INTRODUCTION

In a book review published in 2003, Holt lamented that 'Magna Carta seems no longer to be an active field of study.'[1] The only exceptions he noticed were David Carpenter's proposed revision of Holt's dating of the document itself,[2] and Richard Helmholz's attempt to demonstrate that contemporary Roman and Canon law – the *ius commune* – had heavily influenced its drafting.[3] Great works of historical scholarship can indeed have the unintended consequence of closing down debate, because they seem so self-evidently right that there appears to be nothing more to be said. But Holt's gloom was premature.

Justice and Jurisdiction

In truth, a major stimulus for activity was Holt's second edition of his *Magna Carta*, which appeared in 1992.[4] He had once considered a clause-by-clause commentary, but rejected the idea because 'it soon became apparent that this would require almost encyclopaedic bulk.' Instead the thematic structure remained. There was some limited rewriting of the main text and also changes in the appendices. Some appendices remained unmodified, but others were extended, and others still were new. Several included forceful reassertion of Holt's earlier opinions, as criticisms were met not with solid defence but rather with characteristically pugnacious drives back past the bowler.[5]

By far the most significant change, though, was the inclusion of a lengthy and very detailed new chapter entitled 'Justice and jurisdiction'. The chapter's first sentence presents it as supplementing those on 'Privilege and liberties' and 'Custom and law': 'These matters must now be set in a jurisdictional framework; for men wove their political theories from

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[1] *E.H.R.*, CXVIII (2003), 988-9.
[2] Carpenter (1996a).
[3] Helmholz (1999).
[4] For changes from the first edition, note Holt (1992), pp. xiii-xiv.
[5] See esp. Appendices nos 1, 9, 10 [cf. Holt (1965), Appendix no. VI]. Appendix no. 2 prints a new document significant for the analysis of aids; no. 7 discusses translations of the Charters, on which Holt had written since the first edition – see Holt (1974); no. 14 discusses grants in perpetuity. The discussion of the manuscripts of the Charter and their drafting is modified in Appendix no. 6; for further discussion of these subjects, see below, p. 000. The discussion of 'the Twenty-Five' in Appendix no. 8 [Holt (1965), no. V] is extended because of the discovery of a further relevant text by Christopher Cheney; see also the paragraph added at Holt (1992), pp. 345-6. For further examples of re-writing and additions within the main text, see e.g. Holt (1992), pp. 10-12, cf. Holt (1965), pp. 9-10. The second edition also made some minor changes, for example to the spelling of names (e.g. Eustace de Vesci in the first edition, Eustace de Vescy in the second).

words first spun in legal contexts.'[6] The chapter therefore reinforces Holt's determination to explain Magna Carta and its contents through their context.[7] The first edition had already shown great and necessary concern with royal provision of justice, especially but not exclusively in Chapter 4 on 'Custom and law'.[8] However, the new chapter displayed a marked change in emphasis. In it Holt stated that

> The crisis of jurisdiction which occurred in the years either side of 1215 has been explained traditionally in personal terms: King John undid the good work of his father. … Such an explanation, in which the supposed psyche of the king is derived from the very facts it is supposed to explain, will not do. The king's personality mattered. The inadequacy of jurisdictional structure and legal procedure mattered much more.[9]

If the argument of Chapter 4 focuses on the personal role of John and the quality of the justice which he provided,[10] that of the new Chapter 5 concentrates on a structural problem: the weak position of the tenants-in-chief resulting from their lack of access to the new routine remedies that the Angevin legal reforms had provided for all other free landholders:

> It has long been recognized that the cry for justice in 1215 exhibited some very peculiar, apparently contradictory features. On the one hand the Charter demanded that royal justice should be more accessible and better administered. On the other, it forbade unlawful arrests and disseisin, the sale or delay of justice, and it promised restitution for unjust fines and amercements. Apparently men wanted more but were not altogether pleased with what they had. This contrast is striking and is to be explained by another. The common law of the Angevins gave the undertenant the

[6] Holt (1992), p. 123.
[7] See e.g. Holt (1992), p. 21 [= Holt (1965), p. 18].
[8] Outside Chapter 4, see e.g. Holt (1992), pp. 28-30, 32, 201-2, 323-32 [= Holt (1965), pp. 23-5, 27, 116-17, 223-30].
[9] Holt (1992), pp. 179-80.
[10] There are places in other chapters where the structural argument might have been made but was not; see e.g. Holt (1992), pp. 83-4, 112-13, 121, 303, 323-4 [= Holt (1965), pp. 70-1, 95-6, 103, 206, 223-4]. At Holt (1992), p. 117 [= Holt (1965), p. 100] the distinction made is chronological rather than tenurial: John 'might be condemned as an innovator, but not his father. … Magna Carta left much of Henry II's work untouched.' In the second edition Chapter 4's emphasis on the judgement of the king's court has, of course, to be read in the light of the new chapter's emphasis that the king's court is one with no superior, removing the opportunity for the disappointed party to look to another court with a claim of default of justice.

> opportunities and protection of varied routine procedures. But it left the tenant-in-chief still exposed to the vagaries of the king's will. This is the clue to the judicial provisions of the Charter.[11]

John's interest in judicial matters remains relevant, as does the quality of justice that he provided, but the focus on structure reveals the particular jurisdictional framework within which John treated the tenants-in-chief: structural asymmetry allowed, perhaps required, personal involvement.[12]

The germ of the new chapter's central argument can be found in the first edition, with reference to

> the ultimate unwillingness of the Crown to submit itself to conventional or enacted rules similar to those it was imposing on others. … 1215 marked the decision to demand from the Crown that regularity of procedure and treatment which barons, knights and townsfolk had come to expect and had been led to accept in their dealings with each other.[13]

Yet, unlike the preceding quotation from the new Chapter 5, the paragraph in which these statements appear is not permeated with the language of lordship or of tenure. This may be a clue as to the origin of the emphatic argument of the new chapter, the need that Holt felt for its inclusion. If the anomalous position of the king as lordless lord was present in J. E. A. Jolliffe's *Angevin Kingship*, the process whereby it emerged was revealed in S. F. C. Milsom's *Legal Framework of English Feudalism*, published in 1976.[14] The *Legal Framework* argued that the Angevin reforms destroyed the sovereignty of the honorial lordship, through the routine provision of royal actions available to all free tenants. Only one lordship remained sovereign, that of the king. Now the text of the second edition of *Magna*

[11] Holt (1992), p. 123.
[12] See e.g. Holt (1992), pp. 180-1 (the passage quoted above – 'The crisis … much more' is followed by the statement that 'Yet in one matter the traditional account comes close to the facts. Whatever his influence, malign or not, King John took a close personal interest in the supervision of justice. Whatever the inadequacies of the system, he certainly jolted it.'); also pp. 186-7.
[13] Holt (1992), p. 35 [= Holt (1965), pp. 29-30].
[14] There is no reference to Jolliffe in the new chapter; for references to Jolliffe's *Angevin Kingship* elsewhere in the book, see Holt (1992), pp. 81 n. 27, 95 n. 94 [= Holt, (1965), pp. 68 n. 2, 80 n. 4]. The extent of Jolliffe's influence on Milsom is uncertain, although *Angevin Kingship* is one of the small number of secondary works that appear in the footnotes of *The Legal Framework of English Feudalism*, at p. 25 n. 1.

Carta does not provide any clear proof of the influence of Milsom on Holt. There is one footnote reference to the *Legal Framework* added in Chapter 4, two in Chapter 11, and six in the new Chapter 5.[15] Almost all refer to specific points rather than to Milsom's broader arguments. Instead, proof of influence must come from remembered conversations, as when Holt firmly told a first-year DPhil doctoral supervisee early in 1985 that *Legal Framework* was 'the most important book since Stenton's *First Century*.' Or from comparison between his article on 'Politics and Property' published in 1972 and his Royal Historical Society Presidential Addresses published in 1982-5, together with a brief discussion in a note added to the 1997 reprint of 'Politics and Property' in his *Colonial England*.[16] Or from the very language of Chapter 5. Within the common law 'there still remained the king's jurisdiction over his immediate vassals. … It was primitive, and its essence was lordship.'[17] The resemblance to Milsom is obvious, and there is a further echo in the following statement: 'To call this [jurisdiction] feudal is to use a word to which there are now fashionable if misdirected objections.' Such may not be absolute proof of influence, but as Milsom says at the very start of the *Legal Framework*, 'there will be no more evidence for the most important lines in your picture than that they fit with the demonstrable detail. They are either obvious or wrong.'[18]

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[15] Chapter 4: p. 105 n. 146 (descent and tenure); Chapter 5: p. 128 nn. 22, 24, p. 132 n. 43 (Milsom on the disciplinary origins of novel disseisin), p. 142 n. 78, p. 150 n. 111, p. 161 n. 166; Chapter 11: p. 383 nn. 15-16. White (1974) may have prompted some initial thoughts, and was taken very seriously in the rejoinder by Holt (1974b); the choice of extract to reprint in Holt (1997) is significant of the weight Holt attached to White's piece. Note further Holt (1992), p. 123, on legal developments under the Angevins and the minority of Henry III: 'the protection of the law moved up, not down, the social scale'; cf. Holt (1974b), 133, primarily on the preceding period and defending the position in Holt (1972b): 'it would be hazardous to assume that the apparent logic of the terms of enfeoffment at a particular feudal and social level may be used to define rights of inheritance in general. To be sure, one level infected another; the provisions about relief, marriage, widowhood and wardship in the charter of liberties of Henry I were extended beyond the king to the conduct of his barons; but the infection moved down rather than up the feudal hierarchy and tended towards inheritance rather than against it.'

[16] Holt (1972b); Holt, (1974b); Holt (1982b, 1983, 1984b, 1985b); Holt (1997), p. 157, where the phrase 'It was written P.M. (pre-Milsom)' indicates the pivotal significance that Holt then attached to *Legal Framework*. The influence of Milsom on Holt may have subsequently declined somewhat, although again evidence is primarily anecdotal.

[17] Holt (1992), p. 127.

[18] Milsom (1976), p. 1.

