

Magna Carta and the Executive

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In 1215, Genghis Khan conquered Beijing on the way to creating the Mongol Empire. The 23rd of September 2015 was the 800th anniversary of the birth of his grandson, Kublai Khan, under whose imperial rule, as the founder of the Yuan dynasty, the extent of the China we know today was determined. 1215 was a big year for executive power. This 800th anniversary of Magna Carta should be approached with a degree of humility.

Underlying themes

In two earlier addresses during this year's caravanserai of celebration,¹ I have set out certain themes, each recognisably of constitutional significance, which underlie Magna Carta.

In this address I wish to focus on four of those themes, as they developed over subsequent centuries, and to do so with a focus on the executive authority of the monarchy. The themes are:

First, the king is subject to the law and also subject to custom which was, during that very period, in the process of being hardened into law.

Secondly, the king is obliged to consult the political nation on important issues.

Thirdly, the acts of the king are not simply personal acts. The king's acts have an official character and, accordingly, are to be exercised in accordance with certain processes, and within certain constraints.

Fourthly, the king must provide a judicial system for the administration of justice and all free men are entitled to due process of law.

In my opinion, the long-term significance of Magna Carta does not lie in its status as a sacred text—almost all of which gradually became irrelevant. It lies in these underlying themes, as they were further developed over the centuries in the course of English constitutional history, sometimes with reference to Magna Carta and sometimes without such reference.

The charters and successor documents

Magna Carta, and the almost equally significant Forest Charter (into which four clauses of the 1215 text were expanded), are intensely practical documents. They list and resolve a range of specific grievances, and are almost devoid of statements of high principle. The charters are the first of a long line of similar documents in English

1 James Spigelman, 'Magna Carta in its medieval context', *Australian Law Journal*, vol. 89, no. 6, 2015, p. 383; James Spigelman, 'Magna Carta: the rule of law and liberty', *Australian Bar Review*, vol. 40, no. 3, 2015, p. 212.

constitutional history, many of which refer to or replicate provisions of the charters. Almost immediately the charters acquired a totemic state as a statement of proper conduct on the part of the king. However, in its detail each charter was a pragmatic, time-bound statement.

The 1215 Magna Carta was preceded by statements of the grievances on the part of the barons, including in writing. Similarly, over the course of later centuries, the nobles, for as long as they constituted the political nation, then the broader political nation as that developed, demanded resolution of specific grievances to restore compliance with proper conduct and, sometimes, for reforms to the processes or policies of government. Often this took the form of a similarly pragmatic, written list of demands. Some of those were granted, some were granted only to be abjured, and some of those re-granted, in whole or part later. Sometimes the process was accompanied by violence against, and even the deposition of, the monarch of the day.

The process that led to Magna Carta was eventually subsumed in parliamentary procedure. As parliament acquired a recognisable shape, the process took the form of a petition to the king to remedy specific grievances.

The charters themselves were the contemporary equivalent of what came to be called statutes—as the two charters were subsequently confirmed to be. The word ‘statute’ was first used in 1236. It was the 1297 version of Magna Carta, the very version that we have in this Parliament House, that became the first entry in the official compilation of statutes.

The following is a select list of demands by the political nation, and responsive charters/statutes over the course of two centuries after 1215. It is selective because the stream of parliamentary petitions which commenced under Edward I grew substantially in later years. Those referencing Magna Carta are identified by asterisk:

1215	Unknown Charter
1215	Articles of the Barons
1215–25	Magna Carta
1217–25	Forest Charter
1258	Provisions of Oxford*
1259	Provisions of Westminster*
1265	Annulment of the Provisions of Oxford and of Westminster
1266	Dictum of Kenilworth*
1267	Statute of Marlborough 52 Henry III*
1275	Statute of Westminster 3 Edw I
1285	Second Statute of Westminster
1297	Remonstrance of the Barons*
1297	List of demands: <i>De Tallagio Non Concedendo</i>

