

Situating Citizenship along the Two Faces of the Magna Carta

There are two faces to the Janus-like Magna Carta – one that destabilises the inherent power of any institution and another that replaces one form of institution with inherent power by another. Thus, while the inherent power of the monarch was destabilised, this power was assumed by the Parliament and those who had the power and inclination to initiate a regime change, i.e. the elite barons who had the power to coerce a shift in power. We refer to these two faces as the Mitigative Face and the Legitimizing Faces of power. The Legitimizing Face is one that defines and constrains ‘the body of the free man.’ Provision was made for such institutional definition and constraint in the original text when the English elite ‘freeman’ was subject to ‘the judgement of his peers’ or ‘the law of the land.’ The subsequent change to ‘everyman’ still maintained the qualifications to her freedom. We argue that the Legitimizing Face is the dark side of the Magna Carta, which has allowed the continuation of the idea of inherent power of an institution, and allowed for the definition of people and privileges according to its will. The only way to allow the Mitigative Face of the Magna Carta to continue its professed distinction between law and the Rule of Law– and the implied functional role of contesting any privileged articulation of law by a particular institution – would be to destroy it, and remove its hold on constitutionalism.

The way of thinking about the legacy of the Magna Carta described above has a direct bearing on the way EU citizenship progresses, and how the Magna Carta may be used to influence its trajectory. EU citizenship has developed in two ways: first, it has served a mitigative role by qualifying the forms of exclusion created by national governments, including protecting the individual against the ‘will of the people’ expressed in parliamentary or executive decisions. The second has been a legitimating role, where power structures and discourses that come with the ‘touch of Stateness’ have been privileged, usually by mimicking the way national governments function. We argue that the spirit of the Mitigative Face of a destroyed Magna Carta could serve as a check on this development of the legitimating role of citizenship.

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