



MASARYKOVA UNIVERZITA PRÁVNICKÁ FAKULTA

Evropské právní dějiny

Vojáček



MASARYKOVA UNIVERZITA
PRÁVNICKÁ FAKULTA

Konstitucionalismus (příklad: Anglie)

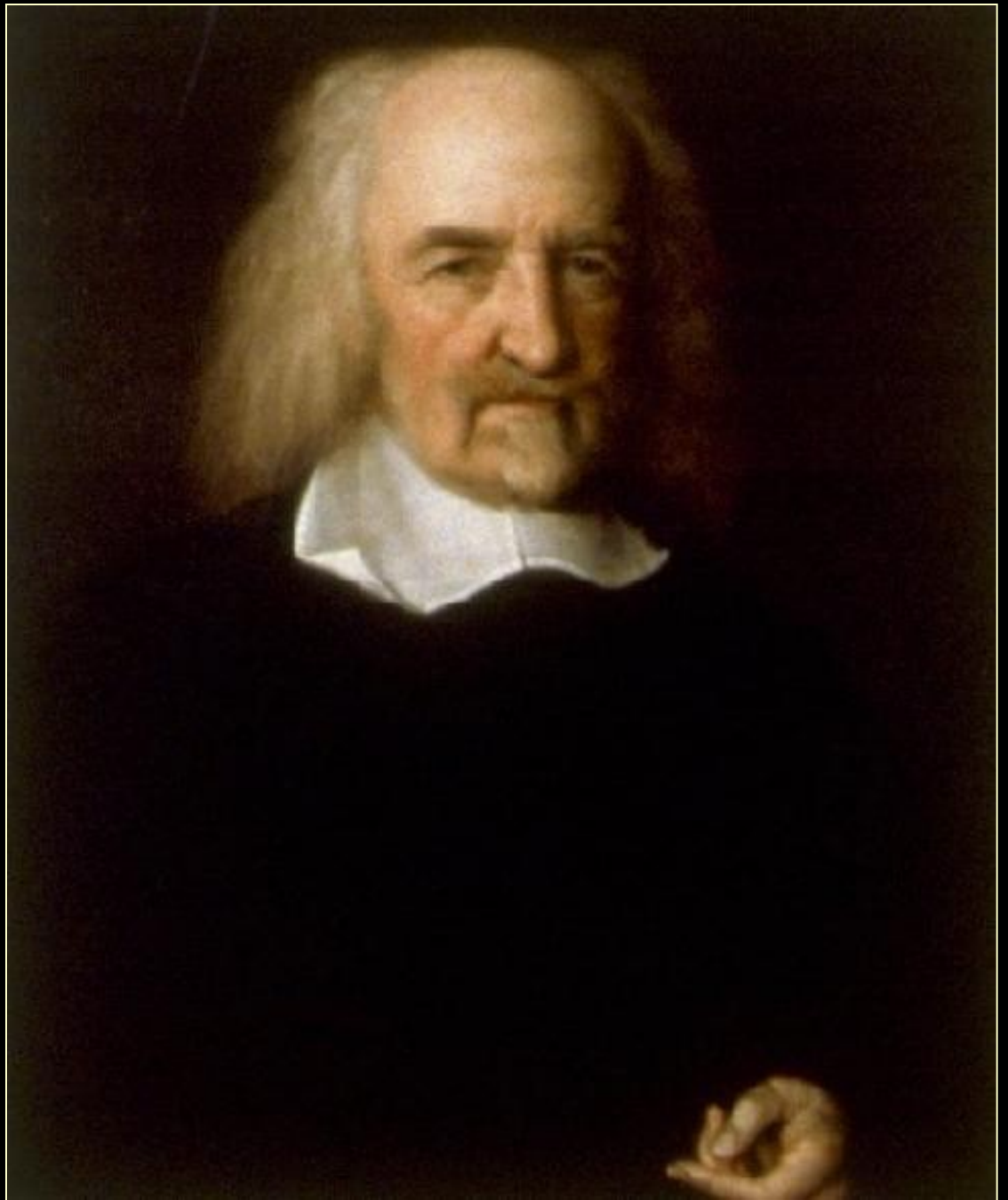
Vojáček



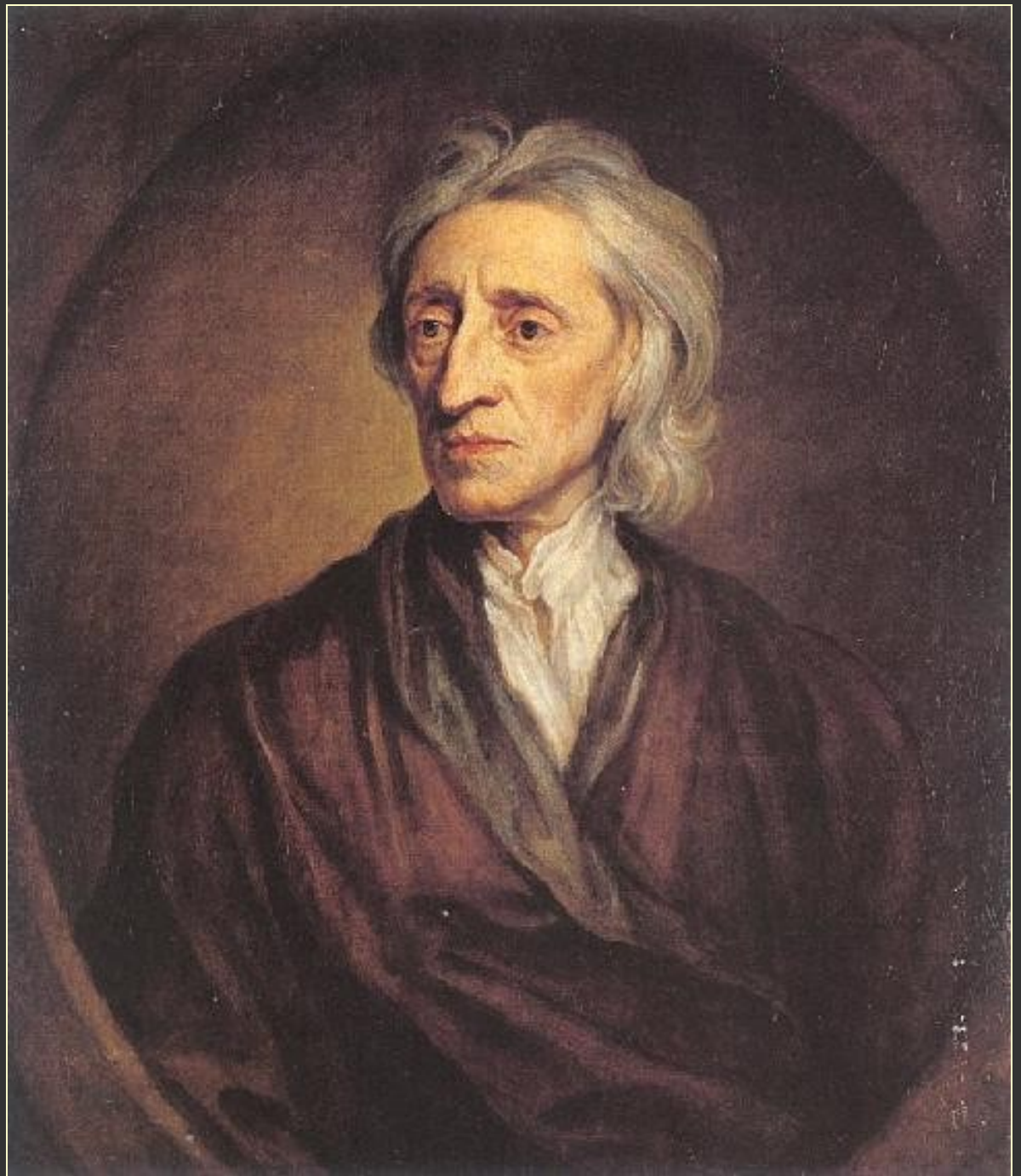
Přirozenoprávní koncepce

- návaznost na starší koncepce
- lidský rozum jako východisko
- přirozená práva X platné právo
 - Deklarace práv člověka a občana: svoboda, vlastnictví, bezpečnost a odpor proti útisku
- společenská smlouva (T. Hobbes x J. J. Rousseau)
- dělba moci (J. Locke, Ch. L. de Montesquieu)

