

AUSTRALIA'S MAGNA CARTA

HISTORY COUNCIL OF NSW SYMPOSIUM ON MAGNA CARTA

STATE LIBRARY OF NSW

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It is not widely known that Australia has an original exemplification of an early issue of the Magna Carta or Great Charter, not one of the four surviving copies from 1215, but one of four surviving from the 1297 Inspeximus issue by Edward I, the one most commonly included in English statute books. In literal terms, therefore, the 1297 issue is more than just an agreement between the King and the barons. It can be seen as the statutory foundation of what we regard as essential Magna Carta principles in English law and all its derivatives.

There were other issues of the charter in 1216, 1217, 1225 and 1300 and from all of these issues it has been estimated that there are twenty-three or twenty-four surviving exemplifications (or original copies made at the time) identified so far.¹ Australia's copy is therefore a rare treasure indeed and is one of only two to be found outside the United Kingdom. The other is on display in the National Archives in Washington D.C. and is owned by David M. Rubenstein who bought it at auction through Sotheby's, New York, in 2007 for US\$21.3 million and arranged for it to be on permanent display for the nation. This is the only copy in private hands.²

Australia's Magna Carta belongs to the Commonwealth Parliament and is on permanent display in Parliament House, Canberra, having been moved there in 1988 from Old Parliament House where it had been on display – for most of the time – since 1961.

But behind these bald statements about Australia's Magna Carta lie tales of intrigue, institutional rivalry and incredible luck that matched up the desire of an impecunious minor English public school in Somerset to raise some cash, with the nation-building ambition of an influential Canberra librarian of the 1950s and 60s to acquire treasures for the new national library.

¹ Much of the information in this paper is based on a wonderful essay by Nicholas Vincent, Professor of Medieval History at the University of East Anglia, 'Australia's Magna Carta,' first published in a pamphlet of that name by the Department of the Senate in 2010 and since reissued in revised form in the 2015 second edition. The 24th exemplification was only identified earlier this year.

² Mr Rubenstein tells the story of his acquisition of the manuscript in *Australia's Magna Carta*, 2nd edition revised, Department of the Senate, 2015.

The story has been well told by Professor Nicholas Vincent but a sketch of the background is useful for context.

It was Edward I's grandfather, King John, whose disastrous relationships with the Church and his barons and the loss of English territories in France, among other things, forced him to acquiesce to the first great charter in 1215. Repudiated after only a few weeks, the Magna Carta was reissued after John's death, first in 1216 and again in 1217, this time accompanied by the Forest Charter which regulated what activities were allowed in the great tracts of countryside defined as the King's Forests. Issued as a sign of good faith by the council advising John's 9-year-old son and heir, Henry III, the charter was issued again in revised terms in 1225 when Henry turned 18, and it was this version that continued to be reissued whenever the King needed to give assurances to the barons that he *would* rule according to law. The long minority of Henry III may well have facilitated the charter's eventual influence as a check on absolute power. Over the same period, the great council that would ultimately evolve into the English Parliament was aligning itself with the rights and liberties associated with the charter and, in particular, with the principles of taxation by consent and regular meetings for the presentation of grievances.

However, Henry III wasn't any better than his father at mollifying the barons and, after yet another period of civil war, Simon de Montfort effectively seized control and called the January parliament of 1265 which included two knights from each shire and burgesses from the towns or boroughs, probably to build an alternative source of authority to the King and royalist barons.³ Montfort, who had taken Henry III and his son, the future Edward I, prisoner at the battle of Lewes in 1264 was, in turn, gruesomely killed at the battle of Evesham in August 1265, perhaps providing some inspiration for Edward's later treatment of the Scottish rebel, William Wallace.

By 1297, Edward I, having crushed Wales, needed vast sums to wage war in Scotland and France. With his Italian creditors bankrupted, Edward had few options other than to ask for supply from parliament, to be funded by taxes. In return, parliament demanded confirmation and reissue of both the Magna Carta and the Forest Charter. While Edward was off fighting the French in Flanders, his regency council issued letters patent, reciting the texts of both charters and requiring their despatch to each county for promulgation. For this purpose, copies were made and it is one of these copies that is now in Canberra. As Nicholas Vincent explains, it is "technically 'a letters patent'⁴ of *inspeximus*' (that is, a letter sent in the King's name for public proclamation, inspecting and confirming earlier legislation)".

