MAGNA CARTA MONUMENT
MAGNA CARTA PLACE – CANBERRA, AUSTRALIA

1. WHAT'S THERE?

Bounded by Queen Victoria Terrace, Langton St., and King George Terrace, is now Magna Carta Place, set in the open space of the Senate Rose Garden. Around the copper canopy of the rotunda is carved, "Nullus liber homo capiatur vel imprisonetur, aut disseisiatur, aut utlagetur, aut exuletur, aut aliquo modo destruatur, nec super eum ibimus, nec super eum mittemus, nisi per legale judicium parium suorum vel per legem terae.", and inlaid in brass into the floor rotunda are the words "Equality. Freedom. Trial by Jury. Justice. Rule of Law." Around the walls and on the columns is the history and meaning of Magna Carta - typical of the words are such passges as: "Magna Carta is now seen as a traditional mandate for trial by jury, justice for all, accountable government and no arbitrary imprisonment."; and "It is from the people that the Commonwealth Constitution gets its ultimate authority and to them that the parliament is responsible.".

Come, absorb and take its message away with you with photographs and video. Tell everyone you have seen it - and don't let it be hidden and forgotten, to our peril.

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2. NAMING ADDRESS:

The following naming of Magna Carta Place address was given by The Hon Sir Gerard Brennan AC KBE, Chief Justice of Australia, on 12 October 1997, at Langton Crescent, Canberra, Australia.

Magna Carta was not an act of Parliament. There was no Parliament. Magna Carta was not born of a revolution. Henry II's structures of government stayed in place. It was a bargain struck between King John and the Barons who thought themselves oppressed by his demands. Its term were hammered out between them on the banks of the Thames at Runnymede between June 15th and June 19th 1215. Then the Great Seal was affixed to Magna Carta. It was not granted because of a desire for reform but merely as concessions wrung from a King whose position had been weakened by his disastrous campaigns in Flanders and France the year before. Historically, Magna Carta can be understood only by reference to the turbulent history of the times in the context of a feudal system. John repudiated Magna Carta and the repudiation was confirmed by Pope Innocent III. Both men died in the following year. But that is not the history that matters.

There are three factors which make today's occasion significant. The first is that the Barons' particular grievances against the King were extended to include provisions of potential benefit to a wider segment of the people. These ameliorating and beneficial provisions were largely the work of the Archbishop of Canterbury, Stephen Langton, whose election John had refused to confirm and whom he kept out of the Kingdom for years until 1213. It was Langton who brought the precedent of a Royal Charter to the notice of the Barons; it was Langton who looked beyond the interests of the Barons to the protection of the people. How appropriate it is that Magna Carta Place should be dedicated in a site bounded by Langton Crescent.

After John's death in 1216, Magna Carta was reissued by the Regents of the infant Henry 111 in 1216 and again in 1217. In 1225, Henry having come of age, he made the final and definitive reissue of the text under his seal. The original 63 Chapters were reduced to 37. But the enduring influence of Magna Carta depended on events that were to occur more than 70 years later.

On this day 12 October in 1297, the Royal Seal of Edward I was affixed to inscribed and attested copies of Magna Carta. They were distributed

throughout the land to implement Edward's confirmation of the Charter. By letters patent, he directed his justices to administer the Charter as common law. No judgements were to be given henceforth that were contrary to the

Charter - else they would be "undone and holden for naught". Magna Carta, whether as common law or statute, entered the law of the land and, as part of the law of England from that time forward, became part of the law of all those Imperial colonies and possessions to which English law was carried. It is Edward's confirmation of the Charter - of the 1225 reissue, not of the 1215 original - which is of greatest significance in the history of our institutions. It is this event that we commemorate today, the 700th Anniversary of its occurrence. In the Parliament building, close by, there is one of Edward's sealed copies of the Charter intended for the County of Surrey. That copy and this Place will be tangible reminders of the origin and centuries of growth of the constitutional principles which inform our national life.

The third significant factor is not the text itself but the beneficial misinterpretations - indeed, the myth - with which, from age to age, the text has been invested. Four centuries after the Charter was granted, Sir Edward Coke called it "the Charter of Liberty, because it maketh freemen." This is not the occasion to rehearse the textual or historical support for all that has been said about the Charter. Today it is regarded as providing a traditional mandate for trial by jury, equal and incorrupt justice for all, no arbitrary imprisonment, and no taxes without Parliament's approval. It does not matter that the text is seldom invoked in today's courts. At base, the importance of Magna Carta is that it contains the principle that the King, like all his subjects, is subject to the rule of law. On the doctrine that government, as well as the governed, is subject to the rule of law, depends every step in our constitutional progress.

Above all, Magna Carta has lived in the hearts and minds of our people. It is an incantation of the spirit of liberty. Whatever its text or meaning, it has become the talisman of a society in which tolerance and democracy reside, a society in which each man and woman has and is accorded his or her unique dignity, a society in which power and privilege do not produce tyranny and oppression. It matters not that this is the myth of Magna Cart, for the myth is the reality that continues to infuse the deepest aspirations of the Australian people. Those aspirations are our surest guarantee of a free and confident society.

Today, in commemorating the launching of this enduring myth into our lives and our law, we gather to name this Place. We do so with a sense of gratitude for those who brought the law with them to these shores, a law that endures for the benefit of those who were here before and those who have come after to make Australia their home. We name this Place in our National Capital with gratitude for our forebears who have kept alive the spirit of Magna Carta. I am therefore honored to unveil this plaque which names Magna Carta Place.

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3. OPENING ADDRESS:

The following opening of the Magna Carta Monument address was given by The Prime Minister of Australia, The Rt. Hon John Winston Howard, M.P. on 16th September 2001.

26 September 2001

TRANSCRIPT OF THE PRIME MINISTER THE HON JOHN HOWARD MP ADDRESS AT THE OPENING OF THE MAGNA CARTA MONUMENT, CANBERRA.

E&EO .....

Mrs. Marjorie Turbayne, Sir Alistair Goodlad the British High Commissioner in Australia and Lady Goodlad, Sir John Mason, Baroness Gardner, Madam President, Chief Minister, my ministerial and parliamentary colleagues, ladies and gentlemen.

Today is a wonderful occasion and Janette and I are delighted to have been extended the honour of participating in this opening ceremony. Quite rightly Sir Alistair referred to the importance of the values at stake in the response by the civilized world to the terrorist attack on the 11th of September. And in the context of this gathering it is worth remembering that many of the common ideals and common values that are shared by the people of Britain, the people of Australia and the people of the United states and indeed the people of many lands in the 21st century, many of those ideals and values in fact find their origin in the Magna Carta. And that in the historical context and the great historical significance of an occasion like this.

I can't imagine as a faltering but nonetheless dedicated student of the

history of our country and the shared history and our country and the experience of the united Kingdom, I can't think of those things that are more important in binding us together than those common commitments to the liberty of the subject, the importance and the primacy of private property within an orderly democratic society the freedom from arbitrary arrest and the right of people to be judged by their peers according to the evidence, made available in that process.

They are things that we have grown up to take for granted, they are things that the people of Australia and the people of Britain have held in common through the life experience of everybody here today. They are not things of course that have been experienced throughout the lifetime of many around the world. And it's those values, those principles and those freedoms and all the other associated freedoms that our peoples have stood for through the centuries which were assaulted on the 11th of September. So when I and others have spoken of that attack not only being an attack upon the people and the values of the United States but also an attack upon the people and the values of Australia and the people and the values of the United Kingdom, we have an understanding of what is involved in that.

Because in the end our societies are judged by their values, they're judged by the things that they are prepared to stand for and defend. And in the long history of the association between the people pf Great Britain and the people of Australia there have been many examples of their shared determination to stand together against the forces that would deny the liberty of the subject against the forces of tyranny, the forced of arbitrary arrest and detention without trial. And it will always be to the enduring credit in the history of mankind that the people of Great Britain and Australia and New Zealand and Canada and other parts of the then British Commonwealth stood together and alone against the worst tyranny the world had confronted in the 20th century. And then in 1940 they were standing for the tings given birth in part by that compact between King John and the Barons of Runnymede.

And so today when we express our gratitude to the Australia Britain Society, we express our gratitude to the generous contribution from the Government of the United Kingdom. We reflect upon the tremendous heritage that we have in common. The people of Australia and the people of Britain have a lot in common. We share a language, we have a common cultural tradition, we share a common love of sport, we share a common commitment to robust parliamentary institutions. We have inherited much we in Australia from Great Britain. We've inherited so

many of those things and many more. And today is an occasion for us to celebrate the freedoms that we have in common for we in Australia to acknowledge our debt in those areas to the people of Great Britain and all that that has meant in the formative stages of our nation.

It's also an occasion for us to recognize that in the 21st Century it is a partnership in every sense of equals. It is a partnership of two nations which although in different parts of the world and often being cast in very different situation and nonetheless two nations that still have great affection towards each other, who still feel in the same way about certain fundamentals of life, we still react with the same indignity and anger when the fundamentals of our society are obscenely assaulted. So today is an occasion to celebrate what we have in common. It's a day for all of us to express our gratitude to those people who have fought for the fundamental liberties we have. Those people who've died for those fundamental liberties and sadly there are too may of the young men in earlier generations of both pour nations who died defending freedom and died of course to give us the kind of life that we enjoy today.

So ladies and gentlemen I am delighted to be here today. I congratulate the Australia Britain Society. Marjorie I can only say you are magnificent, your leadership of that organization, your inspiration, your cajoling, your capacity to apply pressure ever so subtly, ever so effectively, ever so humbly but always very successfully is quite legend, not only in this city but in many other parts of Australia. It's a lovely occasion; it's a thoughtful, ever so appropriate contribution to our Centenary of Federation by the Australia Britain Society. I hope it will be a place to which people who love freedom and believe in the values of our two societies come to reflect upon what they can do to contribute to the common maintenance of those values and the shared experiences of their benefits in the year ahead. Thank you.

