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From Magna Carta to Atlantic Charter: The Constitutional Foundations of the Special Relationship

by

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FROM MAGNA CARTA TO ATLANTIC CHARTER
The Constitutional Foundations of the Special Relationship

The purpose of this series of lectures is to explore the relations between the United States of America and the continent of Europe including its offshore islands of which its own civilization is to a large extent an offshoot. It must be regarded as a timely one since the intimacy of the transatlantic relationship is at one of its low points. It is not that Europe rejects America or American influence - indeed anti-Americanism so prominent in some political and intellectual quarters a generation ago is now in decline. And this development must owe something to the ending of what we call the "Cold War". But the relaxation of international tensions has had the opposite effect in the United States. There seems general agreement that Europe attracts much less American attention than was formerly the case, whether we judge it by the lack of interest in its fortunes displayed in the media or by the declining concern with European history at all levels in the educational process, or the indifference of American youth to the chances of securing a direct acquaintance with countries from which their families originally came.

One explanation of this phenomenon is that the ancestors of many of today's American young did not in fact come from Europe. The composition of the population of the United States is increasingly diverse and other important influences now play upon its mental outlook. For this reason among others it is not appropriate to talk of a return to isolationism as we knew it during much of the last century and again after the first world war. For the centre of demographic and economic expansion has moved across the continent. New York is one thing, Los Angeles another. While Europe has also undergone changes of some importance thev are not on the same scale. The European States-system and the domestic institutions of the various European countries still reflect the basic legacy of Renaissance. Reformation and Revolution - neither migrations nor massacres have radically changed the map. It is indeed the persistence of such legacies and the conflicts to which they give rise that helps to explain the impatience some Americans have expressed at Europe's inability to look after its own affairs without recourse to American intervention.

However one interprets the present phase in relations between the old world and the new, the current importance of the subject would hardly be denied. The question then arises why should these lectures be styled the "Atlantic Charter" lectures. One can see that the Atlantic itself is central to the story. For the ancient and medieval worlds the Atlantic was a barrier to intercourse but developments in technology from early modern times steadily reduced the efficacy of the barrier in that the Atlantic became a highway for men, goods and above all ideas. So someone looking for a symbol of the relationship might well have felt that the "Atlantic Charter" was adequate for such a role. Yet it was not an inevitable choice and it is worth reminding ourselves of what a very special and peculiar document it is one is talking about.[1]

I can most simply illustrate its peculiarity by referring to the other document that figures in the title of today's lecture, Magna Carta - the agreement between King John of England and his rebellious barons, concluded as every English schoolboy used to know, on the meadow of Runnymede by the River Thames on 15 June 1215. Of the original Great Charter no text survives; but the royal chancery's scribes were put to work and copies were sent to various parts of the kingdom of which four survive. While the language is that of a royal grant it is in essence a Treaty between King and subjects. As such after many confirmations and revisions it acquired a position in English and British constitutional law.[2] It has been quoted in the Courts and was later also to become part of American constitutional thinking.

The Atlantic Charter has no such status. Drawn up hastily in a meeting between Winston Churchill and President Roosevelt living in two battleships moored off Newfoundland the final version was simply issued to the press and printed in a British Command paper. No signed copy exists in either the British or the U.S. archives.

To understand its nature we must recall the circumstances of the time. Britain alone in western Europe was outside the Nazi grasp. Hitler's invasion of the Soviet Union in June 1941 had put an end to the collaboration between the two dictators which had followed upon the partition of eastern Europe between them; and the outcome of that conflict could not be foreseen. Churchill had pinned his hopes upon the belief that the United States would be drawn into the war as it had been in 1917 to prevent the domination of the continent and of the sea lanes by Germany. And indeed the United States was already moving from neutrality through non-belligerent assistance to ultimate participation. It was clear that for domestic political reasons, Roosevelt would require a statement of "war aims" that would appeal to his own people and the initiative for it came from him although the working papers were based upon a British draft. It was not a treaty and had no legal force. The great Bishop Stubbs wrote that the "whole of the Constitutional history of England is a commentary" on Magna Carta. It would be hard to say that the subsequent history of the world has been a commentary on the Atlantic Charter though one could list elements that correspond to its aspirations as well as others that fly in the face of them.

