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MAGNA CARTA: 800 YEARS YOUNG

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I begin with a few words about one of the supporters of this event, the Rule of Law Institute of Australia (RoLIA). I am a member of the board of the Institute and this year I am Chair of its Magna Carta Committee. An important part of RoLIA's work is outreach to the community and especially to school students about rule of law issues. This year our education officers are having a very busy time travelling to schools in NSW, Queensland, Victoria and South Australia, bringing the story and the messages of the Magna Carta to a multitude of students. They have also prepared and supported many educational resources that may be accessed at www.magnacarta.org.au or www.ruleoflaw.org.au . The rule of law is foundational to our way of life and the Magna Carta anniversary has given it a big boost in public consciousness.

The title of my paper is "Magna Carta: 800 Years Young" and that is to focus intentionally on the continuing relevance of this document in our lives and the messages that we may continue to take from it to ensure observance of some of the founding principles of our system of governance.

All educated persons, especially (but not only) those in places with an English heritage, think they know what the Magna Carta is and why it is important to our lives – but it is always helpful to stop and reflect upon objects that have passed into legend and myth and that over time have acquired significance and value that the originators could never have foreseen. The History Society of NSW is, of course, well placed to facilitate such reflection. It is coincidental that the 800th anniversary of the Magna Carta falls in the same year as the 100th anniversary of the landing at Gallipoli – we have recently marked that occasion and that event, too, has acquired some mythical qualities that provoke us to re-examine the historical record.

A view commonly held is that King John made an agreement with the barons in 1215 at Runnymede, that the document called Magna Carta became "law", it created rights, it has been construed and applied ever since and it is the source of most that is good in public administration – including

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democracy, the separation of powers, the rule of law, the independence of the judiciary, trial by jury, equality before the law and much more.

That is only partly true. The real story is much more interesting (although perhaps not as satisfyingly pat), but there is time here to tell only some of it.

WHERE DID MAGNA CARTA COME FROM?

In the known early history of what is now called England, Kings held sway. There was competition between Kings of different areas, between Kings and nobles and between Kings (and nobles) and their subjects. The Christian Church of Rome also played a significant role in this. Over time, laws developed to regulate these matters, but they were not in England (until at least 594) written and recorded laws (unlike much earlier in Babylon, the Holy Land, among the Germanic peoples and elsewhere) – they survived in the memory and retelling. That is significant because it is often not the precise letter of the early law that is important, but the intent behind the written word.

Laws began as dispute resolution mechanisms among the people and were appropriated by Kings claiming to be acting in the interests of peace. The places of peace – the meetings or courts (if the Kings attended) – became the places for the enforcement of the laws – our modern "courts". There were not, as yet, police or legal professionals working in criminal justice. In securing peace, violence was to be prevented and suppressed. As often as not, the best means of preventing violence was thought to be the infliction of greater violence.

Every community and its lord needed to have a basic understanding of the law, as did the King. There was a communal and largely unwritten understanding of what was or was not lawful. Sometimes penalties were also fixed for specific infractions.

At the time of the 594 code of Aethelbert, King of Kent, the written versions of laws claimed not to make new laws, but to define customs and practices already in place – so there was already an existing body of what might be called common, or perhaps natural, law in existence by the time it was recorded in writing. That was reaffirmed in the rather haphazard and selective codes of later Kings of Kent, of Ine, King of Wessex (694), Alfred the Great in the 9th Century and many others through to King Cnut around 1026.

The Norman Conquest in 1066 brought all property under the King, but otherwise it embedded the pre-existing "English" laws which William acknowledged. A tension was created between the force of conquest and obedience to the old law.

From around 1100 it is known that English law was again operating routinely. The Domesday Book from the survey of 1086 shows the survival of Anglo-Saxon laws and records and there are available other collections of laws from those times. The Laws of King Henry I of 1115 and the so-called Laws of Edward the Confessor compiled around 1140 (a century after Edward) were significant in the later drawing of the document sealed in 1215.

