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## THE LEGACY OF MAGNA CARTA: LAW AND JUSTICE IN THE FOURTEENTH CENTURY

Anthony Musson\*

### INTRODUCTION

Scholarly focus on Magna Carta in the fourteenth century has generally been on what might be termed the public law or constitutional aspects. The Great Charter was frequently invoked in the political discourse of the time and became enshrined in the lexicon of constitutional debate between the king and his subjects.<sup>1</sup> Magna Carta's prominence in the fourteenth century owed much to its confirmation during the 1297 constitutional crisis,<sup>2</sup> which brought formal assimilation as part of the common law (*la grande chartre des franchises cume lay commune*), an event that revived and refocused the attention of the legal profession.<sup>3</sup> With historical hindsight, though, it was the confirmation of Magna Carta as a point of principle in the so-called 'six statutes' ("fourteenth-century interpretations of the Magna Carta")<sup>4</sup> and its employment in the 'Record and Process' against Richard II—the official parliamentary justification for his deposition in 1399<sup>5</sup> that firmly embedded the Great Charter in legal and political theory.<sup>6</sup>

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<sup>1</sup> For example, the final clause of the Ordinances of 1311 (restraining Edward II) required Magna Carta to be upheld in all its points. CHRONICLES AND MEMORIALS OF GREAT BRITAIN AND IRELAND DURING THE MIDDLE AGES: I CHRONICLES OF THE REIGNS OF EDWARD I. AND EDWARD II. 173–74 (Stubbs ed., Kraus Reprint 1965) (1882) [hereinafter CHRONICLES OF EDWARD I AND II]. But in 1312 Edward II argued (through his legal advisers) against the validity of the Ordinances on the grounds that they contravened Magna Carta, the Forest Charter, and his coronation oath. *Id.* at 211–15; SEYMOUR PHILLIPS, EDWARD II 198–99 (2010).

<sup>2</sup> MICHAEL PRESTWICH, EDWARD I, at 427–35, 519–27 (Yale Univ. Press 1997) (1988).

<sup>3</sup> See Charles Howard McIlwain, *Magna Carta and the Common Law*, in MAGNA CARTA COMMEMORATION ESSAYS 122, 122–23 (Henry Elliot Malden ed., 2005) (1917); 132 SELDEN SOCIETY, SELECTED READINGS AND COMMENTARIES ON MAGNA CARTA: 1400–1604, at xxxix–xl (John Baker ed., 2015) [hereinafter READINGS AND COMMENTARIES].

<sup>4</sup> FAITH THOMPSON, MAGNA CARTA: ITS ROLE IN THE MAKING OF THE ENGLISH CONSTITUTION 1300–1629, at 86–87 (1948).

<sup>5</sup> See DAVID CARPENTER, MAGNA CARTA 62–67 (2015) (giving an original and translated copy of chapter 61 of the 1215 Magna Carta providing that twenty-five individuals shall oversee the realm to keep the peace and liberties provided by the Magna Carta); Andrew Spencer, *The Coronation Oath in English Politics, 1217–1399*, in POLITICAL SOCIETY IN LATER MEDIEVAL ENGLAND: A Festschrift for Christine Carpenter 33, 43 (Benjamin Thompson & John Watts eds., 2015) (discussing the "Record and Process" of King Richard II's deposition depicting many failures to uphold the Magna Carta).

<sup>6</sup> See GERALD HARRISS, SHAPING THE NATION: ENGLAND 1360–1461, at 492–93 (2005);

This revisitation of Magna Carta's legacy will focus not on the high politics of the period, but on what might anachronistically be called the realms of private law: the disputes of the highly litigious population of the age.<sup>7</sup> The Article explores the continued relevance of the Great Charter by considering the nature of its invocation in the litigation strategies of individuals and communities alike.<sup>8</sup> In so doing, it examines perceptions of its authority and the legitimacy that stemmed from citing Magna Carta (or its tenets).<sup>9</sup> It also assesses the role of the legal profession in interpreting and pushing the conceptual boundaries of the Great Charter during this period.<sup>10</sup> Finally, it considers the extent to which the language and rhetoric of petitions reflects expectations of the Great Charter as a benchmark for the exercise of royal justice.<sup>11</sup>

### I. AUTHORITY AND LEGITIMACY

Taking on the mantle of the preeminent statute of the realm, Magna Carta was symbolically placed at the head of the legislative canon in contemporary collections of statutes.<sup>12</sup> Produced from the late thirteenth century onwards, initially as rolls and then in book form, these bespoke volumes often included other legal material useful to practitioners, such as treatises and/or registers of writs.<sup>13</sup> In general, though, Magna Carta and the Forest Charter provided an initial reference point preceding the legislation promulgated by Henry III and Edward I,<sup>14</sup> which was the meat and drink of practising lawyers. Late thirteenth- and early fourteenth-century copyists also included Magna Carta in manuscript collections of earlier legal texts,<sup>15</sup> intending it either as the apotheosis of a tradition of early English laws (that included the Anglo-Saxon

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J. C. HOLT, *MAGNA CARTA* 34–48 (Cambridge Univ. Press, 3d ed. 2015); THOMPSON, *supra* note 4, at 86–97, 326–35.

<sup>7</sup> This is an area Thompson recognised as largely ignored by historians in favour of the public side. THOMPSON, *supra* note 4, at 33.

<sup>8</sup> *See infra* Part I.

<sup>9</sup> *See infra* Part I.

<sup>10</sup> *See infra* Part II.

<sup>11</sup> *See infra* Part III.

<sup>12</sup> *See* Don C. Skemer, *From Archives to the Book Trade: Private Statute Rolls in England, 1285–1307*, 16 J. SOC'Y ARCHIVISTS 193, 195 (1995) (writing of statute rolls in the fourteenth century consistently containing Magna Carta) [hereinafter *Book Trade*].

<sup>13</sup> Don C. Skemer, *Reading the Law: Statute Books and the Private Transmission of Legal Knowledge in Late Medieval England*, in *LEARNING THE LAW: TEACHING AND THE TRANSMISSION OF LAW IN ENGLAND 1150–1900*, at 113, 116–17 (Jonathan A. Bush & Alain Wijffles eds., 1999) [hereinafter *Reading the Law*].

<sup>14</sup> *See generally* *Book Trade*, *supra* note 12 (discussing in part the role Magna Carta took in fourteenth-century legal texts).

<sup>15</sup> *See generally* *Reading the Law*, *supra* note 13 (describing the formation of various thirteenth- and fourteenth-century legal texts that included the Magna Carta).

*Consilatio Cnuti*<sup>16</sup> and the *Leges Edwardi*<sup>17</sup> as well as the late twelfth-century treatise, *Glanvill*<sup>18</sup>) or, in an attempt to provide continuity from the legal past, as a worthy extension of that tradition.<sup>19</sup>

Not surprisingly it played an important part, too, in legal education. Although the earliest extant lectures so far identified cover the first clause of the second Statute of Westminster (*De donis*),<sup>20</sup> surviving moot questions—problems drawn from particular statutes—indicate that disputation on areas of law espoused by the Great Charter was a theme favoured by lawyers,<sup>21</sup> probably members of the emergent Inns of Court, as early as the 1340s.<sup>22</sup> Indeed, the questions forming one of the learning exercises contains the names of those who posed them or interjected during the moot: lawyers (such as Roger de Baukwell, Richard Branscombe, William Fyncheden, John Knyvett, and John Pulteney) who were in practice during this period.<sup>23</sup> The moot questions recorded were probably distilled or abridged from some other text, but the earliest two surviving manuscripts (both at Cambridge) show that the statute book formed the basis for these exercises<sup>24</sup> and that the interpretation of at least seventeen clauses of Magna Carta (clauses 3–5, 7, 8, 11, 17, 18, 21, 22, 28, 29, 31, 33, 34, 36, 37)<sup>25</sup> was debated before the earliest ‘Readings’ (lectures) on the subject were held in the Inns of Court in the early fifteenth century.<sup>26</sup>

Although the recorded Magna Carta moot problems do not appear to derive explicitly from the Year Book reports of cases appearing in the courts, its manifestation in the latter equally demonstrates the significance of the Great Charter in litigation as well as revealing the particular matters of dispute in the courts.<sup>27</sup> Cases from

<sup>16</sup> Scott Kleinman, *Frid and Freedom: Royal Forests and the English Jurisprudence of Lagmon's Brut and Its Readers*, 109 *MOD. PHILOLOGY* 17, 24 (2011).

<sup>17</sup> BRUCE R. O'BRIEN, *GOD'S PEACE & KING'S PEACE: THE LAWS OF EDWARD THE CONFESSOR* 3 (1999).

<sup>18</sup> See generally THE TREATISE ON THE LAWS AND CUSTOMS OF THE REALM OF ENGLAND COMMONLY CALLED GLANVILL (G. D. G. Hall ed. & trans., 1983).

<sup>19</sup> For example, see London, British Library [hereinafter BL] MS Harley 746, 1704; BL MS Additional 24066; Bruce O'Brien, *Pre-Conquest Laws and Legislators in the Twelfth Century*, in THE LONG TWELFTH-CENTURY VIEW OF THE ANGLO-SAXON PAST 229, 233–34 (M. Brett & D. A. Woodman eds., 2015).

<sup>20</sup> Paul Brand, *Legal Education in England Before the Inns of Court*, in LEARNING THE LAW: TEACHING AND THE TRANSMISSION OF ENGLISH LAW 51, 66 (Jonathan Bush & Alain A. Wijffels eds., 1999).

<sup>21</sup> READINGS AND COMMENTARIES, *supra* note 3, at xl; see also 2 READINGS AND MOOTS AT THE INNS OF COURT IN THE FIFTEENTH CENTURY: MOOTS AND READERS' CASES (Samuel E. Thorne & J.H. Baker eds., 1990), in 105 SELDEN SOCIETY cxlii–cxliii [hereinafter READINGS AND MOOTS] (providing a selection of Magna Carta cases).

<sup>22</sup> READINGS AND COMMENTARIES, *supra* note 3, at xl.

<sup>23</sup> READINGS AND MOOTS, *supra* note 21, at xxiii–xxiv.

<sup>24</sup> READINGS AND COMMENTARIES, *supra* note 3, at xl.

<sup>25</sup> MAGNA CARTA (1225).

<sup>26</sup> READINGS AND MOOTS, *supra* note 21, at xxii–xxv, xlv–xlvi, cxliii–cxlvii; see also READINGS AND COMMENTARIES, *supra* note 3, at xl.

<sup>27</sup> READINGS AND MOOTS, *supra* note 21, at xix, xxi.

the early fourteenth century concerning interpretation of individual provisions not only show in the range of clauses litigated a remarkable affinity with the clauses highlighted in the surviving moots, but also how provisions of Magna Carta (whether taken as separate issues or joined with elements from other statutes) provided legal points on which lawyers felt their colleagues needed to be informed and advised.<sup>28</sup>

Dissemination and discussion of Magna Carta's provisions was not restricted to the legal profession nor indeed to the literate, public proclamation enabled it to reach a broader audience.<sup>29</sup> Emphasis on its accessibility, if not applicability to all, was envisaged by the *Articuli Super Cartas* according to which transcripts of the Great Charter were to be sent to sheriffs so it could be read out 'before the people four times a year' at Michaelmas, Christmas, Easter, and Midsummer.<sup>30</sup> Regular recitation of Magna Carta in the county court, the shire's prime meeting point, combined with recitation of the Statute of Winchester of 1285 (measures for local policing),<sup>31</sup> afforded attendees in the localities a firm basis of the key tenets in the English judicial system.<sup>32</sup> Following parliamentary assent, new legislation—some of it citing or endorsing Magna Carta—was also proclaimed in towns and cities, at fairs and markets, and in the countryside at important crossroads.<sup>33</sup>

The language of dissemination and proclamation equally assisted its absorption.<sup>34</sup> The Great Charter was originally issued to the barons in Anglo-Norman French, as a contemporary 1215 version implies.<sup>35</sup> Other copies in the vernacular French were circulated during the thirteenth century through their inclusion in chronicles, cartularies, and legal collections.<sup>36</sup> We know from chronicles and the instructions sent out to

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<sup>28</sup> See, e.g., David J. Seipp, *Medieval English Legal History: An Index and Paraphrase of Printed Year Book Reports, 1268–1535: Compiled by David J. Seipp (Seipp's Abridgement)*, LEGAL HISTORY: THE YEAR BOOKS, <https://www.bu.edu/law/faculty-scholarship/legal-history-the-year-books/> [http://perma.cc/X9D2-H8QE]. c.1—liberties of holy church (1330.193ss), c.3—waste during wardship (1329.084; 1352.023), c.4—custody of lands in wardship (1310.048ss), c.7—widow's remarriage (1311.255ss, 1311.258ss), c.11—common pleas (1310.168ss), c.12—assizes (1313.594ss; 1324.018), c.18—debt of the deceased (1308.026ss; 1311.295ss, 1324.062), c.24—praecipe (1302.150rs), c.28—witnesses for an oath (1304.179rs, 1313.440ss, 1324.187), c.35—county courts (1330.193ss), c.36—gifts to religious houses (1306.033rs).

<sup>29</sup> Reginald L. Poole, *The Publication of Great Charters by the English Kings*, 28 ENG. HIST. REV. 444, 449 (1913).

<sup>30</sup> 1 STATUTES OF THE REALM 136 (Alexander Luders et al. eds., 1808–28).

<sup>31</sup> See SELECT DOCUMENTS OF ENGLISH CONSTITUTIONAL HISTORY (George Burton Adams & H. Morse Stephens eds., 1927) (1901).

<sup>32</sup> J. R. Maddicott, *The County Community and the Making of Public Opinion in Fourteenth-Century England*, 28 TRANSACTIONS ROYAL HIST. SOC'Y 27, 32–35 (1987).

<sup>33</sup> *Id.* at 33–36.

<sup>34</sup> *Id.* at 36.

<sup>35</sup> HOLT, *supra* note 6, at 399.

<sup>36</sup> Bibliothèque Municipale de Rouen, MS y 200 is the only known vernacular French copy of the 1215 Magna Carta in existence. It was written in a thirteenth-century hand and

sheriffs that Magna Carta and other statutes were not read out solely in Latin (*litteraliter*),<sup>37</sup> a French text was prepared for recitation,<sup>38</sup> but they were also translated by the crier himself and proclaimed (in the local dialect) for the benefit of people for whom English was their native (*patria lingua*) or mother tongue (*materna lingua*).<sup>39</sup> This linguistic inclusivity was deemed appropriate for ensuring it reached the widest possible audience.

The broad reach of Magna Carta and perceptions of its authority can be observed by studying the prime vehicle for the transmission of grievances or requests for remedy of complaints to the crown: the petition. Explicit evidence of the identity of the compilers of petitions or recourse to legal advice by petitioners is sometimes discernible, but fairly rare.<sup>40</sup> In 1290, for example, it emerged from an inquiry into disputed facts about a petition that local scribe Stephen le Popeshall of Kent had written it for four pence,<sup>41</sup> while in clause 1393 Joan, daughter of Alice Windsor (or Alice Perrers, as is she is more familiarly known),<sup>42</sup> stated in her petition that ‘sages de loy’ informed her that her claim had the merits of ‘droit et reson.’<sup>43</sup>

It is clear from a survey of private petitions submitted to parliament for the king’s attention, that Magna Carta was invoked in different ways and with varying degrees of accuracy and success by a range of individuals and groups from across

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included in the cartulary of the Leper Hospital of St. Giles at Pont-Audemer, Normandy. It clearly states that the vernacular document and writ that followed were attested in Odiham, 27 June 1215 MS y 200. *Id.* For later examples in Anglo-Norman French see, for example, BL MS Additional 32085.

