

Heroism and the Struggle for Liberty

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“My purpose is not to relate at length every motion, but only such as were conspicuous for excellence or notorious for infamy. This I regard as history’s highest function, to let no worthy action be uncommemorated, and to hold out the reprobation of posterity as a terror to evil words and deeds.”
—Tacitus, *The Annals* (3.65)

Preconditions for individual liberty and constitutionally limited government:

- A. A theory of the “higher law,” whether expressed in terms of a transcendent God (i.e., a God who is not merely another part of the world, whether a golden calf or a man) or in terms of access to an objective reality that is not dependent on our perception of it, e.g., Aristotle noted that fire does not burn one way in Greece and another way in Persia (i.e., among “barbarians”).

Bible Passages quoted are: Exodus 32 (story of the golden calf); Matthew 5:43 (“Love your enemies and pray for those who persecute you); Matthew 22:15 (“Render therefore unto Caesar the things that are Caesar’s, and unto God the things that are God’s.”)

Philosophical passages include: Aristotle, *Nicomachean Ethics*, Book V, chap. vi, 1134b18 ff (“natural and conventional justice”); Cicero, *De Officiis*, III, 27 (“all are constrained by one and the same law of nature”);

- B. An appreciation that law can be discovered and is not merely the expression of will or power; this is contrasted with the theory of “sovereignty,” according to which the sovereign (whether king, parliament, or the people), as the creator of the law, cannot be limited by the law.

Law as *imposed* from above by a person or body not itself subject to the law:

From Jean Bodin, *The Six Books of the Commonwealth*, Book I, Chap. 10 (denigrating emerging custom as opposed to “law”: “custom acquires its force little by little and by the common consent of all, or most, over many years, while law appears suddenly, gets its strength from one person who has the power of commanding all.”)

From King James VI and I, *The Trew Law of Free Monarchies*: “the King is over-Lord of the whole land; so he is Master over every person that inhabiteth the same, having power over the life and death of every one of them. For

¹ (Note to Attendees: Don’t expect that I’ll get through all of this material in any depth. Expect to skip lightly over the surface of history in a way that, I hope, will provide a few insights into the achievement of liberty. The following outline is intended to save attendees from having to take notes and to provide suggestions of topics for papers in history, economics, jurisprudence, and moral and political philosophy.)

although a just Prince will not take the life of any of his subjects without a cleare law, yet the same lawes whereby he taketh them, are made by himselfe, or his predecessours, and so the power flowes always from him selfe....I have at length proved, that the King is above the law, as both the author and giver of strength thereto....”

Law as *discovered*:

From the *Institutes of Justinian*, Book One, 1.2: “The law which natural reason makes for all mankind is applied the same everywhere. It is called ‘the law of all peoples’ because it is common to every nation.” “Law comes into being without writing when a rule is approved by use. Long-standing custom founded on the consent of those who follow it is just like legislation.”

Some Crucial steps in the history of limited government:

Liberty in the Ancient World

I. The Discovery of Liberty and the Rule of Law in Sumeria

●ca. 2800-2500 B.C.E., Setting of the Epic of Gilgamesh, the oldest written story of humanity, in which Gilgamesh, king of Uruk, “became overbearing” and the people called on Aruru, creator of mankind, to make a rival to Gilgamesh, “to match the ardor of his energies. Let them be regular rivals, and let Uruk be allowed peace!” **Enkidu**, created of clay by Aruru, challenged Gilgamesh as he was about to enjoy his kingly rights with the brides on their wedding night; they fight and leave the city to undertake adventures. The story of freedom and law starts with a struggle.

