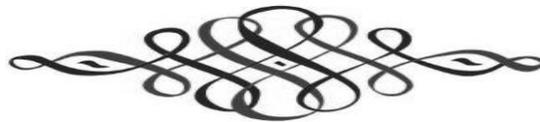


# **THE IMPACT AND INFLUENCE OF THE MAGNA CARTA ON THE COMMONWEALTH CARIBBEAN\***

**Presented by:**

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## **“IMPACT AND INFLUENCE OF THE MAGNA CARTA ON THE COMMONWEALTH CARIBBEAN”**

### **Protocols**

Appreciation for the invitation to deliver the lecture.

The Magna Carta is a legal instrument issued under the authority of King John of England in 1215. It is an instrument upon which many constitutions, including those in CARICOM are based. The words Magna Carta is Latin for Great Charter (of Freedoms). Eight hundred years ago England’s King John was entirely oblivious of the Caribbean region and its peoples. But Magna Carta and the ideals it enshrined flourish in the Caribbean today. In preparation for this presentation one of our research assistants was requested to comb through CARILAW, a data base of Caribbean judgments, to discover the number of cases in which Magna Carta was referred to in Caribbean judgments handed down between the 1971 and the present time. She found 46 such cases. In other words, at least once per year, this legal document is cited by Caribbean judges. .

### **The context of Magna Carta**

The early 13<sup>th</sup> Century was a dark time for King John of England. By 1215, the year Magna Carta was signed, King John found himself on the verge of civil war with his Barons, excommunicated from the Roman Catholic Church by Pope Innocent III <sup>1</sup> and on the losing side of a series of wars with France.

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<sup>1</sup> Breay, Claire and Harrison, Julian, Magna Carta: an introduction :-  
<http://www.bl.uk/magna-carta/articles/magna-carta-an-introduction>

King John and his subjects lived in a feudal society where the king granted barons land in return for loyalty, rent, military service and the payment of taxes and fees. But the Barons became dissatisfied with excessive taxes and abuses of power. Relevant to our discussion the king appointed judges. The fines imposed were extreme, often taking an individual's property and possessions,<sup>2</sup> for the benefit and use of the Crown.

After king John and his allies were defeated in France, he returned to England Broken and humiliated.<sup>3</sup>

The Barons moved to open defiance and they formally demanded a Charter as a guarantee of future good government. King John initially refused to meet the barons' demands. But the Barons declared war, and seized the city of London. It was then that King John negotiated with them. The two sides met at Runnymede, on the River Thames near Windsor in the south of England, in June 1215. Following discussions King John granted the Charter which subsequently became known as Magna Carta.<sup>4</sup>

The historian the late J.C. Holt, (I should add that he was the Master of Fitzwilliam College Cambridge, my own *alma mater*, and I was privileged to attend his memorial service last year), in his work on the Magna Carta, made the point that the Magna Carta, was a political document produced in crisis: he wrote "*It was a product of intermittent negotiations which lasted for at least six months. It was the culmination of hard bargaining and skilful manoeuvring.*" Magna Carta, was "*not only law: it was also propaganda*"

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<sup>2</sup> : Magna Carta - Events Leading To The Magna Carta - King, Barons, John, and Land - JRank Articles <http://law.jrank.org/pages/12301/Magna-Carta-Events-leading-Magna-Carta.html#ixzz3UfXbgb9u>

<sup>3</sup> - <http://www.bl.uk/magna-carta/articles/the-origins-of-magna-carta#sthash.nwG23iVc.dpuf>

<sup>4</sup>See more at: <http://www.bl.uk/magna-carta/articles/magna-carta-an-introduction#sthash.BpEHR2my.dpuf>

### **Contents of the Magna Carta**

Magna Carta 1215 contained 63 clauses which span a wide array of topics from free navigation on English rivers to the standardization of weights and measures. There were some blemishes in its human rights provisions, for example clause 54 prohibits any woman from accusing a man of murder or manslaughter, save in accusations that involved her husband.

Today it is celebrated mainly because of two of its clauses:

Clauses 39 and 40 read as follows:

*“39. No freemen shall be taken or imprisoned or disseised or exiled or in any way destroyed, nor will we go upon him nor send upon him, except by the lawful judgment of his peers or by the law of the land.*

*40. To no one will we sell, to no one will we refuse or delay, right or justice.”*

And I emphasize the fundamental concept *“except by the lawful judgment of his peers”*.

### **Impact of the Magna Carta**

Today one would say that the Magna Carta promoted judicial integrity and impartiality, forbade the denial of justice and its delay to all citizens and lay the foundation for the protection of the right to life, the right to personal liberty, the right to the protection of property and the right not to be arrested, imprisoned, outlawed, destroyed or put upon in any way except by the lawful judgment of one’s peers or the law of the land.<sup>5</sup> It stands for what has become one of the most fundamental and immutable tenets of law namely that no one is above the law.

