The Influence of the Magna Carta on Papua New Guinea Law[1]

The year 2015 is an anniversary of great significance in the common law world of which Papua New Guinea is part. On 15 June 1215 a document was signed and sealed by John, King of England, in the presence of the barons of the realm, at a meadow called Runnymede on the River Thames about 30 kilometres west of London. This document was the Magna Carta, which in Latin means "Great Charter".

The rights and liberties set out in the Magna Carta have been a model in the development of the legal and parliamentary structures of modern states with connections with the British Empire.[2] Papua New Guinea is one of those States.

The theme of this lecture is to examine the influence of the Magna Carta of 1215 on the development of laws in Papua New Guinea. I would like to address this topic in the time available to me in the following manner:

1. Setting the Magna Carta into context by briefly outlining the political and legal situation in England at the time;
2. Considering the Magna Carta itself;
3. Identifying clauses of the Magna Carta which appear to be of relevance to rights in the modern common law world; and
4. More closely examining if and to what extent those clauses relate to rights and liberties enjoyed in Papua New Guinea.

A brief outline of the political and legal situation in England at the time of King John

Any consideration of the Magna Carta must take into account the background against which it was produced and agreed. It is a background quite different to life we enjoy in the modern

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[2] K F Dew *Magna Carta* (Greenwood Press, 2004) page xvii

world, although perhaps not totally alien to the political environment experienced in less fortunate places on the globe than we experience here in Papua New Guinea.

In 1215, John was King of England. King John's family had originally come from Normandy. His great-great-grandfather, William the Conqueror, had conquered England in 1066, defeating the Saxons at the Battle of Hastings. Men who fought with or were favoured by the new king were installed as the new nobility. Unlike the common people of England who spoke English, the king and the nobles spoke French. The language of the Church and of scholarship was Latin.

One hundred and fifty years had passed since King William took England by force of arms. This period had seen almost continual political turmoil and armed engagement in England. There had been civil wars to gain the throne of England between claimants on several occasions, including rebellions of King John's mother and older brothers against their father in pursuit of power and position, and an unsuccessful attempt by John himself to take the throne of England from his brother Richard I while Richard was on crusade to the Holy Land. John became King on the death of his older brother Richard in 1199 when Richard was killed fighting in France.

This was a time in England when the word of the king was law, and displeasing or defying the king could easily mean death for the person and his or her family. It was a brutal age where people lived in a strictly defined structure of obligation and obedience to written and unwritten rules, when lifespans were relatively short, disease was rife, and life was cheap. Perceived weakness in rulers was a short step to armed rebellion and replacement. There was no Parliament in England as we know it, although kings of England from William the Conqueror onwards would call Great Councils of nobility and the Church when necessary – often to obtain their consent to an increase in taxation. Courts were in their infancy – there were royal Courts over which the king presided, and local Courts presided over by the local lord. Determination of innocence or guilt in the criminal justice system included trial by combat or ordeal. The first permanent Court – the Court of Common Pleas – had been established by Henry II in 1176.

Like many other feudal kings of the time, King John was renowned for his cruelty. Centuries later the disappearance of the so-called Princes in the Tower at the instigation of Richard III would became a hallmark of ruthless ambition and the cold-blooded murder of children of the family to entrench one's own position. However less known is that the nephew of King John,

Arthur of Brittany, who at the age of 16 years old had a claim to the throne of England, was captured by John and disappeared mysteriously never to be seen again. That deed in itself sparked a rebellion in Brittany against John's rule. Further, the wife and son of one of his erstwhile loyal subjects, William de Braose, 4th Lord of Bramber, were deliberately starved to death after they were imprisoned by John in a castle. And, in 1212, 28 boys, most of whom were Welsh princes and held hostage to guarantee the good behaviour of their fathers, were hanged by John when their fathers rebelled.[3]

Even placing to one side this conduct, in many ways John was a failure as a king. He was the youngest of seven children of his parents and was nicknamed "Lackland" as he was not expected to nor trained to rule anywhere or anything. His armies were unsuccessful to the extent that he was also nicknamed "Softsword" (in contrast with his brother King Richard who was known as "the Lionheart"). He fought with the Pope of the Catholic Church and was excommunicated for some time in 2009, being reconciled with the Pope only upon John's agreement to acknowledge the Pope's primacy in England and the payment of large and continuing sums of money. When he became king of England he also inherited from both his parents and his older brother an empire containing most of what is now France, but by the time of his death 18 years later almost all of that empire had been lost.

This perceived failure of John as an effective king, combined with huge debts incurred to recover those lost lands and his determination to raise money in any way he could (including increased taxation) to recover those lost lands, set him on a collision course with the aristocracy of England at that time. Although the ancestors of the barons of England, had come with William the Conqueror from Normandy, by the time of King John they had diminishing interest in fighting to recover John's lost lands in Europe and were not pleased when John wanted them to fight in Europe in that cause.[4] They were also displeased by the increasing amounts the King wanted them to pay for the privilege of inheriting land and marrying woman of their choice.[5]

King John did not want to sign the Magna Carta – he was, in substance, forced into doing so by rebellious barons who by 1215 had had enough and wanted something in writing from the King to guarantee them a number of rights. Almost immediately after the sealing of the Magna Carta, King John asked the Pope to nullify the Magna Carta. In a letter dated

[3] A Arlidge and I Judge *Magna Carta Uncovered* (Hart Publishing, 2014) page 9
[4] *Ibid* page 38
[5] *Ibid* page 38

24 August 1215, Pope Innocent III declared that the Magna Carta was null and void because the King had been forced to sign it. War broke out at once between the King and the barons, however the King died in 1217 (note – after losing the royal treasury, including his Crown, in quicksand in The Wash in East Anglia). His son, Henry III, the new king, reissued the Magna Carta as a child, but importantly it was confirmed by Henry III voluntarily in 1237. A version of the Magna Carta was then entered on the statute rolls in 1297 during the reign of Edward I. To a limited degree that version remains on the statutes of England today.[6]

As has been pointed out many times by many commentators,[7] the barons of King John were not motivated by altruistic or liberal concerns to require the King to accede to the Magna Carta. However that may be, for reasons to which I will now turn the effects of the terms of the Magna Carta in this country, and indeed throughout the world, have far overtaken its original scope in securing rights to the particular nobles forcing its execution.

The Magna Carta

The Magna Carta is a document written in Latin, containing a recital followed by 63 clauses. Multiple original copies of the Magna Carta were sealed on that fateful day in 1215, but only four copies survive. All copies of the 1215 Magna Carta are in England, including two in the British Library.

