

Magna Carta Matters Today

Magna Carta was handwritten in Latin with a quill pen on a piece of sheepskin eight hundred years ago. What about this image seems relevant in today's high-tech, fast-paced society? More than you might think. From calls demanding the closure of Guantanamo Bay to the outcry against NSA's bulk data collection to support for a Magna Carta for the web, it is evident that an agreement between a tyrannical king and some rebellious barons eight centuries ago continues to influence us today. Magna Carta and the U.S. Constitution offer valuable lessons about the importance of individual liberties and limits on government power.

If social media were available in the thirteenth century, King John would not have many Instagram followers. The king bled his subjects with excessive taxes, including "scutage" required in lieu of military service to support his endless wars. King John seized land and property as it suited him, arbitrarily incarcerated subjects, and ignored people's rights. Disgusted by the monarch's oppressive rule, a group of barons unsuccessfully tried to negotiate with him in 1215. The rebellion of the barons was not a fight for democracy or a human rights campaign championing the rights of serfs laboring in their fields. The one-percenters of medieval England, the barons were simply defending their own self-interests. After the barons captured London, King John agreed to meet them on June 15th at their encampment at Runnymede, a meadow twenty miles west of the capital. The barons introduced Magna Carta, the "great charter" supporting the principle that no one, including the king himself, was above the law.

Magna Carta is relevant to issues we face today, including calls demanding the closure of the prison at Guantanamo Bay. Chapter 39 of Magna Carta asserts an individual's freedom from imprisonment "except by the lawful judgment of his equals and according to the law of the

land.” This clause is associated with habeas corpus, the constitutional freedom from being detained without just cause and due process. Habeas corpus is not about deciding innocence or guilt. Rather, it ensures that a prisoner is being legally detained. Suspending the writ of habeas corpus is often justified as a wartime security measure. For example, in what Ewers called “the dark side” of President Lincoln’s presidency, thousands of Confederate sympathizers in Maryland and other border states were placed under arrest during the Civil War (1). Similarly, 100,000 Japanese-Americans were interned during World War II.

Today the war on terror is used to justify suspending the writ of habeas corpus. Since September 11, 2001, 779 men have been detained at Guantanamo Bay. All have been detained without a trial by jury. Many have never even been charged with a crime. Whisking someone off to prison without due process sounds like King John’s throwing subjects into the castle dungeon simply because he didn’t like them. Similarly, our Founding Fathers viewed arbitrary imprisonment as the ultimate form of tyranny by King George III. Today illegal detentions and torture at Guantanamo Bay hurt America’s image around the world. Lowering ourselves to the level of the terrorists we oppose is not what the United States represents. Locking up the principles of Magna Carta and the U.S. Constitution, along with illegally imprisoned detainees, may make us feel safer, but at what cost?

The Magna Carta principle aimed at keeping King John from seizing grain from the barons to feed his army morphed into the Fourth Amendment. When Magna Carta and the Constitution were written, “searches” referred to physical searches of people’s property. Today “search and seizure” takes on a new meaning because of internet and phone surveillance, GPS tracking, drones, and other advanced technologies. As the threat of terror increases, governments have increased surveillance of their citizens. In fact, the National Security Agency (NSA)

systematically collected phone records to find connections people might have with suspected terrorists. The Court of Appeals struck down the “telephone metadata” program, ruling it went beyond the intent of the Patriot Act (*ACLU v. Clapper*).

Who cares if the NSA knows I called my friend Mitchell? We’re not plotting anything suspicious. Maybe not, but protecting the privacy of American citizens is important. Systematic surveillance of citizens will suppress free speech. People will be reluctant to report misconduct to reporters or agencies if phone records tie them to the complaint. In addition, phone records can uncover confidential information like medical conditions, private business deals, or inappropriate relationships or affiliations. Documents released by Edward Snowden revealed the government is monitoring Google, Facebook and other websites. Will our phone conversations, instant messages or texts be next? As technology becomes more sophisticated and futuristic, it is important to look to the past. Our nation’s Founders embraced protection against warrantless searches in response to King George’s policy of permitting his agents to search anyone at any time. History provides important lessons about protecting the individual liberties we cherish today. Are we listening?

In 2014 Tim Berners-Lee, the computer scientist credited with inventing the internet, called for a “Magna Carta for the web.” As the internet gives individuals more power, governments and companies increasingly try to reign in that power. China, North Korea, Syria, and other nations regularly block websites with opposing viewpoints, monitor emails, and control who may upload content. It has a chilling effect when American businesses or government agencies engage in the censorship we associate with authoritarian rulers. Freedom of speech is important. It is a cornerstone of democracy and arguably the constitutional right most valued by Americans.

Magna Carta did not guarantee free speech. However, it began a tradition of individual liberties that led to the First Amendment freedoms including speech, assembly, religion, press, and petition. Today people do most of their “speaking” online. The internet is also where people “assemble” to share ideas. Beyond anything the Framers of the Constitution could have imagined, the internet is a twenty-first century soapbox, printing press and town square all in one. Every American has access to this powerful communication tool at home, at work, or at the library. Given its unique and global nature, protecting people’s internet rights is essential.

Eight hundred years ago a revolt against a despotic king with little respect for individual liberties led to Magna Carta. In the eighteenth century, our Founding Fathers turned to Magna Carta as inspiration for their own revolt and their own great document, the U.S. Constitution. Both documents earned a distinguished place in history because of their commitment to civil liberties. Unfortunately, when a nation is faced with a crisis, individual liberties tend to erode. The rights of individuals increasingly are sacrificed in the name of security and patriotism. However, there is nothing patriotic about chipping away at the freedoms that make our nation great. While it is important to protect life and property, we also have to safeguard our liberty.

Freedoms such as due process, protection against unreasonable searches and seizures, and freedom of speech need to be defended today as fiercely as they were in past centuries. History shows us that the fight for individual rights and liberties is a never-ending battle. Our government, especially the judicial branch, plays an important role in defending our rights and freedoms. Yet sometimes government can overstep its bounds and intrude on the civil liberties that make our nation and our individual lives something special. Every day, with our voices and our votes, we must remind our fellow citizens that government is our servant and that we, the people, are its master.

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