



Communications Law & Ethics

RU COMS 400 Unit 3 **Foundations of Freedom**

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Class web site:
revolutionsincommunication.com/law

On Track: Unit 3

- Read Section 3 on web site,
- Assignment 3 – group response, censorship experiences
- Additional readings
 - Cato, Jefferson, Franklin,
- Take quiz 3

Connections

- Who was Bloody Mary?
- What happened Nov 5, 1605?
- What was the “King James Bible”?
- What British king and queen took the throne in 1689?
- What else do we know about the journey from the Gunpowder Plot to the Glorious Revolution?
- What fundamental things changed in Britain?

Historical concepts

- Religious tolerance
- Equal justice under law
- Due process
- Natural rights of individuals
(replaced divine rights of kings)
- Marketplace of ideas
 - – freedom of speech and press
- The social contract
- Limited government &
Balance of powers (3 part government)

Historical timeline

- Classical civilizations 550s BCE – 1000 ACE
 - China, India, Greek, Roman, Arabic cultures
- Middle ages – 500 ACE – 1500 ACE
 - Fixed ideas, superstitions
 - Authorities in church & state repressed the free flow of ideas, new discoveries
- Protestant Reformation 1500s – 1700s
 - Printing accelerated dissent
- Counter-reformation 1500s-1700s
 - Heavy penalties for sedition & heresy
- Age of Enlightenment 1600s – 1800s
 - Political revolutions – English, American, French, Haitian, Latin America

Enlightenment figures

- British
 - Francis Bacon, Isaac Newton, John Milton, John Locke, David Hume, John Stuart Mill,
 - French: Francois Voltaire, Montesquieu, Jean-Jacques Rousseau
 - Americans: Franklin, Jefferson, Madison
- Political revolutions 1600s – 1848

Confucius

China (551 – 479 BCE)



Human institutions should be balanced based on respect for others and a sense of duty to the society.

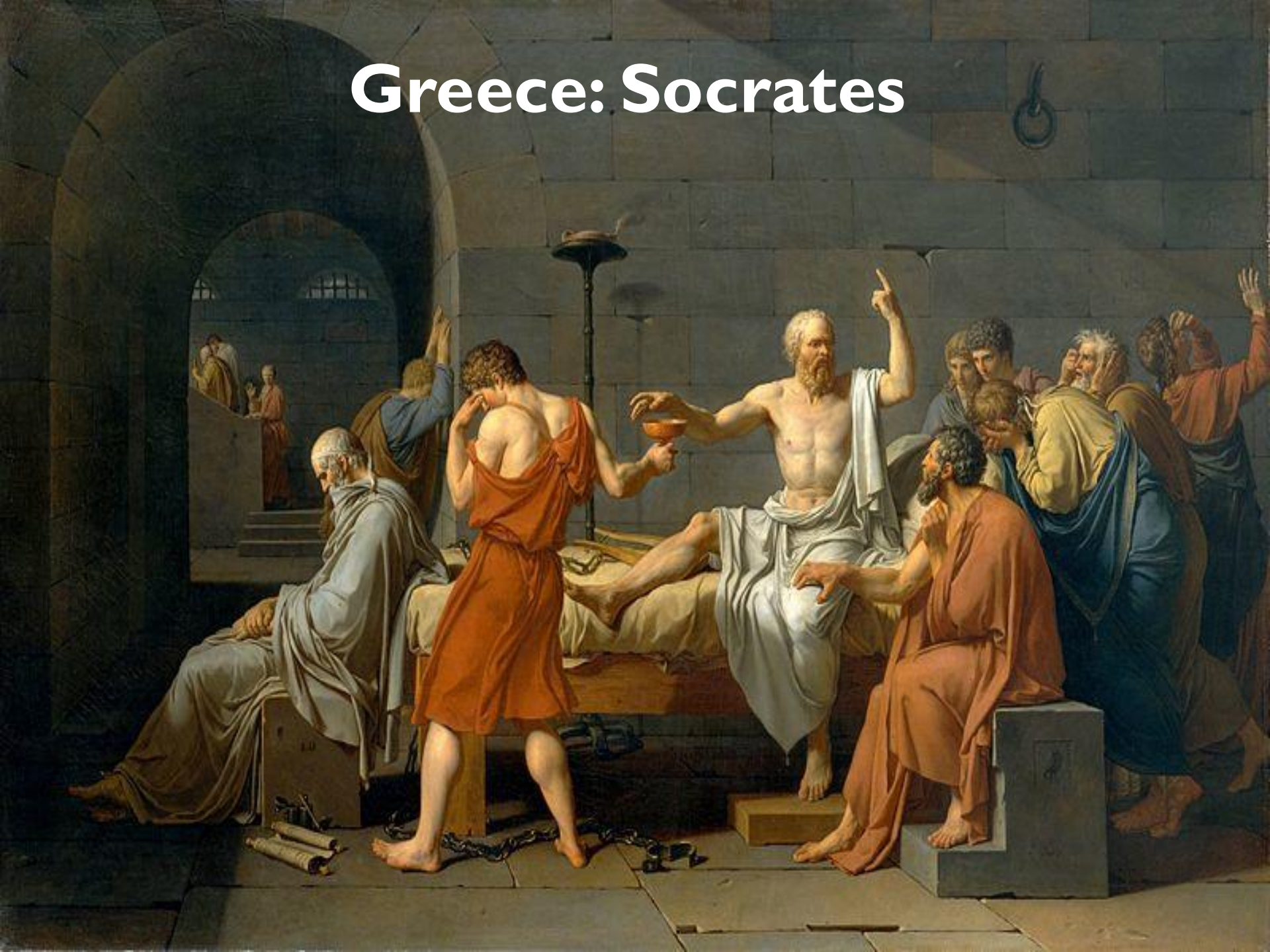
Confucius supported government by a virtuous central authority, but saw it limited by natural morality. Later interpretations of his teachings (for example, from Mencius), argued that a king might be overthrown if he were to lose the “mandate of heaven” by taking action that was not correct.

“What you do not wish for yourself, do not do to others.” The idea is found in many other traditions.

King Ashoka
desires that all
religions should
reside everywhere,
for all of them
desire self-control
and purity of heart.
— India 256 BCE



Greece: Socrates



Rome: Cincinnatus



Islamic culture

- Religious tolerance was explicit in the Constitution (charter) of Medina, 622 ACE written by the Prophet Muhammad. It states that non-Muslim citizens have equal political and cultural rights as Muslims and specifically says that non-Muslims have the right of autonomy and freedom of religion.
- “Whosoever will, let him believe and whosoever will, let him disbelieve” (Qur’an, 18: 29).