Magna Carta, Holt argued, was a major step in correcting the structural anomaly that had arisen because of the Angevin reforms:

> By and large it approved of what the undertenant had enjoyed and condemned what the tenant-in-chief had suffered. Hence it sought to give the magnate a legal security like that enjoyed by the freeman. During the minority of Henry III this was largely achieved.[19]

Immediately after the settlement at Runnymede John made restorations to some of those tenants-in-chief who had suffered from his arbitrary actions, and cases went to the king's court.[20]

> The Twenty-Five [barons responsible for ensuring royal enforcement of the Charter's terms] probably played a large part in these cases. They were not conducting a revolution. The procedures followed were not new. All that happened is that routine processes governing seisin and right were introduced into the operations of the king's court.[21]

The minority of Henry III ensured that 'for ten years after John's death actions of right, disseisin, *mort d'ancestor*, the final concord became the standard currency of the court.'[22] 'The mechanism at the heart of these changes was the writ *praecipe*', in the form of the writ *praecipe in capite*. In this, 'the baron finally achieved a general writ of right, the first and the only one he ever had. … Its appearance in the eyre begun in 1218 set the seal on the victory of 1215.'[23] There are early signs of such a development in John's reign. Most significant is the appearance of a writ *praecipe* for lands of half a knight's fee or less in the Irish Register of Writs, which may be dated as early as 1210:

> The king to the sheriff, greeting. Command B. that, justly and without delay, he render to A. half a knight's fee … in N. which he claims to hold of the lord king for so much service … and whereof he complains that this B. has deforced him.[24]

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[19] Holt (1992), p. 123.
[20] Holt (1992), pp. 165-7.
[21] Holt (1992), p. 167.
[22] Holt (1992), p. 167.
[23] Holt (1992), p. 173.
[24] *Early Registers of Writs*, p. 2. Cf. such cases with ones where a plaintiff was claiming that he should hold in chief of the king but the king was retaining the land in demesne (the

However, Holt 'found no action between barons concerning a tenancy-in-chief defined in such terms' and concluded therefore that 'the *praecipe in capite* ... was a great unrecorded baronial victory that gave backbone to cap. 40 of the Charter', which specified that 'to no one will we sell, to no one will we deny or delay right or justice.'[25]

Holt's arguments in the new chapter received considerable criticism from David Carpenter in an article published in 1996 and entitled 'Justice and Jurisdiction under King John and King Henry III'.[26] The majority of the article and the most telling criticisms concern the reign of Henry III, where Carpenter convincingly shows that Magna Carta had less effect on controlling royal conduct of cases involving tenants-in-chief than Holt may have suggested. Regarding the writ *praecipe in capite*, Carpenter lays much greater emphasis than Holt on its presence in the Irish Register of Writs under John. Yet Carpenter admits that that writ in the Register was only routinely and cheaply available '*de cursu*' for cases involving half a knight's fee or less. He comments that 'such restrictions were attached to other writs in Ireland. Whether they also applied to *praecipe in capite* in England seems impossible to say.' Such is a major qualification, especially given the lack of plea roll evidence for cases described in such terms.[27] Nor does Carpenter examine the issue of lack of access to writs concerned only with seisin rather than right, writs such as novel disseisin and mort d'ancestor; these were at the heart of the Angevin reforms and of Holt's view of the structural problem of justice revealed by Magna Carta. Such writs do appear in cases that Carpenter cites from Henry III's reign, although again not leading automatically to routine procedure.[28] Carpenter's article therefore modifies our view of the context that produced Magna Carta rather less than our view of the Charter's impact. Despite the Charter, despite the minority of Henry III, the problem remained of what to do in cases of default of justice when the person defaulting was the king, the still lordless-lord.

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simplest form of 'vertical' case in Milsom's terms); this form of *praecipe quod reddat* was no help to the aspiring tenant-in-chief in the latter type of case.

[25] Holt (1992), p. 174 n. 218. As Holt admitted in a different context, it is possible that some writs *praecipe* were not described by that word in the plea rolls; Holt (1992), p. 142; Hudson (2012), p. 559.

[26] Carpenter (1996b). Carpenter does not interpret the new chapter as reflecting the influence of Milsom.

[27] Carpenter (1996b), pp. 21-3. It is notable that at p. 22 Carpenter goes on to argue that the point of real significance is that *praecipe in capite* did not produce routine procedure in litigation under Henry III; it is Holt's position on the contrast with Henry III's reign rather than the situation under John that is most forcefully under attack.

[28] Carpenter (1996b), pp. 26, 28, 31, 34.

In 1215 the solution had been the security clause and the appointment of the Twenty-Five.[29] Unfortunately the second edition's new chapter did not add an extended new discussion of the clause, and the Twenty-Five are mentioned only with regard to specific cases.[30] Elsewhere in the book Holt stated that execution of the provisions of the Charter 'was to be enforced by distraint, the customary method which all understood and used.'[31] Had he returned to the subject in the new chapter on Justice and Jurisdiction he might have pointed out that distraint lies at the very heart of what Milsom calls 'disciplinary jurisdiction', the means by which a lord enforced his lordship in relation to his men, by taking goods and lands. The security clause of Magna Carta in 1215 provided that if the king or his servants offended 'against anyone in any way, or transgress any of the articles of peace and security', should the offence not be redressed within forty days after due complaint and procedure, the case was to be referred to the Twenty-Five:

> and those twenty-five barons with the commune of all the land shall distrain and distress us in every way they can, namely by seizing castles, lands and possessions, and in such other ways as they can, saving our person and those of our queen and our children, until, in their judgement, amends have been made; and when it has been redressed they are to obey us as they did before.

Magna Carta thus provided the wrongdoing king with at least a temporary lord.[32] But the security clause was dropped from the re-issues of the Charter and therefore, as Carpenter has shown, the problem of the lordless lord failing to provide justice remained.

Continental context: Politics

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[29] Holt (1992), pp. 468-73 [= Holt (1965), pp. 332-7]. For an alternative version of the clause, note Holt (1992), pp. 345 [= Holt (1965), p. 241], 445.
[30] Holt (1992), pp. 166-7.
[31] Holt (1992), p. 272 [= Holt, (1965), pp. 179-80]; see also pp. 99, 343-5 [Holt (1965), pp. 84, 239-41].
[32] Hudson (2012), p. 852. Paradoxically, the 'commune of the land' was not only the quasi-lord created here but also the beneficiary of the Charter. It is conceivable that the barons and others had been encouraged in thinking about the issue of lordship over the king by John's surrender of the realm to the pope in 1213, his receipt of it back as a 'feodarius', and his swearing of homage to the pope for it. Some must also have been aware that the French king's seizure of many of John's Continental lands had received legal justification from John's failure to attend the court of the king of France, his lord, to answer complaints brought against him; see e.g. *Selected Letters of Innocent III*, pp. 60-2. Cf. the means of enforcement indicated in Continental grants of liberties, which take different forms, for example renunciation of fealty, resistance without accusation of treachery, and excommunication; see Holt (1992), pp. 78-9 [= Holt (1965), pp. 66-7].

If the new chapter introduced in the second edition focused very much on England, one of the distinctive features of Holt's *Magna Carta* more generally is its examination of Continental Europe to provide context and comparison for twelfth-century governmental developments, for early thirteenth-century English political events, and for the Charter itself.[33] Comparative exploration has not been taken much further,[34] but some recent work has considered the relationship between political events in southern France and Iberia and the crisis that John faced in England particularly from 1212.[35]

Prominent amongst these was the Albigensian Crusade. Holt's view was that there were significant parallels between the Statute of Pamiers of 1212 and the Charter of 1215 but no influence.[36] However, a picture of closer ties between the Crusade and developments in England can be sketched, one that might suggest possible direct links between the making of grants at Pamiers and Runnymede, if not between the precise contents, vocabulary, or structure of those grants. The leader of the Albigensian Crusade was Simon de Montfort, and the Dunstable Annals mention a rumour that baronial conspirators had chosen [*elegerant*] him as king of England.[37] The accuracy of this statement is uncertain, and the annalist puts it under 1210 whereas 1212 would be the correct year. Even if the statement is trustworthy and the rumour was true, there is no evidence that Simon knew of the choice, although his enmity with John is clear[38] as also is John's lack of support for the Crusade particularly in its first years.[39] However, connections between the Crusade and English opponents of John are certain. Hugh de Lacy rebelled against John and was expelled from his lands in England and Ireland in 1210. He was thereafter close to Simon de Montfort on the Crusade.[40] Perhaps still more significant is the presence on the Crusade of the Lincolnshire knight Walter

[33] See esp. Holt (1992), pp. 25-6 (the effect of war on other European grants of liberties), 75-80 (on liberties), 114-15 (on appeal to the situation under good old kings), 188-9 (on the impact of defeat at Bouvines), 272-8 (on the extent of grants of liberties), 284-6 (on churchmen's influence on grants of liberties) [= Holt (1965), pp. 20-1, 63-8, 97-8, 105-6, 180-5, 190-2].
[34] Note Vincent (2012), pp. 245-6.
[35] See Vincent (2012); Taylor (1999), on the relations between John and Innocent III in the context of the Albigensian Crusade; also Vincent (2002b), p. 75, on the significance of the battle of Muret.
[36] Holt (1992), p. 80 [= Holt, (1965), pp. 67-8]; Vincent (2012), pp. 245-8, is cautious on the likelihood of influence.
[37] *Annales monastici*, III, 33.
[38] See Taylor (1999), pp. 216-17, in particular on Simon's claim to the earldom of Leicester.
[39] Taylor (1999), Vincent (2002b).
[40] Taylor (1999), pp. 217-18; Vincent (2002b), p. 73; see also Power (2013), 1069.

Langton, brother of Stephen Langton, the archbishop of Canterbury whose importance to the Charter has been a matter of considerable and continuing debate.[41]

Such connections may persuade us to attach more weight to the Dunstable annalist's story, and even to consider the possibility of the king's opponents having knowledge that a written grant of customs had been made at Pamiers. The baronial leader Robert fitzWalter, too, must have known of the Crusade, as he fled to France in 1212.[42] Unfortunately we know little of his activities during his exile, although he was in touch with the king of France.[43] Nevertheless, one may speculate that the ideology of the Albigensian Crusade may underlie the title that fitzWalter was given in 1215, 'Marshal of the Army of God and of the Holy Church in England'.[44] It was a title with which Holt had little sympathy: he first called it 'imposing', then referred to it dismissively as 'the best title they could manage', and finally described it - in an addition to the second edition - as 'vainglorious and seditious.'[45]

Such condemnation may reflect Holt's generally secular assessment of 1215. Even if influence from the Albigensian Crusade, or crusading ideology more generally,[46] is rejected, Robert fitzWalter and his title do indicate the close links between some lay rebels, ecclesiastics, and the religious terms in which reform was conceived and presented. When Robert went into exile in 1212 it was with Gervase of Howbridge, a canon of St Paul's who was probably closely associated with criticisms of John's kingship.[47] Robert's restoration in 1213 was included as part of the settlement between king and Church.[48] And the title 'Marshal of the Army of God and the Holy Church in England' is mirrored in the opening of

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[41] Taylor (1999), p. 218; Vincent (2002b), p. 73. For a third brother, Simon Langton, see below, p. 000; the Langton family's connection to the events of 1215 may have been underestimated by debate focussing on the role of Archbishop Stephen.
[42] *Walt. Cov.*, II, 207; *Chron. Maj.*, II, 534; Holt (1961), pp. 82-3.
[43] Holt (1961), p. 88.
[44] See Holt (1992), p. 490 (agreement concerning London) [= Holt (1965), p. 342]; also *Chron. Maj.*, II, 586 (where Wendover omits the words 'in England'); and F. M. Powicke, 'The bull "Miramum plurimum" and a letter to Archbishop Stephen Langton', *E.H.R.* 44 (1929), 92, for letters of papal commissioners excommunicating Robert 'qui exercitus Dei se nominat marescallum'. Note also Cheney (1976), pp. 373-4.
[45] Holt (1992), pp. 226, 295-6, 346 [=Holt (1965), pp. 139, 200].
[46] For Wendover later projecting crusading ideas onto a proposed invasion of England by Philip Augustus in 1212, see *Chron. Maj.*, II, 536-7; Cheney (1948a) demonstrates that Wendover's account of these events is not to be trusted.
[47] *Rot. Litt. Claus.*, I, 165. See below, p. 000.
[48] *Selected Letters of Innocent III*, pp. 133, 161; *Rot. Litt. Pat.*, p. 101; F. M. Powicke & C. R. Cheney, *Councils and Synods* (Oxford, 1964), I, 34.

the Charter and in the beneficiaries mentioned in its first clause, passages that had not appeared in the Articles of the Barons:

> Know that we, from reverence of God and for the salvation of our soul and those of all our ancestors and heirs, *for the honour of God and the exaltation of the Holy Church* and the reform of our realm … in the first place have granted *to God* and by this our present charter have confirmed, for us an our heirs in perpetuity, that *the English Church* shall be free.