The preamble to the Magna Carta lists the parties to the document, being King John, men of the Church and the barons.

Many of the clauses of the Magna Carta are of no relevance to modern law. For example:

- clause 2, which permits the heir of any of the earls or barons, being of full age, to take his inheritance on payment of a certain amount (being 100 pounds for the heir of an earl); and
- clause 6, which states that heirs shall be given in marriage without disparagement, yet so that before a marriage is contracted it shall be made known to the heir's next of kin.

A number of clauses refer to specific people, for example:

[6] A more detailed discussion can be found in Lord Woolf *The Pursuit of Justice* (Oxford University Press 2008) Chapter 5

[7] See for example Tom Bingham Lives of the Law: Selected Essays and Speeches 2000-2010 (Oxford University Press, 2011) at 5

- clause 58, which refers to the restoration of Welsh hostages; and
- clause 59, which refers to the entry into a treaty with Alexander the King of the Scots.

Similarly there are clauses which relate to specific places in England, for example:

- clause 13, which says that the city of London is to have all its ancient liberties and free customs by land and water; and
- clause 43, which refer to anyone who dies holding estates in Wallingford, Nottingham, Boulogne or Lancaster.

There are also many clauses which specifically deal with forests in England, so much so that in 1217 a further Charter of the Forest was issued establishing rights of access by free men to the royal forest.

Mixed in with many now redundant provisions are clauses which can be seen to have a direct relationship to rights we now enjoy in the common law world, including in Papua New Guinea. These include:

> **Clause 12**. No scutage or aid is to be levied in our realm except by the common counsel of our realm, unless it is for the ransom of our person, the knighting of our eldest son or the first marriage of our eldest daughter; and for these only a reasonable aid is to be levied. Aids from the city of London are to be treated likewise.
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> …
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> **Clause 17**. Common pleas shall not follow our court but shall be held in some fixed place.
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> **Clause 20**. A free man shall not be amerced for a trivial offence, except in accordance with the degree of the offence; and for a serious offence he shall be amerced according to its gravity, saving his livelihood; and a merchant likewise, saving his merchandise; in the same way a villain shall be amerced saving his wainage; if they fall unto our mercy. And none of the aforesaid amercements shall be imposed except by the testimony of reputable men of the neighbourhood.
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> …
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> **Clause 38**. Henceforth no bailiff shall put anyone on trial by his own unsupported allegation, without bringing credible witness to the charge.
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> **Clause 39**. No free man shall be taken or imprisoned or disseised or outlawed or exiled or in any way ruined, nor will we go or send against him, except by the lawful judgment of his peers or by the law of the land.
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> **Clause 40**. To no one will we sell, to no one will we deny or delay right or justice.
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> …
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> **Clause 45**. We will not make justices, constables, sheriffs, or bailiffs who do not know the law of the land and mean to observe it well.

…

Clause 52. If anyone has been disseised or deprived by us without lawful judgment of his peers of lands, castles, liberties, or his rights we will restore them to him at once, and if any disagreement arises on this, then let it be settled by the judgment of the 25 barons referred to below in the security clause …

…

Clause 60. All these aforesaid customs and liberties which we have granted to be held in our realm as far as it pertains to us towards our men, shall be observed by all men of our realm, both clerk and lay, as far as it pertains to them, towards their own men.

Clause 61. Since, moreover we have granted all the aforesaid things for God, for the reform of our realm and the better settling of the quarrel which has arisen between us and our barons, wishing these things to be enjoyed fully and undisturbed in perpetuity, we give and grant them the following security: namely that the barons shall choose any twenty-five barons of the realm they wish, who with all their might are to observe, maintain and cause to be observed the peace and liberties which we have granted and confirmed to them by this our present charger; ***so that if we or our justiciar or our bailiffs or any of our servants offend against anyone in any way, or transgress any of the articles of peace or security, and the offence is indicated to four of the aforesaid twenty-five barons, those four barons shall come to us or our justiciar, if we are out of the kingdom, and shall bring it to our notice and ask that we have it redressed without delay***. ***And if we, or our justiciar, should be out of the kingdom, do not redress the offence within forty days*** from the time when it was brought to the notice of us or our justiciar, should we be out of the kingdom, the aforesaid four barons shall refer the case to the rest of the twenty-five barons and ***those twenty-five barons with the commune of all the land shall distrain and distress us in every way they can, namely by seizing castles, lands and possessions, and in such other ways as they can***, saving our person and those of our queen and of our children, until, in their judgment, amends have been made, and when it has been redressed they are to obey us as they did before.

I will return to these particular clauses and their relevance in the context of Papua New Guinea law shortly.

The Magna Carta in the common law world

The earliest treatise on English law was written in approximately 1189 – the year recognised as concluding "time immemorial" in English law by the *Statute of Westminster 1275*. It is clear that the Magna Carta came at an early time in the development of the common law in England. Indeed, because it pre-dated the creation of the English Parliament, it could be said to be part of the common law before that institution was created.[8] However the power of the

[8] A C Castles "Australian meditations on Magna Carta" (1990) 64 *Australian Law Journal* 122

principles espoused in the Magna Carta meant that it was confirmed by kings somewhere between 32 and 50 times, the last occasion being that of Henry VI in 1423.

The Magna Carta has been described as traditionally:

> … a banner carried by those who were concerned at any extension of the royal prerogative or any diminution in what they believed to be their rights and their rights and the rights of Parliament.[9]

It has also been described as:

> a beacon of the rule of law ... [proclaiming] the fundamental nature of individual liberties …[10]

It has been the subject of much learned disagreement over the centuries as to its legal application as a constitutional document in England, but in modern times there appears to be consensus that it is of historical importance only, albeit of ***significant*** historical importance. As Lord Woolf remarked, the Magna Carta has been influential:

> … in establishing the constitutional principles that today are generally accepted as governing any society committed to the rule of law.[11]

In England the Magna Carta is recognised as the progenitor of the long libertarian tradition of the ancient remedy of *habeas corpus*, now embodied in Article 5 of the European Convention of Human Rights.[12] Lord Denning in *Allen v Sir Alfred McAlpine & Sons Ltd*[13] said:

> The delay of justice is a denial of justice. Magna Carta will have none of it. 'To no one will we deny or delay right or justice' [Magna Carta, ch 40].