●ca. 2300 B.C.E. **Urukagina** of Lagash (Telloh in contemporary Iraq) leads a governmental reform in Sumeria; taxes are limited, state monopolies are abolished, law is distinguished from power, and property is protected

●ca. 1100 B.C.E. the Israelites choose a king to rule over them, and are warned in I Samuel 8 about “the ways of the king who shall rule over them”

II. The Growth of Classical Civilization and Trade

●ca. 500 B.C.E. The Athenian polity reaches a high degree of wealth and (relative) personal freedom;

●490 B.C.E. First Persian Invasion of Greece (Battle of Marathon)

●480 B.C.E. Second Persian Invasion of Greece (Battle of Thermopylae); Greek thinkers (philosophers, tragedians, rhetoricians, lawyers) ask deep questions about the nature of freedom and independence; Aeschylus writes the *Oresteia* (concerning, among other things, justice and the rule of law), Sophocles writes *Antigone* (concerning, among other things, the higher law)

- 431 B.C.E. The Peloponnesian War leads to additional thinking about the nature of freedom, as shown in the contrast between Athens and Sparta (Pericles delivers his famous funeral oration, praising the liberty of the Athenians)
- 335 B.C.E. Aristotle returns to Athens and founds the Lyceum, which undertakes systematic investigation of everything, including morality, politics, and economics.

III. Expansion of Roman Republic and Commercial Relations Throughout the Mediterranean

- ca..367 B.C.E. the Roman Republic institutes reforms that diminish hereditary privilege
- 326 debt slavery is eliminated for plebians in Rome
- Roman republic grows through wars, alliances, and trade; it is substantially (although hardly exclusively) a vast trading area; the *provincia* are established to provision the city of Rome
- 46 B.C.E. **Cato the Younger**, after his defeat by Caesar at the Battle of Thapsus, commits suicide, thus becoming an inspiration to defenders of republicanism for thousands of years
- 43 B.C.E. **Cicero** is murdered and one of the very last defenders of the Roman Republic is eliminated; the examples of Cicero and of Cato inspire defenders of republican liberty, however, for thousands of years; Cicero's works, preserved as examples of good Latin, transmit through the dark ages and into the middle ages and the modern period the ideas of the higher law and Stoic ideas of equal freedom:

“Therefore, all men should have this one object, that the benefit of each individual and the benefit of all together should be the same. If anyone arrogates it to himself, all human intercourse will be dissolved. Furthermore, if nature prescribes that one man should want to consider the interests of another, whoever he may be, for the very reason that he is a man, it is necessary, according to the same nature, that what is beneficial to all is something common. If that is so, then we are all constrained by one and the same law of nature; and if that is true, then we are certainly forbidden by the law of nature from acting violently against another person. The first claim is indeed true; therefore the last is true.” (Cicero, *De Officiis*, III, 26-27)

IV. Comparison: Growth and Later Retreat of Chinese Civilization

- ca. 500 B.C.E. life of **Lao Tzu**, great Chinese sage, flourishes and establishes doctrine of Taoism, which argues for light governance and a doctrine of laissez faire
- 221 B.C.E. Establishment of Chin Empire, followed by cyclical patterns of centralization and collapse

- 960-1127 Northern Sung Dynasty founded by **Sung Taizu**, who establishes rule of law, limited government, tax limitation, and thereby fosters an advanced and monetized market economy, making China the most advanced civilization on the planet
- 1127 Conquest of Kaifeng and Laioyang by the Jurchen State of Kin Mongol
- 1127-1269 Flourishing of the Southern Sung Dynasty
- 1269 Conquest of the Southern Sung by the Mongols under Bayan of the Hundred Eyes
- 1269-1371 Yuan (Mongol) Dynasty
- 1371-1644 Ming Dynasty, established by Zhu Yuanchang (who calls himself Emperor in 1368), followed by his son Ming Yongle, who consolidated the empire and blamed the collapse of the Sung on the commercial society and limited government of the Sung and began a period of demonetization of the economy, elimination of markets in land, and elimination of foreign trade

V. Comparison: Rise and Collapse of Islamic Civilization

- 610 Muhammad receives his first revelation
- 622 Muhammad embarks on beginning of the emigration, beginning the Muslim era
- 632 Death of the Prophet, followed by the military and administrative successes of the Four Rightly Guided Caliphs, who spread Islam to Egypt, the Sasanian Empire, and throughout much of the Mediterranean, setting off an astonishingly rapid spread throughout the world
- 1258 Sack of Baghdad by the Mongols, led by Hulagu Khan, which effectively brought the Abbasid Caliphate to an end, after which Caliphs are largely creatures of Sultans and other wielders of military and political power (unlike in the Latin West, where the Pope rises as an independent power that can check the claims of the Emperors)

