of the Magna Carta that has become a guiding force. Approaching the 800th Anniversary of the Magna Carta on the 15th June 2015 it is important to celebrate our own ideas about the rule of law, liberty and democracy and continue to discuss what they mean for us today.

MAGNA CARTA

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On June 15 this year Australia, Britain, the United States of America, Canada, New Zealand, and perhaps other countries settled or occupied by the British Empire, will commemorate the sealing of Magna Carta (the ‘Great Charter’) 800 years ago on June 15, 1215, by England’s King John. The placing of the royal seal at Runnymede on the Thames, signified King John’s promise to implement the demands of his barons and others for various legal and political reforms, including constraints on the king’s prerogatives and powers, as set out in the 63 chapters of the Charter. The substance of the proposed reforms, and their place in the saga of English liberties, will be dealt with later. For the countries mentioned above, Magna Carta and the English legal and political heritage it represents is also part of their history and heritage. The survival of that heritage, in its varying national forms but fundamental similarity, was at stake in World War II that began in 1939.

In that year, parliamentary democracy, religious freedom and toleration, a free press, the rule of law, the equality of all before the law, property rights, relatively free markets, trial by jury, and security of contract, prevailed only in a handful of nations. With the exception of Switzerland, France, Belgium, the Netherlands, and some of the Nordic nations of Europe and, to a lesser extent, South Africa, those

bulwarks of freedom and relative prosperity existed exclusively and in their fullness in the English-speaking nations – the British Isles, the United States, Canada, Australia and New Zealand. The rest of the world at that time, including most of Europe and Asia, Africa, and Central and South America, languished under dictatorships or arbitrary and unstable governments¹.

Magna Carta, and its influence in later centuries in advancing those achievements, is part of the long struggle for liberty, democracy and the rule of law centred primarily in English history. By the end of the eighteenth century great progress had been made in England and especially in the United States of America. The American colonists had waged war against England in order to attain justice and recognition of their claim to enjoy the promises of English law and liberty that had been denied them. Their successful struggle was brought to brilliant consummation by the amazing and liberal Constitution that followed it. This was a masterly consolidation, entrenchment and extension of English rights and law.

The Early Roots of English Liberty, Law and Democracy

Although that culminating, eighteenth century Anglo-American experience could be seen as a kind of historical conclusion, it was followed by continuing progress. Yet the whole story of the growth of the institutions of liberty, and the place of Magna Carta in it, cannot be truly understood without some examination of their beginnings in the centuries that preceded it. The origins of our liberal political and legal institutions take us back to Anglo-Saxon England and to what had already been achieved by the tenth century.

By then, invasions and raiding, especially by Vikings, had ceased. Those who stayed behind were being assimilated and an Anglo-Saxon people (the ‘English’) prevailed. In the words of historian Daniel Hannan, by then: “... the English had, on almost any definition, formed an independent and unitary nation-state by the tenth century. No other European country came close”. And, “the people of England had a palpable sense of common identity”.²

The Roman historian, Tacitus, writing two thousand years ago about the German tribes encountered by the Romans, referred to their custom of deciding matters of common concern and administration in open air clan meetings. The Anglo-Saxons had Germanic origins, and sources indicate that English kings in the seventh century ruled through councils of their people³. These councils were not democratic in any full sense of a meeting of delegates chosen by all the people. The important point is that it was a gathering of several prominent and influential members of the society whose agreement to proposals was essential to the legitimacy of kingly authority and decision-making. They were the ‘*Witan*’, the ‘wise men’, including religious leaders, substantial land-owners and civic leaders, gathered together in council with their ruler. Their role was to ratify significant decisions about such things as land grants and the resolution of important legal disputes. In an important sense, the decisions taken were contractual in character, with enforcement guaranteed by the assembly. In this we see the rudiments of democracy and the seeds of a fundamental legal process of wide application and value in oiling the wheels of social and economic action.

