

The Influences of the Magna Carta on the American Constitution

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Abstract:

The influence of Magna Carta on the American constitutional system took several centuries to be fully articulated and incorporated into the current constitutional framework. American leaders regarded the principles of Magna Carta as values deeply rooted in their culture and recognized them as inherent rights worth fighting for. The English Crown initially refused to acknowledge these rights as applicable to the colonies; however, following sustained pressure and prolonged struggle, it ultimately accepted this reality, which culminated in revolution and the Declaration of Independence. The effectiveness of Magna Carta in American constitutional development unfolded across three critical periods: the colonial era from 1606 to 1760, the American Revolution, and the establishment of the Federal Constitution. This article examines the influences of Magna Carta on the American Constitution from the early seventeenth century through the creation of the Federal Constitution.

Keywords: Magna Carta, Influences, England, liberty, constitution, colonies.

1. INTRODUCTION

The magna Carta is considered as constitutional document enacted by the king John I of England in 1215. This constitutional document is the first document which defines the rights of the king and his power. It tries to limit these powers and legalizes them and delivers constitutional rights to the people. It is the first historical document which restricted the power of the monarch, and it is the first successful attempt by the barons to have documented rights and they would be able to practice these rights under the legal authority. For 800 years the Magna Carta has played a major effect on the international legal system, and it has had its impact on constitutional documents all over the world. However, the influences of Magna Carta on American legal system have special features because the nature of the relation between the British Empire and colonies during the colonies' period and the growth of the British Empire for 300 years it made the principle of the Charter spread in the most of

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American legal documents. The magna Carta was determined as people's reassertion of the rights against injustice and unfairness.¹ In spite, the Magna Carta did mean anything to the English people in 1215 because the ecclesiastical king and their followers remained masters. Twelfth century was not the time that gave this document all this importance and value, but the subsequent events provided the provisions of useful access to documents to unlimited number of people, which had its impacts to be woven this document in international and American society.²

In seventeen century, the people in the United States looked at the Magna Carta as fundamental protection of their individual rights; it is the only document it could strength their rights facing of the Englishman. Furthermore The U.S founders such as Benjimen, Franklin and Jeferson describes the Magna Carta as great Charter of liberty against injustice government and it has great impacts on American cultures and heritages, but the story of the influences of Great Charter on the American legal documents or constitutions has taken more than two centuries because the process of having their own independent states and rights and the Englishman resisted the idea of giving them full rights of liberty for people of new land.³

When Englishman refused to admit their rights, it turns to political disputes between the Britin and American colonies then the political crisis led to revolution which one of the great revolutions in modern history which was a great factor to declare the independent states called the United States of America. After more than 800 years since the Magna Carta have passed, we must rethink for a moment to recount the events that took place and how this document affected the legal systems in the world in general, and the American Constitutional in particular. After the American Revolution, which established a new political system and an heir to the English constitutional monarchy, they realized that the Magna Carta it helped them in writing the new constitution, although this document restricted the authority of the absolute rule of the king, in spite, this document was supported or protected by a class of barrens who They tried to preserve feudal rights and privileges and did not effectively limit the powers of the Crown.⁴

In the middle of the seventeenth century, strong campaigns in England and America have been led by Edward Coke; the aims of these campaigns were to provide support to the Magna Carta. They tried to convince the people that the Magna Carta did not sell or delay justice, but it was the best law at the time. It worked and aimed to protect the English Constitution and the common law, as well as restricting most of the powers of the King. It also established the principle of respect for constitutional rules by rejecting laws issued by Parliament that violate the basic rules. We must not forget that the Englishmen who used to live in the American colonies have inherited everything from previous ages such as the laws and the history of the English language and even the ideas contained in the Bill of Rights and the

¹ Saxe, D. W. "Teaching Magna Carta in American History: Land, Law, and Legacy". *The History Teacher*, 43(3), 2010. 329–344. <http://www.jstor.org/stable/25740748>

² WITTE, JOHN. "A NEW MAGNA CARTA FOR THE EARLY MODERN COMMON LAW: AN 800TH ANNIVERSARY ESSAY." *Journal of Law and Religion*, vol. 30, no. 3, 2015, pp. 440–45

³ Dickinson, Harry T. "Magna Carta in the American Revolution." *Magna Carta: History, Context and Influence*, edited by Lawrence Goldman, University of London Press, 2018, P(79-82)

⁴ Dickinson, H. T. "Magna Carta in the American Revolution". p 79-83,87.