Liberty in the Dark Ages and in the Middle Ages in Europe

I. The Collapse of the Roman Imperium in the West and the Settlement of the Germans

- 330—the foundation of a new Rome by the Emperor Constantine in 330—
"Constantinopolis," the "City of Constantine," and the creation of a system of two emperors of a single empire, one located in Rome, the other in the Second Rome
- 410—the abandonment of Britain by the Roman Legions (different dates are given in different sources for the end of Roman administration)
- 451—Hunnic invasion of Gaul under the leadership of Attila
- 454—Defeat of Attila by the combined armies of the German tribes
- 476—the last Roman Emperor *in Rome*, Romulus Augustulus, is expelled by the German general Odovacar
- 480—the death of Julius Nepos brings to an end the separate line of emperors in the west

- With no Roman Emperor in Rome, the Christian Bishop of Rome begins to take on more and more of the prestige of the Roman Empire
- The crowning of the Frankish King Carolus Magnus (Charlemagne) as Emperor of Rome on Christmas Day in 800 by Pope Leo III
- The Carolingian Empire is divided by the Treaty of Verdun among the sons of Charlemagne's son Louis the Pious in 843
- Otto I, King of Germany, crowned Emperor by the Pope in Rome in 962, thus beginning the Kaiserzeit, or "Time of the Emperors," and what would become the Holy Roman Empire of the German Nation (which was only dissolved by Napoleon in 1806; one principality of it still exists, however, Lichtenstein, which was overlooked in the various intrigues)

II. The "Gregorian Reformation" of the Church (in which the Church Asserted Its Independence from the Secular Powers)

- 1073—the German monk Hildebrand becomes **Pope Gregory VII**
- 1075—Gregory VII issues the Dictates of the Pope in a letter to Emperor Henry IV
- 1077—Emperor Henry IV asks for Gregory VII's forgiveness in Canossa
- 1122—Emperor Henry V and Pope Calixtus II sign the Concordat of Worms, wherein the Emperor guaranteed that bishops and abbots would be chosen by the church and the pope conceded the Emperor's right to intervene in disputed elections; each power recognized the power and authority of the other.

III. The Rediscovery of the Roman Law

- 530 At the request of the Emperor Justinian, the lawyer Tribonian systematizes and codifies the Roman law, presented in the form of a "codex," i.e., a book of the modern form, produced on pages, rather than on scrolls
- About 1080—a copy of the *Digest of Justinian* rediscovered in Italy
- Law schools are founded, notably in Bologna
- The Roman Law is viewed as ideal law and hence as independent of the will of the rulers
- Two principles drawn from the Roman Law that provide the slogans for the two sides, constitutionalist vs. absolutist:

quod omnes tangit ab omnibus approbetur (what touches all must be approved of by all)

vs.

quod principi placuit legis vigorem habet (what pleases the prince has the force of law)

IV. The Growth of Independent "Communes," i.e., Self-governing Cities

- Cities as associations of free persons, based on freedom and peace, and typically surrounded by a wall to provide protection for the peaceful life within
- The communes are based on public oaths, robust social contracts that are actual, not hypothetical
- “Stadtluft macht frei (nach Ablaufe von Jahr und Tag)” -- City air makes one free (after the lapse of a year and a day)
- The growth of cities accelerated the growth of commerce, markets, and commercial law
- From the communes we derive a wide variety of modern terms; from the Latin term (*civitas*) we derive “civil society” and “civility” (and the exhortation to “be civil!” said by parents to children), referring to the polite treatment of strangers characteristic of commercial cities; from the German term for a fortified place (*Burg*) we derive such names as Pittsburgh and Hillsborough and (through French) *bourgeois*; to get a sense of the deep roots of such terms, consider the name of the old Virginia legislature: the “House of Burgesses”