“The fundamental and original nature of humanity is that individuals are free.”
— Miraj al-Suud ila nayl Majlub al-Sudan

Magna Carta 1215

- British social contract between Normans and Anglo-Saxons

Guaranteed:

- Due process
- Trial by jury of peers
- More moderate tax system
- Does not deal with free speech





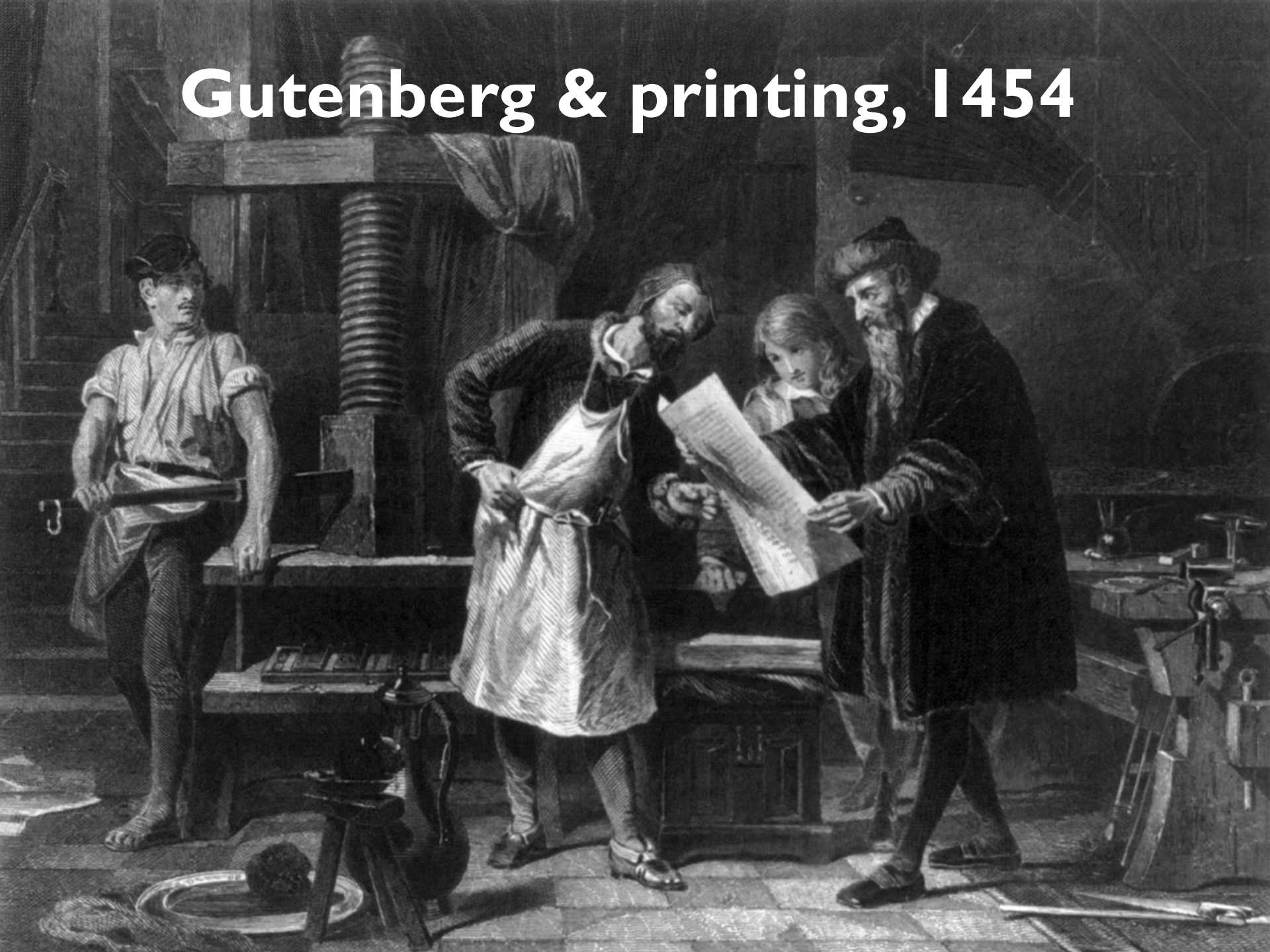
John
Wycliffe
(England)

Jan Hus



- Religious dissent easily punished before printing press (1455)
- Wycliffe 1331-1384 – Oxford
- Hus 1369 – 1415 – Prague

Gutenberg & printing, 1454

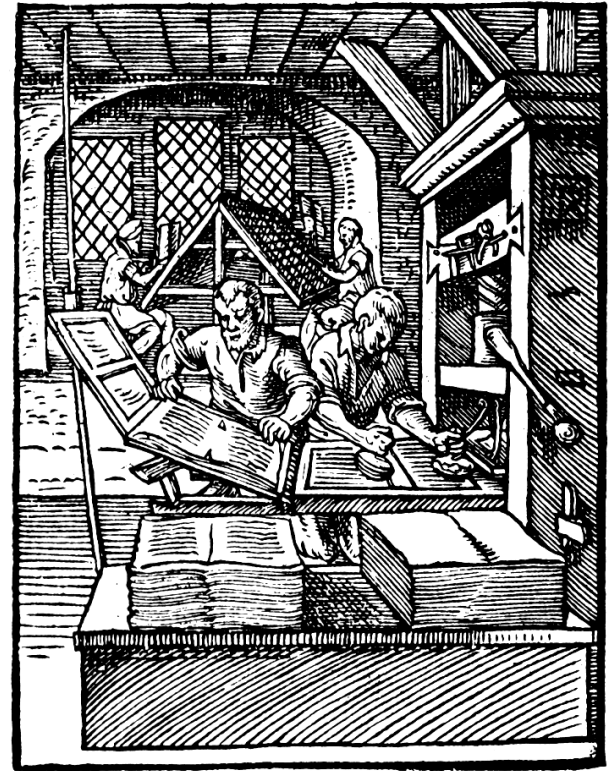


Religious wars

- All across Europe, millions of people were imprisoned, executed or killed in the religious wars of the 1500s and 1600s.
- Germany – 30 years war – 14 million
- France – 1685 Revocation Edict Nantes
 - Aprox 20,000 French Huguenots killed in one week, 400,000 fled France
- Netherlands – 80 years war

Printing impacts

- Standardized Bibles
 - Critical reading allowed challenge to church
- Standardized language
 - Helped form nation-state
- Amplified new information and ideas
- Christopher Columbus, Martin Luther, Erasmus become famous overnight



