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Magna Carta as a Source of British Constitution.

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Dedication

I dedicate this work to my family specially my parents, sisters and brothers. I also dedicate this work to my best friends Marwa and Merriam for helping me and being very patient with me. To all my colleagues and teachers at the university for their collaboration and

support in my educational life.

To anyone who read this work.

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Abstract

This dissertation is about the nature of the British constitution which is unwritten one ,where the fundamental rules of government take the form of customs, usage. In this dissertation was attempt to analyze one of the document that based on the British constitution which is the Magna Carta . also this study reveals the important principles of unwritten constitution and identifies its characteristic of it. The aim of this dissertation is to find some explanation about the political system in Britain and to discuss the different types of the constitution (written and unwritten constitution).

Key words: British constitution , unwritten constitution, written constitution, political system. Magna Carta

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General Introduction

In a world where all the countries have written constitutions, Britain makes the exception with its unwritten one also called uncodified. This Unwritten Constitution is not gathered in one single document like the written one, but it can be found in a variety of documents, it is generally the result of historical development, not the result of conscious and deliberate efforts of the people. However, the unwritten and the written constitutions share the same principles and aims such as the limitation of powers and the safety. The unwritten nature of the British constitution does not mean that there is no written document.

1.Statement of the problem

Great Britain is a constitutional monarch, where the constitution is unwritten and the king or the queen has limited powers, and the constitution is the reference of all decisions. But the British recently start thinking about shifting from unwritten to written constitution since voices started to rise calling for this necessity pretending that the unwritten constitution is no longer sufficient.

2.Research Questions

The research questions of this study are as followed:

- 1.How dose the British constitution controls all parts of UK?
2. What are the characteristics of British Constitution?
3. what is the definition of Magna Carta ?
4. how the Magna Carta influences other countries into independence?

3.Aims of the Study

The aims of this study are:

- To have an overview of British Constitution.
- It shows how the Magna Carta helps the British constitution to develop through the history and influences other countries into independence.

4.Hypothesis

Is it possible that the British shift to written constitution looking for further stability, enriching their actual one and maintaining the basics of the Magna Carta.

5.Research Methodology

In this study, the major purpose is to analyze one of the historical documents of the British constitution in order to have an overview about the historical movement in Britain.

6.The Structure of Dissertation

This thesis comprises two chapters, the theoretical and the practical one, the first chapter deals with the definitions and the types of constitutions in addition to the basic principles of British Constitution and its characteristics, concluding it with how the British constitution is a quasi-written one.

The second chapter is the practical one, where attempt has made to analyze one of the historical documents in the British history. We start with the definition of the Magna Carta, and how was it issued in 1215. Also attempt to explain some of its provisions, in addition to the signification of the Magna Carta for the British.

7. Significant of the Study

We choose this topic "Magna Carta as a source of British Constitution" because Britain is one of the Modern and few countries that has unwritten constitution, in order to understand how Britain governed their nation by using the document of the Magna Carta.

Chapter One:

The Nature of British Constitution

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Introduction

British constitution is unwritten which depends on rules that have been modified then applied through the history. Its telltale is that no one is above the law even the royal family. Whereby, British constitution control the country depending on several documents like: Magna Carta, Bill of Right and Reform Act...etc, but before we discuss the nature of British constitution we should first understand the meaning of constitution and how its work.

1. Definition of Constitution

Constitution defined as "The set of political principles by which a state or organization is governed, especially in relation to the right of the people it governs". (Cambridge University online, 2018). Another definition by Oxford Living Dictionaries (2018) states that: "A body of fundamental principles or established precedents according to which a state or other organization is acknowledged to be governed". Accordingly , we can understand that constitution is a document which distributes the power between the government, also by providing a list of rules for citizens to follow and living suitable live. Constitution should defined relationship between the government of nation and its people setting limitation on power. So in simple words Constitution is a collective of principles and rules that used to control the country by using the three power of organs (Legislature, Executive and Judiciary). That will be discussed in this chapter.

1.1 Types of Constitution

There are two type of constitution written and unwritten:

1.1.1 Unwritten Constitutions (Uncodified)

Is not a single document like the written one, it is a collection of many documents developed through the history to become what is it now. Like the Magna Carta, the Bill of right and Reform Act...etc. There are only two countries with Unwritten constitutions: New Zealand and United Kingdom. Philgence (2017) argues that :

The UK is Unwritten constitution due to its history. It has not been thought necessary to develop a document which will regulate with the matters pertaining to the constitution. This has been due to the development of UK constitution and the absence of any event which might have an abrupt change in the constitution; such as a revolution, a defeat in war.

1.1.2 Written Constitution (Codified)

Written constitution is a constitution contains in a single document or in a form of book which shows how the laws or rules are govern the political system and protect the rights of the people in a codified form., most countries written constitution like USA and Ghana. This type of constitution used his powers to make a relationship between the state and individual. For the citizens of the country, the constitution has important goal which is to prevent the state from abusing its powers and safeguards the right of the individual. According to Osiele (2017) who states that:

The written constitution means the constitution written in a form of the book or series of documents combined to form a series of the book. It is concisely farmed and enacted from of the constitution, this type of constitution is formulated and adopted by either the constituent assembly, council or a legislature.

