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*Bills of rights of the U.k and the U.S*

*Dissertation Submitted in Partial Fulfillment of the Requirements for  
the  
Master Degree in British Civilization*

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**Academic year: 2016-2017**

## Dedication

This work is dedicated to:

My wonderful brother, Mohamed. Without your support, bringing this thesis to its end would never have been possible. You understood from the outset my desire to obtain this degree and never questioned or doubted my determination. I am very proud of you.

My parents for their love and support.

My sister and my brothers.

## **Acknowledgements**

Praise to God for giving me the ability to complete this work.

The writing of this thesis could have never been completed without the unwavering support of my man Dr.Mahfoud Rezki . I am grateful to him for his generosity, his quick and insightful feedback, and continuous Patience, encouragement and support on so many different levels.

At last but not least, I thank my friends Salaa Mohamad and Ismail Mezadja for their support and help

## **Abstract**

This research examines the British and the American Bills of Rights, I will begin with the English Bill of Rights. I will take a closer look at why the document was issued? What the document represents and the influence it had on the U.S. Constitution? by highlighting the different events in history that led to the appearance of this document, and than to which extent it contributed in the alteration of the frame of society and the preservation of man's freedom even under authority. Scholars studying this trend have come to different conclusions. Taking all these positions into consideration this dissertation shows that though the Bill of Rights has restrained the government abuse of power gradually throughout time. it remains all the same a number of fundamental issues about rights and liberties are still manifested but with less squirt and on specific nations. This dissertation concludes that the Bill of Rights may be beneficial in establishing a long lasted constitution for the success and the evolution of the nation, and it may be unrewarding in creating an anarchy by exceeding limits and declining in social values. Conversely, this research shows that both the American and the British Bills of Rights play a vital role in making a balance between security and liberty.

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# General Introduction

## ***General Introduction:***

No one can deny the vital role of the Bill of Rights in protecting the citizen's liberties, since it is its primary function. Furthermore, no one can ignore or neglect the crucial role of the Bill of Rights by helping people realize the fundamental rights that the individuals should have and how this Bill is substantial to the existence of democracy. That is to say that one may master his rights; however, he may not know other rights in various scopes, the later paves the way to the abuses of power and anarchy; that is why the Bill of Rights is a moral guide offering a path out of crisis and chaos.

Throughout the past years and up till now, the Bill of rights has defined human rights, to draw up its limits as to put forward its foundations to figure out the effectiveness of the current laws. On these studies we are worried with the effect of the bill of rights on the western social reforms; from 1689 in Britain into 1787 inside the United States, until in recent times.

We aim at shedding the light on the strategies adopted by the western nations in order to cope with the problems that they met in imposing their rights on the so-called unfair government laws. From what has been said previously; the bill of rights brought hopes for a new era of justice in Britain and subsequently in the United States.

The basic questions of which this study attempts to answer are:

-what are the documents, philosophers and events that paved the way to the Bill of Rights?

-Has the Bill of Rights contributed in making reforms within the government and later on in the society?

-What are the strategies that are employed or adopted by the radicals in drafting the Bill of Rights?

-Does the Bill of Rights legacy affect the laws today?



In answering these questions, this study will focus on how the Bill of Rights imparted fresh period of fairness, as well as, the strategies used in the drafting of those bills.

At the start the studies preceded via ultra-modern initiation wherein, we attempt to talk globally about the bills of Rights. the first chapter tackles the origins of the English and the American bills of rights, it is a try to describe the documents and Philosophers, that most expected to be the origins of the work, mainly it would deal with the historical background of the work by examining the conditions of life of the English and the American nations at that time. The second chapter is devoted to the English and American bill of rights in details including their historical history their significance and provisions. The third chapter will display how the English and the American bill of rights introduced a new era of justice.

Last but not least, this work probes into the subsequent question of how the Bill of rights brought hopes for a new era of justice in Britain a subsequently in the United States, within the other side how the bill's legacy impacts the legal guidelines nowadays.

# Chapter one:

## The Origins of the Bill of Rights

### ***1.1. Introduction:***

Over the medieval era a construction of Christian ideology and natural law was done. Hypothetically, governors were submissive to the moral restrictions imposed by law of nature together with the charge of the church for man's unworldly regards. Practically, the rulers were barred by both the authority of the church and the feudal system from exercising a monopolized global force.

The most vital aspect of political reflection in the Middle Ages was the doctrine that all political authority was the expression of justice: all laws are a branch from justice, and natural law is higher and better than the laws made by the state. Natural

law was considered as celestial, invariable and not to be canceled by positive law or refused by leaders.

The main factor of the interpretation of political liberty in the Middle Ages was the dominance of law and law was regarded as conveying nothing but the practice and the habit of life of the community. In other words, political liberty meant mainly that law was supreme, that it reflected the custom and the decision of the society, and that all laws and all political powers were submissive to the supreme authority of divine natural law and justice.

English history normal defined as a succession of kings and Queens than of files or ideas. As is recognized, Britain has no written constitution; still just as American or French Historians have fetish zed sections of paper and diploma. Acknowledgements of the right of men or of republican independence in the history of England there are to a certain degree three or four documents that students need to know; the 1086 Domes day Book would be one, the Great Reform Act of 1832, another, a third may be the 1689 Bill of Rights. At their head, standing over all others, would loom the document that is part of my research: Magna Carta, known by the Great Charter announced by King John of England in 1215.

## **1.2. Documents:**

### **1.2.1. Magna Carta 1215:**

The doctrine is that the law was superior to the king and that the king could not take any action against the governor except by the process of law. According to Vincent (2012); 'Magna Carta is generally supposed to be the first attempt to codify English law. As such, it is still cited in English and American law courts' (p. 2). Similar in the past decennary efforts have been made to apply one or other of its articles to discuss tips of principle.

From central issues of community regard such the arrest of those dubious of terrorism, or the right to be silence for the charged in criminal and malicious trials. Prior to individual harms over fishing rights on the rivers Severn or Shannon, as lately in January 2012, a group of New Hampshire Republicans granted a bill planned to assure that any new legislation touching person rights or liberties include a citation from Magna Carta.

Indeed astonishingly sparsely of the initial Magna Carta stays on today's statute book. As mentioned in 1215, Magna Carta was initially and primary a peace treaty between King and barons, not an utterance of abstract regulations, though it remained speedy case of its matters, almost one third of its words were either expelled or mainly rewritten within the first ten of its life time.