The Influences of the Magna Carta on the American Constitution

Petition of Rights which they are closely related to the Magna Carta. and they became a source of rights and freedoms not only in the English lands Even in all English communities.¹

The circumstances in English colonies played a prominent role in transferring the influence of the Magna Carta to American lands, regardless of the events that accompanied the emergence of the great document and how it provided rights and freedoms and restricted the king's authority in the twelfth and thirteenth centuries.² The journey of the influence of the Magna Carta on the American constitutional institutions is a one stop in the history of the British constitutional institutions in the colonial lands, therefore it cannot be understood the influence of the Magna Carta as an independent part of the English law, so the researchers can understand or reach all the secrets of the influence, when they are considering the Magna Carta as an Indivisible part from the legal inheritance of the Englishman in the colonial land.³

2. Magna Carta and the American Colonies

Since the beginning of the era of the English colonies in American lands, people demanded it was the necessity to take an advantage of English law in preserving their rights and freedoms because they realized that these laws might be the rescuer to them because it came in the form of judgments and decisions of the English courts. These laws fortunately had reached the land of the colonies under the needs of the English community in America, and after the arrival of these laws to the lands of the colonies, new rules and principles were established for the American society, but it descended from the laws of the colonies.

Several English colonies gave rights to individuals after they demanded equality with the Englishman, and they obtained the same rights that the Englishman enjoyed in Britain. These colonial laws such as charter of Virginia , Law and liberties of Massachusetts are fully compatible with the Magna Carta because it is the most powerful document in English history, However during the stage of claiming rights and freedoms, there were several documents which they are with Magna Carta, have great influence to laws of the colonies such as Bill of Rights, Act of Settlement and Petition of the Rights.⁴

2.1 The Charter of Virginia 1606

The Virginia Charter is the first document issued by the English King James I. This document has a great historical significance in the history of colonies as well as in the history of rights and liberties outside England. The purpose of this document was to expand the colonies in the American land and for the purpose of encouraging immigration; it is very similar to the original document of the Magna Carta because it was issued by the king to his subjects according to a hierarchical order⁵. By reviewing the most significant text in relation to our research, we find that Sir Edward Coke played a crucial role in order to include in the Virginia Charter the most important texts from the Magna Carta such as "that the colonists and

¹ Ibid

² Hazeltine, H. D." The Influence of Magna Carta on American Constitutional Development". *Columbia Law Review*, 17(1),1917, p 4-5

³ Saxe, David W. "Teaching Magna Carta in American History: Land, Law, and Legacy." pp. 338-339

⁴ Hazeltine, H. D., P 6-8

⁵ Wakelyn, Jon "America's Founding Charter: Primary Document Colonial and Revolutionary Era Governance" Greenwood Pres, London, p 31

their posterity, as English subjects, were to enjoy “all liberties, franchises and immunities” to the same extent “as if they had been abiding and born in this our realm of England”¹.

This adoption shows reflection, importance and size of the impact of the Magna Carta in the first constitutional law in the colonial land nearly 400 years after its issuance. As mentioned above the way of the granting the Virginia Charter much resembled of the Magna Carta. “J James, by the grace of God [King of England, Scotland, France, and Ireland, Defender of the Faith], etc. Whereas our loving and weldisposed subjects, Sir Thomas Gates and Sir George Somers, Knightes; Richarde Hackluit, Clarke, Prebendarie of Westminster; and Edwarde Maria Winghfeilde, Thomas Hannam and Raleighe Gilberde, Esquiers; William Parker and George Popham, Gentlemen; and divers others of our loving subjects, have been humble sutors unto us that wee woulde vouchsafe unto them our licence to make habitacion, plantacion and to deduce a colonie of sondrie of our people into that part of America commonly called Virginia”.²

Since this Virginia Charter shared many characteristics with the Magna Carta, it served as the gateway through which the rights of citizens in the new colonies emerged and were affirmed in subsequent charters. There is more than one charter for Virginia, they are the Virginia Charter of 1609 and 1612, but the differences between them are relation to the territorial jurisdiction of the company.

