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# THE NEW MAGNA CARTA

A FAR cry it seems from the field of Runnymede in the beginning of the thirteenth century to the Metropolitan Opera House in the City of New York on the twenty-seventh day of September of this, the year nineteen hundred and eighteen. Yet it was at Runnymede that King John, driven to bay by the Barons of England, was made to grant to the freemen of England that priceless charter of liberty, Magna Carta, and it was at the Metropolitan Opera House that our President presaged a new Magna Carta, not alone for one people or group of people, but for all peoples and all nations.

What is that new charter? Is it a poet's dream of Utopia, or is it a workable plan to bring forth from this great and tragic war an adequate and noble recompense?

To these questions the Barons of England made answer seven hundred years ago; and it is to measure the President's program in the light of that weightiest of historic precedents that these words are set down.

We turn to a well-thumbed copy of Green's "History Of The English People," little read since boyhood. The picture of King John, murderer of his young cousin, Arthur, is once again recalled.

"King John was the worst outcome of the Angevins. He united into one mass of wickedness their insolence, their selfishness, their uncontrollable lust, their cruelty and tyranny, their cynical indifference to honor or truth. His punishments were refinements of cruelty,—the starvation of children, the crushing of old men under copes of lead," yet it will be remembered that "in the rapidity and breadth of his political combinations he far surpassed the statesmen of his time,—that throughout his reign we see him quick to observe the difficulties of his position and inexhaustible in the resources with which he met them." "Foul as hell is," his

contemporaries said of him, as, were they living, they would now say of the chief of our enemies, "hell is itself defiled by the fouler presence of King John."

From its beginning his reign had been marked by all manner of wrongs and oppressions. He had levied outrageous taxes upon the men of England; had made courts of justice a mockery; had practised all manner of cruelty; had starved to death the wife and son of William de Broose, the first Baron who took arms against him; had hanged in a row twenty-eight Welsh boys who were hostages for their fathers.

But at last, after years of submission, the Barons' hatred of the king overcame their in-born sense of loyalty to their lord. Led by Robert Fitz Walter, the Barons united against their sovereign. His day of reckoning came. Deserted by all save a handful of courtiers, he was forced to surrender to the Barons.

It was near the meadow of Runnymede that King John of England, Lord of Ireland, Duke of Normandy, Aquitaine, and Count of Anjou, met the Barons on the fifteenth of June, twelve

hundred and fifteen. There, friendless and solitary, in the presence of a vast assemblage who loathed and despised him, perforce he accepted the terms imposed upon him, and affixed his royal seal to that famous parchment—Magna Carta.

It was a thrilling and historic surrender to the rights of the common man. Holding the destiny of England in their hands, the Barons did not enter into a secret bargain for their own advantage. They exacted no profit for themselves or their own class, but obtained equal justice for all English freemen; and the covenants they wrested from an untrusted monarch they secured and made enduring by coercing from him an agreement giving them and their successors power “to distress him in all possible ways,” even to the extent of making war on him, should he break his royal promises.

In the three and sixty articles contained in Magna Carta many reforms were secured. Taxation without the consent of the Great Council Of The Realm was prohibited. Thus, the king's pursestrings were taken from his hands

and his power to raise armies destroyed. The courts, which had become mere instruments of the king's will, were freed from his dominion. The rights of the municipalities and of the poor were safeguarded. Many special abuses were swept away. Indemnities were exacted in the form of compelling restitution of plunder and booty. Yet, bitter as was the medicine the king was made to swallow, in granting these and similar rights to his subjects, the chief and permanent fruits of Magna Carta lay in two general clauses, which to King John doubtless seemed mere vaporings and dreams, tenuous nothings, and yet which, to the English or American lawyer, trained in the English common law, are the very alphabet of his profession.

These clauses, the thirty-ninth and the fortieth articles, provide as follows:

“No freeman shall be taken or imprisoned, or disseised or outlawed or destroyed, nor will we pass upon him nor send upon him unless by the lawful judgment of his peers, or the law of the land.”

“We will sell to no man, we will not deny any man, either justice or right.”