Daniel Hannan, quoting J. R. Madicott’s *Origins of the English Parliament*, observes: “In other parts of the West, the Germanic legislative tradition died out in the tenth century. Its energetic preservation and promotion in England was quite exceptional”. And Hannan further comments: “The Witan was not only a partner in royal law-making, it was also a guardian, of the established law, willing on occasion to lay down terms to the King”.⁴

Legal historian A.K.R. Kiralfy sums up Anglo-Saxon law at this time:

“The law, therefore, consisted mainly of a mass of local customary rules modified here and there by the Dooms [statutes or ordinances] of the Anglo-Saxon or Danish Kings. These customary rules were the ancient customs observed by the people of shires or kingdoms for countless generations. They were administered only as such rules can be in a general meeting or court, comprised of all the freemen of the neighbourhood, whether it were shire or hundred [subdivision]”.⁵

So, England then was on the path to the ‘rule of law’, to be understood not as the ruler’s arbitrary decree, but as ‘the law of the land’, the people’s law, in principle applicable to all without exception and administered by a system of courts including a rudimentary jury principle. By the end of the tenth century England was, by the standards of the day, a politically sophisticated, relatively prosperous and well-governed society within which nascent political and legal institutions provided a degree of security of tenure of property, a justice system, and a degree of freedom not enjoyed by the rest of Europe. Already, in the Witan, there were the beginnings of a trend towards a form of parliamentary institutions. But that state of affairs was about to be demolished by a new and contrary force.

The Norman Invasion, 1066

Edward the Confessor was the last of the Anglo-Saxon Kings. After his death at the beginning of 1066, he left no male heir to the throne. The two main contenders for the Crown were Harold of England and William, Duke of Normandy, neither of whom was blood-related to Edward. Harold simply claimed the throne with the support of the English nobility. William hastened to challenge the claim and organised an invasion force consisting of landed and landless Norman nobles and knights from Normandy and elsewhere in Europe. The Normans were Vikings who had earlier conquered northern France. William defeated and killed Harold at the battle of Hastings and William of Normandy became William I of England. His reign transformed England, sometimes for the better and more often for the worse so far as English liberties, the possessions and lives of the English aristocracy, and the way of life of the people, were concerned. William ruled with an iron fist, took possession of the land, passed most of it over to his supporters, reduced much of the population to serfdom, substituted his arbitrary will for their liberty and ignored the law that had protected it.

Norman rule was harsh and ruthless for all, whether English nobles, merchants, shopkeepers, artisans or villeins. The aloof

French-speaking nobles and their feudal customs directly challenged the country they had conquered and its way of life. The native aristocracy, no less than the ordinary citizen, suffered expropriation and repression and loss of political status. Active resistance came five years after the Conquest with the rebellion of Hereward the Wake and his followers, but it was quickly put down.

It is not surprising that subsequent generations of Englishmen dreamt of reinstating what had been lost. As the twelfth century chronicler, Orderic Vitalis put it:

“The English groaned aloud for their lost liberty and plotted ceaselessly to find some way of shaking off the yoke that was so intolerable and unaccustomed”.⁶

The Path to Magna Carta

It is important to note that the French invaders numbered less than nine thousand, and that they were immediately immersed in a population of a million or more Anglo-Saxons living in a relatively prosperous country with a strong and relatively sophisticated culture. It was inevitable, as the decades rolled by, that they could not help but be influenced by the surviving Anglo-Saxon customs, habits and institutions of the people they commanded and lived with. At the same time, the French nobles were also bound by the arbitrary and absolute rule of the King and unavoidable subjection to Royal service and oaths of loyalty that were strictly enforced by William and those who followed him on the throne.

