

## Lesson 3

# British Origins of the American Constitution



### Key Terms

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American Constitutionalism	monarch
burgesses	parliamentary government
charters	realm
common law	rights of Englishmen
contracts	rule of law
due process of law	tenets
Magna Carta	vassal
manorialism	

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### What You Will Learn to Do

- Show how the Founders built on the principles of British representative government

### Linked Core Objectives

- Communicate using verbal, non-verbal, visual, and written techniques
- Apply critical thinking techniques

### Skills and Knowledge You Will Gain Along the Way

- Examine how the nature of the British constitution emerged from struggles between royalty, nobility and the church
- Identify how parliamentary government changed and began to represent the interests of all people
- Identify how the constitutional principles from the English Bill of Rights impacted the U.S. Bill of Rights
- Defend a position on the importance of specific rights such as habeas corpus and trial by jury and on what limitations, if any, should be placed on them
- Define key words contained in this lesson

## *Introduction*

The American colonial period lasted for 150 years. The Founders were loyal subjects of the British crown and were proud to enjoy the rights of Englishmen as protected by the English constitution. The Founders were greatly impacted by the English form of government, which ultimately influenced the creation of the United States Constitution. In this lesson you explore how the establishment of representative government in British history influenced the Founders and helped establish some of our most important constitutional rights today.

## *How English Government Began*

For several centuries after the fall of the Roman Empire, England was divided among a number of tribes, each ruled by its own leader or “king.” These early kings were selected by councils of advisers because they were the strongest and most powerful members of their tribes. For many years these tribes were at war with each other. Eventually all the tribes of England became united under one king. Christianity increased the authority of kingship by teaching that kings were “anointed by God” and that all the people governed by the king were subject to his rule—which is why they were called “subjects.”

England was too large for one person to rule because quick and efficient means of communication and travel did not exist. Most kings had to let people in local areas tend to their own affairs according to customs that had developed over the years.

## *Feudalism*

A major change in the way England was ruled took place on October 14, 1066, when William the Conqueror, the leader of the Normans (from Normandy in France), invaded England and defeated King Harold at the Battle of Hastings (see Figure 2.3.1). William introduced the new system of feudalism to control the conquered land.



*Figure 2.3.1: Feudalism, introduced after the Normans invaded England, changed the way people were governed.*

*Courtesy of Nik Wheeler/  
Corbis Images.*

*How did feudalism change the way people were governed?*



### Key Note Term

**vassal**—in feudal times, a person granted the use of land by a feudal lord in return for military or other service

**contracts**—binding agreements between two or more persons

**manorialism**—the form of economic life of the Middle Ages, when most people were involved in agriculture and land was divided up into self-contained farms or manors

Feudalism is not easy to define because it varied greatly in different times and different places. Generally, feudalism was a form of political organization in which a lord gave land to other men in return for their personal allegiance and for military and other service. The men who received land from the lord were known as **vassals** as they served their lord and were entitled to be protected by him.

Feudalism is important to the development of constitutional government because of its ideas about **contracts**. Feudal government depended upon a series of agreements or contracts between lords and vassals. Each contract included mutual rights and responsibilities. Thus, feudalism introduced the idea of government based on a contract—those in power pledged to respect the rights of the people who gave them allegiance.

The basis of this feudal system was land use. Parcels of land were divided into self-contained farms or manors. Peasants were legally required to remain on the land and in that sense were part of the property enjoyed by the owner or “lord” of the land. Even peasants, however, enjoyed certain customary rights on the manor. For this reason, the system of **manorialism** as well as feudalism helped to develop ideas about the fundamental rights of Englishmen.

## Understanding the Rights of Englishmen

The **rights of Englishmen** had been established slowly over centuries of British history. They were certain basic rights that all subjects of the English monarch, king or queen, were believed to have. They were fundamental in the sense that they could not be changed or violated.

The Founders began their lives as loyal subjects of the British Crown, proud to enjoy the rights of Englishmen. This privilege, they believed, set them apart from the other peoples of the world. Centuries of respect gave these rights a special status which included:

- **The right to a trial by jury**
- **Security in one’s home from unlawful entry**
- **No taxation without consent**

### Key Note Term

**rights of Englishmen**—basic rights, established over time, that all subjects of the English monarch were understood to have

The historical sources of these rights are custom and law. They were confirmed by royal **charters** and became part of English common law. The **common law** consists of the accumulated legal opinions of judges explaining their decisions in specific court cases. These decisions provide guidelines or precedents for later judgments. The English common law provides the historical foundation of our American legal system.