The document itself tells us that it was certified by Hugh of Yarmouth, a relatively well-known royal clerk at the time, and that it was destined for the county of Surrey along with its companion document, the Forest Charter.

³ For an in-depth analysis, see J. R. Maddicott, *The Origins of the English Parliament, 924-1327*, Oxford University Press, 2010, particularly chapter 4 (Establishment: The First Age of Parliamentary Politics, 1227-1258) and 5 (Consolidation: Parliament and Baronial Reform, 1258-1272).

⁴ From the Latin *litterae patentes*, meaning letters lying open (that is, to public inspection) and referring to official documents issued by the Crown granting a legal right.

How then did this copy end up in the records of the King's School in Bruton, Somerset?

According to a civil servant involved in the bureaucratic machinations over the school's sale of the manuscript in the 1950s, there was a story that sometime in the previous century the school's lawyer had mistakenly put another client's property into the wrong deed box. Nicholas Vincent's theory is that both charters were delivered in 1297 to the sheriff of Surrey (who was also joint sheriff of Sussex) and, for safekeeping, were given into the custody of the nuns at Easeborne Priory in Sussex. After the dissolution of the monasteries in the 16th century, many of the priory documents, including the 1297 charters, passed into the hands of a family which, much later, engaged as a solicitor one John Louch of Drayton in Somerset, about twenty miles from Bruton. Although no definite connection has yet been found between John Louch and the King's School, it is likely that the Magna Carta became separated from the rest of the collection while the documents were in Louch's custody.

We know that the documents were in Louch's custody because, after his father's death, John Louch's son donated the collection of manuscripts to the British Museum. These included the Surrey copy of the 1297 Forest Charter but, owing to a cataloguing error and a failure to identify it as an original 1297 copy, when the King's School's 1297 Magna Carta came on the market, it was not recognised as the companion piece of the British Museum's 1297 Forest Charter.

Not realising that it already possessed the Surrey copy of the Forest Charter, and not appreciating the claim it could have mounted for possession of the much more significant companion great charter, the British Museum considered the school's Magna Carta to be worth £2,000 to £2,500 and not particularly special to an institution that already possessed several charters. Disappointed, the King's School sought an alternative valuation (which came in at £10,000) and commissioned Sotheby's to sell the manuscript by private treaty. In the improbable coalescence of circumstances so beautifully chronicled by Nicholas Vincent, approval was granted for a sale to Australia which scraped together the £12,500 sterling asking price. In Australian pounds this was about £15,600.

This was a great deal of money in 1952 as the financial burdens of a post-war economy continued to bite. Ever a perennial topic, Sydney real estate prices provide some guide to what such a sum could buy. Not surprisingly, the *Sydney Morning Herald* for Saturday, 14 June 1952, included very few properties in that price range. Fine gentlemen's residences on large blocks on the north shore or in the eastern suburbs, including with harbour views, could be purchased for considerably less, but a city agent was advertising homes in Bellevue Hill and Vaucluse with harbour views in the £6,500 to £20,000 range. People with £15,600 to spend might have considered:

- a two storey residence in Wahroonga with 3 reception rooms, 3 bedrooms, multiple bathrooms, detached double garage and lovely gardens ('suit consular officials or retired graziers') for £16,000;
- a 'stately bungalow' in Warrabee, 'built with the best pre-war materials', 4 reception rooms, 4 bedrooms, multiple bathrooms, detached double garage with air

conditioning, artist-landscaped gardens, tennis court, bush house, sawn stone walls and N.E. aspect, all for £15,000; or

- a Spanish-style two storey home in Clifton Gardens with sweeping harbour views from all windows, lofty reception hall, balcony staircase, large lounge and dining rooms, study, staff quarters, 4 bedrooms, multiple bathrooms, terraced gardens and fishponds ('impossible to build at this price') for £15,000 or offer.

In other words, while Magna Carta was bought for a very substantial price, it was not a fortune beyond imagination, particularly for a national government, even one counting its pennies so carefully.

