

Magna Carta from Edward the Confessor to Henry III
Dr. William F. Campbell
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It is a delight to give the second lecture on British constitutional thought for the Margaret Thatcher Center for Freedom at the Heritage Foundation. Since we are covering 700 years of British history, I have distributed a timeline of English monarchs to help you follow the lecture. I apologize for not giving you a similar timeline of the various Archbishops of Canterbury, but one timeline is enough except for our younger listeners who are experts at multitasking.



Ronald Reagan and Margaret Thatcher

The central purpose of this lecture is to shed light on the institutions of liberty and limited government. I will put them in historical and cultural perspective by means of pictures and I will conclude with a musical video at the end.

Coming from Louisiana, I am entitled to draw on a quotation from Robert Penn Warren, author of *All the King's Men*. Warren states, "Historical sense and poetic sense should not, in the end, be contradictory, for if poetry is the little myth we make, history is the big myth we live, and in our living, constantly remake."¹

There is no better description of the life of Magna Carta in Anglo-American history. There was a lived myth of Magna Carta and it was constantly remade. In this lecture we will be concentrating on the English medieval background, and in my concluding lecture

¹ Robert Penn Warren, Foreword, *Brother to Dragons: A Tale in Verse and Voices* (1979). For lovers of paradox, there is also a lot of truth in G.K. Chesterton's chapter on Edward the Confessor in his *History of England*, when he stated, "It is an excellent habit to read history backwards....If we really want to know what was strongest in the twelfth century, it is no bad way to ask what remained of it in the fourteenth." G.K. Chesterton, *A Short History of England*. London: New Phoenix, 1951, first published 1917, p. 71.

in December of 2009, I will be emphasizing the English 17th and 18th centuries background to the American appropriations of Magna Carta.

Margaret Thatcher herself is a warm friend of Magna Carta and liberty. The friendship and mutual support between Ronald Reagan and Margaret Thatcher were important to both of them. They were both fighters in the struggle for liberty. The fight for the rule of law, limited government, and private property were all part of Magna Carta, properly understood.²

When the French were celebrating in 1989 the 200th anniversary of the French Revolution of 1789, Margaret Thatcher pointed out to François Mitterrand, “We, of course, had the Magna Carta.” But she was careful to locate Magna Carta in the bosom of Judaism and Christianity.

After the French took offense, she clarified her views in a later interview: “I was asked about human rights and whether I thought human rights started two hundred years ago. Most certainly they did not and I gave the reasons why they go right back to Judaism, to Christianity, they go right back to Magna Carta, they go right back to our Bill of Rights, 1689 after we had our 1688, the American Statement of Independence 1776 was one of the most brilliant pieces of English literature in proclaiming the liberties of man and that the government is there to serve the liberties of man.”³



Queen Elizabeth Toasting Ronald Reagan

When Queen Elizabeth greeted Ronald Reagan in 1982 at Windsor Castle, she essentially made the same point, “Our close relationship is not just based on history, kinship, and language, strong and binding though these are. It is based on the same values and the

² For a full exposition of the importance of private property and its connections to the rule of law cf. Gottfried Dietze, *Magna Carta and Property*, Charlottesville: University Press of Virginia, 1965.

³ When she was asked by a French journalist what she thought of the Bastille Day celebrations, Thatcher replied, “Human rights did not begin with the French Revolution...[they] really stem from a mixture of Judaism and Christianity...[we English] had 1688, our quiet revolution, where Parliament exerted its will over the King...it was not the sort of Revolution that France's was... 'Liberty, equality, fraternity' — they forgot obligations and duties I think. And then of course the fraternity went missing for a long time.”

Quoted in

http://www.eursoc.com/news/fullstory.php/aid/2820/Where_Do_Human_Rights_Come_From_.html

same beliefs, evolved over many years in these islands since Magna Carta and vividly stated by the Founding Fathers of the United States.”⁴

One of the main points that I wish to draw from the history of Magna Carta is that the battle for liberty is a never-ending one. No victory is permanent. Persistence is required. Modern conservatives who cherish liberty should take heart from the lesson that Ronald Reagan emphasized in a December 1, 1964 issue of *National Review*. Reagan admitted that in the 1964 loss by Goldwater, we “lost a battle in the continuing war for freedom.”⁵ But in that loss was born the American conservative movement. We are at a similar crossroad today—but enough of current politics.

If I may put it paradoxically, the history of Magna Carta is a string of failures followed by a string of revivals and resurrections. We are right to place our current struggles in the context of a culture war rather than short-term electioneering struggles. We will also see that there is no simple black and white, good guys and bad guys. Most of the kings will pay lip service to Magna Carta and then go on and act as they please. This includes the interregnum rule of Oliver Cromwell. Promoters of Magna Carta often have their own set of self-interests that do not stem from pure idealism.

Therefore, liberty and limited government require a moral foundation grounded in human reason and divine revelation. Christianity supplied the cultural support for this foundation during the English middle ages. Michael Oakeshott has also wisely pointed to the importance of culture as the background for politics: “Political activity may have given us Magna Carta and the Bill of Rights, but it did not give the content of these documents, which came from a stratum of social thought far too deep to be influenced by the actions of politicians.”⁶

In my lecture on Alfred the Great, I drew heavily upon the work of Christopher Dawson. He also provides the necessary link from the time of Alfred the Great to the 11th century English developments: “The dynamic force of this spiritual ideal put new life into the dying civilization of the ancient world and gave Latin Christendom the power to incorporate the northern barbarians in the new synthesis of Western medieval civilization. Here again the principle of freedom was central to the new cultural development, hard as it may be for the modern democrat to recognize anything in common between his ideals and those of the Catholic feudal world. Nevertheless the old liberals realized it half consciously by their idealization of Magna Carta and of the medieval communal and

⁴ Although a search on a Presidential website turned up Magna Carta references from Gerald Ford to John McCain, it also had hits for Lyndon Johnson and Joe Biden but none yet for Obama.

⁵ Ronald Reagan, *National Review*, December 1, 1964. But, he emphasized that as conservatives “We represent the forgotten American — that simple soul who goes to work, bucks for a raise, takes out insurance, pays for his kids’ schooling, contributes to his church and charity and knows there just ‘ain’t no such thing as free lunch.” The “forgotten American” with his “simple soul” reminds one of the Hollywood versions of the Saxons battling against the oppressive Normans. The only difference is that Ronald Reagan never would have invoked the Robin Hood principle of “robbing the rich to feed the poor.”

⁶ Michael Oakeshott’s “Claims of Politics” in *Religion, Politics, and the Moral Life*, ed. Timothy Fuller, (New Haven: Yale University Press, 1993), p. 93. He also wisely added, “A political system presupposes a civilization.”

constitutional movement. It is true that what the Middle Ages called liberties were very different from the liberty of the Declaration of Independence and still more from that of the French Revolution. Nevertheless, at the root of the development of Western freedom and Western democracy there lies the medieval idea that men possess rights even against the state and that society is not a totalitarian political unit but a community made up of a complex variety of social organisms, each possessing an autonomous life and its own free institutions.”⁷

Today we speak blithely of liberty whereas the Middle Ages would have talked of liberties. This story of how liberties became liberty is long and complex and still controversial. Conservatives are divided between those who want to ride the train of the Whig Theory of History to its ultimate destination, and those who want to stop the train and get off somewhere in the Middle Ages or a later destination in the 18th century.⁸

The best tellers of that story are Christopher Dawson, Brian Tierney, Harold J. Berman, and Janelle Greenberg. Brian Tierney has stressed the fact that individual rights and liberties grew out of the personalism and humanism of the religious middle ages.⁹ He tells the story, fleshed out in greater detail by Harold J. Berman,¹⁰ that although there is no straight road from Luke to Locke, there are paths begun by Ambrose, Augustine, and Gratian that avoid the shoals of forced monasticism, of Nominalism, of State or Papal absolutism. The line continues straight through Magna Carta!

But if Anglo-Americans pay such homage to Magna Carta, how can we justify going back to the more obscure King Edward the Confessor? He would not be a blip on the radar screen of American citizens, and I daresay, even citizens of Great Britain.

