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Catterall Peter

This is an electronic version of a paper presented at the *800th Anniversary of Magna Carta Conference*, University of Amiens, France 7th - 9th December 2015.

The proceedings are available online at:

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Magna Charta and Parliament 1900-1914

In 1915 plans for the celebration of the 700th anniversary of *Magna Carta* had to be dropped following the outbreak of the First World War. Such celebrations marked a sense of *Magna Carta* as an event in the history of these islands. The usage of the term *Magna Carta* in Parliament in the run-up to the First World War, however, shows that its granting was not seen only as a significant historical event to be memorialised. During the period from 1900, opening with war in South Africa and ending in 1914 with war throughout Europe, the Great Charter was mentioned 85 times in Parliament. As a period marked by a lengthy constitutional crisis in 1909-11 and beset with problems in Ireland and the Empire, this seems like a good case study period to choose. This short paper attempts to analyse how and why it was invoked in Parliament in the years and what these various usages tell us about how *Magna Carta* was understood at the time.

The first point to make is that parliamentarians at the start of the twentieth century referred to *Magna Charta* rather than *Magna Carta*. The modern appellation *Magna Carta* was hardly ever used throughout the nineteenth century or before 1919, and only seems to have become the standard term in Parliament since the 1950s. Accordingly, throughout the rest of this paper I am going to use the term as it was in circulation at the time.

In using the term parliamentarians of the time could simply follow H. H. Asquith, the distinguished lawyer who served as Liberal Prime Minister 1908-16, who in 1911 described *Magna Charta* as a statute which Parliament can 'alter or amend...if it pleases'.¹ Technically Asquith was correct, as *Magna Charta* had been incorporated onto the Statute Book through being confirmed by Parliament at least 55 times since its initial appearance.² By 1911, as well, many of its provisions had been removed from the Statute Book by parliamentary emendation in exactly the manner Asquith suggested. It could thus be referred to as antiquated. The Liberal MP, Robert Harcourt in 1913 implied as much in saying 'I know many people who have a kind word even for Magna Charta. But the Home Secretary does not regulate biplanes and Zeppelins by enactments originally designed for sedan chairs.'³ This was, however, an isolated example. Generally speaking no other statute, except perhaps the Bill of Rights or *Habeas Corpus* - both of which were frequently mentioned in the same breath as *Magna Charta* - was referred to so widely or in such a range of settings in Parliament throughout these years. *Magna Charta* might technically have become a Statute through incorporation, but it was also much more.

As is suggested by its coupling with the Bill of Rights and *Habeas Corpus*, not least by Asquith himself, *Magna Charta* was often invoked as a foundational document, one which

¹ *House of Commons Debates*, 5th series, vol.24, c.1108, 20 April 1911.

² Sir Ivor Jennings, 'Magna Carta and constitutionalism in the Commonwealth 1964-65' in Harshan Kumarasingham (ed), *Constitution-Maker: Selected Writings of Sir Ivor Jennings* (Cambridge; Cambridge University Press, 2014), p.273.

³ *House of Commons Debates*, 5th series, vol.51, c.2037, 16 April 1913.

shaped understanding of the law, of historical identity, and of the nature of authority. All of these usages were wrapped up in the speech by the distinguished Liberal jurist, James Bryce, on the constitution for the new Commonwealth of Australia, in which he concluded: 'This constitution is a product of that history, and witnesses to the vitality of the principles by which England had begun to be guided as far back as the days of Magna Charta.'⁴ Indeed, about a fifth of the references use *Magna Charta* in this way to reflect on its role in shaping British identity and history.⁵

Magna Charta was not just invoked as the distant progenitor of constitution-making in debates on government legislation. It was raised by the Irish MP J. P. Boland in 1909 in presenting a petition on behalf of a Catholic school in Barnsley complaining about having to pay educational rates from which they derived no benefits, contrary to the no taxation without representation associated with *Magna Charta*.⁶ This was, however, the only example of it being invoked in the presentation of a petition.

There were also only four occasions during 1900-14 when *Magna Charta* was mentioned during Parliamentary Questions as part of the process of holding the government to account. On each of these occasions, however, it was used to raise specific concerns that provisions of *Magna Charta* were being over-ridden in terms of taxation, the selling of justice or the right of petition. In other words, in Boland's petition and these questions *Magna Charta* was invoked as a legal text used to challenge the government of the day for failing to abide by its provisions. For instance, the right of petition was invoked in the first use of *Magna Charta* by a Labour MP when Keir Hardie asked about this right for a deputation of suffragettes in 1909.⁷

Magna Charta could also be used in this way in the majority of settings in which it was invoked, debates usually on government bills, either on the floor of the House of Commons or Lords or during the committee stages of a bill. Its usage, however, depended upon the values parliamentarians choose to invest it with and the context in which they sought to invoke it. Often it was referenced simply in passing as a familiar term, helping to frame either a sense of historic rights and/or identity, without being central to the argument being adumbrated. It was also used on a number of occasions in a very different sense as an analogy. *Magna Charta* was in these portrayed (somewhat misleadingly) as an exemplary concordat between contracting parties: for instance, when the Highways Act 1896 was referred to as 'the Magna Charta for motorists'.⁸ Churchill's first parliamentary invocation of *Magna Charta* was in the same vein when he proclaimed in the aftermath of the South African war in 1902 his hopes for 'a military compact or treaty between those fighting on

⁴ *House of Commons Debates*, 4th series, vol.83, c.792, 21 May 1900.

