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Cultural implications of the liberties and guarantees bourn of Magna Carta

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ABSTRACT

This text seeks to trace a broad outline of the circumstances under which the Magna Carta was originally conceived in England in the early 13th century. It also aims to identify the forces and inspiration that drove those who conceived of its form and imposition to act in the manner they and the legacy it has had on ensuing generations. While the great charter was not always fully respected, it did enjoy a revival owing to the scholarly diligence of Sir Edward Coke and this initiative paved the way for its permanent fixture as part of the architecture of liberty in England and the settlers of the American colonies who took inspiration from it. Attention is also given to the fundamental role played by rhetorical discourse in the advancement and preservation of the spirit of freedom originally inspired by content of the original charter.

KEYWORDS: liberty, cultural freedom, legal rights, constitutional limits, literary expression.

Introduction

Several centuries have passed since the promulgation of the original Magna Carta. Inevitably, a great deal has changed since. An enduring sense of order brought about by the inception of the great charter remains in existence and continues to offer inspiration and direction for contemporary thinkers.

The present reflection has been stimulated by the commemoration of fifty years since the Carnation Revolution in Portugal April 1974 and that of a renewed sense of heritage a decade after the 800th year since the charter's original wording was enacted. Such an exercise inevitably involves looking back in time and analyzing the circumstances and results of specific events.

The Origins of Magna Carta

Magna Carta or the 'Great Charter' was first signed by King John of England in the early 13th century in 1215. Its text was clarified and reissued on several occasions, with 1225 being the most widely referenced text in later citations (Baker, 2016: 3-4).

As my title suggests, liberty and guarantees require some constraints and limits to be put on power, both the power exercise by the government (the power of the King in the case of England) and by private individuals if society is to function within relatively normal parameters. However, if there is no control of these limits, they effectively do not exist. There must, then, be some method to enforce and monitor the power 'exercised' by government.

Returning to the circumstances of why and when the Magna Carta was signed by King John, historical accounts and specialist commentators tell us about how King John was engaged in a series of failed and faltering military campaigns

and was losing his remaining lands in northern France and this was an expensive activity. Military campaigns cost a lot of money and the King attempted to extract more and more money from wealthy classes particularly the Barons in English society of the time. They were well aware of the reality of the failing campaign abroad and were suffering from fatigue and material loss from the taxes and impositions they were being forced to pay (Helmhol, 1999:298; Reynolds, 2016:664).

King John was a selfish and arrogant ruler who did not wish to seek approval for anything and it was this arrogance that eventually caused a schism between him and the ruling elements of the society of his day. Thus, the Barons threatened to withdraw their allegiance to him if a reasonable accommodation of their concerns and demands was not found.

Political and legal implications

As Jennifer Jahner in her 2019 book *Literature and Law in the Era of Magna Carta*, quite rightly notes: 'From its beginnings, then. Magna Carta was not simply a statement of law but a statement about law about the origins of royal and communal authority and the nature of a just political order' (Jahner, 2019: 100-101). It was of such profound import for successive generations that analysis of its content prompted James Spigelman to remark that the charter came to: 'constitute the first comprehensive statement in written form, formally promulgated to the whole English population, of the requirements of good governance and the limits upon the exercise of political power' (Spigelman, 2015: 24). Indeed, any provision repugnant to the law, just as provided for in Magna Carta, is regarded as having no effect as can be seen in the provision in Magna Carta which clearly states: 'And we will that if any judgments be given from henceforth, contrary to the



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points of the charters aforesaid by justices or by any other (...) that hold please before them touching the points of the charters, they shall be undone and holden for naught' (McIlwain, 1917: 122). This principle has survived the long passage of time and as Linda Edwards has correctly 'asserted' the power of text for the legal process is so potent that one can say that narrative "provides the frame through which we see all legal issues and within which all our discourse occurs" (Edwards, 2016: 179). Such a principle inevitably became a bulwark against notions that 'sovereign power was inevitable, limitations futile' (Rudisill, 1956: 751). In the modern era, the courts, particularly the higher courts in the Western world have taken on the role of the wise arbitrator in the mold envisioned by John Rawls which has seen the judiciary act as "exemplar" of public reason (Rawls, 1996: 216).