Despite these harsh conditions, much of the traditional life and its legal and political principles, and the cherishing of property rights, continued in the shires and courts of the kingdom. People went about the business of making money, and commitment to the ideas of public decision-making and the rule of law lived on. As Hannan observes: “The association of Englishness with common law and representative government long predates Magna Carta”.⁷

It was against this background that the affairs of state, especially the relationship of the king and his nobles (or ‘barons’), were

played out in the 12th and 13th centuries during the reigns of the six kings, up to John, who had followed William I. (**See Appendix**). During this period, until 1204, the king and his French barons had enjoyed not only the lands and income of England, but also of extensive dominions in Northern France. This dual kingdom, so to speak, and its resources, was important in meeting the oath-bound commitments of service to the king. These included contributions of both money and military service ('scutage'), as the king commanded, and varied with the king's activities and the costs thereof. The barons therefore had a great deal at stake in the burden imposed by the king and their capacity to meet it. Of these burdens the cost of warfare was usually the most important.

John became king in 1199 and reigned until 1216. His character and behaviour were crucial in determining the course of events leading to Magna Carta and the destiny of his Normandy holdings. The record shows, so far as his personality is concerned, that he was intelligent and energetic, and industrious and attentive to detail in managing the kingdom. But he was devious, calculating and cruel, and a poor soldier and general. His own family feared him. He was accused, with good reason, of arranging the murder of his nephew for dynastic reasons. He stole from his own mother, Eleanor of Aquitaine and his sister-in-law, Berengaria, the widow of King Richard. He hanged the sons of 28 Welsh chieftains.⁸

He constantly and wilfully offended and outraged his barons. Robert FitzWalter once arrived at court with 500 armed knights to see justice done in a case touching his son-in-law. As legal historian Arthur R. Hogue put it: "The English barons should have been John's most dependable subjects, but he had made personal enemies among them and lost their support long before the treaty at Runnymede".⁹

Perhaps his greatest folly was to lose his lands in France to King Philip II of France in 1204, with the consequences for the fortunes of his barons suggested above. This was a factor in ultimately forming the rebellious alliance of the exasperated French and English aristocrats who were to confront King John. At that time, the aristocracy comprised "about two hundred and thirty great noblemen who held grants of land from the Crown".¹⁰

Not all of these joined the revolt, which developed slowly over several months and came about only after John repeatedly refused to discuss the barons' claims to enforcement of customary rights. Forty five barons had formulated demands against the king, but he refused them. They then renounced their allegiance, marched on London and established themselves in an invincible position. The king agreed to treat with the barons and others in June, 1215 at Runnymede, on the Thames, just outside London.

Although serving their interests was the prime motive of the barons, it is important to note that the Charter went beyond their immediate concerns by phrasing their demands in terms well-suited to serve ends of a more general kind, including a conception of justice and liberty with deep roots in the Anglo-Saxon way of life. Geoffrey de Q. Walker points out in his *The Rule of Law: Foundations of Constitutional Democracy*:

"There has been a tendency among commentators influenced by New Whig or Marxist ideas to denigrate Magna Carta, to stigmatize it as a purely feudal document, as a deal struck between the king and the barons for the benefit of the nobility, and even as an obstacle in the path of freedom and democracy. These views cannot be supported. As the more recent studies have emphasised, what was distinctive about the Charter was that, owing to a peculiar conjunction of events and alliances, its provisions were not purely for the benefit of the barons, The group that drew it up was not composed solely of the nobility and the clergy, but also included the merchants, the townsmen, the inhabitants of the forests and freemen more generally. The Charter's most important general provisions were expressly worded so as to apply to all of these groups, and even to the unfree classes as well."¹¹

In the preparation of Magna Carta, the Archbishop of Canterbury, Stephen Langton, played a key role and sought to protect and strengthen the position of the Church. He nevertheless took a broader, long term view of what the negotiations with the king might achieve, and this approach is reflected in the final terms of the Great Charter where certain rights claimed are of a universal kind amenable to wide application. So, the Charter "was an expression of the law which

the king and his judges and other officials were not permitted to ignore “¹². In this is a key principle of the rule of law. And Arthur Hogue goes on to say:

“If one had to choose a chapter from all of Magna Carta to express the spirit and the principal idea embodied in the Charter, it would be Chapter 39 of the 1215 version; ‘No free man shall be taken or imprisoned or dispossessed, or outlawed, or banished, or in any way destroyed, nor will we go upon him, nor send upon him, except by the legal judgment of his peers or by the law of the land’.”¹³

Beginning on June 15, 1215, and after several days of discussion between the barons and the king, John acceded to their demands and placed his royal seal upon the Charter.

