

**THE IMPORTANCE  
OF  
POLITICAL TRADITIONS**

by

**Leonard P Liggio**

with an introduction by

**M C O'Dowd**



**FMF Paper**

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**INTRODUCTION:**

**THE CONFLICT OF**

**POLITICAL TRADITIONS IN**

**SOUTH AFRICA**

**by M C O'Dowd**

IN "*The Importance of Political Traditions*", Leonard Liggio presents an explanation of the difference between the histories of North and South America. It is the difference between the ancient political traditions these two continents inherited from Britain and Spain, he says.

Liggio describes the wide range of institutions that co-existed with feudalism in mediaeval Europe, Spain and

In the English colonies, on the other hand, many of the early colonists were refugees from James I's attempts to establish a centralized autocracy in England, moderate and unsuccessful though his attempts were. The traditions of freedom rooted in the Germanic tribes of the Middle Ages is true that some of the colonists, like the Puritan Pilgrim was transported to North America in its strongest form. It was transported to the Inca and Aztec regimes it succeeded through his attempts were.

In the English colonies, on the other hand, many of the early colonists were refugees from James I's attempts to establish a centralized autocracy in England, moderate and unsuccessful though his attempts were. The traditions of freedom rooted in the Germanic tribes of the Middle Ages is true that some of the colonists, like the Puritan Pilgrim was transported to the Inca and Aztec regimes it succeeded through his attempts were.

All through Europe there was a move toward such autocratic government. In Spain it flourished to an extreme degree, but hardly at all in England. The difference between the Spanish monarchy imposed a system of centralized Spanish, aided by the fact that the Inca and Aztec regimes it replaced in the English colonies were themselves bureaucratic.

All through Europe there was a move toward such autocratic government. In Spain it flourished to an extreme degree, but hardly at all in England. The difference between the Spanish monarchy imposed a system of centralized Spanish, aided by the fact that the Inca and Aztec regimes it replaced in the English colonies were themselves bureaucratic.

But at the end of the Middle Ages an alternative tradition asserted itself. It claimed to be "modern" and "rational", but, in fact, it was the reassessment of a very old tradition derived in Europe from the Roman Empire, with still more ancient roots in Persia, Babylonia and Egypt. This tradition was the tradition of bureaucracy, unlimited taxation and mercantilism -- institutions that have always gone together, whether in ancient Babylonia, the late Roman Empire, Ming China, or recent East Germany.

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Fathers, sought freedom for themselves, but had no desire to allow it to anybody else. But others, like the Quakers who founded Pennsylvania, were committed in principle to general liberty and tolerance, indeed to a greater extent than any state had ever been before. In important respects the Quakers' conception of liberty was broader than the traditional tribes'.

So the one European tradition, that of freedom and individual rights, was established in an advanced form in North America, and the other, the tradition of empire, autocracy and mercantilism, in an extreme form in South America. Liggio suggests that the whole divergent history of the two continents follows from this fact; that the economic success of North America is the direct consequence of its free institutions, as well as its unsatisfactory political history, and the economic failure of South America is a consequence of its inherited tradition of autocracy.

Liggio's thesis is eminently plausible and can be generalised for the world as a whole. Throughout history, we have known only two basic ways of organising human society. One is the essentially free society, where individuals are restrained by law or customs but not by arbitrary authority; and where the economy relies on markets. The other is autocracy, which regards the individual as "belonging" to the king, the state, or the collective society, and where, to a greater or lesser extent, the economy is controlled by the ruler.

Notice the connection between the political and economic freedom. It is not accidental. Free markets give ordinary people much more power than autocrats dare to tolerate. Furthermore, free markets require secure property rights, which are a great obstruction to the exercise of arbitrary political power. The extent to which autocrats try to dispense with markets has varied very much. Very few have gone to the disastrous length of trying to do so altogether, but they always try to control them to a significant extent.

Turning tribes into autocracies

THE rights-protecting Germanic tribes that survived into the Middle Ages and the African tribes that have survived into the present time have a great deal in common. We know little about the tribal societies which must have existed in Southern Europe and the Middle East at a much earlier time, but what we do know suggests that all tribes had much in common. In particular, they recognisably differed between tribes lay in the nature of the property custom in the same way as ordinary people were. The main land, whereas an agricultural tribe would have property in pastoral tribe would have property in animals but not in rights that were upheld. A nomadic or semi-nomadic society between tribes lay in the history of the Old Testament we have not only the description of an ancient tribal society but also the history of how it was transformed into an autocracy. The book of Samuel describes how the Israelites lived before they were decided to appoint a king: it was not because they were dissatisfied with their internal administration. It was because they wanted a permanent leader, in order to make them more effective against their external enemies. Samuel told them not to do it. He warned them of the things a king would do. He would conscript labour, Samuel said. "He will take your fields and your vineyards and give them to his servants". They would even the best of them, and give olive yards, even the best of them, and give them to his servants". David and Solomon did everything that Samuel said about. The advantage of autocracy is that it is, in the short term, more efficient for the purposes of warfare. David was a king, more effective than he ended the Israelites' problems with their economy in southern Africa. The FMF publishes both papers and books, papers, videotapes, and audiotapes. Please call (011) 483-3280 or

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Michael O'Dowd is chairman of the Free Market Foundation; and is well known in South Africa for the "O'Dowd thesis", first put forward in 1964, that economic development would bring about the downfall of apartheid. Born and educated in Johannesburg, he is an executive director of the Anglo-American Corporation and is chairman of its Chariman's Fund. He is author of the books, *The Industrial Revolution: Myth and Reality*, and *South Africa: The Growth Imperative*. Mr O'Dowd holds BA and LL.B degrees from the University of Witwatersrand and an honorary doctorate in Social Science from the University of Natal.