This seminal event rippled into the future and prompted former Lord Chief Justice of England, Parker of Waddington to recall:

Today, as in the reign of King John, as in the days of the Stuarts, as in the time of the American Revolution, Magna Carta serves as a constant reminder of the dangers of arbitrary government. It remains an example of those countries, Britain and the United States foremost among them, in whose constitutional development it has been so influential. It serves, too, as a signpost to the nations of the world, a reminder of what can be when rulers and ruled can live under a rule of law.

(Howard, 1968: xii)

It is to be remembered that before its promulgation, the King always claimed to be above the law and be answerable to nobody other than God. Magna Carta changed all of that. What was seen as the King's limitless power, was now formally constrained, but this was not to fully crystallize for several centuries.

In practical terms, creating a system that would limit the King's powers and thus affirm the rights of 'free men' as they were then – meant that a new process of law had to be formally adopted. The effect of this provision was monumental for the time and remains a central principle of most modern legal systems, that of the principle of what we now call 'due process'. Thereafter it became far more difficult for the King or a baron to randomly or arbitrarily arrest and imprison a person without a just cause. In later years this evolved into the legal device of granting a writ of *habeas corpus*. In turn, this also had a conditioning influence over how penalties for breach of the law were conceived and imposed so that *the punishment should fit the crime* (Judge, 2015: 361). Moreover, creating new laws in the name of the realm in other words wider society if you like would have to be undertaken with the consent of those concerned. In the 13th century, this meant the powerful. This became the idea that as former Lady Chief Justice of the United Kingdom, Lady Hale has asserted: 'the idea that government rests upon the consent of the governed; and the idea that

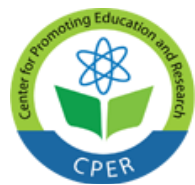
government as well as the governed is bound by the law' (Hale, 2015: 136). Few would contest the truth of this statement in our understanding of participative democracy today. However, the complexities arising from the fragmentation of public opinion as a symptom of postmodernity have resulted in a multitude of pluralities in identities and outlooks. This in turn has created further challenges in creating a consensus around an agreed set of conditions as to how a modern democratic society should be constituted.

This has much to do with Jahner's reference to 'the origins of royal and communal authority and the nature of a just political order'. With the passage of time comes the passage of peoples with varying interests and awareness in their 'heritage' its implications for their current circumstances. A central element of this has long been the necessity for the recognition of the rule of law and some essential attendant qualities that have largely become indissoluble. Chief among these is clear legal rights and recognized procedures for their realization.

Ellis Sandoz cites the great Sir John Fortescue's (1394-1479) remarks on his belief in the superior nature of English law given that they:

are made only with the prince's will, but also by the assent of the whole realm, so they cannot be injurious to the people...Furthermore, it must be supposed that they are necessarily replete with prudence and wisdom since they are promulgated by the prudence of...more than three hundred chosen men...of parliament...And if statutes ordained with such solemnity and care happen not to give full effect to the intention of the makers, they can speedily be revised, and yet not without the assent of the commons and nobles of the realm, in the manner in which they first originated (*et non sine communitatis et procerum regni illius assensu, quali ipsa primitus emanarunt*) (Sandoz, 1993:7)

Fortescue was correct in highlighting that any defects in the law could be corrected. There, however, are some dangers that must be avoided if the genuine exercise of freedom is to be achieved. In this respect, Michael Spicer has instantiated the observant warnings offered by Isaiah Berlin who distinguished between *negative* and *positive* freedoms. For Berlin, the nature of positive freedom primarily consists in having the authority and autonomy to decide all matters for oneself, whereas negative freedom is concerned with how far the authority of the state and how this authority interacts or interferes with the individual. Spicer notes that the seemingly similar nature of both these kinds of features can be quite misleading and caution must be exercised to conflate them which would result in a growing deficit and eventual extinguishment of personal liberties. Failure to exercise vigilance in respect of how far state authority extends into each person's life can create an opportunity for over-zealous governments to corrupt this notion of freedom so that it is "turned into a doctrine of authority, and, at times, of repression" and would become "a cloak for despotism in the name of a wider freedom". A strong guard



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against these totalizing tendencies, for Berlin, was to remain well informed about the nuances between and the understanding of the meaning of allied notions such as security, equality, and status (Spicer, 2003: 547).