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4. RUDYARD KIPLING ON MAGNA CARTA:

What Say the Reeds at Runnymede?
by Rudyard Kipling (1865-1936)
A poem commemorating the signing of Magna Carta

Runnymede, Surrey, June 15, 1215

At Runnymede, at Runnymede,
What say the reeds at Runnymede?
The lissom reeds that give and take,
That bend so far, but never break,
They keep the sleepy Thames awake
With tales of John at Runnymede.

At Runnymede, at Runnymede,
Oh, hear the reeds at Runnymede:
'You musn't sell, delay, deny,
A freeman's right or liberty.
It wakes the stubborn Englishry,
We saw 'em roused at Runnymede!

When through our ranks the Barons came,
With little thought of praise or blame,
But resolute to play the game,
They lumbered up to Runnymede;
And there they launched in solid line
The first attack on Right Divine,
The curt uncompromising "Sign!'
They settled John at Runnymede.

At Runnymede, at Runnymede,
Your rights were won at Runnymede!
No freeman shall be fined or bound,
Or dispossessed of freehold ground,
Except by lawful judgment found
And passed upon him by his peers.
Forget not, after all these years,
The Charter signed at Runnymede.'

And still when mob or Monarch lays
Too rude a hand on English ways,
The whisper wakes, the shudder plays,
Across the reeds at Runnymede.
And Thames, that knows the moods of kings,
And crowds and priests and suchlike things,
Rolls deep and dreadful as he brings
Their warning down from Runnymede!

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5. WHY IN 1215?

The Church banned participation of clergy in trial by ordeal in 1215. Without the legitimacy of religion, trial by ordeal collapsed. The juries under the assizes began deciding guilt as well as providing accusations. The same year, trial by jury became a pretty explicit right in one of the most influential clauses of Magna Carta, signed by King John. Article 39 of the Magna Carta read:

Nullus liber homo capiatur, vel imprisonetur, aut desseisetur de libero tenemento, vel libertatibus, vel liberis consuetudinibus suis, sut utlagetur, aut exuletur, aut aliquo modo destruatur, nec super eum ibimus, nec super eum mittemus, nisi per legale judicium parium suorum, vel per legem terrae. It is translated thus by Lysander Spooner in his Essay on the Trial by Jury: "No free man shall be captured, and or imprisoned, or disseised of his freehold, and or of his liberties, or of his free customs, or be outlawed, or exiled, or in any way destroyed, nor will we proceed against him by force or proceed against him by arms, but by the lawful judgment of his peers, and or by the law of the land." Although it says and or by the law of the land, this in no manner can be interpreted as if it were enough to have a positive law, made by the king, to be able to proceed legally against a citizen. The law of the land was the consuetudinary law, based on the customs and consent of John's subjects, and since they did not have Parliament in those times, this meant that neither the king nor the barons could make a law without the consent of the people. According to some sources, in the time of Edward III, by the law of the land had been substituted by due process of law, which in those times was a trial by twelve peers.

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6. CHAPTER THIRTY–NINE, IN PARTICULAR:

Nullus liber homo capiatur vel imprisonetur, aut disseisiatur, aut utlagetur, aut exuletur, aut aliquo modo destruatur, nec super eum ibimus, nec super eum mittemus, nisi per legale judicium parium suorum vel per legem terrae.

No freeman shall be taken or [and] imprisoned or disseised or exiled or in any way destroyed, nor will we go upon him nor send upon him, except by the lawful judgment of his peers or [and] by the law of the land.3

This chapter occupies a prominent place in law–books, and is of considerable importance, although its value has sometimes been exaggerated.1

I. Its Main Object.

It has been usual to read it as a guarantee of trial by jury to all Englishmen; as absolutely prohibiting arbitrary commitment; and as solemnly undertaking to dispense to all and sundry an equal justice, full, free, and speedy.2 The traditional interpretation has thus made it, in the widest terms, a promise of law and liberty and good government to every one.3 A careful analysis of the clause, read in connection with its historical genesis, suggests the need for modification of this view. It was in accord with the practical genius of the Charter that it should here direct its energies, not to the enunciation of vague platitudes, but to the reform of a specific abuse. Its object was to prohibit John from resorting to what is sometimes whimsically known in Scotland as "Jeddart justice."4 It forbade him for the future to place execution before judgment. Three aspects of this prohibition may be emphasized.

(1) Judgment must precede execution.

In some cases John proceeded, or threatened to proceed, by force of arms against recalcitrants as though assured of their guilt, without waiting for legal procedure.1 Complaint was made of arrests and imprisonments suffered "without judgment" (*absque judicio*); and these are the very words of the "unknown charter"—"*Concedit Rex Johannes quod non capiet homines absque judicio.*"2 The Articles of the Barons and Magna Carta expand this phrase. *Absque judicio* becomes *nisi per legale judicium parium suorum vel per legem terrae,* thus guarding, not merely against execution without judgment, but also against John's subtler device for attacking his enemies by a travesty of judicial process. The Charter asks not only for a "judgment," but for a "judgment of peers" and "according to the law of the land." Two species of irregularities were condemned by these words; and these will be explained in the two following subsections.

(2) Per judicium parium:

every judgment must be delivered by the accused man's "equals."3 The need for "a judgment of peers" was recognized at an early date in England.4 It was not originally a class privilege of the aristocracy, but a right shared by all grades of free–holders; whatever their rank, they could not be tried by their inferiors.1 In this respect English custom did not differ from the procedure prescribed by feudal usage on the Continent of Europe.2 Two applications of this general principle had, however, special interest for the framers of Magna Carta: the "peers" of a Crown tenant were his fellow Crown tenants, who would normally deliver judgment in the *Curia Regis;* while the "peers" of the tenant of a mesne lord were the other suitors of the Court Baron of the manor. In either case, judgments were given *per pares curiae.* John, resorting wholesale to practices used sparingly in earlier reigns, had set these rules at defiance. His political and personal enemies were exiled, or deprived of their estates, by the judgment of a tribunal composed entirely of Crown nominees. Magna Carta promised a return to the ancient practice.

The varied meanings conveyed by the word "peers" to a medieval mind, together with the nature of *judicium parium,* may be further illustrated by the special rules applicable to four exceptional classes of individuals:—(*a*) Jews of England and Normandy enjoyed under John's Charter of 10th April, 1201, the right to be judged by men of their own race; for them a *judicium parium* was a judgment of Jews.3 (*b*) A foreign merchant, by later statutes, obtained the right to a jury of the "half tongue" (*de medietate linguae*), composed partly of aliens of his own country.4 (*c*) The peers of a Welshman seem, in some disputes with the Crown, to have been men drawn from the marches: such at least is the plausible interpretation of the phrase *"inmarchia per judicium parium suorum,"* occurring in later chapters of Magna Carta, and granting to the Welsh redress of wrongful disseisins.1 (*d*) A Lord Marcher occupied a peculiar position, enjoying rights denied to barons whose estates lay in more settled parts of England. In 1281 the Earl of Gloucester, accused by Edward I. of a breach of allegiance, claimed to be judged, not by the whole body of Crown tenants, but by such as were, like himself, lords marchers.2 These illustrations show that a "trial by peers" had a wider and less stereotyped meaning in the Middle Ages than it has at the present day.3

(3) Per legem terrae.

No freeman could be punished except "in accordance with the law of the land." The precise meaning of these often–quoted words ought, perhaps, still to be regarded as an open question. Two meanings are possible: one, narrow and technical; the other, of a loose and popular bearing. The more technical has already been explained.4 Thus interpreted, the words of John's Charter promised a threefold security to all the freemen of England. Their persons and property were protected from the King's arbitrary will by the rule that execution should be preceded by a judgment—by a judgment of peers—by a judgment according to the appropriate time–honoured "test," battle, compurgation, or ordeal.5

Much weight, however, must be allowed to the arguments of those who contend for interpreting *"lex terrae"* more in accordance with the vague and somewhat

meaningless "law of the land" of popular speech at the present day. The phrase, they argue, was not confined to methods of procedure, but referred to the entire tone and substance of the law.1 Advocates of both theories can point to other parts of Magna Carta where *"lex"* is used in the sense they claim for it in the present passage; for its purport was, in 1215, ambiguous. In chapters 18, 36, and 38, it refers primarily to procedure, whereas chapters 9, 45, 52, 56, and 59 suggest a broader interpretation.

Magna Carta is undoubtedly a loosely drawn document, and it is always possible that both meanings were in the minds of the framers. If so, the older, more technical signification was gradually forgotten, and "the law of the land" became the vague and somewhat meaningless phrase of the popular speech of to–day. It was only natural that this change of emphasis should be reflected in subsequent statutes reaffirming, expanding, or explaining Magna Carta. An important series of these, passed in the reigns of Edward III. and Richard II., shows how the *per legem terrae* of 1215 was read in the fourteenth century as equivalent to "by due process of law," and how the Great Charter was interpreted as prohibiting the trial of men for their lives and limbs

before the King's Council on mere informal and irresponsible suggestions, sometimes made loosely or from malicious and interested motives.2

The Act of 1352, for example, after reciting this provision of Magna Carta, insisted on the "indictment or presentment of good and lawful people of the same neighbourhood where such deeds be done." Coke,1 founding apparently on these fourteenth–century statutes, makes "*per legem terrae*" equivalent to "by due process of law" and that again to "by indictment or presentment of good and lawful men," thus finding the grand jury enshrined in Magna Carta. The framers of the Petition of Right2 read the same words as a prohibition, not only of imprisonment "without any cause showed" but also of proceedings under martial law, thus interpreting the aims of King John's opponents in the light of the misdeeds of King Charles.

