

Magna Carta: Personal Encounters, Popular Culture and Australian Links

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Encountering Magna Carta in the Middle Ages

Kathleen Neal — In the 1997 Australian film, *The Castle*, the hapless barrister Dennis Denuto concluded his case against the compulsory acquisition of his clients' house with the immortal phrase, 'In summing up, it's the Constitution, it's Mabo, it's justice, it's law, it's the vibe ...'¹ The landmark High Court decision in the native title case *Mabo v Queensland (No. 2)*, and its representation, or rather misrepresentation in popular culture, might seem like a strange place to begin talking about encounters with Magna Carta; but in fact it has a powerful bearing on the medieval and even modern reception of the iconic document we are celebrating this year. In this paper I provide a taste of the range of people who encountered Magna Carta in the Middle Ages, and what they made of it when they did. While, as we shall see, there is a great deal of evidence for Magna Carta's currency in some kinds of legal and political discussion in England in the Middle Ages, I argue that understanding of Magna Carta was neither universal nor complete. As in the case of *The Castle*, beyond certain legal and political circles, 'the vibe' of Magna Carta was cited (and understood) as much, if not more frequently, than the letter.

The Mabo decision forms one of the running jokes in *The Castle*. It serves as a shorthand for both the poor legal understanding of the Kerrigan family's counsel, and the family's naivety in engaging him. It also functions as a metaphor for the disconnection between 'the people' as represented by this 'salt of the earth' working-class family, with their simple wants and even simpler understanding on one hand, and the threatening interests of big business, with their better knowledge, big lawyers, and—by extension—the support of big policy makers on the other.² Perhaps most importantly, it becomes a shorthand for the justice of the Kerrigans' cause: the inherent rightness of protecting a family's home from malign outside interests. The Mabo decision never had any relevant bearing on the case that forms the centre of the movie. Nevertheless, the appeal to icons of legal rightness—like Mabo, like the Constitution—signalled the moral 'vibe' of the situation to the audience. Importantly, this was true even if the audience had no better understanding of the legal complexities of those documents than the Kerrigans.

1 *The Castle*, directed by Rob Sitch, Working Dog, Melbourne, 1997.

2 See, for example, Justine Lloyd, 'The Castle: a cinema of dislocation', *Australian Screen Education Online*, no. 30, 2002, pp. 125–30.

In a similar way, throughout its history, Magna Carta has often operated as a metaphor, signal, or shorthand, irrespective of the average understanding of what it said or signified. Mechanisms were put in place quite early on in its history to publicise it, and to make sure that people heard about it, understood its significance and took note of its highlights. Yet really understanding its legal and, indeed, political implications remained fairly privileged knowledge. In other words, people heard of and about Magna Carta, but how well they understood it and the uses to which they thought it could be put varied widely and weren't always accurate. Beyond members of the legal fraternity, and elites who came into contact with the charter through their involvement in political and legal gatherings like parliaments or county courts, the wider population often referred to the 'vibe' of Magna Carta rather than its precise articles.³ This was especially true as the immediate context of the charter's production passed out of living memory and other mechanisms of redress gained currency in the late thirteenth and fourteenth centuries.

A concern for the dissemination of the charter was evident from the moment of its inception. In the six weeks following the initial agreement in June 1215, copies were distributed widely with instructions for sheriffs to arrange for the terms to be read aloud throughout their bailiwicks.⁴ Public announcement of the charter in Latin was probably not widely useful, since understanding that language was a relatively restricted skill. However, even though all the surviving original charters were recorded in Latin, scholars have accumulated evidence that encounters with the charter and its ideas were not necessarily conducted in the Latin medium. Thirteenth-century England was a multilingual culture, within which different languages were associated with different social ranks, registers of formality, and textual forms. Latin was the most official and appropriate language in which to produce a legal text, and so the preservation of the charter itself in Latin versions is not surprising. However, the aristocracy more likely spoke and read a local form of French, sometimes known as Anglo-Norman or the French of England, while the lower ranks most likely spoke English, which was not commonly written down at this time. Magna Carta may have had a presence across this linguistic spectrum from its very origins. For example, it is clear that the barons involved

3 All clause citations in the body of the text are given with reference to the 1215 charter which is being celebrated this year. My preferred text of the 1215 charter is published with facing translation in David Carpenter, *Magna Carta*, Penguin, London, 2015. An online English translation is available at www.bl.uk/magna-carta/articles/magna-carta-english-translation (accessed 8 October 2015). For the 1297 text, which entered the statutes, see *Australia's Magna Carta*, 2nd edn, Department of Senate, Canberra, 2015, pp. 21–6. Also available at www.magnacarta.senate.gov.au/index.php/translation/ (accessed 5 November 2015). Where clauses were still in effect after 1225, under different customary numbering, I give the new clause in a footnote.

4 M.T. Clanchy, *From Memory to Written Record: England 1066–1307*, 3rd edn, Wiley-Blackwell, Oxford, 2013, p. 266.

in negotiating the charter worked in Anglo-Norman: by happy chance a copy of a set of ‘working papers’ from 1215 survives to demonstrate this.⁵

Furthermore, an Anglo-Norman copy of the 1215 charter and the accompanying writ instructing the knights of the shire of Hampshire to proclaim it in the county survive in a contemporary Norman cartulary, that is, a volume of collected charters and official documents. These texts suggest the possibility that when Magna Carta was first proclaimed aloud it could have been rendered in translation for the benefit of local understanding, certainly in the language of the aristocracy, if not yet in English.⁶

By the 1260s, when the charter had gained fresh significance as a touchstone for rebels against the rule of Henry III,⁷ reissues of the charter were certainly being proclaimed aloud in multiple languages to ensure a maximum possible reception: first in Latin, the language of authority, and then in ‘the mother tongue’, which might have meant Anglo-Norman, or English—and possibly both.⁸ When Edward I reissued the charter in 1297 and again in 1300, in response to the demands of political opponents,⁹ he ordered that it be read aloud ‘in full, and in public’, four times per year, at the major feast days, which were also key moments in the Crown’s legal and administrative calendar. These were: Michaelmas (29 September), Christmas, Easter, and the Nativity of John the Baptist (24 June).¹⁰ Proclamations of this kind took place in towns and cities, at markets, fairs, in the countryside, and at major crossroads: in every public place.¹¹

Thus, while not all English people attended parliament, or obtained a legal education, everyone—in theory—had the opportunity to be exposed to the charter, regularly and in some detail. Importantly, while these measures demonstrate the possibility of widespread awareness of the charter’s existence, they remained largely aural.

5 London, British Library, Harleian MS 458. See Appendix 7 in J.C. Holt, *Magna Carta*, 3rd edn, revised and with a new introduction by George Garnett and John Hudson, Cambridge University Press, Cambridge, 2015.

6 J.C. Holt, ‘A vernacular-French text of Magna Carta, 1215’, *The English Historical Review*, vol. 89, no. 351, 1974; Ian Short, ‘The vernacular-French Magna Carta: some linguistic evidence’, *Semasia*, vol. 4, 1977.

7 Adrian Jobson, *The First English Revolution: Simon de Montfort, Henry III and the Barons’ War*, Bloomsbury, London, 2012.

8 Clanchy, op. cit., p. 266; Anthony Musson, ‘Magna Carta in the later Middle Ages’ in Nicholas Vincent (ed.), *Magna Carta: The Foundation of Freedom, 1215–2015*, Third Millennium, London, 2014, p. 89; Tim William Machan, *English in the Middle Ages*, Oxford University Press, Oxford, 2003, p. 35.

9 Marc Morris, *A Great and Terrible King: Edward I and the Forging of Britain*, Hutchinson, London, 2008.

10 See ‘Articuli super cartas, 1300’, in *Magna Carta, 1215 and Beyond*, The National Archives, www.nationalarchives.gov.uk/education/resources/magna-carta/articuli-super-cartas/ (accessed 5 November 2015). For a variant text see Melbourne, State Library of Victoria [henceforth SLV], RARES 091 G79, f.3v. ff. I give particular thanks to Jan MacDonald of the State Library of Victoria for her assistance in accessing this manuscript.

11 Musson, ‘Magna Carta in the later Middle Ages’, op. cit., p. 89.

Although the document itself survives today as a written, material object, this was not how the majority of medieval English people encountered it. Aside from copies displayed in some cathedrals, most people encountered Magna Carta in the Middle Ages by hearing it. In other words, in order to understand the full meaning of the charter, those listening had to be able to follow its intricate legal terms in real time, and commit them to memory. This was a major obstacle to widespread accurate and detailed understanding of the charter. It is perhaps no wonder, therefore, if the idea of Magna Carta that most people retained was of a significant, powerful legal gist, or ‘vibe’, perhaps remembering in depth a few points of specific relevance to their own livelihoods. For example, we might expect that women recalled most clearly the clauses on widows’ financial rights, and fishermen the clauses on rivers and weirs. Like the Kerrigans acquiring a general sense that the Mabo decision pertained to a paramount right to ancestral land, people knew that Magna Carta mattered, but they needed specialists to help them turn that knowledge into a viable legal argument.