The role of the state in the process of formulating policy in the areas of social planning and the welfare system is a target for Berlin's critique in his *Four essays on liberty* in which he notes.

The case for social legislation or planning, for the welfare state and socialism, can be constructed with as much validity from considerations of the claims of negative liberty as from those of its positive brother; and, if historically, it was not made so frequently, that was because the kind of evil against which the concept of negative liberty was directed as a weapon was not laissez-faire but despotism. (Berlin, 1969: xlvi).

Berlin thus alerts us to the real and present dangers of allowing unrestricted power and authority to be accumulated by the state. An obvious instrument that is most powerful against such tendencies is legal restrictions. Magna Carta was one of the earliest explicitly worded legal codes limiting centralized authority and provided for some checks and balances which later involved much more sophisticated safeguards in the modern era.

The purpose of these legal safeguards is multifaceted in that they jointly achieve the conditions whereby the general philosophy is to avoid the specter of 'overwhelming concentrations of power.' In this way, society cannot be hegemonically ruled by any one source of power and this permits the ability to stave off what has been described as the "despotism of superstition" that acts as a brake on the materialization of tangible freedoms. Under such conditions, it thus becomes possible to engage in an ongoing 'dialogue' through time taking inspiration from past, present, and future where each element of time competes for influence but does not arrogate all power (Kos, 2019: 121). An obvious regulatory mechanism is thus required to effect the balance of application of laws and the recognition and exercise of rights.

The rule of law

What many would rightly assert to be the cornerstone of modern society and its attendant rights of private property and bodily integrity can also be traced back to Magna Carta. These rights are naturally and inextricable dependent on the rule of law which was manifested in Clause 39 of the Great Charter that held:

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.

The conception and insertion of this exacting wording of Clause 39 stemmed directly from the fact that King John

frequently abused his power by imprisoning his opponents in the absence of both proof and due process, exiling enemies, and expropriating their property and possessions for the benefit of the Crown (Johnson, 2015: 15).

While Magna Carta was modified and reconfirmed in new issues in 1216, 1217, 1225, and 1229, its overall thrust never lost its relevance. The passage of time led to its obscurity for some time under the Tudors and their successors, it was later to be revived in the 17th century a phenomenon which I think attests to its ingenuity and potency by legal scholars who sought far higher standards of certainty in the law against further abuses by the King after the English Civil War. Indeed, the founding fathers of the United States were well aware of its provisions when they drafted the new American Constitution in the late 18th century. In a judgment delivered in the United States by Justice Hugo Black in *Duncan v. Louisiana* (1968), Black affirmed:

The origin of the Due Process Clause is [Clause] 39 of [the] Magna

Carta As early as 1354 the words 'due process of law' were used in an

English statute interpreting [the] Magna Carta, and by the end of the 14th

century 'due process of law' and 'law of the land' were interchangeable.

Thus the origin of this clause was an attempt by those who wrote [the]

Magna Carta to do away with the so-called trials of that period where people

were liable to sudden arrest and summary conviction in courts and by

judicial commissions with no sure and definite procedural protections and

under laws that might have been improvised to try their particular cases.

[Clause] 39 of [the] Magna Carta was a guarantee that the government would take neither life, liberty, nor property without a trial in accord with the law of the land that already existed at the time the alleged offense was committed.

This means that the Due Process Clause gives all Americans ... the right to be tried by independent and unprejudiced courts using established procedures and applying valid pre-existing laws.¹

It has to be said that litigation is generally an expensive and complex process and this was also the case at the inception of Magna Carta. However, the charter created how those whose rights were being infringed had some remedy to defend their interests and assert their rights in court. Meaningful implementation of these rights implied that the court system and access to it had to be properly regulated. Article 40 of the Charter thus provided that: '(t)o one will we sell, to no one deny or delay right or justice.' Given the limited means of mobility

¹ *Duncan v. Louisiana*, 391 U.S. 145 (1968) cited in Johnson (2015: 14-15)



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available to people in the 13th century, it was felt necessary to ensure that they had access to the court system in their community, and thus Articles 17, 18, and 19 made it mandatory for court sessions to be held around the country regularly (Agapiou-Josephides et. al., 2015:14). Without this facility these acquired rights and procedures would have effectively been ignored and have had no real effect whatsoever. This provision remains a widely recognizable feature of most judicial systems today and it is an important public marker of its operation in the public realm.