Anachronisms such as these must be avoided. Whatever may have been the exact grievances that bulked most largely in the barons' minds in 1215, their main contention was obvious. John was no longer to take the law into his own hands: the deliberate judgment of a competent court of law must precede any punitive measures to be taken by the King against freemen of his realm.

(4) The meaning of "vel."

The peculiar use of the word *"vel"* introduced an unfortunate element of ambiguity. No proceedings were to take place "without lawful judgment of peers *or* by the law of the land"—"or" thus occurring where "and" might naturally be expected. Authorities on medieval Latin are agreed, however, that *"vel"* is sometimes equivalent to *et.*3 Comparison with the terms of chapter 52 and with those of the corresponding Article of the Barons places the matter almost beyond doubt. The 25th of the Articles of the Barons had provided that all men disseised by Henry or Richard should "have right without delay by judgment of their peers in the king's court," giving no hint of any possible alternative to *judicium parium.* Chapter 52 of the Charter, in supplementing the present chapter, describes the evils complained of in both chapters as acts of disseisin or outlawry by the King *"sine legale judicio parium suorum,"* leaving no room for ambiguity.

II. The Scope of the Protection afforded.

The object of the barons was to protect themselves and their friends against the King, not to set forth a scientific system of jurisprudence: the *judicium parium* was interposed as a barrier against measures instituted by the King, not against appeals of private individuals. Pleas following upon accusations by the injured party were held in 1471 not to fall within the words of Magna Carta.1 This was a serious limitation; but as against the Crown the scope of the protection afforded by the Great Charter was very wide indeed. Care was taken that the three–fold safeguard should cover every form of abuse likely to be practised by John.2

(1) Capiatur vel imprisonetur.

These words are followed in the text by a string of other verbs, each of which is introduced by *"aut"* (*"aut disseisiatur,"* etc.). The contrast between *"vel"* and *"aut"* strengthens the suggestion that *"vel"* is used in this chapter conjunctively. The

meaning would then be that no one could be arrested and imprisoned (that is, no one could be detained as a prisoner) without trial. If *"vel,"* on the other hand, were to be read disjunctively while the two words it connects were literally interpreted and enforced, orderly government would be at an end.1 Arrest normally precedes judgment, although judgment must precede permanent imprisonment following on arrest.

(2) Aut disseisiatur.

Avarice was a frequent motive of John's oppressions: the machinery of justice was an engine for transferring land and money to his treasury. Crown–tenants frequently found their estates appropriated by the Crown as escheats. That this was a grievance to which the barons attached supreme importance is shown in many ways: by the care taken in the 25th Article of the Barons and in chapter 52 of the Charter to provide procedure for restoring "disseised"2 estates, and by the terms of writs issued by John after the treaty at Runnymede, for the immediate restoration of "lands, castles, and franchises from which we have caused any one to be disseised *injuste et sine judicio."*3

Later versions of Magna Carta (beginning with that of 1217) are careful to define the objects to be protected from disseisin: "free tenements, franchises, and free customs."4 (*a*) *Liberum tenementum.* "Free" tenements were freeholds as opposed to the *villenagium* that passed into the modern copyhold. None of the possessions thus protected were more highly valued by the barons than their feudal strongholds.5 Castles claimed by great lords as their own property are mentioned in many writs of the period, while chapter 52 of Magna Carta gives them a prominent place among the "disseisins" to be restored. (*b*) "*Libertates*" covered feudal jurisdictions, immunities, and privileges of various sorts, of too intangible a nature to be appropriately described as "holdings." (*c*) *Consuetudines* had two meanings, a broad general one and a narrower financial one.1 As the Charter of 1217 uses a proprietary pronoun (no freeman shall be disseised of *his* free customs), it probably refers to such rights as those of levying tolls and tallages. These vested interests were of the nature of monopolies; and Coke, in treating this passage as a text on which to preach the doctrine that monopolies have always been illegal in England, aims wide of his mark. Commenting on the words "*de libertatibus,*" he declares that generally all monopolies are against this Great Charter, because they are against the liberty and freedom of the subject and against the law of the land."2 In this error he has been assiduously followed.3

(3) Aut utlagetur, aut exuletur, aut aliquo modo destruatur.

The declaration of outlawry, which could only be made in the county court, was a necessary preliminary to the forfeiture of the outlaw's lands and goods. The expedient recommended itself peculiarly to John's genius; it was his policy to terrify those with whom he had quarrelled, until they fled the country; to summon them three times before the county court, knowing that they dared not face his corrupt and servile officers; and finally to have them formally outlawed and their property seized. Such had been the fate of Robert Fitz Walter and Eustace de Vesci, in the autumn of 1212.4 The outlawed man was outside the pale of society; anyone might slay him at pleasure; in the grim phrase of the day, he bore "a wolf's head" (*caput lupinum*), and might be

hunted like a noxious beast. A reward of two marks was offered for each outlaw's head brought to Westminster. This sum was paid in 1196 for the head of William of Elleford.1 The word "exiled" explains itself; and commentators have very properly noted the care taken to widen the scope of the clause by the use of the words "or in any other way destroyed."2

(4) "Nec super eum ibimus, nec super eum mittemus."

These words have been frequently misinterpreted. Read in the light of historical incidents of the immediately preceding years, they leave no room for ambiguity. Their object was to prevent John from substituting violence for legal process: he must never again attack *per vim et arma* men unjudged and uncondemned.

The meaning is plain. Yet Coke, following his vicious method of assuming the existence, in Magna Carta, of a warrant for every legal principle of his own day, misled generations of commentators. He maintained that John promised to refrain from raising, in his own courts, actions in which he was personally interested. In elaborating this error, he drew a distinction between the court of King's Bench, otherwise known as *coram rege,* because the King was in theory present, and other courts to which he had "sent" a writ delegating authority. *Ibimus,* he seems to think,

applied in the former case; *mittemus* in the latter. To quote his words, "No man shall be condemned at the King's suit, either before the King in his bench, where the pleas are *coram rege* (and so are the words, *nec super eum ibimus,* to be understood) nor before any other commissioner, or judge whatsoever (and so are the words, *nec super eum mittemus,* to be understood), but by the judgment of his peers, that is, equals, or according to the law of the land."3 Coke is in error; it was the use of brute force, not merely one particular form of legal process, which John in these words renounced.

III. What Classes enjoyed the Protection of Judicium Parium?

No "freeman" was to be molested in any of the ways specified; but how far in the social scale did this description descend? Coke claims villeins as free for purposes of this chapter and of chapter 1, while rejecting them for the purposes of chapter 20.1 Their right to the status of freeman has already been disallowed, and any possible ambiguity as to the present chapter is removed by the words of the revised version of 1217. Chapter 35 of that reissue, with the object of making its meaning clearer, inserts after "*disseisiatur*" the words (already discussed) "*de libero tenemento suo vel libertatibus vel liberis consuetudinibus suis.*" Mr. Prothero suggests that this addition implies an advance on the privileges secured in 1215:—"It is worth while to notice that the words in which these liberties are stated in § 35 of the Charter of 1217 are considerably fuller and clearer than the corresponding declaration in the Charter of 1215."2 It is safer to infer that no change was here intended, but merely the removal of ambiguity. If there is a change, it is rather a contraction than an extension, making it clear that only "free" tenements are protected, and excluding the property of villeins and even *villenagium* belonging to freemen.3 It was made plain beyond reasonable doubt that no villein should have lot or part in rights hailed by generations of commentators as the national heritage of all Englishmen.4

IV. Reactionary Side of these Provisions.

To insist that in all cases a judgment of feudal peers, either in King's Court or in Court Baron, should take the place of a judgment by the King's professional judges, was to reverse one of the outstanding features of the policy of Henry II. In this respect, the present chapter may be read in connection with chapter 34. The barons, indeed, were not strict logicians, and probably thought it prudent to claim more than they intended to enforce. Yet, a danger lurked in these provisions; the clause was a reactionary one, tending to restore feudal privileges and feudal usage, inimical alike to the Crown and to the growth of popular liberties.1 John promised that feudal justice should be dispensed in his feudal court; and, if this promise had been kept, the result would have been to check the development of the small committees destined to become at no distant date the Courts of King's Bench and Common Pleas, and to revive the fast–waning jurisdictions of the manorial courts on the one hand and of the *commune concilium* on the other.2

V. Genesis of this Chapter.

The interpretation here given is emphasized by comparison with certain earlier documents and events. The reigns of Richard and John furnish abundant examples of the abuses complained of. In 1191, Prince John, as leader of the opposition against his brother's Chancellor, William Longchamp, concluded a treaty that protected himself and his allies from the very evils which John subsequently committed against his own barons. Longchamp conceded in Richard's name that bishops and abbots, earls, barons, "vavassors" and free–tenants, should not be disseised of lands and chattels at the will of the King's justices or ministers, but only by judgment of the King's court according to the lawful customs and assizes, or by the King's command.3

Now, the main subject of the arbitration, ending in this treaty, was the custody of certain castles and estates. After the right to occupy each separate castle in dispute had been carefully determined, provision was then made, in the general words cited above, against this arrangement being disturbed without a judgment of the *curia regis*. Disseisin, and particularly disseisin of castles, was thus in 1191, as in 1215, a topic of special prominence.

