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Royalist Propaganda: Fabrication of Magna Farta

By Daniel R. Palthe

ABSTRACT: This paper examines the perception and usage of *Magna Carta* in interregnum England. The central question is whether or not Oliver Cromwell ever referred to this royal document as the "*Magna Farta*." While one of the most common posthumous charges against him was a disdain for *Magna Carta* and English rights, accounts of his calling it a "*Magna Farta*" are questionable. The ways in which the *Magna Carta* was actually used under Cromwell rather seems to indicate a different opinion. Essentially, this paper compares royalist propaganda with the Commonwealth's accounts.

Lord Protector Oliver Cromwell is often cited by scholars and politicians as referring to Magna Charta as the "Magna Farta." It makes us wonder how exactly a compact between the English people and the monarchy, which the Commonwealth of England abolished, fit into the young republic's policies. In reality, however, Lord Protector Cromwell never said anything against Magna Charta, but respected it as England's first great step towards a constitution. Whether he was the Royalists' tyrant or the Parliamentarians' champion of the people, Lord Protector Cromwell believed he fought under the authority of the Common Law.

One of the places in which Lord Protector Cromwell is accused of saying "Magna Farta" is in Royalist propaganda. With printing easy and not too expensive, seventeenth-century Britain was flooded by pamphlets from supporters both of Parliament and of the Crown. Anyone could have things printed, though not always legally. At the end of the Protectorate, a pamphlet by the name of *The English Devil: or, Cromwel and his Monstrous Witch Discover'd at White-Hall* was published for a man named George Horton. This pamphlet describes Cromwell as a tyrant who murdered the king and stole the throne. On its very first page, it mentions "Magna Farta."

The whole Nation was enchained in a more than Ægyptian Bondage: who compelled to submit to this Tyrant *Noi*, or be cut off by him; nothing but a word and a blow, his Will was his Law; tell him of *Magna Charta*, he would lay his hand on his sword, and cry *Magna Farta*.¹⁰⁹

By this Horton means that Cromwell had enslaved the nation and ruled as he saw fit. If Magna Charta was to be cited in defense against him, he would defy it.

George Horton's pamphlet makes grave accusations but presents no evidence. He gives no time or place for Cromwell's dismissal of Magna Charta, but only says "he would." A lot of pamphlets were printed in 1660, and this is just one of many. We do not even know who George Horton is. He had many pamphlets printed including a Royalist periodical called *The Faithful Post*. Here is an example from an early spring issue from 1653.

The States of *Holland* are very busie in consulting of an Answer to the *Letter* sent from the K. of *Scots*, written with his own hand; wherein he condoles with them their great Defeat at sea, and desires he may have a Squadron of good ships to bear his flag, and that then He would serve in person at sea against the *English*. This is wel referred by many; and the Royalists give out, That He shall be taken in with all His Titles of *Great*

¹⁰⁹ George Horton, *The English Devil: or, Cromwel and his Monstrous Witch Discover'd at White-Hall* (London: Robert Wood, 1660), 3.

Brittain, To. In the meantime the Ministers and common people are set on to sail against the present Government in *England*, crying out, *that they ought to joyn with him against the Parliament*; besides, they fancy him a considerable party among the *Highlanders*, which will be able to shuffle the Cards with the *English* in *Scotland*, whilst they play the Game at Sea.¹¹⁰

In 1653 the Stuart royal family attempted to take back the English throne by force with Scottish troops, but would ultimately be defeated by the Protectorate. This issue details the attempt of Prince Charles to gain Dutch support to "joyn with him against the Parliament." Evidently Horton was printing Royalist propaganda in London even in the heyday of the Protectorate. He is today, however, an unknown pamphleteer and we have no record of him aside from his name on his pamphlets, so what he has written must be read with scrutiny.

As for the content of the pamphlet, it is a passionate mess of slander. Propaganda is not known to be factual, and the pamphlet says things Horton had no way of knowing for certain. For example, he speaks with authority about Cromwell's motives.

He hated all Learning, and the Learned, because his Crimes were so black and horrid, that they went far beyond the mercy of the Book. He granted a tolleration for all Religions, because his own was to choose; and that he might not offend the Tender Consciencs of his pretended Zealots and Favorites, who were true Vassels to the Lust and Villainy of such an Imperious Usurper.¹¹¹

Horton offers no proof of these accusations, and the only proof one could really have of Cromwell's motives would be the words of Cromwell himself. Propaganda is not a reliable enough source of evidence to say Cromwell indeed said "Magna Farta" at all.

