THE VALIDITY OF THE MAGNA CARTA 1215

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Connor J. Wilkinson

Proofread by EE Spenser, BA (Hons)

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"Here is a law which is above the King and Parliament, and which even He and They must not and may not legally break. And in the event they or anyone else were to try to abrogate it, such attempt at abrogation shall have no force nor effect and can be safely ignored with no legal ill effect. In addition, in the event of successful attempts at abrogation of such liberties, customs, or rights, the King has commanded and do hereby compel any and all subjects to swear oath to join the barons to assail the properties and persons and families of those [. . . .] who had successfully completed such abrogation, including but not limited to that of the individual Members of Parliament who had voted in favour of any such successful attempts at abrogation. This reaffirmation of a supreme law and its expression in a general charter is the great work of Magna Carta; and this alone justifies the respect in which men have held it."

-W.C. *A History of the English Speaking Peoples* (1956)

There has been much rhetoric in recent years about the validity and efficacy of the Magna Carta 1215 and whether or not it has any relevance in modern law, that it had been *"signed under duress"* and that Pope Innocent III even effectively annulled it. I have been subjected to a number of various arguments from both solicitors and law students who are of the opinion that the Magna Carta 1215 is an *arcane* law with no modern relevance or effect. It should be pointed out that law degrees have not included constitutional law as a mandatory subject of study or examination since the mid-1970's in Britain and consequently lawyers are very poorly trained in the subject today. Not to mention that todays 'constitutional' teachings are actually very anti-constitutional by comparison of how it used to be (and should be) taught.

It must be noted and understood that the 1215 Great Charter is NOT a statute [1] as is often wrongly assumed by some. Unlike the later 're-issues' such as the 1297 and 1830 versions, the original 1215 re-affirmation of the Charter of Liberties is the People's perennial Compact with their chosen incumbent heads of state which predates parliament by some 50 years, it is virtually immutable. This is because legitimate amendment to any Clause/Article of the Magna Carta may be put into effect only by the greatest mass of the total population actively authorising such in a plebiscite. It is sometimes 'referred' to as a 'statute', however this is either from ignorance, the casual misapplication of terms, or, in the case of government functionaries and lawyers in recent times, specious disinformation. As Jonathan Gaunt Q.C. said, *"Magna Carta* [is] *not a statute but a treaty."* [2]

If the Magna Carta 1215 were irrelevant today why would Leolin Price Q.C. have sanctioned the *petition of grievances* to the Queen which was delivered on behalf of 25 Peers the 7th of February 2001? [3] This *petition* was sanctioned under Clause 61 of the Magna Carta and it then led to the said Clause being triggered [4] the following month. Surely if Magna Carta was void of relevance such an educated practitioner of law *et al* would not have agreed to do it. Surely the Queen would not have responded to it by stating she is *"well aware"* [5] of it's constitutional importance but rather simply ignored it as if it were void.

As Alistair MacDonald Q.C., Chairman of the Bar Council of England and Wales stated in the 2015 issue of *The Barrister* (page 3, pa, 25):

"The principles enshrined in Magna Carta are as important today as they were in 1215. It is a terrible irony that, as we celebrate Magna Carta, it is being undermined by an executive which pays lip service to its principles. If the legacy of Magna Carta is to last another 800 years, it requires everyone with a sense of history and an understanding of the critical importance of the rule of law to our society to stand up and fight for it. The liberties conferred by this great document were hard won. We owe it to posterity to ensure that they are not lost in our time."

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1. *Kenn D'oudney. DEMOCRACY DEFINED: The Manifesto* (ISBN 978-1-902848-26-6)
2. Jonathan Gaunt QC. *FIVE KNIGHTS FOR FREEDOM THE STORY OF THE PETITION OF RIGHT 1628* London, May, 2015. Print.
3. Caroline Davis. "Peers Petition Queen on Europe" The Telegraph March 2001, late ed., F1+. Print.
4. Sarah Womack. "Peers use Magna Carta to oppose EU charter" The Telegraph 2001, late ed., F1+. Print.
5. The Barons Petition and Communications, gen. ed. London, 2001. Print.