The greater certainty that this established practice of legal practice has brought about ushered in a more progressive attitude of citizens toward their would-be rulers. The latter could be thought to believe the rule of law as Michael Oakeshott holds: ‘...the single greatest condition of our freedom, removing from us that great fear which has overshadowed so many communities, the fear of the power of our own government’ (Oakeshott, 1991: 389). The essential bulwark against arbitrary use or abuse of the law by the government is the spirit of Magna Carta itself. Sir John Baker Quotes Sir Edward Coke’s powerful claim that such was the reach and extent of the Great Charter protected

‘everything that anyone has in this world, or that concerns the freedom and liberty of his body or his freehold, or the benefit of the law to which he is inheritable, or his native country in which he was born, or the preservation of his reputation or goods, or his life, bloody and posterity’

(Baker, 2017: 347)

Given all the encompassing nature of the law and the protections it offers; its necessity cannot be overstated nor be taken for granted. In an ideal world, no stringent regulations would be required as every citizen could respect implicit limits and abide by intuitive restrictions.

In general terms, one of the primary functions of the law – and perhaps one of the most important – is to seek to prevent conduct regarded as undesirable and the promotion of what is seen as honorable behavior (Raz, 2011: 169). Moreover, as Alexander Hamilton wisely observed: “If men were angels, no government would be necessary. If angels were to govern men, neither external nor internal controls on government would be necessary” (Hamilton, 1956: 337). Many learned scholars have agreed on the need not only for legal constraints on governing powers but also on the predictability and certainty, a view strongly supported by Matthew Hale – who once served as Chief Justice in the Elizabethan era who surmised that:

It is one of the things of the greatest moment in the profession of the common law to keep as near as may be to the certainty of the law, and the consonance of it to itself, that one age and one tribunal may speak the same things and carry on the same thread of the law in one uniform rule as near as possible; for otherwise that which all places and ages have contended for in laws,

namely certainty and to avoid arbitrariness and that extravagance that would fall out if the reasons of judges and advocates were not kept in their traces, would in half an age be lost. And in this conservation of laws within their bounds and limits could never be, unless men be well informed by studies and reading what were the judgements and resolutions and decisions and interpretations of former ages. (cited in Leoni, 1972: 93)

Where there are clearly defined limits on the function and operation of the law and its agents, the greater the confidence citizens can have in its function in the present and the future. Wider considerations in the world of research and commerce reveals some important contours of these guarantees discussed in the next section.

Cultural implications and commercial considerations

I have dealt broadly with the legal implications of the Magna Carta. But what of the cultural ones and effects on commerce and the wider economy?

In our Western tradition which has evolved into a liberal democratic system since the Enlightenment, one would be quite hard-pressed to find any serious dissent to the belief that we now enjoy many important rights; the right to due process, the right to a fair trial, protection of and equal application to all regardless of status or power. These are some of the main freedoms we enjoy. However, it would be inconceivable to lose our right to the freedom of expression. While no rights are absolute, some such as personal liberty, freedom of expression, and the rule of law are notions that could be regarded as fundamental and indivisible from our modern system of cultural values. There is strong current of opinion among legal scholars and politicians that the rule of law is also something that must be regarded as the essential ingredient for democracy and prosperity, although they disagree as to an exact definition of what it means (Fernández-Villaverde, 2016: 23). Regardless of the lack of greater consensus on the exact nature of the rule of law, many do agree on the fact that its limitations are to be welcome, which is a view that enjoys an extensive history as Brian Tamanaha in his *On the Rule of Law: History, Politics, Theory* defends:

The heritage of this idea, which first became firmly established in the Middle Ages, preexists liberalism; it is not inherently tied to liberal societies or liberal forms of government. Everyone is better off, no matter where they live and who they are, if government officials operate within a legal framework in both senses described, in the sense of abiding by the law as written, and in the sense that there are limits on law-making power. (Tamanaha, 2004: 137-38).

