

Bad King John and the Australian Constitution: Commemorating the 700th Anniversary of the 1297 Issue of Magna Carta*

Harry Evans

A SUGGESTION was made by a number of organisations that something should be done to mark the 700th anniversary of the 1297 inspeximus issue of Magna Carta which is on display here in Parliament House. The Senate Department decided to oblige by devoting one of its occasional lectures to the subject before it was known that other and grander events were planned. Considering other anniversaries which are commemorated from time to time, however, perhaps this is one which should be marked by more than one event.

In 1952 the Australian government purchased a copy of the 1297 inspeximus issue of Magna Carta of Edward I for the sum of £12 500, a lot of money in those days. The copy had long been in the possession of a British school which needed to sell it to raise money for school improvements.

An inspeximus issue of a charter is one in which the granter states that an older charter has been examined (Latin: inspeximus, we have examined), and then recites and confirms the provisions of that original.

The 1297 statute of Edward I confirms and enacts the principal provisions of the original Magna Carta which King John was forced by his rebellious barons to sign in 1215. The 1297

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statute was enacted by Parliament (which did not exist in 1215) and is still in force in part in the United Kingdom and, indeed, in the Australian states and territories.

The purchase of the copy by the Australian government indicated a belief that the document is an important part of Australia's constitutional and legal heritage and that we ought to have a copy upon which we can gaze with awe and reverence.

Is Magna Carta significant, and should we gaze upon it with awe and reverence?

There is certainly a long history of reverence for Magna Carta. It was constantly cited during the struggle between Parliament and King Charles I in the 17th century. Parliament's Petition of Right of 1628 referred to the Great Charter and alleged that King Charles had violated its terms. Its virtually sacred status came to be encapsulated in a phrase which was repeated throughout the 18th and 19th centuries. Magna Carta was called 'the palladium of English/British liberty'. A palladium is something without which the city falls, and this phrase implied that the Great Charter was the essential basis of the whole structure of the British constitution. The phrase was also employed by some of the American colonists during their revolution.¹

On the other hand, there has been an equally long history of debunking of Magna Carta. Oliver Cromwell was very rude about it when the judges cited it against him, and incidentally provided a chilling foreglimpse of modern times when he scorned the old English republicans who regarded it as holy writ.² Some of the rebellious American colonists referred to it as a symbol of the genetic defects of the British system of monarchical government and of the radical difference in the republican foundation of their constitution.³ As will be seen, this disagreement amongst the Americans about Magna Carta was very significant.

The document has therefore long had a mixed reputation.

The actual content of Magna Carta is now not conducive to awe and reverence. Most of it consists of a lengthy and very tedious recital of feudal relationships which not only have no relevance to modern government but which would be of interest only to the most pedantic antiquarian. Here are two samples of what most of it is like:

No scutage or aid shall be imposed in our kingdom except by the common council of our kingdom, except for the ransoming of our body, for the making of our oldest son a knight, and for once marrying our oldest daughter, and for these purposes it shall be only a reasonable aid; in the same way it shall be done concerning the aids of the city of London.

If any one holds from us by fee farm or by socage or by burgage, and from another he holds land by military service, we will not have the guardianship of the heir or of his land which is of the fief of another, on account of that fee farm, or socage, or burgage; nor

¹ Noah Webster, 2 articles of 1787, in *The Debate of the Constitution*, Library of America, 1993, vol. 1, pp. 158, 669.

² Edward Hyde, Earl of Clarendon, *The History of the Rebellion and Civil Wars in England ...*, ed. W. Dunn Macray, Oxford University Press, Oxford, UK, 1969, vol. vi, p. 93.

³ Alexander Hamilton, *The Federalist*, No. 84, 1788, Everyman ed., p. 438.

will we have the custody of that fee farm, or socage, or burgage, unless that fee farm itself owes military service. We will not have the guardianship of the heir or of the land of any one, which he holds from another by military service on account of any petty serjeanty which he holds from us by the service of paying to us knives or arrows, or things of that kind.

Whether King John was entitled to the money to marry off his eldest daughter for the first time and whether somebody was obliged to supply him with knives and arrows do not now appear to be matters of great constitutional importance.