For the exclusion of any doubt, here is what Lord Renton said in the House of Lords (recorded in Hansard in 2000) [6] in response to a speech by The Earl Russell on *"amending"* the Magna Carta 1215. Something parliament cannot do without the fully fledged will of the whole population. The Honourable Lord Renton said:

"My Lords, before the noble Earl sits down, perhaps I may mention one point in relation to his fascinating speech. He suggested that we should amend Magna Carta. We cannot do that. Magna Carta was formulated before we ever had a Parliament. All that we can do is to amend that legislation which, in later years when we did have a Parliament, implemented Magna Carta."

The Earl of Russell then apologetically replied by saying "*I spoke loosely and I hope that the noble Lord will forgive me."*

Halsbury's Laws of England (vol 44.1.) [7] entry on Constitutional Acts, *Constitutional and Administrative Law: Key Facts and Key Cases 2014* [8] (pg 10-11) and the introduction section of *The Cabinet Manual* of 2011 [9] (vol. 1, pg 10) all clearly recognise Magna Carta 1215. The 1297 Statute, which is now referred to as the last remaining and most relevant Magna Carta by a vast majority of public officials, is never mentioned, nor is it ever celebrated.

For this reason I feel it is now appropriate to bring attention to Halsbury's vol 44 entry on constitutional Acts. Pay particular attention to the fact that Magna Carta 1215 is expressly cited – and the notable absence of the largely repealed 1297 Act. Again, as previously indicated, it is important to note and bare in mind that the 1215 Magna Carta is not a statute.

One of the commonly cited arguments is that Magna Carta is "largely symbolic" and not arguable in court. Let us see what *Halsbury's Laws of England* says about this, too:

"(iii) Particular Types of Act

CONSTITUTIONAL, TREATY AND FINANCIAL ACTS

Constitutional Acts.
The British Constitution is said to be 'unwritten'. This only means that, unlike most countries, the United Kingdom does not possess a single comprehensive constitution and much of its constitutional principle is embodied in the common law. There are nevertheless a number of historic statutes regarded as embodying and setting forth the state's constitutional principles 1. Any modern Act which amends or adds to these may also be regarded as a constitutional Act 2. The main significance of classing an Act as a constitutional Act lies in the nature of the interpretative criteria which then apply to it. In particular, the rights the Act confers, having the quality of constitutional rights, will be regarded by the courts as fundamental and not to be displaced . . ."
3.
1 See eg Magna Carta (1215); the Bill of Rights (1689); the Act of Settlement (1700); the Septennial Act 1715."

6. Hansard. 2000, London 20 July 2000 <http://hansard.millbanksystems.com/lords/2000/jul/20/football-disorder-bill#column_1208>

7. *Halsbury's Laws of England* Vol 44(1) (ISBN: 9780406052070)

8. *Constitutional and Administrative Law: Key Facts and Key Cases (Key Facts Key Cases)* (ISBN: 9780415833233)

9. United Kingdom. House of Commons. *The Cabinet Manual* London: GPO, 2011. Print.

As you will see from the final sentence, Halsbury's does not consider Magna Carta to be 'largely symbolic' but rather fundamental to the courts.

Magna Carta 1215 is a peace treaty and like all treaties, cannot be repealed. [10] As a contract or covenant between sovereign and subjects, it can be breached only by one party or the other, but even in the breach it still stands. It is a mutual, binding agreement of indefinite duration. Any breach merely has the effect of giving the offended party rights of redress.

The introduction section of *The Cabinet Manual of 2011* (vol. 1, pg 10) also clearly recognises Magna Carta 1215 and not the heavily repealed 1297 Act:

"The UK constitution

4. The UK does not have a codified constitution. There is no single document that describes, establishes or regulates the structures of the state and the way in which these relate to the people. Instead, the constitutional order has evolved over time and continues to do so. It consists of various institutions, statutes, judicial decisions, principles and practices that are commonly understood as 'constitutional'.

5. Constitutional matters and practices may include:

• statutes, such as Magna Carta in 1215; the Bill of Rights and Scottish Claim of Right Act in 1689; the Acts of Union ..."

