

Title:

Perceptions of Magna Carta:

Why has it been seen as significant?

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Introduction

Magna Carta has often been presented as the foundation of English liberties, guaranteeing the rights of English citizens against the arbitrary actions of those governing the country. Throughout its eight centuries of existence it has been cited in many political disputes and many rights and liberties have been attributed to it. Although Magna Carta was a thirteenth-century feudal charter created to resolve the immediate crisis of civil war, it has been perceived to be significant and relevant in many subsequent periods of British history. This study seeks to investigate the causes of this perception and explain why people have made appeals to it for eight hundred years.

Magna Carta was a series of concessions made by King John in June 1215 to his barons in an attempt to end civil war. In May, a group of barons had renounced their allegiance to John, accusing him of oppressive misgovernment and infringing their ancient liberties. The military successes of the baronial party led John to attempt to reach a settlement with the rebels. These negotiations resulted in the drawing up of a charter of liberties to deal with grievances, which later became known as Magna Carta. In this charter, John granted a set of liberties dealing with feudal, administrative and legal matters. Although within months the charter was annulled by the Pope and repudiated by the king, it was later reissued by supporters of Henry III during his minority to secure the new reign and

confirmed by the king at the beginning of his personal rule in 1225. The 1225 version of the charter was placed on the first statute roll in 1297.¹

Whig historians in the nineteenth century venerated the charter and portrayed it as the basis of English liberty and the beginning of constitutional government.² This view was attacked in the twentieth century as historians, such as Pollard and Painter, increasingly argued that Magna Carta was a reactionary document which merely asserted the feudal liberties of the great men in society and had little to say about constitutional issues.³ Although modern scholars have successfully discredited many of the traditional claims about the charter suggesting that its provisions were not as important as have been claimed, the charter has been seen as significant throughout its history.⁴ To investigate the reason for this seemingly inaccurate perception of the charter, this study will focus on five noteworthy periods: the first century of Magna Carta, opposition to the early Stuart kings, mid eighteenth-century Britain, eighteenth-century colonial America and Britain in the present day.

In the century after the creation of Magna Carta, the document was perceived to be significant because its specific provisions were of practical value to contemporary issues. Although the perception of the charter's importance

¹C. Breay, *Magna Carta: manuscripts and myths* (London, 2002), pp. 23-8, 40-4; R. Turner, *Magna Carta: through the ages* (Harlow, 2003), pp. 45-51 60-61, 67-71, 105.

²J. Green, *A short history of the English people* (London, 1878), p. 123-4; Sir James Mackintosh, *History of England I* (London, 1830) p. 217-8.

³A. Pollard, *The history of England : a study in political evolution* (London, 1912), p. 19; S. Painter, *The reign of King John* (Baltimore, 1949), p. 347.

⁴W. Stuart, 'The constitutional clauses of Magna Carta' *Virginia Law Review* 2 (1915), pp. 573-5; W. Mckechnie, *Magna Carta* (Glasgow, 1914) , pp. 134-8; A. Howard, *Magna Carta : text and commentary* (Charlottesville, 1998), p. 11; W. Swindler, *Magna Carta: Legend and Legacy* (New York, 1965),p. 96.

declined in the fifteenth and sixteenth centuries, it was revived in the early seventeenth century by those opposing the actions of James I and Charles I. The growth of the power of parliament over the course of the seventeenth century led to increasing fears that it was threatening people's liberties. Thus, in the eighteenth century, campaigners attempted to challenge parliamentary actions and often cited Magna Carta to support their cases. In mid eighteenth-century Britain activists attempted to use such references to arouse the public while in British America, the colonists tried to persuade the British ruling elite to address their grievances. Even though in the last two hundred years the provisions of the charter have increasingly been perceived as obsolete and irrelevant, Magna Carta continues to be cited by activists today as they attempt to win public support for their campaigns about perceived infringements of civil liberties. Although this study is limited both in the number of periods considered and the depth of its examination of each situation, it will demonstrate that Magna Carta has been perceived as significant throughout the last eight centuries because people have believed that it is of use to them and their cause. The ability to present the charter as relevant, authoritative and important has led it to be valued in many periods of history by many different people.

The First Century of Magna Carta

In the century after Magna Carta was first created in 1215 it was valued by many groups in society. Throughout the reigns of Henry III and Edward I, the document was frequently cited and demands were made for its reissue and confirmation by the monarch. The widespread perception of the significance of Magna Carta relied on people being aware of the document and its provisions through the

effective promulgation of it. Although some historians have argued that people in thirteenth-century England placed importance on Magna Carta because of the impact it had on the government of the country, it was in fact its practical provisions that made it useful to contemporaries. Historians, such as Painter and Pollard, have emphasized the selfishness of the barons but its contents were actually perceived to be advantageous to many groups in society.⁵ These groups believed that Magna Carta was useful to them because of the general perception that its regulations should be obeyed due to the belief that it stated ancient laws and the church's support of it.

Thirteenth-century Englishmen could not have valued Magna Carta if they had been unaware of its existence and provisions. Thus, the 'quite anomalous' promulgation of Magna Carta provided the opportunity for it to be perceived as important.⁶ Although attempts had been made to spread the knowledge of previous royal charters by dispatching copies of them around the country, increased efforts were made to ensure that there was widespread knowledge of Magna Carta. The copies of the charter that were sent throughout the country, following earlier tradition, were accompanied with orders that they be publicly proclaimed to the local population. For instance, the patent rolls contain an order sent by the king in 1217 to the sheriff of Yorkshire 'commanding that you cause them to be read publicly in your shire court having called together the barons, knights, and all free tenants of the same shire'.⁷ Therefore, many Englishmen would have been informed of the contents of Magna Carta. The frequent reissues

⁵ Painter, *The reign of King John*, p. 347; Pollard, *The history of England*, p. 19.

⁶ R. Poole, 'The Publication of Great Charters by the English Kings' *EHR* 28 (1913), p. 448.

⁷ T. Hardy (ed.), *Rotuli litterarum clausarum, 1204-1227* (London, 1835) in D. Stenton, *After Runnymede: Magna Carta in the middle ages* (Charlottesville, 1965), p. 28.

and confirmations of the charter and the publication of these ensured that its provisions retained a place in people's minds. Thus, it is likely that the provisions of Magna Carta were better known than those of previous charters. There is evidence that the contents of other royal charters were not well-known. For example, the account by Henry of Huntingdon of the coronation charter of King Stephen includes many inaccuracies.⁸ In contrast, thirteenth-century chronicles and the records of court cases illustrate an awareness of the specific provisions of Magna Carta. There were fifty-nine references to its clauses in court cases from 1221 to 1306 and it is mentioned in several chronicles, such as Matthew Paris's *Chronica majora* and the Dunstable Annals.⁹ Without the knowledge of Magna Carta and its provisions, it would have been impossible for people to value it.

Such effective publication relied on the support of the crown as it was through its orders that the charter was publically proclaimed and through the king's consent that the charter was reissued and confirmed. The moderation of the charter due to its original purpose as a treaty to end a conflict and subsequent hijack by Henry III's counsellors meant that it was not terribly objectionable to the crown. For instance, the second clause of the 1215 charter did not abolish the fee payable by heirs to the king to obtain their inheritances but merely fixed its value.¹⁰ Magna Carta also became essential to the effective operation of government. The definitions of law and outlining of judicial and administrative procedures in its provisions underpinned thirteenth-century legal and financial relationships and

⁸ Poole, 'Great Charters', p. 448.

⁹ F. Thompson, *The first century of Magna Carta: why it persisted as a document* (Minneapolis, 1925) pp. 64, 58; M. Paris, *Chronica majora II* (London, 1872-83), pp. 588-98.

¹⁰ *Magna Carta 1215* in H. Rothwell, *English Historical Documents, 1189-1327* (London, 1996), p. 308.

processes.¹¹ This suggests that it was in the interests of the crown that the provisions of Magna Carta were widely known so that they could be generally followed for such activities. However, the most significant cause of the majority of the confirmations of Magna Carta was the demand for them by the magnates in return for money grants. For instance, before the magnates consented to a new levy on moveable goods in 1237, they demanded a confirmation of the charter.¹² This suggests that the charter would not have gained publicity as a result of the confirmations of it if the king had not felt that they were necessary to receive money grants from his magnates. Therefore, it is necessary to investigate the reasons for the high regard with which the magnates held the charter.

The magnates did not value Magna Carta because it espoused constitutional principles. Magna Carta is often perceived in the popular imagination as a quasi-constitution and nineteenth-century historians, such as Green and Mackintosh, interpreted the charter as the foundation of individual political liberties.¹³ However, this is an inaccurate interpretation of the contents of Magna Carta. Rather than being primarily concerned with the machinery of government, the document focused on regulating the feudal rights of the king. Of the sixty-three clauses of the 1215 Magna Carta, only five related to constitutional machinery and these are only incidental references.¹⁴ Thus, Magna Carta was not a valuable way to limit the king's control over the government of the country and the thirteenth-century magnates did not perceive it as such. The attempts by the magnates during the reigns of Henry III and Edward I to create limitations on the

¹¹ J. Holt, *Magna Carta and medieval government* (London. 1985), p. 304.

¹² Turner, *Magna Carta*, p. 93.

¹³ Green, *A short history of the English people*, p. 123-4; Mackintosh, *History of England*, p. 217-8.

¹⁴ Mckechnie, *Magna Carta*, p. 129.

political role of the king did not make use of Magna Carta. For instance, the barons tackled the king's independent power to make political decisions not by appealing to any measures of Magna Carta but by demanding the ability to select the king's officials, to which the Great Charter did not refer.¹⁵ Thus, the significance placed on Magna Carta in the thirteenth century was not because it contained provisions that placed limits on the monarch's control of the government.

Many historians, such as Breary and Adams, while accepting that the specific provisions of Magna Carta were of limited value in affecting the government of the country, have argued that the charter was significant in limiting the political power of the king.¹⁶ They claim that the existence of a charter limiting certain activities of the king established the principle that the king was subject to the law and had limits on his power. However, this principle had already been firmly established in medieval England. Both the customary Anglo-Saxon law and the Norman feudal law promoted the idea of government as a contract between the king and his subjects in which each had rights and obligations.¹⁷ This view was demonstrated at medieval coronations in which the newly crowned monarch took a coronation oath in which he made promises in return for the allegiance of his subjects.¹⁸ Thus, even before Magna Carta, kings were not perceived to be absolute monarchs as it was accepted that limits were placed on their power. There was also a pre-existing acceptance that the king was subject to the law. In previous royal charters kings had promised not to perform certain activities. In the

¹⁵ Turner, *Magna Carta*, p. 89; D. Carpenter, *The reign of Henry III* (London, 1996), p. 61.

¹⁶ Breary, *Magna Carta*, p. 48; Thompson, *The first century*, p. 29.

¹⁷ I. Jennings, *Magna Carta and its influence in the world today* (London, 1965), p. 13.