V. The European Movement for Written Charters of Privileges and Immunities

- Examples: Magna Carta (1215), Golden Bull of Hungary (1222), Pact of Kosice (1374), many others. Magna Carta commits King John to respect the rights of his subjects and to rule by the law: “No free man shall be taken, imprisoned, disseized [having one’s estate taken], outlawed, banished, or in any way destroyed, nor will We proceed against or prosecute him, except by the lawful judgment of his peers or by the law of the land.” (Item 39)
- Recognition of the principle of reciprocity between rulers and ruled
- Recognition of the right of petition, redress, and popular consent (“Redress before Supply,” much later to be known as “No taxation without representation”)

VI. Development of the Principle of That All Rational Creatures Have Rights

● **Innocent IV** (*Decretales*, 3.34.8, c. 1250): “I maintain, therefore, that dominium, possession, and jurisdiction can belong to infidels licitly and without sin, for these things were made not only for the faithful but for every rational creature as has been said. For he makes his sun to rise on the just and the wicked and he feeds the birds of the air, Matthew c.5, c.6. Accordingly we say that it is not licit for the pope or the faithful to take away from infidels their belongings or their lordships or jurisdictions because they possess them without sin.”

● **St. Thomas Aquinas** integrates the concepts of justice and of rights; Thomas undertakes a fusion of Christian faith, Aristotelian logic and science, and Roman law in his *Summa Theologica* (written c. 1265-1272); the Aristotelian theory of justice referred to the action done, known as *objective right* (“that disposition [habit] which renders men apt to do just things, and which causes them to act justly and to wish what is just.” Aristotle, *Nicomachean Ethics*, V, i., 1129-a8-9), whereas in the Roman law Ulpian formulates justice in terms of the legitimate claims of persons, known as *subjective right* (“Justice is a steady and enduring

will to render unto everyone his right. 1. The basic principles of right are: to live honorably, not to harm another person, to render to each his own. 2. Practical wisdom in matters of right is an awareness of God's and men's affairs, knowledge of justice and injustice." *Digest of Justinian*, I, I, 10)

Thomas brings the two – subjective right and objective right – together to form a harmonious system: "It would seem that lawyers have unfittingly defined justice as being *the steady and enduring will to render unto everyone his right*. For, according to the Philosopher (Ethics, V, i.), *justice is a habit which renders a man apt to do what is just, and which causes them to act justly and to wish what is just*...I answer that, The aforesaid definition of justice [from the Digest of Justinian] is fitting if understood aright. For since every virtue is a habit that is the principle of a good act, a virtue must needs be defined by means of the good act bearing on the matter proper to that virtue. Now the proper matter of justice consists of those things that belong to our intercourse with other men...Hence the act of justice in relation to its proper matter and object is indicated in the words, *Rendering to each one his right*, since, as Isidore says (Etym. X), *a man is said to be just because he respects the rights (ius) of others*." (Thomas Aquinas, Summa Theologica, II^a, II^{ae}, Q. 58) Thus:

Justice is achieved when the rights of persons are respected, meaning that it is not necessary to know the mind of God or the perfect ordering of society in order to achieve justice; what is necessary is to know what your rights are and what the rights of other people are. That represents one of the greatest intellectual revolutions of all time and a foundation for the achievements of later centuries. (And it is denied today by many who oppose the classical liberal conception of rights and the free exchange that it makes possible.)

● Thomas also provides an early defense of individualism in his brilliant essay "On the Unity of the Intellect Against the Averroists," which argued against ontological, epistemological, and moral/political collectivism.

VII. Comparison: Eastern Europe

- The foundation of the new Rome by Constantine in 330—"Constantinopolis," the "City of Constantine"
- Development of "Caesaro-Papism" in the east, as the power of the emperors was never ended there, and the church did not emerge as an institutional competitor to the imperial power
- The fall of Constantinople to the Turks in 1453 (the final conquest of the remnants of the Roman Empire comes in 1462)
- The transfer of the authority of Rome and of Orthodox Christianity to the Muscovy

