A POCKET BOOK OF FREEDOM

December 2013

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A POCKET BOOK OF FREEDOM

The Hampden Trust

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The Rule of Law

Most people accept the importance of living in a land where the 'rule of law' is upheld but beyond that, who cares ?

Who cares who makes the law ? Who cares how the law is made; who administers it and, not least, upon what principles it is founded ?

These are fundamental questions that should concern us all because essentially they define whether we are living in a dictatorship or in a democracy.

Under a totalitarian regime the answers to the questions posed above are almost universally provided by the dictator himself, or the henchmen appointed under him.

Their decree is absolute. The consequence is invariably a jurisdiction in which false accusation, arbitrary arrest and wrongful imprisonment are the order of the day.

Even in modern times tens of millions of ordinary people have, with their lives, paid the price of living under such regimes – tryrannies, under which the proverbial knock on the door in the small hours of the morning sends paroxysms of sheer terror through its victims' minds.

In contradistinction the English, from at least the time of Magna Carta, until recently that is, always had a clear and consistent view that one of the chief purposes of the law was to ensure that individuals would always be free from coercion by those that rule them.

The English common law with its range of defences and protections against State inspired coercion has ensured that, for centuries, we have been a truly 'free' people – until recently we could confidently say that it is the law that makes us free and it is the law that keeps us free.

The following chapters, by addressing the questions posed above, seek to demonstrate the utter stupidity and irresponsibility of abandoning fundamental aspects of our common law, both in terms of its effect upon the freedom of the individual and not least, in terms of its effect upon the democracy we pride ourselves as living in.

Who Cares
Who Makes the Law ?

By whom the laws that rule our lives are made is fundamental.

If the laws were made exclusively by those that we elect by secret ballot to rule over us, that would be classed as democratic. The cause of democracy is further served if, in the event of there being dissatisfaction with or revulsion against the laws that are being made in our name, we have the power, again through the ballot box, to dismiss those who have by their actions destroyed the confidence placed in them to govern us responsibly and well.

On these two principles the Rule of Law, as understood in the United Kingdom in particular and the Anglosphere in general, was founded.

Until the advent of the European Union there was no individual law or body of law, made or conceived, over which our directly elected representatives did not have the ultimate power of decision. The law was made by 'the tribunes of the people' and it was the 'people' to whom, in the final analysis, 'the tribunes ' were answerable.

The question is, who cares that the majority of our new laws are now initiated by unelected and unaccountable bureaucrats in Brussels ? Who cares that these new laws are inflicted upon us by EU Councils comprising Ministers from 27 other countries voting by Qualified Majority Voting (QMV) with Britain so often outmanoeuvred and outnumbered ? Who cares that the people passing this never-ending stream of legislation do so without public record, effectively in secret ?

Furthermore, who cares that the Members of the Westminster Parliament who scrutinise some but by no means all of the legislation emanating from the European Commission do so in the certain knowledge that they can neither amend nor reject any part of it ? By dint of the treaties, EU regulations and directives simply have to be put onto the Statute Book and then, on pain of hefty fines imposed by the European Court of Justice, have to be implemented.

So, who does care who makes our laws ?

Apparently not any of the Political Parties currently represented in the House of Commons and most certainly not the supine leaders of any one of those individual Parties. They hide behind the pathetic figleaf that because the Ministers who attend the meetings in Brussels are themselves democratically elected then the cause of

democracy is served, notwithstanding that the hapless Minister is frequently outvoted by his foreign counterparts and that the consequent decision is foisted upon us anyway.

No, the people who really care who makes our laws are the silent majority who will, in the fullness of time, conclude that what currently passes for democracy is but a chimera. At that point, which may not now be far away, there will be a wholesale revulsion against the treacherous Parties and duplicitous politicians that have led us into what a well known leading Europhile once succinctly but accurately described as the 'post democratic age'.

Who Cares How the Law is Made ?

How our laws are made may be of limited interest to most of our fellow countrymen but in the huge sea-change that has engulfed our nation's institutions these past 40 years the question has become one of more than academic interest.

