



Magna Carta and the Origins of Due Process

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Magna Carta (1215), Clauses 39-40

John, King of England

39. *Nullus liber homo
capiatur, vel inprisonetur,
aut dissaisiatur, aut
utlaghetur, aut exuletur,
aut aliquo alio modo
destruatur, nec super eum
ibimus, nec super eum
mittemus, nisi per legale
iudicium parium suorum vel
per legem terre.*

40. *Nulli vendemus, nulli
negabimus, aut differemus,
rectum aut justiciam.*

39. No free man is to be arrested, or imprisoned, or disseised, or outlawed, or exiled, or in any way destroyed, nor will we go against him, nor will we send against him, save by the lawful judgement of his peers or by the law of the land.

40. To none will we sell, to none will we deny or delay, right or justice.

(David Carpenter trans., 2015.)

Magna Carta and the Fifth Amendment to the U.S. Constitution

39. No free man is to be arrested, or imprisoned, or disseised, or outlawed, or exiled, or in any way destroyed, nor will we go against him, nor will we send against him, **save by the lawful judgement of his peers or by the law of the land.**

40. To none will we sell, to none will we deny or delay, right or justice.

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, *nor be deprived of life, liberty, or property, without due process of law*; nor shall private property be taken for public use, without just compensation.

Medieval Criminal Justice



- Prior to 1215, criminal cases in medieval England were resolved by “ordeals,” which invoked God’s judgment to decide guilt or innocence.
- Most of the ordeals required participation by priests to pronounce God’s verdict.

Fourth Lateran Council (1215)

From November 11-30, 1215, Pope Innocent III presided over the Fourth Lateran Council. Canon 18 of the Council provided that, in the future, priests would not be allowed to participate in the ordeals.



Magna Carta (1215), Clauses 17-18

John, King of England

17. *Communia placita
non sequantur curiam
nostrum sed teneantur in
aliquot certo loco.*

18. *Recognitiones de nova
disseisina, de mortis
antecessoris, et de ultima
presentatione, non
capiantur nisi in suis
comitatibus et hoc modo.*

17. Common pleas are not to follow our court but are to be held in some specified place.

18. Recognitions of novel disseisin, of mort d'ancestor, and of darrein presentment, are not to be taken unless in their counties and in this way.

(David Carpenter trans., 2015.)



Parish Church of St. Edmund, Acle

Diocese of Norwich

December 2012

Constitutions of Clarendon (1164)

Henry II, King of England

1. De advocacione et presentatione ecclesiarum, si controversia emeruerit inter laicos, vel inter clericos et laicos, vel inter clericos, in curia domini regis tractetur et terminetur.

1. When disputes arise concerning advowsons and presentations to churches, whether between laymen, between laymen and clerks, or between clerks, they must be heard and decided in the lord king's court.