1297	Confirmation of the Charters*
1300	Articles upon the Charters*
1301	Parliamentary Petition, known as Henry Keighley's Bill *
1306	Henry Keighley imprisoned for presenting the 1301 Petition
1308	The Boulogne Agreement on separation of Crown and royal person
1311	Ordinances of Edward II*
1322	Revocation of the Ordinances of 1311 by the Statute of York
1327	Articles of deposition, abdication and murder of Edward II
1330	Statute establishing annual parliaments 4 Edw III
1331	Statute enforcing Magna Carta 5 Edw III 9*
1341	Parliamentary Petition accepted by Edw III 4*
1342–43	Revocation and annulment of 1341 Petition
1351	Statute on Administration of Justice, 25 Edw III 4*
1354	Statute on due process 28 Edw III 3
1362	Statute on Pleas in English enacted 36 Edw III 22* (The statutes of 1331, 1351, 1354, 1362, 1363 and 1368, are referred to as 'The Six Statutes' and were designed to reinforce the Magna Carta provisions on the administration of justice.)
1362	Petition (later called a statute) for enforcement of the Charters*
1363	Statute on allegations of breach of Magna Carta 37 Edw III 18*
1368	Parliamentary Petition on false accusations, and statute enforcing due process 42 Edw III 2
1381	Parliamentary Remonstrance to Richard II after Peasants' Revolt
1386	Petitions of the Commons appointing a commission to supervise the government of Richard II
1388	Execution and banishment of Richard II's supporters by the 'Merciless Parliament'
1389	Reassertion of authority by Richard II
1397	Renunciation of the reforms of 1386 and of the acts of the Merciless Parliament plus execution or banishment of their proponents
1399	Deposition and murder of Richard II, including Articles of Impeachment*
1404 & 1406	Petition of the Commons on defects in elections
1406	Statute on succession to the throne and elections to parliament 7 Henry IV
1406	Petition of Thirty One Articles 8 Henry IV

Just as the 1215 version of Magna Carta was almost immediately abrogated, only to be revived in a somewhat different form in the 1216 and 1217 charters, culminating in the final texts of 1225, some of the later concessions were similarly abrogated. I refer, for example, to:

- the annulment of the Provisions of Oxford, and of the Provisions of Westminster, after the death of Simon de Montfort and the restoration of Henry III's authority;
- the renunciation in 1306 by Edward I of his agreement to the bill of 1301, which had declared void all statutes contrary to the charters;
- the revocation, in 1322, by Edward II of his promises to remedy a long list of grievances, called 'The Ordinances', of 1311, leading to his campaign against the nobles, which culminated in his deposition and murder; and
- the revocation, in 1342, of specific demands which Edward III was forced to accept under duress by the parliament the previous year.

Under the Tudors, the process of the political nation making formal demands was largely in abeyance. This was a function of the settled state, and the strength, of the monarchy during that era. That changed under the Stuarts.

The interaction between the political nation and the Stuart kings is too long to try to summarise in a lecture. The political nation in parliament was often in conflict with the king. This climaxed in the death of a king, as had occurred in the fourteenth century to Edward II and Richard II.

The parliamentary petitions, resolutions and bills of this era are numerous. The principal characteristic of the charters—as pragmatic documents resolving specific grievances, bereft of statements of high principle—is reflected in several landmark documents, under the Stuarts:

1610	Petition of Grievances
1628	Petition of Right*
1640	The Root and Branch Petition
1641	The Ten Propositions
1641	The Grand Remonstrance
1641	The King's Answer to the Grand Remonstrance
1642	The Nineteen Propositions
1642	The King's Answer to the Nineteen Propositions
1649	The trial and execution of Charles I*
1689	Bill of Rights

Some years ago I drew on Francis Bacon, to distinguish the common law legal tradition from the civil law legal tradition, by reference to two schools of epistemology—empiricists, most of whom were British philosophers, and rationalists,

most of whom were Continental philosophers. Bacon said: ‘empiricists, are like ants; they collect and put to use, but rationalists are like spiders, they spin threads out of themselves’.²

In the case of the political and legal development of the Constitution, the process has a combination of the ant and the spider, which Bacon, in his *The New Organon*, described as the approach of the bee. After the reference to the ant and the spider metaphor, he added: ‘But the bee takes a middle course: it gathers its material from the flowers of the garden and of the field, but it transforms and digests it by a power of its own’.