There is rich evidence for the importance attributed to Magna Carta as a living document at the turn of the fourteenth century among the notaries and attorneys of the legal profession. The charter was afforded a prime position in legal instruction at this time. For example, it takes pride of place at the beginning of the surviving books of English law from this period in many of the great libraries of the world, including a little-researched volume of English statutes, c.1300, now in the State Library of Victoria in Melbourne.¹² In such ‘bespoke’ handbooks of legal documents, commissioned or personally copied by lawyers-in-training to be the main reference works of their careers, the first document is invariably Magna Carta, followed by the Charter of the Forest, and the Articles instituted by Edward I to provide remedies and processes for transgression of the two charters’ various clauses.¹³

The fact that these documents were not recorded merely for their historical interest is clear from the text and its physical manifestation in legal handbooks. In the first instance, the handbooks invariably record the most recent version of Magna Carta—not its earliest form in 1215, but the abbreviated and refined version of 1225, which was the text subsequently affirmed by Edward I in 1297. This was normally copied together with Edward’s covering notice of confirmation, or *inspeximus*, which affirmed its current relevance.¹⁴ That these were working documents is also evident from the addition of annotations and navigation aids such as chapter numbering that would have helped the student or practising lawyer to locate passages quickly. In this respect, the accompanying Articles were clearly of considerable relevance in how Magna Carta itself was used. In the Melbourne manuscript, for example, it is this text, rather than the charter itself, that has been most annotated. A later hand (or hands)

12 Melbourne, SLV, RARES 091 G79. But see also, for example, Oxford, Bodleian, Add. C 188; Washington DC, Law Library, Library of Congress, 008.

13 For the Articles, see ‘Articuli super cartas’, op. cit.

14 See for instance *Australia’s Magna Carta*, op. cit.

has added chapter divisions in alternating red and blue, corrected a number of minor copying errors that risked introducing errors of interpretation, and placed chapter numbers in the margins. We also know from the records of moot courts, class debates and lectures, that by the mid-fourteenth century legal students were routinely required to cut their teeth by disputing questions of interpretation centred on specific clauses of the charter.¹⁵ Apart from reinforcing the notion that lawyers were the ones who really understood Magna Carta in the Middle Ages, evidence such as this shows that lawyers considered it important and worthwhile to spend time, effort and resources obtaining physical copies of the charter and its associated texts, and subjecting the document to close examination and its principles to thorough interrogation.

An important factor that drove legal knowledge of Magna Carta was its usefulness in framing petitions submitted to the king and council in parliament for redress of various grievances from the late thirteenth century onwards. Having been introduced as a mechanism for seeking legal redress in the 1270s by Edward I, petitions quickly acquired a formal style and required format, and petitioners therefore needed to seek expert advice to draw them up.¹⁶ Specialist notaries and legally aware secretaries were normally employed to undertake this task. As a result, these documents do not necessarily represent the general populace's normal degree of legal awareness. Yet, because petitions were sent by all sectors of society and not elites only, they provide a wonderful source for testing how widespread awareness of Magna Carta could be. When we look at these petitions, it is clear that when people needed legal remedy in the late thirteenth and fourteenth centuries, whether through their own knowledge or through the advice of their legal team, Magna Carta was among the tools available to them in justifying their cases.

Some petitioners were evidently well-informed or had knowledgeable counsel, because they rested their cases on particular clauses of Magna Carta, which they explicitly discussed. Such was the case, c.1289, of the abbot of Bury St Edmunds in a complaint about the actions of the king's officials when he had been absent from the realm. The abbot's petition explained that he had been summoned before the justices travelling through Suffolk by a writ known as *precipe* in a matter concerning two of his manors in that county, but that he had refused to attend on the grounds that the issue of the writ was against Magna Carta (clause 34).¹⁷ These manors, he argued, were held in chief of the king, that is, as the king's personal tenant, and therefore exempt from action under this writ according to the charter. His reasoning was correct;

15 Musson, 'Magna Carta in the later Middle Ages', op. cit., p. 88.

16 For medieval parliamentary petitions see W. Mark Ormrod, Gwilym Dodd, and Anthony Musson (eds), *Medieval Petitions: Grace and Grievance*, York Medieval Press, Woodbridge, 2009.

17 The petition survives at Kew, The National Archives [henceforth TNA], SC 8/177/8816. The online catalogue provides a summary and image of the document: <http://discovery.nationalarchives.gov.uk/details/r/C9294684> (accessed 5 November 2015). This clause was still in effect in 1289: see *Australia's Magna Carta*, op. cit., clause 24, p. 24.

however, according to the abbot's story the justices had not accepted it and implicitly the abbot's possession, or 'seisin' of his manors was threatened. He petitioned the king to uphold his refusal to answer, explaining his grounds with specific reference to the charter.¹⁸

Similarly, when the citizenry of York petitioned Edward II in 1317 for the rivers Ouse and Ure not to be 'put in defence'—a technical term meaning that the fisheries had been taken into private hands¹⁹—they rehearsed specific clauses on river management (clauses 47–8) in their case.²⁰ Their petition claimed that the rivers Ouse and Ure had been put in defence by the late Richard of Cornwall, the brother of Henry III, contrary to the terms of 'the Great Charter', and that the practice had been continued by his son, Edmund. The petition proceeded to articulate the community's accurate understanding of the relevant clause(s), saying 'that no river should be in defence, except for those that were in defence in the time of King Henry [II], great-great-grandfather of the present king'. Demonstrating political as well as legal awareness, the reasoning relied explicitly on the 'recent ordinances' guaranteeing that the clauses of the charter would be upheld in all points.²¹ The complaint was successful in bringing the matter before the King's Bench, which apparently found in the community's favour. However, proving the difference between holding rights and being able to enforce them, the same complaint was articulated in another petition five years later, at which time it apparently remained unanswered.²² The legal accuracy of a reference to the charter seems to have been useful in drawing attention to the complaint, but insufficient to conclude it successfully in the favour of the petitioners.

Informed and technical references to the charter thus had some legal force, but this was increasingly complemented by a moral weight and political power that petitioners were keen to exploit. In some petitions it is clear that the appeal to the

18 The outcome of the petition itself is not clear. However, it is probable that it was upheld, because the Patent Rolls reveal that the matter was subsequently brought before the justices at Westminster and eventually settled by trial by combat. It seems likely that the counter claimants had fallen back on this strategy having been foiled in their action by writ. See *Calendar of the Patent Rolls Preserved in the Public Record Office, 1281–1292*, HMSO, London, 1971, p. 414.

19 For a clear definition of the term see Tim P. O'Neill, 'Fish, historians and the law: The Foyle Fishery Case', *History Ireland*, vol. 17, no. 6, 2009, www.historyireland.com/20th-century-contemporary-history/fish-historians-and-the-law-the-foyle-fishery-case/ (accessed 7 October 2015).

20 Kew, TNA, SC 8/7/314. Available at <http://discovery.nationalarchives.gov.uk/details/r/C9060436> (accessed 2 October 2015). Clauses were still in effect which guaranteed no rivers would be put in defence unless they had already been banked in the time of Henry II (d. 1189). See *Australia's Magna Carta*, op. cit., clause 16.

21 These were the Ordinances of 1311, which called for the 'Great Charter of liberties and the Charter of the Forest' to be upheld in all their particulars. See J.R. Maddicott, *The Origins of the English Parliament, 924–1327*, Oxford University Press, Oxford, 2010, pp. 331–7.

22 Kew, TNA, SC 8/2/73. Available at <http://discovery.nationalarchives.gov.uk/details/r/C9060186> (accessed 19 November 2015).

charter was as much an appeal to the exact letter of the law as it was to the growing ‘vibe’ of Magna Carta. This kind of dual reference to the charter as a legal and moral authority is especially noticeable in the case of petitioners seeking redress of persistent grievances, as in the case of the men of York, above. A particularly powerful example comes from 1315. In the January parliament of that year Lady Isabel Bardolf,²³ widow of Sir Hugh Bardolf, petitioned the king and council for redress concerning ‘the suit of Robert Lewer who deprived her of her free tenement by means of a writ obtained by false accusation ... and despite [Isabel] producing her royal charters granting [those same] tenements’.²⁴ Isabel asserted that she had complained in the chancery immediately after the initial adverse finding, now at least a year previously, and had approached the parliament in 1314 to no avail. Her new petition wove precise and well-informed references to Magna Carta together with many other strategies for persuading the king’s authorities to find in her favour, so that its specific legal relevance ultimately contributed to a wider, moral claim.

Isabel was the only surviving heir of her father, Robert Aguilon, and the wording of her request makes clear that the lands concerned were hers by right of inheritance rather than as her widow’s portion, or dower. Thus, she was not pressing her case based on any of the clauses specific to women in the charter, but on the most famous articles of modern times: the king’s promise not ‘to go against [a free person] or send against [them] save by lawful judgment of [their] peers or by the law of the land’ and not ‘sell or deny or delay right or justice’ (clauses 39–40).²⁵ Isabel’s petition used key words to make clear how the charter had been transgressed in this article.²⁶ The initial inquiry into her lands had been held ‘arbitrarily’ and ‘without her knowledge’, indicating that the judgment had not been conducted lawfully. She outlined how this was ‘contrary to the terms of the Great Charter concerning franchises, which states that neither the king nor any of his officials is to expel any man from his free tenement without a reasonable judgement’. Her argument was not limited to this point, however. She also explicitly appealed to the clause of the Ordinances, building on the Articles on the Charters,²⁷ that prevented any common law matter from being delayed by a writ

23 See *Calendar of Inquisitions Post Mortem and Other Analogous Documents*, vol. VI (Edward II), HMSO, London, 1910, pp. 272–3. Available at: www.archive.org/details/cu31924099427845 (accessed 5 November 2015).