Early in 1213, the King had attempted to take vengeance upon his opponents in a manner they are not likely to have forgotten, two years later at Runnymede. John, resenting the attitude of the northern barons who had refused alike to accompany him to Poitou and to pay scutage, determined to take the law into his own hands. Without summoning his opponents before a *commune concilium,* without even a trial and sentence by one of his Benches, he set out with an army to punish them. He had gone as far north as Northampton when, on 28th August, 1213, Stephen Langton persuaded him to defer forcible proceedings *until he had obtained a legal sentence* in a formal *Curia.*1 That John again threatened recourse to violent methods may be inferred from the letter patent issued in May, 1215, when both sides were armed for war. He proposed arbitration, and promised a truce until the arbitrators had given their award. The words of this promise are notable; since, not only do they illustrate the procedure of August, 1213, but they agree closely with the clause of Magna Carta under discussion. The words are:—"Know that we have conceded to our *barons* who are against us, that we shall not take or disseise them or their men, nor shall we go against them *per vim vel per arma,* unless by the law of our kingdom, or by the judgment of their peers *in curia nostra.*"2 Magna Carta repeats this concession in more general

terms, substituting "freemen" for the "barons" of the writ—an alteration which necessitated the omission from the Charter of the concluding words of the writ, "*in curia nostra*"; because the peers of ordinary freemen would be found among the freeholders in the Court Baron.1

VI. Later History of "Judgment of Peers."

The claim made by the barons at Runnymede was re–asserted on subsequent occasions. The phrase "judicium parium" which, probably in consequence of its use in Magna Carta, sprang into "sudden and extraordinary prominence"2 was destined to have a long and distinguished career. Mr. Harcourt3 thinks that "it was the obscurity of the chapter when reissued, the fact that it might mean so many things, which supplied the congenial soil wherein the principle of trial of peers was able to expand and grow to maturity," when "the Charter as a whole became the Bible of the constitution."

(1) The baronial contention.

The earls and barons, throughout the reign of John's unhappy son, attempted to place a broad interpretation on the privilege secured to them by this chapter—claiming that all pleas, civil and criminal (such at least as were raised against them at the instance of the Crown) should be tried by their fellow earls and barons, and not by professional judges of lower rank. William de Braose in 1208 had declared himself ready to satisfy John *"secundum judicium curiae suae et baronum parium meorum."*4

(2) The royal contention.

The Crown, on the other hand, while not openly infringing the Charter, tried to narrow its scope. Judges appointed to determine pleas *coram rege,* no matter what their original status might be, became (so the Crown argued) by such appointment, the peers of any baron or earl. This doctrine was enunciated in 1233 when Peter des Roches denounced Richard, Earl Marshal, as a traitor, in a meeting (*colloquium*) of crown–tenants held at Gloucester on 14th August of that year. Thereafter, "*absque judicio curiae suae et parium suorum,*" as Matthew Paris carefully relates,5 Henry treated Earl Richard and his friends as outlaws, and bestowed their lands on his own Poitevin favourites. An attempt was made, at a subsequent meeting held on 9th October, to have these proceedings reversed on the ground, already stated, that they had taken place *absque judicio parium suorum.*

The sequel makes clear a point left vague in Matthew's narrative: there had been a judgment previous to the seizure, but only a judgment of Crown officials *coram rege,* not of earls and barons in *commune concilium.* The justiciar defended the action of the government by a striking argument: "there were no peers in England, such as were in the kingdom of France," and, therefore, John might employ his justices to condemn all ranks of traitors.1 Bishop Peter was here seeking to evade the provisions of Magna Carta without openly defying them, and his line of argument was that the King's professional judges, however lowly born, were the peers of an English earl or baron.2 Neither the royal view nor the baronial view entirely prevailed. A distinction, however, must be drawn between criminal and civil pleas.

(3) Criminal pleas.

Offenders of the rank of barons partially made good their claim to a trial by equals; while ordinary freemen failed. A further distinction is thus necessary. (*a*) *Crown tenants.* The conflicting views held by King and baronage here resulted in a compromise. In criminal pleas, the Crown was obliged to recede from the high ground taken by Peter des Roches in 1233. Unwillingly, and with an attempt to disguise the fact of surrender by confusing the issue, Bracton in theory and Henry III. in practice admitted part of the barons' demand, namely, "that in cases of alleged treason and felony, when forfeiture or escheat was involved, they should be judged only by earls and barons.1 Bracton does not admit that the King's justices were not "peers" of barons; but deduces their disability from the narrower consideration that the King, through his officials, ought not to be judge in his own behalf, since his interests in escheats might bias his judgment. This explains why "privilege of peers" has never extended to misdemeanours, since these involved no forfeiture to the Crown.

The *judicium parium* was secured to earls and barons in later reigns by bringing the case before the entire body of earls and barons in *commune concilium.* What the barons got at first was "judgment" by peers. The actual "trial" was the "battle," the fellow–peers acting as umpires and enforcing fair play.2 Although new modes of procedure came to prevail, the Court of Peers continued its control, and the *judgment* of peers gradually passed into the modern *trial* by peers.3 The subject has been further complicated by the growth of the modern conception of a "peerage," embracing various grades of "nobles." In essentials, however, the rights of a baron accused of crime have remained unchanged from the days of Henry III. to our own. The privilege of "trial by peers" still extends to treason and felony, and is still excluded from misdemeanours. When competent, it still takes place before a "Court of Peers"—namely, the House of Lords, if Parliament is in session, and the Court of the Lord High Steward, if not. Under these limitations the privilege of a peer has been for centuries a reality in England for earls and barons, and also for members of those other ranks of the modern "peerage" unknown in 1215—dukes, marquesses, and viscounts.4

(*b*) For *tenants of a mesne lord* no similar privilege has been established, even in a restricted form. In charges of felony, as in those of misdemeanour, all freemen outside the peerage are tried, and have been tried for many centuries past, in the ordinary courts of law. There is no privileged treatment for knight or landed gentleman: private feudal courts never recovered from the wounds inflicted by Henry II. The clauses of Magna Carta which sought to revive them were rendered nugatory by legal fictions or simply by neglect.

(4) Civil pleas.

Various attempts were made by the barons to make good a claim to *judicium parium* in civil cases.1 The chief anxiety, perhaps, of the men of 1215 was to save their estates and castles from disseisin consequent on such pleas. Yet the barons' efforts in this direction were unsuccessful. The House of Lords (except in cases involving the dignity or status of a peer) has never claimed to act as a court of first instance in civil cases to which a peer was a party. Noble and commoner here are on a level. No "peer

of the realm" has, for many centuries, asked to plead before a special court of peers in any ordinary non–criminal litigation, whether affecting real or personal estate.

VII. Erroneous Interpretations.

The tendency to vagueness and exaggeration has already been discussed. Two mistakes of unusual persistence require detailed notice.

(1) The identification of judicium parium with trial by jury.

The words of the present chapter form the main, if not the sole, ground on which this traditional error has been based.2 The mistake probably owes its origin to a tendency of later generations to explain what was unfamiliar in the Great Charter by what was familiar in their own experience. They found nothing in their own day to correspond with the *judicium parium* of 1215; and nothing in Magna Carta (unless it were this clause) to correspond with trial by jury: therefore they identified the two.1 Mr. Reeves, Dr. Gneist, and other writers long ago exposed this error, but the most conclusive refutations are those given by Prof. Maitland and Mr. Pike. The arguments of these writers are of a somewhat technical nature;2 but their importance is far–reaching. They seem to be mainly three:—

(*a*) The criminal petty jury cannot be intended in this chapter, since it had not been invented in 1215:3 to introduce trial by jury into John's Great Charter is an unpardonable anachronism. (*b*) The barons would have repudiated trial by jury if they had known it. They desired (here as in chapter 21) that questions affecting them should be "judged" before fellow barons, and in the normal case, by the *duellum*. They would have scorned to submit to the verdict of "twelve good men" of their own locality. Their inferiors must have no voice in determining their guilt or innocence. This sentiment was shared by the tenants of mesne lords. (*c*) *Judgment* and *verdict* were essentially different. The function of a petty jury (after it *had* been invented) was to answer a specific question. The insurgent barons demanded more than this: they asked a decision on the whole case.4 The "peers" who judged presided over the proceedings from beginning to end, appointing the proof they deemed appropriate, sitting as umpires while its fulfilment was essayed, and giving a final decision as to success or failure therein.

(2) Magna Carta and arbitrary commitment.

A second erroneous theory has still to be discussed. The Petition of Right, as already stated, treats Magna Carta as prohibiting the Crown from making arrests without a warrant showing the cause of detention; and the earlier commentators further interpreted it as making all acts of arbitrary imprisonment by the Crown absolutely illegal. Hallam, for example, declares that "It cannot be too frequently repeated that no power of arbitrary detention has ever been known to our constitution since the charter obtained at Runnymede."1 Yet every King of England from John Lackland to Charles Stewart claimed and exercised the prerogative of summarily committing to gaol any man suspected of evil designs against Crown or Commonwealth. Even the famous protest of the judges of Queen Elizabeth, asserting the existence of legal limits to the royal prerogative of commitment, proves the lawfulness of the general practice to which it makes exceptions. Such rights inherent in the Crown were never seriously

challenged until the struggle between Charles I. and his parliaments had fairly begun. Then only was it suggested that Magna Carta was intended to prohibit arbitrary commitments at the command of the Crown. Such was the argument deliberately put forth in 1627 during the proceedings known sometimes as Darnell's case and sometimes as the case of the Five Knights. Health, the Attorney–General, easily repelled this contention: "the law hath ever allowed this latitude to the King, or his privy council, which are his representative body, in extraordinary cases to restrain the persons of such freemen as for reasons of state they find necessary for a time, without for this present expressing the causes thereof."2 The parliamentary leaders, however, too grimly in earnest to be deterred by logic, were far from abandoning their error because Heath had exposed it. They embodied it, on the contrary, in the Petition of Right, which condemned the Crown's practice of imprisoning political offenders "without any cause showed" (other than *per speciale mandatumregis*), as contrary to the tenor of Magna Carta—an effective contention as a political expedient, but unsound in law.

ANON…… APOLOGIES…..THE NAME OF THE AUTHOR OF THIS SECTION IS NOT READILY TO HAND. YOURS SINCERELY, JOHN WILSON.