Subsequently, the charter as gotten by later lawyers and historians is a composite imported about through a successions of reissues early in the dominion of king John's son; Henry III, by the 1980s, as a result of law reform, all but four of Magna Carta's earliest sixty clauses had been asserted absolute, removed from the Statute book, what stay are the clauses permitting freedom to the church ensuring the conducts and liberties of the city of London, and an extra huge forbidding renouncing the king's authority and power to commend randomly arrest, preventing the purchase of justice, and ensuring judgment by a person's fairness, that is to say, what we might have in mind at the present time as the right to trial by jury .

In spite of the extended immortality of these clauses, the treaty as a whole was previously acted as a very old reminder up to 1300, when it was for the final time allowed a complete issue of publication by king of England, king John's grandson Edward I. by then, it had then become more familial memorial preceding conflicts than something contemporary political situations.

Yet as the points in question of the 13th century show Magna Carta stayed of huge importance of the political state. By 1218, it had previously obtained its appellation as the majestic Magna Charter. By 1230s, its protection system had become the main reorganizing point for the king's rejection to the randomly authority of the crown. In the 1620s, it was revived as a governmental public declaration, pointed out by parliamentarians as an analysis on the Stuart Kings and their requests to total and entire power.

In the 18th century, it was boastfully shown as one of the long lasted treasures of the recently settled British Museum; eventually the British library. In 2007, when for the very first time a pioneer Magna Carta though from the late reissue of 1297, occurred for civil activity not only it draw the worldwide attention, media and attractive noticeable price but the large assembly that queued to perceive it, in New York where it was purchased in Oxford, London and elsewhere, wherever the original Magna Carta are overtly presented, proved to an ongoing strong interest with this noticeable of democracy Survival, even these days come within the muted balcony wherein the British library unique Magna Carta are proven is to stand a feeling of religious terror.

It is to clarify the real signification of this document, to explain in detail the conditions in which it was announced and to draw something of the subsequent memorialization of Magna Carta, what is shown in the first beginning of the first chapter of my dissertation. As well as the Magna Carta; 1215, the historical rights and liberties of the British community and eventually the American one have been issued and determined in the following documents.

### **1.2.2. Petition of Right:**

Depending on the past standards of the English constitution, the parliament introduced the complaints of the people in the mold of a petition to King Charles I, 1625-1649. When the royal consent was accepted, the principles of the Petition of Right became in a firm position as law of the land.

The petition of right introduced a good sized range of essential restraints on authorities by means of privileges as exercised via the King in abuse of strength on the individual liberties. Privilege taxation, or the authority of the King to collect taxations without the assent of the representatives in parliament was chopped down ' that no tillage or aid shall be laid or levied by & the King or his heirs in this realm, without the best will and assent of the Archbishops, Bishops, Earls, Barons, Knights, Burgesses, and other the freemen of the commonalty of this realm; And , by the authority of parliament Holden in the five and twentieth year of the reign of King Edward III'(Fairburn, 1810, P. 27).

Mainly, the staying provisions within the record correctly shield the non public liberty of the public in general. The written form of habeas corpus was integrated by the provisions spelling out that none might be jailed or detained by the command of the King without cause being shown. The petition as well stated that prisoners forced at the order of the King should be released on security before trial. The shelter of soldiers and mariner in intimate houses was announced illegal. The trial of civilians under law was prohibited.

At last the Petition contained a request that the rights and liberties of people will be known, through a declaration of his royal majesty will that for the further leisure and integrity of his community all his officers and ministers will act according to the laws and statutes of this universe.

### **1.2.3. Habeas Corpus Act 1679:**

The document of 'Habeas Corpus furnished the way through which an accused felon is probably committed to the Marshalsea, in which he could then procure a pardon. Such practices suggest that accused traitor and felons understood that the connection between pardon and habeas corpus was more than an abstraction

'(Halliday, 2010 ,p. 74). In other words, the document is a process for taking a person who is arrested or taking into custody before a court for the purpose of making a court looking into the legitimacy of his arrest.

When the court arranges the official who has an individual in supervision to guide him before it, the official have to recognize reason for his domination of the freedom of that individual. Commonly, if the individual is bound in custody or fined either definitely or matter to deposit rely on the court come up with the public authority's justification for possession juridical suitable, if no good enough reason to possess the individuals proving, he must be freed.

Further, habeas corpus is not a major individual liberty, rather clockwork for the defense of the fundamental right of personal liberty. To the extent that it depicts the right of having a court test the validity of an arrest constitutionally, it is mainly inspected to be the most significant assurance of liberty, so it bans randomly arrest and imprisonment the fearful knock at the door and the disappearance of the seized individual. It is then, an effective arm against oppression.

This process was fabricated by English lawful genius. Through specific source, in English law is in doubt , it has been apparently recognized by government that some of its shapes occurred earlier in Magna Carta ,in its subsequent evolution, it allowed persons to defy the force of their retention, even when arranged by the King or his ministers. It supported focus judicial power in courts, build up the sovereignty of law on the monarchy and retain the people's liberty against randomly formal deeds except if enough accountabilities are imparted against him.

The Habeas Corpus Act of 1679 was the most meaningful legislation organizing the use of the so called, great writ in Britain and completely maintaining it as a successful therapy. The parliament, as a result of that did not make any law right , but rather integrate a right previously present .

The Act spelled out that the so called the Great Writ should be announced by the judges in break time in addition to term time. To reinforce more speedy comfort of all people jailed, prisoners ought to be provided in front of the court right away so that the legitimacy in their prison can be resolved.

Further, the exercise of the imprisonment of people behind the seas in an attempt to abolish submissiveness with the writ was clearly barred. The Act over and above incorporated some practical versions meant to recognize the writ an extra worthy safety. For those officials who may flop or reject to obey with terms of the act, grim penalties were fixed.

### **1.3. Philosophers:**

#### **1.3.1. John Locke: (1623-1704):**

Publicly the best effective English philosopher, John Locke set up his liberal doctrine in his 2nd famous Treatise on Civil Government, 1690 and his Letter regarding Toleration, 1689. His political hypothesis intended to examine absolutism, the liberation of the people and the assertion of the so called basic natural rights and freedoms.

Challenging the management of Hooker and citing different social deal and freedom-oriented scholars, he assumes an authentic property of nature that foreshadowed the universe of nation-states. In contrast to Hobbes, Locke agrees that the state of nature has a law of nature to rule it, and in it individuals revel peace, good will, mutual assistance and preservation, and that no one person shall have more than one dignity, with the signatories or baronies there unto belonging.