1.1.3 Advantages and Disadvantages

1.1.3.1 Advantages and Disadvantages of Unwritten Constitution

Taylor (2008) argues some advantages and disadvantages of both types written and unwritten constitution to show the weakness and the strength of both of them. But first we will deal with Unwritten one:

a. Advantages

- Flexibility: it means that the constitution can be legally changed (easy to change).
- Leaves the state free: this freedom allow the parliament to make law by providing acceptable amendments which bring benefits for its citizens.
- Encourage the evolution of the constitution.

b. Disadvantages

- No single agree source of constitutional law: its not easy to recognize whether something is constitutional or not.
- Leaves the state free can lead to abuse the powers: For examples the prime Ministers are able to change law through the parliament and it could be wrong or abuse for citizen.
- Individual civil liberties are not protect

1.1.3.2 Advantages and Disadvantages of Written Constitution

a. Advantages

- Consist in a single document: mean that every one can buy a legal book which contained all the provision he need it.
- Clear and precise there is no ambiguity surrounded .
- Protects the right of individual from the abuse of the government.

b. Disadvantages

- Requires one document to encompass the regulation of the entire constitution.
- Most of the written constitution are rigid which mean that it is not easy to amend the law, because there are several steps that should follow in order to amend it and it take time.

2. Basic Principles of the Constitution

2.1 The Separation of Power

In the past, the monarch had the power to control the country, but its impossible for them to spread the peace and justice among the citizens. By the time, every thing changed because the country had changed the way it controlled by using a modern constitution which allowed to work together by using what we called a separation of power and its success to achieve what the people want. her is the definition of the separation of power:

It is feature of the peculiarly British conception of the separation of powers that parliament ,the executive and the courts have each their distinct and largely exclusive domain. Parliament has a legally unchallengeable right to make whatever laws It thinks right .The executive carries on administration of the country in accordance with the powers conferred on it by law . The courts interpret the laws ,and see that obeyed.("4 Separation of Powers Lord Mustill It is a Feature", 2018, para1).

From this quote we can understand that the power of UK is divided between the three organs of state : the legislature ,the executive and the judiciary, each one of them has a special functions. The legislature has the ability to amend law, the executive power tries execute law and Judiciary has the right to apply law.

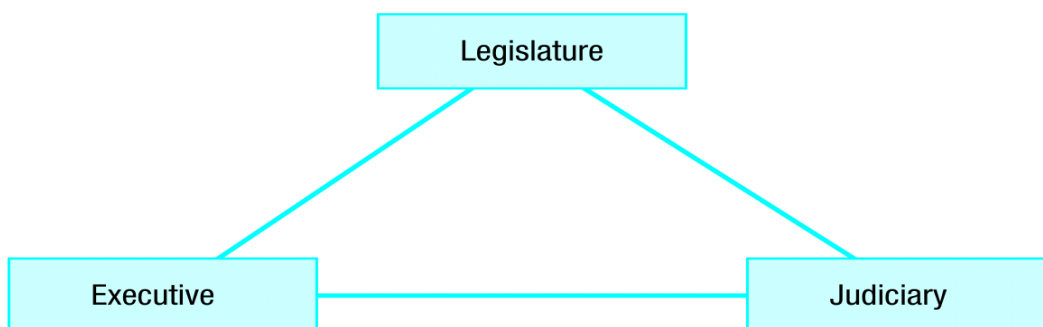


Figure 01:The three organs of the state. Taylor, 2008, p, 28.

2.1.1 The Legislative Power

The UK is bicameral legislature which means two chambers. These are the House of Commons and the House of Lords .

2.1.1.1 House of Commons

House of Commons is the lower house or the First Chamber. The UK Constitution (2015) argues that in the past the House of Commons was not important in the government but through the history it become the dominate chamber over the House of Lords and the main function for the House is to represent the citizen in all matter.

Total Number of MPs	646
Labour	352
Conservative	196
Lib Dem	63
Others	35
Government majority at last election	64

Table 01:The membership of the House of commons (Taylor, 2008,p, 66).

2.1.1.2 The House of Lords

The House of Lords is known as the upper chamber or a second chamber, is not elected like the House of Commons its Composed of Life of peer, peers....etc and divided into two the Lords Temporal and the Lords spiritual. One of his function is to subordinate the House of the Commons and amend the bill and approve it.(UK Constitution; 2015).

Total number of Lords	738
Labour	211
Conservative	205
Lib Dem	77
Crossbench	207
Bishops	26
Other	12

Table 02:The membership of The House of Lords (Taylor,2008,p,66).

2.1.1.3 Functions of Legislation

The parliament makes laws, gives authority for the government to raise and spend money . Bill is printed proposal of an act of parliament, which passes through different stages to become an Act of Parliament. These stages are showing in figure 2

