

Magna Carta at 800

From King John, to King George, to King Barack

June 15th marks the [800th anniversary](#) of the sealing of the [Magna Carta](#) at Runnymede, England.^[1] It was a peace agreement between England's tyrannical and cruel King John and a group of rebel barons. Part of the agreement was supposed to give all free men (not all people) protections against certain abuses by the king, such as arbitrary imprisonment and denied or delayed trials.

The famous chapter 39^[2] states, "No free man shall be seized or imprisoned, or stripped of his rights or possessions, or outlawed or exiled, or deprived of his standing in any 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."

As Peter Linebaugh writes, in his enlightening book, *The Magna Carta Manifesto*, "Scarcely had the mud of Runnymede dried on his boots than John resumed war on the barons and began to plot with the pope against them."^[3] John wrote to Pope Innocent III, "I have been forced to sign this awful thing!" The pope's response declared "the charter to be null and void of all validity forever." The charter lasted just ten weeks.^[4]

This quickly led to more war, the [First Baron's War](#), in which France invaded England at the request of the barons in May 1216. The charter was modified and reissued on behalf of King John's son, Henry III, age 9, after John died of dysentery in October 1216. It was an attempt to gain support for the war. To no avail.

It was again reissued on September 11, 1217 as part of a peace treaty between France and England. But this time more concessions were made. Along with the reissue of the Magna Carta came another charter, the [Charter of the Forest](#). This charter is largely forgotten. It "granted to all Men" access to common land for obtaining food, firewood and building materials. It guaranteed employment and sustenance. The Magna Carta was also expanded in reference to the commons. The amended chapter 7 provided that a widow "shall have meanwhile her reasonable estover in the common." Estovers were provisions for sustenance.^[5]

It was out of the struggles over the commons that the Robin Hood tales came. The legendary sheriff of Nottingham might have been based on the real sheriff, Philip Marc, singled out for removal in article 50 of the Magna Carta.

The term Magna Carta, or Great Charter, was first used in 1218 to distinguish the Charter of Liberties, the first charter, from its 1217 companion, the Charter of the Forest. Both charters were reissued by Henry III, now an adult, in 1225. This reconfirmation was in order to gain the barons' support for his war in France. He confirmed both charters again in 1253, in exchange for more taxes. In 1267, after the Second Baron's War, Henry, yet again, confirmed the terms of the Magna Carta.

Both charters were instated as English law by Henry III's son, Edward I, in 1297. This confirmation was in order to avoid civil war after having instituted new taxes. This was the sixth confirmation, in less than a century, of one or both charters. In every case it came from political necessity, never as a gift.

The Magna Carta, with good reason, is generally seen as being the foundation of Anglo-American law, even though it was preceded by the [Coronation Charter](#) of Henry I in 1100, and Anglo-Saxon law that goes all the way back to the Law of Ethelbert in the early 7th century. It's the Magna Carta, as a result of continued struggle, that has had lasting influence.

Henry I's charter was issued unilaterally in an attempt at gaining political support. Its provisions were completely ignored by Henry and subsequent kings. The Magna Carta, however, was not granted from above, but forced from below (though not far below). While Henry's charter was just words, the Magna Carta was made operative through continuous struggle.

Though the 1100 charter, rediscovered in 1213 by Archbishop Stephen Langton, did have some later influence. Langton told the barons that the charter could be the means "by which (if they pleased) they might re-establish their ancient liberties." They swore an oath to "contend for those liberties even to death itself." The Magna Carta, authored largely by Langton, was the result.^[6]

Our contemporary notion of due process stems from chapter 39's "by the law of the land". The more expansive "due process of law" first appears in a statute under Edward III in 1354. "No man of what state or condition he be, shall be put out of his lands or tenements nor taken, nor disinherited, nor put to death, without he be brought to answer by due process of law."^[7]

And, as you can see, "no free man" became "no man." This was changed in a previous Edward III statute in 1331.^[8] "Free man" (*liber homo*) was itself expanded from "baron" during the process of working out the provisions of the original charter.^[9]

In the New World

The first hint of legal rights in the American colonies goes all the way back to the first charter, the [Charter of Virginia](#), 1606, which declared, "that all and every the Persons being our Subjects... shall have and enjoy all Liberties, Franchises, and Immunities... as if they had been abiding and born, within this our Realm of England."^[10] This sounds great, but with no specific rights cited, this declaration guaranteed nothing. As with Henry I's Charter of 1100, these supposed rights were given by grace, the king could ignore them, so the declaration was meaningless. Though, also as with the 1100 charter, subsequent generations would make use of these words in their struggle for substantive rights.

