

= Petition of Right =

The Petition of Right is a major English constitutional document that sets out specific liberties of the subject that the king is prohibited from infringing . Passed on 7 June 1628 , the Petition contains restrictions on non @-@ Parliamentary taxation , forced billeting of soldiers , imprisonment without cause , and the use of martial law . Following disputes between Parliament and King Charles I over the execution of the Thirty Years ' War , Parliament refused to grant subsidies to support the war effort , leading to Charles gathering " forced loans " without Parliamentary approval and arbitrarily imprisoning those who refused to pay . Moreover , the war footing of the nation led to the forced billeting of soldiers within the homes of private citizens , and the declaration of martial law over large swathes of the country .

In response , the House of Commons prepared a set of four Resolutions , decrying these actions and restating the validity of Magna Carta and the legal requirement of habeas corpus . These were rejected by Charles , who also announced that Parliament would be dissolved ; in response , the Commons met on 6 May to discuss alternatives , and concluded that a petition of right was the way forward . Accordingly , a committee under Sir Edward Coke drafted such a petition , and it was passed by the Commons on 8 May and sent to the House of Lords . After three weeks of debates and conferences between the two chambers , the Petition of Right was ratified by both houses on the 26th and 27 May . Following additional debates in which the King restricted the right of the Commons to freely speak , he bowed to the pressure ; in need of Parliamentary support for the war effort , the Petition was accepted on 2 June . Unhappy with the method chosen , both houses joined together and demanded the King fully ratify the Petition , which he did on 7 June .

Despite debates over its legal status , the Petition of Right was highly influential . Domestically , the Petition is seen as " one of England 's most famous constitutional documents " , of equal value to the Magna Carta and Bill of Rights 1689 . In a period in which Charles 's main protection from the Commons was the House of Lords , the willingness of both chambers to work together marked a new stage in the constitutional crisis that would eventually lead to the English Civil War . The Petition remains in force in the United Kingdom and , thanks to Imperial legislation , many parts of the Commonwealth of Nations including Australia and New Zealand . Internationally , it helped influence the Massachusetts Body of Liberties , and is seen as a predecessor to the Third , Fifth , Sixth and Seventh amendments to the Constitution of the United States .

= = Background = =

= = = Charles I = = =

On 27 March 1625 , King James I of England died , and was succeeded by his son , who became Charles I. Along with the throne , Charles inherited the Thirty Years ' War , in which Christian IV of Denmark and Frederick V , Elector Palatine , who was married to Charles 's sister Elizabeth , were attempting to take back their hereditary lands and titles from the Habsburg Monarchy . James had caused significant financial problems with his attempts to support Christian and Frederick , and it was expected that Charles would be more amenable to prosecuting the war responsibly . After he summoned a new Parliament to meet in April 1625 , it became clear that he was not ; he demanded over £ 700 @,@ 000 to assist in prosecuting the war . The House of Commons refused , and instead passed two bills granting him only £ 112 @,@ 000 . In addition , rather than renewing the customs due from Tonnage and Poundage for the entire life of the monarch , which was traditional , the Commons only voted them in for one year . Because of this , the House of Lords rejected the bill , leaving Charles without any money to provide for the war effort .

Displeased with this , Charles adjourned it on 11 July , but finding himself in need of money recalled the Members on 1 August , when they met in Oxford . Not only did the Commons continue to refuse to provide money , led by Robert Phelps and Sir Edward Coke they began investigating the Duke of Buckingham . Buckingham , Charles 's favourite , was in charge of prosecuting the war , and with it

going badly the Commons inquired into Buckingham 's use of previous grants , and various controversies within the admiralty . This was a pretext to impeachment , and Charles reacted by dissolving Parliament less than two weeks later on 12 August . By 1627 , with England still at war , Charles decided to raise " forced loans " ; taxes not authorised by Parliament . Anyone who refused to pay would be imprisoned without trial , and if they resisted , sent before the Privy Council . Although the judiciary initially refused to endorse these loans , they succumbed to pressure after the Chief Justice of the King 's Bench , Sir Randolph Crewe , was dismissed .

