



Notes – Context and Background

- I. Constitutionalism
 - a. Political ideology dating back almost 1000 years
 - b. Traits
 - i. People are the ultimate source of political authority
 - 1. Seems natural / self-evident, but it's really a radical modern notion
 - 2. Really only imagined within the last few hundred years
 - ii. Government has limited power
 - iii. Legal system allowing people to seek regress for government / private transgressions ("Rule of Law")
- II. First civilizations
 - a. "Everyone" – say 90% of people – were rural peasants.
 - b. Cities
 - i. Very few people lived in cities – very few cities.
 - ii. In a city people don't grow their own food.
 - iii. Without an agricultural surplus, there cannot be a city.
 - c. Peasants supported artisans (making tools), fighters, religious people – small groups
 - i. Fighters protected peasants from...
 - 1. marauders: people who hadn't settled down to a particular plot of land
 - 2. neighboring civilizations
 - ii. Religious Figures
 - 1. Protect civilization from the Gods.
 - 2. As important as the fighters
 - 3. Tell peasants when to plant (understood the lunar calendar)
 - iii. Society can't afford to feed many people. The surplus was extracted from the peasants as a tax and given to these small groups
 - d. Warriors / Priestly Class ruled as representatives of the Gods
 - e. When that didn't work, warriors could get violent. Peasants couldn't nearly afford a weapon or find any time to train.
 - f. Everyone knew their place; places were inherited. No social mobility!
 - g. Government
 - i. Run by Warriors / Priests
 - ii. Based on tradition
 - iii. No room for dissent
 - iv. Had power of life and death
 - h. Legal System
 - i. Preserved class structure
 - ii. Maintained the values of that society.
 - iii. Justice was different for a warrior and a peasant
 - iv. Courts had no jurisdiction over the priestly class – they had their own courts.
 - i. This is how it worked for thousands of years.
 - j. Existed in Europe as late as 1917
- III. An Exception: England
 - a. About 1000 years ago, began to develop a different legal system
 - b. About 1200 AD, almost everyone was a serf
 - i. Not a slave, but close.
 - ii. Come with the land.
 - iii. Most never traveled more than few miles.
 - iv. Small warrior class (chief warrior = King)
 - 1. What a lord wanted, he took – labor, crops, sex
 - 2. Serfs had no rights
 - v. Very small class of merchants
 - 1. Governed their own affairs, for a price, thanks to charters from the king.
 - 2. Everything was available for a price.

- vi. Warriors often fought with each other and with the King.
- c. Courts
 - i. King began developing non-local courts.
 - ii. King always needed money. He was fighting with warriors, merchants, and the church.
- d. King John (1215)
 - i. Needed money to fight in France
 - ii. Squeezing everyone pretty hard. Underlings & Barons (right under the king) got upset
 - iii. Agrees to sign Magna Carta
 - 1. I'll play by the traditional rules
 - 2. Will tax traditional amount for something like ceding to a position
 - 3. Stop interfering with merchants' charters
 - 4. What it WASN'T
 - a. NOT a charter of freedoms!
 - b. Created no new rights
 - c. The 90% serfs didn't know about it or care
 - d. Agreement between thugs (Barons, etc)
 - 5. What it WAS
 - a. King set down in writing that there are limits on the power of King.
 - b. So radical that the pope immediately declared it null and void.
 - c. Contained chapter 39: No free man could be taken / imprisoned except by the law of the land (Rule of Law!)
 - d. King cannot act arbitrarily
 - e. Due process of Law
 - f. Contained prohibition on laying of taxes (beyond the traditional) without approval of council of lords and church officials
 - i. Eventually becomes Parliament
 - ii. Parliament could make demands before they'd give the money
- e. Henry VIII
 - i. Broke from the Roman Catholic Church
 - ii. Created political and religious loyalties all in one place (the King). he was both the political and religious head of England
 - 1. Anyone with different beliefs now questioned the authority of the King
 - 2. Thinking differently from the king is not only heresy but also treason
 - iii. Before: EVERYONE was catholic, but one morning they're told they're not catholic anymore.
 - 1. Follow Henry, lose your soul
 - 2. Follow the Pope, lose your head
 - iv. Parliament growing stronger, more willing to challenge the king
 - v. Wealth coming increasingly from trade
 - vi. Well-educated commoners were gaining in economic position
- f. James I
 - i. Haul people into court (his own court) and try to trick them into incriminating themselves
 - ii. Held without bail, not told if they were even charged with a crime
- g. Charles I
 - i. Parliament chopped his head off!
 - ii. Sent a very clear message about the divine right of kings
 - iii. Parliament then hires a new king.
 - iv. Introduce the "Bill of Rights" (for Protestants only)
- IV. Hobbs & Locke
 - a. Start to wrestle philosophically with the question of the source of political power. This is the birth of political science

