The reign of King John was in all ways unlikely and, in most, dreadful. He was born in 1166 or 1167, the youngest of Henry II's five sons, his ascension to the throne being, by the fingers on one hand, so implausible that he was not named after a king and, as a matter of history, suffers both the indignity of the possibility that he may have been named after his sister Joan and the certain fate of having proved so unredeemable a ruler that no king of England has ever taken his name. He was spiteful and he was weak, although, frankly, so were the medieval historians who chronicled his reign, which can make it hard to know quite how horrible it really was. In any case, the worst king of England is best remembered for an act of capitulation: in 1215, he pledged to his barons that he would obey “the law of the land” when he affixed his seal to a charter that came to be called Magna Carta. He then promptly asked the Pope to nullify the agreement; the Pope obliged. The King died not long afterward, of dysentery. “Hell itself is made fouler by the presence of John,” it was said. This year, Magna Carta is eight hundred years old, and King John is seven hundred and ninety-nine years dead. Few men have been less mourned, few legal documents more adored.

Magna Carta has been taken as foundational to the rule of law, chiefly because in it King John promised that he would stop throwing people into dungeons whenever he wished, a provision that lies behind what is now known as due process of law and is understood not as a promise made by a king but as a right possessed by the people. Due process is a bulwark against injustice, but it wasn’t put in place in 1215; it is a wall built stone by stone, defended, and attacked, year after year. Much of the rest of Magna Carta, weathered by time and for centuries forgotten, has long since crumbled, an abandoned castle, a romantic ruin.
Magna Carta is written in Latin. The King and the barons spoke French. “Par les denz Dieu!” the King liked to swear, invoking the teeth of God. The peasants, who were illiterate, spoke English. Most of the charter concerns feudal financial arrangements (socage, burgage, and scutage), obsolete measures and descriptions of land and of husbandry (wapentakes and wainages), and obscure instruments for the seizure and inheritance of estates (disseisin and mort d’ancestor). “Men who live outside the forest are not henceforth to come before our justices of the forest through the common summonses, unless they are in a plea,” one article begins.

Magna Carta’s importance has often been overstated, and its meaning distorted. “The significance of King John’s promise has been anything but constant,” U.S. Supreme Court Justice John Paul Stevens aptly wrote, in 1992. It also has a very different legacy in the United States than it does in the United Kingdom, where only four of its original sixty-some provisions are still on the books. In 2012, three New Hampshire Republicans introduced into the state legislature a bill that required that “all members of the general court proposing bills and resolutions addressing individual rights or liberties shall include a direct quote from the Magna Carta which sets forth the article from which the individual right or liberty is derived.” For American originalists, in particular, Magna Carta has a special lastingness. “It is with us every day,” Justice Antonin Scalia said in a speech at a Federalist Society gathering last fall.

Much has been written of the rule of law, less of the rule of history. Magna Carta, an agreement between the King and his barons, was also meant to bind the past to the present, though perhaps not in quite the way it’s turned out. That’s how history always turns out: not the way it was meant to. In preparation for its anniversary, Magna Carta acquired a Twitter username: @MagnaCarta800th. There are Magna Carta exhibits at the British Library, in London, at the National Archives, in Washington, and at other museums, too, where medieval manuscript Magna Cartas written in Latin are displayed behind thick glass, like tropical fish or crown jewels. There is also, of course, swag. Much of it makes a fetish of ink and parchment, the written word as relic. The gift shop at the British Library is selling Magna Carta T-shirts and tea towels, inkwells, quills, and King John pillows. The Library of Congress sells a Magna Carta mug; the National Archives Museum stocks a kids’ book called “The Magna Carta: Cornerstone of the Constitution.” Online, by God’s teeth, you can buy an “ORIGINAL 1215 Magna Carta British Library Baby Pacifier,” with the full Latin text, all thirty-five hundred or so words, on a silicone orthodontic nipple.

The reign of King John could not have been foreseen in 1169, when Henry II divided his lands among his surviving older sons: to Henry, his namesake and heir, he gave England, Normandy, and Anjou; to Richard, Aquitaine; to Geoffrey, Brittany. To his youngest son, he gave only a name: Lackland. In a new biography, “King John and the Road to Magna Carta” (Basic), Stephen Church suggests that the King might have been
preparing his youngest son for the life of a scholar. In 1179, he placed him under the tutelage of Ranulf de Glanville, who wrote or oversaw one of the first commentaries on English law, “Treatise on the Laws and Customs of the Realm of England.”