The Free Market Foundation of Southern Africa was established in 1975 to promote the market economy. The FMF sponsors research, publications, conferences, lectures, training programmes and lobbying subcommittees, project sponsorships and income from sales and fees. Dr Richard J. Grant is the Director of Research and Publications, and editor of books and papers published by the FMF.

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neighbours for the time being and created the Empire of Solomon. In the same way, the Persians, Romans, Turks and Russians prevailed over their neighbours, and spread their autocratic systems far and wide.

Unfortunately for the autocrats, but fortunately for mankind, autocracies are short-lived. At all times in history, from the most ancient to the most modern, autocracy has undermined its own economic base -- something on which its power depends. The crumbling of the Soviet Union today was a rerun of the decline of the Roman Empire. So was the downfall of seventeenth century Spain and the *ancien régime* of France. But there is an important difference: today it happens much faster.

### South Africa's clashing traditions

What are South Africa's prospects? Will South Africa fare better than South America? The answer is complicated, for South Africa has strong traditions of both freedom and autocracy. It has a stronger tradition of freedom than any part of South America, but there can be few places where the two traditions have met head on as thoroughly as they have done in South Africa.

On the positive side, we have both an indigenous tradition of freedom and an imported one. The rights-protecting African tribal tradition existed here in a very pure form uncomplicated by the slave trade as it was in northeast Africa and West Africa, and not influenced by Moslem autocrats as in parts of West Africa and the Sudan.

As for the imported tradition, the British and Dutch settlers both brought strong traditions of freedom from their countries of origin. Holland and England were two of the countries that most successfully resisted the autocratic tendencies of the sixteenth century and preserved the earlier tradition of freedom. Holland revolted successfully against the new Spanish autocracy and for a long time had the world's free-est economy. According to Adam Smith, writing

- in 1776, Holland was the richest country in Europe. Although the Dutch East India Company was indeed autocratic, outside Cape Town its government was quite ineffective. The Boers developed a strong tradition of individualism and suspicion of government. The examples of limited government, the British settlers, too, were in a constant struggle with the British colonial governors over their rights. But with the British colonials more tied to the government, they were more concerned with building a free society where they were living. In the Cape Colony, they secured such things as a free press and independent courts.
- The British settlers, too, were in a constant struggle with the British settlers, too, were in a constant struggle for justice in the Colony. They secured such things as a free press and independent courts. Today, the common law of South Africa, Roman-Dutch law, is a hybrid of the British settlers' Dutch law, is a hybrid of the Roman-Dutch system which was not the case in Roman law and was very doubtful in the Roman-Dutch law of Holland. South Africa's common law is probably one of the best available systems of law embodying the basic principles of a free society, as they have come to us from tribal customs, in a system adequate for the complexities of the modern world.
- It is true that the Boers did not regard their traditions of freedom as applying to black people, but in the time and the British were equivocal about it at best. At the time of Liggi's speech it mattered less. The essence of Liggi's thesis is that the basic institutions needed to underpin democracy simply did not exist there. It is far easier to adapt democratic institutions in South America than to create such institutions that already exist, even if some people have been excluded from them, than to create such institutions out of nothing. The relatively free societies of Holland and
9. Charles Howard McIlwain, *Constitutionalism: Ancient and Modern* (Ithaca, New York Cornell University Press, 1947, pp. 67-92); Sir Henry Sumner Maine, *Lectures on the early History of Institutions* (Port Washington, New York, Kennikat Press, 1914, 1966, pp. 374-80); Roland Vaubel, "The Case for International Competition among Economic Policy Makers", "Economic Affairs" (October-November, 1989, pp. 28-30).
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England were full of various forms of discrimination and exclusion, but reforming them has been easier than trying to create democracy from scratch, as in South America.

## The Autocratic Influences

Unfortunately, along with the favourable traditional influences, South Africa has been subjected to a number of influences from the autocratic side. These are the principles and practices of the British Empire (as distinct from the practices within Britain herself), Russian communism, and mid-twentieth century statism, especially as practised in Britain under both parties prior to Mrs Thatcher's accession to power.

### 1) The British Empire

The British Empire had two faces. On the one face, it included the countries that were used to settle emigrants from Britain: initially, the North American colonies, which became the founding members of the United States; later, Canada, Australia and New Zealand. In these, in contrast with the policies of the Spanish government, the indigenous institutions were transplanted. While these institutions were not fully democratic, they had strong democratic implications, which flourished in the colonies sooner than they did at home. Before the American War of Independence, the northern colonies were already far freer and more democratic than Britain herself. The revolt of the colonies was a response to a very mild attempt by the British government to curtail their freedom and impose some degree of central government. The American Revolution was not a revolution at all in the usual sense. It was a conservative movement in defence of the free (or relatively free) institutions that were already in place.

The other face of the British Empire was seen in India and

Later in other parts of Asia and black Africa. But it was in India that it was formed. The British empire in India was an empire of conquest in the Roman tradition. Institutions inherited from the Mogul Empire and an autocratic empire in the Middle Eastern tradition were intentionally used and perpetuated, while the British rulers were extremely conscious of their Roman "inherence". For example, it was quite fashionable to refer to colonial governors as "prococrats".

