



# MASARYKOVA UNIVERZITA PRÁVNICKÁ FAKULTA

## Evropské právní dějiny

Vojáček



# MASARYKOVA UNIVERZITA PRÁVNICKÁ FAKULTA

## Konstitucionalismus (příklad: Anglie)

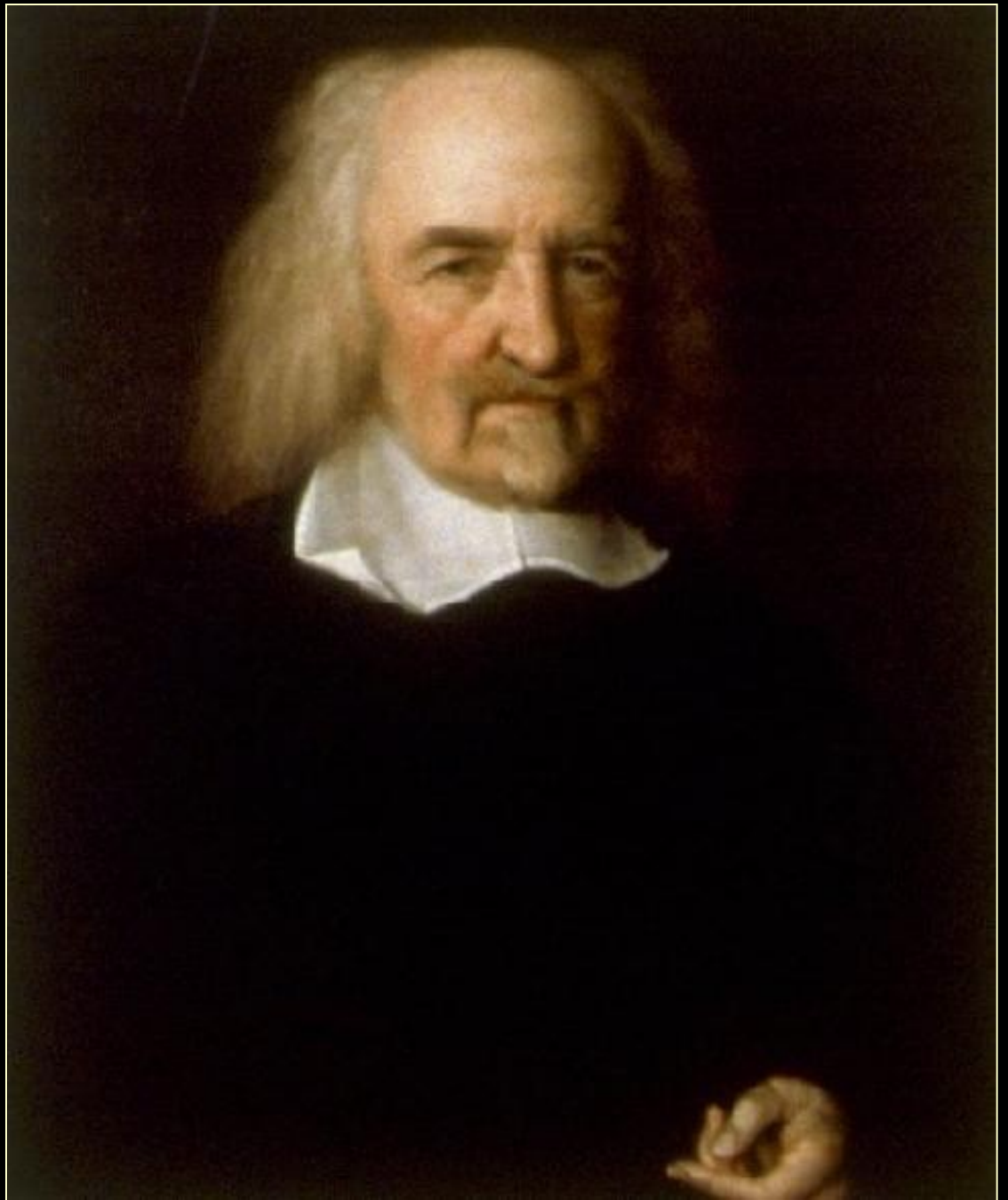
Vojáček



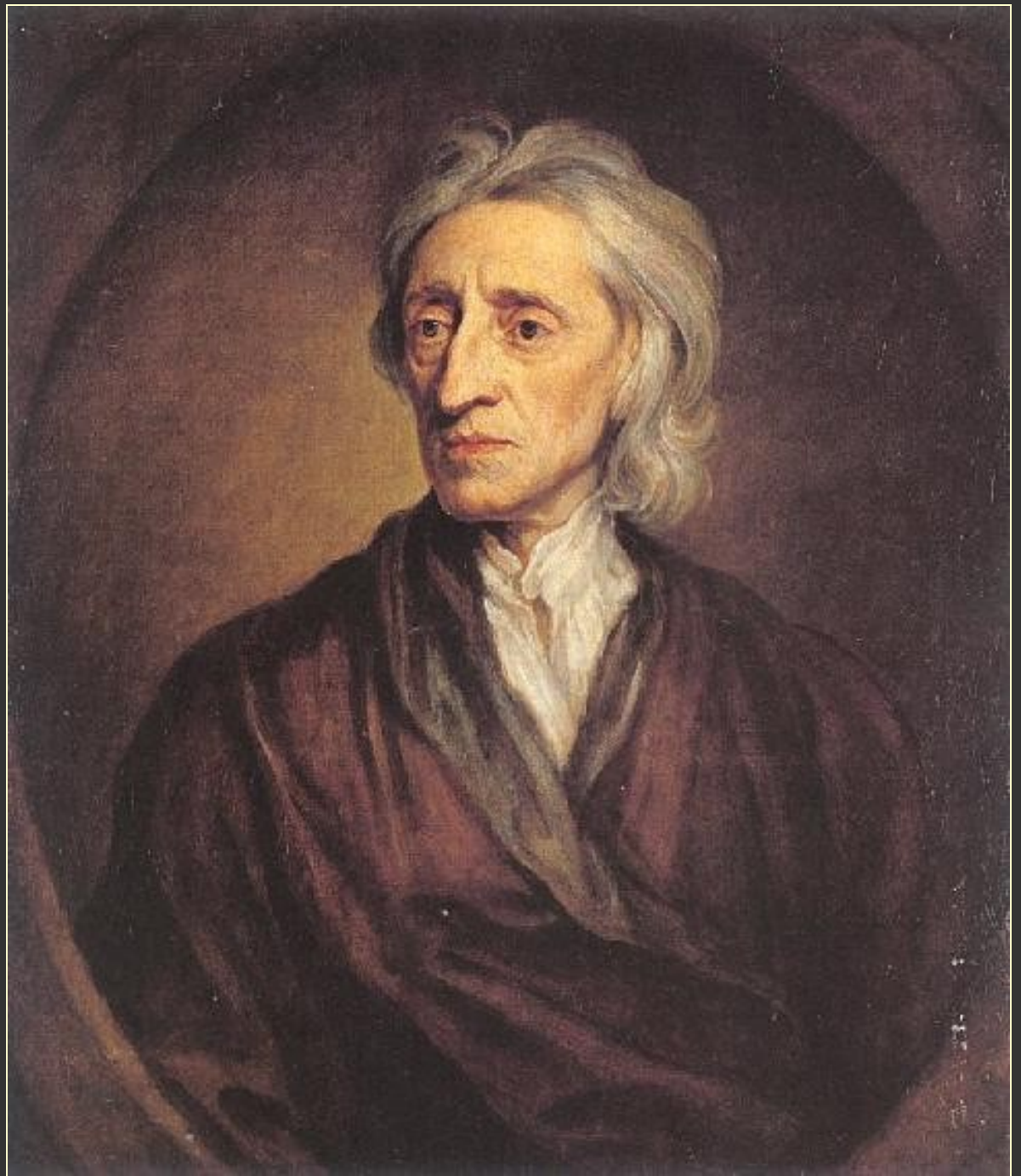