VIII. The Rise of Muscovy

- Establishment of Kievan Rus by Scandinavian pirates (“Vikings”)
- Invasion of Europe by the Mongols and establishment of the Overlordship of the Golden Horde (1237 invasion; December 11, 1241 Ogedai Khan dies and the various officers return to Karakorum to elect a new Khan, thus sparing Europe from total invasion [pity the poor Chinese, however, to whom the Mongols then turned their attention!])
- The princes of Muscovy excel as tax collectors for the Golden Horde
- In 1380 the Prince of Muscovy defeats the Golden Horde in the Battle of Kulikovo

IX. The Destruction of Novgorod

- Novgorod was very much a part of the western constitutional movement; it was a member of the “Hanseatic League” of German merchant cities
- 1471—Tsar Ivan III (the first Prince of Muscovy to call himself “Tsar,” until then a title reserved for the Emperor of the Roman Empire in the East, now known as “Byzantium”) attacks and defeats the Novgorodians
- 1477—Tsar Ivan III uses his military power to force the city to surrender its liberties, abolish its popular assembly, and surrender its municipal bell, the symbol and mechanism of the city’s independence and of the liberty of its citizens
- 1570—Ivan IV (“Ivan the Terrible”) razes Novgorod and massacres its inhabitants: constitutionalism is snuffed out in Russia

Liberty in the Modern Age

I: The Rise of Absolutism in Western Europe

- Many factors lead to the rise of centralized states: changes in military technology, e.g., the pike, the musket, the cannon, close order drill, etc.
- The “Protestant Reformation” and the wars of religion
- European states begin colonization of the Americas; for the Spanish this brings incomes of gold and silver extracted by slave labor to the crown
- Constitutionalism seems doomed

II. The Debate Over the Status of the Indigenous Peoples of the Americas, the “Indians”

- 1506 **Bartolomé de las Casas** travels from Spain to Hispaniola in the West Indies and is given an *encomienda* (basically a plantation with slaves or serfs) for his services
- 1511 (August 15) de las Casas hears a sermon from Father **Antonio de Montesinos**, in which Montesinos defended the Indians; de las Casas returned his serfs to the Governor, became an advocate of the rights of the Indians, and became the first priest to be ordained in the New World
- 1539 **Francisco de Vitoria** of Salamanca publishes his *De Indis*, and defends the Indians:

“They are not, in point of fact, madmen, but have judgement like other men. This is self-evident, because they have some order in their affairs; they have properly ordered cities, proper marriages, magistrates and overlords (domini), laws, industries, and commerce, all of which require the use of reason.” (Question 1, Article 6)

"Every Indian is a man and thus is capable of attaining salvation or damnation"; "Every man is a person and is the master of his body and possessions"; "Inasmuch as he is a person, every Indian has free will, and, consequently, is the master of his actions"; "By natural law, every man has the right to his own life and to physical and mental integrity." (drawn from various writings)

- 1542 de las Casas convinced Charles I to pass the “New Laws” limiting Indian serfdom to one generation, thus liberating the children of Indians from servitude; his book “A brief account of the destruction of the Indies” was published and shocked European consciences

- 1544 de las Casas named Bishop of Chiapas, where he proceeded to enforce the liberation of the Indians by forbidding priests to give absolution and last rites to Spaniards who refused to free their serfs

- 1547 de las Casas returned to Spain and in 1550 decisively defeated the preeminent defender of the enslavement of the Indians, Juan Gines de Sepúlveda, in a debate before a church council in Valladolid

“Now if we shall have shown that among our Indians of the western and southern shores (granting that we call them barbarians and that they are barbarians) there are important kingdoms, large numbers of people who live settled lives in a society, great cities, kings, judges and laws, persons who engage in commerce, buying, selling, lending, and the other contracts of the law of nations, will it not stand proved that the Reverend Doctor Sepúlveda has spoken wrongly and viciously against peoples like these, either out of malice or ignorance of Aristotle's teaching, and, therefore, has falsely and perhaps irreparably slandered them before the entire world?” (*In Defense of the Indians*, chap. 4)

“The Indians are our brothers, and Christ has given his life for them. Why, then, do we persecute them with such inhuman savagery when they do not deserve such treatment? The past, because it cannot be undone, must be attributed to our weakness, provided that what has been taken unjustly is restored.” (*In Defense of the Indians*, Chapter 63)

