

MAGNA CARTA

I. BACKGROUND

1. “King John was not a good man he had his little ways.” (A. A. Milne, *Now We Are Six* (first ed. 1927))
2. The Victorian and Edwardian view of King John as irredeemably bad (Stubbs and many others)
3. The revisionists, e.g. Sidney Painter, 1902–1960, *The Reign of King John*, first published, 1949
4. Modern historians (J.C. Holt, D.A. Carpenter)
5. The loss of Normandy (1204), the battle of Bouvines (1214)
6. The murder of Arthur of Brittany, of Maud de Briouze; execution of the son of Peter of Wakefield; the attempted seduction/rape of the daughter of Robert Fitz Walter
7. The interdict
8. The role of Stephen Langton, archbishop of Canterbury
9. Rebellion, Robert Fitz Walter, Eustace de Vesci, the defeat at Bouvines, the defiance of the barons, charter signed in June, in August Innocent III relieves John of his oath to obey the Charter
10. After the death of John in 1216, the moderates, under the leadership of William the Marshall, earl of Pembroke, reissued the charter in the name of the 10-year old king, Henry III. They issued it again in 1217. Henry III issued it in his own name in 1225. The text was fixed when Edward I reissued the 1225 charter in 1297.

II. THE CHARTER ITSELF

1. Clauses of Magna Carta arranged by topic (references are to the numbering in the 1215 charter) (Only one topic only per clause; a more complicated arrangement would split clauses (e.g. 12) that deal with more than one topic.):
 - a. The church (4): 1, 22, 42, 46.
 - b. The burgesses (2): 13, 41.
 - c. Economic matters, debts and Jews (5): 9, 10, 11, 33, 35.
 - d. Feudal grievances (18):
 - i. Relief, wardship, marriage: cc. 2, 3, 4, 5, 6, 7, 8, 37, 43, 53
 - ii. Aids and scutages: cc. 12, 14, 15, 16, 26, 27, 29, 32
 - e. Justice (20): 17 (CP), 18, 19 (petty assizes), 20, 21, 24, 34, 36, 38, 39 (judgment of peers), 40, 44, 45, 52, 54 (appeals), 55, 56, 57, 58 (Welshmen), 59 (Scots)
 - f. Administrative (11): 23, 25 (farms), 28, 30, 31 (royal works), 47, 48 (forests), 49, 50, 51 (foreign ministers), 53
 - g. Administration of Magna Carta (1): 60 (sometimes divided into 4 clauses, 60–63).
2. Clauses of Magna Carta in order identified by topic:
 - c. 1a, 2di, 3di, 4di, 5di, 6di, 7di, 8di, 9c, 10c, 11c, 12dii, 13b, 14dii, 15dii, 16dii, 17e, 18e, 19e, 20e, 21e, 22e, 23f, 24e, 25f, 26dii, 27dii, 28f, 29dii, 30f, 31f, 32dii, 33c, 34e, 35c, 36e, 37di, 38e, 39e, 40e, 41b, 42a, 43di, 44di, 45di, 46a, 47f, 48f, 49f, 50f, 51f, 52e, 53f, 54e, 55e, 56e, 57e, 58e, 59e, 60g.
3. Magna Carta today in Alberta (* for England):

1215	1225	Topic
c. 1	*1	General confirmation of liberties of the Church
cc. 7&8	7	Widows' marriage
c. 9	8	Sureties, chattels to be seized before land
c. 13	*9	Liberties of London
c. 22	14	Amercements of men of all sorts
c. 23	15	Distrain for making of bridges and banks
c.	16	Defending bridges and banks unless defended temp H.I
c. 26	18	King's debtor dying, king shall be paid first
c. 39	*29	Due process
c. 41	30	Merchant strangers coming into the realm
c.	*37	A subsidy in respect of the Charter

