**MAGNA CARTA IN THE AGE OF THE AMERICAN AND FRENCH REVOLUTIONS**

Harry T. Dickinson

University of Edinburgh

In the 1760s the political disputes between Britain and her American colonies developed into a revolutionary crisis, which eventually led to war and the creation of an independent United States of America. In this crisis, which was primarily political and constitutional, the colonists challenged the authority of the British government and the power of the Westminster parliament by appealing to the notion of fundamental law, the principles of the English common law, the liberties granted to them in their colonial charters, and their understanding of England’s ancient constitution. In doing so, they frequently appealed to the rights and liberties granted by Magna Carta according to the interpretation of this charter of liberties that had been advanced over the centuries and more recently by Edward Coke and his allies who had strenuously defended the liberties of the subject and the rule of law against Stuart absolutism in the early seventeenth century. In the early thirteenth century Magna Carta had been supported by a baronial elite anxious to preserve its feudal privileges. It had not protected the rights and liberties of all the king’s subjects and it had not effectively limited the powers of the crown.[[1]](#endnote-1) Over the next four centuries, however, frequent confirmations of it by kings and parliaments,[[2]](#endnote-2) reinterpretations of it by teachers in the Inns of Court and by judges and lawyers appealing to it in numerous trials,[[3]](#endnote-3) and political exploitations of it by opponents of the crown’s prerogatives had seen its meaning and significance greatly expanded.[[4]](#endnote-4) By the later seventeenth century there was widespread support for Magna Carta, in both England and in her American colonies, but appeals were now made to the Magna Carta which had been interpreted and expanded over the centuries and mediated in particular by Edward Coke and his allies in the early seventeenth century, not to the Magna Carta of 1215 or even to that of 1225.[[5]](#endnote-5) It was now widely assumed that Magna Carta had guaranteed that justice would not be sold, delayed or denied to any subject, and that all accused persons must know the charge levelled against them, must be speedily brought to face their accusers and to be free to offer their defence in an open trial conducted according to the law of the land and before a jury of their equals in the vicinity of where the offence had taken place. It was further widely believed that Magna Carta was a fundamental law designed to preserve England’s ancient constitution and immemorial common law by bringing all powers, even the royal prerogative, under the rule of law and denying parliament the right to pass statutes contrary to fundamental laws of this kind.

I

*Magna Carta in the American Revolution*

Throughout the American crisis of the later eighteenth century the colonists repeatedly insisted that their charters from the king had always granted them the same rights and liberties as their fellow subjects back home in England, including those granted by Magna Carta. They pointed to the Virginia charter of 1606, which had promised that the emigrants who settled in this colony, and their descendants, ‘shall have and enjoy all Liberties, Franchises, and Immunities as if they had been abiding and born, within this our realm of England’.[[6]](#endnote-6) Similar rights were granted to many other colonies in America, from Massachusetts in 1629 to Georgia in 1732.[[7]](#endnote-7) The colonists themselves were generally very willing to adopt the English common law and English legal practices. When dissatisfied with the government of their colony, they frequently attempted to redress their grievances by appealing to the rights of Englishmen, including those they believed were enshrined in Magna Carta. The Maryland legislative assembly passed a law in 1638, which granted that the ‘Inhabitants of this province shall have all their rights and liberties according to the great charter of England’ and appeals were made to Magna Carta in a number of law suits contested in the Maryland courts.[[8]](#endnote-8) In Massachusetts a ‘Body of Liberties’ was drawn up in 1641 stressing the right of all the colony’s inhabitants to trial by jury, due legal process, and equal justice, all liberties drawn directly from chapter 29 of the 1225 version of Magna Carta. In 1646 the General Court of Massachusetts claimed that the laws of the colony were in accord with Magna Carta. Two years later, the ’Laws and Liberties of Massachusetts’ laid down several legal provisions, which were again drawn directly from chapter 29 of Magna Carta.[[9]](#endnote-9) William Penn, the first proprietor of the colony of Pennsylvania, successfully appealed to Magna Carta, when he demanded to know what specific law he had broken, when he was charged in London with disturbing the peace. He did not abandon his principles when he settled in America. In 1681, he drafted a charter for Pennsylvania and Delaware that guaranteed the inhabitants of these colonies a fair trial and freedom from unjust imprisonment. In 1687 he arranged for the first printing in America of the 1225 version of Magna Carta and also the 1297 confirmation of it, in his tract, *The Excellent Priviledge of Liberty and Property: Being the Birth-Right of the Free-Born Subjects of England*.[[10]](#endnote-10) Throughout the later eighteenth century, in their constitutional disputes with Britain, the American colonies continually reiterated that they possessed the same rights and liberties as the British people because of the grants made to them in their royal charters. In 1765, for example, Governor Stephen Hopkins of Rhode Island declared, ‘By all these charters, it is in the most express and solemn manner granted that these adventurers [the English colonists in America], and their children after them forever, should have and enjoy all the freedom and liberty that the subjects in England enjoy’.[[11]](#endnote-11) In 1766, Richard Bland appealed to Magna Carta as an earlier form of contract between the monarch and his subjects. He claimed that the rights and liberties enshrined in Magna Carta had been possessed by the English people since Anglo-Saxon times, long before 1215, and had been passed on to the American colonists as a fundamental law through their royal charters.[[12]](#endnote-12) Thomas Jefferson also made the same point.[[13]](#endnote-13) John Tucker maintained that the compact, created by royal charters, and reinforced by Magna Carta, limited the powers which George III could exercise over the American colonies. He claimed in 1771 that the American colonists lived under the British constitution, whose ‘constitutional laws are comprised in *Magna-Charta* [*sic*],[[14]](#endnote-14) or the great charter of the nation. This contains, in general, the liberties and privileges of the people, and is, *virtually*, a compact between the king and them; the reigning Prince, explicitly engaging, by solemn oath, to govern according to the laws:- Beyond the extent of these then or contrary to them, he can have no rightful authority at all.’[[15]](#endnote-15)

Such colonial opinions were strongly contested in Britain, however. In seeking to impose its authority on the colonies the British government, supported by a clear majority in the Westminster parliament, insisted that the supreme sovereign authority in Britain and also in all British North America lay with the combined legislature of the King, the House of Lords and the House of Commons. This view of the British constitution had been steadily developing since the Glorious Revolution of 1688-89. Whereas the American colonists appealed to an early seventeenth-century view of the English constitution, which raised the law above both the British executive and legislature, many British politicians, since the Glorious Revolution, had become convinced that the combined legislature at Westminster possessed the right to pass, amend or revoke any law and could even alter or repeal the rights and liberties granted by Magna Carta.[[16]](#endnote-16) William Blackstone, the celebrated and highly influential jurist, had claimed in 1765 that each state needed ‘a supreme, irresistible, absolute, uncontrolled authority’, and, in Britain, he asserted, this was the combined legislature of King, Lords and Commons.[[17]](#endnote-17) Even Edmund Burke, a politician very anxious to conciliate the American colonies, could never surrender his conviction that the British legislature was the supreme authority in America as it was in Britain.[[18]](#endnote-18) By the 1760s, the British defenders of parliamentary sovereignty had abandoned the long-standing belief that parliament’s sphere of action was limited by the superior authority of the fundamental law.[[19]](#endnote-19) Josiah Tucker, a leading British critic of the colonists’ claims, maintained that their arguments were self-defeating. He acknowledged that Magna Carta was the great foundation of English liberties and the basis of the constitution. It denied the king the right to raise taxes by his own prerogative and it supported the constitutional right of parliament alone to give consent to tax-raising measures. Magna Carta therefore supported the superior authority of parliament over that of the subordinate colonial legislative assemblies and hence it could not be appealed to in order to challenge the constitutional powers of parliament: ‘the principal End and Intention of Magna Charta, as far as Taxation is concerned, was to assert the Authority and Jurisdiction of the three Estates of the kingdom [King, Lords and Commons], in Opposition to the sole Prerogative of the King; so that if you [the colonists] will now plead the Spirit of Magna Charta, against the Jurisdiction of Parliament, you will plead Magna Charta against itself ’.[[20]](#endnote-20)

British defenders of parliamentary sovereignty also pointed out that not all the American colonies had been granted a royal charter of liberties. The royal charters that had been granted had not conferred on the colonists all the rights and liberties of Englishmen (the right to vote in parliamentary elections, for example).[[21]](#endnote-21) Moreover, in the past, colonial charters had on several occasions been reviewed, altered and even revoked and, since they had been granted by the crown alone, they would always be subordinate to the sovereign authority of the British legislature.[[22]](#endnote-22) William Blackstone conceded that, ‘if an uninhabited country is discovered, and planted by English subjects, all the British laws then in being, which are the birthright of every subject, are immediately there in force. For as the law is the birthright of every subject, so wherever they go, they carry their laws with them.’[[23]](#endnote-23) Unfortunately for the colonial cause, however, he promptly went on to assert that, in territories which had been conquered or ceded by treaty, as was the case with all of Britain’s American colonies, the common law of England had no authority there and the colonists inhabiting these territories were subject to the sovereign authority of the British legislature.[[24]](#endnote-24) The American colonies might be allowed to possess their own legislatures, which could pass local laws, but these subordinate legislatures could not pass laws contrary to those passed by the Westminster parliament. On the other hand, the imperial Westminster parliament could pass laws for, and raise taxes in, the American colonies.[[25]](#endnote-25) Ironically, in view of how much the colonists relied in the 1760s on many of the arguments advanced against arbitrary and oppressive power by Edward Coke in the early seventeenth century, Coke had himself maintained that those English subjects who left the realm of England to live in the American colonies could not claim the same rights and liberties, under the common law or according to Magna Carta, as those who remained in England.[[26]](#endnote-26) This was one argument of Coke’s that the American colonists ignored.

