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Magna Carta then and now

BY

[EUGENE K B TAN](#)

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What's the significance and relevance of Magna Carta, an 800-year-old handwritten sheepskin parchment currently on a world tour that has been to New York City, Luxembourg, China (Beijing, Guangzhou, and Shanghai), Hong Kong, and now Singapore?

Magna Carta was never intended as a “great charter” of people’s rights and liberties. In fact, when it was first created on June 15, 1215, it was essentially a peace treaty warding off a civil war.

However, through a series of serendipities, Magna Carta has become a symbol of freedom and equal rights for all. It has inspired clauses of the United States Constitution and the Universal Declaration of Human Rights, and is regarded as providing the foundation of individual rights for Common Law systems, including the United Kingdom and Singapore.

History has not been kind to King John, the English monarch forced by rebellious barons to place his seal on the Charter. In the 19th century, he was cast as the villain in the Robin Hood tales, ill-treating the people while his brother Richard the Lionheart was away fighting at the Crusades.

John levied oppressive fines and taxes to finance battles to regain lands in Normandy lost to Philip II of France. The exasperated nobles finally forced the king to the negotiating table at Runnymede, a meadow beside the Thames. The result was Magna Carta.

Many of its clauses required John to stop unfairly extracting money for his wars. However, the ones with enduring significance are those that sought to prevent him from acting arbitrarily towards his subjects.

For instance, clause 39 states: “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 ... except by the lawful judgment of his equals or by the law of the land.” Clause 40 continues: “To no one will we sell, to no one will we deny or delay right or justice.”

The first version of Magna Carta lasted just two months. Complaining he had acted under compulsion, John appealed successfully to Pope Innocent III, then England's feudal overlord, to annul Magna Carta.

John died suddenly the following year. To secure the barons' support, his son Henry III and subsequent monarchs reissued the Charter. In 1297, Edward I wrote it into the statute book, confirming that Magna Carta was part of English law.

LEGACY IN SINGAPORE

As a statute, Magna Carta became applicable to Singapore in 1826 when a court system administering English law was established in the Straits Settlements. This remained the case through Singapore's evolution from Crown colony to independent republic.

The Charter ceased to apply only in 1993, when Parliament enacted the Application of English Law Act to clarify which colonial laws were still part of Singapore law. Nonetheless, Magna Carta's legacy in Singapore continues in a number of ways.

For one, the Court of Appeal, Singapore's highest court, has stated that some fundamental liberties in the Constitution originate from the Great Charter's principles. For example, clause 39 of Magna Carta is the ancestor of Articles 9(1) and 11(1) of the Constitution, which respectively guarantee the rights to life and personal liberty, and prohibit retrospective criminal offences and punishments. Article 12(1), which protects equality before the law, can be traced to clause 40 of Magna Carta.

Secondly, key principles of the Charter have themselves become ingrained in the common law. In a 2014 case, Chief Justice Sundaresh Menon said the common-law notion that punishment must fit the crime stems from, among other sources, clause 20 of Magna Carta, which requires that "(a) freeman is not to be amerced for a small offence save in accordance with the manner of the offence, and for a major offence according to its magnitude...".

Thirdly, over the years, Magna Carta has been referred to in various parliamentary debates in Singapore since 1955. Parliamentarians often referred to it to emphasise the importance of the rule of law, democratic values and aspiration, freedom from oppression, and access to justice.

Singapore does not owe a direct debt to Magna Carta in the same way that American Founding Fathers in the Bill of Rights did. Nonetheless, the principles

such as due process of law and the supremacy of law are cornerstones of the rule of law, vital to the success, stability and well-being of Singapore and Singaporeans.

Symbolic value

Though most of Magna Carta's provisions have become obsolete and have been repealed in the UK, the document continues to resound with symbolic value in many former British colonies.

Lord Sumption, a UK Supreme Court judge and medieval historian, commented earlier this year that Magna Carta "has become part of the rhetoric of a libertarian tradition based on the rule of law" — the idea that everyone, including the government, is subject to the law.

This idea has gained near universal acceptance around the world although the principles in Magna Carta are all rather vague. It is how these principles are implemented by parliament and the courts that truly give them significance.

As we mark the 50th anniversary of the enactment of the Singapore Constitution, the story of Singapore constitutionalism is also one of legacy, adaptation and innovation.

We have created constitutional organs such as the Presidential Council for Minority Rights, and innovated with the Group Representation Constituency scheme and the Elected President to meet our constitutional and political needs, in line with our indigenous understanding, expectations and conventions.

One final and no less salient point: Ultimately, it is we Singaporeans who sustain and bring new insights, sustained purpose and useful innovations to our system of government.

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