24 For the petition, see Kew, TNA, SC 8/4/190. Available at: <http://discovery.nationalarchives.gov.uk/details/r/C9060310> (accessed 11 December 2015).

25 For more on women and Magna Carta generally, see Louise J. Wilkinson, ‘Magna Carta and women’ in *Australia’s Magna Carta*, op. cit. The quote comes from the 1297 version given in *Australia’s Magna Carta*, clause 29, p. 25.

26 The full petition is given in J.R.S. Phillips (ed.), *Edward II: Parliament of January 1315, Text and Translation*, online edn, The Parliament Rolls of Medieval England, Scholarly Digital Editions, Leicester, 2005, item 48. Available at www.sd-editions.com/PROME (accessed 20 November 2015).

27 ‘The New Ordinances, 1311’ in Harry Rothwell (ed.), *English Historical Documents III: 1189–1327*, Eyre & Spottiswoode, London, 1975, clause 32. Cf. ‘Articuli super cartas’, op. cit., clause 6.

of the privy seal: a refinement of the principle of ‘reasonable judgement’ articulated in the original charter. Having already experienced set-backs and delays in securing her lands, Isabel thus deployed all the legal and moral tools at her disposal in this attempt to force the issue. The ‘vibe’ or tenor of Magna Carta was one part of a veritable barrage of rhetoric that she launched against her opponent to justify her case: alleging that Lewer’s offence against her stemmed from fraud and un-due process on several levels, as well as contravening the charter and the Ordinances as iconic statements of the king’s pact with his people.²⁸

Not all moral appeals to the charter were as well informed. In 1324 the tinsmiths of Cornwall collectively opened a rather ambitious claim to general freedoms by asserting that the liberties of ‘Magna Carta and the law of the land of England’ ought to apply to the entire realm.²⁹ More specifically, they were angered by royal officials who paid them in foreign coin of lesser worth than sterling. They sought the right to be paid in the ‘standard coinage of London’, which they implied was granted in the charter and should therefore be extended to them. They were not precisely correct: clause 35 did indeed discuss weights and measures, and attempt to establish the London quarter as the standard measure of grain, but it did not directly concern coinage.³⁰ It may have been a misguided appeal to this clause that was intended. Alternatively, the tinsmiths may have conflated the terms of the charter with the regulations on gold assaying developed in Edward I’s later Articles on the Charters which did deal with metal quality, albeit in a different context. Such confusion could have been encouraged by the reissue of English coinage that had also taken place in 1300 in an attempt to remove debased foreign coins from circulation.³¹ The tinner’s petition also asked for free trade conditions that would permit them to sell their tin publicly, rather than being restricted to dealing with the king’s contracted merchants whom they explicitly accused of underpaying. Hence, in the case of the Cornish tinsmiths, it would seem a general grievance concerning the conduct of the king and queen’s officials with respect to inadequate payment had become attached to the charter’s general moral principle that the king owed right to his subjects, rather than any legal principle it contained. Magna Carta’s relevance to the case was almost entirely symbolic.

28 Her case was still unresolved in 1322, when she petitioned again: see Kew, TNA, SC 8/4/191. Available at <http://discovery.nationalarchives.gov.uk/details/r/C9060311> (accessed 26 November 2015). Thomas, her son and heir, was still pursuing the case c.1324 after Isabel’s death: see Kew, TNA, SC 8/95/4735. Available at <http://discovery.nationalarchives.gov.uk/details/r/C9149286> (accessed 26 November 2015).

29 Musson, ‘Magna Carta in the later Middle Ages’, op. cit., p. 91. For the petition see Kew, TNA, SC 8/103/5129. Available at <http://discovery.nationalarchives.gov.uk/details/r/C9149699> (accessed 5 November 2015).

30 For 1297 see *Australia’s Magna Carta*, op. cit., clause 25, p. 24.

31 ‘Articuli super cartas’, op. cit., clause 20. For the coinage see Martin Allen, *Mints and Money in Medieval England*, Cambridge University Press, Cambridge, 2012, pp. 357–8.

Appeals to Magna Carta as a kind of symbolic legal authority, beyond its specific legal significance, were becoming almost stereotypical by the 1320s: the Cornish tinnars were not alone. We can see this, for example, in a petition from the townsmen of Oxford to the king in 1328, as part of their long-running conflict with the university.³² The townsmen held:

that grants have been made to the Chancellor and university of Oxford which are contrary to [the town's] liberties, the law of the land, and the Great Charter, and are to the prejudice of the crown, and which have thrown [the townsmen] into such a state of subjection and oppression that they cannot levy the King's farm or keep the peace; so that they will be compelled to abandon the town if they do not have the King's help.³³

In this petition, we can see how appeals to 'the vibe' of the charter were becoming integral to medieval English ways of expressing slippery concepts like justice and injustice, and to ways of attempting to coax a favourable response from the legal and administrative authorities of royal government. The burgesses of Oxford directed their appeal in a general way to the guarantee of 'ancient liberties and customs' that had applied, in theory, to all towns since the first issue of Magna Carta (clause 13).³⁴ They had made oblique reference to this provision in securing confirmation of their charters of liberties in 1324.³⁵ In their new petition, however, the way that their appeal to the charter formed one in a series of ever more rhetorically impressive foundational concepts of rightness—the town's liberties, the law of the land, the Great Charter, and the Crown's interests—suggests that they, like Isabel Bardolf, saw the charter as a moral argument as much as a legal one. They used this language to increase pressure on the Crown to resolve their complaint. They were at least partially successful, since writs were issued instructing both parties to present their records for comparison and final determination of their respective liberties.³⁶ In the long term, however, the conflict continued.

In a further example, in a case before the King's Bench in 1384, certain townsmen of Padstow in Cornwall argued for their ancestral right to control their own maritime contracts with reference to Magna Carta's grant of ancient liberties to other maritime

32 The protracted conflict had many parts, but the specific grievances of this petition had been running since at least 1324; see Eleanor Chance et al., 'Medieval Oxford' in Alan Crossley and C.R. Elrington (eds), *A History of the County of Oxford: Volume 4, the City of Oxford*, Victoria County History, London, 1979, www.british-history.ac.uk/vch/oxon/vol4/pp3-73, n. 638.

33 See Kew, TNA, SC 8/202/10099. Available at <http://discovery.nationalarchives.gov.uk/details/r/C9333654> (accessed 1 October 2015).

34 *Australia's Magna Carta*, op. cit., clause 9, p. 23.

35 Kew, TNA, SC 8/200/9994. Available at <http://discovery.nationalarchives.gov.uk/details/r/C9295884> (accessed 8 December 2015).

36 *Calendar of the Close Rolls Preserved in the Public Record Office, 1327–1330*, Eyre & Spottiswoode, London, 1896, pp. 391–2.

towns like the Cinq Ports.³⁷ The specifics of the clause were not as vital to this case as reference to a principle—long prized in England both before and after Magna Carta—of appeal to ancient and continuous precedent. And yet, they must have felt it was a beneficial strategy to tie their request explicitly to the charter by name.

Perhaps most tellingly, even outside formal arenas of legal dispute, we find evidence that citation of Magna Carta was coming to be part of the popular language of complaint by the early fourteenth century. For instance, references to it appeared in literature claiming to offer advice on good rulership to Edward III, and in the preaching of his ecclesiastical opponents.³⁸ Perhaps the clearest example, however, comes from the reports of tax assessors and collectors who had been sent out into Staffordshire and Shropshire in 1317. Their letters back to the exchequer noted that their duties had been impeded by people ‘under the pretext of the king failing to observe the Great Charter of liberties of England, the charter of the forests and the ordinances made by the prelates, earls and barons’.³⁹ This seems to imply that local people in these counties knew very well how to speak the appropriate language of rights and law—at least to delay if not to prevent unwelcome intrusions into their lives by the king’s officers. For all these complainants, as for the Kerrigans, ‘the vibe’ of the charter strongly conveyed the moral rightness of their case, irrespective of the precision of their legal understanding, or even the nature of the forum in which they expressed their grievance.

These examples, and many others that I have not discussed, furnish us with evidence of widespread awareness of Magna Carta as a valuable moral and rhetorical basis of argument, and sometimes of a detailed legal understanding of its contents. Both geographically and socially, the individuals and groups whom we know to have cited it in their legal affairs ranged widely. From the businessmen and local authorities from eastern ports like Yarmouth to western maritime towns like Padstow, from cities close to London like Oxford, to distant northern cities like York. From the relatively lowly tinsmiths of Cornwall to high ranking baronial families like the Bardolfs, whose seniority was reflected by their hereditary right to provide the king and his guests with a particular dish on the occasion of his coronation feast.⁴⁰ It would seem, then, that people from all walks of life in medieval England had encountered Magna Carta.

Interestingly, despite this widespread trust in and reliance on the charter in its general and specific significance, the outcomes of appeals to Magna Carta whether as a legal and/or rhetorical strategy of complaint in the Middle Ages were far from guaranteed.

37 Musson, ‘Magna Carta in the later Middle Ages’, op. cit., p. 91.

38 Wendy Scase, *Literature and Complaint in England, 1272–1553*, Oxford University Press, Oxford, 2008, pp. 24, 58.

39 Samuel K. Cohn, *Popular Protest in Late Medieval English Towns*, Cambridge University Press, Cambridge, 2013, p. 151.

40 *Calendar of Inquisitions Post Mortem and Other Analogous Documents*, vol. IV (Edward I), HMSO, London, 1913, p. 168.