In defending what they regarded as their constitutional rights and liberties, and in resisting the British efforts in the 1760s and 1770s to impose imperial authority over them, the American colonists often appealed to Magna Carta as proof of their claims. On a number of occasions they used visual images of Magna Carta as a symbol of their right to claim the civil liberties possessed by Englishmen. In 1768, Paul Revere, a silversmith, produced a beautiful silver punch bowl in honour of several leading ‘Sons of Liberty’ in Massachusetts. He decorated this with references to John Wilkes and his notorious publication, the *North Briton*, number 45 and added flags representing Magna Carta and the English Bill of Rights of 1689 on either side of this image. In the same year, the title page to the third edition of John Dickinson’s influential political tract, *Letters from a Farmer in Pennsylvania*, shows him standing with Magna Carta under his right elbow and a book by Sir Edward Coke on his bookshelf. When the American patriots decided to publish the *Journal of the Proceedings of the [Continental] Congress held at Philadelphia, on 5 September 1774* the title-page was decorated with an image of twelve hands grasping in unison a pillar resting upon a base entitled Magna Carta. On 15 December 1774, the *New York Journal* was illustrated with a similar design, but this time it was encircled by intertwined snakes as further proof that the American patriots were establishing their political unity. In July 1775, Maryland published a four-dollar paper banknote, whose design included ‘Liberty’ handing a petition to ‘Britannia’, who is being restrained by King George III, who is shown trampling upon Magna Carta. Finally, the Great Seal of Massachusetts, designed in 1775, depicts a colonist holding a sword in his right hand and Magna Carta in his left hand.[[27]](#endnote-27)

Interesting and important as such symbols were, they were not as significant or as influential in rallying the American colonists against British policies as the arguments produced in law courts, speeches, debates and printed publications. Many of these cited Magna Carta in support of colonial claims to their rights and liberties and their protests against Britain’s misuse of its judicial, executive and legislative powers. As early as 1761, James Otis challenged the right of the king’s officials in Massachusetts to use ‘writs of assistance’, a form of general warrant, allowing the examination of the premises of Boston merchants on the mere suspicion that smuggled goods might be located there. In winning his case, Otis appealed to Magna Carta to support the argument that a specific charge needed to be made before such an examination of private property could be undertaken.[[28]](#endnote-28) When the British parliament passed the Sugar Act in 1764, it determined that those colonists, who attempted to avoid paying customs or excise duties, would be prosecuted in a Vice-Admiralty court established at Halifax, Nova Scotia. There, the charges would not be heard by juries made up of local colonists, but heard by judges appointed by the crown. The Townshend Acts of 1767 established additional Vice-Admiralty courts in Boston, Philadelphia and Charleston, which were used even more frequently by customs collectors. The result was repeated protests that the colonists were being denied legal rights that were not being denied to Britons charged with smuggling offences.[[29]](#endnote-29) A town meeting in Braintree, Massachusetts, in 1765, protested against the British attempt to use Vice-Admiralty courts to punish those who refused to pay taxes levied by the Westminster parliament, because such trials would not be heard by a jury, which was a policy ‘directly repugnant to the Great Charter itself’.[[30]](#endnote-30) In September 1765, the colonial legislature in Pennsylvania resolved: ‘That the vesting an authority in the courts of admiralty to decide in suits relating to the stamp duties, and other matters, foreign to their jurisdiction, is highly dangerous to the liberties of his majesty’s American subjects, contrary to Magna Charta, the great charter and fountain of English liberty, and destructive of one of their most *darling and acknowledged rights*, that of TRIALS BY JURIES.’[[31]](#endnote-31) A month later, the lower house of the Connecticut legislature condemned the Sugar Act of 1764, on similar grounds. Vice-Admiralty courts, used to prosecute those who tried to evade paying the Sugar duty, were charged with being ‘highly dangerous to the liberties of his Majesty’s American subjects, contrary to the great charter of English liberty, and destructive of one of their most darling rights, that of trial by juries, which is justly esteemed one chief excellence of the British Constitution’.[[32]](#endnote-32)

In order to restrict the use of such prerogative courts, under the influence of the British executive, the legislative assemblies in several colonies began erecting their own courts and appointing their own judges so that judicial decisions in such cases could be resolved outside the king’s Vice-Admiralty courts. These courts advanced petitions against the oppressive use of the king’s courts and pressed for legislative action to be taken in the colonial assemblies without seeking the consent of the king.[[33]](#endnote-33) In June 1768, when John Hancock was prosecuted in the Vice-Admiralty court in Boston, for failing to get a permit to unload cargo from his sloop, *Liberty*, John Adams, the future second President of the United States, successfully defended him by maintaining that this prosecution was against the legal principles enshrined in chapter 29 of the 1225 version of Magna Carta.[[34]](#endnote-34) Adams highlighted and condemned the distinction that the Westminster parliament’s legislation had made between British subjects and American colonists:

What shall we say to this distinction? Is there not in this clause, a Brand of Infamy, of Degradation, and Disgrace, fixed upon every American? Is he not degraded below the Rank of an Englishman? Is it not directly a Repeal of Magna Charta, as far as America is concerned … This 29 Chap. of Magna Charta has for many Centuries been esteemed by Englishmen, as one of the noblest Monuments one of the firmest Bullwarks of their Liberties … The [Sugar Act] takes from Mr Hancock this precious Tryal Per Legem Terra [by the law of the land], and gives it to a single Judge. However respectable the Judge may be, it is however an Hardship and severity, which distinguishs my Clyent from the rest of Englishmen.[[35]](#endnote-35)

When, in 1772, Britain attempted to put on trial far outside the colony those colonists charged with burning one of His Majesty’s revenue ships, which was endeavouring to prevent smuggling in the colonies, Chief Justice Stephen Hopkins of Rhode Island successfully maintained that such an action would be a violation of the right enshrined in Magna Carta that any accused person should always be tried by a jury composed of men living in the vicinity of where the crime took place.[[36]](#endnote-36) After the Boston Tea Party of 16 December 1773, when some colonists attacked British merchant ships importing tea into the colony, the British parliament passed the Intolerable or Coercive Acts of 1774 to punish Massachusetts. Of these, the Administration of Justice Act allowed the British authorities to prosecute anyone accused of attacking the property of British merchants in trials held far outside the American colonies. Leading American patriots, including Thomas Jefferson, protested that it was contrary to Magna Carta and the common law to hold a trial outside the locality where the offence took place.[[37]](#endnote-37) When leading American colonists convened to discuss how to unite in opposition to Britain’s imperial policies, in the First Continental Congress held in Philadelphia, in October 1774, they passed resolutions insisting that the colonists had inherited all the rights and liberties of Englishmen under the common law and the British constitution. Their fifth resolution stated: ‘That the respective colonies are entitled to the common law of England, and more especially to the great and inestimable privilege of being tried by their peers of the vicinage, according to the course of that law.’[[38]](#endnote-38) They undoubtedly believed that this claim was based on chapter 29 of the 1225 version of Magna Carta. When South Carolina threw off its allegiance to George III, in early 1776, its Chief Justice, William Henry Drayton, expressed deep satisfaction that British efforts to abolish the right of trial by jury, in contempt of Magna Carta, would no longer be tolerated under the independent state’s new constitution.[[39]](#endnote-39) When, in July 1776, the American colonists finally drafted their Declaration of Independence, their long list of grievances, against the British king, ministers and parliament, included the charges that Britain had used Vice-Admiralty courts where judicial decisions had been reached without juries and that efforts had been made by Britain to put colonists on trial in courts located far beyond the borders of their provinces.[[40]](#endnote-40)