The only reputable account of Cromwell's distaste for the *Magna Charta* comes from volume seven of *The History of the Rebellion and Civil Wars in England* by Edward Hyde, Earl of Clarendon. Hyde writes that Cromwell acted without regard for the ancient laws and gives the example of a man who was sent to prison by Cromwell because he refused to pay a tax. The man, named 'Cony,' was summoned by Cromwell who tried to persuade him to pay the tax, but the man insisted that the tax is illegal. When he came to trial, the man's defenders brought the common law against his charges.

¹¹⁰ George Horton. "The sum of all Intelligence form the English and Dutch Fleets." *The Faithful Post* 1 Apr. 1653 [London] .

¹¹¹ Horton, *English Devil*, 4-5.

Maynard, who was of council with the prisoner, demanded his liberty with great confidence, both upon the illegality of the commitment, and the illegality of the imposition, as being laid without any lawful authority. The Judges could not maintain or defend either, and enough declared what their sentence would be; and therefore the protector's attorney required a farther day, to answer what had been urged. Before that day, Maynard was committed to the Tower, for presuming to question or make doubt of his authority; and the judges were sent for, and severely reprehended for suffering that licence; when they, with all humility, mentioned the law and magna charta, Cromwell told them, with terms of contempt and derision, "their magna f----- should not control his actions; which he knew were for the safety of the commonwealth."¹¹²

Here Hyde clearly tells us that Cromwell did not care what Magna Charta says he can and cannot do, and actually said "magna f----." Hyde's history is considered the most comprehensive contemporary account of the English Civil War, and most historians do not question this account, but that does not mean that it is entirely true.

There are several problems with Edward Hyde's account. First of all, he gives no specific information about the event, such as date or even year. He does not name the tax, or which court session it was questioned in, and only names the accused as 'Cony.' He gives no direct quotation, and could not anyway, because he was not there. If this is a true story, it is not a firsthand account, because Edward Hyde was not even in the country when Cromwell ruled. After the Royalists lost the battle of Torrington in 1646, he fled with Prince Charles to Jersey and did not return to England until the Restoration after Cromwell's death.¹¹³

We also must take into account Edward Hyde's bias against Cromwell. Initially, Hyde was a member of Parliament and was angry with Charles I. He was particularly furious about the Earl Marshal's Court, which he found unlawful. It was a court which handled only cases in which the nobility was slandered. He also opposed the Council of the North. Hyde equally defended the king's power to check the rapidly growing power of Long Parliament and opposed the Grand Remonstrance. He hoped to reconcile with the monarchy instead of abolishing it and would eventually become unofficial advisor to the king.¹¹⁴

Hyde continued to mediate between the King and Parliament until it was clear that Charles I had lost, and he was asked to flee with the teenaged Prince

¹¹² Edward Hyde, *The History of the Rebellion and Civil Wars in England*. Vol. 7 (Oxford: Clarendon Press, 1671), 294-296.

¹¹³ George E. Miller, *Edward Hyde, Earl of Clarendon* (Boston: Twayne Publishers, 1983), 11.

¹¹⁴ Miller, 2-8.

Charles. After the death of Charles I, Hyde joined the young heir in France and became his chief advisor. For years he worked in exile to keep the Royalists together by corresponding with Royalists in Britain and by looking for support from other monarchs in Christendom. He was instrumental in the Restoration of Charles II and gained the king support in Parliament.¹¹⁵ Hyde was closely tied to the royal family and was the most active Royalist during the Interregnum; he and Cromwell were natural enemies. It is likely Hyde that would not scrutinize too deeply correspondence claiming that Cromwell went against Magna Charta.

Hyde's *History* was also commissioned by Charles II, the same Charles II who had Cromwell exhumed and hanged after the monarchy was restored. To further the Royalist cause, Hyde began writing his account in 1646 on the island of Scilly before even reaching Jersey.

As soon as I found myself alone, I thought the best way to provide myself for new business against the time I should be called to it ... was to look over the faults of the old; and so I resolved ... to write a history of these evil times.¹¹⁶

Hyde intended the *History* to serve as a reminder of the errors that led to the Rebellion and teach how a king should avoid them.

