

**Part II:**

**Liberal Trends in Constitutional Reforms  
of the Nineteenth Century**

**Historical Narratives:**

**Overview and Case Studies**

**England, Sweden,  
the Netherlands, Japan, Germany,  
and the United States**

## **Chapter 9: Setting the Stage: Philosophical, Economic and Political Developments Prior to the Nineteenth Century**

### **A. From Autocracy to Democracy without Revolution**

The “king and council” template is an example of a robust architecture for governance. Particular instances of it divide policymaking authority among the king (the executive) and the council (the parliament or legislature) to advance the interests of the government’s original formateur(s). Insofar as a particular assignment of policymaking authority is sufficiently stable that it can be taken as “given” by those holding positions within the government, the “officeholders” know what their authority is and what is required for policy decisions of various kinds to be made and implemented. These political property rights provide the basis for constitutional exchange. Standing authority to participate in or determine particular policy decisions can be traded one for another, for support on critical issues, or for new tax revenues. The bargains reached may be temporary or essentially permanent.

The analytical history demonstrates that technological shifts favoring industrialization and increases in the persuasiveness of liberal arguments can induce rational, more or less self-interested men and women to negotiate constitutional bargains that favor the emergence of parliamentary democracy. The analysis does not imply that the West was somehow destined to democratize, as some have argued (Diamond 1999, Jones 2003). Nor does it suggest that the road to democracy is a one-way street. Rather, the analysis suggests that chance innovations in technology, political theory, and economics, combined with preexisting institutions of divided government, can produce a gradual, peaceful, transition from king-dominated political systems to parliamentary democracy through a series of constitutional reforms.

The remainder of the book attempts to determine whether these hypothetical factors and constitutional bargains can, in fact, account for the emergence of Western democracy. Were there new alignments of economic and political interests in the nineteenth century? Is there evidence of the penetration of liberal political and economic ideas among political elites? Did groups inside and outside government lobby for more open political and economic systems, for equality before the rule of law, and for suffrage reform? Were the shifts in political authority from kings to parliaments,

and expansions of suffrage more or less separate events? Were Western transitions largely peaceful and lawful, rather than consequences of civil war or obvious, credible threats of revolution?

## **B. Organization of Part II**

Part II of the book provides an overview of historical developments in the West (chapters 9–11) and six case studies (chapters 12–18). Chapters 9–11 provide an overview of the changing ideas and interests that motivated reforms, especially those that favored liberal reforms of economic regulations and political institutions. The cases studies focus more attention on the details of constitutional and policy reforms. Three of the cases are natural applications of the models of part I, and three of the cases are less natural applications, which are consistent with those models, but less obviously so. Chapters 12–15 examine the British, Swedish, and Dutch transitions. Chapters 16–18 examine the German, Japanese, and American transitions. In all six cases, peaceful shifts of power between king and council were commonplace. In all six cases, more or less similar economic and ideological pressures triggered similar great transformations of governance and economic life, although transitions to parliamentary democracy were not always complete or stable once completed. Interests and ideas motivated the reforms, but the particular reforms adopted also reflected preexisting political institutions, local issues, and leaders.

The remainder of chapter 9 sets the historical stage for the European transitions of the nineteenth century. It reviews the institutional starting point of the late Middle Ages and briefly chronicles the shift in production technologies that allowed new economies of scale to be realized in private organizations devoted to market activities (what economists refer to as firms), the emergence of liberal political and economic ideas, and their increasing relevance for public policy.

The history prior to the nineteenth century suggests that there was nothing inherent in European monarchical-parliamentary systems, Christianity, or Roman Law that oriented European governance toward parliamentary democracy. Although European society was not entirely static in the Middle Ages, it was remarkably stable, because political, economic, and religious institutions created a largely self-replicating and supported the hierarchical pattern of life and death. Stable societies tend to be dominated by institutional conservatism, for perfectly good reasons, and the reforms adopted normally provide additional support for existing arrangements, rather than undermine them. Such reforms may, for example, reinforce the authority and wealth of the state church or aristocratic and royal households. In some cases, however, policies that initially protect the status quo, may lead to other reforms, as for example when law courts become more

independent, or when authority is shifted to those previously outside government obtain additional resources or support during a time of war or other crises.

In late medieval Europe, reforms often reinforced the dynastic rule of “royal” families, rather than shifting policymaking authority from kings to parliament or to commoners.

### **C. An Overview of the Medieval Constitution**

The roots of many contemporary parliaments extend back to the medieval period and beyond. For example, the present English parliament extends back to the ancient Great Council (Magnum Concilium), which was composed of lay and ecclesiastical magnates. The Great Council met with the English king on affairs of the realm, including taxation. The Magna Carta of 1215 formally established a new very narrowly elected council of 25 barons to monitor and enforce implementation of that compact between the English king, church, and nobility.<sup>71</sup> The English parliament emerged half a century later, following another period of turmoil, during the reign of Edward I. The early English parliaments voted on tax matters, heard petitions from the public, petitioned the king to address various grievances, and occasionally impeached senior government officials (Lyon, 1980: ch. 34).<sup>72</sup>

Similarly the parliament of Sweden (the Riksdag) evolved from the ancient Scandinavian and German institution of the *ting* (*ting*, *lagting*, or *althing*), which had powers similar to those of the Great Council. *Tings* were deliberative assemblies that met at regular intervals to settle disputes, pass sentences on law breakers, and elect kings. As such, *tings* combined aspects of modern judicial and legislative branches of government. *Tings* existed at both local and regional levels. As Sweden emerged as a state in the fourteenth century, a new Swedish council was established by law in 1319 in exchange for oaths of fealty by the great men of the realm at the time that Magnus Eriksson was elected king. That council had veto power over taxation and some policy decisions. At about the same time, a similar Danish council of state was established with veto power over war and some authority over new taxes (Danstrup 1947: 37).

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<sup>71</sup> The council of barons was formally empowered to protect “the peace and liberties we have granted and confirmed to them by this our present Charter.” The rights of the Magna Carta were gradually extended to include lesser landowners, merchants, and eventually the nonpropertied classes (Strayer and Gatzke 1979).

<sup>72</sup> Tax revolts have occasionally led to significant shifts in policymaking authority. For example, the Magna Carta was obtained from King John as a consequence of a tax rebellion by an organized group of English barons.

The French Estates General also originated around 1300, at which time the king (Philip the Fair) called representatives from the nobility, burgers, and clergy to form a grand council, which was consulted on all major decisions. A smaller group composed of judges and lawyers, the Parlement, was also consulted on a more regular basis. That group remained relatively influential throughout French history. The Estates General played a significant role in medieval France, but had only a minor role in the century of absolutism before the French Revolution (see Bély 1998: 33, 58, 62, and 75). In that century, the various judiciary parliaments served as the main check on the king's authority.

Medieval European and Japanese political institutions were very stable. Although the families who occupied the posts of greatest authority varied somewhat through time, as did the territories ruled by particular families, the basic procedures of policymaking fluctuated within a fairly narrow band. King-dominated forms of the king and council template provided the core institutions of governance for most of Europe for most of the five centuries before the 1800. The various parliaments, national assemblies, and estates general were not "self-calling" during this time and met only when the king wanted their opinion on some matter or (more commonly) authority to collect additional tax revenues. Meetings in times of peace took place at irregular intervals, doubtless because kings found it difficult to obtain new revenues at such times. The number of meetings tended to increase in periods before, during, and shortly after wars, because at those times parliament's permission to collect additional taxes (subsidies) was more likely to be obtained. Such "war subsidies" were normally temporary in nature, which assured that the king had to call parliament back into session during long wars, and as new international and domestic military action seemed necessary or advantageous.

In general, meetings of parliament were called every few years, and after called, parliament normally met for just a few weeks. Parliaments had the right to petition the king to address problems of regional or local concern, and most citizens had the right to petition members of parliament to bring such requests to the Sovereign. Such meetings, thus, provided useful information about problems and grievances throughout the realm (kingdom, principality, barony, city). The festivals associated with such special occasions also provided members of parliament with opportunities to arrange marriages among their children, to coordinate their opposition to particular royal policies, and to negotiate inter-regional trade agreements. Essentially all national (and many regional) policy decisions were made within the executive branch of government by the king and persons to whom he had delegated policymaking authority. This also tended to be true at the local level, where dukes,

counts, and barons determined and enforced regulations concerning peasant life and also settled many legal disputes within their essentially personal, family-based, domains.