¹⁸ C. Hollister, *Henry I* (New Haven, 2001), p. 109.

coronation charter of Henry I he promised to ‘remove all the bad customs by which the kingdom of England has been unjustly oppressed’.¹⁹ This is further demonstrated by the wording of Magna Carta itself. The promise in chapter fifty-five to remit ‘all fines made with us unjustly and against the law of the land’ suggests that it was already accepted that there were certain activities the king should not do and that there was a ‘law of the land’ that he should not contravene.²⁰ The problem in 1215 was that the king had flouted pre-existing limits, not that such limits did not exist. Thus, Magna Carta was not valued in the thirteenth century for establishing the principle of limited monarchy as this already existed.

In fact, the perception of Magna Carta as merely reiterating old laws and principles contributed to the value ascribed to it by contemporaries. Only one contemporary account of Magna Carta describes it as containing new law: the others present it as an attempt to ensure that existing laws and customs were fulfilled. The Annals of Waverley relates its provisions to the laws of Edward the Confessor, while the author of *Histoire des ducs de Normandie* and Roger of Wendover suggest that it was influenced by the charter of Henry I.²¹ This was crucial in establishing the significance of Magna Carta in the thirteenth century as a result of the importance of precedent. Past practices and customs acquired a moral authority as demonstrated by the warning of the bishop of Lincoln against repeating an act as ‘a thing done twice becomes a custom’.²² This suggests that

¹⁹ *Henry I: Coronation Charter* in C. Stephenson and F. Marcham (eds.), *Sources of English constitutional history : a selection of documents from A.D. 600 to the present* (New York, 1937), p. 46.

²⁰ *Magna Carta 1215*, p. 313.

²¹ Thompson, *The first century*, p. 12.

²² Paris, *Chronica majora V*, (London, 1872-83) pp. 325-26.

the perception of an act as a custom endowed it with authority. This is demonstrated by the attempt by the magnates to depict themselves as merely demanding the implementation of their existing rights.²³ For example, article two of the 1215 charter claims that its demands are ‘according to the ancient custom of fees’.²⁴ Thus, the perception of Magna Carta as a record of ancient laws led people to place value on its rulings and believe that they should be followed. This view of Magna Carta was consolidated throughout the thirteenth century as the passing of time since the creation of Magna Carta led to the document itself being perceived as an old law, and thus imbued with the moral quality of custom in its own right. For instance, it was referred to as the ‘old charter’ in the Annals of the Reign of Edward I.²⁵

However, even if people in thirteenth-century England were aware of the provisions of Magna Carta and accepted that they should be obeyed because of the force of precedent, they would not have valued the document if they did not believe that its provisions were useful to them. The reason that Magna Carta was preserved and valued by people in the thirteenth century was that it was of practical value to contemporaries as its specific provisions dealt with contemporary issues that arose in their lives. The many examples of court cases in which the charter was cited are evidence of its relevance. For example, in 1290-91 a widow asserted her right to remain in her husband’s house forty days after his death and to receive her dower within that period according to article seven of the charter and in 1290 the judges in Surrey annulled a court’s proceedings

²³ Mckechnie, *Magna Carta* p. 111 ; A. Pallister, *Magna Carta: the heritage of liberty* (Oxford, 1971), p. 2.

²⁴ *Magna Carta 1215*, p. 308.

²⁵ W. Rishanger, *Ann. Regis Edwardi Primi*, p. 460 in Thompson, *The first century*, p. 13.

because article eleven had not been followed.²⁶ The utility of the provisions of Magna Carta is demonstrated by their repetition in later statutes as it illustrates that it was believed that they should be preserved. For example, the guarantees against the abuses of wardship were repeated in the Dictum of Kenilworth, the Statute of Westminster and the Statute of Gloucester.²⁷ The recording of these principles in a well-known and widely accepted national document was of value because it suggested that the issues would be dealt with consistently. This gave people assurance that, to a certain extent, they could predict the way that others would perceive their rights and thus could act accordingly. Therefore, Magna Carta was valued not because it was a symbol of general constitutional principles but because of the usefulness of its specific provisions in thirteenth-century England.

The provisions of Magna Carta were of value to many parts of the population meaning that it was in the interests of many that it be preserved. Although several twentieth-century historians claimed that the barons were mainly concerned with protecting their own interests, the provisions of the charter were actually beneficial to many social groups.²⁸ As the rebellion against John had been conducted by an alliance of the barons, the church and townspeople, the interests of the three groups were reflected in the charter. As well as regulating the king's feudal rights over his magnates, the charter contained clause thirteen which granted that 'all cities, boroughs, towns, and ports shall enjoy all their liberties and free customs' and clause one that guaranteed the liberties of the English

²⁶ Thompson, *The first century*, p. 40, 46.

²⁷ *Ibid.*, p. 56.

²⁸ Pollard, *The history of England*, p. 19; Painter, *The reign of King John*, p. 347.

Church.²⁹ Thus, Magna Carta was valued by a wide range of people in whose interests it was for the charter to be preserved. This is demonstrated by the alliance between the barons, the clergy and Londoners in 1297 to seek a confirmation of the charter as it shows that all three groups valued the provisions of the document.³⁰ The support of the church was especially important in ensuring that Magna Carta was valued by contemporaries as the spiritual position of churchmen as God's representatives meant that their promotion of the charter provided it with additional moral authority. Furthermore, their ability to excommunicate those who did not obey the charter increased its significance as it ensured that people would not want to be accused of contravening it and consequently face such a severe spiritual sanction.³¹ Even people outside these groups benefited from provisions of the charter meaning that they too valued the document and supported its preservation. As it dealt with situations experienced by people throughout society, such as the operation of courts, many people were affected by its provisions. This was demonstrated by the appeal to article thirty-five against the sheriff's administration of justice by a group of Lincolnshire knights in 1226 as it illustrates that the gentry also found Magna Carta to be useful.³² The interests of the non-baronial classes were also explicitly protected in clause sixty where it declared that the King's subjects would grant the same liberties to their tenants that the King had just conferred on them.³³ Within a decade of 1215, residents of Westmorland and Lancashire had appealed to this

²⁹ *Magna Carta 1215*, pp. 308-9.

³⁰ Thompson, *The first century*, p. 106.

³¹ Thompson, *The first century*, p. 77.

³² J. Holt, *Magna Carta* (Cambridge, 1992), p. 391.

³³ *Magna Carta 1215*, p. 314.

clause against their magnates, demonstrating that the charter was perceived to offer protection for humble people as well.³⁴

Thus, Magna Carta was seen as significant in the first century of its existence because many people believed that they benefited from its provisions. The charter's lack of attention to constitutional issues and the pre-existing acceptance that the king was subject to the law meant that it was not valued because of the impact that it had on the government of the country. Instead many groups believed that its specific provisions about practical contemporary issues were in their interests and were useful to them. Thirteenth-century Englishmen could only have valued such provisions because they were aware of them as a result of the effective proclamation of the charter which relied on the support of the crown and the actions of the magnates. Additionally, its provisions were only significant because it was widely believed that the charter should be obeyed because of the support of the church and the perception that it was a record of existing custom. Therefore, Magna Carta was valued in thirteenth-century England because it was perceived to be useful to many groups in society.

Opposition to the early Stuart kings

During the reigns of James I and Charles I, opponents of the crown often cited Magna Carta and argued that it supported their campaigns against the actions of the monarch. The importance of precedent meant that it was useful to base their principles in history and claim that their opponents were contravening existing customs and laws. Magna Carta was often used as such a precedent because of the

³⁴ Holt, *Magna Carta*. p. 276.

campaigners' awareness of it and their perception of it as fundamental law. However, although they claimed that its provisions were relevant to many political debates in the seventeenth century, the contents of the charter did not actually relate to the issues of the period. Therefore, opponents of the crown made Magna Carta significant in the early seventeenth century by misinterpreting the charter to give the impression that it supported their cause.

At the beginning of the seventeenth century statesmen and lawyers believed that it was important to base their claims and ideas on history as a result of the importance of precedent. The prominent position of common law in which precedents were legally binding meant that in court cases it was important to find a previous example of the principle for which one was fighting.³⁵ Additionally, the positive perception of past practices meant that portraying an action as a traditional custom was a useful way of gaining support for it. The early modern belief that institutions and societies tended to become corrupt over time meant that past customs were perceived to be of greater value and more just than contemporary ones. This is demonstrated by the value that Renaissance thinkers placed on Greek and Roman practices and the espousal of the purity of the early church during the Reformation.³⁶ Furthermore, it was argued that as traditions had been built up over generations, they had been developed by a large number of people whose combined ability was necessarily much greater than any individual contemporary. This view was demonstrated by Sir Edward Coke who described the law thus: 'by many succession of ages it hath been fined and refined by an

³⁵ H. Butterfield, *The Englishman and his history* (Cambridge, 1944), p. 35.

³⁶ H. Butterfield, *Magna Carta in the historiography of the sixteenth and seventeenth centuries* (Reading, 1969), p. 10.

infinite number of grave and learned men'.³⁷ This meant that it was believed that a past custom was more likely to be beneficial and just. Therefore, as in the thirteenth century, it was important for advocates to claim that their opponents were innovators attacking past customs.

It is important to understand why, in their search for precedent, seventeenth-century political thinkers believed that Magna Carta was such a useful one to cite. As in the thirteenth century, the fame of the charter ensured that people had the required awareness of it to use it and to be influenced by references to it. The interest in history among the political elite during the period, as demonstrated by the foundation of the Society of Antiquaries in 1572, meant that attention was paid to medieval events, such as Magna Carta.³⁸ Scholars produced historical works which provided information about the Middle Ages to educated laymen. For instance, the 1225 Magna Carta was reprinted in John Selden's 1610 historical survey, *England's Epinomis*.³⁹ The nobility and gentry gained knowledge of history through their education from private tutors, grammar schools and the universities.⁴⁰ The great importance that was placed on the study of Latin provided students with the ability to read medieval texts.⁴¹ The spread of printing allowed collections of statutes and medieval chronicles to be widely produced and thus their contents to become well-known. The 1225 version of Magna Carta had been first published in 1499 and was translated into English in

³⁷ G. Burgess, *Absolute monarchy and the Stuart Constitution* (London, 1996), p. 169.

³⁸ H., Cam, *Magna Carta-event or document?* (London, 1965), p. 20.

³⁹ Swindler, *Magna Carta*, p. 171.

⁴⁰ J. Simon, *Education and Society in Tudor England* (Cambridge, 1966), p. 324; H. Jewell, *Education in Early Modern England* (Basingstoke, 1998), pp. 55, 62.

⁴¹ R. O'Day, *Education and Society, 1500-1800* (London, 1982), pp. 64-8.

1534.⁴² The interest in the charter was particularly stimulated by the publication of the chronicle of Matthew Paris in 1571 as this readable text that espoused the significance of the Great Charter is likely to have influenced the views of many readers.⁴³ Therefore, the study of history ensured that the politically influential members of society were aware of the charter.

Additionally, the legal training of many of the opponents of the crown meant that they would have been aware of the charter because of its continued legal status. The entering of the 1225 Magna Carta onto the statute book meant that its provisions were still in force, and thus of relevance to lawyers.⁴⁴ It also ensured that it was included in collections of English statutes and law books, such as John Rastell's *Exposiciones terminorum legum anglorum* in 1527, which were produced for the growing legal profession.⁴⁵ Although many of the charter's provisions had lost much of their relevance as a result of changes in society since the thirteenth century, many of its clauses were still discussed.⁴⁶ For instance, in the Tudor period, Magna Carta was regularly included in lists of all the legislation referring to a particular issue, such as purveyance.⁴⁷ Therefore, the opponents of the crown in the seventeenth century and the people they were trying to influence would have been aware of Magna Carta through their study of history and the law.