2.2 Massachusetts Bay Colony Charter of 1629

It is a document issued by King Charles I to the Massachusetts Bay Company to establish a colony belonging to the royal crown, the new colony called the Massachusetts Bay colony. This document granted rights to the new colony. It specified the form of government, the boundaries of the colony as well as the rules that must be followed within the colony. The charter was unique because it does not have any clause which required remaining the colony of Massachusetts in England. the charter of 1623 was establishing the Massachusetts bay Colony as charter colony it means that the election of administration of the colony would be by the colorists also the colony would be allowed primarily to have self-government as long as its laws compatible with laws of England. The charter allowed the Puritan leaders to hold meetings to choose the governor and deputy governor also the assistant, and the seven who could serve as general court. The Charter vested the power to those people to govern the Bay with respecting to all rights and privileges it states that “shall have and enjoy all liberties and immunities of free and natural subjects as if they were born within the realm of England”.³

In regarding the influences of magna Carta to the Massachusetts Charter, the Magna Carta states in clause 61 that the twenty five boranes would keep and protect the rights and liberties that which confirmed to them by Charter, it gave them (barons) the right to represent the community in an assembly or (parliament), and it represents the idea of their consent before imposing taxes. The right to redress Infront of the king or his representatives, if the King or his chief justice does anything for the offensive all boranes with supporting of the community, they

¹ Ibid. 31

² The First Charter of Virginia (1606), http://avalon.law.yale.edu/17th_century/va01.asp

³ Massachusetts Bay Colony Charter of 1629

The Influences of the Magna Carta on the American Constitution

have the right to disobey the king, until the king does justice to the aggrieved person.¹ Article 61 allowed the barons to constitute an assembly or a parliament to maintain their security, as well as preserve rights and liberties from the king or his entourage if they infringed on these liberties and allowed them to address a petition and claim for compensation.

The readers could compare the Massachusetts Charter with the Magna Carta, and the result will be that there is an interesting similarity between them. The grants and proposals made by King William III to the colonists are like writ of summons and model Parliament, which was sent by Edward I to the barons. The text determined that how the General Court of Assembly be organized, with stating in details how to vote and the oath of allegiance how was sworn, and how and when they could hold meeting with Governor or Council in regarding to create General Court of Assembly. Furthermore, according to the Great Charter, the king gave the barons the right to appoint officers, and therefore the Massachusetts Charters this also adopted these ideas through that the Charter authorized the governors to appoint Judges and Commissioners and Sheriffs after having the consent of agreement of the Council.²

The Anglo American colonists explained that the importance of adhering to and respecting these Charters, believing on them it came through their belief that the Magna Carta was a contractual commitment between the king and the people, and that these Charters came as a complement to this great Charter. The charter of 1629 was revoked because England claimed that the colonist continued trading with other countries without pay intention to Navigations Act of 1651 and 1660,³ also they claimed the colonists issued illegal mints that made without the king picture on it, also the Massachusetts General Court created laws are not suitable and compatible with England's law.⁴ The Charter was revoked by these reasons in 1684 then the Massachusetts bay and colony was emerged with the colonies of Connecticut, New Hampshire and creating large royal colony, called the Dominion of New England, in 1686. 1691, the new king and queen of England, his name William III and Queen Mary II, issued a new charter for Massachusetts Bay, which converted Massachusetts into a royal colony called the Province of Massachusetts Bay.

2.3 Massachusetts Body of Liberties 1646 (New Magna Carta for Massachusetts)

The American colonies were fertile ground not only for the exercise of religious freedoms, but also it was a green land for the exercise of other rights and freedom. Before enacting the American constitution, there were some colonies really began to write their own charters, which legitimized the primary rules of rights and freedoms for citizens in the colony, and they had their impacts on the American Constitution. The Constitution was incorporated with these laws. The seventh century was considered for colony of Massachusetts as the paradise of freedoms. It witnessed the writing of the Charter of Rights and Freedoms, which

¹ Magna Carta, 1215, full text at <http://www.constitution.org/eng/magnacar.htm>

² Dickinson, Harry T. pp. 81

³ Lesh, Benjamin. "The Assertion of English Royal Authority in the American Colonies and Royal Revenue: 1651-1707." Western Oregon University, 2016

<https://digitalcommons.wou.edu/cgi/viewcontent.cgi?referer=&httpsredir=1&article=1052&context=his>

⁴ Karr, Ronald Dale. "The Missing Clause: Myth and the Massachusetts Bay Charter of 1629." *The New England Quarterly*, vol. 77, no. 1, 2004, pp. 89–95.

came in conformity with the Magna Carta (1215) and with the petition of rights (1628), as well as with other proposals of rights and liberties which were proposed in England.¹

Massachusetts has long struggled to enact these laws that govern individuals' relationships without resorting to the discretionary power of the executive and the judiciary. The rights of Lives and property of the colonists were not safe from arbitrary power, and therefore these rights must be embodied in the form of a written law. Massachusetts was a shelter for Puritans, who had the ideas of the English revolutionaries and who fled from other English colonies. Puritans were radicals and they were known for their opposition to the Church, as God gave them the basic rights that they must preserve these rights.