Far more important than the colonial accusations that Britain was betraying the legal principles enshrined in Magna Carta were the repeated claims made in America that Britain was acting contrary to Magna Carta in maintaining that the Westminster parliament had the right to levy direct internal taxes on the American colonies without the consent of the colonial legislatures. When parliament attempted to levy the Stamp Tax on the colonies, in 1765, the colonists quickly pointed out that consent to taxes must be given by those required to pay them and hence internal taxes levied in America required the consent of local colonial legislatures.[[41]](#endnote-41) They therefore vehemently protested that the Stamp Tax was contrary to the constitutional principle of ‘no taxation without representation’, a claim very much based on Sir Edward Coke’s assertion in the early seventeenth century that Magna Carta had laid down that the crown could only levy taxes with the consent of parliament. On 28 September 1765, the lower house of the Maryland legislative assembly resolved unanimously, ‘that it was granted by Magna Charta, … that the subject should not be compelled to contribute any tax, tallage, aid or other like charge, not set by the common consent of parliament’,[[42]](#endnote-42) and hence without the consent of the colonial legislatures. In his resolutions against the Stamp Act presented to the Massachusetts House of Representatives, on 29 October 1765, Samuel Adams, a leading Patriot, insisted that a major pillar of the British constitution, to which the colonists could also lay claim, was the principle of no taxation without representation, which ‘together with all other essential rights, privileges, and immunities of the people of Great Britain, have been fully confirmed to them by Magna Charta’.[[43]](#endnote-43) The Massachusetts assembly went on to declare that the Stamp Act was invalid because it was ‘against Magna Charta and the natural rights of Englishmen, and therefore, according to Lord Coke, null and void’.[[44]](#endnote-44) The New York assembly also insisted in 1765 that no taxation without representation was ‘a fundamental principle … declared by Magna Charta’.[[45]](#endnote-45)

Thomas Hutchinson, the Lieutenant-Governor of Massachusetts, was alarmed at the way local American patriots were exploiting Edward Coke’s interpretation of Magna Carta in order to resist the imposition of the Stamp Tax. He declared on 12 September 1765: ‘our friends to liberty take the advantage of a maxim they find in Lord Coke that an Act of parliament against Magna Carta or the peculiar rights of Englishmen is *ipso facto* void … This, taken in the latitude the people are often disposed to take it, must be fatal to all government, and it seems to have determined [a] great part of the colony to oppose the execution of the act with force.’[[46]](#endnote-46) The fierce colonial opposition to the Stamp Act was not confined to Massachusetts. Several colonies agreed to send representatives to a Congress in New York in order to coordinate their opposition to the Stamp Act. There they resolved that ‘The invaluable rights of taxing ourselves … are not, we most humbly conceive Unconstitutional; but confirmed by the great CHARTER of *English Liberty*’.[[47]](#endnote-47) When the Stamp Act was repealed by the Westminster parliament in 1766, Jonathan Mayhew, in Boston, celebrated this decision on the basis that taxation by consent was a natural right, but it was also a right based on Magna Carta: ‘It shall be taken for granted that this natural right is declared, affirmed and secured to us, as we are British subjects, by Magna Charta; all acts contrary to which are said to be *ipso facto* null and void.’[[48]](#endnote-48) On 27 January 1772, Samuel Adams, now one of the most outspoken of American Patriots, published in the *Boston Gazette* Edward Coke’s claim that Magna Carta was ‘declaratory of the principal grounds of the fundamental laws and liberties of England’. He added, however, ‘whether Lord Coke has expressed it or not … an act of parliament made against Magna Charta in violation of its essential parts, is void’.[[49]](#endnote-49) In 1775, Moses Mather insisted that the charters of the American colonies were, like Magna Carta, permanent, perpetual and unalterable. He claimed that chapter 29 of Magna Carta established that British subjects, on both sides of the Atlantic, were liable to no taxes and bound by no laws except those made and imposed by their own consent.[[50]](#endnote-50)

The claim that the principle of no taxation without representation was enshrined in Magna Carta was supported by political commentators in America[[51]](#endnote-51) and even by a few in Britain. In July 1768, John Wilkes, a leading pro-American campaigner in London, proclaimed:

*Liberty* I consider as the birthright of *every* subject of the British empire, and I hold *Magna Charta* to be as full in force in *America* as in *Europ*e. I hope that these truths will become generally known and acknowledged through the wide extended dominions of our sovereign, and that a *real union of* *the whole* will prevail *to save the whole*, and to guard the public liberty, if invaded by despotic ministers, in the most remote, equally as in the central parts of this vast empire.[[52]](#endnote-52)

Shortly before war broke out, James Burgh, a supporter of parliamentary reform in Britain, declared:

*Magna Charta*, and the Bill of Rights, prohibit the taxing of the mother country by prerogative, and without the consent of those who are to be taxed. If the people of *Britain* are not to be taxed but by parliament; because otherwise they might be taxed without their own consent; does it not directly follow, that the colonists cannot, according to *Magna Charta* and the bill of rights, be taxed by Parliament, so long as they continue unrepresented, because otherwise they may be taxed without their consent.[[53]](#endnote-53)

In an effort to stop the war in its early stages some British supporters of the American cause formed the London Association in 1775.[[54]](#endnote-54) They attacked the British government’s determination to use armed force in the colonies and denied that the Americans desired complete independence.[[55]](#endnote-55) To justify their position, they published a pamphlet, in 1776, setting out the most important terms of Magna Carta, complete with Edward Coke’s remarks on these.[[56]](#endnote-56) About the same time, another British commentator, who regarded Magna Carta as ‘still the impregnable fortress of our privileges’, was even more explicit:

By Magna Charta … no subject should be compelled to contribute any tax … not set by the common consent of Parliament. Our colonists are subjects of the British dominions. In the parliament of Great Britain, which is only a part of those dominions, they are not represented. The imposition, therefore, of any tax, by that Parliament, must be without the consent of the colonists; and it follows that they are absolutely exempted from the necessity of submitting to it.[[57]](#endnote-57)

On both sides of the Atlantic, however, American Patriots and British radicals began to rely more on the belief that their political rights and liberties were better defended by appeals to fundamental law[[58]](#endnote-58) and natural rights than by Magna Carta. James Otis[[59]](#endnote-59) and James Wilson,[[60]](#endnote-60) for example, maintained that English liberties had existed long before Magna Carta and that the great charter had merely declared what had long been regarded as natural rights and fundamental law in England. In 1767, Silas Downer of Providence Rhode Island declared of the doctrine of no taxation without representation that: ‘It is a natural right which no creature can *give*, or hath a right to take away. The great charter of liberties, commonly called Magna Charta, doth not *give* the privileges therein mentioned, nor doth our *Charters*, but must be considered as only declaratory of our rights, and in affirmance of them.’[[61]](#endnote-61) Samuel Langdon, President of Harvard College, proclaimed in a sermon preached in 1775, ‘Thanks be to God that He has given us, as men, natural rights, independent of all human laws whatsoever, and that these rights are recognized by the grand charter of English liberties.’[[62]](#endnote-62) William Gordon went so far as to claim that Magna Carta provided no solid security for the rights and liberties of the British or the American people when parliament could amend or ignore its terms by passing statute laws.[[63]](#endnote-63)

As the American crisis developed, however, these concerns did not prevent appeals being made to Magna Carta in order to justify using force to oppose the British government and parliament, both of which were increasingly regarded by the American colonists as arbitrary and oppressive. As early as November 1772, some Boston Patriots declared that Magna Carta ‘was justly obtain’d of King John sword in hand: and peradventure it must one day sword in hand again be rescued and preserv’d from total destruction and oblivion’.[[64]](#endnote-64) In ‘The Forester’s Letters’, Thomas Paine defended the natural rights of the colonists and denied Magna Carta had created any new rights, but he did concede that 1215 had shown how a king could be forced to renounce tyranny.[[65]](#endnote-65) Charles Carroll also stressed that Magna Carta had been achieved by force,[[66]](#endnote-66) while John Adams used the events of 1215 to claim: ‘Did not the English gain by resistance to John, when Magna Charta was obtained’.[[67]](#endnote-67) In ‘A Pastoral Letter’ of 1775, four Presbyterian ministers in Pennsylvania advised their co-religionists in North Carolina that: ‘To take any man’s money, without his consent is unjust and contrary to reason and the law of God … it is contrary to Magna Charta, or the Great Charter and Constitution of England; and to complain, and even to resist such a lawless power, is just and reasonable, and no rebellion.’[[68]](#endnote-68) At a provincial convention in Philadelphia, in January 1775, James Wilson claimed that the armed resistance now being contemplated by the American colonists was the same as the barons had used in securing Magna Carta in 1215. In his view, the right of resistance was founded on both the letter and the spirit of the British constitution.[[69]](#endnote-69) When some colonial representatives at the second Continental Congress, held in Philadelphia in 1776, questioned the legitimacy of taking up arms against King George III, Wilson pointed out that such an objection had not prevented the English barons from resisting the tyranny of King John in 1215 and gaining the concessions he agreed to in Magna Carta.[[70]](#endnote-70)