⁴² M. Ashley, *Magna Carta in the seventeenth century* (Charlottesville, 1965), p. 5.

⁴³ Turner, *Magna Carta*, p. 147.

⁴⁴ W. Dunham, 'Magna Carta and British Constitutionalism' in *The Great Charter* (New York, 1965), pp. 25-6.

⁴⁵ Swindler, *Magna Carta*, p. 167.

⁴⁶ F. Thompson, *Magna Carta: Its Role in the Making of the English Constitution 1300-1629* (New York, 1950), p.3.

⁴⁷ Butterfield, *Magna Carta*, p. 15.

The perception of Magna Carta as fundamental law meant that it was a very useful precedent as it was believed that the authorities were bound by it. The claims in the thirteenth century that the charter was a record of ancient laws led to the belief that its provisions were declaratory of England's ancient constitution and thus they were a record of the immemorial rights of Englishmen. Coke claimed that Magna Carta 'was for the most part declaratory of the principall grounds of the fundamentall Lawes of England'.⁴⁸ Thus, it was argued that the king could not contravene the provisions of Magna Carta. Coke asserted in the Commons that 'Magna Charta is such a Fellow, that he will have no Sovereign'.⁴⁹ This perception was supported by the statements that statutes contrary to Magna Carta were invalid. The 1225 Magna Carta itself stated that 'if any thing be procured by any person contrary to the premisses, it shall be had of no force nor effect' and in 1368 parliament ruled that any acts contrary to the charter were void.⁵⁰ Therefore, it greatly benefited campaigners to argue that their claims had a precedent in Magna Carta. This is demonstrated by the fact that the crown never disputed the significance and relevance of Magna Carta, but merely disagreed with their opponents' interpretation of it.⁵¹

Therefore, opponents of the crown in the seventeenth century believed that it was in their interests to appeal to Magna Carta. However, the charter did not actually contain precedents for many of the principles for which they were fighting due to its lack of attention to constitutional matters and the great changes in society in the four centuries since its creation. Thus opponents ensured that Magna Carta

⁴⁸ Sir Edward Coke, *Institutes of the Lawes of England II* (London, 1797), 'A Proeme'.

⁴⁹ J. Rushworth, *Historical collections of private passages of state* (London, 1721), p.562.

⁵⁰ *The statutes at large, from Magna Charta, to the twenty-fifth year of the reign of King George the Third I* (London, 1786), p. 10; Stenton, *After Runnymede*, p. 34.

⁵¹ Dunham, 'Magna Carta', p. 37; Ashley, *Magna Carta*, p. 22.

was useful to their arguments by misinterpreting its provisions. The ability of opponents, such as Coke, to successfully and convincingly reinterpret Magna Carta to support their case allowed them to cite the document in their disputes with the crown. For instance, in Coke's *Institutes of the Lawes of England*, he argued that article twenty-nine of the 1225 Magna Carta prohibited monopolies. Monopolies had not been perceived as a problem in the Middle Ages. Consequently, outlawing them could not have been the intention of the creators of Magna Carta.⁵² Coke claimed that its protection of people's 'liberties' meant that it was illegal to grant monopolies as 'the graunt is against the liberty and freedom of the subject that before did, or lawfully might have used that trade and consequently against this great charter'.⁵³ Coke also asserted that the charter ruled that every attempt by monarchs to extract money from their subjects must 'bee given by the common consent of the whole realme in parliament'.⁵⁴ Thus, he claimed that Magna Carta insisted that the king gain parliamentary consent for tax. This is an inaccurate interpretation as the fact that a representative assembly did not exist when the charter was created meant that it could not have been referring to one. Furthermore, Coke's claims are based on article twelve of the 1215 Magna Carta which decreed that 'no scutage or aid may be levied in our kingdom unless by common counsel of our kingdom'.⁵⁵ The omission of this from the 1225 reissue meant that it did not have legal force in the seventeenth century as it was the 1225 version of the charter that was on the statute book. These misinterpretations were generally accepted because of the prestige of Coke and the perception of his arguments as authoritative statements. Lawyers in the

⁵² S. Thorne, *Sir Edward Coke, 1552-1952* (London, 1957), p. 10.

⁵³ Coke, *Institutes*, p. 47.

⁵⁴ *Ibid.*, p. 529.

⁵⁵ *Magna Carta* 1215, p. 309.

early seventeenth century believed that it was unnecessary to go further back than Coke's writings when they were attempting to establish a point of law.⁵⁶ Thus, Magna Carta was seen as significant in the seventeenth century not because its provisions were relevant to the period, as they had been in the thirteenth century, but because people interpreted them to make them appear to be.

Opponents of the crown were able to reinterpret Magna Carta to support their arguments because of the vagueness of many of its provisions. If the writers of Magna Carta had defined their terms and rules more specifically it would have been harder for people in the seventeenth century to argue that the charter related to additional liberties and practices. For instance, article thirty of the 1225 Magna Carta failed to define 'evil tolls' when it gave merchants the right to enter and leave England without being subject to them.⁵⁷ Therefore the lawyers for John Bates in 1606 were able to argue that the arbitrary raising of the custom rates by James I was prohibited by Magna Carta by claiming that it was included in the 'evil tolls'.⁵⁸ Furthermore, the provision that no free-man should be imprisoned except by 'the laws of the land' in article twenty-nine was also usefully flexible as it failed to define 'the laws of the land'.⁵⁹ Coke gave it his own definition by claiming that it referred to 'common law, statute law or custome of England' which excluded other types of law to which it could be interpreted as referring, such as the king's prerogative, ecclesiastical law and martial law.⁶⁰ For instance, in 1613, Sir Francis Bacon claimed that the phrase included the king's prerogative as 'his majesty's prerogative and his absolute power incident to his sovereignty is

⁵⁶ Swindler, *Magna Carta*, p. 174.

⁵⁷ *The statutes at large*, p.8.

⁵⁸ Turner, *Magna Carta*, p. 155.

⁵⁹ *The statutes at large*, p. 8.

⁶⁰ Coke, *Institutes*, p. 45.

also “lex terrae”⁶¹. Thus, the vagueness of the original document provided the opportunity to interpret the article in a specific way to support the principles and arguments of the opponents of the crown. In the case of the five knights, their lawyers argued that holding them by the king’s special mandate was contrary to article twenty-nine which was not the case if the article was interpreted to include the royal prerogative.⁶²

Therefore, Magna Carta was perceived to be significant in the seventeenth century because opponents of the crown used it to support their campaigns against the king. The legal and emotional importance attached to precedent meant that it was useful for campaigners to depict themselves as merely upholding past customs. They appealed to Magna Carta because of their knowledge of it due to the awareness of history at the beginning of the seventeenth century and its legal position. Magna Carta was a useful precedent to appeal to as a result of the perception of it as fundamental law meaning that it could not be annulled by other rulings. The fact that Magna Carta did not refer to many of the seventeenth-century political debates meant that statesmen, lawyers and historians had to make the charter significant by misinterpreting the meaning of many articles. This process was aided by the vagueness of many of the charter’s statements as it gave people the opportunity to re-interpret them to support their cause. Thus, Magna Carta was not seen to be significant in the seventeenth century because it was relevant to the political debates of the period but because campaigners distorted its meaning to make it appear to be so.

⁶¹ Dunham, ‘Magna Carta’, p. 34.

⁶² Cam, *Magna Carta*, p. 23.

Mid-Eighteenth Century Britain

Magna Carta continued to be perceived as significant in the eighteenth century. Although the ability of the Hanoverian kings to restrict the liberties of their subjects was much more limited than their medieval and Stuart predecessors, many began to fear that parliament could act arbitrarily. Campaigners against the actions of parliament found that appealing to Magna Carta was a useful way to attract public support for their cause. Reformers attempted to demonstrate that the actions of parliament were contrary to Magna Carta and therefore that their campaigns were attempts to defend the principles of the charter. This was effective at winning public support because of the perception of the document as a valuable and relevant protector of the people's traditional rights and liberties.

The growing power of parliament throughout the seventeenth and eighteenth centuries increasingly limited the power of the monarch. The restrictions placed on the activities of the monarchy by acts of parliament, such as the Bill of Rights and the 1701 Act of Settlement, meant that it became increasingly unnecessary to appeal to Magna Carta to protect the rights of the subjects against the monarch. For example, the ruling against arbitrary extractions by the monarch in the Bill of Rights meant that it was no longer necessary to refer to article twelve of Magna Carta, as Coke had done, to argue that the monarch could not impose taxation without parliamentary consent.⁶³ Therefore, parliament rather than Magna Carta became the primary defence against royal injustice. However, Magna Carta retained its importance as it began to be perceived as a defence against the power of parliament. During the eighteenth century, parliament was regularly accused of

⁶³*Bill of Rights, 1689* in A. Browning (ed.), *English Historical Documents, Volume VIII 1600-1714* (London, 1953), p. 123; Coke, *Institutes*, p. 529.

threatening people's liberties through arbitrary actions. As the constitutional developments in the preceding centuries had been primarily concerned with limiting the power of the monarch, the ability of parliament to invade people's liberties had not been restricted in the same way. Reformers criticized, among other things, the use of placemen, the length of parliaments and the use of general warrants.⁶⁴ Therefore, reformers in the eighteenth century believed it was necessary to campaign against the actions of parliament.

Magna Carta was useful to reformers as it allowed them to gain public support for their cause. Influencing public opinion was important as a result of the impact that it had on the political elite. Patrons did have great influence over elections but they could never entirely ignore the views of voters. In no eighteenth-century parliament were more than a third of MPs merely nominated by the patron.⁶⁵ Instead, Members of the House of Commons normally had to ensure that they won the support of voters. This is demonstrated by the efforts that they undertook to gain votes. Campaigns were so demanding that William Bridges was advised by his father not to stand at Weobley in the 1715 election because he did not believe that his constitution could 'stand the fatiguing debauchery of a poll'.⁶⁶ The political elite also had to take into account the views of those who did not possess the vote as a result of the threat of riots. Popular disorders could create major problems for the authorities as the lack of a police force meant that it was difficult to suppress them without resorting to the army. Magistrates were often unwilling to summon the army as a result of the damage that it would do to their

⁶⁴ Pallister, *Magna Carta*, p. 64; P. Thomas, *John Wilkes : a friend to liberty* (Oxford, 1996).

⁶⁵ H. Dickinson, *The politics of the people in eighteenth-century Britain* (New York, 1994), p. 19.

