

## Chapter 9: An Overview of British Constitutional History: the King and the Medieval Parliament

Two chapters are devoted to developing an overview of the constitutional history of the United Kingdom. This is done for three reasons: first, most English language readers will be most familiar with this history, although they will not generally be familiar with its constitutional developments. Most historians focus on the great tapestry of history rather than a single very important strand of developments, and thus telling the tale provides a useful illustration of how the analytical models can be used as a lens through which to view history. Second, the English history demonstrates very clearly the robustness of the King and Council template. Although times were often troubled and occasional civil wars ensued, that template remained in place for essentially eight hundred years. Third, England emerged as a nation state relatively early, which makes its particular institutional development relatively free from the effects of regional entanglements, although not entirely so. This allows a long and relatively detailed account of its medieval history to be told without accounting for nation building, itself.

Accounting for English constitutional developments, however, is complicated by the fact that England has never had a formal constitution or fundamental law.<sup>62</sup> The written constitution of the United Kingdom consists of dozens of acts of parliament that define, and redefine: the basic architecture of the government, how the persons who come to hold power are chosen, and the constraints under which they may lawfully operate. In addition to the written constitution is an elaborate unwritten body of procedures and norms that fills the spaces of constitutional legislation. For example, evidently the crown continues to have the power to call and dismiss parliament, to

appoint ministers, and to veto legislation, but informally the Crown has deferred to Commons on these matters for more than a century.

Neither the multi-document character of the English constitution, nor the complexity of its unwritten informal constitution is unusual among the countries analyzed in the present study. What is unusual about the English constitution is its longevity and the fact that none of its written documents describe formal procedures of constitutional amendment that are more stringent than for changes in ordinary legislation. The relative ease of amendment has allowed more constitutional legislation to be passed and, thus, a more gradual path of constitutional development than in the other modern kingdoms of northern Europe, but its constitutional core has remained extraordinarily stable. The medieval constitution remained substantially in place for 400 hundred years, except for two decades in the seventeenth century. The modern constitution emerged during the period between 1828 and 1928, and has been in place for nearly a century.

Instead of a cumbersome amendment process, the stability of the English constitution is the consequence of the natural institutional conservatism of existing parliamentary bodies who tend to be well served by the rules that bring them to power, and by informal norms that regard fundamental features of British governance to be sacrosanct. Although, it has been the case since 1911, that the written constitution can be modified at any time by a simple majority of the House of Commons, no major structural changes were adopted until 1999, when the hereditary basis of membership the House of Lords was substantially reduced--although not eliminated.<sup>63</sup> It is well-recognized by both politicians and voters that some changes in law may have unanticipated long term effects on the subsequent balance of political power. Thus, risk aversion as well as ongoing political interests make changing the English constitution more difficult than its amendment rules imply. For this reason, a surprising amount of the medieval template of English governance remains in place.

<sup>62</sup> It could be argued that Cromwell's *Instrument of Government* (IG) was a written constitution. It was adopted by Cromwell in 1653, but it never really described the fundamental procedures and constraints of English governance. Cromwell clearly had more power in practice than described by the IG--as for example when he rejected a more than a fourth of the first parliament elected under its rules. Moreover, the IG was substantially revised in 1657, and governance under the amended "constitution" disintegrated shortly after Cromwell's death in 1658 (Morgan, 375-7; Field 122-5).

<sup>63</sup> The rules for membership in the Lords have been revised several times in the past half century. Lifetime memberships in Lords (non-hereditary peers) were created in 1958 and the number of hereditary peers eligible for voting in Lords was reduced to 92 in 1999.

The possibility of eliminating the House of Lords all together has recently been seriously debated, and various alternatives to hereditary membership voted on in Commons (McLean, xxxx). Of course, debate over the role of Lords in a democratic country has long been considered. Indeed the House of Lords was eliminated for about a decade, along with the crown, during the English civil war (1649-1660).

Table 1 lists four dozen significant reforms of the procedures of British governance spread unevenly over the course of eight centuries. Episodes of reforms of the written constitution are concentrated for the most part in four periods (i) in the mid-fourteenth century during which parliament took its medieval bicameral form: a house of commons representing county and town governments and a house of lords representing nobles and senior church administrators, each with veto power over taxes and legislation, (ii) in the early sixteenth century during when time the Church and church courts were brought under the control of the crown via acts of parliament, (iii) in the period between 1825 and 1835 when the medieval electoral practices for selecting members of the House of Commons and local governments were radically reformed, partly at the behest of organized reform groups outside parliament, (iv) in the period from 1910-1928, when universal suffrage was adopted and the House of Lords lost its absolute veto power.

This is not to say that no other significant constitutional legislation has taken place in the course of the past eight centuries. The suffrage reforms of 1430, 1867, and 1884 were clearly significant. The unwritten constitution also underwent substantial reform during the late 18th century as royal deference to Parliament increased, the use of the royal veto declined, the House of Lords increasingly deferred to commons on money bills, and cabinet governance emerged. Recent membership in the European Union and modifications of the House of Lords are likely to affect the procedures and constraints of contemporary English governance for decades to come. It is to say, however, that the basic architecture, procedures, and constraints of British governance have been stable for centuries at a time, despite of the absence of stringent rules for constitutional amendment.<sup>64</sup>

**Table 1: Major Constitutional Developments in English Constitutional History**

Date	Event	Description
1215	Magna Carta	Establishes Right to Jury Trial, and Council of Barons (including Bishops and Abbots) with veto power of new taxes
1265	Montefort Parliaments	Invites four knights from each shire (county) to his first parliament. Two burgesses from every major town are also included in his second parliament.
1414	Equality of Commons and Lords	Proclamation of Henry V that laws be adopted with the assent of both Commons and Lords
1429	Election Law Statute	49 shilling franchise established in the Shires (counties), allowing 5 percent of adult males to vote for shire representatives to Commons.
1445	Election Law Statute	Boroughs to have two elected representatives each, who must be residents and possess the wealth of a Knight (or Squire).
1489		Court decision holds that legislation requires the assent of both Lords and Commons.
1533	Act of Appeals	Appeals by ecclesiastical courts to the Pope eliminated (makes the crown the final level of appeal in both secular and religious courts).
1534	Act of Supremacy	Crown as head of English Church (rather than Pope), Creation of Anglican Church
1534	First Act of Secession	Parliament passes and the King accepts rules for future accession to the crown. (The rules were suggested by the King.)
1536	Bill for the Dissolution of the Lessor Houses	Dissolution of smaller monasteries with all their assets turned over to the Crown. Abbots and Priors are subsequently removed from the House of Lords, ending the majority of the "Lords Spiritual."
1536	Union of Wales and England	English law extended to Wales, 24 Welsh MPs join parliament.
1641	First Triennial Act	Parliament to be called at least once every 3 years, will be "self calling" if the Crown fails to issue writs
1641	Act Against Dissolution	Forbade the King from unilaterally dissolving parliament
1642-1660	Civil War and Commonwealth	Period of parliamentary rule (by a subset of the 1641 Parliament) followed by the Authoritarian Rule of Cromwell
1660	Breda Proclamation	Restoration of Parliamentary Monarchy: England returns to constitution of August 1641 (prior to Act Against Dissolution)
1664	Second Triennial Act	Requires parliaments to be called at least once every three years, but eliminates the self-calling provision.
1673	The Test Act	Forbade Catholics and dissenters (mostly Presbyterians and puritans) from holding public office
1689	Bill of Rights	William and Mary offered joint sovereignty, right to jury trial affirmed, right of free speech in Parliament affirmed, forbids a standing army in peace time, and excludes Catholics from the crown.
1694	Third Triennial Act	Modifies the previous triennial act. A meeting of parliament is required at least once every three years, and the maximal duration of parliament is set at 3 years
1689-1702	Precedents of William III	Annual tax bills, ear-marked taxes, ear-marked budgets, audit of crown accounts, parliamentary consultation on military and foreign affairs, Bank of England is established.
1698	Civil List Act	Provides William III with additional tax sources for life, but caps the new revenues at £700,000/year, beyond which approval of parliament is required.
1701	Act of Settlement	Advances the Hanovers in the line of secession (as the nearest Protestants), future crowns can only leave Great Britain with permission from Parliament, MPs are forbidden from being on the royal payroll.
1706	Regency Act	Provides for a regent council after Queen Anne's death, naturalized all protestant Hanoverian successors. It also weakens the 1701 provision regarding MPs on the Royal payroll. MPs may now take paid positions, but must stand for reelection after taking a new position.
1707	Union of Scotland and England	Scottish Parliament abolished, 45 Scottish members join the "English" Commons and 9 elected peers join the Lords.
1711	Property Qualification Act	County representatives to Commons (knights) required to have 600 pounds of income per year, and town representatives (burgesses) 300 pounds per year.
1716	Septennial Act	Modifies the Third Triennial Act, by setting the maximal duration of parliament at 7 years.
1801	Union with Ireland	The Irish parliament is abolished, 100 Irish MPs join the "English" Commons, and 32 new Peers join the House of Lords.
1828	Repeal of the Test Act	Allows Catholics and dissenting protestants to run for office and hold appointed positions in government
1829	Catholic Emancipation Act	Allows Catholics to sit in Parliament.
1832	Great Reform Bill	Major reform of Commons: the Borough franchise is made uniform, which doubles the franchise from 10 to 20% of male voters; and seats are redistributed from very small boroughs to the new industrial centers and counties.
1833		Slavery Outlawed in the British Empire

