

Magna Carta and Environmental Rights
The sixth Magna Carta lecture
Dame Fiona Reynolds, 15 June 2010

Recent events have given the constitutional traditions of this country a thorough road test. The experience of going to the polls reminds us, once every five years, of just how important the democratic process is – especially when there is no party in the lead.

And its result – a Coalition Government, which most of us here today have no experience of and are watching with enormous interest – has also raised questions about what matters most and what leadership is required of Government at this moment in our social, political and economic history.

Magna Carta, now nearly 800 years old, symbolises for many around the world the struggle for individual liberties against arbitrary rule. It has become fundamental to our contemporary ideas of justice, democracy and human rights. These are the bedrock of any free society and are ideals we rightly cherish.

It is therefore a great honour to be invited – particularly in such interesting political times – to give the sixth annual lecture in this Magna Carta Lecture series. And it is a genuine privilege, if somewhat daunting, to follow in the footsteps of such distinguished speakers as Lord Woolf, Baroness Williams, David Davis MP, Sir Anthony Clarke and Professor Vernon Bogdanor. I am *not* going to attempt to compete with their expert analyses of the constitutional, political and legal implications of Magna Carta.

I would like instead, though, to reflect on the implications Magna Carta has for other sorts of rights and freedoms. Few would disagree that its key principles – *habeas corpus*, the right to justice, the principle of proportionality in criminal justice – remain critical today. But do these, by themselves, guarantee the sense of wellbeing and happiness to which all politicians of all parties claim to be committed? In the ever-swinging pendulum between legislation and de-regulation that dominates political rhetoric, have we missed something more important – a more positive sense of entitlement to what really matters in life?

If we were writing Magna Carta today I wonder whether we would focus on legal rights and responsibilities, or whether we would have the confidence to capture what, in twenty-first century Britain, is becoming increasingly important – the right of access to beauty, to nature, to a shared sense of history and heritage and to a well cared-for environment?

For you might search election speeches and manifestos but you would struggle to find any politicians talking about these issues. Perhaps standing alone is Oliver Letwin's much quoted but never repeated speech about beauty several years ago. '*The language of politics needs to reflect the felt experience of the environment as sensations and impressions that are capable of moving and delighting us*' he said, '*We need to conduct politics as*

if beauty matters'. His plea was not answered, but these issues are absolutely essential to fulfilled and happy lives.

Such rights as we have in this area – such as the right of access to the countryside, the protection of landscapes and historic buildings for public benefit, the quality of the air we breathe and the water we drink – are not present by accident or inevitability, but as a consequence of hard-won campaigns in the past, often in the face of indifference or even downright opposition in their time. The National Trust is part of this story too, and our size and popularity today demonstrate just how much people value the things that we do – caring for wonderful buildings and landscapes, and opening up the countryside for everyone to enjoy.

With 3.8 million members, it's become something of a cliché to observe that there are more members of the National Trust than there are members of all the political parties put together – currently, I believe, by a factor of seven! Indeed, I've yet to find a charity anywhere in the world that enjoys our level of success either in absolute numbers of members or as a percentage of the population – our membership currently stands at just over 6% of the population or 7% of the households in this country.

So I do think there are some valuable lessons to reflect on here, as we enter a period of debate about size, shape and role of Government and consider where we think the boundaries of the state should lie; and whether we are missing anything important in the lexicon of rights and responsibilities that we spend our time discussing.

So my proposition this evening on the theme of Magna Carta is to reflect on the long history of the development of our modern sense of environmental rights – what tonight I shall more lyrically call *A Charter for Beauty* – and what role this approach might play in our thinking about the future.

Magna Carta and the medieval landscape

This is not to imply, of course, that we find in Magna Carta an unambiguous early statement of environmental rights – or indeed 'rights' at all – as we understand them today. Magna Carta, as you will all know, was a carefully constructed statement of the limits to kingly power, rather than a positive endorsement of the rights enjoyed by individuals or communities. In the early summer of 1215 Bad King John was almost completely discredited and he was forced to seal the Magna Carta to constrain the excesses of his financial and political ambitions. Yet even from this great distance the act of inscribing the boundaries to royal sovereignty is a gesture that has profound implications. Magna Carta's legacy transcends its literal meanings.