In 1100 Henry I came to the throne, supported by the barons. He was the youngest of William's sons so his claim was not strong and he was obliged to make a number of concessions which were

embodied in the Coronation Charter. He promised to uphold the existing laws of earlier English kings and sought to gain popularity by blackening certain of his predecessors while promising to uphold the "good old" laws and traditions of the past. The Coronation Charter was later used to bind successive Kings and was very influential in the drawing of the 1215 document.

In the latter months of 1214 the Coronation Charter was brought out of the archives by Stephen Langton, Archbishop of Canterbury (who had begun to refer to it in 1213) and circulated widely. It was brought to Runnymede on 15 June 1215. It was used to bind King John to the "good old" laws of his great grandfather, Henry I.

WHAT LED TO THE MAGNA CARTA?

The document we call Magna Carta is both a restatement of the "good old" laws of the English past and a treaty of peace between the English and their king (and the Christian Church).

John was a Plantagenet, an ancient line from Angers on the Loire with a history of conquest and plunder, connected to the English throne by the marriage of his mother, Eleanor of Aquitaine. When Henry I died, Stephen reigned. His heir died and after some dealings involving Matilda he recognised Henry II as King. In 1154 he inherited a system of law from his grandfather, Henry I, which he set about changing while quarrelling with Thomas Becket. Becket's murder in 1170 did not play well for Henry II or his line and it aided in the revitalising of the Coronation Charter of Henry I. Becket had called for the "liberty" [see below] of the English Church which inspired others to seek to have their liberties also enforced against a tyrannical King. For the time, however, the King held sway.

From the time of the Assize of Clarendon (1166) while Becket was in exile, Henry II set about reforming the criminal law especially. He provided for juries to report suspected robbers or murderers who would be detained by sheriffs for trial before local law officers. Gaols were built. Exile and outlawry were decreed for notorious criminals. Other laws were enacted that created a flood of litigation and Henry II had to employ additional judges and officials to deal with it. By the 1170s there were professional courts, centred on Westminster but travelling on circuit. Knights and local landowners were drawn into law enforcement, but before long inequities appeared and by the time of Becket's murder in 1170 resentment was strong. In 1173 a rebellion broke out and was put down the following year. The King then tackled more strongly the powers of local lords and assumed greater control over the administration of both criminal and civil justice. Henry II was viewed by a significant segment of the population as a tyrant.

One chronicler, Ralph Niger, claimed in very strong terms that Henry II deliberately delayed judgments so that justice could be bought and sold (cf Chapter 40 of the Magna Carta 1215). He promoted serfs and soldiers as officials. He debased the monasteries and debauched the wives and daughters of barons. He overruled the old laws, set aside "liberties", legislated scandalously for royal dominion in the forests, supported the usury of the Jews, ordained barbaric punishments and so on. All this certainly served to increase the power of the king – and these criticisms herald some of the clauses of Magna Carta.

If Henry II was a tyrant, he was nonetheless effective in government. England expanded and prospered. By contrast, his youngest son John was a tyrant with no redeeming qualities. He was

cruel and contemptuous and he came after his elder brother, Richard (who died without heir), had bled the country for his own gain (including his ransom paid to Germany of billions of pounds in today's money).

John was crowned in May 1199 and in the next five years piled catastrophe upon catastrophe at both personal and national level (losing most of his territory in France, among other things). He routinely abused the law and his subjects; but because the law was regarded as being there to serve the monarch, little could be formally done. After losing Normandy in 1204 King John was obliged to stay in England and among the barons, where propinquity bred contempt. From 1205 he also challenged the Church, seeking to have his own candidate elected Archbishop of Canterbury. He lost that contest and Stephen Langton, a staunch Becket supporter, was consecrated by the Pope in 1207 but was obliged to live in France. King John refused to recognise him and eventually in 1212 Pope Innocent III excommunicated England and the royal court. From 1208 to 1214 the services of the English Church were suspended and the populace was adversely affected in various ways. John retaliated by expropriating what he could from the Church and bled the barons to build a war chest to retake his French territories. The Pope was rumoured to be plotting to depose King John and put a Frenchman on the throne. Some barons were discovered plotting John's death and fled to France. A powerful group, English and French, baronial and ecclesiastical, grew around Stephen Langton in exile in France in 1213 where the Coronation Charter of Henry I from 1100 was invoked. A French invasion loomed.

