

# Establishing Justice: from Magna Carta to Our Own Day.

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First, on behalf of everyone at the State Bar of Arizona, I would like to congratulate the recipients of the Foundation awards. You are the ones who are bringing justice to those who need it most. Thank you for your efforts.

I would also like to thank the Foundation and everyone involved in seeing that every year the Foundation recognizes those who are doing so much to help those who have so little and yet need so much. You remind of one my favorite movie quotes. In the movie Mr. Smith Goes to Washington, Jefferson Smith played by Jimmie Stewart exclaimed, "[lost causes] are the only ones worth fighting for." While I find that quote inspirational, I do not completely believe in it. I believe that as long as a cause is worth fighting for, it is never really lost. Certainly, one of those causes worth fighting for is the one proudly proclaimed at the end of the Pledge of Allegiance--the cause of "justice for all."

As I consider the cause of "justice for all," I cannot help but think of the recent 800th anniversary last week of the sealing of Magna Carta. I had the opportunity last summer to see one of the four remaining original copies of that document on display at the Museum of Fine Arts in Boston. Viewing the document was both overwhelming and underwhelming--overwhelming, because of the charter's lasting effect on the jurisprudence of English speaking people, and underwhelming because the document itself was a normal size piece of paper with very small print and no elaborate signatures. In fact, the document bore no signatures at all. Instead of signatures, it bore the royal seal.

Magna Carta was never intended to be anything more than a document to resolve the grievances of forty rebellious barons against King John. The barons objected to the taxes he and his older brother King Richard had levied to support the crusades and the war to regain their lands in France. They had many other complaints, most of them related to the arbitrariness with which King John had ruled over them. The barons were in open rebellion. They had taken London, and now King John had little choice but to accede to their demands.

As a governing document, Magna Carta was short-lived. Within a couple of months, John refused to follow the document and Pope Innocent III decreed under threat of excommunication that neither King John nor the rebellious barons should abide by it or attempt to enforce its provisions.

Amazingly, this apparently short-lived document kept getting resurrected. Later kings reissued it on several occasions — albeit with fewer limits on royal power. Then, in the early 1600s, Sir Edward Coke used Magna Carta to support his view that the common law of England had existed before anyone could remember, that William the Conqueror had agreed to follow this common law, and that Magna Carta contained the substance of the common law. Coke's interpretation of Magna Carta went far beyond the original intent of its drafters creating what Justice Cardozo and others have referred to as the "myth of Magna Carta."

A century and a half later and on the other side of the Atlantic, the American colonists found themselves in a situation not unlike that of the rebellious barons of King John's day. They felt the burden of high taxes to pay Britain's war debt from the recently concluded Seven Years War; they had many other grievances; and generally they saw the King taking back liberties the colonists previously enjoyed. The colonists studied Lord Coke and his interpretation of Magna Carta. They believed King George III violated their rights as freemen guaranteed under Magna Carta. Hence, Magna Carta justified their own rebellion.

When the Revolution was complete and the founders framed the United States Constitution, they included many relics from Magna Carta and from Coke's mythical interpretation of it. As the United States Supreme Court has interpreted the Constitution, the justices have often resorted to using Magna Carta and Lord Coke to explain what the founders meant in their own document.

So 800 years after King John's humiliating concession, Magna Carta has become a foundational part of our own jurisprudence. What was written primarily to establish that the barons had rights that the King could not violate became a tool used to justify expanding the concept of rights on a much broader basis. Magna Carta helped establish the idea of the rule of law. Today, it reminds us that no one or nothing, not even the King, or in our case, government itself, is above the law.

So what does this have to do with access to justice? The same concepts of rule of law and individual rights that were expressed in their infancy in Magna Carta are the foundation of what we see today as justice. As I have pondered justice, I have come to the conclusion that a society can have no more liberty or freedom than it has justice. Freedom without justice quickly devolves into anarchy. Without justice, individual choice often leads some to impose their will on those around them. Without justice, society becomes a sort of Darwinian—survival of the fittest—place where only the smartest, strongest, or wealthiest are truly free to pursue happiness. It should be no surprise then that justice is usually the first casualty of both totalitarian regimes and anarchy.

So if I am correct that a society can have no more freedom or liberty than it has justice, how free is our society? What is the state of justice in Arizona and across the country? As most in this group already know, when it comes to access to justice in civil matters, we have our work cut out for us. Access to justice is no longer a problem that only affects those living in poverty. The vast majority of people here and across the country do not believe that they can afford an attorney, and in most cases, they are right. Increasingly, only the very wealthy and those who are poor enough to qualify for legal aid are represented by attorneys in court, and of course we are all too familiar with the financial limitations of our legal aid organizations.

So unable to afford attorneys, many people represent themselves in court. Others forgo courts altogether hoping their legal problems go away or they try to resolve them outside the legal process. As more and more people seek to resolve their justice needs without attorneys, attorneys risk becoming left out of the justice solution altogether. People must be able to resolve their differences. As attorneys, we must ask ourselves what our role will be in helping them to do so. As officers of the court, we also have to ask ourselves what is our responsibility to see that everyone has access to justice?

One thing is clear, if we continue to do what we have always done, access to justice is not likely to get much better. Increasingly, we are going to have to reconsider options we have rejected in the past. We will need to consider ways to make it easier for pro se litigants to navigate their way through the court system on their own. We will likely have to reconsider how non-attorney resources can help fill the gap. We may have to revisit what the "practice of law" means. Our critics argue that every time some other group seeks to help people find a cheaper way of resolving legal issues, we try to stop them under the guise of protecting the public by arguing that what they are doing constitutes the unauthorized practice of law. While we do have a duty to protect the public, at some

point we have to concede that we do nothing to protect the public, if 1) we prevent the public from receiving cheaper legal services from non-attorney sources and 2) we are unable or unwilling to step up and provide those services ourselves. As long as the vast majority of the public cannot afford our services and there are no cheaper sources of justice, justice will be at risk. In closing, as we struggle as a profession to find solutions to our access to justice problem, there is one simple thing we can do now. We can do more to spread the word to encourage attorneys to make contributions to our legal aid organizations using the Arizona Working Poor Tax Credit. Taxpayers can contribute up to two hundred dollars per year under this program and receive a matching credit against their state taxes. If each of our members participated in this program, we could raise nearly \$4,000.000 from state coffers for our legal aid organizations each year. So I challenge everyone within the sound of my voice to 1) participate in the Arizona Working Poor Tax Credit program, and 2) encourage other attorneys to do the same.

If justice is usually the first casualty of both totalitarian regimes and anarchy, it is interesting to note that our founders, many of whom were attorneys, made justice the first stated goal of the Constitution. They said, "We the People of the United States, in Order to form a more perfect Union, establish Justice. . . ." Today, 226 years later, establishing justice is still the key to a more perfect union. As officers of the court, let us follow the example of the founders and lead the cause of establishing justice in our own day. Thank you.