We begin to see why Magna Carta represents both a summing up of the thinking of the times in which it was prepared and a guide to aspirations for the future. It articulated principles of justice and liberty of permanent importance and a foundation for the future of liberty in England (and elsewhere). The revolutionary character of the Charter and the familiarity of some of the principles now, although formulated eight hundred years ago, are remarkable. Some examples follow, put briefly in summary form, from the Charter’s 63 chapters. The numbers in brackets indicate the number of the chapter in Magna Carta:

The freedom of the English Church is guaranteed (13)

Establishment of fixed law courts rather than those following the King (17)

Defined authority and frequency of county courts (18)

Royal judges, rather than officials such as sheriffs, must try crimes (24)

A royal official requisitioning goods must make immediate payment to the owner (28)

No free man could be imprisoned or stripped of his rights except by the lawful judgment of his peers or by the law of the land (39)

Justice must not be sold, denied or delayed (40)

Justices, constables, sheriffs and bailiffs should be appointed only if they know the law and would enforce it (45)

A process should be established for giving restitution to those who have been unlawfully dispossessed of their property or rights (52)

This charter is binding upon King John and his heirs (63)

Promises, Promises

When King John reluctantly sealed his promise to implement the Charter, it seemed that its authors had triumphed.

However, within weeks Magna Carta was a dead letter, repudiated by the Pope on John's urging, betrayed and dismissed by the king himself, and England was headed for civil war. Centuries to come were again to be marked by struggles and civil war against arbitrary government under kings who continued to use arbitrary power against weak individuals, councils and parliaments. It was not until the 'Glorious Revolution' of 1688-89 in Britain that Parliament finally wrested power from the king. The semblance of full democracy lagged behind, but Parliament became sovereign. The nineteenth century saw rapid progress on all fronts and in all of the English-speaking democracies, by the 1930s, freedom, parliamentary sovereignty and the rule of law were firmly established.

So, where does Magna Carta figure in all of this? Was it the epitome of futility or liberty's banner? Was the presentation of a charter to King John unprecedented?

No, it was not without precedent – nor was its repudiation. In England both before and after Magna Carta, and in Europe too, charters and promises had been presented to rulers, accepted by them, promises made, and then broken. As Jill Lepore reports, quoting various authorities:

“In eleventh-century Germany, for instance, King Conrad II promised his knights that he wouldn’t take their lands, ‘save according to the constitution of our ancestors and the judgment of their peers’. In 1100, after his coronation, Henry I, the son of William the Conqueror, issued a decree known as the Charter of Liberties, in which he promised to ‘abolish all the evil customs by which the Kingdom of England has been unjustly oppressed’, a list of customs that appear, all over again, in Magna Carta”.¹⁴

So, *the promise*, as a convenient tool of political authority, has been willingly used for generations to get over political hurdles – and still plays a role in this day and age.

If absence of prompt implementation is evidence of futility, so be it. There was no seamless process of implementing Magna Carta. That never happened; but in slow, piece-meal fashion over centuries, many of the principles expressed in its chapters eventually found a place in the statute books of Britain, until a tidying-up process in the nineteenth century removed several that had become redundant or obsolete; but four chapters remained.

Dissemination

Soon after Runnymede, many copies of the Charter were distributed throughout England, especially by the churches, and the terms of the Charter itself were somewhat modified until reaching a final form in 1225.

