



**IHS Summer Seminars 2010: "Morality, Capitalism, and Freedom"  
"A Brief History of Bills of Rights"  
Dr. David M. Hart**





*THE BRITISH ATLAS, or John Bull supporting the Peace Establishment.*

Charles Williams, "The British Atlas, or John Bull supporting the Peace Establishment" (1816)

## Questions to keep in mind:

- when was the first Bill of Rights created?
- what is the purpose of a Bill of Rights?
- what are some of the most important historical examples of Bills of Rights?
- whose rights are to be protected?
  - against whom are their rights protected?
  - why do their rights need protection?
  - who have been left out of this protection?
- do Bills of Rights work as intended?
- who has, or should have, rights?
- what is the best way to protect these rights? is a written Bill of Rights the best way?
- how do you think existing Bills of Rights might be improved?





- the Norman Yoke (1066) vs the rights of Anglo-Saxons
- “the imprescriptible rights of Englishmen”
- “the immemorial rights of Englishmen”
- “the native Rights of Englishmen”





**Michael Curtiz, *The Adventures of Robin Hood* (1938)**



**Michael Curtiz, *The Adventures of Robin Hood* (1938)**

## Introductory Thoughts

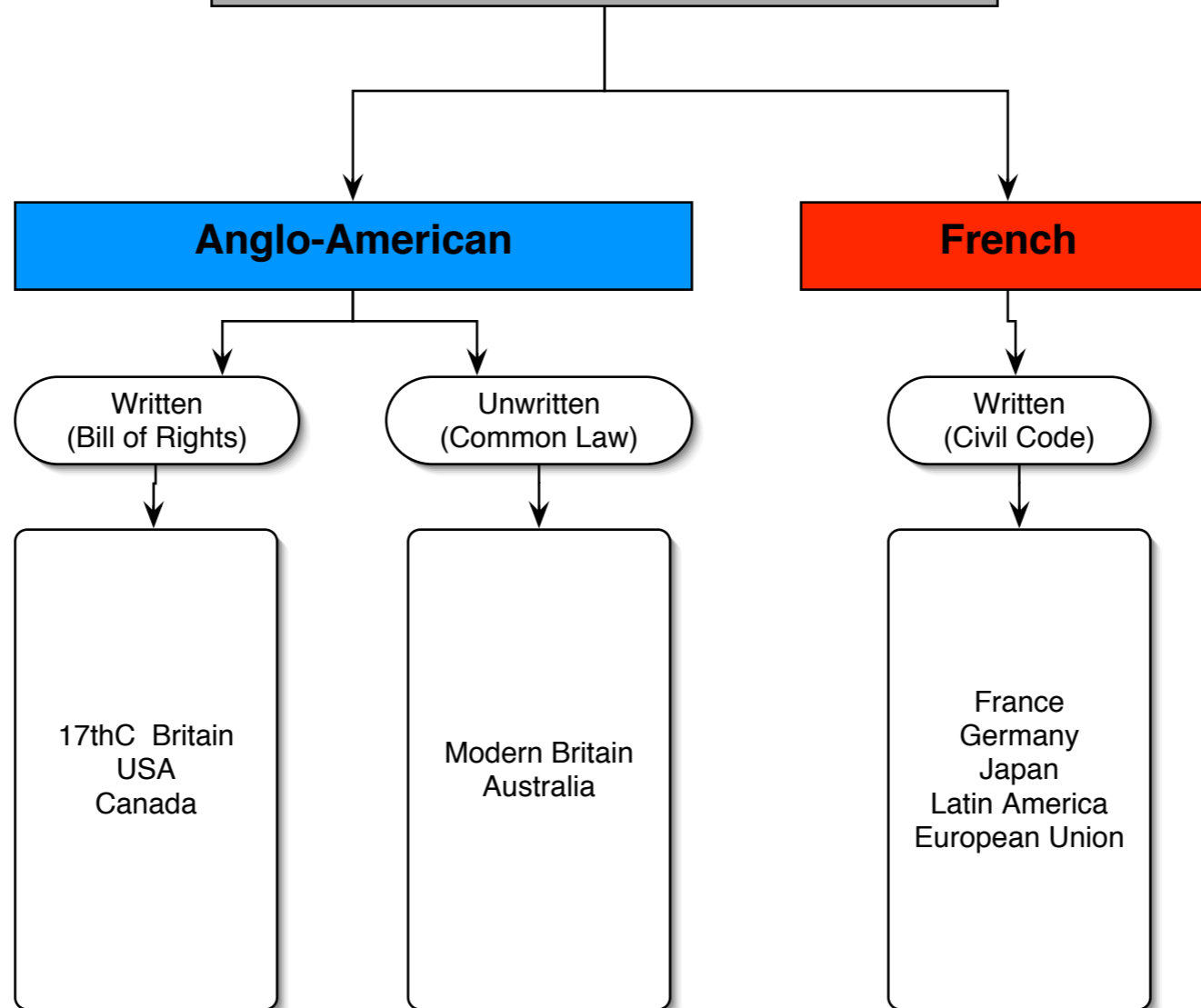
- I have put together a collection of nearly 100 “Key Documents about Liberty” at the OLL Website [Forum/Reading Lists]
  - [oll.libertyfund.org](http://oll.libertyfund.org)
- sheer number of attempts to limit state power by means of a Bill of Rights suggests:
  - deep-seated need to defend liberty against power
  - these attempts work for a while and then fail
- beginning of rule of law and emergence of notion of rights vis-à-vis the ruler
  - first as customary rights
  - then as “natural rights” (the “imprescriptible rights of Englishmen”)

