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**Introduction**

John by the grace of God, king of England, lord of Ireland, duke of Normandy and Aquitaine, count of Anjou, to his archbishops, bishops, abbots, earls, barons, justices, foresters, sheriffs, reeves, ministers and all his bailiffs and faithful men, greeting …

***Magna Carta 1215***

Magna Carta Initiated

Magna Carta is generally seen as a statement of rights. A treaty between king and barons, its provisions are often claimed to extend rights and freedoms to ‘ordinary’ British subjects. In 1215 when it was signed at Runnymede the barons had no concept of ‘equal rights for all’; there was no desire to include the masses. The barons’ intentions were twofold. Magna Carta was designed to curb King John’s excesses toward them and theirs: amongst others, clauses limited his power to extract taxes and other emoluments, reduced his prerogative to determine when and whom wards and widows might marry, and denied his right to control absolutely the royal rivers and forests. Equally or even more significantly, the treaty established a council of twenty-five, chosen by and from the barons, to ensure the king’s compliance. The Council of Barons would ‘with all their might … observe, maintain and cause to be observed’ the ‘peace and liberties’ confirmed and granted by Magna Carta, whilst ‘anyone in the realm’ could ‘take an oath to obey the orders of the twenty-five barons’ in enforcing it.

Thus, at its heart, Magna Carta meant no longer would the monarch exercise independent and complete power over the kingdom. Rather, King John (and, as intended, his successors) would be obliged not only to comply with its provisions, but to follow the barons’ interpretation of them, submitting to their final ‘say’ on whether or not he strayed or disobeyed. The king would not be above the law.

It was not as if kings had never signed agreements with nobles before. John’s father, Henry II, did so. Yet there was no suggestion that King Henry ruled at their behest. As it was, John was never expected to rule. Of the eight children Henry and Eleanor of Aquitaine produced, William died early, leaving next-in-line Henry as heir. Henry died just short of thirty. Matilda, being a woman, was automatically ‘out’. Next, Geoffrey died, so upon Henry II’s demise, in 1189 Richard succeeded him. Ten years on, Richard’s unexpected death meant John reigned.

‘John the Tyrant’ generated such unrest, bitterness and resentment, that barons rebelled. Albeit successful in securing his signature to Magna Carta, they were wary of his readiness to comply. Nor, indeed, should a king be a law unto himself. Fifteen years of his rule had precipitated them into thoughts of shared control. Thoughts transformed into action. Hence, their insistence that twenty-five would serve as a permanent imperial ‘directorate’. All twenty-five were men.

In Magna Carta, not a single woman’s name appears. Women are mentioned, but through their relationships with men, as with heiresses, wards or widows and the Scots’ king’s daughters – John’s hostages. Women were classed by sexual status. As Henrietta Leyser’s *Medieval Women* … notes, men could be considered collectively ‘as knights, merchants, crusaders’. Women were ‘virgins, wives or widows [and] mothers’.[[1]](#endnote-1) None was an archbishop, bishop, abbot, earl, baron, justice, forester, sheriff, reeve, minister, bailiff or ‘faithful man’. Although, as Louise Wilkinson recounts in *Women as Sheriffs …*,on 18 October 1516 John appointed a woman, Lady Nicholaa de la Haye (c.1169-1230) as joint sheriff (with a man) of Lincolnshire and ‘worthy … of God’s protection “in body and soul”’, [[2]](#endnote-2) she played no part in Magna Carta. Nor did any other woman.

No woman signed. Yet women were not entirely lacking status. Nor were they voiceless. In the *Time Traveller’s Guide …*, Ian Mortimer reflects upon ‘high-status females [being] just as highly respected as high-status males’ (at least, by underlings). Two centuries after Magna Carta, Margery Kempe’s autobiography appeared. A century before, Hildegard of Bingen preached throughout Europe, travelling from Paris to Switzerland, to southern Germany, back to France and around once more. Written versions of her orations were requested by clamorous listeners. Her commanding remonstrations had the interdict against her convent removed. She wrote to popes, bishops, nuns, emperors and the nobility. Her works included hundreds of letters, songs, poems, books – including discourses on herbal remedies and the workings of the human body, a commentary on the Gospels and one on the Athanasian Creed, and a play set to music – the *Ordo Virtutum*. She exchanged letters with her friend and rival, Elizabeth of Shonau who authored three books of *Visions* (two, perhaps, with her brother Egbert) and *Liber viarum Die*, enjoining the clergy and the laity, wed and unwed, to live lives of piety and holiness, without hypocrisy or cant.[[3]](#endnote-3)