<sup>37</sup> HOLT, *supra* note 6, at 399.

<sup>38</sup> *Id.*

<sup>39</sup> CAMDEN SOCIETY, *THE CHRONICLE OF WILLIAM DE RISHANGER OF THE BARON’S WARS: THE MIRACLES OF SIMON DE MONTFORT* 405 (James Orchard Halliwell ed., 1968) (1840); *5 CHRONICLES AND MEMORIALS OF GREAT BRITAIN AND IRELAND DURING THE MIDDLE AGES: ANNALES MONASTICI* 541 (Henry Richards Luard ed., 1869); MICHAEL CLANCHY, *FROM MEMORY TO WRITTEN RECORD: ENGLAND 1066–1307*, at 267–68 (2013); James A. Doig, *Political Propaganda and Royal Proclamations in Late Medieval England*, 71 *HIST. RES.* 253, 264 (1998).

<sup>40</sup> GWILYM DODD, *JUSTICE AND GRACE: PRIVATE PETITIONING AND THE ENGLISH PARLIAMENT IN THE LATE MIDDLE AGES* 302–04, 312 (2007). *See generally* Kitrina Lindsay Bevan, *Clerks and Scriveners: Legal Literacy and Access to Justice in Late Medieval England* (Mar. 2013) (unpublished Ph.D. thesis, University of Exeter) (on file with Open Research Exeter, University of Exeter).

<sup>41</sup> Paul Brand, *Petitions and Parliament in the Reign of Edward I*, in 23 *PARLIAMENTARY HIST. (SPECIAL ISSUE)* (2004), *reprinted in* *PARCHMENT AND PEOPLE: PARLIAMENT IN THE MIDDLE AGES* 14, 30–31 (Linda Clark ed., 2004).

<sup>42</sup> This made her the illegitimate daughter of Edward III. *See generally* W. M. Ormrod, *The Trials of Alice Perrers*, 83 *SPECULUM* 366 (2008).

<sup>43</sup> Petitioners: Joan Wyndesor (Windsor), Daughter of Alice Windsor (SC 8/22/1060) (c. 1393/1394), NAT’L ARCHIVES, <http://discovery.nationalarchives.gov.uk/details/r/C9061224> [<http://perma.cc/6WJP-2CKC>].

the social scale, clergy as well as lay persons.<sup>44</sup> For some, it seemed enough to allude to *la tenur de la grant chartre* on the basis of the substance of the request (e.g., a widow seeking financial support from her husband's executors),<sup>45</sup> or for the petitioner to ask to receive their inheritance in full 'as ordained by the Great Charter.'<sup>46</sup> For others it was necessary to raise it in order to avoid disinheritance, which would be 'against the terms of Magna Carta.'<sup>47</sup> One early fourteenth-century petitioner, Thomas de Fynmer, did not reference Magna Carta by name, but accorded it a legislative basis when he stated that it was *ordained by statute* that no man be ousted from his free tenement.<sup>48</sup>

More often than not the knowledge of the drafter or the nature of the advice given has to be inferred from the style and details of the petition itself, especially its legal complexity and the particular circumstances surrounding it.<sup>49</sup> In the case of John Wardeden of Bodiam (Sussex) and John de Boxhurst of Sandhurst (Kent) the text of the petition paraphrases clause 29,<sup>50</sup> but in such a way that it retains its legal flavour: "that by him [the king?] or by the common law the body of no one ought to be taken nor their lands nor chattels removed into the king's hand unless it is for just cause."<sup>51</sup>

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<sup>44</sup> See generally DODD, *supra* note 40, at 279–316 (discussing the drafting of petitions in varying ways, including the language and authorship of the petitions).

<sup>45</sup> Petitioners: Alice de Everingham, Widow of Thomas de Normanville (SC 8/312/E1) (c.1395), NAT'L ARCHIVES, <http://discovery.nationalarchives.gov.uk/details/r/C9529050> [<http://perma.cc/A7KR-KMYG>].

<sup>46</sup> Petitioners: William de la Beche (Beech); Euphemia de la Beche, Wife of William de la Beech, one of the Heirs of Edmund Comyn of Kilbride; Harvey de Stanton (Staunton), Guardian of Mary, Sister of Euphemia, the Other Heir (SC 8/95/4733) (1322), NAT'L ARCHIVES, <http://discovery.nationalarchives.gov.uk/details/r/C9149284> [<http://perma.cc/83MD-Y7YC>].

<sup>47</sup> Petitioners: Richard de Grey Codnor (SC 8/48/2400) (c.1330), NAT'L ARCHIVES, <http://discovery.nationalarchives.gov.uk/details/r/C9062613> [<http://perma.cc/3PXP-NSAK>].

<sup>48</sup> Petitioners: Thomas de Fynmer (SC 8/206/10292) (c.1332), NAT'L ARCHIVES, <http://discovery.nationalarchives.gov.uk/details/r/C9333848> [<http://perma.cc/2HKU-ZHKD>] (*come ordeyne est par lestatut qu nulla homme soit ouste de son frank tenement saunz estre mys a responus*).

<sup>49</sup> See generally Gwilym Dodd, *Writing Wrongs: The Drafting of Supplications to the Crown in Later Fourteenth-Century England*, 80.2 MEDIUM AEVUM 217 (2011) (analyzing the different influences that affected petitions, and the various specialized knowledge and expertise used) [hereinafter *Writing Wrongs*].

<sup>50</sup> See MAGNA CARTA (1225).

<sup>51</sup> Petitioners: John Wardeden, Son of Richard Wardeden of Bodiam; John de Boxhurst of Sandhurst (SC 8/15/749) (1346), NAT'L ARCHIVES, <http://discovery.nationalarchives.gov.uk/details/r/C9060890> [<http://perma.cc/5DAQ-T6KY>] (*qe par la ou par la comune ley le corps de nulli ne doit estre pris ne ses terres ne ses chateux seisez en la mein le Roi sil ne soit par veroy cause*). This petition also appears in the old edition of the rolls of parliament where it is dated c.1330. 2 ROLLS OF PARLIAMENT: REIGN OF EDWARD III, at 3 (1783). This does not fit with a writ issued in 1346. 8 CALENDAR OF CLOSE ROLLS: EDWARD III A.D. 1346–1349, at 154 (1905).

Petitioners (or their advisors) may have considered direct quotation from the Great Charter was a way of underlining its authority and thus the legitimacy of the claim. A petition from Robert de Thorpe of Suffolk, for instance, desiring ‘such remedy as afforded by the law of the land and the provisions of the Great Charter,’ referred accordingly to several distinct ‘poyntz’ of the Charter during the course of his lengthy petition.<sup>52</sup> Robert Thorpe was son and heir of John Thorpe (d.1324), who had held the manor of Combs in Suffolk directly from the king for an annual fee farm, which had escheated to the king as a result of a forfeiture in the distant past.<sup>53</sup> The petitioner was claiming reimbursement of the issues erroneously taken by the escheator and remedy for the sheriff’s wrongful distraint for payment of relief.<sup>54</sup> In support of his case, Thorpe quotes directly from clause 31 of Magna Carta (1225)<sup>55</sup> “we will hold it in the same manner that the baron held it,”<sup>56</sup> for which unusually the text breaks from the Anglo-Norman French of the petition into Latin “*Nos eodem modo eam tenebimus quo baro eam tenuit etc.*”<sup>57</sup> By making precise reference to the original Latin text, Thorpe is emphasising both his specific claim and his understanding of the authority of the Charter. Since unfortunately he had mistakenly ‘through ignorance’) already performed homage to the king,<sup>58</sup> the strength of his argument through invocation of that particular clause may have been undermined. Hedging his bets slightly in legal terms, therefore, he then cites the clause at the very end of the Charter: “Also we have granted to them for us and our heirs, that neither we nor our heirs shall seek anything by which the liberties contained in this charter may be infringed or broken; and if anything shall be sought after by any person contrary to this it shall not prevail and be held for nothing.”<sup>59</sup> The strategy succeeded to the extent that the certifications and inquests he had attached to the petition were scrutinised in chancery and the complaint itself was eventually ordered to be heard by the king’s council.<sup>60</sup> In the meantime, though, as Robert Thorpe died in April 1330,<sup>61</sup> it took Sir John de Clavering, who held the wardship of Thorpe’s heir, to bring the case to

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<sup>52</sup> Petitioners: Robert de Thorp (Thorpe), Son and Heir of John de Thorp (SC 8/166/8297) (1325), NAT’L ARCHIVES, <http://discovery.nationalarchives.gov.uk/details/r/C9294142> [<http://perma.cc/CK99-BYXH>] (*tiel remedie qu la ley de la terre et les poyntz de la graunde Chartre*).

<sup>53</sup> *Id.*

<sup>54</sup> *Id.*

<sup>55</sup> *Id.*

<sup>56</sup> MAGNA CARTA (1225).

<sup>57</sup> Petitioners: Robert de Thorp (Thorpe), Son of John de Thorpe (SC 8/8/355) (1325), NAT’L ARCHIVES, <http://discovery.nationalarchives.gov.uk/details/r/C9060478> [<http://perma.cc/C37Z-K3DR>] (a duplicate of the petition *supra* note 52).

<sup>58</sup> SC 8/166/8297, *supra* note 52.

<sup>59</sup> *See* MAGNA CARTA (1225).

<sup>60</sup> SC 8/166/8297, *supra* note 52; SC 8/8/355, *supra* note 57.

<sup>61</sup> W. A. COPINGER, *THE MANORS OF SUFFOLK: NOTES ON THEIR HISTORY AND DEVOLUTION* 151 (1910).

the attention of the king in parliament. He did so in July of that year, whereupon the matter was examined by the chancellor, treasurer, the justices of the two benches, barons of the exchequer and other wise men of the council, who duly acknowledged:

that it is specified in the great charter that the king will not have wardship by reason of escheat if a man held in chief of someone other than him, that it is the case that the aforesaid Robert held the same moiety at the fee-farm from the king . . . and thereby the king ought not to have the wardship of the manors . . . by reason of the minority of the heir of the said Robert.<sup>62</sup>

Precise citations such as this appear to betray the influence of lawyers or at least personal reference to a statute book. Indeed, volumes of statutes were owned not just by men of law, but a whole range of ‘consumers’ of legal literature, among whom were public officials, lay landowners, merchants, estate stewards, ecclesiastical institutions, and urban corporations.<sup>63</sup> As Robert de Thorpe’s father played a key role in local justice in East Anglia during Edward II’s reign,<sup>64</sup> the petitioner may well have had access to a copy of the Great Charter in any law books he possessed or been able to secure legal advice on the matter. Equally, he would have had access to the sheriff’s office where copies of the Great Charter and other legislation were deposited.<sup>65</sup> It would therefore be unsurprising to find Thorpe’s verbatim citation, though that in itself does not diminish the authoritativeness of the claim or the air of confidence he wished to project by its use.

The clergy’s invocation of Magna Carta and the substance of particular clauses may reflect both the growing practice of ecclesiastical institutions retaining common lawyers during the fourteenth century, and their personal or institutional possession of statute books or transcripts of the Great Charter.<sup>66</sup> As Richard Helmholz has

<sup>62</sup> Parliament of November 1330, C 65/2 m6d, in *PARLIAMENT ROLLS OF MEDIEVAL ENGLAND* (Chris Given-Wilson et al. eds., 2005) [hereinafter *PROME*]; Petitioners: Robert de Thorp (Thorpe), Son and Heir of John de Thorp (SC 8/266/13299) (c.1330), *NAT’L ARCHIVES*, <http://discovery.nationalarchives.gov.uk/details/r/C9517246> [<http://perma.cc/5HRN-U5MW>].

<sup>63</sup> ANTHONY MUSSON, *MEDIEVAL LAW IN CONTEXT: THE GROWTH OF LEGAL CONSCIOUSNESS FROM MAGNA CARTA TO THE PEASANTS’ REVOLT 122–23* (2001); Donald C. Skemer, *Sir William Breton’s Book: Production of Statuta Angliae in the Late Thirteenth Century*, in *ENGLISH MANUSCRIPT STUDIES, 1100–1700*, at vii, 27–28 (Peter Beal & Jeremy Griffiths eds., 1998). Skemer provides the contents and organizational scheme for Breton’s statute collection. *Id.* at 38–42.

<sup>64</sup> ANTHONY MUSSON & W. M. ORMROD, *THE EVOLUTION OF ENGLISH JUSTICE: LAW, POLITICS AND SOCIETY IN THE FOURTEENTH CENTURY 70* (1999) [hereinafter *THE EVOLUTION OF ENGLISH JUSTICE*].

<sup>65</sup> Maddicott, *supra* note 32, at 36–37.

<sup>66</sup> Adelaide Bennett, *Anthony Bek’s Copy of Statuta Angliae*, in *ENGLAND IN THE FOURTEENTH CENTURY: PROCEEDINGS OF THE 1985 HARLAXTON SYMPOSIUM 18–21* (W. M.

shown, however, the clergy were generally enthusiastic about disseminating the provisions of the Great Charter and it was not only read out in Cathedrals, but also included in clergy manuals.<sup>67</sup> Unlike Robert Thorpe, however, some of their petitions tend to paraphrase rather than provide the text verbatim.<sup>68</sup> Citing the Great Charter (but not a specific clause), the bishop of Rochester's claim, for example, related to waste during the recent vacancy in the Holy See (clause 4)<sup>69</sup> in that he alleged waste made to the woods and mismanagement of the estate.<sup>70</sup> The prior of Cranborne framed his grievance in relation to clause 14,<sup>71</sup> complaining that contrary to 'la graunt chartre' he had been ammerced to the tune of £10 when his lay fee amounted only to two acres of land.<sup>72</sup> In his request for restoration of various spiritual rights,<sup>73</sup> which he argues were wrongfully taken from the churches of Penrith and Dalston by the keeper of the temporalities of the see of Carlisle, the archbishop of York, William Melton, does not invoke the Great Charter by name.<sup>74</sup> Nevertheless he effectively provides clause 1<sup>75</sup> as a justification for action (*contre le gree le dit Ercevesque e contre le dite fraunchise de seinte Eglise*).<sup>76</sup> The broadness of this clause, however, belies the fact that the substance of his complaint in fact involves elements of several other provisions of Magna Carta, namely clause 4 and clause 33.<sup>77</sup>

Bishops and priors certainly had recourse to legal advice and/or the text of the Great Charter,<sup>78</sup> but interestingly from the format of their petitions, lower clergy did too.<sup>79</sup> The parsons and vicars of the forest of Galtres (in the north riding of York

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Ormrod ed., 1986); Maddicott, *supra* note 32, at 36; Nigel Ramsay, *Retained Legal Counsel, c.1275–c.1475*, 35 TRANSACTIONS ROYAL HIST. SOC'Y 95, 100–01, 103 (1985).

<sup>67</sup> See generally R.H. Helmholz, *The Church and Magna Carta*, 25 WM. & MARY BILL RTS. J. 425 (2016).

<sup>68</sup> See Petitioners: Hamo Hethe, Bishop of Rochester (SC 8/87/4311) (c.1320), NAT'L ARCHIVES, <http://discovery.nationalarchives.gov.uk/details/r/C9148853> [<http://perma.cc/AYA6-SGPX>].

