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Magna Carta: still shining bright for freedom

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Coming after a year of unprecedented restrictions on basic freedoms, Zachary Gorman's new book on Magna Carta, which is now available from the Institute for Public Affairs, could not be more timely.

A talented young historian, Gorman provides a remarkably accessible, yet carefully researched, overview of the famous charter's many lives. As in any book of great scope, it contains many things to discuss and some things to disagree with; but beneath its understated, at times frankly colloquial, manner lie insights that make it a joy to read.

The story of the great charter defies any simple summary. It is nonetheless clear that the Magna Carta of 1615 — when the “ancient freedoms” the charter supposedly granted were central to the attempts by parliament and the common lawyers to rein in the power of the Stuarts — was completely different from that signed in 1215, despite the fact that the relatively few words that still mattered were identical.

And it is also clear that no one would have been more surprised by the interpretation then being placed on those words than the earls, barons and senior clerics who authored the document agreed at Runnymede. “The Charter itself,” Gorman rightly notes, “was completely misinterpreted”, being hailed as according rights “which were never intended”, including “all taxes being approved by Parliament, trial by jury, and a broad understanding of habeas corpus”.

Moreover, far from Runnymede marking a turning point, there is, prior to the Elizabethan era, little sign that the charter was viewed as having constitutional status, and even less that it was seen as enshrining a “higher law of liberty”.

Rather, it was almost entirely concerned with safeguarding the property of the church and of 200 or so large feudal landowners, with some obscurely phrased constraints on the crown’s ability to expropriate, fine or arrest any “free person” tucked away amid provisions dealing with England’s complex laws of ownership and inheritance.

But those few phrases proved sufficient to sustain a centuries-long process of striving for freedom. In part, their enduring impact — especially when compared to the similar pledges angry nobles extracted from virtually all of King John’s continental counterparts — reflected England’s unusual social and political structure.

On the one hand, its monarchy was undoubtedly the strongest in late mediaeval and early modern Europe, presiding over a territory that was exceptionally unified by the standards of the time. On the other, its rulers faced a particularly compact, cohesive and combative nobility, along with a rising, commercially minded gentry that thrived as the wool trade expanded and the economy became increasingly market-oriented.

With power balancing power to a much greater degree than on the continent, each group had incentives to protect its position by restricting the discretion of the others, including by formalising the “liberties” it claimed and vesting responsibility for their preservation in the courts.

And as each component of that hard-fought bargain was magically transformed into “ancient custom”, no group was likely to gain by wiping the slate clean, so that — in the words of Arthur Hogue, an eminent historian of the common law — England became “unique among the nations of western Europe in bringing a mediaeval customary legal system into the modern world”.

However, every bit as important as interests in explaining those phrases’ persisting resonance were ideas. It is, in particular, impossible to overstate the contribution of the Christian doctrine

of freedom, with its emphasis in the High Middle Ages on the supremacy of natural law and on the monarch's obligation to rule by consent.

Sir John Fortescue, a towering chief justice of England, was articulating that doctrine when he authoritatively stated that “A law is necessarily adjudged cruel if it diminishes liberty, (because) liberty is implanted in human nature by God”; and it was in the same spirit that Fortescue's equally towering successor, Sir Edward Coke, described the charter's due process clauses as “shreds of gold”, whose “excellency” was such that it would be a crime to “let them pass”.

No one is more aware than Gorman of the limitations of “freedom” as it was defined in earlier times and of the prolonged battles waged to give the term its modern scope, not least England's 17th century civil war. But as he lucidly argues, the fact that the charter had been repeatedly interpreted by the courts as “declaring” a hallowed core of rights meant that British reformers, when they sought to expand the reach of liberty, could always vindicate their claims by referring to ancestral authority.

The effort to build a freer world, Marx famously proclaimed, “cannot draw its poetry from the past, but only from the future”. However, thanks to the sacralisation of Magna Carta, the struggle for rights in the UK and its dominions never needed to base its legitimacy on revolutionary utopianism, with its fantasies of reshaped humanity. Instead, exceptionally by international standards, it could find a reliable ally — and not an adversary — in custom and tradition, entrenching their role as the plinth of society.

That, in turn, facilitated a remarkable degree of institutional continuity, accommodating and absorbing the seismic political transitions that tore one continental power apart after the other.

The Romans thought of culture — a word that like “agriculture” derives from the Latin “colere”, which means to cultivate, tend and preserve — as combining organic growth and ongoing change, with the “mos maiorum” or “custom of the founders” serving, in Plutarch's phrase, as “the central weight, the ballast in the ship” that “keeps things in equilibrium” as the ship navigates the perilous journey to its destination.

In exactly the same way, a political culture needs its ballast too, and never more so than in stormy times. After all, politics is inevitably concerned with the things that divide us, not the things that unite us; and because the conflicts it fosters are always in danger of spiralling out of control, a viable political community requires common points of reference by which to remain on course.

Evolving over the centuries, the foundation myth of Magna Carta has acted as that ballast in Britain and the countries of British settlement, standing as a bulwark against tyranny and a lodestar of freedom. Embedded in the collective imagination, it has offered a usable past we can all share, regardless of where our individual journeys began.

That is why the attacks on that heritage and its achievements are so damaging: they shatter our common ground and leave a minefield in its place. And that is why we are indebted to Gorman, whose book helps ensure that so precious an inheritance retains the lustre it richly deserves.