

The Relevance of Magna Carta in Today's World

At the Honourable Society of Gray's Inn, London

The Right Honourable Beverley McLachlin, P.C.

Chief Justice of Canada

18 June 2015



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Thank you for that kind introduction and for the honour of addressing you tonight. I begin by confessing to two emotions as I contemplate the task of finding something to say that (a) you don't already know; and (b) would say much more eloquently than I.

The first emotion I felt when I received your invitation was surprise. I must admit to being somewhat astonished to find myself before you, scripted to talk about that great English document, the *Magna Carta*.

We have a quaint Canadian saying, of which you may have heard: "Taking coals to Newcastle." Standing here before this distinguished array of Great Britons, I feel very much like the proverbial barrow-man.

The second emotion I felt came as the aftermath of the first – puzzlement. Why, assuming an external view was deemed necessary, did the wise women and men of Gray's

Inn hit on Canada, and in particular me?

I thought I had found the answer last Wednesday, when at a luncheon in Ottawa the speaker proclaimed that more clauses of the *Magna Carta* remain in force in Canada than anywhere else, including England. The hot-bed of *Magna Carta* fervour, the speaker advised, was Alberta – the province of cowboys and oil sands.¹

I must admit that subsequent research has failed to turn up hard data to support the speaker's claims, but exercising my judicial prerogative, I have chosen to believe they are true and that they are the reason you have asked me to speak to you tonight.

Having thus satisfied my curiosity as why I, and not some better-informed person, stand before you this evening, let me proceed without further ado to the subject at hand – the *Magna Carta* and its impact on the world.

My task tonight is to discuss the resonance of the *Magna Carta* – the Great Charter – throughout the world. I propose to focus on three aspects of the *Magna Carta* – what it was; what it became; and what it will be. I will suggest that what Lord Bingham has

¹ See quotation of Professor Donahue in Corydon Ireland, *Magna, Cum Laude* in Harvard Law Bulletin – Spring 2015 (May 1, 2015), accessed at <http://today.law.harvard.edu/magna-cum-laude/> on June 13, 2015.

referred to as the spirit of *Magna Carta* that has grown and survived for the better part of a thousand years, stands challenged today as never before.

The *Magna Carta* That Was

Let's start at the beginning – what was the *Magna Carta*? How was it conceived? What was its import in 1215, when it was conceived?

On June 15th, 1215, almost eight hundred years ago to the day, King John, Sovereign Monarch of England, met his nobles on a soggy meadow near Runnymede Green and set his seal to the *Magna Carta*. The moment was more tortured than auspicious. No one on the meadow of Runnymede could have foreseen that eight hundred years hence, their dubious act of agreement – the King was acting under great duress and in the face of rebellion – would be celebrated as the moment when liberty, the rule of law, and democracy were born.

You know better than I the story of how the Great Charter came to be. King John had been continually at war in the decade that preceded the document. His wars for the most part had not been successful. He had lost great chunks of land in France, and wanted to wage yet more war to regain what he had forfeited. For that he needed money and for money he needed to tax his barons. The barons objected to his impositions. At base, the *Magna Carta* has been – with some justice – characterized as a tax document

directed to the “abolition of unfair taxes”, as an assertion that “[t]axation must be fair, and requires the consent of the people”.²

The barons knew the King was desperate. So they moved. They took control of London. King John holed up at Windsor Castle. The barons followed and called him out to Runnymede Meadow. They would support him, yes, but only on a series of conditions – sixty-three to be precise. The result was the document, later known as the *Magna Carta*.

Taxes weren’t the only grievance the barons had. King John, to put it bluntly, was not a nice fellow, although to be fair, it was mainly his enemies who authored his history. He did not stop with taking the barons’ gold; it seems he took their wives and chattels as and how he wanted. The letter of one good wife so abused resonates with unintended pathos; she begs the King for one night – one night only – with her husband. History does not record whether John granted her request.