4. Selected Clauses (translation updated and improved from that in the *Materials*)

- a. Clause 1. [We i]n the first place, have granted to God and by this our present charter have confirmed, for us and our heirs in perpetuity, that the English church is to be free, and is to have its rights in whole and its liberties unharmed, *and we wish it so to be observed; which is manifest from this, namely that the liberty of elections, which is deemed to be of the greatest importance and most necessary for the English church, by our free and spontaneous will, before the discord moved between us and our barons, we granted and confirmed by our charter, and obtained its confirmation from the lord pope, Innocent the third, which we shall both observe and wish to be observed by our heirs in perpetuity in good faith.*
- b. Clause 13: And the city of London is to have all its ancient liberties and free customs *both by land and by water*. In addition, we wish and grant that all other cities and boroughs, and towns and ports shall have all their liberties and free customs.
- c. Clause 35: There shall be one measure of wine throughout all our kingdom, and one measure of ale; also one measure of grain, namely the quarter of London; and one width of dyed cloth, russet [cloth], and hauberk [cloth], namely, two ells within the borders. Moreover with weights it is to be as for measures.
- d. Clause 2: If any one of our earls or barons, or others holding from us in chief by knight service, dies, and when he dies his heir is of full age and owes relief, he is to have his inheritance for the ancient relief: namely the heir or heirs of an earl for a whole barony £100; the heir or heirs of a baron for a whole barony £100, the heir or heirs of a knight for the whole fee 100s at most. And who owes less is to give less according to the ancient custom of fees.
- e. Clause 7: A widow, after the death of her husband, immediately and without difficulty, is to have her marriage portion (*maritagium*) and inheritance (*hereditatem*); nor shall she give anything for her dower (*dos*) or for her marriage portion or her inheritance, which inheritance she and her husband held on the day of his death. And she is to remain in the house [1225: principal dwelling] of her husband for forty days after his death, within which time her dower is to be assigned to her. [1225 adds: "unless it has been assigned to her earlier, or unless that house is a castle. And if she leaves the castle, she is at once to be provided with a suitable house in which she may honourably dwell until her dower is assigned to her as aforesaid. And in the meantime she is to have her reasonable estover (firewood) from the common. Moreover, she shall be assigned as dower one-third of all the

land held by her husband during his lifetime, unless she was endowed with less at the church door.”]

- f. Clause 18. Recognitions of novel disseisin, mort d’ancestor, *and of darrein presentment*, are not to be taken unless in their counties and in this way. We or, if we are out of our kingdom, our chief justiciar shall send two justices through each county *four times a year, who, with four knights of each county, elected by the county court are to take the aforesaid assizes, in the county court and on the day and in the place of the county court.*

[1225 omits darein presentment, reduces the number of visits of the justices to once an year and adds: “And those matters which cannot be concluded during that visit in the county by the aforesaid justices, sent to hold the said assizes, shall be concluded by the same men elsewhere on their eyre. And those matters which owing to the difficulty of some particulars cannot be determined by the same men shall be referred to our justices of the bench and there concluded.”]

- g. Clause 17. Common pleas are not to follow our court, but are to be held in some definite place.
- h. Clause 24. No sheriff, constable, coroner, or other of our bailiffs are hold the pleas of our crown.
- i. Clause 34. The writ which is called *praecipe* is not to be made out henceforth in such a way as to deprive a free man of his court.

[After 1216, *Glanvill’s* ‘writ of first summons’ was no longer issued, but was replaced by the writ of right *in capite*, the writ of right *quia dominus remisit curiam*, and multiple writs of entry.]

- j. Clause 39. No freeman (*nullus liber homo*) shall be captured or imprisoned or disseised or outlawed or exiled or in any way destroyed, nor will we go against him or send against him, except by the lawful judgment of his peers or by the law of the land.

III. THE CHARTER EVALUATED

1. Finding the right level of generality
2. Parallels between the Magna Carta process and parliamentary process
3. The relationship between sovereignty and the rule of law
4. The relationship between the Charter and the events of 1642
5. The relationship between the Charter and contemporary charters
 - a. Treaty of Constance (1183)
 - b. Charter of Alfonso IX of León (1188)
 - c. Draft charter of Peter II of Aragon (1205)
 - d. Charter of Frederick II (1220)
 - e. ‘Golden Bull’ of Hungary (1222)
 - f. Charter of Henry VII of Germany (1231)
 - g. Charters after the Sicilian Vespers (1282–3)
6. Magna Carta and the *ius commune* (Roman and canon law) – the Helmholz thesis: 40 of the 63 clauses in Magna Carta are ‘congruent’ with the *ius commune*, examples:
 - a. Terminology not found in native English law prior to 1215: *delictum* in clause 20

- b. A specific idea not found in native English law prior to 1215: one must proceed against the principal debtor before proceeding against his sureties in clause 9
- c. Terminology common to both: *libertas ecclesiae* in clause 60
- d. Ideas common to both:
 - i. Specific: removal of obstructions to navigation in the Thames and Medway in clause 33
 - ii. General: the notion of due process in clause 39
- e. Bottom line: borrowing, influence, and congruence are not the same thing. The congruence is certainly there. Magna Carta was very much a document of its time, but we make a serious mistake if we think that the conceptual economy of customary feudal law is the only conceptual economy of the time and the only one reflected in the document.