Just as Archbishop Langton looked to the Coronation Charter in the struggle for the Magna Carta, Patrick Henry looked to the Virginia Charter in the struggle for American independence. [His resolutions](#) of 1765 cited "the liberties, privileges, franchises, and immunities" granted by

the Virginia Charters (1606 and 1609) as grounds for opposition to the Stamp Act.[11] This argument played a major role in developing the independence movement. As was said at the time, it "gave the first impulse to the ball of revolution." [12] [The Declaration of Rights and Grievances](#), adopted later in the year by the First Congress of the American Colonies, made the same argument, likewise with the [Declaration of Rights](#), adopted by the First Continental Congress in 1774.

The Maryland Act for the Liberties of the People, 1639, contained a version of Magna Carta's chapter 39. This was the first due process guarantee in the colonies. The better known Massachusetts Body of Liberties, 1641, contained the first extensive bill of rights, 98 provisions, including a version of chapter 39. It also contained provisions for common aid and access to commons: aid to widows; fishing access; grazing access. Both of these rights bills, along with several subsequent ones in other colonies, unlike the colonial charters, were made by partially representative assemblies. They also made specific guarantees, instead of vague declarations. These were significant advances.

[Virginia's Declaration of Rights](#), June 1776, was the first state bill of rights. Section eight guaranteed due process.

In *Common Sense*, January 1776, Thomas Paine called for a "Charter of the United Colonies," in the manner of "what is called the Magna Charta of England," that would secure "freedom and property to all men." [13] The charter was drafted in June and signed on July fourth as the Declaration of Independence. Jefferson's original draft is preserved as a "Charter of Freedom" in the National Archives. [14] Among the king's 28 "abuses and usurpations" listed in the Declaration are various violations of due process.

The "due process" phrase came to the Constitution by way of New York. In drafting the Bill of Rights, James Madison used Virginia's proposed Bill as his model, but he took "due process" from New York's proposal. The Virginia proposal had the standard "law of the land." The first instance of "due process" was in a 1787 New York statute. The New York Charter of Liberties, 1683, had "due course of Law." [15]

The Bill of Rights was not originally part of the Constitution. The framers thought it useless at best. House Representative James Jackson displayed a common hostility to the Bill, claiming that after fighting a war under a confederation, then adopting a federal government, that a bill of rights would amount to a third revolution. "Our instability will make us objects of scorn. We are not content with two revolutions in less than fourteen years; we must enter upon a third, without necessity or propriety." [16] It was only after intense public pressure that the Bill was added in the first session of Congress. Madison, the main author of the Bill, was himself originally opposed to having one.

On December 15, 1791, the [Bill of Rights](#) was ratified into law. Due process was guaranteed in the 5th Amendment, which states, "No person shall... be deprived of life, liberty, or property, without due process of law." But don't be fooled by the term person. By looking at the status of

Native Americans, slaves, and women, we can see that only a small minority of human beings were considered persons.

The 14th Amendment, 1868, was supposed to promote former slaves to the status of persons by granting citizenship to everyone born in the states, applying due process guarantees at the state level, and guaranteeing "equal protection of the laws." All this was effectively nullified by [Black Codes](#) and many blacks were re-enslaved thanks to a slavery loophole in the 13th Amendment. (The loophole still exists.) While not helpful to dark skinned humans, the 14th Amendment was successfully used to grant personhood to corporations.

Federal troops were removed from the south in the [Compromise of 1877](#) and terror and Jim Crow would reign for nearly another century. Not until civil rights legislation in the 1960s would blacks gain the status of persons. Women didn't gain the right to vote until 1920 and couldn't serve on juries in every state until 1975. These advances were the result of many decades of struggle, long after rights were granted on paper.