Life in 1215 “was fundamentally informed by Christian convictions, hopes and fears” and by “the conceptions of polity, justice and due process” drawn from scripture over the centuries.³ King John was on the outs with the church. So it is no wonder that the opening clause of the *Magna Carta* is a covenant that “the English Church shall have her rights and her liberties inviolate.” Nor is it any wonder that the values associated with

² Vern Krishna: Corporate barons vote with their feet, National Post, February 18, 2015.

³ Mark Hill, Q.C., “*Magna Carta* and religious liberty” *The Times* (June 11, 2015)

religious teachings – due process, the worth and liberty of each man, and consent-based power grounded in Christian notions of personal agency – underlay of many of the covenants that followed.

The *Magna Carta* did not create new rights and values so much as affirm existing mores. “What King John offered to do in 1215 was not to create a written constitution but rather to uphold law, liberties and customs already considered ‘just’, ‘good’, and perhaps above all ‘ancient’”, says Nicholas Vincent, Professor of Medieval History at the University of East Anglia.⁴

Most of the sixty-three clauses of the Great Charter do not make riveting reading. They deal with taxes, fish wares, Jewish money lenders and blood feuds, among other pressing matters. Although they stipulate widows should not be compelled to remarry, they contain little to warm the modern feminist heart. Nor did they affect the lot of the common folk – the vast bulk of the inhabitants of England at the time. In the idiom of the 21st Century, this was a deal between the fellow “one-percenters” of late medieval England.

Nor did the Charter fare well in the years that immediately followed. John detested the document, regarding it as an illegitimate infringement of his divine Kingly right. Pope

⁴ Nicholas Vincent, *Magna Carta, The Foundation of Freedom*.

Innocent III, having reconciled previous differences with John, annulled the document ten weeks after King John sealed it. But John died and the barons persisted. In the following two years (1216-17), William Marshall, Regent to John's son, the child King Henry III, twice reissued the articles, which for the first time were dubbed *Magna Carta – The Great Charter*. Only last week, in Ottawa, at the Canadian Museum of History, I viewed the Durham copy, issued in 1300 by King Edward.

In the years that followed, most of the sixty-three clauses fell by the wayside, the victim of this or that change in the law. And for the most part it didn't matter much. Even today, only three clauses of limited impact on the general law remain on the books in the United Kingdom – protection of the freedom of the Church of England; protection of the liberties of the cities; and the protection of the right to a speedy trial by one's peers. Outside England, the *Magna Carta* enjoys little formal application.

All this has led leading writers, with some justification, to refer to the "myth" of the *Magna Carta*. Yet the *Magna Carta* is no mere myth – in the ensuing eight centuries, it has been a powerful force for good. The late Lord Bingham of Cornhill made this point when he observed that the *Magna Carta* is "as influential for what it was widely believed to have said as for what it actually did."⁵ Lord Bingham was right. The *Magna Carta's*

⁵ Mark Hill, *supra*.

enduring influence flows not from its force as a legal document, so much as from its force as a symbol of what is right and just.

As Jill Lepore put it in the *New Yorker*: “Magna Carta was revived in seventeenth-century England and celebrated in eighteenth-century America because of the specific authority it wielded as an artifact — the historical document as an instrument of political protest...”⁶

Ms. Lapore adds:

“It would not be quite right to say that Magna Carta has withstood the ravages of time. I would be fairer to say that, like much else that is very old, it is on occasion taken out of the closet, dusted off, and put on display to answer a need. Such needs are generally political. They are very often profound.”⁷

The *Magna Carta* that was is a myth, a symbol, an artifact. Yet for 800 years it has moved the world in a better direction. Therein lies its importance.

This brings me to what the *Magna Carta* became –

The Magna Carta That Is

The Chief Justice of the United States Supreme Court, John G. Roberts, told an audience of the American Bar Association last August that the *Magna Carta* is still

⁶ Jill Lepore, *The Rule of History*, *The New Yorker*, April 20, 2015 Issue.

