

# Magna Carta: Born of Conflict, Herald of Freedom, Still Evolving

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Game of Thrones, HBO's smash hit, reminds us of what life was like before the rule of law. In the first episode of season 5, Tyrion Lannister, one of my favorite characters, commented that "the powerful have always preyed on the powerless; that's how they became powerful in the first place." And so it was: the strongest warlord, the richest king, the most devious court advisor: each could tyrannize tens of thousands of people as long as "might was right." But documents like Magna Carta, which celebrates its 800<sup>th</sup> birthday on June 15<sup>th</sup>, changed all that. Magna Carta helped give birth to the rule of law.

On June 15, 1215, pressured by the grievances of barons, merchants and church officials, a political pot boiling over in rebellion, King John affixed his seal to a document called Magna Carta Libertatum, or "Great Charter of Liberties." King John, like several of his predecessors, had pushed his subjects too far by means of arbitrary decision-making and onerous taxation and by meddling in their marriages and inheritances. In an attempt to avert civil war, the king agreed to abide by and, more importantly, to be limited by a document largely drafted by those opposing him. The king could no longer arbitrarily violate the rights of his subjects.

Curiously, the 1215 document itself did not succeed. In fact, it was a miserable failure—civil war ensued anyway and King John, in less than 3 months, convinced the Pope to annul the charter and excommunicate the rebels. However, certain bedrock principles of Magna Carta took root in the imagination of the British people and throughout the world. These principles were confirmed by later English monarchs, have inspired the founding fathers and mothers of republics worldwide, and have been grafted onto seminal documents like our Constitution, the

1948 Universal Declaration of Human Rights and the 1950 European Convention on Human Rights.

So, the two questions are these: how did this happen? And what relationship does Magna Carta have to our legal system today? I offer three responses to these questions.

First, like many other elemental legal precepts, the principles of Magna Carta were not born in the abstract, but in the crucible of individual grievances. In the same way that individual cases like *Oliver Leon Brown v. the Topeka Board of Education* helped end racial discrimination, the political and military pressure exerted by the rebellious barons convinced King John that it would be a good idea for the King to cede some of his power to them. The overwhelming majority of the edicts set forth in Magna Carta are remedies for the complaints of individuals or groups. Anyone interested in our legal system should never forget that an individual case may provide the petri dish in which an important canon of law springs to life and flourishes.

Second, although Magna Carta is strewn with trivial rules and regulations, like a ban on fishing dikes in the Thames and mandates regulating the cloth in monk's robes, Magna Carta set forth several of the most fundamental and memorable maxims of our legal system. These include the following:

- “To no one will we sell, to no one deny or delay right or justice;”
- “For a trivial offence, a free man shall be fined only in proportion to the degree of his offence, and for a serious offence correspondingly....” And,
- “No free man shall be seized or imprisoned, or stripped of his rights or possessions,...except by the lawful judgement of his equals or by the law of the land.”

In those three brief passages, Magna Carta heralded several radical and essential axioms of human rights: that legal rights shall not be bought or sold, that justice shall not be delayed or

denied, that the punishment must fit the crime and that no one shall be convicted or held liable except by the judgment of their peers. With such a firm foundation and a powerful bulwark safeguarding human rights, it is easy to see why Magna Carta has had universal appeal over eight centuries.

Third, the principles of Magna Carta have proven flexible enough over the years to evolve and support human rights unknown at the time of King John. The rights set forth in the last paragraph benefitted only a “free man.” In the thirteenth century, only a handful of women, those owning land and single, had legal rights. If a presentation for service in the name of liberty were being made in 1215, the recipient would not likely be our honored recipient, Barbara Spiegel, but a man. Moreover, in 1215, “free men” comprised only a small percentage of the English population. Most of the people were peasants known as “villeins,” who were not considered “free” and who could seek justice only in the local courts of their lords. The bedrock principles of Magna Carta, however, have inspired people seeking justice everywhere to bring about human rights and personal freedoms unknown in 1215. For example, Nelson Mandela quoted Magna Carta during the trial that led to his imprisonment and, ultimately, to the end of apartheid in South Africa. And, Myanmar’s Nobel Peace laureate, Aung San Suu Kyi, cited Magna Carta as relevant in her country because “everybody still needs to be protected by just laws.”

And so, in closing, to Magna Carta, a document termed “A manuscript for all seasons” by the Economist, we wish a happy 800<sup>th</sup> birthday and hope for many happy returns for human rights in the centuries to come.

#### Sources

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