⁶⁶ Herefordshire RO, Bridges MSS: F. Bridges to W. Bridges 25 Sep 1714 in W. Speck, *Tory and Whig: the struggle in the constituencies* (London, 1970), p. 59.

reputation in the local community and the fact that they could be held to account for casualties that were incurred as a result.⁶⁷ Therefore, rioting or the threat of rioting was often effective at influencing the policies of the authorities. For instance, it contributed to the repeal the Jewish Naturalization Act in 1754.⁶⁸

Although society outside the political elite were often primarily concerned with local issues, it was possible to win their support for national issues. The expansion of newspapers during the eighteenth century meant that political awareness was increasingly widespread. The total annual sale of newspapers had reached 12.6 million by 1775 and the readership figures were likely to be much greater as many copies had multiple readers. The production of oral and visual propaganda, such as ballads, ensured that information about national issues could reach the non-literate as well.⁶⁹ Therefore those outside the political elite possessed the knowledge to take an interest in national issues. This interest is demonstrated by the 1734 elections in which supporters of the Excise Bill lost their seats in towns such as Bristol and Newcastle as a result of their political actions.⁷⁰ Therefore, reformers of parliament could further their cause by attracting public support for their campaigns as it could influence the actions of the political elite. This is demonstrated by the efforts that politicians undertook to sway public opinion. For instance, Walpole spent over £50,000 on the production of newspapers and pamphlets during the 1730s.⁷¹

⁶⁷ Dickinson, *Politics of the people* pp. 148-9; E. Thompson, 'The Moral Economy of the English Crowd in the Eighteenth Century', *Past and Present*, 50 (1971), p. 121.

⁶⁸ Dickinson, *Politics of the people*, p. 158.

⁶⁹ J. Brewer, *Party ideology and popular politics at the accession of George III* (Cambridge, 1976), pp. 142-, 148, 155.

⁷⁰ Dickinson, *Politics of the people*, p. 21.

⁷¹ J. Black, *Robert Walpole and the nature of politics in early eighteenth-century Britain* (Basingstoke, 1990), p. 64.

The reformers appealed to Magna Carta in their attempt to win public support because of its usefulness as a rallying cry. This firstly depended on society being aware of the document. Whereas in the early seventeenth century, campaigners cited Magna Carta to justify their case to the political elite, in the mid-eighteenth century radicals, such as John Wilkes and Arthur Beardmore, appealed to the charter to attempt to stir the emotions of the public. This was possible as a result of the broader readership of histories due to the increase in literacy, the growth of popular histories and the increasing opportunities to purchase works cheaply through the publishing of histories in serial form or the production of extracts and abridgements.⁷² Thus, although the readership of histories in the eighteenth century was still limited, it was widening. Tindal's English translation of Rapin's *Historie d'Angleterre*, in which a copy of the 1215 Magna Carta was printed, had sales of approximately 18,000 from 1725 to 1755.⁷³ Therefore, knowledge of the charter would have been widespread.

Magna Carta was seen as relevant for the eighteenth century as a result of the influence of Coke's writings on eighteenth-century historians. The continued perception of Coke as an authority on the document meant that they adopted many of his misrepresentations of the charter's clauses and consequently his

⁷² K. O'Brien, 'The History Market in Eighteenth-Century England' in I. Rivers (ed.), *Books and their Readers in Eighteenth-Century England: new essays* (London, 2003), p. 106; L. Stone, 'Literacy and Education in England 1640-1900' *Past and Present* 42 (1969), pp. 100, 104; J. Black 'Ideology, xenophobia and the world of print in eighteenth-century England' in J. Black and J. Gregory (eds.) *Culture, Politics and Society in Britain, 1660-1800* (Manchester, 1991), p. 189; D. Woolf, 'Historical writing in Britain from the Late Middle Ages to the eve of Enlightenment' in J. Rabasa (ed.) *Oxford history of historical writing III* (Oxford, 2012), pp. 488-9.

⁷³ Paul de Rapin, *The history of England, written originally in French by Rapin de Thoyras: translated into English, with additional notes; and continued from the Revolution to the accession of King George II. By N. Tindal* Vol. 1 (London, 1789), p. 261; O'Brien, 'The History Market', p. 112.

exaggeration of its significance⁷⁴. For example, Blackstone, in his *Commentaries*, echoed Coke's misinterpretation of article twenty-nine as granting trial by jury.⁷⁵ Therefore, many in the eighteenth century accepted Coke's representation of Magna Carta and thus believed that it was relevant to issues in the early modern period. Consequently, they accepted the claims of campaigners that actions by parliament in the eighteenth century were contrary to it. Eighteenth-century writers also adopted the high value that early seventeenth-century commentators placed on the document, echoing their view of it as an essential defence of the people's traditional rights and liberties. This is demonstrated by Blackstone's claim that there is 'no transaction in the ancient part of our English history more interesting and important' than the creation of the charter.⁷⁶ As a consequence, public anger could be aroused against particular actions of the government by presenting them as contrary to Magna Carta as it was believed that an attack on Magna Carta was an attack on the liberty of the people.

The perception of Magna Carta as fundamental law made it particularly useful for critics of parliament. The developing doctrine of parliamentary sovereignty led to the argument that parliament was supreme and could repeal any laws made by previous parliaments. Therefore, it was impossible to bind the present parliament by any parliamentary legislation meaning that any liberties granted in them, such as in the Bill of Rights, could not be effectively protected. For instance, in 1716 parliament repealed the 1694 Triennial Act which had guaranteed that elections would be held every three years and replaced it with the Septennial Act, allowing

⁷⁴ R. Smith, *The Gothic bequest: Medieval institutions in British thought, 1688-1863* (New York, 1987), p. 92.

⁷⁵ Sir William Blackstone, *Commentaries on the law of England Vol. 4* (London, 1800), p. 349.

⁷⁶ Sir William Blackstone, *The great charter and charter of the forest, with other authentic instruments* (Oxford, 1759), p. i.

parliament to sit for seven years without elections.⁷⁷ Therefore, Magna Carta was perceived to be important to reformers because the presentation of it throughout its history as fundamental law that could not be changed meant that it was possible to argue that parliament could not contravene the liberties granted in it. The claims by seventeenth-century scholars that the charter was declaratory of the ancient constitution convinced eighteenth-century historians. Blackstone argued that ‘it is agreed by all our historians that the great charter of King John was for the most part compiled from the ancient customs of the realm or the laws of King Edward the confessor’.⁷⁸ Additionally, the many confirmations of the charter by parliaments led campaigners, such as Granville Sharp, to argue that no single parliament could repeal it as it did not have the same authority as that of all these parliaments combined.⁷⁹ Thus, it was widely believed that parliament could not rescind the grants of Magna Carta. For instance William Pitt the elder described Magna Carta as ‘the Bible of the English Constitution’ by which all parliamentary actions should be judged.⁸⁰

Therefore, many critics of parliament attempted to present their campaigns as attempts to defend the liberties of Magna Carta against an arbitrary parliament. Arthur Beardmore, a radical writer arrested for seditious libel in 1762, attempted to win support for his cause by ensuring that his arrest occurred while he was teaching his son about Magna Carta. The wide circulation of prints of this event promoted the view that the government had acted contrary to the provisions of

⁷⁷ Turner, *Magna Carta*, p. 174.

⁷⁸ Blackstone, *The great charter*, p. vii.

⁷⁹ G. Sharp, *A declaration of the people's natural right to a share in the legislature* (Dublin, 1776), p. 204.

⁸⁰ W. Pitt, *The Speeches of the Right Honourable the Earl of Chatham in the Houses of Lords and Commons: With a Biographical Memoir and Introductions and Explanatory Notes to the Speeches* (London, 1848), p. 98.

Magna Carta.⁸¹ John Wilkes managed to win a large public following by presenting his disputes with parliament, concerning their attempts to arrest him for libel in 1763 and to exclude him from parliament in 1769, as endeavours by him to protect the principles of Magna Carta.⁸² The frontispiece of Wilkes's *English Liberty* depicts him as Liberty's champion fighting against the furies who are attempting to burn Magna Carta and the Bill of Rights and the Middlesex Journal reported that during the Middlesex election campaign his supporters wore blue cockades in their hats stamped with the Bill of Rights and Magna Carta.⁸³ This won public support for Wilkes's campaigns as it encouraged the public to believe that parliament's actions against him were unjustifiable attacks on an Englishman's traditional liberties and that it was their duty and in their interests to support his campaigns as their fundamental liberties were also being threatened. The success of Wilkes's methods is demonstrated by the displays of popular support for him both through the large crowds that regularly gathered in defence of his cause and the fact that nearly 60,000 people signed the petition supporting Wilkes over the Middlesex election dispute.⁸⁴ The reports that the crowds regularly cried out 'Wilkes and Liberty' demonstrates that their support for Wilkes was a result of the perception of him as a champion of liberty.⁸⁵ Therefore, during the eighteenth century it was beneficial for radicals to present themselves as defenders of Magna Carta.

⁸¹ Turner, *Magna Carta*, p. 176.

⁸² H. Dickinson, 'Radicals and Reformers in the age of Wilkes and Wyvill' in J. Black (ed.), *British politics and society from Walpole to Pitt* (Basingstoke, 2010), p. 133.

⁸³ J. Wilkes, *English Liberty: being a collection of interesting tracts, from the year 1762 to 1769* (London, 1769), p. ii; *Middlesex Journal* 11 April 1769.

⁸⁴ A. Cash, *John Wilkes: the scandalous father of civil liberty* (New Haven, 2006), p. 258.

⁸⁵ Thomas, *John Wilkes*, p. 31; G. Rudé, *Paris and London in the eighteenth century: studies in popular protest* (London, 1970), p. 312.

Thus, Magna Carta was perceived to be important in the eighteenth century because of its effectiveness as a rallying cry. The increasing power of parliament had reduced the ability of the monarch to restrict people's liberties but now many feared that people's rights were threatened from the arbitrary actions of parliament. Campaigners attempted to win public support for their causes because of the impact that public opinion could have on the authorities through elections and the threat of rioting. Appeals to Magna Carta were a useful way of winning support. The wide knowledge of English history meant that many in the eighteenth century were aware of the document. The influence of seventeenth-century works meant that they had a distorted view of its actual significance and thus believed that it was both relevant to eighteenth-century issues and something that it was necessary for them to defend. The belief that Magna Carta was fundamental law meant that it was believed parliament was unable to alter it and thus any parliamentary actions against it were invalid and should be resisted. Therefore, by claiming that parliament was contravening the liberties of Magna Carta, critics of parliament were able to mobilize popular support for their causes. Thus, they perceived Magna Carta to be significant because of its usefulness as a propaganda technique.

Eighteenth-century Colonial America

The perception of Magna Carta as a significant document was not confined to England. In the eighteenth century, the English colonists in British America appealed to Magna Carta to justify their opposition to actions of the British parliament. During the 1760s, the colonies became increasingly dissatisfied with their treatment by the British government, believing that their rights were being

infringed by parliamentary legislation. A key grievance was the attempt by parliament to impose taxation on the colonies even though the colonists were not represented in the institution and thus could not consent to it. Colonial campaigners attempted to persuade the British government to address their grievances through appeals to the provisions of Magna Carta. They believed that this was a useful technique to adopt because of their perception of the document as relevant, binding and valued.