<sup>69</sup> MAGNA CARTA (1225).

<sup>70</sup> SC 8/87/4311, *supra* note 68.

<sup>71</sup> MAGNA CARTA (1225).

<sup>72</sup> Petitioners: Prior of Cranborne (SC 8/323/E554) (c.1295–1320), NAT'L ARCHIVES, <http://discovery.nationalarchives.gov.uk/details/r/C9529606> [<http://perma.cc/WKK5-7CAZ>].

<sup>73</sup> Including tithes of wool and lambs, mortuary gifts, offerings, pensions, and other revenues. Petitioners: William Melton Archbishop of York (SC 8/8/377) (1325), NAT'L ARCHIVES, <http://discovery.nationalarchives.gov.uk/details/r/C9060501> [<http://perma.cc/Q7C4-EEBV>].

<sup>74</sup> See *id.*

<sup>75</sup> MAGNA CARTA (1225).

<sup>76</sup> See SC 8/8/377, *supra* note 73.

<sup>77</sup> MAGNA CARTA (1225).

<sup>78</sup> See *supra* notes 69–77 and accompanying text.

<sup>79</sup> See Petitioners: Hugh de Cressy, Parson of Greasley (SC 8/329/E967) (c.1295–c. 1310), NAT'L ARCHIVES, <http://discovery.nationalarchives.gov.uk/details/r/C9682962> [<http://perma.cc/KM7Z-M6MG>]; Petitioners: Hugh de Cressy (Cressy), Parson of the Church of Greasley (SC 8/99/4932) (c.1300–c.1325), NAT'L ARCHIVES, <http://discovery.nationalarchives.gov>

shire) state that Magna Carta granted that putre should not be demanded from people of the Church by forest officials because they had no land except the glebe of the church, couching their grievance in terms as if the Great Charter (clause 14)<sup>80</sup> used those precise words rather than by analogy.<sup>81</sup> Hugh de Cressy, parson of the church of Our Lady, Greasley in Nottinghamshire petitioned the king on two occasions concerning his right to tithes in Willey Hay.<sup>82</sup> In complaining that they have been granted away to someone else, he invokes the dispossession and disinheritance aspects of clause 29 (*desherite de sa possession*),<sup>83</sup> which he combines with clause 1 (*a droit de sa eglise e a sa longe possession*)<sup>84</sup> and with his rights in relation to assarts under the forest charter (clause 4).<sup>85</sup>

The status of the petitioners can equally imply recourse to legal assistance, and the framing of complaints from peasants is particularly intriguing in its employment of a discourse of ancient rights. Common perception of the downward extension of Magna Carta's provisions in this respect can be found in numerous petitions emanating from villagers invoking their real or imagined status as tenants of manors of the king's ancient demesne.<sup>86</sup> Tenants on manors that were or had once been royal land were accorded a range of special privileges, including protection from increases in rents and services owed, access to the royal courts,<sup>87</sup> and personal freedom.<sup>88</sup> For example, the ancient demesne tenants of South Tawton, who in early Edward II's reign sought confirmation of their customs and usages, were able to cite with appropriate detail that they were enrolled (*en roule*) as a result of a plea decided before oyer and terminer justices Ralph de Hengham and his companions during Edward I's reign.<sup>89</sup> This action had been brought when the manor was in the hands of Richard

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.uk/details/r/C9149499 [http://perma.cc/R45A-848T]; Petitioners: Parsons and Vicars of the Forest of Galtres (SC 8/11/532) (1333), NAT'L ARCHIVES, <http://discovery.nationalarchives.gov.uk/details/r/C9060659> [http://perma.cc/52QE-RVMV].

<sup>80</sup> MAGNA CARTA (1225).

<sup>81</sup> SC 8/11/532, *supra* note 79.

<sup>82</sup> SC 8/329/E967, *supra* note 79; SC 8/99/4932, *supra* note 79.

<sup>83</sup> MAGNA CARTA (1225).

<sup>84</sup> *Id.*

<sup>85</sup> SC 8/329/E967, *supra* note 79; SC 8/99/4932, *supra* note 79.

<sup>86</sup> See B. P. WOLFFE, *THE ROYAL DEMESNE IN ENGLISH HISTORY: THE CROWN ESTATE IN THE GOVERNANCE OF THE REALM FROM THE CONQUEST TO 1509*, at 29 (1971).

<sup>87</sup> R. S. Hoyt, *The Nature and Origins of Ancient Demesne*, 65 *ENG. HIST. REV.* 145, 165, 168, 172 (1950); Marjorie Keniston McIntosh, *The Privileged Villeins of the English Ancient Demesne*, 7 *VIATOR: MEDIEVAL & RENAISSANCE STUD.* 295, 296, 306–07 (1976).

<sup>88</sup> Christopher Dyer, *Memories of Freedom: Attitudes Towards Serfdom in England, 1200–1350*, in *SERFDOM AND SLAVERY STUDIES IN LEGAL BONDAGE 277*, 286 (M. L. Bush ed., 1996).

<sup>89</sup> Petitioners: Tenants of the King's Ancient Demesne of South Tawton (SC 8/142/7093) (c. 1307), NAT'L ARCHIVES, <http://discovery.nationalarchives.gov.uk/details/r/C9209272> [http://perma.cc/9J6W-K6V7].

de Pultemor on account of ‘autres coustoums’ demanded of them.<sup>90</sup> The second limb of their petition highlighted further problems they had allegedly encountered, complaining of the unreasonable behaviour of royal bailiffs in detaining livestock and wrongful distraints carried out by various lords that were interfering with their customary practices.<sup>91</sup> Employing legal terminology to convey the bailiffs’ actions (*par force e destresce*), they were clearly advised on the construction of their petition.<sup>92</sup> Justification for bringing their complaint (akin to the tenants of Bocking, who were under the jurisdiction of the prior’s Court Leet)<sup>93</sup> came from the fact that the lords were claiming royal privilege and other liberties (*plede regal e autre franchises*).<sup>94</sup>

The tenants of the ancient demesne manor of Fawsley similarly do not cite Magna Carta by name, but emphasise their impoverishment (*sont en poveris*) through the severity of the demands made on them contrary to the practices established in the time of their forebears.<sup>95</sup> Adding to the picture of injustice, they complain that they have suffered ejection from their common pasture by the lord of the manor, Simon de Daventry.<sup>96</sup>

Claims of dispossession made by other ancient demesne tenants seem to draw implicitly on clause 29 of Magna Carta,<sup>97</sup> championing their free status. Using the language of disseisin, “poor tenants” variously maintain they have been ousted from their land<sup>98</sup> and their inheritance<sup>99</sup> or had their houses knocked down and their lands seized so that their heirs could not enjoy them.<sup>100</sup>

Although the petitions are brought at different periods, they tend to use similar language and arguments. As justification for their position, they usually underline

<sup>90</sup> *Id.* (The writ they obtained mentions “alias consuetudines et alias servicia”).

<sup>91</sup> *Id.*

<sup>92</sup> *See id.*

<sup>93</sup> *See* John F. Nichols, *An Early Fourteenth Century Petition from the Tenants of Bocking to Their Manorial Lord*, 2 *ECON. HIST. REV.* 300, 300–01 (1930).

<sup>94</sup> SC 8/142/7093, *supra* note 89.

<sup>95</sup> Petitioners: Tenants of the Ancient Demesne of the Manor of Fawsley (SC 8/169/8406) (1315), NAT’L ARCHIVES, <http://discovery.nationalarchives.gov.uk/details/r/C9294253> [<http://perma.cc/GE8Y-AMAB>].

<sup>96</sup> *Id.* As in the previous case, the arguments clearly struck the correct note with the king’s council as a remedy was forthcoming. *CALENDAR OF CHANCERY WARRANTS PRESERVED IN THE PUBLIC RECORD OFFICE: A.D. 1244–1326*, at 420 (1927).

<sup>97</sup> MAGNA CARTA (1225).

<sup>98</sup> *See* Petitioners: People of Old Windsor, New Windsor and Sunninghill of the Ancient Demesne of the Crown (SC 8/201/10005) (c.1327), NAT’L ARCHIVES, <http://discovery.nationalarchives.gov.uk/details/r/C9333561> [<http://perma.cc/NE2K-3BG3>].

<sup>99</sup> *See* Petitioners: Tenants of the Ancient Demesne of the Manor of Merton (SC 8/61/3007) (1348), NAT’L ARCHIVES, <http://discovery.nationalarchives.gov.uk/details/r/C9106768> [<http://perma.cc/MAZ5-P5BL>].

<sup>100</sup> *See* Petitioners: People of Ogbourne (SC 8/63/3133) (1332–1334), NAT’L ARCHIVES, <http://discovery.nationalarchives.gov.uk/details/r/C9106896> [<http://perma.cc/7MAW-LHQP>].

the antiquity of their customs and usages.<sup>101</sup> Some cite Domesday Book,<sup>102</sup> while one group specifically cites King Harold, thus claiming its authority dated back prior to the Conquest.<sup>103</sup> Others simply state that they and their ancestors have enjoyed their lands *saunz destourbance* from time immemorial.<sup>104</sup> This could be taken in legal terms to mean they were invoking the limit of legal memory (1189), a fictional time by which matters of ownership, possession and usage were (and still are) theoretically judged.<sup>105</sup> Alternatively, they were perhaps using the term more metaphorically as simply constituting tradition or usage over a very long time.

The appeal to ancient customs lies at the heart of Magna Carta (especially clause 9),<sup>106</sup> but the peasants also strongly believed that the actions against them were “contrary to their laws” and prevented them from availing themselves of “droit.”<sup>107</sup> Certain tenants also clearly believed that their personal liberty (as well as their lands and possessions) was at stake: the tenants of Merton, for example, requested protection for their bodies and chattels.<sup>108</sup> Such petitions provide an insight into perceptions of liberty and the grounds upon which claims of unjust treatment were founded. The perceptions of rights and privileges entertained by these disparate groups on a localised basis chimes with the belief of the townspeople and peasants of St. Alban’s, who in a dispute in 1327 (and later during the Peasants’ Revolt of 1381) pointed the abbot of St. Alban’s to various “charters of liberties” that they believed guaranteed their freedoms.<sup>109</sup>

The petitions from ancient demesne tenants manifest concern for the misuse of jurisdictional authority, thereby challenging the legitimacy of that authority.<sup>110</sup> As

<sup>101</sup> See, e.g., SC 8/201/10005, *supra* note 98.

<sup>102</sup> Petitioners: King’s Poor Tenants of Archenfield (SC 8/167/8334) (1334), NAT’L ARCHIVES, <http://discovery.nationalarchives.gov.uk/details/r/C9294179> [<http://perma.cc/AHP6-9H2H>]; SC 8/61/3007, *supra* note 99; Petitioners: Keeper and College of the Church of Our Lady of St. Mary, Ottery (SC 8/63/3142) (1377), NAT’L ARCHIVES, <http://discovery.nationalarchives.gov.uk/details/r/C9106905> [<http://perma.cc/DY2W-HT57>].

<sup>103</sup> SC 8/61/3007, *supra* note 99. In 1280 and 1364, the tenants of Crondall and Hessebourne in Hampshire claimed that their manors had been in the hands of “the ancestors of the Lord King,” which, although fairly vaguely worded, in fact represented an extraordinary feat of communal memory going back as far as the tenth or ninth centuries (and was accepted by Edward III in spite of the entry in Domesday Book which said it had always belonged to the Church). See Rosamond Faith, *The “Great Rumour” of 1377 and Peasant Ideology*, in *THE ENGLISH RISING OF 1381*, at 43, 56–57 (R. H. Hilton & T. H. Aston eds., 1984).

<sup>104</sup> SC 8/201/10005, *supra* note 98 (*eyent en use du temps sont memorie ne cour*).

<sup>105</sup> See Paul Brand, “Time Out of Mind”: *The Knowledge and Use of the Eleventh- and Twelfth-Century Past in Thirteenth-Century Litigation*, in *16 ANGLO-NORMAN STUDIES: PROCEEDINGS OF THE BATTLE CONFERENCE 37*, 54 (Marjorie Chibnall ed., 1993).

<sup>106</sup> MAGNA CARTA (1225).

<sup>107</sup> See, e.g., SC 8/201/10005, *supra* note 98; SC 8/167/8334, *supra* note 102; SC 8/61/3007, *supra* note 99.

<sup>108</sup> SC 8/61/3007, *supra* note 99.

<sup>109</sup> Faith, *supra* note 103, at 63–64.

<sup>110</sup> For a wide-ranging exploration of this theme, see Susan Reynolds, *Secular Power and*

such, they also constitute an ongoing dialectic between personal freedom and villeinage played out both in a manorial context and with reference to the royal courts.<sup>111</sup> Frequently they comprise allegations of illegality in terms of the behaviour of lords towards their tenants, notably attempts to downgrade their status (and thus their tenure) with detrimental consequences.<sup>112</sup> The men of Mickleover, for example, were aggrieved at the actions of the abbot of Burton upon Trent.<sup>113</sup> Allegedly, he had distrained them (seized property for rent or services owed) in order to force them to acknowledge themselves as villeins when they were ancient demesne tenants.<sup>114</sup> The tenants of Manton (ancient demesne of the crown) were equally distraught.<sup>115</sup> They said that they held their land freely of the abbot of Cluny, but had now been reduced to servitude following the removal of eighty acres, which had occurred without a corresponding reduction in the amount of rent owed.<sup>116</sup> They were extremely worried as they were unable to pursue an action in law as a consequence of their impoverishment and reduced status.<sup>117</sup> The free sokemen of the manor of Harmondsworth similarly encountered harsh and unjust treatment from their ecclesiastical landlord: distraints against their customary levels were compounded by the harm suffered by their lord's refusal to accept their legal status and his contravention of the findings of an inquest on the matter.<sup>118</sup>

Recourse to litigation and to the mechanism of petitioning the crown to achieve their aims was clearly not alien to the lowest orders of society.<sup>119</sup> Customary tenants

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*Authority in the Middle Ages*, in POWER AND IDENTITY IN THE MIDDLE AGES: ESSAYS IN MEMORY OF REES DAVIES (Huw Price & John Watts eds., 2007).

<sup>111</sup> MARK BAILEY, THE DECLINE OF SERFDOM IN LATE MEDIEVAL ENGLAND: FROM BONDAGE TO FREEDOM 291, 293 (2014).

<sup>112</sup> R. H. HILTON, *Peasant Movements in England Before 1381*, 2 ECON. HIST. REV. 117, 126, 135 (ser. 2, 1949).

<sup>113</sup> Petitioners: The Men of Mickleover, County Derby to the Chancellor (SC 1/48/86) (1272–1307), NAT'L ARCHIVES, <http://discovery.nationalarchives.gov.uk/details/r/C12228637> [<http://perma.cc/7LG6-662F>].

<sup>114</sup> *Id.*

<sup>115</sup> Petitioners: Tenants of Manton (SC 8/266/13288) (c.327–c.1340), NAT'L ARCHIVES, <http://discovery.nationalarchives.gov.uk/details/r/C9517235> [<http://perma.cc/B8RV-VPEF>].