When the American colonists finally took up arms to secure their independence from Britain they began creating new state constitutions for their provinces. In drafting written constitutions, they hoped to create fundamental laws, which could not so easily be amended or revoked by a sovereign legislature as had happened in Britain in recent decades. Many colonies, including Virginia, Maryland, Delaware, North Carolina and South Carolina in 1776, New York in 1777, Massachusetts in 1780, and New Hampshire in 1784, incorporated in their new constitutions the essential features of chapter 29 of the 1225 version of Magna Carta.[[71]](#endnote-71) The Virginia Bill of Rights of 1776 declared that an accused person should receive a speedy trial before an impartial jury in the locality where the offence had occurred, that ‘no man could be deprived of his liberty, except by the law of the land or the judgment of his peers’, and that no excessive fines should be imposed nor cruel or unusual punishments inflicted.[[72]](#endnote-72) Several states explicitly guaranteed that ‘no person shall be deprived of life, liberty, or property, without due process of law’, that any accused person must be tried by the law of the land and by a jury of his peers in the vicinity where the offence took place, and that justice should not be sold, denied or delayed.[[73]](#endnote-73) In 1779, John Adams, in Massachusetts, declared that any government seeking to serve the public interest must be a government of laws not of men. In England, Magna Carta had been an attempt to serve such a purpose, but its specific terms and general principles had been frequently broken by king or parliament and the people had often been forced to repair the damage done to their rights and liberties. The American colonies now fighting for their independence must try to avoid such a fate by clearly stating their rights and liberties, and limiting the powers of their legislatures in their new written constitutions.[[74]](#endnote-74) Adams helped ensure that the Massachusetts constitution of 1780 included no less than three articles, which could be traced back to the terms of Magna Carta.[[75]](#endnote-75)

After securing their independence in 1783 the new American states recognized the need to establish a more effective national government than they had managed to achieve during the War of Independence. In the debates on establishing a new Federal Constitution that took place in 1787, in Philadelphia, there was little discussion among the representatives about how it might be influenced by the terms and principles of Magna Carta. James Wilson even pointed out that the Americans no longer had any need to look back to Magna Carta for inspiration because that charter of rights and liberties had been granted to the English people by their monarch, whereas the United States was a republic in which the people were establishing their own rights by their own efforts. In his view, the American people would retain all the rights and liberties not explicitly surrendered in their new Federal Constitution.[[76]](#endnote-76) The terms of the Federal Constitution were drafted in 1787, but it was then sent out in 1788 for ratification by the states. This process, which lasted some months, led to disputes between Federalists and Anti-Federalists about whether the new constitution had done enough to protect the rights and liberties of individuals. Although it has been suggested that there was little discussion of Magna Carta by those chosen to ratify the constitution,[[77]](#endnote-77) there was in fact some discussion of its relevance by major commentators on the issues at stake. The leading Federalists, James Madison and Alexander Hamilton, shared James Wilson’s view that there was no need to include specific guarantees for the rights of the individual in the terms of the Federal Constitution. They maintained that whereas Magna Carta had been needed by the English people to secure their rights and liberties against an arbitrary and oppressive monarch, in America’s new republic there was no need to guarantee the rights of the individual since the powers of the Federal legislature and the elected president were clearly limited by the express terms of the new constitution. In *The Federalist Papers*, Alexander Hamilton specifically mentioned that there was no need to emulate the English people in securing a Magna Carta style charter of liberties. Such a charter could ‘have no application to constitutions founded [like the Federal Constitution] upon the power of the people, and executed by their immediate representatives and servants. Here, in strictness, the people surrender nothing; as they retain every thing they have no need of particular reservations … here is a better recognition of popular rights’.[[78]](#endnote-78) Madison claimed that the English people’s ‘Magna Charta does not contain one provision for the security of these rights, respecting which the people of America are most alarmed. The freedom of the press and rights of conscience, those choicest privileges of the people, are unguarded in the British constitution.’[[79]](#endnote-79) James Iredell and Samuel Johnston both opposed the demand for a specific Bill of Rights to be added to the Federal Constitution because the evidence of British history showed that a sovereign legislature there had possessed the authority to alter or revoke various parts of Magna Carta.[[80]](#endnote-80) Governor Johnston asked those at the North Carolina Convention, ‘What is Magna Charta? It is only an act of Parliament. Their Parliament can, at any time, alter the whole, or any part of it. It is no more binding on the people than any other law Parliament has passed.’[[81]](#endnote-81) In the new American republic, by contrast, the powers of the American Congress were clearly circumscribed by the terms of the Federal Constitution. David Ramsay, one of the first historians of the American Revolution, made this distinction crystal clear in an oration celebrating the anniversary of the Declaration of Independence in 1794. While willing to accept that Magna Carta had been freely granted to the English people by their king, he nevertheless concluded, ‘What is said to be thus given and granted by the free will of the sovereign, we, the people of America, hold in our own right. The sovereignty rests in ourselves, and instead of receiving the privileges of free citizens as a boon from the hands of our rulers, we defined their powers by a constitution of our own framing, which prescribed to them, that this far they might go, but no farther. All power, not thus expressly delegated, is retained.’[[82]](#endnote-82)

Despite such efforts, Anti-Federalists remained seriously concerned about the absence of any mention in the Federal Constitution of the rights and liberties of the individual. They maintained that Magna Carta had indeed provided an important security for the rights and liberties of Englishmen and they wished to see something similar included in the new constitution before it was fully ratified.[[83]](#endnote-83) Representatives from Virginia, for example, put forward the view that the Federal Constitution needed to be amended to ensure that such rights and liberties as had been protected in England by Magna Carta would be secured in the new republic. They urged that no accused person should be punished except by due process, according to the law of the land; that justice should neither be delayed nor denied; and that an accused person should be given a fair and speedy trial before a jury drawn from the area where the offence had been committed.[[84]](#endnote-84) These were all civil rights, which the Americans had long believed were enshrined in chapter 29 of the 1225 version of Magna Carta.

In the event, Congress decided to give to the demands of the Anti-Federalists. In 1791, a Bill of Rights, proposed by the leading Federalist, James Madison, added ten amendments to the Federal Constitution.[[85]](#endnote-85) Several of these amendments were clearly influenced by some of the most famous and cherished terms of Magna Carta. The First Amendment guaranteed citizens the right to petition for the redress of grievances. The Fifth Amendment declared that ‘No person shall be … deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation’. This clearly owed much to chapter 29 of the 1225 version of Magna Carta. The Sixth Amendment, also clearly influenced by Magna Carta, provided that ‘the accused shall enjoy the right of a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed’. The Seventh Amendment established jury trials in civil cases and the Eighth Amendment prohibited cruel and unusual punishments; both of which were influenced by Magna Carta, through earlier English statutes and American state constitutions.[[86]](#endnote-86) In the early years of the republic (and long afterwards) appeals were made to Magna Carta a great many times by American lawyers pleading their cases before both state and federal courts.[[87]](#endnote-87)

Before and during the War of Independence a number of American Patriots had used the example of the English barons using force to compel King John to accept the terms of Magna Carta to justify their own resort to arms against what they regarded as Britain’s oppressive and arbitrary policies since the early 1760s. Before and during the drafting of the Federal Constitution a number of Americans commented on the difficulties that the English had had in securing the rights and liberties, which they believed they had been granted by Magna Carta. The Americans were aware that an effort had been made in chapter 61 of the original Magna Carta of 1215 to ensure that King John would observe the terms in the charter to which he had given his consent. In this chapter the rebellious barons had proposed electing representatives from their ranks, who could determine whether an appeal to arms needed to be made in order to ensure that King John fulfilled his obligations under the terms set out in Magna Carta. The Americans knew, however, that this chapter had been omitted from all subsequent versions and confirmations of Magna Carta. No mechanism therefore had ever been established to ensure that the terms of Magna Carta could be enforced. The Americans soon found a means by which the authority of the executive and legislature created by the Federal Constitution could be effectively prevented from exceeding the powers granted to them by the terms of this constitution. A Supreme Court was established quite independent of the executive and the legislature. The justices of the Supreme Court soon established their power of judicial review. They took it upon themselves to adjudicate whether any action by the executive or the legislature in the United States could be judged as exceeding the powers granted to these institutions by the Federal Constitution. In 1803, in the case of *Marbury v. Madison*, Chief Justice John Marshall used the arguments previously used by Edward Coke in England in the early seventeenth century to assert that the Supreme Court had the right to declare some executive or legislative actions to be unconstitutional.[[88]](#endnote-88) The principle and practice of Judicial Review became an extremely important, if often contested, aspect of the American Constitution.[[89]](#endnote-89) When the Supreme Court was housed in its fine building in Washington DC it was therefore appropriate that its magnificent bronze doors included among it eight panels, an image of King John agreeing to Magna Carta at Runnymede in 1215, another of King Edward I confirming Magna Carta in 1297, and a third showing Sir Edward Coke disputing with King James I.

V

*Magna Carta and the French Revolution*

From its first dramatic months in 1789, and for many years thereafter, the French Revolution stimulated an intense ideological debate in Britain that deeply polarized the nation at all social levels. A vast amount of propaganda – speeches, sermons, books, pamphlets, periodicals, newspapers, plays, poetry, novels and graphic satirical prints – discussed whether the French Revolution should encourage British reformers to demand radical changes to the constitution or whether it should stimulate firm opposition to any attempt to emulate what was happening in France. This profound and heated debate involved commentators such as Richard Price, Thomas Paine, and James Mackintosh, who promoted the natural, universal and inalienable rights of all men, and critics of this approach, such as Edmund Burke and Arthur Young, who appealed to the historic rights of Britons. Neither side in this great debate made substantial use of Magna Carta, although both sides were quite ready to blame the other for endangering its benefits.

