

DEBATE FORUM

A HISTORY LESSON FOR DAVID CAMERON

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Introduction

The limits to Prime Minister David Cameron's general knowledge hit the headlines at the end of September 2012 when an American talk-show host asked him about Magna Carta, and he was unable to say what the term meant literally. But is the current Prime Minister historically ill-informed (he also thought Edward Elgar wrote *Rule Britannia*), or did David Letterman simply ask the wrong question?² The Latin words simply mean 'Great Charter'. When the original *carta libertatum* issued by King John in 1215 was reissued for a second time (the first reissue came after John's death in 1216) it was accompanied by a complementary specialist charter, the Charter of the Forest (*Carta de Foresta*). The original Magna Carta was expanded to take note of the declarations in The Charter of the Forest. David Letterman asked the wrong question. The important questions are: What is Magna Carta? and Why is it significant?

An enormous amount has been written about Magna Carta, more than any other single English historical document, and doubtless much more will be written as its 800th anniversary approaches. Much comment, however, is simplistic or erroneous, not least the traditional view that 'Bad' King John signed Magna Carta. John (1199-1216) was certainly one of England's less successful monarchs, and his actions alienated many of his subjects to the extent of armed rebellion. Rebellion was, though, an occupational hazard of medieval kings, who trod a narrow line between 'weakness', which provoked rebellion from those seeking to take advantage, and 'tyranny', which provoked rebellion from those angry at their exactions. It can certainly be argued that, like that of his descendant Richard III, John's reputation has been unfairly maligned. In any event he never signed anything; he, and all others who assented to the charter affixed their seals to it in what was the ordinary fashion of the day (they remain attached to the Salisbury Magna Carta).

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² See BBC News, 28 September 2012 <http://www.bbc.co.uk/news/magazine-19744823>.

Much of Magna Carta's significance can only be established in retrospect. In its immediate context it was a peace settlement between John and his enemies among the magnates, mediated by the Archbishop of Canterbury, and as such it was spectacularly unsuccessful. John, supported by the Pope, repudiated it only six weeks later, and the civil war the settlement was designed to prevent occupied the last 14 months of his reign. Nonetheless, it represents a statement that the king was not above the law, but subject to it, and, though it largely disappeared from sight for 300 years a century after John's death, its reissue after John's death (during the minority of Henry III) ensured it constituted an important element in the gradual evolution of constitutional government in England.

1 What was it all about?

Why was a peace settlement needed in the first place? John, born in 1167, was the fourth son of Henry II (1154-89), and succeeded his childless elder brother Richard I (1189-99), when the latter died unexpectedly from wounds while campaigning in France. Henry, and particularly Richard, who only spent seven months of his reign in his kingdom, were Angevin monarchs.³ Consequently they spent much of their time and energies in campaigning in defence of their vast lands in France. Richard, one of the greatest warriors of the age, was in addition a leader of the Third Crusade, and a huge ransom had to be paid for his release after he was captured by his leading enemies in Germany while travelling home. All this required money, and at a time when the king was expected to 'live off his own'. A feudal king was expected to fund the everyday management of his government, and those military campaigns that were then an intrinsic element in such government, from income from the crown lands amplified by the profits from royal perquisites. Both Richard and Henry raised revenue by exploiting their perquisites to the fullest extent possible. To use a more modern turn of phrase, they 'squeezed the pips until the pips squeaked'. Such perquisites included the wardship of heiresses, which meant that the heiress's property came into the king's hands until she married with the consent of the king, and ownership of treasure buried in the ground with the intention of recovering it. This was an era when there were no banks; so a

³ Angevin because of the crown's possession of Anjou (also Aquitaine). In addition to holding the dukedom of Normandy, which originally came to the English crown from 1066, and became a more permanent part of the English crown's claimed possessions after the Battle of Tinchebri 1106, when (after the death of William II, better known as William Rufus) Robert, Duke of Normandy and his younger brother Henry fought over succession to the English throne. Henry won to become Henry I and Duke of Normandy. His grandson, Henry II was Count of Anjou and Maine through his father, and married Eleanor of Aquitaine, sole heiress to the duchy (later known as Gascony and in the hands of the English crown until 1453). In consequence, Henry and his sons controlled lands stretching from the Channel to the Pyrenees. In that capacity there was constant dispute over the extent to which kings of England were also vassals of successive Kings of France, who were at the same time seeking to extend their direct rule beyond the Ile de France.