Lord Ashbourne, a Conservative hereditary peer said in 2001 (before Clause 61 of the Magna Carta was triggered) that: *"These rights may not have been exercised for 300 years but only because they were not needed. Well, we need them now. They may be a little dusty but they are in good order."* [11]

The House of Lords Records Office confirmed in writing as recently as 2009 that Magna Carta, signed by King John in June 1215, stands to this day. [12] Home Secretary Jack Straw said as much on 1 October 2000, when the Human Rights Act came into force.

Halsbury's Laws of England says that *"Magna Carta is as binding upon the Crown today as it was the day it was sealed at Runnymede."* [13] and the Magna Carta 1215's Clause 63 declares that *". . . men in our kingdom shall have and keep all these liberties, rights, and concessions, well and peaceably in their fullness and entirety for them and their heirs, of us and our heirs, in all things and all places for ever."* [14] The Magna Carta 1215 also, throughout many of its provisions, repeatedly makes it clear that it is based on a concept of complete permanence: *"in perpetuum"*. This means that any attempt to usurp Magna Carta 1215 would be illegal, contrary to *R v Thistlewood* 1820 which states that any attempt to *"destroy the constitution"* of the United Kingdom would be an act of Treason. [15]

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10. The Magna Carta Society Research Paper. Ashley Mote MP, gen. ed. London, 2000. Print.

11. Sarah Womack. "Peers use Magna Carta to oppose EU charter" The Telegraph 2001, late ed., F1+. Print.

12. Study Resources. 2001 London <http://studyres.com/doc/11693046/petition-delivery-press-release>

13. The Magna Carta Society Research Paper. Ashley Mote MP, gen. ed. London, 2000. Print.

14. The Magna Carta. Estates of England, gen. ed. Runnymede, 15 June 1215. Print.

15. *R. v. Thistlewood* (1820) 33 St. Tr. 681.

Constitutional and Administrative Law: Key Facts and Key Cases' (2014, page 10-11) also demonstrates the importance of Magna Carta 1215 and not the fragmented Act of 1297:

"1.5.3 There are many examples of constitutionally significant names. including the following:

● Magna Carta 1215 - a settlement with the Crown. protecting the rights of individuals. freedom of the Church and trial by Jury; ● Bill of Rights 1688. . ."

If the Magna Carta 1215 was not relevant today, why would it be the only version that is explicitly referenced throughout various constitutional and authoritative works? Clearly if the 1297 Act was the only remnant of the Magna Carta 1215, it would be a little more obvious.

Why Celebrate the *'invalid'?*

2015 was the Magna Carta's 800th anniversary. Why wasn't the 1297 Act celebrated in 1997? Furthermore, why wasn't the 1217 version celebrated in 2017? Why is the only version being celebrated the original 1215 reaffirmation of the Charter of Liberties? If it is not relevant today, why would we even celebrate it in the first place? Why would we not celebrate what's left of the *"more-valid"* versions?

If anything is clear, it's that we celebrated *"Magna Carta's 800 years of imposing duties on those in government."* [16] and it should be noted that *"the statute must . . . conform to duties under Magna Carta."* The constitutional dominance of the world-respected 1215 Great Charter is absolute in its reign over despotic and tyrannical rule. It was also confirmed at least 44 times in its first 200 years [17] since it was first sealed by King John at Runnymede and lives today as an undermined pinnacle of established freedom, liberty and customs enshrined under the Rule of Law.

Indeed, in 1661, one of His Majesty's Justices of the Peace told a grand jury:

"If Magna Carta be, as most of us are inclined to believe it is, ...unalterable as to the main, it is so in every part." [18]

On the Magna Carta 1215's 700th anniversary, in 1915, the Scottish legal scholar William McKechnie called the Charter *"a clear enunciation of the principle that the caprice of despots must bow to the reign of law; that the just rights of individuals, as defined by law and usage, must be upheld against the personal will of kings"* [19]

On the 750th anniversary of Magna Carta 1215, Lord Denning's stated that it is *"the greatest constitutional document of all times—the foundation of the freedom of the individual against the arbitrary authority of the despot."* [20]

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16. Denning Law Journal 2015 Vol 27 pp 106-129, pg 123, *MAGNA CARTA AND MAGNANIMITY*