Prior to 1973 it was axiomatic that new laws were exclusively initiated by the Westminster Parliament. That is not to say that the Civil Service didn't make a substantial input into the process but the fact remained that prospective new laws made no progress unless, firstly, they were adopted by the Government of the day and that, secondly, the Government could persuade a majority of MPs to vote for them.

Post 1972 all that has changed. In defined areas Her Majesty's Government may still initiate and proceed to enact new laws but it is generally recognised that the preponderance of new legislation these days is tabled at the initiative of the unelected and unaccountable EU Commission in Brussels. Some may cling to the naive belief that the European Parliament is a replica of the Westminster Parliament and has the same powers of initiation and execution – nothing could be further from the truth. In reality the EP is no more than a talking shop, an Assembly

of widely disparate groups and individuals which, at best, enjoys the power of co-decision with the Commission and the European Council. In practice the vast majority of those who seek election to the EP seem almost inevitably to support the concept of 'ever closer union' within the EU and become little more than cheerleaders for an institution which boosts their own self-importance, not to mention their seductive life-styles!

Historically the progress of new legislation in the United Kingdom followed a well defined course. Having been agreed to by the Government of the day a Bill would be introduced in the House of Commons where the bare bones, or the principle, of the Bill would be considered in a Second Reading debate. At that stage, dependent upon whether the Bill was contentious or not, MPs would vote, or might possibly not need to vote, to allow the Bill to 'go into committee' where it would be subject to critical analysis and quite possibly a series of amendments triggering an infinite number of votes, or 'Divisions', prior to emerging with the assent of the majority of the MPs serving on that committee. The Bill would then be sent to 'the other place' for further scrutiny and potential amendment prior to coming back to the House for its Report and Third Reading stages - stages at which there would be yet further opportunities to debate or even amend aspects of the Bill before finally voting to approve or reject it. Only after this extensive process, during the course of which the Bill had

been subjected to the repeated scrutiny of the 'tribunes of the people' and their Peers, would the Bill be sent for 'Royal Assent' and find its way onto the Statute Book.

Contrast that procedure, whereby at every stage each piece of new legislation (barring 'Statutory Instruments' which I shall come onto) has been subjected to the scrutiny and potential rejection by the elected representatives of the people, with the method by which EU legislation reaches the Statute Book.

As has already been stated, in the first instance the power of initiation rests with the European Commission, not with our elected representatives. Once the European Commission has submitted its legislative proposal to the European Parliament and the European Council it is given a first reading debate in the Parliament at which the EP adopts its own position. If the Council approves the EP's wording then the act is adopted. If not, the Council then adopts its own position and passes it back to the EP. At its second reading the act is adopted if the EP either approves the Council's text or fails to take a decision. The EP may reject the Council's text, leading to a failure of the proposed legislation, or modify it and pass it back to the Council. The Commission then gives its opinion once more and in the circumstances in which the Commission has, in its expressed opinion, rejected EP amendments the Council must then act unanimously rather than by majority.

In short, the final decision regarding proposed new EU legislation rests with the bureaucracy and the single representatives from each of the 28 member States sitting as a Council of Ministers. The EP is permitted to make its views known and to propose amendments but, as can be seen from the above, the ultimate decision is not within their competence.

Back in the UK, the European Scrutiny Committee may recommend, but not insist, that new EU legislative measures be debated in the chamber of the House of Commons. In practice that, sadly, is the exception rather than the rule and most EU measures find their way into law via the Statutory Instrument procedure. Under this procedure Government Ministers, using powers delegated to them, can effectively ensure that EU and indeed other measures, have a virtually unimpeded passage onto the Statute Book.

Given that, by dint of the treaties, EU Directives, Regulations, Decisions, Recommendations or Opinions cannot be ignored, the notion that they are implemented by a process that is essentially democratic is delusional – the pretence that they have been scrutinised, in the true sense of the word, even more so!

Who Cares Who Administers the Law ?

The barons who prevailed upon King John to put the Great Seal upon the *Magna Carta* could have scarcely imagined that some of the basic principles thereby established would have endured for close on 800 years.

