EVOLUTION OF ANGLO-AMERICAN LEGAL PROTECTION OF HUMAN RIGHTS

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Abstract:
The United Kingdom and the United States share several commonalities: both use English at the common language, both use common law based court decision as well as having a constitution as their legal basis rather than code law, and both are predominately Christian countries. These factors have resulted in highly advanced respect in the law for protection of human rights. The British were moving toward acceptance of human rights long before Americans had populated the North American continent and although they became enemies in the years of colonization and shortly after the Establishment of the United States as an independent country, they have reached many of the same positions on human rights such as abolition of slavery, equal rights for all, and protection of the weak against the strong.

Key words: *abolition, equal opportunity, limited government. Magna Charta, separate but equal.*

INTRODUCTION

Anglo-American legal protection of human rights have been evolving since the 13th Century with the British leading the way since there was no appreciable colonization of the North American continent by English subjects until the 17th Century. The English constitution, being an "unwritten" document consisting a all of the laws of Parliament was subject to many changes, while the American Constitution is a compact document that is difficult to amend. Both constitutions have evolved over the years to expand protection of human rights for the citizens of the two countries.

ENGLISH BEGINNING

Prior to the encounter between noblemen and King John at Runnymede in 1215, the king had absolute power of his subject: who will live, who will die, who can inherit English land, how much subjects must pay in taxes, etc. The noble men began to reduce those powers of the king in the Magna Charta.

The Magna Charta was a charter first issued in 1215 A.D. to force King John to proclaim certain rights to his subjects and to accept that his will was not to be exercised arbitrarily by insuring that no free Englishman can be punished except by a legal process. A later version in 1297 omitted some challenges to the king's power and the document was renamed The Great Charter of the Liberties of England and of the Forest. It remains on the status book of England and Wales and the process was underway to limit the absolute powers of the king. This Magna Charta has been called the first of a series of instruments that have constitutional status in granting human rights, the others being the Habeas Corpus Act, the Petition of Right, the Bill of Rights, and the Act of Settlement. These acts stated that taxes could only be levied by the

Parliament, that martial law could only be imposed during time of war, and persons could challenge the legitimacy of their detentions by a writ of Habeas Corpus.

Over the years prior to the time that the 13 English colonies were established in America, the English went through several civil wars, many of them aimed at changing the English constitutional system, but it remained intact although the English kings still acted in arbitrary ways well into the 18th century. Some political theorists were inspired to analyze the existing conditions and explain why certain political positions were appropriate. Thomas Hobbes (1588-1679) was a champion of the absolute power of the English monarch. He had been influenced by the English Civil War fought between 1642 and 1651 and wrote a political treatise called in the short title, Leviathon to explain why governments exist. He began by looking at human beings in "the state of nature" meaning without any control over their actions. In the natural state as perceived by Hobbes, people act selfishly, having no regard for their fellow human beings. They are continually fighting among themselves for the best food, the best habitations, the best mates.

Since there are no rules to live by, they take what they want by force, destroying other human beings who have something they want. There is no penalty for clubbing a neighbor to death to get the antelope he has killed for food, the cave that he has cleaned out for himself and his family, or for his wife who is devoted to him. Hobbes saw life in such conditions as "brutish, nasty, and short," therefore, because of such conditions, people have instituted governments to provide rules and police forces that will prevent the strong from dominating the weak and the greedy from stealing from those who cannot protect their property. This is an argument for a strong government to control human beings. Of course, such restraint is necessary to an extent, but it can be overdone and intrudes on the private lives and civil liberties of citizens. All citizens should have the right to enjoy their lives so long as they do not interfere with other citizen's lives and have the right to enjoy the property they accumulate within the rules accepted by society. Unfortunately, Hobbes did not specify that there should be limits on the government which meant, inter alia, the British King.

A later English philosopher, John Locke (1832-1704), challenged Hobbes' ideas in writings called Two Treatises on Government. Locke also looked at humans in the natural state without government or laws. In his view, humans are mostly good in nature and have "right reasoning powers" that help them make the proper decisions in dealing with other human beings. Locke recognized, however, that a small proportion of any group will not exercise right reasoning and will make life inconvenient for others. They will use brute strength to dominate those with less strength and will plot to steal and destroy what others have earned by their hard work.

Because of this minority that can make life difficult for the majority, governments are instituted to establish rules to restrain the lawless minority. This is the argument for "limited government" and not a government that tries to control all activities of the citizens. Under the Hobbesian scheme, unless a law specifically allows an action to take place, it isn't allowed. Under the Lockean ideas, actions are allowed unless a law specifically forbids it.

British monarchs continued into the 18th century to use the Hobbesian model to dominate their colonies, resulting in a Declaration of Independence for 13 British colonies in North America. This declaration written by Thomas Jefferson and adopted

by all of the 13 colonies contains some of the most sublime ideas relating to human rights ever written. These ideas have been adopted by many other democracies: "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 them are Life, Liberty, and the Pursuit of Happiness. That to secure them, governments are created among Men, deriving their just powers from the consent of the governed." As President Abraham Lincoln later said in his Gettysburg Address in 1863 that war may be necessary to insure "that Government of the people, by the people, for the people does not perish from the earth," thus meaning as Locke said that the role of government is not to dominate and enslave citizens but to serve and protect them. Missing from this declaration were the rights of female citizens and of individuals not considered citizens who were serving involuntary servitude for masters who "owned" them.