17. D.J.M. Caffyn. *Boats on our rivers again.* p 5 *February, 2011. Print.*

18. The Magna Carta Society Research Paper. Ashley Mote MP, gen. ed. London, 2000. Print.

19. BRYCE, J. B., et al. (1917). *Magna Carta commemoration essays*. [London], Royal Historical Society.

20. Denning Law Journal 2015 Vol 27, *MAGNA CARTA AND MAGNANIMITY*

One of the major myths today is that the Magna Carta 1215 was *"signed under duress"* which is nothing but incorrect (mis)information. Firstly it wasn't signed, it was sealed [21] with the Royal Seal. And even if it was *"signed"* (as people say), there's no indication of it (e.g. *VC*). Secondly – title of the land was, then, settled by *'trial by combat'*. [22] If we were to be conquered in war for example. John (a lawless tyrant) was in a position where he had been defeated by his own subjects who then had right to title of the land. However the barons allowed John to keep the throne if certain laws were put into place to protect the people. It was perfectly lawful. The last certain judicial battle in Britain was in Scotland in 1597.

According to feudal protocols, the king was at all times subject and bound under the Common Law terms of his coronation oath to uphold the Law of the Land, *legem terrae*. The king's numerous atrocities and unchivalrous gross offences placed him outside the Law of the Land to which he was already subject and bound by oath. [23] The *"duress"* King John would have used was that which a murderer would also use when being arrested. Throughout John's vicious rule and leading up to the confrontation with the people's just forces of law and order, he mercilessly inflicted what we would call today, 'a reign of terror': widespread injustice, acts of disseizin (unlawful dispossession of property) at the hands of his lawless government justices; of his mercenary forces committing acts of homicide, wanton butchery, torture, the cutting-out of tongues, the putting out of eyes, the slitting-off of ears and noses, of robbery, rapine, extortion and depredation; in short, inhuman criminal misrule by outlaws led by a robber king.

Not only did John break every kind of moral and legal obligation binding on a monarch and a man, but he breached his compact (ie, 'contract') with his equals, the nobility – and with all other parties to the feudal agreement which comprised the entire population, including the land-holding freemen, churchmen and commoners who shared wide alloments of common land made available for sustenance of a large proportion of the populace. The land and nation was feudally 'owned', distributed, occupied and worked. Without the concurrence of his nobles, his equals (peers), King John had no authority whatsoever for what he considered his benefit as it was against the interests of the people and the Law of the Land.

Some would say that an action against King John in 1215 was unlawful as it was "treason". However, as we see, this is yet another foul play of words. In a mock trial on 31 July 2015 for the 800th anniversary of Magna Carta 1215, at Westminster Hall, the original Magna Carta Barons' committee were charged with Treason for their involvement in the sealing of Magna Carta in 1215. A unanimous verdict of Not Guilty was returned by the Hon. Justice Stephen Breyer, Lord Neuberger, President of the UK Supreme Court, and Dame Sian Elias, Chief Justice of New Zealand. [24]

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21. Magna Carta Trust Foundation of Liberty. 2015. London <http://magnacarta800th.com/.../1215-sealing-of-magna-carta/>

22. McKechnie, " Magna Carta" (first edition), pp. 103, 441.

23. Lambarde, *Archeion*, p. 43; BL MS Lansd 621, F 99.

24. The Supreme Court. 2015, London <https://www.supremecourt.uk/news/magna-carta-barons-found-not-guilty-of-treason-against-king-john.html>

Another myth is that Pope Innocent III effectively annulled the 1215 Great Charter. To summarize inconsistency of this argument, it is a very well established principle that the peoples incumbent head of state cannot under the control of a foreign power. For example, *"The king,"* says Bracton, who wrote under Henry III *"ought not to be subject to man, but to God, and to the law; for the law makes the king. Let the king therefore render to the law, what the law has invested in him with regard to others; dominion, and power: for he is not truly king, where will and pleasure rules, and not the law."* [25]

In 1213 King John was having a great deal of trouble with the Barons, and the population generally. King John was using foreign mercenaries to suppress the population. He feared for his safety and gave England to Archbishop Pandolph, the Papal Legate, receiving it back again to rule as a vassal King to the Pope for a payment of 1000 Marks a year. [26] John also took on the mantle of a Crusader so that any one who attacked him would face excommunication.