As I mentioned earlier in this paper, in England the Magna Carta of 1297[14] remains in force as a statute to the extent of three clauses, namely:

- clause 1, which guarantees the freedom of the English Church;

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[9] *Ibid* page 124
[10] Lord Irvine of Lairg "The Spirit of Magna Carta Continues to Resonate in Modern Law", paper based on the inaugural Magna Carta Lecture, presented in the Great Hall of Parliament House, Canberra, on 14 October 2002, https://www.aph.gov.au/binaries/senate/pubs/pops/pop39/lairg.pdf
[11] Lord Woolf, *supra* at page 107
[12] *A v Secretary of State for the Home Department* [2005] 2 AC 68 at 107
[13] [1968] 2 QB 229 at 245
[14] 1297 Chapter 9 25 Edw 1

- clause 9, which guarantees the ancient liberties of the City of London;[15]
- clause 29, which guarantees the right to due process.[16]

Turning away from the position in England, I note that in *Calder v. Attorney-General of British Columbia* (1973) 34 DLR (3d.) 145, 203 the Supreme Court of Canada spoke in terms of the historical and jurisprudential force of the Magna Carta in that country in terms of its influence on Canadian law. Their Honours observed:

> Magna Carta has always been considered to be the law throughout the Empire. It was a law which followed the flag as England assumed jurisdiction over newly-discovered or acquired lands or territories.

This is also the case in the United States of America, where, as Justice Sandra Day O'Connor observed, the Magna Carta is recognised as the forebear of the US Declaration of Independence and Constitution[17] and has been referred to by the Supreme Court of the United States as providing guidance and inspiration in identifying those rights that are fundamental.[18]

In Australia, the High Court has on a number of occasions observed that the Magna Carta was the historical confirmation of common law legal rights,[19] including the right to fish in tidal waters,[20] the right to a speedy trial,[21] the rule against arbitrary deprivation of property,[22] and the independence and impartiality of Courts.[23] In Australia the position is complicated by the fact that later versions of the Magna Carta continue in force by operation of State law.[24]

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[15] Cf clause 13 in the 1215 charter
[16] Cf clause 39 in the 1215 charter
[17] Justice Sandra Day O'Connor "Magna Carta and the Rule of Law" in R J Holland Magna Carta: Muse & Mentor Thomson Reuters/Library of Congress 2014 at pages 5-7
[18] *Ibid* at page 7. Justice O'Connor refers to Supreme Court cases including *Solem v Helm* 463 US 277, 284-285 (1983) in relation to the Eighth Amendment prohibition of cruel and unusual punishment, and *Duncan v Louisiana* 391 US 14, 151 (1968) in respect of the requirement that trial by jury be afforded in state criminal prosecutions. The influence of the Magna Carta on the terms of the US Constitution and Bill of Rights were also examined by Lord Woolf, *supra* at page 108
[19] Isaacs J in Ex parte *Walsh & Johnson* (1925) 37 CLR 36 at 79, and see the discussion by Lord Woolf, *supra* at 109
[20] *Commonwealth v Yarmirr* (2001) 208 CLR 1
[21] *Jago v District Court of NSW* (1989) 168 CLR 23, *Brisbane South Regional Health Authority v Taylor* (1996) 186 CLR 541
[22] *Malika Holdings Pty Ltd v Stretton* (2001) 204 CLR 290
[23] *Ebner v Official Trustee in Bankruptcy* (2000) 205 CLR 337
[24] In Queensland, for example, the *Imperial Acts Application Act 1984* (Qld) Schedule 1 item 1

The Supreme Court of New Zealand has made similar observations as to the historical relevance of the Magna Carta in that jurisdiction.[25]

Finally, it is illuminating to note that the influence of the Magna Carta on the terms of the United Nations Universal Declaration of Human Rights adopted 10 December 1948. Indeed in her address to the United Nations General Assembly on 9 December 1948, Eleanor Roosevelt said:

> this Universal Declaration of Human Rights may well become the international Magna Carta of all men everywhere.[26]

In Papua New Guinea, the Supreme Court has recognised the force of Magna Carta as an historic document shaping the course of human rights in the common law world. In the Constitutional reference case *Special Reference By Fly River Provincial Executive Council; Re Organic Law on Integrity of Political Parties and Candidates*[27] the Court said:

> 252. Throughout English history, all power, legislative and executive was descended from the Crown. Initially the monarchs had absolute power, but this was progressively reduced over time by documents such as the Magna Carta (Great Charter) and the Bill of Rights which was signed by King John in 1215, and by King William (of Orange) and Queen Mary in 1689 respectively.

Similarly in *Special Reference Pursuant to Constitution Section 19; Section 365 of the Income Tax Act*[28] Chief Justice Amet in discussing the concept of "the right to protection of the law" in relation to section 37(1) of the Constitution, observed:

> The words used in our provision are not the same but it is clear from the CPC Report that the phrase is intended to deal with the same subject matter as the concept of "due process of law" in the US Constitution. The history of "due process of law" can be found in the judgment of Mr Justice Black *In the Matter of Application of Paul L.Gault and Majorie Gault, Father and Mother of Gerald Francis Gault, A Minor, Appellant* (387 U.S. 1 - Decided May 15 1967) where he said:
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> > "The phrase 'due process of law' has through the years evolved as the successor in purpose and meaning to the words 'law of the land' in Magna Carta which more plainly intended to call for a trial according to the existing

[25] *Waitakere City Council v Estate Homes Limited* [2007] 2 NZLR 149 at [45]
[26] A report of Eleanor Roosevelt's address appears in the Records of the Meeting of the General Assembly, 9 December 1948 at p 862 (available at http://www.un.org/ga/search/view_doc.asp?symbol=A/PV.180). The address is also available as a video recording at http://legal.un.org/avl/ha/udhr/video3.2.html. The reference to Magna Carta occurs at approximately 00:07:38 minutes
[27] [2010] PGSC 3; SC1057
[28] [1995] PGSC 3; SC482

> law of the land in effect at the time an alleged offence had been committed. That provision in Magna Carta was designed to prevent defendants from being tried according to criminal laws or proclamations specifically promulgated to fit particular case or to attach new consequences to old conduct."
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> I have reached the conclusion that the interpretation given by McDermott AJ in *State v Mana Turi* (supra) is the correct meaning to be given to the words "protection of the law". That is that the protection of the law is the fact of state of being protected by the law. In practical terms, if any person is treated outside the law, the person is entitled to invoke the provisions of the law.

The ongoing influence of the Magna Carta can therefore be seen to be by reference to the principles it articulates, rather than as a law to be applied.

Returning now to explore the position in this country, it does not require long or detailed research to identify possible influences of the Magna Carta on the laws and legal structure of Papua New Guinea.

