Anglophone Island: The Un-Utopia

Constructing one's own personal Utopia is a widespread temptation. My definition of Utopia is "a different arrangement of human affairs that can bring general perfectibility and thus happiness". I believe that human institutions can, at best only remove or mitigate specific causes of unhappiness. Happiness comes from within the individual, which is to say, it is the province of religion or philosophy, not social science or politics. Utopias are thus inherently inconsistent with the Anglophone message, which is all about specific times and places and conjunctions in the past, present, and future. It is also about real-world societies that fall short of perfection in every conceivable area, but are still preferable overall to any existing alternative, in the eyes (and actions) of the great majority of the Anglophone's inhabitants.

Still, I don't believe that the USA, or any other Anglophone society, represents the best achievable version of a society that exemplifies the Anglophone's virtues. It is at least amusing, and perhaps useful as a thought experiment, to construct a sort of imaginary Anglotopia – which we could define as a society that seeks to maximize those things that make the Anglophone desirable, and minimize those things in current Anglophone societies that serve to undermine its own virtues. To that end, I have created the following sketch of such a place – let's call it "Anglophone Island" – if we could imagine a group of Anglophoneists who have managed to locate some uninhabited island that could be rented from some state willing to grant the islanders effective autonomy. (It doesn't have to be an island, of course, but so many Anglophone societies have been islands or quasi-islands...it's sort of traditional. It also doesn't have to be a rental, but I wanted to make the point that unlike many new-nation schemes, this does not depend on sale of sovereignty services for revenue; it is expected to work for its living off of the world economy, most likely in
information technology. Past new-nation experiments have been excessively hung up on formal independence.)

It's also important to stress that this is not my idea of the best possible society, even if it is entirely notional, merely something that could possibly be achieved.

Although I have warned against an unconsidered "mix-and-match" approach to constructing constitutions, it is still possible to adopt a sort of "best practices" approach to imagining a green-field Anglosphere society. If nothing else, experience helps us avoid the worst practices. And in fact, viewing the four principal foundings of the core Anglosphere (United Kingdom, 1707, USA 1789, Canada 1871, and Australia 1901), it is clear that in each subsequent case the founders looked back at prior Anglosphere experiences with an eye to adopting best and avoiding worst practices. Even the British founders of 1707 looked back to the prior Acts of Union between England and Wales as sources of experience.

Some decisions are straightforward and obvious. The language of government is to be English. The legal system is Common Law, as to the form of the law, the manner of the judicial process, and the substance of the law. There is a question as to whether there should be an attempt to operate entirely on precedent, or whether there should be a statutory codification and restatement of the law. Practicality probably advises the latter – most Common Law systems have had some degree of codification for a long time now, even though they have failed to deliver on their promises.

It would go without saying that there would be jury trials for all criminal cases, and most likely jury trials in civil cases as well. There is some question as to whether to rely entirely upon a permanent prosecutorial staff on the American model, or whether to adopt the British model of having "Queen's Counsels" – a pool of qualified private lawyers hired to prosecute cases for the government on a case-by-case basis. I tend to think the American system tends toward greater politicization and thus a greater tendency for grandstanding on the part of ambitious district
attorneys, so I lean a bit toward the British system here. In any event I would avoid the American state model of electing district attorneys.

One open question is whether to apply the doctrine of judicial review - the process by which a court can declare a law unconstitutional. The classical argument for judicial review comes from the English jurist Blackstone (drawing on older traditions in English jurisprudence), but by quirks of history was implemented in America, and not in England. As the "mix-and-match" post quoted above discusses, it has recently been imported into Canada, and through the back door of European treaties, into Britain. And as a related question, if there is to be judicial review, what sort of Bill of Rights should it stand upon?

Here my instincts go to judicial review under an entrenched Bill of Rights drawing on the English and American Bills of Rights - "negative" rights, i.e., listing those things that the government cannot do to you, rather than "positive" rights, listing things the government must do for you (and must thus take money from somebody else to do them with.) Popular sovereignty had a nice long run, but in the end judicial review under a strong Bill of Rights has probably done better. However, there needs to be a strict construction clause (probably in the form of a beefed-up Ninth and Tenth Amendment) to keep the Court from becoming legislators in their own right.

As to the form of government, we have the choice of a American or Westminster form of government - i.e., either a strong elected President on the American model, or a ceremonial executive (either a constitutional monarch or a selected President, as in India or Ireland) with executive power held by a Prime Minister chosen from the majority party in the legislature. Here it's a real tossup - the American model is efficient and usually provides for decisive executive action, but obviously can become too powerful, and the conflation of the ceremonial and political functions can erode civic feeling - many Americans, variously depending on their political proclivities, found the idea of Clinton or Bush representing America in the world to be grating. The Westminster model is flexible and is used effectively in a wide variety of
countries. However, there has been a tendency for power to drift to the Prime Minister's office, and in both Britain and Canada there have been few effective checks on a Prime Minister with an effective majority in Parliament.