convenient means of safeguarding one's money was to bury it in the ground, and a proportion of owners never returned to dig up their hoards. Coin hoards are still found from time to time today, but were a good deal more common in the twelfth century. Richard revived the ancient office of coroner, whose holder had power to determine the ownership of buried treasure – if the owner could not be found, it passed to the king – and took such a personal interest in treasure that he received his fatal wound while besieging a French castle in a dispute over ownership of a hoard. Other perquisites included 'reliefs' paid by heirs before they could take possession of their inheritances, which rose to hugely inflated levels. It is no accident that most of the clauses in Magna Carta deal with technical points of feudal law in relation to the king's perquisites.

In consequence of 40 or more years of financial exactions, the magnates were already growing restive during Richard's reign, as shown by a significant minority supporting John in two rebellions against his brother – possibly they believed he would be a softer touch. John therefore inherited a difficult situation at the time of his accession, and matters soon became worse as a result of his own misjudgements.

John inherited a war with Philip Augustus of France (1165-1223), who, beginning under Henry II, made it his life's work to destroy the power of the Plantagenet kings in France. Philip saw the opportunity to profit from uncertainty over the succession to Richard, between John and his nephew Arthur, Duke of Brittany, son of Henry II's deceased third son Geoffrey. After Arthur disappeared mysteriously in 1202 after being taken prisoner by John,⁴ a peace of a sort was patched up, but before long John's own high-handed behaviour provoked another conflict. In 1200 he had his childless marriage to Isabella of Gloucester, a cousin, annulled on the grounds of consanguinity, and immediately, according to chroniclers of the day, developed a violent passion for Isabella of Angouleme, the young daughter and sole heiress of a leading baron of Poitou, which John ruled as Duke of Aquitaine, and sought marriage. Isabella's date of birth is uncertain, but she was no more than 15 years old at this time, and may have been as young as nine. She was already betrothed to Hugh IX de Lusignan, another leading Poitevin magnate (like John in his thirties and already twice

⁴ Arthur was never seen after Easter 1202, and it seems highly likely that he was killed on John's orders, but the episode attracted little if any opprobrium from contemporaries. He was 16 at the time of his presumed death, but medieval society did not see him in any sense as a vulnerable child. This was an age where young noblemen typically began their military careers in their mid-teens – Arthur's father, Geoffrey, had been 15 when he first joined his elder brothers in rebellion against Henry II. Arthur was taken prisoner while at the head of an army besieging his grandmother, Eleanor of Aquitaine, and seems to have inherited in full measure the bellicose temperament for which the Plantagenets were known.

married), and with whom John was on poor terms. In medieval times betrothals counted as legal negotiations with binding force. Thus while great heiresses might be betrothed several times before an actual church-endorsed marriage ceremony, those earlier betrothals usually needed to be called off by agreement between all the families involved, and breaking a betrothal without such consent (often involving payment of compensation), could lead to trouble. For John, preventing Angouleme from coming into Lusignan's hands made very good political sense. But while Isabella's father was delighted to become the king's father-in-law, Lusignan strongly objected to being thrust aside. War ensued. As was his habit, Philip Augustus saw an opportunity to profit, and, making common cause with Lusignan, invaded Normandy. The result was disaster for John. By July 1204 he had lost not only Normandy, but also the counties of Anjou and Maine which he had inherited from his father. Only Aquitaine remained.⁵

Not only did John's personal prestige suffer enormously from these losses, but he spent the next ten years seeking to recover his continental lands, continually planning military expeditions. Necessarily, this required money, particularly for the hire of mercenaries, who now formed the backbone of most armies. His financial exactions need to be viewed in this light. Not only did John's financial demands lead to growing opposition from the magnates especially where families had also lost land as a result of John's disastrous campaigns in France, he also fell into conflict with the church.

