

Magna Carta
May 1, 2015
Judge Ingrid Moll

Good morning, everyone. It is my pleasure to address you this morning. I consider it a privilege to be able to address my judicial colleagues, representatives of local government, members of the bar, court personnel, members of the public, and Ms. Silva's class. I am particularly pleased that I am able to do so in this courtroom, which has been placed in my care for the last year. Today, we reflect on and celebrate Magna Carta, a significant building block in the foundation of the rights that we hold dear – equality before the law, due process, and the right to justice.

If I asked each of you to name the most important thing or person to come out of Great Britain, depending on your age and your interests, at first blush, you might say Winston Churchill, the Beatles, Shakespeare, Jane Austen, or Downton Abbey. If you are in Ms. Silva's 4th grade class, who I am very pleased to see here today, you might say "One Direction." But it is the Magna Carta that has been described as Great Britain's "gift to the world." Magna Carta means, as it translates from Latin, the Great Charter. With few exceptions, one is hard-pressed to identify a document that has left such a mark on human history. Indeed, throughout this year, people in rule-of-law based nations around the world are honoring the 800th anniversary of this Great Charter.

Because the details of important events in history can fade in our memories, I thought I would briefly give some historical background on the creation of Magna Carta, the events that challenged its survival, and several ways in which Magna Carta has shaped the evolution of democracy in the free world.

What happened 800 years ago? Interestingly, despite what Magna Carta has come to mean, particularly in the United States (where the words of the Magna Carta adorn the doors of the U.S. Supreme Court), Magna Carta was not originally drafted *for the purpose of* promoting justice and liberty. The year was 1215, and a group of English barons demanding rights and property was rebelling against, and was at war with, King John, who was arbitrarily exercising power to extort their property. The barons had captured London. And King John, facing a political crisis, needed a peace treaty.

In a meadow at Runnymede near the River Thames, on June 15, 1215, King John reluctantly reached agreement with the 40 English barons in a document considered the original Magna Carta, first called the “Charter of Liberties.” One single sheet of parchment with 54 lines of small lettering. Contrary to many pieces of art depicting King John physically signing the charter with a quill in his own hand, the king had his seal affixed to the document. The original Magna Carta, drafted by the Archbishop of Canterbury, created a council of 25 barons charged with overseeing King John’s compliance with the Charter’s provisions reflecting the barons’ demands. This was significant, almost radical, because it placed the king under the rule of law. In a broader sense, it was so significant because it memorialized the principle that *anyone* who breaks the law is legally accountable for his or her actions. An estimated 41 copies of this first Magna Carta were sent to officials across the kingdom, four copies of which survive today and are displayed for public viewing.

At first, as a peace treaty between King John and the barons, Magna Carta was a failure. Although King John had agreed to its terms, not even three months later, he abandoned its reforms and convinced Pope Innocent III to declare it invalid. The Pope went on to declare the

charter “null and void of all validity, forever.” Following the Pope’s declaration, a full-scale civil war broke out between King John and his barons. This was the First Barons’ War.

King John’s son, Henry III, then ascended to the throne. Like perhaps some of the children in Ms. Silva’s class, King Henry was nine years old at the time. One year later, the regency of Henry III signed a substantially revised, and less radical, version of Magna Carta to try to regain the barons’ support.

In 1225, when King Henry reached 18 years old, he reaffirmed the Charter of 1217, now known as Magna Carta, and the first version to be entered into English law.

The original Magna Carta had 63 clauses. Many of the clauses expressed grievances within the feudal system, and with the ways of life unique to the early thirteenth century, covering topics such as river navigation. One clause even dealt with the testimony of women. I’ll leave it to your own research to learn what that was about, but thankfully, that clause did not survive.

The number of clauses varied in the versions issued in the years that followed, but why do I bother to mention the number? Today, only three of the original 63 clauses remain in English law. One defends the liberties and rights of the English Church, another confirms the liberties and customs of London and other towns, and the third provide the right to justice and a fair trial.

Translated into Modern English, the actual text of the clause concerning the right to justice and a fair trial provides:

“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. To no-one will we sell, to no-one deny or delay, right or justice.”

This means that the law belongs to everyone, applies to everyone; no one is above it. This clause about the right to justice and a fair trial was buried deep within the original Magna Carta. Its inclusion was not accidental, but it was not the purpose for which the Great Charter was designed in 1215. Yet, this principle was so powerful that it took root, has flourished, and indeed is one of three clauses to have survived.

In the centuries that immediately followed its creation, Magna Carta paved the way for the first English Parliament and was used to restrain the power of monarchs.

By the eighteenth century, Magna Carta was widely regarded as affirming *individual* liberties. That understanding motivated, for example, the Boston patriots who protested the Stamp Act (of “no taxation without representation” fame). And that understanding motivated the Founding Fathers in their drafting of the Declaration of Independence and the U.S. Constitution. Indeed, the Bill of Rights incorporated several guarantees — for example, protection of life, liberty and property; freedom from unlawful searches and seizures; and the right to jury trial — that *the drafters understood* descended from Magna Carta.

Fast forward more than 150 years, Magna Carta makes its mark again. In 1948, shortly after the end of World War II, Magna Carta left its imprint on the Universal Declaration of Human Rights, which Eleanor Roosevelt heralded as an “*international* Magna Carta.” In its preamble, this Universal Declaration cautions that “it is essential, if man is not to be compelled to have recourse, as a last resort, to rebellion against tyranny and oppression, that human rights should be protected by the rule of law.” How poignant *those* words remain today.

What I would like to leave you with is this:

Magna Carta does *not* represent a moment in time 800 years ago when out of nothing a *fully developed* bill of rights was born. Instead, it was a critical moment along a continuum towards democracy as we know it today, which continues to evolve. Even though Magna Carta did little to bring peace between King John and the barons, it changed the course of history in its articulation of the concept of “equality before the law.” It inspired an understanding about the proper relationship between the State, the individual, and the law...and a belief that power is not to be exercised arbitrarily, that no one is above the law, and that there is a right to justice.

Thank you for being here today. I congratulate those individuals receiving awards this morning. Let us always remember the importance of defending these important rights and liberties.