

THE MAGNA CARTA OF 1215, GOVERNMENT ETHICS, AND WOMEN'S RIGHTS

I. The 800th Anniversary

The Magna Carta, England's "Great Charter of Liberties,"¹ was first issued in 1215. As this landmark legal document marks its 800th anniversary this year, it will be celebrated for many reasons.

The Great Charter was written in the medieval world when King John was forced by rebel barons to make concessions. Ultimately, the document made important contributions to the shaping of western law, particularly in the United States.

The Magna Carta firmly embraced the idea of the Rule of Law, meaning that no one is above the law, not even a king. According to the Magna Carta, everyone is accountable according to the "law of the land." The Great Charter also demanded due process, fair trials, and proportional punishment. There are even provisions in the Magna Carta that dimly foreshadowed the idea that there should be no taxation without representation—the issue that caused the American colonies to break from Britain in 1776.

However, the Great Charter also contained two other interesting sets of provisions. The first set deals with what might today be called ethics in government. The other set of provisions was an early landmark in the recognition of women's rights.

II. Ethics in Government

The 1215 Magna Carta contains a trove of anti-corruption provisions. Though framed in terms addressing the realities of thirteenth-century life, those provisions were driven by the same concerns that inspire modern efforts to fight corruption.

A. Justice is Not for Sale

Clause 40 is the shortest and most elegant provision in the Magna Carta. In language that still glows with ethical clarity, it provides: "To no one will we sell, to no one deny or delay right or justice."²

Bribery of the king and his judges, and delays in rendering judgment, had been serious problems in the decades leading up to the barons' rebellion. Clause 40 has been interpreted as a universal guarantee of equal



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justice. Today, the principle that justice is not for sale is a cornerstone of the American principles of judicial ethics which broadly prohibit judges from receiving gifts or other things of value from persons whose cases may come before them.

B. Improper Economic Benefit is Prohibited

Three additional clauses in the 1215 Charter were intended, in part, to address other corrupt practices. Clause 28 provided: "No constable or other royal official shall take corn or other movable goods from any man without immediate payment, unless the seller voluntarily offers postponement of this." Clause 30 stated: "No sheriff, royal official, or other person shall take horses or carts for transport from any free man, without his consent. And Clause 31 said: "Neither we nor any royal official will take wood for our castle, or for any other purpose, without the consent of the owner."

These provisions were intended to address abuses related to the right of the king to requisition supplies from citizens as the royal court travelled about England, but with an obligation to pay. The problem was that the

1 See J.C. Holt, *Magna Carta* xvi (2d ed. 1992).

2 The Magna Carta was written in Latin. An English translation can be found on the website of the British Library.

persons from whom supplies were requisitioned were often not paid, or were paid too little, or were paid too late. Some were compensated in “exchequer tallies,” a hated form of currency which could be used only to pay taxes.

The abuses included not only takings to provide for the king’s household, but requisitioning by officials for their own personal benefit. Clauses 28, 30, and 31 were intended to address that kind of abuse, too. In doing so, these clauses anticipated the later development of a broader, fundamental principle of modern government ethics jurisprudence. That principle holds that a government official or employee may not use official power for personal economic benefit.

C. Officials Must Be Accountable

Under anti-corruption principles, public officials and employees must be accountable for corrupt practices. In modern societies, the procedures often involve criminal indictment or impeachment. The Great Charter sought to achieve the same goal by extracting from King John a promise in Clause 55 that a committee of twenty-five barons could hold him accountable, by majority vote, for failure to return all fines unjustly exacted.

D. Judicial Qualifications and Temperament

It is often taken for granted that judges will be learned in the law. However, even today, this is not always the case. Because judicial qualifications were also problems in medieval England, the barons forced King John to promise in Clause 45: “We will appoint as justices, constables, sheriffs, or other officials, only men that know the law of the realm and are minded to keep it well.”

III. Women’s Rights

In the feudal world, “much of the sovereign’s revenue came from feudal incidents resulting from the king’s control of persons under disabilities. This included women whose husbands had died.

A. Forced Remarriage of Widows

In thirteenth century England, a widow “could be married at the wish of her feudal overlord to any man willing to pay the going rate.”¹ However, in rare cases a widow was sufficiently wealthy to be able to outbid suitors and buy a charter from her lord guaranteeing that she would not be forced to remarry. It is said that King John “did a lively business in payments for the

1 See Geoffrey Hindley, *The Magna Carta: The Story of the Origins of Liberty* 167 (2008).

widow’s privilege of remaining single, of remarrying whom she wished, or of keeping control of the lives and fortunes of her minor children.”² The payments, which sometimes included chattels (e.g., hunting animals) as well as money, testified “eloquently to the greed of the King, the anxiety of the victims, and the extortionate nature of the system.”³

The Magna Carta addressed these deeply resented practices in language so strong that it is something of a landmark in the recognition of women’s rights. Clause 8 states with certainty: “No widow shall be compelled to marry, so long as she wishes to remain without a husband. . . .” This victory for women was qualified. This was only a prohibition against a forced *second* or later marriage, and a woman could not choose to remarry without her lord’s consent. Moreover, most widows had no option other than to remarry because there were few career opportunities.