In 1215 the notion that an offender should be tried by his peers, in accordance with the law, would doubtless have appeared as something of a novelty in a land of serfs accustomed to the arbitrary rule of authoritarian landowners and despotic monarchs.

But today who really cares that the adversarial system of criminal justice stemming from that landmark Charter is being steadily undermined and eroded by the continental inquisitorial system instituted in that same era by Pope Innocent III ?

Who cares that on the continent of Europe a system of criminal justice prevails which puts the onus upon defendants to prove their innocence ? More importantly who cares that our own system, which quite rightly places the onus upon the prosecution to establish guilt, is in danger of being subordinated to the continental system ?

It is claimed that there is an 'equivalence' between our own criminal justice system and that extant in continental Europe. Indeed, that is what Home Office Minister, Bob Ainsworth, argued at the time that he was taking the Extradition Bill through its Committee Stage in the House of Commons in 2003. The reality is that there was no such 'equivalence' then and there is no such 'equivalence' now!

That Bill, which became the Extradition Act 2003, embodied the European Arrest Warrant which removed the requirement for *prima facie* evidence to be presented in a British court before a person could be extradited to another jurisdiction. Previously, unless the judge was satisfied that the standard of evidence presented was sufficiently convincing an extradition warrant would not be forthcoming. Now all that the judge is permitted to do is to ensure that the details, such as name and address, are correct on the face of an EAW before extradition is granted.

There is no better example than the iniquitous EAW of how the old British system of law, designed as it was to protect and defend the liberty of the individual against coercion by the State, is giving way to a system of law in which the primary purpose is to ensure the supremacy of the State.

The law of *Habeas Corpus* is unknown in the rest of the EU - Ireland and Malta excepted - and yet it is the very bedrock of individual liberty. As Archbishop Desmond Tutu once put it on BBC Radio 4, "*Habeas Corpus* is such an incredible part of freedom".

Trial by Jury and 'innocent until proven guilty' are the very principles upon which the English common law is founded and yet they are in danger of being subordinated to an alien set of principles based upon the *Code Napoléon* (Napoleonic Code).

It used to be said that 'better ten guilty men go free than that one innocent person be punished' but on the pretext that the prevention of terrorism justifies the means that maxim is being turned on its head by legislators who are either unforgivably ignorant of the principles upon which British justice was heretofore founded or otherwise, culpably venal.

Who Cares What Principles the Law is Founded Upon ?

So, what are the principles upon which traditional English common law is founded ?

Firstly, that until proven otherwise, every person is presumed innocent. The **presumption of innocence** is the very keystone of the British criminal justice system.

Secondly, except under the circumstances prescribed in the latter day Prevention of Terrorism Act, nobody may have their liberty infringed without being charged in open court within 24 hours of arrest. Crucially the 'charge' has to be backed by prima facie evidence. Even when the suspect is thought to have committed murder, detention without charge may only be extended, with the permission of magistrates, to a maximum of 96 hours. This fundamental principle is enshrined in the law of ***Habeas Corpus*** which Archbishop Desmond Tutu once described as being "such an incredible part of freedom".

Thirdly, the right to **trial by jury**, originating in *Magna Carta*, forms part of the very bedrock of the British criminal justice system. Its significance is that it ensures

that the defendant can insist that he or she is effectively 'tried' by his or her peers - '12 good men and true' - drawn at random from amongst the general public and demonstrably independent of 'the powers that be' who might otherwise act in an authoritarian and arbitrary fashion.

Fourthly, until recently that is, it was always held that once a defendant had been acquitted it was unlawful to charge that person again with the same offence. **Double jeopardy** was something that British subjects have heretofore never had to worry about. The view was taken that it was totally unacceptable that a potentially innocent person should forever live under the threat of being dragged through the courts again and again in the circumstances in which the prosecution had failed to establish guilt in the first case. An unwritten principle of the British criminal justice system was that it was better that 10 guilty men went free than that one innocent person be hanged.

