

LESSON 6

How Did Representative Government Begin in England?

Purpose of Lesson

This lesson describes the evolution of constitutional government in England after the Magna Carta. You examine some early documents that protected rights in England and the origins of England's representative governmental institutions. You learn how these ideas and institutions influenced American constitutionalism. You also learn about some important differences between British and American constitutionalism.

You also should be aware that we sometimes refer to England and other times to Britain. In 1707 Scotland agreed to join with England and Wales to create the United Kingdom of Great Britain. "Britain," therefore, is the name used for events occurring after that date.

When you finish this lesson, you should be able to explain how rights and representative government were established in British history and how this history influenced the Founders. You also will have a better understanding of the origins and importance of some of our most important constitutional rights today.

Terms to Know

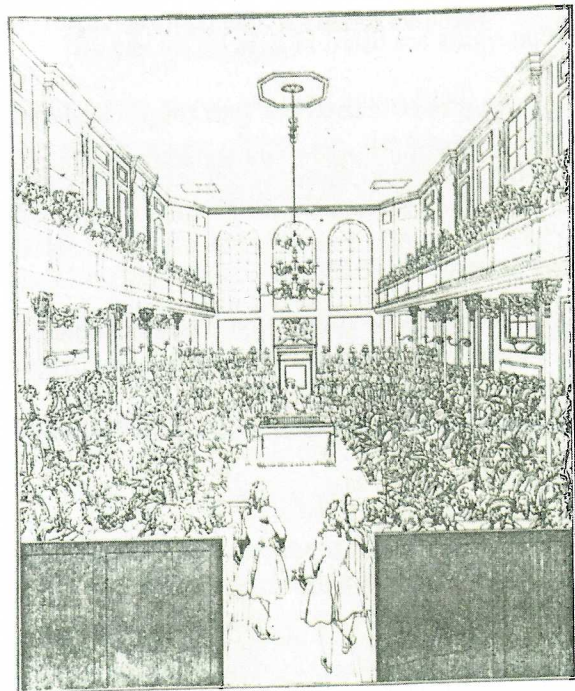
balance of power	Parliament
burgess	Parliamentary supremacy
English Bill of Rights	Petition of Right
Glorious Revolution	realm
House of Lords	Revolution Settlement
House of Commons	writ of habeas corpus
jurist	

How did parliamentary government in England begin?

The Magna Carta brought the law to bear against a law-breaking king. It did not, however, solve the problem of how to make sure the king would continue to comply with the law. The Magna Carta gave King John's barons the right to go to war with him if he broke their agreement. Going to war, however, was not a satisfactory basis for assuring responsible government. A better way began to develop in the century following the Magna Carta.

In the feudal system English kings relied on councils to advise them in the task of governing. The councils came to be called **parliaments**, from the French word *parler*, to speak. At first these councils of advisers included only the leading nobles and clergy of the realm. Gradually, the number of members and the role of these councils expanded to more effectively represent the interests of the different groups in the realm.

In the fourteenth century these parliaments divided into two parts or houses: the **House of Lords**—representing the interests of the feudal nobility and major churchmen; the **House of Commons**—representing not the common people as we understand that term, but rather people who were not nobility but who still possessed wealth and stature in the kingdom. The Commons included knights, who represented the shires or counties of the kingdom, and **burgesses**, wealthy merchants and craftsmen, who represented the cities and towns of England.



How did the English Parliament come to represent the interests of more people?

Parliament developed as a representative institution of government because the kings of England found it an effective way to raise money from their subjects. They also found it an efficient way to make important laws. Henry VIII, for example, used the authority of Parliament to break away from the Church of Rome and

to establish the Church of England. English subjects found Parliament to be an effective way to voice their grievances to their monarch and also to limit or check his or her power.

How did the struggles between the English kings and their subjects develop the British constitution?

Eventually, Parliament became so important to English government that it was capable of challenging the king's ability to act without its support. The struggle for ultimate power in England's government came to a head in the seventeenth century, when the Stuart kings and their Parliaments quarreled over a variety of issues, including money, religion, and foreign policy. At the heart of these struggles was a key constitutional issue:

- Did the king have the authority or prerogative to act independently of established law and parliamentary consent?

OR

- Must the king govern through Parliament and accept the ultimate supremacy of Parliamentary law?

On the outcome of this struggle, which included a bloody civil war, the execution of one king, Charles I, and the overthrow of another, James II, depended the future of British—and American—constitutional government.

What was the Petition of Right?