A.K.R. Kiralfy, in *Potter’s Historical Introduction To English Law*, records:

“During the thirteenth and fourteenth centuries, the House of Lords also acquired jurisdiction in trials of peers for treason or on impeachment. This was a natural result of Magna Carta.”¹⁵

It continued thereafter to perform as a talisman of justice and the rule of law, and served the realisation of tendencies immanent in the long history of the Anglo-Saxons. It did not languish as the self-interested demands of the aristocracy, but gradually found its place for universal application in English law, and wherever that law found a new home. In the words of a former Lord Chancellor of England, Lord Irvine of Lairg, in delivering the Inaugural Magna Carta lecture in the Great Hall of the Australian Parliament in Canberra in 2002:

“Magna Carta emerged as the rock upon which the [English] constitution would gradually be built and the fulcrum upon which the constitutional balance would be struck.”¹⁶

Lord Irvine further observes in this lecture:

“Magna Carta was re-issued four times, with various amendments, and is now thought to have been confirmed by Parliament on almost fifty further occasions. The authoritative text, four chapters of which remain on the statute book of England, is Edward I’s *Inspeximus* of 1297. A copy of this version, the only one outside the United Kingdom, is displayed in Australia’s new Parliament House”.¹⁷

(There is a monument to Magna Carta in the Parliamentary Zone in Canberra.)

Magna Carta began as, and remained, a key repository of principles of justice and liberty, settling in the minds of the people and their leaders and ultimately finding a place in the laws and constitutions of the English-speaking peoples.

Magna Carta in the United States of America and Australia

Forever after, it was appealed to time and again by those fighting for liberty. The American founding fathers and subsequent generations repeatedly quoted it, or its principles, in their discussions and debates both before, and in, the Declaration of Independence; in the creation of their Constitution, and in the amendment to the Constitution expressing a Bill of Rights.

The English Lincoln Cathedral copy of Magna Carta was sent for safe-keeping to America upon the outbreak of World War II and held in the Library of Congress, where it was viewed by fourteen million Americans. It was also displayed at the New York World's Fair in 1939.

Jill Lepore reports that;

"In 1775, Massachusetts adopted a new seal, which pictured a man holding a sword in one hand and Magna Carta in the other".¹⁸

And she later observes; "Between 1836 and 1943, sixteen American states incorporated the full text of Magna Carta into their statute books". And further: "...Magna Carta became an American icon. In 1935, King John affixing his wax seal to the charter appeared on the door of the United States Supreme Court Building"

In Australia, Magna Carta was implicit in the law precisely to the extent that its presence is reflected in English law, because that was the law that obtained at the beginning of British settlement in 1788. However, with the effluxion of time, as Lord Irvine explains in the lecture referred to above:

"The process of federation meant that Magna Carta was given concrete legal effect in Australian jurisdictions in a complex way. Jurisdictions with Imperial Acts (the Australian Capital Territory, New South Wales, Queensland and Victoria) all chose to enact chapter 29 [of Magna Carta]. This was not, primarily, for its salutary legal effects, but rather to recognise Magna Carta's pivotal role in the constitutional legacy that these jurisdictions had inherited. By contrast, in the Northern Territory, South Australia and Western Australia, Magna Carta was received by Imperial law reception statutes. These jurisdictions find themselves in the surprising position of having almost all the provisions of Magna Carta theoretically still in force."¹⁹

Additionally, Australia's inheritance of English law included the common law within which elements of Magna Carta remained. However, the High Court of Australia, in *Jago v. District Court*, limited the extent of Magna Carta's contribution to the right of access to justice, at least in Australian law. To this may be added, however, the

view of Justice Isaacs speaking in the High Court when he proclaimed Magna Carta to be ‘the groundwork of all our constitutions’²⁰

Concluding Remarks: History and the Rule of Law

During the continuing struggles for rights and justice in English history and, more widely, in the English-speaking world, there has been constant recourse to Magna Carta as a reminder and example both of a tradition of protest and the pursuit of rights and justice. The principles and aspirant spirit alive in Magna Carta were embedded in the development of English law and stood permanently for fortitude and persistence in resisting backsliding and neglect of what had been won, and what remained to be won.

