



## Our English Inheritance

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*Stephanie Forrest traces the roots of the English parliamentary system back to the early Middle Ages, exploring the unique features of a key feature of our own liberal democracy.*

Today, parliamentary democracy is widespread and takes many forms. In Australia, we are fortunate to have inherited a particularly old parliamentary tradition with a long tradition of stability. Unlike many modern democracies, it has its roots not in the French Revolution of 1789, or in the political reorganisations that followed the second world war, but in several centuries of British history—specifically, in several centuries of English history. From the 12th or 13th centuries and onward, unique political conditions developed which would steer English institutions in a very different direction from the medieval kingdoms of the continent, and the powers of parliament would become an entrenched part of England’s unwritten constitution. It is to this parliament, as it developed especially in the nineteenth and early twentieth centuries, that we ultimately owe our particular tradition of parliamentary democracy.

The earliest stages in the story of parliament are shadowy. Though the word ‘parliament’ itself was

not used to refer to assemblies of barons and other magnates until well into the 13th century, some have argued that the earliest roots of the English Parliament can be traced back to the councils held under Alfred the Great's successors in the 10th century. At a time when the power of the English monarchy was growing, the *witenagemot*—literally 'the meeting of wise men'—began as a means for the king to handle important matters of state in consultation with his leading nobles.

This was not itself a unique development. Councils of key magnates, supporters, and citizens had played similar roles in many civilisations since antiquity, sometimes founded on sophisticated constitutions; the *ekklesia* of Golden Age Athens and the Roman Senate are two especially famous examples. 'Warrior councils' were also common among the Germanic invaders that overran the Western Roman Empire at the end of antiquity. Councils continued to play a role after the collapse of Rome in the West throughout the early Middle Ages, both in the form of church councils and secular assemblies convened by monarchs. In the generations before Alfred the Great, Charlemagne and his successors had summoned warrior councils very similar to the *witenagemot* in mainland Europe. As such, there seems to have been nothing specifically unique about the English tradition at this early stage.

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Following the Norman Conquest in 1066, the name of the *witenagemot* fades from record. So deeply rooted was the tradition of summoning 'great men' to council, however, that the practice continued under England's new rulers. The Norman kings continued to summon Great Councils—*magna concilia* in Latin—to discuss succession and other matters of policy. Whereas the *witenagemot* had once been attended by the leading members of the Anglo-Saxon elite, most attendees were now the King's leading magnates—his earls, barons, and bishops—the majority of whom were French-speaking Normans. The Norman kings used these councils as a means for communicating with their magnates when important edicts were issued or there was a need to obtain oaths of loyalty.

Similar patterns can be seen across the Western European continent. Kings convened very similar councils in the Christian kingdoms of Spain—Catalonia, Léon, Aragon and Castile. There are similar instances in the Holy Roman Empire, and even in France, England's major continental rival. Yet none of these continental councils survived as long, nor ever assumed the same constitutional power as the baronial meetings in England. It was in the 13th century that the English Great Councils evolved into something truly unique, and began to steer England, politically, in a very different direction.

In the feudal world of William the Conqueror and his immediate successors, the King technically owned all land, and no 'private property' existed in the modern sense. His lands were broadly divided into two categories: a) the land that he held directly, known as the royal *demesne* (pronounced 'domain'), and b) lands held by his key magnates, who were known as vassals.

For the first few decades after the Norman Conquest, the funds from the king's *demesne* were adequate to fund his military exploits and lifestyle. Yet by the time Henry II came to power—the same Henry, incidentally, who laid the foundations of the English Common Law—the traditional feudal payments were no longer adequate to fund the royal government and the king's military campaigns.

His solutions were manifold, and many were unique to England alone. His centralisation of the justice system was a part of it, since parties now needed to pay for writs when opening certain kinds of cases in court. He also exploited the Royal Forest, a section of England set aside, ostensibly, as the king's hunting grounds, which was governed by the unpopular 'Forest Law'. Another innovation was 'scutage', introduced as a payment to be made in place of 'knight service'. He also experimented with taxes on moveable property, which had some precedent in the tithes raised at the bidding of the church in England and on the continent, and particularly the tithe raised in 1166 to aid wars in the Holy Land.

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As the king's demands for revenue became more and more extensive, he risked earning the ire of his main taxpayers, the barons. In 1188, therefore, an important precedent was set when King Henry II summoned a Great Council of his magnates to gain their counsel on the Saladin Tithe. It is the first known instance of a Great Council being summoned specifically for the purpose of approving a tax levy.