In addition to kingdoms, principalities, duchies, baronies, and counties; there were also independent free towns and cities, many of which had purchased their independence from local rulers. Many of these city governments that were, by medieval standards, relatively liberal versions of the king and council template.<sup>73</sup> A town's mayor might be elected by the town council. The members of the ruling council might be elected by a relatively large number of voters, usually major property owners in the city. In some cases, larger more representative assemblies were called for discussion public policies. For example, many of the major cities and principalities of what became the Netherlands routinely called representative assemblies of nobles, guilds, church and commercial interests. However, particular families would often informally control the membership of both branches of local government, which were thus often dynastic in practice, although not formally so.<sup>74</sup>

Titles, manorial assets, and personal wealth were assigned to particular families and passed on to their heirs through durable civil laws governing inheritance and marriage. This was also largely true of seats in parliament; where noble families automatically received seats as a birthright, as true in England, France, and Sweden. In cases in which the right to sit in parliament was not directly inherited by members of particular families, their greater access to education, government officials, and wealth allowed noble families to qualify more easily for seats in parliament and for senior positions in the religious and commercial organizations represented there.

Family members who inherited multiple territories often had several parliaments in which to sit and/or to negotiate with. Kings, princes, and barons often spent considerable time on the road consulting with a variety of parliaments to assure their loyalty and press for new subsidies from their subjects. This pattern of rule by a king and parliaments representing wealthy families was the nearly universal medieval constitutional template for Europe. Kings and kingdoms, princes and principalities, barons and baronies were largely determined by heredity and marriage for more than a 1,000 years. Consequently, medieval governance could be said to be rule by "blue bloods" for the benefit of "blue bloods."

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<sup>73</sup> City governance often included a chief executive (mayor, magistrate, or burgomeister) and a council representing local religious and business interests.

<sup>74</sup> See, for example, Pirenne (1925), Blockmans (1978), Tilly and Blockmans (1989), Catsstraat (1995).

Although family rivalries and alliances were complex and often far from peaceful, the balance of economic and institutional interests was very stable, because of the importance of landownership as a source of wealth, the church as a source of ideas, and the practical interests of elites in defending the political institutions that helped to cement their privileged place in society. Institutional and intellectual conservatism was completely rational for such men and women.

Indeed, the paucity of the governmental alternatives analyzed by enlightenment scholars shows how narrow the range of governance was in Europe in the late medieval and early modern period. Neither Hobbes, Locke, Montesquieu, Rousseau, Kant, nor von Humboldt took the time to analyze representative or parliament-dominated systems fully, in large part because they had never seen one operate. This intellectual constraint was reinforced by the laws that defined treason and by political and religious censorship in most of Europe at the time that they wrote. Many enlightenment scholars honestly thought that election-based representative systems were impossible, and others evidently pretended to think so, because to suggest otherwise risked the punishments associated with treason and/or royal disfavor.

Those few theorists who believed systems of popular government were possible and brave enough to put their pens to paper (but often not their names) referred to 2,000-year-old examples from classical Greece. For example, in the mid-eighteenth century, Rousseau imagined grand democratic constitutional conventions that would provide the basis for legitimate governance. He referred to ancient Greek and Rome assemblies in an attempt to argue that such assemblies and broad political participation were actually possible:

“The people in assembly, I shall be told, is a mere chimera. It is so today, but two thousand years ago it was not so” (*Social Contract*, 1762, ch. 12).

### *Constitutional Bargaining within Medieval Governments*

The medieval constitution was not entirely static, but king-dominated forms of the template were common at both the national and regional levels. Somewhat unusual times did occur, particularly toward the end of this period, in which parliaments gained significant policymaking authority or kings, conversely, attempted to eliminate parliamentary authority. One example is associated with the English Civil War of the mid-seventeenth century, during which a (rump) parliament elected on the basis of very narrow suffrage was in control of English policymaking for 10 years or so. Another occurred during the middle of the eighteenth century, when the Swedish parliament became dominant for a half century during that country’s “Age of Liberty.” At the other

extreme, kings occasionally disbanded or ceased calling parliaments, as in Denmark and France in the seventeenth century, and to some extent in England in the two decades before and after its civil war in the mid-seventeenth century. The constitutional center of gravity, however, remained a dominant king and a relatively weak parliament for several centuries. Although the balance of power between kings and their parliaments varied a bit through time, it tended to return to the medieval balance.

Much of that balance was described in written documents. In essentially every country and every independent duchy, there were a variety of formal agreements that shifted power from kings to councils (or parliaments) and back again to kings, as well as many informal agreements. For example, in 1414 the English King Henry V proclaimed that all new laws be adopted with the assent of both chambers of the British parliament, a decision that was later affirmed by the British courts. In 1534 the British parliament proposed and the king accepted rules for future accession to the Sovereign. Similarly, formal documents marked periods when parliamentary power was on the rise in Sweden. The first Riksdag Act was adopted in 1617. It required that the king consult the four estates before declaring war or forming alliances. In 1660 a protocol calling for the routine meeting of parliament was adopted, which made parliament a self-calling institution. In 1720–23, constitutional reforms led to a half century of parliamentary domination of policymaking—from 1719–72.

Such patterns of negotiation and reform were also present outside of Europe. For example, Japanese governance used various forms of king and council rule at national and local levels during its medieval (Edo) period. The Tokugawa shogunate period of 1603–1868 also includes a number of peaceful shifts of authority between the shogun and his council. During much of this period, the *shogun* gradually transferred authority to his council and the bureaucracy for day-to-day rule, and regional governments gradually secured increased autonomy (Mason and Caiger 1997: 215–16). The shift in policymaking authority fluctuated somewhat, but tended to be in the direction of council rule and regional autonomy.

Similar fluctuations occurred in late medieval France and Denmark. The Estates General and the State Council became relatively more important when “subsidies” were needed by the Sovereign, and less so during periods in which they were not. In these last two cases, however, the Sovereign was eventually able to circumvent the veto authority of their parliaments, which allowed periods of “absolutism” to occur in the seventeenth century, in which their parliaments (estates) were not called and new less representative councils were created for advisory and administrative purposes.



Medieval history also suggests that shifts of policymaking power from the king to the council, depended on the political environment in which new divisions of policymaking power are worked out. Technological and ideological shocks did not always favor parliament in the medieval period; however, neither parliaments nor executive councils gave up all of their authority during periods favoring the expansion of royal authority (except perhaps once in Denmark).

Few political histories devote significant attention to the ebb and flow of political authority between king and council or king and parliament in the medieval period, although numerous illustrations from medieval England are provided by Field (2002). Examples from other parts of Europe are discussed in Ertman (1997) and Guizot (1861). The long-term stability of the medieval constitution demonstrates that there is nothing latent in constitutional monarchy in itself that tends toward parliamentary democracy. Parliaments and estates-general continued to exist during the “absolutist” periods in France and England, although they were not routinely called into session. Only Denmark formally disbanded its parliament.

### *Relatively Weak National Governments*

The governments of medieval nation-states were decentralized and federal in structure, and local rulers normally had considerable autonomy to regulate conduct within their “own” territories. In the period before the Protestant Reformation, the Catholic Church also exercised considerable political and economic influence and often had its own parallel court system for religious and family matters (Berman 2003). The central governments of these early nation-states were rarely the only source of new laws and law enforcement.

Conflict between the center and periphery were common, as the center attempted to shift authority from the regional governments to the center and the periphery attempted to preserve local authority or expand it. The places where the central government gained power through marriage, constitutional exchange, and military threats gradually became nation-states, such as England, France, Denmark, Portugal, Sweden, and Spain. Those where central governments were not so fortunate remained loose confederations, as in Germany, the Netherlands, and Switzerland.

The long-run stability and durability of medieval constitutions suggest that medieval governance advanced the interests of those represented in government tolerably well; otherwise, reforms would have been adopted. Evidence of their success for privileged families is found throughout contemporary Europe. In nearly every independent polity in this period, the palaces and castles of kings, nobles, and wealthy townsmen from the fifteenth, sixteenth, and seventeenth centuries are so

impressive that they continue to attract tourists from around the world in the twenty-first century. Their scale, attention to detail, and setting demonstrate that wealth was concentrated in relatively narrow elites who could afford to employ very large work forces for their own personal amusement. (Very few houses of ordinary persons remain or are of sufficient interest to attract international tourists, and few of today's wealthy could employ so many craftsmen for their personal amusement.)

