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November, 2015

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Britain’s Other—Perhaps More Important—Anniversary

by Brian Christopher Jones

The 800th anniversary of the much-revered Magna Carta has dominated much of the public law news this year not only in Britain, but also globally. Yet whether or not you praise Magna Carta or denounce the widespread praising of it, most appear to have forgotten (save for a few of those in the British press) another milestone just as significant—if not more so—than the venerated thirteenth century text: the 750th anniversary of the 1265 Parliament assembled by Simon de Montfort, which was the first to include representatives from the shires, cities, and boroughs, as well as feudal barons. While such an event may not have produced a classic text that can be glorified today, its importance should not be lost on how it influenced the evolution and modern-day conception of a legislature; and more widely, the notions of “representation” and “participation” in democratic governance. Even though democracies still struggle mightily with both these concepts in terms of how to perfect each, these initial seeds of democracy have helped mature it into the world’s dominant, and most just, mode of governance.

However democracy itself stands at a pivotal juncture. After another period of growth during its Third Wave, over the past decade scholars have documented its global recession. During this slide other phrases, such as the “rule of law”, have become even more prominent than they were previously. While many believe this concept comes deeply coupled with democracy, debate remains primarily due to the ambiguity of the phrase, and especially as to whether it can be successfully implemented in non-democratic governance. For instance, in a prominent display China has recently trumpeted their rule of law credentials (“Socialist rule of law with Chinese characteristics”), rekindling the debate over its role in democracy. Therefore serious questions remain as to where democracy is heading, and what, ultimately, will be the pillars it stands on. The world’s expansive celebration of Magna Carta and the rule of law, and the paltry lack of acknowledgement of the 1265 Parliament that spurred ideas such as “representation” and “participation” may be a troubling sign for contemporary democratic values. Yet looking back at democratic origins may help guide future endeavours.

The representative nature of de Montfort’s 1265 Parliament—also called the “January Parliament”—marked a decisive turning point in the idea of governance. Even though Simon perished later that year, his strong and somewhat radical positions (at the time) ultimately took hold of the English throne. The idea of having local representatives come together to make national policy was eventually implemented by Henry III’s son, Edward I. Over time this practice became the norm, and in the early 14th century the House of Commons was established (in fact some regard de Montfort as the father of the Commons). While Westminster evolved into a bicameral legislature (including the House of Lords), the Commons remains the primary law-making body, and under certain conditions—using the Parliament Acts 1911 & 1949—it can make law without the Lords’ consent. These conditions were made available to the Commons because of its representative nature and electoral accountability, in addition to the belief that those local members elected to public office should have the ultimate say in terms of national law and policy.
Much of what I know about Simon de Montfort comes from an in-depth article written by D A Carpenter, published in 1991. Simon, a Frenchman, gained respect amongst his English peers because of his engaging personality, “outsider” status and willingness to stick by and stand up for the Provisions of Oxford (actually he was not so much of an “outsider”, given his marriage to Henry III’s sister). However there is little doubt he has been a divisive historical figure. As Carpenter points out, others have called him “a self-interested opportunist” and a “dark, destructive force”. Indeed, de Montfort was not afraid to fight for his beliefs, and he did so frequently on the battlefield. He is known for being a “powerful” and successful commander. Yet he has also been described as “one of the first to see the uses and the glories of parliamentary government”. Between 1263 and 1265, there were moments when Simon was “effectively the ruler of England”, but largely governed through a council of nine set up after the Battle of Lewes in 1264.

Although some of de Montfort’s protest arose from personal grievances with the King, much of it came from his strong belief that the 1258 Provisions of Oxford should be recognised and enforced. Carpenter describes the general thrust of Provisions as such:

“Namely that the magnates, representing the community of the realm, should govern the king’s choice of ministers, distribution of patronage and direction of policy; that there should be extensive reform of local administration, both royal and seignorial; and that England should be saved from domination by foreigners”.

Given its connection with representation and local communities, Simon was especially concerned with the quality of local government. Only through a more inclusive and wider-range of councillors could local and national government be improved; that is, only through fidelity to the Provisions of Oxford. Magna Carta certainly played some role in Simon’s cause, but it was the Provisions that took centre stage in his rebellion. And when Simon came to power after ousting the King, Carpenter notes that he “did not forget the reform of local government”, appointing sheriffs that retained salaries based on the Provisions. Indeed, “it was his adherence to the Provisions which…had made him unique”. But has our contemporary obsession with historical texts relegated the significance of people such as de Montfort and the ideas that he championed?

On last month’s International Day of Democracy (15 September 2015), the UK Government announced a new UK legal expertise consulting fund, in addition to a global tour of the original Magna Carta document. Baroness Anelay noted the following as regards the fund:

“Democracy under the rule of law is the best form of governance we know - and the longer-term trend is towards countries wanting more democratic governance, not less. The UK government is committed to supporting this. The fund that I am launching today offers British legal expertise to countries around the world that want to improve the rule of law and their democratic processes.”

During this event on the International Day of Democracy and the celebration of Magna Carta, presumably no one mentioned the January Parliament or Simon de Montfort, and probably little was mentioned regarding the importance of representation or participation in the democratic process. Democracy merely seemed to revolve around the rule of law. To an outsider it may appear that the primary way Britain achieved an advanced democracy was
through Magna Carta (i.e., just write a founding document based around the rule of law and your democracy will eventually take shape), and not through other democratic pioneers such as de Montfort, or through deep exploration of the firm foundations inherent in democracy. What an exceedingly fanciful message to send current, and potentially future, democracies. After all, the Magna Carta global tour stops in China, Hong Kong, and Singapore...three places that are, to put it mildly, not exactly bastions of democracy.

While Magna Carta may be the most widely recognised piece of legislation in history, its influence on contemporary democracies remains limited, if not greatly exaggerated. However the ideas of representation and participation in the governing process remain an indispensable feature of democracy, and are to be celebrated and perfected, not ignored. Just because there was no direct physical output—as opposed to the shaping of democratic principles and values—that resulted from de Montfort’s 1265 Parliament, does not make it any less significant; if anything it crystalizes its importance. Ultimately, in these times of democratic recession, celebrating ideas like de Montfort’s should take precedence over holding onto antiquated physical texts, whether or not the latter are closely associated with the evidently all-encompassing (democratic) conceptions of the “rule of law”.