What it is about the West's legal and political institutions that provided unique dividends of liberty and wealth. We know from all these sources that the West's unique development is due to the inheritance of medieval legal and political institutions.

It is understandable that the East Bloc countries which shared that tradition -- Yugoslavia, Poland, Hungary, Czechoslovakia, East Germany, Lithuania, Latvia and Estonia -- have taken the lead in recent months in re-establishing the route to a free society. Their example gives hope to Latin American countries that their roots in Spain's medieval tradition can provide a road map to liberty and prosperity.



Another form of imperial tradition has invaded South Africa, not in the institutions of government but in the thinking of the opposition: Russian communism as Marxists-Leninists but there is a great deal of Lenin and of Russia -- the Russia of the Czars, which has been the second most complete

During most of the nineteenth century the Cape Colony was regarded as a colony of settlement, and its British governors were not drawn from the autocratic Indian services. But towards the end of the century this started to change. With the South African War, it changed completely. Lord Milner had been trained in India and he and his followers introduced into South Africa the methods of Indian Empire that became the established mode of government over the black population. This imperial style of government remained at odds with courts and the common law throughout the twentieth century. To this day, the law resists the imperial style.

Colonies were not drawn from the autocratic Indian courts and the common law resists the imperial style. During most of the time. But behind it all was the government of arbitrary detention, banishment and confiscation, power of arbitrary trial fact that the government combined with the fundamental fact that the government was the Roman Empire in its earlier years. Property rights were respected, and most civil rights appeared to be in place most of the time. But behind it all was the iron fist -- the As empires go, Britain's was "moderate", as indeed was not accountable to the people in any shape or form.

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## 2) Russian communism

highest example of the New England mind. He deserves the highest accolades for his ability, in the midst of the Age of Reason, to transcend the spirit of the age and to pursue the vast amount of reading he needed to understand the mediaeval traditions of American legal and representative institutions.

The mediaeval supremacy of the judiciary and judicial review were reflected in the US Constitution and *The Federalist Papers*.

"The political and social philosophies that sprang from the Enlightenment were religious because they ascribed ultimate meaning and sanctity to the individual mind and also, it must be added immediately, to the nation. The age of individualism and rationalism was also the age of nationalism: the individual was a citizen, and public opinion turned out to be not the opinion of mankind but the opinion of Frenchmen, the opinion of Germans, the opinion of Americans, and so forth. Individualism, rationalism, nationalism – the Triune Deity of Democracy – found legal expression in the exaltation of the role of the legislature and the consequent reduction (except in the United States) of the law-creating role of the judiciary<sup>12</sup>."

Were there any Latin American John Adamses? It is necessary to identify them, then re-examine their analyses of constitutions and institutions, and show North and South America the value of their contributions. Classical liberals have an important Latin American research agenda before them.

We live in an exciting epoch. The concept of liberty -- of capitalist revolution -- is once more to the fore. The restoration of mercantilism, whether as socialism in the Eastern Bloc countries or as welfare state in Western Europe, North and South America, has once again failed.

The scholarly research in the last decade has more clearly identified what Lord Acton and Alexis de Tocqueville in the last century, and FA Hayek and Bruno Leoni in this century, have been explaining to us. We must understand

autocracy (after the Ottoman Empire) to exist in the modern world.

In spite of the claims of complete revolution, Russian political life after the revolution was strikingly similar to what it was before. The institutions of government under Stalin and those that existed a century earlier, under Czar Nicholas I, were much more similar than the contemporary institutions of Britain or Japan and those that existed there a hundred years before.

Indeed, during the Russian Revolution the clock turned back a great deal. In the second half of the nineteenth century Czar Alexander II attempted to westernise and liberalise Russian institutions. He introduced a trial by jury and a considerable range of civil rights; he relaxed censorship, thus making possible the famous flowering of Russian literature, including the writings of Tolstoy, Dostoevsky, Chekhov and the rest; and he abolished serfdom. Lenin and Stalin reversed all the reforms. Serfdom, censorship and arbitrary imprisonment were brought back. In the 1840s, Dostoevsky was sent to Siberia for "conspiring to set up a printing press". A hundred years later, Solzhenitsyn was sent to Siberia for criticising Stalin in his private diary. The main difference was that in Dostoevsky's time the prisoners had enough to eat while in Solzhenitsyn's time they did not.

The Russian autocracy had its traditional roots. On the one hand, it identified itself with the Roman empire. Moscow was called the "third Rome" and "czar" is simply a Russian version of "Caesar". But the identification was not with the Rome of Augustus, so beloved of the British imperialists. It was with the late Roman and Byzantine Empires, which had become fully assimilated to the Persian and Mesopotamian model.