Stephen Langton and Theology

The Continental context within which Magna Carta has been discussed was not just political, and the book that Holt was reviewing in 2003 – Natalie M. Fryde, *Why Magna Carta? Angevin England Revisited* (Münster 2001) – has turned out, at least in one respect, to be prophetic. Fryde sought to resurrect Powicke's case, refuted by Holt, that Stephen Langton was the principal ideologue on the baronial side, that the archbishop applied the formidable book-learning of a Parisian university theologian to developing the case against John.[49] She argued that the most important theoretical influence on Langton was John of Salisbury, a view which has failed to find general favour. Yet although she did not know it, her renewed attribution of influence to Langton chimed in with a recent attempt, by Philippe Buc, to tease political lessons out of the scriptural commentaries and *quaestiones* of twelfth- and thirteenth-century theologians, including the colossal corpus of (largely) unedited manuscripts of Langton's scriptural and other commentaries.[50] That Langton was only one amongst many theologians considered in Buc's book, that it concentrated on his writings prior to his election as archbishop of Canterbury, that it failed even to mention Magna Carta, and that it was published in French, might all help to account for the tardiness of its impact on Anglophone scholarship relating to 1215. The honourable exception was David d'Avray, who quickly sketched the possible implications for Magna Carta, although he largely

[49] Fryde (1998) was a trial run for ch. VIII of her book.
[50] Buc (1994), pp. 43, 62, 66, 79, 99-101, 138-9, 143-5, 157, 168, 182, 187-93, 198, 251-2, 282-3, 294, 321, 329, 348-50, 361, 390-2; his '*Principes gentium dominantur eorum*: Princely Power between Legitimacy and Illegitimacy in Twelfth-Century Exegesis', in T.N. Bisson, ed., *Cultures of Power. Lordship, Status, and Process in Twelfth-Century Europe* (Philadelphia, PA 1995), pp. 310-28, summarised part of the book, but made only passing reference to Langton. For Langton's works, see R. Sharpe, *A Handlist of Latin Writers of Great Britain and Ireland before 1540, with additions and corrections* (Turnhout 2001), pp. 624-33.

confined his observations to Langton's role in the reissue of 1225. He did so because he considered only the views on royal taxation which Langton had expressed in his academic writings, and the reissue of 1225 was granted in return for the grant of a fifteenth of moveable wealth, whereas the original of 1215 had not been issued in return for any sort of levy.[51] Nevertheless, d'Avray clearly signalled that this approach to Langton's role as an intellectual in English politics had potentially wider implications. For instance, he followed Buc in emphasising the importance to Langton of I Samuel 10: 24, 25, where Samuel proclaimed the 'law of the kingdom' to Saul after Saul's acclamation as king, and 'inscribed it in a book, which he deposited in the presence of the Lord.' According to Langton, this law was to be identified with that in Deuteronomy 17. It provided the people's best bulwark against the wicked exercise of kingship.[52] It was pregnant parallels of this kind which led d'Avray to express the hope that 'this article will draw the attention of Magna Carta specialists to [Buc's] book.'[53] Perhaps it prompted Nicholas Vincent to notice the contrast which Langton drew between the kings of ancient Israel, such as Josiah, who took heed of the book of the law recorded in Deuteronomy, going so far as to rend his garments in anguished penitence, and modern kings who, if they bothered to listen to the word of God at all, did so only once a year, and slipped out of church before the sermon had even ended.[54] As with most of Langton's extant works, this commentary cannot be dated with any precision, so it is impossible to suggest which particular modern kings Langton might have had in mind. Elsewhere he denounced an (unnamed) English king for indulging so enthusiastically in the English national pastime of drunkenness that after dinner he was incapable not only of taking counsel, but even of speech.[55]

It was John Baldwin, unsurprisingly a specialist on the twelfth-century Parisian schools rather than English political history, who first took up d'Avray's invitation,[56] and presented Langton as a latter-day Samuel. He laid particular emphasis on the influence of Langton's probable tutor, Peter the Chanter, on his putative pupil. Peter would have imbued

[51] D'Avray (1997); cf. Buc (1994), pp. 260-72.
[52] For Langton's comments, see d'Avray (1997), 427-9, 437-8; Buc (1994), pp. 282-3.
[53] D'Avray (1994), 426 n. 9.
[54] Stephen Langton, *Commentary on the Book of Chronicles*, ed. A. Saltman (Ramat-Gan 1978), p. 200, discussed by Vincent (2010), p. 75; P.A. Linehan, 'Historiografia peninsular: el intellectual en la politica', *Actas XL Semana de Estudios Medievales, 2013: La Cultura en la Europa del siglo XIII, 2014* (Pamplona 2014), pp. 285-301, at 289.
[55] On Leviticus 10: 9: B. Smalley, '*Exempla* in the Commentaries of Stephen Langton', *Bulletin of the John Rylands Library*, XVII (1933), 121-129, at 126.
[56] Baldwin (2008).

Langton with the type of views which he indeed expressed – views which might be characterized as 'anti-monarchical'.[57] What this meant was a darkly Augustinian reading of the Old Testament account of the institution of kingship in Israel, granted by God to the Israelites in his wrath, and grounded in sin, but as such also a partial, providential remedy for sin.[58] The most important immediate source for these views was Peter Lombard's *Sentences*.[59] On these foundations Langton had occasionally gone so far as to suggest that the commands of a wicked king were not always to be obeyed. In certain circumstances subjects were not only obliged to disobey a legitimate king who ordered something unjust,[60] they must take action to thwart him. If, for instance, the king sought to kill someone unjustly and without any judgement having been passed in a court (*sine sententia*),[61] then those who were aware of the circumstances were obliged to liberate the potential victim.[62] It was the necessity of a judgement in court which was the decisive criterion for Langton.[63] If a king waged an unjust war, but on the basis of a judgement passed by a court, then his men must obey him even though the judgement was unjust. If a king besieged a castle in accordance with a judgement, however unjust, passed in court, then the people must not disobey him; if no judgement had been pronounced, then the people would not be disobedient if it failed to obey him.[64] These opinions are gathered from widely disparate bits of casuistry in Langton's huge corpus of commentaries; as is conventional in scholastic works of this kind, he did not expound them systematically or at length. And he obviously advances them at a high level of abstruseness – although, as Baldwin and others observe, contemporary events occasionally break into the theoretical ivory tower,[65] as they doubtless did as asides in Langton's

[57] Baldwin (2008), 813.
[58] Baldwin (2008), 813; see Langton on I Sam. 10: 24, cf. Os 13: 11, quoted by Buc (1994), p. 253 n. 39. Buc, pp. 356-67, detects 'democratic tendencies' in Peter the Chanter's justification for popular action against King David.
[59] Buc (1994), pp. 138-9.
[60] Baldwin (2008), 815.
[61] In contemporary canon law, *sententia* meant the binding decision of a court, or what is termed judgement in modern English: see, for instance, *Corpus iuris canonici*, *Liber extra* (= *X*) 2. 27. This might be synonymous with *iudicium*, but *iudicium* might also mean the whole judicial process rather than just its outcome. Much the same had been true in classical Roman law: A. Berger, *Encyclopedic Dictionary of Roman Law* (Philadelphia, PA 1953), *s.v.*. I should like to thank Magnus Ryan for his guidance on this nuance.
[62] Baldwin (2008), 817-18.
[63] Already noticed by Powicke (1928), pp. 94-5; Roberts (1968), pp. 123-30.
[64] Baldwin (2008), 818.
[65] Baldwin (2008), 818: 'The king of the French has an unjust war with the king of England, and I am his knight…'; Langton's gloss on Amos 7: 10-13, concerning a modern bishop exiled like Amos: 'Leave my bishopric…, go back to your studies in Paris…Your rebukes

university lectures. Nevertheless, it seems clear that for Langton what mattered most was that a judgement had been handed down in a court, regardless of whether that judgement was just or not, and without any attempt to define either the nature of the particular court or of the procedures followed in it.

Having distilled this principle out of Langton's theological writings, Baldwin attempts to present it – 'Master Stephen's personal signature' – as the basis of the opposition's case against John. Specifically, he argues that the principle was embodied in the first clause of the second half of the so-called Unknown Charter – the half which supplemented what was in this document termed Henry I's Coronation Charter[66] – and which appears to be the earliest detailed extant draft of the opposition's demands: 'King John grants that he will not take any man without judgement, nor will he accept anything for justice, nor will he do any injustice.'[67] This is the only item in the second half of the Unknown Charter which records a grant already made by the king; all the other clauses are prospective grants by John, mostly expressed (like the preceding Coronation Charter of Henry I) in the first, rather than the opening clause's third, person singular. Those who are inclined to date the Unknown Charter to 1215 have long interpreted this first clause as probably referring to the grant offered by John which is recorded in letters patent of 10 May, in the drafting of which Langton is likely to have played some part.[68] On the very same day John also offered the judgement of his court to both Geoffrey de Mandeville for the fine Geoffrey had made for his wife, Isabella of Angoulême, and to Giles de Briouze, bishop of Hereford, for the fine he had made for the lands of his father.[69] By 1 April, the pope himself was archly turning the usage against the English barons, pointing out to them that they should not attempt to deprive John of possession of his traditional scutage 'without judgement; for he himself, while continuing in possession of it, is prepared to offer justice to all petitioners.'[70]

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offend the king…'; B. Smalley, *The Study of the Bible in the Middle Ages*, 3rd edn. (Oxford 1983), p. 252.