Thomas Hobbes



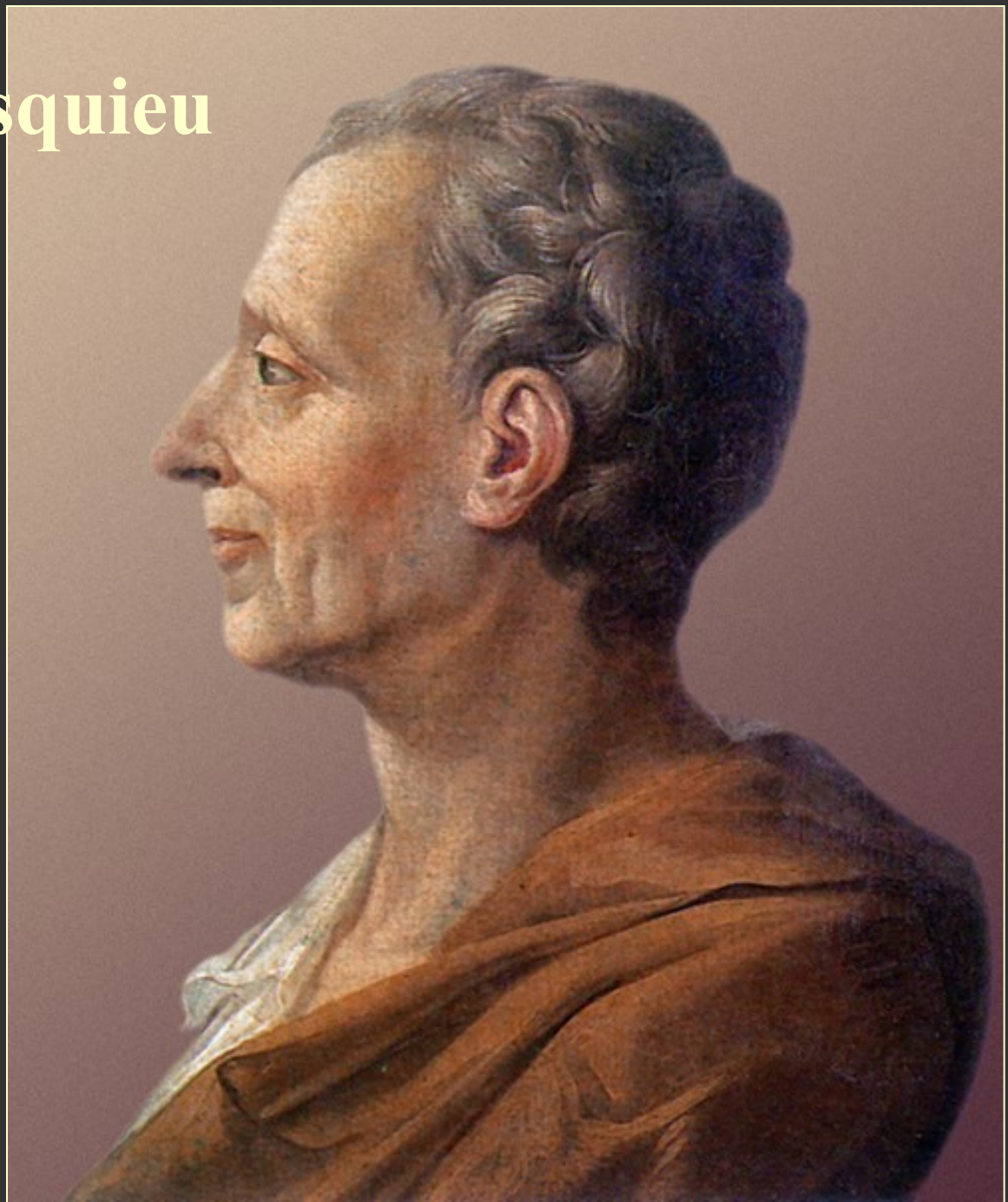
John Locke



J.-J. Rousseau



Ch. L. de Montesquieu

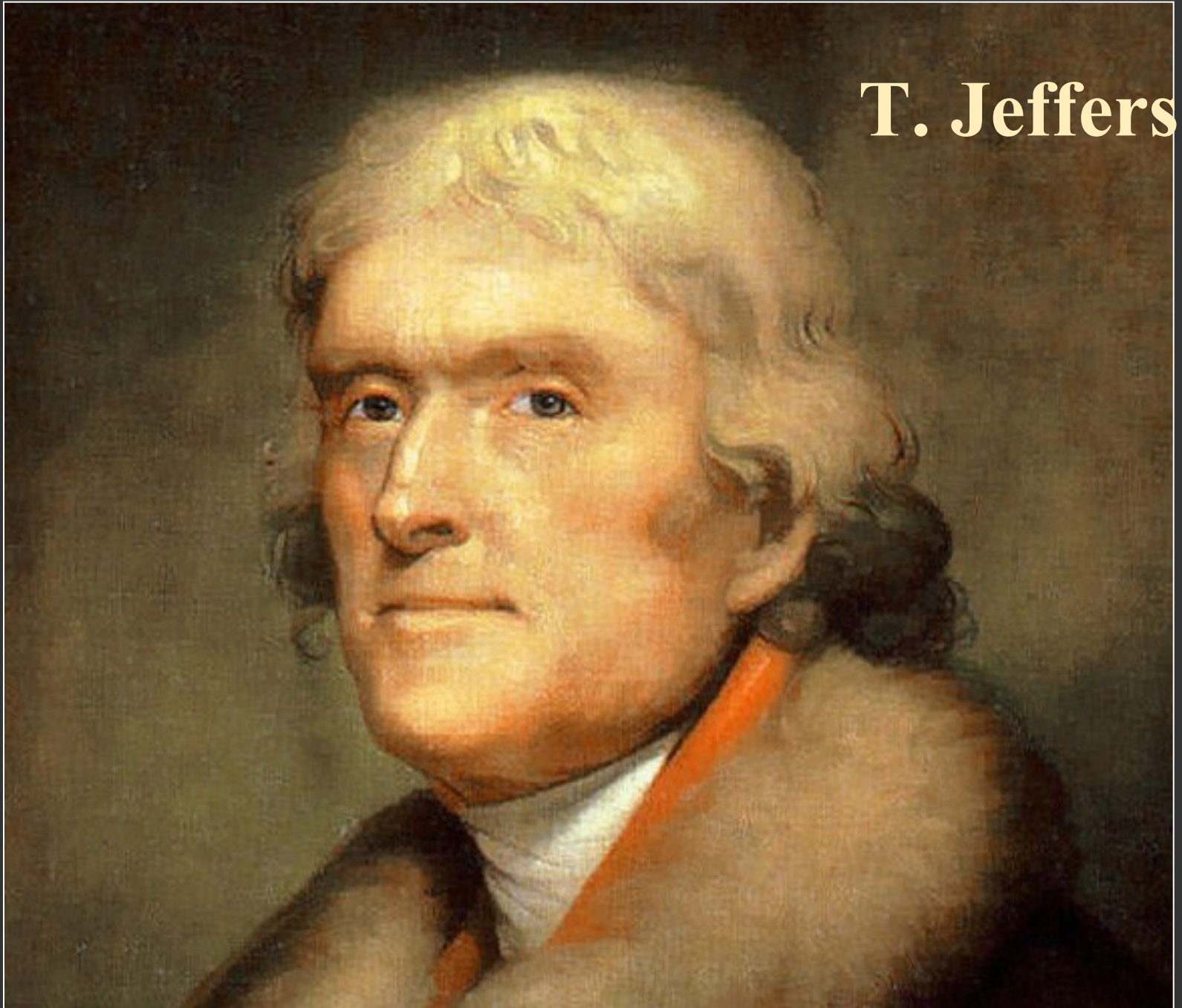


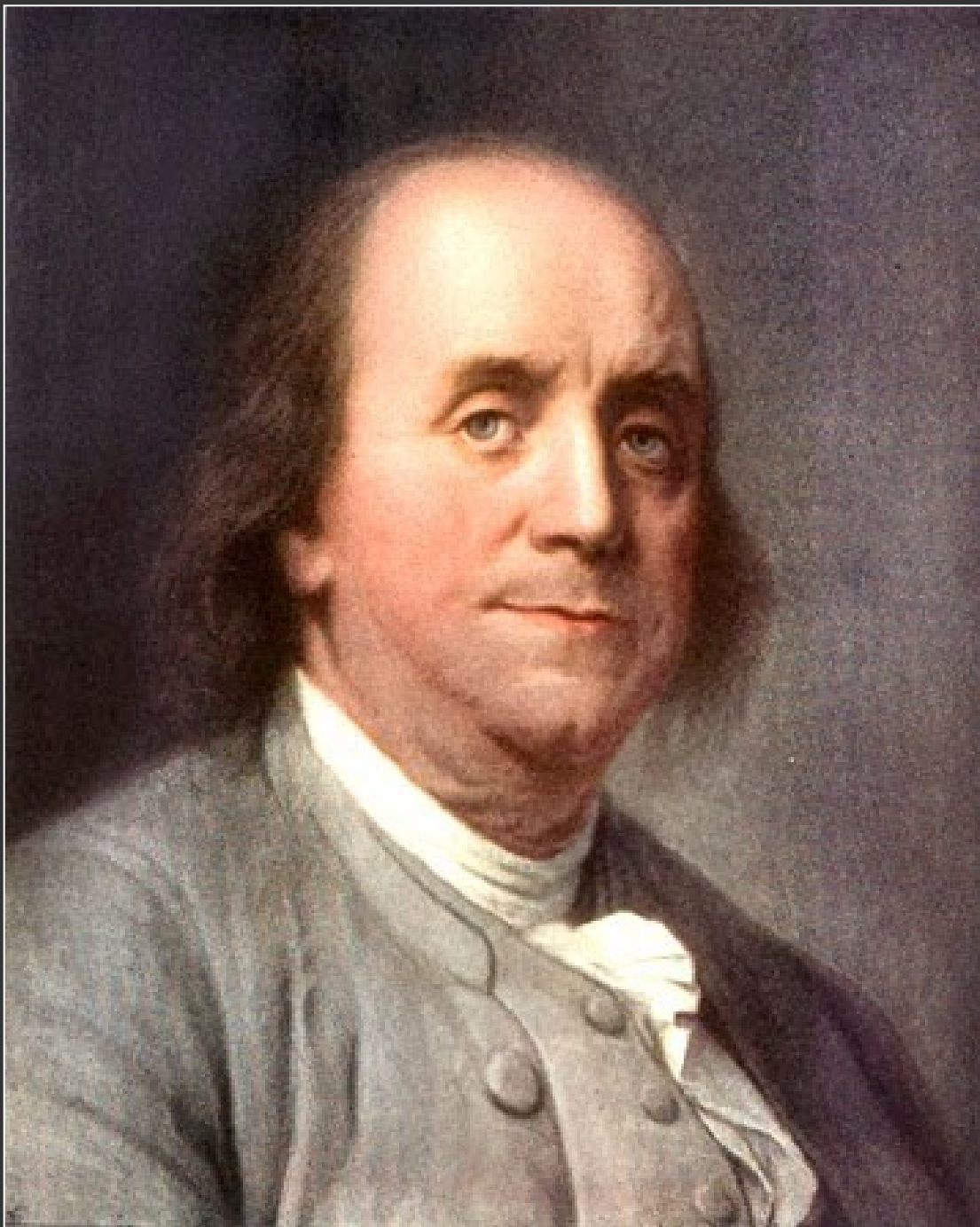


Významné ústavy 18. a 19. století

- americká ústava 1777, 1787
- francouzské ústavy 1791, 1793, 1795, 1799, 1804, 1814, 1830, 1848, 1875
- německá ústava 1849 (nerealizovaná), ústava Severoněmeckého spolku 1867, německá ústava 1871
- rakouské ústavy 1848, (kroměřížský návrh), 1849, 1861, 1867
- italský Piemontský (Sardinský) statut 1848

T. Jefferson





B. Franklin

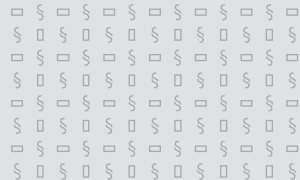
Ludvík XVI.