“English laws are unwritten,” the treatise explained, and it is “utterly impossible for the laws and rules of the realm to be reduced to writing.” All the same, Glanville argued, custom and precedent together constitute a knowable common law, a delicate handling of what, during the reign of Henry II, had become a vexing question: Can a law be a law if it’s not written down? Glanville’s answer was yes, but that led to another question: If the law isn’t written down, and even if it is, by what argument or force can a king be constrained to obey it?

Meanwhile, the sons of Henry II were toppled, one by one. John’s brother Henry, the so-called Young King, died in 1183. John became a knight and went on an expedition in Ireland. Some of his troops deserted him. He acquired a new name: John Softsword. After his brother Geoffrey died, in 1186, John allied with Richard against their father. In 1189, John married his cousin Isabella of Gloucester. (When she had no children, he had their marriage ended, locked her in his castle, and then sold her.) Upon the death of Henry II, Richard, the lionhearted, became king, went on crusade, and was thrown into prison in Germany on his way home, whereupon John, allying with Philip Augustus of France, attempted a rebellion against him, but Richard both fended it off and forgave him. “He is a mere boy,” he said. (John was almost thirty.) And lo, in 1199, after Richard’s death by crossbow, John, no longer lacking in land or soft of sword, was crowned king of England.

Many times he went to battle. He lost more castles than he gained. He lost Anjou, and much of Aquitaine. He lost Normandy. In 1200, he married another Isabella, who may have been eight or nine; he referred to her as a “thing.” He also had a passel of illegitimate children, and allegedly tried to rape the daughter of one of his barons (the first was common, the second not), although, as Church reminds readers, not all reports about John ought to be believed, since nearly all the historians who chronicled his reign hated him. Bearing that in mind, he is nevertheless known to have levied steep taxes, higher than any king ever had before, and to have carried so much coin outside his realm and then kept so much coin in his castle treasuries that it was difficult for anyone to pay him with money. When his noblemen fell into his debt, he took their sons hostage. He had a noblewoman and her son starved to death in a dungeon. It is said that he had one of his clerks crushed to death, on suspicion of disloyalty. He opposed the election of the new Archbishop of Canterbury. For this, he was eventually excommunicated by the Pope. He began planning to retake Normandy only to face a rebellion in Wales and invasion from France. Cannily, he surrendered England and Ireland to the Pope, by way of regaining his favor, and then pledged to go on crusade, for the same reason. In May of
1215, barons rebelling against the King’s tyrannical rule captured London. That spring, he agreed to meet with them to negotiate a peace. They met at Runnymede, a meadow by the Thames.

“Vinnie, we gotta talk about what ‘bookmaking’ means.”

The barons presented the King with a number of demands, the Articles of the Barons, which included, as Article 29, this provision: “The body of a free man is not to be arrested, or imprisoned, or disseised, or outlawed, or exiled, or in any way ruined, nor is the king to go against him or send forcibly against him, except by judgment of his peers or by the law of the land.” John’s reply: “Why do not the barons, with these unjust exactions, ask my kingdom?” But in June, 1215, the King, his royal back against the wall, affixed his beeswax seal to a treaty, or charter, written by his scribes in iron-gall ink on a single sheet of parchment. Under the terms of the charter, the King, his plural self, granted “to all the free men of our kingdom, for us and our heirs in perpetuity” certain “written liberties, to be had and held by them and their heirs by us and our heirs.” (Essentially, a “free man” was a nobleman.) One of those liberties is the one that had been demanded by the barons in Article 29: “No free man is to be arrested, or imprisoned . . . save by the lawful judgment of his peers or by the law of the land.”