Fifthly, in order to avoid the possibility of defendants being condemned on the strength of their own testimony the law embraces the **right to silence**.

Sixthly, the **inadmissibility of hearsay** avoids the possibility of defendants being found guilty on the basis of say-so evidence from absent 'witnesses'.

Seventhly, the **withholding of previous convictions** ensures that the hearing of cases brought to court are not prejudiced by the defendant's previous record.

Eighthly, trials ***in absentia***, in other words trials in the absence of the defendant, have no place in the British criminal justice system.

Finally, we have **reporting restrictions** so that whilst matters are *sub judice* Press reporting is limited so as not to prejudice a fair trial.

As can be seen from the foregoing, the British system of criminal justice has bent over backwards to protect and defend the individual from State-inspired coercion. It has been the individual's sure protection against false accusation, arbitrary arrest and wrongful imprisonment.

As we face a future in which the harmonisation of criminal justice systems within the European Union looms ever closer it is instructive to note that there is no equivalent of the law of *Habeas Corpus* in continental Europe, trial by jury is a little known concept and they most certainly don't start from a position of presumed innocence!

As for all the other defences against State coercion that we British enjoy, in the event of an acquittal, the continental systems allow the prosecution to appeal for the defendant

to be tried again; a defendant's refusal to answer questions is regarded as an admission of guilt; reported or 'hearsay' evidence is frequently used to obtain convictions; a defendant's record, including prosecutions pending, may be read out at the hearing; the defendant may be tried without being present in court or, as recently confirmed, without the defendant even being aware of the hearing and, not least, the Press are free to name names and express opinions both before and during the course of a trial.

At a time when we stand in extreme danger of having the European Court of Justice made superior to our own national institutions those of us who were born free, for that is the very nature of our British inheritance, would do well to contemplate the commendable words of Admiral Blake, the chief founder of England's naval supremacy in the 17th century, that "I will have the whole world know that none but an Englishman shall chastise an Englishman".

The English common law is what has made us a free people and has kept us a free people – the prospect of surrendering it in favour of criminal justice systems whose *raison d'etre* is to ensure the supremacy of the State rather than the freedom of the individual is really too awful to contemplate but, be warned and be very afraid, that is the direction in which your Government is currently taking you.

The Dagger Pointed at the Heart of Freedom

The 'Working Time Directive', the 'Financial Transactions Tax', the 'Metric Directive' and all the other mindless Directives and Regulations that spew out from the European Commission may be unnecessary and unwanted but at least they don't directly affect our freedom as individuals.

They may well be irksome in as much as they affect our freedom of action and our financial wellbeing but mercifully they don't actually threaten our physical liberty.

That happy state of affairs all changes when, in their infinite wisdom, our rulers surrender aspects of our criminal justice system to the extent that we can no longer go about our daily round, safe in the certain knowledge that we cannot be subject to arbitrary arrest and indefinite detention.

As long ago as 1997, at a seminar in San Sebastian financed by the European Commission which was, to quote the official programme, "to make known the content

of the *Corpus Juris*... which has been conceived as the embryo of a future European Criminal Code", the question was asked as to whether in drawing up that Code any comparative studies had been made between continental criminal justice systems and the British system.

Answer came there none – after a pregnant pause the Chairman of the seminar simply invited the next question!

Worse was to follow. At the time of the passing of the Extradition Act 2003, which incorporated the now notorious European Arrest Warrant, the Government Minister taking it through its Committee stage in the House of Commons claimed that that there was an 'equivalence' between the British criminal justice system and that extant in continental Europe. That so-called 'equivalence' didn't exist then and it doesn't exist now!

That non-existent 'equivalence' had to be conjured up because, at Tampere in Finland in 1999, a policy of mutual recognition (of each member state's criminal justice systems) had been adopted, notwithstanding the massive fundamental differences that exist between, specifically, the British system and that of all the other Member States, the Republic of Ireland and Malta excepted.