For refusing to contribute to the forced loan , over 70 gentlemen were arbitrarily jailed , without trial or charges brought against them . Five of them , Sir Thomas Darnell , Sir John Corbet , Sir Walter Erle , Sir John Heveningham and Sir Edmund Hampden , attempted to gain their freedom , petitioning the Court of King 's Bench for a writ of habeas corpus . These were awarded on 3 November 1627 , with the court ordering the bailiffs to present these prisoners to the King 's Bench for examination by 8 November . None of the prisoners were presented , because the bailiffs were unable to determine what they were charged with ; in an attempt to get a test case to decide on the legality of the forced loans , the Attorney General Sir Robert Heath secured a writ for Darnell . This led to the Five Knights ' Case , known as Darnell 's Case . Darnell , unnerved by the situation , ceased pursuing his freedom , and the other four secured writs instead , represented by John Bramston , Henry Calthorp and John Selden .

The judges denied the defendants bail , concluding that if no charges had been brought , " the [prisoners] could not be freed as the offence was probably too dangerous for public discussion " . This was merely a ruling on bail , not on the legality of the loans , and Charles decided not to pursue the charges against the knights , fearing that , if asked to rule on the loans themselves , the judges would find them illegal . An unforeseen side effect was that although Charles continued to demand the loans , more and more wealthy landowners refused to pay , reducing the income from the loans and necessitating a new Parliament being called in March 1627 . With widespread public opposition to Charles , Buckingham and the war , this resulted in the election of " a preponderance of MPs opposed to the King " , including Selden , Coke , John Pym and a young Oliver Cromwell .

= = = Martial law and the Parliamentary response = = =

To cope with the ongoing war situation , Charles had introduced martial law to large swathes of the country ; he extended this during 1626 and 1627 , as the financial constraints imposed by Parliament began to cut into pay , leading to soldiers rioting . Under the law of the time , martial law was declared by the local military commander , at which point a group of Commissioners would be empowered to decide on the facts of offences , before passing the case to the commander , who would pass judgment . In practice , things worked completely differently . In Dover , the forces were commanded by Lord Conway , who declared martial law . Not only were commissioners authorised to decide on the facts , they were also permitted to authorise summary judgments , including the execution of people they deemed to be guilty . In addition , the commissioners were given the power not only to resolve billeting disputes between soldiers and civilians , but to order civilians to provide quarters for the troops . A later declaration of martial law in Portsmouth extended the commission 's remit yet again , allowing for civilians to be tried under martial law and , if necessary , sentenced to death . Even this did not solve the problems , as soldiers would often wander outside the jurisdiction of the commissioners ; to deal with this , February 1627 saw a Provost Marshal introduced to each county , bringing the entire nation under martial law .

Crucially , martial law as then understood was not a form of substantive law , but instead a suspension of the rule of law ; it was the replacement of normal statutes with a law based on the whims of the local military commander . It was , however , based on certain firm rules , primarily that it should only be used " in time of war or open rebellion in the realm " . In previous reigns , this had not been a problem , with monarchs such as Elizabeth I instituting martial law without issues . Charles , however , lacked both the public popularity of Elizabeth and the support within Parliament , and his justification for martial law was not as sound . As a result , the opposition in Parliament , already aggrieved with his behaviour , was further inflamed .

All of those imprisoned for failing to pay the loans were released in December 1627 , and although martial law remained in force , Charles decided that the only way to prosecute the war was to again ask Parliament for money . Accordingly , Parliament began meeting on 17 March 1628 , and " immediately became locked into debates on English liberties " , specifically relating to the forced loans , the trial of the five knights , the billeting of soldiers and martial law . Members of Parliament , already angry with Charles , were further enraged when Selden discovered that Heath had attempted to have the decision in the five knights case enrolled as binding precedent on the legality of the forced loans , pressuring the clerk of the King 's Bench to do so ; MPs reacted by declaring the judgment illegal .

Coke , not satisfied by this , immediately began preparing the Resolutions on 1 April , a series of Parliamentary declarations . The four resolutions were that imprisonment was illegal , except under law , that habeas corpus should be granted to anyone , whether they are imprisoned by the King or the Privy Council , that defendants could not be remanded in custody until the crime they were charged with was shown , and that non @-@ Parliamentary taxation such as the forced loans was illegal . This was " a dogmatic summary of subjects ' rights as enshrined in English ' due process ' legislation since 1225 " , and the first three later became the foundations of the Habeas Corpus Act 1679 . The Resolutions were unanimously accepted by the Commons on 3 April , and Coke , Selden , Dudley Digges and Thomas Littleton presented them to the House of Lords . There , the Resolutions met a mixed reception ? something rendered moot when Charles refused to accept them , since resolutions of the Commons had no power outside the chamber .