<sup>64</sup> Perhaps the most striking example of this occurs in the seventeenth century, during which the medieval English constitution was stretched to the breaking point, and then rebounds to its old medieval forms. The great "reforms" of 1660 (the restoration) and 1689 (the glorious revolution) can best be understood as reversions to the long-standing medieval constitution.

1835	Municipal Corporations Act	Replaces 178 unelected corporate borough governments with elected town councils. Extends local franchise to all male tax payers with a three year residency, mandates poor relief.
1859		Repeal of wealth qualification for members of parliaments.
1867	Second Reform Act	Approximately doubles franchise for parliamentary elections by extending the vote to all male property owners. Redistribution of seats, expansion of borough boundaries. Ends requirement of new elections for MPs who take or change posts in the government.
1869	Municipal Franchise Act	Extends right to vote in municipal elections to women taxpayers.
1872	Ballot Act	Secret ballot introduced for parliamentary elections
1883	Corrupt Practices Act	Places limits on election expenditures by candidates according to a schedule that varies by size of electorate.
1884	Third Reform Act	Extends the franchise to occupants (renters) of properties worth more than 10 pounds per annum.
1885	Redistribution of Seats Act	Reallocates seats, and divides most of the remaining 2-seat boroughs to establish single member districts.
1911	Parliamentary Act	Eliminates the House of Lords' veto power, (Lords can only delay legislation for two years). It also revises the Septennial Act so that the maximum term of parliament is now limited to 5 year terms. MPs receive salaries for the first time.
1918	Fourth Reform Act: Representation of the People Act	Universal Suffrage for men over age 21 and for women over age 30 (with some minor residency restrictions). Polls to be held on the same day. Free postage for candidate mail associated with elections.
1918	Redistribution Act	Increases the size of Commons and formally adopts principle of equal sized districts, and redistributes seats accordingly.
1922	Irish Free State Act	Irish Parliament reestablished, Irish MPs no longer called, except those from Northern Ireland.
1928	Equal Franchise Act	Woman's suffrage put on same basis as men's suffrage (21 years of age).
1948	Representation of the People Act	The remaining two member constituencies are eliminated (12), as are the University seats. Redistribution of seats.
1949	Parliament Act	Delaying ability of House of Lords further reduced to one year for legislation
1958	Life Peerage Act	Provides for the creation of life peers and allows women to sit in the House of Lords.
1973		UK joins the European Union, confirmed by national referendum in 1975 (67.2% yea).
1981	Representation of the People Act	Disqualifies those serving prison sentences of more than 12 months in the UK from serving in the House of Commons.
1998	Registration of Political Parties Act	Political parties are required to register names (to prevent attempts to confuse the electorate).
1999	Devolution of Powers	Substantial decentralization of policy making to Wales and Scotland. First elections to the "new" Scottish Parliament and Welsh Assembly.
1999	House of Lords Act	Restricts the number of hereditary memberships in the House of Lords to ninety two.

Sources: Morgan (2001), Field (2002), Rallings and Thrasher (2000), and Sephenson and Marcham (1938). See also *A Brief Chronology of the House of Commons*, House of Commons, 2002.

## I. Emergence of the Medieval Parliament in Catholic England: 1200-1500

In the thirteenth century, a number of agreements were negotiated between the barons and the English king, the most famous being the Magna Carta signed in Runnymede in 1215. As often the case in English constitutional history, the immediate

problem underlying constitutional reform was money. In exchange for an agreement by the barons to pay more taxes in the present, a variety of terms, including the right of a jury trial by one's peers and the right of a council of barons to reject future increases in taxation were negotiated and accepted in writing by King John in 1215. The medieval baronial council characterized in the Magna Carta and its veto power over new taxes established the legal foundation of the medieval parliament. The agreement was not entirely self-enforcing and the authority of the baronial council had to be reaffirmed many times, occasionally after a civil war as in the mid-thirteenth century. For example, the provision of Oxford in 1258 made the council of Barons permanent and allowed the council to make certain appointments in government.<sup>65</sup>

During a subsequent military confrontation of the baronial council and the King, representatives of counties and towns were invited to baronial council meetings, and the name "parliament" came into use. Simon de Montfort (the Earl of Leicester) invited four knights from each county to join the barons in a parliament 1264. Two representatives from the major towns (boroughs) were invited to the second Montford parliament in 1265. King Henry III eventually won the civil war between the king and the barons. He regained the crown, after being Montford's prisoner for a short period of time (Field, 48). However, the authority of baronial councils on tax matters was accepted, and parliaments continued to be called by Henry's son Edward I. It also became routine to invite prominent commoners to meetings of the baronial councils, "knights of the shire and burgesses." These parliaments voted on tax matters, heard petitions from the public, petitioned the king to address various grievances, and occasionally impeached senior government officials (Lyons, ch. 34). Although burgesses and knights were not always called to meetings of the barony, they were routinely called to the meetings that considered tax increases after 1265. Edward I called 46 parliaments in 35 years.<sup>66</sup>

<sup>65</sup> The council of barons include both senior church officials and nobles with very large land holdings. Even before the Magna Carta, the Constitutions of Clarendon had accorded baronial status to the catholic church's archbishop and bishops in 1164.

The Constitutions of Clarendon, essentially, described procedures for establishing jurisdiction over legal matters and for appeal. According to Clarendon, the top appeal from both the ecclesiastical and the king's courts (which both considered criminal matters, murder and the like) were to end with the king rather than with the pope in Rome. (Appeals to Rome, however, were restored in relatively short order, although revised again four centuries later under Henry VIII.)