[66] What had in the early twelfth century been termed an 'edict' was first unambiguously referred to as a charter in this document: G. Garnett, *Conquered England: Kingship, Succession, and Tenure 1066-1166* (Oxford 2007), pp. 105-6.

[67] *Cap*. 1, below, p. 427; Baldwin (2008), 829, translates this clause rather differently. As pointed out below, p. 418, the extant witness is evidently the work of a French scribe, who made several mistakes in copying what was in front of him.

[68] Galbraith (1948), pp. 133-4; below, pp. 234, 420-3 (for the various dates proposed), 492-3.

[69] *Rot. Litt. Pat*., p. 141.

[70] *Selected Letters of Innocent III*, no. 77, p. 202; cf. below, p. 231.

But as Baldwin went on to concede, its invention cannot be credited to Langton. Nor was it (just) rarified book-learning. It was a well-established legal commonplace.[71] It was, for instance, intrinsic to the terms of the assize of novel disseisin.[72] According to that chronicler of late twelfth-century rustic lore Gerald of Wales, Roger of Asterby, a Lincolnshire knight, had had a vision of King Henry II's being instructed in the principle by both St Peter and the Archangel Gabriel.[73] According to Roger of Howden, in 1191 the future King John and King Richard's Chancellor William de Longchamps had agreed that henceforth no-one who held freely would be disseised by the 'will' of royal officials, but 'by judgement of the court of the lord king according to the lawful customs and assizes of the realm'.[74] It was interpolated into the copy of the *Leges Henrici* made in the compilation of the *Leges Anglorum* put together in London sometime shortly after 1204.[75] It seems to have underpinned the pope's proposals for a formal settlement on 19 March, when he commended it to the king as he would two weeks later to the rebellious barons.[76] Langton had frequently repeated it in theological contexts, but there is no reason why its appearance at the head of the second part of the Unknown Charter should be attributed to his influence, whatever role he may have played in the letters patent of 10 May. Indeed, as David Carpenter has pointed out in a response to Baldwin's essay, the lack of interest shown in ecclesiastical matters in the second part of the Unknown Charter strongly suggests that Langton was not closely involved in drafting this list of demands on King John, whenever they were drafted.[77] Much the same, he suggests, is true of the Articles of the Barons,[78] which included two clauses analogous to the initial one of the second part of the Unknown Charter. Langton's central role in negotiations from the time of his return to England in 1213, as emphasized by Roger of Wendover, does not mean that he was responsible for the primary and principal concession recorded as an established fact in the Unknown Charter, recast and elaborated in the Articles of the Barons *caps*. 29, 30, and reformulated again in Magna Carta *caps*. 39, 40. 'Master Stephen's personal signature' was in truth nothing of the kind; it was a familiar, conventional refrain, which Langton had picked

[71] Baldwin (2008), 836-7, cf. below, pp. 75-8; and for Langton's insisting on it in proceedings against the Northerners in 1213, 220.
[72] Glanvill, *lib*. xiii *cap*. 32, 33, pp. 167-8.
[73] Gerald of Wales, *De principis instructione*, in *Opera Omnia*, ed. J.S. Brewer, J.F. Dimock, and G.F. Warner, eds., 8 vols., Rolls Series (1861-91), VIII, 183-6.
[74] *Howden* III, 136, discussed below, pp. 120-1; that 'the mandate of the lord king' was an alternative to judgement shows that things had moved on by 1215.
[75] *LHP* 8. 1b, *Gesetze*, I, 554 n. d, discussed by Liebermann (1913), 732-45, at 740.
[76] Below, pp. 229-31, 233-4, 446; *Selected Letters of Innocent III*, p. 195.
[77] Carpenter (2011), 1041-65, at 1049-50.
[78] Carpenter (2011), 1044-6.

up and echoed from time to time in his academic work. When in August 1215 he refused to surrender Rochester Castle to John *nisi per iudicium*, he may perhaps have recalled wryly what he had written (probably) many years before about a notional king who besieges a castle 'on his own whim [*proprio motu*]', rather than because it had been 'adjudged by a judgement [*sententia*]'.[79] But in doing so he had been saying nothing original or unusual. As we shall see, the bits of Magna Carta which can with any confidence be pinned on Langton are precisely those concerned with the Church, and these are absent from the Articles and the second half of the Unknown Charter. Their draftsmen are likely to have had Pope Innocent's recent letters, and the king's proposals of 10 May, at the forefront of their minds, rather than the archbishop's occasional reiterations of a commonplace in his academic writings.

Ius commune and Legal Knowledge

If Langton's theology may be discounted as a major influence on opposition thinking, what of that other great twelfth-century university subject, the learned law or *ius commune*, both canon and Roman? This is a possibility which has recently been explored with great thoroughness by Richard Helmholz, and reportedly rejected by Holt.[80] That contemporary canon law required there to be a court hearing and formal sentence before an excommunication does not amount to evidence of canonical influence on Magna Carta *cap*. 39 (and, by inference, on the opening clause of the supplementary part of the Unknown Charter).[81] The subject matter is too different. This principle is in any case common to many legal systems, as both Helmholz and Baldwin conceded.[82] Helmholz pointed out that even if

[79] Baldwin (2008), 818 n. 26, quoting *Quaestiones*, Cambridge, St John's College MS 57, fo. 136v; *Coggeshall*, pp. 173; Galbraith (1948), p. 137; I.W. Rowlands, 'King John, Stephen Langton and Rochester Castle', in C. Harper-Bill, C. Holdsworth, and J.L. Nelson, eds., *Studies in Medieval History presented to R. Allen Brown* (Woodbridge 1989), pp. 267-79.
[80] Helmholz (1999), 297 n., reports that Holt 'did not find the Article's argument convincing'; see also below, pp. 284-6. Professor Helmholz kindly informs us that Holt discussed the question with him on one occasion, and that Holt recalled having discussed it with Christopher Cheney. Both Holt and Cheney had come to the conclusion that there was no evidence to support the case. Given Cheney's knowledge of canon law, his reported opinion is particularly authoritative. Holt's thoughts are set out at greater length in a long letter to Helmholz, dated 1 February 1997, which comments on a draft of the essay. This is now lodged with Holt's papers in the Department of Mediaeval History, St Andrews University.
[81] Helmholz (1999), 357, citing *X*. 2. 28. 26.
[82] Helmholz (1999), 357 n. 228; Baldwin (2008), 836 and n. 77. For Langton's commentary on Peter Lombard's *Sentences*, see J.W. Baldwin, *Masters, Princes and Merchants. The Social Views of Peter the Chanter and his Circle*, 2 vols. (Princeton, NJ 1970), I, 161-170, II, 112-13.

Langton were not a competent learned lawyer himself, other members of his household would have been.[83] What he does not say is that they would have been competent not just as canonists, but also, perforce, as practitioners of contemporary English law. Otherwise they would scarcely have been capable of dealing with the quotidian, practical interests of their churches.

Although the distinction between the two categories of law was readily acknowledged – Ralph Niger (unusually) expressed hostility to the *ius commune*[84] – they were not impermeably distinct. That is clear from *Glanvill*, which opens with a conscious literary aping of Roman grandiloquence[85] to lend the book jurisprudential respectability, as it were. Yet elsewhere *Glanvill* made a point of differentiating itself from the language of the learned law: it professed to be written 'intentionally in a vulgar style, with words used in court' in order to explain English procedures to those 'who are not at all versed in this type of vulgarity'.[86] The *Dialogus de Scaccario* likewise conceded that English royal documents – the document under discussion being Domesday Book – were written in 'common words', but described the Book's purpose in impeccably Romanesque terms: 'that every man should be content with his right, and might not encroach with impunity on that of another.'[87] Both authors, writing in the 1170s or 1180s, seem slightly embarrassed by the vulgarity of the language of English law, as if potential, legally-knowledgeable readers might consider it barbarous. In other words, they assume a certain proficiency in the *ius commune* – and anticipate a concomitant snootiness – on the part of those readers. As Richard fitz Neal's lengthy digression on the subject of Domesday Book reveals, they were determined to signal

[83] Helmholz (1999), 361; cf. *Acta Stephani Langton Cantuariensis archiepiscopi A.D. 1207-1228*, ed. K. Major, Canterbury and York Society, L (London 1950), nos. 13, 83; K. Major, 'The *Familia* of Archbishop Stephen Langton', *E.H.R.*, XLVIII (1933), 529-53, at 530, identifies William of Bardney and Adam of Tilney as perhaps the 'iurisperiti' mentioned by Langton in passing a judgement in favour of the abbot of Pershore. For these and other possible candidates, see Brundage (2010), in Loengard, ed. (2010), p. 96.

[84] Ralph Niger, 'Moralia regum', in H. Kantorowicz and B. Smalley, 'An English Theologian's View of Roman Law: Pepo, Irnerius, Ralph Niger', *Medieval and Renaissance Studies*, L (1941-3), 237-52, at 250-2; E. Rathbone, 'Roman Law in the Anglo-Norman Realm', *Studia Gratiana*, XI (1967), 253-71, at 256-7, 269; F. de Zulueta and P. Stein, *The Teaching of Roman Law in England around 1200*, Selden Society, supplementary series VIII (London 1990), pp. xli-xliii.

[85] *Glanvill, prologus*, p. 2.

[86] *Glanvill, prologus*, p. 3.

[87] *Dialogus* I. xvi; cf. Roger of Howden's account of the words used on behalf of John immediately after his accession in 1199, which echo *Dig.* 1. 1. 10: *Hoveden* IV, 88. It seems likely that this is evidence of Howden's learning, but Howden was a royal justice.

that they shared that proficiency (if not the snootiness) themselves. Most capable lawyers – particularly, one suspects, clerical lawyers – would have had to be competent in both types of law. And the *ius commune*'s influence on English law was not restricted to matters of style or vocabulary. For instance, *Glanvill*'s content is in one case demonstrably shaped by Roman law;[88] in another the author explicitly distinguishes between the rules of English law and those of the *ius commune*.[89] But in general there is more evidence of awareness of Romano-canonical parallels than of the learned law's direct influence on English procedure.[90]

Widespread knowledge of Roman and canon law in England does not, however, mean that they had a profound influence on most of Magna Carta, whether via Langton's backroom boys or any other route. The only published response thus far to Helmholz's essay demonstrates that his alleged parallels between *ius commune* texts and Magna Carta may chiefly be attributed to the occasional use in the Charter of Romano-canonical vocabulary.[91] This does not have to have come direct from those texts: it might, for instance, have come from the Vulgate, which, as the work of an accomplished Roman lawyer, is shot through with Roman legal terminology;[92] and, not least because it had scriptural warrant, it might already have become embedded in English law long before 1215.[93] The only clauses of Magna Carta which are indubitably influenced by canon law are those which concern the Church: most importantly, the general clause with which the Charter opened, and more detailed provisions, such as *cap*. 22, on amercement of clerics.[94] It was precisely in these clauses that Langton can be shown to have had his greatest influence. Thus, for instance, *cap*. 1 was newly framed for Magna Carta: it had no precedent in the Articles of the Barons, drafted, without any

