ASPECTS OF THE FREEDOM

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Talks given at the Informal Meetings preceding the A.G.M.'s of the Freemen of England and Wales

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ASPECTS OF THE FREEDOM

This set of papers, regarded by their receptive audiences as pearls of wisdom and essential follow-up reading were, according to Charles himself, merely discussion documents. They were written, and presented, at a time when occasional threats were being made against the Freedom in several places and when there was little, if any, prospect of any sympathetic Parliamentary Legislation.

That all changed with the passing of the "Local Democracy, Economic Development and Construction Bill (HL)" which received Royal Assent in early 2010 which amended Section 249 of the Local Government Act 1972.

This provided mandatory regulation to confer equal rights to the daughters of Freemen as were hitherto enjoyed only by their sons.

It also went one step further in allowing discretionary amendments to the Rules of Admission on a local basis, without any further recourse to costly legislation, so long as a ballot of the local Freemen approved the changes and agreement was reached with the Local Authority.

These papers are, therefore, to be viewed in the context of the time that they were written in since many, if not all, of the hopes and aspirations expressed have now been overtaken by events.

Freemen's Land and Property
(Great Grimsby - 1982)

Freedom by Servitude
(York - 1983)

Local Acts of Parliament
(Shrewsbury - 1984)

Women and the Freedom
(Oxford - 1985)

Life with the York Bill
(Ipswich - 1987)

Freemen's Lands
(Newcastle-under-Lyme - 1989)

Managing the Freedom and Its Public Image
(Chester - 1990)

Women and their part in the Freedom
(York - 1991)

Custom, Charters and Acts of Parliament
(Great Grimsby - 1992)

The End of a Holiday
(Leicester - 1993)

Women and the Freedom Today
(Berwick-upon-Tweed - 1994)

The Singularity of the Freedom
(Coventry - 1995)

Admission by Apprenticeship Today
(Haverfordwest - 1996)

At The Crossroads
(Shrewsbury - 1997)

The 1835 Act and Its Penalty Today
(Oxford - 1998)

The Unity of the Freedom
(Altrincham – 1999)

The Freedom Today and its Future
(Newcastle upon Tyne – 2000)

Learning from Apprenticeship
(Great Grimsby - 2001)

The Freedom’s Debt to York
(York – 2002)

A Grave Menace
(Durham – 2003)

FREEMEN'S LAND AND PROPERTY (1982)

This informal discussion, which was started a year ago, seems to have become very popular and people have been kind enough to say that it is helpful and valuable. I find it so because it is a discussion. This is not therefore going to be a talk by me but a discussion. The most important part is the contributions made by people afterwards.

Can I tell you how I see my contribution to these discussions year by year? What I will try to do is to give you some general idea of general principles governing "the Freedom" which is a very, very difficult thing to do for one special reason. "The Freedom" is governed, in each borough, by an individual and entirely distinct set of principles; in theory the principles which govern Borough A may be completely different from those which govern Borough B. Therefore, possibly exaggerating a little, it is as if you got together a gathering of scientists, over the whole spectrum of science from, for example, a geologist at one extreme to a nuclear physicist at the other, and hoped to get someone to talk to them on one subject. Because each scientist had a different speciality, it would be very difficult, if not impossible, to get someone to talk to them on a subject which would cover all their own special fields of study. However, it is not quite as bad as that and it is worth making the effort to deal with those general principles which bear, to some extent or another, on the circumstances of individual boroughs. I do ask you to bear in mind, in relation to everything I ever say about "the Freedom", that your own personal Freedom in your own borough will be regulated according to principles which are special to your borough.

Last year's subject was: "What is the Freedom?" You will remember that I made the point - I hope very clearly, certainly I intended to make it very firmly - that "the Freedom" is a legal status, a status under the law. Figuratively, as a Freeman, you carry on your forehead the mark of a rubber stamp which states, "This is a warranted, hallmarked, trade-tested Freeman" and the principles which govern the testing process are legal. It is not, therefore, a club governed by decisions made by your management committee. Your management committee cannot alter the regulations which are law and unalterable. I repeat these remarks, although they are not relevant to my subject today, because in some places individuals have attempted to introduce, by resolution of committee, alterations to the principles governing the Freedom. This is not possible, and I am afraid it makes life rather difficult when people attempt to do it. You have to take "the Freedom" as what it is: it is a legal status. You cannot alter it. I have said it before but let me say it again: the legal status of "the Freedom" is as much part of the law as the peerage, and I think that someone who holds his status of "Freedom" by law under the rules of descent of English Common Law, which likewise governs the peerage, is entitled to look any peer of the realm in the eye and say: "I am just as good as you are."

My subject this year is "Freemen's Land and Property". What we established last year was that the Freemen were the people who built our boroughs and trading centres over the centuries. We are now going to look at the property owned or enjoyed by Freemen.

I have a very important foreword to make before I launch into the great body of what I have to say, and my forward is this: What I have to say may prove to be of interest and significance to Freemen other than those who come from places where they have, and know they have, property. In other words, just because you do not have any pastures or other type of Freemen's land, or the paraphernalia of overseeing land, collecting rents from it and paying out, do not think what I have to say will be of no interest to you. I have chosen the subject because I think it is potentially important for those who do not believe at the moment that they have any involvement with Freemen's property. It is a worthwhile subject to explore because there are places which may have property and should be looking into the subject to see whether, in fact, they do have property. The subject of Freemen's property, like a great deal else about "the Freedom" has never been studied properly and helpfully explained. Unfortunately, you cannot buy a little book about it. There is, however, - and I am glad to make this admission here in Grimsby - a most excellent publication called "Grimsby Freemen" by Lillian Greenfield which contains some very valuable material about the property of Freemen. I know of no other place where it is put down in writing like this. So, if anybody wants to explore the subject this is where you can add to your knowledge.

I must ask you to be patient with me because this is a very technical subject in some ways. It is not easy to explain, and it may not altogether be easy to understand, but I hope to give you a clearer idea than you had of what Freemen's property is all about.

It begins I think with two questions: "How do Freemen's lands come into existence?" and "How is it that some places have Freemen's lands and others do not?"

It is the second question, which is a very difficult question to understand, which prompted me to think that today's subject might be worth discussion. If you understand why it is that some places have Freemen's land, recognised as such, and other places do not, and see how it comes about, you will see that it is not just a matter of luck or fate; it is dependent upon certain definite principles and certain historical ideas. It follows, does it not, that if Freemen in a place which so far has not been known to have Freemen's property look back along those lines and examine the principles they will be able to determine whether it is really true that there is no Freemen's property for them to claim.

Last year, you will recollect, we reminded ourselves that for something like eight centuries "the boroughs were the Freemen" and "the Freemen were the boroughs". Until the Local Government Act 1972 the official description of the Borough Council was "The Mayor, Aldermen and Burgesses of the Borough" and when a Borough went to law and brought an action the name of the plaintiff in the writ,

which started the action, would be "The Mayor, Aldermen and Burgesses of the Borough of so-and-so", not "So-and-so Borough Council". What that reflects is the old idea, the idea before 1835, that the borough was, what we lawyers call, a "corporation aggregate". "Corporation" is the word for some legal entity, not a human being. A human being is obviously a legal person but, in addition to individuals like ourselves, there are trading companies, limited companies and so forth. They are called corporations and under the old law there were two types of corporation, a corporation aggregate and a corporation sole. The Archbishop of Canterbury is a corporation sole; the office and its powers and duties continue even though the individual who holds the position changes. In the borough the Mayor, Aldermen and Burgesses were treated in law as a single legal person; they existed as a collective legal entity in the law. It follows, therefore, that if "the borough" was "Mayor, Aldermen and Burgesses" there was nobody in the borough who was not a Freeman. So, before 1835, borough equals Freeman, Freeman equals borough and the people who happened to be living there who were not Freemen were of no account to the law.

Before 1835 lands were often granted to the borough. For example - and this is very common - when a borough was established by Royal Charter the Charter would, either at that time or later, attach lands to the borough, very often for pasturing stock. The lands would usually be granted to "The Mayor, Aldermen and Burgesses", by that name or some equivalent name, i.e. to the Freemen. So, before 1835, if some borough land was Freemen's land the non-Freemen were excluded from any benefit from it. Indeed, it must be admitted that there were many instances during the eighteenth century when Freemen asserted their rights to lands where it was just possible that, in law, the non-Freemen were entitled to some rights.

In 1835 the world changed: the Freemen lost their right to run their boroughs. As I put it so often, the Freemen in 1835 lost their functions. Those functions were the whole range of local government functions which were transferred to the new statutory Borough Council. Although they lost their functions, the Freemen retained their status; they remained in being as Freemen.

What happened to the town green, town pastures or other town lands? As we have seen these lands will normally have been given or created as Freemen's lands and it follows therefore that in principle the lands and property remained with the Freemen. After all, if one owns land and one loses one's job, there is no reason why one should lose one's land: there is no connection between the two. This is perhaps a remote analogy, but it illustrates the point that the ownership of the lands and the functions which the Freemen performed were in separate compartments and there was no reason at all in law why, although losing their functions, the Freemen should not retain their lands.

In principle that is what happened. Two sections of the 1835 Act are noteworthy in this regard. First, Section 2 said that Freemen's rights and property rights and personal rights should remain entirely as they were before 1835. That is why Freemen still exist today. Section 2 states at great length, firstly that the existing rights of Freemen and their wives and families and secondly their lands and property shall continue to exist exactly as in 1835. That, as far as we are concerned, is the main section. That is the section which carried into the post-1835 period the property rights which were vested in Freemen before that date. I am happy to say that the courts upheld this position in a number of cases in the years following. However, nothing in the law is ever completely certain: some of the Charters and conveyancing documents which created Freemen's land had language which was open to doubt. I have to mention another section in the 1835 Act. Section 92, which provided that the property of the old corporation should pass to the Borough Council.

Now you have a conundrum, have you not? How do you decide whether the property in a particular borough, item by item, fell under Section 2 as Freemen's property or fell under Section 92 as corporation property? This is a difficult question and I would not blame you if you confessed that you could not understand what I was talking about. What I am talking about is the curious situation whereby the old corporation was, at one and the same time, a body having to attend to the public interests of the borough - having to build the roads, the bridges and the walls - and also a body of people who were historically concerned with their own private interests, so that a Freeman was, at one and the same time, a person concerned with his own affairs and somebody who was charged with a duty. In a way I think it might be helpful to compare him with a shareholder: a shareholder in a company is one who, at the same time, is both concerned with his own investment and concerned with the running of the limited company which, incidentally, is a corporation. The difficult question, for anyone considering the operation and effect of the 1835 Act is whether a particular piece of property was given to the Freemen for the benefit of the Freemen as individuals or given to the Freemen to use for public benefit, that is, for the interests of the corporation or the borough. That is the question which has to be answered and, in a sense, it is an insoluble question because before 1835 the Freemen and the borough were one and the same thing. After 1835 the boroughs exploded in population and in importance. It became necessary to have professional administrators to run the "public interests' side". In the old small boroughs with a small number of Freemen it had been possible for people to look after both their own interests as individuals and "public interests" as part of Freemen's duties.

Is there any assistance to be derived from the circumstances of Freemen's property to enable the question to be answered? I think that there is. For example, it seems inevitable that pasture land should be recognised as Freemen's property, as property vested in the Freemen as individuals. An individual who exercises a right of pasture on the common pasture land is in one sense doing so as one "unit" in the "population of the borough" but it is also true to say that he is doing himself a service and not doing it for anybody else. On the other hand, what about a Guild Hall which is landed property? Probably the Guildhall is better regarded as property held for public benefit. Remember that I am generalising, and if Freemen have retained a Guild Hall do not think that I am suggesting that it should be returned to the Borough Council. What I am saying is that in the case of a Guild Hall it is possible to see a justification for treating it not as an individual benefit for the Freemen, but for the benefit of the corporation as the authority concerned with the public interest of the borough.

This is a difficult question and I cannot lay down clear lines for resolving it, but this is the essential background. Section 2 preserved in the Freemen's hand that which belonged to the Freemen or was thought to have belonged to the Freemen; Section 92 took away from the Freemen those things which they held as public functionaries, as people concerned with the good government of their borough. The issue therefore is to decide between those two sections in respect of any piece of property.

Of course, in the working out of this Act, I think the Freemen tended to suffer more than the Borough Council. In general, I think the Borough Council collected very often where it should not have done. I think the Freemen lost where they should not have done and we therefore have to look back to the period immediately following 1835 as a period in which, unhappily, and in some cases now beyond restoration, the Freemen lost the inheritance which should have passed to them. After 1835 they lost their legal authority and, in some places, where they were then few in number they had no support by way of an organisation like the Freemen of England. The Borough Council had just been set up by the Municipal Corporations Act on a high tide of reforming zeal and the odds were against the Freemen.

I leave you with this thought. The fact that land is vested in the District Council today (the Borough Council of yesterday), the fact that the legal title is, and has been, treated as being vested in the corporation does not determine the question. It is possible that Freemen's land may still exist for the Freemen's benefit. It may be that it is "beneficial property", as lawyers call it, of the Freemen even though it may have been treated and registered under the Commons Registration Act, or other Acts, as being in the ownership of the District Council. The District Council may well hold Freemen's property as trustees for the Freemen. It stands to reason that in most cases you would have a struggle forcing them to admit it, but it is a possibility and more than a possibility. Within the last eighteen months I have advised, in the case of one place in England, that in my view, although the land is clearly and has been for some time in the corporation, the local corporation (the District Council) who is the legal owner in law nevertheless holds it as Trustee "for the benefit of the Freemen", which in effect means that it is the Freemen's land. If someone holds property as trustee for somebody else that "somebody else" is beneficial owner, the effective owner or person entitled to enjoy it.

So, the overriding question is, always: what was the position in 1835? That question is not easy to answer, very often because it means historical research and examining legal documents which may be expressed in obscure language.

That is the governing question because the 1835 Act froze the position and it has been successfully frozen by subsequent local government acts including the Local Government Act 1972. If in 1835 that situation was favourable to Freemen, in principle the Freemen's rights remain to this day. We tend to look at everything as it were, through our memories of the Borough Council: we can remember from our childhood, the corporation buses, the corporation departments, etc. which were the outward manifestation of this "creature" the Borough Council. I think we have rather easily assumed, as individuals, that the Borough Council must have succeeded to "whatever the Freemen had" who were discharging the same function before 1835. But for the reasons I have given you it does not follow that the Borough Council was automatically entitled to "whatever the Freemen had" before that time. The Borough Council simply took over the functions of the Freemen, it did not necessarily take over the property of the Freemen. If the pre-1835 lands were in the hands of the Freemen there was either direct ownership or a trust and, if it was a trust, it was a charitable trust.

If the pre-1835 history was to this effect then, even if, in fact, the Borough Council has made use of the property since 1835, there was and remains a trust, a charitable trust, for the Freemen. There have been cases, including the one I mentioned a few moments ago, where that charitable trust has had to be recognised.

As I draw towards the close of what I want to say, and as we approach our discussion, I hope I have managed to satisfy you that this is not an antiquarian topic or a dead subject; it is very much a live topic which may have potential importance either in your locality or a neighbouring locality which may be still, unhappily, in the process of recovering its inheritance, providing "the Freedom", and preparing to join the Freemen of England.

As on nearly every occasion when we talk about these general subjects, of interest to Freemen all over the country, we have to say to ourselves at the end of our sessions: "we must all turn to and research the history of our own borough". At a certain point you have to stop generalising. I can explain this subject up to a certain point and then I have to say, "I cannot carry it further, you must look into your own particular circumstances and see what happens in your own particular borough". Then, when that research has been completed, legal advice can be sought and you can review your position. For everybody in this room there is a strong case for the need to research the history of your borough. If you have got Freemen's lands you are very lucky indeed; if you do not, there is the chance that you may discover that you have rights which have been put aside. We have to be alert in this subject, as in every other. We have to be informed and we have to be industrious. If we are industrious, we will become informed and if we are informed then we will be alert to guard our inheritance.

Charles Sparrow QC
Great Grimsby 1982

FREEDOM BY SERVITUDE (1983)

In my view, servitude is the most important aspect of the Freedom and the most fruitful area for us to explore. Although it gives us more to learn and think about than any other subject I have dealt with it is the most neglected. It is the most difficult both to explore and to understand. I regard the need to talk about servitude as something of a crusade. I would put more energy into exploring this subject than any other because I believe it is worth doing to stimulate all Freemen to study it. First, it is important because it is a lifeline; I will explain what I mean by that in a little while. Secondly, it is a remedy at the right time for certain problems we have. Thirdly, it is a means of justifying ourselves by demonstrating both what we are and the fact that we have a proper place in the community today.

In approaching the subject we need to consider what is the custom in a town and the implications this has for other Freemen both in the detail and the broad principles and trends of the Freedom.

The subject is covered in legal cobwebs which obscure its essential nature and because of this in some town's practices have been continued for one hundred years or one hundred and fifty years which have no legal basis.

Servitude is a rather curious word: an archaic word meaning apprenticeship. It matches patrimony, which is another curious word for descent, inheritance or a very good old English word, birthright, a word from the Bible. Admission to the Freedom by servitude is admission on account of apprenticeship and on account of apprenticeship only with no reliance on blood connection or descent.

A large number of towns allow admission to the Freedom by both patrimony, and servitude on terms of absolute equality. Some towns do not allow admission by servitude. When I say they do not "allow" it, I mean that, because we are operating in accordance with legal principles, unless admission by servitude has been demonstrated to operate by immemorial custom it cannot be introduced. So in your own particular town apprenticeship - and this means apprenticeship to a Freeman of your town - either is, or is not, admissible. There are a few places - and I only know of one for certain, Coventry - where, surprisingly, admission by servitude is the only method and there is no admission by descent or birthright at all.

There is nothing second rate, inferior, or "stop gap" about admission by servitude. This is a very important point. We all tend to think of the Freedom passing by patrimony as the main or even the only method. We must bear in mind that there is another method: servitude, which is one of two equal methods of admission to the freedom, where they are allowed.

As always, we will find the key to our understanding in a study of history. Undoubtedly, patrimony came first and in varying ways, and servitude, if it came at all, came later. In some places servitude was never recognised. Sometimes servitude came very late, sometimes as late as the eighteenth century whic2h is very late considering that it is the last century in which the Freemen played an active part in the Borough government before they were dealt the great blow of 1835. Undoubtedly servitude originated from the use of common sense. Freemen must have considered that they needed to pass on the Freedom other than by descent. The Boroughs were a trading enterprise, very like a trading company, physically isolated and self-contained in times when communications were primitive. So, within the walls of their Borough, the Freemen must have decided that they would carry on their trading and business better if Freemen were admitted on the basis of servitude, or apprenticeship. In any business new blood is important.

In the town the Freemen ran everything, were high up in the social scale and of considerable importance. There were people at the bottom whose condition was very close to slavery. In the periods before and after the Norman Conquest we had something approximating to slavery and there were a lot of people at the lower levels in the Borough who certainly were not free in any sense. Within the Freedom there were some people who were more important than others; there were people who held municipal office in the Borough and those who did not. Great care would be taken in choosing people for admission to the Freedom. Consequently, it came about that Freemen were admitted by five methods subject to regulations and legal control. The five methods were:

(a) Patrimony
(b) Servitude
(c) Sale, which still exists in London
(d) Gift
(e) Marriage to a Freeman's daughter, as in Grimsby

Sale of the Freedom in London is now given the genteel name "Freedom by Redemption": you do not "buy it", you "obtain it by redemption".

So the system worked this way. For the "blue blood", it was Freedom by descent. For the "upstart", it was Freedom by servitude; he could come into the Borough, learn a trade and become a Freeman. For another kind of "upstart", also from outside the borough, who had made good, it was Freedom by purchase. Freedom by gift was reserved for the aristocrat who lived on his estate outside the Borough, and, even more important, for the aristocrats young brother who was M.P., having been put up by his elder brother as the nominee in what was a "Rotten Borough".

The system had great flexibility. Disposal of the Freedom by gift was sometimes used for the highest motives. We have heard much about the "Rotten Boroughs". During the last century many people made it their mission to blacken the Boroughs, and by implication the Freemen, and they did it rather successfully, aided by Charles Dickens. The mud has stuck although they presented a very crude view of the system in 1835. There was a lot of good in the system. Admission to the Freedom by gift was used for paupers who were without subsistence, sometimes when it was the only means of giving them access to charitable funds. Sometimes Freedom by gift was used when something had gone wrong with admission by servitude. In some Boroughs it was a requirement that the parties to the articles of apprenticeship, or indentures, should immediately lodge it with the Town Clerk and if it had not been done the transaction was a nullity. The apprentice might have served seven years or longer and be unable to be admitted to the Freedom because the deed had not been lodged properly. So you can see the flexibility of the system.

The Royal Commission which was appointed in July 1833 to report on municipal government was composed of those who were known to be committed to reform and thus the dice were heavily loaded against the Freemen from the beginning; the Commission was appointed not to conduct an objective inquiry into the need for reform but simply to abolish the Freedom as it was operated. As a result of the 1835 Act, which was based upon its recommendations, Freedom by gift and purchase disappeared and we were left with patrimony and servitude, (and the limited number of cases acquired by marriage), which have survived through subsequent local government acts including that of 1972 in which the Association of Freemen of England played such a decisive part to ensure survival.

Patrimony and servitude are important to all bodies of Freemen but perhaps, in particular admission by servitude is of importance in those towns where the numbers of Freemen are now diminishing. It is something which brings in new blood. There are some people who have a hostile attitude to the Freemen. Servitude is so much easier to defend, to describe and to assimilate into the operation of the Freedom than patrimony. There is nothing wrong with patrimony but in this age anything which depends upon heredity, upon descent, is automatically under pressure. Servitude is immune from this criticism; a person can come in without pre-existing privilege and take up the Freedom. I would therefore describe it as a "hedge" against slander and against jealousy and a means of defending our position and indeed commending our position which has particular merits compared with patrimony.

In describing servitude, we must make use of some unfamiliar terms: masters, apprentices, indentures and articles of apprenticeship.

"Master" is something of an unfashionable term in our egalitarian society. "Indentures" have nothing to do with false teeth, but they have a connection with teeth.

An indenture is a document which provides a unique copy. The wording is written out twice on the one piece and the two are divided by an irregular zig-zag cutting, indentations or teeth marks, which enables the one to be linked uniquely to the other, a most important security precaution when the apprenticeship, which derived from the indenture, was such an important passport for the right to work.

The starting point in describing servitude, as it is in all matters pertaining to the Freedom, is that "we cannot alter custom". If women can be admitted to the Freedom by custom, as in York, then it can be done; if they cannot, as is the position in most other towns, then it cannot be done. But custom can be applied and applied sensibly. You cannot alter "the law" for that is what "custom" is - the local "law" for a particular place. Technically, English Law consists of the general law which applies over the whole country, and which we know as "the Common Law", and the "law" applicable in a particular locality which is known as "custom" or "customary law". It has the same force as "common law" in the are2a where it operates. Few lawyers in the course of their practice ever encounter "custom"; property lawyers are more likely to do so than others. Nevertheless, it exists and "the Freedom" is a living, breathing, example of customary law.

I want to illustrate the next part of my exposition by referring to one aspect of "the common law", the general law which applies over the whole country. The common law gives a remedy for what it calls nuisance. Nuisance is the disturbance of a person's comfort and enjoyment in his home: for example, a neighbour lighting a bonfire, the smoke from which affects the enjoyment of an adjoining house. The common law gives a remedy for this but on the other hand it does not give a remedy for "interference with a view", where a person lawfully builds a building which has the effect of destroying the outlook. This is an illustration of where there is a remedy and where there is not. You cannot add to the common law a remedy for spoiling the view, but you may have to apply the remedy of nuisance to changed circumstances. With the advent of television, the question of interference with reception became important. Some years ago, someone claimed that the use of an electrical appliance which was not fitted with a suppressor was an interference with the comfort and enjoyment of a home. The judge held that the reception of a television set was not something which was protected by the law of nuisance. Today, the case might be decided differently. This illustrates the point, which applies to custom as it does to common law, that you cannot add a new feature, but the old feature may have to be applied to new circumstances.

This is of direct relevance to servitude. "Apprentices" are rather old-fashioned and appear in old stories and pantomimes. The old institution, "the apprentice", has got to be examined in the context of today and apprenticeship has to be applied under conditions which are very different from the conditions which existed in the Middle Ages when the Freedom had its greatest significance.

We must be responsible and remember that apprenticeship still has to be operated as law. We must not allow it to be used as a "back door" method of admission to the Freedom, which is an honourable institution and a valuable possession. When we operate admission by servitude everything must be "above board", and we must not create apprenticeships which are not really apprenticeships. Some

people may pose the question: "Why bother with admission by servitude; it is a relic of the past?" I would answer by saying: "Consider how apprenticeship has come to look like a relic of the past". If the institution of apprenticeship has really gone, if it has no counterpart and we are really trying to revive a relic we ought not to be doing so. Here we have an example of the practice, to which man is prone, of changing the name of things when the previous name has become uncomfortable. For example: a lunatic asylum is really a charming expression because "asylum" means sanctuary, a place where one may have refuge and care, and "lunatic" is about the kindest way of describing someone of unsound mind - subject to the influence of the moon. Over the period of many generations the term became ugly and reminded us of the world of Charles Dickens. There comes a time when a word is no longer acceptable and the word is changed but usually the thing that the word denoted remains. We call that a euphemism.

The old idea of learning a manual trade became disreputable and it was looked upon as more desirable to have a longer education at school and university. Thus the term "apprentice" became disreputable, although there are still apprentices whether you take it in the narrow or wide sense. It is now replaced by something which means the same thing in substance - "vocational training" - which means training for the sort of life and work which was previously catered for by apprenticeship. Nothing has altered in reality; people are still qualifying themselves as apprentices in truth and in substance though what they are doing may be called "Youth Training" or any other name. The Local Government Act 1972 Section 248(4), (printed in the back of "The Freemen of England" by Harry Ward), uses the word "employment". The Civil Service draughtsmen, (it was not our word), used an inaccurate word "employment" which is legally wrong but fortunately they added "or otherwise" so there was no great harm done. However, the wording of the Act indicates that it is envisaged that apprenticeship is intended to continue and there is no reason why we should not continue that aspect of the Freedom which matches with our modern vocational training. I would like to state briefly the essentials which must be present if Freedom by servitude is to be conferred in a way that is correct and defensible.

There must be:

1. A genuine apprentice: someone who genuinely desires to learn the trade. I think that it means learning the trade to practice it for a living.

2. A genuine master in the same trade who has instruction to give and who can supervise the apprentice. It is not absolutely necessary that the apprentice should be under the exclusive instruction of the master, but the master must have general supervision. In modern conditions it is possible that both apprentice and master are employed by someone else. It is interesting to note one feature from the old Act of Queen Elizabeth I, which regulated apprenticement for most of the history of servitude; this required one journeyman "out of his time" to be employed for every three apprentices. This provision was to ensure that there was sufficient flow of work going through the trade, and to have other people capable of instructing as well as the master, who no doubt spent much of his time travelling.

3. A regular and proper period of continuous training. In 1562 the period was six to seven years, and the seven years is often referred to, for example, in the folksong "The Lincolnshire Poacher". The 1562 Act stated that apprenticeships were not to expire before the age of twenty-four years. The Act was compulsory in the Boroughs until it was repealed by the Apprentices Act 1814. At the present time, there is no requirement for seven years' service and the period can be any appropriate period. It must not be a casual engagement: there must be a definite period.

4. A binding engagement in writing. It does not have to be Deed on parchment and indented any more, but there must be a definite engagement between master and apprentice. The fact that there is a Director or Chairman of a Company who is a Freeman and somewhere in the Company there is an apprentice is not enough. There must be a personal agreement between two individuals in writing, independently of their other relationships as "boss" and "trainee". There cannot be a "blanket" apprenticeship for all apprentices because the Managing Director is a Freeman. If the Managing Director is a Freeman, it makes it possible for him to enter into an engagement of apprenticeship in writing with the individual independently of their other relationship, but the master must be willing and able to give instruction to the apprentice. If such a system can be operated, it is worth doing because apprentices are a dying breed.

Charles Sparrow QC
York 1983

LOCAL ACTS OF PARLIAMENT (1984)

A Broad View

The Freemen of York have a motto which urges them to hold to what their forefathers have set out. Their motto expresses the single great precept of the Freedom - the one truth upon which all is built, that is to say, what we have we get from the past. So, to measure and describe what we have in the Freedom, we must look, with a keen and steady eye, back into the past.

Once again, therefore, I shall be asking you to join with me in harvesting the records of the past, in order to understand and enjoy the full richness of being a Freeman in the present. My subject today is Local Acts of Parliament.

Now, our Victorian forefathers were great teachers. Our education system was given to us by the Victorians. They were very fond of expressing the heart of a topic in such language as "the rule of three". I am going to borrow that trick and talk about The Rule of Twice Two. This will contain my whole subject. Indeed, it will give you, in a nutshell, the whole landscape of Freemen's law.

The First "Two"

All law in this country can be separated out into two distinct bodies or classes. We have (1) WRITTEN law and (2) UNWRITTEN law. Some countries have the first only. In those countries, the law is to be found only in a written text. Of course, any matter, however fleeting and vague, may be expressed in writing. Our newspapers exist to reflect the passing words of politicians, popstars and trade union leaders. But here we use the expression "written law" to denote law, which is found in a single authorised official text, from which one takes and uses the very words. No other version counts. On the other hand, unwritten law has no one authorised version.

Let me illustrate the difference. Those of us who have driven down to Shrewsbury will have, I hope, (a) been in possession of a vehicle licence and (b) driven on the left of the road. In those two respects, we have been following the law. Now principle (a) will be found in the written law of England; but principle (b) was merely part of our unwritten law. Once upon a time, a statute was passed, which said: "thou shalt have a vehicle licence"; and it spoke in an exact form of words. But there was no statute which enacted: "thou shalt drive on the left". Fortunately, in this instance, the precise wording is of no moment. But consider the important rule of the common law that a man shall not use his land in such a way as to cause a nuisance to his neighbour. That is unwritten law. So, we are not told exactly what is meant by "a nuisance" or "his neighbour". And thus, some years ago, the Court had to consider whether it was a nuisance for a man to create electrical interference which spoiled his neighbour's television reception. It decided, incidentally, that such activity was no nuisance.

To sum up this rule of two: with the written law, we apply the word, with unwritten law, we apply the idea. Where then do we find "the idea", of the unwritten law. The answer is primarily in any opinions expressed by the judges, during some seven hundred years of our recorded legal history. But we also take it from textbooks or any other reliable source of the law which men followed at a previous point in our history. This is because unwritten law is, and must necessarily be, assumed to have existed always. Written law is, of course, made. Unwritten law simply is.