= = Passage = =

= = = Formation = = =

With the Resolutions rejected , Charles presented the Commons with an alternative ; he was willing to allow them to pass a bill confirming Magna Carta and six other liberty @-@ related statutes , on the condition that such a bill contained " no enlargement of former bills " . A majority of MPs , however , rejected this offer ; although they did not necessarily distrust Charles , the illegal acts committed by his ministers , both in the war and in relation to the five knights ' case , left them loathe to accept a state of affairs which would leave the government with the right to interpret the law . Instead , on 3 May , they approved a formal reply to Charles , which assured him that the Commons was " as full of trust and confidence in your royal word as ever House of Commons reposed in any of their best kings " but that , because of the illegal acts publicly committed by his ministers , nothing except a public remedy would " raise the dejected hearts of your loving subjects to a cheerful supply of your Majesty " .

Charles conferred with the House of Lords , and then had Lord Coventry deliver his reply ; that if the Commons did indeed trust the King , they should not request a public bill , and that Parliament would be prorogued on 13 May . With this , the Commons gave up on pursuing a public bill against Charles 's wishes , since it would require his assent to be made law , and on 6 May turned to what to do next . A number of possible alternatives were debated . John Coke and a number of " courtiers " suggested simply trusting Charles , while William Coryton continued to push for an explanatory bill ? precisely what Charles had rejected . Nathaniel Rich suggested asking Charles to explain his understanding of the law and declare certain acts illegal . Finally , Sir Edward Coke made a speech suggesting that the Commons join with the House of Lords , and pass their four resolutions as a petition of right . He was not the first to do so ? Digges had suggested such a move as early as 26 April ? but his proposal on 6 May was the one to be adopted , and he is thus normally seen as the originator of the Petition of Right .

The idea of a petition of right was an established element of Parliamentary procedure , and in addition , had not been expressly prohibited by Charles , allowing the Commons to evade the restrictions placed upon them while still acting legitimately . Once the Commons agreed to move forward with a petition of right , and on its contents , Coke moved that the Commons " join with the

Lords " in the petition and then have it " exemplified under the great seal " . This was accepted by the Commons almost unanimously , and they formed a drafting committee led by Coke . The committee produced a petition containing the same elements as the Resolutions , covering discretionary imprisonment , non @-@ Parliamentary taxation , martial law and forced billeting , and had its recommendations accepted by the Commons on 8 May .

= = = House of Lords = = =

On 8 May , the Petition was formally presented to the Lords by Coke , accompanied by a bill for subsidies for the King to encourage them to accept the Petition . It was read to the House , and debated on 9 and 10 May . The Lords approved the substance of the petition , but were worried it would be distasteful to Charles and attempted to " sweeten " the wording . On 12 May , before a resolution had been reached , the Lords were presented with a message from Charles , expressing his reservations over the clause on imprisonment . He wrote that although he had attempted to " satisfy all moderate minds , and free them from all just fears on this matter " , he insisted that if Parliament accepted that " in no case whatsoever (though they should never so nearly concern matters of state or government) we , or our Privy Council , have power to commit any man without the cause shown " , then this " would soon dissolve the foundation and frame of our monarchy [and] without overthrow of our sovereignty ... we cannot suffer this power to be impeached " .

This message was read to the Commons later in the morning , and the MPs decided to simply ignore it , not even bothering to reply . In response to the message , the Lords proposed eight alterations to the petition and the modification of the imprisonment clause to appease the king . When these changes were debated on 13 May , they were all rejected except for one minor change in wording . The Lords still favoured a compromise , and suggested the addition of a paragraph to the petition reading " We humbly present this petition to your majesty , not only with a care of preserving our own liberties , but with due regard to leave entire that sovereign power , wherewith your majesty is trusted , for the protection , safety , and happiness of your people " . By 20 May the Commons had agreed to one more minor alteration , but had not decided whether to accept the new paragraph . Coke made a speech urging them to reject all of it , saying that to use the phrase " sovereign power " would mean admitting that the King had the power to destroy any limitations the Petition might place on his power " .