Anglická ústava

- „nepsaná“ (terminus technicus)
 - = soubor právních aktů a ústavních zvyklostí
- výsledek historického vývoje



Anglie před revolucí

- Magna Charta Libertatum 1215
- King in Parliament
- nástup Stuartovců
 - ➔ napětí mezi panovníkem a parlamentem
- Petition of Right 1628
- vláda bez parlamentu (1629 – 1640)



Jan Bezzemek

Magna Charta Libertatum 1215

Gloucestre

85

et singula in articulo predicto conten-
ta faciant et exequantur non obsta-
te quod articulus iste in omnibus cum
dicto statuto Gloucestre non concordat

Explicunt articuli Gloucestre
Incipiunt explanationes eorumdem

Primo modo per dictam re-
gem et iustitiam suos facta
sunt quedam expla-
nationes quorundam ar-
ticulorum superius portorum
videlicet ad primum articulum ubi illi
qui fuerint ingressi per dissensionem
causant dampna sua a tempore
facti predicti dupliciter eodem modo
de his de ingressu super dissensionem
De dampnis in omnibus hiis qui
moris antecessoris consanguini
etiam sui et parentum De incursio-
ne vel de factis pro quodamque
hiis causant dampna sua post
impedicionem huiusmodi eos qui

Alžběta I. (1533 – 1603)





Jakub (James) I.



Karel (Charles) I.

Petition of Right

To the Kings most Excellent Maieftie

Seit that just come est desire.

Sheweth

That unto our Sovereigne Lord the King, his heirs, Executors, and Assignes, and Comons in Parliament assembled, That whereas it is declared and enacted by a Statute under the Great Seal of King Edward the first commonly called Statutum de tallage an. cccc. lxxviij. That noe tallage, or tax should be laid, or levied by the King or his heirs in this Realme, without the good will and assent of the Arch Bishops, Bishops, Counts, Barons, Justices, Knights, and other the free men of the Comons of this Realme.

And by other Lawes of this Realme it is provided, That none should be charged by any tax, or impost called a benevolence, nor by such like charge.

By which the Statute before mentioned, and also the good Lawes and Statute of this Realme, yo. Richard have intended that freedom, that they should not be compelled to contribute to any such tallage, Aids, or other like charge, nor sit to receive, consent, or pay the same.

Yet notwithstanding of late divers Comissioners have issued in severall Counties, and Cities, Townes, Burghs, and Villages, by means whereof your people have been in divers places assembled, and required to lend, receive, and pay unto yo. Maieftie, And many of them upon their refusal thereto have had an oath administered unto them, not warrantable by the Lawes of this Realme, and have been constrained to become bound to make appearance and give attendance before your High Court, and in other places, and others of them have been vexed, imprisoned, confined, and sundry other wrongs inflicted and suffered. And divers other charges have been laid and levied upon yo. people in severall Counties by divers Justices, Deputie Justices, Comissioners for the Sheriff, Justices of Peace, and others by Commission or direction from your Maieftie, or yo. High Court against the Lawes and free customes of the Realme.

And whereas also by the Statute called the Great Charter of the liberties of England, it is declared and enacted that noe free man may be taken, or imprisoned, or be disseised of his freehold, or liberties, or his free custome, or be outlawed, or exiled, or in any manner destroyed, but by the lawful judgement of his Peeres, or by the Lawe of the Land.

And in the eighth and twentieth years of the reign of King Edward the first, it was declared and enacted by authority of Parliament, That noe man of what estate or condition that he be, should be put out of his Land, or Tenements, nor taken, nor imprisoned, nor disherited, nor put to death, without being brought to answer by due process of Lawe.

Nevertheless against the tenor of the said Statute, and other the good Lawes and Statute of this Realme, it hath and is provided, divers of your Subjects have late been imprisoned, without any cause shewed, and when for those detentions they were brought before yo. Justice, by yo. Maieftie writs of Habeas Corpus there to undergoe and receive of the Court shoud order, and to be released, remained to certifye the cause of their detentions, noe cause was certified, but that they were deteyned by yo. Maiefties speciall commandes signified by the Lords of yo. High Court, and yet were returned back to severall prisons without being charged with any thing to which they might make answer according to the Lawe.

And whereas of late divers Comissioners of the Shires and Marches have been appointed in divers Counties of the Realme, and the inhabitants against their will have been compelled to receive them into their houses, and there to suffer them to remaine against the Lawes and customes of this Realme, and to the great grievance and vexation of the people.

And whereas also by authority of Parliament in the first and twentieth years of the reign of King Edward the first, it is declared and enacted that noe man should be forejudged of life, or limb, against the forme of the Great Charter, and the Lawe of the Land. And by the said Great Charter, and other the good Lawes and Statute of this Realme, noe man ought to be adjudged to death, but by the Lawe established in this Realme, either by the testimony of his Peeres, or by Act of Parliament.

And whereas noe offences of what kind soever it cometh from the peccadours to be visited, and punishment to be inflicted by the Lawe and Statute of this Realme.