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<sup>5</sup> Sir Fred Phillips Commonwealth Caribbean Constitutional Law

The Magna Carta is part of the history of the struggle between power and freedom. In England, we could note that under the influence of the great jurist Sir Edward Coke, Magna Carta became a key element in the fight by Parliamentarians to develop parliamentary democracy in the seventeenth century. The traditions have remained as underlying foundation pillars on the constitutional evolution in Britain.

Magna Carta then travelled to the New World in the hearts and minds of the first British settlers and became a rallying cry for the American colonists in their fight for independence from the British crown. It was later woven into the American Constitution and the Bill of Rights.

In the Caribbean, as indeed throughout the British Commonwealth it is attributed as being one of the most significant land marks on the road to the establishment of the rule of constitutional law. There can be no doubt that it influenced the development of Caribbean jurisprudence and in particular Caribbean constitutions. I reintroduce the idea of symbolism because it is significant that it found expression in Caribbean constitutions even though there was no constitution in England. Of course there are many commentators that would equate the Magna Carta with a constitution.

In general Caribbean constitutions constrain the actions of the organs of the State, whether Executive, Legislative or judicial, and ensure that no one is above the law. They balance the enjoyment of individual rights with the public interest and determine the mechanisms through which sovereignty is exercised. The Constitutions articulate core values such as a commitment to parliamentary democracy, constitutional supremacy, the separation of powers, judicial independence and the rule of law.

They protect fundamental rights, such as freedom of association, equality before the law, the right to personal liberty, the right to life, protection from deprivation of property, protection from inhumane and degrading punishment, the right to free movement and the right to freedom of expression, and they also express the lofty aspirations of the people.

But one cannot forget the colonial roots. In Caribbean constitutions there was and still is that restrictive clause known as the transitional provision which prohibited Caribbean courts from applying constitutional principles to laws that might infringe the fundamental freedoms and lofty aspirations of the people, once they were passed during the colonial period and were still in force at the time of adoption of the constitution. I would doubt that transitional provisions could or should be regarded as having permanent or indefinite application. Caribbean courts must be committed to adopt a generous approach to the interpretation of constitutions that gives the citizen the full breadth of the stated rights free from any restriction.

I must at this juncture introduce the sobering thought that the issue of criminal justice reform must be high on our regional agendas owing in part to the undeniable fact that we are witnessing rising crime rates across the board. There must be holistic change among all the major players: the police, the prosecution, the judiciary and the prison system. In relation to the police, the level of crime detection must be addressed as the low regional rate particularly in small societies such as ours is a cause for concern. This is aggravated by the extraordinary length of pre-trial detention which must be regarded as a human rights issue and should be targeted for elimination as a pressing priority. In this context I could add that it is an affront to the concepts underpinning Magna Carta.

In order to address this and related problems the Caribbean Court of Justice as the implementing agent of the Conference of Heads of Judiciary in the region has embarked on a judicial reform and institutional strengthening project with donor funds that have been solicited. The JURIST project is aimed improving the justice system by enhancing the technological capabilities of courts in the region, re-engineering court processes in order to expedite caseflow, expand the range of ADR mechanisms offered to court users and address gender imbalances in the administration of justice. Of course, one of the challenges here is that reform, especially criminal justice reform requires a holistic approach that integrates the coordinated efforts of all the key stakeholders. Since low crime rates and respect for the rule of law will naturally attract investments and lead to increased economic prosperity, the gains to be realized from addressing

these problems extend to economic development and social stability and so the major stakeholders also have a vital interest in partnering with the CCJ in this endeavour.

The establishment of the Caribbean Court of Justice (CCJ) has been an important milestone in the completion of the circle of independence for Caribbean states. The main purpose in establishing this court is to promote the development of a Caribbean jurisprudence. As a court of final appeal the CCJ is best equipped to carry forward the goals and aspirations of the Caribbean people, to protect democracy in the region and to advance the noble principles upon which Magna Carta is premised. The orderly delinking from all vestiges of imperial and colonial rule is a natural process that is consistent with Magna Carta and the Caribbean Court of Justice has been fulfilling its mandate over the last ten years, confronting the challenges which face the rule of law and democracy in those Caribbean countries which have acceded to its final appellate jurisdiction.

This is important because the Magna Carta was a symbol that had far greater impact than its actual wording and its real historical context. The freedoms which today we say apply to everyone, were at the time of the Magna Carta, only applicable to the class of barons who themselves had no concept of the universality of the rights that they demanded. Yet today the Magna Carta is celebrated as being consistent with the applicability of those rights to everyone.