General parallel between Constitution and Magna Carta

First, the Constitution of Papua New Guinea, which became operational on 16 September 1975, is the supreme law of Papua New Guinea and entrenched into the law of this country. Organic Laws, in respect of which section 12 of the Constitution provides, are also part of the Constitution and part of the supreme law of this country.[29] That this is so is clear from section 11 of the Constitution.[30]

In *re Constitutional (Amendment) Law 2008, Reference by the Ombudsman Commission of Papua New Guinea*[31] at [51] the Supreme Court said:

> We have expressed in the past that the Constitution is the supreme authority and even the Parliament is subservient to it and neither the Parliament nor the elected representatives in the Parliament have the power to pass or make laws that diminishes that authority given to the Commission to act according to the wishes and aspirations of the Constitution which is the mother law of the land.

[29] A useful, although not recent, discussion of Organic Laws and their place in the Constitution can be found at Eric L Kwa Constitutional Law of Papua New Guinea (UniBOOKS, 2001) at pages 26-29

[30] Section 11 (1) of the Constitution provides: "(1) This Constitution and the Organic Laws are the Supreme Law of Papua New Guinea, and, subject to Section 10 (construction of written laws) all acts (whether legislative, executive or judicial) that are inconsistent with them are, to the extent of the inconsistency, invalid and ineffective."

[31] [2013] PGSC 67; SC1302

Indeed, the Supreme Court has shown that it is not hesitant to rule as invalid laws or acts which are inconsistent with the Constitution.[32]

It is somewhat whimsical to draw parallels between the Constitution and the Magna Carta. The Constitution of Papua New Guinea was developed following extensive work and consultation by many people and organisations, including by that of the Constitutional Planning Commission. It represents the aspirations and commitment of the people of Papua New Guinea, rather than a forced agreement as was the case with the Magna Carta. It is both fanciful and incorrect to attribute the inspiration for the terms of the Constitution of Papua New Guinea to documents like the Magna Carta.

However, it is not fanciful to recognise the Magna Carta as a document articulating important legal principles in the then newly emergent country of England, where different peoples were brought together under the one rubric. Similarly, the Constitution of Papua New Guinea is a document articulating important legal principles in the then newly emergent country of Papua New Guinea, where people speaking 800 different languages were brought together under the one rubric.

Incorporation of Magna Carta into Papua New Guinea law

Second, and perhaps more relevantly, the Constitution of Papua New Guinea recognises that the principles and rules forming the common law of England immediately before Independence Day 1975 should be applied and enforced as part of the underlying law of Papua New Guinea.[33] Importantly, section 9(f) of the Constitution recognises the existence and operation of the underlying law, being common law and customary law principles, although those principles do not operate to the extent that they are inconsistent with the Constitution or a statute or are repugnant to the general principles of humanity (Schedule 2.1.1(2)).

So far as concerns the Magna Carta, does this mean that it was incorporated into Papua New Guinea law as part of the underlying law? The answer appears to be "yes", but only to the extent that the principles set out in the Magna Carta of 1215 or any later version thereof

[32] For example *Luma v Kali* [2014] PGSC 46 at [38]-[39], *In re Constitution Section 19(1) - Special reference by Allan Marat; In re Constitution Section 19(1) and 3(a) - Special reference by the National Parliament* [2012] PGSC 20; SC1187; *Re Reference by Mondiai* [2010] PGSC 39; SC1087

[33] Definition of "the underlying law" in Schedule 1.2.2 (1), Schedule 2.2.2 (1)

declared or reflected common law principles[34] inherited from England. The position in Papua New Guinea can thus be contrasted with the approach adopted in a number of States of Australia, where the Magna Carta of 1297 was specifically named as inherited legislation[35] and those States where Imperial legislation was deemed to have been received into the law.[36] Indeed it is important to emphasise the point that, in the Papua New Guinea Constitution, customary law ranks equally with common law principles in constituting the underlying law of the land.[37]

If follows that any application of principles in the Magna Carta in Papua New Guinea would be subject to the Constitution and any Act of the Papua New Guinea Parliament. Indeed even in those jurisdictions where the Magna Carta is specifically incorporated into the law, as was pointed out in one learned article:

> As the courts have repeatedly pointed out from an early date, Magna Carta, as a British statute is still a statute and under the doctrine of parliamentary sovereignty the local legislatures are perfectly competent to either displace or override it with local legislation.[38]

Rights and liberties

Perhaps of most importance, it is clear that like the Magna Carta, the Constitution of Papua New Guinea is a complex document setting out principles, including rights and liberties. Rights and liberties in the Constitution include the following:

- right to freedom (section 32)
- right to life (section 35)
- freedom from inhuman treatment (section 36)
- protection of the law (section 37)
- liberty of the person (section 42)
- freedom from forced labour (section 43)

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[34] This was a point advanced by Sir Edward Coke in his writings on Magna Carta: see for example D Clark "The Icon of Liberty: The Status and Role of *Magna Carta* in Australian and New Zealand Law" (2000) 24 *Melbourne University Law Review* 866 at 872

[35] *Legislation Act 2001* s 302 Schedule 1 (ACT), *Imperial Acts Application Act 1969* (NSW) Schedule 2, *Imperial Acts Application Act 1984* (Qld) Schedule 1, *Imperial Acts Application Act 1980* (Qld) Schedule

[36] For example *Interpretation Act 1984* (WA) s 73, *Acts Interpretation Act 1915* (SA) s 4

[37] A detailed discussion of the underlying law is beyond the scope of this paper. Scholarly examinations of the underlying law, including the *Underlying Law Act 2000,* can be seen in Sir Salamo Injia "The Underlying Law Act 2000" [2011] *LAWASIA Journal* 1 and Jean G Zorn and Jennifer Corrin Care "Everything Old is New Again: The Underlying Law Act of Papua New Guinea" [2002] *LAWASIA Journal* 61

[38] D Clark (2000) 24 *Melbourne University Law Review* 866 at 877

- freedom from arbitrary search and entry (section 44)
- freedom of conscience, thought and religion (section 45)
- freedom of expression (section 46)
- freedom of assembly and association (section 47)
- freedom of employment (section 48)
- right to privacy (section 49)
- right to vote and stand for public office (section 50)
- right to freedom of information (section 51)
- right to freedom of movement (section 52); and
- equality of citizens (section 55).[39]

It is interesting to reflect on the extent to which those rights in the Magna Carta of 1215, I listed earlier in this paper, can possibly be seen as informing and influencing provisions in Papua New Guinean law, including the Constitution itself.

