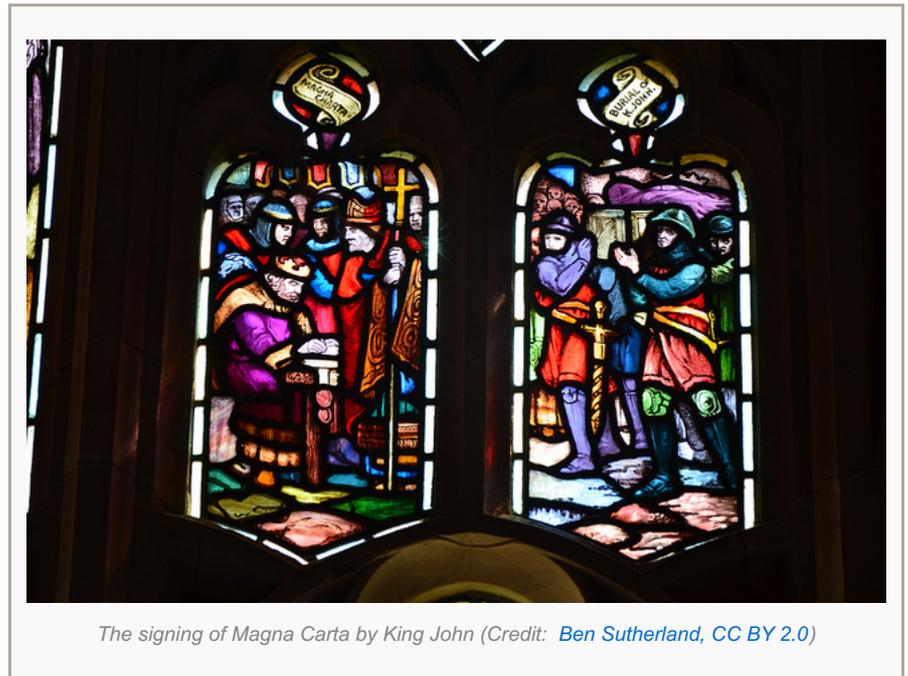


# Magna Carta can still challenge the orthodoxy and help resolve today's democratic difficulties

By Democratic Audit UK

*What influence does Magna Carta, signed 800 years ago at Runnymede by King John, continue to have over UK democracy and governance? A lot, according to **Andrew Blick**, who points out that taken as a whole, it is a surprisingly enduring document which still influences our political and democratic choices to this day.*

Even after eight centuries, *Magna Carta* is a contemporary document. The 800<sup>th</sup> anniversary of this text, taking place in June next year, is already generating interest that extends beyond a mere focus on its place in history. It is an ancient legal instrument that remained in force for little more than two months in its original form. Yet it remains central to our understanding of the most important features of any society: our rights and the way we are governed. It is invoked, for instance, by both sides in the debate about Conservative Party proposals to repeal the *Human Rights Act 1998*, replacing it with a 'British Bill of Rights', and to end the binding force on the UK of the European Convention on Human Rights (ECHR).



Those who cite *Magna Carta* in such discussions generally have in mind chapters 39 and 40 of its 1215 edition. They stipulate respectively that 'No free man' will be punished 'except by the lawful judgement of his equals or by the law of the land', and that 'right or justice' will not be sold, denied or delayed. These requirements – merged into a single chapter in later issues of the text – are known collectively as the 'golden passage' (in conjunction with chapter 38, dealing with independent evidence in proceedings). Among the few portions of *Magna Carta* that remain on the statute book, they are the main reason for the international reputation of the text.

This fame rests on the perception of this document as helping found the rule of law, the concept that governors are subject to the same fundamental principles as those they govern. On this basis alone, *Magna Carta* merits our reverence. But there is more to it. The 'golden passage' is part of a 1215 document containing sixty-three chapters in total. They bristle with a significance now largely overlooked, and arose in an important but generally forgotten historical context. The coming commemoration presents an opportunity to recover this lost *Magna Carta*, and appreciate the relevance it retains today.

*Magna Carta* is an English text. It is a common error – among the English – to elide the constitutional history of the largest component of the United Kingdom with that of the whole, and to refer to this document as 'British'. But it predates the appearance of the UK by half a millennium. This distinction is a reminder of the exceptional territorial diversity of our country, and that the UK is a relatively recent – and perhaps fleeting – creation. Recent developments in Scotland have made a breakup of the UK appear plausible. From the historic perspective *Magna Carta* provides, this outcome would be a return to the norm.

