



**ENLIGHTENMENT
AND
DISSENT**

No. 30

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MAGNA CARTA IN THE AGE OF REVOLUTION

H T Dickinson

The recent 800th anniversary of Magna Carta has inspired a most impressive range of publications, exhibitions and conferences across the world. A close examination of the charter of liberties accepted by King John in June 1215, however, does not seem to justify the excessive praise and attention that Magna Carta has received from historians, lawyers, politicians, and the general public on both sides of the Atlantic, and even much further afield. In 1215, Magna Carta was drawn up by critics of King John as a practical solution to a set of specific grievances that had alienated leading churchmen and barons. It was not a statement of fundamental law, support for the universal rights and liberties of all individuals, nor an attempt to produce a written constitution. The opponents of King John were essentially conservative, if not as reactionary as some historians have claimed.¹ Leading churchmen sought in chapter 1 of Magna Carta to preserve the liberties of the English church, but they wished to safeguard a very particular Christian church and had no desire to promote the cause of religious liberty or freedom of conscience in general.² The baronial opponents of King John wished to preserve a feudal system that had served their particular interests in the past and also endeavoured to resist the arbitrary innovations and expedients recently devised by the king. They wanted to defend customary practices not to establish new rights nor to introduce universal principles of liberty. A great many of the chapters in Magna Carta protected the particular privileges of feudal landowners. Even the chapters which sought to guarantee a man's liberties were probably meant to be interpreted in a restricted way. Rights, liberties and privileges granted to 'liber homo' (a free man) could be regarded as denying these benefits to the majority of the English people, who

¹ See, for example, Edward Jenks, 'The Myth of Magna Carta', *Independent Review*, 4 (1905), pp.260-73; and Sidney Painter, 'Magna Carta', *American Historical Review*, 53 (1947), pp.42-49.

² *Magna Carta and the rule of law*, ed. Daniel Barstow Magraw, Andrea Martinez and Roy E Brownell II (Chicago, 2014), pp.193-226.

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were non-free villeins in feudal England.³ When the villeins were granted protection in some parts of Magna Carta it was because they were valuable to their lords.⁴ The granting of the right of an accused person to be tried by his peers was very probably a privilege to be enjoyed only by the feudal elite. The charter could not have been meant to institute trials by jury for any accused person, whether landowner or villein, since the petty jury adjudicating trials did not exist as early as 1215.⁵ References to judging an accused person according to the 'law of the land' should not be read as supporting 'due process' in the modern sense of granting all accused persons a fair trial under the rule of law.⁶ Limited as the rights and liberties in Magna Carta may have been, King John had no intention of abiding by these concessions. Within ten weeks of accepting Magna Carta he had abjured it and he had even secured the support of Pope Innocent III, who not only annulled Magna Carta, but was ready to excommunicate anyone who endeavoured to enforce it.⁷ The civil war between the king and his leading opponents was resumed and Magna Carta seemed doomed to oblivion. To understand therefore why Magna Carta became the great charter of liberties celebrated in Britain and North America in the later eighteenth century, and why it is even more widely celebrated today, we need to appreciate how it was repeatedly confirmed and re-interpreted long after King John and his leading opponents had left the political stage.

I

³ Anthony Arlidge and Igor Judge, *Magna Carta uncovered* (Oxford, 2014), pp.45, 59, and 63.

⁴ William Sharp McKechnie, *Magna Carta: A commentary on the Great Charter of King John* (2nd edn., Glasgow, 1914), pp.118-19.

⁵ *Ibid.*, pp.134-38.

⁶ C H McIlwain, 'Due Process of Law in Magna Carta', *Columbia Law Review*, 14 (1914), pp.27-51.

⁷ *Magna Carta, religion and the rule of law*, ed. Robin Griffith-Jones and Mark Hill (Cambridge, 2015), pp.19-21; and J C Holt, *Magna Carta* (2nd edn., Cambridge, 1992), pp.378-81.

Confirming and re-interpreting Magna Carta from Henry III to Edward Coke

When King John died in 1216, he left his young son, Henry, as his heir. To win support for the accession of Henry III and to end the civil war, William Marshal, regent for the young king, supported by Cardinal Guala Bicchieri, the papal legate, issued a revised version of Magna Carta under his own seal in 1216 and again in 1217. On 11 February 1225, a revised and shortened version of Magna Carta was voluntarily confirmed by Henry III himself, in return for the agreement of leading subjects to support the raising of taxes on movable goods in order to meet the costs of the king's wars.⁸ It was to this version of Magna Carta, rather than that of 1215, that almost all later appeals were made. This charter removed the most objectionable restrictions that the 1215 Magna Carta had imposed on King John, including the former chapter 61 which had tried to give the rebellious barons a means of bringing force to bear on the king if he reneged on the concessions he had made. On the other hand, this version of Magna Carta was granted voluntarily, it was decreed that the liberties in it were to be granted in perpetuity, the bishops were empowered to excommunicate anyone who violated the charter, and any action contrary to the terms of the charter was to be regarded as invalid. The terms of the 1225 Magna Carta were not always observed and, when they were, they offered more to the magnates than to those below them. By the end of the thirteenth century, however, it had become accepted that the king should govern under the rule of law.⁹ Moreover, the English barons were expected to observe towards their feudal dependants the rights and liberties which the charter had granted to them.¹⁰ The king desired that 'all

⁸ Ibid., pp.393-96; and A Arlidge and I Judge, *Magna Carta uncovered*, pp. 89-102.

⁹ David Carpenter, *Magna Carta. With a new commentary* (London, 2015), pp.424-60.

¹⁰ Holt, *Magna Carta*, pp. 395-97; Helen Cam, *Magna Carta: event or document?* (London, 1965), pp.3-4, 6, 12, and 15; and Faith Thompson, *The first century of Magna Carta: why it persisted as a document* (Minneapolis, 1925), pp.6-9.

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the customs and liberties that we have granted to be observed towards our men, all men of our kingdom shall observe to their men'.¹¹

The 1225 version of Magna Carta was confirmed several times by Henry III and by his son, Edward I. On each occasion the confirmation was connected with the king's request for grants of revenue. It was the 1215 version of Magna Carta which had laid down that taxes should be raised only with the consent of the realm, but the English magnates believed that this was still valid after 1225. When Simon de Montfort led a baronial rebellion against Henry III he summoned a parliament at Westminster in 1265, at which it was complained that the king had not observed the terms of Magna Carta, despite confirming it in the past in return for taxation. To gain wider support for his reform proposals Montfort encouraged this parliament to confirm Magna Carta and he ensured it was widely distributed to shire courts and cathedrals.¹² By the end of the thirteenth century, it was becoming accepted that consent to taxation should be given by parliament. When Edward I tried to levy a tax without consent, in 1297, he faced a near revolt. He was compelled to agree that he would levy taxation only 'with the common consent of all the kingdom'.¹³ Later confirmations of Magna Carta also occurred when the king sought to secure parliament's support for the raising of taxes, a practice which helped to reinforce the conviction that parliamentary consent was needed for the raising of taxes.

Copies of the text of Magna Carta became increasingly widely distributed as it was repeatedly confirmed. When Magna Carta was confirmed in 1237, 1253, 1265 and 1297 it was sent to all sheriffs in the shire courts and all bishops in their cathedrals, where it was ordered to be read out twice a year. This was done in Latin and

¹¹ Cam, *Magna Carta: event or document?*, p.6.

¹² S T Ambler, 'Magna Carta: Its confirmation at Simon de Montfort's Parliament of 1265', *English Historical Review*, 130 (2015), pp.801-30.

¹³ David Carpenter, *Magna Carta. With a new commentary*, p.459.

French and probably in English.¹⁴ It was also accepted in 1297 as a statute of the realm approved by the recently created parliament summoned by Edward I.¹⁵ There is evidence therefore that it was already becoming known to men in all ranks of society.¹⁶ Later it was issued in the manuscript collection of statutes, the *Antiqua Statuta*,¹⁷ much of it was printed in the *Great Abridgement* of parliamentary statutes published in 1527,¹⁸ and, when the printed version of the *Statutes at Large* was first published in the eighteenth century, it appeared in both English and Latin versions. In all these cases it was placed first in the list of the recorded statutes of the English parliament.¹⁹ In 1301, Edward I agreed that any future parliamentary statute contrary to Magna Carta should be considered null and void. In 1368, parliament itself passed a law to the same effect, stating ‘That the Great Charter ... be holden and kept in all Points; and if any Statute be made to the contrary that shall be holden for none’.²⁰

Magna Carta grew in significance over the centuries for a variety of reasons. In the first place it was confirmed over forty times by successive kings and their parliaments, up to 1416.²¹ It was always granted in perpetuity and repeated efforts were made to ensure that

¹⁴ Ambler, ‘Magna Carta: Its confirmation at Simon de Montfort’s Parliament of 1265’, *English Historical Review*, 130 (2015), p.812.

¹⁵ Cam, *Magna Carta: event or document?*, pp.16-17; and Holt, *Magna Carta*, pp.400-01.

¹⁶ Carpenter, *Magna Carta. With a new commentary*, p.435.

¹⁷ J C Holt, ‘The Ancient Constitution of Medieval England’, in *The roots of liberty: Magna Carta, ancient constitution and the Anglo-American tradition of the rule of law*, ed. Ellis Sandoz (Indianapolis, 1993), p.50.

¹⁸ Faith Thompson, *Magna Carta: its role in the making of the English Constitution 1300-1629* (Minneapolis, 1948), p.149.

¹⁹ See, for example, *Statutes at Large*, ed. Owen Ruffhead (8 vols., London, 1768-70), I, pp.1-10.

²⁰ 42 *Edward III*, cap. 3 (1368). Quoted in Faith Thompson, ‘Parliamentary Confirmations of the Great Charter’, *American Historical Review*, 38 (1933), pp.669.

²¹ *Ibid.*, pp.659-72.

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the people were aware of its contents. Its significance was noted in legal texts, such as the *Mirror of Justices* (1285-90),²² and Sir Thomas Littleton's *Treatise on Tenures* (1481). It was produced in a French vernacular translation and subsequently in English.²³ Although Magna Carta was not confirmed by any monarch in the sixteenth century, its significance was still widely recognized. It was first printed in 1508 by Richard Pynson, the king's printer, and the first unabridged translation was printed by George Ferrers in 1534.²⁴ Matthew Paris's thirteenth-century chronicle, *Chronica Majora*, which provided inaccurate information on the contents of Magna Carta, had a considerable influence after it was first published in 1571. In the early seventeenth century, Edward Coke and John Selden, in particular, were misled by some of Matthew Paris's factual errors and misinterpretations of the charter, but this did not prevent them making considerable political capital out of them.²⁵ Detailed comments on Magna Carta were included in such printed chronicles as Raphael Holinshed's *Chronicles of England, Scotland and Ireland* (1577) and John Stow's *The Annales of England* (1584).²⁶

The growing influence of Magna Carta was promoted even more effectively by the frequent use made of it by law teachers in the English Inns of Court, who trained generations of law students and legal practitioners.²⁷ Texts taken from Magna Carta would be read out and then the reader would expound on it clause by clause, illustrating his propositions by appealing to real or imaginary cases. As a result, the words of the text became mere pegs on which to hang

²² Holt in *The roots of liberty*, ed. Sandoz, p.52.

²³ J C Holt, 'A Vernacular French Text of Magna Carta, 1215', *English Historical Review*, 89 (1974), pp.346-64.

²⁴ *Magna Carta: law, liberty, legacy*, ed. Claire Breay and Julian Harrison (London, 2015), p.107.

²⁵ Thompson, *Magna Carta: its role in the making of the English Constitution 1300-1629*, pp.161 and note.

²⁶ *Ibid.*, pp.162-64.

²⁷ *Selected readings and commentaries on Magna Carta 1400-1604*, ed. Sir John Baker, *Selden Society*, 132 (London, 2015).

whatever interpretation the reader chose to advance.²⁸ Because of this kind of training appeals were made to Magna Carta in a great many trials conducted in the common law courts by lawyers trained in these Inns of Court.²⁹ Appeals to it also appeared in many petitions presented by the laity to the crown and to parliament.³⁰ In the opinion of a great many judges and lawyers Magna Carta was increasingly regarded as a fundamental law, superior to many ordinary laws of the land.³¹ Lawyers practising in the common law courts sought to formulate legal arguments which would prevail in court and which would also become a precedent to be used in other cases. By using Magna Carta as a starting point in such endeavours the meaning of various chapters in the charter was transmuted by centuries of litigation and countless refinements of what was regarded as the legal cornerstone protecting the personal liberties of all subjects.³² The history of Magna Carta therefore became the history of how men looked at the law and at the political context in which the law operated. Magna Carta was sometimes seen as stating the law, but sometimes it was interpreted as the law that lawyers wanted it to be or that which they pretended it to be.³³ Moreover, by repeatedly recognizing Magna Carta as a particularly important parliamentary statute, both crown and parliament helped to increase the charter's importance. Its potency was further increased over the centuries as judges and lawyers cited, interpreted, misinterpreted and extended its original meaning.³⁴

²⁸ Ibid., pp. l-lix.

²⁹ Thompson, *Magna Carta: its role in the making of the English Constitution 1300-1629*, pp.167-96 and 268-93.

³⁰ Ibid., pp.10-16, and 33-67.

³¹ McIlwain, 'Magna Carta and the Common Law', in *Magna Carta: commemorative essays*, ed. Henry Elliot Malden (London, 1917), pp. 122-79.

³² John Phillip Reid, *Rule of law: the jurisprudence of liberty in the seventeenth and eighteenth Centuries* (De Kalb, ILL., 2004), p.14.

³³ Holt, *Magna Carta*, p.300.

³⁴ *The Great Charter: four essays on Magna Carta and the history of our liberty*, ed. S E Thorne, W H Dunham, P B Kurland and Sir Ivor

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As Magna Carta was repeatedly interpreted and re-interpreted (even mis-interpreted) the rights and liberties it included, originally conceived in 1215 as being primarily for the benefit of the barons of England, were increasingly seen as having been granted to the whole community of England. In statutes passed by parliament in 1331, 1350, 1354 and 1368 the restrictive term 'liber homo' was changed to refer to all men 'of whatever state or condition he may be in', and it was stated that no man could be condemned without being brought to answer a charge by due process of law, and no legal statute could be passed contrary to Magna Carta.³⁵ The statement in chapter 29 of the 1225 version of Magna Carta about the right of an accused person to be judged by his peers came to mean the right of all accused persons to trial by a jury of men drawn from the vicinity where the offence had taken place. The claim in the same chapter - that the accused should be judged according to the law of the land and that justice should not be sold, delayed or denied - came to be interpreted as the right of the accused to face 'due process'. The term 'due process' became the right of the accused to know the specific charge he faced, to undergo a speedy trial, to be faced in court by those who believed him guilty, to be able to challenge their testimony and to produce evidence in his defence, and to be found guilty only by an unanimous verdict of the jury in his trial.

Appeals to Magna Carta were not only made by lawyers in legal cases fought in the English courts of law. The rights, which the English people believed that they possessed because of Magna Carta, were used by them to justify some of their political actions and popular protests. As early as the middle decades of the thirteenth century knights and substantial freeholders joined in political action with magnates in efforts to force the king and his officials to uphold

Jennings (New York, 1965), p.26; and Max Radin, 'The Myth of Magna Carta', *Harvard Law Review*, 60 (1947), pp.1067-68.

³⁵ 5 *Edward III*, cap.1 (1331); 25 *Edward III*, stat.5, cap. 4 (1352); 28 *Edward III*, cap. 3 (1354); and 42 *Edward III*, caps 1 and 3 (1368). See *Statutes at Large*, ed. Ruffhead (New edn, London, 1768-70), I, pp.209, 262-63, 285, and 324.

the concessions granted in Magna Carta.³⁶ In 1509 Richard Empson and Edmund Dudley, highly unpopular ministers of Henry VII, and in 1529 Cardinal Thomas Wolsey, Henry VIII's chief minister, were charged by critics with violating Magna Carta by denying individuals the right to due process of law.³⁷ During the Reformation disputes in the 1530s appeals were made by the English clergy, supported by many in parliament, to chapter 1 of Magna Carta. They did this to safeguard the traditional rights and privileges of the English church in opposition to the religious changes being initiated by Henry VIII. Participants in the Pilgrimage of Grace in 1536 cited Magna Carta as a warrant for their rebellion against the king's decision to dissolve the monasteries in England.³⁸ In 1587, in *Cavendish's Case*, the judges of the Queen's Bench reminded Elizabeth I directly that Magna Carta limited her power. They cited in support of their judgment chapter 29 of the 1225 version of the great charter.³⁹

By the late sixteenth century it had become firmly established among the strongest supporters of the common law against the crown's prerogative courts that Magna Carta not only proclaimed the liberties of all the people, but also that the monarch and royal officials should never infringe these rights. In the early seventeenth century, with James I seeking to stretch the royal prerogative, it was increasingly asserted that Magna Carta restricted the authority of the king himself. It was claimed that Magna Carta obliged the king to observe the law of the land and hence any unlawful acts by his ministers and officials could be deemed to be invalid. Sir Edward

³⁶ J R Maddicott, 'Magna Carta and the Local Community', *Past and Present*, 102 (1984), pp.25-65; and David Carpenter, 'English Peasants in Politics, 1258-1267', *Past and Present*, 136 (1992), pp.3-42.

³⁷ Radin, 'The Myth of Magna Carta', *Harvard Law Review*, 60 (1947), p.1076.

³⁸ Thompson, *Magna Carta: its role in the making of the English Constitution 1300-1629*, pp.140-41.

³⁹ Radin, 'The Myth of Magna Carta', *Harvard Law Review*, 60 (1947), p.1077.

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Coke, despite holding several high appointments under the crown, began to claim that Magna Carta was not an ordinary statute, but was one of the country's fundamental laws which established that everyone, including the king, was subject to the law and that the king could not change the law without the consent of parliament.⁴⁰

The most famous and significant political and constitutional use made of Magna Carta occurred in the early seventeenth century when lawyers and members of the House of Commons repeatedly appealed to it in order to defend their views of the ancient constitution and the supreme authority of the common law against the attempts of the early Stuart monarchs to extend the prerogative powers of the crown.⁴¹ These critics of royal absolutism insisted that Magna Carta was 'a most august document and a sacrosanct anchor to English liberties'.⁴² In 1616, Sir Francis Ashley, a barrister of the Middle Temple, declared of Magna Carta that 'by force of this statute every free subject may have remedy for every wrong done to his person, lands, or goods ... this statute also prevents wrongs, for by virtue hereof, no man shall be punished before he be condemned, and no man shall be condemned before he be heard, and none shall

⁴⁰ *Magna Carta, religion and the rule of law*, ed. Griffith-Jones and Hill, pp.82-84; Thompson, *Magna Carta: its role in the making of the English Constitution 1300-1629*, pp.68-70; F M Powicke, 'Per judicium parium vel per legem terrae' in *Magna Carta: commemorative essays*, ed. Malden, pp.96-127; McIlwain, 'Due Process of Law in Magna Carta', *Columbia Law Review*, 14 (1914), pp.27-51; R V Turner, *Magna Carta: through the ages* (Harlow, 2003), p.3; Holt, *Magna Carta*, p.403; and *Magna Carta and its Modern Legacy*, ed. Robert Hazell and James Melton (New York, 2015), pp.85-86.

⁴¹ See, in particular, 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).

⁴² Henry Spelman, cited in Turner, *Magna Carta: through the ages*, p.146.

be heard but his just defence shall be allowed'.⁴³ Sir Edward Coke claimed, in the *Proeme* of his *Second part of the Institutes of the Laws of England*, that 'The highest and most binding laws are the statutes which are established by Parliament; and by the authority of that court it is enacted (only to shew their tender care of Magna Carta and Charta de Foresta) that if any statute be made contrary to the great charter, or the charter of the forest, that shall be holden for none; by which words all former statutes made against either of these charters are now repealed.'⁴⁴

In 1621 and again in 1624 the opponents of the royal prerogative in the House of Commons tried, though in vain, to have Magna Carta re-confirmed.⁴⁵ In the Five Knights' Case, in 1627, John Selden used chapter 29 of the 1225 version of Magna Carta to defend his client on the grounds that this knight had been arrested and imprisoned by royal authority, but not charged with any specific breach of the law of the land.⁴⁶ When Charles I secured the arrest of nine of his parliamentary critics in the House of Commons, in 1629, the lawyers for those arrested applied for a writ of habeas corpus, to ensure that they would be speedily brought to trial on some specific charge. In doing so, they cited Magna Carta to justify their appeal.⁴⁷ In 1637, John Hampden used chapters 12 and 14 of the 1215 version of Magna Carta to justify his resistance to paying the Ship Money Tax, which had not been approved by parliament.⁴⁸

Sir Edward Coke, the best legal mind of the time used Magna Carta to promote the independence of the judiciary, extend the notion of due legal process, curb the use of the crown's prerogative powers

⁴³ Quoted in Lord Parker of Waddington, *Magna Carta and the rule of law* (Jamestown, VA, 1965), p.9; and in *Selected readings and commentaries on Magna Carta*, ed. Sir John Baker, p.xvi.

⁴⁴ Quoted in *Selected readings and commentaries on Magna Carta*, ed. Baker, p.lxxvi note.

⁴⁵ Maurice Ashley, *Magna Carta in the seventeenth century* (Charlottesville, 1965), p.20.

⁴⁶ Turner, *Magna Carta: through the ages*, p.156.

⁴⁷ Arlidge and Judge, *Magna Carta uncovered*, p.137.

⁴⁸ Ibid.

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and advance the constitutional powers of the House of Commons. In the preface to his *Eighth Reports* (1611), Coke presented Magna Carta as the first surviving summary of English law in statutory form, but he believed that it embodied the ancient, immemorial English common law that had existed since long before the Norman Conquest of 1066. In his opinion it reinstated rights and liberties which had recently been discarded or contravened. Coke paid particular attention to chapter 29 of the 1225 version of Magna Carta and he strove to incorporate within it the claim that an accused person could apply for a writ of habeas corpus to ensure that he could know the offence for which he was charged and could be assured that he would face a fair trial and not simply be incarcerated without charge or trial.

Coke and some of his allies in parliament went much further than mounting a defence of due process in order to protect the civil liberties of the subject. They claimed that Magna Carta not only granted many civil liberties to the people of England, but also established that the monarch must govern through parliament and parliament could impose limits on the royal prerogative. These critics stressed that Magna Carta was the palladium of English liberty and a fundamental law in England's ancient constitution, and it was to be regarded as firmly placing the rule of law above the prerogative powers of the crown. They tied Magna Carta closely to their broad claim that parliament was the protector of the rule of law against the crown's efforts to create an absolute monarchy in England. Magna Carta was perceived as a symbol of earlier successful efforts to curb the power of the crown and as a form of constitutional contract between the monarch and the English people. In his *Second Institutes* Edward Coke assembled details of four centuries of English statutes and legal cases that he claimed were built upon the foundations of Magna Carta.⁴⁹ In the *Proeme* to this work, Coke claimed that Magna Carta was 'for the most part

⁴⁹ *The second part of the Institutes of the Lawes of England* was written by Coke in 1628, but was published posthumously in 1642. The references to the influence of Magna Carta appear in II, pp.745-914.

declaratory of the principall grounds of the fundamental law of *England*, and for the residue it is an additional to supply some defects of the Common Law'.⁵⁰ In such hands the scope of chapter 29, in particular, was now becoming almost limitless and, as a consequence, Magna Carta was becoming a central text in the disputes between king and parliament about the nature of the English constitution. While usually appealing to the 1225 version of Magna Carta, Coke used chapter 61 of the original 1215 version to justify the claim that the monarch could be resisted if he abused his powers or threatened to undermine the liberties of the subject.⁵¹

Coke also appealed to chapters 12 and 14 of the 1215 version of Magna Carta, in which King John had agreed that he would govern with the common counsel of the realm. John had promised to summon leading clergymen and greater tenants to give him advice, when seeking to raise taxation by any aid or scutage. Coke took this to mean that it was a promise to rule in future through some form of parliament.⁵² In *Dr Bonham's Case* (1610) Coke claimed that the authority of parliament itself was bounded by Magna Carta, though he did accept that statutes passed by parliament could alter the common law.⁵³ The *Case of Impositions* in 1610 was the first occasion when Magna Carta was cited in parliament to limit the powers of the crown. Coke contributed by insisting that the taking of

⁵⁰ *The roots of liberty*, ed. Sandoz, p.25.

⁵¹ Arlidge and Judge, *Magna Carta uncovered*, pp.77-78.

⁵² *Ibid.*, p.77.

⁵³ It is now accepted that Coke did not insist that Magna Carta was superior to statute law and hence that acts of parliament contrary to Magna Carta were null and void. Many later commentators, however, who were anxious to limit the authority of parliament, did believe that Coke had made this claim. See J R Silver, *Common law and liberal theory: Coke, Hobbes and the origins of American Constitutionalism* (Lawrence, KAN, 1992), pp.46-47; Glenn Burgess, *Absolute monarchy and the Stuart constitution* (New Haven, 1996), p.208; Jeffrey Goldsworthy, *The sovereignty of Parliament: history and philosophy* (Oxford, 1999), pp.112-14, 157, and 182 note 16.

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money from any subject required the consent of parliament.⁵⁴ When Charles I later attempted to impose a tax on the English people without the consent of parliament, Coke both composed and pushed through parliament the Petition of Right, in 1628, which explicitly conjoined habeas corpus with Magna Carta and he used Magna Carta to justify the claim that no taxation could be levied without the consent of parliament.⁵⁵

Charles I reluctantly acknowledged the Petition of Right, but he did not abandon his efforts to increase the prerogative powers of the crown. Coke and his allies failed to persuade the king to accept their view of the ancient constitution, the rule of law, and the parliamentary limits on the royal prerogative. The king ordered the seizure of Coke's papers before his *Second Institutes* could be published. It was only when the country was on the brink of civil war that this work was published. In 1641, the Long Parliament ordered the release and publication of Coke's papers and the *Second Institutes* were published the next year.⁵⁶ It took civil war in the 1640s and the Glorious Revolution of 1688-89 before Coke's legal and constitutional objectives began to be secured. By then, there was widespread support for Magna Carta, in both England and in her American colonies, but appeals were most often made to the Magna Carta that 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. It was now widely assumed that Magna Carta had guaranteed that justice would not be sold, delayed or denied, and that all accused persons must know the charge levelled against them, must be speedily brought to face their accusers and 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

⁵⁴ Cam, *Magna Carta: event or document?*, p.21.

⁵⁵ Thompson, *Magna Carta: its role in the making of the English Constitution 1300-1629*, pp.335-53.

⁵⁶ See the entry on Edward Coke by Allen D Boyer in the on-line *Oxford Dictionary of National Biography*, <http://www.oxforddnb.com/view/article/5826>; accessed 24 September 2015.

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 the royal prerogative under the rule of law and preventing parliament passing statutes contrary to fundamental laws of this kind.

II

William Blackstone, John Wilkes and Magna Carta

By the mid-eighteenth century most Britons took great pride in Britain's mixed and balanced constitution and believed that the British people were the freest subjects on earth. In praising the rights of Britons many politicians and commentators adopted a range of perspectives on the role that Magna Carta played in promoting these rights and liberties. Many paid greater attention to the political and constitutional gains made by the passing of such recent legislation as the Habeas Corpus Act of 1679, the Bill of Rights of 1689 and the Act of Settlement of 1701, than to the rights and liberties enshrined in Magna Carta. In early Hanoverian Britain some supporters of the Whig ascendancy in parliament claimed that the nation's liberties had been secured only as recently as 1688-89, when the Glorious Revolution had finally forced the crown to govern with the consent of parliament.⁵⁷ It was even suggested that Magna Carta had done little to protect the rights of the people because it had concentrated on protecting the interests of the English church and the privileges of a few great landowners.⁵⁸ Allan Ramsay claimed that Magna Carta had been an attempt by a small baronial elite to place chains on both the king and the common people, since the majority of the latter in 1215 had been slaves or villeins. Those who closely examined Magna Carta, he asserted 'can see that it is not at all in

⁵⁷ Isaac Kramnick, 'Augustan Politics and English Historiography: The Debate on the English Past, 1730-35', *History and Theory*, 6 (1967), pp.33-56. See also, H T Dickinson, 'The Eighteenth-Century Debate on the Glorious Revolution', *History*, 61 (1976), pp.28-45

⁵⁸ *London Journal*, 23 March 1734; and *Daily Gazetteer*, 2 August and 27 September 1735.