The English colonists in America believed that the provisions of Magna Carta applied to them. Even though they were in a different country, they believed that they possessed the traditional rights of Englishmen. This belief was stronger in British America than in other parts of the British Empire because of the large number of English settlers who emigrated to the American colonies.⁸⁶ Their perception of themselves as English meant that they believed that they were heirs to the English tradition of liberty and could not lose their inherent rights by moving. This view was consolidated by the explicit granting of such rights in the colonial charters that English kings had issued at the founding of the colonies. These charters included promises that the citizens of the colonies possessed the same rights as those in England.⁸⁷ For example, the Charter of Massachusetts guaranteed that the colonists had a right to ‘all liberties and immunities of free and natural subjects within any of the domynions of us’.⁸⁸ Therefore, in the eighteenth century the American colonists believed that any rights that the English possessed could also be exercised by them. This is demonstrated by the

⁸⁶ Turner, *Magna Carta*, p. 208.

⁸⁷ Ibid. p. 209; J. Greene, *The Constitutional Origins of the American Revolution* (Cambridge, 2011), p. 9.

⁸⁸ *The first charter of Massachusetts* in H. Commager, *Documents of American history* (New York, 1958), p. 17.

claim by the Stamp Act Congress in 1765 that the first settlers had brought with them ‘all the inherent rights and liberties of [the king’s] natural-born subjects within the realm of Great Britain’.⁸⁹ Thus, the colonists believed that they possessed the liberties granted in Magna Carta as this was part of their heritage.

For the colonists to make use of this inheritance, they had to be aware of Magna Carta. As in early seventeenth-century Britain, the political leaders gained information about the charter through their study of history and the law. The belief that knowledge of history improved the judgement of statesmen as they received lessons from the past ensured that colonial political society valued historical studies.⁹⁰ The study of British history was perceived to be particularly relevant as it related to the origins of the American colonies. Thomas Jefferson claimed that during his life he had found ‘knowledge of British history...useful to the American politician’.⁹¹ In eighteenth-century America, an increasing number of colonists studied the law as a result of the growing need for legal knowledge due to the development of commerce and the establishment of substantial fortunes and landholdings.⁹² The prominent role played by lawyers during the revolutionary era meant that, as in early seventeenth-century England, many of those involved in political discussions had undergone serious legal study.⁹³ Colonists were able to gain knowledge of history and the law through the study of books which were imported from England and produced by the growing number

⁸⁹ *Proceedings of the Congress at New-York* (Annapolis, 1766), p. 15.

⁹⁰ H. Colbourn, *The lamp of experience : Whig history and the intellectual origins of the American Revolution* (Williamsburg, 1965), pp. 4-5.

⁹¹ P. Ford (ed.), *The writings of Thomas Jefferson IX* (New York, 1892-99), p. 72.

⁹² A. Howard, *The Road from Runnymede: Magna Carta and Constitutionalism in America* (Charlottesville, 1968), p. 116.

⁹³ H. Hazeltine, ‘The influence of Magna Carta on American constitutional development’ *Columbia Law Review* 17 (1917), p. 21.

of colonial presses. The large number of history and legal books in colonial libraries is evidence of the commitment to the study of these subjects. For instance, in 1741, the most common genre by far in the catalogue of Franklin's Library Company was history works. It contained one hundred and fourteen history books compared to only sixty-nine works of literature.⁹⁴ The high cost of importing books meant that it is unlikely that colonists would have purchased them merely for show suggesting that they were studied by the colonists.⁹⁵ Therefore, as in previous periods, the colonists were made aware of Magna Carta through the pursuit of historical and legal knowledge. This awareness is demonstrated by the echoing of its language and provisions in colonial legislation, such as in the Pennsylvanian *Act of Privileges to a Freeman* in 1700.⁹⁶

Colonists in eighteenth-century British America believed that Magna Carta was significant because of their distorted view of it. The respect for Coke as an authoritative voice on English law that was prevalent in eighteenth-century Britain was echoed in the colonies.⁹⁷ This is demonstrated by the prominence of Coke's works in colonial libraries.⁹⁸ The high regard for the views of Coke was consolidated by the study of eighteenth-century British writers, such as Blackstone, who had adopted Coke's claims.⁹⁹ Therefore, many colonists who studied history and law accepted Coke's misrepresentations of the charter, increasing their perception of its significance. Coke's misinterpretations of

⁹⁴ Ibid, p. 14.

⁹⁵ Howard, *The Road from Runnymede*, p. 118.

⁹⁶ Howard, *The Road from Runnymede*, p. 92.

⁹⁷ C. Mullet, 'Coke and the American Revolution', *Economica* 38 (1932), pp. 457-8; R. Pound, *The development of constitutional guarantees of liberty* (New Haven, 1963), p. 43.

⁹⁸ Howard, *The Road from Runnymede* p. 119.

⁹⁹ Swindler, *Magna Carta*, p. 218.

several of the clauses led many colonial lawyers and writers to believe that they were relevant to their debates. Coke's claim that it prohibited taxation without 'common consent of the whole realme in parliament' encouraged the belief that the taxation of the colonies by the British parliament was contrary to Magna Carta as the colonists were not represented in that body.¹⁰⁰ For instance, in 1764, James Otis protested against the Sugar Act by citing the commentary of Magna Carta in Coke's *Institutes*.¹⁰¹ Additionally, the accepted interpretation of clause twenty-nine as granting the right to trial by jury led writers, such as John Adams, to argue that the Stamp Act contravened this by prescribing trial by admiralty court for offences committed under it. In the *Instructions of the Town of Braintree to their Representative*, Adams attacked the provisions as being 'directly repugnant to the Great Charter'.¹⁰² Therefore, the influence of early seventeenth-century English political thought in the colonies led to the belief that the British government was violating the provisions of Magna Carta.

The colonial campaigners found it useful to argue that legislation contravened Magna Carta because they believed that the government should be bound by the charter. The influence of Coke and eighteenth-century writers led colonial lawyers and statesmen to perceive Magna Carta to be merely a restatement of the inherent rights of Englishmen. They consequently argued that, although parliament could repeal acts of parliament, it could not infringe the liberties of Magna Carta because they were part of the fundamental law of England. Thus, it was believed that proving that parliament's actions were contrary to Magna Carta should have been enough to halt them. Samuel Adams argued in an article in the

¹⁰⁰ Coke, *Institutes*, p. 529.

¹⁰¹ J. Otis, *The rights of the British colonies asserted and proved* (London, 1766), p. 89.

¹⁰² J. Adams, *Works of John Adams Vol. III*, ed. C. Adams (Boston, 1865), p. 467.

Boston Gazette in 1772 that Coke had shown that ‘an act of parliament made against Magna Charta in violation of its essential parts, is void’.¹⁰³ Therefore, as in eighteenth-century Britain, campaigners in the colonies believed that Magna Carta was a useful tool to justify their opposition to the actions of parliament.

In their use of Coke’s writings to justify this argument, the colonists were selective. Although Coke had argued that Magna Carta was declaratory of fundamental law, in the fourth part of his *Institutes* he claimed that the power of parliament is ‘so transcendent and absolute as it cannot be confined either for causes or persons within any bounds’.¹⁰⁴ This could thus be used to suggest that parliament had the authority to encroach any liberties guaranteed in Magna Carta. The neglect of this claim by colonial campaigners suggests that their interpretation of Coke’s writings was affected by their desire to use them to support their arguments, in the same way that Coke had misinterpreted Magna Carta. This selective interpretation allowed them to present Magna Carta as more relevant and significant than they would have otherwise been able to do.

It was important for the colonial campaigners to be able to justify their opposition to parliamentary acts as originally they did not want to overthrow British rule in America but merely wanted their grievances to be addressed. Therefore, they wanted to persuade their opponents of the justness of their cause rather than merely to impose their desires through rebellion. In 1774, the convention of Delaware still expressed a hope that Britain and America would remain ‘one

¹⁰³ S. Adams, *The writings of Samuel Adams vol. II* (New York, 1904), p. 326.

¹⁰⁴ Sir Edward Coke, *The fourth part of the institutes of the laws of England* (London, 1797), p. 36.

people'.¹⁰⁵ This hope is demonstrated by the tone of the literature as it is explanatory and persuasive and devoid of expressions of hatred towards their opponents.¹⁰⁶ They were attempting to convince the British government to repeal the offending acts and thus needed to demonstrate to them why they should take this course of action.

Appealing to Magna Carta was a useful technique when attempting to influence the actions of the British parliament. Although some historians, such as Clark and Muller, have emphasized the colonists' increasing reliance on natural law arguments and many writers clearly did use these, the colonists believed that appealing to Magna Carta was worthwhile.¹⁰⁷ Firstly, the campaigners believed that the more arguments they could use to defend their position, the more effectively they could prove their point. This is demonstrated by the works referencing both natural law and constitutional arguments. For instance, in 1775, four Presbyterian ministers condemned taxation without representation by arguing that it was 'contrary to reason and the law of God... it is contrary to Magna Carta...and Constitution of England'.¹⁰⁸ The citing of Magna Carta was likely to be a particularly effective technique when dealing with the British parliament. By arguing that they were only attempting to defend their established rights against innovative encroachments, the colonists could present their cause as unrevolutionary and thus try to avoid being perceived as dangerous and disruptive radicals. It also allowed them to claim, as the opponents to the early Stuarts had

¹⁰⁵ *Proceedings of the convention of Delaware* in P. Force, *American Archives I* (Washington, 1837) p. 667.

¹⁰⁶ B. Bailyn, *The ideological origins of the American Revolution* (Cambridge, 1992), p. 19.

¹⁰⁷ J. Clark, *The language of liberty, 1660-1832* (Cambridge, 1994), p. 4; Mullet, 'Coke and the American Revolution', p. 467.

¹⁰⁸ W. Saunders, *The Colonial Records of North Carolina X* (Raleigh, 1890), p. 224.

attempted to do, that the legitimizing force of precedent was on their side and it was their adversaries who were attempting to disrupt the constitution. The Stamp Act Congress's petition to the king argued that 'the invaluable rights of taxing ourselves and trial by peers... are not, we most humbly conceive unconstitutional; but confirmed by the Great Charter of English Liberty'.¹⁰⁹

The use of a document and a legal theory which parliament had used in the past to advance its claims against the crown made it particularly challenging for the institution to refute the arguments of the colonists without undermining the justification for their history of resistance. James Allen explicitly drew comparisons between parliamentary campaigns for liberty and the present struggle in a sermon in 1773 when he claimed that history showed that 'it is no rebellion to oppose any king, ministry, or governor, that destroys... the rights of the people'.¹¹⁰ Furthermore, the citing of greatly respected English writers, such as Coke, imbued their claims with respectability and gave the impression that they may be valid. The belief in the advantages of appealing to English theorists is demonstrated by the frequent citations of their works in the colonists' literature.¹¹¹ The valuableness of appealing to Magna Carta is demonstrated by the attempts by the British government to refute the colonists' claims by arguing that the colonists had virtual representation in parliament. This suggests that the government believed that it had to present itself as respecting the traditional rights of its citizens. For instance, in *The Regulations Lately Made*, Thomas Whately, a minister in Grenville's ministry, supported the principle of no taxation without

¹⁰⁹ E. Morgan (ed.), *Prologue to revolution : sources and documents on the Stamp Act crisis, 1764-1766* (Chapel Hill, 1959), p. 65.

¹¹⁰ J. Allen, *An oration on the beauties of liberty* (Boston, 1773), p. 28.