Ten years after the colonists' arrival in Massachusetts, the lawyer Nathaniel Ward, who came to England in 1634 and was a graduated from Cambridge with valuable legal experience, was able to write the Massachusetts Body of Rights and Liberties, which he drafted in 25 pages Ward called it "first, elemental, and essential, public, private, and procedural rights that where to obtain in Massachusetts Bay colony".² Therefore, the value of rights was considered as a preamble to basic rights, and the protection of rights and liberties in this colony was necessary for the stability of the Church.³

The Body and Liberties was opened ingenious wording to guarantee and protect these rights, such as the right to life, liberty, and the family, and the legal procedures that were taken from the greatest document, which is the Magna Carta. The Body of Liberties contained several guarantees regarding criminal procedures. It is the first document in the land of the colonies that explicitly stipulates restricting criminal procedures and making them applicable to all residents of the colony, regardless of whether they are foreigners or residents, therefore the person could not be considered a criminal unless he committed a crime listed in law.⁴ It consisted of several crimes such as murder, Treason, Adultery, sodomy, kidnapping, sexual assault, perjury. Likewise, they can only be punished by appearing before an impartial judge, during a speedy trial, whether it was made up of a jury or individually, and a person cannot be punished for criminal behavior more than once. The incrimination and conviction must be based on strong and clear evidence, such as the testimony of witnesses.

In civil lawsuits, plaintiff and defendant could choose the pleadings to be written or oral. Furthermore, they had the right to have trial jury or without a jury, and the parties have the right to challenge the procedure of selecting Jury. The plaintiff had the right to complain about the legal damage that was accrued, he could withdraw his case at any time before the judgment was verdict. The Body of liberties also contained legal provision to protect property and civil contracts, and the legal age for legal responsibility considered to be 21 years for the purpose of engaging in legal actions. The Body and liberties contained guarantees for the rights of women and children, as well as the protection of women from violence or abuse.⁵

¹ Winthrop, John. "Winthrop Journal of history of New England 1630-1646" J.K Homser . New York scriben's Son, 1908. P 151

² WITTE, JOHN. "A NEW MAGNA CARTA FOR THE EARLY MODERN COMMON LAW: AN 800TH ANNIVERSARY ESSAY." *Journal of Law and Religion*, vol. 30, no. 3, 2015, pp. 428

³ WITTE, JOHN. pp. 442-43

⁴ Ibid, pp. 442

⁵ Dickinson, Harry T. p 90

The Influences of the Magna Carta on the American Constitution

Body and Liberties of Massachusetts recognized the right of citizens to participate in political elections, as well as their right to work in political positions and the right to vote or abstain from voting. Citizens had the right to express their opinions in public meetings and it included several legal texts that prohibit slavery. It contained an impressive set of civil rights and liberties as well as rules for civil and criminal procedures that were a true guarantee of individual rights.

Body and Liberties of Massachusetts became one of the primary sources of the US Constitution later, and these rights were derived from English law, as Ward described it. However, the laws of the colonies came on the compilation of traditional customary laws. Therefore, these civil rights, criminal procedures, and other legal guarantees that the document came with were not a Western invention, but rather had an ancient origin root back to the classical and Roman times, but modern jurists and lawyers revealed them with more accuracy, clarity and detail for public statements.

The Magna Carta was the constitutional document; it was a legal basis from which the Body and Liberties of Massachusetts took the most prominent of these guarantees, which was considered a door or a path for freedom in the land of the colonies. The trial by jury, due legal process and equal justice are all these rights that came directly from provision 29 of Magna Carta. Also, the first section the Body of Liberties has been the spirit from chapter thirty nine of Magna Carta by declaring that, " No mans life shall be taken away, no mans honor or good name shall be stained, no mans person shall be arrested, restrained, banished, dismembered, nor any ways punished, no man shall be deprived of his wife or children, no mans goods or estate shall be taken away from him, nor any way damaged under color of law or Countenance of Authority, unless it be by virtue or equity of some express law of the Country warranting the same, established by a general Court and sufficiently published, or in case of the defect of a law in any particular case by the word of God. And in Capital cases, or in cases concerning dismembering or banishment according to that word to be judged by the General Court."¹

3. The Magna Carta Voices in American Revolution

Most of the colonies in America adopted principles of the English laws, in particular the principles stipulated in the Magna Carta. These principles became part of the social, legal and political life of the inhabitants of these colonies, and they seemed to adapt to them and became firmly established in their souls before they were firmly established in the legal systems. Before the era of the American Revolution, extending from 1770 to 1783, this period witnessed long and important discussions.² In fact, the discussion took place between the colonists and the motherland or country over constitutional principles.