An obvious implication of this assertion is that any claims against absolute power could never be safely discussed in public or ever argued within academic contexts. Limiting lawmakers power is one such way to prevent such powers of



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censorship from ever coming into being and also contribute to defeating those that may have come into existence.

How could we conceive of a cultural context in which the free exchange of ideas and the right to criticize those in power can be called into question or worse, be lost? A relatively unexplored frontier in this continuum of challenges is what could be termed the freedom of inquiry in the context of academic research presents a highly relevant facet of this situation. One could say with great confidence that any threat against intellectual freedom would endanger the very existence of academic inquiry. Some legal protections do exist, for example, in the form of Article 13 of the Charter of Fundamental Rights of the European Union (EU Charter which deals with the freedom of scientific research and/or freedom of teaching. 'It protects scientific and teaching activities against unjustified interference from public authorities and/or universities and also from other academics. This defensive function of academic freedom is essential for the creation of knowledge (...)' (Stachowiak-Kudła et. al., 2023: 162). As Isaiah Berlin has noted (negative) freedom is 'the absence of obstacles to possible choices and activities' (Berlin, 2004: 32). Absolute freedom for the expression of all any ideas, is of course, illusory, but this can be mitigated by the fact that ideas are conceived within a particular historical context, where they dwell and from which they derive their meaning and gain momentum as their proponents formulate strategies for their appropriate expression in certain social and cultural contexts (Harrington et. al., 2019: 306).

But, of course, living in a society regulated by laws and norms provides many freedoms, it also implies accepting certain limitations. This means that while we can access information and innovation is encouraged it comes at a price, for example, when we wish to use techniques or information that have been copyrighted or patented by commercial entities we are obliged to pay for the privilege. However, when commercial interests interfere directly in the process of scientific inquiry and the divulging of the results thereof, we face a conflict of interest which can be very difficult to resolve. The difficulties in these situations arise from the fact that funding for certain research activities may come from commercial entities such as influential corporations who may wish to block the release of inconvenient research findings or governments would rather ignore and suppress 'controversial' results (Stachowiak-Kudła et. al., 2023: 162).

Furthermore, ensuring that the government respects the law also implies that the public has the right to access information about the functioning of the government that acts in its name. For a government or any governing system to credibly retain a legitimate status of being 'democratic', the right of citizens to obtain information on demand subject to reasonable limitations must be enshrined in law. It is essential to defend our understanding of intellectual freedom through key principles contained within legal and social values that presume

the existence of free expression, freedom of the press, and the right to information (Ratcliffe, 2020: 13).

The right to question known to the law

One may well assert the right of citizens and scholars alike to assert their freedom of information, but for this right to function in a sophisticated way, it requires recourse to literary imagination based on an aesthetic sensibility. These factors can also be relied upon in the process of law-making itself and it was the promulgation of Magna Carta and the evolution of thinking that it triggered that has ensured that this enterprise has been largely successful.

Circumstances within with the citizen are inserted frequently provide the principal motivation for generating an intervention in the form of an utterance of some kind. This is consistent with what Lloyd Bitzer (1968) asserted in his paper "The Rhetorical Situation" in which he says: 'Rhetorical discourse is called into existence by situation; the situation which the rhetor perceives amounts to an invitation to create and present discourse. The clearest instances of rhetorical speaking and writing are strongly invited often required' (Bitzer, 1968: 9). Situational factors can thus provoke individual personal reactions which can in turn trigger wider societal responses to emerge or existing dangers or perceived threats to liberty or other claims rights and interests.