When I put next the question: where do we find "the word" of the written law, the answer is without any complication. It is in a statute, i.e. an Act of Parliament. The statute may be extended and elaborated by ministerial order, but you begin with the Act of Parliament; and that is inescapable.

I have not forgotten Charters. These were an early form of statute, though made by the King alone (and by the King Lords and Commons in Parliament assembled). They still exist and come into being, but their operation today is very limited. So we can safely talk of statute as the source and record of written law.

I now turn to my second "two", which we shall marry up with our first.

The Second "Two"

My first "two" cannot have surprised anybody. We all know about Acts of Parliament, though it may have helped to paint a double portrait of statute and the unwritten law of England.

My second pair of terms will be known to almost no layman and is, I assure you, only imperfectly understood by lawyers.

I am now talking of GENERAL law and LOCAL law. In other words, I want you to consider (a) law which operates in each and every part of the country and (b) law which operates only in a particular locality. Again we have both classes in England.

There is no superiority of one over the other. Where they exist, they are of equal validity and importance. Local law is equally deserving of study with general law, as I hope you will agree when I have finished this address.

The Rule Complete

At this point, I now make the marriage, of which I have spoken, so as to produce The Rule of Twice Two.

In previous years, I have talked to you of "local customary law". That is the variety of unwritten law which operates in a local area such as a borough. The general variety is called the common law, i.e. the law which is common to all places in the land. I shall not go over that again.

My subject today is the local variety of written law, i.e. local statutes or Acts of Parliaments. We also have general statutes.

Now you can see my Rule. It combines the classification of: -

(i) UNWRITTEN and WRITTEN

(ii) GENERAL and LOCAL

I apologise for so long an introduction. But I know you all to be serious students of the Freedom and I believe it to be absolutely vital to understand the logical structure of these discussions we have each year.

The law which relates to the Freedom embodies all four of those elements, in varying degrees. Obviously, the main element is local unwritten law, e.g. the principles of admission to the Freedom in a particular borough. Next comes local written law, e.g. local Acts of Parliament which identify and control Freemen's lands. But Freemen have some concern with general written law, e.g. in the management of their properties.

And so I come to my subject: local legislation, as it affects Freemen.

The Essential Function

The essential function of legislation, i.e. statute or the written law, is to ALTER the law. That is its peculiar power.

Unwritten law, as I have said, simply EXISTS, it cannot be MADE. This is true in the GENERAL field, i.e. the common law, and is true also in the LOCAL field, i.e. customary law.

That is why Freemen cannot themselves change the rules, for their own borough. The Freemen of Coventry cannot say: we shall add admission by descent to admission by apprenticeship. The Freemen of Grimsby cannot say: we shall give up this business of obtaining the Freedom by marrying a Freeman's daughter. Nor can the Freemen of Shrewsbury say: we like the idea they have in York of admitting women by descent and we shall adopt it here.

However, Parliament can do all or any of those things. Parliament can do anything. It used to be debated by pedants whether one should say: Parliament can do almost anything, for of course it cannot make a man into a woman. The debate has no practical point; but in fact Parliament may certainly say that, for the purpose of a statute, a woman shall be deemed to be a man. That is just what sex disability legislation has done. Incidentally, the old drafting formula, alas no longer used, was as follows: "Under this Act man shall embrace woman".

So the function of local legislation is to redress the pre-existing law, but only in a particular place.
Accordingly, if you go into a law library, you will see one row of volumes for PUBLIC GENERAL statutes and another row for PRIVATE AND LOCAL statutes.

Thus the good Burgesses of Shrewsbury will pay their taxes under public general legislation, i.e. the finance and income tax acts; but they will earn the moneys on which they are so taxed by selling their goods in conditions regulated by local legislation such as the Shrewsbury Market Acts.

The Special Character

The Local Act is a very different animal from the General Act, with which we are all familiar. The latter is normally a product of the political system. It will usually represent a party policy. The Local Act is normally a Private Act. As such it is "promoted", as the

expression is, by personal, sectional or other private interests. It passes through a Committee procedure, away from the main chamber, which looks and is rather like a court hearing, with robed counsel appearing for the promoters and opposing petitioners.

Such an Act is sometimes spoken of as "a parliamentary bargain", whereby Parliament approves a trade-off between local factions and the public interest. Local Acts are replete with all manner of parochial and topographic2al detail.

The Effect on Freemen

Obviously, the Freedom is a local matter, which can be, and commonly is, the subject of Local Acts of Parliament. Such Acts will amend the local customary law, of which I have often spoken to you.

Local Acts are most numerous in the nineteenth century; but important Acts are found in the eighteenth century and one must be prepared to meet the occasional local statute from the seventeenth century. The restoration of the monarchy in 1660 led to much legislative activity, general and local.

Without doubt, the usual reason for a Local Act affecting Freemen is some question of property. And usually that property will be landed. In the past, Freemen were interested, above all else, in pastures.

Freemen's rights of pasturage are today seen in the form of individual benefits. But they usually originated as a collective entitlement. Thus the general body of the Freemen would be entitled to pasture on the town moor. They had common rights of pasture, otherwise called rights of common or, more shortly, commons. In an agrarian system, this arrangement worked well enough. As both economics and agricultural methods advanced, provision had to be made for the exclusive farming of land and for the compensation of Freemen who were no longer graziers.

Thus we find local legislation parcelling out common tracts, so as to allow individuals to farm their own lands, and Freemen's rights confined to specific areas. We also find the organisation of Freemen's lands in such a way as to protect those who were interested in money value rather than enjoyment in kind. However, quite apart from pastures, local legislation may deal with any aspect of the Freedom. The procedure and conditions of admission may be so ordered. In particular, we may well find provision for committees of stewards or trustees for the Freemen. Local Acts of Parliament may, therefore, bear upon Freemen in any one or more of these serious aspects of the Freedom.

Such legislation must be studied. That task has special difficulties. Old Acts are not conveniently labelled. They do not have titles in the modern manner. Their language, though often charming and of elegant prose style, tend to vary from clause to clause. Consistency was not as obsession, as it is today. The numbering of clauses or sections may be in Roman, if it exists at all.

But I do not want to overdo the agony. In any one place, Freemen will probably not be concerned with more than, say, half a dozen Local Acts, at the most. Those Acts will be printed in large type, with antique embellishments of the printer's art, and certainly one will never find that monster of modern legislation, the giant Act with a great hump of unreadable schedules.

Every seventeenth or eighteenth century Local Act and many in the nineteenth will be found to have an individual character, to be visually attractive and to be a pleasure to get to know.

The Local Government Act 19722

So far, I have been very mildly encouraging you to study your local legislation. I have now to tell you that the local Government Act 1972 makes it imperative for you to embark on that study.

The 1972 Act was the heavy-handed statute that abolished the boroughs in England. In addition, it ordained the disappearance of most local legislation. Let me repeat that. The Act says, in effect, that, on a specific date, most local legislation throughout England shall simply cease to have effect. Useful provisions must be, before that date, enacted in new Local Acts.

At this point, it may appear blindingly obvious that the reason we have to be concerned with the 1972 Act is because that Act will sweep away Freemen's rights along with the rest of local legislation. But, curiously, I do not think that this is so at all.

Although Section 262 of the 1972 Act says that local statutory provisions shall be terminated, on a uniform date, Section 248 of that same Act specifically preserves the status and rights of Freemen from being affected by any other section of the 1972 Act. So it seems to me to follow that, insofar as any local statutory provisions may deal with Freemen and their rights, the effect of such provision is immune from extinction on the appointed day. No action by Freemen is necessary to achieve that satisfying result.

However, there is a reason why we have vigilantly to watch the operation of the 1972 Act in relation to Local Acts of Parliament.

In order to guard and provide for their miscellaneous local interests, district and county councils have to promote new Acts of Parliament. Such legislation will be likely, at least in part, to deal with old Acts which have regulated Freemen's affairs. So such new legislation will be treading the same ground as the Acts upon which Freemen will be continuing to rely for their rights, as preserved by the 1972 Act. The risk of a conflict of provisions is manifest. Local authorities, when promoting their legislation, may well deal Freemen's interests a glancing blow, either knowingly or by accident. No Act of Parliament is proof against repeal, in part or whole, by a later Act. One Act is just as good as another. So a Puddletown Local Act may quite well reverse or impair the effect of the great Local Government Act 1972.

Accordingly, we need to know about our Local Acts of Parliament in order to watch and parry effectively, at this critical time under the 1972 Act. Moreover, if legislation is promoted by local authorities who are well-disposed towards Freemen, there is always the possibility of taking that chance to improve Freemen's rights.

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May I, therefore, summarise my advice about Local Acts of Parliament and the 1972 Act. I see no compelling need for Freemen's guilds to procure new local legislation in order to keep their rights alive. On the other hand, if such legislation is being promoted by others, Freemen should be, at least, generally watchful and, at best, solicitous for any improvement of their situation.

Finally, for those of you with an unslaked thirst for knowledge of this eccentric Act, may I issue a practical warning to be wary of Section 262 sub-sections (12) and (13). These sub-sections define the "local statutory provisions" which are governed by Section 262, in the manner I have already described. In other words, they describe the class of local legislation which is continued and then terminated. That class consists, in essence, of legislation promoted by "local authorities". The expression is widely defined so as to cover the old borough councils and urban and rural district councils and the earlier local boards; but it does have a precise and limited meaning.

Accordingly, the term "local statutory provisions" does not mean all local legislation. Now, in the eighteenth and nineteenth centuries, Acts of Parliament were promoted by private landowners and all sorts of local groups. So one may find, in a run of Local Acts, all dealing with similar topics, that some are affected by the 1972 Act, and some are not. The result may appear bizarre indeed if you find (a) the sequence of one old Act later repealed by another and if you also find (b) the first Act is untouched by the 1972 Act but the second Act (the repealing Act) is terminated by Section 262 of the 1972 Act. I have met this pattern in real life with the Harrogate Spa Acts, which some of you may know.

You have been very patient but I have now reached the end of my subject. I wish you happy hunting among your own Local Acts. Your research will be of abiding value to your fellow Freemen.

Charles Sparrow QC
Shrewsbury 1984

WOMEN AND THE FREEDOM (1985)

Introduction

There are, I suppose, people who will find the title of this talk something of a tease. With a change of word here or there, I could be talking about More Freedoms for Women or The Free Woman in Our Society. It sounds like women's lib on a grand scale.

But I must tell you that this is, quite definitely, not a trendy talk for bra-burners. Yet I can also assure you that it will be so topical as to be well in advance of any discussion you have ever heard at any gathering of Freemen.

Before we finish, therefore, we shall have our eyes set upon the most distant horizons of the future. Meanwhile, as everything about the Freedom has grown out of the past, we must speak about history and look at the package of rules it has left us in relation to Women.

How Important Is "The Difference"

The curious answer to this vital question is: A mixture of the vital and the non-existent. Let me make that answer slightly clearer in its meaning.

First, in relation to patrimony, that is to say, admission by descent, the sex of an applicant is, almost universally, of vital importance. In general, the applicant has to be a man, the son of a Freeman. On the other hand, in relation to servitude, i.e. admission by apprenticeship, men and women are most widely recognised to be of equal standing.

As Harry Ward says in his book: "Throughout the ages women apprentices were admitted". And he mentions London, Coventry and York. Those names are but a random selection. Recent debate has shown us that we can add Shrewsbury.

My own feeling is that the admission of women by apprenticeship, and perhaps the entire mechanism of servitude, was an addition, in the course of history. The disintegration of the craft guilds and also the advance of urban prosperity may well have played a part. Maybe we must reckon, too, with the effect of war or pestilence, in creating widows. Be all that as it may, the equal right of women, under the custom of servitude, is indisputable and deeply settled.

I wish this were better known. It has great practical importance, for women who wish to claim the status of Freeman. And it also has an intangible importance because it shows that women are simply not, in the Freedom, a lesser breed. There are, between the sexes, differences of regulation; but women are not rated as invariably disqualified.
The legacy of the past is much more complex than that. For example, in Coventry, apprenticeship is the one and only gateway. Thus women in that place have no disability whatever.

The complexity I speak of is quite pronounced within the custom of patrimony. Women may, but usually may not, be admissible to the Freedom by virtue of descent, according to where one looks.

It is now accepted that daughters of Freemen may be admitted, by descent, in the City of York. There are some other places also where this is allowed; and there is a promising claim presently being advanced in Ipswich. On the other hand, it has not proved possible to assemble satisfactory evidence to uphold a claim vigorously made in Shrewsbury. The failure of the Shrewsbury claim has, I know, caused deep individual disappointment. But there can be no justification for personal recriminations, no justification whatever.

Within the Freedom, custom is the master of us all. By custom, which is a legal term, we mean the provisions of local law which govern the Freedom. In the view of the law, custom has never changed. Likewise, the law does not allow for any change to be made now. That means that what we may do is no more and no less than what has always been done, within the place with which we are concerned.

As I have indicated, custom has the force of law. It is as potent as the common law or the statutes made by Parliament. But it is different. It is nowhere officially recorded, which makes it different from statute law; and it applies only in a local place, such as a borough or city, which makes it different from our great common law. But, in order that custom shall have equivalent force to common law and statute, legal policy requires that it shall be something special. Not every popular idea or habit or practice will justify recognition. The law says in effect that it must be constant practice, timeless and unvarying. A comparable criterion of generality was applied to the common law. It had to be geographically universal, throughout the country, in short "common" to the entire realm.

Now the moral of all this is that custom exists only by reason of its immemorial and unchanging character. That moral becomes, in actual practice, a discipline, which we cannot evade.

And so, whatever the merits, the just desserts, of women, we simply cannot alter the custom. We must abide by history. We must obediently respect the results of documentary research. It is not within the power of any guild master, guild, local council or legal adviser to authorise the admission of women, unless the custom allows of it and always has, throughout the long life of the Freedom.

For women, therefore, the key to the gate, if key there be, will be found in careful, accurate and sustained research. One must research Freemen's rolls and assemble a decent quantity of positive evidence. Odd entries will not do. Usually such entries do not point clearly to anything anyway. The results of research must support the desired deduction fairly and without straining. In short, and putting it bluntly, one cannot fake the proof. I certainly cannot, when I am called upon to advise.

But do not imagine that vast erudition or technical skills are required. Those talents were not present in York or Ipswich. All that is required is commonsense and care, with a self-critical approach that curbs the excesses of optimism.

All that is very serious stuff and you may find it a little indigestible. So, to lighten the diet, I will mention, in passing, another connection which Women have with the Freedom.

In some places, and Grimsby is the great example, women have the power to pass on the Freedom by marriage. In those places, when a man marries the daughter of a Freeman, he becomes himself a Freeman. Here we have for women special privilege, not disability. Or, you may say, just a logical equality. For each sex, custom recognises a consequence of marriage.

Once upon a time, Freemen had a monopoly of the Parliamentary vote. In other words, members of Parliament were elected by the Freemen and nobody else. At that time, when a borough could have an electorate of a hundred, or even less, votes were very valuable, and they were bought or sold for money or liquor. Even a single vote could be vital to one side or the other. It is credibly reported that, in the bad old days before the Reform Act, the daughters of Freemen were locked up during an election to prevent them marrying and thus creating, in their husbands, one more vote, which might affect the result. You will not be surprised to hear that this robust practice was called "cooping".

Now I want to leave the curiosities of the past and the technicalities of the present; and I shall try to look at the future of the Freedom as it relates to Women.

What of the Future

You may find irksome the iron fist of custom. In the remainder of what I have to say, I shall be examining the chances of prising open that closed fist.

But have I not said, just a moment ago, that custom cannot be changed? So I have, and in ordinary life that principle is inescapable. However, there is one exceptional way of making custom yield to change.

Though custom is the master of us all, there is one master of all custom and that is statute. An Act of Parliament can change any law, including custom. The Municipal Corporations Act of 1835 changed all custom in the kingdom, save for the City of London. A local Act of Parliament often changes the custom piecemeal. Another general Act like the 1835 Act could once more change the custom all over England.

Doubtless you can see where I am going. It is within the power of Parliament to emancipate women everywhere, by passing an Act to make admission of women by patrimony generally available.
In effect, Parliament would be extending the custom of York to all places in the realm. This is not a new method. The custom of the City of London enjoyed special reverence in centuries gone by; and it was adopted in many other places as a model.

But of course Parliament requires to be satisfied that, in the statutory phrase, "it is expedient" that a change should be made in the law. Could the test of expediency be satisfied? I believe so.

Families are getting smaller all the time. The failure of the male line is now more of a risk than ever before. That means family disappointment. But it also means grave and accelerating danger for the institution of the Freedom, in every place. This is the message now brought, year by year, to every General Meeting of the Freemen of England, by members who are deeply troubled. People come and tell me of a family connection with the Freedom going back into the mists of the past, which is threatened with extinction because a man has no sons and only daughters. These people have genuine grievance. Their personal worry is also a threat to the whole Freedom.

I believe that the Freemen of England has to face that threat and take it seriously. In doing so, one has to recognise that the national interest of Freemen interlocks with the claim that women have been advancing and which is so often rejected and thrown back by the custom. In the general interest, it would be better for custom to be moulded to the needs of today's social pattern.

Custom was, in its ancient origin, pragmatic, practical, even experimental. It grew out of the everyday life of ordinary people. There was nothing theoretical about it. It was adopted, above all, to keep a community going, in working order. That was its social purpose. Only in the cold hands of the law has it become frozen and immovable. It becomes a perversion for the Freedom to bring about a strangulation of this worthy institution of English community life.

In the plain interest of the community, we must now seek to soften the custom and give it a measure of renewed energy. The Freedom should be permitted, under control and with safeguards, to pass in the female line. There is a clear case for admitting to the Freedom the daughters of Freemen.

This is a task, a large task and a long task, I fear, for members of the Freemen of England. They must act with the support of the women, who increasingly augment our effort with their enthusiasm and encouragement. We must be ingenious and calculating. The walls of Jericho will not come tumbling down at the first blast of the trumpet. This will have to be a political cause. Members of Parliament will have to be enlightened and persuaded, by pressure and argument. I think it is a cause that can be won. At any rate, I believe it would be a feebleness of the spirit not to try. Our salvation may lie in the simple fact that this is a battle which most uninformed people would say, have said, had been already won. It is only by lifting the lid of an ancient muniments chest that one discovers the disability of women in the realm of customary Freedom. I am convinced that, suitably approached, Parliament could move, briskly and with confidence, to root out that disability.

Charles Sparrow QC
Oxford 1985

LIFE WITH THE YORK BILL (1987)

SIGNIFICANCE OF THE BILL

For all of us, the Bill to confiscate the Freemen's pastures in York came as a thunderbolt out of a blue sky. The Freemen of York were stunned. Freemen all over England were thrown into a state of chill and alarm.

Yet such a Bill was, sooner or later, inevitable. It could have happened at any time, anywhere. More than that, it could happen again, anywhere.

A Local Bill to confiscate Freemen's rights was undoubtedly one of the perils which the founding fathers of this Association must have had in their minds when they established Freemen of England. The York Bill is not the first attempt at Parliamentary interference with the prerogatives of Freemen. However, it does stand out for its severity and sheer malignity. The York Council had no constructive plan for the Strays. Its object was simply plunder.

We in Freemen of England must learn the lesson of this episode. To do so we shall have, as always, to go back into the old history of the Freedom.

THE COUNCIL AS ULTIMATE GUARDIAN

Today, the idea of a community without its local government council is unthinkable. The local council is perpetual and all-pervasive. It has compulsory powers to tax us, to regulate our lives and to acquire our property. It seems to be the ultimate guardian of the community and all things public.

That was the philosophy which gave birth to the York Bill. The Strays in York were embedded in the physical centre of the City, they looked somewhat like municipal parks and the public were allowed access to them. Therefore, it was said, they should be in the hands of the local council. It was as simple as that. And a Committee of the House of Lords was content to look no further.

But a moment's careful thought will show that the Strays were created at a time when things were very different. There was then no overriding notion of public rights and services. And certainly there was no ever-present local council to enforce that creed. Only by recalling to mind this background, of vastly different thought and action, can we see what the Strays really are and why they exist at all. This picture was never understood in the House of Lords.

The basic truth is that the Strays of York and other like pastures are simply not public property. They are not waifs waiting for a guardian. They have a rational origin and a perfectly legitimate title under the law.

TRUE HISTORY OF FREEMEN'S LANDS

There was nothing public-spirited about the birth of our Boroughs. Some thousand years ago, Germanic immigrants landed in England and wandered across the country looking for new homes. Eventually they settled, in clusters, wherever it suited them. The bigger clusters eventually became Boroughs. It is still possible to see how some town centres took their shape from the life-style of these original settlers and such practical features as the stalling or herding of beasts and the laying out of markets. There was, of course, tribal loyalty and some organisation but the essential driving force was the individual and his family.

We are thus looking at a society which can be compared with the American Frontier. Public law was little more than a matter of the punishment of criminals. The property rights of individuals were not planned and regimented, for the public good, as they are with us today.

In that world, the town-dwellers of England ran their own Boroughs. They built town walls and bridges and road systems, not because Acts of Parliament required them to do so, but because they themselves wanted these things; and there was nobody else to build them. Furthermore, they did their building whilst carrying on their various trades and crafts, as well as their own acquisitive, private lives. They were not professional local government servants. They were Burgesses; and they needed and exercised individual rights of pasture and woodcutting and so on. These were the people who called themselves Freemen.

Then there came a time when wise men said that this system of intermixed private and public activity was intolerable. The boroughs were thought to be rotten. Reform became a war-cry. And so we had the Municipal Corporations Act 1835.

The Bill for that Act set out to abolish the old system, Freemen and all. But, as the Bill made its way through Parliament, it was seen that the old system incorporated individual rights and benefits. It was thought that to destroy such advantages would be, as a great

judge put it, "to do an act of great injustice". Thus survived Freemen and Freemen's rights. Their survival has been affirmed by successive Acts of Parliament over the intervening one hundred and fifty years.

From this look back at the history, we get two important truths. First we see that Parliament has deliberately and repeatedly concluded that Freemen's rights should not be confiscated. Secondly, those rights have the character of private property. They are not abstract political rights which Parliament, having given, may freely take back. The Strays, and other such lands, represent a form of private property, which is, in its nature, no different from a man's house.

HOW FREEMEN'S LANDS STAND TODAY

It is a basic principle of our constitutional practice that Private Bills have a strictly limited purpose. They are only for local or personal matters. They are not to be used to change the general law. Most certainly, a Private Bill should not interfere with something that has been expressly settled by a Public General Act. The York Bill infringed both principles. And there is another relevant principle, which is at the very centre of our constitution. Private property is not to be confiscated without compensation. The York Bill flouted that principle also.

An attempt was made to ride this business out by saying that, as no Freeman of York wanted any longer to pasture beasts on the Strays, the Freemen's rights had become obsolete. That is as logical as saying that, if I do not cultivate my back garden, my legal ownership of that land has become obsolete. The point is a very bad one.

The Freemen of York have a right of pasture. But that right is an exclusive one. This means that the land can be used only by the Freemen and by nobody else. The law has long recognised that such a right amounts to effective ownership. It is, therefore, a total misconception to dwell on the terminology of pasture rights.

So the York Bill prompts us to recognise the true nature of Freemen's pastures. They arise from the law of landed interests and they represent an entitlement of private property. They are not simply matters of personal status. They have not been conferred by statute. They do not differ from the ancillary property rights which exist elsewhere in English law for the convenience of property owners. Each pasture has a unique origin, with a specific local justification. And such property rights are not to be expropriated on mere political grounds. For good measure, Parliament has, over and over again, decreed that such rights shall endure and be preserved. In law and constitutional practice, therefore, there is no case for a York Bill or any imitation of it elsewhere. That truth should be as widely understood as possible.

And yet, and yet, Parliament is all-powerful and cannot be fettered. Ideas do not stand still. Social and political attitudes change. It is open to Parliament, by proper procedure, to reverse its attitude to Freemen and their lands. We must, as sensible people, recognise this risk and face the danger.

COMMONSENSE FOR THE FUTURE

Whether or not individual Freemen see their lands as a personal advantage, there is a quality of uniqueness or, to be blunt, oddity about such lands. Most Freemen would accept that their rights will seem strange to the modern citizen. It is then a short step to admitting that such rights must be enjoyed responsibly and in a way that will not drive the community to think of abolition and confiscation.
When the lid was lifted at York, a very sad story was found. Some years ago, albeit in the immediate post-war period, the Freemen of York surrendered all charge of their lands to the York Council. That state of affairs came to an end because all parties were advised that the surrender was invalid in law. The Freemen then professed a desire to recover their birthright. Unhappily, there was, even then, no detailed plan for the land-management of the Strays nor any feasibility study on the financial side.

In such a case, we see the need for a sense of responsibility and, above all, plain commonsense.

Our fellow citizens cannot be made to approve of Freemen's lands and rights. They can only be persuaded. They may be persuaded by the evidence of Freemen's own attitudes. At bottom, this is a public relations problem.

Freemen's rights, though approved by Parliament, are a relic. They are a relic of a system which Parliament extinguished a hundred and fifty years ago. They are an anomaly. And, when people start using that word, it can be the kiss of death. Fortunately, this is a country in which anomalies survive and even thrive. The preservation of Old England is an enterprise which has a promising (indeed profitable) future. Given a timely display of commonsense, on the part of Freemen, it is plain that Freemen's lands could last another hundred and fifty years and more.

But we must put our house in order. We must be prudent, careful and methodical in our stewardship of Freemen's lands. On any view, it is a stewardship. The Freemen of today have a manifest duty, even if not to the public, then indubitably to the Freemen of tomorrow and the day after.

IMPLEMENTATION IN PRACTICE

I believe that it all boils down to: -

1. Survey
2. Management
3. Presentation

First, there must be research, and a clear understanding of what possessions Freemen have. The history and the precise legal position can be uncovered. Legal rights need careful analysis. Then, of course, the physical; extent of the land must be meticulously plotted and recorded. Everything else must be built upon a competent and reliable survey, historical as well as physical.

Secondly, the lands should be put under some system of management which is as capable as that of a private landowner or a commercial company. The local council is always there as a yardstick by which the Freemen will find themselves judged. Almost certainly, therefore, Freemen must make use of professional management advice to some degree. Such management has the vital merit of being continuous.

Finally, Freemen must get in first with a public presentation of their case. This must be positive, calm and a regular feature of the Freemen's regime. It is really too late when a Bill has been lodged in Parliament. Many guilds of Freemen all over the country realise the importance of public relations. There should be no exceptions to this enlightened attitude.

I will add further reflection. Freemen must face their responsibilities frankly. They must give their minds to the inheritance of Freemen's lands, with all its problems. It is no good being apologetic or absent-minded. Nor, in my view, can we be anonymous. We must stand up and submit to be counted. At the Bar of Parliament, it is quite fatal for Freemen to be shown to have been silent and without coherent action or policy. We may be archaic landowners; but we cannot afford to be absentee landlords.

TAKING STOCK

The York Bill has been a very nasty experience. It has revealed gaps in our defences. These gaps we ignore at our peril. But the repair of such gaps requires nothing more than should be otherwise suggested to us by good housekeeping practice. I repeat and stress that the Freemen of the present day are merely stewards for the generations of Freemen to come.

It has been said that the moment brings forth the man. We must see to it that this moment, after the York Bill, brings forth a whole breed of men (and women), who accept the challenge to Freemen's lands in the twentieth and twenty-first centuries.

Our Association, Freemen of England, must encourage and inspire that response to challenge. And we must encourage a shrewd outlook and wise management everywhere.

I end with a sombre warning. A disaster anywhere could bring down our whole system. That is the ultimate mischief of the York Bill. What is at stake today is the very survival of the Freedom everywhere.

Charles Sparrow QC
Ipswich 1987

FREEMEN'S LANDS (1989)

A Practical Study

This is, first and last, a practical Study; and it has a topical motive.

There are Freemen's lands all over England and Wales. They are under threat in some places; they are potentially at risk elsewhere.

There is, therefore, a pressing urgency for Freemen everywhere to put themselves in readiness to fend off any acquisitive Council which sees Freemen's land as easy prey.

To do that, Freemen need, as always, to learn more about the history of the Freedom and its legal character. We are not interested in history for its curiosity or charm; we are concerned with its vital, practical value, today and tomorrow.

A Legal Verdict

My concern here is to go to the heart of the subject and to examine the true nature, in law, of Freemen's lands. This examination will lead us to the conclusion that the lands called Freemen's lands belong to the Freemen in the fullest sense. They do not, in any degree, belong to the local authority, nor to the public.

As I shall show, it is very important that this principle should be understood. But I shall endeavour to make it clear in the course of this study.

The matter is one of legal analysis. And it is pretty rarefied law at that. But the consequences are of practical and political significance. Above all, they may be critical for the defence of Freemen's lands and the resistance to Private Bills seeking the confiscation of such lands.

Survival in 1835

Let us go back to the basic reason why Freemen's lands survived the destruction of the old Borough system, which was achieved by the 1835 Act.

The main object of that Act was the establishment of a new local government authority. This was a matter of public law. The aim was to substitute government by an elected council for government by non-elected Freemen.

But it was gradually realised by Parliament that, in the workings of the old system of Borough government, there were private rights. These were usually seen as rights of pasture.

Parliament recognised that a mandate for reform for local government gave no warrant for confiscation of private rights of property. That realisation is still perfectly valid today and it should be noted with care.

Ancient Farming

At this point, we must turn aside to notice an aspect of legal history which is not peculiar to Freemen. This is the so-called Enclosure Movement.

Today it would hardly seem remarking that agriculture takes place on land which is owned by farmers or their landlords. To that observation one could only say "obviously". But in the early days of English agriculture, the great mass of agricultural land was not owned by anybody.

When I speak of early days I am not talking of the Iron Age or Anglo Saxon times, I am talking of a period that included mediaeval England and lasted, in places, into the eighteenth and nineteenth centuries.

In that period, agriculture was carried on upon large common fields, sometimes called open fields.

Those who farmed simply had rights to use the land. Such rights were exercised in common with other people in the community. There were no fences and no owners. And, certainly, there was no agricultural development.

The New Age

To undertake agricultural improvement it was necessary to get effective control of the land itself. There had to be ownership. So the old common field system had to go.

The result was achieved by what was called enclosure. This was the process which took a large open field, with many users, and produced from it a number of individual "closes", each with its owner. Those individual properties could be, and indeed were usually required by law to be, physically enclosed by a hedge. Hence the expression "enclosure". In that way was created, quite late in our history, the supposedly immemorial patchwork of the "ancient" English landscape.