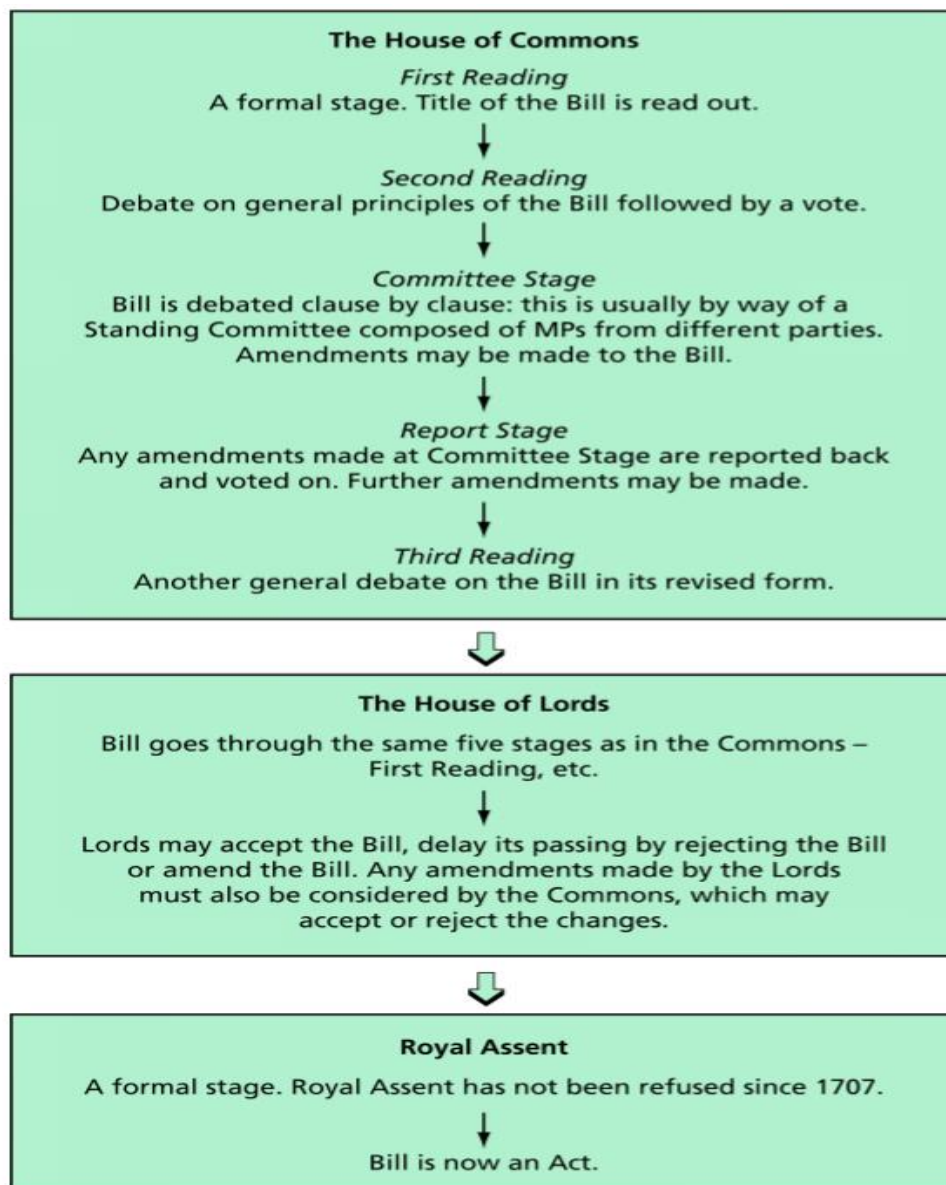


Figure 02: The passing of a Government Bill. Mitchell, 2009, p, 25

2.1.2 The Executive Power

The executive is the second branch of the UK which comprises the government, Cabinet government ministers, Prime Minister (PM) and the monarch. However, Cornford (1991) states that, the executive power of the UK is vested in ,and subject to his

constitution, should be exercised by the government of UK. The government may act through the cabinet or any member of the public service for the UK.

2.1.2.1.Prime Minister (PM)

Prime Minister is the head of the government, who is responsible for obligatory of the government and selects of the ministers PM work with the cabinet to determine the use of armed forces, and determine the level of taxation within the UK .(Taylor, 2008). Prime Minister is elected by the House of Commons from its member, if the majority of the members of the House of Commons suggest there is no confidence in PM, he/she directly fails.

2.1.2.2 The Cabinet

Cornford, (1991) defined the cabinet as a small group which consists of PM, senior Ministers and the Chancellor of Exchequer. Cabinet has the rights to content the government, Ministers are largely the heads of the most department they are appointed by the queen on the advice of PM . (Ministers are members of the both Houses of Parliament.).

2.1.2.3. Power of the Executive

The article "The UK Constitution"(2015) argues that the common law powers of the Executive include, but are not limited to :

- The executive is responsible to organize military, to defense of the state and prepare for fighting in a war.
- Signing a treaty requires some members of the executive before the sing they negotiates the treaty under the approving of international law and the constitution of the state.

- The executive grant titles and honours to people who are in laudable work such as : art, science, literature...etc.

2.1.3 The Judiciary Powers

The Judiciary Powers is the third branch of powers consists of Higher Courts formally the monarch. Although it is mainly comprised of senior judges in higher courts, the judiciary must interpret Act of parliament and apply law (Taylor, 2008). There is no power to strike down law enacted by parliament. (the term judiciary covers all Judges and those Judges are appointed by the Queen on ministerial advice) .

2.1.3.1 Functions

The primary functions of the judiciary that the article of "Political and Constitutional Reform Committee" (2015) argues are:

- Apply law on every person "No one is above the law, all the citizen are equal .
- Using the supreme court of UK which consists of high court of justice it deals with the civil cases (conflict between people or institution) and the crown court for criminal cases (murder, rape and robbery) .

The most important aspect of separation of powers is the way in which the three organs of state act to restrain each other and inhibits the other institutions from exceeding their powers.

3. The Rule of Law

3.1 Definitions of the Rule of Law

The rule of law is the second doctrine of constitution which can be little bit difficult to understand because it does not have a special definition, it can be understood as a legal political system. However, this system try by to protect the right of citizens by declaring some rules to follow it. Basically the rule of law is a set of underlying principles which governs how legal system should be and how the powers of the state should be controlled. the next table provides the reader with different explanations of rules of law:

Writers	Key features
Joseph Raz (1979)	1- law should be general ,open and clear 2-law should be stable . 3-Judiciary should be independent . 4-Law should be biased . 5-Courts able to review state powers . 6-Courts shouldbe accessible .
Declaration of Delhi (1959)	1-Representative government . 2-No retrospective . 3-Respect of human rights . 4-The right to challenge the state. 5- Right it a fair trial .
Albert Dicey (1885)	1- No arbitrary power 2-State power should be specified in law 3-No punishment except for breach of the law . 4-Law applies to all persons equally.

Table 03: Definitions of Rule of law.(Taylor, 2008).

Those definitions shows that no one can be above the law, even the state itself and its obligatory for the state to represent and apply the law in a good way.