In 1366 King Edward III received a letter from the Pope asking, again, for the 1000 Marks a year for those years for which it had not been paid, threatening to take action against him if Edward failed to pay. Edward spoke to the Bishops, and the Lords, who spoke to the Commons. First the Bishops, then the Lords, and finally the Commons, came to Edward and they told him that England did not belong to John. King John only held England in trust for those who follow on. [27] Therefore it was not King John's to give away. By handing England to the Pope, King John broke the law. As such, the agreement King John made with the Pope was not valid. The money was not owed, and was not to be paid. This constitutional ruling ensures that the Kings of England were not, and can never be, vassal Kings to anyone. This is a very important constitutional ruling which applies as much today as it did then.

Speaking of this, Lord Kilmuir, the ex-Lord Chancellor who wrote in December 1660, states that *"King John's action in surrendering England to the Pope, and ruling England as a Vassal King to Rome was illegal because England did not belong to John he only held it in trust for those who followed on. The Money the Pope was demanding as tribute was not to be paid. Because England's Kings were not vassal Kings to the Pope and the money was not owed."* [28] Pope Innocent III did indeed purport to declare the Magna Carta 1215 *"null and void of all validity forever"* but what authority did he have over England to do so? The constitutional laws and customs of England clearly do not allow any foreign interferences. As Sir William Blackstone said in 1753, *"the legislature of England doth not, nor ever did, recognize any foreign power, as superior or equal to it in this kingdom or as having the right to give law to any, the meanest of its subjects."* [29]

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25. Bracton. / l. 1. c. 8.

26. BUTLER, C., & SOUTHEY, R. (1825). The book of the Roman-Catholic Church: series of letters. Southey. "Book of the Church". London, John Murray.

27. David Hume, *The History of England*, vol. 2 [1778]

28. Lord Kilmuir. Letter to Edward Heath. December, 1960

29. Sir William Blackstone. *Commentaries on the Laws of England in Four Books, vol. 1* [1753]

Magna Carta is an affirmation of common law based on principles of natural justice. These principles - and the document itself - pre-date the first model parliament of 1295 [30] created under Edward I. Although the 1215 Great Charter pre-dates parliament by 80 years it was subsequently enacted in 1297 with the passage of the King's Confirmation of the Great Charter (Act), which included the words:

"And we will that if any judgement be given henceforth contrary to the points aforesaid by the justices or by any other (of) our ministers that hold plea before them against the points of the charters it shall be undone and holden for nought." [31]

The text later includes words to the effect that the "charter of liberties shall be kept on every point." This admonition was repeated at the Coronation of the young Henry III:

"...it shall be lawful for everyone in our realm to rise against us and use all the ways and means they can to hinder us...that each and every one shall be bound by our command...so that they shall in no way give attention to us but that they shall do everything that aims at our injury and shall in no way be bound to us until that in which we have transgressed and offenced shall have been by a fitting satisfaction brought again in due state....this having been done let them be obedient to us as they were before."

Of course, in recent times, the House of Commons has frequently attempted to interfere with the constitution. An attempt was purportedly made to repeal Magna Carta in 1969, when the Statute Laws (Repeal) Act was sneaked through parliament during the moon landings.

It repealed Edward 1's Confirmation of the Great Charter Act of 1297 - but it did not repeal Magna Carta itself. Yet again, as far as the legal position is concerned, a repeal of a statute which gives effect to common law does not repeal the underlying common law itself. [31] Neither does the distance in time between the two events have any bearing. Not only this, but a treaty cannot be repealed, [32] especially by something that did not create it. The limitations of royal prerogative are clear. The Lord High Chancellor Command Paper 3301, 1967, Legal and constitutional implications of UK membership of the European Community clarified that:

"No prerogative may be recognised that is contrary to Magna Carta or any other statute, or that interferes with the liberties of the subject. The courts have jurisdiction therefore, to enquire into the existence of any prerogative, it being a maxim of the common law that the king ought to be under no man, but under God and the law, because the law makes the king. If any prerogative is disputed, the courts must decide the question of whether or not it exists in the same way as they decide any other question of law. If a prerogative is clearly established, they must take the same judicial notice of it as they take of any other rule of law." [33]

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30. Keith Feiling. *A HISTORY OF ENGLAND: From the coming of the English to 1912.* (1951) CH x, p 225

31. COKE, E. (1797). *Institutes of the laws of England: containing the exposition of many ancient and other statutes.* London, E. & R. Brooke.