But whensoever's it shall happen that anyone, who is already proprietor, landgrave, or cacique, shall have any of these dignities, with the lands annexed, he shall like best '(Lock, Wooten, 1993, p.143). This law of nature that is in progress to and autonomous form of all political arrangements, guides all humanity in that state of nature, that being all equal and independent no one could stand the freedom of others.

Appropriately, the person being a vital aspect of Locke's doctrine, is gifted with a natural, inborn, inalienable and indefeasible right to life, liberty and property, managed at that original level by the law of nature whose basis are higher to every affirmative laws.

The source of a political society is attributed to the pact between particular individuals to shape themselves into a community having control over all its



components, because of the point that individuals were short of organization in the state of nature and had no tool to strengthen natural law. Naturally people are free, equal, and independent; no one can be neglected from this estate and subjected to the political power of another without his agreement that is executed by other men, to join right into a community for their existing, secure, and living in peace, one maximum of the others, in a safe enjoyment of their properties, and a more safety.

When any one has so agreed to make a government, they are presently united, in which the majority has to act and conclude the remainder. The following descent accepts the circumstances of this agreement by approving the heritage of intimate possession that is built and covered by the compact.

The political body therefore required and formed warrants the cardinal objective of organization and safeguard of people natural rights and liberties, in specially the rights of possession, versus any violation led in its laws and actions by the overweening and sacred natural law the great end of men's entering into society is the enjoyment of their properties in peace and safety.

Locke differentiates between the state's origin of reign and the government's. the state supports on a social charter, government on a reliance. A government is depended on power to safeguard life, liberty and property .In condition, Locke employs the concept of the social agreement not to explain, Like Hobbes, the transit of all natural rights to the ruler. He considers that a government restrains its authority in confidence and is charge limit to examine natural law and maintain the people's rights whose defense to the peoples have confided to it.

The government is merely the manager, and the ultimate political lordship is that of the society, or rather more exactly, the plurality. The law of nature determines that everyone is restricted by the majority; total authority is not permissible even if it were to be supposed by the legislative that Locke regards to be the vital member of government. For him the legislative reign. The legislature, though the utmost governmental lordship, practicing parliamentary handle in Locke's government, yet stays beneath the firm supervision of the community, and any legislation that is unlike the natural rule is ipso facto invalid with any influence.

In a nutshell, John Locke's is possibly admitted best for his political philosophy and how it has represented a vital function in shaping the English and eventually the American notion of an ethical right. Lock demonstrates that in a state of nature all men are equal with the right to punish those who violate the human rights of life liberty and property, those rights are granted to individuals by their god. During the 1720s, the English writers John Trenchard and Thomas Gordon made Locke's political ideas widely popular in Cato's letters, a well known succession of essays were published in London newspapers, and these had a direct effect on American scholars, Lock's impact was most obvious in the Bill of Rights.

### ***1.3.2. Jean Jacques Rousseau (1712-1778):***

Rousseau's affect was most obvious within the English and the American bill of rights particularly by his fundamental work (Social Contract), 1763, the celebrated French philosopher looked to create a synthesis of two prima facie opposed explanations of freedom; obscurity of outer repression and submission to the law, in trying to reply the question, what forces a man to comply another man, or by what right does a man controls another.

The proof of Rousseau is that man can be under authority and still be free. The social compact joined into by the people, not with a government , is the melting pot of the people's desire, the desire of each throw in one's hand completely to the others .Subsequently this emerged the " general will " ; that is a moral desire which points at the common benefit and in which individuals involve immediately and altogether, that is to say general will, every peers on freedom and equality are preserved since by submitting to the authority of each will submit himself or his own desire that has then built a principle component in that procedure.

Further, no violation is found in this genre of submission whose aim is to safeguard man's freedom. The submission of the people to the supposed idealistic law which he has assigned to himself is liberty. To obey one's motive or fantasy is slavery, while liberty is natural in an accepted and self-appointed law.

His noticeable work grant to the visualization of freedom is then established on Rousseau's examination of individuals in which each one collects and incorporates with the others, and then submits himself and stays as free as he was born. The

authority that an individual promises to submit, that is to say the general will which is the desire of everyone of those who constitute political community when an organ of such a member shaped on a procedure of consensus and analogy is penalized for the assent of some actions, he would panelize himself and submitting his own logical and natural will, he is as a result free as he becomes persuaded by himself.

The members of this civil state also accept a full equivalence despite the fact that their compact has wrapped up that freedom does not mean chaos.' At a minimum, political freedom requires subordinating the private to the public good; and at its fullest, it requires finding one's private good in the public or common good '(Rousseau, Gourevitch, 1997, p. 14).

State law stays matter to the general will for an utmost safeguard of liberty and equality in the shape of civil rights and liberties. As such, authority fits only in the crowds, and they practice their supremacy over a government that would be repealed at any moment. In the case that government have to react in a randomly, it turns into the duty of the individuals to pull legality from the power of the governors. Regarding this authority, yet, Rousseau glorified the immediate authority of the citizens opposing the parliament representative of democracy. He constantly believed on the small city-state that were in his own native Geneva centuries ago and considered it as the perfect shape of society for citizens.

The most instant and achieving impact of Rousseau 's systematic supposition on revolutionist mainly on those who were born in France and who established to his notions of the popular authority, the general will and liberty and equality to warrant the exclusion of revolution, as mentioned in the French declarations of rights of 1789.

Further his Romantic Movement and celebrity rebellions of the group desire affected the American Revolution mainly in the direction of liberal constitutionalism and democracy. Besides, yet the autocrat, demagogues and advocates of absolutism asked for a symbol for the general will, form the employment of Rousseau's theory forcing people to be free as a justification to submit individuals to the supremacy of the society under the name of the so-called freedom.

Last but not least, the bill of rights reflects the notion of the social contract us it permits the government and the people to band together under justice and the

people have their rights such freedom of speech, privacy, a right to a fair trial, Besides it represents Rousseau's notion that the social contract between man and government allows men to unite together while retaining individual freedom as, when the government does handle the country basically, the citizens are granted specific rights, thus they still be free and autonomous.