While many British critics of the French Revolution praised the historic rights of Britons and the virtues of Britain’s ancient constitution, there was relatively little discussion of the particular merits of Magna Carta itself and few claims that it granted British subjects extensive political rights. The strongest endorsement of Magna Carta made by a British critic of the French Revolution was written by James Thomson. He contrasted the virtues of Magna Carta with the failings of the French ‘Declaration of the Rights of Man and the Citizen’. He claimed that the authors of Magna Carta accepted the existing social distinctions in society, calmly but firmly sought the redress of specific grievances, and endeavoured to achieve a fair and legal compact between the governor and the governed. By contrast, the authors of the French Declaration were influenced by metaphysical doctrines and abstract principles, placed themselves in an imaginary situation, and tried to establish a perfect system of government. The English gained practical benefits from their charter of liberties. The French were content with a mere declaration of rights.[[90]](#endnote-90)

A few British critics of the French Revolution did acknowledge that Magna Carta was a fundamental law, but, in doing so, they claimed that it was a confirmation of older laws. They laid particular stress on the legal benefits granted by chapter 29, rather than any political liberties it was supposed to have granted.[[91]](#endnote-91) Edmund Burke admitted that Magna Carta could be taken as a fundamental law, but he refused to believe that therefore it was for ever unalterable and could not be changed by an act of parliament: ‘Now, although this Magna Charta, or some of the statutes establishing it, provide that the law shall be perpetual, and all statutes contrary to it shall be void: yet I cannot go so far as to deny the authority of statutes made in defiance of Magna Charta and all its principles. This however I will say, that it is a very venerable law, made by very wise and learned men, and that the legislature in their attempt to perpetuate it, even against the authority of future parliaments, have shewn their judgment that it is fundamental’.[[92]](#endnote-92) Henry Maddock accepted that if any laws were fundamental, then Magna Carta was one of them, but he went on to assert: ‘I think it necessary that Parliament should have a power over them – I think they legally have such a power’.[[93]](#endnote-93) Robert Hobart, Chief Secretary to the Lord Lieutenant of Ireland, insisted that parliament not Magna Carta established which men had the right to vote in parliamentary elections.[[94]](#endnote-94) John Gifford, a deeply conservative and intensely patriotic British propagandist,[[95]](#endnote-95) went so far as to compare the actions of the English barons in 1215 with the violent activities of the French Jacobins. Like the French Jacobins, the English barons did not discriminate between liberty and licentiousness, but were eager only to advance their own interests and to pursue their ambitious political projects.[[96]](#endnote-96)

Moderate British reformers in the 1790s were still prepared to appeal to Magna Carta, particularly to chapter 29, in defence of their legal rights.[[97]](#endnote-97) In defending Thomas Paine against a charge of seditious libel, Thomas Erskine claimed that King John had been forced to grant Magna Carta at Runnymede: ‘The people took it as their inheritance; they had a right to it’.[[98]](#endnote-98) The members of the Revolution Society, marking the centenary of the Bill of Rights in 1789, even proclaimed: ‘May the principles of Magna Charta … be deeply engraved for ever on every British breast’.[[99]](#endnote-99) The development of a loyalist reaction in Britain, in and out of parliament, led to great efforts being made to silence those British radicals who sympathized with the revolutionary ideas being propagated in France. This convinced many radicals in Britain that Magna Carta did not provide them with sufficient legal guarantees of their civil liberties nor a strong enough role in the political affairs of the nation. The London Corresponding Society conceded that only chapters 14 and 29 of Magna Carta were still in existence, and that even the benefits and provisions of chapter 29 were being eroded by the government’s repressive policies.[[100]](#endnote-100) Maurice Margarot acknowledged at his trial for sedition that Magna Carta had not done enough to secure the rights and liberties of the people,[[101]](#endnote-101) while his fellow London radical, John Thelwall, lamented that the provisions of Magna Carta had mouldered away.[[102]](#endnote-102) Thomas Paine pointed out that Magna Carta had done no more than compel those in power to renounce some of their assumptions, but it had failed to destroy their power and could not claim to have given the English people a constitution.[[103]](#endnote-103) The more moderate Thomas Oldfield went further in bluntly asserting that Magna Carta had not recognized one essential political right of the people, but had only protected the feudal privileges of the barons.[[104]](#endnote-104) Charles Pigott criticized the British people for not showing sufficient spirit to defend the rights and liberties which they had long claimed under Magna Carta.[[105]](#endnote-105) Other reformers and radicals tried to infuse such a spirit by claiming that the benefits of Magna Carta had been obtained by force and reminding the British people (and warning the British government) that they still possessed the right to resist oppression and the abuse of power.[[106]](#endnote-106) Few radicals in Britain, though far more in Ireland, were prepared to take up arms to defend their civil liberties and extend their political rights in the 1790s, when those in power, with the support of most men of property and influence, were prepared to stamp out any effort to promote the political principles or adopt the violent methods of the French revolutionaries.

While Magna Carta thus played only a relatively minor role in the formal political debate in Britain in the 1790s, its potency as a symbol of British liberties continued to resonate strongly in the popular imagination. Graphic satirists, seeking to sell their products to men of either a reforming or a conservative disposition, were quick to accuse both sides of being a threat to Magna Carta. James Gillray, in his print, *Vulture of the Constitution* (1789), depicts Prime Minister William Pitt as a vulture tearing up Magna Carta. In his print, *The Genius of France Triumphant or Britannia petitioning for Peace* (1795), however, he attacks Charles James Fox and Richard Sheridan, leaders of the opposition in parliament, for seeking peace with France and depicts Britannia surrendering Magna Carta to a monstrous French sans-culotte. In Plate 1 of his series of prints on the *Consequences of a Successful French* *Invasion* (1798) Gillray depicts French troops violently taking control of the House of Commons, leaving a torn copy of Magna Carta on the floor of the chamber. Thomas Rowlandson’s print, *The Contrast* (1793), which proved to be one of the most widely distributed visual prints of the 1790s, has Britannia proudly holding a copy of Magna Carta.[[107]](#endnote-107) This print proved so popular that it was even re-produced on beer jugs.[[108]](#endnote-108) In 1794, Thomas Spence produced a large number of small copper coins or tokens celebrating the release of all the radicals accused of high treason that year. One side of these coins listed the names of all those accused, while the other side showed the defence lawyers, Thomas Erskine and Vicary Gibbs, holding a scroll with the words ‘Bill of Rights’ on it and with another scroll above their heads labelled ‘Magna Charta’.[[109]](#endnote-109)

In the 1790s, therefore, the ideological content of the profound and protracted debate on the civil liberties and political rights of Britons did not focus centrally on an appeal to Magna Carta, as it had done in the preceding decades. Nevertheless, British radicals and reformers continued to cherish it as a bulwark of the people’s legal rights in particular. Its potency as a symbol of the rights of free men against oppressive acts of government remained undimmed. It was fully exploited, for example, by Sir Francis Burdett in 1810, when he was arrested on the orders of the House of Commons for severely criticizing its decision to order the arrest of the radical, John Gales Jones, who had publicized a public debate critical of attacks made in the House of Commons on the freedom of the press. Burdett refused to recognize the Speaker’s warrant for his arrest on a charge of committing a scandalous libel on the House of Commons. He was only committed to the Tower of London after troops had been called out in large numbers to escort him there. Huge crowds turned out to witness his arrest and to express support for the stand he was making.[[110]](#endnote-110) Like John Wilkes, Burdett was praised as a friend of liberty in many addresses from counties and boroughs. He was also represented as the champion and defender of Magna Carta in paintings and caricatures, and on a wide range of porcelain products.[[111]](#endnote-111) In the graphic print, *A New Cure for Jacobinism or a Peep in the Tower* (1810) by Charles Williams, Burdett is shown behind bars in the menagerie of the Tower of London, appealing to King George III and presenting him with a paper bearing the words ‘Magna Charta’ and ‘Trial by Jury’.[[112]](#endnote-112) In the graphic print, *Modern St George attacking the Monster of Despotism* (1810), by William Heath, Burdett wears armour and carries a shield inscribed ‘Bill of Rights’ and ‘Magna Charta’. He defends the ground of independence against a seven-headed monster guarding the gates to the treasury. The heads are those of government ministers.[[113]](#endnote-113) In the graphic print, *A Model for Patriots or an Independant Legislator* (1810), also by William Heath, Burdett stands on a pedestal inscribed ‘Bill of Rights’ and ‘Magna Charta’ and fights off four sea monsters.[[114]](#endnote-114) Just like Alderman Beardmore in the early 1760s, Burdett is depicted in Isaac Cruikshanks’s graphic print, *The Arrest of Sir Fs Burdett MP* (1810), as having been reading Magna Carta to his son at the very time of his arrest.[[115]](#endnote-115) In a letter to his constituents, published as a pamphlet, Burdett quoted chapter 29 of the 1225 version of Magna Carta on the title page and in the text he referred to the charter on many occasions when protesting that the House of Commons had no constitutional right to imprison Jones without trial.[[116]](#endnote-116) His defence of his speech in the House of Commons was also printed in William Cobbett’s *Political Register*, on 24 March 1810, and thence widely distributed across the country. Burdett’s arrest provoked several constituencies to praise his stance and to express support for his earlier efforts in 1809 to secure a reform of the country’s system of representation. On 20 April, Burdett replied to a letter from his Westminster constituents, promising that he would continue in future with his efforts to secure parliamentary reform:

Magna Charta and the old law of the land will then resume their empire; freedom will revive; … property and political power, which the law never separates, will be reunited; the King, replaced in the happy and dignified station allotted to him by the Constitution; the people … restored to their just and indisputable rights. … The question is now at issue; it must be ultimately determined whether we are henceforth top be slaves or free. Hold to the Laws, this great country may recover; forsake them, it will certainly perish.[[117]](#endnote-117)

Released when parliament was prorogued, on 21 June, Burdett left the Tower discreetly, preventing the awaiting crowd from engaging in violent protests, but he went on for many years to play a major role in promoting the cause of parliamentary reform in the House of Commons.