The stability of both centralized and decentralized late medieval systems depended on the stability of "blue blood" interests and opportunities, which affected bargaining within government and the marriage arrangements and alliances that determined relationships among governments. Around 1500, many of these "blue blood" interests began to change, as understandings of religious, political, and economic life were revised and as new opportunities for commerce emerged. Luther and Calvin proposed new interpretations of biblical texts and new church rituals. Other new theories and new experiments by men who would later be called scientists and political philosophers challenged long-standing claims about the nature of the physical world and the normative foundations for government. New sea routes to Asia around Africa became feasible. Columbus' great miscalculation of the distance to Asia led to the discovery and European colonization of vast new lands in North and South America.

After 1500, medieval society in Western Europe began to change, but slowly. It was not until the nineteenth century that radically new forms of political and economic life emerged.<sup>75</sup>

#### **D. Disruptions to the Medieval Equilibrium: New Lands and Revenues from Abroad**

The discovery of new territories and greater access to distant lands known to exist created a number of new economic and political interests and coalitions.

Foreign territories were of interest to kings and queens for several reasons: First and most important, they potentially provided new sources of royal revenues that could be used to cement and extend their authority. Sales of royal land, monopoly privileges, and tariffs were all customary sources of royal income beyond the veto of parliament. New colonial territory and expanded commerce could also be used to expand royal support within parliament through land grants and appointments to posts in colonial governments.

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<sup>75</sup> See, for example, North and Thomas (1973) for an overview of gradual economic and legal reforms in the late medieval and early modern period. See *Finer (2006)* and *Spruyt (1994)* for overviews of the gradual centralization of policymaking authority during the late Middle Ages and the emergence of the nation-state.

In contrast to many other national policies, support in parliament for colonial investments were thus relatively easy to obtain. No new taxes were required, at least in principle, and a larger territory meant more opportunities for those whose interests were represented in parliament. Territorial expansion might also reduce the need for future royal “subsidies.” Many of the colonial enterprises undertaken in the seventeenth century were sovereign companies, whose stockholders included nobles and other men and women of means who were well-represented in parliament. In addition to these economic and political advantages, amassing an empire might also be regarded as necessary for self-defense. If one nation did not act as the others did, it would be left behind economically, militarily, and culturally.

Others outside government also had interests in colonial activities. Many merchants believed that larger territories would produce new business opportunities and profits. These, in turn, produced new opportunities for the middle class as colonial enterprises needed both craftsmen and ordinary labor. Larger territories increased the scope of national markets, providing new opportunities for a broad range of people throughout the kingdom. Many citizens (and kings) evidently believed that national “status” was associated with the size of national territory. To be part of a “great nation” was widely accepted as better than being part of a “minor nation” and thus territorial expansion was often broadly supported as a national aim in its own right.

Although it soon became clear that very few territories had gold for the taking, efforts to build empires were often popular (especially when successful) and remained so well into the nineteenth century.<sup>76</sup>

However, the territory that could be brought under a national government’s authority at reasonable cost is scarce. Conflict and escalating competition for potential “colonial” resources naturally arose. The empire-building game resembled a prisoner’s dilemma game under mercantilist rules. In most cases, the cost of the fleets and armies necessary to assemble and defend empires increased more rapidly than the revenues generated by the new territories.

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<sup>76</sup> This popularity provides indirect evidence of the ideology. The aims were partially economic and political to be sure, but the arguments favoring such policies were often essentially “nationalistic”; that is, they argued that a “good society” is both strong and prosperous. This allowed more resources to be devoted to establishing trading posts and colonies than economics or military advantage alone could account for. National “status” and “honor” of the nation matter to many within a kingdom, partly for their own sake, and this together with desire for wealth and glory led wealthy nobles and commoners to invest in foreign enterprises and many less wealthy individuals to bet their lives on new opportunities in foreign lands. Evidently, most of these colonial ventures earned only meager financial returns for most investors. Indeed, many companies were rescued from bankruptcy by royal subsidies of various kinds.

This, unexpectedly, tended to increase rather than diminish parliamentary authority; because new taxes were often required, and parliamentary assent was required under the medieval constitution. To avoid making requests for subsidies in the short run, royal land holdings at home and abroad were often sold off to nobles and “freeholders.” This also tended to increase the resources of those represented in parliament relative to the king in the long run, because royal investments abroad often earned below average returns. Public policy also became more complex and elaborate with colonial expansion, which caused the national bureaucracy to increase in size and authority. The technology of sea combat improved rapidly, as did its expense.

Thus, rather than freeing kings from the necessity of going to parliament for revenues, colonial enterprises tended to increase the importance of parliament’s control over tax resources. As the importance of majority support in the parliament increased, the kings were gradually forced to take parliamentary majorities more seriously. For example, they might use scarce royal resources to purchase marginal seats for their supporters or to purchase support from pragmatists. Although election laws were not changed, nor many parliamentary procedures, pivotal members of majorities in parliament became relatively more important.

### **E. Disruptions to the Medieval Equilibrium: Technological Innovations and the Expansion of Commerce**

The same technologies that made war more costly—bigger and faster ships—tended to make long distance shipping relatively cheaper and more reliable. If one could stay clear of pirates and warfare, more goods could be shipped greater distances more quickly with less likelihood of loss. As the territories in which trade could take place expanded, new formerly unrealized (and unrealizable) opportunities for exchange arose internationally and domestically. The demand for better military hardware induced a good deal of experimentation with metals and machining. Improved metallurgy allowed guns and cannons to become more reliable, more accurate, and more powerful.

These improvements were, in turn, taken up in various domestic industries. For example, the same advances in metallurgy and machining that made cannons more reliable and accurate were applied to create the early steam-powered mining pumps of Savery (1698), Newcombe (1712), and Watts (1769). The shift from wood to metal machine parts, the production of steam engines, and their new applications created new economies of scale in production. These caused new organizations and new industries to emerge. The steam engine also increased the feasibility of production away from the riverside cities and estates that had long dominated commerce. As new

more capital-intensive production methods were adopted (ships and water-powered looms, foundries, and machine shops), markets for skilled and unskilled labor increased, and the value of land away from major waterways increased.

New techniques in farming were also introduced in the eighteenth century. More productive crop rotations from Flanders and the Netherlands, improved plows from England, new tilling methods and new seeds, were adopted that increased farm output per unit of land and labor. Together better farming techniques and transportation allowed larger populations and larger cities to be supported by fewer farmers. Complementary industries expanded while others declined, which further shifted the geographic and familial distributions of wealth and produced new alignments of political interests.

For example, the new economies of scale in farming, textiles, mining, and metal working could not always be realized within existing late medieval legal systems. Medieval rules and regulations included a wide variety of internal and external barriers to exchange, which limited the size of the market that an economic organization could serve and thereby the size of those organizations. Many formal and informal rules would have to be changed if the new technologies were to be profitable. More complete transport networks would also be necessary to create broader and more integrated domestic markets.

New rules, new canals, and new highways would all require new legislation by national and regional governments. To the extent that members of parliament or those represented by them expected to profit from the new technologies, these same technologies also changed political interests in parliament, which in Europe gradually induced a good deal of legal reform.

An early and important example of such reforms involved changes in real estate law. Under medieval law, labor was often immobile, and most land holdings were illiquid and difficult to transfer. New rules and procedures gradually allowed “strip” farming to be replaced by what might be called “rectangular” or field farming, the normal pattern for contemporary farming. Compact parcels could be more economically fenced (enclosed) and plowed than the long, thin, strip fields that were common in the medieval period. In the eighteenth and nineteenth centuries, new legal procedures were adopted to facilitate the assembly of unconnected strips of land into more contiguous and compact fields. The new “enclosure” laws also increased the fraction of land that could be transferred among person through private purchases. Before the Industrial Revolution, about 90 percent of families were farmers or employees of farmers, so medieval real estate laws were significant impediments to commercial development.