#### **1.4. Conclusion:**

To overview, the English and the American bills of rights were primarily based on a large number of documents and great political personalities worth mentioning; Magna Carta 1215, the Petition of Rights 1628, and the Habeas Corpus Act 1679, Further John Lock and Jean Jacques Rousseau these documents and enlightenment thinkers grasp much in the way of conviction on the makers in the drafting of the constitution that is to say the government could be legitimate was for it to be based on the assent of the people believing that the people consented to be governed by the government, in return the government protected their rights.

On one hand, the notion of the superiority of the law on the king and the king could not take any action against the person or property of any of his subjects except by process of law. Magna Carta would represent a major aspect of the constitution. The notion that there are specific rights that cannot be taken away by any external force is an underlying assumption behind the bill of rights. At the same time, the idea of the Petition of Right announced a considerable number of important restraints on government by privileges as exercised by the King in abuse of power on the individual liberties.

After this came the so called the great writ to defend the prisoners rights. Then moving to the enlightenment thinkers who based on the notion of social contract. As regards Lock demonstrates that in a state of nature all men are equal with the right to punish those who violate the human rights of life liberty and property, those rights are granted to individuals by their god. Finally Rousseau's vision general wills that political description is the only way to fulfill a sort of internal liberation and freedom is significant to the principle of popular sovereignty which is mentioned in the constitution.

What is mentioned before clarifies that the English and the American societies were given reinforcement that when the new government was created aimed at giving a new frame, this allowing them to manage their freedom, as an instance the revolution as opposed to England was to get the rights to the individuals merited. Thus the bill of rights was made up so the government had a prerogative to give the people what they wanted.

# **Chapter two:**

## **The British and the American Bills of Rights**

## **2.1. Introduction:**

When we say rights we usually think of the rights that are given by the government to individuals. There are known as the civil rights. They embody the right to vote, freedom of speech, freedom of religion. These are some civic rights given to the English and the American citizens. Both countries give their people the right to a fair trial, freedom of press, and freedom from unlawful researches. There are other types of rights; few of them are spread out to other nations. These rights are known by human rights. these rights are the right to life and liberty, freedom of thought and expression, and equality before the law .Human rights are the fundamental aspect of natural law.

The notion of natural law appears in Greece, the Greeks believed that there were particular laws that were major and essential to human nature. These laws were not put in mind. Instead, they are observed over mind's logic. They comprise manners, or realizing what is pure and just understanding true from false and be respectful and educated citizens.

Natural law is the start of most civil rights, these were gathered into a list and added to the English and the American constitutions under the name of the bill of rights, aimed at safeguarding those rights from violation of public officials and private citizens. the term bill of rights dates back to England, where it points to the bill of rights 1689 issued by parliament following the glorious revolution, asserting the sovereignty of parliament over the king and recording a number of basic rights and liberties. The first ten amendments of the American constitution are recognized by the bill of rights, the first amendment guarantees freedom of speech, freedom of expression and the right to assemble peacefully.

## **2.2. The British Bill of Rights 1689:**

Though the Magna Carta existed for about 400 years, English kings hold on to misuse their power. King James II reigned England from 1685 to 1688. Before his sovereignty, James II had changed from Protestantism to Roman Catholicism. England had announced Protestantism to be the official religion of the country. at that

time Catholicism England were not allowed to take positions of power. Although James II was Catholic, he became king as the kinship was maintained Social change without war.

### ***2.2.1. Power and Reform:***

During his sovereignty, James II promoted religious tolerance. Even the formal religion of England was protestant; he proved priority for Catholic officials. He permitted Catholics to bear guns as well. Because Protestants were not permitted to bear guns. And it was considered unfair .Further; James II exaggerated in using power in several ways. He stole money from the people by collecting more taxes than were agreed by parliament. As he asked for large amount of bail and raised penalties against people denounced of crimes. He even fined accused people before their trial.

James II prevented practicing some laws. He canceled when he wants to do so. He did this without the consent of Parliament. He organized an army. The people were incensed. A tactic was created to eliminate the king from his throne. His daughter, Mary, and her husband, William of Orange, was called for taking his throne. At that time they were living in Holland.

### ***2.2.2. The Glorious Revolution 1688:***

William and Mary arrived into England with a Dutch army. The English army determined to backup William, and James II escaped. Citizens explained that is to mean that he surrendered the reign. William III and Mary II became the king and queen of England. At their enthronement, William and Mary made an oath. It was a deal to respect the laws that had been confirmed by Parliament.

These laws restrained the grants of the royal family. William and Mary approved these laws. On December 16, 1689, these laws, called the English Bill of Rights, became successful. The English bill of rights enjoined limits on the power of the king and improved the contribution of English people inside the basis and exclusion of laws, their civil rights remained to increase.

Besides, the English Bill of Rights was the result of the Glorious Revolution of 1688 by which King James II (1685-1689) was removed and substitute with William

and Mary, prince and princess of Orange. It was given a different from the provisions of the Declaration of Rights in the legislative frame of an act of parliament.

The so-called Declaration was embraced by parliament on February 12, 1689 and was stated simultaneously with the parliament's proposal of the English monarchy to William and Mary .confirming that the governmental rules and lawful protections were the real rights and liberties of the people of this kingdom, the declaration reviewed states on which the seduction to pick the throne was being expanded to the new reign who agreed the Declaration as a whole on February 19, 1689.

### ***2.2.3 Provisions of the Bill of Right:***

The provisions of the Bill of Rights can be accumulated into the following Categories:

**A-** The provisions that confirm and assert the supremacy of parliament over the claimed divine right of Kings .the monarchical privileges was firmly abridged and even the ownership of the throne became a legal right, instate of purely transmitted and inborn right. The royal pretended power of dispensing with and suspending of laws without consent of parliament was in forceful way proclaimed unlawful.

The Bill also tackles the final conclusive word of the King's authority impose money and reconfirmed the fundamental position assent in this link. As to the clause which forbidden the King form raising and keeping a standing army within this Kingdom in time of peace unless it be with consent of parliament, it was meant to handle of the martial forces from the crown and put it beneath the authority and trend of parliament.

Intervention with the freedom of election of members of parliament, which had been a combined deed of English Kings, was in a similar way finished. Besides, the Bill declared that any of the parliament matters, should not be discussed or questioned out of parliament. And, for redress of all grievances, and for the amending, strengthening and preserving of the laws, parliaments ought to be held frequently.



**B-**The provisions that guarantee the liberation of individuals and protect them against governmental encroachment that is the right of the subjects to petition the King. In order to enhance the effectiveness of so called the great writ of habeas corpus in safeguarding single freedom, the Bill as long as excessive bail ought not to be required, nor excessive fines imposed. This quotation put an end to the perversions of the King's judges in imposing bails, in large amounts that the jailer could obtain, in trying to maintain prisoners in jail for a long period of time without trial.