There are two provisions only in the document which strike the reader as being of some significance, and these are the provisions which are always quoted as evidence of Magna Carta's continuing importance and contribution to constitutional development. The provisions are as follows:

No free man shall be taken or imprisoned or dispossessed, or outlawed, or banished, or in any way destroyed, nor will we go upon him, nor send upon him, except by the legal judgment of his peers or by the law of the land.

To no one will we sell, to no one will we deny, or delay right or justice.

These provisions certainly have a more modern ring and appeal to them. This is partly because they appear to anticipate subsequent declarations of the rights of the citizen.

Rudyard Kipling wrote a charming story to account for the language of one of these two provisions amongst the feudal minutiae. His story tells of a Jewish money lender, a member of a despised and persecuted race, who uses the influence he has gained as a result of lending some money to the barons to have inserted in the document the reference to 'no one' being denied justice, in the hope that some day these words will be taken literally and extended even to members of his race.⁴

The occurrence of the words certainly has the appearance of an historical breakthrough requiring more than the usual explanation. As one authority puts it, 'Magna Carta ... assumed legal parity among all free men to an exceptional degree' (but 'free men' was a restricted category).⁵

There is a conventional view that these two provisions are the foundation of English law about the liberty of the citizen. While this may be true, it can lead to exaggeration. It is often said, for example, that the provisions are the origins of the entitlement of the citizen to due process of law. This phrase has assumed enormous importance in the jurisprudence of all common law countries, and particularly in the constitutional jurisprudence of the United States because the phrase appears in the Bill of Rights in the first ten amendments of the United States constitution.

⁴ 'The Treasure and the Law', in *Puck of Pook's Hill*, 1910, various eds.

⁵ J.C. Holt, *Magna Carta*, 2nd ed., Cambridge University Press, Cambridge, UK, 1992, p. 278.

Magna Carta, however, does not refer to due process of law; it provides that free men are not to be dealt with except in accordance with law. What this meant was unclear in 1215 and in 1297.

The phrase 'due process of law' first appears in a statute of Edward III of the year 1354. This statute, which is referred to by the title Liberty of the Subject, contains the following provision:

... no man of what estate or condition that he be, shall be put out of land or tenement, nor taken, nor imprisoned, nor disinherited, nor put to death, without being brought in answer by due process of law.

The first chapter of this statute provided 'That the Great Charter ... be kept and maintained in all points', so it is clear that the provision about due process was thought to add something new and different. (The documents were in Latin and French respectively, but the English translations are literal.) The Petition of Right also separately cited the 1354 statute.

The direct influence of the 1354 statute can be seen by comparing its provision relating to due process with the corresponding provision from the 5th amendment of the United States Constitution:

No person shall ... be deprived of life, liberty, or property, without due process of law.

The provision thus reached out over four centuries into the modern world in a more striking survival than any influence of Magna Carta.

There is a very great qualitative difference between a right to be dealt with according to law and a right to due process of law. According to law simply means in accordance with whatever the law provides; due process of law implies what the law should provide. This is certainly how the United States Supreme Court has interpreted the expression: as an entitlement to standard processes conducive to just results.

The statute of 1354 is therefore the real historical breakthrough. It is of greater significance to the constitutional heritage than Magna Carta. Perhaps the Australian government should have spent its money on a copy of the later statute so that we could gaze with awe and reverence upon the original use of this highly significant phrase.

It is true that Magna Carta may also be of some residual legal significance. In 1973 the Australian Capital Territory Law Reform Commission prepared a report on imperial statutes still in force in the Territory, recommending which statutes should be repealed and which should be retained in force. The report recommended that the 1297 version of Magna Carta, which is still in force in the ACT, should be retained. The Commission mildly dissented from the conclusion of its New South Wales counterpart that the value of the statute is chiefly sentimental. The ACT Commission thought that the phrase relating to the deferral of justice may make it unlawful for the executive government to delay unreasonably the rights of the citizen.⁶ Similarly, in June of this year the ACT Supreme Court referred to Magna Carta as

⁶ Law Reform Commission of the Australian Capital Territory, *Imperial Acts in Force in the Australian Capital Territory*, AGPS, Canberra, 1973, p. 7.

creating an overriding right to be dealt with by a court in relation to the traffic laws of the ACT.⁷ So Magna Carta may be regarded as a living statute.