Norwich Cathedral

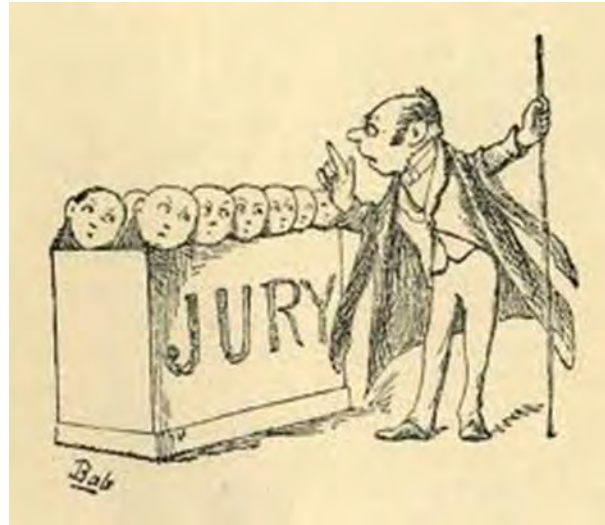
Norfolk, England

December 2012

The Problem

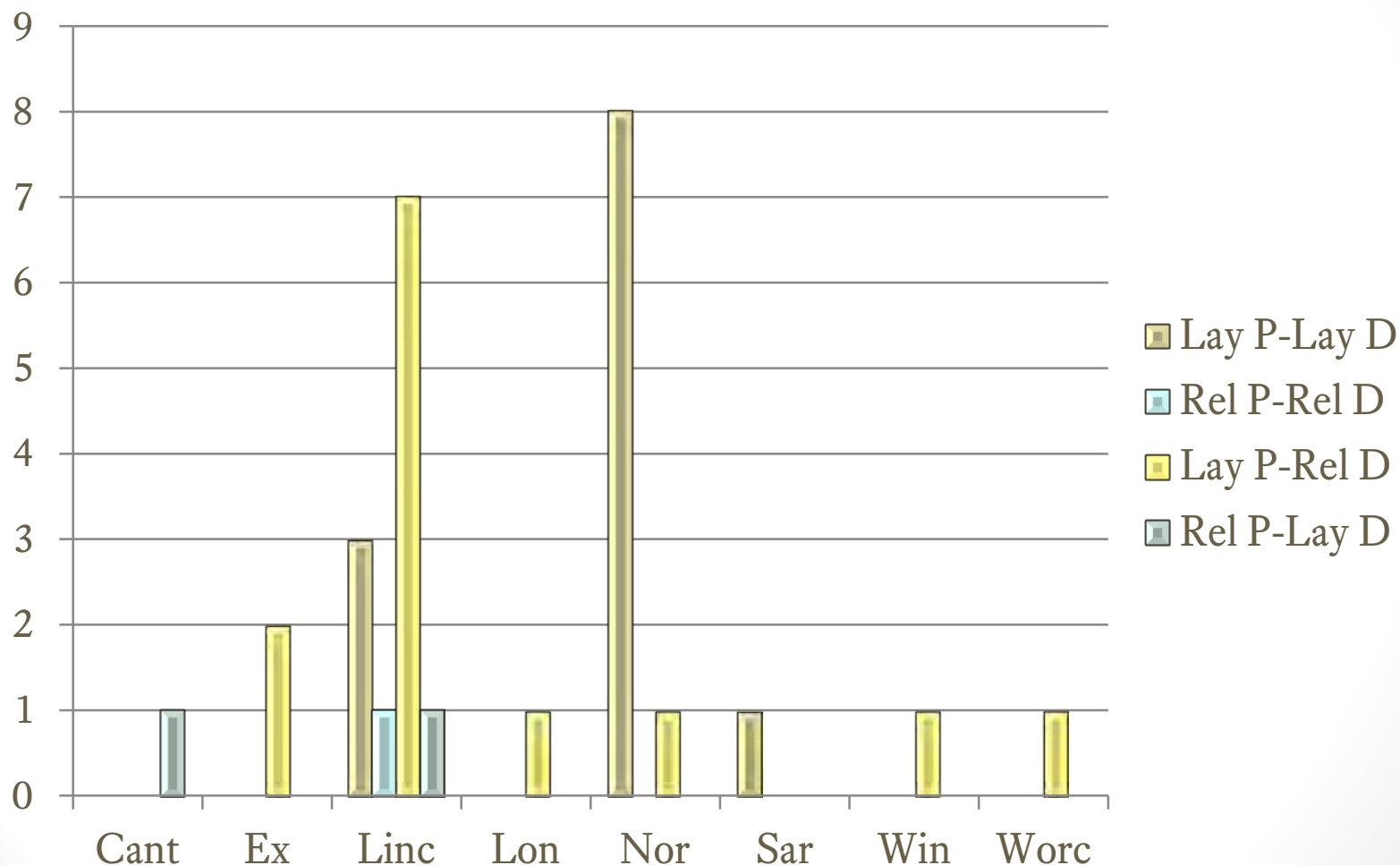
- King Henry II wanted patronage disputes to be decided in his own courts.
- Unlike the church, however, the royal government did not have and could not afford a large bureaucracy of literate clerks.
- In addition, patronage disputes often implicated powerful barons on both sides whom the king would not wish to offend.