<sup>66</sup> The tax authority of the baronial council and subsequent parliamentary control of taxation was essentially self-enforcing because taxes were general and affected the entire group; thus it was more difficult for the king to divide the baronial council over taxation than for over other issues where interests varied.

This was less the case on the other powers of parliament. For example, there was never complete freedom of speech by members within parliament, although it was often asked for and given. Both kings and queens would occasionally suppress an outspoken radical group in commons--often to the satisfaction of their opponents within the chamber.

The familiar bicameral architecture of the English parliament emerged in the fourteenth century. After 1341, nobles and church leaders began meeting separately from the town and county representatives. The barons of the upper chamber normally met with the king directly, and consequently had the power to initiate legislation of various kinds as well as to negotiate with the king regarding his requests for new taxes (subsidies). The lower chamber was the inferior body at this point, and was not routinely consulted regarding new legislation, although it was routinely consulted on tax matters (Field, 50-54; Lyon, 52-3). The dominance of the Lords continued well into the eighteenth century, although Henry V granted the Commons veto power over legislation as well as taxation in 1414, at a time when war with France was pending and new taxes of some importance (Lyon, 605; Field, 65; Morgan, 228).

During the early fifteenth century, the Commons petitioned the King for a more uniform (and less corrupt) method of choosing local representatives. Three long-standing election statutes were subsequently adopted in 1413, 1429, and 1445 (Stephanson and Marham, 276-7). These laws established procedures and qualifications for the House of Commons are of particular interest, because they remained essentially unchanged for 400 years. The 1413 law required that all county and borough representatives be residents of the communities that they represent. The 1429 law characterized suffrage rules for electing county representatives to Commons. County suffrage was based on "a freeholding to the value of 40 shillings by the year at least above all charges." This enfranchised approximately 5% of the male population of the time, which tended to increase slowly through time with inflation and economic growth.<sup>67</sup> The 1445 law required that borough representatives have a similar status (sufficient wealth to be a knight), and specified that two representatives should be selected from each borough. Representation was by no means equal, because no effort was made to construct boroughs of equal size, but this was a very broad national suffrage and representation by the standards of its time--indeed by European standards until well into the nineteenth century. Representatives of the towns continued to be selected by town governments that under a wide variety of local election rules until the 1832 reforms (Stephanson and Marham, 276-7; Lyon, 542-3; Field, 62).

For the most part, the medieval English parliament was a consultative body on matters other than taxation, a sounding board for national policy and a source of information about regional problems. English kings had the power to overrule parliament on essentially all matters of law other than new taxes. Parliament met when called by the king and was dismissed when the king thought it had met long enough, or when the king accepted the parliamentary petitions for redress (which ever came first). Parliamentary sessions were, thus, normally relatively short and infrequent meetings lasting two or three weeks. The longest session in the fourteenth century was the Good Parliament of 1376, which lasted for ten weeks.

The power of the early parliaments, however, varied considerably. During time of peace, it was more difficult to persuade Parliament to provide new subsidies, because other sources of royal income were usually sufficient to run the King's government. Consequently, fewer parliaments were called, and fewer parliamentary petitions were submitted to the crown. Indeed, parliaments were often completely ignored between wars, as kings and queens chose their own advisory councils (great councils or privy councils) from the nobility, church, and elite commoners; and used royal income sources to avoid unpleasant discussions with the parliament over "proper" parliamentary deference and matters of sovereignty.

During times of war, the kings needed subsidies, and the crown would call parliaments to obtain additional tax revenues. These were not always freely given. The extent to which parliamentary privileges and petitions were accepted by the crown depended on the immediacy of the crown's need for baronial contributions and community taxes. When the demand for revenue was great, medieval English parliament would meet often and could affect policies on trade, religion, and industrial regulations--as well as taxes. At occasional peaks of power, parliaments might have significant oversight responsibility or be instrumental in replacing an errant king or in confirming a new dynasty. For example, in 1310, parliament appointed a committee of twenty bishops and lords to oversee the finances of the kingdom. In 1399, the English parliament sentenced former King Richard II to lifetime imprisonment in the Tower of London.

<sup>67</sup> The very gradual doubling of male suffrage over the next four hundred years is a testimony to the power of Malthus' model of population dynamic prior to the industrial revolution.

In century prior to the Great Reform, the county electorates under the forty shilling rule for parliamentary elections still entitled just 5% of the population (Fields, 62, 141, and 167). This suggests that the distribution of wealth remained as concentrated at the start of industrial revolution as it had been four hundred years earlier, although it had shifted somewhat among elite families.

Such peaks were rare, and normally medieval parliaments were of secondary importance. For example, neither the House of Lords nor the House of Commons had its own permanent meeting place until 1512 and 1549 respectively. Prior to that time, space for meetings was made available by the king, usually in his palace at Westminster, the site of the present Parliament.<sup>68</sup> Indeed the term "House of Lords" was not used until 1544 (Field, p.69).

During the Catholic period, the kings were clearly the primary, if not the only, locus of power within the governments of England. The crown could influence elections to commons and determine the membership in the lords (in the long run) through elevation. The English kings and queens also controlled appointments to a large several hundred relatively well-paid positions of authority throughout the kingdom. (Members of parliament, were normally wealthy individuals, but were not paid a salary for serving in parliament until 1911.) Between patronage and occasional threats, the crown could often "manufacture" a compliant parliament. Although members of parliament did not serve at the pleasure of the crown, the royal family was the wealthiest in the kingdom, which together with its power to appoint persons to government positions and its control of the largest military force in England, meant that an ambitious king could nearly always be the dominant policy maker on matters of royal interest.<sup>69</sup>

Indeed, the second most powerful organization in England during this period was the Catholic Church rather than parliament. The Church controlled very large land

holdings, had its own court system, and was directly represented at court and within the parliament. The Bishops, Abbots and Priors often formed a majority of the House of Lords and senior church officials were often among the king's most important ministers.<sup>70</sup> The church hierarchy could use the power of the pulpit to mobilize public opinion throughout England, and could also negotiate for new privileges and protect those that it had discreetly at court behind closed doors. The Catholic church was essentially the only large organization within England that was largely beyond the control of the crown, although that was soon to change.

## 2. Parliament and the Protestant Reformation: 1500-1625

The next two centuries were turbulent times, intellectually, socially, and politically as the Catholic universe underwent major revisions. With the discovery of the new world shortly after 1500, the physical world that Europeans had "known" for centuries had to be revised substantially. The new continents of North and South America, as well as the new southern sea routes to the East, became new domains of European economic and political conflict for centuries to come.<sup>71</sup> There were also revolutions of the spiritual and intellectual world at about the same time. The movable type printing press developed by Gutenberg in the previous century brought the thoughts of Aristotle, Luther (1507) and Calvin (1534) to all who could read, and their interpreters brought their ideas to all who would listen.<sup>72</sup> The Protestant reformation produced new theology, new church organizations, and new political alignments throughout Europe,

<sup>68</sup> It was also not until the sixteenth century that the respective chambers began keeping careful records of their meetings. Parliamentary records begin in 1510 for the Lords and 1542 for the Commons, respectively (Fields, 69).

<sup>69</sup> During the fifteenth and sixteenth century, about a fourth of noble families were replaced each generation. In some cases, replacement was necessary because a family lacked legitimate heirs in others replacement was a consequences of punishments that stripped families of privilege. Clearly both, but especially the later, gives the king considerable power over the house of lords. The total number of peers, perhaps surprisingly, was fairly stable, 55-57, during this period (Field p.67).