We can truthfully claim the liberal arts play a vital role in formulating and sustaining these features that are given legal status through mobilizing the power of language. As I noted in my paper 'Literature, Rhetorical Devices, and Juridical Imagination: A Symbiotic Dynamic', published in 2023:

aesthetics provides a powerful means to create the necessary imaginative devices for legal truths, such as "equality of all before the law" supported by the promise of impartial treatment for all as embodied by the blindfolded Roman Goddess Justitia securing with her hands a set of scales and an unsheathed sword, designed to appeal to a supposedly innate sense of justice as being fair, quick and conclusive. This allegorical personification of the legal principle of justice before the law permits the formation of what otherwise be inaccessible notions of fairness and equality in the processes of making law and its adjudication when being applied is amenable to a philosophy that seeks to promote social justice and the core human need for belonging to a community of others of equal standing, which thus makes it possible to cultivate a culture of compliance. Actors concerned with the wellbeing of such cultures of compliance akin to communities of cooperation are conceived as being engaged in marshaling various facets of the power of the mind which has been held to involve practices that "constitute an enterprise of the imagination, an enterprise whose central performance is the claim of meaning against the odds: the translation of the imagination into reality by the power of language.



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(Wakefield, 2023: 69)

The rule of law has many implications, but few would argue against the assertion that one of the most striking features of a legal system is that an agreed system of rules is theoretically applied to all citizens equally. It is in this context that the above-cited 'translation of the imagination into reality by the power of language' extends further still to the point that mere words become binding constructs that simultaneously guide and govern. Thus, the said 'culture of compliance' becomes a tangible reality and quotidian experience. Respect for the rule of law must begin with the rulers themselves which then sets an example for all others to follow.

Respect for the rule of law also entails recognizing the right of citizens to exercise their right to debate existing policy and to suggest re-imagined ways of government and the laws that support it. This presupposes that the existence of liberal democratic regimes remains unquestioned and that they are likely to survive in the future. Francis Fukuyama, a respected academic, analyst of the history of governance and the cultures of democracies posited an important question in his *The End of History and the Last Man*:

...democracy's greatest weakness was its inability to defend itself against ruthless and determined tyrannies. The question of whether and for how long the threat from these tyrannies has receded will continue to preoccupy us in a world still full of authoritarianism, theocracies, intolerant nationalisms, and the like. But let us grant, for the moment, that liberal democracy has vanquished its foreign rivals and for the foreseeable future faces no serious external threats to its survival. Left to themselves, can those stable, long-standing, liberal democracies of Europe and America be indefinitely self-sustaining, or will they one-day collapse from some kind of internal rot, much as communism has done? Liberal democracies are doubtless plagued by a host of problems like unemployment, pollution, drugs, crime, and the like, but beyond these immediate concerns lies the question of whether there are other deeper sources of discontent within liberal democracy where life there is truly satisfying.

(Fukuyama, 1992: 287-288)

Arguably, a key test of the resilience of a democracy is that system's ability to defend itself from attack both from within and from without. Tyrannies of varying types and degrees may arise, but they can be faced where there is sufficient political will and popular support to resolve them. Just as Bitzer has affirmed: '...rhetoric is a mode of altering reality, not by the direct application of energy to objects, but by the creation of discourse which changes reality through the mediation of thought and action' (Bitzer, 1968:4).

It is only with the rule of law that stable conditions for a conscientious democratic polity can be sustained within which a civilized set of debates around quality of life may happen. What

constitutes a satisfying life? This is a difficult question to answer involving countless strands of criteria and categories, none of which could be openly discussed in the absence of a stable system of the rule of law sustained by a democratic culture. In the formative decades of the new United States of America, founding father Thomas Jefferson was engaged in planning the founding of his new University of Virginia and it was under those circumstances that he remarked that it should be constructed based on "the illimitable freedom of the human mind" because for him "for here we are not afraid to follow truth wherever it may lead, nor to tolerate any error so long as reason is left free to combat it" (Washington, 1854: 196). This strong libertarian spirit attests to the necessity to combat censorship and allow the human mind to explore each idea to the maximum extent. Protections for this kind of behavior are to be found, of course, in the right to the freedom of speech present in most liberal democracies today. Indeed, a truly democratic culture will recognize both the right and necessity to follow the exploration of ideas to their necessary ends, and any restriction upon this ability will inevitably be prejudicial to the development of society.

