



EXPLORING MAGNA CARTA

Boston College Law Library
Daniel R. Coquillette Rare Book Room
Spring/Summer 2015

EXPLORING MAGNA CARTA:

A LOOK AT OUR
COLLECTION FOR THE
800TH ANNIVERSARY

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Many thanks to everyone who helped brainstorm, prepare, mount, and otherwise support this exhibit, including Lily Olson, Alexa “Lexy” Bader, Gregg Wahhab, Nick Szydlowski, Karen Beck, Professor Mary Sarah Bilder, and Professor Frank R. Herrmann, S.J.

I would like to offer a special thanks to Daniel R. Coquillette, J. Donald Monan, S.J., University Professor, for inspiring this exhibit with his engaging (and book-centric!) discussion of Magna Carta with the students in his Anglo-American Legal History course.

~Laurel Davis, Curator of Rare Books

MAGNA CARTA

This year marks the 800th anniversary of the signing of Magna Carta at Runnymede on June 15, 1215, one of the most recognizable dates in Anglo-American history. The signing was the culmination of years of bitter fighting between disgruntled barons and a much despised monarch in the form of Richard the Lionheart's younger brother, John. King John lost a critical battle with France at Bouvines in 1214, and, after years of collecting the scutage tax from his barons (paid in place of military service), the barons escalated their protests. By May 1215, the baronial army had taken the city of London by force, and John was forced to negotiate.

After weeks of negotiation, King John finally placed his seal upon the Magna Carta at Runnymede, a meadow along the Thames, just over 20 miles west of London. The document, in its original form, consisted of sixty-three clauses, in a bit of jumble. The content ranged from the regulation of fishing in the Thames to the standardization of weights and measures to the famous (and somewhat buried) precursor to our modern day right of due process.

Interestingly, the 1215 Magna Carta was declared null and void by the Pope within months, though it was subsequently reissued during the reign of Henry III. Only three of the clauses are still in force today.

Furthermore, far from being an introduction or even declaration of rights for all people, most provisions of this charter of liberties were aimed at protecting the barons--not the unfree peasantry or even the small population of freemen. Nonetheless, Magna Carta remains a great symbol of the limits on arbitrary governmental authority and a powerful, written guarantee of individual rights and liberties. This exhibit will take a closer look by exploring some items housed in our Rare Book Room.

THE DOCUMENT



Credit: Magna Carta, British Library Cotton MS Augustus II.106

Only four copies of the original 1215 Magna Carta are known to survive, and all are held in England: two at the British Library, one at the Salisbury Cathedral, and another at the Lincoln Cathedral. The item on display in our exhibit is a reproduction of one of the British Library copies, known as the “Cotton manuscript”, and the only one of the four with a landscape orientation.

The original 1215 Magna Carta contained sixty-three clauses. Later revisions, culminating in the 1225 revision and reissue under Henry III, would reduce that number to thirty-seven. In the original, many of clauses address taxes and duties owed to the King by the barons; others, including the 61st clause creating a committee of twenty-five barons, were present to address the peacemaking process and to ensure the king’s compliance with Magna Carta’s terms.

Probably the most famous language of the Magna Carta, in terms of its iconic position as a written guarantee of individual rights and liberties and an original source of the rights to trial by jury and due process, is the following. In later printings where the clauses are numbered, this language is found in Clauses 39 and 40 of the 1215 Magna Carta and then combined as Clause 29 in the reissued 1225 Charter:

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 other 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. To no one will we sell, to no one deny or delay right or justice.

Facsimile Reproduction of the Magna Carta, with Seal of King John, AD 1215. [c.1977]

This reproduction was authorized by the British Library and the U.S. Capitol Historical Society and designed by British goldsmith, Louis Osman. The panel is silver gilt with raised Latin text. Our copy is number 103 of 500.

Gift of George G. Ferreira

MAGNA CARTA & LEGAL LITERATURE: BRACTON

One indication of the import of Magna Carta is its almost immediate presence in legal literature. The most famous treatise of the age is *De Legibus et Consuetudinibus Angliæ* (On the Laws and Customs of England) with origins between 1220 and 1260. The generally credited author—but more likely a later reviser—is Henry de Bracton, a lawyer and royal justice under Henry III.