Yet class did not inhibit sexual prejudice. Mortimer’s *Time Traveller’s Guide …* records medieval convention holding women responsible for all ‘physical, intellectual and moral weaknesses of society’. A contradictory mixture of traits and physical attributes asserted women were ‘smaller, meeker, more demure, more gentle, more supple and more delicate’, simultaneously with being ‘more envious and more laughing and loving’, whilst the souls of women housed malice, more so than men’s. Besides, it was said, women exceeded men in mendacity and feebleness of nature, working ever in a more tardy fashion and moving always at a pace slower than a man.[[4]](#endnote-4) In light of this bigotry, little wonder women were absent from Magna Carta’s drafting, negotiation, signing or execution. Yet for all this, could Magna Carta extend to women?

In *Magna Carta*, JC Holt denotes the charter’s ‘greatest and most important characteristic’ as ‘its adaptability’. Did this mean Magna Carta supported women claiming legal rights, protections and status, or could it be used to advance them?

Magna Carta, Women, Law & History

Some six centuries after Runnymede, Magna Carta’s exhortations for freemen’s rights resonated with Mary Wollstonecraft and her contemporary, American Joel Barlow:

The word ‘liberty’ … would not have been known in any language, had people not felt deprived of it; and some are ‘free men’ because ‘men are not all free’.[[5]](#endnote-5)

As Wollstonecraft expostulated in 1792, neither were women ‘all free’. Hence, her proclamation in *A Vindication of the Rights of Woman*, building on and generating centuries of women’s struggle for freedom, for rights as freewomen, and for freedom as persons. Her work resonated beyond the United Kingdom and the United States. It became a rallying cry for women throughout the Empire and thence the Commonwealth. Women from Canada, Australia and Aotearoa/New Zealand initiated their own struggles and interacted across what became national boundaries, and across oceans.

As chapter 1 ‘Are Women Persons’ recounts, the failure to acknowledge women as identities in their own right permeates actual history, the writing of history and the recognition that women might make and record history too. Over the centuries women have recorded their own lives and the lives of other women, yet male treatises and men’s histories are more often published and remembered. Women’s works come to attention, then fade, are sometimes recovered, or new generations of women write herstory all over again. What of women and Magna Carta?

It is difficult to unearth women writing of women’s worlds and works at the time of John, Runnymede and Magna Carta and the rebellion’s impact on them. Histories are there – Judith M. Bennett and Ruth Mazo Karras with *The Oxford Handbook of Women and Gender …* (2013), Vicki Leon’s *Outrageous Women …* (1998), and Marelle Thebaux’s collection, *The Writings of Medieval Women …* (1994), showing women did and could write ‘then’.[[6]](#endnote-6) Magna Carta features by its very absence, yet historians’ concentration on men’s involvement and its impact on men may be unremarkable, for Eileen Power’s 1920s work on *Medieval Women* and *Medieval English Nunneries* recognises women moved within a circumscribed sphere – if women moved at all:

… the ideas about women were formed on the one hand by the clerkly order [the Church], usually celibate, and on the other hand by a narrow caste [the aristocracy], who could afford to regard its women as an ornamental asset, while strictly subordinating them to the interests of its primary asset, the land … [T]he accepted theory about the nature and sphere of women was the work of the classes least familiar with the great mass of womankind.[[7]](#endnote-7)

Whether highborn or lowborn, women lived under the direction of fathers or husbands, or the church. Although young men were subject to their father’s will: those highborn being deployed in marriage to make alliances and increase a family’s wealth and status, unlike young women, they were not perennial ‘non-persons’. Once gaining their majority, sons gained a preeminent place in their own household or that prospect lay before them. For a woman, whatever her age, personhood was beyond her realm.

As for treatises reflecting on law and legal history, that Magna Carta might be significant for women’s rights was far from the contemplation of jurists Bracton (c.1210-c.1268), Coke (1552-1634), Hale (1609-1676), Blackstone (1723-1789). Nor did Glanville (1112-1190), John’s tutor and chief minister of England during Henry II’s reign, anticipate it. Barbara Leigh Smith Bodichon published her … *Laws of England concerning Women* in 1854. Elizabeth Cady Stanton’s *Women’s Bible*, Parts I (1895) and II (1898) reflected her grasp of the law’s failure to acknowledge women’s ‘whole’ identity and religion’s undermining of it. However it was not until 750 years after Magna Carta that Albie Sachs and Joan Hoff Wilson’s ground breaking work analysing women’s lack of personhood in US and UK law, appeared. In *Sexism and the Law …*, published in 1978, Sachs and Wilson confronted deftly the judicial guile (perhaps cunning?) producing the jurisprudential nonsense deeming women ‘non-persons’. They exposed this excuse for women’s absence from bench and bar, parliament and professorships … for what it was: a manufactured reason for legitimating women’s absence when the truth was, bluntly, (too many) men did not want women there. Magna Carta won no mention. Nor did it when, almost fifty years on, Robert J. Sharpe and Patricia I. McMahon in *The Persons Case …* (2007) once more addressed the law’s women-are-not-persons conundrum. [[8]](#endnote-8)