Clause 12: Taxation

> **Clause 12**. No scutage or aid is to be levied in our realm except by the common counsel of our realm, unless it is for the ransom of our person, the knighting of our eldest son or the first marriage of our eldest daughter; and for these only a reasonable aid is to be levied. Aids from the city of London are to be treated likewise.

"Scutage"[40] is defined by Jowitt's *Dictionary of English Law* (3rd edition) as:

> A tax or contribution raised by those who held lands by knight's service in commutation of such service towards furnishing the king's army, at the rate of one, two, or three marks for every knight's fee. The statute 1660, 12 Car. 2, c. 24, abolished military tenures.

Jowitt also notes that no instance of Parliament assessing scutage had occurred since the time of Edward II, the great-grandson of King John.

Whether it can be said that clause 12 is of greater application than merely in respect of scutage in 1215, and can be seen as the precursor of the principle that Parliamentary consent is required before implementation of or changes in taxation, has been the subject of debate for

[39] This concise summary was conveniently set out in Eric L Kwa Constitutional Law of Papua New Guinea (UniBOOKS, 2001) at page 143

[40] The term "scutage" appears to be a corruption of the word "Escuage", derived from the Latin word "scutagium".

many years. Certainly one view is that far from formulating any doctrine of taxation by representation, clause 12 was designed to referable to specific impositions levied by King John on the barons only, and was not intended to have more general application.[41] Over time, however, it is clear that political movements demanding representation and popular consultation before increases or imposition of taxation have drawn inspiration from clause 12 of the Magna Carta – early examples being the Petition of Right (in particular section X) by the Parliament of the United Kingdom to King Charles I[42] and the revolutionary cry of "no taxation without representation" in 1776 by colonists in North America.

In Papua New Guinea the sentiment of Parliamentary consultation in respect of taxation is clearly expressed in section 209(1) of the Constitution which provides:

> Notwithstanding anything in this Constitution, the raising and expenditure of finance by the National Government, including the imposition of taxation and the raising of loans, is subject to authorization and control by the Parliament, and shall be regulated by an Act of the Parliament.

The Supreme Court of Papua New Guinea has stated that section 209(1) should be interpreted so as to give it:

> "its fair and liberal meaning", and to construe it so that it will take effect and not become attenuated. We consider that it must be construed so that it will maintain parliamentary responsibility for revenue raising and "ultimate parliamentary control over public moneys", as contemplated by the recommendations of the Constitutional Planning Committee (Final Draft, Chapter 9, at 2, 3 and 5).[43]

Clause 45: Qualifications of Judges

> **Clause 45**. We will not make justices, constables, sheriffs, or bailiffs who do not know the law of the land and mean to observe it well.

The terms of this clause of the Magna Carta are fairly self-explanatory. In Papua New Guinea, section 168 of the Constitution provides that the qualifications for appointment as a Judge are as determined by or under an Act of the Parliament. Parliament has recognised the

[41] See for example WS McKechnie *Magna Carta: A Commentary on the Great Charter of King John, with an Historical Introduction* (Glasgow: Maclehose, 1914) page 154 (on-line version available at http://maranathamedia.com/books/history/03-medieval/357-magna-carta-ws-mckechnie-1914), J Frecknall-Hughes "King John, Magna Carta and Taxation" in R J Holland *Magna Carta: Muse and Mentor* (Thomson Reuters, 2014) at page 204

[42] and see comments in respect by Arlidge and Judge Chapter 20

[43] Prentice DCJ and Williams J in *Mairi v Tololo, Secretary for Education* [1976] PNGLR 125

importance of Judges being learned in the law. So, for example, qualifications of Judges appointed to the National Court are prescribed by the *National Court Act 1975* as follows:

> **1. QUALIFICATIONS TO BE HELD BY A CITIZEN.**
> Subject to Section 4 of the Organic Law on the Terms and Conditions of Employment of Judges, a citizen is qualified for appointment as a Judge if–
> (a) he–
> (i) is a graduate in law of at least six years standing of a university in Papua New Guinea or of a university of another country the degree in law of which is recognized by the Judicial and Legal Services Commission as a sufficient academic qualification for appointment; and
> (ii) has practised as a lawyer for not less than four years; or
> (b) he–
> (i) is a graduate in law of a university in Papua New Guinea or of a university of another country the degree in law of which is recognized by the Judicial and Legal Services Commission as a sufficient academic qualification for appointment; and
> (ii) has not less than five years' experience in Papua New Guinea as a Magistrate Grade IV. or a Magistrate Grade III., or partly as a Magistrate Grade IV and partly as a Magistrate Grade III.
>
> **2. QUALIFICATIONS TO BE HELD BY A NON-CITIZEN.**
> Subject to Section 4 of the Organic Law on the Terms and Conditions of Employment of Judges, a non-citizen is qualified for appointment as a Judge if–
> (a) he is or has been a lawyer who has practised as a lawyer–
> (i) in Papua New Guinea; or
> (ii) in a country with a legal system that, in the opinion of the Judicial and Legal Services Commission, is substantially similar to the legal system of Papua New Guinea; or
> (iii) in Papua New Guinea and in a country referred to in Subparagraph (ii), for a total period of not less than five years; or
> (b) he was a Judge or an acting Judge of the pre-Independence Supreme Court; or
> (c) he is or has been a Judge of a court of unlimited jurisdiction in a country with a legal system that, in the opinion of the Judicial and Legal Services Commission, is substantially similar to the legal system of Papua New Guinea.

There are no separate qualifications for Judges of the Supreme Court because section 161(1) of the Constitution provides that the Supreme Court shall consist of the Chief Justice, Deputy Chief Justice and the other Judges of the National Court (excluding acting Judges).

In relation to the principle in the Magna Carta that Judges should "mean to observe [the law] well", section 4 of the *Organic Law on the Terms and Conditions of Employment of Judges* makes the following specific provision in respect of disqualification of Judges:

> **DISQUALIFICATIONS FROM OFFICE.**
> A person is not qualified to be, or to remain, a Judge of the National Court if he is–
> (a) a member of the Parliament; or

(b) a member of a Provincial Government; or
(c) a member of a Local-level Government or Local-level Government Special Purposes Authority; or
(d) an office-holder in a registered political party; or
(e) an undischarged bankrupt or insolvent; or
(f) of unsound mind within the meaning of any law relating to the protection of the person and property of persons of unsound mind; or
(g) under sentence of death or imprisonment.