The introduction of cruel and unusual punishments was also forbidden, following the rule of English law that should not be offense and be neither abused nor excessive in extent or seriousness looking for reform the system of jury and reconfirm the right to jury trial, the Bill emphasized that jurors ought to be duly impaneled and returned to seep the preceded royal act of tampering the injuries, affecting the manner in which jurors were chosen, or penalizing them for their judgment.

#### ***2.2.4. Articles in the English Bill of Rights:***

- Articles I and II of the English Bill of Rights stipulates that Laws Ought not be ratified, or cancelled, without the ascent of parliament.

-Articles III and IV of the English Bill of Rights emphasizes No forces should be raised in peacetime and taxes should not be levied, without the consent of parliament.

- Articles VII and VIII of the English Bill of Rights spells out that parliament should be considerably assemble and that must be fair elections.

-Article IX of the English Bill of Rights focuses on the freedom of speech of the members of parliament.

- Articles X of the English Bill of Rights focuses on the prevention of the superfluous bail, fines and cruel and unusual punishments.

At long last, The English Bill of rights, the third great charter of the English liberty, establishes the division of powers, restraints the power of the King and the queen, improves the democratic election and emphasizes freedom of speech. Many

of the laws that form the English Bill of Rights are alike, or approximately the same, as those of the U.S. Bill of Rights. For instance, both give prevention of excessive fines or bail and both protect the people from harsh punishment.

### ***2.3. The American Bill of Rights 1791:***

The revolution that have been provoked against the British based on the past events of the thirteen colonies and the laws and taxations embodies all of the provisions that have been brought from history joining this combination of ideas is the English bill of rights 1689. This document is an influence from the Greece, the Scientific Revolution, and the Enlightenment. In turn, it inspired the American colonies and the long lasted Constitution of the United States.

#### ***2.3.1 Virginia Declaration of Rights:***

The first settlers settled in North America in the late 1570s and early 1580s. They were not able to survive, so some came back to their mother country, the remaining colonists disappeared in the early of the 1600s the English tried for the second time to live in North America.

Previously, America was called Virginia; It was labeled by Sir Walter Raleigh, In 1605. King James gave British explorers the right to look for gold, silver, or copper in America. In 1607, the British settled at James- town for economic reason; as in America they produced raw materials, such as wood, from the natural resources there to be sent to England to make products to enhance the country's economy and be distributed in Europe.

The second reason the British came to America looking for religious freedom. The Church of England obliged the British people. By 1774, the English parliament sent an official to the colonies. His duty was to act as governor in the Massachusetts Colony, England was already taxing colonists and the king is still controlling the colonies.

Up to September to October 1774, the first Continental Congress assembled. organs tried to find a solution to free them from British control. At the Congress, the seeds of declaring Independence from England grew considerably. The American

Revolution broke out. In 1776, the American colonies started moving towards independence.

On June 12, 1776, Virginia had its own declaration of rights. It gave Virginians certain rights the Virginia Declaration of Rights was written by George Mason. Jefferson who subsequently drafted and ratified the U.S. Constitution Said that Mason was the wisest man of his generation. The people of Virginia were satisfied with the Virginia Declaration of Rights. It did not only protect the citizens' rights, but also it put restraints on the authority of the government. This was of great significance to Virginians. They were raged that England had been obliging colonists to pay taxes. They wanted representatives in their government.

### ***2.3.2. The Declaration of Rights:***

The Virginia declaration of rights stipulates the following:

“• All men are free and independent. As people, they have the right life, freedom, and property. They have the right to be happy and safe.

• People have the power, and government officials must work for the good of the people.

• Government is set up to benefit and protect the people. If the governments not working for the people, they have the right to change or replace it by a majority vote.

• No person, including any government official, has more privileges than another.

• The legislative and executive powers of the state should be separate from the judicial powers. Elections should be held regularly and often.

• People have the right to vote freely.

• Laws cannot be made or abolished without the consent of the people's representatives.

• People have the right to be informed of legal charges against them. They have the right to a speedy trial by jury. No one is required to present evidence against himself.

- People cannot be charged excessive bail or fines. They cannot be punished in ways that are cruel or unusual.

- A search warrant is required to search any place or take anyone in custody

- Trial by jury is preferred in disputes between people.

- Freedom of the press is guaranteed.

- A well-regulated army is appropriate for the safety of the people, but people should be avoided in times of peace.

- People have the right to one unified government. Other governments cannot be set up in the state of Virginia.

- Justice and virtue are necessary for a free government.

- Religion cannot be forced on anyone, and people are free to worship the religion of their choice. It is the duty of everyone to be caring toward one another” (Rachal, 1951, p. 3).

Later on, the American colonies used the Virginia Declaration of Rights. They copied its ideas in their own Bills of rights. Thomas Jefferson subsequently used the ideas from the Virginia Declaration of Rights in of the Declaration of Independence. The Virginia Declaration of Rights became the establishment Of the Declaration of Independence and the U.S. Bill of Rights. People’s rights kept to enhance. They had more rights and they had voices in their government.

### ***2.3.3. The New Nation:***

In 1776, the United States got its independent from England. In the Declaration of Independence, Jefferson mentioned why the colonies wanted their total separation from England. He also mentioned the freedoms that the new United States would exercise as an autonomous country. Many of these freedoms foreshadowed included in the Virginia Declaration of Rights, fifty-six representatives from the thirteen colonies signed the Declaration of independence.

After the United States announced its independence, each State drafted a constitution which stipulates the rights and regulations of each state. By 1781, the

British troops fighting the colonists. Two years later, the representatives from both nations gathered in Paris, France. They signed a peace treaty on February 3, 1783 and the United States was recognized as an independent nation. Afterward the leaders decided to join the States together. They decided to form one government, so they arranged a Constitutional Convention in Philadelphia, Pennsylvania, to discuss a plan, seventy-four men were selected to represent people from each states. Only fifty-five of them attended the conference.

The first Constitutional Convention assembled on May 25, 1787. The statesmen tackled the states issues. They recognized many times to discuss about resolution to these issues. They agreed to write a Constitution for the whole nation. On August 6, 1787, the first draft of the Constitution was ratified. Yet not all the organs agreed on the constitution they continued to gather to revise it.