After further debate , the Commons informed the Lords that they would not accept the addition . The Lords attempted to rebut the arguments at a conference on 21 May , but were unsuccessful , and then proposed a joint conference of 23 members from each house to find some middle ground . When this was rejected on 24 May , the Lords abandoned any attempt to accommodate the King . Instead , they unanimously voted to join with the Commons on the Petition of Right , while passing their own resolution on 26 May insisting that their intention was " not to lessen or impeach any thing which by the oath of supremacy [we had] sworn to assist and defend " , assuring the King of their loyalty . With this , the amended Petition was quickly approved by the Lords on 26 May , the Commons on 27 May , and transmitted back to the Lords , who would present it to Charles .

= = = Acceptance by Charles = = =

Following the acceptance of the Petition by the House of Lords , Charles sent a message to the Commons " forbidding them to meddle with affairs of state " , something that produced a furious debate . John Finch , the Speaker of the House of Commons , announced that he had been commanded to interrupt any Member of Parliament who should insult or cast aspersions on a Minister of State , such as the Duke of Buckingham . This produced a " spectacle of passions " in the House ; the tradition of free speech within the Commons was a long one , and many MPs found themselves " unable to speak for tears running down their faces at the thought of the destruction of the liberties of Parliament " . Coke , although crying , declared that he did not know whether he would be allowed to speak in Parliament again , but named Buckingham anyway , saying that " the Duke of Buckingham is the cause of all our miseries , and till the King be informed thereof we shall never go

out with honour , or sit with honour here ; that man is the grievance of grievances ; let us set down the cause of all our disasters and they will reflect upon him " .

Selden immediately moved that the commons produce " The Common Remonstrance against the Duke " , which demanded his removal from office . Faced with both the Petition of Right and a demand to remove his favourite , while requiring Parliament to provide subsidies for the war effort , Charles accepted defeat . After he gave a grudging assurance that the petition would be accepted on 2 June , saying :

The King willeth that right be done according to the laws and customs of the realm ; and that the statutes be put in due execution , that the subject may have no just cause of complaint for any wrong or oppression , contrary to their just rights and liberties , to the preservation whereof he holds himself in conscience as well obliged of his just prerogative .

Unsatisfied , with this vague answer , the Commons and the Lords banded together and demanded " that a clear and satisfactory answer be given by His Majesty in full Parliament " . On 7 June , Charles capitulated , appearing within Parliament at 4pm and , following a reading of the full Petition , saying " soit droit fait comme est desire " ? the phrase normally used in the acceptance of a Parliamentary bill . This was met with widespread adulation ; contemporary accounts report the ringing of church bells and the lighting of bonfires throughout the country . As a symbolic admission of defeat , Charles also picked 7 June to restore to favour all peers in opposition to him , a list that " read like the leadership of the pro @-@ Petition forces in the Lords " . After setting out a list of individual grievances and statutes that had been broken , the Petition of Right declares that Englishmen have various " rights and liberties " , and provides that no person should be forced to provide a gift , loan or tax without an Act of Parliament , that no free individual should be imprisoned or detained unless a cause has been shown , and that soldiers or members of the Royal Navy should not be billeted in private houses without the free consent of the owner . In relation to martial law , the Petition first repeated the due process chapter of Magna Carta , and then provided that :

Nevertheless , of late divers commissions under Your Majesty 's great seal have issued forth , by which certain powers have been assigned and appointed commissioners , with power and authority to proceed within the land according to the justice of martial law against such soldiers and marines or other dissolute persons going with them as should commit robbery murder , etc ... and by such summary course and order as is used by armies in time of war , to proceed to the trial and condemnation of such offenders , and to cause them to be executed and put to death according to the law martial ... We do humbly pray , Your most excellent Majesty ... that the aforesaid commissions ... may be revoked and annulled ; and that hereafter no commission of like nature may issue forth to any person or persons whatsoever to be executed as aforesaid , lest by color of them any of Your Majesty 's be destroyed or put to death contrary to the laws or practises of the land .