The Solution



The king to the sheriff, greeting. If such a one has made you secure with respect to the prosecution of his claim, summon etc. twelve free and lawful men of such a neighbourhood to be before our justices at the first session when they come into those parts . . . prepared to recognise on oath who as patron in time of peace presented the last parson, who has died, to the church of such a place which is vacant, as it is said, the advowson of which [the claimant] says belongs to him. The Writ of Assize of Darrein Presentment, 3 *Bracton* 206 (trans. Thorne).

Common Advowson Cases by Diocese, Trin./Mich. 1194 (Earliest Surviving Rolls)





Shrine of St. Hugh
St. Mary's Cathedral, Lincoln
December 2012

Hugh of Avalon

Augustinian Canon

Carthusian Monk

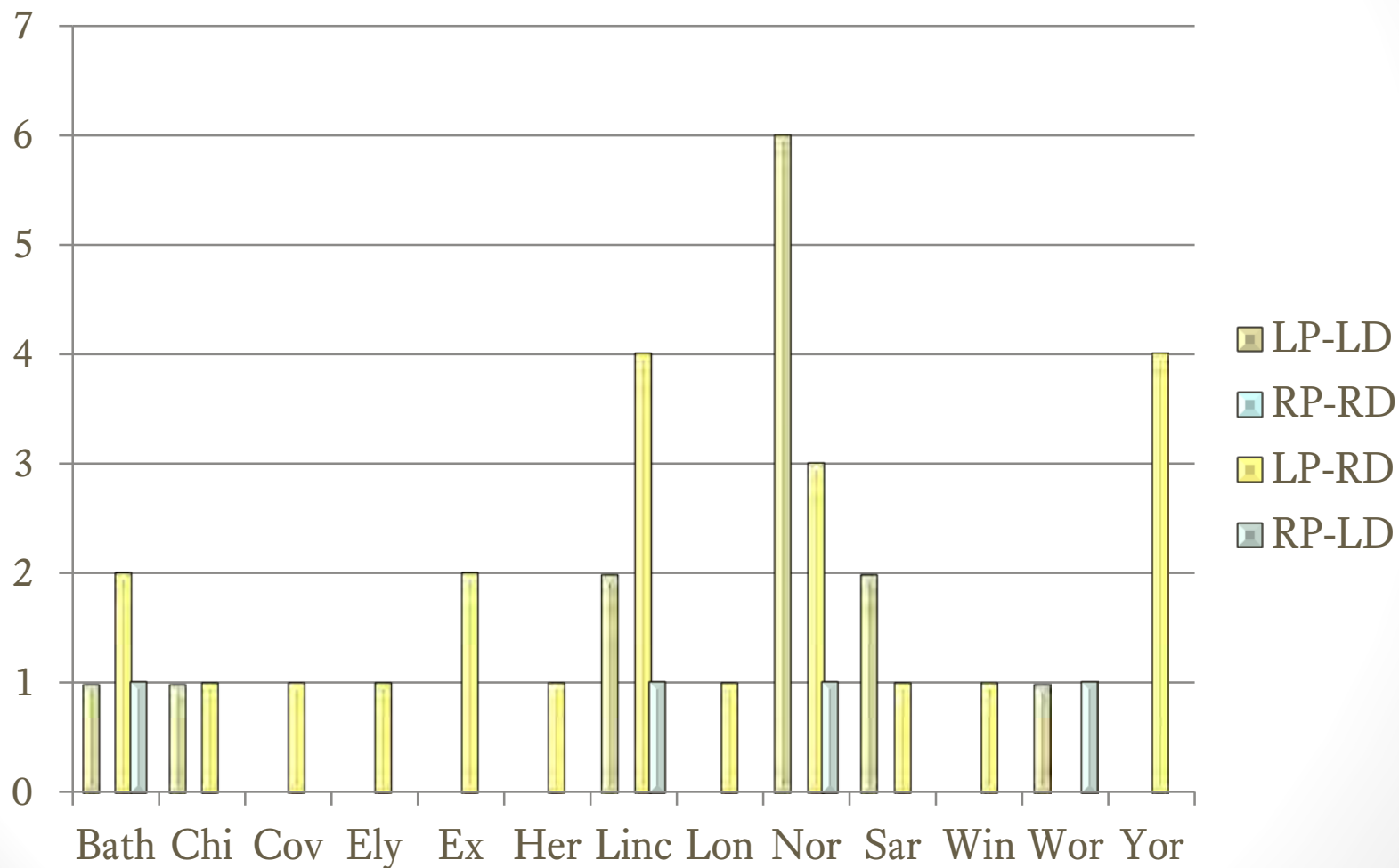
Procurator,
Monastery of the
Grande-Chartreuse,
1173-1180