In the treatise, Bracton makes the oft-cited statement that “[t]he king must not be under man but under God and under the law,” very much an echo of the sentiments expressed in Magna Carta. Indeed, in an essay written in honor of Magna Carta’s 700th anniversary, Harvard historian Charles Howard McIlwain wrote that

Magna Carta had, in fact, from the time of Henry III, been recognized as in some sense a law fundamental. Henry III’s reissue of 1225 was the form considered final. We have evidence of this as early as Bracton’s time. [For example,] Bracton says a writ is to be quashed ‘si impetratum fuerit contra jus et regni consuetudinem et maxime contra chartam libertatis’ [if contrary to the law and custom of the realm, especially one contrary to the charter of liberty]. (173)

Henry Bracton, *De Legibus et Consuetudinibus Angliæ*. London, 1569.

This is the first printed edition of *Bracton*, which had circulated in manuscript for centuries. This edition was printed by Richard Tottel, a famous English printer; this copy belonged to Roscoe Pound, Dean of Harvard Law School from 1916 to 1936.

Gift of Daniel R. Coquillette



Henry Bracton, *De Legibus et Consuetudinibus Angliae*.

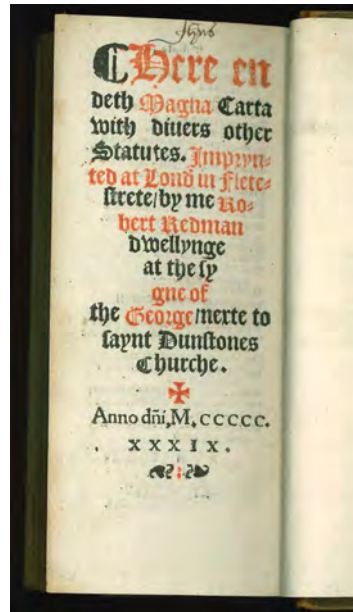
London, 1640.

This particular volume belonged to Isaac Parker, the first faculty member at Harvard Law School.

Gift of Daniel R. Coquillette

EARLY PRINTED MAGNA CARTAS

Magna Carta circulated in manuscript from the moment it came into being in 1215, with copies being distributed to bishops and sheriffs throughout the country. It was not until 1508, however, that the first printed copy of Magna Carta was produced, in Latin, by Richard Pynson. The first unabridged English edition did not appear in print until 1534, translated by George Ferrers and printed by Robert Redman. The two early, printed editions of Magna Carta featured in this section are both in Latin.



***Magna Carta*. London, 1539.**

The title page of this little book incorrectly states the publication year as

1529. The colophon, reproduced on the left-hand page, features the correct year of 1539. The lovely little volume was printed by a well-known printer of English law books, Robert Redman.

Gift of Daniel R. Coquillette

A collection of all the statutes, from the beginning of Magna Carta, unto the year of our Lord (1557). London, 1556.

The image below shows the first page of Magna Carta. Interestingly, at some point in its binding history, the pages of this little statutory compilation were bound out of order. The volume now begins with Folio 9 of the Charter of the Forest (Folios 1-8 are found later); Magna Carta, which is listed first in the Table of Contents, appears after the Statute of Marlebridge. On the bottom of the left-hand page, you can see a pencil notation indicating that a previous owner wrestled with this confusion. The book was printed by Richard Tottel, also the printer of the 1569 *Bracton*.



MAGNA CARTA AND STATUTORY COMPILATIONS

While the smaller, pocket-sized volumes discussed in the previous section would have been handy for going to court, there were other, more sizeable compilations that would have been easier on the reader's eyes and more appropriate for office use. This edition of the title commonly called *Pulton's Statutes* is a great example of the latter.



Ferdinando Pulton, compiler. *A Collection of Sundrie Statutes, Frequent in Use...London, 1632.*

This large, folio volume features absolutely beautiful printing. First pub-

lished in 1618, Pulton's work represented the first successful attempt to pull together, in chronological order, the statutes of the realm. Magna Carta is the first statute printed in the book. Pulton included marginal references to case law, books of entries, and registers.

Gift of Daniel R. Coquillette

STATUTORY COMPILATIONS EVOLVE: RASTELL

When Edward I “confirmed” Magna Carta in 1297, it officially was added to the Statute Rolls of England. In chronological statutory compilations, such as Pulton's, Magna Carta typically was printed first. It generally was followed by the Charter of the Forest (which was reissued hand-in-hand with Magna Carta by Henry III in 1225) and then the Statute of Merton.