⁷ Jill Lepore, *supra*.

recognized today “because it laid the foundation for the ascent of liberty” and constitutional democracy. “We celebrate not so much what transpired 800 years ago, but what has transpired since,”⁸ the Chief Justice said.

Almost everyone can find in the Great Charter’s obscure Latin text something that addresses their particular passion. Equality, property, even women’s rights have been linked to the *Magna Carta*. But it is three singular and related ideas – or more accurately the germ of what were to become three singular ideas that made the *Magna Carta* what it is today – the idea of *individual liberty*; the idea of *rule of law*; and the profoundly fundamental idea that *state power must be exercised in accordance with the law and the consent of the people* – in the modern word, *democracy*. It is these ideas – liberty, rule of law and democracy – that have made the *Magna Carta* one of, if not the most, influential documents of recorded history, spreading its influence beyond Britain’s shores to every part of the world.

Let me say a few words about each of these profoundly important ideas. The first is the idea of *individual liberty*. Many of the clauses of the *Magna Carta* touch on this or that liberty or constraint, but it is in clauses 39 and 40 that we find the concept of liberty set out in pure form. “No free man — and I emphasize “NO FREE MAN” — shall be

⁸ American Bar Association Journal, June 2015, p. 45.

taken or imprisoned or outlawed or exiled or in any way ruined, nor will we go or send against him except by the lawful judgment of his peers or by the law of the land.” The words still resonate today – *no free man shall be taken*. In a word, liberty.

Of course this liberty was confined and imperfect. It applied only to “free men”, who comprised only a tiny portion of the population of England in 1215. But the concept emerges from the *Magna Carta* fleshed and powerful for all its limitations. The individual liberty of Jeremy Bentham, the fight for freedom of Martin Luther King, the essential dignity of each human being of contemporary human rights covenants – these find their roots in the seminal notion that *no free man* shall be taken or imprisoned or outlawed or exiled or ruined by state power, except in accordance with the law.

The idea of individual liberty was not obvious at the time. In 1215 people didn’t think of themselves, by and large, as individuals entitled to say and do and think what they wished, subject only to legal constraint. Most of the people were serfs or indentured servants. They probably thought of themselves, if they thought about themselves at all, as part of retinue associated with a great family or household. Even the great lords of the realm probably saw themselves first and foremost of vassals of the King, their liege lord. Yet they had their rights, and they were tired of those rights being abused. They were tired of having their lands and property taken without due process or being thrown in some prison keep at the whim of the King. The idea “we have a right to be free of tyranny”

progressed to the idea of liberty – the idea that “no free man shall be taken or imprisoned” without due process of law.

Even today, individual liberty is viewed as a strange and sometimes perverse idea by much of the world. In the Orient, Confucian values of the wise leader and social cohesion bulk larger than the value of individual liberty. It is no accident that individual liberty is not a vaunted concept in many parts of the world. We in the west, the heirs of the *Magna Carta*, take individual liberty for granted. And we in the west, steeped in centuries of libertarian thought, may too easily fail to appreciate the enormity of what the barons at Runnymede accomplished when they loosed the idea of liberty on the world.

As a symbol of the idea of liberty, it is not surprising that the *Magna Carta* was conscripted by advocates of the human rights movement, and during the Cold War, too. “This Universal Declaration of Human Rights . . . reflects the composite views of the many men and governments who have contributed to its formulation.” Eleanor Roosevelt said in 1948, urging its adoption in a speech at the United Nations — she chaired the committee that drafted the declaration — but she insisted, too, on its particular genealogy: “This Universal Declaration of Human Rights may well become the international *Magna Carta* of all men everywhere”.⁹

⁹ Jill Lepore, *supra*.

The second idea which traces its genesis to the *Magna Carta* is the **rule of law**. Not rule by law – laws were imposed long before 1215 – but rule of law. By rule of law I mean the principle that the law is the ultimate framework into which the exercise of all power must fit and by which it must be justified. The French articulation – *primauté du droit* – captures the concept precisely. The *primacy* of the law over the exercise of state power.