Even so, the conclusion may be drawn that the two provisions in question are a mere legal fragment, hardly worth the purchase of 1952 and the regard for the document before and since.

I want to suggest that Magna Carta has a significance which is not dependent on its content. This is its contribution to the history of constitutionalism, and, in particular, to the development of the concept of a constitution.

In order to appreciate this significance, it is necessary to realise that many concepts and institutions of government which we now take for granted and which we regard as obvious developed extremely slowly over a long period and in very small accretions. Even the most simple ideas and institutions have been a long time in developing. It is also necessary to appreciate that there are very few really new ideas or institutions. The modern epoch has made very few original contributions to government. A history teacher of mine used to ask his pupils to imagine that a Roman citizen of the 2nd century BC was brought back to life early in the 18th century, 2000 years later, to find that there were very few things in the world with which he was not familiar. If he were revived merely 200 years later, he would be amazed by the things he saw around him. Suppose, however, he were brought to this building and taken into the Senate chamber. He would immediately recognise the physical layout, the institution and its function. He would know that he was in a senate, a body for debating and resolving public affairs on behalf of the community. He would no doubt be delighted to learn that its very name is taken from his language and his institution. And however amazed he might be by the technology of the modern world, he would not be unfamiliar with most of the institutions and methods of government of the modern state. No doubt the vast scale of modern societies would surprise him, but there would be few political institutions not essentially similar to their ancient counterparts. (It is not true that representative government is an innovation of medieval times; it too was known to the ancients.⁸)

There have been two inventions in government in modern times. One of them is federalism as we now understand that term, the constitution by a people of two different levels of government each having a direct relationship with the people through election and the application of laws. Another modern invention is the written constitution. Both of these institutions were invented by the founders of the United States, justifying the boast of one of their mottos that they created *novus ordo seclorum*, a new order of the ages.

The idea of a written constitution, a supreme law of the country to which all other laws are subordinate and which can be changed only by some special process different from that applying to ordinary laws, now appears to us to be too obvious even to think about. Most countries now have constitutions. Historical references to the British constitution remind us that constitutions were not always the modern type of written constitutions; the expression

⁷ 'Speed fine makes slow trip through court', *The Canberra Times*, 23 June 1997, p. 1.

⁸ As James Madison pointed out in *The Federalist*, No. 63, 1788, p. 324.

was used to refer simply to the system of government of a country, which until modern times was prescribed simply by ordinary laws and practices.

The written constitution, although it first appeared at a particular point in history, was also the product of a very slow process of evolution. It was not discovered overnight by the gentlemen of Philadelphia in 1787.

There were two essential stages in the evolution of the written constitution. The first stage was the medieval charter. We would regard it as a massively simple and obvious concept that some of the principal rules of government should be codified and set down in writing. This also, however, had to be developed in stages. Ancient states largely depended on practice and custom, and when Aristotle set about collecting the 'constitutions' of states what he collected were descriptions of the governmental practices of the ancient cities. There were certainly some ancient antecedents of law codes, such as the Twelve Tables in which the principal laws of the early Roman Republic were codified. Medieval charters, however, added a significant new element. They were granted by kings to their subjects. The kings were placed in their positions by God, but they granted boons to their subjects. Medieval government was highly monarchical and personal: the king *was* the government. On the other hand, feudalism and the church created a sort of primitively pluralistic society. Those grants therefore often were concerned with agreed limitations on the otherwise unrestrained personal powers of kings and agreed rights of the subject (if only *great* subjects) which kings ought not to take away. Thus came about the notions of limitations on the power of governments and of subjecting governments themselves to law, as well as the notion of rights of citizens which could not be taken away by governments. These were great discoveries, however simple they may appear to us now, and they represent the contribution to constitutional history made by the medieval charters. The ancient republics had contributed checks and balances, the division of powers between different institutions of government and different office-holders, whose individual powers were limited, but the power of government itself was thought to be by definition limitless. The concept of personal rights was embryonic in ancient times. The notions of limiting the powers of government itself and recognising rights of the citizen against government were essentially medieval contributions.