From 1759 to 1797, Wollstonecraft lived and died, for years judged wanton and wanting. Creative woman and ‘new genus’ she, yet, like her medieval sisters, scorned by unreasoned and unreasoning opinion dripping sexual prejudice. Yet as chapter 2 ‘Are Women Peers’ relates, Magna Carta called for judgment by peers. Would women’s campaign for adjudication in courtrooms vindicate Wollstonecraft or condemn her? Women’s role as jurors and the struggle for women to get there features in historically and jurisprudentially based work. Holly J. McCammon’s treatise, *The U.S. Women’s Jury Movements …* covers 1920s through 1960s campaigning in all US states. She cites the Bill of Rights 6th Amendment, based on Magna Carta, focusing on women’s archival material reflecting 19th century struggles. In the UK, Australia, Canada and Aotearoa/New Zealand academic and practising lawyers have built a strong corpus of work, though little explicitly directed to women’s role. If mentioned, Magna Carta is not centre stage. Following an earlier ‘all white juries’ study, in 2010 Cheryl Thomas conducted a major review *Are juries fair?* for the UK Ministry of Justice, focusing on minorities, and no Magna Carta background. Neil Vidmar’s *World Jury Systems* and, with Valerie Hans, *Judging the Jury*, look at similarities and differences – the latter (1986), principally Canada and the US, the former (2004) reviewing amongst others England, the US, Australia, Aotearoa/New Zealand, Canada, Scotland and Ireland (NI and Republic): references to women, but nothing headed ‘Women and Juries’, ‘Women as Jurors’ or ‘Magna Carta’. Vidmar and Regina Schuller in ‘The Canadian Criminal Jury’ (2011) acknowledge Britain as originator but again, Magna Carta’s absence is replicated by a paucity of reference to women. Neil Cameron, Susan Potter and Warren Young cover ‘The New Zealand Jury’ – recognising colonial history and English heritage, but again no Magna Carta and little on women. Michael Chesterman’s insightful 1997 article explores the role of juries in ‘sensationalist’ or sensationalised crimes involving women – as accused (Alice Lynne Chamberlain in Australia’s ‘dingo’s got my baby’ case), and as victim (OJ Simpson and the death of Nicole Simpson and her friend Ronald Goldman). Kate Auty and Sandy Toussaint’s *A Jury of Whose Peers?* (2004) redeems this by carrying entire chapters on women and juries, analysing their impact and socio-cultural meanings. Still, no Magna Carta[[9]](#endnote-9)

Addressing land rights, in the late 15th century, Margery Paston and her mother-in-law Margaret Paston sought support from Norfolk’s dowager duchess in John Paston’s property dispute. Articulate and forceful, consistent with Magna Carta they nonetheless saw their delegation as regaining or retaining ‘his’ land. Leyser’s *Medieval Women* (1995) refers briefly to Magna Carta in this context: widows ‘effectively denied … any choice at all’, because property rights were male. Women’s inheritance ‘rights’ – if existing – were subsumed in their status, exemplified by the 1185 *Register of Rich Widows and of Orphaned Heirs and Heiresses* – the list of those ‘in the king’s gift’, women and property employed by kings as bargaining tools for enhancing regnal power. Amy Louise Erickson follows with *Women and Property in Early Modern England* (1993) and, addressing women’s lives and legal status in the Victorian era, Joan Perkin’s *Women and Marriage …* (1989) and *Victorian Women* (1995) reveal women’s efforts to avoid legal and historical oppression centred in property rights (for men) and wrongs (for women). Marylynn Salmon’s *Women and the Law of Property* … (1986) addresses US women’s property rights history. For Canada, Anne Lorene Chambers’ *Married Women and Property Law* … combines law past and present, as do Angela Barns, Andrew Cowie and Therese Jefferson in *Women’s Property Rights …* (2009) for Australia, whilst Maureen Baker provides historical and sociological insights for Aotearoa/New Zealand, Canada and Australia in *Families, Labour and Love* (2001). Magna Carta being implicit, not explicit in this scholarship, chapter 3 ‘Can Women be Landed Gentry?’ draws together women’s struggles arising out of Magna Carta, detailing its limited gestures toward widows and property, and recounting the still unfinished struggle for women’s claims.[[10]](#endnote-10)