## The British Constitution

Unlike the U.S. Constitution, the British constitution did not exist before the creation of a government. The constitution of Great Britain is not a single written document. Instead it is made up of the common law, acts of Parliament, and political customs and traditions.

Three great historical documents are important in the development of the British constitution and the rights of the British people. These are the **Magna Carta** (1215), the Petition of Right (1628), and the English Bill of Rights (1689).

These documents were written during times of great conflict. Much of English history is the story of a bloody struggle for power between the most important groups in society. These groups were the royalty, nobility, and the clergy. By the thirteenth century, the struggle was mainly between royalty and the Parliament. Parliament was originally a council of nobles created to advise the **monarch**. It soon became the branch of government that represented the most powerful groups in the kingdom.

For hundreds of years, Parliament and the monarch struggled for power. During these conflicts, English subjects were jailed, tortured, and executed. Kings and queens defeated in battle were imprisoned and beheaded. Because of these conflicts, several important legal documents were written that limited the power of the monarch in order to protect the rights of other groups. These documents were important not only in English history, but also had a great influence on the Founders. One of the most important of these documents is described next.

## Understanding the Magna Carta

The first great landmark of British constitutionalism and one of the great charters of human liberty originated as a quarrel between a feudal lord and his vassals. One of William the Conqueror's successors, King John, tried to take back some rights and powers of his barons. This was the title of nobility given to principal vassals. The result was a war between the barons and their king, a war that the barons won.

With the support of the church and others, the barons, in June 1215, forced John to sign the Magna Carta, meaning *Great Charter*, confirming certain traditional rights and, by implication, promising not to violate them again. Most of the rights in question were feudal privileges, enjoyed only by the feudal nobility. The **tenets** of the Magna Carta were very important in the later development of constitutional government:

### Key Note Term

**charters**—written documents from a government or ruler which grants certain rights to an individual, a group, an organization, or the people in general

**common law**—the body of unwritten law developed in England from judicial decisions based on custom and earlier judicial decisions, which constitutes the basis of the English legal system and became part of American law

**Magna Carta**—the Great Charter of freedom granted in 1215 by King John of England by demand of his barons

**monarch**—a king or queen

### Key Note Term

**tenets**—an opinion, doctrine, or principle held as being true by a person or especially by an organization

**Key Note Term**

**due process of law**—protection against arbitrary deprivation of life, liberty, or property



*How did the Magna Carta reduce the power of the English monarch?*

*Courtesy of F.P.G. International.*

**Government should be based on the rule of law.**

The Magna Carta was perhaps the most important early example of a written statement of law limiting the power of a ruler. It expresses the idea of limited government by requiring the king to govern according to established rules of law. The Magna Carta, for example, states that no free man could be imprisoned or punished “except by the lawful judgment of his peers and by the law of the land.” “Judgment of his peers” did not originally mean trial by jury as we understand it. This statement, however, did explain the principle of **due process of law**, whereby no government could take action against those it governed except by settled and generally agreed on procedures and rules.

**Certain basic rights may not be denied by government.** In limiting the power of the king, the Magna Carta also expressed the idea that established rights of the governed could not be violated. Most of the rights guaranteed in the Magna Carta belonged only to the feudal nobility. The Magna Carta did, however, secure some rights for others in English society. The king, for example, promised to respect the “ancient liberties and free customs” of London and other towns.

**Government should be based on an agreement or contract between the ruler and the people to be ruled.** The agreement in the Magna Carta was between the king and a very limited number of his subjects. It did not include the majority of the English people. It did, however, express the feudal principle of drawing up an agreement between parties as a basis for legitimate government.

Government by contract meant that if either side broke the agreement, that agreement would no longer be valid. Later generations also would discover in the Magna Carta the seeds of other important constitutional principles. For example, the American colonists found in King John’s promise not to levy certain feudal taxes without the consent of “our common counsel of the kingdom” the principle of no taxation without representation and consent.

**Analyzing and Evaluating Specific Rights**

People have fought and died to establish such rights as those described in this lesson. It is often difficult, however, to understand their importance from merely reading about them. By examining specific rights more closely and discussing your opinions about them, you may be able to gain a greater appreciation of their meaning and importance. Let's examine more closely some of the provisions of the Magna Carta.