⁵ I use British here because Scottish and Irish MPs were just as apt to invoke *Magna Charta* as English ones. However, it does not seem to have been cited by any Welsh MPs in the period.

⁶ *House of Commons Debates*, 5th series, vol.13, c.475, 1 December 1909.

⁷ *House of Commons Debates*, 5th series, vol.7, c.233, 29 June 1909. Hardie was advised by Mr Speaker Lowther that 'There is no doubt that the public have the right to petition, but I did not understand that that was the point raised by the hon. Member. He spoke of a deputation, and I do not know whether there is any right on the part of the public to compel a Minister to attend a deputation.'

⁸ Ernest Soares (Liberal MP), *House of Commons Debates*, 4th series, vol.126, c.1461, 4 August 1903.

either side, which should be to the Boers a *Magna Charta*, and to the British the title deeds of the country.⁹ Similarly a whole range of arrangements, from education reforms in India through the creation of parish councils to agreements with the National Telephone Company could improbably be invoked as examples of a latter-day *Magna Charta*. This was *Magna Charta* understood analogously as a foundational deal which gave enough to each side to be workable.

The other main way in which *Magna Charta* was referred to was in terms of legal rights, often in ways which implied that these rights were being undermined. For instance, in the brief debates allowed on the Official Secrets Bill in 1911 the Liberal MP Sir Alpheus Morton complained 'It upsets *Magna Charta* altogether'. Protesting vehemently against the provision in S.2 of that legislation that 'it shall not be necessary to show that the accused person was guilty of any particular act tending to show a purpose prejudicial to the safety or interests of the State', his fellow Liberal, the newspaper proprietor Sir William Byles, used *Magna Charta* to argue 'that no Member of this House ought to vote for a Bill which contains those words.'¹⁰

Most of his fellow Liberal MPs, however, loyally supported this legislation. This was not the only occasion on which *Magna Charta* featured in an intra-party dispute between Liberal MPs and their government. The Liberal barrister, F. C. Mackarness, complaining of the detention or deportation without charge on hearsay evidence of various political activists in India invoked not only *Magna Charta* but the emperor Trajan's law of 102. In response, the Under-Secretary of State for India Thomas Buchanan referred to backbench talk of *Magna Charta* as an ideal, but 'in the practical work of government, especially a Government such as our Government of India, emergencies will arise, difficult emergencies, in which theories and ideals have to be put on one side.'¹¹

It was not that those in government were necessarily less apt to mention *Magna Charta*, but they tended to use it in different ways. Most of the Conservative references to it before they lost power in December 1905 were as an analogous concordat, a deal through which power was responsibly exercised and delegated. It was only after they went into opposition that they began using the term in ways more critical of government. This was particularly during the Parliament Bill debates, but there was also a change in tone in respect to financial issues. Thus alterations to income tax were criticised in 1913 by the Tory lawyer, Sir William Joynson-Hicks, on the grounds that 'our primary object in coming here is to stand up for the rights of the subject against the Crown. That is clearly the first reason why Parliaments were instituted, in order to gradually curb and fetter the strong....That is how all the liberties of the subject were gradually gained from the days of *Magna Charta* and of Ship Money and of the

⁹ *House of Commons Debates*, 4th series, vol.101, c.480, 21 January 1902.

¹⁰ *House of Commons Debates*, 5th series, vol.29, c.2253, 18 August 1911.

¹¹ *House of Commons Debates*, 5th series, vol.1, cc.807-45, 24 February 1909.

