

The Tree of Liberty is Rooted in Magna Carta
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I am delighted to be back at the Heritage Foundation for my third lecture on Magna Carta. I thank Ed Feulner for his gracious introduction. Working with Nile Gardiner, Sally McNamara, John Hilboldt, Erica Munkwitz, and the Margaret Thatcher Center for Freedom has been a joy.

The main theme of this talk is the importance and significance of Magna Carta for the founding of this country. Our ethos of the Constitution is based on the ethos of Magna Carta. The chartered liberties are the ultimate basis for the “special relationship” between the U.S. and Britain. All this is threatened by the Progressive “Living Constitution” so ably dissected by Heritage’s Matt Spalding in his splendid book, *We Still Hold These Truths*.¹

Ed Meese on September 17th wrote for Heritage on Constitution Day, “There is a growing movement throughout America to reinvigorate the tree of liberty, a tree whose trunk is the Constitution, whose limbs are the Bill of Rights, and whose leaves are the new sons and daughters of liberty who embody the same spirit that infused our Founders.”

Extremely admirable, but he left out the soil preparation and the roots. In my two previous Heritage Lectures, I described the Christian soil provided by the England of Alfred the Great and Edward the Confessor. What Michael Oakeshott said about England is just as true for America: “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....A political system presupposes a civilization.”

Although traditional conservatives tend to stress the cultural side of the equation and the men of Claremont tend to emphasize the creedal aspects, it is a false dichotomy to pose the issue as creed versus culture. The correct understanding is that creed flows from culture. Creed is often too easily equated with an abstract set of principles established by free-floating reason. The American creed should be more closely lined with Christian Providence and the Nicene Creed. Reason can only deal with the materials handed by

¹ Also consult Herman Belz, *Constitutionalism and the Rule of Law in America* (Heritage Foundation, 2009) and Bradley Watson’s *Living Constitution, Dying Faith: Progressivism and the New Science of Jurisprudence*.

custom, tradition, and experience. It needs Revelation of some sort or other or otherwise it is a non-starter. Several conservatives skillfully synthesize these two strands.²

Paradoxically, Magna Carta itself and its reception in America were both conservative and radical at the same time. Magna Carta was a conservative document from the beginning. According to Samuel Johnson, “It was born with a grey Beard.”³ The Barons did not claim to create something new. They only claimed to restore traditional English liberties.

The note of conservatism in Magna Carta was there from the beginning, in fact from the Preamble. From a little noted passage of Magna Carta, The Third Great Charter of King Henry the Third, 1224-1225, we read: “Greeting. Know ye, that in the presence of God, and for the salvation of our own soul, and of the souls of our ancestors, and of our successors, to the exaltation of the Holy Church, and the amendment of our kingdom...”

Note the importance of the “souls of our ancestors.” I am reminded of G.K. Chesterton's definition of tradition: “Tradition means giving a vote to most obscure of all classes, our ancestors. It is the democracy of the dead. Tradition refuses to submit to the small and arrogant oligarchy of those who merely happen to be walking about. All democrats object to men being disqualified by the accident of birth; tradition objects to their being disqualified by the accident of death. Democracy tells us not to neglect a good man's opinion, even if he is our groom; tradition asks us not to neglect a good man's opinion, even if he is our father.”⁴

This is not a prescription for Illinois politics, Democratic style, but a perceptive understanding of the meaning of tradition—something handed down from generation to generation.

But, at the same time that Magna Carta is conservative and traditional it is also radical in the sense of going to the root of things. Although the significance of Magna Carta varies from century to century, there is a root of continuity, albeit sometimes going underground, to which we can repair. Fundamental is the fear of vesting sovereignty in any human agency. Sir Edward Coke, the lightning rod of Magna Carta in the 17th century, pithily stated, “Magna Carta is such a fellow, that he will have no sovereign.” No human agency is immune from the temptations of power. We must appeal to the rule of law to protect us from arbitrary power.

²Matt Spalding's, *We Still Hold These Truths* op. cit. and Brad Watson's excellent speech for I.S.I. weave a dense fabric holding the particular and the universal rightly together: “The American Founding Vision and the Trajectory of the Western Civilization”: <http://isi.org/lectures/lectures.aspx?SBy=lecture&SFor=6dd43152-457c-4672-ad96-c3ca6ac65028>

³ One suspects that this Samuel Johnson was the Whig, (1649–1703), not the more famous Tory by the same name, (1709–1784).

⁴ G.K. Chesterton, *Orthodoxy*, Chapter 4, “The Ethics of Elfland.”

Appropriately enough, Magna Carta appealed to both the radicals and the conservatives in the American Revolution. The spectrum includes the very conservative John Dickinson of Delaware, the more fiery conservative, John Adams, his even more radical cousin, Samuel Adams, their mutual friend, John Hancock, and the outstanding radical of the Revolution, Tom Paine. With all their differences, they all claimed Magna Carta as part of their heritage.

At this point, let's stick with John Adams and Thomas Paine. John Adams had learned about Magna Carta through his family and church. His great-uncle Peter lived during the Glorious Revolution and regaled John with stories about the tyrannies of the Stuarts and the Bloody Assizes to which we will return. His Congregationalist minister was John Hancock, the father of the more famous signer of the Declaration of Independence. He points out that the Massachusetts Charter secured the liberties of Englishmen for the colonists. His successor, the Reverend Lemuel Briant spoke of Magna Carta with a "joyful pride as though he himself had signed it."⁵

As early as 1765 when, in opposition to the Stamp Act, he wrote the "Instructions of the Town of Braintree to Their Representative" he appealed to Magna Carta. The tax was "unconstitutional" and, even worse, the cases were to be tried in a "court of admiralty, without a jury...directly repugnant to the Great Charter itself; for, by that charter, 'no americiament shall be assessed, but by the oath of honest and lawful men of the vicinage;' and 'no freeman shall be taken, or imprisoned, or disseized of his freehold, or liberties of free customs, nor passed upon, nor condemned, but by lawful judgment of his peers, or by the law of the land.'"