Clause 52: Unjust deprivation of property

> **Clause 52**. If anyone has been disseised or deprived by us without lawful judgment of his peers of lands, castles, liberties, or his rights we will restore them to him at once; and if any disagreement arises on this, then let it be settled by the judgment of the Twenty-Five barons referred to below in the security clause …

Section 53 of the Constitution specifically provides for protection from unjust deprivation of property. The key paragraphs buttressing this right are sections 53(1) and (2) which provide:

> (1) Subject to Section 54 (*special provision in relation to certain lands*) and except as permitted by this section, possession may not be compulsorily taken of any property, and no interest in or right over property may be compulsorily acquired, except in accordance with an Organic Law or an Act of the Parliament, and unless–
>
> (a) the property is required for–
>
> (i) a public purpose; or
>
> (ii) a reason that is reasonably justified in a democratic society that has a proper regard for the rights and dignity of mankind,
>
> that is so declared and so described, for the purposes of this section, in an Organic Law or an Act of the Parliament; and
>
> (b) the necessity for the taking of possession or acquisition for the attainment of that purpose or for that reason is such as to afford reasonable justification for the causing of any resultant hardship to any person affected.
>
> (2) Subject to this section, just compensation must be made on just terms by the expropriating authority, giving full weight to the National Goals and Directive Principles and having due regard to the national interest and to the expression of that interest by the Parliament, as well as to the person affected.

The provisions of section 53 of the Constitution apply only to citizens of Papua New Guinea.[44] Persons who are not citizens are not allowed to own freehold land in Papua New Guinea.

[44] Section 53 (7) Constitution, *Minister for Lands v Frame* [1980] PGSC 12; [1980] PNGLR 433

Due Process of Law and Rule of Law

Many of the clauses of the Magna Carta relate to the rule of law and due process. Indeed it is in this respect that the Magna Carta retains its eminence as a "beacon of the common law world". It is useful to now turn to these clauses and examine them through the prism of the law of Papua New Guinea.

Clause 17: Location of Court

> **Clause 17**. Common pleas shall not follow our court but shall be held in some fixed place.

Clause 17 related to the practice at the time of King John of the Court of Common Pleas following the sovereign and being held wherever the King held his Court. The Court of Common Pleas was the Court in which litigation took place between citizen and citizen. The movement of the Court was clearly inconvenient for litigants, and potentially resulted in denial or delay of justice.

Today, the Supreme Court of Papua New Guinea has power over its internal functions, including where it is to sit. The independence of the judiciary of this country is guaranteed by section 157 of the Constitution which provides:

> **157. INDEPENDENCE OF THE NATIONAL JUDICIAL SYSTEM**.
> Except to the extent that this Constitution specifically provides otherwise, neither the Minister responsible for the National Justice Administration nor any other person or authority (other than the Parliament through legislation) outside the National Judicial System has any power to give directions to any court, or to a member of any court, within that System in respect of the exercise of judicial powers or functions.

This position is reinforced in respect of where the Court sits by the *Supreme Court Act 1975* which provides:

> **36. PRINCIPAL SEAT OF SUPREME COURT.**
> The Chief Justice, after consultation with the other Judges, shall determine the Principal Seat of the Supreme Court.
>
> **37. SITTINGS AND REGISTRIES OF THE SUPREME COURT.**
> The Chief Justice, after consultation with the other Judges, shall determine–
> (a) the place and frequency of sittings of the Supreme Court; and
> (b) the location and number of registries of the Court.

Equivalent legislation applies in relation to the National Court.[45]

As you may know, the principal seat of the Supreme Court of Papua New Guinea is in Waigani, Port Moresby. There are however provincial registries of the National Court throughout Papua New Guinea, namely in Kokopo, Kimbe and Kavieng in the islands region, Lae, Madang and Wewak in the Northern coastal part of the mainland and Mount Hagen , Wabag, Goroka, Kundiawa, Mendi in the highlands region, and Port Moresby and Alotau in Southern region.

Clause 20: Proportionality of penalty to offence

> **Clause 20**. A free man shall not be amerced for a trivial offence, except in accordance with the degree of the offence; and for a serious offence he shall be amerced according to its gravity, saving his livelihood; and a merchant likewise, saving his merchandise; in the same way a villain shall be amerced saving his wainage; if they fall unto our mercy. And none of the aforesaid amercements shall be imposed except by the testimony of reputable men of the neighbourhood.

In clause 20, the term "amercements" referred to penalties levied on an offender by his peers or equals, which penalty could be released if too heavy on the offender. The clause makes it clear that a penalty on a free man should not be so heavy as to strip him of his livelihood. Incidentally, a "villain" in feudal times was not a scoundrel or a criminal, but rather described a person who was a peasant farmer in the estate of a lord.

The basic principle that, in the eyes of the Court, there must be proportion between offence and sentence, is well ingrained into the criminal law of Papua New Guinea.[46] Indeed, as observed by the Supreme Court in *Kara v The State*:[47]

> [where] a sentence is out of reasonable proportion to the circumstances of the crime, even though no particular error can be identified, this Court will infer that some error must have occurred in the exercise of the sentencing discretion.

This principle is, of course, subject to Parliamentary intervention. Legislation imposing both maximum[48] and minimum[49] penalties for offending conduct are examples of Parliamentary

[45] Sections 3 and 4 *National Court Act 1975*
[46] *Avia Aihi v. The State (No.3)* [1982] PNGLR 92; *Golu v The State* [1979] PGSC 9, [1979] PNGLR 653; Kidu CJ in *Setep v The State* [2001] PGSC 14, SC666; *Kovei v The State* [2001] PGSC 5, SC676
[47] [2006] PGSC 14 at [5]
[48] Maximum penalties imposed by legislation are common place in Papua New Guinea, as well as countries throughout the common law world. More than one hundred instances of maximum penalties can be found throughout the *Criminal Code Act 1974*.

intervention in sentencing approaches, and setting standards of punishment for criminal behaviour. Any such impositions on sentencing are however made by the nation's Parliament, and are not subject to capricious imposition.

