

Magna Carta

Magna Carta was first issued on June 15, 1215 at the meadow of Runnymede, between Windsor and Staines. Magna Carta means 'The Great Charter'. It's also known as Magna Carta Libertatum (The Great Charter of Liberties). It was written in Latin because generally writing in the Middle Ages was in Latin - *writing* in English only really begins in earnest over a century later with figures like Chaucer. The Latin origins of many modern English words is largely attributable to Latin's dominance as a written language and a *lingua franca* long after the decline of the Roman Empire.

Magna Carta was reissued (in modified versions) in 1216, 1217 and 1225, during the reign of Henry III. It was reissued again in 1297 by Edward I. When it was reissued in 1217, sections concerning the 'liberties of the forest' - hunting rights essentially - were hived off into a separate smaller charter. So there was the smaller Forest Charter and then the Great Charter. Hence, from that time it was known as Magna Carta.

(Clauses marked (+) are still valid under the charter of 1225, but with a few minor amendments. Clauses marked (*) were omitted in all later reissues of the charter. In the charter itself the clauses are not numbered, and the text reads continuously. The translation sets out to convey the sense rather than the precise wording of the original Latin.)

+ (1) FIRST, THAT WE HAVE GRANTED TO GOD, and by this present charter have confirmed for us and our heirs in perpetuity, that the English Church shall be free, and shall have its rights undiminished, and its liberties unimpaired. That we wish this so to be observed, appears from the fact that of our own free will, before the outbreak of the present dispute between us and our barons, we granted and confirmed by charter the freedom of the Church's elections - a right reckoned to be of the greatest necessity and importance to it - and caused this to be confirmed by Pope Innocent III. This freedom we shall observe ourselves, and desire to be observed in good faith by our heirs in perpetuity.

- "that the English Church shall be free": This essentially means that the Church itself – and not the King – would appoint all high church officials, eg bishops, the Archbishop of Canterbury.

- Recall that John's great dispute with the Church had originated in disagreement

about who had the power to appoint the Archbishop of Canterbury (and his further rejection of the Pope's compromise candidate, Stephen Langton). John, of course, had already given in on this issue but this clause can be seen as cementing John's concession.

- On 21st November 1214, a charter had been released guaranteeing canonical election (the Church controlling its own appointments). John had done this in an attempt to win support as rebellion became more inevitable.

- "The use of the words *ecclesia Anglicana* may indicate, perhaps, that under the influence of Stephen Langton, English churchmen were beginning to regard themselves as members of a separate community, that looked for guidance to Canterbury rather than Rome." (McKechnie 1914: 192)

** (12) No 'scutage' or 'aid' may be levied in our kingdom without its general consent, unless it is for the ransom of our person, to make our eldest son a knight, and (once) to marry our eldest daughter. For these purposes only a reasonable 'aid' may be levied. 'Aids' from the city of London are to be treated similarly.*

- Scutage: the commuting of an obligation to provide military service for an equivalent cash payment (and the use of the revenue so obtained to maintain paid armies).

- Aid: Besides military service, feudal custom allowed the king to make certain other exactions from his barons. In times of emergency, and on such special occasions as the marriage of his eldest daughter, he could demand from them a financial levy known as an 'aid' (auxilium).

- This clause limits the King to imposing aids on the three specified occasions OR beyond those cases, when it has been affirmed by general consent of the kingdom. See clause 14 as to how this consent was to be obtained.

- The rule that scutage could only be imposed with general consent of the kingdom was new and was omitted when Magna Carta was reissued the next year.

- The occasions when the King can impose an aid without common consent are specified precisely. However, the appropriate level that aids should be levied at is not – that it should be 'reasonable' leaves a lot of room for dispute.

- "It came indeed to be interpreted in a broad general sense by enthusiasts who, with the fully-developed British Constitution before them, found in it the modern doctrine that the Crown can impose no financial burden without consent of Parliament." (McKechnie 1914: 232)

+ (13) The city of London shall enjoy all its ancient liberties and free customs, both by land and by water. We also will and grant that all other cities, boroughs, towns, and ports shall enjoy all their liberties and free customs.

- A fundamental liberty was the capacity of London to elect its own mayor.
- Another important right was for the city to appoint those officials, known as sheriffs, who acted as tax collectors (as opposed to royal bailiffs doing this).
- Crucially, London had sided with the rebel barons. This clause can in part be seen as London's reward.