The parts of Magna Carta that are most often highlighted are those that relate to individual freedoms under the law. Clauses 39 and 40 have resounded through the centuries as the untouchable principles of how an advanced society should operate: *'No freeman shall be captured or imprisoned ...*

except by the lawful judgment of his peers or by the law of the land' ... 'To no one will we deny or delay right or justice'.

Just as possession is nine-tenths of the law, many of the clauses of Magna Carta relate to property – what happens when estates are inherited by minorities, or when wives are widowed. In these clauses, the barons were seeking to draw some clear red lines of their own to limit the power of the monarch to extract payments or other duties from ‘freemen’ – the propertied class, who held their estates in trust from the Crown.

I’m struck too by how much Magna Carta tells us about the landscape of medieval England as well as about the uses and abuses of the day. I love how through this legal document we can begin to imagine how the countryside must have looked in 1215 – the ‘houses, parks, preserves, fish-ponds, [and] mills’ cited in clause 5 that would have been familiar sights to the authors of the text.

I’m also struck that we can detect ideas of stewardship and responsibility towards the land and its riches that are absolutely relevant to us today. Guardians of under-age heirs, for example, are exhorted in clause 4 not to *‘take from the land of the heir’* more than is reasonably due to them, and to do this *‘without destruction and waste’*, so that the productive capability of the land and its assets were passed on in good hands when the heir came of age.

It is in the clauses that relate to the king’s hunting rights that we perhaps get the greatest sense of the way Magna Carta asserted certain rights or freedoms over the landscape. Clause 47 is crucial here, as it asserted that *‘All forests that have been afforested in our time shall at once be disafforested’*. This was no small demand, and a reminder of how Bad King John had colonised for his own enjoyment places that had been available for the public good.

For the ‘forests’ in question were not the woodlands that today we would associate with the term. Forest land was land over which forest law applied, and was reserved for the king’s exclusive use in hunting. A complex machinery of governance kept order in the forest areas – from the forest justiciar, to the wardens, foresters and verderers, who upheld the draconian forest laws in the shire courts.

Forests were often wooded, or made up of wood pasture (where grazing and timber production co-existed), but they also included heaths, open countryside, villages and even towns, by no means all of it royal property. By the end of the reign of Henry II, King John’s father, it was said that a third of the country was subject to forest law, including the entire county of Essex. It’s hard to imagine what these huge tracts of land, part wooded, part open heaths with villages and tiny settlements would have looked and felt like – the only places where you can get a sense of them today are the surviving Royal Forests like Epping Forest, The New Forest, the Forest of Dean and one of our most atmospheric properties, Hatfield Forest.

Through Magna Carta, the barons aimed to roll back the extension of the forest lands made in John's time, in order to reduce the subjugation of landowners to the forest law and to promote once again their freedom to hold property under common law. Magna Carta also called for an inquiry into 'all evil customs' associated with the forests, with a view to ensuring the abolition of such customs after forty days.

Reading Magna Carta in full in preparation for this lecture I believe it's not too far-fetched to say that here we have a model compromise agreement – thrashed out by a coalition of leading political figures over five days of intrigue and behind-the-scenes negotiations – which led to a set of written promises that were then widely publicised to proclaim the start of a new political era. It all sounds very familiar!

But as we know, the original 1215 version of Magna Carta did not last long. The Council of 25 Barons created to enforce Magna Carta – an unprecedented constraint on the rights of a king – was to prove useless. Within weeks John – with the support of the Pope, who described it as '*not only shameful and demeaning but also illegal and unjust*' – had renounced it, plunging the country into civil war which only ended with King John's timely death in October 1216. Perhaps here the political analogy should cease.....