The colonists had obtained all the rights enjoyed by the English man. However, the colonists also focused on the argument that they demanded that there should be no taxation without representation and adhered to basic principles of English law. When the controversy continued over the nature of the enjoyment of these rights, the colonists resorted to the basic

¹ Massachusetts Body of Liberties (1641)

The 1641 Massachusetts Body of Liberties was the first British North American colonial statute to guarantee the legality of enslaving Africans and Native Americans.

² WITTE, JOHN. P 430

charters of the English law such as Magna Carta and Bill of the Rights, without relying entirely on royal charters. Especially these rights are adopted by the Magna Carta and the Bill of Rights.

¹ “In our Revolutionary era, the colonists frequently invoked the Glorious Revolution and Magna Carta. For example, when Parliament passed the Stamp Act in 1765, the Massachusetts Assembly declared the act null and void as a violation of their natural rights outlined in Magna Carta; namely, no parliament could by right tax subjects without representation and thus without consent”.²

The colonists considered the English constitution to be as their own constitution and the guarantor of their rights, therefore; all American documents during the revolution, such as Massachusetts letter 1768, Virginia Resolutions 1769, Declaration of the causes and Necessity of Taking up Arms 1775, and the Declaration of independence came compatible with English common law, and Magna Carta.³ These principles have been acquired by the American people during a long struggle that started with long discussions about the Englishman and the necessity of their enjoyment of rights to the extent enjoyed by the Englishman. The Magna Carta was the most important document that the Americans inherited and adhered to during the struggle for freedom and discussing the constitutional principles. It was one of the most important reasons that led to differences of viewpoints in the interpretation of constitutional principle between the colonists and their mother country. therefore, the constitutional Principles of the Magna Carta contributed to the outbreak of the War of Independence against the English Crown.⁴

In the spring of 1776, that was months before the declaration of independence, Chief Justice William Henry Drayton of South Carolina delivered a riveting address to a grand jury in Charleston., who held the Magna Carta in his hand, said that this document was a founding document for justice in the English colonies, and accused George III that he is treating this document with more of contempt.⁵ Therefore when the revolution succeeded, there was no big difference that deserves to be mentioned except it was the birth of the American Constitution. This constitution is an extension of the English ideas and the constitutional principles that Americans inherited from the English law such as Magna Carta and the Bill of Rights. Thayer in wrote in his easy about American constitutional development, what happen after the revolution he said we cut the cord that tied us with Britian and there no longer with external sovereign⁶

3.2 Magna Carta and the Formation of the United States Constitution

When the founders of the American Constitution tried to write their constitution, which is considered an heir to the English ideas regarding constitutional principles, the American Constitution was distinct and different in some principles over the English Constitutions. The reason for the difference was the nature of the

¹ Hazeltine, H. D. “The Influence of Magna Carta on American Constitutional Development.” PP 6-12

² Saxe, David W. p26.

³ Corley, Pamela C., Robert M. Howard, and David C. Nixon. “The Supreme Court and Opinion Content: The Use of the Federalist Papers.” *Political Research Quarterly* 58, no. 2 (2005): 329–40

⁴ Ibid.p 8-13

⁵ Yonce, Jason ” How Magna Cart Influences the American Revolutionn’ Jonural of American Revolution. 2019 <https://allthingsliberty.com/2019/10/how-magna-carta-influenced-the-american-revolution/>

⁶ KASPER, ERIC T. “The Influence of Magna Carta in Limiting Executive Power in the War on Terror.” pp 550-560

The Influences of the Magna Carta on the American Constitution

relationship between the Englishman and the colonies, which involved in a lot of conflicts over the acquisition of the rights and enjoyment between them.¹ The nature of the relationship between Englishman and colonies gave Constitution of the United States the distinction and made it different from all the English colonies, the distinction could be shown in the nature of the union as well as the nature of the relationship between the legislative, judicial and executive powers. It may be one of the most successful constitutions that implemented the principle of separation of powers at the highest level, despite the failure of many of the world's constitutions to have this.