There was, however, another tradition which was even more extreme. This was the tradition of the so-called Tartars, the Mongols of Genghis Khan. These people, like the Ottoman Turks who were related to them, took the

concept of autocracy to its logical conclusion. There were no property rights at all in their empires. Everybody belonging to the ruler and could be "recalled" by him at any time. Everybody was the slave of the ruler and could be put to death at his mere say-so. In the Ottoman Empire this system reduced to desert most of what had been known once as the "fertile crescent". After the collapse of the Tatar Khanate in Russia, the Russian Czars never fully established the Tatar system, but there is no doubt that they aspired to it. It was left to Stalin to do so successfully. Very evident among the Tartars and the Ottomans. Both regarded themselves as an army rather than as a nation, and part of the reason they denied people's rights was to prevent the warlords from settling down and losing their warlike character, as the Vikings did in Normandy. This military character is still very much alive. "Comrade" is a word that accounts for whatever popularity communism has had. The South African Communist Party was as tightly tied to Moscow as any and more so than most, for many years the ANC as part of the Soviet Union's revolutionary party were while the main spokesmen of the Communist policy, means in accordance with traditional Marxist-Leninism. Loyalty propagating the Gorbatchev line, which was by no means a secret material support was withdrawn from the ANC as part of the Soviet Union's revolutionaries were all that. They have been built deeply into the thinking and the collapse of the Soviet Union, they will not die quickly for traditional communist ideas are now rootless, but even with that was its function in the alliance.

Russian communism was exported as an ideology to the rest of the world. But it was the promise of Russian communism that aided rather than the appeal of Russian communism to Moscow as any and more so than most, for many years the Communist Party had great influence on the ANC because of its ability to deliver Russian material support. Indeed, that was its function in the alliance. The South African Communist Party was as tightly tied to Moscow as any and more so than most, for many years the Communist Party had great influence on the ANC because to Moscow as any and more so than most, for many years the Communist Party was as tightly tied to Moscow as any and more so than most, for many years the Communist Party had great influence on the ANC because that was its function in the alliance. Of course, the alleged existence of a war has always been used to justify autocratic rule and the military term. If anything, the military autocracy of a war has military character is still very much alive. "Comrade" is a word that accounts for whatever popularity communism has had. The South African Communist Party was as tightly tied to Moscow as any and more so than most, for many years the Communist Party had great influence on the ANC because to Moscow as any and more so than most, for many years the Communist Party was as tightly tied to Moscow as any and more so than most, for many years the Communist Party had great influence on the ANC because that was its function in the alliance.

### The task ahead

"A sound civilisation is unity in multiplicity; since its virtues and vices constantly act upon each other, the strength of one institution is the strength of all. The rule of law, commerce, prosperity, religious toleration, the flourishing of arts and sciences, civil liberties -- all are necessary, all sustain each other."

Voltaire tells his readers in one vivid image, assimilates, protects, and profits from a variety of citizens". Voltaire's descriptive vision of a civilisation that

AFTER a decade in which North American and Western and Eastern European historians have identified the medieval roots of modern economic and political success, it is time for those engaged in Latin American studies to seek to identify parallel Latin American themes and traditions.

When the United States Constitution was written, it received violent critical reviews from the French Enlightenment philosophers of the French Enlightenment. They did not understand, as Edmund Burke did, that the Americans had revolted against England because the English bureaucrats were attempting to destroy the Americans' medieval institutions and to install a modern, bureaucratic state. The French philosophers that the English bureaucrats were revolting against to defend the French Enlightenment. They did not receive violent critical reviews from the French Enlightenment philosophers of the French Enlightenment. The French Enlightenment philosophers sought to explain to the middle ages. Thomas Jefferson and John Adams sought to explain to the mediaeval institutions that the American revolutionaries were philosophares that the American revolutionaries were absense of central government agents.

Constitution of the United States for the English Enlightenment critics. He drew on a deep background of legal history, including history of the canon law. John Adams was the

North America). Yet, so much of Latin America's knowledge of North America's views of Latin America come from the New England writers. Too many intellectuals are influenced by literature, and many see North America through the eyes of the Puritans who wrote literature. The New England Puritans were not part of the English mediaeval tradition with which we associate the liberty and prosperity of England and English America. The Puritans sought exile in New England to escape the mediaeval Catholicism of the Anglican Church and the mediaeval (freedom) of English society and economy. The Puritan Yankee provides the literary model, but the reality of English America was mediaeval in economy and society.

The American South was not only Anglican and Cavalier, but had strong Creole/Latin influence at its two commercial and cultural centres - Huguenot and British and French West Indian in Charleston; French and Spanish in New Orleans. Charleston and New Orleans were more important ports than Boston, until the War between the States<sup>10</sup>. So were New York, Philadelphia and Baltimore. These Middle Colonies were truly characteristic of English America. They were centres of commerce, with broad cultural diversity of religions and dozens of languages (in New York). Diversity, toleration, and plurality were the foundations of their commercial wealth.

Enter the London stock exchange, that place more respectable than many a court. You will see the deputies of all nations gathered there for the service of mankind. There the Jew, the Mohammedan, and the Christian deal with each other as if they were of the same religion, and give the name infidel only to those who go bankrupt; there the Presbyterian trusts the Anabaptist, and the Anglican accepts the Quaker's promise. On leaving these peaceful and free assemblies, some go to the synagogue, others go to drink; ... others go to their church to await the inspiration of God, their hats on their heads, and all are content.

Peter Gay, noting that Voltaire's *Lettres philosophiques* (1734) were dedicated to England's rule of law, calls

traditions of African national movements, and they remain there as a dangerous and destructive force.