3.3 Elements of the Rule of Law

Fuller (1969) identified eight elements of law. The eight elements are clear and understandable but it is difficult to apply it in real life. He stated the following:

1. Law must exist and those laws should be obeyed by all, including government official.
2. Laws must be published.
3. Laws must be prospective in nature so that the effect of the law may only take place after the law has been passed. For example, the court cannot convict a person of crime committed before a criminal statute prohibiting the conduct was passed.
4. Laws should be written with reasonable clarity to avoid unfair enforcement.
5. Law must avoid contradictions.
6. Law must not command the impossible.
7. Law must stay constant through time to allow the formalization of rules; however, law also must allow for timely revision when the underlying social and political circumstances have changed.
8. Official action should be consistent with the declared rule.

4. Parliamentary Sovereignty

The parliamentary sovereignty or legislative supremacy is the superior type of law, it has the right to make any law, and nothing can exceed its power even the King himself. The most significant definition comes from A.V. Dicey, who stated that "Parliamentary sovereignty as the legal right of the British parliament, under the constitution, to make or unmake any law and do so without the possibility of its decisions being overridden or set aside by another body or person."

4.1 The Effect of the European Law on the Parliamentary Sovereignty

In 1973, the UK was not a member of European Community. They had already been established the idea that EU has supreme authority over all member of states. However the international treaties do not produce legal only if they are included by the Act of parliament. (Emrah, 2013).

The parliament made the European Communities Act 1972 which is a direct challenge to parliament sovereignty of UK. In 1988 parliament had some problems in making a legislation so the Factortame case appeared to solve the dispute between parliament and European law. Factortame case sets out the relationship between the EU and UK law and the nature of parliament sovereignty. (Emrah, 2013).

The European Community Act 1972 may be used as an alternative to parliamentary sovereignty so the law may be cancelled by parliament. In seventeenth century, the judges as a response to political events the doctrine get improved. Therefore, The UK altered the constitution by making the parliament had more power than the monarch. (Emrah, 2013).

5.The Constitutional Monarchy

The British Royal Family considered as the famous royal around the world. Most of the people though that the royal family is the responsible of all decision about the country, but this concept is wrong because the king or the queen have a limited power and there are some apply just on the royal families. Cambridge University press (2018) argues that " As system in which the king or queen's power is severely limited, because they act only on the advice of the politicians who form the government.". The next definition is more precise by William Anthony:

A constitutional monarchy is a form of government in which a monarch acts as a head of state within the parameters of written, unwritten or blended constitution. It differs from absolute monarchy in that an absolute monarch serves as the sole source of political power in the state and is not legally bound by any constitution. Most constitutional monarchies employ a parliamentary system in which the Monarch may have strictly ceremonial duties or may have reserve powers, depending on the constitution. They have a directly or indirectly elected prime minister who is the head of government, and exercises effective political power. (British Monarchist league, 2014, para 1)

From these two definitions we can understand that the queen has no power without the prime minister and others who work in the government. However, the queen acts as a head of the state but everything in the advice of the prime minister.

5.1 The Role of the Monarch

The articles " Britain Monarchy" (2015) declared that the monarch has three important roles: First one, the monarch is the head of the state, and as head of the state the queen representing the country by performing the ceremonial duties like appointing ministers and granting titles and honours. Second, the monarch acts as a final check on a government. For example the monarch can refuse to sign the royal assent and the bill would not become a law. Third, the monarch is the embodiment of the government of the country, which means that any person can criticise about the government.

5.2 The Queen and the Church:

The Queen is the supreme Governor, which is a title established under the 1707 Act of Union with Scotland. This act stated that the monarch is the supreme Governor of both the church of England and the church of Scotland. As Supreme Governor, the sovereign must be in communion with the Church of England and, in the coronation, swears to maintain it. As usual, the queen appoints on the advice of Prime Minister, Archbishops,

bishops and Deans of the Church of England. (The Queen's Diamond Jubilee, 2012)

6.Characteristic of Constitutional System

The meaning of a flexible or rigid are more complex than the terms suggest, each one of them has benefits to the country at the same time it could be negative. The written constitution tend to be rigid and the unwritten constitution tend to be flexible.

6.1 Flexible Constitution :

Flexible constitution it is constitution that able to changed law easily by the parliament. A flexible constitution is better adapted to changing situation of the times. Every provisions that passed by the parliament is considered as constitution. It is a sovereign body. Dicey described Flexible constitution as "It is a laws of every description can be changed legally, in very easy way". However, the British constitution is a flexible one, because the parliament have the ability to produce or make law without any struggle (Philgence, 2017).

6.2 Rigid constitution

A rigid constitution can be defined as a constitution that can not be changed easily, the parliament should followed a specific steps for changing the law. USA, India and Canada are examples of rigid constitution. Also Dicey defines Rigid constitution as " a law known as constitutional or fundamental laws, that can not be changed in the same manners as ordinary laws." The American Constitution is rigid so in order to change the law it requires the participation of state legislatures or special ratifying conventions in addition to that of the Congress. According to Arwin (2016):

A rigid constitution cannot be changed or amended easily. To make amendments in the constitution, specific procedures have to be followed, Ordinary legislature of the country is not competent to amend it in the ordinary legislative procedure.

Under a rigid constitution distinction is always maintained between a constitutional law and an ordinary law

The rigidity and flexibility of a constitution are reflected in the process of amendment as well as in the institutions provided it. A flexible constitution is one which can be amended in an ordinary legislative process by the ordinary legislature. A constitutional law and ordinary law are treated alike, but a rigid constitution always make distinction between a constitutional law and an ordinary law.

7.Overview: The United Kingdom's Quasi-Written Constitution

Jenkins (2002) claims that the British constitution influenced by certain documents which are critical in political norms. Those documents include the Magna Carta (1215), the Bill of Right (1689), the Act of Settlement (1701), the Act of Union between England and Scotland, and the Reform Act of 1832. Courts have used their interpretive tools, while none of these instruments legally restrains Parliament.