The Charter that King John sealed on June 19, 1215 does not refer to the rule of law in its Latin clauses. But they did set out the concept of the priority of law over arbitrary exercises of state power. Again we return to Articles 39 and 40 – “no free man shall be taken or imprisoned or outlawed ... except by the *lawful* judgment of his peers or *by the law of the land*”. In plain, 21st century language, the King’s power over citizens must be exercised *lawfully*, within the framework and by authority of *the law*. The *Magna Carta* was the “first legally binding document to limit the power of the King over his subjects.”¹⁰ And the means chosen to limit the King’s power was the law.

This idea – that state power must be exercised *lawfully*, within the *framework of the law* – meant that the law had primacy over the executive power of the King and his administrators. Like the idea of liberty, this was not an obvious or fully articulated idea in 1215. Indeed, it is still not an obvious idea in many parts of the world. I am told that

¹⁰ Sir Jeffrey Jowell, “Professional Program: The Influence of Magna Carta” *Journal of the American College of Trial Lawyers* (Winter-Spring 2015) at 36

the western phrase “rule of law” is impossible to translate in certain languages – it simply has no counterpart certain cultures.

But the rule of law embedded in the *Magna Carta* is more than a mere demand for legal primacy. The document supplements it with an insistence that the law must be just, available and free from corruption. The words still resonate today: “To no one will we sell, to no one will we deny or delay the right of justice”.

The twin notions of the primacy of law and the effectiveness of the law – an insistence that the law be just, impartial and available to all – combine to create what we call the rule of law. Both are essential to the rule of law. If the law is subordinated to other forms of power, there is no rule of law. Nor can the rule of law survive if the law is partial, corrupt or inaccessible to citizens. The *Magna Carta* contains the germs of both these ideas – ideas that were developed in later centuries to produce the modern concept of the rule of law.

The third idea rooted in the *Magna Carta* that persists to this day is the idea that *power is based on the consent of the people* – in a word, **democracy**. Underlying the promises of Articles 39 and 40 of the *Magna Carta* is the idea that the King rules with the consent of his barons. The same idea underlines the assertion in the *Magna Carta* that there should be no taxation without representation.

Again, the idea is inchoate, but the germ of our modern conception of democracy is there. Thus U.S. President Franklin D. Roosevelt in his 1941 Inaugural Address, pronounced as the Nazis consolidated their grip on Czechoslovakia, stated: "The democratic aspiration is no mere recent phase in human history. It is written in the *Magna Carta*." The President could, of course, have referred to ancient Athens, the birthplace of democracy. But the reality was that the Athenian ideal had lain dormant for more than a millennium when King John sealed the *Great Charter* in 1215. The *Magna Carta* took the ancient idea of democracy and breathed new life into it.

In the centuries that followed the agreement we call the *Magna Carta*, statesmen confronted with unacceptable assertions of Kingly power, took up the germs of the related ideas of liberty, rule of law and democracy contained in the document, and fleshed them out as fundamental principles of constitutional dimension. The two most important struggles in which the *Magna Carta* was invoked were James I's assertion of the divine right of Kings and the right to judge causes in the early seventeenth century, and the American Revolution of the late eighteenth century.

In 1608 the issue arose as to whether a King's Court of High Commission, entrusted with supervision of ecclesiastical matters, could order arrest and detention. Lord Coke, a staunch defender of the common law courts, pronounced that this was contrary to the

Magna Carta, and that if the High Commission acted, the judges of Common Pleas would grant an order of prohibition. King James decided that he himself would adjudicate the dispute between the High Commission and the Court of Common Pleas. Coke questioned the King's jurisdiction to do this. This joined the real dispute – the King's authority to act as judge. And a lively fight it was.