This was a time of dispute between European kings and the Roman Catholic Church over the appointment of bishops. The Church regarded this as an issue solely for the church, but given that bishops were also major land-holders, kings wished to exert influence – Henry II once wrote as follows to a cathedral Chapter during a vacancy, ‘I order you to hold a free election, but I order you to elect no one but Richard, my clerk, the Archdeacon of Poitiers’! When the Archbishop of Canterbury died in 1205, the monks of Christ Church Canterbury elected one of their number to the post, and he duly set off for Rome to claim the traditional *pallium* from the Pope as the symbol of his authority. John, however, put pressure on the

⁵ Those who think to add paedophilia to the lengthy list of John's failings should note that it was entirely normal at that time for young girls to be married to mature men, but also that such marriages were frequently not consummated until much later, i.e. after a first menstruation to give proof of potential for fertility. Isabella's first child, the future King Henry III, was not born until 1207. Clearly she was highly fertile, having a further four children by John, and then nine in the space of fifteen years by her second marriage, which suggests her marriage to John (who had several illegitimate children before his marriage to Isabella) was not consummated much before her eldest child's conception. See Nicholas Vincent: ‘Isabella of Angoulême: John's Jezebel,’ in S.D. Church: *King John: New Interpretations* (Boydell, 2007).

monks to revoke that election and elect his own candidate, John de Gray, Bishop of Norwich, who also set out for Rome. When two Archbishops-elect arrived, Pope Innocent III (1198-1216) rejected both and installed his own preferred choice, Stephen Langton, a distinguished theologian long resident at the papal court. The monks of Canterbury backed down, but the king did not, refusing to allow Langton to land in England. The Pope not only excommunicated John, but placed England under an interdict, under which no religious functions could be carried out by the clergy, other than the baptism of infants and confession and absolution of the dying. John took the opportunity to seize all the church lands in England, and a legal stand-off over the rightful possession of such lands continued from March 1208 until May 1213.

Realising that he could not regain his continental lands without allies, John concluded a series of alliances in 1211 and 1212 and planned an expedition to Poitou. This had to be called off when a large portion of the baronage now reduced to possession of English lands only refused to serve in Poitou, arguing that their legal obligations under the feudal system only required them to provide military service in England. This, following a similar thwarted campaign in 1205, led John to open negotiations with Pope Innocent. An agreement was reached, under which John capitulated. Not only did he accept Stephen Langton as Archbishop, he surrendered his kingdom to the Papacy, and received it back as a fief.

To be successful as a medieval king, a man needed to be respected by his subjects, but, crucially, he also needed to be feared. Henry II had been respected, for the most part, and the only serious opposition to his rule came from his sons and their adherents. Richard perhaps engendered less respect, but his reputation as a military commander made him greatly feared. John intermittently showed military ability, but as a commander he was unlucky, and when his campaign to recover his lands was finally launched in 1214, another disaster resulted. John landed in Aquitaine and marched north into the territories of the French king, but after two unsuccessful encounters he withdrew. Meanwhile, his continental allies, headed by his nephew, the Holy Roman Emperor Otto IV (son of John's sister Matilda, and Henry the Lion, Duke of Saxony and Bavaria), joined together in Flanders, and were heavily defeated at Bouvines, close to the modern border between France and Belgium. The Emperor narrowly escaped capture, and his power and prestige were so reduced that he was deposed and replaced by a rival. John's own prestige reached an all-time low, and his domestic enemies began to combine against him. Over a number of years, John's suspicion of his leading English subjects had led him to rely increasingly heavily on a small cabal of

Poitevin advisors. Not for the first time, nor the last, this favour towards what were now considered ‘foreign’ favourites further alienated the magnates.

The genesis of Magna Carta is obscure, because the chroniclers of the day have almost nothing to say on the matter. The magnates who opposed the king were not in any sense seeking the common good. Their motivation was entirely self-interested, rooted in their legally-inflicted grievances as feudal vassals and landowners. The extent to which their demands were moderated by the influence of Archbishop Langton and the Papal legate is also obscure.