Given these contrasts what is my reason for putting these two documents together? My reason is to call attention to the fact that while the Atlantic Charter was intended in the first place to be applicable to a liberated Europe and ultimately more widely still - it contains the embryo of the United Nations and its associated bodies as well as of NATO - it was specifically an Anglo-American agreement. The process of negotiation revealed many differences between the outlook of what was still imperial Britain and the more thoroughgoing internationalist commitments of the United States. But it remains a document which it would be hard to imagine as the fruit of any possible relationship between the United States and another European country. It is easy to make fun of the common language - and indeed the two languages are drifting apart quite

fast in the study as well as the street - but can one imagine what would have happened if Roosevelt and Churchill had needed not only their advisers but interpreters?

I have never myself believed that in some mysterious way relations between Britain and the United States were found to become ever closer or that differences of an important kind have not always existed between them; indeed much of my own historical work has been directed towards exploring some of the critical points in that relationship.[3] Nevertheless it is also the case that the relationship is in the familiar phrase "special". If in the last resort Britain would seem to have no future as an independent nation-State which I do not for one moment believe, I think it would be the case that rather than be swallowed up in a European Federation the United Kingdom would find it easier to see itself becoming the fifty-first State of the American Union.

What I want to do in the present lecture is to pursue a two-fold argument. In the first place I want to show that within the broad context of relations between the United States and Europe, relations between the United States and the United Kingdom are of quite specific and singular importance. In the second place I wish to argue that the main reason for that greater intimacy is the common legal and constitutional inheritance of the two countries. Magna Carta is a part of the American heritage while the French Revolution's "Declaration of the Rights of Man and the Citizen" is not. The practices of the American courts are often widely different from those of either English or Scottish courts; a Presidential style constitution is different from a Parliamentary model - but the possibilities of understanding and even more important of co-operation are immeasurably enhanced by what is common to both systems.

I hasten to add that this view is by no means original. It would be particularly appropriate here to call in aid the most eminent of the several Scots who have held the great office of Lord High Chancellor of the United Kingdom, Viscount Haldane of Cloan.

In 1913, Haldane was invited to give the main address at the annual meeting of the American Bar Association, held that year at Montreal together with the Canadian Bar Association and representatives of the bar from the United Kingdom. Since the text is not easily come by perhaps I may be permitted to quote.[4] Lord Haldane pointed out the importance which the legal profession had at that time in all the three countries represented at the meeting, and how their future might be moulded by its members:

> "The United States and Canada and Great Britain together form a group which is unique," he declared, "unique because of its common inheritance in traditions, in surroundings, and in ideals, and nowhere is the character of this common inheritance more apparent than in the region of jurisprudence." The letter of the law might differ from country to country, he said, but the spirit was the same, and this might in due course lead to

relations between them of a closer kind than could be managed between "nations more isolated from each other and lacking our identity of history and spirit."
"Canada and Great Britain on the one hand and the United States on the other", he went on, "with their common language, their common interests and their common ends form something resembling a single society" which might find formal expression in treaties and agreements establishing "a true unison between sovereign states."

Such unison would not be attainable elsewhere since "the spirit of the jurisprudence which is ours, of the system which we apply to the regulation of human affairs in Canada, in the United States and in Great Britain alike is different from that which obtains in other countries."

Haldane went on to trace the development of the common law system and in deference to his hosts to trace the way in which its spirit had come to influence and modify the very different legal inheritance of the province of Quebec.

In another passage Haldane points out what we have come to see more clearly since our involvement with the European Courts at Strasbourg and Luxembourg, the very different make up of the legal profession on the Continent, where public policy has been less intimately connected with other branches of public life than in the common law countries. Because of the difference in tradition and spirit of the law said Haldane, "the vocation of lawyers has not, as on the Continent of Europe, been that of a segregated profession of interpreters; but a vocation which has placed him at the very heart of affairs."

It will be accepted that Haldane cannot be dismissed as someone ignorant of what he was speaking. He had after all been sent to Göttingen University in preference to that Scottish outpost, Balliol College, Oxford, before completing his University career at Edinburgh. Indeed in the remainder of the lecture Haldane showed his deep feeling for German as well as ancient philosophy leading him to hope that all mankind might develop through a common morality the ability to transcend its divisions. But that was for the future - for the moment it was the special opportunities open to the common law countries that concerned him - the wider perspectives of the Atlantic Charter were still remote.