Parliament limits the powers of House of Lords through the Parliament Acts of 1911 and 1949. The most significant Acts are: the Human Right Act 1998, the statutes devolving law making authority to Scotland, Northern Ireland, and Wales. These documents are important because they respect human rights and pressures Parliament sovereignty by require them to defer the other sources of law. (Jenkins, 2002)

Conclusion:

In this chapter we have been discussed several points such as: the definition of constitution, types of constitution and the basic principles of constitution which deals with the separation of powers (Executive, Legislature and Judiciary), the rule of law and parliament sovereignty. Moreover; the characteristics of constitution and how the United Kingdom's Quasi-Written Constitution. The nature of British constitution is unwritten, so in order to manage and protect the rights of the citizens and stabilized the country, the UK used special systems (its mentioned in the chapter). But what make the unwritten succeed is the flexibility because the written constitution does not has this specialty.

Chapter two:

The Magna Carta

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Introduction

Magna Carta mean the great Charta in Latin it is a fundamental document which underpins on the principles of that no one can be above the law even the king himself. Also is the first document that imposed on a king from his Barons (grazing). In 1214 the barons made a draft of list. Then in 1215 king John forced to sign it. the Magna Carta unionize the relationship between the three powers of England which are the king, the barons and the church. The fundamental purpose in that old era is forcing or banded the king John to maintain the conciliated of the Barons (noblemen), whereas, the other citizens got nothing just the disappoint and hard condition to live because the magna Carta was used just to groveled the king John under the law and limited his power. The story of the Magna Carta begain at Runnymede in England, but it does not end there.

1.Definition of Magna Carta

Depending on Oxford Living Dictionaries (2018) The Magna Carta is a political rights obliged on King John of England from his rebellious barons at Runnymede in 1215, by the time it became the seminal document of English constitutional practice". Merriam Webster Dictionary (2018) claims that " Magna Carta or a charter of liberties, signed by King John of England in 1215, and helps to influence other country into modern constitution.

In brief; The Magna Carta is a fundamental document in the development of individual liberty. Its document provides the fundamental rights of citizens (covenant between the king and the nobleman), In 1215 was the first time to declared about it then declared again in the thirteen century, but in different copies, some of the temporary articles are repealed from the first copy, specially the articles that directly threat the power of king, In 1225 the UK officially used this document as law.

2.Condition of Magna Carta issues

In the middle ages, all the power was in the hand of the king he had the ability to make law with the support of Barons and the Church. But in that period there was a king called John he was unpopular one, king John was a first king that forced to agree for the prerogatives which written on a document known as Magna Carta. It was the turning point, that helped to create the constitution of the kingdom.

King John (1166-1216) was the fifth and the youngest son of King Henry II, he became a King after the death of his brother Richard I. In 27 May 1199 he coronate as King, after awhile he married Isabella de Angouleme. ("John, King of England", 2018).

Mathew Paris said that about him "Foul as it is, Hell itself is defiled by the presence of King John." From this quote we can understand that King John was not a good king, he was one of the worst Kings in the history of England, he was cruel and treacherous.

3.The Problems that Faced King John

3.1 King John and the Church

In the Middle Age, the religion of English people were Christian (Catholic). The pope was the head of the church, he lived far away from the England in Italian city.

In 1205, the Archbishops of Canterbury Hubert Walter died, so the pope Innocent III wanted Stephen Langton to replaced him, but the king John refused to appointed Stephen and he expelled some members of the monks from the kingdom, as a result to that, the pope Innocent III imposed an interdict which informed that no religious men will be expelled any more if that happened the churches will close. At the end of 1214, King John accepted Stephen Langton as the archbishop of the Canterbury because he need the support of the pope. (Hughes, 2015).

3.2 King John and the Barons

By 1204, king John had lost Normandy in France, John wanted his lands to back, he taxes his barons and many ordinary people. He used different methods like: Increased taxes on barons if the baron refused to pay he imprisoned him until he paid. When the barons died, his son or daughter should paid if they wanted to inherit their parents land. and Increased the forfeits for people. Also A rich baron widows also paid after their husband died..(Wilkinson, 2015).

By 1213 king John had collected enough money to declare for a new war. In 1214 John and German Emperor unified together to attack France, but he **lose** the battle again.(Wilkinson, 2015).

4. Magna Carta Issued in 1215?

By 1215, the situation of the country was from bad to worst, the barons met together for finding a solution to stop the King John. A civil war happened between king John and his barons. However, the barons rose a rebellion against king John and they captured London. John realized that it would be difficult to fight them. So he agreed to their demands which include a list of rights. By forcing king John to sign the Magna Carta. it became the first document that obliged on a King. Some of those provisions became a part of England.

5. The Provisions of Magna Carta

Magna Carta was very important document. Written in Latin, it attempted to limit the king power, it contains 63 clauses some of them still a part of English Law :

Clause 1: "FIRST, THAT WE HAVE GRANTED TO GOD, and by this present charter have confirmed for us and our heirs in perpetuity, that the English Church shall be free, and shall have its rights undiminished, and its liberties unimpaired. That we wish this so to be observed, appears from the fact that of our own free will, before the outbreak of the present dispute between us and our barons, we granted and confirmed by charter the freedom of the Church's elections - a right reckoned to be of the greatest necessity and importance to it - and caused this to be confirmed by Pope Innocent III. This freedom we shall observe ourselves, and desire to be observed in good faith by our heirs in perpetuity."

The first clause declared that the English church shall be free, it was intended to insure that the king could not interfere in what the church did and the church had the right to elect its own leaders it used for a purpose when King John and the pope had fallen out over the choice of the Archbishops of Canterbury, so the clause try to limited the power of the King on the Church. In the last sentence of this clause declared that Magna Carta is charter of liberties only for the free men.