Every person who formerly had a right to use the common field was given a piece of freehold land, for himself. And that process of exchange extended not merely to rights to plough but also to rights of pasture. The old common fields had provided both arable and grazing.

Now, when the Boroughs of England grew up, their citizens needed pasture for their horses, cattle and sheep. As the management of Borough economy was in the hands of the Freemen, certain pasture rights were acquired or given for the use of the Freemen. Such rights existed all over the country.
The existence of such rights was an ordinary feature of the life of any Borough before the age of motor cars, commercial dairies and supermarkets. Such rights were simply an urban-related form of the common field system.

When the Enclosure Movement rolled over the countryside, these rights of pasture were also reorganised and transformed. Following out the logic of the process, the former rights to use a communal tract of land were converted into the enjoyment of enclosed parcels of land, from which other people were excluded.

That is how we get the pieces of land attached to Boroughs throughout England and variously known as, for example, Moor, Stray or Common. They represent very ancient rights but they have not always existed in their present form. It is vitally important to take account of their evolution and change in character.

It is, therefore, essential to grasp that the Enclosure process created a pattern of absolute ownership.

The Essential Point

We are now able to step back and review the history of the Freemen's lands, as we know them today.

We have seen how the Freemen of the Boroughs of England possessed valuable rights. These were exercised by individuals, for their personal advantage. The horses, cattle and sheep did not belong to the community. They were, of course, the animals of individual owners. And the rights of pasture were as much private property as the houses which Freemen inhabited.

The old common fields belonged to nobody. But the new Enclosure fields did belong to somebody. That was the essential change. And Freemen were involved in that change.

The new Strays, or whatever they were locally termed, were set aside for the exclusive enjoyment of the Freemen. That is an important point. Nobody else had any right in those lands. Whatever argument is raised about Freemen's lands, it is basic and inescapable that no other person or body can have an interest in such lands.

But what is the interest of the Freemen?

On the surface, it looks like a right of pasturage and nothing else. That, however, is an incorrect and erroneous view, which is quite contrary to legal principle.

The Freemen's entitlement to pasture is a right of exclusive pasturage. This means, in law, that nobody else can claim (a) to share the pasturage, or (b) to interfere with it. In the result, therefore, the right of pasturage, which is exclusive, amounts to effective ownership of the land. And the law clearly recognises that practical result.

For technical reasons, Freemen's lands are usually regarded as being legally vested in a local Council. But this is simply the paper title. The Council can have no effective rights in the land, for the reasons which I have already set out. To put it briefly, the Council is no more than a trustee.

Final Result

It now remains only to identify the valuable result of this legal analysis. It can be expressed in two main points.

First, the rights of Freemen belong to individuals. It is quite immaterial that such individuals share the description of Freeman. Their rights are private property.

Secondly, it is a fundamental principle of English constitutional law that there can be no compulsory acquisition of private property, without compensation. The enactment of Private Bills must respect this principle. Arbitrary confiscation would be improper.

And so we return to the acquisitive Council. The predator will argue that Freemen's lands are public open space, of ancient origin, which were formerly administered by the Freemen but which, in modern times, are appropriate for custody by a public authority.

As we can now see, this picture is totally false. The Freemen's lands were not public. They were not simply open space. They were and remain valuable real property, in private ownership. And it follows that their confiscation is not a technical exercise in local government or public law. It is nothing less than an infringement of the rights of the private citizen.

These principles must be recognised for what they are, namely, the core of the defence to any Private Bill that seeks to seize Freemen's lands.

A Council which puts its claim to Freemen's lands on the grounds that "Freemen have no horses, cows or sheep" is advancing an argument that is transparently misconceived. Any such argument requires an alternative owner for the land; with Freemen's lands, there is no such party. The Council is a trustee, and nothing more. And plainly there is nobody else who could assert an interest in Freemen's lands. So any such claim, to dispossess Freemen, is quite false.

As for the Freemen themselves, their right can be expressed as pasture. But this is simply a statement of what was the normal mode of enjoyment for living Freemen. Such Freemen could let out their right for money and still can. One has to remember that the entitlement of Freemen passes on to Freemen yet unborn. The rights of such Freemen have to be protected. So the ownership of Freemen's lands does not permit the normal owner's power of sale.

But there is nothing in that limitation which, logically, legally or morally, justifies any claim to ownership by a stranger to the Freedom.

These are the reasons why nobody from outside the Freedom can stand before a Committee of Parliament claiming to be, or to represent, a party entitled to Freemen's land in law. Parliament may, of course, make a new law. But a new law, authorising the seizure of Freemen's lands, would be stark confiscation of the property of the subject. Successive Public Acts, from 1835 to 1972, have rejected the option of confiscation.

An Aid To Memory

Freemen are not lawyers. They need guidance in the law. The following simple notes state the correct response to any attack, by Private Bill, upon the Freemen's entitlement to their lands:-

(a) The Council itself is a bare trustee and can have no claim to such lands.

(b) There is no other conceivable claimant.

(c) Freemen's land is not public property.

(d) Apart from sale, Freemen have the same full enjoyment as any other landowner.

(e) Seizure of Freemen's lands would be confiscation of private property.

(f) The public general law of this country has repeatedly affirmed Freemen’s ownership of their lands

Charles Sparrow QC
Newcastle-under-Lyme 1989

MANAGING THE FREEDOM AND IT'S PUBLIC IMAGE (1990)

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MYTHS AND FANTASIES

As has been proclaimed so often at our Annual Banquets, the Freemen of England and Wales have, down the centuries, stood for liberty and democracy. And their noble example shines out like a beacon upon the world. It symbolises, for all who behold it, the struggle of the ordinary man to be free.

Splendid stuff, especially after an excellent dinner! But, ladies and gentlemen, it is moonshine, not to say poppycock. Here are myths and fantasies.

I shall be showing you why this picture is completely false. But I am not simply bent on destroying illusions. My real concern is to establish the truth. I suggest that, for us, myths and fantasies are positively dangerous. In the first place, they delude us; and that leaves us complacent and the Freedom at risk. Secondly, where there are, at present, these myths and fantasies, there should be instead a correct knowledge of history. Then, in that knowledge, we should fashion for the community in which we live, an image of the Freedom, which will be both sound and serviceable.

THE WAY IT ALL BEGAN

The civilisation of our country is not an ancient one. The roots do not go back beyond the Christian era, as in China, the Middle East and Central America. All is to be found in the comparatively recent past, as history goes. So we can be clear in our view of the beginnings of English and Welsh towns.

There were English and Welsh towns when the Romans came. They were part of a tribal system. Canterbury, for instance, takes its name from the local Celtic tribe, the Cantii. But all these people had themselves, in a sense, just unpacked their bags. They had arrived from the continent within a century before.

At the coming of the Romans we are already within the Christian era. The Romans arrive, they conquer the country, they stay for some 400 years and then their rule ends. Now it is the turn of German settlers.

Here is the beginning of our society. But it was a raw beginning. Settlement was sporadic. In some places, people lived, at first, in small groups of primitive huts. Towns evolved; but this process took some hundreds of years. In this fashion, our urban settlement began to approach the end of the first thousand years. Yet the Borough, as we know it, was little more than a shadow of coming events.

The point I am making is that the origins of Borough life and the Freedom are not very far distant; and they may be easily understood in terms of life today.

The people who developed the towns of this country were, in the main, traders. They banded themselves together, as traders always do. And they travelled, as traders do. These two features, organisation and travel, explain everything we have to know about the Freedom and its past.

The traders formed guilds, which were essentially what we would call trade unions. These became powerful. Living and working together, these folk governed the towns in which they had established themselves. In short, local government was controlled not by a legal body imposed from outside, on a national pattern, but by a local system, springing out of the actual power of a settled class of residents. This then was what we may call rule by Burgesses.

In a settled nation, protected by geography from foreign conquest, it was natural that control of society should become hereditary. And so we get admission by patrimony. This system was supplemented by apprenticeship. It was elaborated further by the gift and sale of the Freedom.

Accordingly, we are looking at a system of hereditary privilege. We really must face that fact. Naturally and understandably, but indubitably, the Freedom was born of self-interest. There is no difference of principle here between Borough rule by the Freemen and the authority and trappings of the landed aristocracy.

This is how it all began. This is how Freemen came into being and ruled the Boroughs of England and Wales. And we must not forget that, at the end, the towns which the Freemen ruled came to be called the "Rotten Boroughs". So much for freedom and democracy!

INVENTION OF THE FREEDOM

Today it appears obvious that Freemen and the Freedom are in substance the same thing. How, we feel, can it be otherwise? The truth, however, is that they are different things, with separate stories.

Oddly, the Freemen came first. There were, in reality, Freemen before there was the Freedom. Although I have described this as odd, which it is, it follows logically from what I have been saying about the earliest days.

The people we now call the Freemen are simply a class of persons, formerly exercising power in the Boroughs. That being so, there is no necessary reason why these persons should be called Freemen. We are not here concerned with a general movement in society away from slavery or bondage. We are simply looking at a specific class of citizens, with a distinctive character. That character was fixed by residence and status in the Boroughs.

The natural description for such persons was, of course, Burgesses. The term denotes citizens of a Borough. And this is how, for a long time and in many connections, one described these people now known as the Freemen.

At this point, the question arises; what then is thing called the Freedom, which now looks to be so closely connected with Freemen but which, as I say had no relation to Burgesses?

The Freedom was, in fact, an invention to meet two powerful and pressing needs.

The first need was that of the Freemen, as traders and merchants, to travel the realm without being taxed and levied at every port, town or other local boundary. The taxing of travellers is an immemorial perquisite of local power anywhere. In origin it is blackmail. It then acquires respectability and evolves into a payment in aid of law and order. It bears most hardly upon commercial men who must necessarily travel and transport their goods.

For them, immunity from travellers' taxes is the most precious freedom of all.

The second need was that of the King, who required money to organise his kingdom and pay his officials and, of course, to wage costly wars.

These needs were met by the King selling something. One thing the King sold was a portion of his royal power, that which is termed his prerogative. The King transferred to the Burgesses power to rule in the towns. This is what generally we now call local authority. In this specific context, it involved the creation of Borough status. Such status was granted, conferred and ordained by a Royal Charter.

Now it so happens that the notably impoverished but warlike Richard I came to the throne in the year 1189, eight hundred years ago. This present year and last year have been marked by celebrations in many places of the purchase from Richard I, for a large fee, of a Borough Charter.

Such a Charter could confer freedom from taxes and dues, throughout the realm; and the local authority delegated by the King, brought power to monopolise trade in the Borough.

Thus the Freedom is, in origin, commercial property: a business asset. It was procured for gainful trade and was bought with money. Noble sentiments have no place in the story. What is more, it is obvious that today, when we contemplate this aspect of the Freedom, we are looking at a dusty relic of the past, long since obsolete and useless for its stated purpose of tax exemption.

LANDED RIGHTS AND PROPERTY

It remains to say something about the other rights and property that, in some fortunate places, still belong to the Freemen.

In 1835, the Municipal Corporations Act stripped the Freemen of their power. Before that time, Freemen collectively had property, of various kinds. The probable intention of the 1835 Act was to transfer to the new Borough Council all property that went with the machinery of local government. The language of that Act is tangled and its practical effect varied from place to place.

It is not profitable today to compare cases, where Borough buildings and regalia went this way or that. The only form of property which now deserves attention is land and rights over land.

In particular, we find that Freemen have rights of pasture. For reasons which I have explained in the past, such rights, though expressed in terms of pasture, amount to exclusive possession. In short, Freemen have effective ownership of the relevant lands.

These landed rights are valuable. They may be coveted by local Councils. They may have to be defended, as we all know to our cost. Where do Freemen stand in relation to this problem?

The central point to be grasped is that Freemen's lands are no different from the house or garden of Mr Smith or Mr Robinson. They are private property. They belong to individuals. They are not and were not any form of public property or public trust.

Such rights of Freemen commonly arose from that form of legislation called Enclosure Acts. The essence of an Enclosure Act was a bargain. Before such an Act, local people had landed rights that were valuable but which, for technical reasons, did not take the form of separate pieces of land. Everything was in one pot. But the effect of the Act was to achieve what we call compulsory purchase. The Act overrode the technicalities. The result was an exchange. Everybody got something that they could call their own. I repeat: there was a bargain.

The effect of that bargain survives in law and is still to be seen today in the shape of Freemen's lands.

Freemen's lands do not always derive from enclosure. They may have been a gift. But in either case, we are dealing with property which is personal. In 1835, it did not pass to the Council, as local government property. It was recognised, by Parliament and by the Judges as private land, belonging to the Freemen as individuals. Statute after statute has since affirmed that recognition.

So here, if the Freemen can grasp that fact, they stand upon a position which can be explained and defended in terms that the modern citizen will understand. We are not dealing here with the mere flotsam of history, any more than in the case of a Mr Smith or a Mr Robinson who has, in the title to his house, some ancient parchment deeds.

MANAGING THE FREEDOM TODAY

The sharp, uncomfortable truth is that today the Freedom cannot be left to manage itself.

That has been conclusively proved by the York Bill. But let us remember, it was earlier proved by the Bill for the Local Government Act 1972, which led to the foundation of this Association. In its initial text, that Bill proposed to disenfranchise Freemen.

If you want to see exactly what happens when the Freedom is left to manage itself look, for instance, at Boston, Malden or Bury St. Edmunds. These were legendary strongholds of mediaeval prosperity. Now there are no Freemen, and the Freedom is quite forgotten. Nothing remains. And there is a host of other such towns.

Men and women must come forward to give leadership, striving together. The Freemen must be helped to value the Freedom at a price which includes continuous support, of the kind we see in the working of this Association.

Our leaders must practice systematic management, such as they would regard as essential in the companies which employ them or in which they invest their money. We must ensure, by these means, that we prove too long-sighted and cunning for those local politicians who prowl around the Freedom looking for easy loot.

Above all, we must try to put ourselves in the shoes of the public. If a crisis comes, they must be on our side. This will happen only if we take trouble to create an image.

It is no good leaving the man in the street to work out what the Freedom is all about, as the guests at our Banquets try to do. We must go out to the man in the street.

As I have shown you, easy interpretations of the Freedom can explode in our face. Let us, therefore, get in first with the solid truth that this country's greatness was built upon commerce. That commerce was born in, and grew outwards from the Boroughs. Those Boroughs traded vastly with Europe for centuries before the Common Market was dreamt of. The Freemen engineered that trade. The Freedom helped to advance that trade. The Freedom was, in truth, no more than an early practice of the principle now sanctified in the EEC: that there should be no obstacle to the free movement of goods. Europe in 1992 will be doing no more than reviving our Freedom, as established by the Borough Charters of England and Wales.

Is this not an exciting realisation? Is it not worth sharing with the public? Are Freemen not entitled to credit for their past service to the country? Why do we not encourage the man in the street to search his lineage for a Freeman ancestor, through whom he may claim admission? Why do we not become positive? If we do, the reward for the Freedom will be great indeed.

PRACTICAL STEPS FOR ALL

I believe that no body of Freemen should today be without a Public Relations Committee, of able and dedicated men and women. I reiterate those last two words.

I have used the expression Public Relations in a broad meaning. The Committee would be charged firstly with the ordinary duty of spreading information and building the helpful image. But secondly, and this is literally vital, the Committee must plan for a possible renewed attempt at interference with the Freedom.

More than once, when called in by a guild of Freemen under threat, I have formed a strong impression that there has been a failure by Freemen to think clearly and to think ahead. The world does not owe us a living. We must try to perceive the world's present view of Freemen and the Freedom. We simply cannot be complacent. Above all, we cannot be provocative. I have seen cases where the Freemen seem to have dared the Council to interfere. We simply cannot afford to take that line.

In this department, we must go in for strategic thinking. We must study all the circumstances and the local interests and watch the balance of power. We must make friends and seek allies.

Returning to routine public relations, I ask the question: how many bodies of Freemen have published a booklet or even a leaflet, to explain the Freedom to the man in the street?

People love history. They are proud of local history. They want to be part of it. They will be intrigued to know that the Local Government Act preserves Freemen's rights and requires the Council to maintain a Freemen's Roll for their Borough. They will want to know more. They should be told of the right to apply to be entered on that Roll. They should be told where the older records are kept and may be consulted by them.

All these steps will bring the Freemen closer to the citizen. The Freemen will cease to be shadowy figures of mystery. They will be better understood; and with understanding should come respect and regard. That way lies safety. The option is within our own grasp.

I shall conclude with a piece of plain good news. Parliament has been looking critically at Private Bill procedure. It is only by means of such a Bill that Freemen can be penalised or dispossessed. Parliament has now resolved to tighten the conditions for a Private Bill. This will, I judge, make it more difficult to push through a Local Bill that conflicts with the general legislative policy, favouring Freemen, which we find in successive Public Acts. Moreover, the Parliamentary authorities have explicitly indicated that a promoter will be prejudiced if there has been no prior consultation. This should benefit Freemen greatly. Failure to consult is, as we have all found, the indelible badge of a greedy and oppressive Council.

Charles Sparrow QC
Chester 1990

WOMEN AND THEIR PART IN THE FREEDOM (1991)

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A MALE CITADEL

I want to begin with a very plain question. How does the Freedom look, to the eye of a woman?

It seems to me that the Freedom, when viewed from the outside, must appear to any woman as cold, complacent and obstinately hostile to women. There is no chink of welcoming light. There is not a morsel of heart. It is all cheerless.

Certainly, nobody could blame any woman for thinking that way.

My own purpose, today, is to do two things. First, I want to explain the present situation. In that way, you will get an accurate and reliable picture. Secondly, I want to bring light to that picture. It is not all gloom.

However, there can be no doubt that, at the moment, we seem to see before us a male citadel. That citadel appears to be impregnable and with gates firmly shut against women.

But I shall be ending with another plain question. Is there, in fact, a breach in the rampart of that citadel?

HISTORICAL BACKGROUND

The clue to so many of life's puzzles is to be found in history. This is always true of the Freedom. So we must, yet again, look over our shoulder, at the past.

Today the Freedom is essentially a status and an honour. It is regulated and protected by law; and it sometimes carries with it privileges and even, in places, a little profit. But it has no legal role or function. Once upon a time, matters were very different.

In centuries past, the Freemen were pioneers. They built the boroughs. And they walled and paved and governed the boroughs. They also established the trade that fed and prospered the boroughs. That trade paid for the moothalls and maces and chains and cups and banquets. And obviously all that was, in those days, man's work.

We can, therefore, see how there might come about a certain bias in the Freedom, in favour of the male sex. That is how life was. It was not truly a bias against women. It was an understandable reflection of the realities of a primitive society. In general, man did the leading and the fighting and the owning. Thus it was natural for the Freedom to embody an element that was attuned to male domination. Even so, it was but one element among others. Surprisingly, there was, overall, a tolerable balance, as we shall see.

However, that world melted away in 1835, with the Municipal Corporation Act. Freemen were stripped of their power and influence. The boroughs were turned over to elected councils. The status of Freeman was henceforth little more than a mere notion in the mind. Freemen no longer had to plan and build and rule. The principles governing the Freedom were hacked about; and the remnant no longer had the functional logic of its creation.

So we find ourselves with the Freedom that we know today, which appears arbitrarily to discriminate against women. That discrimination makes no sense in the modern world. Indeed, it has become generally offensive. As a result, we now have to face and recognise a strong desire, on the part of both men and women, to see the female sex allowed through the gates of the Freedom.

I emphasise that the pressures come at least as much from the Freemen themselves as from women. There can be no doubt about that. I have been approached by many local Masters and Guilds. All such effort is a credit to Freemen of England and Wales. It is, I suggest, the mark of a healthy, forward-looking attitude of mind in that Association.

THE GATES TO THE FREEDOM

We all know about admission by birth, namely, as the son of a Freeman. Most of us are familiar with admission by apprenticeship to a Freeman. But before 1835, there were two other ways into the Freedom, namely gift and purchase.

These last two modes of admission were abolished by statute in 1835. But I suggest that, in their time, they had great value, which has never been properly appreciated.

These methods liberalised the system. They were unfettered in their operation. Whatever the defects of male succession and apprenticeship, gift and purchase could cure everything. Here we have a surprising blend of rigidity, on the one hand, and total mobility, on the other.

There was no reason why a woman should not purchase the Freedom. Nor was there any reason why she should not be given the Freedom. And I suggest that women were, in truth, allowed the Freedom by gift.

All over the country, it was commonplace for women, whose husbands had died, to be continued in the privileges of the Freedom and to be allowed to trade in the borough. Customarily, the right to carry on trade in a borough was restricted to the Freemen. Continuance of that right in favour of widows was, in substance, admission to the Freedom by gift. What is more, in some places at least, widows were allowed to take apprentices and to qualify them for admission to the Freedom.

The point I am seeking to make is that the Freedom was not inherently hostile to women. There was no stigma in being a woman. That is what one would expect. This is, after all, the land of Boadicea and Elizabeth I. Women are essential to the working of society. We have no history of the subjugation of women. We remember that, when Julius Caesar came to Britain, he found a system of polyandry. Such a system does not depict the unimportance of women. A Celtic society was succeeded by an Anglo-Saxon one; but then we find women building abbeys and becoming saints.

In a sentence, the traditional Freedom cannot fairly be blamed for the apparent prejudice against women which we see today.

Historically, the prime cause of our problem is the over-heavy hand of Parliament in 1835. The preservation of the bare status of Freeman was a second thought by Parliament. And by 1835, Parliament itself again came to see that it had been too drastic. In the latter year, Parliament restored, albeit in a limited form, the power to confer the Freedom by gift. The result is what is now termed honorary freedom. But this is available only in individual cases, for distinction or eminent service.

APPRENTICESHIP

I now carry my enquiry a little further, into the subject of admission as the apprentice of a Freeman.

The influence of women was strong in the commercial life of the boroughs.

We have already seen how women carried on the businesses of deceased husbands. That implied a skill and competence in trade, allowed to women and manifested by them. It is quite plain, from a variety of evidence, that women were successful traders. Indeed, some trades were, of course, natural monopolies for women. Inevitably, we could expect women to be apprentices and to claim the Freedom by right of apprenticeship. And so they did.

Here again, there is proof that women were not an inferior breed in the boroughs of England; and truly the Freedom did not so view them.

The importance of this conclusion is that the admission of women by birth would not be an infringement of basic principle. It would not be against the grain. We need not be afraid of it.

ADMISSION BY BIRTH

Now we come to the dark corner of the Freedom. Admission by birth meant, and still means, qualification as the son (or grandson) of a Freeman. This is today the effective bar against women.

What we have to understand here is that we are dealing with the legal principle of descent. As we have seen, there were several modes of admission. Each had its own character. The peculiar character of descent is strictness.

Whether we are looking at descent of the Freedom of descent of the Peerage, the rules are precise and quite inflexible.

In England and Wales, descent moves in the male line. What is manifestly true of the Peerage is also true of the Freedom. They order these things differently in Scotland, where titles descend freely in the female line. In England and Wales, however, daughters of noblemen are disenfranchised by the system of descent.

Here at last, we have the true origin of the apparent hostility to women of the Freedom. It is a shadow of something else, very ancient and most strict; and something which is of the stuff of English society at large.

CUSTOM

At this point, the thinking woman asks: Has not legislation, in our time, worked upon the law to produce equality between the sexes? Indeed it has; but such changes have not dissolved the principles of descent, which remain as they were. Moreover, the Freedom has its own barrier against change.

This is the legal doctrine of custom. Alongside the general body of legal principle, which we call common law, there is local law, which we call custom. It has all the force of common law but only within a particular locality. And the essential quality of custom is that it is perpetual, timeless and unchanging. Anything which lacks this quality cannot be valid custom. But the Freedom is, in its origin, custom.

So, in principle, we cannot improve or improvise upon the Freedom. We must find and take it as it is and always was.

Thus we are, in strict law, powerless to change custom, so as to help the thinking woman over admission by birth. The 1835 Act preserved the Freedom but it did so in a state of absolute refrigeration. The Freedom is frozen, in the shape which it had in 1835.

I ask you to mark most carefully what I have said. We cannot add to what existed in 1835. But we have available to us that which existed in 1835, whatever it was. The vital issue is: what exactly was it in 1835.

THE BREACH IN THE RAMPART

At this point, I ask my second question. Is there a breach in the rampart?

Despite all that I have said so far, the outlook for women is not without hope of a remedy, for some at least. There is one possible way into the Freedom, for women, which I must now describe.

Where custom reigns in its historic simplicity, then, and in those places, we have no choice but to accept its verdict. It cannot be altered. All must remain as it always was. That is the law of England and Wales. Changed social attitudes, commonsense or even fair play have no part in things.

But, of course, the legal institution which we call the Freedom may be modified by the law. That follows logically. It may, above all, be modified by Act of Parliament. Statute may achieve anything. An Act to make a general reform of the Freedom and to enfranchise women is possible and has indeed been suggested to Government. But there has been no response from our political masters; and I shall take no further time upon that idea.

In addition to statute, English law has another method of creating law; and that is Royal Charter. There can be no direct comparison. Royal Charter is a very limited method for making law. But the Crown has an undoubted power, by Royal Charter, to establish legal corporations and, in that process, to regulate minutely the life of such a corporation. It can also delegate its power.

It is from that lawmaking power that we get borough charters. At this present time, many boroughs of England and Wales are celebrating the passing of eight hundred years since an impoverished King Richard I sold them a charter of incorporation.

Now, the effect of a borough charter was to formalise the legal personality of a town, which had previously rested upon custom. Here we see a modification of custom.

I now come to the point that is of critical importance. Many, perhaps a majority, of borough charters have, embedded in their various provisions a power of revision. This power allowed the borough council to enact measures necessary for the good government of the borough and to remedy grievances. I am using general language. The exact effect of any such power will be determined by the language of the particular charter. Naturally, we do not find, in all places and at all times, a single standard form. But the general effect is to allow the borough council to rectify anomalies and inconveniences in the system of borough government. Remarkably for such ancient ordinances but indubitably, there is an obvious intention to create means to modernise.

Now, Freemen were part and parcel of the borough. The full and formal title of a borough was "The Mayor, Aldermen and Burgesses" of that borough. Burgess was another name used for Freemen. Thus Freemen were an element in the borough's corporate structure. That corporate structure lay within the authority of the crown, acting by Royal Charter. If such charter conferred upon the corporation power to vary the structure so created, it would seem clear that it must be within such power to vary the conditions for admission to the Freedom.

It has long been recognised that the Crown may delegate the fixing of qualifications for persons appointed under a charter.

Any limitations created by statute must, of course, be respected. So it would not be possible to vary conditions by reviving admission by gift or purchase. That would be contrary to the Municipal Corporations Act 1835. Subject to any such limitation, the council would have, in my opinion, the right, under any suitably-worded charter power, to authorise the admission by birth of women as the daughters of Freemen.

I so advised the Ipswich Council; and women were admitted. I have lately advised, to the same effect, the Chester and Sudbury Councils. There must be many, probably a majority of our borough charters that contain suitable wording.

So my story comes to a happy ending. It is not an illogical or contrived ending. I would emphasise, yet again, that the Freedom was not anti-feminist. When the system was complete, and before certain of its limbs were amputated, women were admitted. The system is still complete in the City of London and there women may be admitted by gift or purchase. Elsewhere, acting in haste and in a fever of hostility to the so-called "rotten boroughs", Parliament abolished admission by gift or purchase. The result was imbalance and sex disqualification. That is what we are having to put straight. It must be right to do that.

I salute those Councils that have shown enlightenment and wisdom in coming to the aid of their women citizens who loyally desire to be within the Freedom.

Charles Sparrow QC
York 1991

CUSTOM, CHARTERS AND ACTS OF PARLIAMENT (1992)

FOREWORD

The cord that binds us all to the Freedom has two strands. One is History and the other is the Law. History interests everyone. The Law does not. It is not easy for the layman or laywoman, without legal training, to find understanding or even appetite in the law. It may seem dull. It is, without doubt, somewhat difficult.

But, if the Freedom is to prosper in this century and the twenty-first, we who are involved in the Freedom must fully understand its character. If we do not, we cannot defend the Freedom against apathy within and encroachment from without.

So, in order to justify the Freedom to others, we must have it plain and clear in our own minds. We all have faith; we must also have knowledge.

In our study of the Law, as it underlies the Freedom there is a consolation. We shall be acquiring knowledge that is not possessed by the average professional lawyer. There is hardly a single member of the Bar who has even heard of the Freedom, let alone given advice upon it.

So, with a little courage and some determination, the ordinary Freeman has it in their power to steal a march on the lawyer. That, surely, is a lure that no freeborn Englishman, or Welshman, can resist.

CUSTOM

The legal principle known as Custom is of central importance to the Freedom. Yet, elsewhere, Custom is one of the rarest features of the law of England.

It does not exist at all in the criminal law or in most of the departments of our civil law. It has its place only in land law and a few related matters, such as the Freedom. A barrister or solicitor is likely to go through his whole career without once meeting Custom. So, in a sense, a Freeman may have to be his own lawyer.

In everyday language, the word custom means, of course, a habit or practice. To that the law adds an important qualification: that the custom must be ancient, indeed, immemorial.

In truth, Custom is a sensible device in the law, which recognises the validity and importance of the roots of our culture. Custom reflects the platform upon which the earliest community life in this country was founded. In principle, the law still requires that any practice, which is claimed as Custom, shall have run, so far as one can tell, from the beginnings of legal time.

Old ways die hard and, to some extent, the developing common law had no choice but to reconcile itself to immemorial Custom. And at any rate, that is what the law did and still does.

Among the instances of custom are the rules for the admission of applicants to the Freedom. Acts of Parliament, which we shall consider, have modified Custom, where it regulates the Freedom. But the starting-point is always Custom. So, for the basic regulations of the Freedom we must look to immemorial Custom.

Where Custom exists, it has the full force of law. It binds the citizen as surely as the common law. However, there is this vital difference: the common law, as its name implies, operates everywhere. But Custom is always local. It operates in each place separately.

Technically, therefore, you cannot deduce the Custom for Oxford from what is done in Colchester, and vice versa. Naturally, in this limited field, a number of places will be found to have the same or similar features in their Custom. But this is coincidence. It is not legal connection. No assumptions can ever be made. York admits the daughters of Freemen; but we cannot say whether this happens elsewhere. Grimsby admits men who marry Freemen's daughters; but this feature is a rarity. Admission as the son of a Freeman would at first appear to be universal; but in fact Coventry does not allow it and relies exclusively upon apprenticeship.