Never again, however, would an individual reformer be so closely associated with the defence of the subject’s civil liberties by making such determined appeals to Magna Carta. Long after this, however, other political campaigns in Britain, such as those in support of the Great Reform Bill of 1832, the efforts to secure the radical People’s Charter in the 1830s and 1840s, and the efforts of the suffragettes to secure the parliamentary franchise for women in the late nineteenth and early twentieth centuries, continued to support their demands with references to Magna Carta. Appeals to the terms of this famous medieval charter of liberties, both real and supposed, have also been used in modern times to inform political and constitutional efforts across the world to secure the rights and liberties of all humanity.

1. Edward Jenks, ‘The Myth of Magna Carta’, *Independent Review*, 4 (1905), 260-273; Sidney Painter, ‘Magna Carta’, *American Historical Review*, 53 (1947), 42-49; C.H. McIlwain, ‘Due Process of Law in Magna Carta’, *Columbia Law Review*, 14 (1914), 27-51; and William Sharp McKechnie, *Magna Carta: A Commentary on the Great Charter of King John* (2nd edn., Glasgow, 1914). [↑](#endnote-ref-1)
2. Faith Thompson, *The First Century of Magna Carta: Why it persisted as a Document* (Minneapolis, 1925); Faith Thompson, ‘Parliamentary Confirmations of the Great Charter’, *American Historical Review*, 38 (1933), 659-672; and Faith Thompson, *Magna Carta: Its Role in the Making of the English Constitution 1300-1629* (Minneapolis, 1948). [↑](#endnote-ref-2)
3. Faith Thompson, *Magna Carta: Its Role in the Making of the English Constitution 1300-1629*, pp. 167-196 and 268-293; and *Selected Readings and Commentaries on Magna Carta 1400-1604*, ed. Sir John Baker, *Selden Society*, 132 (London, 2015). [↑](#endnote-ref-3)
4. Faith Thompson, *Magna Carta: Its Role in the Making of the English Constitution 1300-1629*, pp. 335-353; C.H. McIlwain, ‘Magna Carta and the Common Law’, in *Magna Carta: Commemorative Essays*, ed. Henry Eliot Malden (London, 1917), pp. 122-179; J.R. Maddicott, ‘Magna Carta and the Local Community’, *Past and Present*, 102 (1984), 25-65; David Carpenter, ‘English Peasants in Politics, 1258-1267’, *Past and Present*, 136 (1992), 3-42; S.T. Ambler, ‘Magna Carta: Its confirmation at Simon de Montfort’s Parliament of 1265’, *English Historical Review*, 130 (2015), 801-830; Maurice Ashley, *Magna Carta in the Seventeenth Century* (Charlottesville, VA, 1965); and J.G.A. Pocock, *The Ancient Constitution and the Feudal Law: A Study of English Historical Thought in the Seventeenth Century* (2nd edn., Cambridge, 1987). [↑](#endnote-ref-4)
5. King John had agreed to accept Magna Carta at a meeting with his rebellious barons at Runnymede in June 1215, but within ten weeks he had revoked it and Pope Innocent III had annulled it. This decision had led to civil war. In 1225 John’s son, Henry III, had voluntarily re-issued a revised and shortened version of Magna Carta. This version was the one frequently reissued and confirmed thereafter. [↑](#endnote-ref-5)
6. *The Federal and State Constitutions*, ed. Francis N. Thorpe (7 vols., Washington DC, 1909), VII, 3788; and A.E. Dick Howard, *The Road from Runnymede: Magna Carta and Constitutionalism in America* (Charlottesville, VA, 1968), pp. 15, 19. [↑](#endnote-ref-6)
7. A.E. Dick Howard, *The Road from Runnymede*, p. 25. [↑](#endnote-ref-7)
8. *Ibid*., p. 54; and H.D. Hazeltine, ‘The Influence of Magna Carta on American Constitutional Development’, *Columbia Law Review*, 17 (1917), 12. [↑](#endnote-ref-8)
9. A.E. Dick Howard, *The Road from Runnymede*, pp. 37-48. [↑](#endnote-ref-9)
10. *Ibid*., pp. 213-214; and *Magna Carta and the Rule of Law*, ed. Daniel Barstow Magraw, Andrea Martinez and Roy Brownell II (Chicago, 2014), p. 160. [↑](#endnote-ref-10)
11. Stephen Hopkins, *The Rights of the Colonies Examined* (Providence, RI, 1765), p. 5. [↑](#endnote-ref-11)
12. Richard Bland, *An Enquiry into the Rights of the British Colonies* (Williamsburg, 1766), cited in H. Trevor Colbourn, *The Lamp of Experience: Whig History and the Intellectual Origins of the American Revolution* (Chapel Hill, NC, 1965), p. 147. [↑](#endnote-ref-12)
13. Stanley R. Hauer, ‘Thomas Jefferson and the Anglo-Saxon Language’, *Publications of the Modern Language Association*, 98 (183), 879-898. [↑](#endnote-ref-13)
14. In the eighteenth century the great charter of liberty was often written as *Magna Charta*. [↑](#endnote-ref-14)
15. John Tucker, *A Sermon preached at Cambridge [Massachusetts], before his Excellency Thomas Hutchinson, Esq, Governor* (Boston, 1771), p. 17. [↑](#endnote-ref-15)
16. H.T. Dickinson, ‘The Eighteenth Century Debate on the Sovereignty of Parliament’ *Transactions of the Royal Historical Society*, 5th series, 26 (1976), 189-210. [↑](#endnote-ref-16)
17. William Blackstone, *Commentaries on the Laws of England* (4 vols., Oxford, 1765-1769), I, 49. [↑](#endnote-ref-17)
18. Harry T. Dickinson, ‘America’, in *The Cambridge Companion to Edmund Burke*, ed. D.W. Dwan and C. Insole (Cambridge, 2012), pp. 156-167. [↑](#endnote-ref-18)
19. J.W. Gough, *Fundamental Law in English Constitutional History* (Oxford, 1955), pp. 174-213. [↑](#endnote-ref-19)
20. Josiah Tucker, *A Letter from a Merchant in London to his Nephew in North America* (London, 1766), p. 5. The same sentiment in exactly the same words can be found in William Pulteney, *Thoughts on the present state of affairs with America, and the means of conciliation* (London, 1778), p. 86. See also *The Rights of Parliament vindicated, on the occasion of the late Stamp-Act, in which is exposed the conduct of the American Colonists* (London, 1766), pp. 6, 14. [↑](#endnote-ref-20)
21. H.T. Dickinson, ‘Britain’s Imperial Sovereignty: The Ideological Case against the American Colonists’, in *Britain and the American Revolution*, ed. H. T. Dickinson (London, 1998), pp. 73-80. [↑](#endnote-ref-21)
22. David J. Hulsebosch, ‘The Ancient Constitution and the Extending Empire: Sir Edward Coke’s British Jurisprudence’, *Law and History Review*, 21 (2003), 475-482. [↑](#endnote-ref-22)
23. William Blackstone, *Commentaries on the Laws of England*, I, 104-105. [↑](#endnote-ref-23)
24. *Ibid*., I, 105. [↑](#endnote-ref-24)
25. H.T. Dickinson, ‘Britain’s Imperial Sovereignty: The Ideological Case against the American Colonists’, in *Britain and the American Revolution*, ed. H. T. Dickinson, pp. 86-94. [↑](#endnote-ref-25)
26. David J. Hulsebosch, ‘The Ancient Constitution and the Extending Empire: Sir Edward Coke’s British Jurisprudence’, *Law and History Review*, 21 (2003), 439-440. [↑](#endnote-ref-26)
27. Sinclair Hamilton, ‘“The earliest Device of the Colonies” and some other early devices’, *Princeton University Library Chronicle*, 10 (1949), pp. 117-123. [↑](#endnote-ref-27)
28. A.E. Dick Howard, *The Road from Runnymede*, p. 133. [↑](#endnote-ref-28)
29. David S. Lovejoy, ‘“Rights Imply Equality”: The Case against Admiralty Jurisdiction in America, 1764-1776’, *William and Mary Quarterly*, 3rd series, 16 (1959), 459-484. [↑](#endnote-ref-29)
30. Joyce Lee Malcolm, in *Magna Carta: The Foundation of Freedom 1215-2015*, ed. Nicholas Vincent (2nd edn., London, 2015), p. 125. [↑](#endnote-ref-30)