His first volume, called the "prolegomenon," catalogues the mistakes of the Royalists and is not meant to be a scholarly history. It begins in 1625 with the death of James I and notes the king's mistakes in the use of Parliament. The second volume covers the Scottish wars and notes how the members of Parliament turned against Charles I. The third volume bridges the gap between the second Scots war and the first civil war and analyses the workings of Long Parliament. The fourth volume is full of summarized documents instead of only complete ones and only serves as a justification for the Royalists. To only include full documents would be counterproductive, as the volume would be a many thousand pages longer and not make its point; Hyde's *History* was not meant to be an infallible document but a warning. It was not until he returned to finish the *History* in the 1670s that he decided it should be a historical work.¹¹⁷ His *History* does not rely on factual but on descriptive accounts to support its narrative, which is why it should not be accepted as infallible.

It is suspicious that the only accounts of the Lord Protector insulting Magna Charta come from the Royalists. It is unlikely that this event would be overlooked by Cromwell's supporters in their accounts. It would also be surprising if Cromwell

¹¹⁵ Miller, 10-15.

¹¹⁶ Edward Hyde, *Clarendon State Papers*, 2:228.

¹¹⁷ Miller, 25-31, passim.

said the word 'fart' at all. Cromwell was a Puritan after all, and Puritans strictly avoided swearing and cursing.¹¹⁸ Even Edward Hyde censored the word 'farta' in his *History*; a Puritan would consider the word too vulgar for a good Christian. Aside from another Royalist pamphlet which accuses Cromwell of referring to the Petition of Right as the "Petition of Shite," there is no confirmable account of Cromwell swearing or cursing.¹¹⁹

In the government of the English Commonwealth, we do not see Magna Charta being cast aside or criticized. We actually see Magna Charta being used in legal discussions and regarded in a positive light. We have two petitions to Cromwell using Magna Charta to support their arguments. First, we have the petition to Cromwell from 1655 titled *The humble Petition of the Prisoners in the FLEET*, which asks Cromwell to protect the debtors from unlawful imprisonment, as is called for in Magna Charta clause nine.

Neither we nor our bailiffs will seize any land or revenue for any debt, so long as the chattels of the debtor are sufficient to repay the debt; nor shall the sureties of that of that debtor be distrained so long as the chief debtor is himself able to pay the debt. And if the chief debtor, having nothing with which to pay, defaults in payment of the debts, the sureties shall be responsible for the debt; and, if they wish, they shall have the lands and revenues of the debtor until satisfaction is made to them for the debt which they previously paid on his behalf, unless the chief debtor proves that he is quit of such responsibility toward the said sureties.¹²⁰

This clause prevents debtors from having their land or freedom taken as long as they have the means to repay their debt. This provision had been broken several times during the reigns of the kings, and now that Cromwell was Lord Protector, the petitioners believed he could repeal all laws that went against Magna Charta, such as *Capias Vtlegatum*, which had been used by the king to arrest subjects in civil disputes without due process.

Now if that long Expected yeare of Jubile to the oppressed Captives become, that they may be at last Delivered out of their more then *Ægyptian* slavery and bondage, and restored to their ancient *Lawes*, and precious *Liberty*; wee humbly hope your *Highness* will manifest your *Selfe* the Vindicator of the ancient *Lawes* and *Liberties* of the people in generall, and Conservator of the *Great Charter*; and will be pleased to Answer all and

¹¹⁸ Bernard Capp, *England's Culture Wars* (Oxford: Oxford University Press, 2012), 92-93.

¹¹⁹ E. D. A *True Relation of the State of the Case Between the ever Honourable Parliament and the Officers of the Army* (London: J. C., 1659), 13.

¹²⁰ Magna Charta, Clause 9.

whatsoever *Innovators*, with that memorable Negative, of *A nolimus mutare Leges Anglie*; and restore the ancient *Law* and proceedings for *Recovery of Debts*, and take away the *Capias* in all Civill causes, which will be a most Honourable and just Ordinance, and prejudiciall to none; for the Ancient and laudable proceedings were more remediall to Creditors then that barbarous Imprisonment of the Debtor is or can bee; for if the Debtor be worth nothing, it is against the Law of GOD, Nature, and Nations, that he should live all his dayes in the grave of *Prison*; whereby he is deprived of Friends, and disabled for ever by any Industry in his Calling to attaine to any Estate, wherewith to make satisfaction to his Creditors or prosecute for his owne, but is forced to spend his time most unprofitably in *Prison*, and waste what ever he hath or can come by for his necessary subsistance (in a very Wofull condition) which is well hoped, will not only be pittied but remedied by the Mercy and Justice of your *Highness*.¹²¹

The petitioners ask Cromwell to do away with Capias warrants in noncriminal cases and to uphold Magna Charta because it is right in all ancient laws including natural and Biblical laws and he should not let it be changed as the kings have before. They even ask him to respond to "innovators" in the traditional Latin phrase "*A nolimus mutare Leges Angliae*" ("A nolimus" is likely a misprint as it should be "sic nolimus") meaning, "We do not wish to change the Laws of England."