What is less commonly known is that when another version of Magna Carta was reissued under the reign of his son Henry III in 1217, many of its principles were upheld and strengthened. Indeed the clauses relating to the forests were expanded and set into their own charter – which came to be known as the Charta di Foresta or Charter of the Forest.

I'm fascinated by the story of this 'other', less well known charter. Among other things it was responsible for giving Magna Carta its name. The Charter of Liberties was renamed as the 'great charter' in order to differentiate it from the forest charter, which was much shorter.

And yet, by guaranteeing basic rights of access to natural resources, the Forest Charter was arguably more relevant to everyday life in the 13th century than Magna Carta itself. Whereas Magna Carta applied mainly to literate freemen, most of the population were largely illiterate agricultural workers and the Charter of the Forest asserted their freedoms and liberties; especially those living in royal forest lands. These included the common rights of grazing cattle and pigs, cultivation and fuel- and wood-gathering which were indispensable to people living in the forests. The landed gentry were granted rights to build mills and make fishponds, dig drainage ditches and even the right to harvest honey from the hives in their trees.

Elements of The Charter of the Forest remained on the statute book longer than many of the clauses of Magna Carta, with tensions emerging for example in Tudor and Stuart times over its flouting as timber was harvested for shipbuilding and other construction. Many of its traditions continue to this day in the court systems of the New Forest and Forest of Dean and in law it was not finally superseded until 1971.

Tracing the tree of liberty

Curiously, by the time of the Tudors, Magna Carta had largely disappeared from popular memory – Shakespeare’s play about King John famously does not refer to it at all. But a few decades later Magna Carta was resurrected in support of the challenge to Charles I’s rule – another monarch who overstepped the boundaries of what was acceptable to the body politic.

Thanks to commentators such as Sir Edward Coke in his *Institutes of the Lawes of England*, Magna Carta came to be regarded as the touchstone of the liberties of free Englishmen. As such it was to inform the American constitutional settlement, from the founding charters of James Town and Massachusetts to the Constitution itself.

Over time, Magna Carta has assumed a status and meaning that goes far beyond what the document was ever intended to achieve by its protagonists.

Indeed, the struggle for liberty and freedom provides a ‘golden thread’ connecting what happened at Runnymede in 1215 to a great many other key moments in British history, from the abolition of the transatlantic slave trade in 1807 to the Chartists and their 19th century battle for democratic representation; and ultimately of course to universal suffrage. And as previous lecturers have explained, many of the principles in Magna Carta have shaped the British legal system, from the principle of proportionality to an individual’s basic rights and responsibilities.

In this romantic form, Magna Carta stands for the universal inheritance of rights enjoyed by all, which crucially includes rights to enjoy the natural world. To quote Shelley: “*the rights of man are liberty and an equal participation of the commonage of nature.*”

This, I think, is where the National Trust comes in. Our origins lie in the mid-19th century battle for rights of access to the countryside, the protection of green open spaces and dismay over the loss of vernacular architecture and what Ruskin had admired as ‘*the appearance of felicitous fulfilment of function*’. Our roots are with groups such as the Commons Preservation Society, which fought countless battles to protect the remaining areas of open common and heath from enclosure in order to preserve rights of access for ordinary people. It is striking to think that places like Hampstead Heath, Wimbledon Common and Epping Forest only remain open spaces today because of the efforts of these Victorian campaigners and their supporters.

They saw the need for access to nature, whether in town or country, as a basic human need, which has found its expression as a result of their efforts in our unparalleled public rights of way system, access to open country enshrined still further recently in the Countryside and Rights of Way Act; and in the National Trust’s twin commitment to enabling access to as well as conserving beautiful places.

In the late nineteenth century the Commons Preservation Society secured some crucial legal measures against the enclosures, but lacked the legal authority to secure permanent safeguarding of land. This, it was felt, could only be achieved by a body that could take ownership of land in the public interest. This, then, was the origin of the idea of a National Trust – an organisation able to acquire land not for private gain but in the common good, literally *'for the benefit of the nation'*.