32. The Magna Carta Society Research Paper. Ashley Mote MP, gen. ed. London, 2000. Print.

33. Legal and Constitutional Implications of the United Kingdom Membership of the European Communities, CMND. No. 3301, para. 33 (1967).

Wasn't Magna Carta only exclusively for the barons?

In a short answer, no. Throughout the manuscript of the Magna Carta 1215, there are the frequently used words; *"No man", "all men", "free men", "welshmen", "person", "whole community of the land", "anyone",* and *"Any man"*. It also refers to a baron as a *"baron"* and nothing other, their roles are very specific within the protocols of Magna Carta 1215. For example:

Clause 16 says: ***"No man** shall be forced to perform more service for a knight's 'fee', or other free holding of land, than is due from it."*

Clause 39 states; ***"No free man** shall be seized or imprisoned, or stripped of his rights or possessions, or outlawed or exiled, or deprived of his standing in any way, nor will we proceed with force against him, or send others to do so, except by the lawful judgment of his equals or by the law of the land."*

If a *free man* is specifically a baron, then why does it not state that "no baron" *shall be seized or imprisoned, or stripped of his rights or possessions, or outlawed or exiled, or deprived of his standing in any way?* Whilst Clause 46 says that *"All barons who have founded abbeys, and have charters of English kings or ancient tenure as evidence of this, may have guardianship of them when there is no abbot, as is their due."* Should it not say All "free men" if this is the case?

Clause 40 states *"To **no one** will we sell, to no one deny or delay right or justice."*

Clause 56 recognises that *"If we have deprived or dispossessed **any Welshmen** of land, liberties, or anything . . . without the lawful judgment of their equals, these are at once to be returned to them."*

Clause 62 says
*"We have remitted and pardoned fully to **all men** any ill-will, hurt, or grudges that have arisen between us and our subjects. . ."*

There is no evidence at all to suggests that *"all men", "free men", "welshmen", "person", "whole community of the land", "anyone",* and *"Any man"* exclusively refer to the Barons. Nor is it apparent whatsoever that the Magna Carta 1215 only included the barons.

Clause 60 says that *"All these customs and liberties that we have granted shall be observed in our kingdom in so far as concerns our own relations with our subjects."*

It is very apparent that this timeless and perpetual [34] document (Magna Carta 1215) may never be altered but by the explicit full hearted consent of the people it was designed to protect: The Population.

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34. J. C. Holt. *Magna Carta* (2015) p 434.

Belhaj and Boudchar v Straw

In a case of 2014 which followed on until 2017, former foreign Secretary Jack Straw and former senior MI6 officer, Sir Mark Allen had a case brought against them under Magna Carta for being unlawfully involved in the illegal rendition of a Libyan man and his pregnant wife to Gaddafi's Libya in 2004. [35]

In November 2015 an appeal was made in defence of their actions and why the case shouldn't be heard. However, in this case Lord Mance, quoting from Magna Carta, said: *"No free man shall be taken, or imprisoned, or dispossessed, of his ... liberties ... or be outlawed, or exiled, or in any way destroyed ... excepting by the legal judgment of his peers, or by the laws of the land."*

In the following case heard on the 17th of January 2017 the the seven Supreme Court judges unanimously dismissed the Government's appeal, concluding to the claims both men were unlawfully involved. The person(s) who brought the case against Jack Straw and Mark Allen was Mr Belhaj and Mrs Boudchar who were both subject to inhumane torture. Mr Belhaj is in no way a Baron. So that is further evidence that it is <u>not</u>, as some might say, *"only for the barons."*

Sapna Malik, from the international team at law firm *Leigh Day* spoke on the case:

"The Supreme Court today has delivered an emphatic judgment upholding the rule of law, particularly in the face of breaches of rights recognised as fundamental by English statute and common law, in which British Defendants are alleged to have been complicit."