Due process made its way into international law in 1948, in the [Universal Declaration of Human Rights](#) (UDHR). Article 9 states, "No one shall be subjected to arbitrary arrest, detention or exile." Article 10 states, "Everyone is entitled in full equality to a fair and public hearing by an independent and impartial tribunal." Article 11 says "Everyone" is "presumed innocent until proved guilty according to law in a public trial." The [International Covenant on Civil and Political Rights](#) (ICCPR), adopted in 1966, elaborates on these guarantees. Eleanor Roosevelt, the initial chairperson on the commission that drafted the UDHR, declared her hope that the Declaration would be "the Magna Carta of all mankind."^[17]

The Great Charter Today

So with all the advances in people's rights made over the centuries and with human rights now enshrined even in international law, how does the Great Charter's legacy currently stand in practice?

Deep inequalities that are the legacy of slavery and Jim Crow are still very much with us. The uprisings in Ferguson and Baltimore are a reminder. The system of mass incarceration and the war on drugs function as a New Jim Crow, as Michelle Alexander explains in her great book by that name.^[18] Humans born outside of our borders are subject to a separate legal system appropriate for their non-personhood. Lack of equality for women can be seen in the pay gap, among other disparities. The Equal Rights Amendment, proposed in 1923, has yet to be ratified. And LGBT humans are still struggling for personhood as well.

Without a shred of due process, and far from any battlefield, people are being routinely killed by drones. That goes for the targeted criminal suspects, or people thought to be possible future threats, as well as whoever happens to be nearby. There's a word for due process free killing beyond the battlefield: Murder. There's a word for murders that strike fear into entire communities of potential victims: Terrorism. If a foreign government was bombing our neighborhoods this would be perfectly obvious, but since it's our government targeting foreign

communities it's incomprehensible.

As for due process, not to worry, former Attorney General Eric Holder told us everything's legit. "Due process and judicial process are not the same," he explained. "The Constitution guarantees due process, not judicial process." [19] The president can kill whomever he likes so long as he had a meeting beforehand.

"King John would have nodded in approval," [writes Noam Chomsky](#), in a recent Magna Carta review. (This review covers much of the same ground.) He goes on, "The term 'guilty' has also been given a refined interpretation: it now means 'targeted for assassination by the White House.' Furthermore, the burden of proof has been shifted to those already assassinated by executive whim. As *The New York Times* reported, 'Mr. Obama embraced a disputed method for counting civilian casualties [that] in effect counts all military-age males in a strike zone as combatants...unless there is explicit intelligence posthumously proving them innocent.'" [20]

After who knows how many hundreds or thousands of civilians have been killed in drone strikes (estimates [here](#)), with virtually no reaction, some concerns have been raised after the recent killing of two non-Muslim westerners, since non-Muslim westerners are candidates for personhood. [21] Incidentally, they were killed in a "signature strike," which means not only were they not known to be there, but that the CIA had no idea who the intended targets were either. They just fit a profile.

Other non-persons are still caged in Guantanamo, also without any due process. [Section 1021 of the National Defense Authorization Act](#) authorizes due process free indefinite detention on US soil. There has been no accountability for torture and rendition for torture. (Rendition is grievance No. 19 in the Declaration of Independence. The [Habeas Corpus Act](#), 1679, was a protection against rendition. It was enshrined into Article 1, Section 9 of the Constitution.)

So much for the Magna Carta. As Oliver Cromwell said after arbitrarily imprisoning one critic, along with the critic's lawyer, the "Magna Carta should not control his actions which he knew were for the safety of the Commonwealth.... Magna Charta, Magna Carta!" He had similar respect for the 1628 "Petition of Shite." [22]

There is some possibly good news in the passage and signing of the USA Freedom Act on June 2nd. While it leaves in place most of the Fourth Amendment defying mass surveillance programs revealed by Edward Snowden two years ago, it somewhat limits the NSA's ability to look at bulk phone metadata. The NSA will no longer be able to store the bulk metadata and must get data from phone companies in a "specific selection term" search. How broadly this will be interpreted and whether or not this legislation is a small step forward is hard to tell. It does bring some reform to the secret rubber stamping Foreign Intelligence Surveillance Court.