Magna Carta figured prominently in John Adams' rhetoric for the rest of his career. He insisted in the 1780 Constitution of Massachusetts "we are a nation of laws and not of men." In his 1787 defense of the American states' constitutions, Adams continued to believe in the primary importance of Magna Carta: "If, in England, there has ever been any such thing as a government of laws, was it not *magna carta*?"⁶

More surprising than John Adams' appeal to Magna Carta is that Tom Paine also laid claim to the spirit of Magna Carta. He wrote in his 1776 pamphlet *Common Sense* an appeal to religion which pulled out all the stops: He called for a "Continental Charter, or Charter of the United Colonies; (answering to what is called the Magna Charta of England) fixing the number and manner of choosing members of Congress, members of Assembly, with their date of sitting, and drawing the line of business and jurisdiction between them: always remembering, that our strength is continental, not provincial: Securing freedom and property to all men, and above all things the free exercise of religion, according to the dictates of conscience; with such other matter as is necessary for a charter to contain. Immediately after which, the said conference to dissolve, and the bodies which shall be chosen conformable to the said charter, to be the legislators and

⁵ Catherine Drinker Bowen, *John Adams and the American Revolution*, (Boston, 1950), pp. 30-31. Cited in Dick Howard, p. 157.

⁶ Dick Howard, p. 164.

governors of this continent for the time being: Whose peace and happiness, may God preserve, Amen.”

The year before Tom Paine wrote *Common Sense* quoted above, he wrote the words to a song called, *The Liberty Tree* in 1775. It was set to the English melody of *Once The Gods of the Greeks*. In case you are as aurally challenged as I am, I have distributed a copy of the lyrics so that you can sing along and follow the bouncing ball.

To summarize both Adams and Paine would have agreed, “In America, the law is king.”

Constitutions: Written, Unwritten, and Living

Now that we have an overall view, let us describe in more detail how the tree of liberty was rooted in Magna Carta throughout Anglo-American history.

Everyone knows that the American system of government has major layers of complexity. Our Constitution created separation of powers of the branches of government, Federalism, and all elements of the Constitution have procedural safeguards for the purpose of securing liberty. On the surface, The Bill of Rights, the first 10 amendments to the U.S. Constitution, were more heavily influenced by Magna Carta than the Constitution itself.

It is too easy to think that we draw on Magna Carta only to limit the power of the executive branch of government. It certainly was that—King John and George III—were declared tyrants. But, the British heritage in which we are grounded did not stop with what we call the executive branch. The British tradition of liberty also included checking the power of courts and the legislatures.

The Americans who wrote the Declaration of Independence and the U.S. Constitution were drawing on a long historical tradition of claiming traditional British liberties through the earlier Colony charters and constitutions. They were granted these liberties by the King when they received their charters. If Magna Carta was the great charter, then the 17th century charters of the colonies were derivatives from the original.

Our lived experience includes more than 170 years of colonial history. Eighty of these years occur before the influence of John Locke. American colonial history is replete with references to Magna Carta and the Constitution, meaning the British Constitution grounded in Magna Carta.

It is true that the colonists picked and chose what they wanted from their English heritage. The one hundred and seventy years of colonial experience were relatively unencumbered with practical Parliamentary supremacy. The policy of “salutary neglect” from 1603-1760 froze the theoretical discussions of Parliamentary supremacy.

Let us get the flavor of the period before the Declaration of Independence by choosing some samples from the various colonies. We must be selective because every colony

deserves a separate chapter, or for that matter, a complete book to fully grasp the importance of Magna Carta and British constitutionalism in their development.⁷

Traditionalist conservatives such as Mel Bradford would argue that the continuity of British legal tradition and Magna Carta is more consistent with the South than either the Puritan North or the commercial middle colonies. He contrasts the myth of the South grounded in the training southern Americans received at the Inns of Court with the myth of the Puritan North grounded in the Law of Moses and the myth of the self-made man as exemplified by Benjamin Franklin leading to the Law of Contract.⁸

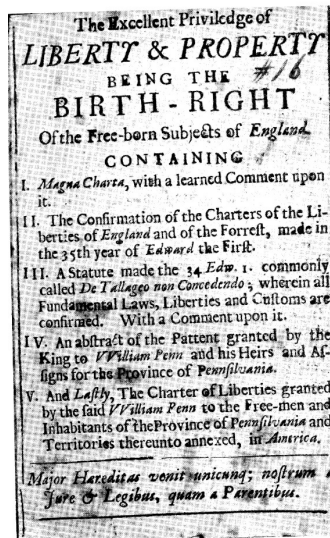
He is right about the South, but what he says about the Puritan and Middle Colonies is only qualifiedly true. The tendency to push the Law of Moses and neglect the Law of England, was true of early Massachusetts and New Haven, but not of Connecticut, Rhode Island, New Hampshire, and Maine. It certainly was not true of New York, Pennsylvania, and Delaware.

Let's start, then, with the middle colony of Pennsylvania.

In 1687, for the first time in the western hemisphere, in order to ensure that due process of civil law was being properly executed in his colony, William Penn authorized in the city of Philadelphia the first American printing of the Magna Carta.