With respect to commons, the king would occasionally threaten or pack the commons. For example, in 1398, Richard II once surrounded the meeting place of parliament with archers, with bows drawn and ready to shoot. The power of appointment was used by Henry VI who added 53 persons (of the 277) to the 1447 house of commons.

<sup>70</sup> By the end of the fourteenth century, the House of Lords had become largely hereditary, and consisted of the "Lords Temporal" composed of the top five ranks of the nobility (Duke, Marquess, Earl, Viscount, and Baron) and the "Lords Spiritual" from the top three ranks of the church (Bishop, Abbot and Prior). See the "History of the House of Lords," <http://www.parliament.the-stationery-office.co.uk/pa/ld199798/ldb/ldhist.htm>

<sup>71</sup> At first, the new discoveries were simply interpreted within the existing frame of reference. Columbus (1492) insisted that he had found a new Western route to the far East. However, his discoveries were reinterpreted by other explorers in the years following his famous voyages. And his new route to the far East became the new Western continents. Perhaps the most famous of these revisionists was the Medici bank representative Vespucci, who declared the western lands to be a "new world" (*mudus novus*) after several voyages. In honor of his controversial conclusion, and perhaps because of his control over the substantial Medici financial assets, his first name, Americus, began showing up on maps of the new world shortly thereafter.

<sup>72</sup> Criticism of catholic doctrines and church behavior had, of course, long existed in Europe both within educated elites and among illiterate peasant church goers. However, the grumbling of a few

eventually separating northern from southern Europe. By mid-century, there was no longer a single church in Europe, and no longer were European political and economic interests concentrated within the Northwestern corner of the great Euro-Asian land mass, and no longer were intellectuals focused narrowly on infallible church doctrine.<sup>73</sup>

All this led to a good deal of conflict, which was often good for parliaments throughout Europe, although it was not good for Europe itself. Conflict is expensive, and the winner take all nature of warfare tends to induce escalation in the resources committed to individual battles and to wars as a whole. The kings and queens of Europe were, consequently, increasingly in need of additional income. Economic growth increased royal incomes from tariffs and royal properties, but parliamentary subsidies remained significant sources of revenue in times of war, but, as before, were not always freely given.

In England and in much of the rest of Europe, the reluctance of parliaments to tax themselves in order to provide royal subsidies without receiving something in exchange induced the crown to seek additional revenues elsewhere. Both kings and queens could collect customs fees and tariffs. They could also rent and sell royal properties, appointments, and monopoly privileges. An entrepreneurial crown might also sponsor business ventures and engage in piracy at sea and, occasionally, confiscate the wealth of others in the kingdom. In times of peace, these nontax income sources often allowed the crown to rule without calling parliament for years at a time.<sup>74</sup> However, in the end, the English kings always called new parliaments to vote on tax proposals and to affirm royal successions. In exchange for new subsidies, parliaments often asked for and received assurances of their privileges (free speech and freedom from arrest during parliament sessions), petitioned and obtained royal interventions and regulations, and occasionally also sought improved quarters.<sup>75</sup>

Parliament, thus, occasionally received expanded authority to intervene more broadly on various public policy matters in exchange for tax revenues. The latter was also freely acceded by the crown in policy areas where royal and parliamentary interests were closely aligned, and parliamentary acts could help legitimize royal policies. For example, the parliament's authority over religious matters was greatly expanded by Henry VIII who used acts of parliament to secure control over both the Church and the Church's resources in England. The Act of Appeal (1533) made the crown the highest court in the land, ending appeals to Rome by ecclesiastical courts.<sup>76</sup> The Act of Supremacy (1534) made the crown the "supreme head in earth of the Church of England called Anglicana Ecclesia." The Bill for Dissolution of the Lesser Houses (1536) closed the smallest monasteries and confiscated their assets for the crown. In 1539, a similar bill closed the larger monasteries and allowed Henry to confiscate their assets as well. The Statute of Six Articles (1539) codified Henry's theological dicta for the new Anglican church.

Henry VIII's interest in church reform was partly personal, a desire for divorce that could not be easily approved by the Catholic church. It was also partly economic, his government needed resources for wars being fought and the church had enormous assets within England--perhaps more than Henry's. Taking over the Church would also advance his constitutional interests, insofar as it provided the Crown with far more complete control over England governance. The church, its judicial system, its properties, its doctrines, its courts, and its pulpits had been largely beyond his control.

The parliament's interests were less than perfectly aligned with those of the crown, because the Catholic bishops and senior abbots had long been members of the Lords.<sup>77</sup> However, it is clear that the "temporal" members of parliament had an interest in expanding the domain of parliamentary authority, in finding tax sources other than

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intellectuals and nonconformists over doctrine and various critical assessments of the behavior of church leaders did not produce a powerful mass movement until shortly after 1500.

<sup>73</sup> By century's end the work of Copernicus (1473-1543), Galileo (1564-1642), and Kepler (1571-1630) had also begun to literally produce a new universe, and perhaps more importantly in the long run a new scientific method that would subsequently produce the technology for a new civilization, Margolis (2002).

<sup>74</sup> Indeed, in other parts of Europe, these revenue sources were sufficient to allow the crown to dispense with parliaments, as in Denmark and France.

<sup>75</sup> The lords and commons received permanent space in Westminster Palace in 1512 and 1550 respectively, albeit after a fire induced the crown to move to other quarters (Field, p. 69).

<sup>76</sup> This jurisdictional dispute was a long standing bone of contention for the crown vis à vis the church. For example, similar authority had been sought long ago in the Constitutions of Clarendon adopted in 1164. The power of the church in 1164 allowed it to negotiate with King Henry II on this matter for many years, eventually inducing the king to reverse on this matter over the course of a decade (Morgan, 144-5, see also the *Catholic Encyclopedia*).

The rapid spread of descent throughout Europe evidently prevented the church from obtaining similar results in the sixteenth century.

their own property and income, and in reforming the church.<sup>78</sup> The latter is not to say that a majority in the commons or the lords were Protestants in the modern sense of the word, but rather that the problem of corruption and doctrinal inconsistencies within the church was widely acknowledged if not widely discussed in England, as elsewhere (for fear of being punished for heresy). Moreover, many of the temporal members of parliament would have anticipated their subsequent acquisition of monastic lands from the king and their relatively advantaged position in subsequent parliaments. After 1539, only the Bishops and ArchBishops remained members of the House of Lords, and the "Lords Temporal" obtained a secure majority in the Lords for the first time.<sup>79</sup>

Most of the members of the commons and the temporal lords, thus, had economic and political interests in "clerical reform" that paralleled those of King Henry.<sup>80</sup> In fact, parliament probably obtained advantages in the long run that Henry VIII did not fully anticipate. By using the Parliament to reform the church, Henry had not only expanded the scope of parliamentary authority, but *he had elevated statute law above other all others*. That is to say, *the English church was reformed by formal acts of parliament rather than divine revelation*. That precedent clearly changed the fundamental relationship between church and state, but also changed the perceived importance of parliament

and its rulings, within parliament and in the courts, and also in the country at large. Parliament expected to play a significant role in religious controversies from that point on.<sup>81</sup>

In the short run, however, the post-reformation parliament was still essentially the same medieval parliament as it had been in Catholic times. It remained selected by medieval procedures and with powers determined by medieval documents and precedents. Although the membership of the house of lords became less clerical and its domain of authority expanded somewhat, the parliament's main area of authority remained taxes. The Crown continued to determine when parliaments would be called and when they would end, and these tended to reflect the state of government finances. The crown continued to be largely "self funded" in times of peace, relying on income from royal lands, sales of monopoly privilege and tariffs.<sup>82</sup> Parliamentary approved tax receipts accounted for less than ten percent of crown income during this period.