THE SLAVE PROBLEM

The British initiated the slave trade and brought African slaves to the American colonies. Slavery of some kind existed in Britain and Ireland from the time of Roman occupation, it continued after the Romans were gone. There is a record in 1555 of an Englishman, John Lok of London who brought five Guinean slaves to Britain. Also in 1555 Admiral Sir John Hawkins of Plymouth hijacked a Portuguese slave ship on the high seas and took 300 African slaves to Santo Domingo in what is now the Dominican Republic and sold them. British ships brought many more Africans to the West Indies in the next ten years and soon thereafter to the American colonies. In the 18th century a triangular trade practice was practiced with ships setting out from Bristol or Liverpool laden with merchandise for West Africa where the replacement cargo would be slaves captured by local rulers, who would then be taken across the Atlantic to be sold to work on plantations mainly in America.

Not many African slaves went to the British Isles, but there is evidence of attempts to end the slavery in Britain. John Locke argued against slavery in the case Butts v. Peny (1677) 2 Lev201, 3Keb785, which was an action to recover possession of 100 slaves who apparently had been set free. The court ruled that slavery was legal in England. However, in Smith v. Gould (1705-07) 2 Salk 666, chief Justice Hold stated that in the common law no man can have a property in another. This decision was reversed in 1729 in the York-Tallent Slavery opinion that held that African slavery was lawful, But Lord Heartly said in Shanley v. Harvey (1763) 2 Eden 126,127 that "as soon as a man sets foot on English ground, he is free."

Finally, a ruling in Rv. Knowles, ex parte Somerset (1772) 206 State 4 that slavery has never been backed by a positive law and cannot be enforced. Despite this ruling, the slave trade continued to be practiced by the British until the William Wilberforce Slave Trade Act of 1807 completely abolished slave trade in the British Empire.

Not so lucky was the fledgling United States of America. Its slave question had to be solved by a horrible civil war (1861-1865). In 1776, one half a million African slaves toiled in the 13 colonies, but mostly in the colonies in the south. When the U.S. Constitution was written, the issue of slavery was dealt with by declaring that no more

slaves could be imported after 1808. The current slave population was to be counted as 3/5 of its enumeration for representation in Congress.

Thomas Jefferson, who had inherited slaves from his father, wanted to abolish slavery, but was unable to do so. He is reported to have said, "We have the wolf by his ears (but can't let go).(Right Side News (October 10. 2010). Jefferson had implored the Founding Fathers to erase this "Heart of Hell"" slavery issue from the face of America. He viewed slavery to be a destabilizing factor and a crime against humanity, although he himself owned slaves and even had fathered children with Sally Hemings, one of his slaves.

President George Washington, the "Father of His Country" also owned slaves, but wanted to free them. He was unable to because of laws in the State of Virginia prohibiting it except by a will on the death of the owner. Washington also had the problem of intermarriage of his slaves with those of his wife, Mary Custis Washington so in his will, he dictated that all of the family slaves would be freed at the time of his wife's death. He had written in 1786, "Among my first wishes is to see some plan adopted for the abolition of slavery in this country." As President after 1793, he did sign a law that gave Federal civil rights and prohibited slavery north of the Ohio river which divided the states of Ohio and Pennsylvania from Virginia.

The founding fathers had deleted Jefferson's petition from the Declaration of Independence in 1776 to be able to get the agreement signed by the southern colonies. Seventy years later, with the slave population in the U.S. exceeding four million, President Abraham Lincoln issued an Emancipation Proclamation in the midst of a Civil War that resulted in 618,000 deaths in the Federal and Confederate armies (204,000 were battle deaths and out of every 1,000 combatants, 131 were wounded). The proclamation in 1863 did not free the slaves in the south since the war was in full ferocity and it was not until the Federal victory in 1865 that the proclamation's provisions went into effect all over the reunited U.S. and was codified by the 13th Amendment to the Constitution.

This amendment, plus the 14th Amendment (No state shall deny any person equal protection of the laws and may not deny any citizen of life, liberty, or property without due process of law) was intended to give full citizenship rights to the newly freed slaves. These amendments did not, however, have the desired result of granting equal human rights to the former African slaves. Many devices were employed to disenfranchise former slaves, such as the "Poll Tax" to charge money to potential voters. There was also a doctrine of providing "separate but equal" accommodations to former slaves. This device was accepted as the law of the land in the U.S. Supreme Court in the case Plessy v. Ferguson 163 U.S. 537 (1896). The decision upheld a State of Louisiana law mandating that separate but equal accommodations for black and white train travelers. This doctrine then was applied to all activities throughout the south including school accommodations, hotel and restaurant accommodations, and even water fountain usage.