Bibles smuggled in barrels





Martin Luther

Germany 1517

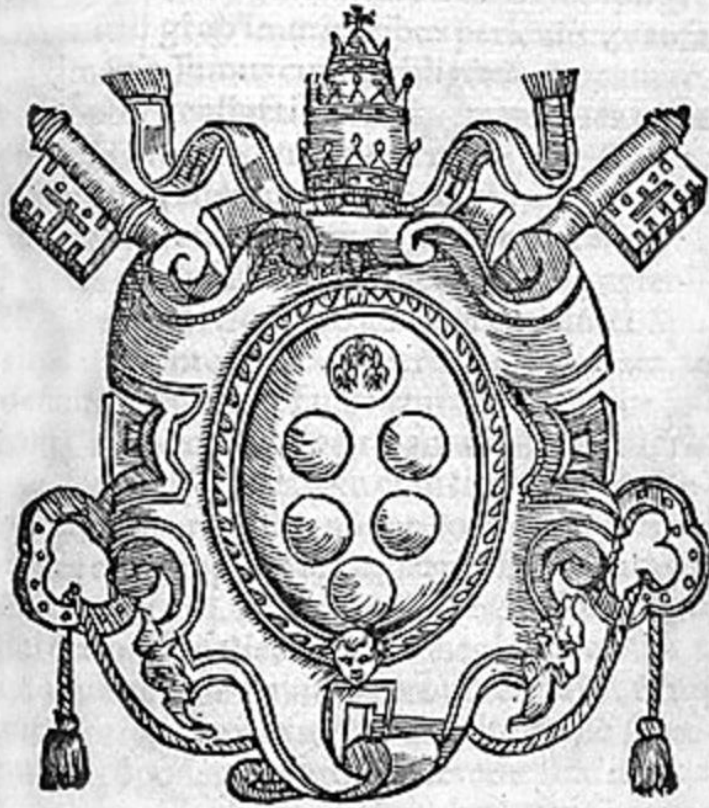
95 Theses

- Henry VIII England
- 1530s broke away
- Divine right of kings
 - Monarch is now even above the church



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- Index Librorum Prohibitorum

- Rene Descartes
- John Milton
- John Locke
- Daniel Defoe
- Montesque
- Voltaire
- David Hume
- Edward Gibbon

Raises question: what is above a king?

- As the church loses power, the idea of the people as sovereign increases
- Challenges the “divine right” of kings
- Rights of the people are “natural” or God-given rights
- Thomas Hobbs - natural law 1651
- John Locke - social contract
- Framers of American Constitution
- (We'll return to this point in a minute...)

British history refresher

- Henry VIII founds Church of England 1530s
- Mary I (Bloody Mary) Catholic 1553 - 58
 - Fights Church of England
- Succeeded by Elizabeth I in 1558
 - Fights Catholic clergy, Spanish Armada
- Succeeded by James I in 1603
 - nearly killed in Gunpowder Plot
 - orders more repression of Catholics
- Succeeded by Charles I
 - Executed by Parliament 1649, ***English Civil War***
- Charles II in 1661- 1685, James II until 1688
- William & Mary 1689 ***Glorious Revolution***

Three Bishops of Oxford, 1555



"... Play the man, Master Ridley; we shall this day light such a candle, by God's grace, in England, as I trust shall never be put out." (Bishop Hugh Latimer)

Executed by Queen Mary I who attempts to return Britain to Catholic Church. This was also in retaliation for executions by her father, Protestant king Henry VIII



St. Bartholomew's Day massacre, 1572

Spanish Armada defeated, 1588



France

- The **Edict of Nantes** (French: édit de **Nantes**), signed in April 1598 by King Henry IV of France, granted the Calvinist Protestants of France (also known as Huguenots) substantial rights in the nation, which was still considered essentially Catholic at the time.
- In October 1685, [Louis XIV](#), the grandson of Henry IV, renounced the Edict and declared Protestantism illegal. This act, commonly called the '*revocation of the Edict of Nantes*,' destroyed religious freedom in France. It was not restored until 1787.



Thirty years war 1618 Catholic vs Protestant
kills 30 to 80 % of people in Central Europe

Guy Fawkes gunpowder plot, 1605

- Remember, remember the 5th of November
- Gunpowder treason and plot ...
- Catholic Guy Fawkes tries to blow up Protestant King James I and Parliament



English civil war 1642 - 1651

- Parliament vs King
 - No longer a war of religion
- Parliament wins, executes Charles I, 1649
- Parliament cant govern, restores Charles II to the throne 1660, dies 1685
- His son James flees to France
- “Glorious Revolution” - William & Mary become constitutional monarchs, 1689

Restoration 1660

- Charles II is restored to the throne by Parliament.
- James II (his brother) comes to throne in 1685 but flees into exile.



Glorious revolution

- William & Mary
1689 Dutch
monarchs
- Replaced James II
- Constitutional
monarchy
- Licensing Act
sedition laws
expire 1694



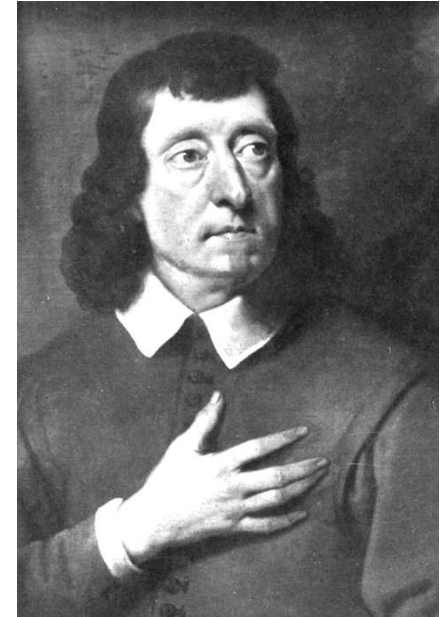


What are Enlightenment ideals?

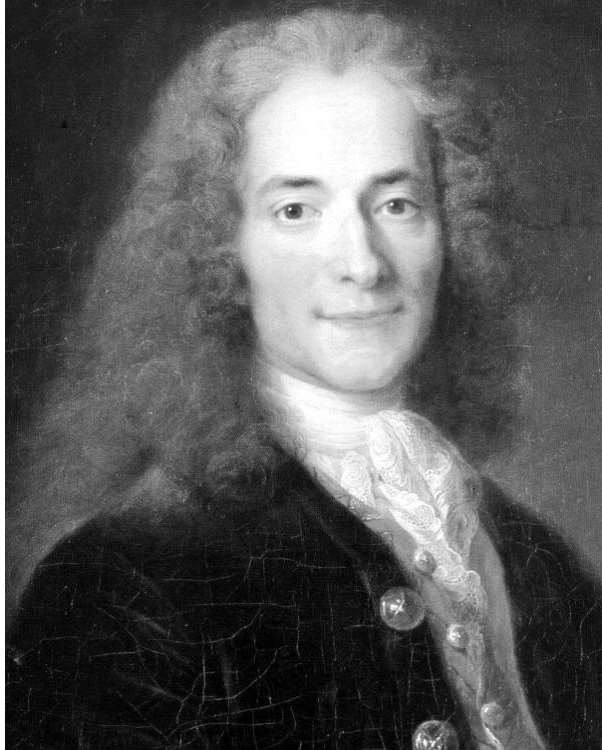
- When was the Enlightenment?
- What are some of the ideas from that period that are useful today?
- What ideas seem dated today?
- Who were the major figures? What were their goals and obstacles?
- What ever happened to the Enlightenment?