Theme one: the rule of law

The great English legal historian, Frederic Maitland, characterised the import of Magna Carta thus: ‘in brief it means this, that the king is and shall be below the law’.³ This principle is the essential foundation for the rule of law.

The contribution of the charters to the rule of law is of considerable significance across the centuries. The proposition that the king was subject to the law was not established by Magna Carta. Royal autocracy was not a feature of early medieval Europe. Subsequent iconic legal texts—of Henry de Bracton and Sir John Fortescue—would state the proposition without reference to the charter. However, the charter was the earliest written affirmation of the principle, although it was not expressly stated in these terms in the text. It was a theme which underlay the actual provisions of both charters. It is similarly implicit in the larger number of successor texts that I have listed.

The refusal of the political nation to countenance an absolutist monarch is best exemplified in the lengthy record of the deposition of Richard II, including 50 Articles of Impeachment. The record asserted that Richard would ‘at his own arbitrary will ... do whatever appealed to his desires ... and ... expressly said, with an austere and determined countenance, that his laws were in his own mouth or, occasionally, in his own breast; and that he alone could establish and change the laws of his realm’.⁴

Shakespeare captured the idea in the lament of Richard: ‘The breath of worldly men cannot depose the deputy elected by the Lord’.⁵ Early in Richard’s reign, in a compilation of precedents which his most recent biographer has called a ‘manifesto

2 See Spigelman, ‘The truth can cost too much: the principle of a fair trial’, *Australian Law Journal*, vol. 78, no. 1, 2004, p. 49, reprinted in Tim Castle (ed.), *Speeches of a Chief Justice: James Spigelman 1998–2008*, CS2N Publishing, Sydney, 2008.

3 F. Pollock and F.W. Maitland, *The History of English Law Before the Time of Edward I*, 2nd edn, Cambridge University Press, Cambridge, 1911, p. 173.

4 Carl Stephenson and Frederick Marcham (eds), *Sources of English Constitutional History*, Harper & Bros, New York, 1937, p. 252.

5 *Richard II*, Act 3, Scene 2, lines 56–7.

for the reassertion of royal power’, the king had listed Edward I’s Articles upon the Charters and Edward II’s humiliating Ordinances of 1311, amongst the concessions that must be extirpated.⁶

Such views returned with the Stuarts, in what came to be called the divine right theory of monarchy. James I had written in defence of this approach in learned and literate texts when still only James VI of Scotland. He understood, when he assumed the throne of England, that this theory, or rather theology, was not accepted there. Whilst he maintained that the king was above the law, he accepted the long established restraints. However, he was determined not to permit any expansion of, and to exploit any ambiguity in, the restraints on the scope of his authority. His son did not accept the restraints and shared the fate of Richard II.

As is well known, the principal mythologist of Magna Carta, and the source of the prominence lawyers continue to give it today, was Sir Edward Coke as both judge and parliamentarian. Coke’s adoption of the mythology of the charter, as Exhibit A in the theory of an ‘ancient’ English constitution, constituted an alternative to James I’s belief that royal authority came directly from God.

James said: ‘Kings were the makers of laws—not the laws of the Kings’.⁷ For Coke, the law preceded the king. Therefore, the king was subject to the law. He believed that the prerogative was created by the common law.

Coke’s writings invoked a bizarre range of alleged historical events and not infrequent fabrications. However, Magna Carta was real enough and, to some degree, was based on tradition as well as making reforms. Coke’s contemporary, John Selden, was more measured and intellectually honest in proclaiming the significance of the charters. For parliamentarians, the issue was where sovereignty lay: with the king or with the king in parliament. For lawyers, the issue was not sovereignty, but the source of governance legitimacy: with the sovereign or an organic legitimacy from the development of institutions over the centuries.