The doctrine was upheld until its repudiation in the case, Brown v. Board of Education of Topeka (Kansas) 347 U.S. 483 (1954) by declaring "Separate but equal educational facilities are inherently unequal." Ten years later, similar findings were decided concerning hotel/motel accommodations and restaurant seating. (Heart of

Atlanta Motel v. U.S. 379 U.S. 241 (1964) and Katzenbach v. McClung 379 U.S. 294 (1964). These decisions effectively banned racial discrimination in public places as impediments to interstate commerce. Women were given the right to vote in all elections by the 19th Amendment to the U.S. Constitution in 1920.

Discrimination in employment did not occur simultaneously. U.S. armed forces had been separated by race until President Harry S. Truman issued Executive Order 9981 in 1948 integrating all races in the Department of Defense. Segregated military units had been employed in the Federal Army in the Civil War where 180,000 negro Union troops had served in segregated units under white officers and 36,000 had died. Similar separations were in being in World War I and World War II. It was in the Korean War (1950-1953) that racial integration was used in combat with successful results and much higher status was given to black members of the U.S. Armed Forces. This status did not follow in civil employment as much discrimination occurred in all of the country.

President Kennedy wanted to have a new civil rights act passed during his presidency, but it did not occur before his assassination in 1963. The next year, the Civil Rights Act of 1964 came from Congress and was signed into law by President Lyndon Johnson on July 2 of that year. The law established an Equal Employment Opportunity Commission (EEOC) to enforce its provisions against discrimination in employment by public and private employers based on race, color, national origin, religion, or sex. It is now illegal to use non-job related factors in hiring, promotions, etc. in private companies. An earlier Equal Pay Act of 1963 was also enforced by the EEOC. These provisions were supplemented by an Age Discrimination act of 1967. Since the 1960's, the EEOC has been very busy investigating claims of discrimination under these Civil Rights Laws relating to inequities suffered by women and minority groups.

In 1983, McCrudden claimed that there was not any legislation in the UK protecting a comprehensive list of human rights. An earlier act, The Public Order Act of 1936 provided only and indirect remedy to those affected by racial discrimination. Although there were two laws passed in the 1970's, The Sex Discrimination Act of 1975 and The Race Relations Act of 1976, there was still no comprehensive act. The European Union's legislation is filling this gap.

The British became part signatories to the European Convention on Human Rights promulgated by the Council of Europe in 1950 and put into force in 1853. All council of Europe Member states ratified the treaty, which contains provisions guaranteeing life, prevention of torture, abolition of slavery, rights to a fair trial, privacy, freedom of religion, freedom of expression, freedom of association, and freedom of marriage between men and women. It has several "protocols" that have not been accepted by all of the signatories. For example, the UK has declined to sign Protocol 12 concerning discrimination because the wording of the protocol is unclear.

Recently, an organization known as Migration Watch UK, began arguing to no longer adhere to the European Convention on Human rights because it is an attraction for terrorists to operate in or from Britain, secure in the knowledge that even if convicted, they cannot be detained effectively. This group and its followers says the 1950's measure did not comprehend the threat of 21st Century terrorism. Their

proposal is to withdraw from the convention and write another convention for the UK containing all of the European guarantees except those protecting terrorists.

Both Britain and America have been accused in the U.N. General Assembly of human rights violation including torture, rendition, and false imprisonment in the aftermath of the terrorist attacks in the first decade of the 21st century. Paradoxically, the accusers often are from countries that have very poor human rights records including forced prostitution, rape, involuntary servitude, and dictatorial religion based judiciary systems.

The United Nations was founded in 1945 with 51 nations signing the U.N. Charter at San Francisco on June 26, 1945. The United States took a leading role in creating the U.N. and drafting the Universal Declaration of Human Rights, much of which was modeled on the U.S. Bill of Rights (the first ten amendments to the U.S. Constitution). Since then, the U.N has more than tripled in membership. With many of the newer members having poor human rights records.

SUMMARY

The now United Kingdom and the United States of America have evolved in application of human rights over the years. Both have brought about advancements in human rights by laws passed by their legislatures and interpretation of the laws in their respective judiciary systems. These laws are more attuned to the Lockean principle of a governmental role to serve and protect rather than the Hobbesian principle to dominate and punish. Challenges are still faced by both nations as changing conditions and threats must be handled. Unscrupulous individuals profit from child labor, human trafficking of women for prostitution and imprisoning young boys and girls as sex slaves. Their records are not perfect in granting human rights throughout their histories, but they try to face inequities in due time and provide the best conditions for citizens who obey the laws and do not make life difficult for other citizens.

Fortunately, we have organizations such as Amnesty and Amnesty International to uncover human rights violations and keep them from growing. The law is on the side of those who condemn human right violations.

There are many more aspects of human rights that as not discussed in this paper and many more facets of the laws in both Britain and America that are not discussed. For this paper, the author has only hit upon a few of the most prevalent historical precedents and has not attempted to forecast the future.

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