III: The Heroic Dutch Revolt Against Absolutism

- 1556 Philip II of Spain receives the Netherlands as an inheritance from his father, Emperor Charles V. His rule over the Netherlands included the reorganization of the territories for fiscal purposes and the introduction of a Resident Inquisition

- 1567 The Duke of Alba is appointed by Philip to replace Margaret of Parma; he marches with 9,000 men from Milan with orders to raise taxes, enforce religious

uniformity, and centralize power by destroying the autonomy of the towns and of the estates

- The introduction of the “Tenth Penny” tax by the Duke of Alva in 1571, which led to widespread resistance

- The rebellion of the Dutch in defense of their medieval estates and privileges and the eventual establishment of the United Provinces (1606) and later of the Dutch Republic, which becomes known as a center of free presses (which would print anything for money), of limited government, of unprecedented and widespread prosperity, and of religious toleration, as **Benedict de Spinoza** noted in his *Tractatus Theologico-Politicus* (1670):

“In order to prove that from such freedom no inconvenience arises, which cannot easily be checked by the exercise of the sovereign power, and that men's actions can easily be kept in bounds, though their opinions be at open variance, it will be well to cite an example. Such an one is not very far to seek. The city of Amsterdam reaps the fruit of this freedom in its own great prosperity and in the admiration of all other people. For in this most flourishing state, and most splendid city, men of every nation and religion live together in the greatest harmony, and ask no questions before trusting their goods to a fellow-citizen, save whether he be rich or poor, and whether he generally acts honestly, or the reverse. His religion and sect is considered of no importance: for it has no effect before the judges in gaining or losing a cause, and there is no sect so despised that its followers, provided that they harm no one, pay every man his due, and live uprightly, are deprived of the protection of the magisterial authority.”

As the great historian John Lathrop Motley noted,

The rise of the Dutch Republic must ever be regarded as one of the leading events of modern times....

So much is each individual state but a member of one great international commonwealth, and so close is the relationship between the whole human family, that it is impossible for a nation, even while struggling for itself, not to acquire something for all mankind. The maintenance of the right by the little provinces of Holland and Zealand in the sixteenth, by Holland and England united in the seventeenth, and by the United States of America in the eighteenth centuries, forms but a single chapter in the great volume of human fate; for the so-called revolutions of Holland, England, and America, are all links of one chain. (*The Rise of the Dutch Republic*, 1855)

IV: Across the Water in England

- 1603—King James VI of Scotland becomes (in addition) King James I of England and attempts to establish absolute power

- 1625—James dies and his son Charles I comes to the throne, continuing his father's policies

- 1628—**Edward Coke**, who had defended the common law against James I (as well as the supremacy of the law over parliament), proposes and Parliament

passes the Petition of Right in Parliament (“Redress before Supply”), leading to Charles’s attempt to rule without Parliament

- The English Civil War breaks out (here I skip a great deal of detail) and the King is executed

V. The Levellers as the First Consistent, Self-aware Political Movement for Liberty

- The “New Model Army” is created, based entirely on volunteers, rather than on criminals and conscripts, as had been more common in the past

- Perhaps the most interesting and important participants in the Civil War are the **Levellers**, who promoted religious toleration, property, abolition of state monopolies, freedom of trade, and a written constitution

- Leaders of the included **John Lilburne, Elizabeth Lilburne, Richard Overton, William Walwyn, and Richard Rumbold**

- 1637 Lilburne arrested and charged before the Court of Star Chamber; he was found guilty of illegal printing and beaten, tortured, fined, and imprisoned. That caused outrage in England and led to the abolition of the Star Chamber in 1641. Lilburne continued to campaign for the rights of the accused to face his accuser and to know the charges against him, for the rights of juries to be judges of both fact and of law, and against self-incrimination through coerced confessions, principles which were later incorporated in American law. Lilburne spent many years in prison because of his convictions, was tortured repeatedly, and was punished by having an eye poked out with a pike. He died in the arms of his wife Elizabeth, also a prominent Leveller, when let out of prison. He said, “I shall leave this Testimony behind me, that I died for the Laws and Liberties of this Nation.”

