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William J. Brennan Jr.

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REDEDICATION ADDRESS: THE AMERICAN BAR ASSOCIATION'S MEMORIAL TO THE MAGNA CARTA*

*Justice William J. Brennan, Jr.***

I am greatly privileged to have the honor to speak at this rededication of the American Bar Association's Memorial to Magna Carta—the Great Charter now 770 years old, aptly said by Lord Denning to be “the greatest constitutional document of all time.”¹ Our legal institutions in America share with the English people the heritage of Magna Carta, and in these remarks I would like briefly to touch upon some of the ways in which Magna Carta has guided the interpretation of our own Constitution.

The Magna Carta, in Bryce's words, “was the starting point of the constitutional history of the English race, the first link in a long chain of constitutional instruments which have molded men's minds and held together free governments not only in England but wherever the English race has gone and the English tongue is spoken.”² It has been said that its signing “was the most important event in English history. To have produced it, to have preserved it, to have matured it, constitute the immortal claim of England upon the esteem of mankind.”³ As Lord Coke said, Magna Carta was called “the Charter of the Liberties of the Kingdom, upon great reason, because . . . it makes the people free.”⁴

American allegiance to the principles of Magna Carta far antedates the drafting of our own constitutional charter. Throughout our colonial history we were “big with the privileges of Englishmen and Magna Charta.”⁵

* The Board of Editors of the *LOYOLA OF LOS ANGELES LAW REVIEW* is honored to reprint this speech which was delivered at Runnymede, England on July 13, 1985 upon the occasion of the rededication of the American Bar Association's Memorial to Magna Carta.

** Associate Justice, Supreme Court of the United States.

1. *The Magna Carta Ceremonies in England*, 51 A.B.A. J. 922 (1964) (quoting Lord Denning).

2. Bryce, *Preface* to *MAGNA CARTA COMMEMORATION ESSAYS* at xiii (H. Malden ed. 1917).

3. *Hurtado v. California*, 110 U.S. 516, 542 (1884) (Harlan, J., dissenting) (internal quotation omitted).

4. *Id.* (Harlan, J., dissenting).

5. *Id.* at 554 (Harlan, J., dissenting).

Magna Carta was "one of the jurisprudential cornerstones of American constitutional law."⁶ Magna Carta was in the thoughts of those who debated the first Constitutions of Massachusetts and Virginia. Those constitutions, in turn, served as models for the Federal Constitution in 1787. "It seems not too fanciful to say that the prelates and barons of Runnymede, building better than they knew, laid the foundations for the supremacy of law over arbitrary power in much of the world."⁷

Throughout the 196 year history of the Supreme Court of the United States, the bedrock principles of the Magna Carta have had and continue to have, a profound influence over the Justices' deliberations. Two themes emerge from the Court's opinions that explicitly address the Magna Carta.

The first is that the Magna Carta was both a substantive and symbolic contribution to the ongoing development and refinement of principles that protect the fundamental rights and liberties of the individual; it set forth certain specific guarantees that are cornerstones of our modern concepts of liberty. Among the liberties set out in Magna Carta were the all important Chapter 39, which provided that "[n]o free man shall be taken, imprisoned, disseized, outlawed, banished, or in any way destroyed, nor will we proceed against or prosecute him, except by the lawful judgment of his peers by the law of the land."⁸ Other relevant liberties included Chapter 20, providing for punishments proportionate to the crime committed and providing that no punishment "shall be imposed except by the oath of honest men of the neighborhood,"⁹ Chapter 40 providing that "[t]o no one will We sell, to none will We deny, or delay, right or justice,"¹⁰ and Chapter 45, providing for the appointment

6. A. HOWARD, *THE ROAD FROM RUNNYMEDE* 249 (1968).

It is in the Bill of Rights [first eight amendments], rather than in the body of the Constitution itself, that we find the bridge between Magna Carta in England and the Charter's legacy in America. As the Supreme Court said over a hundred years after the Bill of Rights went into effect, "The law is perfectly well settled that the first ten amendments to the Constitution, commonly known as the Bill of Rights, were not intended to lay down any novel principles of government, but simply to embody certain guaranties and immunities which we had inherited from our English ancestors" [Robertson v. Baldwin, 165 U.S. 275, 281 (1897)].

Nearly two centuries of jurisprudence have added considerable breadth to the meaning and uses of the provisions of the Bill of Rights. The ever-dynamic patterns of American constitutional law have evolved dimensions for one or another of the first eight amendments which simply did not exist in the English law. But the origin in, and debt to, Magna Carta remains.

A. HOWARD, *supra*, at 239-40.

7. Bryce, *supra* note 2, at xiv.

8. MAGNA CARTA, ch. 39. For a contemporary translation of the Magna Carta, see A. HOWARD, *MAGNA CARTA: TEXT AND COMMENTARY* (1964).

