

Some Aspects of English Historical Legacy to Political Culture

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England, later Great Britain and the UK, has been a very influential country in history, sometimes for the better, sometimes for the worse. This paper focuses on some of her positive contributions to political culture, some everlasting concepts that have been taken for granted for years, but whose historical origins are not so well known and which deserve to be highlighted.

The first issue I would like to discuss is the origins of the common law, probably England's most significant legacy. In the 12th century, in an attempt to centralize his power, King Henry II set up central courts at Westminster and made the law applied by the royal judges accessible to all England through a series of journeys that the judges went on every year. For this purpose, the country was divided into circuits and the judges became itinerant justices, who took the royal law to different parts of the country, beginning the process that led to the future supremacy of royal law over the law of the localities. In this way, royal law became common to all England, that is to say, it became the common law.

This law was very flexible since it was judge-made, which resulted in a dramatic growth of the common law in the High Middle Ages. Its flexibility also lay in the fact that the itinerant justices were given freedom to resort to different types of sources to base their verdicts on, not only Norman law but also Anglo-Saxon law, canon law and even Roman law.

Although the later development of statute law –law passed by the king in Parliament seemed to put an end to the early flexibility of the common law, this tradition did not disappear and, in the course of time, it re-emerged to create a peculiar legal system which includes case-law, customs and traditions alongside enacted laws.

Was the king limited by the law? The issue of supremacy of the law over the power of the king takes us back to the times of Magna Carta in 1215, when King John was forced to set his seal to the charter after his feudal vassals rebelled against his abuses in government.

Needless to say, the idea that the king is below the law had not yet appeared in the early thirteenth century. Nevertheless, this principle of government is present in an implicit way in any document which makes the laws of the land more precise, so that both subjects and sovereign know what is expected from them.

Magna Carta does not include philosophical or political theories, a detailed description of government or a list of old and new laws. It is neither a code of law nor a kind of constitution in the modern sense of the word. Its clauses are redefinitions of, not innovations upon, already existing laws. The barons' purpose was to confirm these laws, the English institutions from which they had emerged, and the machinery of government that enforced them. Article 40 clearly exemplifies this point.

To no one will we sell, to no one deny or delay right or justice.¹

The idea that the king is below the law can clearly be seen in the spirit of the clause, if not in its wording.

The same analysis can be applied to the document as regards the principle of the social contract between ruler and subjects, which became so significant many centuries later, at the time of the

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1. Translation into English by G. R. C. Davies, PhD.

Enlightenment. This idea does not appear in black and white but it can easily be read between the lines. The society of 1215 was a feudal one. Thus it was based on written contracts accepted by both lords and vassals, which included their respective rights and obligations. Magna Carta is a document that reflects this social and political organization. By redefining feudal customs and traditions, it implicitly confirmed the private contracts between the king and his barons and other lords and their own vassals, and it became a kind of general contract for the country, a compact to which each party had to make contributions, a compact from which they could derive their respective rights and obligations.

This concept of the feudal contract, however, clashed with the medieval doctrine that the king derived his power directly from God, which the Normans took from the Anglo-Saxons after the conquest in 1066. This duality lingered on throughout the rest of the Middle Ages and into the modern period, until it found its final solution in the 17th century. I will soon come back to this point.

Although Magna Carta does not include extreme or radical statements that could be startling for its age, clause 61 could appear to be rather radical in that it allows for the creation of a group of barons whose duty would be to check the King's fulfilment of his promises. These barons could also rebel with the support of the rest of the population against the sovereign if he failed to do what was stated in the charter. In a broad sense, the so-called resistance clause seems to legalize rebellion. But it was the only thing the barons could think of at that time, since they lacked the machinery of government that would enable them to make sure that the king would do as he had promised. This clause was omitted from later reissues of the charter, but its spirit was not completely lost and it reappeared during the 17th century.

We must admit that laws are useless without the will to abide by them. John himself was not willing to accept Magna Carta since it lessened royal power; this is why, as soon as the meeting at Runnymede came to an end, he got ready to fight against his vassals. Luckily for them, he died in the midst of preparations for war, which enabled the barons to control government during the minority of his son, who was crowned as Henry III.

Another important concept which can be traced back to Magna Carta is that of "no taxation without representation;" that outcry of many American colonists who refused to pay the taxes that Britain wished to impose on her colonies. Clause 14 of the charter states that when the king wanted to ask his subjects for extra amounts of money (called scutage or aid, the feudal equivalent to modern taxation) he would

cause the archbishops, bishops, abbots, earls, and greater barons to be summoned individually by letter. To those who hold lands directly of us we will cause a general summons to be issued, through the sheriffs and other officials, to come together on a fixed day (of which at least forty days' notice shall be given) and at a fixed place. In all letters of summons, the cause of the summons will be stated. When a summons has been issued, the business appointed for the day shall go forward in accordance with the resolution of those present, even if not all those who were summoned have appeared.