31. *The Proceedings of the North American Colonies in consequence of the Stamp Act* (London, 1766), p. 10; and *Prologue to Revolution: Sources and Documents on the Stamp Act Crisis, 1764-1766*, ed. Edmund S. Morgan (Chapel Hill, NC, 1959), p. 52. [↑](#endnote-ref-31)
32. *The Public Records of the Colony of Connecticut*, ed. C.J. Headley and J.H. Trumbull (15 vols., Hartford, Conn, 1881-90), XII, 424; and *Prologue to Revolution*, ed. Edmund S. Morgan, p. 55. [↑](#endnote-ref-32)
33. *Magna Carta and the Rule of Law*, ed. Daniel Barstow Magraw, *et al*., pp. 66-68. [↑](#endnote-ref-33)
34. Joyce Lee Malcolm in *Magna Carta: The Foundation of Freedom 1215-2015*, ed. Nicholas Vincent, p. 126. [↑](#endnote-ref-34)
35. John Adams’s ‘Admiralty Notebook’, quoted in David S. Lovejoy, ‘“Rights Imply Equality” The Case against Admiralty Jurisdiction in America, 1764-1776’, *William and Mary Quarterly*, 3rd series, 16 (1959), 481. [↑](#endnote-ref-35)
36. Joyce Lee Malcolm in *Magna Carta: The Foundation of Freedom 1215-2015*, ed. Nicholas Vincent, p. 126. [↑](#endnote-ref-36)
37. H. Trevor Colbourn, *The Lamp of Experience*, p. 164. [↑](#endnote-ref-37)
38. <http://avalon.law.yale.edu/18th_century/resolves.asp>, accessed on 20 May 2015. [↑](#endnote-ref-38)
39. ‘Drayton’s Charge to the Grand Jury of South Carolina, 23 April 1776’, in *Principles and Acts of the Revolution* *in America*, ed. Hezekiah Niles (Baltimore, 1822), p. 72. [↑](#endnote-ref-39)
40. <http://www.archives.gov/exhibits/charters/declaration_transcript.html>, accessed 24 August 2015. [↑](#endnote-ref-40)
41. *A Collection of Tracts, on the subjects of taxing the British colonies in America, and regulating their trade* (4 vols., London, 1773), III, 105. [↑](#endnote-ref-41)
42. *The Proceedings of the North American Colonies in consequence of the Stamp Act* (London, 1766), p. 11; and *Prologue to Revolution*, ed. Edmund S. Morgan, p. 52. [↑](#endnote-ref-42)
43. Quoted in H. Trevor Colbourn, *The Lamp of Experience*, p. 175. [↑](#endnote-ref-43)
44. Quoted in *Magna Carta Uncovered*, ed. Anthony Arlidge and Igor Judge (Oxford, 2014), p. 158. [↑](#endnote-ref-44)
45. Quoted in John Phillip Reid, *Constitutional History of the American Revolution: II, The Authority to Tax* (Madison, Wisconsin, 1987), p. 108. [↑](#endnote-ref-45)
46. Quoted in *Law, Liberty, and Parliament: Selected Essays on the Writings of Sir Edward Coke,* ed. Allen D. Boyer (Indianapolis, 2004), p. 179. See also Hutchinson’s comment of 25 September 1765, quoted in *ibid*., p. 180. [↑](#endnote-ref-46)
47. *Authentic Account of the Proceedings of the Congress held at New York, in MDCCLXV, on the subject of the American Stamp Act* (New York, 1767), p. 14; and *Prologue to Revolution*, ed. Edmund S. Morgan, p. 65. [↑](#endnote-ref-47)
48. Jonathan Mayhew, *The Snare Broken* (Boston, 1766), p. 4. [↑](#endnote-ref-48)
49. Quoted in H. Trevor Colbourn, *The Lamp of Experience*, p. 175. [↑](#endnote-ref-49)
50. Moses Mather, *America’s Appeal to the Impartial World* (Hartford, Conn., 1775), pp. 12, 25, 36-37. [↑](#endnote-ref-50)
51. See, for example, Daniel Dulany, *Considerations on the propriety of imposing taxes on the British Colonies for the purpose of raising a revenue, by Act of Parliament* (2nd edn., New York, 1765), p. 31; and [Arthur Lee,] *An Appeal to the Justice and Interests of the People of Great Britain, in the present disputes with America* (London, 1774), p. 7. [↑](#endnote-ref-51)
52. *The Controversial Letters of John Wilkes, Esq, the Rev. John Horne, and their principle* [sic] *adherents* (London, 1771), p. 164. [↑](#endnote-ref-52)
53. James Burgh, *Political Disquisitions: Or, an enquiry into public errors, defects and abuses* (3 vols., London, 1774-75), II, 310. [↑](#endnote-ref-53)
54. John Sainsbury, *Disaffected Patriots: London Supporters of Revolutionary America 1769-1782* (Kingston and Montreal, and Gloucester, 1987), pp. 106-113, 118. [↑](#endnote-ref-54)
55. The ‘Circular Letter from the London Association’ and ‘Resolutions of the London Association’ In *The Crisis*, LXXXVIII, pp. 554-556 and the ‘Prefatory Address from the London association’ printed in *The Declaration by the Representatives of the United Colonies of North America, now met in general congress at Philadelphia, setting forth the causes and necessity of taking up arms* (London, 1775), pp. iii-vi. [↑](#endnote-ref-55)
56. *The Golden Passage in the Great Charter of England, called Magna Charta … with Lord Coke’s Remarks and Explanations. Printed for the Use of the London Association* (London, 1776). [↑](#endnote-ref-56)
57. *Taxation, Tyranny. Addressed to Samuel Johnson* (London, 1775), pp. 26-27. Dr Samuel Johnson had recently published a pamphlet, *Taxation No Tyranny*, which supported the right of the Westminster parliament to tax the American colonies. [↑](#endnote-ref-57)
58. John Phillip Reid, ‘“In our Contracted Sphere”: The Constitutional Contract, the Stamp Act Crisis, and the Coming of the American Revolution’, *Columbia Law Review*, 76 (1976), 21-47; and Thomas C. Grey, ‘Origins of the Unwritten Constitution: Fundamental Law in American Revolutionary Thought’, *Stanford Law* *Review*, 30 (1978), 843-893. [↑](#endnote-ref-58)
59. James Otis, *The Rights of the British Colonies Asserted and Proven* (Boston, 1764), p. 31. [↑](#endnote-ref-59)
60. H. Trevor Colbourn, *The Lamp of Experience*, p. 126. [↑](#endnote-ref-60)
61. Quoted by Joyce Lee Malcolm, in *Magna Carta: The Foundation of Freedom 1215-2015*, ed. Nicholas Vincent, p. 129. [↑](#endnote-ref-61)
62. Quoted in A.E. Dick Howard, *The Road from Runnymede*, p. 185. [↑](#endnote-ref-62)
63. *Ibid*., p. 184. [↑](#endnote-ref-63)
64. *The Votes and Proceedings of the Freeholders and other Inhabitants of the Town of Boston, in town meetings assembled, according to law* (Boston, 1772), p. 8. [↑](#endnote-ref-64)
65. Joyce Lee Malcolm, in *Magna Carta: The Foundation of Freedom 1215-2015*, ed. Nicholas Vincent, p. 129. [↑](#endnote-ref-65)
66. H. Trevor Colbourn, *The Lamp of Experience*, p. 141. [↑](#endnote-ref-66)
67. Quoted in *ibid*., p. 92. [↑](#endnote-ref-67)
68. Quoted in J.C.D. Clark, *The Language of Liberty 1660-1832: Political Discourse and Social Dynamics in the Anglo-American World* (Cambridge, 1994), p. 360. [↑](#endnote-ref-68)
69. H. Trevor Colbourn, *The Lamp of Experience*, p. 123. [↑](#endnote-ref-69)
70. *An Address to the Inhabitants of the Colonies* (1776) in *The Collected Works of James Wilson*, ed. K.L. Hall and M.D. Hall (2 vols., Indianapolis, 2007), I, 49. [↑](#endnote-ref-70)
71. *Magna Carta and its Modern Legacy*, ed. Robert Hazell and James Melton (Cambridge, 2015), pp. 9 and 83; and H.D. Hazeltine, ‘The Influence of Magna Carta on American Constitutional Development’, *Columbia Law Review*, 17 (1917), 25-26. [↑](#endnote-ref-71)
72. *Principles and Acts of the Revolution in America*, ed. Hezekiah Niles, pp. 123-124; and *Magna Carta and the Rule of Law*, ed. Daniel Barstow Magraw *et al*., p. 161. [↑](#endnote-ref-72)
73. Joyce Lee Malcolm in *Magna Carta: The Foundation of Freedom 1215-2015*, ed. Nicholas Vincent, pp. 131-132; and A.E. Dick Howard, *The Road from Runnymede*, pp. 204-213. [↑](#endnote-ref-73)
74. William F. Swindler, *Magna Carta: Legend and Legacy* (New York, 1965), p. 228. [↑](#endnote-ref-74)
75. A.E. Dick Howard, *The Road from Runnymede*, pp. 209-211. [↑](#endnote-ref-75)