Poet of the English civil war

- **John Milton (1608-1674)**
 - *Marketplace of ideas*
- Areopagetica 1644 --
Plea for tolerance, refers to the ancient Athenian Areopagus court
- *“Who ever knew truth put to the worse in a free and open encounter?”*
-



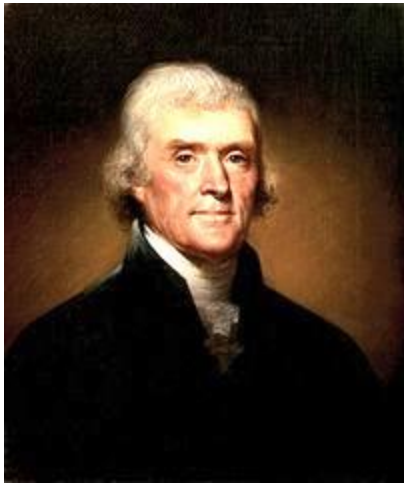
French Enlightenment



Francois Voltaire (1694-1778) – May disagree with what you say but will die defending your right to say it.

Also:

Baron de Montesquieu (1689-1755) - Spirit of the Laws / Separation of powers (Legislative, executive, judicial)



Jefferson's trinity: Bacon, Newton, Locke





Francis Bacon (1561-1626)

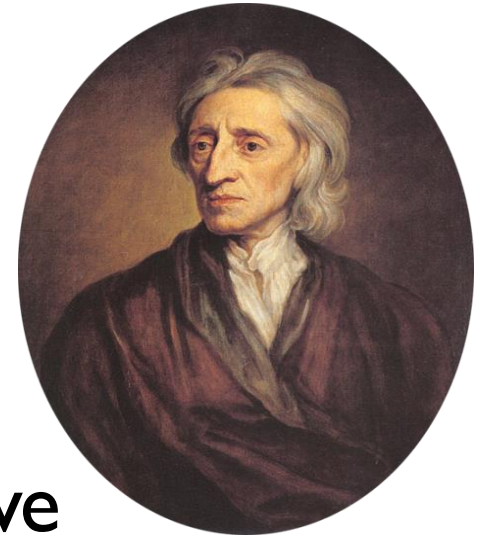
- *Novum Organum* (New Instrument, 1620)
- Father of scientific method
- **"Printing, gunpowder and the compass:** These three have changed the whole face and state of things throughout the world; the first in literature, the second in warfare, the third in navigation..."



Scientific revolution

- Old idea (Aristotle) – Matter rises up into increasingly pure levels, earth sits at the center of perfect spheres.
- New ideas (Galileo, Copernicus, **Newton**)
-- Natural laws govern movement of solar system, sun at the center
- Leads to questions about natural laws in social and political spheres (John Locke & social contract, for example)

John Locke (1632-1704)



- People and government have a **social contract**
- Government existed to serve the people, not the other way around;
- People have natural rights to **life, liberty and property.**
- Wrote *An Essay Concerning Human Understanding*.
- Put religious tolerance in Carolina state constitution

Carolina Constitution 1669

- Article 97 -- “...the natives who...are utterly strangers to Christianity, whose idolatry, ignorance, or mistake gives us no right to expel or use them ill; and those who remove from other parts to plant **there will unavoidably be of different opinions concerning matters of religion, the liberty whereof they will expect to have allowed...**” John Locke

Censorship

- Censor – Ancient Rome
 - Maintained census & public morality
 - Political discussions limited
- Church censorship
 - Religious dissent forbidden
 - Main form of censorship Medieval – Renaissance period
- State censorship
 - Political dissent of all kinds forbidden
 - England, Star Chamber, Henry VIII

English censorship

- English Civil War (1641-1660) Puritans enacted strong new laws
 - Milton's *Areopagitica* was a protest
- Old laws -- 1692 -- printer hung, drawn and quartered for sedition, "compassing"
- 1694 -- Licensing Act expires
- 1700s – control through sedition laws
- 1765 – Wm Blackstone notes lack of prior restraint is a benchmark of English freedom

Press censorship by ...

- **Licensing** of a printing company itself;
- **Prior restraint:** pre-press approval of each book or edition of a publication;
- **Taxation** and stamps on regular publications; and
- **Prosecution** for sedition against the government or libel of individuals.

Maryland Toleration Act 1649

- Prohibited all but Christianity under pain of death but declared toleration among Christians. “And whereas **the inforceing of the conscience in matters of Religion hath frequently fallen out to be of dangerous Consequence** in those commonwealthes where it hath been practised... noe person or persons whatsoever within this Province ... professing to beleive in Jesus Christ, shall from henceforth bee any waies troubled...” It was a first tentative step towards freedom of religion. But rescinded in 1689 ...

Colonial Censorship

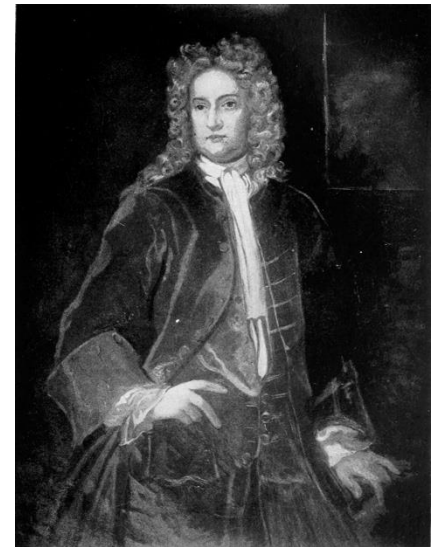
- Virginia Gov. William Berkeley

- Banishes Puritans.
- Puts down Bacon's rebellion 1676
- Says: *"I thank God there are no free schools nor printing, and I hope we shall not have these hundred years; for learning has brought disobedience and heresy and sects into the world; and printing has divulged them, and libels against the best government. God keep us from both."*