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favour of what is fondly called the natural liberty of mankind, and only calculated for the benefit of the few landed tyrants who extorted it from their weak sovereign'.⁵⁹ In an appendix to later editions of this pamphlet, Ramsay published and discussed the chapters in Magna Carta, claiming that it had been influenced by popery and concepts of arbitrary power.⁶⁰ The Swiss historian, Jean Louis De Lolme, in a widely read study of the English constitution, acknowledged that Magna Carta had originally been designed to benefit the feudal elite, rather than the poor majority of the English people and he admitted that there was 'an immense difference between the making of laws and the observing of them', but he believed that its benefits, particularly the right to trial by jury, had gradually been extended to the whole population and made the English people the freest on earth.⁶¹ A leading radical, John Cartwright, warned against inflating the importance of Magna Carta: 'That "Magna Charta"⁶² is the great foundation of the English constitution", I must positively deny. It is indeed a glorious member of the superstructure, but of itself would never have existed, had not the constitution already had a basis, and a firm one too'.⁶³ Francis Bissat, who wished to see a reform of the electoral system, criticized

⁵⁹ [Allan Ramsay,] *An essay on the constitution of England* (London, 1765), p.11. See also, John Millar, *An historical view of the English government* (London, 1787), p.298.

⁶⁰ This extensive appendix appears, separately paginated, on pages 1 to 42 in the second edition published in London in 1766 and on pages 93 to 127 in the third edition published in London in 1793.

⁶¹ Jean Louis De Lolme, *The constitution of England, or an account of the English government* (London, 1775), pp.30-31, 329-30, and 349-35.

⁶² In the eighteenth century the great charter was very frequently referred to as Magna Charta.

⁶³ John Cartwright, *American independence the interest and glory of Great Britain* (London, 1774), p.39. Cartwright later went on to assert that the provisions of Magna Carta were quite inadequate to protect the essential political liberties of the people. See, John Cartwright, *An appeal, civil and military, on the subject of the English Constitution* (2nd edn., London, 1799), pp.25, 30 and 38.

Magna Carta because ‘the liberi homines [free men], whose rights were established by magna charta were very few indeed, compared with the body of the people, who consisted of vilains [*sic*] or slaves, who were the property of the king, barons and prelates, and were transferred from one to another in the same manner as the soil they cultivated’.⁶⁴

Many commentators of a more conservative disposition insisted that the liberties of the subject and the rule of law were better protected by defending the rights of parliament than by appealing to Magna Carta. They asserted that the ultimate sovereign authority in the state resided in the combined legislature of King, Lords and Commons.⁶⁵ In Britain’s disputes with the American colonies Edmund Burke remained committed to upholding the sovereignty of the Westminster parliament, although he did praise Magna Carta because it had played a major role in reducing the unlimited prerogatives of the king, in acting as a foundation of English liberties, and in promoting the rule of law.⁶⁶ William Blackstone, the most able and influential legal scholar in later eighteenth-century Britain, was also quite prepared to praise the virtues of Magna Carta, but he put greater stress on the absolute, irresistible sovereign authority of the combined legislature of King, Lords and Commons. In 1759 Blackstone published an edition of Magna Carta in which he clearly differentiated between the original charter of 1215 and its subsequent re-issues.⁶⁷ Before the appearance of this edition there had been considerable confusion over the different versions of the charter. Although he ended this confusion, Blackstone advanced

⁶⁴ Francis Bissat, *Thoughts on equal representation* (London, 1783), p.4.

⁶⁵ Dickinson, ‘The Eighteenth-Century Debate on the Sovereignty of Parliament’, *Transactions of the Royal Historical Society*, 5th series, 26 (1976), pp.189-210.

⁶⁶ ‘Abridgment of English History’, in *The writings and speeches of Edmund Burke, I: The early Writings*, ed. T O McLoughlin and James T Boulton (Oxford, 1997), pp.543-50.

⁶⁷ William Blackstone, *The Great Charter and the Charter of the Forest* (Oxford, 1759).

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somewhat ambivalent views on whether Magna Carta was a threat or a support to the sovereign authority of the legislature. He claimed that the charter for the most part was declaratory of the common law of England and that its repeated confirmations by crown and parliament had fixed it upon an eternal basis.⁶⁸ He specifically approved of the decision of Edward I in 1297 that all acts contrary to its terms should be regarded as null and void.⁶⁹ On the other hand, in commenting upon chapter 61 of the original 1215 Magna Carta, by which the barons had attempted to create a means of compelling King John to observe the terms of the charter, Blackstone maintained that the monarch could not be constrained by such express provisions.⁷⁰ In his *Commentaries on the laws of England*, published between 1765 and 1769, Blackstone defended the rule of law in general and the specific rights and liberties enshrined in chapter 29 of the 1225 version of Magna Carta. He maintained that Magna Carta ‘protected every individual of the nation in the free enjoyment of his life, his liberty, and his property, unless declared to be forfeited by the judgment of his peers or the law of the land’.⁷¹ He expressly agreed with Sir Edward Coke in maintaining that, since ‘the law is in England the supreme arbiter of everyman’s life, liberty, and property, courts of justice must at all times be open to the subject, and the law be open to the subject, and the law be duly administered therein’.⁷² Nonetheless, he stressed, more explicitly than Coke and his early seventeenth-century allies had ever done, that absolute sovereignty lay with the combined Westminster legislature.⁷³ He hoped that parliament would always respect such aspects of the common law as were enshrined in Magna Carta, but he denied that there were any limits to what the Westminster parliament could enact

⁶⁸ Ibid., pp.vii and lxxiv.

⁶⁹ Ibid., p.lxiii.

⁷⁰ Ibid., p.lix.

⁷¹ William Blackstone, *Commentaries on the laws of England* (4 vols., Oxford, 1765-1769), IV, pp.423-24.

⁷² Ibid., I, p.137.

⁷³ Ibid., 1765-1769), I, pp.85, 137, 252, 387-89, 400; III, p.133; IV, p.416-20.

and he appeared to have reluctantly accepted that parliament could over-ride the terms of Magna Carta.⁷⁴ Blackstone's views on the sovereign authority of parliament were shared by a majority of the political elite in Britain.

There were, however, many critics of the British government at home and abroad during the politically unstable years following the accession of George III in 1760 and this gave a new lease of life to appeals to Magna Carta. The young king was soon creating ministerial instability and arousing fears for the independence of parliament and the liberties of the subject as he exploited the royal prerogative and crown patronage to put particularly loyal politicians in office and to rally support for them in both houses of parliament. The king's initiatives soon alarmed some leading politicians, who had become used to exercising power, but who now found themselves unpopular at court and out of office. The actions of his new ministers created greater alarm outside parliament and helped promote the growth of a popular radical movement encouraged by such political activists as John Wilkes and Christopher Wyvill and such radical theorists as John Cartwright and Granville Sharp.⁷⁵ They even helped to provoke popular disturbances against the tax policies adopted on both sides of the Atlantic. In Britain the cider tax of 1763 was seen as particularly oppressive as it fell heavily on a few

⁷⁴ J W Gough, *Fundamental law in English constitutional history* (Oxford, 1955), p.190.

⁷⁵ There is a huge literature on the political crises during the early years of the reign of George III and the rise of a popular and radical opposition seeking political changes. See, for example, John Brewer, *Party ideology and popular politics at the accession of George III* (Cambridge, 1976); John Brewer, 'English radicalism in the Age of George III', in *Three British revolutions: 1641, 1688, 1776*, ed. J G A Pocock (Princeton, NJ, 1980), pp.323-67; Ian R Christie, *Wilkes, Wyvill and reform: the Parliamentary reform movement in British politics 1760-1785* (London, 1962); H T Dickinson, *Liberty and property: political ideology in eighteenth-century Britain* (London, 1977), pp.195-231; and H T Dickinson, *The politics of the people in eighteenth-century Britain* (London, 1995), pp.221-54.

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counties in the south-west of England and its mode of collection allowed excise officers to demand access to the business premises of those involved in its production. One outspoken critic of the tax protested: 'The laws of *excise* have, by *freeborn Englishmen*, been always looked upon as the most grievous to the subject. They have been ever considered as *unconstitutional* – as an abridgment of *English Liberty* – as the most oppressive method of collecting taxes – as an infringement of *Magna Charta* – and as inventions of cruelty founded on the principles of the most *arbitrary* and tyrannical governments in *Europe*.'⁷⁶

Critics of George III and his ministers appealed, as Sir Edward Coke had done, to the ancient constitution and the common law, in general, and to the liberties enshrined in Magna Carta in particular. Several commentators expressly followed Coke in asserting that Magna Carta proclaimed some of the fundamental laws and liberties of the English people. The charter proved that the common law was superior to the royal prerogative and could limit what laws parliament could enact and what taxes it could raise.⁷⁷ One commentator asserted that Magna Carta was not simply the result of royal favour because 'as lord Coke in divers places asserts, and as is well known to every gentleman professing the law, this charter is, for the most part, only declaratory of the principal grounds of the fundamental laws and liberties of England. Not any new freedom is hereby granted, but a restitution of such as the subject lawfully had before, and to free them from the usurpations and incroachments of

⁷⁶ 'A Freeholder', *Gentleman's Magazine*, 34 (1764), p.115. Quoted in John Phillip Reid, *The ancient constitution and the origins of Anglo-American Liberty*, p.115. Italics in the original.

⁷⁷ *A letter to a Member of Parliament, wherein the power of the British legislature, and the case of the colonies, are briefly and impartially considered* (London, 1765), p.16; *The Court of Star Chamber, or seat of oppression* (London, 1768), pp.12-13, 16; *A history of Magna Carta* (London, 1769), pp.3-34; *Magna Charta, opposed to assumed privilege* (London, 1771), pp.203-04. Seven volumes of the *Reports* of Edward Coke were published in London in 1777.

every power whatever.⁷⁸ John Wilkes, the most famous critic of the government in the 1760s, claimed in the House of Commons that parliament possessed no authority to repeal any right granted by Magna Carta: ‘Can we, Sir, repeal Magna Charta? ... There are fundamental inalienable rights, land-marks of the constitution, which cannot be removed. The omnipotence of parliament therefore, which is contended for, seems to me a false and dangerous doctrine’.⁷⁹ Some critics of parliamentary sovereignty went further and insisted that any parliamentary statute made contrary to the terms of Magna Carta would be null and void.⁸⁰

Greater efforts were made than ever before by radical critics of the British government and parliament to reach out to the wider public, especially when their criticisms provoked the authorities into ordering their arrest or restricting what they regarded as their legitimate political rights. In doing so, explicit appeals were frequently made to Magna Carta and the charter was often used as a visual symbol or image to indicate to a wider public that the policies of the governing elite were posing a threat to the liberties of the British people. In November 1762, the editor of *The Monitor*, Arthur Beardmore, who was also a member of the Common Council of the City of London and a friend of John Wilkes, was arrested on a charge of publishing a seditious libel on the mother of King George III. In

⁷⁸ *British liberties, or the free-born subject's inheritance* (London, 1766), pp.21-22.

⁷⁹ *The parliamentary history of England*, ed. William Cobbett (36 vols., London, 1806-1820), XIX, 570 (10 December 1777). See also Lord Camden's speech in the House of Lords on 1 May 1770, in *ibid.*, XVI, p.962; and Granville Sharp, *An address to the people of England: being the protest of a private person against every suspension of the law that is liable to injure or endanger personal security* (London, 1778), p.68.

⁸⁰ *The rights and liberties of the people of England vindicated* (London, 1770?), p.46; Granville Sharp, *A declaration of the people's right to a share in the legislature, which is a fundamental principle of the British Constitution of State* (London, 1774), pp.200-205; and William King, *An essay on civil government* (London, 1776), p.45.

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his defence, he appealed to Magna Carta. He successfully sued the government for unlawful arrest and he eventually received one thousand pounds in damages, in May 1764. He later sat for a commemorative painting by Robert Edge Pine, portraying him at the moment of his arrest, teaching his young son the significance of chapter 29 of the 1225 version of Magna Carta. Engraved copies of this were produced and widely distributed.⁸¹ William Bingley, a supporter of John Wilkes, also appealed to Magna Carta to defend his rights and liberties. In his anti-government publication, the *North Briton*, a publication adopting the title of Wilkes's more famous periodical, he claimed that 'the plan of securing and guarding the liberties of the freest nation in the world, ... can only be obtained by the most wholesome laws, and the wisest regulations, built on the firm basis of Magna Charta, the great preserver of the lives, freedoms, and property of Englishmen'.⁸²

John Wilkes made frequent appeals to Magna Carta in his protests against the government's abuse of its powers in the 1760s. In 1763, he attacked the use of general warrants, which did not specify any particular offence under investigation. These were used in 1763 against Wilkes and several other printers who had produced publications critical of the government. The king and his ministers were particularly aggrieved at the fierce attack Wilkes had made on the Earl of Bute, the king's favourite, in his recent publication, number 45 of *The North Briton*. A general warrant was issued by the government in order that a trawl could be made through Wilkes's own premises and those of several printers in a determined and unscrupulous effort to find damning evidence against him that might

⁸¹ There is a copy of this in the Royal Collection at Windsor. It can be seen in *Magna Carta: law, liberty, legacy*, ed. Breyer and Harrison, p.174; and *Magna Carta: the foundation of freedom 1215-2015*, ed. Nicholas Vincent (2nd edn., London, 2015), pp.102-03.

⁸² *The North Briton* (London, 1771), I, i, App.54. This is not the publication produced earlier by John Wilkes, but a different publication under this name, compiled by William Bingley. Quoted in Anne Pallister, *Magna Carta: the heritage of liberty* (Oxford, 1971), p.61.

lead to a prosecution for seditious libel. Wilkes and his allies strenuously protested against this use of general warrants as contrary to the rights granted by Magna Carta.⁸³ Accused of seditious libel in the court of Common Pleas, Wilkes was discharged, on 6 May 1763, on the grounds that he was protected by parliamentary privilege as a member of the House of Commons. Believing that this might not be the end of the affair, Wilkes declared:

If the same persecution is after all to carry me before another court, I hope I shall find that the genuine spirit of MAGNA CHARTA, that glorious inheritance, that distinguishing characteristic of ENGLISHMEN, is as religiously revered THERE, as I know it is HERE, by the great personages, before whom I have now the happiness to stand; and ... that an independent *Jury* of FREE-BORN ENGLISHMEN will persist to determine my fate, as in conscience bound, upon constitutional principles, by a verdict of *Guilty* or *Not Guilty*. I ask no more at the hands of MY COUNTRYMEN.⁸⁴

Wilkes later took the issue of general warrants to court, where he was awarded damages against the Secretary of State of one thousand pounds. Despite this legal victory, enough damaging evidence had been found to blacken the moral reputation of Wilkes in the eyes of many politicians. This encouraged the House of Commons to resolve that the publication of number 45 of Wilkes's *North Briton* was a seditious libel. Large crowds, crying out 'Wilkes and Liberty', were heard in London in protest at the persecution of Wilkes and several

⁸³ *An enquiry into the doctrine, lately propagated, concerning libels, warrants, and the seizure of papers* (London, 1764), p.105; *A collection of the most valuable tracts, which appeared during the years 1763, 1764, and 1765, upon the subjects of general warrants ...* (London, 1766), p.29; and William Meredith, *A reply to the Defence of the Majority, on the question relating to General Warrants* (London, 1764).

⁸⁴ *St. James's Chronicle*, 7 May 1763, quoted in *The North Briton* (3 vols., London, 1763), III, p.176.

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printers and even in parliament there was serious concern about the widespread use of general warrants. Despite his popularity, Wilkes recognized that the ministerial majority in the House of Commons was determined to prosecute him for seditious libel. To avoid prosecution, Wilkes went temporarily into exile in France. The House of Commons then expelled him from the chamber and he was declared an outlaw.⁸⁵

On his return to England in 1768 Wilkes raised greater protests against the government's abuse of power because of its efforts to prevent him serving as the Member of Parliament for the county of Middlesex. George III and his ministers pressed the House of Commons into denying Wilkes his seat in the House, despite his victories in four successive elections held in Middlesex in 1768-69. In seeking to prove that he should be allowed to take his seat in the chamber, because he had been repeatedly and rightfully elected by the Middlesex voters, Wilkes appealed to 'the most wholesome laws ... built on the firm basis of Magna Carta, the great preserver of our lives, our freedom, and property'.⁸⁶ The cause of 'Wilkes and Liberty' attracted immense popular support outside parliament. He even won some support inside parliament. In May 1770, Earl Camden, recently Lord Chancellor, denounced the decision of the House of Commons to deny Wilkes his seat in parliament, despite his being chosen four times in quick succession by the electors of Middlesex in 1768-69. He claimed that the House was setting up its will against Magna Carta, the Bill of Rights and other fundamental laws of the constitution.⁸⁷

When Wilkes was elected once more for Middlesex in the general election of 1774 he began making repeated efforts to have his expulsion from the House of Commons in 1769 expunged from the records. In doing so, he insisted that the decision to deny him his seat, after he had secured a majority of the votes cast by the electors in four

⁸⁵ Peter D G Thomas, *John Wilkes: a friend to liberty* (Oxford, 1996), pp.35-56.

⁸⁶ Arlidge and Judge, *Magna Carta uncovered*, p.157.

⁸⁷ *The parliamentary history of England*, ed. Cobbett, XVI, p.962 (1 May 1770).

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elections in 1768-69, were a betrayal of rights granted by Magna Carta. On 22 February 1775, he informed the Speaker of the House of Commons:

The common right of the subject, Sir, was violated by the majority of the last House of Commons ... [Lord North] committed by that act high treason against Magna Charta. This House only, without the interference of the other parts of the legislature, took upon them to make the law. They adjudged me incapable of being elected a member to serve in that parliament, although I was qualified by the law of the land, ... I repeat it, Sir, this violence was a direct infringement of Magna Charta, high treason against the sacred charter of our liberties. The words, to which I allude, ought always to be written in letters of gold: "no freeman shall be disseized of his freehold, or liberties, or free customs, unless by the lawful judgment of his peers, or, by the law of the land". By the conduct of that majority, and of the noble lord, they assumed to themselves the power of making the law, and at the same moment invaded the rights of the people, the King, and the Lords. The two last tamely acquiesced in the exercise of a power, which had been in a great instance fatal to their predecessors, had put an end to their very existence;⁸⁸ but the people, Sir, and in particular the spirited freeholders of this county, whose ruling passion is the love of liberty, have not yet forgiven the attack on their rights. So dangerous a precedent of violence and injustice, which may in future times be cited and adopted by a despotic minister of the

⁸⁸ Here, Wilkes was alluding to the disputes leading to the civil war in the 1640s, which resulted in the execution of Charles I and the abolition of the House of Lords.

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crown, ought to be expunged from the Journals of this House.⁸⁹

John Wilkes did not re-enter parliament until 1774, but, meanwhile, he exploited his popularity and strong support in London to embarrass the king's ministers, to defend the privileges of the city and the liberties of the subject, and to promote his own career. He won a resounding success in a conflict in 1771 with Lord North's administration and a majority in the House of Commons in a dispute known as the Printer's Case.⁹⁰ Wilkes had long maintained that the people had a right to know what their elected representatives were saying in debates in the House of Commons. Several printers in the city of London filled columns in their newspapers with unofficial reports of these debates, despite the fact that many members of the House of Commons regarded this as a breach of their right to prohibit such reports. In early 1771, John Wilkes, now an alderman of the city, capitalized on a rash decision of the House of Commons to send its messengers to arrest several London printers. Wilkes encouraged his aldermen colleagues to respond by arresting these messengers and charging them with attempting unlawful arrests. The House of Commons responded by arresting Lord Mayor Brass Crosby and Alderman Richard Oliver and sending them to the Tower of London. Wilkes soon rallied massive support in London and considerable support in the House of Commons to attack this decision. Large crowds surrounded parliament in defence of the liberty of the press. Crosby and Oliver were soon released when parliament was prorogued. Wilkes had helped to out-manoeuvre the House of Commons and to humiliate the king's ministers. London newspapers began to report parliamentary debates in the House of Commons in greater detail than ever before and the House abandoned its efforts to keep its debates secret from the electorate and the wider public. During this crisis repeated references were made to Magna Carta and

⁸⁹ *The parliamentary history of England*, ed. Cobbett, XVII, pp.362-63; and the *Political Register*, V (1775), p.218.

⁹⁰ P D G Thomas, 'John Wilkes and the Freedom of the Press (1771)', *Bulletin of the Institute of Historical Research*, 33 (1960), pp.86-98; and Thomas, *John Wilkes: a friend to liberty*, pp.125-40.

especially to the due legal process supposedly enshrined in chapter 29 of the 1225 version of the charter. In his legal defence of the city's aldermen, John Glynn attacked the privileges claimed by the House of Commons: 'Magna Charta declares against them all in express Terms, when it declares against all discretionary powers, and establishes the trial by Equals as the basis of liberty.'⁹¹ In the House of Commons, John Sawbridge, a London Alderman, protested that the Speaker's warrant for the arrest of the London printers was unlawful according to chapter 29 of Magna Carta.⁹² Joseph Mawbey, Member of Parliament for Southwark, pointed out the danger of the House of Commons assuming both a legislative and a judicial role and warned that its denial of trial by jury was contrary to the rights granted by Magna Carta.⁹³ Isaac Barré, an opposition member, informed the House of Commons: 'It has been proved to a demonstration, that your claim of privilege was meant as a bulwark against the encroachment of the crown, and not as a check upon your constituents. It has been clearly shewn [*sic*] that you have acted contrary to Magna Charta, and that the [London] magistrates accused have adhered to the law of the land.'⁹⁴

John Wilkes was also a master of the art of publicizing his activities, defending his political principles, and promoting his own career by the use of visual images.⁹⁵ These images often made use of Magna Carta as a symbol of Wilkes's commitment to the liberties of the subject. Robert Edge Pine produced an oil painting of Wilkes in 1764, which showed him with a scroll of Magna Carta on his

⁹¹ *Magna Carta, opposed to assumed privilege* (London, 1771), p.76.

⁹² *Ibid.*, p.37.

⁹³ *A collection of speeches and writings on the commitment of the Lord-Mayor to the Tower, &c* (New York, 1771), p.19.

⁹⁴ *The parliamentary history of England*, ed, Cobbett, XVII, p.150 (25 March 1771).

⁹⁵ See, for example, John Brewer, 'The Number 45: A Wilkite Political Symbol', in *England's rise to greatness, 1660-1763*, ed. Stephen R Baxter (London, 1983), pp.349-80.

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desk.⁹⁶ This was re-produced as a widely distributed engraving.⁹⁷ The same occurred when Wilkes was painted and then engraved in 1775, wearing the robes of Lord Mayor of London and holding Magna Carta in his hand. The head and shoulders of Wilkes from the painting by Pine, with a scroll underneath labelled Magna Carta, appeared on a porcelain tea pot.⁹⁸ A porcelain figurine of Wilkes was produced by Josiah Wedgwood in about 1769, with a well-dressed Wilkes standing next to scrolls entitled Magna Carta and the Bill of Rights.⁹⁹ Magna Carta was used in visual propaganda as a potent political symbol by other critics of the government. It was shown being endangered by the actions of George III and his ministers in such satiric engravings as *Samson Pulling down the Pillars* (1767), and used by Wilkes's ally, John Almon, as an illustration to his periodical, the *Political Register* in 1773, and in *An Emblematic Pile* (1774) and *The Political Cartoon for the Year 1775*.¹⁰⁰

III

The Irish Patriots and Magna Carta

The prejudices of George III and the policies of his ministers created opposition on constitutional grounds in Ireland as well as in Britain. There, Irish patriots, particularly in the Irish House of Commons, waged a long campaign to free the Irish parliament from its subordination to English ministers and the Westminster parliament. The king and his ministers in England controlled appointments to the Irish executive, could amend or reject any legislative proposal put

⁹⁶ An illustration of this can be seen in *Magna Carta: law, liberty, legacy*, ed. Breay and Harrison, p.170.

⁹⁷ See *Magna Carta: the foundations of freedom, 1215-2015*, ed. Vincent, p.117.

⁹⁸ This can be seen in *Magna Carta: law, liberty, legacy*, ed. Claire Breay and Julian Harrison, p.173.

⁹⁹ *Ibid.*, p.172.

¹⁰⁰ These prints can all be found on the Collection on-line website of the British Museum at: http://www.britishmuseum.org/research/collection_online/search.aspx; accessed 28 Sept. 2015.

forward by the Irish parliament, and could pass legislative acts (though not taxes) effective in Ireland if Ireland was specifically mentioned in a Westminster statute. This powerful interference in Irish affairs meant that Ireland was being treated as a virtual colony; a situation increasingly resented by a growing number of Irish politicians by the mid-eighteenth century. These Irish patriots protested that Ireland should be regarded as a separate, though sister, kingdom, which happened to have the same king as England and Scotland.

England's right to dominate the internal political life of Ireland, enshrined in Poyning's Law passed by the Irish parliament in 1494 and in the Irish Declaratory Act passed by the Westminster parliament in 1720, rested on the claim that Ireland had been conquered by English forces in the late twelfth century and reconquered several times since then. In the early seventeenth century, Sir Edward Coke, that great opponent of the royal prerogative, had asserted in *Calvin's Case* (1608) that the Irish were neither full subjects of King James I nor were they aliens, but rather denizens who had their own laws, but were not entirely free of English control.¹⁰¹ He accepted that Ireland was a conquered country and that the English monarch was able to introduce English laws and customs there. Having established a parliament in Ireland, the English monarch could then govern Ireland, but only with the consent of that parliament. He reluctantly admitted however that Poyning's Law allowed the English Privy Council to amend or veto Irish legislation and that the Westminster parliament could pass laws that applied to Ireland.¹⁰² In the mid-eighteenth century, Sir William Blackstone also claimed that Ireland was a conquered country and

¹⁰¹ Elizabeth F Cohen, 'Jus Tempus in the Magna Carta: The Sovereignty of Time in Modern Politics and Citizenship', *Political Science and Politics*, 43 (2010), pp.463-66.

¹⁰² D J Hulsebosch, 'The Ancient Constitution and the Expanding Empire: Sir Edward Coke's British Jurisprudence', *Law and History Review*, 21 (2003), pp.462-63; and Barbara A Black, 'The Constitution of Empire: The Case for the Colonists', *University of Pennsylvania Law Review*, 124 (1976), pp.1177-87.

