

## WHAT ARE THE ORIGINS OF SOME OF THE RIGHTS GUARANTEED BY THE FIFTH AND SIXTH AMENDMENTS?

### A. The English Roots

Many of the rights guaranteed against government interference by the Bill of Rights came directly from England. Prior to and even during the existence of the American colonies, Englishmen struggled against the English kings to establish fundamental rights. Some of these rights were the right against double jeopardy, the right against self-incrimination, the right to trial by jury, and the right to confront witnesses.

#### 1. DOUBLE JEOPARDY

The idea that a person should be tried only once for the same offense is deeply rooted in history. It dates at least to ancient Greece and Rome. By the thirteenth century it was firmly established as a part of English law. Thus, if a person were tried and found not guilty of an offense, the government had no right to try that person again on the same charge.

#### 2. RIGHT AGAINST SELF-INCRIMINATION

It can be argued that the right against self-incrimination began with the struggle for freedom of religious beliefs. People who were attacked for being outside of the mainstream of religious thought often did not wish to reveal their innermost beliefs.

Efforts to remain silent about personal religious beliefs had been ongoing throughout history. Certainly this was occurring well before Englishmen's struggles against the monarchy during the two centuries before the American Revolution.

The right against self-incrimination became one of the rights which Englishmen insisted the monarchy could not take away. This right was their shield against the torture and forced confessions practiced in England until the end of the seventeenth century. John Lilburne (see Chapter One, Lesson 6A), who was tortured and imprisoned for several years beginning in 1637, insisted that he could not be forced to incriminate himself when he was charged with printing seditious books.

#### 3. RIGHT TO TRIAL BY JURY

Trial by jury also came to America from England. Citizens there felt that a trial by jury would insure that they were tried fairly. A jury trial meant that the King could not arbitrarily decide that a person was guilty of an offense. Englishmen felt that decision could be made only by a person's peers.

During the years preceding the Declaration of Independence, the American colonists repeatedly asserted their right to a trial by jury in-