To sum up, the history of the Freedom began with Custom. Any enquiry as to the Freedom of a particular place must still, today start from Custom.
Since Custom was not formally enacted, it will never be found in an exact text. There is no authorised version. One must consult the reporting of Custom in borough records, Freemen's Rolls and local histories.

It also follows that one must use one's commonsense. The Custom may be widely recorded as requiring that an apprentice serve a term of seven years, for admission to the Freedom. But that record must be set against the fact that, in former times, the universal term of

apprenticeship was seven years and this was even a feature of the general law. So what the Custom meant, in substance, was that an apprentice should have served the full term, then normally required. It would be absurd for the Custom now to be interpreted as demanding seven years apprenticeship, at a time when no such term is ever served or even available.

In some places, Custom requires that an applicant for admission shall have been born in the borough. How is the Custom to be interpreted today, in a place where there is no longer any maternity hospital within the borough boundary? It would be just as unreasonable to disqualify a child of resident parents who is delivered in a hospital outside the boundary limits as it would have been, in the old days, to disqualify a child whose mother had given birth whilst working in the fields outside the town walls or on a visit to her mother in another town.

A similar approach was necessary when Parliament reduced the age of majority to eighteen years. The Freedom had previously been recorded as requiring that an applicant be of the age of twenty-one. Likewise, the meaning of "son" of a Freeman had to change when legal adoption was introduced by Parliament.

Curiously, perhaps, it is a strict condition of the law not only that custom shall be immemorial and local but also that it be reasonable.

CHARTERS

Here again, we come to a subject that is not common, in the normal experience of a professional lawyer. Here again, therefore, the Freeman need not be hesitant in collecting his own store of knowledge.

Today, the citizen probably assumes that all lawmaking is done by Parliament. In fact, the Crown has always had independent power to engage in lawmaking and that power still survives. However, it has been vastly reduced from what it was before the Civil War, which was fought essentially to curtail the royal prerogative, as it is called.

A principal element in the royal prerogative was and is the power to create legal corporations.

The ordinary club or society is not, in law, a legal person. It is just a collection of persons, each with his or her place in the law. A trading company may make itself a legal person by taking the procedure offered by Act of Parliament. Other bodies, such as learned societies, may become incorporated as legal persons by means of a Royal Charter.

Down the long course of legal history, the commonest type of incorporation by Royal Charter was that of the borough. This was how local inhabitants secured legal status and authority for their town. To obtain that privilege, wealthy merchants would pay an impoverished King heavily.

Here, therefore, in Charters, is the second source of the legal regulations governing the Freedom. This must be added to Custom.

Normally, the Freedom was in existence and well-settled when a borough charter came to be granted. So a Charter may make some addition or modification to the Freedom.

The most striking provision we can find is a release of the Freemen of the particular borough from customs duties and all other imposts levied upon travellers. This was an enhancement of the Freedom, which was of incalculable value to merchants and traders. It was a principal motivation in the petition to the Crown for a Charter.

Other provisions in a charter could regulate the Freedom in a number of ways. One clause which is commonly found is a power for the borough to make amendments to the Custom where that it is found to be deficient or inconvenient.

Now, in principle, it is considered these days that Custom cannot be supplemented by invention and Custom cannot be rescinded save by statute, i.e. Act of Parliament. However, these charter clauses exist and must be taken to have had validity. In my opinion, they can be justified as incidental to the creation of a municipal corporation, which embodied Freemen. Of the Crown's ability to create a corporation and provide for its regulation, there can be no doubt whatever.

So we have now reviewed the second mechanism which has been used in the building up of the Freedom. Boroughs have been abolished by the Local Government Act 1972 and charter powers have been largely swept away. At the same time, however, Parliament explicitly preserved the Freedom. The effect of Custom has thus been perpetuated within the character of the Freedom; and the effect of Charters must surely have been preserved likewise.

ACTS OF PARLIAMENT

Our third subject is Acts of Parliament. This is the ultimate and paramount source of law.

Parliament may do anything by an Act. There are no limitations upon Parliamentary authority. And there is nothing in the law which is immune to that authority. So Custom and Charters may be freely rescinded or amended by Act of Parliament.

We have to notice, in our subject, that there are two sorts of Act of Parliament. There are Public and Private Acts. A Public, or General, Act affects everybody; it is the law of the land, i.e. the whole country. It is produced by the normal workings of Parliament as an instrument of government. A Private, or Local, Act affects only a certain locality. Similar legislation may be passed for private or personal interests. A Private Act is produced by a peculiar Parliamentary procedure which may involve hearings that resemble court sittings and at which the interested parties may appear by counsel. A Private Bill, which leads to a Private Act, is not to be confused with a Private member's Bill, which leads to a Public act.

Both Public and Private Acts of Parliament play their part in the regulation of the Freedom.

It was a Public General Act, the Municipal Corporations Act 1835, which stripped Freemen of their local government functions and which prohibited admission to the Freedom by gift or purchase. Successive Local Government Acts, ending with that of 1972, have made certain changes to the effect of the 1835 Act but have, in the main, affirmed the continuance of the Freedom.

Public Acts, having a general effect, do not regulate or affect, in any individual way, the Freedom of a particular place.

On the other hand, a Private Act or Acts may have the greatest importance for the Freedom of a particular place.

A Private Act will be drafted with great exactitude for the circumstances of its place. It may resemble, to some extent, another Act dealing with another place or it may be wholly unique. This is a matter of pure chance. So there is very little that one can say about Private Acts in general.

Private Local Acts may record or even alter the conditions for admission to the Freedom. They may well deal with Freemen's property rights. They may establish a trust or other system of control for such rights.

Private Bills, that lead to Private Acts, represent something resembling litigation, in which there is an adjudication between conflicting interests. In litigation, there are winners and losers. The same may be said of Private Bills. Thus Private Acts may embody provisions which are irksome to Freemen. I have particularly in mind certain Acts which have diverted Freemen's property to a charitable trust, benefitting members of the general public. Once this happens, Freemen become subject to the authority of the Charity Commissioners. The result, inevitably, is erosion of Freemen's property rights.

PRACTICAL APPLICATION

The object of this study has been to give help of a practical kind, not to delve into the crevices of legal learning.

Any Freeman, or anybody else concerned with managing the Freedom, must, sooner or later, become involved with such matters as we have examined. He or she will be confronted, inevitably, with Custom, Charters and Acts of Parliament. What is more, he or she must make sense of that which confronts them.

Claims to be admitted to the Freedom will depend upon these matters. These claims must be both prepared and examined with adequate knowledge. All other affairs of the Freedom deserve the like knowledge.

The key points in our subject are historical sequence and legal authority. As to sequence: Custom came first. It is the page on which all else is written. As to authority: Acts of Parliament override everything. But we should always remember that an Act of Parliament has commanded that the perpetuation of the Freedom shall have effect regardless of anything else.

Charles Sparrow QC
Great Grimsby 1992

THE END OF A HOLIDAY (1993)

FOREWORD

The subject of this talk chose itself. It was forced upon us by disagreeable circumstances.

In March of this year, the High Court gave judgement in a case about the Freemen of Huntingdon. That case settles, or purports to settle, a matter of great importance to the Freedom. It is a matter which has been in debate, in the law, for more than a century. And it concerns Freemen's property.

But although the subject has been forced upon us by fate, the title of this talk is my own. I have applied the label: "The End of a Holiday", because I believe that it expresses the inner meaning of this event.

What I shall be seeking now to do is to place that decision of the Court before you, in its context. As always, I shall be looking for the practical message. But, in that quest, we must look back over the history. Only thus can we see how the Court's judgment has come about and exactly what it means.

THE EMERGENCE OF FREEMEN

The English in England are, of course, no more than immigrants. They came from Europe and they landed in England by boats, every one of them. We can see places, revealed by archaeology, where the incomers gathered in family groups, scratched a hole in the ground and put a rough shelter of branches over it. Their way of life was crude, primitive and tribal. The great mass of English place-names originate with the name of some family or tribal leader, whose people huddled together in a pioneer settlement.

These beginnings happened during the fifth, sixth and seventh centuries. So we are looking at a period which was more than a thousand years before the urban life that we know today, with its town centres, shopping malls and municipal services. What happened in between?

There were towns at the time of the English invasion. The Romans, coming some 400 years before, found tribal centres established by the then British inhabitants of this country. The British, we must recall, existed before the English. Canterbury is an example of a settlement functioning before the Roman invasion and actually named after the British tribe inhabiting those parts.

But the towns of Roman Britain must have been in a poor way during the couple of hundred years of the English migration. Roman government had been withdrawn; and a tidal wave of invaders was swamping the previous inhabitants. The incomers were racially and culturally different. Neither element could begin to emulate the municipal skills of the Roman administration.

The point I wish to make is that here we have a new beginning, for the English, in a new land. From this stage, began the history of the English borough.

The borough was essentially a commercial centre, in contrast to the agricultural landscape with which it was surrounded. There was between them an inevitable difference of character and of purpose. That difference was intensified, after the Norman Conquest, when the feudal system parcelled out the countryside, with the dedicated object of conscripting and supporting an army. And so we get Town and Country, inhabited by, respectively, the Freemen and the Yeomen.

The borough was thus on its own. It had to make its own rules and manage its own house. It stood apart.

In this way, it came to develop a select class or caste of inhabitants. These were the full members. They came to be called Freemen. They had to bear the burdens and they naturally claimed the benefits of borough life. The system had a natural logic. The daily reality of borough life was that the Freemen were liable for scot and lot. Each Freeman had to pay his scot, i.e. local taxes, and bear his lot i.e. local offices and duties. These burdens having been undertaken, the Freemen asserted a monopoly right to trade in the borough.

It was a predictable feature of this system that admission to the Freedom was carefully regulated. Descent, in the male line was the first and most obvious way to pass the privileges of the Freedom from one generation to another. Apprenticeship was, functionally, the next obvious mechanism. Gift and purchase had their uses, in special cases. Parliament, in its wisdom, abolished gift in 1835; and it then found itself compelled to revive that feature fifty years later, thus demonstrating the ancient prescience of the Freedom.

Under this system, freedom to trade in the borough was kept in the hands of the Freemen and generation succeeded generation, down the centuries.

These elements produced a pattern of living in which the Freemen were all-in-all. Freemen alone could make a living in the borough. Freemen alone could take part in local government. Freemen alone could join in sending a borough member into Parliament. Freemen alone looked after the town walls, the gates in those walls and the roads. And of course they also provided such care for their poor and sick as was customary in those times. They accumulated municipal property, in the shape of land, buildings and other possessions, including plate and civic jewellery. The boroughs grew proud and prosperous.

The English borough was a whole world of its own. Within the bounds of the borough, there was no other element of significance than the Freemen. It was a closed world.

PASTURAGE

In that closed world, domestic life was, by our standards, primitive.

Light was made, in the home; it did not come through an electric cable. Water was fetched; it did not emerge from a tap. Milk was taken from a cow, somewhere close at hand; it did not appear in a bottle, from far away. Meat was raised in the neighbourhood, sometimes by the family itself; it did not come in plastic packets.

I concentrate on the last two aspects. Freemen in the boroughs had their own cattle, sheep, goats and poultry. They had to have pasturage. This was an absolute necessity.

In the earliest days, this necessity was met by community pasturage. Every borough had its "common fields", as they were termed. These were the "springfields", "marshfields", "broomfields" and the rest, which are still met with, around the country, surviving as place-names. They were held in public ownership. They were not divided up. Enjoyment of the arable land was through an allocation of strips, which, to ensure fairness, was re-arranged each year.

It follows, from what I have already said, that these common fields belonged, in substance, to the Freemen of the borough. An exclusive right of pasturage effectively carries possession of the land.

With the development of agricultural science, it was seen that common fields were an obstacle to progress. No man is likely to improve land which he does not own. So began the so-called enclosure movement. Common fields were divided up, under parliamentary authority, and private ownership followed.

With the arable land, those entitled to cultivate were identified and they received parcels of land which were hedged round and became the new, individually-owned, fields of the modern landscape. However, pasture could not be dealt with in the same way. It could not sensibly be split up into individual plots. Moreover, there were future generations of Freemen to be considered. So there emerged a new version of the common fields but confined to pasturage. This was the origin of most of the Freemen's pasture rights in the country. Land was set aside for the use of the generations of Freemen, present and future. Here was another reflection of the closed community of the borough.

RETRIBUTION

It is a sad fact that a closed community is prone to certain particular maladies. Abuse of power is one. Indifference to the march of civilisation is another.

And so it was that, in England, in the eighteenth and nineteenth centuries, people came to talk of the "Rotten Boroughs".

Monopoly of trade in the borough became an unacceptable restrictive practice. Hereditary rule was not thought a satisfactory system for local government in large towns swollen by the Industrial Revolution. Universal suffrage came to be the only acceptable pattern for Parliamentary democracy. That democracy could not tolerate the bribery and jobbery depicted by the cartoonists and satirists of the eighteenth century.

These features were essential components of the Freedom. So, when reform came and the Reform Act and the Municipal Corporations Act struck down the abuses, the result was bound to be a mortal blow for the Freedom. The original legislative plan had been to abolish the Freedom outright, lock, stock and barrel. But in the nineteenth century respect for private property was impregnable. After further consideration, therefore, it was realised that within the Freedom there were individual rights, in effect private property. Plainly, total reform was not simply an exercise in democracy and government, elections and administration.

In the result, Parliament had second thoughts. The final legislation destroyed the Freemen's monopoly of the vote and their local government functions; but property rights were not abolished. This necessarily meant that the owners of those rights were also preserved. In short, the Freemen lived on. They had a reprieve.

For practical purposes, the significant property rights which were preserved were the rights of pasture. And Freemen's pasture lands have survived in law to this day, though few are still used for grazing by the Freemen. The Strays of York are a prime example of such lands.

We must, however, note the consequences of a pressing need for roads and housing, in an overcrowded island. Many pieces of Freemen's pasture have been compulsorily acquired and are now represented by substantial investments. Such investments are held for the same purposes as the original lands, in brief, for the benefit of the Freemen.

And so we come to the modern scene, in which the Freemen of today are actors.

THE SCENE TODAY

In Huntingdon, there were, at the last count, fifteen Freemen entitled to benefit from the fund derived from pasture rights. In 1990 each Freeman, so entitled, was paid £31,750.

It is not really surprising that the Charity Commissioners began to take an interest in the affairs of the Freedom in Huntingdon. Their conclusion was that the annual benefit to a Freeman in Huntingdon was not consistent with the proper application of charitable funds, which must reflect a public interest.

Now that conclusion raised the crucial question whether the Freemen's fund was truly, in law, a charity.

If it was not a charity, then the Charity Commissioners had no right to interfere and the whole of the yield from the fund must go to the Freemen, regardless of the amount. If, however, it was a charity, then the Charity Commissioners were entitled to intervene. It would be within their powers to declare that the charitable trust had become, in effect, outmoded and some other scheme of distribution should be introduced. The practical result would be a sharing of benefit by the Freemen with a wider class of persons.

There is a fundamental principle of English law which governs every perpetual trust. Such a trust is not lawful unless the purpose of the trust is "charitable", i.e. in some way for the public benefit. The principle is a simple one and understandable. Perpetual trusts tie property up and remove it from the reach of the community. So the law says that a perpetual trust, to be validly created and to survive, must be charitable.

If, therefore, Freemen's pasture rights are to be treated simply as a trust, of an obviously perpetual character, it must be accepted that such a trust has to be regarded as charitable and accordingly subject to the authority of the Charity Commissioners.

In 1882, there was a dispute between a Freeman and the corporation of Colchester, in which the Court took the view that a Freeman's fund was not simply a perpetual private trust (and therefore subject to the principle of law which I have stated). That view was taken because the 1835 Act had authorised the continuance of Freemen's rights. Statute expresses the sovereign power of Parliament and may achieve any result, whatever the normal rules of law. Accordingly, it was considered that the perpetual trust for Colchester Freemen, though not charitable, had been explicitly validated by Parliament.

Unfortunately, the Judge in the Huntingdon case elected to rely upon a case in the Court of Appeal which, he considered, substantially overruled the Colchester case and another case to the same effect. In the result, he concluded that the Huntingdon trust had to be treated as a charitable trust. Accordingly, the Charity Commissioners were entitled to intervene and reconstruct the purposes for which the Freemen's fund was held. The probable revision will be a widening of the class of beneficiaries to embrace the citizens of Huntingdon, generally.

AN EXPLANATION

At first sight, the Huntingdon decision appears to be harsh and looks like confiscation.

But, as the Judge pointed out, the Freemen were, in mediaeval times, "entirely suitable" as a class eligible to receive benefit as representing the public, within the borough. I have myself tried to show that they were, in so many ways, the borough itself. So a perpetual trust for Freemen was plainly for a public purpose and valid. However, as the Judge also pointed out, the effect of the 1835 Act was to destroy the political importance of the Freemen, thus undermining their social and economic importance too.

In consequence, the Freemen of today can no longer be equated with the borough. Their status has been preserved but their powers and functions have gone. Their surviving rights are personal. They do not have any part in the running of the borough. There is no organic justification for their existence.

It is, therefore, now seen to be impossible to equate Freemen's property rights with an underlying public interest. They must be recognised simply as individual rights. Such rights cannot be allowed to exist independently of the public interest. Freemen can only come in for benefit as part of the general public.

In other words, Freemen are in a cleft stick. If the trust were for their benefit alone, it would fail as a private trust of perpetual duration. If the trust be treated as charitable, in order for it to survive, its benefit must go to the public at large and not merely to the Freemen. An application of the Colchester case could have given the trust an independent validation and thus avoided reliance on the law of charity; but the Huntingdon Judge has rejected that course.

A FINAL RECKONING

I think that the Freemen of England have been unlucky. If the facts of the Huntingdon case had not been so startling, a Judge might have considered the situation of Freemen more sympathetically. Their inheritance is a unique one and merits special consideration.

In the Colchester case, the judge expressed a firm and clear view. The Municipal Corporations Act 1835 expressly accepted and recited that Freemen's property had not been "applied to public purposes". Nevertheless, and against the background, the Act provided that Freemen's rights should be enjoyed as fully and effectually as they had previously been enjoyed, by any legal title, including custom.

The Colchester Judge stated the position in these words: "This right is under the Act of Parliament; it is not a right by reason of there being a charity". He also said: "I am satisfied that this section was intended to treat the interests which the Freemen had got in that way as effectual and binding, whether they had got them legally or illegally, so far as regards any such consideration as that it would be a perpetuity". Nothing could be plainer than that.

The Judge in the Huntingdon case held that the Colchester case had been "in substance" overruled by the Norwich case. But the Appeal Court judgements in the Norwich case do not even mention the 1835 Act or the Colchester case; and their concern was with a preliminary point of jurisdiction.

The heart of this matter seems to me to be as follows. One is peering into the mists of the past and any judge has, in truth, to make something out of nothing. So it comes down to his personal impression. With an inclination to find a charity, a judge can say that there was a charity before 1835 and the Act altered nothing. Equally, a judge may say that there was merely a custom before the 1835 Act, which then created a statutory right, free from the restraint of charity law.

The Freemen of Huntingdon have, I believe, been advised against an appeal. If there were an appeal, the factual situation which I have stated would remain to be considered. Nobody could relish the task of trying to explain to three judges in the Court of Appeal why they must ensure that fifteen Freemen go on receiving, each year, some £30,000.

If the Huntingdon decision remains undisturbed, Freemen must understand what it means to them.

First, I would say that, technically, a decision about the Huntingdon situation does not govern any other place. Another judge in another case could take a different line. Every set of Freemen's rights is, in principle, unique and, in my experience, has its own peculiar facts. If, therefore, Freemen are confronted by the Charity Commissioners, they must, in their own interest, take legal advice and do so promptly. If there are rights in issue, there is money in the case and costs could be found.

Secondly, we must bear in mind that we are here concerned with something that only affects Freemen's property. The Charity Commissioners have no legal right to interfere generally in the conduct of the Freedom. And, even in respect of property, a trust producing small benefits for a large class of Freemen might well be left undisturbed.

Thirdly, if the Charity Commissioners do intervene in respect of Freemen's property rights, that is not the end of the world. The Commissioners would not normally dismantle the Freemen's entitlement completely. What they would be more likely to do would be to modify that entitlement so as to do away with the Freemen's monopoly. But Freemen could continue to share. It is for the Commissioners to devise what is called a Scheme; and every Scheme is tailored to meet the particular circumstances of the case. In all probability, in the ordinary case, sick or impoverished Freemen would, as individuals, experience no change in their treatment. But, in "windfall" cases, like the Huntingdon one, the trust would probably undergo a very drastic revision.

It is worth remembering that the Freemen of Norwich have lived happily with the Charity Commissioners for more than a hundred years. And the Norwich Freemen are reputed to be among the wealthiest in the land.

CONCLUSION

What we are seeing is a belated working out of the cataclysmic reform introduced by the 1835 Act. That piece of legislation was mangled in its progress through Parliament. Its purpose became muddled. The consequence was that Freemen have enjoyed a holiday, on the property side. That holiday may now have ended.

But the Freedom itself survived; and, in my opinion, it is coming increasingly to be respected and valued. The admission of women marks a new and hopeful era. Narrow attitudes are being abandoned. And I would add a significant footnote. The most likely cause of intervention by the Charity Commissioners is the existence of only a small number of surviving Freemen. That state of affairs has sometimes resulted from deliberate manipulation by the Freemen themselves. There is a lesson which can be learned from such cases; and that lesson must be learned. In this, as in every other aspect, the Freedom deserves and should be given true dedication and wise stewardship.

Charles Sparrow QC
Leicester 1993

WOMEN AND THE FREEDOM TODAY (1994)

MOMENT OF DESTINY

The Freedom is today at a crossroads. This is for the Freedom a true moment of destiny.

The Freedom has had no official function since 1835 - that is to say, for more than a century and a half. In 1835, the ancient local government powers and duties of the Freedom were stripped away and given to the new-fashioned Borough Council, now succeeded by the District Council.

Obviously, such action was calculated to lead to the decline, if not total extinction, of the Freedom. There can be no doubt that the reformers wished for that result.

By accident, however, and at the last moment, the Freedom was given a lifeline. During the passage through Parliament of the Municipal Corporations Act 1835, powerful supporters were mobilised and the Act was critically modified.

Logically, the new legislation should have put an end to Freemen, who were the club members or shareholders of the so-called Rotten-Boroughs system, which Parliament fiercely desired to abolish. But, on a legal pretext, (it was nothing more), Freemen were saved. Their existence and status as Freemen, though of course not their functions, were given a reprieve. This was provided for by direct and explicit statutory provision. Such was the effect of the Municipal Corporations Act 1835, as ultimately carried into law.

That protection has been repeated in a succession of local government Acts, through two centuries. The latest was the Local Government Act 1972.

So the paper title remains impressive and in good order. But, unhappily, that is not the whole story.

In some places, the 1835 Act seems to have caused the Freedom to die of shock. How else can one explain the demise of the Freedom in places of such ancient lustre as Boston, Malden and Bury St. Edmunds.

In other places, the Freedom has survived but declined dramatically, sometimes, it must be said, with the connivance of the local Freemen, selfishly anxious to keep property benefits for themselves.

In yet other places, false interpretation of the legal position has strangulated the Freedom and reduced its members to a point below which survival becomes unlikely.

To all these places, the foundation of the association called the Freemen of England brought hope, enlightenment, education and a formula for survival. But not everywhere have Freemen opened their ears to the call. This is sad and inconvenient but undeniable. Reality must be faced.

Moreover, I have no doubt in my mind that Whitehall has, for some years, had a formed and hostile policy towards the Freedom and Freemen. It could be expressed in the memorable quotation: "Thou shalt not kill; but need'st not strive officiously to keep alive".

In short, I believe that Government would be pleased to sweep away the Freedom as, in its opinion, an untidy relic of the past.

I further believe that, as the years go on, the Charity Commissioners will be minded, and perhaps encouraged, to scrutinise the property rights which, in some places, Freemen possess. The practical object, and inevitable result, will be to confiscate such rights and make them over to members of the general public, who have no connection with the Freedom.

And so we have reached, I am convinced, a point in the history of the Freedom at which Freemen must recognise danger. They must do this with realism. They must recognise the peril for what it is. And the Freedom must somehow gain a new lease of life.

How is that to be done?

A SOURCE OF SALVATION

I do not believe that there is real salvation to be gained from a mere attempt to increase local enthusiasm or administrative efficiency. The Freedom needs strong medicine. We must find and employ a new force.

Where is that force to be found?

I suggest that the search is not really so difficult. Changes in social life, during the last few decades, point the way.

Those changes have shown that women are now an equal power with men, at all levels in the workings of national life. Commonsense suggests that that power should be recognised within the Freedom, as it is elsewhere.

In short, I believe that the Freedom should align itself with the new status of women and call upon their aid.

The question to be faced is not: "Have women a traditional place in the Freedom?" but rather this question: "Can women now be given a real place in the Freedom".

For myself, I have come to believe that we cannot afford to leave them without such a place.

I am profoundly convinced of the high value to any community of continuity and tradition. Those elements encourage public service and provide example. But they need to do so from a position of strength. An eroded membership is not serviceable. A membership that included women would have special qualities of energy and dedication. That is why, in my opinion, the Freedom cannot afford to deny women a place, if one is possible.

THE HURDLE

So much for the desirable result. But can that result be attained? Here is the central question, at the heart of everything I am saying.

In plain form, the vital question is this: Can women be as simply admitted to the Freedom as men?

That question has often been put to me over the last twenty-two years. And the question has one safety-first answer: No.

It is obvious that women have not been freely admitted by patrimony or descent; and to break in upon that pattern would, no doubt, arouse opposition from some male Freemen and queries from some local councils.

But the safe answer may not always be the same thing as the right answer.

We are in a field of most technical law, which deals in features that have long since vanished from daily life. No ordinary lawyer today has, or ever has had, any call to study the subject. No judge would have any prior experience whatever of the Freedom, let alone the background of historical knowledge that is necessary to make the subject intelligible.

As a result, the question which we are considering must be a matter of exceptionally difficult speculation. But I believe that there may be grounds for hope.

ADMISSION AND ACTUALITY

Since 1835, as statute has ordained, the Freedom cannot, outside London, be acquired by gift or purchase. In some places, admission may be secured by marrying a Freeman's daughter; but that has no immediate relevance. Servitude or apprenticeship is another way into the Freedom; but apprenticeship is today a limited and technically difficult avenue. We are left, therefore, with admission by descent or patrimony, as the staple mode of admission to the Freedom.

That mode of entry is often spoken of as involving the qualifications of being the son of a Freeman.

But we must be careful. We are dealing, not with specific wording in a charter or statute, but with unwritten tradition. So we do not have an authoritative edict, whose language could be taken as the ultimate guide. And thus common practice may not necessarily reflect the full legal scope of the institution we are studying.

Nevertheless, we must squarely face the technical doctrine of custom, in the law. That doctrine recognises, as valid local law, custom which has existed since 1189, or at any rate for a period "during which the memory of man runneth not to the contrary".

Taking a practical view, we must recognise that, save in the occasional place such as York, there is no obvious legal memory of the admission of women by descent. On the face of it, therefore, the Freedom cannot be conventionally proved to embody such admission.

If that analysis be legally complete and correct, the admission of women by descent is simply not possible.

Here is the short route to a dusty answer. This is the background to what I have cited as the completely safe answer.

But is there, in truth, a way round?

A WAY ROUND

At this point, it is well to take a good, wide look over the subject.

At the outset, there is, I suggest, no general principle or legal disability that rules women out of the Freedom. It does appear that women have been admitted by descent in the occasional place. But, with certainty, we know that women could, and did, gain admission by apprenticeship. Moreover, in many boroughs, a widow was allowed to exercise the Freeman's rights of her deceased husband. And I know of no limits on the ability, before 1835, to dispose of the Freedom by gift or purchase. Finally, of course, admission by marriage to a Freeman's daughter involves the descent of the Freedom through a female child. Such admission should be most particularly noted. So should the clear documentary evidence from Oxford that a Freeman's widow could, by marriage, confer the Freedom on a second husband. Here again, there is descent otherwise than through the male line.

Now, upon that review, I suggest that the correct enquiry is not for what Freemen ordinarily did in practice but for what must be reasonably implied in the institution known as the Freedom.

Most significantly, the ability to give or sell the Freedom implied a latitude of admission that was total.

As I have remarked, we do not have the certainty of statutory wording. No Act of Parliament defines patrimony. We are trying to assess a concept, an idea, which exists but which is undefined.

Admission as the son of a Freeman was, I suggest, a stereotyped device, obvious, familiar and adopted for convenience.

It reflected, mechanically, the ancient principle of descent in the male line, which was for centuries the common law rule for succession to land. The Freedom undoubtedly carried benefits that were proprietary. It thus had much affinity with landholding. What more natural than that the Freedom should adopt, as a basic method of transmission, succession in the male line?

But why should one treat that mode of admission as necessarily exclusive? I can see no reason.

Descent of land in the male line is no longer law. To my mind, this circumstance encourages us to look into the real heart of the Freedom.

That institution was functional, in a crude pattern of society. It reflected the actual structure and working of that society. Foe centuries, women had a subordinate social condition. The Freedom mirrored that condition, while it existed. But that condition was transitory. The Freedom must be timeless.

2Thus it seems to me that a judge could and should view the Freedom as always having the capacity to implement descent, as actually required and accepted from age to age.

Putting the matter another way, the logically correct enquiry is as to the character of the Freedom, as an institution. It is not as to the extent of implementation, from time to time. Admission by apprenticeship, by sale or gift, by marriage to a freeman's daughter and admission of women, as practised in York, all speak relevantly and, I think, powerfully, of the functional character of the Freedom.

But this view does require a judge with a mind that has a broad sweep and a feel for the evolution of history in the boroughs. It is not enough to look at the potted guides to that history. They do not touch the soul of the Freedom.

I would add this. The Freedom is not a technical feature or mechanism from the general law. It is not directed to produce any conventional legal result. It is simply folk custom. It mirrors community behaviour. So I do not believe that the law imports predetermined boundaries or conditions. The result of this, I believe, is a broad opportunity for commonsense interpretation.

In substance, what we are looking at is transmission of the Freedom by descent. That mode of transmission stood alongside apprenticeship, gift and purchase. So viewed, descent simply imported family inheritance. That is the essential purpose which custom was intended to serve. Admission of women serves that purpose perfectly well.

CHARTERS

Many borough charters had provisions for the revision of custom in the borough. This may be a relevant point; but it must be weighed with care.

The Local Government Act 1972 repealed all borough charters and few Councils have taken the opportunity to reinstate the old charter powers.