Of course, kings were sometimes forced 'at the point of the sword' to agree to limitations on their powers and to recognise rights of their subjects. This was famously the case with Magna Carta. King John was not only tyrannical but exceptionally devious, and so when his grand subjects rebelled they determined not only to make him change his ways but to force him to sign an agreement which would be difficult for him to slide out of in the future. It could be said that in this process bad kings make good laws: the more oppressions your king engaged in, the more prescriptions against them you would seek. As we know from A.A. Milne's poem and *1066 And All That*, King John was a very bad king, and when he was brought to book, without intending any pun, he made an exceptionally good law by the standards of the time. Thus occurred Magna Carta, the Great Charter. The statutes of 1297 and 1354, usually depicted as the work of wise and benevolent monarchs co-operating with good parliaments, had a great deal to do with those monarchs' need of money.

It is significant that the barons of 1215 had the advice and assistance of a clerk, in the original meaning of that title, the Archbishop of Canterbury, Stephen Langton. Clerks have a proclivity for writing things down. In its uneasy relationship with the secular powers, the church had a great interest in protecting its rights and in getting things in writing, and this also contributed to the development of charters.

Magna Carta was repudiated by King John virtually immediately after its signature, and, although confirmed by needy sovereigns on subsequent occasions, was also ignored by other monarchs. This only served to ensure its survival, because every subsequent resistance to royal power, especially those of the 17th century, was able to have history on its side by appealing to the Great Charter. What is often called the myth of Magna Carta reflected the relative successes of the English revolutions.

The other stream contributing to the development of the written constitution was the covenant, an agreement between a people and their God, and later between people to constitute a church, a society and ultimately a form of government. The biblical idea of a covenant was revived during the Protestant Reformation and played a large part in the revolution and civil war in England in the 17th century. It was taken by the refugees from those events to the New World. Covenants were a feature of the American colonies from the earliest settlement. The Mayflower pilgrims agreed to 'covenant and combine together in a civil body politic'.⁹ The history of colonial America thereafter is littered with covenants, which became more and more secularised and more sophisticated as they developed one from another. They were the forerunners of the various state constitutions which were the forerunners of the federal constitution of 1787.

Of course, America also had royal charters, and these also influenced the development of the various constitutions, in a significant way, as will be seen.

Establishing a system of government by a covenant meant that the covenant could be changed only by agreement of the whole people, which necessarily involved a procedure different from that applying to ordinary laws. The institution of federalism also reinforced the special status and different method of changing the constitution: because it was an agreement between the people of the states it could be changed only by the people of the states speaking through their representatives at state level, and necessarily it had to be supreme over state laws. Thus arrived the modern written constitution.

The founders of the United States were insistent that their constitution was a covenant not a charter, in other words, an agreement between a people not a grant from a king. They retained, however, the charter tradition of limiting government power and recognising rights. This was so even before they amended the constitution to include a bill of rights: the unamended constitution of 1787 contained a number of prohibitions on the national government and protections of the rights of the citizen.

The subsequent debate over whether the constitution should include a bill of rights illuminates the vital contribution of the medieval charter to constitutionalism. Reference has been made to the ambivalent attitude of the Americans to Magna Carta. Those who favoured a bill of rights, that is, provisions explicitly limiting the power of government in respect of the expressly recognised rights of the citizen, tended to look favourably upon the great precedent of the Magna Carta. Those who opposed a bill of rights did so partly on the basis that the concept of a bill of rights was derived from medieval charters such as Magna Carta which were handed down by kings, and was therefore inappropriate to a constitution established by

⁹ W. Berns, *Taking the Constitution Seriously*, Simon and Schuster, New York, 1987, p. 25.

the contrary process of an agreement between people. James Wilson, the greatest constitutional theorist among the founders, explained that a grant of rights like Magna Carta could be made only by a king with sovereign powers, not by a government with a limited delegation of power by a sovereign people who retain their *natural* rights.¹⁰ Contrary assessments of Magna Carta were thus central to the debate over a bill of rights.

