

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.

I. Runnymede

What was it like at Runnymede, England, June, 1215, when the Barons threatened continuing war 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 twelve square inches of dried calfskin inscribed from edge to edge in miniscule 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 aside 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 mood is loud and boisterous.

Hear it for yourself:—“Magna Carta on the Microphone.”

[\[http://iconofliberty.com/gallery/you-are-there-radio-episode/?link=main-gallery/\]](http://iconofliberty.com/gallery/you-are-there-radio-episode/?link=main-gallery/)

II. Lake Charles

What does all this noise mean to you and me? I will explain it to you by sketching a postage stamp of history fit for lawyers and judges—not at Windsor Castle, but at the Pioneer Club, Lake Charles, Louisiana. 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 make the law!” Not so. Not after Magna Carta. And I have brought Justice Hugo Lafayette Black of the Supreme Court of the United States along with me to celebrate Law Day, 2015.

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My remarks are entitled, “From Magna Carta to *Chambers v. Florida*: Hugo Black and the ‘law of the land.’”

Now let me bring the Icon Magna Carta from Runnymede to Lake Charles. This time imagine you are with me, not aside 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.

III. The Library of Congress

We are at a scholar’s table surrounded by boxes of legal papers, not King John’s, but Justice 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.”

IV. Justice Hugo Black

I teach Justice Black’s faith in my constitutional law classes at LSU Law School. He was born February 27, 1886, the year the Statue of Liberty came into New York Harbor. It is still standing. We serve “Hugo Black Sour Cream Pound Cake” in class on February 27th to celebrate Justice Black’s birthday. I have the recipe with me. As a matter of fact, I conspired with the Pioneer Club’s Executive Chef, William Alexander, to have it served as our Law Day dessert. It is good, plain pound cake. With Chef Alexander’s cream cheese frosting and a scoop of strawberry ice cream, this is one Law Day dessert you will long remember. Elizabeth Black would like that. She was Mrs. Hugo L. Black when I met her at the Supreme Court. She was hauling around a manuscript of her memoirs that nobody would publish. She asked for my help. After four years of re-composition, Random House published MR. JUSTICE AND MRS. BLACK on February 27, 1986, the Centennial of Justice Black’s birth. Hugo Black’s memoirs are Part I of the book. Nobody knew they existed. Elizabeth Black showed them to me. After I read them, I knew they belonged in the book.

V. *Chambers v. Florida*

Back to the Library of Congress, back to our scholar's table. One of the boxes contains the draft of Hugo Black's opinion for the Court in *Chambers v. Florida*.¹ 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 seventy-five years ago on Lincoln's birthday, February 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 penalties, Justice Black recited the history of "due process of law." He knew that tyrannical governments had utilized dictatorial criminal procedure leaving mutilated bodies along the way to the cross, the guillotine, the hangman's noose. He knew that those who had suffered most were the poor, the weak, 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.

VI. Hugo Black on the Microphone

The stage is set. Hugo Lafayette Black's mellifluous Alabama voice takes us back to Runnymede, to Magna Carta, Chapter 39—to "the law of the land." Listen for yourself:

[tape played]

I thought that the Due Process Clause meant a case should be tried according to the law of the land, clear laws, as written, unambiguously, before a case or controversy came up. And that it was intended to protect the people from edicts rendered by an emperor or a king, see that they were tried according to the then existing law of the land. I had stated in *Adamson* my concept of the due process, what it actually accomplished, according to my meaning, and that has been utilized a great many times. That statement, which I closed, 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.

¹ 309 U.S. 227 (Feb. 12, 1940).

[Reading 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 there were four colored 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.” [Snaps the book shut]

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 is right. We have the best Constitution in the world. It all goes back to King John, to Runnymede, to Magna Carta—come to Lake Charles.

Thank you for inviting me to add a few pages to my book of SPEECHES. Be sure to pick up a copy of the recipe for Hugo Black Sour Cream Pound Cake on your way out. It’s a magnificent keepsake of 800 years of Magna Carta.

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² This piece of treasured sound is from the sound recordings of the C.B.S. television production, “Justice Black and the Bill of Rights,” which aired December 3, 1968, on file with the author.