9. MAGNA CARTA, ch. 20.

10. MAGNA CARTA, ch. 40.

to judicial offices only of "such men as know the law of the land and will keep it well."¹¹ In these provisions we find not only the ancestors of the due process clause of our own Bill of Rights, but also the specific prohibitions of our eighth amendment against cruel and unusual punishment, our sixth amendment guarantees of a speedy and public trial, and even the roots of the right to trial by jury.

But Magna Carta is hardly a complete catalogue of the civil liberties we know today. Notably, nothing in it concerned the freedom of religion, of speech, or of the press. Nor is the charter itself free of sex discrimination, providing, as it does, that "no one shall be taken or imprisoned upon the appeal of a woman for the death of anyone except her husband."¹² Yet even these liberties, taken for granted today, find their root in the spirit of Magna Carta. Once it was recognized that an individual had rights against the government and that there was a domain of personal autonomy and dignity in which the government had no right to intrude, it was only a matter of time before the full range of civil rights and liberties were called forth in service of the same ideal. This crucial symbolic aspect of Magna Carta was recognized by our Court in a case decided in 1819, only thirty years after the Court began its work:

As to the words from Magna Carta, . . . after volumes spoken and written with a view to their exposition, the good sense of mankind has at last settled down to this: that they were intended to secure the individual from the arbitrary exercise of the powers of government, unrestrained by the established principles of private right and distributive justice.¹³

The second theme emerging from our opinions emphasizes the significance of our decision in the United States to entrench these safeguards in a written constitution. You have not chosen similarly to entrench them. The degree of loyalty to the great principles is nevertheless equal for both of us, with one notable exception that should not escape mention. In England, the provisions of Magna Carta, including the all important Chapter 39, were originally intended, and have since been regarded, as a limitation upon the Crown and the Courts, not upon Parliament. For the United States, the safeguards of the Constitution and the first ten amendments delimit the powers of all departments of government—the legislative, as well as the executive and judicial. Our Court explained in a decision written by Mr. Justice Stanley Matthews a century ago:

11. MAGNA CARTA, ch. 45.

12. MAGNA CARTA, ch. 54.

13. *Bank of Columbia v. Okely*, 17 U.S. 235, 244 (1819).

In this country written constitutions were deemed essential to protect the rights and liberties of the people against the encroachments of power delegated to their governments, and the provisions of Magna Charta were incorporated into Bills of Rights. They were limitations upon all the powers of government, legislative as well as executive and judicial.

It necessarily happened, therefore, that as these broad and general maxims of liberty and justice held in our system a different place and performed a different function from their position and office in English constitutional history and law, they would receive and justify a corresponding and more comprehensive interpretation. Applied in England only as guards against executive usurpation and tyranny, here they have become bulwarks also against arbitrary legislation; but, in that application, as it would be incongruous to measure and restrict them by the ancient customary English law, they must be held to guarantee not particular forms of procedure, but the very substance of individual rights to life, liberty, and property.¹⁴

Thus, it is not mere symbolism that accounts for the depiction on the bronze door entering the Supreme Court building of King John sealing Magna Carta and the depiction on the marble frieze around our courtroom (seen by each of us Justices on every argument day) of King John in chain mail armor holding Magna Carta in his arms. The first eight amendments to our Federal Constitution, our explicit Bill of Rights, owes its parentage to Magna Carta; and, Americans regard the enforcement of those amendments as the Supreme Court's most important and demanding responsibility.

In closing, I borrow from H. D. Hazeltine's 1915 Magna Carta Commemoration Essay:

The history of Magna Carta in America has a meaning far deeper than the influence of a single constitutional document; for Magna Carta typifies those ideals of law and government which have spread to America and to many other political communities that lie beyond the four seas encircling the island-realm itself. . . . The history of the Charter's influence upon American constitutional development . . . should be illuminating alike to subjects of the Crown and citizens of the Republic. Above all it teaches them that English political and legal ideals lie at the basis of much that is best in American institutions.

14. *Hurtado v. California*, 110 U.S. 516, 531-32 (1884).

Those ideals, jealously preserved and guarded by Americans throughout their whole history, still form the vital force in political thought and activity within the Union. As the Americans adapt their institutions to the ever-changing conditions of national and international life, those ideals of liberty and justice, founded upon the Great Charter, will continue to inspire and guide them. The Charter has a future as well as a past in the American commonwealth, for its spirit is inherent in the aspirations of the race.¹⁵

It is indeed fitting that free peoples periodically restate their debt to the principles of the Great Charter—to attest over and over again their determination that the spirit of Magna Carta—consummate symbol of freedom under law—will, to paraphrase Dean Griswold, “continue to serve us well as it has so powerfully and effectively in the past. Its power is in no sense spent. It embodies an idea which we cherish and its symbolic force moves on through the years.”¹⁶ It is the fact of Magna Carta, not just the particulars of its contents, that provides the beacon light for free peoples everywhere.

15. Hazeltine, *The Influence of Magna Carta on American Constitutional Development*, MAGNA CARTA COMMEMORATION ESSAYS 180 (H. Malden ed. 1917).

16. Griswold, *Introduction to THE GREAT CHARTER* at ix (1965).