The constitutional struggles of seventeenth-century England included several important events. One of these events produced a constitutional document almost as important as the Magna Carta: the **Petition of Right** of 1628. Pressed for money, King Charles I sought to raise funds without the consent of Parliament. He also tried to force this money from his subjects through illegal pressures. For example, he required subjects to “quarter” or house soldiers in their homes.

In 1628 Parliament forced Charles to consent to the **Petition of Right**, which confirmed that taxes could only be raised with the consent of Parliament. It also guaranteed English subjects other rights, including a prohibition against requiring people to quarter soldiers in their homes. The **Petition of Right** thus strengthened the idea that English subjects enjoyed certain fundamental rights that no government could violate.



How did the Petition of Right of 1628 strengthen the principle of constitutional government?

What was the connection between the Petition of Right and the Magna Carta?

One parliamentary leader in favor of the **Petition of Right** was the famous jurist Sir Edward Coke, who was greatly admired by the Founders. Coke championed the rights of Englishmen. He believed that the Magna Carta was not only a victory for feudal privilege but also a confirmation of the fundamental rights belonging to all Englishmen, rights that had existed since time immemorial. The **Petition of Right**, he believed, was, like the Magna Carta, a confirmation of these ancient rights.

Why is habeas corpus such an important right?

Another important milestone in this constitutional struggle was the **Habeas Corpus Act** of 1678, in which Parliament gained from English monarchs the right of their subjects to a legal document called a **writ of habeas corpus**. The Latin phrase *habeas corpus* means to “have the body.” A writ of habeas corpus orders the government to deliver a person it has arrested to a court of law and explain why that person has been arrested and held. If the government cannot produce evidence to show that the arrested person may have broken the law, the person must be set free.

The English subject's right to a writ of habeas corpus may have existed in English law even before the Magna Carta. Its guarantee was also one of the provisions of the Petition of Right. English monarchs, however, had for centuries ignored this guarantee by using unlawful arrest and prolonged imprisonment without trial as weapons against their subjects.

Critical Thinking Exercise

EVALUATING THE IMPORTANCE OF THE RIGHTS TO HABEAS CORPUS AND TRIAL BY JURY

The following exercise asks you to examine the rights of habeas corpus and trial by jury. Your class should be divided into two groups, one group will read selection 1 and the other selection 2. Then each group will answer the questions that accompany their selection. Discuss your reading with the entire class.

Group 1: Habeas corpus. The writ of habeas corpus has been called the "Great Writ of Liberty." One constitutional scholar called it "the greatest guarantee of human freedom ever devised by man." Let's examine why this right was thought to be so fundamental.

Suppose you were arrested and imprisoned by the Queen of England. Although you have the right to be tried by the law of the land, the queen's jailers keep you in prison. They refuse to bring you before a court to be charged with a crime and tried.

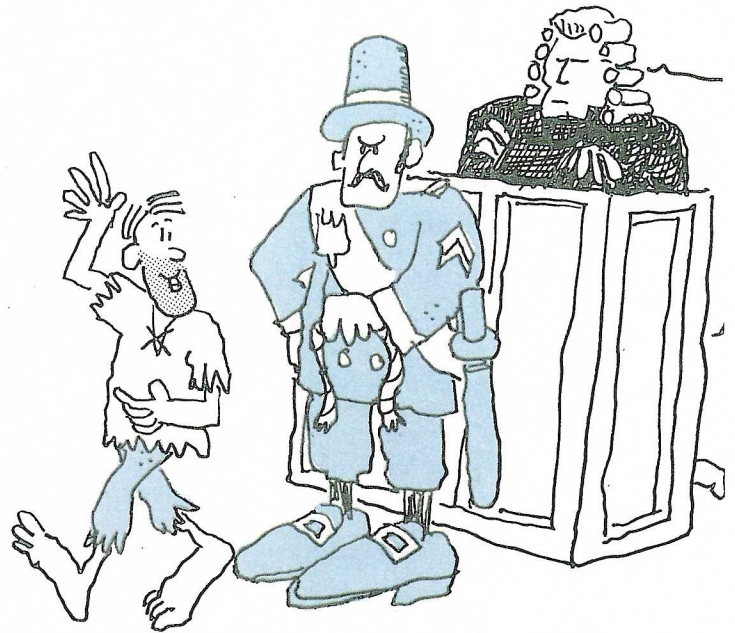
How could the right to a writ of habeas corpus protect you from such treatment? How could the jailers be forced to bring you into a court of law for a fair hearing?

Suppose you had a family member, a friend, or a lawyer who knew you had been arrested and were being kept in prison. That person could go to court and ask the judge to issue a writ of habeas corpus. This writ would be an order by the judge to your jailer to bring you, that is your "body," to court and present evidence that you have broken the law. If there is evidence, you would be held for trial. If there is no evidence, you would be set free.