## **Some Key Points about Bills of Rights:**

- they are claims of “right” (or privilege) of one group of people against another (usually a ruler) who feels aggrieved about “rights” violations
- they may or may not be expressed in “universalist” language (“all men are created equal”) but usually for benefit a particular group
- need to note who have been excluded - women, slaves, propertyless men
- usually outcome of a bitter struggle - war, revolution
- usually list specific grievances in some detail, e.g. American Declaration of Independence
- over time previously excluded groups are gradually included (propertyless men, women)
- gradually evolution of more abstract declaration of “rights”
  - “natural” rights in late 18thC - Enlightenment & Lockean
  - state source of rights in late 18thC - Rousseau
  - welfare or “positive” rights in 20thC
- 2 (possibly 3) different traditions
  - Roman legal tradition
  - British customary common law tradition
  - French civil code (Napoleonic Code)



# THE TWO TRADITIONS OF RIGHTS



**ALL THINKING BEINGS (COMPUTERS, ROBOTS, ALIENS, DOLPHINS, GREAT APES?)**

**ALL HUMAN BEINGS**

**CHILDREN (?)**

**ABORIGINAL/NATIVE PEOPLE (LATE 20THC)**

**AFRICAN AMERICANS (MID-20THC)**

**WOMEN (EARLY 20THC)**

**ALL WHITE MEN (19THC)**

**PROPERTY-OWNING WHITE MEN (17TH-18TH C)**

**NOBLES (13THC)**

**KINGS AND EMPERORS**

**WHO HAS  
RIGHTS?**



## Discussion of Some Examples of Bills of Rights

Ancient World:

- Code of Urukagina (2350 BC)



Medieval Period:

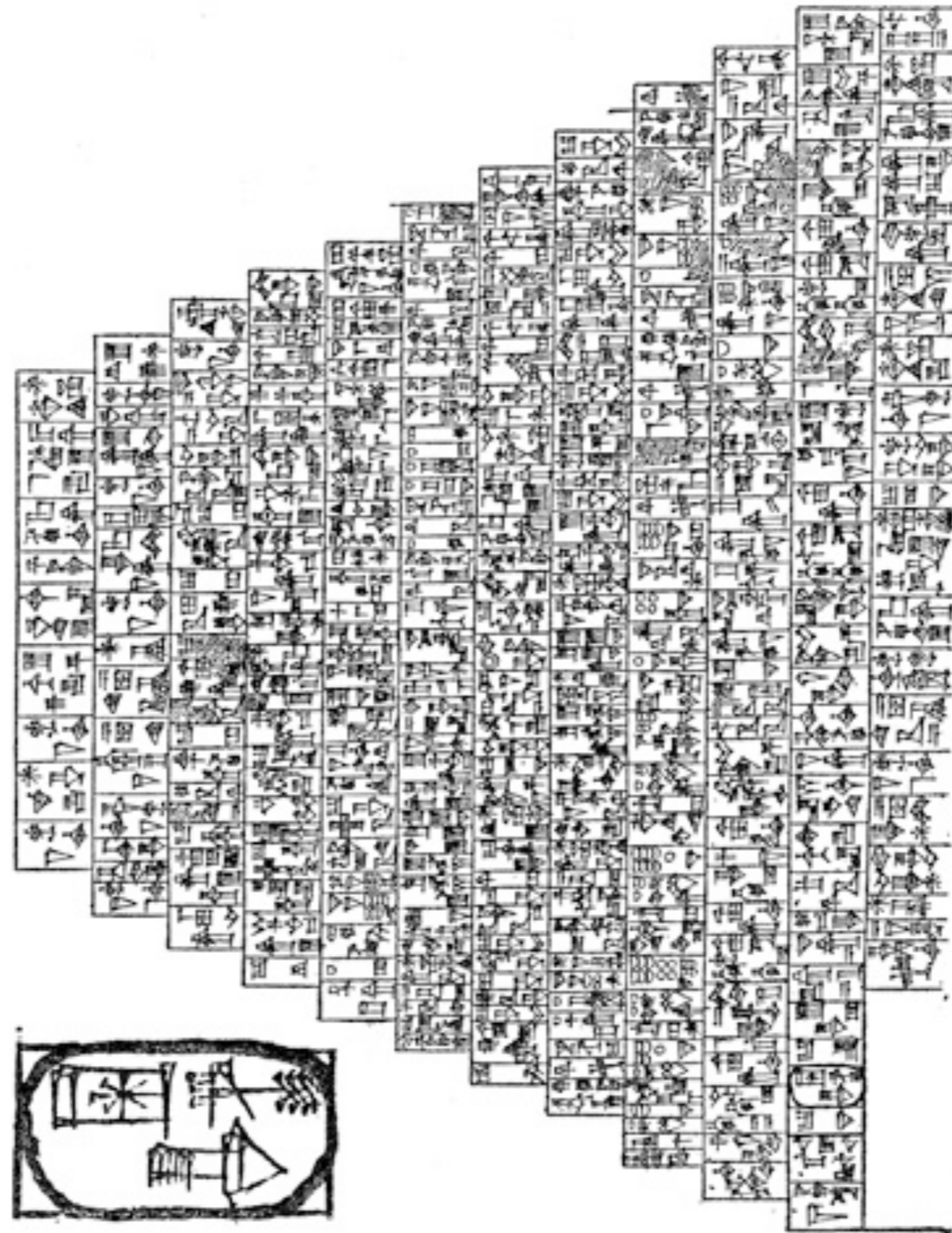
- Magna Carta (1215)

17thC England:

- An Agreement of the People (1647)

18thC America and France:

- Virginia Bill of Rights (1776)
- The Declaration of the Rights of Man and of the Citizen (1789)
- Olympe de Gouges "Rights of Woman" (1791)
- The Declaration of Independence (1776) and The First Ten Amendments of the Constitution (1791)



Ancient World: Urukagina (2350 BC)