- Maryland Toleration Act 1649, rescinded 1689

- Publick Occurrences newspaper,

- Boston, banned 1690



Trial of John Peter Zenger



New York printer uses truth as a defense in seditious libel trial, 1734



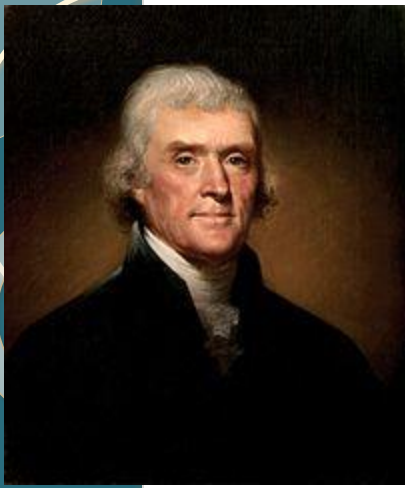






Natural rights

- In the Declaration, primarily authored by Thomas Jefferson, the Second Continental Congress asserted the “self-evident” truths that “all men are created equal” and entitled to “life, liberty, and the pursuit of happiness.”
- These are the rights that people would have in a state of nature
- Sometimes known as “God-given” rights



Thomas Jefferson

- “Millions of innocent men, women and children, since the introduction of Christianity, have been burnt, tortured, fined, imprisoned; yet we have not advanced one inch towards uniformity. What has been the effect of coercion? To make half the world fools, and the other half hypocrites.” Jefferson's [*Notes on the State of Virginia*](#),

Ben Franklin's Apology for Printers



“Printers are educated in the belief, that when men differ in opinion, both sides ought equally to have the advantage of being heard by the public; and when truth and error have fair play, the former is always an overmatch for the latter.”

James Madison



English Common Law allowed suppression of the press, but in America, “the people, not the government possess the absolute sovereignty.”

“Some degree of abuse is inseparable from the proper use of everything , and in no instance is this more true than in that of the press.”

John Stuart Mill

- (1773-1836) Scottish utilitarian philosopher and historian who expanded on Milton's Marketplace of ideas by arguing that:
 - 1) A censored opinion may be true and the accepted view may be in error
 - 2) Even error may contain particle of truth
 - 3) Truth may be held as prejudice, not rationally
 - 4) Truth loses vitality if not contested from time to time.



“The peculiar evil of silencing the expression of an opinion is, that it is robbing the human race; posterity as well as the existing generation; those who dissent from the opinion, still more than those who hold it. If the opinion is right, they are deprived of the opportunity of exchanging error for truth: if wrong, they lose, what is almost as great a benefit, the clearer perception and livelier impression of truth, produced by its collision with error.”

VA Declaration of Rights 1776

- June 12, 1776
- “All men are by nature equally free and independent and have certain inherent rights” ... including “the enjoyment of life and liberty, with the means of acquiring and possessing property, and pursuing and obtaining happiness and safety.” The declaration also included freedom of press, free exercise of religion, and due process.

Virginia 1786 Religious Freedom

- “Whereas Almighty God hath created the mind free; that all attempts to influence it by temporal punishments ... tend only to beget habits of hypocrisy and meanness, and are a departure from the plan of (* text not inserted *) the Holy author of our religion ... Be it therefore enacted by the General Assembly, That **no man shall be compelled to frequent or support any religious worship, place, or ministry whatsoever**, nor shall be enforced, restrained, molested, or burdened in his body or goods, nor shall otherwise suffer on account of his religious opinions or belief; but that **all men shall be free to profess, and by argument to maintain, their opinions in matters of religion**, and that the same shall in nowise diminish, enlarge, or affect their civil capacities.

Virginia 1786

- Jefferson had this to say about the *text not inserted* :
- *Where the preamble declares, that coercion is a departure from the plan of the holy author of our religion, an amendment was proposed by inserting 'Jesus Christ,' so that it would read 'A departure from the plan of Jesus Christ, the holy author of our religion;' the insertion was rejected by the great majority, in proof that **they meant to comprehend, within the mantle of its protection, the Jew and the Gentile, the Christian and Mohammedan, the Hindoo and Infidel of every denomination.** — Thomas Jefferson, Autobiography
- Similarly, James Madison led the opposition to a bill establishing “A Provision for Teachers of the Christian Religion.” “If finally armed with the sanctions of a law, will be a dangerous abuse of power,” he said in Memorial and Remonstrance Against Religious Assessments.



US Constitution

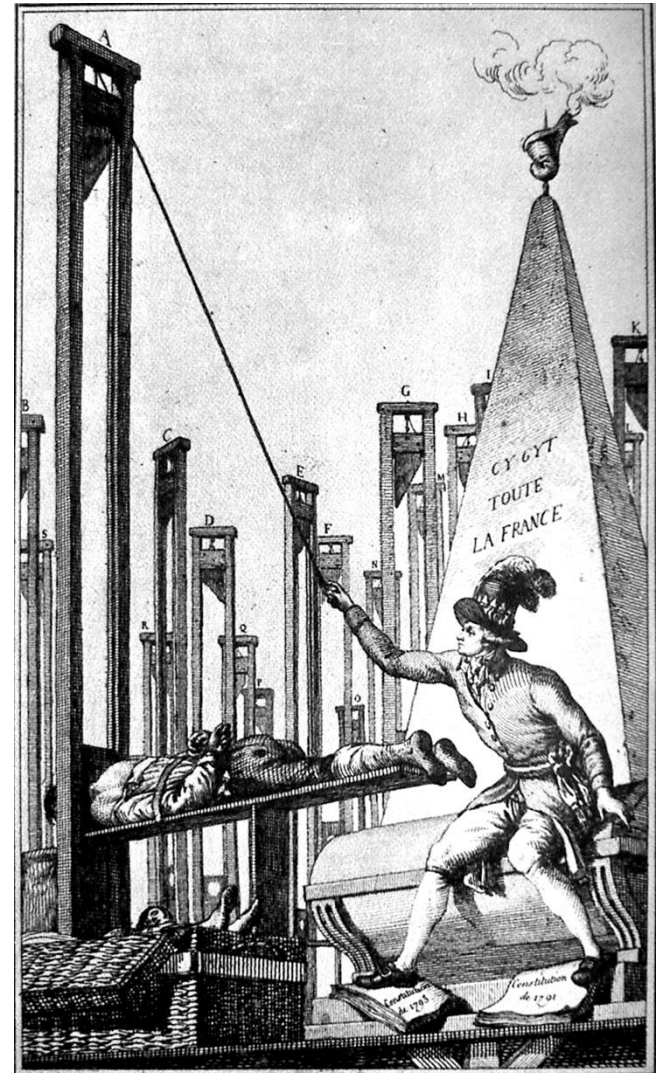
- Virginia Declaration Rights 1776
- Virginia Act for Establishing Religious Freedom, 1786
- US Constitution 1787
- Declaration of Rights of Man (Fr) 1789
- US Bill of Rights 1791