In the early twentieth just as the liberty and well-being of millions of citizens were being gravely threatened and frequently extinguished with the progression of the First World War, American academics organized themselves in 1915 in search of greater freedoms to fulfill their role in sustaining the special relationship between higher education and society. The culmination of these efforts produced the *Declaration of Principles on Academic Freedom and Academic Tenure* which sought three broad guarantees which pertained to "freedom of inquiry and research; freedom of teaching within the university or college; and freedom of extra-mural utterance and action," and the latter called for tenure and due process before faculty dismissals..." This meant that it was believed that legislators should refrain from making laws to frustrate these freedoms, even when they sought to do so with public support. Essentially, this amounted to the fact that 'academic freedom was needed for societal, not individual or institutional benefit' (Cain, 2012: 39).

However, the gift of eloquence and clear articulation is not naturally possessed by all people and thus, assistance will be required by some if they are to successfully communicate their needs and intentions. It is precisely in this context that the world of academia becomes an important ally of the general public in wider society in finding a suitable formula of words to express their positions. Michael Oakeshott identifies the process of how disparate musings can be drawn into an intelligible narrative of thought:

Intelligible emerge out of misty intimations of intelligibility when noticings become thoughts and when, in virtue of distinguishing and remembering likenesses and unlikenesses in what is going on, we come to inhabit a world of recognizable. These recognitions may often be vague, obscure, and tentative, and often



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mistaken; that is, unlikes mistaken for likes and likes for unlikes. But continually gone over, rehearsed, revised, and refined they endow what is going on with the intelligibility of familiar characteristics. And every achievement is also an investment. The language of noticing, recognizing, and remembering resemblances and differences is a language of characteristics. Shapes, sizes, colors, textures, movements, sounds, scents, tastes, etc., are distinguished and attended to, not-yet-named recurrences are remarked, and not-yet-named connections are observed. The limits of this least adequate understanding are severe, but its constant exercise increases its resources. It becomes more exact and more confident when recollection (the self-conscious recall of recognizable) is added to remembering, when recognition is in terms of words, when thoughts take more definite shapes in ideas when abstraction becomes more discriminating, when experiences are made to serve inferences, and when new experiences become more readily recognizable because they have been anticipated in educated imagination. (...)

(Oakenshott, 1975: 3-4)

It can be seen that while there may be an awareness of one's life situation and the general state of society, ordinary uneducated citizens may lack the resources to properly qualify what they wish to express. Such a situation is where intellectuals and the academic in a wider sense become very important in quantifying, qualifying, and distilling the intended shape or form of the desired message that may have originally come into being in a rather embryonic state. Gradual reiteration and refinement processes can be applied to reveal more specific intentions and give them appropriate and comprehensible form. Once more, the freedom to follow these ideas through to their final form must be protected and encouraged if such processes are to be possible at all. In turn, these clarified ideas can then be deployed to the desired effect and can be utilized by members of society to question their state of being and ensure that established limits placed on the exercise of power by those who govern in their name can be realized with at least some discernible efficacy. This would stand to reason in light of Cover's assertion that "law and narrative are inseparably related" since every legal prescription can only take form after its content has been "located in discourse" (Cover, 1983: 5).

There can be little doubt that the freedom to hold those who govern in the name of the people to the high standard of the principle of law has helped to transform the idea of governance and the concept of freedom of conscientious citizens. Arguably, with the foundation of the idea of limited government the Magna Carta formally permitted in what became the Anglophone world. Undeniably, the stark reality is that as academic freedom is essential to the vitality and health of free societies in the spirit of remarks made in *Sweezy v. New Hampshire* (1957) decisions by United States Supreme Court Justice Earl Warren who defended that without this freedom

"our civilization will stagnate and die" (Cain, 2012: 177). Warren's sage remarks are unlikely to be refuted and remain true to this day.

