



WE THE PEOPLE...*

LESSON 4

WHAT IS CONSTITUTIONAL GOVERNMENT?

PURPOSE OF LESSON 4

This lesson introduces two main ideas. They are the ideas of (a) constitution and (b) constitutional government. Since these ideas are so important in understanding governments and the development of our own constitutional government, we will define them as clearly as possible.

When you finish the lesson, you should be able to explain what a constitution is, what a constitutional government is, and some of the essential differences between constitutional governments and autocratic or dictatorial government. You should also be able to explain the other basic ideas that are listed below.

Constitution

Written and unwritten constitution

Constitutional government

Autocratic or dictatorial government

Limited government

Higher law

Private domain

DEFINING „CONSTITUTION“

A constitution is a set of fundamental customs, traditions, rules, and laws that sets forth the basic way a government is organized and operated. Most constitutions are in writing, some are partly written and partly unwritten, and some are not written at all.

If you study the constitution of a government, you will often be able to answer the following questions about the relationship between the government and its citizens.

Government

- What are the purposes of the government?
- How is the government organized?
- How is the government suppose to go about doing its business?

* This is a continuation from the first and second issue of the journal.

Citizens

- Who is considered to be a citizen?
- Are the citizens supposed to have any power or control over their government? If so, how is it to be exercised?
- What rights and responsibilities, if any, are the citizens supposed to have?

According to this definition of a constitution, every nation has a constitution. Good governments and bad governments have constitutions. Some of the worst governments have constitutions that include lists of the basic rights of their citizens. A list of rights does not mean that the citizens actually have those rights.

Having a constitution does not mean that a nation has a constitutional government. If, for example, a constitution provides for the unlimited exercise of political power – by one, few, or even many – it would not be the basis of a constitutional government. If a constitution says that the power of the government is to be limited, but it does not include ways to enforce those limitations, it also is not the basis of a constitutional government.

DEFINING „CONSTITUTIONAL GOVERNMENT“

A constitutional government is best understood by comparing it with an autocratic or dictatorial government.

In an autocratic or dictatorial government, whether ruled by one person or many, power is unlimited. The person or persons who ultimately control the government can do whatever they want to do with the nation’s citizens and resources.

In a constitutional government, the powers of the person or group controlling the government are limited by a set of laws and/or established customs called a constitution which they must and do obey.

As you have learned, all governments have constitutions that set forth the ways they are organized and operated. But only in a constitutional government is the constitution considered to be a form of higher law that must be obeyed by the persons running the government.

THE CHARACTERISTICS OF THE HIGHER LAW

In a constitutional government, the constitution or higher law has the following characteristics.

- It sets forth the basic rights of citizens to life, liberty, and property.
- It establishes the responsibility of the government to protect those rights.
- It establishes limitations on how those in government may use their powers with regard



to (a) citizens’ rights and responsibilities, (b) the distribution of resources, and (c) the control of conflict.

- It establishes the principle of a private domain – which means that there are areas of citizens’ lives that are no business of the government and in which the government cannot interfere.
- It can only be changed with the widespread consent of the citizens, and according to established and well-known procedures.

WHAT KINDS OF GOVERNMENTS MAY BE CONSTITUTIONAL GOVERNMENTS?

It is possible in theory to have a constitutional government that is ruled by one person or a small group of people, so long as the rulers obey the limitations on their powers placed upon them by the “higher law” of the constitution.

But history has shown that a problem often arises when a constitutional government is ruled by one person or a small group of people. If all of the power is given to a select few, it is difficult to make sure that they will obey the limitations placed upon them by the constitution. The rulers in such a nation would control its armed forces and law-enforcement agencies. What group of citizens would have the power to force the rulers to obey the constitution? Both history and contemporary events show us that the misuse of governmental power can threaten and even destroy the lives, liberty, and property of citizens.

PROBLEM SOLVING

THE FOUNDER’S FEAR OF THE ABUSE OF POWER

Given their knowledge of history and their experiences with the British government, it is not surprising that the Founders greatly feared the possible abuse of the powers of government. Read, for example, the following selections from the writings of some of the most prominent Founders. Then discuss your answers to the questions that follow the selections.

Give all power to the many, they will oppress the few. Give all power to the few, they will oppress the many. (Alexander Hamilton, American statesman, 1787.)