On the purely legal side of the story not much needs to be added. Despite the falling off in the jurisdiction of the Privy Council in which Haldane played an important part, the Common law countries - Australia and New Zealand as well as Canada - still give rise to a cross-fertilization of remedies and interpretations - and British and American courts are still well aware of developments in each other's jurisprudence.[5] The American Bar Association still meets from time to time in London, and on the last occasion, I felt as a peer

of the realm a particular pleasure in sitting in Westminster Hall among many many lawyers from all over the United States gathering together where it all began.

Nor has the change in the composition of the American people affected this side of the relationship. Looking at it another way, compare the list of the signers to the Declaration of Independence with its familiar English and Scottish surnames and a recent list of members of the U.S. Supreme Court - Rehnquist, Stevens, O'Connor, Scalia, Kennedy, Souter, Thomas, Ginsburg, Breyer. We have the Irish, the Scandinavians the Germans and the Italians and disguised by an Anglo-Saxon surname one whose ancestors were not free migrants at all but African slaves brought by force to America's shores. Yet the law they profess is squarely within the common law tradition familiar to the Founding Fathers.

At this point it is possible that someone might ask about the Scottish contribution to this common legal tradition, given the importance of Scottish legal figures in the public life of the United Kingdom. All one can say is that the Founding Fathers do not seem to have regarded the Scottish legal system for all its manifest differences from the system prevailing in England and Wales as something they needed particularly to take into account. A principal reason may be that a good deal of change was introduced into the Scottish system in the early decades after the Union - change which assisted in enabling Scots to enter fully into the British commercial and imperial expansion of the period - their prime object in pressing for Union. It was only after the American Revolution that questions were raised in Scotland as to whether acceptance of English judgements had gone too far.[6] Scots certainly played a large part in the development of the colonial resistance which led to the independence of the United States, but their contribution did not reflect their own legal and constitutional experience.[7]

More significant even than the relations between the legal systems of the United States and Britain is the fact that despite the obvious differences apparent between them the Constitutional foundations of the two countries are directly related in a way which assists for most of the time in mutual understanding. The differences are easy enough to catalogue; a fairly rigid Constitution against one which is not so much unwritten as in a formal sense easy to modify; a federal system as against a unitary one; separation between the Executive and the Legislature against an Executive ultimately resting upon the confidence of the legislature; the presence of an hereditary element in the constitution of the United Kingdom with no such element in the United States, and so on.

Yet if we place the two systems in relation to constitutional systems outside the English-speaking world and particularly on the continent of Europe some basic similarities between them are at once apparent. In neither Britain nor the United States is there an abstraction called the State in whose name things are done, and whose agents claim special immunities; in both, the institutions of government are held to derive their authority from popular consent and to be

guarantors of the rights of the individual citizen or of voluntary associations between citizens; in both, the subordination of the military to the civil authority is axiomatic. Dialogue is easier because so much can be taken for granted.

The source of such similarities is obvious - the American Constitution evolved out of the background of a colonial society whose elites were imbued with what they believed to be the presuppositions of legitimate government on the British model. It was to redress their alleged violation that they ultimately opted for independence, even though an important element of natural rights doctrine that had by then come to affect their thinking.[8] Put more simply, Magna Carta was part of the American inheritance as much as of Britain's. The memorial at Runnymede was set there by the American Bar Association, not the Inns of Court.

Before seeing what became of Magna Carta on the other side of the Atlantic, let me acknowledge the fact that strictly-speaking Magna Carta is an English not a United Kingdom document, one of a number of such bargains between feudal sovereigns and their subjects to be found in Europe at that time. It was an issue of defending customary rights against the pretensions of monarchical absolutism, stimulated by the revived study of Roman Law.[9] No such Charter exists in the case of Scotland. It is true that in his capacity as an English baron, King Alexander of Scotland was a beneficiary of Magna Carta in being enabled to pursue his claims to the three border shires of Northumberland, Cumberland and Westmoreland. But this was merely an episode in the centuries-long interaction between the claim of English Kings to Suzerainty over Scotland and the more concrete problem of the absence of a clearly recognized border between the two countries.[10]

Indeed when in 1965, the English celebrated 750 years of Magna Carta, the Scots could only come up with the anniversary a few years later of the Declaration of Arbroath, an appeal by Scottish Barons to the Pope against the invasion by the English of Scottish rights; in the words of an eminent Scottish historian.