On September 17, 1787, three organs of the Constitutional Convention agreed and signed the Constitution. It was printed and then sent to the states to be signed. The first group was the federalists, the federalists agreed on the Constitution as it was. The second group was the anti-federalists. Organs of this group agreed that the Constitution required a bill of rights that restrains the government's abuse of power. Mason was an anti-federalist he did not agree to sign the Constitution without including a bill of rights. Jefferson replied to the request for a bill of rights, he said bill of rights was what the people are entitled to against every government on earth, general or particular, and what no just government should refuse or rest on inference.

In February 1788, Massachusetts the Constitution was signed with the Bill of rights. The Constitution became legitimate on June 21; 1788. A list of amendments was given by Virginia when it signed the constitution. These were proposal for the bill of rights. They were similar to the ones included in Virginia Declaration of Rights.

In a quick time the states elected members of Congress, via the primary assembly of Congress James Madison proposed a bill of rights; over than two hundred Amendments had been recommended by the states. Finally, the Congress agreed on 12 amendments. On September 25, 1789, these amendments were approved. After six months, ten of the amendments were agreed by nine states as the amendments required eleven states' consent before their legitimacy. On

December 15, 1791, Virginia became the eleventh state to accord the amendments, formally became a branch of the Constitution. They were known by the Bill of Rights.

#### ***2.3.4. The American Bill of Rights:***

There are ten amendments in the Bill of Rights, but the states wanted more. Many of the amendments suggested by the states would have made changes to the structure of the government. Some of these amendments would have changed the powers of government.

Here are some of the U.S. bills of rights:

- Amendment 1—Religious freedom and freedom of speech and the press. This means that people may practice any religion they want. It also gives them the right to speak their minds and to gather peacefully.

- Amendment 2—The right to bear arms. This gives U.S. citizens the right to own guns.

- Amendment 3—The government cannot force people to house military. This means that the government cannot force homeowners to let soldiers stay in their homes.

- Amendment 4—Freedom from illegal searches or seizures. This means that no one may search a person or his home without a reason, or without a search warrant. No one can take another person's belongings without a warrant.

- Amendment 5—A person is innocent until proven guilty; no one can be forced to bear witness against him/herself. This means that no one can be punished for a crime until he/she has been proven guilty of that crime in court. It also means that no one is required to say anything in court that might prove him/her guilty of a crime.

- Amendment 6—The right to a speedy and public trial, and the right to a lawyer. This means that people do not have to wait a long time for a trial after they are charged with a crime. It also means that if someone cannot afford a lawyer to defend him/her . in court, the court must provide a lawyer for that person.

- Amendment 7—Right to a trial by jury. This means that the person is accused for a crime has the right to be tried in court by a group of citizens like him/her.

- Amendment 8—Freedom from cruel or unusual punishment and freedom from excessive bail. This means that the courts must give people punishments that are equal to the severity of their crimes. It also means that people convicted of crimes cannot be tortured and bail cannot be high.

- Amendment 9—People have other freedoms that are not listed in the Constitution or the Bill of Rights.

- Amendment 10—States have powers that are not granted to the federal government. This means that any powers not given to the federal government are determined by the states.

### ***2.3.5. The provisions of the American Bill of Rights:***

The provisions of the American bill of rights may be grouped into the following three categories:

(a) Freedom of speech religion, and the press.

(b) The process of law as protection from unfair arrest.

(c) Trial by jury safeguarding people from “cruel and unusual Punishment.

Ultimately, after the rights that were given in England through the Magna Carta and the 1689 English bill of rights, the American colonists expected to have the same rights. When the American colonists were ignored these raged colonies and conducted to the American Revolutionary War. Many of the principles mentioned in the Magna Carta and the English Bill of Rights are mentioning in the American Declaration of Independence of 1776, the First State Constitutions, the Articles of Confederation, the U.S. Constitution, and in the US Bill of Rights.

### ***2.4. Conclusion:***

To sum up, the bill of rights was employed as a frame for both Great Britain and the United States’ new government. The bill of rights permitted the Government and the people to gather under fair provisions, which were given rights as freedom of

speech, regulating the militia, privacy of their own home, right to a just trial. As the Bill of Rights, the American people possess rights that other nations do not have.

The Bill of Rights gave self-confidence to the Americans new after the creating of the new government, ensuring that they would not be governed by the same sort of government that Britain had, thus allowing them to keep their freedom. The revolution versus England was to give people their rights, thus the Bill of Rights were created so the government had a right to afford the citizens what they desired. This was one reason the people trusted the new government. Because of the Bill of Rights American people have the right to trial by jury permitting them to request their case and demonstrate their honesty.

However, The Bill of Rights afforded the Americans freedom of speech allowing them to address topics of remarkable significance without scare of the government interference. And it permits them to behave freely. Allowing the Americans to protest like the case of Martin Luther King who complained for discrimination suffering, so allowing the change of history and subsequently the shift of the coming generations ideologies.

# **Chapter three:**

## **How the Bill of Rights legacy**



# Affects

## The laws nowadays

### ***3.1. Introduction:***

Nowadays, there is still a conflict of opinion whether the Bill of Rights should be included in the constitution or not, though the adoption of such a Bill of rights was supported for a considerable number of reasons mainly for the division of power and for avoiding the violation of people rights. there are justifiable arguments for saying that laws are changing gradually throughout time as the societies become more permissible and things are no more remaining the same as they are, which may need to be regarded against the recent events.

Let's take the rights of the LGBT in the United Kingdom and the United states as a study case, The LGBT's abbreviation means lesbian, gay, bisexual and transgender; that is to say homosexuality. The so-called the LGBT was granted rights that have enhanced tragically over time though still vary from one nation to another.

This chapter would tackle the notion of LGBT, namely how laws of homosexuality changed in both the United Kingdom and the United States, that is the right to be a homosexual is derived from the set of freedoms found in the ancient bill

of rights. So my step here is going to be tracing how these homosexuality laws got defended by the bill of rights starting from a point of how LGBT were seen as a gender and how they were covered from discrimination also their right to serve in the military service whether in the UK or in the US.

### ***3.2. LGBT rights in the United Kingdom:***

Through the foundation of the United Kingdom, Christianity and homos equality met and came into violent conflict. Same-sex sexual activity was considered as a cruel crime and was punishable by death under the Buggery Act 1533. LGBT rights were violated across the UK by 1967 and 1982. by the turn of the 21st century, LGBT started to get corroboration some protections had occurred for LGBT citizens since 1999, but were expanded under the Equality Act 2010. In 2000, Her Majesty's Armed Forces has taken down its interdict on LGBT individuals. Since 2005 the same year, same-sex couples were given the right to a civil partnership, and the same legal structure was granted to marriage were embraced in England and Wales.