This article refers to the meetings of the Great Council, which later developed into Parliament. The Great Council was attended by all the king's tenants-in-chief, the vassals who had been granted land directly by the sovereign, and who had to be summoned every time the king wanted to levy extra taxation. Articles such as this one show that Magna Carta bears a significance that goes beyond feudalism and that has played an important part in English constitutional history even after feudalism declined and disappeared. In fact, the Argentinean Constitution is often called our Magna Carta in Spanish, which shows how important this document has become in the course of time, not only in the United Kingdom, but in western political culture as well.

And how did the Great Council mentioned above develop into the ancestor of modern Parliament? In the 13th century representatives from the middle classes began to be invited to the sessions of the Great Council, and in the following century they became permanent members of this assembly, which began to be called Parliament. It is true that the role they played was mainly passive at the beginning, simply consenting to taxation as the new members did not dare

to oppose the king at that time. Soon, however, they started to become aware of their growing importance within the machinery of government. The middle classes were becoming wealthier towards the end of the Middle Ages and the kings started to depend on them for extra taxes. When the middle classes got together in the House of Commons and gained control over taxation, they redefined the phrase “no taxation without representation”, even though they never expressed the idea in these words.

At the same time, they also acquired a powerful weapon to use against the king; every time he summoned Parliament to ask for extra taxes, the Commons demanded redress of grievances first, thus gaining other rights such as the right of impeachment or the right to present common petitions and thus initiate legislation. The fact that the middle classes obtained a voice in government as early as in the 14th century has become a great constitutional achievement in English history and a legacy that was to be inherited by future generations.

The legislative branch of government in England underwent constant development during the late Middle Ages and the early Modern Age. Gradually, the assembly became an essential part of the machinery of government, so much so that King Henry VIII carried out the break with Rome entirely with the support of Parliament, which made the changes legitimate in English common law. It is true that King Henry and his secretary Thomas Cromwell were very good at manipulating the members of Parliament, which was made easier by the fact that Parliament was still a primitive institution by modern standards.

However, quoting David Harris Willson, ‘at least, the Commons knew that they were worth manipulating.’

This awareness led to the appearance of feelings of self-respect and self-confidence which gave the Commons the strength they needed to deal with the Stuart kings in the following century. The Stuarts defended the doctrine of the divine right of kings, thus underestimating the Commons’ privileges and importance in government. This situation became the background to the clash that eventually resulted in the civil wars of the 17th century.

This is the constitutional and political tradition that the English emigrants took with them to America, to Virginia the first colony and, a few years later, on board the *Mayflower*, to modern Massachusetts. It is not surprising then that, a few years after the foundation of Virginia at the start of the 17th century, the House of Burgesses appeared as an assembly that played an active role in the government of the young colony. This assembly consisted of representatives from the different settlements chosen by the colonists who held land, which granted them the right to vote. It is not surprising either that the *Mayflower Compact* was signed by the so-called Pilgrim Fathers before they set foot on American soil. In the covenant they agreed to

combine our selves together into a civil body politic ... to enact, constitute, and frame such just and equal laws, ordinances, acts, constitutions and offices, from time to time, as shall be thought most meet and convenient for the general good of the Colony, unto which we promise all due submission and obedience.

The fact that the pilgrims were Separatists, a group within the Puritans who believed that each congregation was to be autonomous in religious issues and should have a voice in the decision-taking process, obviously resulted in the signing of the compact. But we must not underestimate the historical heritage that they brought with them, which must have contributed to shaping their political views.

In the 17th century, significant events took place in the mother country. The clash between the Stuarts and Parliament led to civil wars and a number of republican experiments carried out by Oliver Cromwell after the execution of King Charles I. The restoration of the monarchy did not solve the main constitutional and religious conflicts, which definitely came to an end with the English Revolution of 1688. This event, also called the Glorious Revolution since no blood was shed, was an answer to James II’s attempt to subvert English known laws and the religion accepted by the majority of the people. According to the parliamentarians of the time, the revolution aimed at preserving English institutions, which were being threatened by the king. When James fled to the Continent, Parliament declared the throne vacant and offered the crown to the king’s eldest daughter Mary and her husband William, who were both protestant.