The Australian purchase was spearheaded by Sir Harold White. White was Parliamentary Librarian from 1947 to 1967 but, from its earliest days, the parliamentary library was also a national library and White therefore played a dual role. The extra-parliamentary component was known from 1923 as the Commonwealth National Library.⁵ It was governed by a joint parliamentary committee – technically the Library Committees established by the standing orders of each House and empowered to meet together. White pursued a determined collection policy with an eye on the ultimate separation of parliamentary and national libraries, achieved by legislation establishing the National Library of Australia in 1960. The new library building on the southern shore of Lake Burley Griffin opened in 1968.

When the purchase of the 1297 *Inspeximus* was announced by the Speaker in the House of Representatives on 19 August 1952 he referred to the role of the Library Committee:

The Library Committee, encouraged by the Prime Minister and financially supported by the Government, felt that it would have failed in its duty to this young country if it had not acquired for the nation the copy of Magna Carta that was offered to it.⁶

Speaker Cameron also referred to the "discreet silence" that had accompanied the delicate negotiations. Prime Minister R.G. Menzies followed with a resounding tribute to Magna Carta as the first charter of civil liberties, the basis of the rule of law and the precursor of democratic principles.⁷ Opposition Leader, Dr H.V. Evatt, referred to the charter's embodiment of the rule of law, liberty and hatred of arbitrary government. He referred to its contemporary resonance in a world recently "assailed by totalitarianism, sometimes of the left and sometimes of the right".⁸

A few weeks later, the Senate President, Senator Edward Mattner, announced the purchase in an erudite and informative statement to the Senate that included the following assessment of Magna Carta's enduring significance:

There is scarcely one great principle of the English constitution of the present day which has not been read into the provisions of Magna Carta. Many of these were

⁵ Speech by Senator Reg Withers, *Senate Debates* (SD), 27 November 1968, p. 2447.

⁶ *House of Representatives Debates* (HRD), 19 August 1952, p. 381.

⁷ R.G. Menzies, HRD, 19 August 1952, pp 381-2.

⁸ H.V. Evatt, HRD, 19 August 1952, p. 382.

wrongly claimed to flow from Magna Carta, but we cannot afford to underestimate the value of traditional interpretations, whether they were historically well-founded or ill-founded. The greatness of Magna Carta lies not so much in what it was to its framers in 1215, as in what it afterwards became to the political leaders, to the judges and lawyers, and to the entire mass of the men of England of later ages. The Australian Constitution, embodying, as it does, the principles of British liberty and representative government, is in that sense a true lineal descendant of the Great Charter.⁹

President Mattner thus put his finger on the importance of the *idea* of Magna Carta and what it came to represent, rather than on the obsolescence of much of the actual text of the charter with its references to fish weirs on the Thames and the Medway or to rates of compensation by sheriffs and bailiffs for use of someone else's horses and carts.

In 1961, following years of work by the CSIRO to devise the best method of preserving it, the Magna Carta was placed on permanent display in King's Hall, located between the two chambers in what is now Old Parliament House. While the "greatness of Magna Carta" inspired occasional references in debates, (including during debate on the Australia Card Bill 1986¹⁰), the burning question eventually became one of ownership. When the Magna Carta disappeared from King's Hall during the winter recess in 1968 (the year the National Library's new building was opened), questions were asked in the House. Speaker Aston explained rather apologetically that consultations had occurred with himself and the President:

We made inquiries and found that we were simply the temporary custodians of the document which was purchased by the National Library in the early 1950s, and it was held in this building only until the National Library moved into its permanent headquarters. I emphasise that the Parliament was not the purchasing authority. The purchasing authority was the National Library ... we were merely the temporary custodians of the document.

There were subtle hints that, in the Speaker's absence overseas, the President of the Senate had effectively authorised the move. Member for Hindmarsh, Clyde Cameron, gave a fiery adjournment speech lambasting the librarian, Harold White, for spiriting the Magna Carta away to the new National Library "without the authority of this Parliament" and rejecting the view that the document could possibly have been bought by an institution (the National Library) that did not exist at the time of purchase.¹¹

More than 100 members and senators signed a petition for the return of the Magna Carta to Old Parliament House. Prime Minister Gorton diplomatically considered it a matter for the Presiding Officers rather than the executive government.¹² In the Senate, Opposition Leader

⁹ President Mattner, SD, 11 September 1952, p. 1280.