Under the terms of the Lisbon Treaty (2007) the United Kingdom has until 31st May 2014 to decide whether or not it continues to be bound by the 130 or more police and criminal justice measures which were adopted before that treaty entered into force or indeed, whether it should exercise its right to opt out of all of them. Having taken this latter course it can now elect to opt back into any number of these measures and the present government has announced its intention to opt back into 35 of them, including the European Arrest Warrant, despite the fact that the Tories ostensibly opposed it in 2003.

In the event that the UK Government carries out its declared intention then all those measures that it opts into "will become subject to the jurisdiction of the CJEU (European Court of Justice) and the enforcement powers of the European Commission on 1st December 2014" (Cm 8671). In other words, in respect of Europol, Eurojust, CEPOL etc. control will be beyond the reach of the Westminster Parliament, aka the British people! Significantly, if subsequently we find that we do not like any of these arrangements, we will no longer have the faculty to opt back out again.

Making our domestic criminal justice system, or indeed any part of it, irreversibly subject to the jurisdiction of courts beyond these shores is not only dangerous, in as much as it opens up the possibility of British subjects

being detained or incarcerated by alien courts applying alien and, at present, unresearched laws and procedures, but also undemocratic in the sense that it is our birthright as British subjects to live our lives under the law of this land, made in our own Westminster Parliament by those that we ourselves from time to time elect for that very purpose and whom we can just as easily dismiss at an ensuing General Election if we don't like what they are doing in our name.

Different individuals will have their own differing opinions as to the true meaning of freedom but few Britons would surely accept that genuine freedom exists in countries where the individual citizen is subject to the vagaries of a criminal justice system that does not require the production of *prima facie* evidence as a prelude to arrest or detention, where 'trial by jury' is not available and in which the onus is upon defendants to prove their innocence.

The dagger pointing at the heart of individual liberty is the very real prospect that, by opting into the 35 EU police and criminal justice measures, our Government will place us firmly onto a conveyor belt taking us inexorably in the direction of an alien criminal justice system in which all the defences and protections that British subjects have heretofore enjoyed against coercion by the State are simply not replicated.

As an example of how justice in this brave new world of 'ever closer union' really works, we need look no further than the European Arrest Warrant – justified on the dubious assertion that the EAW is essential to combat financial fraud, terrorism and thirty other undefined areas of criminal activity, but resulting in practice, as some British subjects know to their cost, in the lives of innocent people being ruined by false accusation, arbitrary arrest and wrongful imprisonment.

Throughout a long and proud history Britain has not only repeatedly defeated the forces of tyranny in bloody wars but effectively invented what has come to be known these days as 'human rights'. Surely we deserve better than that our present leaders plunge the dagger into the heart of the English common law that has not only stood the test of time but also, more importantly, ensured that we could indeed call ourselves a truly free people.

The Runnymede Speech

Addressing a gathering of Freedom Association members at Runnymede on the occasion of the 798th Anniversary of the signing of Magna Carta the Hon. President, Christopher Gill, said :

Ladies & Gentlemen, we are gathered here today as members of the Freedom Association to mark the 798th Anniversary of King John putting the royal seal to the *Magna Carta*.

You will hardly be surprised when I tell you that the text for what I have to say on this historic day is the single word, Freedom... but before developing that theme I want to pay tribute to the two Prime Ministers who, in my lifetime, truly understood the meaning of that crucial word.

I refer of course, in the first instance, to Sir Winston Churchill who, against all the not inconsiderable odds stacked against him, united the then British Empire in the armed struggle against the Axis forces of terror and tyranny.

As a child I lived through the Second World War. Night after night we slept under the dining room table or in the

next door neighbour's air raid shelter. As the bombs rained down and the bullets flew my generation instinctively knew that freedom was well and truly on the line.

In the second instance, as many of you will have already guessed, I want to pay tribute to the late lamented Margaret Thatcher who unswervingly stood up for freedom. She instinctively knew that there is no 'third way' between freedom and tyranny and, as we all know, it was her declaration of opposition to EU imposed tyranny in her famous Bruges speech which provoked the forces of darkness within the Conservative Party to engineer her defenestration.