2 The 1215 Charter

Be that as it may, the terms of the document to which the king and his leading subjects, both ecclesiastical and lay, set their seals at Runnymede, near Windsor, on 15 June 1215, dealt very largely with specific points of feudal law and sought to limit the king’s power to raise revenue via his feudal perquisites. A further clause named several of his Poitevin supporters and required their immediate expulsion from their offices – a clear sign that the Charter was dealing with the specific grievances of the day rather than being a more general statement of principle.

Item 50. We will entirely remove from their bailiwicks [territorial jurisdictions], the relations of Gerard of Athée (so that in future they shall have no bailiwick in England); namely, Engelard of Cigogné, Peter, Guy, and Andrew of Chanceaux, Guy of Cigogné, Geoffrey of Martigny with his brothers, Philip Mark with his brothers and his nephew Geoffrey, and the whole brood of the same.

Of the remaining 60 clauses, only three deal with points of general principle. Clause 1 guarantees the liberties of the English church, Clause 2 the liberties of London, together with other cities, towns and boroughs and the Cinque Ports. Clause 29 states:

No freeman shall be taken or imprisoned, or disseised [expelled] from his freehold, or liberties, or free customs, or be outlawed, or be exiled, or be in other wise destroyed; nor will we pass upon him, nor condemn him, but by lawful judgment of his peers, or by the law of the land. We will sell to no man, we will not deny or defer to any man either justice or right.

Though Clause 29 sets out a general principle of trial by peers rather than arbitrary action by the king, it is nevertheless only applicable to free men. The proportion of the thirteenth

century population of England comprised of freemen, as distinct from bondmen under the feudal system, remains unknown, but it was a minority, perhaps less than 10%. There was no intention to make a statement for a majority of the population. ,Equally though the final clause provided for the creation of a Council of 25 barons to oversee the working of the Charter, the motive was short term not long term. The intention was simply to ensure that John observed its provisions. ‘They have given me 25 over-kings!’ declared the furious monarch.

3 The Aftermath

The extent to which John’s enemies were prepared to accept the settlement and end their rebellion remains uncertain, because John himself immediately sent an emissary to Rome, and secured the annulment of the Charter on the grounds that it had been extorted from him by duress. By the end of August 1215 the emissary had returned, and both parties were back on a war footing. The remainder of John’s reign was spent on campaign, not only against his internal enemies, but against Alexander II of Scots (1214-49), who made common cause with the disaffected barons, and the French king’s son, Louis, who could lay claim to the throne as the husband of John’s niece Blanche of Castile (daughter of his sister Eleanor and Alfonso VIII of Castile), and who landed in Kent with an army in May 1216. John was intermittently successful, but when he died at Newark on 18 October 1216 (traditionally from a surfeit of peaches and rough cider, but more probably from a perforated ulcer aggravated by dysentery), he left a kingdom in chaos. The barons were still in arms, and both the King of Scots and Louis of France were on English soil with their armies. In addition, at a time when royal courts were peripatetic and kings travelled their realms with large portions of their regalia and wealth, John’s baggage train had been overwhelmed by the tide while crossing the Wash a few days before his death. Significantly diminishing the immediate resources of the crown

John entrusted his kingdom to his nine-year-old son, Henry, under a regency council headed by William the Marshal, Earl of Pembroke, one of the great men of the age. The regents acted quickly and decisively to safeguard the young heir’s position and to begin to gain the support of a majority of the leading subjects. The new king was hastily crowned at Gloucester Abbey, and on 12 November the Marshal and the Papal legate reissued Magna Carta in a modified form as an earnest of their good faith. This early piece of spin was a success. In addition, Henry III was too young to have been associated with his father’s abuses of power, and the Marshal was the most respected layman in the country, the

chevalier sans peur mais sans reproche of his day. Gradually, the barons lost support and were defeated in a campaign which occupied much of 1217. Louis returned to France and Alexander II concentrated on affairs at home. To mark the end of the crisis, the charter was reissued a second time, with its accompaniment of the Charter of the Forest.

