

The Origins of Freedom

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Last year, Professor David Flint gave a speech to the Order of Australia Association about the fact that young Australians are not being taught about their British heritage.

In his speech, he referred to a 'crucial golden thread' which comes to us directly from Britain, starting with the Magna Carta, winding its way through the next 800 years via numerous defining moments in Britain's history, and ending up here in Perth, in 2017.

Incidentally, I met Professor Flint on Monday, and he was delighted to hear that I was using his analogy in my talk.

This golden thread *is* crucial, because it carries with it the institutions- the laws, the customs, rules, rights and code of conduct which determine the way we act with each other and with government.

These institutions have given us the freedoms, the peace and the prosperity which characterise Australia as the successful nation that it is today, and which continue to attract people from all over the world.

These institutions didn't originate in Asia or Middle East or even from Continental Europe. They came from that extraordinary, damp Island, beset by terrible weather, pebbled beaches and, until, the influx of enthusiastic Australian baristas in the 2000s, thoroughly undrinkable coffee.

That island's rich and utterly mesmerising history is our history. We have a claim to it. It belongs to us. Its institutions are our institutions. Its freedoms are our freedoms.

However, to continue with Professor Flint's analogy, this golden thread is not only fraying at the end, but is in danger of being severed all together because young Australians are not being taught that these institutions come from Britain.

Teachers and academics have much to blame for this. As we are all well aware, schools and universities, and especially universities, are more concerned with peddling climate change and identity politics than they are with explaining to those in their charge why they need to know about the Magna Carta, the Glorious Revolution or the Industrial revolution.

Of course, it hasn't always been so. For most of Australia's history since the settlement, the study of Britain formed the central part of history lessons in schools and universities.

In the 1960s, historian Manning Clark turned Australian history into popular and specialised subject. Since then, the majority of Australian histories followed a similar narrative, commencing either with the arrival of the first European explorers in the region after the sixteenth century or with the landing of First Fleet in 1788.

These histories explored common themes and followed similar patterns; the difficulties faced by settlers in New South Wales, the establishment of colonies in Van Diemen's Land and in what is now Victoria, the arbitrary rule of the British governors, the gold rushes, Eureka Stockade, democracy, Federation and Gallipoli.

These accounts tended to focus on the last two centuries or so in total isolation, almost as if no earlier history, especially British, was in any way relevant to Australia's past or present.

When Geoffrey Blainey wrote his *The Triumph of the Nomads* in 1975, this changed. Blainey decided to include the story of Aboriginal Australia prior to European settlement in his narrative. By doing

so, he set a standard to which subsequent historians have consistently endeavoured to match by emphasising the fact that the continent was not empty when the settlers arrived.

Blainey has influenced a great many popular accounts of Australian history, which have since incorporated this extended history into account. While this new approach tells the history of the Australian continent, which is itself important, it fails to explain the history of Australia as a nation—as a collection of institutions, or culture, or as a people came from Britain and did not suddenly materialise in 1788.

Only a few decades ago, it would not have been necessary to make the case for Australia's debt to Britain to this length. But culturally, economically, internationally, and politically, Australia has since undergone a rapid phase of change. The British Empire is no more, the United Kingdom's ties with Australia have weakened since the Suez Crisis and—perhaps even more significantly—its entry to the European Union.

Australia has emerged as an independent nation with a distinct culture of its own. With people from many non-Western nations now calling Australia home, there has been a tendency for many Australians to disassociate their country from its colonial past, and instead to emphasise its indigenous heritage and its connections with other nations in the Asian region.

It is indeed telling that 'Asia and Australia's relations with Asia' and 'Aboriginal and Torres Strait Islander histories and cultures' were two of the three 'cross-curriculum priorities' emphasised across all areas of Australia's first National Curriculum, which was released to public in 2011.

Indeed, the National Curriculum only barely mentions any kind of British history, with definitely no effort all to teach children about the institutional links and episodes like the Civil War for example.

Unfortunately, as we all know, things are no better at our universities. Of the 746 history subjects taught in 35 universities which I looked at in our recent history audit *'The Rise of Identity Politics: An Audit of History Teaching at Australian Universities in 2017'*, just 17 of these focus specifically on Britain. And only two of those, which are taught at Monash and Melbourne cover the important events in Britain's history which explain the origins of our freedom. 17 out of 746 are not great odds.

Interestingly, in response to the audit, Melbourne University's Professor Trevor Burnard who specialises in British history, protested in an article on *The Conversation*, that while he would love to teach more British history, there simply isn't the demand for it amongst the undergraduate population.

I think this is a thoroughly fallacious argument. How does the undergraduate population know what it wants or doesn't want, if it's lacking in knowledge in the first place? If school students are being deprived of Britain's history at school, or they are not hearing about it at home or in public, how could they possibly know what they are missing out on, and thus reject it once they get to university?

Well, I can tell you that they are missing out on awful lot. I'm currently reading *'The English and Their History'* by Professor Robert Tombs, who is one two Cambridge academics who publicly backed Brexit in 2016, and who based their arguments on an extensive knowledge of the history of both Britain and Europe.