Not all royal income sources were, however, uncontroversial, inside or outside of parliament. The first recorded public demonstration before parliament occurred in Queen Elizabeth's reign during the 1601 session. The demonstrators objected to the Queen's *excessive* use of monopolies as a source of revenues (Field, 89). Monopolies in Elizabeth's time included: currants, iron, transport of leather, ashes, vinegar pots, lead,

<sup>77</sup> In at least a few cases, Henry evidently threatened pivotal members to bring them into line on important votes (Morton, 283). For example, in a private meeting with a prominent member of commons, Edward Montague, King Henry reportedly took Edward by the ear and said "Get my bill passed by tomorrow, or else tomorrow this head of yours will be off.."

The threat was not entirely credible, insofar as laws and courts might have decided otherwise, but it was not an idle threat. The King often induced parliament to pass bills of attainder against unpopular political opponents and reluctant public servants, who forfeited their life and property to the crown as penalty for treason (e.g. disloyalty to the crown). The bill was passed the next day (Field, 70).

<sup>78</sup> The first recorded majority vote in the House of Lords occurred in its consideration of the 1532 Act in Conditional Restraint of Annates, which ended payments to Rome by clergy appointed to public offices (benefices).

<sup>79</sup> With the closing of the monasteries, the abbots and priors ceased being longer members of the House of Lords. The lords spiritual had in the past often been a majority, depending on the issues and attendance.

<http://www.parliament.the-stationery-office.co.uk/pa/ld199798/ldb/ldb/ldhist.htm>

<sup>80</sup> Two thirds of the monastic lands acquired had been dispensed by 1547 and three quarters by 1558. Much of the crown's newfound wealth was devoted to military ventures, however much was also dispensed as patronage to Henry's supporters. (Morgan, 285; Field, 68)

<sup>81</sup> For example, Edward VI induced parliament to pass the first (1548) and second uniformity (1552) acts which replaced Latin with English rather than Latin the language of the Anglican church, and required church attendance. Queen Mary, in turn, induced the parliament to reinstate the links to the Papacy, reinstating laws against heresy and repealing much of the reformation law—with the parliamentary proviso that *the monastic lands not be restored*. The latter suggests that parliament was not at this point entirely motivated by religious interests. Mary's heresy laws were rigorously enforced with at least 287 persons burned at the stake (Morgan, 298-9). Elizabeth I subsequently reestablished the royal supremacy and full Protestant worship through acts of parliament in 1559.

<sup>82</sup> Economic growth raised royal revenues while reduced conflict reduced its costs. New agricultural techniques of crop rotation were adopted, specialized production and distribution increased, and foreign trade expanded.

whale oil, and brushes. Monopoly privileges were often sold by the crown in what would otherwise have been competitive markets, which, of course, made the monopolized goods and services more expensive than they otherwise would have been. In this case, the public demonstration and the "anti trust" petitions submitted by parliament were successful, and the Queen eliminated several of her most burdensome monopoly grants.

There were also ongoing theological disputes and tensions during this time. A variety of doctrinal disputes arose because of the, now smaller separation between church and states. Questions arose, consequently, over what types of services would be permitted within England. Initially the English church was relatively tolerant and allowed a broad range of services to be held, including those by "non-conforming" protestants and catholics.<sup>83</sup>

However in the short run, none of these religious disputes, minor tax revolts, nor economic growth lead to significant reforms of the medieval English constitution.<sup>84</sup> The medieval procedures for selecting members of parliament and its areas of authority remained intact. As had long been the case, the Crown governed with its own hand picked great councils and the privy councils. Most of the Crown's advisors were members of parliament, but these were important or clever men whose interests were well aligned with those of the crown. Other MPs whose interests were less important or less well aligned with the crown's could be ignored. Kings and Queens dispensed with parliaments when they could, but called them as necessary to request new taxation and to affirm the accession of new kings and queens. Overall, the fundamental routines of English medieval governance were remarkably stable, although they would soon be

challenged by intense fiscal and religious conflicts that arose during the seventeenth century.<sup>85</sup>

### **3. Collapse of the Medieval English Constitution and its Restoration: 1625-1660**

In the early seventeenth century, the medieval constitution of England was stretched to the breaking point by the Stuart Kings. The proximate cause of fiscal distress was money, as usual, but this time negotiation failed to find a mutually agreeable solution. James I and his successor Charles I greatly expanded the practice of selling public offices (benefices) and monopoly privileges, and also increased customs duties and tariffs. In addition, the Stuarts made extensive use of forced loans and ship's money as sources of royal income. The Duke of Buckingham, acting on Charles's behalf, also attempted to pack the Lords by selling peerages to his supporters.<sup>86</sup> The numbers of peers increased from 55 in 1603 to 126 in 1628. The Stuarts also applied harsh, and somewhat arbitrary, punishment of those who refused them using royal courts, violating long-standing rights of due process. Many of these practices appeared to be taxes in disguise, and others violated long-standing constitutional law and precedent.

As Charles I came to office in 1625, he wanted to finance a war with Spain and France. This required expanded government revenues, which induced him to call parliament three times during his first five years. In exchange for more tax revenues, the Parliament demanded a return to the medieval constitution. Parliament wanted the fiscal and judicial practices of his father stopped, and refused to provide subsidies of the magnitude that Charles requested. In 1628, the parliament submitted the Petition of Right, which formally listed grievances against the Crown, and sought to have Charles

<sup>83</sup> The church of England was relatively tolerant during this time, as, perhaps indicated by its official name, "the Catholic and Reformed Church of England" (Morgan, 352).

<sup>84</sup> Economic growth favored those with special skills or land. A new "middle class" of merchants, professionals, and successful farmers developed below the nobility.

The age of the shopkeeper emerged as village stores augmented the ancient market places as places of local commerce. A small leisure industry emerged, which allowed playwrights such as Shakespeare to take up the theater as a full time occupation. The largest manufacturing industry was engaged in the decentralized production in homesteads and sheds. Population, however, grew more rapidly than economic output, with the result that real wages fell. Food price increased about twice as fast as wage rates (Morgan, 329).

<sup>85</sup> It bears noting that day-to-day governance was principally a local matter, as it remained until the twentieth century. The crown controlled a thousand or so senior appointments, but the local county gentry, who largely determined local services and implemented parliamentary tax and regulatory policy. There were neither a standing army nor an organized police force outside major cities. Many local public services were provided by volunteers marshaled by local leaders rather than salaried civil servants.

The importance of local governance meant that the interests represented in Parliament had to be accounted for even in cases where parliaments were not called.

<sup>86</sup> Buckingham was impeached in 1627, but Charles dismissed parliament to end the proceedings (Field, 99). Buckingham was subsequently murdered 1628 (Morgan, 349).



affirm long-standing constitutional practices that had parliament argued had been in place since the Magna Charta. Charles refused to accept the petition, and after 1629 did not call another parliament for more than a decade. Instead, he raised money from other sources, and, indeed, was able to balance the budget without parliamentary subsidies after the war was over.

None the less, questions about the constitutionality of some of the royal "income sources" as well as the burden of the royal charges, continued to undermine support within the elites represented in Parliament. His religious policies further reduced support among its puritans, both inside and outside parliament. Archbishop Laud tightened control of church practices and doctrine and forbade some of the practices used by non-conforming Puritan churches. Puritan suspicions of papistry were reinforced by Charles' marriage with Henrietta Maria of France (a catholic) and also by his alliances with Irish and Scottish Catholics to suppress the rebellion of Presbyterian Scots. Together his neglect of parliament and his fiscal and religious policies caused legal, economic, and religious opposition to mount throughout the country.