We now see Magna Carta developing a symbolic importance in terms of the relationship between monarch and free subjects. The new Charter was issued again in 1225, when Henry III declared himself of age, at the urging of the magnates, and once more in 1237. However, it did not play any significant role in the crisis of Henry's reign from 1258 onwards. Henry III was characterised by the authors of *1066 And All That*⁶ as a Weak King, and he is an insubstantial figure in comparison with his three immediate predecessors and his son, Edward I. After the dark times of his accession, his reign was largely peaceful until 1258, when his need for money set off a lengthy crisis, and might well have led to his deposition had his enemies been able to find a suitable rival claimant. In 1253 Henry accepted the crown of Sicily from Pope Innocent IV on behalf of his younger son Edmund, then aged eight, following the death in 1250 of its hereditary ruler, the Emperor Frederick II. Sicily was, however, in the hands of Frederick's illegitimate son, Manfred, and Henry somewhat rashly vowed to send an army to Sicily on pain of excommunication, and, more rashly still, agreed to repay a vast papal debt by Michaelmas (October) 1256, on pain of interdict. Henry was already at odds with his brother-in-law Simon de Montfort (husband of King John's posthumous daughter Eleanor), who had earlier been the subject of an investigation into his actions as Governor of Gascony. Baronial discontent was anyway simmering over the king's favour to his '*foreign*' relations. Rather unfairly this included Simon de Montfort, a scion of an Anglo-Norman family who (after the Battle of Bouvines) had typically divided their lands between 'French' and English lines. Simon de Montfort had been allocated English estates around Leicester which had come into the de Montfort family through his paternal grandmother. But having lived most of his life in France until he took up his lands, he was seen by English magnates with no prospects of regaining lost lands overseas as a 'foreigner' seizing land in short supply, in the same way as Henry's half-brothers. After John's death, Henry's mother Isabella of Angouleme, had married Hugh X de Lusignan, son of her original betrothed, and their five sons, now adult, had settled in England and were the leading beneficiaries of their half-brother's generosity, along with the relations of Henry's queen, Eleanor of Provence. These threads now came together, so that at successive Great Councils (forerunners of Parliament) in 1256 and 1257 the magnates refused the king's

⁶ W C. Sellar and R.J. Yeatman *1066 And All That* (Methuen, 2010).

requests for revenue to cover the costs of the Sicilian campaign and the papal debt. To make matters yet worse, the English suffered a series of defeats in Wales, where the crown claimed an uneasy suzerainty, and Henry had been required by the Pope to make peace with France on disadvantageous terms.

At the Great Council of Easter 1258, the magnates agreed revenue for the Sicilian expedition only in return for a promise of thorough reform of royal administration, on the basis of a programme to be agreed by delegates from both sides. This produced the Provisions of Oxford, which were central to the dispute which raged for the next seven years, during which Henry was temporarily imprisoned by his enemies after his defeat at the Battle of Lewes in 1264. The Provisions of Oxford developed certain themes in Magna Carta, but were to a considerable extent nullified by the defeat of Simon de Montfort and his leading adherents in 1265. Interestingly, the Statute of Marlborough of 17 November 1267, issued at a time when Henry and, increasingly, his heir Edward, were seeking a peaceful solution to the problems which had brought about the conflict, created a mechanism by which ordinary freemen could enforce the provisions of both the Magna Carta and The Charter of the Forest. Though small in number, this provided a legal basis for later developments when freemen became a majority with the collapse of the feudal system.

There was one further episode in which the Charters were central before they disappear from public consideration until the seventeenth century. In 1297 Edward I (1272-1307) reached the nadir of his fortunes. Following the sudden death of Alexander III (1249-86), and then his only descendant in 1290, Edward had intervened directly in Scottish affairs and supported the candidacy of John Balliol (1292-96) for the vacant throne. In 1296, angered at Balliol's attempts to manifest his independence, Edward invaded Scotland and deposed him, placing the country under English rule. However, the hitherto obscure William Wallace mounted a rebellion. At the same time, Edward planned an extensive campaign in Gascony against the French, who had earlier occupied much of the duchy.