Prior of Witham,
1180-1186

Bishop of Lincoln,
1186-1200

Canonized 1220

Common Advowson Cases by Diocese, Trin./Mich. 1214 (Last Rolls of King John)



John (1167-1216), King of England



- Ruled England 1199-1216
- Ineffective leader: lost most of the English crown's former land in France
- Compensated for military losses by heavy taxation and perceived abuse of feudal rights
- Frequent conflicts with powerful barons brought country to brink of civil war by 1215

Personal Justice under King John

- 1201: King John orders a dispute over the church of Melton to be stayed (postponed) until he is able to secure the election of his preferred bishop of Lincoln.
- 1203: King John dismisses a lawsuit over the church of Kettlestone because it is within the jurisdiction of his close ally John de Grey, bishop of Norwich.
- 1203: King John orders a dispute over the church of St. Decuman's to be postponed while he controls the bishopric of Bath during a vacancy.
- 1207: A lawsuit over the church of Wimpole is recorded as having been dismissed because “*dominus rex non vult quod loquela illa procedat* (the lord king doesn't want the lawsuit to proceed).”

Great Charter (“Magna Carta”) Runnymede, 1215



- In 1215, John agrees to various demands in an effort to win support in the growing crisis.
- Signs “Magna Carta,” a long list of specific and general concessions to his subjects.

Hugh of Wells (d. 1235)



- Loyal servant of King John until the king's excommunication in 1209
- Bishop of Lincoln, 1209-35
- Produced earliest surviving English episcopal register

Register of Hugh of Wells, Roll 10, m. 2.

- *Magister T. de Tyrintona presentatus per abbatem et conventum de [Thorney] ad ecclesiam de Stibbingtona, ad eam est admissus et institutus in eadem . . . Et facta fuit prius inquisitio per episcopum, in ipsa ecclesia presentem, quod fuit sine controversia et de advocatione dictorum Abbatis et conventus. . . .*
- Master Thomas of Tyrinton, presented by the abbot and convent of Thorney to the church of Stibbington, is admitted and instituted to that church. And this was done after an inquest by the bishop, present in that very church, determined that the church was the subject of no controversy and the abbot and convent held the advowson.