¹¹¹ B. Bailyn, *Pamphlets of the American Revolution 1750-1765* (Cambridge, 1965), p. 21; Colbourn, *The lamp of experience*, p. 14.

representation but argued that ‘the Inhabitants of the Colonies are represented in parliament’.¹¹² This suggests that appealing to Magna Carta was a beneficial way for the colonists to advance their cause.

Thus, many colonists valued Magna Carta because they believed that they could use it to effectively support their campaigns against the actions of the British parliament. Their belief that they had inherited the traditional rights and liberties of Englishmen led them to believe that the provisions of Magna Carta applied to them. They were aware of these provisions as a result of the prevalent study of history and the law. This study led them to a distorted view of the document as a result of the influence of Coke and other writers. The misrepresentations in these works led the colonists to believe that Magna Carta was relevant to their political issues as they suggested that the charter specifically prohibited the actions of parliament in the eighteenth century. This was believed to be significant as the inaccurate perception of Magna Carta as declaratory of fundamental law meant that it was believed that parliament could not contravene it. The selective use of the historical and legal works allowed the colonists to present a more convincing case, by excluding arguments that did not support their position. Consequently, colonial campaigners believed that appealing to Magna Carta allowed them to justify their opposition to the British government. This was important for the colonists as their original aim was to convince their opponents to address their grievances rather than to overthrow British rule. Appealing to Magna Carta was a wise technique as it allowed the colonial theorists to argue that they were not being revolutionary or radical which were characteristics abhorred by the British

¹¹² T. Whately, *The regulations lately made concerning the colonies, and the taxes imposed upon them, considered. By the late Right Hon. George Grenville* (London, 1775), p. 109.

political elite. Additionally, the use of a document that parliament had appealed to in the past to assert its rights and the citing of respected English works imbued the arguments of the colonists with respectability and made it difficult for parliament to disregard their claims. Therefore, Magna Carta was perceived to be significant in eighteenth-century British America because colonial campaigners believed that appealing to it would advance their cause.

Magna Carta in Britain Today

In the twenty-first century, there are still claims that the government is threatening the rights and liberties of citizens. Campaigners against such activities continue to refer to Magna Carta in their attempts to prevent violations of people's rights. Although citing the charter has lost some of its impact because of the doctrine of parliamentary sovereignty and the greater awareness of the original meaning of its provisions, Magna Carta is still perceived to be significant. Activists believe that references to Magna Carta help their cause because of the influence on public opinion. As the charter has come to symbolize important liberties, presenting a campaign as an attempt to uphold the tradition of Magna Carta is seen to be a useful way to win support for it.

Magna Carta is perceived to be significant in the twenty-first century because of continuing fears about threats to people's liberties. The development of the power of parliament and the establishment of universal suffrage means that there is no longer a need to fight against the threat of absolute monarchy or an unrepresentative legislature as campaigners did in the past. However, activists are concerned about the power of the executive which has been described as an

elective dictatorship as a result of the lack of control over the actions of elected politicians and their ability to infringe individual rights.¹¹³ The control of the government over the legislative process in Britain leads to fears that they can use legislation to attack citizens' rights and increase the control of the authorities.¹¹⁴ Many argue that the problem has been exacerbated by the war on terror as politicians have justified violations of civil liberties by arguing that it is necessary for national security.¹¹⁵ In 2004, Lord Hoffman criticized the government's Anti-terrorism Crime and Security Act of 2001 which allowed the detention of terrorist suspects without trial, arguing that it 'calls into question the very existence of an ancient liberty of which this country has until now been very proud: freedom from arbitrary arrest and detention.'¹¹⁶ Thus, many continue to believe that it remains necessary to campaign to protect the rights and liberties of citizens.

However, unlike in earlier periods, campaigners no longer believe that proving that a government policy contravenes the terms of Magna Carta is sufficient to annul it. Although in previous centuries Magna Carta had been seen as fundamental law that could not be infringed, the strengthening of the doctrine of parliamentary sovereignty means that the present parliament cannot legally be bound by any previous law or custom.¹¹⁷ The fact that all but three of the clauses

¹¹³ N. Saul, 'Magna Carta, history and politics' (2013) at magnacarta800th.com/speeches/magna-carta-history-and-politics/ [accessed 08/03/13].

¹¹⁴ K. Ewing and C. Gearty, *Freedom under Thatcher: civil liberties in modern Britain* (Oxford, 1990), p. 255.

¹¹⁵ B. Davies, 'Terror laws "attack civil liberties"' *BBC News*, 13 May 2003 at news.bbc.co.uk/1/hi/uk_politics/3025603.stm [accessed 08/03/13]; 'Will Parliament allow war on terror shame to continue?' (2010) at www.liberty-human-rights.org.uk/media/press/2010/will-parliament-allow-war-on-terror-shame-to-continue.php [accessed 08/03/13].

¹¹⁶ P. Linebaugh, *The Magna Carta Manifesto* (Berkeley, 2008), p. 16.

¹¹⁷ K. Ewing and C. Gearty, *Freedom under Thatcher: civil liberties in modern Britain* (Oxford, 1990), p. 265.

of Magna Carta have been successfully repealed by parliaments demonstrates that it is accepted that parliament has the power to overrule the charter.¹¹⁸

Moreover, the provisions of Magna Carta are no longer perceived to be relevant to contemporary issues and debates. Modern historians have sought to expose the traditional misapprehensions about the document by focusing on its original meaning. The professionalization of the study of history in the nineteenth and twentieth centuries, through its establishment as a distinct discipline in universities, allowed historians to undertake increasingly specialized and informed studies into past periods.¹¹⁹ It is likely that professional historians, studying the past as an academic exercise, are less likely to misrepresent documents than campaigners whose reason for appealing to the past is to aid their present cause. Additionally, the greater availability of medieval documents in the last two hundred years, through the publication of records and greater accessibility of archives, gave historians the opportunity to more effectively study the context of Magna Carta.¹²⁰ Thus, historians gained a greater understanding of what its framers meant by the language that they used in the document. By putting the document in its thirteenth century context historians have demonstrated that its provisions dealt with medieval issues and that its authors were influenced by their now antiquated mentality. Therefore, historians have successfully discredited the seventeenth- and eighteenth-century interpretations of the charter and argue that its provisions are neither relevant today nor commendable by modern standards. For instance, works, such as those by Brey and Mckechnie, have disputed the traditional interpretation of the phrase

¹¹⁸ Pallister, *Magna Carta*, p. 89.

¹¹⁹ Turner, *Magna Carta*, p. 201.

¹²⁰ *Ibid.* pp. 200-1.

‘judicium parium’ in clause thirty-nine as guaranteeing trial by jury. Through their understanding of thirteenth-century justice they are aware that the modern jury trial had not fully developed by 1215 and thus the writers of the charter could not demand it. Instead, it is claimed that the barons were demanding a guarantee that they should be tried by persons of an equal rank rather than the king’s professional judges who were of lower status.¹²¹ Additionally, many historians have argued that campaigners were incorrect when they claimed that the rights in chapter twenty-nine were granted to everyone. Coke claimed that the phrase ‘freeman’ even included villeins as ‘they are free against all men, saving against their lord’ but Swindler argued that it only referred to freeholders.¹²² Stuart went further and claimed that ‘freeman’ only referred to around six per cent of the population. He argued that in the monkish Latin of the Middle Ages as opposed to the classical Latin that was principally used after the Renaissance ‘libertas’ referred to an exclusive privilege meaning that a ‘liber homo’ was someone who possessed a special privilege. He claimed that this restricted the right to primarily tenants in capite of crown and a limited number of people with special grants.¹²³ Contextual criticism of the document has led to the refutations of many other traditional interpretations, such as the claim that Magna Carta prohibited taxation without the consent of a representative assembly and that it protected citizens from monopolies.¹²⁴ Therefore, in contrast to earlier periods, Magna Carta is not presented as significant because it is believed that it offers practical remedies for contemporary grievances or protects rights highly valued by current society.

¹²¹ Breay, *Magna Carta*, p. 46 ; Mckechnie, *Magna Carta*, pp. 134-8.

¹²² Coke, *Institutes*, p. 45; Swindler, *Magna Carta*, p. 96.

¹²³ Stuart, ‘The constitutional clauses of Magna Carta’, p. 572.

¹²⁴ Howard, *Magna Carta*, p. 11; Turner, *Magna Carta*, p. 149 ; Holt, *Magna Carta*, p. 12; Thorne, *Sir Edward Coke*, p. 10.

Although scholars, such as Painter and Pollard, have argued that Magna Carta is merely a feudal document, the charter is perceived to be significant because of what it came to represent.¹²⁵ The misinterpretations of the clauses led the document to become a symbol of important liberties because people were led to believe that it guaranteed them. Therefore, in the twenty-first century, even if the significance of the document is questioned, the idea of Magna Carta is presented as significant and relevant. Modern historians argue that Magna Carta is historically significant because the inaccurate view of it acted as an inspiration and a weapon for campaigners in several periods of history.¹²⁶ Moreover, activists still believe that referencing Magna Carta is beneficial because they are not referring to the thirteenth-century document but to the tradition of rights and liberties that have stemmed from it and have been attributed to it. Magna Carta is not believed to be significant because of what it originally meant but because of what it has come to mean and the rights of which it is perceived to be a symbol. This is demonstrated by the claims made by the Magna Carta 800th Anniversary 2015 Committee. Its deputy chairman, Alice Richmond, argued that the charter retains significance not by alleging that it originally guaranteed important rights but by claiming that it ‘came to represent’ valued liberties.¹²⁷ Therefore, Magna Carta is still perceived to embody significant rights that are valued and fought for by twenty-first-century society.

Many activists believe that it is useful to have a symbol of these rights as a rhetorical device to arouse public opinion. The holding of regular free elections

¹²⁵ Pollard, *The history of England*, p. 19; Painter, *The reign of King John*, p. 347.

¹²⁶ Cam, *Magna Carta*, p. 26 ; Ashley, *Magna Carta*, p. 13 ; E. Griswold, ‘Introduction’, in *The Great Charter* (New York, 1965), p. ix.

¹²⁷ A. Richmond, ‘The Magna Carta: ideas for all seasons’ (2011) at magnacarta800th.com/tag/habeas-corpus/ [accessed 08/03/13].

means that politicians depend on public support to retain their positions and thus are unlikely to risk antagonizing voters. Therefore, winning public support is crucial to activists to allow them to influence governmental actions and policies. As in the eighteenth century, referencing Magna Carta is a useful tactic for campaigners to influence public opinion because of people's knowledge of the charter. The British public gain an awareness of history through universal education in which children are taught history at least up to the age of fourteen. The national curriculum for Key Stage three instructs teachers to ensure that students are taught about 'the development of political power from the Middle Ages to the twentieth century, including changes in the relationship between rulers and ruled over time' in which it is likely that Magna Carta will be included.¹²⁸ The popular interest in history means that many also gain knowledge about the past during their leisure time through popular history books, radio and television programmes and historical attractions. There are many opportunities to learn about Magna Carta through these means, such as through the exhibition of copies of the charter at the British library and Lincoln cathedral and the featuring of it on a 2009 edition of the radio series *In Our Time*.¹²⁹ The public are made particularly aware of Magna Carta through the practice of commemorating historical anniversaries in which at significant milestones historical events are specifically celebrated. This tends to involve publications, special exhibitions and publicity campaigns and often attracts media coverage. In 1965 a large number of works on Magna Carta were published to celebrate its 750th anniversary and many

¹²⁸ Qualifications and Curriculum Authority, *History 2007 programme of study for Key Stage three* (2007), p. 115 at media.education.gov.uk/assets/files/pdf/h/history%202007%20programme%20of%20study%20for%20key%20stage%203.pdf [accessed 08/03/13].

