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## Prof. Amar's Eccentric Asides on British History

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One of the things I'm appreciating about this course is the combination of Law, Political Science and History, and particularly the British History (being both a Brit and a historian by origins...). Prof. Amar makes many references to the British way of doing things, and the American adoption/rejection thereof (and there will be a lot more in the Common Law parts of the 'Unwritten Constitution' lectures). However, I do find some of the Prof.'s British *dicta* a tad eccentric. And, while none of them are terribly crucial, an eye for detail is surely a necessary, though not sufficient, part of the legal mind! So, here's a few of my nit-picks from the material so far (with apologies for their nit-picky length....).

**A)** *In the second part of "America's First Officer" lecture [at just after the 6.00 min mark] Prof. Amar states that in England foreign-born people **are** "perpetually ineligible" for membership of Parliament, the Privy Council and certain executive offices.*

That was largely true in 1789, under the terms of the Act of Settlement of 1701 - whose language Amar is quoting - but even by then was somewhat attenuated (a small number of MPs were foreign-born, though all to British parents away on government service). But such restrictions (including most religious ones too) were certainly no longer in force by the early 20th century (the UK had an American-born lady MP in 1919, and a Canadian-born Prime Minister and Privy Councillor in 1922, neither of whom had British parents), and were emphatically swept away in 1948, when citizenship rules were vastly revised.

True, until quite recently those "freedoms" were more granted to those born in the former colonies than to pure outsiders. But, today, there are a good number of naturalized citizen MPs and senior government officers from all parts of the globe. BTW, the UK is somewhat unusual in allowing even non-citizens to vote and to become MPs: Irish citizens are fully eligible for almost aspects of UK civic life, as are Commonwealth citizens.

**B)** *Who chooses the Prime Minister?*

*In the Article II section (at Kindle location 3121) of "America's Constitution: a Biography" (but not, so far, in the lectures), Prof. Amar states in an aside that, **today**, the UK Prime Minister is chosen by*

*Parliament, contrasting that with the late 18th century practice of the King making his own choice from among his grantees.*

Not so.

Technically, the Prime Minister is chosen by the Queen (on advice from her Privy Counsellors), and is the person who can "command the confidence of the House of Commons", ie the leader of the Party with the largest number of seats therein (if need be - and as at present - in coalition with a smaller party to command an absolute majority of the votes in the House). But the Parties - not Parliament, not the Queen, not the People - choose their own leaders, all in various different ways (by some combinations of their own MPs and their membership at large), with the only modern rule being that the party leader is invariably an elected Member of the House of Commons (ie, an MP: not a Lord, a Prince or anyone else).

So, the present UK Prime Minister, David Cameron was elected MP in 2001 with about 40,000 votes in his constituency of Whitney; chosen as Conservative Party Leader in 2005 with about 135,000 votes from members of that Party (from a short-list voted on by its then 198 MPs); and appointed Prime Minister by one single Queen Elizabeth II after the 2010 national election for Parliament (when his party won 306 seats, offering a coalition to a smaller Party that had won 57 seats, so as to have an overall majority over the chief opposition Party with its 258 seats).

Though Parliament does not choose the PM, Parliament can *un-choose* him! If the majority of MPs support a *vote of no confidence* in his government, he resigns as PM and asks the Queen to call a new general election for Parliament. I say *Him*. There's a famous *Her* too: when sitting Prime Minister Margaret Thatcher was defeated in a re-election vote for the leadership of her own Party, she too resigned as PM. However, in that case, her *Party* still had a clear majority in the House of Commons, so the Queen merely appointed the new Party leader, John Major, as PM, without any national election.

**C)** *In the first part of "New Rules for a New World" lecture, Prof. Amar compares the majesty of Buckingham Palace to the homeliness of the White House in the early days of the republic: as he says, a picture [can be] worth a thousand words.....*

Fair enough today: the Palace is about 10 times the size of the White House. But in 1789 it was very much smaller than it now is – not much bigger at all than the White House – and in any case was called "The Queen's Residence", bought by King George III from the Duke of Buckingham in 1761 to be a private home for his immediate family. It was hugely expanded from 1826 under George IV, and only then became "Buckingham Palace". Even then, it only attained its present grandeur in about 1850, though what you see today is essentially the effect of the last major facade-lift, in 1913.

In 1789 the official Royal Palace of London was (and technically still is) St. James' Palace: a charming, ramshackle collection of mostly 16th and early 17th century dark-brick buildings and narrow corridors, somewhat tucked away and easily missed by visitors: no one part of it is especially grand or large. It's that cluster of mostly sepulchral, intimate spaces that would have been very familiar to American diplomats.