No words in any political document in history, it may fairly be said, have exerted a profounder influence than these two paragraphs wherein no material treasure but only a possession of the spirit was granted to Englishmen. It is these words that frame the principle that every man, be he poor or rich, mighty or humble,—whatever his race or creed,—shall have his day in court. It is but a rephrasing of that principle which is found in the constitution of the United States and of every state of the Union in the language that “No man shall be deprived of life, liberty or property without due process of law.”

Magna Carta, then, laid and built not only the foundation, but the very house of liberty wherein all English-speaking people have dwelt for seven centuries. And if kings, plutocrats and industrial tyrannies have again and again laid siege to that dwelling-place, these principles of Magna Carta have, on the whole, successfully bulwarked the life, liberty and property of the individual.

In these clauses of Magna Carta are bound up almost the entire development of constitutional

law, both in England and the United States. They are no mere lawyer's abstraction; they have reached into the very roots of the life of every man and woman who live under their protection. They are a background to every political conception of men of England and of the United States, a conception wherein the state is a community of individuals, who, owing allegiance to the state, are yet entitled, not as a matter of favor, but of right, to protection from the state,—who are freemen, not slaves or vassals, and who have a right to expect that the state will be bound by the same laws of honor and obligation as those which apply to individuals.

So deeply have these ideas permeated us that we can scarcely conceive that there can exist a state other than one where, in the words of Magna Carta, "We will sell to no man, we will not deny to any man, justice or right." The extent to which this English and American attitude toward the state has penetrated the very air we breathe is nowhere better shown than in our inability even to glimpse or comprehend the Prussian theory of statecraft, not merely acted

on by its autocrats and soldiers, but laboriously developed over many years by its professors and philosophers. To them "the highest moral duty of the state," as said by Von Treitschke, "is to be concerned for its power," and from this concept, which is ground into the very marrow of German life, it follows that trickery, the breaking of treaties and covenants, murder, pillage, destruction, oppression,—are not merely forgivable sins, if done for the increase of the state's power, but become solemn virtues. The case of the Prussian today is the case of King John in the thirteenth century. The king could do no wrong. That was genuinely and completely King John's belief and upon that belief the murder of the twenty-eight Welsh boys was, in his eyes, no evil act, but a wise and good deed. So, too, the violation of Belgium and the wholesale murder of its people were not wrongs, according to deliberate German philosophical concepts, but acts of the highest virtues, performed, as Prussian autocracy held them to be, for the increase of the state's power.

To mention these things is only to restate once



more what has echoed through a horror-stricken world for four years, yet these things require restatement a thousand times and a thousand times again so that we, who dwell where such concepts of the state are unthinkable, may at least dimly perceive the character of our enemy.

With victory in sight, we have, then, before us in the Germany of today, certainly in its ruling classes, such a government to deal with as confronted the Barons when, victorious, they came to deal with King John. Dealing with him as victors, they took rights rather than territory, and these rights they secured—for the Barons had no faith in King John's promises—by requiring him to consent to what caused him, in rage, to cry, "They have given me five and twenty over-kings." They compelled him to agree that, should he violate his grants of liberty or "break through any of these articles of peace and security," then the five and twenty barons and their successors, together with the community of the whole kingdom, "shall distrain and distress us in all possible ways by seizing our castles, lands and possessions."

The situation, then, as to Magna Carta, may be summarized into three prime essentials: First: For years the Barons patiently suffered oppression, but when once they took arms they made no compromise with the king; they accepted nothing less than unconditional surrender. Second: Having gained complete ascendancy over the king, the Barons chose to use their power, not for personal or selfish gain over other Englishmen, not to bargain with the king behind secret doors or in the whispers of diplomacy for greater baronies for themselves, but, openly and in the presence of all England, to secure the equal liberties of all Englishmen. Third: To preserve and guarantee these precious liberties they constituted themselves and their successors a permanent League of Barons with power of overlordship to prevent the king's trespass upon their charter.

Let us look now to the present day. The long train of abuses to which we submitted from the time of the sinking of the *Lusitania* to our entrance into the war need not be catalogued. Like the Barons we suffered wrongs till further sub-

mission would have become a coward's part. But from the instant we entered the war the President armed himself with the same resolution which carried the Barons to Runnymede. When, in August, 1917, Pope Benedict's proposals called for a statement of American policy toward the enemy, the President's message to the people left no one in doubt that he would not and could not deal with "an irresponsible government, which, having secretly planned to dominate the world, proceeded to carry the plan out without regard either to the sacred obligations of treaty or the \* \* \* long cherished principles of international action and honor."