** (14) To obtain the general consent of the realm for the assessment of an 'aid' - except in the three cases specified above - or a 'scutage', we will cause the archbishops, bishops, abbots, earls, and greater barons to be summoned individually by letter. To those who hold lands directly of us we will cause a general summons to be issued, through the sheriffs and other officials, to come together on a fixed day (of which at least forty days notice shall be given) and at a fixed place. In all letters of summons, the cause of the summons will be stated. When a summons has been issued, the business appointed for the day shall go forward in accordance with the resolution of those present, even if not all those who were summoned have appeared.*

- Clause 14 can be understood as specifying the mechanism by which Clause 12 (the common consent of the realm for extraordinary aids) would be achieved.
- Note those figures who will be summoned to an assembly: archbishops, bishops, abbots, earls, greater barons. It was the aristocracy whose consent would be obtained, not the common people's (popular democracy, where a large portion of the population have a say in government, is still six centuries away).
- "of which at least forty days notice shall be given"... "In all letters of summons, the cause of the summons will be stated." The barons were attempting to ensure with these specifications that the King couldn't rig the process in one way or another.

(33) All fish-weirs shall be removed from the Thames, the Medway, and throughout the whole of England, except on the sea coast.

- The purpose of this clause was to remove all obstacles likely to interfere with navigation.
- Roads were poor, water-ways were the avenues of commerce. When water-

ways were blocked, townsmen and traders suffered losses and all parts of the economy were inconvenienced.

- This clause reminds us that, while Magna Carta contains noble principles of enduring significance, it was produced in a specific time and place with immediate interests and objectives in mind.

- Aaron asked a good question about how and why this provision arose out of the conflict between the King and the barons. The short answer is that it didn't; this clause is really a confirmation of already established practice. McKechnie (1914: 345) states: "So far as the Thames and Medway were concerned, this provision contained nothing new. To the Londoners, indeed, the keeping open of their river for trade was a matter of vital importance. The right to destroy *kydelli* [fish-weirs] had been purchased from Richard I for 1500 marks, and a further sum had been paid to John to have this confirmed."

Friday:

(16) No man shall be forced to perform more service for a knight's 'fee', or other free holding of land, than is due from it.

- Knights fee: In feudal society, the king's barons held their lands 'in fee' (feudum) from the king, for an oath to him of loyalty and obedience, and with the obligation to provide him with a fixed number of knights whenever these were required for military service. Barons provided the knights by dividing their estates into smaller parcels described as 'knights' fees', which they distributed to tenants able to serve as knights.

- Everybody agreed on the basic arrangement – land in exchange for military service – but there was much room for dispute about how much service was actually due in each particular case. This clause was intended to address this issue, to define and limit the knight's obligations.

- "One grievance may have been specially in their minds. They had frequently objected to serve abroad, particularly during John's campaigns in Poitou." (McKechnie 1914: 260). Remember that the immediate cause of the crisis had been the refusal, particularly of the northern barons, to serve with John in 1214 in his campaign to recapture those territories in modern-day France that had previously been his.

- The clause does little to specify precisely what was owed, by whom, and when. Disputes continued.

(17) Ordinary lawsuits shall not follow the royal court around, but shall be held in a fixed place.

- At the time, all departments of government, legal and administrative, were centred in the King's household.
- "The entire machinery of royal justice followed Henry II, as he passed, sometimes on the impulse of the moment, from one of his favourite hunting seats to another." (McKechnie 1914: 262).
- For those seeking justice, this meant intolerable delay, expense and annoyance.
- Richard of Anesty journeyed for five years through most parts of England, Normandy, Aquitaine and Anjou, following the King. He eventually had his case heard and was successful but had accumulated a ruinous debt in the meantime.
- Common pleas – those involving disputes between one subject and another, but not concerning the King – were to be held in a fixed spot.
- Although it wasn't named in Magna Carta, Westminster was probably intended as the location of the permanent court. It was the location in London of the various departments of government - legal and administrative - that made it England's capital.

(20) 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 husbandman the implements of his husbandry, if they fall upon the mercy of a royal court. None of these fines shall be imposed except by the assessment on oath of reputable men of the neighbourhood.

- Three stages of justice pre-existed Magna Carta.
- 1. The bloodfeud (the family of the victim took physical revenge)
- 2. Fixed money-payments (money was accepted by the aggrieved party instead of physical retribution; the wrong-doer might have to make payment to the victim's family, the victim's lord, the lord of the territory on whose land the crime had been committed, , the church and the King as lord paramount)
- 3. Amercements – As a reaction to the impracticality of fixed money-payments, the Crown would instead offer protection to the wrong-doer if the wrong-doer placed his 'life and limb' at the mercy of the King.
- Historically, the King had applied amercements according to a set of conventions or customs. The amount a wrong-doer would have to pay would be defined by

the severity of the crime and their ability to pay.

- Technically, however, amercement allowed the King to charge whatever fine he liked and so was very open to abuse.
- This was a big issue because few people would go a whole lifetime without being subject to an amercement.
- This clause insists that payments be proportionate.
- Moreover, payments to the Kings shouldn't deprive a person of their livelihood.
- The payable amount should be assessed by a person's peers – something of a precursor of trial by jury.

+ (39) 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.

