

The Magna Carta and its Relevance in New Zealand Today

Monday 15th June 2015 was the 800th anniversary of the sealing of the Magna Carta. It is considered to be a pivotal moment in the establishment of human rights in a number of countries. Ironically, human rights are still seriously violated in many parts of the world. This small reflection touches briefly on the Magna Carta's fascinating and colourful story of origin, subsequent developments, and some implications in today's society.

In the beginning . . .

On the left bank of the river Thames, about thirty kilometres west of central London at a place called Runnymede there's an old yew tree. No one's exactly sure of its age but it's at least fourteen hundred years old.

It's so important that it has been given a name – the Ankerwycke Yew. Over the centuries the birds that peep out from its branches have been witnesses to history.

From the 8th to 11th centuries the Council of the Anglo-Saxon kings used to meet nearby. King Henry VIII first met Anne Boleyn in its shade – before a greater shadow came over her life and his. And on 15 June 1215, a day of high summer, King John attended a meeting with his nobles which turned out to be far from ordinary.

It took place at Runnymede. Its exact location of the meeting isn't certain but some historians believe that it happened under the great yew.

King John was unpopular with the barons (nobles) who resented his heavy taxation and practice of cruel and arbitrary imprisonment. Anxious to keep the peace the Archbishop of Canterbury drafted a charter safeguarding the barons from ruinous taxation and illegal imprisonment; it guaranteed that justice would not be delayed. This agreement was signed by the nobles and King John was forced to apply his seal.

Of course the agreement wasn't kept and war broke out between the King and his barons. But after his death the main provisions of the Magna Carta (Great Charter) were included in a peace treaty which subsequently became part of English law.

Originally these freedoms applied only to the barons but in time they were extended to everyone. They guaranteed that justice would be available to *all* people without delay or prejudice and that the ultimate judgement would be made by a jury of people like themselves, not by a vindictive tyrant.

Two principles of the Magna Carta became part of British law – everyone had to obey the laws of the land and everyone had the right to a fair trial. Those who were accused of crimes should be judged according to the law of the land by a jury comprised of his equals.

The principles of the Magna Carta have had significant implications for democratic countries. For instance, the mass-media continually draw our attention to complexities of trial by jury especially in relation to serious crime and other legal dilemmas concerning the laws of the land around the globe.

As the British Empire expanded the Magna Carta travelled . . .

As the British Empire expanded, the cultural relevance of the Magna Carta usually favoured the colonists. Pre-existing indigenous systems of justice were overruled. Consequently, the rights of more people around the world were deliberately restricted and violated.

Nonetheless the key concepts of the Magna Carta have been incorporated into various foundational documents – the US Constitution (1791), the Universal Declaration of Human Rights (1950) and the Constitution of the Republic of India (1950).

The Magna Carta adopted in New Zealand, God's southernmost outpost . . .

In 1840, with the signing of the Treaty of Waitangi Britain's laws became New Zealand's laws. From its beginning, New Zealand's Parliament adopted the Magna Carta's ideals of individual liberty and freedom, and the constraint of power. This includes the use of the Westminster parliamentary system as it is defined in the New Zealand Constitution Act 1852. Since then many of our laws have changed but those two basic principles – 'everyone had to obey the laws of the land and everyone had the right to a fair trial' have remained important.

As a result of the complexities and contradictions which exist within New Zealand society and the judicial system, there are movements working to present alternative ways of dealing with different types of offences.

A Law Foundation-backed, two-year study, *From "Real Rape" to Real Justice: Prosecuting Rape in New Zealand*, co researched by Elisabeth McDonald, Yvette Tinsley and Jeremy Finn, published in 2011 concludes –

Alternative ways of dealing with sexual offending should be tried, given stubbornly unchanged prosecution rates and high levels of victim dissatisfaction with the system. These might include substituting jury trials with judges either sitting alone or assisted by lay assessors, as used in European jurisdictions. Other trial process options might include pre-trial cross-examination, as well as specialist judges, prosecutors, police, defence counsel and support persons.

The researchers say a one size fits all approach won't work – 'there is no perfect panacea that we can transport to New Zealand,' Yvette says.

The study draws on overseas and local experience to propose alternatives to the current system. It advocates using restorative justice in appropriate cases, improved risk assessment processes in child sex abuse cases, and public awareness education. (The Law Foundation February 2012 News Item)

Similarly when discerning the matter of imprisonment in New Zealand and the huge over representation of Maori, questions must be continually asked not only about alternative processes within the legal system but about society itself.

For example, in 2013 the total prison population of women comprised 58 percent Maori, while the total prison population of men comprised 51 percent Maori – and this despite the that Maori represented only 15 percent of the general population.

During the Christchurch earthquakes, judicial hearings were held at Nga Hau e Wha National Marae while court buildings were being repaired. It was widely noted that there was more respect shown by all parties while on the marae with much of the anger and frustration left at the door. The outcomes were praised by police and other officials. Hearings are now held *back* in the city.

Such insight speaks about the potential New Zealand has to draw from the richness of Tikanga Maori and the huge benefit Marae-based justice has (and could have more) in healing the effects of crime.

Another vital group is the *New Zealand Public Interest Project*. This group has identified some significant gaps and systemic issues within the criminal justice system.

In a recent interview with Lisa Owen (*Scoop*, Independent News), trustee Dr Jarrod Gilbert discussed his concerns about some very serious situations which must be addressed in the judicial system. He recently spoke to a conference of High, Supreme and Court of Appeal Judges and couldn't be more impressed with the judiciary. However, Gilbert shared, 'few of them would say that there aren't cases that have slipped through the net that a body like this will identify, and in doing so, not just assist those individuals, which clearly is very, very important, but also uphold the integrity of a very good justice system.'

NZPIP is also working with the Council of Trade Unions, on criminal prosecutions of the forestry industry over its safety record and will consider civil action on behalf of Christchurch earthquake victims.

These three examples, cast a little light on the creative and inspiring ways groups of people are courageously watching and challenging existing systems to ensure that those principles sealed 800 ago years ago in Runneymede are upheld appropriately for the common good in a more culturally diverse and complex New Zealand.

Back to Runneymede . . .

In 1992, beneath the Ankerwycke Yew, the great environmental campaigner David Bellamy extended the rights of the Magna Carta to 'the plants and animals with which we share our islands and our planet'. What a great occasion for the birds peeping out from the branches on that day!

Bellamy's words remind us that all creatures great and small are part of the one creation. As Coleridge said, 'We are all one life.'

Cathy Harrison
20th June 2015.