Geoffrey de Q. Walker summarises the part played by Magna Carta in the progress to the rule of law as follows:

“But the significance of Magna Carta for our purposes could fairly be summed up in this way. First, the Charter preserved and reinvigorated the mediaeval idea of the law’s supremacy and thereby promoted the principle of the rule of law. Next, the inviolability that was attributed to the Charter, or at least to its major provisions, made it into a higher kind of law against which the legitimacy of later laws and statutes could be tested. Whether or not any court ever actually struck down a statute for inconsistency with the Charter, it stood as a statement of constitutional principle that guided the development and interpretation of public law. It also served as a reminder that internal peace and stable government required, at the very minimum, a balance between the governors and the governed and a measure of restraint in the use by government of its coercive power; and that these requirements are most effectively met by a system of government under law.”²¹

It is surely no exaggeration to claim that one of the greatest, if not *the* greatest political achievement of the English-speaking peoples, has been the establishment of the rule of law. Without it there is no barrier to autocracy and arbitrary government, no protection for property, free speech, democratic assembly and democratically-made law; just the prospect of tyranny for all. This was the case before the barons confronted King John, for they were

living without the rule of law. And justice under the rule of law claimed for some could be justice for all.

A detailed description of what the rule of law consists in, or an extended discussion of the present threats to it, is beyond the scope available to us here. But something can be said of some fundamental features.

First of all, the *law* must rule us, not persons – no matter how noble or knowledgeable or powerful they may be or claim to be. And those who make the law should be properly authorised to do so by universal adult franchise of those subject to it. The law must be published, available and understandable; the ordinary citizen must be able to know what the law says and how the law may affect him or her. The law must be interpreted impartially and knowledgeably, and applied impartially by independent courts. All citizens must be answerable to the law and courts without exception and without privilege or special courts; in short, equality of all before the law. The law should be general, certain and clear and leave little or no room for arbitrary judgment or action by those with authority.

A crucial question today is whether these conditions are being met and whether the rule of law as described above is strong and healthy in Australia.

In his book, *The Rule of Law: Foundations of Constitutional Democracy*, Geoffrey de Q. Walker, formerly Professor of Law in the University of Queensland sounds a warning. After affirming his view that the rule of law is under threat he goes on to say:

“... the institutional requirements for the existence of the rule of law and the elements of an institutional definition of it, are being compromised to such an extent that some of them can no longer be said to exist in Australia and the other common law countries, to say nothing of the rest of the world. They are being undermined by the rise of the power of pressure groups, a change in the role of the courts, a decline in their independence and impartiality, a decreased sense of community, the triumph of short-term expediency as the main political principle and a variety of other social and political phenomena associated with what some sociologists call ‘late sensate’ society”.²²

We are also confronted today with the compounding problem of the decline in history education in the schools and universities. Evidence is gradually revealing the absence, or at least the unacceptable minimisation, of the teaching of the history of Western civilisation within the National Curriculum for schools and the special importance of British history for Australians within such a narrative.²³

These observations and the saga of Magna Carta hold for us today both a warning and an inspiration. We live today in a country drowning in statutes and regulations of wide range and detail in which certainty, generality and clarity are often missing; where the citizen cannot readily understand the law in order to abide by it; where the law is increasingly intrusive into the private and civil life; where the law trivialises personal responsibility; and where some citizens may be adversely affected by the legal privileges of other groups of citizens.

The remedy for such states of affairs rests with an informed and alert citizenry. If we save the books, save the history, and keep memory alive, repair is always possible. And the example of Magna Carta shows the way.