- 1646 Richard Overton publishes his famous essay *An Arrow Against All Tyrants*

“To every individual in nature is given an individual property by nature not to be invaded or usurped by any. For every one, as he is himself, so he has a self-propriety, else could he not be himself; and of this no second may presume to deprive any of without manifest violation of the very principles of nature and of the rules of equity and justice between man and man. Mine and thine cannot be, except this be. No man has power over my rights and liberties, and I over no man’s. I may be but an individual, enjoy my self and my self propriety and may right myself no more than myself, or presume any further.”

- 1649 Leveller contingents in the New Model Army mutiny and refuse to invade Ireland to suppress the Irish. Lord Cromwell and Lord Fairfax attack, kill some of the Leveller troops, and imprison 340 in the church in Burford (not far from Oxford); **Cornet Thompson, Corporal Perkins, and Private Church** are executed for refusing to suppress Irish Catholics. (Visit the church at Burford, where you can see carved into the baptismal font: Anthony Sedley Prisoner 1649.)

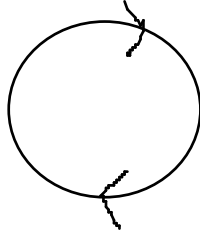
VI. The Glorious Revolution

- The Stuarts are restored in 1660 in the person of Charles II (son of Charles I), who attempts to restore absolutist rule
- The “Exclusion Crisis” over whether Charles II’s brother, James II (known as a Roman Catholic) would come to the throne and re-establish the Roman Catholic Church as the state church
- The Glorious Revolution of 1688
 - 1686—in America the king had abolished the colonial assemblies and replaced them with the “Dominion of New England,” with an appointed Royal Governor and an appointed council
 - William (Stadholder of the Netherlands) and Mary, both grandchildren of Charles I, assume the throne
 - 1689—Parliament passes the Bill of Rights
 - Publication of **John Locke**’s *Two Treatises of Government* (written during the earlier Exclusion Crisis, during which the Whigs sought to exclude James II from the throne on the grounds that he was a Roman Catholic, and therefore likely to reimpose the Roman Church as the state church and to bring with it the then-Catholic-associated political theory of royal absolutism with it)

“*[T]he end of law is not to abolish or restrain, but to preserve and enlarge Freedom: For in all the states of created beings capable of Laws, where there is no Law, there is no Freedom. For Liberty is to be free from restraint and violence from others which cannot be, where there is no Law: But Freedom is not, as we are told, A Liberty for every Man to do what he lists: (For who could be free, when every other Man’s Humour might domineer over him?) But a Liberty to dispose, and order, as he lists, his Persons, Actions, Possessions, and his whole Property, within the Allowance of those Laws under which he is; and therein not to be subject to the arbitrary Will of another, but freely follow his own.*” (John Locke, *Second Treatise of Government*, Chap. VI, §57)

VII: The American Revolution

- “No taxation without representation” an updated version of Magna Carta, No. 12, “No scutage [money paid by a vassal to a lord in lieu of personal services; a tax] or aid shall be imposed in our realm unless by the common counsel of our realm” and of the maxim from the Roman law *quod omnes tangit ab omnibus approbetur* (what touches all must be approved of by all).
- Revolution—the revolution of a wheel to its earlier position, a restoration and return to first principles



Revolution: A Return to First Principles

- A return to the first principles of Magna Carta, the Petition of Right, the Glorious Revolution, and the (English) Bill of Rights

In a letter of 1815 from John Adams to **Thomas Jefferson**, Adams wrote:

“What do we mean by the Revolution? The war? That was no part of the Revolution; it was only an effect and consequence of it. The Revolution was in the minds of the people, and this was effected, from 1760 to 1775, in the course of fifteen years before a drop of blood was shed at Lexington. The records of the thirteen legislatures, the pamphlets, newspapers in all the colonies, ought to be consulted during that period to ascertain the steps by which the public opinion was enlightened and informed concerning the authority of Parliament over the colonies.”