> "Legal technicalities (and Magna Carta is full of these) have never drawn upon themselves in Scotland the awed respect accorded to them in England. Englishmen being seldom oppressed except by fellow-Englishmen have reverenced the hoary legal apparatus that protected their civil liberty; Scotsmen being sometimes oppressed by Englishmen, have taken civil liberty for granted and have reverenced whatever pertained to national liberty."[11]

Of course there is a school of thought which regards the American War of Independence as the assertion of a national identity rather than as the outcome of debates about individual rights, and it may well be the case that the Scottish element in colonial elites contributed to this sense of a separate national identity. This view is fortified if we accept the contention that the revolution was in part

one embraced on religious grounds. Anglican measures of centralization were seen as portents of a threat from Rome itself and a link can be established between the activity of Scots, the Scotch Irish, the Irish and the Welsh in the dissenting politics of the U.K., with the opposition movements in the American colonies.[12]

In any event by the time the crisis came it was against the United Kingdom Parliament that the anger of the colonists was directed, and by and large the Scottish political class was no less devoted to the imperial cause than its English counterparts; the contrast with Ireland is striking: "Many influential Scots" writes an historian of the development of a sense of Britishness in that period, "seized on the American War as a means to underline their political reliability to London, deliberately contrasting their own ostentatious loyalty with American disobedience and with the anti-war activity of English radicals."[13]

By this time, Magna Carta represented an approach to English constitutionalism which had been superseded in Britain by the new accent on parliamentary sovereignty which was accepted by the overwhelming majority of the ruling elite - Whig and Tory. The interest aroused during the seventeenth century in medieval precedents for limiting the powers of the Executive was not maintained once the classes who had relished such researches had, through the Glorious Revolution and the Hanoverian accession, gained control of the essentials of government. All the legends of the origins of freedom among the Anglo-Saxons and the imposition upon them of the "Norman Yoke" were of interest primarily to those who found themselves outside the new constitutional consensus.

Magna Carta and all that its echo encapsulated was thus available to the Americans. Its evocation suggests that they too were victims of the same historical myths, which is not surprising since the whole debate rested on the same foundations. Thomas Jefferson for instance, late in life insisted upon the importance of young Americans studying English history, in order that they should be fortified against Tory beliefs in the virtue of strong executive government.[14] And here one can recall that in his 1774 pamphlet he had drawn a parallel between the oppressed colonists and the Anglo-Saxons who had emigrated of their own accord fiom the German forests enjoying free institutions until the Normans forced alien rule and feudal institutions upon them.[15]

But the importance of Magna Carta was even more to the fore when the Americans came to form and ratify their own Constitution.

One curious notion abroad in America was that the English Parliament had existed before Magna Carta. "What is their Magna Charter" asked Governor Johnston in the North Carolina ratifying convention, "It is only an Act of Parliament. Their Parliament can at any time alter the whole or part of it."[16] The whole argument in this and other ratifying conventions was concerned with the absence of a Bill of Rights in the proposed Constitution, and the fear that this would enable the Congress to claim the same kind of legislative sovereignty as the

British Parliament, whose rule the Americans had rejected. Speaking in the South Carolina Convention in May 1788, Patrick Dollard said of his constituents: "They say that they are by no means against vesting Congress with ample and sufficient powers but to make over to them or any set of men their birthright comprised in Magna Carta which this new Constitution absolutely does they never can agree to."[17]

The accent in the speeches of the opponents was upon the need to have something which the legislature could not alter, unlike the situation in England where "they talk as loudly of constitutional rights and privileges as they do here "but where" they have no written constitution." There the Common law and even Magna Carta and the Bill of Rights could be altered from year to year.[18] The supporters of the proposed new system such as the authors of the Federalist papers in New York approached the matter differently. In Paper LII of The Federalist; it is pointed out that the idea of a Representative body is that it should act instead of the entire body of the citizenry coming together as in the Republics of antiquity. A disputed question was how often the House of Representatives proposed under the new Constitution should have to be renewed by new elections. The way to settle the problem was to look at examples, of which the House of Commons in Great Britain was the most useful. But writes the author (Hamilton or possibly Madison), "the history of this branch of the English Constitution anterior to the date of Magna Carta is too obscure to yield instruction. The very existence ofit has been made a question among political antiquaries."[19] The obscure urge to see Parliament as antedating Magna Carta was clearly there. On the other hand the changes later on in England as to the frequency and longevity of Parliaments were obviously part of familiar history. As the American ratification debates show, the ability of Parliament to prolong its own life as exemplified in the Septennial Act of 1716 was much in the minds of the seekers after safeguards against Congressional power.[20]