[88] *Glanvill lib*. x c. 3 p. 118, cf. *Nov*. 4. 3. 1, as shown by Hudson (2010), in Loengard, ed. (2010), pp. 104-5, which provides a critique of Helmholz (1999). Helmholz has responded briefly, in the prolegomenon to an Italian version of this essay: Helmholz (2012), pp. 23-7.
[89] *Glanvill lib*. vii, c. 15, p. 88, cited by Hudson (2010), p. 117.
[90] M.G. Cheney, '*Possessio*/*proprietas* in Ecclesiastical Courts in Mid-Twelfth-Century England', in G. Garnett and J.G.H. Hudson, eds., *Law and Government in Medieval England and Normandy: Essays in Honour of Sir James Holt* (Cambridge 1994), pp. 245-54
[91] Hudson (2010), pp. 101, 108-10. Brundage (2010), pp. 95-9, is more sympathetic to Helmholz.
[92] Hudson (2010), pp. 108, 118-9; more generally W. Ullmann, 'The Bible and Principles of Government in the Middle Ages', repr. in his *The Church and the Law in the Earlier Middle Ages* (London 1975), ch. III.
[93] Eg., the law of debt in *Glanvill*, above n. 40; Hudson (2010), p. 105; for an earlier example, see B.C. Brasington, 'Canon Law in the *Leges Henrici Primi*', *Zeitschrift der Savigny-Stiftung für Rechtsgeschichte*, cxxiii, *kanonistische Abteilung*, XCII (2006), 288-305.
[94] Helmholz (1999), 311-14, 329-31; Hudson (2010), pp. 102-3.

detectable input from the archbishop, a few days beforehand.[95] (That the document eventually fell into his hands does not mean that he had influenced its contents).[96] His chief contribution to Magna Carta appears to have lain in the insertion at its head of this guarantee of the liberty of the *ecclesia Anglicana*, specifically freedom of election, which, as the clause made clear, John had granted previously.[97] It was scarcely conceivable that such a provision would bear no traces of canon law.

Yet although there is no precedent in the Articles, there is one, or at least a partial one, in Henry I's Coronation Charter, which formed the first half of the Unknown Charter. In its opening clause Henry I had proclaimed 'First of all (*in primis*), I make the Holy Church of God free'. Magna Carta cap. 1 states: 'First of all (*in primis*) [we] have conceded to God and by this our present charter have confirmed, for us and our heirs in perpetuity, that the English Church should be free…' The nature of the principal freedom granted is different: in 1100, it was an undertaking that church lands and resources would not be plundered while they were in the king's custody during a vacancy; in 1215, it was freedom of election. But the earlier royal charter to which Magna Carta explicitly refers, first issued in November 1214, reissued in January 1215, and (as Magna Carta also records) subsequently confirmed by the pope, does not use that little phrase *in primis*. It is an unusual phrase: it is not found, for instance, in either of King Stephen's Charters of Liberties, or in that of Henry II. It is difficult not to believe that whoever drafted *cap*. 1 of Magna Carta was recalling Henry I's Charter, where the phrase also marks off the grant of liberty to a single 'Holy Church of God' as distinct from concessions about the incidents of feudal tenure (and other matters) in subsequent clauses.[98] The final sentence of *cap*. 1 of Magna Carta emphasises even more strongly that the preceding, inserted grant to the single 'English Church'[99] (the term used in John's charters of November 1214 and January 1215) is distinct from the liberties granted in the rest

[95] Carpenter (2011), 1044-7.
[96] Below, p. 245.
[97] Carpenter (2011), 1050-3; John had issued a charter to this effect on 21 November 1214, which had been reissued (for reasons which remain unclear) in identical terms on 15 January 1215, at a council in London: *Selected Letters of Innocent III*, pp. 198-201; Cheney (1976), pp. 363-5.
[98] In this respect they are quite different from the Charters of either Stephen or Henry II. Stephen's first Charter makes no mention of the Church; his second is almost exclusively concerned with the Church. Henry II's Charter integrates pledges about future treatment of the Church throughout.
[99] Though note that in the contemporary French translation 'les yglises d' Engleterre' are consistently in the plural: Holt (1974) repr. in Holt (1985a), p. 250.

of the document: 'We have *also* granted [*Concessimus eciam*]…' Although *cap*. 1 of Magna Carta may include canonical terminology which was unavoidable in such a context, therefore, it also echoes both the phrasing and the arrangement of an earlier English royal document which had for some time provided the formal foundation for the opposition's case against John. If the clause may indeed be attributed to Langton, the verbal echo provides the diplomatic connection between him and Henry I's Charter[100] which has hitherto eluded those who, following Roger of Wendover and Powicke, have attributed its resurrection to him. The echo does not, however, establish that Langton was responsible for that resurrection: the valiant efforts made in recent publications to overturn or at least modify Holt's judgement about the unreliability of Roger of Wendover's account of events in St Paul's Cathedral on 25 August 1213 have not been successful.[101] There is reliable evidence that on that occasion he preached against English drunkenness[102] – something of a personal obsession. There is none to support the rumour reported by Roger of his producing Henry I's Coronation Charter in private discussion with the barons. There was nothing in Langton's background to make him a likely expert in antique English royal records, or for that matter in recent developments in English law, though it is, of course, perfectly possible that members of his household were more knowledgeable, and certain that by June 1215 he had become very familiar with Henry I's Charter. But profound as was the influence of Henry I's Charter throughout Magna Carta, the legal intelligence which informed the drafting in 1215 had moved far beyond that of the draftsman of 1100. To cite just two (connected) instances: the emphasis on perpetuity which appears in *cap*. 1, whence (in Holt's phrase) it 'infected all the rest' of the document;[103] and that on corporate personality, in the form of 'the commune of the whole land' (*cap*. 61), the perpetual recipient of the liberties granted. As Holt shows, these are a product of intervening developments in the exercise of royal government; but as he also suggests, it is here that the indirect influence of canon law might most profitably be sought, in broadly conceptual, not detailed textual, terms.[104]

[100] Carpenter (2011), 1052, notices the echo, but does not draw this connection.
[101] Baldwin (2008), 827-31, Fryde, (2001), pp. 79, 95; Vincent (2010), 93-7; cf. below, pp. 224-5, 268-71, 280-7, and Carpenter (2011), 1047-8, endorsing Holt's view.
[102] G. Lacombe, 'An Unpublished Document of the Great Interdict (1207-1213)', *Catholic Historical Review*, n.s., XV (1930), 408-20; P. B. Roberts, ed., *Selected Sermons of Stephen Langton* (Toronto 1980), pp. 35-51; Baldwin (2008), 825-7.
[103] Below, p. 518, cf. p. 285.
[104] Below, pp. 285-6; Holt (1991a), esp. 4-6.

Thus, for instance, the interpolations made in the recension of the *Leges Edwardi Confessoris* found in the London Collection of the *Leges Anglorum* – the key compilation for opposition thinking in the city – repeatedly mention *commune consilium*.[105] There is no need to attribute this to direct canonical influence. It was already present in the opening clause of Henry I's Coronation Charter, which was included in the Collection. More parochially, it may reflect the city's 'common counsel', probably identical with the body of twenty-four which swore in 1205-6 to 'counsel according to its custom by right of the lord king', [106] and the seal of which is referred to in a list of city charters copied in the Collection.[107] *Corona* is a comparable example, even more frequently invoked in the interpolations in the *Leges Edwardi Confessoris*.[108] It might appear to be a perfect example of the sort of juristic abstraction characteristic of the more modish innovations of the learned law;[109] but there was by this point a century-long, indigenous tradition of using the word in a non-physical sense, and in origin this owed nothing to the *ius commune*.[110] In 1215 both concepts may have been considerably enriched by the recent sophistications of the learned law. The 'crown' of the interpolations in the *Leges Edwardi* was no longer merely a metonym. The commune of London and its epoch-making offspring the 'commune of the whole land' – the Charter's beneficiary and the key to its security[111] – was a novel secular abstraction of a type seen elsewhere in twelfth-century European cities. But in both cases it is easy to detect earlier indigenous antecedents, and impossible to demonstrate specific influences from the learned law, as distinct from general similarities.

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[105] *LECf* 32 A 4, 32 B 1, 32 C 4, 32 E 6: *Gesetze*, I, 655, 656, 658, 660, cf. 11, 1 A 8, 32 B 8, 32 C 7. The earliest version of the Collection – the only one dating from the thirteenth century – survives in Manchester, John Rylands Library MS Lat. 155 and London, BL MS Add. 14252 (originally a single manuscript); further, Liebermann (1913), and on the second section which is composed of municipal documents, Bateson (1902). For a more thorough survey of the material relating to London, see Weinbaum (1933), II, 1-91.

[106] BL MS Add. 14252, fo. 110r; Weinbaum (1933), II, 49-50; Keene (2008), 88; Helmholz (1999), 322-4. For analogous examples in the Collection, see the building assise of 1212, MS. Add. 14252, fo. 128r (Bateson (1902), 729-30; Weinbaum (1933), II, 89), and the communal oath of Richard I's reign, fos. 112v-113r (Bateson (1902), 510-11; Weinbaum (1933), II, 57).

[107] BL MS Add. 14252, fo. 106r; Weinbaum (1933), II, 45.

[108] *LECf* 13, 1 A, 32 A 4, , 32 B, 32 B 1, 32 C 3, 32 C 7, 32 E, 32 E 3, 35, 1 A 1; *Gesetze*, I, 640, 655, 656, 658, 659, 660, 664.

[109] For instance, E.H. Kantorowicz, *The King's Two Bodies. A Study in Medieval Political Theology* (Princeton, NJ 1957), pp. 149-87, 342-64.

[110] Garnett (1996).

[111] The identical phrase is used in the Articles *cap*. 49.