- The essential significance of Magna Carta is its role in establishing the principle that the king is under, or subject to, the law. The king too must obey the laws that govern his kingdom. In other words, Magna Carta helped establish the rule of law (in place of the rule of simple brute force). Clause 39 is perhaps the best and most important example of how Magna Carta constrained the arbitrary power of the King.

- "It has been usual to read it as a guarantee of trial by jury to all Englishmen; as absolutely prohibiting arbitrary commitment; and as solemnly undertaking to dispense to all and sundry an equal justice, full, free, and speedy." (McKechnie 1914: 376)

- John had proceeded, in various instances, by force of arms against parties as though assured of their guilt. Recall the dispute that John had with many of his barons in 1213. He believed the barons were obliged to provide him military service and/or scutage for his invasion of France. The barons rejected John and claimed that the terms of their feudal relationship with John did not oblige them to serve with him overseas. Stephen Langton, seeking a negotiated settlement, insisted that John should not wage war on his subjects without a legal judgment against them. The balance of forces obliged John to accept this path. So, the first point of Clause 39 was to establish that punishments and penalties were applied *after* a legal process had been conducted and a legal judgment made.

- Every judgment must be delivered by the accused man's equals. This reinstated a custom that John had flouted.

- No freeman could be punished except in accordance with the law of the land.

(54) No one shall be arrested or imprisoned on the appeal of a woman for the death of any person except her husband.

- A woman would not have the right to institute legal proceedings other than in the case of the murder of her husband.

- This clause is a stark illustration of the patriarchal nature of Medieval England; women were fundamentally subordinate to their male relatives.

- McKechnie (1914: 451) suggests that barons were concerned by the “unfair advantage enjoyed by women appellants” who would not fight in the subsequent duel themselves but appointed a ‘champion’ to duel in their stead.

- This clause is, again, a reminder of how this document is a product of a specific time and place.

** (61) SINCE WE HAVE GRANTED ALL THESE THINGS for God, for the better ordering of our kingdom, and to allay the discord that has arisen between us and our barons, and since we desire that they shall be enjoyed in their entirety, with lasting strength, for ever, we give and grant to the barons the following security: The barons shall elect twenty-five of their number to keep, and cause to be observed with all their might, the peace and liberties granted and confirmed to them by this charter.*

If we, our chief justice, our officials, or any of our servants offend in any respect against any man, or transgress any of the articles of the peace or of this security, and the offence is made known to four of the said twenty-five barons, they shall come to us - or in our absence from the kingdom to the chief justice - to declare it and claim immediate redress. If we, or in our absence abroad the chief justice, make no redress within forty days, reckoning from the day on which the offence was declared to us or to him, the four barons shall refer the matter to the rest of the twenty-five barons, who may distrain upon and assail us in every way possible, with the support of the whole community of the land, by seizing our castles, lands, possessions, or anything else saving only our own person and those of the queen and our children, until they have secured such redress as they have determined upon. Having secured the redress, they may then resume their normal obedience to us.

Any man who so desires may take an oath to obey the commands of the twenty-five barons for the achievement of these ends, and to join with them in assailing

us to the utmost of his power. We give public and free permission to take this oath to any man who so desires, and at no time will we prohibit any man from taking it. Indeed, we will compel any of our subjects who are unwilling to take it to swear it at our command.

If one of the twenty-five barons dies or leaves the country, or is prevented in any other way from discharging his duties, the rest of them shall choose another baron in his place, at their discretion, who shall be duly sworn in as they were.

In the event of disagreement among the twenty-five barons on any matter referred to them for decision, the verdict of the majority present shall have the same validity as a unanimous verdict of the whole twenty-five, whether these were all present or some of those summoned were unwilling or unable to appear. The twenty-five barons shall swear to obey all the above articles faithfully, and shall cause them to be obeyed by others to the best of their power.

We will not seek to procure from anyone, either by our own efforts or those of a third party, anything by which any part of these concessions or liberties might be revoked or diminished. Should such a thing be procured, it shall be null and void and we will at no time make use of it, either ourselves or through a third party.

- Clause 61 sets out what shall occur if any of Clauses 1 – 60 are breached by John.
- A wronged party was to state his case to four of twenty-five barons, elected for the purpose.
- The barons would in turn raise the grievance with the King.
- If John refused to redress the grievance or delayed responding for over forty days, compulsion might be used.
- “The procedure devised for enforcing the Charter was crude: John conferred upon twenty-five of his enemies a legal right to organize rebellion, whenever in their opinion he had broken any one of the provisions of Magna Carta. Violence might be legally used against him, until he redressed their alleged grievances ‘to their own satisfaction’.” (McKechnie 1914: 468)
- Note that this clause was omitted from all later reissues of the charter. It’s possible to imagine that, had it been kept in place, it would have fatally undermined monarchical rule.