Nevertheless of late time divers Comissioners under yo. Maiefties Great Seale have issued writs by which certeyne persons have been assigned and appointed Comissioners with power and authority to proceede within by Land according to the Justice of Marshall Lawe against such as were founden or suspected, or other otherwise persons wronging with them, or should commit any unchaste, debetery, felony, mutiny, or other offence, or misdemeanour whatsoever, and by such summary way, and order as it was meete to Marshall Lawe, and as if they were taken in time of warre, to proceede to the trial, and condemnation of such offenders, and then to cause them to be executed and put to death according to the same Marshall Lawe, whereas some of yo. Maiefties Subjects have been by some of the said Comissioners put to death, when, and where if by the Lawe and Statute of the Land they had deserved death, by the same Lawe and Statute of this Realme, and by noe other way, and by noe other ought to have been judged and executed.

And also sundry other offenders by such way, and order, and by the same Lawe and Statute of this Realme, by reason that divers of yo. Maiefties Justices of Peace, and Ministers of Justice have commonly used, or taken to proceede against such offenders according to the same Lawe and Statute, upon petition that the said offenders were punishable only by Marshall Lawe, and by authority of such Comissioners as aforesaid.

Whiche Comissioners and all other of like nature are contrary and directly contrary to the good Lawe and Statute of this Realme.

They do therefore humbly pray yo. most excellent Maieftie that noe man hereafter be compelled to make or yield any such loan, benevolence, tax, or such like charge without common consent by Act of Parliament.

And that none be called to make answer, or take such oath, or to give attendance, or be confined, or otherwise mistreated, or punished contrary to the same, or for refusal thereto. And that noe person in any such manner as is before mentioned be imprisoned, or deteyned.

And that yo. Maieftie would be pleased to remove the said Comissioners, and that your people may not be burthened in time to come.

And that the aforesaid Comissioners for proceeding by Marshall Lawe may be revoked, and annulled, and that hereafter noe Comissioners of like nature may issue writs to any person or persons whatsoever to be executed as aforesaid, least by such way, and order as is aforesaid, or put to death, contrary to the Lawe and franchises of the Land.

All which they most humbly pray yo. most excellent Maieftie, as those rights and liberties according to the Lawes and Statute of this Realme. And that yo. Maieftie would cause yo. Justice to declare, that the aforesaid danger and grievance to the prejudice of your people in any of the premises shall not be done henceforth into any manner, or example.

And that your Maieftie would be pleased graciously, please for the further comfort and safety of yo. people to declare yo. Royal will and pleasure, that in the things aforesaid, yo. Justices and Ministers shall serve you according to the Lawe and Statute of this Realme, as they touch the Lawe of yo. Maieftie, and the privileges of this Realme.



Počátek revoluce 1640 – 1649

- krátký parlament
- dlouhý parlament
- Velká remonstrace
- poprava lorda Strafforda a arcibiskupa Lauda
- občanská válka
- Oliwer Cromwell
- presbyteriáni, independenti, lewelleři a diggeři X roajalisté
- svržení a poprava krále