Other long-standing legal impediments to trade included a variety of town and guild monopolies. Even toward the end of the eighteenth century, Adam Smith in *Wealth of Nations* lamented the poor quality of workmanship within guild-dominated cities, which still had significant monopoly power within many geographical regions of England and Scotland:

The pretense that corporations [guilds] are necessary for the better government of the trade, is without any foundation. The real and effectual discipline which is exercised over a workman, is not that of his corporation, but that of his customers. It is the fear of losing their employment which restrains his frauds and corrects his negligence. An exclusive corporation necessarily weakens the force of this discipline. A particular set of workmen must then be employed, let them behave well or ill.

It is on this account, that in many large incorporated towns no tolerable workmen are to be found, even in some of the most necessary trades. **If you would have your work tolerably executed, it must be done in the suburbs, where the workmen having no exclusive privilege, have nothing but their character to depend upon, and you must then smuggle it into the town** as well as you can. (Smith 1776: ch. 10.)

As it literally gathered steam, the Industrial Revolution created new choices for many more or less ordinary persons. New career possibilities and new urban lifestyles emerged, with the adoption of new methods of production and distribution. Opportunities at new production facilities that were largely outside the home (and farm) could most easily be realized by moving close to those facilities. In this manner, factory production created new communities and caused old ones to expand. These new towns were culturally and economically less homogeneous than medieval villages tended to be, because they were composed of persons from many villages, towns, and cities—and in some cases from many countries.

In this manner, the gradual reorganization of production made possible by technological and legal innovations also tended to change the interests of many ordinary and wealthy persons, to challenge traditional and religious conceptions of a “proper” (traditional) life on Earth, and to challenge the existing medieval system of economic regulation and property. The number of persons occupied directly or indirectly with manufacturing and commerce increased in the eighteenth century, although not enormously so as a fraction of the population, which expanded rapidly along with agricultural output.

Technological innovation and associated profit opportunities thereby changed the interests of many of those already represented in national parliaments, who could bargain with other members and with the king for desired reforms of public policies.

## **F. Disruptions to the Medieval Equilibrium: New Political and Economic Ideas**

The philosophical foundations of governance became a major subject of inquiry at about the same time that foreign lands were discovered. This was not entirely a coincidence, as new colonies required new colonial governments and their very newness meant that they could not be said to be grounded in divine rights or traditional forms and balances of authority. Their newness did not preclude the use of long-standing constitutional structures in the new territories, but colonial institutions could not be taken for granted, as God given, natural, or simple historical facts. Partly for this reason and partly because of political and intellectual changes associated with the late Renaissance and Protestant Reformation, scholars and practitioners developed new theories of the state.

The new theories grounded legitimate governmental authority in natural rights, sovereign duties, implicit constitutional contracts, and in some cases elections and popular sovereignty. Some of the new political ideas were codified in European constitutional documents. For example, in 1581, conflict between the Dutch and their Habsburg governors led to a Dutch war of secession from the Habsburg territories (which had recently shifted its family headquarters to Spain). The Dutch declaration of independence (Act of Abjuration) articulates a theory of the state based on sovereign duties and natural rights, rather than tradition or unconditional deference to a preexisting divine order.

As it is apparent to all that a prince is constituted by God to be ruler of a people, to defend them from oppression and violence as the shepherd his sheep; and **whereas God did not create the people slaves to their prince**, to obey his commands, whether right or wrong, but rather the prince for the sake of the subjects (without which he could be no prince), to govern them according to equity, to love and support them as a father his children or a shepherd his flock, and even at the hazard of life to defend and preserve them. And when he does not behave thus, but, on the contrary, oppresses them, seeking opportunities to infringe their ancient customs and privileges, exacting from them slavish compliance, then he is **no longer a prince, but a tyrant**, and the subjects are to consider him in no other view...

So, having no hope of reconciliation, and finding no other remedy, we have, agreeable to the law of nature in our own defense, and **for maintaining the rights, privileges, and liberties of our countrymen, wives, and children**, and latest posterity from being enslaved by the Spaniards, been constrained to **renounce allegiance to the king of Spain**, and pursue such methods as appear to us most likely **to secure our ancient liberties and privileges**.

If the Sovereign fails to live up to his duties, this document argues that the people (“we”) have a natural right to replace the current sovereign with a new one. The Dutch were fortunate in their revolt, and a new republic was founded a few years later, which rapidly became one of the most wealthy and powerful nations of seventeenth-century Europe (Israel 1998).<sup>77</sup>

During the next two centuries, many other proposed charters in Europe espoused similar theories. For example, about a half century later, a group called the “Levelers” proposed a major reform of England’s medieval constitution in their *People’s Agreement* (1647). The *People’s Agreement* proposed a republican constitution for English governance based on popular sovereignty and civic equality, rather than sovereign duties, and their conception of popular sovereignty that is explicitly democratic. It argued:

(3) That the people do [should] of course **choose themselves a parliament** once every two years ... (4) That the power of this and all future representatives of this nation is **inferior only to those who choose them**, and does extend to whosoever is not expressly or implicitly reserved by the represented to themselves. ...**That in all laws made or to be made, every person may be bound alike** and that no tenure, estate, charter, degree, birth, or place to confer any exemption ... That **all laws ought to be equal**, so they must be good and not evidently destructive to the safety and well-being of the people. (Sharp 1998: 94-5)

The *People’s Agreement* also mentions freedom of religious conscience and equality before the law as “reservations” by the people. In other petitions sent to Parliament, writers from the same group attacked monopoly privileges:

The oppressive monopoly of Merchant Adventurers and others do still remain to the great abridgment of the liberties of the people and to the extreme prejudice to all industrious people. (Sharpe 1998: 79)

and lobbied for improved judicial proceedings:

That ye will permit no authority whatsoever to compel any person or persons to answer questions about themselves or nearest relations. (Sharp 1998: 82)

In these respects and several others, the *Agreement* may be regarded as the beginning of English debate on “civic equality,” a concept that would play a central role in liberal political reforms adopted over the course of the next three and a half centuries.<sup>78</sup>

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<sup>77</sup> See chapter 15 for a more extensive discussion of the Dutch revolt and its political institutions.

<sup>78</sup> Several levellers also raised issues concerning the proper size of the welfare state. A proper welfare state “will provide some powerful means to keep men, women, and children from begging and wickedness, [so] that this nation may no longer be a shame to Christianity therein.” (Sharpe 1998: 83)



### *Academic Contract Theories of the State*

Several scholars subsequently elaborated and deepened the Dutch and Leveler arguments. In the relative safety of Paris, Thomas Hobbes wrote a famous book, the *Leviathan*, which was published in England in 1651. Among many other carefully reasoned arguments, he explained how it could be in the self-interest of all citizens to delegate their power to a sovereign in order to avoid the calamities of life without law and order. Although his logic supported complete irrevocable sovereignty (1959: ch. 14), the argument was based on popular sovereignty:

A COMMONWEALTH is said to be instituted when a multitude of men do agree, and covenant, every one with every one, **that to whatsoever man, or assembly of men, shall be given by the major part the right to present the person of them all, that is to say, to be their representative; every one, as well he that voted for it as he that voted against it, shall authorize all the actions and judgments of that man**, or assembly of men, in the same manner as if they were his own, to the end to live peaceably amongst themselves, and be protected against other men.

From this institution of a Commonwealth are derived all the rights and faculties of him, or them, on whom the sovereign power is conferred by the consent of the people assembled.

Once a commonwealth is created, Hobbes argued that it could not be cast off, nor could the sovereign (whether a single man or representative assembly) be bound by a covenant (ch. 18):

First, because they covenant, it is to be understood they are not obliged by former covenant to anything repugnant hereunto. And consequently they that have already instituted a Commonwealth, being thereby bound by covenant to own the actions and judgments of one, cannot lawfully make a new covenant amongst themselves to be obedient to any other, in anything whatsoever, without his permission.

**And therefore, they that are subjects to a monarch cannot without his leave cast off monarchy and return to the confusion of a disunited multitude; nor transfer their person from him that beareth it to another man, other assembly of men:** for they are bound, every man to every man.

Although Hobbes' theory of an irrevocable constitutional contract is clearly more conservative than the ones articulated in the Dutch declaration of independence and the Leveler's *People's Contract*, it shares with them the idea that legitimate governmental power exists to advance the interests of those living within the commonwealth of interest. For Hobbes, the provision of law and order was sufficient to satisfy that requirement.