As well as being English, *Magna Carta* is European. It was just one expression of a pan-continental trend of its era. At the time, kings from Iberia to Hungary were submitting to charters of good practice that rebellious subjects

imposed upon them. The original text is in Latin, the shared European language. *Magna Carta* also had an important connection to a European-wide institution: the Church. Chapter one – a self-interested insertion by the clergy – insists that the English branch of this organisation ‘shall be free’. Initially, Pope Innocent III, with encouragement from King John, issued an annulment of *Magna Carta* only weeks after John had reluctantly agreed to it. But subsequently popes came to be upholders of *Magna Carta*, with those who violated it subject to excommunication.

Thus when critics today of the European Court of Human Rights object to its role as an external imposer of the ECHR, asserting this arrangement is anathema to our insular traditions, they overlook this historic means of enforcing *Magna Carta*, from Rome rather than Strasbourg. Another complaint about the contemporary Court is that it has over time applied interpretations to the ECHR that the drafters of this Convention could not have intended. While this view may be correct, a similar observation is applicable to *Magna Carta*, and to a far greater extent. While *Magna Carta* is now cited as a foundation for modern democracy and universal human rights – providing an inspiration for later instruments including the ECHR – these concepts were unimaginable in 1215.

A consideration of *Magna Carta*, then, reveals the inescapably European essence of the English and later the UK polity. Any idea that we are a case apart, somehow distinct from the continent, is misconceived. This identity will remain, whether we recognise it or not, and regardless of the future of the UK inside or outside the European Union (EU). *Magna Carta* contains further parallels relevant to this particular continental integration project. An early precursor to EU freedom of movement provisions comes in chapter 40, which seeks to facilitate safe passage in and out of England for foreign merchants, protecting them from harassment and discriminatory tariffs.

Chapter 35 sets out to dictate standard weights and measures in a range of trades throughout the realm. Like EU regulations applying to the European Single Market, this 1215 stipulation was intended to reduce the overall burden of rules, thereby lowering trade barriers. This point is not fully appreciated today in the UK, with the EU often depicted as a fanatical creator of additional bureaucracy. Perhaps similar negative attitudes existed in mediaeval times.

Another perspective on *Magna Carta* is as a document possessing some of the features of a modern written constitution, dealing with rights (of a sort), key structures and principles of the political system. Local government appears in chapter 13, guaranteeing to London and other municipalities ‘all their liberties and free customs’. Chapters 12 and 14 commit to the raising of taxes on a basis of ‘general consent’. Assorted chapters deal with standards applying to central government officials and the legal system. Chapter 61 comprises a vigorous enforcement mechanism whereby a committee of 25 barons may impose the terms of the text upon the ruler.

The document also deals with a range of matters we would now term socio-economic, such as the rights of widows (chapters 7 and 8), and through its references to river-banks and fish weirs, engaging the livelihood of the wider public. Today, some hold that such material concerns have no proper place in a fundamental legal text. But this stigmatisation of socio-economic content occurred neither to the authors of *Magna Carta*, nor of a number of modern constitutions in force today.

Part of the long-term influence of *Magna Carta*, via the American revolution, was on the development of the concept of the written constitution. This idea has not yet returned to the place in which its roots lie. But present, deep, divisions over human rights, the EU and devolution, and the threat of a break-up of the Union, may force us to recast our system in a new text. It would need – as *Magna Carta* did, by the standards of its time – to rest on the engagement of a wide range of social groups. Working through a ‘constitutional convention’, they would engage in a process of detailed deliberation, with some similarity to that preceding the agreement struck at Runnymede in June 1215.

Opponents might see the adoption of a written constitution as too radical a step for the UK, with its supposed tradition of gradual, peaceful development and long continuity. Yet events of 1215, like those connected to many other milestones of English and UK constitutional history, were far from placid. They involved military disaster overseas, threatened French invasion, and internal rebellion. Though it presented itself as reasserting existing law, *Magna Carta* sought in some provisions to bring about dramatic change. Once more, close consideration of *Magna Carta* serves to confound established views. Any true celebration of this text must acknowledge its

capacity both to challenge orthodoxy and help resolve present difficulties. It has done both many times in the past

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*Note: Dr. Blick has been research fellow to the project providing academic support to the first ever official inquiry into the possibility of introducing a written constitution for the UK, being carried out by the House of Commons Political and Constitutional Reform Committee. Views expressed are his own and not those of the Committee. This piece represents the views of the author and not those of Democratic Audit or the LSE. Please read our [comments policy](#) before posting.*

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