⁷ The book that comes the closest to doing this and from which I have drawn heavily is A.E. Dick Howard, *The Road from Runnymede: Magna Carta and Constitutionalism in America*, University of Virginia Press, (Charlottesville, 1968).

⁸ As he explains, "Always Southern conservatism has acknowledged a precious Anglo-American continuity, a heritage preserved, first of all, through veneration of the British constitution and of institutions derived from our colonial English past and our struggle to resist presumption and high-handedness from the mother country without surrendering our patrimony as overseas Englishmen." ("Southern Conservatism" *Southern Partisan*). <http://www.thesouthernpartisan.com/wp-content/uploads/2010/08/11.1-ARCHIVEBradfordSConservatism-17p.pdf>



Penn had already invoked the principles of Magna Carta in his notorious trial in England in 1670. Again the issue was the overweening power of judges and improperly constituted courts.

It is literally true that Magna Carta went through many “trials and tribulations.” We shall see this time and again in this lecture. The defenders of liberty are always under attack, ridiculed, imprisoned, and occasionally executed for promoting what they believe in. One of my main points of recounting this history is that defenders of liberty today must have courage and fortitude to stick to their principles.

In 1701 England adopted Penn’s fourth revision to Pennsylvania’s Constitution, the Charter of Privileges, which so firmly established and grounded “good and right” government that it became a precursor to our American liberties, the Constitution of the United States.

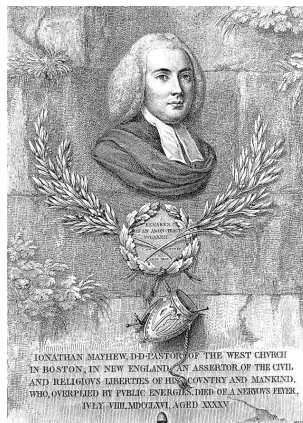
In 1751 the Pennsylvania General Assembly commissioned a foundry in England to forge a bell in honor of the fiftieth anniversary of William Penn’s Constitution for Pennsylvania, the Charter of Privileges. On the bell is inscribed Leviticus 25:10 which says, “Proclaim liberty throughout the land unto the inhabitants thereof.”

The Stamp Act, 1765

The single most important crisis before the 1770s was the passage of the Stamp Act in 1765. In Virginia, Patrick Henry made his famous speech to the House of Burgesses in May 1765 using the inflammatory language: “Tarquin and Caesar each had his Brutus, Charles the First his Cromwell and George the Third...” Rumbings of “treason” and shocked protests from some of the listeners, and Henry concludes, “...may profit by their example. If this be treason, make the most of it.”

His eloquence inspired the Virginia Resolutions of the House of Burgesses which appealed to tradition and posterity in their claim to “all the Liberties, Privileges, Franchises, and Immunities, that have at any Time been held, enjoyed, and possessed by the people of *Great Britain*.” This included the principle of no taxation without representation which was “the distinguishing Characteristick of *British* Freedom, without which the ancient Constitution cannot exist.”⁹

The Boston clergyman, Jonathan Mayhew (1720-1766), was the correspondent of Thomas Hollis, and fellow-deprecator of Charles I. As early as 1749-1750 on the 100th anniversary of the execution of Charles I, he had written a *Discourse Concerning Unlimited Submission and Non-Resistance to the Higher Powers*. His sermon sounded like a mini-Declaration of Independence: “For afterwards, during a reign, or rather a tyranny of many years, he governed in a perfectly wild and arbitrary manner, paying no regard to the constitution and the laws of the kingdom, by which the power of the crown was limited; or to the solemn oath which he had taken at his coronation. It would be endless, as well as needless, to give a particular account of all the illegal and despotic measures which he took in his administration;--partly from his own natural lust of power, and partly from the influence of wicked counsellors and ministers.--He committed many illustrious members of both houses of parliament to the tower, for opposing his arbitrary schemes.--He levied many taxes upon the people without consent of parliament;--and then imprisoned great numbers of the principal merchants and gentry for not paying them.--He erected, or at least revived, several new and arbitrary courts, in which the most unheard-of barbarities were committed with his knowledge and approbation.--He supported that more than fiend, arch-bishop Laud and the clergy of his stamp, in all their church-tyranny and hellish cruelties.”



In opposition to the Stamp Act he delivered a major sermon “The Snare Broken.” It was dedicated to William Pitt. After his death, Thomas Hollis commissioned this print of Mayhew, one of the few Americans so honored in the Liberty Print series.

⁹ Dick Howard, *op. cit.*, pp. 430-431.

In order to understand the interplay between the Whigs in Great Britain and the American colonies, we must make a brief return to Pennsylvania. We will make stops in three cities, Pittsburgh, Wilkes-Barre, and Camden, yes, there is a Camden, Pennsylvania as well as the better known, Camden, New Jersey. All these cities were named after British Whigs who were friends of America and liberty before, during, and after the Stamp Act of 1765.

Pittsburgh was named after the friend of American liberty in England, William Pitt the Elder. He was given the major credit for repealing the Stamp Act of 1765, along with the active support of Isaac Barré, Charles Pratt, 1st Earl of Camden, and John Wilkes.

All of these men and many others were celebrated in Boston in the famous Paul Revere print of the four sides of the Obelisk. This was published in 1766 to show the festive mood of Boston upon hearing the news of the Repeal of the Stamp Act. Even King George was allowed to share their company even though he might not have wanted to be included in that company.