Both of the distinct approaches of parliamentarians and of lawyers invoked Magna Carta. It was the totemic state of the document, rather than its detail, upon which reliance was placed. The text invoked during these debates included clauses of the 1215 text that were extirpated in all subsequent reissues and confirmations. Parliamentarians sometimes relied on the provision for the ‘consent of the realm’ for certain taxes—a provision of the 1215 text which disappeared. Lawyers invested the concept of the ‘law of the land’ in clause 29 with later developments, namely reforms of what we have come to call ‘due process’. Nevertheless, the invocation of Magna Carta, even if unhistorical, was a centrepiece of the affirmation of the rule of law in the conflicts of the seventeenth century.

6 Nigel Saul, *Richard II*, Yale University Press, New Haven, 1999, p. 237.

7 Quoted in James S. Hart, *The Rule of Law 1603–1660*, Pearson, Longman, London, 2003, p. 80.

Rule of law issues under the Stuarts included the assertion of a royal prerogative not to enforce the law, indeed to dispense with an enacted law. That one of the steps leading to the 1688 Revolution was a purported exercise by James II to suspend the operation of legislation discriminating against Catholics, should give pause to those who take Magna Carta as a direct source of liberties, which it was not.⁸

The import of Magna Carta as a source of the principle that the king is subject to the law was superseded by the Bill of Rights of 1689. It is entirely appropriate that that document took the same form of a list of specific, practical grievances, pragmatically resolved without statements of high principle. The English approach of developing the common law by incremental steps, based on real life disputes, is also a feature of the development of the English Constitution.

This is the way the English Constitution developed from Magna Carta through its successor documents.

Theme two: duty to consult

The king's obligation to consult had a feudal origin. What was sought, at least in England after the Norman invasion, was assent, not consent. Nevertheless, particularly with respect to taxation, the strength of the monarchy, which varied considerably, determined how close assent had to be to consent.

The original Magna Carta of 1215 imposed restraints in numerous respects. However, it implicitly gave, or affirmed, consent to the limits some clauses permitted and to the practices it did not change.

The express provision in the 1215 text, requiring the consent of the realm for a form of taxation including precise detail as to how the 'realm' would be summoned to give consent, was deleted in all subsequent issues and confirmations. The barons who had been loyal to John, apparently regarded this as one of the provisions that insulted royal dignity. No doubt it was inserted by the more radical of the rebel barons of 1215. The necessity to consult before imposing taxes was not stated expressly. However, that was the very process that led to the charters, particularly the reissues and confirmations.

This duty to consult was what we would now call a constitutional convention. During the thirteenth century, under John's son and grandson, Henry III and Edward I, the charters were confirmed on numerous occasions, often accompanied with an additional document remedying new grievances. This occurred in express exchange for a grant of taxation. The principle that assent of a council—eventually parliament—was required for taxation was reinforced frequently by this systematic practice.

It was not until Edward I's Confirmation of the Charters in 1297—our very copy—to which the 1225 text was annexed, that the king made the express promise that certain taxes would only be imposed with 'the common assent of all the realm and

8 For other examples see Spigelman, 'Magna Carta: the rule of law and liberty', op. cit.

for the common profit thereof'. Traditional feudal impositions were excluded and, more significantly, the promise did not encompass every conceivable source of royal revenue. Nevertheless, one of the most significant themes underlying the charters was now in writing.

The struggle of succeeding monarchs to find sources of revenue which did not need consent was perhaps the most basic political dynamic over the course of the five centuries after the charters. Advisers to the Crown kept dreaming up new tricks to raise revenue, which led to resistance. Some things don't change over the centuries.

