

MAGNA CARTA AND THE PARLIAMENT

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Magna Carta had nothing to say directly about parliaments. They didn't exist in 1215 and the first English parliament would not make its appearance until the second half of that century, though the word 'parliament' first appeared in official usage in the 1230s. Yet we can argue with conviction that Magna Carta is at the root of Westminster-style parliamentary democracy. How can such a claim be sustained?

From the 8th to 11th centuries Anglo-Saxon kings had tolerated a forerunner of parliament, the witan, literally a meeting of wise men, but the witan had disappeared before Magna Carta. Norman kings periodically met with the nobility in Great Councils, but they were not standing institutions and exercised no legislative authority. Clause 61 of Magna Carta, however, promised that 'the barons shall elect twenty-five of their number to keep and cause to be observed with all their might, the peace and liberties granted and confirmed by this charter'. That body would evolve into the House of Lords.

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An institution carrying the name ‘parliament’ was convened some four decades after Magna Carta through the initiative of an ambitious but enlightened noble, Simon de Montfort, brother-in-law of the king, Henry the Third. These meetings of barons and king were generally called to authorise fresh taxes. De Montfort sought to consolidate and expand the powers and responsibilities of these parliaments under an agreement with Henry called the Provisions of Oxford in 1258, which included the genesis of a cabinet—a council of fifteen. But the king reneged on the agreement, just as John had done after the signing of Magna Carta. A short civil war followed, Henry was captured, and de Montfort’s new-look parliament convened in 1265, including representatives of knights and burgesses from the towns. Some historians date the birth of the English parliament, or more specifically the House of Commons, from that year, but de Montfort’s creation did not enjoy a long life. Henry’s son, Edward, led a revolt and de Montfort was killed at the battle of Evesham. Fortunately for British political history, Henry had the good sense to continue to meet with his barons to discuss matters of national interest, and the word parliament became enshrined in the lexicon of English political life. The Commons met separately from the nobility, but from 1341 they met together, thereby creating two chambers.

It would take another four centuries, however, before Parliament became the recognised custodian and guarantor of those collective and individual rights spelled out in Magna Carta. Although the Tudor and Stuart kings continued to assume that they ruled by divine right, Parliament secured major concessions from Charles the First in 1629, when he agreed to ratify the Petition of Right, which re-stated the validity of Magna Carta. In particular, the Petition demanded restrictions on non-parliamentary

taxation, the forced billeting of soldiers, imprisonment without cause and the use of martial law. This didn't save Charles from the gallows twenty years later, however, and for three years following his execution England was ruled by the 'rump parliament' without a head of state. The abolition of monarchy and proclamation of the republican Commonwealth by Oliver Cromwell did not confirm the supremacy of parliament but it paved the way for the final constitutional showdown, the Glorious Revolution of 1688. The flight of the last Stuart monarch, a Catholic, and the acceptance by William of Orange and his wife Mary Stuart of Parliament's Bill of Rights in 1689, must be seen as events of equal significance to Magna Carta, but building upon that 13th century compact.

The rules were now firmly in place for the model of English parliamentary democracy which would evolve over the next two centuries and be successfully transplanted to British settler colonies, most notably Canada, Australia and New Zealand. Hanoverian monarchs in the 18th century and even Queen Victoria in the 19th would sometimes chafe at the bit, but Cabinet government, directly responsible to Parliament, would become celebrated as the Westminster model. In Britain there would be no written constitution, merely a collection of statutes, common law and custom. The monarch would remain the legal fountain of executive authority but the royal prerogative would gradually be exercised by ministers of the Crown. The Bill of Rights was not a clarion call for democracy, but interpretations of representative government would become ever more progressive through the 19th and early 20th centuries through a largely peaceful and evolutionary process. The development of robust parliamentary institutions in Australia from the 1850s, within a broadly Utilitarian philosophy, is a fascinating story deserving of

celebration, though one lingering anachronism has not yet been addressed. The powers of Tasmania's Legislative Council cannot be amended without its consent. Classroom explanations of our political system became a bit more difficult with adoption of our federal constitution. With no mention of prime minister or Cabinet or the conventions of Westminster parliaments, the printed document can be somewhat misleading for a beginner.

It has been argued, with good reason I think, that Americans tend to be more excited about Magna Carta than the British or other citizens of the Crown Commonwealth. The only physical memorial to Magna Carta at Runnymede is a white portico cupola in a meadow by the Thames, presented by the American Bar Association in 1957, and some 800 members of that Association will have descended on that site this week. Every state constitution in the U.S. carries reference to rights, and some of them express these rights in the language of Magna Carta's Clause 29. But why was it such a useful symbol to the founding fathers of the American republic? I can think of at least two reasons. The first is that the late 18th century was an era of increasing preoccupation with the notion of rights and the cause of limited government, twin ingredients of what came to be called 'classical liberalism'—owing much to the political philosophy of John Locke. And these intellectual influences inspired vigorous debate among the delegates at the constitutional conventions of the 1780s, possibly the most brilliant assembly of political minds ever convened. A second reason is that the founding fathers knew they would need a written constitution if the thirteen colonies were to be federated, and in that constitution they could enshrine the rights of citizens and limited responsibilities of government. The Constitution which emerged in 1789 was not a democratic document of course, but its

separation of powers and the subsequently adopted bill of rights, the second amendment, offered both the process and the idealism for gradual progress towards full democracy.