Magnae Carta is very old, but even when it was written it was not especially new. Kings have insisted on their right to rule, in writing, at least since the sixth century B.C., as Nicholas Vincent points out in “Magna Carta: A Very Short Introduction” (Oxford). Vincent, a professor of medieval history at the University of East Anglia, is also the editor of and chief contributor to a new collection of illustrated essays, “Magna Carta: The Foundation of Freedom, 1215–2015” (Third Millennium). The practice of kings swearing coronation oaths in which they bound themselves to the administration of justice began in 877, in France. Magnae Carta borrows from many earlier agreements; most of its ideas, including many of its particular provisions, are centuries old, as David Carpenter, a professor of medieval history at King’s College, London, explains in “Magna Carta” (Penguin Classics), an invaluable new commentary that answers, but does not supplant, the remarkable and authoritative commentary by J. C. Holt, who died last year. In eleventh-century Germany, for instance, King Conrad II promised his knights that he wouldn’t take their lands “save according to the constitution of our ancestors and the judgment of their peers.” In 1100, after his coronation, Henry I, the son of William the Conqueror, issued a decree known as the Charter of Liberties, in which he promised to “abolish all the evil customs by which the Kingdom of England has been unjustly oppressed,” a list of customs that appear, all over again, in Magnae Carta. The Charter of Liberties hardly stopped either Henry I or his successors from plundering the realm, butchering their enemies, subjugating the Church, and flouting the
laws. But it did chronicle complaints that made their way into the Articles of the Barons a century later. Meanwhile, Henry II and his sons demanded that their subjects obey, and promised that they were protected by the law of the land, which, as Glanville had established, was unwritten. “We do not wish that you should be treated henceforth save by law and judgment, nor that anyone shall take anything from you by will,” King John proclaimed. As Carpenter writes, “Essentially, what happened in 1215 was that the kingdom turned around and told the king to obey his own rules.”

King John affixed his seal to the charter in June, 1215. In fact, he affixed his seal to many charters (there is no original), so that they could be distributed and made known. But then, in July, he appealed to the Pope, asking him to annul it. In a papal bull issued in August, the Pope declared the charter “null, and void of all validity forever.” King John’s realm quickly descended into civil war. The King died in October, 1216. He was buried in Worcester, in part because, as Church writes, “so much of his kingdom was in enemy hands.” Before his death, he had named his nine-year-old son, Henry, heir to the throne. In an attempt to end the war, the regent who ruled during Henry’s minority restored much of the charter issued at Runnymede, in the first of many revisions. In 1217, provisions having to do with the woods were separated into “the charters of the forests”; by 1225, what was left—nearly a third of the 1215 charter had been cut or revised—had become known as Magna Carta. It granted liberties not to free men but to everyone, free and unfree. It also divided its provisions into chapters. It entered the statute books in 1297, and was first publicly proclaimed in English in 1300.

“Did Magna Carta make a difference?” Carpenter asks. Most people, apparently, knew about it. In 1300, even peasants complaining against the lord’s bailiff in Essex cited it. But did it work? There’s debate on this point, but Carpenter comes down mostly on the side of the charter’s inadequacy, unenforceability, and irrelevance. It was confirmed nearly fifty times, but only because it was hardly ever honored. An English translation, a rather bad one, was printed for the first time in 1534, by which time Magna Carta was little more than a curiosity.

Then, strangely, in the seventeenth century Magna Carta became a rallying cry during a parliamentary struggle against arbitrary power, even though by then the various versions of the charter had become hopelessly muddled and its history obscured. Many colonial American charters were influenced by Magna Carta, partly because citing it was a way to drum up settlers. Edward Coke, the person most responsible for reviving interest in Magna Carta in England, described it as his country’s “ancient constitution.” He was rumored to be writing a book about Magna Carta; Charles I forbade its publication. Eventually, the House of Commons ordered the publication of Coke’s work. (That Oliver Cromwell supposedly called it “Magna Farta” might well be, understandably, the single thing about Magna Carta that most Americans remember from their high-school history class. While we’re at it, he also called the Petition of Right the “Petition of Shite.”) American lawyers see Magna Carta through Coke’s spectacles, as the legal
scholar Roscoe Pound once pointed out. Nevertheless, Magna Carta’s significance during
the founding of the American colonies is almost always wildly overstated. As cherished
and important as Magna Carta became, it didn’t cross the Atlantic in “the hip pocket of
Captain John Smith,” as the legal historian A. E. Dick Howard once put it. Claiming a
French-speaking king’s short-lived promise to his noblemen as the foundation of English
liberty and, later, of American democracy, took a lot of work.

On the 15th of this month, anno 1215, was Magna Charta sign’d by King John,
for declaring and establishing English Liberty,” Benjamin Franklin wrote in
“Poor Richard’s Almanack,” in 1749, on the page for June, urging his readers to
remember it, and mark the day.

Magna Carta was revived in seventeenth-century England and celebrated in eighteenth-
century America because of the specific authority it wielded as an artifact—the historical
document as an instrument of political protest—but, as Vincent points out, “the fact that
Magna Carta itself had undergone a series of transformations between 1215 and 1225
was, to say the least, inconvenient to any argument that the constitution was of its nature
unchanging and unalterable.”