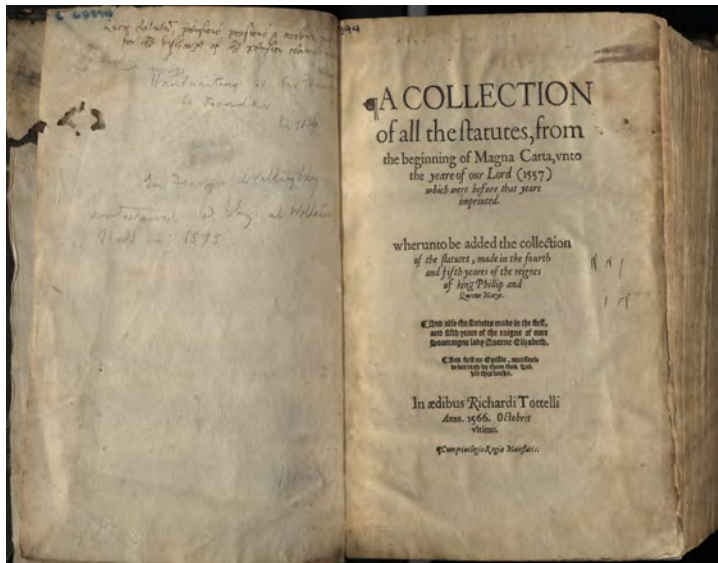
Lawyers, however, needed to be able to access the applicable statutes on a given subject, just as they do today. This part of the exhibit features an early example of a statutory publication that aimed to provide that mode of access by arranging content under alphabetical subject headings. Magna Carta, naturally, would have been one of the many statutes that was examined and cited to under a variety of those headings.

William Rastell, compiler. *A Collection of All the Statutes, from the Beginning of Magna Carta, Unto the Yeare of our Lord 1557.*

London, 1566.

This impressive volume was compiled and edited by Rastell, a justice of the Queen's Bench and former printer. Rastell's subject headings began with Abatement of Writs and ended with Yorke. It was printed by Richard Tottel, who, at the time, held the privilege of printing common law books and printed two other books in this exhibit.

Gift of Daniel R. Coquillette



MAGNA CARTA & THE TRIAL OF THOMAS MORE

The influence and presence of Magna Carta waned in the Middle Ages, but it would experience a resurgence in the 16th century with the trial of Thomas More and then, importantly, with Lord Coke in the 17th century. With regard to the former, after Henry VIII split with the Catholic Church, Thomas More refused to recognize Henry as head of the Church by taking the Oath of Supremacy. Soon thereafter, More was imprisoned in the Tower of London for treason and later placed on trial for his life.

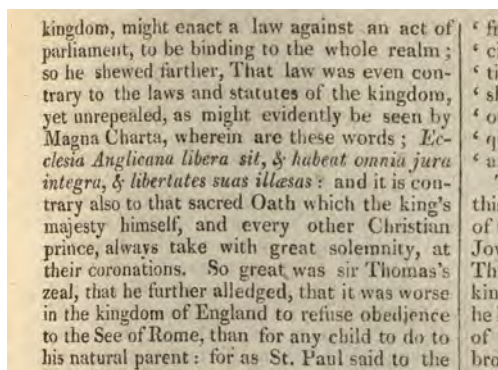


After the guilty verdict, More insisted that, amongst other infractions, Henry was violating the first clause of Magna Carta. That clause states that the English Church shall be free, and shall have its rights undiminished and its liberties unimpaired. More quoted Magna Carta in Latin. An excerpt from the trial is reproduced on the following page.

T. B. Howell, compiler. *A Complete Collection of State Trials and Proceedings for High Treason and Other Crimes and Misdemeanors.*

London, 1816.

This multi-volume set covers state trials and other proceedings from the reign of Henry II through the reign of George III. This particular volume on display in this exhibit covers Henry II through Elizabeth I.



Learn more about our Thomas More collection, which includes several early editions of *Utopia*, by scanning the QR code!



SIR EDWARD COKE & THE RISE OF MAGNA CARTA

The seventeenth century was a defining time for Magna Carta. The Tudors were replaced with the Stuarts in the form of the James I, King of Scotland. With James I and then Charles I, there was general nervousness about the extent to which English common law would be respected.

Edward Coke soon became embroiled in this clash between Charles I's claim of divine right and the sanctity of the common law. During the Parliamentary debate of the Petition of Right, Coke famously stated that "Magna Charta is such a fellow, that he will have no Sovereign."

In his *Second Institutes*, Coke dealt with Magna Carta "and many ancient and other Statutes." He was faced with two options when positioning Magna Carta within the nation's legal framework: one, he could say that the document itself, granted by a King, introduced new rights and liberties; or two, he could state that the Great Charter was simply a declaration of rights and liberties which had long existed under English law.

The former option clearly was problematic, as rights bestowed by a king could be retracted by a king. Coke took the latter route, writing in



his preface that “[Magna Carta] was for the most part declaratory of the principall grounds of the fundamentall Lawes of England, and for the residue it is additionall to supply some defects of the Common Law; and it was no new declaration.”