### 3) Twentieth century statism

The last of the evil influences on South Africa has by no means been the least destructive. This was the great mid-twentieth century fashion for social engineering and the aggrandisement of the state that came with it. Before World War II it was pioneered by fascist regimes, but after the demise of fascism it was taken up with great enthusiasm by western democracies, underpinned by Keynesianism (the belief that economy can be "managed" by the manipulation of the money supply) and the doctrine of Gunnar Myrdal (the belief that development is a function of the state). It justified high taxation, all kinds of controls, a bloated bureaucracy and a great deal of pushing around of individuals. In Britain it gave us the tower blocks. In South Africa it gave us grand apartheid, funded by a tax system closely copied from socialist Britain.

### The tide of freedom

UNLIKE South America, South Africa partakes of both traditions -- of freedom and autocracy. For most of the twentieth century, the autocratic tradition has been dominant, but that has been so in most of the world. Yet the good traditions are still alive, not only as ideas, but embodied in many institutions, from the independent judiciary to the democratic organisation of the Methodist Church. Throughout the world the tide is running strongly in favour of the traditions of freedom. South Africa is better placed than many countries to ride this tide.



James I complained repeatedly to the Spanish ambassador and to the Spanish court, which he wished to copy, that he hated the limitations on his power from the English common law, the common law courts and judges, the absence of a centralized bureaucracy, and the freedom of James I, sought to achieve the establishment of Spanish Charles I, House of Commons to criticize and thwart him. His son, Charles II, established the English legislature before the Restoration returned to its medieval legal institutions and political England to its medieval legal institutions and political commonwealth established before the Restoration returned to its medieval legal institutions and political North America. If England's crown and the English colonists had a similar opportunity, they would have embraced it fully; as would North America.

In North America, the Indian tribes, valuable inheriting European traditions to preserve that medieval inheritance. It is the medieval tradition that Bertrand Jones, Rosenberge, Vauzel, etc see as the cause of the liberty and prosperity of the West (and particularly of England and the American Revolution to protect the medieval institutions and political traditions of England, and fought the colonists. North America inherited the medieval institutions and political traditions of England by decided). This system was transferred to North America by peace. All central orders went through them (or not, as they controlled by major tax-payers as unpaid justices of the centralised self-government. Local administration was most important of all, England retained decentralised, were maintained.

Like many monarchs, Henry VII seized supremacy of the church in England and confiscated monastic lands, but he maintained the Catholic liturgy and defended the sacraments against Martin Luther. In the era of Shakespeare, England inherited an English Catholic church, against which Protestant Reformation, the Puritans, complained. The Anglican church was a medieval church, minus monasteries and a papal legate. Similarly, the medieval monasteries and a papal legate. Similarly, the medieval common law and common law courts, the Puritans, were maintained. (1258) -- and the representative institutions in Parliament on the Magna Carta (1215) and the Provisions of Oxford protected private property and individual rights -- based on the Magna Carta (1215) and the Provisions of Oxford on the Magna Carta (1215) and the Provisions of Oxford were maintained.

IN this year, the 500th anniversary of Christopher Columbus' voyage to the New World in 1492, the world has before it an important pair of models for liberty and wealth: Iberian South America and Anglo-America. The past five hundred years of South American history and four hundred years of North American history provide significant bases for comparison. Much attention can be focused on the differences in the native cultures encountered by the immigrants in the Americas.

The native populations of South America were much more advanced in agriculture and craft skills, as well as political skills of taxation, than the native populations of North America. If England's crown and the English colonists had a similar opportunity, they would have embraced it fully; as would North America. In North America, the Indian tribes, valuable inheriting European traditions to preserve that medieval inheritance. It is the medieval tradition that Bertrand Jones, Rosenberge, Vauzel, etc see as the cause of the liberty and prosperity of the West (and particularly of England and the political traditions of England, and fought the colonists. North America inherited the medieval institutions and political traditions of England by decided). This system was transferred to North America by peace. All central orders went through them (or not, as they controlled by major tax-payers as unpaid justices of the centralised self-government. Local administration was most important of all, England retained decentralised, were maintained.

by Leonard P. Liggio

## POLITICAL TRADITIONS

OF

## THE IMPORTANCE

Salamanca was more than off-set in Latin America by the rise of Absolutism and Mercantilism in place of the mediaeval institutions of liberty.

### Shakespeare

FOR two hundred years -- from Adam Smith and the Scottish Enlightenment through Macaulay, Acton and Dicey, to Harold Berman, Eric Jones, Nathan Rosenberg and Roland Vaubel -- classical liberals have explained why the Anglo-American world escaped the disasters which befell Latin America.

First, the disasters which befell Latin America were economic and political. Cultural life has flourished there. This permitted the famous contrast between Caliban (Anglo-America) and Ariel (Latin America): North America is the material, sub-human, non-intellectual culture; Latin America is the spiritual, supra-human, intellectual culture. It is interesting that the comparison is drawn from William Shakespeare's *The Tempest*, rather than classical continental writers, whether Racine, Corneille, Cervantes and Calderón. Shakespeare appeals to us because of his realism, his materialism, if you will, rather than for heroism, spiritualism and unrealism. Is Shakespeare the playwright of the James Buchanan School of Public Choice? Shakespeare places his emphasis on the reality of human nature rather than the hope that men will be inspired to transcend their human nature's self-interest. He does not propose that politicians or voters will abandon their own self-interest for the general good.

Shakespeare's work draws on mediaeval institutions and philosophical traditions, as did the School of Salamanca. The England which Shakespeare describes is an England which continued to flourish in the mediaeval political and legal structures which continental Europe was abandoning for Spanish absolutism.