# Přirozenoprávní koncepce

- 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

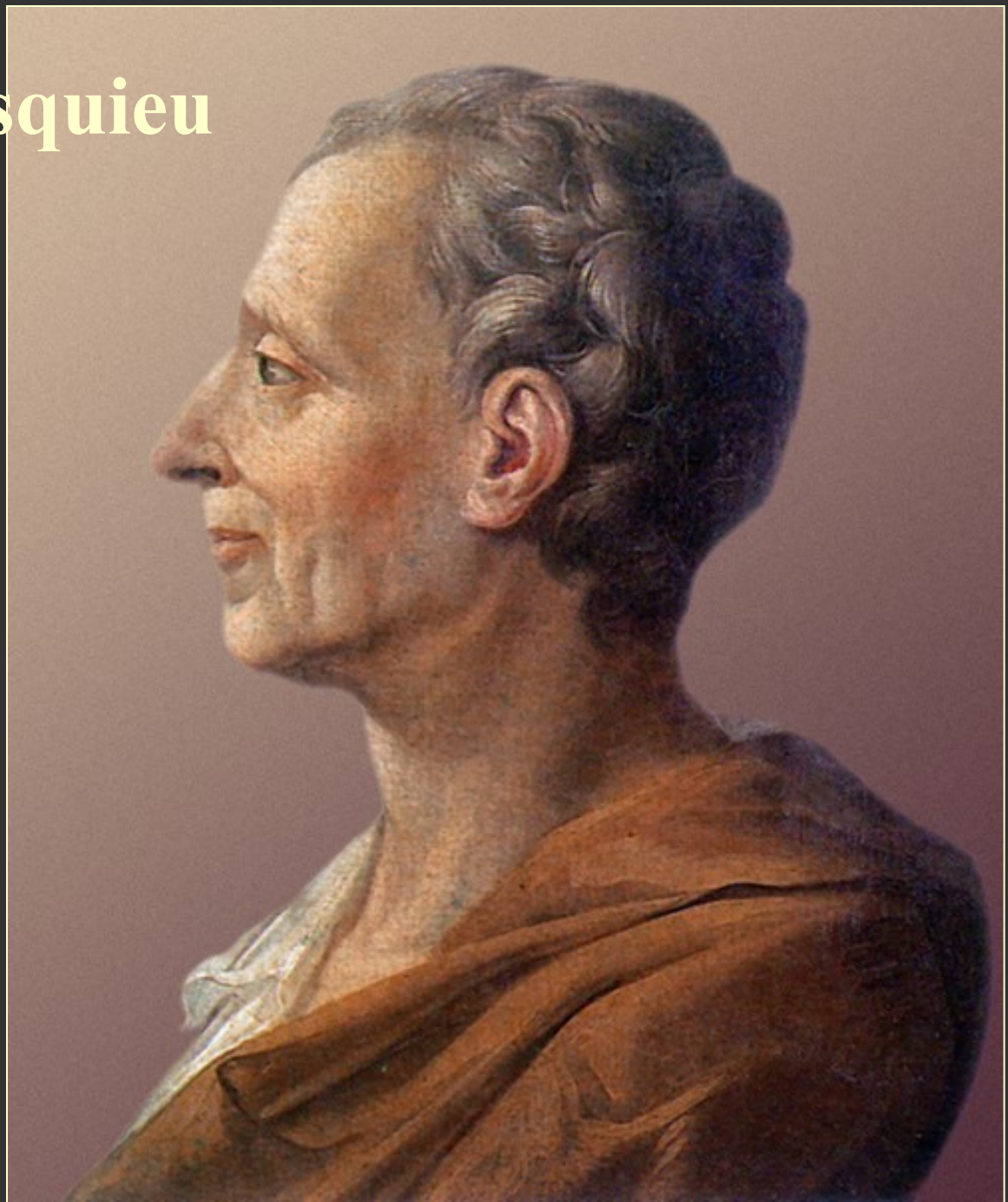




J.-J. Rousseau



# Ch. L. de Montesquieu



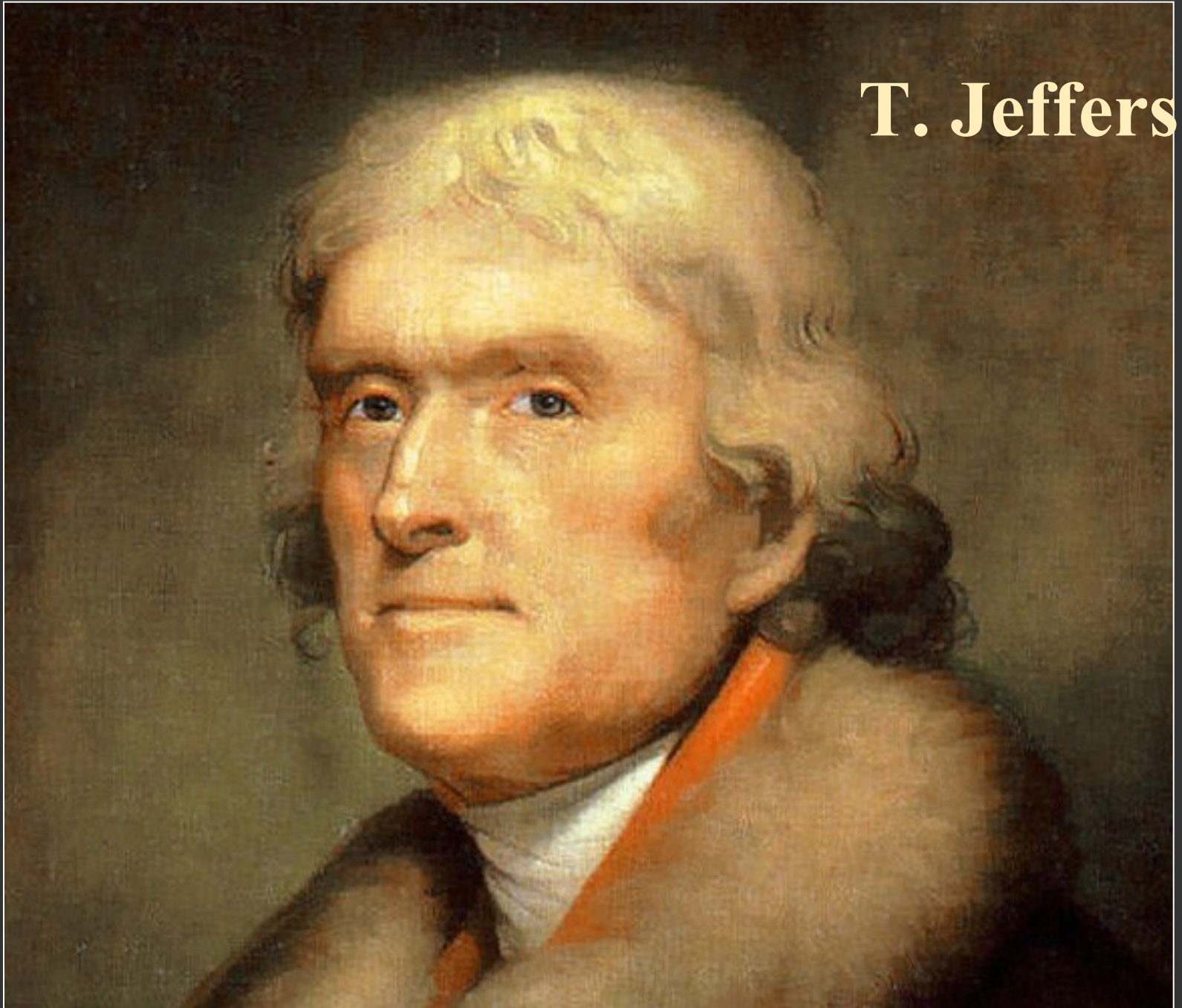


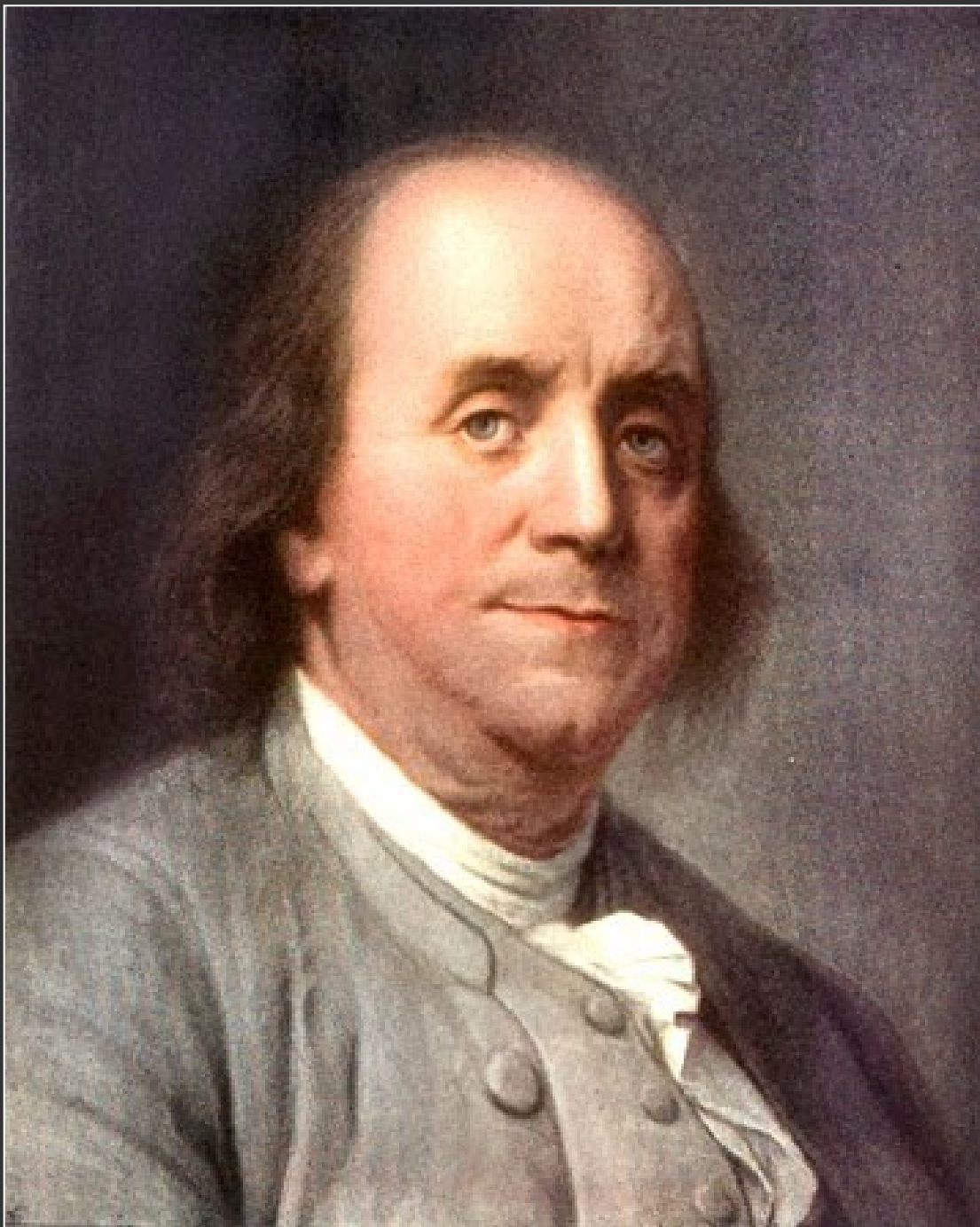
# Významné ústavy 18. a 19. století

- 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 continen-  
ta faciant et exequantur non obstant  
te quod articulus iste in omnibus cum  
dicto statuto Gloucestre non concordat

Explicunt articuli Gloucestre  
Incipiunt explanationes eorumdem

**P**rimo modo per dictam re-  
gem et iustitiam suos facte  
sunt quedam expla-  
nationes quorundam ar-  
ticulorum superius portorum

videlicet ad primum articulum ubi illi  
qui fuerint ingressi per dissensionem  
auxilium dampna sua a tempore  
facti publicati eodem modo

de hiis de ingressu super dissensionem  
De dampnis in omnibus hiis qui  
moris antecessoris consanguini  
etiam sui et per sui De iniuriam  
ne vel de factis pro quodamque  
hiis auxilium dampna sua post  
impetitionem huiusmodi eos qui

# Alžběta I. (1533 – 1603)







Jakub (James) I.



Karel (Charles) I.



# Petition of Right

## To the King's most Excellent Maieſtie

Sett that full come est desire.

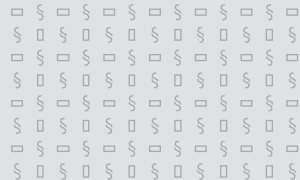
### Sheweth

That unto our Sovereigne Lord the King, his heires, Heires, and Emperors, and Common in Parliament assembled, that whereas it is declared and enacted by a Statute in this behalf made, touching the same, Edward the first commonly called Statutum de tallage an curialitate, that noe tallage, or aid, should be levied, or levied by the King or his heires in this Realme, without the assent of the Arch-Bishop, Bishops, Barons, Knights, Knights, and other the freemen of the Consistory of that Realme. And whereas by the said Statute, touching the same, King Edward the third, it is declared and enacted, that no freeman should be compelled to make any loan to the King against his will, because such loans were against the law, and the franchises of the land. And by other laws of this Realme it is provided, that none should be charged by any charge, or imposition called a benevolence, nor by such like charge. By which the said Statutes, laws, and enactments, and also the said laws and Statute of this Realme, yo. Richard have intended that freedom, that they should not be compelled to contribute to any charge, tallage, aid, or other like charge, not set by common consent in Parliament. Yet notwithstanding the diverse Commissions, directed to severall Countiees, shires, and cities, by means whereof your people have been in divers places assembled, and compelled to lend, receive, and receive same of money unto yo. Maieſtie. And many of them upon their refusal thereto have had an oath administered unto them, not warrantable by the law, and Statute of this Realme, and have been constrained to become bound to make appearance and give attendance before your Honorable Council, and in other places, and others of them have been vexed, oppressed, confined, and sundry other wrongs mistreated and distressed. And divers other charges have been laid and levied upon your people in severall Countiees by divers Justices, Deputy Justices, Commissioners for the Sheriff, Justice, of Peace, and others by Commission, or direction from your Maieſtie, or your Honorable Council against the law, and free customes of the Realme. And whereas also by the Statute called the Statute of the liberties of England, it is declared and enacted that noe freeman may be taken, or imprisoned, or be disherited of his freehold, or liberties, or his free customs, or be outlawed, or exiled, or in any manner distressed, but by the lawful judgement of his Peeres, or by the Law of the Land. And in the eighth and twentieth yeare of the reign of King Edward the third, 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 Law. Nevertheless against the tenor of the said Statute, and other the said laws and Statute of this Realme, it is that and provided, divers of your Subjects have lately been imprisoned, without any cause shewed, and when for those detentions they were brought before yo. Justice, by yo. Maieſtie writtes of Habeas Corpus there to vindicate and bring all the Court should order, and intercept, commanded to certifye the cause of thine detentions, no cause was certified, but that they were detained by yo. Maieſties Speciall commands signified by the Lordes of your Honorable Council, and yet were returned back to severall prisons without being charged with any thing to which they might make answer according to the Law. And whereas of late great Companies of Soldiers and Mercenaries have been pressed into severall Countiees of the Realme, and the inhabitants against their will have been compelled to receive them into their houses, and there to suffer them to forage against the Law, and custome 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 yeare of the reign of King Edward the third, it is declared and enacted that noe man should be forejudged of life, or limb, against the forme of the Great Charter, and the Law of the Land. And by the said Statute, and other the Law and Statute of this Realme, noe man ought to be adjudged to death, but by the Law established in this Realme, either by the testimony of the Law, or by Act of Parliament. And whereas no offences of what kindsoever it cometh from the punishments to be inflicted by the Law, and Statute of this Realme, are punishable of late time diverse Commissions under yo. Maieſties Great Seale have issued forth, by which severall persons have been assigned and appointed Commissioners, with power, and authority to proceed within by land, according to the Justice of Marshall Law, against such Soldiers, or Mercenaries, or other dissolute persons, keeping with them, as should commit any murdrer, robbery, felony, murther, or other outrage, or offence whatsoever, and by such summary way, and order as it should come to Marshall Law, and as of old time was used in time of warre, to proceed 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 Law, without whereby some of yo. Maieſties Subjects have been by some of the said Commissioners put to death, when, and where if by the Law and Statute of the Land they had deserved death, by the said Law, and Statute of this Realme, and by no other way, and by no other manner as it is beforementioned, to be punished, or deterred. And that yo. Maieſtie would be pleased to remove the said Commissions, and that your people may not be further troubled in time to come. And that the said speciall Commissions for proceeding by Marshall Law may be revoked, and annulled, and that hereafter noe Commissions of like nature may issue forth to any person or persons whatsoever to be executed as aforesaid, least by utter of them any of yo. Maieſties Subjects be distressed, or put to death, contrary to the Law, and franchises of the Land.

**T**hev do therefore humbly pray yo. most excellent Maieſtie, that noe man hereafter be compelled to make or yield any assistance, 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 distrained concerning the same, or for refusal thereof, and that noe freeman in any such manner, as it is beforementioned, be imprisoned, or detained. And that yo. Maieſtie would be pleased to remove the said Commissions, and that your people may not be further troubled in time to come. And that the said speciall Commissions for proceeding by Marshall Law may be revoked, and annulled, and that hereafter noe Commissions of like nature may issue forth to any person or persons whatsoever to be executed as aforesaid, least by utter of them any of yo. Maieſties Subjects be distressed, or put to death, contrary to the Law, and franchises of the Land.

**W**ill what they most humbly pray of yo. most excellent Maieſtie, as those rights and liberties according to the Law and Statute of this Realme. And that yo. Maieſtie would cause your Justice to declare, that the aforesaid damage and grievance, to the prejudice of your people in any of the premises shall not be done henceforward, and that yo. Maieſtie would be pleased to give satisfaction to yo. people to have yo. Justice and your Justice, that in the things aforesaid, as yo. Maieſtie and Ministers shall see you according to the Law, and Statute of this Realme, as they touch the Law of yo. Maieſtie, 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

