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Magna Carta and Sustainable Development

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On June 15, 1215, 25 English barons forced King John (r. 1199–1216) to agree to Magna Carta at Runnymede, just outside London. Magna Carta was an intensely practical document addressing specific abuses of power by the king in the hopes of avoiding war. Although Magna Carta was invalidated by Pope Innocent III in August 1215 on the ground of coercion, it is now revered as the fountain of liberty and rule of law. Winston Churchill called it one of the “title deeds of freedom.” Although at this time only three and a half of Magna Carta’s original 63 provisions are still in force in England, its legacy and influence encircle the globe, including not only the United States, but also the United Kingdom and the other 52 members of the Commonwealth of Nations, plus other countries as well. It is inscribed in the United Nations Memory of the World Register. What then does this ancient instrument have to do with sustainable development, a term that was not even coined until the last part of the twentieth century, more than 750 years after King John affixed his seal to Magna Carta? To answer that, it helps to examine Magna Carta’s fascinating course over the past 800 years.

History of Magna Carta and Carta de Foresta

King John was the latest of a line of rulers who had abused their power and alienated segments of English society. The demands made by the rebellious barons thus covered not only their own concerns, but also the concerns of knights, the business community, noblewomen, and elements of the church. These demands, some of which were quite mundane, are contained in the Articles of the Barons, which King John probably sealed on June 15, 1215. The documents we now call the 1215 Magna Carta were created soon thereafter by the royal scribes and sealed by the king. The scribes may have made about 40 exemplifications—i.e., copies—of Magna Carta in order to provide them to each of the shires (so that the sheriffs could apply Magna Carta as law), the royal court, and some others; the exact number and distribution are unknown. Four copies of the 1215 Magna Carta, which had 63 provisions (referred to as chapters), are known to exist. As was customary at that time, the copies are in abbreviated Latin and are in the form of a description of what was agreed to, akin to minutes of a meeting, not the form of an actual agreement; and each has the date the agreement was made, June 15, rather than the date the copy was actually sealed. A French-language translation was made in conjunction with a letter dated June 27, 1215, presumably in order to allow knights and others not fluent in Latin to know Magna Carta’s contents. At this juncture, Magna Carta was referred to as the Charter of Liberties.

A sequence of critical events then quickly transpired. As noted above, the pope invalidated Magna Carta 10 weeks after King John agreed to it, and civil war broke out between the barons and King John; the peace treaty had failed. King John died a year later, however, and his nine-year-old son Henry III (r. 1216–1272) was crowned king. To reassure barons and others, Magna Carta was re-issued over the seal of King Henry III’s regent and the pope’s legate. England now had Magna Carta again, though in a different version. The 1216 version of Magna Carta omitted several provisions from the 1215 original, explaining that some of them were under consideration. It is also noteworthy that, whereas the 1215 Magna Carta had been forced upon King John by his enemies, the 1216 Magna Carta was issued by King Henry III’s supporters: Magna Carta now had the support of the king and the church.

A year later, a third version of Magna Carta was issued by the king’s regent and the pope’s legate as reassurance at a time when taxes were being raised. The 1217 version reinstated some of the provisions that had been omitted in 1216. Importantly, it also spun off several provisions relating to forests and created a new charter, Carta de Foresta—the Charter of the Forest. In order to distinguish it from the new shorter charter, Magna Carta was given its current name. England now had two charters: Magna Carta and Carta de Foresta. These were re-issued with some changes to Magna Carta in 1225 by King Henry III over his own seal when he turned 18. They were re-issued in 1297 (with one miniscule change in Magna Carta) and again in 1300 (with no changes).

The history just recounted can be seen in the British Library. The library’s collection includes the Articles of the Barons, two of the four remaining copies of the 1215 Magna Carta, the August 1215 papal bull invalidating Magna Carta, a 1225 copy of Magna Carta, and a copy of Carta de Foresta. The U.S. National Archives contains a copy of the 1297 Magna Carta.

Magna Carta’s textual development was over, but its journey had just begun. It first entered into English statutes in 1297, and it was invoked by litigants, barons, and judges from the thirteenth century on, as is indicated by a fourteenth-century miniature Magna Carta in the collection of the U.S. Library of Congress. In 1354, its reach was expanded by statute to apply to all people in England. Nevertheless, Magna Carta was ignored or evaded by kings at various times after its inception, each of these instances being followed by objections by subjects and a reconfirmation of Magna Carta by the ruler.