King John (having none of the diplomatic talents of his father) capitulated in 1213. In order to gain protection from France, he surrendered England and Ireland to the Pope as a papal fiefdom, promising a perpetual annual rent (of the equivalent of one million pounds in today's money). In 1214 he attempted to re-establish a foothold in northern France, but was defeated. The English churchmen feared Papal interference in their English church (in 1215 the election of Stephen's brother Simon as Archbishop of York was to be quashed by the Pope). Langton returned to England and preached against King John's moves and seizures of church properties. As noted, in 1213 Langton had rediscovered the Coronation Charter of Henry I and, although not enjoying the trust of the barons, became pivotal to the development of the Magna Carta.

London merchants, too, had suffered under John. The King had been accustomed to seize French and other foreign ships in English ports to ward off invasion. The French retaliated. Commerce was thwarted. Money was lost.

Late in 1214 the circulation of Henry I's Coronation Charter led to King John's issuing a charter of liberties for the English Church, but it was not enough. Barons and churchmen were meeting at various places and a group of barons known as the "Northerners" emerged. It was this political movement that forced King John to Runnymede. The alternative was his deposition or death. The document was sealed under duress.

WHAT IS THE MAGNA CARTA?

Documents began to be prepared from late 1214 through to June 1215, including the so-called Unknown Charter probably dating from the northern spring of 1215. Various drafts of clauses

(perhaps more precisely “chapters”) survived and were later distributed in various places – sometimes with provisions that differed from the sealed Charter (eg clause 2). King John, seeing the writing on the wall, had granted new privileges to bishops and barons, abolished large tracts of royal forest, pacified Bayonne to hold Gascony, granted privileges to the men of London and made concessions to barons and opponents about the arbitration of disputes. Negotiations were well and truly under way; but it was too little, too late for John.

On 5 May 1215 the malcontents gathered at Brackley in Northamptonshire and publicly repudiated their oaths of allegiance to the King. On 17 May a group seized London (including Westminster, the Royal seat) on behalf of the rebel barons. Negotiations continued with some sophistication on the wording of an agreement between King and barons as both sides tried earnestly to preserve the peace. Langton was also very concerned to ensure that the English Church was also properly considered and in the result predominated over the barons.

A place had to be selected for the agreement to be sealed. Runnymede was at an appropriate distance from both the rebel stronghold of London (and Staines) and the King’s castle at Windsor. (This was the first time a name had been recorded for the place which was sometimes an island, sometimes riverside land.) The date when agreement was reached was 15 June 1215.

When agreement was formalised, the document was called the “Charter of Liberties” – the title “Magna Carta” came in 1217 to distinguish it from the Forest Charter of that year, a smaller charter of liberties covering land under the law of the forest.

As noted above, liberties were understood a little differently from modern usage. The word liberty was coined by the Greeks, meaning immunity from taxation. The Romans used it to mean negation of slavery – a person at liberty not being the property of someone else. This became the sense in which it was used by the Anglo-Saxons – denoting freedom from dominion by royalty, such as to be enjoyed by particular subjects and institutions like the cathedral or monastic churches. At the time of the Charter of Liberties it meant freedom from tyranny or perhaps even privileges – well short of the catalogue of rights and freedoms in international and domestic instruments that we now understand as liberties; so it is perhaps ill-judged to attempt to extract a list of them from the document, as can be done (for example) from the Universal Declaration of Human Rights of 1948 and its progeny and even from the American and French declarations of the 18th Century.

Much of the Charter of Liberties reflects the Coronation Charter of Henry I of 1100 and the Laws of Edward the Confessor (compiled around 1140, although Edward lived a century earlier). Some of it reflects more international influences from Europe. Some of it was no doubt inspired by Stephen Langton, Archbishop of Canterbury.

The original Charter of Liberties was handwritten in mediaeval Latin on untanned animal skin, vellum. It was over 3,500 words and was 63 clauses long. In addition to the King, at least 36 individuals are named in the document including English nobles and an Irish Archbishop, the King of Scotland and his Constable, a Cardinal of the Roman Church, an Italian clerk, at least ten Frenchmen and eight of the relatives and friends of the King’s henchman in Tours on the Loire. The copy bearing the King’s seal has been lost.