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therefore the Irish parliament was not independent of either the English government or the Westminster parliament. He stated quite bluntly that:

The inhabitants of Ireland are, for the most part, descended from the English, who planted it as a kind of colony after the conquest of it by king Henry the second, at which time they carried the English laws with them. And as Ireland, thus conquered, planted, and governed, still continues in a state of dependence, it must necessarily confirm to, and be obliged by such laws as the superior state thinks proper to prescribe.¹⁰³

This imperial stance had long been resented in Ireland by those patriots who regarded Ireland as a separate country sharing the same monarch with England. In mounting their opposition to England's domination of Irish politics, they often appealed to Magna Carta since this charter of liberties had been granted to Ireland during William Marshal's regency for the young Henry III. As early as 1643, Patrick Darcy had maintained that the Irish were a free people, who had voluntarily adopted the laws of England, but possessed their own parliament, which could freely enact new laws.¹⁰⁴ In December 1697, Bishop William King had commented: 'I think that the Magna Charta established the liberty of the subject and that it fundamentally consists in the choosing our own representatives and to be governed by laws of our own choosing'. He went on to request the repeal of Poyning's Law.¹⁰⁵ The claim that Ireland had been granted the same rights and liberties enshrined in Magna Carta as had England was used by William Molyneux to mount the most effective argument that Ireland was a separate kingdom and not a colony. He did so in his pamphlet, *The Case of Ireland being bound by Acts of Parliament in England, Stated*, published in London in 1698 and reprinted nine times in Ireland during the eighteenth century. Referring to Magna

¹⁰³ Blackstone, *Commentaries on the laws of England*, I, p.99.

¹⁰⁴ *An Argument delivered by Patrick Darcy Esquire* (Waterford, 1643).

¹⁰⁵ Philip O'Regan, *Archbishop William King of Dublin (1650-1729) and the Constitution in Church and State* (Dublin, 2000), p.91.

Carta, Molyneux asserted: 'Here we have a free Grant of all the Liberties of England to the People of Ireland'.¹⁰⁶

Charles Lucas, the leading Irish patriot in the middle decades of the eighteenth century also used Magna Carta in his strenuous efforts to resist Britain's domination of Irish politics and to stress that Ireland deserved, on the basis of the charter, to have its own independent parliament. In 1744 he declared that 'MAGNA CHARTA, a great *charter of rights and liberties*, was granted to the *whole [Irish] nation*, agreeable to that of *England*, after whose manner, for the further security of the *rights and liberties* of the *whole*, PARLIAMENTS were instituted, wherein the *people* gave their suffrages, by representatives appointed among themselves, by *free and uncorrupted elections*'.¹⁰⁷ Strongly influenced by the British critics of the policies of the Westminster administrations early in the reign of George III and even more influenced by the resistance being mounted to British interference in their internal affairs by the American colonists,¹⁰⁸ the Irish patriots mounted a powerful and eventually a successful effort to secure legislative independence for the Irish parliament. Though focusing on the English constitution, Francis Stoughton Sullivan undoubtedly had Ireland in mind too when he stressed, in the 1770s, that the rights set out in Magna Carta applied to all the king's subjects and that this charter established that there could be no taxes imposed on the people without the consent of parliament.¹⁰⁹ Charles Francis

¹⁰⁶ William Molyneux, *The case of Ireland being bound by Acts of Parliament in England, Stated* (London, 1770 edn), p.36.

¹⁰⁷ Charles Lucas, *Divelina Libera: An apology for the civil rights and liberties of the Commons and citizens of Dublin* (Dublin, 1744), pp. 10-11.

¹⁰⁸ See, Victor Morley, *Irish opinion and the American Revolution 1760-1783* (Cambridge, 2002); and Martyn J Powell, *Britain and Ireland in the eighteenth-century crisis of empire* (Basingstoke, 2003).

¹⁰⁹ Francis Stoughton Sullivan, *An historical treatise on the feudal law and the constitution and laws of England, with a commentary on Magna Carta* (London, 1772), pp.192, 400; and Francis Stoughton

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Sheridan claimed that the authority of the Westminster parliament was constitutionally limited by the fundamental laws of Ireland, which included Magna Carta.¹¹⁰ Hervey Redmond Morres maintained that Poyning's Law was contrary to the rights granted to Ireland by Magna Carta.¹¹¹ In England, the reformer, Granville Sharp, claimed that Magna Carta had granted English rights and liberties to the Irish.¹¹² Edmund Burke, in a speech advocating conciliation with the American colonies, was uncertain when a parliament was established in England, but claimed that, whenever that was, such a legislature was instantly transmitted to Ireland. Moreover, England had not kept the benefits of Magna Carta to itself, but had extended the same rights and liberties to Ireland. Unfortunately, these rights had not been extended to all Ireland, that is, not to the native Gaelic Irish, and hence Ireland had not been given a fully independent parliament. The result had been continuous difficulties for the English in their efforts to govern Ireland.¹¹³

Henry Grattan, the leading Irish patriot in the Dublin House of Commons, led a fierce, and eventually successful campaign to secure legislative independence for the Irish parliament. His speeches had a profound effect on Irish political opinion in parliament and among the general public. In them, Grattan made repeated claims that the people of Ireland had the right to enjoy the same liberties as the

Sullivan, *Lectures on the constitution and laws of England* (London, 1776), pp. xv, 154.

¹¹⁰ Charles Francis Sheridan, *Observations on the doctrine laid down by Sir William Blackstone, respecting the extent of the power of the British parliament, particularly with relation to Ireland* (London, 1779), pp.6-7.

¹¹¹ Hervey Redmond Morres, *Plain reasons for new-modelling Poyning's Law* (Dublin, 1782), pp.6-7.

¹¹² Granville Sharp, *A Declaration of the people's natural right to a share in the legislature* (London, 1774), pp.97, note 25 and 100.

¹¹³ 'Speech on Conciliation with America', 22 March 1775, in *The writings and Speeches of Edmund Burke, Vol. III: Party, parliament, and the American War 1774-1780*, ed. Warren M Elofson and John A Woods (Oxford, 1996), pp.139-40.

English. In his influential speech, on 19 February 1782, he made frequent references to Ireland's rights under her own Magna Carta. He insisted that 'We cannot allow England to plead her Magna Charta against ... the Magna Charta of Ireland'. Because Ireland possessed its own Magna Carta, taxation by consent, due legal process, and trial by jury were all rights which should be enjoyed by the Irish. The grant of Magna Carta to Ireland meant no Westminster statute could have force in Ireland and the Irish people should be subject only to those laws passed by the Dublin parliament.¹¹⁴ Grattan wanted the Westminster parliament to repeal both Poyning's Law and the Irish Declaratory Act of 1720, but he did not want the complete separation of Ireland from Britain. In April 1782, when proposing an amendment to the address to His Majesty, Grattan stated what he thought the relationship should be between Ireland and England:

This Nation is connected with England, not by Allegiance only, but by Liberty. The Crown is one great point of Union, but Magna Charta is a greater. We could get a King anywhere, but England is the only country where we could get a Constitution. We are not united with England, as Judge Blackstone has foolishly said, by Conquest, but by Charter. Ireland has British privileges, and is by them connected with Britain. Both countries are united in Liberty.¹¹⁵

Facing a war with the rebellious American colonies, the Westminster government and parliament decided they could not resist the protest movement of the Irish patriots, particularly as the largest armed force in Ireland, the Volunteers, had rallied in support of Grattan's cause. The British response was to repeal both Poyning's Law and the Irish Declaratory Act of 1720. Henry Flood, Grattan's rival for the leadership of the Irish Patriots, was not satisfied with these gains. He pressed the Westminster government and parliament

¹¹⁴ Grattan's speech in *Ireland in the age of revolution, 1760-1805*, ed. Harry T Dickinson (6 vols., London, 2013), II, pp.210-13.

¹¹⁵ John Lewis De Lolme, *The British Empire in Europe; part the first* (Dublin, 1787), p.73.

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to pass a Renunciation Act, explicitly denying that the Westminster parliament had any legitimate constitutional right to pass laws affecting internal Irish affairs. In advancing this demand in the Irish House of Commons, on 14 June 1782, he claimed that Magna Carta was an act by King John renouncing his abuse of power and recognizing the rights of his subjects. Westminster should offer a similar act of renunciation.¹¹⁶ The Westminster government and parliament again gave way, in 1783. The Irish Patriots had undoubtedly won considerable political concessions for the propertied men among the Episcopalian Protestant community in Ireland. They had achieved little for the Catholic majority in Ireland, except for the relaxation of some of the penal laws that restricted their social and economic activities. There was a minority among the Irish Patriots, however, who wanted to extend political rights to the Catholic majority. In advancing this argument, they too were ready to appeal to Magna Carta. In June 1784, the Loughgall Volunteers, a mainly Protestant body, resolved: 'That rejoicing in the late relaxation of the penal laws against our Roman Catholic brethren, and firmly persuaded that the descendants of those brave Irishmen who obtained the Magna Charta of this long oppressed kingdom, can never prove inimical to her Liberties, we most cordially invite the Roman Catholics ... to flock to the standard and strengthen the ranks of the Loughgall Volunteers.'¹¹⁷ Few Irish Protestants supported such a policy at this time, but there were Catholics who took advantage of the point made here. When Richard Woodward, the Protestant Bishop of Cloyne claimed that Roman Catholics were unfit for liberty and that only members of the Protestant Episcopalian Church of Ireland could be considered as loyal supporters of the constitution in Ireland, invoking the first chapter of Magna Carta in his defence of the liberties of the established church, Samuel Barber responded by

¹¹⁶ Flood's speech in *Ireland in the age of revolution, 1760-1805*, ed. Harry T Dickinson, II, p.241.

¹¹⁷ *Peep O'Day Boys and Defenders: selected documents on disturbances in County Armagh, 1784-1796*, ed. David W Miller (Belfast, 1990), p.16.

HT Dickinson

asking ‘who obtained this great charter! Was it not Roman Catholics’.¹¹⁸

IV

Magna Carta in the American Revolution

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 by Edward Coke and his allies in opposition to the absolute authority claimed by the Stuart monarchs of the early seventeenth century. 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

¹¹⁸ Samuel Barber, *Remarks on a pamphlet, entitled the present state of the Church of Ireland, by Richard Lord Bishop of Cloyne* (Dublin, 1787), p.17. As early as 1771, James Curry, in *Observations on the Popery laws* (Dublin), p.33, had asserted: ‘Magna Charta itself ... and the great sanctions of the British constitution, were fought for, and obtained by our Popish ancestors’. The same point was made later by Theobald McKenna, *Political essays relative to the affairs of Ireland; in 1791, 1792 and 1793* (London, 1794), p.33; Patrick Lattin, *The case of Ireland re-considered* (Dublin, 1799), p.47; and *Proofs rise on proofs, that the Union is totally incompatible with the rights of the ancient, self-legislative, and independent kingdom of Ireland* (Dublin, 1799), p.19.

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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'.¹¹⁹ Similar rights were granted to many other colonies in America, from Massachusetts in 1629 to Georgia in 1732.¹²⁰

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.¹²¹ 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.¹²² 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

¹¹⁹ *The federal and state constitutions*, ed. Francis N Thorpe (7 vols., Washington DC, 1909), VII, p.3788; and A E Dick Howard, *The road from Runnymede: Magna Carta and constitutionalism in America* (Charlottesville, VA, 1968), pp.15, 19.

¹²⁰ Dick Howard, *The road from Runnymede*, p.5.

¹²¹ *Ibid.*, p.54; and H D Hazeltine, 'The Influence of Magna Carta on American Constitutional Development', *Columbia Law Review*, 17 (1917), p.12.

¹²² Dick Howard, *The road from Runnymede*, pp.37-48.

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 privilege of liberty and property: being the birth-right of the free-born subjects of England*.¹²³ 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'.¹²⁴ 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 charter.¹²⁵ Thomas Jefferson also made the same point.¹²⁶ 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

¹²³ Ibid., pp.213-14; and *Magna Carta and the rule of law*, ed. Magraw et al., p.160.

¹²⁴ Stephen Hopkins, *The rights of the Colonies examined* (Providence, RI, 1765), p.5.

¹²⁵ 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.

¹²⁶ Stanley R Hauer, 'Thomas Jefferson and the Anglo-Saxon Language', *Publications of the Modern Language Association*, 98 (183), pp.879-98.

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lived under the British constitution, whose ‘constitutional laws are comprised in *Magna-Charta*, 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.’¹²⁷

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 Westminster executive and the Westminster parliament, many politicians in Britain, particularly 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*.¹²⁸ As we have seen, 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.¹²⁹ Even Edmund Burke, a politician very anxious to conciliate the American colonies, could never surrender his conviction that the British legislature was the

¹²⁷ John Tucker, *A sermon preached at Eventbridge [Massachusetts], before his Excellency Thomas Hutchinson, Esq, Governor* (Boston, 1771), p.17.

¹²⁸ Dickinson, ‘The Eighteenth Century Debate on the Sovereignty of Parliament’ *Transactions of the Royal Historical Society*, 5th series, 26 (1976), pp.189-210.

¹²⁹ Blackstone, *Commentaries on the laws of England*, I, p.49.

supreme authority in America as it was in Britain.¹³⁰ 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.¹³¹ 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 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 so the latter could not appeal to Magna Carta to resist the power of the former: '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'.¹³²

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

¹³⁰ Harry T Dickinson, 'America', in *The Cambridge Companion to Edmund Burke*, ed. D W Dwan and C Insole (Cambridge, 2012), pp. 156-67.

¹³¹ Gough, *Fundamental law in English constitutional history*, pp.174-213.

¹³² 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 occasion of the late Stamp-Act, in which is exposed the conduct of the American Colonists* (London, 1766), pp.6, 14.

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(the right to vote in parliamentary elections, for example).¹³³ 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.¹³⁴ 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.'¹³⁵ 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.¹³⁶ The American colonies might be allowed their own legislatures which could pass local laws, but they could not pass laws contrary to laws passed by the Westminster parliament, whereas this imperial parliament could pass laws for, and raise taxes in, the American colonies.¹³⁷ 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

¹³³ 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.

¹³⁴ Hulsebosch, 'The Ancient Constitution and the Extending Empire: Sir Edward Coke's British Jurisprudence', *Law and History Review*, 21 (2003), pp.475-82.

¹³⁵ Blackstone, *Commentaries on the laws of England*, I, pp.104-105.

¹³⁶ *Ibid.*, I, p.105.

¹³⁷ Dickinson, 'Britain's Imperial Sovereignty: The Ideological Case against the American Colonists', in *Britain and the American Revolution*, ed. Dickinson, pp.86-94.

Magna Carta, as those who remained in England.¹³⁸ 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.¹³⁹ 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 inscribed '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.¹⁴⁰ In July 1775, Maryland published a four-dollar paper banknote, whose design included 'Liberty' handing a petition to 'Britannia', who is being

¹³⁸ Hulsebosch, 'The Ancient Constitution and the Extending Empire: Sir Edward Coke's British Jurisprudence', *Law and History Review*, 21 (2003), pp.439-40.

¹³⁹ John Smithers produced a separate engraving of this title page in 1768. There is an illustration of it in *Magna Carta: The foundation of freedom 1215-2015*, ed. Vincent, p.123.

¹⁴⁰ Sinclair Hamilton, "'The earliest Device of the Colonies" and some other early devices', *Princeton University Library Chronicle*, 10 (1949), pp.117-23.

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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.¹⁴¹

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.¹⁴² 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 be heard by judges appointed by the crown. The Townshend Acts of 1767 established 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.¹⁴³ A town meeting in Braintree, Massachusetts, in 1765, protested against the British attempt to use

¹⁴¹ This can be seen in *Magna Carta: the foundation of freedom 1215-2015*, ed. Vincent, p.131; and in *Magna Carta and the rule of law*, ed. Magraw et al., facing p.233.

¹⁴² Dick Howard, *The road from Runnymede*, p.133.

¹⁴³ David S Lovejoy, "'Rights Imply Equality': The Case against Admiralty Jurisdiction, in America, 1764-1776", *William and Mary Quarterly*, 3rd series, 16 (1959), pp.459-84.

Vice-Admiralty courts to punish those who refused to pay taxes raised 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'.¹⁴⁴ 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.'¹⁴⁵ 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'.¹⁴⁶

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

¹⁴⁴ Joyce Lee Malcolm, in *Magna Carta: The foundation of freedom 1215-2015*, ed. Vincent, p.125.

¹⁴⁵ *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.

¹⁴⁶ *The public records of the Colony of Connecticut*, ed. C J Headley and J H Trumbull (15 vols., Hartford, Conn, 1881-90), XII, p.424; and *Prologue to revolution*, ed. Edmund S Morgan, p.55.

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seeking the consent of the king.¹⁴⁷ 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.¹⁴⁸ 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 the 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 on of the firmest Bulwarks 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 distinguishes my Clyent from the rest of Englishmen.¹⁴⁹

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

¹⁴⁷ *Magna Carta and the rule of law*, ed. Magraw, et al., pp.66-68.

¹⁴⁸ Joyce Lee Malcolm in *Magna Carta: the foundation of freedom 1215-2015*, ed. Vincent, p.126.

¹⁴⁹ 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), p.481.

the right enshrined in Magna Carta that any accused person should always be tried by a jury composed of men living in the vicinity where the crime took place.¹⁵⁰ 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.¹⁵¹ 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.'¹⁵² 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 deny the colonists the right of trial by jury, in contempt of Magna Carta, would no longer be tolerated under the independent state's new constitution.¹⁵³ They undoubtedly believed that this claim was based on chapter 29 of the 1225 version of Magna Carta. When, in July 1776, the American colonists finally

¹⁵⁰ Joyce Lee Malcolm in *Magna Carta: the foundation of freedom 1215-2015*, ed. Vincent, p.126.

¹⁵¹ Colbourn, *The lamp of experience*, p.164.

¹⁵² http://avalon.law.yale.edu/18th_century/resolves.asp, accessed on 20 May 2015.

¹⁵³ '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.

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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.¹⁵⁴

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 legislatures.¹⁵⁵ They therefore vehemently protested that such an action 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’.¹⁵⁶ By parliament, in this case however, they meant their own legislative body. In his resolutions against the Stamp Act presented to the Massachusetts House of Representatives, on 29 October 1765, Samuel Adams, a leading

¹⁵⁴ http://www.archives.gov/exhibits/charters/declaration_transcript.html, accessed 24 August 2015.

¹⁵⁵ *A collection of tracts, on the subjects of taxing the British colonies in America, and regulating their trade* (4 vols., London, 1773), III, p.105.

¹⁵⁶ *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.

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’.¹⁵⁷ 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’.¹⁵⁸ The New York assembly also insisted in 1765 that no taxation without representation was ‘a fundamental principle ... declared by Magna Charta’.¹⁵⁹

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.’¹⁶⁰ 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

¹⁵⁷ Quoted in Colbourn, *The lamp of experience*, p.175.

¹⁵⁸ Quoted in Arlidge and Judge, *Magna Carta uncovered*, p.158.

¹⁵⁹ Quoted in John Phillip Reid, *Constitutional history of the American Revolution: II, the authority to tax* (Madison, Wisconsin, 1987), p. 108.

¹⁶⁰ 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.

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confirmed by the great CHARTER of *English Liberty*'.¹⁶¹ 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.'¹⁶² 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'.¹⁶³ In 1775, Moses Mather insisted that the royal 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 were bound by no laws except those made and imposed by their own consent.¹⁶⁴

The claim that the principle of no taxation without representation was enshrined in Magna Carta was supported by political commentators in America¹⁶⁵ and even by a few in Britain. In July

¹⁶¹ *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.

¹⁶² Jonathan Mayhew, *The snare broken* (Boston, 1766), p.4.

¹⁶³ Quoted in Colbourn, *The lamp of experience*, p.175.

¹⁶⁴ Moses Mather, *America's appeal to the impartial world* (Hartford, Conn., 1775), pp.12, 25, and 36-37.

¹⁶⁵ 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*

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 *Europe*. 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.¹⁶⁶

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.¹⁶⁷

In an effort to stop the war in its early stages some British supporters of the American cause formed the London Association in 1775.¹⁶⁸

Great Britain, in the present disputes with America (London, 1774), p.7.

¹⁶⁶ *The controversial letters of John Wilkes, Esq. the Rev. John Horne, and their principle [sic] adherents* (London, 1771), p.164.

¹⁶⁷ James Burgh, *Political disquisitions: or, an enquiry into public errors, defects and abuses* (3 vols., London, 1774-75), II, pp.310.

¹⁶⁸ John Sainsbury, *Disaffected patriots: London supporters of Revolutionary America 1769-1782* (Kingston and Montreal, and Gloucester, 1987), pp.106-113, 118.

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They attacked the British government's determination to use armed force in the colonies and denied that the Americans desired complete independence.¹⁶⁹ 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.¹⁷⁰ About the same time, another British commentator, who regarded Magna Carta as 'still the impregnable fortress of our privileges', was even more explicit in defending the American cause:

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.¹⁷¹

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

¹⁶⁹ The 'Circular Letter from the London Association' and 'Resolutions of the London Association', in *The Crisis*, LXXXVIII, pp.554-56 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.

¹⁷⁰ *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).

¹⁷¹ *Taxation, tyranny. Addressed to Samuel Johnson* (London, 1775), pp.26-27. Dr Samuel Johnson has recently published a pamphlet, *Taxation no tyranny*, which strongly supported the right of the Westminster parliament to tax the American colonies.

law¹⁷² and natural rights than by explicit appeals to Magna Carta. James Otis¹⁷³ and James Wilson,¹⁷⁴ 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.'¹⁷⁵ 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.'¹⁷⁶ 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.¹⁷⁷

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

¹⁷² 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), pp.21-47; and Thomas C Grey, 'Origins of the Unwritten Constitution: Fundamental Law in American Revolutionary Thought', *Stanford Law Review*, 30 (1978), pp.843-93.

¹⁷³ James Otis, *The rights of the British Colonies asserted and proven* (Boston, 1764), p.31.

¹⁷⁴ Colbourn, *The lamp of experience*, p.126.

¹⁷⁵ Quoted by Joyce Lee Malcolm, in *Magna Carta: the foundation of freedom 1215-2015*, ed. Vincent, p.129.

¹⁷⁶ Quoted in Dick Howard, *The road from Runnymede*, p.185.

¹⁷⁷ *Ibid.*, p.184.

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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'.¹⁷⁸ 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.¹⁷⁹ Charles Carroll also stressed that Magna Carta had been achieved by force,¹⁸⁰ while John Adams used the events of 1215 to claim: 'Did not the English gain by resistance to John, when Magna Charta was obtained'.¹⁸¹ 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.'¹⁸² 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.¹⁸³ 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

¹⁷⁸ *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.

¹⁷⁹ Joyce Lee Malcolm, in *Magna Carta: the foundation of freedom 1215-2015*, ed. Vincent, p.129.

¹⁸⁰ Colbourn, *The lamp of experience*, p.141.

¹⁸¹ Quoted in *ibid.*, p.92.

¹⁸² Quoted by J C D Clark, *The language of liberty 1660-1832: political discourse and social dynamics in the Anglo-American World* (Cambridge, 1994), p.360.

¹⁸³ Colbourn, *The lamp of experience*, p.123.

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.¹⁸⁴

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.¹⁸⁵ 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 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.¹⁸⁶ 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.¹⁸⁷ In 1779, John

¹⁸⁴ *An address to the inhabitants of the colonies* (1776) in *The collected works of James Wilson*, ed. Hall and Hall (2 vols., Indianapolis, 2007), I, p.49.

¹⁸⁵ *Magna Carta and its modern legacy*, ed. Hazell and Melton, pp.9 and 83; and H D Hazeltine, ‘The Influence of Magna Carta on American Constitutional Development’, *Columbia Law Review*, 17 (1917), pp.25-26.

¹⁸⁶ *Principles and Acts of the revolution in America*, ed. Hezekiah Niles, pp.123-24; and *Magna Carta and the rule of law*, ed. Magraw et al., p.161.

¹⁸⁷ Joyce Lee Malcolm in *Magna Carta: the foundation of freedom 1215-2015*, ed. Vincent, pp.131-32; and Dick Howard, *The road from Runnymede*, pp.204-213.

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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 out their rights and liberties, limiting the powers of their legislatures in their new written constitutions.¹⁸⁸ 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.¹⁸⁹

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 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.¹⁹⁰ The terms of the Federal Constitution were drafted in 1787, but it was

¹⁸⁸ William F Swindler, *Magna Carta: legend and legacy* (New York, 1965), p.228.

¹⁸⁹ Dick Howard, *The road from Runnymede*, pp.209-11.

¹⁹⁰ *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.

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,¹⁹¹ 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'.¹⁹² 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.'¹⁹³ James Iredell and Samuel Johnston both opposed

¹⁹¹ Pauline Maier, *Ratification: the public debate on the Constitution 1787-1788* (New York, 2010).

¹⁹² Alexander Hamilton, 'Certain General and Miscellaneous Objections to the Constitution Considered and Answered', *The Federalist Papers*, no. 84 (July-August 1788).

¹⁹³ Quoted in Dick Howard, *The road from Runnymede*, p.234.

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the demand for a specific Bill of Rights to be added to the Federal Constitution because the evidence of British history showed that the Westminster parliament had exercised its authority to alter or revoke various chapters of Magna Carta.¹⁹⁴ 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.’¹⁹⁵ 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 at 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.’¹⁹⁶

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

¹⁹⁴ Ibid., pp.230-31.

¹⁹⁵ *Proceedings and debates of the Convention of North-Carolina ... for the purpose of deliberating and determining the Constitution* (Edenton, NC, 1789), p.86.

¹⁹⁶ David Ramsay, *An oration, delivered on the anniversary of American Independence, July 4, 1794 ... to the inhabitants of Charleston* (London, 1795), p.18.

was fully ratified.¹⁹⁷ 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.¹⁹⁸ 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 way 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.¹⁹⁹ 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.²⁰⁰

¹⁹⁷ *Magna Carta and its modern legacy*, ed. Hazell and Melton, p.13.

¹⁹⁸ Dick Howard, *The road from Runnymede*, pp.232-33.

¹⁹⁹ Gordon S Wood, ‘The Origins of the Bill of Rights’, *Proceedings of the American Antiquarian Society*, 101 (1991), pp.255-74.

²⁰⁰ *Magna Carta and its modern legacy*, ed. Hazell and Melton, pp.10-11; and *Magna Carta, religion and the rule of law*, ed. Griffith-Jones and Hill, pp.93-96 and 139.

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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.²⁰¹

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

²⁰¹ *Magna Carta and the rule of law*, ed. 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), pp. 26-33; Joyce Lee Malcolm in *Magna Carta: the foundation of freedom 1215-2015*, ed. Vincent, p.135.

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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.²⁰² The principle and practice of Judicial Review became an extremely important, if often contested, aspect of the American Constitution.²⁰³ When the Supreme Court was housed in its fine building in Washington DC it was therefore appropriate that its magnificent bronze doors included among its 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.

²⁰² Dick Howard, *The road from Runnymede*, pp.276-80.

²⁰³ *Magna Carta and the rule of law*, ed. Magraw *et al.*, pp.111-40.

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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.²⁰⁴

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.²⁰⁵ 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

²⁰⁴ James Thomson, *The rise, progress, and consequences, of the new opinions and principles lately introduced into France; with observations* (Edinburgh, 1799), pp.12-15.

²⁰⁵ *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.

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'.²⁰⁶ 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'.²⁰⁷ 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.²⁰⁸ John Gifford, a deeply conservative and intensely patriotic British propagandist,²⁰⁹ 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.²¹⁰

Moderate British reformers in the 1790s were still prepared to appeal to Magna Carta, particularly to chapter 29, in defence of their legal rights.²¹¹ In defending Thomas Paine against a charge of seditious libel, Thomas Erskine claimed that King John had been

²⁰⁶ 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.

²⁰⁷ Henry Maddock, *The power of parliaments, considered, in a letter to a Member of Parliament* (London, 1799), p.25.

²⁰⁸ *The proceedings of the Parliament of Ireland 1793* (Dublin, 1793), p.296.

²⁰⁹ 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.

²¹⁰ John Gifford, *The history of England from the earliest times to the peace of 1783* (2 vols., London, 1790), I, pp.292, 297.

²¹¹ 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, p.369.