In the late sixteenth and early seventeenth centuries, however, Magna Carta began to acquire a mythical status as the foundation of English law and rights as it was invoked by judges, politicians, and commentators in England, most strikingly by Sir Edward Coke. Coke described Magna Carta as the “ancient constitution” of England. His descriptions of Magna Carta were factually erroneous, as was revealed later through the scholarship of William Blackstone, but they had a strong effect on contemporary thought. Thus, although the influence of Magna Carta had waxed and waned for centuries, the mythical Magna Carta had been created, and, with one notable exception, it is this myth that has had the most impact.

The exception is that the primary principle of Magna Carta is that everyone, even the king or head of state, is subject to the law and that this can be established via a written instrument. This concept is the essence of constitutionalism, and it is inherent in Magna Carta from its inception in 1215 onward. It is obvious that both King John and Pope Innocent III recognized the validity of this principle because of John’s effort to have Magna Carta invalidated on the ground of duress and the pope’s agreement to do that. The several re-issues of Magna Carta, the many demands for its reconfirmation, and rulers’ acquiescence in those demands demonstrate the same. This principle, unlike other aspects of Magna Carta, has not changed for 800 years.

Coke’s vision of Magna Carta traveled to England’s colonies, including those in the Americas. In order to encourage Englishmen to move to its colonies, England had adopted the view that English law followed the colonists as the British Empire expanded across the globe. Individuals such as William Penn, who had raised Magna Carta as a defense when he was being tried as a heretic in England, brought Magna Carta with him when he came to the colonies and founded Pennsylvania. As Coke had, the American colonists used Magna Carta for their own ends, arguing forcefully for principles they asserted were embodied in Magna Carta and seeing in it a symbol of their rights as free Englishmen. A wonderful example of this is the 1775 seal of Massachusetts colony, which depicts a patriot brandishing a sword in one hand and Magna Carta in the other. There are echoes of Magna Carta in parts of the Bill of Rights in the Fifth, Seventh, and Eighth Amendments. For example, the Due Process Clause of the Fifth Amendment has a connection to the reference to “the law of the land” in chapter 39 of the 1215 Magna Carta (chapter 29 of the 1225 and subsequent Magna Cartas). And Magna Carta is still cited frequently in the U.S. Supreme Court.

Magna Carta has been dynamic, adaptable, and resilient throughout its existence. Its textual content, its perceived role, and common understandings of its meaning have changed as the mythical Magna Carta has grown. Principles are sometimes inaccurately attributed to it, including those of the rights to trial by jury, religious freedom, or habeas corpus; but these concepts developed independently with no meaningful connection to Magna Carta. At the same time, less attractive aspects of Magna Carta are routinely ignored, such as the facts that it implicitly recognized the legitimacy of the feudal system because it applied to only half of the population (freemen); it discriminated against Jews (chapter 10); and it implicitly recognized the legitimacy of trial by battle (chapter 54). The iconic vision of Magna Carta as the fountain of freedom and rule of law concentrates instead on the inspiring Magna Carta myth—a myth that shows no signs of fading as we head into Magna Carta’s ninth century.

Carta de Foresta has received less attention than Magna Carta, perhaps because its impact has been felt primarily within England, but it has important implications for rule of law and sustainable development. Since 1066, kings had been designating much of England as Royal Forests, within which the draconian provisions of forest law replaced common law. When Carta de Foresta was created in 1217, among other reforms, it rolled back the many expansions of the forests perpetrated by King John and his father, significantly increased the uses that people could make of the remaining forests, and outlawed capital punishment for poaching deer and maiming for other forest law offenses. Moreover, parts of it applied to all Englishmen. Despite occasional resistance and disregard, Carta de Foresta has served over the past eight centuries both to protect the forests, many of which are now national parks, and to allow their sustainable use and enjoyment. Notably, it accomplished this via a written document establishing that the king had to obey certain rules, just as Magna Carta did.

Sustainable Development Goals

The international community adopted sustainable development at the UN Conference on Environment and Development in 1992 as the framework for improving the quality of people’s lives around the world. Although there is no universally agreed-upon definition of sustainable development, it is generally agreed that sustainable development requires four things: taking into consideration the interests of future generations; giving priority to the needs of the world’s poor; integrating economic, social, and environmental policies; and protecting the environment to a significant degree.