Archbishop Bancroft, on the side of the High Commission and the King, asserted that the Word of God gave the King the power to judge whatever dispute he pleased. Coke responded that the Word of God required that "The laws even in heathen countries must be obeyed." The King then intervened to tell Coke that he "spoke foolishly". When the King said he would "ever protect the common law", Coke shot back that it was the other way around -- "the common law protecteth the King". At this the King, shaking his fist at Coke, exploded, "Then I am to be under the law, which is treason to affirm?"

It was a dangerous moment, and one version has Coke, after a suitable rejoinder, falling on his knees before the King. If he repented, it was not for long. The next day the Court of Common Pleas sent a prohibition to the High Commission with Coke's seal on it. The King backed down but did not relent. Two years later, in March 1610, he told Parliament that the King exercised "divine power on earth" and was entitled "to judge all and be accountable to none." The Commons responded in The petition of Grievances by asserting that the King must be governed "by the certain rule of law, and not by any

uncertain or arbitrary form of government.”¹¹

In the struggle that ensued, the long dormant *Magna Carta* became the banner of those who opposed extension of the royal prerogative and diminution of their rights and the rights of Parliament. Coke, abetted by others like John Seldon, fellow member of the Inner Temple, steadfastly asserted the document’s guarantees of an independent judiciary, the liberties enjoyed by members of the Commons, and the principle of no taxation without representation. James I appointed Coke as Chief Justice of the King’s Bench, thinking that would curb the campaign, and then fired him when Coke disappointed him. Coke, undeterred by demotion or stints in the Tower of London, continued to extol the *Magna Carta* as the foundation of the rights and liberties of the entire nation. “*Magna Carta*”, he declared, “is called ... the Charter of liberty ... when the king says he cannot allow our liberties of right, this strikes at the root. We serve here for thousands and tens of thousands.”¹²

James died before the contest between the common law and the King’s law was resolved, and Coke and his cohorts continued to use the *Magna Carta* against the new King, Charles I. The Civil War intervened, followed by the Restoration of the Monarchy.

¹¹ This episode is recounted in Anthony Arlidge and Igor Judge, *Magna Carta Uncovered* (Oxford and Portland, Oregon: Hart Publishing, 2014) at p. 122-23.

¹² As quoted in Mary Ann Glendon, *The Forum and the Tower: How Scholars and Politicians Have Imagined the World, from Plato to Eleanor Roosevelt* (Oxford and New York: Oxford University Press, 2011), at 83.

Many years were to pass before formal recognition of liberty, the rule of law and the supremacy of Parliament and representative government. But in the end they were recognized, thanks in no small part to the *Magna Carta*.

This brings us to the second historic struggle that cemented the *Magna Carta* in the annals of liberty, rule of law and democracy – the American Revolution. Lord Coke’s battles with the King inspired generations of settlers heading for the new world and young men from America who came to England to study and to read law at the Inns of Court. Blackstone’s Commentaries, which were widely read, opined that the three crucial rights of the individual – life, liberty and property (for the latter, read “no unjust taxes”) – flowed from the *Magna Carta*. Indeed Thomas Marshall, father of the future and first Chief Justice of the United States, was one of the subscribers to the first American version of Blackstone’s Commentaries, published in 1772. It has been said that Blackstone “had a significant influence on the legal profession in Britain, but it was in North America that his work made its greatest impression.”¹³

This influence soon surfaced in American political life. In 1765 the Massachusetts Assembly declared new taxes imposed by England to be against the *Magna Carta* and against the natural rights of Englishmen. Eleven years later the American Revolution

¹³ Arlidge and Judge, *supra*, at 156.

began. The individual states, in bold constitutional experiments, drew on and echoed various provisions of the *Magna Carta*, asserting in constitutions and declarations of rights that “no man be deprived of his liberty except by the law of the land, or the judgment of his peers”.¹⁴

