

# Land Governance and the Legacy of 1215

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## SUMMARY

2015 sees the 800th anniversary of a remarkable event that has had a profound influence on the development of land governance in the English-speaking world. In 1215, the English barons forced King John to attach the Great Seal to the Magna Carta (or Great Charter). The Magna Carta set out the rights and privileges of the barons and various other bodies and set limits on the powers of the king, including the famous clause 40, “To no one will we sell, to no one deny or delay right or justice.”, which remains part of the monarch’s Coronation Oath. The Charter was repudiated within three months by King John and annulled by the Pope as being agreed to under duress. However, it was re-issued by his son Henry III in 1216 and 1225 and became, in revised form, a statute in 1297. It has contributed key elements to both the (uncodified) British constitution and the American Constitution. The world did not change in 1215 but the Charter did set in motion a process that resulted in the development the rule of law and protection of property rights, with the government not being above the law. At the heart of policy on land governance lies a paradox. In the World Bank’s 2014 Doing Business rankings on registering property, the UK is ranked 68th and the USA 29th. The UK does not have a cadastre and the USA has such a fragmented system of property registration that title has to be insured through private title insurance companies rather owners relying on guarantees through registration. If either of these countries were to be eligible for World Bank loans, they would undoubtedly be under pressure to reform their land administrations and install a “modern” system of land registration and cadastre. Yet they are ranked 1st and 2nd in the Jones Lange LaSalle 2014 Global Real Estate Transparency Index, are ranked 25th and 4th in the World Economic Forum 2014 rankings of the security of property rights, have amongst the most efficient real estate markets in the world, and whose real estate is sought after by domestic and foreign investors. The key to understanding why the real estate markets in these countries are so efficient whilst their land administrations lack many of what are regarded as being essential elements for the protection of property rights is the legacy of 1215, namely that the rule of law provides effective protection of property rights. The paper explores the relationship between the rule of law and aspects of land governance and the security of property rights using a variety of statistical sources. It uses them to develop the argument that improved systems of land administration are of themselves insufficient protection for property rights unless there is also investment in developing their legal protection through enhancement of the rule of law. There is a danger that without this, improved land registration systems could be exploited by an elite or fail to protect the full range of property rights.