Subsequently, Scotland later traced the same path for same-sex couples in 2009, and Northern Ireland in 2013. Same-sex marriage was permitted by law in England, Wales and Scotland in 2014, yet it stays unlawful in Northern Ireland where their citizenship is acknowledged. Nowadays, LGBT people have approximately the same rights as non-LGBT people further the United Kingdom is the country that provides its LGBT communities with liberty in the world. In ILGA-Europe's 2014 survey of LGBT privileges, the UK had the highest rate in Europe, with 82% of "respect of human rights and full equality. An Integrated Household Survey notified 1.5% citizens in the UK indicate themselves as gay, lesbian or bisexual.

LGBT rights association and very large LGBT individuals have been created through out the UK, mainly in Birmingham, Blackpoll, Brighton, Leeds, Liverpool, London, Manchester and Newcastle, which all participated in the annual pride festivals.

### ***3.2.1. Same-sex relationships:***

#### ***3.2.1.1. Civil partnership:***

IN 2005 equal-sex relationships became legal in Britain, considering the allowing of civil partnerships by the Civil Partnership Act on 18 November 2004. Civil partnerships are an organization which gives most the rights of civil marriage Civil partners are entitled to the same property rights as married opposite-sex couples, as the same case on tax, social security and pensions, and also the right to have a complete responsibility on their adopted children as well as having total life insurance acknowledgment , Civil partnerships have settled p in the United Kingdom and even in religious places in England and Wales up to 2011.

#### ***3.2.1.2. Same-sex marriage:***

Same-sex marriage in Britain has been the target of debate, prior laws in England and Wales had banned same-sex marriage, embracing «the Marriage Act 1949 » which stipulated that marriage must be between a man and a woman, further the so-called « Nullity of Marriage Act 1971 » is an act which has forbidden same-sex marriages.

When the corporations of civil partnerships had been existed all over the country, marriage law is a declining problem in the UK and furthermore the legislative process of same-sex marriage differ by jurisdiction, till 2013 came The Marriage Act 2013, which permits same-sex marriage in England and Wales, was issued by UK Parliament in July 2013 and came into practice on 13 March 2014. Same-sex marriages in the United Kingdom grant all the rights, this also embraces religious place, supplying the religious staff is chosen.

However, no religious staff is affected to practice same-sex marriages; the Church of England and the Church in Wales are forbidden from doing so. For the aim of the divorce of a same-sex marriage, the common law meaning of adultery stays a marriage between a man and a woman only, though betrayal with a person of the same sex may be an evidence and reason for a divorce as unreasonable behavior.

Many votes opposed to same-sex marriage in the Northern Ireland Assembly which means that is not permitted in Northern Ireland yet. Same-sex marriages practiced in Great Britain and through the world are acknowledged as civil partnerships in Northern Ireland.

Even though the obstacles that were facing the LGBT like rejecting the legislature to agree a marriage bill, local LGBT rights unions declared that they may have the access to the courts for the right to get married.

### ***3.2.2. Adoption:***

Via the adoption and children Act 2002 Parliament introduced that both a single person or a couple is authorized to adopt a baby in England and Wales. The subsequent condition that the couple be married was removed, thus permitting a same-sex couple to get involved, even the lords denied the suggestion before. Supporters in Parliament focused that adoption was not a gay rights problem but one of the available, since many children as workable with a constant family condition as perceiving them kept in care. Opposes doubted on the relationships out of marriage, and how anarchy would influence on the comfort of adopted children. the same law was adopted in Scotland which came into practice on 28 September 2009.

The Human Fertilization and Embryology Act 2008 was granted royal consent on 13 November 2008. The laws permits for lesbians and their partners the same equal outburst to juridical overconfidence of birth in situations of in vitro fertilization from the moment the child is born. As the law permits both partners to be specified on the child's birth certificate by the words parent. The law entered into force from 6

April 2009 and is not retroactive Parental orders for gay men and their partners since 6 April 2010 have been available for surrogacy arrangements.

Embracing «the Marriage Act 1949», which stipulated that marriage, must be between a man and a woman, further the so-called « Nullity of Marriage Act 1971 » is an act which has forbidden same-sex marriages. When the organizations of civil partnerships were found throughout the country, marriage law is a declining issue in the United Kingdom and moreover the legislative process of same-sex marriage vary by jurisdiction-on ,till 2013 came « The Marriage Act 2013 », which permits same-sex marriage in England and Wales, was issued by UK Parliament in July 2013 and came into practice on 13 March 2014.

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### ***3.2.3 Military Service:***

The LGBT individuals have been permitted to work on the military service of Her Majesty's up to 2000, and racism has been prohibited up to 2010. It is also prohibited to put pressure on LGBT people to break through. All are submissive to the identical regulations against injustice, sexual bothering, nevertheless gender identification or sexual orientation. The British military also acknowledge civil partnerships and gives same-sex couples the identical rights to housing as opposite-sex couples.

The British military actively enlists the LGBT individuals and have installed conscripting teams to several Pride incidents: the Royal Navy advertises for recruits

in gay magazines and has allowed gay sailors to hold civil partnership ceremonies on board ships and, since 2006, to march in full naval uniform at gay pride marches; « British Army and Royal Air Force » personnel could march but had to wear civilian clothes until 2008, now all military personnel are permitted to attend such marches in uniform.

In 2009, on the tenth anniversary of the alteration of law that permitted homosexuality in the Armed Forces, newspapers announced that the raising of the prohibition had no perceivable influence on the operational efficacy on the military. The anniversary was broadly observed, embodying in the Army's in house publication Soldier Magazine, with a chain of articles including the July 2009 cover story and newspapers articles.

To sum up, many studies show the alteration in manner across the LGBT in Great Britain from the seventeenth century till the twenty first century. The dominant stand towards homosexuality has changed from negative to positive ,recently . There was also a sharp shift in the number of people who were hesitated on the matter as it was previously in this chapter.