The more noteworthy petition is the *Epistola Medio-Saxonica, or, Middlesex first Letter to his Excellency, The Lord General Cromwell* from 1653. His title changed to Lord Protector in 1653, but that was only on the 16th of December so it is not strange that a petition written that year would still refer to him as 'Lord General.' This petition used Magna Charta to argue to Cromwell that the collection of tithes is contrary to Common Law. The clause the petitioners cite in their defense is clause thirty-nine.

No freeman shall be captured or imprisoned or disseised of any free tenement or liberties or free customs or outlawed or exiled or in any way destroyed, nor will we go against him or send against him, except by the lawful judgment of his peers or by the law of the land.¹²²

The petitioners argue that tithes are included in "free tenement," and therefore no freeman should be required by law to pay them.

¹²¹ *The humble Petition of the Prisoners in the FLEET*. N.p.: T. Forcet, 1655.

¹²² Magna Charta, Clause 39.

Tithes as well as the rest did belong to every mans Tenement and Free-hold, and so far were the Clergy at the time from claiming any Tithes to be due unto them by any Custom, as that, on the contrary, it is acknowledged at the Council of *Lateran*, under *Gregory* the 10th. *Anno 1274*. and in the Decretal Epistle sent from Pope *Innocent* the 3d. to the Arch-Bishop of Canterbury, about the year *1215*. that the people of this Nation did by a general Custome till then observed, dispose of their Tithes according to their own free will and pleasure. So that it is very clear at the confirmation of the *Magna Charta*, no Custome of the Land for Clergy-men to have Tithes out of every Proprietors Estate, but that they were the proper right and inheritance of the owner of the Land.¹²³

The petitioners hold that the tithes are not defended as a right of the clergy and the Church had acknowledged it not long after the signing of Magna Charta.

Fortunately, we have a response to this petition in the form of *A Treatise of Tithes*. It argues for the ancientness of the tithes in England and that it has been confirmed many times by the Church and Parliament. It agrees that before the Lateran Council tithes were freely given, but that was five hundred years earlier so tithes were ancient enough to be common law. The *Treatise* questions the logic in questioning an institution which has been ordained by a law and has been in existence for centuries and been ratified numerous times in Parliament. It catalogues Acts of Parliament and first notes a Magna Charta clause which defends their position.

We have in the first place granted to God and by this our present charter have confirmed, for us and our heirs forever, that the English Church shall be free and shall have its rights entire and its liberties inviolate.¹²⁴

Classifying the tithes as one of the rights of the Church, they make the clause that protects it the very first clause of Magna Charta, thereby making the tithes the first thing the Magna Charta protects. The author concludes that it is the petitioner who has gone against Magna Charta.

So that he that penned that Letter is cleerly out, when he denyeth the Right of Ecclesiasticall persons to Tithes at the making of that Statute; and the Arguments used by him against Tithes, because he pretends them to be against *Magna Charta*, are cleerly against himself, and for the payment of

¹²³ *Epistola Medio-Saxonica, or, Middlesex first Letter to his Excellency, The Lord General Cromwell* (London: F. L., 1653), 5.

¹²⁴ Magna Charta, Clause 1.

Tithes; for they were then, and before the Churches Right; and so confirmed by *Magna Charta* cap. I.¹²⁵

He ends certain that he is entirely in the right because he believes *Magna Charta* supports him. He tells the reader this was written to clear up anything misleading about what *Magna Charta* says about the tithe and that both Parliament and *Magna Charta* are on his side.

A member of Parliament named August Wingfield responds to this response in *Vindiciae Medio-Saxonicae, or, Tithes totally Routed, by Magna Charta*. He attacks the author of the *Treatise's* reasoning and use of *Magna Charta* directly twice and insists that the tithe is absolutely against Common Law.