This is particularly significant because the Magna Carta was being used by parliamentarians to support their fight for parliamentary democracy in England, England was engaging in imperial rule over the colonies. Today there is no doubt that colonialism was a denial of the concept of the universal equality of mankind and the fundamental freedoms attributed to the Magna Carta. Even more stunning is during its use for these and other laudable developments in the independence movements in France and the USA the odious trade in the trafficking of enslaved human cargo was being practiced. The Magna Carta survived that shameful period. Today the Magna Carta would be used to condemn such practices.

I was born during the Second World War. In that era, the Caribbean Human Being, not free, still a colonized person fought together with the British colonial power against Nazism which had threatened the freedom of Britain in the name of ethnic superiority, thereby helping to explode the myths of ethnic superiority. Immediately after that war, at the United Nations, the nations of the world joined together and proclaimed the Universal Declaration of Human Rights. The ideas that this released has changed the world. They caused the end of colonialism and developed the concept of human equality and dignity in profound ways. Today my tiny nation state of St. Kitts-Nevis can sit in the General Assembly of the United Nations and contribute to making decisions that influence world affairs with the same voting power as the biggest nations in the world.

I would like to recall a few excerpts from the Preamble:

*“recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world,”*

The Universal Declaration of Human Rights (UDHR), is a foundational document of international human rights law. It has been referred to as humanity’s Magna Carta by Eleanor Roosevelt, who chaired the United Nations (UN) Commission on Human Rights that was responsible for the drafting of the document.

I doubt that there could be any opposition to the statement that the declaration had a profound impact on world history. It was during the same year of the declaration in 1948, that the great nation of India won its independence.

In 1960 the UN again pronounced on human equality and dignity in its Declaration on the Granting of Independence to Colonial Countries and Peoples. This convention has been described as the Magna Carta of colonial states.

I think it is worth reminding ourselves of some excerpts of the preamble and the resolution :

*“Mindful of the determination proclaimed by the peoples of the world in the Charter of the United Nations to reaffirm faith in fundamental human rights, in the dignity and worth of the human person, in the equal rights of men and women and of nations large and small and to promote social progress and better standards of life in larger freedom,*

*Convinced that the continued existence of colonialism prevents the development of international economic co-operation, impedes the social, cultural and economic development of dependent peoples and militates against the United Nations ideal of universal peace,*

*Solemnly proclaims the necessity of bringing to speedy and unconditional end colonialism in all its forms and manifestations;*

*And to this end declares that:*

*3. Inadequacy of political, economic, social or educational preparedness should never serve as a pretext for delaying independence.”*

It was just two years afterwards, and fifty years ago in 1962 that Jamaica and Trinidad became independent nations. These two leading Caribbean countries were among the leaders of a large group of British Colonies in Africa and the rest of the Caribbean to become independent.

However, the independent status reflected itself in an independent executive and an independent legislature. It was only in a few cases in the Caribbean that independence included the establishment of a national as the head of state. In almost every other former colony in other parts of the world, a national is the head of state. In the commonwealth Caribbean it is only Guyana, Trinidad and Tobago and Dominica that has taken this important step to completing the circle of independence. The same reluctance to take the final step to independence is also seen with regard to the judicial arm, setting the Caribbean region way behind former colonies from

every other part of the world. Only 4 Caribbean commonwealth Caribbean countries have taken the necessary step to judicial independence, Guyana, Barbados, Belize and most recently Dominica. The time has come for all commonwealth Caribbean countries to remove the vestige of colonialism represented by the Privy Council.

In 2001, the Heads of Government of the Caribbean Community, signed the Revised Treaty of Chaguaramas. An important feature was to create the CARICOM Single Market and Economy (CSME) and eventually The Caribbean Court of Justice (CCJ). The CCJ was inaugurated on 16 April 2005 in Port of Spain, Trinidad & Tobago, the Seat of the Court and this year celebrates its 10<sup>th</sup> anniversary.

The independence of the CCJ and its fitness to replace the Privy Council should not be a matter in which there is any doubt. In assessing the independence of a court one looks at the quality and the character of the judges of the court, the institutional arrangements for the selection of judges, focusing particularly on the absence of political involvement, as well as the independence and sustainability of the financial arrangements for the operation of the court. The CCJ meets these standards. In a book by renowned law professors examining how judges are chosen for international courts Professor Kate Mallenson held up the Caribbean Court of Justice as a model of how to choose judges for international courts and for identifying independent and high-quality candidates.

It is true that these developments in international law provided rights and opportunities to the countries that were colonial. But today as we celebrate the 800<sup>th</sup> anniversary of the Magna Carta, I propose that they also create obligations on the colonial powers to put an end to even the last vestiges of colonialism. England, in particular, as the parent of the Magna Carta and one of the champions of the international conventions on human rights and colonialism should be considered as having an obligation to remove the last vestige of colonialism represented, in this

case, by the Privy Council. It should be proactive in promoting the international regime to that it helped to develop. What a tremendous legacy to the Magna Carta that would be !!



**The Right Honourable Sir Dennis Byron**