Such thoughts he restated with increasing emphasis until on July fourth, nineteen hundred and eighteen, in his address at the tomb of Washington he summarized his position by demanding, as the very first prerequisite of peace, "the destruction of every arbitrary power anywhere that can \* \* \* disturb the peace of the world; or \* \* \* at least, its reduction to virtual impotence."

Hence the curt dismissal of Austria's recent

bid for bargaining behind closed doors. Like the Barons, the President long submitted to wrongs. Having taken arms, like the Barons, he is content with nothing less than the destruction of autocratic power.

The Barons required restitution; they took back what the king had stolen. Here again the President follows their course; for in his fourteen conditions of January eighth, nineteen hundred and eighteen, he has demanded the evacuation and restoration of Belgium, the surrender of French territory wrested from France in 1871, the restitution of plunder and the various other material settlements which are required by justice.

So we are brought face to face with the great address of September 27th. Delivered at the opening of the campaign for the Fourth Liberty Loan and at a time when the glorious advance of our armies in the fields of Flanders and Picardy and the fury of battle burning in our blood turn our minds from peace to victorious war, this country has scarcely, it seems, taken in the root and branch of the words he spoke,—

words which he spoke not only to those who heard his voice, not only to the people in this country, but also to friend and foe.

In its omissions it is as eloquent as in its content. He does not pause to discuss material things,—boundaries, moneys, trade, indemnities, balance of power. Following closely upon the recent address of Senator Lodge on the conditions of peace, but touching on substantially none of the things with which it dealt, the President concerns himself not with things, but with rights. His address begins by pointing out that no statesmen or assembly created the issues of this world conflict but that “they have arisen out of the very nature and circumstances of the war.” This description of the present situation leads us back for a moment to Magna Carta, for the conflict which preceded that treaty,—on a smaller scale, indeed, yet like the present one,—arose not out of the choice of the king or his barons, but out of circumstances themselves,—out of the age-long strife between absolutism and liberty.

The President proceeds, then, to define the

issues of the war. This he does by asking five pregnant questions:

“Shall the military power of any nation or group of nations be suffered to determine the fortunes of peoples over whom they have no right to rule except the right of force?”

“Shall strong nations be free to wrong weak nations and make them subject to their purpose and interest?”

“Shall people be ruled and dominated, even in their own internal affairs, by arbitrary and irresponsible force or by their own will and choice?”

“Shall there be a common standard of right and privilege for all peoples and nations or shall the strong do as they will and the weak suffer without redress?”

“Shall the assertion of right be haphazard and by casual alliance or shall there be a common concert to oblige the observance of common rights?”

The answers to these questions are to be found by applying to the family of nations those principles which Magna Carta brought into being for the individual man of England. In a word, the President proposes that hereafter in international relations there shall be substituted

for force, power, guile and secret bargain Magna Carta's rule of justice. "Hereafter," the President might have said, in effect paraphrasing Magna Carta, "we will sell to no people, we will not deny to any people either justice or right." Into the Kaiser's hands he thrusts the same pen which the Barons of England forced into the unwilling fingers of King John, and, like the Barons, he will not use victory to grasp or permit selfish advantage for the victors but to gain equality and justice for all men.

This is a matter of the weightiest import. With a magnanimity that characterized Lincoln's utterances, the President stresses his intent when he says, "It will be necessary that all who sit at the council table shall come ready and willing to pay the price, the only price that will procure it. \* \* \* That price is impartial justice, \* \* \* no matter whose interest is crossed."

While the President points out that "there can be no peace obtained by any kind of bargain or compromise with the governments of the Central Powers," while, in words which must

sink like daggers into all German hearts, he declares that "they are without honor and do not intend justice; they observe no covenants, accept no principle but force and their own interest," while he makes it clear that it is a prerequisite to peace discussion that the brutal code of power which dominates Germany today must be destroyed, while his language is so clear that even the rulers of the Central Powers must begin to comprehend the meaning of his calm and inexorable will, he promises them that, though they must be made to suffer the sword of retributive justice until they yield unconditional surrender of the cruel power they have sought to impose upon the world, yet they shall then be protected by not less than the shield of justice.