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forced to grant Magna Carta at Runnymede: 'The people took it as their inheritance; they had a right to it'.²¹² 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'.²¹³ 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.²¹⁴ Maurice Margarot acknowledged at his trial for sedition that Magna Carta had not done enough to secure the rights and liberties of the people,²¹⁵ while his fellow London radical, John Thelwall, lamented that the provisions of Magna Carta had mouldered away.²¹⁶ 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

²¹² *The genuine trial of Thomas Paine, for a libel contained in the second part of Rights of Man* (London, 1792), p.94.

²¹³ *An abstract of the history and proceedings of the Revolution Society in London* (London, 1789), p.3.

²¹⁴ *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.

²¹⁵ *The trial of Maurice Margarot, delegate from London, to the British Convention* (Edinburgh, 1794), p.58.

²¹⁶ John Thelwall, *The natural and constitutional right of Britons to annual Parliaments, universal suffrage, and the freedom of popular association* (London, 1795), p.69.

constitution.²¹⁷ 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.²¹⁸ 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.²¹⁹ 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.²²⁰ 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

²¹⁷ Thomas Paine, *Rights of man; part the second* (1st edn., London, 1792), pp.51-52.

²¹⁸ T H B Oldfield, *An entire and complete history, political and personal, of the boroughs of Great Britain* (3 vols., London, 1792), I, p.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.

²¹⁹ Charles Pigott, *A political dictionary: explaining the true meaning of words* (London, 1795), p.72, where he offers an ironic definition of Magna Carta.

²²⁰ *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, p.277.

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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), depicted 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 attacked Charles James Fox and Richard Sheridan, leaders of the opposition in parliament, for seeking peace with France and depicted 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 depicted 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, showed Britannia proudly holding a copy of Magna Carta.²²¹ This print proved so popular that it was even re-produced on beer jugs.²²² 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'.²²³

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

²²¹ 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.

²²² This is an illustration of this in *Magna Carta: law, liberty, legacy*, ed. Breay and Harrison, p.159.

²²³ Thomas Spence, *The coin collector's companion* (London, 1795), pp.17-18.

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, when he was arrested in April 1810 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.²²⁴ Like John Wilkes, Burdett was praised as the 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.²²⁵ 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'.²²⁶ 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.

²²⁴ 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.

²²⁵ 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, pp.165, 178-80.

²²⁶ BM Print 11549. It can be viewed in *Magna Carta: law, liberty, legacy*, ed. Breay and Harrison, p.178.

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The heads are those of government ministers.²²⁷ 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.²²⁸ 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.²²⁹ 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.²³⁰ 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 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 to be slaves or free. Hold to the Laws,

²²⁷ BM print 11538.

²²⁸ BM print 11540.

²²⁹ BM print 11550.

²³⁰ *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).

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this great country may recover; forsake them, it will certainly perish.²³¹

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.

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²³¹ Joseph S Jackson, *The public career of Sir Francis Burdett*, pp.140-41.

**‘THE PRINCIPLES OF REASON, MORALITY AND
RELIGION, APPLIED TO THE CONCERNS OF LARGE
COMMUNITIES’: MAJOR JOHN CARTWRIGHT AND
THE INTELLECTUAL ROOTS OF RADICAL REFORM IN
LATE EIGHTEENTH-CENTURY BRITAIN**

George Owers

Looking back at the early thought of parliamentary reform pioneer Major John Cartwright (1740-1824) in an essay of 1812, Samuel Taylor Coleridge contended that no-one could ‘have more nakedly or emphatically identified the foundations of Government in the concrete with those of religion and morality in the abstract.’¹ Indeed, Cartwright himself repeatedly stated that moral and religious considerations formed the fundamental basis of his political perspective. From his early statement, made in a letter of 1775, that ‘the principles on which politics are built, are the principles of reason, morality, and religion, applied to the concerns of large communities,’ he repeatedly asserted, throughout his career, that all temporal ‘rules of prudence and policy’ depended for their validity upon their being ‘strictly just and perfectly consonant with morality and religion.’² It is the fundamental contention of this article that Cartwright’s ideas are only comprehensible if we take these statements seriously and place his arguments within the context of eighteenth-century debates about the nature of moral knowledge, as well as considering his thought in the light of the broad Dissenting and Anglican latitudinarian tradition of rational religion.

The significance of this enterprise lies in the importance of Cartwright’s role in formulating the doctrines of one of the earliest movements in favour of recognisably modern democratic ideas in Britain. In the 1770s and 1780s, Cartwright, a former naval officer from Marnham, Nottinghamshire, published a series of pamphlets setting out the case for a thoroughgoing programme of reform to the British political *ancien régime*, most famously in *Take your choice!*

¹ Samuel Taylor Coleridge, *The friend: a series of essays* (London: Gale and Curtis, 1812), p.147.

² *The life and correspondence of Major Cartwright*, ed. F D Cartwright (2 vols., London, 1826) (subsequently ‘L&C’), v.1, p.59; John Cartwright, *Legislative rights of the commonalty vindicated or, take your choice!* (2nd edn., London, 1777), pp.64-5.

(1776), but also in important works such as *The people's barrier against undue influence and corruption* (1780) and *Give us our rights!* (1782).³ The most important elements of this platform were universal manhood suffrage, annual parliaments, the secret ballot and the equalisation of parliamentary constituencies, although it developed subtly throughout the course of these pamphlets.⁴ This platform contained within it the first systematic, written demand for the complete abolition of all property qualifications for the franchise.⁵ It became the platform of a small fringe of activists who attempted to influence the agitation that arose within the context of the reaction against the war against America and the activity of the Associated Counties movement in a more radical direction.⁶ They promoted their cause through organisations such as the Society for Constitutional Information, which Cartwright set up with colleagues such as John Jebb and Capel Lofft in 1780, and the Westminster Committee, a subcommittee of which, in the same year, published a report into the state of parliamentary representation which strongly supported Cartwright's basic proposals.⁷

³ For Cartwright's life and career, see the L&C; Rachel Eckersley, *The drum major of sedition: the political life and career of John Cartwright (1740-1824)* (University of Manchester, unpublished PhD thesis, 1999); John Osborne, *John Cartwright* (Cambridge, 1972); Naomi Churgin, *Major John Cartwright: a study in radical parliamentary reform, 1774-1824* (University of Columbia, unpublished PhD thesis, 1963).

⁴ For example, between 1776 and 1780 he moved from upholding the propriety of a property qualification for standing for parliament to attacking it, gradually incorporating the abolition of this qualification into his platform – see John Cartwright, *Take your choice!* (London, 1776), p.69 compared to his *The people's barrier against undue influence and corruption* (London, 1780), p.109.

⁵ Eckersley, *The drum major of sedition*, p.44.

⁶ For a classic account of these movements and events, see Ian R Christie, *Wilkes, Wyvill and reform: the parliamentary reform movement in British politics, 1760-1785* (London, 1962), ch. III.

⁷ Christie, *Wilkes, Wyvill and reform*, pp.107-9; L&C, I, p.120.

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Although the word democracy was still at this time largely associated with the direct exercise of sovereignty by the people within the context of ancient city states, the fundamental case for reform which Cartwright had outlined and which motivated this group of reformers can be seen, in its fusion of representative government with the principle of universal manhood suffrage, as being a pioneering milestone in the progress towards modern parliamentary democracy.⁸ Cartwright was very clear that the basis of his argument was that ‘personality is the sole foundation of the right of being represented: and that property has, in reality, nothing to do in the case,’ and his conception of human personality was closely linked into his notion of human moral agency.⁹ However, despite this, the thought of Cartwright and the colleagues who helped him develop and publicise his platform has rarely been considered in its moral or philosophical aspect. Instead, it has been conceived largely in terms of the notion of ‘popular constitutionalism,’ a nostalgic appeal to Whiggish traditions of ‘mixed government’ and the historic Anglo-Saxon constitution.¹⁰

Clearly, such appeals were part of the picture, and elsewhere I have provided an analysis of how Cartwright and his colleagues democratised the seventeenth-century discourse of the ancient constitution by reactivating and reinterpreting the dormant rationalism of the traditions of English common law jurisprudence.¹¹

⁸ For the usage of the word ‘democracy’ in the eighteenth century, see Mark Philp, ‘Talking about democracy: Britain in the 1790s’ in J Innes and M Philp, eds. *Re-imagining democracy in the age of revolutions: America, France, Britain, Ireland 1750-1850* (Oxford, 2013), pp.101-113, at p.102.

⁹ Cartwright, *Take your choice!*, p.33.

¹⁰ See Osborne, *John Cartwright*, p.86.; R J Smith, *The gothic bequest: medieval institutions in British thought, 1688-1863* (Cambridge, 2002), p.137; John Cannon, *Parliamentary reform, 1640-1832* (Cambridge, 1972), p.120.

¹¹ George Owers, ‘Common Law Jurisprudence and Ancient Constitutionalism in the Radical Thought of John Cartwright,

However, although Cartwright did attempt to present his desired reforms in such a constitutionalist fashion, underpinning the fundamental logic of his democratic arguments was a conception of moral epistemology rooted in a tradition of deontological, rationalistic ethical realism. This was a tradition that also underpinned Cartwright's rhetorical presentation of his reform platform as analogous to a true Protestant Reformation. In order to gain a better understanding of the philosophical and religious roots of Britain's incipient movement for parliamentary reform, and thereby give a more sophisticated account of the development of democratic ideas in late eighteenth-century Britain, it is crucial to trace this process and uncover its underlying dynamics.¹²

II

An essential context for understanding Cartwright's early intellectual development is the mid-to-late eighteenth-century reaction against Humean moral scepticism. A number of early commentators, particularly within the traditions of ethical rationalism and the Scottish Common Sense school, perceived the ethical and political implications of Hume's work as a grave threat to morals and true religion.¹³ A fundamental issue for these moralists was the essential arbitrariness that Hume appeared to have injected into morality, and by extension politics. There were a number of reasons for this (rather contentious) interpretation. Most central was Hume's argument that morality could not be objectively derived by a process of rational apprehension, since reason was unable to give

Granville Sharp and Capel Lofft', *The Historical Journal* (2014) 58, pp.51-73.

¹² Peter Miller *Defining the common good: empire, religion and philosophy in eighteenth-century Britain* (Cambridge, 1994), ch.6, is the only existing attempt to examine Cartwright in such a way. I am indebted to this work, upon which this article builds.

¹³ See James Fieser, ed., *Early responses to Hume's moral, literary and political writings* (2 vols. 2nd edn., Bristol, 2005), v.1, chs. 10 and 11.

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rise to volition and was a mere ‘slave of the passions.’¹⁴ This was closely related to the contention that moral apprehension, rather than being a question of discerning an inherent and objective feature of an action, was really a question of approbation and disapprobation, existing purely in the breast of the moral observer, as well as the view that virtues such as justice were a matter of convention and artifice, derived ultimately from self-interest rather than natural instinct.¹⁵ Thomas Reid’s comments on Hume’s *A treatise of human nature* summarise this view succinctly:

If what we call moral judgment be no real judgement, but merely a feeling, it follows, that the principles of morals which we have been taught to consider as an immutable law to all intelligent beings, have no other foundation but an arbitrary structure and fabric in the constitution of the human mind: So that, by a change in our structure, what is immoral might become moral, virtue might be turned into vice, and vice into virtue.¹⁶

Although Hume considered that his arguments had not reduced morality and justice to arbitrariness, and even tried to claim the concept of ‘the Laws of Nature’ for himself, many were not convinced.¹⁷

Among them was John Cartwright, whose 1770s correspondence illustrates his uneasiness at Hume’s ‘metaphysical refinements’ and how they had:

overturned all the principles of belief, not only in religion, but of all existence both of matter and

¹⁴ David Hume, *A treatise of human nature* (London, 1739), bk. III, pts. II & III; see also David Fate Norton, ‘The foundations of morality in Hume’s treatise’, in David Fate Norton and Jacqueline Taylor eds., *The Cambridge companion to Hume* (2nd edn. Cambridge, 2008), pp.270–310.

¹⁵ Ibid.

¹⁶ Thomas Reid, *Essays on the active powers of man* (Edinburgh, 1788), p.491.

¹⁷ Hume, *A treatise*, bk. III, pt. II, section I, p.49.

spirit, so that as Reid expresses it, “There was according to his system no ground for believing one thing whatever, rather than its contrary.”¹⁸

Indeed, Cartwright’s objections to Hume’s epistemological and moral perspective are illustrated in his earliest political writings. In a ‘Dedicatory Epistle’ to his first pamphlet, he identified Hume, whom he described as ‘that see-saw sceptic from the remotest North,’ as the foremost modern philosopher responsible for undermining morality by teaching a dedication to the pursuit of earthly interest based upon the idea that ‘morality...hath no foundation’ and truth ‘is not worth our pains.’¹⁹ For Hume, argued Cartwright, wisdom consisted of ‘the blindness and prejudices, the little passions and anxieties of a fretful and miserable world,’ rather than the solid and immutable precepts of ‘truth, religion, and common sense.’²⁰ This led to the prevalence of the ‘infamous maxim of modern politicians, that every man hath his price,’ which in turn implied the justifiability of political corruption.²¹ As he framed it, Hume’s scepticism formed a natural political alliance with the ‘Walpolian state-prostitute,’ fortifying ‘the unmanly, unprincipled, impious and dissipated spirit, which marks the character of the times’ and encouraging ‘an indifference to moral rectitude’ that was fundamental to the entrenched corruption of the British state.²² In short, by bringing into question the idea of a universally accessible, objective, and immutable morality, Cartwright argued that Hume’s moral scepticism propagated a debilitating moral arbitrariness. In his view, this had the political consequence of undermining the idea of disinterested pursuit of the common good, facilitating instead the corrupt and inegalitarian rule of partial interests.

¹⁸ L&C, v.1, p.49.

¹⁹ John Cartwright, *American independence the interest and glory of Great-Britain* (2nd edn., London, 1775), ‘Epistle dedicatory’, pp.x-xi; ix.

²⁰ *Ibid*, p.x.

²¹ *Ibid*, p.vi.

²² *Ibid*, p.x.

III

An important text in informing this sensibility was *An essay on the nature and immutability of truth*, written by Scottish Common Sense philosopher James Beattie in 1771. Cartwright mentioned having read it in a letter of 1772, and the prose of his later attack on Hume resonates with the cadences of Beattie's anti-sceptical censures.²³ Beattie was concerned that scepticism, particularly Hume's brand, had 'been extended to practical truths of the highest importance, even to the principles of morality and religion.'²⁴ He attempted to counter this threat by outlining the nature of common sense, defined as:

that power of the mind which perceives truth, or commands belief, not by progressive argumentation, but by an instantaneous, instinctive, and irresistible impulse [...] acting in a similar manner upon all, or at least upon a great majority of mankind.²⁵

According to Beattie, the maxims of true morality are likewise apprehended, being directly perceived as self-evident truths. Such truths, he argued, are objective and, as he put it, 'agreeable to the eternal relations and fitnesses of things.'²⁶ To doubt such intuitively grasped moral truths, or see them as the product of 'human artifice,' as Hume had done, was to doubt what is as self-evident as the 'axioms of geometry' in favour of the 'moral paradoxes' beloved of 'the corrupt judge; the prostituted courtier; the statesman who enriches himself by the plunder and blood of his country.'²⁷ The implication was that the moral arbitrariness of scepticism legitimated an arbitrary and corrupt politics, where individuals can take

²³ L&C, v.1, p.47.

²⁴ James Beattie, *An essay on the nature and immutability of truth, in opposition to sophistry and scepticism* (2nd ed., Edinburgh, 1771), p.6.

²⁵ *Ibid*, p.40.

²⁶ *Ibid*, p.58.

²⁷ *Ibid*, pp.148 & 168.

advantage of the neglect of self-evident moral truths in order to politically pursue their base interests. The resemblance to Cartwright's argument of a few years later is unmistakable.

Beattie's approach was itself influenced by Thomas Reid, the founder of the Common Sense school. Reid, in his *An inquiry into the human mind, on the principles of common sense*, had argued that modern philosophy had silently imbibed a false 'theory of ideas,' an assumption that 'ideas, not the objects of ideas, are the immediate objects of the mind's apprehension,' a viewpoint which, in his words, 'hath produced a system of scepticism, that seems to triumph over all science, and even over the dictates of common sense,' bringing into question fundamental concepts like free-will and causation.²⁸

His response was to posit that the operation of the mind and the senses, 'in its very nature, implies judgement or belief, as well as simple apprehension.'²⁹ All human beings have access to reality, conceived in terms of the direct apprehension of an objective, external world, an apprehension shaped by the 'original and natural judgements' that are 'part of that furniture which nature hath given to the human understanding.'³⁰ Indeed, the mind by its nature is a 'highly active cognitive agency,' containing innate powers such as the ability to form judgements or beliefs that are part of the process of perception, in addition to 'first principles of common sense,' which are self-evident, intuitively derived first principles, common to all.³¹ Together, these powers and innate truths were seen by Reid as constituting common sense.

²⁸ Knud Haakonssen, 'Thomas Reid's moral and political philosophy' in Knud Haakonssen, *Natural law and moral philosophy* (Cambridge, 1996), pp.182-225, at p.185; Thomas Reid, *An inquiry into the human mind, on the principles of common sense* (London, 1764), p.5.

²⁹ Reid, *An inquiry*, p.533.

³⁰ *Ibid*, p.534.

³¹ Haakonssen, 'Thomas Reid's moral and political philosophy', p.185.

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Although the Common Sense school believed that morality was perceived by a ‘moral sense,’ because Reid had argued that rational judgement was inherent in the act of sensual apprehension, the Common Sense theorists in fact retained the idea that moral knowledge was objective and obtained by a rational process. This was why Beattie could, in his reference to ‘the eternal relations and fitnesses of things,’ echo the language of a kindred school of moral thought, that of ethical rationalism, without inconsistency.³²

This tradition, given its most influential expression by the philosopher and divine Samuel Clarke, stressed the rational and objective nature of moral truth, based upon the idea of ‘fitness and unfitness, eternally, necessarily, and unchangeably in the nature and reason of things,’ relations of which determined the obligating content of the laws of nature.³³ These laws stood entirely ‘antecedent to will and to all arbitrary or positive appointment whatsoever,’ obligating all positive authority, including even that of God.³⁴ This natural and objective standard of moral rectitude was seen as accessible directly to each individual’s understanding, as a matter of intuitive rational apprehension rather than mere passion or interest.³⁵ As such, for Clarke, the only legitimate motive for human behaviour was the inherent righteousness of acting in accordance with objective fitnesses and unfitnesses; that is, ‘moral Motives.’³⁶ Only when

³² For the compatibility and similarity, in terms of being deontological, realist and rational, of the Common Sense school and the ethical rationalists, see John Rawls, *Lectures in the history of moral philosophy* (Cambridge, MA, 2000), p.11; Terence Cuneo, ‘Reid’s moral philosophy’ in Terence Cuneo, René van Woudenberg, eds., *The Cambridge companion to Thomas Reid* (Cambridge, 2004), pp.243-66, at p.247.

³³ Samuel Clarke, *A discourse concerning the being and attributes of God, the obligations of natural religion, and the truth and certainty of the Christian revelation* (8th edn., London, 1732), p.115. For Clarke’s life and thought, see James P Ferguson, *Dr. Samuel Clarke: an eighteenth century heretic* (Kineton, 1976).

³⁴ Clarke, *A Discourse*, pp.114-5.

³⁵ *Ibid*, p.115.

³⁶ *Ibid*, p.273.

motivated by these alone could human beings act in a morally meaningful way. This fitted in with human beings' possession of reason and free will, reason allowing us to apprehend the rational maxims of moral truth and free-will allowing us to be responsible moral agents, freed from the ethical meaninglessness implied by determinism.³⁷

The key features of this perspective were similarly reflected in the work of Cartwright's friend and fellow radical, the Rev Richard Price. Price's *A review of the principal questions in morals* (1758) can partially be seen as an attempt to defend the basic commitments of a Clarkean moral perspective against Hume. As D O Thomas has argued, Price believed that to 'defend the meaningfulness of morality' he was obliged to 'defend the thesis that man enjoys a real freedom to obey an objective moral law which is binding even upon God.'³⁸ Price's belief in the objectivity and rationality of moral judgement, and in the idea that 'right and wrong are distinctions in the natures of things,' intuited by human understanding and giving rise to moral obligations that 'constitute a part of eternal truth and reason,' were fundamentally influenced by his reading of Clarke's works.³⁹

The Common Sense school and ethical rationalism may appear to have embodied contradictory moral perspectives, since the Common Sense theorists conceived moral apprehension in terms suggesting affinity to the 'moral sense' tradition, which was typically inimical

³⁷ Ibid, p.273.

³⁸ David Oswald Thomas, *The honest mind: the thought and work of Richard Price* (Oxford, 1977), p.6.

³⁹ See Richard Price, 'A dissertation on the being and attributes of the Deity', appended to *A review of the principal questions and difficulties in morals; particularly those relating to the original of our ideas of virtue, its nature, foundation, reference to the Deity, obligation, subject-matter, and sanctions* (3rd edn., London, 1787), pp. 489-512, at p.509. This appendix, which closely echoes the title of Clarke's magnum opus, is a clear demonstration of Price's defence of Clarke's perspective against modern sceptics, particularly Hume.

to moral rationalism. However, since Reid and Beattie believed that intuitive reasoning was inherent in the immediate, direct act of perception, and saw intuitive reasoning as based upon the mind's active ratiocinatory powers in conjunction with its inherent, self-evident moral first principles, they conceived the process of moral apprehension as itself a rational one. The traditional dichotomy between 'sense' and 'understanding' was undermined, and the act of moral *perception* was reconceptualised as a rational and objective process. The difference between the ethical rationalist conception of moral apprehension as an act of intuitive apprehension undertaken by the understanding, and the Common Sense conception of it as the perception of the active and rational cognitive agency of 'common sense', was reduced to a largely semantic distinction. Given this fundamental similarity, in addition to the two traditions' common assumption of the objectivity and immutability of a temporally-binding framework of moral knowledge, it seems clear that they can be seen as part of a common tradition of rationalist, deontological moral realism which cast individuals as epistemologically competent beings capable of discerning objective moral and theological truths, conceived as laws of nature and God.

IV

That this tradition may have shaped Cartwright's political principles is suggested by further biographical clues. His niece named Clarke as one of Cartwright's 'favourite writers.'⁴⁰ He was personal friends with Price, noting in 1777 'there is a very remarkable agreement in our sentiments.'⁴¹ He also mentioned in early correspondence his appreciative perusal of Reid's *An inquiry into the human mind on the principles of common sense*, observing approvingly that Reid 'overthrew [Hume's] doctrines...by making the discovery of a truth

⁴⁰ L&C, v.2, p.287.

⁴¹ Ibid, v.1, p.116.

which lain hid from the learned ever since the days of Aristotle,' i.e. common sense.⁴²

In his early pamphlets Cartwright outlined the basis of a moral and political perspective fundamentally shaped by these influences. 'The law of nature,' he argued, is 'the immoveable basis of our political fabric,' an 'immutable... standard' for all temporal actions, as well as being the law of God as manifested in Christian revelation.⁴³ In order to emphasise their absolute, objective and metaphysically fundamental nature, Cartwright argued, echoing Samuel Clarke, that, theoretically, the laws of nature had metaphysical priority over even God's positive will itself:

If the arbitrary will of any ruler could be a fit and proper measure of obedience in subjects, surely the will of God, which is unerring and accompanied by every good and perfect attribute, must be so; ... but, it should seem, that, as rational beings and free agents which he had been pleased to create us, to establish his authority over us on the basis of every man's voluntary assent was the only means of reconciling to our reason the justice and benevolent designs of his government.⁴⁴

In other words, if even God's will itself only obligated because based upon the antecedent foundation of objective truth, mediated by rational human *moral* agency, then clearly temporal authorities, such as parliament, had even less justification for asserting their will in absolute or arbitrary ways that contradicted what Cartwright, in clear echoes of Clarkean moral language, called 'the necessary relations of things in the great scheme of moral government,' as apprehended by the rational agency of all human beings in their *political* capacity.⁴⁵ This underpinned Cartwright's hostility to 'the modern doctrine of the omnipotence of parliament'; as he put it, 'although parliament should enact, that

⁴² Ibid, p.50.

⁴³ Cartwright, *American independence*, p.27.

⁴⁴ Cartwright, *The people's barrier*, pp.26-7.

⁴⁵ Cartwright, *Legislative rights*, p.81.

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reason and truth should no longer be reason and truth, yet plain and honest people would be apt to call them reason and truth still.’⁴⁶ This was a particularly relevant point in view of parliament’s imposition of taxation and the Coercive Acts on the Americans, as well as a welter of what Cartwright considered to be iniquitous legislation upon the unrepresented masses of Britain, an imposition which reflected the growing influence of Blackstone’s conception of the sovereignty of parliament in terms of an ‘absolute despotic authority.’⁴⁷

This perspective, by extension, underpinned Cartwright’s concern for the natural right of individuals to political participation. For Cartwright, if the rights of the people to ‘this or that civil institution’ have ‘no absolute existence in nature, and the necessary relations of things in the great scheme of moral government,’ but are the ‘mere offspring of system’ – ‘conventional,’ in Hume’s terms – politics becomes divested of its true foundations; might is right, and the people may be subjected to any de facto arbitrary human despotism.⁴⁸

Fortunately, the law of nature, contended Cartwright, does bind temporal authority, decreeing, in language reminiscent of both the ethical rationalists and the Common Sense school, firstly, that all individuals have ‘been created free,’ for, without humans having free will, ‘neither virtue nor vice, right nor wrong, could be ascribed to their actions.’⁴⁹ It also decrees human rationality, so that each individual is also capable of using their understanding to apprehend morality, and, by extension, their duty. In short, in making the human species, God ‘add[ed] free-will to rationality, in order to render them beings which should be accountable for their actions.’⁵⁰ Since God also ‘made men by nature equal,’ and gave them ‘the same passions

⁴⁶ Ibid, p.60; Cartwright, *American independence*, p.40.

⁴⁷ On this, see H T Dickinson, ‘The eighteenth-century debate on the sovereignty of parliament’, *Transactions of the Royal Historical Society*, 26 (1976), pp.189-210.

⁴⁸ Cartwright, *Legislative rights*, pp.81-2.

⁴⁹ Cartwright, *Take your choice!*, p.2.

⁵⁰ Ibid, p.21.

to actuate; the same reason to guide; the same moral principle to restrain; and the same free will to determine, all alike,' they all have equal capabilities as moral agents to access truth, about which, being objective and immutable, 'there can be no diversity of opinion.'⁵¹

Cartwright's emphasis on the moral capability of freely willing and rational human individuals was clearly closely modelled on Clarke and Price's arguments. Cartwright could have been directly quoting Clarke when he wrote, in *Give us our rights*:

To place a general undefined conscience in others, even the best and wisest, is to resign our free-agency and become mere machines. It is dishonourable to both parties. It is contrary to nature; which requires rational beings universally, to be the judges of the fitness or unfitness of their own actions.⁵²

His conception of the moral agency of human beings was also clearly influenced by the Common Sense school. He made numerous references to the self-evidence of moral truth, conceiving it as intuitively grasped by all human beings. As he put it in his first pamphlet, government must be based upon 'a very small number of fundamental principles of the utmost simplicity, since they must be self-evident, or they are no principles at all.'⁵³ Such principles are not matters of complex deduction unavailable to the labouring majority; they are directly accessible to all. Indeed, he contended, in an echo of Beattie, that all maxims fundamentally can be reduced 'by clear inferences, to some one or other of ...simple, self-evident principles.'⁵⁴ Furthermore, he frequently referred to universal human moral agency as a function of 'common sense'; as early as 1775 he argued that politics should be rooted in the idea that 'there are some plain things in which every man of common sense may be infallible,' a tendency that continued in later works.⁵⁵

⁵¹ Ibid pp.2-3; *The people's barrier*, p.81.