This became entrenched as tradition in the reigns of Henry II's sons, Richard and John, who were either engaged in or planning costly military adventures for most of their reigns. At the end of John's reign, this practice resulted in a rebellion of the barons and the sealing at Runnymede of Magna Carta, which contained two chapters—12 and 14—which explicitly set out that the king could only make levies 'by the common counsel of the kingdom'. Though these chapters were not included in later reissues, the practice of summoning Great Councils to consent to taxation was slowly reinforced by later decades of tradition. After the Great Council of 1236, these meetings acquired a new name which remains familiar in our own era: *parliament*.

It was also during this period that meetings of parliament began to include representatives from the boroughs and shires. In addition to barons and leading clerics, it was now customary for the King to request that each county and borough elect a representative to send to the parliament. In 1341 the parliament was split into two chambers: one comprising the lords and bishops, and one comprising elected representatives from the boroughs and counties.

On the eve of the modern era, therefore, the English Parliament was entrenched as a central part of England's constitution, and had already taken on a form that might be recognisable to modern eyes. It met regularly at a set place, and what would become the House of Commons included



elected 'representatives' from each county and borough.

This was a unique development which was not paralleled elsewhere on the continent. Although irregular councils of nobles came and went there, in no case did these councils succeed in becoming an entrenched part of the political processes. The key to the longevity of the parliament in England was its exclusive power to consent to certain forms of taxation. This was not realised anywhere on the continent.

The turmoil of the later Middle Ages stalled and reversed some of the ground parliament had made in the period after Magna Carta. Beginning with the rise of Henry VII at the end of the Wars of the Roses, the Tudor monarchs did much to strengthen powers of the monarchy that had slackened in earlier decades. When it met, parliament's power was cemented in its exclusive power to give consent to the major forms of taxation. Along with this, it retained its power to comment on foreign affairs and issue legislation. The *Act of Supremacy*, which established the crown as the head of the English church, had to be passed through parliament in 1534. The fact that its power survived into the Tudor era intact meant that the opinions of parliament still could, and did, have an impact on other matters of policy. It was in this peculiar political climate that the seeds for the next major conflict between parliament and the monarchy were sown.

The English Civil War began in October 1642, and was initially fought out between parliamentarians and royalists. The parliamentarians captured King Charles I in 1647 and charged him with treason. He was executed on 30 January, 1649, and for the next decade England was a Republic. Power eventually devolved upon the military commander and puritan Oliver Cromwell, who was elected Lord Protector of the Commonwealth and ruled until his death in 1658.

But the interregnum would not long outlive Cromwell. In 1660, a new parliament voted to restore the monarchy. Charles II, the son of Charles I, was called out of his exile on the continent and crowned in 1661. Though England's brief experiment with republicanism ended in failure, it only served to reconfirm the powers of parliament. Its powers now extended to regulating trade and customs duties. The powers of parliament were also reaffirmed in the Bill of Rights, affirmed by William III and Mary II following a swift royal coup known to posterity as the 'Glorious Revolution'. Henceforth, it was to meet frequently, enjoy freedom of speech, and had the right to consent to laws, standing armies, and an exclusive right to consent to taxation.

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Already by the end of the 17th century, parliament was cemented in English tradition as a vital part of the constitution. Though the voting franchise was still narrow—restricted to a small portion of the population, chiefly landed or wealthy men—in the unique economic and intellectual climate of the nineteenth century, a series of reform movements would expand the franchise, dramatically reducing property requirements and (in the early twentieth century) eventually expanding the vote to women.



When early colonists arrived in Australia, chiefly from the British Isles, they brought with them distinctly British ideas about constitutionalism and legal rights. In their eyes (and quite justifiably, as has been seen) this was a tradition that extended back through the chaos of the seventeenth century and back at least to Magna Carta. When the first parliaments were founded in the Australian colonies in the nineteenth century, they were founded predominantly on British models, albeit with some influences from American and Canadian equivalents.

Parliament is only one example. Overwhelmingly, it is from the British Isles that Australia has derived its major institutions including,— along with its ‘parliament of taxpayers,’—its language and legal system. It is these institutions, along with trade and fortunate natural resources, that have allowed it to prosper as a modern liberal democracy. They continue to leave a lasting imprint on the shape of our society today.

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