Langton and his household were not the only possible source of the various types of legal acumen apparent in Magna Carta. As Holt repeated in the book review of 2003, the Chapter of St Paul's was a hotbed of learned clerical radicals such as Gervase of Howbridge (or Heybridge), its chancellor, who was almost certainly brother of William of Howbridge, one of the rebels of 1215. Gervase had been involved in Robert fitz Walter's conspiracy against John in 1212, and had been briefly exiled.[112] His election as dean sometime between September 1215 and June 1216 suggests the attitude of the majority the Chapter towards the king by that point.[113] Simon Langton, the archbishop's brother (and possibly chancellor of Canterbury), was also amongst many other things a canon of St Paul's.[114] William of Ely, who became king's treasurer in succession to Richard fitz Neal, by then bishop of London (1198-98), was made a canon by his *consanguineus*,[115] the bishop. In 1215 he went over to the rebel side.[116] He is a reminder that many members of the St Paul's Chapter had been senior mandarins, and that in the end this did not necessarily make for loyalty to John, whose activities some royal justices had found it difficult to stomach long before the debacle of 1215.[117] As the case of Bishop Richard underlines, they were a learned lot: Ralph de Diceto (d. 1199/1200), a Parisian-trained lawyer as well as an accomplished historian, had recently been dean.[118] And this was true not only of the canons. Thomas of Chobham, a canon lawyer, was a member of Bishop Richard's household;[119] Peter of Blois, of that of Bishop William de Ste Mère-Eglise, Richard's successor.[120] Peter might have expressed regret for his youthful enthusiasm for Roman law, but at Bologna he had sat at the feet of no less an authority on the subject than the future Pope Urban III.[121] On a more workaday level, it is possible to identify several jobbing attorneys who acted for the bishop, and were members of his household.[122]

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[112] Below, p. 283; Richardson (1933), 252-3; Holt (1961), p. 94.
[113] *E.E.A.*, XXVI: *London 1189-1228*, ed. D.P. Johnson (Oxford 2003), pp. lvii, 219.
[114] John le Neve, *Fasti Ecclesiae Anglicanae 1066-1300*, ed. D.E. Greenway *et al*., 9 vols. (London 1968-2003), I, 50; *Acta Stephani Langton*, pp. xlix-l (for his acting as his brother's chancellor, and possibly drafting documents in a particularly uncompromising style); Holt (1985c), in Holt (1985a), pp. 1-22, at 16; Holt, (1991a), p. 5.
[115] *E.E.A.*, XXVI, no. 74.
[116] H.G. Richardson, 'William of Ely, the King's Treasurer', *T.R.H.S.*, 4th ser., XV (1932), 45-90, at 48-9, 56-8; *E.E.A.*, XXVI, pp. xxxix, xlix, li-liii.
[117] Hudson (2012), pp. 846-7.
[118] *E.E.A.*, XXVI, pp. xliv-xlv; J.F.A. Mason, 'Ralph of Diceto', *O.D.N.B.*; D.E. Greenway, 'Historical Writing at St Paul's', in D. Keene, A. Burns, and A. Saint, eds. (2004), pp. 151-3.
[119] *E.E.A.*, XXVI, pp. liv-lv.
[120] *E.E.A.*, XXVI, pp. lv-lvi.
[121] R.W. Southern, 'Peter of Blois', *O.D.N.B.*
[122] *E.E.A.*, XXVI, pp. xli-xliii.

Close to the beginning of the twelfth century, it was probably there that one of the first antiquarian collections of Old English laws – Cambridge, Corpus Christi College MS 383 – had been put together,[123] perhaps at the instigation of Bishop Maurice of London, the sometime royal chancellor.[124] If it had not been assembled there, it seems certain that it was there soon afterwards when a copy of a list of shipmen owed by St Paul's from its estates *c*. 1000 was added.[125] Yet later surviving booklists from St Paul's library provide no direct evidence that the church continued to be a centre of jurisprudential scholarship during the twelfth century, whether in English or learned law,[126] much though one might suspect it, given the presence there of the likes of Richard fitz Neal. The London Collection of the *Leges Anglorum* has not been identified as a St Paul's manuscript; its generally secular interests might be judged to make such an identification unlikely,[127] and Liebermann considered that it was written 'for the London Guildhall.'[128] But given the central role of St Paul's in the life of the city – pictorially represented on the seal of the barons of London of *c*. 1220,[129] and of St

[123] F. Liebermann, 'Matrosenstellung aus Landgutern der Kirche London', *Archiv für Studium der neueren Sprachen und Literaturen*, CIV (1900), 17-24; Wormald (1999a), pp. 228-36, with St Paul's provenance established, and St Paul's composition suggested, at 230, 234.

[124] P. Wormald, 'Laga Eadwardi: The *Textus Roffensis* and its Context', repr. in Wormald (1999b), pp. 115-37, at 135; Wormald (1999a), p. 236, who also speculates, p. 230 n. 268, that the 'Master Robert of Abingdon' recorded in the manuscript in a thirteenth-century hand may have been the brother of Archbishop Edmund, and that he might have acquired it through his contacts with the Langton family.

[125] CCCC 383, fo. 107; Wormald (1999a), p. 230; P. Taylor, 'Foundation and Endowment: St Paul's and the English Kingdoms, 604-1087', in Keene *et al.*, eds. (2004), p. 15. The list is edited in S.E. Kelly, ed., *Anglo-Saxon Charters, X: Charters of St Paul's* (Oxford 2004), no. 25.

[126] N.R. Ker, 'Books at St Paul's Cathedral before 1313', in A.E.J. Hollander and W. Kellaway, eds., *Studies in London History Presented to P.E. Jones* (London 1969), pp. 43-72; N. L. Ramsay and J. Willoughby, eds., *Secular Cathedrals of England and Wales*, Corpus of Medieval British Library Catalogues (London forthcoming). Bishop Ralph Baldock bequeathed a library including works of canon and civil law in 1313: N.L. Ramsay, 'The Library and Archives to 1897', in Keene *et al.*, eds. (2004), p. 414. It is impossible to be certain about items not recorded in these lists, for instance those which might have been lost when the cathedral was closed and its property sequestrated in 1642, or in the fire of 1666.

[127] The surviving witness is probably a less than perfect copy of a lost autograph, and it is impossible to say whether that putative autograph contained evidence which might have linked it to St Paul's: Liebermann (1913), 744; P. Wormald, 'Quadripartitus', repr. in Wormald (1999b), pp. 81-114, at 89 n. 29; Keene (2008), 81-2.

[128] Liebermann (1913), 743.

[129] Keene (2008), 77 and fig. 1: note that St Paul's is central on the obverse, and on the miniature cityscape on the reverse, the main function of which is to depict St Thomas Becket. Perhaps the seal of the 'common counsel', referred to in the London Collection (above, n. 105), also featured the tower of St Paul's.

Paul himself 'in gold, with the feet, and hands, and head in silver, and a sword in hand' on the Mayor's banner[130] – and the expertise of its personnel, it seems unlikely that the canons of St Paul's played no part in the compilation of what became for well over a century the definitive London legal compilation. As London's cathedral, it would have been the conventional place in which to deposit engrossments of royal charters sent to the city,[131] so much of the material which makes up the Collection is likely to have been found there. A reference in the Collection to the London folkmoot being summoned by the bell of St Paul's is evocative:[132] it met to the north east of the church, by the belfry.[133] What is clear is that whoever compiled the Collection was not drawing directly on that early twelfth-century compilation of Old English law which had probably been assembled at St Paul's. The fact that one part of the Collection shares the arrangement of a block of (anonymous) legal texts with the earlier St Paul's compilation[134] suggests only that in this particular instance they both drew on a similar source, not that the later one depended on the earlier. The putative role of members of the Chapter as legal advisors for the opposition must for the present depend on personal connections with Archbishop Stephen Langton and with Robert fitz Walter, lord of Baynard's Castle, 'the standard bearer of the lord king and procurator of the whole city',[135] who was also a close associate (and relative) of Saer de Quincy,[136] earl of Winchester, baron of the Exchequer, and royal judge. De Quincy had attested the grant of freedom to the Church in 1214 and was one of the main negotiators on the baronial side in 1215. He and Robert both ended up as members of the Twenty-Five. As Holt pointed out in the book review of

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[130] *Liber Custumarum*, in *Munimenta Gildhallae Londoniensis*, ed. H.T. Riley, 3 vols. in 4 parts, (RS 1859-62), II, pt. 1, p. 148.
[131] On this practice, see Poole (1913).
[132] BL MS Add 14252, fo. 101r, discussed by Bateson (1902), 502-3; Weinbaum (1933), II, 39. D. Keene, 'From Conquest to Capital: St Paul's *c*. 1100-1300', in Keene *et al*., eds. (2004), p. 31, points out that not only was the great assembly of 25 August 1213 held there, but it was also there, before the high altar, that John did liege homage to the papal legate on 3 October 1213.
[133] Keene, 'Conquest to Capital', p. 19 fig. 9.
[134] Wormald, 'Laga Eadwardi', pp. 123, 128; (1999a), p. 242, who shows, p. 248 and Table 4.9, that this was also incorporated into *Textus Roffensis*. As he points out, 'Laga Eadwardi', p. 122 n. 13, the fact that the Old English royal codes are rearranged in chronological order in the London Collection makes it harder to identify the compiler's sources.
[135] BL MS Add. 14252, fo. 90v, cf. 125r; Bateson (1902), 485-6, cf. 727-8; Weinbaum (1933), II, 16, cf. 83; and for Robert's hereditary role, *Munimenta Gildhallae Londoniensis*, II, pt. 1, p. 147-51. As the account in *Liber Custumarum* reveals, Robert's banner was different from the Mayor's, but the Mayor invested Robert with the banner depicting St Paul in St Paul's churchyard: above, n. 130.
[136] Holt (1984b) repr. in Holt (1997), p. 240.

2003, Baynard's Castle was only a short step from the cathedral.[137] The portentous title which Robert assumed in April 1215 to counter John's taking of the Cross on 4 March – 'Marshal of the Army of God and Holy Church in England' – has clerical fingerprints on it,[138] though not every cleric would find its bombast convincing,[139] and there is no reason to identify a St Paul's man as the culprit. There were many other lawyers active on the opposition side who had no St Paul's association – that accomplished draftsman Elias of Dereham, for instance,[140] who distributed numerous copies of Magna Carta to the localities.[141]

Key text though the London Collection manifestly is, it cannot be shown to have been directly exploited by those who drafted the Unknown Charter, the Articles of the Barons, or Magna Carta. Its version of Henry I's Coronation Charter is derived from *Quadripartitus*; but unlike the copy which prefaces the Unknown Charter, it appears to have been conflated with another version, termed by Richard Sharpe the Interpolated Version, which he shows circulated widely.[142] It also differs from the version translated into Anglo-Norman French in a bifolium (also including the first of Stephen's Charters of Liberties, and Henry II's, both also translated) intended for the briefing of non-Latinate laymen. This has been dated on palaeographical grounds to the early thirteenth century, a dating sharpened on circumstantial grounds to c. 1215. The Latin text is very closely related to the Interpolated Version, specifically to two almost identical copies in a late thirteenth-century Canterbury cartulary,

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[137] M.D. Lobel, ed., *The British Atlas of Historic Towns*, III, *The City of London from Prehistoric Times to c. 1520* (Oxford 1989), 'City of London *c.* 1270'. On 22 November 1214, at the New Temple, he witnessed John's charter in favour of St Paul's: M. Gibbs, ed., *Early Charters of the Cathedral Church of St. Paul, London*, Camden Third Ser., LVIII (1939), no. 52; *Cal. Charter Rolls*, I, 154.