The Charter of the Forest

While the Great Charter found its way into the American colonies and subsequent federal constitution, it's not exactly surprising that the people who expelled the indigenous population from their common land would ignore the Charter of the Forest. Though, in Anglo-American history, the process of privatizing the commons started long before. The Forest Charter itself was a demand for a return of the forests to common use. The Norman regime, starting with what Paine called "a French bastard" and his "armed banditti," in 1066, overturned long standing practices of common land use. King John, the great great grandson of the "French bastard" and "plunderer of the English nation," followed the family tradition of taking the forests for his own sporting.[23]

Thomas More's *Utopia*, 1516, was largely an attack on the enclosure movement. He explained that tenants are dispossessed "when an insatiable wretch, who is a plague to his country, resolves to inclose many thousand acres... What is left for [the tenants] to do, but either to steal and so to be hanged (God knows how justly), or to go about and beg? And if they do this they are put in prison as idle vagabonds; while they would willingly work, but can find none that will hire them." [24]

While More's defense of the commons would come to nothing, another part of his vision turned out to be prophetic: "If there is any increase over the whole island, then they draw out a number of their citizens... and send them over to the neighboring continent... taking the inhabitants into their society.... But if the natives refuse to conform themselves to their laws, they drive them out... and use force if they resist. For they account it a very just cause of war, for a nation to hinder others from possessing a part of that soil, of which they make no use." [25]

The most significant shift in the long process of enclosure was the dissolution of the monasteries, and their commons, in 1536 by Henry VIII. This was one of the final acts of the English Reformation, which started with Henry's determination to get rid of his wife, requesting an annulment in 1527. The pope refused, so Henry said to hell with the pope, declared himself head of the Church of England, banished his wife (not the worst of fates among his six wives), and greatly escalated the dislocation of the peasantry. More, who not only defended the commons, but opposed the Reformation, was beheaded by Henry in 1535.

Thomas Paine, the greatest of our nation's founders, and the only genuine revolutionary in the bunch, was the first to propose the modern version of the commons, or rather alternative to the commons, that we now call the welfare state. His proposals were first developed in part two of the *Rights of Man*, 1792. He extended the argument in *Agrarian Justice*, 1796. The title page summed up his program:

AGRARIAN JUSTICE,
OPPOSED TO
AGRARIAN LAW,
AND TO
AGRARIAN MONOPOLY.

BEING A PLAN FOR MELIORATING
THE CONDITION OF MAN,
BY CREATING IN EVERY NATION,
A NATIONAL FUND,
To Pay to every Person, when arrived at the Age of
TWENTY-ONE YEARS, the Sum of FIFTEEN
POUNDS Sterling, to enable HIM or HER to begin
the World!
and also,
Ten Pounds Sterling per Annum during life to every
Person now living of the Age of FIFTY YEARS, and to
all others when they shall arrive at that Age, to enable
them to live in Old Age without Wretchedness, and
go decently out of the World.[26]

In the text, he explains that the loss of the commons, or what he calls "natural property," is a common feature of so called civilized society. This development has made "one part of society more affluent, and the other part more wretched, than would have been the lot of either in a natural state." But a return to the natural state is neither possible nor desirable. "The thing therefore now to be done, is, to remedy the evils, and preserve the benefits, that have arisen to society, by passing from the natural to that which is called the civilized state." [27]

"Cultivation is, at least, one of the greatest natural improvements ever made by human invention. It has given to created earth a tenfold value. But the landed monopoly, that began with it, has produced the greatest evil. It has dispossessed more than half the inhabitants of every nation of their natural inheritance, without providing for them, as ought to have been done, as an indemnification for that loss, and has thereby created a species of poverty and wretchedness that did not exist before." [28] (The English and Native American commons, as with many others, were far from uncultivated. They were developed over centuries and managed by complex customs.)

Paine made clear that what he proposed was "not charity but a right--not bounty but justice.... It is the practice of what has unjustly obtained the name of civilization... to make some provision for persons becoming poor and wretched, only at the time they become so.--Would it not, even as a matter of economy, be far better, to devise means to prevent their becoming poor." [29]

Paine's concern for "the most miserable of the human race" was not shared by the constitutional framers.[30] In fact, their chief concern was the reverse. Madison explained in Federalist No. 10: "The most common and durable source of factions, has been the various and unequal distribution of property.... There are two methods of curing the mischiefs of faction: the one, by removing its causes; the other, by controlling its effects." The option of removing the cause of the problem is dismissed. Instead, he states that the "principal task" of government is to maintain and defend these inequalities.[31]

This was written in a public appeal for the adoption of the Constitution. In the secret convention that created the Constitution he was even blunter. "An increase of population will of necessity increase the proportion of those who will labour under all the hardships of life, and secretly sigh for a more equal distribution of its blessings." Government must protect against "the future danger" of this "leveling spirit."^[32] It "ought to be so constituted as to protect the minority of the opulent against the majority."^[33] Madison got the government he asked for.