As with many issues, the final decision should probably take into account the particular political traditions of the majority of the initial population – Texas, for example, adopted the US model during its years as an independent republic as a matter of course, while all of the British colonies of settlement after the American revolution adopted the Westminster model. If the latter model were adopted, I would try to assure a strong second chamber of the legislature, as well as entrenched Bill of Rights, as a check upon such an ambitious Prime Minister. I have no inherent biases toward a constitutional monarchy or a republic – the world is far more troubled by the republics that are not democracies, than by the democracies that are not republics. What most people feel is right is what they should have.

In regard to a second chamber, there are quite a few options. The British model, the House of Lords, works surprisingly effectively, (even while stuffed with Blair's donor base, it has been the most effective check on his ambitions over the past nine years) but I suspect that its long tradition and ethos has much to do with it. We don't have the thousand years or so to spare in developing the equivalent, and the idea of addressing our upper house as "Lords" seems more than a bit ridiculous. So that's out. The Canadian Senate, entirely appointed, is probably the least effective upper house in the Anglosphere, and should not be emulated. Since I'm assuming that Anglosphere Island is a rather small place, there's probably no call for federalism, and that is what gives the American Senate its power.

The Republic of Ireland has an interesting Senate, which is formed on "corporatist" principles – the various "corporations" (by which is meant what is usually called "sectors", or perhaps "stakeholders") of society are represented – business organizations, labor unions, civic organizations, etc. The "Corporatist" philosophy was popular in conservative Catholic circles in the early 20th century (and also influenced Mussolini and Franco), and the Irish Senate was an attempt to put them
into practice. In actual fact the Irish Senate has not particularly distinguished itself and its performance is not readily distinguishable from the track record of a conventionally-formed body such as the Canadian Senate. The elected Australian Senate, which is distinguished from that country's lower house primarily by a somewhat different electoral system, is probably the most successful of the Commonwealth second chambers, after the House of Lords. This suggests that, of existing models, it might be the most useful one to copy.

As for the lower chamber, there is no reason to deviate from the classic Anglosphere model: single-member districts, electing members on a first-past-the-post electoral system, having the sole power to initiate budget bills. I would prefer a small enough size to permit useful debate with all members having a meaningful chance to speak, but a large enough size to permit a reasonably small elector-representative ratio. The model of proportional representation, beloved of certain political scientists, has been a disaster, leading almost invariably to interest-group deadlock and an inability to make a clean, decisive political reform. The fad for proportional representation was at its peak just after World War Two, when it inspired three of the worst constitutions of the times, those of Israel, Italy, and the French fourth republic. In each case the magnification of interest-group power and institutional deadlock it created contributed substantially to the inability of each nation to extricate itself from the various policy disasters it had gotten itself into. Only Charles De Gaulle, by leading a thinly-disguised coup, was able to short-circuit the logic of proportional-representation-based governments in the French case. All in all, the historical evidence is strongly weighted toward first-past-the-post, single-member-district representation.

In regard to the actual substance of legislation, the short answer of course is that it is up to the people: the Anglosphere tradition is that of representative government. But in general my preferences can be summed up as "Lockean in regard to all matters in which people tend to act as Lockeans, i.e., as rational calculators; Burkean in all things where people act as Burkeans, i.e., guided by their sentiments, habits, and passions. This means that I favor a strong, predictable framework of law and contract
enforcement, within which economic functions are largely left up to private actors; and in those areas where substantial numbers of people are driven by compulsions (particularly those of sex, alcohol, drugs, and gambling), the law should attempt to mitigate and reduce the amount of harm people's compulsions may do to them. The former does not necessarily mean pure market relations, because the Anglosphere predilection has tended to be what I term an "instrumentalist" view of state action beyond the core competencies — where state action is tolerated for specific purposes, rather than a general assumption of state action, as happens under socialism. And the latter does not mean prohibition in regard to mitigating harm from compulsions in most cases. In general, a Burkean regard for society means keeping as many activities as possible in the civil realm, just as a Lockean regard for contract means minimizing "economic" offenses to genuine fraud and misrepresentation.

Thus the regrettable trend in American law to abandoning the mens rea distinction — jailing people for actions even where there was no provable criminal intent — would not be permitted on Anglosphere Island. Similarly, in considering Burkean measures to mitigate harm from the compulsive drives, a first test would be "will this measure drive people into the arms of a criminal underground?" Circumscribing, limiting, harassing, and annoying would be preferred to prohibition in most areas of compulsive behavior — creating speed bumps on the road to Hell, rather than erecting a wall that most of the compelled can readily find a way around. These two principles — requiring mens rea in all but a very selected number of crimes, and circumscribing the power to prohibit — would be written into the constitution of Anglosphere Island. Domestic prohibitive crusades would be discouraged. (Technically, one could describe the optimal regulation on vicious compulsions as that which maximizes the transaction costs of indulging the compulsion to a certain point, that point being just enough below the transaction costs of satisfying the compulsion from a criminal underground, that a broad enough market to support underground services does not emerge.)

As to the great hot-button social issues, the constitution would create few fixed rules. It would try to steer their resolution toward legislation rather than adjudication, to
make it clear that the Supreme Court does not have the power to impose a major change on the culture from above. The fundamental tradition of the Anglosphere is that the government is not a philosopher-prince determining the optimal way of life for the people and imposing it upon them, but rather an instrument to impose the relatively small number of rules that must be mandated generally rather than resolved by the mores and manners of the people.