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7. FULL TEXT OF MAGNA CARTA:

Introductory Note

As might be expected, the text of the Magna Carta of 1215 bears many traces of haste, and is clearly the product of much bargaining and many hands. Most of its clauses deal with specific, and often long-standing, grievances rather than with general principles of law. Some of the grievances are self-explanatory: others can be understood only in the context of the feudal society in which they arose. Of a few clauses, the precise meaning is still a matter of argument.

In feudal society, the king's barons held their lands `in fee' (*feudum*) from the king, for an oath to him of loyalty and obedience, and with the obligation to provide him with a fixed number of knights whenever these were required for military service. At first the barons provided the knights by dividing their estates (of which the largest and most important were known as `honours') into smaller parcels described as `knights' fees', which they distributed to tenants able to serve as knights. But by the time of King John it had become more convenient and usual for the obligation for service to be commuted for a cash payment known as `scutage', and for the revenue so obtained to be used to maintain paid armies.

Besides military service, feudal custom allowed the king to make certain other exactions from his barons. In times of emergency, and on such special occasions as the marriage of his eldest daughter, he could demand from them a financial levy known as an `aid' (*auxilium*). When a baron died, he could demand a succession duty or `relief' (*relevium*) from the baron's heir. If there was no heir, or if the succession was disputed, the baron's lands could be forfeited or `escheated' to the Crown. If the heir was under age, the king could assume the guardianship of his estates, and enjoy

all the profits from them-ven to the extent of despoliation-until the heir came of age. The king had the right, if he chose, to sell such a guardianship to the highest bidder, and to sell the heir himself in marriage for such price as the value of his estates would command. The widows and daughters of barons might also be sold in marriage. With their own tenants, the barons could deal similarly.

The scope for extortion and abuse in this system, if it were not benevolently applied, was obviously great and had been the subject of complaint long before King John came to the throne. Abuses were, moreover, aggravated by the difficulty of obtaining redress for them, and in Magna Carta the provision of the means for obtaining a fair hearing of complaints, not only against the king and his agents but against lesser feudal lords, achieves corresponding importance.

About two-thirds of the clauses of the Magna Carta of 1215 are concerned with matters such as these, and with the misuse of their powers by royal officials. As regards other topics, the first clause, conceding the freedom of the Church, and in particular confirming its right to elect its own dignitaries without royal interference, reflects John's dispute with the Pope over Stephen Langton's election as archbishop of Canterbury: it does not appear in the Articles of the Barons, and its somewhat stilted phrasing seems in part to be attempting to justify its inclusion, none the less, in the charter itself. The clauses that deal with the royal forests (§§ 44, 47, 48), over which the king had special powers and jurisdiction, reflect the disquiet and anxieties that had arisen on account of a longstanding royal tendency to extend the forest boundaries, to the detriment of the holders of the lands affected. Those that deal with debts (§§ 9-1l) reflect administrative problems created by the chronic scarcity of ready cash among the upper and middle classes, and their need to resort to money-lenders when this was required. The clause promising the removal of fish-weirs (§ 33) was intended to facilitate the navigation of rivers. A number of clauses deal with the special circumstances that surrounded the making of the charter, and are such as might be found in any treaty of peace. Others, such as those relating to the city of London (§ 13) and to merchants (§ 41), clearly represent concessions to special interests.

Translation

(Clauses marked (+) are still valid under the charter of 1225, but with a few minor amendments. Clauses marked (*) were omitted in all later reissues of the charter. In the charter itself the clauses are not numbered, and the text reads continuously. The translation sets out to convey the sense rather than the precise wording of the original Latin.)

JOHN, by the grace of God King of England, Lord of Ireland, Duke of Normandy and Aquitaine, and Count of Anjou, to his archbishops, bishops, abbots, earls, barons, justices, foresters, sheriffs, stewards, servants, and to all his officials and loyal subjects, Greeting.

KNOW THAT BEFORE GOD, for the health of our soul and those of our ancestors and heirs, to the honour of God, the exaltation of the holy Church, and the better ordering of our kingdom, at the advice of our reverend fathers Stephen, archbishop of Canterbury, primate of all England, and cardinal of the holy Roman Church, Henry

archbishop of Dublin, William bishop of London, Peter bishop of Winchester, Jocelin bishop of Bath and Glastonbury, Hugh bishop of Lincoln, Walter Bishop of Worcester, William bishop of Coventry, Benedict bishop of Rochester, Master Pandulf subdeacon and member of the papal household, Brother Aymeric master of the knighthood of the Temple in England, William Marshal earl of Pembroke, William earl of Salisbury, William earl of Warren, William earl of Arundel, Alan de Galloway constable of Scotland, Warin Fitz Gerald, Peter Fitz Herbert, Hubert de Burgh seneschal of Poitou, Hugh de Neville, Matthew Fitz Herbert, Thomas Basset, Alan Basset, Philip Daubeny, Robert de Roppeley, John Marshal, John Fitz Hugh, and other loyal subjects:

+ (1) FIRST, THAT WE HAVE GRANTED TO GOD, and by this present charter have confirmed for us and our heirs in perpetuity, that the English Church shall be free, and shall have its rights undiminished, and its liberties unimpaired. That we wish this so to be observed, appears from the fact that of our own free will, before the outbreak of the present dispute between us and our barons, we granted and confirmed by charter the freedom of the Church's elections - a right reckoned to be of the greatest necessity and importance to it - and caused this to be confirmed by Pope Innocent III. This freedom we shall observe ourselves, and desire to be observed in good faith by our heirs in perpetuity.

TO ALL FREE MEN OF OUR KINGDOM we have also granted, for us and our heirs for ever, all the liberties written out below, to have and to keep for them and their heirs, of us and our heirs:

(2) If any earl, baron, or other person that holds lands directly of the Crown, for military service, shall die, and at his death his heir shall be of full age and owe a `relief', the heir shall have his inheritance on payment of the ancient scale of `relief'. That is to say, the heir or heirs of an earl shall pay £100 for the entire earl's barony, the heir or heirs of a knight l00s. at most for the entire knight's `fee', and any man that owes less shall pay less, in accordance with the ancient usage of `fees'

(3) But if the heir of such a person is under age and a ward, when he comes of age he shall have his inheritance without `relief' or fine.

(4) The guardian of the land of an heir who is under age shall take from it only reasonable revenues, customary dues, and feudal services. He shall do this without destruction or damage to men or property. If we have given the guardianship of the land to a sheriff, or to any person answerable to us for the revenues, and he commits destruction or damage, we will exact compensation from him, and the land shall be entrusted to two worthy and prudent men of the same `fee', who shall be answerable to us for the revenues, or to the person to whom we have assigned them. If we have given or sold to anyone the guardianship of such land, and he causes destruction or damage, he shall lose the guardianship of it, and it shall be handed over to two worthy and prudent men of the same `fee', who shall be similarly answerable to us.

(5) For so long as a guardian has guardianship of such land, he shall maintain the houses, parks, fish preserves, ponds, mills, and everything else pertaining to it, from the revenues of the land itself. When the heir comes of age, he shall restore the whole

land to him, stocked with plough teams and such implements of husbandry as the season demands and the revenues from the land can reasonably bear.

(6) Heirs may be given in marriage, but not to someone of lower social standing. Before a marriage takes place, it shall be' made known to the heir's next-of-kin.

(7) At her husband's death, a widow may have her marriage portion and inheritance at once and without trouble. She shall pay nothing for her dower, marriage portion, or any inheritance that she and her husband held jointly on the day of his death. She may remain in her husband's house for forty days after his death, and within this period her dower shall be assigned to her.

(8) No widow shall be compelled to marry, so long as she wishes to remain without a husband. But she must give security that she will not marry without royal consent, if she holds her lands of the Crown, or without the consent of whatever other lord she may hold them of.

(9) Neither we nor our officials will seize any land or rent in payment of a debt, so long as the debtor has movable goods sufficient to discharge the debt. A debtor's sureties shall not be distrained upon so long as the debtor himself can discharge his debt. If, for lack of means, the debtor is unable to discharge his debt, his sureties shall be answerable for it. If they so desire, they may have the debtor's lands and rents until they have received satisfaction for the debt that they paid for him, unless the debtor can show that he has settled his obligations to them.

* (10) If anyone who has borrowed a sum of money from Jews dies before the debt has been repaid, his heir shall pay no interest on the debt for so long as he remains under age, irrespective of whom he holds his lands. If such a debt falls into the hands of the Crown, it will take nothing except the principal sum specified in the bond.

* (11) If a man dies owing money to Jews, his wife may have her dower and pay nothing towards the debt from it. If he leaves children that are under age, their needs may also be provided for on a scale appropriate to the size of his holding of lands. The debt is to be paid out of the residue, reserving the service due to his feudal lords. Debts owed to persons other than Jews are to be dealt with similarly.

* (12) No `scutage' or `aid' may be levied in our kingdom without its general consent, unless it is for the ransom of our person, to make our eldest son a knight, and (once) to marry our eldest daughter. For these purposes ouly a reasonable `aid' may be levied. `Aids' from the city of London are to be treated similarly.

+ (13) The city of London shall enjoy all its ancient liberties and free customs, both by land and by water. We also will and grant that all other cities, boroughs, towns, and ports shall enjoy all their liberties and free customs.

* (14) To obtain the general consent of the realm for the assessment of an `aid' - except in the three cases specified above - or a `scutage', we will cause the archbishops, bishops, abbots, earls, and greater barons to be summoned individually by letter. To those who hold lands directly of us we will cause a general summons to be issued, through the sheriffs and other officials, to come together on a fixed day (of

which at least forty days notice shall be given) and at a fixed place. In all letters of summons, the cause of the summons will be stated. When a summons has been issued, the business appointed for the day shall go forward in accordance with the resolution of those present, even if not all those who were summoned have appeared.

* (15) In future we will allow no one to levy an `aid' from his free men, except to ransom his person, to make his eldest son a knight, and (once) to marry his eldest daughter. For these purposes only a reasonable `aid' may be levied.