As in the example of the Kerrigan family with which I began, cases that rested on Magna Carta met with mixed success. In fact, evidence shows that the Crown and its officials were just as able as other English people, if not more so, to manipulate the clauses and ‘tenor’ of the charter to their own ends. In many of the petitions mentioned above, the contemporary annotation indicates that the immediate outcome was usually some variant of ‘this needs more investigation’, or sometimes, ‘this cannot be done, or must be delayed, or needs to be heard in another court, because it is against Magna Carta’. On the one hand, this points to the unsurprising conclusion that the Crown had sophisticated lawyers who could find legal ways to avoid giving away too many rights or privileges that subjects might otherwise pay to enjoy, or which might conflict with its own interests or those of its most important tenants. However, a further, subtler reading is also possible. Namely, that appeals to Magna Carta were rhetorically effective in forcing a complaint to be heard, but that the charter’s legal force was insufficient to ensure a positive outcome. In that sense, appealing to the ‘vibe’ of the charter served an important but largely extra-legal purpose, and seems to have served it well. In medieval times, just as now, appeals to ‘the vibe’ of the rightness of things were powerful ways of thinking about and talking publicly about justice. But they were not enough—on their own—to clinch the case in a court of law. Overall, we may be forced to conclude that even in the Middle Ages when people encountered Magna Carta, they found that it was often more powerful as persuasive language than it was effective as a legal tool.

Magna Carta: The View from Popular Culture

Andrew Lynch — Yeatman and Sellar made the definitive statement in *1066 and All That* (1930) that ‘History is not what you thought. It is what you can remember’.¹ My discussion here is about some of what has been popularly remembered (and forgotten) about Magna Carta over eight centuries, and how popular culture has shaped its significance. I have divided this material under four headings: 1. Magna Carta was a brave new start; 2. Magna Carta is a people’s document; 3. Magna Carta has never been forgotten; 4. Magna Carta: a Good Thing from a Bad King. How well do these popular views measure up to what is known of the historical record?

1. Magna Carta was a brave new start

A common view is that the charter granted by King John in 1215 was a startlingly new venture, making an end of royal absolutism and a beginning of modern rights and liberties. It would be truer to say that Magna Carta was already consciously ‘old’ when it began. This is partly because it owed a lot to older forms of popular belief and shared cultural memory.

1 R.J. Yeatman and W.C. Sellar, *1066 and All That: A Memorable History of England*, Methuen, London, 1930, preface.

That is not surprising. Magna Carta comes from a time when very few outside the trained clergy could read official documents in Latin, including the barons who had such an interest in them. To be widely effective, documents needed the support of public rituals—memorable events like the meeting at Runnymede, which has since been re-enacted and recalled countless times in every medium. They also had to be connected with widespread and accepted beliefs about the way things were and should be. Although Magna Carta’s existence as one of many charters proliferating in its own times shows the growing importance of official writing, the document still drew much of its authority from a persistent popular myth: namely, that England had been better off in the past, in the days of Henry I, and before that in the far-off time of King Edward the Confessor, who died in 1066, and who was by the time of Magna Carta a canonised saint and renowned as a great law-giver.

The so-called ‘Laws of King Edward’ loomed large in cultural memory, both in 1215 and for many centuries after, right down to the time of Thomas Jefferson. In reality these were a mid-twelfth-century compilation,² but they were associated with an imagined golden age, the immediate pre-Conquest period of 1052 to 1065, which even the modern *Oxford Dictionary of National Biography* calls ‘an oasis of peace and prosperity’.³ The Prelude to these ‘Laws’ says that four years after the Conquest, in 1070, William I, on the advice of his barons, had them taken down under oath from twelve Anglo-Saxon men from each shire. There is no evidence for that actually happening, but it indicates a shared belief that good laws came from a legendary king accepting counsel and listening to popular tradition. According to the chronicler Roger of Wendover, when the barons met secretly, late in 1214, to work out what to do about King John, they discussed the ‘Charter of Liberties’ granted by Henry I at his coronation more than a hundred years before in 1100, which promised to restore ‘the Laws of King Edward the Confessor’.

Magna Carta needed a long pedigree of that kind. The idea that it was a brand new start would have been very damaging to its status. To have proper authority, it had to be seen as restoring ancient and customary ways, to which it frequently refers, while removing abuses seen as recent or contemporary innovations, ‘evil customs’ that had crept in. After 1215, the view that Magna Carta had simply restored a former good arrangement became standard: the very popular chronicle history known as the prose *Brut*, of which 181 manuscripts still survive, attributes all King John’s problems with the barons to his breaking an age-old tradition:

A great dispute began between King John and the lords of England,
because he would not respect and uphold the laws which St Edward had

2 Bruce R. O’Brien, *God’s Peace and King’s Peace: The Laws of Edward the Confessor*, University of Pennsylvania Press, Philadelphia, 1999, pp. 3–7.

3 Frank Barlow, ‘Edward [St Edward; known as Edward the Confessor] (1003x5–1066)’, *Oxford Dictionary of National Biography*, Oxford University Press, 2004; online edn, May 2006, www.oxforddnb.com/view/article/8516 (accessed 21 Oct 2015).

ordained, which had been in use and upheld up to the time that he had broken them.⁴

The *Brut*, in this fifteenth-century version, adds that when John died,

the king [Henry III] and the archbishop and earls and barons gathered at London the next Michaelmas, and King Henry confirmed by his charter all the liberties that King John had granted at Runnymede, and they are still current throughout England.⁵

Magna Carta was certainly not promoted as a novelty in its own time, but it has very successfully continued to embody the traditional idea of a precious ancient legacy still powerful in the present. The lead curator of the British Library's exhibition this year, Claire Breay, was rung up by a man asking if Magna Carta could get him off his traffic fines.



Figure 1: John Wilkes by John Dixon, published by Carington Bowles, mezzotint, 1770
© National Portrait Gallery, London, NPG D18845

4 *The Brut, or The Chronicles of England*, ed. F.W. Brie, Early English Text Society, Original series 161, London, 1906, chapter 104 (excerpt translated by A. Lynch).

5 *ibid.*, chapter 107 (excerpt translated by A. Lynch).

2. Magna Carta was a people's charter

Magna Carta was won by baronial and church coercion, at a critical stage in a complex struggle between the king, his barons, the papacy, and the Crown of France. It had no input from the great mass of the population, and not much direct concern for them. Yet, despite the fact that later kings did not always, or even often, abide by the charter, historians tell us it did moderate their financial demands. Knowledge of it at least gave people a yardstick for measuring royal actions. As Kathleen Neal's essay in this volume shows, subsequent translation and publicising of the terms of the charter put into wide circulation the view that the king was not above the law.⁶ These factors lie behind the long-term popular belief that Magna Carta in 1215 was a charter 'for the people'.

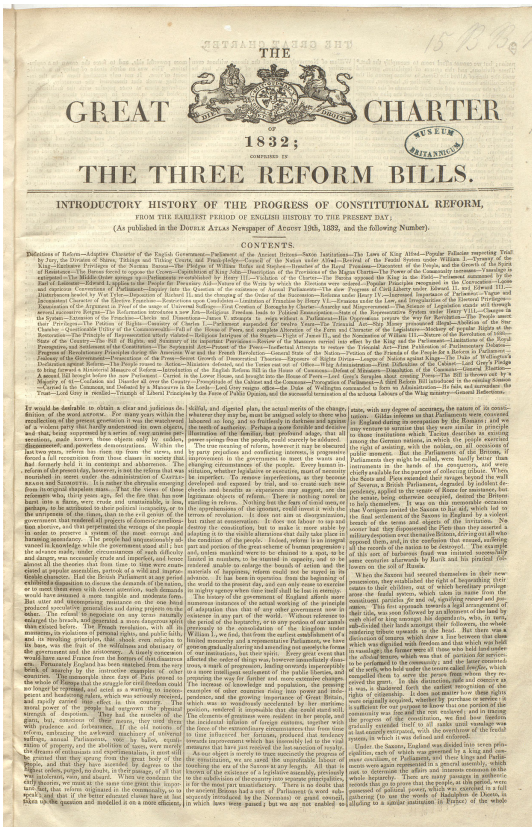


Figure 2: 'The Great Charter of 1832; comprised in the three Reform Bills', British Library, 504.1.5

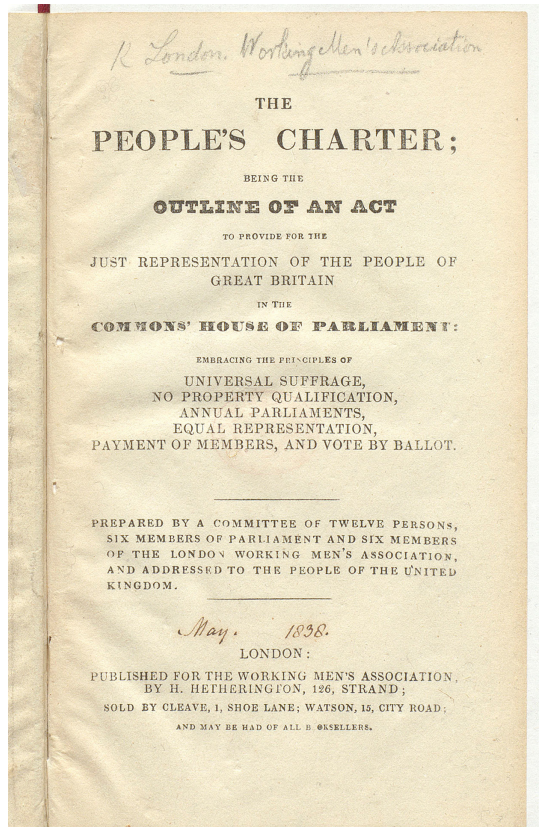


Figure 3: 'The People's Charter; being the outline of an Act to provide for the just representation of the people of Great Britain in the Commons' House ...', 1838, British Library, C.194.a.938

This belief has taken many forms in later historical periods. One version is that Magna Carta is the (originally Anglo-Saxon) basis of English common law, and the forerunner and ally of parliament as the people's guardian against the encroachments of monarchy.⁷ A second version is seen in the legitimization of later democratic political views by deliberate association with Magna Carta. For example, the eighteenth-century radical John Wilkes was pictured in 1770 (figure 1), holding Magna Carta and giving a good impression that he had just written it himself. The Reform Act of 1832 was published as 'The Great Charter' (figure 2). The 'People's Charter' of 1838, an early part of the Chartist Movement, also used the name, making the point that parliament did not properly represent the 'people' adequately, so that a new charter was needed for modern times (figure 3).