<sup>116</sup> *Id.*

<sup>117</sup> *Id.*

<sup>118</sup> Petitioners: People of Harmondsworth (SC 8/203/10143) (1307–1327), NAT'L ARCHIVES, <http://discovery.nationalarchives.gov.uk/details/r/C9333698> [<http://perma.cc/ZT5S-MVC6>] (*en contre leur droit estat et la forme del inquest . . . a leur graunt damage*). Whether this means an inquiry into their estate or a jury assessing the correct levels of amercement is not clear.

<sup>119</sup> Phillipp R. Schofield, *Peasants, Litigation and Agency in Medieval England: The Development of Law in Manorial Courts in the Late Thirteenth and Early Fourteenth Centuries*, in 14 THIRTEENTH CENTURY ENGLAND 15, 20–21 (Janet Burton et al. eds., 2013); see Phillipp R. Schofield, *Peasants and the Manor Court: Gossip and Litigation in a Suffolk Village at the Close of the Thirteenth Century*, 159 PAST & PRESENT 3, 3–5 (1998) [hereinafter *Peasants and the Manor Court*].

were likely to issue such challenges outside of their normal environment, as the lord's control over the manor court was such that they were unlikely to be able to overturn or undermine his property interests in that forum.<sup>120</sup> While a response to the circumstances alleged in such petitions is not always forthcoming from the crown, it is noticeable that in the first half of the fourteenth century, before the growing discontent and concerted peasant request for clarification of their status during the 1370s, efforts were made to examine claims and provide remedy where appropriate. By the later fourteenth century, the benefits of the common law were increasingly sought over the localised custom of the manor, testing the authority and resolve of landlords and the weakening bonds of lordship.<sup>121</sup> The grievance of the *poures gentes* of Melbourne and King's Newton, tenants of the ancient demesne manor of Melbourne, for instance, cites previous petitions to parliament and the king's council and requests the proper implementation of writs from chancery to uphold their rights as demanded by the *ley de terre*.<sup>122</sup>

The petitions also reveal how peasants were using the mechanisms and processes of royal government to question issues of taxation and status. Requests for inquiry or confirmation of liability to tallage on the royal ancient demesne were made by various groups of tenants.<sup>123</sup> The crown's poor tenants of Archenfield in Herefordshire were particularly aggrieved that they had mistakenly been taxed by the county assessors "contrary to their laws,"<sup>124</sup> while the tenants of Tunstead, in the honour of the castle of High Peak, the king's ancient demesne, claimed it was down to a clerical error that they had been placed on the rent roll in the first place.<sup>125</sup>

This questioning of the status quo and familiarity with Magna Carta penetrated further, extending to those at the lowest levels of society and who were clearly unfree. Addressing the Prior of Christ Church Canterbury (their manorial lord), the customary tenants of the manor of Bocking articulated their complaints against a new bailiff (John le Doo) with express reference to Magna Carta.<sup>126</sup> They cited

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<sup>120</sup> See *Peasants and the Manor Court*, *supra* note 119, at 40, 42.

<sup>121</sup> See, e.g., Petitioners: Warden and Canons of the Collegiate Church of Ottery St. Mary (SC 8/251/12549) (1399), NAT'L ARCHIVES, <http://discovery.nationalarchives.gov.uk/details/r/C9440155> [<http://perma.cc/YP37-WK4K>] (as in the dispute between the warden and college of Ottery St. Mary and its manorial tenants).

<sup>122</sup> Petitioners: People of Melbourne and King's Newton (SC 8/8/366) (1324–1325), NAT'L ARCHIVES, <http://discovery.nationalarchives.gov.uk/details/r/C9060490> [<http://perma.cc/R9SP-GD6W>]; see also CALENDAR OF THE CLOSE ROLLS PRESERVED IN THE PUBLIC RECORD OFFICE: EDWARD III A.D. 1323–1327, at 225 (1898).

<sup>123</sup> Petitioners: Poor People of Oakham, Langham and Egleton in Rutland 149 (SC 8/132/6562) (c.1300–c.1350), NAT'L ARCHIVES, <http://discovery.nationalarchives.gov.uk/details/r/C9208743> [<http://perma.cc/6HVR-6PZQ>].

<sup>124</sup> SC 8/167/8334, *supra* note 102.

<sup>125</sup> Petitioners: Tenants of Tunstead (SC 8/339/15976) (1334), NAT'L ARCHIVES, <http://discovery.nationalarchives.gov.uk/details/r/C9736457> [<http://perma.cc/RX5A-PAVP>].

<sup>126</sup> Nichols, *supra* note 93, at 300–01.

breach of customary practice, the unreasonableness of new demands and framed assessment of their liability for amercement (adopting the language of clause 14),<sup>127</sup> as needing to be “by their peers according to the extent of their trespass.”<sup>128</sup> Aping its phraseology, Magna Carta is clearly couched as applicable to them in that they claimed (or it was claimed on their behalf) the steward’s behaviour was “against all reason and the Great Charter.”<sup>129</sup>

The articulation of these feelings in petitions to the Crown (and to manorial lords), setting out the nature of their grievances extremely clearly (some in contemplation of or as a result of legal proceedings) illustrate the burgeoning legal consciousness of members of the peasantry whose formal status in the eyes of the law (as villeins) or low economic standing (as husbandmen and labourers) normally militated against active participation in legal matters beyond the manor court.<sup>130</sup> Since many of the complaints voiced in the late thirteenth and early fourteenth centuries were symptoms of long-running disputes,<sup>131</sup> they not only underline the impact of perceptions of Magna Carta, but also confirm that these issues were not purely a reflection of the altered economic situation after the Black Death.<sup>132</sup>

## II. PUSHING THE BOUNDARIES

While petitions often had an eye on the formalities of litigation, the format of the petition enabled individuals to couch their grievance on their own terms, which if the complaint did not easily fit within a common law remedy meant pushing the conceptual legal boundaries.<sup>133</sup> William de Moumby’s complaint that John de Hardingham, clerk of the sheriff of London, had not allowed him to pursue his business as an attorney (representing William le Heanmer of Fleet Street) and had wrongfully ejected him, centred on his claim that he had been barred from his livelihood against Magna Carta,<sup>134</sup> which seems to be expanding the ambit of clause

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<sup>127</sup> MAGNA CARTA (1225).

<sup>128</sup> Nichols, *supra* note 93, at 306 (translating Canterbury Manuscripts Rural Economy No. 4).

<sup>129</sup> *Id.* at 300–07.

<sup>130</sup> See MUSSON, *supra* note 63, at 86–88; W. M. ORMROD, *POLITICAL LIFE IN MEDIEVAL ENGLAND, 1300–1450*, at 40–41 (1995).

<sup>131</sup> See Rosamond Faith, *The Class Struggle in the Fourteenth Century*, in *PEOPLE’S HISTORY AND SOCIAL THEORY* 50, 50–60 (Raphael Samuel ed., 1981) (discussing the complex urban and manorial lord-tenant disagreements in St Albans); see also MARJORIE MORGAN, *THE ENGLISH LANDS OF THE ABBEY OF BEC* (1946) (discussing the dispute between the villeins of Ogbourne and the abbot of Bec).

<sup>132</sup> SC 8/63/3142, *supra* note 102. For the broader historical context, see Hilton, *supra* note 12, at 117–36. See generally BAILEY, *supra* note 111.

<sup>133</sup> See Schofield, *supra* note 119, at 18–19, 21.

<sup>134</sup> Petitioners: William de Moumby (SC 8/320/E445) (1319), NAT’L ARCHIVES, <http://discovery.nationalarchives.gov.uk/details/r/C9529497> [<http://perma.cc/TX9J-4LBS>].

29.<sup>135</sup> The petition of Theobald, the son and minor heir of William Russell, correctly cites Magna Carta clause 5, relating to wardship,<sup>136</sup> but then claims that the heir should have proper maintenance out of the revenues, an additional clause not contained within the Great Charter.<sup>137</sup>

The need to justify continued enjoyment of freedoms and privileges in the face of blanket allegations to the contrary is evidenced by the arguments put forward by parties in a case concerning trespass to a ship in Plymouth Sound reviewed in the court of King's Bench in 1384.<sup>138</sup> Referencing clause 9 of Magna Carta,<sup>139</sup> the complainant, Osbert Hamely, sought to uphold the right and privilege of the reeve and burgesses of Padstow to hear pleas relating to maritime matters on the grounds that "it is contained in the Great Charter of the liberties of England that the barons of the Cinque Ports and all other seaports are to have all their ancient liberties and free customs."<sup>140</sup> By analogy, it was argued, so too should Padstow, an ancient Cornish town and a port where their ancestors from time immemorial had used and enjoyed certain franchises.<sup>141</sup> This, as Hamely contended, included local admiralty jurisdiction, the right to hear all pleas pertaining to maritime law at flood tide.<sup>142</sup> The defendant, a certain John Alweston of Plymouth, thought differently and rebutted any claims to this privileged jurisdiction.<sup>143</sup> He maintained that Padstow was not an ancient borough, but merely an upland town held of the prior of Bodmin, whose franchises and jurisdiction were distinctly limited to those of the Court Baron.<sup>144</sup> Alweston not only denied the reeve and burgesses could hold a maritime court, but was prepared to set the bar higher by alleging the town's encroachment on royal authority, contending, in more serious terms, that entertaining such a plea was "in contravention of the law and in disherison of the king and in lese-majesty."<sup>145</sup> Although no judgment was given in the case, the reposte suggests the (exaggerated) lengths parties were prepared to go where Magna Carta was set as the benchmark.<sup>146</sup>

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<sup>135</sup> See MAGNA CARTA (1225).

<sup>136</sup> See *id.*

<sup>137</sup> THOMPSON, *supra* note 4, at 40.

<sup>138</sup> The National Archives, Court of King's Bench, Plea Rolls, KB 27/491 m.51 (Hilary 1384), in 7 SELDEN SOCIETY, SELECT CASES IN THE COURT OF KING'S BENCH UNDER RICHARD II, HENRY IV AND HENRY V 35–39 (G. O. Sayles ed., 1971).

<sup>139</sup> MAGNA CARTA (1225).

<sup>140</sup> KB/27/491 m.51, *supra* note 138, at 39.

<sup>141</sup> *Id.*

<sup>142</sup> *Id.* at 35.

<sup>143</sup> *Id.* at 38.

<sup>144</sup> *Id.*

<sup>145</sup> *Id.*

<sup>146</sup> See SELECT PLEAS IN THE COURT OF ADMIRALTY: THE COURT OF THE ADMIRALTY OF THE WEST AND THE HIGH COURT OF THE ADMIRALTY, in 1 SELDEN SOCIETY xlix–1 (Reginald G. Marsden ed., 1894). Judgment on the matter was postponed, but never given and the matter later adjourned without day as Alweston produced letters patent of protection from the king. *Id.*

William de Cleydon's grievance is unusual in that it not only relates to several clauses of Magna Carta,<sup>147</sup> but also confuses or conflates provisions of the Great Charter with the Forest Charter. Providing his credentials as a freeman, Cleydon boldly states with authority (*come il est contenuz en la grant charter*) that a free man can erect a mill in his own land as long as it is not to the nuisance of his neighbours.<sup>148</sup> This provision does not actually occur either in the 1215 or 1225 versions of Magna Carta, but rather forms clause 12 of the Forest Charter (both the 1217 and 1225 versions).<sup>149</sup> However, Cleydon (or his legal advisor) appears to have glossed the precise nature of the provision in his favour in that clause 12 speaks of the mill lying in the (royal) forest (*quam habet in foresta*) not simply forming his own land (*en son soil proprie issint*) in the vill of Sudbourne.<sup>150</sup> Further, in complaining that the bailiffs of John Sturmyn, keeper of Orford Castle (Suffolk), have detained his corn from this mill to his damage and disinheritance and that this wrong has been committed "without judgment,"<sup>151</sup> Cleydon seems to be invoking both clause 19 and clause 29.<sup>152</sup> He underlines his justification by asking the king for the justices of king's or common benches to inquire concerning this trespass "according to law and reason and the purport of the Great Charter."<sup>153</sup>

A sense of how litigants were pushing the boundaries can also be gleaned from the endorsements to petitions, written comments on the back (or occasionally on the face) of the piece of parchment, within which citations of Magna Carta can occur.<sup>154</sup> These endorsements are presumably responses from those specially appointed at the start of parliament for hearing private grievances, panels that included lords, higher clergy and senior lawyers.<sup>155</sup> They can also contain feedback from others of the king's council, such as the chancellor or treasurer, who had been specifically asked to respond.<sup>156</sup> Not all petitions received a response.<sup>157</sup> Some endorsements are more

<sup>147</sup> Petitioners: William de Cleydon (Claydon) (SC 8/39/1943) (c.1317), NAT'L ARCHIVES, <http://discovery.nationalarchives.gov.uk/details/r/C9062146> [<http://perma.cc/KN3D-AUC4>].

<sup>148</sup> *Id.*

<sup>149</sup> *Charter of the Forest*, CONST. SOC'Y, [http://www.constitution.org/eng/charter\\_forest.html](http://www.constitution.org/eng/charter_forest.html) [<http://perma.cc/683K-EDDS>] (translation of the 1217 Forest Charter); *Charter of the Forest, 1225*, NAT'L ARCHIVES, <http://www.nationalarchives.gov.uk/education/resources/magna-carta/charter-forest-1225-westminster/> [<http://perma.cc/VP9C-9QGM>].

<sup>150</sup> SC 8/39/1943, *supra* note 147; *The Charter of the Forest, 1225*, *supra* note 149.

<sup>151</sup> SC 8/39/1943, *supra* note 147.

<sup>152</sup> MAGNA CARTA (1225).

<sup>153</sup> SC 8/39/1943, *supra* note 147.

<sup>154</sup> DODD, *supra* note 40, at 57–59, 82–83; *see, e.g.*, Petitioners: Merchants of England and All the Alien Merchants (SC 8/329/E939) (c.1300–c.1325), NAT'L ARCHIVES, <http://discovery.nationalarchives.gov.uk/details/r/C9682934> [<http://perma.cc/EZK5-8L5C>].

<sup>155</sup> *See* DODD, *supra* note 40, at 57–59, 82–83.

<sup>156</sup> *See id.* at 52.

<sup>157</sup> *See* Gwilym Dodd & Sophie Petit-Renaud, *Grace and Favour: The Petition and Its Mechanisms*, in GOVERNMENT AND POLITICAL LIFE IN ENGLAND AND FRANCE, c.1300–c.1500, at 270–71 (Christopher Fletcher et al. eds., 2015).

laconic than informative; others take the form of bureaucratic or ministerial instructions or internal memoranda rather than comments directed to the petitioner,<sup>158</sup> though doubtless the outcome was relayed somehow.<sup>159</sup> If there was no action, the petitioner often returned at the next parliament with a duplicate or similarly worded petition and sometimes added the lack of answer to the complaint.<sup>160</sup> This (as will be seen below) in itself could form a grievance founded on Magna Carta: delay in obtaining justice.<sup>161</sup>

Some of the responses suggest the petitioners are not wholly aware of the current law, maybe citing outdated statute books or perhaps just “trying it on.” The instruction to Wybert de la Clowere, the nephew and executor of Nicholas de Cantin, an alien merchant, for example, was that he should obtain a writ of debt in Chancery rather than try and sue in the Exchequer because he is not able to plead for debt at the Exchequer as it is against Magna Carta:<sup>162</sup> in this case chapter 4 of the *Articuli super cartas*, which had added the proviso that no common pleas shall be held in the Exchequer.<sup>163</sup> Other merchants seeking a special privilege from the court of the steward to hear pleas of debts for loans for which it was claimed they otherwise would have no means of recovery were equally informed that this was contrary to Magna Carta.<sup>164</sup> In this case chapter 3 of the *Articuli*, which represented an attempt to confine the court of the steward and marshal (or the itinerant “court of the verge” as it was known) to its proper business of hearing the complaints of members of the household rather than pleas of land, debt, contract or trespass relating to all-comers.<sup>165</sup>

The prioress and convent of Broadholme (Nottinghamshire) may have been pushing the boundaries when they complained that they were being ruined on account of loss of rents owing to the fault of the wardens of the religious house and wanted a charter from the king enabling them to have self-determination of their rents and enclosures (*emproumens*) for the benefit (*al profist de la dit meyson*) of the house.<sup>166</sup> It is not clear from the petition whether the wardens (*gardeyns*) mentioned are in charge of the house or as administrators have (or had) custody of it during a vacancy, which would fall under clause 4 of Magna Carta and would support a valid

<sup>158</sup> See, e.g., SC 8/8/366, *supra* note 122.