(16) No man shall be forced to perform more service for a knight's `fee', or other free holding of land, than is due from it.

(17) Ordinary lawsuits shall not follow the royal court around, but shall be held in a fixed place.

(18) Inquests of *novel disseisin*, *mort d'ancestor*, and *darrein presentment* shall be taken only in their proper county court. We ourselves, or in our absence abroad our chief justice, will send two justices to each county four times a year, and these justices, with four knights of the county elected by the county itself, shall hold the assizes in the county court, on the day and in the place where the court meets.

(19) If any assizes cannot be taken on the day of the county court, as many knights and freeholders shall afterwards remain behind, of those who have attended the court, as will suffice for the administration of justice, having regard to the volume of business to be done.

(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, but not so heavily as to deprive him of his livelihood. In the same way, a merchant shall be spared his merchandise, and a husbandman the implements of his husbandry, if they fall upon the mercy of a royal court. None of these fines shall be imposed except by the assessment on oath of reputable men of the neighbourhood.

(21) Earls and barons shall be fined only by their equals, and in proportion to the gravity of their offence.

(22) A fine imposed upon the lay property of a clerk in holy orders shall be assessed upon the same principles, without reference to the value of his ecclesiastical benefice.

(23) No town or person shall be forced to build bridges over rivers except those with an ancient obligation to do so.

(24) No sheriff, constable, coroners, or other royal officials are to hold lawsuits that should be held by the royal justices.

* (25) Every county, hundred, wapentake, and tithing shall remain at its ancient rent, without increase, except the royal demesne manors.

(26) If at the death of a man who holds a lay `fee' of the Crown, a sheriff or royal official produces royal letters patent of summons for a debt due to the Crown, it shall

be lawful for them to seize and list movable goods found in the lay `fee' of the dead man to the value of the debt, as assessed by worthy men. Nothing shall be removed until the whole debt is paid, when the residue shall be given over to the executors to carry out the dead man s will. If no debt is due to the Crown, all the movable goods shall be regarded as the property of the dead man, except the reasonable shares of his wife and children.

* (27) If a free man dies intestate, his movable goods are to be distributed by his next-of-kin and friends, under the supervision of the Church. The rights of his debtors are to be preserved.

(28) No constable or other royal official shall take corn or other movable goods from any man without immediate payment, unless the seller voluntarily offers postponement of this.

(29) No constable may compel a knight to pay money for castle-guard if the knight is willing to undertake the guard in person, or with reasonable excuse to supply some other fit man to do it. A knight taken or sent on military service shall be excused from castle-guard for the period of this servlce.

(30) No sheriff, royal official, or other person shall take horses or carts for transport from any free man, without his consent.

(31) Neither we nor any royal official will take wood for our castle, or for any other purpose, without the consent of the owner.

(32) We will not keep the lands of people convicted of felony in our hand for longer than a year and a day, after which they shall be returned to the lords of the `fees' concerned.

(33) All fish-weirs shall be removed from the Thames, the Medway, and throughout the whole of England, except on the sea coast.

(34) The writ called *precipe* shall not in future be issued to anyone in respect of any holding of land, if a free man could thereby be deprived of the right of trial in his own lord's court.

(35) There shall be standard measures of wine, ale, and corn (the London quarter), throughout the kingdom. There shall also be a standard width of dyed cloth, russett, and haberject, namely two ells within the selvedges. Weights are to be standardised similarly.

(36) In future nothing shall be paid or accepted for the issue of a writ of inquisition of life or limbs. It shall be given gratis, and not refused.

(37) If a man holds land of the Crown by `fee-farm', `socage', or `burgage', and also holds land of someone else for knight's service, we will not have guardianship of his heir, nor of the land that belongs to the other person's `fee', by virtue of the `fee-farm', `socage', or `burgage', unless the `fee-farm' owes knight's service. We will not have the guardianship of a man's heir, or of land that he holds of someone else, by reason

of any small property that he may hold of the Crown for a service of knives, arrows, or the like.

(38) In future no official shall place a man on trial upon his own unsupported statement, without producing credible witnesses to the truth of it.

+ (39) 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 other way, nor will we proceed with force against him, or send others to do so, except by the lawful judgement of his equals or by the law of the land.

+ (40) To no one will we sell, to no one deny or delay right or justice.

(41) All merchants may enter or leave England unharmed and without fear, and may stay or travel within it, by land or water, for purposes of trade, free from all illegal exactions, in accordance with ancient and lawful customs. This, however, does not apply in time of war to merchants from a country that is at war with us. Any such merchants found in our country at the outbreak of war shall be detained without injury to their persons or property, until we or our chief justice have discovered how our own merchants are being treated in the country at war with us. If our own merchants are safe they shall be safe too.

* (42) In future it shall be lawful for any man to leave and return to our kingdom unharmed and without fear, by land or water, preserving his allegiance to us, except in time of war, for some short period, for the common benefit of the realm. People that have been imprisoned or outlawed in accordance with the law of the land, people from a country that is at war with us, and merchants - who shall be dealt with as stated above - are excepted from this provision.

(43) If a man holds lands of any `escheat' such as the `honour' of Wallingford, Nottingham, Boulogne, Lancaster, or of other `escheats' in our hand that are baronies, at his death his heir shall give us only the `relief' and service that he would have made to the baron, had the barony been in the baron's hand. We will hold the `escheat' in the same manner as the baron held it.

(44) People who live outside the forest need not in future appear before the royal justices of the forest in answer to general summonses, unless they are actually involved in proceedings or are sureties for someone who has been seized for a forest offence.

* (45) We will appoint as justices, constables, sheriffs, or other officials, only men that know the law of the realm and are minded to keep it well.

(46) All barons who have founded abbeys, and have charters of English kings or ancient tenure as evidence of this, may have guardianship of them when there is no abbot, as is their due.

(47) All forests that have been created in our reign shall at once be disafforested. River-banks that have been enclosed in our reign shall be treated similarly.

* (48) All evil customs relating to forests and warrens, foresters, warreners, sheriffs and their servants, or river-banks and their wardens, are at once to be investigated in every county by twelve sworn knights of the county, and within forty days of their enquiry the evil customs are to be abolished completely and irrevocably. But we, or our chief justice if we are not in England, are first to be informed.

* (49) We will at once return all hostages and charters delivered up to us by Englishmen as security for peace or for loyal service.

* (50) We will remove completely from their offices the kinsmen of Gerard de Athée, and in future they shall hold no offices in England. The people in question are Engelard de Cigogné', Peter, Guy, and Andrew de Chanceaux, Guy de Cigogné, Geoffrey de Martigny and his brothers, Philip Marc and his brothers, with Geoffrey his nephew, and all their followers.

* (51) As soon as peace is restored, we will remove from the kingdom all the foreign knights, bowmen, their attendants, and the mercenaries that have come to it, to its harm, with horses and arms.

* (52) To any man whom we have deprived or dispossessed of lands, castles, liberties, or rights, without the lawful judgement of his equals, we will at once restore these. In cases of dispute the matter shall be resolved by the judgement of the twenty-five barons referred to below in the clause for securing the peace (§ 61). In cases, however, where a man was deprived or dispossessed of something without the lawful judgement of his equals by our father King Henry or our brother King Richard, and it remains in our hands or is held by others under our warranty, we shall have respite for the period commonly allowed to Crusaders, unless a lawsuit had been begun, or an enquiry had been made at our order, before we took the Cross as a Crusader. On our return from the Crusade, or if we abandon it, we will at once render justice in full.

* (53) We shall have similar respite in rendering justice in connexion with forests that are to be disafforested, or to remain forests, when these were first a-orested by our father Henry or our brother Richard; with the guardianship of lands in another person's `fee', when we have hitherto had this by virtue of a `fee' held of us for knight's service by a third party; and with abbeys founded in another person's `fee', in which the lord of the `fee' claims to own a right. On our return from the Crusade, or if we abandon it, we will at once do full justice to complaints about these matters.

(54) No one shall be arrested or imprisoned on the appeal of a woman for the death of any person except her husband.

* (55) All fines that have been given to us unjustiy and against the law of the land, and all fines that we have exacted unjustly, shall be entirely remitted or the matter decided by a majority judgement of the twenty-five barons referred to below in the clause for securing the peace (§ 61) together with Stephen, archbishop of Canterbury, if he can be present, and such others as he wishes to bring with him. If the archbishop cannot be present, proceedings shall continue without him, provided that if any of the twenty-five barons has been involved in a similar suit himself, his judgement shall be set aside, and someone else chosen and sworn in his place, as a substitute for the single occasion, by the rest of the twenty-five.

(56) If we have deprived or dispossessed any Welshmen of lands, liberties, or anything else in England or in Wales, without the lawful judgement of their equals, these are at once to be returned to them. A dispute on this point shall be determined in the Marches by the judgement of equals. English law shall apply to holdings of land in England, Welsh law to those in Wales, and the law of the Marches to those in the Marches. The Welsh shall treat us and ours in the same way.

* (57) In cases where a Welshman was deprived or dispossessed of anything, without the lawful judgement of his equals, by our father King Henry or our brother King Richard, and it remains in our hands or is held by others under our warranty, we shall have respite for the period commonly allowed to Crusaders, unless a lawsuit had been begun, or an enquiry had been made at our order, before we took the Cross as a Crusader. But on our return from the Crusade, or if we abandon it, we will at once do full justice according to the laws of Wales and the said regions.

* (58) We will at once return the son of Llywelyn, all Welsh hostages, and the charters delivered to us as security for the peace.

* (59) With regard to the return of the sisters and hostages of Alexander, king of Scotland, his liberties and his rights, we will treat him in the same way as our other barons of England, unless it appears from the charters that we hold from his father William, formerly king of Scotland, that he should be treated otherwise. This matter shall be resolved by the judgement of his equals in our court.

