



The Baronial Order of  
**MAGNA CHARTA**



The Military Order of  
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## Magna Carta and the Colonies

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### Baronial Order of Magna Charta

Magna Carta gave to America and the rest of the world the concept of a written constitution representing freedom under the rule of law.

Regarding American history, the influence of the Magna Carta lay not in the encounter of King John and the barons of the realm at Runnemede in 1215, but rather in Sir Edward Coke's colorful version, however inaccurate, and highly palatable perception of the common law.

In 1607, Coke was the Chief Justice of the Common Pleas in England, and it was he who drew up the Royal Charter granted by King James 1st for the Virginia Company of London, which established the colony in Jamestown, Virginia in that year. This charter declared that "The persons which shall dwell within the colonies shall have all the liberties as if they had been abiding and born within this our realm of England or any other of our dominions." These "Liberties" appeared in one form or another in the founding charters of Massachusetts (1629), Maryland (1632), Maine (1639), Connecticut (1662), Rhode Island (1663), and Georgia (1732).

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William Penn published the Magna Carta in Philadelphia in 1687, only five years after that city was founded. The world's only complete copy of his book now resides in Haverford, Pennsylvania.

From the Virginia charter of 1606 to the Massachusetts Body of Liberties of 1641 to the Constitution, which William Penn wrote for the colony of West New Jersey, and his charters for his own settlement, immigrants were guaranteed that English law back to Magna Carta would follow them to the colonies.

In 1747 the governor and assistants of the young commonwealth of Massachusetts ordered two copies of Sir Edward Coke on Magna Carta along with various other books on English law ‘to the end that we might have a better light for making and proceeding about laws’.

By 1640 there were about 20,000 British immigrants had settled along the Eastern seaboard of America and their leaders were aware at the outset of the need to establish the rule of law on firm footing. John Winthrop of Massachusetts noted that without some recognized body of positive law the magistrates might “proceed according to their discretion.” So it was agreed that some men should be appointed to frame a body of grounds of law resembling the Magna Carta.

An extract from the 1641 Massachusetts body of Liberties under clause 29 stated “No man’s life shall be taken away, no man’s honor or good name shall be bestayned, no man’s person shall be arrested, restrained, banished, nor in anyways punished, no man shall be deprived of his wife or children, no man’s goods or estate shall be taken from him – unless by virtue of some express law of the country.”

We see here evolving what was in a very real sense, the early colonial charter’s being the forerunners of the Constitution, and later the Bill of Rights of the United States of America.

Magna Carta was only revived as a basic source of English law and liberty in the 1600’s during another battle between subjects and the King, one that would end with the execution of the reigning monarch. That timing was important for American law, because the promoters negotiating charters for the new American colonies fought to have the protections of the Magna Carta extended to the new lands. Settlers were promised the Magna Carta would follow them into the American wilderness, which in fact the 1682 Pennsylvania Frame of Government included; William Penn could hardly deny to his settlers protections which he had claimed under the Magna Carta in his own trial, in England, in 1670.

What has Magna Carta meant for American law? It is the source of our most fundamental concepts of law. Indeed, the very concept of a written constitution stems from the Magna Carta. In over one hundred decisions, the United States Supreme Court has traced our dependence on the Magna Carta for

our understanding of due process of law, trial by a jury of one's peers, the importance of a speedy and unbiased trial, and the protection against excessive bail or fines or cruel and unusual punishment.

Although the colonial charters were a solemn compact between the colonies and the King at home in England, the Crown did 'Indeed guard its prerogatives quite covetously through increasingly tighter imperial control by way of Crown and Parliament agencies.

At this point there comes a shift from the original colony concept by the mother country to one of royal domain. For example, in 1638 the Maryland Assembly agreed to an act whereby "The inhabitants shall have all their rights and liberties according to the great charter of England," but this act was disallowed by King Charles 1st through his Attorney General.

The theory from London was that all legislation in the American colonies was at the pleasure of the Crown. But the colonial legislators were so resolute in their beliefs that they frequently by-passed or even ignored the Crown's involvement and re-enacted or re-worked measures as they saw fit. This was all done to preserve what they perceived as their Magna Carta based liberties, and under these guarantees by Parliament the colonials were repudiating home rule as Parliament was trying to enforce it.

The Crown was now alerted that their hold on the colonies might be slipping. Protests were now beginning to surface from the upstarts in the provinces, such as in Massachusetts where they felt that because of the high-handed actions of the governors they could no longer feel secure in the enjoyment of their lives, liberties, and estates as a free-born Englishmen.

This led to the General Court of Massachusetts ordering that the body of liberties be thoroughly compared with the Magna Carta and common law in parallel columns and presented to Parliament.

William Penn argued in 1692 the rights of the colonials as Englishmen under the protection of the Magna Carta as perceived by Coke, and that in matters of conflict with the home government he stated that the great charter was the final arbiter.

There continued for many years a constant seesawing back and forth between the mother country and the colonies as to which prerogative of governance was to prevail – the Crown or the upstarts – and the Magna Carta held steadfast throughout this travail as the guide for the New World.

The war of independence finally evolved wherein the Magna Carta played a role as "The essential proof of the natural law that attested the rights of the people against the government." It was truly the age of enlightenment, the age of Jean Jaques Rousseau, an age enthralled by the amorphous notion of the rights of man.

Magna Carta seems to grow more important with each passing year. Up to the time of our Civil War, the United States Supreme Court found fewer than a dozen cases requiring analysis of the Magna Carta; but between 1870 and 1900 we see over thirty cases which mostly interpreted the newly extended rights under the 13th, 14th, and 15th Amendments which involved discussions of the Magna Carta. Since 1940 over sixty cases have produced comments and commentary on the Magna Carta's role in American law.

The Constitution and the Bill of Rights of the United States of America have demonstrated to the world at large over the past two centuries that a democracy does not have to decay into anarchy and a republic does not have to devolve into totalitarianism.

These two documents do not stand alone and isolated, but are a part of a 4,000-year struggle to create a society ruled by laws not men.

From the very beginning the fact that the Great Charter had been forced upon King John was seen as more important than almost any of the actual clauses of the document itself.

This made the Magna Charta the leading edge symbol of the concept of the final and absolute power of the people to impose their will on the government. Thus, a dissident group of Barons and churchmen had been mythologized into veritable champions of the people. Hence, in America, the expression of the people's will of fundamental rights in a written document. This will of the people was superior to the legislative and the executive, absolutely.

The Bill of Rights were in fact a revision of the Constitution, as was the case in the evolution of the Magna Carta. The fathers of the Republic sought to strengthen popular liberties. In America the final arbiter was the Supreme Court, which was above the Legislative and the Executive.

From the ancient legal systems of the fertile Crescent through Mosaic law and the contributions of ancient Greece and Rome we now see an unfolding of mankind's 4000 year struggle to create the rule of law, not men.

Magna Carta's essential and real value has been to put the law on the right track. Such has been the tremendous power of those two Latin words – Magna Carta -, words from within a medieval setting and framework, that from the Mayflower settlers in Massachusetts to the Jamestown settlers in Virginia to the present, Magna Carta was the foundation of the continued evolution of constitutionalism with the freedom of man under the rule of law.

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The Sheriff and Magna Carta

Kipling Poem – “What Say the Reeds at Runnymede?”

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