Hobbes' conclusions, were not, of course, universally accepted. Other enlightenment scholars challenged his doctrine of complete sovereignty and his theoretical approach to natural law (Berman

2003: 261–62). John Locke (1689), for example, accepted Hobbes' use of abstraction and also accepts Hobbes' argument that individuals transfer their natural authority to the sovereign as a means of securing life and personal property (in both person and land), because these advance broadly shared interests within every community. However, he notes that the logic of social contracts also implies that some actions of a sovereign cannot be legitimate, because authority to make some kinds of policy decisions would never have been included in a voluntary social contract:

But though men, when they enter into society, give up the equality, liberty, and executive power they had in the state of nature, into the hands of the society, to be so far disposed of by the legislative, as the good of the society shall require; yet it being only with an intention in everyone the better to preserve himself, his liberty, and property (for **no rational creature** can be supposed to change his condition with an intention to be worse) **the power of the society or legislative constituted by them, can never be supposed to extend farther than the common good;** but is obliged to secure every one's property, by providing against those three defects above mentioned that make the state of nature so unsafe and uneasy. (*Second Treatise*, 1689: 310)

Locke, thus, adopts the Dutch perspective on sovereignty, possibly because he spent many years as a refugee in the Netherlands avoiding the sanctions of the British King James II.

Popular sovereignty and social contract–based arguments were further developed in the eighteenth century by Montesquieu, Rousseau, Madison, and Kant, to name but a few of the next generation of political theorists. Similar reasoning was also applied by important legal scholars such as Blackstone (1765).

Such new theories of legitimate rule-making authority gradually undermined existing justifications for the medieval constitution and, in the long run, provided logical foundations for what would become liberal political theory. Theories of government based on divine will and ancient privilege gradually fell from use, at least among scholars. In governments grounded in social compacts, all members of the community should be regarded as a government's formateurs, and the delegation of policymaking authority to a policymaking body should be regarded as simply a means for advancing their common purposes. Legitimate government policy, from this perspective, is for the benefit of the community members, rather than for those holding the offices of government.

### *New Economic Critiques of Medieval Monopolies*

During the same period in which liberal theories of the state emerged, new liberal theories of economic growth emerged. To some extent, the new theories were motivated by increased international trade and changes in the mode of production within the textile industry during the

seventeenth and eighteenth century. Many early liberal theorists analyzed economic and political matters simultaneously.

For example, seventeenth-century Dutch writers noted that prosperity may be impeded as well as advanced through government policies. La Court's (1662) widely read book examined the economic and political interests of Holland, and suggests that centralized political power, in contrast to Hobbes' argument, tends to undermine prosperity (ch. 9):

However, this **excellent and laudable harmony and union in commerce**, fishing, farming, and manufacturing **may be violated**, even to the ruin of all the inhabitants, none excepted but courtiers and soldiers, and that by **one sole mistake in government, which is the electing of one supreme head over all these inhabitants**, or over their armies. For seeing such a single person for the increase of his grandeur, may curb and obstruct Holland's greatness and power...they **would weaken or lessen all such [productive] cities and impoverish the inhabitants**, to make them obedient without control.

Locke's theory of the state is partly based on the economic advantages of secure property rights. He also wrote on usury laws in 1691, analyzing the difficulty of writing laws to regulate loans and the undesirable consequences of many such laws.

In the course of developing his unusually complete theory of governance, Montesquieu (1748) in *The Spirit of the Law* also develops a theory of taxation, noting that government policies can harm, rather than benefit the general interest:

The public revenues are a portion that each subject gives of his property, in order to secure or enjoy the remainder. To fix these revenues in a proper manner, regard should be had both to the necessities of the state and to those of the subject. **The real wants of the people ought never to give way to the imaginary wants of the state.**

**Imaginary wants are those which flow from the passions and the weakness of the governors, from the vain conceit of some extraordinary project, from the inordinate desire of glory**, and from a certain impotence of mind incapable of withstanding the impulse of fancy. Often have ministers of a restless disposition imagined that the wants of their own mean and ignoble souls were those of the state. (Book 8: ch. 1)

The most complete analysis of the tension between markets and government regulation was undertaken by Adam Smith who published his *Wealth of Nations* in 1776. This book directly challenged medieval ideas on wealth, international trade, and economic policy (mercantilism). Smith noted that specialization and capital accumulation were the main engines of economic growth, rather than a nation's stock of gold, and argued that markets tend to work best when the formation of new business organizations is not blocked by monopoly patents, heavy taxation, inadequate

infrastructure, or corruption. Increased specialization generated by larger markets tended to benefit nearly everyone:

In the foregoing Part of this Chapter I have endeavored to show, even upon the principles of the commercial system, how **unnecessary it is to lay extraordinary restraints** upon the importation of goods from those countries with which the balance of trade is supposed to be disadvantageous.

Nothing, however, can be more absurd than this whole doctrine of the balance of trade, upon which, not only these restraints, but almost all the other regulations of commerce are founded. When two places trade with one another, this doctrine supposes that, if the balance be even, neither of them either loses or gains; but if it leans in any degree to one side, that one of them loses, and the other gains in proportion to its declension from the exact equilibrium. Both suppositions are false. **A trade which is forced by means of bounties and monopolies, may be, and commonly is disadvantageous to the country in whose favor it is meant to be established,** as I shall endeavor to show hereafter. (Book 4: ch. 3)

Smith goes on to argue that a nation's capacity for making goods depends on its human resources, holdings of productive equipment, and land, rather than holdings of gold. The ability to produce desired goods and services from those holdings increases with specialization and round about production (the division of labor). With respect to the latter, Smith develops what might be called a popular sovereignty theory of economic development. He argues that self-interest tends to promote the welfare of all involved in market relations, without need for significant intervention on the part of a sovereign, but as if guided "by an invisible hand."

Although governments can provide useful public services, such as roads and canals, contract enforcement, and national defense, Smith and other economic liberals argued that wealth was for the most part a consequence of the voluntary nature of market transactions. Monopoly privileges and most impediments to trade were completely unnecessary and often counterproductive.

### *Reasoned Argument, Rather than Revelation*

Liberal economic and political theorists used similar types of arguments and reached similar conclusions about the kinds of reforms that should be adopted. For the most part, they relied on reason, abstraction, and examples from the physical world, rather than revelation, authority, or scripture as their main engines of analysis.

**Natural right is the dictate of right reason** showing the moral turpitude or moral necessity of any act ... and consequently that such an act is either forbidden or commanded by God, the author of nature. ... Now the **Law of Nature is so**

**unalterable**, that it cannot be changed even by God himself... Thus two and two must make four, nor is it possible to be otherwise... (Grotius 1625, book 1, ch. 1: 21-22).

That right and wrong were susceptible to reasoned argument implied that governance and governmental policies could be analyzed in a similar, reasoned, dispassionate manner.

For the most part, the early liberals regarded men (literally so in most cases) to be equal participants in the political and economic communities in which they participated. Such persons were not necessarily equal in their talents or wealth, but should, nevertheless, be equal before the law and constrained by those laws only insofar as common interests are advanced by them:

But **every man**, when he enters into society, gives, up a part of his natural liberty, as the price of so valuable a purchase ; and, in consideration of receiving the advantages of mutual commerce, obliges himself to conform to those laws, which the community has thought proper to establish.

And this species of legal obedience and conformity is infinitely more desirable, than that wild and savage liberty which is sacrificed to obtain it. For no man, that considers a moment, would wish to retain the absolute and uncontrolled power of doing whatever he pleases; the consequence of which is, that every other man would also have the same power; and then there would be no security to individuals in any of the enjoyments of life. **Political therefore, or civil, liberty, which is that of a member of society, is no other than natural liberty so far restrained by human laws (and no farther) as is necessary and expedient for the general advantage of the public.** (Blackstone 1765, book 1: ch. 1)

The center of gravity in public discussion and in Europe's scholarly literature in the eighteenth century, nonetheless, accepted most of the existing pattern of privilege as essentially reflecting fundamental differences in family, talent, and nature. Conservatism in this sense, for example, was clear in the religion-based theories of Filmer (1680) and Bossuet (1709) and also in the rational-choice analysis of Hobbes (1651).