In my lecture to the Heritage Foundation last December, I stressed the importance of going even further back to Alfred the Great in British cultural history. It would be tempting to leap from Alfred the Great who died in 899 to Magna Carta in 1215 without

⁷ Christopher Dawson, *The Judgment of the Nations*, (New York: Sheed & Ward, 1942, pp. 64-65)

⁸ The anti-Whig understanding of Magna Carta was forcefully laid out by Hilaire Belloc, long before Herbert Butterfield: “Lastly, I have maintained that the various rebellions of the wealthier feudal class in the early Middle Ages were not to be confounded with the political movements of modern times. Magna Carta has nothing to do with that doctrine of substituting wealth for kingship which used to be called the Spirit of the Constitution, and is to-day oddly called Democracy. It is the rear-guard action of a declining feudal society, a registration of its precedents and privileges and of its efforts against excessive taxation. So long as the relics of feudal dues survived as the main sources of royal revenue, that record remained important. With the rise of Parliamentary grants the importance of Magna Carta disappeared, and its resurrection in the XVIIth century upon a totally false basis gave rise to an equally false modern legend that this document was at the basis of Whiggery. But the feudal rebels of the Middle Ages were not Whigs. The Norman and other feudatories rising against William and his son, the feudal opposition to John, the feudal opposition to both Papal and royal taxation under Henry III, the attack on, deposition and murder of Edward II, —these had no relation to the glorious revolution of 1688 or the parlour politics of Macaulay.” Hilaire Belloc, *A History of England in Five Volumes*, Vol. II, London: Methuen & Co. Ltd., 1927, pp. ix-x.

⁹ Brian Tierney, “Religion and Rights: A Medieval Perspective,” *Journal of Law and Religion*, Vol. 5, No. 1, 1987, pp. 163-175.

¹⁰ Harold J. Berman, *Law and Revolution: The Formation of the Western Legal Tradition*, Cambridge: Harvard University Press, 1983.

paying attention to Edward the Confessor who died on January 5, 1066. But if we leave out Edward the Confessor, we will miss the point that Magna Carta was a radically conservative political document.



King Edward the Confessor

Notice that Edward died in 1066! The subtitle for that great spoof of English History, *1066 and All That* was “A Memorable History of England, comprising all the parts you can remember, including 103 Good Things, 5 Bad Kings and 2 Genuine Dates.” Don’t worry that near the end of my talk I will say something like, “Let me conclude with 103 good things.” We have enough to remember with 5 bad kings and 2 genuine dates.

It is alleged that all British students would know the date 1066, but the story is apocryphal. Even if they did, they would associate 1066 with William the Conqueror rather than Edward the Confessor. The other date is June 15, 1215. This is the day that King John sealed the charter at Runnymede.¹¹

With King John we have one of the 5 Bad Kings, who put his seal on Magna Carta at Runnymede in that year. He was not bad because he signed Magna Carta, but because of the reasons that got him into that situation and the fact that he immediately reneged his promise. We will meet many such backsliders along the way.

So now we have the two dates and one bad king. We shall run into many more bad backsliding kings, but the easiest to remember are the four Stuart Kings with which we will end this lecture: James I, Charles I, Charles II, and James II in the seventeenth century. The opposition to the Stuarts leads us up to the Glorious Revolution. For most Englishmen this is surely one of the 103 Good Things in English history.

¹¹ On June 15, 2006, the British people selected June 15th as Magna Carta Day to celebrate their Britishness. It was meant to be the counterpart of our 4th of July.

There is, however, one worm in this apple which is symbolized by the fact that Edward the Confessor was dropped from the Coronation Oath for William and Mary in 1689. There we will end the story for this year. In 2009, we will pick up the thread and exorcise the worm by discussing the significance of Magna Carta in American history and its importance for the Declaration of Independence and the U.S. Constitution.

Edward the Confessor

Let us return then to Edward the Confessor. The most reproduced image of Edward the Confessor is portrayed in the most intriguing of English historical documents, the Bayeux Tapestry. Actually a specimen of presumably English needlework, 230 feet long and 20 inches high, the tapestry celebrates the victory of William the Conqueror. It is currently located in the town of Bayeux in Normandy, France.

Allegedly Edward the Confessor was elected to the throne by an assembly of estates while he was still in his mother's womb. Since he had two older brothers, clearly there was no divine right of hereditary succession.¹² The monarchy was an elective monarchy.

First of all, he was known for his piety. Next to Christopher Dawson, I am always indebted to the pithy and paradoxical G.K. Chesterton. His chapter on "St. Edward and the Norman Kings" in his *A Short History of England*, gets to the essence of Edward the Confessor. "Edward the Confessor, like Henry VI., was not only an invalid but almost an idiot. It is said that he was wan like an albino, and that the awe men had of him was partly that which is felt for a monster of mental deficiency. His Christian charity was of the kind that borders on anarchism, and stories about him recall the Christian fools in the great anarchic novels of Russia."¹³ The theme of Christian fools will surface again when we discuss Henry III.



King Edward the Confessor and the Ring of St. John the Evangelist

¹² Janelle Greenberg, "The Confessor's Laws and the Radical Face of the Ancient Constitution," *The English Historical Review*, Vol. 104, No. 412, July 1989, p. 616.

¹³ G.K. Chesterton, *A Short History of England*. London: New Phoenix, 1951, first published 1917, pp. 44-45.

Edward is often shown in medieval art with the ring of St. John the Evangelist. While he was riding to a ceremony at a chapel dedicated to St. John the Evangelist in Essex a beggar asked for alms. Edward had no money with him so he took off his ring and handed it to the poor man instead. A few years later two English pilgrims were travelling through the Holy Land and became stranded. They were helped by an old man who told them he was St. John the Evangelist. He was carrying the ring Edward had given to the beggar some years previously. He asked the pilgrims to return it to the king telling him that in six months he would meet St. John in heaven.

Another aspect of his sainthood was his ability to heal scrofula, the “King’s Evil,” a practice which lasted until the death of Queen Anne in 1714. There are graphic portrayals of sick persons crawling through his tomb at Westminster to get the cure.



Edward the Confessor's Tomb and Healers

Second he was known for ruling England peaceably, justly, and equitably before William the Conqueror. He lived within the income provided by his own lands and even returned army taxes to the poor. Fiscal and taxation issues are often at the bottom of constitutional changes and reforms. It appears that most governments find it hard to live within their means.

Third, he was known for building Westminster Abbey. Most of the subsequent kings and queens, including Queen Elizabeth, were crowned in Westminster Abbey.¹⁴

¹⁴ The literature on Westminster Abbey and its artistic and political significance is enormous. The most comprehensive recent treatment is Paul Binski, *Westminster Abbey and the Plantagenets: Kingship and the Representation of Power, 1200-1400*, New Haven: Yale University Press, 1995. Also stimulating is D.A.

Coronation rituals were the occasion for reaffirming the dedication to Edward the Confessor.



Queen Elizabeth's Coronation in Westminster Abbey

In Roy Strong's beautifully illustrated book, *Coronation: From the 8th to the 21st Century*, he has an intriguing chapter, "Kingship and Consent." It provides a contrast between the English and French coronation procedures: "There is moreover in the English ordo a carefully observed balance between the parts played by the monarch and the magnates as embodiments of royal power and of its limitations. In that there is a parting of the way, for the focus of the French Coronation was always to be on the *sacre*, the basis of absolutist rule and one which was to end in disaster in 1789. In sharp contrast, in England, where checks and limitations on the power of the crown were emerging fast during the thirteenth and fourteenth centuries, the focus was on the oath which spelt out the boundaries of royal power. In this way the Coronation was already by the mid-fourteenth century flexible enough to be accommodated within the terms of a constitutional monarchy. In the Fourth Recension there is this enhancement of the monarchy in terms of its splendour and magnificence simultaneously with the ruler swearing an oath in which his power is limited. That curtailment is also vividly reflected in the pre-Coronation meeting of the king-to-be with the magnates in order to discuss the Coronation, and also in the reintroduction of the formal acclamation of the ruler from the earlier ordines."¹⁵

Carpenter's "King Henry III and Saint Edward the Confessor: The Origins of the Cult," *The English Historical Review*, Vol. 122, No. 498, September 2007, pp. 865-891.