And first for proof thereof he saith *pag. 14*. That by the Common Law of this Land, at the confirmation of *Magna Charta*, Ecclesiastical persons had remedy to recover their Tithes in the Spiritual Court, and then concludes, that the Law gives no remedy but where there is a right: which assertion is very untrue. For *Cook* upon Tithes saith, That by the Common Law Lands are undecimable, and if undecimable, then certainly by that Law there can be no Church rights to Tithes, neither to be recovered by virtue thereof in the Spiritual, or Popes Court, Since the people of *England* were not bound in Law by his Cannons. Neither is *Shelden so. 291* saith, That Arbitrary disposition of Tithes used by the Laity, as we *de jure*, of right, (as the positive Law then received and practz'd was) as *de facto*, of deed and practise, is that which *Wickess* remembred in his Complaint to the King and Parliament under *R. 2*. The substance whereof in brief, is, That the proud and pompous Priests did constrain the poor People of *England* (*vix.* by Popish Canons) to pay their Tithes unto them, whereas within a few years before, they paid their Tithes and Offerings at their own free will and pleasure.¹²⁶

He cites Sir Edward Coke, the great scholar of *Magna Charta* from the early seventeenth century, that English lands are "indecimable" (unable to be tithed) and that the Common Law cannot be overruled by Spiritual or Canon Law. He also notes that before Richard II, tithes were paid freely, and the legal tithe is not ancient at all.

¹²⁵ *A Treatise of Tithes* (London: S. F., 1653).

¹²⁶ Aug. Wingfield, *Vindiciae Medio-Saxonicae, or, Tithes totally Routed, by Magna Charta* (London: F. L., 1653), 3.

But he objecteth and saith, That Tithes are contained in these words, *The Churches Rights, Mag. Char. cap. I.* for further satisfaction whereof, see *Cooks* exposition upon the very same words, where he saith, that Ecclesiastical persons shall enjoy their lawfull jurisdictions, and other rights (but not one word of Tithes) without diminution, and that no new Rights were given unto them hereby, but such as they had before confirmed: Now if no new Rights were given, then not Tithes, since the Author of the said Treatise confesseth *p. 14.* that the Common Right of Tithes due to the Rector of the Parish, is but from the time of *K. John*, and then, as *M. Selden* (whom he quoteth) *p. 146.* declareth, not so much as in opinion established, whereby it is evident, not onely by *Selden* and his own confession, but also in the judgment of *Cook*, that at the confirmation of *Magna Charta*, Tithes were not at all comprehended in the Rights of the Church.¹²⁷

Again Wingfield cites Coke and agrees that the Church shall have all the rights due to them by the law but no new rights.

Whether or not the petitioners were in the right, it is clear that *Magna Charta* still had a place in English law during the Interregnum. It was, after all, Charles I's overstepping of his legal bounds that eventually led to the English Civil War which created the Commonwealth, just as John I overstepped his legal bounds and created the need for *Magna Charta*. As in 1215, the Petition of Right was drafted in 1628 to curb illegal collection of funds by the Crown. In writing the Petition of Right, the House of Commons falls back upon *Magna Charta* to support the legitimacy of their assertions. Were it not for the authority Parliament took from *Magna Charta*, Charles I might have never been overthrown.

Edward Coke and the House of Commons drafted the Petition of Right as a response to Charles I's exorbitant spending on the Thirty Years' War. Parliament had refused many of the extra taxes that Charles I proposed and so he had forced his subjects to give him loans. Both the House of Commons and the House of Lords would not stand for it and put forward the Petition of Right to check Charles I's infractions.

The Petition of Right refers to the *Statutum de Tallagio non Concedendo* that no king may extract money from his subjects without their consent and argues that the forced loans were contrary to this. It then refers to *Magna Charta* in defense of those arrested by Charles I for refusing to give these forced loans.

And where also, by the statute call the Great Charter of the Liberties of England, it is declared and enacted that no freeman may be taken or imprisoned, or be outlawed or exiled or in any manner destroyed, but by the

¹²⁷ Wingfield, 3-4.

lawful judgment of his peers or by the law of the land; and in the eight-and-twentieth year of the reign of King Edward III it was declared and enacted by authority of parliament that no man, of what estate or condition that he be, should be put out of his land or tenements, nor taken, nor imprisoned, nor disherited, nor put to death, without being brought to answer by due process of law: nevertheless, against the tenor of the said statutes and other the good laws and statutes of your realm to that end provided, divers of your subjects have of late been imprisoned without any cause showed; and when for their deliverance they were brought before your justices by your majesty's writs of *habeas corpus*, there to undergo and receive as the court should order, and their keepers commanded to certify the causes of their detainer, no cause was certified, but that they were detained by your majesty's special command, signified by the lords of your privy council; and yet were returned back to several prisons, without being charged with anything to which they might make answer according to the law.¹²⁸

Charles I's imprisonment of his subjects without trial went against Magna Charta's clause thirty-nine (the same clause cited by the author of *Epistola Medio-Saxonica*). The king cannot legally overrule the judgment of the peers of the accused, but he continued to do so anyway.