What lay behind the thinking was a profound belief in the vital importance to quality of life provided by public access to nature and beauty. Octavia Hill, one of our founders, said that *"There are two great wants in.....life.....which ought to be realised more than they are – the want of space, and the want of beauty."* She believed in the life-enhancing virtues of *"pure earth, clean air and blue sky"* and fought hard to ensure *"that no bit of the small portion of unenclosed ground, which is the common inheritance of us all as English men and women, shall be henceforth inclosed."*

Octavia's vision was to be given legal recognition with the National Trust Act of 1907 – a piece of statute that our founders worked hard, with a mixture of prescience and vision, to secure. For me, the 1907 Act stands as the National Trust's own Magna Carta, giving us the 'freedom under the law' to pursue our historic mission.

The Act sets out our purpose as being *'To promote the permanent preservation, for the benefit of the nation, of land ... and buildings of historic interest or natural beauty'*.

For their time, these words represent an ambitious, even audacious vision. For in 1907 there was no protection at all in the law for buildings or landscapes. There were no national parks, no AONBs, no listed buildings, no planning controls at all as we would recognise them today. Governments hardly took any account of the wider environment and landscape, though had belatedly introduced a few grudging measures to protect ancient monuments.

Octavia Hill was convinced that a National Trust could take on the responsibility, permanently, of protecting the landscape, countryside and precious vernacular buildings; and that its example would inspire others to do the same. Her model was that such a Trust could be independent of Government, supported by the good will and financial contributions of private individuals. She was not a lover of the welfare state and believed in the power of motivated and self-reliant individuals to make a difference. She could never have predicted just how successful this model would be.

Octavia's vision of an authoritative, effective body operating outside the State on the strength of the goodwill of its supporters is an appealing one, and perhaps not surprisingly it is attracting increasing attention today. As government departments, quangos and local councils face stringent budget cuts it looks at least possible that organisations and public bodies will seek ways other than taxation or public funding to deliver public benefit.

The Trust in this context is already being cited as an exemplar of how the things that matter to people can be cared for in ways that do not require the heavy hand of the state, or indeed Big Government at all. Indeed, British Waterways, the public authority in charge of our canal network, has recently called for itself to be effectively privatised and moved to the charitable sector, where it would become 'the National Trust of the Waterways'. We are flattered by the comparison, but also struck by the continued power and potency of the vision outlined by Octavia Hill and her fellow founders of the National Trust.

What say the reeds at Runnymede? (Kipling)

The ebb and flow of the debate over the limits of the state's responsibilities can also be witnessed in the history of the site that will be forever linked to Magna Carta: Runnymede.

Runnymede is named on the face of the great charter as '*the meadow that is called Runnymede, between Windsor and Stanes.*' The site is simple: a meadow next to the Thames, historically prone to flooding, today graced by the Magna Carta memorial, funded by the American Bar Association, erected in 1957; a tribute to President J F Kennedy; and a pair of Lutyens lodges.

This land was historically part of the Windsor estate, within the bounds of the royal forest. Yet Runnymede itself has always remained open. For most of the 18th and 19th centuries, Runnymede was in fact the venue for the annual Egham horse races.

Ironically it was this fact – rather than any reverence for the events of 1215 – that was the principal reason why the Egham Enclosure Act of 1813 specified that the meadow should '*not be fenced or inclosed*', and should be kept open in perpetuity.

By the early 1920s, there were repeated attempts by the Government of the day – a Liberal-Conservative coalition, it might be noted! – to sell Runnymede for development. But by this time, however, the site's association with Magna Carta was too well known – not least thanks to Kipling's famous poem *What say the reeds at Runnymede?* (1911). As the *Manchester Guardian* declared in 1929 'An outcrop of bungalows on this site sacred to liberty would have raised an outcry which would have been as loud in America as here'.

That same year Urban Broughton, the MP for Preston, bought Runnymede to protect it from the developers. His American widow and son bequeathed Runnymede to the National Trust in 1931, knowing that this was its best form of protection.