Complaints about such matters arose often. For example: in the Statute of Westminster of 1275, the 1297 Remonstrance to Edward I and in his response in 1297 by the Confirmation of the Charters, in the 1300 Articles upon the Charters, and in the Ordinances forced on Edward II in 1311.

Such complaints became particularly intense under the Stuarts. James I exploited to the limit his power to extract revenue in the exercise of prerogative power, without parliamentary approval, for example, by levies on imports or the grant of monopolies.⁹

Charles I continued this practice, perhaps most famously by extending the obligation to pay ship money from coastal regions to the whole nation and making it an annual levy. He also revived long lost battles to expand Crown revenue, for example, by trying to extend the Royal Forest contrary to the Forest Charter, as implemented under Edward I over three centuries before.

When Charles I failed to get parliamentary approval for additional taxation, he proceeded to force his subjects to advance loans. Those who refused were imprisoned. When five of them sought habeas corpus, they were met with a Crown submission that the king had the power to imprison without cause. The prosecution did not want to admit that their imprisonment was based on a demand for money that had no lawful basis. This came to be known as the *Five Knights Case*, to which I will return. It appears that Charles I ignored the fact that it was the demand of Richard II in 1297 for forced loans that began the conflict that led to his deposition and death.¹⁰

Of fundamental significance during the Stuarts was the transformation of the duty to consult into a right of concurrence. This process began when parliament was transformed, during the fourteenth century, from an event into an institution. There could be no doubt about the position after the Revolution of 1688. The duty to consult under Magna Carta had been superseded. The monarch no longer consulted the political nation. In most major respects s/he required parliamentary consent. The scope of residual executive power remained, however, contentious. It still is.

9 See my analysis of impositions in Spigelman, 'Lions in conflict: Ellesmere, Bacon and Coke—the prerogative battles', *Australian Bar Review*, vol. 38, no. 1, 2013, pp. 11–13.

10 See for example, Saul, *op. cit.*, pp. 366 ff.

Theme three: the scope of the prerogative

In 1215, and for centuries thereafter, kings and queens of England found it difficult to distinguish the personal role of the monarch and his or her formal status as a disembodied Crown. At its most dangerous, this proclivity took the form of an assertion of divine authority, not subject to restraint. This frequently led to tension and even conflict with the political nation.

As early as 1308, a group of barons promulgated a written declaration, known as The Boulogne Agreement, distinguishing between the Crown and the person of the king. That treatment of the king was not then common in Europe. As the Lancastrian warrior turned Chief Justice, Sir John Fortescue, put it in the late fifteenth century, in France the king was 'regal', but in England the king was both 'regal' and 'political'.

It was the 'political' monarch who was subject to constraints. Gradually, over the centuries, the extent of the prerogative, the 'regal' monarchy, was restricted in scope. However, a remnant of unrestrained power still exists and is relied upon from time to time to this day. That is another lecture.

The largest number of clauses in Magna Carta, and virtually the whole of the Forest Charter, are directed to overturning the past abuse of power by the king, particularly the extraction of revenue through exploitation of the incidents of feudal tenure.¹¹ These abuses appear, to an unknown extent, to have breached customs on the proper limits of the exercise of royal power. However, in this and in the successor documents, not all were longstanding limits. The agreement reflected in these documents constituted changes to what was regarded as proper, or even fair.

The problem was always enforcing the political promises in the charters. Over the first century from the 1225 reissue, the focus of most frequent complaint was that the king failed to honour his promises of the Forest Charter.¹²

After a century of evasion by Henry III and Edward I, by the Articles upon the Charters of 1300, the latter was forced to agree to an independent commission of inquiry into the proper boundaries of the Royal Forest. The king lost virtually every point in that process.

Gradually, over time, these provisions became less important. In the case of the Forest Charter, the one quarter to one third of England, where an absolutist monarchy existed, was substantially reduced in size. Social and economic changes rendered many other provisions of the charters irrelevant. However, as the successor documents show, there were always new grievances.