We find, then, to the entire world a plain avowal of the President's intentions; an avowal lacking wholly in the subtleties and circumventions of the language of diplomacy, but spoken so simply, so frankly, so clearly, that even he who runs may read.

What this seed will produce in the hearts of the common soldiers and the common people of



Germany no one can foretell. Perhaps they have so long been bred to the cruel and cynical code of their masters that they accept it as their own, yet the words of the President, spoken to the common people of Germany, may have a profound effect, since the desire of justice and liberty is a thing deeply rooted in human breasts. Perhaps, judging from the course developing in Austria and that already taken in Bulgaria, his words have already reached the common people of the Central Powers.

Plainly as the President speaks to our foes, his words are no less full of meaning to our allies. "With malice toward none, with charity for all," he reminds them that "the impartial justice meted out must involve no discrimination between those to whom we wish to be just and those to whom we do not wish to be just. It must be a justice that plays no favorites." No other statesman in the world has spoken with such candor and such daring. Nor is it an easy doctrine for us or our allies to accept. The God of the Hebrews speaks in the breasts of all of us. Reprisals,—“an eye for an eye; a tooth for a

tooth,”—are almost overpowering desires to those who read the Bryce report of Belgian atrocities, whose minds dwell on Louvain, the *Lusitania* and the countless other acts of savagery of which our enemies are blood-guilty. Yet the President's words are the counsel of wisdom. He hews to the line and will not let anger discolor judgment. It was Lincoln who said that “government cannot endure permanently half slave, half free.” The President's demand of liberty for all nations is but an enlargement of that thought to meet this greater conflict.

To all the peoples of all the nations, then, the President, in words that must have echoed through the world, announces that, while indemnities, territorial and trade adjustments are matters which must be settled according to the dictates of justice, it is a greater issue than these things that forms the essence; that the issue for all men and all nations is the one solved for English-speaking people when Magna Carta granted to each individual “due process of law.”

But the President does not stop here. No one knows better than he that to such a declaration of principle our enemies would give instant assent if these laws of future international conduct were left to the good faith of individual nations. No one is better aware than he that while these great principles are generalities, glorious dreams, mere stuff for a sonnet, but not a program of practical statesmanship in a world of economic and territorial conflict, our enemies will yield them ready acceptance. He knows that none are readier with large promises and fair words than those who intend to adhere to their covenants only so long as it is their interest to do so.

So he proposes, as did the Barons, a League of Nations, of Overlords, with power to enforce the charter of liberty which he proposes. For the Barons' Council Of The Realm he substitutes a council of the nations.

The formation of such a league is, of course, no new project. It has been on the lips of men since the war broke out, and before. Treatises deal with the subject. The President has him-

self explicitly proposed it in earlier addresses. In his speech at the tomb of Washington he demanded it as an essential of peace, but in his address at the Metropolitan Opera House he travels much further. Remarking to those diplomats of an earlier school who may scoff at his plans as those of a dreamer or a doctrinaire that "some details are needed to make them sound less like a thesis and more like a practical program," calling for a justice that shall "play no favorites," he demands that no special interest, "inconsistent with the common interest of all," shall be made the basis of settlement, that there shall be no league within league, no "special, selfish economic combinations," "no economic boycott or exclusion except as the power of economic penalty by exclusion from the markets of the world may be vested in the league of nations itself as a means of discipline and control," and, lastly, as the Barons spread the Magna Carta broadcast through England, so the President insists that "all international agreements and treaties of every kind must be made known in their entirety to the rest of the world."

When it comes to the time and manner of organization of the league, he presents new matter of the highest significance. It cannot, he points out, be organized before the end of the war, for, if formed now, "it would be merely a new alliance confined to the nations associated against a common enemy. It is not likely that it could be formed after settlement. It is necessary to guarantee the peace, and the peace cannot be guaranteed as an after-thought." This he insists on, because "there will be parties to the peace whose promises have proved untrustworthy and means must be found in connection with the peace settlement itself to remove that source of insecurity." For these reasons he points out that "the constitution of that league of nations and the clear definition of its objects must be a part, is, in a sense, the most essential part, of the peace settlement itself."