As usual, a war on two fronts was an expensive business, and hostility from the magnates was intensified by Edward's previous exactions. One of Edward's biographers has estimated the total cost of his campaigns of 1294-98 at £750,000, in comparison with a contemporary figure from the Exchequer for his annual revenues of £26,828 3s 9d. To make matters worse, the revenues from the lucrative Gascon wine trade were currently out of the king's reach. Initial opposition came from the church, when in November 1296 the Archbishop of

Canterbury, Robert Winchelsey, refused on behalf of his clergy to agree to demands for 'extraordinary taxation' of church property, following the issue of a Bull by Pope Boniface VIII expressly condemning such taxation. Edward retaliated by placing the clergy outside the king's peace and Winchelsey backed down, but the two magnates appointed to lead the Gascon expedition, Roger Bigod, Earl of Norfolk, and Humphrey de Bohun, Earl of Hereford, then expressly refused to go overseas, except in the company of the king, who had chosen to lead a force to Flanders. In the spring of 1297 they held a large assembly in the Forest of Wyre on the Welsh border, and then went armed to Westminster for the next meeting of the Great Council. In July the king made a public plea for support at Westminster Hall before embarking for Flanders, but this had little effect on the mood of the magnates and their supporters, who drew up a statement of grievances, the *Monstraunces*, which included the king's failure to abide by the terms of Magna Carta, the burden of taxation, and the harsh application of the law under the terms of The Charter of the Forest..

Civil war was a real possibility at this point, and the king took a considerable risk in leaving the country for Flanders, with his 13-year-old heir, the future Edward II, in nominal charge. A Parliament was summoned for 6 October, apparently to give retrospective consent to taxation which was already being levied, but military preparations were made on both sides. It may well have been the quite unexpected news of the English defeat by William Wallace at the Battle of Stirling Bridge on 24 September which led to a moderation of the magnates' demands. At any rate, the king's representatives reissued the Charters in his absence, and obtained the Parliament's consent to taxation, though only a 'Fourteenth' instead of the 'Eighth' originally sought, and the immediate crisis died down. Before long the king resumed his exactions, and in 1300 a further confrontation led to another solemn reissue of the Charters, and the issue of a further 20 articles as the *Articuli super Cartas*. The main new provisions were that three knights were to be appointed in each shire to deal with infringements of the Charters, and that in future prises (levies in kind) were to be taken only by authorised purveyors, and only for the purposes of the king's military household, not his personal household. In future, the king's household court should only deal with matters arising within and in the immediate vicinity of the household, and not common law cases of debt or freehold. Each county should in future elect its own sheriff, rather than the sheriff being appointed by the king.

Over the 85 years between its creation in 1215 and the *Articuli super Cartas*, Magna Carta in its different versions dealt very largely with matters of specific concern, which were, in turn,

the concerns of a narrow landowning class. The concerns of the ordinary mass of the peasantry, or indeed, the inhabitants of the town, were not brought into consideration at all and were thus only accidentally covered in that most freemen of this period were landholders to some small extent and were so included almost by default in that they were too small a group to be worried about in terms of any potential to challenge the power and authority of magnates or monarchs. In the final years of the thirteenth century, the Charters were very much alive and retained a major symbolic importance. However, they then disappear. Why was this?

The answer seems to be that the politics of the day moved on from seeking to restrict the power of a ‘tyrannical’ king to removing a tyrannical king from his throne on the pretext of his abuse of power. First Edward II (1307-27) and then Richard II (1377-99) were deposed after lengthy periods in which their baronial opponents sought to induce them to act within the law as they saw it, though the actual depositions were triggered by personal grudges (from Edward II’s queen, Isabella of France, and Richard II’s cousin, who seized the throne as Henry IV (1399-1413)).

4 Magna Carta Reborn

Magna Carta continued to be studied and invoked technically by lawyers between the fourteenth and sixteenth centuries, but did not re-emerge as a major public document upon which the political figures of the day relied until after 1600. It is not mentioned at all in Shakespeare’s *King John*, which concentrates on the conflict with Arthur and is believed to have been written around 1590, drawing on *Holinshed’s Chronicle*, published in 1577, for its contextual base.