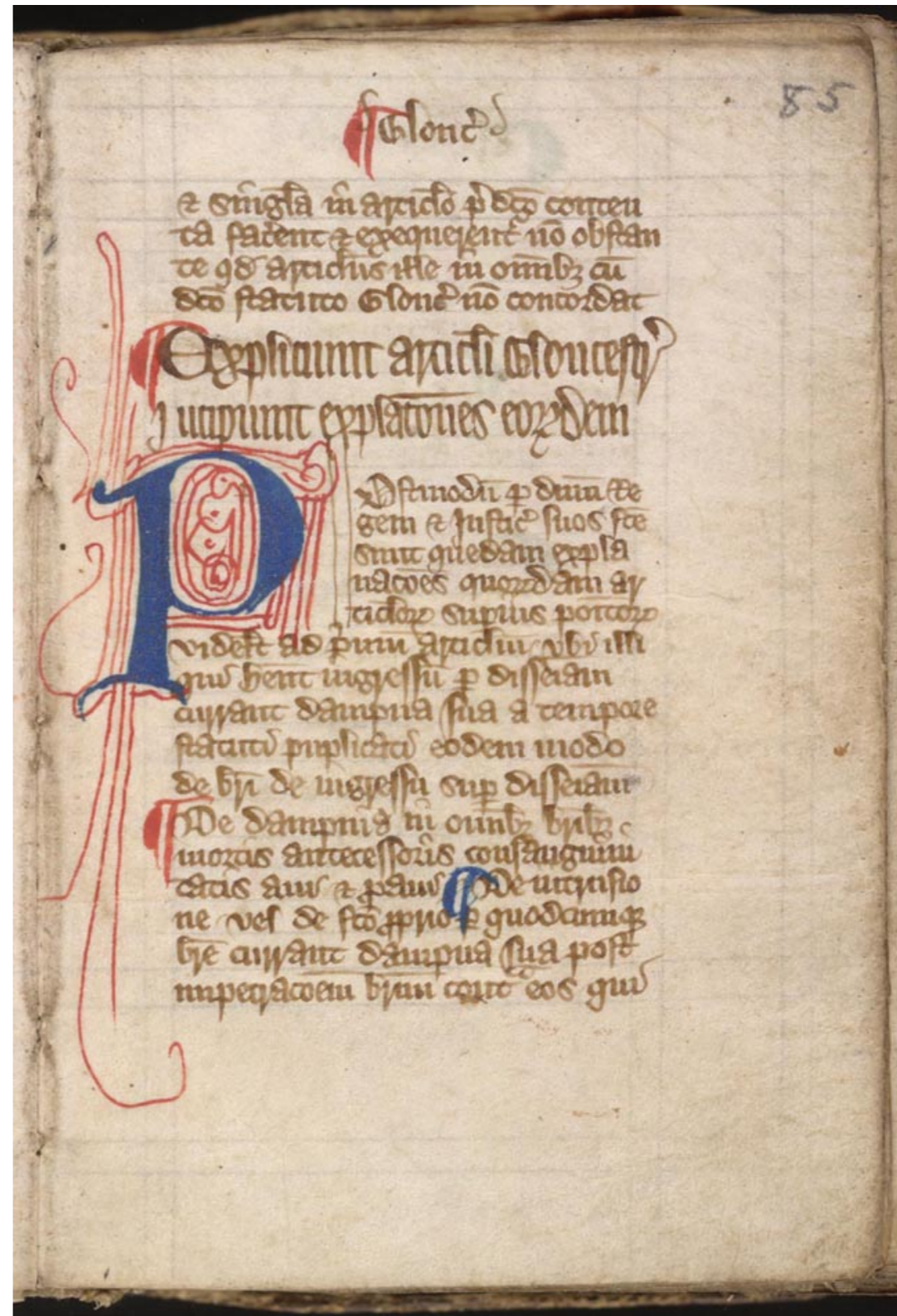
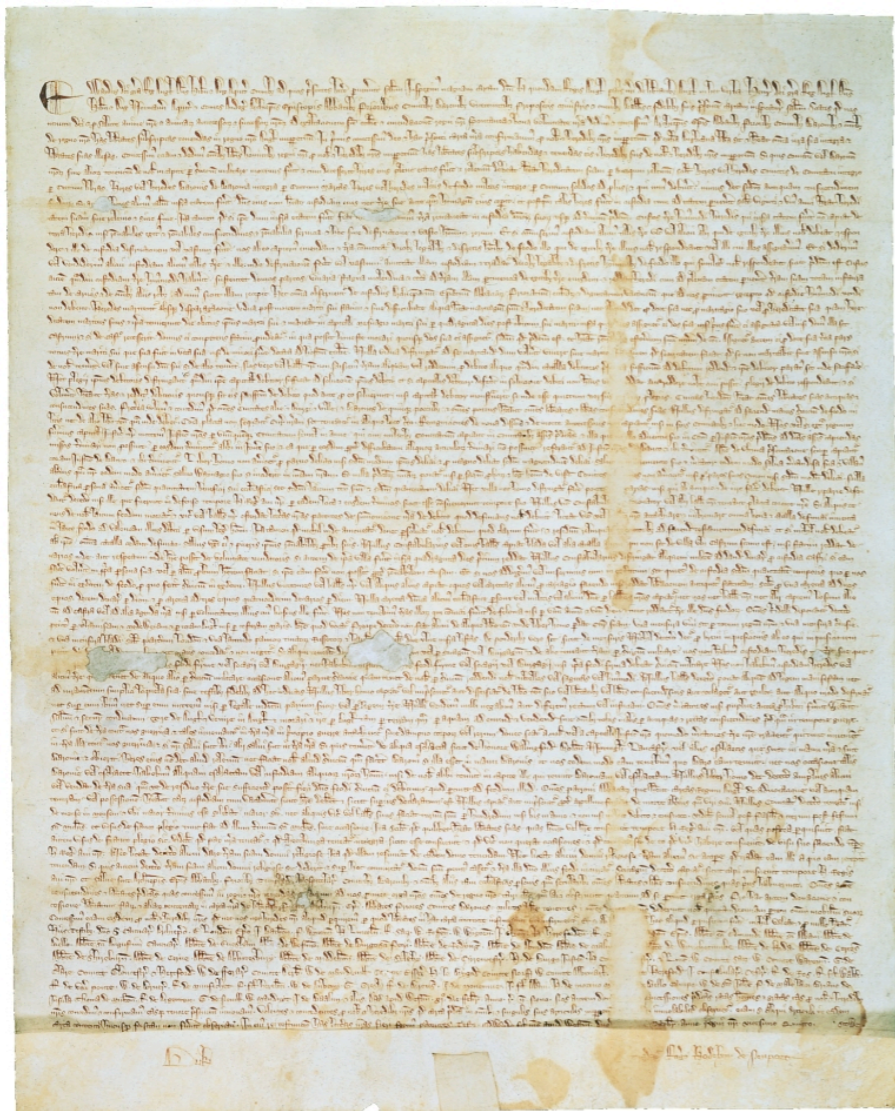