In the later years of Shakespeare's career, England

characteristics were well presented in the monumental reports of the *Jesuit Relations*. The Indian tribes were not engaged in settled agriculture. As European settlement displaced the animal resources, the tribes tended to move with them.

In South America, Castilian immigrants from Spain encountered two massive, centralised empires -- the Aztecs and the Incas -- which exploited the settled, agricultural populations. Much to the envy of the early English colonists, the Spanish crown substituted itself for Aztec and Inca rulers, while individual Spaniards took part of the agricultural production of the native peoples for themselves.

### Mediaeval foundations of freedom

TO understand the difference between South and North America, we must study Europe's legal and political institutions during the five hundred years before 1492 -- before Columbus received the support of Isabella and Ferdinand.

Iberia's legal and political institutions were the same as the rest of mediaeval Europe's. On the eve of colonisation, Spain shared all the institutions of Europe and England. But it rejected them and initiated new, absolutist institutions. After taking over the Aztec and Inca empires, Spain embarked on the creation of an absolutist state in Spain and the colonies. England, on the other hand, languished in its mediaeval heritage, and the English colonists carried that heritage to North America. The American Revolution was a successful struggle to retain the English mediaeval heritage, when London itself seemed to move in the direction of absolutism.

That was just after 1760. At the same time, a leading Bourbon reformer and utilitarian advocate of enlightened despotism, Gaspar Melchor de Jovellanos, declared Iberia's great tragedy to be its mediaeval, or Gothic inheritance. Jovellanos and the enlightened philosophers attacked

Montesquieu's assertion that Gothic constitutional traditions were the foundations of liberty and wealth in Europe. We need to recall that Montesquieu's defense of the Gothic constitution was the most influential authority among the American Founding Fathers.

ceremonial. The Spanish government imposed taxes (maximum price controls) on agricultural and manufactured products which disrupted the economy. An army of tax inspectors and tax collectors were employed to enforce the mercantilist regulations. The medieval traditions were completely reversed by the absolute state. In Latin America, the early free institutions were strangled, and mercantilism became universal.

However, in this period of struggle over whether Latin America would receive medieval free institutions or new mercantilism, Latin America gave to Europe one of its most important inheritances: the development of the theory of rights. The expansion of rights theory, which reached its found on the rights debates which were introduced into Spain from the New World. The origin of this development was the dispute between the Bishop of Chiapa, Bartolome De Las Casas and Juan Gines de Sepulveda in 1550 at Valladolid. The debate was on the humanity rights of the American Indians. The dispute led to the enrichmentment of the traditional rights theory of the Spanish.

Latin America would receive medieval free institutions or new universities at the beginning of the sixteenth century - the process continued in Ibero-America where six new universities at the beginning of the sixteenth century - Iberia experienced the establishment of numerous Schools.

However, in this period of struggle over whether Latin America would receive medieval free institutions or new universities at the beginning of the sixteenth century - Iberia experienced the establishment of numerous Schools.

PERHAPS our understanding of the difference between South and North America will be assisted by the analyses of Montesquieu, Tocqueville, Action, and Burckhardt. These mid-nineteenth century liberals' analyses were based on the great liberal historian Augustin Thierry, work done by the earlier nineteenth century French liberals. The great liberal historian, Augustin Thierry, documented the development during the Middle Ages of free institutions. Basing his analysis on the economic theory and political studies of Jean Baptiste Say, Desnutt de Tracy, Benjamin Constant, Charles Comte and Charles DuNuay, he traced the growth of commerce and publications of the middle class, and the charters and oath-bound associations from the eleventh century, whereby the legal associations of the middle classes were protected.

The early liberals

Montesquieu's defense of constitutional rights - underscores the differences between South America and North America. Montesquieu's analysis -- paralleled by Tocqueville -- emphasizes the importance of individual rights to the historic roots of legal and political institutions. Eric Jones, in the European Miracle, explains the crucial development of the individual rights founded in the medieval institutions which developed during the five hundred years before Columbus. Europe's outstanding success in bringing about liberty and wealth over the past five hundred years is due to exactly the Gothic inheritance which Jovellanos disdained.

Montesquieu's defense of powers -- helps one to see the balance and separation of powers -- helps one to protect by limits on the expansion of government through American foundations of fathers.

made Spain the paymaster of European wars for a century and a half. Castilian infantry excelled throughout Europe, leaving Spain's monetary and human wealth in graves around the continent. To achieve imperial greatness, Spain had to abandon the mediaeval free market and constitutional institutions.

Along with the precious metals of the Indies, Spain sought to impose a "modern" system of taxation to pay for its imperial role. Navigation Acts were passed for state control of foreign trade for fiscal purposes. The *Mesta* was granted monopoly of sheep migration, preventing enclosures and agricultural development in Castile, for taxation purposes. But wool could not be exported. That guaranteed the Spanish manufacturers cheap raw materials to export to the monopolised South American markets. The Seville merchants had monopoly of trade to South America to collect customs, judge commercial cases and set trade policy. The *Consejos de las Indias* controlled political administration. In South America, the self-governing municipal institutions, modelled on mediaeval Spain's *communas*, were abolished. Instead, royal appointees ruled under the royal Audiencias and the Viceroy.