A third version is to represent the idea of Magna Carta itself as actually emanating from the common people. An interesting example occurs in the 2010 film *Robin Hood*, where the hero, Robert of Loxley, is a common archer, and his father, a stonemason, has written the prototype of the charter:

If Your Majesty were to offer justice, justice in the form of a charter of liberties, allowing every man to forage for his hearth, to be safe from conviction without cause or prison without charge, to work, eat and live on the sweat of his own brow, then that king would be great What we would ask, Your Majesty, is liberty. Liberty by law!

John pretends to agree, but then betrays his word to Robin, just as King Richard has done before. At the film's end, the dream of a people's contract with monarchy is dead, and Robin goes off to an outlaw socialist collective in the forest:

Nobody rich, nobody poor. Fair shares for all at nature's table. Many wrongs to be righted in the country of King John.⁸

Is the film's conclusion that the charter dreamed of by Robin and his father will soon be realised in Magna Carta? I think Brian Helgeland's screenplay implies instead that the imminent arrival of Magna Carta will not really help. True justice and liberty will never simply be granted from on high to the ordinary folk, or won for them by baronial intervention; they will always have to fight for it themselves. In the 1770 print of John Wilkes with Magna Carta (figure 1), a bas-relief of Hercules fighting the Hydra is pictured behind him to make the same point.

3. Magna Carta has never been forgotten

Magna Carta is often called the 'foundation of liberty', or the 'fountainhead of freedom'. That implies an integral and steady historical tradition based on it, or flowing from it. But in reality the popular view of Magna Carta depends, to a large extent, on forgetting most things that were actually in it. For example, by far the most

7 Justin Champion and Alexander Lock, 'English Liberties' in Claire Breay and Julian Harrison (eds), *Magna Carta: Law, Liberty, Legacy*, British Museum, London, 2015, pp. 107–11.

8 *Robin Hood*, dir. Ridley Scott, Universal Pictures, 2010.

radical thing about the 1215 charter was its appointment of a committee of 25 barons to see that the king kept his word, and whom he empowered, if he did not, to ‘distrain upon and assail us in every way possible, with the support of the whole community of the land’. John bound himself by these terms—he clearly had no intention of keeping them—to give over his sovereignty as king. But John soon died and naturally later reissues of the charter by other kings omitted all that. The king’s grant of a charter of liberties was an assertion of his own right and power to do so. The barons’ committee has gone largely unnoticed in popular memory, although it has been sensationally likened to the ‘Committee of Public Safety’ in the French Revolutionary period.⁹ Similarly, Magna Carta’s references to debts owed to Jews (clauses 10 and 11) are rarely mentioned. England scarcely wishes to recall its twelfth- and thirteenth-century anti-Jewish history of exploitation and violence, culminating in Edward I’s Edict of Expulsion in 1290.

Magna Carta now stands unrivalled as what is popularly remembered from the history of King John’s time. That has not always been the case, at least up to the beginning of the twentieth century. In the sixteenth century, in the wake of the Protestant Reformation, John was better known for his troubled relationship with Pope Innocent III. England was placed under a papal interdict from 1208 to 1214, and John was excommunicated in 1209. He made so much money from keeping the revenues of vacant dioceses that this situation apparently suited him for a good while.¹⁰ Eventually, to get the pope back on his side, John surrendered the crown of England and Ireland to the papal legate, Pandulph, in 1213 and formally did homage to the pope for it, with the promise of 1000 marks per annum and restitution to the church: typically, he soon stopped paying it.

This submission was probably a good idea at the time but it became notorious in later centuries. Any enemy of the pope was a friend to early Protestants like John Bale, writing at the time of the dissolution of the monasteries, after Henry VIII had made himself head of the English Church. In Bale’s play *King Johan* (1540), John bravely defies Rome, which he calls ‘the grett captyvyte / Of bloody Babulon’, and only surrenders his crown to avoid the destruction of his people. Bale tells his audience that John has been maligned by the Italian-born Tudor historian Polydore Vergil:

Kynge Johan was a man both valeaunt and godlye.
What though Polydorus reporteth hym very yll
At the suggestyons of the malicyouse clergye?
Thynke yow a Romane with the Romanes can not lye?¹¹

9 Geoffrey Hindley, *The Book of Magna Carta*, Guild Publishing, London, 1990, p. 161.

10 Barlow, op. cit.

11 John Bale, *King Johan*, ed. Gerard NeCastro, Act 2, <http://ummutility.umm.maine.edu/necastro/drama/kingjohan.txt> (accessed 28 October 2015).

Magna Carta is not mentioned by Bale, nor does it feature in popular history plays of the later sixteenth century. Shakespeare's *King John*, for example, written in 1596, omitted it, though we know he was aware of it from Holinshed's *Chronicles*. The hot topics in Shakespeare's text are its anti-papal stance, the untrustworthiness of the French, and the military greatness of a united England. John is a bad character, but the real villain is Pandulph, the manipulative papal legate. John is given some fine lines defying him:

No Italian priest
Shall tithe or toll in our dominions;
But as we, under heaven, are supreme head,
So under Him that great supremacy,
Where we do reign, we will alone uphold,
Without the assistance of a mortal hand.¹²



Figure 4: King John by Renold Elstrack, line engraving, 1618 © National Portrait Gallery, London, NPG D23644

John denies the pope's right to question or judge his actions as king: only God can do that. These were apparently crowd-pleasing sentiments in 1596, but their tendency is governed by Tudor fear of division and civil disorder, not at all inclined to favour popular restraint on the monarch's power. Similarly, a contemporary English image of King John by Renold Elstrack (figure 4) represents him as lofty, regal and dignified, confidently holding the sceptre and orb that symbolise his rule. In such a climate, Magna Carta would have seemed out of place.

Anti-Catholic sentiments also made Shakespeare's play popular in later periods. In 1745, when a Stuart invasion was threatening, Colley Cibber took the chance to stage his much-altered version, *Papal Tyranny*. When *King John* was staged at Drury Lane in the 1840s and 50s, Catholic Emancipation (1838) and the re-establishment of Catholic bishops in 1850 were topical: the actor/producer William Charles Macready wrote that 'part of the audience came to the play, not to see it, but to act themselves in a foolish demonstration

of hostility of Papistry'.¹³ Only when Sir Herbert Beerbohm Tree staged Shakespeare's play in 1899 was a spectacular tableau of Magna Carta inserted. But at that time *King John*'s main relevance was as a patriotic call to arms and national unity: 'One reviewer noted on the first night that the Bastard's final speech made heads turn to the box where sat Joseph Chamberlain, the embattled colonial secretary during the [Second] Boer War'¹⁴:

This England never did, nor never shall,
Lie at the proud foot of a conqueror,
....
Come the three corners of the world in arms,
And we shall shock them. Nought shall make us rue,
If England to itself do rest but true.¹⁵

Magna Carta is never fully forgotten, but under the pressure of war and civil unrest, its importance has certainly been played down in the popular mind, just as its provisions concerning imprisonment and access to justice are often reinterpreted or suspended by governments when states of national emergency are identified.

4. *Magna Carta: a Good Thing from a Bad King*

In the terms of *1066 and All That*, Magna Carta is a 'Good Thing' and King John a very 'Bad King', in fact an 'Awful King'. The two judgements go together. Magna Carta is an occasion of fun, mainly because it gives us the opportunity to enjoy the nastiness and rage of King John, secure in the knowledge that he will get his comeuppance. John has a long tradition in popular history as an absurd figure, a pantomime villain. Holinshed's *Chronicles* (1577) relate that:

the king hauing condescended to make such grant of liberties, farre contrarie to his mind, was right sorowfull in his heart, curssed his mother that bare him, the houre that he was borne, and the paps that gaue him sucke, wishing that he had receiued death by violence of sword or knife, in steed of naturall norishment: he whetted his teeth, he did bite now on one staffe, and now on an other as he walked, and oft brake the same in peeces when he had doone.¹⁶

13 Diary of William Charles Macready (1851), quoted in Anjna Chouhan, 'King John: a play for all time?', *Blogging Shakespeare*, <http://bloggingshakespeare.com/king-john-a-play-for-all-time> (accessed 28 October 2015).