ENDNOTES

- 1 Hannan, Daniel, *How We Invented Freedom & Why It Matters*, Head of Zeus Ltd., London, 2013
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- 4 Hannan, supra, p. 84
- 5 Kiralfy, A.K.R. (Ed.), *Potter's Historical Introduction To English Law And Its Institutions*, Fourth Edition, Sweet and Maxwell Ltd., London, 1958
- 6 Hannan, supra, End Note 1, p.103
- 7 Hannan, supra, End Note 1, p.106
- 8 Hogue, Arthur, *Origins Of The Common Law*, Liberty Press, Indianapolis, 1966, p.46
- 9 Hogue, supra, End Note 8, p.47
- 10 Hogue, supra, End Note 8, p.50
- 11 Walker, Geoffrey de Q, *The Rule of Law: Foundation Of Constitutional Democracy*, Melbourne University Press, 1988, p. 93
- 12 Hogue, supra, End Note 8, p.53
- 13 Hogue, supra, End Note 8, p.53
- 14 Lepore, Jill, "The Rule Of History: Magna Carta, the Bill of Rights, and the hold of time", *The New Yorker*, April 20, 2015, p. 85
- 15 Kiralfy, supra, End Note 5, p.176
- 16 Lord Irvine of Lairg, "The Spirit of Magna Carta Continues to Resonate in Modern Law", Inaugural Lecture presented in The Great Hall of Parliament House, Canberra, 14 October, 2002, p.4
- 17 Lord Irvine of Lairg, End Note 15, p.2
- 18 Lepore, Jill, supra, End Note 14, p.88
- 19 Lord Irvine of Lairg, supra, End Note 16, p.13
- 20 Lord Irvine of Lairg, supra, End Note, 16, p.14
- 21 Walker, supra, End Note 11, pp.96-7
- 22 Walker, supra, End Note 11, p. 50
- 23 The decline in historical studies implicit in the proposals for a National Curriculum by the Federal Government is discussed in publications by The Institute for Public Affairs in Melbourne (ipa.org.au) dealing with the history curriculum.

APPENDIX

A crucial event in the history of the events leading up to Magna Carta was the invasion and conquest of England by the Normans in 1066, led by William, Duke of Normandy. After the death of the Anglo-Saxon king, Harold, at the battle of Hastings, the conqueror, William of Normandy, became William I, king of England. Listed below as an aid to understanding is a dynastic and chronological listing of the English kings from William I to King John, the crucial figure in the drama of Magna Carta, and John's successor, Henry III:

Norman Kings

William I	Accession: 1066	Years Reigned: 21
William II	" 1087	" " 13
Henry I	" 1100	" " 35
Stephen	" 1135	" " 19

Plantaganet (Angevin) Kings

Henry II	" 1154	" " 35
Richard I	" 1189	" " 10
John	" 1199	" " 17
Henry III	" 1216	" " 56



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MAGNA CARTA: TALISMAN OF LIBERTY

Eight hundred years ago, in 1215, an English king was confronted by rebellious barons—the great landholders of England—who demanded that his royal powers be curbed in favour of their liberties. Their Magna Carta (or ‘Great Charter’) listed their proposals. That singular event became the foundation of a movement that finally brought justice, liberty and prosperity to the common men and women of England; and, in turn, to English-speaking nations elsewhere. Deeper in the pre-medieval history of England there had already existed a combination of customs and forms of government that pre-figured, and underpinned, the coming of the Magna Carta and the growth of parliamentary democracy. At the centre of this achievement is the long delayed coming of democratically decided rule of law. The alternative is the rule of persons and their whims and wishes—and thus the face of tyranny. We Australians justifiably rejoice in a degree of freedom, well-being, prosperity, lawfulness and peace that are the envy of the world. But we rarely stop to consider that our way of life is a creation with a history. Understanding how it came about is vital to the will to protect and to cherish.



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