Furthermore, the principles of the Checks and balances and the mechanism of the application of the system that made this constitution to have outstanding characteristics.² It shows that it was written carefully and whose purpose was to perpetuate and survive regardless of the different circumstances and times. The Founding Fathers did not deny the virtue of English law on building and developing constitutional concepts and principles of US Constitution. When the thirteen states declared their independence from Britain, they enacted their independent constitutions. The features that were linked with these constitutions were the declarations of fundamental rights and liberties of the people. The principles of fundamental rights that the Magna Carta and Bill of Rights have which they secured the rights and liberties of Englishman, they became essential principles for the states' constitutions.³

The states' constitutions naturally expressed the rights and liberties that were derived from Magna Carta. In Lord Bryce's felicitous words: "The American Constitution is no exception to the rule that everything which has power to win the obedience and respect of men must have its roots deep in the past, and that the more slowly every institution has grown, so much the more enduring is it likely to prove. There is little in this Constitution that is absolutely new. There is much that is as old as Magna Carta."⁴ The United States federal Constitution embodies several of the principle of Magna Carta as mentioned above, the rule of (No Taxation without representation) it came directly from Magna Carta, which became one of most significant principle in US Constitution. This right has been cited by Colonist in the declaration of the independence. In May 1765, Patrick Henry wrote the Virginia Resolves, which obviously used the phrase "taxation without representation" It has been used after the protests against the Stamp Act.

1791 the people felt the absence of the Bill of the Rights in their new constitution because this thing was criticized as dangerous features on their rights. In response of this in 1791 the Bill of Rights added the United States Constitution by first ten amendments.⁵ These amendments¹ were added to the US Constitution as

¹ Saxe, David W. P332-340

² Hazeltine, H. D. p 7-14

³ Ibid

⁴ Hazeltine, H. D.p 27.

⁵ Ibid p30

amendments guaranteeing the rights and freedoms of individuals against the federal authority and became an integral part of the federal constitution. Therefore, people have felt that these rights and freedoms, which were gained after a long struggle with the colonial authorities, and that these rights and freedoms have become part of the constitutional development in the United States. The qualities and advantages of the Magna Carta and the Bill of Rights in the first ten amendments has significant impacts on American society, and they are a source of pride for the new society, they were formed because of a long struggle. Therefore, when the founding Fathers tried to write the American Constitution, they did not forget the dream of the Magna Carta which it must remain firmly rooted in the new constitutional structure.²

3.2 Constitutional Principles of Magna Carta in American Constitutional Law

The right to due process of law subsequently has been found many the American colonies, although it continued to be phrased as "the law of the land." For instance, the Massachusetts 1641 Body of Liberties declared that "No mans life shall be taken away, no mans honor or good name shall be stayed, no mans per on shall be arrested, restrayed, banished, dismembred, nor any ways punished...unless it be by vertue or equitie of some express law of the Country wanting the same."³ "New York's "Act Declaring...Rights and Privileges" of 1691 stated that "no Free-man shall be taken or imprisoned, or be deprived of his Free-hold or Liberty...but by the lawful Judgment of his Peers, and by the Laws of this Province. Although the language differed slightly from Magna Carta's "law of the land" phraseology, the evolving concept of due process had taken root on a new continent".⁴ the phrase "due process of law" appeared for the first time in the Magna Carta but with phrase "the law of the land" it appeared in a 1354 statute of King Edward III when the king declared that the role of Magna Carta to guarantee of the liberty of the subject.⁵

When the colonies declared their independence from Britain in 1776, the states kept their allegiance to the concept of due process.⁶ All the U.S. states' constitutions before the Federal Constitution including the 1776 Virginia Bill of Rights, they used the same words and concepts that used in the Magna Carta as well: "no man may be deprived of his liberty except by the law of the land. However, when drafting the U.S. Bill of Rights, Madison played little bit with language and use the phrase to "due process," which was ratified as part of the Fifth Amendment: "No person shall...be

¹ Nayel AlOmrani, Tourkia Rebhi, Constitutional Protections of Press and Media Freedoms in Jordan and Indonesia Amid Challenges from Artificial Intelligence and International Legal Frameworks. (2025). *Journal of Indonesian Legal Studies*, 10(2), 667-714. <https://doi.org/10.15294/jils.v10i2.11010>

² Hazeltine, H. D. p 27

³ the Massachusetts Body of Liberties 1641

⁴ KASPER, ERIC T. "The Influence of Magna Carta in Limiting Executive Power in the War on Terror." *Political Science Quarterly*, vol. 126, no. 4, 2011, pp. 560