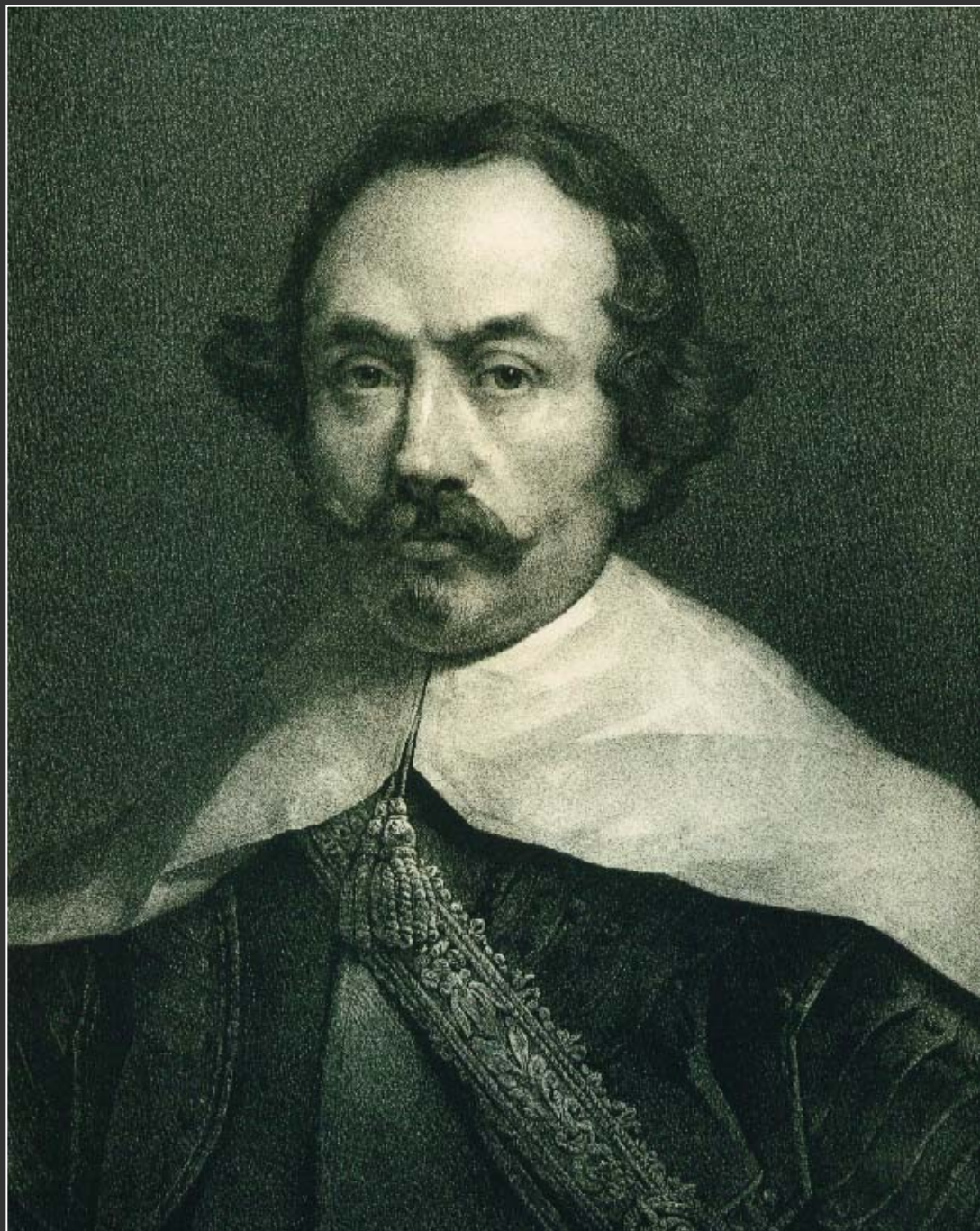
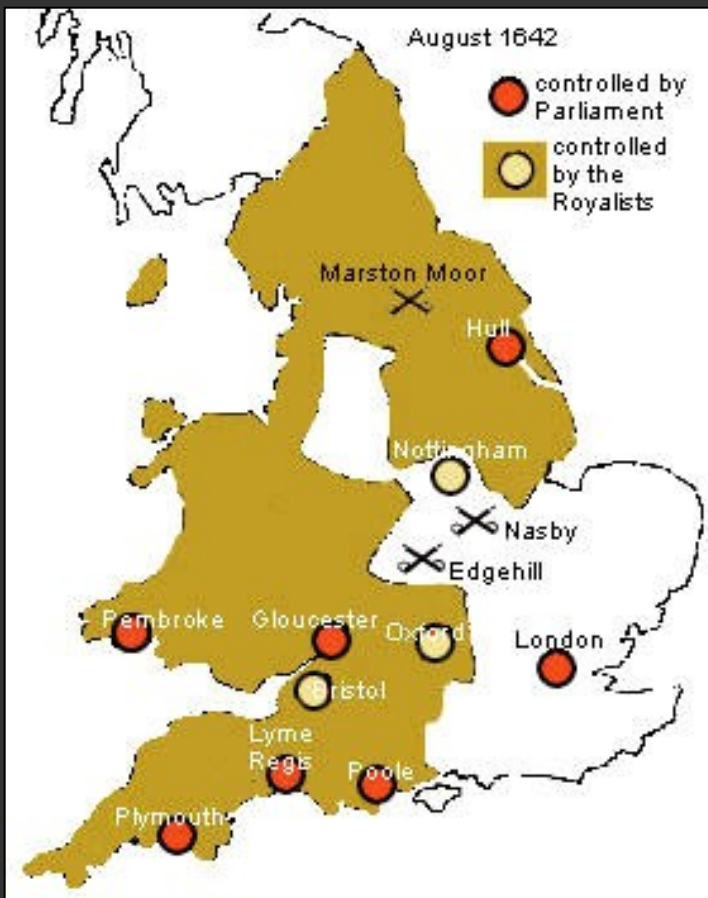




Lord Strafford



Arcibiskup W. Laud



Oliwer Cromwell



Tower





Republika a Protektorát

- neúspěch republiky
- rozpuštění „zbytkového“ parlamentu
- Listina o vládnutí (Instrument of Government)
➔ Protektorát
- Ponížená prosba a rada 1657 ➔ monarchistické prvky
- Richard Cromwell
- Karel II.