We do not, I think, need to pursue further the justification for including Magna Carta in a discussion of the relationship between the United Kingdom and the United States; our interests are practical not antiquarian. We are, to summarize the argument so far, dealing with a single Constitutional tradition which bifurcated at the time of the American Revolution but whose essentials persist on both sides of the subsequent political divide. But while this fact may be recognized in practice by the legal profession it is not altogether clear that in recent years it has been fully understood by the two governments.

Anything which impedes mutual understanding is clearly more important to this country as much the weaker of the two than to the world's one "super-power". Even at the time of the Atlantic Charter Churchill was clearly the suppliant - not Roosevelt. For that reason trying to understand the American position must take priority.

It has been an axiom of American foreign policy since the time of the Marshall Plan fifty years ago that the United States should deal with "Europe" as a whole rather than with Britain or any other single European State, even if what was meant by "Europe" might change from time to time. At different junctures, the United States has sought different interlocutors in chief- for a time Germany appeared the most promising. But in the end it came back to what the United States wanted; a single voice for "Europe", someone who as the saying went could be called to the telephone in case of crisis. A United States of Europe would parallel the United States of America and Brussels function like Washington D.C. In pursuit of this objective, the United States went on using its economic, financial and diplomatic leverage to pressurise European nations, including the United Kingdom into a system of this kind. Like the authors of the Federalist, they knew where they wanted power to lie. Individuals who pointed out that some aspects of such a European Union might actually damage other interests dear to the United States were relegated to the fringe. [21]

What should have been of greater concern than possible divergences of interest and hence of policy was the fact that the single European voice whether of the former Communities or the current European Union would not and could not correspond to the single American voice arrived at through the mechanisms of the Federal Constitution. What was happening in Europe with American encouragement was the coming together of national bureaucracies into a Pan-European elite increasingly remote from the ordinary citizen and subject to no democratic checks. "L'Etat c'est moi" of Louis XIV has become "L'Etat c'est nous" of the German Chancellor and the French President. Nothing could be further in conception from the United States of America than the "United States of Europe". Yet U.S. strength has been exercised and may still be being exercised to pressure the United Kingdom to dispense with its parliamentary institutions and common law protection of the citizen, and accept to the full the agenda for the future as laid down in Brussels.

It must be admitted that the governments of the United Kingdom itself have until recently shown a similar lack of grasp of what is at stake. Most of the arguments about membership of the Communities and latterly the European Union up to and including the debate over the Treaty of Maastricht have concentrated on an assessment of potential economic gains and losses or upon the impact on government finance. It was only as the full implications of the surrender of law-making powers and of the rights of British Courts to give final interpretations of legal instruments became apparent, that questions began to be asked as to where this left the historic Constitution of the United Kingdom. Even then the movement of opinion was sluggish since the interests involved seemed to be of a purely economic and sectional nature with little direct impact upon most ordinary citizens - what is the sacrifice of our fishing industry or the environmental damage of 40 ton juggernauts compared with the great ideal of European harmony?

This year's intergovernmental Conference and the Amsterdam "summit" and Treaty have moved the argument further. At Maastricht it was agreed that matters of justice that is to say of individual liberties - were to be part of an intergovernmental "pillar" which would protect the position of our own laws and courts. It is now quite clear that for the Brussels machine, Maastricht was not a stopping place. Every effort is being made to transfer competence in such matters to the Commission and the European Court of Justice, and even Whitehall, so supine in the past, is showing signs of alarm.[22] You cannot marry English Common law or Scots law with their provisions for the protection of the citizen against overweening authority with continental legal systems based on the supremacy of the State. You cannot amalgamate trial by jury with the inquisitorial system, and habeas corpus has no place the other side of the Channel and North Sea. Article 39 of Magna Carta says it all, but the Charter does not form part of the acquis communautaire.