⁵ Due Process of Law Under the United States Constitution, *University of Pennsylvania Law Review*, Vol 74, 1926, PP 336

https://scholarship.law.upenn.edu/cgi/viewcontent.cgi?article=8086&context=penn_law_review

⁶ McIlwain, C. H. "Due Process of Law in Magna Carta." *Columbia Law Review*, vol. 14, no. 1, 1914, p 22-24

The Influences of the Magna Carta on the American Constitution

deprived of life, liberty, or property without due process of law." Madison did this to place a stronger limit on executive power than the vaguer "law of the land."¹ The same "due process" language was used when the Fourteenth Amendment was ratified in 1868, thus placing all state governments under this restriction as well. Again, much like the jury trial right, due process crossed many important legal "bridges" to become relevant in the United States; the most important one of these bridges was the U.S. Constitution".²

The U.S Supreme Court has cited in the case of *Twining v. New Jersey* that due process has long roots connected with Magna Carta. *Twining* and David Cornell, who was directors of the Monmouth Trust and Safe Deposit Company, has been accused of knowingly exhibiting a false paper to the examiner of the state's banking department.³ When the judge was giving the jury the instructions, he pointed out that "the two defendants heard evidence against them, but they failed to take the witness stand to deny the allegations against them. The jury found the two men guilty. The Supreme Court upheld the men's convictions, finding that the commentary did not violate their rights against compelled self-incrimination (a ruling the Supreme Court would overturn over one-half century later in *Malloy v. Hogan*"⁴

Twining, Justice William Moody states the words 'due process of law' are compatible with in meaning to the words 'law of the land, contained in that chapter of Magna Carta." Moody then stated that "due process of law may be ascertained by an examination of those settled usages and modes of proceedings existing in the common and statute law of England before the emigration of our ancestors."⁵ then we concluded that," It does not follow, however, that a procedure settled in English law at the time of the emigration and brought to this country and practiced by our ancestors, is an essential element of due process of law. If that were so the procedure of the first half of the seventeenth century would be fastened upon the American jurisprudence like a straitjacket, only to be unloosed by constitutional amendment."⁶ In *Hagar v. Reclamation Dist.*" the Court had already expressed the view that the meaning of "due process of law" is that "there can be no proceeding against life, liberty, or property which may result in deprivation of either, without the observance of those general rules established in our system of jurisprudence for the security of private rights"⁷

The second amendment declared that" A well-regulated Militia, being necessary to the security of a free State, the right of the people to keep and bear Arms, shall not be infringed."⁸ This was connected with section 61 of the Magna Carta it states

¹ Fifth amendment of US consitiuion

²KASPER, ERIC T. "The Influence of Magna Carta in Limiting Executive Power in the War on Terror, P 560

³ *Twining v. New Jersey* - 211 U.S. 78, 29 S. Ct. 14 (1908)

⁴KASPER, ERIC T. "The Influence of Magna Carta in Limiting Executive Power in the War on Terror."P560-561

⁵ Ibid

⁶ *Twining v. New Jersey* - 211 U.S. 78, 29 S. Ct. 14 (1908)

<https://www.lexisnexis.com/community/casebrief/p/casebrief-twining-v-new-jersey>

⁷ Hazeltine, H. D. "The Influence of Magna Carta on American Constitutional Development." pp. 30

⁸ Bearing Aram second amendment. P 1193

that” if the King (John) did not follow the provisions of the charter, the Barons should have a right to correct the King by force until the King should begin to follow the articles of the charter. Thus, the right to lawful revolution was born into the constitutional law of England. This is of major import because without the right to revolt there is less reason to preserve the right to bear arms. This particular portion of the Carta has been reaffirmed as were the regulations concerning the bearing of arms and tenure by serjeanty”¹

In the words of Judge Cooley describe this kind of amendment; he states that "The amendment, like most other provisions in the Constitution, has a history. It was adopted with some modification and enlargement from the English Bill of Rights where it stood as a protest arbitrary action of the overturned dynasty in disarming the people, and as a pledge of the new rulers that this tyrannical action should cease.”²

The statement of the Magna Carta no one” shall be imprisoned except by the lawful judgment on his peers”³ the trial by jury was taken from the colonies law which also they adopted this by the influences of the Magna Carta on American constitutional developments. The development of this concept stated from fourteen century the sixth amendments declared that the” accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed”.⁴ The trial by jury must be in all the crimes which are committed in the United States, but jury trial took many decades to develop and be formulated as we see today. The Supreme Court of the United States cited very important case which declared the rights of jury was inherent to the Magna Carta⁵.