In 1957 the Magna Carta Trust was established to promote the perpetuation of the principles of Magna Carta; the preservation for reverent public use of sites associated with Magna Carta; and the Commemoration of the grant of Magna Carta as the source of the constitutional liberties of English-speaking peoples and a common bond of peace between them.

The Magna Carta Trust has been enormously helpful at Runnymede: it is a small site, quite difficult to visit and desperately short of funds. We're enormously grateful to the current trustees, who include Lord Bingham and Sir Robert Worcester and we are supporting in their work to prepare for an appropriate and inspiring commemoration of the 800th anniversary of Magna Carta in 2015.

But in many ways the calm tranquillity and open character of the site for me speaks far louder of our love of liberty than any public event, monument or building ever could. Already, places like Runnymede are becoming ever scarcer, as the urban sprawl of London spreads ever further, expanding the tentacles of commuter territory and resulting in the further loss of green spaces.

Octavia Hill would absolutely have understood Runnymede's importance. I think she would have loved the fact that, by keeping this ancient meadow open and accessible, we are today ensuring that not only are we looking after a place of deep historical resonance, but are also providing a habitat for the skylark, the cinnabar moth and the common blue butterfly. She would have been delighted to have heard how our conservation work is assisted by voluntary conservation groups and young volunteers, who help with the hedging, ditching, fencing and scrub clearance.

In many ways Runnymede's significance lies in its simplicity and humility. How striking that what is arguably this country's greatest contribution to international thinking is not associated with a grand castle or palace, but an unassuming meadow by the side of a river. That is a hugely symbolic part of our national psyche and culture – it's one of this country's foundation stories. It's something we should take great pride in. We should celebrate it more than we currently do.

Celebrating Magna Carta

How best, then, to celebrate Magna Carta and the achievements at Runnymede in 1215? I'm constantly struck by how much Magna Carta is recognised by other countries, while being almost invisible to the general public here.

The Indian Prime Minister, on his visit to the UK last year, made a special trip to Runnymede to see for himself the place where Magna Carta was sealed. I wonder if it has ever crossed the minds of many of our leading politicians to make a similar pilgrimage?

Even more pertinent a question is why do we not seem to remember at all the Charter of the Forest? Perhaps, in part, it is a sign that we have severed too many of our links with the land. Today, too many people are denied access to beauty simply by virtue of where they live – impoverished concrete jungles with scarcely any open green space nearby, and few options for reaching the coast or countryside.

Indeed so alienated are many of our city-dwelling population becoming that a survey published only last week showed that more than half of Londoners aged 16 to 24 confessed to feeling scared of the great outdoors.

To me, the 800th anniversary provides a perfect opportunity for us all to pause and think. If we were writing Magna Carta today, what would we enshrine as the universal rights and freedoms that matter most to us? What are the rights that we would want to see handed on to our children, and theirs?

For me, the answer is clear. It is the right to beauty in town and country, to nature, to open countryside. It is the freedom to feel the sun on our face, to hear the wind rustling in the reeds, and to take time out from our hectic lives to reflect on what really matters. Without these opportunities, our lives are simply not worth living. Thus I propose that we promote a *Charter for Beauty* as an integral element of our celebration of the 800 year old great charter.

And in truth, we have a collective responsibility towards our environmental rights and their protection. We have tended increasingly, in the last fifty or so years, to look to the state and public bodies to act as custodians of cherished places and landscapes, and to legislate to define ever more tightly a series of formally described rights and responsibilities. That time, I speculate, may now be coming to an end.

Perhaps the answer to our current crisis is *not* more legislation or regulation – another Magna Carta – but to change our culture to one where we all, as individuals who are also members of communities, take more responsibility to act together in our shared and collective interests.

Finding ways to encourage this communitarian spirit is the challenge for the new government and perhaps gives a clue to what might be meant by ‘big society, small government’. But we all need to play a part in thinking about what really matters, and to act on it.

This then, to me, is the fundamental message of Magna Carta and its sister the Charter of the Forest: that the task of ensuring our basic freedoms, including our right to beauty and access to it, is a collective endeavour that we must all work together to protect.