¹⁵ Roy Strong, *Coronation: From the 8th to the 21st Century*, London: Harper Perennial, 2005, pp. 80-81.

Many of the Regalia of the British monarchy are associated with Edward the Confessor. His crown, scepter and sword, were all kept in Westminster Abbey. Of most interest was his pointless sword Curtana that was both a sword of mercy and a blunt, if pointed, reminder to kings to observe their coronation oath.



Edward the Confessor's Curtana

The symbolism of Curtana pops up again and again all the way through the centuries. John Milton in his 17th century battle against King Charles I could even extend the historical arguments of Edward the Confessor to sanction not only regicide, but, more fundamentally, republicanism. Killing the monarchy is more radical than killing a monarch. Classical republicanism sanctioned both.

The Tenure of Kings and Magistrates (1649) was written in the heat of the regicide. *Eikonoklastes* (1649) was written to attack the *Eikon Basilike* which had elevated Charles I to martyrdom. His *Defence of the English People* (1651) was Milton's answer to Salmasius, the French scholar who had written a strong defense of Charles I.

Although Milton drew on classical learning, natural law, reason, and scripture, he also used English history as part of his formidable arsenal. The English people were invested by God with the original power and were superior to the king. He appealed to Chapter 17 of the supposed laws of King Edward and Curtana. He cited Childeric, king of France, the many subsequent confirmations of the Confessor's laws, and argued the superiority of Parliament extending back to the twice-a-year practice set up by Alfred the Great. One of Charles I's greatest offenses was altering the coronation oath: "Unworthy and abominable action! The act was wicked in itself...for, by the eternal God, what greater breach of faith, and violation of laws can possibly be imagined? What ought to have been more sacred to him, next to the Holy Sacraments themselves, than that oath."¹⁶

¹⁶ John Milton, *A Defence of the English People*, 1651, quoted in Greenberg, *The radical face of the ancient constitution: St. Edward's 'laws' in early modern political thought*, (New York: Cambridge University Press, 2001), p. 239.

As late as the Restoration Edmund Ludlow took comfort from the sword Cortana. The radical side of Edward the Confessor could remind the British of the king-killing aspects of the sword. According to Janelle Greenberg, “Thus the fiery Edmund Ludlow, who sat on the High Court of Justice and signed Charles I’s death warrant, based his defense of the regicide on just such an appeal to the past. Writing shortly after the Restoration from his sanctuary on the continent, the unrepentant republican defended king-killing by reminding his countrymen back home that rulers could be called to account by the highest authority in the nation. So much Ludlow knew from reading Matthew Paris, who described ‘the sword of St. Edward that the *Comes Palatii* did carry before’ the king at his coronation—a ‘token that if the king himself did transgress, he had of right a power to restrain him; which law William the Conqueror confirmed.’”¹⁷

Fourth, he was known for his Laws. Why is Edward the Confessor so important in legal history since he did not really promulgate new laws so much as codify and put them in good order? The most important was the book called *Leges Edwardi Confessori*. This work purportedly stated the Confessor’s laws as they were confirmed by William I in the fourth year of his reign. Their historicity is dubious but in spite of this they were thought to be authentic. If we know Chapter 11 in American law as connected with private bankruptcy, then Chapter 17 of these laws is all-important for royal bankruptcy. “The King, because he is the vicar of the highest king, is appointed for this purpose, to rule the earthly kingdom, and the Lord’s people, and, above all things, to reverence his holy church, to govern it, and to defend it from injuries; to pluck away wicked doers, and utterly to destroy them: which, unless he do, the name of a king agreeth not unto him, but he loseth the name of a king.”

When Edward the Confessor dies, he is shown in the Bayeux Tapestry both dead and alive. He is receiving last rites from Stigand, Archbishop of Canterbury, and Harold stands by his side.

¹⁷ *Ibid.*, p. 246.



Edward the Confessor Receiving Last Rites

On his death, he had no male successor. His funeral bier is being carried to Westminster Abbey, Edward's shining glory that he had just completed.



Edward the Confessor on Bier to Westminster Abbey

Putting the weathercock in place shows that Edward was not able to attend the consecration of what he had just completed. The visible hand from the sky shows God's approval.



Hand of God Blessing Westminster Abbey

G.K. Chesterton in his usual fashion packs in a few lines what many scholars take books to prove. “When we turn from the destructive to the constructive side of the Middle Ages we find that the village idiot is the inspiration of cities and civic systems. We find his seal upon the sacred foundations of Westminster Abbey. We find the Norman victors in the hour of victory bowing before his very ghost. In the Tapestry of Bayeux, woven by Norman hands to justify the Norman cause and glorify the Norman triumph, nothing is claimed for the Conqueror beyond his conquest and the plain personal tale that excuses it, and the story abruptly ends with the breaking of the Saxon line at Battle. But over the bier of the discrepant zany, who died without striking a blow, over this and this alone, is shown a hand coming out of heaven, and declaring the true approval of the power that rules the world.”¹⁸

William the Conqueror

There were several claimants to Edward’s throne. The most ambiguous was Harold Godwinson, his brother-in-law, and England’s most powerful earl. The tapestry does not make clear for sure whether Harold or William the Conqueror had been promised the succession. Harold is also shown in a Coronation scene, again accompanied by Archbishop Stigand. I will spare you the many bloody battle scenes and the horny horses, but Harold is killed with an arrow in his eye.

¹⁸ G.K. Chesterton, *op. cit.*, p. 45.



Coronation of Harold Godwinson with Archbishop Stigant

William was related by blood to Edward as a distant cousin and he claimed that he had been designated as Edward's successor. This was offered to him by none other than Harold himself, who in 1064 swore on the relics of a martyred saint that he would support William. Harold, with both hands placed on religious objects, makes an oath to William the Conqueror. On the basis of this claim, William secured the support of the Pope who excommunicated Harold and consigned him and his supporters to an eternity in Hell.

Although the Bayeux Tapestry is the subject of many books, the best interpretation comes from Howard Bloch's *A Needle in the Right Hand of God*. He argues "The Bayeux Tapestry is the aesthetic expression of the wish to hold the kingdom and duchy together, 'to hold the land in peace.'...The Tapestry's visual narrative does not participate in the vindictiveness for which William the Conqueror was famed when he felt that he or his men had been wronged....The Tapestry does not crushingly espouse one of side of the struggle against the other. It is both Anglo-Saxon and Norman."¹⁹

¹⁹ Howard R. Bloch, *A Needle in the Right Hand of God*, New York: Random House, 2006, pp. 201-202.



William the Conqueror

William the Conqueror invades England in 1066, kills Harold, and defeats the Saxons. William the Conqueror affirmed the laws of Edward the Confessor at his Coronation. There is a marvelous print from the 17th century during the Exclusion Crisis which served as the frontispiece to Edward Cooke's *Argumentum Antinormannicum* (1682) which shows William the Conqueror conquering the Saxons and at the same time receiving from Britannia the Coronation Oath and a copy of St. Edward's Laws.



Coronation of William the Conqueror by Edward Cooke, 1683

We know that William the Conqueror went back on his Oath. There are a large number of traditions that 1066 and all that was only a temporary blip in English history. William the Conqueror was often referred to as William the Bastard, but he also agreed to sustain the laws of Edward. Saxon continuity was important to this conqueror who claimed to be the legitimate successor to Edward.

If kings are persistent in extending their powers into absolutism, the English people keep resisting and insisted that Kings keep their word. T.S. Eliot captured it best in the famous quote: “If we take the widest and wisest view of a Cause, there is no such thing as a Lost Cause, because there is no such thing as a Gained Cause. We fight for lost causes because we know that our defeat and dismay may be the preface to our successors’ victory, though that victory itself will be temporary; we fight rather to keep something alive than in the expectation that it will triumph.”