Charles I had also been executing prisoners and housing troops in civilian homes as is only allowed during time of martial law.

And whereas of the late great companies of soldiers and mariners have been dispersed into divers counties of the realm, and the inhabitants against their wills have been compelled to receive them into their houses, and there to suffer them to sojourn, against the laws and customs of this realm, and to the great grievance and vexation of the people: and whereas also, by authority of parliament in the five-and -twentieth year of the reign of King Edward III, it is declared and enacted that no man should be forejudged of life or limb against the form of the Great Charter and the law of the land; and, by the said Great Charter and other laws and statutes of this your realm, no man ought to be adjudged to death but by the laws established in this your realm, either by the customs of the same realm or by acts of parliament; and whereas no offender of what kind soever is exempted from the proceedings to be used, and punishments to be inflicted by the laws and statutes of this your realm: nevertheless of late divers commissions under your majesty's great seal have issued forth, by which certain persons have been assigned and appointed commissioners, with power and authority to

¹²⁸ Petition of Right, 1628.

proceed within the land according to the justice of martial law against such soldiers or mariners or other dissolute persons joining with them, as should commit any murder, robbery, felony, mutiny, or other outrage or misdemeanour whatsoever, and by such summary course and order as is agreeable to martial law and as is used in armies in time of war, to proceed to the trial and condemnation of such offenders, and them to cause to be executed and put to death according to the law martial; by pretext whereof some of your majesty's subjects have been by some of the said commissioners put to death, when and where, if by the laws and statutes of the land they had deserved death, by the same laws and statutes also they might, and by no other ought to have been, adjudged and executed; and also sundry grievous offenders, by colour thereof claiming an exemption, have escaped the punishments due to them by the laws and statutes of this your realm, by reason that divers of your officers and ministers of justice have unjustly refused or forborne to proceed against such offenders according to the same laws and statutes, upon pretence that the said offenders were punishable only by martial law and by authority of such commissions as aforesaid; which commissions and all other of like nature are wholly and directly contrary to the said laws and statutes of this your realm.¹²⁹

The Petition of Right here makes it unlawful for the king to quarter troops in the homes of his subjects and to use martial law during times of peace. Although no specific clause of Magna Charta forbids the quartering of troops in civilian homes or the use of martial law in the time of peace, these provisions were necessary to prevent the king from going around the laws of Magna Charta. The Petition of Right would only be the first of many struggles between the House of Commons and Charles I. In 1649 it would be the House of Commons that executed Charles I as a traitor.

Young Oliver Cromwell was actually a member of Parliament in 1628, and at twenty-nine years old delivered his first speech in the House of Commons. From then on, his career was focused on defending the Common Law and the liberties of the people of England. Although he rarely mentioned Magna Charta, he saw it as the first step towards a written constitution. Cromwell mentions Magna Charta in his first speech to Parliament as Lord Protector of England in 1654.

In every government there must be somewhat fundamental, somewhat like a *Magna Charta*, that should be standing and be unalterable. Where there is a stipulation on one part, and that full accepted, as appears by what hath been said, surely a return ought

¹²⁹ Ibid.

to be: else what does that stipulation signify? If I have upon the terms aforesaid undertaken this great trust, and exercised it, and by it called you, surely it ought to be owned.¹³⁰

At this point in his speech, the Lord Protector is actually calling for a written constitution. His acknowledgement of Magna Charta shows his respect for the document and its fundamental strength to protect the Common Law.

There was already a written constitution in England by the time of this speech. The Instrument of Government was the first written constitution in English history and had been codified the day before his installation as Lord Protector on the sixteenth of December 1653, but Cromwell did not believe it was adequate. The Instrument of Government was based on proposals for a constitutional agreement with Charles I in 1647 when it was still likely that the king would have been allowed to remain on the throne. The Instrument of Government created the role of Lord Protector to take the place of the king as ruler of England.¹³¹ It gave Cromwell power, but it did not protect every fundamental that he believed should be protected.

Cromwell continues his speech by describing what should be fundamental in the constitution of the Protectorate.

That Parliaments should not make themselves perpetual is a fundamental. Of what assurance is a law to prevent so great an evil, if it lie in one or the same legislator to unmake it again? Is this like to be lasting? It will be like a rope of sand; it will give no security, for the same men may unbuild what they have built.¹³²

Here he says Parliaments should end so they do not change the law too often. If members of Parliament had lifetime positions, they would become too powerful. Cromwell was especially wary of the growing power in Parliament.