- b. Imagine an abstract place before any government. "State of Nature"
 - i. No security. A life spent looking over your shoulder.
 - ii. Hobbs: Result that was "Nasty, brutish, and short"
 - c. Alternative: People acting in their own self-interest could pool their power in a government.
 - i. Gain peaceful, stable society
 - ii. Give up the right to do whatever you feel is necessary to be secure
 - iii. Everyone's power to fight back has been granted to the government
 - d. Where should the power be
 - i. Hobbs: To an absolute monarch (The Rub: The monarch may not act in the people's best interest)
 - ii. Locke: People won't give up their powers that way. People can choose any government they want, but must be in control of that government.
 - 1. Limitations: Cannot tax without consent (just as bad as state of nature, people can just take yours stuff)
 - 2. Cannot delegate authority without consent.
 - 3. Government exists SOLELY to serve the people.
 - 4. (In modern times it's "The PEOPLE of the state... v. whoever")
 - e. Property
 - i. Suffrage was always based on ownership of property
 - ii. Those without property don't have a stake in what happens anyway
 - iii. "Life, liberty, property"
- V. The Written Charter
 - a. America's great contribution: "write it down"
 - b. England has no WRITTEN constitution
 - c. England was so far away that the colonists wanted clear definitions of rights .
 - d. Mayflower Compact was the first
- VI. American Revolution
 - a. First colony: 1607 → 1763
 - b. Salutary neglect (benign neglect) from England
 - c. Colonists get used to running their own affairs. Taxation much less than inside England
 - d. England gets busy fighting wars though.
 - e. Crown in charge of defense, diplomacy, trade.
 - f. Doesn't want trade between colonies of different countries
 - g. French-Indian war: England kicks out the bad guys, and the colonies are thrilled.
 - h. England feels like the colonies aren't pulling their weight.
 - i. 1763: England tries to take the colonies in hand.
 - j. Colonies resist: riot, boycott, usually the crown backs down.
 - k. 1773: England imposes a tax on tea, which actually makes tea CHEAPER in the colonies, but they were opposed to the principle
 - l. Colonists are still extremely loyal to England, just aren't happy with the arrangements. No movement toward independence.
 - m. Thomas Paine: "Common sense." What you want is independence.
 - n. Main purpose of the Declaration of Independence was to convince colonials that it was the right thing to do.
 - o. Articles of Confederation: Very weak national government.
 - i. States warring.
 - ii. Huge trade problems.
 - iii. Framers saw tremendous threats to commerce.
 - iv. Needed government powerful enough to unite the states.
- VII. Two Different Views of the Economy
 - a. Winthrop
 - i. Puritan Massachusetts.
 - ii. Bible imposes morals on business activities
 - iii. Not attending Sabbath services is a criminal offense
 - iv. Just Price: Man should not profit from the want of his community

- v. Moral Economy: Not just supply and demand, but also a moral consideration
- b. Adam Smith
 - i. Economic Freedom! Charge as much as you can get
 - ii. No God here – the Invisible Hand (~~a~~moral – neither moral nor immoral, it just *is*)
 - iii. Sole motivation of humans: self-preservation
 - iv. Whenever government gets involved the market is damaged