As the debate progressed it became clear that agreement to a bill of rights was essential to achieve the adoption of the constitution. Opponents of central government regarded it as worthy of the same suspicion as kings. The operations of the new state constitutions had also taught a valuable lesson: even popularly elected governments should be explicitly limited; rights had to be safeguarded against popular majorities as against kings. The leading opponents of a bill of rights therefore undertook to support amendments to insert one. So a bill of rights was included by the first ten amendments in 1791. The charter and the covenant were combined and the medieval discoveries represented by Magna Carta thereby entered into the modern world.

The Australian Constitution exhibits an explicit combination of the charter tradition and the covenant tradition. It is a charter in the sense that it was handed down by the British sovereign through her Parliament and bestowed on the people of the country. It is a covenant in that it was drawn up by the representatives of those people and approved by them in a referendum, and it can be changed only by the same means. It neglects the charter tradition, however, by not having a statement of rights. In that respect the American constitution emphasises the charter tradition to a greater extent than its Australian counterpart. It is ironic that by the 19th century the British had repudiated the charter tradition by their hostility to declarations of rights.

If Australia becomes a republic one of the changes required will be to turn the Constitution into a completely autochthonous product instead of a document bestowed by the monarch. This requirement particularly affects the so-called covering clauses of the Constitution, the provisions which are part of the British statute containing the Constitution but not part of the Constitution itself. There are differences of opinion about whether the covering clauses can be amended by the people in a referendum under section 128 of the Constitution, or whether they would need to be amended at all if the change were to take place. This problem is really a problem of turning a charter bestowed by a monarch into a covenant agreed to by a people. On the other hand, if a bill of rights were to be included in the Constitution this would introduce and emphasise the more significant element of the charter tradition.

In one respect Australia could benefit by a large injection of the charter tradition. Perhaps because of our convict origins, when we started with governors possessing absolute powers, we do not have a great understanding of the virtues of limiting governments and putting safeguards between the state and the citizen. We tend to think that, provided that governments are democratically elected, they should be able to do anything. In short, we do not have a strong tradition of constitutionalism properly so called. Our version of the so-called Westminster system encourages our leaders to think that, once they have foxed 40 per cent of the electorate at an election, they have the country by the throat. Our prime ministers and

¹⁰ Debate in the Pennsylvania Convention, 1787, in *The Debate of the Constitution*, vol. 1, p. 808; see also items in notes 1 and 3, and G.S. Wood, *The Creation of the American Republic, 1776-1787*, Norton & Co., New York, 1972.

premiers are averse to being told that anything is beyond their lawful powers, and are angered by restraints applied by upper houses or judges. They frequently behave in ways which make King John and Charles I seem moderate by comparison. When they have majorities in both houses of parliament they become more like those monarchs' eastern contemporaries. We have not had a Magna Carta, or a Petition of Right, or a Bill of Rights as part of our own history, and we have not sufficiently valued what we have inherited from those great events. We should, particularly at this time, tap into that inheritance.

So perhaps after all we may gaze upon our copy of the Magna Carta with some awe and reverence, not because of its content or for its legal significance but for the contribution it made to the development of the written constitution and the concept of rights of the citizen. In a sense, all written constitutions, including our own, and all declarations of rights, are its descendants. Remembering that, and other aspects of history to which I have referred, may help us a little on our way into another century.



Question — You remarked earlier in your address, rhetorically I took it, that we might have to question whether we got value in the twelve and a half thousand quid we paid for our copy of the 1297 edition. In view of the present climate of government, and bearing in mind the strong investment interest in collectables, would there be anything to prevent our 1297 edition of the Great Charter being offered in the next round of asset sales?

Mr Evans — Now I am really getting into dangerous ground. I think there would be a lot of people who would say, 'Are we that desperate?' Whenever we are told that Blue Poles is now worth umpteen million, I often say 'Quick, flog it off before it drops'. But whether I would say the same about Magna Carta I am not entirely sure. Perhaps we could swap it for a copy of the 1354 charter, if anybody has got one of those.