¹²⁹ www.bl.uk/whatson/permgall/treasures/magna.html [accessed 08/03/13]; lincolncathedral.com/library-education/magna-carta/ [accessed 08/03/13]; *In Our Time*. Prod. James Cook. BBC Radio 4, London, 7 May 2009.

activities and events are being organised for the 800th anniversary in 2015.¹³⁰ The preparations for the Octocentenary celebrations have already attracted media interest as demonstrated by articles in the national press, such as on the BBC website.¹³¹ Therefore, many people are aware of Magna Carta and thus can understand the references to it by campaigners and activists. This is demonstrated by the fact that in a survey conducted in 2012 more than eight out of ten adults claimed they had heard of the charter.¹³²

Appealing to Magna Carta is a useful tactic for campaigners because the public believe that they have a right to the liberties that it symbolizes. Therefore, by demonstrating that a policy contravenes these liberties, activists can encourage the public to perceive it as dangerous and unjust. In contrast to earlier periods, people in modern Britain tend not to value historical precedent and do not believe that determining whether a liberty has been previously granted is crucial in deciding whether people have a right to it. As the early modern belief that history is a story of corruption and decline has been replaced by the view that British society and governance has become more ethical over the centuries, society no longer believes that past practices must be superior to modern ones. The importance placed on concepts such as democracy, equality and tolerance in modern Britain leads to the perception of past societies as less enlightened meaning that it is not believed to be necessarily profitable to follow their

¹³⁰ J. Traer, 'Magna Carta by James C. Holt' *Michigan Law Review* 64 (1966), p. 1189; Magna Carta 2015 Committee, 'Aspirations and Activities leading up to and during 2015' (2013) at magnacarta800th.com/magna-carta-today/2015-aspirations/ [accessed 08/03/13].

¹³¹ A. Yalland, 'Magna Carta 800th anniversary celebrations begin' *BBC News* 12 November 2010 at www.bbc.co.uk/news/uk-11735060 [accessed 08/03/13].

¹³² Sir Robert Worcester, '85% of British adults say they have heard of the Magna Carta', *Ipsos MORI* (2013) at www.ipsos-mori.com/newsevents/ca/1286/85-of-British-adults-say-they-have-heard-of-the-Magna-Carta.aspx [accessed 08/03/13].

practices. Additionally, the development of the view that humans have certain natural rights means that it is believed that governments have a duty to provide them to their citizens regardless of whether they have been granted in the past.¹³³ Therefore, it is no longer necessary to prove that the English have traditionally held the liberties symbolized by Magna Carta to argue that they have a right to them today. This is demonstrated by the widespread belief that citizens of countries without the heritage of Magna Carta also have a right to the liberties that it has come to represent. For example, the United Nations Declaration of Human Rights claims that all human beings have a right to not be ‘subjected to arbitrary arrest, detention or exile’.¹³⁴ Therefore, campaigners no longer value Magna Carta because they believe that it is beneficial to provide a precedent for their demands. Instead, they believe that referencing the charter helps them to gain public support because it is a symbol of a set of liberties to which people believe that they have a natural right. As a consequence, accusing the government of violating the tradition of the charter encourages the belief that its actions are unjust and a real threat to people’s security. The tradition of Magna Carta acts as an inspiration and motivator. As these natural rights have been successfully upheld in the past in what are perceived to be less morally enlightened times, twenty-first-century governments would be perceived to be extremely immoral and backwards if they could be shown to have denied them. The historic campaign for liberty that Magna Carta represents also encourages people to believe that they can effectively fight for these rights in the present.

¹³³ Pallister, *Magna Carta*, p. 76 ;Turner, *Magna Carta*, p. 180.

¹³⁴ *The Universal Declaration of Human Rights* (1948) at www.un.org/en/documents/udhr/index.shtml [accessed 08/03/13].

Therefore, as in the eighteenth century, twenty-first-century campaigners refer to Magna Carta to win public support for their stance.¹³⁵ For instance, in Prime Minister's Questions in December 2012, John Hemming raised concerns about the government's proposed reforms of judicial review by asking if 'the Government propose the repeal of Magna Carta?'.¹³⁶ This suggests that he felt that mentioning the charter would place pressure on the government. Additionally in an article in *The Guardian* in July 2012, Noam Chomsky attempted to stir up public concern about the treatment of terrorist suspects by claiming that 'the Great Charter is being shredded before our eyes' rather than just suggesting that people's natural rights were being infringed.¹³⁷ Therefore, activists believe that Magna Carta is significant because referencing it allows them to gain support for their campaigns and consequently helps them to protect people's rights and liberties.

Thus Magna Carta continues to be perceived as significant today because of its usefulness in campaigns to protect rights and liberties. The power of the executive has led to fears that civil liberties are under threat. Although, the revelation of the original meaning of the charter by modern historians means it is not believed to address contemporary issues, Magna Carta is still seen to be relevant to twenty-first-century politics because of what it has come to represent. The misinterpretations of the charter over many centuries have led it to become a symbol of many rights that are still valued and fought for today. The developed

¹³⁵ K. Worcester, 'The meaning and legacy of Magna Carta' *PS: Political Science and Politics* 43 (2010), p. 451.

¹³⁶ *Parliamentary Debates*, House of Commons, 12 December 2012, column 288.

¹³⁷ N. Chomsky, 'How the Magna Carta became a Minor Carta, part 1' *The Guardian* 24 July 2012 at www.guardian.co.uk/commentisfree/2012/jul/24/magna-carta-minor-carta-noam-chomsky [accessed 08/03/13].

doctrine of parliamentary sovereignty means that campaigners can no longer argue that legislation cannot legally contravene terms of the charter. However, the importance of public opinion means that they can attempt to influence the actions of the government through winning public support for their cause. Appealing to Magna Carta is often an effective rhetorical device to use because of people's awareness of it and their belief that it would be unjust for the government to infringe the rights that it has come to symbolize. Although in the twenty-first century less importance is placed on precedent, people believe that they have a right to the liberties that Magna Carta represents because they are part of the natural rights of humans. Therefore, campaigners value Magna Carta because they believe that referring to it is a useful way to win public support for their attempts to uphold the rights of citizens.

Conclusion

Many people have perceived Magna Carta to be significant because they have believed that it is of value to them. In the almost eight hundred years since the charter was first drawn up, there have been countless references to the document by people who have believed it would be advantageous to them and their cause.

Throughout history many people have attempted to campaign against the governing authorities. Although the growth in the power of parliament during the seventeenth century meant that it was no longer believed that the monarch could significantly threaten people's liberties, as the Plantagenet and early Stuart kings had been able to, parliament itself began to be presented as a threat. During the eighteenth century, activists in both Great Britain and Colonial America

campaigned against the unaccountability of the institution and its manipulation of justice. Today, although many of the grievances from previous centuries have been addressed, it is still regularly argued that citizens' liberties are being threatened as a result of the power of the executive.

Campaigners have believed that appealing to Magna Carta is a useful tactic to challenge these perceived threats and attempt to influence the policy of the government. Supporters of parliament in the early seventeenth century and colonial campaigners in British America cited the charter in an attempt to alter the views of the ruling elite themselves. The growing political power and awareness of the people meant that campaigners in the eighteenth and twenty-first centuries have often believed that the best way to influence the authorities is to win public support. Their references to Magna Carta have been part of an attempt to influence public opinion which they believe will put pressure on those governing the country.

This use of Magna Carta has depended on the retention of an awareness of the document throughout the last eight centuries. Without this, campaigners would have lacked the knowledge of the charter to call upon it and the confidence that people would be roused by their references to it. In the thirteenth century, the effective promulgation of the charter and frequent reissues and confirmations of it ensured that knowledge of the charter reached much of society. Later generations learnt about the provisions of Magna Carta through their study of history and law. The widening of access to such education allowed a greater proportion of society

to gain knowledge of the charter and thus the ability to be influenced by references to it.

Campaigners have attempted to exploit this awareness of the charter because they have been able to present it as relevant to contemporary issues. In the century after its creation, the charter was of practical use as it provided solutions and regulations for thirteenth-century circumstances and problems. The changing nature of society meant that these provisions lost their relevance as the centuries progressed. However, in the early seventeenth century, the misinterpretation of the charter by scholars, such as Coke, allowed supporters of parliament to claim that the provisions of Magna Carta did relate to their debates. The acceptance of these misinterpretations by later generations meant that the belief that the Great Charter referred to early modern disputes continued into the eighteenth century and travelled across the Atlantic to British America. Although modern historical scholarship has refuted these claims, referring to Magna Carta is still believed to be of relevance to modern political discussions because of what the charter has come to represent. Even if it is accepted that scholars have incorrectly attributed rights to Magna Carta, the fact that they have done so means that the charter has become a symbol of those rights and thus relevant today.

It has been seen as useful to argue that Magna Carta prohibits the activities of one's opponents because of the widespread belief that its provisions should be followed. The importance placed on precedent and past custom in the medieval and early modern period meant that the presentation of the charter as ancient custom imbued it with moral authority. It also allowed campaigners to argue that

they were merely asserting existing rights meaning that they could present their opponents as the dangerous innovators. The framers of the document claimed that the charter was a record of existing customs while the charter itself was a legal precedent for those in the seventeenth and eighteenth century. The perception of Magna Carta as fundamental law has also given the document value to campaigners. The claim that the provisions of Magna Carta were declaratory of the immemorial rights of Englishmen led to the belief that the authorities did not have the power to contravene them. Therefore, campaigners in the seventeenth and eighteenth centuries believed that claiming that the actions of the crown or parliament were prohibited by the charter would lead to the perception of them as invalid and unjust. In the twenty-first century, the declining importance of precedent and development of parliamentary sovereignty means that society no longer believes that the provisions of Magna Carta should be followed because of their antiquity or their perceived fundamental nature. However, the belief that Magna Carta symbolizes a set of rights to which humans have a natural right means that people continue to believe that it would be unjust of the government to infringe them.

Therefore, in the five periods that have been examined, there have been enduring reasons for the perception of Magna Carta as significant. The value ascribed to Magna Carta has also been dependent on the high regard with which it has been held in previous periods. This has not only ensured the continued fame of the charter but has led it to build up a reputation as an important and powerful document. The fact that it was believed that the charter successfully protected

liberties in the past led people to believe that it could help them uphold rights in their own times.

Thus, Magna Carta has been seen as significant over eight centuries because campaigners have made use of it to challenge the activities of the authorities and to uphold rights and liberties. This has depended on continued awareness of the document and the belief that it is relevant to contemporary issues. The provisions of Magna Carta have been valued because of the perception of them as ancient custom and fundamental law and because of the use to which they have been put in previous periods. Therefore, the perception of Magna Carta as significant is due to its usefulness in campaigns to challenge the infringement of individual rights.