⁵² John Cartwright, *Give us our rights!* (London, 1782), p.36.

⁵³ Cartwright, *American independence*, p.14.

⁵⁴ Ibid.

⁵⁵ L&C, v.1, p.59.

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Cartwright thereby invoked ‘common sense’ and the language of reason and understanding together. Following Reid and Beattie’s characterisation of the direct, intuitive faculty of common sense as active and rational, and their consequent redefinition of ‘moral sense’ in terms almost identical to the ethical rationalist language of ‘intuitive understanding’, he used the languages of rational understanding and of common sense as synonymous. For example, in 1775 he stated:

So when the British constitution, whose form is so manifest to the eye of common sense, and whose principles by their self-evidency are so simple and so obvious, lies before us, 'tis in vain for ministers, for statesmen, or even for orators, to endeavour to impose upon our understandings.⁵⁶

The phrase ‘the eye of common sense’ invoked Reid’s comparison between the power of sensory perception and moral apprehension, but the process of negating this ‘sense’ was described, in the same sentence, as an imposition on our *understandings*. Cartwright was thereby exploiting the normative commonalities of the anti-sceptical tradition of realist moral philosophy, invoking Clarke and Reid in a powerful synthesis.

This conception of the moral nature of human beings had extensive political implications, some of which Peter Miller has already drawn out to some extent.⁵⁷ If human beings must be governed by their own rational self in terms of their moral behaviour, impinging as it does on their happiness in a future state, it follows that the same principle must be applied to their temporal happiness. This has obvious implications for the political framework within which temporal happiness, and thereby practical moral action, may flourish. As Cartwright wrote, ‘all, without exception, are capable of feeling happiness or misery accordingly as they are well or ill

⁵⁶ Cartwright, *American independence*, ‘A letter to Edmund Burke esq.’, p.7.

⁵⁷ Miller, *Defining the common good*, ch.6.

governed.’⁵⁸ The implication was that one’s moral agency was acutely relevant to civil government.

Much of this links into Cartwright’s persistent analogy between human sovereignty and God’s sovereignty. As we have seen, Cartwright held that human beings, created as rational and free by God, must voluntarily consent to the ordinances of God’s moral government of the universe, thereby choosing to govern themselves in accordance with eternal divine rectitude. Precisely the same must apply even more obviously to temporal jurisdictions, since civil governors do not share the infallibility of God’s nature. As Cartwright put it, the moral government of God, as an example to men, has ‘established, beyond all contradiction,’ that ‘law, to bind all, must be assented to by all;’ that ‘of right, every man ought to be his own legislator.’⁵⁹

As such, much of Cartwright’s case for reform consisted in demonstrating how representative government, based upon universal manhood suffrage, was the means by which, in a large state, individuals could collectively consent to civil government, and thereby give aggregate expression to their moral existence as rational and self-governing individuals bearing free-will and common sense.⁶⁰ The failure of the doctrine of virtual representation to recognise the equal moral and political sovereignty of each individual rendered it contrary to the laws of nature. This implied a conception of political agency, and therefore political rights, conceived in terms of equal natural right, particularly in terms of the right to vote, seen as embodying the right to govern one’s own self according to moral principles that one has apprehended using one’s own rational judgement. The right to vote, therefore, was natural in the sense of being absolute and inalienable, coterminous with the inherent moral nature of humanity; a right ‘which a citizen claims as

⁵⁸ Cartwright, *The people’s barrier*, p.21.

⁵⁹ Ibid, pp.27-8.

⁶⁰ It could easily be maintained that Cartwright’s moral view in fact implied a kind of philosophical anarchism, but that was not a conclusion that he was prepared to countenance.

being a MAN,' rather than as, for example, an unequal bearer of unequal property.⁶¹

Cartwright was not alone in making such a case for reform; he closely associated in this cause with various fellow radicals also active in the Society for Constitutional Information, particularly John Jebb, who advocated practical proposals, such as universal manhood suffrage, identical to Cartwright's. Indeed, Cartwright described Jebb as 'friend of my bosom and pattern of my conduct', and Jebb stated that he had been converted to radical reform 'in consequence of the incomparable publications of major Cartwright.'⁶² As such, Caroline Robbins has suggested that the two men were 'influenced by the same traditions and shared most of their ideas and aspirations.'⁶³

However, the picture of Cartwright outlined in this article brings Robbins' contention into question, and suggests that the same platform was propagated within the same context by two close colleagues despite fundamental philosophical and moral differences. As Anthony Page has demonstrated, Jebb's thought, like that of radical Dissenter Joseph Priestley, was underpinned by the 'optimistic Enlightenment philosophy' of David Hartley, which combined 'determinism, materialism, and Christianity'.⁶⁴ Although Cartwright never explicitly mentioned Hartley, Priestley, nor his philosophical differences with Jebb, it is clear that his emphasis upon the importance of free-will as the basis of meaningful moral and political agency, and his rejection of a mechanistic, materialist view of human moral nature, were both antithetical to such a philosophical viewpoint. This implies that in the 1770s and 1780s there were

⁶¹ Ibid, p.5.

⁶² Anthony Page, *John Jebb and the enlightenment origins of British radicalism* (Westport, 2003), p.187.

⁶³ Caroline Robbins, *The eighteenth-century Commonwealthman: Studies in the transmission, development, and circumstance of English liberal thought from the Restoration of Charles II until the war with the Thirteen Colonies* (Cambridge, 1959), p.370.

⁶⁴ Page, *John Jebb*, p.270.

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multiple philosophical and moral foundations for a common platform of radical reform.

V

Cartwright's moral perspective closely complemented his religious affiliations. Cartwright was, as the work of Rachel Eckersley has shown, theologically, if not explicitly in terms of congregational membership, a Dissenter, and specifically a unitarian.⁶⁵ However, although Cartwright held unitarian views privately, there was considerable overlap between liberal latitudinarian Anglicanism and rational Dissent, a point reflected in his background. As well as being, doctrinally, an idiosyncratic unitarian, he was, at least in a familial sense, an Anglican. As Eckersley points out, there is no evidence that he attended formal Unitarian worship at either of the two openly Unitarian chapels established in the eighteenth century.⁶⁶ As a military officer in both the navy and the Nottinghamshire militia, he presumably took the sacrament according to the practice of the Church of England, a requirement of the Test Act for all civil and military officers. Although he was clearly not an Anglican doctrinally or in terms of worship, and he appears to have largely worshipped outside of the confines of organised religions of any type, his family background was within the fold of the Established Church.⁶⁷

⁶⁵ See Rachel Eckersley, 'John Cartwright: radical reformer and unitarian?', *Transactions of the Unitarian Historical Society*, xxii (1999), pp.37-53. I will use Eckersley's distinction between 'unitarianism' and 'Unitarianism', the former referring to a theological position denying the orthodox view of the Trinity without necessarily entailing explicit avowal of that view or formal Unitarian worship, the latter referring to membership of a Unitarian congregation or the practising of formal Unitarian worship.

⁶⁶ Eckersley, *The drum major of sedition*, p.84.

⁶⁷ Cartwright's brother Edmund was an Anglican clergyman, see Eckersley, *The drum major of sedition*, pp.23-4. The Cartwright family's Anglicanism is also implied by the fact that Cartwright was

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In practice however, this meant little more than openness to the doctrines and personalities of latitudinarians such as Clarke, and a lack of explicit 'Dissenting' identity. Many of Cartwright's friends and acquaintances, such as the Rev. John Lindsey and John Jebb, began as Anglican latitudinarians of unitarian views before leaving the fold of the Church of England to become avowed Unitarians, largely because they came to believe that seeking a 'second reformation' that would allow the Church of England to comprehend all of Protestant Christianity was impossible, a view encouraged by the failure of the Feathers Tavern petition of 1771, which argued for replacing subscription to the Thirty-Nine Articles with a simple commitment to the word of scripture.⁶⁸ As such, the distinction between Anglican latitudinarianism and the mainstream of Dissent was, on the fringes, fairly fluid.

It is perhaps more accurate, therefore, to talk about Cartwright as part of a broad tradition of 'rational' Protestantism, which scholars such as Knud Haakonssen and John Gascoigne have highlighted as being present both within the Dissent and latitudinarian Anglicanism in the eighteenth century. This tradition embodied the principle that each individual was the arbiter of their own salvation, and had a right – and indeed duty – to use their private judgement to interpret scripture according to divine right reason.⁶⁹ This approach had an obvious source in the Dissenting tradition, which is perhaps best seen in terms of James Bradley's contention that there was a common nonconformist tradition of 'refus[ing] to allow any civil or religious authority to exercise power over the individual's conscience', rather than in terms of J C D Clark's emphasis upon the consequences of

buried in the family plot at an Anglican church in Finchley, see L&C, v.2, p.289.

⁶⁸ Page, *John Jebb*, pp.21-2.

⁶⁹ On the common features of Anglican and Dissenting radicalism, see Knud Haakonssen, 'Enlightened Dissent: an introduction', in Hakonssen, ed., *Enlightenment and religion*, pp.1-11; and John Gascoigne, 'Latitudinarianism, rational dissent and radicalism', in Hakonssen, ed., *Enlightenment and religion*, pp.219-40.

theological heterodoxy, which struggles to explain the radicalism of many theologically orthodox Dissenters.⁷⁰

However, it was an approach that also had a close affinity with rationalistic elements of the Anglican tradition, the sources of which can be traced in both Locke's *The reasonableness of Christianity* and Samuel Clarke's own religious writings. Locke's views were characterised by profound ambivalence. On the one hand, scholars such as John Dunn have suggested that Locke's religious thought was 'democratic in long term implication,' since it embodied an 'epistemological individualism implying an equality of human souls in terms of their understanding of the truth of religious propositions.'⁷¹ Locke contended that God gave all humans the requisite understanding to discern the underlying rationality of revelation, and argued that the ultimate recourse was to Scripture, with each individual conceived, at least in theory, as competent to bring reason to bear on its truths. On the other hand, as Alan Sell has argued, in practice Locke's theological rationalism could be seen as 'aristocratic,' since he held that 'the greatest part of mankind want leisure or capacity for demonstration, nor can carry a train of proofs,' and therefore could not be expected, in practice, to understand the

⁷⁰ On this, see James Bradley, 'The Religious Origins of Radical Politics in England, Scotland, and Ireland, 1662-1800', in *Religion and politics in Enlightenment Europe*, ed. James Bradley and Dale Van Kley (Notre Dame: University of Notre Dame Press, 2001), pp. 187-253, at pp.195-98. See also James E Bradley, *Religion, revolution and English radicalism: non-conformity in eighteenth-century politics and society* (Cambridge, 1990); Martin Fitzpatrick, 'Heretical religion and radical political ideas in late eighteenth-century England', in *The transformation of political culture: England and Germany in the late eighteenth century*, ed. Eckhart Hellmuth (Oxford, 1990), pp.339-74; and Mark Philp, *Godwin's political justice* (Ithaca, N.Y, 1986), ch.1. For Clark's view, see J C D Clark, *English society 1660-1832* (Cambridge, 2000), ch.4.

⁷¹ John Dunn, 'The politics of Locke in England and America in the eighteenth century', in: *John Locke: problems and perspectives* (Cambridge, 1969), p.59.

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underlying rationality of the Christian revelation.⁷² This implied that it was incumbent on religious authorities, embodying the authority of Christ the lawgiver, to inculcate in the majority a sense of religion and morality through revelation.⁷³

Clarke's viewpoint was more unequivocally rationalist and individualistic. He held that setting up any arbitrary religious authority over scripture and conscience was the religious equivalent of attempting to establish truth by positive political institution against objective moral realities, denying the capacity of human beings to exercise their reason and free-will. There cannot be 'any Authority upon Earth, sufficient to oblige any man to receive any thing as of divine Revelation, which it cannot make appear to that Man's own Understanding.'⁷⁴ As James Ferguson has observed, the rule of scripture-as-right-reason interpreted by the individual conscience was seen by Clarke as the defining feature of Protestantism, which he contrasted to 'the position of the Church of Rome which teaches that doctrines and creeds are to be believed on the authority of the Church.'⁷⁵

The fundamental basis of Cartwright's views fitted into this tradition. He described *The reasonableness of Christianity* as 'the most satisfactory book of the kind I ever met with in my life.'⁷⁶ He appeared to emphasise the more democratic and individualistic aspects of Locke's viewpoint, regularly stating his commitment to the importance of all individuals using their reason to interpret scripture and come to a freely-willed, morally meaningful apprehension of religious truth. For example, he argued that, not believing in the 'infallibility of popes and kings,' he could never become a Tory or a Papist; rather, 'on every point which materially

⁷² Alan Sell, *John Locke and the eighteenth-century divines* (Cardiff, 1997), p.125; John Locke, *The reasonableness of Christianity*, ed. L T Ramsey (London, 1958), p.66.

⁷³ Ibid.

⁷⁴ Samuel Clarke, *The Scripture-doctrine of the Trinity* (London, 1712), p.ii.

⁷⁵ Ferguson, *Dr. Samuel Clarke*, p.166.

⁷⁶ L&C, v.1, p.50.

affects a man's moral conduct, either as an individual or as a member of society, he must judge and act for himself.⁷⁷ Early in his career, he appears to have agreed with the view of the liberal fringes of the Church of England, arguing that the Established Church 'should, in my opinion, have in it so many open portals, as to admit within its walls every sober Christian and peaceable member of the community.'⁷⁸ However, by the end of his career he appears to have lost faith in the idea of a religious establishment, arguing against all civil interference in religious belief.⁷⁹ His general, consistent view was perhaps best summarised when he described himself in the third person thus: 'The legal doctrines of the state-church not satisfying his judgement, he sought for truth in the Bible, and in Reason, equally, the revelations of the Almighty.'⁸⁰

Cartwright's view was, in short, that religious authority must be a product of the rational and voluntary consent of individual believers. Since, for Cartwright, politics was the temporal application of the laws of religion and morality, the religious principle of the sanctity of private judgement must have political implications. Only by finding a way of subjecting the concerns of entire societies to the private judgement, and by extension consent, of individual rational moral agents, by means of a suffrage based upon personality, could political authority gain legitimacy. If Protestantism embodied the principle of the 'priesthood of all believers,' then the extension of such a principle to politics implied the 'sovereignty of all moral agents.'

The commonalities between these ideas and the broad moral tradition earlier identified were striking, based upon a common

⁷⁷ Ibid, p.57.

⁷⁸ *Some thoughts on the present most alarming condition of the state; and of the measures necessary for its preservation*, Nottinghamshire Archives, Foljambe of Osberton Papers, Correspondence – Sir George Savile, Vol. XIII – Parliamentary and national affairs, DDFJ 11/1/7/1-3, pt. 2 (1776, unpaginated).

⁷⁹ John Cartwright, *The English constitution produced and illustrated* (London, 1824), pp.397-8.

⁸⁰ L&C, v.2, p.287.

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epistemological perspective. Interpretation of scripture was conceived as an individualistic and rational process, analogous to and dependent on processes inherent in the general process of apprehending moral knowledge. Furthermore, implicit in both the religious emphasis on the individual's exercise of conscience and the moral emphasis on the individual's ability of moral apprehension was the importance of free-will; only the possession of rational understanding and free-will combined could make moral behaviour possible. Likewise, both positions were predicated on the existence of an objective, immutable, obligating realm of moral truth. Such a realm coincided with the duties prescribed by Scripture, and, as such, the moral realists' emphasis on the objectivity and rational nature of moral truth made it necessary, if Christian revelation were to maintain a special status, to conceive Scripture as rationally explicable and objectively true. It was, in short, important for the fundamental authority of Christianity that moral truth, seen both in terms of reason and natural religion, and in terms of Scripture and revelation, was conceived as being non-arbitrary. As such, the two perspectives naturally dovetailed.

VI

Cartwright's extension of the principles of this strand of rational Protestantism into his politics is reflected in his consistent use of an analogy between religious salvation, as the saviour of the individual soul from eternal destruction, and political salvation, as the people's achievement of freedom under a reformed parliament. This metaphor was first used in his debut pamphlet, when he referred to 'the gospel of civil as well as religious salvation.'⁸¹ The point of this analogy was to stress the universality of political agency. He contended that the 'religion, or the divine government' was 'intended...for the equal benefit of all, such is the simplicity of its moral precepts.'⁸² Civil government must be likewise, for 'it would be very absurd to

⁸¹ Cartwright, *American independence*, p.7.

⁸² *Legislative rights*, p.67.

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suppose that God had made it more easy to learn the means of eternal, than of temporal salvation.’⁸³ As he put it in *To the Rev Christopher Wyvill*:

...when we recollect that the poor have the same natural faculties as ourselves, and have been entrusted by the great Creator and Legislator of the universe, with the means and management of their own self-preservation, physical and moral, and even with the means of their own eternal salvation, this denial of their competency to share in the election of those who have full power over their property, their families, their lives and liberties, appears to me to be both a satire on our species, and a libel on Providence.⁸⁴

The Protestant nature of this analogy is highlighted by his conception of ‘political Roman Catholicism.’ He argued that, despite the fact that the means of civil and religious salvation are both open to the understandings of all, ‘we have our political Popes, who would fain have us distrust our common sense and our feelings, and believe implicitly in their infallibility.’⁸⁵ These political Papists privilege their will over the religious and moral truths communicated to the individual conscience; consent in government is implicitly compared to choosing one’s religious views for oneself rather than having them imposed by a Pope or council. As Cartwright put it:

We ought to be careful to preserve a gospel purity in our civil as in our religious constitution; for they are both founded on the word of God. If the religious be more express and clear, the civil is more antient, and no less divine, though only revealed to us by a general and fainter impress on the mind and heart of man. If the Dean [Tucker] will not admit the decrees of popes and councils as of equal authority with the

⁸³ Ibid, p.68.

⁸⁴ John Cartwright, *To the Rev. Christopher Wyvill* (London, 1801), p.47.

⁸⁵ Cartwright, *American independence*, p.7.

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word of God, he will not surely maintain, that a Magna Charta ought to come in competition with the spirit of a constitution, whose basis is internal justice and inherent liberty.⁸⁶

The implications that Protestantism had for individual moral agency and the natural right to self-determination militated strongly against the imposition of any arbitrary moral, theological or political order. As such, political ‘reform’ was analogous to Protestant ‘Reformation,’ since both involved replacing the arbitrary determinations of a corrupt elite with the self-governance of individual, rational moral agents. Indeed, it is striking how often Cartwright used the term parliamentary ‘reformation’ in preference to ‘reform’, which may have been a deliberate attempt to cultivate the analogy.⁸⁷

Cartwright never actually used the specific phrase ‘Political Protestantism,’ but, given his consistent use of such an analogy between political reform and Protestant Reformation, it seems an apt way of describing an important aspect of Cartwright’s mode of political argumentation. It was undoubtedly a tactical response to the cultural context of Britain’s contemporary self-image and the historical Whiggish association in domestic political culture, emanating from the seventeenth century, between Protestantism and liberty, Roman Catholicism and tyranny.⁸⁸ Indeed, Cartwright talked explicitly about the ‘indissoluble union between real protestant piety and liberty,’ and ‘Catholic’ was always synonymous in his writings with the words ‘Tory’ and ‘slavery.’⁸⁹

⁸⁶ Ibid, p.39. Dean Josiah Tucker (1713-1799) had previously contended that the argument of Cartwright, among others, in favour of universal manhood suffrage was attributable to his attempt to extend his religious views into the political realm. See his *A treatise concerning civil government* (London, 1781), p.30.

⁸⁷ See, for example, Cartwright, *Legislative rights*, second preface, penultimate page (unpaginated).

⁸⁸ See Linda Colley, *Britons: forging the nation, 1707-1837* (London, 1996), p.18.

⁸⁹ Cartwright, *Legislative rights*, pp.72-3.

VII

It is the case, however, that another mode of political legitimation co-existed with this framework of rational religion and moral philosophy within Cartwright's thought. This was an argument based upon a radicalised interpretation of the theory of property and consent contained in John Locke's *Second treatise of government*. As early as *Take your choice!*, Cartwright, directly quoting Locke, observed that 'every man has a property in his own person; the labour of his body and the work of his hands, we may say are properly his.'⁹⁰ He extended this argument by observing that even the poorest man has property in terms of the fruit of this labour, such as food, clothing and other 'necessaries,' as well as his wife and family.⁹¹ Such property as this constitutes 'great stakes to have at risk,' and, as such they give the poor man 'an undoubted right to share in the choice of those trustees, into whose keeping and protection they are to be committed.'⁹² Since, according to Locke, property is only property if it is that which cannot be alienated without the consent of the owner, and since all male human beings have 'property' in terms of their life and labour, and the power to take away life or liberty is one that devolves to civil government, Cartwright concluded that all must consent to government, and therefore have a right to vote.

As scholars such as D O Thomas have observed, such an interpretation involved several contestable interpretative moves, particularly in terms of conceiving 'consent' in terms of continuous and active political participation through a system of representation.⁹³ Nonetheless, it was far from being an outlandish reading. It contained two separate levels. The first was linked to the assumption that 'the first principle of nature [is] that of self-preservation,' an axiom taken from Locke's definition of the fundamental law of nature as the preservation of members of

⁹⁰ Cartwright, *Take your choice!*, pp.20-21.

⁹¹ Ibid.

⁹² Ibid, pp.19-20.

⁹³ Thomas, *The honest mind*, p.193.

society.⁹⁴ For Cartwright, ‘having a participation in all the laws by which they are governed’ was literally the people’s means of the preserving the ‘internal’ property they possessed, in the sense of their own lives.⁹⁵ The other level pertained to the ‘external’ property that each individual had in their labour and its fruits, a concept that Cartwright often used to underpin his argument in favour of the inseparability of taxation and representation. For, example, in *A letter to the high sheriff of the county of Lincoln* (1795), Cartwright quoted Locke’s question, ‘What property I have in that, which at the will of another, may be taken from me without my consent?’⁹⁶ He argued that if the poor have no right to choose their own governors, whose actions, in the form of taxation, may deprive them of the fruits of their own labour, they can be said to have no security of property, and hence no liberty. It was a point that frequently recurred in Cartwright’s political writings.

Cartwright’s aim in using this discourse was to show that, as he put it in *Take your choice!*, ‘according to the received doctrine of property, no man can be without a vote for a representative in the legislature.’⁹⁷ Such an argument was, however, secondary to his fundamental argument: for Cartwright, it was ‘not property...which truly constitutes freedom,’ no matter how widely that property was construed, but the moral agency that was ‘the immediate gift of God to all the human species.’⁹⁸ The argument from an expanded conception of property was a tactical and secondary mode of political legitimation designed to supplement his fundamental argument in favour of universal political agency as the natural consequence of universal moral agency.

This was understandable within the context of the powerful underlying assumption of contemporary public discourse that property, liberty and authority existed in a symbiotic relationship. As

⁹⁴ Cartwright, *American independence*, postscript, p.27.

⁹⁵ Ibid.

⁹⁶ John Cartwright, *A letter to the high sheriff of the county of Lincoln* (London, 1795), appendix, pp.11-12

⁹⁷ Cartwright, *Take your choice!*, p.21.

⁹⁸ Ibid.

Paul Langford has illustrated, one of the foundational assumptions of public and political life during the eighteenth century was that ‘property [was] the sole, rightful basis of authority.’⁹⁹ Post-1688, parliament was widely conceived as the institutionalisation of the rights of the propertied classes against crown prerogative. Langford observes that the discourses of liberty as security of property, and property as the basis of authority, were hegemonic; indeed, it was a sign of the strength of this hegemony that contentious questions about the nature of politics and society were, as Langford observes, typically ‘conceived within propertied terms of reference and conducted with constant recourse to the rhetoric of property.’¹⁰⁰ The other side of this was that ‘property itself could be defined in diverse ways, some of them potentially subversive of established authority.’¹⁰¹ Cartwright’s attempt to use Locke’s conception of property in order to expand the boundaries of the propertied political settlement was just such a subversive move. It allowed him to redefine the scope of the political nation while retaining the form of an established and respectable discourse.

As such, Cartwright tended to tactically stress this mode of legitimation in contexts later in his career when a more circumspect line of argument was required. Although it had always been present, in early pamphlets Cartwright made its subordinate status quite clear. This was not the case, however, in less promising political circumstances. In the wake of the Pittite repression of the 1790s and the French Revolution, as Rachel Eckersley has noted, Cartwright increasingly targeted his writings at parliamentary Whigs and propertied audiences with the aim of piecing together a respectable pro-reform movement in alliance with Sir Francis Burdett.¹⁰² In such circumstances, it became more expedient to stress the ways in which

⁹⁹ Paul Langford, *Public life and the propertied Englishman, 1689-1798* (Oxford, 1991), p.v.

¹⁰⁰ *Ibid*, p.1; p.28.

¹⁰¹ Cartwright, *Take your choice!*, p.v.

¹⁰² See Rachel Eckersley, ‘Of radical design: John Cartwright and the redesign of the reform campaign, c.1800–1811’, *History*, 89 (2004), pp.560-80.

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arguments for reform demonstrated continuity and accordance with the hegemonic assumptions of British political culture; as such, Cartwright increasingly gave prominence to Locke's definition of property in order to argue for reform within the paradigm of the assumed reciprocity between liberty and property. This was particularly the case given that his audiences in this era were increasingly groups of propertied freeholders, likely to be conscious of their status and therefore more susceptible to a cautious appeal to what he called 'inseparable union' that exists 'between Liberty and Property' than an abstract appeal to moral principle.¹⁰³

After Cartwright's relationship with Burdett had broken down and popular radicalism showed signs of revival, signalled by the rise of the provincial Hampden Clubs in 1816, Cartwright no longer needed to place his platform within such a cautious intellectual framework; his new plebeian audience were more receptive to the more thoroughgoing arguments of his early career.¹⁰⁴ This is evidenced by the fact that in this period Cartwright reverted back to his original moral framework. For example, in his 1817 work *A bill of rights and liberties* he made no mention of Locke, and instead declared that universal manhood suffrage was the political consequence of the fact that 'all men come of the hand of their Creator with the same rational nature,' meaning that 'imposing on any class of men...guardians, not of their choice, but against their will' was 'an impeachment of the Divine Wisdom.'¹⁰⁵ He invoked once again the language of the Scottish Common Sense school, arguing that the principles of natural law 'are so self-evident, that every man of common sense, who once looks at them, sees their truth, and feels their force; which is a natural ground of

¹⁰³ See his *An appeal, civil and military, on the subject of the English constitution* (London, 1799), p.86; *A letter to the electors of Nottingham* (London, 1803), pp.34-5; and *A letter to the high sheriff of the county of Lincoln*, appendix, p.11.

¹⁰⁴ For his break with Burdett and the rise of provincial radicalism at this time, see Churgin, *Major John Cartwright: a study in radical parliamentary reform*, p.382-93.

¹⁰⁵ John Cartwright, *A bill of rights and liberties* (London: 1817), p.8.

unanimity.¹⁰⁶ He also continued to use the metaphor of Protestant salvation, arguing that since human beings are ‘held to be competent judges of the means of their own eternal salvation,’ they are also ‘competent judges of their own temporal welfare.’¹⁰⁷

VIII

The picture of Cartwright’s thought outlined in this article has a number of important consequences. On a narrow level, it corrects the neglect of the moralistic and religious dimension of Cartwright’s ideas and suggests linkages between a wing of the parliamentary reform movement often seen as predominantly ‘constitutionalist’ and the religious radicalism usually more associated with Rational Dissent and the wider spectrum of ‘rational religion.’ It also suggests that one element of the movement towards a modern idea of ‘democracy’ had its roots in a common tradition of anti-sceptical, realist, deontological moral philosophy, embodied in both the schools of ethical rationalism and Common Sense. This shows how reforming intellectuals of the era were able to utilise the egalitarian and rationalistic potential of the precepts of elite discourses of moral philosophy to new and radical political ends.

Furthermore, Cartwright’s willingness to utilise both moralistic-Protestant and Lockian property-based arguments to justify his platform implies that in certain strands of the era’s reformist thought multiple modes of political legitimation operated at different levels of relative conceptual and tactical importance, alternating in terms of emphasis depending on concrete political circumstances, but still in a hierarchy of significance. In other words, it suggests that their thought may have possessed a sophisticated ideological and rhetorical structure, in which deeply-rooted ethical frameworks of argument were sometimes supplemented, but not supplanted, by more tactical, and conceptually subordinate, discourses.

¹⁰⁶ Ibid, p.14.

¹⁰⁷ Ibid, p.15.

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A further interesting problem thrown up by this argument is the relationship between the moralistic-religious framework of argument that has been outlined and the use of arguments derived from the English republican tradition. Implicit in Cartwright's conception of individual moral and political agency was the idea that liberty consisted in rational self-government. At times, Cartwright's characterisation of the political implications of Humean scepticism appeared to come close to a republican diagnosis of corruption in terms of the imposition of the discretionary power of arbitrary despotism and the victory of partial, sectional interests over the public weal. In short, there are reasons to think that there may have been a kind of ideological affinity between Cartwright's moral and religious argument and the characteristic features of republicanism as conceived by scholars such as Quentin Skinner or Jonathan Scott.¹⁰⁸ As such, the central contention of the above argument should prompt us to rethink how the ideological dynamics of republicanism may have fitted into the intellectual landscape of late eighteenth-century reform.

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¹⁰⁸ Jonathan Scott, *Commonwealth principles: republican writing of the English revolution*. (Cambridge, 2004); Quentin Skinner, 'The republican ideal of political liberty', in: Gisela Bock, Quentin Skinner and Maurizio Virola, eds. *Machiavelli and republicanism* (Cambridge, 1990), pp.293-309; Quentin Skinner, *Liberty before liberalism* (Cambridge, 1998).

REVIEW ARTICLE

BENJAMIN FRANKLIN, THE ENDS OF EMPIRE AND THE AMERICAN REVOLUTION

Mark G Spencer

J A Leo Lemay, *The life of Benjamin Franklin, Volume 1: Journalist, 1706-1730*, Philadelphia: University of Pennsylvania Press, 2005; pp.568, cloth, ISBN 978-0-8122-3854-9; \$49.95s / £32.50.

— ***Volume 2: Printer and publisher, 1730-1747***, Philadelphia: University of Pennsylvania Press, 2005; pp.664, cloth, ISBN 978-0-8122-3855-6; \$49.95s / £32.50.

— ***Volume 3: Soldier, scientist, and politician, 1748-1757*** Philadelphia: University of Pennsylvania Press, 2008; pp.768, cloth, ISBN 978-0-8122-4121-1; \$49.95s / £32.50.

Carla J Mulford, *Benjamin Franklin and the ends of empire*, Oxford: Oxford University Press, 2015, hdbk. ISBN: 9780199384198, £41.99.

Most of us picture Benjamin Franklin (1706-1790) as the aged statesman. Perhaps the image that comes to mind is the bespectacled-old-man in his blue coat, as David Martin painted him in 1767; or the seventy-year-old captured in Jean-Antoine Houdon's famous marble bust of 1778; or, perhaps, the octogenarian with long, wavy hair who graces the front of today's US \$100 bill, an image based on Joseph Duplessis's eighteenth-century portrait from 1785. When historians consider Franklin, they, too, tend to focus on him as aged statesman. Franklin's engagement with the American Revolution, for instance, is often said to begin on 29 January 1774. That was the day on which a 68-year-old Franklin was scathingly denounced by Alexander Wedderburn in the Cockpit, at London's Whitehall. Historians portray this memorable event as a turning point — one that, in an instant, transformed Franklin, the long-time Imperial Briton, into Franklin, the radical American Revolutionary. The books under review here, however, focus their attention on the younger Franklin. That Franklin, we learn, was not only an extraordinarily complex and interesting character, but one who has

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important things to tell us about the culture of colonial America and the nature of the American Revolution itself.

The late J A Leo Lemay's (1935-2008) three large volumes (of more than 1,900 pages in all) are definitive for the period of Franklin's life that they cover, from Franklin's birth in 1706 to age 51 in 1757. In his 'Preface' to the first volume, Lemay wrote: 'One might wonder how this life of Franklin differs from previous ones' (1: xiii). His answer was that, as 'a literary biography', it would have 'more discussions of Franklin's writings than any previous life'. As well, the account would have 'far more detail about Franklin's life than any previous study' (1: xiv). Both of Lemay's claims are borne out in the text of his biography. But his volumes also contribute more than this. That is because Lemay's *Life of Benjamin Franklin* is much more than Franklin's story. Lemay provides sketches — often involved ones — of the lives of most of those whose paths intersected with Franklin's. Indeed, Lemay delivers a wide-ranging cultural history of Franklin's America for the first half of the eighteenth century. This is biography on a grand, encyclopedic, scale.

The image of Franklin that emerges in these pages is one whose life was centered on writing from an early age, but also one who had boundless energy to pursue activities of various sorts—from organizing clubs and libraries, to swimming, chasing tornadoes, and commanding troops in Northampton County. Always, Franklin had an eye for improvement. Liberty, too, was a value that guided Franklin's multi-sided life from a young age. For Lemay, many of those traits came together in Franklin's political thought. More than in any previous biography, Franklin is portrayed as a serious 'theorist of empire,' as one who envisioned America playing a pivotal role in the British Empire. This, argues Lemay, was a defining feature of Franklin's thought, long before the outbreak of the American Revolution in 1776, before Wedderburn's attack in 1774, and even before Franklin's articulation of the Albany Plan of Union in 1754. As Lemay puts it in the concluding chapter of volume 3, 'Franklin's writings on America and the British Empire during the period 1748-

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1757 prove he had, so far as surviving evidence shows, the most outspoken Americanism of anyone at that time' (3: 586).

In addition to that argument, an endearing aspect of these volumes is Lemay's captivating writing style and the accessibility of his approach. While seriously scholarly, the books are nonetheless written with a general reader in mind. Lemay's biography is meticulously researched. As Lemay explains in a section on 'Sources and Documentation' (1: 465-466), it is rooted in the *Papers of Benjamin Franklin*, edited by Leonard W Labaree, et al (New Haven: Yale University Press, 1959-). Also central for Lemay was his own *The documentary history of Benjamin Franklin*, 'a chronologically arranged calendar of his activities (meetings of the Junto, Library Company directors, Union Fire Company, etc.), writings, whereabouts, and the attacks on him and references to him throughout his life' (1: 465). Historiography is central to these volumes. Indeed, at times Lemay's text is a running commentary on secondary sources, old and new. But neither the scholarship nor the historiography is allowed to interfere with Lemay's storytelling. These are very readable volumes. They are also, at times and like their subject, quite humorous.

Volume 1 documents Franklin's life from his birth in 1706 through to his marriage to Deborah Read in 1730. It is divided into two parts: 'Part I, Boston: Youth, 1706-1723' and 'Part II, Adrift: Age Seventeen to Twenty-four, 1723-1730'. As is the case with all of Lemay's volumes, there is far too much content of interest to be discussed comprehensively here. Readers are introduced to Franklin's family and acquaintances, including his closest boyhood friend, John Collins, who Franklin described as 'another Bookish Lad in the Town'. Lemay provides descriptions of the city of Boston and its environs in the early eighteenth century. That context helped to shape Franklin in important ways, including by instilling a deep-seated knowledge of Puritanism. Religion always interested Franklin. Cotton Mather's *Essays to do good* clearly impacted his

views on improvement. But when he wrote about religion, Franklin most frequently mocked or satirized it.

Lemay finds significance in the time that Franklin spent as an apprentice in his brother's printing shop. In part, that is because Lemay is able to see past what he refers to as 'the fictive world of Franklin's *Autobiography*' (1: 52; the phrase is used elsewhere as well), in which Franklin has little praise for his older brother, James, who is depicted as an overbearing master of his young apprentice. While that was so (James is thought to have beat his brother on occasion), Lemay argues that the print shop gave Franklin much more than he admits in the *Autobiography*. It provided access to the ideas contained in the books that his brother printed. Several examples are considered, including books on logic by Antoine Arnauld (1612-1694) and Pierre Nicòle (1625-1695), and works by local writers, such as Henry Care (1646-1688) and the Reverend John Wise (1652-1725), an economic improver who wrote in the spirit of Daniel Defoe's (1660-1731) *An essay on projects*. 'Franklin's later support of paper currency, his belief in egalitarianism, and his Americanism were all prefigured and perhaps partially created by the redoubtable six-foot-six-inch John Wise' (1: 76).

It was also in James Franklin's print shop that the young Franklin became acquainted with the various contributors to the irreverent *New-England Courant*. The 'styles, personae, and even jests of the *New-England Courant*'s first writers' (1: 87) had a marked impact on Franklin: John Checkley (1680-1754), Dr. William Douglas (1681-1752), Dr. George Steward (fl. 1713-51), Dr. John Gibbins (1688-1760), John 'Mundungus' Williams (fl. 1721-1723), Thomas Lane (fl. 1721-52), 'Mrs. Staples', Captain Christopher Taylor (ca. 1677-1734). Lemay gives accounts of all of them. Collectively, Lemay sees more of an impact from that lot on Franklin's writing than he does from Joseph Addison (1672-1719) and Richard Steele's (1672-1729) *The Spectator*, to which Franklin, burnishing his image, gave credit in his *Autobiography*. Nathaniel Gardener (1692-1770), James Franklin's friend, collaborator, and sometimes editor of the *Courant*, was one of the most influential of all. Franklin looked up

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to Gardener, fourteen years his senior and a tradesman (he was a tanner) who was also a talented, ‘prolific and inventive writer’ as well as ‘an indispensable town official, serving in fifty-four minor posts’ (1: 88). What did Franklin acquire from his brother and his circle?:

Benjamin Franklin learned about the printing business, running a newspaper, drumming up interest in the paper, and literary techniques from his older brother. Just as he learned to set type and do presswork, he also learned that if a cut were needed and no one else could supply it, an ingenious printer could do so himself—as James Franklin did. Benjamin Franklin learned the arts of publicity and of controversy from his brother—how to start a newspaper, manage it, and make it interesting. He also learned a number of journalistic techniques from James ... [and his] radical Whig ideology ... The talented James Franklin supplied his brother with an extraordinary training.

Without his brother’s influence, ‘Franklin’s life would have been entirely different’ (1: 142). All of that provides a context for Franklin’s early writings, such as the Silence Dogood essays, and helped set the stage for his later successes. Summarizing Franklin’s character at age seventeen when he ran away from his life as an apprentice in Boston to try his luck living independently in Philadelphia, Lemay finds him ‘precocious and brilliant’ (1: 207), but also somewhat ‘saucy, provoking, proud, and rebellious’ (1: 207).

Part II of this volume opens with a portrait of colonial Philadelphia as Franklin would have found it on his arrival. There are sections on everything from Philadelphia’s economy and politics to ‘Social Life, Holidays, and Folkways’. In November 1724, Franklin set off for London, England, although without the support that Lieutenant Governor William Keith had promised him. Lemay

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reconstructs Franklin's working life as a journeyman printer in London and also his anonymous authorship and publication of *A Dissertation on liberty and necessity, pleasure and pain* (London, 1725), a 'scandalously subversive pamphlet' (1: 457). He speculates, as well, on what else Franklin would have done—besides working and writing—to pass the time, including what plays he is likely to have seen and with whom he is likely to have visited and caroused. Franklin departed London and returned to Philadelphia in October 1726. While at sea, he kept a journal that demonstrated his natural history interests and also his desire to improve himself by, he wrote, 'regulating my future Conduct in Life' (458).

The following years were active ones for Franklin as he set himself up as a Philadelphia printer. In the autumn of 1727 at age 21 he founded the Junto. Lemay gives a chapter to the club, discussing its members and activities, and assessing its historical impact, which was substantial:

Franklin used it and the members (and they reciprocally used it and him) as a testing ground for plans to improve Philadelphia's conditions (city streets, town watch, fire companies, insurance company) and to create its institutions (a library, academy, scientific society). The Junto members inspired one another to do good — for one another, for their immediate society, and for their world. By the time the Junto expired in 1765, it had touched and improved nearly every life in Philadelphia. (1: 356)

The volume concludes with discussions of Franklin's publications from these years, including his *A modest enquiry into the nature and necessity of a paper-currency* (Philadelphia, 1729) — a work that would later grab the attention of Karl Marx (1818-1838), among others — and his ownership and editorship of the *Pennsylvania Gazette*, from 1729.

Volume 2 gives us Franklin's time as a printer and publisher, again in two parts: 'Part I, A New Life, Age 24 to 30 (1730-1736)' and 'Part II, Expanding Personal Interests, Age 30 through 41 (1736-

1747)'. As is the case in all three volumes, this one is richly illustrated. Here, the illustrations include reproductions of seminal Franklin texts, such as 'Figure 9. The preface to *Poor Richard* for 1733, predicting the death of the rival almanac maker Titan Leeds'. There are also reproductions of more obscure pieces, such as 'Figure 11. 'A Half-Hour's Conversation with a Friend,' the first interview in American journalism, *Pennsylvania Gazette*, 16 November 1733'. Several of the most interesting illustrations are those that relate to manuscript sources. Some of these are exciting for the new light they shed on Franklin's life. For instance, the illustration entitled 'Figure 15. A hat for Franklin's slave, 1745.' The image is a reproduction of a bill of exchange from Charles Moore, Franklin's hatter. Among the items charged: 'To a Raccoon hat for your Negro, 15.0.' In the text, Lemay explains that this is the earliest evidence we have of Franklin's owning of a slave. (Previously, it was thought the first evidence of his slave ownership was from 1750.) Other illustrations show a lighter side of Franklin, such as 'Figure 17. The manuscript of Franklin's drinking song ("The Antediluvians Were All Very Sober")'.

In his third, and final, volume (he had planned to write a seven-volume biography), Lemay sketches Franklin's activities, from 1748 to 1757, as 'Soldier, Scientist, and Politician.' The argument in this volume is that accompanying Franklin's international reputation for the 'new Invented Pennsylvanian Fire-Place' and his renown as an experimenter with electricity, was Franklin's prominence as a political thinker. An essential text supporting that argument is Franklin's manuscript, 'Observations Concerning the Increase of Mankind, Peopling of Countries, &c' (written and circulated in 1751, but not published until 1754). Franklin there 'documented the extraordinary population growth in America,' as scholars have long appreciated. But Lemay skillfully assembles the layered intellectual contexts underlying Franklin's work, including works by (listed here in alphabetical order) John Cary (d. 1720?), Joshua Child (1630-99), Charles Davenant (1656-1714), John Graunt (1620-74), Edmund

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Halley (1666-1742), Archibald Kennedy (1685-1763), John Locke (1632-1704), Montesquieu (1689-1755), and William Petty (1623-87), among others. In an appendix, Lemay traces the influence of Franklin's 'Observations' on Ezra Stiles (1727-1795) in America, Richard Price (1723-1791) in England, and Adam Smith (1723-1790) in Scotland. Franklin stimulated their work on population and, through those three, Franklin 'inspired the basic thesis of the first edition of Thomas Malthus's (1766-1834) *Essay on the principle of population* (1798). And, argues Lemay, 'Malthus's use of Franklin in turn inspired Charles Darwin (1809-1882) and Alfred Russel Wallace (1823-1913) (3: 605).

The most significant eighteenth-century impact of 'Observations', however, lay elsewhere than in the specialized field of population studies. Lemay casts it as the 'Fundamental Document of the Revolution' (the title of chapter 7). In 'Observations', Franklin demonstrated America's 'higher standard of living, and predicted its future greatness. It did not call for independence; it celebrated the British Empire — with America as its future most important part' (3: 240). By 1757, wrote Lemay, Franklin could be styled 'the most important theorist of the American empire' (3: xii). That theme is amplified by Carla Mulford in *Benjamin Franklin and the ends of empire*.

Mulford's Franklin, like Lemay's, had been thinking about America's place in the Empire for a long time before 1774. Mulford argues that, as early as the early 1750s, Franklin had formed notions about an 'intercolonial system' of government, a system in which 'Britons in North America would have the same rights, privileges, and representation as those in England' (2). Mulford identifies in Franklin what she refers to, anachronistically, as an 'early modern liberalism' (4), a 'constellation of values important to Franklin across his long life' (7). Those core values were largely formed during Franklin's youth and early adult years. Her Franklin is also 'a hard-working, intelligent tradesman who was competitive yet community-oriented' (103). Some might think that more might have been done to explore the impact of Franklin's father, Josiah, on the early formation of his son's character. After all, Josiah was quite

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active in civil life and was adamant that all of his sons (he had 17 children!) set their sights on learning a useful trade. Relying too heavily on Franklin's *Autobiography* runs the risk of seeing things in a skewed way as Franklin's narrative highlights self-sufficiency in its rags-to-riches tale.

To reconstruct Franklin's intellectual development, Mulford taps into many sources, including several that Lemay pointed to in his volumes. Important for understanding Franklin, Mulford argues, is Franklin's conception of his own family's history, one that involved religious dissent and memories of the English Civil Wars. Mulford explores what Franklin would have learned from his early 'haphazard' reading (73), including in the books that were available in his brother's, James Franklin's, printing house in Boston. Mulford works into the story some writers who have not been given prominent places in books on Franklin's intellectual development before Lemay. Henry Care's *English liberties*, for instance. 'Given Franklin's public stances on liberty during the course of his long career', she writes, 'I cannot overstate the importance of this book to Benjamin Franklin' (55).

Mulford may be at her best when it comes to documenting Franklin's early economic thought, in works such as his *A modest enquiry into the nature and necessity of a paper currency* (1729) and *Observations concerning the increase of mankind* (1754), and putting that into Franklin's overall conception of empire. Franklin, long before he had even turned 40 (1746), had come to believe, quite strongly, that Pennsylvania had an important role to play in the British Empire. That role could only be achieved within an Empire that encouraged free trade and the free movement of specie and people. Even during this early part of his career, Mulford argues, 'Franklin was at the center of the colony's political and social decision-making' (141). His vision: 'that different parts of the empire might benefit from other parts of it in a cooperative and collaborative network' (143). He had come to see, even by the 1750s, that 'the British colonies of North America could become a separate,

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powerful, confederated set of states within a network of similar colonial entities, all still part of the British Empire' (344). Increasingly, Franklin worked not only to convince other colonists that this was the case, but also those in positions of power in Britain, where Franklin resided himself for most of the period from 1757 to 1775.

However, Franklin came to see that the British — and especially British parliamentarians — were blind to this vision. Again and again in the late 1760s, Franklin 'emphasized his sense of the common natural rights of all Britons, wherever they were situated globally' (215), but to no avail. The colonists, he argued, 'were not 'subjects to subjects' ... [they] were subjects to the king of England' (216). Franklin was 'a pro-American man in the 1750s and 1760s,' (229) long before his harsh treatment by Wedderburn in 1774. His early-formulated views became further developed and engrained during his visit to Ireland in 1771. The poor living conditions that he witnessed in that part of the British Empire made a strong impression on him. Franklin was coming to see that the Empire he had once admired was not praiseworthy and perhaps not worth fighting for.

Franklin had attempted to secure a peaceful solution to the problems between Britain and North America. He had tried to explain that the greatest value to any nation was in its laws enacted by the consent of the governed and in its people, their affections for their leaders, their laws, their land, and their labor. He had tried, and he failed. (272).

That, we might say, was Franklin's American Revolution. It was achieved only reluctantly and over a long period of time and had come before 1774.

Mulford gives space to demonstrating how Franklin's thought on empire related to that of several British thinkers —such as David Hume (1711-76), Adam Smith, and George Whatley (c.1709-91). But there is surprisingly little comparative American context in this volume. One wonders how Franklin's conception of empire compared with that of other eighteenth-century Americans? The positions of John Adams (1735-1826), John Dickinson (1732-1808),

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and William Smith (1697-1769) of New York, for instance, to name three prominent ones of the American Enlightenment. Some of that can be found in Lemay, but the books under review here also show that comparative work remains to be done on Franklin and this aspect of the American Revolution.

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REVIEWS

Pamela Clemit ed., *The Letters of William Godwin: Volume II: 1798-1805*, Oxford: Oxford University Press, 2014, pp. xlvii+423; ISBN 978-0-19-956262-6, £100.

My review of volume one of the Letters of William Godwin (ante, 27 (2011), pp.186-87) commented very favourably on how important and interesting Godwin's letters were and how excellently well Pamela Clemit had edited them. The high praise lavished on that volume can also be paid to this second volume, also edited by Professor Clemit. This volume prints 242 dated letters written by Godwin, plus two undated letters in an appendix. Professor Clemit has again produced a highly informative introduction, a very useful index, some attractive illustrations, interesting details on Godwin's receipts for book sales and his promissory notes, and a huge number of very helpful notes added after each letter. Godwin took great care in composing these letters and it is important that this edition allows us to see the major revisions, which he often made in order to express himself to the greatest effect. The labour invested by Professor Clemit in this volume has been prodigious. Her editorial work, moreover, is of the very highest standard and she has set the bar very high for those scholars who will edit the succeeding volumes in this extremely important series.

As in the first volume, the private letters of Godwin frequently reinforce the opinions he expressed in his published writings. Godwin was nothing if not frank and fearless in upholding in private the political and moral views which made him so many enemies when they were made public. Even while trying to persuade Harriet Lee to accept his repeated and pressing proposals of marriage, he could not forbear writing in these terms: I 'consider myself as a member of the great family of mankind. Where all being fellow labourers, each is bound to contribute in proportion to his ability to the common good. In acts of utility, which, by producing the happiness of individuals, add to the general stock, a wise & just man will place his pleasure and his pride' (p.34). While recognizing that Miss Lee disapproved of his religious views, especially about life after death, he could not refrain from informing her: 'I believe, ... that the man who is moral, merely from a conception of rewards & punishments, is not a virtuous man at all. ... A virtuous man pursues a certain system of action, because his heart demands it, because he

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rejoices in the happiness & good of his fellow-men, & not because he expects a reward for doing right, or fears a punishment for doing wrong.’

Running through many of Godwin’s letters are his fears that the views he expressed so bravely in his political writings were preventing critics and the general public from giving due credit to any of his other writings. In responding to James Mackintosh’s criticisms of his own views on the opinions of Thomas Malthus, Godwin protested: ‘No man, who after having meditated upon philosophical subjects, gives the results of his reflections to the world, believes that, for having done so, he deserves to be treated like a highwayman or an assassin’ (p.68). Aghast that he was accused in print of favouring infanticide, Godwin, who clearly loved children, wrote to an unknown addressee, in 1801, ‘I see, that there is a settled and systematical plan in certain persons, to render me an object of aversion & horror to my fellow-men; they think, that, when they have done this, they will have sufficiently overthrown my arguments’ (p.228). He was, however, alarmed that Thomas Clio Rickman might believe that the political views that he had expressed in public prints might suggest that he favoured violent revolution. He wrote, in 1801, to disabuse Rickman of such an opinion: ‘I am not free from an apprehension that you have mistaken my character. I am a mere speculator; anxious to contribute my mite to the general improvement; but not less anxious that I may not contribute for the sake of any uncertain conjectures of mine, to disturb the peace of mankind. I seek only such reforms as may be effected by humane & gentle means’ (p.223). In 1805, he wrote to Robert Southey denouncing the harsh public attacks he had made on him, in 1803, that were very different from the praise he had once lavished on Godwin’s *Political justice* (pp.350-52). Given the difficulties Godwin’s other writings were having in finding a good reception because, he strongly believed, of the hostile public responses given to his political views, it is not surprising to find that he frequently

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pressed publishers and theatre managers to hide the fact that he was the author of some of his plays and novels and histories.

This volume includes important letters to such important recipients as Samuel Taylor Coleridge, John Horne Tooke, Thomas Malthus, Samuel Parr, Capel Lofft, John Philip Curran, and Sir Francis Burdett. Of greater significance are the following major themes, which run through Godwin's correspondence. There are his very revealing letters to Harriet Lee and Maria Reveley, whom he tried in vain to make his second wife, and those to and about Mary Jane Clairmont, who did marry him. Godwin clearly had a strong sex drive and was anxious to have close and rewarding physical relations with the opposite sex, but his courtship tactics do not impress and his relations with his second wife were not always cordial. There are Godwin's begging letters to several correspondents, but principally to Thomas Wedgwood, seeking loans to get him out of very difficult financial predicaments. There are the pestering letters, difficult for Godwin to write then and almost painful to read now, to the playwright, Richard Sheridan, and the actor-theatre-manager, John Philip Kemble, about his protracted and disastrous efforts to write successful and profitable dramas for the London stage. Besides these, there are letters to publishers suggesting a range of novels, biographies, and histories that Godwin was contemplating writing. Although he regularly promised more than he eventually accomplished, he was extremely industrious and was ever ready to protest when his publishers dared to alter his prose or refused to produce his works in the format he thought best. Finally, there are the many letters that Godwin wrote to Thomas Holcroft, showing how close they sometimes were and how manfully Godwin strove on several occasions to mend fences with him when their relations turned very sour.

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Leslie Ellen Brown, *Artful Virtue: The Interplay of the Beautiful and the Good in the Scottish Enlightenment*, Surrey, Ashgate, 2015, pp.253. ISBN 9781472448484, £70.00.

The author of this book is a retired professor of music at Ripon College, a liberal arts college in Wisconsin. She claims to have had a long interest in matters Scottish, and enthusiastic amateurs are always to be encouraged. Regrettably, as often happens, she has to rely on what particular experts have argued in order to structure her book, and far too often fails to grasp what they have said. In the second sentence of her Introduction, she rightly underlines the very broad range of interests and enquiries pursued in Scotland during the period from approximately 1720-1790. She then explicitly adopts the definition of Richard Sher in his *Church and university in the Scottish Enlightenment* (Edinburgh, 1985) of 'Scots literati, [as] a professional class of men of letters and learning'. Having assigned almost anybody who can be traced as saying anything to this group, she then sketches a story in terms of them. She states that 'philosophical analysis is not what is at the forefront of my study, however, and I don't pretend to approach it as a philosopher'. Unfortunately, attempts to unravel ideas and arguments, by whomsoever they are articulated, requires some commitment to and competence in 'philosophical analysis'. The author's aim is to 'provide(s) a historical phenomenology that shows how virtue and beauty became an interwoven theme in all aspects of the Scottish Enlightenment': how this emerges in the work of Joseph Black, or John Pringle, of Colin Maclaurin or James Short remains a mystery. What are offered are random surface summaries from a few known and unknown texts, with no attempt to anchor them in the precise contexts in which they were written, or recognition that the ideas canvassed were both invariably influenced and coloured by religious

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and political views of the time and place, and focused on particular targets. Above all, like so many young Americans of the present time, the writer assumes that what someone wrote, in English in, say 1750, means what someone would mean if they were writing in English in Wisconsin in 2015. There is no awareness of the vast conceptual shifts between then and now, of the rapidly changing meaning of many terms as more people became dimly aware of the advancing sciences after about 1760, and the often implicit underpinning of moral views by tenets in epistemology derived from diverse ancient and modern sources in Britain and abroad.

A reader with an average awareness of the centrality of medicine and the rapidly evolving life and physical sciences in Scotland, alongside serious interest in French thought about economics and civic society, would naturally expect new insights to complement the work of Devine, Emerson, Haakonssen, Hont, Smout and Stewart, among others: some of these names appear in a bibliography, but there is no evidence of understanding what has been written. Astonishing comments result: we are told that James Beattie ‘refuted Hume’s scepticism of religion’ (21), and that George Campbell ‘dissects and counters several theories of Du Bos, Fontenelle, Hume and Hobbes’ (80). There is no recognition that Hume’s central criteria in his essay on taste (transliterated into English) are lifted entirely from Du Bos, and no realisation that Hume and Smith, as well as Ferguson, Kames, Gerard, Gregory, Campbell and Beattie are all responding to Allan Ramsay’s provocative essay of 1755, but in their own different contexts.

The author leaps about over her chosen seventy year period, apparently assuming that everyone both knew, and had in mind, what earlier writers had claimed, and that particular contexts of reflection did not signally influence the focus and style of discussion. Anachronistic remarks occur throughout the book. It is not true, until the end of the century, that the Highlands, were admired for their

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‘picturesque topography’; or that the ‘fine arts’ (understood almost exclusively as painting and sculpture, but not furniture, utensils or such items as stained glass, ceramics or tapestries) were readily accessible and appreciated by the majority of the population. There were very few ‘collectors’ in the whole of Scotland, and the small elite class of ‘literati’ confined their remarks to literary works.

No one disputes that there are letters, newspaper comments, diaries, sermons, student notes and occasional publications by virtually unknown authors, which throw light on how individuals thought of moral, political and aesthetic issues in different contexts. To marshal illuminating selections of such material, and juxtapose them with interpretations of works which today, at least, are better known – however little they may have been known in the eighteenth century – and to construct a coherent narrative requires skills that the present author lacks. The majority of ‘professional’ moral philosophers of the day were, of course, concerned in the most general sense with ‘how to live’: but so was everyone else. If terms such as ‘moral’ and ‘aesthetic’ – or ‘political’, in other contexts – are to be used as defining categories of attitude and behaviour, very great care is needed in their characterisation and use; and casual use of quasi-technical terms, such as ‘intentionality’ needs to be monitored closely. With her stated aims, the author cannot justifiably remain ignorant of who read the books and articles cited, where, when, against what backgrounds and interests, and for what purposes.

It is surprising that, writing as a musicologist, the author tells us nothing about Joseph MacDonald’s *Compleat theory of the Scots Highland Bagpipe* written in 1760, and she seems uninterested in the fact that Gregory was not alone in being familiar with works by Pergolesi, Astorga, Candara and Palestrina. He was also likely to have read the well known works on performance by C P E Bach, Quantz and Couperin. (The Piranesi engraving of Adam’s Ante-

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room at Syon House is to be dated between 1762 and 1764, although not published until 1778 [Plate 10]; the date of the Robert Adam engraving is 1791 [Plate 11])

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Memoirs of Women Writers, Parts II and III: Mary Hays, *Female Biography; Or, Memoirs of Illustrious and Celebrated Women, of All Ages and Countries*. Edited by Gina Luria Walker. 6 vols. London, Pickering & Chatto in association with Chawton House Library, 2013, 2014. Parts II and III comprising vols. 5-7, and 8-10, respectively. ISBN: (vols. 5-7) 9781848930520; (vols. 8-10) 9781848930537

This is the first modern scholarly edition of the encyclopaedic work in which Mary Hays (1759-1843) confirmed a commitment to the candid, public representation of women's experiences and achievements that had already characterised her works as one of the most daring Jacobin novelists of the 1790s. The six volumes of *Female biography* comprise Parts II and III (vols. 5-10) of Pickering & Chatto's 'Memoirs of women writers' series, the texts presented in which are based on early editions of eighteenth- and early nineteenth-century works of women's life-writing held at Chawton House Library. Assisted by an international and multi-disciplinary team of scholars, including several dedicated section editors, Gina Luria Walker presents the original text of *Female biography* in facsimile, along with endnotes to each volume that serve to supplement the information contained in Hays's individual entries, and to provide a modern scholarly commentary on the whole work.

In *Female biography*, Hays consciously brought to her lively factual accounts of her 300 historical subjects' lives the narrative skill of a novelist, just as in her novels, *Memoirs of Emma Courtney* (1796) and *The victim of prejudice* (1799), she had infused fictional narratives with a sense of documentary immediacy – having even

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included verbatim passages from her own, real-life written correspondence in *Emma Courtney*. While partly motivated by her need to support herself financially, Hays's *Female biography* project was no less dedicated than her novels had been to promoting women's education and personal agency. It also attracted the censure of conservative critics on the same grounds as had been cited in their attacks on her novels, which they had branded as bad examples to impressionable female readers because of their frank narration of women's moral dilemmas and transgressive actions.

Among her radical contemporaries, Hays suffered especially acutely in her literary career as a result of the anti-Jacobin backlash in mid- and late 1790s Britain, provoked and intensified by the escalating war with revolutionary France. As a woman writer, Hays additionally became the victim of the specifically misogynistic strain of anti-Jacobin critique that also characterised responses to the life and radical writings of her friend Mary Wollstonecraft – especially after the details of Wollstonecraft's unconventional personal life had been revealed following her death, in her widower William Godwin's *Memoirs of the author of A vindication of the rights of woman* (1798). Hays herself was singled out for mockery by Elizabeth Hamilton, who caricatured her as Bridgetina Botherim in her satirical novel, *Memoirs of modern philosophers* (1800), while her former friend Charles Lloyd parodied her politics in the character of Gertrude Sinclair in *Edmund Oliver* (1798). Unlike the deceased Wollstonecraft, then, at the turn of the nineteenth century Hays remained faced with the challenge of surviving as a radical woman writer in a hostile social and political climate.

Mary Hays was not alone among her contemporaries in her adoption of literary genres less liable to anti-Jacobin attacks than the novel - which was still, at this period, a suspect genre of literature on account of its fictionality, and its much-discussed appeal to the emotional responses of young female readers in particular. As Hays's experience of becoming the butt of Hamilton and Lloyd's

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satire would also have made clear to her, the fluid and unstable (because versatile) genre of the novel could itself be deployed against her and her ideas. Having begun her literary career in the non-fictional genre of the religious and moral essay, with *Cursory remarks* (1791), and *Letters and essays, moral and miscellaneous* (1793), in the years following the publication of her second (and last) novel Hays again adopted a non-fictional vehicle for her ideas in a polemical treatise, *An appeal to the men of Great Britain in behalf of women* (1798). In *Female biography*, the preparation of which began in the same year that *An appeal* was published, Hays's feminist intentions remained similarly explicit. As she declared in her Preface to *Female biography*, 'My pen has been taken up in the cause, and for the benefit, of my own sex ... I have at heart the happiness of my sex, and their advancement in the grand scale of rational and social existence' (v.5, 3-4). Far from constituting a retreat from the generic challenges of prose fiction, writing and publishing narrative non-fiction based on her researches in others' work in historiography and biography enabled Hays's continued, serious consideration of how different forms of prose could inform women readers' intellectual and moral development. Believing her female readers' 'understandings' to be 'principally accessible through their affections', she promised the first audiences of *Female Biography* not only instruction, but also 'lively images' and 'minute delineations of character' (ibid., 4).

Female biography was not the first collective women's history of its kind – earlier examples had included George Ballard's *Memoirs of several ladies of Great Britain who have been celebrated for their writings or skill in the learned languages, arts and sciences* (1752), and the two-volume *Biographia Faemineum. The female worthies: or, memoirs of the most illustrious ladies, of all ages and nations* (1766). While its eighteenth-century predecessors had represented their subjects as exemplars of personal or patriotic virtues, *Female biography* presented readers with both negative and positive

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examples of social, political, and sexual conduct. Its narratives of women from diverse historical, geographical, and cultural backgrounds are connected by a distinct thread of concern with the effects of education and social conditioning upon character and actions. *Female biography* thus continued a rational, Enlightenment critique of contemporary British women's education and social roles dominated in the 1790s by Wollstonecraft's *A vindication of the rights of woman* (1792) – and previously developed by prose moralists such as Catharine Macaulay and Hester Chapone – while expanding its frame of reference to include more examples from the historical past, and from non-Western cultures.

Individually and collectively, the narratives of Hays's subjects' lives are offered to readers as empirical evidence on which to base their own considered, moral conclusions. The alphabetical ordering of subjects by name was an important expression of Hays's impartial approach to her project, in which no individuals were given precedence, or otherwise highlighted or marginalised, on any grounds of judgement of their historical (or moral) significance. As well as learning historical facts from the biographies, Hays's readers were encouraged to practice independent, reasoned judgement in assessing the actions and motivations of the characters they read about, singly and in relation to each other, and within their particular historical or other contexts. Hays insisted upon the importance of contextual awareness to assessing individuals' actions. As she reminded her readers, when accounting in her Preface for her treatments of monarchs as biographical subjects, 'the character of the sovereign is read in the history of his times' (v.5, 7). While many of the historical events, and personages referred to in the biographies would have been familiar to an educated readership, the dominance of women's experiences and perspectives in Hays's narratives would in many instances have compelled readers to reconsider historical events and characters from female, and thus often subaltern, perspectives.

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In her richly detailed and illuminating General Introduction to this edition of *Female biography* (an expanded version of which appeared as ‘The Invention of Female Biography’ in *Enlightenment and Dissent* 29 [Sept. 2014], pp.79-136), Walker emphasises the importance of Hays’s own education and social milieu as a British Rational Dissenter and Unitarian to her methods as compiler of a work designed to stimulate readers’ independent discernment of truths concerning women’s situations in history, and the contemporary condition of women. Walker also informatively discusses Hays’s *Female biography* as both a development of, and a calculated feminist response to, earlier European Enlightenment projects for collecting, constructing, and classifying historical narratives – most notable among these being Pierre Bayle’s inclusive and non-moralistic, but masculine-biased, *Dictionnaire historique et critique* (1697). Bayle’s *Dictionnaire* is among the major antecedents to Hays’s work further discussed by Mary Spongberg in Appendix 2, a dedicated survey of Hays’s sources for *Female biography* (v.10, 535-44).

Other useful supporting materials in this new edition include Hays’s ‘Memoirs of Mary Wollstonecraft’, first published in the *Annual necrology 1797-8* (1800), and reproduced as Appendix 1, which also includes an introduction by Fiore Sireci (v.10, 479-534). The inclusion in this edition of Hays’s account of Wollstonecraft’s professional career, and personal life and character, supports Walker’s argument that in that piece, Hays developed what became a ‘template’ for her even-handed approach to the subjects of *Female biography* – having generally felt compelled to eschew covering very recent, and potentially controversial, contemporaries such as Wollstonecraft in the *Female biography* project itself (v.5, xxii-iv). (The most recently-living of Hays’s subjects was Catherine II of Russia, who had died the year before Wollstonecraft in 1796, and who was one of relatively few figures from within the living memory of her contemporary period to be included in the work.)

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Walker's introduction to this edition of *Female biography* pays poignant tribute to Hays's solitary endeavours as an author and compiler – describing the Chawton House Library Editions series as 'a collaborative feminist project that would likely astonish Hays' (v.5, xxvii). Walker contrasts Hays's inevitably flawed efforts to construct her pioneering reference work in a period when women were almost totally excluded from all major universities and cultural institutions, with the achievements of her own professional research team, drawn from more than 100 institutions worldwide (the recent, dramatic expansion and improvement of electronic databases and other digital resources for scholarship is also acknowledged as having crucially furthered Walker's editorial aims).

The one serious drawback of this edition is the absence of a reset text, with keyed endnote references – although new pagination has been added to the facsimile text. Readers must find their own, selective or more 'completist' approaches to using the facsimile text alongside the editorial annotations (each of which refers back to the relevant, new pagination in the same volume). Many details of the closely researched and meticulously-compiled explanatory and textual information in the notes - including valuable observations relating to Hays's selection and manipulation of her source materials - are thus left at risk of being neglected and under-appreciated.

Overall, however, Walker and her research and editorial team, and the Chawton Library 'Women's Memoirs' series editor Jennie Bachelor, have together provided a resource with strong potential to benefit students and scholars of diverse disciplinary backgrounds and research interests. With *Female biography* attracting an ever greater share of attention in the recent critical literature on Hays, this edition is likely to stimulate new directions in studies in Mary Hays, and in women's history, for many years to come – while Walker and her contributing colleagues' detailed commentaries on their research and editorial methods will offer to future scholars a valuable record

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(and model) of the undertaking of a large-scale project of feminist literary recovery.

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Martin Priestman, *The Poetry of Erasmus Darwin: Enlightened Spaces, Romantic Times*, (Farnham, Surrey and Burlington, VT: Ashgate, 2013), pp. xiv+310. ISBN 9781472419545. £70.00.

That the reputation of Erasmus Darwin currently stands higher than at any point since his death in 1802 has multiple causes: a natural rise since the depression caused by the long aftermath of anti-Jacobinism; a recognition that the pre-eminence of the grandson need not entail the marginalization of the grandfather; the recent reclaiming of medicine and the body as key Enlightenment concerns; a more general reorientation of the history of science away from a Whiggish success narrative; the recognition that England had its real (Midland-northern) Enlightenment; and the recent reaction against academic specialization in favour of polymathic range.

Yet literary-critical reappraisal has lagged behind. True, there has been serious recognition of Darwin's direct influence on the Romantic poets from his early admirer Coleridge to his late disciple Shelley. And Richard Holmes's *The age of wonder* in breaking down many of the later-erected barriers between literary and scientific culture has as a result placed Darwin, as well as Herschel and Davy at the centre of the transitions from Enlightenment to Romantic culture in England. But barriers remain. Whatever our theoretical orientation we are still the literary inheritors of *Lyrical ballads* with its emphasis on bringing the language of literature closer to the language of everyday life. How can we find a way back into Darwin's long, miscellaneous poems with their very ornate and very eighteenth-century 'poetic diction'?

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Martin Priestman grasps that mild apologies and invitations to see things from Darwin's point of view will not do the heavy lifting required. We need to grant Darwin his artistic premises and to follow through his indefatigable pursuit of them. And for this to happen, some basic reorientations need to precede. Linguistically, we have to accept that Darwin's elaborately Latinate language is just what he needs to bring the dynamics of the biological sphere home to the reader. (This recognition has been facilitated by the recognition that Thomson's earlier *The seasons* has its similar rationale for Latinisms and need no longer be critiqued as stylistically 'vicious'). Epistemologically, Priestman argues, we need an even bigger realignment. The Romantics have bequeathed to us a time- (and history-) haunted consciousness. Darwin by contrast needs to be viewed in terms of his commitment to an Enlightenment spacialism: the characteristic movement of his work is through a garden, where one is taken from one section to another remembering all the time that they exist synchronically and not diachronically as one's consciousness might register them. To show this will entail prolonged engagement with the successive details (rather than sequential narratives) of his longer published poems *The botanic garden* and *The temple of nature*. An unfinished poem *The progress of society* will be the exception that proves the rule – arguably unfinished precisely because Darwin found historical progress a recalcitrant perspective for his muse.

The botanic garden of 1791 consists of two parts, confusingly written in the reverse order to that in which they now appear. Part 2, 'The Loves of the Plants', had been published first in 1789, with Part 1, 'The Economy of Vegetation', written subsequently. While 'Loves' has attracted more attention largely because of its explicit portrayal of floral dalliances (any hints at female sexuality here being grist to the mill of the anti-Jacobins), Priestman argues that it is 'Economy' which is the more fundamentally innovative, with its wide-ranging subject matter and with its excursions into cosmology:

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perspective, with its implicit sidelining of the divine role in creation, which does much to explain his marginalization through the nineteenth century.

Finally Priestman resurrects and prints as an appendix the previously-mentioned unfinished poem *The progress of society*, a work written to a recognizably Enlightenment, stadial view of the development of civilization. Comparison with Richard Payne Knight's almost contemporaneous poem *The progress of civil society* suggests to Priestman that Darwin's view of the fifth (upcoming) stage of society is much more peaceable than Knight's apocalyptic vision. But even had that milder vision proved palatable, which in an increasingly reactionary 1790s it no longer was, there was the difficulty even for the optimistic Darwin of making its 'peace and love' future plausible in a time of global war. The anti-Jacobin parody *The loves of the triangles* (1798) with its evocation of 'simpering FREEDOM' would sadly hit two Darwinian targets: his future age was either dangerously plausible or ridiculously implausible. The lack of logic in that twin charge did nothing to reduce its effectiveness.

Ultimately, this aborting of Darwin's historical overview usefully throws us back on the challenge of his spatial vision — its challenge to our millennially haunted visions of utopia and apocalypse. After all there is, as Martin Priestman reminds us, much to be grateful for in a vision which constantly opens sideways from our existing knowledge. It is not difficult to imagine Darwin's reactions to any kind of religious fundamentalism ('Let us look at where your view links across to these apparently conflicting views') or to radical scepticism ('This area of knowledge may be currently contested but consider the advances in this other field').

It has been said of the poet of *The seasons* that he was a great poet rather than a good one. Martin Priestman does not claim that Darwin was a great poet. But he does convince us that Darwin's was a richly-stocked and sophisticated mind which poured much of its

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syncretistic power into poetry. In this scholarly yet engagingly open-minded study, Priestman does much else: he is both a mine of information on late eighteenth century science and a sensitive tracer of literary influences, both a minute textual scholar and a tracker of intellectual trends over centuries. To say that I haven't detected a scholarly error in this book may sound like the faintest of praises on which to end. But to say that in the context of a study which travels exhilaratingly with Darwin through botany, zoology, chemistry, mythology, geography and much else is to say a great deal.

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Mike Hill and Warren Montag, *The Other Adam Smith* (Stanford, CA: Stanford University Press, 2015), hdbk £62,00; pbk £19.76
ISBN-10: 0804792941; ISBN-13: 978-0804792943

It has become commonplace to recognize that there is more to Adam Smith (1723-1790) than his best-known masterpiece, *An Inquiry into the nature and causes of the wealth of nations* (1776). Smith's earlier published *A theory of moral sentiments* (1759) must also be taken into account if we are to understand the historical Smith more fully. The Smith of *Wealth of nations* appears to some to see a world dominated by self-interested individuals while the Smith of *TMS* appears to others to emphasize the role of natural benevolence in human nature. Indeed, for a group of nineteenth-century German scholars, these two Smiths were thought to be so different that reconciling them constituted 'Das Adam Smith Problem'. In more recent scholarship that problem fades considerably and we see an enlarged role for 'sympathy' within the world-view of both of Smith's books mentioned above.

But Hill and Montag's 'Other' Adam Smith is neither of the Smiths of 'Das Adam Smith Problem' nor is it an integration of them

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in what the authors refer to as ‘a twentieth-century “Adam Smith Solution”’. Rather, Hill and Montag demand that we venture past this bifurcated approach to Smith by giving more attention to his ‘so-called minor works’ (p.5): ‘the time has come to read Smith as a broadly systematic thinker, one who cannot be understood on the basis of a few well-known passages from the two more famous books, *Wealth* and *TMS*’ (p.9). Their volume looks for ‘something more complex and variegated;’ an account of Smith that also takes into account his *Lectures on rhetoric and belles lettres* (from 1748), student lecture notes of his *Lectures on jurisprudence* (delivered in the early 1760s), Smith’s correspondence (ranging from 1740 to 1790), the *Essays on philosophical subjects* (first published posthumously, in 1795), and even some of what we know Smith planned to write but didn’t.

Rather than approaching Smith as if he were writing strictly as a philosopher or primarily as an economist, Hill and Montag (both of whom are Professors of English) rightly see Smith as ‘an interdisciplinary scholar, before disciplines as such’ (p.27). Smith’s important essay, ‘The Principles which lead and direct Philosophical Enquiries; illustrated by the History of Astronomy,’ is taken into account here. Therein, argue Hill and Montag, Smith posits that knowledge is advanced by the ‘association of philosophy and wonder’. As Smith puts it:

Wonder, Surprise, and Admiration, are words which, though often confounded, denote in our language, sentiments that are indeed allied ... What is new and singular, excites that sentiment which, in strict propriety, is called Wonder; what is unexpected. Surprise; and what is great or beautiful, Admiration’ (p.58).

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Another notable strength of this volume is its attempt to place Smith in the context of the Scottish Enlightenment—with attention afforded Smith’s contemporaries such as Francis Hutcheson (1694-1746), Henry Home, Lord Kames (1696-1782), George Turnbull (1698-1748), especially David Hume (1711-1776), but also Hugh Blair (1718-1800), William Robertson (1721-1793), and Dugald Stewart (1753-1828), Smith’s first biographer. Hill and Montag are equally attentive to the Enlightenment more generally, and provide discussions of Spinoza (1632-1677), Malebranche (1638-1715), Mandeville (1670-1733), Shaftesbury (1681-1713), and, interestingly, Henry Fielding (1707-1754), among others. The book concludes by exploring Smith’s legacy, with figures such as Robert Malthus (1766-1834), Ludwig von Mises (1881-1973), and Friedrich Hayek (1899-1992)

Far ranging indeed; some will think too much so as Smith and his thought frequently fade from view with perhaps too much attention focused on the others. More attention to Smith’s biography might have helped to keep the account centred on their picture of him as a generalist. If the goal is to understand Smith in his times, then readers would have been helped by more frequent references to Ian Simpson Ross’s *The life of Adam Smith* and fewer references to the theoretical writings of Michel Foucault (1926-1984) and Jürgen Habermas. At times, the writing becomes quite obscured by theoretical jargon. For instance, in their important third chapter, “‘Numbers, Noise, and Power’: Insurrection as a Problem of Historical Method’, the authors summarize an argument by historian Nicholas Rogers on the role of ‘the crowd’ in Hanoverian England with the conclusion that the crowd becomes ‘less an object ripe for diachronic anatomical description over linear trajectories of time than a unique temporal-spatial enigma in its own epistemological right’ (p.151). One is reminded that reading about Adam Smith (and the same could be said for many other eighteenth-century writers) is no substitute for

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reading Smith himself. As a writer, Smith is usually quite clear. That may be one of the primary reasons that his works continue to be read and receive ‘public approbation’ (to use the phrase with which Smith concludes his ‘Review of Johnson’s *Dictionary*’.) *The other Adam Smith* is well documented with scholarly endnotes. Unfortunately, there is no bibliography. That would have been useful in a volume that summarizes so much historiography and also incorporates large numbers of eighteenth-century texts.

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RECEIVED

Ellen Spolsky, *The Contracts of Fiction: Cognition, Culture, Community*, Oxford University Press, 21 May 2015, pp. xxxi + 283, ISBN 978-0-19-023214-6, hdbk., £41.99.

AN INSIGHT INTO THE ENLIGHTENMENT IN SPAIN FROM A NEW BURKE PUBLICATION

Edmund Burke's second attack on the Revolution in France. An unpublished anonymous manuscript located in the Spanish National Library, Madrid: 'Extract from 'A Letter to a Member of the National Assembly (1791).'' Introduction, transcription, and annotations by Lioba Simon-Schuhmacher. In appendix (in English): Burke's *'Letter to a Member of the National Assembly, 1791.'* Fundación Foro Jovellanos del Principado de Asturias www.jovellanos.org, 'Almanaque 2015.' n° 2 ISSN: 2340-8979, Gijón, 2015, 140 pp.¹

In February 2015 the *Fundación Foro Jovellanos del Principado de Asturias*² brought out, in the form of an Almanach (*Almanaque 2015*), a hitherto unpublished manuscript located in the Spanish National Library in Madrid: *'Extract from a 'A Letter to a Member of the National Assembly (1791).'*' It was acquired by the Spanish State from Sotheby's in London in 1976. The publication features a lengthy introduction including references to the life and works of Edmund Burke and his influence on the Spanish statesman Gaspar Melchor de Jovellanos, the background of the age to understand the origin of this manuscript, and historical and philological explanations to place it in its context. This is followed by the transcription of the text and the facsimile of the anonymous 14 page long handwritten manuscript. Several fetching drawings and portraits by the Asturian artist Jesús Gallego are included. Moreover

¹ Full original reference: *La segunda acometida de Edmund Burke contra la Revolución en Francia. Un Manuscrito inédito de la Biblioteca Nacional: 'Extracto de una carta de Mr. Burke a un miembro de la Asamblea Nacional de Francia (1791).'* Introducción, transcripción y notas de Lioba Simon Schuhmacher. En apéndice, en inglés, la obra de Burke: *Letter to a Member of the National Assembly (1791)*, Fundación Foro Jovellanos del Principado de Asturias www.jovellanos.org, 'Almanaque 2015.' n° 2 ISSN: 2340-8979, Gijón, 2015, 140 pp.

² Foundation Foro Jovellanos of the Principality of Asturias (www.jovellanos.org)

in the appendix it offers, in English, the complete text of Burke's *Letter to a member of the National Assembly (1791)*.

The publication is especially noteworthy since no Spanish translation of this specific work of Burke is available. The manuscript contains an 'extract' or rather an odd selection of passages of approximately half the length of Burke's original *Letter*, translated –sometimes quite freely– into Spanish. Altogether it effectively conveys Burke's reservations against the revolutionary process in France, and displays, amongst others, his full and vigorous attack on Rousseau. In some passages, however, the translator-transcriber rambles off from the original conveying a peculiar stance to Burke's ideas. For example, where the Irishman says: 'M. Mirabeau is a fine speaker, and a fine writer, and a fine—a very fine man', the author of this 'Extract' transforms this into: 'Mirabeau es un bello hablador, un escritor eloquente, un guapo Mozo.'³

What is the history of this manuscript and why has it stayed anonymous? The answers to these questions will largely remain conjectures, as explained in the introduction of this work. Spain, as most European countries was observing the upheavals in France since 1789 with scepticism and fear of contagion. Thus the Inquisition and Charles IV's feeble government put any printed matter that contained the word 'revolution' on the blacklist. No matter whether it was *for* or *against* it, any debate on what was going on the neighbouring country was to be suppressed. This is why the author of this manuscript had to remain concealed, and his⁴ peculiar and partial transcription of Burke's work circulated clandestinely in the years during and after the French Revolution.

The same had happened to Burke's original main work, published in England in the previous year (1790), his *Reflections on the Revolution in France*. It was first referred to the 'Santo Oficio', or

³ Re-translated into English this would mean: 'Mirabeau is a beautiful speaker (a term that comes close to 'charlatan'), an eloquent writer, a handsome chap,' thus degrading the outstanding member and soon president of the French National Assembly.

⁴ It is more than likely that it was a man.

the Inquisition, in 1792. No Spanish translation of it was available until the mid twentieth century.

Nevertheless, the curiosity of the enlightened few in Spain would find means to get round this. Such was the case of the statesman Gaspar Melchor de Jovellanos (Gijón, 1744 - Puerto de Vega, 1811), whose legacy is safeguarded and publicised by the Foundation Foro Jovellanos, seated in the manor house⁵ where he was born, in Gijón (Asturias, in the north-western part of Spain), and which has recently published this anonymous manuscript. Jovellanos makes reference to Burke's work in a letter from 21 November 1791, saying that he had lent Francisco de Paula Caveda y Solares 'the *Burke*'.⁶ It remains controversial which 'Burke' Jovellanos may have referred to. His library was certainly one of the best stocked in the country;⁷ he received English newspapers, and his correspondence with foreign politicians and diplomats, such as Lord Holland, constitute a vivid proof of his open-mindedness. Hence it is part of Spain's tragic history that this key enlightenment figure,⁸ for eight months Minister of Justice in 1797, was soon disgraced under Carlos IV's prime minister, Godoy, and confined for seven years in a fortress in Mallorca. He was freed only after the 1808 popular upheaval. In the ensuing years he played an important role opposing the Napoleonic invasion, and in the making of the liberal Constitution. Yet he would not live to enjoy it since he died seeking refuge from a second invasion of his hometown Gijón by the French army in November 1811.⁹

⁵ Nowadays it is a museum (<https://museos.gijon.es/page/5283-museo-casa-natal-de-jovellanos>).

