

Magna Carta: Its Role in the Making of the English Constitution, 1300-1629 (Book Review)

Edward D. Re

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MAGNA CARTA: ITS ROLE IN THE MAKING OF THE ENGLISH CONSTITUTION, 1300-1629. By Faith Thompson. Minneapolis: The University of Minnesota Press, 1948. Pp. x, 410, index. \$6.50.*

Numerous generations of school boys have been familiar with the glowing version of Magna Carta in the history texts, but it is less well understood that for long periods of our history, subsequent to the encounter of barons and king on the plains of Runnymede, the Charter was quite obscure and for the most part neglected. Even more to the point, perhaps, the original Charter was hardly a Charter at all in our sense, but rather something much more like a compact or arrangement between the contending parties. It is, nevertheless, from this humble beginning that our greatest traditions of political liberty have sprung.

Miss Faith Thompson published a first study of the subject in 1925, *The First Century of Magna Carta: Why It Persisted as a Document*. Since the period set was an arbitrary one and the materials of interest to the researcher and historian are not exhausted with the death of Edward I, the author in the present book continues to recount the story of the Great Charter for a longer additional period. Developing the lucid scholarly presentation characteristic of her first book, Miss Thompson now follows the course of Magna Carta from the close of the reign of Edward I to the death of Sir Edward Coke. Although 1629, "the eve of the eleven years of no parliaments and King Charles' seemingly successful bid for absolutism—is a low ebb in Charter history,"¹ the year chosen is a happy one, for Sir Edward Coke's *Second Institute*, the commentary on the Magna Carta, that may well be regarded as a peak in Charter history, had been completed the previous year.

The present work does not pretend to be all-inclusive, for "To collect from three centuries of sources all the instances, so ubiquitous yet so illusive [elusive?], of the citing of Magna Carta would be an almost hopeless task."² The exhaustive and accurate documentation indicates the thoroughness of treatment accorded to the period of Magna Carta history selected for study.

The "attempt to trace through three more centuries the varied uses and increasingly significant interpretations of the famous document"³ is admirably successful. A great variety of sources has been explored in a way that reveals that the Charter, in fact, was never really obscured. Moreover, its reinterpretation in the early Stuart period was neither novel nor unusual. By then, the document had acquired a long history and a repute evidenced in plea rolls, Year Books, parliament and statute rolls, law treatises and even in chronicles.

Doubtlessly, it would be interesting to know with reasonable certainty why in *King John*, Shakespeare makes no mention of the Great Charter. It seems reasonable to assume that if he had known of it and of the manner in which it was wrested from King John by "the Army of God and the Holy Church"

* Professor Re has reviewed this book for the New York Times. The New York Times Book Review, January 9, 1949.

¹ P. 354.

² P. 3.

³ P. v.

on the 15th day of June, 1215, on the Plain called Runnymede, he hardly would have omitted such a momentous event from the life of King John. This fact has been used to indicate the obscurity into which the Charter had fallen during the late fifteenth and greater part of the sixteenth centuries. However, the author shows that "even in this period it was not so completely in the shade as hitherto supposed."⁴

Other popular misconceptions are also corrected. For example, in the matter of the number of parliamentary confirmations of the Great Charter, it is shown that modern historians have too readily accepted the accuracy of Sir Edward Coke's count of "thirty-two acts of parliament." The total number of recorded confirmations actually reaches forty-four.

The materials are presented in three parts. Part I shows the role and influence of the Charter in the later middle ages. It treats the topics of parliamentary confirmations and supplementary statutes, Magna Carta in plea rolls and Year Books, Magna Carta and liberty of the subject, and Magna Carta and "special interests," as for example, the part played by the City of London in the winning of Magna Carta, and the role of the English Church in its interpretation, enforcement and exposition.

Part II, *The Tudor Period*, deals with the Magna Carta of the printers and chroniclers, the lawyers' contributions in the writing of treatises and in speeches and arguments before societies and the courts, and the manner in which the Charter was put to practical use by the combination of talents and forces of the common law lawyers and the Puritans.

Part III deals with the early Stuart period. Here, as in the other parts, the author quotes freely from both primary and secondary sources, but these quotations are woven into the text skillfully and interestingly.

The work is by no means to be regarded as a dull history book dealing with matters of merely antiquarian interest. It introduces many interesting, diverting and even ludicrous personages. Whether or not these figures will be familiar, each makes his particular contribution to one's store of knowledge or entertainment. The lawyer reader will especially appreciate the discussion of many specific cases, showing exactly how Magna Carta was implemented and thus grew and acquired stature and meaning.

The book concludes with *Coke's Commentaries: Summation of Three Centuries*. Also available, for reference purposes, are nine appendixes and a detailed bibliography. Appendix A gives the Great Charter of Henry III, being the third revision of February 11, 1225. A comparison of this text and that of 1215 is followed by an explanatory note on the Forest Charter.

A study of Magna Carta at this particular time assumes special significance for it serves to re-emphasize certain basic concepts of law and government, which form a veritable heritage of freedom, guaranteed by government and founded upon the principle of constitutional limitations.

It has been said that Magna Carta "had in it the seeds of a growing greatness."⁵ It has in truth served a purpose far nobler and greater than any

⁴ P. 139.

⁵ X ENCYC. SOC. SCI. 45. The article on the Magna Carta in the *Encyclopaedia of the Social Sciences* from which the famous quotation is taken is

dreamed of by its drafters and proponents. Its history reveals how a document of feudal "liberties" was moulded by a variety of circumstances and interests into a great charter of "liberty of the subject." The history of this heritage should be a matter of common knowledge quite as much as the cherished heritage itself. The Great Charter, as the forerunner of bills of rights, stands as the classical monument of freedom. Magna Carta gave us the talismanic phrase *per legem terrae*. From this vague fiction sprang the concepts that school boys have come to know as the inalienable rights of man, to due process of law—trial by jury, freedom from unreasonable searches and seizures, protection against ex post facto laws and bills of attainder, habeas corpus—in short, our Bill of Rights.

It is in this light that the Charter deserves to be known. To so understand it is not a distortion of historical fact, for the Charter even in 1215 was a document that stood for limitations upon governmental power. Regardless of its historical vicissitudes, it quite properly came to be regarded as the keystone of constitutional government. It represents the uncompromising principle of the supremacy of the law and equality before the law. *Magna Carta* should serve to stimulate public interest in another charter, the Charter of the United Nations, presently enduring the formidable and challenging test of the processes of history. Yet, upon this new charter lies the hope of the world for the achievement of an international community, based on law, cooperation and understanding. If this new charter, like the charter of King John, becomes a myth, may it ultimately prove as happy and fruitful a myth as its monumental predecessor.

EDWARD D. RE.**

ORGANIZING CORPORATE AND OTHER BUSINESS ENTERPRISES. By Chester Rohrlach. New York: Matthew Bender & Company, Incorporated, 1949. Pp. xv, 500, index. \$12.00.

In his preface, the author states that the book's primary purpose "is to make available to the general practitioner, in one volume with a unified approach, guidance in dealing with the many legal problems involved in the organization of a new business, from the conception of the idea on through the death of the owners. This necessitates a broad coverage of an extremely large segment of commercial law, but it does seem important that the various legal aspects of the subject matter be treated in one volume, not only as a

written by Professor Albert Beebe White, who first awakened the author's interest in the famous Charter. Miss Thompson's first book on the Magna Carta, *The First Century of Magna Carta: Why It Persisted as a Document*, was a doctoral dissertation prepared under the direction of Professor White.

** Assistant Professor of Law, St. John's University School of Law.