The first and most important clause granted liberties (freedoms from royal control) to the Church, not the barons. “Free men” (perhaps up to 40% of the population of England of between two and four million people at that time, being the nobility, landowners and townsmen and excluding serfs owing servile obligations to their masters) then had their liberties declared in subsequent clauses. This emphasis on the Church was reinforced in the final clause 63.

WHAT DID MAGNA CARTA DO?

As already noted, the Charter was both an affirmation of the “good old” laws of England and a treaty of peace between the King, the barons, his subjects and importantly the English Church. The specific subjects were the English Church and all free men.

The Charter (in its 1215 form) in clause 1 gives freedom to the English Church and guarantees its rights and liberties. In its terms and position (being followed by a preambular statement catching up all free men in what follows), clause 1 gives special treatment to the English Church and it is a carefully drafted clause. It makes a grant to God. It specifically separates itself from what follows, being in consequence of the dispute that arose between King and barons. The distinction between Church and free men is emphasised in the final clause 63.

The clauses that follow in the 1215 version, after the preamble, deal with:

- concessions by the King regulating financial profits that could be extracted from feudal rights such as wardships, widows and escheats and provisions for trusts (clauses 2-8);

- the realm as a corporate entity capable of self-expression (clauses 12, 14); further, the King being bound contractually to the community of his subjects, to popular consent – in effect, the King being placed under the rule of law; and the beginnings of “no taxation without representation”;

- the ancient liberties of London and all cities, boroughs, towns and ports – perhaps 100 corporate communities (clause 13);

- fining of earls and barons only by their peers and proportionately to the offence (clause 21);

- the judgment of free men by peers generally (clause 39);

- a general settlement, intended to ensure good lordship for all, great and small not just between King and barons (clause 60);

- enforcement of the Charter by a group of 25 barons [25 having been observed by St Augustine as being the square of 5, being the number of books of law in the Old Testament Pentateuch] (clause 61);

- protection of subjects from the rapaciousness of sheriffs, foresters and other local officials (clauses 9, 16, 20, 23-26, 28-33, 38, 44-45, 47-48);

- law and legal procedure (clauses 17-19, 24, 34, 36, 38, 39, 40, 45);

- national measures for wine, corn and cloth (clause 35);

- protection for international trade (clause 41);

- the separation and independence of the judiciary and judicial competence (clauses 24, 45);

- limitations on the King's manipulation of debt, especially to Jews (clause 9-11, 26);

- protection of widows and heiresses, but limits on a woman's capacity to testify (clause 54);

- negotiation points for further discussion (clauses 47-48, 53 on forests; 56-59 on peace with the Welsh and Scots);

- removal of armed aliens bent on trouble (clause 51);

- dismissal of alien constables (clause 50);

- transmission of the benefits of the charter from the King to his subjects and from all in the kingdom to their own people (clause 60);

- ruling out the possibility of an appeal to the Pope to annul the Charter (clause 61).

No reprisals were recorded against King John, even though justified. A difficulty that could not be contracted away, of course, was that the King was sovereign under God and the Charter was an act of the King's grace, issued in his name – it was just a promise by the King and one that he could undo.

HOW WAS MAGNA CARTA PROMOTED?

On 19 June 1215 (4 days after the sealing) the rebels paid homage to the King and he declared an end to hostilities. Two uneasy months followed while all sides waited for the contract to be honoured on all sides. Copies of the Charter were made through July and sent out to be read aloud in over 30 county courts, probably in Latin and French, possibly in English as well. Sealed copies were still being copied and dispatched by 22 July. There are four surviving "originals" of the document of 15 June 1215, but not the one with the King's seal, and they were brought together in the British Library and House of Lords in February this year.

The barons refused to surrender London. The King refused to dismiss his constables (cf. clauses 50, 51). Langton was suspended and went into exile. The King sent envoys to Rome with a copy of the Charter (cf clause 61) but the Pope had learned of the charter and was already taking action. He annulled the Charter on 24 August 1215, the letter arriving in England near the end of September by which time the Charter of Liberties was already dead (at the latest probably from 5 September when other documents were proclaimed at Dover on behalf of King John). It survived in its first life less than three months.