Bibliography

Primary

Adams, S., *The writings of Samuel Adams vol. II* (New York, 1904)

Allen, J., *An oration on the beauties of liberty* (Boston. 1773)

Bailyn, B., *Pamphlets of the American Revolution 1750-1765* (Cambridge, 1965)

Bill of Rights, 1689 in Browning, A., (ed.), *English Historical Documents,*

Volume VIII 1600-1714 (London, 1953)

Blackstone, William (sir), *Commentaries on the law of England Vol. 4* (London, 1800)

Blackstone, William (sir), *The great charter and charter of the forest, with other authentic instruments* (Oxford, 1759)

Chomsky, N., ‘How the Magna Carta became a Minor Carta, part 1’ *The*

Guardian 24 July 2012 at

www.guardian.co.uk/commentisfree/2012/jul/24/magna-carta-minor-carta-noam-chomsky [accessed 08/03/13]

Coke, Edward (sir), *Institutes of the Lawes of England II* London, 1797)

Coke, Edward (sir), *The fourth part of the institutes of the laws of England*

(London, 1797)

Davies, B., ‘Terror laws “attack civil liberties”’ *BBC News*, 13 May 2003 at

http://news.bbc.co.uk/1/hi/uk_politics/3025603.stm [accessed 08/03/13]

Ford, P., (ed.), *The writings of Thomas Jefferson IX* (New York, 1892-99)

Henry I: Coronation Charter in Stephenson, C., and Marcham, F., (eds.),

Sources of English constitutional history : a selection of documents from

A.D. 600 to the present (New York, 1937)

In Our Time. Prod. James Cook. BBC Radio 4, London, 7 May 2009

lincolncathedral.com/library-education/magna-carta/ [accessed 08/03/13]

Magna Carta 1215 in Rothwell, H., *English Historical Documents, 1189-1327*
(London, 1996)

Magna Carta 2015 Committee, 'Aspirations and Activities leading up to and during 2015' (2013) at magnacarta800th.com/magna-carta-today/2015-aspirations/ [accessed 08/03/13]

Middlesex Journal 11 April 1769

Morgan, E., (ed.), *Prologue to revolution : sources and documents on the Stamp Act crisis, 1764-1766* (Chapel Hill, 1959)

Otis, J., *The rights of the British colonies asserted and proved* (London, 1766)

Paris, M., *Chronica majora II* (London, 1872-83)

Paris, M., *Chronica majora V* (London, 1872-83)

Parliamentary Debates, House of Commons, 12 December 2012, column 288.

Paul de Rapin, *The history of England, written originally in French by Rapin de Thoyras: translated into English, with additional notes; and continued from the Revolution to the accession of King George II. By Tindal, N.*, Vol. 1 (London, 1789)

Pitt, W., *The Speeches of the Right Honourable the Earl of Chatham in the Houses of Lords and Commons: With a Biographical Memoir and Introductions and Explanatory Notes to the Speeches* (London, 1848)

Proceedings of the Congress at New-York (Annapolis, 1766)

Proceedings of the convention of Delaware in Force, P., *American Archives I*
(Washington, 1837)

Qualifications and Curriculum Authority, *History 2007 programme of study for Key Stage three* (2007) at

media.education.gov.uk/assets/files/pdf/h/history%202007%20programm
e%20of%20study%20for%20key%20stage%203.pdf [accessed 08/03/13]

Richmond, A., 'The Magna Carta: ideas for all seasons' (2011) at
magnacarta800th.com/tag/habeas-corpus/ [accessed 08/03/13]

Rushworth, J., *Historical collections of private passages of state* (London, 1721)

Saunders, W., *The Colonial Records of North Carolina X* (Raleigh, 1890)

Sharp, G., *A declaration of the people's natural right to a share in the legislature*
(Dublin, 1776)

The first charter of Massachusetts in Commager, H., *Documents of American
history* (New York, 1958)

*The statutes at large, from Magna Charta, to the twenty-fifth year of the reign of
King George the Third I* (London, 1786)

The Universal Declaration of Human Rights (1948) at
www.un.org/en/documents/udhr/index.shtml [accessed 08/03/13]

Whately, T., *The regulations lately made concerning the colonies, and the taxes
imposed upon them, considered. By the late Right Hon. George Grenville*
(London, 1775)

Wilkes, J., *English Liberty: being a collection of interesting tracts, from the year
1762 to 1769* (London, 1769)

'Will Parliament allow war on terror shame to continue?' (2010) at www.liberty-
human-rights.org.uk/media/press/2010/will-parliament-allow-war-on-
terror-shame-to-continue.php [accessed 08/03/13]

Worcester, Robert (sir), '85% of British adults say they have heard of the Magna
Carta', *Ipsos MORI* (2013) at www.ipsos-

mori.com/newsevents/ca/1286/85-of-British-adults-say-they-have-heard-of-the-Magna-Carta.aspx [accessed 08/03/13]

www.bl.uk/whatson/permgall/treasures/magna.html [accessed 08/03/13]

Yalland, A., 'Magna Carta 800th anniversary celebrations begin' *BBC News* 12 November 2010 at www.bbc.co.uk/news/uk-11735060 [accessed 08/03/13]

Secondary: Books

Ashley, M., *Magna Carta in the seventeenth century* (Charlottesville, 1965)

Bailyn, B., *The ideological origins of the American Revolution* (Cambridge, 1992)

Black, J., *Robert Walpole and the nature of politics in early eighteenth-century Britain* (Basingstoke,

Breay, C., *Magna Carta: manuscripts and myths* (London, 2002)

Brewer, J., *Party ideology and popular politics at the accession of George III* (Cambridge, 1976)

Burgess, G., *Absolute monarchy and the Stuart Constitution* (London, 1996)

Butterfield, H., *Magna Carta in the historiography of the sixteenth and seventeenth centuries* (Reading, 1969)

Butterfield, H., *The Englishman and his history* (Cambridge, 1944)

Cam, H., *Magna Carta-event or document?* (London, 1965)

Carpenter, D., *The reign of Henry III* (London, 1996)

Cash, A., *John Wilkes : the scandalous father of civil liberty* (New Haven, 2006)

Clark, J., *The language of liberty, 1660-1832* (Cambridge, 1994)

- Colbourn, H., *The lamp of experience : Whig history and the intellectual origins of the American Revolution* (Williamsburg, 1965)
- Dickinson, H., *The politics of the people in eighteenth-century Britain* (New York, 1994)
- Ewing, K., and. Gearty, C., *Freedom under Thatcher: civil liberties in modern Britain* (Oxford, 1990)
- Green, J., *A short history of the English people* (London, 1878)
- Greene, J., *The Constitutional Origins of the American Revolution* (Cambridge, 2011)
- Hollister, C., *Henry I* (New Haven, 2001)
- Holt, J., *Magna Carta* (Cambridge, 1992)
- Holt, J., *Magna Carta and medieval government* (London. 1985)
- Howard, A., *The Road from Runnymede: Magna Carta and Constitutionalism in America* (Charlottesville, 1968)
- Howard, A., *Magna Carta : text and commentary* (Charlottesville, 1998)
- Jennings, I., *Magna Carta and its influence in the world today* (London. 1965)
- Jewell, H., *Education in Early Modern England* (Basingstoke, 1998)
- Linebaugh, P., *The Magna Carta Manifesto* (Berkeley, 2008)
- Mackintosh, J. (sir), *History of England I* (London, 1830)
- Mckechnie, W., *Magna Carta* (Glasgow, 1914)
- O'Day, R., *Education and Society, 1500-1800* (London. 1982)
- Painter, S., *The reign of King John* (Baltimore, 1949)
- Pallister, A., *Magna Carta: the heritage of liberty* (Oxford, 1971)
- Pollard, A., *The history of England : a study in political evolution* (London, 1912)

- Pound, R., *The development of constitutional guarantees of liberty* (New Haven, 1963)
- Rudé, G., *Paris and London in the eighteenth century: studies in popular protest* (London, 1970)
- Simon, J., *Education and Society in Tudor England* (Cambridge, 1966)
- Smith, R., *The Gothic bequest: Medieval institutions in British thought, 1688-1863* (New York, 1987)
- Speck, W., *Tory and Whig: the struggle in the constituencies* (London, 1970)
- Stenton, D., *After Runnymede: Magna Carta in the middle ages* (Charlottesville, 1965)
- Swindler, W., *Magna Carta: Legend and Legacy* (New York, 1965)
- Thomas, P., *John Wilkes : a friend to liberty* (Oxford, 1996)
- Thompson, F., *Magna Carta: Its Role in the Making of the English Constitution 1300-1629* (New York, 1950)
- Thompson, F., *The first century of Magna Carta: why it persisted as a document* (Minneapolis, 1925)
- Thorne, S., *Sir Edward Coke, 1552-1634* (London, 1957)
- Turner, R., *Magna Carta: through the ages* (Harlow, 2003)

Secondary: Articles

- Black, J., 'Ideology, xenophobia and the world of print in eighteenth-century England' in J. Black, J., and Gregory, J., (eds.) *Culture, Politics and Society in Britain, 1660-1800* (Manchester, 1991), pp. 184-216

- Dickinson, H., 'Radicals and Reformers in the age of Wilkes and Wyvill' in J. Black (ed.), *British politics and society from Walpole to Pitt* (Basingstoke, 2010), pp. 123-46
- Dunham, W., 'Magna Carta and British Constitutionalism' in *The Great Charter* (New York, 1965), pp. 20-42
- Griswold, G., 'Introduction', in *The Great Charter* (New York, 1965)
- Hazeltine, H., 'The influence of Magna Carta on American constitutional development' *Columbia Law Review* 17 (1917), pp.1-33
- Mullet, C., 'Coke and the American Revolution', *Economica* 38 (1932), pp. 457-71
- O'Brien, K., 'The History Market in Eighteenth-Century England' in Rivers, I., (ed.), *Books and their Readers in Eighteenth-Century England: new essays* (London, 2003), pp. 105-34
- Poole, R., 'The Publication of Great Charters by the English kings' *EHR* 28 (1913), p. 444-453
- Saul, N., 'Magna Carta, history and politics' (2013) at magnacarta800th.com/speeches/magna-carta-history-and-politics/ [accessed 08/03/13]
- Stone, L., 'Literacy and Education in England 1640-1900' *Past and Present* 42 (1969), pp. 69-139
- Stuart, W., 'The constitutional clauses of Magna Carta' *Virginia Law Review* 2 (1915), pp. 565-583
- Thompson, E., 'The Moral Economy of the English Crowd in the Eighteenth Century', *Past and Present*, 50 (1971), pp. 76-136

Traer, J., 'Magna Carta by James C. Holt' *Michigan Law Review* 64 (1966),
pp.1189-91

Woolf, D., 'Historical writing in Britain from the Late Middle Ages to the eve of
Enlightenment' in Rabasa, J., (ed.) *Oxford history of historical writing III*
(Oxford, 2012), pp. 473-96.

Worcester, K., 'The meaning and legacy of Magna Carta' *PS: Political Science
and Politics* 43 (2010), pp. 451-6