

“No freeman is to be taken or imprisoned or disseised of his free tenement or of his liberties or free customs, or outlawed or exiled or in any way ruined, nor will we go against such a man or send against him save by lawful judgement of his peers or by the law of the land. To no-one will we sell or deny of delay right or justice.”

Magna Carta, a charter between King John and a group of English Barons sealed on June 15, 1215.*

Perhaps more than any other document in history, Magna Carta has come to embody a simple but enduring truth:
No one, no matter how powerful, is above the law.

As you think about this historic Magna Carta excerpt also reflect on the continued importance of the legal principle and practice of due process -- the principle that an individual cannot be deprived of life, liberty, or property without appropriate legal procedures and safeguards.

Look for modern examples of due process in news reports in-print or online.

*Quoted above is a translation of Chapter 29 from the 1297 version. The language derives from Chapters 39 and 40 from the original Magna Carta of 1215.

Next installment: The U.S. Constitution - Habeas Corpus



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“The privilege of the writ of habeas corpus shall not be suspended, unless when in cases of rebellion or invasion the public safety may require it.”

**Article I, Section IX of the United States
Constitution
September 17, 1787**

Habeas corpus is Latin for “have the body.” A writ of habeas corpus is a court order directing that a prisoner be brought to court and that the government show lawful grounds for his or her detention. The inclusion of the writ of habeas corpus in the Constitution prior to the passage of the Bill of Rights illustrates how important this right was to the founding fathers of our country.

In extreme cases, habeas corpus has been suspended. President Lincoln suspended habeas corpus a few times in response to unrest and rebellion during the Civil War. Again during World War II, Japanese Americans living on the West Coast were forced into internment camps following the attack on Pearl Harbor and detained for a couple of years.

With the passage of the Civil Liberties Act of 1988, the U.S. Government offered formal apologies and payments to Japanese-Americans who were forcibly relocated in WWII.

Look for news reports in-print or online that might require the necessity to suspend habeas corpus. Under what circumstances do you think one’s rights to due process could or should be reasonably curtailed?

Next installment: The Fifth Amendment



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“No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a grand jury, except in cases arising in the land or naval forces, or in the militia, when in actual service in time of war or public danger; nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.”

**Bill of Rights to the United States Constitution
Amendment V
September 25, 1789**

Look for modern examples of Fifth Amendment rights, including due process, in news reports in-print or online and think about how these modern examples tie back to colonial America and indirectly to 1215's Magna Carta.

Next installment: Supreme Court Case, Hamdi v. Rumsfeld (2004)



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Hamdi v. Rumsfeld (2004)

Yaser Hamdi, an American citizen, was captured in Afghanistan shortly after the events of 9/11 and was held as an enemy combatant. Hamdi claimed to be a relief worker. He was kept in prison without access to a lawyer or the courts. His father filed a writ of habeas corpus - a petition asking the court to decide if his son's imprisonment was legal.

Hamdi argued that the government had violated his 5th Amendment right to due process. The government claimed that as an enemy combatant Hamdi did not have the right to speak to a lawyer or to ask a court to review his case. The government claimed that the Executive Branch, during war time, had the authority to act without oversight from any other branch of government. After several appeals, the case made it to the Supreme Court.

The justices disagreed on important issues and without a majority, the decision was split. The plurality opinion held that Congress had authorized the use of military force which gave the president the authority to label U.S. citizens "enemy combatants" as well as detain them. But, the Executive Branch *does not* have the power to both declare someone an enemy combatant and then hold him or her *indefinitely* without due process. The Court agreed that Hamdi could only be held as long as the U.S. was involved in armed conflict with the Taliban.

The Court held that the Constitution's separation of powers require that courts review presidential decisions; Hamdi had the right to bring his case before a "neutral decision maker."

In a plea agreement, Hamdi renounced his American citizenship and he was returned to Saudi Arabia.

Look for current examples of balancing individual rights and security in the news.

Next installment: The Fourteenth Amendment



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“All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the state wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.”

**The Fourteenth Amendment
United States Constitution
July 9, 1868**

The Fourteenth Amendment uses the same exact words - the due process clause - as found in the Fifth Amendment, to describe a legal obligation of all states. This was done to ensure that all levels of American government operate under the same rule-of-law and provide fair procedures.