Archbishop Stigand figures prominently in the stories of how William the Conqueror is portrayed as promulgating the first Magna Carta. The thirteenth century legend from the annals at St. Augustine’s, Canterbury (1220) is that the men of Kent, led by Archbishop Stigand and Aethelsige, abbot of St. Augustine’s, confronted William the Conqueror at Swanscombe Down. They forced him to preserve the ancestral laws and customs in Kent.



William Lambarde

J.C. Holt explains how the stories came down to Edward Coke: “The tale of Swanscombe Down was fiction. The London interpolations in the *Leges Edwardi Confessoris* were fabricated. The interchanges between King John and Pandulf that contrasted the good laws of the Confessor with the evil laws of the Conqueror were recorded long after the event. Nevertheless all three express a potent train of thought that good law was ancient

law, in particular Anglo-Saxon law; that charters confirmed and restored, they did not innovate. These were some of the conceits and notions on which the knights of Lincolnshire could well have drawn when they claimed in 1226 that King Henry had confirmed their ancient liberties. They certainly provided the texts for the theory of the Norman Yoke and the argument that the Charter was restorative as they were developed in the seventeenth century. Sprott's tale of Swanscombe Down was repeated by Holinshed and summarized by Lambarde who, in his *Perambulation of Kent* (1576), preserved the best text of the judicial record of Kentish customs of 1293. Tottell also included it in his *Magna Carta cum Statutis* (1556). In addition Lambarde published the London text of the *Leges Edwardi Confessoris* in his *Archaionomia* (1568). Coke possessed copies of both the *Perambulation* and *Archaionomia*. The latter was his main source of information on Anglo-Saxon law. There is a most direct textual link between the thirteenth and the seventeenth centuries."²⁰



Sir Edward Coke

The main figure of the early opposition to the Stuarts is Sir Edward Coke. Although we will have to defer a full treatment of Edward Coke and the common law appeals to reason to a later lecture, it is imperative to recognize that the radical political thought of the anti-Stuart 17th century was thoroughly grounded in the historical traditions stemming from Edward the Confessor.²¹

²⁰ J.C. Holt, "The Ancient Constitution in Medieval England," in *The Roots of Liberty: Magna Carta, Ancient Constitution, and the Anglo-American Tradition of Rule of Law*, edited and with an Introduction by Ellis Sandoz (Indianapolis: Liberty Fund, 2008), pp. 54-55.

²¹ The clearest exposition of the radical nature of historical appeals is Janelle Greenberg's path breaking article "The Confessor's Laws and the Radical Face of the Ancient Constitution," *The English Historical Review*, Vol. 104, No. 412, July 1989, pp. 611-637. She expanded the article into the book, *The radical face of the ancient constitution: St. Edward's 'laws' in early modern political thought*, (New York: Cambridge University Press, 2001).

The signature quote for this lecture could be Coke's "Magna Charta is such a Fellow, that he will have no Sovereign."²²

Sir Edward Coke linked the *Modus Tenendi Parliamentum*²³ to Henry I's Coronation Charter and to Magna Carta in his Preface to *Ninth Reports* (London, 1613). He reinforced the idea that William the Conqueror was no conqueror and that Parliament goes back to Edward the Confessor. Coke argued that William the Conqueror "swore to observe the good, approved and auncient" laws of the realm, calling together 'twelve of the most discreete and wise men in everie shire throughout all England' to declare their laws, the 'summe of which, composed by him into a *Magna Carta* (the groundwork of all those that after followed) hee blessed with the seale of securities and wish of eternitie, closing it up with this generall: *And wee further commanude that all men keepe and observe duely the Lawes of King Edward.*'²⁴

The men of Kent appear in another legend, the trial held in the 1070s at Penenden Heath. According to Greenberg, "Here an assembly consisting of both Norman and English suitors ruled that the liberty and land of the church at Canterbury belonged, by ancient Saxon custom, not to William I's brother, Odo, bishop of Bayeux and now earl of Kent, but to Archbishop Lanfranc. Present at the hearing was the Saxon Aethelric, formerly bishop of Chichester, 'a man of great age and very wise in the law of the land, who by the king's command was brought to the trial in a wagon in order that he might declare and expound the ancient practice of the law.'"²⁵

The story persisted all the way to William Temple's recounting of English history after the Glorious Revolution in 1695. William the Conqueror tried to impose tyrannical power on the Saxon subjects. "On the contrary, from time to time rebellious lords rose up and forced the new king 'to change the whole frame of the English government, to abolish their ancient laws and customs and introduce those of Normandy, by which he thought he should be more absolute, and too powerful to be again disturbed.' But 'the whole people, sad and aggrieved...with universal agreement' petitioned William to renew his coronation oath, 'and by the soul of St. Edward, from whom he had the crown and kingdom, under whose laws they were born and bred,' to continue to govern as the Confessor's heir. After meeting with Lanfranc William relented, and 'by a public and open charter' renewed the ancient laws 'and thereby purchased the hearts, as well as the satisfaction of his English subjects...'"²⁶

²² Faith Thompson, *Magna Carta: Its Role in the Making of the English Constitution, 1300-1629*. (Minneapolis: University of Minnesota Press, 1948), p. 16

²³ Although the *Modus* was thought to have been written in the time of Edward the Confessor, it was actually written during the reign of Edward II.

²⁴ Christianson, *op. cit.*, pp. 105-106.

²⁵ Janelle R Greenberg. *The radical face of the ancient constitution: St. Edward's 'laws' in early modern political thought*. New York: Cambridge University Press, 2001, p. 70.

²⁶ *Ibid.*, p. 295. Temple goes on to repeat the story that, according to Greenberg, "Indeed, in the fourth year of his reign William I 'summoned out of every county, the nobles, wise men, and such as were learned in their own law; that he might from them learn what were their ancient laws and customs.' Thus did he confirm and conserve 'the laws of St. Edward...throughout the whole kingdom.'"



Lanfranc and Anselm, Archbishops of Canterbury

Let's now take a deep breath. If you think you have difficulties in keeping the English kings straight—even with your cheat sheet, then it is even more difficult with successive Archbishops of Canterbury who figure in our story. There is a painting in Canterbury Cathedral which shows Archbishop Lanfranc and Our Lady of Bec with St. Anselm, Archbishop of Canterbury from 1089 to his death in 1109. Lanfranc was the energetic Italian from Pavia who had put the monastery of Bec on the map. William appointed him Archbishop of Canterbury to replace the ineffectual Stigand. When Lanfranc dies, St. Anselm reluctantly agrees to take over the job of Archbishop of Canterbury. He has serious conflicts with both William Rufus, and Henry I on the Investiture controversy. The Kings of England wanted power totally vested in themselves; the Church wished to maintain the supremacy of the spiritual power. Furthermore, Rufus maintained the position as vacant for four years so he could add to the stream of royal finances. Anselm was exiled from 1103-1107.

Henry I

Henry I was the fourth son of William the Conqueror. He was known as the “lion of justice” and “keeper of the bees and the guardian of the flock.” Even the followers of Oliver Cromwell could not resist making appeal to such images in an iconographical print of Cromwell.

Probably the most important link between Edward the Confessor and Magna Carta was the Coronation Charter of Henry I in 1100. “Know that by the mercy of God and the common counsel of the barons of the whole kingdom of England I have been crowned king of said kingdom; and because the kingdom had been oppressed by unjust exactions, I, through fear of god and the love which I have toward you all, in the first place make the holy church of God free, so that I will neither sell nor put to farm, nor on the death of archbishop or bishop or abbot will I take anything from the church's demesne or from its men until the successor shall enter it. And I take away all the bad customs by which the kingdom of England was unjustly oppressed; which bad customs I here set down in part.” Also crucial was his reversion to Edward the Confessor: “I restore to you the law of King

Edward with those amendments introduced into it by my father with the advice of his barons.”²⁷

Henry II

When Henry II began his rule in 1154, he could have gone in the direction of limited government. Henry had family connections with Alfred the Great. He thought it would be good to have a connection with Edward the Confessor. Osbert de Clare, a monk at Westminster who thought he had been healed by Edward pursued his canonization for thirty years. Henry supported it and Edward the Confessor was canonized in 1161. His feast day is celebrated in the church calendar on October 13, the day in 1163 when his body removed from his tomb and placed in the shrine. Thomas of Canterbury officiated at this ceremony in the presence of King Henry II.