I actually had the pleasure of meeting Professor Tombs in July and he has since agreed to deliver two addresses each in Melbourne and Sydney in 2018 as our visiting scholar for the Institute of Public Affairs' Foundations of Western Civilisation Program.

Tomb's book is a monumental 1000 pages of facts, wit and insight. The more I read about the history of England, the more I appreciate how unique and fascinating it is, and how lucky Australia is to have been the beneficiary of that history and its institutions.

One of the things that I am most struck is just how much importance the English have placed on, and continue to place on the Rule of Law. The rule of law of course, has a multitude of definitions, but what I am referring to specifically is that everyone—including citizens and the government—is bound by and entitled to the benefit of laws. In Australia, we uphold the rule of law in our daily lives. It's the foundation of a fair and just society.

There numerous interactions between the rule of law and the concept of freedom. Following the laws creates stability. Predictability in the law allows people to plan their behaviours around the law and gives them freedom under the law.

I think that even to this day, the concept of the rule of law is deeply ingrained in the English psyche. And of course, it has had many centuries in which to become ingrained.

The rule of law is one of the longest established common law fundamental principles of the governance of the Britain. It dates back to 1215, when King John sealed the Magna Carta and it was, in effect, a highly successful attempt to bring the king back under the rule of law.

Magna Carta was unique because it was basically a contract between the community and the monarch. It was by no means egalitarian, but it did ascribe certain rights and powers to that community, even its humblest members. It effectively planned the system that we enjoy in Australia today.

As early as 1300, the English already had a strong sense of the importance of the Rule of law. They understood that the laws, rights, statutes and property were all inherited, that they came from the past and that they needed to be upheld in order for society to function and prosper.

This point can be illustrated using the example of the plague. When the black death arrived on the shores of England in the 1340s, it swiftly wiped out half the population. Because there was no immunity, 80% of the people who contracted it died within a couple of hours.

Yet, society did not collapse. It was shaken but it did not collapse. Even though half the population of London died, recent excavations of a cemetery in Smithfield showed that the many of the bodies were buried neatly in individual graves rather than being thrown into mass pits.

Society did not collapse because King Edward and his parliament made sure to keep society running by insisting that laws were followed. They did everything in their power to maintain the Rule of Law. As they understood it, this meant requiring people to work, fulfil their obligations and keep things as they had been before. This Royal courts acted to enforce agreements and payment of debts and to maintain quality of workmanship.

Flexible *ad hoc* decisions - what would develop into equity law, one of the characteristic features of English and Australian legal practice, began. Local knights were appointed as justices of the peace with the task of maintaining law and order and local administration.

Remarkably, the plague also opened up the opportunity for prosperity and greater freedom. This is something that is rarely mentioned. The population had been dramatically reduced from 6 million in 1300 to 2.5 million in 1350. Tenants who had survived threatened to leave the land unless rents were lessened and feudal obligations were dropped.

Thus, the Black death helped to bring about the end of serfdom in England. But on the Continent it continued for another 400 years. In England, workers enjoyed greater freedom, moving between jobs, young people, particularly women were able to live independently of their parents, delay marriage and even choose their own husbands.

The next three centuries in England's history saw momentous changes. But during all this upheaval, neither the existence nor unity of the nation, nor the functioning of its institutions were ever seriously threatened. The worst civil violence in the country was always shut down and the rule of law constantly restored.

In the 1600s, Sir Edward Coke, English barrister and politician, resurrected the largely forgotten Magna Carta and declared it to be the 'fountain of all the fundamental laws of the realm' and the 'restitution of common law.' At the same time, Parliament's 1628 Petition of Right asserted that imprisonment without trial by royal order was illegitimate.

It could be argued that it was at this time, in the 17th century, that the instinctive belief that law is, or should be, more than a collection of executive orders and directives came into being. During that century, the concept that 'law' and 'rights' embody intangible and permanent values was also established. In short, the rule of law became a central tenet of the English ideas of freedom and civilisation.

Just over a century later, this central idea of the rule of law which was transported to the new colony of NSW. Somewhere on board one of those 11 ships, and buried among the 747,000 nails, 12 ploughs, 44 sheep, 307 pairs of women's shoes and 700 wooden bowls, was one chest of books.

And within that chest there was a complete set of Blackstone's *Commentaries on the Law of England*. Arguably the most important treatise in the British legal canon, these volumes were key to crafting a new egalitarian vision. Blackstone's explained common law and its evolution with such clarity that even a lay -person with no legal training would be able to understand it.

Incidentally, this is the first of the 8 sub-rules of the Rule of law devised by Lord Bingham, eminent British judge and jurist who died in 2010. The law he stated "must be accessible and, so far as possible, be intelligible, clear and predictable"

And Just six months after the first fleet arrived, Blackstone's *Commentaries* were taken out of their case and consulted when the new court heard its first civil case under English law. The case involved two convicts, Henry and Susannah Kable, who successfully sued the captain of the ship for a missing parcel. Henry and Susannah, were vocal but unwitting participants in the establishment of the rule of law in the new colony of New South Wales.

This is fascinating history. And we know that Australians want to know about it because 47,000 of them have watched the films we made on the Magna Carta, the Kables and the Eureka stockade. Academia is wrong. There is an appetite for British history in Australia. It's just a matter of feeding it.