#### The theory of rights

IF one considers the constitutional institutions of the domains of Charles V, it is possible to see the contrast with the period of his successors. The Austrian-Bohemian lands had provincial estates; the Burgundian lands had the seventeen estates of the Netherlands provinces, as well as the Free County of Burgundy. The Iberian-Italian lands had eight parliaments and constitutions: Naples, Sicily, Sardinia, Aragon, Valencia, Cataluna, Castile and Navarre. Philip II clashed with the Netherlands' estates and lost seven of them. Charles V crushed the *communas* of Castile and gradually drained the power of the Cortes. The other parliamentary institutions were allowed to become

Thierry's work shows how rights emerged in the great religious movements of the Peace of God and the Gregorian Reformation, and were consolidated in the oath-bound associations creating town-charters and representative institutions. In the debris of the Carolingian Empire and its tradeless feudal system, there arose commerce and industry -- with watermills, windmills and private property in land. The feudal institutions were challenged by the oath-bound associations, usually led by abbots or bishops. Contract and consent became the centre of the struggle against the feudal institutions of autarkic economy. In the conflict against feudalism, the emerging market forces of commerce and agriculture created the edifice of mediaeval legal and constitutional institutions.

Today, the memory of this magnificent classical liberal history is practically lost. But its importance has been emphasized again by recent valuable contributions to legal and constitutional scholarship. The most significant has been that of Harvard law professor Harold Berman<sup>2</sup>.

The remnants of mediaeval legal and constitutional institutions in Cataluna and Castile in Spain, were attacked as early as the eighteenth century with the succession of the Bourbons. This process was intensified under Carlos III, who succeeded his half-brother, Ferdinand VI. In 1734, at the age of sixteen, Carlos had already ruled Parma for his mother, Queen Elizabeth Farnese, and in 1736 he became king of the Two Sicilies, where he reigned until he came to power in Spain in 1759. During Carlos' time in the Two Sicilies, he undertook legal and economic reforms inspired by the School of the Two Sicilies: the ideas of Antonio Genovesi, Giuseppe, Palmieri, Gaitano Filangieri, Domenico Cantalupo, Domenico Caraccioli and the Abbe Ferdinando Galianie<sup>3</sup>.

During Carlos' reign in Spain, many works of French and Italian writers on jurisprudence, constitutional thought and economics were translated into Spanish. An important source of economic ideas for Spain and Ibero-America was

The Protestant Reformation, the second phase of this movement, occurred where local rulers were not able to gain Papacy total control over the church institutions in their territories.

The Protestant Reformation, the second phase of this movement, occurred especially of the Church. The universal church was replaced under absolutism by a subservient, state religious bureaucracy. For example, the French kings and rulers of the Spanish kingdoms used Concordats to gain from the Papacy total control over the church institutions in their territories.

Just as the Monarchists Church of the Council of Trent (with the Royal Inquisition) contributed to absolute (with the Royal Inquisition) control of the Council of Mexico and Peru as well. Dominated not only the Peninsula but the Vice-royalties of Spain, the power to establish political inquiry, and 1480 gained the rulers of Castile, Aragon and Catalonia after "fathers", and sought to consolidate their gains through the Catholic Reformation centred on the Council of Trent. In Spain, the rulers of Castile, Aragon and Catalonia after 1480 gained the power to establish political inquiry, and dominated not only the Peninsula but the Vice-royalties of Mexico and Peru as well.

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In the flowering of liberalism in the early nineteenth century, one of F.A. Hayek's favorite authors, Benjamin Constant, raised a serious question. He challenged what he believed to be Charles Duogers' determinist view of progress. Constant asked: if we believe that economic and technological improvement is accompanied by moral sentiments, how do we explain the fact that while all of the more advanced peoples of Europe -- French, Lombards, Flemish, Dutch, Germans and Austrians -- accepted the tyranny of Napoleon Bonaparte, it was the Spanish peasants alone who rose up against the French occupation, and exhausted and then destroyed Napoleon's rule? Constant saw the Spanish peasants as the liberators of Europe.

It is exactly in the context of the Spanish struggle for liberation from Napoleon that arose the first use of the term "liberal". The Spanish liberals and their admirers of the Spanish Vanguard. However, there was a strong conflict among the Spanish liberals and their monarchist absolutists in Spain were divided between the French and English friends. The opponents of the French admires, which was adopted by the English and world, liberals, which was arose of the first use of the term "liberal". The Spanish struggle for liberation from Napoleon that arose of the first use of the term "liberal".

It is not too much to say that analytic economics took a century to get where it has in twenty years after the publication of Turgot, had its content been properly understood and absorbed by an alert profession. As it was, even JB Say -- the most important link between Turgot and Walras -- did not know how to exploit it fully.<sup>5</sup>

Joseph Schumpeter,  
Turgo's theoretical skeleton is, even in its specificity, distincitly superior to the theoretical skeleton of the Wealth of Nations. It is not too much to say that analytic economics took a century to get where it has in twenty years after the publication of Turgot, had its content been properly understood and absorbed by an alert profession. As it was, even JB Say -- the most important link between Turgot and Walras -- did not know how to exploit it fully.<sup>5</sup>

etc were absolved of their oaths. We find in the *Fueros* the traditional rights and independence from taxation of the mediaeval nobles, freemen, townsmen and clergy, with their roots in Germanic legal concepts -- the foundations of our modern individual rights. English legal and constitutional history, including the Magna Carta, was parallel to the constitutional history of Spain, such as the Great Charter of 1020 issued by the Cortes of Leon under Alphonso V.