The myth that Magna Carta had essentially been written in stone was forged in the
colonies. By the seventeen-sixties, colonists opposed to taxes levied by Parliament in the
wake of the Seven Years’ War began citing Magna Carta as the authority for their
argument, mainly because it was more ancient than any arrangement between a particular
colony and a particular king or a particular legislature. In 1766, when Franklin was
brought to the House of Commons to explain the colonists’ refusal to pay the stamp tax,
he was asked, “How then could the assembly of Pennsylvania assert, that laying a tax on
them by the stamp-act was an infringement of their rights?” It was true, Franklin
admitted, that there was nothing specifically to that effect in the colony’s charter. He
cited, instead, their understanding of “the common rights of Englishmen, as declared by
Magna Charta.”

In 1770, when the Massachusetts House of Representatives sent instructions to Franklin,
acting as its envoy in Great Britain, he was told to advance the claim that taxes levied by
Parliament “were designed to exclude us from the least Share in that Clause of Magna
Charta, which has for many Centuries been the noblest Bulwark of the English Liberties,
and which cannot be too often repeated. ‘No Freeman shall be taken, or imprisoned, or
deprived of his Freehold or Liberties or free Customs, or be outlaw’d or exiled or any
otherwise destroyed nor will we pass upon him nor condemn him but by the Judgment of
his Peers or the Law of the Land.’” The Sons of Liberty imagined themselves the heirs of
the barons, despite the fact that the charter enshrines not liberties granted by the King to
certain noblemen but liberties granted to all men by nature.
In 1775, Massachusetts adopted a new seal, which pictured a man holding a sword in one hand and Magna Carta in the other. In 1776, Thomas Paine argued that “the charter which secures this freedom in England, was formed, not in the senate, but in the field; and insisted on by the people, not granted by the crown.” In “Common Sense,” he urged Americans to write their own Magna Carta.

Magna Carta’s unusual legacy in the United States is a matter of political history. But it also has to do with the difference between written and unwritten laws, and between promises and rights. At the Constitutional Convention, Magna Carta was barely mentioned, and only in passing. Invoked in a struggle against the King as a means of protesting his power as arbitrary, Magna Carta seemed irrelevant once independence had been declared: the United States had no king in need of restraining. Toward the end of the Constitutional Convention, when George Mason, of Virginia, raised the question of whether the new frame of government ought to include a declaration or a Bill of Rights, the idea was quickly squashed, as Carol Berkin recounts in her new short history, “The Bill of Rights: The Fight to Secure America’s Liberties” (Simon & Schuster). In Federalist No. 84, urging the ratification of the Constitution, Alexander Hamilton explained that a Bill of Rights was a good thing to have, as a defense against a monarch, but that it was altogether unnecessary in a republic. “Bills of rights are, in their origin, stipulations between kings and their subjects, abridgements of prerogative in favor of privilege, reservations of rights not surrendered to the prince,” Hamilton explained:
Such was MAGNA CHARTA, obtained by the barons, sword in hand, from King John. Such were the subsequent confirmations of that charter by succeeding princes. Such was the Petition of Right assented to by Charles I., in the beginning of his reign. Such, also, was the Declaration of Right presented by the Lords and Commons to the Prince of Orange in 1688, and afterwards thrown into the form of an act of parliament called the Bill of Rights. It is evident, therefore, that, according to their primitive signification, they have no application to constitutions professedly founded upon the power of the people, and executed by their immediate representatives and servants. Here, in strictness, the people surrender nothing; and as they retain every thing they have no need of particular reservations. “We, THE PEOPLE of the United States, to secure the blessings of liberty to ourselves and our posterity, do ordain and establish this Constitution for the United States of America.” Here is a better recognition of popular rights, than volumes of those aphorisms which make the principal figure in several of our State bills of rights, and which would sound much better in a treatise of ethics than in a constitution of government.

Madison eventually decided in favor of a Bill of Rights for two reasons, Berkin argues. First, the Constitution would not have been ratified without the concession to Anti-Federalists that the adopting of a Bill of Rights represented. Second, Madison came to believe that, while a Bill of Rights wasn’t necessary to abridge the powers of a government that was itself the manifestation of popular sovereignty, it might be useful in checking the tyranny of a political majority against a minority. “Wherever the real power in a Government lies, there is the danger of oppression,” Madison wrote to Jefferson in 1788. “In our Governments the real power lies in the majority of the Community, and the invasion of private rights is chiefly to be apprehended, not from acts of Government contrary to the sense of its constituents, but from acts in which the Government is the mere instrument of the major number of the constituents.”