Bill of Rights and so forth.¹² *Magna Charta* in other words, could easily serve as a rhetorical stick with which to beat ministers. An example is the way the Tory Earl Stanhope raised the forthcoming 700th anniversary during the 1914 Lords debate on the Address to suggest that such a great change to the Constitution as the Irish Home Rule Bill should be submitted to a referendum as a curb on executive power.¹³

Ireland was one of the recurrent contexts in which *Magna Charta* was invoked. At the start of the century the leader of the Irish Home Rulers, John Redmond, pointed out that "The principle underlying trial by jury is as old as Magna Charta, and is now in vogue, in one form or another, in most civilised countries in the world."¹⁴ As far as this provision was concerned, however, as one of his parliamentary colleagues reminded the House the following year 'for all practical purposes in Ireland the word "Magna Charta" had never existed'.¹⁵

After 1910 Redmond's party was much less inclined to mention *Magna Charta* and disrupt efforts to pass Home Rule for Ireland. It was the Tories who repeatedly brought it up in the debates in 1912, attempting in vain to reinstate for a Home-Rule Ireland the protections for religious equality based upon *Magna Charta* which had appeared in Gladstone's 1893 Bill. In doing so they reflected Gladstone's own use of the term in those debates, in which he spoke of his Bill as 'a portion of the Magna Charta of the Irish Legislature, [which] cannot be abrogated by anything that the Irish Legislature may do.'¹⁶ In the process they followed Gladstone in implying that *Magna Charta* was not only a foundational piece of law, but also - despite Asquith's views - a fundamental one, arguing that otherwise it was open to the future Irish parliament 'to interfere with life, liberty, or property outside the ordinary course of law.'¹⁷ This, however, was not a view which commended itself to Gladstone's heirs in the Liberal government steering through the 1912 legislation.

As is shown in Tables 1 and 2, all parties were thus inclined from time to time to use *Magna Charta*, including for their own political purposes. Many of the references to it were allusive and largely rhetorical. Yet certain themes recur in its usage during the period. Domestically it was deployed to critique an over-mighty executive, particularly in areas of constitutional, legal and financial procedures. This usage reflects an understanding, seemingly shared by all parties, that *Magna Charta* may not have had a fundamental status, but it did, alongside various other provisions such as the Bill of Rights, have a special one. That it was rarely discussed in detail and was all too often somewhat incidental to the subject of the debate does not indicate a lack of importance. Indeed, its importance in part lay in that it was treated as important, generally understood as some kind of foundational document which underpinned both British liberties and British identity. Its invocation was thus more than a rhetorical

¹² *House of Commons Debates*, 5th series, vol.51, c.1038, 8 April 1913.

¹³ *House of Lords Debates*, 5th series, vol.15, c.119, 11 February 1914.

¹⁴ *House of Commons Debates*, 4th series, vol.83, c.1315, 25 May 1900.

¹⁵ *House of Commons Debates*, 4th series, vol.93, c.679, 3 May 1901 (J. P. Farrell).

¹⁶ *House of Commons Debates*, 4th series, vol.13, c.1087, 15 June 1893.

¹⁷ *House of Commons Debates*, 5th series, vol.42, c.2297, 23 October 1912 (James Campbell).

flourish. Even in areas that those who framed *Magna Charta* had never envisaged, it was used to warn against the accretion of executive powers. Thus the Liberal Unionist MP, Lord Morpeth, warned in 1909: 'I do not suppose that Magna Charta, or the Bill of Rights will be closely bound up with housing. None the less, the President of the Local Government Board, if he were so disposed, takes power to override these ancient laws and important statutes.'¹⁸ Thus mention of *Magna Charta* was used to express regularly revisited themes about the need to control the powers of the Crown as exercised by ministers, the need to ensure the liberties of the subject in areas of taxation or access to the law, and the idea of power as a relationship whereby its excessive use is restrained by general understandings of its limitations.

Specific chapters or provisions of *Magna Charta* were not always referred to in making such points. Nor were such specific citations usually successful. An example is the attempt by the Liberal MP and barrister Charles McCurdy to emphasize that 'it was one of the conditions of Magna Charta, and before Magna Charta it had been a plain principle of English law, that no man should be imprisoned for any offence without his being tried and properly convicted of that offence' when opposing the 'Cat and Mouse' Bill. This legislation, which sought to deal with suffragette prisoners on hunger strike by temporarily releasing them was, McCurdy argued, in breach of *Magna Charta* because it made their re-imprisonment not a matter for the due process of trial by judge and jury, but at the discretion of the Home Secretary. This constitutional breach, he suggested, was to be effected 'upon the ground that it is necessary to meet a case of emergency.'¹⁹ Emergency, however, here as in the case of the Official Secrets Act triumphed. The spirit of *Magna Charta* may have been invoked, but the letter was not applied. Instead, *Magna Charta* was seen in the period as a series of principles, albeit ones which could be in certain circumstances treated as non-binding upon the government of the day.