Such, it is submitted, is a "practical program" of supreme moment. It means that "after the destruction of arbitrary power," upon which the President insists as a prerequisite of peace, the essentials of the peace confer-

ence itself shall not be in terms merely of indemnities, territory, boundaries or other synonyms of power, but in those terms, both of securing and of guaranteeing a permanent peace of justice, which have made Magna Carta immortal.

Such a program, hinted at first by the President over a year ago, gradually developed in his successive addresses and state papers since we have entered the war, now fully presented, brings the President's conditions of peace from the heaven of Utopian dreams to the earth of practical human affairs. It creates an international court of justice wherein the petitioners shall be the several nations of the world, and it creates an international policeman whose club shall beat any recalcitrant into submission. It substitutes for that gentlemen's agreement, now called international law, which is binding only on those nations which have a conscience to bind them, a world court, controlling the nations of the world, and backed by such power that its decrees shall be enforceable, so that arbitrary power shall never again be given opportunity to wreck the world.

If the Barons had elected to use their power in order to usurp prerogatives for themselves; had they been content with exacting booty and territory from the king; had they parceled out his dominions among themselves as feudal overlords, the subsequent history of England would have been profoundly different. Indemnities the Barons did exact; the remission of fines, returns of kingly plunder. Such exactions the President, too, demands. But vital as they are to any plan of peace they are not of the essence. The imperishable contribution which the Barons of England made lay in a thing that was neither gold nor treasure, nor lands, nor castles. It lay in something wholly abstract,—the right of justice to the individual English freeman.

How tenuous a thing; how easy for King John to make such a promise,—“We will sell to no man, we will not deny to any man either right or justice.” Cynically as John disregarded all covenants, may we not imagine his secret thoughts as he granted so vague a charter to his subjects? Cannot we see him, in the very act of signing the charter, planning to wreak ven-

gence on his subjects? Yet the Barons had vision greater than his. Doubtless they knew, for they were not dreamers, that the preservation of these rights would require endless conflict with oppression and lust of power, but it was with the creation of the right that they were concerned, and once created, it has ever since stood as an explicit and definite bulwark of constitutional liberties. In it lay the spring of action that led George Washington and his troops to throw off the dominion of autocracy. In it throb the eloquent paragraphs of our Declaration of Independence.

With the background of a lifetime of intense study of history, the President sees Napoleon's dream of power ended in exile on a solitary isle; Alexander's world-conquests dust and ashes; faded the glory that was Greece, the grandeur that was Rome. The imperishable things he sees are the tablets of Mount Sinai, the Sermon on the Mount,—divine charters of right and justice:—Magna Carta,—the great human grant of individual liberties.

The mockers, the doubters, the “practical



men," trained in a long life of diplomatic intrigue, will perhaps call the proposed program a beautiful chimera, but the servants of Mammon, Midas and all of their tribe, the barterers of influence and might, have had their day. For generations they have erected delicately-adjusted balances of power. They built their structures on a scaffolding of secret treaties and of covert and hidden arrangements. The structures they laboriously reared have proved to be houses of cards. The houses have tumbled, and, with them, the peace of the world. We turn now to another leader,—to one who has hitched his wagon to the stars.

Such a new Magna Carta as the President proposes shall be granted not to individuals but to the peoples and nations of the entire world; he sees to it, however, in terms of practical and of the highest constructive statesmanship that it is to be no such covenant as that of Belgium's neutrality,—no scrap of paper, but a covenant armored with steel and fire, backed by the guns of all the world. He sees that though indemnities and territorial adjustment are a necessary

part of peace, yet those settlements cannot grant freedom to oppressed peoples nor restore the heroic dead to their desolated hearths. It is a peoples' peace that he greatly and nobly proposes,—a peace which shall end discord and give to all peoples the blessings which Magna Carta has bestowed on English-speaking men and women.

That Magna Carta was no dream but a “practical program” seven hundred years of English and American liberty amply prove. President Wilson's vision, then, is not merely a noble dream of an unearthly Paradise, but, measured by the weightiest and best tested of historic precedents, a glorious and realizable end and goal, which, if won, shall compensate the dead and the living for the anguish of this war which now engulfs the world.

October 8, 1918.



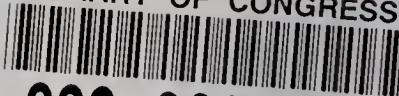








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