The stories of England and the United States — two epochal stories of how two countries came to enshrine liberty, rule of law and democracy, both inspired by an ancient agreement between a King and his barons we call the *Magna Carta*. England (including the colonies that adopted its laws and norms, like Canada) and the United States were changed and shaped by the *Magna Carta*. But it is equally true to say the *Magna Carta* was changed by them. An unremarkable treaty between a medieval King and his lords — many such treaties were made in late medieval Europe — was transformed into a document of seminal and enduring constitutional and historic importance in England and America and, as those models spread, around the world. The *Magna Carta* — not for what it was but for what it has become — has been rightly hailed as “the beginning of the spread of modern democracy and the “foundation stone supporting the freedom enjoyed today by nearly two billion people in over 100 countries.”¹⁵

¹⁴ The assertion is found in the form quoted above in the Virginia Declaration of Rights of 1776. Variations are found in other state declarations of rights or constitutions. See Bernard H. Siegan, *Property Rights: From Magna Carta to the Fourteenth Amendment* (London: Transaction Publishers, 2001), at 52.

¹⁵ Sir Jeffrey Jowell, “Professional Program: The Influence of Magna Carta” *Journal of the American College of Trial Lawyers* (Winter-Spring 2015) at 37-8

The values for which the *Magna Carta* has come to stand find different expressions in different countries, attesting to their flexibility and utility. In England, they fueled the battle between the King and Parliament, which was ultimately resolved by the King-in-Parliament principle which established Parliamentary supremacy and removed the danger of royal despotism.¹⁶ In the United States, the War of Revolution became a war against the institution of the monarchy, leading to an independent Republic. In both countries, an independent judiciary emerged. In England Parliament was supreme, precluding any suggestion that the courts might negate an act of Parliament. But in the United States, it was otherwise. As Arlidge and Lord Judge explain:

To protect the new Constitution from subsequent legislative interference, a new structure had to be found. Consciously or otherwise, refuge was found in Coke's motto that the law is the safest shield. Thus the Constitution of the United State sets out the proposition of fundamental law and vested the judiciary with power to reject even properly enacted legislation which conflicted with the Constitution.¹⁷

In my country, Canada, the route was more complicated. Canada was born of evolution, not revolution. For Canada's first century, the English model prevailed. Then, in 1982, Canada repatriated its Constitution and introduced the *Charter of Rights and Freedoms*. The basic values of the *Magna Carta* –liberty, rule of law and democracy – were given constitutional status, and judges entrusted with the responsibility of ensuring

¹⁶ Arlidge and Judge, *supra*, at 161.

¹⁷ *Ibid.* at 161

that all laws conform to the *Charter's* provisions.

Different paths, different results, but all of them true to the basic precepts we associate with the *Great Charter*.

The *Magna Carta* That Will Be

I have discussed the *Magna Carta* that was and the *Magna Carta* that is. I conclude with the *Magna Carta* that will be – the *Magna Carta* of the future.

The values that have made the *Magna Carta* the great constitutional document that it is — the values of liberty, rule of law and democracy — were hard won. Lord Coke and the Commons party fought long and hard to enshrine these values in the English Parliamentary system – a battle that took over a century to win. The American colonies fought a bloody revolution to install their version of these values. My own nation, Canada, has engaged in its own struggles to ensure respect for the values of the *Great Charter*, as have many countries around the world.

It is tempting to think that the all the battles have been fought -- that liberty, rule of law and democracy are forever entrenched. Tempting, but wrong.

Every era faces its own battles, and ours is no exception. It is not an exaggeration

to say that the values of the *Magna Carta* – liberty, rule of law and democracy – are challenged in the opening decades of the twenty-first century as never before within living memory. The challenges come from a world that is ever more crowded, ever more polluted and ever more fearful. In this newly destabilized world, individual liberty, rule of law and even democracy can come to be seen as luxuries – frills we cannot afford.

I will not dwell on the strains that will be imposed in the future by crowding and climate change – each would occupy its own lecture. Suffice to say that the pressures of too many people, advancing oceans and poisoned air in many parts of the world have the capacity to engender desperation, displacement, and war. We have not realized the full force of these impacts, but if we do not change course, we may be forced to confront them. In circumstances where people fear for their survival and the future of their children, the values of liberty, rule of law and democracy may well be threatened by the immediate felt need for strong and forceful action. Liberty, the rule of law and democracy are powerful values, but to sustain them requires acceptance of diversity, patience and dedication to process. In states of emergency, these may be in short supply.