From 17 September 1215 the King issued many instructions for the seizure of rebel lands. Civil war began and the rebels sought help from the Scots, the Welsh and the French (whom they invited to invade, which they did). While campaigning in Lincolnshire in October 1216 King John fell ill and died (it is said, from dysentery after eating a surfeit of peaches), the Crown passing to his eldest son Henry (then nine years old) and the coronation occurring at Gloucester Abbey (not at still rebel-held Westminster) on 28 October 1216.

Two weeks later, on 12 November 1216 at Bristol, the Charter of Liberties was reissued as affirmation of the new King's future good government. It was sponsored by a Papal legate, so it acquired explicit Papal approval on this occasion. But the text had been significantly modified from that of 15 June 1215 (by, *inter alia*, the omission of many specifically local and temporal provisions and restrictions on the King's powers, including restraints on modification or annulment of the charter).

The war continued, the French were forced out and the rebels sued for peace. In November 1217 the Charter of Liberties was again reissued, with still further modifications to the text. In 1216 and 1217 the clauses that most directly challenged royal sovereignty were removed, including the sanctions clause 61.

Also in 1217 Henry III issued a distinct charter, the Forest Charter, regulating the royal administration of those parts of the country under forest law. The Charter of Liberties became known as the Magna Carta (great charter) to distinguish it from the Forest Charter (which was shorter and smaller).

In 1225 Henry III confirmed both Magna Carta and the Forest Charter. This version of the Magna Carta differed again and this version became the standard, as reproduced (more or less) in subsequent reissues. It was now down from 63 clauses to 37.

There were further reissues of Magna Carta through the next 70 years (including 1234, 1237 and 1253). In 1253 the document is known to have been read aloud throughout the land in English as well as Latin and French. In 1265 the 1225 Charter was reissued.

Known surviving charters are from 1215 (4), 1216 (1), 1217 (4), 1225 (4), 1297 (4 – and not all identical) and 1300 (6 – the most recent rediscovery occurring in Maidstone, Kent in 2014-15).

The last two issues in 1297 and 1300 were intended to achieve support for King Edward I in high spending on warfare that was unpopular with barons and the population generally. The 1297 document was the first to be copied onto the official "Statute Roll" and its 37 clauses (emanating from the 1225 document) thereby became the text that is definitive under English law (and is the version quoted hereafter). Notwithstanding that, reference has often been made to clauses of the Charter of Liberties that was in force for three months in 1215 (with 63 clauses) and which were not reproduced in later versions. The 1297 version purports to copy the 1225 version, but it did so from a defective copy that resurrected an error in clause 2. The 1300 version is identical to the 1297 version and was reissued only because of a formal deficiency related to the King's seal during his absence abroad at the time of the issue of the 1297 version.

The document had moved from a failed peace treaty to a law and was to become legend, with all the anomalies and peculiarities that usually attend upon legends.

THE REALITY

It follows that the reality is that the Magna Carta by that name dates not from 1215, but from 1217. The Charter of Liberties of 1215 survived less than three months and was never a law of England – nor was the later Magna Carta. It did not create rights, so much as declare existing laws (with a few additions). Its shrinking terms are to be found in many documents spanning 85 years and not all identical. Its principal other party was the Church, not the barons. Its significance, however, is real – and it lies not so much in the text of any of the documents but in the principles behind the text – the values and concepts that support it and their derivation from the "good old" laws of England.

And the Magna Carta did not acquire its name because of the portentous nature of its contents – it was because it was bigger than the Forest Charter.

WHAT HAS SURVIVED?

Magna Carta, since the 13th Century, has been looked to symbolically for guarantees of royal conduct and the regulation of power between governors and the governed. It has been respected and referenced whenever individual freedoms have been threatened or needed to be asserted. It has been regarded as akin to legislation and in the late 15th Century was even referred to (inaccurately) as the "laudable Statute of Magna Carta". The fact that there are so many versions of the document adds to its mystique. But it is not so much reference to the words of any particular clause that is important: the whole document is symbolic of the continuation of the "good old laws" of England, even unwritten laws, and of the subjection of all, even monarchs, to those laws. The Magna Carta's importance lies more in the principles that underlie it, than in its text – and in the symbolic way in which it has been invoked for 800 years in many different countries and circumstances.