When Parliament was finally called again in 1640 to help finance and ratify the settlement with the Scots, not only was Parliament's bargaining position unusually strong, but its opposition to royal policies was unusually strong as well. The Stuart neglect of the longstanding English constitution had created a major political crisis.

The 1640 parliament met in mid-April. A clear majority was willing to finance the war in Scotland, but insisted on a return to the constitution, as had its predecessor a decade before. The Commons complained about religious innovations, the sale of monopolies, ships duties, the expansion of forests, military charges, and the violation of the liberties and normal procedures of parliament.<sup>87</sup> Commons petitioned Lords for a joint meeting (a joint conference), which was agreed to by the Lords. Constitutional grievances were again voiced, but no actions taken. The king argued that all his policies were necessary for the safety of the nation, and dismissed the "short" parliament on May 5. The two "all or nothing" offers were tabled rather than resolved through negotiation and constitutional exchange.

In November 1640, parliament was again summoned, partly at the insistence of the Scots, who refused to accept a peace settlement unless it was ratified by parliament. This time, parliament was able to press for and to obtain formal agreements with Charles that affirmed the power of parliament. Much of the new legislation simply formalized long-standing medieval practices, but some was substantially new. New provisions included the Triennial Act (no. 27, p. 144), which required parliament to be called at least once every three years, and allowed parliament to be self-calling, if no royal writs were forthcoming after three years. A subsequent act (no. 30, p. 158) prevented the king from unilaterally dissolving parliament without its approval. These two Acts made sessions of parliament autonomous of the crown for the first time in English history, and the latter was the constitutional basis under which parliament continued to meet throughout the civil war. (The "long" Parliament did not formally dissolve itself until 1660.) In exchange, parliament passed and the King accepted the Tonnage and POUNDAGE Act (no. 31, p. 159), which legitimated retroactively many of the charges used to finance governance by the James and Charles, and extended them in to the future, *but only for two months*. This freed James from various legal challenges to his revenue sources, but also made his continued solvency completely dependent on parliamentary good will (Gardiner, 1906, part III).

The crown's authority to intervene directly on legal matters, both in the secular and religious courts, was eliminated by acts which eliminated the Star Chamber and High Commission (no. 34 and 35). The consequent reduction in prosecutions for treasonous matter unleashed a torrent of popular pamphlets (Field, 106). Finally, ships money, the charges used to finance the expansion of the Navy, was declared illegal (no. 36, p. 189).

To this point, it is fair to say that the new legislation had simply reclaimed authority that parliament had had, or at least claimed to have, at its various peaks of power during the previous four hundred years, formalized the longstanding practice of summoning parliaments every few years, and reestablished a more independent court system. And, as it turned out, after the civil war had run its course and the crown was "restored" to Charles' son Charles II, this is approximately where English governance found itself again in 1660, and also again in 1689 at the accession of William III.<sup>88</sup>

<sup>87</sup> *Journal of the Commons, II, 10f.* Excerpts from the proceedings of the Short Parliament can be found at [http://www.constitution.org/sech/sech\\_095.htm](http://www.constitution.org/sech/sech_095.htm).

<sup>88</sup> At the time of the reformation, the Triennial Act was revised to eliminate the "self-calling" of parliament, but the crown remained legally obligated to call parliament at least once every three years

The robustness of the medieval constitution, however, was not obvious at the time. Tensions between parliament and king escalated, rather than returning to the long term balance of the previous three centuries. The "long parliament" and the Charles I continued to maneuver for control of public policy and subsequently for control over the army. Their mutual (and very creditable) suspicions of "coup" rapidly escalated to warfare in 1642 and twenty years of constitutional experimentation by the parliament. The details of the civil war, and much of the parliamentary politics during the war are beyond the scope of this book insofar as they clearly violated long standing constitutional practices and failed to have lasting institutional effects on English governance. The period from 1642-1660 were truly revolutionary times.

What is relevant for the present overview of English governance, is that after two decades of constitutional turmoil, a return to constitutional monarchy was legislated by the very next elected parliament selected under the old rules. In 1660, the long parliament finally dissolved itself, and called for a new parliament. The newly elected parliament turned the constitutional clock back to August 1641, and the next Stuart in the line of session, Charles II, was "restored" to power. In the end, after two decades without the medieval English constitution, it was restored. The civil war and commonwealth, thus, indirectly demonstrated the amazing robustness of England's medieval parliamentary institutions. Neither kings nor parliaments could rule England alone.

#### 4. A Digression on Cromwell's Republic

Some of the institutional debates and developments of the parliament during the civil war, and by the commonwealth are of interest, because they presage constitutional

debates that would take place in the nineteenth and twentieth centuries, and also indirectly demonstrate how a majoritarian government can self-destruct. There were evidently supermajorities favoring the first series of reforms in 1641; however, as Parliament attempted to reduce the crown's authority below its traditional medieval levels, support, especially in the Lords, dwindled, and the Parliament as a whole split into "royalist" and "parliamentary" camps. The royalist minority withdrew (and was subsequently excluded) from the parliamentary sessions in Westminster during the military phase of the civil war.<sup>89</sup> Eight years later, the remaining members of parliament subsequently split over the treason and execution of Charles I. Parliament consequently excluded the moderate MPs who opposed sentencing Charles I to death for treason.<sup>90</sup> Later in 1649, this "rump" of the original long parliament sentenced Charles to death, eliminated the House of Lords, and declared England a commonwealth.

The remaining members of parliament then attempted to draft a republican constitution. Their deliberations were reportedly influenced by the "Peoples Agreement," a surprisingly modern social contract (1647) proposed by one of the first ideological interest groups, a group known as the Levelers. However, none of the Agreement's most radical ideas--free trade, universal male suffrage, equality before the law, religious toleration, and frequent elections--were adopted by the Rump.<sup>91</sup> Instead of placing such procedural and policy constraints on itself, the parliament gradually transferred all remaining political authority to itself and to its new executive council of state through a series of acts adopted over the next four years.

Oliver Cromwell, the Lord General of the Parliament's army evidently decided that this process of constitutional reform was too slow and corrupt--or perhaps, not sufficiently responsive to his advice--and dismissed the rump parliament (by force) in

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(Gardiner, 1906, part III).

<sup>89</sup> Departure of the royalist members, chiefly from the House of lords, had reduced the parliament by approximately half its original numbers. Many of these joined the King's parliament that met in Oxford in 1644 (The King's "mongrel parliament" met only once, Field, 110.) Constitutional negotiations between Charles and the Westminster parliament continued throughout the civil war, but little could be agreed to.

<sup>90</sup> The excluded group could well have been the majority of the "anti-Charles" parliament, given the reduced attendance at parliamentary sessions. In December 1648, Colonel Pride reduced parliament by excluding 110 members (arresting 40 and barring 70 others).

The resulting "Rump" parliament was essentially purged of moderates and included only about a sixth of the original 1640 parliament. A majority of this radical tail voted for the king's execution. This Rump majority included less than a tenth of the original 1640 parliament (Morgan, 370,2). In 1649, Charles was beheaded for constitution crimes (treason).

The execution of Charles I, of course, made it impossible for the excluded parliamentary majority to surrender to Charles and restore the monarchy. This, at least, must have seemed to be an irreversible reform to the republican members of the Rump.

