

The Heritage of Freedom

We know that practically all men instinctively hunger for freedom. But it seems both remarkable and significant that the major thrust for freedom in modern times originated almost exclusively with one people --the English. They wrote the first Magna Carta, developed the first parliament, authored the first Declaration of Rights, wrote the first Bill of Rights, and limited the monarchial authority of kings. Nevertheless, the English culture continued to suffer certain oppressive and political weaknesses which plagued its people until English society was transplanted to the soil of America where it flowered and produced the first free people in modern times.

In 1873, John Richard Green of Oxford published at the age of 36 his famous *Short History of the English People*. During his intensive studies of the English, Green had made an interesting discovery. He found that the greatness of English history was not in the ward of the rise and fall of royal dynasties, but in the ancient political institutions which had been largely preserved down through the centuries. These institutions had been brought to England by the Anglo-Saxons shortly after the Romans departed in the third century A.D., and John Richard Green decided that it was these Anglo-Saxon principles which had provided the foundation for freedom among modern men.

In 1787 when the American founding fathers met in Philadelphia to write the Constitution, they were well aware that there was a tremendous difference between the theory of law which dominated practically all of Europe (called the Roman civil law) and the Anglo-Saxon Common Law of England. The English Common Law is not only far more ancient, but contains all of the ingredients necessary to set up a society of "freemen" --the word which the Anglo-Saxons always used to describe themselves. Therefore, it was the English Common Law and not the civil law of the European continent which the American founding fathers used as their principal frame of reference in structuring the *Constitution for the United States*.

Common Law and civil law are in a constant ideological war against each other, so it is extremely important to understand the differences between the two. Civil law is the law of the ruler; Common Law is the law of the people. One is the *lex regia*; the other is the *lex populi*. The latter can only be preserved against the former by constant vigilance on the part of the people.

A former United States Under-Secretary of State and Ambassador to Mexico, J. Reuben Clark, Jr., gives us the following analysis of these two competing systems of law which should be thoroughly understood:

"Briefly, and stated in general terms, the basic concept of these two systems was as opposite as the poles. In the civil law, the source of all law is the personal ruler, whether prince, king, or emperor; he is sovereign. In the Common Law, certainly as finally developed in America, the source of all law is the people. They, as a whole, are sovereign.

"During the centuries, these two systems have had an almost deadly rivalry for the control of society, the civil law and its fundamental concepts being the instrument through which ambitious men of genius and selfishness have set up and maintained despotisms; the Common Law, with its basic principles, being the instrument through which men of equal genius, but with love of mankind burning in their souls, have established and preserved liberty and free institutions. The Constitution for the United States [established and ordained by the people] embodies the loftiest concepts yet framed of this exalted concept."