The seventeenth century was a time of turmoil, in which the role of the king as a lawmaker was directly challenged, and the precise nature of his relationship with Parliament led to civil war, the deposition and execution of one king and the deposition of a second, together with a settlement which severely limited the king’s prerogatives and ability to act independently of Parliament. By then Parliament had developed into an established legislative body, though it met only when summoned by the king, usually when he was in need of revenue, and sat only until dissolved by him. Under James I (1603-25) the issue arose of whether the king could still legislate independently of Parliament via his prerogative powers.

In the usual fashion, James was a monarch in need of money. He inherited a burden of debt from his predecessor, Elizabeth I, and inflation seriously reduced the value of his traditional revenues. By 1619 his financial position was so parlous that the funeral of his queen, Anne of Denmark, had to be delayed for ten weeks while the necessary funds were raised. Matters only worsened when James's son-in-law, Frederick of Bohemia,⁷ was driven from his kingdom in 1620 and James sought to assist him.

James had already occupied the highly unstable Scottish throne for 36 years when he succeeded to the English crown. An unparalleled series of royal minorities from 1407 onwards led to the growth of factional politics to an extreme degree, and as a young man James had learned the arts of political calculation and canniness. The same was not true of his son Charles I (1625-49). During James's reign, conflict over the king's prerogatives was confined to the law courts and Parliament, but under Charles matters intensified to full-blown civil war, and Charles's deposition, trial and execution.

For 300 years, Magna Carta had been known only to lawyers, but it is at this point that it re-emerges, specifically in its symbolic form. A leading figure in this development was Sir Edward Coke (1552-1634), Chief Justice of the Common Pleas 1606-13, Lord Chief Justice 1613-16) and an MP for various constituencies from 1620. Coke presided over a number of leading cases concerned with the king's prerogatives, including the *Case of Proclamations* and *Dr Bonham's Case*, until his dismissal by James in November 1616. He was then at the forefront of the parliamentary opposition to James and to Charles I in the first years of his reign.

Following his father's death, the young Charles I initially sought to raise revenues independently of Parliament, mainly by demanding forced loans from his richer subjects and imprisoning those who refused to pay without trial. The courts held such imprisonment to be illegal, with the result that few paid and Charles summoned Parliament in 1627 in the hope of being granted revenues, known then as subsidies. This Parliament, however, was in a combative mood, and the House of Commons not only included Coke, but a number of other major figures, including Oliver Cromwell and John Pym. The king declared martial law and billeted troops on the civilian populace. Coke prepared a set of four *Resolutions*, which declared that Magna Carta was still in force and prohibited imprisonment without trial. The

⁷ Frederick and his wife, Elizabeth, were the parents of Sophia of Hanover, progenitor of the House of Hanover in Britain.

Resolutions further declared that no revenue could be raised for the Crown without the approval of Parliament and that troops could not be billeted on private citizens without the householder's agreement. The king rejected the *Resolutions* and Coke and his supporters in the Commons moved on to producing the Petition of Right, which made specific reference to Magna Carta, and, unprecedently, was approved by the Lords as well as the Commons. Previously, the Lords had very largely supported successive monarchs, and opposition within Parliament had been confined to the Commons. The Petition of Right was accepted by the increasingly cash-strapped monarch in return for the grant of five subsidies, which dealt with his immediate financial difficulties but did not resolve the long-term issues.

The Petition of Right bears many similarities to the original Charter of 1215. It was a settlement forced on a reluctant king by his enemies, and did not in the longer term prevent the conflict from escalating into open war. The Petition of Right required the king to endorse the propositions that he could not by the prerogative alone levy taxation, imprison without trial, billet troops or impose martial law. Like Magna Carta, it purported to be a declaration of existing law, and it was coupled with a humble request that the king observe that law, rather than it representing any imposition of unprecedented restrictions on the use of the prerogative. In particular, it was stated that the right of every man to be tried by his peers, and hence the absolute right not to be imprisoned without trial, was contained in Magna Carta.