Even the Houses of Parliament were less impressive, back in the day. What you see now is the massive re-build after the calamitous fire of 1834. Before that, the old, part-medieval Palace was

another ramshackle collection of great halls and pokey offices (though better sited than St. James for pure visual impact), housing not just the debating chambers of Lords and Commons, but parts of both the royal executive and the high courts.

Gary B.

↑ 0 ↓ · flag

[Stanley H Kelley](#) · 4 days ago 🔒

On the first two points I think Professor Amar is talking about the situation as it existed in the late 18th Century and not what the situation as it is a Century later, just as he sees the Constitution as very democratic for its time, not in the context of today.

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[Anthony Gary Brown](#) Signature Track · 4 days ago 🔒

No: in both cases he specifically talks about what is \*now\* the case, today in the UK.

Gary B.

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[Stanley H Kelley](#) · 4 days ago 🔒

This is far from clear. It is often the case that when talking about historical events that in bringing in other contemporaneous event one uses the present tense which is all he does here. In the text "America's Constitution: A Biography" he says that by opening most offices to immigrants "the Constitution represented a considerable liberalization of eighteenth-century English practice."

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Stanley,

Agreed that point A) is perhaps not so clear, and Amar may well not have been suggesting that the English "perpetual ineligibility" of 1701 remains the case today (which it does not). But it wasn't quite the case in 1789 either. The problems that the 1701 Act had been designed to address - a) the

potential return of continental relatives of the Catholic Stuarts, and b) the potential influx of even Protestant advisers to Sophia of Hanover, the declared heir to the childless Queen Anne - were, some 90 years later, pretty much long-settled.

Clear as crystal in respect of my B):

"The modern Westminster model, in which Parliament picks its own leader with minimal monarchical involvement, still lay in the future." (*America's Constitution: A Biography*, @Kindle 3121)

An interesting follow-on on the immigration point is that of course it was some years after 1789 that a post-Constitution immigrant could actually become naturalized and eligible for office (probably not much before 1800 I guess). The first so naturalized US Representative looks to have been the Scot James Stewart, seated for NC in 1818, and the first naturalized Senator seems to have been the Frenchman Eligius Fromantin, seated for LA in 1813; the first naturalized Cabinet Secretary was the Irish William Duane of the Treasury, appointed in 1833. There was no naturalized Secretary of State until Henry Kissinger! Of course, there were probably naturalized State-level politicians and lesser Federal officials somewhat before those early dates. And, again, there were numbers of foreign-born high achievers - most of them active in the Revolutionary War, which gave them their "chops" for office - around in 1789 itself, though they were not "naturalized" in the narrow legal sense of the word. (A shout-out here for the remarkable Swiss immigrant Albert Gallatin, who was an early occupier of a cluster of post-1789 high State and Federal offices; but he was almost certainly naturalized a few years before that date.)

BTW, an an immigrant myself, I love and cherish the heights to which one can freely aspire in the US, and do believe they have long been more available than in many other lands, including my native UK. Many will recall that Gen. Colin Powell noted that his parents contemplated both the UK and the USA as potential places to move from their native Jamaica. As he said, had he grown up in the UK and joined the British Army, he could perhaps have made sergeant....

Gary B.

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Stanley H Kelley · 4 days ago

Is it not the case with respect to point B that the reason Cameron had to have the votes of the Liberals was because one has to be chosen by a majority of the Commons and not just by a majority of one's own Party?

↑ 0 ↓ · flag



Anthony Gary Brown

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No: in 2010, the old Parliament was dissolved by the Queen on April 11th; the national election took place on May 5th; Cameron was appointed PM by the Queen on May 11th; the new Parliament met for the first time on May 25th (when the Queen made a speech announcing what her new Government would be proposing to the House by way of legislation).

Usually, the appointment of the new PM (assuming the previous one has retired / been defeated) takes place the day after the election. But here it took some time, behind the scenes, for the Lib-Dems to formally agree to support Mr Cameron's party in the forthcoming Parliamentary session; hence the delay until May 11th. BTW, the previous PM, Mr Brown (no relation!) remained as PM after the previous Parliament was dissolved by the Queen, and after he was defeated in the May 5th election. On May 11th, he was summoned by the Queen to be politely dismissed, and a few minutes later Mr Cameron arrived to be appointed.

Gary B.

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