Two parts of the Magna Carta, Articles 39 and 40, contain some of the most important principles of modern constitutionalism. Read and discuss these provisions; then develop responses to the questions that follow. Be prepared to explain your answers to the class.

**Article 39:** No freeman shall be taken or imprisoned or disseised [dispossessed] or banished or in any way destroyed, nor will we proceed against or prosecute him, except by the lawful judgment of his peers and by the law of the land.

**Article 40:** To no one will we sell, to none will we refuse or delay, . . . justice.

1. What rights are listed in Articles 39 and 40? In what ways might the rights in Articles 39 and 40 be relevant to you today?
2. How do these rights limit the power of the king?
3. Why would the English nobles want to place such limits on the power of the king?
4. What values and interests are protected by these statements?
5. What events in the United States or other nations can you identify in which one or more of the above rights have been upheld or violated?
6. Do you think the declaration of these rights alone is enough to protect individuals from unfair and unreasonable treatment by their government? Why or why not?
7. At Runnymede in England, where King John signed the Magna Carta, there are three monuments. One is a tribute to U.S. President John Kennedy. Another is the Magna Carta national memorial erected by the American Bar Association. In addition there is one honoring the Commonwealth airmen who died in World War II. Why do you think the Magna Carta might be especially important to Americans?



*Did the Magna Carta protect the rights of all Englishmen? Why?*

**Key Note Term**

**realm**—a community or territory over which a sovereign rules; a kingdom

**burgesses**—wealthy merchants and craftsmen who represented the cities and towns of England

**parliamentary government**—a way of dividing legislative power to better represent the people

**Parliamentary Government in England**

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.

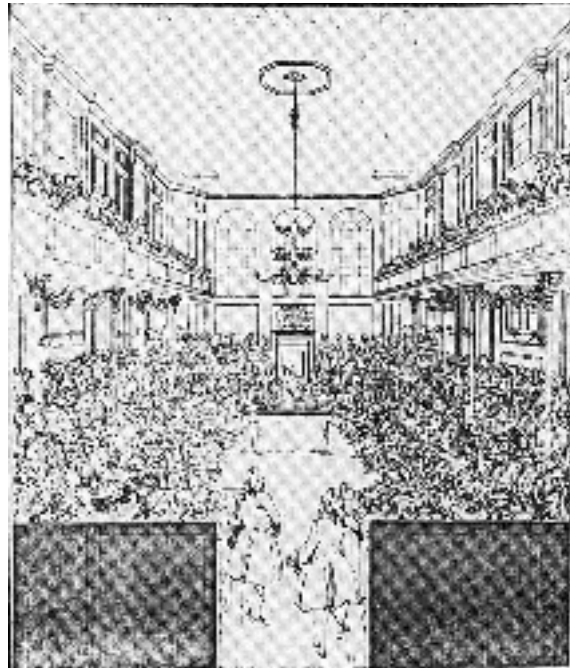
In the feudal system English kings relied on councils to advise them in the task of governing. The councils came to be called parliaments, from the French word *parler*, to speak. At first these councils of advisers included only the leading nobles and clergy of the **realm**. Gradually, the number of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

Parliament and **parliamentary government** 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 (see Figure 2.3.2), 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.

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:



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

*Courtesy of the Library of Congress.*



*Figure 2.3.2: King Henry VIII used Parliament to break away from Rome and form the Church of England.*

*Courtesy of Gianni Dagli Orti/Corbis Images.*

- **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?**

The future of British and American constitutional government depended 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.

### *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?*



### ***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.

### ***Habeas Corpus***

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.

### ***Evaluating the Importance of the Rights to Habeas Corpus and Trial by Jury***

Take a few minutes and 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. Each group will then 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.”