From the late 13th and early 14th Centuries the Magna Carta (the 1297/1225 version) became regarded as the pre-eminent statute of the realm. It was given pride of place in publications of statutes and other legal texts. It was lavishly illuminated in the fashion of the times. It played an important part in legal education, including as a source of moot questions in legal training. It was publicly proclaimed from time to time and copies displayed. It was cited in political debate. It was cited in litigation and as authority for legal remedies from the monarch by petition or otherwise. It was "interpreted" in many ways.

Certain key provisions became identified as the sources of rights enjoyed by all subjects, including due process of law (the 1297 version is quoted).

> Clause 5: "The keeper, for as long as he has the custody of the land of such (an heir), is to maintain the houses, parks, fishponds, ponds, mills and other things pertaining to that land from the issues of the same land, and he will restore to the heir, when the heir comes to full age, all his land stocked with ploughs and all other things in at least the same condition as when he received it. All these things are to be observed in the custodies of archbishoprics,

bishoprics, abbeys, priories, churches and vacant offices which pertain to us, save that such custodies ought not to be sold."

This is said to be a (or the) source of the law of trusts.

Clause 11: "Common pleas are not to follow our court but are to be held in a certain fixed place."

This separated the powers of the King's court from the law courts that could deal with ordinary law suits involving property that did not require the King's presence to be decided.

Clause 14: "A free man 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, saving his sufficiency, and a merchant likewise, saving his merchandise, and any villein other than one of our own is to be amerced in the same way, saving his necessity should he fall into our mercy, and none of the aforesaid amercements is to be imposed save by the oath of honest and law-worthy men of the neighbourhood. Earls and barons are not to be amerced save by their peers and only in accordance with the manner of their offence."

This established a form of trial by jury (although limited at that time to nobility being tried by their peers) and assured proportionality in sentencing.

Clause 17: "No sheriff, constable, coroner or any other of our bailiffs is to hold pleas of our crown."

This was a move towards the establishment of an independent, professionally qualified judiciary and the reinforcement of moves that had already been taken (read with clause 35).

Clause 28: "No bailiff is henceforth to put any man on his open law or on oath simply by virtue of his spoken word, without reliable witnesses being produced for the same."

This imposed a burden of proper proof on those alleging infractions of the law and indirectly affirmed the presumption of innocence.

Clause 29: "No free man is to be taken or imprisoned or disseised of his free tenement or of his liberties or free customs, or outlawed or exiled or in any way ruined, nor will we go against such a man or send against him save by lawful judgment of his peers or by the law of the land. To no-one will we sell or deny or delay right or justice."

This is probably the most-cited clause of Magna Carta (being clauses 39 and 40 of the 1215 version), certainly in the criminal jurisdiction. It is the declaration of two fundamental planks of the rule of law – that punishment may only be imposed after due process of law and that the law is to be applied without improper external influence or corruption.

Another aspect of the rule of law is present in the charter itself, its mere being: that justice will be done by following rules that have been stated in advance and are knowable by all.

From the 16th to the 18th Centuries Magna Carta was invoked in battles between monarchs and parliaments over the nature of law, in defining the prerogatives of sovereignty and individual property, through to conflicts between the people and anyone who claimed power. In 1628 Sir Edward Coke in his Institutes of the Laws of England included a complete commentary on Magna Carta. It was closely studied and quoted in constitutional struggles in the 17th and 18th Centuries when it came to legitimate protest and resistance to invasions of personal liberty (in the more modern sense of the word). It was a foundation for the Glorious Revolution of 1688 and the Bill of Rights of 1689 and the Act of Settlement of 1701. It inspired the American independence movement in 1776 and the American Constitution. And much more besides…

In 1948 Eleanor Roosevelt, the champion of the Universal Declaration of Human Rights, told the United Nations: *"We stand today at the threshold of a great event in the life of the United Nations and in the life of mankind. This declaration may well become the international Magna Carta for all men everywhere."*