As for revenue and the franchise, chapter 4 ‘No Taxation without Representation’ explores women’s campaign for a say in the polity and the raising of revenue – Magna Carta’s affirmation for barons and freemen. Women’s enfranchisement has a high history profile, less so women’s tax status. Women’s populist movements in Britain, the US and Australia echoed Magna Carta’s barons ‘no taxation’ refrain in an egalitarian voice, yet scholarship is only now beginning to catch up. The inequities of women’s tax liability, the (under)valuing of ‘women’s work’, and the role of global finance are being dissected with surgical precision led, by Patricia Apps’ tax analysis in her 1981 *A Theory of Inequality …,* added to by Marilyn Waring’s work on women and economics - *If Women Counted* (1988), and followed by Ann Mumford’s 2010 comparative law perspective, *Tax Policy, Women and the Law …*.[[11]](#endnote-11)

Just as Magna Carta demanded taxation and politics heed men’s voices, women’s voices demand a hearing in the polity and revenue raising. Similarly with legal wrangles: chapter 5 ‘Access to Law and Justice’ addresses women’s rights in civil disputes. Critically, $109.99 (C)

Magna Carta focused on access to law and the rights of the governed (the barons) to challenge the governor (the king). Why? The medieval court followed the king. Henry II travelled out of London – sometimes. Richard went north rarely. John travelled to Nottingham, Lincoln, Derby, Oxford, Buckinghamshire, Norfolk, Norwich, points beyond and points between. The barons stood disconcerted. When having their cases heard, they wanted them heard in one place. Though the king might want to travel around and about, they did not – with little or no notice, and much added expense. That women might be similarly disconcerted by peripatetic dispute settlement was not in barons’ minds nor Magna Carta’s lines. That women might have legal standing – the right to sue – was not in prospect. That women might wish to challenge decisions of government (the king) was beyond the realms of Magna Carta reality. Centuries on, in *Sex, Power and Justice* … (1995) Greta Bird and Diane Kirkby explore Indigenous, non-Indigenous and ‘ethnic-background’ women’s legal system experience over 200 years of colonised history; and Australian and Aotearoa/New Zealand Commission’s recount obstacles to justice and opportunities for access: *Women’s Access to Legal Services* (1999), *Women and Access to Justice*  (1995-1999) and *Equality Before the Law* (1994). Similarly the Canadian Advisory Council on the Status of Women reported on *Canadian Charter Equality Rights for Women …* (1989), and Canada’s LEAF researches and promotes legal services and access for women, as in Alison Brewin’s *Legal Aid Denied* (1994). In the US, states and independent agencies produce reports and scholars publish on women’s (lack of) access rights in historical (Felice Batlan, 2015) and contemporary (Deborah L. Rhode, 2002) perspective, while in Britain, amongst others the Fawcett Society and Rights of Women (2002) pursue civil interventions for women, consistent with the Magna Carta’s refrain of rights to law and justice.[[12]](#endnote-12)

Women’s bodies gained no Magna Carta mention. Woman-as-chattel did. Women’s bodies were not their own. In *The Medieval Vagina …* (2014) Karen Harris and Lori Caskey-Sigety traverse the ‘women are not men’ so are ‘inferior’, their bodies ‘somehow unnatural’. Women then, and in the centuries leading up to the twentieth, protested against the wanton use and abuse of women’s bodies and denial of bodily integrity. In 1975, Susan Brownmiller’s *Against Our Will …* prompted global adoption of the chant ‘yes means yes, no means no …’ Erin Pizzey’s *Scream Quietly …* (1979) and Jocelynne Scutt’s *Even in the Best of Homes …* (1983) taking the message ‘women’s bodies count’ into UK and Australian homes and beyond, with Andrea Dworkin’s oeuvre extending the debating lines. Yet women are bound by more than the body construct. Real bonds grow out of physiology and meanings imposed upon biology, as Simone De Beauvoir provocatively decreed in *The Second Sex* (1953) and Germaine Greer in *The Female Eunuch* (1979), building on those before them, providing followers a platform*.* Law binds women just as strongly. For the US, Catharine Mackinnon’s work exemplifies this, while Helena Kennedy and Susan Edwards’ UK work, Mary Jane Mossman’s Canadian scholarship, Australia’s Scutt, Margaret Thornton, Regina Graycar and Jenny Morgan, and Aotearoa/New Zealand scholars expand the lines. Making Magna Carta meaningful, chapter 6 ‘Bring Up the Bodies’ relates women’s struggle to be free in body and free from the strictures binding women’s bodies in the law and to husbands, a central claim in the pantheon of claims for women’s right to be human.[[13]](#endnote-13)