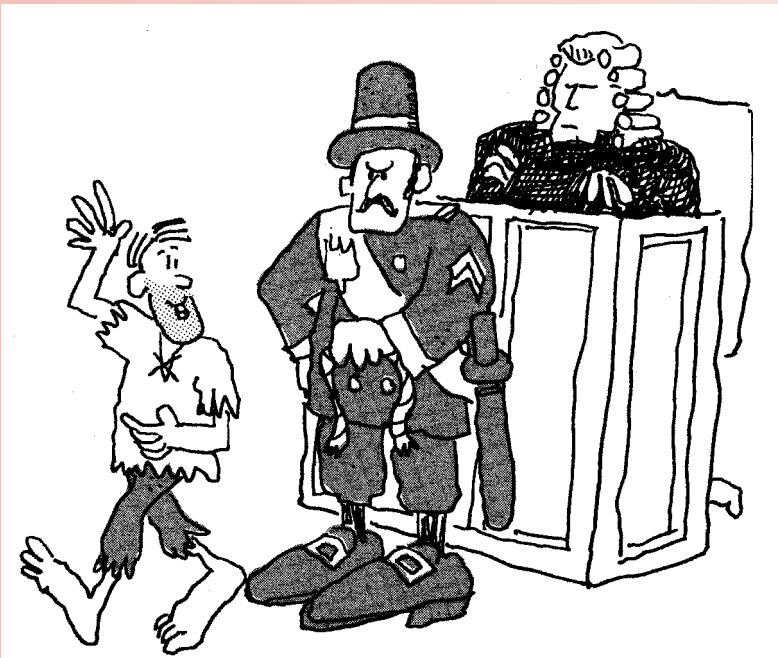
Now examine why this right was thought to be so fundamental.

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.

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.

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?

## *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, which 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 overthrowing 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.

#### ***Key Note Term***

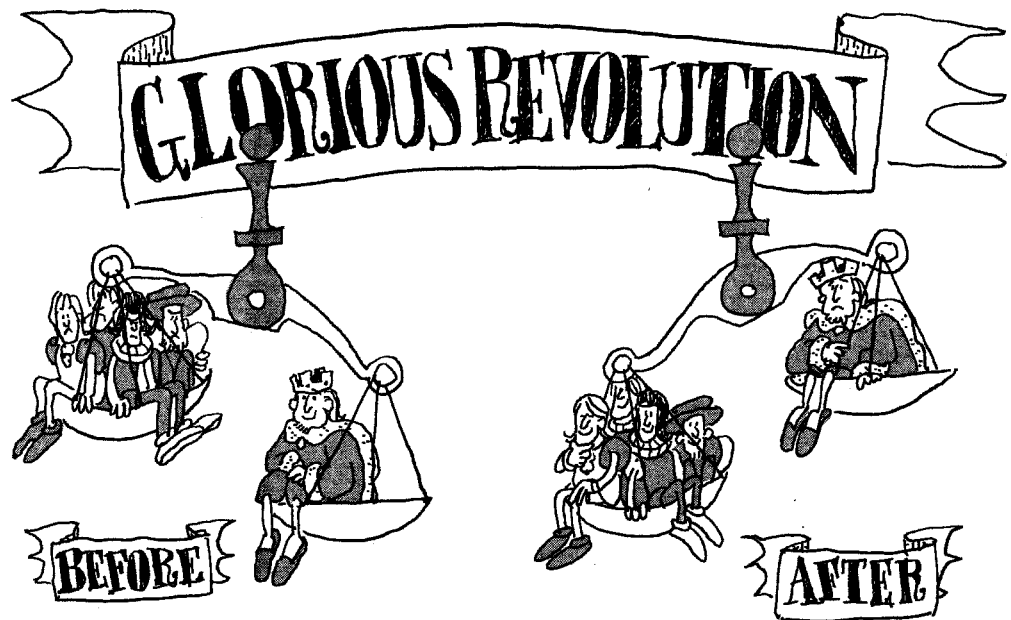
**rule of law**—implies that government authority may only be exercised in accordance with written laws, which are adopted through an established procedure

#### ***British History and the Magna Carta***

Think about the following questions. Be prepared to share your thoughts with the rest of your class.

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?
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?

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



### **Montesquieu and 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. 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.

## Conclusion

This lesson described how some basic rights of Englishmen were established and why they were important to the American colonists. You examined English government in its early stages from the ninth through the thirteenth centuries, known as the feudal period. You also examined the initial development of the English constitution, the Magna Carta, and its importance to the Founders.

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

The following lesson covers colonial government. In this lesson, you examine basic rights and constitutional government.

### Key Note Term

**American Constitutionalism**—government in which power is distributed and limited by a system of laws that must be obeyed by the rulers

## Chapter 2

## Lesson Review

### Lesson Review

1. What is meant by the “rights of Englishmen”? How were these rights established?
2. What was feudalism and how did it contribute to the development of constitutional government?
3. What is the Magna Carta? How was it created? How did it contribute to the development of constitutional government?
4. What is the common law? How does it develop?