Henry II and Thomas Becket

Henry should have seen the handwriting on the wall when Thomas went to France in 1163 to attempt the canonization of St. Anselm, the Archbishop of Canterbury, who had fought the royal tyranny of his revered ancestor, Henry I.

The most dramatic event of the reign of Henry II was the martyrdom of Thomas à Becket. The story has been often told and dramatically seen in both stage and cinema—who can ever forget the movie *Becket* with Richard Burton as Becket and Peter O’Toole as Henry, or T.S. Eliot’s play *Murder in the Cathedral*.²⁸

²⁷ Translated in Albert Beebe White and Wallace Notestein, eds., *Source Problems in English History* (New York: Harper and Brothers, 1915).

²⁸ Nor should one forget *Lion in Winter* with Peter O’Toole again as Henry II and Katherine Hepburn as Eleanor of Aquitaine. The point of this movie is to select the successor to Henry II: Richard and John. The other Henry/Thomas connection is, of course, Henry VIII and Thomas More, celebrated in the movie, *Man*



Murder of Becket

Thomas à Becket (1118-70) was first the Lord Chancellor and Henry's bosom friend. But Henry made a mistake when he appointed Thomas Becket as Archbishop of Canterbury in 1162. He thought Becket would remain a King's man and stay on as Chancellor.

Henry II was a great consolidator of secular power. Ralph Turner describes what it meant to be a King's Man in the Angevin tradition: "When Henry II took the English throne in 1154, he built on this foundation to erect a superstructure of 'administrative kingship', staffed by literate professionals, functioning apart from the royal household. With such a structure, he and his sons Richard Lionheart and John Lackland would wield almost autocratic powers threatening their great nobles' privileges and oppressing them as well as lesser subject with heavy financial burdens."²⁹

Although it can be argued that Henry II created the common law, it started out as a fiscal expedient. It was an important source of royal funds and competed against the local courts of the barons. The Levellers in the 17th century who talked about the Norman Yoke distrusted the common law because it was expensive, arcane, and used obscure Law French. The monopoly of lawyers created a special interest against ordinary people.

Many of the bureaucrats were low born or foreigners. This antagonized many of the Norman noble families (what might later be called the Country party) who stayed on their properties and were not seduced by the Crown (Court party). In Turner's description,

for All Season. In 1540 Henry VIII destroyed the shrine of Thomas Becket at Canterbury. This was done on orders from King Henry VIII as vengeance for his ancestor, Henry II. The king also destroyed Becket's bones and ordered that all mention of his name be obliterated.

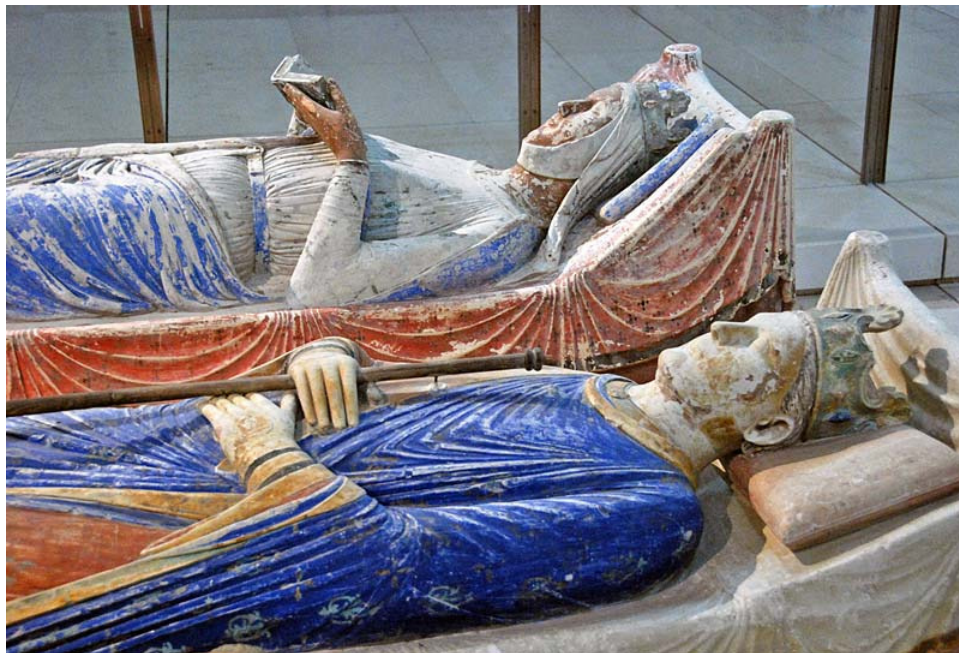
²⁹ Ralph V. Turner, *Magna Carta Through the Ages*, New York: Pearson, Longman, 2003, p. 10.

“As the English kings’ subjects dealt with the twelfth-century bureaucracy and its complex rules and regulations, their new awareness of government’s impersonal and public aspects provoked a reaction. Once the strong governance of Henry II and his sons turned to intimidation and violence to collect funds and compel services, it aroused the fear and hatred of their subjects. Old assumptions that the kingdom was a single political community revived to strengthen the solidarity of the English as a unique people with their own customs and laws.”³⁰

As usual the bureaucrats, i.e. royal clerks, supported the royal supremacy. The *Dialogue of the Exchequer* in the late-twelfth-century denied that the subjects had a right “to question them or condemn their actions.”³¹

Becket was transformed by his office. He represented the Papacy and the reform of the church in the 11th century. He resigned his office as Chancellor and fought Henry’s Constitutions of Clarendon in 1164. These had restored the king’s power over the church. Finally in 1170, Henry says, “Will no one rid me of this pestilential priest?” Four knights took him at his word and did the bloody deed in Canterbury Cathedral.

By standing against the absolute power of the secular realm, Becket finally became the English martyr celebrated in Chaucer’s *Canterbury Tales*. Violence produced the opposite of what it had intended. Canterbury became the primary location for pilgrimages in England. Instead of going to Fontevrault where Henry II and his queen, Eleanor of Aquitaine were buried, they went to Canterbury instead.



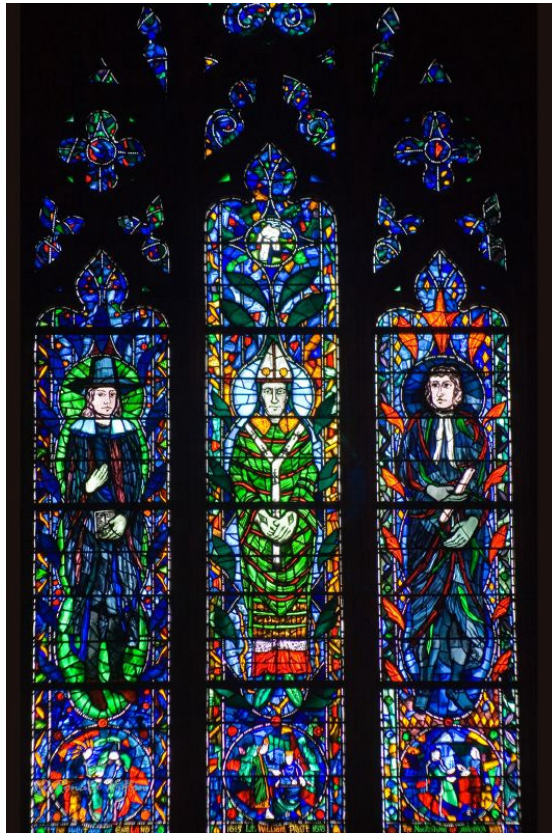
³⁰ Turner, *op. cit.*, p. 17.