Sir Edward Coke, *The Second Part of the Institutes of the Lawes of England*.

London, 1642.

We are happy to exhibit the first edition of Coke’s work. The beautifully ornamented

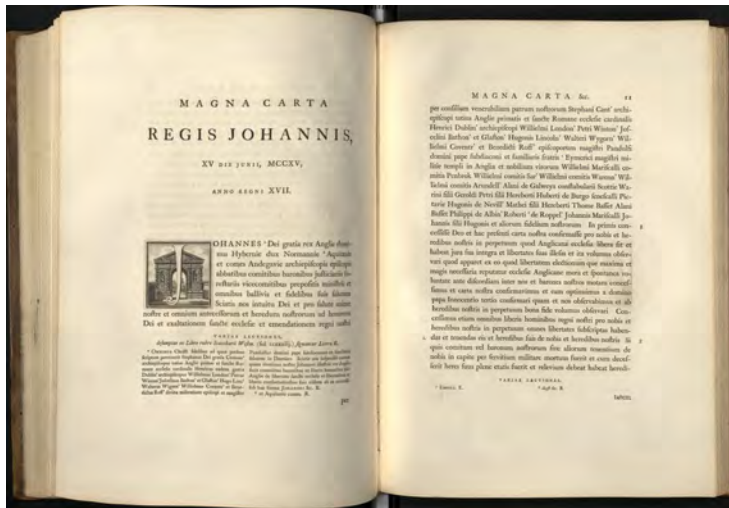
title page is reproduced to the left.

Gift of Daniel R. Coquillette

BLACKSTONE & THE GREAT CHARTER

This Blackstone work, much less famous than his *Commentaries on the Laws of England*, represented the first modern, critical edition of Magna Carta, pulling together the various versions and reissues. As Blackstone notes, previous commentaries typically relied on the text con-

firmed and placed on the statute rolls by Edward I in 1297. Over the years, errors had abounded. Blackstone proudly announces that, here, readers may expect correct and authentic editions, carefully printed from the originals. Here are the first pages of the 1215 charter—note the right-hand side where Blackstone numbered the clauses, originating the convention still used today:



While Blackstone wrote his introductory commentary in English, the documents themselves are presented in their original Latin. They include the 1215 charter (above), the Articles of the Barons, the 1216 and 1217 reissues, the Charter of the Forest and the Statute of Marlebridge, and then the theretofore neglected 1225 reissue under Henry III. In the

introduction, Blackstone echoes Coke's positioning of Magna Carta as a declaratory document as opposed to an introductory one. He writes that "it is agreed by all our historians that the great charter of king John was for the most part compiled from the antient [sic] customs of the realm..." (vii).

**William Blackstone, *The Great Charter and the Charter of the Forest*.
Oxford, 1759.**

Throughout the volume (see the image on the previous page), there are beautifully engraved initials depicting various buildings at Oxford University, where Blackstone had been confirmed as the first Vinerian Professor of English Law in 1758.

On generous loan from Historical & Special Collections, Harvard Law School Library

MAGNA CARTA IN THE AMERICAN COLONIES

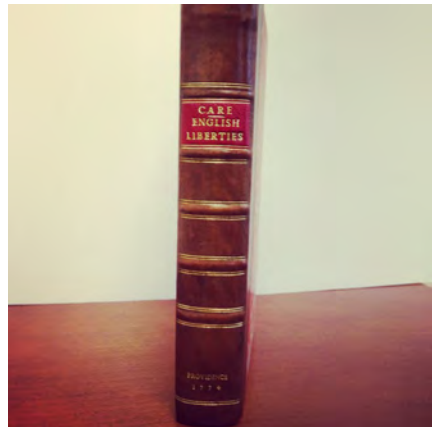
Early American colonists viewed Magna Carta as the great expression of their rights as Englishmen. It was later joined by the Petition of Right (1628), the English Bill of Rights (1689), the Habeas Corpus Act (1679), among others, as a tangible guarantee of those rights, applicable

to the colonists as subjects of the Crown and through royal charters (Hazeltine 6). Both works displayed here captured this view and were important sources for colonial leaders like George Mason and Thomas Jefferson.

Henry Care's *English Liberties* was a popular layman's guide to the principles of English law, with a focus on Magna Carta and other early, important English statutes. It was originally published in England around 1680 and enjoyed two colonial printings, including the one shown here. Thomas Jefferson owned two copies.

Henry Care, *English Liberties, or the Free-Born Subject's Inheritance. Containing Magna Charta...* Providence, Rhode Island, 1774.