¹⁰ See, for example, a reference by the Member for Macquarie, Alasdair Webster, HRD, 13 November 1986, p. 3120.

¹¹ HRD, 20 August 1968, pp 353 and 354.

¹² HRD, 24 October 1968, p. 2292.

Senator Lionel Murphy asked President McMullin to accept the petition "without any formal resolution as a firm expression of the desire of the Senate" to have the document returned. The President undertook to discuss the matter with the Speaker and the National Library Council, of which he happened to be Deputy Chairman, expecting his best endeavours in the matter to be successful.¹³

Some senators were concerned that the President would contemplate acting in his official capacity on the basis of an informal petition only. Senator Reg Withers brought forward a motion on the evening of 27 November 1968 indicating that, in the Senate's opinion, the best place for Magna Carta to reside was in the National Library. This was done, he said, to test the will of the Senate in a formal way, to allow the voices of the minority to be heard and to ensure that the President, when he acted, would be doing so in accordance with the wishes of the majority of the Senate.¹⁴ In other words, he was concerned that due process – for which Magna Carta was now seen as a guarantee – should prevail.

Over the next hour and a half, senators argued the toss between the National Library and Parliament House, technically by means of an amendment moved by Senator Murphy to substitute "Parliament House" for "the National Library".¹⁵ Details of the purchase emerged, including the source of the funds appropriated to pay for it. Withers informed the Senate that the funds had come from two sources: a deposit of £1,500 from an appropriation to the Prime Minister's Department to allow the Presiding Officers to make purchases and employ staff for the national library component; while the full amount of £12,500 sterling was paid at the direction of the Treasury from another appropriation to the Prime Minister's Department. No parliamentary funds were involved.¹⁶

A counter-argument was put by Murphy and others that funds had been appropriated by the Parliament for the document to be purchased for display in Parliament House where it was accessible to the hundreds of thousands of visitors each year, in contrast to the Library which was intended as a place of scholarship, research and quietness. "A library is not a place for visitors to be tramping in and around," thundered Murphy.¹⁷

Although the technicalities of ownership were interesting, the real plea was to emotion. As the Leader of the Government in the Senate, Senator Anderson, explained:

I do not deny the suggestions as to how the document was purchased, but I believe that its rightful place is in Parliament House. I believe that Parliament is the voice of the people. Parliament is the most precious thing in our way of life and it stems initially from the Magna Carta.¹⁸

¹³ SD, 24 October 1968, p. 1539.

¹⁴ SD, 27 November 1968, p. 2447.

¹⁵ SD, 27 November 1968, p. 2449.

¹⁶ SD, 27 November 1968, p. 2448.

¹⁷ SD, 27 November 1968, p. 2451.

¹⁸ SD, 27 November 1968, p. 2452.

Such sentiments carried the day. Despite the "legal niceties of who is the technical owner of this copy of Magna Carta"¹⁹, the Senate voted overwhelmingly to express its view that the Magna Carta be returned to Parliament House. The Senate's wishes were given effect and Harold White relinquished custody of his precious treasure. The Surrey copy of the 1297 Inspeximus Magna Carta returned to King's Hall and in 1988 was placed in a special housing on the public level of Members' Hall, the equivalent space in the new Parliament House.

Sir Harold White died in 1992. The "legal niceties" were eventually resolved in 2005 by a deed signed by the then Director-General of the National Library and the then Secretary of the Department of Parliamentary Services transferring both ownership and custody to the Parliament of the Commonwealth of Australia. In 2010, Magna Carta moved from its dim and somewhat dated housing where many visitors missed it altogether to become the centrepiece of an [exhibition](#) on parliament's lawmaking function,²⁰ mounted by the Department of the Senate. Magna Carta's arresting qualities, both physical and emotional, continue to attract generations of visitors to Parliament House, Canberra.

¹⁹ Senator Prowse, SD, 27 November 1968, p. 2453.

²⁰ That part of the exhibition is also published separately online at <http://www.magnacarta.senate.gov.au/>.