³¹ Turner, *op. cit.*, p. 11.

Henry II and Eleanor of Aquitaine in Fontevrault

King John

Henry's sons who succeeded him were Richard the Lionhearted and John Lackland. Both of them were profligate and imperious. The former has maintained his good reputation because of his heroic role in the Crusades. King John was not so fortunate in his military exploits. But both of them bled the country economically to support their foreign military activities.



**Stephen Langton surrounded by William Penn and John Marshall,
Washington National Cathedral**

Stephen Langton, Archbishop of Canterbury, is very important to the story of limited government and he is often thought to be the intellectual brains behind the Magna Carta of 1215. Although English, he was educated in the atmosphere of Paris and soaked up the tradition of Thomas Becket long before he became Archbishop of Canterbury.³²

³² John W. Baldwin, "Master Stephen Langton, Future Archbishop of Canterbury: The Paris Schools and Magna Carta," *English Historical Review*, cxxiii, 503, August, 2008, pp. 811-846.



Innocent III

John had appointed an Archbishop of Canterbury whom Pope Innocent III could not accept. Innocent III appointed Stephen Langton. Innocent responded to John's recalcitrance by putting England under interdiction and eventually excommunicating King John. Later in a startling reversal of events, John surrendered his kingdom in 1213 to Innocent III through the papal nuncio, Pandulf; John then received it back as a vassal of the Pope. He was absolved from excommunication in July 1213, and the interdict was finally rescinded in July of 1214.

Earlier in 1213 he had pressured King John to swear "that he would love, defend and maintain the church, restore the good laws of his predecessors, particularly Edward the Confessor, do away with bad laws, judge all men according to the just judgments of his court, and give to every man his rights."³³

The barons who forced Magna Carta on King John at Runnymede in 1215 were mainly discontented because John was acting tyrannically by not observing his coronation oath. The miniature of King John hunting captures the scriptural tradition of King Nimrod, the first tyrant, who was a hunter of men. The barons became rebellious and went to war with John.

³³ Quoted in Gottfried Dietze, *Magna Carta and Property*, Charlottesville: University Press of Virginia, 1965, p. 25.



King John Hunting

But, again, we meet victory followed by defeat. Yes, Magna Carta was sealed in 1215, but King John was not happy with the arrangement. As one of the benefits of becoming the vassal of Pope Innocent III, the Pope declared Magna Carta invalid because it was done under duress.

What are we to think of Magna Carta? It is tempting to think of Magna Carta as the source of modern democracy, but that is an exaggeration and anachronistic.



Magna Carta

As G.K. Chesterton observed: “Magna Carta was not a step towards democracy, but it was a step away from despotism. If we hold that double truth firmly, we have something

like a key to the rest of English history. A rather loose aristocracy not only gained but often deserved the name of liberty. And the history of the English can be most briefly summarized by taking the French motto of 'Liberty, Equality, and Fraternity,' and noting that the English have sincerely loved the first and lost the other two."³⁴

It is also tempting to think of Magna Carta as the source of the modern movements for individual rights. There is more truth to this claim than that of democracy. Lord Tennyson's poem, "You Ask Me, Why," sets the proper framework:

You ask me, why, tho' ill at ease,
Within this region I subsist,
Whose spirits falter in the mist,
And languish for the purple seas.

It is the land that freemen till,
That sober-suited Freedom chose,
The land, where girt with friends or foes
A man may speak the thing he will;

A land of settled government,
A land of just and old renown,
Where Freedom slowly broadens down
From precedent to precedent;

We will deal with the broadening of these rights in America during the 18th century in the next lecture. But among the rights adumbrated in Magna Carta are habeas corpus, due process of law, freedom of religion, no taxation without representation, freedom from private monopolies, privilege against self-incrimination, and trial by jury.

But it is a mistake to over individualize the significance of Magna Carta. We are still talking about liberties and not liberty. Brian Tierney and J.C. Holt have stressed the communal movements of the Middle Ages. Urban liberties and burgesses—the communal movements of the Middle Ages may give us a new and increased respect for the bourgeoisie. Economic freedoms painfully arise from corporate privileges. There is definitely a strong commitment to economic freedom and property rights in the constitutional tradition of Sir John Fortescue and developed most importantly in Sir Edward Coke.

According to Brian Tierney, "For the vast extension of civil liberties that occurred in the twelfth century came through the grant of charters of rights to corporate communities, churches, boroughs and cities for instance; but often the rights were of a kind that could

³⁴G.K. Chesterton, *A Short History of England*, London: New Phoenix, 1951, first published 1917, p. 84. It is ironical to note that when the Lincoln Cathedral Magna Carta was being shown in Jamestown in 2007 one of the promotional aspects was, "Magna Carta ignited the first embers of democracy in the 13th century." It was also called the "founding document of free democracy."
<http://www.cacv.org/exhibitions/MagnaCarta.asp>

actually be exercised only by individuals, e.g. the right of a merchant to come and go freely. Earlier medieval society had certainly recognized individual rights, especially feudal rights, but there was nothing liberal or egalitarian about them. A baron's right was typically an exemption from royal jurisdiction, a right to dominate others. One of the most cherished of feudal rights was the right to have a gallows. But when rights or liberties, exemptions from official meddling in certain areas of life, began to be granted to corporate communities, they took on a new tone and quality and became diffused through much broader classes of the population. From the twelfth century onward thousands of urban communities acquired such rights through purchase or negotiation or sometimes outright rebellion—rights like freedom from arbitrary taxation and arbitrary arrest, freedom from servile dues, the right to be tried by one's own townfolk in a local town court, and the right to elect a mayor and other city officials. This was rich soil where later more generalized theories of civil rights would take root and grow. As Alan Harding observed, 'Urban liberties gave content to the idea of individual liberty.' Perhaps we can even fit Magna Carta into this context of broadening civic liberties. There have been many interpretations of that enigmatic document. Some historians have seen it as a noble charter of national liberty; others' at the opposite extreme, interpret it as a selfish contrivance of reactionary feudal barons. Many clauses of Magna Carta do deal explicitly with the barons' feudal claims, selfish claims if you will. But others contain the great broad principles that have echoed down the centuries in our common law. 'No free man shall be taken or imprisoned . . . save by the lawful judgment of his peers and by the law of the land.' 'To no one will we sell, to no one will we deny or delay right or justice.' The interpretations that dwell on the Charter's more generous provisions often emphasize the role of Stephen Langton, the great theologian and Archbishop of Canterbury, who negotiated on behalf of the barons. But recently J. C. Holt, while acknowledging Langton's influence, suggested a new way of looking at the Charter. He sees it as a vast communal privilege, inspired in part by the privileges already granted to various other corporate communities like boroughs and cities. 'Just as communal liberties had been won by a sworn association whereby citizens pledged themselves to fight for their liberties, so the barons pledged themselves to fight for the liberties of the realm.' Holt adds that the barons 'envisaged the establishment of one great "commune of all the land".' He suggests that if we look at Magna Carta in this way—with reference to earlier communal charters of liberties—we can explain without anachronism how the apparently 'progressive' ideas of the Charter could naturally have found expression in a primarily feudal document of the earlier thirteenth century."

Winston Churchill's panegyric to Langton is worth noting: "Stephen Langton, the great Archbishop, was the indomitable, unwearying, builder of the rights of Englishmen against royal, baronial, and even ecclesiastical pretensions. He stood against King John; he stood against the Pope. Both cast upon him at times their utmost displeasure, short of taking his life. Here is a man who worked for the unity of Christendom through the Catholic Church; but also for the interests of England against the Papacy. Here is a faithful servant of the Crown, but at the same time a champion of the Charter, and all it meant, and still means. A commanding central figure, practical, resourceful, shifting from side to side as evils forced him, but quite unchanging and unchangeable in his

broad, wise, brave, workaday, liberal purpose. Here was, if not an architect of our Constitution, at least a punctual and unfailing Clerk of the Works.”³⁵

One of the fabled incidents that swirl around Langton’s appointment as Archbishop of Canterbury is the confrontation between King John who opposed the appointment with the Papal Nuncio, Pandulf. Innocent III was threatening to absolve John’s subjects from their allegiance.