## Code of Urukagina (2350 BC)



- King Urukagina (circa 2350 BC) was leader of the Sumerian city-state Lagash (modern day Iraq)
- led popular movement of legal reform of the oppressive legal and government structure
- codified reforms which were written on cuneiform tablets (discovered by French in 1878)
- preamble states: “From the borders of the Ningirsu to the sea, there was the tax collector...”
- guaranteed property rights
- banned seizure of property by state and church
- fired most tax collectors
- returned previously seized property
- made judicial proceedings public and open
- the cuneiform character for “liberty” is pronounced “amagi” and has been adopted as the logo of Liberty Fund
- 1st written expression of the word “liberty”?





Medieval Period: Magna Carta (1215)



## **Magna Carta Libertatum(Great Charter of Liberties) (or Charta) (1215)**

- settlement between powerful noble lords and the King John of England (John) after battle of Runnymede)
- based upon Charter of Liberties issued by King Henry I 1100
- Nobles objected to violation of their customary rights by the crown:
  - right to be taxed at fixed times and circumstances
  - right to be tried by a jury of the peers (i.e. other lords)
- Church objected to claim by crown to appoint bishops
- important because among the specific claims began to emerge general principles such as due process of law (clauses 39-40)
- exerted enormous influence in later centuries in England and America:
  - 17thC England
  - 17th and 18thC America
  - 19thC Chartist movement

AN  
AGREEMENT  
OF THE  
PEOPLE

FOR

A firme and present Peace, upon  
grounds of common-right and free-  
dome;

As it was propofed by the Agents of the five  
Regiments of Horfe; and fince by the generall approba-  
tion of the Army, offered to the joynt concur-  
rence of all the free COMMONS of  
ENGLAND.

The Names of the Regiments which have already appeared for the  
Cafe, of *The Cafe of the Army truly stated*, and for this  
present Agreement, *VIZ.*

1. <i>Gen. Regiment.</i>	} Of Horfe	1. <i>Gen. Regiment.</i>	} Of Foot.
2. <i>Life-Guard.</i>		2. <i>Col. Sir Hardrefse Wallers Reg.</i>	
3. <i>Lieut. Gen. Regiment.</i>		3. <i>Col. Lamberts Reg.</i>	
4. <i>Com. Gen. Regiment.</i>		4. <i>Col. Rainsboroughs Regiment.</i>	
5. <i>Col. Whaleyeyes Reg.</i>		5. <i>Col. Overtons Reg.</i>	
6. <i>Col. Riches Reg.</i>		6. <i>Col. Lilburns Reg.</i>	
7. <i>Col. Fleetwoods Reg.</i>		7. <i>Col. Backfters Reg.</i>	
8. <i>Col. Harrifons Reg.</i>			
9. <i>Col. Twifldens Reg.</i>			

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Printed *Anno. Dom.* 1647.



AN  
ARROW  
AGAINST ALL TYRANTS

14  
--

And Tyranny, shot from the Prison of New-gate  
into the Prerogative Bowels of the Arbitrary House  
of Lords. and all other Usurpers and Tyrants  
*Whatsoever.*

wherein the originall rise, extent, and end of Magi-  
steriall power, the naturall and Nationall rights, freedomes and pro-  
perties of Mankind are discovered, and undeniably maintained; the  
late oppressions and incroachments of the Lords over the Commons  
legally ( by the fundamentall Lawes and Statutes of this Realme,  
as also by a memorable Extract out of the Records of the *Tower of  
London* ) condemned; The late Presbyterian Ordinance ( invented  
and contrived by the Diviners, and by the motion of *Mr. Bacon* and  
*Mr. Taet* read in the House of Commons ) examined, refuted, and  
exploded, as most inhumaine, tyranicall and Barbarous.

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By *RICHARD OVERTON*

Prerogative Archer to the Arbitrary House of Lords, Their  
Prisoner in New-gate, for the just and legall properties, rights and  
*freedoms of the Commons of England: Sent by way of a Letter  
from him, to Mr. Henry Martin, a Member of the  
House of Commons.*

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*gbor. 10th.* IMPRIMAT UR  
*Rectat Justitia.*

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Printed at the backside of the Cyclopien Mountains, by *Martin Clav-*  
*Clergy*, Printer to the reverend Assembly of Divines, and are to  
be sould at the signe of the Subjects Liberty, right oppo-  
site to persecuting Court. 1646.