Examining the Right

1. What limits does the right to a writ of habeas corpus place on the power of the monarch?
2. Why would the English Parliament want to place such limits on the power of the monarch?
3. What arguments can you make for this right today?

4. What examples of situations in the United States or other nations can you identify that uphold or violate this right?
5. Under what conditions, if any, do you think this right should be limited?



Why is the right to a writ of habeas corpus so important in protecting the rights of a person accused of crimes?

Group 2: Trial by jury. The right to a trial by a jury of one's peers is one of the oldest and most important of the fundamental rights of Englishmen. It has become an essential right in a free society.

Suppose you were arrested and imprisoned by the English king. A judge, appointed and paid by the king, has examined the evidence against you and decided you should be tried for breaking the law.

The English constitution guarantees you the right to be tried by a jury of your peers. This means that a group of people from your community will listen to the evidence the king's prosecutor has against you. They also will hear your side of the story. The jury has the authority to decide if you are guilty or innocent of breaking the law. Its verdict must be unanimous to find you guilty. Jurors also have the power to find you not guilty even if you have broken the law if they think the law in question is unfair.

Examining the Right

1. What limits does the right to a trial by jury place upon the power of the monarch?

2. Why would the English Parliament want to place such limits on the power of the monarch?
3. What relation does the right to a trial by jury have to the separation of powers and checks and balances?
4. What arguments can you make for this right?
5. Under what conditions if any, do you think this right should be limited?

What led to the English Bill of Rights of 1689?

The struggle between the monarch and Parliament came to a head in a bloodless revolution known as the **Glorious Revolution** of 1688. King James II was overthrown and forced to flee the country. The king's son-in-law, Prince William of Orange, and his followers had suspected James II of trying to make Roman Catholicism the established religion in England and of resorting to various illegal acts to accomplish this.

In the **Revolution Settlement** that followed the Glorious Revolution, Prince William and his wife, Mary, succeeded to the throne. A condition of their succession, however, was that they agree to a **Declaration of Rights**. The Declaration was then enacted into law by Parliament as the **English Bill of Rights**. It became the cornerstone of the Revolution Settlement and of England's constitution.

What protections did the English Bill of Rights include?

The English Bill of Rights was a practical and specific document rather than a statement of general constitutional principles. Its primary objective was to make sure that what James II had tried to do would never happen again. It limited the power of the monarch by placing the dominant power of government in Parliament and providing for the security of the Church of England against any attempts at counter-revolution by James or his descendants on behalf of Roman Catholicism.

The English Bill of Rights includes many ideas about rights and government that were later included in our Declaration of Independence, Constitution, and Bill of Rights. In addition to limiting the monarch's power to act without the consent of Parliament, it provides for such traditional rights of Englishmen as trial by jury, prohibition of cruel and unusual punishments, the right to petition the government, and the right to bear arms for personal defense—a right, however, granted only to Protestants.

The English Bill of Rights does not provide for freedom of religion. Nor does it guarantee freedom of the press

or freedom of speech outside Parliament. An **Act of Toleration**, however, passed shortly after the Glorious Revolution, gave freedom of worship to Protestant dissenters. Though not included in the act, Roman Catholics were thereafter generally left alone to practice their faith. The government also expanded freedom of the press by repealing the act that allowed censorship of printed material.

How does the English Bill of Rights differ from the U.S. Bill of Rights?

The English Bill of Rights differs from the U.S. Bill of Rights in several important respects. The former was ratified by Parliament and could be changed by Parliament. The U.S. Bill of Rights was ratified by the people and could only be changed with their consent through the amending process of the Constitution.