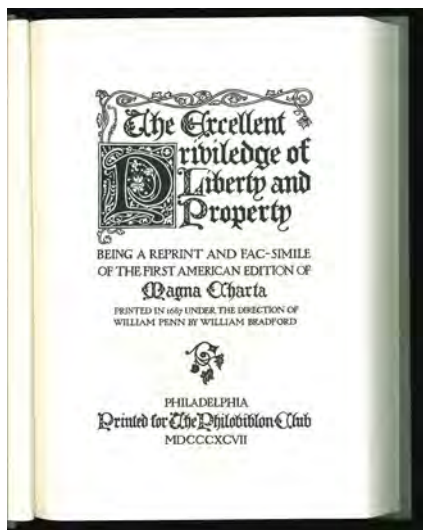
The publication date is interesting, as this was just months after the passage of the Intolerable Acts. The discussion of Magna Carta and fundamental rights would have been quite interesting reading for colonial patriots.



The first American edition of Magna Carta was based in large part on Care's work. It was printed in 1687 in Philadelphia by colonial

printer William Bradford, under the direction of William Penn. In his note to the reader, Penn states that he wants to inform the public of their rights since law books are scarce; he urges colonists

not to give away any thing of Liberty and Property that at present they do, (or of right as loyal English Subjects, ought to) enjoy, but take up the good example of our ancestors, and understand, that it is easy to part with or give away great privileges, but hard to be gained, if once lost. (5-6)



William Penn, *The Excellent Privilege of Liberty and Property: Being a Reprint and Fac-simile of the First American Edition of Magna Charta, Printed in 1687.* Philadelphia, 1897. Reprinted by The Lawbook Exchange, 2005.

We could find evidence of only two copies of Penn's original 1687 work in libraries. Thankfully, the work has been reprinted twice: once by the Philobiblon Club of Philadelphia in

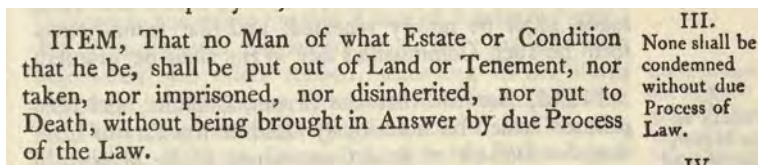
1897, and then this edition in 2005 by The Lawbook Exchange.

BEYOND MAGNA CARTA: OTHER SOURCES OF RIGHTS

Magna Carta is often credited as the source of individual rights like due process. It is part of Britain's constitutional scheme and an ancestor of and source of inspiration for the U.S. Constitution and Bill of Rights. However, there are other sources, often more direct, that should also be recognized in the history of the development of our modern constitutional rights.

The Statutes of the Realm: Printed by Command of His Majesty King George the Third ... from Original Records and Authentic Manuscripts.
London, 1963. Reprint. Originally published in London, 1810-1822.

This is the authoritative compilation of English statutes from Magna Carta through the end of the reign of Queen Anne in 1714. Excerpted below, Volume I contains a statute passed in 1354 during the reign of Edward III. The first clause confirmed the Great Charter and the Charter of the Forest; the third forbade condemnation without due process of law. This was the first use of the phrase, now enshrined in the 5th and 14th Amendments to the U.S. Constitution.



Volume VI contains the English Bill of Rights of 1689, enacted by Parliament during the reign of William and Mary. The influence on the American Bill of Rights is marked, with this statute's declaration of the right to petition, the right to free speech (on the floor of Parliament), the right of Protestants to bear arms within the bounds of the law, and a prohibition against excessive bail and cruel and unusual punishment.

FOR MORE ON MAGNA CARTA

If you are interested in learning more about Magna Carta, there are a multitude of books, articles, and online resources available. I'd like to point two online resources out in particular.

First, the British Library has a fabulous series of articles on its website at <http://www.bl.uk/magna-carta/articles>. In addition to providing wonderful background information about Magna Carta, the site also provides links to digitized versions of primary source materials, including different versions of the charters.

Second, I gained a tremendous amount of background knowledge and context by participating in an online Coursera course, developed and taught by members of the History Department at Royal Holloway, a college of the University of London. For more information, see <https://www.coursera.org/course/magnacarta>.

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Cover image: Joseph Martin Kronheim, King John Signs the Magna Carta (*Pictures of English History*, Plate XXIV), 1868.

[The page contains dense, handwritten text in a cursive script, likely a historical document or manuscript. The text is written in dark ink on aged, slightly discolored paper. The handwriting is highly stylized and difficult to decipher. The text is arranged in several horizontal lines across the page, with some lines being more prominent than others. There are some small, illegible markings and possibly a signature or date at the bottom right corner.]