### ***3.3. The LGB Right in the UNITED STATES:***

Homosexuality between adults and even adolescents of an identical sex has been lawful throughout the whole nation up to 2003, following to the U.S. Supreme Court decision in Texas. Age of approval in each state alters from age 16 to 18 ; some states preserve various ages of agreement for both males and females or for the same-sex or opposite-sex relations. LGBT rights linked laws implicating family, marriage, and anti-racism legislations differ according to the state.

Thirty-seven states in addition to Washington DC give the same sex couples the right to get married these weddings are acknowledged by the federal government and Missouri, but not by the twelve states, in addition states give civil unions or other sorts of acknowledgement that give some of the law full interest and safeguards of marriage. Twenty-two states in addition to Washington Dc and Puerto Rico outcast

prejudice based on sexual orientation, and nineteen states plus Washington, D.C. and Puerto Rico outlaw prejudice founded on gender identity or expression. Loathe offenses founded on sexual direction or gender identity are also unlawful by federal law beneath the« Matthew Sheppard and James Byrd, Jr.Hate Crimes Prevention Act of 2009 ».

In 2011 and 2012, the Equal Employment Opportunity Commission considered that job racism against lesbian, gay, bisexual and transgender persons is arranged as a shape of sex racism and so crashed « Title VII of the Civil Rights Acts of 1964» Adoption Policies in regard to gay and lesbian parents also vary greatly from state to state. Some allow adoption by same-sex couples, while others ban all unmarried couples from adoption.

Civil rights for LGBT people in the United States are advocated by a variety of organizations at all levels and concentrations of political and legal life, including the Human Rights Campaign, Lambda Legal Gay and Lesbian Advocates and defenders (GLAD), American Civil Liberties Union (ACLU), and the National Center For Lesbian Right.

### ***3.3.1. Defense of Marriage Act:***

The incidents of the Hawaii Supreme Court pushed the United States Congress to pass the Defense of Marriage Act (DOMA) in 1996, which banned the federal government from acknowledging same-sex alliances and released states of the request that they acknowledge same-sex alliance represented in other authorities .On June 26, 2013, « Section 3 of DOMA » was governed illegal by the U.S. Supreme Court in United States v. Windsor, that is to say an indicator of civil rights situation.

### ***3.3.2. Military service:***

Up to 1993, lesbian and gay individuals were not allowed to work on the US military. By the "Don't ask, don't tell" (DADT) policy issued that year, they were allowed to serve in otherwise they did not reveal their sexual trend. The don't Ask, Don't Tell Repeal Act of 2010as allowed homosexual men and women to work widely

in the armed forces pursuing once specified government officials legalized that the military was ready for the repeal. Since September 20, 2011, gays, lesbians, and bisexuals have been able to serve openly. Transgender and intersex service-members but are still banned from serving openly, because of Department of Defense medical strategies that estimate gender identity trouble to be a medically prohibiting situation.

### ***3.3.3. Medical facilities:***

On April 14, 2010, the president of the US ;Barack Obama announced An order to the « Department of Health and Human Services » to prepare a preliminary version of new laws for hospitals according "Medicare or Medicaid funds". They may need provisions to give examination and medical rights to gay and lesbian partners, as delegates of others; widows and widowers as an example these prerogatives are not safeguarded by law in many states. Obama said he was affected by the event of a Florida family, where one of the mothers died when her husband and children were disowned visitation by the hospital.

All in all, In the U.S. the history of homosexual culture and politics is even shorter than it is in Europe, the LGBT nation was given rights that have developed throughout time, granting the right to adopt orphans to serve in the military service and the right to get married as any heterosexual, thus is America really a country of freedom as it tries to show.

### ***3.4. Conclusion:***

To wrap up, for centuries the Bill of Rights adoption has embolden reforms as it has influenced our laws today , it allows individuals to get more liberties and freedom even those which were regarded as sin and taboo such as the LGBT individuals , even if they were humiliated in society eventually they were granted rights that have enhanced at the speed of light , that is to say that the Bill of Rights taught citizens how to get their liberties from government , for well over two centuries the language of rights has left a strong mark on social and political relations either in Great Britain or in the United States.



Then the Bill of Rights has helped to output a society with more lawyers than any other on the earth and it has immersed every side of life with licit argument .And yet , rights talks has also been one of the most vital ways in which British and American individuals have inspired their politics with a measure, behind simple law or interests arguments about rights, essential , inalienable, human rights have been through the key ways in which Americans have disputed what a good society might look like .

# Conclusion

*General Conclusion:*

Through my research I wanted to see the improvement of the Bill of Rights for centuries, to what extent it contributed in re-shaping the society with different dimensions, and how it played a vital role in making a balance between security and liberty. This pushed me to dig behind the origins of the Bill of Rights that embrace both document and philosophers, which encouraged citizens to fight for their right and to see the duplicity of the opinions of the two major figures that played a major role in developing the individual's consciousness throughout time. I looked for who was for the reform and who was for having a complete human rights .I wanted to know whether the figures that have been chosen did really fulfill the individuals goals and desires and to see whether these goals were personal or they worked for the benefit of the English and the American societies in particular and for the whole world in general.

Starting with the documents and the political thinkers' doctrines that are considered as the basis of the Bill of Rights document, worth mentioning ; the Magna Carta, the Petition of Rights and the Habeas Corpus Act, then John Lock and John Jacques Rousseau the most influential and powerful figures of their time, they had a great impact on the draft of the Constitution by making a balance between security and liberty. In other words the government could be lawful was for it to be based on the assent of the citizens believing that the individuals wanted to be governed by a government that has representatives of the people they wanted an immediate reform of the status quo, that is to say the existing order showing that there are a specific rights that cannot be taken away by any external force .So I reached the point that people whatever their trend claimed against the King abuse of power on their liberties.

Then came the English and the American Bills of Rights which came at different periods but they almost have the same provisions even the English bill came much earlier which focuses on the division of power, the restraint of the power of the King and Queen, eventually the freedom of speech. That is to say the Bill of Rights was

employed as a frame for a powerful government for both United Kingdom and the United States. Due to the Bill of Rights document the government and the people were permitted to gather under fair provisions.

In the last chapter of my work I wanted to see how the Bill of Rights legacy affects our laws today. I have taken the LGBT individuals as study case I have shown that these individuals, who were humiliated in society and were considered few years ago as a taboo they were able to impose their existence and get their complete natural laws as any heterosexual by following the path of the Bill of Rights. By the end of my work you will find out that the Bill of Rights was the gate of freedom and how laws are changing gradually throughout time as societies become more permissible but still influenced by the principles of the Bill of Rights which were issued centuries ago.

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