## **An Agreement of the People (1647)**

- English Revolution (1640-1660)
  - Civil War 1640-1649 between Catholic Stuart monarch King Charles I and Puritan Parliament
  - Commonwealth 1649-1653
  - Oliver Cromwell's Protectorate 1653-1658
- debate among army officers in New Model Army about political demands to be made to Cromwell and other senior officers
- wanted stable Parliamentary govt, end to Civil War, and protection of rule of law for all people
- "Agreement of the People" read and debated by junior officers and agitators on October 29, 1647



## **An Agreement of the People (1647)**

5 general demands concerning Parliament:

- end to unequal electoral districts
- existing Parliament to be dissolved and new elections held
- Parliaments elected every 2 years on fixed date
- Parliament not supreme but subject to those “who chuse them”
- Parliament to have powers:
  - enact and repeal laws
  - erect or abolish offices and courts
  - appoint or remove magistrates
  - declare war and peace and make treaties

## **An Agreement of the People (1647)**

5 demands concerning Liberty of citizens (their “native Rights”):

- that there be freedom of religion
- an end to conscription
- amnesty for all those who fought in civil war (both sides)
- that laws apply equally to all regardless of rank or wealth
- laws must be both “equal” and “good”, i.e. “not evidently destructive to the safety and well-being of the people”



18thC America: Virginia Bill of Rights (1776)

George Mason (1725-1792)



## **The Virginia Bill of Rights (1776)**

- Drafted by a committee headed by George Mason (1725-1792)
- passed unanimously on June 12, 1776
- then drafted a constitution with a lengthy preamble written by Thomas Jefferson -adopted on June 29
- importance:
  - it preceded the Declaration of Independence and 1st Ten Amendments of the Constitution (the Bill of Rights”)
  - clear statement that the law of nature is the source of the rights of individuals (better expressed than TJ’s in Declaration of Independence)
  - influenced declarations issued by other states (Delaware, Pennsylvania, and at least 4 others)
  - influence on French Declaration of the Rights of Man and Citizen (via Lafayette)





18thC France: Declaration of the Rights of Man and of the Citizen (1789)



## **The Declaration of the Rights of Man and of the Citizen (1789)**

- Adopted by the Constituent Assembly 26 August, 1789 to assert the claims of the Third Estate against the king
- designed to be a preamble to the new constitution for a constitutional monarchy
- Influence of the marquis de Lafayette who had served in the American Revolution - especially George Mason's Virginia Declaration of Rights of Rights
- influence of the Abbé Sièyes in drafting declaration
- influence of Enlightened ideas about natural law - John Locke, Montesquieu, and Rousseau (problematical)
- Relatively short (17 articles) with emphasis on
  - rule of law (reaction against arbitrary behaviour of King),
  - universal equality of natural rights of all men
  - right to property.





18thC France: Olympe de Gouges, "Rights of Woman" (1791)

## **Olympe de Gouges “Rights of Woman” (1791)**

- Olympe de Gouges (1748-1793) daughter of a butcher and self-educated
- wrote the “Rights of Woman” (1791) using the same rhetoric and words of the Declaration
- she felt that that the official French Declaration of the Rights of Man and of the Citizen had compromised the universality of its principles by ignoring women
- influence of Condorcet, “On the Admission of Women to the Right to Vote” (July 1790).
- Guillotined by the Jacobins in 1793
- Condorcet guillotined in 1794





IN CONGRESS, JULY 4, 1776.

# A DECLARATION

BY THE REPRESENTATIVES OF THE  
UNITED STATES OF AMERICA,  
IN GENERAL CONGRESS ASSEMBLED.

**W**HEN in the Course of human Events, it becomes necessary for one People to dissolve the Political Bands which have connected them with another, and to assume among the Powers of the Earth, the separate and equal Station to which the Laws of Nature and of Nature's God entitle them, a decent Respect to the Opinions of Mankind requires that they should declare the causes which impel them to the Separation.

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 Foundation on such Principles, and organizing its Powers in such Form, as to them shall seem most likely to effect their Safety and Happiness. Prudence, indeed, will dictate that Governments long established should not be changed for light and transient Causes; and accordingly all Experience hath shewn, that Mankind are more disposed to suffer, while Evils are sufferable, than to right themselves by abolishing the Forms to which they are accustomed. But when a long Train of Abuses and Usurpations, pursuing invariably the same Object, evinces a Design to reduce them under absolute Despotism, it is their Right, it is their Duty, to throw off such Government, and to provide new Guards for their future Security. Such has been the patient Sufferance of these Colonies; and such is now the Necessity which constrains them to alter their former Systems of Government. The History of the present King of Great-Britain is a History of repeated Injuries and Usurpations, all having in direct Object the Establishment of an absolute Tyranny over these States. To prove this, let Facts be submitted to a candid World.