As Mr Jack Straw himself said in 2015:

"The rule of law does require us to accord rights to some very unpleasant people, which those people . . . readily deny others. As the threat rises, there may a temptation to allow the end – public safety, national security – to justify the means used, and bypass long established rights. It's a temptation we have to resist. It's easy to grant rights to those who will respect the rules in any event. More difficult to those who are intent on breaking every rule. But that's the test of a free democratic society, of all living by good law – a journey which started, not far from here, 800 years and one day ago." [36]

35. The Guardian. 2017.

<https://www.theguardian.com/world/2017/jan/17/libyan-dissident-abdel-hakim-belhaj-wins-right-to-sue-uk-government-over-rendition

36. ROYAL HOLLOWAY UNIVERSITY OF LONDON. 2015, London

<https://www.royalholloway.ac.uk/aboutus/newsandevents/news/newsarticles/jackstrawdeliversconcludingmagnacartalecture.aspx>

If still in doubt about whether or not the Magna Carta applies to the people, here's a speech given to both Houses of Parliament in 1628 by Sir John Glanville, this contribution prevented the Tyrannical clause "by Sovereign power" from being in the final draft of the Petition of Right:

"...My lords, as there is mention made in the additional clause of sovereign power, so is there likewise of a trust reposed in his Majesty, touching the use of sovereign power. The word "Trust" is of great latitude and large extent, and therefore ought to be well and warily applied and restrained, especially in the case of a king: there is a trust inseparably reposed in the persons of the kings of England, but that trust is regulated by law. For example, when statutes are made to prohibit things not mala in se, but only mala quia prohibita, under certain forfeitures, and penalties, to accrue to the king, and to the informers that shall sue for the breach of them; the Commons must and ever will acknowledge a regal and sovereign prerogative in the king, touching such statutes, that it is in his Majesty's absolute and undoubted power to grant dispensations to particular persons, with the clauses of non obstante, to do as they might have done before those statutes, wherein his Majesty, conferring grace and favour upon some, doth not do wrong to others.

But there is a difference between those statutes, and the laws and statutes whereupon the petition is grounded: by those statutes the subject has no interest in the penalties, which are all the fruit such statutes can produce, until by suit or information commenced he become entitled to the particular forfeitures; whereas the laws and statutes mentioned in our petition are of another nature; ***there shall your lordships find us rely upon the good old statute, called Magna Charta, which declareth and confirmeth the ancient common laws of the liberties of England: there shall your lordships also find us to insist upon divers other most material statutes, made in the time of Kings Edw. III. and Edw. IV., and other famous kings, for explanation and ratification of the lawful rights and privileges belonging to the subjects of this realm: laws not inflicting penalties upon offenders, in malis prohibitis, but laws declarative or positive, conferring or confirming, ipso facto, an inherent right and interest of liberty and freedom in the subjects of this realm, as their birthrights and inheritance descendable to their heirs and posterity; statutes incorporate into the body of the common law, over which (with reverence be it spoken) there is no trust reposed in the king's "sovereign power," or "prerogative royal," to enable him to dispense with them, or to take from his subjects that birthright or inheritance which they have in their liberties, by virtue of the common law and of these statutes.***

But if this clause be added to our petition, we shall then make a dangerous overture to confound this good destination touching what statutes the king ia trusted to control by dispensations, and what not; and shall give an intimation to posterity, as if it were the opinion both of the Lords and Commons assembled in this Parliament, that there is a trust reposed in the king, to lay aside by his "sovereign power," in some emergent cases, as well the Common-Law, and such statutes as declare or ratify the subjects' liberty, or Confer interest upon their persons, as those other penal statutes of such nature as I have mentioned before; which, as we can by no means admit, so we believe assuredly, that it is far from the desire of our most gracious sovereign, to effect so vast a trust, which being transmitted to a successor of a different temper, might enable him to alter the whole frame and fabric of the commonwealth, and to resolve that government whereby this kingdom hath flourished for so many years and ages, under his Majesty's most royal ancestors and predecessors." [37]

37. HOWELL, T. B. (1816). *A complete collection of state trials and proceedings for high treason and other crimes and misdemeanors from the earliest period to the year 1783: with notes and other illustrations*. London, Printed by T.C. Hansard for Longman, Hurst, Rees, Orme, and Browne. pp 205-206.