Nevertheless, it seems to me well arguable that when the Municipal Corporations Act 1835 provided expressly for the perpetuation of Freemen's rights, as they then stood, that operation carried within it, by necessary implication, any power to amend the custom. Such power could easily be taken to be exercisable now by the District Council having the statutory duty, under the 1972 Act, of maintaining the roll of Freemen.

But, we must not be distracted by the distinct and difficult question of the survival of any charter power of amendment. What is relevant, however, is that the history of such charter powers provides additional support for contending that it was reasonable for the Freedom to have the capacity for adjustment as times changed. Of course, there might be a counter argument that charter powers recognised an inability to effect change without them. But, in my view, a convenient enabling power, given to a designated authority, does not necessarily imply absence of some other route to change.

THE HEART OF THE MATTER

The heart of the matter can be put like this. Statute has prohibited, though still not in London, transmission of the Freedom by sale or gift. But that specific prohibition cannot be taken to impair the overall willingness of the Freedom to include women as persons acceptable for the status of Freeman.

Nor can it bear upon the question whether descent may be so operated as to admit women.

Inasmuch as the Municipal Corporations Act expressly preserved the Freedom in the shape which it had in 1835, any liberty to admit women will still exist. The Freedom is as capable today as it ever was.

THE OUTCOME

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If Freemen were to face the issue before them and admit women by descent, there would, of course be a risk.

A District Council might make a legal challenge and seek an order of the court. And there are few certainties in litigation.

I have indicated a view which I believe to be true to the legal character of the Freedom, when assessed with historical sensitivity.

And the irony is that a restrictive view of the ability of the Freedom to admit women would be totally at odds with the present public policy of our law. Moreover, custom is a compartment of the law which has always been consciously and explicitly regulated by "reasonableness". It really would be unfortunate to drift into a finding, in relation to the customary Freedom, which was against the current of the general law today.

One wonders, also, who would have the interest - indeed the audacity - to mount litigation for the disfranchisement of women Freemen.

WHICH WAY AHEAD

I must end as I began. The Freedom is at a crossroads. Here is a moment of destiny.

I cannot bring you a tablet of stone, with the law carved in bold letters.

To change the metaphor to a fashionable one, the setting for a contest is no level playing field. A judge might have little sympathy for the Freemen, who have long since lost their ancient role in the community and in municipal affairs. The Huntingdon case is no encouragement for Freemen. Yet, on the other hand, statute has been at great pains to perpetuate the legal status of Freemen, most recently by an Act little more than twenty years old. And, in other legislation, Parliament has demonstrated, most forcibly, a concern for the equal rights of women. A judge would have to be bold indeed to deny the underlying reasonableness which the admission of women would now seek, belatedly, to demonstrate.

At the end of this review, the only certainty is that there is a pressing need for the admission of women, by descent, to be considered and energetically advocated. It is, assuredly, a sensible and enlightened cause. But litigation would be speculative. The ideal solution would be a single-page Bill in Parliament, introduced by a private Member. That process is best initiated in the House of Lords. We would do well to seek a champion in Their Lordships' House.

Charles Sparrow QC

Berwick-upon-Tweed 1994

THE SINGULARITY OF THE FREEDOM (1995)

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INTRODUCTION

In the constitutional landscape of England today, the Freedom is assuredly a great curiosity. Indeed it would be right to describe it as a quite unique institution. One only has to think for a moment to realise that there is nothing like it in the daily life of the modern community. It appears in the latest Local Government Act, as part of the local administration structure of our day; and yet its origins are so ancient as to be beyond the clear sight of any historian. It has existence but no evident function. It is an anomaly.

The law labels the Freedom as Custom, which is a technical term, albeit of some rarity, in the law. But not one lawyer in a thousand ha8s ever heard of the Customary Freedom; and not one lawyer in ten thousand could explain what that Freedom is and how it has come to be.

To explore the legal character of the Freedom is not to probe idly into the dusty crevices of ancient law and history. It is to equip ourselves - indeed to arm ourselves - for the future. Like all ancient institutions, the Freedom needs, from time to time, to be protected against unthinking reform. That was the state of things in 1972, when the Freemen of England compelled government to reverse its plan to terminate the Freedom. That scene and that need may well come again.

We must, therefore, seek to understand the true character of the Customary Freedom, so as to be able to exploit its legal strength and merit, in time of challenge.

CUSTOM AND ITS CHARACTER

As everybody would agree, a jewel in the crown of the English nation is the Common Law. That Jewel has been passed across the Atlantic to America and around the world through the British Commonwealth. We are all sure we know what is meant when we talk of the Common Law. But do we?

It is a paradox that, in a real sense, the Common Law is so named not because of what it is but because of what it is not.

Another way of putting the same point is that the term Common Law necessarily implies another and earlier and less universal body of law, namely, the law which is not common.

Two thousand years ago, there was another European Union. It had, we might well recall, a common currency. That Union was the Roman Empire. Its legal system employed Roman law. We in England were part of that system. But then, in the 5th century, our history and our law made a totally new start, with a culture carried in by immigrants from the German lands.

That culture, if I may use the word in the loosest sense, was brought here by small uncoordinated groups of settlers, invaders or whatever else they should be termed. They took up occupation of this country on a tribal or sub-tribal basis. In plain terms, they subsisted in small groups. Inevitably, their lives were regulated on a local basis. Their law, from place to place, was the law of the tribe. Then as time passed, kingdoms evolved, with their own kings; and, ultimately, we had one kingdom and one king of England. Inevitably, the previous, different systems of law widened and merged, in a corresponding way.

When the last stage of common rule was reached, the English people established a common legal system. And that became the so-called Common Law, because it was the law that prevailed anywhere and everywhere, whatever the past may have been.

However, in its wisdom, the law that was common recognised a role, albeit limited and ill-defined, for law that was not common. That non-common law is called Custom.

In legal principle, the Common Law and Custom are of equal force. Where Custom applies, it is equally binding and enforceable with the Common Law. As a 19th century Justice once said: "Custom obtains the force of law, and is, in effect, the common law within that place to which it extends". But we must note the crucial difference: Custom only operates in a particular locality. Thus all customs must be local and confined to particular places.

That is the reason why you cannot be a Freeman of England. There is no such animal. Everybody who is a Freeman is a Freeman of a particular place, within which Custom has generated the institution known as the Freedom.

REQUIREMENTS OF THE LAW

Custom, where it operates, is obviously an exception from or qualification upon the Common Law. And so it should surprise nobody that the legal requirements for the recognition of Custom are very strict.

First, the relevant rule or practice in question must be local. It must relate to a limited geographic entity. It cannot apply to a segment of the general population. Such a wider application would, of course, amount to conflict or competition with the Common Law.

Custom can apply to a locality as small as a parish or manor. A borough is, plainly, a natural setting for the existence of Custom. The formal abolition of boroughs, by the Local Government Act 1972 has not prevented the survival of customs within the former borough territories.

Secondly, the relevant rule or practice must be truly ancient. It must, in the language of the law have existed from time immemorial. The law further interprets the term "time immemorial" as meaning existence from beyond the accession of Richard I in 1189.

This rather daunting requirement is powerfully qualified by the principle that Custom may be found to exist where the rule or practice goes back as far as anybody can see and there is no evidence that it did not exist in 1189. In short, ancient origin is presumed from an absence of contrary evidence. Here the law is favourable to Custom and adopts the approach that "every supposition, not wholly irrational, should be made in favour of long-continued enjoyment". I draw special attention to this approach of the law.

Thirdly, the rule or practice must be "reasonable". This requirement is difficult, indeed almost impossible, to explain intelligibly to a layman. In truth, it enables the Court to exercise a judicial discretion in the recognition of Custom. The discretion will be exercised by reference to broad principles of public interest. One really cannot generalise further. The criterion has been expressed as that of "the benefit of the commonwealth in general".

So, for better or worse, these are the requirements which the law imposes for the recognition of Custom. That is the legal basis on which the Customary Freedom is, place by place, recognised in the law of England.

In former times, the Freedom carried with it valuable rights, such as pasturage, monopoly of trade and parliamentary vote and freedom from taxes. Then, the power and significance of Custom was much more evident than today. However, the legal basis of the Freedom still remains the same, namely, legal Custom. This is an important factor, because the legal requirements in relation to Custom may be harnessed for the protection of the Freedom, especially the condition as to reasonableness.

A VITAL APPROACH

There is thus a vital, a critical, lesson to be learned from our review of the legal character of the Freedom and Custom. It is a lesson that bears upon all responses Freemen may have to make to future threats and challenges.

That lesson is that, in law, every custom is independent, singular and peculiar to its locality.

Custom may well appear, in a particular place, to belong to a class of legal practices which are found in other places. But, in law, every specimen is unique. Thus Freedom also, being Custom, is likewise unique. Here we find our title: the Singularity of the Freedom.

The practical importance of this singularity is that the legal position of the Freedom in borough A does not determine the position of borough B. Of course, Parliament has power to legislate for all Freemen, as happened in 1835 and nearly happened in 1972. But no other authority can move against the Freemen of a borough simply because of what has happened in another borough.

Putting the matter more positively, every body of Freemen is entitled to fight its corner on the merits of their own situation and regardless of whatever may have happened elsewhere. In particular, the Charity Commission has no right to use other cases to discipline a body of Freemen. It must always make its case, if it can, on the merits of the particular facts in the specific borough.

So it is to be hoped that Freemen will feel encouraged to resist all movement against them which is designed, as a matter of policy, simply to level down their ancient rights and annul, indirectly, the recognition given by successive Local Government Acts, from 1835 to this day.

Of course, it is not easy for a lay person to absorb and understand the legal detail that grows out of the root principle of Custom. But that detail is secondary. The vital and central thing is the Singularity of Custom, that is, the individual personality of each outpost of the Freedom.

Of course, there are similarities and resemblances, some very close and of general occurrence; but that does not impair the legal principle of singularity.

It follows that the features of the Freedom in any particular place must be identified from that place alone and not by borrowing or imitation from some other place.

The real point of crucial importance is this. The uniqueness of the Freedom in abstract legal principle may prove to be reflected in uniqueness of operation. This will be by reason of what particular Freemen have, in the past, actually done or not done. For example, York stands alone in its evidence of ancient admission of daughters of Freemen; and Coventry is firm in confining admission to apprentices.

Moreover, it must never be forgotten that the Freedom, in a particular place, is quite likely to have been moulded by Royal Charter or Act of Parliament or both. Thus, even apart from the legal doctrine of Custom, these two factors alone make it vital to recognise and respect the Singularity of the Freedom.

When challenged, therefore, Freemen should be clear-sighted, sceptical and stubborn. Those were, after all, the qualities which created the boroughs of England.

ANOTHER ASPECT

The clear sight, which all Freemen should have, applies, not only when dealing with outside pressure, but also when debating, within a borough, the exact nature of the Freedom.

It can fairly be said that most of the problems in this territory arise, first, because the Freedom always rests upon tradition, having no authorised, binding text, and, secondly, because Freemen themselves very often forget the implications of that fact.

Local histories, however learned, are not Acts of Parliament. Thus any written statement of the Freedom, from wherever it comes, must be treated with caution and reserve. A written account of an oral tradition will always carry with it a danger of error and distortion.

For example, it seems quite harmless to say that admission to the Freedom is allowed to the son of a Freeman. Of itself, that statement does not require that a grandson of a Freeman should not be admitted. Yet the statement may easily be put forward as having that effect. But, even as a pure matter of language, a grandson is also a son. Many decisions in English case law proceed on the basis that the term "son" may include grandson.

If one reminds oneself that admission to the Freedom was not limited by the printed word but was founded upon ideas in the popular mind, it seems likely that the relevant idea here was the familiar one of descent, under English law. If that be right, a grandson must be eligible for admission.

A similar need for clear thought was necessary when it was suggested that an applicant for admission to the Freedom had to be a person paying Council Tax. This arose from an ancient custom to the effect that an applicant had to be of good character and paying local taxes. The ancient form of words for the required qualification was "paying scot". Again the written wording was capable, on a literal reading, of the suggested interpretation. But the idea behind the words was simply that of good character and performance of civil obligations, whatever they were. This approach produces a completely different result. It would have been absurd to penalise a man for not paying a tax to which he personally was not liable. In brief, whatever the form of words may be thought to say, the idea, sensibly construed, required no more than that the applicant had to have paid such local tax as he was liable for, if any.
To take another example, a requirement that an applicant be born in the borough surely reflects no more than the idea of parents who are, at the time of the birth, resident in the borough.

In all these instances, it is necessary to cut through the words that learned writers have used and to deduce the idea in the minds of the unlettered Freemen who built up the Freedom, hundreds of years ago.

A more difficult case than most is created by the statement, which is not uncommon, that admission of the sons of Freemen is limited to sons who were born after the admission to the Freedom of their father. The City of London and other places operate this principle resolutely and literally. But would the Court hold that limitation to be "reasonable"?

Such a practice must tend to divide families. Thus it would seem to be against the public interest. It is difficult to perceive its motivation. It might be thought to encourage prompt application for admission. That implies a concern to enlarge the strength of the Freeman body. In fact, when there were valuable property rights attached to the Freedom, existing Freemen had a direct interest not to encourage recruitment. We can see this motivation actually working, in some places, to the present day. But whichever way the motive operated, it is hard to find any "benefit of the commonwealth in general". A challenge to this practice, for unreasonableness, would seem to have a fair prospect of success.

Whatever the outcome of a challenge might be, the existence of such an issue provides yet further encouragement for the exercise of a critical judgment in seeking to establish the true ambit of the Freedom. I would note that the Freemen of Berwick exercised such judgement long ago and rejected discrimination between sons of a Freeman. I find their decision totally rational.

THE RIDDLE AT THE CENTRE

It cannot be disputed that a custom has to be what it immemorially was. It must remain what it was in 1189. So runs the inflexible ruling of the law of England.

Yet what does that test mean for the Freedom?

Does it mean a limitation to what Freemen actually did? Or should it mean an observance of the underlying thought and mind, which produced what Freemen did?

We have already seen that Custom generated a system of admission which brought about family succession. If that system is operated only according to usual practice, then we would seem to have a succession which passes the Freedom from father to son. But the public policy which desired to implement family succession must have favoured the admission of a grandson. That is no more than commonsense, which is the good sense of the ordinary man. And that was certainly the law, in respect of real titles of nobility.

Thus we come, as so often today, to the admission of women. It was the policy of the law of England, in a male-dominated society, to favour the male succession. Today, plainly, that is no longer the policy of our law. Succession to property now makes no general distinction between male and female. Equal rights are, today, a policy goal of our statute law. How are we then to operate today the principle of family succession. Are we really to confine ourselves, in the Freedom, to the male line and thus to shun a broader and more sensible view of family interest?

Here is what I have called the riddle at the centre.

Let me give you yet another example of the agonising questions that lie at the heart of the survival of the Freedom.

Many borough charters gave power to rectify the Freedom, when necessary or expedient. But, in 1972, the Local Government Act, of that year, extinguished all borough charters.

In 1835, however, the Municipal Corporations Act had explicitly preserved the legal rights of Freemen as they stood, at that time. Now, at that time, the Freedom embodied within it, in certain boroughs, the power of amendment, to which I have referred. Why should that incident of the Freedom not survive? It was part and parcel of Freemen's rights as they stood in 1835.

So it is upon a riddle, at the centre of all, that the survival of the Freedom will hang, nationally and locally. Does the Freedom go according to the substance or the letter of the law? Is it to be governed by the spirit or the word? Has the Freedom life or is it a dry relic? I can give you no certain answer. The future alone can bring enlightenment.

Charles Sparrow QC
Coventry 1995

ADMISSION BY APPRENTICESHIP TODAY (1996)

INTRODUCTION

In 1832, by the Reform Act of that year, Parliament took away from the freemen the parliamentary franchise. In plain terms, freemen ceased to have the exclusive right to elect members of Parliament coming from the boroughs. This was the beginning of a process of dismantling the system, under which the boroughs had been governed for hundreds of years,

Without doubt, there had been abuses. Improper advantage had been taken of the power, which the bodies of freemen had, to admit to the Freedom by purchase, in short to sell the Freedom. Political magnates had been able, in this way, to fund and create block votes at election time. This practice encouraged the public to talk bitterly about "The Rotten Boroughs". It is, therefore, impossible to argue against the cleansing process effected by the Reform Act 1832. As a result, freemen lost their monopoly of the parliamentary vote.

But this was just the beginning of a process of generally dispossessing the freemen.

Three years later, in 1835, Parliament set about the intended task of abolishing the Freedom and freemen, lock stock and barrel.

The prime purpose of the Municipal Corporations Act 1835 was to place government of the boroughs in the hands of borough councils, elected by the inhabitants at large. In its original form, the Bill for that Act would have destroyed the status of freeman, together with all of the functions exercised by freemen. But, along the way, Parliament was persuaded to grant the freemen themselves a reprieve. Thus freemen survived; and their status was preserved. That status has been affirmed by three successive local government Acts and most recently by the Local Government Act of 1972. That last Act took its final form, as an affirmation of the Freedom, by reason of the timely remonstrances of The Freemen of England, now The Freemen of England and Wales.

An additional and drastic provision of the Municipal Corporations Act 1835 was the abolition of the power to admit to the Freedom by gift and purchase.

Parliament has never dared to impose this reform upon the City of London. Thus it is that, today, the City of London is able to present the Freedom, and not merely the honorary Freedom; and, every day, the City sells the authentic Freedom, albeit to persons of proven respectability.

So here we see a critical disability, imposed upon the borough Freedom. In the late 19th century, Parliament repented somewhat its abolition of admission by gift. It created, by Act of Parliament, the status of honorary freeman. But that status was to be conferred, not by the bodies of freemen but by the borough councils. This was no help to freemen or to the Freedom.

And so, today, we find freemen in England and Wales striving to preserve and perpetuate the Freedom but deprived by Parliament, in its wisdom, of two of the four traditional modes of admission to the Freedom.

Here is the background against which one has to consider the past, the present and the future of one of the two remaining modes of admission, namely, apprenticeship, otherwise known as servitude.

The need to consider admission by apprenticeship is, in truth, a pressing one. Throughout the history of the unreformed Freedom, patrimony and servitude were, unquestionably, the main gates for admission. It stands to reason that, if one of those two gates be forgotten or neglected, there must be a grave menace to the future of the Freedom. Here is the blockage of a principal artery.

It is an undoubted fact that the decline of servitude began in the 19th century. This was probably connected with social changes and the legal transition from status to contract. Apprentices ceased to be members of the master's family, in the fashion of earlier times. There was a less dedicated and lengthy relationship, which seemed to be, and indeed was, of a different style. It was, therefore, easy to suppose that apprenticeship had disappeared.

Statute had for centuries required a term of apprenticeship of seven years. This requirement was repealed in 1814. Yet it seems possible that the change failed to make an impact on the public mind.

In the result, vocational training changed its personality and was even thought to lack the legal character of an apprenticeship. It is no wonder that servitude came to be overlooked and neglected.

Yet it is hard to excuse the continuing blindness of freemen today, by which I mean blindness to the danger of fatal erosion of the Freedom and also blindness to the means of salvation.

My earnest purpose today is to open the eyes of freemen, everywhere, and to spell out the true nature and value of admission by apprenticeship today.

ADMISSION TO THE FREEDOM BY APPRENTICESHIP TODAY

THE FREEDOM

The plain fact is that the Freedom has been a most important strand in the history of England. It ensured that the boroughs of this country were responsibly governed; and that they prospered, down the ages, as centres of trade.

At the heart of this system was a body of citizens, in each borough, who undertook the burden of local government. That burden was a real one. There was a legal discipline, which required each citizen to provide "scot and lot", that is, to pay local taxes and to accept civic duties. Each of these words survives in our language but, sadly, its ancient meaning is not now remembered.

As one would expect, families became settled in the boroughs and the responsibility for local government passed from generation to generation. Inevitably, in England as in other European countries, there came to be a hereditary class of burghers. That word is a perfectly good word in the English language. However, the usual expression today for the people who managed the English boroughs for centuries is freemen.

Within each borough, the freemen provided local government, exercised an exclusive right to elect the borough Members of Parliament and enjoyed a monopoly of trade. Their rights and duties were commonly formalised by royal charter. The borough would have a mayor (sometimes described by a different term, e.g. senior bailiff) and a town clerk.

Provision was made for an orderly succession in the Freedom, as the institution is termed. Principally, there was family succession, often called patrimony; and succession by apprenticeship in trade, called servitude. Additionally, there was admission by gift and purchase. Sometimes there was admission to the Freedom as the widow of a freeman or, exceptionally, by marriage to a freeman's daughter. There were some common features around the country; but in strict legal principle, each borough had a pattern of Freedom that was unique to that place.

THE LAW

The law of England has grown, over the centuries, from an original patchwork of local, tribal, systems. A process of standardisation has resulted in what today we call the Common Law. But Common Law and Statute do not, as most people believe, make up the totality of English law. Immemorial Custom still exists, as a third element. It has the same full force as Common Law but only in particular localities. In truth, this element is, perhaps surprisingly, a survival from ancient tribal law.

The system we call the Freedom is a prime example of Custom.

It is because the Freedom is local Custom that legally every place is a unique case. As already noted, the nature of the Freedom in a particular place may well resemble generally what is to be found in other places. But nothing can be assumed. The Freedom must always be established in the relevant place. Generalisation is not a reliable exercise. Thus, most places limit admission by patrimony to sons of freemen; yet in York, daughters are admitted. In most places, patrimony and servitude exist together; but, in Coventry, the only mode of admission is by apprenticeship.

In 1835, Parliament passed the Municipal Corporations Act. The power of Statute is, of course, paramount; and the 1835 Act worked radical changes in the Freedom. Local government in the boroughs passed out of the hands of the freemen. But the Freedom was not abolished. Indeed, it was affirmed, by the 1835 Act itself and successive local government Acts, down to and including the Local Government Act 1972.

So the principles that regulate the Freedom are principles of law. They cannot be moulded by convenience. They cannot be changed by local wish. They have the full force of the law. They are and remain what they were before 1835. On the other hand, the life of the world is changing all the time. We must expect to find the old principles operating in new scenes and in new shapes. But those principles will and must retain their integrity. A true understanding of admission by apprenticeship today will, therefore, reconcile modern conditions with the unchanging heart and spirit of the Freedom.

ADMISSION

Since 1835, the year of the Municipal Corporations Act, the only permissible grounds of admission to the Freedom, outside London, have been patrimony and servitude, i.e. descent from a freeman and apprenticeship to a freeman. Admission by gift and purchase, which were formerly operated all over England, are prohibited by law, outside London. This is the effect of the Municipal Corporations Act 1835.
It must be plain, therefore, that admission by apprenticeship is a crucial matter, as being one of the only two grounds of admission now available. It also has a special value as being a wholesome counterweight to hereditary Freedom. Indeed, it has always had this function, down the centuries.

So admission by apprenticeship is a subject to be studied with care. It should be used to the full but with due understanding and responsibility. The Freedom is an honourable institution, regulated by strict principles. Servitude cannot become a backdoor to the Freedom.

The golden rule must be that every admission by servitude is based on an apprenticeship that is clearly genuine and above board.

This will mean that, in every case, there will be found the following prime elements. First, there will be an untrained person wanting to learn an occupation, in which he or she will gain a living. Secondly, there will be an established practitioner in that occupation, who will give actual instruction, alternatively actual supervision of instruction given by somebody else. Thirdly, there will be a definite and substantial period of training, which satisfies the current, recognised requirements of that occupation. Fourthly, there will be a firm and formal engagement, into which both parties enter. Finally, there will be nothing to suggest that the apprenticeship is a device to secure admission to the Freedom.

The last point merits some expansion. There can be no objection to a true recruit for an occupation extending or formalising his training in order to secure admission to the Freedom, as an addition to bare qualification in that occupation. That must have happened through the centuries, when there were active craft guilds and the Freedom had a money value. But an "apprenticeship" must not be fabricated for the sole purpose of gaining entry to the Freedom. In fact, if the first four points are fully respected, the last point will hardly be necessary. There will positively be a genuine apprenticeship.

THE RIGHT APPROACH

What has been said above is intended to express the correct working of principle, in the conditions of today or any other modern time. What follows next is intended to deal with certain common ideas which are mistaken and do not truly reflect the principle.

There can be no distinction, for present purposes, between trades and professions, so as to limit apprenticeships to so-called trades. The concept of a profession today is too vague to have any basis in history. In fact, surgeons derive from barbers, doctors, and chemists from apothecaries and accountants from counting-house clerks or, perhaps, listers. If we put aside the original professions of the Church and the Army, we simply have left the Law. Barristers used to have the expression "apprentice" and they have always had pupils, whilst attorneys have had articled clerks. Provided that there is an "art or mystery"; to be taught by one person and learnt by another, apprenticeship must be possible and will be found to serve a genuine purpose.

There can be no need to observe a set period of years, for the term of the apprenticeship, which is applicable to all places and all time and all occupations. Certainly, the old period of seven years does not bind us in that way. It originated with a statute, which has long since been repealed. The term to be observed today must be that presently followed in the particular occupation. The period of time should be functional. It should provide sufficient time to gain for the apprentice the skill of a qualified person. A mere nominal term will not be justifiable. It must be substantial.

There can be no intrinsic objection to an apprentice being paid by a limited company or some other employer who is not his apprentice master. Here we can observe the true working of principle. Doubtless, an apprentice was, in former times employed by his master. But the essential object of apprenticeship was to train adequately a new tradesman, fit to take his place in the borough's community. That object can be quite properly served in today's conditions by allowing apprenticeship to a master despite employment by a third person. Thus master and apprentice may both be employees of another person or body. The prime elements, described above, must nevertheless be present in any such apprenticeship.

There can, in general, be no objection whatever to the admission of women apprentices. Their admission was a common feature of borough life before 1835. Conceivably, local custom, in some particular place, might discriminate between men and women in the matter of admission by apprenticeship. Such a custom, if suggested, would have to be established. A search of the freemen's rolls should show how matters stood in a particular borough.

There can be no valid objection raised from the fact that the traditional deed of apprenticeship is now obsolete and a relic of the past. In the old days, the formal engagement entered into by the parties had the name "indenture". That term had, indeed, a general use. It simply meant any legal deed of which two copies were made on one sheet of parchment or paper, which was then divided by a jagged or "indented" cut. The object was to guard against forgery. The genuine documents would come together and match exactly along the indented line. Obviously this ancient procedure is not essential today. All that is required is a firm and binding agreement, preferably in writing. And it is simply not necessary to employ the ancient form of "articles of apprenticeship". Such a document is neither appropriate nor sensible today. We are no longer living in a society where the apprentice might well be living in the house of his master, so that, for example, his personal life would require regulation. Indeed, the very term "master" is no longer socially accurate. But changes in language and social habits cannot destroy the essential need and reality of occupational training.
So much for popular misunderstandings. It remains only to reiterate the warning that must be included in any advice on freemen's affairs. The law to which reference has been made is of a type that is seldom, if ever, met with in ordinary life. The legal term is "local Custom" but the word "Custom" is used in a technical sense. It is certainly not optional. It has the same force as the Common Law, albeit in a limited area. For our purpose, it is the law that applies in a particular borough. It will usually resemble the law governing the

Freedom in other places; but it may have differences and may even be unique. Accordingly, every body of freemen must research and abide by their local own pattern of the Freedom.

A SPECIAL CAUTION

So Custom must, in every place, be faithfully respected. But, in order to be respected, Custom must first be established.

It is vitally important to realise that Custom, unlike Statute, has no authorised and official text. It originated as ideas, in the minds of common men. Those men were normally illiterate. Thus one must guard against giving the force of holy writ to the writings of local historians, who will have been, in any event, living long after the "immemorial origin" required by Custom. By its very definition in law, Custom extends beyond the reach of memory. In practice, that criterion simply requires a proven record of usage extending back indefinitely and without evidence to the contrary.

A striking example of the general need for caution may be taken from the present subject of admission by apprenticeship. A responsible and learned writer has described the relevant qualification as "being apprenticed for seven years" to a freeman. Without doubt, that was the rule actually observed, for a considerable period of borough life. But that was because, for a long period in history, statute required every apprenticeship to last for seven years. Statute had introduced that provision as ensuring what Parliament considered to be a due and proper apprenticeship. But, previously, the Freedom would simply have required something which was such an apprenticeship in fact.

So the inadvertent importation of a temporary provision into a historian's description of the Freedom is a danger for which one should be on guard. A historian will not usually be a lawyer, let alone a lawyer conversant with the arcane subject of Custom. As a result, he or she will not be familiar with the legal principle that Custom, if it exists, will be found to have a uniformity that is immemorial.

There is another useful analogy in the obligation, already noticed, for an applicant to pay scot, i.e. local taxes. Doubtless, the amount due for scot would, for some periods of time, have been a stable sum. But it could not be suggested that Custom required always the payment of that specific amount of money. The principle was constant but its practical effect could vary.

One has, unfailingly, to look at the real substance of Custom, its commonsense and everyday purpose.

Both commonsense and the importance of everyday practice are demonstrated by a decided case in the law reports. There, the judge considered the requirement that a Custom should have existed, actually or apparently, since the beginning of "legal memory", i.e., technically, the accession of Richard I in 1189. Notwithstanding that requirement, the judge held that an ancient public right to play games on private land must today extend to the playing of cricket, even though, as he put it, "it is reasonably certain that cricket was unknown until long after the time of Richard I". Here we see demonstrated the essential concern with the real-life character of Custom, its heart and its function.

Admission by apprenticeship was designed, by ordinary men to allow the Freedom to be passed on, in the interests of the borough community, not only to the descendants in the family, but to descendants in business. Both commonsense and everyday purpose require that descendants in business should be adjudged according to the nature of each business and the common standards of each age of our national history.

GOOD PRACTICE TODAY

One practice which was obligatory in many places was to require master and apprentice to appear, normally with the apprenticeship agreement, before the freemen's court or borough authority, at the start of the apprenticeship. Consistently with what has been said above, it is not possible to impose such an obligation in all places, as a matter of strict law. Nevertheless, it should usually be practicable to introduce such a system as a matter of good practice. It has much to be said for it, as a part of the wholesome regulation of admission by apprenticeship today. The appearance of master and apprentice and the details of the agreement between them should be recorded in a register, as happened through the centuries with borough archives.

This paper cannot lay down mandatory conditions upon the way which local freemen run their affairs; and it assuredly does not seek to do so. Nor, of course, can it state the precise rules that will be found to govern any particular borough. But some general guidance is possible; and this paper seeks to offer such guidance.

