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**How The Magna Carta Can Save Donald Trump**

by

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The 809th anniversary of the [Magna Carta](#), a document signed by King John and an assembly of rebellious barons, is this June, and the anniversary of the historic Great Charter is little noted in America each year — but it should be.

Perhaps with Donald Trump’s guilty verdict in his New York jury trial fresh in the country’s mind, this year’s anniversary presents an occasion to revisit the Magna Carta’s continuing relevance.

The Magna Carta is the most significant document in the development of the rule of law in English and American jurisprudence. By placing limits on the sovereign’s power — forcing King John to acknowledge in writing that his power was not absolute and could not be exercised arbitrarily — the foundation was laid for the beginning of constitutional government.

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Indeed, a direct line can be traced from the Magna Carta of 1215 to the English Bill of Rights of 1689 and America's Bill of Rights ratified in 1791. There is no dispute that the document was a principal inspiration for our founders in drafting our Bill of Rights.

Magna Carta's Clause 39, one of the most oft-cited, states, "No free man is to be arrested, or imprisoned, or disseised, or outlawed, or exiled, or in any other way ruined, nor will we go against him or send against him, except by the lawful judgment of his peers or by the law of the land."

Clause 39's reference to "lawful judgment of his peers" is the foundation for the present-day right to a trial by jury, secured by the Sixth Amendment in our Bill of Rights. The reference to the "law of the land" quickly became understood in England to mean "due process of law." As early as 1354, the phrase "due process of law" appeared in a statute during King Edward III's reign. That statute restated the Magna Carta's guarantee this way. It reads, "No man of what state or condition he be, shall be put out of his lands or tenements, nor taken, nor disinherited, nor put to death, without he be brought to answer by due process of law."

Sir Edward Coke, the most notable jurist and barrister of the Elizabethan age, explicitly equated the phrase "law of the land" with "due process of law" in his famous ["Institutes of the Lawes of England" treatise](#), published in stages between 1628 and 1644. America's founders were intimately familiar with Coke's "Institutes." It is not surprising then that our Constitution's Fifth and 14th Amendments guarantee that all persons in the United States shall not be deprived of their life, liberty, or property without "due process of law."

By no means did the Great Charter's influence end at the nation's founding. The Supreme Court has referred to the Magna Carta more than 200 times in the development of our constitutional jurisprudence, often in connection with addressing the requisites of due process.

Now back to Trump's jury trial.

In a recent [Wall Street Journal piece](#), David Rivkin and Elizabeth Foley make a convincing case that Trump's conviction violated his due process rights. As they explain, under Supreme Court precedents, due process requires notice of the crime charged. It also requires a meaningful opportunity to defend, and prove, all elements of the crime. In [Cole v. Arkansas](#), the court said no principle of due process is more clearly established than that the defendant receives "notice of the specific charge" and has "a chance to be heard in a trial of the issues raised by that charge." In the decision from [In re Winship](#), the court declared that "the Due Process Clause protects the accused against conviction except upon proof beyond a reasonable doubt of every fact necessary to constitute the crime with which he is charged."

Much has already been written regarding the fact that Trump's indictment did not specify the "other crime" upon which the elevation of a misdemeanor for falsifying business records to a felony was dependent. Nor did the prosecutors specify the other crime at trial. As Rivkin and Foley put it, "The charged crime hinged on the intent to commit another unspecified crime, which in turn hinged on the actual commission of yet another unspecified offense."

While I find persuasive the claim that Trump's due process rights to a fair jury trial likely were violated, my purpose here is not to present that brief in full. Rather, it is to show that when Trump's lawyers present their arguments on appeal, they will be able to draw a straight line from the Magna Carta, signed on June 15, 1215, to their contention that the New York jury trial did not comport with due process.

If they succeed, and if Trump's conviction is reversed on appeal, not only will his rights be vindicated, but the rights of all individuals facing criminal charges will be made more secure. Then, the barons who forced King John to sign the Great Charter at Runnymede may look down from above with satisfaction.

\* Randolph J. May is President of the Free State Foundation, a free market-oriented think tank in Rockville, MD. The views expressed in this *Perspectives* do not necessarily reflect the views of others on the staff of the Free State Foundation or those affiliated with it. *How The Magna Carta Can Save Donald Trump* was published in the *The Federalist* on June 14, 2024.