The Bill of Rights drafted by Madison and ultimately adopted as twenty-seven provisions bundled into ten amendments to the Constitution does not, on the whole, have much to do with King John. Only four of the Bill of Rights’ twenty-seven provisions, according to the political scientist Donald S. Lutz, can be traced to Magna Carta. Madison himself complained that, as for “trial by jury, freedom of the press, or liberty of conscience . . . Magna Charta does not contain any one provision for the security of those rights.” Instead, the provisions of the Bill of Rights derive largely from bills of rights adopted by the states between 1776 and 1787, which themselves derive from charters of liberties adopted by the colonies, including the Massachusetts Body of Liberties, in 1641, documents in which the colonists stated their fundamental political
principles and created their own political order. The Bill of Rights, a set of amendments to the Constitution, is itself a revision. History is nothing so much as that act of emendation—amendment upon amendment upon amendment.

It would not be quite right to say that Magna Carta has withstood the ravages of time. It would be fairer to say that, like much else that is very old, it is on occasion taken out of the closet, dusted off, and put on display to answer a need. Such needs are generally political. They are very often profound.

In the United States in the nineteenth century, the myth of Magna Carta as a single, stable, unchanged document contributed to the veneration of the Constitution as unalterable, despite the fact that Paine, among many other Founders, believed a chief virtue of a written constitution lay in the ability to amend it. Between 1836 and 1943, sixteen American states incorporated the full text of Magna Carta into their statute books, and twenty-five more incorporated, in one form or another, a revision of the twenty-ninth Article of the Barons: “No person shall be deprived of life, liberty, or property, without due process of law.” The Fourteenth Amendment was passed in 1868; it came to be interpreted as making the Bill of Rights apply to the states. In the past century, the due-process clause of the Fourteenth Amendment has been the subject of some of the most heated contests of constitutional interpretation in American history; it lies at the heart of, for instance, both Roe v. Wade and Lawrence v. Texas.

Meanwhile, Magna Carta became an American icon. In 1935, King John affixing his wax seal to the charter appeared on the door of the United States Supreme Court Building. During the Second World War, Magna Carta served as a symbol of the shared political values of the United States and the United Kingdom. In 1939, a Magna Carta owned by the Lincoln Cathedral was displayed in New York, at the World’s Fair, behind bulletproof glass, in a shrine built for the occasion, called Magna Carta Hall. As Winston Churchill was vigorously urging America’s entrance into the war, he contemplated offering it to the United States, as the “only really adequate gesture which it is in our power to make in return for the means to preserve our country.” It wasn’t his to give, and the request that the British Library send the Lincoln Cathedral one of its Magna Cartas, to replace the one he intended to give to the United States, was not well received. Instead, the cathedral’s Magna Carta was deposited in the Library of Congress—“in the safe hands of the barons and the commoners,” as F.D.R. joked in a letter to Archibald MacLeish, the Librarian of Congress—where it was displayed next to the Declaration of Independence and the Constitution, with which, once the war began, it was evacuated to Fort Knox. It was returned to the Lincoln Cathedral in 1946.

Magna Carta was conscripted to fight in the human-rights movement, and in the Cold War, too. “This Universal Declaration of Human Rights . . . reflects the composite views of the many men and governments who have contributed to its formulation,” Eleanor Roosevelt said in 1948, urging its adoption in a speech at the United Nations—she had
chaired the committee that drafted the declaration—but she insisted, too, on its particular genealogy: “This Universal Declaration of Human Rights may well become the international Magna Carta of all men everywhere.” (Its ninth article reads, “No one shall be subjected to arbitrary arrest, detention or exile.”) In 1957, the American Bar Association erected a memorial at Runnymede. In a speech given that day, the association’s past president argued that in the United States Magna Carta had at last been constitutionalized: “We sought in the written word a measure of certainty.”

Magna Carta cuts one way, and, then again, another. “Magna Carta decreed that no man would be imprisoned contrary to the law of the land,” Justice Kennedy wrote in the majority opinion in Boumediene v. Bush, in 2008, finding that the Guantánamo prisoner Lakhdar Boumediene and other detainees had been deprived of an ancient right. But on the eight-hundredth anniversary of the agreement made at Runnymede, one in every hundred and ten people in the United States is behind bars. #MagnaCartaUSA?

The rule of history is as old as the rule of law. Magna Carta has been sealed and nullified, revised and flouted, elevated and venerated. The past has a hold: writing is the casting of a line over the edge of time. But there are no certainties in history. There are only struggles for justice, and wars interrupted by peace. ♦

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