Question — You said that the Magna Carta that we have here is a copy of the 1297 issue. Does that mean that it is one of a number of copies made at the time, that is in 1297 and would you have any idea how many copies of the *inspeximus* still exist?

Mr Evans — I think that is what I would call a hard question. What we have in the argon gas-filled glass case around there is a 1297 copy, and that means copied by hand onto vellum, of the statute which was agreed to by Edward I, and these copies were sent out to various people around the country so that they would be aware that this law had been made. This was sent to some official in Somerset, if I remember rightly, and somehow it came into the possession of the school. So it is a medieval document, because obviously they had no printing and certainly no Internet, so that was their version of publishing, of sending out these copies and that is one of those. I am told that in all there are sixteen copies of the various versions of Magna Carta. So if you take all the versions across the centuries, or century, there are sixteen copies. So it is a pretty valuable document worth some millions I am told, to go back to that earlier question.

Question — Could you name the school?

Mr Evans — It was the King's School at Bruton. It is an ancient school which was founded way back in the dim dark ages, and how this copy came into their possession we are not entirely sure. It was sent to some sheriff or another and it is believed that the descendants of this sheriff had something to do with the school, and it passed down through the family, and it got into the possession of a very eccentric history master in the school and nobody knew it was there except him and a couple of other people. When the governors of the school found that they had it, they said 'Wacko, we'll flog that off quick smart and we will be able to repair the east wing', and that is how the Australian government got hold of it, because they put it on the market.

Question — I would like to give first a comment and then a question. The comment is that a plate, just beside the Bridgewater's, then the British Museum's, copy of the Magna Carta, reminded us that between the initialling of Magna Carta, and I cannot say exactly which and when, probably the 1215 version, there were in fact, I think, thirty-eight amendments slipped in, between the initialling and the final illuminated copies which were made. That tells us probably that nothing much has changed. More seriously, I did not have the sense to come to Australia early and when I came in 1979 I was rather puzzled because there were various things going on which suggested that the Constitution was defective in many ways. The only interpretation I could put upon those defects, was that they did not write down a lot of things which the average person growing up in Britain would take for granted because of that accumulated history from Magna Carta onwards. Is that a reasonable assessment of what happened? Such fundamental things as the right of peaceful assembly and so on, which just are not in our constitution. Am I right for thinking they were taken for granted?

Mr Evans — Yes, absolutely. Most of the people who drew up our Constitution had a great faith in the common law and the democratic election of the legislature. They tended to say that with the combination of the common law and British law, including Magna Carta and the democratic election of the legislature, we do not have to worry about rights. They will be sufficient safeguards of rights. Now there were some dissenters. Andrew Inglis Clark, from Tasmania, wanted to insert something of a Bill of Rights into the Australian Constitution and, as I said, he was met with the reaction, 'We do not want any of that American and French stuff thank you very much, we are British here.' The ironical thing being, as I said, that declarations of rights, like the American Bill of Rights, are taken straight out of those medieval charters of which us British people were so very proud. Had they put in a bill of rights, they would have been following in the footsteps of Magna Carta to a greater extent than they did. So there is a little irony there. But I think your analysis is quite correct.

Question — Can I ask you a question about a bill of rights? As you have explained very well, the bill of rights is well-placed, or reasonably well-placed, in American history, and because of the flow-through, as you said, from the covenants and the early history of the American states, how can we, in the review of the Constitution, inject into the media and to politicians, the historical need for a bill of rights for this wide, brown land? But before 2001, hopefully, now we are looking at the Constitution.