<sup>91</sup> A copy of this very early and surprisingly liberal social contract, which predates both Hobbes and Locke, can be found at: [http://www.constitution.org/lev/eng\\_lev\\_07.htm](http://www.constitution.org/lev/eng_lev_07.htm)

April 1653. He called a new parliament composed of a hundred and forty worthy persons selected by local protestant church congregations. (Field, 122). Eight months later, in December 1653, Cromwell announced that he would rule via a new written *Instrument of Government* (IG: no. 97, p. 405).

Cromwell's constitution did not break with the long-standing structure of the English medieval parliaments in all respects, but it did change many of its core procedures. The government of the "commonwealth" was to be composed of three major branches: (1) the lord protector (a lifetime position to be held by Cromwell), (2) an advisory privy council, and (3) a unicameral parliament. A four hundred man Parliament was to be elected and meet every three years and would remain in session for at least five months, with male suffrage based on wealth greater than 200 pounds (e.g. to the landed gentry). Parliament would initiate all legislation (subject to protector veto) and would be called upon in times of emergency to vote new taxes. When parliament was not in session, the council and lord protector would rule. During times of peace, taxes would be sufficient to maintain a 30,000 man army and a fleet, plus 200,000 pounds per year for administrative purpose.<sup>92</sup> There was to be freedom of worship for Protestants.

Members of the privy council would hold their seats for life. As vacancies arose on the privy council the parliament would send the protector a list of six names from which the lord protector would choose a replacement. All acts of government could be challenged in court to determine whether they violated the *Instrument of Government*. The disposition of troops would be jointly controlled by the lord protector and the parliament, if parliament was in session, or with the council if not. Evidently, the constitution could be amended by new acts of legislation (no amendment process was mentioned).

Of course, the problem with such a "constitution" is that if the lord protector is sufficiently powerful to impose it unilaterally, he cannot be bound by its rules. This was evident even before procedures of the new IG could be implemented. In 1653, after the very first election to parliament under the new suffrage rules, Cromwell excluded 120 members who he considered hostile to his regime (Gardiner, 1906, part V; Field, 123). Those allowed to take their seats petitioned Cromwell for additional

constitutional reforms. These attempted to make the new IG even more closely resemble the old English constitution. Parliament proposed reinstatement of the office of King (to be held by Cromwell), which Cromwell refused. They also proposed that the Lord Protector be able to appoint his successor, which Cromwell accepted, and recommended the creations of a second chamber of parliament (of lifetime peers) to be appointed by the Lord Protector. Cromwell named his son, Richard, to be his successor, and began filling the new chamber with loyal Puritan supporters. (Subsequent peers would have to be approved by the existing members of the new house of peers, which would limit somewhat the opportunities of future lord protectors.) The process of replacing members of the privy council was also changed to give the lord protector, rather than parliament, control over the initial proposal, with veto power in the council and parliament. Although the elected chamber also gained the right to accept or reject its own members, it is clear that the amendments enhanced Cromwell's already considerable power under the original *Instrument of Government*.

It also is clear that *Instrument of Government*, both before and after amendment, was never a constitution--a document that describes durable procedures for making rules. Its procedures were never fully implemented and did not survive Cromwell's death in 1658. Cromwell's son did inherit the lord protectorship, and did call for a new parliament. It met in 1659 for just three months before being (unconstitutionally) dismissed. The authority of the commonwealth subsequently disintegrated in the face of a widespread *tax revolt*.

The old rump parliament was reassembled and then dismissed by the army. Finally, the members of the long parliament were resummoned. They met, lawfully dissolved themselves, and called for new elections--under the rules adopted in 1641. The subsequent parliament called for the restoration of the monarchy in the person of Charles II, and thereby restored the principle of hereditary succession. In the negotiations between parliament and Charles II, it was agreed to turn back the legislative clock to August 1641--the date at which the last constitutional provisions were passed by the long parliament and accepted by Charles I. By the end of 1660, English governance had clearly returned to its medieval constitution.<sup>93</sup>

<sup>92</sup> Cromwell's proposed 30,000 man army as approximately ten times that normally supported in times of peace. Charles II kept a standing army of just 3,000 (Morgan, 378)

<sup>93</sup> The 1660 "Declaration of Breda" is Charles II's account of the conditions under which he desired to "return" to the throne. It includes a clear statement of divine right of kings: "we can never over

## 5. From Restoration to Glorious Revolution 1660 - 1689.

Charles II's Breda declaration described his intentions should he return to the throne, was adhered to. Only those who signed his father's death warrant were punished (Morgan, 178). The annulment of the parliamentary acts after August 1641 implied that all the crown properties sold off during the civil war were *returned to the crown* and his supporters. This together with the crown's traditional access to customs duties, which were affirmed by the 1661 parliament, meant that Charles could rule without summoning parliament to raise taxes during time of peace. A modest extension of freedom of religious was proclaimed by Charles and subsequently promoted by him, although he subsequently accepted parliament's Test Act in 1673 restricting government offices to Anglican Protestants.

Legislation adopted prior to August 1641 had limited some royal revenue sources and the eliminated the royal high courts (star chamber and high commission), which meant that Charles was somewhat less autonomous than his father had been, or at least claimed to be, but his powers were not substantially different from those of kings and queens prior to 1600. He could still call and dismiss parliament at his convenience, subject to the three year constraint, and could still rule by fiat in policy areas other than taxation and those determined by common law. Consequently, Charles was soon pursuing the usual political interests of kings, power and wealth.

Elections were avoided altogether for much of Charles' regime by keeping the very royalist 1661 parliament in session for fifteen years without calling for new elections (Morgan, 381). Patronage was extensively used at all levels of government and across all groups to elicit broad support (Morgan, 379). The long standing election laws

of 1430 were undermined by transforming many borough charters into corporations, which allowed borough MPs to be appointed by a handful of town officials, often replacing broader election processes. Less favorable but malleable members of parliament were bribed (Field, 128). The search for new revenues beyond the control of parliament continued unabated.<sup>94</sup>

It was during Charles' reign that the first nationwide political campaign took place. The length of Charles' first parliament was unprecedented, and allowed more stable political coalitions and opposition leadership to emerge in Parliament. The Earl of Shaftesbury, a proponent of parliamentary supremacy, formed a political alliance that attempted to pass legislation to block the accession of Charles' catholic brother James to the crown. The proposed exclusion act would have broken the long-standing English practice of hereditary succession by incorporating religious requirements for the throne. Shaftesbury and his allies were unsuccessful in passing an Exclusion Act during the reign of Charles II (Morgan, 383) although they did demonstrate that an organized group of MPs could affect national elections, a lesson that was not forgotten. Their campaign also produced durable party labels. The opponents of exclusion came to be called Tories. The Tories supported Charles II, the rule of law, and established religion. They, consequently, supported the long-standing rules of succession.<sup>95</sup> The proponents of exclusion came to be called Whigs. The Whigs generally opposed Charles II, supporting religious toleration for Protestants only, and sought to increase the power of parliament relative to the crown.<sup>96</sup>

In spite of the efforts of Shaftesbury, who eventually fled to the Netherlands, James II inherited the crown upon his brother's death in 1685. Like his brother, James

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the hope, in good time, to obtain the possession of that right which god and nature hath made our due," a "free and general pardon" (with exceptions to be determined by parliament), "restoration of King, Peers, and people to their just, ancient and fundamental rights," religious tolerance (to be enacted by parliament), and a promise to provide for the "arrears" due the military.

(Breda also dates the beginning of the reign of Charles II from the death of his father twelve years before.)

<sup>94</sup> In return for French subsidies, Charles promised in the secret Treaty of Dover to abolish parliament and to provide King Louis XIV the English crown after his death (Field, 127). Evidently, King Louis was unfamiliar with recent English history.