Clauses 38, 39, 40, 60 and 61: Rule of law and access to swift justice

> **Clause 38**. Henceforth no bailiff shall put anyone on trial by his own unsupported allegation, without bringing credible witness to the charge.
>
> **Clause 39**. No free man shall be taken or imprisoned or disseised or outlawed or exiled or in any way ruined, nor will we go or send against him, except by the lawful judgment of his peers or by the law of the land.
>
> **Clause 40**. To no one will we sell, to no one will we deny or delay right or justice.
>
> …
>
> **Clause 60**. All these aforesaid customs and liberties which we have granted to be held in our realm as far as it pertains to us towards our men, shall be observed by all men of our realm, both clerk and lay, as far as it pertains to them, towards their own men.
>
> **Clause 61**. Since, moreover we have granted all the aforesaid things for God, for the reform of our realm and the better settling of the quarrel which has arisen between us and our barons, wishing these things to be enjoyed fully and undisturbed in perpetuity, we give and grant them the following security: namely that the barons shall choose any twenty-five barons of the realm they wish, who with all their might are to observe, maintain and cause to be observed the peace and liberties which we have granted and confirmed to them by this our present charger; so that if we or our justiciar or our bailiffs or any of our servants offend against anyone in any way, or transgress any of the articles of peace or security, and the offence is indicated to four of the aforesaid twenty-five barons, those four barons shall come to us or our justiciar, if we are out of the kingdom, and shall bring it to our notice and ask that we have it redressed without delay. And if we, or our justiciar, should be out of the kingdom, do not redress the offence within forty days from the time when it was brought to the notice of us or our justiciar, should we be out of the kingdom, the aforesaid four barons shall refer the case to the rest of the twenty-five barons and those twenty-five barons with the commune of all the land shall distrain and distress us in every way they can, namely by seizing castles, lands and possessions, and in such other ways as they can, saving our person and those of our queen and of our children, until, in their judgment, amends have been made, and when it has been redressed they are to obey us as they did before.

The "rule of law" is an expression echoing from antiquity. It contemplates that everyone has the protection of the law, and no-one is above it. It is an ancient tradition in civilised society.

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[49] For example section 139 of the *Criminal Code Act 1974*, which provides that a person who, being a prisoner in lawful custody, escapes from that custody is guilty of a crime for which the penalty is not less than 5 years prison.

For example, in the 4th Century BC the Greek philosopher Aristotle extolled the virtue of rule of law, writing:

> But this now is law, for order is law. We should therefore choose that law should rule rather than one single citizen. According to this same train of reasoning, even if it is best that there should be some persons in authority, these persons ought to be constituted merely guardians and servants of the laws.
>
> …
>
> He, therefore, who wishes Law to govern seems to wish for the rule of God and Intellect alone; he who wishes men to rule brings in the element of the animal. For appetites are of this lower nature, and anger distorts the judgment of rulers, even of the best. And so Law is Intellect without animal impulses.[50]

It is a sentiment which gained momentum over more recent centuries, for example in the writings of Dr Thomas Fuller "Be you never so high, the law is above you".[51]

Clauses 38, 39, 40, 60 and 61 of the Magna Carta encapsulate the philosophy that rule of law is supreme.

In Papua New Guinea, section 37 of the Constitution of Papua New Guinea, entitled "Protection of the Law" restates the principle that rule of law is paramount. Section 37 (1) specifically states:

> (1) Every person has the right to the full protection of the law, and the succeeding provisions of this section are intended to ensure that that right is fully available, especially to persons in custody or charged with offences.

The influence of clause 38 of the Magna Carta, which stands against capricious prosecution by the State[52], can be seen in section 37(2) of the Constitution, which provides that:

> (2) Except, subject to any Act of the Parliament to the contrary, in the case of the offence commonly known as contempt of court, nobody may be convicted of an offence that is not defined by, and the penalty for which is not prescribed by, a written law.

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[50] *Aristotle's Politics, Books I, III, IV, VII: the text of Bekker ; with an English translation by W.E. Bolland ... together with short introductory essays by A. Lang* Book III Cap. 16 pp 223-224 (Longmans Green & Co, London, 1877, see https://archive.org/details/cu31924071172914)

[51] *Gnomologia: adagies and proverbs; wise sentences and witty sayings, ancient and modern, foreign and British* collected by Thomas Fuller (London: Barker, Bettesworth and Hitch, 1732), sentence 943

[52] "Bailiff" in clause 38 embraces all degrees of the King's officers, including Judges. Detailed examination of clause 38 and other clauses of the Magna Carta may be found in Richard Thomas *An Historical Essay of the Magna Charta of King John* (reprinted The Legal Classics Library, Birmingham Alabama, 1982, original edition 1829). This particular point is examined at page 220

In this respect section 37(2) prescribes the conditions under which a person may be charged with a criminal offence – that is by contravention of a ***written law***. The Supreme Court has interpreted this section strictly – thus, for example, in *Mune v Agiru, Kaiulo and Electoral Commission*[53] Injia J (as his Honour then was) observed that statutory provisions which simply imposed a duty on a public official without providing for a criminal penalty for failing to discharge that duty were not criminal "offences" punishable by a criminal sanction such as a fine or imprisonment.

The right of the Public Prosecutor, as lawfully appointed State officer under sections 176 and 177 of the Constitution to conduct public prosecutions, to commence such prosecutions, was recently discussed by Davani J in *Wartoto v State*.[54] As Her Honour observed:

> 20. The prosecutorial power of the State belongs to the Public Prosecutor under s 176 and s 177 of the Constitution. The Public Prosecutor has powers not only to prosecute but he also has powers to decline to prosecute. He has a wide discretion to make those decisions even before they get to Court.

Importantly in the current context, her Honour continued:

> ***Whatever decision he makes must be based on proper basis, grounds or reasons must not be made lightly***. Persons charged with offences have the right to defend themselves once formal charge or charges have been laid. If the person charged is of the opinion that the prosecution is malicious, he has a separate cause of action in separate proceedings. But it is no reason to prevent such lawful authorities from carrying out their lawful function.

Clause 39 of the Magna Carta, which provides that no-one shall be imprisoned or otherwise penalised except by the lawful judgment of his peers or the law of the land, is encompassed by sections 37(1) and (2) of the Constitution which are already set out in this paper, as well as by section 37(4) which provides:

> (4) A person charged with an offence–
>
> (a) shall be presumed innocent until proved guilty according to law, but a law may place upon a person charged with an offence the burden of proving particular facts which are, or would be, peculiarly within his knowledge; and
>
> (b) shall be informed promptly in a language which he understands, and in detail, of the nature of the offence with which he is charged; and

[53] [1998] PGSC 3; SC590
[54] [2015] PGSC 1; SC1411

> (c) shall be given adequate time and facilities for the preparation of his defence; and
>
> (d) shall be permitted to have without payment the assistance of an interpreter if he cannot understand or speak the language used at the trial of the charge; and
>
> (e) shall be permitted to defend himself before the court in person or, at his own expense, by a legal representative of his own choice, or if he is a person entitled to legal aid, by the Public Solicitor or another legal representative assigned to him in accordance with law; and
>
> (f) shall be afforded facilities to examine in person or by his legal representative the witnesses called before the court by the prosecution, and to obtain the attendance and carry out the examination of witnesses and to testify before the court on his own behalf, on the same conditions as those applying to witnesses called by the prosecution.