Throughout, this paper has been concerned with a general and respected institution of some antiquity in England, namely, the relationship usually termed that of master and apprentice. Such a relationship is, in essence, simply the bond between teacher and pupil. The aim of this paper has been to try and show how admission by apprenticeship can be more widely used, without being abused. The need for such use is everywhere strong and, in some places, most pressing. The future of the Freedom will be guarded and enriched by a fuller understanding of these matters.

Charles Sparrow, QC, DL, FSA
Haverfordwest 1996

AT THE CROSSROADS (1997)

A TIMELESS SYSTEM

For centuries, the commercial life of England drew its strength from a community structure which came to be known as the borough freedom. I stress the adjective "community". There was a complete pattern of life. Commercial activity was fully integrated with

residence in the borough and family interests and with government of the borough. The citizens of this system, the burghers or freemen, were a race apart from the inhabitants of the English countryside.

The status of freeman was formal. It had its place in the law. It passed down from generation to generation, through duly qualified admission. This succession was commonly through family descent, sometimes known as "patrimony", or apprenticeship, known as "servitude". Other prescribed modes of admission were gift and purchase. When so admitted, freemen had a monopoly of trade in the borough. They operated all the functions of local government. They alone voted for members of Parliament. The boroughs were, in every sense, closed communities.

Such a system, sustained over centuries, created a powerful vested interest. That interest had a high value. The system must have appeared to be eternal. It was bound to lead to complacency and worse.

During the 18th century, freemen in the boroughs allowed the procedure of admission by purchase to be abused, for political purposes. Wealthy figures in the political world were enabled to make block purchases of the freedom in order to exploit the freemen's monopoly of the vote for Parliament.

On this account, the borough freedom became notorious and the places where it existed were castigated as "The Rotten Boroughs".

Indeed, national opinion was so inflamed that Parliament felt obliged to take action. By the Reform Act 1832, the freemen lost their monopoly of the Parliamentary franchise. And, by the Municipal Corporations Act of 1835, they were deprived of their local government functions. These were transferred to a new authority, the borough council. Moreover, the right to confer the freedom by gift or purchase was totally abolished.

The result was traumatic. Property rights such as rights of pasture were preserved; but otherwise the status of freeman became a statutory relic and an anomaly. In many places, admission to the freedom had been, by custom, limited to gift and purchase. In those places, the freedom simply died outright. Elsewhere, the survival and health of the freedom depended greatly upon local circumstances, such as political interests and the existence, or absence, of funds or landed property in the hands of the freemen. Speaking generally, the freedom tended to decline, though there were, and still remain, conspicuous exceptions.

Here, in the trauma of 1835, is a stark lesson from history. It would be folly to ignore or underrate it. Public opinion has to be treated with respect. Parliament has the power to reflect public opinion and it has shown its willingness to intervene in this particular field of national life. The freedom survives today only because Parliament has been prepared to keep it alive, by express provision in successive Local Government Acts. Parliament could easily withdraw or moderate its tolerance of the freedom.

PRACTICALITIES OF TODAY

So we see that the freedom has survived because of a reprieve and licence by statute. But it is not a creature of statute. There are some local statutes which regulate the freedom for a particular place. But we cannot look to a general Act of Parliament for universal principles defining the legal character of the freedom.

The freedom belongs to a very special and hardly known compartment of English law called Custom. This exists alongside, but independently of, the Common Law and Statute.

It represents the survival of ancient, indeed immemorial, community practice. It has the same force as the Common Law but only in each particular place. It is, positively and indelibly, local.

What follows from this is that, in principal, any place may have a version of the freedom which is unique. And certainly some places are known for rare features. York admits the daughters of freemen; Coventry limits itself to admission by apprenticeship; Grimsby admits those who marry the daughters of freemen. The precise character of any borough freedom has to be deduced from its own past history. To qualify as customary law, the relevant historical practice must be found to stretch back to the limit of legal memory and beyond.

This situation leads to the raising of many questions. Such questions cannot be conclusively settled by reference to any document. Custom is unwritten.
Historical accounts and records have to be treated with caution because they have no authority in the law. Moreover, the freedom dates from a time long before the general literacy of the population and thus historical material is not likely to be truly ancient.

It follows that legal advice for freemen is far from easy to formulate. There is no "authorised version" of the freedom, which could be studied. It must be remembered that attitudes of mind and the whole furniture of social life are different from what they were in medieval times and following centuries. Today, in a later age, those attitudes may be hard to uncover and, even if perceived, difficult to assess at the right value. Yet it was in the context of those attitudes that the freedom came into being.

When, therefore, freemen of a place ask to be told whether women may be admitted, a reasonably certain opinion may be possible; but absolute assurance cannot be given. The question may arise whether an applicant must have been physically born in the borough or whether it is enough that his mother lived in the borough at the time of his birth. That is a more difficult point. And the question may come up as to whether a freeman's sons must, for the purpose of admission, be divided between those born before and those born after the father's own admission, so as to disqualify the former class. That is yet a more stubborn question. The practice exists, in many places. But it may well be that, if legally challenged, it could be held by the court, to be contrary to the juridical principle of "reasonableness", in the realm of Custom.

In all these situations, the legal adviser must, in effect, strive to foresee the decision which a judge would make. There is never any money available for legal proceedings to obtain such a decision.

We should recognise, frankly, that local guilds of freemen are increasingly tempted to take the law into their own hands. In all probability, their conduct will not be challenged by hostile legal proceedings. But the result of such local actions by guilds is that individuals are ostensibly vested with a legal status, which is recognised and protected by the Local Government Act 1972. Yet that apparent entitlement may prove to be totally invalid. The eventual result could be to bring the law and the freedom into disrepute.

To be blunt, Parliament could well decide that such a structure of improvised lawmaking should be swept away by the final extinction of the freedom. Here is another warning which we ignore at our peril.

A GRISLY TALE

At this point, I have to mention a legal case, which came before a Chancery Court in 1993, namely, PEGGS v LAMB. It is better known as the Huntingdon case.

From time immemorial, the freemen of Huntingdon had enjoyed grazing rights over certain lands. As history moved towards our own times, there were sales from those lands, for a variety of purposes and mainly through compulsory purchase orders. The monetary proceeds of such sales were accumulated in trust for the freemen of Huntingdon.

Eventually, a day of reckoning came. The number of freemen having dropped to only 15, the annual payout to each of those freemen was about £32,000. Not surprisingly, the Charity Commissioners swept in and brought a lawsuit which was designed to end the golden feast.

The technicalities of the legal position were complicated but the practical result can be very simply stated. The freemen lost everything; and the trust was legally restructured so as, for the future, to benefit the inhabitants of Huntingdon as a whole.

A perpetual trust is not lawful under English law unless it be authorised by statute or is for charitable purposes. One had hoped that the perpetuation of freemen's property rights by the 1835 Act would constitute statutory authority and thus protect freemen against a disaster of the Huntingdon kind. But the judge in that case decided, in effect, that the 1835 Act recognised but did not enhance the pre-existing trust, whatever its status in law.

Such a trust, having endured for centuries, could legitimately presumed to be charitable and thus qualified to last in perpetuity. Unless so presumed, the trust would have to be recognised as totally invalid.

In this context, the critical point about a trust, declared or presumed to be charitable, is that the court has power to alter the terms of the trust in the light of changed circumstances.

It is possible that where, as happens in places, freemen's lands were established by an Enclosure Act, statutory authority was thus constituted. That would, of course, preclude interference of the court. But one cannot be sure. And the tone of the Huntingdon judgement is not encouraging.

So here we have another dire warning, to be set alongside those already noticed. There can be no assurance that the Huntingdon case will not be replicated elsewhere.

In particular, we should carefully note the real case of the scandal, in the Huntingdon case, which the Charity Commissioners and the court could not reasonably be expected to pass over. That cause was the dramatic decline in the number of surviving freemen.

On a more general assessment, freemen everywhere should ponder these chilling words from the judgement in the Huntingdon case: -

"In the middle ages...there can be little doubt that the freemen of a borough were a substantial section of the public both numerically and in their social, economic and political importance...The effect of the Municipal Corporations Act 1835 was to

destroy the political importance of the freemen and thereby to undermine their social and economic importance too. But, of more importance, membership of the class was thereby restricted, in the case of these charities, to those who were the sons of freemen and born in the ancient borough. The inevitable consequence after over 150 years is that the class has dwindled very considerably. There will come a time, if it has not arrived already, when the class of freemen ceases to be a section of the public at all."

Those words have an obvious and inescapable relevance to any other case where the Huntingdon situation is to be found. But we must recognise that they could have relevance also to any general evaluation of the freedom, by Parliament.

SEEKING A SOLUTION

We have, therefore, identified three fields of risk. The first is a decline in the local numbers of freemen. The second is the difficulty of ensuring that admissions are lawful. And there is a third and wider field of risk, namely, that the freedom may be perceived as being out of accord with current values.

Because of the criterion that the freedom must have had immemorial duration, freemen cannot themselves now invent remedies for their doubts and problems. However, remedy is possible. Parliament has the power to declare authoritatively, by statute, the scope of the freedom. And, of course, Parliament, but it alone, has power to make, by means of statute, changes in the law.

Parliamentary intervention might be implemented in one of two ways. Parliament would be able to declare or amend the law in relation to a particular place. This would be done by a Private Act, i.e., a statute relating only to a particular place. Or Parliament could amend the general law governing the freedom everywhere. This would involve a Public Act.

At first sight, the former alternative might seem to be a natural choice. However, a Private Bill is subject to special Parliamentary procedure. There would be legal formalities to be observed; and professional assistance would have to be engaged and paid for by the local freemen. Moreover, I myself doubt whether, in the very special circumstances of this subject, Parliament today could be brought to engage in limited reform, operative in local circumstances only. This would be piecemeal treatment of a situation which is, in reality, of general concern.

As to the second alternative, this is actually the easier option, by far. For the layman, the terminology may be somewhat confusing; but the better mode of proceeding here would be a Private Member's Bill, for a Public Act. That means that the result would be an amendment of the general law but it would be promoted by an individual Member of Parliament.

Promotion of such a Bill in the House of Lords has the advantage that there is, in that House, no member's ballot. Any member may, at any reasonable time, present a Bill, which will be printed at public expense. Of course, that member will be well advised to prepare carefully his presentation speech; and he will, beforehand, seek support from other members. Subject to those precautions, a member of the House would have the ability to seek legislation for general reform of the freedom, in all places where it is found.

Thus, what we are looking at is an individual venture; but one that would be in the general interest of freemen everywhere. They, in their turn, have the power to support that venture, as by signifying guild approval and enlisting the aid of other members of the House of Lords.

THE BILL

In the situation which I have described, the general interest of the freemen of England and Wales has been taken up by the freemen of Beverley. They have procured the drafting of a Bill which, it is intended, will be introduced in the House of Lords.

Let me lay to rest, immediately, any idea that freemen are now confronted by a complex legal document, understandable only by professional lawyers. Any such idea would be plain nonsense. This Bill is short and simple. It is, after all, designed to appeal to the members of the House of Lords who are, as a whole, laymen.

The reality is this. The Bill has two substantive clauses only. Each of those clauses is less than three lines long. Neither clause contains any wording that is not universal and familiar language in the world of the freedom.

The first of the two clauses merely provides that, wherever the son of a freeman may today apply to be admitted as a freeman, then, after the coming into force of the Act, a daughter may apply likewise.

The second clause removes any previous necessity for an applicant seeking admission to show: (a) birth before the father's, or mother's, admission as a freeman or (b) birth in the borough.

The first and principal provision of the Bill simply equates sons and daughters of a freeman, for the future. It does not authorise any retrospective use of the female line.

It is intended to provide that the Act shall not affect, in any way, the Freedom of the City of London. That Freedom was not subject to the 1835 Act and has its own unique character. It works happily in the conditions of our time.

THE CROSSROADS

Every Bill has a preamble, shortly describing its purpose. It is very well worth noting that the preamble to the Beverley Bill describes its purpose as being "to ensure, in the public interest, the due continuance of the historic institution known as the borough freedom".

These are pregnant words. What is intended here is the survival of the freedom. That is to be ensured through a fair and reasonable operation of the freedom, by the standards of today.

The main effect will be the general admission of daughters of freemen. This cannot honestly be described as any opening of floodgates. The average size of a family today is dramatically smaller than the average size of a medieval or Victorian family. That fact has undoubtedly been the cause of a decline in the number of freemen, where such a decline exists, as it did in Huntingdon. Given the reduced size of the modern family, the admission of daughters could produce only a modest increase in numbers.

Moreover, it would be a fallacy to assume that there was historically a general sex bar, against women, in the freedom. There was not. Indeed there were some few places, evidently, where daughters were actually admitted, as in York. The bar on women was limited to family succession. That was understandable when, for instance, intestate succession to land was exclusively in the male line. As was the succession to titles of honour.

In the freedom, there was, in addition to family succession, business succession. It should be realised that, in medieval times and later, women were active in borough trade. They could qualify for admission by apprenticeship. In places, the freedom even allowed widows to succeed to the trading privileges and advantages, if not the status, of their freeman husbands. In Beverley, research has shown evidence of the existence of women in the freedom, possibly through apprenticeship.

We should not fail to notice the full implications of the abolition, by the 1835 Act, of admission by gift or purchase. That abolition was intended to be punitive. In the fevered climate of early constitutional reform, it was understandable. But its effects have not been beneficial. Indeed, they have been harmful, in the long term. Today, the City of London is able to serve the public interest by conferment of its freedom, i.e. by gift. As to the boroughs, Parliament did relent to the extent of allowing honorary freedom but only at the gift of the statutory borough council. That was not an organic propagation of the borough freedom. Freemen of the boroughs are thus prevented from following the enlightened practice of the City of London in our time. We should note also that the City of London can sell its freedom. But it does so only after careful selection; and then devoting the proceeds to the cause of charity.

In relation to the admission of women, the Beverley Bill would empower the borough freedom to do, by a general authority, that which local guilds would actually be doing today, if they had not been penalised by the 1835 Act.

We should be careful not to limit our motivation to the making up of numbers. The freedom originated in a male-dominated world. We now have an entirely different attitude to the place of women in society. They enjoy a totally different involvement. Parliament has recognised that. Europe also recognises it.

That recognition must not be seen as a conflict with the ancient spirit of the freedom. For the citizen of an ancient borough, the freedom was a valuable possession. In the general interest of the community, that possession was something to be passed on. Succession was related, on the one hand, to business and, on the other hand, to the family. In the latter case, the idea took its practical operations from social conditions of the age. But the motive spirit was that of the family. Today, family succession to status and property operates very differently from the way it did in former times. Male inheritance is a memory of the past.

So the Beverley Bill should not be seen as rescinding a principle. The full title of the Beverley Bill is "The Borough Freedom (Family Succession) Bill". The words in brackets should be carefully observed.

York is a glowing example of the real benefits that have come from the full participation in the freedom of the daughters of freemen. London, still able to exercise the ancient right of admission by gift or purchase, enhances the freedom immeasurably by the admission of women.

Not for the first time, I say that the freemen of England and Wales are truly at a crossroads. They can ignore the bitter lessons of history and remain complacent. But the fat purses of today could disappear overnight. Freemen can take the chance of losing all. Or they can act with judgement and responsibility to preserve the freedom for the future. The true path, for family succession in the world of the freedom, lies ahead of us, plain and clear.

Charles Sparrow, QC, DL, FSA
Shrewsbury 1997

THE 1835 ACT AND ITS PENALTY TODAY (1998)

Foreword

It is never wise or safe to be, as somebody once said, “economical with the actuality”. I suggest that the Freedom provides no exception to that wholesome principal.

There are those outside the world of freemen who know absolutely nothing about that world. It is natural for such people to give the imposing term “the Freedom” a meaning drawn from everyday language. In the result, they tend to perceive, in “Freedom”, some

high moral principle akin to universal liberty. Of course, as we all know, such a meaning effectively reverses the truth. To be blunt, it is both accurate and fair to define the word "Freedom", in this special context, as meaning privilege.

In ordinary life, we sometimes invite a friend to "make free" of something belonging to us. When we say this, we are envisaging that the recipient will share in a benefit. This was the essence of the borough freedom. It gave a right to participate in privilege. In past times, the process of admission to the freedom was often spoken of as being "made free of the borough". This meant conferment of a status which gave the right to special advantages, not enjoyed by the general population.

That is the actuality. Yet, when we debate freemen's affairs, there are those who refer to the Freedom as if it were a sacred principle, which we defend in the public interest.

Do not misunderstand me. The Freedom is an essential feature of the history and character of our country. Parliament has firmly chosen to preserve and protect the Freedom. It is right that freemen everywhere should strive to defend the Freedom and ensure its continuance into the future.

What is not justifiable is to distort debate with assertions or implications of a noble principle, which other people are accused of betraying. At best, such accusations stem from ignorance of the history and law of the Freedom. At worst, they are a cover for the defence of a financial interest.

Again, I must not be misunderstood. I am saying nothing against the legitimacy of defending a financial interest. An interest of that kind is sometimes found as part of the borough freedom. As such, it is meant to be protected. The mode of protection may, however, be a different question, upon which opinions can differ. In order to be effective, protection must be shrewd. The case of Huntingdon shows that inept defence may prove suicidal.

My present concern is that debate about the Freedom should found itself upon the realities. I will go further and suggest that there is a real peril for the Freedom if we do not observe that guiding rule. Let there be no doubt that the Freedom has to face risks and perils. In seeking to meet those dangers, freemen must, I believe, be frank and open with themselves and also with the outside world.

In this situation, we do well to remind ourselves of the true history of the Freedom. It is a plain tale.

The Plain Tale

From about the end of Roman rule, this country was settled by newcomers from the German lands. They came as mere boat loads of migrants. There was little or no co-ordination. The unit of settlement was usually small, commonly a family group. To this day, a great many English place names, for both towns and villages, conform to a certain pattern, which denotes the settlement of the family or followers of an Anglo-Saxon leader, whose name can still be read. I offer you Sonning, Basing, Reading and Goring, Sunningwell and Wallingford. The first particle in each case reflects the leader's name. The second signifies the tribal or family character of the settlement. Here we see the beginnings of English communal life.

There was no national government and certainly nothing that we would recognise as government control of the daily life of the population. There was no pattern of comprehensive statutes. Bye-laws and statutory regulations did not exist. Ministries and county councils had yet to come.

This was the scene in which the trading centres of England were born. They were free enterprise in the fullest sense. There was, then, no general pattern of local government. But, as time passed, the boroughs of England and Wales came to organise their defence, their government and their succession. This was the achievement of the citizens, the burghers or burgesses. It was their communal effort. It was not imposed from above.

In principle, therefore, a borough was a trading enterprise, whose shareholders were the freemen of the borough. In the course of time, freemen were able to enhance their position by acquiring a royal charter, often from a king whose funds were low. This gave legal formality to borough administration, as did the right to send members to Parliament. But the underlying reality of the borough character was made plain by the customary monopoly of trade in the borough, which the freemen enjoyed. Thus the freedom was a system designed and operated as a means of assuring to the freemen of a borough rights and privileges, profits and monopolies.

In the year 1155, in the city of Oxford, King Henry II granted a charter to "my faithful burgesses of Wallingford". That charter testified that the liberties and laws and customs thereby granted to the burgesses were to ensure "that they may freely have a Guild of Merchants...so that no reeve of mine nor any justice of mine shall meddle with their guild". To that end, the burgesses were declared "quit of toll, passage, pickage, pannage and stallage", as well as of divers other forms of taxation. Here we see demonstrated the actuality of the Freedom.

The freemen of a borough organised their local world comprehensively and, above all, so as to take the benefit of monopoly and inheritance. Membership was closely regulated and carried domination in trade. Family succession was promoted. There were residential privileges; and rights of pasturage. Local government rested totally in the hands of the freemen. There was strict discipline to ensure performance of civic duties and the discharge of civic office. Here was nothing abstract. It was real life. It lasted, impregnably, for centuries.

During the long span of those centuries, it must have been beyond belief that the Freedom could be brought to an end or radically altered. Certainly, the freemen of the boroughs conducted their affairs with sublime self-confidence.

The Eighteenth Century

The eighteenth century saw development of English political life along lines that we can recognise. There was more organisation. But there was no control of political funding and bribery was a fact of life.

Under the system obtaining in the boroughs, the freemen had a monopoly of the parliamentary franchise. Freemen alone could vote for borough members of Parliament. Of itself, there was no great harm in that position. Indeed it was manifestly right that the members of a borough community should be represented in Parliament. To a large extent, the freemen were the population of a borough.

However, the borough system commonly allowed admission to the freedom by gift or purchase. Political magnates saw in this their opportunity. By providing the money for admissions by purchase, they could buy blocks of votes. Sadly, but perhaps not surprisingly, freemen in the boroughs yielded to temptation. Admissions were bought and sold. Both political life and the borough freedom became contaminated. By the end of the eighteenth century, the boroughs had come to be known as “The Rotten Boroughs”.

The term was deadly. It gained immediate currency; and it lives on to this day. In a recent political pamphlet, concerned with reform of local government, the City of London has been described as “the last Rotten Borough”.

We can have no doubt of the odium in which the boroughs were held, as the eighteenth century ended. When eventually investigated, at national level, the boroughs provided a mass of material which was recorded under such eloquent headings as Abuse, Bribery, Political Patronage, Family Influence, Mismanagement and Misconduct.

The published report that resulted from this investigation is a fascinating treasure house of municipal detail. It depicts every borough’s peculiarities of custom. Here we see reflected the principle of English law that custom is intrinsically local. Every borough is, in law, unique. And, in the heyday of the unreformed Freedom, the actual pattern of borough custom was, to say the least, unpredictable and infinitely various.

The respective modes of admission, in the boroughs, were ascertained and duly recorded in the report. The modes of admission to the freedom, thus noted, will be found to include appointment by the manorial lord, election into the council, inhabitancy, self-election, presentment of jury and freehold estate in a burgage tenement. Varying combinations of these and the more familiar procedures of patrimony and servitude, were legion.

Unhappily, the prevailing message that emerged countrywide was that the public interest was subjugated to private influence and advantage. This was indeed a general state throughout the boroughs of England and Wales.

In the result, as the nineteenth century opened, Parliament and the public had determined that the system which called itself the Freedom was thoroughly corrupt and deserved to be swept away.

The Nineteenth Century

As a first step, Parliament reformed the political machinery. Voting in parliamentary elections, in a borough, was no longer reserved for the freemen. There was to be universal suffrage. But this reform was certainly not sufficient to satisfy those who had come to detest the Rotten Boroughs.

For many, the obvious solution was to demolish the entire structure of the Freedom. An Act of Parliament was framed. This was intended as a final solution. However, the Freedom was not without powerful friends and the legislation was moderated, as it went through Parliament. What Parliament eventually enacted was the Municipal Corporations Act 1835.

The local government structure of the Freedom disappeared; and there were brought into being the borough councils, which we can all remember well. Surprising as it may seem, the property rights attaching to the Freedom were carefully preserved. these rights had originated with the pasturage that every medieval town needed to sustain its population. The title to these rights had usually been given a statutory character by Enclosure Acts. Forfeiture of such property would have meant expropriation or confiscation. This would have been wholly inconsistent with the 19th century respect for property.

So the Freedom itself remained in existence and was destined to be recognised by succeeding Local Government Acts, the last in 1972. Admission by patrimony and servitude, i.e. admissions of sons and apprentices of freemen, was not touched, by the 1835 Act. These are now, of course, the principal mechanisms for the perpetuation of the Freedom. Admission by gift or purchase could not have been expected to endure. Nor did it. But, on a broad assessment, the Freedom seemed to have survived, remarkably well.

The Legacy

However, we come now to an assessment of the real effect of the Municipal Corporations Act 1835 and its legacy for our time.

Contrary to the modest appearance of the Act's effect, when expressed in generalities, the 1835 Act meant slaughter and decimation of the Freedom.

At the outset, we should remind ourselves that the Freedom is a prisoner of a fundamental principle of English law. That principle is the doctrine of custom.

The law of this country has three distinct compartments, namely, Statute, Common Law and Custom. All have equal force. The first two are familiar to everybody and need no further explanation. The third, Custom, reflects a willingness of English jurisprudence to accept and enforce local law that derives historically from the tribal systems of our Anglo-Saxon ancestors. Consistently with the tribal settlement of this country, in the Anglo-Saxon period, all English law was, once, local. As the common law, i.e. national law, evolved, elements of the local system were allowed by the royal courts to survive. Predominantly, this happened in the field of land use law. But the freedom also exists under the umbrella of Custom.

The inflexible and inescapable requirement for Custom is immemoriality. This means that, for Custom to exist, there must be proved, or presumed from evidence, an origin "beyond legal memory" i.e. previous to 1189. There can be no evasion of this criterion.

It follows that the Freedom, where it exists, will be what it always was, down the centuries. Freemen today cannot alter the Freedom. The idea that guilds have the power today to change their local freedom is simply moonshine. Equally fallacious is the suggestion that guilds can exercise a choice between making or not making a change.

The immemoriality of the Freedom was, of course, as rigid in 1835 as it is today. Thus the system with which the 1835 Act dealt was simply not capable of being adjusted to anticipate or respond to that Act, by the introduction of new local custom.

As has already been noticed, the investigation which preceded the Municipal Corporations Act 1835 ascertained and recorded the modes of admission operative in each of the boroughs; and these were remarkably varied.

Today we have a standardised view of the conditions for admission as a freeman. There are staple qualifications, i.e. as the son or apprentice of a freeman. Then there is a very small number of exceptional qualifications, as, for example, daughter of a freeman or husband of a freeman's daughter.

Comfortably, there were, in 1835, standard cases, as in Bedford, where admission was by birth and apprenticeship, as also purchase and gift. But even a brief glance at the information assembled by the national investigation shows that there was a host of places where, as for example in Bury St Edmunds, admission was by gift alone. In other places, there was admission only by gift or purchase.

Thus the prohibition, in the 1835 Act, of admission by gift or purchase had the ultimate effect, in many places, of extinguishing the Freedom.

Here we have immediately potent penalty, for the Freedom, created by the Municipal Corporations Act 1835. But there remains a further penalty, which afflicts the Freedom of today. Times change and social conditions evolve. Any communal institution would wish to be able to adjust to such conditions and evolution. Indeed, the public would expect that attitude. But, outside the City of London, the Freedom is unable to deploy the choice and power of selection which it possessed before 1835, through the ability at that time to admit by gift. The 1835 Act wounded where it did not kill.

It is this present penalty, of impaired capacity, that makes it necessary, outside the City of London, to go to Parliament for any revision of the conditions of admission to the Freedom.

Ironically, the unreformed Freedom of the City of London has been able to respond to social change, by means of admission by gift or purchase. But the "reformed" Freedom in the rest of England and Wales cannot do likewise.

Looking back, it must be a matter of sad regret that the power to admit by gift came to be abused. That power was a natural and wholesome reinforcement of the vitality of the Freedom. Properly used, it could provide for the exceptional case of merit. In fact, Parliament itself shared this thought and gave the new borough councils statutory power to create honorary freemen. However, that was of no aid to the ancient Freedom.

The Lesson

Nearly a quarter of a century ago, in 1975, Harry ward published his book "Freemen in England". When compiling that book, he conducted a survey of the Freedom, by means of questionnaires sent to freemen's organisations and town clerks. The material obtained by that survey was duly published in Harry Ward's book.

Twenty three years on, I would invite FEW to consider making a further survey, in the conditions of today.

The general opinion which Harry Ward formed was that, in places, "freemen have become fewer". His book was a pioneering exercise and it achieved much. But it is not surprising that there are lines of enquiry which remain to be carried further.

It is surely desirable that we should try to discover, from the members of FEW, what is the pattern of numbers in their boroughs. Is the total of their freemen declining, remaining much the same or perhaps increasing? Numerically, the answer to this question is likely to be only an estimation. But what we should be able to discover is the general trend. For example, it must have been very clear, before the Charity Commission stepped in, what was happening in Huntingdon.

The members of FEW could also be asked to state their opinion as to the cause of any perceived decline in the number of freemen. It seems likely, to say the least, that the smaller size of the modern family has had an effect on the overall number of freemen. If so, this must be a relevant consideration in the debate about the admission of daughters of freemen. Overall, the seriousness or scale of any decline in numbers will be a vital factor in that debate.

Because admission by gift or purchase was prohibited by the 1835 Act, the ability of the Freedom to maintain its numerical strength is tragically limited. Harry Ward pointed out in his book that women apprentices had been admitted "throughout the ages". He raised the possibility of gaining the support of women by recruiting more women apprentices. But, today, apprenticeship seems to lack popular appeal.

Some individuals have tried to argue that a general revision of the law to allow the admission of daughters would be interference with an immemorial right of each body of freemen to make its own decision as to admission. As indicated already, that claim is nonsense. It is 163 years behind the times. Any such right was removed in 1835. Admission by gift or purchase would have enabled us to put our house in order today. But we no longer possess that power. We have to look elsewhere. In fact, we have no alternative but to turn to Parliament.

What is at stake today is a vital aspect of the Freedom. It is the ability, to guard the inheritance of families which have possessed, perhaps for centuries, that worthy legacy long known as the Freedom. It was respect for that family inheritance that brought the freemen of ancient times to admit daughters as apprentices and to admit to benefit the widows of freemen and those who married freemen's daughters and widows. The paramount concern was the freeman family, as I beg to suggest it should be today.

The Future

Although I have spoken of the dire penalty of the 1835 Act, I do not wish to convey a message that is simply negative.
Harry Ward described the aim of his book as being to help freemen understand their customs and law. He plainly saw that study as important, indeed vital, for the future of freemen. The ultimate object was to determine, as Harry Ward himself put it, what action freemen should consider. He referred to a tendency for freemanship to die out owing to inertia.

Irredeemably, the 1835 Act has ruled out admission by gift. Although gift is a loaded term, in this connection, I would comment, in passing, that the word is, after all, merely one way of describing the normal mode of admission for any society or association. However, that mode of admission has gone and cannot be recalled.

As already noted, Harry Ward urged the encouragement of apprenticeship, under modern conditions, for young men and young women, so that they could claim the freedom. This is, without a doubt, a subject which could be taken more seriously. The

participation of women was something which Harry Ward recognised and plainly valued. He remarked that women were participating in more activities.

So the long-term effect of the 1835 Act can be seen as setting a challenge for freemen everywhere. Full use must be made of the modes of admission that remain. Declining numbers, if they exist, are a threat that simply must be recognised for what it is. Huntingdon is a clear and frightening example of the ultimate danger.

Incidentally, I notice, from Harry Ward's book, that, in Huntingdon, qualification by patrimony required birth in the borough. Whatever disputation there may be about the admission of women, clearly the requirement of birth in the borough is outmoded, unnecessary and, today, absurd. It may well have been a prime cause of the fatal decline in numbers in Huntingdon. But where do we find, among the critics of a Freedom Bill, concern about the grave effect of this fetter on admission? Harry ward reported that the Huntingdon freemen were claimed to be "the wealthiest in England". Perhaps they should have considered spending some of their wealth on getting a Bill to modernise and rationalise their terms of admission.

