

# Opinion • Commentary

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## The Magna Carta

**P**OSSIBLY no single document was as well known by name to the Founding Fathers as the Magna Carta which the Barons forced King John to accept on June 15, 1215. It was a "bill of rights" that formed an integral part of the English legal heritage of the 13 original colonies.

Yet when the Constitutional Convention met in Philadelphia in the summer of 1787, the document it

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produced lacked any hint of a bill of rights. Some, like James Wilson of Pennsylvania, argued that it was not needed given the universally accepted traditions of the English constitution and the constitutions of the individual states.

Maryland's State Constitution, adopted in 1776, already contained a Declaration of Rights, among which was the provision "That no freeman ought to be taken, or imprisoned, or disseized of his freehold, liberties, or privileges, or outlawed, or exiled, or in any manner destroyed, or deprived of his life, liberty, or property, but by the judgment of his peers, or by the law of the land."

In 1215 the English barons imposed upon King John their own Bill of Rights, among which was the provision that "No Free man shall be taken, imprisoned, disseized, outlawed, banished, or in any way destroyed, nor will we proceed against or prosecute him, except by the lawful judgment of his equals or by the law of the land." So strong was the influence of the Magna Carta as an underpinning of the rule of law that in 1776, 561 years after Magna Carta, those who wrote Maryland's first State Constitution would in part make Magna Carta's language their own.

In April 1788, just as workmen were completing the exterior of the magnificent wooden dome atop the present Maryland State House, the Maryland Ratifying Convention assembled in the old House of Delegates chamber to pass on the proposed new Constitution of the United States. Twelve members urged the majority to consider 15 amendments, among which



was one that would make it unconstitutional to in any way "repeal or abrogate the constitutions or bills of rights of the states or any part of them."

Another of their proposed amendments would restrain the application of martial law except in time of war. (Such a provision ultimately was incorporated into the Fifth Amendment to the U.S. Constitution.)

The Maryland minority argued: "This provision . . . although, by no means so ample as that provided by magna charta, and the other fundamental and constitutional laws of Great Britain (it being contrary to magna Charta to punish a freeman by martial law in time of peace.) . . . yet it may prove an inestimable check, for all other provisions in favour of the rights of men would be vain and nugatory, if the power of subjecting all men to bear arms to martial law at any moment should remain vested in congress."

Although the Maryland effort to amend the Constitution proved unsuccessful, the widely circulated printed report of the minority, the first such printed agenda for a Bill of Rights, had a profound influence on the states that had not yet ratified. Within the first year of the new government the first amendments to the U.S. Constitution collectively known as the Bill of Rights were on their way back to the states for approval — containing language that derived in part from the charter to which the Barons forced King John to affix his seal of approval in 1215.

*Dr. Papenfuse is the Maryland state archivist. Through Friday the original Magna Carta, one of four existing copies, will be touring Maryland.*