Although Barré, Camden, and John Wilkes deserve a separate lecture for their role in the British background to the Bill of Rights, I will only briefly focus on John Wilkes.

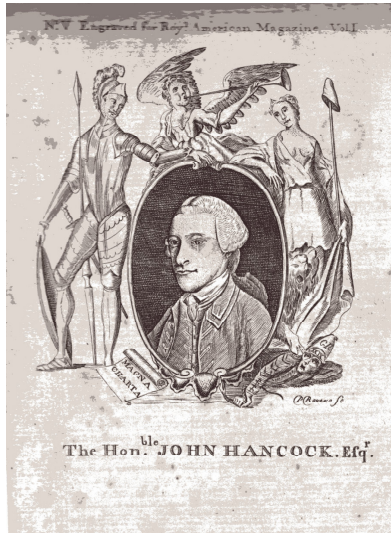


Here we see Wilkes as Hercules slaying the hydra of corruption in the background and holding Magna Carta in his hand. The other papers on his desk refer to the Bill of Rights, letters to the Gentlemen Clergy and Freeholders of the County of Middlesex, etc.

In 1768 Paul Revere produced his beautiful "Liberty Bowl" which celebrates John Wilkes' No. 45 of the *North Briton* where he attacked the King and Lord Bute. The slogan "Wilkes and Liberty" in the circle has two flags extending to the side, "Bill of Rights" and "Magna Carta." The other side celebrates the "Glorious 92" members of the Massachusetts Assembly who defied the efforts of Lord Hillsborough to rescind their Circular Letter to King George.



Although John Hancock was both a radical and a conservative, he was the radical when he responded to the Stamp Act in 1765. He wrote to an English correspondent, “I will not be a slave. I have a right to the liberties and privileges of the English Constitution...” Paul Revere makes it clear in this print that John Hancock was appealing to Magna Carta.



William Pitt was held in such high esteem that Thomas Hollis, the one-man Liberty Fund of the 18th century, put an advertisement in *The London Chronicle* on March 18, 1766, the day after the Stamp Act was repealed: “Englishmen, Scottishmen, Irishmen, Colonists, Brethren, Rejoice in the Wisdome, Fortitude of one Man, which hath saved You from Civil War & your Enemies! Erect a Statue to that Man in the Metropolis of your Dominions! Place a garland of Oak leaves on the Pedestal and grave in it Concord.”¹⁰

The American colonists in New York and South Carolina took up the challenge. They commissioned English sculptor Joseph Wilton who produced pedestrian statues of Pitt for not only New York City and Charleston, South Carolina, but also for Cork, Ireland.

¹⁰ The *London Chronicle* was published by William Strahan, the famous printer of the first edition of Adam Smith’s *Wealth of Nations* and friend of Benjamin Franklin.



Although not completed until 1770, the statue shows Pitt holding Magna Carta. In this reproduction of the New York version, we can see the description of the *New York Journal* of September 13, 1770: “Last Friday the Statue of the Right Hon. William Pitt, Esq; Earl of Chatham, was fixed on the Pedestal erected for it in Wall-Street, amidst the Acclamations of a great Number of the Inhabitants. The Statue is of fine white Marble, the Habit Roman, the right Hand holds a Scroll, partly open, whereon we read, ARTICULI MAGNA CHARTA, LIBERTATUM; the left Hand is extended, the Figure being in the Attitude of one delivering an Oration.”¹¹

Here are the remains of the William Pitt statue sent to Charleston, South Carolina.



¹¹ R.T.H. Halsey, *The Boston Port Bill*, (New York, The Grolier Club, 1904) p. 32. Ironically Joseph Wilton also sculpted the equestrian statue of George III at the same time for New York. It was torn down July 9, 1776 after the Declaration of Independence was read to Washington’s troops.

We can see that the imposition of the Stamp Act was not a simple matter of economic statics. More importantly the demand curve did not stay where it was in a nice static fashion. It changed dramatically. It was in response to the Stamp Act that the non-importation agreements first started. As a means of promoting repeal Americans cut down imports and started making home-spun respectable rather than as a simple sign of colonial poverty compared to the sophisticated fashions of England. The merchants of New York, Boston, and Philadelphia actually signed agreements, even before the Stamp Act took effect in some cases, to import nothing from Great Britain. The British merchants held British policy responsible for this decrease in their business and put pressure on Parliament to repeal.

All this figures into one of the more complex iconographic prints designed to celebrate the repeal of the Stamp Act. It appeared in March 18, 1766, and was called the “Repeal (or the Funeral of Miss Ame. Stamp)” There are large unshipped cargoes and “Stamps from America.”



Above the tomb are two skulls with 1715 and 1745 prominently displayed, the anti-Scotch motif again. Also there is a written warning which reads, “Within this Family Vault lie (it is to be hop’d never to rise again) the Remains of Hearth mon. Ship mon. Excise B. Jew B. Gen Warrants &c” There may be other things included but they are either deliberately smudged or illegible. Ship Money is clearly recalling John Hampden. The battles against the Stuarts and the fights against illegitimate sources of taxation are front and center.

The Hearth Tax was indeed a popular grievance and was later repealed on grounds that are strikingly similar to those enunciated by the Declaration of Independence. It was claimed that they were “not only a great oppression to the poorer sort, but a badge of slavery upon the whole people, exposing every man’s house to be entered into and searched at pleasure by persons unknown to him. Again and again we are confronted with the notion that an “Englishman’s house is his castle.”

The statues by Wilton were the prototype for the richest iconographic source relating Magna Carta to William Pitt. Charles Willson Peale, the American painter and engraver from Maryland, engraved this mezzotint of Mr. Pitt when he was an art student in London in about 1768.