Due process refers to legal procedures that require the government to treat people fairly, including providing notice and an opportunity to be heard. Read recent news reports, in-print or online, for reports involving local legal proceedings - living examples of rights under the 14th Amendment.

Next installment: Supreme Court Case: In re Gault (1967)



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In re Gault (1967)

Juvenile offenders in the United States have not always been treated differently than adults. When the first juvenile court was established in 1899, it operated under the philosophy of *parens patriae* — “the State as parent.” Authorities believed that it was the state’s obligation to both protect the public’s interest and to act as a guardian of the interests of the children involved. Because the goal of juvenile courts was for rehabilitation rather than punishment, juveniles had no due process rights.

In 1964, an Arizona sheriff took 15-year-old Gerald Gault into custody after a woman complained that he had made an obscene phone call. Gault was on probation when he was arrested. The sheriff left no notice for Gerald’s parents, who had to figure out on their own where Gerald went. At the hearing the following day, nothing that was said was recorded, no witnesses were sworn in and the woman who accused Gerald wasn’t present. After several days in police custody, Gerald was released only to appear at another hearing a few days later. Again, there were no records kept and the complainant wasn’t there. At both hearings, Gerald testified about what happened. The judge committed Gerald as a juvenile delinquent to the State Industrial School until he was 21 years old.

Gault’s parents filed a petition for a writ of habeas corpus contending that the juvenile proceedings were unconstitutional. No appeal of this decision was allowed under Arizona law.

The Gaults’ next step was to petition the Supreme Court of the United States. Gerald’s attorneys argued Gerald had been deprived of his liberty without due process of law and that the Constitution guarantees due process for both juveniles and adults.

The Supreme Court agreed. The Court was clear stating that neither the Fourteenth Amendment nor the Bill of Rights is for adults alone and found that juveniles who are subject to delinquency hearings were entitled to notice of the specific charges against them, a right to legal counsel, the privilege against self-incrimination, and the right to confront and cross-examine witnesses.

Find current examples of how the U.S. justice system handles juvenile offenders in the news.

Next installment: Supreme Court Case, Goss v. Lopez (1975)



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Goss v. Lopez (1975)

Eight high school students and one middle school girl, in Columbus, Ohio, were given 10-day suspensions for a variety of disruptive or disobedient behavior. Among them, Dwight Lopez was suspended for damaging school property during a lunchroom commotion. Lopez claimed he was not involved and was simply an innocent bystander. There was no hearing either before or shortly after the suspensions and Ohio law did not require it. Their principals' actions were challenged, and a federal court found that the students' rights had been violated. The case was then appealed to the Supreme Court.

Attorneys for Lopez and others argued that students have a legitimate property right in their education, which is protected by the Due Process Clause. This right cannot be taken away without appropriate procedural hearings.

In a 5-to-4 decision, the Court ruled for the students, explaining that once the state provides an education for all of its citizens, it cannot deprive them of it without ensuring due process protections. The Court found that students facing suspension should at a minimum be given notice and afforded some kind of hearing. However, the Court also agreed with the District Court indicating, "Students whose presence poses a continuing danger to persons or property or an ongoing threat of disrupting the academic process may be immediately removed from school. In such cases, the necessary notice and rudimentary hearing should follow as soon as practicable..."

Research the policies and procedures for dealing with misconduct at your school and read the newspaper, in-print or online, to search for current examples of balancing individual rights and the safety of persons or property.

Final installment: Man's Unending Search for Freedom



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“Magna Carta was for England, and later for people around the world, what President Lyndon Johnson said Lexington and Concord were for the American Revolution and Selma was for the American civil rights movement — a turning point — where “history and fate meet at a single time, in a single place to shape a turning point in man’s unending search for freedom.”

**Roger Gregory,
Judge, Fourth Circuit Court of Appeals
Prepared for Insights on Law & Society,
American Bar Association, 2014**

Look for current news stories, in-print or online, that you think might be considered “a turning point” in man’s search for freedom in the future.

This series was created to prompt study and discussion on Magna Carta as an international symbol of the rule of law and the basic rights Americans still hold dear, among them habeas corpus and due process.

There is so much more that could have been covered. But, this need not be the end of the discussion, any more than Magna Carta was the end of the human desire for life, liberty and fair treatment under the law.



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