⁶ Jovellanos, G M, *Diarios* (1795, Tomo II, 186), Ed. de Julio Somoza, Oviedo.

⁷ See, e.g.: Aguilar Piñal, F (1984), and Clement, J P (1980).

⁸ An authoritative succinct biography is that of Caso González, J M (1980), translated into English by M J Álvarez Faedo in 2011 on occasion of the bicentenary of Jovellanos' death.

⁹ Having boarded a vessel heading for Cádiz, Jovellanos fell ill and had to get off in Puerto de Vega (where the vessel sought shelter in a storm), and died a few days later.

Burke's influence on Jovellanos is unquestioned.¹⁰ While involved in the task of drafting the Spanish Constitution, Jovellanos revealed in a letter to Lord Holland: 'My endeavour is to set up, by means of our plan, a constitution modelled on the English and as much improved as could be, and to that end the manner of the organisation of the Assembly has been devised.'¹¹ Esteban Pujals, who undertook the 1989 translation of Burke's *Reflections*, states in his introduction to it:

As we study the personality of Burke ... inevitably and as a matter of fact a figure comes to mind which, up to a point, turns out to be his equivalent in Spain: this figure is Jovellanos. ... it simply has to be pointed out that, in general and in many instances his attitude is strikingly similar, and when reading Burke's works one cannot be but reminded of many pages of Jovellanos'. ... In him we will see a man whose personality and attitude in Spain is the equivalent to that of Burke in England.¹²

¹⁰ See e.g. Varela, J (1988, 231): 'The Asturian opposes, as Burke had done, the democratic tendencies that understood liberty as a permanent self-determination...' ('El asturiano se opone, como lo había hecho Burke, a las tendencias democráticas que entendían la libertad como autodeterminación permanente...').

¹¹ 'Mi deseo era preparar por medio de nuestro plan una constitución modelada por la inglesa y mejorada en cuanto se pudiese, y a esto se dirigía la forma que ideamos para la organización de la asamblea', Letter to Lord Holland, dated Muros de Galicia, 5 December 1810, In: Jovellanos, G M : *Obras completas V. Correspondencia*, 4º, Gijón, KRK, 1990, 422-423.

¹² 'Al paso que se estudia la personalidad de Burke (...) surge inevitablemente por si sola la figura que, hasta cierto punto, resulta su equivalente en España: esta figura es Jovellanos. (...) simplemente señalar que, de modo general, su actitud es en muchos casos singularmente semejante, y que a lo largo de la lectura de las obras de Burke es imposible no recordar frecuentemente muchas páginas de Jovellanos. (...) Veremos en él un hombre cuya personalidad y actitud es en España equivalente a la de Burke en

Jovellanos was truly visionary, as Francisco Carantoña asserts when recognising the statesman's 'admiration of the British political system, shared by all moderate liberals, yet his position was never that of a conservative.'¹³ According to Ignacio Fernández Sarasola's study on *Jovellanos' Political Thought*,¹⁴ he seems to share Burke's constitutional ideas, which gave priority to historical circumstance over abstract reason, in marked contrast to the French revolutionaries. Moreover, Lord Holland quoted Burke, whom he admired, in his letters to Jovellanos, as well as in a project of a Cortes'¹⁵ meeting which he drafted together with John Allen for the Spaniard. However, Jovellanos' convergence with Burke's thought does not go beyond this; Burke is overtly more modern. The former would neither sense the importance of a cabinet system nor that of political parties, nor even that of the full (not merely normative) mechanism of the so called 'English Constitution'. Thus, Fernández Sarasola concludes, Jovellanos was closer to Hume than to Burke.

References and reflections such as these are contained in the introductory study of this publication. The transcription, introduction, and annotations of the manuscript were carried out by Dr Lioba Simon-Schuhmacher, associate professor of the University of Oviedo. The work was presented in Gijón, Jovellanos's birthplace, on 26 February 2015. It is not saleable, yet anyone who

Inglaterra.' In: *Reflexiones sobre la revolución francesa* / Edmund Burke; edición, introducción y traducción de Esteban Pujals Madrid: Rialp, D L 1989, 253p ([Hombre y sociedad; 31](#)) 1989, 31-32.

¹³ '...su admiración por el sistema político británico, que compartirán todos los liberales moderados, pero sus posiciones no son nunca las de un conservador'. Carantoña Álvarez, F, *Jovellanos en la Junta Central*, Cuadernos de Investigación. núm. 3 – año 2009, 13-34 Fundación Foro Jovellanos del Principado de Asturias, Gijón. 2010, 28.

¹⁴ Fernández Sarasola, I (2011). *El pensamiento político de Jovellanos*. Seis estudios, Seminario Martínez Marina, 2011 In Itinere, Ediciones de la Universidad de Oviedo http://www.unioviedo.es/constitucional/seminario/editorial/crbst_3.html

¹⁵ The Spanish Parliament.

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is interested may order a copy at the Foundation (foro@jovellanos.org) against a donation to help cover costs. It will also be available in a pdf version on the webpage of the Foundation (www.jovellanos.org).

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DOCUMENT

A PREVIOUSLY UNPUBLISHED LETTER FROM THOMAS BELSHAM TO SAMUEL FAWCETT, 21 APRIL 1791

Tony Rail

In this letter, we discover Thomas Belsham as a concise, clear, and amiable correspondent. He was a recent convert to Unitarianism; this being the principle reason for him resigning the senior tutorship at Daventry Academy.¹ He was now classics tutor at New College Hackney,² whence he maintained an extensive network of correspondents,³ which included Samuel Fawcett, who had been his fellow student at Daventry. Fawcett had been pastor to the congregation who met in the thatched-roof meeting-house in Beaminster, Dorset, from 1776 until June 1790,⁴ when he quit the ministry. He now divided his time between his family home at Mountfield House, Bridport, and his residence at Taunton, where he was involved in banking, with his brother-in-law, Edmund Batten (d.1836), an attorney in Yeovil. At Taunton, Fawcett attended Paul's Chapel, which had been his father's first ministry. About 1801, Fawcett moved to

¹ With effect from the end of May 1789. John Williams, *Memoirs of Thomas Belsham* (London, 1833), pp.376-399. For the history of the Academy, see The Dissenting Academies Project: <http://dissacad.english.qmul.ac.uk>

² See *New College, Hackney (1786-96): A selection of printed and archival sources* (2011), ed. Stephen Burley <http://www.english.qmul.ac.uk/drwilliams/pubs/nc%20hackney.html>.

³ Drawn from his times as student at Daventry Academy, as pastor of Angel Street Congregational Church Worcester, as tutor at Daventry, and through his younger brother William Belsham (1752-1827), writer and campaigner for political and electoral reform.

⁴ Samuel Fawcett was baptized 15 June 1751; died 14 Dec 1835. He was ordained when installed at Beaminster, 26 June 1776. Samuel's father, Benjamin Fawcett (1715-1780), a student, friend and correspondent of Philip Doddridge, had been minister of Paul's Meeting, Taunton, and Old Meeting Kidderminster, successively.

Yeovil, where he re-entered the ministry as pastor to the Unitarian Chapel there.

The first of the three items of note in Belsham's letter, concerns another Daventry alumnus, Habakkuk Crabb (1750-1795).⁵ Crabb had been minister at Stowmarket, 1771-1776, and Cirencester, 1776-1787, before a brief period assisting his brother-in-law John Ludd Fenner (1749-1833),⁶ yet another Daventry contemporary, at Devizes. Then, in January 1789, Crabb transferred to the chapel of his childhood, the Presbyterian Old Meeting at Wattisfield, Suffolk.⁷ However, within a year, Crabb was seeking a new position. He had preached at Old Meeting Royston as a probationer, 4 July 1790,⁸ but was wary of a pending secession amongst the congregation,⁹ and stayed on at Wattisfield. It seems that Crabb approached Belsham for advice, and was considering either Royston, or Paul's Meeting, Taunton, where Thomas Reader was looking to

⁵ Henry Crabb Robinson (1775–1867) the Unitarian diarist, was the son of Crabb's sister Jemima.

⁶ Born in Canterbury, 31 Mar 1749, to Rest Fenner (1716-1795), he had married Crabb's sister Eutychia in 1783.

⁷ Filling the vacancy left by the death of Thomas Harman (1714-1788), who had spent his entire career ministering to the Dissenters of Wattisfield.

⁸ Habakkuk Crabb, *Sermons on practical subjects, ... brief memoirs of the author by the Rev Hugh Worthington Jun* (Cambridge, 1796)

⁹ The Old Meeting House had been erected in Kneesworth Street, Royston, in 1706. In 1790, a doctrinal dispute led to a group withdrawing from the Old Meeting. The New Meeting house was built on another site in Kneesworth Street. The two Meetings continued to worship side by side until, after the town fire of 1841, a new building for the Old Meeting was erected in John Street, and opened in 1843.

devote more time to the Western Academy, at which he was sole tutor.¹⁰ In the end, Crabb chose Royston.

In the second item, recording the death of Dr Richard Price, Belsham gives a glimpse into funerary practices amongst middle-class Dissenters at the end of the eighteenth century. Within a day of Price's death, his corpse was embalmed, in preparation for interment in his uncle's vault,¹¹ in Bunhill Fields. Several invited friends assembled at Price's home in St Thomas's Square, Hackney, to witness the procedure, as part of which the deceased's bowels were removed and examined. The matter-of-fact manner in which Belsham introduces the subject, suggests that post-mortem evisceration was not unusual in his experience, though evidence is scant of it being a common

¹⁰ Thomas Reader (1725-1794) was later assisted by a former student, Samuel Rooker (1768-1832). Following Reader's death in 1794, the Paul Street meeting was served for twenty-five years by Isaac Tozer Sr. (12 Mar 1758-12 Oct 1820). *Bristol Mercury* 23 Oct 1820.

¹¹ Richard Price, born 1723, was the son of Rev Rees Price (1673-1739) of Tyn-ton, Llangeinor, Glam. Rees Price's younger brother (Richard Price's uncle) was Rev Samuel Price, 1676-1756, co-pastor with Isaac Watts (1674-1748) at Bury Street Chapel, St Mary Axe, London. Samuel Price was interred in a newly commissioned 5ft by 7ft vault in Bunhill Fields, 28 Apr 1756. Richard Price, and his wife Sarah Blundell (bur. Tues 26 Sep 1786), were interred in the same private vault. *Registers of Bunhill Fields burial ground*, TNA RG4/3982, RG4/3987; *Burials register of the Old Jewry Chapel*, TNA RGA/4349.

practice.¹² The burial service took place on 26 April,¹³ the funeral address being given by Andrew Kippis.¹⁴ Dr Priestley, who attended the interment, gave a memorial discourse at Price's Gravel-pit chapel in Morning Lane, the following Sunday.¹⁵

Belsham's third item, reports the first annual dinner of the *Unitarian Society*: 'The Unitarian Society for promoting Christian knowledge, and the practice of virtue, by distributing

¹² When one thousand coffins were excavated from the vaults below Christ Church Spitalfields in the 1980s, only one viscera box was found. In many coffins, the corpses were placed on a bed of sawdust, presumably to absorb fluid exudations. Jez Reeve and Max Adams, *The Spitalfields project* (York, 2007). <http://archaeologydataservice.ac.uk/> It is not known whether Price's entrails were discarded, wrapped within his coffin, or boxed beside it.

¹³ 'Dr Price was interred ... about one o'clock in Tindall's Burying-ground, in the City-road. The procession from Hackney was preceded by six horsemen; and the hearse was followed by nineteen mourning coaches, besides a great number of gentlemen's carriages; amongst which were those of the Duke of Portland, Earl Stanhope, and several other persons of distinction, with the Doctors Priestley, Towers, and Kippis; Messrs Lindsey, Palmer, Worthington, &c. the pall being supported by six of the most intimate friends of the deceased. Dr Kippis spoke the Funeral Oration; and, though he mostly expatiated on the private virtues of his departed friend, he made a sensible impression upon every person present.' *Hereford Journal*, 4 May 1791.

¹⁴ Andrew Kippis (1725-1795), *An address, delivered at the interment of the late Rev Dr Richard Price* (London, 1791)

¹⁵ Joseph Priestley, *A discourse on the death of Dr Price* (London 1791); J T Rutt, *Theological and miscellaneous works of Joseph Priestley* (25 vols. in 26, London, 1817-32), XV, pp.441-57 & XX, pp.493-502.

books,' to give its full title.¹⁶ Lindsey and Priestley had long advocated that Unitarians should sail under their true colours, but it was Belsham, it seems, the zealous convert, who had persuaded them to raise the battle-ensign, by adopting his plans for a Unitarian Society,¹⁷ whose aims contained a subtext, and what some perceived to be a hidden agenda. Formed 9 February 1791, the Unitarian Society attracted more than 150 individual

¹⁶ A similar association, 'The Society for promoting the knowledge of the scriptures,' had been established in 1783, but did not flourish, partly, perhaps, because Joseph Priestley's resumed *Theological Repository* (vols. IV, V, VI, Birmingham, 1784, 1786, 1788), was 'more comprehensive and more useful.' Thomas Belsham, *Memoirs of Theophilus Lindsey* (London, 1873), p.114, (First edition 1812). At the end of 1785, Lindsey regretted that the materials that had been submitted for publication were not sufficiently original or 'ingenious' to be of use. Although the Society's stated aim had been to avoid all tracts that were 'wholly controversial,' the only three works it published dealt with the interpretation of the *logos sarx egeneto*, the Word made flesh, of John 1:14: *Commentaries and Essays* (2 vols, London, 1784-1796); Robert Tyrwhitt, *Two discourses on the creation of all things by Jesus Christ; and on the resurrection of the dead through the man Jesus Christ* (London, 1787); Nathaniel Lardner *Letter on the Logos* (London, 1788).

¹⁷ '[I] was the person who first suggested the plan,' Belsham tells his readers. Belsham, *Memoirs of Lindsey*, p.196.

and corporate members in its first six months,¹⁸ including Richard Price, a Unitarian though not ‘of the Socinian school.’¹⁹

The subtext is found in the Society’s published *Rules*, which restricted the books it would distribute to those that contained ‘the most rational views of the gospel,’ and are ‘most free from the errors by which [the gospel] has long been sullied and obscured.’²⁰ The imagined hidden agenda lay in the inclusion of the provocative word *idolatrous*,²¹ the use of which was

¹⁸ Subscribers included Samuel Fawcett; James Lee (1764-1812) of Birmingham, a leather merchant who successively married two of James Martineau’s aunts; Thomas Paget (1732-1814), banker of Ibstock; Mrs Elizabeth Rayner (1714-1800), Unitarian benefactress; John Cole Rankin (1768-1810), James Martineau’s uncle; William Smith MP (1756-1835); William Tayleur (1712-1796) of Shrewsbury; and Thomas Walker (1751-1817) of Manchester.

¹⁹ For a decisive demonstration of whether or not Richard Price should be considered a Unitarian, see D O Thomas (Ed.) ‘William Morgan’s Memoirs of the Life of the Rev Richard Price,’ *Enlightenment and Dissent*, 22 (2003), pp.120-122, n.148.

²⁰ Unitarian Society for Promoting Christian Knowledge and the Practice of Virtue, *Unitarian Society [Rules]* (London, 1791) [1st ed. Mar 1791 (14pp); 2nd ed. May 1791 (17pp); 3rd ed. Dec 1791 (28pp).] Belsham later admitted that the first object of the Unitarian Society ‘was that the few who then professed the *unpopular doctrine of the unrivalled supremacy of God ...* might have some common bond of union.’ Belsham, *Memoirs of Lindsey*, p.196.

²¹ ‘While, therefore many well-meaning persons are propagating with zeal opinions which the members of this society judge to be unscriptural and *idolatrous*; they think it their duty to oppose the further progress of such pernicious errors, and publicly to avow their firm attachment to the doctrine of the Unity of God.’ *Unitarian Society [Rules]*, p.2. Alexander Gordon later stressed

the theological perspective: that the pejorative term idolatrous was simply 'meant to exclude Arians, and to stigmatize the worship of Christ.' Alexander Gordon, *Heads of English Unitarian history* (London, 1895), §.27. Looking back, Belsham admitted that it might have been more prudent to omit the word *idolatrous*: 'as the doctrine which the Society desired to hold forth as their common faith might have been expressed with equal distinctness and precision without it. But as it had been introduced, many were unwilling to abandon it: they even considered the omission of it as little less than a dereliction of principle. Among these were Mr Lindsey, Dr Priestley, Mr [William] Russell, of Birmingham, and Mr Tayleur, of Shrewsbury. On the other side were some gentlemen of Cambridge and elsewhere, whose names would have been an ornament to the Society, but who either declined joining it, or withdrew from it when they heard that it was decided to retain the offensive epithet. And, in fact, some who still continued in the Society were not well pleased with the expression, which they regarded as having a tendency to fix an opprobrium upon their fellow Christians.' Belsham, *Memoirs of Lindsey*, p.198. It was not until 1831 that Lant Carpenter (1780-1840) was able to get the words *idolatrous* and *mere man* struck from the preamble of the Western Unitarian Society. Gordon, *Heads*. loc.cit.

promoted by Priestley,²² and justified by Lindsey.²³ Whilst certainly an attack on the Anglican litany, the word was construed by some Anglicans as a threat to the religious and civil establishment itself.²⁴ — Some had made the same construal from Priestley's metaphor of 'laying gunpowder, grain by grain, under the old building of *error and superstition*,' which had been intended as much a challenge to Trinitarian Dissenters as to Anglicans.²⁵

²² Priestley used the word *idolatrous* in his *Appeal to the serious and candid professors of Christianity* (Leeds, 1770): 'To join habitually in public worship with trinitarians, is countenancing that worship, which you must consider as idolatrous.' (Rutt, II, 414) In his 'Address to the Jews,' dated 20 May 1791, which he prefixed to the publication of his Buxton sermon *The evidence of the resurrection of Jesus* (Birmingham, 1791), Priestley wrote: 'All your persecutions have arisen from Trinitarian, i.e. *idolatrous* Christians, but all Unitarians will naturally love and respect you, acknowledging their unspeakable obligations to you, as the antient depositories of the great article of their faith.' (p.xxiii). In the Preface, Priestley suggested that his Unitarian congregation in Birmingham would not object to a Jew or a Muslim, any more than a Roman Catholic, standing in their pulpit to 'recommend charity', and 'by whose discourses we can hope to be edified,' (pp.xi-xii); Rutt, XX, 280, 520.

²³ *Conversations on Christian idolatry, in the year 1791, published by Theophilus Lindsey* (London, 1792).

²⁴ Cf. Nigel Aston, 'Horne and Heterodoxy: the Defence of Anglican Beliefs in the Late Enlightenment', *English Historical Review*, Oct. 1993, pp.895-919.

²⁵ Joseph Priestley, 'Reflections on the present state of free inquiry,' attached to *The importance and extent of free inquiry in matters of religion, a sermon, ... November 5, 1785* (London, 1785), p.40.

The previous year, Prime Minister Pitt had spoken quite calmly, when he warned that if greater powers were given to those Dissenters ‘who regard the Establishment as sinful, and bordering upon idolatry’ they must, by consistency of conscience, seek its ‘extirpation’.²⁶ Following the publication of the Unitarian Society’s *Rules*, Pitt was more vehement: The ‘furious Dissenters,’ he told Parliament, ‘looked upon Episcopacy as *idolatrous* and *sinful*, and professed it their duty at all times to labour its demolition.’ Furthermore, he reminded Members, the ‘security of the church establishment’ was immediately connected with the security of the civil establishment,²⁷ a theorem that encouraged the mantra *Church and King*, which in July became the battle-cry of West Midlands rioters.

The first annual dinner of the Unitarian Society was held on Thursday 14 April 1791, at the King’s Head Tavern in the Poultry, with Dr Priestley in the Chair.²⁸ In the general meeting before the dinner, it was unanimously resolved to apply to Parliament for the repeal of the *Blasphemy Act* which proscribed

²⁶ *The speech of the Right Honourable William Pitt, in the House of Commons, on Tuesday, the second of March 1790, respecting the repeal of the Corporation and Test Acts* (London, 1790), p.35.

²⁷ On 10 May 1791, during a debate on Sir Gilbert Elliot’s motion to exempt members of the Church of Scotland the requirement to take the sacramental rites of the Church of England, on their acceptance of British Civil or Military Office. *Hampshire Chronicle* 16 May 1791.

²⁸ ‘Our first business today, at the King’s Head, was to chuse a new Chairman, which Dr Priestley obligingly complied with at last, being much pressed into office.’ G M Ditchfield (ed), *The letters of Theophilus Lindsey* (2 vols, Woodbridge, 2007, 2012) vol.2, letter 449, pp.113-5.

preaching or writing against the doctrine of the Holy Trinity.²⁹ This was a subject close to Priestley's heart. Had he been consulted in connection with the Applications to Parliament for the repeal of the Test and Corporations Acts,³⁰ Priestley later wrote, 'I should rather have advised an application for the repeal of [the Blasphemy Act].'³¹ Priestley, Theophilus Lindsey, and Samuel Heywood,³² were deputed to present the Unitarian Society's Resolution to Charles James Fox.³³

The acceptance of the Chair at the Unitarian Society's first annual meeting, brought upon Priestley's head the public opprobrium that arose from the intemperate language of the

²⁹ Although it came into force in 1698, it is generally called the *Blasphemy Act* (1697). Before 1793, Acts of Parliament were dated retrospectively to the start of the parliamentary session, rather than the date of royal assent.

³⁰ Successively debated and defeated in Parliament 28 March 1787, 8 May 1789, and 2 March 1790. Ursula Henriques, *Religious toleration in England, 1787-1833* (London, 1961).

³¹ Joseph Priestley, *An appeal to the public* (Birmingham, 1791), p.15; Rutt, XIX, p.368.

³² Samuel Heywood (1753-1828), Serjeant-at-law (King's Counsel) and a Chief Justice, had been active on the Committees for the repeal of the Corporation and Test Acts. He was author of *The right of Protestant Dissenters to a compleat toleration* (London, 1787), and *High Church politics* (London, 1792).

³³ On 8 March 1792, Fox presented a Petition for repealing the Blasphemy Act, signed with some 1600 names. He introduced the motion for the relief of Unitarian Dissenters, on 10 May 1792. This was the occasion when, whilst Fox was speaking, Edmund Burke left the opposition benches, scuttled across the floor of the House, and plumped himself down on the government front bench, next the Prime Minister. *Derby Mercury*, 17 May 1792.

prandial toasts.³⁴ The ninth toast, a sarcastic jibe at Edmund Burke, was unworthy, whilst the absence of the Loyal Toast from the published list, together with references to both American independence and the French Revolution, gave more than a hint of menace to the final toast: ‘May the example of one revolution make another unnecessary.’

Impressively, despite the furore that followed the first annual dinner, the members of the Unitarian Society did not strike their colours, though they were more discreet in their subsequent meetings. Slowly but steadily, other individuals and congregations stood to declare their attachment to Unitarianism,

³⁴ 1. Prosperity to the Unitarian Society. • 2. The cause of civil and religious liberty throughout the world. • 3. Mr Fox; and a speedy repeal of all the penal laws respecting religion. • 4. May the example of America teach all nations to reject religious distinctions, and to judge of the citizen by his conduct. • 5. The National Assembly of France; and may every tyrannical government undergo a similar revolution. • 6. May no man destroy another’s happiness in this world, for the sake of securing it in the next. • 7. The Ladies and Gentlemen who have asserted and supported civil and religious liberty, by their writings and speeches. • 8. Thomas Paine, and the Rights of Man. • 9. Thanks to Mr Burke for the important discussions he has provoked. • 10. May no society, civil or religious, claim rights for themselves, that they are not ready to concede to others. • 11. Success to Mr Fox’s intended motion to ascertain the liberty of the press. • 12. May the sun of liberty rise on Oxford as it has on Cambridge, and as it has long shone on the Dissenters. • 13. May the governments of the world learn that the civil magistrate has no right to dictate to any man what he shall believe, or in what manner he shall worship the Deity. • 14. May the example of one revolution make another unnecessary. *Bath Chronicle*, 21 April 1791

Tony Rail

allowing Belsham to declare, in 1812, that the title Unitarian, rather than a term of reproach, had ‘become a mark of honour.’³⁵
Sudbury, Suffolk

TEXT³⁶

Rev^d Samuel Fawcett, Taunton.

Dear Sir,

By yesterday’s post, I received a letter from our friend Crabbe in which he informs me that he intends to accept the invitation from Royston. He is much obliged to you for thinking of him with a view to Taunton, and hopes that his delay (unavoidable circumstances having prevented him from coming to an earlier decision) will prove no material inconvenience to you or to the Society.

We have lost our invaluable friend Dr Price.³⁷ In ability, in inflexible integrity, & in an ardent & enlightened zeal for the just rights of mankind he has left few equals and no superior. He is to be interred on Tuesday when his numerous friends will take the opportunity of paying the last tribute of respect to his venerable remains. Upon opening him, his viscera were found in a very diseased state – one kidney quite gone – the other very unsound – a small stone in one of the Ureters – and a fleshy excrescence at the neck of the bladder. From such miseries, how happy the release. Indeed it is wonderful that he did not suffer more than he appears to have done.

³⁵ Belsham, *Memoirs of Lindsey*, pp.204-5.

³⁶ Transcribed from the original MS, held privately.

³⁷ Price had developed a fever on 23 Feb 1791, after attending the funeral at Bunhill Fields of Ann (née Dyer), the wife of his friend Brough Maltby (1719-1798). A month later, he developed a painful disorder of the urinary tract, which worsened towards his death in the early hours of 19 Apr 1791. Priestley, *Discourse*.

Tony Rail

The Unitarian Society had their first annual meeting last Thursday, Dr Priestley in the chair. Amongst other things we came to an unanimous resolution to apply to parliament for a repeal of the Act of 10th of W^m 3^d against the Anti-Trinitarians; & Dr Priestley, Mr Lindsey, & Mr Heywood are to wait upon Mr Fox with the resolution, & to request him to bring forward a motion to this purpose when he finds it convenient; & we know that he will comply with our request. This my friend is one of the first fruits of our Unitarian Society and surely it was worth while to form it if it were only to bring forward so important a discussion. At dinner we had a much larger party than we expected. Amongst others were Sir George Staunton, George Rous, Porson, M^r W^m Smith, M^r James Martin, D^r Kippis, M^r Lindsey, D^r Disney,³⁸ & many other names which stand high in the list of firm, & judicious friends to rational Christianity, & freedom of enquiry. It was a glorious meeting. I wish you had been with us.

³⁸ Sir George Staunton (1737-1801), influential member of George Macartney's embassy to China; George Rous (24 Dec 1743-11 Jun 1802), barrister, MP, and author of *A letter to Edmund Burke* (London, 1791); Richard Porson (1759-1808), the Greek scholar whose *Letters to Mr Archdeacon Travis* (London, 1790), Unitarians believed, proved beyond doubt that the *Comma Johanneum*, the Trinitarian clause in 1John, 5:7, is spurious; William Smith MP (1756-1835), abolitionist and campaigner for social justice, and a grandfather of Florence Nightingale; James Martin MP (1738-1810), partner in Gresham's, later Martin's Bank; Andrew Kippis DD (1725-1795), biographer, minister of Princes Street Chapel Westminster, and tutor at New College Hackney; Theophilus Lindsey (1723-1808), founder of Essex Street Unitarian Chapel; John Disney, DD (1746-1816), Lindsey's co-adjutor at Essex Street Chapel. Staunton, Rous, and Porson, are not listed as subscribing members of the Unitarian Society.

Tony Rail

The high church party are much alarmed at the insolence of the Unitarians.

With comp^{ts} to M^{rs} Fawcett & all my friends at Taunton, I am my dear Sir,

Yours very affect^y

Tho^s Belsham

Hackney College, April 21, 1791.