Common Sense was a call for a new Magna Carta. The result was the Declaration of Independence. *Agrarian Justice* was a call for a new Forest Charter. It was ignored. Paine said, "A revolution in the state of civilization, is the necessary companion of revolution in the system of government."^[34] This companion revolution has yet to take place.

Jefferson, for his part, in a letter to Madison, lamented "that unequal division of property which occasions the numberless instances of wretchedness.... I am conscious that an equal division of property is impracticable, but the consequences of this enormous inequality producing so much misery to the bulk of mankind, legislators cannot invent too many devices for subdividing property." Also, they could "exempt all from taxation below a certain point, and to tax the higher portions or property in geometrical progression as they rise.... The earth is given as a common stock for man to labor and live on.... We must take care that other employment be provided to those excluded from [its] appropriation" and "provide by every possible means that as few as possible shall be without a little portion of land."^[35]

Jefferson's draft constitution for Virginia, June 1776, declared, "Every person of full age neither owning nor having owned 50 acres of land, shall be entitled to an appropriation of 50 acres or to so much as shall make up what he owns or has owned 50 acres in full and absolute dominion."^[36] Jefferson was in Philadelphia at the Second Continental Congress during Virginia's Constitutional Convention and his draft arrived too late to be considered. (Former slaves would later be promised, then denied, 40 acres, in Sherman's [Special Field Orders, No. 15.](#))

Where would the land come from for Jefferson's generous appropriation plan? He followed the Utopian scheme, though his vision was grander than More's. And it was carried out. He wrote to James Monroe, "However our present interests may restrain us within our own limits, it is impossible not to look forward to distant times, when our rapid multiplication will expand itself beyond those limits, and cover the whole northern, if not the southern continent, with a people speaking the same language, governed in similar forms, and by similar laws; nor can we contemplate with satisfaction either blot or mixture on that surface."^[37]

And if the natives don't cooperate? "We shall be obliged to drive them, with the beasts of the forest into the Stony mountains...^[38] to pursue them to extermination, or drive them to new seats beyond our reach."^[39] And, of course, along with the expulsion and slaughter of the natives came enslavement of Africans. Jefferson set a personal example by owning of hundreds of slaves. All this is especially illuminating coming from among the most enlightened of our

country's founding fathers. The founders' struggle for their own freedom and prosperity was inextricably intertwined with their determination to deprive others of theirs. As Samuel Johnson put it in [his response](#) to the 1774 Declaration of Rights, "we hear the loudest yelps for liberty among the drivers of negroes."^[40] Slave agitation and restrictions on land expropriation were on the list of grievances in the Declaration of Independence. (Slavery was part of More's Utopia as well.)

State of the Commoners

As with the Great Charter, international law also extends the legacy of the Forest Charter. Article 25 of the UDHR guarantees "adequate... food, clothing, housing and medical care and necessary social services." Article 11 of the [International Covenant on Economic, Social and Cultural Rights](#) (ICESCR), 1966, declares, "the right of everyone to an adequate standard of living... to be free from hunger" and ensures "an equitable distribution of world food supplies in relation to need." Article 1 of the ICESCR and the ICCPR states, "In no case may a people be deprived of its own means of subsistence." Article 25 of the ICESCR and 47 of the ICCPR declare, "the inherent right of all peoples to enjoy and utilize fully and freely their natural wealth and resources." Both the UDHR and the ICESCR guarantee full employment, fair pay, labor rights, and education for all.

The UDHR, the ICCPR, and the ICESCR constitute the [International Bill of Human Rights](#) (IBHR). The preambles of all three proclaim the ideal of the "freedom from fear and want" (the third and fourth of FDR's Four Freedoms). The ICESCR adds that this freedom "can only be achieved if conditions are created whereby everyone may enjoy his economic, social and cultural rights, as well as his civil and political rights."