14 William Shakespeare, *King John*, ed. L.A. Beaurline, Cambridge University Press, Cambridge, 1990, 'Stage history'.

15 Shakespeare, *King John*, Act 5, Scene 6.

16 Raphael Holinshed, *Chronicles of England, Scotland and Ireland*, Imprinted for Iohn Hunne, London, 1577, vol. 4, 1.7.1., www.english.ox.ac.uk/holinshed/texts.php?text1=1577_5316#p10491 (accessed 28 October 2015).

Centuries later, the very popular children's historian Henrietta Marshall wrote in *Our Island Story* (1905):

When the meeting was over, and John went back to his palace, his anger was terrible. He threw himself on the floor foaming with passion ... He cursed the barons and the people with terrible curses. He tore and bit the rushes with which the floor was covered. He gnashed his teeth, growling and snarling like a wild animal mad with rage.¹⁷

In the Ladybird 'Adventure from History' book of *King John and Magna Carta* (1969),

... the King sat biting his nails in sullen fury. We are told that this was a bad habit which he had acquired as a boy and never lost. If it had been his only bad habit, he would not have been in the situation in which he now found himself.¹⁸

John has also had long-term trouble with ill-fitting accessories. Matthew Paris in the mid-thirteenth-century *Abbreviatio chronicorum Angliae* depicted him as degenerate and incompetent, the crown sliding off his head (figure 5).¹⁹ Walt Disney's animators picked up on that symbolism. John's crown slips down below the ears on his unregal head.²⁰ In an illustration from John Newbery's history for children (1749 and reprints) the king wears his sword behind to indicate cowardice



Figure 5: Depiction of King John by Matthew Paris in 'Drawings of the kings of Britain and England to Henry III (1216–1272)'
© The British Library Board, Cotton Claudius D. VI, f.9v

- 17 H.E. Marshall, *Our Island Story: A History of England for Boys and Girls*, T.C. and E.C. Jack, London, 1905, chapter 36.
- 18 L. Du Garde Peach, *King John and Magna Carta*, A Ladybird 'Adventure from History' Book, Loughborough Wills and Hepworth, 1969, reprinted 2015, p. 42.
- 19 Suzanne Lewis, *The Art of Matthew Paris in the Chronica Majora*, University of California Press, Berkeley, 1987, pp. 156–7, figure 88.
- 20 *Robin Hood*, dir. Wolfgang Reitherman, Walt Disney Productions, 1973.

and unmanliness, and his mantle—the royal mantle of his great brother Richard the Lionheart—is far too large and trails on the ground behind him (figure 6).²¹ In Ridley Scott’s 2010 film of *Robin Hood*, John wears a helmet absurdly too big, and in a mail hood even evokes memories of *Blackadder* (figure 7).



(Left) Figure 6: Woodcut illustration of King John from *A New History of England* (1785) by John Newbery. Image courtesy of liveauctioneers.com and PBA Galleries, San Francisco.

(Below) Figure 7: King John in *Robin Hood* © 2010 Universal Pictures. Courtesy of Universal Studios Licensing LLC



21 John Newbery, *A New History of England*, J. Newbery, London, 1763, sig.A.4r.

Laughing at John's rage and taking pleasure in his discomfort has a political point: the king's power is in inverse proportion to his maniacal claim to dominance. The fun of despising John provides a comedic victory of the people over the monarch, a comforting affirmation that executive power is finally accountable to popular opinion. Laughter at him unites the people *as* a people, whose judgement matters. Of course, the politics of this comedy of contempt are ambivalent. Depending on your views, John can be taken as an example of the vileness of all monarchy, or as a monarch so totally bad that he exonerates the rest by comparison: not a 'proper' king. Whichever way one reads it, the horrible history of King John remains vital in giving Magna Carta its present popular status as a 'Good Thing' from which everyone still benefits.

A Few Chapters in Australia's Magna Carta Story

David Headon — When the Clerk of the Senate invited me to present a paper at this symposium, for the 800th anniversary of Magna Carta, I was flattered to be included in such a distinguished line-up of speakers but also a little apprehensive about the subject itself. Thirteenth-century England and the so-called 'Great Charter' are just two of many notable absences in my CV. I was aware, as well, of Lord Jonathan Sumption's abrupt opening sentence in his speech in March 2015 to the Friends of the British Library, when he remarked that it 'is impossible to say anything new about Magna Carta, unless you say something mad'.¹

Despite this cautionary observation from one so well-qualified to provide an opinion, I must say I welcomed the prospect of commenting on Magna Carta's 'Australian links', one small yet significant part of the much larger narrative. I will begin with my 'personal encounter', and work my way into some discussion of popular culture, political culture, constitutional history and, lastly, some detailing of Magna Carta's Australian story—a story which has continued to have new (and, on occasion, abrasive) chapters added to it right up to the present day.

First, the personal encounter. When the occasional interstate federal politician, during sitting period downtime, takes the opportunity to enjoy the cultural fabric of Canberra, he or she might well head down the grassy hill of Federation Mall on foot, past the Old Parliament House and into the symbolic heart of the parliamentary triangle. There is much to take in, aesthetic, historic and symbolic. One site of cultural significance encountered on the western side of the triangle, the Commonwealth Avenue/Commonwealth Bridge side, is Magna Carta Place, with its distinctive, low bronze dome.

From 2000 to 2007, I had the privilege of working for the National Capital Authority (NCA) as its Cultural Adviser. One of the first major projects with which I was directly involved was the Magna Carta Place design competition, first conceived

1 Lord Jonathan Sumption, 'Magna Carta then and now', Address to the Friends of the British Library, 9 March 2015, <https://www.supremecourt.uk/news/speeches.html>, p. 1.

in 1995 and later developed into a proposal submitted to the NCA by the Australia–Britain Society in late 1996 as that organisation’s ‘Centenary of Federation’ project. An international competition was eventually announced in August 1999, with a rather flash 23-page booklet, and some two years after that, the competition run and won, and building complete, the monument site was officially opened at Magna Carta Place, appropriately on (Archbishop Stephen) Langton Crescent in Parkes, by then Prime Minister John Howard on 26 September 2001.²

My personal involvement with the project involved preparation of the text for six bronze panels comprising a key element of the monument, and the choice of accompanying visual material. A big project on this scale could only materialise if it had a sponsoring private organisation willing to provide additional financial support to complement the Commonwealth’s contribution—and that group, the Australia–Britain Society, did assert itself confidently in the whole process, led by its President, the imposing Mrs Marjorie Turbayne MBE OAM. Those selected to represent the Society in discussions proved to be formidable advocates.

It is fair to say that those same Society representatives, and Mrs Turbayne, would never want to be regarded as social and cultural progressives. Not surprisingly, our discussions concerning the textual/visual material for the monument proved to be, in a word favoured by former Prime Minister Howard, ‘robust’ indeed. In my roles as NCA Cultural Adviser and in-house historian, I was determined to ensure that the history panels featured in the monument’s inviting open green space not only engaged with the Australian context, but made it the central narrative element. Canberra’s Magna Carta commemoration was not going to be yet another ill-informed Great Charter hagiography exercise, a lazy birthday puff-piece of the kind that has too often featured throughout the Western world over the past few hundred years.

I am pleased to note that the end result for our Magna Carta Place was an intelligent, scholarly and accessible set of text panels, the wording supplied by John Williams, these days Professor John Williams, Dean of Law at the University of Adelaide—with whom I did two Melbourne University Press books some years ago: *Makers of Miracles—The Cast of the Federation Story* (2000) and, in close collaboration with our mutual dear friend, the late Dymphna Clark, a volume called *The Ideal of Alexis de Tocqueville* (2000), a first publication, a jointly edited publication, of Manning Clark’s 1940s thesis on Tocqueville.³

2 National Capital Authority, ‘Design competition guidelines for Magna Carta Place, Canberra, Australia’, August 1999; Prime Minister John Howard, ‘Address at the opening of the Magna Carta monument, Canberra’, 26 September 2001, pmtranscripts.dpvc.gov.au/release/transcript-12382.

3 David Headon and John Williams (eds), *Makers of Miracles—The Cast of the Federation Story*, Melbourne University Press, Carlton South (Vic.), 2000; Dymphna Clark, David Headon and John Williams (eds), *The Ideal of Alexis de Tocqueville—Manning Clark*, Melbourne University Press, Carlton South, Vic., 2000.

John Williams, I knew, was the right choice for the Magna Carta/Canberra job, and he did his work with dedication. The only hitch in the process that I can recall concerned the reproduction of an image of Tasmanian Supreme Court judge, Andrew Inglis Clark, now widely recognised as the primary author of the Australian Constitution. The representative of the Australia–Britain Society with whom I was dealing objected to Inglis Clark’s image being used at all, as he had only just found out that Inglis Clark was—shock, horror!—a republican. Discussion of the objection was polite if firm, and I am pleased to say that it concluded with Clark taking his place amidst the splendid Magna Carta collage of relevant images on the monument’s east-facing wall. If you have not yet seen the site, it is definitely worth a visit. I should also record, perhaps as a postscript to the entire experience, that the final text for the six panels produced no substantive disagreements at all. I was pleasantly surprised.

Before discussing the text that appears on the various panels, and the related speeches and written material that accompanied the September 2001 monument opening, there is a need for a broader context in which to place this distinctively Australian material. A short summary of Magna Carta’s global reception over eight centuries will assist, and in providing it I acknowledge my reliance on the work of two experts of recent decades: Britain’s Lord Sumption, quoted at the outset, and the Australian Senate’s own Harry Evans, the late Harry Evans, a fine historian who was never afraid to go public on matters of principle and concern.