Once again, all the statutes passed by Parliament on that occasion lacked declarations of political theories. It is outside the so-called revolutionary settlement that we find a philosophical justification of the principles derived from it. Needless to say, the reference is to John Locke's Two Treatises of Government, published in 1690, two essays that include his theory of the social contract, inalienable human rights and the right to rebel against the king when those rights are violated. According to Locke, men are originally born free and equal, subject only to the laws of nature. In order to avoid the inconveniences brought about by that state of nature, they enter into a commonwealth or community, and they form a civil society with a civil government to which they grant part of their natural rights. They retain, however, some basic inalienable rights that must be respected by the government. In Locke's words,

The Reason why Men enter into Society is the preservation of their Property; and the end why they chuse and authorize a Legislative is that there may be Laws made, and Rules set as Guards and Fences to the Properties of all the Members of the Society, to limit the Power, and moderate the Dominion of every Part and Member of the Society. Whensoever therefore the Legislative shall transgress this fundamental Rule of Society, and either by Ambition, Fear, Folly or Corruption, endeavour to grasp themselves, or put themselves into the hands of any other an Absolute Power over the Lives, Liberties, and Estates of the People; By this breach of Trust they forfeit the Power the People had put into their hands for quite contrary ends, and it devolves to the People, who have a Right to resume their original Liberty, and, by the Establishment of a new Legislative ... provide for their own Safety and Security, which is the end for which they are in Society. What I have said here, concerning the Legislative ... holds true also concerning the supreme Executor.

In 17th century Britain, the executive branch of government was dramatically affected by the revolution of 1688. The revolutionary settlement proclaimed the sovereignty of Parliament. If Parliament can make kings, it can also unmake them following the concept of lawful resistance. Consequently, it became the body where sovereign power resided, and Britain emerged as a limited monarchy a century before the French rebelled against the absolutism of Louis XVI. The Coronation Oath written for William and Mary, clearly shows this since, for the first time, a king and queen had to swear to respect "the statutes in Parliament agreed upon, and the laws and customs of the same."

Locke's words are clearly echoed in the Declaration of Independence of the USA when it says

We hold these truths to be self-evident, that all men are created equal, that they are endowed by their Creator with certain unalienable Rights, that among these, are Life, Liberty, and the pursuit of Happiness. That, to secure these rights, Governments are instituted among Men, deriving their just powers from the consent of the governed, that, whenever any Form of Government becomes destructive of these ends, it is the Right of the People to alter or abolish it, and to institute new Government, laying its foundation on such principles, and organizing its powers in such form, as to them shall seem most likely to effect their Safety and Happiness.

The eighteenth century witnessed the appearance of the ideas of the Age of Reason, among them Montesquieu's ideal type of government: three branches that checked one another to ensure balance of power. One of his sources of inspiration was British government, where he thought that three different powers could be clearly found. What he failed to notice from a distance was how powerful Parliament had become. Since the revolution of 1688, Parliament had had sovereignty over the king. Even the judicial power was closely connected with the House of Lords as this chamber had retained its traditional role as the Supreme Court in the land. In this way, England became an example through an ironic misunderstanding and indirectly influenced the writing of the Constitution of the USA, which adopted the principle of the separation of powers, and in turn, became a model for other constitutions like the Argentinian one.

The English documents and events discussed above have contributed significantly to the development of a strong feeling of respect for the rights and liberties gained in the course of time, and above all, for the rule of law in English society. This respect for the rule of law concerns acts

of Parliament, constitutional documents, judge-made law, tradition and custom, that is to say, what is known as English common law.

A good example of an unenacted convention can be found in Victorian times and it affected the selection of the prime minister. For many years after the revolution of 1688, kings had preserved the right to appoint their prime ministers. It was during the early Victorian period that a minor constitutional crisis led to the final settlement of this issue. At that time the Whig and the Tories, the two political parties of the time, had even forces in the Commons. Having relied on the support and good counsel of her Whig Prime Minister Melbourne, Queen Victoria refused to admit changes when he resigned and the Tories were asked to form a new Cabinet. Robert Peel, the leader of the Tories, felt that he could not take over government while the Queen was surrounded by Whig ladies and advisers at court. When he asked her to dismiss some of those ladies from her side as a sign of support for the new government, the young Queen considered this a gross interference in her private life and called Melbourne back. Lord Melbourne was Prime Minister until the elections of 1841 gave the Tories a clear majority over the Whigs. It did not take the young queen long to give in to what was inevitable, and from that moment onwards and without the need for an act of Parliament, it became firmly established that the Prime Minister had to be the leader of the political party that had won a majority in the Commons, regardless of the sovereign's desires.

This last issue has become one of the valuable lessons I have learnt throughout my studies of British history. Laws are passed to be respected whether they are convenient for our own personal or political interests or not. The same applies to long standing conventions that need not be enacted if citizens are guided by their common sense and their acceptance of what is best in the interests of society as a whole. Of course, there will always be people who break the law everywhere, but there should be a general attitude of respect for the rule of law as the basis of society if we want that society to be fairer and organized on a sound basis. Perhaps this lesson is pointless in many countries, but it is very significant in Argentina, where the law often seems to exist only to be ignored, broken, or manipulated. Widespread respect for the law should not be a utopia in any culture. It should be an aim worth aiming at.

Reference

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