All these provisions were the product of the most devastating war the world has ever seen. Just as the expanded Magna Carta and the Charter of the Forest were an outcome of the ravages of the First Baron's War, the protections of the UN Charter and the IBHR were a product of WWII. Roosevelt's [Four Freedoms](#), which are embodied in the IBHR, were first proposed in his pitch for entering the war in January 1941. They were put into the [Atlantic Charter](#) that August. They were then put into international law after the war. But, as we saw in the history of the Magna Carta and the Charter of the Forest, expanded guarantees on paper don't guarantee expanded rights in practice. So what does the legacy of the Forest Charter look like in practice?

As many as 30 million Americans are unemployed or underemployed.^[41] Over 45 million live in poverty.^[42] About 15% of households are food insecure.^[43] Basic provisions for the poor have been under assault for 35 years, gutted by both parties. Though productivity has steadily increased, wages have been stagnant for over 40 years. The minimum wage, adjusted for inflation, is about a third less today than it was in 1968. It would be about three times its current rate if it had kept pace with productivity. Many full time workers are on welfare because they can't live on minimum wage. We pay twice as much for healthcare as many other developed countries and have worse outcomes and millions left uninsured. Not even Social Security is safe. And while higher education is free for all in many countries, here students are

racked with ever increasing levels of debt, currently \$1.3 trillion. All this in the richest country on the planet.

State of the Commons

As for the commons, due to a couple centuries of burning fossil fuels on a massive scale, the atmosphere now contains too much carbon to maintain a stable climate, and we continue to pump ever higher quantities into the air. This is leading us towards ecological catastrophe. Gurth, a swineherd in *Ivanhoe*, a Robin Hood tale set in the time of the Magna Carta, says, "little is left us but the air we breathe, and that appears to have been reserved with much hesitation, solely for the purpose of enabling us to endure the tasks that they lay upon our shoulders." [44] The hesitation is no more. Even the air we breathe, the last of the commons, is no longer worth sustaining.

Garrett Hardin's famous and influential essay, "[The Tragedy of the Commons](#)," 1968, confused as it is, describes a very real problem. [45] What he calls the tragedy of the commons is actually the tragedy of unfettered capitalism and the complete annihilation of all commons. This, as it relates to climate change, is the most serious problem we face today.

Hardin illustrates the problem with a hypothetical scenario: "Picture a pasture open to all.... As a rational being, each herdsman seeks to maximize his gain.... Since the herdsman receives all the proceeds from the sale of the additional animal" and "the effects of overgrazing are shared by all the herdsmen... the rational herdsman concludes that the only sensible course for him to pursue is to add another animal to his herd. And another; and another... But this is the conclusion reached by each and every rational herdsman sharing a commons. Therein is the tragedy.... Freedom in a commons brings ruin to all."

The first thing to note here is Hardin's definition of a rational being: Someone who only cares about short term material gain, regardless of disastrous consequences, even to his or her own long term material interests. The next thing to note is three assumptions he makes about commoning: 1) Commoners are "rational beings"; 2) There is unlimited demand for their "rational" pursuits; 3) That commons are completely unregulated. All three of these assumptions are false. (The Forest Charter was a set of regulations based on longstanding customs.) The completely hypothetical tragedy is an absurd fantasy.

But here's the rub. In the economic system that actually dominates the globe today, all three of these assumptions are true. "Rational beings," such as the ones that run the fossil fuel industry, have plenty of demand for their product, and they can extract and sell their product without any restrictions. Melting glaciers just make room for more drilling of the riskiest sort. (Kayaktivists in Seattle have taken a stand on this front.)

The existing system is even worse than Hardin's fictional "horror of the commons." Madison's "opulent minority" own the government, which in turn protects and subsidizes them. Regulations and alternatives are blocked. And if the CEO of Royal Dutch Shell wakes up

tomorrow and decides he doesn't want to continue with this madness, he'll just be replaced with someone else who will. With a few word changes, Hardin sums this up fairly well: "The inherent logic of the [existing system] remorselessly generates tragedy.... Each man is locked into a system that compels him to increase [profit] without limit--in a world that is limited. Ruin is the destination toward which all men rush, each pursuing [maximum profit] in a society that believes in the freedom of the [most destructive activities]. [Unconstrained capitalism] brings ruin to all."