Is it not Liberty of Conscience in religion a fundamental? So long as there is liberty of conscience for the supreme magistrate to exercise his conscience in erecting what form of church-government he is satisfied he should set up, why should not he give it to others? Liberty of conscience is a natural right; and he that would have it

¹³⁰ Wilbur C. Abbott, *The Writings and Speeches of Oliver Cromwell*. Vol. 3 (Oxford: Clarendon Press, 1988), 459.

¹³¹ Roy Sherwood, *Oliver Cromwell: King in all but Name* (New York: St. Martin's Press, 1997), 1, 2.

¹³² *Ibid.*

ought to give it, having liberty to settle what he likes for the public.¹³³

He lays freedom of religion here as a fundamental, so long as it is not Catholic or Arminian.

Indeed, that hath been one of the vanities of our contests. Every sect saith, Oh! Give me liberty. But give him it, and to his power he will not yield it to anybody else. Where is our ingenuity? Truly, that's a thing ought to be very reciprocal. The magistrate hath his supremacy, and he may settle religion according to his conscience. And I may say it to you, I can say it: All the money of this nation would not have tempted men to fight upon such an account as they have engaged, if they had not had hopes of liberty, better than they had from Episcopacy, or than would have been afforded them from a Scottish Presbytery, or an English either, if it had made such steps or been as sharp and rigid as it threatened when it was first set up.¹³⁴

This I say is a fundamental. It ought to be so: it is for us, and the generations to come, And if there be an absoluteness in the imposer, without fitting allowances and exceptions from the rule, we shall have our people driven into wildernesses, as they were when those poor and afflicted people, that forsook their estates and inheritances here, where they lived plentifully and comfortably, for the enjoyment of their liberty, and we necessitated to go into a vast howling wilderness in New England, where they have for liberty sake stript themselves of all their comfort and the full enjoyment they had, embracing rather loss of friends and want, than to be so ensnared and in bondage.¹³⁵

Because liberty is the fundamental right of all men, they will readily give their lives for it. Whether it be in war or an untamed land, people will risk their lives to protect their liberty.

Another, which I had forgotten, is the Militia; that's judged a fundamental, if anything be so. That it should be well and equally placed, is very necessary. For put the absolute power of the Militia into one without a check, what doth it? I pray you, what doth your check put upon your perpetual Parliaments, if it be wholly stript of this? It is equally placed; and

¹³³ Ibid.

¹³⁴ Ibid.

¹³⁵ Ibid.

desires were to have it so, in one Person, and the Parliament, ---sitting, the Parliament. What signifies a provision against perpetuating of Parliaments, if this be solely in them? Whether, without a check, the Parliament have not liberty to alter the frame of government to Aristocracy, to Democracy, to Anarchy, to anything, if this be fully in them, yea, into all confusion, and that without remedy? And if this one thing be placed in one; that one, be it Parliament, be it supreme governor, they or he hath power to make what they please of all the rest.¹³⁶

A Militia must exist to protect the liberty of the people and to check the power of Parliament. At the same time, Parliament must exist to check the power of the Militia. If Parliament has no check, they might completely change the government to their whims and liberty will not be defended.

Therefore, if you would have a balance at all, and that some fundamentals must stand which may be worthy to be delivered over to posterity, truly I think it is not unreasonably urged, that the Militia should be disposed, as it is laid down in the Government, and that it should be so equally placed, that one person, neither in Parliament, nor out of Parliament, should have the power of ordering it. The Council are the trustees of the Commonwealth, in all intervals of Parliaments, who have as absolute a negative upon the supreme officer in the said intervals, as the Parliament hath whilst it is sitting. It cannot be made use of, a man cannot be raised nor a penny charged upon the people, nothing done without the consent of Parliament; and in the intervals of Parliament, without consent of the Council it is not to be exercised.¹³⁷

Cromwell sees the constitution as the fundamental base of a good government. For the government to work, he would establish checks and balances. There should be a Lord Protector, a Council, and a Parliament, and nothing shall be passed without the consent of all three. The constitution would serve to hold the three checks together and to protect undeniably the liberties of the people.

The Instrument of Government did protect most of these fundamentals. Article I secures the position of a single ruler in the form of Lord Protector.

That the supreme legislative authority of the Commonwealth of England, Scotland, and Ireland, and the dominions thereunto belonging, shall be and reside in one person, and the people assembled in Parliament; the style of

¹³⁶ Ibid.

¹³⁷ Abbott, 460.

which person shall be the Lord Protector of the Commonwealth of England, Scotland, and Ireland.¹³⁸

Article II agrees that there ought to be a council to assist the single ruler.