In his recent British Museum speech, Jonathan Sumption summarises Magna Carta’s historic reception with characteristic bluntness. Like many commentators over the last hundred years, he enlarges on two contrasting schools of thought: firstly, the ‘lawyer’s view’, Magna Carta as ‘a major constitutional document, the foundation of the rule of law and the liberty of the subject in England’, a view adhered to by historians up to about the time of Australian Federation, a view which became emboldened over time as it developed into the ‘myth’ of Magna Carta (making an important contribution to the entrenchment of British exceptionalism during the expansion of Empire); and secondly, what Sumption proposes as the ‘historian’s view’, first articulated in numbers in the early years of the twentieth century, a view ‘which has tended to emphasise the self-interested motives of the barons and has generally been sceptical about the charter’s constitutional significance’.⁴

Until the early twentieth century, most commentators were quite content to ratify the myth, first and famously promoted by Sir Edward Coke with his gaze firmly on charters, statutes and year-books. The same myth was embraced by, amongst others, the early American colonists, and afterwards developed with zealous intent by their Revolutionary descendants. Coke’s narrow emphasis on legal sources, with no regard for cultural context, would eventually be challenged when English historians such as the Oxford academic Edward Jenks, in 1904, and soon after the

4 Sumption, *op. cit.*, p. 1.

likes of W.S. McKechnie and Maurice Powicke, exposed an array of Magna Carta misconceptions. The Great Charter was shown to be a deeply conservative, dated document. As Sumption deftly summarises, where Magna Carta is concerned there ‘are no high-flown declarations of principle. No truths are held to be self-evident. Indeed, there are hardly any provisions that can be called constitutional at all’. Magna Carta, he concludes, ‘guarantees very little’.⁵

Though he makes no attempt to highlight the point in his iconoclastic British Museum speech, Lord Sumption does engage with a distinct third school of thought: namely, those who acknowledge that Magna Carta matters all right, but not, as he puts it:

... for the reasons commonly put forward. Some documents are less important for what they say than for what people wrongly think they say. Some legislation has a symbolic significance quite distinct from any principle which it actually enacts. Thus it is with Magna Carta.⁶

Canvassing the same broad issues as Sumption though approaching them in an entirely different way, Harry Evans, in a trenchant paper entitled ‘Bad King John and the Australian Constitution’ (presented in the Australian Senate’s Occasional Lecture Series in 1997⁷), expands on the myth-making school which, as he points out, reached a crescendo of intensity in the eighteenth and nineteenth centuries when the charter was routinely referred to as ‘the palladium of English/British liberty’.⁸ Harry can’t resist instancing arguably the most publicised sceptic, Oliver Cromwell, a frustrated Oliver Cromwell, who was ‘very rude’ about Magna Carta—a restrained allusion by the Australian to Cromwell’s oft-quoted, Chaucerian reference to Magna Carta as ‘Magna Farta’.

More purposefully, Evans also maintains that Magna Carta’s ultimate significance ‘is not dependent on its content’⁹, and it is this line of enquiry—this third school of thought—that I intend to track for the rest of the paper, within an Australian context. Evans concentrates his attention exclusively on the charter and its covenant traditions, keen to explain the explicit combination of these two traditions in the Australian example. I too want to explore some of the revealing ways in which Magna Carta has been applied within the unique Australian setting, past and present.

Magna Carta surfaced as a political and cultural reference point in Britain’s southern colonies on a number of occasions in the nineteenth century—in 1848, for example, when Henry Parkes’ Constitutional Association took root; in the following year, 1849,

5 *ibid.*, pp. 2–3, 8, 17.

6 *ibid.*, p. 17.

7 Harry Evans’ lecture, presented in the Department of the Senate’s Occasional Lecture series in 1997, is republished in: *Australia’s Magna Carta*, 2nd edn, Department of the Senate, Canberra, 2015.

8 Evans, *op. cit.*, p. 47.

9 *ibid.*, pp. 48, 50.

when the anti-transportation debates in New South Wales ignited; in 1853–54, as William Charles Wentworth precociously promoted a hereditary New South Wales Upper House (a sort of home-grown House of Lords); and, not surprisingly, in the 1890s Federation debates. But easily the most striking nineteenth-century example of the charter's persistent application to an Australian setting found voice as the result of what took place in Ballarat, on 3 December 1854, when the short-lived Eureka rebellion reached its tragic conclusion.

The most famous invocation of the charter within the Eureka narrative, and there were many, is that by an American, Samuel Clemens, Mark Twain, who visited our shores in 1895 as part of a world tour that he turned into a memorable work of non-fiction entitled *Following the Equator* (1897).¹⁰ The book is replete with acute observations concerning the human condition, as the mature Twain grew steadily more pessimistic about life in general. However, where Australia is concerned, he outdid himself with a remarkable series of comments on subjects as diverse as Aboriginal lore, the promise of early Australian literature, black/white relations, kookaburras, dingoes and the Melbourne Cup. Remember, Twain visited in 1895, whereupon he described Cup Day, only thirty-odd years after the first Cup had been run, as 'the Australasian National Day'. He mused that it 'would be difficult to overstate its importance', because Melbourne's Cup race:

... overshadows all other holidays and specialized days of whatever sort in that congeries of colonies. Overshadows them? I might almost say it blots them out ... Cup Day, and Cup Day only, commands an attention, an interest and an enthusiasm which are universal ... Cup Day is supreme ... I can call to mind no specialized annual day, in any country, whose approach fires the whole land with a conflagration of conversation and preparation and anticipation and jubilation. No day save this one; but this one does it.¹¹

With this year's Melbourne Cup to be run on Tuesday, four days away, and with 'popular culture' part of my brief, I felt I simply had to find room for the specialised annual day somewhere.

Despite spending only a few months in Australia, Twain twigged to many of the subtle nuances of Australian history, for which he provided this exquisite summation:

Australian history is almost always picturesque; indeed, it is so curious and strange, that it is itself the chiefest novelty the country has to offer, and so it pushes the other novelties into second and third place. It does not read like history, but like the most beautiful lies. And all of a fresh new sort, no mouldy old stale ones. It is full of surprises, and adventures, and

10 Mark Twain, *Following the Equator*, 1897; republished by Beaufoy Books (John Beaufoy Publishing Ltd), Oxford, 2010.

11 Twain, *op. cit.*, p. 112.

incongruities, and contradictions, and incredibilities; but they are all true, they all happened.¹²

Twain certainly understood Eureka's potential national significance into the future, enthused by the prospect of having lighted upon another America in the south. 'Eureka', he writes, was simply:

... the finest thing in Australasian history. It was a revolution—small in size, but great politically; it was a strike for liberty, a struggle for a principle, a stand against injustice and oppression. It was the Barons and John, over again; it was Hampden and Ship-Money; it was Concord and Lexington; small beginnings, all of them, but all of them great in political results, all of them epoch-making.¹³

The Great Charter recruited for service once again, this time with a fresh New World application.

In a book on Eureka about to be published by The Federation Press, *Eureka: Australia's Greatest Story*, historian Paul Pickering discusses the mood in the colony of Victoria before and after the Eureka rebellion, as well as the reaction to Eureka amongst liberals in England. He cites writers in both countries who, trying to understand the details of the tragic event, consciously invoked the Great Charter as a moral reference point. Pickering concludes that 'Magna Carta itself could be pressed into service in defence of lawful rebellion'.¹⁴ Mark Twain's assertion has had plenty of support over the years.

Fast-forward exactly one hundred years after the publication of *Following the Equator*, to Magna Carta Place, Canberra, on 12 October 1997, when the Hon. Sir Gerard Brennan, Chief Justice of the High Court of Australia, delivered an address at the naming ceremony for Magna Carta Place, some four years before the finished product would be opened to the public.

While first providing his audience with an obligatory history lesson on Magna Carta, Chief Justice Brennan made his own thoughts on the charter's contemporary relevance crystal clear. The original text itself was seriously dated. Far more important was what he called 'the beneficial misinterpretations ... with which, from age to age, the text has been invested'.¹⁵ He asserted that Magna Carta today was regarded as 'a traditional mandate for trial by jury, equal and incorrupt justice for all, no arbitrary imprisonment

12 *ibid.*, p. 116.

13 *ibid.*, p. 166.

14 Paul Pickering, '“Who are the Traitors?”: rethinking the Eureka Stockade', in David Headon and John Uhr (eds), *Eureka—Australia's Greatest Story*, The Federation Press, Annandale, NSW, 2015, p. 78.

15 The Hon. Sir Gerard Brennan, 'An Address on the Occasion of the Naming of Magna Carta Place, Langton Crescent, Canberra', 12 October 1997, www.hcourt.gov.au/assets/publications/speeches/former-justices/brennanj/brennanj_magna.htm.

and no taxes without Parliament's approval'. But it is his conclusion that resonates profoundly, and uncomfortably, in 2015:

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 power and privilege do not produce tyranny and oppression. It matters not that this is the myth of Magna Carta, 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.¹⁶

Professor John Williams' carefully chosen words for the monument panels, while not quite matching the eloquence of Chief Justice Brennan, nonetheless formulate the same argument. He describes Magna Carta as 'the people's touchstone, an enduring legacy of humanity's determination to protect fundamental human rights and human dignity'.¹⁷ Brennan and Williams are on the same moral and ethical page.