<sup>159</sup> DODD, *supra* note 40, at 52–53; Dodd & Petit-Renaud, *supra* note 157, at 270–71.

<sup>160</sup> As occurred with Robert de Thorpe. See *supra* notes 52–62 and accompanying text.

<sup>161</sup> MAGNA CARTA (1225).

<sup>162</sup> Petitioners: Wybert de la Clowere (Cloere), nephew and executor of Nicholas de Cantin, Merchant of Doval (SC 8/329/E932) (c.1295–c.1315), NAT’L ARCHIVES, <http://discovery.nationalarchives.gov.uk/details/r/C9682927> [<http://perma.cc/7ZRR-RQ37>].

<sup>163</sup> ARTICULI SUPER CARTAS, 1300, NAT’L ARCHIVES, <http://www.nationalarchives.gov.uk/education/resources/magna-carta/articuli-super-cartas/> [<http://perma.cc/BHD2-NVE5>].

<sup>164</sup> SC 8/329/E939, *supra* note 154.

<sup>165</sup> ARTICULI SUPER CARTAS, *supra* note 163.

<sup>166</sup> Petitioners: Prioress and Convent of Broadholme (SC 8/5/217) (1321–1322), NAT’L ARCHIVES, <http://discovery.nationalarchives.gov.uk/details/r/C9060337> [<http://perma.cc/294Z-6NDT>].

grievance,<sup>167</sup> but the upshot of the request was that the petition was deemed to be ‘unjust’ and (in modern parlance) could not be actioned.<sup>168</sup> The reasoning behind this decision is not given, though it may be that the priory having already received in 1318 and 1319 charters confirming grants made to the house (the latter issued jointly with Newhouse Abbey across the border in Lincolnshire) had also applied for licence in mortmain in 1320 and had been allowed to acquire lands, tenements, and rents to the value of £10.<sup>169</sup> To grant them further concessions therefore may have seemed unjust in the circumstances.

In at least one instance the endorsement to a petition concerning fines for beau-pleader,<sup>170</sup> which the community of Bedfordshire claims the sheriff has been levying a large amount every year, carries instructions that the petitioners are to have a writ “founded on Magna Carta” and “the statute made in the first year of the present king” (Edward III).<sup>171</sup> Writs “founded on Magna Carta”<sup>172</sup> were never prescribed in precise form, but this complaint appears to be based on a conflation of two notions: excessive amercement (against clause 14 of Magna Carta)<sup>173</sup> and prohibition of beaupleader taken up in the statute of 1327 but originally found in the Statute of Marlborough (clause 11).<sup>174</sup>

Inaccuracies in the citation or glosses of the Charter used in petitions would seem to suggest the scrivener or clerk preparing it was proceeding on the basis of their own recollection or the gist of the text rather than one actively consulted. It is also not necessarily the case that only an imprecise citation is the mark of a non-lawyer! An examination of citations of the Great Charter by pleaders in the Year

<sup>167</sup> MAGNA CARTA (1225).

<sup>168</sup> SC 8/5/217, *supra* note 166 (*Iniusta est petitio ideo non potest fieri*).

<sup>169</sup> 3 CALENDAR OF THE PATENT ROLLS: PRESERVED IN THE PUBLIC RECORD OFFICE: EDWARD II: A.D. 1317–1321, at 253 (1 Dec.), 397 (8 Dec.), 518 (7 Nov.) (1903); *House of Premonstratensian Canonesses: The Priory of Broadholme*, in 2 A HISTORY OF THE COUNTY OF NOTTINGHAM 138–40 (William Page ed., 1910), BRITISH HIST. ONLINE, <http://www.british-history.ac.uk/vch/notts/vol2/pp138-140> [<http://perma.cc/BW3X-DMS6>].

<sup>170</sup> A fine paid by jurors or county communities to avoid the consequences of wrongful judgments relating to outlawry or inaccurate statements of custom.

<sup>171</sup> Petitioners: Community of Bedfordshire (SC 8/32/1585) (c.1328), NAT’L ARCHIVES, <http://discovery.nationalarchives.gov.uk/details/r/C9061782> [<http://perma.cc/DP7A-GQQW>]; 1 Edw. III, Stat. 2, c.8 (1326–27), in 1 STATUTES OF THE REALM 256.

<sup>172</sup> SC 8/32/1585, *supra* note 171.

<sup>173</sup> MAGNA CARTA (1225). For another example of a writ ‘foundu sur la graunte chartre’ in relation to clause 14 (where the recipient was the bailiff of the bishop of Winchester), see THOMPSON, *supra* note 4, at 46; Seipp, *supra* note 28 (using Seipp Number 1316.050ss).

<sup>174</sup> 52 Hen. III, c.11 (1267), in 1 STATUTES OF THE REALM 22–23; PAUL BRAND, KINGS, BARONS AND JUSTICES: THE MAKING AND ENFORCEMENT OF LEGISLATION IN THIRTEENTH-CENTURY ENGLAND 87–90 (2003). Under clause 42 of the 1217 version of Magna Carta, sheriffs were also cautioned not to seek exceptions “to amerce,” though the text of the petition does not provide any evidence that this was suspected. POCKET MAGNA CARTA: 1217 TEXT AND TRANSLATION 36–37 (Bodleian Library ed., 2016).

Books yields some “occasional misconception[s] or frivolous exception[s]” as lawyers push the boundaries too.<sup>175</sup> Yet this may equally be a product of relying on the unofficial texts copied into statute books, which appear to contain some differences not only in the versions of Magna Carta included, but also in the choice of language used in individual clauses.<sup>176</sup>

Indeed, a survey of just a fraction of the surviving statute books shows not all provisions of Magna Carta were correctly copied: some have annotated corrections or interlineations (where words have been missed out)<sup>177</sup> or have updated cross references in the margins.<sup>178</sup> The Latin quoted in Robert Thorpe’s second Magna Carta citation differs slightly linguistically from certain other contemporary versions of that part of the text.<sup>179</sup> Nor, indeed, was the numbering of clauses by the scribes of statute books entirely accurate or consistent internally. The list of chapters preceding the text of Magna Carta in various books does not tally with the individual clauses. One volume does not number the clauses of Magna Carta individually, but provides numbering in red in the margin at intervals of ten (X, XX, XXX) as a guideline. Unfortunately, the roman numerals do not correspond to the correct clauses. In others, the ‘safeguarding of the franchises of the city’ of London, for instance, is slated at IX in volumes with ‘capitularia,’ but then occurs opposite VIII in the text.<sup>180</sup> Similarly, the ‘capitularia’ gives the ‘no free man’ clause (*de imprisonmento*) variously as XXVIII or XXVII, but then places the wording of the provision at XXVI or (more usually) XXV.<sup>181</sup>

Matters relating to the Great Charter raised by individual petitioners or communities were sometimes felt to encompass broader issues or a much wider constituency. The tanners of Cornwall, for example, argued in relation to their claim (not being paid in the standard coinage of London) that the ‘points and measures’ of

<sup>175</sup> THOMPSON, *supra* note 4, at 52.

<sup>176</sup> Occasionally they are King John’s or alternatively King Henry III’s (e.g., BL MS Harley 79 fol. 2r; Cambridge, MA, Harvard Law School MS 57 fol. 1r <https://listview.lib.harvard.edu/lists/hollis-014294028> [<http://perma.cc/Q267-XN3L>]) rather than Edward I’s 1297 confirmation.

<sup>177</sup> See, e.g., HLS MS 184 fol. 9v (‘quos’ for ‘quod’), 10v (additions in the margin); MS 161 fol. 7v. (‘mercatores’ is added in the margin as omitted from the text of c.26).

<sup>178</sup> See, e.g., HLS MS 179 fol. 19r (reference to Westminster I c.6), 21r (reference to Westminster I c.1).

<sup>179</sup> Thorpe’s petitions cite: “Concessimus eciam [*eisdem*] pro nobis et heredibus nostris quod nec nos nec heredes nostri aliquid perquiremus per quod libertates [*predicte*] in hac Carta contente infringantur vel infirmentur et [*si ab*] aliquid ab aliquo contra hoc perquisitum fuerit nichil valeat et pro nullo habeatur.” SC 8/166/8297, *supra* note 52; SC 8/266/13299, *supra* note 62. This differs slightly [as indicated by words in square brackets] from the versions given in, for example, HLS MS 28 fol. 3v and MS 161 fol. 8v.

<sup>180</sup> See, e.g., HLS MS 175 fol. 1v, 7r.

<sup>181</sup> See, e.g., HLS MS 174 fol. 3r, 22v; MS 175 fols. 2r, 9v; see also MS 57 fol. 7v; MS 80 fol. 3r.

Magna Carta should apply to the whole realm.<sup>182</sup> Similarly, the bakers of London complained that the punishment for defective bread newly instituted by the mayor did not conform to Magna Carta ('which holds that the city has all its franchises and ancient customs in their entirety and unimpaired') in being harsher than any punishments used elsewhere in the land and also lacked legitimacy in that it was made outside of parliament and 'without the common counsel of the land.'<sup>183</sup> Joan de Siggeston's request for a reasonable part of her husband's goods and chattels had allegedly been long delayed, rather than 'immediately and without difficulty'<sup>184</sup> as Magna Carta clause 7 proscribed;<sup>185</sup> an issue that was felt to be touching the commons not just one person, and so the king's council were to be advised.<sup>186</sup> This has roughly been dated (by the compilers of the National Archives calendar entry) to the second quarter of the fourteenth century possibly linking in with the commons' concern for Magna Carta expressed in common petitions of that period.<sup>187</sup>

A broader appeal also lay depending on the nature of the clause. The guarantee of free passage by water was not limited to the Rivers Thames and Medway (the rivers specifically mentioned in Magna Carta clause 23),<sup>188</sup> but was extended by the Great Charter (and various later statutes reiterating the principle)<sup>189</sup> to cover all navigable rivers.<sup>190</sup> Nevertheless the various man-made obstructions that diverted waterways out of their 'auncien et dreiturel cours' remained an issue for various communities throughout the fourteenth century, who requested inquiries and 'ammendment' accordingly.<sup>191</sup> Some of these private issues were also taken up by the parliamentary

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<sup>182</sup> Petitioners: Merchants and Tinnors of Cornwall (SC 8/103/5129) (c.1324), NAT'L ARCHIVES, <http://discovery.nationalarchives.gov.uk/details/r/C9149699> [<http://perma.cc/7NTB-XZ9V>]. They add that this would be "for the profit" of the king and queen (for further discussion of this phrase see below).

<sup>183</sup> Petitioners: The Bakers of London (SC 8/59/2926) (1318), NAT'L ARCHIVES, <http://discovery.nationalarchives.gov.uk/details/r/C9063146> [<http://perma.cc/H3CV-AULC>] (*en la graunt chartre qe la diste citee eit toux ces faunchises e auncienes custumes entieres e nonblemies*).

<sup>184</sup> Petitioners: Joan de Siggeston (Sigston), Widow of Thomas de Siggeston (SC 8/159/7927) (1327–1350), NAT'L ARCHIVES, <http://discovery.nationalarchives.gov.uk/details/r/C9210119> [<http://perma.cc/SYJ7-MZGQ>].

<sup>185</sup> MAGNA CARTA (1225).

<sup>186</sup> SC 8/159/7927, *supra* note 184.

<sup>187</sup> *Id.*

<sup>188</sup> MAGNA CARTA (1225).

<sup>189</sup> *See, e.g.*, a petition from the commons of York dated to c.1388 states the removal of dams and weirs from rivers "was ordained by a statute of the present king." CALENDAR OF THE PATENT ROLLS: PRESERVED IN THE PUBLIC RECORD OFFICE: RICHARD II: A.D. 1385–1389, at 471 (1900) [hereinafter CPR 1385–1389]; Petitioners: Commons of Yorkshire (SC 8/199/9928) (c.1388), NAT'L ARCHIVES, <http://discovery.nationalarchives.gov.uk/details/r/C9295817> [<http://perma.cc/R6Z5-5CNY>].

<sup>190</sup> THOMPSON, *supra* note 4, at 23.

<sup>191</sup> *See, e.g.*, Petitioners: People of the Commonality of Kesteven in the County of Lincoln (SC 8/11/539) (1334), NAT'L ARCHIVES, <http://discovery.nationalarchives.gov.uk/details/r>

commons and brought into the public arena,<sup>192</sup> either because lobbyists from various regions with similar causes had joined together or private petitions were being deliberately diverted away from the committees processing them towards the session of parliament itself in order to achieve prominence for the request or perhaps raise the chances of a more favourable outcome.<sup>193</sup>

Broadening the range of authorities to include the common law can also be seen in a petition sent to the king from archbishop William Melton as part of his dispute with the bailiffs of the port of Hull, who claimed that their seizing prises of wine which were the right of the church of York and the rents of the archbishop's tenants without judgement or process of law amounted to severe treatment against the law and against Magna Carta.<sup>194</sup> Claims of illegality with regard to purveyance was an enduring problem faced by the crown and clearly one that could impede the enjoyment of franchisal rights (under clause 29)<sup>195</sup> too.<sup>196</sup> Melton's complaint, however, chimes with the scathing treatise on the evils of purveyance (particularly with regard to the goods of ecclesiastics) written around the same time by his southern counterpart Simon Meopham, archbishop of Canterbury (1327–33).<sup>197</sup>

The continued perception of the Great Charter as legal authority can be seen more broadly in the type of grievances submitted in petitions which appear as elaborations of aspects of clause 29 (and other provisions).<sup>198</sup> John Mandour, for example, maintained that he was properly appointed under canon law (*fist duement*

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/C9060666 [http://perma.cc/D9MK-LECE]; Petitioners: Merchants of London (SC 8/259/12922) (c.1327), NAT'L ARCHIVES, http://discovery.nationalarchives.gov.uk/details/r/C9440535 [http://perma.cc/PSM6-UARN]; Petitioners: Commons of Nottinghamshire, Lincolnshire and Yorkshire (SC 8/165/8226) (1324), NAT'L ARCHIVES, http://discovery.nationalarchives.gov.uk/details/r/C9294071 [http://perma.cc/W8XR-5E3K]; Petitioners: People of Somerset who have Lands on the Rivers Yeo and Parrett (SC 8/339/15979) (c.1310, c.1330), NAT'L ARCHIVES, http://discovery.nationalarchives.gov.uk/details/r/C9736460 [http://perma.cc/3JMJ-D8MP].