The Sustainable Development Goals (SDGs) were called for in *The Future We Want* (U.N. Doc. A/RES/66/288), the outcome document of the 2012 UN Conference on Sustainable Development (Rio+20). See http://www.un.org/ga/search/view_doc.asp?symbol=A/RES/66/288&Lang=E. They will be part of the Post-2015 Development Agenda. The SDGs are intended to build on and fill in the gaps of the Millennium Development Goals (MDGs), adopted by the UN General Assembly in 2000 with the aim that they would be met by 2015. An Open Working Group (OWG) was tasked with preparing a proposal for the SDGs. On September 10, 2014, the UN General Assembly adopted the *Report of the Open Working Group of the General Assembly on Sustainable Development Goals* (U.N. Doc. A/68/970), which proposed 17 goals and 169 targets under those goals. See http://www.un.org/ga/search/view_doc.asp?symbol=A/68/970&Lang=E. The OWG’s report will be the “main basis” on which to establish the SDGs. Though the proposed goals and targets are not final, they indicate themes that will be considered in the Post-2015 Development Agenda.

Magna Carta, Rule of Law, and Sustainable Development

The proposed SDGs expressly include rule of law under Goal 16: “Promote peaceful and inclusive societies for sustainable development, provide access to justice for all and build effective, accountable and inclusive institutions at all levels.” Target 16.3 is more explicit: “Promote the rule of law at the national and international levels, and ensure equal access to justice for all.” Other targets under Goal 16 relate to other aspects of the mythical Magna Carta. For example, targets 16.5, 16.6, 16.7, 16.10, and 16.b include, respectively: “[s]ubstantially reduce corruption and bribery”; “[d]evelop effective, accountable and transparent institutions”; “[e]nsure responsive, inclusive, participatory and representative decision-making”; “[e]nsure public access to information and protect fundamental freedoms”; and “enforce non-discriminatory laws and policies” Importantly, the concept of rule of law embodied in the SDGs not only requires access to justice and that law be enforced, but also more expansively that it be enforced in a manner that respects procedural rights *and* that the substance of the laws themselves achieve good governance, respect fundamental freedoms, and be nondiscriminatory.

The OWG *Co-Chairs’ Summary Bullet Points* recognized that rule of law touches directly on sustainable development because, for example, economic growth is advanced through the “protection of land, property and other resource use rights [and] providing access to fair and responsive justice systems.” See <http://sustainabledevelopment.un.org/content/documents/3190summarybullet.pdf>. It was acknowledged that the SDGs require a focus on the social, economic, and environmental dimensions and that rule of law and governance, among other things, are relevant because development is undermined by conflict and violence. The *Summary* also noted the many references to the declaration of the high-level meeting of the UN General Assembly on rule of law. That declaration emphasized that rule of law and development are “inter-related and mutually reinforcing,” and that advancement of rule of law is “essential” for sustainable development.

The relationship between rule of law and development is not a novelty. It has presumably been an issue since at least the promulgation of the first known code of laws, the Code of Urukagina, roughly 4,400 years ago, which dealt with economic issues such as bribery and social issues such as treatment of widows and orphans. The fact that during the reign of King John there was no rule of law led to Magna Carta. In addition to the fundamental idea embodied in Magna Carta of imposing rule of law through a written instrument, specific provisions of Magna Carta demonstrate the importance of rule of law with respect to a wide range of concerns.

The most famous provisions of Magna Carta (chapters 39 and 40 of the 1215 version, which were combined in chapter 29 of the 1225 version) deal expressly with rule of law:

[39] No free man is to be arrested, or imprisoned, or disseised, or outlawed, or exiled, or in any other way ruined, nor will we go against him or send against him, except by the lawful judgment of his peers or by the law of the land.[40] We will not sell, or deny, or delay right or justice to anyone.

See http://magnacarta.cmp.uea.ac.uk/read/magna_carta_1215/all. Other provisions also reflect concerns related to aspects of justice, such as chapters 45 (appointment of qualified persons as justices, constables, sheriffs, and bailiffs); 17 (access to court); and 53 (restoration of illegally obtained property). The mythical Magna Carta came to represent an even broader array of justice principles, as noted above, but even the 1215 Magna Carta (and the 1217 Carta de Foresta) embodied the same concept of rule of law as does SDG 16.