In the matter of lawsuits, it seems clear by this point that the American doctrine of contingent-fee litigation has been badly abused and should be returned to its original purposes of enabling suits in limited cases where plaintiffs could not afford representation. The Commonwealth practice of a failed plaintiff being responsible for the legal fees of the defendant should be adopted. (It is amazing how American advocates of government payment for medical fees can point to the Canadian model in this regard, without ever mentioning the curbs on malpractice litigation that Canada enjoys, without which their medical system would almost certainly collapse.)

In terms of a medical system, nobody in their right mind would adopt the American system as it has evolved, nor would he chose to adopt the limitations of the British or Canadian systems at this point. My general observations are that the lower-income third of the population does better under the latter systems; the middle third does better in the American system, and the top third pretty much manages to take care of themselves under any system. (Even if, as in Canada, this means resorting to the unacknowledged upper tier of Canadian medicine, which is of course the American medical system.) If we were truly starting from scratch, something like the Singaporean medical system might be preferable, with large tax-sheltered medical savings accounts. Equally importantly, the pharmaceutical regulatory framework would tend to lean more heavily toward the concept of patient’s accepting informed risk (which should be the general approach to all imperfectly safe voluntary activities - no Nanny State!) than the American FDA; it would certainly accept drug studies done in any of the core Anglosphere nations in considering the status of proposed drugs.
As to immigration and defense, the Island would lean more toward the Australian (and to some extent) the Canadian approach to immigration, rather than the American. That is to say, benefit to the host country would be the primary criterion of entry; only the most immediate family (spouse, children, parents) would be permitted entry on the basis of family ties. A points system (in which candidates are scored on various aspects of desirability, with a minimum score needed for entry) as in the Australian and Canadian models would be strongly considered. Numbers would be related to the actual physical characteristics of the island, which, since it is notional, cannot be fixed here. However, I don't tend to be daunted by the prospect of overpopulation, I am pretty much a Simonian. Assimilability would be a major criterion of admission, and immigrants would sign a Contract of Assimilation as a condition of entry, which for example would require them to adhere to Common Law and the Bill of Rights even when it conflicted with their other beliefs.

This post is not intended to be a comprehensive tour de horizon of my Island, so I will not go into detail about education systems, banking systems, etc. I would presume that there would be a desire for a public school system off some sort, and that others would prefer to create private schools. It would be reasonable, as most Anglosphere countries do, (and many American states once did) to give parents a choice as to whether to use the tax monies allocated to their children's education by attending public schools, or to pay some portion of private school tuition. I would depart from optimal school-choice ideology by declining to fund education in languages other than English, or with an orientation that rejected the fundamental social and constitutional assumptions of the Island. The Island's constitution, as with the American, is not a suicide pact. Home schooling would not be hindered, and home-schooolers would have access to taxpayer-funded after-school and recreational programs as a matter of course.

In economic matters, the basic assumption is open market relations. Banking and currency would be on the basic Anglosphere models, with open entry into financial services subject to regulation to avoid fraud, deception, and gross mismanagement. Although in general I am trying to avoid novel experimentation, it may be
worthwhile experimenting with Hayek's ideas for the denationalization of money; perhaps as a start it would be permissible to use any of the major Anglosphere currencies as units of account. If there are substantial natural resources under the Island's control, revenues would be redistributed to the population via a trust fund structure. As far as taxation is concerned, I would prefer avoiding an income tax altogether, particularly as the Island's economy would most likely concentrate on Information-Age entrepreneurism, with its convention location-independence, whose fluid use of labor doesn't lend itself to classic income taxation very well. An island permits the use of a revenue (as opposed to a protective) tariff as a major revenue source; a consumption tax and/or real estate tax has a similar effect.

Since the Island would undoubtedly be a small mammal in the ecology of world powers, its defense plan would be to raise the price of attack or invasion as high as possible, and to maintain order in the immediate surrounding sea and air spaces, and economic areas. Singapore's military, small, professional, and well-equipped, would be a model, although a citizen militia would back it up. A local version of the SAS would be a high-leverage investment. It would be expected that the ordinary citizen would have the opportunity to be familiar with weapons and, if desired, to participate in society's defense. Anglosphere alliances would be proactively sought.

The people of the Anglosphere have historically been very adept at setting up a functional representative constitutional government on very short notice, in all sorts of corners of the world, and sometimes under very difficult circumstances, such as being in the middle of a war of independence. They have done this by drawing from what is by now a very flexible and comprehensive toolkit of solutions. This thought experiment of Anglosphere Island is designed not to produce the perfect society, but rather a place in which ordinary, or extraordinary people from various corners of the Anglosphere could readily feel at home, and immigrants from other parts could feel welcome provided they chose to meld their cultures with those of the majority. As in the past, the power of the Anglosphere toolkit can be understood by asking whether once could easily imagine such a place, or whether one could imagine living there comfortably. I certainly can.
Anybody with a spare island is welcome to contact me for further discussions.

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An interesting discussion followed, which may be accessed at: