



MASARYKOVA UNIVERZITA PRÁVNICKÁ FAKULTA

Evropské právní dějiny

Vojáček



MASARYKOVA UNIVERZITA
PRÁVNICKÁ FAKULTA

Konstitucionalismus (příklad: Anglie)

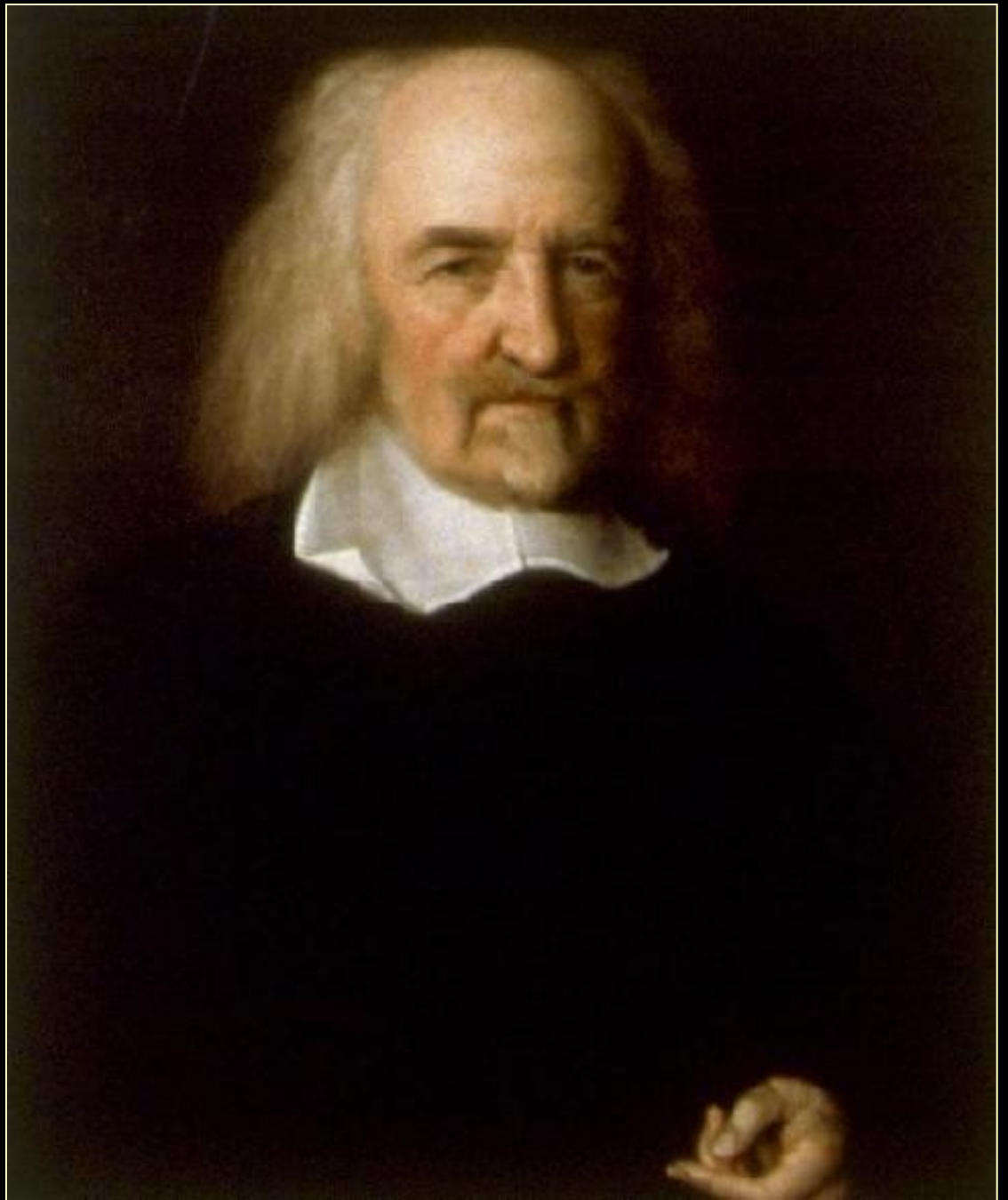
Vojáček



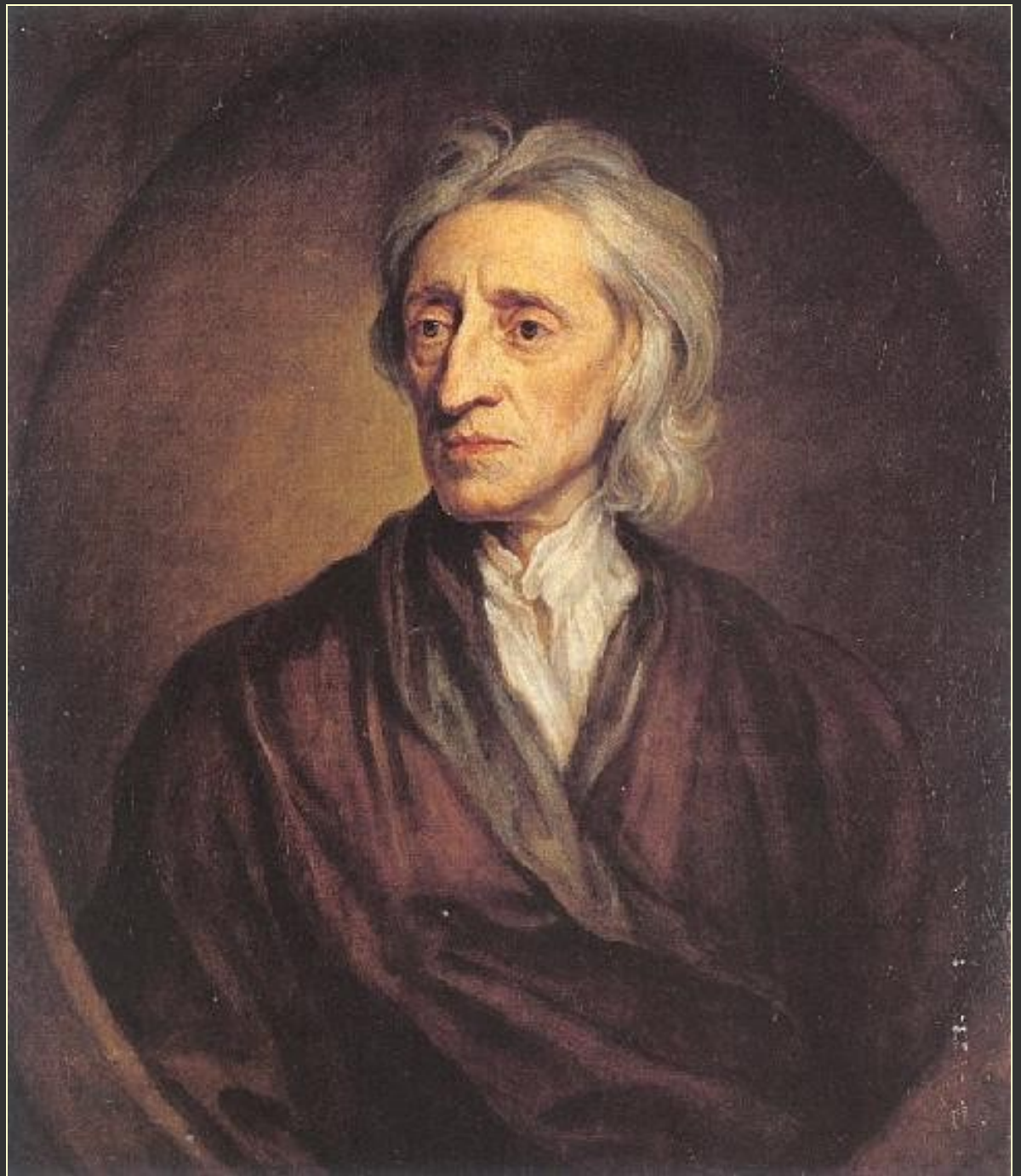
Přirozenoprávní koncepce

- 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



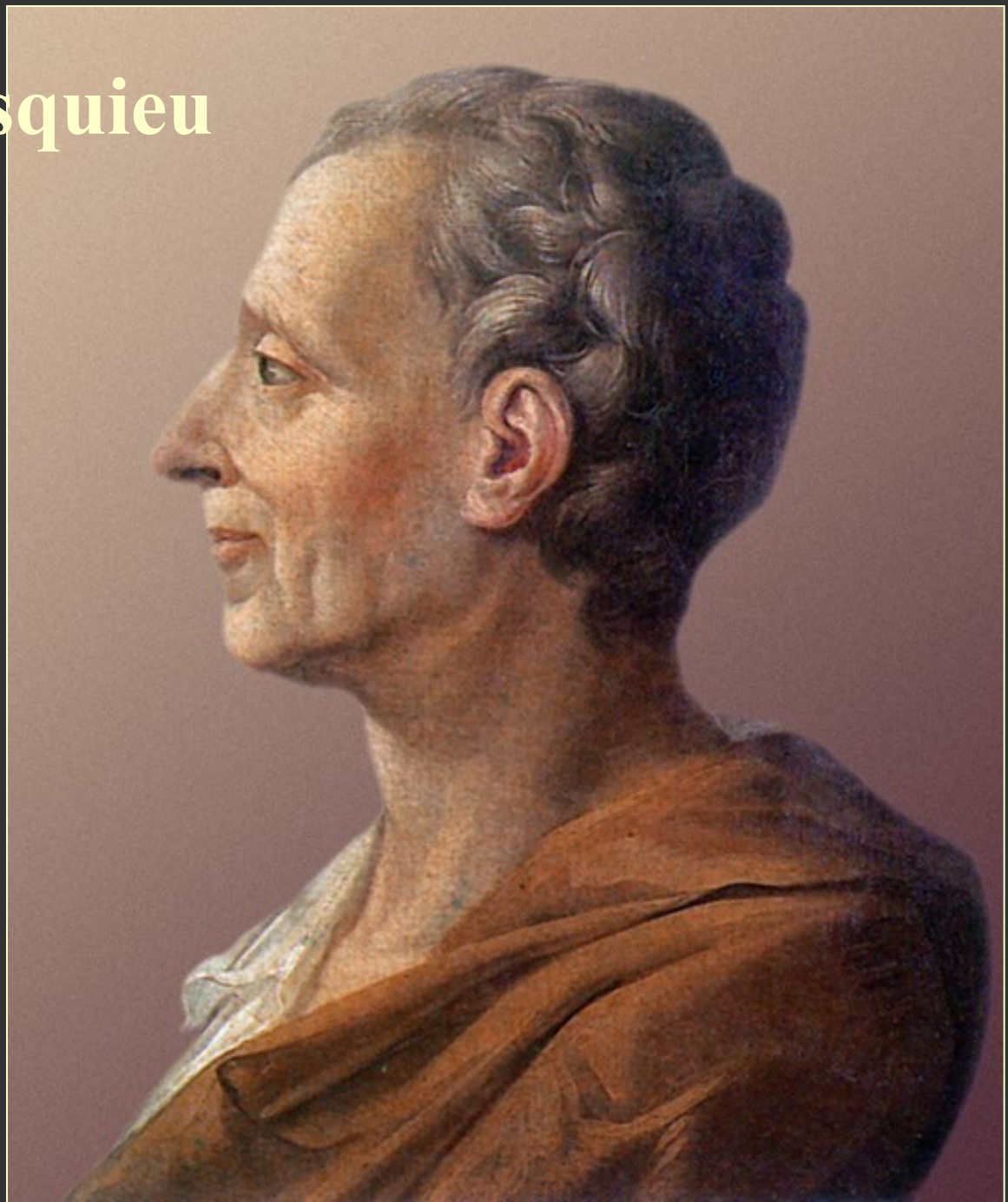
John Locke



J.-J. Rousseau



Ch. L. de Montesquieu

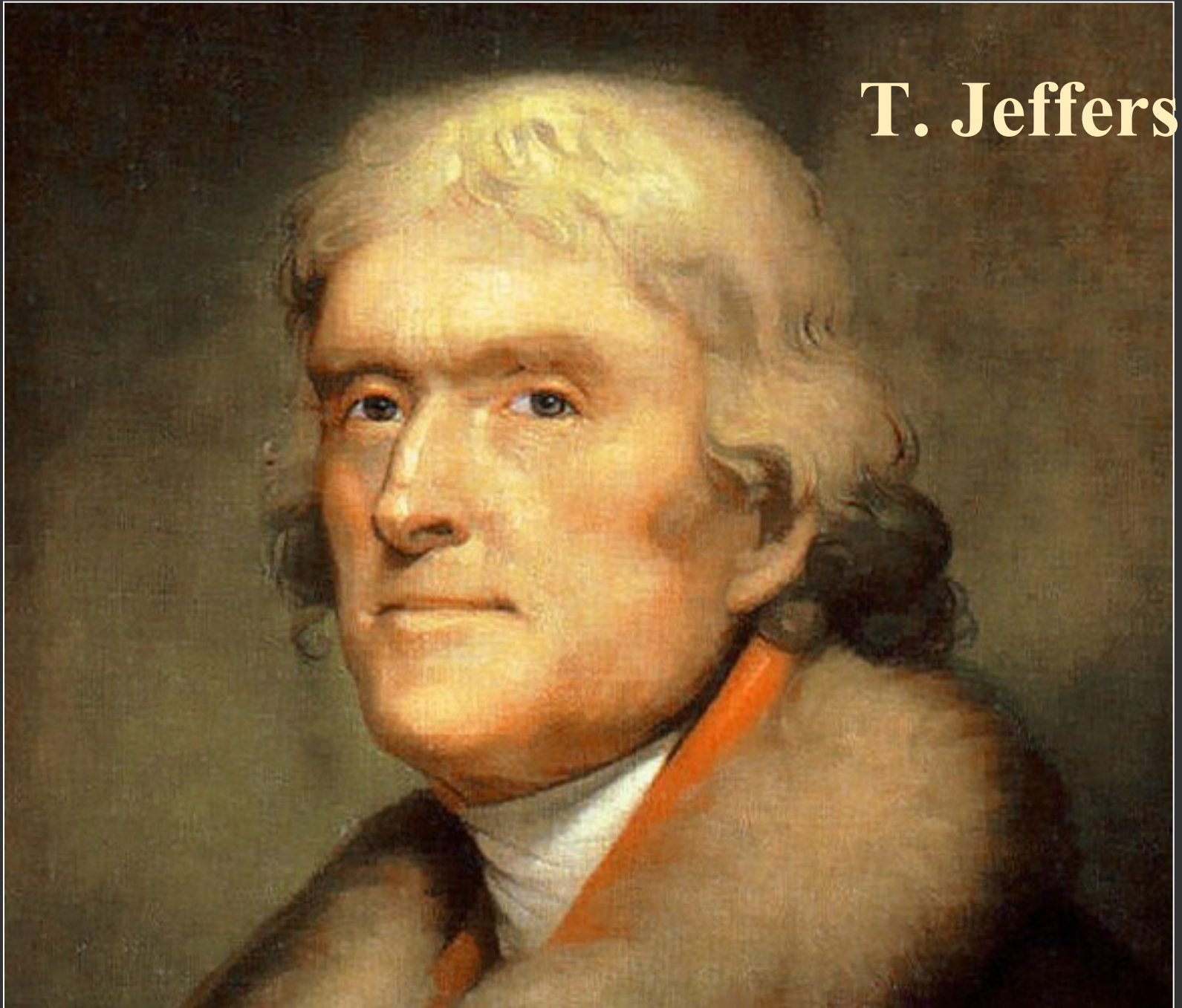


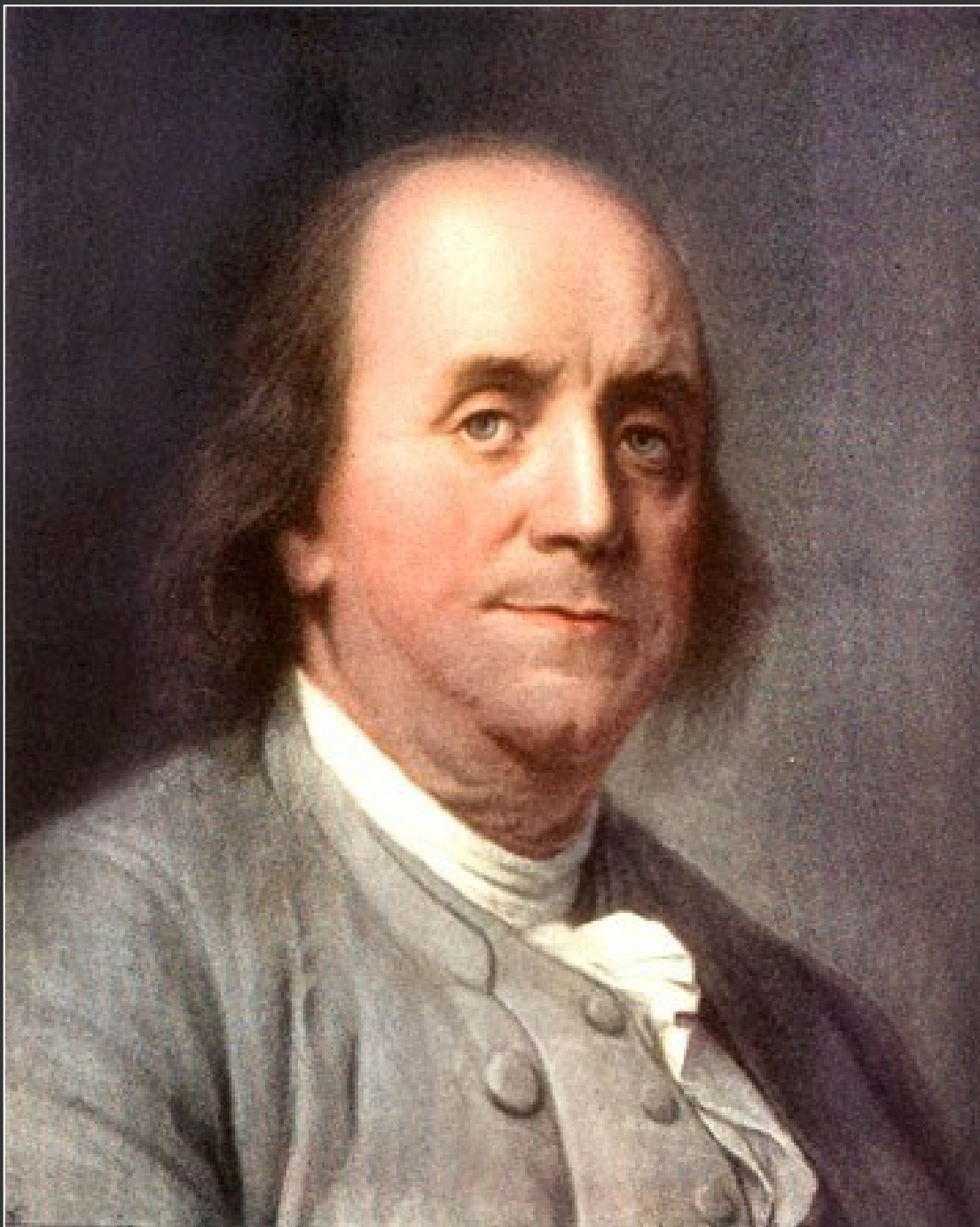


Významné ústavy 18. a 19. století

- 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 contenta
facient et exequentur non obstant
te quod articulus iste in omnibus articulis
dicto statuto Gloucestre non concordat

Explicunt articuli Gloucestre
Incipiunt explicationes eorumdem

Primo modo per dictam regem et iustitiam suos facta sunt quedam explicationes quorundam articulorum superius portorum videlicet ad primum articulum ubi illi qui fuerint ingressi per dissensionem aut dampna sua a tempore facti et publicati eodem modo de hiis de ingressu super dissensionem De dampnis in omnibus hiis et mortis antecessoris consanguinitatis aut et per alios De usuris ne vel de factis pro quodamque hiis aut dampna sua post impetracionem huius carte eos qui

Alžběta I. (1533 – 1603)





Jakub (James) I.



Karel (Charles) I.

Petition of Right

To the Kings most Excellent Maiestie

Seit that just come est desire.

Humbly

Sheweth unto our Sovereign Lord the King, His Lords Spiritual, and Temporal, and Common 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 concilio* 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, Knights, Knights, and other the free men of the Community of this Realme.

And by other laws and Statutes made in the first and twentieth year of the said King Edward the first, it is declared and enacted, That noe person should be compelled to make any loan to the King against his will because his lands, were against reason, and the franchises of the land.

And by other laws of this Realme it is provided, That noe shuld be charged by any charge, or imposition called a benevolence, nor by such like charge.

By which the Statute before mentioned, and also the said laws and Statutes of this Realme, yo^r Subjects have intended that freedom, that they should not be compelled to contribute to any such tallage, Aids, or other like charge, nor shuld they receive, consent, or lend, receive, or give any money unto yo^r Maiestie, And many of them upon their refusal thereto have had an oath administered unto them not warrantable by the Lawe 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 mistreated and distressed. And divers other charges have been laid and levied upon yo^r people in severall Countie by your Justices, Deputie Justices, Commissioners for the Sheriff, Justice of Peace, and others by Commission or direction from your Maiestie, or yo^r High Court against the Lawe 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 distressed of his freehold, or liberties, or his free custome, or be outlawed, or exiled, or in any manner distressed, 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 distressed, 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 said Laws and Statutes 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^r Justice, by yo^r Maiestie writs of Habeas Corpus there to vindicate and bring on the Court should be order, and intercepted, remanded to satisfy the cause of their detentions, no cause was certified but that they were detened by yo^r Maiesties speciall commands signified by the Lords of yo^r 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 years Companies of Soldiers and Mariners have been pressed into severall Counties of this Realme, and the inhabitants against their will have been compelled to receive them into their houses, and there to suffer them to forswear against the Lawe 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 years of the reign of King Edward the first, it is declared and enacted That noe man should be foreward 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 said Laws and Statutes of this Realme, noe man ought to be adjudged to death, but by the Lawe established in this Realme, either by the testimony of the four Realme, or by Act of Parliament.

And whereas noe offences of what kind soever is committed from the punishment to be inflicted by the Lawe and Statute of this your Realme.

Nevertheless of late years Divers Commissioners under yo^r Maiesties Great Seale have issued writs by which certain persons have been assigned and appointed Commissioners with power and authority to proceed within by land according to the Justice of Marshall Lawe against such Soldiers or Mariners, or other dissolute persons keeping with them, as should commit any unchaste, debetious, mutiny, or other offence or misdemeanour whatsoever, and by such summary trial, and order as it should seeme to Marshall Lawe, and as if they were 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 Lawe, whereas some of yo^r Maiesties Subjects have been by some of the said Commissioners 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 your Realme, and by noe other ought to have been judged and executed.

And also sundry other offenders by such Writs, assuming an execution have enjoyed the punishment due to them by the Lawe and Statute of this your Realme, by reason that Divers of yo^r Justices and Ministers of Justice have commonly refused or forbore to proceed 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 Commissioners as aforesaid.

Whom Commissioners and all other of like nature are rebelle and directly contrary to the said Lawe and Statute of this your Realme.

They do therefore humbly pray yo^r most excellent Maiestie 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 distressed concerning the same, or for refusal thereof, And that noe freeman in any such manner as is before mentioned be imprisoned, or detened.

And that yo^r Maiestie would be pleased to remove the said Soldiers and Mariners, And that your people may not be burthened in time to come.

And that the speciall Commission for proceeding by Marshall Lawe may be revoked and annulled, and that hereafter noe Commissioners of like nature may issue writs to any person or persons whatsoever to be executed as aforesaid, least by such writs any of yo^r Maiesties Subjects be distressed, or put to death, contrary to the Lawe and franchises of the Land.

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

And that your Maiestie would be also graciously pleased for the further comfort and safety of yo^r people to declare yo^r speciall will and pleasure, That in the thing aforesaid as is aforesaid, and Ministers shall serve you according to the Lawe and Statute of this Realme, as they touch the Lawe of yo^r Maiestie, and the property 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

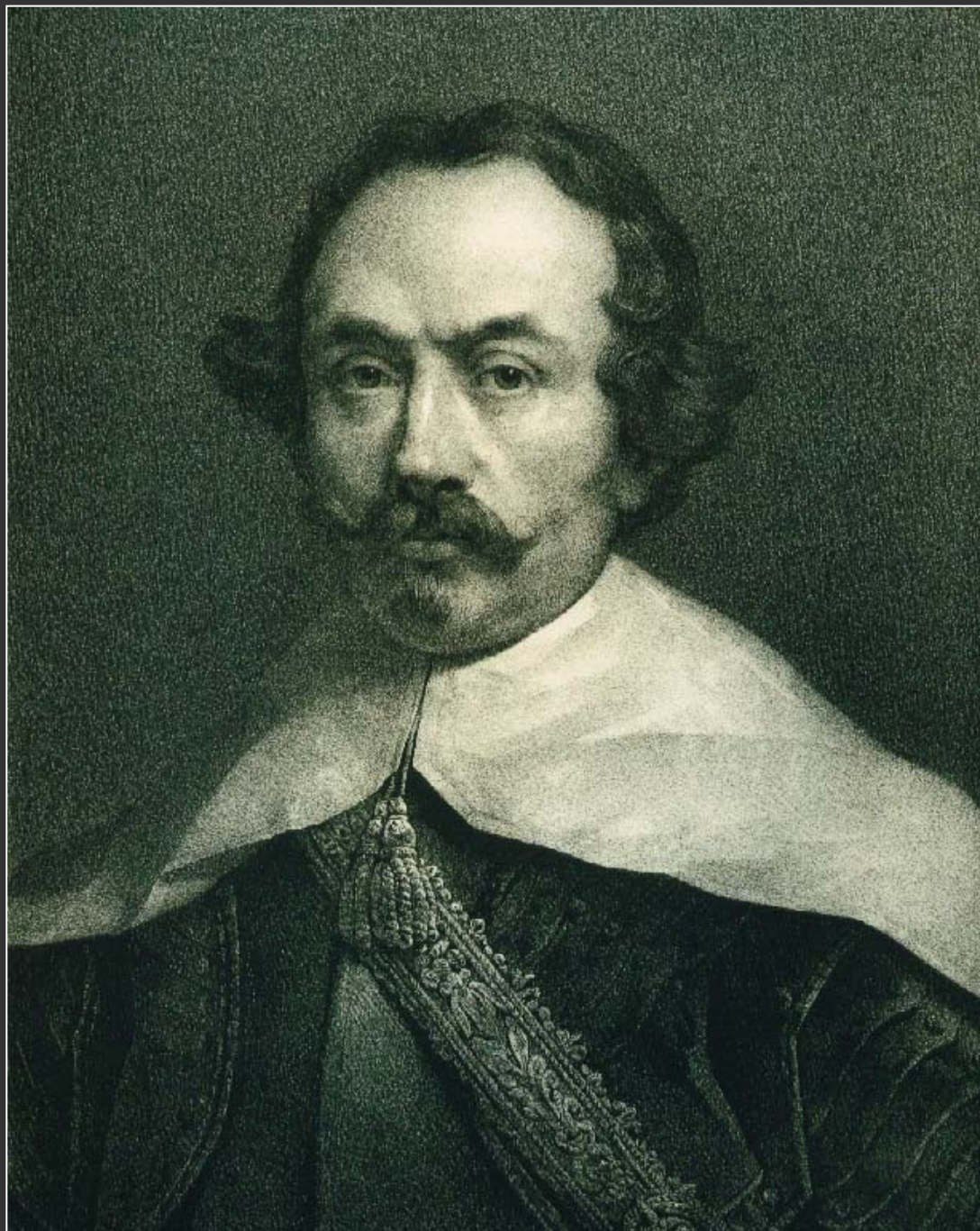
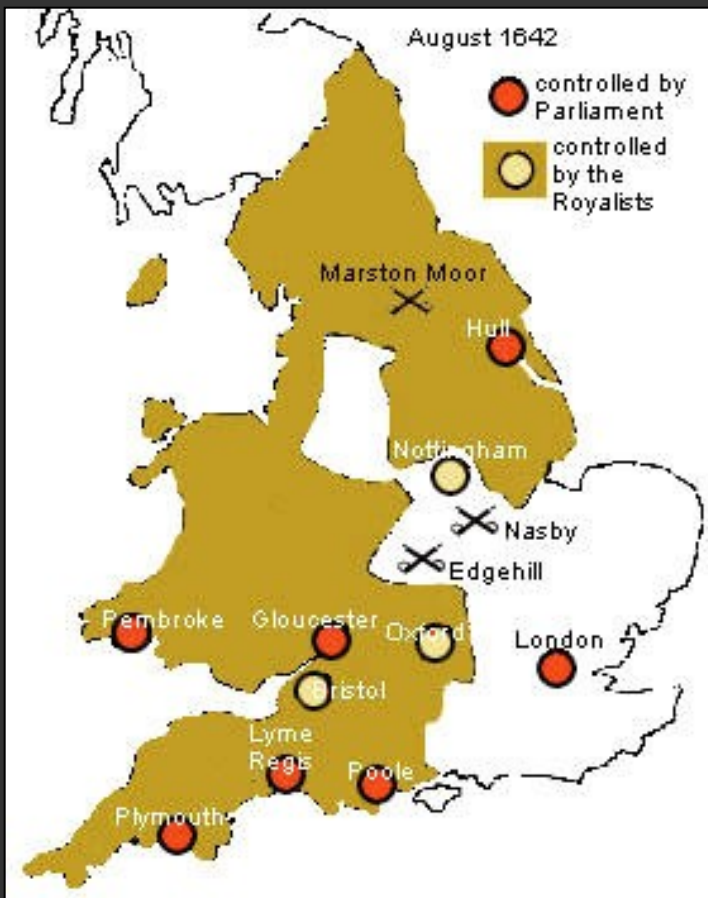




Lord Strafford



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



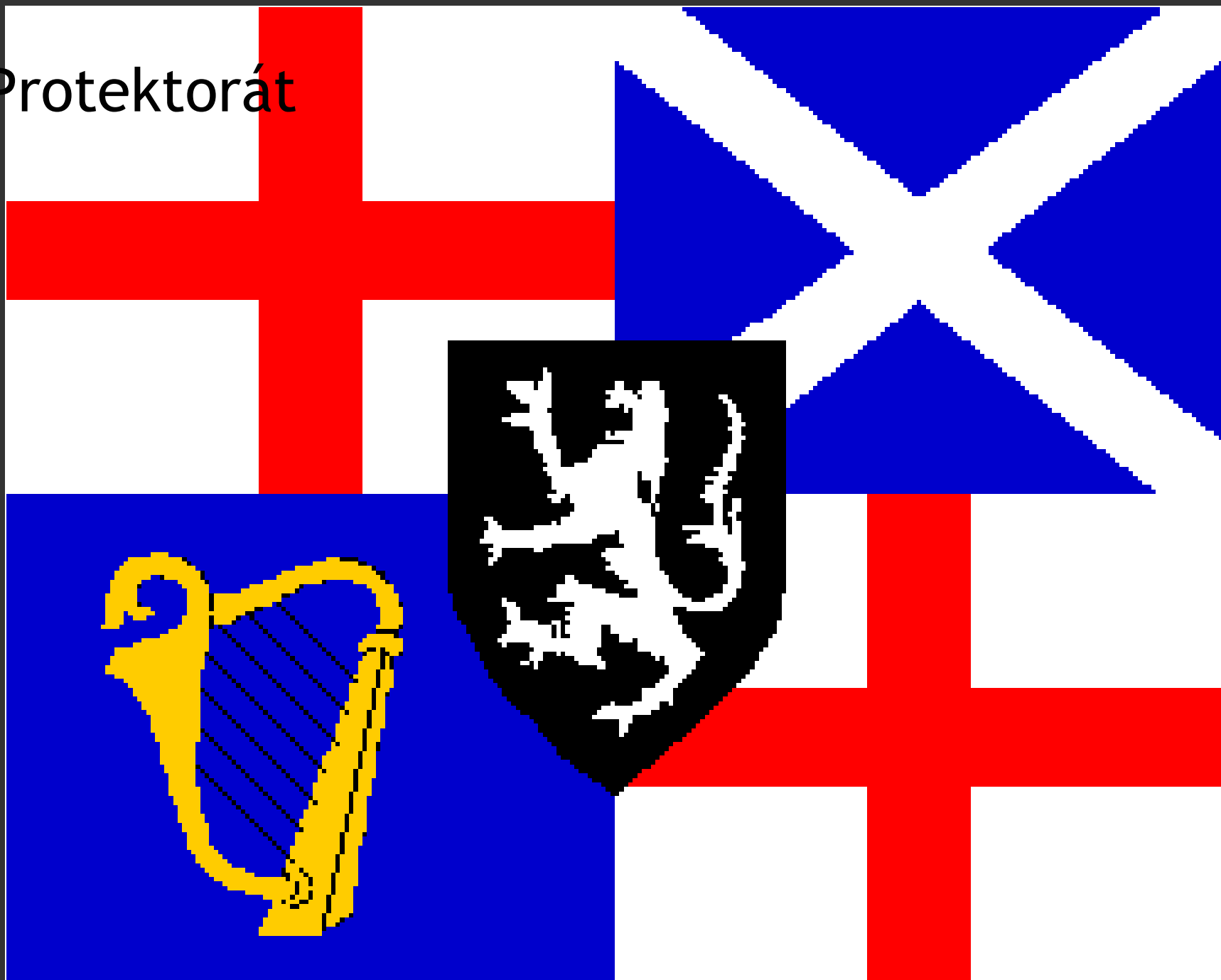
The arms of the Commonwealth



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