King John supposedly justified himself: “Moreover I can demonstrate to you that all my predecessors conferred archbishoprics, bishoprics and abbeys in their chambers. You can read in the holy record how the holy and glorious king St Edward in his time conferred the bishopric of Worcester on St Wulfstan. Then William the Bastard, conqueror of England, wanted to take his bishopric away from him because he did not know any French, but St Wulfstan answered him saying: ‘You did not confer on me my staff nor will I surrender it to you’, and thereupon he went to the tomb of St Edward and said in his native language: ‘Edward, you gave me my staff; I cannot hold it by virtue of this king and so I commit it to you; defend it as best you can’. So he embedded the staff in the carved stone of the tomb and miraculously the staff remained immovable in the tomb of St Edward, so that no-one could withdraw it except St Wulfstan. Furthermore in our own times my father Henry conferred the archbishopric of Canterbury on St Thomas. And now the Pope wishes to withdraw from me at his behest all the liberties which my predecessors held. He does me wrong.”³⁶

The story goes that Pandulf replied: “you adduce St. Edward and William the Bastard. To this I answer that you are not the successor of St Edward nor are you worthy to be compared with him. For he was the protector of holy Church and you offend and ruin it. But we well allow that you are the successor of William the Bastard since at the beginning he assaulted Holy Church in that he wished to deprive the blessed Wulfstan of the church of Worcester and therefore you are his successor and not St Edward’s. And in this you have not changed your spots because you and all your predecessors have sought the destruction of the holy Church. Moreover you enjoy and enforce the evils laws of William the Bastard, even the worst; and you spurn as worthless the laws of St Edward, even the best.”³⁷

Henry III (1216-1272)

One of the most interesting figures in the perpetuation of the myth of King Edward the Confessor is Henry III (1216-1272). He was another king who showed great promise.

Henry III was hastily crowned king of England as a nine-year old boy in October 1216, just a week after the death of his father, John. In order to defeat the rebels, Henry with

³⁵ Winston Churchill, *A History of the English-Speaking Peoples: The Birth of Britain*, New York: Dodd, Mead & Company, 1966, pp. 261-262.

³⁶ Quoted in J.C. Holt, *Magna Carta and Medieval Government*, London: The Hambledon Press, 1985, p. 7.

³⁷ *Ibid.*, p. 8.

the aid of the Papacy reissued Magna Carta in 1216, 1217, and the definitive version in 1225. There has always been much confusion between the various issues of Magna Carta.

On the one hand, he established strong support for the cult of Edward the Confessor. He rebuilt Westminster Abbey as a tribute to him. He wanted to outshine Louis IX, the builder of Sainte-Chapelle and the French Coronation Church of Reims. Also combined in his grandiose scheme was to outdo St. Denis, the royal mausoleum of France. Remember that Edward the Confessor's original Westminster was built to rival Mainz and Speyer.

There is a copy of a lost wall painting, c. 1267 above Henry III's bed in the Painted Chamber of Westminster Palace which shows the Coronation of Edward the Confessor. He built a glorious shrine for Edward the Confessor in Westminster Abbey.



Shrine of Edward the Confessor built by Henry III

Although his minority ended in 1227, he was not able to shake off the control of his regency until 1234 when Henry was 27 years old. Hubert de Burgh, his justiciar, was dismissed in 1232 and followed by Peter des Roches, Bishop of Winchester. Not only was des Roches a foreigner but he was also an authoritarian monarchist who wished to return Henry to absolute power. Encouraging him to regain the lost lands in France, he brought on another fiscal crisis.

Jealous of the assumption of power by the royal bureaucrats, he returned to "household government." Since the Barons did not go along with his incursions into France, they failed, thus denying Henry III the military glory that he desired.

Another important link in the transmission of Edward the Confessor, Henry I, and Magna Carta was Matthew Paris (c. 1200 – 1259). He was a Benedictine monk, English chronicler, artist of illuminated manuscripts and cartographer, based at St Albans Abbey in Hertfordshire. He had his troubles with the Plantagenets and the Papacy, but he was a loyal supporter of the nobles and holds a great deal of the credit for reviving the cult of

Edward the Confessor and maintaining the myth of Magna Carta. Matthew Paris claimed that Magna Carta derived from both Edward the Confessor's Laws and the Coronation Oath of Henry I. In addition, he issued a life of Edward the Confessor for the instruction of the new queen, Eleanor of Provence. He helped steer Henry in the early years to the ideal of "lawful consensual kingship."³⁸



Matthew Paris

The significance of all this was fully developed by D.A. Carpenter: "The Confessor, however, did not merely give Henry protection. He also, king as well as saint, gave him an example of how to rule, an example which chimed perfectly with the kind of consensual kingship which Henry sought to practice after des Roches's fall in 1234. This was another important reason for the development of the cult. Through imitating the Confessor, Henry could be confirmed and strengthened in the way he was now required, and in many respects wished, to go. The background here, of course, was des Roches's abrasive rule and the reaction to it. Imperious and impervious, very much the old minister of King John, with numerous scores to settle and friends to reward, he had boasted of 'the plenitude of royal power', ridiculed the principle of 'judgement by peers' and hurried Henry into a series of disseisins per voluntatem regis. During his regime, the very future of Magna Carta had seemed at stake. It was on this form of rule that Henry turned his back. At the great council held at Gloucester in May 1234, he acknowledged his failure to accord his opponents 'judgement by their peers', and humbly reversed the disseisins he had committed per voluntatem. The vital principles of Magna Carta were thus affirmed. Henceforth, the implication was that Henry would rule within the law and with the counsel and consent of his magnates. As a sign and safeguard of the new order, the council appointed as head of the court coram rege, the judge William of Raleigh, whose

³⁸ For details cf. D.A. Carpenter, "King Henry III and Saint Edward the Confessor: The Origins of the Cult," *The English Historical Review*, Vol. 122, No. 498, September 2007, pp. 865-891.

circle had produced the great book on the laws of England, known as Bracton, after its later editor, a work which firmly espoused the now prevailing constitutional doctrines.⁸⁶ Indeed, in passages probably written soon after 1234, Bracton vindicated the principle of judgement by peers against des Roches's critique, and even contemplated the king being bridled by his barons if he acted unlawfully. Henry in many ways now sought to govern in this new spirit. In the next few years, he gained the consent of great councils for both his own marriage and that of his sister, confirmed Magna Carta in return for taxation, and, with the consent of his nobles, issued a remarkable amount of legislation 'for the salvation of his soul and the improvement of his kingdom, led by a spirit of justice and piety', as Matthew Paris put it in reference to the 1236 Statute of Merton. Henry must have been well aware that these policies fitted exactly with those of the Confessor. Ailred spoke continually of the justice and peace of Edward's rule and the harmony between him and his people. Edward was a great law giver, just like Henry himself after 1234. Just like Henry, he took the advice of his nobles over his marriage. And as with the rebirth of Henry's kingship in 1234, his accession to the throne ended a period of injustice and tyranny. For Henry, therefore, it must have been immensely encouraging and re-assuring to find the Confessor's rule so similar to what was now his own. There was also an added advantage. By adopting the Confessor as his patron saint, Henry proclaimed the nature of this rule, sacral but also consensual, to the political community. It was not that he embraced the cult in any calculated way, but he must have known and welcomed the message that it put across."

