

Farewell Magna Carta!

A document signed under duress by a British king in 1215 became embedded in British Law in 1297, and was eventually accepted as the legal foundation of modern democracy, both in Britain and throughout its colonial empire. It remains implicit in the legal fabric of most of those nations, although it is not always enshrined in their black-letter law. This is the case in Australia.

Founded as it was on a set of 'democratic' principles that were originally developed and defined in ancient Greece, the original document, **the Magna Carta**, pivoted on what is known as the **Separation of Powers**. This states that the three primary sources of cultural power that are embodied in the elected **legislators**, the appointed **judiciary**, and the **religious hierarchy**, should be rigidly separated in law, and their power should be equally limited.

The Magna Carta also declared that all individuals have an implicit legal right to life and liberty, and that only the judiciary should therefore have the power to withdraw this freedom by imposing a custodial sentence:

- **39. No free-man shall be taken or imprisoned, or dispossessed of his free tenement, or liberties, or free customs, or be outlawed, or exiled, or in any way be destroyed; nor will we condemn him, nor will we commit him to prison, excepting by the legal judgement of his peers, or by the laws of the land.**
- **40. To none will we sell, to none will we deny, to none will we delay right or justice.**

These revolutionary propositions incorporated an older Anglo-Saxon Perogative Writ known as **Habeas corpus**. This stipulated that the 'body' in question must physically appear in a legally constituted court to answer any charges laid against that individual. The customary time limit for this process was 90 days.

In Australia however, the Magna Carta's Separation of Powers was spectacularly overridden by John Howard, a Prime Minister who knew little legal history but was a shrewd manipulator of public opinion. In 2005 he even managed to ram legislation through Parliament that was specifically designed to undermine and invalidate habeas corpus, thereby overstepping the Separation of Powers and shredding Australia's right to call itself a fully democratic nation.

To achieve this, Howard launched his political tirades against boat-borne refugees, calling them 'illegal immigrants' who sometimes 'threw their children overboard' in order to gain sympathy and 'jump the immigration queue'. Seduced by this propaganda Australians then re-elected Howard twice, giving him an overwhelming mandate to arbitrarily imprison all 'boat-people' in razor-wire concentration camps on an indefinite basis.

Such inherently tyrannical policies are nothing new, of course. A man named Joseph Goebbels ran a very similar propaganda campaign against the 'aliens' in teutonic Germany in the late 1930s. It gained him public approval and inspired him to build a chain of concentration camps, some of which were equipped with gas fuelled 'showers' that promised a final solution to the problem of Germany's 'alien minorities'.



The Howard legacy ...

With that recent German history in mind, these pictures of caged refugee children shine a savage spotlight on the terrible damage that Australia's democracy has sustained in recent time.

Meanwhile, neither of Australia's major political Parties appears to have the slightest understanding of the historic illegality of mandatory detention. It represents a peculiar ignorance of the foundations of British, and thereby, Australian law.

How sad it is that only Australia's Green Party, has had the courage and integrity to publicly reject those policies and defend democracy's founding principles as laid down by the Magna Carta and its Great Writ, *Habeas Corpus*.

An Urgent Task

Australia lacks a Bill of Rights that codifies our individual access to life, liberty and justice, and thereby establishes our freedom to pursue our lives as we wish provided that we do not infringe the rights of others.

Our last line of defence used to be the *Habeas corpus* imperative that was implicit in clause 39 of democracy's foundational document, the Magna Carta. This also came to be referred to by the phrase 'due process of law', a phrase that first appeared in a statutory rendition of the Magna Carta's 39th clause in the year 1354, during the reign of Edward III of England:

"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."

Although this restatement of clause 39 was never fully ratified in later British law its 'due process' aspect was eventually incorporated in the US Bill of Rights and in the US Constitution.

With this ancient legal protection of individual freedom now dead and buried in Australia, and Parliaments able to arbitrarily impose custodial sentences without recourse to 'due process', there is an urgent need to regenerate a major public debate on the establishment of an Australian Bill of Rights that resurrects this crucial aspect of the Magna Carta.

By agreeing to punish refugees with indeterminate detention in Australia, Nauru and PNG, both major Parties have indicated that they, like John Howard and a long line of other grubby politicians, are perfectly happy to reject the founding principles of democratic law merely in order to win their trade war with people smugglers. (Their stated aim is to 'break the smugglers' business plan'.)

Compassion for the world's growing tide of refugees get's little mention.

Three Sri Lankan men are currently locked in the Villawood 'detention centre' in southern Sydney despite the fact that all three have already been declared 'genuine refugees'. Meanwhile, no charge has been laid against any of them, no evidence brought forward, and no prospect of 'due process' has been offered. They are being held indefinitely on the basis of secret ASIO rulings that they are a threat to the general Australian community (ABC Lateline 13/08/2012).

With no idea of the nature of the charges against them and no prospect of legally testing the alleged evidence, they face the same prospects of permanent imprisonment and permanent brain damage that all prisoners face in such hopeless circumstances.

If this is a true measure of modern Australia then I am embarrassed to call myself Australian.

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