There are two passions which have a powerful influence on the affairs of men. These are ambition and avarice, the love of power and the love of money. (Benjamin Franklin, American statesman and philosopher, 1787)

From the nature of man, we may be sure that those who have power in their hands... will always, when they can increase it. (George Mason, American statesman, 1787)

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1. Explain the view of human nature that is expressed in the above quotations by several of the Founders.
2. If you held the view of human nature expressed above, what kind of safeguards would you include in your government to prevent the abuse of its powers?

REVIEWING AND USING THE LESSON

1. What is a constitution? What can you learn of a nation's government by studying its constitution?
2. All governments have constitutions. Only some of these governments are constitutional governments. Explain the essential differences between constitutional governments and autocratic or dictatorial governments.
3. What characteristics does the "higher law" of a constitutional government have?
4. Review the basic ideas listed at the beginning of this lesson and be sure you can explain each of them.

LESSON 5

HOW CAN CONSTITUTIONAL GOVERNMENTS BE ORGANIZED TO PREVENT THE ABUSE OF POWER?

PURPOSE OF LESSON 5

You learned in the last lesson of the fear of the Founders that the powers of government might be abused at the expense of the people. This fear was not unreasonable given their knowledge of history and their beliefs about human nature. This final lesson of Unit One deals with some of the ideas used by the Framers to organize our government so it would be difficult to abuse its powers.

After studying the lesson, you should be able to explain the following ideas and to identify example of their use in our government.

separation of powers

checks and balances

legislative branch

executive branch

judicial branch

veto



ORGANIZING A CONSTITUTIONAL GOVERNMENT

A study of constitutional governments will show that their powers are usually distributed among several different groups. This distribution of power makes it less likely that any one group will be able to abuse or misuse its powers. Also, it is less likely that any group will gain so much power that it can ignore the limitations placed upon it by the constitution. To prevent the abuse of the powers of our government, the Framers provided for the separation of its powers and a system of checks and balances.

Separation of powers

In modern constitutional systems, powers are commonly divided among three branches of government.

- The legislative branch is responsible for making laws.
- The administrative or executive branch is responsible for carrying out and enforcing laws.
- The judicial branch is responsible for managing conflicts over the interpretation, application, and enforcement of laws.

Checks and balances

The phrase checks and balances means that the powers given to the different branches of government are distributed or “balanced” so that no branch has so much power that it can completely dominate the others. Although each branch of the government has its own special powers, many of these powers are “checked” because they are shared with the other groups.

For instance, in the United States, the power to make laws is given to the legislative branch of government. This legislative power is divided between the House of Representatives and the Senate, which check each other. In addition, the executive and judicial branches have been given ways to check and control this power of the legislature. For example,

- the President can check the power of Congress by vetoing its laws, and
- the Supreme Court can check the power of Congress by declaring its laws to be in violation of the Constitution and, therefore, invalid.

In much the same way, the powers of the President and Supreme Court are checked by the other branches. You will learn more about this system in later lessons.

THE COMPLEXITY OF CONSTITUTIONAL GOVERNMENT

The complicated ways in which constitutional governments are organized often mean that it takes them a long time to get things done. In fact, it is almost impossible to get something done if there are powerful conflicting interests involved. It may seem strange, but this “inefficiency” was seen by the Framers as an advantage. Many people think that these difficulties make it more likely that when a decision is finally made, it will be a good one.

REVIEWING AND USING THE LESSON

1. What powers of government are usually separated in modern constitutional governments? Why?
2. To Which branches of our government are the powers you have identified given?
3. In constitutional governments, a separate branch is often “checked” or “balanced” the other branches. Why? Give examples of these “checked balances.”
4. The separation and sharing of powers may make quick responses to common problems unlikely. Why do you think the Framers chose these arrangements over other, possibly more efficient, ways of organizing a government? Do you agree with them? Why?

UNIT TWO: HISTORY AND EXPERIENCE

PURPOSE OF UNIT TWO

In the first unit of this text, you have studied some of the basic ideas of the natural rights philosophy, republicanism, and constitutional government which influenced the thinking of the Framers. However, these were not the only influences upon their thinking. Many of them had studied the history of government in Western civilization. Most of them had had personal experience in government before and after the Revolution. This unit will provide you with an overview of some of the most important historical events and experiences which influenced the writing of our Constitution.

LESSON 6

WHAT BASIC IDEAS OF CONSTITUTIONAL GOVERNMENT WERE FOUND IN THE GOVERNMENT OF ENGLAND?