There is a detailed description of the print, presumably by Peale himself. Pitt appears in Consular Habit, speaking in defense of the claims of the American colonies “on the Principles of the British Constitution.” It was during the debate about the Stamp Act that Pitt pronounced, “I rejoice that America has resisted.” But at the same time he laid the groundwork for the Declaratory Act when he argued, “...that the Stamp Act be repealed absolutely, totally, and immediately. That the reason for the repeal be assigned, because it was founded on an erroneous principle. At the same time, let the sovereign authority of this country over the colonies, be asserted in as strong terms as can be devised, and be made to extend to every point of legislation whatsoever. That we may bind their trade, confine their manufactures, and exercise every power whatsoever, except that of taking their money out of their pockets without their consent.”

“A Civic Crown is laid on the Altar, as consecrated to that Man who preserved his Fellow-Citizens and Subjects from Destruction!” He holds Magna Carta in his hand. He

stands next to an “Altar, with a Flame is placed in the Foreground, to shew that the Cause of Liberty is sacred, and, that therefore, they who maintain it, not only discharge their Duty to their King and themselves, but to GOD. It is decorated with the Heads of Sidney and Hampden, who, with undaunted courage, spoke, wrote, and died in Defence of the true Principles of Liberty, and of those Rights and Blessings which Great Britain now enjoys: For, as the Banner placed between them expresses it, 'Sanctus Amor Patriae Dat Animum’. “May the sacred love of the Fatherland [always] animate [the soul]”

This appeal to Hampden and Sidney in the Pitt print also indicate the gravity with which the Americans took their opposition to British authority. After all Hampden and Sidney were Whig martyrs in the eyes of the leading American revolutionaries. John Hampden died on the field of battle against Charles I in 1643. More important for the political and legal issues involved, he was the man who refused to pay the one-pound Ship Money tax in 1637. Although very wealthy, he refused to pay on the constitutional principle involved.

Hampden had articulated two reasons why kings could be resisted: if they threatened religion and if they overturned the fundamental laws. Part of the fundamental laws was the right to private property. The ship-money tax both in its principle and in its manner of assessment and collection were extensions of arbitrary power on the part of a financially desperate crown. In essence, Hampden traced the principle of no taxation without representation to Magna Carta.

Six years after the death of Hampden occurred the execution of another man, King Charles I in 1649. Whether he should be considered a Royal Martyr or a Tyrant is still divisive to these days. Peale and most American Whigs had no doubt that this was a legitimate case of tyrannicide. In the print by Peale you can see Whitehall, the place of execution, in the background.

One of the most interesting speculations is that Peale not only showed Pitt in Roman “Consular Habit” but also that the figure in Roman history he was designed to portray was Brutus who slew Caesar.

Another arch-defender of Magna Carta, Catherine Macaulay, was portrayed in 1767 by Thomas Hollis as a Brutus figure. Hollis’s engraving was based on a silver Roman coin of Marcus Junius Brutus that was done in 44 B.C.



Pitt is pointing to a Statue of British liberty holding a pole with the liberty cap on top of it. Ironically, this figure is “trampling under Foot the petition of the Congress at New-York.” This is a sarcastic reference to the failure of the House of Commons to heed the petitions of the Congress “against acts of meer power.” It shows “the present faint Genius of British Liberty.”

Algernon Sidney was accused of complicity in the Rye House Plot to assassinate Charles II and James II and was executed forty years later in 1683. The “hanging judge” George Jeffreys tried Sidney, found him guilty and had him executed. Justice Antonin Scalia, in the majority opinion in *Crawford v. Washington*, 541 U.S. 36, 67 (2004), wrote that “[The Framers of the Constitution] knew that judges, like other government officers, could not always be trusted to safeguard the rights of the people; the likes of the dread Lord Jeffreys were not yet too distant a memory.”

Hampden and Sidney became part of the iconography of liberty lovers both in Great Britain and the United States. They, of course, are the namesakes of the fine Virginia liberal arts College, Hampden-Sydney, founded in 1775.

An important example is the mezzotint of John Wilkes, which features the portrait of Hampden and the Works of Sidney on the bookshelf. The mezzotint was engraved by James Wilson after a painting by Robert E. Pine, the painter of the most famous version of the Declaration of Independence.



The connections we see being made by Patrick Henry in 1765, and Peale in 1768 were made explicit later when John Adams wrote to James Warren in June 1774: “There is one ugly reflection, Brutus and Cassius were conquered and slain. Hampden died in the field, Sidney on the scaffold, Harrington in jail, etc. This is cold comfort. Politics are an ordeal among red hot ploughshares.” Josiah Quincy was even more explicit: “America hath in store her Bruti and Cassii, her Hampden's and Sidney's, patriots and heroes, who will form a band of brothers: men who have memories and feelings, courage and swords.”¹²

Before we leave Algernon Sidney, we must pay our respects to William Russell, the other Whig Martyr executed in 1683 for his alleged part in the Rye House Plot. I have a very large mixed medium print of the trial of William Russell in my home, which was too large to transport to Washington. It is a romanticized 19th century historical print showing Russell defending himself against Lord Pemberton.

¹² Frank H. Sommer, III, “Thomas Hollis and the Arts of Dissent,” *Prints in and of America to 1850*, ed. John D. Morse, Winterthur, Delaware, 1970, pp. 154-155.