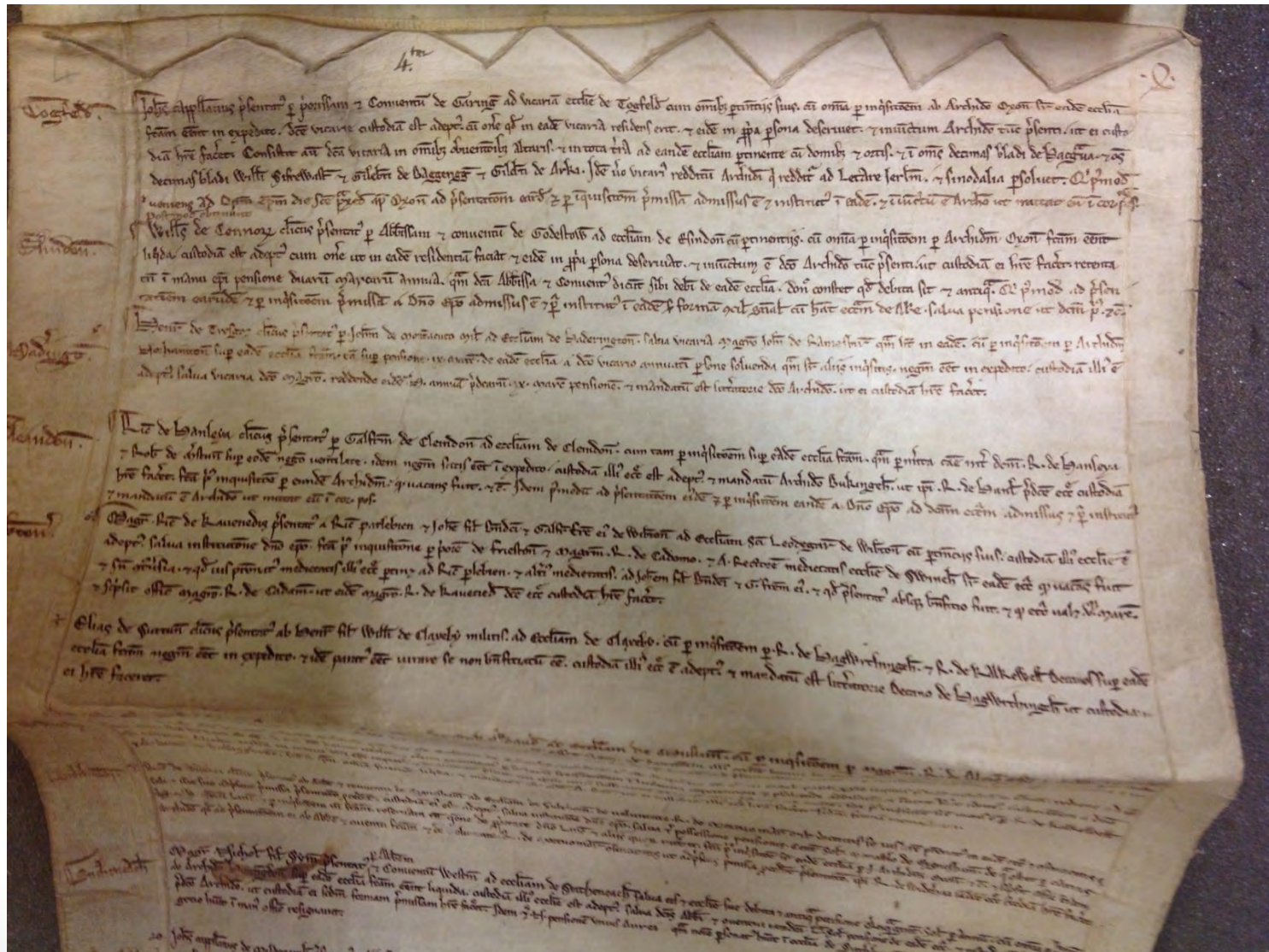
Register of Hugh of Wells, Roll 10, m. 4.

- *Willelmus de Cennora, clericus, presentatus per abattissam et conventum de Godestow ad ecclesiam de Esindone . . . cum omnia per inquisitionem per Archidiaconum Oxoniensem factam essent liquida . . . admissus est et in persona institutus . . .*
- William of Cennor, a clerk, having been presented by the abbess and convent of Godstow to the church of Easington . . . was admitted and instituted as parson when an inquest by the archdeacon of Oxford determined that everything was in order.

Register of Hugh of Wells, Roll 10, m. 2

[illegible]

Register of Hugh of Wells, Roll 10, m. 4



Concluding Thoughts