The enduring relevance and strength of Magna Carta and its inextricable role in the establishment of modern thought on the concept of liberty was reaffirmed by the U. S. Supreme Court in its hailing and further liberalization of habeas corpus in the *Fay v. Noia* (1963) case where Justice Brennan determined that the ancient writ contained encomiums possessed of a rich heritage:

These are not extravagant expressions. Behind them may be discerned the unceasing contest between personal liberty and government oppression. It is no accident that habeas corpus has time and again played a central role in national crises, wherein the claims of order and liberty clash most acutely, not only in England in the seventeenth century, but also in America from our very beginnings, and today. Although in form the Great Writ is simply a mode of procedure, its history is inextricably intertwined with the growth of fundamental rights of personal liberty. For its function has been to provide a prompt and efficacious remedy for whatever society deems to be intolerable restraints... (habeas corpus) prefigured the union of the right to due process drawn from Magna Charta.

(Wert, 2010: 477)

In making these remarks, Brennan recognized the central role Magna Carta in protecting personal liberty and establishing procedures to protect against abuses of that right. This fundamental right of liberty is best protected by carefully setting out the rights and duties of those who exercise power under legal authority and the remedies for abuses against them. Without this, liberty itself would fall into disrepute and quickly decay.

Conclusion

Thoughts and ideas constitute the markers of the mind and provide the blueprint for the transportation of dreams into the real world through the vehicle of language. The careful selection of suitable terminology and the philosophy to inspire and guide it are an important part of the process of creating new paradigms as much as challenging old ones. In other words, as I noted in a previous paper, language itself is the key since it: '...is thus the central element of form and impetus in creating and sustaining an imaginative state of being conducive to transducing legal and literary energy that underpins a desired state of being within a particular cultural context...' (Wakefield, 2023: 69). This is, of course, is dependant on the effective mobilization of linguistic and intellectual resources on the part of those who possess them.

A system in which an established and recognized limit on law-making and exercise of authority pervades government and wider society ensures that all residents of that polity enjoy greater liberties, have more security, and a better quality of life. The existence of reasonable restraints on governing powers



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allows citizens of all walks of life, regardless of the sector or segment from which they come, to benefit from a codified (i.e. formal legislation and jurisprudence) set of rules and regulations (Tamanaha, 2004: 137-138). Prince of medieval jurisprudence and strong defender of the limited government by the provisions of Magna Carta, Sir Edward Coke opined that the law should set the standard for what could be regarded as a correct procedure in that he noted: “Law is the perfect reason, which commands those things that are proper and necessary and which prohibits contrary things” (Underwood Lewis, 1993: 108).

When perhaps once it was true to say ‘What has pleased the Prince has the force of law...’ (Clark, 1994: 75) such is the pace and scale of the evolution of the concept of liberty this may well have to be reconsidered to read something akin to ‘What appeases the people has the force of law’. Achieving such a state in a polity depends much on satisfying the competing demands of a complex body politic and perplexity whirlwind of forces within societies. What then is truly *satisfying* (to borrow from Fukuyama) about this position arguably the legal right to hold our rulers to account and to have the right to question all manner of rules and conventions that are adopted in their pursuance of specific agendas. Moreover, it would be impossible to exercise the freedom to think and enquire without the right to question those who purport to rule in our name. This right extends to the right to approve or remove those who rule in the name of the people on their behalf, only with the existence of this right is it possible to

foster a genuine respect for the law (Raz, 1988: 94). Consent of this kind is consistent with and only possible because of the fundamental principles set down by Magna Carta.

As Neil McCormack has quite rightly defended:

‘The Rule of Law is a signal virtue of civilized societies. Where the Rule of Law obtained, the government of a state, or of a non-state polity (...) or political entities within states (...) is carried on within a framework laid down by law. This gives significant security for the independence and dignity of each citizen.

(McCormack, 2005: 12)

Few would argue with an assertion that promotes the notion that without the fundamental limitations and guarantees brought forth by the Magna Carta, achieving real dignity and security for each citizen against over-zealous ruling authorities would be practically impossible.

Magna Carta stands as a significant cultural monolith that inspired practices that paved the way for greater personal and academic freedoms that have proven to be crucial in establishing more liberal regimes that have allowed processes that govern the human mind and the material goods and cultural treasures it inspired to flourish. We would be well-advised to acknowledge this debt and gift that the Magna Carta has left for the generations that have come after it. This gift cannot be taken for granted and we should remain vigilant lest our hard-won progress be squandered or stolen.

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