1649

-

1651



1649-1660



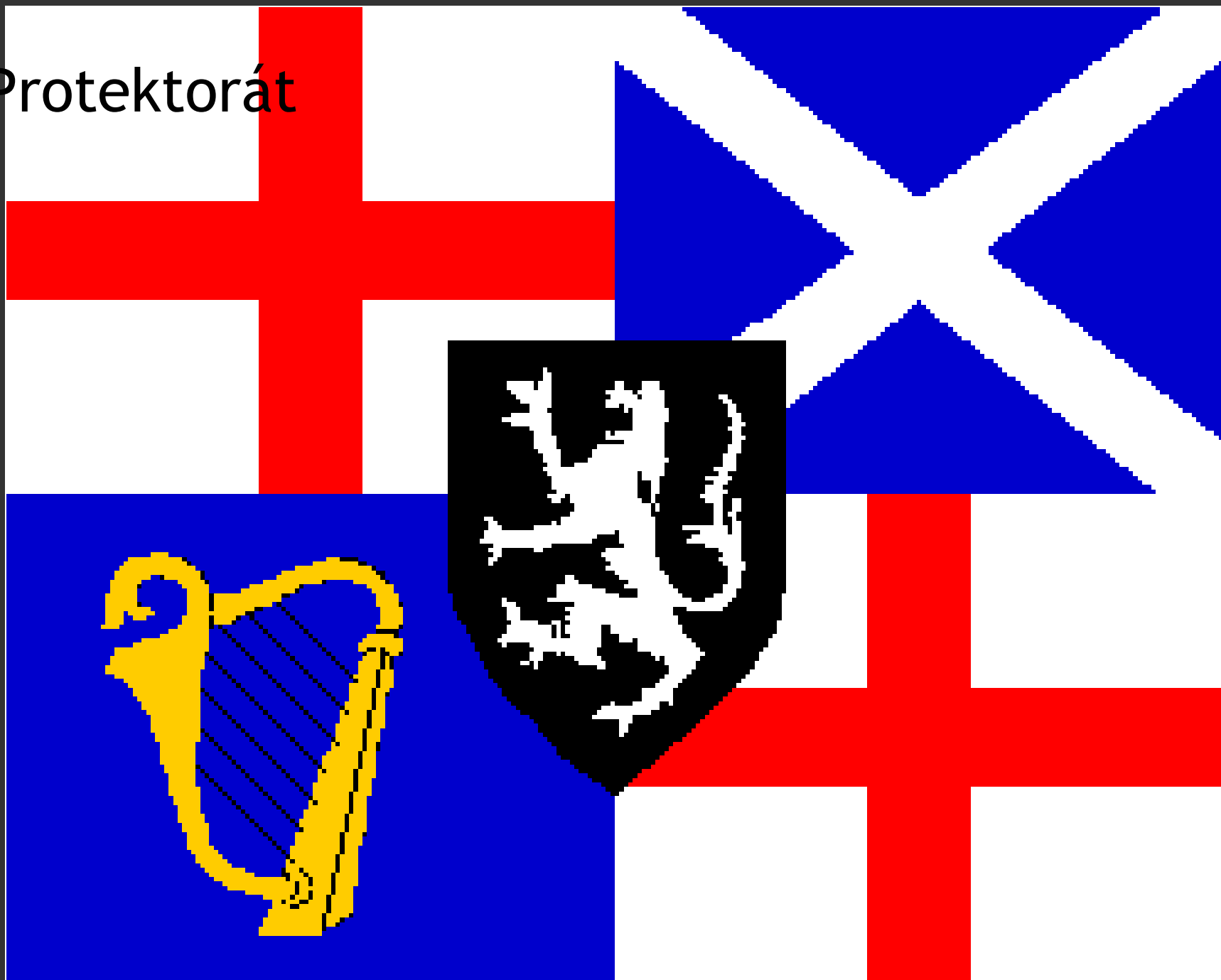
The arms of the Commonwealth



Cromwell rozpouští parlament



Protektorát



Richard
Cromwell





Návrat Karla II.



Porevoluční vývoj

- Bredská deklarace a na ji navazující zákony 1660
- Karel II. a Jakub II.
- Habeas corpus Act 1679
- „slavná“ revoluce 1688
 - Bill of Rights 1689
- zákon o následnictví trůnu (Act of Settlement) 1701:
 - ➔ ministerská odpovědnost za akty panovníka, inkompatibilita, neodvolatelnost soudců, podřízenost krále parlamentu, vzdělání členů parlamentu

Karel II.



Jakub II.



Vilém III. Oranžský

...and ... Spiritual and ...
 Demerits and Objections as published at Westminster
 lawfully fully and freely representing all the Grievances
 of the People ... the Petition did upon the matter
 ... of the ... in the year of our Lord one ...
 ... by ... and ... present ...
 ... of ... and ... of the ...
 ... of ... and ... present in ...
 proper persons ... Declaration in ...
 ... made by the said Lords and Commons
 in the words following viz **Whereas** the
 ... the ... of the ...
 of diverse evil Counselors Judges and Ministers
 employed by him did endeavour to subvert and
 pervert the Protestant Religion and the Laws
 and Liberties of this Kingdom By assuming
 and exercising a power of Dispensing with
 and suspending of Laws and the Execution of
 Laws without consent of Parliament By ...
 ... and prosecuting diverse worthy ...
 ... petitioning ... from
 ... to the said assumed power By ...
 and causing to be printed a Commission under
 the Great Seal for erecting a Court called the
 Court of Commissioners for Ecclesiastical Causes
 By levying money for and to the use of the Crown
 by pretence of Decretative for other times and in
 other manner than the same was granted by
 Parliament By raising and keeping a standing
 Army within this Kingdom in time of Peace
 without consent of Parliament and Quarters
 Soldiers contrary to Law By raising severall
 good Subjects being Protestants to be disbanded
 at the same time when Paym^{ts} were both arrears
 and unpaid contrary to Law By violating the
 freedom of Election of Members to serve in
 Parliament By prohibition in the Court of
 Kings Bench for matters and causes cognizable
 only in Parliament and by diverse and arbitrary
 and illegal ... of Law ...



Bill of Rights