A similar indifference to the Common law safeguards for the individual is shown in the proposal now adopted by the government under pressure from a vociferous section of the legal profession to embody the European Convention of Human Rights into the national legal system. No evidence has been provided as to the extent to which human rights have been better protected in those countries which have already acted in this way, or why any lacunae that have been discovered in our own systems cannot be remedied by statute law. Is it suggested that other Common Law countries who not being members of the Council of Europe cannot be asked to incorporate the Convention offer less protection to their citizens or to foreigners within their jurisdiction than is available in continental Europe? If it is claimed that the real purpose is to save litigants the delays and expense of going to Strasbourg, why not take the simpler course of withdrawing from the Convention; it was originally intended to prevent the rise of new fascist regines not to regulate the conduct of established democracies.

One returns to the central point of this lecture, the United Kingdom and the United States whose institutions and underlying political and legal philosophy are part of a single whole are natural interlocutors when it comes to discussing successive challenges in world affairs. Even though Britain is no longer a world power it still has many links with the non-European world which give it scope for understanding the hopes and anxieties of the United States without the inward looking inhibitions of most continental European governments. If we are to seek inspiration in the Atlantic Charter as the designation of this series of lectures suggests that is where it points.

Even if the United States were to become disillusioned with its search for an alternative European partner, it would still not be easy to recreate the Churchill-Roosevelt partnership nor even the Thatcher-Reagan partnership in the final phase of the "Cold War". At least one can point out where the pitfalls are to be found. It is no longer the case that the British take the "special relationship" for granted or offend American sensitivities by such a presumption. What is important for political leaders in this country is to be on their guard against

apparent short cuts to understanding. One such short cut is to imagine that the political parties can be the vehicles for it. From Thomas Jefferson's point of view, "Whigs" and "Tories" were universal categories in terms of which both countries' institutions and policies could be categorized. That is no longer the case. The Republicans in the United States are not a transatlantic version of British Conservatives, still less are the Democrats in the United States, blood brothers of "new Labour". For U.K. citizens to engage in activities of a party kind in the United States is to compromise goodwill; nor conversely, in my view, have British parties much to gain from American example.

The real difficulties in any dialogue are likely to arise from changes in the American scene in recent years, some not altogether new but making in total for possible or even actual sourees of conflict. The most important of these is the decline in the power of the Executive in the face of the legislature. As the accent shifts from the global confrontation first with the Axis powers and then with the Soviet Union to a world in which economic considerations bulk larger and in which security is a matter of handling a variety of external threats rather than one major danger, Congress is bound to feel that it has the right to shape the country's priorities. When a foreign statesman in London has done the rounds of No 10, the F.C.O and the M.O.D, he has done his bit; the White House, the State Department and the Pentagon do not between them exhaust what needs to be done by someone coming to Washington.

One must therefore ask what are the particular consequences of Congress's new role in policy-making. The first and most obvious is that since Congressmen and Senators rely upon their local support for re-election not on national party machines the possible effect upon their own constituents is bound to be their first reaction to any proposal in the field of foreign affairs, or indeed in respect of defence appropriation without which foreign policy would be meaningless.

Less immediately obvious is the belief among Congressmen who are after all, primarily legislators, that foreign goals like domestic goals can best be achieved through legislation. In some contexts this is a truism. The United States can by law restrict access to its own products, or markets or financial resources subject only to treaty limitations freely entered into. What is relatively new is the belief that American law should be enforceable outside the territory of the United States. If American companies are to be limited in their activities in order to penalize a particular State or regime, foreign companies should, some congressmen believe, be liable to sanctions if they refuse to behave in the same way. Such claims to extra-territorial jurisdiction have caused friction and might do so again.

Finally there is the impact upon the latest as well as some earlier waves of migration in creating voting blocs which are, or are assumed to be, influenced in their voting behaviour by the policy of the United States towards their own or other countries and the regimes there in place. Such sensitivity is of course not confined to Congress and may affect the Executive branch as well. It has been a familiar, indeed at times exaggerated, complaint of the British foreign office in

respect of American policy in the Middle East. With the importance of election funding at all levels owing to the cost of modern methods of electioneering the possibility of influencing policy through the funding of candidates or parties has also come to acquire new importance.

Where ideology combines with intense concern for the fate of one's country of origin as in the case of the Cubans of Florida the mix is hard to ignore especially where the political parties find themselves evenly balanced.