Like his ancestor, John, Charles I showed an early reluctance to abide by the spirit of what he had agreed. The Petition of Right made no reference to the collection of customs duties (tunnage and poundage), which by tradition were granted by Parliament on the accession of each monarch for the duration of the reign, but had not been granted by the 1625 Parliament because of opposition to the foreign policy conducted by the royal favourite, George Villiers, Duke of Buckingham. Following the acceptance by Charles of the Petition of Right, the 1628 Parliament began to prepare a bill which retrospectively validated the collection of these duties for the previous three years. The king declared that no such validation was required - after all, they had not been mentioned in the Petition of Right, which was supposedly a declaration of existing law. He therefore prorogued Parliament and ordered the arrest of merchants who had refused to pay tunnage and poundage.

One source of conflict was removed, when, on 23 August 1628, the Duke of Buckingham was murdered in Portsmouth by a former soldier, by reason of a private grudge. An

expedition which Buckingham had been due to lead against the French fortress of La Rochelle was then abandoned. For a brief period Charles attempted to meet Parliament with moderation, seeking to persuade the members that he had continued to levy tunnage and poundage not as a matter of right, but from necessity alone, and the Bill to validate their collection was introduced early in 1629. Deadlock ensued when Sir Charles Eliot, one of the king's leading opponents, seems deliberately to have engineered a confrontation by raising an issue of privilege, to wit, whether a merchant who was also an MP could speak on this issue. Charles considered that matters of privilege were to be decided by him, and exacerbated the tension by continuing to insist that his own interpretation of the Petition of Right was the only correct one.

On 2 March 1629 rumours circulated that the king was about to dissolve Parliament. The Commons refused to acknowledge Black Rod's summons to the House of Lords to hear the king speak, and two MPs held the Speaker down in his chair to prevent him from reading the king's order for the House to adjourn. Whilst the Speaker was thus rendered impotent, Eliot persuaded the House to pass three resolutions. These declared that those advising 'popish innovations' in religion were 'capital enemies to this kingdom and commonwealth', as were those who were involved in any way in the collection of tunnage and poundage. The final resolution declared those who paid the dues to be ' betrayers of the liberty of England, and enemies to the same'. However, there was no serious opposition to the dissolution of Parliament which took place two days later.

At this stage Coke retired from public life and settled on his estate at Stoke Poges, Buckinghamshire, where he concentrated on writing until his death. His most significant work was the *Institutes of the Lawes of England*, which includes commentaries on 39 major constitutional states. One of these is Magna Carta, and it seems to be by this route, and the Petition of Right' that the Charter came to influence the American Founding Fathers. Echoes of Clause 29 can be seen as early as 1641 in the Massachusetts Body of Liberties, perhaps not surprisingly as many of those involved in drafting early American legal and governmental instruments had trained as lawyers and so come under the influence of Coke's writings. Whereas Clause 29 of Magna Carta had only covered freemen, in Coke's eyes it was applicable to the entire population. After all, serfdom had disappeared from England in the later Middle Ages, particularly after the Black Death when shortage of labour meant that it was practically impossible to have a labouring population tied to specific tracts of land, and been formally abolished under Elizabeth I.

Seventeenth century radicals adopted differing views of Magna Carta during the conflicts of the Civil War and Commonwealth. By this time, as well as the theory of Magna Carta as a great bulwark of English liberty, there had also developed the idea that there had been an era of popular liberty under the Anglo-Saxons, before the country fell under a Norman yoke. Following the Revolution of 1688, a Whig interpretation of history gradually developed, under which the Revolution Settlement was considered to be the perfect foundation of democracy. Gradually, the oppression of the Norman period had given way to a resurgence of liberty, and Magna Carta was seen as a central element in this process. This view was very much based on the mythology of Magna Carta, rather than on its thirteenth-century reality.

Conclusion

Given current legislation relating to individual liberties and rights, does David Cameron need a history lesson?

The point of this narrative survey has been to point up that the reality of Magna Carta is far more subtle and more complex than a simple matter of its title and when and where it was concluded. Much of modern thinking about it can clearly be shown to be a mythology arising from seventeenth century assumptions reflecting the dramatic change in the population profile of England and Wales by that date. There are now significant changes again in both Britain and the USA. Perhaps David Letterman needs a history lesson as well.