But then the question of why Henry III faced such stiff opposition late in his kingship still remains. D.A. Carpenter explains: "The legendary Confessor and the real King Henry had thus much in common, as has often been pointed out. Yet, there were also important differences, which help to explain how Henry's personal rule ended in political revolution and civil war. If Henry was indolent, he was also ambitious. In ways which owed nothing to Ailred's Confessor, he wished to increase his revenues, and expand his power in Europe. He also went far beyond the Confessor in giving patronage to foreigners. Given Henry's limited military and political skills, these policies proved incompatible with the equal aim of imitating the Confessor's consensual rule. Too often, Henry's was '*fole simplicité*' rather than '*simplicité debonaire*'."³⁹

At the end of Henry III's reign Henry Bracton (c. 1210-1268), stepped forward to bring order to English jurisprudence. He is said to have authored *De Legibus et Consuetudinibus Angliae* "On the Laws and Customs of England."⁴⁰

³⁹ D.A. Carpenter, "King Henry III and Saint Edward the Confessor: The Origins of the Cult," *The English Historical Review*, Vol. 122, No. 498, September 2007, pp. 865-891. For the various versions of *simplicité*, Carpenter refers to P. Hyams, 'What did Henry III of England think in bed and in French about kingship and anger?' in B. H. Rosenwein, *Anger's Past. The Social Uses of an Emotion in the Middle Ages* (Ithaca and London, 1998), 92-124, a paper which includes a section on the Confessor as a royal role model (116-20).

⁴⁰ The first printed edition of *De legibus* appeared in a 1569 folio and was reprinted in quarto in 1640. Sir Travers Twiss issued a six-volume translation of the entire work from 1878 to 1883. *De Legibus* is conveniently online and searchable through Harvard University Law School, <http://hls15.law.harvard.edu/bracton/Common/index.htm>

According to E.S. Corwin, he was one of the first to systematically combine Roman Law, including the general medieval idea of a Higher Law, and Common Law. Most important for our purpose here, “The King himself ought not to be subject to man, but subject to God and to the law, for the law makes the King. Let the King then attribute to the law what the law attributes to him, namely, dominion and power, for there is no King, where the will and not the law has dominion.”⁴¹

Corwin has suggested that putting a bridle on the King in the name of a return to Magna Carta could possibly be a “reminiscence, evoked perhaps by De Montfort’s rebellion against Henry III, of chapter sixty-one of *Magna Carta*.”⁴²



Simon de Montfort, U.S. House of Representatives

Magna Carta was the first Baron’s War; what has been called the second Baron’s War followed a very similar pattern. Henry III was waging an unpopular war abroad with the help of the Pope. Some of his nobles led by Simon of Montfort wished to circumscribe his powers as the Magna Carta attempted to do to King John. In 1258 seven of his barons coerced Henry to agree to the Provisions of Oxford. Similar to the provision in Magna Carta, a council of fifteen barons dealt with matters of government by meetings of parliament to monitor his performance. The two sides began to polarize and Henry was able to obtain a papal bull in 1261 denying the oath. Civil War followed with Henry’s eldest son, the future King Edward I, in charge of the Royalist armies and Simon de

⁴¹ Quoted in Edward S. Corwin, *The “Higher Law” Background of American Constitutional Law*, Ithaca: Cornell University Press, 1961, p. 27.

⁴² Edward S. Corwin, *The “Higher Law” Background of American Constitutional Law*, Ithaca: Cornell University Press, 1961, p. 29.

Montfort in charge of the Barons. Montfort and his forces had captured most of southeastern England by 1263 and at the Battle of Lewes in 1264, Henry was defeated and taken prisoner by de Montfort's army. During this period, Montfort broadened the representation in parliament.

C.H. Knowles stressed the importance of the clerical support of Simon: "Simon's improved standing in English society owed much to his increasing reliance on the support and counsel of several leading churchmen, notably the great Bishop Grosseteste of Lincoln. The earl was unusually interested in religious matters and his conventional piety was reinforced by a desire to emulate his father, who had fought the Albigensian heretics. The clerics in Simon's circle were firm upholders of the pastoral ideal and vigorous defenders of ecclesiastical immunities. They resented Henry's interference in episcopal elections and objected to the pope's appointment of unsuitable foreigners to English benefices, and some were soon to protest at the burden of papal taxation levied on the Church."⁴³

The rhetoric of *The Song of Lewes* (1264) is quite interesting:

"May the Lord bless Simon de Montfort and also his sons and his army who, exposing themselves to death, fought bravely for the English people... Simon de Montfort had few men used to arms; the royal party was large, having assembled the greatest warriors in England... but God provided... since God is a help for those who are on the side of justice. Thus it was right that God should help the Earl, for without God he could not overcome the enemy."

Dicitur vulgariter "ut rex vult, lex vadit;"

Veritas vult aliter, nam lex stat, rex cadit.

[Commonly it is said, "as the king wishes, so goes the law;" The truth is quite otherwise, for the law stands, though the king falls."]

G.K. Chesterton succinctly stated it, "Simon de Montfort was not an enthusiast for the Whig theory of the British Constitution, but he was an enthusiast for something. He founded a parliament in a fit of considerable absence of mind; but it was with true presence of mind, in the responsible and even religious sense which had made his father so savage a Crusader against heretics, that he laid about him with his great sword before he fell at Evesham."⁴⁴

Chesterton later adds, "We have all read at school that Simon de Montfort and Edward I., when they first summoned Commons to council, chiefly as advisers on local taxation, called 'two burgesses' from every town. If we had read a little more closely, those simple words would have given away the whole secret of the lost medieval civilization. We had only to ask what burgesses were, and whether they grew on trees. We should immediately have discovered that England was full of little parliaments, out of which the great parliament was made. And if it be a matter of wonder that the great council (still called in quaint archaism by its old title of the House of Commons) is the only one of

⁴³ C.H. Knowles, *Simon de Montfort: 1265-1265*. London: The Historical Association, 1965, p 22.

⁴⁴ G.K. Chesterton, *A Short History of England*. London: New Phoenix, 1951, first published 1917, pp. 83-84.

these popular or elective corporations of which we hear much in our books of history, the explanation, I fear, is simple and a little sad. It is that the Parliament was the one among those medieval creations which ultimately consented to betray and to destroy the rest.”⁴⁵

Cities, guilds, monasteries—these are the crucibles of self-government and bourgeois virtues. They are Edmund Burke’s “little platoons” which we lose at our peril. Time forbids an account of the Tudor despotism brought on by the other Henry-Thomas confrontation, Henry VIII and Thomas More.

Unfortunately Simon de Montfort was killed at the Battle of Evesham in 1265. Here was another defeat for the principles of Magna Carta, but another martyr for the cause of liberty. C.H. Knowles pointed out that “For some years he was popularly venerated as a saint who had died for the liberties of the realm.”⁴⁶

Last fall, I had the delightful experience of visiting the town of Lewes on the Delaware coast. It calls itself the “First Town in the First State.” It is located in the county of Sussex. There is no town of Evesham in Sussex County. There is an Evesham in New Jersey.

Conclusion

A cautionary note is in order. Throughout I have been stressing the cultural context out of which Magna Carta and limited government arose. In our own case, we have been witnessing the breakdown of that cultural context. The total privatization and trivialization of religion, the complete failure of the educational system in transmitting a sense of our culture, and the vulgarization of the media means that we have our work cut out for us. If we celebrate a glorious past and hope for a glorious future, we know that no sense of Whiggish inevitability can support us.

Let me conclude with the observation of Alexis Tocqueville: “It cannot be repeated too often that there is nothing more fertile in prodigies than the art of being free; but there is nothing more arduous than the apprenticeship of liberty. Such is not the case with despotic institutions; despotism often promises to make amends for a thousand previous ills; it supports the right, it protects the oppressed, and it maintains public order. The nation is lulled by the temporary prosperity which accrues to it, until it is roused to a sense of its own misery. Liberty, on the contrary, is generally established in the midst of agitation; it is perfected by civil discords; and its benefit cannot be appreciated until it is already old.” Alexis de Tocqueville, *Democracy in America*, Vol. I, (New York: Arlington House, 1965), Chapter XIV, p. 237

Yes, the apprenticeship of liberty is arduous, and by repeated resistance to the powers of a bloated, centralized state, we keep alive the tradition of limited government that is our birthright as a nation. In God We Trust.

⁴⁵ *Ibid.*, p. 103.

⁴⁶ C.H. Knowles, “Simon de Montfort, Earl of Leicester (ca. 1208-1265)” in *Medieval England: An Encyclopedia*, New York: Garland Publishing Inc., 1998, p. 700.

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