Moderates in the late eighteenth century, like conservatives, were skeptical of democratic reform, but tended to accept elements of liberal and conservative sides of policy debates. For example, Burke suggests that people are not equal and that it is entirely proper that these differences be taken into account:

The occupation of an hair dresser, or of a working tallow chandler, cannot be a matter of honor to any person—to say nothing of a number of other more servile employments. Such descriptions of **men ought not to suffer oppression from the state; but the state suffers oppression, if such as they**, either individually or collectively, **are permitted to rule.** In this you think you are combating prejudice, but you are at war with nature. (Burke 1790: 139)

On the other hand, Burke also suggests that the right to participate in politics and production could be extended a bit beyond the current elites, whose privileges were based on ancient favors and accomplishments of their ancestors, to include those who had proven their worth in the present:

You do not imagine, that I wish to confine power, authority, and distinction to blood, and names, and titles. No, Sir. There is **no qualification for government, but virtue and wisdom**, actual or presumptive. **Wherever they are actually found**, they have, in whatever state, condition, profession or trade, the passport of Heaven to human place and honor...

**Woe to the country which would madly and impiously reject the service of the talents and virtues, civil, military, or religious, that are given to grace and to serve it;** and would condemn to obscurity every thing formed to diffuse luster and glory around a state. Woe to that country too, that passing into the opposite extreme, considers a low education, a mean contracted view of things, a sordid mercenary occupation, as a preferable title to command. **Every thing ought to be open; but not indifferently to every man.** (Burke 1790: 140-1)

In the nineteenth century, these ideological trends accelerated along with commerce and industrialization.

In the nineteenth century, the contract-based theories of the state gave way to utilitarian ideas about the good society, under which policies and institutions were not judged by their contractual foundation, but rather by whether they tended to increase or decrease “society’s welfare,” defined as the sum of the happiness (utility) of all persons in a given society. Most contract theories had already reached similar conclusions, so there was less conflict among intellectuals during this transition than might have been expected. Although utilitarian logic is quite different than contractarian analysis, utilitarian arguments were also rational and inclusive, and made use of scientific predictions. Policy A is better than policy B if it will (predictably) make more people better off than worse off.

By explicitly including everyone’s welfare (happiness or utility) into their calculations, utilitarian theory further undermined arguments for special privilege and, thereby, also tended to promote liberal reforms. If the proper aim of public policy is to maximize social utility, everyone’s welfare counts, not just that of privileged families. Indeed, the self-interest of a person that has internalized utilitarian normative theory tends to be more inclusive and altruistic than tends to be the case for persons adhering to most other less inclusive normative theories.

The utilitarian analysis for public policy and constitutional design reached conclusions that were similar to those of contractarian theory, and provided another methodology for extending the rationalism of science and mathematics into policy debates. Both contractarian and utilitarian arguments focused on the secular sphere of political and economic life, and relied on rational

arguments rather than appeals to tradition or religious doctrine to judge the relative merits of policies and institutions .

These normative theories, together with the gradual shift in economic interests, induced an increasingly broad swath of literate society to accept the notion that (i) historical privileges of birth were somewhat excessive and that (ii) broadening economic and political opportunities might improve their own circumstances as well as society's. (Many liberal intellectuals were not eligible for government office or entitled to vote in national elections at the time that they wrote.)

### *Religious Beliefs Narrow, Rather than Fade*

As censorship laws were relaxed during the eighteenth century, such arguments were widely disseminated and read by educated persons throughout Europe and North America. A century or two of philosophical and policy debates among conservatives, moderates, and liberals had sharpened arguments on all sides and tended to make the arguments more rational and less grounded in custom and religion. (U. S. colonial history is a special case here, as there was relatively little censorship during American colonial days and much more freedom to experiment with alternative forms of religion and local government, as noted below in chapter 18.)

The effect of such rational, secular analyses of public policy on religion, however, was not to reduce the extent or intensity of religious faith in the West, which remained high in the United States and in Europe throughout the nineteenth century, even as liberal democracy emerged, rather it tended to reduce the scope of religion. The enlightenment did so in three ways. First, the Scientific and Industrial Revolutions diminished the range of phenomena that educated persons interpreted as miracles. Lightning became electricity, rather than the wrath of God, and more generally, weather became a meteorological (physical) phenomenon, rather than a matter of God's favor or punishment. This implied that prosperity in the countryside was largely determined by physical phenomena (good and bad weather), rather than prayer, God-fearing conduct, or sacrifices (church contributions). Subsequent scientific progress in the nineteenth century in geology, biology, and social science further diminished the extent to which educated persons regarded the world to be static or the product of constant divine intervention. A nontrivial role remained for divine intervention in the new theories, but it was clearly less active and frequent in those theories than had been taken for granted during earlier times.

Second and partly as a consequence of the first, the sacrifices considered necessary to achieve an afterlife declined. This did not make people less intensely religious, but did make them somewhat

more tolerant persons. Their neighbor's sins and beliefs became less important to their own perceived chance of an afterlife. Consequently, "mistaken persons" (both errant fellow travelers and believers of other faiths) were less subject to persecution, as being under the influence of the devil. Moreover, the belief that a complete final answer has been found conflicted with the evidence of the Scientific Revolution and the Industrial Revolution, both of which demonstrated that continual improvement is possible and useful. No contemporary theory is perfect. Perhaps perfecting one's religious beliefs also required a bit of creativity and experimentation.

Third, the scope of religiously neutral activities increased, which was partly caused by economic and scientific developments, but also reinforced them. Less and less of life was devoted to religious matters by most religious persons, and fewer aspects of life were deemed to have sacred origin. Life's routines were not all god given, and, so, change is not always a sin. Even though one's father and grandfather and great grandfather had all been farmers and all lived in the same village, it was possible to choose another career or move to another place without undermining God's divine organization of life on Earth. Many good people, not simply the community's wastrels, sinners, and deviants, left farm villages for towns and cities. This transition was evident in the behavior of many famous persons during the Enlightenment, and also evident in the pattern of migration taking place within Europe and the United State, as new urban centers emerged and great waves of emigration took place.

In the seventeenth and eighteenth centuries, it could also be argued that the expansion of commerce and increased mobility caused religious ideologies to change to accommodate the new economic circumstances and greater competition among religions. Such changes in doctrine also contributed to the expansion of the domain of religiously neutral activities and actions (Weber 1930: 72–76). Career choices, investment alternatives, food choices, clothing choices, reading choices, and so on increased with the Industrial Revolution.

Indeed, for many economic pragmatists, the domain of religion gradually shrank to the point that it became a field of metaphysics, rather than a guide for daily life.

The capitalistic [industrial] system so needs this devotion to the making of money, it is an attitude toward material goods which is so well suited to that system, so intimately bound up with the conditions of survival in the economic struggle for existence, that there can today [in 1904] no longer be any question of a necessary connection of that acquisitive manner of life with any single *Weltanschauung*. In fact, **it no longer needs the support of any religious forces, and feels the attempts of religion to influence economic life, insofar as they can still be felt at all, to be as much an unjustified interference as its regulation by the State.** (Weber 1930: 72)



In this sense, life in the West gradually became increasingly secular, even as Europe and the United States continued to be populated by very religious people.

Western democracies and laws in support of religious tolerance emerged in very religious societies, although not ones in which religion was all encompassing. The expansion of the religiously neutral domain made it easier (and more routine) for people of faith to interact with persons from other faiths (which in nineteenth-century Europe were mostly slightly different versions of Christianity). It also simplified the organization of new firms, cooperatives, and interest groups.

As the religiously neutral domain expanded, legal supports for religious tolerance also expanded. In the mid-nineteenth century, religious conditions for political office were generally dropped and the rights to worship extended, at the same time that state churches were maintained and privileged through state laws.<sup>79</sup>

### *Normative Theories and Nineteenth Century Constitutional Reform*

In the seventeenth and eighteenth centuries core theories of the role of governance and the role of the national church began shifting slowly. During the same period, notions of “equality before the law” began to replace theories of family and royal privilege among educated people, including many prominent members of parliament. Such ideas were not entirely new, as for example, many had been developed by the Leveler movement in England during the seventeenth century. These liberal conceptions of the good society and good government, however, gradually became more widely accepted by politically active persons and groups throughout Europe during the late eighteenth century and nineteenth centuries.