Not coincidentally, while this system marches us towards catastrophe, indigenous communities around the world are at the forefront of the fight against this destruction. They're defending their local commons as well as the global commons.

Conclusion

As has always been the case, our liberties, and the basic resources on which those liberties stand, must be fought for. The impending threat to the entire ecological system that life depends on is a new addition to these age old struggles. (To say it's impending puts it much too lightly. Estimates of current death tolls from climate change range from 150,000 to 400,000 annually.[46]) Another recent addition, unleashed 70 years ago, is the ever present threat of nuclear annihilation.

In the struggle for liberty and security, we must, among other things, appeal to the words that are supposed to guarantee liberty and security. We should appeal to the Declaration of Independence, the Constitution, and international law, just as our predecessors appealed to the Charter of Liberties and the Charter of the Forest. As [King said](#), such documents are promissory notes. We must demand that the checks be cashed.[47] Without a demand, the promise is ignored and rights are denied. As [Frederick Douglass told us](#), "Power concedes nothing without a demand. It never did and it never will." [48]

Crane Brinton showed in *The Anatomy of Revolution*, demands for change usually do not result from oppression alone, but from thwarted hopes and expectations.[49] People must not only be catching hell, but know that they deserve better and that alternatives are possible. James Jackson was right about the Bill of Rights constituting a third American revolution, though it's one that's still in the works, currently in regression in many ways, and victory's not guaranteed. Nominal rights raise expectations and create the demand for substantive rights. These pieces of paper can be of tremendous value. Let's make the most of them.

Notes

[1] Also see bl.uk/magna-carta and magnacarta.cmp.uea.ac.uk.

[2] The articles were first enumerated by William Blackstone in *The Great Charter and Charter of the Forest*, 1759. This was the first scholarly edition of the charters.

[3] Peter Linebaugh, *The Magna Carta Manifesto: Liberties and Commons for All* (Berkeley: University of California Press, 2008), 35. Magna Carta chapter 39 is quoted from Linebaugh, 289.

- [4] Ari Shapiro, "At 800 And Aging Well, The Magna Carta Is Still A Big Draw," NPR, April 13, 2015, [npr.org](#).
- [5] Linebaugh, *The Magna Carta Manifesto*, 300, 284.
- [6] Ibid, 269.
- [7] "Due Process," [wikipedia.org](#); Linebaugh, *The Magna Carta Manifesto*, 186; Bernard Schwartz, *The Bill of Rights: A Documentary History* (New York: Chelsea House Publishers, 1971), "New York Ratifying Convention, 1788: Commentary," 855.
- [8] Ferdinand Mount, "Back to Runnymede," *London Review of Books*, April 23, 2015.
- [9] Schwartz, *The Bill of Rights: A Documentary History*, "Magna Carta: Commentary," 6. Also see "By the law of our realm or the judgement of their peers," The Magna Carta Project, [magnacarta.cmp.ac.uk](#).
- [10] Ibid, "First Charter of Virginia, 1606," 59-60.
- [11] "Virginia Resolves," [wikipedia.org](#); "Virginia Resolves on the Stamp Act (1765)," *Encyclopedia Virginia*, March 28, 2012, [encyclopediavirginia.org](#); "Patrick Henry's Resolutions Against the Stamp Act," [redhill.org](#).
- [12] Jon Kukla, "Patrick Henry (1736-1799)," *Encyclopedia Virginia*, March 31, 2015, [encyclopediavirginia.org](#).
- [13] Thomas Paine, *Rights of Man, Common Sense and Other Political Writings* (New York: Oxford University Press, 2008), 33.
- [14] Linebaugh, *The Magna Carta Manifesto*, 119.
- [15] Schwartz, *The Bill of Rights: A Documentary History*, "New York Ratifying Convention, 1788: Commentary," 855-857.
- [16] Ibid, "House of Representatives Debates, May-June, 1789," 1035.
- [17] Quoted by Peter Meyer, "The International Bill: A Brief History," in *The International Bill of Human Rights* (Encinitas: Entwistle Books, 1999), XXXI. All quotes from the UDHR, the ICCPR, and the ICESCR are from *The International Bill of Human Rights*.
- [18] Michelle Alexander, *The New Jim Crow* (New York: The New Press, 2010).
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