Mrs. Russell is looking up at her husband with rapt adoration and concern. Although great efforts were made to free Russell who protested his innocence to the last, nothing availed. The only concession that the King would make is that he was beheaded instead of hanged. On the day that he was executed, July 21, 1683, he kissed his wife and said, “Now the bitterness of death is past” and went bravely to his execution. Russell's execution occurred eight days after Essex in Lincoln's Inn Fields. His execution was so bloody and botched by Jack Ketch that the executioner became notorious and later wrote an Apology for it.

To return to the Stamp Act, its repeal in 1766 was good news and bad news. The good news is that it was repealed; the bad news was that it was combined with a theoretical statement of Britain's total sovereignty over its colonies, “in all matters whatsoever.”

Britain's declaration of sovereignty eventually resulted in America's declaration of independence. The period of salutary neglect is definitely over. It was the British insistence on a point of honor that made it necessary for the Americans to invoke their sacred honor later on.

As the Morgans explained, the issue of right or sovereignty was built into the passage of the original Stamp Act: “... unfortunately the Ministry could not expect Parliament to judge the Stamp Act simply by its economic effects. Probably one of the principal reasons why George Grenville had pressed the Act was in order to settle once for all the question of right. Certainly that was a principal reason why Parliament passed it. The Americans themselves had raised the question in the summer of 1764 by objecting to Parliament's authority to tax them. Once raised, the question could not easily be ignored, and it had become for many members of Parliament the Central issue. They might agree

that the Act was ill-advised, they might accept every claim made by the merchants, but they could not afford to give the appearance of backing down before a colonial mob; and they would not abandon the authority which they had claimed in passing the Act.”

Both sides came to recognize the significance of principle. No narrow economic consideration or calculus could resolve the issues of fundamental principle. Or as Benjamin Franklin observed: “The hope of glory and the ambition of princes are not subject to arithmetical calculation.” One of the leaders of opposition to repeal acknowledged that the revenue impact of the Stamp Act might be slender. In fact, if it was not a laughing matter, it turned out to be a Laffer curve; for the six months of its force the yield was 14,000 and the expense of collecting 16,857. In spite of this correct foreboding, Robert Nugent contended that “a peppercorn, in acknowledgement of the right, was of more value, than millions without.”¹³ (quoted in Morgans, p. 334).

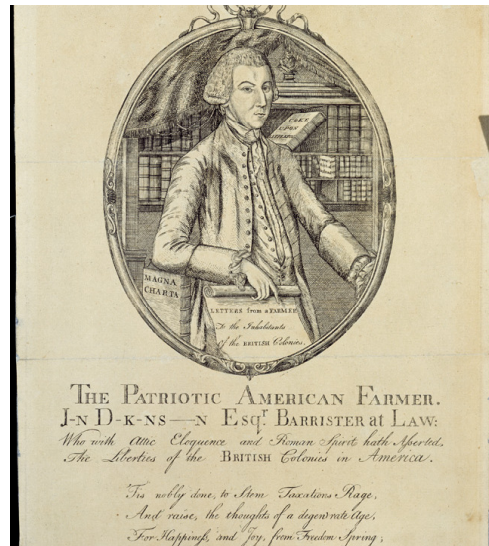
Taxation Townshend

It did not take very long after repealing the Stamp Act that the British urge for reform and increased taxes raised its ugly head. Charles Townshend proposed taxes on lead, printer’s paper, and tea in May 1767. He wished to “improve” the system of government in the colonies by taxing them, and, what was worse, placing the revenue in a fund for paying the salaries of royally appointed officials in America. To collect these revenues, he proposed a new Board of Customs Commissioners to be stationed in the colonies.

The “Townshend Acts” were five laws beginning in 1767. They were the Revenue Act of 1767, the Indemnity Act, the Commissioners of Customs Act, the Vice Admiralty Court Act, and the New York Restraining Act. The purposes were manifold. One was to raise revenue in the colonies to pay the salaries of governors and judges so that they would be independent of colonial control. They also wanted to establish that the British Parliament had the right to tax the colonies.

In opposition to these new taxes, John Dickinson of Delaware and Pennsylvania published his very influential pamphlet, *Letters from a Farmer* in 1767-1768. A print of *The Patriotic American Farmer* captures graphically the links to Magna Carta. His elbow rests on Magna Carta and in the background showing his library a copy of *Coke Upon Littleton* is prominently displayed. Dickinson knew what he was talking about. He was trained in the Inns of Court where he learned his Common Law directly.

¹³ Speaking of Peppercorns, when the statue of King George III was destroyed by American Patriots, it was reported: "On Wednesday [Thursday] last," as a Philadelphia paper recounted, "the equestrian statue of George III which tory pride and folly raised in the year 1770, was by the sons of freedom, laid prostrate in the dirt the just desert of an ungrateful tyrant! The lead wherewith this monument was made, is to be run into bullets, to assimilate with the brain of our infatuated adversaries, who, to gain a peppercorn, have lost an empire."



The text describes Dickinson as asserting British Liberties with Attic Eloquence and Roman Spirit. One would like to know who the statue is in the upper right-hand corner of the print. The text also asserts that we live in a “degenerate age” and that “Life in Bondage is a worthless Thing.” Dickinson was described as the “American Pitt.”

John Dickinson’s song, *The Liberty Song*, was also written about this time. It made reference to a Liberty Tree,

“The tree their own hands had to Liberty rear’d,
 They lived to behold growing strong and revered;
 With transport they cried, Now our wishes we gain,
 For our children shall gather the fruits of our pain.”