He has refused his Assent to Laws, the most wholesome and necessary for the public Good.

He has forbidden his Governors to pass Laws of immediate and pressing Importance, unless suspended in their Operation till his Assent should be obtained; and when so suspended, he has utterly neglected to attend to them.

He has refused to pass other Laws for the Accommodation of large Districts of People, unless those People would relinquish the Right of Representation in the Legislature, a Right inestimable to them, and formidable to Tyrants only.

He has called together Legislative Bodies at Places unusual, uncomfortable, and distant from the Depository of their public Records, for the sole Purpose of fatiguing them into Compliance with his Measures.

He has dissolved Representative Houses repeatedly, for opposing with manly Firmness his Invasions on the Rights of the People.

He has refused for a long Time, after such Dissolutions, to cause others to be elected; whereby the Legislative Powers, incapable of Annihilation, have returned to the People at large for their exercise; the State remaining in the mean time exposed to all the Dangers of Invasion from without, and Convulsions within.

He has endeavoured to prevent the Population of these States; for that Purpose obstructing the Laws for Naturalization of Foreigners; refusing to pass others to encourage their Migrations hither, and raising the Conditions of new Appropriations of Lands.

He has obstructed the Administration of Justice, by refusing his Assent to Laws for establishing Judiciary Powers.

He has made Judges dependent on his Will alone, for the Tenure of their Offices, and the Amount and Payment of their Salaries.

He has erected a Multitude of new Offices, and sent hither Swarms of Officers to harass our People, and eat out their Substance.

He has kept among us, in Times of Peace, Standing Armies, without the consent of our Legislatures.

He has affected to render the Military independent of and superior to the Civil Power.

He has combined with others to subject us to a Jurisdiction foreign to our Constitution, and unacknowledged by our Laws; giving his Assent to their Acts of pretended Legislation:

For quartering large Bodies of Armed Troops among us:

For protecting them, by a mock Trial, from Punishment for any Murders which they should commit on the Inhabitants of these States:

For cutting off our Trade with all Parts of the World:

For imposing Taxes on us without our Consent:

For depriving us, in many Cases, of the Benefits of Trial by Jury:

For transporting us beyond Seas to be tried for pretended Offences:

For abolishing the free System of English Laws in a neighbouring Province, establishing therein an arbitrary Government, and enlarging its Boundaries, so

as to render it at once an Example and fit Instrument for introducing the same absolute Rule into these Colonies:

For taking away our Charters, abolishing our most valuable Laws, and altering fundamentally the Forms of our Governments:

For suspending our own Legislatures, and declaring themselves invested with Power to legislate for us in all Cases whatsoever.

For suspending our own Legislatures, and declaring themselves invested with Power to legislate for us in all Cases whatsoever.

He has abdicated Government here, by declaring us out of his Protection and waging War against us.

He has plundered our Seas, ravaged our Coasts, burnt our Towns, and destroyed the Lives of our People.

He is, at this Time, transporting large Armies of foreign Mercenaries to complete the Works of Death, Desolation, and Tyranny, already begun with circumstances of Cruelty and Perfidy, scarcely paralleled in the most barbarous Ages, and totally unworthy the Head of a civilized Nation.