[138] *Chron. Maj.* II, 586; see also above, p. 000. This was the title he used in the agreement which he made with John concerning the custody of London, almost certainly on 19 June: see Galbraith (1967), 354-5, below, pp. 263-6, 481-3, 490. Whoever devised it restricted the Church (singular) to England, as was the case in *cap.* 1 of Magna Carta. The Barnwell chronicler records no such geographical limitation in the terms of the baronial *conjuratio* established in London in January 1215: 'that they would pledge themselves to sustain the house of the Lord and stand fast for the liberty of the Church and the realm': *Walt. Cov.* II, 217-18; below, p. 223.

[139] Innocent III's view is revealed by the letter of the papal commissioners of 8 September which excommunicated the rebel barons: Powicke (1929), 92.

[140] Vincent (2002), pp. 138 n. 53 (legal experience), 140-1 and n. 64 (draftsmanship).

[141] Holt (1964) repr. in Holt (1985a), pp. 285-6; Holt (1982) repr. in Holt (1985a), p. 262; Rowlands (2009), 5, 7, 10.

[142] R. Sharpe, *Acts of William II and Henry I* (Oxford forthcoming; electronic preview 24 October 2013), pp. 53-4; for the Interpolated Version, see pp. 45-7. The Unknown Charter's copy is derived straight from *Quadripartitus*, without any apparent conflation with another source: Sharpe, pp. 37-8, 40.

which were probably copied from a (now lost) single-sheet copy recorded as having once been in the Canterbury archive.[143] But that does not mean that the bifolium's text of Henry I's Charter came from a Canterbury source, for, as Sharpe demonstrates, the text found in the archiepiscopal register was not unique to Canterbury. It was widely disseminated: the supplementary clause's reference to 'presentis ecclesie' could apply to any church. There is, therefore, no demonstrable link between the bifolium and the London Collection; and none between either of them and St Paul's. Yet the bifolium's copy was a pretty careful one,[144] precisely translated.[145] It was not a series of jottings. It was evidently executed by competent scribes, who may well have used Chancery copies of the documents.[146] Its copy of Henry II's Charter is the best one extant.[147] Whoever compiled it seems to have been primarily interested in Henry I's Charter, because the Latin text is on the recto of the first folio and the French translation on the recto of the second. It was designed for ease of cross-reference between text and translation, but – given its failure to separate clauses as the Articles do – by someone who read the document aloud to an audience rather than by non-Latinate laymen using a crib for themselves. If the bifolium was compiled in London, there were few locations where such a level of expertise might have been encountered, St Paul's being one of them. Yet all that can be concluded, as distinct from inferred, from the latest diplomatic scholarship is that there were many copies of Henry I's Charter in circulation in the early years of the thirteenth century, and that they were studied intensively – which is what has always been

[143] London, BL MS Harley 458, below, pp. 474-7 and plates 4, 5. This includes the supplementary *cap*. 15, distinctive of the Interpolated Version, which confirmed all 'liberties, dignities, and royal customs' previously confirmed to churches by royal charters. On this manuscript, see also Holt (1985c) in (1985a), pp. 14-15. Cf. London, Lambeth Palace Library, MS 1212, fos. 10rv, 97v-98r; Sharpe, *Acts*, pp. 10, 45-8; Holt (1964) in (1985a), p. 286 n. 3. Holt's suggestions, below p. 424, that the version in the Canterbury register is 'similar' to that in the London Collection, and that '[t]his text may stem from Harleian MS 458', must therefore be rejected.

[144] In the final sentence of *cap*. 8 the scribe wrote 'dampnatus fuerit'. According to the edition in the *Acts*, this reading is unparalleled. All other witnesses read 'convictus', which someone, probably the original scribe, has inserted over 'dampnatus' but without deleting 'dampnatus'. This might mean that he was using more than one copy.

[145] Though note that whoever translated Stephen's Charter and that of Henry II had given up by the time he reached the end: the former is dated 'Apud London', and the latter 'A London' (even though the original Latin specifies Westminster).

[146] Below, p. 475 n. 8. Pierre Chaplais took the view, in a letter to Holt dated 20 August 1982, that the whole bifolium was the work of a single scribe – an 'early thirteenth-century joker' – who deliberately disguised his hand, but Holt remained convinced that three or just possibly four scribes had contributed: see Holt papers, St Andrews. To our inexpert eyes, everything except the translation of Henry I's Charter looks like the work of one scribe.

[147] Below, p. 476.

apparent from the chroniclers, inaccurate though some of the details of their accounts have been judged to be.

The Date of the Charter

Aside from consideration of the *ius commune*, the other post-1992 innovation in the scholarship of Magna Carta to which Holt drew attention in his book review of 2003 was David Carpenter's suggested re-dating of Magna Carta itself. As Carpenter pointed out, this was not simply a point of diplomatic detail: it had considerable implications for interpretation of the document.[148] Carpenter argues that we should take at face value the statement at the end of the final clause of the four surviving engrossments from 1215: 'Data per manum nostrum in prato quod vocatur Ronimed inter Windlesoram et Stanes, quinto decimo Junii, anno regni nostri decimo septimo.'[149] Holt, by contrast, argues that the (undated) Articles of the Barons, which in his view had been sealed on Wednesday 10 June, were accepted as the basis for a settlement on Monday 15 June, and that the settlement was eventually reached on Friday 19 June, when 'firm peace' – a phrase which may be another echo of the opening clause of Henry I's Charter – was made and the barons renewed their homage.[150] As Carpenter readily concedes, the existing evidence does not admit of an incontrovertible verdict on which view is correct, and he advances his hypothesis only with caution.[151] He endorses Holt's dating of the Articles, but argues that the final terms of Magna Carta were settled on 15 June at Runnymede, when, as recorded just before the date with which *cap*. 63 concludes, 'it has been sworn both *ex parte nostra quam ex parte baronum* that all the aforesaid shall be observed...'[152] In Carpenter's view, this records that small groups of negotiators on either side had sworn on behalf of either party, that the king had then 'given by [his] hand' the draft recording the terms sworn, and that the king had ensured that this was immediately engrossed and sealed.[153] John was anxious to make it clear that the Charter was his last, best offer, made before peace had been settled and homages renewed; he did so, Carpenter suggests, in the hope that if his issuing it failed to bounce the mass of his foes into

[148] Carpenter (1996a), p. 4.
[149] *Cap*. 63, below, p. 472; Carpenter (1996a), pp. 1, 5-7.
[150] *Rot. Litt. Pat*. pp. 143b, 180b, etc.
[151] Carpenter (1996a), p. 3.
[152] Carpenter (1996a), p. 13.
[153] Carpenter (1996a), pp. 4, 5, 13-16. This reconstruction is accepted by Rowlands (2009), 1.

accepting what their representatives had negotiated on their behalf as the basis for peace, it might at least sow dissension amongst them.[154]

It is a powerful and interesting case, mounted with great ingenuity and thoroughness. As such, it commanded Holt's respect: 'Cheney would have liked this and Galbraith would have relished it.'[155] Holt did not vicariously dispense Galbraith's approval lightly: there was no higher praise. One reason why he might have taken particular pleasure in the essay was the way in which Carpenter integrated Galbraith's discovery in the Huntington Library of what Galbraith considered to be the penultimate draft of Magna Carta, copied at the start of a book of early statutes apparently compiled before 1290.[156] As Galbraith showed, many details in this text are demonstrably subsequent to those in the Articles and antecedent to those in Magna Carta. Although a late copy, it is likely to be a pretty accurate one. The scribe's minor errors prove that he was mechanically copying something, rather than making it up.[157] The document's dating clause records its having been 'given by our own hand' on the same day – logically earlier in the day – but 'apud Windesor'' rather than on the 'meadow which is called Runnymede between Windsor and Staines' of the 1215 engrossments.[158] Neither Galbraith nor Carpenter attempted to draw a connection between this penultimate draft and John's letters patent of 10 June, which had extended the then current truce until the morning of 15 June.[159] Yet this may be the key to the significance of the penultimate draft.

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[154] Carpenter (1996a), pp. 8, 14.

[155] Personal letter from David Carpenter, April 2014, recalling his discussion of the matter with Holt.

[156] Huntington Library, MS H.M. 25782; Galbraith (1967), 346; the document is thus described at 352. V.H. Galbraith, 'A new MS of the Statutes', *Huntington Library Quarterly*, XXII (1959), 148-51, gives a fuller account of the book at the beginning of which the document is copied.

[157] Galbraith (1967), 346-7.

[158] Galbraith (1967), 351; Carpenter (1996a), p. 2; cf. below, pp. 445-6. The document is headed 'Provisiones de Ronnemede scilicet, carta Johannis Regis', and finishes 'Expliciunt Provisiones de Ronnemede'. But the identification with Runnymede of a document which purports to have been issued at Windsor seems likely to have been in the mind of the compiler of the book of statutes, rather than in the document which he was copying.

[159] *Rot. Litt. Pat*. p. 143: 'usque in diem Lune in crostino Trinitatis mane'; cf. below, pp. 244, 248. Carpenter (1996a), p. 13, mentions the extension of the safe conduct, but fails to explain the significance of its expiring on the morning of 15 June. Holt (1957) repr. in Holt (1985a), pp. 221-3, 228-9, suggested that what was envisaged was acceptance or rejection of the Articles by the opposition. But when he wrote this, Galbraith had not yet discovered the copy of a draft Magna Carta.

The king's punctiliousness indicates that on 10 June he envisaged that something of great moment was scheduled to happen in the morning of 15 June. The truce must be extended only up to that precise point, and no further. Normally safe conducts terminated at the end of a day.[160] And whereas earlier safe conducts had related to a few envoys, the scale of circulation for the letters of 10 June suggested that a large gathering was envisaged.[161] The most plausible explanation is that on 10 June the morning of 15 June had already been set as a deadline for reaching (or not) some sort of preliminary deal, based on the Articles which the king had sealed on 10th. This deal was what was recorded in the draft document as having been reached at Windsor on 15 June, and by inference early in the day – in other words, by the deadline. If this reconstruction be correct, then it was with the penultimate draft that the petition embodied in the Articles was first recast in the form of a charter, as *caps*. 1 and 49 of the Articles had ordained. This happened at Windsor Castle, where the Chancery personnel were likely to have remained, and where the draft charter's place-date indicates that it was warranted by the king.[162] The inspiration for that recasting may have come from what the rebels had, in the Unknown Charter, termed the 'charter' of Henry I,[163] though the putative supplementary concessions – the 'consequentia' – attributed to John in that document in late 1214 or (more likely) early 1215 had not at that time been cast in charter form.[164] The opposition had long sought to compel John to confirm the charters of liberties of his predecessors. The decision about the diplomatic form to be adopted for the document embodying the agreement had already been made by 10 June. The implication of the extension of the truce was that it had then been envisaged that an agreed text, based on the Articles, but in the form of a charter, would be settled (or not) on the morning of 15 June.