<sup>95</sup> The exclusion act would have undermined the "divine right of kings" doctrine. If passed, sovereignty would have depended on criteria adopted by parliament as well as birth, which would have increased the power of parliament. These constitutional arguments also partly determined the language rationalizing William and Mary's accession to the throne in 1689.

<sup>96</sup> The "party" labels for the pro and anti-exclusion voting blocks were coined as *insults* by their respective opponents. The term Whig was slang for a group of crazy Scottish Presbyterian rebels, and Tory was slang for the papist outlaws of Ireland. (Field, 128).

A few Whigs were, in fact, Presbyterians, although they could not yet be Scottish. The union with Scotland did not take place for half a century (1707). Tory MPs were, of course, Anglican Englishmen rather than Catholics. MPs could not be Irish until the union in 1801, and could not be Catholic until the Test Acts were repealed and the Act of Catholic Emancipation was adopted in 1829.

received customs duties for life by an act of parliament. But unlike his brother, James II proceeded to rule without parliament, violating the modified Triennial Act (Field, 128). He also exacerbated religious tensions by promoting a more tolerant, but anti-Anglican policy agenda. He called in town charters and rewrote them to advance the cause of Protestant nonconformists and Catholics. Three quarters of the local justices of the peace were sacked and replaced with Protestant dissenters beholden to the King (Morgan, 385). A large standing army was organized in which catholic officers were prominent. Full religious liberty was declared (for Catholics and Protestants), and Anglican clergy were instructed to read his declaration at their services.

Whether James' policies were a benevolent effort to increase religious tolerance, a campaign on behalf of Jame's fellow believers, or a Papist conspiracy; they were clearly policies that made the both local elites and dominant religious communities worried about worse to come.

The local gentry and nobles were well-organized, as were mainstream protestants. And although neither group had an army at their disposal on this occasion, they did have contacts with someone who could potentially raise an army and who had an indirect claim to the throne, namely, William III, stadtholder of the Netherlands.<sup>97</sup> William's wife, Mary, was next in the line of succession to the thrown after James II, being the Protestant daughter of the present king, James II, during his first marriage.<sup>98</sup> In 1688, seven prominent Protestant leaders (including five members of the house of lords, both Whigs and Tories) invited William to drive James II from the thrown in order to protect Protestantism and Mary's claim to the thrown.<sup>99</sup>

## 6. William III and the Rise of Parliament 1689 - 1702

In order to do so, William III had to persuade the Dutch Estates General that an invasion of England would advance Dutch interests. Britain had taken the French side in the previous war during the reign of Charles II, which had nearly ended Dutch independence. Another war with France was clearly likely in the near future, which again would threaten the survival of the Dutch republic. William argued that if he could

secure the English throne, English resources would support the Dutch rather than the French side in the next war. This would greatly improve prospects for the Netherlands. The States General were persuaded, and agreed to fund William's English strategy. A Dutch armada carrying 20,000 troops arrived in England on November 5 (Claydon, 28).

A much larger, if much less experienced, British army marched to meet the Dutch invasion. However, the 40,000 man British army folded in disarray after several high level defections lead James II to reconsider his plans, retreat, and subsequently to flee to France. William and the Dutch army marched, essentially without opposition to London, arriving on December 18. The London members of the House of Lords met on Christmas day and asked William to take charge of government (Field, 130). They also authorized him to call a "convention" parliament (Claydon, 63).

A convention parliament, composed in the usual medieval manner, met in early January. On January 27, the parliament resolved that James II had broken the contract between king and people and had vacated his office (Field, 130). Parliament subsequently, after more internal negotiation and a private threat by William to return to the Netherlands with the Dutch army if not offered the crown (Claydon, 63), offered the crown to both William and Mary on February 13 1689 in an act of parliament that has come to be known as the English Bill of Rights.

Clearly, both the offer of the crown and the conditions under which the crown would be accepted were negotiated within parliament as well as between parliament and William and Mary. The reign of William and Mary is the *only time* in which England had two sovereigns. The Bill of Rights, clearly, addresses several issues simultaneously. The first part describes why James II was no longer king, even though he was alive and well in France. In short, he had violated the constitution, and, moreover, had "abdicated the government and the throne [is] thereby vacant." The second part lists powers which the previous kings had "pretended" to have, including the power to impose taxes without parliamentary assent and to create their own courts, but which had no basis in long-standing constitutional law.<sup>100</sup> (Many of these grievances had been claimed about

<sup>97</sup> William III had previously published a letter disapproving of James II's religious policies, but promised not to intervene in England unless he were invited to do so by leading Englishmen. The letter was published in 1687 and evidently was well received within Protestant circles in England.

<sup>98</sup> William III also had family ties to the English crown, being the grandson of Charles I. He and Mary were Cousins. The soon to be deposed James II was his uncle (Morgan, table of descendants, appendix).

<sup>99</sup> A copy of the letter is available at: <http://www.jacobite.ca/documents/16880630.htm>. (All were subsequently rewarded with elevated titles.)

previous kings as well.) The second part also lists various rights: the right of free speech in parliament, the right to bear arms for self defense, the right to a fair and speedy trial by jury, and suggests that "for redress of all grievances, and for amending, strengthening and preserving the laws, Parliament ought to be held frequently." (Most of these rights had been claimed by Parliaments since the fourteenth century. It could, thus, be said that section two simply reset the constitutional clock back to August 1641-- this time, by negating the innovations of the Charles II and James II.) The third part offers William and Mary jointly the crown (of England, France and Ireland) and provided for the order of succession. (*Although this was the only time in history that England has had two sovereigns, a rationale for this exceptional provision is not provided by the text.*) The fourth part reaffirms the Test Act and essentially extends the Test Act to the crown for the first time. From hence forward, Catholics and those married to Catholics are excluded from the throne, and moreover cannot sit in the Parliament. This rules out the lawful return of James II to the throne (which parliamentary Whigs had previously tried to block with their proposed Exclusion Acts) and also reduced Protestant fears about papist conspiracies.

Overall, the Bill of Rights reasserts Parliament's long-standing rights and only very moderately extends them. Indeed, the striking thing about the Bill of Rights is how few new powers are listed. Apart from ruling out future catholic kings and providing for a dual monarchy, very little new is adopted.

The conservative nature of the Bill of Rights was evidently necessary to secure broad support within Commons and Lords for the act as a whole. Parliamentary records indicate that many members still supported Jame's claim to the Crown, and many others were concerned that long-standing constitutional practices be continued. Only a minority of the recorded debates seem interested in a "glorious revolution." Most favored continuation of as much of the medieval constitution as possible under the circumstances. Consequently, *most of the provisions in the Bill of Rights cover familiar ground--*fundamental laws which had been accepted by parliaments and kings for much of the previous four centuries.

To obtain the protection of the Dutch army, the crown is offered to both William and Mary, not to Mary or William alone. To obtain the crown, William and

Mary agree to rule in accordance to the laws of the land, including those enacted by parliament and accepted by the crown--as had been promised many times before in British history at times of accession.

<sup>100</sup> Essentially all of these powers and prohibitions had long been claimed by Parliament. Thus the bill also states that parliament "do pray that it may be declared and enacted that all and singular the rights and liberties asserted and claimed in said declaration are the true ancient and indubitable rights and liberties of the people of this kingdom." A complete copy of the English bill of rights can be found at: [http://www.constitution.org/eng/eng\\_bor.txt](http://www.constitution.org/eng/eng_bor.txt).