The case of Duncan Vs Louisiana was in 1968 which Duncan was accused that he committed a misdemeanor battery maximum penalty for this it was two years imprisonment and paying fees Duncan asked for trial by Jury, but the court denied because at this time the Louisiana Constitution granted the trial by jury for only the cases had potential execution or imprisonments in hard labor.⁶ The Supreme Court reversed the conviction It declared that” Consequently, [Duncan] was entitled to a jury trial and it was error to deny it." In the course of the opinion of the Court, Justice Byron White noted the development of the right to a jury trial as it dated back to Magna Carta: The history of trial by jury in criminal cases has been frequently told. It is sufficient for present purposes to say that by the time our Constitution was written, jury trial in criminal cases had been in existence in England for several centuries and carried

<https://www.govinfo.gov/content/pkg/GPO-CONAN-1992/pdf/GPO-CONAN-1992-10-3.pdf>

¹ Stuart R. Hays, "The Right to Bear Arms, A Study in Judicial Misinterpretation", William & Mary Law Review, Volume 2 (1959-1960) Issue 2, P 385

<https://scholarship.law.wm.edu/cgi/viewcontent.cgi?referer=&httpsredir=1&article=3295&context=wmlr>

² Hazeltine, H. D. "The Influence of Magna Carta on American Constitutional Development."p 27

³ KASPER, ERIC T. "The Influence of Magna Carta in Limiting Executive Power in the War on Terror." pp. 557

⁴ Sixth amendment of US Constitution

⁵ Ibid

⁶ Ibid

The Influences of the Magna Carta on the American Constitution

impressive credentials traced by many to Magna Carta."¹ Furthermore, the influences of Magna Carta went in a deep point of the American society and gave them the principles of protection of the human being. These principles were adopted in the Eighth amendment. It states that "Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted."²

U.S Supreme Court in the case of *Hurtado v. California* emphasizes that the fundamental rules of the Magna Carta which gave the Constitution of the United States a distinction, they incorporated into the Constitution of the United States but in the way which bring into American harmony and it also incorporated with American notions not only of the supremacy of the written constitution and of the co-ordination of the three departments of government under that constitution, but of the great power entrusted to the courts of declaring legislative acts which conflict with the constitution null and void.³

4- Conclusion

The history of the Magna Carta in America has a deep meaning, and it is more than a constitutional document. The founding fathers of the United States preserved the fundamental rules of the Magna Carta, which were incorporated into the American Constitution. The Magna Carta rules became a model for the protection of freedom and Rights in the United States.

The history of the Magna Carta's overseas voyages, from its home, begins in the early 17th century. The document was revived from the eclipse under the Tudor dynasty, and the great English jurist Sir Edward Coke believed that these struggles were unfolding just as English settlers began to settle in America a fortunate historical coincidence. Thus, in 1606, the Charter of the First Settlement of Virginia declared that settlers and their descendants, as English subjects, should enjoy "all liberty, the right to vote, and immunity" to the same degree "as if they had stayed in England. Therefore, the development of the Magna Carta in the American Constitution took more than three centuries. It started with colonial laws, which people of new lands insisted on having full rights as Englishmen had. The Magna Carta came to America not by a grant of the kingdom, but it came by the demand of people when they felt the life is under threat from the authority and they had to have protection from these authorities.

The legacy of the Magna Carta is most clearly reflected in the Bill of Rights, the first ten amendments to the Constitution approved by the states in 1791. In particular, the Fifth to Seventh Amendments set out the basic principles of speedy and impartial jury trials, and the Eighth Amendment prohibits improper safeguards and fines. But perhaps the greatest impact Magna Carta had on the Founding Fathers was their collective understanding that, in drafting the U.S. Constitution, they were creating a new era of Magna Carta. The influence of the Magna Carta is taught to the citizens of the United States. The ideas of Magna Carta were kept and guarded by Americans through their entire history; they should continue to animate them as they adapt their institutions to the everchanging conditions of national and international life. "William Penn was right when he exhorted the colonists "not to give away anything of Liberty.

¹ *Duncan Vs Louisiana* 391US. 145 (1968)

² Eighth Amendment of US constitution,

³ Hazeltine, H. D. "The Influence of Magna Carta on American Constitutional Development." , pp. 32.

but take up the good example of our ancestors and understand that it is easy to part with or give away great privileges, but hard to be gained if once lost.”

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The Influences of the Magna Carta on the American Constitution

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