There were intermittent attempts to override the king's authority, with little effect. The 1215 text of Magna Carta established a committee of 25 barons which would,

11 For a list see Spigelman, 'Magna Carta in its medieval context', *op. cit.*, p. 390.

12 *ibid.*, pp. 391–3.

in effect, take over the government if the king failed to honour his promises. This disappeared in the next version of 1216, never to return.

Under the Provisions of Oxford of 1258, to which Henry III was forced to agree, a council of 24—half nominated by the king, half by the barons—was established to reform the government. A panel of 12 barons, under the leadership of Simon de Montfort, took effective control of the government. This arrangement collapsed with Simon de Montfort's defeat and death in 1265.

Proposals to impose a committee of barons to supervise the government were revived under both Edward II and also, after the long reign of Edward III, under Richard II. The Ordinances of 1311, while they lasted, gave considerable executive authority to a committee of 25 barons, called the 'Ordainers'. In 1386, Richard was forced to accept supervision by a baronial committee, called the 'Appellants'.

Conflict over the scope of the prerogative was, as is well known, a feature of the reign of the Stuarts. I have discussed this at some length for the early years of James I, when Coke was a judge.¹³ The Stuart view was that the prerogative reflected the divine mandate of the kings. In the view of Sir Edward Coke, the prerogative was a principle of the common law.

The focus at first was on the interaction of the common law courts with prerogative courts—Admiralty, High Commission, Chancery—and the king's power to act without parliamentary approval, including to raise revenue and to make new law by mere proclamation. Whilst acknowledging the restraints of English custom by the creation of the parliament—an institution which he deplored—James I, asserting his divine authority, emphasised that the established restraints could not extend into what he called 'matters important'.

Even Oliver Cromwell rejected parliamentary intrusion into his authority with a crude, dismissive reference to 'Magna Farta'. In more demure mode, proponents of executive power over the centuries characterised the charter as a concession by the king in the exercise of his prerogative discretion. The approach of lawyers and parliamentarians, to what they had come to call a charter of liberties, characterised it as a written recognition of tradition.

In modern democracies, the sovereign people have replaced an individual hereditary sovereign as the source of political legitimacy. However, the scope of permissible executive conduct, unsupported by legislation, particularly on what the executive believes to be, to use James I's words, 'matters important', still arises from time to time. These matters are not limited to issues of national security.

Unlike the first two themes—the rule of law and the duty to consult—the scope of executive power theme is still with us. Its extent has reduced but it is not superseded.

13 See Spigelman, 'Lions in conflict', *op. cit.*

Theme four: the king's peace

The provision of justice was a primary duty of a feudal monarch. Detailed provision for the justice system constitutes the second largest group of clauses in Magna Carta, and was a primary objective of the Forest Charter.¹⁴ Distinctively, this was one of the few fields in which the political nation of 1215 wanted the king to do more, rather than less. This was also true of most of the successor documents.

The numerous, specific provisions about the law were accompanied by one of the few—and, therefore, enduring—statements of general principle. I refer to the well-known clause 29 of the 1225 text (amalgamating clauses 39 and 40 of the 1215 version). The promise not to impose any sanction without ‘lawful judgment of his peers or by the law of the land’ and the promise not to ‘refuse or delay right or justice’—are words that have never lost their force. They have been invoked continually, both as a basis for complaint and as a principle for reform.

The detailed provisions for the administration of justice in the charters—most of which appear to be reforms rather than restoration of previous custom—were reflected in further such provisions in the successor documents. Most of them, with considerable specificity, abolish abuses and make reforms. That is so in the 1258 Provisions of Oxford; in the 1259 Provisions of Westminster; in the second Statute of Westminster of 1285; in less detail in the Confirmation of the Charters of 1297; in general terms in the Petitions of 1301 and 1341; again in much detail in the Ordinances of 1311; of lasting significance, in the Six Statutes of Edward III; but with most dramatic consequence in the 50 Articles of Impeachment of Richard II in 1399, described as a list of ‘frauds and deceitful tricks of the said king’.¹⁵

It was opponents of the absolutist pretensions of the Stuarts who gave Edward III’s ‘six statutes’ that appellation. They were invoked because they added detail to Magna Carta’s promise of due process of law. Indeed, it was the statute of 1354 that extended the protection of clause 29 to the whole population. The original charter provision extended only to ‘free men’, more than just the barons but still a minority of the population at that time.