But before that appalling act of treachery and betrayal it was the Western world's great good fortune that, in cahoots with Ronald Reagan, Margaret Thatcher stood up to Soviet Russia and effectively ended the Cold War. She understood, better than most, that the way to deal with bullies is to stand up to them, just as she had stood up to the bullies in the Trades Union movement and banished the iniquitous 'closed shop'.

To quote the Iron Lady "A man's right to work as he will, to spend what he earns, to own property, to have the State as servant and not as master; these are the British inheritance. They are the essence of a free economy. And on that freedom all our other freedoms depend".

Those words of Margaret Thatcher's encapsulate some of the most important fundamental human rights - the right to act, to speak or think freely, to be master of one's own fate - the origins of which go back to the *Magna Carta* sealed by King John on this day in 1215.

On line 40 of that historic document, as translated from the original Latin, it is stated that "No free man shall be taken, imprisoned, outlawed, banished, or in any way destroyed, nor will We proceed against or prosecute him, except by the lawful judgement of his equals and by the law of the land".

That sentence, together with the sentences either side of it, have been the bedrock of British justice for far longer than most other countries have existed.

In the words of the late Lord Denning, *Magna Carta* is "the greatest constitutional document of all times – the foundation of the freedom of the individual against the arbitrary authority of the despot".

Throughout history, even to the present day, the spectre of despots, dictators, oppressors – call tyrants what you will – is ever present. The all too common hallmark of their generally evil regimes is invariably that of false accusation, arbitrary arrest and wrongful imprisonment.

To the lasting shame of our own British Parliament the passing into law of the European Arrest Warrant by dint of the Extradition Act in 2003 rendered British subjects powerless to resist that same spectre of false accusation, arbitrary arrest and wrongful imprisonment from which we had heretofore been so adequately protected. Plunging us back into aspects of the criminal justice of the Dark Ages the Government of the day argued that there was an equivalence between British common law and continental law which simply didn't exist then and doesn't exist now. With the exception of Malta and the Republic of Ireland, the law of *Habeas Corpus* and the crucial right to 'Trial by Jury' are virtually unknown in the rest of the European Union. East of Dover the onus is upon defendants to prove their innocence - in stark contrast to the British criminal justice system which requires the prosecution to establish guilt.

Before the end of May next year, when the deadline expires, the Westminster Parliament has the opportunity to opt out of 130 EU police and justice measures. The importance of this being done cannot be overstated. The power of the State to exercise coercion over the individual has to be prevented and it is down to the present generation of Parliamentarians to ensure that this crucial dividing line between freedom and tyranny is never crossed.

In my lifetime, at the hands of murderous dictators and deranged despots, millions of innocent people were consigned to concentration camps and labour camps where the almost inevitable fate that awaited them was death in unspeakably appalling circumstances.

Our own Vice President, Vladimir Bukovsky, has personal experience of life in the gulag but listen to the proverb quoted by another Russian dissident, Alexander Solzhenitsyn, in his book "The Gulag Archipelago"... **Freedom spoils, lack of freedom teaches!**

We, who have enjoyed Freedom for so long that we take it for granted, **have** been spoilt!

As if to underscore that point, what an irony it is that the memorial to *Magna Carta* which now stands in the meadow of Runnymede was commissioned by the American Bar Association rather than by the British who effectively invented Freedom!

As to 'the lack of freedom teaching', if the EU ratchet is allowed to grind inexorably onwards and snuffs out the criminal justice system which has for so long protected us against State coercion, we shall learn a lesson the likes of which scarcely bears thinking about.

I therefore beg the present generation of Parliamentarians to stand firm against the surrender of British common law.

Defending the freedom of the individual against coercion by the State is their single most important fundamental duty and responsibility.

To paraphrase the immortal words of Admiral Lord Nelson, **"England expects**...

For its part, the Freedom Association **expects**... every Member of the Westminster Parliament - **in whom the instruments of freedom and democracy are entrusted** - to earn the gratitude and respect of all the people by ensuring the continuance of British common law... or forever be held in utter contempt!

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