

*Magna Carta and the Origins of Due Process*

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In the famous words of Clause 39 of Magna Carta, King John proclaimed that he would not arrest, imprison, disseize, or outlaw any free man “save by the lawful judgment of his peers or by the law of the land.” More prosaically, Clauses 17 and 18 provided that common pleas, including recognitions of novel disseisin, mort d’ancestor, and darrein presentment, were to be “held in some specified place.” These recognitions made use of juries to decide disputes over disseisin, inheritance, and patronage. Why did the barons who forced John to agree to the Great Charter consider these common-law procedures and the associated institution of jury trial worthy of protection from royal interference? Using evidence from advowson pleas, Professor Tate will argue that the common law jury earned respect at least partly because it was a fair and neutral mechanism for resolving cases that otherwise could have been influenced by the bias of ecclesiastical judges, royal officials, or the king himself. John’s occasional interventions in common law proceedings jeopardized the successful legal reforms of his father and were a legitimate cause for concern. The resulting inclusion of jury trial among the rights guaranteed in Magna Carta had lasting ramifications for the future of common law procedure, particularly in the United States.

About the Speaker

Joshua Tate’s research and teaching focuses on legal history, property, and trusts and estates. He has been a full-time faculty member at SMU Dedman School of Law since the fall of 2005, and was a visiting assistant professor at the University of Pennsylvania Law School in the spring of 2008. In the fall of 2012, he was a Lloyd M. Robbins Senior Research Fellow at the University of California at Berkeley. He currently serves as the Selden Society’s Honorary Treasurer for the U.S.A., co-chairs the Uniform Acts for Trust and Estate Law Committee for the ABA Real Property, Trust and Estate Law Section, and is a past chair of the Sutherland Prize Committee for the American Society for Legal History. In August 2015, he was elected as a Miembro de Honor by the Comité Ejecutivo de la Abogacía Colombiana. He has given invited presentations at numerous academic conferences, colloquia, and workshops both in the United States and abroad, and is currently engaged in a study of the development of property rights and remedies in medieval England, focusing on issues of jurisdictional conflict with regard to rights of presentation to churches. He is admitted to practice in Texas and Connecticut.