76. *Ibid*., p. 225; and Jack N. Rakove, *Original Meanings: Politics and Ideas in the Making of the Constitution* (New York, 1996), p. 326. Wilson’s view was commended in Alexander Contee Hanson, *Remarks on the proposed plan of a federal government, addressed to the citizens of the United States of America, and particularly to the people of Maryland* (Annapolis, MD, 1788), p. 27. [↑](#endnote-ref-76)
77. Pauline Maier, *Ratification: The Public Debate on the Constitution 1787-1788* (New York, 2010). [↑](#endnote-ref-77)
78. Alexander Hamilton, ‘Certain General and Miscellaneous Objections to the Constitution Considered and Answered’, *The Federalist Papers*, no. 84 (July-August 1788). [↑](#endnote-ref-78)
79. Quoted in A.E. Dick Howard, *The Road from Runnymede*, p. 234. [↑](#endnote-ref-79)
80. *Ibid*., pp. 230-231. [↑](#endnote-ref-80)
81. *Proceedings and debates of the Convention of North-Carolina … for the purpose of deliberating and determining the Constitution* (Edenton, NC, 1789), p. 86. [↑](#endnote-ref-81)
82. David Ramsay, *An Oration, delivered on the anniversary of American independence, July 4, 1794 … to the inhabitants of Charleston* (London, 1795), p. 18. [↑](#endnote-ref-82)
83. *Magna Carta and its Modern Legacy*, ed. Robert Hazell and James Melton, p. 13. [↑](#endnote-ref-83)
84. A.E. Dick Howard, *The Road from Runnymede*, pp. 232-233. [↑](#endnote-ref-84)
85. Gordon S. Wood, ‘The Origins of the Bill of Rights’, *Proceedings of the American Antiquarian Society*, 101 (1991), 255-274. [↑](#endnote-ref-85)
86. *Magna Carta and its Modern Legacy*, ed. Robert Hazell and James Melton, pp. 10-11; and *Magna Carta, Religion and the Rule of Law*, ed. Robin Griffith-Jones and Mark Hill (Cambridge, 2015), pp. 93-96 and 139. [↑](#endnote-ref-86)
87. *Magna Carta and the Rule of Law*, ed. Daniel Barstow Magraw *et al*., pp. 70-73, 94-96; H.D. Hazeltine, ‘The Influence of Magna Carta on American Constitutional Development’, *Columbia Law Review*, 17 (1917), 26-33; Joyce Lee Malcolm in *Magna Carta: The Foundation of Freedom 1215-2015*, ed. Nicholas Vincent, p. 135. [↑](#endnote-ref-87)
88. A.E. Dick Howard, *The Road from Runnymede*, pp. 276-280. [↑](#endnote-ref-88)
89. *Magna Carta and the Rule of Law*, ed. Daniel Barstow Magraw *et al*., pp. 111-140. [↑](#endnote-ref-89)
90. James Thomson, *The Rise, Progress, and Consequences, of the New Opinions and Principles lately introduced into France; with observations* (Edinburgh, 1799), pp. 12-15. [↑](#endnote-ref-90)
91. *The Corner Stone of the British Constitution; Or, the Golden Passage in the Great Charter of England* (London, 1789), pp. 2-16; and *The Birthright of Britons: Or the British Constitution, with a Sketch of its History* (London, 1792), pp. 20, 30-41. [↑](#endnote-ref-91)
92. Edmund Burke, ‘Letter to Sir Hercules Langrishe’ (1792), in *The Writings and Speeches of Edmund Burke, Vol IX: The Revolutionary War 1794-1797 and Ireland*, ed. R.B. McDowell (Oxford, 1991), p. 611. [↑](#endnote-ref-92)
93. Henry Maddock, *The Power of Parliaments, considered, in a letter to a Member of Parliament* (London, 1799), p. 25. [↑](#endnote-ref-93)
94. *The Proceedings of the Parliament of Ireland 1793* (Dublin, 1793), p. 296. [↑](#endnote-ref-94)
95. John Gifford (1758-1818) was the editor and chief contributor to the monthly *Anti-Jacobin Review* from 1798 until his death. He was born John Richards Green. [↑](#endnote-ref-95)
96. John Gifford, *The History of England from the earliest times to the peace of 1783* (2 vols., London, 1790), I, 292, 297. [↑](#endnote-ref-96)
97. John Butler, *Brief Reflections upon the Liberty of the British Subject* (Canterbury, 1792), in *The Political Writings of the 1790s*, ed. Gregory Claeys (8 vols., London, 1995), III, 369. [↑](#endnote-ref-97)
98. *The Genuine Trial of Thomas Paine, for a libel contained in the second part of Rights of Man* (London, 1792), p. 94. [↑](#endnote-ref-98)
99. *An Abstract of the History and Proceedings of the Revolution Society in London* (London, 1789), p. 3. [↑](#endnote-ref-99)
100. *The Address published by the London Corresponding Society at the General Meeting held at the Globe tavern, Strand, on Monday the 20th day of January 1794* (London, 1794), pp. 4-5. [↑](#endnote-ref-100)
101. *The Trial of Maurice Margarot, delegate from London, to the British Convention* (Edinburgh, 1794), p. 58. [↑](#endnote-ref-101)
102. John Thelwall, *The Natural and Constitutional Right of Britons to Annual Parliaments, Universal Suffrage, and the Freedom of Popular Association* (London, 1795), p. 69. [↑](#endnote-ref-102)
103. Thomas Paine, *Rights of Man; Part the Second* (1st edn., London, 1792), pp. 51-52. [↑](#endnote-ref-103)
104. T.H.B. Oldfield, *An Entire and Complete History, Political and Personal, of the Boroughs of Great Britain* (3 vols., London, 1792), I, 130. For a similar attack on the limited benefits of Magna Carta, see *An Englishman’s Advice to his Countrymen, on the present state of their general interests and prosperity under their good old constitution* (London, 1798), pp. 5-6. [↑](#endnote-ref-104)
105. Charles Pigott, *A Political Dictionary: explaining the true meaning of words* (London, 1795), p. 72, where he offers an ironic definition of Magna Carta. [↑](#endnote-ref-105)
106. *Letters on Parliamentary Reform, containing a short review of the origin and constitution of parliaments* (London, 1793), pp. 15, 47; *The Genuine Trial of Thomas Paine, for a libel contained in the second part of Rights of Man* (London, 1792), pp. 93-94; and Daniel Isaac Eaton, *Politics for the People* (2 vols., London, 1794-95), II, 277. [↑](#endnote-ref-106)
107. These four graphic prints can be found on the on-line British Museum website of its collection of Prints and Drawings. See note 97 above. In the catalogue of this collection, edited by F.G. Stephens and M. Dorothy George (London, 1870-1954) they are numbered BM 7478, BM 8614, BM 9180 and BM 8264 respectively. [↑](#endnote-ref-107)
108. This is an illustration of this in *Magna Carta: Law, Liberty, Legacy*, ed. Claire Breay and Julian Harrison, p. 159. [↑](#endnote-ref-108)
109. Thomas Spence, *The Coin Collector’s Companion* (London, 1795), pp. 17-18. [↑](#endnote-ref-109)
110. For a detailed account of this affair, see Joseph S. Jackson, *The Public Career of Sir Francis Burdett: The Years of Radicalism, 1796-1815* (Philadelphia, 1932), pp. 99-148. [↑](#endnote-ref-110)
111. M. Dorothy George, *English Political Caricature 1793-1832: A Study of Opinion and Propaganda* (Oxford, 1959), pp. 125-126; and *Magna Carta: Law, Liberty, Legacy*, ed. Claire Breay and Julian Harrison (London, 2015), pp. 165, 178-180. [↑](#endnote-ref-111)
112. BM Print 11549. It can be viewed in *Magna Carta: Law,* *Liberty, Legacy*, ed. Claire Breay and Julian Harrison, p. 178. [↑](#endnote-ref-112)
113. BM print 11538. [↑](#endnote-ref-113)
114. BM print 11540. [↑](#endnote-ref-114)
115. BM print 11550. [↑](#endnote-ref-115)
116. *The Letter of Sir Francis Burdett to his Constituents; with the Argument used by him in denying the Power of the House of Commons to imprison the People of England* (5th edn., London, 1810). [↑](#endnote-ref-116)
117. Joseph S. Jackson, *The Public Career of Sir Francis Burdett*, pp. 99-100. [↑](#endnote-ref-117)