So there remains the expedient of legislation, i.e. a Freeman's Act of Parliament. Harry Ward recognised the possibility and he said, bluntly, "Farseeing Freemen will do well to consider from time to time what changes they would like to put forward". He said this in the context of his opinion that "there must be amending Acts from time to time". His words could not have been plainer. I support his advice, totally and without reservation.

It would be no exaggeration to say that the freemen of today owe everything to Harry Ward. He it was who took up the cudgel when the Government of the day brought forward a Local Government Bill which would finally have abolished the Freedom. For him, the Freedom was a sacred cause. And he won victory for the Freemen. I would invite every freeman to take down Harry Ward's book and read again what he wrote in 1975. In that book, we find the wide horizons of the Freedom, as Harry Ward saw them. He was deeply concerned with the survival and the enhancement of the Freedom. We should profit from his knowledge and his wisdom. The 1835 Act, the original Bill for the 1972 Act and the Huntingdon case all show us that we cannot safely trust to luck.

Charles Sparrow, QC, DL, FSA
Oxford 1998

THE UNITY OF THE FREEDOM (1999)

I. FEW's Charter

The Freemen of England and Wales have sought and obtained the legal status of a charitable institution. That status carries both tangible and intangible benefits. The former benefits include tax relief. It is good to be a charity.

A judge once said that the term charity has "a much wider meaning in law than it has in popular speech". And another judge has remarked that the legal meaning of charity is not "coterminous with the popular or vulgar use of the word".

Of course, the term charity may, in a particular case, reflect a concern simply with the relief of poverty. But the term is equally capable, in law, of denoting the advancement of education. That purpose is a major head of charitable activity.

The common element in all charitable causes is public benefit. Whatever the particular object or purpose of a charitable institution, there must be benefit to the community. English law favours charity. It does not require technical words for the creation of a charity. It looks to the intent or object. There must always be a public purpose and benefit. And that purpose must be exclusive. It follows, therefore, that the operation of an institution that has been accorded the status of a charity must reflect public purpose and benefit.

I suggest further that the interpretation of any charitable body's constitution will be influenced by the same need for public purpose and benefit. A charity cannot be seen or operated as simply a club for members.

In observing the principles which I have set out, we are not implementing some arcane technicality in the law. The legal principle of charity is one of the most fundamental and respected features of the English legal system.

The practical effect of what I am saying is that we cannot determine the ambit of the activities of FEW as though we were safeguarding the property interests of a defined membership class. Under its Constitution, FEW is concerned with the advancement of knowledge. That is its role and the justification for its status as a charity.

It is of the very nature of the pursuit of knowledge that it advances boundaries. The field of knowledge with which FEW is concerned will be found to determine the extent of its membership. That concern relates to the customs of life in the ancient towns of our country. This is limited territory. There is no justification for arbitrary limits. Such limits would be a restraint upon the pursuit of knowledge. The relevant concept of the freedom derives from its actual existence. That existence was not dictated by abstract principle. It was the customary practice of ordinary people. Legal custom is fact not theory.

Accordingly, I suggest that one cannot divorce the interpretation of the term freedom, when applied in the administration of FEW, from the meaning, or indeed meanings, which the term had in the historic past. We must not fall into the error of assuming a system of nationwide regulation or convention, however natural such a system would be in our time. We simply cannot impose a neat, unified, definition upon the variable actuality of ancient times.

II. Boroughs and other places

The stated objects of the Association of The Freemen of England and Wales are to be found in Clause 2 of its Constitution. Those objects are concerned, impeccably, with the advancement of education, the promotion of research, the publication of results of such research and the provision of advice and information. Here is an assembly of activities that reflects a classic element of charity, as recognised by English law, namely, public education.

It is to be observed that the first of those objects is to advance public education in and promote research into "the history and legal customs of the ancient towns of England and Wales and of the legal institution of the Freedom".

Here we have, expressly stated, a concern with the legal customs of "the ancient towns" of England and Wales. The language is general. There is no limitation to boroughs. The expression "towns" cannot, as a matter of language or law, be limited to boroughs. A court was once moved to observe that "every borough is a town, but every town is not a borough". So we should note that the first and primary object of FEW relates unequivocally to "the ancient towns" of this country.

There is a reference to "the legal institution of the Freedom". The relevant constitutional object is stated to be the provision of advice and information concerning the legal institution of the freedom within each of the places in England and Wales where that institution is to be found. Those places are identified as former boroughs "or other places".

Once again, we have explicit language and a general terminology. In this way, the FEW Constitution makes it plain, beyond challenge, that the concern of FEW is with the historical actuality of ancient life in the towns of England and Wales. That concern cannot be ignored, rejected or qualified. It is the basis upon which the Freemen of England and Wales chose to seek the status of a charitable institution.

III. The fundamental institution

As already noticed, Clause 2 of the Constitution refers, more than once, to "the legal institution of the Freedom". The repeated definite article, the adjective "legal", the word "institution" and the capital letter beginning the word "Freedom" combine to suggest an established concept of immutable certainty. The reality is more than somewhat different.

The term "freeman" simply does not have a uniform and universal meaning. There was no Statute of Freemen. The status of a borough freeman existed under customary law, which was, of its nature, local in character and variable in content.

The class of persons with which we are concerned could, in fact, be termed "burgesses". Indeed, that terminology is almost universal in the listing of corporations by the First Schedule to the Municipal Corporations Act 1883. Black's Law Dictionary defines "burgess" as "an inhabitant or freeman" of a borough or town. The 1882 Act defined the term freeman as including both freemen and burgesses. Plainly, therefore, the word "freeman" may denote persons who, in some sense, are not freemen.

In passing, I note that the 1883 listing includes: "The mayor, aldermen, and burgesses of the borough of Altrincham".

Harry Ward rendered a public service by unifying local guilds in a national association. But his project was a matter of organisation rather than academic research. In that process, the concepts of freedom and freemen may well have become unduly standardised. Mr Walker, Harry Ward's advisor, is on record as having stated bluntly that customary freeholders of manors "were not Freemen". This firm statement necessarily implies a single, mandatory criterion. Again one notices the capital letter, for the word "Freeman". In sharp contrast to Mr Walker's statement, we have, in Christopher Jessel's book, "The Law of the Manor", explicit reference to manorial "freemen".

IV. Membership of FEW

The principal membership of FEW is constituted by Guild Members and Individual Members.

The expression "Guild Member" is defined by Clause 4(b) as "an organised body of Freemen however named".

Although this qualification as to naming, if construed narrowly, might be taken to relate merely to the title of a body, a title normally reflects the character of the body. Accordingly, Clause 4(b) may fairly be taken to extend to a body whose members are not actually or conventionally termed freemen, though they have that character. This interpretation is not merely permissible. It is, I suggest, necessary. I have already drawn attention to the common use of the equivalent designation "burgess", which is found in Acts of Parliament, no less.

By Clause 4(c), the expression "Individual Member" means, in the first place, a person who, before 1st April 1974, was "admitted to the Freedom of a borough according to the law and custom of that borough".

Bearing in mind the concern of the Constitution with the "legal customs of the ancient towns" and its recognition of the existence of the freedom in "former boroughs or other places", one can have no doubt that the membership provisions of the Constitution of FEW should be construed in a broad and practical way.

Indeed, quite apart from the specific phrasing of the Constitution, we should take note of the wide historic meaning of the word "borough" itself. The judicial comment about boroughs and towns, which I have cited, reflects a relatively modern limitation of the word borough to places having a royal charter. But the original meaning derives from the Old English, i.e. Anglo Saxon, word *"burh"*, denoting simply a fortified place.

The Oxford Dictionary of English Place Names comments, in relation to the word *burh*, as follows: "variously applied to Iron Age hill-forts, Roman and Anglo-Saxon fortifications, and fortified houses, later to manors or manor houses and to towns or boroughs".

The Oxford English Dictionary provides the following radical definition of the word borough: "A fortified town; a town possessing municipal organisation". Most interestingly, the Dictionary provides also the definition: "A court, a manor-house". And it records actual use of the word borough to denote a court or place of assembly.
Returning to the Old English root word *burh*, we find that the Place Names Dictionary, at page 43, expresses this word's meaning, summarily, as "manor, borough".
Here again, we must avoid attributing a standardised, indeed statutory, modern meaning to an ancient word of variable usage. It follows, I suggest, that it would be wrong to limit the term "borough" to some particular class of boroughs; and thus to exclude manorial boroughs.

As Christopher Jessel says, in his book on manorial law, "No one sat down and devised the manor out of nothing. It developed from circumstances and mutual interests". Precisely the same statement could be made of the borough. Moreover, as Jessel remarks, "Manors are associated with country villages…but they could not exist without trade or the towns that trade created…The lord of a manor may also be lord of a borough". Jessel records that the manor was "a society, organised by degree, with lord, freemen and copyholders".

As a manorial village grew into a town, its inhabitants would develop a sense of identity as a community. This could lead to the acquisition, by royal charter, of borough status. Jessel notes that when a town became a borough one of the things that many mayors and commonalities tried to do was to acquire the lordship of "the manor that comprised the borough".

The reality of mediaeval life was that manors and boroughs existed side by side and in combination.

V. Court Leet members

Here in Altrincham, it is appropriate to recognise and affirm the status of the so-called court leet members of FEW.

In order to bring a clear mind to this subject, it is necessary to avoid the mistake of seeing an irreconcilable difference between a borough and a place regulated by a court leet.

Both had the same organic origin, namely, a sit of human settlement. Both had the same function, namely, the provision of local government. Both recognised freemen, namely, citizens of full capacity.

Moreover, it is, I suggest, of critical importance to understand the derivation and full meaning of the expression "court leet". It indicates a court but it denotes a town or other place.
In Blackstone's Commentaries, Vol. IV, page 357, a court leet is described as a court "held within a particular hundred, lordship or manor". It could be found in a borough. The character of such a court is thus derived from a particular place. That linkage is denoted by the word "leet". In Cowel's Law Dictionary (1727) and Jacob's Law dictionary (1732), a court leet is defined as a court of "Jurisdiction above the Wapentake or Hundred". Here is a pattern of language that is geographical.

So we are not concerned with a terminological contrast between a borough and a court. There is the possibility of identity between a borough and a leet. We are, I would suggest, looking at court leets not courts leet.

The Oxford English Dictionary recognises explicitly, as a meaning of the term leet, "the district" over which this type of court's jurisdiction extended. And it gives, as a further meaning, "a district generally". Leet has been defined as "a division of the hundred". There can, therefore, be no doubt as to the topographical character of the word "leet". It was a unit of land.

Interestingly, it is to be noted that Jowitt's Dictionary of English Law records that the original intent of the court leet was to view the frankpledges, that is, as the Dictionary puts it, "the freemen" within the liberty. Likewise, Blackstone, Vol. I, page 328, observed that the view of frankpledge involved "freemen".

Thus there is functional parity between the terms "borough" and "leet". Each denoted a town or other place. They could co-exist. Furthermore, we may note that each was associated with a class of persons capable of being described as "freemen".

A most striking circumstance, recorded in Wharton's Law Lexicon, is that, in some places, the jury of the court leet chose the mayor, port-reeve, or other chief municipal officer of the borough or town "to which the leet jurisdiction was appended". Given that prime function, admission to the freedom by the court leet would be an obvious implication.

Section 23 of the Municipal Corporations Act 1883 explicitly records that the mayor of Altrincham was "elected at the Court leet".

Bryan Massey has compiled an excellent Directory of Courts Leet. This depicts their long history of civil administration, enforcement of law and regulation of trade, the classic functions of freeman bodies. The governing law was customary; and there were "free" tenants and certainly burgesses.
Thus, in our concern with the ancient towns of England and Wales and the institution of the freedom, it is only by perverting the evidence of history that we could raise a material distinction between boroughs and court lets. And the very Constitution of the Freemen of England and Wales enjoins us to draw no distinction between boroughs and "other places". There could not be a clearer message.

VI. The matter in a nutshell

This Association is a national body. It is concerned with all freemen of England and Wales. It takes, as an express object, research into the history and legal customs of the ancient towns of this country. The term freeman is a word as old as any in the English language. Its meaning has to be derived from that language, as it existed long ago. The term was part of ordinary speech in "the boroughs and other places". We cannot trim its historic meaning. It must have its full effect.

Dr. Johnson defines the word freeman as: "One partaking of rights, privileges or immunities". This meaning is not restrictive. Section XIV of the Municipal Corporations Act 1835 has a reference to persons being "free of a City Town or Borough". And we must remember that in FEW the word has its function in a stated context of "the ancient towns" of this country. In that context,

there was no official or academic limitation upon its meaning. Its use was found in the daily speech of ordinary folk. The national survey before the 1835 Act shows that local qualifications for the status of freeman were almost infinitely variable. Thus, the term is a perfectly natural one to denote free citizens in a manorial borough or town as much as for the free citizens of any other borough.
This matter is, I suggest, put beyond all question by the composite definition of the term freeman, as recorded, in Wharton's Law Lexicon, namely: "an allodial proprietor, one born or made free to enjoy certain municipal immunities and privileges". It is not to be overlooked that the meaning "allodial proprietor" has pride of place in this dual definition. The Oxford English Dictionary defines the word "allodial" as indicating the holding of land in absolute ownership or, as the Dictionary puts it, by "free title" or in "free ownership".

There can, therefore, be no rational challenge to the entitlement of manorial and court leet freemen to be recognised as being within the full and ancient meaning of the term freeman.

VII. Constitutional reconciliation

It follows from what I have said that customary freeholders or tenants of manorial places should be recognised as eligible for admission as Individual members of FEW and their guilds as Guild Members.

Clause 4(b) of the Constitution embraces organised bodies of freemen "however named whether corporate or unincorporated".

Clause 4(c) recognises those admitted to the freedom of a borough before 1st April 1974 "according to the law and custom of that borough". After that date, the qualification is entry on the roll of freemen under Section 248(3) of the Local Government Act 1972. It is important to observe that Section 248 concerns itself globally with the status of "freeman of a city or town".

Reverting to FEW, it is to be noticed that manorial freeholders and tenants are recognised in Clause 5(c) of the Constitution.

At the outset, I am forced to remark that the drafting of Clause 5(c) does not induce an unqualified impression of competence. It contains a reference to places included in "schedules to the Municipal Corporations Act (sic) 1835 and 1882". There is, of course, no such Act, with double dating. There are in fact two separate Acts, in 1835 and 1882 respectively. But the 1882 Act contains no schedule whatever of the kind indicated. What must have been intended was a reference to the relevant schedule of a third statute, namely, the Municipal Corporations Act 1883.

Now it is an elementary principle of legal interpretation that the meaning of any particular provision of a document is to be arrived at only after the consideration of the entire context of the document, taken as a whole. This is the approach that a court would be obliged, by law, to follow.

Clause 2 of the Constitution refers to the freedom as the institution within "each of those several places in England and Wales being former boroughs or other places where that institution is to be found". Here is language of generality and actuality. It could not be more practical. And one notes the present tense. The concern is with the freedom wherever it "is to be found".

Accordingly, with any question of interpretation of the FEW Constitution, regard must be had to the national character of FEW, its general concern with "the ancient towns" and "boroughs and other places" and the wide meaning of the term "freeman", as used in popular speech, over the whole country.

These elements justify, indeed require, the acceptance of a broad approach. The court would, in my opinion, recognise the likelihood of local variations of definition and implementation. It would, I believe, strive to find a sensitive pattern of interpretation that allowed such variations to co-exist without conflict.

The result of this approach must inevitably be a constructive reconciliation of Clause 5(c) with other provisions. This could be achieved by identifying, for manorial freemen, an option, not an exclusive provision.

Clause 5 introduces a form of membership which is expressed as being "open to" certain persons. There is no language of necessary exclusion.

Any borough freeman may elect to become an Individual Member and pay a subscription; or alternatively he may remain content with the non-participatory status of a Corporate Member. In like manner, a court leet freeman may either pay a subscription or choose to be recorded merely as an Associate Member. The effect is symmetry of treatment and status. That result is amply justified by the historical and other factors with which I have dealt.

It would be a truly extraordinary interpretation to conclude that, in a nationwide association of freemen, of the ancient towns of England and Wales, manorial freemen were rated no more highly than "persons interested in freemen's affairs for social reasons",

to quote the class of member established by Clause 5(b). That would be the implication of denying manorial freemen Individual Membership and limiting them to Associate Membership.

The standard forms of membership in FEW are those of "Guild Member" and "Individual Member". Given the generality of concern with the freedom, wherever found, and the breadth of the term freeman, the natural assumption must be that these elements are reflected in the standard membership. Any other deduction would be highly eccentric.

FEW was founded, as an inspired enterprise, to bring together the local companies of freemen who had survived the disfavour created by unwise conduct in the eighteenth century. Unity was, and remains, essential to the survival of the freedom.

VIII A final reflection

Over the years of its existence, FEW has admitted to membership manorial and court leet freemen from a number of places. To Altrincham we may add, by way of example, Alcester, Newport and Warwick. The Guilds of these places have served the Association well and in a variety of ways.

Thus we have a situation in which FEW formed, and has executed, a decision that there would be admission of such members. This is not a case in which such membership is now to be considered. The admission is completed fact.

Were that admission to be challenged, an event which I mention reluctantly and as pure hypothesis, I believe that the freemen in question could raise the legal principle of estoppel, which comes into operation when parties enter into a transaction upon the basis of an agreed understanding. In such a case, the parties may be held mutually bound by that understanding, whatever the actual facts of the matter.

Certainly, the relevant admissions could not be annulled by simple resolution.

However, I prefer to view this subject more positively and constructively.

For the reasons which I have formulated, with no little care, I have reached the conclusion that both the letter and the spirit of the Constitution of FEW authorise the admission of such members. It follows that, in my opinion, Guild Membership and Individual Membership are available to them, as well, of course, as Corporate and Associate Membership.

The cause for which our Association was founded is to advance the study of the civic history of our country and to bring together all those who now represent the life and customs of the ancient towns of England and Wales. The aim was unity. And mutual support. In the result, we have a firm duty to join with all who share that noble inheritance from the past.

Charles Sparrow, QC, DL, FSA
Altrincham 1999

THE FREEDOM TODAY AND ITS FUTURE (2000)

The importance of the subject

Freemen can look back upon centuries of history, during which they have created and fostered the civic life of our country. But fate has not always been kind to the freedom. Its very survival has been under dire threat more than once.

It is obvious, therefore, that there can be no more prudent exercise than to assess the present state of the freedom; to attempt to view into the future; and then to do whatever we can to guard and strengthen the freedom.

Moreover, there is reason for concluding that the need for such an exercise is urgent. Time is not on the side of the freemen. We simply cannot afford to be complacent.

It would be true to say that our difficulties today derive directly from the conduct of freemen in a certain chapter of history. I allude to the eighteenth century. There was, at that time, complacency and a total failure by freemen to look into the future of the freedom. Their complacency cruelly and permanently damaged the freedom. But, at that time, history had no lesson to offer. Freemen today live in a very different scene. History has much to teach us today. We should learn from history.

Freemen cannot afford to live merely in the present, ignoring the past and failing to assess what the future might bring upon them. The historic character of the freedom gives it a significance in national life which attracts attention and may expose it to interference. The long life and survival of such an institution create naturally the risk of erosion and decline. These are the realities, with which we must reckon.

The language of this subject

At the outset of any account of the freedom, it is vital to understand fully the language of the subject.

The expression the Freedom, especially with a capital letter, looks and sounds very grand. It seems to denote a corporate institution, functioning in the life of the nation. In truth, there is no such national institution. As a matter of language, the term denotes the status of an individual. It describes the full membership of a citizen in a local community. It identifies a person who could "make free" of the benefits of that community. Here is plain English.

Thus it is that the association to which we belong is The Freemen of England and Wales. It is not the Freedom of England and Wales. It would be absurd to criticise or seek to avoid the use of the term the freedom. All that is required is that we should be aware of what it does and does not mean.

The significance of this analysis is that we cannot direct our gaze upon an identified and established institution and examine its present state. We have a much more complex situation and the difficult task of assessing the climate in which local freemen exist.

In short, we are looking at something which is a feature of the local history of the towns of England and Wales. It does not have a national unity. It exists individually in the ancient boroughs and communities of our country.

It follows that an examination of the state of the freedom must be a dual exercise. The influence of FEW, the national association, is a powerful element. It provides a facility for clear thought and balanced opinion. But the functioning of the freedom is local and rests with the hearts and minds of the guilds and other bodies of freemen. In large measure, the frontline of this subject is to be found in the boroughs and other places where the freedom is alive today.

The golden history

For many centuries, within the boroughs of England and Wales, the civic body of which a freeman enjoyed a full membership was literally omnipotent.

Long, long ago, for a period of some four hundred years, this country was a Roman colony. It was strictly governed. It was guarded by the Roman army. With the abrupt ending of the Roman occupation, there was created a territorial vacuum. That vacuum attracted the Anglo-Saxon invaders. These invaders settled in small communities. This was quite natural because the invasion process was unorganised and uncoordinated. And the unit of settlement was as much familial as tribal. But, from these elemental beginnings, natural evolution produced, over time, the boroughs of England.

The term "borough" came to have considerable lustre and dignity. But, in truth, it originated as an Anglo-Saxon word meaning a place where invading settlers had chosen to live and where they had guarded themselves with some kind of fortification.
The prosperity and importance of the boroughs derived from the trading enterprise of their citizens. Not surprisingly, a trading monopoly for the borough freemen was often an organic feature of borough life. Moreover, within the community of a walled town, it was inevitable that the citizens would evolve a scheme of government. The freemen elected a mayor. And they had the sole right to vote for the borough member of Parliament. Here were the elements of independence.

The role of the borough system of government came to be, in English life and language, indelible. This is remarkably, indeed astonishingly, testified by no less than a passage from the King James Bible. Chapter 19 of The Acts of The Apostles gives us an account of a visit by Saint Paul to the city of Ephesus. He was not welcome. The people of Ephesus worshipped the great goddess Diana of the Ephesians; and Paul's coming provoked a turbulent gathering of the local inhabitants. However, the episode had a peaceful ending. The Bible solemnly records, in verse 35, that the people were appeased by, and I quote, "the town clerk".

A sad transformation

The philosophy of political representation, as we know it, had its origins in the eighteenth century. At that time, as already noted, the freemen of the boroughs had a monopoly of the parliamentary vote. They also had, in most places, the right to confer the freedom "by gift or purchase".

The temptation to sell the freedom or to trade the vote to political managers or candidates for election proved to be, in places, irresistible. Such corruption took place frequently. In this way, the conduct of freemen provoked the deadly label "the rotten boroughs".

Retribution fell upon the freedom in the nineteenth century. Freemen lost their monopoly of the parliamentary vote. They also lost the conduct of local government. Even worse, Parliament was minded to exterminate the borough freedom entirely. This result did not, in the end, happen; but the freedom did lose its powers to admit by gift or purchase. These disabilities have endured to this day. It is easy in retrospect, to condemn the "rotten boroughs", as they came to be called. But it is fair to recognise that, for centuries, the nation had profited from their vitality and self-reliance. During that long period of national history, they had neither practical support nor guidance of principle from central government. Quite simply, the boroughs were wrongfooted by evolution in political philosophy.

The outcome for the freedom was virtually capital punishment. In many boroughs, admission to the freedom had been by gift or purchase exclusively. This was not surprising under a system of local custom. But, in the result, the prohibition of such admission decimated the freedom nationally. In what remained of the system, the effective limitation of admission to sons of freemen and apprentices of freemen brought about a decline in numbers. Sons of freemen do not invariably take up their right. And some boroughs had a further requirement for admission, namely, birth within the borough. In our time, the siting of maternity hospitals outside the ancient borough boundaries and the explosion of urban development beyond those boundaries have had an inevitable effect.

It is to be noted that the City of London was permitted by Parliament to retain its powers of admission intact. Not surprisingly, those powers allowed admission by gift or purchase. Outside of London, it is worth recording, Parliament came to believe that the new statutory borough councils should be able to create honorary freemen. This power was duly conferred by statute. Here was admission by gift under another label.

Thus, although the City of London was, and is, in effect, allowed the chance to put its own house in order, this opportunity has been denied the freemen of England and Wales elsewhere.

It should be stressed that the power to admit by gift or purchase cannot be dismissed as necessarily corrupt or unjustifiable. The fact that it was abused does not necessarily condemn it. Parliament did not regard it as a necessary evil to be excised from the freedom of the City of London. Properly employed, it serves to maintain the numbers of the freedom. Moreover, the City of London is providing a commendable example by using its powers to build up the influence of women in the City freedom. There could be no more brilliant badge of enlightenment.

But, throughout the rest of the country, the power to admit by gift or purchase has been stripped away from the freedom, thus putting it beyond the power of right-thinking freemen to respond to modern attitudes and the need for sensible recruitment.

And there, in law, the matter rests. The freedom is in peril of a continued decline in numbers. Without doubt, this is the principal feature of the scene in which we have to assess the future of the freedom.

The landscape today

There is, in law, no uniform code of qualifications for admission to the freedom. This is because the law governing the freedom is in a special compartment of legal principle, which is termed custom. It stands alongside but is distinct and apart from statute and the common law. Custom permits the survival of ancient features in the law. Some of these derive ultimately from our Anglo-Saxon origins. But the essential element of this compartment of the law is locality. Customary law is exclusively local. Where it exists, it has equal force with statute and common law but it operates only within a particular place.

Thus the law governing admission to the freedom must be identified place by place. It is, in principle, peculiar to each borough or other place where the freedom is found. There is no mandatory national pattern.

Thus, if the ancient custom of a place allowed admission to the freedom upon a ground which has not been prohibited by Parliament, that ground remains available to this day. For example, in York and Sudbury, daughters of freemen may be admitted to the freedom. In Grimsby, the husband of a freeman's daughter may be admitted. But such cases are rare indeed. Generally, admission to the freedom is today limited to sons of freemen and apprentices to freemen.

Plainly, this system is outmoded and unfair. It provides no satisfactory basis for the continued working of an institution that Parliament has recognised as having public value. Despite the bad odour left by the eighteenth century, Parliament did not abolish the freedom. Moreover, successive Local Government Acts have, to this day, expressly affirmed the continuance in law of the freedom. It must follow, logically and sensibly, that this institution should be enabled to live in a practical way and ensure its succession.

Present peril

It may seem to be stating the obvious to say that a decline in the numbers of freemen creates great danger for the freedom. But there is an aspect of that danger about which the layman can have no knowledge whatever.

In a number of places, freemen have a benefit additional to their status in the freedom. There are places where freemen have financial rights. Normally, these rights derive from the ancient pasture land which was essential to life in the customary walled boroughs of medieval England and Wales. Sometimes that land still remains open; and is available for grazing use. But, in many places, compulsory purchase for development has come about and had yielded substantial investment moneys. These moneys are held upon trust for the benefit of the freemen.
The 1835 Municipal Corporations Act formally and explicitly preserved the property rights of freemen. This might appear to create a satisfactory state of affairs. But there is a lethal snag.

The freedom has a potentially indefinite existence, which the law would label as perpetual. And, in English law, a perpetual trust of property is valid only if it is authorised by statute or if it is a legally recognised charity.

Despite the express ratification of freemen's property rights by statute, i.e. the 1835 Act, the court has, notably in the recent Huntingdon case, chosen to ratify the trusts of freemen's property on the ground of charity rather than a statute. At first sight, this may seem a comfortable position for the freemen. But, in all cases of legal charity, the court must be satisfied of a public interest and benefit; and it has an inherent power to reflect changing circumstances and alter the terms of the charity. This is done formally by what is called a scheme.

This was how the complacent handful of the freemen of Huntingdon came to be dispossessed. The judge in the Huntingdon case regarded the freemen as too few and no longer identifiable with the borough community. Their interest could not be classified as public benefit. Accordingly, by a judicial scheme, a new class of local beneficiaries has been introduced for the enjoyment of the trust benefits.

Although the ultimate adjudication, in such a case, will lie with the court, the Charity Commission has the right to initiate proceedings leading to a change in the terms of a charitable trust. And I have to record, from my observation of another case than that of Huntingdon, a grave and disturbing possibility. This is that the Charity Commission may well have made a policy decision to scrutinise trusts involving freemen more critically. I see grim writing on the wall.

In this situation, declining numbers in the freedom create a risk that is immediate and potentially devastating.

With any ordinary body or organisation, the danger created by reduced membership is something which the rank and file member can fully understand. It is a familiar problem. The remedy is obvious. The members have it in their power to take remedial action. The remedial effect will be proportionate to the effort made. The situation is one of ordinary human experience.

The danger posed by a case of the Huntingdon kind is something quite different. It arises from the law. Indeed, it emanates from a part of the law which is esoteric. The ordinary member cannot have any knowledge of the relevant rule of law. It follows that he cannot have any comprehension of the danger. Moreover, the measure of that danger cannot be ascertained with guaranteed certainty, even by a lawyer. The ultimate question is whether there is the survival of a legally significant freeman community that will justify continuance of a trust for the benefit of the freemen. This question rests upon the opinion of a judge. He will have a wide discretion. His decision would be, at best, difficult to challenge. The law is absolutely inflexible in demanding, for every charity, a due public interest.

Self help, with limits

Plainly, there is no way of encouraging a return to the days when the number of children in a freemen family often went into double figures. But there are two avenues for remedial action. They are totally different in character and feasibility.

The first avenue is open without restraint or qualification. In general, the freedom may be conferred upon the son of a freeman and upon an apprentice of a freeman. But it is probably fair to observe that, in most places, the second qualification is today rarely invoked.

Of course, the terms apprenticeship and apprentice have today disappeared from ordinary speech. But those terms do not have an exclusive meaning, either in the law or in language. For example, statute once required an apprenticeship to have a seven-year term. However, that requirement was repealed long ago. Deeds of apprenticeship were formal and lengthy but that simply reflected the then current style of legal drafting. In a different social climate, it was not uncommon for an apprentice to be provided with accommodation in the house of the master. Strict rules were imposed to govern the personal behaviour of the apprentice.

Apprenticeship is, in substance, a scheme of tuition or training. That is the reality. Training was once exclusively personal, even domestic, whereas today it is likely to be in a corporate setting. Nevertheless, it is perfectly possible to create today a personal relationship for tuition or training. There must be good faith and a genuine bond, for an appropriate term. A written record is, in practice, essential. But, in my opinion, bodies of freemen have this mode of admission available to them; and they ignore it at their peril.