Let me turn to the challenge posed by our ever more fearful world. The attack on the World Trade Center in New York in 2001 altered the world. Terrorism itself was not new. Canada, for example, experienced a horrendous act of terrorism with the bombing of Air India Flight 182 in 1985, leading to the loss of 329 lives. Other countries had

experienced devastating terrorist incidents. But the bombing of the Twin Towers seared the collective imagination of people everywhere in a way the previous incidents had not. We did not watch as the Air India flight crashed into the Atlantic Ocean off the coast of Ireland, but in 2001, the world sat glued to its screens as it watched towers crumble and people flee screaming into the streets. To paraphrase Yeats, the world was changed, utterly changed.¹⁸ Subsequent events – like the 2005 bombing in London, the 2007 Glasgow airport attack, the 2011 Norway attacks, and the assassinations of the journalists of *Charlie Hebdo* in Paris have reinforced this fear.

The world of 2015 is a world primed for fear. And it is a world determined to fight terrorism in all its forms. This is as it should be – one of the fundamental tasks of any government is to keep its citizens safe. Governments have responded to the threat of terrorism with suites of new laws. This is also arguably as it should be.

My argument is not that these responses are necessarily wrong, but rather that they pose challenges to the values of liberty, rule of law and democracy that generations before have, with hard effort, in the face of imprisonment and even death, wrung from the sparse Latin clauses of the *Magna Carta*. As we vaunt these values, so we should also understand that efforts to combat terrorism may threaten them. Liberty may be curtailed by laws that

¹⁸ William Butler Yeats, "*Easter, 1916*" and *Other Poems*. (Mineola, N.Y: Dover Publications, 1997).

permit incarceration or deportation of people thought to pose threats without the trial by their peers of which the *Magna Carta* spoke. The rule of law may be undermined by laws which may require courts to operate in secrecy, away from the cleansing glare of sunlight. Democracy and the principle of Parliamentary supremacy for which Coke and his cohorts fought so long and assiduously may be undercut by security agencies operating in the clandestine world of espionage at the behest of the executive branch of government.

The basic problem is to assess how far the intrusion on the values of liberty, rule of law and democracy should be allowed to go. What precisely is required to combat terrorist threats and keep us safe? The danger is that in a fear-charged climate, laws and executive actions may cut too deeply into the values that are the legacy of the *Magna Carta*.

This year we celebrate the eight-hundred year march of liberty, rule of law and democracy from the soggy fields of Runnymede to every corner of the world; a march from an ancient piece of parchment called the *Magna Carta* to vaunted Constitutions on every continent. “The *Magna Carta*”, it has been said, “is England’s greatest ever export.”¹⁹ As a jurist from abroad, I believe this to be true. We should daily remind ourselves of the greatness of what has been done in the name of the *Magna Carta*. And we should be

¹⁹ Sir Robert Worcester, “Professional Program: The Influence of *Magna Carta*” *Journal of the American College of Trial Lawyers* (Winter-Spring 2015) at 37-8

vigilant to ensure that what Lord Bingham called “the spirit of the *Magna Carta*”²⁰ never dies.

Magna Carta, legal document maybe, historical force, without doubt. In closing, I echo the words of Ms. Lepore:

“The rule of history is as old as the rule of law. *Magna Carta* has been sealed and nullified, revised and flouted, elevated and venerated. The past has a hold: writing is the casting of a line over the edge of time. But there are no certainties in history. There are only struggles for justice, and wars interrupted by peace.”²¹

²⁰ See Claire Brey and Julian Harrison, eds., *Magna Carta: Law, Liberty, Legacy* (London, British Library Publishing, 2015) at 144.

²¹ Jill Lepore, *supra*.