From the point of view of this country now that it has shed imperial responsibilities, the main concern has been the perennial one of the Irish question. It is one of the paradoxes of American history that while the descendants of the Scots-Irish have played an important part in the building of the American nation - from Andrew Jackson to Woodrow Wilson - they have never swayed the politics of the United States in favour of the Protestants of Ulster. Like the immigrants from the main island itself they never formed a voting bloc. On the other hand the Catholic Irish early learned the political arts even though they had to wait for 1960 to see one of their number elected to the Presidency.

While in earlier years there was some American sympathy with Irish nationalism it has only been since the outbreak of political violence on a large scale in Northern heland that the United States has felt impelled to intervene in an active fashion. It has indeed in recent years been actively encouraged to do so both by the government of the Irish Republic and even the government of the United Kingdom.

Although the idea of external mediation has always figured in the thinking of would-be reformers of the international system, it has rarely proved successful. Cyprus comes to mind as an obvious example. But in any event the mediating individual or government must at least seem to be impartial; and clearly in Northern Ireland this is not the case. It is generally agreed that the history of Ireland is unfamiliar to the mass of an increasingly uninterested American electorate - the distribution of population in Ulster and its constitutional status are not widely understood and those who wish to depict the issue as one of a people struggling to be free of British military despotism, as portrayed by the Kennedy family have it all their own way. And even the American courts in extradition cases have too often taken the view that those who have sought refuge have done so as being subject to penalties for political action or even political views rather than as the murderers they so often are.

So long as the American government is willing to allow Mr Gerry Adams to collect money in the United States to finance the terrorist activities of Sinn Fein-IRA - what else can he need the money for? - the impediment to a fruitful collaboration between the United States and the United Kingdom are serious indeed. What would the United States say if we gave succour to the so-called militias or made heroes of the Oklahoma City bombers?

Dyed in the wool Atlanticists of whom I am one are having a hard time and can only hope that the present troubles will not persist. A different American President might feel able to dispense with the Kennedy support - the Kennedys themselves might, with a little more help from their drink-related problems succeed in finally discrediting themselves in the eyes of all respectable Americans. There might even be a settlement in Northern Ireland despite rather than because of American intervention.

The future is as always obscure, but the essentials of the case I have tried to make are unaffected even by serious divergences between the two governments over particular issues of policy, important to one, marginal to the other. For there are other things tending to bring them together. As there is dangerous pressure in both countries to lower defence expenditure their co-operation in the defence field remains significant. So too in the intelligence arena where it has long been of crucial importance. Without the support of the United States we would not have regained the Falklands. What were our European partners doing? In the Gulf War we mattered to the Americans. It therefore remains the case that a new Atlantic Charter like the original could only be the fruit of close association between the two major upholders of free institutions in the western world. To keep that relationship alive to reject the temptation of sinking Britain's identity in a so-called European Union, even if the Americans encourage us to give way to it, remains a central task of the government of the United Kingdom as it looks towards another century.

APPENDIX

The Atlantic Charter

Joint declaration of the President of the United States of America and the Prime Minister, Mr Churchill, representing His Majesty's Government in the United Kingdom, being met together, deem it right to make known certain common principles in the national policies of their respective countries on which they base their hopes for a better future for the world.

First, their countries seek no aggrandizement, territorial or other;

Second, they desire to see no territorial changes that do not accord with the freely expressed wishes of the peoples concerned;

Third, they respect the right of all peoples to choose the form of government under which they will live; and they wish to see sovereign rights and self-government restored to those who have been forcibly deprived of them;

Fourth, they will endeavour, with due respect for their existing obligations, to further the enjoyment by all States, great or small, victor or vanquished, of access, on equal terms, to the trade and to the raw materials of the world which are needed for their economic prosperity;

Fifth, they desire to bring about the fullest collaboration between all nations in the economic field with the object of securing, for all, improved labor standards, economic advancement and social security;

Sixth, after the final destruction of the Nazi tyranny, they hope to see established a peace which will afford to all nations the means of dwelling in safety within their own boundaries, and which will afford assurance that all men in all the lands may live out their lives in freedom from fear and want;

Seventh, such a peace should enable all men to traverse the high seas and oceans without hindrance;

Eighth, they believe that all of the nations of the world, for realistic as well as spiritual reasons must come to the abandonment of the use of force. Since no future peace can be maintained if land, sea or air armamemts continue to be employed by nations which threaten, or may threaten, agression outside of their frontiers, they believe, pending the establishment of a wider and permanent system of general security, that the disarmament of such nations is essential. They will likewise aid and encourage all other practicable measures which will lighten for peace-loving peoples the crushing burden of armaments.