It seems to me well to bear in mind that it was in the boroughs that the commercial life of our country originated and was established and developed. Borough freemen commonly had a monopoly of trade in the borough. The privilege of the freedom descended in parallel, through the family and through the family business. Hence the combination of patrimony and servitude. In every borough, trade guilds flourished.

Even today the freedom of the City of London derives its form and vigour from the City Livery Companies.

By definition, admission through apprenticeship reflects a public interest. Admission by patrimony serves the interests of the freeman's family. Admission by servitude, i.e. apprenticeship, confers the benefit of the freedom upon somebody else, from the general community of the borough or other place. This public interest should be recognised as a factor that puts communal importance on the survival of admission by apprenticeship.

It follows, I suggest, that we should have regard, not to the labelling of the institution called apprenticeship, but rather to its substance.

The Oxford English Dictionary defines an apprentice as "a learner of a craft". Johnson's Dictionary speaks of a person bound by covenant to another man of trade upon condition that the tradesman shall "endeavour to instruct him in his art of mystery".

Here are the essentials of apprenticeship. It is a mutual bonding whereby an established person instructs a learner.

The formalities have changed with time and the evolving practices of business and commerce. But the eternal need for instruction and education remains. And the fostering of those elements is in the interest of the community, as it was when the terms apprenticeship and servitude were more often on the tongues of freemen.

It is surely right that the freemen of the boroughs of England and Wales should give attention to the contribution that commerce makes to the local community. That contribution is sustained by commercial training and instruction. Those elements are today as deserving of recognition as when they were termed apprenticeship. They are generated by the freedom, through the implementation of admission by servitude.

So much for admission by apprenticeship.

The second line of remedial progress does not lie wholly within the power of the freemen. However, if pursued with success, the benefit to the freedom could be immediate and great indeed.

Parliament can, of course, change the law, in any way it pleases. It is within the power of Parliament to regulate the freedom in any particular place; and there are a number of Private Acts, as they are called, which do just that. However, the procurement of such an Act is costly in legal expenses; and, more important, this procedure is confined to situations that are personal or local and not general. A change in the general law has to be made by a Public Act, so called. This is the expedient now being adopted through the Beverley Bill. If this enterprise succeeds, daughters of freemen will be eligible for admission to the freedom, as in York.

The restriction of admission by patrimony, which excludes daughters, is a historic relic pure and simple. It dates from an age when the family breadwinner was a man. At that time, women were not, for example, members of Parliament, doctors, lawyers, soldiers or priests. Titles and landed property descended in the male line.

It can be safely said that there is no reasoned argument that could now be raised against admission to the freedom of daughters. There is a distinct possibility that the European law on human rights may be invoked by daughters of freemen. This possibility has been explicitly asserted. The freedom should not run any risk of being associated with the current position of legal discrimination.

A Bill in Parliament is the sure remedy for the decline in the numbers of freemen. The Beverley freemen have nobly taken up the torch for the freedom of England and Wales. We owe them much gratitude. It is to be hoped that the prospect of a hearing before the House of Lords will shortly materialise in success.

The public image of the Freedom

Finally, I would like to support the efforts now being made by the officers of FEW to enhance the public image of the freedom.

The public needs to know that the image they have of the freedom in the City of London is inapplicable to the rest of the country. Outside of London, the freedom cannot be bought and there are no gilded livery companies. A genuine connection with the borough or other seat of the freedom is universal. Provincial freemen should be recognised as having, necessarily, a family record of involvement in the local community. And they should be recognised as having themselves, by their adherence to the freedom, affirmed and valued that family record. They are, in a real sense, heirs to the historic importance of the boroughs of England and Wales. Today the heart of the provincial freedom is not privilege but social loyalty, from which the whole community gains. These verities should be made clearer to the people of this country.

True it is that the status of freeman carried benefits. But it needs to be understood that these benefits were incidental. They did not stand alone. The status of freeman was essential to the working of the municipal community. The historic freeman can be compared to the shareholders of a commercial company today. They provided the system that ensured public finance and administration. Freemen were subject to a strict system of municipal taxation. This was labelled, in language now obsolete, as "scot and lot". Both words still have, of course, echoes of meaning in the English language generally. But, in the history of the freedom, they signified municipal obligation. There was also an obligation for personal service, including that as mayor. Freemen today have thus inherited a long tradition of loyalty to the local community.

Enhancement of the public image is not just an exercise in fashionable thought. It could well help in the situation of falling numbers. It could improve the parliamentary climate in which the Beverley Bill will be received. It could even discourage legal procedure for the forfeiture of freemen's property. It must, therefore, be right to educate the public about the place that the freedom has had in the history of our land and the part it still has in the world today.

It is well arguable that the freedom, as a feature of English life, antedates the monarchy. At any rate, it cannot be denied that the freedom is a most ancient and potent element in our national history. The very existence today of FEW, a national association, supported loyally by freemen throughout England and Wales, indicates pride in our country. Here also is support for public interest. That support should be recognised by the public. And it should be effectively sustained. In this way, the freedom would be enabled to remain active as a most worthy feature of our inheritance from the history of England and Wales.

Charles Sparrow QC, DL, FSA
Newcastle upon Tyne 2000

LEARNING FROM APPRENTICESHIP (2001)

A Punitive Legacy

Early in the 19th century, Parliament set out, with deliberate intent, to punish the freemen of England and Wales. Freemen today live in a mode of existence that results from Parliament's punishment. This fact should be understood and never forgotten. And we should strive to counter, in a practical way, the damage so inflicted upon the freedom.

The subject of admission through apprenticeship is, to my mind, a principal element in a practical approach. And I believe that there is urgent need for such an approach.

I have spoken to this subject on previous occasions. But I make no apology for a return to this subject. My aim has been, and remains, to bring about a sense of priority and urgency and real action at guild level.

There must be a true understanding of the numbers position in the freedom of today. And there must be accurate awareness of remedial action that is open to freemen. It is plain that, to say the least, there are many freemen who do not have that understanding and awareness.

My survey must, of course, take account of legal matters. But my purpose is, first and last, to guide freemen to a practical assessment and confident action.

Apprenticeship is not a technical detail of the freedom or an outmoded relic of its history. It was a prime element in the centuries of borough life; it retains its potency and we cannot disregard it. Indeed, we can learn much from it.

The Penalty

The justification which Parliament saw for its punitive action was the conduct of the so-called "rotten boroughs" in the 18th century. At that time, freemen had a monopoly of the vote for members of Parliament. This was not surprising. The vote was but one element of the freemen's comprehensive management of the boroughs. It could be seen as a logical feature of the freedom and an aspect of full citizenship.

But what incurred the wrath of Parliament in the 18th century was the wide practice in the boroughs of action that amounted to the sale of the parliamentary vote. Admission by gift or purchase was, at that time, an element of the borough freedom. And, in the 18th century, that mode of admission came to be widely used to raise money from parliamentary candidates and political organisations. Sale of the freedom carried the vote.

At the outset of 19th century reform, Parliament was minded to abolish the freedom altogether. But the eventual reforms were, first, removal of the freemen's monopoly vote and, secondly, abolition of admission by gift or purchase.

The immediate effect of this latter reform was drastic enough. The freedom had not been uniform throughout England and Wales in its pattern of admission. In many places, the only mode of admission was through gift or purchase. This was a practical and historically understandable position. But the inevitable effect of Parliamentary reform was, in these places, extinction of the freedom. In other places, the freedom survived but admission was thereafter limited to sons of freemen and apprentices of freemen. Our assessment of the freedom today obliges us to scrutinise closely the implications of this limited pattern of admission to the freedom.

In the England and Wales of the 19th century, a family of a dozen children was commonplace. Succession through sons of freemen was, therefore, a reasonable and serviceable mechanism. But things are different today. The average family is small and an absence of sons is common. Here is the harsh reality that confronts the freedom today.

This is the situation which makes it essential for us to give urgent attention to the alternative mode of admission through apprenticeship. There is nothing we can do about the unremitting decline, indeed the virtual disappearance, of a class of available sons. But we can and must operate and encourage admission by apprenticeship.

A Vital Remedy

Here, therefore, is a golden opportunity for the freedom to fend off the prospect of eventual extinction and to counter the penal handicap imposed by Parliament.

But effective action requires that individual guilds recognise the opportunity and formulate practical policy. There must be positive action. Freemen engaged in trade or business must be mobilised to lend their support. In a borough community, even today, the freemen of that borough must be a significant element of the population and must include a commercial element.

There need be no distinction made between trade, business, profession or any other calling. Apprenticeship is simply a process of training by one person of another person for earning a living.

And, although there was once a requirement by statute for a relationship lasting seven years, that requirement has been repealed and there is today no prescribed duration. A term of fewer years would be admissible.

The field is open for practical action. The opportunity is waiting to be seized.

For most people today, their view of the subject of apprenticeship is probably clouded by a belief that we have here a subject of legal technicality and an obsolete subject to boot. But that is a false impression, which should be firmly repelled. Apprenticeship did not emerge as a feature of the law. The truth of its origin is the reverse. The standard work, by Austin, on The Law Relating to Apprentices, was published in 1890. This attributes the origin of apprenticeship to "the burgal policy" of the countries of Europe.

Apprenticeship was an inextricable feature of trade in the boroughs and the system of commercial guilds. It was a feature ancillary to the freemen's exclusive right to trade in the borough. Commercial training and admission to the magic circle went together.

Thus apprenticeship and the freedom are, and always have been, firmly linked.

A Myth

At this point, we should notice a common belief that, whatever its history, apprenticeship is today dead, in law and in fact. This belief is, quite simply, false.

In the preface to his book on The Law Relating to Apprentices, Austin observed firmly that: "The notion which prevails that the ancient apprenticeship is dead, is erroneous".

There is still today, and always will be, a place and a need for the essential function of apprenticeship, which is for the teaching of a trade or calling. Sensibly, the law still recognises that function.

Apprenticeship has long been expressly recognised in the statute law of our country. A leading case in the 19th century concerns an Act from the reign of William and Mary. Rather closer to our time, we have the case of *Edmonds v Lawson*, in the year 2000, which required the Court of Appeal to consider the reference to a contract of apprenticeship in the National Minimum Wage Act 1998. We may also note that the Family Allowances Act 1965 employed and defined the expression "apprentice". The definition in that Act is surely instructive in its broad reference to "training for any trade, business, profession, office, employment or vocation".

Equally instructive is the judgement in *Edmonds v Lawson* of Lord Bingham of Cornhill C.J. In that judgement, Lord Bingham explicitly concluded that parliament has intended, in its legislative policy, "a relatively unlegalistic view to be taken of what modern apprenticeship entails".

True it is that apprenticeship has a wealth of ancient literary reference. And, in the law, it has had quaint detail, now obsolete, such as the term indenture. But we must not be misled. Apprenticeship can exist and function in the world of today. This is the law. And this is life.

Practical Action

We are free, therefore, to identify and apply the essential character of apprenticeship.

In the case of *Clapham v St Pancras*, 29 LJMC 143, an apprentice was defined as "A person bound to another for the purpose of learning a trade or calling". And in the case of *R v Laindon*, 8 Term Rep. 379 at 383, Chief Justice Kenyon observed that "The term 'apprentice' is taken from the French word apprendre - to learn". Black's Law Dictionary defines an apprentice as: "A learner in any field of employment or business". The definition given in Wharton's Law Lexicon is: "A person bound by indentures of apprenticeship to a tradesman or artificer, who covenants to teach him his trade or mystery".

Here, therefore, is the essential character of apprenticeship, as valid today as at any time in the past.

It would be quite absurd to suggest that there is no longer a need for beginners in trade or business to seek instruction and to link themselves to experienced persons for the purpose of learning.

In the historic past, employment of the apprentice, by the master, was a commonplace feature of apprenticeship. But, as I have noted, the Court of Appeal has encouraged an unlegalistic view of modern apprenticeship. In essence, apprenticeship is an educational contract. Plainly the essentials of such a contract may be satisfied without conventional employment of the apprentice. The Court, in *Edmonds v Lawson*, took note of a contract where the apprentice was obliged simply to "follow reasonable instructions". And payment of a premium by the apprentice would put the deduction of a contract beyond doubt.

I turn again to the august guidance provided by Lord Kenyon in the *Laindon* case, where he said: "In this case a premium was paid by one man to another, who engaged to teach him a trade: now what is that but an apprenticeship".

The Formalities

The first step must be to check that the custom of the relevant place included the admission of apprentices of freemen. In law, the custom of each place is unique. There is no national code. But it is to be expected that admission of apprentices may, in practice, be found to have existed anywhere. Apprenticeship was an integral part of the trade guild system, which was functionally universal.

As already noted, the essence of apprenticeship is an agreement. To be legally effective, that agreement must be made in writing. However, there is no necessity for a lengthy or complicated document. It is of basic importance to recognise this fact.

There should be a definite period stipulated for the operation of the agreement. Preferably, this should be for a term of, say, five years or more. Local custom may, of course, provide for a particular term. Such provision must, of course, be duly reflected.

The freeman will bind himself to provide instruction or training. But this provision need not be technical or elaborate in its language.

The apprentice will be bound in return to follow diligently all reasonable instructions. The payment of a premium is probably not legally essential; but it would certainly be prudent to include this in the agreement. The amount need not be large. The function of a premium would be to put beyond doubt the mutuality that is required for a contract.

A local solicitor could be instructed to draft a brief agreement; and this would be available for general use thereafter.

For the comfort of local guilds and freemen, I commend the observations in Austin's book that: "At common law, no particular description of instrument is requisite to create a contract of apprenticeship"; and "No particular form of words are necessary to make a contract of apprenticeship".

The Function in our Time

Although it can be established that apprenticeship remains alive in the law and can still be created, freemen must understand that it has a real function today. It must not be seen as a relic.

I suggest that there is a modern function, which has a dual character.

In the first place, apprenticeship is an aspect of the freedom which is bound to have a general effect on the reputation of the freedom in the community. It must be beneficial for the freedom to be seen to have an active concern for the younger generation. The freedom should not be left to be seen as a relic or a class privilege.

Secondly, the aim and object of apprenticeship has functional value in the community. In the language of our time, apprenticeship can be defined as providing sponsorship. The absence of employment by the master or full-time instruction is simply a matter of detail. It is the quality of the instruction that counts.

There can be no doubt that the development of apprenticeship as a mode of admission will require real effort by individual freemen. But there can hardly be a more commendable exercise than lending aid to a young recruit in ones trade or calling. In the last analysis, this is education. The law of our land rates no purpose higher than the provision of education.

The Message

I urge freemen everywhere to face up to the dire penalty created by 19th century legislation. Admission only of sons of freemen cannot secure any increase in overall numbers. On the contrary, it must inevitably bring about long-term decrease. Indeed it could eventually bring about local extinction of the freedom. We must resist that outcome.

I have sought to show that we have a remedy. We must recognise and actively adopt that remedy. The exercise is not a difficult one. It will require an initial effort of understanding. But once we have grasped the technique, its application will be routine. And we shall be doing nothing more than restoring the working of a process that was for centuries an organic function of the freedom of England and Wales. That function has gone to sleep. We must wake it up.

Charles Sparrow QC, DL, FSA

THE FREEDOM'S DEBT TO YORK (2002)

Harry Ward's City

There can be no doubt that this gathering, in the ancient City of York, has a very special distinction. And it offers FEW a welcome opportunity to acknowledge the debt that the freedom owes to the City of York. In large measure, the debt that the freedom owes to York is, of course, a debt owed to Harry Ward.

Harry Ward was a man of many parts. He was a historian. But he was also a man of the world and a skilled manager. Fortunately for us all, he was a visionary. He saw a vital future for the freedom everywhere throughout out land. On page 3 of his book **Freemen in England**, Harry Ward records that there were freemen in England *"long before there were kings"*. This is a spectacular and abiding truth that should never be forgotten. It follows that the freedom should be recognised by the people and the authorities of this country as the oldest civic institution of our land.

But history is not everything; and, in the opening paragraph of his book, Harry Ward records the fundamental reality that freemen still have an important part to play in the life of their towns.

The plain truth is that all contemporary knowledge and wisdom relating to the freedom has been authoritatively recorded by Harry Ward, speaking from the City of York. We can be sure that, had it not been for Harry Ward's dedication and enthusiasm. The freemen of England and Wales would have remained, to this day, leaderless. In his book, Harry Ward frankly recognised "a tendency for freemanship to die out owing to inertia". But there could not be a freeman community farther removed from the danger of inertia than the City of York.

And so it is that we gather here in York with a shared pride in the freedom and with confidence for its future.

YORK

The organisation which, at birth, was entitled **'Freemen of England'** had its foundation in York. It was born at a meeting of twenty representatives of the freedom from ten towns, which was held in York, at the invitation of Harry Ward, in October 1966.

That meeting stressed the need for searching inquiries into history and practice, so that rights could be maintained and restored. And at that meeting, it was decided to form **'Freemen of England'**, with Harry as convenor. This was the birth of the body that came to be entitled and is known today as **'The Freemen of England and Wales'**.

Fortunately for the freedom everywhere, Harry Ward did not rest on his laurels. In 1967, Harry Ward produced a privately printed book stating some of the modern problems of freemen and recording essential particulars about freemen in thirty-eight places. A revised and enlarged edition, published in 1975, extended the information to fifty-eight places. Ever since 1975, this book has been, for all freemen, an authoritative, indeed unique, guide to the origins, history and character of the freedom, throughout England and Wales.

During the remainder of his life, Harry Ward provided unmatched inspiration for freemen everywhere in England and Wales. Moreover, by his admirable example, he brought into the movement those individuals to whom he could pass the torch. Without Ward's leadership, the freedom would have frozen and declined everywhere.

Such were the unique pioneering achievements of Harry Ward, a Past Master of The Gild of Freemen of The City of York.

YORK AND HARRY WARD

The City of York has civic credentials that are matched only by the City of London. Uniquely, for a period in ancient times, York was, in effect, the power centre of the Roman Empire. Today there can be no doubting its character in England as the capital of the north. It is tight that we should recognise it as, in a sense, the spiritual capital of the freedom in England. The York Gild produced Harry Ward, to whom we owe the character and the vigour of the freedom today. Moreover, York displays a local body of custom which provides a model for every borough in the land. It is truly an inspiration.

Under the explicit heading 'Women Freemen', Harry Ward recorded that *"Throughout the ages women apprentices were admitted in London, Coventry, York etc."*. He went on to express the view that *"the number of girls being articled as apprentices is likely to increase"*. Furthermore, he explicitly recognised the wisdom of recruiting more women, ultimately to become freemen, and thus, in the general interest of the freedom, gaining *"the support of women"*.

It is clear that Harry Ward had no reservations about the admission of women to the freedom. This position accords with the custom of York, which admits daughters of freemen in parity with sons. We are indebted to York for this shining example of a sensible attitude to the admission of women. It is noteworthy that in the other premier city of our land, London, a similar example is set by the admission of women, albeit through a different method.

Sadly, Harry Ward was unduly optimistic in his expectation that the number of girls being articled as apprentices would be likely to increase. But this position has nothing to do with women as such. It is a reflection of a general failure, by both men and women, to make full use of admission by apprenticeship. I the general interest of the freedom, the admission of women and the exploitation of apprenticeship should be complementary. The future of the freedom requires, from guilds everywhere, a practical attitude, to secure everywhere the recruitment that is so urgently needed.

TODAY'S ROLE FOR FREEMEN

The book written by Harry Ward, from his experience as a freeman of York, is far from being a mere history of the freedom. It looks actively to its future. There are important sections in Harry Ward's book which are headed "Need for Freemen" and

"Freemen Today". These are elements that must have been based on Ward's experience of the freedom as it was and as it is to be seen in York. Ward believed and asserted that freemen can do much more to sustain the morale of their places of origin. This is a belief vital to the future of the freedom.

Ward records that, throughout the centuries, before there were permanent local government officials, each freeman had an obligation to carry out onerous unpaid duties. Those civic responsibilities no longer exist; but Ward observes that there is a continuous need to review rights and to re-arrange them in accord with modern needs.

Thus, by its very nature and history, the freedom has a record of vital service to the local community. Moreover, a freeman family will always have roots in that community. It must be in the community interest to recognise and proclaim that record and those roots. The freedom, by its very nature, signifies loyalty and support for the community. Those elements can be manifested, in a practical way, by encouragement of personal aid through apprenticeship, in a modern form. And there are other modes of local dedication. The City of York leads the way.

THE FINAL RECKONING

Although the freedom has been a feature of our English culture for more than a thousand years, we had no national body representing the freedom until Harry Ward brought into being **'The Freemen of England'**.

It was Harry Ward who recorded publicly the fact that since the Municipal Corporations Act of 1835 freemen have become fewer. And he cited the view of one group of freemen that the freemen of this age were *"a dying race".* Harry Ward proclaimed explicitly the need for freemen and the service they render in local communities. He recorded that many local councils and officers had created difficulties but in other places "the council and officers are proud of their freemen".

Harry Ward recorded and manifestly commended a movement, that he saw as proceeding to *"revive freemanship".* Here was welcome encouragement for freedom throughout the land. Harry Ward's book identified the two aspects of the freedom that provided opportunity to combat the destructive effect of the 1835 Act. These were apprenticeship and the admission of women.

It was observed by Harry Ward that freemen have always been closely associated with trades and crafts. And he recorded, explicitly, his view that: "Many more young men and young women should be encouraged to take up apprenticeship under modern conditions with freemen". There could not be a plainer statement of action necessary to combat the decline of numbers in the freedom.

Harry Ward included in his book a section on Apprentices, contributed by Robin Walker, MA, LLM. This made plain that the law has long since abandoned the requirement, for apprenticeship, of a seven year term. Mr Walker observed that: *"Freemen in many towns seem unaware of the change in law and practice in many crafts and professions".*

Mr. Walker's contribution embodied this most valuable statement: "Women who were apprenticed could become freemen from the earliest times". I repeat and stress that Harry Ward himself recorded the opinion that "some may deem it wise to gain the support of women by recruiting more women apprentices ultimately to become freemen". Any balanced consideration of the decline in freemen numbers, as recorded by Harry Ward, must conclude that the admission of women has to be brought in as necessary action. The exclusion of daughters from general admission to the freedom, in parity with sons, simply cannot be justified today.

The boroughs of England were essentially trading units, operated by freemen. The exclusive right to trade in the borough and admission by apprenticeship demonstrate that character. At a time when the children of a freeman's family could run into double figures, women would not, could not, normally be involved in trade. Nonetheless, women were admitted to the freedom in some places. A shining example is York. And of course, for centuries it was common to have admission by gift or purchase.

It should be recognised that the exclusion of women from the freedom is attributable at least as much to the general abolition of gift and purchase by the 1835 Act as to anything else. But for that Act, which did not apply to London, the boroughs of England and Wales could today commendably admit women, as does the City of London.

In conclusion, we can record yet another aspect of our debt to Harry Ward and to York. The founding of The Freemen of England provided the structure for a formal resolution to be passed, at an Annual General Meeting of that body, to invite a local guild to promote a Bill in Parliament to secure the admission of women. Such a resolution was passed; and it was most nobly responded to by the freemen of Beverley. Again we must acknowledge an immeasurable debt to Yorkshire.

THE HEART OF THE FREEDOM TODAY

When one is in the City of York, it is easy to feel a deep pride in the institution of the freedom. This is how it should be throughout the country.

The freedom is not just a relic of the past. It is a symbol of the bond that every live community needs and reflects. In past times, the freedom created and conferred valued advantages, personally and commercially. But these advantages were a return for real effort and serious dedication. Scot and lot made a heavy burden for a freeman.

Over centuries, the shape of the freedom has changed radically. Even so, in our age, we respect the paramount value of community loyalty. It is a commitment that is proud to manifest itself. The lustre of the freedom of the City of London is something that is recognised everywhere. And so it is with the City of York. Elsewhere, the borough freedom must have no sense of inferiority.

As members of The Freeman of England and Wales we must give the freedom our undying allegiance. Here today, as guests of the Freemen of York, we offer our gratitude for precious example and conspicuous leadership down the years.

Charles Sparrow QC, DL, KStJ, FSA, LLB
York 2002

A GRAVE MENACE (2003)

The Freedom numbers today

Nearly thirty years ago, in 1975, Harry Ward, the Founder of FEW, published his book, 'Freemen in England'. A distinguished Preface to that book was contributed by The Duke of Westminster, Patron of the Freemen of England.

In that Preface, the Duke of Westminster stated bluntly that the Freemen must change. Those were his very words. He went on to say: "We must become numerically greater than we have been in the recent past". There could not be clearer testimony that FEW faces a numbers problem. And that problem has certainly not diminished since the Duke's statement in 1975.

The Duke of Westminster was himself a freeman. He was a freeman of London and a freeman of Chester. The judgement expressed in his Preface is supported by the general approach of Harry Ward's book. There has never been a more eminent authority in the world of the Freedom than Harry Ward. We can be quite sure that, were he alive today, he would be voicing the wisdom, indeed the necessity, of guarding, and indeed enhancing, the numbers of the Freedom.

The numbers situation today is, without doubt, a potential threat to the survival of the Freedom. We must, throughout the country, consciously face up to that threat. The danger is not something that may fade away. And it will certainly increase with time.

The legacy of the past

Before the Freemen of England and Wales decide how they should implement the change of attitude advised by the Duke of Westminster they must, I suggest, reach an understanding of the past. They must realise how and why the Freedom is in its present state.

For centuries, freemen in the average borough were omnipotent. They had a monopoly of local government, a monopoly of trade and a monopoly of the parliamentary vote. And they had the power to confer the freedom by gift or purchase. This was the position in the 18th century. And then, in that century, there was a lamentable turn of events.

The freemen in many boroughs effectively sold the parliamentary vote by the use of their power to confer the freedom by purchase. This led to the abusive designation of "The Rotten Boroughs".

The response of Parliament, in due course, was to abolish, throughout the land, the power to confer the freedom by gift or purchase. The City of London alone was spared this punishment. In very many boroughs throughout the country, local custom provided only for conferment of the freedom by gift or purchase. Here, inevitably, the freedom died altogether. In all other places, the freemen simply lost that power and were thus limited to succession by male descent and apprenticeship.

Succession today

In surveying succession to the Freedom today, it is vital to understand the practical effect of the 1835 Act. Itis sheer myth and misrepresentation to claim that women were traditionally, and from the beginning of time, excluded from the Freedom. The boroughs were essentially trading organisations, with the family as the basic unit. Thus the primary provision for succession, in those days, was through sons and apprentices. When family size was commonly in double figures, women were not normally involved in the family business. But that was just the usual situation. Widows could, through a death, succeed to involvement in family business. This was a commonplace transition. And, in such a situation, for example, women were admitted to the freedom by gift or purchase. However, with the abolition of gift or purchase, in 1835, there was an incidental and gratuitous exclusion of women.

Here we see a crucial analysis in the numbers situation which the Freedom has to face today. There was, formerly a power to admit women. But this has been removed by Parliamentary action. That action, in its effect on the admission of women, was gratuitous and indefensible. And it remains so to this day.

A second factor

Thus, following the 1835 Act, succession of the Freedom was essentially limited to male descent in the family. This was a change in the law. But we must notice also a vital evolution in the borough population.

At the time of the 1835Act, the average size of a family was of the order of ten children or more. In this situation, exclusive male descent was adequate for the needs of the Freedom. Today, however, the size of the average family has shrunk dramatically. It has today been authoritatively ascertained and published as being between two and three children. So, as the law stands, a family limited to daughters will suffer an abrupt end to succession of the Freedom in that family, however long that succession may have endured. Thus the changing pattern of family life has reinforced the legal slaughter effected by the Act of 1835.

Seeking a Remedy

FEW deserves recognition and praise for the action it has taken to combat the dire menace that the Freedom faces over numbers.

At an Annual General Meeting, by a virtually unanimous vote, FEW took the sensible step of inviting a local Guild to undertake the practical task of formulating and carrying forward a Bill to rectify the situation of the Freedom. The freemen of Beverley have nobly assumed this task on behalf of FEW. In the result, we have a Bill, professionally drafted and checked by the Parliamentary Office and politically supported.

The Borough Freedom (Family Succession) Bill

It cannot be too strongly emphasised that this Bill is explicitly concerned with Family Succession in its totality. Its aim is to protect and preserve the inheritance of a family with roots in the Freedom. The Bill has three distinct provisions. Each of these has practical importance.

First, as to the place of birth of an applicant for admission to the Freedom, the Bill provides for removal of any requirement that an applicant must have been born in the relevant borough. Such condition requires birth within the ancient boundaries. Any such requirement is obviously archaic and irrelevant today. Ancient borough boundaries no longer have any practical relevance; and maternity hospitals are commonly situated outside these boundaries. Yet in many places a requirement of place or birth still exists legally and can significantly handicap recruitment to the Freedom.

Secondly, the Bill provides for removal of any requirement that the freeman parent was a freeman before the birth of a family applicant. Such a requirement is equally obstructive to recruitment.

Finally, the Bill provides for the admission of a daughter of a freeman. For all the reasons already set out, this provision, though attuned to modem philosophy, is not a reversal of ancient freedom regulation. Quite the contrary. There was no traditional bar on women. Women were, for centuries, admitted to the Freedom. The running of borough life was normally served by admission of sons and apprentices, through patrimony and servitude. But there was also admission by gift. This was available for women, especially widows and most especially widows who inherited a business.

It cannot be too strongly emphasised that the Beverley Bill does not seek to bring into the freedom something that has never previously existed. In truth, it is seeking to reflect an aspect that was present in the Freedom for centuries. The Bill is wholly in tune with the ancient character of the Freedom.

The freedom was, in a sense, a family passport. It authorised a freeman's family to live and earn a living within a protected community. It was not merely an individual privilege.

It cannot be too categorically stated that there is not, and never has been, a discriminatory ban on the admission of women to the freedom. It is a total myth to suggest that the Beverley Bill conflicts with such a ban. The eligibility of women is to this day nobly demonstrated by the custom of the City of York and the City of London.

I suggest that tradition and good sense combine to support the Freemen of England and Wales as they carry forward the Bill which has so far been approved by the House of Lords. The kernel of that Bill is simply to bring the boroughs of England and Wales into line with the Cities of York and London.

The Future

When the Beverley Bill becomes the law, the freedom will benefit greatly. With universal recruitment in the family, supplementing apprenticeship, and the paring away of obsolete qualifications upon admission, we shall have made the radical change for which the Duke of Westminster so wisely called. And we shall have acted firmly to vanquish the menace that taunts us today.

Charles Sparrow QC, DL, KStJ, FSA, LLB
Durham 2003