PURPOSE OF LESSON 6

This lesson describes the evolution of constitutional government in England. As you read the lesson look carefully to see how the basic ideas about government that you have studied were developed in English history.



When you complete this lesson, you should be able to explain some of the most important events in the development of English constitutional government. You should also be able to explain the basic ideas and terms introduced in the lesson which are listed below.

source of authority

divine right of kings

subject

feudal government

royalty

nobility

commons

balance of power

balanced constitution

Magna Carta

THE BEGINNINGS OF ENGLISH GOVERNMENT

For the first thousand or so years after the birth of Christ, 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 of the tribes of England became united under one king.

After England became a Christian country, the kings claimed that the source of their authority was the “will of God,” an idea that became known as the divine right of kings.

Under this early kind of English monarchy all of the people were subject to the king's rule—which is why they were called his “subjects”. The king exercised his control with the help of a council of trusted advisers.

England was a large nation for one person to rule in those times, since there were no quick and efficient means of communication or travel. Most kings simply preferred to let people in local areas control themselves according to customs that had developed over the years.

FEUDAL GOVERNMENT

A major change in the way England was ruled took place on October 14, 1066, when William the Conqueror, the leader of the Normans, completed his invasion of England by defeating

King Harold in the Battle of Hastings. As a result, a new feudal system of government was imposed on the people of England. The feudal government had the following characteristics.

- All of the people of the nation were classified as belonging to one of three groups, called “orders.” These were (a) royalty which included the king and queen and their family; (b) the nobility which included the “lords” and “ladies” who were the major followers of the king or queen and who held titles such as earl or baron, and (c) the commons or “common people, made up of such different groups as knights, merchants, and peasants. At that time the peasants were called “serfs” because they were not free and were forced to work on the land.
- All of the territory of England was considered in belong to the king or queen. Everyone living in the kingdom was subject to the monarch’s rule.
- Because there was so much territory to control the king or queen gave some of the responsibility for governing the kingdom to the nobility. The nobbles were allowed to control parts of the royal territory and the common people who lived upon it in exchange for military service. This convenient sharing of power by royalty with the nobility eventually led to the development of a different kind of government as you will soon learn.

CHECKING FOR UNDERSTANDING

1. What did early English kings claim was the source of their authority, that is, the source of their right to rule over their people? How does this source from the soured of authority of the United states government?
2. What was the source of the nobles” authority to rule the people who were subject to them? How does this compare with the source of authority of a cabinet officer nominated by the President and confirmed by Congress?
3. How did the kings share their powers in the English feudal system?

THE MAGNA CARTA AND THE DEVELOPMENT OF CONSTITUTIONAL GOVERNMENT

One of the most important changes in the government of England took place in 1215. This date is important in the development of constitutional government in England because in that year the power of the king became limited by a written document called the Magna Carta.

By this time, it had become traditional for the kings and queens of England to share some of their powers with the nobility. In 1215, King John tried to take back some of the rights and



powers the nobles had grown accustomed to having. The result was a war between the nobles and their king, a war that the nobles won.

The nobles then forced King John to sign the Magna Carta. It listed traditional rights of the nobles that the king could not take from them. The rights guaranteed included (a) the freedom of the church from the control of the king. (b) the independence of the courts of England, (c) the right of people who owned land to pass it on to their oldest son, (d) the right of people who owned land to a fair trial (e) the right to travel, and (f) the freedom from unnecessary searches of their homes.

The early English customs and traditions and the Magna Carta protected certain basic rights. However, it is important to know that these rights did not apply to all of the people of England. Men who owned property were given far more rights than were women or children or others without property.

CHECKING FOR UNDERSTANDING

1. Identify and explain the basic ideas of constitutional government described above.
2. What were some of the basic rights included in the Magna Carta and what were their sources? Which of these rights do you think the Framers included in our Constitution?

THE ESTABLISHMENT OF A BALANCE OF POWER AMONG BRANCHES OF GOVERNMENT

Conflicts between the kings and their nobles continued after the signing of the Magna Carta. The Magna Carta showed how a written document or constitution could be used to place limits on governmental power. The next great change in the English government resulted in the separation of its powers.