One obvious objection to Carpenter's case that the final version of Magna Carta as extant in the surviving engrossments of 1215 was agreed *and issued* later that same day at Runnymede is the prodigious level of productivity it assumes on the part of draftsmen and scribes. It was easy enough for John to move back and forth between the two locations on a

[160] For instance, that issued on 8 June in favour of baronial envoys, which had extended to the end – 'ad diem Jovis proximo sequentem completam' – of 11 June: *Rot Litt. Pat*. p. 142b.
[161] Below, pp. 244-5.
[162] Galbraith (1967), 352. If this hypothesis be accepted, then Holt's argument that it was the Articles which provided 'a preliminary settlement to which all who agreed at Runnymede [on 15 June] were committed' would require some amendment. But Holt himself in effect suggests it as an alternative hypothesis: below, pp. 446, 249, cf. 245.
[163] This was a misnomer, because Henry I's document did not record a grant to anyone: see the discussion cited above, n. 66.
[164] Below, pp. 427-8.

daily basis.[165] It would have been another matter for the staff of the Chancery, with all their paraphernalia, to do likewise. Whether or not they accompanied John on the three-and-a-half mile ride to Runnymede on the afternoon of 15 June,[166] if the final version of Magna Carta was issued there and then they would have to have been capable of taking account of a series of detailed agreed amendments consequent on negotiations subsequent to and presumably based on the agreement set down in writing earlier in the day at Windsor, and of incorporating them into a lengthy revised document. (The Chancery clerk who had written up the Articles had left room for just this sort of insertion at several points – indeed the layout of this working document was evidently designed to make it very easy to find particular clauses, and to amend or amplify some of them. In this respect the Articles are quite different from the extant engrossments.)[167] It would have made for a very busy afternoon. 'That any sealed engrossment of so elaborate a document as Magna Carta was available on the famous 15 June is highly improbable: indeed, virtually impossible.'[168]

Be that as it may, Carpenter flags his rendering *cap*. 63's *ex parte* 'on behalf of' as 'immensely significant' to his argument: royal and baronial proxies at Runnymede, not the king and most of the barons, were in his view recorded as having sworn to the terms of the Charter there and then,[169] and on that same allegedly frenetic day. He adduces examples from contemporary documents where the phrase refers to negotiators acting on behalf of the king and the barons; but in no instance are such negotiators said to have sworn on behalf of those they represented.[170] Moreover, whereas it is obviously crucial to his case that only a small

[165] Hugh, the newly elected abbot of Bury St Edmunds, attended on the king at Windsor on the evening of 9 June. John instructed him to present himself the following day on 'the meadow at Staines' to receive the kiss of peace which marked formal royal approval of his election. That evening, he and the king dined at Windsor: *Electio Hugonis*, pp. 168-70. For John's movements during this period, see the itinerary in *Rot. Litt. Pat.*; Holt (1957) repr. in Holt (1985a), p. 238, for John's 'commuting' during this week.
[166] Galbraith (1966), 311 n. 13; below, p. 446.
[167] Most strikingly, following *caps*. 37, 45, and 48: below, pl. 6, p. 246. Further, Holt (1957) repr. in Holt (1985a), pp. 225-6. The second half of the Unknown Charter must originally have looked something like this: it is clear that *cap*. 1 is distinct from all subsequent clauses; *caps*. 2-5 take a similar form, and seem to belong together; *caps*. 7, 9, and 10 begin with the conjunction 'adhuc', which suggests that they were piecemeal additions; and *caps*. 6, 8, and 11 are not phrased as grants by the king. But of course the only extant copy is a later French one.
[168] Galbraith (1967), 352. For an indication of the pressure under which one scribe was working on 20 June, see Rowlands (2009), 6, 8.
[169] Carpenter (1996a), p. 13.
[170] Carpenter (1996a), p. 13.

group of baronial negotiators had sworn on behalf of the opposition, and that they should have been acutely conscious of the danger of being subsequently disowned by their own side,[171] he offers no reason why the king should have permitted or wanted proxies to swear on his behalf.[172] Still less is it clear why the barons, who so mistrusted John by this stage, would have countenanced such an unprecedented procedure, and why, had they done so, none of the surviving accounts remarks upon it – though it must be conceded that the chroniclers do not seem very well-informed about the precise course of events during this crucial ten day period.[173] Other than Carpenter's rendering of *cap*. 63, there is no evidence that such an event ever happened. Holt translates 'on our part and on the part of the barons',[174] which of course does not mean that representatives swore on behalf of each party, but that individuals, including the king, swore themselves. This was what the construction often meant in contemporary legal documents.[175] In Holt's view, as reported by Carpenter, 'John swore all right',[176] in person, probably on 19 June, after the renewal of homage.[177] And by Carpenter's account, Holt also rejected Carpenter's connected claim that John had somehow managed to force matters to a 'take it or leave it' conclusion on 15 June, four days before the rebellious barons acceded to the peace. In Holt's view, this made John seem like a boss negotiating with a trades union in the late twentieth century, not a king dealing with rebellious barons in the early thirteenth. Both reported comments capture the authentic tone of the master's voice, and

[171] Carpenter (1996a), p. 14.
[172] Carpenter (1996a), p. 13 n. 71, observes that Matthew Paris, *Chron. Maj*. II, 605-6, gives a list of those who swore to observe the orders of the Twenty-Five, but that '[t]here appears to be no list of those who swore the oath on behalf of the king'. He gives no reason for accepting that these were the individuals who, by his account, had sworn on 15 June, when, also by his account, the Twenty-Five had not yet been selected. He offers no suggestion as to why there was no list of those who allegedly swore on the king's behalf. In fact, Matthew records the names of those in the king's party who swore: below, p. 254 n. 70.
[173] The most detailed account, though written a decade later, is *Coggeshall* p. 172, who says that the barons assembled 'on the specified day, between Windsor and Staines, on the meadow which is called Runnymede', but fails to give the date. Cf. the Barnwell chronicler, *Walt. Cov.* II, 221, who also fails to give the date, and the Dunstable annalist, *Annales Monastici* III, 43, who gives 19 June; and below, p. 259. None of the chronicles records anything specifically about events on 15 June.
[174] Below, p. 473; cf. the vernacular French translation: Holt (1974) repr. in Holt (1985a), p. 256.
[175] For instance, R.C. van Caenegem, ed., *English Lawsuits from William I to Richard I*, 2 vols., Selden Soc., CVI, CVII (1990-1), nos. 606 (8 Feb. 1189), 637 (9 June 1195), 649 (25 Dec. 1197-8 Mar. 1198); however, it could also mean 'on behalf of': nos. 592 (Oct.–Nov. 1189), 641 (1189-95).
[176] Personal letter, April 2014.
[177] Below, pp. 253-4, 256.

can be accepted as his response to what in his view was the second noteworthy contribution to the scholarship of Magna Carta published since the second edition of this book.[178] They are both forceful objections.

We have already dealt with the possibility that John allowed negotiators to swear on his behalf at Runnymede on 15 June. The logic of John's seizing on as yet unauthorised concessions by baronial negotiators, and immediately sealing and issuing a Charter which embodied them in order to wrong foot the opposition, is a curious one. Baronial negotiators, like royal ones, were hardly held incommunicado on the meadow. The location was obviously chosen to establish the security of the rebels,[179] not their isolation from their supporters and reinforcements. It would have been easy enough for them to refer new proposals back to those they represented, if the key figures were not present themselves. There can be little certainty about who was on the meadow on 15 June, but the tactical choice of location suggests that the king's opponents assembled in strength and presumably, given the absence of formal peace, in arms, as Ralph of Coggeshall reported. Moreover, the existence of an early copy of what appears to be yet another draft Charter, dated 16 June,[180] may suggest that negotiations continued in some form during the days which followed. This draft echoes the Windsor draft's level for baronial relief, which is antecedent to that in Magna Carta, but in every other variant shares the reading of Magna Carta's final text. If both variants are not simply errors, it is difficult to interpret it as anything other than a further draft, intermediate between the Windsor draft of 15 June and the final version of Magna Carta. It therefore seems that Holt was correct to stick to the position that 19 June was the date of the final settlement. The Charter may have recorded its date as 15 June because it was then that both sides accepted an authoritative penultimate draft based on the Articles. This was deemed to be the warrant for the eventual final version, which nevertheless embodied changes to that penultimate draft,[181] one of which had still not been incorporated into a draft dated to the following day.

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[178] Carpenter recalls Holt making these comments orally. There is no letter from Holt to Carpenter on this subject amongst the Holt papers.
[179] Below, pp. 249-50.
[180] Found in a law book of the late twelfth and early thirteenth century: Oxford, Bodleian Library, MS Rawlinson C 641, fos. 21v-29r. The dating clause is in a much larger script than the rest of *cap*. 63, and lacks its contractions. It looks like the work of a different scribe. The date is written in words rather than numbers, so it is unlikely that it is a copyist's error. Further Carpenter (1996a), 15; below, p. 446.
[181] Below, p. 446.

The current anniversary has inspired David Carpenter to produce a collation of the four surviving original engrossments of 1215 and of the copy in the letters testimonial.[182] He kindly informs us that this has not produced any fresh information which might settle the matter. It is to be hoped that a more wide-ranging and definitive edition will now be produced. [183] This might reveal new evidence, but seems unlikely to do so, not least because the four extant engrossments of 1215 are so remarkably consistent. They are testimony to the efficiency of the operation by which the agreed text was disseminated.[184] Failing new evidence, it seems likely to us that Holt's view will continue to hold the field, as does his assessment of Langton's role and of the putative influence of the learned law.

Future Possibilities

The Octocentenary of Magna Carta in 2015 will no doubt spur further reconsiderations both of the Charter itself and of Holt's work. Some such studies may be of types that can completed within the anniversary year, for instance work based on careful examination of the manuscripts of the Charter,[185] or on comparison of the Articles with the Charter, both regarding minutiae, such as alteration of mood or tense of verbs, and more general manifestations of political thinking, such as alterations of drafting with regard to the word 'regnum', 'realm'. Other studies will necessarily take much longer, for example the continuing scrutiny of the works of theologians including but not just Stephen Langton. And a full understanding of 1215 will require a study which Holt said he was writing but never completed, a study of the supporters of King John, their characteristics, their inter-connections, and their motives – a companion to Holt's other classic study of the rebellion against King John, *The Northerners*. Such varied investigations will ensure a still fuller appreciation of the present volume on its centenary, the 850th anniversary of the Charter.

[182] D.A. Carpenter, *Magna Carta* (Harmondsworth forthcoming).
[183] Until this happens, the best guide to the manuscripts (with photographs of many) is Vincent (2007), with a 'Census of Manuscripts' at pp. 54-71, and 'Related Texts' at pp. 72-81. A collation of the engrossments of 1215 by Sir John Fox in 1924 is in London, BL MS Add. 41178; there is a copy amongst the Holt papers at St Andrews.
[184] For the recently rediscovered text of the writ ordering publication, see Rowlands (2009), 8-9.
[185] See above, p. 000; note also more generally The Magna Carta Project, based at the University of East Anglia.