B. Inheritance by Women

At the time of the Magna Carta, “[i]t was customary for a land-owner to bestow marriage portions [of his land] on his daughters.”⁴ In addition, it was usual for a new husband to establish a dowry for his wife as they were leaving the altar. If the husband failed to do so, the law stepped in and fixed the dower at one-third of all his lands. The problem for a widow was that “she could only enter into possession [of the land] by permission of the King. . . .”⁵

To address this problem, Clause 7 of the Magna Carta provided: “At her husband’s death, a widow may have her marriage portion and inheritance at once and without trouble. She shall pay nothing for her dower, marriage portion, or any inheritance that she and her husband held jointly on the day of his death. She may remain in her husband’s house for forty days after his death, and within this period her dower shall be assigned to her.”

Issues remained relating to personal property, including food and other necessities. Those matters were addressed in Clause 26, which provided limited protection to widows and surviving minor children by making clear that their reasonable shares of a deceased man’s estate would not be treated as assets of the estate, except in cases of an unpaid debt to the Crown.

2 Frances Gies & Joseph Gies, *Women in the Middle Ages* 28 (1978).

3 *Id.*

4 William Sharp McKechnie, *Magna Carta: A Commentary on the Great Charter of King John* 216 (2d ed. 1914).

5 *Id.* at 215.

The 1215 Magna Carta was in no sense a model of equal treatment under law. However, it is important to remember that the Magna Carta did in fact protect a much wider array of persons and entities than just “free men” and aristocrats. It recognized the freedom of the church; the rights of “all merchants” and “any man” to travel; the liberties, customs, and obligations of cities and similar entities; and the interests and needs of hostages and mercenaries (in addition to the interests of widows, surviving children, heirs, wards, and persons accused of crime). Though it did not provide for full equality, the Magna Carta moved legal institutions across the globe closer to the ideal of equal justice under law.

IV. Conclusion

Today, authors are quick to point out that only four

of the original 63 provisions in the 1215 Magna Carta are still good law in the United Kingdom. Two of those provisions guarantee the freedom of the English Church and the rights of the City of London. The other two provisions deal with the administration of justice, guaranteeing that justice will not be sold or denied, and that persons will be punished only in accordance with the lawful judgment of their equals or the law of the land.

It is not surprising that the other 59 clauses have been repealed. They dealt in specific terms with the problems of a different age. No one would have expected them to last 800 years. The important thing is that the Magna Carta set high expectations for the development of the law that continue to inspire the reform and administration of justice around the world.

რ ე ზ ი უ მ ე

ამერიკელი პროფესორის ვინსენტ ჯონსონის სტატია ეხება თავისუფლების დიდ ქარტიას, ასევე მაგნა კარტას (ლათ. Magna Carta Libertatum), რომელიც გამოცხადდა ინგლისში 1215 წელს და იყო ერთ-ერთი უმნიშვნელოვანესი წინაპირობა ხანგრძლივი ისტორიული პროცესისა, რომლის შედეგად თანამედროვე კონსტიტუციური სამართალი ჩამოყალიბდა. ქარტიის თანახმად მეფეს გარკვეული უფლებები უნდა დაეთმო, დამორჩილებოდა სამართლებრივ პროცედურებს და ელიარებინა, რომ მეფეც შეზღუდული იყო კანონით.

ქარტიის შედეგად სასამართლოებს მიენიჭათ დამოუკიდებლობა, ის ამკვიდრებდა შესაბამის სასამართლო პროცედურას და კანონის წინაშე თანასწორობის პრინციპებს. ქარტია აღიარებს მიწისმესაკუთრეთა უფლებებს და მემკვიდრეობის უფლებას და ჩამოთვლის უფლებათა მთელ რიგს, როგორცაა ყველა თავისუფალი მოქალაქის უფლება ჰქონდეთ და მემკვიდრეობით მიიღონ და გადასცენ საკუთრებადა გათავისუფლდნენ ზედმეტი გადასახადებისაგან. გამოცხადდა გადაადგილების თავისუფლება, აიკრძალა სანქციის გარეშე საკუთარი სახლების ჩხრეკა და სხვ.

ხუთი საუკუნის შემდეგ ინგლისის პარლამენტმა გამოსცა კანონი, რომელიც აცხადებდა, რომ აღარ დაუშვებდა სამეფო ჩარევას თავის საქმეებში. იგი უკრძალავდა მონარქებს შეეჩერებინათ კანონის მოქმედება პარლამენტის თანხმობის გარეშე, გამოაცხადდა პარლამენტის წევრების თავისუფალი არჩევნები და სიტყვის თავისუფლება პარლამენტში, რომელიც არ უნდა დამდგარიყო კითხვის ნიშნის ქვეშ სასამართლოში ან სხვა ნებისმიერ ადგილას. კონსტიტუციურ მონარქიას, საპარლამენტო მმართველობას სწორედ 1215 წელს ჩაეყარა საფუძველი თავისუფლების დიდი ქარტიის საშუალებით.