Magna Carta – Rights, Wrongs and Women

The 800th anniversary of Magna Carta prompted efforts to ‘write women in’: Louise Wilkinson’s scholarship in recovering John’s daughter, Joan, whom he married to Llywelyn of Wales; Isabella of Gloucester, John’s first wife and Isabella of Angouleme, his second; Margaret of Scotland, John’s hostage; and Jessica Nelson’s recognising Isabella, countess of Norfolk (younger sister of Margaret and hostage, too), provides a picture of women who, not ciphers or sycophants, were courageous and bold.[[14]](#endnote-14) Yet any brave defiance was just that: constructed by and against the reality of women rating second, if at all. Whatever their deeds or derring-do, their diplomacy, debating skills or denunciation of conformity to roles of wife, daughter, mother … they were not equal, nor equals. Did they hope for Magna Carta’s help?

Mid-twentieth century, Mary Ritter Beard recovered women, too. In *Woman as Force in History* (1946) she reconstituted women’s history to affirm an agency and aptitude conventional history ignored. [[15]](#endnote-15) In turn affirming those women who defied restrictions and restraints of legal strictures, social mores and cultural limits, she followed women who had made the argument before. One such, Harriet Taylor (1807-1858), lived with that defiance, rejecting notions that, a married woman, she should share no working intimate relationship with another man. Unlike Wollstonecraft before her, she survived opprobrium or suffered it less: John Stuart Mill’s affirmation of her intellect and her husband’s acceptance of the alliance no doubt tempered scorn or stopped it at its source.

Published in 1851, Taylor’s ‘Enfranchisement of Women’ attests to the strength of Magna Carta’s ideas and their impact beyond John, the barons, and Runnymede. Referencing the *New York Tribune*, she extolled American women’s organised agitation on a ‘new question’, observing it was not ‘new’ to ‘thinkers’ and nor indeed:

… to anyone by whom the principles of free and popular government are felt as well as acknowledged, but new, and even unheard-of, as a subject for public meetings and practical political action.[[16]](#endnote-16)

The question? Women’s enfranchisement and ‘admission, in law and in fact. To equality in all rights, political, civil, and social, with … male citizens …’ The Women’s Rights Convention of 1850 was her touchstone, ‘above a thousand persons … present throughout’ and with a larger venue, ‘many thousands more would have attended’. Like the Seneca Falls Convention of 1848 (of which Taylor had heard nothing), the Declaration incorporated Magna Carta sentiments:

*Resolved*--That every human being, of full age, and resident for a proper length of time on the soil of the nation, who is required to obey the law, is entitled to a voice in its enactment; that every such person, whose property or labour is taxed for the support of the government, is entitled to a direct share in such governmental; …

Yet the Resolution went further, claiming women’s entitlement to ‘the right of suffrage, and … eligibl[ity] to office … [with] equality before the law, without distinction of sex or colour’ must emblazon every party’s banner claiming to ‘represent the humanity, the civilization, and the progress of the age …’ More, ‘… civil and political rights acknowledg[ing] no sex, … the word ‘male’ should be struck from every State Constitution …’

Yet Taylor’s confidence that ‘man’ would not be limited to the male sex when women proclaimed the ‘self-evident’ truth, ‘that all men are created equal [and] endowed with … inalienable rights …’ was misplaced. The struggle was not over, women’s non-personhood an obstacle to their claims.

So, more than 150 years after Taylor’s hopes, and eight hundred years after John signed at Runnymede under the eyes of barons intent on advancing their rights, is Magna Carta relevant today’s women? In ‘Magna Carta in the Twentieth and Twenty First Centuries’, Michael Beloff avers its role ‘as an always speaking statute’: Magna Carta ‘should be given its current, not simply its historic meaning’.[[17]](#endnote-17) How then does Magna Carta in its past and current meanings speak for women? Taking Holt’s applause for its adaptability (2015), is Magna Carta a charter for advancing women’s rights or a licence for affirming women’s wrongs?

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