Section 37(4) sets out a comprehensive process for a fair trial for a person charged with an offence. The principle that an accused is innocent until proven guilty for example has strong roots in Roman law[55] and the common law,[56] however the requirements that a person be informed of the allegations in a language he or she understands and be provided with the assistance of an interpreter adds a modern lustre.

The importance of the protections given by section 37 of the Constitution to persons accused of having committed an offence cannot be understated. As observed by the Supreme Court in *Bate v State*[57]:

> [67] A trial judge must ensure that the rights of an accused person to the full protection of the law under Section 37(1) of the Constitution and in particular to be presumed innocent until proven guilty according to law under Section 37(4)(a) of the Constitution are enforced from the beginning to the conclusion of a trial. To those ends, sufficient weight must be given to the defence evidence, the right of the accused to remain silent must be protected and the elements of the offence being tried must be accurately set out and applied.

Clause 40 of the Magna Carta refers to the need for speedy justice. Section 37(3) of the Constitution of Papua New Guinea specifically provides:

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[55] the *Digest of Justinian* (22.3.2), originally promulgated in 529, provides: *Ei incumbit probatio qui dicit, non qui negat*—"Proof lies on him who asserts, not on him who denies". The title refers to Roman Emperor Justinian 1 and the 50 volume codification of codification of all Roman laws up to that time

[56] For example, from the well-known case *Woolmington v Director of Public Prosecutions* [1935] AC 462

[57] [2012] PGSC 46; SC1216

> A person charged with an offence shall, unless the charge is withdrawn, be afforded a fair hearing within a reasonable time, by an independent and impartial court.

The right given by this section is bolstered by section 37(14), which provides:

> In the event that the trial of a person is not commenced within four months of the date on which he was committed for trial, a detailed report concerning the case shall be made by the Chief Justice to the Minister responsible for the National Legal Administration.

Clauses 60 and 61 are of more than contextual interest in that not only do they acknowledge that the rights granted in the Magna Carta apply to all men, but that those rights are binding against the highest in the land.

The rule of law in Papua New Guinea was tested in 2012. You may recall events that year, in particular where two justices of the Supreme Court, including the Chief Justice, were arrested on charges of sedition, including following one extraordinary incident where the police, led by a senior government Minister, stormed the Court of the Chief Justice. This followed judgments of the Supreme Court in *re Reference to Constitution section 19(1) by East Sepik Provincial Executive*,[58] and *re Constitution Section 19(1) - Special reference by Allan Marat; In re Constitution Section 19(1) and 3(a) - Special Reference by the National Parliament*[59] where the Court ruled that Sir Michael Somare was the legitimate Prime Minister of Papua New Guinea at the time, not Mr Peter O'Neill who had assumed office.

The offence of the Judges in question was that they delivered judgments, which did not find favour with some of the highest in the land.

Subsequently the Deputy Speaker, Mr Francis Marus, declared to Parliament that the Supreme Court's decisions would be accepted.[60] Elections were held, and Mr O'Neill was elected with the support of a majority in the Parliament.[61]

The Chief Justice has retained his position, as has the other Judge arrested.

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[58] [2011] PGSC 41
[59] [2012] PGSC 20
[60] http://www.loc.gov/lawweb/servlet/lloc_news?disp3_l205403170_text
[61] A more detailed description of these events appears in "A Year in the Life of an Australian Member of the PNG Judiciary", a paper presented by Justice John Logan on 15 April 2013 at the 18th Commonwealth Law Conference in Cape Town, South Africa (http://www.fedcourt.gov.au/publications/judges-speeches/justice-logan/logan-j-20130415#_ftnref15)

Earlier in this paper, I set out section 157 of the Constitution, which guarantees the independence of the judiciary. The respect for rule of law, and the judiciary which enforces it without fear or favour, provides the critical divide between on the one hand a peaceful and progressive society where citizens can expect justice, and on the other hand an autocracy descending into chaos. Those who drafted the Constitution recognised this as both principle and fact.

Conclusion

Notwithstanding the influence of the English common law and historical documents of the like of the Magna Carta, the laws of Papua New Guinea continue to develop in a style unique and appropriate to the conditions of this country, through legislation passed by the popularly-elected Parliament and rulings of the independent judiciary. The evolutionary nature of the common law, originating in England but spreading throughout many parts of the world, can in turn be seen in the growth of a body of jurisprudence in Papua New Guinea, as well as throughout the south-west Pacific. While this could easily be a paper for another time, it is also interesting to note that an examination of the database www.paclii.org reveals not only a growth of home-grown Papua New Guinean jurisprudence by increased citation by Papua New Guinea courts of precedents developed in Papua New Guinea rather than citation of judgments from abroad,[62] but an interesting trend of citation of Papua New Guinean cases by other superior courts in the region.[63] As a superior Court derived from a significant population in the region, in a country where rule of law continues to be paramount, it is not surprising that decisions of the Supreme and National Courts of Papua New Guinea are both relevant and applicable to cases litigated in neighbouring countries.

Principles forming the foundation of the Magna Carta were developed long ago and in a place far away from Papua New Guinea. However as I have endeavoured to demonstrate in this

[62] This observation is made by reference to an examination of www.paclii.org and citation practice of the Papua New Guinea Supreme Court in 1994, 2004 and 2014. This examination revealed that, from the low point in 1994 of citations by the Supreme Court of 57 Papua New Guinea judgments, this had increased to citation by the Supreme Court of 239 Papua New Guinea judgments in 2004 and 477 Papua New Guinea judgments in 2014.

[63] On 28 May 2015 a search of paclii.org in respect of such citations revealed particular reference to Papua New Guinean judicial decisions by Courts in the Solomon Islands, particularly in respect of principles of criminal law. Interestingly on that date data from paclii.org indicated that the High Court of the Solomon Islands had cited Papua New Guinean cases in 82 documents (the search parameters being: "pnglr or p.n.g.l.r. or png lr or pgsc or pgnc") whereas, for example, an equivalent search of citations in the High Court of the Solomon Islands of decisions from Vanuatu yielded only 6 documents (the search parameters being "vanlr or van.lr or vuca or van.l.r. or van. l r.")

paper, those principles continue to resonate in Papua New Guinea, through the Constitution, the Courts, and the continuing rule of law in this country. That this is so is a testament to the power of those principles, and perhaps recognition that a society which respects and adheres to those principles has both a place and future in the modern world. The rule of law provides certainty and stability in a society, which in turn encourage social and economic growth, prosperity and progress for all.