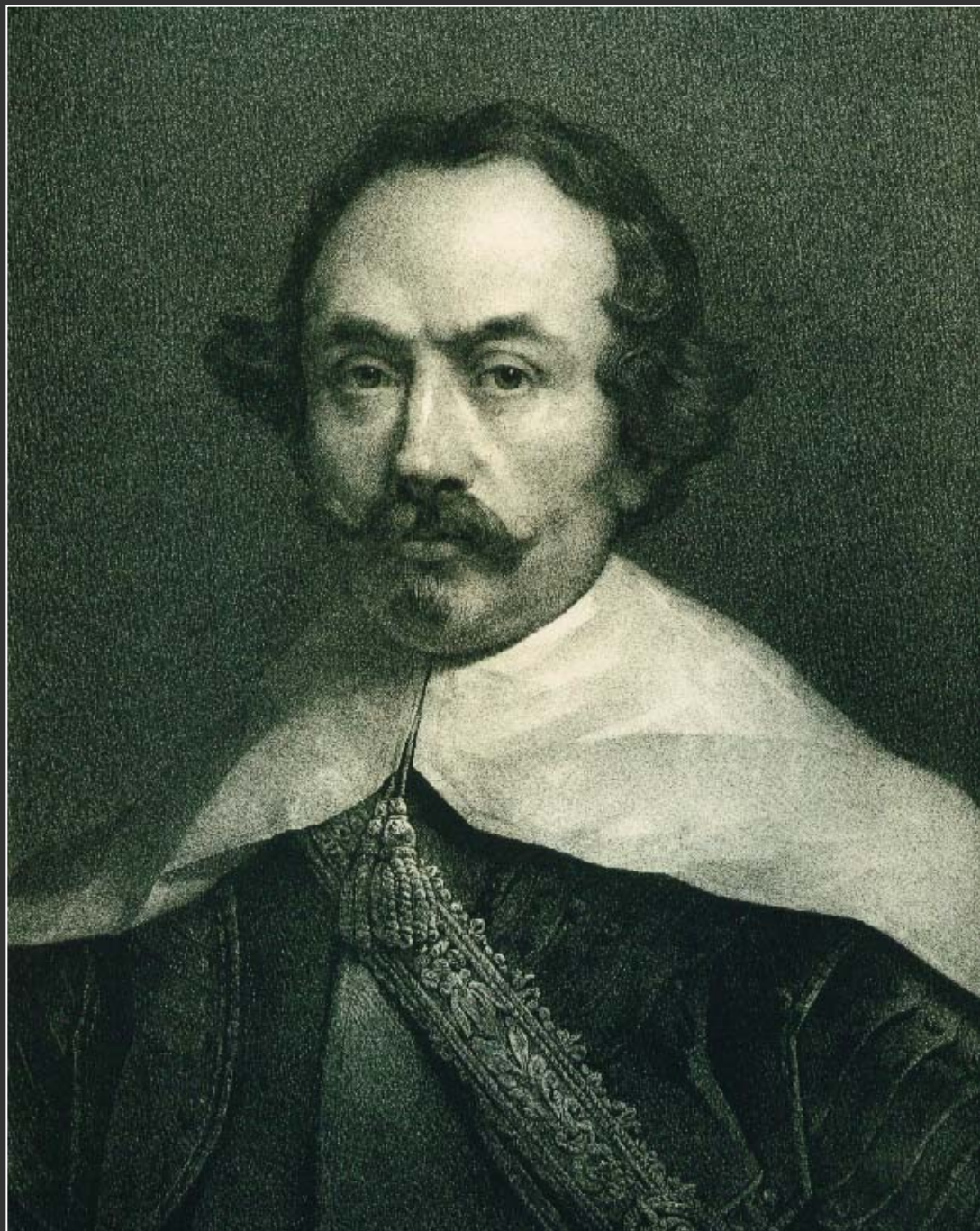
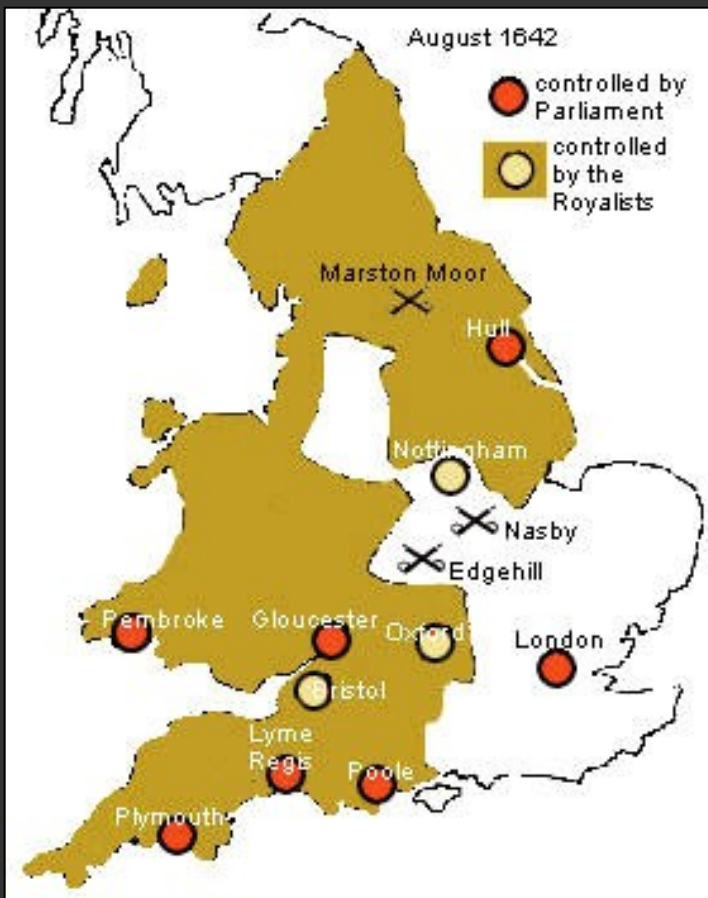