Prime Minister Howard spoke at the September 2001 opening, contributing to what I consider to be a milestone moment in the history of the Great Charter's unfolding Australian story. Mr Howard spoke a bare fifteen days after the horror of 9/11. As one might expect, he made reference to 'the assault' by the terrorists on 'those principles and those freedoms' that the Australian and British peoples stood for, including freedom from arbitrary arrest, opposition to detention without trial, and the right of all people charged with crimes to be judged by their peers according to the evidence available.¹⁸

The day before the monument opening, former *Canberra Times* editor, Ian Mathews, wrote an article for the newspaper under the heading: 'The betrayal of a cornerstone of justice and fairness'.¹⁹ The piece was intentionally placed to anticipate the content of the Prime Minister's Magna Carta address the next day, Mathews taking the Prime Minister to task as someone actively eroding the ethos of Magna Carta. He cited as evidence of his assertion recent migration laws, the Tampa case, and what he described as the Prime Minister's determination to acquire more power for the executive at the expense of judicial review through court action. Mathews quoted the Tampa judgment of Federal Court Justice Anthony North, including the judge's specific reference to Magna Carta and his several references to 'ancient rights'. Mathews, too, enlists Magna Carta for his argument, accusing the Howard

16 ibid.

17 Text for panels at Magna Carta Place, Langton Crescent, Canberra.

18 Howard, op. cit.

19 Ian Mathews, 'The betrayal of a cornerstone of justice and fairness', *Canberra Times*, 25 September 2001.

Government, and along with it the Labor opposition, of a ‘betrayal of Magna Carta’s principles’. His understanding of the Great Charter’s contemporary relevance is captured in one uncompromising sentence: ‘What distinguishes [Magna Carta] as a document of worth is its attempt to set down the parameters of fairness’. For Ian Mathews, in 2001, both sides of the Australian Parliament had failed the test of fairness.

In the fourteen years since the Magna Carta monument’s opening, neither the Coalition nor the Labor Party, when in government or opposition, has passed the fairness test where the treatment of refugees and asylum seekers is concerned—nor, it must be added, has a majority of Australians. During this period, fairness has not been one of the ‘deepest aspirations’ of the Australian people. Our governments have failed the test; as a nation, we have failed the fairness test. Sadly, a community that Chief Justice Brennan discussed with such pride in 1997 has lapsed into a society where anxiety and fear have replaced confidence and compassion. As bad as the human rights record in Australia was in the decade following 9/11, a subject exhaustively documented in a number of books, recent years have been even worse.

Yet there may be some small glimmers of hope beginning to appear at last. When Australia’s Race Discrimination Commissioner, Tim Soutphommasane, responded to the quashing of the proposed 18C changes to the Racial Discrimination Act, he opted for the high moral road in his comments, noting that the undignified debate has united Australians in one sense: ‘There has been an emphatic affirmation of our commitment to racial tolerance’.²⁰

And perhaps this is where I should conclude discussion of a few select chapters in Australia’s Magna Carta story, as the page starts to turn again: with a new Prime Minister and a population which, according to the most recent polls, has dramatically shifted from being overly pessimistic about the future in the first months of 2015, to an endorsement of the potential impact of a new Prime Minister based in part on the fact that he has ‘a clear vision for Australia’s future’.²¹ That vision must incorporate a rediscovery and reassertion of the country’s moral compass, its moral bearings, so that we never again have to endure offensive three-word slogans masquerading as government policy.

I take it as a promising sign that, as reported in the *Canberra Times* on the 27 September 2015, the Australian delegation to the United Nations General Assembly in New York received a warm response to the shift in national leadership: ‘Doors

20 Tim Soutphommasane, ‘PM bows to public opinion’, *Canberra Times*, 7 August 2014.

21 See Mark Kenny, ‘Voters fault Abbott as new PM shines in the poll’; Peter Hartcher, ‘Turnbull rides high in popularity stakes’; and ‘Tide turns’, all in *Canberra Times*, 19 October 2015, p. 5.

that were recently firmly closed, have mysteriously swung open'.²² For the 800th anniversary year of Magna Carta, let us hope that this refreshing development is a metaphor applying to the corridors of federal government in Australia, and to the homes and hearts of the Australian community.

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Rosemary Laing — Thank you very much to all our speakers today. We have probably got less time left than we had hoped but we had the idea of closing the session with questions and comments, including a number of perhaps personal stories from the audience in relation to their own encounters with Magna Carta. I wonder if we could perhaps start that off with our Parliamentary Librarian, Dianne Heriot, who has a very interesting addition to Professor Nicholas Vincent's paper in our booklet *Australia's Magna Carta*, and to his translation of the 1297 Magna Carta into modern English.

Dianne Heriot — As Rosemary mentioned, I am the Parliamentary Librarian, which is a great honour and a great joy to me, but my first encounter with the Magna Carta was as a young student at the wonderfully named Pontifical Institute of Mediaeval Studies at the University of Toronto. As part of my exam prep, I prepared for my current role by transcribing and translating the 1215 and 1297 texts of Magna Carta driven, I must say, not by a passionate interest in the evolution of the rule of law, but by an equally passionate interest in the evolution of feudal taxation systems and customary dues. All of which were occasioned by the fact that my name, Heriot, is in fact the term for a medieval death duty.

As I worked, clause by clause, through those two versions of Magna Carta, I was struck by three things. One was how much had gone missing between 1215 and 1297 in terms of specific clauses addressing contemporary grievances. The second issue was how little what was said in Magna Carta was ever talked about. People who talked about Magna Carta seemed to go much more, as our learned speaker said, with 'the vibe'. The third was that, despite all the focus on the barons, the role of the church and the significance of Magna Carta in the tussle between the papacy and the English Crown was perhaps one of the more interesting stories.

All this was, of course, but an early preparation for my work earlier this year when I set about the task of transcribing and retranslating the Parliament's own copy of Magna Carta to find, to my delight, that we had missed two lines. The two lines, ironically, were about the inability of the king to continue to randomly attribute fines to churchmen. It stipulated that churchmen would suffer fines based on the degree of their delinquency and on their own personal wealth rather than upon the wealth of their benefice or their office.

22 Nick O'Malley, 'Closed doors open under new PM', *Canberra Times*, 27 September 2015, p. 11.

Rosemary Laing — Thank you. What a legacy that is, to find the missing lines in Australia's Magna Carta.

Anthony Heiser — I am the Vice-President of the Canberra Fisherman's Club. Everyone here enjoys a public right to go fishing in all tidal waters in Australia, except the Northern Territory. Not many pastimes enjoy that legal status. I have been interested in this topic since my university days. My understanding is that Magna Carta has contributed to the recognition of this right. I have never quite put my finger on it, but I believe there are two things. Clause 33 called for the removal of fish weirs, which were huge fish traps in the Thames and other waterways. Since the thirteenth century, judges and courts have written that Magna Carta somehow stopped the king from granting private fisheries but I cannot find anywhere in Magna Carta that actually says that. While I was waiting I did some more reading and it might have been that allowing people to fish in tidal waters was to ensure that they could meet their religious needs of eating fish.

Rosemary Laing — Very interesting. Anthony, I believe you wrote an article this year for the Canberra Fisherman's Club on Magna Carta and fishing rights, which I am sure you can google. Thank you, Anthony.

Comment — Just a couple of observations on how far I feel we have deviated from Magna Carta. I will start off with the inscription on the conference pencil, 'To no one will we sell, to no one deny or delay right or justice'. Justice, unfortunately, as a result of resource restraints, is rationed and we are in the situation where we can have as much justice as we can afford. When we look at point one on the rule of law, 'All persons and organisations are subject to and accountable to the law', well it looks like our government, as mentioned already, has no accountability to anybody as far as law is concerned, either in national law or international law. If we look at the final three points we see that all those points are completely overridden by the anti-terrorism legislation—60 individual pieces of legislation altogether—which deprives people of their liberty and the right to habeas corpus. The only convergence I see with Magna Carta and the present day is that the warlords and the barons continue to exist in the form of the plutocrats on whose behalf and benefit legislation is implemented these days.

Rosemary Laing — I think we will take that as a comment. Let me also stress the importance of organisations like the Rule of Law Institute of Australia and indeed the Australian Senate in acting as watchdogs on the exercise of executive and other power.

James Bayston — My dad was the scientist, or part of the team anyway, who was responsible for preserving the Magna Carta using argon gas. I remember the burden that he carried to do this job over a period of eight years. I believe he was very much involved, on his own really, in trying to solve this problem of preserving the document.

Rosemary Laing — Thank you, and thank you to your father for all those years of work to make sure that our Magna Carta will be preserved long beyond the time of any of us.

At the New South Wales History Council conference in May this year at the State Library in Sydney, I was also delighted that a person in the audience stood up and said, ‘Well my dad made the wooden case that Australia’s Magna Carta is housed in’. So we have been able to identify not only some of the story of how Australia’s Magna Carta came here but also, at a very practical level, we have had translators and we have had people working hard to preserve the physical object. I think also today at this conference we have been able to demonstrate how, through scholarship and the study of so many people that we have, 800 years later, something enduring, whether it is a document, whether it is a vibe, whether it is a set of ideas, whether it is an inspiration to the kind of society we all aspire to.

On that note I would like to thank you all so very much for coming today. I think it has been a fabulous day with many stimulating papers that I hope we will have an opportunity to sit down later and read and savour. To all of our speakers, thank you so much. It has been a really wonderful day. I also thank all of you, the audience, for making it a wonderful day.