Unfamiliarity with the history of the Hispanic Pyrenean kingdoms could lead one to think that Spanish Christians were isolated from the mainstream of European mediaeval civilisation. The oath-sworn associations, arising from the Peace of God and Truce of God movements in the tenth and eleventh centuries, were led and protected by the Cluny monasteries. The great Abbey of Cluny (north of Lyon) led a religious reform and then a political reform. Spain and Spanish monasteries were particularly linked to the Abbey of Cluny through the most important of its pilgrimage goals: the shrine in western Spain of Santiago de Compostela. Large numbers of pilgrims travelled to Compostela; often the people who had participated in the oath-sworn associations of the Peace of God movement or in the oath-sworn associations which brought self-governing charters and representative institutions to the towns and provinces of France. Massive numbers of the monks who had led these movements made this same pilgrimage. The Spanish Pyrenean kingdoms were inundated with news of the representative institutions of towns and provinces in mediaeval Europe, which were similar to legal concepts of the Spanish *Fueros*<sup>6</sup>.

### The transformation of religion

THE conquest of the kingdom of Grenada in 1492 witnessed the establishment of absolutism, the core feature of which

supporters of King Joseph Bonaparte and French modern statism, and supporters of the Cortes of Cadiz and the Constitution of 1812.

### The utilitarian opposition

MANY supporters of Enlightenment French philosophy, economics and legal reform, such as Jovellanos, were associated with the French Napoleonic administration in Spain. Charles Dunoyer served in the French civil administration in Navarre and maintained long friendships with Spanish political and economic writers, who later were exiles in France. The works of the Spanish exiles were published in French. The Spanish exiles translated many of the French liberal writings into Spanish to challenge the anti-liberal direction of Spanish political life. Thus, Jean Baptiste Say, Destutt de Tracy, Charles Comte, Charles Dunoyer, Augustin Thierry and the French Doctrinaires, Francois Guizot, Royer Collard, de Barante, Laine and Maine de Biran, had an impact on Spain's political thought. But the greatest influence from this French direction was the English utilitarian, Jeremy Bentham. Bentham's writings often appeared in French translations by Dumont long before they appeared in English. Sometimes Bentham's ideas for law reform were codified in Latin America before Englishmen knew what he had written. The utilitarian influence was one of Latin America's major handicaps, in contrast with the lack of utilitarian influence on North American thinking.

In the era of independence in Spanish America in the early nineteenth century, Jeremy Bentham's writings flooded the Iberian world. Utilitarianism, rather than Whig liberalism, was seen correctly to be the heir of the Enlightenment, but seen wrongly to be the guide to liberty and wealth. English and American constitutionalism, as described by Montesquieu, was understood correctly to mean inefficient government institutions which cancelled

out each other, but was understood incorrectly to mean a block to an efficient society. According to Montesquieu, an efficient society required an effective government.

Pierre Claude François Daunou, a co-author of the French Constitution of the Year III (1795), which featured a divided executive and bicameral legislature, was a constitutional theorist with a major impact on Latin America. Associated with the ideologues, Daunou lost influence during the rule of Napoleon. He was professor of history at the Collège de France (1819-30) and archivist of France (1830-40), and became a leading exponent of individual rights, alongside Benjamin Constant. Daunou's Essai sur les garanties individuelles was an impressive statement of constitutional protection of individual rights.

Spain was liberated from Roman taxation and infiltration when the Germanic tribes crossed the Rhine frontier in 406. The Visigothic settlers in Spain brought their Germanic concepts of limited power of rulers and extensive independence and rights of freedom. They believed that the king must live on his own resources, and the concept of taxation was unacceptable to independent freedom. But, with the Moslem conquest after 711, and the Moslem defeat by the Franks at the Battle of Tours in 732 AD, the representation of the Germans were limited to the Visigothic Christian kingdoms in the Pyrenees, Asturias, Navarre, and Galicia.

During the five hundred years of the Reconquistas, the Germanic concepts of law and political institutions flourished in Spain. In the various kingdoms of Spain -- Asturias, Galicia, Navarre, Leon, Castile, Aragon, Catalonia and Valencia -- the rights of freemen were clearly recognized. Taxation was at odds with freedom. The king's ability to rule depended on whether he had enough funds of his own to pay for his costs as king. The nobles and townspeople had complete independence and seculiar and monastic clergy had complete independence and freedom; townspeople in municipalities with charters and the clergy against the king.

The well-known oaths of the nobles, freemen, knights to live up to their oaths. If they didn't, the freemen, Aragon, and the reciprocal oaths of the kings, required townspeople and clergy, as at the coronation of the kings of Castile and León and clerical oaths of the nobles, freemen, knights against the king.

In the midst of the resistance of the Spanish leaders and rural yeomen after May 2, 1808, their townspeople sought inspiration from the historic rights-protecting institutions of Spain. The provincial councils of the medieval representative institutions. The national council in Cádiz called in 1810 for the formation of a successor to the Cortes, which issued a new constitution on March 19, 1812 based on English constitutional principles. The liberals sought a foundation in the Gothic traditions of liberty in the communes of Catalonia and Castile. In March 1814, Ferdinand VII was restored to power in Spain after swearing to maintain the constitution of 1812. But he suppressed the Cortes and undertook a ferocious