From Magna Carta to *Chambers v. Florida*:
Hugo Black and “the Law of the Land”
By Paul R. Baier

“No free man shall be taken, imprisoned, disseised, outlawed, banished, or in any way destroyed, nor will We proceed against or prosecute him, except by the lawful judgment of his peers and by the law of the land.”
—*Magna Carta* (1215), Chapter 39

Runnymede

What was it like at Runnymede, England, June 1215, when the barons threatened to continue warring against the King unless John affixed his royal seal to Magna Carta? “The Great Charter” has come down to us through 800 years. It is physically no more than 12 square inches of dried calfskin inscribed from edge to edge in tiny Latin script. I am no Latinist: I can make neither heads nor tails of it. What was all the fuss between King John and his barons?

Imagine you are there with the barons in the meadow beside the River Thames. We are a few miles from Windsor Castle expecting King John to appear. He is late in coming. The air is tense. The crowd is loud and boisterous.

Hear it for yourself: “Magna Carta on the Microphone.”
http://iconofliberty.com/gallery/you-are-there-radio-episode/?link=main-gallery/.

800 Years of Magna Carta

What does all this noise mean to you and me? I will explain by sketching a postage stamp of history fit for lawyers and judges. We celebrate 800 years of Magna Carta: Symbol of Freedom under Law. Charles the First lost his head to the axe when he turned his back on Magna Carta. “I am the King!” “I am the law!” Not so. Not after Magna Carta.

Now let me bring the Icon Magna Carta from Runnymede to Louisiana. This time imagine you are with me, not beside the River Thames, but diagonally across from the U.S. Capitol. Our meadow is not Runnymede but the Reading Room of the James Madison Building, the Library of Congress, Washington, D.C.

The Library of Congress

We are at a scholar’s table surrounded by boxes of legal papers, not King John’s, but Hugo Black’s. He was one of the Supreme Court’s greatest justices. He loved history. He carried the Constitution in his pocket. The Bill of Rights, read literally and enforced strictly, was his Magna Carta. I can hear Hugo Black quoting Chapter 39 of the Great Charter at this very moment:
“No free man shall be taken, imprisoned, disseised [deprived of property], outlawed, banished, or in any way destroyed, nor will we proceed against or prosecute him, except by the lawful judgment of his peers and by the law of the land.”

Mr. Justice Black

I teach Justice Black’s faith in my constitutional law classes at Louisiana State University Paul M. Hebert Law Center. He was born Feb. 27, 1886, the year the Statue of Liberty came into New York Harbor. Thank God, it is still standing.

Chambers v. Florida

One of the boxes of legal papers that surround us at the Library of Congress contains the draft of Hugo Black’s opinion for the Court in Chambers v. Florida. It is written in pencil on a yellow legal tablet in Justice Black’s bold handwriting. The Chambers opinion was announced by Justice Black for the Court 75 years ago on Lincoln’s birthday, Feb. 12, 1940. It is a direct descendant of Magna Carta. Hugo Black will explain it to you. I will only set the stage.

Chambers and others had been rounded up by a police dragnet on suspicion alone, isolated on the top floor of the county courthouse, and subjected to questioning and cross-questioning under circumstances calculated to break the strongest nerves and stoutest resistance. “Sunrise confessions,” as Justice Black called them, were used to convict and sentence Chambers and his fellows to death.

In reversing the convictions and setting aside the death sentences, Justice Black recited the history of “due process of law.” He knew that tyrannical governments had utilized dictatorial criminal procedure. He knew that those who had suffered most were the poor, the weak and the helpless.

He knew that to outlaw these “ancient evils” our country wrote into its basic law the requirement that the forfeiture of the lives of people accused of crime can only follow if the procedural safeguards of due process have been obeyed.

Hugo Black on the Microphone

The stage is set. Justice Hugo Black’s mellifluous Alabama voice takes us back to Runnymede, back to Magna Carta Chapter 39, back to “the law of the land.”

(From “Hugo Black on the Microphone”)

“I stated and the people here were familiar with the fact that many people had been convicted without following the law, and indeed our people knew it. Some of the best had been crucified on crosses; others had been hung; others had been executed in various manners. But the purpose was to see that nobody in the future should be convicted except under the law of the land as it was already written. And here was the closing part of what I thought about due process, I
still think it, and it’s probably the reason that I made the statement earlier, that I thought we had the best constitution in the world and if we would follow it, we would be alright.”

(From his Chambers opinion)

“Today, as in ages past, we are not without tragic proof that the exalted power of some governments to punish manufactured crime dictatorially is the handmaid of tyranny. Under our constitutional system, courts stand against any winds that blow as havens of refuge for those who might otherwise suffer because they are helpless, weak, outnumbered, or because they are non-conforming victims of prejudice and public excitement. Due process of law, preserved for all by our Constitution, commands that no such practice as that disclosed by this record shall send any accused to his death.” (The accused were four black tenant farmers, young fellows, who had been questioned for three nights on the seventh floor of the county courthouse.)

“No higher duty, no more solemn responsibility rests upon this Court, than that of translating into living law and maintaining this constitutional shield deliberately planned and inscribed for the benefit of every human being subject to our constitution — of whatever race, creed, or persuasion.”

“That was my idea then. It’s my idea now, of due process of law — not a natural law. For they knew about these things and they wanted to stop them. And there it is. And I think that if it’s enforced that way, this can be, and was bound to be, the best Constitution in the world.2

Justice Black was right. We have the best Constitution in the world. It all goes back to King John, to Runnymede, to Magna Carta Chapter 39 — come to our make-believe Meadow of Magna Carta.

(This article is adapted from a Law Day address, Southwest Louisiana Bar Association, May 8, 2015, Old Calcasieu Courthouse, Lake Charles, La.)

FOOTNOTES

1. 309 U.S. 227 (Feb. 12, 1940).
2. This piece of treasured sound is from the sound recordings of the CBS television production, “Justice Black and the Bill of Rights,” aired on Dec. 3, 1968, on file with the author.

Paul R. Baier, a graduate of Harvard Law School, is the Judge Henry A. Politz Professor of Law at Louisiana State University Paul M. Hebert Law Center and editor of Mr. Justice and Mrs. Black (Random House, 1986). (paul.baier@law.lsu.edu; LSU Law Center, 422 Law Center Building, Baton Rouge, LA 70803-1000)

Photo caption: Justice Hugo Black. Collection of the Supreme Court of the United States.