This clause was directly addressed to the various commissions issued by Charles and his military commanders , restricting the use of martial law except in war or direct rebellion and prohibiting the formation of commissions . A state of war automatically activated martial law ; as such , the only purpose for commissions , in their view , was to unjustly permit martial law in circumstances that did not require it .

= = Aftermath = =

= = = Significance = = =

Historians have traditionally considered the passage of the Petition of Right an important moment in the Stuart period . Whig historians such as Samuel Rawson Gardiner described it as the founding of the United Kingdom 's modern constitutional monarchy , and although revisionists have " virtually abolished " Gardiner 's works , the Petition of Right is still considered an important moment , with Conrad Russell arguing that it was the " culmination of a national war crisis [and] an ideological watershed " . In its own right , the Petition has been described as " one of England 's most famous constitutional documents " , with writers considering it of equal standing to the Magna Carta and the

1689 Bill of Rights . Within what is now the Commonwealth of Nations , the Petition was also heavily influential ; through the various statutes which enforced Imperial law , it remains in force in both New Zealand and Australia , as well as the United Kingdom itself .

The Petition profoundly influenced the rights contained by the Constitution of the United States . The clauses relating to the billeting of troops later helped form the Third Amendment to the United States Constitution , which states that " No soldier shall , in time of peace be quartered in any house , without the consent of the owner , nor in time of war , but in a manner to be prescribed by law " . Steve Bachmann , writing in the *Quinnipiac Law Review* , goes further ; he says that the Criminal Trials Clause of the Sixth Amendment , the Due Process Clause of the Fifth Amendment and the Civil Jury Trial Clause of the Seventh Amendment all are influenced by the Petition of Right , primarily through the Massachusetts Body of Liberties .

Domestically , the Petition marked " a major step on the way to the English Civil War of the 1640s " . Although Parliament lacked what would be considered political parties , and would continue to do so until the 18th century , the Petition of Right marked a substantial cooperative work between individual parliamentarians and between the Commons and Lords , something that had previously been lacking . Moreover , it saw Charles lose the " precious initiative in policy direction " ; the Commons had only previously been prevented from twisting the King 's intentions and policies due to the presence of the Lords , which acted as a buffer . With the Lords now indicating a willingness to work with the lower house , " the Crown 's most important protection within Parliament had been shaken as never before and the constitutional crisis between the Stuarts and their Parliaments had entered a new stage of development " .

= = = Legal status = = =

Clashes over the interpretation and legality of the Petition began almost immediately , with the Lords and Commons arguing with the King as early as 20 June 1628 , leading to the prorogation of Parliament on the 26th . The Petition of Right was not a formal statute , and despite it being reaffirmed as a bill by the Long Parliament in 1641 , the legal status of the initial Petition has been debated . It has been considered a declaratory act , a private bill , or simply a petition , which permitted an individual harmed by the government to take action against the crown . A petition is the oldest form of Parliamentary proceeding , and the one through which most early statutes were originally passed ; the King would be petitioned to take action by Members of Parliament , and would assent to their request ; laws passed in this way include Magna Carta and the Statute of Westminster . Whether or not this made it legally binding was debated . F.H. Relf argued that the recognition of the Petition was a judicial matter and at best a private bill , and as such it was not binding on the King or on Parliament . L.J. Reeve , on the other hand , considers it to have had the strength of a public bill ; it was a legislative act , and as such legally binding .

Reeve bases this argument on several things . Firstly , the judiciary of the time were asked by Charles what standing they would give to the Petition were it passed ; they concluded that it was a potentially legislative act . Charles 's assent to the Petition was also made in Parliament , not in Whitehall , something normally done with statutes , and Henry Elsynge , the Clerk of the House of Commons , had the Petition placed on the statute rolls as if it were an Act of Parliament . It was later enforced by the courts ; when Selden and other Members of Parliament were imprisoned , they cited the Petition as a reason to grant habeas corpus , something the judges accepted , and the ship money case , although a victory for Charles , was a victory in spite of the Petition rather than because of it ; the judgment concluded that Charles 's actions were acceptable under the Royal Prerogative , but would otherwise be in violation of the Petition . Stephen D. White simply says that " it seems impossible to establish conclusively which of these interpretations of the petition is correct . The Petition of Right of 1628 was a unique parliamentary act . It was interpreted differently by different people . And there are probably no absolute criteria by which its true nature can be determined " .