

# What Were the British Origins of American Constitutionalism?

High school level: Unit 1, Lesson 5

## Purpose of Lesson

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

## Terms to Know

Charter	Manor and manorialism
Contract	Parliament
Custom	Rights of Englishmen
Common law	Royal charter
Due process of law	Subject
Feudalism	Tenet
Magna Carta	Vassal
Monarch	

## How did English government begin?

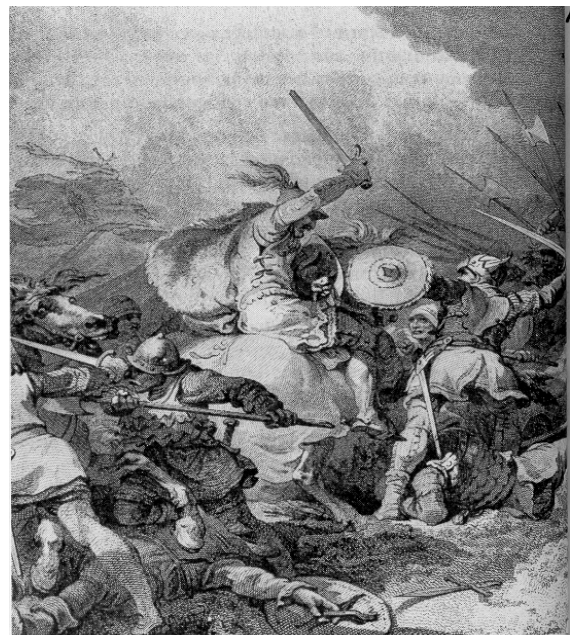
For several centuries after the fall of the Roman Empire, England was divided among a number of tribes, each ruled by its own leader or “king.” These early kings were selected by councils of advisers because they were the strongest and most powerful members of their tribes. For many years these tribes 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.

## What was 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. William introduced a new system of **feudalism** to control the conquered land.

Feudalism is not easy to define because it



*How did feudalism change power relationships between people.*

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 his **vassals**—they served their lord and were entitled to be protected by him.

Feudalism is important to the development of constitutional government



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

because of its ideas about **contracts**. Feudal government depended on 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.

### **What do we mean by 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. They included

- the right to a trial by jury
- security one’s home from unlawful entry
- no taxation without consent

The historical sources of these rights are **customs 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.

### **What is 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 they also had a great influence on the Founders. One of the most important of these documents is described below.

### **What was the Magna Carta and why is it important to us?**

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**—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**—principles or doctrines—of the Magna Carta were very important in the later development of constitutional government:

**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.** This 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, the 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.

### CRITICAL THINKING EXERCISE

#### 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. Working in small groups, 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?
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?



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

#### What do you think?

1. In what ways might the rights in Articles 39 and 40 be relevant to you today?
2. 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?
3. 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 memorial erected by the American Bar Association. In addition there is one honoring the British Commonwealth airmen who died in World War II. Why do you think the Magna Carta might be especially important to Americans?

#### Reviewing the Using the Lesson

1. What is meant by the “rights of Englishmen”? How were these rights established?
2. What is the common law? How does it develop?
3. What was feudalism and how did it contribute to the development of constitutional government?
4. What is the Magna Carta? How was it created? How did it contribute to the development of constitutional government?
5. What ideas in the U.S. Constitution or in your state constitution can you trace back to the Magna Carta?

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