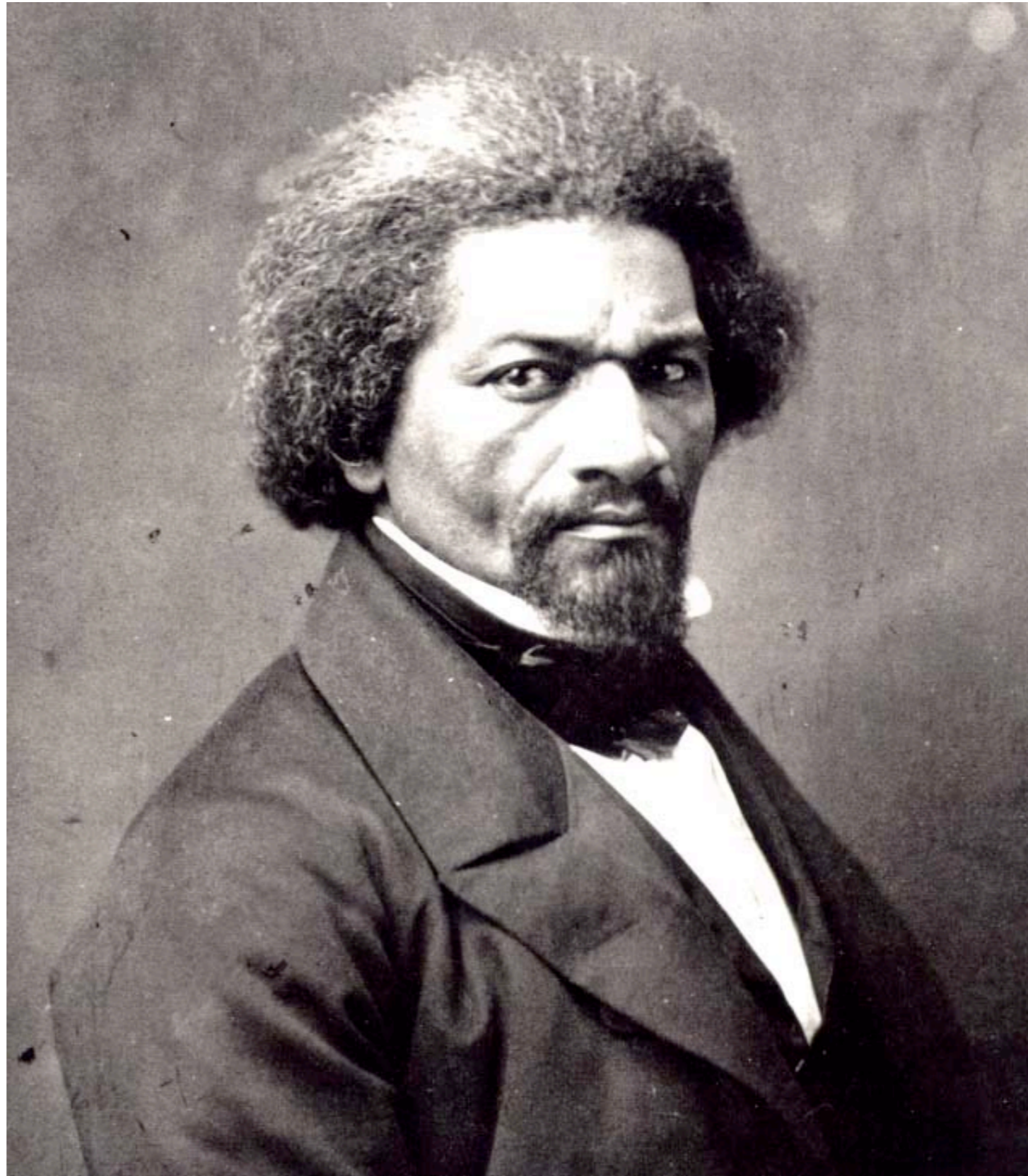
He has constrained our fellow Citizens taken Captive on the high Seas to bear Arms against their Country, to become the Executioners of their Friends and

18thC America: The Declaration of Independence (1776) & the Amendments to the Constitution (1791)



## **The Declaration of Independence (1776) and The First Ten Amendments of the Constitution (1791)**

- the relative briefness of the Declaration of Independence
- not a Declaration of “Rights” but a Declaration justifying secession from the British government
- many of the separate states had DoR as a preamble to their constitutions
- similarly with the 1st 10 amendments of the constitution (called the “Bill of Rights”)
- does not begin with a strong general statement about rights (compare French and Virginia)
- 9th Amendment suggest that this too is covered more fully in declarations and constitutions of individual states: “the enumeration in the Constitution, of certain rights, shall not be construed to deny or disparage others retained by the people”
- problem of those excluded from its coverage: native Americans, African slaves, women (from voting)



19thC America: Frederick Douglass, "Fourth of July Oration" (1852)

## Frederick Douglass, “Fourth of July Oration (1852)”

- Frederick Douglass (1818-1895) born a slave but escaped when was 20
- ardent abolitionist who first sided with William Lloyd Garrison but broke with him in 1851 over whether Constitution was an pro- or anti-slavery document
- Garrison believed it was pro-slavery and that anti-northern states should secede from Union
- Douglass believed with Lysander Spooner that it was anti-slavery and pro-liberty document
- in Oration complained that great principles in Constitution not applied to African-Americans - “This Fourth of July is *yours* not *mine*”
- “... but interpreted as it ought to be interpreted the Constitution is a GLORIOUS LIBERTY DOCUMENT”