The new theories had implications for the proper authority of parliament, the proper degree of suffrage, economic regulation, religious tolerance, education reform, and a variety other standing policies. In 1800, these views were minority opinions, especially among members of parliament. The

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<sup>79</sup> Such freedom of conscience existed in the many of the U.S. colonies a century and a half earlier and in the Dutch republic three centuries earlier. In the United States, this principle became part of the national government’s constitution in 1783. See chapter 18 for a discussion of colonial American institutional innovations.

Although the *Union of Utrecht* called for religious tolerance, as did many of the republic’s early political leaders, tolerance was not always supported by provincial and urban governments. Nonetheless, local autonomy implied that a place could nearly always be found in the Netherlands where nonconforming religious practices and intellectual perspectives would not lead to arrest or banishment by local authorities. This was to a considerable extent a consequence of its decentralized political institutions. Chapter 15 provides a more complete discussion of the Dutch Republic.

increased support for liberal reforms, however, was sufficient to motivate a variety of pamphleteers and interest groups to advocate eliminating trade barriers, freeing slaves, expanding public education and expanding suffrage. Many organized interest groups were formed during periods in which such “revolutionary” groups were tolerated, and the success of their persuasive campaigns was evident in the long run. By 1900, there were clear majorities among voters and within parliament that accepted all these formerly radical views as essentially obvious and uncontroversial.

## **G. Disruptions to the Medieval Equilibrium: New Evidence that Republican Governance Is Feasible**

In addition to new political and economic theories, new evidence emerged that representative systems of government with dominant parliaments were feasible and could be successful. An important experiment in political and economic innovation began in the late sixteenth century in the Rhine river’s delta. The provinces north of the Rhine successfully fought a war of secession from the Habsburg empire and created a very decentralized and divided government—the United Republic of the Netherlands—which chapter 15 discusses in more detail. In addition a variety of new very representative governments were formed in the English colonies of North America—which chapter 18 discusses in more detail. In a few cases, new colonial governments were literally formed by social contract. In most cases, the policymaking authority of the elected members of their colonial parliaments was greater than in Europe and elected by usually broad electorates. The success of these relatively liberal forms of government undermined conservative claims that more inclusive political systems were necessarily doomed to chaos and disaster.

### *The Dutch Republic in the Seventeenth Century*

The Dutch republic had a relatively strong federal parliament (the States General) and a relatively weak chief executive (*stadhouder*) by the standards of the late-medieval, early-modern period. The republic’s decision rules caused it to be a very decentralized state, and decentralized governance together with the region’s historic interest in international trade generated competition among localities for the large inflows of new capital and labor. Decentralization thus favored relatively open internal and external trade networks. Decentralization also produced a relatively tolerant society in which religious and political ideas could be expressed that would have been punished severely in other countries.

If not a liberal state in the modern sense, the United Provinces rapidly became a safe haven for nonconformist religious and political ideas. Its tolerance for variations of Protestantism and relatively open markets attracted substantial immigration and produced rapid economic growth. Commerce and population expanded as hard-working innovators, capitalists, craftsmen, and scholars from throughout northern Europe converged on the Netherlands.<sup>80</sup>

Amsterdam became a metropolis, and many other Dutch towns became cities. New universities, newsletters, journals, and printing companies were founded (Dunthorne 2004; Goldie 1997: xii; Schwoerer 1990).

In addition to those seeking economic and religious opportunities, the United Provinces attracted individuals and manuscripts with controversial political and philosophical ideas (Dawson 1954). The French philosopher and mathematician, René Descartes, spent more than 20 years living and writing in the Netherlands. Somewhat later, in 1682, Ashley Cooper, the Earl of Shaftesbury and organizer of the first national political campaigns in England (against the accession of James II), arrived in the Netherlands. Cooper was followed a year later by his young protégé, John Locke. Locke remained in the Netherlands for six years. He completed his first and second treatises during this period, as well as his work on religious tolerance. The influence of Dutch political theory and history is evident in his *Two Treatises*.

In other cases, the controversial persons themselves did not seek refuge in the Netherlands, but their books were anonymously published at Dutch presses, rather than at home. Among well-known enlightenment political philosophers, Montesquieu, Voltaire, and Rousseau all at one time or another found it necessary to publish their work on Dutch presses (Dunthorne 2004). Hobbes, who chose refuge in France, rather than the Netherlands during the English civil war, also found on his return to England that several of his later books could only be published on Dutch presses (Macpherson 1985: 21–22).

From an economic perspective, the success of the Dutch republic partly reflected its fortunate location at the mouth of the Rhine river, a gateway to Southern Germany, northern France, and Western Switzerland. As output and trade expanded inland, more products were imported and

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<sup>80</sup> Many of these immigrants were religiously motivated. Thousands of Protestants and nonconformists from the southern provinces (Belgium) also moved to the Netherlands in the late sixteenth and early seventeenth centuries. Other nonconformists from throughout Europe followed, including thousands of Huguenots from France and several hundred English Puritans. Of course, not all the new immigrants were pleased with life in the Netherlands—half of the pilgrims on the Mayflower’s voyage to New England were English Puritans who found life in Leiden unsatisfactory—but substantial immigration continued for many decades.

exported. However, its more open internal and external markets amplified the advantages of its fortunate location. Other port cities at the ends of other rivers also did well, but not nearly as well as Amsterdam. In this manner, decentralized limited governance allowed a relatively tolerant and prosperous polity to emerge at the mouth of the Rhine river during the early seventeenth century. Indeed, Adam Smith regarded the Netherlands to be the wealthiest place on Earth in the late eighteenth century.

The Dutch success demonstrated that a relatively weak central government and open trade could produce a prosperous economy and relatively tolerant polity. The magnitude and breadth of immigration into the United Provinces demonstrate that Dutch political institutions and their associated tolerance and prosperity were well known throughout Europe. Principles of limited government, tolerance, and natural rights were more than philosophical ideas in the United Provinces. Thoughtful persons began to analyze the sources of its success, which helped to launch the liberal movement in Europe.

### *Representative Government in the English Colonies of North America*

By the middle of the seventeenth century several European colonies had been established along the eastern seaboard of what became the United States of America a century later. Commercial colonies were established in Virginia and North Carolina. A series of religious enclaves were founded in new England by English Puritans. A Dutch commercial colony was established along the Hudson river that later became New York city and New York state. Proprietary colonies were established by William Penn (Pennsylvania) and Lord Baltimore (Maryland).

Although founded for different purposes, the colonies all required new governments, and to be successful those governments had to attract significant immigration. In the case of the commercial and Sovereign ventures, autonomous rule-making bodies were created, because the colonies were too far away to manage directly from the home country, and few formateurs took the risk of living in the colonies themselves. Consequently, they delegated a good deal of authority to men selected to govern their new territories, who moved (often temporarily) to the colonies. In the context of the great wilderness confronting colonists, it must have been somewhat of a surprise that securing cooperation from the colonists, many of whom were investors or employees of the home companies, was not always easy. In the case of the religious colonies, new organizations were created to provide local public goods such as law and order, help assure the purity of their faith, and help manage development and colony defense. Religious and other disagreements among community

residents often induced exit, and subsets of disgruntled town residents would set off to form new villages with new governments.

In most cases, colonial formateurs appointed colonial chief executives who were subsequently augmented by appointed “councils” and by assemblies with elected members. In this manner, parliamentary government emerged in the North American colonies.

One of the first instances—and a striking one—occurred in 1619, when the Virginia company established a bicameral parliament (House of Burgesses) with one chamber appointed by the governor and the other elected by all freeholders. In Virginia’s colonial circumstances, the usual property qualifications generated nearly universal male suffrage, rather than the traditional 5-10% suffrage. The elected chamber had the right to veto all new taxes and new legislation. The new colonial institutions of governance were not (usually) intended to be revolutionary experiments, but rather adapted the familiar English template to new circumstances. It bears noting that the new Virginians were mainstream English men and women, rather than rebels. They belonged, by and large, to the established church and many were from aristocratic families. They were not religious or political radicals. The minor changes—broader suffrage and stronger veto power of new laws—proved to be significant reforms of the conventional king and council template for governance.