In 1258, King Henry III and the nobles agreed to create a new council, called Parliament to advise the king. During the next thirty years, Parliament became the branch of government that represented the most powerful orders or groups in the kingdom. The Parliament was made up of two houses: the House of Lords which represented the interests of the nobility, and the House of Commons which represented the “common people.” However, at this time the “common people” were mainly people who owned large amounts of land but were not members of the nobility.

For hundreds of years royalty, nobility, and “commoners” struggled against each other for power. But no one group was able to control all of the power for very long. This struggle for the control of the government had a dramatic history. Consider, for example, the following events during the important years between 1621 and 1689 -the time of the early settlement of the English colonies in America.

- 1621. Members of the House of Commons insisted on having the right to take part in making governmental decisions. King James I responded by disbanding Parliament the following year.
- 1628. Members of Parliament forced the king to sign the Petition of Right. The petition included the liberties Englishmen had won in the past and the customs they lived by and supported. Now the customs, traditions, and liberties of Englishmen were clearly set forth in an official written document agreed upon by Parliament and signed by the king.
- 1641. Parliament was powerful enough to pass a law denying the king the right to disband it without its consent.
- 1649. During the English Civil War, Parliament was powerful enough to put King Charles I on trial for treason and to have him executed.
- 1653-1658, Oliver Cromwell an English general, took power and completely abolished the title and positions of the king and the House of Lords.
- 1660. The monarchy was restored and Charles II became king.
- 1688. King James II was forced to flee England because of his arbitrary methods of government. This ended the doctrine of the “divine right of kings”.
- 1689. The Toleration Act increased the religious freedom of most people in England by allowing members of a variety of religious groups to practice their beliefs.
- 1689. Parliament created a Bill of Rights.

THE ENGLISH BILL OF RIGHTS

The English Bill of Rights of 1689 restored the balance of power between the king and Parliament that had been upset by King James II. Kings and queens were not allowed to (a) collect taxes without the consent of the Parliament, (b) interfere with the right to free speech and debate that went on in Parliament, (c) maintain an army in times of peace (since it might be used to take over the government), (d) require excessive bail or administer cruel punishment for those accused or convicted of crimes, or (e) declare that laws made by Parliament should not be obeyed, as King James had done.

The Bill of Rights also included the principles that (a) everyone must obey the law, even the king and Parliament, (b) elections must be free, and (c) the people have the right to keep and carry weapons.

BALANCED POWERS AND REPRESENTATIVE GOVERNMENT

You can see how during this relatively short period of time, the balance of power in the



English government shifted from the king to the Parliament. The basic idea of representative government had become firmly established. However, only men with property had the right to vote and to be a member of the House of Commons. Most people today would consider the government corrupt because these men often served their own interests at the expense of the common welfare.

In 1707, England and Scotland (which until then had its own parliament) agreed to join together along with Wales to create the kingdom of Great Britain. Therefore, in this book, England is referred to as Great Britain for events occurring after that date.

THE BRITISH CONSTITUTIONAL MONARCHY

During the colonial period, the British government was becoming increasingly limited in what it could do by a constitution which included the following:

- A set of documents and customs, including the Magna Carta and the English Bill of Rights, which set limits on the powers of the government and spelled out the rights of English freemen.
- A system of responsible government in which ministers appointed by the king were directly responsible to Parliament.
- A system in which the executive, legislative, and judicial powers were separated among the monarchy, Parliament, and the courts.

The “balanced constitution” of the British government was greatly admired in other nations. The French political philosopher Montesquieu called the British government “this beautiful system” because he felt that it was perfectly balanced and, therefore, the only one in the world in which the constitution guaranteed political liberty.

PROBLEM SOLVING

Complete the following chart by identifying an example in British government of each of the basic ideas listed.

BRITISH GOVERNMENT

IDEA

1. Basic rights
2. Limited government
3. Separated powers
4. Shared powers
5. Consent
6. Representative government

To complete this exercise, identify at least one example of how each of the above ideas applies to our present government.

REVIEWING AND USING THE LESSON

1. What is the Magna Carta? Explain why it is important in the development of constitutional government in England.
2. A struggle between king and Parliament throughout the 17th century was won by the Parliament, Referring to the English Bill of Rights of 1689, list the restrictions placed upon the king's power that resulted from Parliament's victory.
3. Explain which provisions of the English Bill of Rights are included in our Constitution.
4. Why do you think that the rights that were secured by the movement toward constitutional government were mostly of help to men who owned property? Why weren't women or poor people given these rights.

(Will be continued in the next issue)