I hope those side references to the North American reverence for Magna Carta will not seem too unrelated to its influence on the development of parliamentary systems. And I want to turn now to how the reputations of major Westminster-style parliaments, legatees of Magna Carta and the Glorious Revolution, are faring in the early 21st century. Some of the evidence to hand is very disturbing. In Britain there is widespread loss of trust in Parliament and its elected membership; in Canada serious surveys reveal an equally disenchanting electorate.

And what of the state of play in Australia? Disillusionment and/or political illiteracy is so widespread that among younger adult Australians, those aged between 18 and 29, only 48% believe that democracy is preferable to any other form of government. This finding has been consistently reported by the Lowy Institute in its national attitude surveys over recent years. 21% have stated that it doesn't matter what kind of government is thrust upon us. Despite this statistic, an overwhelming majority of Australians endorsed other western liberal values, including freedom of the media, freedom of expression, the right to a fair trial and the right to vote.

How serious a form of alienation does this represent in Australia, given that other western societies are also reporting alarming levels of disenchantment? And how do we explain it? The Lowy investigators have listed several possible factors in a discussion paper prepared by Alex Oliver for the Australian Parliament last October. I will mention them briefly, but at the heart of the problem is a generally

unacknowledged disconnect between freedoms and democratic government. In other words, rights are embraced enthusiastically but not the parliament that can guarantee them. Accordingly the public seems happier with unelected tribunals or commissions than with a reliance on their elected legislatures.

As to the possible reasons for disenchantment with parliaments, especially in the Crown Commonwealth countries, one might consider the following:

- (1) The first possibility is that democracy has become the victim of its own success. Because there has been a spectacular increase in the number of sovereign states professing to be democratic, now more than half of the world's 200-odd countries, it seems to be so much the norm that it is taken for granted, with no need to celebrate it or understand its vulnerability;
- (2) The second possible explanation is that capitalism and consumerism, feeding on unparalleled prosperity, has distracted citizens, especially Generation Y, from a focus on civil and political freedoms;
- (3) A third argument cited is that our younger citizens are overly impressed by the economic success of non-democratic states in our region, especially China and Singapore. There is no doubt, from the survey data, that a huge percentage of Australians are more admiring of China than they are of the United States for example; and
- (4) Disgust with the level of political discourse is another possible explanation of the public's disenchantment with Parliament, and there seems little doubt that this is a factor highly relevant to the Australian experience of recent years. Reinforcing it is the rigidity of political party

discipline and the apparent inability of both major parties to practice any measure of bipartisanship outside key issues of national security.

Can respect for Parliament be restored? In considering that herculean task we should concede that the problem lies as much with the electorate and the media as it does with parliamentarians themselves. The 24-hour news cycle is at fault, as is the confused priorities of voters as to whether they want their members to be trustees of the national interest or faithful only to party or interest group wishes. Also, the mounting influence of social media is distracting parliamentarians from their primary tasks and encourages instant or unrestrained complaint and abuse from voters.

Perhaps structural changes to our parliamentary institutions are needed? There is certainly scope for electoral and possibly procedural reform, but I suspect that the nub of our problem is cultural. Perhaps we worry unduly, for even a seemingly dysfunctional national parliament 'keeps blood off the streets', as Amanda Lohrey, the Tasmanian novelist (and brilliant political science graduate) reassured us in a recent essay for *The Monthly*. But the image of our national Parliament could be improved if we were able to convince the electorate that the protection of rights should not be divorced from Parliament. Leaving aside the case for or against a bill of rights, Parliament is sometimes not given credit for monitoring draft legislation for possible human rights implications, and I was reminded by a friend recently that Tasmania can claim an honourable track record in this area with its Subordinate Legislation Statute, introduced in 1968 by the reformist Bethune Government. Can we educate for changes to our political culture? We certainly don't want to see the emergence of facile propaganda about the virtues of our political institutions, but the serious decline of history in our schools and narrowing specialisms of history and political science in our universities

make it very difficult indeed to excite young Australians about the dramas and debates that have punctuated our political history through the past 800 years.

In any healthy, free-speaking democracy there will always be critics of the workings of Parliament or of the quality of party leadership, but when serious doubts arise about the value of Parliament itself we should start losing sleep. Thomas Jefferson argued that democracies should be subject to rebellion every generation or so. I doubt whether we need a violent rebellion within our political culture of liberal democracy, but we could do with some serious collective soul searching.