As noted above, emergency requirements could also be used in government to over-ride *Magna Charta* within the empire. Bryce may have depicted *Magna Charta* as part of the common inheritance and identity of that empire in his remarks on the Australian constitution in 1900. As Mackarness showed with respect to India, its application was, however, uneven across the empire. He specifically raised *Magna Charta* in order to highlight this point. Similar concerns, in this instance with respect to South Africa, prompted the one occasion during the period 1900-14 when *Magna Charta* was made central to a parliamentary debate. This was when the Labour MP, Frank Goldstone, shortly before the outbreak of the First World War argued that 'the rights of British Citizens set forth in Magna Charta, the Petition of Right, and the [Habeas Corpus Act](#), and declared and recognised by the Common Law of England, should be common to the whole Empire, and their inviolability should be assured in every self-governing dominion.'²⁰

¹⁸ *House of Commons Debates*, 5th series, vol.3, c.858, 5 April 1909.

¹⁹ *House of Commons Debates*, 5th series, vol.52, cc.112-13, 151, 21 April 1913.

²⁰ *House of Commons Debates*, 5th series, vol.60, c.1270, 1 April 1914.

It was conceded by the Colonial Secretary, Lewis Harcourt, that the South African government undoubtedly acted illegally. The problem was that South Africa was a self-governing dominion within the empire. As the Tory MP, Lord Hugh Cecil noted, the result was that 'we have less power to interfere in a part of the British Empire that, as it were, takes to tyranny than we should have in a neighbouring country which was nominally independent.' Disconsolately, the Labour MP Stephen Walsh observed: I have been under the impression that there were certain fundamental principles of British law upon which all these self-governing institutions were to be based....In the ignorance under which we labour upon these benches we really thought that that fundamental condition would exist just as much in the South African Dominions as in our own country, that there should be no person outlawed or exiled, that justice should not be sold and should not be deferred, that no man should be deprived of his fundamental liberties, except through trial by his peers.²¹ The analogous *Magna Charta* of guarantees for the Boers that Churchill had spoken of in 1902 had turned out to undermine the liberties provided for in *Magna Charta* itself.

Magna Charta could not be made justiciable in the self-governing empire and its operation could be trammelled by emergency considerations both elsewhere in the empire and at home. It could, however, be used to address such questionable uses of power, to suggest that they breached the subtle understandings of the conventions of the unwritten constitution Asquith was so apt to evoke,²² and to imply that these breaches were only acceptable within some kind of emergency frameworks. *Magna Charta*, in other words, was part of the foundational understandings of a liberal order which, while never wholly observed was also never wholly to be set aside. While sometimes observed in the breach, it helped to frame a political culture and set of assumptions about what ought ideally to happen. In shaping this political culture in terms of an inheritance of defence of liberties against an over-mighty Crown of which all political parties - even the Irish Home Rulers - could see themselves as heirs, *Magna Charta* was arguably far more important at the start of the twentieth century than as a living legal document. It was not a fundamental document, though it was sometimes discussed as if it were. Instead, the way in which it was regularly used as a metaphor for some kind of fundamental and lasting settlement by a wide range of parliamentarians demonstrates that the idea and desirability of such settlements very much shaped political thinking. It was through these two residues in political culture: a language of liberties against an overweening executive and an understanding of *Magna Charta* as an exemplary political settlement, that its importance lay in the years before the First World War. If the 700th anniversary celebrations had gone ahead in 1915 they would not have been reflecting on something of merely historical interest. Instead, *Magna Charta* was a potent political symbol and idea.

²¹ *House of Commons Debates*, 5th series, vol.60, c..1282-1307, 1 April 1914.

²² Peter Catterall, "'Efficiency with Freedom?'" Debates about the British Constitution in the Twentieth Century' in Peter Catterall, Wolfram Kaiser and Ulrike Walton-Jordan (eds) *Reforming the Constitution: Debates in Twentieth-Century Britain* (London: Cass, 2000), p.2.

Dr Peter Catterall

University of Westminster

TABLE 1: References in Parliament by party, type and subject 1900-December 1905 (under the Conservative government)

Party	Conservative	Liberal	Irish	TOTAL
Types of reference				
Passing	1	2	2	5
Foundational	2	1		3
Concordat	5	4		9
Legal Rights	2	1	3	6
Undermined		1		1
TOTAL	10	9	5	24
Subject of reference				
Empire (general)	1	2		3
Finance	6	2		8
Ireland	1	3	4	8
Parliament and Constitution	1		1	2
South Africa	1			1
Other		2		2

TABLE 2: References in Parliament by party, type and subject December 1905 - July 1914 (under the Liberal government)

Party	Conservative	Liberal Unionist	Liberal	Irish	Labour	Bishop	TOTAL
Types of reference							
Passing	8	2	12	1	1	1	25
Foundational	3		1		2		6
Concordat	2	1	4				7
Legal Rights	3	1	5	1	1		11
Undermined	9		3				12
TOTAL	25	4	25	2	4	1	61
Subject of reference							
Empire			1				1

Finance	5		1				6
India	1		5				6
Ireland	8		2	1			11
Parliament and Constitution	10	2	9		2	1	24
South Africa	1		2		2		5
Other		2	5	1			8