



# Magna Carta's Impact on MODERN PROPERTY RIGHTS

BY MEYRIC LEWIS

**In June 2015, the democratic world celebrated the 800<sup>th</sup> anniversary of the sealing of Magna Carta, an historic document under which — for the first time — the people imposed limits on the power of their rulers. Despite its considerable age, this document continues to be relevant to our lives, rights and liberties in the 21<sup>st</sup> century. And, it has particular significance for those of us practicing in the field of eminent domain or expropriation or, as we Brits call it, compulsory purchase.**

The ruler at the time of the signing of Magna Carta was King John of England, who had become unpopular as a result of, among other things, levying too many taxes and engaging in failed foreign wars. By June 1215, England was verging on civil war. In fact, the location for the signing was chosen not for its picturesque qualities but because the marshy ground of the surrounding flood plains meant that neither side could ambush the other with their cavalry. So King John's barons seized the opportunity to make the King subject to written laws that held that the deprivation of a free person's liberty, or their subjection to taxation could not be imposed without the consent of the citizenry. This was a ground-breaking concept at the time, and Magna Carta is regarded as the foundation of the many representative democracies we have around the world today.

A question that still arises concerns the true motivations of King John's barons and whether they were truly interested in the greater good of all people. It has been fairly suggested by historians that the barons had a lot to gain from the agreement themselves,

given that they could avoid making their fortunes and armies available to the King according to his whim. In fact, England's former Lord Chief Justice, Lord Bingham of Cornhill, once said, "It would be a travesty of history to regard the barons who confronted King John as altruistic liberals who wanted to make the world a better place."

However, regardless of the document's original intent, and despite King John's almost immediate attempt to repudiate Magna Carta after he had agreed to it, the rights and freedoms originally enshrined by the barons have endured to this day for the benefit of us all.

Several copies of Magna Carta were made and many were distributed to cathedrals for safe-keeping and consultation when necessary. Remarkably, four copies of this document survive, although some copies are in a better state of preservation than others. One copy in particular was kept at Lincoln Cathedral in England and was lent to the United States in 1939 to be stored at Fort Knox for safekeeping throughout the Second World War.

### Continuing Relevance

Many of Magna Carta's 63 original provisions are still as relevant today as they were in 1215. Clause 39 states, "No free man shall be seized or imprisoned, or stripped of his rights or possessions, or outlawed or exiled, or deprived of his standing in any way, nor will we proceed with force against him, or send others to do so, except by the lawful judgment of his equals or by the law of the land." This clause set the stage for the concept of just compensation, which is a fundamental component of our work as right of way professionals. As such, it corresponds almost exactly to the terms of the Fifth Amendment to the U.S. Constitution, which states, "No person shall be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation."

Indeed, the principles in Magna Carta have long been cherished by the American people, and have been incorporated in full into the statute books of 17 U.S. states. And many more state statutes include a version of Clause 39, which prohibits interference with life, liberty or property without due process of law.

Similarly, Clause 40 states, "To no one will we sell, to no one deny or delay right or justice." Compare this with the Sixth Amendment to the U.S. Constitution, which gives citizens the right to a speedy and public trial by an impartial jury. And in Clause 20, "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," which echoes the legal principle of proportionality. This belief is similarly crucial in the field of right of way in that all of us professionals believe strongly in balancing the importance of our project with the rights and needs of affected landowners.

### An Historic Legacy

Another significant milestone in the history of Magna Carta is its underpinning of the Universal Declaration of Human Rights adopted by the United Nations General Assembly in 1948. Following the ravages of the Second World War, the United Nations came together to issue a comprehensive restatement of our fundamental rights and freedoms as humans. Article 17(2), again echoing Magna Carta, states unequivocally, "No one shall be arbitrarily deprived of his property."

Shortly after the UN Declaration of Human Rights, the newly-formed Council of Europe drafted the European Convention on Human Rights in 1950. Article 1 of the First Protocol to the Convention again uses similar language to and addresses the same issues as Clause 39 of Magna

Carta, "No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law."

### Our Common Inheritance

The basic human rights and freedoms set forth in Magna Carta continue to be relevant in our every day and professional lives eight centuries after they were first enshrined in that historic document. The same fundamental principles contained in it have echoed down the centuries in ensuring a citizen's rights and liberties in all democratic societies. It continues to be cited by advocates and judges as a high authority confirming the protection of the individual from the abuse of executive power. From England, to the United States, to Canada and anywhere else in the world where public infrastructure is erected, we should always remember that preserving the rights of the individual must always be paramount and placed as our highest priority. No doubt King John would agree. 🌐



*Meyric is a Barrister at Francis Taylor Building, having practiced compulsory purchase and compensation law throughout his career. He is also Chair of the Compulsory Purchase Association in the United Kingdom.*