Clause 2: If any earl, baron, or other person that holds lands directly of the Crown, for military service, shall die, and at his death his heir shall be of full age and owe a 'relief', the heir shall have his inheritance on payment of the ancient scale of 'relief'. That is to say, the heir or heirs of an earl shall pay £100 for the entire earl's barony, the heir or heirs of a knight 100s. at most for the entire knight's 'fee', and any man that owes less shall pay less, in accordance with the ancient usage of 'fees'

This clause tried to limit the inheritance taxes .Earls and Barons shall pay 100£ (as relief) to the king to inherit their lands. Knight shall pay no more than 5£ for a knights fee.

Clause 6: Heirs may be given in marriage, but not to someone of lower social standing. Before a marriage takes place, it shall be made known to the heir's next-of-kin.

This clause deal "Lower social standing" which addressed that : the guardians were forbidding to marry from lower social standing.

Clause 12 “No 'scutage' or 'aid' may be levied in our kingdom without its general consent, unless it is for the ransom of our person, to make our eldest son a knight, and (once) to marry our eldest daughter. For these purposes only a reasonable 'aid' may be levied. 'Aids' from the city of London are to be treated similarly“.

This clause **meant** that the king could not demand or levy scutage or aid (new taxes) without consent of the Barons. This clause had been implemented like The USA used this clause to justify independence from Britain in 1776. The American people objected to being asked to pay taxes to Britain without having representation in Parliament.

Clause 13: “The city of London shall enjoy all its ancient liberties and free customs, both by land and by water. We also will and grant that all other cities, boroughs, towns, and ports shall enjoy all their liberties and free customs”.

This clause is the most surprising one it confirmed the rights and liberties of London and other cities, for example: Like the English Church, the people of England wanted to make sure that it wasn't the king that got to decide everything that was important. ("Key clauses of Magna Carta", 2018).

Clause 39: “No free man shall be seized or imprisoned, or stripped of his rights or possessions, or outlawed or exiled, or deprived of his standing in any way, nor will we proceed with force against him, or send others to do so, except by the lawful judgment of his equals or by the law of the land“.

This clause is the most famous provision, it established the idea that No free man shall be arrested or imprisoned. All free men of the Kingdom are equals under the law. People should be judged by group of their equals, in a simple word before the punishment there must be a judgment and the judgment must be imposed by equals in manner , even the king himself should follow the law.

Clause 40: “To no one will we sell, to no one deny or delay right or justice ”.

This clause is the shortest and most significant one . It ensures that King John will not sell, or deny or delay right or justice to anyone. The bribery of the King John and his judges were a serious problem in that decade which leading up the barons' rebellion, so the

barons used this clause to take a stand against such practice. By the centuries, it interpreted to guarantee of equals justice under the law.

Clause 54: "No one shall be arrested or imprisoned on the appeal of a woman for the death of any person except her husband'.

This clause deal with the cases that includes murder, which prohibited men from being arrested or imprisoned when the witness is woman, unless the man became her husband.(Johnson, 2015).

Clause 61: (also known as the security clause) "...We give and grant to the barons the following security: The barons shall elect twenty-five of their number to keep, and cause to be observed with all their might, the peace and liberties granted and confirmed to them by this charter. If we, our chief justice, our officials, or any of our servants offend in any respect against any man, or transgress any of the articles of the peace or of this security, and the offence is made known to four of the said twenty-five barons, they shall come to us - or in our absence from the kingdom to the chief justice - to declare it and claim immediate redress. If we, or in our absence abroad the chief justice, make no redress within forty days, reckoning from the day on which the offence was declared to us or to him, the four barons shall refer the matter to the rest of the twenty-five barons, who may distrain upon and assail us in every way possible, with the support of the whole community of the land, by seizing our castles, lands, possessions, or anything else saving only our own person and those of the queen and our children, until they have secured such redress as they have determined upon".

This clause explains that the Barons shall choose 25 barons of kingdom, to make sure that king John follow the terms of Magna Carta. Also they can use force and seize the king castles, lands and possessions to make king keep on his terms, they can attack the queen or children.

The Magna Carta was reissued several times in 1216, 1217 and 1225. The reissued of 1225 became law. Four of 1215 Magna Carta's clauses still a part of English law. These clauses are : the first clause ,the 13 clause and the 39,40clauses companied as one clause.

6. What Happened Afterwards

Hughes (2015) states that in July 1215, King John wants to repeal the Magna Carta so he sent a messenger to Innocent III, but the barons refused that and surrounding the city of London until the Magna Carta had been implemented. In September 1215 civil war broke out between the king and his barons. The castle was handed over to the rebel barons. King John was sick by dysentery, he never recovered in 18 October 1216 he died at Newark. The next king was Henry III (John's son and heir), he was nine years old under the leadership of great barons like William Marshal and Earl of Pembroke, in 12 November 1216 a revised version of Magna Carta was issued in order to get support from barons, and another version edited on 6 November 1217. In 1225, king Henry III became 18 years old and reissued a much revised version of Magna Carta.

7. Model Parliament (1295)

From Oxford Learner's Dictionaries (2018) defined Model parliament as " a parliament including a members of the clergy and the aristocracy people and an elected members to represent ordinary people. Which created by King Edward I (1272-1307) the son of Henry III, during his epoch parliament began to meet more regularly. Edward I had a series of extremely expensive wars, so he looked to the Magna Carta as solution for his financial demands...from the Model of parliament Edward frequently summoned this assembly to secure his subjects' assent to taxation, and later on they made a suitable rules to followed when they needed money.(Wilkinson, p, 23). Magna Carta helped to formalise the idea that the English King needed the consent of his subject to impose taxation (clause 12 of the 1215 Magna Carta).