Mr Evans — Well, I am very carefully trying to avoid the question of whether I am in favour of a bill of rights or not, because that leads to acrimony and disputation which I always try to avoid. A large part of the process could have been reminding people that bills of rights are not modern inventions of wretched Americans and French people, that they have a long history to them and they come down to us via those medieval charters. In fact the medieval charters

were early bills of rights, grants of rights, recognitions of rights, and bearing that in mind, we may not be so hostile to them. But there is another reason for the hostility of course, and people will tell you very readily that if you put a bill of rights in the Constitution you will only increase the power of those judges to go about making laws and interfering with the running of the country, and that offends our so-called democratic theory of government. That theory of government that I mentioned before, that you get 40 per cent of the vote at the election and then you can ride roughshod over everyone for the next three years until the next election. That is democracy according to the Australian tradition, and the idea of judges restraining politicians is very alien to our tradition, and there have been some hostile words said about that in recent times. Another element in it is that if you adopted a bill of rights, without reforming Parliament, that would lead to a head-on confrontation between an all-powerful executive government and a judiciary trying to interpret the bill of rights in accordance with their lights. You would have only two people in the state and they would be like old King John and his barons fighting it out, the judges on the High Court, and the cabinet sitting over here in Parliament House, and that could be dangerous, to adopt a bill of rights without reforms in other parts of the Constitution.

Question — Before we get too carried away with bills of rights, can you offer any explanation as to why the United States, after they adopted the bill of rights, were able to retain slavery for nearly one hundred years, and even today in 1997 have more than three thousand prisoners awaiting execution on death rows around the country?

Mr Evans — Well, the first point is very interesting actually and it goes back to that little Rudyard Kipling story that I told you. In Rudyard Kipling's story the Jewish money-lender inserted in the document 'no-one shall be denied justice', in the hope that some day even his race would not be denied justice, and the American Constitution is very like that. This is a matter of great disputation between historians, but the principles of the Declaration of Independence and the Constitution are totally incompatible with slavery and the people who drew up those documents knew that, and if you asked them, 'What do you mean all men were created equal when you've still got slaves down there on your plantation?', they would have said 'Oh, well, it is a difficult issue, but we are quite confident that slavery will disappear in the next ten years or so; it is a dying institution, it will die out; and then those words will mean what they literally say'. Well, of course, we all know it did not die out, the Poms started opening up cotton mills and the southern planters started planting cotton and the institution did not die out, and disposing of it was much more painful. But that is the great thing about declarations of rights. If you get someone to sign a piece of paper which says that everybody is equal before the law, sooner or later someone will take that literally and will say 'Hey, what about this?' After all, that is partly how the old Soviet Union collapsed, because of the great gaps between these documents enshrining rights and so on, and the actual practice. So I think that is the answer to the question about the American Constitution and slavery, and of course, people became hostile to slavery because they said it is incompatible with what we committed ourselves to when we founded this country, and of course Abraham Lincoln said that.

In your second question, you mentioned the death penalty. Well, lots of countries have the death penalty, and interestingly enough the documents which I quoted contemplate the death penalty, because Magna Carta, the statute of 1354 and the provision in amendment 5 of the American Bill of Rights all say that no one will be put to death without due process of law. So capital punishment was very much in contemplation in all of those documents, and if you get into an argument in America about that you will get plenty of people who will tell you that the founding fathers did not object to capital punishment as such, which they did not.

Question — I am rather intrigued as to what was going on in 1952 in this country. Not only did we buy a copy of Magna Carta, but we also gazetted in the parliamentary triangle, Langton Crescent. Have you any idea what was the motivation of these two actions? Was it purely a product of Sir Robert Menzies as prime minister, or were there other people who were encouraging these actions?

Mr Evans — I do not know the answer to that because I have not researched it, but from what I do know about it, I think Sir Robert Menzies had a lot to do with it. I think if he had not been prime minister in 1952 we may not have bought that document. I think he had a great deal to do with it. The naming of the crescent I do not know anything about at all but I suspect again, if you look into it, that he had something to do with that. But I do not know the answer for sure. It is also rather ironical that the Magna Carta and the declarations of rights, which are its descendants, tend to be quoted by people who are of a rather left wing disposition. I am sure Doc Evatt at some stage said to Robert Menzies when they encountered each other in the corridors of the old building ‘What do you mean, buying Magna Carta, when you have just tried to ban the Communist Party, you old devil.’ And probably Doc Evatt when he turned up before the High Court could have said, if he did not actually say, ‘I am here for Magna Carta and to prevent these latter day violations of it’.