<sup>192</sup> See, for example, the 1365 petition from Somerset and Wiltshire regarding obstructions on the River Avon, Petitioners: Community of the Counties of Somerset and Wiltshire (SC 8/293/14647) (1365), NAT'L ARCHIVES, http://discovery.nationalarchives.gov.uk/details/r/C9735809 [http://perma.cc/VUQ4-K6RN], an issue which was taken up by the commons in the mid-fourteenth century onwards. See also DODD, *supra* note 40, at 129.

<sup>193</sup> This phenomenon came to a head in the parliament of 1372. See 5 PROME, *supra* note 62, at 251–55, providing an introduction to the Parliament of 1372.

<sup>194</sup> Petitioners: William Melton, Archbishop of York (SC 8/11/515) (c.1330), NAT'L ARCHIVES, http://discovery.nationalarchives.gov.uk/details/r/C9060642 [http://perma.cc/KRY3-ZV3G].

<sup>195</sup> MAGNA CARTA (1225).

<sup>196</sup> See, e.g., Petitioners: Commons (SC 8/272/13584) (1337–1339), NAT'L ARCHIVES, http://discovery.nationalarchives.gov.uk/details/r/C9517531 [http://perma.cc/BBA3-HW2R]; Petitioners: The Petitioner Name(s) Illegible (SC 8/272/13587) (c.1337–c.1339), NAT'L ARCHIVES, http://discovery.nationalarchives.gov.uk/details/r/C9517534 [http://perma.cc/K949-DTKU].

<sup>197</sup> THOMPSON, *supra* note 4, at 128–29.

<sup>198</sup> MAGNA CARTA (1225).

*par la ley de seinte esglise collacion*) to the archdeaconry of Durham, but the appointment was later revoked by the king and given to an alternative candidate, Cardinal Pilet, who was later confirmed in the position under letters patent.<sup>199</sup> Mandour argued for reinstatement on the basis of the injustice of the king's actions: that he had been ousted on false allegations (*suggestions nient veritables*), that writs to collect the fruits of his benefice had been issued unlawfully (*grantez en countre droit*) and without process against him either in the royal courts or in the church courts.<sup>200</sup> Mandour's justification further underlined clause 29<sup>201</sup> of Magna Carta by alleging that this was patently against the law (*en countre la ley notariement*).<sup>202</sup> In a final salvo (covering the relevant 'laws of the land' phrase) he released the twin barrels of canon law and common law (*a les leys de seynt esglise e de realme*),<sup>203</sup> a volley that ultimately hit the mark as letters patent were duly issued in August 1387 for Maundour to replace Cardinal Pilet in the archdeaconry.<sup>204</sup>

In many instances the focus of petitions raising or shadowing clause 29 concern contentious issues related to legal disputes, including cases of wrongful imprisonment or outlawry.<sup>205</sup> Others involve specific procedural or substantive points.<sup>206</sup> The petitioners highlight conflicts of jurisdiction,<sup>207</sup> including alleged disseisin of rights 'wrongfully and without judgment,'<sup>208</sup> and more general difficulties affecting the

<sup>199</sup> Petitioners: John Mandour, Clerk (SC 8/21/1021) (1381–1387), NAT'L ARCHIVES, <http://discovery.nationalarchives.gov.uk/details/r/C9061181> [<http://perma.cc/QAY3-E5LK>].

<sup>200</sup> *Id.*

<sup>201</sup> MAGNA CARTA (1225).

<sup>202</sup> SC 8/21/1021, *supra* note 199.

<sup>203</sup> *Id.*

<sup>204</sup> CPR 1385–1389, *supra* note 189, at 349, 431.

<sup>205</sup> Petitioners: Richard de Beverley (Beverley) (SC 8/33/1635) (1331), NAT'L ARCHIVES, <http://discovery.nationalarchives.gov.uk/details/r/C9061832> [<http://perma.cc/W72K-67U5>]; Petitioners: Henry de Bucketon (Buckton of Cornwall) (SC 8/36/1799) (1318–1319), NAT'L ARCHIVES, <http://discovery.nationalarchives.gov.uk/details/r/C9062001> [<http://perma.cc/B7Y4-2NJZ>]; Petitioners: Henry de Bucketon (Buckton of Cornwall) (SC 8/36/1800) (1318–1319), NAT'L ARCHIVES, <http://discovery.nationalarchives.gov.uk/details/r/C9062002> [<http://perma.cc/T5EJ-5BLT>].

<sup>206</sup> *See, e.g.*, Petitioners: Prior and Convent of Bury St. Edmunds (SC 8/34/1667) (1382), NAT'L ARCHIVES, <http://discovery.nationalarchives.gov.uk/details/r/C9061864> [<http://perma.cc/N97A-KS6K>] (record and process); Petitioners: Robert de Bylkemore (Bilkemore); Anastasia de Bylkemore (Bilkemore), wife of Robert de Bylkemore (SC 8/37/1826) (1346–1353), NAT'L ARCHIVES, <http://discovery.nationalarchives.gov.uk/details/r/C9062028> [<http://perma.cc/6F4U-N5HG>] (procedural delays in an assize); Petitioners: Robert Busse, Prior of Montacute (SC 8/37/1834) (1327–1328), NAT'L ARCHIVES, <http://discovery.nationalarchives.gov.uk/details/r/C9062036> [<http://perma.cc/2MFA-HQXJ>] (problem suing in an ecclesiastical court).

<sup>207</sup> *See, e.g.*, Petitioners: Abbot of Battle (SC 8/34/1658) (1307–1327), NAT'L ARCHIVES, <http://discovery.nationalarchives.gov.uk/details/r/C9061855> [<http://perma.cc/2BLE-QDV6>].

<sup>208</sup> Petitioners: Abbot and Convent of Langouste (Valle Cruis) (SC 8/268/13385) (1284–1300), NAT'L ARCHIVES, <http://discovery.nationalarchives.gov.uk/details/r/C9517332> [<http://perma.cc/LJB4-9W3C>] (*deseysi e hosta de cel gors a tort e saunz jugement*).

conduct of litigation or concerning the administration of justice.<sup>209</sup> In doing so they highlight problems with access to justice, including the convenience of the forum and the fairness of proceedings. Many of these complaints ride on perceptions of the costs and delays inherent in litigation, which were subjective reactions to circumstances rather than objective criticism of the system. The burden of costs and length of time before a hearing took place was not unsurprisingly a nuisance for merchants,<sup>210</sup> but they were not the only ones affected. Ancient demesne tenants of Milton Keynes sought a remedy from the king because they claimed a decision in their suit against their manorial lord (who had been demanding performance of unaccustomed services) was being unnecessarily delayed procedurally in a form of judicial tennis: the justices in the court of common pleas informed them that ‘lor pleinte’ should be seen by the chancellor in chancery, who in turn responded that it ought to be decided by the justices of the Bench.<sup>211</sup> The delay itself was having repercussions in that allegedly the petitioners had been attacked and threatened by their lord in an attempt to prevent them from proceeding in the plea.<sup>212</sup> Such intimidation, whether actual or feared, was clearly preventing or inhibiting access to the courts to the extent that there were other ancient demesne tenants who sought the king’s protection during their suit to ensure that nobody involved suffered molestation nor came to any physical harm nor had their property damaged.<sup>213</sup> The issue was also taken up by the commons in 1378–1379 who requested that “all your lieges and subjects might be able freely and peaceably and in sure and safe protection of the king to go and come to your courts, to sue their actions or defend themselves without disturbance or hindrance . . . .”<sup>214</sup> The costs of litigation and delays were emotive issues that could easily reflect

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<sup>209</sup> Petitioners: Agnes Bacun (Bacon) (SC 8/32/1560) (c.1288), NAT’L ARCHIVES, <http://discovery.nationalarchives.gov.uk/details/r/C9061757> [<http://perma.cc/LW8B-98R4>] (alleges bribes and favour of justices); Petitioners: Abbot and Convent of Byland (SC 8/37/1825) (1370), NAT’L ARCHIVES, <http://discovery.nationalarchives.gov.uk/details/r/C9062027> [<http://perma.cc/P8S3-XFMG>] (urges empanelling of a jury of ‘good people’ rather than suspect ones); Petitioners: John de Argenteyan (SC 8/31/1503) (1323–1327), NAT’L ARCHIVES, <http://discovery.nationalarchives.gov.uk/details/r/C9061697> [<http://perma.cc/537A-JZFM>] (alleges bribery of assize justice, John Bousser so he would not allow challenges or exceptions); Petitioners: Henry de Chatterton (SC 8/39/1915) (c.1380), NAT’L ARCHIVES, <http://discovery.nationalarchives.gov.uk/details/r/C9062118> [<http://perma.cc/PEQ5-FJRR>] (complains inquisition procured and false indictments made).

<sup>210</sup> See, e.g., SC 8/329/E939, *supra* note 154.

<sup>211</sup> Petitioners: Poor People of Milton Keynes (SC 8/201/10006) (c.1272–c.1300), NAT’L ARCHIVES, <http://discovery.nationalarchives.gov.uk/details/r/C9333562> [<http://perma.cc/3LMW-JYFJ>].

<sup>212</sup> *Id.*

<sup>213</sup> SC 8/61/3007, *supra* note 99 (*qil vous plese graunter un proteccioun pour les dits poures tenauntz duraunt lour seute qu nul homme les face mal ne moleste damage de corps ne de chateux*); see also Petitioners: Tenants of the Manor of Northam (SC 8/64/3171) (1330–1340), NAT’L ARCHIVES, <http://discovery.nationalarchives.gov.uk/details/r/C9106934> [<http://perma.cc/ZVT6-SPBV>].

<sup>214</sup> THOMPSON, *supra* note 4, at 41 n.18 (my own translation).

expectations of the benchmark of royal justice and not surprisingly remained a live issue in spite of being raised in parliament and reiterated in various statutes.<sup>215</sup>

### III. LINGUISTIC STRATEGIES

Citation of Magna Carta increasingly became part of the rhetoric of petitioning. Citizens of London were quite vocal with petitions stemming from both the community and from individuals (sometimes raising similar or the same issues). They frequently linked the cities' liberties and clause 9 with a blanket phrase "contrary to their franchises and the Great Charter."<sup>216</sup> One from the mayor and community railing about the behaviour of the court of the steward and marshal of the king's household attaching citizens to appear there reinforces their claim by citing not only Magna Carta and their own charters and franchises, but also the Ordinances of 1311 as authority.<sup>217</sup> While they could legitimately cite these documents (and a writ confirming that citizens should not be so attached confirming the privilege as granted by their charter, confirmed by the Great Charter and the New Ordinances is preserved in the *Liber Albus*),<sup>218</sup> there is a sense in which London and other urban corporations adopted a 'belt and braces' approach in their petitions. The burgesses of Oxford, for example, in a long running dispute against the University added a further element into the mix citing not only their ancient and customary franchises and the Great Charter of Franchises, but also 'lei de terre,' the common law.<sup>219</sup>

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<sup>215</sup> For example:

Also, the said community prays: because the chancery is a place where it is fitting for a man to have recovery and begin to sue his right by writ, that he might have the said writs without paying anything other than the fee of the seal, as the Great Charter wills, 'We shall sell to no-one, we shall deny to no-one or delay right or justice', because many men have been delayed of their right and some disinherited because the clerks of the chancery have refused them writs which on other occasions used to be granted without paying anything, and also the king has suffered great loss from this.

Parliament of February 1334, item 7, in 4 PROME, *supra* note 62, at 199. For examples of legislation, see generally 2 STATUTES OF THE REALM (1377–1504).

<sup>216</sup> Petitioners: People of London (SC 8/259/12917) (c.1328), NAT'L ARCHIVES, <http://discovery.nationalarchives.gov.uk/details/r/C9440530> [<http://perma.cc/5FYW-R8SK>].

<sup>217</sup> Petitioners: Citizens of London (SC 8/57/2848) (c.1328), NAT'L ARCHIVES, <http://discovery.nationalarchives.gov.uk/details/r/C9063068> [<http://perma.cc/5NN5-DT3D>]; THOMPSON, *supra* note 4, at 106–08.

<sup>218</sup> LIBER ALBUS: THE WHITE BOOK OF THE CITY OF LONDON 478–79 (Henry T. Riley trans., 1861) (1419).

<sup>219</sup> Petitioners: Burgesses of Oxford (SC 8/202/10099) (1328) NAT'L ARCHIVES, <http://discovery.nationalarchives.gov.uk/details/r/C9333654> [<http://perma.cc/WS9Z-NRZH>].

Many petitions, if they do not include explicit reference to Magna Carta itself, contain a rhetorical flourish (similar to the one in the petition from Robert Thorpe referred to earlier) and ask the king to remedy the points contained within the said petition “according to law and reason” or “if law and reason or right demand it.”<sup>220</sup> Given the subject matter of such petitions, this phraseology is unlikely to be merely rhetorical, but may in turn reflect a deliberate linguistic strategy to appeal to the ideals of ‘ius’ (or ‘droit’ as employed in Anglo-Norman French) and ‘ratio’ (or ‘reson’), concepts stemming directly from Roman civil law that underpin the provisions of Magna Carta.<sup>221</sup> Indeed, a petition from the mayor, alderman and commonalty of London in Richard II’s reign concerning the destruction of fish stocks (through overfishing and the construction of weirs and other ‘engines’) not only demanded better enforcement of existing statutes, but appealed to ‘divine law, natural law and all other laws’ (*come le ley de dieu e de nature e touz autres leyes*).<sup>222</sup> It is these very phrases that are found in the later fourteenth century (and beyond) in the bills submitted to the chancellor, forming the equitable jurisdiction the office gradually assumed on behalf of the king.<sup>223</sup> As Gwilym Dodd noted in his comparison of different types of supplication: “chancery bills were articulated by drawing on a corpus of legal diction. The language of justice and legality—or *illegality*—underpins the vast majority of chancery cases . . . .”<sup>224</sup> It was this discourse, combined with the new language of ‘good faith and conscience’ that paved the way for the remedy by the court of chancery of injustices that were supposed to lie outside the purview of the common law courts, but which nevertheless inhabited the territory of clause 29,<sup>225</sup> itself born out of the king’s duty to do right, make justice available to all and avoid unnecessary delay in doing so.<sup>226</sup>

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<sup>220</sup> SC 8/166/8297, *supra* note 52. He includes “transcripts attached to this bill.” Transcript (8/166/8298) (1325), NAT’L ARCHIVES, <http://discovery.nationalarchives.gov.uk/details/r/C9294143> [<http://perma.cc/VLU2-PJB8>]; Transcript (8/166/8299) (1325), NAT’L ARCHIVES, <http://discovery.nationalarchives.gov.uk/details/r/C9294144> [<http://perma.cc/DRX6-UKTN>].

<sup>221</sup> See HOLT, *supra* note 6, at 120; R.H. Helmholz, *Magna Carta and the Ius Commune*, 66 U. CHI. L. REV. 297, 304–46, 322–23, 326–29, 340–42, 368–71 (1999).

<sup>222</sup> Petitioners: Mayor, Alderman and Commonality of London (SC 8/121/6028) (1383–1393), NAT’L ARCHIVES, <http://discovery.nationalarchives.gov.uk/details/r/C9208194> [<http://perma.cc/5TGS-P7BY>].

<sup>223</sup> *Writing Wrongs*, *supra* note 49, at 230.

<sup>224</sup> *Id.*

<sup>225</sup> MAGNA CARTA (1225).