8. Magna Carta and The Parliament

During the development of the democracy in the years after 1215, it is true to say that Magna Carta embodied values that have been reflected in the history of Parliament. Which includes the idea of liberty and rights and access to justice. Magna Carta incorporate into Parliament's institutional memory began in many ways in 1297, when the text of the 1225 reissue of the charter was copied onto the Statute Roll. In the fourteenth century Parliament passed Acts which clarified some causes in Magna Carta. Also there were six statutes between 1331 and 1369 clarifying aspect of the Charter. (Carpenter & Prior, 2015)

9. The Modern Legacy:

Carpenter & Prior (2015) argues that during the nineteenth century Parliament cancelled many clauses of Magna Carta. In particular, the Statute Law Revision Acts of 1863 cancelled certain clauses of 1225. Today only clauses 1, 13, 39 and 40 remain in force. However, the Human Rights Act incorporated the European Convention on Human Rights into British Law. The convention echoed Magna Carta in its insistence that government follows the law and due procedure.

10. Significant of Magna Carta

The Magna Carta is significant because it is a provision that applied to all people even the king himself. John Roberts (2014) point out three ways which make the Magna Carta significant:

First, Magna Carta was a means of bolstering allegiances. It embedded the rule of law as a unifying force in English society. Second, Magna Carta contributed to the rise of

representative government. Third, Magna Carta had effect some others colonies like : the American colonists embraced Magna Carta as a charter of rights that followed the English flag to the new world.

11. The Magna Carta in the New World:

The idea of Magna Carta spread into the new world (the American colonies). Magna Carta is possibly as venerated, or more venerated, in the US. The first copy arrived with the colonist Sir William Penn, there was another character called Benjamin Franklin who was the brains behind the American revolution, he used the Magna Carta to argue against Taxation without representation, the core issue that led to the revolt against the British colonizers.

In the US, Magna Carta is a foundation for the idea of written entrenched rights, rather than unwritten, changeable constitutional promises. It is also enacted as a statute in many of the US States, and has become an icon in that country.(Joseph, 2016).

12. The Charter of The Forest

Noam Chomsky described The Charter of The Forest as a document which sought to protect the commons from privatization, which of course would clash with many of the dominant economic strategies of today.

The Charter of the Forest may have been the dominant charter from a legal and practical point of view up until the seventieth century. Joseph (2016) argues that: This led us to know about the Charter of the Forest. The Charta of the Forest was a part of the original Magna Carta 1215, but was split off to form a separate Charter in 1217. (in 1217 they used the name Magna Carta to distinguish it from the Charta of the Forest). The

Charter of the Forest went on to become the longest standing English statute, and it was not repealed in full until 1971.

Furthermore, The Charter of the Forest introduced an idea of the management of shared environmental resources for the common good, for example, all could graze their pigs in the forest, or go and take firewood...etc.

13. Magna Carta in Britain Today

Eele (2013) argues that in the twenty-first century, citizens thought that the government threaten their rights and liberties. However, they continue to refer to Magna Carta in their attempts to prevent violations of people's rights...Magna Carta become more significant in this century because it an effective rhetorical device that rise the awareness of the people about their rights.

14. Notable Quotes

"The Magna Carta is one of the great symbols, to all English-speaking peoples, of liberty within law." Archibald Macleish ("Deposit of Magna Carta," November 28, 1939).

"Centuries ago, when kings, emperors, and warlords reigned over much of the world, it was the English who first spelled out the rights and liberties of man in the Magna Carta." Barack Obama (Speech to UK Parliament, May 25, 2011).

"Our later freedoms were gestating in the Charter. Establish the rule of law - the idea that the authorities can't make up the rules as they go along - and everything else will eventually follow." Danial Hannan ("Magna Carta is the birthright of all English-speakers," June 16, 2014).

Conclusion:

In this chapter we have focused on the charter of liberty " The Magna Carta" , by providing the reader with the definitions of the Magna Carta and how the Magna Carta issued in 1215?. Therefore, We tried to explained some different provisions of the charter, at the end of this chapter there are some quotes about it from famous personalities.

From the study can say that the Magna Carta is an important document in constitutional law of Britain. It established important principles like limiting the power of the King and protect the rights of the ordinary people, also Magna Carta has been used by other countries such as Unite State (US), Australia and Canada...etc as a basis for their laws.

General Conclusion

As conclusion, we can recognize that British constitution is different than the other constitutions among the world. Instead of being in a document or a book that can be hold, it is a collective of documents from different centuries.

This dissertation consists two parts, the first part is theoretical and the second part is practical. we tries to discuss in the theoretical part some differences between the unwritten nature of British constitution with the written one, by mention some advantages and disadvantages of both them. Also explains the basic principles of the British constitution which deals with the separation of power, the rule of law, parliamentary sovereignty and constitutional monarchy.

The practical part we analyze one of the fundamental document in the British history which is the Magna Carta. In this part we will explain some of the provision of Magna Carta and why its issued in 1215?, also to show the relation of the Magna Carta and the parliament.

The aims of this study are to find out some explanations about the political system in Britain, the characteristic that identified the Britain constitution, and how the UK's quasi-written.

For this study we hypothesize that if Is it possible that the British shift to written constitution looking for further stability, enriching their actual one and maintaining the basics of the Magna Carta. But Barber (2012) states that the British constitution should not be written because it will bring a practical difficulties, and the Britain constitution has been succeed for years. Also Bradley and Ewing (2011) argues that if the British constitution changes to be written, it is step to bereaving the constitution from its important characteristic, which is the flexibility.

The British Constitution is unwritten one which depends on customs and usages, it has some defects like other constitutions. However, Magna Carta played a big role in the development of the constitution in Britain, because they still use some of their clauses, specially the clauses 39 and 40. It influences many countries like United States and Australia into independence. Also it was the first step into liberty, because it is clarified that no one above the law even the king.