Photographic reproduction of the text given in U.S. Department of State, *Cooperative War Effort*, Executive Agreement Series 236, Publication 1732 (1942) p.4.

NOTES

1. For an account of the genesis of the "Atlantic Charter", its drafting and the final text, see Sir Llewellyn Woodward, British Foreign Policy in the Second World War, Vol.II (London, 1971), pp.198 ff.
2. The Latin text can be found in Stubbs' Select Charters from the beginning to 1307, 9th ed. pp. 291ff.
3. See Max Beloff, The Great Powers, (London 1959), Part III: "America": The Intellectual in Politics: essay 15 "The Special Relationship: an Anglo-American Myth"; and "The End of the British Empire and the Assumption of World-Wide Commitments by the United States" in Roger Louis and Hedley Bull eds., The Special Relationship (Oxford, 1986).
4. Lord Haldane, : "Higher Nationality: A Study in Law and Ethics". Annual Report of the American Bar Association, 1913.
5. The correspondence between Oliver Wendell Holmes and Felix Frankfurter reveals their continued interest in legal developments in Britain and the contacts between the professions on both sides of the Atlantic. See R.M. Mennel and C.L. Compston eds. Holmes and Frankfurter: their correspondence 1912-1934. (University Press of New England, 1996).
6. See John W. Carrins, "Scottish Law, Scottish Lawyers and the Status of the Union" in John Robertson ed. A Union for Empire, Political Thought and the British Union of 1707, (Cambridge, 1995) and Colin Kidd "Sentiment, race and revival: Scottish identities in the aftermath of Enlightenment", Laurence Brockliss and David Eastwood eds., A Union of Multiple Identities: The British Isles c.1750 c.1850, (Manchester University Press, 1997).
7. Ned Landsman, "The Legacy of the British Union for the North American Colonies: Provincial Elites and the problems of the Imperial Union" in Robertson ed. op.cit.
8. This aspect of the matter is fully explored in David A. Richards Foundations of American Constitutionalism, (New York, Oxford University Press, 1989).
9. Holt op.cit., pp.26, 86–88.
10. For an outline of these issues and the relevant documents, see Frederick Madden and David Fieldhouse, The Empire of the Bretaignes, 1175–1688, (Westport Conn & London, 1985), pp.137–150.
11. Ranald Nicholson, "Magna Carta and the Declaration of Arbroath" University of Edinburgh Journal, XXII, 1965, p.141.
12. J.C.D. Clark, The Language of Liberty 1660–1832: Political Discourse and Social Dynamics in the Anglo-American World, (Cambridge, 1994), pp. 2–5.
13. Linda Colley, Britons, Forging the Nation 1707–1837 (New Haven & London, 1992), p.140.
14. Dumas Malone, Jefferson and His Time, Vol. VI, The Sage of Monticello (Boston Mass., 1981), pp.202–206.

15. For the Jefferson pamphlet see Max Beloff, ed. The Debate on the American Revolution, (London, 1949), pp.159–177.
16. Bernard Bailyn, ed. The Debate on the Constitution, Part II (New York, 1993), p.863.
17. Bailyn op.cit. Pp.592–3.
18. Speech by Mr McLaine in the North Carolina Convention ibid., pp. 861–2.
19. Max Beloff ed., The Federalist, (Oxford, Blackwell, 1948), p.270.
20. For the Septennial Act and the argument over its passage in the House of Lords, see David C. Douglas ed. English Historical Documents, Vol. X (London, 1957), pp.150–1.
21. For documentation of the argument over U.S. And British Policy towards "Europe" see Lord Beloff, Britain and European Union: Dialogue of the Deaf, (London, Macmillan, 1996).
22. For the moves towards bringing further matters within the jurisdiction of the Commission achieved at Amsterdam and planned for the future see Part II, Section 7 "Freedom, Security and Justice" in the Commission Document, "Agenda 2,000" of 16 July 1997. A further threat to Habeas Corpus is contained in the Proposal from the XXth Directorate General for a "European Corpus Juris" embodying a European Public Prosecutor on the continental model, against whose activities Habeas Corpus would not prevail. See Freedom Today, August 1997, p.4.