It was his lyrics set to the English air, *Heart of Oak*, by Dr. William Boyce (1711-1779). The English words were by David Garrick. The references to Liberty could also refer to John Hancock’s ship, called *Liberty*, which had been seized in Boston by the British authorities for smuggling in 1768. This seizure, along with anger over the acts, precipitated riots and led to the declaration of a suspension of English imports by Boston merchants in August 1768 to begin December 31.

To help enforce the Townshend Acts, the British sent soldiers and officials to Boston in 1768. The tensions between the British soldiers and the Americans provoked the Boston Massacre in 1770, celebrated in the Paul Revere print, and The Boston Tea Party on December 16, 1773.

In this print, “The Bostonian’s Paying the Excise-Man, or Tarring & Feathering” (1774), one of a series of humorous British mezzotints, you see the Tea Party taking place in the background. The Liberty Tree becomes the gallows and the Stamp Act is placed upside down on the tree itself. John Malcomb is spewing out the tea that he is being forced to drink in excessive quantities.



Edmund Burke opposed the prudence of the tea tax act in words that link up to our earlier Whig martyr, John Hampden: “The feelings of the colonies were formerly the feelings of Great Britain. Theirs were formerly the feelings of Mr. Hampden....Would twenty shillings have ruined Mr. Hampden? No, but the payment of half that sum, on the principle it was demanded, would have made him a slave.” (Quoted in Karsten, 48)

The British made a serious mistake when they passed The Boston Port Bill in March 1774. They effectively blockaded Boston off from commerce and trade with the rest of the world. The actions also known as the Coercive Acts or the Intolerable Acts punished the guilty and innocent alike; they were not given an opportunity to defend themselves in a court of law. These were not the principles of Magna Carta. The reaction and sympathy of the other American colonists led to inter-colonial cooperation and eventually to the First Continental Congress.

Another famous print in this humorous series is “The Alternative of Williamsburg”. The threat of tarring and feathering is prominently displayed to those merchants who might dare to export tobacco to England. One barrel is in the foreground labeled as a “A Present for John Wilkes Esq.r Lord Mayor of London.”

The women of America were included in the protests against the Tea Tax. The Edenton Tea Party commemorated in this print occurred on October 25, 1774. Penelope Barker organized the ladies to *not* drink tea and import British clothes. They signed the following petition, “The Provincial Deputies of North Carolina, having resolved not to drink any more tea, nor wear any more British cloth, many ladies of this province have determined to give memorable proof of their patriotism, and have accordingly entered into the following honourable and spirited association. I send it to you to shew your fair countrywomen, how zealously and faithfully, American ladies follow the laudable example of their husbands, and what opposition your matchless Ministers may expect to receive from a people thus firmly united against them.” In other words, don’t mess with the ladies!



The petition continued: “We cannot be indifferent on any occasion that appears nearly to affect the peace and happiness of our country, and . . . it is a duty which we owe, not only to our near and dear connections, . . . but to ourselves. . . .”

When the Americans started cooperating with committees of correspondence, it was not long before the First Continental Congress in 1774 passed Resolutions which breathed the spirit of Magna Carta and the English Constitution as well as the spirit of Natural Law and Natural Rights.

The Congressmen in this historical print, “The First Prayer offered in Congress, September 7, 1774” include George Washington, Patrick Henry, and many others who would subsequently sign the Declaration of Independence in July of 1776. The prayer was offered by Jacob Duché, the rector of Christ Church in Philadelphia.

John Adams described the services in Carpenter’s Hall on September 7, 1774: Duche “read several Prayers, in the Prayers, in the established form; and then read the Collect for the seventh day of September, which was the Thirty-fifth Psalm . . . after this Mr. Duche, unexpected to every Body struck out into an extemporary Prayer, which filled the bosom of every Man present. I must confess that I never heard a better Prayer or one so well pronounced . . . with such fervor, such Ardor, such Earnestness and Pathos, and in Language so elegant and sublime - for America, for the Congress, for the Province of Massachusetts Bay, and especially the Town of Boston. It has had an excellent Effect upon every Body here.”¹⁴

¹⁴ The best version of the First Prayer by Duche is the following:



The print was done after a painting by Harrison Tompkins Matteson, c. 1848. They are assembled in Carpenter's Hall in Philadelphia. In 1925, the print was made into the famous stained glass window in Christ Church.

O - Lord our Heavenly Father, high and mighty King of kings, and Lord of lords, who dost from thy throne behold all the dwellers on earth and reignest with power supreme and uncontrolled over all the Kingdoms, Empires and Governments; look down in mercy, we beseech thee, on these our American States, who have fled to thee from the rod of the oppressor and thrown themselves on Thy gracious protection, desiring to be henceforth dependent only on Thee, to Thee have they appealed for the righteousness of their cause; to Thee do they now look up for that countenance and support, which Thou alone canst give; take them, therefore, Heavenly Father, under Thy nurturing care; give them wisdom in Council and valor in the field; defeat the malicious designs of our cruel adversaries; convince them Of the unrighteousness of their Cause and if they persist in their sanguinary purposes, of own unerring justice, sounding in their hearts, constrain them to drop the weapons of war from their unnerved bands in the day of battle! Be Thou present, O God of wisdom, and direct the councils of this honorable assembly; enable them to settle things on the best and surest foundation. That the scene of blood may be speedily closed; that order, harmony and peace may be effectually restored, and truth and justice, religion and piety, prevail and flourish amongst The people. Preserve the health of their bodies and vigor of their minds; shower down on them and the millions they here represent, such temporal blessings as Thou seest expedient for them in this world and crown them with everlasting glory in the world to come. All this we ask In the name and through the merits of Jesus Christ, Thy Son and our Savior. Amen.