The last-mentioned point is evident because the 1215 Magna Carta spanned a wide range of other issues relevant to sustainable development. For example, Magna Carta covered economic concerns such as bankruptcy (chapter 9) and international travel of merchants (chapter 41); social concerns such as the treatment of widows (chapters 7 and 8); environmental concerns such as fish weirs (chapter 33) and forests (chapters 31, 44, 47, 48, and 53); religious concerns such as freedom of the English Church (chapters 1 and 63); and municipal concerns such as the treatment of London and other towns and ports (chapter 13). The range of these provisions mirrors the reach of sustainable development.

Carta de Foresta and Sustainable Development

Multiple SDGs are relevant to environmental protection, one of the three essential components of sustainable development. Relevant goals include Goal 6 (sustainable management of water and sanitation); Goal 8 (sustainable economic growth); Goal 12 (sustainable consumption and production); and Goal 13 (combating climate change). This article focuses on the sustainable management of forests in proposed Goal 15: “Protect, restore and promote sustainable use of terrestrial ecosystems, sustainably manage forests, combat desertification, and halt and reverse land degradation and halt biodiversity loss.”

As Nicholas Robinson explains in a chapter of *Magna Carta and the Rule of Law* (Daniel Barstow Magraw et al. eds., 2014), Carta de Foresta was a successful mechanism for sustainably managing the Royal Forests for nearly 800 years. Carta de Foresta addressed several of the targets established under Goal 15, for example: 15.1, “ensure the conservation, restoration and sustainable use of terrestrial and inland freshwater ecosystems and their services, in particular forests . . .”; 15.2, “promote the implementation of sustainable management of all types of forests . . .”; 15.4, 15.5, and 15.7, which address the conservation of ecosystems, loss of biodiversity, and ending poaching; and 15.9, “integrate ecosystem and biodiversity values into national and local planning. . . .” Today, 129 remaining Royal Forests are the legacy of Carta de Foresta, which was guided by, among other things, aims similar to the aforementioned targets.

Concepts and terminology have evolved over the past 800 years, and therefore the relevant chapters of Carta de Foresta do not use the same terms as the SDGs. Nevertheless, the overall purpose and objectives remain essentially the same. For example, overall the Royal Forests’ natural resources were carefully managed—limiting hunting, gathering berries and herbs, collecting wood, removing clay, and grazing of cattle and pigs (chapters 1, 6, 8, and 11). The Forest Courts were used to enforce these restrictions. There were also fines for the “degradation of resources” (chapter 4) and allowances to “make a mill, fishpond, dam, marsh pit, or dike, or reclaim arable ground” as long as it did not constitute a “nuisance” to any neighbor (chapter 12).

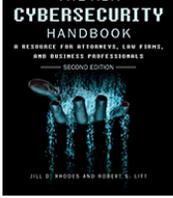
Similarly, target 15.9 resembles acts passed in the nineteenth century that integrated values of ecosystems and biodiversity into national and local planning. In that century, commoners sought to enforce “common rights,” and in 1877, the New Forest Act was passed by Parliament, which recognized the rights of commoners. Also, in 1878, London purchased 3,500 acres of forest, and with the passing of the Epping Forest Act, London became the Conservator of the Forest. The Epping Forest Act established that conservators were to “at all times as far as possible preserve the natural aspect of the Forests [and] protect the timber and other trees, pollards, shrubs, underwood, heather, gorse, turf and herbage.” Richard Mabey, *The Common Ground: A Place for Nature in Britain’s Future?* (1980).

For obvious reasons, the scale of environmental protection in 2015 and 1215 play out at different levels. Globalization has played a tremendous role in the scale of environmental protection, and now concerns are carried out at an international level, which the SDGs intend to address. However the same issues existed and are reflected in Carta de Foresta.

Conclusions

The fundamental rule-of-law concerns that gave rise to Magna Carta 800 years ago are still of critical importance to our entire global community. These concerns are reflected in the proposed SDGs, particularly Goal 15 and Goal 16 and their targets. Moreover, the concept of rule of law embodied in Magna Carta is essentially the same as that embodied in the SDGs. The call for rule of law in the proposed SDGs is encouraging. If rule of law remains in the SDGs 800 years from the sealing of Magna Carta, all UN members will be committed to achieve rule of law worldwide, thereby increasing the likelihood of just, stable, and accountable governance.

Likewise, Magna Carta’s offspring, Carta de Foresta, remains as relevant as ever. As the international community struggles to sustainably manage forests, Carta de Foresta stands as a model. Carta de Foresta experienced many phases and changes, but it became a tool civil society used to conserve the forests of the United Kingdom. Such lessons can be utilized to successfully move the Post-2015 Development Agenda forward.



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