

AN ADDRESS ON THE OCCASION OF THE NAMING OF MAGNA CARTA PLACE LANGTON CRESCENT,  
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12 October 1997 The Hon Sir Gerard Brennan AC KBE

Chief Justice of Australia.

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

There are three factors which make today's occasion significant. The first is that the Barons' particular grievances against the King were extended to include provisions of potential benefit to a wider segment of the people. These ameliorating and beneficial provisions were largely the work of the Archbishop of Canterbury, Stephen Langton, whose election John had refused to confirm and whom he kept out of the Kingdom for years until 1213. It was Langton who brought the precedent of a Royal Charter to the notice of the Barons<sup>1</sup>; it was Langton who looked beyond the interests of the Barons to the protection of the people<sup>2</sup>. How appropriate it is that Magna Carta Place should be dedicated in a site bounded by Langton Crescent.

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

On this day 12 October in 1297, the Royal Seal of Edward I was affixed to inscribed and attested copies of Magna Carta. They were distributed throughout the land to implement Edward's confirmation of the Charter. By letters patent, he directed his justices to administer the Charter as common law. No judgments were to be given henceforth that were contrary to the Charter - else they would be "undone and holden for naught"<sup>3</sup>. Magna Carta, whether as common law or statute, entered the law of the land and, as part of the law of England from that time forward, became part of the law of all those Imperial colonies and possessions to which English law was carried. It is Edward's confirmation of the Charter - of the 1225 re-issue, not of the 1215 original - which is of greatest significance in the history of our institutions. It is this event that we commemorate today, the 700th Anniversary of its occurrence. In the Parliament building, close by, there is one of Edward's sealed copies of the Charter intended for the County of Surrey. That copy and this Place will be tangible reminders of the origin and centuries of growth of the constitutional principles which inform our national life.

The third significant factor is not the text itself but the beneficial misinterpretations - indeed, the myth - with which, from age to age, the text has been invested. Four centuries after the Charter was granted, Sir

Edward Coke called it "the Charter of Liberty, because it maketh freemen."<sup>4</sup> This is not the occasion to rehearse the textual or historical support for all that has been said about the Charter. Today it is regarded as providing a traditional mandate for trial by jury, equal and incorrupt justice for all, no arbitrary imprisonment and no taxes without Parliament's approval. It does not matter that the text is seldom invoked in today's courts. At base, the importance of Magna Carta is that it contains the principle that the King, like all his subjects, is subject to the rule of law. On the doctrine that government, as well as the governed, is subject to the rule of law, depends every step in our constitutional progress.

Above all, Magna Carta has lived in the hearts and minds of our people. It is an incantation of the spirit of liberty. Whatever its text or meaning, it has become the talisman of a society in which tolerance and democracy reside, a society in which each man and woman has and is accorded his or her unique dignity, a society in which power and privilege do not produce tyranny and oppression. It matters not that this is the myth of Magna 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.

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

<sup>1</sup>Holdsworth, *History of English Law* , vol 2 at 210.

<sup>2</sup>ibid at 304.

<sup>3</sup>Allan, "Magna Carta - An English Masterpiece" (1987) 21 *Law Society Gazette* 120 at 123.

<sup>4</sup>G Hindley, *The Book of Magna Carta* (London: Constable, 1990) at 189.