(60) All these customs and liberties that we have granted shall be observed in our kingdom in so far as concerns our own relations with our subjects. Let all men of our kingdom, whether clergy or laymen, observe them similarly in their relations with their own men.

* (61) SINCE WE HAVE GRANTED ALL THESE THINGS for God, for the better ordering of our kingdom, and to allay the discord that has arisen between us and our barons, and since we desire that they shall be enjoyed in their entirety, with lasting strength, for ever, we give and grant to the barons the following security:

> The barons shall elect twenty-five of their number to keep, and cause to be observed with all their might, the peace and liberties granted and confirmed to them by this charter.
>
> If we, our chief justice, our officials, or any of our servants offend in any respect against any man, or transgress any of the articles of the peace or of this security, and the offence is made known to four of the said twenty-five barons, they shall come to us - or in our absence from the kingdom to the chief justice - to declare it and claim immediate redress. If we, or in our absence abroad the chiefjustice, make no redress within forty days, reckoning from the day on which the offence was declared to us or to him, the four barons shall refer the matter to the rest of the twenty-five barons, who may distrain upon and assail us in every way possible, with the support of the whole community of the land, by seizing our castles, lands, possessions, or anything else saving only our own person and those of the queen and our children, until

they have secured such redress as they have determined upon. Having secured the redress, they may then resume their normal obedience to us.

Any man who so desires may take an oath to obey the commands of the twenty-five barons for the achievement of these ends, and to join with them in assailing us to the utmost of his power. We give public and free permission to take this oath to any man who so desires, and at no time will we prohibit any man from taking it. Indeed, we will compel any of our subjects who are unwilling to take it to swear it at our command.

If-one of the twenty-five barons dies or leaves the country, or is prevented in any other way from discharging his duties, the rest of them shall choose another baron in his place, at their discretion, who shall be duly sworn in as they were.

In the event of disagreement among the twenty-five barons on any matter referred to them for decision, the verdict of the majority present shall have the same validity as a unanimous verdict of the whole twenty-five, whether these were all present or some of those summoned were unwilling or unable to appear.

The twenty-five barons shall swear to obey all the above articles faithfully, and shall cause them to be obeyed by others to the best of their power.

We will not seek to procure from anyone, either by our own efforts or those of a third party, anything by which any part of these concessions or liberties might be revoked or diminished. Should such a thing be procured, it shall be null and void and we will at no time make use of it, either ourselves or through a third party.

* (62) We have remitted and pardoned fully to all men any ill-will, hurt, or grudges that have arisen between us and our subjects, whether clergy or laymen, since the beginning of the dispute. We have in addition remitted fully, and for our own part have also pardoned, to all clergy and laymen any offences committed as a result of the said dispute between Easter in the sixteenth year of our reign (i.e. 1215) and the restoration of peace.

In addition we have caused letters patent to be made for the barons, bearing witness to this security and to the concessions set out above, over the seals of Stephen archbishop of Canterbury, Henry archbishop of Dublin, the other bishops named above, and Master Pandulf.

* (63) IT IS ACCORDINGLY OUR WISH AND COMMAND that the English Church shall be free, and that men in our kingdom shall have and keep all these liberties, rights, and concessions, well and peaceably in their fulness and entirety for them and their heirs, of us and our heirs, in all things and all places for ever.

Both we and the barons have sworn that all this shall be observed in good faith and without deceit. Witness the abovementioned people and many others.

Given by our hand in the meadow that is called Runnymede, between Windsor and Staines, on the fifteenth day of June in the seventeenth year of our reign (i.e. 1215: the new regnal year began on 28 May).

Source and Further Information

G. R. C. Davis, *Magna Carta*, Revised Edition, British Library, 1989.

British Library Publications - An Overview.

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8. MAGNA CARTA BY HEADINGS:

JOHN, by the grace of God King of England, Lord of Ireland, Duke of Normandy and Aquitaine, and Count of Anjou, to his archbishops, bishops, abbots, earls, barons, justices, foresters, sheriffs, stewards, servants, and to all his officials and loyal subjects, Greeting.

KNOW THAT BEFORE GOD, for the health of our soul and those of our ancestors and heirs, to the honour of God, the exaltation of the holy Church, and the better ordering of our kingdom, at the advice of our reverend fathers Stephen, archbishop of Canterbury, primate of all England, and cardinal of the holy Roman Church, Henry archbishop of Dublin, William bishop of London, Peter bishop of Winchester, Jocelin bishop of Bath and Glastonbury, Hugh bishop of Lincoln, Walter Bishop of Worcester, William bishop of Coventry, Benedict bishop of Rochester, Master Pandulf subdeacon and member of the papal household, Brother Aymeric master of the knighthood of the Temple in England, William Marshal earl of Pembroke, William earl of Salisbury, William earl of Warren, William earl of Arundel, Alan de Galloway constable of Scotland, Warin Fitz Gerald, Peter Fitz Herbert, Hubert de Burgh seneschal of Poitou, Hugh de Neville, Matthew Fitz Herbert, Thomas Basset, Alan Basset, Philip Daubeny, Robert de Roppeley, John Marshal, John Fitz Hugh, and other loyal subjects:

CHURCH TO BE FREE

+ (1) FIRST, THAT WE HAVE GRANTED TO GOD, and by this present charter have confirmed for us and our heirs in perpetuity, that the English Church shall be free, and shall have its rights undiminished, and its liberties unimpaired. That we wish this so to be observed, appears from the fact that of our own free will, before the outbreak of the present dispute between us and our barons, we granted and confirmed

by charter the freedom of the Church's elections - a right reckoned to be of the greatest necessity and importance to it - and caused this to be confirmed by Pope Innocent III. This freedom we shall observe ourselves, and desire to be observed in good faith by our heirs in perpetuity.

LIBERTIES GRANTED FOR EVER

TO ALL FREE MEN OF OUR KINGDOM we have also granted, for us and our heirs for ever, all the liberties written out below, to have and to keep for them and their heirs, of us and our heirs:

LANDS PROTECTED

the houses, parks, fish preserves, ponds, mills, and everything else pertaining to it, from the revenues of the land itself. When the heir comes of age, he shall restore the whole land to him, stocked with plough teams and such implements of husbandry as the season demands and the revenues from the land can reasonably bear.

(7) At her husband's death, a widow may have her marriage portion and inheritance at once and without trouble. She shall pay nothing for her dower, marriage portion, or any inheritance that she and her husband held jointly on the day of his death.

NO DISPOSSESSION

(9) Neither we nor our officials will seize any land or rent in payment of a debt, so long as the debtor has movable goods sufficient to discharge the debt. A debtor's sureties shall not be distrained upon so long as the debtor himself can discharge his debt. If, for lack of means, the debtor is unable to discharge his debt, his sureties shall be answerable for it. If they so desire, they may have the debtor's lands and rents until they have received satisfaction for the debt that they paid for him, unless the debtor can show that he has settled his obligations to them.

NO INTEREST FOR UNDER AGE DEBTOR

* (10) If anyone who has borrowed a sum of money from Jews dies before the debt has been repaid, his heir shall pay no interest on the debt for so long as he remains under age, irrespective of whom he holds his lands. If such a debt falls into the hands of the Crown, it will take nothing except the principal sum specified in the bond.

FREEDOM OF CITIES AND TOWNS

+ (13) The city of London shall enjoy all its ancient liberties and free customs, both by land and by water. We also will and grant that all other cities, boroughs, towns, and ports shall enjoy all their liberties and free customs.

SUMMONSES

(14) To obtain the general consent of the realm for the assessment of an `aid' - except in the three cases specified above - or a `scutage', we will cause the archbishops, bishops, abbots, earls, and greater barons to be summoned individually by letter. To those who hold lands directly of us we will cause a general summons to be issued, through the sheriffs and other officials, to come together on a fixed day (of which at least forty days notice shall be given) and at a fixed place. In all letters of summons, the cause of the summons will be stated. When a summons has been issued, the business appointed for the day shall go forward in accordance with the resolution of those present, even if not all those who were summoned have appeared.

NO FORCED SERVICE

(16) No man shall be forced to perform more service for a knight's `fee', or other free holding of land, than is due from it.

PROPER COURTS

(18) Inquests of *novel disseisin*, *mort d'ancestor*, and *darrein presentment* shall be taken only in their proper county court. We ourselves, or in our absence abroad our chief justice, will send two justices to each county four times a year, and these justices, with four knights of the county elected by the county itself, shall hold the assizes in the county court, on the day and in the place where the court meets.

(19) If any assizes cannot be taken on the day of the county court, as many knights and freeholders shall afterwards remain behind, of those who have attended the court, as will suffice for the administration of justice, having regard to the volume of business to be done.

PROTECTION OF LIVELIHOOD

(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, but not so heavily as to deprive him of his livelihood. In the same way, a merchant shall be spared his merchandise, and a husbandman the implements of his husbandry, if they fall upon the mercy of a royal court. None of these fines shall be imposed except by the assessment on oath of reputable men of the neighbourhood.

FINED ONLY BY EQUALS IN PROPORTION

(21) Earls and barons shall be fined only by their equals, and in proportion to the gravity of their offence.

NO FORCED LABOUR

(23) No town or person shall be forced to build bridges over rivers except those with an ancient obligation to do so.

NO POLICE COURTS

(24) No sheriff, constable, coroners, or other royal officials are to hold lawsuits that should be held by the royal justices.

NO RENT RISES

(25) Every county, hundred, wapentake, and tithing shall remain at its ancient rent, without increase, except the royal demesne manors.

DEBT TO CROWN

(26) If at the death of a man who holds a lay `fee' of the Crown, a sheriff or royal official produces royal letters patent of summons for a debt due to the Crown, it shall be lawful for them to seize and list movable goods found in the lay `fee' of the dead man to the value of the debt, as assessed by worthy men. Nothing shall be removed until the whole debt is paid, when the residue shall be given over to the executors to carry out the dead man s will. If no debt is due to the Crown, all the movable goods shall be regarded as the property of the dead man, except the reasonable shares of his wife and children.