MAGNA CARTA'S LEGACY

The contemporary strength of the Magna Carta is as a foundation of what is described as the rule of law, even though clauses 12 and 14 from the 1215 Charter of Liberties did not survive. Commentators refer back to those clauses and to the mere fact of a King agreeing at that time to confirm existing laws and to place himself under their operation, even in limited respects, as support for the rule of law. It is said to show that no person – not even the King – is above the law. Further, the process whereby agreement was reached is said to reinforce the aspect of the rule of law that holds that the people should not only be governed by the law, but be willing to be so. That is likely only if those in power are also subject to the law.

The events of 1215 became an enduring symbol and an unchallengeable myth. Through the centuries various interpretations have been placed on the participants in those events: eg King John as victim; the role of the barons; and/or the Pope – but the document continues to inspire.

The rule of law is one of the concepts supported by the Magna Carta and it may conveniently be described in the words of the Secretary-General of the United Nations in 2004:

> *"For the United Nations, the rule of law refers to a principle of governance in which all persons, institutions and entities, public and private, including the State itself, are accountable to laws that are publicly promulgated, equally enforced and independently adjudicated, and which are consistent with international human rights norms and standards. It requires, as well, measures to ensure adherence to the principles of supremacy of law, equality before the law, accountability to the law, fairness in the application of the law, separation of powers, participation in decision-making, legal certainty, avoidance of arbitrariness and procedural and legal transparency."*

The Magna Carta has provided inspiration and support for progressive development in governance worldwide since the Middle Ages. It is said to stand for:

- continuation of basic law – of a framework for order and peace fashioned by and from the people – upon which contemporary laws are made and rest and which is innate and inalienable;

- the triumph of liberties over tyranny;

- the rule of law itself – that no one is above the law, no matter how powerful, even a monarch, and that justice will be done according to certain laws that are knowable in advance;

- the value of democratic processes in the government of the people;

- the value of the separation of powers;

- independence and professional competence of the judiciary;

- equality before the law and due process (including the presumption of innocence and burden of proof on the prosecution);

- trial by a jury of one's peers (as it later developed);

- "no taxation without representation";

- freedom from arbitrary punishment and proportionality in sentencing.

It is also said to have been the origin of the law of trusts and an early example of the protection of women's rights (in that widows were not to be forced to remarry and would take their inheritances). It also dealt with a multitude of local and temporal regulations that are of less enduring significance but which secured common freedoms for that time.

Magna Carta, as it has come to be understood and called upon over 800 years, operates as a shield against tyranny, abuse of power and oppression of the governed. It has become the talisman of a society in which the spirits of tolerance and democracy reside. In the English common law system, it is the touchstone of the rule of law and a continuing inspiration to all.

AUSTRALIA'S MAGNA CARTA (and the USA)

In the 1930s the small King's School in Bruton in Somerset in the English West Country acquired an original 1297 Magna Carta. In 1951 the impoverished school took it to the British Museum for authentication, which was duly made, with a view to sale to raise money. It was formally identified as an original of the 1297 Magna Carta, at that time one of only two known to exist (two others were discovered later). There is uncertainty about how it came into the school's possession, but the best account seems to be that in the decades before, the school's lawyer, who had been keeping the document for someone else whose family had probably acquired it from Easebourne Priory in Sussex, put it into the school's documents box by mistake.

The British Museum was prepared to offer £2,000-2,500. The school had it independently valued at £10,000 (£12,500 with seller's commission), but the British Museum would not move and the school

engaged Sotheby's. After much manoeuvring (a story in itself) the Library Committee of the Australian Parliament purchased it in 1952 for £12,500 (15,672 Australian pounds) and the document is now on display in Parliament House, Canberra. An area in Canberra near Old Parliament House has been designated Magna Carta Place.

The United States of America has another original of the 1297 charter, purchased in 1983 by Ross Perot for $US1.5 million from the Brudenell family of Deene Park in Northamptonshire. In 2007 Perot sold it for $US21.3 million to David Rubenstein, who has since gifted it to the US National Archive.