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Appendices

An English Translation of the 1215 Magna Carta

The British Library offers the following text of the 1215 Magna Carta, translated from Latin into English. The British Library website states that:

(1) FIRST, THAT WE HAVE GRANTED TO GOD, and by this present Charter have confirmed for us and our heirs in perpetuity, that the English Church shall be free, and shall have its rights undiminished, and its liberties unimpaired. That we wish this so to be observed, appears from the fact that of our own free will, before the outbreak of the present dispute between us and our barons, we granted and confirmed by Charter the freedom of the Church's elections - a right reckoned to be of the greatest necessity and importance to it - and caused this to be confirmed by Pope Innocent III. This freedom we shall observe ourselves, and desire to be observed in good faith by our heirs in perpetuity.

TO ALL FREE MEN OF OUR KINGDOM we have also granted, for us and our heirs for ever, all the liberties written out below, to have and to keep for them and their heirs, of us and our heirs:

(2) If any earl, baron, or other person that holds lands directly of the Crown, for military service, shall die, and at his death his heir shall be of full age and owe a 'relief', the heir shall have his inheritance on payment of the ancient scale of 'relief'. That is to say, the heir or heirs of an earl shall pay £100 for the entire earl's barony, the heir or heirs of a knight 100s. at most for the entire knight's 'fee', and any man that owes less shall pay less, in accordance with the ancient usage of 'fees'.

(6) Heirs may be given in marriage, but not to someone of lower social standing. Before a marriage takes place, it shall be made known to the heir's next-of-kin.

(12) No 'scutage' or 'aid' may be levied in our kingdom without its general consent, unless it is for the ransom of our person, to make our eldest son a knight, and (once) to marry our

eldest daughter. For these purposes only a reasonable 'aid' may be levied. 'Aids' from the city of London are to be treated similarly.

(13) The city of London shall enjoy all its ancient liberties and free customs, both by land and by water. We also will and grant that all other cities, boroughs, towns, and ports shall enjoy all their liberties and free customs.

(39) No free man shall be seized or imprisoned, or stripped of his rights or possessions, or outlawed or exiled, or deprived of his standing in any way, nor will we proceed with force against him, or send others to do so, except by the lawful judgment of his equals or by the law of the land.

(40) To no one will we sell, to no one deny or delay right or justice.

(54) No one shall be arrested or imprisoned on the appeal of a woman for the death of any person except her husband.

(61) "...We give and grant to the barons the following security: The barons shall elect twenty-five of their number to keep, and cause to be observed with all their might, the peace and liberties granted and confirmed to them by this charter. If we, our chief justice, our officials, or any of our servants offend in any respect against any man, or transgress any of the articles of the peace or of this security, and the offence is made known to four of the said twenty-five barons, they shall come to us - or in our absence from the kingdom to the chief justice - to declare it and claim immediate redress. If we, or in our absence abroad the chief justice, make no redress within forty days, reckoning from the day on which the offence was declared to us or to him, the four barons shall refer the matter to the rest of the

twenty-five barons, who may distrain upon and assail us in every way possible, with the support of the whole community of the land, by seizing our castles, lands, possessions, or anything else saving only our own person and those of the queen and our children, until they have secured such redress as they have determined upon”.

Glossary

Allies: People who cooperate or help one another by working together.

Baron: The name give to a noble. A baron was a person of high rank of society.

Bishop: A senior clergyman within the Catholic church (religious man).

Charter: A type of the document that was used to grant people lands and rights.

Clergy: The priests and other church officials.

Estates: The lands held by people of high rank in society, such as knights and barons.

Homage: A formal declaration of allegiance to king or lord, usually by a tenant such as a knight in different word it a promise of loyalty to a king or lord by a person who held land from him as a tenant.

Interdict: The Catholic Church imposed a sentence on a person or a place, from participating in the life of the Roman Catholic Church. When they forbidden the performance of religious and other services by the Churchmen.

Knight: An armed who fought on a horseback.

Knight's fee: An estate that was large enough to support one knight. This land was usually held from a lord in return for homage and military service.

Middle Ages: It is the period, when the European history form AD 400 to AD1500.

Monk: A man who lived in Christian religious community and dedicated his life for serving God.

Peasant: A person of low status who lived in the countryside. They usually worked as agricultural labourers. They were under control of a baron who acted as their lord.

Priest: A man of the Catholic Church who performed religious services.

Scutage: Money that paid from king to army for the military service also known as shield money.

Sheriff: The chief officer of the King in a county.

الملخص

تتناقش هذه المذكرة الدستور البريطاني و طبيعته الغير مكتوبة , بذكر أهم القواعد الأساسية التي تتركز عليها الحكومة والتي هي العادات و الأعراف. في هذه المذكرة قمنا بتحليل إحدى أهم الوثائق القديمة التي يتركز عليها الدستور البريطاني وهي الماغنا كارتا, حيث إن هذه الدراسة بينت أهم الوسائل المستخدمة في هذا الدستور وإبراز خصائصه. يكمن الهدف من هذه الدراسة هو العثور على بعض الشرح للنظام السياسي في بريطانيا و مقارنته مع الدساتير الأخرى. و ذلك بفرض إذا قامت بريطانيا بتغيير دستورها من دستور غير مكتوب الى دستور مكتوب, سوف يكون أكثر توازنا و مصداقية. في هذه المذكرة سوف نقوم بشرح كيف إن الدستور الغير مكتوب يحدد لكل من البرلمان و الحكومة و العائلة المالكة واجباتها.

الكلمات الجوهرية: الدستور البريطاني, الدستور الغير مكتوب, الدستور المكتوب, النظام السياسي, الماغنا كارتا.