<sup>226</sup> See generally Gwilym Dodd, *Reason, Conscience and Equity: Bishops as the King’s Judges in Later Medieval England*, 99 HIST. 213, 213–40 (2014) (examining the role of bishops as justices); Anthony Musson, *The Influence of Canon Law on the Administration of Justice in Late Medieval England*, in 4 DER EINFLUSS DER KANONISTIK AUF DIE EUROPÄISCHE RECHTSKULTUR 325, 325–41 (Yves Mauten et al. eds., 2014) (examining the effect of canon law doctrine on the Medieval legal system and practitioners); Nigel Saul, *Magna Carta in the Late Middle Ages, c.1320–1520*, in MAGNA CARTA: NEW INTERPRETATIONS (Nicholas Vincent & Sophie Ambler eds., 2017).

Concerns raised about access to justice and requests for remedies to correct perceived shortcomings in the administration of justice reflected the monarch's responsibilities as set out in his coronation oath and were aspects of the broader concept of 'good governance' that permeated medieval politics.<sup>227</sup> Magna Carta's influence can be traced in the adoption of the language of 'correction,' or 'reform' or 'betterment' of the realm (*ad exaltationem sancte ecclesie et amendacionem Regni nostri*)<sup>228</sup> that formed part of its justificatory preamble.<sup>229</sup> Although many statute books retained a Latin version of Magna Carta (even where it prefaced volumes of *statuta nova*),<sup>230</sup> there were a number of French versions circulating in the early fourteenth century to which legal advisors and litigants would have had access.<sup>231</sup> These sometimes differed in the precise formulation in the vernacular, rendering the Latin variously as: "to the advancement of holy church and in betterment of our realm" (*al avauncement de seint eglise e en amendement de nostre Roialme*)<sup>232</sup> and "to the honour of God and the good of us and of our realm" (*al honur de deu e bien de nos et de nostre reaume*).<sup>233</sup> The phrase had currency in the vernacularised versions of Henry III's Statute of Marlborough (1267)<sup>234</sup> and Edward I's First Statute of Westminster (1275).<sup>235</sup> In the Confirmation of the Charters (1297) the crown cites the formula "a le honur de deu e de seynt eglise e al profit de tout nostre reaume,"<sup>236</sup> which is then echoed (though with the addition of the word 'commun') in the archbishop of Canterbury's sentences on the confirmation.<sup>237</sup> Using

<sup>227</sup> See *supra* note 226.

<sup>228</sup> See, e.g., HLS MS 28 fol. 1r; MS 39 fol. 1r; MS 49 fol. 17r; MS 54 fol. 10r. Some slightly unusual variations occur in HLS MS 56 fol. 1r (*ad exultationem et emendationem sancte ecclesie et Regni Anglie*), MS 184 fol. 9r (*ad exaltationem sancte crucis et emendationem regni nostri*), and BL MS Harley 926 fol. 9r which does not mention 'amendationem' (*ad exaltationem sancte matris ecclesie et eiusdem regni nostri*).

<sup>229</sup> MAGNA CARTA (1225).

<sup>230</sup> See, e.g., Oxford, Bodleian Library MS Hatton 10; Oxford, Merton College MS 297B.

<sup>231</sup> The earliest volumes in the Harvard Law School collection date from the late thirteenth and first half of the fourteenth century (MSS 12, 28, 32, 33, 36, 39, 49, 54–59, 80, 101, 160, 163, 172, 213).

<sup>232</sup> BL MS Harley 3937 fol. 1r; HLS MS 12 is fairly similar with differences only in spelling: "al enhancement de seinte eglise e al amendement de nostre royaume."

<sup>233</sup> BL MS Harley 5326 fol. 4r.

<sup>234</sup> HLS MS 33 fol. 22r (*al amendement de son regne dengleterre e en exhibition de dreiture*).

<sup>235</sup> HLS MS 32 fol. 29v (*demendement e ceo pur le commun profit de seint eglise e du roialme*). See also with variant spelling, HLS M28 fol. 10r (*de amendement pur le commun profist de sainte eglise e de Roialme*).

<sup>236</sup> HLS MS 184 fol. 14r; see also HLS MS 33 fol. 15v–16r. The Confirmation of the Charters uses the phrase: "par comun assent de tout le Realme e a comun profit de tut le Reaume."

<sup>237</sup> HLS MS 184 fol. 15r (*al honour de deu et seynt eglise e al commun profit de son realme*).

a slightly different word ('pru'), but one which carries the same meaning ('profit'), the additional Articles on the Charters (1300) were granted by Edward I to his people 'por le pru de son realme.'<sup>238</sup> The preambles to statutes in Edward III's and Richard II's reigns similarly employ the 'common profit' formula,<sup>239</sup> suggesting it had not only become standardised in form, but a necessary tag in the minds of fourteenth-century legislative draftsmen.<sup>240</sup>

Mark Ormrod highlights various "discursive strategies" in common petitions during the mid-to-late fourteenth century, one of which was to identify their interests with those of the king and the realm.<sup>241</sup> There is evidence from linguistic usage in private petitions that this phrase was also taken up by individuals, particular interest groups and discrete communities.<sup>242</sup> While the number of such instances overall in relation to the total of surviving private petitions may be "extremely small,"<sup>243</sup> it is not altogether negligible in terms of the types of usage that emerges.<sup>244</sup> Indeed, adoption of this phraseology by certain individuals and groups in relation to issues contained in the Great Charter—particularly those that had a broader application, alleged fraudulent behaviour or had economic implications<sup>245</sup>—demonstrates an appreciation (if not direct application) of the textual precedents in Magna Carta and other legislation. William Careles, for example, in claiming that revoking the *supersedeas* (a writ stopping or delaying legal proceedings)<sup>246</sup> against his suit of novel disseisin will be to the king's benefit ("a la profit"), deliberately frames his request as being

<sup>238</sup> HLS MS 184 fol. 15v.

<sup>239</sup> HLS MS 19 fols. 5v (Statute of Northampton, 2 Edward III: *al honor de dieux e de seint eglise e du comune profit du poeple*), 52r (Statute of Westminster, 28 Edward III: *al honor de dieux e de seint eglise e du comune profit de lui mesmes e de son poeple dengleterre*), 79v (Statute of Westminster 2 Richard II st 2: *a honor de dieu e de seint eglise e pur comune profit du roiaume dengleterre*).

<sup>240</sup> See generally W. Mark Ormrod, "Common Profit" and "The Profit of the King and Kingdom": *Parliament and the Development of Political Language in England, 1250–1450*, 46 VIATOR 219, 219–52 (2015) (analyzing the role of political language in the common petition).

<sup>241</sup> *Id.* "[T]he use of common profit in early common petitions looks like a pragmatic and sometimes rather desperate attempt to mobilize a mutuality of interests between crown and people as a necessary means of sweetening the bitter pill of complaint." *Id.* at 234.

<sup>242</sup> See *id.* at 228–29.

<sup>243</sup> *Id.* at 229.

<sup>244</sup> *Id.* at 233–34.

<sup>245</sup> See, e.g., Petitioners: William de Latymer (Latimer), Lord of Yarm (SC 8/9/434) (1305), NAT'L ARCHIVES, <http://discovery.nationalarchives.gov.uk/details/r/C9060560> [<https://perma.cc/G6WL-8UQS>] (William Latimer's request for pontage to repair the bridge at Yarm *pur comun profit des gentz passauntz*); Petitioners: Citizens of Cork (SC 8/98/4891) (c.1322), NAT'L ARCHIVES, <http://discovery.nationalarchives.gov.uk/details/r/C9149458> [<https://perma.cc/X8GY-4BZW>] (citizens of Cork ask permission to construct weirs on the rivers in the city, for its benefit *en amendement de sa dite citee*).

<sup>246</sup> *Supersedeas*, BLACK'S LAW DICTIONARY (10th ed. 2014).

“en emendement ces leys” as well as a rebuke (*en chastiment*) to those who bring actions in courts outside the king’s jurisdiction when he has the cognizance of the plea.<sup>247</sup> In 1297, at a time when confirmation of franchises and charters were issues in high politics,<sup>248</sup> the burgesses of St. Albans complained to the crown that the abbot was infringing certain rights they considered as being for their convenience and belonging to their collective benefit (*regardent com comun profit*) and had issued writs of conspiracy against them claiming remedy “pur vostre estat e leur e comun profit.”<sup>249</sup> The community of Bayonne (in 1300) similarly desired royal confirmation of their liberties and privileges and also their present and future statutes for the advantage (*ad utilitatem*) of the land and of the citizens themselves.<sup>250</sup>

An economic imperative was accorded the petition from merchants using the River Thames between London and Oxford who in 1320 not only invoke Magna Carta clause 23<sup>251</sup> complaining they were obstructed by weirs and other blockages (such as locks and mills) “encountre statut” as well as having to pay tolls to their owners, but specifically suggest that the king and council “might want to order that remedy and correction be carried out on these aforesaid things for the common profit of his people.”<sup>252</sup> This same grievance, which clearly offends Magna Carta (though the Great Charter itself is not specifically mentioned),<sup>253</sup> was endorsed in the same year by the people of both the city of Oxford and the whole county, who not only emphasised the economic benefits (in that provisions and merchandise could be brought there without impediment), but were not afraid of pointing out its reciprocal benefits for the king and the wider community (*pur graunt profit le Roi e soen*

<sup>247</sup> Petitioners: William Careles (Careless) (SC 8/274/13684) (c.1310–c.1335), NAT’L ARCHIVES, <http://discovery.nationalarchives.gov.uk/details/r/C9517631> [<https://perma.cc/M7FM-WG82>].

<sup>248</sup> See McIlwain, *supra* note 3, at 8.

<sup>249</sup> Petitioners: Burgesses and People of St Albans (SC 8/325/E684) (c.1297), NAT’L ARCHIVES, <http://discovery.nationalarchives.gov.uk/details/r/C9682678> [<https://perma.cc/TG9M-NNJA>].

<sup>250</sup> Petitioners: Community of Bayonne (SC 8/236/11773) (c. 1300), NAT’L ARCHIVES, <http://discovery.nationalarchives.gov.uk/details/r/C9335332> [<https://perma.cc/3ZSK-KFBV>].

<sup>251</sup> MAGNA CARTA (1225).

<sup>252</sup> Petitioners: Common Merchants Passing by Water between London and Oxford (SC 8/125/6201) (c.1320), NAT’L ARCHIVES, <http://discovery.nationalarchives.gov.uk/details/r/C9208374> [<https://perma.cc/2EHP-A3WR>] (*q’il voillent commander qe remedie e ammendement se facent sur les choses avaunt dites par le commune profit de son poeple*). They had already brought this to the king’s attention in 1302 and 1305 “pur profit la Roy issint” and requested justices to be assigned to deal with the problems. Petitioners: Merchants who Frequent the River Thames between London and Oxford (SC 8/10/474) (1305), NAT’L ARCHIVES, <http://discovery.nationalarchives.gov.uk/details/r/C9060600> [<https://perma.cc/V527-WL2B>]; Petitioners: Merchants who Frequent the River Thames between London and Oxford (SC 8/10/477) (1302), NAT’L ARCHIVES, <http://discovery.nationalarchives.gov.uk/details/r/C9060603> [<https://perma.cc/TDY9-4VQ6>].

<sup>253</sup> SC 8/125/6201, *supra* note 252.

*poep*).<sup>254</sup> The sentiment of the phrase was clearly accepted by the crown as it is echoed in response (though in Latin) as justification for action to be taken.<sup>255</sup>

Magna Carta was also invoked in 1320 by the clerks of Oxford University, though in a slightly different way.<sup>256</sup> Their complaint (concerning alleged deceit and conspiracy on the part of the burgesses of the city when undertaking inquisitions for death and wounding and in the application of weights and measures in Oxford) has a long preamble which uses the phrase as part of a rhetorical positioning, almost as a form of flattery:

[T]he University would not have been founded nor maintained, but for the bounty of the good kings of England who wish to ensure the common profit of the people as is befitting to them . . . and is not able to have comfort or help, but by your supreme lordship. And the abovesaid clerks pray your highness and the kindness of your grace solely by way of common profit and justice to maintain these things . . . .<sup>257</sup>

The word choice, while underlining the mutuality of royal assistance, nevertheless appears to stress the moral and legal responsibilities of the king by linking common profit and justice (or good faith) in this way.<sup>258</sup>

These are not isolated petitions, and their occurrence with others datable to around or during the 1320s implies not only an absorption of the language being used in high politics around this time into the language of private supplication, but the initiation (in private petitions) of a discourse that associated the correction afforded by Magna Carta with the responsibilities of the king to remedy specific grievances related to its substantive provisions.<sup>259</sup> A petition from the skinnners of London (datable to around 1320–1327), which complained of sharp practices and referred to certain articles relating to trade in furs as ordained “for the common profit of the important people and the community of the realm” links allegations of

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<sup>254</sup> Petitioners: Men of Oxford and of the Whole County of Oxfordshire (SC 8/86/4300) (1320), NAT'L ARCHIVES, <http://discovery.nationalarchives.gov.uk/details/r/C9148842> [<https://perma.cc/TSF4-ETLB>].

<sup>255</sup> *Id.* (*pro utilitate Regis et populi fuerit facienda*).

<sup>256</sup> See Petitioners: Clerks of Oxford University (SC 8/86/4297) (1320), NAT'L ARCHIVES, <http://discovery.nationalarchives.gov.uk/details/r/C9148839> [<https://perma.cc/6HRS-8W6Z>].

<sup>257</sup> *Id.* (“*mais qe par le bounte des bons Roys Denlgeterre queux vut toutditz avie commun proffit du poeple com a eux appendit . . . et ne peut aver autre refer ou sucour mais par vostre haute Seignurie . . . Por quey prient ces clers susditz a vostre hautesce et benarte[?] de vostre grace taunt soulement par commun proffit e leaute meyntenir les choses . . .*”). This petition is damaged and much of the text after this section is missing.

<sup>258</sup> See *id.*

<sup>259</sup> See THOMPSON, *supra* note 4, at 36–37.

deceitful conduct with the need for correction.<sup>260</sup> It was not just groups, who employed the phrase in this period, but individuals, too, such as William de Thorntoft, who highlights problems with delays in justice and alleges undue influence on the legal processes.<sup>261</sup> In both his petitions (one submitted a year previously), Thorntoft aligns his own plight—the way the legal processes have dragged on (*ad longement suwyn*)—with the benefit that will accrue for the king and him personally (*en avauntage nostre Seignur le Roi et le dite William*) if he provides suitable statutory remedy correcting the injustices.<sup>262</sup> He further underlines the broader connection with the welfare of the state that this entails by adding “for him (i.e., Thorntoft) and the common profit of the realm.”<sup>263</sup> It was also something the crown was willing to repeat back to petitioners in cases where the king deemed their behaviour unreasonable.<sup>264</sup> The bishop of Carlisle, (who was trying to claim expenses for nine weeks spent treating with the Scots on behalf of the king as part of a magnate delegation) had his claim thrust back at him, but received an interesting response.<sup>265</sup> He was informed that “for the common profit of the king and of the realm and of his see” he should not travel so far away that he suffers such losses, suggesting that his actions were not beneficial to the king or the wider community and the onus was on him to be less extravagant and not spend an unreasonable time away from his diocese.<sup>266</sup>

The manifestation of this discourse in common petitions (or its perpetuation on a broader scale) did not seem to hinder its continued employment by individuals and communities later in the century, though the significant events in the Good Parliament of 1376<sup>267</sup> and the reforming zeal of the opening years of Richard II’s reign may have given rise to (or provide evidence for) a more self-conscious use of the terminology thereafter.<sup>268</sup> The chancellor and scholars of Cambridge, for example,

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<sup>260</sup> Petitioners: Pelterers of London (SC 8/260/12977) (c.1320–c.1327), NAT’L ARCHIVES, <http://discovery.nationalarchives.gov.uk/details/r/C9516921> [<https://perma.cc/V5CS-K3R7>] (*commun profit de grauntz e le communaute de roaume*).

