

Due Process of Law

The clause in this section—"nor be deprived of life; liberty, or property without due process of law"—is a brief summary of several provisions, some of which are of very ancient origin. Thus, the 39th Article of Magna Charta, 1215, states the following fundamental principle: "No freeman shall be seized, or imprisoned, or dispossessed, or outlawed, or in any way destroyed, nor will we condemn him, nor will we commit him to prison, excepting by the legal judgment of his peers, or by the laws of the land." This provision of Magna Charta was restated in another form by an act of Parliament passed in the 28th year of Edward III. 1354, which declared "that no man, of what estate or condition that he be, shall be put out of his land or tenement, nor taken, nor imprisoned, nor disherited, nor put to death, without being brought to answer by due process of law." I think this was the earliest statutory use of the phrase "due process of law" now so common in our Constitutions and so frequently cited in judicial decisions involving the rights of citizens. These declarations were in substance repeated in the act passed in the reign of Charles I., 1628, in response to the Petition of Rights. This was succeeded by the famous Habeas Corpus act of 1679, and the Declaration of Right, of 1689. But six years prior to the declaration of William and Mary, the New York colonists, in their first assembly, 1683, asserted in the proposed Charter of Liberties the 39th article of Magna Charta, stating it in the following form: "No man, of what estate or condition soever, shall be put out of his lands or tenements, nor taken, nor imprisoned, nor disherited, nor banished, nor any ways destroyed, without being brought to answer by due course of law ;" and this was repeated in the Charter of Liberties, passed in 1691.

The first section of our Constitution restates, in the form proposed by Gilbert Livingston in the first constitutional convention, some of the primary rights of citizens as declared in Magna Charta. It was the original plan of that convention to include a Bill of Rights in the Constitution, but this result was not accomplished, except as to a few items. The New York act of 1787 concerning the rights of citizens contained a declaration of several principles which probably would have been included in a constitutional Bill of Rights had not the unhappy situation of the convention prevented the proper consideration of this subject in connection with the Constitution. That statutory Bill of Rights reiterated the 39th article of Magna Charta in another form, and declared the right of trial by jury, and the right to the presentment of a criminal charge by a grand jury, which have already been quoted. The provisions relating to the protection of life, liberty, and property are stated in this Bill of Rights as follows:

"No citizen of this state shall be taken or imprisoned, or be disseised of his or her freehold or liberties or free customs, or outlawed or exiled or condemned, or otherwise destroyed, but by lawful judgment of his or her peers, or by due process of law."

"No person, of what estate or condition soever, shall be taken or imprisoned, or disinherited, or put to death -without being brought to answer by due process of law, and no person shall be put out of his or her franchise or freehold, or lose his or her life or limb, or goods and chattels, unless he or she be duly brought to answer. and be forejudged of the same by due course of law, and if anything be done contrary to the same it shall be void in law, and holden for none."

All these numerous forms of expression, beginning with Magna Charta. and ending with the New York Bill of Rights of 1787, were stated in the 5th Amendment to the Federal Constitution, 1789, in the simple declaration that "no person shall be deprived of life, liberty, or property without due process of law;" and this was incorporated in the New York Constitution of 1821.