Bill of rights 1791

- James Madison and a committee from the Constitutional Congress originally proposed 12 amendments as a bill of rights, the first three involving freedom of speech:
- 1) The civil rights of none shall be abridged on account of religious belief or worship, nor shall any national religion be established, nor shall the full and equal flights of conscience be in any manner or on any pretext infringed;
- 2) The people shall not be deprived or abridged of their right to speak, to write or to publish their sentiments, and freedom of the press, as one of the great bulwarks of liberty, shall be inviolable;
- 3) The people shall not be retrained from peaceably assembling and consulting for their common good; nor from applying to the legislature by petitions or remonstrances for redress of their grievances.
- These are eventually compressed into **one First Amendment:**
- *Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the government for a redress of grievances.*

Alien & Sedition Acts 1798

- Passed in US to suppress pro-French sentiment
- 25 people arrested
- Jefferson and Madison over-react with Virginia and Kentucky resolutions



Alien & Sedition Acts



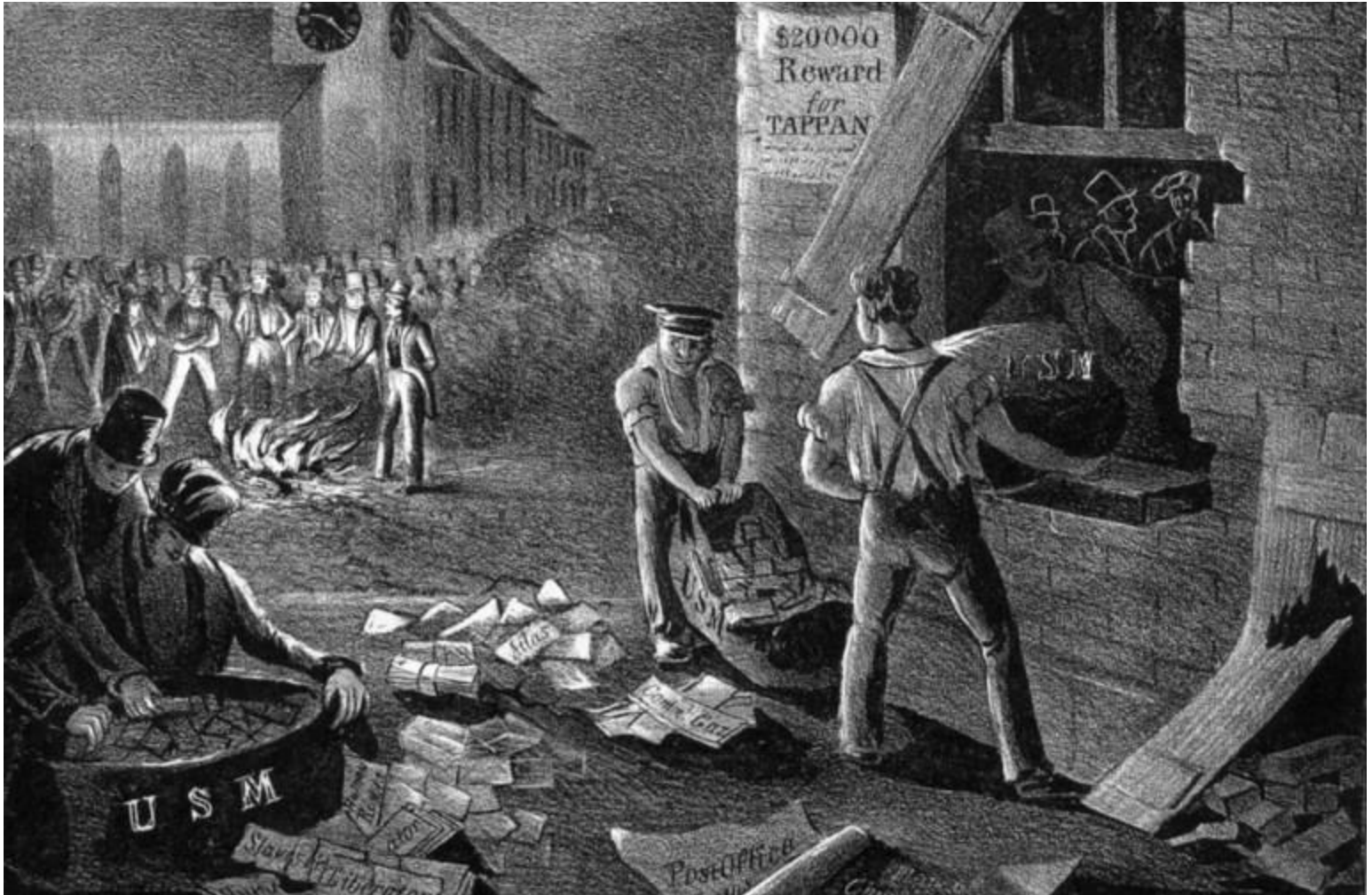
- Adams attacked by Jefferson for monarchical tendencies
- Va & Ky resolutions are later used by secessionists as evidence of original intent

Alien & Sedition acts expire in 1800
but sedition laws return in WWI,
WWII and Cold War

Reaction to Sedition Act

- "A reign of witches" – Jefferson
 - *"It suffices for a man to be a philosopher, and to believe that human affairs are susceptible of improvement, and to look forward, rather than backward to the Gothic ages, for perfection, to mark him as an anarchist, disorganizer, atheist, and enemy of the government."*
- Virginia and Kentucky assemblies pass Resolutions condemning Sedition Act
- Doctrine of "nullification" and states rights