<sup>261</sup> See, e.g., Petitioners: William de Thorntoft (SC 8/75/3736) (c.1325–c.1350), NAT’L ARCHIVES, <http://discovery.nationalarchives.gov.uk/details/r/C9107510> [<https://perma.cc/9GXF-JPSX>].

<sup>262</sup> Petitioners: William de Thorntoft (SC 8/75/3738) (c.1325–c.1350), NAT’L ARCHIVES, <http://discovery.nationalarchives.gov.uk/details/r/C9107512> [<https://perma.cc/BTU8-J8QV>]; SC 8/75/3736, *supra* note 261.

<sup>263</sup> SC 8/75/3736, *supra* note 261 (*pur lui e pur comune profist du Realme*). In his second petition “pur dieu” is substituted for “pur lui.” SC 8/75/3738, *supra* note 262.

<sup>264</sup> See, e.g., Petitioners: John de Halton, Bishop of Carlisle (SC 8/103/5117) (c.1321–c.1324), NAT’L ARCHIVES, <http://discovery.nationalarchives.gov.uk/details/r/C9149687> [<https://perma.cc/GX2P-L4MP>].

<sup>265</sup> See *id.*

<sup>266</sup> *Id.*

<sup>267</sup> W. Mark Ormrod, *On—and Off—the Record: The Rolls of Parliament, 1337–1377*, in *PARCHMENT AND PEOPLE: PARLIAMENT IN THE MIDDLE AGES* 39, 44 (Linda Clark ed., 2004).

<sup>268</sup> W. Mark Ormrod, *The Good Parliament of 1376: Commons, Communes, and “Common Profit” in Fourteenth-Century English Politics*, in *COMPARATIVE PERSPECTIVES ON*

employ the ‘common profit’ formula in 1379 almost as if it were a yardstick for appropriate conduct or a synonym for Magna Carta.<sup>269</sup> The conduct of the mayor and bailiffs of the city of Cambridge regarding weights and measures (and their prevention of the University exercising its powers of punishment) is described as “encontre commune profit” and the University’s request for judicial intervention links the notion of common profit closely with the common law (*selonc les loys de la terre pur commune profit dicelle*).<sup>270</sup>

During a similar period, the concern of the citizens of Norwich with their liberties (having obtained an exemplification of a 1377 charter issued to the city of London and received royal confirmation of their charter in 1378) manifested itself in the desire to seek an additional clause giving the power to correct defective customs and to ordain and provide remedies in new situations requiring amendment (which the Londoners had, though it was in reality no more than the ancient custom to make bylaws).<sup>271</sup> The language used in their petition appears to complete a veritable ‘bingo card’ of supplicatory buzzwords. Not only do they maintain that their remedies will be for “le bon gouvernement” of the city, they will accord with “good faith and reason” (*bon foye e reson*) and be done “for the common profit of the people” (*pur le commune profit del poeple*) in a way that will equally be “profitable for the king and his people.”<sup>272</sup> Ironically, the petition may well have been initiated by a more elite group within the city than the language of community implies, a group who distinguish between themselves and those in the community (*le commune de lour dite ville*) who have recently opposed these new measures and “now seem to be seeking to draw away into their own hands authority which they had hitherto shared with the whole community in the assembly.”<sup>273</sup>

Conventions of deference may have meant that it was not deemed appropriate for ordinary petitioners to be dictating to the king and his council amendments to the law or the way that the government and legal system operated,<sup>274</sup> but where in fact the subject matter of the petition cited or chimed with Magna Carta, where it was legitimately and justifiably of concern because it contravened the Great Charter, its use may have added authority and rhetorical power to their complaint. This overtly

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HISTORY AND HISTORIANS: ESSAYS IN MEMORY OF BRYCE LYON (1920–2007) 169, 169–88 (David Nicholas et al. eds., 2012); Ormrod, *supra* note 240, at 246–47.

<sup>269</sup> Ormrod, *supra* note 240, at 247.

<sup>270</sup> Petitioners: Chancellor and Scholars of Cambridge University (SC 8/19/913) (1379), NAT’L ARCHIVES, <http://discovery.nationalarchives.gov.uk/details/r/C9061066> [<https://perma.cc/7AF2-2542>].

<sup>271</sup> 2 THE RECORDS OF THE CITY OF NORWICH liv–lv (William Hudson & John C. Tingey eds., 1910).

<sup>272</sup> Petitioners: Citizens of Norwich (SC 8/18/892) (1378), NAT’L ARCHIVES, <http://discovery.nationalarchives.gov.uk/details/r/C9061045> [<https://perma.cc/HX3S-4LHN>] (*profitables pur le Roi nostre Seigneur e pur son poeple*).

<sup>273</sup> THE RECORDS OF THE CITY OF NORWICH, *supra* note 271, at lv.

<sup>274</sup> Ormrod, *supra* note 240, at 229–30.

‘political’ language (employing official constructs frequently asserted by the crown) gained currency outside the formal environment of chancery and parliament through its interpolation by provincial lawyers, civic clerks and scribes in supplications to the crown from individuals and communities.<sup>275</sup> Indeed, Parliamentary attendance by men of law and in particular, city recorders (an office that many towns and cities were adopting and in turn was becoming an increasingly attractive position for lawyers), may also explain both the assertiveness and choice of language employed in petitions by civic communities.<sup>276</sup> It was thus already part of the language of complaint (and as such it was repeated back to crown) before its adoption by the parliamentary commons, who by the mid-fourteenth century were themselves recognised as the moral arbiters of public welfare.<sup>277</sup>

#### CONCLUSION

Predominantly it has been the political and constitutional aspects of Magna Carta that have interested historians of the fourteenth century. In spite of its obvious symbolic authority as a benchmark of royal behaviour and its use to legitimise actions on the political stage, the Great Charter nevertheless maintained a strong presence in the realm of private disputes.<sup>278</sup> The crown’s encouragement of complaints from its subjects fostered the construction of petitions citing Magna Carta or drawing on the language of its provisions.<sup>279</sup> Indeed, the Great Charter’s influence on the flow and nature of complaints submitted to the crown concerning the exercise of royal justice should not be underestimated. These grievances centred on issues regarding deprivation of freedoms and privileges, and unfair or unreasonable treatment by those wielding authority (whether in financial, physical, or property-related terms).<sup>280</sup> Significantly, they also concerned perceptions of unjustness and experience of illegality arising from the operation or improper application of the legal processes themselves.<sup>281</sup>

Historians have recognised that even by Henry III’s reign many of the substantive provisions of Magna Carta were outdated, implying the Great Charter did not play as significant a role in the lives of fourteenth-century people as it had done in earlier generations.<sup>282</sup> The private petitions and reported cases, however, reveal that

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<sup>275</sup> MUSSON, *supra* note 63, at 226–30, 254.

<sup>276</sup> *Id.* at 193–98.

<sup>277</sup> Ormrod, *supra* note 240, at 223–24, 234, 237–39.

<sup>278</sup> THOMPSON, *supra* note 4, at 67. Thompson somewhat prosaically concludes that the evidence she presents shows “how some chapters of the Charter continued in current use, and how these and others persisted as part of the statutory lore of the legal profession.” *Id.*

<sup>279</sup> *See generally id.* at 33–67 (analyzing the different areas where Magna Carta appeared in the Plea Rolls and Year Books).

<sup>280</sup> *See, e.g., supra* notes 52, 89, 99.

<sup>281</sup> *See, e.g., supra* notes 205–09.

<sup>282</sup> CARPENTER, *supra* note 5, at 443–44.

this was not necessarily the case.<sup>283</sup> While many of the clauses of the original Magna Carta were no longer relevant (or as relevant),<sup>284</sup> litigants were quite content to include Magna Carta with their citation of other statutes or align its clauses with later amendments.<sup>285</sup> Sometimes they were inventive in their legal arguments or pushed the boundaries of the original meaning.<sup>286</sup> At other times they futilely harnessed it to their cause and betray their own misconceptions or misunderstanding of the law.<sup>287</sup> This in turn makes it possible to gauge contemporaries' respective attitudes towards it as 'law' and the extent to which it was embedded in the psyche or legal consciousness of fourteenth-century men and women.

The question is then why does Magna Carta have this power and at this particular point in time? From 1297 onwards, Magna Carta was acknowledged to be an intrinsic part of the law of the land.<sup>288</sup> This combined with the concept of 'time out of mind'<sup>289</sup> fostered notions of the tradition and timelessness of the common law that the Great Charter had come to represent.<sup>290</sup> In symbolic terms Magna Carta provided a superior reference point (akin to divine law) and ordinary litigants placed faith in it or its principles (governed by right and reason) as an unimpeachable higher authority.<sup>291</sup> The abstract principles enshrined in the Great Charter were infused with Roman/canon law and were themselves embodied in the king's coronation oath.<sup>292</sup> It was the monarch's duty to provide for his subjects access to his justice and remedy abuse of legal process. Moreover, the language employed in certain petitions demonstrates reliance on the promise of amendment contained in the text of Magna Carta.<sup>293</sup> Drawing on a specific formula cited from the preamble<sup>294</sup> it yokes application of the law and judicial processes to notions of common enterprise, yielding economic, social, and political advantage and mutual benefit to the crown and people.<sup>295</sup>

Reference to Magna Carta and its ideals, observable at all levels of society, can be regarded as reflecting the spread of information about the Great Charter, including dissemination in statute books and its regular proclamation in the shires and towns. Against this backdrop should be set a judicial system that in the thirteenth

<sup>283</sup> See THOMPSON, *supra* note 4, at 33.

<sup>284</sup> CARPENTER, *supra* note 5, at 443.

<sup>285</sup> See Nichols, *supra* note 93, at 303–04.

<sup>286</sup> See *id.*

<sup>287</sup> THOMPSON, *supra* note 4, at 33.

<sup>288</sup> READINGS AND COMMENTARIES, *supra* note 3, at lxxiv–lxxix.

<sup>289</sup> PRESTWICH, *supra* note 2, at 260.

<sup>290</sup> For an examination of this concept, see Peter Goodrich & Yifat Hachamovitch, *Time out of Mind: an Introduction to the Semiotics of Common Law*, in DANGEROUS SUPPLEMENTS: RESISTANCE AND RENEWAL IN JURISPRUDENCE 159, 159–81 (P. Fitzpatrick ed., 1991).

<sup>291</sup> Nichols, *supra* note 93, at 304.

<sup>292</sup> MUSSON, *supra* note 63, at 222.

<sup>293</sup> See, e.g., THE RECORDS OF THE CITY OF NORWICH, *supra* note 271, at liv.

<sup>294</sup> MAGNA CARTA (1225).

<sup>295</sup> See *supra* notes 241–66 and accompanying text.

and fourteenth centuries was evolving not just to meet royal requirements in dispelling problems of public order and enforcing penalties against criminal behaviour,<sup>296</sup> but also to meet the needs of growing numbers of private suits brought by a litigious population at the encouragement of a burgeoning legal profession.<sup>297</sup> The fostering of such expectations can be seen in the way customary tenants (especially those claiming ancient demesne status) who felt they were being treated unjustly by manorial lords to bring their plight to the attention of the crown.<sup>298</sup>

Invocation of Magna Carta in petitions and litigation can also be considered as reflecting the availability of and confidence in clerks and local men of law. Whether this confidence in citing its authority (either verbatim, in paraphrase or simply by name) derived from ordinary litigants' knowledge and expectations of the Great Charter, from familiarity with its citation in parliamentary business or as a result of the encouragement and influence of the legal profession would be a difficult distinction to draw. The answer probably lies in a mixture of all three.

As demonstrated by continued citation in private petitions and its deployment in litigation,<sup>299</sup> the Great Charter maintained its power and authority throughout the fourteenth century, not just in the public sphere (with the treason trials and the deposition articles of Richard II), but in the private legal domain too. The more prosaic invocation of the Great Charter by individuals and communities in petitions and litigation therefore provides a parallel world in which it operated and an understandable context for the parliamentary commons' desire for its formal reconfirmation in legislation with the ensuing constitutional ramifications.<sup>300</sup>

Even if the situation in high politics altered over the course of the fifteenth century and constitutional interest in Magna Carta waned,<sup>301</sup> its significance to local society and the legal profession did not markedly decline.<sup>302</sup> Indeed, in relation to the latter, it remained an important element of the lectures and moots of the Inns of Court into the sixteenth century and beyond.<sup>303</sup> Although the numbers of private petitions to the crown may have reduced over the course of the fifteenth century,<sup>304</sup>

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<sup>296</sup> See generally ANTHONY MUSSON, PUBLIC ORDER AND LAW ENFORCEMENT: THE LOCAL ADMINISTRATION OF CRIMINAL JUSTICE, 1294–1350 (1996); Barbara A. Hanawalt, *Fur-Collar Crime: The Pattern of Crime Among the Fourteenth-Century English Nobility*, 8 J. SOC. HIST. 1 (1975) (analyzing crime among English nobility in the fourteenth century).

<sup>297</sup> See generally MUSSON & ORMROD, *supra* note 64 (discussing the evolution of the judicial system in fourteenth-century England).

<sup>298</sup> MUSSON, *supra* note 63, at 252–55.

<sup>299</sup> See generally THOMPSON, *supra* note 4, at 33–67 (discussing Magna Carta's role in the Plea Rolls and Year Books).

<sup>300</sup> See Charles Donahue, Jr., *Magna Carta in the Fourteenth Century: From Law to Symbol?: Reflections on the "Six Statutes,"* 25 WM. & MARY BILL RTS. J. 591, 593–96 (2016).

<sup>301</sup> For the various arguments historians have put forward here, see Saul, *supra* note 226.

<sup>302</sup> MUSSON, *supra* note 63, at 254.

<sup>303</sup> READINGS AND COMMENTARIES, *supra* note 3, at xxiii.

<sup>304</sup> See Timothy S. Haskett, *The Medieval English Court of Chancery*, 14 LAW & HIST. REV. 245, 286–87 (1996).

the evolution of the chancellor's 'court of conscience' in the same period did much to cater for the needs of those who had previously personally petitioned the crown for wrongs and injustices that they felt could not be remedied in the ordinary law courts.<sup>305</sup> Paradoxically, Magna Carta became less overtly visible as its principles became absorbed into the fabric of the legal system and supplementary legislation elaborated on its substantive clauses.<sup>306</sup> If its effect was temporarily diminished during the later fifteenth and sixteenth centuries, it is the long fourteenth century in both legal and political arenas, that Magna Carta's lasting contribution to law and justice was firmly established.

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<sup>305</sup> See DENNIS R. KLINCK, *CONSCIENCE, EQUITY AND THE COURT OF CHANCERY IN EARLY MODERN ENGLAND* (2010); Haskett, *supra* note 304, at 286–87.

<sup>306</sup> See CARPENTER, *supra* note 5, at 458–60.