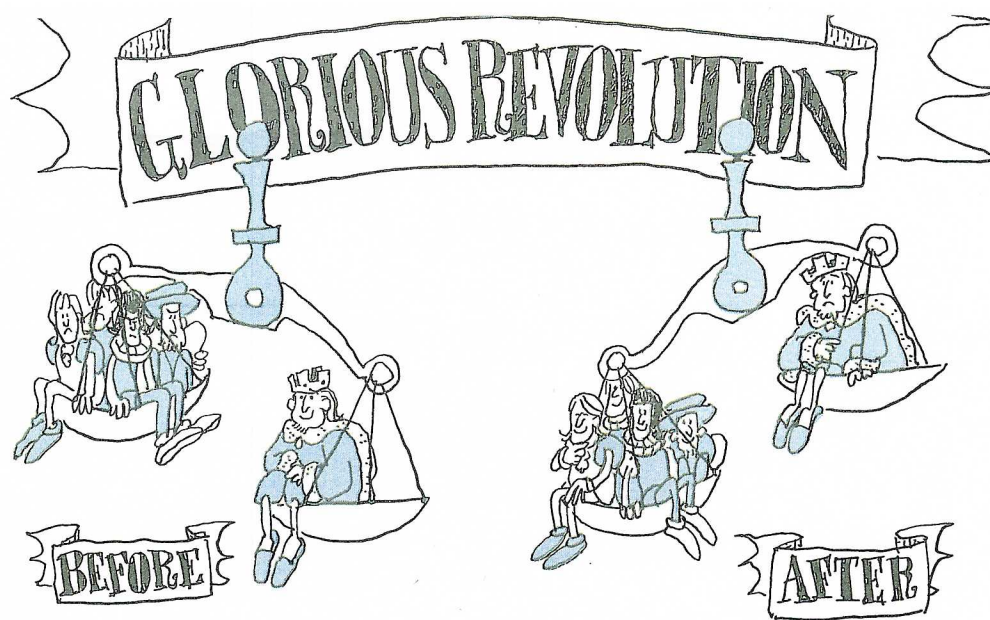
The English Bill of Rights was intended primarily to limit the power of the monarch and increase the power of Parliament. The U.S. Bill of Rights was intended to prohibit the federal government from violating the individual rights of all people and to protect the rights of minorities.

The Glorious Revolution and the English Bill of Rights, however, express several important constitutional principles that influenced our Constitution and Bill of Rights. These were

- **Rule of law.** The English Bill of Rights restated the old idea that legitimate government must be according to the rule of law. Both government and the governed must obey the laws of the land.
- **Parliamentary supremacy.** The Glorious Revolution finally settled the question of supremacy in the English government. While retaining important executive powers, the monarch must govern through Parliament. Parliamentary law was the highest law in the land.
- **Government by contract and consent.** By over-throwing a monarch who broke the law and by declaring respect for the English Bill of Rights as a condition for his successors, the Glorious Revolution confirmed the idea that government is based on a contract between the rulers and those who are ruled.

What do you think?

1. In what ways did the British documents about rights reinforce the major ideas found in the Magna Carta? In what ways did they expand upon these ideas?



How did the Glorious Revolution of 1688 and the resulting English Bill of Rights change the balance of power between the monarch and Parliament?

2. How are the ideas in the Magna Carta, the Petition of Right, and the English Bill of Rights related to the natural rights philosophy?
3. Why might an understanding of British history have led the Founders to want to protect the right of religious freedom and dissent?

Why did Montesquieu admire the British constitution?

Many Europeans admired the British constitution in the eighteenth century. They were impressed by the degree of liberty enjoyed by British subjects and by the growing power and wealth of the British Empire. One admirer of the British constitution was the French philosopher Montesquieu, whose writings on classical republicanism we discussed in Lesson 3. His interpretation of the British constitution had a great influence on the Founders.

Montesquieu admired what he believed to be the “mixed” nature of the British constitution, which included the best of monarchy—the king or queen, aristocracy—the House of Lords, and democracy—the House of Commons. This constitution was, he believed, a modern example of the classical republican model of government. Montesquieu also saw in the British constitution the principle of separation of powers in government, whereby the executive, legislative, and judicial powers are independent of each other.

To some extent, however, Montesquieu misinterpreted how the British constitution worked. It was not as “mixed” in its composition as he believed. Both the House of Lords and House of Commons in the eighteenth century were predominantly aristocratic. Moreover, the three branches of government were not fully separated. The monarch through his or her ministers took an active

part in the affairs of Parliament. English judges also were considered part of the executive branch.

The British constitution as secured by the Glorious Revolution did, however, create a **balance of power** between the monarch and the two houses of Parliament. Judges were granted independence from both the monarch and Parliament to interpret the law fairly. This balance of power was a first step toward the idea of separation of powers and checks and balances in our Constitution.

Reviewing and Using the Lesson

1. How would you describe the evolution of parliamentary government in England?
2. Among the key events in the struggle for power between the Crown and Parliament were the Petition of Right of 1628, the Habeas Corpus Act of 1678, and the Glorious Revolution of 1688. Describe how each of these contributed to the development of constitutional government in England.
3. How does the English Bill of Rights differ from the U.S. Bill of Rights?
4. In recent years proposals have been made to limit or restrict the right to habeas corpus. Do research to find out about these proposals. What concerns are they intended to address? What arguments have been made for and against these proposals? Given what you have learned in this lesson about the importance of the writ of habeas corpus, what do you think of these proposals?