Repression of minorities



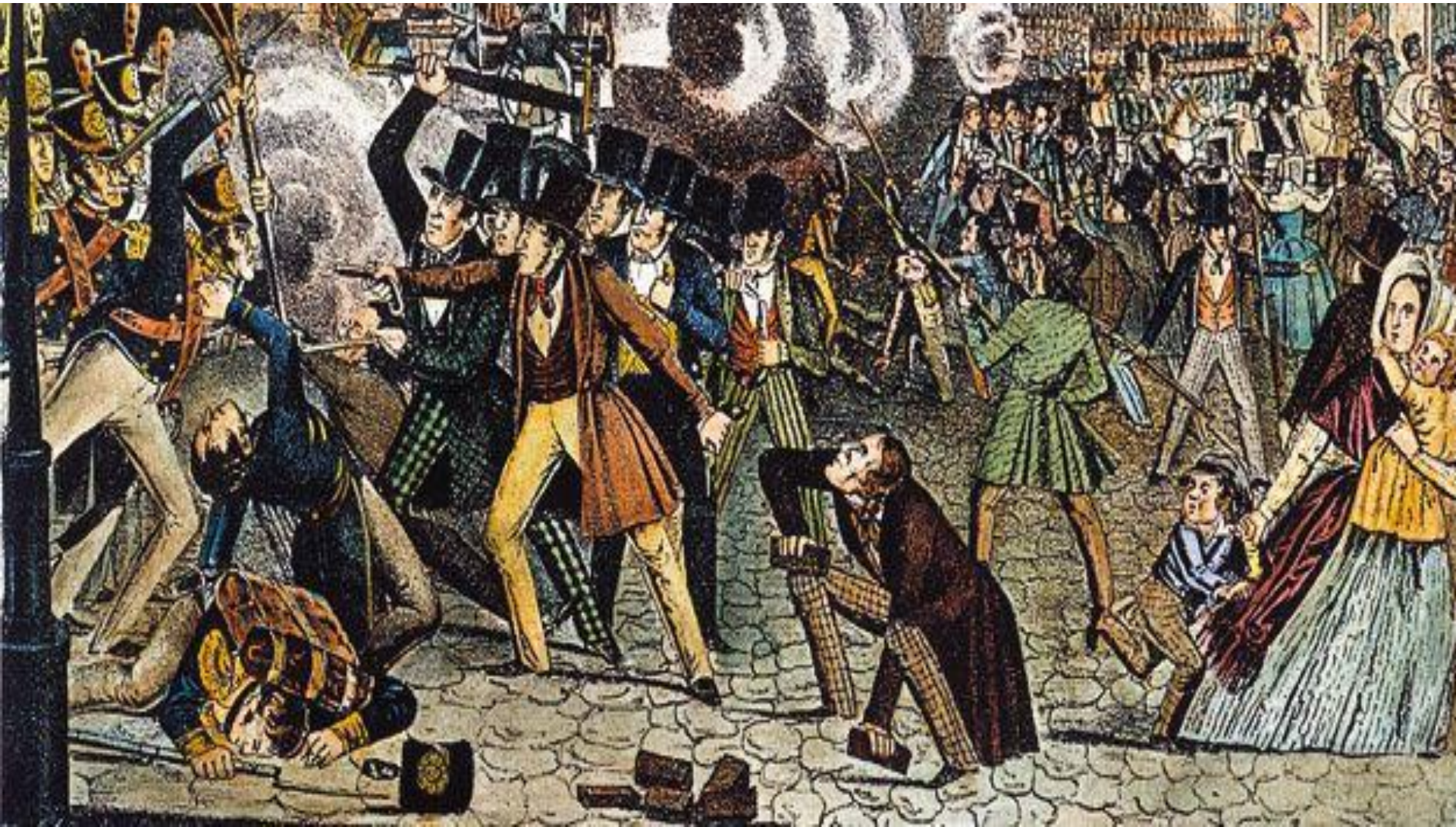
US Censorship

- 19th century censorship mostly at state level
- Virginia banned abolitionism in public speaking and literature – 1 yr jail; slaves not allowed to learn or assemble
- After Civil War, 14th Amendment didn't apply to 1st Amendment until WWI era.

States determine rights

- 1790s – 1860s
- “Slave Codes” forbid possession or distribution of abolitionist literature.
- In Virginia, anyone who “by speaking or writing maintains that owners have no right of property in slaves” could be sentenced to a year in prison.
- Similar laws were passed across the South.

Anti-Catholic Philadelphia riots 1844



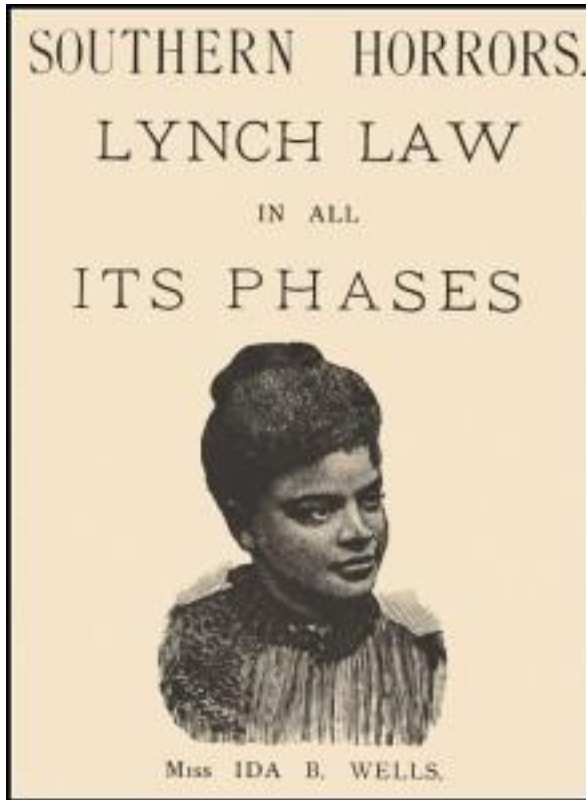
After the Civil War

- 14th Amendment passed
 - Equal protection of law to all citizens
- Incorporation process begins with “Slaughterhouse cases”
- Court recognizes separate federal and state citizenships, does **NOT** protect civil rights on state level

Wilmington insurrection 1898



Censorship by mob rule



1892 Memphis / New York

- *“The dailies and associated press reports heralded these [lynched African Americans] ... as “toughs,” and “Negro desperadoes who kept a low dive.” ... Not content with misrepresenting the race, the mob-spirit was not to be satisfied until the [African American Free Speech newspaper] ..., which was doing all it could to counteract this impression, was silenced.”*