I have referred to the challenge to forced loans demanded by Charles I. When the courts failed to act in the *Five Knights Case*, the House of Commons, relying on clause 29 of Magna Carta and its elaboration in the six statutes of Edward III, drafted the Petition of Right of 1628. When the House of Lords sought to undermine the force of the Petition, by inserting a qualification ‘Saving the King’s Sovereign Power’, Sir Edward Coke responded: ‘Sovereign Power is no Parliamentary word ... Magna Carta is such a Fellow, that he will have no Sovereign’.¹⁶

14 See Spigelman, ‘Magna Carta in its medieval context’, op. cit., pp. 394–5.

15 See Edgar Taylor, *The Book of Rights: Or, Constitutional Acts ...*, A. Maxwell, London, 1833, p. 101.

16 John Rushworth, *Historical Collections of Private Passages of State, Weighty Matters in Law, Remarkable Proceedings in Five Parliaments ...*, 1721, pp. 562, 566.

A document that ‘has no sovereign’ is a good description of a written constitution. The charter was not a ‘constitution’ in our understanding of the concept. It was, however, of constitutional significance. So was the Petition of Right which, like Magna Carta, was a series of demands arising from the practical grievances of the day.

Charles I was forced to accept the petition. It affirmed certain rights and, of particular significance for the administration of justice, it reinforced the principle that the executive cannot deprive citizens of liberty without cause. At a time before the judiciary had security of tenure, it was parliament that did that, not the courts.

The Petition of Right built on, and extended, the scope of Magna Carta in its role as a creation myth. One commentator put it recently: ‘the *Petition of Right* (1628), conceived as a recapitulation of 1215, transformed the baronial charter of privileges into a declaration of the rights of free-born Englishmen’.¹⁷ This traditional, gender-based language is a statement of the Whig interpretation of English history, into which Coke’s ancient constitutionalism was transmogrified.

The numerous specific reforms of the justice system in Magna Carta and the Forest Charter were entirely appropriate for that era. The statements and petitions of successor documents are of the same general character—setting out grievances and enacting reforms in response—dealing with similar issues for different times. Understandably, clause 29 of the 1225 charter—as the only statement of principle in the text—is the best known, precisely because it is not time bound.

That clause has been influential throughout the eight centuries, even if the general words have been infused with content that the original authors could never have conceived. From the time that the judiciary was ensured independence, by the Act of Settlement of 1701, the courts joined parliament as a restraint on the executive branch. Notwithstanding that the words of clause 29 retain their resonance, Magna Carta has been superseded in this respect also.

Conclusion

Two weeks after D-day in 1944, George VI, returning to Windsor Castle from London, was fuming at the latest frustration of his royal wishes, administered by Winston Churchill. As the car passed Runnymede, he gesticulated out of the window and proclaimed: ‘And that’s where it all started!’¹⁸ Over the course of, then, over seven centuries, many of his predecessors had been similarly exasperated by Magna Carta.

It is by no means clear how much actually ‘started’ at Runnymede, and how much was simply confirmed. However, the written text, proclaimed on many occasions throughout the land, was the start of a long process of constitutional development—carried through by the successor documents—of which we remain the beneficiaries today.

17 Justin Champion, ‘From *liber homo* to “free-born Englishman”: how Magna Carta became a “liberty document”, 1508–1760s’ in Nicholas Vincent, *Magna Carta: The Foundation of Freedom 1215–2015*, Third Millennium, London, 2015, p. 112.

18 Nicholas Vincent, *Magna Carta: A Very Short Introduction*, Oxford University Press, Oxford, 2012, p. 2.