Lord Strafford



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



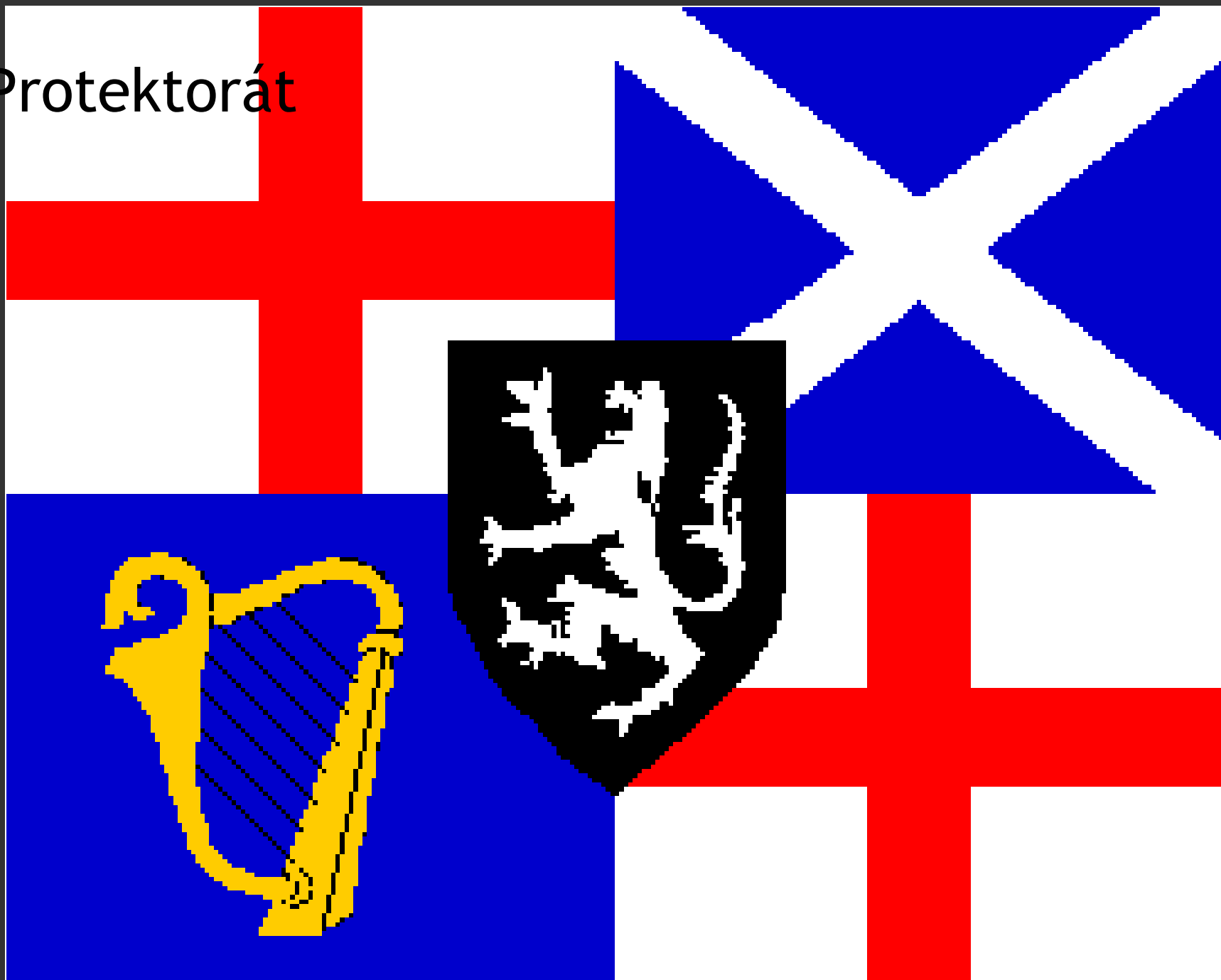


Cromwell rozpouští parlament





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**