Furthermore it was combined with the Magna Carta window immediately above it. Christ Church designed a Magna Carta window right above it; with King John cowering on the right hand side with the authoritative figure of a Bishop scolding him, the religious origins of Magna Carta were clearly understood.



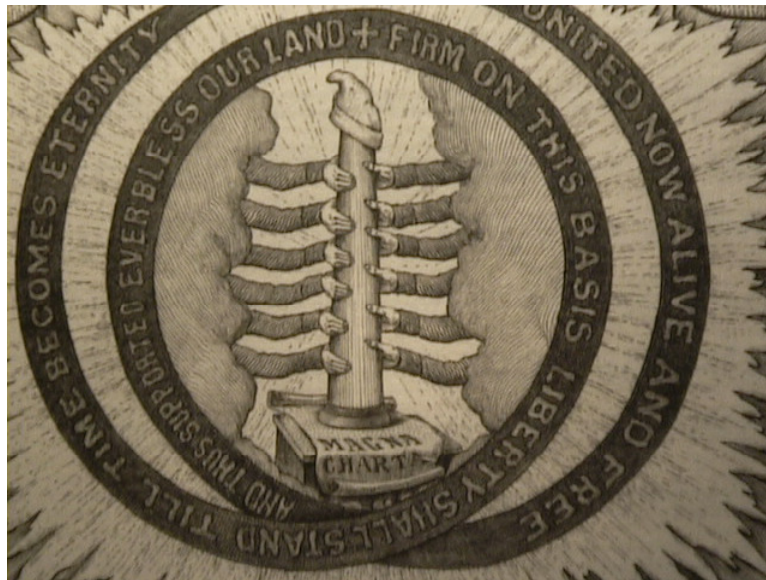
When one looks at the Resolutions of the First Continental Congress, they breathe the spirit of Magna Carta, natural law, and natural rights:

“That the inhabitants of the English colonies in North-America, by the immutable laws of nature, the principles of the English constitution, and the several charters or compacts, have the following RIGHTS:

That they are entitled to life, liberty and property: and they have never ceded to any foreign power whatever, a right to dispose of either without their consent.

That our ancestors, who first settled these colonies, were at the time of their emigration from the mother country, entitled to all the rights, liberties, and immunities of free and natural- born subjects, within the realm of England.”

This spirit of the First Continental Congress and its foundation in Magna Carta is best seen in the print for *The New York Journal or the General Advertiser*, December 15, 1774.



The Tree of Liberty is firmly rooted on Magna Carta, the Liberty Cap is on the top of the tree and the grasping hands represent the colonies. The snake biting its tail is a symbol of the hoped-for unity among the colonies. The slogan written on the snake runs, “united now alive and free and thus supported ever bless our land + firm on this basis liberty shall stand till time becomes eternity”¹⁵

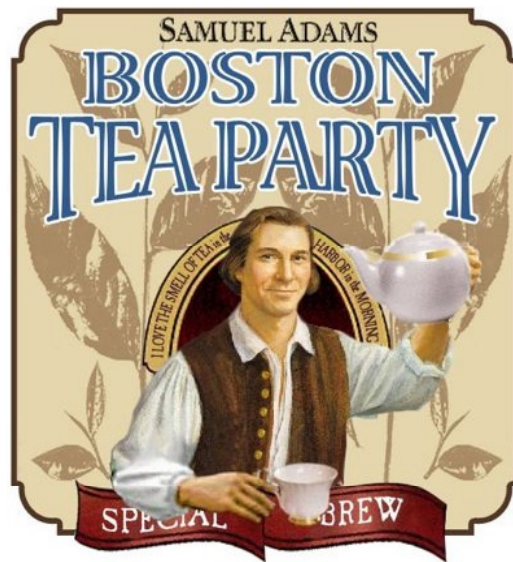
A detailed analysis of the influence of Magna Carta on the Declaration of Independence, the Constitution, and the Bill of Rights is very important, but the use of iconographical symbols is much more limited.

Since we have already noted John Dickinson for his portrait, pamphlets, and songs, let us use his second letter of Fabius (April 15, 1788), as the benchmark for appreciating the importance of Magna Carta to the United States Constitution: “All the foundations before

¹⁵ A less elaborate version is found in the Journal of the Proceedings of the Congress, Held at Philadelphia, September 5, 1774. (Reproduced in A.E. Dick Howard, *Road from Runnymede*, p. 142)

mentioned, of the federal government, are by the proposed system to be established, in the most clear, strong, positive, unequivocal expressions, of which our language is capable. Magna charta, or any other law, never contained clauses more decisive and emphatic. While the people of these states have sense, they will understand them; and while they have spirit, they will make them to be observed.”¹⁶

Let’s end on a cheery note. After the dedication of the Charleston statue of William Pitt in 1770, the elite men of Charleston retired to Dillon and Gray’s Tavern for speeches and forty-five ceremonial toasts. Although we don’t have time for more speeches or forty-five ceremonial toasts, we can at least bend our elbow with a quaff of Sam Adams’ heady brew.



To Magna Carta and Liberty!

¹⁶ Quoted in Forrest and Ellen Shapiro McDonald, *Requiem: Variations on Eighteenth-Century Themes* (Lawrence: University Press of Kansas, 1988, p. 103. Also in Gregory S. Ahern, “The Spirit of American Constitutionalism: John Dickinson’s *Fabius Letters*” *Humanitas*, Volume XI, No. 2, 1998. <http://www.nhinet.org/ahern.htm#b3>