Next: Sedition Act, 1917



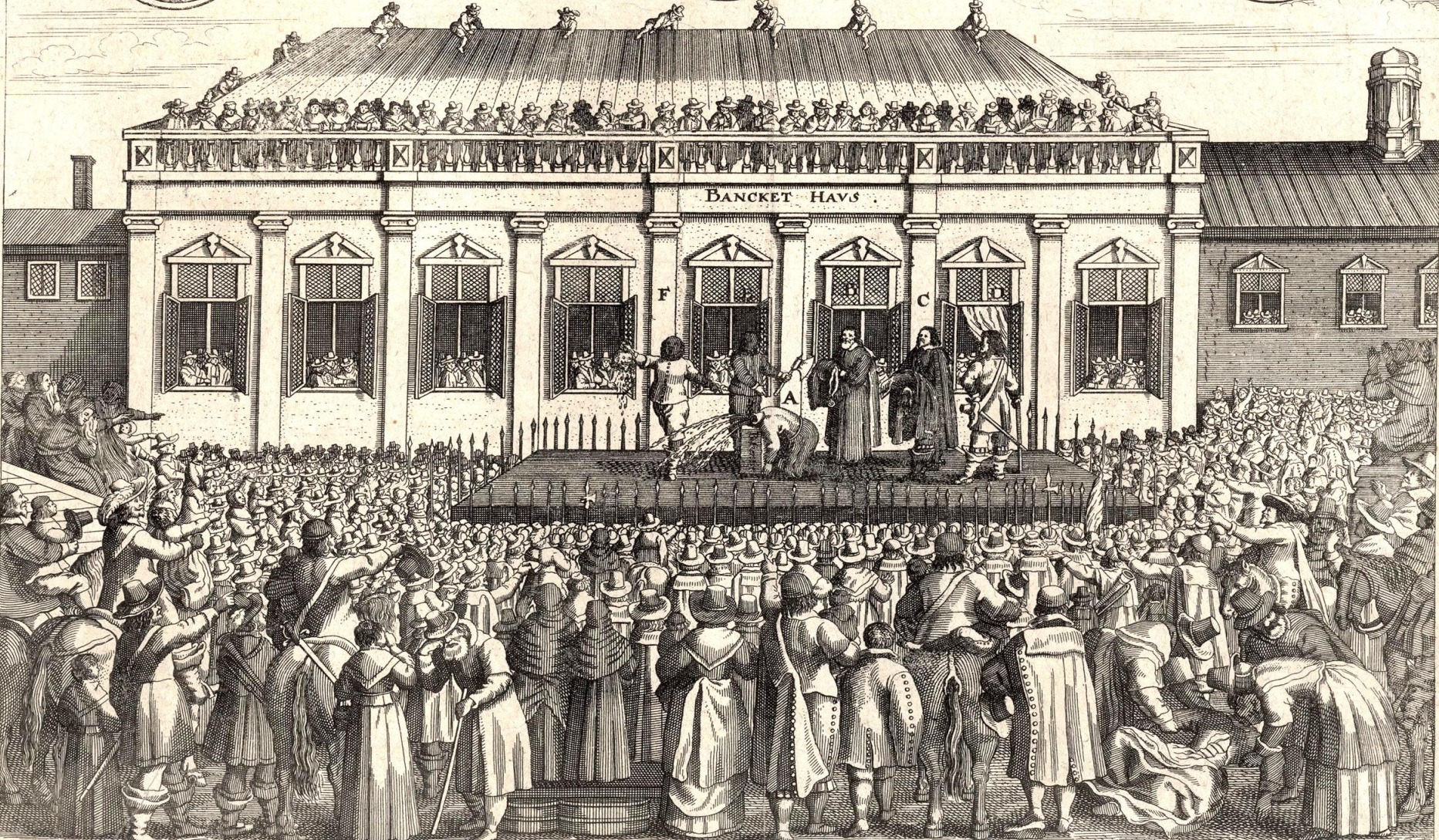
Boxing films banned 1910

Jack Johnson's win over the "great white hope" (James Jeffries) led to rioting in 50 cities and 20 deaths.

Congress passed a federal ban on interstate sales of all boxing films.



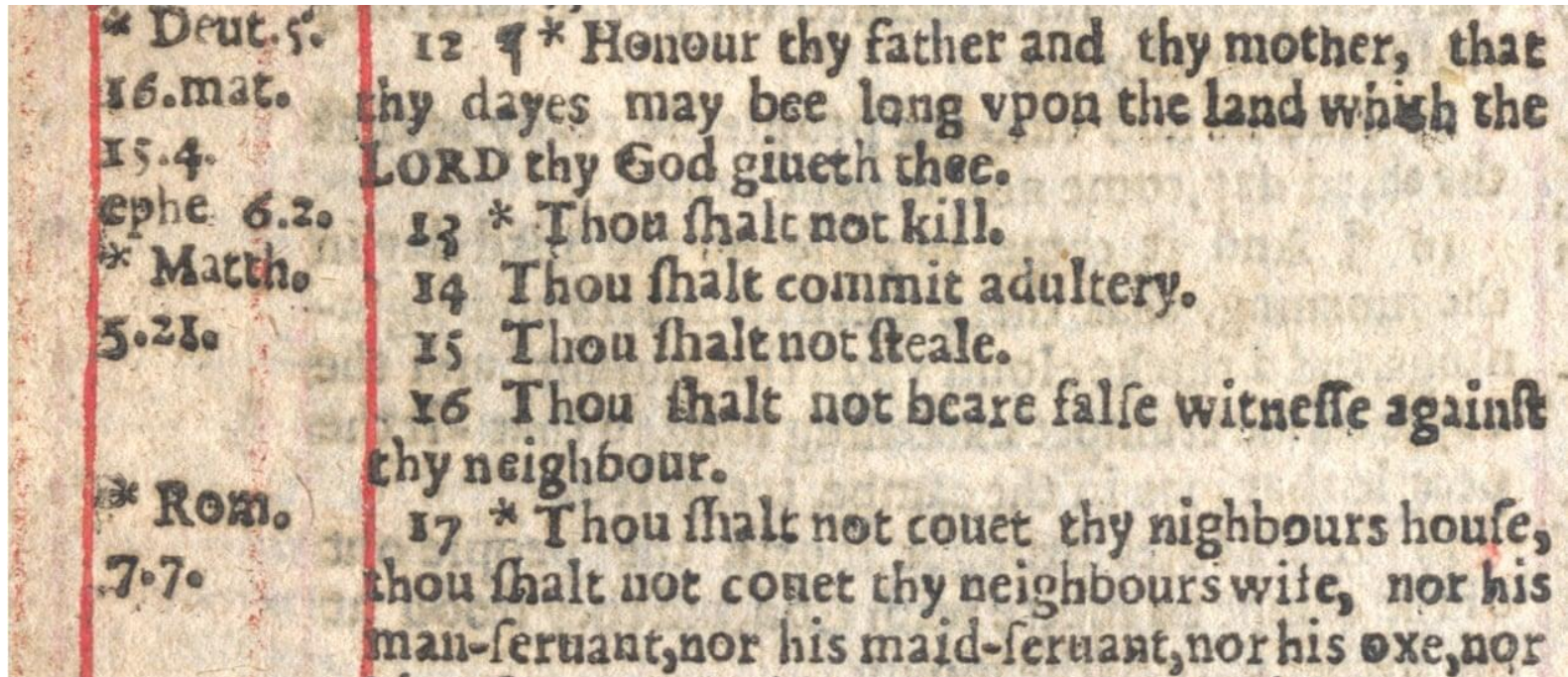
Abscheulichste Verhörte Execution /
An wenland dem Durchleuchtig: und Großmächtigsten
Carl Stuart /
König in Groß Britannien, Frankreich und Irland & vorgangen in London vor der Residents Whithall / dienstag
den 30. Janua: 9. Februa: Anno 1649. Nachmittag zwischen 2. und 3. vhren.



Censorship in Early Modern Europe

- Medieval & Renaissance
 - Even mild skepticism forbidden
 - Wycliffe, Jan Hus
 - Bruno, Galileo
 - Index Librorum Prohibitorum 1560-1966
- State censorship
 - Political dissent of all kinds forbidden
 - England, Star Chamber, Henry VIII
 - Licensing, prior restraint, taxation, prosecution

The Wicked Bible – 1631



Star Chamber put printer Robert Barker on trial
Fined 300 pounds , printing license revoked