Other innovations of the North American colonies included rules supporting religious tolerance and freedom of the press. In the case of New Amsterdam, religious tolerance was simply a normal part of Dutch legal practices. The Dutch colony attracted religious refugees from the New England colonies whose demanding religious practices (often established or supported by elected officials) alienated those who had sought religious freedom in the colonies, rather than religious purity. Religious tolerance was also adopted by Lord Baltimore’s Maryland colony as a method of attracting Protestants evicted from Catholic France and Catholics fleeing Protestant Princes elsewhere in Europe.

Other colonies gradually adopted similar institutions of governance, partly because it was evident that the Virginia rules produced policies that worked tolerably well and partly because Virginia was successfully attracting new colonists. Virginia subsequently reduced suffrage by redefining “freeholder,” but suffrage remained very broad by the standards of world history. The definition of a freeholder varied somewhat through time and among the colonies. The southern colonies tended to have a somewhat higher property threshold for suffrage than the northern colonies.

The results were widely known in Europe, in part because commercial developers had incentives to make them known (and indeed to exaggerate their success). Liberal governance and religious tolerance was, along with access to virgin land, among the main selling points for life in the colonies. Analysis of the new institutions was also provided in letters written to friends and families from those who did reasonably well and from those who stayed a few years and then returned to Europe. About 10 percent of those who made the trip to the English colonies subsequently returned home to family and friends. Many others died in the early years as farming techniques were adjusted for the new soils and climate. Nonetheless, the colonies grew rapidly and average income was very high, in large part because land was fertile and inexpensive (Brown 1955).

The system of divided government that characterized the Virginia charter protected middle class interests (represented in the House of Burgess) against those of the colony's elites (represented in the appointed council) and crown company interests (represented by the governor), and vice versa. In this manner, the Virginia colonial template assured that new laws could only be adopted if they advanced more or less general interests within the colony. The power of the popularly elected chamber did not end the rule of law or produce great transfers of wealth to the middle class, as often argued by conservatives of this time (and for the next three hundred years). Rather, it attracted wave after wave of new immigrants from Europe.

The success of the Dutch and North American experiments supported a variety of liberal ideas about governments and markets, and undermined a variety of conservative claims about the existing "divine" institutional and legal order in Europe. Evidently, the "divine order" could be improved upon.

## **H. Restorations: Failures to Produce Stable Alternatives to the Medieval System of Government**

However, not all liberal experiments proved to be durable or successful. For example, in the early eighteenth century the unexpected death of a Swedish king provided an opportunity for its parliament to take nearly complete charge of governance for almost 50 years, as noted above. Laws were passed that increased freedom of assembly and speech. Commerce initially expanded, but budgetary problems and inflation produced a political crisis toward the end of that period (Roberts 1986). Partly because of a macroeconomic crisis, a new more assertive king was able to restore most of the sovereign's medieval authority (see chapter 14 for more details).

There were also two cases in which civil wars were fought in Europe and major reforms of governance were temporarily implemented. These revolutions, however, produced only temporary changes in medieval templates for governance, because the new institutions proved to be unstable. In each case, a series of major reforms quickly produced dictatorships. During the English civil war of the mid-seventeenth century, governance passed from republic to Cromwell's dictatorship and back via the "restoration" to the old medieval constitution of England. (When the next two Stuart kings violated the medieval constitution again, intervention by William III and the Dutch army restored it again in 1689.) In 1789 the French Revolution produced a series of major constitutional reforms that led to Napoleon's dictatorship in a period of eight years.

Napoleon's army subsequently conquered much of Europe and ended many long-standing regional governments in Germany and Italy. He also reorganized the national governments of Switzerland and the Netherlands. Napoleon's empire, however, was ended by an alliance of monarchies that restored the medieval template and balance of authority in France and throughout his short-lived empire.

In these three cases, major reforms liberalized governance in the short run, produced dictatorships in the medium run, and restored king-dominated forms of the king and council template in the long run. Major reforms are clearly not easy to design. Indeed, in the two centuries prior to 1800, only the Dutch Revolt and American Revolution could be said to have produced durable liberal reforms of governance. By the late eighteenth century, however, the Dutch republic gradually centralized authority, formally adopted a hereditary executive, and so began to resemble its royal neighbors. Napoleon ended that experiment and the Vienna Congress transformed what remained into a more or less traditional European kingdom. Political liberalization in America after its war of independence, was more stable, but most of it had occurred well before its war was fought (see chapter 18).

## **I. By 1815 the Stage is Set for Liberal Constitutional Reform in Europe, But Not Obviously So**

After Napoleon was defeated, the victors organized a conference in Vienna to address international security and constitutional issues. Between 1814 and 1815, that conference substantially redrew the map of Europe: creating somewhat larger states in Germany, a new larger kingdom of the Netherlands, restoring Swiss independence, and reducing Poland and Venice to dependencies (Nicolson 1946: ch. 11-2).

After the Vienna conference, the king and council template must have seemed as secure as ever. Experiments with republican governance in Europe appeared to be over. Republican governments in the Netherlands had been replaced with a proper constitutional monarchy. The Venetian republic had been merged into the territory of Austria. The Swiss confederation had been restored, but was less stable and remained so for three decades. Moreover, the poor constitutional results of the French revolution, both the terror and the dictatorship, could be used to counter liberal arguments favoring more open politics.

The fear of revolutions similar to the French one did not kings to adopt more liberal government after 1789, as some contemporary revolutionary threat theories of constitutional reform would seem to suggest, but rather induced worried governments to reduce civil liberties. For example, the United Kingdom curtailed the right of habeas corpus, increased censorship, and outlawed seditious meetings in 1817. Similar more restrictive laws were also passed on the European continent during this and other times when revolutionary threats were feared by political elites.

Economic and political liberals were a minority even in academic circles (in most places) during the seventeenth and eighteenth centuries, partly because political censorship was still very common in Europe, but also because there were many scholars who favored the traditional scholastic approach. As a consequence, life was often difficult for liberal scholars. Locke, for example, published his work anonymously. Many famous French writers either lived abroad—as did Descartes, in the Netherlands—or were very careful about how they presented arguments, so as not to run afoul of penalties associated with treason or blasphemy. This is one reason why many famous German and French liberals were “fiction” writers, rather than social scientists or political theorists. Fiction provided liberal authors with a natural defense against treason: “its just a story.”

Rationalism and liberalism remained minority views during the early 19th century, although they were gaining support within educated circles.

Burke was much closer to the mainstream in England in 1800 than Locke or Bentham. Indeed, by the spirit of that time, Burke could be regarded as a moderate liberal, which is why both contemporary liberals and conservatives can find useful quotes in Burke’s writings and speeches. Institutional conservatism is completely rational, until it is demonstrated that other institutions actually work as well or better than existing ones.

With the benefit of hindsight, we know that conservative confidence in 1815 was misplaced. That same hindsight, however, also tends to make the next century of reforms seem more inevitable than it was. Commerce and innovation could have stalled, and the ideas of intellectuals and radical



liberal reformers might have lost public and legislative debates to other more traditional ideas, as they had in the past and did in other places such as China. Governments might have become more king dominated, had colonization proved to be as profitable for Sovereign companies as kings had hoped and wars less costly. The fact that eighteenth-century colonies generated little new revenues for kings while increasing their expenses caused parliament's medieval power of the purse to increase in importance, rather than to decline.

At the beginning of the nineteenth century, none of this was obvious. The constitutional decisions made in Vienna had restored the traditional template and balance of authority throughout Europe. New king and council regimes were created at the same time that others were restored. Similar king-dominated templates would be adopted later in the century by Greece, Germany, Italy, and Japan.

Previous centuries had not provided any strong evidence that European culture had led to liberal governments or rapid economic development. Christianity had been the dominant religion for more than a thousand years. The Protestant reformation had begun nearly three centuries earlier, without producing obviously more liberal societies, except perhaps in the Netherlands. Although it can be argued that Europe had gradually become a relatively wealthy place by the standards of world history, life in Europe was not radically different or more prosperous than in other places with reasonably well-functioning governments.

However, as a consequence of technological and ideological changes that were underway in the late eighteenth century, the post-Napoleon restoration proved unstable, and was gradually overturned by a long series of reforms adopted in the century that followed. The fact that both old and new kingdoms underwent similar reforms suggests that a series of "shocks" were systematically changing the political and economic interests of Europe's political elites during the nineteenth century. These factors favored liberalism and industrialization, and their constitutional consequences were largely consistent with the models of constitutional reform developed in part I of the book.