IF NO WILL

(27) If a free man dies intestate, his movable goods are to be distributed by his next-of-kin and friends, under the supervision of the Church. The rights of his debtors are to be preserved.

NO STEALING BY OFFICIALS

(28) No constable or other royal official shall take corn or other movable goods from any man without immediate payment, unless the seller voluntarily offers postponement of this.

(30) No sheriff, royal official, or other person shall take horses or carts for transport from any free man, without his consent.

(31) Neither we nor any royal official will take wood for our castle, or for any other purpose, without the consent of the owner.

CONFISCATED PROPERTY

(32) We will not keep the lands of people convicted of felony in our hand for longer than a year and a day, after which they shall be returned to the lords of the `fees' concerned.

NO DAMS

(33) All fish-weirs shall be removed from the Thames, the Medway, and throughout the whole of England, except on the sea coast.

TRIAL BY JURY

(34) The writ (REQUIRING SOMETHING TO BE DONE) called *precipe* shall not in future be issued to anyone in respect of any holding of land, if a free man could thereby be deprived of the right of trial in his own lord's court.

STANDARDIZATION

(35) There shall be standard measures of wine, ale, and corn (the London quarter), throughout the kingdom. There shall also be a standard width of dyed cloth, russett, and haberject, namely two ells within the selvedges. Weights are to be standardised similarly.

NO COURT FEES

(36) In future nothing shall be paid or accepted for the issue of a writ of inquisition of life or limbs. It shall be given gratis, and not refused.

NO WITNESSES. NO TRIAL

(38) In future no official shall place a man on trial upon his own unsupported statement, without producing credible witnesses to the truth of it.

TRIAL BY JURY

+ (39) 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 other way, nor will we proceed with force against him, or send others to do so, except by the lawful judgement of his equals or by the law of the land.

+ (40) To no one will we sell, to no one deny or delay right or justice.

FREE PASSAGE

(41) All merchants may enter or leave England unharmed and without fear, and may stay or travel within it, by land or water, for purposes of trade, free from all illegal exactions, in accordance with ancient and lawful customs. This, however, does not apply in time of war to merchants from a country that is at war with us. Any such merchants found in our country at the outbreak of war shall be detained without injury to their persons or property, until we or our chief justice have discovered how our own merchants are being treated in the country at war with us. If our own merchants are safe they shall be safe too.

* (42) In future it shall be lawful for any man to leave and return to our kingdom unharmed and without fear, by land or water, preserving his allegiance to us, except in time of war, for some short period, for the common benefit of the realm. People that have been imprisoned or outlawed in accordance with the law of the land, people from a country that is at war with us, and merchants - who shall be dealt with as stated above - are excepted from this provision.

APPOINTING OFFICIALS

* (45) We will appoint as justices, constables, sheriffs, or other officials, only men that know the law of the realm and are minded to keep it well.

OPENING UP LAND

(47) All forests that have been created in our reign shall at once be disafforested. River-banks that have been enclosed in our reign shall be treated similarly.

ABOLISHING EVIL CUSTOMS

(48) All evil customs relating to forests and warrens, foresters, warreners, sheriffs and their servants, or river-banks and their wardens, are at once to be investigated in every county by twelve sworn knights of the county, and within forty days of their enquiry the evil customs are to be abolished completely and irrevocably. But we, or our chief justice if we are not in England, are first to be informed.

RELEASE FROM CUSTODY RE LOYAL SERVICE

* (49) We will at once return all hostages and charters delivered up to us by Englishmen as security for peace or for loyal service.

RESTORATION OF DISPOSSESSIONS WITHOUT JURY

* (52) To any man whom we have deprived or dispossessed of lands, castles, liberties, or rights, without the lawful judgement of his equals, we will at once restore these.

DISAFFORESTATION

* (53) We shall have similar respite in rendering justice in connexion with forests that are to be disafforested, or to remain forests.

RETURN FINES

* (55) All fines that have been given to us unjustly and against the law of the land, and all fines that we have exacted unjustly, shall be entirely remitted or the matter decided by a majority judgement of the (GRAND JURY OF) twenty-five barons referred to below in the clause for securing the peace (§ 61)

(56) If we have deprived or dispossessed any Welshmen of lands, liberties, or anything else in England or in Wales, without the lawful judgement of their equals, these are at once to be returned to them. A dispute on this point shall be determined in the Marches by the judgement of equals. English law shall apply to holdings of land in England, Welsh law to those in Wales, and the law of the Marches to those in the Marches. The Welsh shall treat us and ours in the same way.

This matter shall be resolved by the judgement of his equals in our court.

OBSERVING LIBERTIES GRANTED

(60) All these customs and liberties that we have granted shall be observed in our kingdom in so far as concerns our own relations with our subjects. Let all men of our kingdom, whether clergy or laymen, observe them similarly in their relations with their own men.

RIGHTS GRANTED FOR EVER

* (61) SINCE WE HAVE GRANTED ALL THESE THINGS for God, for the better ordering of our kingdom, and to allay the discord that has arisen between us and our barons, and since we desire that they shall be enjoyed in their entirety, with lasting strength, for ever, we give and grant to the barons the following security:

GRAND JUIRIES

The barons shall elect twenty-five of their number to keep, and cause to be observed with all their might, the peace and liberties granted and confirmed to them by this charter.

IMMEDIATE REDRESS OF WRONGS

If we, our chief justice, our officials, or any of our servants offend in any respect against any man, or transgress any of the articles of the peace or of this security, and the offence is made known to four of the said twenty-five barons, they shall come to us - or in our absence from the kingdom to the chief justice - to declare it and claim immediate redress.

SEIZING PROPERTY OF BARONS

If we, or in our absence abroad the chief justice, make no redress within forty days, reckoning from the day on which the offence was declared to us or to him, the four barons shall refer the matter to the rest of the twenty-five barons, who may distrain upon and assail us in every way possible, with the support of the whole community of the land, by seizing our castles, lands, possessions, or anything else saving only our own person and those of the queen and our children, until they have secured such redress as they have determined upon.

Having secured the redress, they may then resume their normal obedience to us.

VOLUNTEERS

Any man who so desires may take an oath to obey the commands of the twenty-five barons for the achievement of these ends, and to join with them in assailing us to the utmost of his power. We give public and free permission to take this oath to any man who so desires, and at no time will we prohibit any man from taking it. Indeed, we will compel any of our subjects who are unwilling to take it to swear it at our command.

PRESERVING THE 25

If-one of the twenty-five barons dies or leaves the country, or is prevented in any other way from discharging his duties, the rest of them shall choose another baron in his place, at their discretion, who shall be duly sworn in as they were.

MAJORITY VOTE OF GRAND JURY

In the event of disagreement among the twenty-five barons on any matter referred to them for decision, the verdict of the majority present shall have the same validity as a unanimous verdict of the whole twenty-five,

whether these were all present or some of those summoned were unwilling or unable to appear. The twenty-five barons shall swear to obey all the above articles faithfully, and shall cause them to be obeyed by others to the best of their power. We will not seek to procure from anyone, either by our own efforts or those of a third party, anything by which any part of these concessions or liberties might be revoked or diminished. Should such a thing be procured, it shall be null and void and we will at no time make use of it, either ourselves or through a third party.

PARDONS

* (62) We have remitted and pardoned fully to all men any ill-will, hurt, or grudges that have arisen between us and our subjects, whether clergy or laymen, since the beginning of the dispute. In addition we have caused letters patent to be made for the barons, bearing witness to this security and to the concessions set out above, over the seals of Stephen archbishop of Canterbury, Henry archbishop of Dublin, the other bishops named above, and Master Pandulf.

FREE CHURCH AND MEN FOR EVER

* (63) IT IS ACCORDINGLY OUR WISH AND COMMAND that the English Church shall be free, and that men in our kingdom shall have and keep all these

liberties, rights, and concessions, well and peaceably in their fulness and entirety for them and their heirs, of us and our heirs, in all things and all places for ever.

Both we and the barons have sworn that all this shall be observed in good faith and without deceit. Witness the abovementioned people and many others.

Given by our hand in the meadow that is called Runnymede, between Windsor and Staines, on the fifteenth day of June in the seventeenth year of our reign (i.e. 1215: the new regnal year began on 28 May).

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8. A COURT RULING RE: MAGNA CARTA:

IVAN JOSIP LUKATELA v JOHN ARTHUR BIRCH
[2008] ACTSC 99 (30 September 2008)

ORDER

Judge: Rares J
Date: 30 September 2008
Place: Canberra

THE COURT:

3. There is a considerable public interest in the observance of due process by law enforcement authorities: Gedeon v Commissioner of the New South Wales Crime Commission [2008] HCA 43 at [25] per Gummow, Kirby, Hayne, Heydon, Crennan and Kiefel JJ. This public interest can be traced to at least the provisions of Magna Carta (1297) 25 Edw 1 c 29, which today still form part of the law of the Australian Capital Territory. It provides that:
"No freeman shall be taken or imprisoned, or disseised of his freehold, liberties or free customs, or be outlawed or exiled or in any other wise destroyed; nor will We pass upon him nor condemn him, but by lawful judgment of his peers or by the law of the land."
And its concluding clause promised that "... this Charter and all and singular its articles for ever shall be steadfastly, firmly and inviolably observed".
4. While that latter hope may not always have been fulfilled, in his Commentaries on the Laws of England, Sir William Blackstone said (1st ed, Clarendon Press, 1765-69, at Book 1, p 122):

“[E]very wanton and causeless restraint of the will of the subject, whether practiced by a monarch, a nobility, or a popular assembly, is a degree of tyranny.”

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9. ALSO SEE:

Also see: http://www.meadham.id.au/index7.html