That the exercise of the chief magistracy and the administration of the government over the said countries and dominions, and the people thereof, shall be in the Lord Protector, assisted with a council, the number whereof shall not exceed twenty-one, nor be less than thirteen.¹³⁹

Article VI validates the authority of Parliament.

That the laws shall not be altered, suspended, abrogated, or repealed, nor any new law made, nor any tax, charge, or imposition laid upon the people, but by common consent in Parliament, save only as is expressed in the thirtieth article.¹⁴⁰

Article IV forms a militia that is run jointly by all three branches of government.

That the Lord Protector, the Parliament sitting, shall dispose and order the militia and forces, both by sea and land, for the peace and good of the three nations, by consent of Parliament; and that the Lord Protector, with the advice and consent of the major part of the council, shall dispose and order the militia for the ends aforesaid in the intervals of Parliament.¹⁴¹

Article XXXVII protects freedom of religion with the provision that it is not Catholic or Arminian.

That such as profess faith in God by Jesus Christ (though differing in judgment from the doctrine, worship or discipline publicly held forth) shall not be restrained from, but shall be protected in, the profession of the faith and exercise of their religion; so as they abuse not this liberty to the civil injury of others and to the actual disturbance of the public peace on their parts: provided this liberty be not extended to Popery or Prelacy, nor to such as, under the profession of Christ, hold forth and practise licentiousness.¹⁴²

¹³⁸ Instrument of Government, 1653.

¹³⁹ Ibid.

¹⁴⁰ Ibid.

¹⁴¹ Ibid.

¹⁴² Ibid.

The Instrument of Government was very effective in protecting Cromwell's fundamentals. It lasted nearly to the end of the Commonwealth, but it left out one glaring fundamental that concerned the Lord Protector deeply; no article prevented a perpetual Parliament. It was a fundamental to prevent a perpetual Parliament because if a bad Parliament refused to cease, it would be free to challenge the liberties of the people almost unchecked.

In 1657 Parliament presented The Humble Petition and Advice to Cromwell and asked that he be crowned king. The first proposal reversed Article XXXII of the Instrument of Government which made the role of Lord Protector an elected post.

That your Highness will be pleased by and under the name and style of Lord Protector of the Commonwealth [changed from king] of England, Scotland and Ireland, and the dominions and territories thereunto belonging, to hold and exercise the office of Chief Magistrate of these nations, and to govern according to this petition and advice in all things therein contained, and in all other things according to the laws of these nations, and not otherwise: that your Highness will be pleased during your lifetime to appoint and declare the person who shall, immediately after your death, succeed you in the Government of these nations.¹⁴³

In its constitutional form, The Humble Petition and Advice does not use the title of king because Cromwell accepted the petition but not the crown. To Cromwell the title of king would go against everything he had fought for, and after careful consideration he could not accept the crown.¹⁴⁴

Cromwell was also dissatisfied with The Humble Petition and Advice, because although it did not stop defending the fundamentals that were defended by the Instrument of Government it still did not prevent perpetual Parliament. In fact, it protected perpetual Parliament in the third proposal.

That the ancient and undoubted liberties and privileges of Parliament (which are the birthright and inheritance of the people, and wherein every man is interested) be preserved and maintained; and that you will not break or interrupt the same, nor suffer them to be broken or interrupted; and particularly, that those persons who are legally chosen by a free election of the people to serve in Parliament, may not be excluded from sitting in

¹⁴³ The Humble Petition and Advice, 1657.

¹⁴⁴ Sherwood, 167.

Parliament to do their duties, but by judgment and consent of that House whereof they are members.¹⁴⁵

Without any way of breaking Parliament, Cromwell was therefore unable to check it. It was apparent to Cromwell that Parliament was becoming far too powerful. Not long after The Humble Petition and Advice in early 1658 Cromwell would dissolve Parliament in favor of a military run government. The Humble Petition and Advice would remain the last written constitution of England, as the Lord Protector would be dead by the end of 1658.

Before his death in 1658, Lord Protector Cromwell's government was able to create two constitutions, the Instrument of Government in 1653 and The Humble Petition and Advice in 1657. The United Kingdom to this day has still been unwilling to create a written constitution in the three and a half centuries since the Restoration. Although he was never satisfied with the two constitutions of the Protectorate, Cromwell made great efforts to defend the Common Law and protect the liberties of the English people. He may at times have found Magna Charta too restrictive on his actions, but Cromwell appreciated it as an early constitutional document and almost certainly never called it "Magna Farta."

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¹⁴⁵ The Humble Petition and Advice, 1657.

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