In a letter of May 8, 1825 from Thomas Jefferson to Henry Lee, Jefferson wrote:

“But with respect to our rights, and the acts of the British government contravening these rights, there was but one opinion on this side of the water. All American whigs thought alike on these subjects. When forced, therefore, to resort to arms for redress, an appeal to the tribunal of the world was deemed proper for our justification. This was the object of the Declaration of Independence. Not to find new principles, or new arguments, never before thought of, not merely to say things which had never been said before; but to place before mankind the common sense of the subject, in terms so plain and firm as to command their assent, and to justify ourselves in the independent stand we are compelled to take. Neither aiming at originality of sentiment, nor yet copied from any particular and previous writing, it was intended to be an expression of the American mind, and to give to that expression the proper tone and spirit called for by the occasion. All its authority rests then on the harmonizing sentiments of the day, whether expressed in conversation, in letters, printed essays, or in the elementary books of public right, as Aristotle, Cicero, Locke, Sidney, &c.”

VII. The Struggle to Abolish Slavery and to Secure the Rights of Women, Followed by Struggle Against Segregation, “Jim Crow” laws, and Other Forms of Oppression

- The abstract promise of the American Declaration of Independence, “that all Men are created Equal,” leads many to insist on abolition of the slave trade and of slavery itself.
- That movement is seen as a simple application of the promise of the American Revolution, and is later applied to the struggle for the rights of women and to eliminate the vestiges of slavery and other forms of oppression
- Many deserve mention, but especially active are **William Lloyd Garrison**, editor of *The Liberator*, **Lysander Spooner**, and **Frederick Douglass**.

Douglass was born in 1818 in Talbot County, Maryland, raised as a slave, and taught himself how to read and write, despite that being illegal; in 1831 he reads a newspaper about John Quincy Adams’ antislavery petition in Congress and buys with a little money he had gotten for work a copy of *The Columbian Orator*, full of famous speeches, from which he learned how to write and speak eloquently; in 1835 he starts teaching other slaves reading and writing; in 1838 he escaped his slavery on a sailing ship; in 1841 he joined the organized anti-Slavery movement and becomes a powerful orator; in 1845 he visits England and campaigns for free trade; English libertarians raise money to pay off his former owner to induce him to legally “manumit” Douglass; in 1848 he took part in the first women’s rights convention in Seneca Falls, New York; spends the rest of his life campaigning for equal rights for everyone, arguing against racism and sexism, and promoting free trade and limited government. He dies in Washington, D.C. after speaking at a meeting of the National Council of Women, while describing the meeting to his wife. His spirit continued to inspire Americans for generations, as it should for generations yet to come.

The American Constitutional Presumption of Liberty: Unenumerated Rights, Enumerated Powers

The Declaration of Independence states:

“We hold these Truths to be self-evident, that all Men are created equal, that they are endowed by their Creator with certain unalienable Rights, that among these are Life, Liberty, and the Pursuit of Happiness—That to secure these rights, Governments are instituted among Men, deriving their just Powers from the Consent of the Governed, that whenever any Form of Government becomes destructive of these Ends, it is the Right of the People to alter or to abolish it, and to institute new Government, laying its Foundations on such Principles, and organizing its Powers in such Form, as to them shall seem most likely to effect their Safety and Happiness.”

The Constitution of the United States establishes a government of *delegated*, *enumerated*, and therefore *limited* powers. For example, the powers of Congress

are set forth in Article I, Section 8. The theory of the constitution is of a government exercising enumerated powers and a people enjoying unenumerated rights, as stated quite explicitly in the Ninth and Tenth Amendments to the Constitution, the crowning glory of the Bill of Rights.

Ninth Amendment to the U.S. Constitution:

“The enumeration in the Constitution of certain rights shall not be construed to deny or disparage others retained by the people.”

Tenth Amendment to the U.S. Constitution:

“The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people.”

Is the Story Over? NO.

The authors of the next chapter in the story of the struggle for liberty are in this room today.

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(* = especially recommended; if you can read only one book, read one of the ones in

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